UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

November 27, 2013

IN THE MATTER OF	:	
	:	**ORDER OF SUSPENSION**
Nevada Gold Corp.	:	**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 Nevada Gold Corp. ("Nevada Gold") because of questions regarding the accuracy of assertions by Nevada Gold, and by others, to investors in press releases and promotional material concerning, among other things, the company's assets, operations, and financial condition. Nevada Gold is a Delaware corporation based in Del Mar, California. The company's common stock is dually quoted on the OTCBB and OTC Link under the symbol NVGC.

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. EST on November 27, 2013 through 11:59 p.m. EST, on December 11, 2013.

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. 9500 / December 20, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-15658

In the Matter of

Multri-Precision, LLC
115 Main Street
Oakville, CT 06779

ORDER FIXING TIME AND PLACE OF PUBLIC HEARING AND INSTITUTING PROCEEDINGS PURSUANT TO SECTION 8(d) OF THE SECURITIES ACT OF 1933

I.

The Commission's public official files disclose that:

A. On December 5, 2013, Multri-Precision, LLC ("Respondent") filed a Form S-1 registration statement with the Commission (the "Registration Statement"). Respondent's Registration Statement states that it plans to issue 8,000,000 Class A Units at $0.25 per unit, for a total of $2 million. Respondent states in its registration statement that it has offices located at 115 Main Street, Oakville, Connecticut.

II.

The Division of Enforcement alleges, as set forth in the Statement of Matters of the Division of Enforcement attached hereto and incorporated herein by reference, that the Registration Statement omits to state certain material facts as required by Commission forms and regulations governing the offer and sale of securities to the public.

III.

The Commission, having considered the aforesaid, deems it appropriate and in the public interest that public proceedings pursuant to Section 8(d) of the Securities Act be instituted with respect to the Registration Statement to determine whether the allegations of the Division of Enforcement, as set forth in the Statement of Matters attached hereto and incorporated herein by reference, are true; to afford the Respondent an opportunity to establish any defenses to these allegations; and to determine whether a stop order should issue suspending the effectiveness of the Registration Statement referred to herein.

Accordingly, IT IS ORDERED that public proceedings be and hereby are instituted under Section 8(d) of the Securities Act, such hearing to be commenced at 9:30 a.m. on January 3, 2014, at the Commission's offices at 100 F Street N.E., Washington, DC 20549, and to continue thereafter at such time and place as the hearing officer may determine.

IT IS FURTHER ORDERED that these proceedings shall be presided over by an Administrative Law Judge to be designated by further order, who is authorized to perform all the duties of an Administrative Law Judge as set forth in the Commission's Rules of Practice or as otherwise provided by law.

IT IS 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, pursuant to Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220. If the Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against the Respondent 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), 221(f) and 201.310. This Order shall be served forthwith upon the Respondent by personal service or by sending confirmed telegraphic notice, as provided by Rule 141(a)(2)(v) of the Commission's Rules of Practice, 17 C.F.R. § 201.141(a)(2)(v).

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.

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

June 25, 2013

In the Matter of **Biozoom, 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 Biozoom, Inc. ("Biozoom"), a Nevada corporation headquartered in Germany, trading under the symbol BIZM on the Over-the-Counter Bulletin Board ("OTCBB"). The Commission is concerned that certain Biozoom affiliates and shareholders may have unjustifiably relied upon Rule 144 of the Securities Act of 1933 ("Securities Act") and they, Biozoom, and others may be engaged in an unlawful distribution of securities through the OTCBB.

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 above-listed company is suspended from the period 9:30 a.m. EDT, June 25, 2013, through 11:59 p.m. EDT, on July 9, 2013.

By the Commission.

Elizabeth M. Murphy

Elizabeth M. Murphy
Secretary

3 of 79

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-71466]

Draft 2014–2018 Strategic Plan for Securities and Exchange Commission

AGENCY: Securities and Exchange Commission.

ACTION: Request for comment.

SUMMARY: The Securities and Exchange Commission (SEC) is providing notice that it is seeking comments on its draft 2014–2018 Strategic Plan. The draft Strategic Plan includes a draft of the SEC's mission, vision, values, strategic goals, planned initiatives, and performance goals.

DATES: Comments should be received on or before [insert date 30 days from publication in the Federal Register].

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

Electronic Comments

Send an e-mail to PerformancePlanning@sec.gov

Paper Comments

Send paper comments to Vikash Mohan, Program Analyst, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549–2521.

FOR FURTHER INFORMATION CONTACT:

Vikash Mohan, Program Analyst, Office of Financial Management, at (202) 551–8522, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–2521.

SUPPLEMENTARY INFORMATION: The draft strategic plan is available at the Commission's Web site at http://www.sec.gov/about/secstratplan1418.htm or by

contacting Vikash Mohan, Program Analyst, Office of Financial Management, at (202) 551–8522, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549–2521.

By the Commission.

Elizabeth M. Murphy
Secretary

Dated: February 3, 2014

Commissioner Aguilar not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9527 / February 3, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15719

In the Matter of

the Registration Statement of

Eclipse Resources Inc.,
Business Filings Incorporated
311 South Division Street
Carson City, NV 89703

Respondent.

ORDER FIXING TIME AND PLACE OF PUBLIC HEARING AND INSTITUTING PROCEEDINGS PURSUANT TO SECTION 8(d) OF THE SECURITIES ACT OF 1933

I.

The Commission's public official files disclose that:

On December 3, 2012, Respondent filed a Form S-1 registration statement seeking to register management's common shares for resale in a $18,000 public offering (the "Registration Statement").

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

1. Respondent is a Nevada corporation headquartered in Winnipeg, Manitoba, Canada.

B. MATERIAL MISSTATMENTS AND OMISSIONS

2. In the Registration Statement, Respondent claims that it is engaged in the exploration for certain metals and other minerals, but is currently in an exploration stage, is without known reserves, and has not yet begun actual mining.

3. According to the Registration Statement, Respondent's management consists of one person who "control[s]" and "solely govern[s]" Respondent as its sole executive officer and director. In the Registration Statement, Respondent identifies by name its sole officer and director.

4. Further, the Registration Statement states that other than a management agreement between Respondent and its sole executive officer, "there are no, and have not been since inception, any other material agreements or proposed transactions, whether direct or indirect, with . . . any promoters."

5. Respondent's Registration Statement includes untrue statements of material facts and omits to state material facts necessary to make the statements contained therein not misleading. Among other things, Respondent stated that its executive officer and director controls Respondent when in fact Respondent is controlled and/or promoted by an undisclosed control person and/or promoter, who was previously charged with fraud in SEC v. Golden Apple Oil and Gas, Inc., et al., Civil Action No. 09-Civ-7580 (SDNY) (HB) and barred from appearing before the Commission in In the Matter of John Briner, Exchange Act Release No. 63371 (Nov. 24, 2010). Further, Respondent failed to disclose material agreements or proposed transactions with its undisclosed control person and/or promoter.

C. FAILURE TO COOPERATE WITH SECTION 8(e) EXAMINATION

6. On June 17, 2013, the staff issued a subpoena to Respondent requiring the production of documents by June 28, 2013 and testimony on July 8, 2013. Respondent failed to respond to the subpoena by the June 28 deadline or anytime thereafter. On July 2, 2013, the staff attempted to contact Respondent by phone, with no success. Respondent failed to appear for testimony on July 8, 2013.

7. On July 5, 2013, Respondent filed a letter seeking to withdraw its Registration Statement. On July 5, 2013, staff attempted to contact Respondent's executive officer to inform Respondent that it should cooperate with the staff's examination of Respondent, withdraw its letter, and that the failure to withdraw its letter may be grounds for issuance of a stop order under Section 8(d) of the Securities Act. Staff was not successful in contacting respondent. Respondent did not withdraw its letter and, on July 17, 2013, the Commission denied Respondent's request to withdraw its Registration Statement.

8. Respondent's failure to respond to the subpoena and seeking to withdraw its Registration Statement constitutes a failure to cooperate with, refusal to permit, and obstruction of the staff's examination under Section 8(e) of the Securities Act.

III.

The Commission, having considered the aforesaid, deems it appropriate and in the public interest that public proceedings pursuant to Section 8(d) of the Securities Act of 1933 ("Securities Act") be instituted with respect to the Registration Statement to determine whether the allegations of the Division of Enforcement are true; to afford the Respondent with an opportunity to establish

any defenses to these allegations; and to determine whether a stop order should issue suspending the effectiveness of the Registration Statement referred to herein.

Accordingly, IT IS ORDERED that public proceedings be and hereby are instituted under Section 8(d) of the Securities Act, such hearing to be commenced at 9:30 a.m. on February 18, 2014, at the Commission's offices at 100 F Street N.E., Washington, DC 20549, and to continue thereafter at such time and place as the hearing officer may determine.

IT IS FURTHER ORDERED that these proceedings shall be presided over by an Administrative Law Judge to be designated by further order, who is authorized to perform all the duties of an Administrative Law Judge as set forth in the Commission's Rules of Practice or as otherwise provided by law.

IT IS 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, pursuant to Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220. If the Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against the Respondent upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 22I(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§201.155(a), 201.220(f), 22l(f) and 201.310. This Order shall be served forthwith upon the Respondent in accordance with Rule 141 of the Commission's Rules of Practice, 17 C.F.R. §201.141.

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

By the Commission.

Elizabeth M. Murphy
Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

February 3, 2014

In the Matter of

Able Energy, Inc.
ACI Global Corp.
Alternative Energy Development Corp.
Allied Products Corp.
AEC Holdings Corp.
Auction Floor, Inc.
American Gold Resources Corp.
Angus Energy Corp.
Ashby Corporation Ltd.
Aksys, Ltd.
Allison Industries Ltd.
Alchemy Creative, Inc.
Allenergy Inc.
American Green Group, Inc.
Anviron Holding Co. (The)
American Patriot Corp.
Aquis Communications Group, Inc.
Aquamatrix, Inc.
ARTISTdirect, Inc.
Ascendia Brands, Inc.
Ausam Energy Corp.
American TonerServe Corp.
Atlantis Plastics, Inc.
Axiom Management, Inc.
BBMF Corp.
Barricini, Inc.
Butterfield-Blair, Inc., d/b/a Novahead, Inc.
Laura (RONALD S.) Enterprises, Inc.
b-Fast Corp.
BioGold Fuels Corp.
Bioponic Phytoceuticals, Inc.
BrightStar Information Technology Group, Inc.
BAXL Holdings, Inc.
Calibre Energy, Inc.
Cambridge Resources Corp.
Capacitive Deionization Technologies Systems, Inc.
Certified Environmental Group, Inc.
CareGuide, Inc.

ORDER OF SUSPENSION OF TRADING

6 of 79

Chill Tech Industries, Inc.
Chatsworth Data Solutions, Inc.
Caliber Energy, Inc.
Color Q, Inc.
Consolidated American Industries Corp.
Corporate Media International, Inc.
China Oil & Methanol Group, Inc.
Comedia Corp.
Concorde America, Inc.
Custom Restaurant & Hospitality Group, Inc. (The)
Consolidated Biofuels, Inc.
Creston Resources, Ltd.
ClearStory Systems, Inc.
Coattec Industries, Inc.
CO2 Tech Ltd.
Cardiovascular Sciences, Inc.
CyberCash, Inc.
Cheyenne Resources Corp.
DAL International Ltd.
Digital Fusion Multimedia Corp.
DealerAdvance, Inc.
DataLogic International, Inc.
Datamarine International, Inc.
Domestic Energy Corp.
DNAPrint Genomics, Inc.
Deep Earth Resources, Inc.
Deep Field Technologies, Inc.
Direct Coating, Inc.
Display Technologies, Inc.
DiaSys Corp.
eAutoclaims, Inc.
EnterConnect Inc.
Effective Control Transport, Inc.
EdgeTech International, Inc.
Eagle Ventures International, Inc.
Electric & Gas Technology, Inc.
Electric Motors Corp.
Encore Energy Systems, Inc.
E' Prime Aerospace Corp.
Environmental Power Corp.
Eagle Resource Holdings, Inc.
ER Urgent Care Holdings, Inc.
Estore of N.Y., Inc.
Exact Energy Resources, Inc.
Freedom Bank (Bradenton, FL)
4-D Neuroimaging
Federated Purchaser, Inc.

Forefront Holdings, Inc.
First Montauk Financial Corp.
First Mortgage Corp.
First National Entertainment Corp.
Finch Pruyn & Co., Inc.
Flair Petroleum Corp.
fSONA Systems Corp.
Grand Adventures Tour & Travel Publishing Corp.
Global Materials & Services, Inc.
Global Industrial Services, Inc.
Geerlings & Wade, Inc.
Geotel, Inc.
Global IT Holdings, Inc.
Grand Entertainment & Music, Inc.
Geeks On Call Holdings, Inc.
Grayling Wireless USA, Inc.
Gold Coast Resources, Inc.
Harvest Bio-Organic International Co., Ltd.
HC Innovations, Inc.
HealthGate Data Corp.
Hastings Manufacturing Co.
Hemi Energy Group, Inc.
Hemisphere Gold, Inc.
Harold's Stores, Inc.
H3 Enterprises, Inc.
Henley, L.P.
IBSG International, Inc.
Impact E Solutions Corp.
Interfac Mining, Inc.
IFSA Strongman, Inc.
Ignis Petroleum Group, Inc.
Innovative Impact Design, Inc.
International Airline Support Group, Inc.
ImageMax, Inc.
Infinity Medical Group, Inc.
Immune-Tree International, Inc.
Introgen Therapeutics, Inc.
Interep National Radio Sales, Inc.
Isonics Corp.
Integrated Data Corp.
Integrated Water Resources, Inc.
IX Energy Holdings, Inc.
Itzyourmall, Inc.
Jinhua Marine Biological (USA), Inc.
Juniper Content Corp.
Karat Platinum, Inc.
Karver International, Inc.

LDF Inc.
Logistical Support, Inc.
LifeHouse Retirement Properties, Inc.
Link Plus Corp.
ShoLodge, Inc.
Latin American Telecommunications Venture Company
Las Vegas Central Reservations Corp.
Lottery & Wagering Solutions, Inc.
Luxon Holdings, Inc.
Mobile Entertainment, Inc.
Master Distribution Systems, Inc.
MDM Group, Inc.
Medical Finance, Inc.
MagStar Technologies, Inc.
Moore-Handley, Inc.
MicroMed Cardiovascular, Inc.
Market 99 Ltd.
Merco Sud Agro-Financial Equities Corp.
MSH Entertainment Corp.
Mascot Silver-Lead Mines, Inc.
Monarch Staffing, Inc.
MitoPharm Corp.
My Healthy Access, Inc.
New China Ventures, Ltd.
New Dover Capital Corp.
New Generation Technology Holding Inc.
North Country Hospitality, Inc.
National Medical Financial Services Corporation
National Maintenance Group, Inc.
NutriOne Corp.
Nostalgia Network, Inc. (The)
NP Energy Corp.
Narrowstep, Inc.
NS8 Corp.
Navitone Technologies, Inc.
North West Oil Group, Inc.
Nextera Enterprises, Inc.
Nyvatex Oil Corporation (The)
Obee's Franchise Systems, Inc.
Ofek Capital Corp.
CEVA International, Inc.
Online Sales Strategies, Inc.
Panacos Pharmaceuticals, Inc.
Patio Bahia Inc.
Phoenix Associates Land Syndicate
Prime Companies, Inc.

Piccolo Educational Systems, Inc.
Pamet Systems, Inc.
Panglobal Brands, Inc.
Pensador Resources, Inc.
Pop3 Media Corp.
PreMD Inc.
Phoenix India Acquisition Corp.
Quantex Capital Corp.
QMAC Energy, Inc.
QMed, Inc.
Raduga Inc.
Intercorp Excelle, Inc.
RFP Express, Inc.
Rockelle Corp.
Remote Knowledge, Inc.
Rosedale Decorative Products Ltd.
ReSourcePhoenix.com, Inc.
RedRoller Holdings, Inc.
Response USA, Inc.
RAM Venture Holdings Corp.
RxElite, Inc.
Scrip Advantage, Inc.
SeaEscape Entertainment, Inc.
Sherwood Brands, Inc.
Stamford Industrial Group, Inc.
Sivoo Holdings, Inc.
SK Realty Ventures, Inc.
Skyline Multimedia Entertainment, Inc.
Solica, Inc.
Sunnylife Global, Inc.
Source Direct Holdings, Inc.
Solei Systems, Inc.
Shopsmith, Inc.
Startec, Inc.
Smart SMS Corp.
SunStar Healthcare, Inc.
SWMX, Inc.
SweetskinZ Holdings, Inc.
SkyMarkHoldings Inc.
Synvista Therapeutics, Inc.
Syratech Corp.
Syzygy Entertainment, Ltd.
Total Containment, Inc.
Teknowledge Corp.
TEK DigiTel Corp.
The Fight Zone, Inc.
Tidelands Oil & Gas Corp.
Triad Innovations, Inc.

Taj Systems, Inc.	
Tank Sports, Inc.	
TransferOrbit Corp.	
Tri-S Security Corp.	
TrueYou.com, Inc.	
Westwood Group, Inc. (The)	
Turning Wheel Holdings, Inc.	
TeleData World Services, Inc.	
Tianxin Mining (USA), Inc.	
Ultimate Franchise Systems, Inc.	
UpSnap, Inc.	
U.S. Aerospace, Inc.	
uWink, Inc.	
VCampus Corp.	
Vitalstate, Inc.	
Vzillion, Inc.	
We R You Corp.	
World Health Alternatives, Inc.	
WiFiMed Holdings Co., Inc.	
Wi-Fi TV, Inc.	
WebSky, Inc.	
Walker Financial Corp.	
World Logistics Services, Inc.	
World Am, Inc.	
Westlin Corp.	
Worldwide Auction Solutions, Inc.	
WWEBNET, Inc.	
XA, Inc.	
Xensor Corp.	**500-1**

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Able Energy, Inc. because questions have arisen as to its operating status, if any. Able Energy, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "ABLE."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of ACI Global Corp. because questions have arisen as to its operating status, if any. ACI Global Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "ACGJ."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Alternative Energy Development Corp. because questions have arisen as to its operating status, if any. Alternative Energy Development Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "ADEC."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Allied Products Corp. because questions have arisen as to its operating status, if any. Allied Products Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "ADPC."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of AEC Holdings Corp. because questions have arisen as to its operating status, if any. AEC Holdings Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "AECS."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Auction Floor, Inc. because questions have arisen as to its operating status, if any. Auction Floor, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "AFLO."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of American Gold Resources Corp. because questions have arisen as to its operating status, if any. American Gold Resources Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "AGDO."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Angus Energy Corp. because questions have

arisen as to its operating status, if any. Angus Energy Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "AGSC."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Ashby Corporation Ltd. because questions have arisen as to its operating status, if any. Ashby Corporation Ltd. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "AHBY."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Aksys, Ltd. because questions have arisen as to its operating status, if any. Aksys, Ltd. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "AKSY."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Allison Industries Ltd. because questions have arisen as to its operating status, if any. Allison Industries Ltd. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "ALLD."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Alchemy Creative, Inc. because questions have arisen as to its operating status, if any. Alchemy Creative, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "ALMY."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Allenergy Inc. because questions have arisen as to its operating status, if any. Allenergy Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "ALRY."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of American Green Group, Inc. because questions

have arisen as to its operating status, if any. American Green Group, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "AMNE."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Anviron Holding Co. (The) because questions have arisen as to its operating status, if any. Anviron Holding Co. (The) is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "ANVH."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of American Patriot Corp. because questions have arisen as to its operating status, if any. American Patriot Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "APAT."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Aquis Communications Group, Inc. because questions have arisen as to its operating status, if any. Aquis Communications Group, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "AQIS."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Aquamatrix, Inc. because questions have arisen as to its operating status, if any. Aquamatrix, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "AQMT."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of ARTISTdirect, Inc. because questions have arisen as to its operating status, if any. ARTISTdirect, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "ARTD."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Ascendia Brands, Inc. because questions have

arisen as to its operating status, if any. Ascendia Brands, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "ASCBQ."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Ausam Energy Corp. because questions have arisen as to its operating status, if any. Ausam Energy Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "ASMFQ."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of American TonerServe Corp. because questions have arisen as to its operating status, if any. American TonerServe Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "ASVPQ."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Atlantis Plastics, Inc. because questions have arisen as to its operating status, if any. Atlantis Plastics, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "ATPL."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Axiom Management, Inc. because questions have arisen as to its operating status, if any. Axiom Management, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "AXMA."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of BBMF Corp. because questions have arisen as to its operating status, if any. BBMF Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "BBMF."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Barricini, Inc. because questions have arisen as

to its operating status, if any. Barricini, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "BCCC."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Butterfield-Blair, Inc., d/b/a Novahead, Inc. because questions have arisen as to its operating status, if any. Butterfield-Blair, Inc., d/b/a Novahead, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "BFBL."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Laura (RONALD S.) Enterprises, Inc. because questions have arisen as to its operating status, if any. Laura (RONALD S.) Enterprises, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "BFIT."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of b-Fast Corp. because questions have arisen as to its operating status, if any. b-Fast Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "BFTC."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of BioGold Fuels Corp. because questions have arisen as to its operating status, if any. BioGold Fuels Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "BIFC."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Bioponic Phytoceuticals, Inc. because questions have arisen as to its operating status, if any. Bioponic Phytoceuticals, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "BPYT."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of BrightStar Information Technology Group, Inc. because questions have arisen as to its operating status, if any BrightStar Information Technology Group, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "BTSR."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of BAXL Holdings, Inc. because questions have arisen as to its operating status, if any. BAXL Holdings, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "BXLH."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Calibre Energy, Inc. because questions have arisen as to its operating status, if any. Calibre Energy, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "CABE."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Cambridge Resources Corp. because questions have arisen as to its operating status, if any. Cambridge Resources Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "CBRP."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Capacitive Deionization Technologies Systems, Inc. because questions have arisen as to its operating status, if any. Capacitive Deionization Technologies Systems, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "CDTN."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Certified Environmental Group, Inc. because

questions have arisen as to its operating status, if any. Certified Environmental Group, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "CENV."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Careguide, Inc. because questions have arisen as to its operating status, if any. Careguide, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "CGUE."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Chill Tech Industries, Inc. because questions have arisen as to its operating status, if any. Chill Tech Industries, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "CHIL."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Chatsworth Data Solutions, Inc. because questions have arisen as to its operating status, if any. Chatsworth Data Solutions, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "CHWD."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Caliber Energy, Inc. because questions have arisen as to its operating status, if any. Caliber Energy, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "CLBN."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Color Q, Inc. because questions have arisen as to its operating status, if any. Color Q, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "CLOR."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Consolidated American Industries Corp.

because questions have arisen as to its operating status, if any. Consolidated American Industries Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "CMDJ."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Corporate Media International, Inc. because questions have arisen as to its operating status, if any. Corporate Media International, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "CMDL."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of China Oil & Methanol Group, Inc. because questions have arisen as to its operating status, if any. China Oil & Methanol Group, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "CMNO."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Comedia Corp. because questions have arisen as to its operating status, if any. Comedia Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "CMTN."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Concorde America, Inc. because questions have arisen as to its operating status, if any. Concorde America, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "CNDD."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Custom Restaurant & Hospitality Group, Inc. (The) because questions have arisen as to its operating status, if any. Custom Restaurant & Hospitality Group, Inc. (The) is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "CRHY."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Consolidated Biofuels, Inc. because questions have arisen as to its operating status, if any. Consolidated Biofuels, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "CSBF."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Creston Resources, Ltd. because questions have arisen as to its operating status, if any. Creston Resources, Ltd. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "CSTJ."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of ClearStory Systems, Inc. because questions have arisen as to its operating status, if any. ClearStory Systems, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "CSYS."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Coattec Industries, Inc. because questions have arisen as to its operating status, if any. Coattec Industries, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "CTCK."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of CO2 Tech Ltd. because questions have arisen as to its operating status, if any. CO2 Tech Ltd. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "CTTD."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Cardiovascular Sciences, Inc. because questions have arisen as to its operating status, if any. Cardiovascular Sciences, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "CVSC."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of CyberCash, Inc. because questions have arisen as to its operating status, if any. CyberCash, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "CYCHZ."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Cheyenne Resources Corp. because questions have arisen as to its operating status, if any. Cheyenne Resources Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "CYRS."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of DAL International Ltd. because questions have arisen as to its operating status, if any. DAL International Ltd. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "DALN."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Digital Fusion Multimedia Corp. because questions have arisen as to its operating status, if any. Digital Fusion Multimedia Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "DFMCF."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of DealerAdvance, Inc. because questions have arisen as to its operating status, if any. DealerAdvance, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "DLAD."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of DataLogic International, Inc. because questions have arisen as to its operating status, if any. DataLogic International, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "DLGI."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Datamarine International, Inc. because questions have arisen as to its operating status, if any. Datamarine International, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "DMAR."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Domestic Energy Corp. because questions have arisen as to its operating status, if any. Domestic Energy Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "DMEC."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of DNAPrint Genomics, Inc. because questions have arisen as to its operating status, if any. DNAPrint Genomics, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "DNAG."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Deep Earth Resources, Inc. because questions have arisen as to its operating status, if any. Deep Earth Resources, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "DPER."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Deep Field Technologies, Inc. because questions have arisen as to its operating status, if any. Deep Field Technologies, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "DPFD."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Direct Coating, Inc. because questions have arisen as to its operating status, if any. Direct Coating, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "DTCO."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Display Technologies, Inc. because questions have arisen as to its operating status, if any. Display Technologies, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "DTEK."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of DiaSys Corp. because questions have arisen as to its operating status, if any. DiaSys Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "DYXC."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of eAutoclaims, Inc. because questions have arisen as to its operating status, if any. eAutoclaims, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "EACC."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of EnterConnect Inc. because questions have arisen as to its operating status, if any. EnterConnect Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "ECNI."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Effective Control Transport, Inc. because questions have arisen as to its operating status, if any. Effective Control Transport, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "EFFC."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of EdgeTech International, Inc. because questions have arisen as to its operating status, if any. EdgeTech International, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "EGIL."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Eagle Ventures International, Inc. because questions have arisen as to its operating status, if any. Eagle Ventures International, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "EGVIQ."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Electric & Gas Technology, Inc. because questions have arisen as to its operating status, if any. Electric & Gas Technology, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "ELGT."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Electric Motors Corp. because questions have arisen as to its operating status, if any. Electric Motors Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "EMCO."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Encore Energy Systems, Inc. because questions have arisen as to its operating status, if any. Encore Energy Systems, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "ENCS."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of E' Prime Aerospace Corp. because questions have arisen as to its operating status, if any. E' Prime Aerospace Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "EPEO."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Environmental Power Corp. because questions have arisen as to its operating status, if any. Environmental Power Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "EPGRQ."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Eagle Resource Holdings, Inc. because questions have arisen as to its operating status, if any. Eagle Resource Holdings, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "ERHI."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of ER Urgent Care Holdings, Inc. because questions have arisen as to its operating status, if any. ER Urgent Care Holdings, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "ERUC."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Estore of N.Y., Inc. because questions have arisen as to its operating status, if any. Estore of N.Y., Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "ESNY."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Exact Energy Resources, Inc. because questions have arisen as to its operating status, if any. Exact Energy Resources, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "EXER."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Freedom Bank (Bradenton, FL) because questions have arisen as to its operating status, if any. Freedom Bank (Bradenton, FL) is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "FBBF."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of 4-D Neuroimaging because questions have arisen as to its operating status, if any. 4-D Neuroimaging is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "FDNU."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Federated Purchaser, Inc. because questions have arisen as to its operating status, if any. Federated Purchaser, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "FEDP."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Forefront Holdings, Inc. because questions have arisen as to its operating status, if any. Forefront Holdings, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "FFHN."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of First Montauk Financial Corp. because questions have arisen as to its operating status, if any. First Montauk Financial Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "FMFN."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of First Mortgage Corp. because questions have arisen as to its operating status, if any. First Mortgage Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "FMOR."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of First National Entertainment Corp. because questions have arisen as to its operating status, if any. First National Entertainment Corp is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "FNAT."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Finch Pruyn & Co., Inc. because questions have arisen as to its operating status, if any. Finch Pruyn & Co., Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "FPCNB."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Flair Petroleum Corp. because questions have arisen as to its operating status, if any. Flair Petroleum Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "FPMC."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of fSONA Systems Corp. because questions have arisen as to its operating status, if any. fSONA Systems Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "FSON."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Grand Adventures Tour & Travel Publishing Corp. because questions have arisen as to its operating status, if any. Grand Adventures Tour & Travel Publishing Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "GATT."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Global Materials & Services, Inc. because questions have arisen as to its operating status, if any. Global Materials & Services, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "GBMS."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Global Industrial Services, Inc. because questions have arisen as to its operating status, if any. Global Industrial Services, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "GBSV."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Geerlings & Wade, Inc. because questions have

arisen as to its operating status, if any. Geerlings & Wade, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "GEER."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Geotel, Inc. because questions have arisen as to its operating status, if any. Geotel, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "GETE."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Global IT Holdings, Inc. because questions have arisen as to its operating status, if any. Global IT Holdings, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "GITH."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Grand Entertainment & Music, Inc. because questions have arisen as to its operating status, if any. Grand Entertainment & Music, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "GMSC."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Geeks On Call Holdings, Inc. because questions have arisen as to its operating status, if any. Geeks On Call Holdings, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "GOCH."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Grayling Wireless USA, Inc. because questions have arisen as to its operating status, if any. Grayling Wireless USA, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "GRYW."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Gold Coast Resources, Inc. because questions

have arisen as to its operating status, if any. Gold Coast Resources, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "GSRS."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Harvest Bio-Organic International Co., Ltd. because questions have arisen as to its operating status, if any. Harvest Bio-Organic International Co., Ltd. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "HBOI."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of HC Innovations, Inc. because questions have arisen as to its operating status, if any. HC Innovations, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "HCNVQ."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of HealthGate Data Corp. because questions have arisen as to its operating status, if any. HealthGate Data Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "HGAT."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Hastings Manufacturing Co. because questions have arisen as to its operating status, if any. Hastings Manufacturing Co. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "HGMG."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Hemi Energy Group, Inc. because questions have arisen as to its operating status, if any. Hemi Energy Group, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "HMGP."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Hemisphere Gold, Inc. because questions have arisen as to its operating status, if any. Hemisphere Gold, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "HPGI."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Harold's Stores, Inc. because questions have arisen as to its operating status, if any. Harold's Stores, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "HRLSQ."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of H3 Enterprises, Inc. because questions have arisen as to its operating status, if any. H3 Enterprises, Inc is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "HTRE."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Henley L.P. because questions have arisen as to its operating status, if any. Henley L.P. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "HYNLZ."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of IBSG International, Inc. because questions have arisen as to its operating status, if any. IBSG International, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "IBIN."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Impact E Solutions Corp. because questions have arisen as to its operating status, if any. Impact E Solutions Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "IESO."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Interfac Mining, Inc. because questions have arisen as to its operating status, if any. Interfac Mining, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "IFAC."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of IFSA Strongman, Inc. because questions have arisen as to its operating status, if any. IFSA Strongman, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "IFST."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Ignis Petroleum Group, Inc. because questions have arisen as to its operating status, if any. Ignis Petroleum Group, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "IGPG."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Innovative Impact Design, Inc. because questions have arisen as to its operating status, if any. Innovative Impact Design, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "IIDG."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of International Airline Support Group, Inc. because questions have arisen as to its operating status, if any. International Airline Support Group, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "ILAS."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of ImageMax, Inc. because questions have arisen

as to its operating status, if any. ImageMax, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "IMAG."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Infinity Medical Group, Inc. because questions have arisen as to its operating status, if any. Infinity Medical Group, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "IMGR."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Immune-Tree International, Inc. because questions have arisen as to its operating status, if any. Immune-Tree International, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "IMUT."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Introgen Therapeutics, Inc. because questions have arisen as to its operating status, if any. Introgen Therapeutics, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "INGNQ."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Interep National Radio Sales, Inc. because questions have arisen as to its operating status, if any. Interep National Radio Sales, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "IREP."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Isonics Corp. because questions have arisen as to its operating status, if any. Isonics Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "ISON."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Integrated Data Corp. because questions have

arisen as to its operating status, if any. Integrated Data Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "ITDD."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Integrated Water Resources, Inc. because questions have arisen as to its operating status, if any. Integrated Water Resources, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "IWRI."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of IX Energy Holdings, Inc. because questions have arisen as to its operating status, if any. IX Energy Holdings, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "IXEH."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Itzyourmall, Inc. because questions have arisen as to its operating status, if any. Itzyourmall, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "IZML."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Jinhua Marine Biological (USA), Inc. because questions have arisen as to its operating status, if any. Jinhua Marine Biological (USA), Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "JNMB."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Juniper Content Corp. because questions have arisen as to its operating status, if any. Juniper Content Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "JNPC."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Karat Platinum, Inc. because questions have

arisen as to its operating status, if any. Karat Platinum, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "KRAT."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Karver International, Inc. because questions have arisen as to its operating status, if any. Karver International, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "KRVR."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of LDF Inc. because questions have arisen as to its operating status, if any. LDF Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "LDFI."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Logistical Support, Inc. because questions have arisen as to its operating status, if any. Logistical Support, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "LGSL."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of LifeHouse Retirement Properties, Inc. because questions have arisen as to its operating status, if any. LifeHouse Retirement Properties, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "LHRP."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Link Plus Corp. because questions have arisen as to its operating status, if any. Link Plus Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "LKPL."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of ShoLodge, Inc. because questions have arisen

as to its operating status, if any. ShoLodge, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "LODG."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Latin American Telecommunications Venture Company because questions have arisen as to its operating status, if any. Latin American Telecommunications Venture Company is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "LTTV."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Las Vegas Central Reservations Corp. because questions have arisen as to its operating status, if any. Las Vegas Central Reservations Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "LVCC."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Lottery & Wagering Solutions, Inc. because questions have arisen as to its operating status, if any. Lottery & Wagering Solutions, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "LWSL."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Luxon Holdings, Inc. because questions have arisen as to its operating status, if any. Luxon Holdings, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "LXHD."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Mobile Entertainment, Inc. because questions have arisen as to its operating status, if any. Mobile Entertainment, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "MBEI."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Master Distribution Systems, Inc. because questions have arisen as to its operating status, if any. Master Distribution Systems, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "MDBS."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of MDM Group, Inc. because questions have arisen as to its operating status, if any. MDM Group, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "MDDM."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Medical Finance, Inc. because questions have arisen as to its operating status, if any. Medical Finance, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "MFIN."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of MagStar Technologies, Inc. because questions have arisen as to its operating status, if any. MagStar Technologies, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "MGSR."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Moore-Handley, Inc. because questions have arisen as to its operating status, if any. Moore-Handley, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "MHCO."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of MicroMed Cardiovascular, Inc. because questions have arisen as to its operating status, if any. MicroMed Cardiovascular, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "MMCO."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Market 99 Ltd. because questions have arisen as to its operating status, if any. Market 99 Ltd. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "MNTY."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Merco Sud Agro-Financial Equities Corp. because questions have arisen as to its operating status, if any. Merco Sud Agro-Financial Equities Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "MSDG."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of MSH Entertainment Corp. because questions have arisen as to its operating status, if any. MSH Entertainment Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "MSHE."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Mascot Silver-Lead Mines, Inc. because questions have arisen as to its operating status, if any. Mascot Silver-Lead Mines, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "MSLM."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Monarch Staffing, Inc. because questions have arisen as to its operating status, if any. Monarch Staffing, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "MSTF."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of MitoPharm Corp. because questions have

arisen as to its operating status, if any. MitoPharm Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "MTPH."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of My Healthy Access, Inc. because questions have arisen as to its operating status, if any. My Healthy Access, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "MYHA."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of New China Ventures, Ltd. because questions have arisen as to its operating status, if any. New China Ventures, Ltd. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "NCVL."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of New Dover Capital Corp. because questions have arisen as to its operating status, if any. New Dover Capital Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "NDVR."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of New Generation Technology Holding Inc. because questions have arisen as to its operating status, if any. New Generation Technology Holding Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "NGTY."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of North Country Hospitality, Inc. because questions have arisen as to its operating status, if any. North Country Hospitality, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "NHSP."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of National Medical Financial Services Corporation because questions have arisen as to its operating status, if any. National Medical Financial Services Corporation is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "NMFS."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of National Maintenance Group, Inc. because questions have arisen as to its operating status, if any. National Maintenance Group, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "NMGP."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of NutriOne Corp. because questions have arisen as to its operating status, if any. NutriOne Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "NNCP."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Nostalgia Network, Inc. (The) because questions have arisen as to its operating status, if any. Nostalgia Network, Inc. (The) is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "NNET."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of NP Energy Corp. because questions have arisen as to its operating status, if any. NP Energy Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "NPER."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Narrowstep, Inc. because questions have arisen

as to its operating status, if any. Narrowstep, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "NRWS."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of NS8 Corp. because questions have arisen as to its operating status, if any. NS8 Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "NSEO."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Navitone Technologies, Inc. because questions have arisen as to its operating status, if any. Navitone Technologies, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "NVTN."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of North West Oil Group, Inc. because questions have arisen as to its operating status, if any. North West Oil Group, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "NWOL."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Nextera Enterprises, Inc. because questions have arisen as to its operating status, if any. Nextera Enterprises, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "NXRA."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Nyvatex Oil Corporation (The) because questions have arisen as to its operating status, if any. Nyvatex Oil Corporation (The) is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "NYVA."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Obee's Franchise Systems, Inc. because

questions have arisen as to its operating status, if any. Obee's Franchise Systems, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "OBEE."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Ofek Capital Corp. because questions have arisen as to its operating status, if any. Ofek Capital Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "OFEK."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of CEVA International, Inc. because questions have arisen as to its operating status, if any. CEVA International, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "OROB."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Online Sales Strategies, Inc. because questions have arisen as to its operating status, if any. Online Sales Strategies, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "OSSI."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Panacos Pharmaceuticals, Inc. because questions have arisen as to its operating status, if any. Panacos Pharmaceuticals, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "PANC."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Patio Bahia Inc. because questions have arisen as to its operating status, if any. Patio Bahia Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "PBAH."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Phoenix Associates Land Syndicate because

questions have arisen as to its operating status, if any. Phoenix Associates Land Syndicate is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "PBLSQ."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Prime Companies, Inc. because questions have arisen as to its operating status, if any. Prime Companies, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "PCIR."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Piccolo Educational Systems, Inc. because questions have arisen as to its operating status, if any. Piccolo Educational Systems, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "PEDU."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Pamet Systems, Inc. because questions have arisen as to its operating status, if any. Pamet Systems, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "PMTT."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Panglobal Brands, Inc. because questions have arisen as to its operating status, if any. Panglobal Brands, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "PNGB."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Pensador Resources, Inc. because questions have arisen as to its operating status, if any. Pensador Resources, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "PNSR."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Pop3 Media Corp. because questions have

arisen as to its operating status, if any. Pop3 Media Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "POPT."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of PreMD Inc. because questions have arisen as to its operating status, if any. PreMD Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "PREMF."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Phoenix India Acquisition Corp. because questions have arisen as to its operating status, if any. Phoenix India Acquisition Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "PXIA."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Quantex Capital Corp. because questions have arisen as to its operating status, if any. Quantex Capital Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "QCPC."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of QMAC Energy, Inc. because questions have arisen as to its operating status, if any. QMAC Energy, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "QMCG."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of QMed, Inc. because questions have arisen as to its operating status, if any. QMed, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "QMED."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Raduga Inc. because questions have arisen as to

its operating status, if any. Raduga Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "RADG."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Intercorp Excelle, Inc. because questions have arisen as to its operating status, if any. Intercorp Excelle, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "RENE."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of RFP Express, Inc. because questions have arisen as to its operating status, if any. RFP Express, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "RFPX."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Rockelle Corp. because questions have arisen as to its operating status, if any. Rockelle Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "RKLC."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Remote Knowledge, Inc. because questions have arisen as to its operating status, if any. Remote Knowledge, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "RKNW."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Rosedale Decorative Products Ltd. because questions have arisen as to its operating status, if any. Rosedale Decorative Products Ltd. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "ROSD."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of ReSourcePhoenix.com, Inc. because questions

have arisen as to its operating status, if any. ReSourcePhoenix.com, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "RPCX."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of RedRoller Holdings, Inc. because questions have arisen as to its operating status, if any. RedRoller Holdings, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "RROLQ."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Response USA, Inc. because questions have arisen as to its operating status, if any. Response USA, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "RSPNQ."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of RAM Venture Holdings Corp. because questions have arisen as to its operating status, if any. RAM Venture Holdings Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "RVHC."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of RxElite, Inc. because questions have arisen as to its operating status, if any. RxElite, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "RXEI."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Scrip Advantage, Inc. because questions have arisen as to its operating status, if any. Scrip Advantage, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "SCPV."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of SeaEscape Entertainment, Inc. because

questions have arisen as to its operating status, if any. SeaEscape Entertainment, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "SEPI."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Sherwood Brands, Inc. because questions have arisen as to its operating status, if any. Sherwood Brands, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "SHDBQ."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Stamford Industrial Group, Inc. because questions have arisen as to its operating status, if any. Stamford Industrial Group, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "SIDGQ."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Sivoo Holdings, Inc. because questions have arisen as to its operating status, if any. Sivoo Holdings, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "SIVO."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of SK Realty Ventures, Inc. because questions have arisen as to its operating status, if any. SK Realty Ventures, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "SKRV."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Skyline Multimedia Entertainment, Inc. because questions have arisen as to its operating status, if any. Skyline Multimedia Entertainment, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "SKYL."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Solica, Inc. because questions have arisen as to its operating status, if any. Solica, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "SLIA."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Sunnylife Global, Inc. because questions have arisen as to its operating status, if any. Sunnylife Global, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "SNYL."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Source Direct Holdings, Inc. because questions have arisen as to its operating status, if any. Source Direct Holdings, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "SODH."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Solei Systems, Inc. because questions have arisen as to its operating status, if any. Solei Systems, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "SOLI."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Shopsmith, Inc. because questions have arisen as to its operating status, if any. Shopsmith, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "SSMH."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Startec, Inc. because questions have arisen as to its operating status, if any. Startec, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "STIN."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Smart SMS Corp. because questions have arisen as to its operating status, if any. Smart SMS Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "STMC."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of SunStar Healthcare, Inc. because questions have arisen as to its operating status, if any. SunStar Healthcare, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "SUHI."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of SWMX, Inc. because questions have arisen as to its operating status, if any. SWMX, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "SWMX."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of SweetskinZ Holdings, Inc. because questions have arisen as to its operating status, if any. SweetskinZ Holdings, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "SWZH."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of SkyMarkHoldings, Inc. because questions have arisen as to its operating status, if any. SkyMarkHoldings, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "SYHI."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Synvista Therapeutics, Inc. because questions have arisen as to its operating status, if any. Synvista Therapeutics, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "SYNI."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Syratech Corp. because questions have arisen as to its operating status, if any. Syratech Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "SYRA."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Syzygy Entertainment, Ltd. because questions have arisen as to its operating status, if any. Syzygy Entertainment, Ltd. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "SYZG."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Total Containment, Inc. because questions have arisen as to its operating status, if any. Total Containment, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "TCIX."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Teknowledge Corp. because questions have arisen as to its operating status, if any. Teknowledge Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "TEKCQ."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of TEK DigiTel Corp. because questions have arisen as to its operating status, if any. TEK DigiTel Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "TEKI."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of The Fight Zone, Inc. because questions have arisen as to its operating status, if any. The Fight Zone, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "TFZI."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Tidelands Oil & Gas Corp. because questions have arisen as to its operating status, if any. Tidelands Oil & Gas Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "TIDE."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Triad Innovations, Inc. because questions have arisen as to its operating status, if any. Triad Innovations, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "TINV."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Taj Systems, Inc. because questions have arisen as to its operating status, if any. Taj Systems, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "TJSS."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Tank Sports, Inc. because questions have arisen as to its operating status, if any. Tank Sports, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "TNSP."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of TransferOrbit Corp. because questions have arisen as to its operating status, if any. TransferOrbit Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "TRBI."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Tri-S Security Corp. because questions have arisen as to its operating status, if any. Tri-S Security Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "TRIS."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of TrueYou.com, Inc. because questions have arisen as to its operating status, if any. TrueYou.com, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "TUYU."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Westwood Group, Inc. (The) because questions have arisen as to its operating status, if any. Westwood Group, Inc. (The) is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "TWDG."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Turning Wheel Holdings, Inc. because questions have arisen as to its operating status, if any. Turning Wheel Holdings, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "TWHI."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of TeleData World Services, Inc. because questions have arisen as to its operating status, if any. TeleData World Services, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "TWOS."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Tianxin Mining (USA), Inc. because questions have arisen as to its operating status, if any. Tianxin Mining (USA), Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "TXNM."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Ultimate Franchise Systems, Inc. because questions have arisen as to its operating status, if any. Ultimate Franchise Systems, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "ULFS."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of UpSnap, Inc. because questions have arisen as to its operating status, if any. UpSnap, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "UPSN."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of U.S. Aerospace, Inc. because questions have arisen as to its operating status, if any. U.S. Aerospace, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "USAE."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of uWink, Inc. because questions have arisen as to its operating status, if any. uWink, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "UWKI."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of VCampus Corp. because questions have arisen as to its operating status, if any. VCampus Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "VCMP"

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Vitalstate, Inc. because questions have arisen as to its operating status, if any. Vitalstate, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "VTST."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Vzillion, Inc. because questions have arisen as to its operating status, if any. Vzillion, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "VZIL."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of We R You Corp. because questions have arisen as to its operating status, if any. We R You Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "WERU."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of World Health Alternatives, Inc. because questions have arisen as to its operating status, if any. World Health Alternatives, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "WHAIQ."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of WiFiMed Holdings Co., Inc. because questions have arisen as to its operating status, if any. WiFiMed Holdings Co., Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "WIFM."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Wi-Fi TV, Inc. because questions have arisen as to its operating status, if any. Wi-Fi TV, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "WIFT."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of WebSky, Inc. because questions have arisen as to its operating status, if any. WebSky, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "WKYN."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Walker Financial Corp. because questions have arisen as to its operating status, if any. Walker Financial Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "WLKF."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of World Logistics Services, Inc. because questions have arisen as to its operating status, if any. World Logistics Services, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "WLSV."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of World Am, Inc. because questions have arisen as to its operating status, if any. World Am, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "WOAM."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Westlin Corp. because questions have arisen as to its operating status, if any. Westlin Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "WSTN."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Worldwide Auction Solutions, Inc. because questions have arisen as to its operating status, if any. Worldwide Auction Solutions, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "WWDA."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of WWEBNET, Inc. because questions have arisen as to its operating status, if any. WWEBNET, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "WWEB."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of XA, Inc. because questions have arisen as to its operating status, if any. XA, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "XAIN."

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Xensor Corp. because questions have arisen as to its operating status, if any. Xensor Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol "XNSR."

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

THEREFORE, IT IS ORDERED, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EST on February 3, 2014, through 11:59 p.m. EST on February 14, 2014.

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Commissioner Aguilar not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9523 / February 3, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15715

In the Matter of

the Registration Statement of

La Paz Mining Corp.,
Business Filings Incorporated
311 South Division Street
Carson City, NV 89703

Respondent.

ORDER FIXING TIME AND PLACE OF PUBLIC HEARING AND INSTITUTING PROCEEDINGS PURSUANT TO SECTION 8(d) OF THE SECURITIES ACT OF 1933

I.

The Commission's public official files disclose that:

On July 19, 2012, Respondent filed a Form S-1 registration statement with the Commission seeking to register management's common shares for resale in a $20,000 public offering. Respondent filed an amendment to its registration statement on September 25, 2012 (together, the "Registration Statement").

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

1. Respondent is a Nevada corporation headquartered in Peoria, Arizona.

B. MATERIAL MISSTATEMENTS AND OMISSIONS

2. In the Registration Statement, Respondent claims that it is engaged in the exploration for gold and other minerals, but is currently in an exploration stage, is without known reserves, and has not yet begun actual mining.

3. According to the Registration Statement, Respondent's management consists of one person who "control[s]" and "solely govern[s]" Respondent as its sole executive officer and director. In the Registration Statement, Respondent identifies by name its sole officer and director.

4. Further, the Registration Statement states that other than a management agreement between Respondent and its sole executive officer, "there are no, and have not been since inception, any other material agreements or proposed transactions, whether direct or indirect, with . . . any promoters."

5. Respondent's Registration Statement includes untrue statements of material facts and omits to state material facts necessary to make the statements contained therein not misleading. Among other things, Respondent stated that its executive officer and director controls Respondent when in fact Respondent is controlled and/or promoted by an undisclosed control person and/or promoter, who was previously charged with fraud in SEC v. Golden Apple Oil and Gas, Inc., et al., Civil Action No. 09-Civ-7580 (SDNY) (HB) and barred from appearing before the Commission in In the Matter of John Briner, Exchange Act Release No. 63371 (Nov. 24, 2010). Further, Respondent failed to disclose material agreements or proposed transactions with its undisclosed control person and/or promoter.

C. FAILURE TO COOPERATE WITH SECTION 8(e) EXAMINATION

6. On June 25, 2013, Respondent filed a letter seeking to withdraw its Registration Statement. On June 27, 2013, Respondent's executive officer was informed by staff that Respondent should cooperate with the staff's examination of Respondent, withdraw its letter, and that the failure to withdraw its letter may be grounds for issuance of a stop order under Section 8(d) of the Securities Act. Respondent did not withdraw its letter and, on July 3, 2013, the Commission denied Respondent's request to withdraw its Registration Statement.

7. Respondent's seeking to withdraw its Registration Statement constitutes a failure to cooperate with, refusal to permit, and obstruction of the staff's examination under Section 8(e) of the Securities Act.

III.

The Commission, having considered the aforesaid, deems it appropriate and in the public interest that public proceedings pursuant to Section 8(d) of the Securities Act of 1933 ("Securities Act") be instituted with respect to the Registration Statement to determine whether the allegations of the Division of Enforcement are true; to afford the Respondent with an opportunity to establish any defenses to these allegations; and to determine whether a stop order should issue suspending the effectiveness of the Registration Statement referred to herein.

Accordingly, IT IS ORDERED that public proceedings be and hereby are instituted under Section 8(d) of the Securities Act, such hearing to be commenced at 9:30 a.m. on February 18, 2014, at the Commission's offices at 100 F Street N.E., Washington, DC 20549, and to continue thereafter at such time and place as the hearing officer may determine.

IT IS FURTHER ORDERED that these proceedings shall be presided over by an Administrative Law Judge to be designated by further order, who is authorized to perform all the duties of an Administrative Law Judge as set forth in the Commission's Rules of Practice or as otherwise provided by law.

IT IS 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, pursuant to Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220. If the Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against the Respondent upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 22I(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§201.155(a), 201.220(f), 22l(f) and 201.310. This Order shall be served forthwith upon the Respondent in accordance with Rule 141 of the Commission's Rules of Practice, 17 C.F.R. §201.141.

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. 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

Commissioner Aguilar not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9524 / February 3, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15716

In the Matter of

the Registration Statement of

Stone Boat Mining Corp.,
Business Filings Incorporated
311 South Division Street
Carson City, NV 89703

Respondent.

ORDER FIXING TIME AND PLACE OF PUBLIC HEARING AND INSTITUTING PROCEEDINGS PURSUANT TO SECTION 8(d) OF THE SECURITIES ACT OF 1933

I.

The Commission's public official files disclose that:

On July 27, 2012, Respondent filed a Form S-1 registration statement with the Commission seeking to register management's common shares for resale in a $20,000 public offering. Respondent filed amendments to its registration statement on September 24, 2012 and October 17, 2012 (collectively, the "Registration Statement").

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

1. Respondent is a Nevada corporation headquartered in Chihuahua, Mexico.

B. MATERIAL MISSTATMENTS AND OMISSIONS

2. In the Registration Statement, Respondent claims that it is engaged in the exploration for certain metals and other minerals, but is currently in an exploration stage, is without known reserves, and has not yet begun actual mining.

3. According to the Registration Statement, Respondent's management consists of one person who "control[s]" and "solely govern[s]" Respondent as its sole executive officer and director. In the Registration Statement, Respondent identifies by name its sole officer and director.

4. Further, the Registration Statement states that other than a management agreement between Respondent and its sole executive officer, "there are no, and have not been since inception, any other material agreements or proposed transactions, whether direct or indirect, with . . . any promoters."

5. Respondent's Registration Statement includes untrue statements of material facts and omits to state material facts necessary to make the statements contained therein not misleading. Among other things, Respondent stated that its executive officer and director controls Respondent when in fact Respondent is controlled and/or promoted by an undisclosed control person and/or promoter, who was previously charged with fraud in SEC v. Golden Apple Oil and Gas, Inc., et al., Civil Action No. 09-Civ-7580 (SDNY) (HB) and barred from appearing before the Commission in In the Matter of John Briner, Exchange Act Release No. 63371 (Nov. 24, 2010). Further, Respondent failed to disclose material agreements or proposed transactions with its undisclosed control person and/or promoter.

C. FAILURE TO COOPERATE WITH SECTION 8(e) EXAMINATION

6. On June 17, 2013, the staff issued a subpoena to Respondent requiring the production of documents by June 28, 2013 and testimony on July 8, 2013. Respondent failed to respond to the subpoena by the June 28 deadline or anytime thereafter. On July 2, 2013, the staff attempted to contact Respondent by phone, with no success. Respondent failed to appear for testimony on July 8, 2013.

7. Respondent's conduct constitutes a failure to cooperate with, refusal to permit, and obstruction of the staff's examination under Section 8(e) of the Securities Act.

III.

The Commission, having considered the aforesaid, deems it appropriate and in the public interest that public proceedings pursuant to Section 8(d) of the Securities Act of 1933 ("Securities Act") be instituted with respect to the Registration Statement to determine whether the allegations of the Division of Enforcement are true; to afford the Respondent with an opportunity to establish any defenses to these allegations; and to determine whether a stop order should issue suspending the effectiveness of the Registration Statement referred to herein.

Accordingly, IT IS ORDERED that public proceedings be and hereby are instituted under Section 8(d) of the Securities Act, such hearing to be commenced at 9:30 a.m. on February 18, 2014, at the Commission's offices at 100 F Street N.E., Washington, DC 20549, and to continue thereafter at such time and place as the hearing officer may determine.

IT IS FURTHER ORDERED that these proceedings shall be presided over by an

Administrative Law Judge to be designated by further order, who is authorized to perform all the duties of an Administrative Law Judge as set forth in the Commission's Rules of Practice or as otherwise provided by law.

IT IS 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, pursuant to Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220. If the Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against the Respondent upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 22I(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§201.155(a), 201.220(f), 22l(f) and 201.310. This Order shall be served forthwith upon the Respondent in accordance with Rule 141 of the Commission's Rules of Practice, 17 C.F.R. §201.141.

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. 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

Commissioner Aguilar not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9525 / February 3, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15717

In the Matter of

the Registration Statement of

Goldstream Mining Inc.,
Business Filings Incorporated
311 South Division Street
Carson City, NV 89703

Respondent.

ORDER FIXING TIME AND PLACE OF PUBLIC HEARING AND INSTITUTING PROCEEDINGS PURSUANT TO SECTION 8(d) OF THE SECURITIES ACT OF 1933

I.

The Commission's public official files disclose that:

On August 6, 2012, Respondent filed a Form S-1 registration statement with the Commission seeking to register management's common shares for resale in a $15,000 public offering. Respondent filed amendments to its registration statement on September 24, 2012 and October 17, 2012 (collectively, the "Registration Statement").

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

1. Respondent is a Nevada corporation headquartered in Ocala, Florida.

B. MATERIAL MISSTATMENTS AND OMISSIONS

2. In the Registration Statement, Respondent claims that it is engaged in the exploration for certain metals and other minerals, but is currently in an exploration stage, is without known reserves, and has not yet begun actual mining.

3. According to the Registration Statement, Respondent's management consists of one person who "control[s]" and "solely govern[s]" Respondent as its sole executive officer and director. In the Registration Statement, Respondent identifies by name its sole officer and director.

4. Further, the Registration Statement states that other than a management agreement between Respondent and its sole executive officer, "there are no, and have not been since inception, any other material agreements or proposed transactions, whether direct or indirect, with . . . any promoters."

5. Respondent's Registration Statement includes untrue statements of material facts and omits to state material facts necessary to make the statements contained therein not misleading. Among other things, Respondent stated that its executive officer and director controls Respondent when in fact Respondent is controlled and/or promoted by an undisclosed control person and/or promoter, who was previously charged with fraud in SEC v. Golden Apple Oil and Gas, Inc., et al., Civil Action No. 09-Civ-7580 (SDNY) (HB) and barred from appearing before the Commission in In the Matter of John Briner, Exchange Act Release No. 63371 (Nov. 24, 2010). Further, Respondent failed to disclose material agreements or proposed transactions with its undisclosed control person and/or promoter.

C. FAILURE TO COOPERATE WITH SECTION 8(e) EXAMINATION

6. On July 5, 2013, Respondent filed a letter seeking to withdraw its Registration Statement. On July 5, 2013, Respondent's executive officer was informed by staff that Respondent should cooperate with the staff's examination of Respondent, withdraw its letter, and that the failure to withdraw its letter may be grounds for issuance of a stop order under Section 8(d) of the Securities Act. Respondent did not withdraw its letter and, on July 17, 2013, the Commission denied Respondent's request to withdraw its Registration Statement.

7. Respondent's seeking to withdraw its Registration Statement constitutes a failure to cooperate with, refusal to permit, and obstruction of the staff's examination under Section 8(e) of the Securities Act.

III.

The Commission, having considered the aforesaid, deems it appropriate and in the public interest that public proceedings pursuant to Section 8(d) of the Securities Act of 1933 ("Securities Act") be instituted with respect to the Registration Statement to determine whether the allegations of the Division of Enforcement are true; to afford the Respondent with an opportunity to establish any defenses to these allegations; and to determine whether a stop order should issue suspending the effectiveness of the Registration Statement referred to herein.

Accordingly, IT IS ORDERED that public proceedings be and hereby are instituted under Section 8(d) of the Securities Act, such hearing to be commenced at 9:30 a.m. on February 18, 2014, at the Commission's offices at 100 F Street N.E., Washington, DC 20549, and to continue thereafter at such time and place as the hearing officer may determine.

IT IS FURTHER ORDERED that these proceedings shall be presided over by an Administrative Law Judge to be designated by further order, who is authorized to perform all the duties of an Administrative Law Judge as set forth in the Commission's Rules of Practice or as otherwise provided by law.

IT IS 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, pursuant to Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220. If the Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against the Respondent upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 22l(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§201.155(a), 201.220(f), 22l(f) and 201.310. This Order shall be served forthwith upon the Respondent in accordance with Rule 141 of the Commission's Rules of Practice, 17 C.F.R. §201.141.

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. 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

Commissioner Aguilar not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9526 / February 3, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15718

In the Matter of

the Registration Statement of

Chum Mining Group Inc.,
Business Filings Incorporated
311 South Division Street
Carson City, NV 89703

Respondent.

ORDER FIXING TIME AND PLACE OF PUBLIC HEARING AND INSTITUTING PROCEEDINGS PURSUANT TO SECTION 8(d) OF THE SECURITIES ACT OF 1933

I.

The Commission's public official files disclose that:

On November 30, 2012, Respondent filed a Form S-1 registration statement seeking to register management's common shares for resale in a $20,000 public offering (the "Registration Statement").

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

1. Respondent is a Nevada corporation headquartered in Edmonton, Alberta, Canada.

B. MATERIAL MISSTATMENTS AND OMISSIONS

2. In the Registration Statement, Respondent claims that it is engaged in the exploration for certain metals and other minerals, but is currently in an exploration stage, is without known reserves, and has not yet begun actual mining.

3. According to the Registration Statement, Respondent's management consists of one person who "control[s]" and "solely govern[s]" Respondent as its sole executive officer and director. In the Registration Statement, Respondent identifies by name its sole officer and director.

4. Further, the Registration Statement states that other than a management agreement between Respondent and its sole executive officer, "there are no, and have not been since inception, any other material agreements or proposed transactions, whether direct or indirect, with . . . any promoters."

5. Respondent's Registration Statement includes untrue statements of material facts and omits to state material facts necessary to make the statements contained therein not misleading. Among other things, Respondent stated that its executive officer and director controls Respondent when in fact Respondent is controlled and/or promoted by an undisclosed control person and/or promoter, who was previously charged with fraud in SEC v. Golden Apple Oil and Gas, Inc., et al., Civil Action No. 09-Civ-7580 (SDNY) (HB) and barred from appearing before the Commission in In the Matter of John Briner, Exchange Act Release No. 63371 (Nov. 24, 2010). Further, Respondent failed to disclose material agreements or proposed transactions with its undisclosed control person and/or promoter.

C. FAILURE TO COOPERATE WITH SECTION 8(e) EXAMINATION

6. On July 5, 2013, Respondent filed a letter seeking to withdraw its Registration Statement. On July 5, 2013, Respondent's executive officer was informed by staff that Respondent should cooperate with the staff's examination of Respondent, withdraw its letter, and that the failure to withdraw its letter may be grounds for issuance of a stop order under Section 8(d) of the Securities Act. Respondent did not withdraw its letter and, on July 17, 2013, the Commission denied Respondent's request to withdraw its Registration Statement.

7. Respondent's seeking to withdraw its Registration Statement constitutes a failure to cooperate with, refusal to permit, and obstruction of the staff's examination under Section 8(e) of the Securities Act.

III.

The Commission, having considered the aforesaid, deems it appropriate and in the public interest that public proceedings pursuant to Section 8(d) of the Securities Act of 1933 ("Securities Act") be instituted with respect to the Registration Statement to determine whether the allegations of the Division of Enforcement are true; to afford the Respondent with an opportunity to establish any defenses to these allegations; and to determine whether a stop order should issue suspending the effectiveness of the Registration Statement referred to herein.

Accordingly, IT IS ORDERED that public proceedings be and hereby are

instituted under Section 8(d) of the Securities Act, such hearing to be commenced at 9:30 a.m. on February 18, 2014, at the Commission's offices at 100 F Street N.E., Washington, DC 20549, and to continue thereafter at such time and place as the hearing officer may determine.

IT IS FURTHER ORDERED that these proceedings shall be presided over by an Administrative Law Judge to be designated by further order, who is authorized to perform all the duties of an Administrative Law Judge as set forth in the Commission's Rules of Practice or as otherwise provided by law.

IT IS 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, pursuant to Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220. If the Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against the Respondent upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 22I(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§201.155(a), 201.220(f), 22l(f) and 201.310. This Order shall be served forthwith upon the Respondent in accordance with Rule 141 of the Commission's Rules of Practice, 17 C.F.R. §201.141.

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. 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

Commissioner Aguilar Not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9527 / February 3, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15719

In the Matter of

the Registration Statement of

Eclipse Resources Inc.,
Business Filings Incorporated
311 South Division Street
Carson City, NV 89703

Respondent.

ORDER FIXING TIME AND PLACE OF PUBLIC HEARING AND INSTITUTING PROCEEDINGS PURSUANT TO SECTION 8(d) OF THE SECURITIES ACT OF 1933

I.

The Commission's public official files disclose that:

On December 3, 2012, Respondent filed a Form S-1 registration statement seeking to register management's common shares for resale in a $18,000 public offering (the "Registration Statement").

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

1. Respondent is a Nevada corporation headquartered in Winnipeg, Manitoba, Canada.

B. MATERIAL MISSTATMENTS AND OMISSIONS

2. In the Registration Statement, Respondent claims that it is engaged in the exploration for certain metals and other minerals, but is currently in an exploration stage, is without known reserves, and has not yet begun actual mining.

3. According to the Registration Statement, Respondent's management consists of one person who "control[s]" and "solely govern[s]" Respondent as its sole executive officer and director. In the Registration Statement, Respondent identifies by name its sole officer and director.

4. Further, the Registration Statement states that other than a management agreement between Respondent and its sole executive officer, "there are no, and have not been since inception, any other material agreements or proposed transactions, whether direct or indirect, with . . . any promoters."

5. Respondent's Registration Statement includes untrue statements of material facts and omits to state material facts necessary to make the statements contained therein not misleading. Among other things, Respondent stated that its executive officer and director controls Respondent when in fact Respondent is controlled and/or promoted by an undisclosed control person and/or promoter, who was previously charged with fraud in SEC v. Golden Apple Oil and Gas, Inc., et al., Civil Action No. 09-Civ-7580 (SDNY) (HB) and barred from appearing before the Commission in In the Matter of John Briner, Exchange Act Release No. 63371 (Nov. 24, 2010). Further, Respondent failed to disclose material agreements or proposed transactions with its undisclosed control person and/or promoter.

C. FAILURE TO COOPERATE WITH SECTION 8(e) EXAMINATION

6. On June 17, 2013, the staff issued a subpoena to Respondent requiring the production of documents by June 28, 2013 and testimony on July 8, 2013. Respondent failed to respond to the subpoena by the June 28 deadline or anytime thereafter. On July 2, 2013, the staff attempted to contact Respondent by phone, with no success. Respondent failed to appear for testimony on July 8, 2013.

7. On July 5, 2013, Respondent filed a letter seeking to withdraw its Registration Statement. On July 5, 2013, staff attempted to contact Respondent's executive officer to inform Respondent that it should cooperate with the staff's examination of Respondent, withdraw its letter, and that the failure to withdraw its letter may be grounds for issuance of a stop order under Section 8(d) of the Securities Act. Staff was not successful in contacting respondent. Respondent did not withdraw its letter and, on July 17, 2013, the Commission denied Respondent's request to withdraw its Registration Statement.

8. Respondent's failure to respond to the subpoena and seeking to withdraw its Registration Statement constitutes a failure to cooperate with, refusal to permit, and obstruction of the staff's examination under Section 8(e) of the Securities Act.

III.

The Commission, having considered the aforesaid, deems it appropriate and in the public interest that public proceedings pursuant to Section 8(d) of the Securities Act of 1933 ("Securities Act") be instituted with respect to the Registration Statement to determine whether the allegations of the Division of Enforcement are true; to afford the Respondent with an opportunity to establish

any defenses to these allegations; and to determine whether a stop order should issue suspending the effectiveness of the Registration Statement referred to herein.

Accordingly, IT IS ORDERED that public proceedings be and hereby are instituted under Section 8(d) of the Securities Act, such hearing to be commenced at 9:30 a.m. on February 18, 2014, at the Commission's offices at 100 F Street N.E., Washington, DC 20549, and to continue thereafter at such time and place as the hearing officer may determine.

IT IS FURTHER ORDERED that these proceedings shall be presided over by an Administrative Law Judge to be designated by further order, who is authorized to perform all the duties of an Administrative Law Judge as set forth in the Commission's Rules of Practice or as otherwise provided by law.

IT IS 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, pursuant to Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220. If the Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against the Respondent 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), 221(f) and 201.310. This Order shall be served forthwith upon the Respondent in accordance with Rule 141 of the Commission's Rules of Practice, 17 C.F.R. §201.141.

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

By the Commission.

Elizabeth M. Murphy
Secretary

Commissioner Aguilar not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9528 / February 3, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15720

In the Matter of

the Registration Statement of

PRWC Energy Inc.,
Business Filings Incorporated
311 South Division Street
Carson City, NV 89703

Respondent.

ORDER FIXING TIME AND PLACE OF PUBLIC HEARING AND INSTITUTING PROCEEDINGS PURSUANT TO SECTION 8(d) OF THE SECURITIES ACT OF 1933

I.

The Commission's public official files disclose that:

On December 6, 2012, Respondent filed a Form S-1 registration statement seeking to register management's common shares for resale in a $20,000 public offering (the "Registration Statement").

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

1. Respondent is a Nevada corporation headquartered in Salt Lake City, Utah.

B. MATERIAL MISSTATMENTS AND OMISSIONS

2. In the Registration Statement, Respondent claims that it is engaged in the exploration for certain metals and other minerals, but is currently in an exploration stage, is without known reserves, and has not yet begun actual mining.

3. According to the Registration Statement, Respondent's management consists of one person who "control[s]" and "solely govern[s]" Respondent as its sole executive officer and director. In the Registration Statement, Respondent identifies by name its sole officer and director.

4. Further, the Registration Statement states that other than a management agreement between Respondent and its sole executive officer, "there are no, and have not been since inception, any other material agreements or proposed transactions, whether direct or indirect, with . . . any promoters."

5. Respondent's Registration Statement includes untrue statements of material facts and omits to state material facts necessary to make the statements contained therein not misleading. Among other things, Respondent stated that its executive officer and director controls Respondent when in fact Respondent is controlled and/or promoted by an undisclosed control person and/or promoter, who was previously charged with fraud in SEC v. Golden Apple Oil and Gas, Inc., et al., Civil Action No. 09-Civ-7580 (SDNY) (HB) and barred from appearing before the Commission in In the Matter of John Briner, Exchange Act Release No. 63371 (Nov. 24, 2010). Further, Respondent failed to disclose material agreements or proposed transactions with its undisclosed control person and/or promoter.

C. VIOLATIONS

6. As a result of the conduct described above, Respondent's Registration Statement includes untrue statements of material fact or omits to state material facts required to be stated therein or necessary to make the statements therein not misleading in violation of Section 8(d) of the Securities Act.

III.

The Commission, having considered the aforesaid, deems it appropriate and in the public interest that public proceedings pursuant to Section 8(d) of the Securities Act of 1933 ("Securities Act") be instituted with respect to the Registration Statement to determine whether the allegations of the Division of Enforcement are true; to afford the Respondent with an opportunity to establish any defenses to these allegations; and to determine whether a stop order should issue suspending the effectiveness of the Registration Statement referred to herein.

Accordingly, IT IS ORDERED that public proceedings be and hereby are instituted under Section 8(d) of the Securities Act, such hearing to be commenced at 9:30 a.m. on February 18, 2014, at the Commission's offices, at the Commission's offices at 100 F Street N.E., Washington, DC 20549, and to continue thereafter at such time and place as the hearing officer may determine.

IT IS FURTHER ORDERED that these proceedings shall be presided over by an Administrative Law Judge to be designated by further order, who is authorized to perform all the duties of an Administrative Law Judge as set forth in the Commission's Rules of Practice or as otherwise provided by law.

IT IS 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, pursuant to Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220. If the Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against the Respondent upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 22I(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§201.155(a), 201.220(f), 22l(f) and 201.310. This Order shall be served forthwith upon the Respondent in accordance with Rule 141 of the Commission's Rules of Practice, 17 C.F.R. §201.141.

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. 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

Commissioner Aguilar not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9529 / February 3, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15721

In the Matter of

the Registration Statement of

Tuba City Gold Corp.,
Business Filings Incorporated
311 South Division Street
Carson City, NV 89703

Respondent.

ORDER FIXING TIME AND PLACE OF PUBLIC HEARING AND INSTITUTING PROCEEDINGS PURSUANT TO SECTION 8(d) OF THE SECURITIES ACT OF 1933

I.

The Commission's public official files disclose that:

On January 2, 2013, Respondent filed a Form S-1 registration statement seeking to register management's common shares for resale in a $12,000 public offering (the "Registration Statement").

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

1. Respondent is a Nevada corporation headquartered in Dundas, Ontario, Canada.

B. MATERIAL MISSTATMENTS AND OMISSIONS

2. In the Registration Statement, Respondent claims that it is engaged in the exploration for certain metals and other minerals, but is currently in an exploration stage, is without known reserves, and has not yet begun actual mining.

3. According to the Registration Statement, Respondent's management consists of one person who "control[s]" and "solely govern[s]" Respondent as its sole executive officer and director. In the Registration Statement, Respondent identifies by name its sole officer and director.

4. Further, the Registration Statement states that other than a management agreement between Respondent and its sole executive officer, "there are no, and have not been since inception, any other material agreements or proposed transactions, whether direct or indirect, with . . . any promoters."

5. Respondent's Registration Statement includes untrue statements of material facts and omits to state material facts necessary to make the statements contained therein not misleading. Among other things, Respondent stated that its executive officer and director controls Respondent when in fact Respondent is controlled and/or promoted by an undisclosed control person and/or promoter, who was previously charged with fraud in SEC v. Golden Apple Oil and Gas, Inc., et al., Civil Action No. 09-Civ-7580 (SDNY) (HB) and barred from appearing before the Commission in In the Matter of John Briner, Exchange Act Release No. 63371 (Nov. 24, 2010). Further, Respondent failed to disclose material agreements or proposed transactions with its undisclosed control person and/or promoter.

C. FAILURE TO COOPERATE WITH SECTION 8(e) EXAMINATION

6. On July 5, 2013, Respondent filed a letter seeking to withdraw its Registration Statement. On July 5, 2013, staff informed Respondent's executive officer that Respondent should cooperate with the staff's examination of Respondent, withdraw its letter, and that the failure to withdraw its letter may be grounds for issuance of a stop order under Section 8(d) of the Securities Act. Respondent did not withdraw its letter and, on July 17, 2013, the Commission denied Respondent's request to withdraw its Registration Statement.

7. Respondent's seeking to withdraw its Registration Statement constitutes a failure to cooperate with, refusal to permit, and obstruction of the staff's examination under Section 8(e) of the Securities Act.

III.

The Commission, having considered the aforesaid, deems it appropriate and in the public interest that public proceedings pursuant to Section 8(d) of the Securities Act of 1933 ("Securities Act") be instituted with respect to the Registration Statement to determine whether the allegations of the Division of Enforcement are true; to afford the Respondent with an opportunity to establish any defenses to these allegations; and to determine whether a stop order should issue suspending the effectiveness of the Registration Statement referred to herein.

Accordingly, IT IS ORDERED that public proceedings be and hereby are instituted under Section 8(d) of the Securities Act, such hearing to be commenced at 9:30 a.m. on February 18, 2014, at the Commission's offices at 100 F Street N.E., Washington, DC 20549, and to continue thereafter at such time and place as the hearing officer may determine.

IT IS FURTHER ORDERED that these proceedings shall be presided over by an Administrative Law Judge to be designated by further order, who is authorized to perform all the duties of an Administrative Law Judge as set forth in the Commission's Rules of Practice or as otherwise provided by law.

IT IS 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, pursuant to Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220. If the Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against the Respondent upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 22I(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§201.155(a), 201.220(f), 22l(f) and 201.310. This Order shall be served forthwith upon the Respondent in accordance with Rule 141 of the Commission's Rules of Practice, 17 C.F.R. §201.141.

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. 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

Commissioner Aguilar not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9530 / February 3, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15722

In the Matter of

the Registration Statement of

Braxton Resources Inc.,
Business Filings Incorporated
311 South Division Street
Carson City, NV 89703

Respondent.

ORDER FIXING TIME AND PLACE OF PUBLIC HEARING AND INSTITUTING PROCEEDINGS PURSUANT TO SECTION 8(d) OF THE SECURITIES ACT OF 1933

I.

The Commission's public official files disclose that:

On January 2, 2013, Respondent filed a Form S-1 registration statement seeking to register management's common shares for resale in a $24,000 public offering (the "Registration Statement").

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

1. Respondent is a Nevada corporation headquartered in Peoria, Arizona.

B. MATERIAL MISSTATMENTS AND OMISSIONS

2. In the Registration Statement, Respondent claims that it is engaged in the exploration for certain metals and other minerals, but is currently in an exploration stage, is without known reserves, and has not yet begun actual mining.

3. According to the Registration Statement, Respondent's management consists of one person who "control[s]" and "solely govern[s]" Respondent as its sole executive officer and director. In the Registration Statement, Respondent identifies by name its sole officer and director.

4. Further, the Registration Statement states that other than a management agreement between Respondent and its sole executive officer, "there are no, and have not been since inception, any other material agreements or proposed transactions, whether direct or indirect, with . . . any promoters."

5. Respondent's Registration Statement includes untrue statements of material facts and omits to state material facts necessary to make the statements contained therein not misleading. Among other things, Respondent stated that its executive officer and director controls Respondent when in fact Respondent is controlled and/or promoted by an undisclosed control person and/or promoter, who was previously charged with fraud in SEC v. Golden Apple Oil and Gas, Inc., et al., Civil Action No. 09-Civ-7580 (SDNY) (HB) and barred from appearing before the Commission in In the Matter of John Briner, Exchange Act Release No. 63371 (Nov. 24, 2010). Further, Respondent failed to disclose material agreements or proposed transactions with its undisclosed control person and/or promoter.

C. FAILURE TO COOPERATE WITH SECTION 8(e) EXAMINATION

6. On June 26, 2013, Respondent filed a letter seeking to withdraw its Registration Statement. On June 27, 2013, staff informed Respondent's executive officer that Respondent should cooperate with the staff's examination of Respondent, withdraw its letter, and that the failure to withdraw its letter may be grounds for issuance of a stop order under Section 8(d) of the Securities Act. Respondent did not withdraw its letter and, on July 3, 2013, the Commission denied Respondent's request to withdraw its Registration Statement.

7. Respondent's seeking to withdraw its Registration Statement constitutes a failure to cooperate with, refusal to permit, and obstruction of the staff's examination under Section 8(e) of the Securities Act.

III.

The Commission, having considered the aforesaid, deems it appropriate and in the public interest that public proceedings pursuant to Section 8(d) of the Securities Act of 1933 ("Securities Act") be instituted with respect to the Registration Statement to determine whether the allegations of the Division of Enforcement are true; to afford the Respondent with an opportunity to establish any defenses to these allegations; and to determine whether a stop order should issue suspending the effectiveness of the Registration Statement referred to herein.

Accordingly, IT IS ORDERED that public proceedings be and hereby are instituted under Section 8(d) of the Securities Act, such hearing to be commenced at 9:30 a.m. on February 18, 2014, at the Commission's offices at 100 F Street N.E., Washington, DC 20549, and to continue thereafter at such time and place as the hearing officer may determine.

IT IS FURTHER ORDERED that these proceedings shall be presided over by an Administrative Law Judge to be designated by further order, who is authorized to perform all the duties of an Administrative Law Judge as set forth in the Commission's Rules of Practice or as otherwise provided by law.

IT IS 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, pursuant to Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220. If the Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against the Respondent upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 22l(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§201.155(a), 201.220(f), 22l(f) and 201.310. This Order shall be served forthwith upon the Respondent in accordance with Rule 141 of the Commission's Rules of Practice, 17 C.F.R. §201.141.

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

By the Commission.

Elizabeth M. Murphy
Secretary

Commissioner Aguilar not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9531 / February 3, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15723

In the Matter of

the Registration Statement of

Clearpoint Resources Inc.,
Business Filings Incorporated
311 South Division Street
Carson City, NV 89703

Respondent.

ORDER FIXING TIME AND PLACE OF PUBLIC HEARING AND INSTITUTING PROCEEDINGS PURSUANT TO SECTION 8(d) OF THE SECURITIES ACT OF 1933

I.

The Commission's public official files disclose that:

On January 2, 2013, Respondent filed a Form S-1 registration statement seeking to register management's common shares for resale in a $16,000 public offering (the "Registration Statement").

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

1. Respondent is a Nevada corporation headquartered in Peoria, Arizona.

B. MATERIAL MISSTATMENTS AND OMISSIONS

2. In the Registration Statement, Respondent claims that it is engaged in the exploration for certain metals and other minerals, but is currently in an exploration stage, is without known reserves, and has not yet begun actual mining.

3. According to the Registration Statement, Respondent's management consists of one person who "control[s]" and "solely govern[s]" Respondent as its sole executive officer and director. In the Registration Statement, Respondent identifies by name its sole officer and director.

4. Further, the Registration Statement states that other than a management agreement between Respondent and its sole executive officer, "there are no, and have not been since inception, any other material agreements or proposed transactions, whether direct or indirect, with . . . any promoters."

5. Respondent's Registration Statement includes untrue statements of material facts and omits to state material facts necessary to make the statements contained therein not misleading. Among other things, Respondent stated that its executive officer and director controls Respondent when in fact Respondent is controlled and/or promoted by an undisclosed control person and/or promoter, who was previously charged with fraud in SEC v. Golden Apple Oil and Gas, Inc., et al., Civil Action No. 09-Civ-7580 (SDNY) (HB) and barred from appearing before the Commission in In the Matter of John Briner, Exchange Act Release No. 63371 (Nov. 24, 2010). Further, Respondent failed to disclose material agreements or proposed transactions with its undisclosed control person and/or promoter.

C. FAILURE TO COOPERATE WITH SECTION 8(e) EXAMINATION

6. On June 25, 2013, Respondent filed a letter seeking to withdraw its Registration Statement. On June 27, 2013, staff informed Respondent's executive officer that Respondent should cooperate with the staff's examination of Respondent, withdraw its letter, and that the failure to withdraw its letter may be grounds for issuance of a stop order under Section 8(d) of the Securities Act. Respondent did not withdraw its letter and, on July 3, 2013, the Commission denied Respondent's request to withdraw its Registration Statement.

7. Respondent's seeking to withdraw its Registration Statement constitutes a failure to cooperate with, refusal to permit, and obstruction of the staff's examination under Section 8(e) of the Securities Act.

III.

The Commission, having considered the aforesaid, deems it appropriate and in the public interest that public proceedings pursuant to Section 8(d) of the Securities Act of 1933 ("Securities Act") be instituted with respect to the Registration Statement to determine whether the allegations of the Division of Enforcement are true; to afford the Respondent with an opportunity to establish any defenses to these allegations; and to determine whether a stop order should issue suspending the effectiveness of the Registration Statement referred to herein.

Accordingly, IT IS ORDERED that public proceedings be and hereby are

instituted under Section 8(d) of the Securities Act, such hearing to be commenced at 9:30 a.m. on February 18, 2014, at the Commission's offices at 100 F Street N.E., Washington, DC 20549, and to continue thereafter at such time and place as the hearing officer may determine.

IT IS FURTHER ORDERED that these proceedings shall be presided over by an Administrative Law Judge to be designated by further order, who is authorized to perform all the duties of an Administrative Law Judge as set forth in the Commission's Rules of Practice or as otherwise provided by law.

IT IS 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, pursuant to Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220. If the Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against the Respondent upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 22I(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§201.155(a), 201.220(f), 22l(f) and 201.310. This Order shall be served forthwith upon the Respondent in accordance with Rule 141 of the Commission's Rules of Practice, 17 C.F.R. §201.141.

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. 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

Commissioner Aguilar not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9532 / February 3, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15724

In the Matter of

the Registration Statement of

Gold Camp Explorations Inc.,
Business Filings Incorporated
311 South Division Street
Carson City, NV 89703

Respondent.

ORDER FIXING TIME AND PLACE OF PUBLIC HEARING AND INSTITUTING PROCEEDINGS PURSUANT TO SECTION 8(d) OF THE SECURITIES ACT OF 1933

I.

The Commission's public official files disclose that:

On January 2, 2013, Respondent filed a Form S-1 registration statement seeking to register management's common shares for resale in a $10,000 public offering (the "Registration Statement").

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

1. Respondent is a Nevada corporation headquartered in St. Alberta, Alberta, Canada.

B. MATERIAL MISSTATMENTS AND OMISSIONS

2. In the Registration Statement, Respondent claims that it is engaged in the exploration for certain metals and other minerals, but is currently in an exploration stage, is without known reserves, and has not yet begun actual mining.

3. According to the Registration Statement, Respondent's management consists of one person who "control[s]" and "solely govern[s]" Respondent as its sole executive officer and director. In the Registration Statement, Respondent identifies by name its sole officer and director.

4. Further, the Registration Statement states that other than a management agreement between Respondent and its sole executive officer, "there are no, and have not been since inception, any other material agreements or proposed transactions, whether direct or indirect, with . . . any promoters."

5. Respondent's Registration Statement includes untrue statements of material facts and omits to state material facts necessary to make the statements contained therein not misleading. Among other things, Respondent stated that its executive officer and director controls Respondent when in fact Respondent is controlled and/or promoted by an undisclosed control person and/or promoter, who was previously charged with fraud in SEC v. Golden Apple Oil and Gas, Inc., et al., Civil Action No. 09-Civ-7580 (SDNY) (HB) and barred from appearing before the Commission in In the Matter of John Briner, Exchange Act Release No. 63371 (Nov. 24, 2010). Further, Respondent failed to disclose material agreements or proposed transactions with its undisclosed control person and/or promoter.

C. FAILURE TO COOPERATE WITH SECTION 8(e) EXAMINATION

6. On July 5, 2013, Respondent filed a letter seeking to withdraw its Registration Statement. On July 5, 2013, staff informed Respondent's executive officer that Respondent should cooperate with the staff's examination of Respondent, withdraw its letter, and that the failure to withdraw its letter may be grounds for issuance of a stop order under Section 8(d) of the Securities Act. Respondent did not withdraw its letter and, on July 17, 2013, the Commission denied Respondent's request to withdraw its Registration Statement.

7. Respondent's seeking to withdraw its Registration Statement constitutes a failure to cooperate with, refusal to permit, and obstruction of the staff's examination under Section 8(e) of the Securities Act.

III.

The Commission, having considered the aforesaid, deems it appropriate and in the public interest that public proceedings pursuant to Section 8(d) of the Securities Act of 1933 ("Securities Act") be instituted with respect to the Registration Statement to determine whether the allegations of the Division of Enforcement are true; to afford the Respondent with an opportunity to establish any defenses to these allegations; and to determine whether a stop order should issue suspending the effectiveness of the Registration Statement referred to herein.

Accordingly, IT IS ORDERED that public proceedings be and hereby are instituted under Section 8(d) of the Securities Act, such hearing to be commenced at 9:30 a.m. on February 18, 2014, at the Commission's offices at 100 F Street N.E., Washington, DC 20549, and to continue thereafter at such time and place as the hearing officer may determine.

IT IS FURTHER ORDERED that these proceedings shall be presided over by an Administrative Law Judge to be designated by further order, who is authorized to perform all the duties of an Administrative Law Judge as set forth in the Commission's Rules of Practice or as otherwise provided by law.

IT IS 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, pursuant to Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220. If the Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against the Respondent upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 22I(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§201.155(a), 201.220(f), 22l(f) and 201.310. This Order shall be served forthwith upon the Respondent in accordance with Rule 141 of the Commission's Rules of Practice, 17 C.F.R. §201.141.

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. 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

Commissioner Aguilar not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9533 / February 3, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15725

In the Matter of

the Registration Statement of

Canyon Minerals Inc.,
Business Filings Incorporated
311 South Division Street
Carson City, NV 89703

Respondent.

ORDER FIXING TIME AND PLACE OF PUBLIC HEARING AND INSTITUTING PROCEEDINGS PURSUANT TO SECTION 8(d) OF THE SECURITIES ACT OF 1933

I.

The Commission's public official files disclose that:

On January 25, 2013, Respondent filed a Form S-1 registration statement seeking to register management's common shares for resale in a $24,000 public offering (the "Registration Statement").

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

1. Respondent is a Nevada corporation headquartered in Salt Lake City, Utah.

B. MATERIAL MISSTATMENTS AND OMISSIONS

2. In the Registration Statement, Respondent claims that it is engaged in the exploration for certain metals and other minerals, but is currently in an exploration stage, is without known reserves, and has not yet begun actual mining.

3. According to the Registration Statement, Respondent's management consists of one person who "control[s]" and "solely govern[s]" Respondent as its sole executive officer and director. In the Registration Statement, Respondent identifies by name its sole officer and director.

4. Further, the Registration Statement states that other than a management agreement between Respondent and its sole executive officer, "there are no, and have not been since inception, any other material agreements or proposed transactions, whether direct or indirect, with . . . any promoters."

5. Respondent's Registration Statement includes untrue statements of material facts and omits to state material facts necessary to make the statements contained therein not misleading. Among other things, Respondent stated that its executive officer and director controls Respondent when in fact Respondent is controlled and/or promoted by an undisclosed control person and/or promoter, who was previously charged with fraud in SEC v. Golden Apple Oil and Gas, Inc., et al., Civil Action No. 09-Civ-7580 (SDNY) (HB) and barred from appearing before the Commission in In the Matter of John Briner, Exchange Act Release No. 63371 (Nov. 24, 2010). Further, Respondent failed to disclose material agreements or proposed transactions with its undisclosed control person and/or promoter.

C. VIOLATIONS

6. As a result of the conduct described above, Respondent's Registration Statement includes untrue statements of material fact or omits to state material facts required to be stated therein or necessary to make the statements therein not misleading in violation of Section 8(d) of the Securities Act.

III.

The Commission, having considered the aforesaid, deems it appropriate and in the public interest that public proceedings pursuant to Section 8(d) of the Securities Act of 1933 ("Securities Act") be instituted with respect to the Registration Statement to determine whether the allegations of the Division of Enforcement are true; to afford the Respondent with an opportunity to establish any defenses to these allegations; and to determine whether a stop order should issue suspending the effectiveness of the Registration Statement referred to herein.

Accordingly, IT IS ORDERED that public proceedings be and hereby are instituted under Section 8(d) of the Securities Act, such hearing to be commenced at 9:30 a.m. on February 18, 2014, at the Commission's offices at 100 F Street N.E., Washington, DC 20549, and to continue thereafter at such time and place as the hearing officer may determine.

IT IS FURTHER ORDERED that these proceedings shall be presided over by an Administrative Law Judge to be designated by further order, who is authorized to perform all the duties of an Administrative Law Judge as set forth in the Commission's Rules of Practice or as otherwise provided by law.

IT IS 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, pursuant to Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220. If the Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against the Respondent upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 22I(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§201.155(a), 201.220(f), 22l(f) and 201.310. This Order shall be served forthwith upon the Respondent in accordance with Rule 141 of the Commission's Rules of Practice, 17 C.F.R. §201.141.

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. 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

Commissioner Aguilar not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9534 / February 3, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15726

In the Matter of

the Registration Statement of

Gaspard Mining Inc.,
Business Filings Incorporated
311 South Division Street
Carson City, NV 89703

Respondent.

ORDER FIXING TIME AND PLACE OF PUBLIC HEARING AND INSTITUTING PROCEEDINGS PURSUANT TO SECTION 8(d) OF THE SECURITIES ACT OF 1933

I.

The Commission's public official files disclose that:

On January 25, 2013, Respondent filed a Form S-1 registration statement seeking to register management's common shares for resale in a $20,000 public offering (the "Registration Statement").

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

1. Respondent is a Nevada corporation headquartered in Ocala, Florida.

B. MATERIAL MISSTATMENTS AND OMISSIONS

2. In the Registration Statement, Respondent claims that it is engaged in the exploration for certain metals and other minerals, but is currently in an exploration stage, is without known reserves, and has not yet begun actual mining.

3. According to the Registration Statement, Respondent's management consists of one person who "control[s]" and "solely govern[s]" Respondent as its sole executive officer and director. In the Registration Statement, Respondent identifies by name its sole officer and director.

4. Further, the Registration Statement states that other than a management agreement between Respondent and its sole executive officer, "there are no, and have not been since inception, any other material agreements or proposed transactions, whether direct or indirect, with . . , any promoters."

5. Respondent's Registration Statement includes untrue statements of material facts and omits to state material facts necessary to make the statements contained therein not misleading. Among other things, Respondent stated that its executive officer and director controls Respondent when in fact Respondent is controlled and/or promoted by an undisclosed control person and/or promoter, who was previously charged with fraud in SEC v. Golden Apple Oil and Gas, Inc., et al., Civil Action No. 09-Civ-7580 (SDNY) (HB) and barred from appearing before the Commission in In the Matter of John Briner, Exchange Act Release No. 63371 (Nov. 24, 2010). Further, Respondent failed to disclose material agreements or proposed transactions with its undisclosed control person and/or promoter.

C. FAILURE TO COOPERATE WITH SECTION 8(e) EXAMINATION

6. On July 5, 2013, Respondent filed a letter seeking to withdraw its Registration Statement. On July 5, 2013, staff informed Respondent's executive officer that Respondent should cooperate with the staff's examination of Respondent, withdraw its letter, and that the failure to withdraw its letter may be grounds for issuance of a stop order under Section 8(d) of the Securities Act. Respondent did not withdraw its letter and, on July 17, 2013, the Commission denied Respondent's request to withdraw its Registration Statement.

7. Respondent's seeking to withdraw its Registration Statement constitutes a failure to cooperate with, refusal to permit, and obstruction of the staff's examination under Section 8(e) of the Securities Act.

III.

The Commission, having considered the aforesaid, deems it appropriate and in the public interest that public proceedings pursuant to Section 8(d) of the Securities Act of 1933 ("Securities Act") be instituted with respect to the Registration Statement to determine whether the allegations of the Division of Enforcement are true; to afford the Respondent with an opportunity to establish any defenses to these allegations; and to determine whether a stop order should issue suspending the effectiveness of the Registration Statement referred to herein.

Accordingly, IT IS ORDERED that public proceedings be and hereby are instituted under Section 8(d) of the Securities Act, such hearing to be commenced at 9:30 a.m. on February 18, 2014, at the Commission's offices at 100 F Street N.E., Washington, DC 20549, and to continue thereafter at such time and place as the hearing officer may determine.

IT IS FURTHER ORDERED that these proceedings shall be presided over by an Administrative Law Judge to be designated by further order, who is authorized to perform all the duties of an Administrative Law Judge as set forth in the Commission's Rules of Practice or as otherwise provided by law.

IT IS 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, pursuant to Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220. If the Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against the Respondent upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 22I(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§201.155(a), 201.220(f), 22l(f) and 201.310. This Order shall be served forthwith upon the Respondent in accordance with Rule 141 of the Commission's Rules of Practice, 17 C.F.R. §201.141.

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. 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

Commissioner Aguilar not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9535 / February 3, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15727

In the Matter of

the Registration Statement of

Jewel Explorations Inc.,
Business Filings Incorporated
311 South Division Street
Carson City, NV 89703

Respondent.

ORDER FIXING TIME AND PLACE OF PUBLIC HEARING AND INSTITUTING PROCEEDINGS PURSUANT TO SECTION 8(d) OF THE SECURITIES ACT OF 1933

I.

The Commission's public official files disclose that:

On January 25, 2013, Respondent filed a Form S-1 registration statement seeking to register management's common shares for resale in a $20,000 public offering (the "Registration Statement").

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

1. Respondent is a Nevada corporation headquartered in Winnipeg, Manitoba, Canada.

B. MATERIAL MISSTATMENTS AND OMISSIONS

2. In the Registration Statement, Respondent claims that it is engaged in the exploration for certain metals and other minerals, but is currently in an exploration stage, is without known reserves, and has not yet begun actual mining.

3. According to the Registration Statement, Respondent's management consists of one person who "control[s]" and "solely govern[s]" Respondent as its sole executive officer and director. In the Registration Statement, Respondent identifies by name its sole officer and director.

4. Further, the Registration Statement states that other than a management agreement between Respondent and its sole executive officer, "there are no, and have not been since inception, any other material agreements or proposed transactions, whether direct or indirect, with . . . any promoters."

5. Respondent's Registration Statement includes untrue statements of material facts and omits to state material facts necessary to make the statements contained therein not misleading. Among other things, Respondent stated that its executive officer and director controls Respondent when in fact Respondent is controlled and/or promoted by an undisclosed control person and/or promoter, who was previously charged with fraud in SEC v. Golden Apple Oil and Gas, Inc., et al., Civil Action No. 09-Civ-7580 (SDNY) (HB) and barred from appearing before the Commission in In the Matter of John Briner, Exchange Act Release No. 63371 (Nov. 24, 2010). Further, Respondent failed to disclose material agreements or proposed transactions with its undisclosed control person and/or promoter.

C. FAILURE TO COOPERATE WITH SECTION 8(e) EXAMINATION

6. On June 17, 2013, the staff issued a subpoena to Respondent requiring the production of documents by June 28, 2013 and testimony on July 8, 2013. Respondent failed to respond to the subpoena by the June 28 deadline or anytime thereafter. On July 2, 2013, the staff attempted to contact Respondent by phone, with no success. Respondent failed to appear for testimony on July 8, 2013.

7. On July 5, 2013, Respondent filed a letter seeking to withdraw its Registration Statement. On July 5, 2013, staff attempted to contact Respondent's executive officer to inform him that Respondent should cooperate with the staff's examination of Respondent, withdraw its letter, and that the failure to withdraw its letter may be grounds for issuance of a stop order under Section 8(d) of the Securities Act. The staff was unsuccessful in contacting Respondent. Respondent did not withdraw its letter and, on July 17, 2013, the Commission denied Respondent's request to withdraw its Registration Statement.

8. Respondent's failure to respond to the subpoena and seeking to withdraw its Registration Statement constitutes a failure to cooperate with, refusal to permit, and obstruction of the staff's examination under Section 8(e) of the Securities Act.

III.

The Commission, having considered the aforesaid, deems it appropriate and in the public interest that public proceedings pursuant to Section 8(d) of the Securities Act of 1933 ("Securities Act") be instituted with respect to the Registration Statement to determine whether the allegations of the Division of Enforcement are true; to afford the Respondent with an opportunity to establish

any defenses to these allegations; and to determine whether a stop order should issue suspending the effectiveness of the Registration Statement referred to herein.

Accordingly, IT IS ORDERED that public proceedings be and hereby are instituted under Section 8(d) of the Securities Act, such hearing to be commenced at 9:30 a.m. on February 18, 2014, at the Commission's offices at 100 F Street N.E., Washington, DC 20549, and to continue thereafter at such time and place as the hearing officer may determine.

IT IS FURTHER ORDERED that these proceedings shall be presided over by an Administrative Law Judge to be designated by further order, who is authorized to perform all the duties of an Administrative Law Judge as set forth in the Commission's Rules of Practice or as otherwise provided by law.

IT IS 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, pursuant to Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220. If the Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against the Respondent upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 22I(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§201.155(a), 201.220(f), 22l(f) and 201.310. This Order shall be served forthwith upon the Respondent in accordance with Rule 141 of the Commission's Rules of Practice, 17 C.F.R. §201.141.

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. 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

Commissioner Aguilar not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9536 / February 3, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15728

In the Matter of

the Registration Statement of

Coronation Mining Corp.,
Business Filings Incorporated
311 South Division Street
Carson City, NV 89703

Respondent.

ORDER FIXING TIME AND PLACE OF PUBLIC HEARING AND INSTITUTING PROCEEDINGS PURSUANT TO SECTION 8(d) OF THE SECURITIES ACT OF 1933

I.

The Commission's public official files disclose that:

On January 25, 2013, Respondent filed a Form S-1 registration statement seeking to register management's common shares for resale in a $30,000 public offering (the "Registration Statement").

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

1. Respondent is a Nevada corporation headquartered in Ocala, Florida.

B. MATERIAL MISSTATMENTS AND OMISSIONS

2. In the Registration Statement, Respondent claims that it is engaged in the exploration for certain metals and other minerals, but is currently in an exploration stage, is without known reserves, and has not yet begun actual mining.

3. According to the Registration Statement, Respondent's management consists of one person who "control[s]" and "solely govern[s]" Respondent as its sole executive officer and director. In the Registration Statement, Respondent identifies by name its sole officer and director.

4. Further, the Registration Statement states that other than a management agreement between Respondent and its sole executive officer, "there are no, and have not been since inception, any other material agreements or proposed transactions, whether direct or indirect, with . . . any promoters."

5. Respondent's Registration Statement includes untrue statements of material facts and omits to state material facts necessary to make the statements contained therein not misleading. Among other things, Respondent stated that its executive officer and director controls Respondent when in fact Respondent is controlled and/or promoted by an undisclosed control person and/or promoter, who was previously charged with fraud in SEC v. Golden Apple Oil and Gas, Inc., et al., Civil Action No. 09-Civ-7580 (SDNY) (HB) and barred from appearing before the Commission in In the Matter of John Briner, Exchange Act Release No. 63371 (Nov. 24, 2010). Further, Respondent failed to disclose material agreements or proposed transactions with its undisclosed control person and/or promoter.

C. FAILURE TO COOPERATE WITH SECTION 8(e) EXAMINATION

1. On July 5, 2013, staff informed Respondent's executive officer that Respondent should cooperate with the staff's examination of Respondent and that filing a letter seeking withdrawal of its Registration Statement may be grounds for issuance of a stop order under Section 8(d) of the Securities Act. On July 8, 2013, Respondent filed a letter seeking to withdraw its Registration Statement. Respondent did not withdraw its letter and, on July 17, 2013, the Commission denied Respondent's request to withdraw its Registration Statement.

2. Respondent's seeking to withdraw its Registration Statement constitutes a failure to cooperate with, refusal to permit, and obstruction of the staff's examination under Section 8(e) of the Securities Act.

III.

The Commission, having considered the aforesaid, deems it appropriate and in the public interest that public proceedings pursuant to Section 8(d) of the Securities Act of 1933 ("Securities Act") be instituted with respect to the Registration Statement to determine whether the allegations of the Division of Enforcement are true; to afford the Respondent with an opportunity to establish any defenses to these allegations; and to determine whether a stop order should issue suspending the effectiveness of the Registration Statement referred to herein.

Accordingly, IT IS ORDERED that public proceedings be and hereby are

instituted under Section 8(d) of the Securities Act, such hearing to be commenced at 9:30 a.m. on February 18, 2014, at the Commission's offices at 100 F Street N.E., Washington, DC 20549, and to continue thereafter at such time and place as the hearing officer may determine.

IT IS FURTHER ORDERED that these proceedings shall be presided over by an Administrative Law Judge to be designated by further order, who is authorized to perform all the duties of an Administrative Law Judge as set forth in the Commission's Rules of Practice or as otherwise provided by law.

IT IS 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, pursuant to Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220. If the Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against the Respondent upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 22I(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§201.155(a), 201.220(f), 22l(f) and 201.310. This Order shall be served forthwith upon the Respondent in accordance with Rule 141 of the Commission's Rules of Practice, 17 C.F.R. §201.141.

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. 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

Commissioner Aguilar not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9537 / February 3, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15729

In the Matter of

the Registration Statement of

Bonanza Resources Corp.,
Business Filings Incorporated
311 South Division Street
Carson City, NV 89703

Respondent.

ORDER FIXING TIME AND PLACE OF PUBLIC HEARING AND INSTITUTING PROCEEDINGS PURSUANT TO SECTION 8(d) OF THE SECURITIES ACT OF 1933

I.

The Commission's public official files disclose that:

On January 31, 2013, Respondent filed a Form S-1 registration statement seeking to register management's common shares for resale in a $18,000 public offering (the "Registration Statement").

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

1. Respondent is a Nevada corporation headquartered in Edmonton, Alberta, Canada.

B. MATERIAL MISSTATMENTS AND OMISSIONS

2. In the Registration Statement, Respondent claims that it is engaged in the exploration for certain metals and other minerals, but is currently in an exploration stage, is without known reserves, and has not yet begun actual mining.

3. According to the Registration Statement, Respondent's management consists of one person who "control[s]" and "solely govern[s]" Respondent as its sole executive officer and director. In the Registration Statement, Respondent identifies by name its sole officer and director.

4. Further, the Registration Statement states that other than a management agreement between Respondent and its sole executive officer, "there are no, and have not been since inception, any other material agreements or proposed transactions, whether direct or indirect, with . . . any promoters."

5. Respondent's Registration Statement includes untrue statements of material facts and omits to state material facts necessary to make the statements contained therein not misleading. Among other things, Respondent stated that its executive officer and director controls Respondent when in fact Respondent is controlled and/or promoted by an undisclosed control person and/or promoter, who was previously charged with fraud in SEC v. Golden Apple Oil and Gas, Inc., et al., Civil Action No. 09-Civ-7580 (SDNY) (HB) and barred from appearing before the Commission in In the Matter of John Briner, Exchange Act Release No. 63371 (Nov. 24, 2010). Further, Respondent failed to disclose material agreements or proposed transactions with its undisclosed control person and/or promoter.

C. FAILURE TO COOPERATE WITH SECTION 8(e) EXAMINATION

6. On July 5, 2013, Respondent filed a letter seeking to withdraw its Registration Statement. On July 8, 2013, staff informed Respondent's executive officer that Respondent should cooperate with the staff's examination of Respondent, withdraw its letter, and that the failure to withdraw its letter may be grounds for issuance of a stop order under Section 8(d) of the Securities Act. Respondent did not withdraw its letter and, on July 17, 2013, the Commission denied Respondent's request to withdraw its Registration Statement.

7. Respondent's seeking to withdraw its Registration Statement constitutes a failure to cooperate with, refusal to permit, and obstruction of the staff's examination under Section 8(e) of the Securities Act.

III.

The Commission, having considered the aforesaid, deems it appropriate and in the public interest that public proceedings pursuant to Section 8(d) of the Securities Act of 1933 ("Securities Act") be instituted with respect to the Registration Statement to determine whether the allegations of the Division of Enforcement are true; to afford the Respondent with an opportunity to establish any defenses to these allegations; and to determine whether a stop order should issue suspending the effectiveness of the Registration Statement referred to herein.

Accordingly, IT IS ORDERED that public proceedings be and hereby are instituted under Section 8(d) of the Securities Act, such hearing to be commenced at 9:30 a.m. on February 18, 2014, at the Commission's offices at 100 F Street N.E., Washington, DC 20549, and to continue thereafter at such time and place as the hearing officer may determine.

IT IS FURTHER ORDERED that these proceedings shall be presided over by an Administrative Law Judge to be designated by further order, who is authorized to perform all the duties of an Administrative Law Judge as set forth in the Commission's Rules of Practice or as otherwise provided by law.

IT IS 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, pursuant to Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220. If the Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against the Respondent upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 22I(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§201.155(a), 201.220(f), 22l(f) and 201.310. This Order shall be served forthwith upon the Respondent in accordance with Rule 141 of the Commission's Rules of Practice, 17 C.F.R. §201.141.

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. 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

Commissioner Aguilar not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9538 / February 3, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15730

In the Matter of

the Registration Statement of

CBL Resources Inc.,
Business Filings Incorporated
311 South Division Street
Carson City, NV 89703

Respondent.

ORDER FIXING TIME AND PLACE OF PUBLIC HEARING AND INSTITUTING PROCEEDINGS PURSUANT TO SECTION 8(d) OF THE SECURITIES ACT OF 1933

I.

The Commission's public official files disclose that:

On January 31, 2013, Respondent filed a Form S-1 registration statement seeking to register management's common shares for resale in a $10,000 public offering (the "Registration Statement").

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

1. Respondent is a Nevada corporation headquartered in Panama City, Panama.

B. MATERIAL MISSTATMENTS AND OMISSIONS

2. In the Registration Statement, Respondent claims that it is engaged in the exploration for certain metals and other minerals, but is currently in an exploration stage, is without known reserves, and has not yet begun actual mining.

3. According to the Registration Statement, Respondent's management consists of one person who "control[s]" and "solely govern[s]" Respondent as its sole executive officer and director. In the Registration Statement, Respondent identifies by name its sole officer and director.

4. Further, the Registration Statement states that other than a management agreement between Respondent and its sole executive officer, "there are no, and have not been since inception, any other material agreements or proposed transactions, whether direct or indirect, with . . . any promoters."

5. Respondent's Registration Statement includes untrue statements of material facts and omits to state material facts necessary to make the statements contained therein not misleading. Among other things, Respondent stated that its executive officer and director controls Respondent when in fact Respondent is controlled and/or promoted by an undisclosed control person and/or promoter, who was previously charged with fraud in SEC v. Golden Apple Oil and Gas, Inc., et al., Civil Action No. 09-Civ-7580 (SDNY) (HB) and barred from appearing before the Commission in In the Matter of John Briner, Exchange Act Release No. 63371 (Nov. 24, 2010). Further, Respondent failed to disclose material agreements or proposed transactions with its undisclosed control person and/or promoter.

C. FAILURE TO COOPERATE WITH SECTION 8(e) EXAMINATION

6. On July 5, 2013, Respondent filed a letter seeking to withdraw its Registration Statement. On July 5, 2013, staff informed Respondent's executive officer that Respondent should cooperate with the staff's examination of Respondent, withdraw its letter, and that the failure to withdraw its letter may be grounds for issuance of a stop order under Section 8(d) of the Securities Act. Respondent did not withdraw its letter and, on July 17, 2013, the Commission denied Respondent's request to withdraw its Registration Statement.

7. Respondent's seeking to withdraw its Registration Statement constitutes a failure to cooperate with, refusal to permit, and obstruction of the staff's examination under Section 8(e) of the Securities Act.

III.

The Commission, having considered the aforesaid, deems it appropriate and in the public interest that public proceedings pursuant to Section 8(d) of the Securities Act of 1933 ("Securities Act") be instituted with respect to the Registration Statement to determine whether the allegations of the Division of Enforcement are true; to afford the Respondent with an opportunity to establish any defenses to these allegations; and to determine whether a stop order should issue suspending the effectiveness of the Registration Statement referred to herein.

Accordingly, IT IS ORDERED that public proceedings be and hereby are instituted under Section 8(d) of the Securities Act, such hearing to be commenced at 9:30 a.m. on February 18, 2014, at the Commission's offices at 100 F Street N.E., Washington, DC 20549, and to continue thereafter at such time and place as the hearing officer may determine.

IT IS FURTHER ORDERED that these proceedings shall be presided over by an Administrative Law Judge to be designated by further order, who is authorized to perform all the duties of an Administrative Law Judge as set forth in the Commission's Rules of Practice or as otherwise provided by law.

IT IS 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, pursuant to Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220. If the Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against the Respondent upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 22I(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§201.155(a), 201.220(f), 22l(f) and 201.310. This Order shall be served forthwith upon the Respondent in accordance with Rule 141 of the Commission's Rules of Practice, 17 C.F.R. §201.141.

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. 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

Commissioner Aguilar not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9539 / February 3, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15731

In the Matter of

the Registration Statement of

Kingman River Resources Inc.,
Business Filings Incorporated
311 South Division Street
Carson City, NV 89703

Respondent.

ORDER FIXING TIME AND PLACE OF PUBLIC HEARING AND INSTITUTING PROCEEDINGS PURSUANT TO SECTION 8(d) OF THE SECURITIES ACT OF 1933

I.

The Commission's public official files disclose that:

On January 31, 2013, Respondent filed a Form S-1 registration statement seeking to register management's common shares for resale in a $14,000 public offering (the "Registration Statement").

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

1. Respondent is a Nevada corporation headquartered in Dundas, Ontario, Canada.

B. MATERIAL MISSTATMENTS AND OMISSIONS

2. In the Registration Statement, Respondent claims that it is engaged in the exploration for certain metals and other minerals, but is currently in an exploration stage, is without known reserves, and has not yet begun actual mining.

3. According to the Registration Statement, Respondent's management consists of one person who "control[s]" and "solely govern[s]" Respondent as its sole executive officer and director. In the Registration Statement, Respondent identifies by name its sole officer and director.

4. Further, the Registration Statement states that other than a management agreement between Respondent and its sole executive officer, "there are no, and have not been since inception, any other material agreements or proposed transactions, whether direct or indirect, with . . . any promoters."

5. Respondent's Registration Statement includes untrue statements of material facts and omits to state material facts necessary to make the statements contained therein not misleading. Among other things, Respondent stated that its executive officer and director controls Respondent when in fact Respondent is controlled and/or promoted by an undisclosed control person and/or promoter, who was previously charged with fraud in SEC v. Golden Apple Oil and Gas, Inc., et al., Civil Action No. 09-Civ-7580 (SDNY) (HB) and barred from appearing before the Commission in In the Matter of John Briner, Exchange Act Release No. 63371 (Nov. 24, 2010). Further, Respondent failed to disclose material agreements or proposed transactions with its undisclosed control person and/or promoter.

C. FAILURE TO COOPERATE WITH SECTION 8(e) EXAMINATION

6. On July 5, 2013, Respondent filed a letter seeking to withdraw its Registration Statement. On July 8, 2013, staff informed Respondent's executive officer that Respondent should cooperate with the staff's examination of Respondent, withdraw its letter, and that the failure to withdraw its letter may be grounds for issuance of a stop order under Section 8(d) of the Securities Act. Respondent did not withdraw its letter and, on July 17, 2013, the Commission denied Respondent's request to withdraw its Registration Statement.

7. Respondent's seeking to withdraw its Registration Statement constitutes a failure to cooperate with, refusal to permit, and obstruction of the staff's examination under Section 8(e) of the Securities Act.

III.

The Commission, having considered the aforesaid, deems it appropriate and in the public interest that public proceedings pursuant to Section 8(d) of the Securities Act of 1933 ("Securities Act") be instituted with respect to the Registration Statement to determine whether the allegations of the Division of Enforcement are true; to afford the Respondent with an opportunity to establish any defenses to these allegations; and to determine whether a stop order should issue suspending the effectiveness of the Registration Statement referred to herein.

Accordingly, IT IS ORDERED that public proceedings be and hereby are instituted under Section 8(d) of the Securities Act, such hearing to be commenced at 9:30 a.m. on February 18, 2014, at the Commission's offices at 100 F Street N.E., Washington, DC 20549, and to continue thereafter at such time and place as the hearing officer may determine.

IT IS FURTHER ORDERED that these proceedings shall be presided over by an Administrative Law Judge to be designated by further order, who is authorized to perform all the duties of an Administrative Law Judge as set forth in the Commission's Rules of Practice or as otherwise provided by law.

IT IS 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, pursuant to Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220. If the Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against the Respondent upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 22l(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§201.155(a), 201.220(f), 22l(f) and 201.310. This Order shall be served forthwith upon the Respondent in accordance with Rule 141 of the Commission's Rules of Practice, 17 C.F.R. §201.141.

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

By the Commission.

Elizabeth M. Murphy
Secretary

Commissioner Aguilar not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9540 / February 3, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15732

In the Matter of

the Registration Statement of

Lost Hills Mining Inc.,
Business Filings Incorporated
311 South Division Street
Carson City, NV 89703

Respondent.

ORDER FIXING TIME AND PLACE OF PUBLIC HEARING AND INSTITUTING PROCEEDINGS PURSUANT TO SECTION 8(d) OF THE SECURITIES ACT OF 1933

I.

The Commission's public official files disclose that:

On January 31, 2013, Respondent filed a Form S-1 registration statement seeking to register management's common shares for resale in a $20,000 public offering (the "Registration Statement").

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

1. Respondent is a Nevada corporation headquartered in Panama City, Panama.

B. MATERIAL MISSTATMENTS AND OMISSIONS

2. In the Registration Statement, Respondent claims that it is engaged in the exploration for certain metals and other minerals, but is currently in an exploration stage, is without known reserves, and has not yet begun actual mining.

3. According to the Registration Statement, Respondent's management consists of one person who "control[s]" and "solely govern[s]" Respondent as its sole executive officer and director. In the Registration Statement, Respondent identifies by name its sole officer and director.

4. Further, the Registration Statement states that other than a management agreement between Respondent and its sole executive officer, "there are no, and have not been since inception, any other material agreements or proposed transactions, whether direct or indirect, with . . . any promoters."

5. Respondent's Registration Statement includes untrue statements of material facts and omits to state material facts necessary to make the statements contained therein not misleading. Among other things, Respondent stated that its executive officer and director controls Respondent when in fact Respondent is controlled and/or promoted by an undisclosed control person and/or promoter, who was previously charged with fraud in SEC v. Golden Apple Oil and Gas, Inc., et al., Civil Action No. 09-Civ-7580 (SDNY) (HB) and barred from appearing before the Commission in In the Matter of John Briner, Exchange Act Release No. 63371 (Nov. 24, 2010). Further, Respondent failed to disclose material agreements or proposed transactions with its undisclosed control person and/or promoter.

C. FAILURE TO COOPERATE WITH SECTION 8(e) EXAMINATION

1. On July 5, 2013, Respondent filed a letter seeking to withdraw its Registration Statement. On July 5, 2013, staff informed Respondent's executive officer that Respondent should cooperate with the staff's examination of Respondent, withdraw its letter, and that the failure to withdraw its letter may be grounds for issuance of a stop order under Section 8(d) of the Securities Act. Respondent did not withdraw its letter and, on July 17, 2013, the Commission denied Respondent's request to withdraw its Registration Statement.

2. Respondent's seeking to withdraw its Registration Statement constitutes a failure to cooperate with, refusal to permit, and obstruction of the staff's examination under Section 8(e) of the Securities Act.

III.

The Commission, having considered the aforesaid, deems it appropriate and in the public interest that public proceedings pursuant to Section 8(d) of the Securities Act of 1933 ("Securities Act") be instituted with respect to the Registration Statement to determine whether the allegations of the Division of Enforcement are true; to afford the Respondent with an opportunity to establish any defenses to these allegations; and to determine whether a stop order should issue suspending the effectiveness of the Registration Statement referred to herein.

Accordingly, IT IS ORDERED that public proceedings be and hereby are instituted under Section 8(d) of the Securities Act, such hearing to be commenced at 9:30 a.m. on February 18, 2014, at the Commission's offices, at the Commission's offices at 100 F Street N.E., Washington, DC 20549, and to continue thereafter at such time and place as the hearing officer

may determine.

IT IS FURTHER ORDERED that these proceedings shall be presided over by an Administrative Law Judge to be designated by further order, who is authorized to perform all the duties of an Administrative Law Judge as set forth in the Commission's Rules of Practice or as otherwise provided by law.

IT IS 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, pursuant to Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220. If the Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against the Respondent upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 22I(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§201.155(a), 201.220(f), 22l(f) and 201.310. This Order shall be served forthwith upon the Respondent in accordance with Rule 141 of the Commission's Rules of Practice, 17 C.F.R. §201.141.

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. 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

Commissioner Aguilar not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9541 / February 3, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15733

In the Matter of

the Registration Statement of

Seaview Resources Inc.,
Business Filings Incorporated
311 South Division Street
Carson City, NV 89703

Respondent.

ORDER FIXING TIME AND PLACE OF PUBLIC HEARING AND INSTITUTING PROCEEDINGS PURSUANT TO SECTION 8(d) OF THE SECURITIES ACT OF 1933

I.

The Commission's public official files disclose that:

On January 31, 2013, Respondent filed a Form S-1 registration statement seeking to register management's common shares for resale in a $10,000 public offering (the "Registration Statement").

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

1. Respondent is a Nevada corporation headquartered in Sterrett, Alabama.

B. MATERIAL MISSTATMENTS AND OMISSIONS

2. In the Registration Statement, Respondent claims that it is engaged in the exploration for certain metals and other minerals, but is currently in an exploration stage, is without known reserves, and has not yet begun actual mining.

3. According to the Registration Statement, Respondent's management consists of one person who "control[s]" and "solely govern[s]" Respondent as its sole executive officer and director. In the Registration Statement, Respondent identifies by name its sole officer and director.

4. Further, the Registration Statement states that other than a management agreement between Respondent and its sole executive officer, "there are no, and have not been since inception, any other material agreements or proposed transactions, whether direct or indirect, with . . . any promoters."

5. Respondent's Registration Statement includes untrue statements of material facts and omits to state material facts necessary to make the statements contained therein not misleading. Among other things, Respondent stated that its executive officer and director controls Respondent when in fact Respondent is controlled and/or promoted by an undisclosed control person and/or promoter, who was previously charged with fraud in SEC v. Golden Apple Oil and Gas, Inc., et al., Civil Action No. 09-Civ-7580 (SDNY) (HB) and barred from appearing before the Commission in In the Matter of John Briner, Exchange Act Release No. 63371 (Nov. 24, 2010). Further, Respondent failed to disclose material agreements or proposed transactions with its undisclosed control person and/or promoter.

C. FAILURE TO COOPERATE WITH SECTION 8(e) EXAMINATION

6. On July 5, 2013, Respondent filed a letter seeking to withdraw its Registration Statement. On July 5, 2013, staff informed Respondent's executive officer that Respondent should cooperate with the staff's examination of Respondent, withdraw its letter, and that the failure to withdraw its letter may be grounds for issuance of a stop order under Section 8(d) of the Securities Act. Respondent did not withdraw its letter and, on July 17, 2013, the Commission denied Respondent's request to withdraw its Registration Statement.

7. Respondent's seeking to withdraw its Registration Statement constitutes a failure to cooperate with, refusal to permit, and obstruction of the staff's examination under Section 8(e) of the Securities Act.

III.

The Commission, having considered the aforesaid, deems it appropriate and in the public interest that public proceedings pursuant to Section 8(d) of the Securities Act of 1933 ("Securities Act") be instituted with respect to the Registration Statement to determine whether the allegations of the Division of Enforcement are true; to afford the Respondent with an opportunity to establish any defenses to these allegations; and to determine whether a stop order should issue suspending the effectiveness of the Registration Statement referred to herein.

Accordingly, IT IS ORDERED that public proceedings be and hereby are instituted under Section 8(d) of the Securities Act, such hearing to be commenced at 9:30 a.m. on February 18, 2014, at the Commission's offices at 100 F Street N.E., Washington, DC 20549, and to continue thereafter at such time and place as the hearing officer may determine.

IT IS FURTHER ORDERED that these proceedings shall be presided over by an Administrative Law Judge to be designated by further order, who is authorized to perform all the duties of an Administrative Law Judge as set forth in the Commission's Rules of Practice or as otherwise provided by law.

IT IS 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, pursuant to Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220. If the Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against the Respondent upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 22I(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§201.155(a), 201.220(f), 22l(f) and 201.310. This Order shall be served forthwith upon the Respondent in accordance with Rule 141 of the Commission's Rules of Practice, 17 C.F.R. §201.141.

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. 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

Commissioner Aguilar not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9542 / February 3, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15734

In the Matter of

the Registration Statement of

Yuma Resources Inc.,
Business Filings Incorporated
311 South Division Street
Carson City, NV 89703

Respondent.

ORDER FIXING TIME AND PLACE OF PUBLIC HEARING AND INSTITUTING PROCEEDINGS PURSUANT TO SECTION 8(d) OF THE SECURITIES ACT OF 1933

I.

The Commission's public official files disclose that:

On January 31, 2013, Respondent filed a Form S-1 registration statement seeking to register management's common shares for resale in a $16,000 public offering (the "Registration Statement").

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

1. Respondent is a Nevada corporation headquartered in St. Albert, Alberta, Canada.

B. MATERIAL MISSTATMENTS AND OMISSIONS

2. In the Registration Statement, Respondent claims that it is engaged in the exploration for certain metals and other minerals, but is currently in an exploration stage, is without known reserves, and has not yet begun actual mining.

3. According to the Registration Statement, Respondent's management consists of one person who "control[s]" and "solely govern[s]" Respondent as its sole executive officer and director. In the Registration Statement, Respondent identifies by name its sole officer and director.

4. Further, the Registration Statement states that other than a management agreement between Respondent and its sole executive officer, "there are no, and have not been since inception, any other material agreements or proposed transactions, whether direct or indirect, with . . . any promoters."

5. Respondent's Registration Statement includes untrue statements of material facts and omits to state material facts necessary to make the statements contained therein not misleading. Among other things, Respondent stated that its executive officer and director controls Respondent when in fact Respondent is controlled and/or promoted by an undisclosed control person and/or promoter, who was previously charged with fraud in SEC v. Golden Apple Oil and Gas, Inc., et al., Civil Action No. 09-Civ-7580 (SDNY) (HB) and barred from appearing before the Commission in In the Matter of John Briner, Exchange Act Release No. 63371 (Nov. 24, 2010). Further, Respondent failed to disclose material agreements or proposed transactions with its undisclosed control person and/or promoter.

C. FAILURE TO COOPERATE WITH SECTION 8(e) EXAMINATION

6. On July 5, 2013, Respondent filed a letter seeking to withdraw its Registration Statement. On July 5, 2013, staff informed Respondent's executive officer that Respondent should cooperate with the staff's examination of Respondent, withdraw its letter, and that the failure to withdraw its letter may be grounds for issuance of a stop order under Section 8(d) of the Securities Act. Respondent did not withdraw its letter and, on July 17, 2013, the Commission denied Respondent's request to withdraw its Registration Statement.

7. Respondent's seeking to withdraw its Registration Statement constitutes a failure to cooperate with, refusal to permit, and obstruction of the staff's examination under Section 8(e) of the Securities Act.

III.

The Commission, having considered the aforesaid, deems it appropriate and in the public interest that public proceedings pursuant to Section 8(d) of the Securities Act of 1933 ("Securities Act") be instituted with respect to the Registration Statement to determine whether the allegations of the Division of Enforcement are true; to afford the Respondent with an opportunity to establish any defenses to these allegations; and to determine whether a stop order should issue suspending the effectiveness of the Registration Statement referred to herein.

Accordingly, IT IS ORDERED that public proceedings be and hereby are instituted under Section 8(d) of the Securities Act, such hearing to be commenced at 9:30 a.m. on February 18, 2014, at the Commission's offices at 100 F Street N.E., Washington, DC 20549, and to continue thereafter at such time and place as the hearing officer may determine.

IT IS FURTHER ORDERED that these proceedings shall be presided over by an Administrative Law Judge to be designated by further order, who is authorized to perform all the duties of an Administrative Law Judge as set forth in the Commission's Rules of Practice or as otherwise provided by law.

IT IS 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, pursuant to Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220. If the Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against the Respondent upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 22I(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§201.155(a), 201.220(f), 22l(f) and 201.310. This Order shall be served forthwith upon the Respondent in accordance with Rule 141 of the Commission's Rules of Practice, 17 C.F.R. §201.141.

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. 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

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9543 / February 4, 2014

SECURITIES EXCHANGE ACT OF 1934
Release No. 71471 / February 4, 2014

INVESTMENT COMPANY ACT OF 1940
Release No. 30903 / February 4, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15736

In the Matter of

RYAN C. KING,

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, AND SECTION 9(b) OF THE INVESTMENT COMPANY ACT OF 1940, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER 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 Section 9(b) of the Investment Company Act of 1940 ("Investment Company Act") against respondent Ryan C. King ("King").

II.

In anticipation of the institution of these proceedings, King has submitted an Offer of Settlement ("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, King consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Sections 15(b) and 21C of the

Securities Exchange Act of 1934, and Section 9(b) of the Investment Company Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

III.

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

Summary

1. Between May and November 2011, King, at the time a trader at Firm B, agreed with a trader named Thomas Gonnella, who worked at Firm A, to defraud Firm A by temporarily placing ten securities from Gonnella's trading book at Firm A in King's trading book at Firm B. The purpose of this arrangement was to allow Gonnella to avoid charges to his trading profits, and ultimately his year-end bonus, that would result from holding the securities for too long. Instead of incurring those charges or selling the securities in bona fide market transactions, and in violation of Firm A's policies, Gonnella placed the securities with King, who purchased them on behalf of Firm B, with the understanding that Gonnella would repurchase them thereafter and that Firm B would not be exposed to market risk because Gonnella's would repurchase them at a profit to Firm B at the expense of Gonnella's employer, Firm A.

2. Gonnella placed ten securities with King. With respect to nine securities, Gonnella, on behalf of Firm A, repurchased them before the securities had even settled in Firm B's account. With respect to the tenth security, Gonnella did not immediately repurchase it. He later did so at a loss to Firm B, but made Firm B whole by selling it two other bonds from Gonnella's trading book at Firm A at prices favorable to Firm B and unfavorable to Firm A. King then used the resulting profit on the two bonds to offset the loss incurred on the tenth security.

3. In total, Gonnella and King's trades caused Firm A to lose approximately $174,000. Gonnella and King never told their firms the truth about their trades, which was that they were not bona fide market transactions but were done solely to reset the holding period on securities in Gonnella's trading book and allowed Firm B to earn improper profits at Firm A's expense.

4. After Gonnella's supervisor began inquiring about the trades, Gonnella and King interposed interdealer brokers in subsequent transactions and spoke on their cell phones to evade detection. They continued to conduct round-trip trades until Firm A detected Gonnella's conduct and summarily fired him. Firm B later fired King for the same misconduct.

Respondent

5. King, age 35, was a registered representative with Firm B from February 2009 through December 2011. Firm B was then, and is today, a broker-dealer registered with the Commission. King held Series 7 and 63 licenses. He resides in New York, NY.

---

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

Other Relevant Person

6. Gonnella, age 29, was a registered representative with Firm A from September 2008 through December 2011. Firm A was then, and is, a broker-dealer and investment adviser dually registered with the Commission. Since February 2012, Gonnella has been a registered representative with another registered broker-dealer. Gonnella holds Series 7 and 63 licenses. He resides in New York, NY.

Prearranged Transactions in May 2011

7. On May 31, 2011, Gonnella offered to sell King several asset-backed bonds issued by Bayview Commercial Asset Trust ("BAYC"). Gonnella wrote, "i have 4 small bonds that i'm looking to turnover today for good ol' month end/aging purposes . . . i like these bonds . . . and would more than likely have a higher bid for these later this wk when the calendar turns . . . ."

8. Gonnella's reference to "aging purposes" was to Firm A's aged inventory policy, which encouraged the firm's traders to turn over their trading positions by penalizing them if they held those positions for too long. Gonnella's offer to King was prompted by his desire to evade the penalties under the policy: a charge to Gonnella's trading profits at Firm A and the resulting negative impact on his year-end bonus.

9. Shortly after being contacted by Gonnella, King agreed to buy on behalf of Firm B two of the BAYC bonds Gonnella had offered at prices of $56 and $54 per bond, with settlement scheduled for June 3, 2011.

10. The next day, June 1, 2011, before the BAYC bonds had settled in Firm B's account, Gonnella repurchased them from King at prices of $57 and $55 per bond, thereby providing an immediate profit of approximately $23,000 to Firm B at the expense of Firm A and resetting the clock on the holding period for these bonds in Gonnella's book. Had these prearranged transactions not occurred, Firm A would have continued to own the two BAYC bonds, just as it had before the transactions, only without paying Firm B approximately $23,000. There was no negotiation over the repurchase prices.

Prearranged Transactions in August 2011

11. On August 29, 2011, Gonnella again contacted King: "let's talk tmrw. Have some aged bonds that I might offer you, if you're game . . . maybe do what we did a few months ago w/ some of those bayc's . . . ."

12. The next day, August 30, 2011, King wrote: "so I can help you with some aged items today?" Gonnella then offered three BAYC bonds to King at prices of $72, $73, and $40 per bond. In response, King asked, "when would you be looking to purchase something similar? end of the week?" Gonnella replied, "yes. Most likely."

13. King then agreed to buy on Firm B's behalf the three BAYC bonds that Gonnella had offered at the prices Gonnella proposed, with settlement scheduled for September 2, 2011.

14. The next day, August 31, 2011, before the BAYC bonds had even settled in Firm B's account, Gonnella repurchased two of the three bonds at prices of $73.75 and $40.75 per bond, thereby providing an immediate profit of approximately $49,000 to Firm B at the expense of Firm A. As for the third bond — a BAYC 07-4A A1 bond — on September 7, 2011, Gonnella repurchased $12 million of the $19.65 million he had sold to King at a price of $72.125 per bond, thereby providing an immediate profit of approximately $14,000 to Firm B at the expense of Firm A. Had these prearranged transactions on August 31 and September 7 not occurred, Firm A would have continued to own these BAYC bonds, just as it had before the transactions, only without paying Firm B approximately $14,000. As in May 2011, there was no negotiation over the repurchase prices.

15. Also on August 31, 2011, Gonnella sold King five additional bonds on which he faced aged inventory charges. Two days later, on September 2, Gonnella repurchased these five bonds, each at a slight markup, and again before Firm B had taken delivery of them. As a result of these trades, Firm B earned a profit on each of the bonds, for a total profit of approximately $84,000, at Firm A's expense. Had these prearranged transactions not occurred, Firm A would have continued to own the five bonds, just as it had before the transactions, only without paying $84,000 to Firm B.

Prearranged Transactions in October 2011

16. As noted, on September 7, 2011, Gonnella repurchased $12 million of the BAYC 07-4A A1 bond he had sold to King on August 30, which left King still holding $7.65 million of the bond.

17. On multiple occasions in September 2011, King urged Gonnella to repurchase the remaining portion of the BAYC 07-4A A1 bond, and Gonnella assured him that he would do so. On September 22, 2011, Gonnella wrote, "have patience, if you can. Still like them, and eventually want them . . . but not in September." Gonnella assured King that he would buy the remainder of the bond in October.

18. During the time that King held the BAYC 07-4A A1 bond, Gonnella and King were aware that its market value was declining. Although King was supposed to mark the positions in his trading book to fair value each day, he delayed marking down the BAYC 07-4A A1 bond.

19. On October 11, 2011, King and Gonnella agreed to do additional trades that would result in a profit to King's book at Firm B so that King could use that profit to offset the mark-to-market loss on the BAYC 07-4A A1 bond. Gonnella offered to sell King two bonds known as PALS and LBSBC on which Gonnella was set to incur aged inventory charges at the end of October. Gonnella wrote to King, "when you sell these later this month, mark down the [BAYC 07-4A A1 bond] accordingly . . . ." King agreed to buy the PALS and LBSBC bonds on Firm B's behalf.

20. The next day, October 12, Gonnella wrote to King that he was interested in buying back all three of the bonds in question — the PALS and LBSBC bonds, as well as the remaining portion of the BAYC 07-4A A1 bond — in the last week of October, in what Gonnella called a "package bid."

21. On October 26, 2011, consistent with the earlier arrangement between them, Gonnella repurchased the LBSBC bond from King at a markup of more than 18% over its sale price two weeks earlier. This repurchase resulted in a profit of approximately $215,000 to Firm B. Had the prearranged transactions in the LBSBC bond not occurred, Firm A would have continued to own that bond, just as it had before the transactions, only without paying $215,000 to Firm B and without missing out on an interest payment of $1,500 between October 11 and 26.

22. After Gonnella's supervisor noticed the repurchase of the bond at a mark-up from Firm B, he confronted Gonnella about it. Gonnella and King spoke by cell phone multiple times on October 26 and 27 about their trading plans in order to avoid having their conversations overheard or recorded by their firms.

23. On October 27, 2011, Gonnella repurchased the PALS bond at a markup of almost 9% above the sale price at which he had sold it to King two weeks before. However, whereas prior prearranged trades between Gonnella and King had been conducted without intermediaries, Gonnella's repurchase of the PALS bond was routed through an interdealer broker. The repurchase of the PALS bond resulted in a profit of approximately $227,000 to Firm B and approximately $5,600 to the interdealer broker. Had the prearranged transactions in the PALS bond not occurred, Firm A would have continued to own the bond, just as it had before the transactions, only without paying approximately $227,000 to Firm B and approximately $5,600 to an interdealer broker.

24. In keeping with the plan discussed earlier with Gonnella, King marked down to fair value the remaining $7.65 million of the BAYC 07-4A A1 bond. Then, on November 3, 2011, he sold it back to Gonnella at a price of $64.53 per bond, which resulted in a loss to Firm B of approximately $444,000. Like the repurchase of the PALS bond, Gonnella and King routed the repurchase of the remaining portion of the BAYC 07-4A A1 bond through an interdealer broker. Although Firm B incurred a loss on the trade, this loss was recouped through the "package bid" in which Gonnella repurchased the LBSBC and PALS bonds at a markup and also through periodic principal and interest payments that Firm B had received while holding the remainder of the BAYC 07-4A A1 bond and the LBSBC bond. Had these transactions not occurred, Firm A would have continued to own the remainder of the BAYC bond, just as it had before, only without paying approximately $1,900 to an interdealer broker and without missing out on periodic principal and interest payments.

25. In each of his round-trip transactions with Gonnella, King recorded the first leg as a straightforward "purchase" in his firm's books and records, without any reference to his understandings with Gonnella that the latter would thereafter repurchase the bond and that Firm B therefore was not exposed to the true risk of owning such bonds.

26. As a result of the trades described above, Gonnella and King both were terminated in late 2011.

Violations

27. As a result of the conduct described above, King willfully aided and abetted and caused violations by Gonnella of Sections 17(a)(1) and 17(a)(3) of the Securities Act, Section

10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in the offer or sale of securities or in connection with the purchase or sale of securities.

28. Additionally, King willfully aided and abetted and caused Firm B's violations of Section 17(a) of the Exchange Act and Rule 17a-3(a)(2) thereunder, which require that each registered broker-dealer make and keep current ledgers (or other records) reflecting all assets and liabilities, income, and expense and capital accounts relating to the broker-dealer's business. As a result of the conduct described above, Firm B's ledgers did not accurately reflect the understandings reached between King and Gonnella as to their prearranged trades.

IV.

Pursuant to this Order, Respondent agrees to additional proceedings in this proceeding to determine what, if any, civil penalties pursuant to Section 8A(g) of the Securities Act, Section 21B(a) of the Exchange Act, and Section 9(d) of the Investment Company Act against Respondent are in the public interest. In connection with such additional proceedings: (a) Respondent agrees that he will be precluded from arguing that he did not violate the federal securities laws as described in this Order; (b) Respondent agrees that he may not challenge the validity of this Order; (c) solely for the purposes of such additional proceedings, the findings of this Order shall be accepted as and deemed true by the hearing officer; and (d) the hearing officer may determine the issues raised in the additional proceedings on the basis of affidavits, declarations, excerpts of sworn deposition or investigative testimony, and documentary evidence.

V.

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

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

A. King cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act, Sections 10(b) and 17(a) of the Exchange Act, and Rules 10b-5 and 17a-3 thereunder.

B. King 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;

with the right to apply for reentry after three (3) years to the appropriate self-regulatory organization or, if there is none, to the Commission.

C. Any reapplication for association by King 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 King, 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 14 days of the entry of this Order, pay disgorgement of $22,606.80 and prejudgment interest of $1,503.66 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. Payment must be made in one of the following ways:

(1) Respondent may 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 Ryan King 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 Joseph Boryshansky, Senior Trial Counsel, Securities and Exchange Commission, Brookfield Place, 200 Vesey Street, Suite 400, New York, New York 10281.

IT IS FURTHER ORDERED, pursuant to Rule 100(c) of the Commission's Rules of Practice, 17 C.F.R. § 201.100(c), in the interest of justice and without prejudice to any party to the proceeding, that a public hearing for the purpose of taking evidence on the questions set forth in Section IV hereof shall be convened at a time and place to be fixed by, and before, the Administrative Law Judge assigned to the proceedings instituted against Thomas C. Gonnella on today's date (the "Gonnella Proceedings").

If King fails to appear at a hearing after being duly notified, King 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), 221(f), and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.221(f), and 201.310.

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

IT IS FURTHER ORDERED, pursuant to Rule 100(c) of the Commission's Rules of Practice, 17 C.F.R. § 201.100(c), in the interest of justice and without prejudice to any party to the proceeding, that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of an initial decision in the Gonnella Proceedings, or from the date of any order of the Commission accepting an offer of settlement in the Gonnella Proceedings.

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. 9544 / February 4, 2014

SECURITIES EXCHANGE ACT OF 1934
Release No. 71472 / February 4, 2014

INVESTMENT ADVISERS ACT OF 1940
Release No. 3771 / February 4, 2014

INVESTMENT COMPANY ACT OF 1940
Release No. 30904 / February 4, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15737

In the Matter of **THOMAS C. GONNELLA,** **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, SECTION 203(f) OF THE INVESTMENT ADVISERS ACT OF 1940, AND SECTION 9(b) OF THE INVESTMENT COMPANY ACT OF 1940 AND NOTICE OF HEARING

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative 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"), Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act"), and Section 9(b) of the Investment Company Act of 1940 ("Investment Company Act") against Thomas C. Gonnella ("Gonnella").

II.

After an investigation, the Division of Enforcement alleges that:

Summary

1. Between May and November 2011, Gonnella, at the time a trader at Firm A, agreed with Ryan King, another trader who worked at Firm B, to defraud Gonnella's firm by temporarily

placing securities from Gonnella's trading book at Firm A in King's trading book at Firm B and later repurchasing them. The purpose of this arrangement was to allow Gonnella to avoid charges by Firm A to his trading profits, and ultimately his year-end bonus, that would result from holding the securities for too long. Instead of incurring those charges or selling the securities in bona fide market transactions, and in violation of Firm A's policies, Gonnella placed the securities with King, who purchased them on behalf of Firm B, with the understanding that he would repurchase them thereafter and that Firm B would not be exposed to market risk because Gonnella would repurchase them at a profit to Firm B at the expense of Gonnella's employer, Firm A.

2. Gonnella placed ten securities with King. With respect to nine securities, Gonnella, on behalf of Firm A, repurchased them before the securities had even settled in Firm B's account. With respect to the tenth security, Gonnella did not immediately repurchase it. He later did so at a loss to Firm B, but made Firm B whole by selling it two other bonds from Gonnella's trading book at Firm A at prices favorable to Firm B and unfavorable to Firm A. King then used the resulting profit on the two bonds to offset the loss incurred on the tenth security. With respect to each of the foregoing transactions, Gonnella did not disclose to Firm A that he sold the securities to King on the understanding that he would thereafter repurchase them from King at a profit to Firm B.

3. In total, Gonnella and King's trades caused Firm A to lose approximately $174,000. Gonnella and King never told their firms the truth about their trades, which was that they were not bona fide market transactions but were done solely to reset the holding period on securities in Gonnella's trading book and allowed Firm B to earn improper profits at Firm A's expense.

4. After Gonnella's supervisor began inquiring about the trades, Gonnella and King interposed interdealer brokers in subsequent transactions and spoke on their cell phones to evade detection. They continued to conduct round-trip trades until Firm A detected Gonnella's conduct and summarily fired him. Firm B later fired King for the same misconduct.

Respondent

5. Gonnella, age 29, was employed as a registered representative with Firm A from September 2008 through December 2011. Firm A was then, and is today, registered with the Commission as a broker-dealer and investment adviser. As an employee of Firm A, Gonnella owed that firm fiduciary duties of care, candor, and loyalty with respect to matters within the scope of his employment, which included the management of a trading portfolio. In 2011 this trading portfolio contained asset-backed securities and had a total market value that was between $200 million and $250 million. Since February 2012, Gonnella has been a registered representative associated with another registered broker-dealer. Gonnella holds Series 7 and 63 licenses. He resides in New York, NY.

Other Relevant Person

6. King, age 35, was a registered representative with Firm B from February 2009 through December 2011. Firm B was then, and is today, a broker-dealer registered with the Commission. King held Series 7 and 63 licenses. He resides in New York, NY.

Firm A's Policies on Aged Inventory and Prearranged Trades

7. In early 2011, Thomas Gonnella was employed at Firm A as a trader of esoteric asset-backed securities. Gonnella was allowed to commit, on behalf of Firm A, up to $300 million of Firm A's capital for his trades. The bulk of Gonnella's expected compensation for 2011 was a bonus, to be based in part on the profitability of his trading book.

8. In 2011 Firm A had an "aged inventory" policy expressly designed to encourage turnover of trading positions by penalizing traders for holding securities in their inventory for too long. Under the policy, after Gonnella held a position for three months, his book's profits began to accrue a monthly charge equivalent to 0.5% of the security's market value. Charges accrued until Gonnella held a position for seven months or more, when they generally became irreversible.

9. Every month Gonnella received a document informing him how long he had held each of his positions, and it was Gonnella's practice to review that document to see if there were any upcoming irreversible charges. When this document was sent to Gonnella, it came with a copy of Firm A's aged inventory policy.

10. Firm A also had a policy in place prohibiting traders, including Gonnella, from circumventing the aged inventory policy by arranging round-trip transactions with third parties aimed at resetting the clock on the holding period for securities in their book. Firm A's policy prohibited "parking or pre-arranged trades," and stated that traders "shall not pre-arrange the availability of bonds or the specific repurchase price of a security in order to re-establish a position . . . ."

Prearranged Transactions in May 2011

11. At the end of May 2011, Gonnella was about to incur irreversible aged inventory charges on several asset-backed bonds issued by Bayview Commercial Asset Trust ("BAYC"). On May 31, 2011, Gonnella wrote to King, "i have 4 small bonds that i'm looking to turnover today for good ol' month end/aging purposes . . . i like these bonds . . . and would more than likely have a higher bid for these later this wk when the calendar turns . . . ."

12. Gonnella's offer to King was prompted by his desire to evade the penalties under Firm A's aged inventory policy, i.e., the charge to Gonnella's trading profits and the resulting negative impact on his year-end bonus.

13. Shortly after being contacted by Gonnella, King agreed to buy on behalf of Firm B two of the BAYC bonds Gonnella had offered at prices of $56 and $54 per bond, with settlement scheduled for June 3, 2011.

14. The next day, June 1, 2011, before the BAYC bonds had settled in Firm B's account, Gonnella repurchased them from King at prices of $57 and $55 per bond, thereby providing an immediate profit of approximately $23,000 to Firm B at the expense of Firm A and resetting the clock on the holding period for these bonds in Gonnella's book. Had these prearranged transactions not occurred, Firm A would have continued to own the two BAYC bonds, just as it had before the transactions, only without paying Firm B approximately $23,000. There was no negotiation over the repurchase prices.

Prearranged Transactions in August 2011

15. At the end of August and the beginning of September 2011, Gonnella's supervisor took a mandatory two-week vacation during which he was not allowed to be in contact with Gonnella or others on Gonnella's trading desk at Firm A. Before he left, the supervisor instructed Gonnella to reduce his book's exposure to small-loan asset-backed securities, which included BAYC bonds. Instead, Gonnella took advantage of his supervisor being away by resetting the aged-inventory clock on multiple bonds in his trading book.

16. On August 29, 2011 Gonnella wrote to King, "let's talk tmrw. Have some aged bonds that I might offer you, if you're game . . . maybe do what we did a few months ago w/ some of those bayc's . . . ." The next day, Gonnella offered three BAYC bonds to King at prices of $72, $73, and $40 per bond. King asked, "when would you be looking to purchase something similar? end of the week?" Gonnella replied, "yes. Most likely."

17. King then agreed to buy on Firm B's behalf the three BAYC bonds that Gonnella had offered at the prices Gonnella proposed, with settlement scheduled for September 2, 2011. On one of those three bonds, Gonnella was about to incur almost $85,000 in aged inventory charges, which he avoided through his sale to King.

18. The next day, August 31, 2011, before the BAYC bonds had even settled in Firm B's account, Gonnella repurchased two of the three bonds at prices of $73.75 and $40.75 per bond, thereby providing an immediate profit of approximately $49,000 to Firm B at the expense of Firm A. As for the third bond — a BAYC 07-4A A1 bond — on September 7, 2011, Gonnella repurchased $12 million of the $19.65 million he had sold to King at a price of $72.125 per bond, thereby providing an immediate profit of approximately $14,000 to Firm B at the expense of Firm A. Had these prearranged transactions on August 31 and September 7 not occurred, Firm A would have continued to own these BAYC bonds, just as it had before the transactions, only without paying Firm B approximately $14,000. As in May 2011, there was no negotiation over the repurchase prices.

19. Also on August 31, 2011, Gonnella sold King five additional bonds on which he faced aged inventory charges. Two days later, on September 2, Gonnella repurchased these five bonds, each at a slight markup, and again before Firm B had taken delivery of them. As a result of these trades, Firm B earned a profit on each of the bonds, for a total profit of approximately $84,000, at Firm A's expense. Had these prearranged transactions not occurred, Firm A would have continued to own the five bonds, just as it had before the transactions, only without paying $84,000 to Firm B.

20. In total, by selling these eight bonds to King in August 2011, Gonnella avoided approximately $600,000 in aged inventory charges that would have become irreversible on August 31, 2011, and any additional charges incurred monthly after that. As with the earlier trades in May, Gonnella's intention in carrying out the trades was to evade charges under Firm A's aged inventory policy.

Gonnella Lies to Firm A When Asked to Explain His Trades.

21. Gonnella's repurchases of the five bonds from King on September 2 triggered a compliance review by Firm A, whose systems flagged the trades as possible "parking" transactions.

22. A compliance officer interviewed Gonnella, who falsely explained that he had sold the bonds to King because he had been "hoping to get more individuals involved in the bonds" but subsequently decided to repurchase the bonds because he was "confident that they could package some of them together and make them attractive to investors." Gonnella did not disclose to the compliance officer that in fact he had an understanding with King, before selling him the bonds, that he would repurchase them thereafter at a profit to Firm B.

23. After Gonnella's supervisor returned from his vacation, he noticed that while he was away Gonnella had sold a small-loan asset-backed bond but shortly thereafter repurchased it at a higher price. This repurchase was inconsistent with the supervisor's directive to Gonnella to reduce exposure to such bonds. The supervisor asked Gonnella about the trade, and Gonnella again gave a misleading explanation, stating that he had decided to repurchase the bond because he could restructure it and sell it to another investor. Gonnella never told anyone at Firm A the truth about these trades, namely, that he did them to avoid aged inventory charges and on the understanding that he would repurchase the bonds from King and at a profit to Firm B.

Gonnella Sells Bonds to Compensate King for a Loss.

24. As noted, on September 7, 2011, Gonnella repurchased $12 million of the BAYC 07-4A A1 bond he had sold to King on August 30, which left King still holding $7.65 million of the bond.

25. On multiple occasions in September 2011, King urged Gonnella to repurchase the remaining portion of the BAYC 07-4A A1 bond and Gonnella assured him that he would do so. On September 22, 2011, Gonnella wrote, "have patience, if you can. Still like them, and eventually want them . . . but not in September." Gonnella assured King that he would buy the remainder of the bond in October.

26. During the time that King held the BAYC 07-4A A1 bond, Gonnella and King were aware that its market value was declining. Although King was supposed to mark the positions in his trading book to fair value each day, he delayed marking down the BAYC 07-4A A1 bond.

27. On October 11, 2011, King and Gonnella agreed to do additional trades that would result in a profit to King's book at Firm B so that King could use that profit to offset the mark-to-market loss on the BAYC 07-4A A1 bond. Gonnella offered to sell King two bonds known as PALS and LBSBC on which Gonnella was set to incur aged inventory charges at the end of October. Gonnella wrote to King, "when you sell these later this month, mark down the [BAYC 07-4A A1 bond] accordingly . . . ."

28. The same day, King agreed to buy the PALS and LBSBC bonds on Firm B's behalf at prices of $39.50 and $30.

29. The next day, October 12, Gonnella wrote to King that he was interested in buying back all three of the bonds in question — the PALS and LBSBC bonds, as well as the remaining portion of the BAYC 07-4A A1 bond — in the last week of October, in what Gonnella called a "package bid."

Gonnella's Supervisor Identifies an Improper Transaction and Instructs Him to Stop.

30. On October 26, 2011, consistent with the earlier arrangement between them, Gonnella repurchased the LBSBC bond from King at a markup of more than 18% over its sale price two weeks earlier. This repurchase resulted in a profit of approximately $215,000 to Firm B. Had the prearranged transactions in the LBSBC bond not occurred, Firm A would have continued to own that bond, just as it had before the transactions, only without paying $215,000 to Firm B and without missing out on periodic principal and interest payments of $1,500 between October 11 and 26.

31. Also on October 26, 2011, Gonnella's supervisor noticed the repurchase of the LBSBC bond at a mark-up from Firm B. He then looked at Gonnella's trading history and noticed several similar trades with Firm B. Gonnella's supervisor discussed these trades with Gonnella on October 26 and the morning of October 27. In these discussions, Gonnella's supervisor instructed Gonnella not to do such a trade again.

Gonnella Uses Interdealer Brokers to Conceal Prearranged Trades.

32. On October 27, 2011, King called Gonnella about the BAYC 07-4A A1 and PALS bonds. King informed Gonnella that he had spoken with his supervisor and that his supervisor had an ultimatum for Gonnella: repurchase the two bonds or King's supervisor would call Gonnella's supervisor to discuss the trades that resulted in Firm B holding these bonds.

33. Notwithstanding his own supervisor's instruction from that very morning, Gonnella on October 27, 2011 repurchased the PALS bond at a markup of almost 9% above the price at which he had sold it to King two weeks before. However, whereas prior prearranged trades between Gonnella and King had been conducted without intermediaries, Gonnella's repurchase of the PALS bond was routed through an interdealer broker. Gonnella's repurchase of the PALS bond resulted in a profit of approximately $227,000 to Firm B and approximately $5,600 to the interdealer broker. Had the prearranged transactions in the PALS bond not occurred, Firm A would have continued to own that bond, just as it had before the transactions, only without paying $227,000 to Firm B and approximately $5,600 to an interdealer broker.

34. In keeping with the plan discussed earlier with Gonnella, King marked down to fair value the remaining $7.65 million of the BAYC 07-4A A1 bond. Then, on November 3, 2011, he sold it back to Gonnella at a price of $64.53 per bond, which resulted in a loss to Firm B of approximately $444,000. Like the repurchase of the PALS bond, Gonnella and King routed the repurchase of the remaining portion of the BAYC 07-4A A1 bond through an interdealer broker. Although Firm B incurred a loss on the trade, this loss was recouped through the "package bid" in which Gonnella repurchased the LBSBC and PALS bonds at a markup and also through periodic principal and interest payments that Firm B had received while holding the remainder of the BAYC 07-4A A1 bond and the LBSBC bond. Had these transactions not occurred, Firm A would

have continued to own the remainder of the BAYC bond, just as it had before, only without paying approximately $1,900 to an interdealer broker and without missing out on periodic principal and interest payments.

35. In each of his round-trip transactions with King, Gonnella recorded the first leg as a straightforward "sale" in his firm's books and records, without any reference to his understandings with King that Gonnella would thereafter repurchase the bond and that Firm B therefore was not exposed to the true risk of owning such bonds.

Gonnella Uses Cell Phones and Text Messages to Avoid Detection.

36. As their scheme began to unravel, Gonnella and King on several occasions arranged to communicate about their trading plans via cell phone and text messaging to avoid having their conversations overheard or recorded by their firms. For example, their arrangement to trade the BAYC 07-4A A1, PALS, and LBSBC bonds in October was done via text message. After discussing the subject in Bloomberg chats, Gonnella told King, "Check your text [messages] in like 3 minutes." King responded, "haha, ok . . . sneaky sneaky."

37. Cell phone records for Gonnella and King confirm that, over a period of more than four years, Gonnella and King almost never called each other's cell phone, except during the period in which they did the trades discussed above.

38. These cell phone communications and text messages were in violation of Firm A's policy, which prohibited Gonnella from using personal phones to conduct firm business.

Gonnella is Terminated.

39. As a result of the trades described above, Firm A terminated Gonnella's employment in late 2011.

Violations

40. As a result of the conduct described above, Gonnella willfully violated Sections 17(a)(1) and 17(a)(3) 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.

41. As a result of the conduct described above, Gonnella willfully aided and abetted and caused violations of Section 17(a) of the Exchange Act and Rule 17a-3 thereunder, which require that each broker-dealer registered with the Commission make and keep current ledgers (or other records) reflecting all assets and liabilities, income, and expense and capital accounts relating to the broker-dealer's business. Firm A's ledgers did not accurately reflect the understandings reached between Gonnella and King. Gonnella aided, abetted, and caused such violations when he failed to report accurate information about such understandings to Firm A.

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 Gonnella an opportunity to establish any defenses to such allegations;

B. What, if any, remedial action is appropriate in the public interest against Gonnella pursuant to Section 8A of the Securities Act including, but not limited to, civil penalties pursuant to Section 8A(g) of the Securities Act;

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

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

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

F. Whether, pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act, Gonnella should be ordered to cease and desist from committing or causing violations of and any future violations of Section 17(a) of the Securities Act and Sections 10(b) and 17(a) of the Exchange Act and Rules 10b-5 and 17a-3 thereunder.

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 Gonnella 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 Gonnella fails to file the directed answer, or fails to appear at a hearing after being duly notified, Gonnella 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 Gonnella 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

Chair White
Commissioner Aguilar
not participating

UNITED STATES OF AMERICA
Before the
ECURITIES AND EXCHANGE COMMISSION

HANGE ACT OF 1934
February 4, 2014

SECURIT
Release IVE PROCEEDING

AD
V
er of

ENJAMIN CHOUCHANE,

dent.

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 Benjamin Chouchane ("Respondent" or "Chouchane").

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 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. Chouchane was a registered representative who acted as a sales broker on the Cash Equity Desk at a New York-based interdealer broker ("Interdealer Broker"), a broker-dealer registered with the Commission, from February 2005 until December 2010. Prior to February 2005, Chouchane was associated with other broker-dealers registered with the Commission. Chouchane, 39 years old, is a resident of New York, New York.

2. On January 14, 2014, a final judgment was entered by consent against Chouchane, permanently enjoining him from future violations of Section 17(a) of the Securities Act of 1933, and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, in the civil action entitled Securities and Exchange Commission v. Leszczynski, et al., Civil Action Number 1:12-CIV-7488, in the United States District Court for the Southern District of New York.

3. The Commission's complaint alleged, among other things, that Chouchane and others worked on Interdealer Broker's "Cash Desk," executing orders to purchase and sell securities on behalf of customers. From at least 2005 through at least February 2009, they perpetrated a fraudulent scheme to unlawfully take secret profits of at least $18.7 million at the expense of Interdealer Broker's customers. The complaint also alleges that they perpetrated the scheme by falsifying execution prices and embedding hidden markups or markdowns on over 36,000 customer transactions. After executing orders on behalf of his customers, where the price fluctuated sufficiently to conceal the fraud from customers, Chouchane and others instructed others to record, on Interdealer Broker's internal records, a false execution price that included a secret profit for Interdealer Broker. Chouchane then provided, or caused others to provide, false information to customers. As alleged in the complaint, Chouchane received bonuses totaling approximately $4.8 million for his work on the Cash Desk, a portion of which is attributable to the scheme.

4. On June 12, 2013, Chouchane pled guilty to a single count of conspiracy to commit securities fraud and wire fraud and, in his allocution, described conduct that also constitutes a violation of Title 15 United States Code, Section 77q(a), Title 15 United States Code, Section 78j(b) and Title 15 Code of Federal Regulations, Section 240.10b-5 before the United States District Court for the Southern District of New York, in United States v. Leszczynski, et al., Crim. No. 12-CR-923.

5. In connection with that plea, Respondent admitted that:

(a) he made false statements to customers in connection with purchases and sales of securities;

(b) he caused commissions to be recorded into trading records that were in excess of the commissions agreed upon by customers;

(c) he caused false trading confirmations to be generated and sent to various customers; and

(d) he enabled his employer to earn undisclosed trading profits beyond the legitimate trading commissions to which it was entitled, resulting in lucrative performance bonuses for him and others.

IV.

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

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

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

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

By the Commission.

Elizabeth M. Murphy
Secretary

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

Chair White
Commissioner Aguilar
not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 71476 / February 4, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15738

In the Matter of

MAREK LESZCZYNSKI,

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 Marek Leszczynski ("Respondent" or "Leszczynski").

II.

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

III.

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

1. Leszczynski was a registered representative who acted as a sales trader on the Cash Equity Desk at a New York-based interdealer broker ("Interdealer Broker"), a broker-dealer registered with the Commission, from December 2005 until December 2010. Leszczynski, 44 years old, is a resident of Coral Gables, Florida.

2. On January 14, 2014, a final judgment was entered by consent against Leszczynski, permanently enjoining him from future violations of Section 17(a) of the Securities Act of 1933, and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, in the civil action entitled Securities and Exchange Commission v. Leszczynski, et al., Civil Action Number 1:12-CIV-7488, in the United States District Court for the Southern District of New York.

3. The Commission's complaint alleged, among other things, that Leszczynski and others worked on Interdealer Broker's "Cash Desk," executing orders to purchase and sell securities on behalf of customers. From at least 2005 through at least February 2009, they perpetrated a fraudulent scheme to unlawfully take secret profits of at least $18.7 million at the expense of Interdealer Broker's customers. The complaint also alleges that they perpetrated the scheme by falsifying execution prices and embedding hidden markups or markdowns on over 36,000 customer transactions. The complaint also alleges that after executing an order on behalf of his customers, where the price fluctuated sufficiently to conceal the fraud from customers, Leszczynski recorded or instructed others to record, on Interdealer Broker's internal records, a false execution price that included a secret profit for Interdealer Broker. Leszczynski provided false information to customers. Leszczynski received bonuses totaling more than $3 million for his work on the Cash Desk from in or about early 2006 to 2009.

4. On August 20, 2013, Leszczynski pled guilty to one count of conspiracy to commit securities fraud and wire fraud and, in his allocution, described conduct that also constitutes a violation of Title 15 United States Code, Section 77q(a), Title 15 United States Code, Section 78j(b) and Title 15 Code of Federal Regulations, Section 240.10b-5 before the United States District Court for the Southern District of New York, in United States v. Leszczynski, et al., Crim. No. 12-CR-923.

5. In connection with that plea, Respondent admitted that:

(a) he made false statements to customers in connection with purchases and sales of securities;

(b) he added undisclosed markups to customer trades; and

(c) he sent false execution prices to customers and failed to disclose the markups.

IV.

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

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

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

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

By the Commission.

Elizabeth M. Murphy
Secretary

By: Jill M. Peterson
Assistant Secretary

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-71469; File No. SR-FICC-2014-801)

February 4, 2014

Self-Regulatory Organizations; The Fixed Income Clearing Corporation; Notice of Filing of an Advance Notice Concerning the Government Security Division's Inclusion of GCF Repo® Positions in Its Intraday Participant Clearing Fund Requirement Calculation, and Its Hourly Internal Surveillance Cycles

Pursuant to Section 806(e)(1)(A) of the Payment, Clearing, and Settlement Supervision Act of 2010 ("Clearing Supervision Act")[1] and Rule 19b-4(n)(1)(i) of the Securities Exchange Act of 1934 ("Act"),[2] notice is hereby given that on January 10, 2014, The Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") the advance notice as described in Items I, II and III below, which Items have been prepared by FICC. The Commission is publishing this notice to solicit comments on the advance notice from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Advance Notice

This advance notice is filed by the Government Securities Division (the "GSD") of FICC in connection with including GCF Repo®[3] positions in its intraday (i.e., noon)

---

1 12 U.S.C. 5465(e)(1)(A). The Financial Stability Oversight Council designated FICC a systemically important financial market utility on July 18, 2012. *See* Financial Stability Oversight Council 2012 Annual Report, Appendix A, http://www.treasury.gov/initiatives/fsoc/Documents/2012%20Annual%20Report.pdf. Therefore, FICC is required to comply with Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

2 17 CFR 240.19b-4(n)(1)(i).

3 The GCF Repo® service enables dealers to trade general collateral repos, based on rate, term, and underlying product, throughout the day without requiring intra-day, trade-for-trade settlement on a Deliver-versus-Payment (DVP) basis. The service fosters a highly liquid market for securities financing.

participant Clearing Fund requirement calculation, and its hourly internal surveillance cycles. The model change is described in additional detail below.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Advance Notice

In its filing with the Commission, FICC included statements concerning the purpose of and basis for the advance notice and discussed any comments it received on the advance notice. The text of these statements may be examined at the places specified in Item IV below. FICC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Advance Notice

(a) GSD plans to incorporate GCF Repo positions in its intraday (i.e., noon) participant Clearing Fund requirement calculation, and its hourly internal surveillance cycles. This enhancement is intended to align GSD's risk management calculations and monitoring with the changes that have been implemented to the tri-party infrastructure by the Tri-Party Reform Task Force (the "Task Force")[4] specifically, with respect to locking up of GCF Repo collateral until 3:30 p.m. (EST) rather than 7:45 a.m. (EST).

---

4 The Tri-Party Repo Infrastructure Task Force was formed in September 2009 under the auspices of the Payments Risk Committee, a private-sector body sponsored by the Federal Reserve Bank of New York. The Task Force's goal is to enhance the repo market's ability to navigate stressed market conditions by implementing changes that help better safeguard the market. DTCC has worked in close collaboration with the Task Force on their reform initiatives.

(b) The proposed change is consistent with Rule 17Ad-22[5] (the "Clearing Agency Standards") which establishes the minimum requirements regarding how registered clearing agencies must maintain effective risk management procedures and controls. Specifically, consistent with Rule 17Ad-22(b)(1)[6] and (b)(2)[7], FICC's more accurate and timely calculations around and monitoring of GCF Repo activity will better enable FICC to respond in the event that a member defaults. As such, FICC believes that the proposal promotes robust risk management and the safety and soundness of FICC's operations, which reduce systemic risk and support the stability of the broader financial system which is consistent with the Clearing Agency Standards.[8]

(B) Self-Regulatory Organization's Statements on Comments on the Advance Notice Received from Members, Participants, or Others

Written comments relating to the change have not yet been solicited or received. FICC will notify the Commission of any written comments received by FICC.

(C) Advance Notice Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Description of Change

(i) Overview

GSD plans to incorporate GCF Repo positions in its intraday (i.e., noon) participant Clearing Fund requirement calculation, and its hourly internal surveillance cycles. This enhancement is intended to align GSD's risk management calculations and

---

5 17 CFR 240.17Ad-22.

6 17 CFR 240.17Ad-22(b)(1).

7 17 CFR 240.17Ad-22(b)(2).

8 17 CFR 240.17Ad-22.

monitoring with the changes that have been implemented to the tri-party infrastructure by the Task Force.

Historically, the GCF Repo collateral had been unwound by approximately 7:45 a.m. (all times are New York time). In connection with the Task Force's tri-party reform, GCF Repo collateral now remains locked up until 3:30 p.m., with substitutions permitted intraday at the times established by each clearing bank. Because the GCF Repo collateral was unwound at 7:45 a.m., the current production system does not include GCF Repo collateral in the GSD intraday Clearing Fund requirement calculation, and its hourly surveillance cycles. To account for the risk associated with the GCF Repo positions, GSD's margin requirements currently apply a "higher of" standard, which means that the margin calculation takes the higher of the prior night's core charge[9] (which includes GCF Repo collateral) or the current day's noon core charge (which does not[10] include GCF Repo collateral). However, now that the collateral is locked-up until 3:30 p.m., the intraday Clearing Fund requirements and hourly surveillance calculations will be based on the actual locked-up GCF Repo collateral. In the ordinary course of business, the "higher of" standard will not apply. However, this standard will remain available in the event that one or both clearing banks do not provide intraday GCF Repo position data because such clearing bank, as applicable, is unable to provide the data.

---

9 The core charge consists primarily of Value-at-Risk, the Implied Volatility Charge (also known as the Augmented Volatility Multiplier) and the Coverage Component.

10 Since GCF collateral is excluded, only DVP positions are included in the noon core charge.

In connection with this initiative, FICC will have an extended member parallel period of at least 6 weeks during which GCF Repo participants will be able to view their production and test requirements on a daily basis. This will allow members to assess the impact of the change in margining for the mid-day cycle and potentially adjust their GCF Repo activity prior to implementation of the change.

Anticipated Effect on and Management of Risks

FICC believes that the proposed changes will improve its risk management by providing a more accurate and timely view of member positions and their corresponding exposures.

This enhancement is intended to align GSD's risk management calculations and monitoring with the changes that have been implemented to the tri-party infrastructure by the Task Force.

Prior to implementation of the proposed changes, several steps were and/or will be taken to prepare for the changes and to prepare members for the changes. These steps include internal review of the data available in the test environment, customer outreach and the parallel period for members.

FICC believes it is important to incorporate the proposed changes in its risk management process as soon as possible because such changes will allow GSD to use more accurate position information in its margin calculations. Because FICC's risk engine has not yet incorporated the locked-up GCF Repo positions in intraday risk calculations, FICC cannot at this time provide a specific estimate of the impact of this enhancement.

FICC believes that the proposed changes will better reflect the actual risk in its members' portfolios. For members who participate in the GCF Repo service, this change will impact their Clearing Fund requirements. However, because of the parallel period, members will have time to review the possible impact and potentially modify their settlement and trading activity to align with the changes to the intraday margin calculation. FICC's parallel period will cover at least six weeks to give customers ample time to review the impact and consider changes to their portfolios.

III. Date of Effectiveness of the Advance Notice and Timing for Commission Action

The designated clearing agency may implement this change if it has not received an objection to the proposed change within 60 days of the later of (i) the date that the Commission receives notice of the proposed change, or (ii) the date the Commission receives any further information it requests for consideration of the notice. The designated clearing agency shall not implement this change if the Commission has any objection.

The Commission may, during the 60-day review period, extend the review period for an additional 60 days for proposed changes that raise novel or complex issues, subject to the Commission providing the designated clearing agency with prompt written notice of the extension. The designated clearing agency may implement a change in less than 60 days from the date of receipt of the notice of proposed change by the Commission, or the date the Commission receives any further information it requested, if the Commission notifies the designated clearing agency in writing that it does not object to the proposed

change and authorizes the designated clearing agency to implement the change on an earlier date, subject to any conditions imposed by the Commission.

The designated clearing agency shall post notice on its website of proposed changes that are implemented.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/sro.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-FICC-2014-801 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.

All submissions should refer to File Number SR-FICC-2014-801. 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 of submission. 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 advance notice that are filed with

the Commission, and all written communications relating to the advance notice 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 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of FICC and on FICC's website at http://www.dtcc.com/~/media/Files/Downloads/legal/rule-filings/2014/ficc/SR-FICC-2014-801-advance-notice.ashx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FICC-2014-801 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

Chair White
Commissioner Aguilar
not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 71478 / February 4, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15740

In the Matter of

HENRY A. CONDRON,

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 Henry A. Condron ("Respondent" or "Condron").

II.

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

III.

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

1. Condron was a registered representative who acted as a sales trader and middle-office assistant on the Cash Equity Desk at a New York-based interdealer broker ("Interdealer Broker"), a broker-dealer registered with the Commission, from February 2005 until October 2010. Prior to February 2005, Condron was associated with other broker-dealers registered with the Commission. Condron, 35 years old, is a resident of Yorktown Heights, New York.

2. On January 14, 2014, a final judgment was entered by consent against Condron, permanently enjoining him from future violations of Section 17(a) of the Securities Act of 1933, and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, in the civil action entitled Securities and Exchange Commission v. Marek Leszczynski, et al., Civil Action Number 1:12-CIV-7488, in the United States District Court for the Southern District of New York.

3. The Commission's complaint alleged, among other things, that Condron and others worked on Interdealer Broker's "Cash Desk," executing orders to purchase and sell securities on behalf of customers. From at least 2005 through at least February 2009, they perpetrated a fraudulent scheme to unlawfully take secret profits of at least $18.7 million at the expense of Interdealer Broker's customers. The complaint also alleged that they perpetrated the scheme by falsifying execution prices and embedding hidden markups or markdowns on over 36,000 customer transactions. After executing orders on behalf of customers, where the price fluctuated sufficiently to conceal the fraud from customers, Condron recorded, on Interdealer Broker's internal records, a false execution price that included a secret profit for Interdealer Broker. Condron then provided the false information to customers. Condron received discretionary bonuses for his work on the Cash Desk totaling $310,000 from 2007 to 2009.

4. On October 2, 2012, Condron pled guilty to two counts of conspiracy to commit securities fraud and one count of securities fraud in violation of Title 15 United States Code, Section 78j(b) and Title 15 Code of Federal Regulations, Section 240.10b-5 before the United States District Court for the Southern District of New York, in United States v. Henry Condron, Crim. Information No. 1:12-CR-768.

5. In connection with that plea, Respondent admitted that:

(a) he caused commissions to be recorded into trading records that were in excess of the commissions agreed upon by customers;

(b) he caused false trading confirmations to be generated and sent to various customers; and

(c) he enabled his employer to earn undisclosed trading profits beyond the legitimate trading commissions to which it was entitled, resulting in lucrative performance bonuses for him and others.

IV.

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

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

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

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

By the Commission.

Elizabeth M. Murphy
Secretary

By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 71481 / February 5, 2014

INVESTMENT ADVISERS ACT OF 1940
Release No. 3772 / February 5. 2014

INVESTMENT COMPANY ACT OF 1940
Release No. 30906 / February 5, 2014

Admin. Proc. File No. 3-15141

In the Matter of MOHAMMED RIAD and KEVIN TIMOTHY SWANSON	ORDER GRANTING EXTENSION

Chief Administrative Law Judge Brenda P. Murray has moved, pursuant to Commission Rule of Practice 360(a)(3),[1] for a six-month extension of time, until April 22, 2014, to issue the initial decision in this proceeding. For the reasons set forth below, we grant her motion.

On December 19, 2012, we issued an Order Instituting Administrative Proceedings ("OIP") against Mohammed Riad and Kevin Timothy Swanson.[2] The OIP alleges that, in connection with disclosures related to the "put option and variance swap strategies" of the Fiduciary/ Claymore Dynamic Equity Fund, Riad and Swanson violated and willfully aided and abetted violations of the antifraud provisions of the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, and the Investment Company Act of 1940, and that Riad caused violations of Investment Company Act Rule 8b-16.

The OIP directed the presiding law judge to issue an initial decision within 300 days of the date of service of the OIP. Chief Judge Murray filed a motion requesting an extension pursuant to Commission Rule of Practice 360(a)(3).

---

[1] 17 C.F.R. § 201.360(a)(3).

[2] *Mohammed Riad and Kevin Timothy Swanson*, Exchange Act Release No. 68467, 2012 SEC LEXIS 4022 (Dec. 19, 2012).

We adopted Rules of Practice 360(a)(2) and 360(a)(3) to enhance the timely and efficient adjudication and disposition of Commission administrative proceedings by setting deadlines for issuance of an initial decision.[3] The rules further provide for deadline extensions under certain circumstances, if supported by a motion from the Chief Administrative Law Judge and we determine that "additional time is necessary or appropriate in the public interest."[4]

In her motion, Chief Judge Murray stated that it would not be possible for the presiding law judge to issue an initial decision by the due date. She noted that the hearing in this proceeding lasted over eleven days and produced over 3,600 pages of transcript, including testimony from seventeen lay witnesses and the introduction of 352 exhibits. She also noted that start of work on the initial decision was delayed by the presiding law judge's issuance of six initial decisions since July 2, 2013, one of which was preceded by a lengthy, complex hearing. Moreover, the presiding law judge is responsible for initial decisions in three other proceedings with hearings in recent months. Under the circumstances, it is appropriate in the public interest to grant the Chief Administrative Law Judge's request and to extend the deadline for issuance of a decision in this matter.

Accordingly, IT IS ORDERED that the deadline for filing the initial decision in this proceeding is extended to April 22, 2014.

By the Commission.

Elizabeth M. Murphy
Secretary

By: Jill M. Peterson
Assistant Secretary

---

[3] *See Adopting Release*, Exchange Act Release No. 48018, 2003 SEC LEXIS 1404, at *2-3 (June 11, 2003).

[4] 17 C.F.R. § 201.360(a)(3).

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 71484 / February 5, 2014

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3532 / February 5, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15741

In the Matter of **LAWRENCE A. O'DONNELL, CPA** **Respondent.**	**ORDER INSTITUTING PUBLIC ADMINISTRATIVE PROCEEDINGS AND IMPOSING TEMPORARY SUSPENSION PURSUANT TO RULE 102(e)(3) OF THE COMMISSION'S RULES OF PRACTICE**

I.

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

II.

The Commission finds that:

A. RESPONDENT

1. O'Donnell, age 61, was licensed as a certified public accountant ("CPA") by the State of Colorado from July 28, 1977, through October 8, 2010. He audited and reviewed the financial statements included in annual and other reports and registration statements filed with the

---

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

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

Commission by Imperiali, Inc. from October 19, 2006, through May 1, 2009.

B. CIVIL INJUNCTION

2. On November 8, 2013, the U.S. District Court for the Southern District of Florida entered a final judgment against O'Donnell, permanently enjoining him from future violations, direct or indirect, of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder. Securities and Exchange Commission v. Imperiali, Inc., *et al.*, Civil Action Number 9:12-cv-80021-KLR.

3. The Commission's complaint alleged that, while serving as Imperiali, Inc.'s auditor from May 2006 through March 2008, O'Donnell participated in a fraudulent scheme by issuing false audit reports on Imperiali financial statements. The financial statements, which appeared in annual and other reports and registration statements filed with the Commission, listed values for worthless assets in amounts ranging from $3.5 million to $269 million and failed to disclose the issuance of five million shares of restricted stock. O'Donnell's audit reports falsely stated that Imperiali's financial statements were presented in conformity with generally accepted accounting principles and falsely stated that his audits were conducted in accordance with Public Company Accounting Oversight Board Standards.

III.

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

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

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

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

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

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. 71492 / February 5, 2014

INVESTMENT ADVISERS ACT OF 1940
Release No. 3773 / February 5, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15742

In the Matter of GEOFFREY W. NEHRENZ 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 Geoffrey W. Nehrenz ("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.4 below, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 15(b)

of the Securities Exchange Act of 1934 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. Nehrenz, 34 years old, is a resident of Uniontown, Ohio. From approximately May 2009 through May 2013, Nehrenz was the managing member, president, and chief executive officer of Keystone Capital Management, LLC ("Keystone Capital"), an Ohio limited liability company registered in the state of Ohio as an investment adviser firm from May 2009 to December 2010 and from March 2011 to December 2011. Nehrenz, through Keystone Capital, provided investment advice to, made the investment decisions for, and managed the assets of, his hedge fund Keystone Active Trader, LLC ("Keystone Trader"), also registered as a limited liability company in the state of Ohio. Neither Keystone Capital nor Keystone Trader has ever been registered with the Commission.

2. From September 2005 to May 2009, Nehrenz was an investment adviser representative with investment adviser firms registered with the Commission. From May 2009 through May 2013, Nehrenz, through Keystone Capital, acted as an investment adviser in that he received compensation for providing investment advice to Keystone Trader.

3. From June 2006 to May 2011, Nehrenz was also a registered representative associated with broker-dealers registered with the Commission.

4. On June 13, 2013, in the civil action entitled *Andre T. Porter, Director, State of Ohio Department of Commerce v. Nehrenz, et al.*, 2013 CVO 1405 filed by the State of Ohio Department of Commerce, Division of Securities ("Ohio Securities Division") in the Stark County Court of Common Pleas in the state of Ohio, the Ohio Securities Division obtained an agreed order of permanent injunction against Nehrenz, Keystone Capital and Keystone Trader permanently enjoining them from:

a. Selling, offering to sell, or otherwise transferring securities in violation of [Ohio Revised Code ("R.C.")] R.C. §1707.44(B)(4), and R.C. §1707.44(G), or any other provision of the Ohio Securities Act, §1707.01 through R.C. §1707.45, et seq.;

b. Selling, offering to sell, issuing, or in any way distributing securities without prior approval of the Court;

c. Engaging in any deceptive, fraudulent, or manipulative act, practice or transaction in connection with the sale of securities in violation of R.C. §§1707.01 through R.C. 1707.45, et seq.; and

d. Destroying, mutilating, concealing, altering, or disposing of in any manner, any books, records, documents, correspondence or other property of [Nehrenz, Keystone

Capital and Keystone Trader], including but not limited to, property that refers to the sale of securities, including evidence of indebtedness.

5. The Ohio Securities Division's Complaint alleged that, in connection with the unregistered offer and sale of interests in Keystone Trader, Nehrenz admitted to misappropriating $1,156,428.38 of investor funds for his personal use and unrelated business expenses and that Nehrenz made other misrepresentations regarding the investments and the use of investor funds. Specifically, the Complaint alleges that, from May 2009 through September 2012, Nehrenz solicited investors to purchase interests in Keystone Trader and raised approximately $7.9 million. Nehrenz represented to investors that: (1) Keystone Capital, which managed the assets of Keystone Trader, would be paid, each year, 2% of Keystone Trader's assets under management and 25% of Keystone Trader's gross profits; and (2) no more than 10% of investor funds would be invested in illiquid investments. Contrary to these claims, the Complaint alleges that Nehrenz paid himself more money than he was permitted and that, by his own admission, misappropriated more than $1 million through undisclosed sham loans from Keystone Trader to Keystone Capital. The Complaint further alleges that Nehrenz invested approximately 35% of investor funds in illiquid securities, significantly more than the 10% maximum that he represented to investors. The Complaint alleges that less than $13,000 of investor money remains.

IV.

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

INVESTMENT ADVISERS ACT OF 1940
Release No. 3774 / February 5, 2014

INVESTMENT COMPANY ACT OF 1940
Release No. 30907 / February 5, 2014

Admin. Proc. File No. 3-15263

In the Matter of

ZPR INVESTMENT MANAGEMENT, INC., and
MAX E. ZAVANELLI

ORDER GRANTING
EXTENSION

Chief Administrative Law Judge Brenda P. Murray has moved, pursuant to Commission Rule of Practice 360(a)(3),[1] for a 120-day extension to issue the initial decision in this proceeding. For the reasons set forth below, we grant her motion.

On April 4, 2013, we issued an Order Instituting Proceedings ("OIP") against ZPR Investment Management, Inc., a registered investment adviser, and Max E. Zavanelli, ZPR's former president, chief operating officer, and sole owner.[2] The OIP alleges that respondents distributed advertisements to prospective clients that omitted material information which would have revealed that ZPR's historical performance results were underperforming its benchmark index rather than outperforming it, misleadingly stated that ZPR was in compliance with the Global Investment Performance Standards ("GIPS") for its performance results, and falsely claimed ZPR's performance results had been verified by a GIPS verification firm. The OIP alleges that, as a result of this conduct, respondents willfully violated the antifraud provisions of the Investment Advisers Act of 1940.[3]

The OIP directs the presiding law judge to issue an initial decision within 300 days of the date of service of the OIP. On December 19, 2013, Chief Judge Murray filed a motion stating

1 17 C.F.R. § 201.360(a)(3).

2 *ZPR Inv. Mgmt., Inc.*, Advisers Act Release No. 3574, 2013 WL 1343127 (Apr. 4, 2013).

3 Specifically, that respondents willfully violated Advisers Act Sections 206(1) and 206(2), 15 U.S.C. § 80b-6(1) & (2), and ZPR willfully violated and Zavanelli willfully aided and abetted and caused ZPR's violations of Advisers Act Section 206(4) and Rule 206(4)-1(a)(5) thereunder, 15 U.S.C. § 80b-6(4) & 17 C.F.R. § 275.206(4)-1(a)(5).

that the initial decision is due on February 3, 2014, and requesting an extension pursuant to Commission Rule of Practice 360(a)(3).

We adopted Rules of Practice 360(a)(2) and 360(a)(3) to enhance the timely and efficient adjudication and disposition of Commission administrative proceedings by setting deadlines for issuance of an initial decision.[4] The rules further provide for deadline extensions under certain circumstances, if supported by a motion from the Chief Administrative Law Judge and we determine that "additional time is necessary or appropriate in the public interest."[5]

In her motion, Chief Judge Murray states that it will not be possible for the presiding law judge to issue an initial decision by the due date. She notes that the hearing in this proceeding, which took place over seven non-consecutive days, commencing on September 30, 2013, and ending on October 25, 2013, had been scheduled later than usual because of the parties' scheduling conflicts with an earlier hearing and because of discovery issues. She also notes that the hearing produced over 1,800 pages of transcript and 201 exhibits, and that post-hearing reply briefs were not due until December 19, 2013. Moreover, according to the motion, the presiding law judge has an initial decision due in January 2014 in a complex proceeding with five respondents, and is scheduled to preside at lengthy hearings beginning on January 21, 2014, and March 31, 2014. Under the circumstances, it is appropriate in the public interest to grant the Chief Administrative Law Judge's request and to extend the deadline for issuance of a decision in this matter.

Accordingly, IT IS ORDERED that the deadline for filing the initial decision in this proceeding is extended to June 3, 2014.

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

---

4 *See Adopting Release*, Exchange Act Release No. 48018, 2003 WL 21354791, at *2 (June 11, 2003).

5 17 C.F.R. § 201.360(a)(3).

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-71485; File No. S7-27-11)

February 5, 2014

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

I. Introduction

The Securities and Exchange Commission ("Commission") is extending certain temporary exemptive relief contained in a prior Commission order ("Exchange Act Exemptive Order")[1] in connection with the revision of the Exchange Act definition of "security" to encompass security-based swaps. These temporary exemptions were provided by the Commission on July 1, 2011 and are set to expire on February 11, 2014 ("Expiring Temporary Exemptions").

As described in more detail below, the Commission is extending the expiration date for the Expiring Temporary Exemptions. Specifically, for those Expiring Temporary Exemptions that are not directly linked to pending security-based swap rulemakings, the Commission is extending the expiration date until the earlier of such time as the Commission issues an order or rule determining whether any continuing exemptive relief is appropriate for security-based swap activities with respect to any of these Exchange Act provisions or until three years following the effective date of this Order. For each Expiring Temporary Exemption that is related to pending security-based swap rulemakings, the Commission is extending the expiration date until the compliance date for the related security-based swap-specific rulemaking.

---

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

The approach for extending the exemptions related to security-based swap rulemakings reflected in this Order is intended to facilitate a timely phased-in determination regarding the application of the relevant provisions of the Exchange Act to security-based swaps based on the development of the relevant rules mandated by the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act")[2] as the Commission moves toward finalizing those rules. This approach also provides the Commission flexibility while Dodd-Frank Act rulemaking is still in progress to determine whether continuing relief should be provided for any Exchange Act provisions that are not directly linked to specific security-based swap rulemaking.

II. Discussion

A. Background

Title VII of the Dodd-Frank Act amended the Exchange Act definition of "security" to expressly encompass security-based swaps.[3] The expansion of the definition of the term "security" has changed the scope of the Exchange Act regulatory provisions that apply to security-based swaps and has raised certain complex questions that require further consideration.

On July 1, 2011, the Commission issued an order granting temporary exemptive relief from compliance with certain provisions of the Exchange Act in connection with the revision of the Exchange Act definition of "security" to encompass security-based swaps.[4] The overall approach of the Exchange Act Exemptive Order was directed toward maintaining the *status quo* during the implementation process for the Dodd-Frank Act, by preserving the application of

---

[2] The Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124, Stat. 1376 (2010).

[3] Exchange Act Section 3(a)(10), 15 U.S.C. 78c(a)(10), as revised by Section 761(a)(2) of the Dodd-Frank Act.

[4] *See* Exchange Act Exemptive Order.

particular Exchange Act requirements that were already applicable in connection with instruments that became "security-based swaps" following the effective date of the Dodd-Frank Act,[5] but deferring the applicability of additional Exchange Act requirements in connection with those instruments explicitly being defined as "securities" as of the effective date.[6] The Expiring Temporary Exemptions generally provide for the following exemptions from Exchange Act: (a) temporary exemptions in connection with security-based swap activity by certain "eligible contract participants"; and (b) temporary exemptions specific to security-based swap activities by registered brokers and dealers.[7] These Expiring Temporary Exemptions[8] are currently scheduled to expire on February 11, 2014.[9]

---

5 *Id.* The Title VII amendments of the Dodd-Frank Act generally became effective on July 16, 2011 (360 days after the enactment of the Dodd-Frank Act).

6 *See* Exchange Act Exemptive Order at 5-6.

7 *See* Exchange Act Exemptive Order at 39-44.

8 The Exchange Act Exemptive Order provided a temporary exemption from Sections 5 and 6 of the Exchange Act until the earliest compliance date set forth in any of the final rules regarding registration of security-based swap execution facilities. The Exchange Act Exemptive Order also provided that no security-based swap contract entered into on or after July 16, 2011 shall be void or considered voidable by reason of Section 29(b) of the Exchange Act because any person that is a party to the contract violated a provision of the Exchange Act for which the Commission has provided exemptive relief in the Exchange Act Exemptive Order, until such time as the underlying exemptive relief expires. This extension order does not affect either of these expiration dates.

9 *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 (Jul. 18, 2012), 77 FR 48207 (Aug. 13, 2012) ("Product Definitions Adopting Release") (extending the expiration date of the Expiring Temporary Exemptions to February 11, 2013) and Order Extending Temporary Exemptions under the Securities Exchange Act of 1934 in Connection with the Revision of the Definition of "Security" to Encompass Security-Based Swaps, and Request for Comment, Exchange Act Release No. 68864 (Feb. 7, 2013), 78 FR 10218 (Feb. 13, 2013) ("Extension Release") (extending the expiration date to February 11, 2014). Before issuing the Extension Release, the Commission received a request to extend the Expiring Temporary Exemptions from market participants, citing concerns that key issues and questions regarding the application of the federal securities laws remained unresolved and continuing concerns about the potential for unnecessary disruption to the security-based swap market. *See* SIFMA Request for Extension of the Expiration Date of the SEC's Exchange Act Exemptive Order and SBS Interim final Rules (Dec. 20, 2012) ("SIFMA Extension Request"), which is available at http://www.sec.gov/comments/s7-27-11/s72711-12.pdf.

To date, the Commission has proposed substantially all of the rules related to the new regulatory regime for derivatives under Title VII and has begun the process of adopting these rules.[10] Keeping with the Dodd-Frank Act's stated objective of promoting financial stability in the U.S. financial system, the Commission has expressed its intent to move forward deliberatively in implementing the requirements of the Dodd-Frank Act, while minimizing unnecessary disruption and costs to the markets.[11] Among the rules for this new regulatory framework that the Commission has proposed are rules relating to (i) capital, margin, and segregation requirements for security-based swap dealers and major security-based swap participants,[12] (ii) security-based swap trade acknowledgement,[13] and (iii) security-based swap execution facilities registration requirements.[14] In addition, the Commission has also been

---

[10] *See* Statement of General Policy on the Sequencing of the Compliance Dates for Final Rules Applicable to Security-Based Swaps Adopted Pursuant to the Securities Exchange Act of 1934 and the Dodd-Frank Wall Street Reform and Consumer Protection Act, Exchange Act Release No. 67177 (Jun. 11, 2012), 77 FR 35625 (Jun. 14, 2012). *See also* Reopening of Comment Periods for Certain Rulemaking Releases and Policy Statement Applicable to Security-Based Swaps Proposed Pursuant to the Securities Exchange Act of 1934 and the Dodd-Frank Wall Street Reform and Consumer Protection Act, Exchange Act Release No. 69491 (May 1, 2013), 78 FR 30800 (May 23, 2013) ("Reopening Release") which reopened the comment period until July 22, 2013. *See also e.g.* Product Definitions Adopting Release; Further Definition of "Swap Dealer," "Security-Based Swap Dealer," "Major Swap Participant," "Major Security-Based Swap Participant" and "Eligible Contract Participant", Exchange Act Release No. 66868 (Apr. 27, 2012), 77 FR 30596 (May 23, 2012); Process for Submissions for Review of Security-Based Swaps for Mandatory Clearing and Notice Filing Requirements for Clearing Agencies; Technical Amendments to Rule 19b-4 and Form 19b-4 Applicable to all Self-Regulatory Organizations, Exchange Act Release No. 67286 (Jun. 28, 2012), 88 FR 41602 (Jul. 13, 2012); Clearing Agency Standards, Exchange Act Release No. 68080 (Oct. 22, 2012), 77 FR 66219 (Nov. 2, 2012).

[11] *See* Exchange Act Exemptive Order.

[12] *See* Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers, Exchange Act Release No. 68071 (Oct. 18, 2012), 77 FR 70213 (Nov. 23, 2012) ("Security-Based Swap Capital and Margin Rules"). *See also* Reopening Release.

[13] *See* Trade Acknowledgement and Verification of Security-Based Swap Transactions, Exchange Act Release No. 63727 (Jan. 14, 2011), 76 FR 3859 (Jan. 21, 2011) ("Trade Acknowledgement Rule"). *See also* Reopening Release.

[14] *See* Registration and Regulation of Security-Based Swap Execution Facilities, Exchange Act Release No. 63825 (Feb. 2, 2011), 76 FR 10948 (Feb. 28, 2011) ("Security-Based Swap Execution Facility Rules"). *See also* Reopening Release.

mandated by the Dodd-Frank Act to promulgate recordkeeping and reporting requirements for security-based swap dealers and major security-based swap participants.[15]

B. Extension of Temporary Exemptions

The Commission believes it is necessary or appropriate in the public interest, and consistent with the protection of investors to extend the Expiring Temporary Exemptions in order to avoid any potential market disruption stemming from the application of existing rules to security-based swap activities. Although the Commission is making significant progress in establishing and finalizing the new regulatory regime for securities-based swaps, key issues and questions regarding the application of the federal securities laws to security-based swaps remain unresolved. However, because the Commission has proposed substantially all of the rules related to the new regulatory regime for derivatives under Title VII, the Commission is able to better calibrate the need for extensions of the Expiring Temporary Exemptions based on how those exemptions relate to ongoing rulemaking. Accordingly, under this approach an extension of the Expiring Temporary Exemptions will provide the Commission with additional time to consider the potential impact of the revision of the Exchange Act definition of "security" on the scope of Exchange Act provisions applicable to security-based swaps, as well as the appropriateness of applying certain Exchange Act provisions to security-based swap activities in light of the Commission's continuing rulemaking efforts.[16]

While the Commission is generally extending the Expiring Temporary Exemptions, it is refining the applicable expiration dates for these exemptions by (1) extending the expiration date

---

[15] *See* 15 U.S.C. 78o-10(f).

[16] This is also consistent with previous requests to extend the Expiring Temporary Exemptions. *See* SIFMA Extension Request. The Commission has also received a request for certain permanent exemptions upon the expiration of the exemptions contained in the Exchange Act Exemptive Order. *See* SIFMA SBS Exemptive Relief Request (Dec. 5, 2011), which is available at http://www.sec.gov/comments/s7-27-11/s72711-10.pdf.

of certain Expiring Temporary Exemptions that are generally not directly related to specific security-based swap rulemakings until the earlier of such time that the Commission issues an order or rule determining whether any continuing exemptive relief is appropriate for security-based swap activities with respect to any of these Exchange Act provisions or until three years following the effective date of this Order, and (2) extending the expiration date of other Expiring Temporary Exemptions that are directly related to specific security-based swap rulemakings, until the compliance date for the relevant security-based swap rulemaking.[17]

This approach recognizes the continuing development of the new regulatory regime for security-based swaps and takes into consideration the interrelation of certain existing Exchange Act provisions with this new regime. Specifically, the Commission believes it is necessary or appropriate in the public interest, and consistent with the protection of investors for the subset of Expiring Temporary Exemptions that are related to certain ongoing rulemakings to be addressed within any such rulemakings that are finalized in order to determine what, if any, exemptions would be appropriate based on the structure of the regulatory framework. The expiration dates of this subset of Expiring Temporary Exemptions will be extended until they are addressed within any relevant rulemakings relating to: (i) capital, margin, and segregation requirements for security-based swap dealers and major security-based swap participants, (ii) recordkeeping and reporting requirements for security-based swap dealers and major security-based swap participants, (iii) security-based swap trade acknowledgement rules, and/or (iv) registration requirements for security-based swap execution facilities.

---

[17] Subsequent to the issuance of the Exchange Act Exemptive Order, the Commission adopted rules related to certain requirements applicable to municipal advisors. *See* Registration of Municipal Advisors, Exchange Act Release No. 70462 (Sep. 20, 2013), 78 FR 67467 (Nov. 12, 2013). The temporary exemptions provided in this order do not apply to these recently adopted rules.

In addition, with respect to the subset of Expiring Temporary Exemptions that are not directly related to specific security-based swap rulemakings, the Commission believes it would be appropriate for these exemptions to continue for three years or until such time as the Commission issues an order or rule determining whether any continuing exemption is applicable to any of these provisions. This approach is designed to limit the potential for market disruptions. Moreover, this approach is designed to provide sufficient time for the Commission to explore and potentially develop an appropriate framework for regulating security based swap activities and to provide sufficient time for public input regarding any such potential framework. Accordingly, pursuant to its authority under Section 36 of the Exchange Act, [18] the Commission believes it is necessary or appropriate in the public interest, and consistent with the protection of investors to extend the Expiring Temporary Exemptions that are not related to specific securities-based swap rulemakings until the earlier of the time that the Commission issues an order or rule determining whether continuing exemptive relief is appropriate or until three years after the effective date of this Order.

The Commission is also, pursuant to its authority under Section 36, extending the below outlined Expiring Temporary Exemptions, until the earliest compliance dates established in applicable rulemakings.

---

[18] 15 U.S.C. 78mm. Section 36 of the Exchange Act authorizes the Commission to conditionally or unconditionally exempt, by rule, regulation, or order any person, security, or transaction (or any class or classes of persons, securities, or transactions) from any provision or provisions of the Exchange Act or any rule or regulation thereunder, to the extent such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.

1. Expiring Temporary Exemptions Relating to Security-Based Swap Capital and Margin Rules

The Commission is extending the Expiring Temporary Exemptions for the following Exchange Act provisions until the earliest compliance date set forth in any final security-based swap capital, margin, and segregation rules:[19]

- Section 7,[20] regarding the margin requirements for broker-dealers; and Regulation T,[21] a Federal Reserve Board regulation regarding broker-dealer extension of credit.[22]
- Section 15(c)(3),[23] which provides the Commission with rulemaking authority in connection with broker-dealer financial responsibility; Exchange Act Rule 15c3-1,[24] including Appendices A-G (Exchange Act Rules 15c3-1a through 15c3-1g)[25] regarding net capital requirements for brokers and dealers; Exchange Act Rule 15c3-3,[26] including 15c3-3a,[27] regarding broker-dealer reserves and custody of securities; and Exchange Act

---

19 In late 2012, the Commission proposed the Security-Based Swap Capital and Margin Rules. The proposed rules, if adopted, will clarify how certain Exchange Act provisions relating to the capital, margin, and segregation requirements of registered broker-dealers will apply to the security-based swap activities of registered broker-dealers.

20 15 U.S.C. 78g.

21 12 CFR 220.1 *et seq.*

22 Under the approach of preserving the *status quo*, the Exchange Act Exemptive Order provided registered broker-dealers a limited exemption from Section 7(c) and Regulation T only to the extent that these provisions did not apply to the broker-dealer's security-based swap positions or activities prior to expansion of the definition of "security" to include security-based swaps.

23 15 U.S.C. 78o(c)(3).

24 17 CFR 240.15c3-1.

25 17 CFR 240.15c3-1a through 15c3-1g.

26 17 CFR 240.15c3-3.

27 17 CFR 240.15c3-3a.

Rule 15c3-4,[28] regarding internal risk management control systems for OTC derivatives dealers.[29]

2. Expiring Temporary Exemptions Relating to Security-Based Swap Recordkeeping Rules

The Commission is extending the Expiring Temporary Exemptions for the following Exchange Act provisions until the earliest compliance date set forth in any final rules regarding recordkeeping and reporting requirements for security-based swap dealers and major security-based swap participants:[30]

- Section 17(a),[31] regarding broker-dealer obligations to make, keep and furnish information; Section 17(b),[32] regarding broker-dealer records subject to examination; Exchange Act Rules 17a-3 through 17a-5,[33] regarding records to be made and preserved by broker-dealers and reports to be made by broker-dealers; Exchange Act Rule 17a-11,[34] regarding notifications that broker-dealers are required to make; and Exchange Act Rule

---

28 17 CFR 240.15c3-4.

29 Under the approach of preserving the *status quo*, the Exchange Act Exemptive Order provided registered broker-dealers a limited exemption from Section 15(c)(3) and Rules 15c3-1 and 15c3-3 only to the extent that these provisions did not apply to the broker-dealer's security-based swap positions or activities prior to expansion of the definition of "security" to include security-based swaps. However, the limited exemption from Rule 15c3-3 is not available for registered broker-dealers' activities and positions related to cleared security-based swaps, to the extent that a broker-dealer is a member of a clearing agency that functions as a central counterparty for security-based swaps, and holds customer funds or securities in connection with cleared security-based swaps.

30 *See* 15 U.S.C. 78o-10(f).

31 15 U.S.C. 78q(a).

32 15 U.S.C. 78q(b).

33 17 CFR 240.17a-3 through 17a-5.

34 17 CFR 240.17a-11.

17a-13,[35] regarding quarterly security counts to be made by certain exchange members and broker-dealers.[36]

3. Expiring Temporary Exemptions Relating to Broker-Dealer Registration Requirements

The Commission is extending the Expiring Temporary Exemptions that relate to the registration requirements under section 15(a)(1) of the Exchange Act[37] and the other requirements of the Exchange Act and the rules and regulations thereunder that apply to a broker or dealer that is not registered with the Commission[38] until the later of the compliance dates set forth in (i) any final rules regarding capital, margin and segregation requirements for security-based swap dealers and major security-based swap participants[39] or (ii) any final rules regarding recordkeeping and reporting requirements for security-based swap dealers and major security-based swap participants.[40]

---

35 17 CFR 240.17a-13.

36 Under the approach of preserving the *status quo*, the Exchange Act Exemptive Order provided registered broker-dealers a limited exemption from Sections 17(a) and (b), Rules 17a-3 through 17a-5, and Rule 17a-13 only to the extent that these provisions did not apply to the broker-dealer's security-based swap positions or activities prior to expansion of the definition of "security" to include security-based swaps.

37 15 U.S.C. 78o(a)(1).

38 The Exchange Act Exemptive Order excluded from the exemption (1) the "broker" registration requirements of Section 15(a)(1) (and other Exchange Act requirements that apply to a non-registered broker) for broker activities involving security-based swaps by persons that are members of a clearing agency that functions as a central counterparty for security-based swaps and that holds customer funds and securities in connection with security-based swaps; and (2) the "dealer" registration requirements of Section 15(a)(1) (and other Exchange Act requirements that apply to a non-registered dealer) for security-based swaps dealing activities unless those activities involve counterparties that meet the definition of an eligible contract participant.

39 *See supra* note 19.

40 *See* 15 U.S.C. 78o-10(f).

4. Expiring Temporary Exemption Relating to Trade Acknowledgement Rule

The Commission is extending the Expiring Temporary Exemption for Exchange Act Rule 10b-10,[41] regarding confirmation of transactions, until the earliest compliance date set forth in any final rules regarding trade acknowledgement and verification of security-based swap transactions.[42]

5. Expiring Temporary Exemption Relating to Regulation ATS

The Commission is extending the Expiring Temporary Exemption for Regulation ATS,[43] regarding the regulatory requirements that apply to alternative trading systems, until the earliest compliance date set forth in any final rules regarding the registration of the security-based swap execution facilities.[44]

III. Solicitation of Comments

The Commission believes that it would be useful to continue to provide interested parties the opportunity to comment on any aspect of the temporary exemptions contained in the Exchange Act Exemptive Order, this Order extending the Expiring Temporary Exemptions, and

---

41 17 CFR 240.10b-10.

42 In January 2011, the Commission proposed the Trade Acknowledgement Rule which would govern the way in which certain security-based swap transactions would be acknowledged and verified by the parties. Under the proposed rule, security-based swap dealers and major security-based swap participants would have to provide to their counterparties a trade acknowledgement detailing information specific to the transaction. The Commission also proposed a limited exemption from the requirements of Exchange Act Rule 10b-10 for security-based swap dealers and major security-based swap participants that confirm their security-based swap transactions in compliance with the Trade Acknowledgement Rule. The proposed exemption is intended to avoid the duplicative requirements of having to comply with both Exchange Act Rule 10b-10 and the proposed Trade Acknowledgement Rule.

43 17 CFR 242.300 *et seq.*

44 In February 2011, the Commission proposed the Security-Based Swap Execution Facility Rules which, if adopted, will create a registration framework for security-based swap execution facilities, as well as, establish rules governing these entities.

any additional relief that should be granted upon the expiration of the extension of the Expiring Temporary Exemptions, including:

1. Is the distinction between whether an exemption is "not directly linked" to any security-based swap rulemaking or is "related" to security-based swap rulemaking appropriate in connection with the extension of the Expiring Temporary Exemptions? Are there additional Expiring Temporary Exemptions that should be linked to the adoption of any specific security-based swap rulemakings?

2. Is additional exemptive relief necessary or appropriate in light of the ongoing implementation of the Dodd-Frank Act? Are there particular Exchange Act provisions, for which relief has already been granted, that do not warrant a continuing exemption? Are there particular Exchange Act provisions, for which relief has not previously been granted, that warrant exemptions?

Comments may be submitted by any of the following methods:

Electronic Comments

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

Paper Comments

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

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

IV. Conclusion

IT IS HEREBY ORDERED, pursuant to Section 36 of the Exchange Act, that the Expiring Temporary Exemptions contained in the Exchange Act Exemptive Order in connection with the revisions of the Exchange Act definition of "security" to encompass security-based swaps are extended until the earlier of three years following the effective date of this Order or, until such time that the Commission issues an order or rule determining whether continuing exemptive relief is appropriate for security-based swap activities with respect to any of the Expiring Temporary Exemptions, except as set forth below:

(a) The following exemptions are extended until the compliance date set forth in any final rules regarding capital, margin and segregation requirements for security-based swap dealers and major security-based swap participants:

(1) Section 7;

(2) Section 15(c)(3);

(3) Regulation T, 12 CFR 220.1 *et seq.*;

(4) Rule 15c3-1;

(5) Rule 15c3-3; and

(6) Rule 15c3-4.

(b) The following exemptions are extended until the compliance date set forth in any final rules regarding recordkeeping and reporting requirements for security-based swap dealers and major security-based swap participants:

(1) Section 17(a);

(2) Section 17(b);

(3) Rule 17a-3;

(4) Rule 17a-4;

(5) Rule 17a-5;

(6) Rule 17a-11; and

(7) Rule 17a-13.

(c) The exemption pertaining to Rule 10b-10 is extended until the compliance date set forth in any final rules regarding trade acknowledgement and verification of security-based swap transactions.

(d) The exemption pertaining to Regulation ATS, 17 CFR 242.300 *et seq.*, is extended until the compliance date set forth in any final rules regarding the registration of security-based swap execution facilities.

(e) The following exemptions are extended until the later of the compliance dates set forth in (i) any final rules regarding capital, margin and segregation requirements for security-based swap dealers and major security-based swap participants and (ii) any final rules regarding

recordkeeping and reporting requirements for security-based swap dealers and major security-based swap participants:

(1) Exemptions pertaining to the "broker" registration requirements of section 15(a)(1) of the Exchange Act, and the other requirements of the Exchange Act and the rules and regulations thereunder that apply to a broker that is not registered with the Commission, solely in connection with broker activities involving security-based swaps, and

(2) Exemptions pertaining to the "dealer" registration requirements of section 15(a)(1) of the Exchange Act, and the other requirements of the Exchange Act and the rules and regulations thereunder that apply to a dealer that is not registered with the Commission, solely in connection with dealing activities involving security-based swaps with counterparties that meet the definition of eligible contract participant as set forth in section 1a(12) of the Commodity Exchange Act.

By the Commission.

Elizabeth M. Murphy

Elizabeth M. Murphy
Secretary

SECURITIES AND EXCHANGE COMMISSION

17 CFR PARTS 230, 240 and 260

[Release Nos. 33-9545; 34-71482; 39-2495; File No. S7-26-11]

RIN 3235-AL17

EXTENSION OF EXEMPTIONS FOR SECURITY-BASED SWAPS

AGENCY: Securities and Exchange Commission.

ACTION: Interim final rule; extension.

SUMMARY: We are adopting amendments to the expiration dates in our interim final rules that provide exemptions under the Securities Act of 1933, the Securities Exchange Act of 1934, and the Trust Indenture Act of 1939 for those security-based swaps that prior to July 16, 2011 were security-based swap agreements and are defined as "securities" under the Securities Act and the Exchange Act as of July 16, 2011 due solely to the provisions of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act. Under the amendments, the expiration dates in the interim final rules will be extended to February 11, 2017. If we adopt further rules relating to issues raised by the application of the Securities Act or the other federal securities laws to security-based swaps before February 11, 2017, we may determine to alter the expiration dates in the interim final rules as part of that rulemaking.

DATES: The amendments are effective [insert date of publication in the Federal Register]. See Section I of the **SUPPLEMENTARY INFORMATION** concerning amendment of expiration dates in the interim final rules.

FOR FURTHER INFORMATION CONTACT: Andrew Schoeffler, Special Counsel, Office of Capital Markets Trends, Division of Corporation Finance, at (202) 551-3860, U.S. Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-3628.

SUPPLEMENTARY INFORMATION: We are adopting amendments to the following rules: interim final Rule 240 under the Securities Act of 1933 ("Securities Act"),[1] interim final Rules 12a-11 and 12h-1(i) under the Securities Exchange Act of 1934 ("Exchange Act"),[2] and interim final Rule 4d-12 under the Trust Indenture Act of 1939 ("Trust Indenture Act").[3]

I. AMENDMENT OF EXPIRATION DATES IN THE INTERIM FINAL RULES

A. Background Regarding the Adoption of the Interim Final Rules

In July 2011, we adopted interim final Rule 240 under the Securities Act, interim final Rules 12a-11 and 12h-1(i) under the Exchange Act, and interim final Rule 4d-12 under the Trust Indenture Act (collectively, the "interim final rules").[4] The interim final rules provide exemptions under the Securities Act, the Exchange Act, and the Trust Indenture Act for those security-based swaps that prior to July 16, 2011 ("Title VII effective date") were "security-based swap agreements" and are defined as "securities" under the Securities Act and the Exchange Act as of the Title VII effective date due solely to the provisions of Title VII of the Dodd-Frank Act.[5] The interim final rules exempt offers and sales of security-based swap agreements that became security-based swaps on the Title VII effective date from all provisions of the Securities Act, other than the Section 17(a) anti-fraud provisions, as well as from the Exchange Act registration

---

1 15 U.S.C. 77a et seq.

2 15 U.S.C. 78a et seq.

3 15 U.S.C. 77aaa et seq.

4 See 17 CFR 230.240, 17 CFR 240.12a-11, 17 CFR 240.12h-1, and 17 CFR 260.4d-12. See also Exemptions for Security-Based Swaps, Release No. 33-9231 (Jul. 1, 2011), 76 FR 40605 (Jul. 11, 2011) ("Interim Final Rules Adopting Release").

5 The Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010). The provisions of Title VII generally were effective on July 16, 2011 (360 days after enactment of the Dodd-Frank Act), unless a provision requires a rulemaking. If a Title VII provision requires a rulemaking, it will go into effect "not less than" 60 days after publication of the related final rule or on July 16, 2011, whichever is later. See Section 774 of the Dodd-Frank Act.

requirements and from the provisions of the Trust Indenture Act,[6] provided certain conditions are met.[7] In February 2013, we adopted amendments to the interim final rules to extend the expiration dates in the interim final rules from February 11, 2013 to February 11, 2014.[8]

Title VII amended the Securities Act and the Exchange Act to include "security-based swaps" in the definition of "security" for purposes of those statutes.[9] As a result, "security-based swaps" became subject to the provisions of the Securities Act and the Exchange Act and the rules and regulations thereunder applicable to "securities."[10] The interim final rules were

---

6 The category of security-based swaps covered by the interim final rules involves those that would have been defined as "security-based swap agreements" prior to the enactment of Title VII. That definition of "security-based swap agreement" does not include security-based swaps that are based on or reference only loans and indexes only of loans. The Division of Corporation Finance issued a no-action letter that addressed the availability of the interim final rules to offers and sales of security-based swaps that are based on or reference only loans or indexes only of loans. See Cleary Gottlieb Steen & Hamilton LLP (Jul. 15, 2011) ("Cleary Gottlieb No-Action Letter"). The Cleary Gottlieb No-Action Letter will remain in effect for so long as the interim final rules remain in effect.

7 The security-based swap that is exempt must be a security-based swap agreement (as defined prior to the Title VII effective date) and entered into between eligible contract participants (as defined prior to the Title VII effective date). See Rule 240 under the Securities Act [17 CFR 230.240]. See also Interim Final Rules Adopting Release.

8 See Extension of Exemptions for Security-Based Swaps, Release No. 33-9383 (Jan. 29, 2013), 78 FR 7654 (Feb. 4, 2013).

9 See Sections 761(a)(2) and 768(a)(1) of the Dodd-Frank Act (amending Section 3(a)(10) of the Exchange Act [15 U.S.C. 78c(a)(10)] and Section 2(a)(1) of the Securities Act [15 U.S.C. 77b(a)(1)], respectively).

10 The Securities Act requires that any offer and sale of a security must be either registered under the Securities Act or made pursuant to an exemption from registration. See Section 5 of the Securities Act [15 U.S.C. 77e]. In addition, certain provisions of the Exchange Act relating to the registration of classes of securities and the indenture qualification provisions of the Trust Indenture Act of 1939 ("Trust Indenture Act") [15 U.S.C. 77aaa et seq.] also potentially could apply to security-based swaps. The provisions of Section 12 of the Exchange Act could, without an exemption, require that security-based swaps be registered before a transaction could be effected on a national securities exchange. See Section 12(a) of the Exchange Act [15 U.S.C. 78l(a)]. In addition, registration of a class of security-based swaps under Section 12(g) of the Exchange Act could be required if the security-based swap is considered an equity security and held of record by either 2000 persons or 500 persons who are not accredited investors at the end of a fiscal year. See Section 12(g)(1)(A) of the Exchange Act [15 U.S.C. 78l(g)(1)(A)]. Further,

intended to allow security-based swap agreements that became security-based swaps on the Title VII effective date to continue to trade as they did prior to the enactment of Title VII.[11] We were concerned about disrupting the operation of the security-based swaps market until the compliance date for final rules that we may adopt further defining the terms "security-based swap" and "eligible contract participant."[12] We recognized that until we further defined such terms, market participants may be uncertain as to how to comply with the registration requirements of the Securities Act applicable to securities transactions, the registration requirements of the Exchange Act applicable to classes of securities, and the indenture provisions of the Trust Indenture Act.[13]

We also needed additional time and market input to evaluate the implications under the Securities Act, the Exchange Act, and the Trust Indenture Act of including the term "security-based swap" in the definition of "security."[14] We understood from market participants that there were several types of trading platforms being used to effect transactions in security-based swaps, including security-based swap agreements that became security-based swaps on the Title VII effective date, that would likely register as security-based swap execution facilities ("security-

---

without an exemption, the Trust Indenture Act could require qualification of an indenture for security-based swaps considered to be debt. See 15 U.S.C. 77aaa et seq.

11 See Interim Final Rules Adopting Release.

12 Id.

13 Id. See also footnote 10 above.

14 Id. Prior to the Title VII effective date, security-based swap agreements that became security-based swaps on the Title VII effective date were outside the scope of the federal securities laws, other than the anti-fraud and certain other provisions. See Section 2A of the Securities Act [15 U.S.C. 77b(b)-1)] and Section 3A of the Exchange Act [15 U.S.C. 78c-1], each as in effect prior to the Title VII effective date.

based SEFs")[15] and that the use of trading platforms to effect security-based swap transactions would continue after the Title VII effective date.[16] We also understood from market participants that if parties continued to engage in the same type of trading activities after the Title VII effective date that they were engaging in prior to the Title VII effective date with respect to security-based swap agreements that became security-based swaps on the Title VII effective date, such activities could raise concerns about the availability of exemptions from the registration requirements of the Securities Act and the Exchange Act.[17] The interim final rules thus allow market participants to continue to use trading platforms to publish quotes for security-based swaps and enter into transactions involving security-based swaps that are the subject of individual negotiation without concern that such activities may not comply with the applicable provisions of the federal securities laws.[18]

---

15 A security-based swap execution facility is a trading system or platform in which multiple participants have the ability to execute or trade security-based swaps by accepting bids and offers made by multiple participants in the facility or system, through any means of interstate commerce, including any trading facility, that facilitates the execution of security-based swaps between persons and is not a national securities exchange. See Section 3(a)(77) of the Exchange Act [15 U.S.C. 78c(a)(77)]. See also Section 3D of the Exchange Act [15 U.S.C. 78c-4] and Registration and Regulation of Security-Based Swap Execution Facilities, Release No. 34-63825 (Feb. 2, 2011), 76 FR 10948 (Feb. 28, 2011) ("Security-Based SEF Proposing Release").

16 See Interim Final Rules Adopting Release.

17 Id. We received comments expressing concern regarding the implications of including security-based swaps in the definition of "security." Commenters indicated that they were still analyzing the full implications of such expansion of the definition of "security" and that it would take time. Market participants requested temporary relief from certain provisions of the Securities Act and the Exchange Act so that parties could complete their analysis and submit requests for more targeted relief. Id.

18 The interim final rules do not cover security-based swaps that are not subject to individual negotiation. The interim final rules apply only with respect to a security-based swap that would have been a security-based swap agreement under the definition of that term prior to the Title VII effective date. That definition incorporated the definition of "swap agreement," which required that the agreement, contract or transaction be "subject to individual negotiation." See Interim Final Rules Adopting Release.

B. Comments Received on the Interim Final Rules

At the time of adoption of the interim final rules in July 2011, we requested comment on various aspects of the interim final rules. In particular, we requested comment on the following:[19] (i) whether security-based swaps are transacted or expected to be transacted following the full implementation of Title VII in a manner that would not permit the parties to rely on existing exemptions under the Securities Act and the Exchange Act; and (ii) whether we should consider additional exemptions under the Securities Act and the Exchange Act for security-based swaps traded on a national securities exchange or through a security-based SEF with eligible contract participants.[20]

---

19 Id. We also requested comment on these matters in an earlier proposing release regarding exemptions for security-based swap transactions involving an eligible clearing agency. See Exemptions For Security-Based Swaps Issued By Certain Clearing Agencies, Release No. 33-9222 (Jun. 9, 2011), 76 FR 34920 (Jun. 15, 2011) ("Cleared SBS Exemptions Proposing Release").

20 The term "eligible contract participant" is defined in Section 1a(18) of the Commodity Exchange Act [7 U.S.C. 1a(18)]. The definitions of the term "eligible contract participant" in the Securities Act and the Exchange Act both refer to the definition of "eligible contract participant" in the Commodity Exchange Act. See Section 5(e) of the Securities Act [15 U.S.C. 77e(e)] and Section 3(a)(65) of the Exchange Act [15 U.S.C. 78c(a)(65)]. The eligible contract participant definition includes several categories of persons: financial institutions; insurance companies; investment companies; commodity pools; business entities, such as corporations, partnerships, and trusts; employee benefit plans; government entities, such as the United States, a State or local municipality, a foreign government, a multinational or supranational government entity, or an instrumentality, agency or department of such entities; market professionals, such as broker dealers, futures commission merchants, floor brokers, and investment advisors; and natural persons with a specified dollar amount invested on a discretionary basis. The Commission and the Commodity Futures Trading Commission ("CFTC") adopted final rules further defining the term "eligible contract participant." The CFTC staff issued a letter, Staff Interpretations and No-Action Relief Regarding ECP Status: Swap Guarantee Arrangements; Jointly and Severally Liable Counterparties; Amounts Invested on a Discretionary Basis; and "Anticipatory ECPs," CFTC Letter No. 12-17 (Oct. 12, 2012). Such letter does not interpret or further define the term "eligible contract participant" for purposes of Section 712(d) of the Dodd-Frank Act or the federal securities laws. See Further Definition of "Swap Dealer," "Security-Based Swap Dealer," "Major Swap Participant," "Major Security-Based Swap Participant" and "Eligible Contract Participant", Release No. 34-66868 (Apr. 27, 2012), 77 FR 30596 (May 23, 2012) ("Intermediary Definitions Adopting Release").

We received letters from three commenters regarding the interim final rules.[21] One commenter opposed any exemptions for security-based swaps, including the exemptions provided in the interim final rules, but did not provide any explanation for the reason.[22] The two other commenters supported the interim final rules.[23] These commenters stated their view that the interim final rules were necessary and appropriate steps to prevent disruption of the security-based swaps market and to ensure the orderly implementation of Title VII.[24] These commenters provided a description of the security-based swaps market as it currently functions and how it may function following the full implementation of Title VII.[25] These commenters expressed concerns about the availability of exemptions from the registration requirements of the Securities Act for security-based swap transactions entered into solely between eligible contract participants due to the operation of security-based swap trading platforms and the publication or distribution of other information regarding security-based swaps.[26] They indicated that certain communications involving security-based swaps, such as the publication or distribution of price quotes, may be available on or through trading platforms on an unrestricted basis, including following the full implementation of Title VII.[27] They also indicated that security-based swap

---

21 See letter from Kenneth E. Bentsen, Jr., Executive Vice President, Public Policy and Advocacy, The Securities Industry and Financial Markets Association ("SIFMA"), dated December 21, 2012 ("SIFMA Letter"); letter from Kenneth E. Bentsen, Jr., Executive Vice President, Public Policy and Advocacy, SIFMA, and Robert Pickel, Chief Executive Officer, International Swaps and Derivatives Association ("ISDA"), dated Apr. 20, 2012 ("SIFMA/ISDA Letter"); and letter from Tom Nappi, dated Jul. 14, 2011 ("Nappi Letter").

22 See Nappi Letter.

23 See SIFMA Letter and SIFMA/ISDA Letter.

24 See SIFMA/ISDA Letter.

25 Id.

26 See SIFMA Letter and SIFMA/ISDA Letter.

27 See SIFMA/ISDA Letter.

dealers publish and distribute communications they characterized as research regarding security-based swap transactions that may be broadly disseminated and could be available on an unrestricted basis.[28] They were concerned that unrestricted access to these communications could affect the availability of exemptions from the registration requirements of the Securities Act, such as the exemption in Section 4(a)(2), for security-based swap transactions entered into solely between eligible contract participants.[29] Based on their concerns regarding the availability of exemptions from the registration requirements of the Securities Act, these commenters requested that we adopt permanent relief from the registration requirements of Section 5 of the Securities Act for offers and sales of security-based swaps[30] solely between eligible contract participants.[31] These commenters also requested relief under the Exchange Act for offers and sales of security-based swaps solely between eligible contract participants.[32] They were concerned that ambiguity regarding the definition of a "class" as applied to security-based swaps

---

28 See SIFMA Letter.

29 See SIFMA Letter and SIFMA/ISDA Letter.

30 The category of security-based swaps that would be covered by this request for relief is broader in some ways than the category of security-based swaps covered by the exemptions provided in the interim final rules. As noted in footnote 6 above, the exemptions provided in the interim final rules apply to security-based swaps that were defined as "security-based swap agreements" prior to the Title VII effective date. That definition of "security-based swap agreement" does not include security-based swaps that are based on or reference only loans and indexes only of loans.

31 See SIFMA Letter and SIFMA/ISDA Letter. These commenters limited their request for relief to security-based swap transactions not involving an eligible clearing agency. Id. We adopted exemptions under the Securities Act, the Exchange Act, and the Trust Indenture Act for security-based swap transactions involving an eligible clearing agency. See Rule 239 under the Securities Act [17 CFR 230.239], Rules 12a-10 and 12h-1(h) under the Exchange Act [17 CFR 240.12a-10 and 240.12h-1(h)], and Rule 4d-11 under the Trust Indenture Act of 1939 [17 CFR 260.4d-11]. See also Exemptions for Security-Based Swaps Issued By Certain Clearing Agencies, Release No. 33-9308 (Mar. 30, 2012), 77 FR 20536 (Apr. 5, 2012) ("Cleared SBS Exemptions Adopting Release"). These exemptions do not apply to security-based swap transactions not involving an eligible clearing agency, even if the security-based swaps subsequently are cleared in transactions involving an eligible clearing agency. Id.

32 See SIFMA/ISDA Letter.

could raise concerns about the registration requirements of Section 12(g) of the Exchange Act.[33] Finally, these commenters requested relief from Section 304(d) of the Trust Indenture Act for security-based swaps entered into solely between eligible contract participants.[34] They believed that the protections of the Trust Indenture Act are not necessary for these transactions because they involve contracts between two counterparties who are capable of enforcing obligations under the security-based swaps directly.[35]

Moreover, although not submitted in connection with the interim final rules, we received two comment letters from four commenters regarding the exemptions for security-based swap transactions involving an eligible clearing agency.[36] These letters discussed issues arising with respect to security-based swap transactions not involving an eligible clearing agency and requested exemptions under the Securities Act, the Exchange Act, and the Trust Indenture Act for security-based swap transactions entered into between eligible contract participants.[37] In

---

33 Id.

34 Id.

35 Id.

36 See letter from Richard M. Whiting, Executive Director and General Counsel, Financial Services Roundtable, Robert Pickel, Chief Executive Officer, ISDA, and Kenneth E. Bentsen, Jr., Executive Vice President, Public Policy and Advocacy, SIFMA, dated Jan. 31, 2012 ("FSR/ISDA/SIFMA Letter"); and letter from Scott Pintoff, General Counsel, GFI Group Inc., dated Jul. 25, 2011 ("GFI Letter"). These letters were submitted in response to our request for comment in the Cleared SBS Exemptions Proposing Release. See footnote 19 above.

37 See GFI Letter and FSR/ISDA/SIFMA Letter. The GFI Letter suggested that we provide permanent exemptions under the Securities Act, the Exchange Act, and the Trust Indenture Act for security-based swap transactions entered into between eligible contract participants and effected through any trading platform similar to the proposed exemptions for security-based swap transactions involving an eligible clearing agency. This commenter did not provide any explanation as to why such exemptions were needed, including how security-based swap trading platforms operate, that would enable us to evaluate whether relief is necessary or appropriate. See Cleared SBS Exemptions Adopting Release. The FSR/ISDA/SIFMA Letter requested relief under the Exchange Act and the Trust Indenture Act, but did not request relief under the Securities Act. However, two of these commenters subsequently submitted the SIFMA Letter

adopting the exemptions for security-based swap transactions involving an eligible clearing agency, we indicated that these commenters' suggestions were more appropriate to be considered in connection with the interim final rules.[38]

We subsequently extended the expiration dates in the interim final rules from February 11, 2013 to February 11, 2014 to enable us to continue our evaluation of the implications for security-based swaps as securities and determine whether other regulatory action is appropriate before the expiration date of the interim final rules.[39] We indicated at that time that we were carefully considering the comments we had received on the interim final rules as part of our evaluation of the implications for security-based swaps resulting from the inclusion of the term "security-based swap" in the definition of "security" under the Securities Act and the Exchange Act.[40] We also indicated that we were in the process of implementing the Title VII statutory provisions governing the registration and regulation of security-based SEFs.[41] We had proposed rules to implement these provisions, but the particular characteristics of trading platforms that security-based SEFs will be permitted to operate would not be known until we adopted final rules for security-based SEFs. We indicated that we were evaluating the comments we had received on these proposed rules, but that we had not yet adopted final rules implementing the Title VII statutory provisions governing the registration and regulation of security-based SEFs.[42]

---

and the SIFMA/ISDA Letter to request relief under the Securities Act. See footnote 31 above and accompanying text.

38 See Cleared SBS Exemptions Adopting Release.

39 See footnote 8 above. We had received a request from a commenter to extend the expiration dates in the interim final rules. See letter from Kenneth E. Bentsen, Jr., Executive Vice President, Public Policy and Advocacy, SIFMA, dated December 20, 2012.

40 Id.

41 Id.

42 Id.

Moreover, we indicated that we were evaluating such comments in connection with our consideration of the comments we have received on the interim final rules given commenters' concerns regarding the operation of security-based swap trading platforms.[43]

C. Extension of the Interim Final Rules

In this release, we are extending the expiration dates in the interim final rules from February 11, 2014 to February 11, 2017. We are still in the process of implementing Title VII, which imposes a comprehensive regime for the regulation of security-based swaps under the federal securities laws, including the clearing, exchange trading, and reporting of security-based swap transactions. We have adopted some rules under Title VII, including joint rules with the CFTC further defining certain Title VII definitions,[44] rules establishing the procedure by which clearing agencies submit security-based swaps for determination as to whether those instruments should be subject to mandatory clearing under Title VII,[45] and rules establishing standards for how registered clearing agencies should manage their risks and run their operations.[46] We also have issued a policy statement proposing the sequencing of compliance dates for final rules that we may adopt to complete the implementation of the security-based swaps regulatory regime ("sequencing policy statement").[47] While we are working toward fulfilling the requirements of

---

43 Id.

44 See Intermediary Definitions Adopting Release and Further Definition of "Swap," "Security-Based Swap," and "Security-Based Swap Agreement"; Mixed Swaps; Security-Based Swap Agreement Recordkeeping, Release No. 33-9338 (Jul. 18, 2012), 77 FR 48208 (Aug. 13, 2012).

45 See Process for Submissions for Review of Security-Based Swaps for Mandatory Clearing and Notice Filing Requirements for Clearing Agencies; Technical Amendments to Rule 19b-4 and Form 19b-4 Applicable to All Self-Regulatory Organizations, Release No. 34-67286 (Jun. 28, 2012), 77 FR 41602 (Jul. 13, 2012).

46 See Clearing Agency Standards, Release No. 34-68080 (Oct. 22, 2012), 77 FR 66219 (Nov. 2, 2012).

47 See Statement of General Policy on the Sequencing of the Compliance Dates for Final Rules Applicable to Security-Based Swaps Adopted Pursuant to the Securities Exchange Act of 1934

Title VII in a thorough and deliberative manner that includes significant public input and coordination with other regulators, we have not yet adopted final rules completing the implementation of the security-based swaps regulatory regime.

Subsequent to the extension of the expiration dates in the interim final rules in February 2013, we completed proposing nearly all of the rules required to be adopted by Title VII to implement the security-based swaps regulatory regime.[48] Most recently, we proposed rules and interpretations addressing the application of the security-based swap provisions of Title VII to cross-border security-based swap transactions and to non-U.S. persons that act in capacities regulated under the Dodd-Frank Act.[49] In light of the substantially complete picture of the proposed security-based swaps regulatory regime, as well as the fact that the CFTC has adopted nearly all of its rules required by Title VII to implement the swaps regulatory regime,[50] we reopened the comment period for the proposals implementing the security-based swaps regulatory regime and the sequencing policy statement to provide the public with an additional

---

and the Dodd-Frank Wall Street Reform and Consumer Protection Act, Release No. 34-67177 (Jun. 11, 2012), 77 FR 35625 (Jun. 14, 2012).

48 We have not yet proposed rules regarding the reporting and recordkeeping requirements to which security-based swap dealers and major security-based swap participants will be subject pursuant to Section 15F(f) of the Exchange Act. 15 U.S.C. 78o-10(f).

49 See Cross-Border Application of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act; Re-Proposal of Regulation SBSR and Certain Rules and Forms Relating to the Registration of Security-Based Swap Dealers and Major Security-Based Swap Participants, Release No. 34-69490 (May 1, 2013), 78 FR 30967 (May 23, 2013).

50 CFTC Chairman Gary Gensler has noted that the CFTC has "largely completed the swaps market rulemaking, with 80 percent behind us...." Gary Gensler, Chairman, CFTC, Opening Remarks at CFTC Public Roundtable on "Futurization of Swaps" (Jan. 31, 2013) (transcript available at http://www.cftc.gov/PressRoom/SpeechesTestimony/opagensler-130).

opportunity to analyze and comment upon the proposed security-based swaps regulatory regime.[51]

As we consider final rules completing implementation of the security-based swaps regulatory regime, we are evaluating the additional comments we received after reopening the comment period. We also are considering the CFTC's experiences with implementation of the swaps regulatory regime and the extent to which our final rules should harmonize with the CFTC's final rules implementing the swaps regulatory regime. However, we do not expect to complete such evaluation and adopt final rules before February 11, 2014, the current expiration date of the interim final rules. We do not believe that we can complete our evaluation of the implications for security-based swaps and determine whether other regulatory action is appropriate until we progress further in our consideration of final rules completing the implementation of the security-based swaps regulatory regime.

For example, we are considering final rules implementing the Title VII statutory provisions governing the registration and regulation of security-based SEFs. We have proposed rules to implement these provisions, but the particular characteristics of trading platforms that security-based SEFs will be permitted to operate will not be known until we adopt final rules for security-based SEFs. As discussed above, we received comments on the interim final rules that expressed concerns regarding the implications for security-based swaps under the Securities Act as a result of the possible operation of security-based SEFs.[52] We believe that our determination about possible regulatory action for security-based swaps is directly affected by our

---

51 See Reopening of Comment Periods for Certain Rulemaking Releases and Policy Statement Applicable to Security-Based Swaps Proposed Pursuant to the Securities Exchange Act of 1934 and the Dodd-Frank Wall Street Reform and Consumer Protection Act, Release No. 34-69491 (May 1, 2013), 78 FR 30800 (May 23, 2013).

52 See footnote 16 above and accompanying text.

consideration of final rules completing the implementation of the Title VII statutory provisions governing the registration and regulation of security-based SEFs.[53]

If the interim final rules expire before we complete our evaluation of the implications for security-based swaps as securities and determine whether other regulatory action is appropriate, market participants entering into security-based swap transactions will have to consider whether they need to register the offer and sale of the security-based swaps under the Securities Act. Market participants also will have to consider whether they may be required to comply with the registration provisions of the Exchange Act applicable to classes of securities and the indenture provisions of the Trust Indenture Act. We believe that requiring compliance with these provisions while we evaluate the implications for security-based swaps as securities and determine whether other regulatory action is appropriate could have an impact on the operation of the security-based swaps market. Thus, the interim final rules are needed to allow market participants that meet the conditions of the interim final rules to continue to enter into security-based swap transactions without concern that such activities may not comply with the applicable provisions of the Securities Act, the Exchange Act, and the Trust Indenture Act.

Based on the foregoing, we believe that it is necessary and appropriate in the public interest and consistent with the protection of investors to continue providing the exemptions from all provisions of the Securities Act (other than the Section 17(a) antifraud provisions), the registration requirements of the Exchange Act relating to classes of securities, and the indenture provisions of the Trust Indenture Act for those security-based swaps that prior to the Title VII effective date were security-based swap agreements, provided certain conditions are met.

---

[53] Moreover, under the swaps regulatory regime as implemented, we are considering issues that may arise under the federal securities laws from the possible trading of security-based swaps on swap execution facilities.

Accordingly, due to the interrelationship between the interim final rules and the ongoing implementation of the security-based swaps regulatory regime, and based on our consideration of comments we have received to date on these matters, we have determined that it is necessary and appropriate to extend the expiration dates in the interim final rules from February 11, 2014 to February 11, 2017.[54] If we adopt further rules relating to issues raised by the application of the Securities Act or the other federal securities laws to security-based swaps before February 11, 2017, we may determine to alter the expiration dates in the interim final rules as part of that rulemaking. We only are extending the expiration dates in the interim final rules; we are not making any other changes to the interim final rules.

II. CERTAIN ADMINISTRATIVE LAW MATTERS

Section 553(b) of the Administrative Procedure Act[55] generally requires an agency to publish notice of a proposed rulemaking in the Federal Register. This requirement does not apply, however, if the agency "for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest."[56] Further, the Administrative

---

54 In conjunction with the extension of the expiration dates in the interim final rules, we also are extending certain of the temporary relief we adopted in July 2011 that provided exemptions from compliance with certain provisions of the Exchange Act. This relief also is set to expire on February 11, 2014 and exempts security-based swap activities from the application of the Exchange Act other than certain antifraud and anti-manipulation provisions, all Exchange Act provisions related to security-based swaps added or amended by Title VII of the Dodd-Frank Act, including the amended definition of "security" in Section 3(a)(10), and certain other Exchange Act provisions. See Order Extending Temporary Exemptions under the Securities Exchange Act of 1934 in Connection with the Revision of the Definition of "Security" to Encompass Security-Based Swaps, Release No. 34-71485 (Feb. 5, 2014). See also Order Granting Temporary Exemptions under the Securities Exchange Act of 1934 in Connection with the Pending Revisions of the Definition of "Security" to Encompass Security-Based Swaps, Release No. 34-64795 (Jul. 1, 2011), 76 FR 39927 (Jul. 7, 2011).

55 5 U.S.C. 553(b).

56 Id.

Procedure Act also generally requires that an agency publish an adopted rule in the Federal Register 30 days before it becomes effective.[57] This requirement does not apply, however, if the agency finds good cause for making the rule effective sooner.[58] We, for good cause, find that notice and solicitation of comment before adopting the amendments to the interim final rules is impracticable, unnecessary, or contrary to the public interest. We also find good cause not to delay the effective date of the amendments to the interim final rules.

For the reasons we discuss throughout this release, we believe that we have good cause to act immediately to adopt the amendments to the interim final rules to extend the expiration dates in the interim final rules. The extension of the expiration dates in the interim final rules is intended to minimize disruptions and costs to the security-based swaps market that could occur if the interim final rules expire. The interim final rules are needed to allow market participants that meet the conditions of the interim final rules to continue to enter into security-based swap transactions without concern that such activities will be subject to the registration requirements of the Securities Act and the Exchange Act and the indenture qualification provisions of the Trust Indenture Act while we complete our evaluation of the implications for security-based swaps and determine whether other regulatory action is appropriate.

As noted above, we currently are considering final rules completing the implementation of the security-based swaps regulatory regime. As part of such consideration, we are evaluating the additional comments we received after reopening the comment period for the proposals implementing the security-based swaps regulatory regime and the sequencing policy statement and the CFTC's experiences with implementation of the swaps regulatory regime. However, we

---

57 See 5 U.S.C. 553(d).

58 Id.

do not expect to complete such evaluation and adopt final rules before February 11, 2014, the current expiration date of the interim final rules. We do not believe that we can complete our evaluation of the implications for security-based swaps and determine whether other regulatory action is appropriate until we progress further in our consideration of final rules completing the implementation of the security-based swaps regulatory regime. We believe that our determination regarding possible regulatory action for security-based swaps is directly affected by our consideration of final rules completing the implementation security-based swaps regulatory regime. Moreover, under the swaps regulatory regime as implemented, we are considering issues that may arise under the federal securities laws from the possible trading of security-based swaps on swap execution facilities.

Absent an extension, the interim final rules will expire on February 11, 2014. The interim final rules have been in place since July 2011 and market participants have relied on them to enter into security-based swap transactions. Extending the expiration dates in the interim final rules will not affect the substantive provisions of the interim final rules and will allow market participants that meet the conditions of the interim final rules to continue to enter into security-based swap transactions without concern that such activities will be subject to the registration requirements of the Securities Act and the Exchange Act and the indenture qualification provisions of the Trust Indenture Act while we complete our evaluation of the implications for security-based swaps as securities and determine whether other regulatory action is appropriate. Based on the foregoing and for the reasons we discuss throughout this release, we find that there is good cause to have the amendments to the interim final rules effective upon publication in the Federal Register and that notice and solicitation of comment in advance of the

effectiveness of the amendments to the interim final rules is impracticable, unnecessary or contrary to the public interest.[59]

III. ECONOMIC ANALYSIS

We are mindful of the costs imposed by, and the benefits to be obtained from, our rules. Section 2(b) of the Securities Act and Section 3(f) of the Exchange Act require the Commission, whenever it engages in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action would promote efficiency, competition, and capital formation.[60] In addition, Section 23(a)(2) of the Exchange Act requires the Commission, when making rules under the Exchange Act, to consider the impact such rules would have on competition.[61] Section 23(a)(2) of the Exchange Act prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.[62]

As discussed above, we are adopting amendments to the interim final rules to extend the expiration dates in the interim final rules to February 11, 2017. Extending the expiration dates in the interim final rules is intended to minimize disruptions and costs to the security-based swaps market that could occur on the current expiration date of the interim final rules. The interim final rules are needed to allow market participants that meet the conditions of the interim final rules to

---

59 This finding also satisfies the requirements of 5 U.S.C. 808(2), allowing the rule amendment to become effective notwithstanding the requirement of 5 U.S.C. 801 (if a federal agency finds that notice and public comment are "impractical, unnecessary or contrary to the public interest," a rule "shall take effect at such time as the federal agency promulgating the rule determines").

60 See 15 U.S.C. 77b(b) and 15 U.S.C. 78c(f).

61 See 15 U.S.C. 78w(a)(2).

62 Id.

continue to enter into security-based swap transactions without concern that such activities will be subject to the registration requirements of the Securities Act and the Exchange Act and the indenture qualification provisions of the Trust Indenture Act.

The interim final rules currently in effect serve as the economic baseline against which the costs and benefits, as well as the impact on efficiency, competition, and capital formation, of the amendments are measured. Because the extension of the expiration dates in the interim final rules maintains the status quo, we do not expect additional significant costs or benefits to result from the extension. We also do not expect the extension to have additional significant effects on efficiency, competition, or capital formation. The interim final rules will continue to exempt certain security-based swaps from all provisions of the Securities Act, other than the Section 17(a) antifraud provisions,[63] as well as exempt these security-based swaps from Exchange Act registration requirements, and from the provisions of the Trust Indenture Act, provided certain conditions are met.

In the alternative, we could allow the interim final rules to expire by not extending their expiration date. In this scenario, market participants who continue to effect security-based swap transactions would have to determine whether another exemption from the registration requirements of the Securities Act is available so that they may be able to rely on that exemption. If no Securities Act exemptions are available for a security-based swap transaction following the expiration of the interim final exemptions, such a transaction would have to be registered under the Securities Act. The counterparties to such a transaction also would have to consider whether they need to comply with the registration requirements of the Exchange Act and the indenture provisions of the Trust Indenture Act. We believe that requiring compliance with these

---

63 See 15 U.S.C. 77q(a).

provisions at this time for security-based swap transactions between eligible contract participants likely would disrupt and impose new costs on this segment of the security-based swaps market. For example, if market participants are required to register the offer and sale of these security-based swaps under the Securities Act, they would have to incur the additional costs of such registration, including legal and accounting costs, as well as the costs associated with preparing the disclosure documents describing these security-based swaps. Market participants also may incur costs associated with the registration of these security-based swaps under the Exchange Act and compliance with the Trust Indenture Act, including preparing indentures and arranging for the services of a trustee.

It is also possible that if we were to allow the interim final rules to expire, efficiency and capital formation may be impaired. Failing to extend the expiration dates in the interim final rules may result in disruptions and costs to the security-based swaps market that could impede efficiency. Additionally, some market participants may not continue to participate in certain security-based swap transactions if compliance with these provisions were infeasible (economically or otherwise). In that case, capital formation may be impaired to the extent that some market participants use these security-based swap transactions to hedge risks, including those related to the issuance of the referenced securities (as may occur with equity swaps and the issuance of convertible bonds). For example, if registration of these transactions is required under our existing Securities Act registration scheme, issuers of security-based swaps may be forced to provide disclosure about their security-based swap positions that might not otherwise be disclosed to the market. This position disclosure could lead to a decreased use of security-based swaps by these market participants, which could potentially impair capital formation to the

extent counterparties might use security-based swaps for hedging their exposure to issuers of referenced securities.

We also recognize that there would be other effects associated with letting the interim final rules expire. Without the exemptions provided for in the interim final rules, a market participant may have to file a registration statement covering the offer and sale of the security-based swaps, may have to register the class of security-based swaps that it has issued under the Exchange Act, and may have to satisfy the applicable provisions of the Trust Indenture Act, which would provide investors with additional information and in certain cases civil remedies. For example, a registration statement covering the offer and sale of the security-based swaps may provide certain information about the market participants, the security-based swap contract terms, and the identification of the particular reference securities, issuers, or loans underlying the security-based swap. Additionally, although investors currently may pursue antifraud actions in connection with the purchase and sale of security-based swaps under Section 10(b) of the Exchange Act,[64] if market participants were required to file registration statements under the Securities Act, investors may also be able to pursue civil remedies under Sections 11 or 12 of the Securities Act.[65]

IV. PAPERWORK REDUCTION ACT

The interim final rules do not impose any new "collections of information" within the meaning of the Paperwork Reduction Act of 1995 ("PRA"),[66] nor do they create any new filing, reporting, recordkeeping, or disclosure reporting requirements. Accordingly, we did not submit

---

64 See 15 U.S.C. 78j(b).

65 See 15 U.S.C. 77k-l. Regardless of the extension, however, we can always pursue an antifraud action in the offer and sale of security-based swaps under Section 17(a) of the Securities Act. See 15 U.S.C. 77q.

66 44 U.S.C. 3501 et seq.

the interim final rules to the Office of Management and Budget for review in accordance with the PRA.[67] We requested comment on whether our conclusion that there are no collections of information is correct, and we did not receive any comment.

V. REGULATORY FLEXIBILITY ACT CERTIFICATION

We hereby certify pursuant to 5 U.S.C. 605(b) that extending the expiration dates in the interim final rules will not have a significant economic impact on a substantial number of small entities.[68] The interim final rules apply only to counterparties that may engage in security-based swap transactions in reliance on the interim final rule providing an exemption under the Securities Act. The interim final rule under the Securities Act provides that the exemption is available only to security-based swaps that are entered into between eligible contract participants, as that term is defined in Section 1a(12) of the Commodity Exchange Act as in effect prior to the Title VII effective date, and other than with respect to persons determined by the CFTC to be eligible contract participants pursuant to Section 1a(12)(C) of the Commodity Exchange Act. Based on our existing information about the security-based swaps market, including our existing information about participants in the security-based swaps market, we believe that the interim final rules apply to few, if any, small entities.[69] For this reason, the extension of the expiration dates in the interim final rules should not have a significant economic impact on a substantial number of small entities.

---

67 44 U.S.C. 3507(d) and 5 CFR 1320.11.

68 We certified pursuant to 5 U.S.C. 605(b) that the interim final rules will not have a significant economic impact on a substantial number of small entities. See Interim Final Rules Adopting Release. We received no comments on that certification.

69 For example, as revealed in a current survey conducted by Office of the Comptroller of the Currency, 100.0% of credit default swap positions held by U.S. commercial banks and trust companies are held by those with assets over $10 billion. See Office of the Comptroller of the Currency, "Quarterly Report on Bank Trading and Derivatives Activities Third Quarter 2013" (2013).

VI. STATUTORY AUTHORITY AND TEXT OF THE RULES AND AMENDMENTS

The amendments described in this release are being adopted under the authority set forth in Sections 19 and 28 of the Securities Act, Sections 12(h), 23(a) and 36 of the Exchange Act, and Section 304(d) of the Trust Indenture Act.

List of Subjects in 17 CFR Parts 230, 240 and 260

Reporting and recordkeeping requirements, Securities.

TEXT OF THE RULES AND AMENDMENTS

For the reasons set out in the preamble, the Commission amends 17 CFR parts 230, 240, and 260 as follows:

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

1. The authority citation for Part 230 continues to read, in part, as follows:

Authority: 15 U.S.C. 77b, 77b note, 77c, 77d, 77d note, 77f, 77g, 77h, 77j, 77r, 77s, 77z-3, 77sss, 78c, 78d, 78j, 78*l*, 78m, 78n, 78o, 78o-7 note, 78t, 78w, 78*ll*(d), 78mm, 80a-8, 80a-24, 80a-28, 80a-29, 80a-30, and 80a-37, and Pub. L. 112-106, sec. 201(a), 126 Stat. 313 (2012), unless otherwise noted.

* * * * *

§ 230.240 [Amended]

2. In §230.240(c), in the first sentence, remove the words "February 11, 2014" and add, in their place, the words "February 11, 2017".

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

3. The authority citation for Part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77z-3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78k, 78k-1, 78*l*, 78m, 78n, 78n-1, 78o, 78o-4, 78p,

78q, 78q-1, 78s, 78u-5, 78w, 78x, 78*ll*, 78mm, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4, 80b-11, and 7201 et seq.; 18 U.S.C. 1350; and 12 U.S.C. 5221(e)(3), unless otherwise noted.

* * * * *

§ 240.12a-11 [Amended]

4. In §240.12a-11(b), in the first sentence, remove the words "February 11, 2014" and add, in their place, the words "February 11, 2017".

§ 240.12h-1 [Amended]

5. In §240.12h-1(i), in the second sentence, remove the words "February 11, 2014" and add, in their place, the words "February 11, 2017".

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

6. The authority citation for Part 260 continues to read as follows:

Authority: 15 U.S.C. 77eee, 77ggg, 77nnn, 77sss, 78ll(d), 80b-3, 80b-4, and 80b-11.

* * * * *

§ 260.4d-12 [Amended]

7. In §260.4d-12, in the second sentence, remove the words "February 11, 2014" and add, in their place, the words "February 11, 2017".

By the Commission.

Elizabeth M. Murphy

Elizabeth M. Murphy
Secretary

February 5, 2014

UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

Securities Act of 1933
Release No. 9546 / February 5, 2014

Securities Exchange Act of 1934
Release No. 71494 / February 5, 2014

ORDER APPROVING PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD BUDGET AND ANNUAL ACCOUNTING SUPPORT FEE FOR CALENDAR YEAR 2014

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

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

[1] 15 U.S.C. 7201 et seq.

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

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

In accordance with the budget rule, in March 2013 the PCAOB provided the Commission with a narrative description of its program issues and outlook for the 2014 budget year. In response, the Commission provided the PCAOB with economic assumptions and budgetary guidance for the 2014 budget year. The PCAOB subsequently delivered a preliminary budget and budget justification to the Commission. Staff from the Commission's Offices of the Chief

---

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

3 17 CFR 202.190.

Accountant and Financial Management dedicated a substantial amount of time to the review and analysis of the PCAOB's programs, projects and budget estimates; reviewed the PCAOB's estimates of 2013 actual spending; and attended several meetings with management and staff of the PCAOB to further develop an understanding of the PCAOB's budget and operations. During the course of this review, Commission staff relied upon representations and supporting documentation from the PCAOB. Based on this review, the Commission issued a "pass back" letter to the PCAOB. On November 25, 2013, the PCAOB approved its 2014 budget during an open meeting, and subsequently submitted that budget to the Commission for approval.

After considering the above, the Commission did not identify any proposed disbursements in the 2014 budget adopted by the PCAOB that are not properly recoverable through the annual accounting support fee, and the Commission believes that the aggregate proposed 2014 annual accounting support fee does not exceed the PCAOB's aggregate recoverable budget expenses for 2014. The Commission also acknowledges the PCAOB's updated strategic plan and is supportive of the Board's continued work on its six new near-term priority projects. The Commission encourages the PCAOB to continue keeping the Commission and its staff apprised of developments throughout the implementation of these near-term projects and looks forward to providing views to the PCAOB as future updates are made to the plan.

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

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

The Commission also directs the PCAOB during the 2014 budget cycle to continue to include in its quarterly reports to the Commission information about the PCAOB's inspections program. Such information is to include: (a) statistics relative to the numbers and types of firms budgeted and expected to be inspected in 2014, including by location and by year the inspections that are required to be conducted in accordance with the Sarbanes-Oxley Act and PCAOB rules; (b) information about the timing of the issuance of inspections reports for domestic and non-U.S. inspections; and (c) updates on the PCAOB's efforts to establish cooperative arrangements with respective non-U.S. authorities for inspections required in those countries.

The Commission understands that the Office of Management and Budget ("OMB") has determined the 2014 budget of the PCAOB to be sequestrable under the Budget Control Act of 2011.[4] Unless legislation occurs that avoids sequestration, the PCAOB's 2014 spending level would be reduced. In the event that sequestration is not avoided, we expect the PCAOB to work with the Commission and Commission staff, as appropriate, regarding the impact of sequestration on the PCAOB's 2014 spending.

The Commission has determined that the PCAOB's 2014 budget and annual accounting support fee are consistent with Section 109 of the Sarbanes-Oxley Act. Accordingly,

---

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

IT IS ORDERED, pursuant to Section 109 of the Sarbanes-Oxley Act, that the PCAOB budget and annual accounting support fee for calendar year 2014 are approved.

By the Commission.

Elizabeth M. Murphy
Secretary

Chair White
Commissioner Aguilar
not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 71500 / February 6, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15744

In the Matter of

FAISAL SIDDIQUI,

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 Faisal Siddiqui ("Siddiqui" 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. Siddiqui was a vice president in Credit Suisse Group's CDO Trading Group in New York. Siddiqui was a registered representative associated with Credit Suisse Securities (USA) LLC from November 1997 until March 2008. He held Series 7 and 63 licenses. Siddiqui currently resides in Pakistan.

2. On February 21, 2012, a partial judgment was entered by consent against Siddiqui, permanently enjoining him from violations of Sections 10(b) and 13(b)(5) of the Exchange Act and Rules 10b-5 and 13b2-1 thereunder, and from aiding and abetting violations of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 12b-20 and 13a-16 thereunder, in the civil action entitled Securities and Exchange Commission v. Kareem Serageldin et al., Civil Action Number 12-CV-0796, in the United States District Court for the Southern District of New York.

3. The Commission's complaint alleged that Respondent engaged in a fraudulent scheme to fraudulently overstate the prices of subprime bonds owned by Credit Suisse Group at the end of 2008.

IV.

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

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

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

with the 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

By: Jill M. Peterson
Assistant Secretary

Chair White
Commissioner Aguilar
not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 71501 / February 6, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15745

In the Matter of

SALMAAN SIDDIQUI,

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 Salmaan Siddiqui ("Siddiqui" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, Respondent consents to the Commission's jurisdiction over him and the subject matter of these proceedings and to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934, 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 2000 to April 2008, Siddiqui was a registered representative associated with broker-dealers registered with the Commission. Siddiqui, age 37, is a resident of McLean, Virginia.

2. On March 5, 2012, a partial judgment was entered by consent against Siddiqui, permanently enjoining him from violations of Sections 10(b) and 13(b)(5) of the Exchange Act and Rules 10b-5 and 13b2-1 thereunder, and from aiding and abetting violations of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 12b-20 and 13a-16 thereunder, in the civil action entitled Securities and Exchange Commission v. Kareem Serageldin et al., Civil Action Number 12-CV-0796, in the United States District Court for the Southern District of New York.

3. The Commission's complaint alleged that Respondent engaged in a fraudulent scheme to fraudulently overstate the prices of subprime bonds owned by Credit Suisse Group at the end of 2008.

4. On February 1, 2012, Siddiqui pled guilty to one count of conspiracy to falsify books and records and commit wire fraud in violation of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act and Rule 13b2-1 thereunder, and 18 U.S.C. §§ 371 and 1343 before the United States District Court for the Southern District of New York, in United States v. Salmaan Siddiqui, Crim. Information No. 12-CR-089.

5. The counts of the criminal information to which Siddiqui pled guilty alleged many of the same factual allegations as those in the Commission's complaint, including Defendants' participation in a fraudulent scheme to overstate the prices of subprime bonds owned by Credit Suisse Group at the end of 2008.

IV.

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

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

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

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

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

By the Commission.

Elizabeth M. Murphy
Secretary

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

Chair White
Commissioner Aguilar
not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 71497 / February 6, 2014

INVESTMENT ADVISERS ACT OF 1940
Release No. 3775 / February 6, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15743

In the Matter of

DAVID J. WEISHAUS,

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 David J. Weishaus ("Weishaus" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, Respondent consents to the Commission's jurisdiction over him and the subject matter of these proceedings and to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of

1934 and Section 203(f) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

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

1. Weishaus, age 33, resides in Bayside, New York. From October 8, 2007 until November 10, 2009, Weishaus was a registered representative associated with a broker-dealer and an investment adviser registered with the Commission. On November 8, 2007 and November 13, 2007, respectively, Weishaus passed the Series 7 Exam and the Series 63 Exam.

2. On January 28, 2014, a judgment was entered by consent against Weishaus, permanently enjoining him from future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, in the civil action entitled SEC v. Weishaus, et al., Civil Action No. 12 - 8676 - JSR, in the United States District Court for the Southern District of New York.

3. The Commission's complaint alleged, among other things, that Weishaus was tipped by his friend and co-defendant material nonpublic information about International Business Machines Corporation's ("IBM") 2009 acquisition of SPSS Inc. ("SPSS") misappropriated by the friend's roommate and tipped to the friend. The Complaint further alleged that Weishaus used that information to illegally trade, for a profit of $127,485.

4. On December 19, 2013, Weishaus pled guilty to conspiracy to commit securities fraud and securities fraud, in violation of Title 18 United States Code, Sections 371 and 2; Title 15 United States Code, Sections 10(b) and 32(a), and Title 17 Code of Federal Regulations, Section 10b-5, in United States v. Weishaus, 12 Crim. 887 (S.D.N.Y.).

5. In connection with that plea, Weishaus admitted that:

(a) In or about June and July 2009, Weishaus had multiple communications with a friend from school. In those communications, Weishaus's friend told Weishaus about a tip he had received from his roommate regarding an upcoming corporate transaction -- that International Business Machines Corporation would be acquiring a software company called SPSS, Inc. ("SPSS"), and the anticipated price per share for the deal.

(b) Weishaus knew that information like that tipped by his friend was highly material and that it should have been kept confidential prior to any public announcement.

(c) On July 22, 2009, Weishaus used this information to buy SPSS call options with a short expiration date on a national securities exchange.

(d) At the time he bought the call options, Weishaus believed that the information concerning the SPSS acquisition had been revealed in violation of a duty of confidentiality.

(e) The SPSS acquisition was announced a few days after Weishaus's purchases and Weishaus later sold the SPSS call options for a profit.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Weishaus'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 Weishaus be, and hereby is:

barred from association with any broker, dealer, investment adviser, municipal securities dealer, or transfer agent; and

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

Any reapplication for association by the Respondent Weishaus 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: Lynn M. Powalski
Deputy Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

February 11, 2014

In the Matter of **Centor 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 Centor Energy, Inc. ("Centor") because of questions regarding the accuracy of assertions by Centor, and by others, in press releases and promotional materials concerning, among other things, the company's assets, operations, and financial prospects. Centor is a Nevada company based in Florida. The company's common stock is quoted on the OTC Link under the symbol CNTO.

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. EST on February 11, 2014 through 11:59 p.m. EST on February 25, 2014.

By the Commission.

Elizabeth M. Murphy
Secretary

Kevin M. O'Neill

By: Kevin M. O'Neill
Deputy Secretary

42 of 79

Commissioner Aguilar not participating

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 71523 / February 11, 2014

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3534 / February 11, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15747

In the Matter of DAVID M. MARTIN CPA, 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 David M. Martin ("Respondent" or "Martin") pursuant to Rule 102(e)(3)(i) of the Commission's Rules of Practice.[1]

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

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

II.

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

III.

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

1. David M. Martin, age 55, is and has been a certified public accountant licensed to practice in the State of Texas. He served as Chief Financial Officer of Life Partners Holdings, Inc. ("LHPI") between February 2008 and July 2012.

2. LPHI was, at all relevant times, a Texas corporation with its principal place of business in Waco, Texas. LPHI is engaged in facilitating the purchase and sale of fractional interests of life insurance policies in the secondary market known as "life settlements." At all relevant times, LPHI's common stock was registered with the Commission pursuant to Section 12(b) of the Securities Exchange Act of 1934 ("Exchange Act"), and traded on the NASDAQ National Market.

3. On January 9, 2014, a final judgment was entered against Respondent, permanently enjoining him from future violations of Section 13(b)(5) of the Exchange Act and Rules 13b2-1 and 13b2-2 thereunder, and aiding and abetting violations of Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1 and 13a-13 thereunder, in the civil action entitled Securities and Exchange Commission v. Life Partners Holdings, Inc., et al., Civil Action Number 1:12-CV-33-JRN in the United States District Court for the Western District of Texas. Respondent was ordered to pay a civil penalty of $34,961.

IV.

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

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

A. Martin is suspended from appearing or practicing before the Commission as an accountant. After three years from the date of this order, Respondent may request that the

Commission consider his reinstatement by submitting an application (attention: Office of the Chief Accountant) to resume appearing or practicing before the Commission as:

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

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

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

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

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

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

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

By the Commission.

Elizabeth M. Murphy
Secretary

By: Jill M. Peterson
Assistant Secretary

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-71525; File No. PCAOB-2013-02)

February 12, 2014

Public Company Accounting Oversight Board; Order Granting Approval of Proposed Rules, Auditing Standard No. 17, Auditing Supplemental Information Accompanying Audited Financial Statements, and Related Amendments to PCAOB Standards

I. Introduction

On October 30, 2013, the Public Company Accounting Oversight Board (the "Board" or the "PCAOB") filed with the Securities and Exchange Commission (the "Commission"), pursuant to Section 107(b)[1] of the Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act") and Section 19(b)[2] of the Securities Exchange Act of 1934 (the "Exchange Act"), proposed rules to adopt Auditing Standard No. 17, *Auditing Supplemental Information Accompanying Audited Financial Statements*, and related amendments to PCAOB standards (collectively, the "Proposed Rules"). The Proposed Rules were published for comment in the Federal Register on November 15, 2013.[3] At the time the notice was issued, the Commission designated a longer period to act on the Proposed Rules, until February 13, 2014.[4] The Commission received one comment letter in response to the notice.[5] This order approves the Proposed Rules.

II. Description of the Proposed Rules

---

[1] 15 U.S.C. 7217(b).

[2] 15 U.S.C. 78s(b).

[3] See Release No. 34-70843 (November 8, 2013), 78 FR 68872 (November 15, 2013).

[4] Ibid.

[5] See letter to the Commission from Deloitte & Touche LLP, dated December 5, 2013 ("Deloitte Letter").

Rules retain the existing "in relation to" language in the auditor's report; however, they also update the report to describe the auditor's responsibilities for the supplemental information.

The Proposed Rules establish procedural and reporting responsibilities for the auditor regarding supplemental information accompanying financial statements. Specifically, the Proposed Rules establish:

- Requirements that the auditor perform audit procedures to test the supplemental information;
- Requirements that the auditor evaluate the supplemental information, which include evaluating (1) whether the supplemental information, including its form and content, is fairly stated, in all material respects, in relation to the financial statements as a whole, and (2) whether the supplemental information is presented in conformity, in all material respects, with the relevant regulatory requirements or other applicable criteria;
- Requirements that promote enhanced coordination between the work performed on the supplemental information with work performed on the financial statement audit and, if applicable, other engagements, such as an attestation engagement for brokers and dealers; and
- Reporting requirements that clearly articulate the auditor's responsibilities when reporting on supplemental information.

As part of the Proposed Rules, the Board adopted conforming amendments to several PCAOB standards, including superseding PCAOB interim auditing standard AU section 551.

The Proposed Rules would be effective for audit procedures and reports on supplemental information that accompanies financial statements for fiscal years ending on or after June 1, 2014.

The PCAOB has proposed application of its Proposed Rules to audits of all issuers, as applicable, including EGCs; and the PCAOB requested that the Commission make the determination to the extent necessary required by Section 103(a)(3)(C). To assist the Commission in making its determination, the PCAOB prepared and submitted to the Commission its own EGC analysis. The PCAOB's EGC analysis includes discussions of: (1) the economic baseline for consideration of the Proposed Rules; (2) the PCAOB's consideration of alternatives; (3) economic considerations; and (4) characteristics of EGCs. In its analysis, the PCAOB noted that, according to its research, the PCAOB is not aware of EGCs for which auditors would be required to apply the Proposed Rules, but that issuers may voluntarily file supplemental information to which the standard could apply.

The PCAOB's EGC analysis was included in the Commission's public notice soliciting comment on the Proposed Rules. No comments were received on the analysis. Based on the analysis submitted, we believe the information in the record is sufficient for us to make the EGC determination in relation to this standard. Specifically, the PCAOB's EGC analysis discussed its approach to developing the new standard and its consideration of alternatives, as well as the characteristics of EGCs and economic considerations. The Commission also takes note, in particular, of the PCAOB's analysis which explained that the PCAOB is not aware of EGCs for which auditors would be required to apply the Proposed Rules, and the only entities that are currently required to file supplemental information to which Auditing Standard No. 17 would apply are: (1) brokers and dealers pursuant to Rule 17a-5; and (2) Form 11-K[11] filers that elect to file plan financial statements and schedules prepared in accordance with the financial

[11] 17 CFR 249.311. Form 11-K is used for annual reports pursuant to Exchange Act Section 15(d) with respect to employee stock purchase, savings and similar plans.

IT IS THEREFORE ORDERED, pursuant to Section 107 of the Act and Section 19(b)(2) of the Exchange Act, that the Proposed Rules (File No. PCAOB-2013-02) be and hereby are approved.

By the Commission.

Kevin M. O'Neill

Kevin M. O'Neill
Deputy Secretary

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-71549; File No. SR-OCC-2014-801)

February 12, 2014

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Advance Notice of and No Objection to an Amendment to The Options Clearing Corporation's Unsecured, Committed Credit Agreement

Notice is hereby given that, on January 14, 2014, The Options Clearing Corporation ("OCC") filed an advance notice with the Securities and Exchange Commission ("Commission") pursuant to Section 806(e)(1)(A) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, entitled the Payment, Clearing, and Settlement Supervision Act of 2010 ("Clearing Supervision Act"),[1] and Rule 19b-4(n)(1)(i) of the Securities Exchange Act of 1934 ("Exchange Act").[2] The advance notice is described in Items I, II, and III below, which Items have been prepared by OCC. The Commission is publishing this notice to solicit comments from interested persons, to issue a non-objection to the changes set forth in the advance notice, and to authorize OCC to implement those changes earlier than 60 days after the filing of the advance notice.

I. Clearing Agency's Statement of the Terms of Substance of the Advance Notice

This advance notice concerns a proposed change to OCC's operations (the "Change") in the form of an amendment to its unsecured, committed credit agreement (the "Existing Agreement" or the "Existing Facility").

---

1 12 U.S.C. 5465(e)(1)(A). The Financial Stability Oversight Council designated OCC a systemically important financial market utility on July 18, 2012. *See* Financial Stability Oversight Council 2012 Annual Report, Appendix A, http://www.treasury.gov/initiatives/fsoc/Documents/2012%20Annual%20Report.pdf. Therefore, OCC is required to comply with Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

2 17 CFR 240.19b-4(n)(1)(i).

The Commission previously published a notice of no objection to OCC's advance notice filing through which OCC entered into the Existing Facility.[3] The Existing Facility currently provides OCC with access to additional liquidity for working capital needs and general corporate purposes. The Existing Facility also helps OCC satisfy the liquidity requirement of the Commodity Futures Trading Commission's ("CFTC") regulation Section 39.11(e)(2). The Existing Facility is scheduled to terminate on February 21, 2014. The Change would extend the termination date of the Existing Facility for 364 days after the renewal date, increase the commitment amount of the Existing Facility from $25 million to $35 million, and make minor, non-material, changes to the terms of the Existing Facility requested by the lender (the "Extended Agreement" or the "Extended Facility").

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Advance Notice

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the advance notice and discussed any comments it received on the advance notice. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A) and (B) below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Advance Notice

Description of Change

The Change would provide OCC with continued access to an unsecured, committed credit facility in an aggregate principal amount of $35 million until early 2015. The Extended Facility is designed to provide OCC with access to additional liquidity for working capital needs

---

3 Securities Exchange Act Release No. 34-68935 (February 13, 2013), 78 FR 12121 (February 21, 2013), (SR-OCC-2012-801).

and general corporate purposes. The Extended Facility would also satisfy the liquidity requirement of CFTC regulation Section 39.11(e)(2).

OCC's principal reason for entering into the Extended Facility is to provide OCC additional flexibility in managing its liquid assets while ensuring continued compliance with the liquidity requirements of the CFTC regulation cited above. Among other things, CFTC regulation Section 39.11(a)(2) requires a derivatives clearing organization ("DCO") to hold an amount of financial resources that, at a minimum, exceeds the total amount that would enable the DCO to cover its operating costs for a period of at least one year, calculated on a rolling basis.[4] In addition, CFTC regulation Section 39.11(e)(2) provides that these financial resources must include unencumbered, liquid financial assets (i.e., cash and/or highly liquid securities), equal to at least six months' operating costs and that if any portion of such financial resources is not sufficiently liquid, the DCO may rely on a committed line of credit or similar facility.[5] Accordingly, OCC entered into the Existing Facility with BMO Harris Bank N.A. ("Lender") having a maximum aggregate principal loan amount not to exceed $25 million. OCC now proposes to enter into an amendment to the Existing Facility to increase the maximum aggregate principal loan amount to $35 million, extend the termination date to February 20, 2015, and make other non-material changes requested by the Lender. Attached to this filing as Exhibit 3B is a marked Summary of Terms and Conditions that are applicable to the Extended Facility.[6]

---

4 17 CFR 39.11(a)(2).

5 17 CFR 39.11(e)(2).

6 As OCC has requested confidential treatment of Exhibit 3B pursuant to 17 CFR 240.24b-2, Exhibit 3B will not be attached to the published version of this notice.

The marked Summary of Terms and Conditions show the changes from the Summary of Terms and Conditions applicable to the Existing Facility.[7]

In order to have continued access to the Existing Facility, OCC must execute an amendment to the Existing Agreement between OCC and the Lender. Ongoing conditions governing OCC's ability to access the Extended Facility would be the same as with the Existing Facility and would include that no default or event of default may exist before or during an extension of credit by the Lender to OCC through the Extended Facility and that certain representations of OCC must remain true and correct. Events of default would include, but not be limited to, failure to pay any interest, principal, fees or other amounts when due, default under any covenant or agreement in any loan document, repudiation or cessation of the effectiveness of any loan document, materially inaccurate or false representations or warranties, cross default with other material debt agreements, insolvency, bankruptcy and unsatisfied judgments.

The Extended Facility would be available to OCC on a revolving basis for a 364-day term. Upon written or telephonic notice by OCC to the Lender of a request for funds, the Lender would disburse loaned funds to OCC in U.S. dollars. The date of any loan would be required to be a business day and the loans would be unsecured and made and evidenced by a promissory note provided by OCC. Under the Extended Facility, any loan proceeds would be required to be used by OCC to finance its working capital needs or for OCC's general corporate purposes.

As with the Existing Facility, OCC would have the ability to terminate the Extended Facility at any time. Termination within the first six months of the Extended Facility would

---

7 SR-OCC-2012-801, *See* Fn. 3 above. Other than as described in this Section II.A., the differences between the Existing Facility and the Extended Facility (that appear in the comparison attached to this filing as Exhibit 3) are non-material. As OCC has requested confidential treatment of Exhibit 3 pursuant to 17 CFR 240.24b-2, Exhibit 3 will not be attached to the published version of this notice.

trigger a termination fee. After six months from the date of entering the Extended Agreement with the Lender to establish the terms of the Extended Facility, OCC would be permitted to cancel the Extended Facility with no termination fee. Upon five days written notice during the term of the Extended Facility, OCC would also be permitted to reduce the overall size of the Extended Facility at any time. Any such reductions would be required to be made in an initial amount of at least $2.5 million. Thereafter, reductions would be able to be made by OCC in multiples of $1 million. In no event, however, would OCC be permitted to reduce the size of the Extended Facility to an amount that is less than the greater of either its aggregate principal amount of indebtedness outstanding with respect to loans from the Extended Facility or $15 million.

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

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

enforcement of the Extended Facility; and (4) termination fees if OCC elects to terminate the Extended Facility prior to six months from the date of the credit agreement underlying the Extended Facility.

Anticipated Effect on and Management of Risk

Overall, the Extended Facility would reduce the risks to OCC, its clearing members and the options market in general because it would provide OCC with additional liquidity for working capital needs and general corporate purposes and thereby assist OCC in satisfying the CFTC's requirements with respect to liquidity under CFTC regulation Section 39.11.

Like any lending arrangement, the Extended Facility would involve risks. One of the primary risks to OCC associated with the Extended Facility is the risk that the Lender would fail to fund when OCC requests a loan, because of the Lender's insolvency, operational deficiencies, or otherwise. Even if OCC were to draw on the Extended Facility for liquidity purposes, which it does not anticipate, OCC believes the potential funding risk associated with the Extended Facility is mitigated in several ways. First, the Lender would be a national banking association that is subject to oversight by prudential banking regulators with respect to its safety and soundness and its ability to meet its lending obligations. Furthermore, the $35 million maximum size of the Extended Facility would be relatively small when compared to the total resources available to OCC. Therefore, if the Extended Facility proved unavailable to OCC for any reason, OCC believes it readily would be able to access, or arrange for access, to other sources of liquidity if necessary.

A second risk associated with the Extended Facility is the risk that OCC would default on its obligation to make timely payment of principal or interest. Because the Extended Facility would be an unsecured lending arrangement, OCC would not be at risk in an event of default of

the Lender's potentially liquidating OCC assets that are used to secure loaned funds. Furthermore, OCC intends to mitigate the risk of default by never drawing on the Extended Facility.

Accelerated Commission Action Requested

Pursuant to Section 806(e)(1)(I) of Title VIII of the Clearing Supervision Act, OCC requests that the Commission notify OCC that it has no objection to the Change no later than February 14, 2014, which is one week prior to the February 21, 2014 termination date of the Existing Facility. OCC requests Commission action one week in advance of the effective date to ensure that there is no period of time that OCC operates without access to additional liquidity for working capital needs and general corporate purposes, and to satisfy the liquidity requirements of CFTC regulation Section 39.11(e)(2).

(B) Clearing Agency's Statement on Comments on the Advance Notice Received from Members, Participants or Others

Written comments on the advance notice were not and are not intended to be solicited with respect to the advance notice and none have been received.

III. Date of Effectiveness of the Advance Notice and Timing for Commission Action

The advance notice may be implemented if the Commission does not object to the advance notice within 60 days of the later of (i) the date that the advance notice was filed with the Commission or (ii) the date that any additional information requested by the Commission is received. OCC shall not implement the advance notice if the Commission has any objection to the advance notice.

The Commission may extend the period for review by an additional 60 days if the advance notice raises novel or complex issues, subject to the Commission providing OCC with prompt written notice of the extension. An advance notice may be implemented in less than 60

days from the date the advance notice is filed, or the date further information requested by the Commission is received, if the Commission notifies OCC in writing that it does not object to the advance notice and authorizes OCC to implement the advance notice on an earlier date, subject to any conditions imposed by the Commission.

The clearing agency shall post notice on its website of proposed changes that are implemented.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/sro.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-OCC-2014-801 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 SR-OCC-2014-801. 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 of submission. 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 advance notice that are filed with the Commission, and all written communications relating to the advance notice 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 Section, 100 F Street, N.E., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of OCC and on OCC's website at http://www.theocc.com/components/docs/legal/rules_and_bylaws/sr_occ_14_801.pdf.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-OCC-2014-801 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

V. Commission's Findings and Notice of No Objection

Section 806(e)(1)(G) of the Clearing Supervision Act provides that a designated financial market utility may implement a change if it has not received an objection from the Commission within 60 days of the later of (i) the date that the Commission receives notice of the proposed change or (ii) the date the Commission receives any further information it requests for consideration of the notice. A designated financial market utility may implement a proposed change in less than 60 days from the date of receipt of the notice of the change by the Commission, or the date the Commission receives any further information it requested, if the Commission notifies the designated financial market utility in writing that it does not object to the proposed change and authorizes the designated financial market utility to implement the proposed change on an earlier date, subject to any conditions imposed by the Commission.[8]

---

[8] 12 U.S.C. 5465(e)(1)(I).

In its filing with the Commission, OCC requested that the Commission notify OCC that it has no objection to the change no later than February 14, 2014, which is one week before the February 21, 2014 termination date of the Existing Facility. OCC requested Commission action by this date, which is fewer than 60 days after OCC filed this advance notice, to ensure that there is no period of time during which OCC operates without access to additional liquidity for working capital needs and general corporate purposes, and to make certain that OCC remains in compliance with the liquidity requirements of CFTC regulation Section 39.11(e)(2)[9] at all times.

The Commission does not object to the changes described in the advance notice. The Commission agrees that the Extended Facility will afford OCC continued access to additional liquidity that should help OCC meet its CFTC requirement for working capital. Moreover, the Commission believes that access to the Extended Facility affords OCC needed flexibility in meeting its daily needs for operating capital. The Commission further believes that the Extended Facility represents an important safeguard against potential disruptions to OCC's ability to provide clearance and settlement services, and thereby enhances OCC's safety and soundness.[10] Improving OCC's resilience furthers the objectives of the Clearing Supervision Act,[11] and is consistent with the regulations adopted by the Commission thereunder.[12]

---

9 17 CFR 39.11(e)(2).

10 *See* 12 U.S.C. 5464(b) (noting that the objectives of the Clearing Supervision Act include a desire to "promote the safety and soundness" of clearing agencies).

11 *Id.*

12 17 CFR 240.17Ad-22(d)(4) (requiring, pursuant to the Clearing Supervision Act, that clearing agencies (i) develop procedures to minimize "sources of operational risk," (ii) implement systems that are "reliable" and "resilient," and (iii) have "business continuity plans that allow for . . . fulfillment of [the agency's] obligations," among other things).

VI. Conclusion

Pursuant to Section 806(e)(1)(I) of the Clearing Supervision Act,[13] the Commission does NOT OBJECT to the proposed change, and hereby AUTHORIZES OCC to implement the Change (SR-OCC-2014-801) as of the date of this Order.

By the Commission.

Kevin M. O'Neill

Kevin M. O'Neill
Deputy Secretary

---

13 12 U.S.C. 5465(e)(1)(I).

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 71548 / February 12, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15752

In the Matter of **DAVID L. ROTHMAN,** **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 David L. Rothman ("Respondent").

II.

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

III.

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

1. Rothman was a registered representative, Vice President and minority owner of Rothman Securities, Inc. ("RSI"), a broker dealer registered with the Commission. Rothman obtained his Financial Industry Regulatory Authority Series 7, 24, 51 and 63 licenses between 1985 and 2003. Rothman, age 50, is a resident of Richboro, Pennsylvania.

2. On January 27, 2014, a final judgment ("Final Judgment") was entered by consent against Rothman in the civil action entitled Securities and Exchange Commission v. David L. Rothman, Civil Action Number 2:12-cv-05412-BMS, in the United States District Court for the Eastern District of Pennsylvania. The Final Judgment permanently enjoins Rothman 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, orders him to pay disgorgement of $505,431, and provides that the disgorgement will be deemed satisfied upon the entry of an order requiring restitution in an amount equal to or greater than $505,431 in the related criminal matter United States v. David L. Rothman, Case Number 2:12-cr-00513-BMS, in the United States District Court for the Eastern District of Pennsylvania (the "Criminal Action").

3. The Commission's complaint alleged that from 2006 to 2011, while associated with RSI, Rothman issued false account statements to certain elderly and unsophisticated investors that materially overstated the value of their investment accounts. When the investors discovered that Rothman had misrepresented the value of their investments, Rothman engaged in a scheme to conceal his fraudulent conduct by agreeing to pay those investors the investment returns he reported on the false account statements. When Rothman could no longer afford to make those payments, he misappropriated funds from another elderly and unsophisticated investor and from two accounts for which he served as trustee. Rothman used a substantial portion of the misappropriated funds for his personal benefit.

4. On March 26, 2013, Rothman pled guilty to one count of wire fraud in violation of Title 18 United States Code, Section 1343 and one count of money laundering in violation of Title 18 United States Code, Section 1957 in the Criminal Action.

5. The charges in the criminal indictment filed against Rothman in the Criminal Action are based largely on the same conduct alleged in the Commission's Complaint.

IV.

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

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

Kevin M. O'Neill

By: Kevin M. O'Neill
Deputy Secretary

Commissioner Gallagher not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 71547 / February 12, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15751

In the Matter of **Matthew Scott Menies,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 15(b) OF THE SECURITIES EXCHANGE ACT OF 1934, AND NOTICE OF HEARING**

I.

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

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

1. From April 2001 to March 2008, Menies was a registered representative associated with Joseph Stevens & Co., Inc., which at the time of his association was a broker-dealer registered with the Commission. Joseph Stevens & Co. ceased to be registered with the Commission as of August 2008. Menies, age 40, is a resident of New York.

B. RESPONDENT'S CRIMINAL CONVICTION

2. On August 2, 2011, before the New York Supreme Court in People v. Matthew Menies, Case No. 02394-2009, Menies pleaded guilty to three felony counts of securities fraud in violation of New York General Business Law § 352-c(5), one felony count of grand larceny in the third degree in violation of New York Penal Law § 155.35, and two felony counts of criminal possession of stolen property in the third degree in violation of New York Penal Law § 165.50. On November 4, 2011, Menies was sentenced in that proceeding to five years of probation and ordered to pay $115,718 in restitution.

3. The counts of securities fraud to which Menies pleaded guilty alleged, among other things, that between January 2003 and June 2005, Menies engaged in a scheme at Joseph Stevens & Co. with the intent to defraud at least ten persons by false and fraudulent pretenses, representations, and promises and so obtained property from at least one such person while engaged in inducing and promoting the issuance, distribution, exchange, sale, negotiation, and purchase of securities. The count of grand larceny to which Menies pleaded guilty alleged, among other things, that between March 2003 and May 2005, Menies stole money in excess of $3,000 from an individual.

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 15(b)(6) 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 twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

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

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

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

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding

will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Elizabeth M. Murphy
Secretary

By: Jill M. Peterson
Assistant Secretary

SECURITIES AND EXCHANGE COMMISSION
[Release No. 34-71550/February 12, 2014]

Order Making Fiscal Year 2014 Annual Adjustments to Transaction Fee Rates

I. Background

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

Section 31 of the Exchange Act requires the Commission to annually adjust the fee rates applicable under Sections 31(b) and (c) to a uniform adjusted rate.[4] Specifically, the Commission must adjust the fee rates to a uniform adjusted rate that is reasonably likely to produce aggregate fee collections (including assessments on security futures transactions) equal to the regular appropriation to the Commission for the applicable fiscal year.[5]

The Commission is required to publish notice of the new fee rates under Section 31 not later than 30 days after the date on which an Act making a regular appropriation for the applicable fiscal

---

1 15 U.S.C. 78ee.

2 15 U.S.C. 78ee(b).

3 15 U.S.C. 78ee(c).

4 In some circumstances, the SEC also must make a mid-year adjustment to the fee rates applicable under Sections 31(b) and (c).

5 15 U.S.C. § 78ee(j)(1) (the Commission must adjust the rates under Sections 31(b) and (c) to a "uniform adjusted rate that, when applied to the baseline estimate of the aggregate dollar amount of sales for such fiscal year, is reasonably likely to produce aggregate fee collections under [Section 31] (including assessments collected under [Section 31(d)]) that are equal to the regular appropriation to the Commission by Congress for such fiscal year.").

year is enacted.[6] On January 17, 2014, the President signed the Consolidated Appropriations Act of 2014, providing $1,350,000,000 in funds to the SEC for fiscal year 2014.

II. Fiscal Year 2014 Annual Adjustment to the Fee Rate

The new fee rate is determined by (1) subtracting the sum of fees estimated to be collected prior to the effective date of the new fee rate[7] and estimated assessments on security futures transactions to be collected under Section 31(d) of the Exchange Act for all of fiscal year 2014[8] from an amount equal to the regular appropriation to the Commission for fiscal year 2014, and (2) dividing the difference by the estimated aggregate dollar amount of sales for the remainder of the fiscal year following the effective date of the new fee rate.

The regular appropriation to the Commission for fiscal year 2014 is $1,350,000,000. The Commission estimates that it will collect $513,805,098 in fees for the period prior to the effective date of the new fee rate and $58,854 in assessments on round turn transactions in security futures products during all of fiscal year 2014.[9] Using a methodology for estimating the aggregate dollar amount of sales for the remainder of fiscal year 2014 (developed after consultation with the CBO and OMB), the

---

6 15 U.S.C. § 78ee(g).

7 The sum of fees to be collected prior to the effective date of the new fee rate is determined by applying the current fee rate to the dollar amount of covered sales prior to the effective date of the new fee rate. The exchanges and FINRA have provided data on the dollar amount of covered sales through December 31, 2013. To calculate the dollar amount of covered sales from that date to the effective date of the new fee rate, the Division is using the same methodology it developed in consultation with the Congressional Budget Office ("CBO") and the Office of Management and Budget ("OMB") to estimate the dollar amount of covered sales in prior fiscal years. An explanation of the methodology appears in Appendix A.

8 The Division is using the same methodology it has used previously to estimate assessments on security futures transactions to be collected in fiscal year 2014. An explanation of the methodology appears in Appendix A.

9 The estimate of fees to be collected prior to the effective date of the new fee rate is determined by applying the current fee rate to the dollar amount of covered sales prior to the effective date of the new fee rate.

Commission estimates that the aggregate dollar amount of covered sales for the remainder of fiscal year 2014 to be $37,881,618,779,245.

As described above, the uniform adjusted rate is computed by dividing the residual fees to be collected of $836,136,049 by the estimate of the aggregate dollar amount of covered sales for the remainder of fiscal year 2014 of $37,881,618,779,245. This results in a uniform adjusted rate for fiscal year 2014 of $22.10 per million.[10]

III. Effective Date of the Uniform Adjusted Rate

Under Section 31(j)(4)(A) of the Exchange Act, the fiscal year 2014 annual adjustments to the fee rates applicable under Sections 31(b) and (c) of the Exchange Act shall take effect on the later of October 1, 2013, or 60 days after the date on which a regular appropriation to the Commission for fiscal year 2014 is enacted.[11] The regular appropriation to the Commission for fiscal year 2014 was enacted on January 17, 2014, and accordingly, the new fee rates applicable under Sections 31(b) and (c) of the Exchange Act will take effect on March 18, 2014.

---

[10] Appendix A shows the purely arithmetic process of calculating the fiscal year 2014 annual adjustment. The appendix also includes the data used by the Commission in making this adjustment.

[11] 15 U.S.C. § 78ee(j)(4)(A).

IV. Conclusion

Accordingly, pursuant to Section 31 of the Exchange Act,

IT IS HEREBY ORDERED that the fee rates applicable under Sections 31(b) and (c) of the Exchange Act shall be $22.10 per $1,000,000 effective on March 18, 2014.

By the Commission.

Kevin M. O'Neill

Kevin M. O'Neill
Deputy Secretary

APPENDIX A

This appendix provides the formula for determining the annual adjustment to the fee rates applicable under Sections 31(b) and (c) of the Exchange Act for fiscal year 2014. Section 31 of the Exchange Act requires the fee rates to be adjusted so that it is reasonably likely that the Commission will collect aggregate fees equal to its regular appropriation for fiscal year 2014.

To make the adjustment, the Commission must project the aggregate dollar amount of covered sales of securities on the securities exchanges and certain over-the-counter markets over the course of the year. The fee rate equals the ratio of the Commission's regular appropriation for fiscal year 2014 (less the sum of fees to be collected during fiscal year 2014 prior to the effective date of the new fee rate and aggregate assessments on security futures transactions during all of fiscal year 2014) to the estimated aggregate dollar amount of covered sales for the remainder of the fiscal year following the effective date of the new fee rate.

For 2014, the Commission has estimated the aggregate dollar amount of covered sales by projecting forward the trend established in the previous decade. More specifically, the dollar amount of covered sales was forecasted for months subsequent to December 2013, the last month for which the Commission has data on the dollar volume of covered sales.[12]

The following sections describe this process in detail.

---

12 To determine the availability of data, the Commission compares the date of the appropriation with the date the transaction data are due from the exchanges (10 business days after the end of the month). If the business day following the date of the appropriation is equal to or subsequent to the date the data are due from the exchanges, the Commission uses these data. The appropriation was signed on January 17, 2014. The first business day after this date was January 21, 2014. Data for December were due from the exchanges on January 15. So the Commission used December 2013 and earlier data to forecast volume for January 2014 and later months.

A. Baseline estimate of the aggregate dollar amount of covered sales for fiscal year 2014.

First, calculate the average daily dollar amount of covered sales (ADS) for each month in the sample (December 2003 – December 2013). The monthly total dollar amount of covered sales (exchange plus certain over-the-counter markets) is presented in column C of Table A.

Next, calculate the change in the natural logarithm of ADS from month to month. The average monthly percentage growth of ADS over the entire sample is 0.0082 and the standard deviation is 0.122. Assuming the monthly percentage change in ADS follows a random walk, calculating the expected monthly percentage growth rate for the full sample is straightforward. The expected monthly percentage growth rate of ADS is 1.57 %.

Now, use the expected monthly percentage growth rate to forecast total dollar volume. For example, one can use the ADS for December 2013 ($250,727,781,285) to forecast ADS for January 2014 ($254,668,736,673 = $250,727,781,285 x 1.0157).[13] Multiply by the number of trading days in January 2014 (21) to obtain a forecast of the total dollar volume for the month ($5,348,043,470,127). Repeat the method to generate forecasts for subsequent months.

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

1. Divide each month's total dollar volume (column C) by the number of trading days in that month (column B) to obtain the average daily dollar volume (ADS, column D).

2. For each month t, calculate the change in ADS from the previous month as

   $\Delta_t = \log (ADS_t / ADS_{t-1})$, where log (x) denotes the natural logarithm of x.

3. Calculate the mean and standard deviation of the series $\{\Delta_1, \Delta_2, \ldots, \Delta_{120}\}$. These are given by $\mu =$ 0.0082 and $\sigma = 0.122$, respectively.

[13] The value 1.0157 has been rounded. All computations are done with the unrounded value.

4. Assume that the natural logarithm of ADS follows a random walk, so that Δ_s and Δ_t are statistically independent for any two months s and t.

5. Under the assumption that Δ_t is normally distributed, the expected value of ADS_t / ADS_{t-1} is given by $\exp(\mu + \sigma^2/2)$, or on average $ADS_t = 1.0157 \times ADS_{t-1}$.

6. For January 2014, this gives a forecast ADS of 1.0157 × $250,727,781,285 = $254,668,736,673. Multiply this figure by the 21 trading days in January 2014 to obtain a total dollar volume forecast of $5,348,043,470,127.

7. For February 2014, multiply the January 2014 ADS forecast by 1.0157 to obtain a forecast ADS of $258,671,636,250. Multiply this figure by the 19 trading days in February 2014 to obtain a total dollar volume forecast of $4,914,761,088,752.

8. Repeat this procedure for subsequent months.

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

1. Use Table A to estimate fees collected for the period 10/1/13 through 3/17/14. The projected aggregate dollar amount of covered sales for this period is $29,529,028,597,158. Actual and projected fee collections at the current fee rate of 0.0000174 are $513,805,098.

2. Estimate the amount of assessments on security futures products collected from 10/1/13 through 9/30/14 to be $58,854 by projecting a 1.57% monthly increase from a base of $4,940 in December 2013.

3. Subtract the amounts $513,805,098 and $58,854 from the target offsetting collection amount set by Congress of $1,350,000,000 leaving $836,136,049 to be collected on dollar volume for the period 3/18/14 through 9/30/14.

4. Use Table A to estimate dollar volume for the period 3/18/14 through 9/30/14. The estimate is $37,881,618,779,245. Finally, compute the fee rate required to produce the additional $836,136,049 in revenue. This rate is $836,136,049 divided by $37,881,618,779,245 or 0.00002207234.

5. Round the result to the seventh decimal point, yielding a rate of .0000221 (or $22.10 per million).

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

Fee rate calculation.

a. Baseline estimate of the aggregate dollar amount of sales, 10/01/2013 to 02/28/2014 ($Millions)	26,638,917
b. Baseline estimate of the aggregate dollar amount of sales, 03/01/2014 to 03/17/2014 ($Millions)	2,890,112
c. Baseline estimate of the aggregate dollar amount of sales, 03/18/2014 to 03/31/2014 ($Millions)	2,627,375
d. Baseline estimate of the aggregate dollar amount of sales, 04/01/2014 to 09/30/2014 ($Millions)	35,254,244
e. Estimated collections in assessments on security futures products in fiscal year 2014 ($Millions)	0.059
f. Implied fee rate (($1,350,000,000 - $17.40*(a+b) - e) / (c+d)	$22.10

Data

(A)	(B)	(C)	(D)	(E)	(F)	(G)
Month	# of Trading Days in Month	Total Dollar Amount of Sales	Average Daily Dollar Amount of Sales (ADS)	Change in Natural Logarithm of ADS	Forecast ADS	Forecast Total Dollar Amount of Sales
Dec-03	22	2,066,530,151,383	93,933,188,699	-		
Jan-04	20	2,390,942,905,678	119,547,145,284	0.241		
Feb-04	19	2,177,765,594,701	114,619,241,826	-0.042		
Mar-04	23	2,613,808,754,550	113,643,858,893	-0.009		
Apr-04	21	2,418,663,760,191	115,174,464,771	0.013		
May-04	20	2,259,243,404,459	112,962,170,223	-0.019		
Jun-04	21	2,112,826,072,876	100,610,765,375	-0.116		
Jul-04	21	2,209,808,376,565	105,228,970,313	0.045		
Aug-04	22	2,033,343,354,640	92,424,697,938	-0.130		
Sep-04	21	1,993,803,487,749	94,943,023,226	0.027		
Oct-04	21	2,414,599,088,108	114,980,908,958	0.191		
Nov-04	21	2,577,513,374,160	122,738,732,103	0.065		
ec-04	22	2,673,532,981,863	121,524,226,448	-0.010		
an-05	20	2,581,847,200,448	129,092,360,022	0.060		

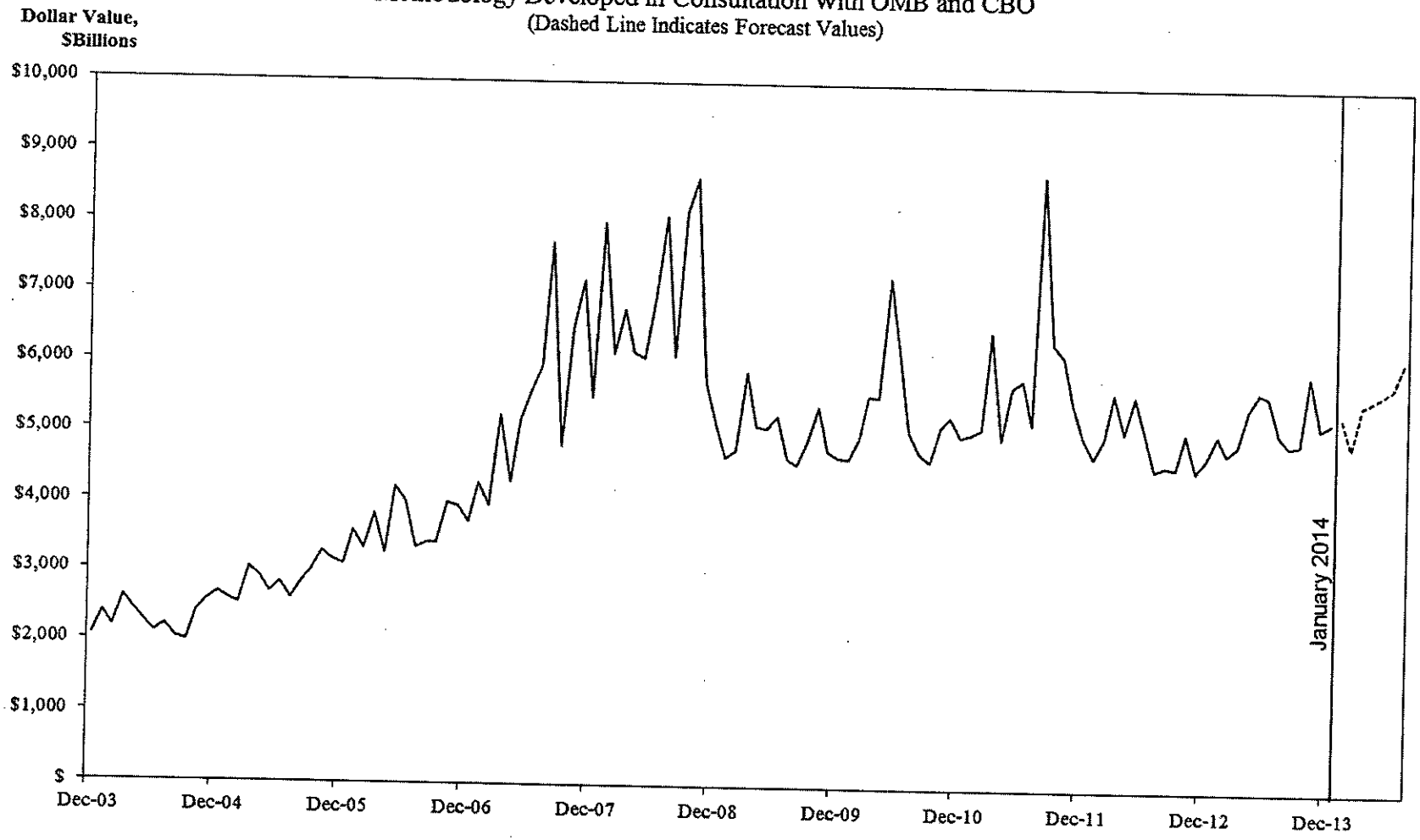
(A)	(B)	(C)	(D)	(E)	(F)	(G)
Month	# of Trading Days in Month	Total Dollar Amount of Sales	Average Daily Dollar Amount of Sales (ADS)	Change in Natural Logarithm of ADS	Forecast ADS	Forecast Total Dollar Amount of Sales
Feb-05	19	2,532,202,408,589	133,273,810,978	0.032		
Mar-05	22	3,030,474,897,226	137,748,858,965	0.033		
Apr-05	21	2,906,386,944,434	138,399,378,306	0.005		
May-05	21	2,697,414,503,460	128,448,309,689	-0.075		
Jun-05	22	2,825,962,273,624	128,452,830,619	0.000		
Jul-05	20	2,604,021,263,875	130,201,063,194	0.014		
Aug-05	23	2,846,115,585,965	123,744,155,912	-0.051		
Sep-05	21	3,009,640,645,370	143,316,221,208	0.147		
Oct-05	21	3,279,847,331,057	156,183,206,241	0.086		
Nov-05	21	3,163,453,821,548	150,640,658,169	-0.036		
Dec-05	21	3,090,212,715,561	147,152,986,455	-0.023		
Jan-06	20	3,573,372,724,766	178,668,636,238	0.194		
Feb-06	19	3,314,259,849,456	174,434,728,919	-0.024		
Mar-06	23	3,807,974,821,564	165,564,122,677	-0.052		
Apr-06	19	3,257,478,138,851	171,446,217,834	0.035		
May-06	22	4,206,447,844,451	191,202,174,748	0.109		
Jun-06	22	3,995,113,357,316	181,596,061,696	-0.052		
Jul-06	20	3,339,658,009,357	166,982,900,468	-0.084		
Aug-06	23	3,410,187,280,845	148,269,012,211	-0.119		
Sep-06	20	3,407,409,863,673	170,370,493,184	0.139		
Oct-06	22	3,980,070,216,912	180,912,282,587	0.060		
Nov-06	21	3,933,474,986,969	187,308,332,713	0.035		
Dec-06	20	3,715,146,848,695	185,757,342,435	-0.008		
Jan-07	20	4,263,986,570,973	213,199,328,549	0.138		
Feb-07	19	3,946,799,860,532	207,726,308,449	-0.026		
Mar-07	22	5,245,051,744,090	238,411,442,913	0.138		
Apr-07	20	4,274,665,072,437	213,733,253,622	-0.109		
May-07	22	5,172,568,357,522	235,116,743,524	0.095		
Jun-07	21	5,586,337,010,802	266,016,048,133	0.123		
Jul-07	21	5,938,330,480,139	282,777,641,911	0.061		
Aug-07	23	7,713,644,229,032	335,375,836,045	0.171		
Sep-07	19	4,805,676,596,099	252,930,347,163	-0.282		
Oct-07	23	6,499,651,716,225	282,593,552,879	0.111		
Nov-07	21	7,176,290,763,989	341,728,131,619	0.190		
Dec-07	20	5,512,903,594,564	275,645,179,728	-0.215		
Jan-08	21	7,997,242,071,529	380,821,051,025	0.323		
Feb-08	20	6,139,080,448,887	306,954,022,444	-0.216		
Mar-08	20	6,767,852,332,381	338,392,616,619	0.098		
Apr-08	22	6,150,017,772,735	279,546,262,397	-0.191		
May-08	21	6,080,169,766,807	289,531,893,657	0.035		
Jun-08	21	6,962,199,302,412	331,533,300,115	0.135		
Jul-08	22	8,104,256,787,805	368,375,308,537	0.105		
Aug-08	21	6,106,057,711,009	290,764,652,905	-0.237		
Sep-08	21	8,156,991,919,103	388,428,186,624	0.290		
Oct-08	23	8,644,538,213,244	375,849,487,532	-0.033		
Nov-08	19	5,727,998,341,833	301,473,596,939	-0.221		
Dec-08	22	5,176,041,317,640	235,274,605,347	-0.248		
Jan-09	20	4,670,249,433,806	233,512,471,690	-0.008		
Feb-09	19	4,771,470,184,048	251,130,009,687	0.073		

(A)	(B)	(C)	(D)	(E)	(F)	(G)
Month	# of Trading Days in Month	Total Dollar Amount of Sales	Average Daily Dollar Amount of Sales (ADS)	Change in Natural Logarithm of ADS	Forecast ADS	Forecast Total Dollar Amount of Sales
Mar-09	22	5,885,594,284,780	267,527,012,945	0.063		
Apr-09	21	5,123,665,205,517	243,984,057,406	-0.092		
May-09	20	5,086,717,129,965	254,335,856,498	0.042		
Jun-09	22	5,271,742,782,609	239,624,671,937	-0.060		
Jul-09	22	4,659,599,245,583	211,799,965,708	-0.123		
Aug-09	21	4,582,102,295,783	218,195,347,418	0.030		
Sep-09	21	4,929,155,364,888	234,721,684,042	0.073		
Oct-09	22	5,410,025,301,030	245,910,240,956	0.047		
Nov-09	20	4,770,928,103,032	238,546,405,152	-0.030		
Dec-09	22	4,688,555,303,171	213,116,150,144	-0.113		
Jan-10	19	4,661,793,708,648	245,357,563,613	0.141		
Feb-10	19	4,969,848,578,023	261,570,977,791	0.064		
Mar-10	23	5,563,529,823,621	241,892,601,027	-0.078		
Apr-10	21	5,546,445,874,917	264,116,470,234	0.088		
May-10	20	7,260,430,376,294	363,021,518,815	0.318		
Jun-10	22	6,124,776,349,285	278,398,924,967	-0.265		
Jul-10	21	5,058,242,097,334	240,868,671,302	-0.145		
Aug-10	22	4,765,828,263,463	216,628,557,430	-0.106		
Sep-10	21	4,640,722,344,586	220,986,778,314	0.020		
Oct-10	21	5,138,411,712,272	244,686,272,013	0.102		
Nov-10	21	5,279,700,881,901	251,414,327,710	0.027		
Dec-10	22	4,998,574,681,208	227,207,940,055	-0.101		
an-11	20	5,043,391,121,345	252,169,556,067	0.104		
eb-11	19	5,114,631,590,581	269,191,136,346	0.065		
Mar-11	23	6,499,355,385,307	282,580,668,926	0.049		
Apr-11	20	4,975,954,868,765	248,797,743,438	-0.127		
May-11	21	5,717,905,621,053	272,281,220,050	0.090		
Jun-11	22	5,820,079,494,414	264,549,067,928	-0.029		
Jul-11	20	5,189,681,899,635	259,484,094,982	-0.019		
Aug-11	23	8,720,566,877,109	379,155,081,613	0.379		
Sep-11	21	6,343,578,147,811	302,075,149,896	-0.227		
Oct-11	21	6,163,272,963,688	293,489,188,747	-0.029		
Nov-11	21	5,493,906,473,584	261,614,593,980	-0.115		
Dec-11	21	5,017,867,255,600	238,946,059,790	-0.091		
Jan-12	20	4,726,522,206,487	236,326,110,324	-0.011		
Feb-12	20	5,011,862,514,132	250,593,125,707	0.059		
Mar-12	22	5,638,847,967,025	256,311,271,228	0.023		
Apr-12	20	5,084,239,396,560	254,211,969,828	-0.008		
May-12	22	5,611,638,053,374	255,074,456,972	0.003		
Jun-12	21	5,121,896,896,362	243,899,852,208	-0.045		
Jul-12	21	4,567,519,314,374	217,500,919,732	-0.115		
Aug-12	23	4,621,597,884,730	200,939,038,467	-0.079		
Sep-12	19	4,598,499,962,682	242,026,313,825	0.186		
Oct-12	21	5,095,175,588,310	242,627,408,967	0.002		
Nov-12	21	4,547,882,974,292	216,565,855,919	-0.114		
Dec-12	20	4,744,922,754,360	237,246,137,718	0.091		
n-13	21	5,079,603,817,496	241,885,896,071	0.019		
eb-13	19	4,800,663,527,089	252,666,501,426	0.044		
lar-13	20	4,917,701,839,870	245,885,091,993	-0.027		

(A)	(B)	(C)	(D)	(E)	(F)	(G)
Month	# of Trading Days in Month	Total Dollar Amount of Sales	Average Daily Dollar Amount of Sales (ADS)	Change in Natural Logarithm of ADS	Forecast ADS	Forecast Total Dollar Amount of Sales
Apr-13	22	5,451,358,637,079	247,789,028,958	0.008		
May-13	22	5,681,788,831,869	258,263,128,721	0.041		
Jun-13	20	5,623,545,462,226	281,177,273,111	0.085		
Jul-13	22	5,083,861,509,754	231,084,614,080	-0.196		
Aug-13	22	4,925,611,193,095	223,891,417,868	-0.032		
Sep-13	20	4,959,197,626,713	247,959,881,336	0.102		
Oct-13	23	5,928,804,028,970	257,774,088,216	0.039		
Nov-13	20	5,182,024,612,049	259,101,230,602	0.005		
Dec-13	21	5,265,283,406,995	250,727,781,285	-0.033		
Jan-14	21				254,668,736,673	5,348,043,470,127
Feb-14	19				258,671,636,250	4,914,761,088,752
Mar-14	21				262,737,453,660	5,517,486,526,869
Apr-14	21				266,867,177,850	5,604,210,734,855
May-14	21				271,061,813,310	5,692,298,079,518
Jun-14	21				275,322,380,320	5,781,769,986,729
Jul-14	22				279,649,915,197	6,152,298,134,326
Aug-14	21				284,045,470,544	5,964,954,881,430
Sep-14	21				288,510,115,513	6,058,712,425,783

Figure A.

Aggregate Dollar Amount of Sales Subject to Exchange Act Sections 31(b) and 31(c)[1]
Methodology Developed in Consultation With OMB and CBO
(Dashed Line Indicates Forecast Values)



[1]Forecasted line is not smooth because the number of trading days varies by month.

Commissioner Gallagher not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 3778 / February 12, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15749

In the Matter of

Jerry A. Smith,

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 Jerry A. Smith ("Smith" 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. From December 2004 to May 2008, Smith was an employee of OneAmerica Securities, Inc. At the time of his employment, OneAmerica Securities was an investment adviser registered with the Commission. Smith, age 51, is a resident of Indiana.

2. On June 12, 2012, Smith pleaded guilty to one count of Conspiracy to Commit Wire and Mail Fraud in violation of 18 U.S.C. § 1349, one count of Obstruction of Justice in violation of 18 U.S.C. § 1519, and one count of Tax Evasion in violation of 26 U.S.C. § 7201 before the United States District Court for the Southern District of Ohio, in United States v. Jerry A. Smith, No. 1:12-cr-00058 (HJW). On March 20, 2013, Smith was sentenced in that proceeding to a prison term of 65 months followed by three years of supervised release and ordered to make restitution in the amount of $5,406,950.65.

3. The conspiracy count of the criminal information to which Smith pleaded guilty alleged, among other things, that from 2003 to 2011, Smith did unlawfully, knowingly, and willfully conspire with another defendant to commit, among other crimes, mail fraud, 18 U.S.C. § 1341, and wire fraud, 18 U.S.C. § 1343, in connection with a scheme and artifice to defraud investors, and to obtain money from investors by means of false and fraudulent pretenses, representations, and promises, using the U.S. mails and interstate wire communications to execute and attempt to execute the scheme to defraud.

IV.

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

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

> barred from association with any investment adviser, broker, dealer, 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. 9548 / February 12, 2014

SECURITIES EXCHANGE ACT OF 1934
Release No. 71546 / February 12, 2014

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3535 / February 12, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15750

In the Matter of

Apple REIT Six, Inc.; Apple REIT Seven, Inc.; Apple REIT Eight, Inc.; Apple REIT Nine, Inc.; Apple Six Advisors, Inc.; Apple Seven Advisors, Inc.; Apple Eight Advisors, Inc.; Apple Nine Advisors, Inc.; Glade M. Knight; and Bryan F. Peery, CPA,

Respondents.

ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933 AND SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, IMPOSING CIVIL PENALTIES AND A CEASE-AND-DESIST ORDER

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 ("Securities Act") and Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), against Apple REIT Six, Inc. ("AR6"), Apple REIT Seven, Inc. ("AR7"), Apple REIT Eight, Inc. ("AR8"), Apple REIT Nine, Inc. ("AR9"), Apple Six Advisors, Inc. ("A6A"), Apple Seven Advisors, Inc. ("A7A"), Apple Eight Advisors, Inc. ("A8A"), Apple Nine Advisors, Inc. ("A9A"), Glade M. Knight, and Bryan F. Peery ("Respondents").

II.

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

III.

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

SUMMARY

1. This matter involves disclosure and internal controls failures relating to valuation, related party transactions, and executive compensation by four non-traded real estate investment trusts ("REITs") – AR6, AR7, AR8, AR9 (collectively the "Apple REITs") – their respective advisers, their Chief Executive Officer ("CEO") and Chairman of the Boards of Directors, Glade M. Knight ("Knight"), and their Chief Financial Officer ("CFO"), Bryan F. Peery ("Peery").

2. AR6, AR7, and AR8 made material misrepresentations and omissions concerning the valuation of their units in their Form S-3 dividend reinvestment plan ("DRIP") registration statements and in certain Forms 10-K. The Apple REITs each initially sold units in blind pool offerings at, according to public disclosures, an arbitrarily established offering price of $11.00 per unit. After the close of the initial offerings, each of the Apple REITs instituted a DRIP program wherein existing unitholders could reinvest their distributions in lieu of receiving cash. Internal Revenue Service ("IRS") rules require that REITs sell their DRIP units at a reasonably accurate fair market value so that unitholders reinvesting dividends receive equivalent value to the cash dividend. In an effort to comply with the IRS framework, the Apple REITs, in language drafted by outside counsel, represented to unitholders in the DRIP registration statements that the DRIP unit price "[would] be based on the fair market value of [the REITs'] units as of the reinvestment date as determined in good faith by [their] board[s] of directors from time to time." Although the Forms S-3 disclosed that "the per unit price for the plan will be determined at all times based on the most recent price at which an unrelated person has purchased our units," the Forms S-3 failed to disclose that the $11.00 unit price was not based on an appraisal of the Apple REITs' assets or other valuation methodology. The Forms S-3 also failed to disclose that, in contrast to an actively traded market, the price last paid for a DRIP share by an unrelated person in the context of a non-traded REIT did not reflect a meaningful estimate of the underlying or realizable value of the units. Relying in part on DRIP sales and redemptions at $11.00, the Apple REITs also represented in

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

Forms 10-K until 2011 that "[t]he per share estimated market value of common stock is deemed to be the offering price of the shares, which currently is $11.00 per share" without disclosing that $11.00 did not reflect a meaningful estimate of the underlying value of the units.

3. Additionally, AR6, AR7, and AR8 failed to devise and maintain sufficient disclosure controls and procedures to meaningfully evaluate whether changes in market conditions or other factors required changes to their valuation disclosures. Consequently, despite receiving internal and third-party analyses indicating a value below $11.00 per unit and despite significant decreases in operating performance, AR6, AR7, and AR8 collectively sold more than 25 million DRIP units following the 2008 global financial crisis while maintaining that the arbitrarily established initial offering price of $11.00 constituted the "fair market value" of their DRIP units in their Forms S-3 and the "estimated market value" of their units in their Forms 10-K.

4. The Apple REITs also failed to disclose numerous related party transactions involving short-term transfers between REITs to meet cash needs and commercial loans personally guaranteed by Knight between 2008 and 2011. As part of their business model, the Apple REITs historically have maintained little cash on hand, relying on cash flows from operations and, as necessary, credit facilities. However, rather than obtaining additional commercial credit or requesting funds from the third-party management companies contained in the operating bank accounts of hotels, Apple REIT management engaged in approximately 25 short-term cash transfers between the Apple REITs – which at all times were separate companies with separate boards of directors and separate unitholders. The short-term cash transfers typically were repaid within a few days, ranged in amounts from $25,000 to $20 million, and were used to, among other things, fund acquisitions, distributions and redemptions, and to cover clearing checks and debt. Further, Knight personally guaranteed several short-term commercial loans to the Apple REITs, some of which were used to fund shareholder redemptions. Neither the short-term transfers nor the fact of Knight's personal guarantee was disclosed to unitholders.

5. The Apple REITs further failed to disclose significant compensation paid by the advisers and Knight to their executive officers between 2008 and 2010. Specifically, the Apple REIT advisers, which at all relevant times were private companies wholly owned by Knight, paid undisclosed supplemental compensation out of funds belonging to the advisers to certain executive officers for work they performed for the REITs. Knight also sold the economic benefits associated with Series B convertible shares issued to Knight to certain executive officers, including Peery, to supplement their compensation, which was not disclosed to unitholders. The undisclosed related party transactions and undisclosed supplemental compensation contradicted affirmative disclosures to unitholders – including representations that the independent directors would affirmatively approve transactions between the REITs and their affiliates – and demonstrated insufficient internal controls.

RESPONDENTS

6. **Apple REIT Six, Inc. ("AR6")**, at all times relevant herein, was a non-traded REIT organized under the laws of Virginia with a class of securities registered under Section 12(g) of the Exchange Act and was subject to the reporting requirements of Section 13(a) of the Exchange Act. AR6 owned 66 hotels operating in 18 states as of December 31, 2012. AR6 raised

approximately $1 billion between January 2004 and March 2006, and had approximately 19,500 beneficial unitholders as of February 15, 2013. AR6 instituted a DRIP by filing a Form S-3 registration statement on February 10, 2006, which it amended and restated on May 14, 2009. As of December 31, 2012, AR6 had sold a total of approximately 18.4 million units representing $202.1 million in proceeds pursuant to these DRIP offerings. AR6 merged with an unrelated entity on May 14, 2013. In connection with the merger, each AR6 share was exchanged for $9.20 in cash and one share of redeemable preferred stock of the unrelated entity with an initial liquidation preference of $1.90.

7. **Apple REIT Seven, Inc. ("AR7")**, is a non-traded REIT organized under the laws of Virginia with a class of securities registered under Section 12(g) of the Exchange Act and is subject to the reporting requirements of Section 13(a) of the Exchange Act. AR7 owned 51 hotels operating in 18 states as of December 31, 2012. AR7 raised approximately $1 billion between May 2005 and July 2007, and had approximately 19,800 beneficial unitholders as of February 28, 2013. AR7 instituted a DRIP by filing a Form S-3 registration statement on July 17, 2007, which it amended and restated on January 13, 2012. As of December 31, 2012, AR7 had sold approximately 11.3 million units representing approximately $124.5 million in proceeds pursuant to these DRIP offerings.

8. **Apple REIT Eight, Inc. ("AR8")**, is a non-traded REIT organized under the laws of Virginia with a class of securities registered under Section 12(g) of the Exchange Act and is subject to the reporting requirements of Section 13(a) of the Exchange Act. AR8 owned 51 hotels operating in 19 states as of December 31, 2012. AR8 raised approximately $1 billion between January 2007 and April 2008, and had approximately 19,700 beneficial unitholders of February 28, 2013. AR8 instituted a DRIP by filing a Form S-3 registration statement on April 23, 2008; it filed a post-effective amendment thereto on February 19, 2013. As of December 31, 2012, AR8 had sold approximately 9.1 million units representing approximately $99.9 million in proceeds pursuant to these DRIP offerings.

9. **Apple REIT Nine, Inc. ("AR9")**, is a non-traded REIT organized under the laws of Virginia with a class of securities registered under Section 12(g) of the Exchange Act and is subject to the reporting requirements of Section 13(a) of the Exchange Act. AR9 owned 89 hotels operating in 27 states as of December 31, 2012. AR9 raised approximately $2 billion between November 2007 and December 2010, and had approximately 38,100 beneficial unitholders as of February 28, 2013. AR9 instituted a DRIP by filing a Form S-3 registration statement on December 10, 2010; it filed a post-effective amendment thereto on February 19, 2013.

10. **Apple Six Advisors, Inc. ("A6A")**, a Virginia corporation wholly owned by Glade M. Knight was the adviser to AR6 at all times relevant herein. The advisory agreement required A6A to provide, *inter alia*, day-to-day management services to AR6 and provides for an annual asset management fee ranging from 0.1 to 0.25% of the amount raised in the offering.

11. **Apple Seven Advisors, Inc. ("A7A")**, a Virginia corporation wholly owned by Glade M. Knight, is the adviser to AR7. The advisory agreement requires A7A to provide, *inter alia*, day-to-day management services to AR7 and provides for an annual asset management fee ranging from 0.1 to 0.25% of the amount raised in the offering.

12. **Apple Eight Advisors, Inc. ("A8A")**, a Virginia corporation wholly owned by Glade M. Knight, is the adviser to AR8. The advisory agreement requires A8A to provide, *inter alia*, day-to-day management services to AR8 and provides for an annual asset management fee ranging from 0.1 to 0.25% of the amount raised in the offering.

13. **Apple Nine Advisors, Inc. ("A9A")**, a Virginia corporation wholly owned by Glade M. Knight, is the adviser to AR9. The advisory agreement requires A9A to provide, *inter alia*, day-to-day management services to AR9 and provides for an annual asset management fee ranging from 0.1 to 0.25% of the amount raised in the offering.

14. **Glade M. Knight ("Knight")**, age 69, of Midlothian, Virginia, was the founder, Chairman of the Board and Chief Executive Officer of AR6, and is the founder, Chairman of the Board and Chief Executive Officer of AR7, AR8, and AR9. Knight reviewed and signed the relevant Forms S-3, 10-Q, and 10-K, which incorporate by reference, in part, the proxy statements. Knight also certified pursuant to Exchange Act Rule 13a-14 the relevant Forms 10-Q and 10-K.[2]

15. **Bryan F. Peery ("Peery")**, age 49, of Mechanicsville, Virginia, served as Executive Vice President and Chief Financial Officer ("CFO") of AR6, and serves as the Executive Vice President and CFO of AR7, AR8, and AR9. Peery also was an officer of A6A, and is an officer of A7A, A8A, and A9A. Peery is a certified public accountant licensed in Virginia. Peery reviewed and signed the relevant Forms S-3, 10-Q, and 10-K, which incorporate by reference, in part, the proxy statements. Peery also certified pursuant to Exchange Act Rule 13a-14 the relevant Forms 10-Q and 10-K.

RELEVANT ENTITY

16. **Apple Fund Management, LLC ("AFM")**, a wholly owned subsidiary of AR6 during the relevant time period, was an entity utilized by the advisers, which have no employees, to provide the management services, including the executive officers, required by the advisory contracts to, *inter alia*, AR6, AR7, AR8, and AR9. Previously, AFM was a subsidiary of Apple Hospitality Five, Inc. ("AH5"). After AH5 merged with a third party in 2007, the board of directors transferred AFM to AR6.

FACTS

A. Background

17. The Apple REITs are non-traded REITs that, during the relevant period, primarily owned full service, limited service, and extended stay hotels. As REITs, they are not subject to federal corporate income taxation as long as they meet certain requirements such as the distribution of at least 90% of their taxable income annually to unitholders in dividends. The Apple REITs have a class of securities registered under Section 12(g) of the Exchange Act and are subject to the

[2] In 1976, the Commission settled an action, *SEC v. Goodman Securities Corp., et al.*, CA 76-0007-R (E.D. Va. 1976), involving Knight and others for alleged disclosure violations in connection with a real estate limited partnership offering. *See also In the Matter of Glade M. Knight, et al.*, Admin. Proc. File 35138, Release No. 13087 (Dec. 21, 1976).

reporting requirements of Section 13(a) of the Exchange Act, but their units are not publicly traded, and generally are considered illiquid. The Apple REITs represent to unitholders that, although there "can be no assurance that this event will occur," they "expect that within approximately seven years from the initial closing" they will execute a liquidity event such as causing the common shares to be listed on a national securities exchange or merging with a REIT or similar investment vehicle.

18. Each of the Apple REITs is a separate reporting company with separate unitholders. However, by virtue of the advisers' reliance on AFM, a wholly owned subsidiary of AR6, to provide employees and management services to the Apple REITs, the Apple REITs share common corporate management. Third-party management companies manage the day-to-day operations of the hotels under the supervision of the advisory companies.

19. The Apple REITs were sold through their exclusive selling agent, as best efforts, blind pool offerings at an offering price of $11.00 per share.[3] The Form S-11 registration statements represented that the "per-unit offering prices have been established arbitrarily ... and may not reflect the true value of the [u]nits; therefore, investors may be paying more for a [u]nit than the [u]nit is actually worth." Except for limited redemption programs, there is no public market for the Apple REITs.

20. Pursuant to redemption programs, unitholders of AR6, AR7, AR8, and AR9 who had held their shares for at least one year were permitted to request unit redemptions on a quarterly basis. Pursuant to SEC guidance concerning tender offers, no more than 5% of the weighted average number of units outstanding could be redeemed during any 12-month period. If shareholder requests exceeded the number of shares that were authorized to be redeemed during any quarter, the Apple REITs redeemed on a pro rata basis.

21. Following the close of their initial offerings, the Apple REITs each instituted a DRIP wherein they each sold DRIP units on a monthly basis during the relevant period.[4] The Apple REITs primarily used the DRIP proceeds to redeem units under their limited unit redemption programs. Under the terms of the unit redemption programs, the number of units redeemed could not exceed the aggregate net proceeds received from DRIP sales and the additional share option program.

22. Between at least 2008 and 2012, the Apple REITs each paid between 7% and 8% in distributions (which generally included a component of return of capital), with the exception of AR8, which lowered its distribution to 5% in June of 2011. The Apple REITs generally have paid more in distributions than they generated in cash from operations. The Apple REITs disclosed in their Form S-11 registration statements that, although they generally seek to make distributions

[3] Units are initially sold at $10.50 per share until the minimum offering is complete.

[4] The Apple REITs' DRIPs were continuous offerings during the relevant period. However, AR6 suspended its DRIP in November 2012 upon execution of its merger agreement with an unrelated third party according to public filings. AR7, AR8, and AR9 also suspended their DRIPs and redemptions on or about June 27, 2013 in connection with the evaluation of a potential consolidation transaction in which AR7, AR8 and AR9 would be combined according to a Form 8-K filed on June 27, 2013.

from operating revenues, they may pay distributions in part from financing proceeds or other sources, including offering proceeds.

B. **Misstatements and Omissions Concerning Valuation**

23. During the relevant period, AR6, AR7, and AR8 made material misstatements and omissions concerning valuation in their Form S-3 DRIP registration statements and in certain of their Forms 10-K.[5] Additionally, the Apple REITs did not have sufficient controls in place to meaningfully evaluate whether changes in market conditions or other factors required changes to their valuation disclosures in their Forms S-3 and Forms 10-K.

24. Item 5 of Form S-3 requires registrants to include a description pursuant to Item 505 of Regulation S-K of the "various factors considered in determining [the] offering price" where common equity is being registered for which there is no established public trading market. Item 5 of Form 10-K requires registrants to furnish pursuant to Item 201 of Regulation S-K certain high and low bid information if the principal United States market is not an exchange and to qualify such quotations with an appropriate explanation "[w]here there is an absence of an established public trading market."

25. In a section titled, *"How are unit prices determined?"*, the Apple REITs' initial Forms S-3 registration statements, as drafted by outside counsel, represented that:[6]

> **The price of units purchased under the plan directly from us by dividend reinvestments will be based on the fair market value of our units as of the reinvestment date as determined in good faith by our board of directors from time to time.**
>
> Our units are not publicly traded; consequently, there is no established public trading market for our units on which we could readily rely **in determining fair market value**. Nevertheless, the board has determined that, for purposes of this plan, at any given time the most recent price at which an unrelated person has purchased our units **represents the fair market value** of our units. Consequently, unless and until the board decides to use **a different method for determining the fair market value** of our units, the per unit price for the plan will be determined at all times based on the most recent price at which an unrelated person has purchased our units. Notwithstanding the foregoing, the board of directors **may determine a different fair market value** and price for our units for purposes of this plan if (1) in the good faith judgment of the board

[5] Although AR9 made substantially similar representations in its DRIP plan filed on December 10, 2010, AR9 did not have the same type of operating history available and rarely was included in the internal and third-party strategic planning analyses that contradicted the disclosures at issue.

[6] The Form S-3 filed by AR6 on February 10, 2006, used the term "distribution" rather than "dividend" in the first sentence of the disclosure, but it was changed to the above quoted language for AR6's Form S-3 filed on May 14, 2009.

> an amount of time has elapsed since our units have been purchased by unrelated persons such that the price paid by such persons **would not be indicative of the fair market value** of our units or (2) our board determines that there are **other factors relevant to such fair market value**.... (emphasis added)[7]

26. Outside counsel drafted the language at issue in part to comply with certain federal tax requirements prohibiting the deduction of preferential distributions by REITs, which, as disclosed in the Forms S-3, "could subject the REIT[s] to federal corporate income taxes which most likely would reduce the after-tax yield on any distributions to shareholders." The Forms S-3 represented that "[t]o avoid this result under [the] plan, **a reasonably accurate determination of the fair market value of units by [the REITs'] board[s] of directors is required**." (emphasis added.)

27. Although the Forms S-3 disclosed that "the per unit price for the plan will be determined at all times based on the most recent price at which an unrelated person has purchased our units," the disclosures omitted to state that the "fair market value" of the units was not based on an appraisal of the Apple REITs' assets or other valuation methodology. They also failed to disclose that, in contrast to an actively traded market, the price last paid for a DRIP share by an unrelated person in the context of a non-traded REIT did not reflect a meaningful estimate of the underlying or realizable value of the units.

28. In addition, following the 2008 global financial crisis until the fiscal year ended December 31, 2011, AR6, AR7, and AR8 represented in their Forms 10-K that "[t]he **per share estimated market value** of common stock is deemed to be the offering price of the shares, which currently is $11.00 per share." (emphasis added) The Forms 10-K further represented that the disclosed estimated market value of $11.00 was "supported by the fact that the [REITs are] currently selling shares to the public at a price of $11.00 per share through ... Dividend Reinvestment Plan[s]."[8] However, the Forms 10-K failed to disclose that $11.00 did not reflect a meaningful estimate of the underlying value of the units.

29. Consequently, AR6, AR7, and AR8 maintained the arbitrarily established initial offering price of $11.00 as the "fair market value" and the "estimated market value" of the units following the 2008 global financial crisis despite internal and third-party analyses suggesting that the per unit values of the Apple REITs were below $11.00 and despite declines in operating performance.

---

[7] AR7 filed an amended and restated Form S-3 on January 13, 2012, which, among other things, disclosed that "the market value of [its] units and the unit price of units purchased from [it] under the plan will not be based on an appraisal or other valuation of [AR7], [its] net assets, or the units, and will not necessarily reflect [its] value, earnings, net worth or other measures of value, but rather will be deemed equal to the most recent price at which an unrelated person has purchased our units from [it]." AR7, AR8, and AR9 filed post-effective amendments to their Forms S-3 on February 19, 2013 incorporating substantially similar language.

[8] The Apple REITs stopped using the term "estimated market value" in Item 5 in their Forms 10-K for the fiscal year ended December 31, 2011. Further, in their Forms 10-K for the fiscal year ended December 31, 2012, the Apple REITs disclosed that the $11.00 price (or $10.25 in the case of AR9 due to a special distribution of $0.75 to unitholders relating to an asset sale on April 27, 2012) "[was] not based on an appraisal or valuation of the Company or its assets."

Internal and Third-Party Analyses Contradicted AR6, AR7, and AR8's Valuation Disclosures

30. Following the 2008 global financial crisis, Apple REIT management received internal strategic planning analyses between late 2008 and 2011 that contradicted the REITs' representations that $11.00 constituted the "fair market value" of the units in their Form S-3 and the "estimated market value" of the units in their Forms 10-K.

31. For example, in late 2008, an Apple REIT employee created a basic model for an executive officer estimating AR6, AR7, and AR8's performance over a five year period. The model was linked directly to the accounting system, was updated regularly through at least mid-2011 and was distributed to certain members of management. Although the primary purpose of the model related to evaluating future cash flow performance, the model included an estimated market value section calculating the REITs' enterprise, equity and per share values. The estimated market values of the AR6, AR7 and AR8 mostly showed per share values below $11.00. A different analysis performed by the same Apple REIT employee for an executive officer in August 2009 showed that, without substantial revenue and FFO[9] increases, the per share values of AR6, AR7, and AR8 would be below $11.00.

32. In addition, starting in approximately mid-2009 through mid-2011, several third-party investment banks made presentations to Apple REIT management concerning potential strategic options for the Apple REITs. The estimated valuations included in these presentations varied and were not a static $11.00 per unit for AR6, AR7, and AR8 as represented in their Forms S-3 and Forms 10-K. Some of the per-unit valuations were below $11.00 for AR6 and most of the per unit valuation estimates were below $11.00 for AR7 and AR8.

AR6, AR7, and AR8's Economic Performance Contradicted the Valuation Disclosures

33. AR6, AR7, and AR8's operating performance following the 2008 global financial crisis also should have caused the Apple REITs to amend their disclosure of $11.00 as a "fair market value" and "estimated market value" of units. AR6, AR7, and AR8's net incomes declined more than 40% in 2009 as compared to 2008, and remained below 2008 levels through at least December 31, 2012.

34. Further, given the up-front fees and ramp up periods[10] for the properties, Apple REIT management knew that growth would be required to reach a fair market value of $11.00 per share, and further knew or should have known that the economic performance of the REITs between 2009 and at least 2011 fell short of that growth level.

35. AR6, AR7, and AR8 also increased their debt levels between 2008 and 2012. Increased debt levels may affect the Apple REITs' valuations because any debt incurred by the

[9] FFO, or Funds From Operations, is defined by the National Association of Real Estate Investment Trusts as net income (computed in accordance with GAAP), excluding gains/losses on sales of depreciable property, plus depreciation and amortization of real property used in operations, less preferred dividends and after adjustments for unconsolidated partnerships and joint ventures.

[10] "Ramp up period" is a term used by the REITs' management to describe the 6 to 24-month period following initial property purchase or construction needed to position the property to reach the expected level of return through, for example, improved management or improved marketing.

REITs must eventually be repaid, thereby reducing the equity available for distribution to unitholders in connection with a liquidity event. AR6, AR7, and AR8 nonetheless never adjusted the $11.00 per unit valuation disclosures.

Failure to Implement Sufficient Processes or Procedures to Evaluate the Valuation Disclosures

36. Despite the representation in the Forms S-3 that the Apple REITs' boards of directors would determine in good faith the fair market value of the DRIP units from time-to-time, the Apple REITs failed to develop or maintain sufficient procedures relating to the disclosure of the valuation of units sold in the DRIPs. The Apple REITs did not establish a valuation committee or valuation working group. Nor did they establish any formal or informal valuation guidelines or otherwise attempt to identify relevant factors for determining fair market value. Further, management did not provide the boards of directors with the contradictory internal valuations discussed in paragraph 31 or the contradictory third-party valuations for consideration in determining fair market value.

37. Consideration of the fair market value of the units for purposes of the DRIP was not included as a formal agenda item for board meetings. Although the directors periodically discussed the DRIP program during board meetings, a record of substantive discussion concerning DRIP prices at board meetings does not appear in meeting minutes until February 2012 even though the DRIP programs for AR6, AR7, and AR8 had been in place since 2006, 2007 and 2008, respectively. That discussion was recorded merely as: "There was ... a discussion concerning DRIP and redemption pricing. Those in attendance considered the price currently paid ($11 per unit) to be appropriate and would reconsider if at some point it is warranted." Rather, the boards of directors operated under the theory that as long as there were DRIP sales, they did not need to reconsider the unit price.

C. Undisclosed Related Party Transactions: Short-Term Transfers Between REITs to Meet Cash Needs and Commercial Loans Personally Guaranteed by Knight

38. Between 2008 and 2011, the Apple REITs, which were separate companies with separate unitholders and boards of directors at all relevant times, engaged in numerous undisclosed cash transfers between REITs to meet short-term cash needs and obtained certain commercial loans personally guaranteed by Knight, which were undisclosed. The Apple REITs executed most of these undisclosed related party transactions without following internal controls described in public filings, including a disclosed policy that such transactions would be approved by an affirmative vote of the independent directors. Further, although the boards of directors had adopted general borrowing resolutions for each of the REITs, the independent directors did not affirmatively approve the fact of the personal guarantee by Knight or the short-term transfers.

39. Item 7 of Form 10-K and Item 3 of Form 10-Q both require registrants to "identify and separately describe internal and external sources of liquidity" pursuant to Item 303 of Regulation S-K, which requires identification of "any known demands, commitments, events or uncertainties that will result in or that are reasonably likely to result in the registrant's liquidity increasing or decreasing in any material way." Item 13 of Form 10-K and Item 7 of Schedule 14A both require registrants to describe "any transaction ... in which the registrant was or is to be a

participant and the amount involved exceeds $120,000, and in which any related person had or will have a direct or indirect material interest,"[11] and to disclose the "registrant's policies and procedures for the review, approval, or ratification" of such related party transactions pursuant to Item 404 Regulation S-K. Accounting Standards Codification Topic 850-10 (hereinafter "ASC 850-10"), *Related Party Disclosures*,[12] requires the disclosure of material related party transactions in the financial statements, even if no or nominal amounts were ascribed thereto.[13] Additionally, the Commission issued a statement in January 2002 providing that registrants should include a discussion of material related party transactions in their Management's Discussion and Analysis of Financial Condition and Results of Operations ("MD&A").

Undisclosed Cash Transfers Between REITs To Meet Short-Term Cash Needs

40. As part of their business model, the Apple REITs historically have maintained little cash on hand, relying on cash flows from operations and, as necessary, credit facilities. On approximately 25 occasions between 2008 and 2011, rather than obtaining additional commercial credit or attempting to obtain funds from the third-party management companies contained in the operating bank accounts of hotels, Peery, in consultation with other members of management, effectuated or authorized undisclosed, short-term cash transfers between REITs – which are separate companies with separate unitholders – to meet short-term cash needs. The transfers at issue ranged between $25,000 and $20 million.[14] The "borrowing" REIT typically repaid the transfer within a few days, and used the assets in connection with property acquisitions, redemptions and distributions, and to cover clearing checks and debt. The Apple REITs' records lacked sufficient detail to determine the business purpose of certain of the transfers.

41. The Apple REITs recorded the transfers between the separate companies in intercompany accounts as opposed to as payables and receivables, and, except for one of the largest transfers, did not execute loan documentation or, except for the two largest transfers, did not charge interest. In addition, the Apple REITs failed to record four of the transfers in their general ledgers. The Apple REITs also failed to disclose as a source of liquidity pursuant to Item 303 that they adopted a cash management policy in 2011 providing for transfers up to $1 million between REITs to cover, among other things, "unanticipated cash need[s]."

---

[11] The Instructions to Item 404(a) define "related person" to include any director or executive officer of the registrant. Transaction is defined to include "any financial transactions, arrangement, or relationship (including any indebtedness or guarantee of indebtedness) or any series of similar transactions, arrangements or relationships." Under Item 404(a), a related person's indirect material interest in a firm, corporation, or other entity engaging in a transaction with the registrant may require disclosure of certain details concerning the transaction.

[12] ASC 850-10 formerly was Statement of Financial Accounting Standards ("SFAS") No. 57 prior to the September 2009 codification.

[13] ASC 850-10 defines affiliates as related parties, and provides that similar related party transactions may be aggregated by type. Affiliate is defined as "[a] party that, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with an entity." Related Party is defined to include "[o]ther parties that can significantly influence the management or operating policies of the transacting parties...."

[14] The $20 million transfer, which was largest of the undisclosed transfers at issue, involved a situation in which AR8 purchased a $100 million Certificate of Deposit ("CD"), but subsequently identified properties for acquisition. The closing date for some of the properties was scheduled before the maturity of the CD. Rather than seeking an early withdrawal from AR8's CD, Peery, in consultation with others in management, transferred $20 million from AR9 to AR8, which AR8 repaid with interest in the amount matching that earned in the CD approximately one month later.

42. The majority of the transactions at issue exceeded the $120,000 Item 404 disclosure threshold, even before aggregating similar transactions.[15] Further, the practice of making periodic short-term transfers between the REITs to meet cash needs was material due to qualitative factors and required to be disclosed because it facilitated their business practice of maintaining little cash on hand during the relevant period. For example, the related party nature of the relationship between the REITs was important to this cash management tool because common management controlled all the relevant bank accounts and could make book transfers between REITs following which the transferred funds were immediately available for use. Additionally, unlike in connection with borrowing on commercial credit lines, no advance notice was needed to execute transfers between REITs. However, Peery treated these transactions as immaterial for disclosure purposes because, among other reasons, they typically were repaid within a few days.

Undisclosed Loans Personally Guaranteed by Knight

43. Between 2009 and 2010, Knight personally guaranteed, and provided personal assets as collateral for, four short-term commercial loans and lines of credit to AR6 and AR7: $10 million in July 2009 to AR6; $2 million in April 2010 to AR6; $2 million in April 2010 to AR7; and $9 million in July 2010 to AR7. With the exception of the $9 million loan to AR7, neither the loans nor the personal guarantees were disclosed to unitholders as required by ASC 850-10 and Items 303 and 404 of Regulation S-K. Although the $9 million loan was disclosed, Knight's personal guarantee was not disclosed. Peery and others were aware of these loans.

44. AR6 and AR7 obtained these personally guaranteed loans and lines of credit in part to fund redemption payments during periods when the Apple REITs had borrowed the maximum available on their existing lines of credit. Knight received no compensation or other benefit in exchange for his personal guarantee.

The Short-Term Transfers and Personally Guaranteed Loans at Issue Contradicted Internal Controls and Affirmative Disclosures to Unitholders

45. The undisclosed short-term cash transfers between REITs and the undisclosed personally guaranteed loans, contradicted several affirmative disclosures and internal controls set forth in the Apple REITs' public disclosures.

46. The Forms S-11 represented that it was the Apple REITs' policy not to "sell, transfer or lend assets or property to any of [their] affiliates" nor to "purchase, borrow, or otherwise acquire assets or property from any of [their] affiliates" unless the transactions were approved by an affirmative vote of the majority of independent directors. The Apple REITs' bylaws, which are exhibits to numerous public filings, contained similar language.[16] Although the

[15] The Apple REITs amended their Form 10-K disclosures for the fiscal year ended December 31, 2010 to include that "the individual companies may make payments for any or all of the related companies" in order "[t]o efficiently manage cash disbursements" and that "[t]he amounts due to or from the related individual companies are reimbursed or collected and are not significant in amount." However, these amended disclosures failed to accurately characterize the nature, frequency and purpose of the transfers between REITs. Additionally, some of the 2010 cash transfers exceeded Item 404's $120,000 disclosure threshold, even before aggregating similar transactions.

[16] AR8 and AR9's Forms S-11 also represented that a majority of disinterested directors would approve any material agreement or arrangement between, or transactions involving the Apple REITs and their affiliates, and that the

boards of directors had adopted general borrowing resolutions for each REIT, management failed to seek the affirmative approval of the independent directors for all but one of the undisclosed short-term transfers and personally guaranteed loans at issue.

47. Some of the undisclosed transfers between REITs also were inconsistent with representations to unitholders concerning the use of proceeds. Neither the Forms S-11 nor the Forms S-3, which specifically set forth the use of proceeds, disclosed the possibility that a REIT might use investor assets to make loans to affiliates.[17] The Forms S-11 also represented that "[t]he proceeds of [the] offering [would] be received and held in trust for the benefit of the investors in compliance with applicable securities laws, to be used only for the purposes set forth in [the] prospectus." Additionally, the Forms S-11 stated that the Apple REITs "expect[ed] borrowings to come from third party, non-affiliated lenders," and that they had "no current plan or intention to make loans to other persons or entities."[18]

48. The advisory agreements provided that either the REITs paid directly or the advisers paid and sought reimbursement for certain enumerated expenses on behalf of the Apple REITs, such as distributions to unitholders, interest expense, and all costs of personnel. The advisory agreements also required the advisers to prepare statements documenting any such reimbursable expenses within 45 days and required the Apple REITs to reimburse the advisers within 60 days after the end of the quarter. Here, rather than following the procedures outlined in the advisory agreements, Peery authorized and/or transferred funds directly between the Apple REITs in varying amounts and at varying intervals as cash needs arose. In addition, notwithstanding their actual cash management practices, AR6, AR7, AR8, AR9 misrepresented that the expense reimbursements flowed from the Apple REITs to their advisers consistent with the advisory agreements in their Forms 10-K for 2008 and 2009 and in their proxies filed in 2008, 2009, and 2010.[19]

D. Undisclosed Compensation Arrangements

49. AR6, AR7, AR8 and AR9 failed to disclose material compensation arrangements in their Forms 10-K for 2008, 2009, and 2010, and in their Schedule 14A proxy statements, including those filed in April 2011 in which they solicited nonbinding advisory votes approving executive compensation (*i.e.*, "say-on-pay" votes).

---

officers, directors and employees were required to report to the board related party transactions where the amount exceeded $120,000.

[17] The Forms S-11 represented that the proceeds of the offering would be used to pay organization expenses, to repay any outstanding balance on the Apple REITs' lines of credit, to pay expenses and fees of selling the units, to invest in properties, to pay expenses associated with acquisition properties, and to establish a working capital reserve. The Form S-3 registration statements provided that the REITs expected to use the proceeds from DRIP sales for general corporate purposes which may include redeeming units, enhancing properties, satisfying financing obligations and other expenses, increasing working capital, funding various corporate operations, and acquiring hotels or other properties.

[18] The Forms S-11 represented that the unitholders were entitled to rely on the fiduciary duties of the advisers and similar duties of officers to provide substantial protection for unitholders' interests.

[19] The Apple REITs Form 10-K disclosures continued to be materially misleading in 2010 and 2011 because they state that expenses were reimbursed by the advisers to AR6 (as the owner of AFM) or paid directly to AR6 on behalf of the advisers when they knew or should have known that the payments were always made directly between REITs.

50. Item 11 of Form 10-K and Item 8 of Schedule 14A[20] both require that registrants furnish the information required by Item 402 of Regulation S-K, including "clear, concise and understandable disclosure of all plan and non-plan compensation awarded to, earned by, or paid to the named executive officers ... by any person for all services rendered in all capacities to the registrant and its subsidiaries," including compensation involving "transactions between the registrant and a third party where a purpose of the transaction is to furnish compensation to any such named executive officer or director...."

Failure to Disclose Payments from the Advisers to the Apple REITs' Officers

51. Knight, the 100% owner of the advisers to the Apple REITs, entered into written agreements with four executive officers, including Peery (as to A8A and A9A only) to share profits earned by the advisers. Although the supplemental compensation was paid from the assets of the advisers, and although the Apple REITs disclosed the advisory fees from which the payments to executive officers were made, they failed to disclose the profit-sharing agreement in their Forms 10-K for the fiscal years ended December 31, 2008, 2009, and 2010, or in the proxy statements incorporated by reference therein, thereby materially understating the compensation paid to executive officers.

52. The total amount of undisclosed compensation paid by the advisers exceeded the disclosed compensation for executive officers by between $85,375 and $1.197 million per REIT as presented in the compensation tables in the fiscal years ended December 31, 2008, 2009, and 2010.

	A6		AR7		AR8		AR9	
	Disclosed Compensation Paid by the Apple REITs	Undisclosed Supplemental Compensation Paid by the Advisers	Disclosed Compensation Paid by the Apple REITs	Undisclosed Supplemental Compensation Paid by the Advisers	Disclosed Compensation Paid by the Apple REITs	Undisclosed Supplemental Compensation Paid by the Advisers	Disclosed Compensation Paid by the Apple REITs	Undisclosed Supplemental Compensation Paid by the Advisers
2008	$368,611	$1,197,306	$368,611	$732,249	$368,611	$478,622	$368,611	$85,375
2009	$476,271	$720,657	$476,271	$493,074	$476,271	$510,397	$476,271	$360,868
2010	$468,127	$721,866	$468,127	$488,942	$468,127	$517,407	$468,127	$744,882

Failure to Disclose the Sale of Benefits Relating to B Shares from the CEO to Executive Officers of the Apple REITs

53. AR6, AR7, AR8, and AR9 failed to disclose in the Forms 10-K and Schedule 14A proxy statements as required by Item 402 of Regulation S-K that Knight sold the economic benefits relating to nearly 30% of his Series B convertible preferred shares ("B shares") in AR6, AR7, AR8, and AR9 to certain officers of the Apple REITs, including Peery, to supplement the compensation paid to those officers.

54. Depending on its size, each REIT issued between 240,000 and 480,000 B shares to Knight in his capacity as founder at $0.10 per share. The B shares are convertible into common

[20] Schedule 14A's requirement to disclose the information required by Item 402 and Item 404 of Regulation S-K applies if action is to be taken with respect to, among other things, election of directors, which was the case in all the Apple REITs' relevant Schedule 14A filings.

shares upon the occurrence of certain events such as a sale or transfer of substantially all of the REIT's assets, or a listing on any securities exchange.

55. The executive officers paid $0.10 per share to Knight for the economic benefits associated with the B shares transferred to them. The interest in the B shares represented compensation for work done for the REITs and their advisers that should have been disclosed.

56. Knight's sale of benefits relating to the B shares also was inconsistent with affirmative disclosures in each of the Apple REITs' Schedule 14A proxy statements that Knight was the 100% owner of those shares, and disclosures in the Forms 10-K that all of the B shares were issued to Knight.

Misstatements and Omissions in the Apple REITs' Compensation Discussion and Analysis Section of their Proxy Statements

57. Given the fact of undisclosed compensation described above, the Apple REITs also misstated or omitted material information required by Item 402(b) of Regulation S-K from the Compensation Discussion and Analysis section of their proxy statements filed in 2009, 2010, and 2011. Item 402(b) requires a discussion of "all material elements of the registrant's compensation of the executive officers" including information concerning the registrant's compensation objectives and rationale.

58. The Apple REITs represented to unitholders, without disclosing the payments to executive officers by the advisers or the B Share sales, that the base salaries and bonuses for the executive officers are "designed to be competitive with comparable employers" and that the REITs believe that a "simplistic approach to compensation better matches the objectives of all stakeholders." They also represented that their executive officer compensation targets were developed "using comparisons to compensation paid by other public hospitality REITs" and that the targets were set "sufficiently high to attract and retain a strong and motivated leadership team, but not so high that it creates a negative perception with ... other stakeholders."

E. Failure to Timely File Forms 3 and Forms 4

59. The directors and executive officers of the Apple REITs were subject to the reporting requirements of Section 16(a) of the Exchange Act, which requires the filing of beneficial ownership forms with the Commission. Section 16(a) and Rule 16a-3 of the Exchange Act require directors and officers to file initial reports of ownership on Form 3 and changes of ownership on Form 4 with the Commission.[21] During the relevant period, Glade Knight failed to timely file one Form 3 and one Form 4 related to AR9. Bryan Peery failed to timely file one Form 3 relating to AR9.

[21] Section 16(a)(2) requires that a reporting person of an issuer that is registering securities for the first time under Section 12 of the Exchange Act must file Form 3 no later than the effective date of the registration statement. Once the initial report is filed, any changes in holdings must be reported on Form 4 within two business days of the change.

60. In addition, Item 10 of Form 10-K and Item 7 of Schedule 14A both require disclosure of the information required by Item 405 of Regulation S-K, including any reporting violations by insiders in a clearly marked section, the number of late reports, the number of transactions not reported on a timely basis, and any known failure to file a required Form. Item 405 explicitly states that a known failure to file includes a failure to file a Form 3, which is required of all reporting persons. AR6, AR7, AR8 and AR9 misrepresented in their proxy statements until April 2011 that the Apple REITs' executive officers had filed reports with the Commission with respect to their initial ownership of common shares and that the REITs believed that each of its officers complied with any applicable filing requirements.

VIOLATIONS

61. In the offer or sale of securities, Section 17(a)(2) of the Securities Act makes it unlawful "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;" and Section 17(a)(3) proscribes "any transaction, practice, or course of business which operates or would operate as a fraud or deceit on the purchaser." Violations of Sections 17(a)(2) and 17(a)(3) may be established by a showing of negligence.

62. Section 13(a) of the Exchange Act requires issuers that have securities registered pursuant to Section 12 of the Exchange Act to file such periodic and other reports as the Commission may prescribe and in conformity with such rules as the Commission may promulgate. Exchange Act Rules 13a-1and 13a-13 require the filing of annual and quarterly reports, respectively. In addition to the information expressly required to be included in such reports, Rule 12b-20 under the Exchange Act requires issuers to add such further material information, if any, as may be necessary to make the required statements, in the light of the circumstances under which they are made, not misleading. A violation of the reporting provisions is established if a report is shown to contain materially false or misleading information. No showing of scienter is necessary to establish a violation of Section 13(a).

63. Section 13(b)(2)(A) of the Exchange Act requires issuers to "make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer." Section 13(b)(2)(B) of the Exchange Act requires issuers to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that, among other things, transactions are executed in accordance with management's general or specific authorization and that transactions are recorded to permit the preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements and to maintain accountability for assets. No showing of scienter is required to establish a violation of Section 13(b)(2)(A) or Section 13(b)(2)(B).

64. Exchange Act Rule 13a-14, among other things, requires principal executive officers and principal financial officers to certify in quarterly and annual reports filed under Section 13(a) of the Exchange Act certain information in the form set forth in Item 601(b)(31)(i) of Regulation S-K, including, *inter alia*, that they have reviewed the reports, that they are responsible

for designing and maintaining certain controls, and that they have designed or caused the design of such controls.

65. Section 14(a) of the Exchange Act requires registrants that solicit any proxy or consent or authorization in connection with any security registered pursuant to Section 12 of the Exchange Act (other than an exempted security) to comply with such rules as the Commission may promulgate. Exchange Act Rule 14a-9 prohibits the use of proxy statements containing materially false or misleading statements or materially misleading omissions. No showing of scienter is required to establish a violation of Section 14(a) of the Exchange Act and Rule14a-9 thereunder.

66. Section 16(a) of the Exchange Act and Rule 16a-3 thereunder require, *inter alia*, timely and accurate filing of Forms 3 and Forms 4 with the Commission.

67. By engaging in the conduct described above relating to valuation, AR6, AR7, and AR8 violated Section 17(a)(2) and Section 17(a)(3) of the Securities Act.

68. By engaging in the conduct described above, AR6, AR7, AR8, and AR9 violated Sections 13(a), 13(b)(2)(A), 13(b)(2)(B), and 14(a) of the Exchange Act and Rules 12b-20, 13a-1, 13a-13, and 14a-9 thereunder.

69. By engaging in the conduct described above, Knight and Peery each caused AR6, AR7, AR8 and AR9's violations of Sections 13(a), 13(b)(2)(A), 13(b)(2)(B), 14(a) of the Exchange Act and Exchange Act Rules 12b-20, 13a-1, 13a-13, and 14a-9 thereunder, and Knight and Peery each violated Section 16(a) of the Exchange Act and Exchange Act Rules 13a-14 and 16a-3.

70. By engaging in the conduct described above, A6A, A7A, A8A, and A9A caused, respectively, AR6, AR7, AR8, and AR9's violations of Sections 13(a), 13(b)(2)(A), 13(b)(2)(B), and 14(a) of the Exchange Act and Rules 12b-20, 13a-1, 13a-13, and 14a-9 thereunder.

UNDERTAKINGS

Respondents AR7, AR8, AR9,[22] and their successors, have undertaken to:

71. AR7, AR8, and AR9, and/or their successors, each will maintain a Disclosure Committee that will be responsible for oversight of disclosures made to their respective securities holders in order to ensure accurate, complete, and timely disclosure of all matters requiring disclosure. The Disclosure Committee will be chaired by an independent director, and will consist of at least three members and outside counsel. The Disclosure Committee shall meet no less than quarterly to review the companies' disclosure of financial statements, results of operations, and other matters required by the federal securities laws, and shall require all officers and directors to submit annual Officer/Director Questionnaires.

[22] The undertakings required by this Order are not applicable to AR6 due to AR6's May 2013 merger with an unrelated entity. According to a Form 15 terminating the registration of shares under Section 12(g) of the Exchange Act filed with the Commission on May 14, 2013, AR6 merged into an unrelated entity on May 14, 2013, at which time the separate corporate existence of AR6 ended.

72. Should AR7, AR8, and AR9, and/or their successors re-establish their DRIPs, AR7, AR8, and AR9, and/or their successors, will hire an Independent Consultant, not unacceptable to the staff of the Commission, to address the determination of fair market value for purposes of their Form S-3 DRIP registration statements, including advising on setting the price for sales thereunder, and other public disclosures. Should AR7, AR8, and AR9, and/or their successors, re-establish their DRIPs, AR7, AR8, and AR9, and/or their successors, will maintain a Valuation Committee comprised of independent board members that will be responsible for the oversight of all valuation issues relating to their respective REITs. Each of the Valuation Committees will establish and maintain written policies and procedures relating to valuation of the Apple REITs, and will consult with third-party valuation services and/or experts concerning their valuations policies, procedures, and methodologies.

73. The independent members of the Boards of Directors of AR7, AR8, and AR9, or their successors, will have separate counsel and will meet no less than quarterly outside the presence of senior management.

74. AR7, AR8, and AR9, and/or their successors, will hire an Independent Consultant, not unacceptable to the staff of the Commission, to evaluate and address: (1) policies, procedures, and internal controls relating to appropriate oversight by the respective Boards of Directors; (2) policies, procedures and internal controls relating to related party transactions; (3) policies, procedures and internal controls relating to executive compensation; (4) policies, procedures, and internal controls relating to public disclosure, including compliance with applicable disclosure requirements; and (5) policies, procedures, and internal controls relating to the oversight of external advisers, to the extent utilized, including, but not limited to, evaluation of compliance with the advisory agreements and evaluation of adviser performance. The Independent Consultant will review each of the Apple REIT's internal accounting, internal controls relating to record-keeping, and regulatory and compliance functions, including, but not limited to, compliance with all of the provisions found to have been violated by this Order.

75. Management shall provide the Audit Committee or other subcommittee of independent directors of AR7, AR8, and AR9, and/or their successors, on a quarterly basis a list of all related party transactions, including, but not limited to, transactions, directly or indirectly, between or among the separate REITs, the advisers, members of management, board members, or other related parties. The Audit Committee or other subcommittee of independent directors of AR7, AR8, and AR9, and/or their successors, each will undertake to develop and implement written internal policies and controls concerning related party transactions, including that all related party transactions be recorded on a monthly and quarterly basis in sufficient detail to permit the determination of their business purpose, and that the CFO of each of AR7, AR8, and AR9, and/or their successors, be designated to ensure compliance with the related party transactions policy and to certify compliance on a quarterly basis.

76. AR7, AR8, AR9, and/or their successors, will require the Independent Consultants to enter into an agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Independent Consultants shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with AR7, AR8, AR9, or their successors, or any of its present or former affiliates, directors, officers,

employees, or agents acting in their capacity. The agreement will also provide that the Independent Consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Independent Consultants in performance of his/her duties under this Order shall not, without prior written consent of the Commission staff, enter into any employment, consultant, attorney-client, auditing or other professional relationship with AR7, AR8, AR9, or their successors, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.

77. AR7, AR8, AR9, and/or their successors, will certify, in writing, compliance with the undertaking(s) set forth above. The certification shall identify the undertaking(s), provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondents agree to provide such evidence. The certification and supporting material shall be submitted to Douglas McAllister, Assistant Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549-6561, with a copy to the Office of Chief Counsel of the Enforcement Division, no later than sixty (60) days from the date of the completion of the undertakings.

IV.

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

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act, Respondents Apple REIT Six, Inc., Apple REIT Seven, Inc. and Apple REIT Eight, Inc. 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 Sections 13(a), 13(b)(2)(A), 13(b)(2)(B), and 14(a) of the Exchange Act and Rules 12b-20, 13a-1, 13a-13, and 14a-9 thereunder.

B. Pursuant to Section 21C of the Exchange Act, Respondent Apple REIT Nine, Inc., cease and desist from committing or causing any violations and any future violations of Sections 13(a), 13(b)(2)(A), 13(b)(2)(B), and 14(a) of the Exchange Act and Rules 12b-20, 13a-1, 13a-13, and 14a-9 thereunder.

C. Pursuant to Section 21C of the Exchange Act, Respondents Apple Six Advisors, Inc., Apple Seven Advisors, Inc., Apple Eight Advisors, Inc., and Apple Nine Advisors, Inc. cease and desist from committing or causing any violations and any future violations of Sections 13(a), 13(b)(2)(A), 13(b)(2)(B), and 14(a) of the Exchange Act and Rules 12b-20, 13a-1, 13a-13, and 14a-9 thereunder.

D. Pursuant to Section 21C of the Exchange Act, Respondents Glade M. Knight and Bryan F. Peery, cease and desist from committing or causing any violations and any future

violations of Sections 13(a), 13(b)(2)(A), 13(b)(2)(B), 14(a), and 16(a) of the Exchange Act and Rules 12b-20, 13a-1, 13a-13, 13a-14, 14a-9, and 16a-3 thereunder.

E. Respondents shall comply with the undertakings enumerated in Sections 71-77 above.

F. Respondent Apple Six Advisors, Inc. shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of $437,500 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) 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

(2) 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 Apple Six Advisors, Inc. 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 Gerald Hodgkins, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549-6010.

G. Respondent Apple Seven Advisors, Inc. shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of $375,000 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) 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

(2) 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 Apple Seven Advisors, Inc. 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 Gerald Hodgkins,

Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549-6010.

H. Respondent Apple Eight Advisors, Inc. shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of $437,500 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) 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

(2) 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 Apple Eight Advisors, Inc. 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 Gerald Hodgkins, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549-6010.

I. Respondent Apple Nine Advisors, Inc. shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of $250,000 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) 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

(2) 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 Apple Nine Advisors, Inc. 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 Gerald Hodgkins, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549-6010.

J. Respondent Glade M. Knight shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of $125,000 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) 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

(2) 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 Glade M. Knight 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 Gerald Hodgkins, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549-6010.

K. Respondent Bryan F. Peery shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of $50,000 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Payment must be made in one of the following ways:

(1) 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

(2) 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 Bryan F. Peery 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 Gerald Hodgkins, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549-6010.

By the Commission.

Elizabeth M. Murphy
Secretary

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

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9547 / February 12, 2014

SECURITIES EXCHANGE ACT OF 1934
Release No. 71537 / February 12, 2014

INVESTMENT ADVISERS ACT OF 1940
Release No. 3777 / February 12, 2014

INVESTMENT COMPANY ACT OF 1940
Release No. 30918 / February 12, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15748

In the Matter of

Ronald E. Huxtable II,

Respondent.

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 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") against Ronald E. Huxtable II ("Huxtable" 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 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 Respondent's Offer, the Commission finds[1] that:

Summary

1. Huxtable was a retiree when he met Adviser A, an investment adviser, in December of 2008. In April 2009, Huxtable became a client of Adviser A and began participating in Adviser A's options trading strategy by trading options in his own on-line brokerage accounts at Adviser A's direction.

2. In late 2009, Huxtable began recruiting friends and family members as clients to participate in Adviser A's options trading strategy and commenced trading in client accounts at Adviser A's direction, invoicing certain clients for management fees which he shared with Adviser A, and communicating with clients and potential clients about Adviser A's options trading strategy and investment performance.

3. Adviser A violated the anti-fraud provisions of the federal securities laws by charging clients fees for the month of February 2011 based on false performance and concealing from them that they had actually incurred net realized losses that month.

4. Huxtable knew that he and Adviser A's clients had incurred net realized losses for the month of February 2011. Adviser A decided to spread the losses incurred in these clients' accounts over five months and to charge one-fifth of the realized losses in these accounts against their realized gains for February, so that it would appear that these clients had net realized profits for February 2011 for which management fees were due.

5. Huxtable aided and abetted and caused Adviser A's violations by sending clients invoices for unwarranted fees, collecting the fees, and sending one client a misleading email about

[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.

her account performance in February 2011 and an incomplete list of transactions that purported to support the invoiced amount.

Respondent

6. **Ronald E. Huxtable II**, age 68, is a resident of Palm Coast, Florida. He is a retiree. From 2009 through January 2012, Huxtable was associated with Adviser A, an investment adviser.

Other Relevant Individual

7. During the relevant time period, **Adviser A** was an investment adviser. He was not registered with the Commission or any state securities regulator.

Background

8. Adviser A, and others at his direction, traded options in clients' online brokerage accounts. Adviser A exercised near complete control over client accounts by determining the trading strategy and directing what options should be traded and when. He charged clients a percentage of their monthly realized profits as management fees. With few exceptions, Adviser A determined the percentage of monthly realized profits that clients would be charged and when clients should be invoiced.

Huxtable's Involvement With Adviser A

9. Huxtable first met Adviser A in December of 2008.

10. Huxtable became a client of Adviser A and began trading options in his own brokerage accounts at Adviser A's direction in April 2009.

11. Later that year, Huxtable began recruiting friends and family members to participate in Adviser A's options trading strategy. He recruited Clients A, B, and C in 2009 and Clients D, E, F, and G in 2010. Huxtable served as the primary point of contact for each of the clients he recruited except Client C, who dealt with Adviser A directly. At least six of these clients knew, based on their meetings with Adviser A and/or Huxtable, that Adviser A had developed the trading strategy and that Adviser A instructed Huxtable on how to trade in their accounts.

12. Huxtable submitted trades for execution for these clients' accounts, as well as for accounts belonging to other Adviser A clients, at Adviser A's direction.

13. Huxtable and Adviser A agreed to share equally in the management fees generated from client accounts that Huxtable traded. Typically, Huxtable and Adviser A each issued invoices to Clients C and H for 50% of the total management fees due. In addition, Huxtable invoiced Client B for the total management fees due and then remitted 50% of what he collected to Adviser A pursuant to an invoice from Adviser A to Huxtable.

Huxtable Aided and Abetted and Caused Adviser A's Violations

14. In February 2011, Huxtable and Clients B, C, and H sustained net realized losses in their accounts. Adviser A decided to spread the losses incurred in these clients' accounts over five months and to charge one-fifth of the realized losses in these accounts against their realized gains for February, so that it would appear that Clients B, C, and H had net realized profits for February 2011 for which management fees were due. Adviser A knew that these clients had actually sustained net realized losses and that no management fees were due. Huxtable also knew that he and Clients B, C, and H had sustained net realized losses for February 2011 and that no management fees were due. Adviser A, or a record-keeper at his direction, adjusted client records to first exclude 80% of the losses from client records for February 2011 and then to include 20% of these losses in future months.

15. Adviser A sent Huxtable, Client C, and Client H invoices for management fees based on the false net realized profits. Huxtable paid the invoices for his own accounts. Clients C and H also paid Adviser A's invoices.

16. In addition, Huxtable sent Clients B, C, and H invoices for management fees based on the false net realized profits. Clients B, C, and H paid these invoices. Huxtable remitted the agreed-upon portion of the fees he collected from Client B to Adviser A. Huxtable did not tell Clients B, C, and H that they were paying excessive fees.

17. In addition, Huxtable sent Client B an email in which he claimed that she had "a great month in February," when in fact, her account had suffered nearly $47,000 of realized losses. Huxtable also provided Client B with a list of transactions that purported to support the net realized profits for which he invoiced her. Huxtable knew that 80% of the loss-generating positions were omitted from this document, but did not disclose this to Client B.

18. Huxtable did not invoice Clients B, C, or H in subsequent months.

Violations

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

20. As a result of the conduct described above, Huxtable willfully aided and abetted and caused Adviser A's violations of Sections 206(1) and 206(2) of the Advisers Act, which prohibit fraudulent conduct by an investment adviser.

IV.

In view of the foregoing, for the protection of investors the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Huxtable's 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. Respondent Huxtable cease and desist from committing or causing any violations 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 206(1) and 206(2) of the Advisers Act.

B. Respondent Huxtable be, and hereby is:

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

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

C. Any reapplication for association by Respondent Huxtable 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 Huxtable shall, within 10 days of the entry of this Order, pay disgorgement of $12,132.00, prejudgment interest of $952.01, and a civil money penalty in the amount of $50,000.00 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 or to 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 Huxtable as the 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 Paul Montoya, Assistant Regional Director, Chicago Regional Office, Securities and Exchange Commission, 175 W. Jackson Blvd., Suite 900, Chicago, Illinois 60604.

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

F. After receipt of Respondent Huxtable's payment of disgorgement, prejudgment interest and civil money penalty, the Commission shall, within 30 days, distribute funds from the Fair Fund to Clients B, C and H. This disbursement will consist of two parts. First, Clients B, C and H will each receive from the Fair Fund their respective share of the dollar amount of fees collected and retained by Respondent Huxtable for February 2011 from each client. Second, Clients B, C and H will receive on a pro rata basis from the Fair Fund an amount of the remaining funds less any funds needed to pay Fair Fund administrative costs and expenses on a pro rata basis. Each Client's pro rata share of the remainder will be determined by totaling the decline in value of each client's investment between May 1, 2011 and January 31 2012, and dividing that sum by the dollar amount of the decline in value for all three clients. Brokerage account statements will be used to determine the decline in value for each client.

By the Commission.

Elizabeth M. Murphy
Secretary

By: Jill M. Peterson
Assistant Secretary

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-71524; File No. PCAOB-2013-01)

February 12, 2014

Public Company Accounting Oversight Board; Order Granting Approval of Proposed Rules, Standards for Attestation Engagements Related to Broker and Dealer Compliance or Exemption Reports Required by the U.S. Securities and Exchange Commission and Related Amendments to PCAOB Standards

I. Introduction

On October 30, 2013, the Public Company Accounting Oversight Board (the "Board" or the "PCAOB") filed with the Securities and Exchange Commission (the "Commission"), pursuant to Section 107(b)[1] of the Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act") and Section 19(b)[2] of the Securities Exchange Act of 1934 (the "Exchange Act"), proposed rules to adopt standards for attestation engagements related to broker and dealer compliance or exemption reports required by the U.S. Securities and Exchange Commission and related amendments to PCAOB standards (collectively, the "Proposed Rules"). The Proposed Rules were published for comment in the Federal Register on November 15, 2013.[3] At the time the notice was issued, the Commission designated a longer period to act on the Proposed Rules, until February 13, 2014.[4] The Commission received two comment letters in response to the notice.[5] This order approves the Proposed Rules.

---

[1] 15 U.S.C. 7217(b).

[2] 15 U.S.C. 78s(b).

[3] See Release No. 34-70842 (November 8, 2013), 78 FR 68911 (November 15, 2013).

[4] Ibid.

[5] See letters to the Commission from Deloitte & Touche LLP, dated December 5, 2013 ("Deloitte Letter") and Suzanne H. Shatto, dated December 17, 2013 ("Shatto Letter").

Attestation Standard No. 1 provides requirements for auditors that:

- Focus the auditor on the matters that are most important to the auditor's conclusions regarding the broker's or dealer's assertions;
- Incorporate consideration of fraud risks, including the risk of misappropriation of customer assets;
- Are designed to be scalable based on the broker's or dealer's size and complexity;
- Coordinate the examination engagement with the audit of the financial statements and the audit procedures performed on supplemental information; and
- Describe how to report on an examination engagement in connection with the requirements of Rule 17a-5.

Attestation Standard No. 1 reflects the requirement in Rule 17a-5 that the auditor must obtain reasonable assurance to support the auditor's opinion. In particular, Attestation Standard No. 1 requires the auditor to obtain reasonable assurance in order to opine on whether the broker's or dealer's assertions are fairly stated, in all material respects.

Attestation Standard No. 2 establishes requirements for the auditor with respect to the auditor's review regarding the broker's or dealer's exemption report and establishes requirements that are designed specifically for the review required by Rule 17a-5.[10] Attestation Standard No. 2 establishes requirements for making inquiries and performing other procedures that are commensurate with the auditor's responsibility to obtain moderate assurance regarding whether one or more conditions exist that would cause one or more of the broker's or dealer's assertions

---

[10] See 17 CFR 240.17a-5(g)(2)(ii).

Documentation, Auditing Standard No. 7, *Engagement Quality Review*, and interim attestation standards AT sec. 101 and AT sec. 601.

The Proposed Rules would be effective for examination engagements and review engagements for fiscal years ending on or after June 1, 2014.

III. Comment Letters

As noted above, the Commission received two comment letters concerning the Proposed Rules. The commenters expressed support for the Proposed Rules, with one commenter noting that they are consistent with the Commission's amended Rule 17a-5 and are necessary to enable auditors of brokers and dealers to comply with the requirements therein.[12]

IV. Conclusion

The Commission has carefully reviewed and considered the Proposed Rules and the information submitted therewith by the PCAOB, including the comment letters received. In connection with the PCAOB's filing and the Commission's review, the Commission finds that the Proposed Rules are consistent with the requirements of the Sarbanes-Oxley Act and the securities laws and are necessary or appropriate in the public interest or for the protection of investors.[13]

---

[12] See Deloitte Letter.

[13] Because these proposed rules apply solely in connection with the obligations of registered brokers and dealers pursuant to 17 CFR 240.17a-5, no separate determination is necessary under 15 U.S.C. § 7213(a)(3)(C).

Commissioner Gallagher not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 71563 / February 18, 2014

INVESTMENT ADVISERS ACT OF 1940
Release No. 3779 / February 18, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15754

In the Matter of **MARK ANDREW SINGER,** **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, AND NOTICE OF HEARING**

I.

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

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

From September 2004 to February 2007, Singer was a registered representative associated with Citigroup Global Markets, Inc., a broker-dealer and investment adviser registered with the Commission. Singer, age 48, is a resident of New York.

B. RESPONDENT'S CRIMINAL CONVICTION

1. On January 19, 2011, Singer was convicted of five counts of theft in an amount greater than $100,000 in violation of Ind. Code § 35-43-4-2(a)(1) before the Marion County (Indiana) Superior Court, in State v. Mark Singer, Cause No. 49G03-0807-FC-167038 (2011). He was

sentenced to serve three years of incarceration at the Indiana Department of Corrections in addition to two years to be served through community corrections. On January 31, 2012, the court modified the sentence, giving him additional credit for confinement prior to sentencing, and reducing his term of incarceration by two years.

2. The theft counts on which Singer was convicted alleged that, in December 2004 and April of 2005, Singer and two co-defendants knowingly exerted unauthorized control over perpetual care trust and/or pre-need trust monies of a corporation, with the intent to deprive the corporation of the value or use of the monies, by unlawfully wiring the funds to third parties. During the time of the alleged misconduct, Singer was associated with Citigroup Global Markets, a broker-dealer and investment adviser registered with the Commission.

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 15(b)(6) of the Exchange Act and Section 203(f) of the Advisers Act.

IV.

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

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

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

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

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

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

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Commissioner Gallagher not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 71561 / February 18, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15753

In the Matter of **MICHAEL GORDON,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 15(b) OF THE SECURITIES EXCHANGE ACT OF 1934 AND NOTICE OF HEARING**

I.

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

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

1. From October 2000 to February 2007, Gordon was a registered representative associated with Joseph Stevens & Co., Inc., which, at the time of his association, was a broker-dealer registered with the Commission. Joseph Stevens & Co. ceased to be registered with the Commission as of August 2008. Gordon, age 40, is a resident of New Jersey.

B. RESPONDENT'S CRIMINAL CONVICTION

1. On April 21, 2009, before the New York Supreme Court in People v. Michael Gordon, Case No. 1784-2009, Gordon pleaded guilty to one felony count of attempted enterprise corruption in violation of New York Penal Law § 110-460.20 and one count of grand larceny in the third degree in violation of New York Penal Law § 155.35. On May 4, 2012, Gordon

was sentenced in that proceeding to five years of probation and ordered to pay $46,799 in restitution.

2. The attempted enterprise corruption count to which Gordon pleaded arose out of the conduct of a broker-dealer and alleged, among other things, that between March 2001 and May 2005, Gordon participated in a scheme at Joseph Stevens & Co. to artificially raise, maintain, and manipulate the prices of certain stocks and to induce customers to buy and sell those stocks in order to receive illegally inflated profits which were shared between principals and registered representatives. The scheme involved the securities of various companies, including Cypress Bioscience, Inc. and Antigenics, Inc. The grand larceny count to which Gordon pleaded guilty alleged that between March 2001 and May 2005, Gordon stole more than three thousand dollars from an individual.

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 15(b)(6) 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 twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

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

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

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

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

By the Commission.

Elizabeth M. Murphy
Secretary

By: Jill M. Peterson
Assistant Secretary

Commissioner Gallagher not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 71573 / February 19, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15756

In the Matter of **HAJRADIN MUCOVIC,** **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 Hajradin Mucovic ("Respondent" or "Mucovic").

II.

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

III.

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

1. From October of 2000 through April of 2005, Mucovic was a registered representative associated with Joseph Stevens & Co., Inc., a broker-dealer registered with the Commission. Joseph Steven & Co.'s registration with the Commission ended in August of 2008.

2. On August 1, 2011, Mucovic pleaded guilty to two counts of securities fraud in violation of N.Y. Gen. Bus. Law § 552-c(5) and to three other criminal counts before the Supreme Court of New York, in People v. Hajradin Mucovic, Case No. 02394-2009. On November 18, 2011, Mucovic was sentenced in that proceeding to five concurrent five-year terms of probation and ordered to make restitution in the amount of $48,958.00.

3. The securities fraud counts to which Mucovic pleaded guilty alleged, among other things, that from January of 2001 through January of 2005, Mucovic and his co-defendants intentionally engaged in a scheme "with intent to defraud ten or more persons and to obtain property from such persons by false and fraudulent pretenses, representations, and promises, and so obtained property from at least one and more such persons while engaged in inducing and promoting the issuance, distribution, exchange, sale, negotiation, and purchase of securities" issued by Antigenics, Inc., and by Cypress Biosciences, Inc.

IV.

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

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

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

February 19, 2014

In The Matter Of	:	
	:	
Imogo Mobile Technologies Corp.	:	**ORDER OF SUSPENSION OF TRADING**
	:	
File No. 500-1	:	

It appears to the Securities and Exchange Commission that the public interest and the protection of investors require a suspension of trading in the securities of Imogo Mobile Technologies Corp. ("IMTC") because of questions that have been raised about the accuracy and adequacy of publicly disseminated information concerning, among other things, IMTC's business, revenue, and assets. IMTC is a Nevada corporation based in Bellevue, WA. IMTC's common stock is quoted on OTC Link under the symbol IMTC.

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. EST on February 19, 2014 through 11:59 p.m. EST on March 4, 2014.

By the Commission.

Elizabeth M. Murphy
Secretary

By: Lynn M. Powalski
Deputy Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

February 20, 2014

In the Matter of **Tweeter Home Entertainment Group, Inc. (a/k/a TWTR, Inc.),** **Ultitek, Ltd.,** **Utix Group, Inc.,** **Velocity Express Corporation, and** **Vyteris, 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 Tweeter Home Entertainment Group, Inc. (a/k/a TWTR, Inc.) because it has not filed any periodic reports since the period ended March 31, 2007.

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

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

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

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies. Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EST on February 20, 2014, through 11:59 p.m. EST on March 5, 2014.

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. 71579 / February 20, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15757

In the Matter of Tweeter Home Entertainment Group, Inc. (a/k/a TWTR, Inc.), Ultitek, Ltd., Utix Group, Inc., Velocity Express Corporation, and Vyteris, 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]

1. Tweeter Home Entertainment Group, Inc. (a/k/a TWTR, Inc.) ("THEGQ") (CIK No. 1060390) is a delinquent Delaware corporation located in Canton, Massachusetts with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). THEGQ 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, 2007, which reported a net loss of $34,349,000 for the prior six months. On June 11, 2007, TWTRQ filed a Chapter 11 petition in the U.S. Bankruptcy Court for the District of Delaware, which was still pending as of February 12, 2014. As of February 12, 2014, the common stock of THEGQ was quoted on OTC

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

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

2. Ultitek, Ltd. ("UITK") (CIK No. 1327299) is a Nevada corporation located in Englewood Cliffs, New Jersey with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). UITK is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended September 30, 2008, which reported a net loss of $1,841,939 for the prior nine months. As of February 12, 2014, the common stock of UITK was quoted on OTC Link, had seven market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

3. Utix Group, Inc. ("UTIXQ") (CIK No. 842010) 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). UTIXQ is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-KSB for the period ended September 30, 2007, which reported a net loss of $7,605,249 for the prior year. On May 20, 2008, UTIXQ filed a Chapter 7 petition in the U.S. Bankruptcy Court for the District of Massachusetts, which was closed on July 8, 2012. As of February 12, 2014, the common stock of UTIXQ was quoted on OTC Link, had four market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

4. Velocity Express Corporation ("VEXPQ") (CIK No. 1002902) is a void Delaware corporation located in Westport, Connecticut with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). VEXPQ is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended March 28, 2009, which reported a net loss of $30,358,000 for the prior nine months. On September 24, 2009, VEXPQ filed a Chapter 11 petition in the U.S. Bankruptcy Court for the District of Delaware, which was closed on November 26, 2013. As of February 12, 2014, the common stock of VEXPQ was not publicly quoted or traded.

5. Vyteris, Inc. ("VYTRQ") (CIK No. 1139950) is a revoked Nevada corporation located in Fair Lawn, New Jersey with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). VYTRQ 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 net income of $1,915,896 for the prior three months. On November 6, 2012, VYRTQ filed a Chapter 7 petition in the U.S. Bankruptcy Court for the District of Nevada, which was still pending as of February 12, 2014. As of February 12, 2014, the common stock of VYTRQ was quoted on OTC Link, had eight market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

B. DELINQUENT PERIODIC FILINGS

6. As discussed in more detail above, all of the Respondents are delinquent in their periodic filings with the Commission, have repeatedly failed to meet their obligations to file timely periodic reports, and failed to heed delinquency letters sent to them by the Division of Corporation Finance requesting compliance with their periodic filing obligations or, through

their failure to maintain a valid address on file with the Commission as required by Commission rules, did not receive such letters.

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

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

III.

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

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

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

IV.

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

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

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

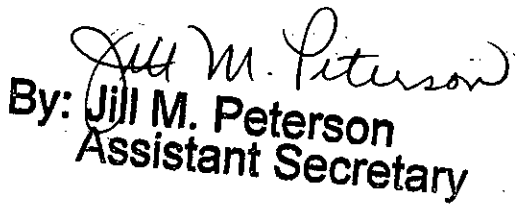
This Order shall be served forthwith upon Respondents personally or by certified, registered, or Express Mail, or by other means permitted by the Commission Rules of Practice.

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

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

By the Commission.

Elizabeth M. Murphy
Secretary



UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

February 20, 2014

In the Matter of

Ads In Motion, Inc.,
Premier Beverage Group Corp.
Pulmo BioTech, Inc.,
TriMedia Entertainment Group, Inc., and
Zanett, 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 Ads In Motion, Inc. because it has not filed any periodic reports since the period ended February 26, 2011.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Premier Beverage Group Corp. because it has not filed any periodic reports since the period ended September 30, 2012.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Pulmo BioTech, 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 TriMedia Entertainment Group, Inc. because it has not filed any periodic reports since the period ended July 31, 2008.

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

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies. Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EST on February 20, 2014, through 11:59 p.m. EST on March 5, 2014.

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 EXCHANGE ACT OF 1934
Release No. 71585 / February 20, 2014

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3537 / February 20, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15760

In the Matter of **SAM KAN, CPA, and SAM KAN & COMPANY,** **Respondents.**	**ORDER INSTITUTING PUBLIC ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTIONS 4C AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934 AND RULE 102(e) OF THE COMMISSION'S RULES OF PRACTICE, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 4C[1] and 21C of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 102(e)(1)(ii)[2] and (iii)[3] of the Commission's Rules of Practice against Sam Kan, CPA ("Kan") and Sam Kan & Co. ("Kan & Co." or the "firm") (collectively "Respondents").

---

[1] Section 4C provides, in relevant part, that: "The Commission may censure any person, or deny, temporarily or permanently, to any person the privilege of appearing or practicing before the Commission in any way, if that person is found . . . (1) not to possess the requisite qualifications to represent others . . . (2) to be lacking in character or integrity, or to have engaged in unethical or improper professional conduct; or (3) to have willfully violated, or willfully aided and abetted the violation of, any provision of the securities laws or the rules and regulations thereunder."

[2] Rule 102(e)(1)(ii) provides, in pertinent part, that: "The Commission may . . . deny, temporarily or permanently, the privilege of appearing or practicing before it . . . to any person who is found . . . to have engaged in unethical or improper professional conduct."

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 Public Administrative and Cease-and-Desist Proceedings Pursuant to Sections 4C and 21C of the Exchange Act and Rule 102(e) of the Commission's Rules of Practice, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

III.

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

A. SUMMARY

1. In connection with audits and quarterly reviews of four microcap issuers, Kan and Kan & Co. failed to comply with auditing standards issued by the Public Company Accounting Oversight Board ("PCAOB"). Respondents repeatedly engaged in unreasonable conduct that resulted in violations of applicable professional standards and demonstrated a lack of competence to practice before the Commission. Respondents' improper professional conduct extended over an 18-month period (November 2010 to May 2012) and was inconsistent with seven PCAOB standards. Respondents failed to: (1) comply with requirements for engagement quality reviews; (2) perform appropriate procedures to ascertain the occurrence of subsequent events; (3) properly document procedures relating to the evaluation of the adequacy of disclosure in the financial statements; (4) prepare engagement completion documents; (5) obtain sufficient evidence to support the firm's audit opinion; (6) properly supervise audits; and (7) obtain written representations from management.

2. Additionally, Respondents willfully violated Rule 2-02(b)(1) of Regulation S-X because each audit report at issue falsely claimed that the audit had been conducted in compliance with PCAOB standards.

---

[3] Rule 102(e)(1)(iii) provides, in pertinent part, that: "The Commission may . . . deny, temporarily or permanently, the privilege of appearing or practicing before it . . . to any person who is found . . . to have willfully violated, or willfully aided and abetted the violation of any provision of the Federal securities laws or the rules and regulations thereunder."

B. RESPONDENTS

1. **Sam Kan**, age 35, resides in Alameda, California. Kan has been licensed as a certified public accountant in the State of California since 2003. Kan is the founder and sole owner of Kan & Co.

2. **Sam Kan & Company**, is an auditing and accounting firm with its principal place of business in Alameda, California. Kan & Co. was registered with the PCAOB on July 14, 2008.

C. RELEVANT ENTITIES

1. **Issuer A** is a Nevada corporation. Issuer A's common stock is registered with the Commission pursuant to Section 12(g) of the Exchange Act and is traded on the OTC Market. Issuer A's public filings state that it sells computer monitoring software. In fiscal year 2010 the company reported no revenues. In fiscal year 2011 it reported gross revenues of approximately $6,000 and operating expenses of over $1.6 million. As of December 2011 the company had an accumulated deficit of over $2.5 million. Kan & Co. issued five audit reports regarding Issuer A, relating to financial statements and restatements for fiscal years 2009, 2010, and 2011. These reports were dated November 19, 2010; March 17, 2011; April 25, 2011; March 30, 2012; and May 18, 2012.

2. **Issuer B** is a Nevada corporation. Issuer B voluntarily files periodic reports with the Commission. Its stock is traded on the OTC Market. Issuer B's public filings state that it pursues oil and gas exploration activities. From its inception in 2006 until August 2012, it had no revenues. Kan & Co. issued an audit report dated December 29, 2011, on Issuer B's fiscal year 2010 and 2011 financial statements.

3. **Issuer C** is a Nevada corporation. Issuer C files periodic reports and is believed to be a voluntary filer. The shares of Issuer C are traded on the OTC Market. Issuer C's public filings state that it is a development stage mineral exploration and carbon development company. From its inception in 2007 through December 2011, the company had no revenues. Kan & Co. issued audit reports dated April 14, 2011 and April 16, 2012, on Issuer C's financial statements for fiscal years 2009, 2010, and 2011. Respondents also conducted quarterly reviews for the quarters ended March 31, 2011, June 30, 2011, and September 30, 2011.

4. **Issuer D** is a Delaware corporation. Issuer D's common stock is registered with the Commission pursuant to Section 12(g) of the Exchange Act and is traded on the OTC Market. Issuer D's public filings state that it is engaged in the development and commercialization of iodine-based agents and antimicrobials. In fiscal year 2010 it had revenue of approximately $23,000 and at year end had an accumulated deficit of over $22.5 million. Kan & Co. issued an audit report dated April 15, 2011 on Issuer D's fiscal year 2009 and 2010 financial statements. Respondents also conducted a quarterly review for the quarter ended March 31, 2011.

D. THE CONDUCT AT ISSUE

Failure to Comply with the Requirements for Engagement Quality Reviews (AS No. 7)

1. PCAOB standards require an engagement quality review and concurring approval of issuance for each audit engagement.[4] The objective of the engagement quality reviewer is to perform an evaluation of the significant judgments made by the engagement team and the related conclusions reached in forming the overall conclusion on the engagement and in preparing the engagement report, in order to determine whether to provide concurring approval of issuance. PCAOB standards require that the engagement quality reviewer be independent of the company, perform the engagement quality review with integrity, and maintain objectivity in performing the review. In order to ensure the necessary level of objectivity, the person who served as the engagement partner during either of the two audits preceding the audit subject to the engagement quality review may not be the engagement quality reviewer. AS No. 7, *Engagement Quality Review*, at .01-.02, .06, and .08.

2. The engagement quality review must be sufficiently documented and include information that identifies: (1) the engagement quality reviewer; (2) the documents reviewed by the engagement quality reviewer; and (3) the date the engagement quality reviewer provided concurring approval of issuance. In addition, PCAOB standards provide that the firm may grant permission to the client to use the engagement report in an audit only after the engagement quality reviewer has performed the review and provides concurring approval of issuance. AS No. 7, *Engagement Quality Review*, at .12-.13, and .19.

3. Issuer A: Respondents failed to comply with the engagement quality review requirements in connection with three audits of Issuer A. First, Respondents failed to obtain an engagement quality review in connection with the audit of Issuer A's restated financial statements for 2010. After Issuer A informed Kan that there was a material accounting error in its 2010 financial statements, Respondents audited the restated financial statements and issued an audit report dated April 25, 2011. They failed to obtain an engagement quality review of their audit of the restated financial statements.

4. Second, the engagement quality review for the audit of Issuer A for fiscal year 2011 was performed by Kan himself even though he had acted as engagement partner for the audits of Issuer A for fiscal 2010 and 2009. Because Kan served as engagement partner for the preceding audit, he was prohibited from performing the engagement quality review for the fiscal 2011 audit.

5. Third, when Issuer A was required to restate its financial statements for fiscal year 2011, Kan & Co. audited the restated financial statements and issued an audit

---

[4] PCAOB standard AS No. 7, *Engagement Quality Review*, was effective for engagement quality reviews of audits and interim reviews for fiscal years beginning on or after December 15, 2009.

report dated May 18, 2012. Here too, Kan & Co. failed to obtain an engagement quality review of its audit.

6. Issuer C: For fiscal year 2011, Respondents failed to obtain the engagement quality review before completing their audit and granting Issuer C permission to use their audit report. The audit report was dated April 16, 2012. Issuer C filed its 2011 Form 10-K, with the Kan & Co. report, on April 17, 2012. But Kan's engagement quality reviewer did not complete the review until April 18, 2012, after the report was filed with the Commission.

7. Issuer D: The engagement quality review was completed after Kan & Co.'s audit report for Issuer D's fiscal year 2010 was filed with the Commission. Kan's audit report was dated April 15, 2011. That same day Issuer D filed its 2010 Form 10-K, including the audit report. But the engagement quality reviewer did not perform the review until May 16, 2011, a month after the report was filed with the Commission.

Failure to Perform Appropriate Procedures to Ascertain the Occurrence of Subsequent Events (AU § 560)

8. An independent auditor's report ordinarily is issued in connection with historical financial statements that purport to present the issuer's financial position at a stated date and results of operations and cash flows for a period ended on that date. However, events or transactions sometimes occur subsequent to the balance-sheet date, but prior to the issuance of the financial statements, that have a material effect on the financial statements and therefore require adjustment or disclosure in the statements. Failure to ascertain whether a material subsequent event has occurred requiring adjustments to or disclosure in the financial statements may result in the misstatement of the financial statements or misleading disclosure. PCAOB standards require the independent auditor to perform procedures, at or near the date of the auditor's report, to evaluate these "subsequent events." These procedures generally include:

- Read the latest available interim financial statements; compare them with the financial statements being reported upon; and make any other comparisons considered appropriate in the circumstances.

- Inquire of and discuss with officers and other executives having responsibility for financial and accounting matters as to whether any substantial contingent liabilities or commitments existed at the date of the balance sheet being reported on or at the date of inquiry; whether there was any significant change in the capital stock, long-term debt, or working capital to the date of inquiry; the current status of items, in the financial statements being reported on, that were accounted for on the basis of tentative, preliminary, or inconclusive data; and whether any unusual adjustments had been made during the period from the balance-sheet date to the date of inquiry.

- Read the available minutes of meetings of stockholders, directors, and appropriate committees.

- Inquire of client's legal counsel concerning litigation, claims, and assessments.

- Obtain a letter of representations, dated as of the date of the auditor's report, from appropriate officials as to whether any events occurred subsequent to the date of the financial statements being reported on that in the officials' opinion would require adjustment or disclosure in these statements.

AU § 560, *Subsequent Events*, at .01, .02 and .12.

9. Issuer A was required to reissue its financial statements for 2010 and 2011. For each reissuance, Respondents merely reviewed Issuer A's Form 8-Ks and asked management whether there were any subsequent events. They failed to: (1) make inquiries of appropriate personnel as to the existence of contingent liabilities, changes in equity, debt or working capital, and whether any unusual adjustments had been made since the date of the auditor's previous review; (2) request from management and read any minutes of stockholders' or directors' meetings that were held since the date of the auditor's previous review; and (3) obtain a letter of representations, dated as of the date of the auditor's report, as to whether any events occurred that in the opinion of management would require adjustment or disclosure in the financial statements.

Failure to Properly Document Procedures Relating to the Evaluation of the Adequacy of Disclosure in Financial Statements (AS No. 3)

10. AS No. 3 requires that an auditor prepare and retain documentation providing a written record of the basis for the auditor's conclusions. This includes documentation of the procedures performed, evidence obtained, and conclusions reached with regard to the relevant financial statement assertions. AS No. 3, *Audit Documentation*, at .01 and .06.

11. Kan & Co. repeatedly failed to document the work performed with regard to the notes to the financial statements. Kan's work papers for the following five engagements do not adequately document such work: (i) Issuer A -- audit report dated 11/19/10 covering fiscal year 2009; (ii) Issuer A -- audit report dated 3/17/11 covering fiscal year 2010; (iii) Issuer C -- audit report dated 4/14/11 covering fiscal years 2009 and 2010; (iv) Issuer C -- audit report dated 4/16/12 covering fiscal year 2011; and (v) Issuer D -- audit report dated 4/15/11 covering fiscal years 2009 and 2010. These work papers provide no evidence that the dollar amounts in the notes were agreed to the books and records of the company or other supporting documents as required by AU § 326.[5] [6]

[5] PCAOB standards require that the auditor's substantive procedures must include reconciling the financial statements to the accounting records. *See* AU § 326 *Evidential Matter* at .19. In addition, the auditor considers the adequacy of disclosure in the financial statements, including the notes to the financial

Failure to Prepare an Engagement Completion Document (AS No. 3)

12. PCAOB standards require an auditor to prepare, for each engagement, an engagement completion document which identifies all significant findings or issues. AS No. 3, *Audit Documentation*, at .13. An engagement completion document discusses the significant findings or issues which are substantive matters important to understanding the procedures performed, evidence obtained, or conclusions reached during the audit. *See* AS No. 3, *Audit Documentation*, at .12.

13. Issuer B: No engagement completion document was prepared in connection with the audit of Issuer B's fiscal year 2010 and 2011 financial statements for which the audit report was dated 12/29/11.

14. Issuer C: No engagement completion document was prepared for the audit of Issuer C's fiscal year 2011 financial statements.

15. Issuer D: Respondents also failed to prepare an engagement completion document in connection with the audit of Issuer D's fiscal year 2009 and 2010 financial statements for which the audit report was dated 4/15/2011. Although the work papers included a checklist noting the need for an engagement completion document, there was no engagement completion document in the work papers.

Failure to Obtain Sufficient Evidence to Support the Audit Opinion and Adequately Document the Procedures Performed (AU § 326 and AS No. 3)

16. AU § 326 requires an auditor to obtain sufficient competent evidential matter to support the opinion expressed in the auditor's report, including evidential matter with respect to management's assertions of completeness, presentation, and disclosure elements of the financial statements. AU § 326, *Evidential Matter,* at .01-.03.

17. Respondents failed to obtain sufficient evidence to support the firm's audit of Issuer B's fiscal year 2010 and 2011 financial statements for which the audit report was dated 12/29/2011. Issuer B was a development stage company that had no recorded revenues since its inception in September 2006, but for fiscal years 2010 and 2011 recorded significant operating expenses. The work papers lacked sufficient evidence to show that expenses for professional fees, travel and promotions, and general and

---

statements. *See* AU § 431 *Adequacy of Disclosure in Financial Statements*. AU § 431 states: "The presentation of financial statements in conformity with generally accepted accounting principles includes adequate disclosure of material matters. These matters relate to the form, arrangement, and content of the financial statements and their appended notes, including for example, the terminology used, the amount of detail given, the classification of items in the statements, and the bases of the amounts set forth. An independent auditor considers whether a particular matter should be disclosed in light of the circumstances and facts of which he is aware at the time." AU § 431 at .02.

[6] AU § 326 was superseded by AS No. 15, *Audit Evidence*, effective for fiscal years beginning on or after December 15, 2010. AU § 431 was superseded by AS No. 14, *Evaluating Audit Results*, effective for fiscal years beginning on or after December 15, 2010.

administrative fees were adequately tested. These expenses comprised 34% and 31%, respectively, of total operating expenses.

18. Additionally, for the audit of Issuer B's fiscal year 2010 financial statements, Kan & Co. failed to prepare adequate work papers. The work papers did not include documentation of the procedures performed or the conclusions reached, as required by AS No. 3 at .06.

Failure to Properly Plan and Supervise the Audit (AU § 311 and AS No. 10)

19. AU § 311 requires that the work be adequately planned and that assistants, if any, be properly supervised. AU § 311, *Planning and Supervision*, at .01.[7] The extent of supervision appropriate in a given instance depends on many factors, including the complexity of the subject matter and the qualifications of persons performing the work. The work performed by each assistant should be reviewed to determine whether it was adequately performed and to evaluate whether the results are consistent with the conclusions to be presented in the auditor's report. AU § 311 at .11 and .13.

20. The vast majority of Kan & Co.'s relevant audit work was performed by a staff member who had no auditing experience at the time he started his employment with Kan in June of 2009. This staff member reported directly to Kan, who was responsible for the supervision and review of the work. Kan was required to consider the staff member's lack of auditing experience and correspondingly increase his supervision and review.

21. Kan failed to properly supervise and review the work performed by his staff. This failure is evidenced by his not having detected that the audit documentation did not comply with PCAOB standards and that required procedures had not been performed. In multiple audit engagements Kan's staff member, and not Kan himself, signed off as having performed the procedures in the checklist relating to determining that the work papers contained adequate documentation and that all required checklists and audit programs had been completed.

22. Issuer A: Kan failed to properly supervise his staff's work relating to whether the work performed for the audits of Issuer A for fiscal years 2009 and 2010 was properly documented, and for Issuer A's amended financial statements for fiscal year 2010 Kan failed to properly plan the restatement audit to ensure an engagement quality review was performed.

23. Issuer B: Kan failed to properly supervise his staff to determine whether an engagement completion document was included for the fiscal year 2010 and 2011

---

[7] AU § 311 was superseded by AS No. 10, *Supervision of the Audit Engagement*, which applies to audits of fiscal years beginning on or after December 15, 2010. AS No. 10 requires the engagement partner (or other engagement team members performing supervisory activities) to review the work of engagement team members to evaluate whether the work was performed and documented; the objectives of the procedures were achieved; and the results of the work support the conclusions reached. AS No. 10, *Supervision of the Audit Engagement*, at .03 and .05.

Issuer B audits. For these audits Kan also failed to detect that there was insufficient evidential matter to support the audit with regard to Issuer B's operating expenses, and to confirm that his firm completed substantive testing of those expenses.

24. Issuer C: Kan failed to properly supervise the audits of Issuer C for fiscal years 2009 and 2010 as required by AU § 311, and 2011 as required by AS No. 10 relating to whether his staff's work was properly documented. Kan also failed to determine whether an engagement completion document was prepared for the fiscal year 2011 audit. When he completed the "Supervision and Review" checklist for that audit, Kan represented that he reviewed the engagement completion document -- but in fact no engagement completion document was prepared.

25. Issuer D: Kan failed to properly supervise his staff's work relating to whether the work performed for Issuer D's fiscal year 2009 and 2010 audits was properly documented and failed to determine whether his staff prepared an appropriate engagement completion document.

Failure to Obtain Written Management Representations for Reviews of Interim Financial Information (AU § 722)

26. AU § 722 provides that written representations from management should be obtained for all interim financial information presented and for all periods covered by the auditor's review. The representations should address, inter alia, financial statements, internal controls, completeness of information, procedures for recognition, measurement and disclosure, and subsequent events. AU § 722, *Interim Financial Information*, at .24.

27. Respondents failed to obtain written representations from management in connection with three quarterly reviews: the reviews of Issuer C's interim financial statements for the quarters ended March 31 and June 30, 2011 and the review of Issuer D's interim financial statements for the quarter ended March 31, 2011.

Misrepresentations Regarding Compliance with PCAOB Standards

28. Rule 2-02(b)(1) of Regulation S-X requires that an accountant's audit report "state whether the audit was made in accordance with generally accepted auditing standards . . . ." 17 C.F.R. 210.2-02(b)(1). As used in Commission regulations, the phrase "generally accepted auditing standards" includes the standards issued by PCAOB.

29. In each of the audit reports at issue, Kan & Co. stated that it had conducted its audits in accordance with PCAOB standards. Those representations were false.

30. Kan was the sole proprietor of Kan & Co. Kan approved the signing of the firm's name to the audit reports and their issuance for inclusion in the filings with the Commission as the engagement partner for all but one of the audits at issue. As a result, Kan too falsely stated that the audits were conducted in accordance with PCAOB standards.

E. VIOLATIONS

1. **Rule 2-02(b)(1) -- Misrepresentations Regarding Compliance:** An auditor violates Rule 2-02(b)(1) of Regulation S-X by issuing a report falsely stating that an audit was conducted in accordance with PCAOB standards. As a result of the conduct described above, Respondents willfully violated Rule 2-02(b)(1).

2. **Rule 102(e)(1)(ii) -- Improper Professional Conduct:** Rule 102(e)(1)(ii) of the Commission's Rules of Practice provides that the Commission may deny the privilege of appearing or practicing before the Commission to any person who is found to have engaged in improper professional conduct. As a result of the conduct described above, Respondents engaged in improper professional conduct as defined in Rule 102(e)(1)(iv)(B)(2), i.e., negligent conduct consisting of repeated instances of unreasonable conduct, each resulting in a violation of applicable professional standards, that indicate a lack of competence to practice before the Commission.

3. **Rule 102(e)(1)(iii) -- Violations of Federal Securities Laws:** Rule 102(e)(1)(iii) of the Commission's Rules of Practice provides that the Commission may deny the privilege of appearing or practicing before the Commission to any person found "[t]o have willfully violated, or willfully aided and abetted the violation of, any provision of the Federal securities laws or the rules and regulations thereunder." As a result of the conduct described above, Respondents willfully violated certain provisions of the federal securities laws or rules and regulations thereunder pursuant to Rule 102(e)(1)(iii) of the Commission's Rules of Practice.

F. FINDINGS

1. Based on the foregoing, the Commission finds that Respondents willfully violated Rule 2-02(b)(1) of Regulation S-X.

2. Based on the foregoing, the Commission finds that Respondents engaged in improper professional conduct pursuant to Section 4C(a)(2) of the Exchange Act and Rule 102(e)(1)(ii) of the Commission's Rules of Practice.

3. Based on the foregoing, the Commission finds that Respondents willfully violated certain provisions of the federal securities laws or the rules and regulations thereunder pursuant to Section 4C(a)(3) of the Exchange Act and Rule 102(e)(1)(iii) of the Commission's Rules of Practice.

IV.

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

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

1. Respondents shall cease and desist from committing or causing any violations and any future violations of Rule 2-02(b)(1) of Regulation S-X.

2. Respondents are denied the privilege of appearing or practicing before the Commission as an accountant.

3. After three years from the date of this order, Kan & Co. may request that the Commission consider its reinstatement by submitting an application (attention: Office of the Chief Accountant) to resume appearing or practicing before the Commission as an independent accountant. Such an application must satisfy the Commission that:

a. Kan & Co. is registered with the PCAOB in accordance with the Sarbanes-Oxley Act of 2002, and such registration continues to be effective. However if registration with the PCAOB is dependent upon reinstatement by the Commission, the Commission will consider the application on its other merits;

b. Kan & Co. has hired an independent CPA consultant ("consultant"), who is not unacceptable to the staff of the Commission and is affiliated with a public accounting firm registered with the PCAOB, that has conducted a review of Kan & Co.'s quality control system and submitted to the staff of the Commission a report that describes the review conducted and procedures performed, and represents that the review did not identify any criticisms of or potential defects in the firm's quality control system that would indicate that any of Kan & Co.'s employees will not receive appropriate supervision. Kan & Co. agrees to require the consultant, if and when retained, to enter into an agreement that provides that for the period of review and for a period of two years from completion of the review, the consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Kan & Co., or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement will also provide that the consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the consultant in performance of his/her duties under this Offer shall not, without prior written consent of the staff, enter into any employment, consultant, attorney-client, auditing or other professional relationship with Kan & Co., or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the review and for a period of two years after the review.

c. Kan & Co. has resolved all disciplinary issues with the PCAOB,

and has complied with all terms and conditions of any sanctions imposed by the PCAOB (other than reinstatement by the Commission); and

d. Kan & Co. acknowledges its responsibility, as long as it appears or practices before the Commission as an independent accountant, to comply with all requirements of the Commission and the PCAOB, including, but not limited to, all requirements relating to registration, inspections, concurring partner reviews and quality control standards.

4. Kan & Co. shall pay disgorgement of $40,000 and prejudgment interest of $1,155.26 and a civil money penalty in the amount of $40,000 to the United States Treasury. Kan & Co. shall also pay post-judgment interest in the amount of $264.10. Payment shall be made in the installments noted below. If any payment is not made by the date the payment is required by this Order, the entire outstanding balance of disgorgement, prejudgment interest, and civil penalties, plus any additional interest accrued pursuant to SEC Rule of Practice 600 or pursuant to 31 U.S.C. 3717, shall be due and payable immediately, without further application. Payment must be made in one of the following ways:

a. Kan & Co. 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

b. Kan & Co. 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 Kan & Co. 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 Antonia Chion, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549.

5. Accordingly, Kan & Co. shall make payments in accordance with the following schedule:

(1) March 1, 2014: $20,315.19
(2) May 1, 2014: $20,341.60
(3) August 1, 2014: $20,368.04
(4) November 1, 2014: $20,394.53

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

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

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

(1) Kan, or the public accounting firm with which he is associated, is registered with the PCAOB in accordance with the Sarbanes-Oxley Act of 2002, and such registration continues to be effective;

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

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

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

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

By the Commission.

Elizabeth M. Murphy
Secretary

By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 71581 / February 20, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15758

In the Matter of Ads In Motion, Inc., Premier Beverage Group Corp. Pulmo BioTech, Inc., TriMedia Entertainment Group, Inc., and Zanett, 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]

1. Ads In Motion, Inc. ("ADSO") (CIK No. 1403243) is a delinquent Delaware corporation located in Morristown, New Jersey with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). ADSO is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended February 26, 2011, which reported a net loss of $2,020,563 for the prior three months. As of February 12, 2014, the common stock of ADSO was quoted on (formerly "Pink Sheets") operated by OTC Markets Group Inc. ("OTC Link"), had three market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

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

2. Premier Beverage Group Corp. ("PBGC") (CIK No. 1253557) 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). PBGC 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, 2012, which reported a net loss of $309,737 for the prior six months. As of February 12, 2014, the common stock of PBGC was quoted on OTC Link, had seven market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

3. Pulmo BioTech, Inc. ("PLMO") (CIK No. 1286690) is a void Delaware corporation located in New York, New York with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). PLMO 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 $636,344 for the prior nine months. As of February 12, 2014, the common stock of PLMO was quoted on OTC Link, had six market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

4. TriMedia Entertainment Group, Inc. ("TMEG") (CIK No. 1163680) is a void Delaware corporation located in New York, New York with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). TMEG 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, 2008, which reported a net loss of $1,154,224 for the prior nine months. As of February 12, 2014, the common stock of TMEG 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. Zanett, Inc. ("ZANE") (CIK No. 1133872) is a void Delaware corporation located in New York, New York with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). ZANE 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 $627,775 for the prior three months. As of February 12, 2014, the common stock of ZANE was quoted on OTC Link, had seven market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

B. DELINQUENT PERIODIC FILINGS

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 issuers to file quarterly reports.

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

III.

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

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

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

IV.

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

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

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

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

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

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

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Commissioner Piwowar not participating

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Release No. 71589A / February 20, 2014

Admin. Proc. File No. 3-14175r

In the Matter of the Application of

KENT M. HOUSTON
Carlsbad, California 92009

For Review of Disciplinary Action Taken by

FINRA

CORRECTED OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION -- REVIEW OF DISCIPLINARY PROCEEDINGS

Sanctions Imposed by Registered Securities Association on Remand

On remand, registered securities association modified the sanctions imposed on a former general securities representative of a member firm for violating association rules for (i) engaging in outside business activities without providing his member firm with written notice; (ii) failing to appear for an on-the-record interview with association staff; and (iii) engaging in conduct inconsistent with just and equitable principals of trade. *Held*, association's modification of sanctions *sustained*.

APPEARANCES:

Kent M. Houston, pro se.

Alan Lawhead, Carla Carloni, and *Megan Rauch* for FINRA.

Appeal filed: March 22, 2013
Last brief received: June 26, 2013

I.

Kent M. Houston, formerly a general securities representative with First Wall Street Corp. ("First Wall Street" or "the Firm"), a former NASD member firm, has appealed a decision by FINRA's National Adjudicatory Council ("NAC") reconsidering and modifying sanctions.[1] On December 20, 2011,[2] we sustained the NAC's findings of fact and findings that Houston violated (i) NASD Rules 3030 and 2110 by engaging in outside business activity without providing written notice to his member firm, and (ii) NASD Rules 8210 and 2110 by failing to appear for an on-the-record interview ("OTR") with NASD staff.[3] But we also vacated the sanction imposed and remanded the proceeding to the NAC for a sanctions redetermination.[4]

We found that the sanction imposed—a bar for violating Rules 8210 and 2110[5]—was based on an NAC determination that Houston's failure to appear for the OTR constituted a complete failure to respond to NASD's Rule 8210 request. This determination, we found, did not take into account that Houston had responded, apparently to NASD's satisfaction, to two other Rule 8210 requests, and at least partially to a third Rule 8210 request.[6] We stated that "because Houston did respond in some manner to NASD's request, any sanction imposed, whether a bar or

---

[1] On July 26, 2007, the Commission approved a proposed rule change filed by the National Association of Securities Dealers, Inc. ("NASD") to amend NASD's Restated Certificate of Incorporation to reflect its name change to Financial Industry Regulatory Authority, Inc. ("FINRA") in connection with the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc. *Order Granting Proposed Rule Change Relating to Restated Certificate of Incorporation of NASD*, Exchange Act Release No. 56146, 2007 SEC LEXIS 1641 (July 26, 2007). Because this disciplinary proceeding was instituted before that date, we continue to use the designation NASD.

[2] *Kent M. Houston*, Exchange Act Release No. 66014, 2011 SEC LEXIS 4491 (Dec. 20, 2011) (the "December 20, 2011 Opinion").

[3] Following the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc. into FINRA, FINRA began developing a new "Consolidated Rulebook" of FINRA Rules. The first phase of the new consolidated rules became effective on December 15, 2008. *See* FINRA Regulatory Notice 08-57 (Oct. 2008). Because the complaint in this case was filed before the consolidated rules took effect, NASD rules apply. *See John B. Busacca, III*, Exchange Act Release No. 63312, 2010 SEC LEXIS 3787, at *2 n.2 (Nov. 12, 2010), *petition denied*, 449 F. App'x 886 (11th Cir. 2011).

[4] *Houston*, 2011 SEC LEXIS 4491, at *27.

[5] In light of the bar imposed for violating Rules 8210 and 2110, the NAC assessed but initially declined to impose sanctions for Houston's failure to disclose his outside business activity in violation of Rules 3030 and 2110.

[6] *Houston*, 2011 SEC LEXIS 4491, at *24-25. All of the Rule 8210 requests at issue "were part of the same investigation by NASD." *Id.* at *25.

otherwise, should analyze factors other than the presumptive unfitness indicated by a failure to respond in any manner."[7]

On remand, the NAC suspended Houston for two years and fined him $25,000 for his failure to provide OTR testimony in violation of Rules 8210 and 2110. The NAC also imposed a consecutive one-year suspension and an additional $50,000 fine for Houston's failure to provide notice to the Firm of his outside business activity in violation of Rules 3030 and 2110. We base our findings on an independent review of the record, and sustain the sanctions imposed.

II.

A. Findings of fact and violations of NASD Rules.

We presume familiarity with our prior findings.[8] As noted, we sustained the NAC's findings of fact and findings that Houston violated (i) Rules 3030 and 2110 by engaging in outside business activity without providing the required notice to First Wall Street,[9] and (ii) Rules 8210 and 2110 by refusing to attend the OTR.[10]

To summarize those findings, Houston failed to give First Wall Street prompt written notice that he was appointed on April 24, 2001, to serve with his great aunt, Veta M. Boyd, as co-trustee of a trust established in 1971 for the benefit of Mrs. Boyd and her late husband.[11] Houston also failed to give First Wall Street prompt written notice when he was appointed as the trust's sole trustee in June 2005. These failures were in contravention not only of Rule 3030 but also First Wall Street's periodic requests from 2002 through 2005 that Houston disclose any outside business activities.

---

7 *Id.*

8 *Id.*

9 NASD Rule 3030 prohibits a person associated with a member from being employed by, or accepting compensation from, "any other person as a result of any business activity . . . outside the scope of his relationship with his employer firm, unless he has provided prompt written notice to the member."

NASD Rule 2110 requires adherence to "high standards of commercial honor and just and equitable principles of trade." Rule 2110 is violated by any conduct that violates another NASD rule. *See, e.g.*, *Wanda P. Sears*, Exchange Act Release No. 58075, 2008 SEC LEXIS 1521, at *19 n.28 (July 1, 2008).

10 NASD Rule 8210(a)(1) provides that NASD may require a person associated with a member "to provide information orally, in writing, or electronically . . . and to testify at a location specified by NASD staff."

11 Boyd's husband, Walter L. Boyd, died in 1986. The trust was established in 1971 to pay the trust's net income to the Boyds on a monthly basis.

Indeed, Houston did not disclose his trustee activities when he signed First Wall Street's "Independent Contractor Agreement" in 2002 and 2003 despite the fact that the agreement (i) stated that Houston was to notify the Firm of such activities, and (ii) appended an "Outside Business Activity Notification Form."[12] Houston then misrepresented on another First Wall Street form in 2004 that he had not "conducted any outside business activities during the past year."[13]

Houston continued with his deception in 2005. He did not disclose his trustee activities after receiving a Firm memorandum on August 29, 2005, stating that registered representatives and staff should contact the compliance department "immediately in writing if you are currently listed as a trustee, . . . or if you perform any duties that involve compensation of any kind that does not come through the firm in the form of commissions and is not included on your form U4 as an approved outside business activity."[14] Houston then again misrepresented on another First Wall Street form in October 2005 that he had not "accepted any appointment as trustee . . . over any client including my immediate family during the past year."[15]

An NASD examination in December 2005 led to the discovery of Houston's outside business activity. During that examination, First Wall Street's chief compliance officer learned that Houston had check-writing authority on an account that Houston had opened for the trust at the Firm in 2001 (the "Boyd Trust Account").[16] The Firm subsequently learned that Houston had become sole trustee of the Boyd trust and that Houston had written numerous checks on the Boyd Trust Account, some of which were payable to Houston's home equity line of credit account at Countrywide Bank. The Firm opened a formal investigation into Houston's trustee activities, and terminated Houston after he failed to cooperate.[17]

---

[12] The agreement expressly mentioned acting as a trustee as an example of an outside business activity. Houston did not complete the appended form in 2002 or 2003.

[13] This form was entitled "Outside Business Activities Statement," and was separate from the form appended to the Firm's "Independent Contractor Agreement."

[14] Houston misrepresented on his Forms U4 (Uniform Application for Securities Industry Registration or Transfer) dated July 29, 2005, and October 20, 2005, that he was not engaged in an outside business activity.

[15] This form was attached to a second Firm memorandum dated September 8, 2005 reminding registered representatives that they are required to request approval for acting as a trustee.

[16] The account application listed Houston and Mrs. Boyd as co-successor trustees and Houston as the account representative. Houston was able to write checks on the account without Mrs. Boyd's signature.

[17] As discussed in detail in the December 20, 2011 Opinion, Houston provided some but not all of the information and documents requested by the Firm before refusing to cooperate. And some of the information he provided was false.

It turned out that Houston had written checks on the Boyd Trust Account to pay himself over $355,000 in compensation from 2003 through January 2006.[18] Houston paid himself $41,600 in 2003, $167,000 in 2004, $119,000 in 2005, and $27,500 in January 2006.[19]

After his termination, NASD began investigating Houston's possible misconduct at First Wall Street. NASD sent two Rule 8210 requests to Houston in June and August 2006, which Houston appears to have complied with to NASD's satisfaction. NASD sent a third Rule 8210 request to Houston in September 2006, to which Houston only partially responded. To obtain a complete response, NASD sent follow-up letters to Houston in October and November 2006 repeating the request from September. Houston again failed to provide a complete response.

On September 7, 2007, NASD sent Houston a letter requesting that he appear for an OTR. After obtaining NASD's agreement to twice reschedule the OTR, Houston sent NASD a letter stating that he had "nothing further to add and [would] not be attending the (OTR)." The FINRA disciplinary action followed.

III.

Pursuant to Exchange Act Section 19(e)(2), we will sustain a FINRA sanction unless we find, "having due regard for the public interest and the protection of investors," that the sanction is excessive or oppressive or imposes an unnecessary or inappropriate burden on competition.[20] As part of this review, we must consider any aggravating or mitigating factors[21] and whether the sanctions imposed by FINRA are remedial in nature and not punitive.[22]

Although the Commission is not bound by FINRA's Sanction Guidelines, we use them as a benchmark in conducting our review under Exchange Act Section 19(e)(2).[23] We acknowledge

---

[18] The trust agreement authorized compensation for the trustee. Some of the checks were made payable to Houston and others to Houston's Countrywide account.

[19] Mrs. Boyd also wrote approximately $99,000 worth of checks to Houston from the Boyd Trust Account in 2001 and 2002. Houston also received commissions for transactions in the Boyd Trust Account.

[20] 15 U.S.C. § 78s(e)(2). Houston does not claim, and the record does not show, that FINRA's action imposed an unnecessary or inappropriate burden on competition.

[21] *See Saad v. SEC*, 718 F.3d 904, 906 (D.C. Cir. 2013); *PAZ Sec., Inc. v. SEC*, 494 F.3d 1059, 1064-65 (D.C. Cir. 2007).

[22] *See Paz Sec.*, 494 F.3d at 1065 ("The purpose of the order [must be] remedial, not penal.") (quoting *Wright v. SEC*, 112 F.2d 89, 94 (2d Cir. 1940)).

[23] *John Joseph Plunkett,* Exchange Act Release No. 69766, 2013 SEC LEXIS 1699, at *42 (June 14, 2013). FINRA revised its Sanction Guidelines in 2011, but the NAC on remand applied the prior version of the Sanction Guidelines (cited hereinafter as the "2007 Sanction Guidelines"). The NAC noted that, in the usual proceeding, it applies the revised version of the Sanction Guidelines, which "are effective as of the date of publication, and apply to all

(continued...)

that the Sanction Guidelines "do not prescribe fixed sanctions for particular violations" and "are not intended to be absolute."[24]

A. The sanctions imposed for violating Rules 8210 and 2110 were neither excessive nor oppressive.

The Sanction Guidelines state that a bar is standard "[i]f the individual did not respond [to Rule 8210 requests] in any manner."[25] But where mitigation exists, the Sanction Guidelines provide that an adjudicator should "consider suspending the individual in any or all capacities for up to two years."[26] The Sanction Guidelines also recommend a fine of $10,000 to $25,000 for "[f]ailure to [r]espond [c]ompletely."[27]

The Sanction Guidelines also identify two "principal considerations" for determining sanctions where an individual has failed to respond to Rule 8210 requests. They are (i) the "[n]ature of the information requested"; and (ii) "[w]hether the requested information has been provided and, if so, . . . the number of requests made, the time respondent took to respond, and the degree of regulatory pressure required to obtain a response."[28] The NAC's decision to suspend Houston for two years and fine him $25,000 for his failure to provide OTR testimony in violation of Rules 8210 and 2110 is supported by application of these considerations.

First, the OTR that Houston refused to attend was important. It concerned the nature and scope of Houston's outside business activity. As we previously have stated, prompt notice to firms of an associated person's outside business activity permits the firm to object to the outside activity at a meaningful time and exercise any appropriate supervision.[29]

(...continued)
disciplinary matters, including pending matters." FINRA Sanction Guidelines at 8 (2011). But the NAC applied the 2007 Sanction Guidelines on remand because it was "in effect at the time [it] issued its initial decision in December 2010 (and during Houston's appeal to the Commission)."

[24] 2007 Sanction Guidelines at 1.

[25] *Id.* at 35. The 2011 revisions to the Sanction Guidelines provide that a bar is standard where an individual has provided a partial but incomplete response to a Rule 8210 request "unless the person can demonstrate that the information provided substantially complied with all aspects of the request." FINRA Sanction Guidelines at 33 (2011).

[26] 2007 Sanction Guidelines at 35. The Sanction Guidelines include a list of non-exhaustive aggravating and mitigating factors. *See id.* at 6-7.

[27] *See id.* at 35. A higher range of $25,000 to $50,000 is recommended for "[f]ailure to [r]espond" in any manner. *Id.* And a lower range of $2,500 to $25,000 is recommended for "[f]ailure to [r]espond [i]n a [t]imely [m]anner." *Id.*

[28] *Id.*

[29] *Sears*, 2008 SEC LEXIS 1521, at *26-27; *see also* Order Approving Proposed Rule Change Relating to Outside Business Activities of Associated Persons of Member Firms, Exchange Act
(continued...)

Houston argues that information concerning his outside business activity was unimportant by the time of the OTR because he had admitted to NASD that he had violated Rule 3030. But an associated person may not "second guess" NASD's requests for information, or "take it upon [himself] to determine whether information is material to an NASD investigation of [his] conduct."[30] And "Rule 8210(a) has no requirement that NASD explain its reasons for making the information request or justify its relevance."[31]

Moreover, Houston misunderstands the purpose of the OTR. Information concerning Houston's outside business activity was important not only because it concerned Houston's Rule 3030 violation but also because it concerned whether Houston defrauded and misappropriated funds from the Boyd trust. Houston's refusal to attend the OTR, therefore, impeded NASD's investigation into potentially serious misconduct against a customer of his firm.

Second, despite NASD's repeated requests and granting of accommodations to Houston, NASD was still unable to obtain Houston's attendance at the OTR. Houston responded to NASD's initial letter scheduling the OTR by stating that he would attend only if NASD provided him with (i) the "[w]ording of the 2110 violation in question"; (ii) "[s]entencing guidelines on violation 2110 & 3030"; and (iii) "[r]ecent broker history of sentences handed down and accepted by" respondents for violating Rules 3030 and 2110. NASD repeated its request in a subsequent letter, warning Houston that he could not impose conditions on his testimony and that failure to appear and testify at the OTR would be "grounds for formal disciplinary action."[32] But NASD also accommodated Houston by directing him to the location on NASD's website for the text of Rule 2110, the Sanction Guidelines, synopses of settled disciplinary actions, and hearing panel and NAC decisions. NASD then twice postponed the OTR to accommodate Houston

---

(...continued)
Release No. 26178, 1988 SEC LEXIS 2032, at *1 (Oct. 13, 1988) (approving NASD's enactment of Rule 3030 to address the securities industry's growing concern about preventing harm to the investing public or a firm's entanglement in legal difficulties based on an associated person's unmonitored outside business activities); Proposed Rule Change by NASD Relating to Outside Business Activities of Associated Persons, Exchange Act Release No. 26063, 1988 SEC LEXIS 1841, at *2-3 (Sept. 6, 1988).

30 *CMG Institutional Trading, LLC*, Exchange Act Release No. 59325, 2009 SEC LEXIS 215, at *21, *26 (Jan. 30, 2009) (citation omitted); *Charles C. Fawcett, IV*, Exchange Act Release No. 56770, 2007 SEC LEXIS 2598, at *18-19 (Nov. 8, 2007) ("As we have often noted, recipients of requests under Rule 8210 must promptly respond to the requests or explain why they cannot. They may not refuse such requests on the grounds of relevance or otherwise set conditions on their compliance, and NASD is not required to justify its information requests in order to obtain compliance from members and their associated persons.").

31 *CMG Institutional Trading*, 2009 SEC LEXIS 215, at *26; *Morton Bruce Erenstein*, Exchange Act Release No. 56768, 2007 SEC LEXIS 2596, at *13 (Nov. 8, 2007), *aff'd*, 316 F. App'x 865 (11th Cir. 2008).

32 *See* note 30.

before finally receiving a letter from him stating that he had "nothing further to add and [would] not be attending the (OTR)."

Moreover, while Houston responded to NASD's initial three Rule 8210 requests for information and documents, his responses to those requests were untimely and his response to the third request was incomplete.[33] In fact, NASD sent Houston two follow-up letters demanding that he fully comply with its third Rule 8210 request, but he still failed to produce all the documents requested. These included copies of checks written from Houston's Countrywide account,[34] documents substantiating payments Houston claimed were for Mrs. Boyd's care, and Houston's tax returns for 2003 through 2005.[35]

Houston contends that the severity of his Rule 8210 violation is mitigated by the fact that he misunderstood the purpose of the OTR. Houston claims that he thought the OTR "was provided to [him] if [he] wanted to fight the [outside business activity] issue," and that he did not attend because he "admitted [his] guilt" and "asked to move on to an equitable settlement." Houston blames NASD for his purported misunderstanding because it did not explain that the OTR "was for further questioning" despite knowing that Houston "did not have legal counsel."[36]

Houston's contention has no merit. NASD's letter to Houston scheduling the OTR stated clearly that the OTR was an "on-the-record interview" pursuant to Rule 8210, and that Houston was "obligated to appear."[37] NASD's letter neither stated nor implied that the OTR was a hearing or that a determination had been made to charge Houston with Rule violations. Moreover, Houston was responsible for understanding his obligations as a securities professional, including those under Rule 8210.[38]

---

[33] The record belies Houston's contention that he provided all information and documents requested in a timely manner. Houston's responses to NASD's initial three Rule 8210 requests were each approximately two weeks late, and he never fully responded to the third request.

[34] Houston claimed that Countrywide does "not send checks."

[35] Houston questioned NASD's "legal authority" for requesting his tax returns.

[36] Houston claims that NASD neglected to explain the purpose of the OTR so that it could charge him with violating Rule 8210, and that NASD told him he "didn't need legal counsel as . . . [he] was pleading guilty to the outside business activity charge." Neither claim is supported by the record.

[37] In a subsequent letter, NASD reiterated that the OTR was an "on-the-record interview" and that NASD was authorized pursuant to Rule 8210 to require Houston "to provide information and to testify at a location specified by the Staff." The letter reminded Houston that he was "obligated to appear" and that "failure to appear and testify truthfully, alone, is grounds for formal disciplinary action."

[38] *See Hans N. Beerbaum*, Exchange Act Release No. 55731, 2007 SEC LEXIS 971, at *19 & n.22 (May 9, 2007) ("We have repeatedly held that members and their associated persons cannot shift their burden of compliance to the NASD.") (internal quotation omitted); *Kirk A. Knapp*, Exchange Act Release No. 30391, 1992 SEC LEXIS 430, at *11 n.15 (Feb. 21, 1992)

(continued...)

Finally, the sanctions are remedial and not punitive. We have stressed the importance of Rule 8210 in connection with NASD's "obligation to police the activities of its members and associated persons."[39] "Without subpoena power, NASD must rely on Rule 8210 to obtain information from its members necessary to carry out its investigations and fulfill its regulatory mandate."[40] Failure to respond to Rule 8210 requests "impedes NASD's ability to detect misconduct that threatens investors and markets."[41] It is therefore "critically important to the self-regulatory system that members and associated persons cooperate with NASD investigations."[42] Houston's misconduct was therefore serious, and the sanctions imposed will protect the public by encouraging Houston (upon the lifting of his suspension) as well as others to respond to Rule 8210 requests completely and in a timely manner.[43]

B. The sanctions imposed for violating Rules 3030 and 2110 were neither excessive nor oppressive.

The Sanction Guidelines state that a suspension of up to one year for violating Rule 3030 should be considered "[w]hen the outside business activities involve aggravating conduct."[44] The Sanction Guidelines also recommend a fine of $2,500 to $50,000.[45]

(...continued)
(Respondent "cannot shift his responsibility for compliance with regulatory requirements to . . . NASD.").

[39] *CMG Institutional Trading*, 2009 SEC LEXIS 215, at *15 (quoting *Paz Sec. Inc.*, Exchange Act Release No. 57656, 2008 SEC LEXIS 820, at *12 (Apr. 11, 2008), *petition denied*, 566 F.3d 1172 (D.C. Cir. 2009)).

[40] *Id.* at 15.

[41] *Howard Brett Berger*, Exchange Act Release No. 58950, 2008 SEC LEXIS 3141, at *13-14 (Nov. 14, 2008), *petition denied*, 347 F. App'x 692 (2d Cir. 2009); *see also Joseph Patrick Hannan,* Exchange Act Release No. 40438, 1998 SEC LEXIS 1955, at *9 (Sept. 14, 1998) ("We have repeatedly stressed the importance of cooperation in NASD investigations . . . . Failures to comply [with Rule 8210 requests] are serious violations because they subvert the NASD's ability to carry out its regulatory responsibilities.").

[42] *Erenstein*, 316 F. App'x at 871.

[43] *See Siegel v. SEC*, 592 F.3d 147, 158 (D.C. Cir. 2010) (noting that deterrence may be considered as part of the overall remedial inquiry in determining sanctions).

[44] 2007 Sanction Guidelines at 14. The Sanction Guidelines recommend a 30-day suspension "[w]hen the outside business activities do not involve aggravating conduct." *Id.* And the Sanction Guidelines recommend a bar or suspension longer than one year "[i]n egregious cases, including those involving a substantial volume of activity or significant injury to customers of the firm." *Id.*

[45] *Id.*

The Sanction Guidelines further identify five "principal considerations" for determining sanctions for violating Rule 3030. They are (i) "[w]hether the outside activity involved customers of the firm"; (ii) "[w]hether outside activity resulted directly or indirectly in injury to customers of the firm and, if so, the nature and extent of the injury"; (iii) the "duration of the outside activity, the number of customers, and the dollar volume of sales"; (iv) "[w]hether the respondent's marketing and sale of the product or service could have created the impression that the employer (member firm) had approved the product or service";[46] and (v) "[w]hether the respondent misled his or her employer member firm about the existence of the outside activity or otherwise concealed the activity from the firm."[47]

The NAC's decision to impose an additional and consecutive one-year suspension and $50,000 fine for Houston's failure to provide prompt written notice of his outside business activity to the Firm in violation of Rules 3030 and 2110 is supported by application of the above considerations.[48] Indeed, Houston's misconduct involved four significant principal considerations: firm customer, duration, substantial monetary gain, and concealment.[49] Houston's outside business activity not only involved a First Wall Street customer, the Boyd trust, but also extended over a long period of time (2001 through 2005). Houston's outside business activity resulted in substantial gain of over $450,000 for Houston, including approximately $355,000 in checks that Houston wrote to himself or his home equity line of credit from the Boyd Trust Account. And Houston repeatedly misled First Wall Street about his trustee activities. As discussed above, Houston misrepresented on one form that he sent the Firm in 2004 that he had not "conducted any outside business activities during the past year," and he misrepresented on another form that he sent the Firm in 2005 that he had not "accepted any appointment as trustee . . . over any client including my immediate family during the past year."[50]

---

[46] This proceeding does not involve the marketing and sale of First Wall Street products or services, and therefore the fourth principal consideration is not applicable here.

[47] 2007 Sanction Guidelines at 14. The Sanction Guidelines also list as principal considerations in determining sanctions for all violations, among other factors, "[w]hether the respondent engaged in the misconduct over an extended period of time," "[w]hether the respondent's misconduct resulted in the potential for respondent's monetary or other gain," and "[w]hether the respondent attempted to conceal his or her misconduct or to lull into inactivity, mislead, [or] deceive . . . the member firm with which he or she is/was associated". *Id.* at 6-7.

[48] It should be noted with respect to the second principal consideration that, while NASD was investigating whether Houston's trustee activities resulted in injury to the Boyd trust through the misappropriation of its funds, Houston's refusal to attend the OTR impeded NASD's investigation into this issue. We therefore make no finding with respect to whether there was or was not customer harm. For similar reasons discussed below, we also reject Houston's contention that a lack of investor injury warrants lesser sanctions.

[49] *See* 2007 Sanction Guidelines at 6-7, 14.

[50] This pattern of deception, and Houston's additional failure to report his trustee activities in response to repeated requests from the Firm, disprove Houston's contention that there was no aggravating conduct here and that he merely failed to "correctly sign[]" certain documents.

We find no mitigating factors here. Houston contends that, before the commencement of this proceeding, he admitted culpability to NASD for violating Rules 3030 and 2110. Houston further contends that he accepts responsibility for his actions and will not commit future violations. But acceptance of responsibility is mitigating only when it occurs "prior to detection and intervention by the firm . . . or a regulator."[51] Moreover, Houston's assurances are unconvincing because of his attempts to shift blame for his misconduct. For instance, Houston asserts that he never would have violated Rule 3030 if the Firm's "compliance officer had caught [his] mistake [in signing an incorrect business activity form] and sent it back to [him] for correction."

Houston further claims that the Firm "knew of [his] trustee activities" because the file he set up for the Boyd Trust Account in 2001 included a "legal document of [his] appointment as [c]o-[t]rustee," and because his name was on the Boyd Trust Account checks which were "shown on [the Boyd trust's] monthly statement for [the] compliance examination."[52] Regardless of whether the Boyd Trust Account file or the Boyd trust's monthly statement indicated that Houston was serving as a trustee, Houston remained responsible as an associated person to provide prompt notice of his outside business activity "in the form required by" the Firm.[53] Houston cannot shift his responsibility for compliance with Rule 3030 to a supervisor, compliance officer, or anyone else at the Firm.[54] Houston's attempt to do so demonstrates a fundamental misunderstanding of his responsibilities as a securities professional.

C. Houston's remaining contentions lack merit.

We reject Houston's remaining contentions. Houston contends that his lack of disciplinary history should be considered mitigating. FINRA has repeatedly held that a lack of disciplinary history is not mitigating for purposes of sanctions because an associated person should not be rewarded for acting in accordance with his duties as a securities professional. We

---

[51] 2007 Sanction Guidelines at 6.

[52] Houston also claims that First Wall Street knew of his trustee activities because (i) it was the Firm's idea that he receive compensation for his services as a trustee because he "could not receive trading commissions"; (ii) he sent First Wall Street a document appointing him as sole trustee in late 2005; and (iii) the Firm's compliance department had him under special supervision "[a]s a trustee on [the Boyd Trust] account, as broker of record and with [First Wall Street] as dealer of record," and that he "had monthly meetings with compliance concerning any and all activities of Boyd's account." These claims are not supported by the record.

[53] NASD Rule 3030. Moreover, as discussed above, Houston not only failed to provide notice of his trustee activities on the forms provided by First Wall Street, he also falsely claimed on certain of those forms that he had no such activities.

[54] *See Scott Epstein*, Exchange Act Release No. 59328, 2009 SEC LEXIS 217, at *73 (Jan. 30, 2009) ("We have held repeatedly that a respondent cannot shift his or her responsibility for compliance with an applicable requirement to a supervisor.") (citation and internal quotation omitted), *aff'd*, 416 F. App'x 142 (3d Cir. 2010).

find FINRA's application of its Sanctions Guidelines reasonable and have consistently affirmed FINRA's choice in so holding.[55]

Houston contends that he "provided seven years of substantial assistance in this investigation" by meeting his "obligation to provide [h]onest and [t]ruthful information requested of [him] in a timely manner without regulatory pressure." In addition to the fact that this contention is contradicted by the record as set forth above, associated persons do not provide substantial assistance by fulfilling their obligations to cooperate with NASD investigations.[56] There is also no indication in the record that Houston otherwise provided substantial assistance to NASD.

Houston contends that he should receive credit because he wanted to settle this proceeding and that NASD "never negotiated in good faith." But NASD had no obligation to settle this proceeding on Houston's terms, and settlement negotiations are irrelevant to the sanctions determination.[57] Moreover, the record does not contain any evidence that NASD acted in bad faith.

Houston contends that the sanctions imposed by the NAC should have been in line with lesser sanctions that have been imposed in proceedings settled by NASD.[58] But "[w]e have repeatedly observed that comparisons to sanctions in settled cases are inappropriate" because pragmatic considerations justify the acceptance of lesser sanctions in negotiating a settlement "such as the avoidance of time-and-manpower-consuming adversary proceedings."[59] Moreover,

---

[55] *Philippe N. Keyes*, Exchange Act Release No. 54723, 2006 SEC LEXIS 2631, at*23 (Nov. 8, 2006). *But cf. Matthew J. Collins v. SEC*, 736 F.3d 521, 526 (D.C. Cir. 2013) (noting, in the context of an appeal from an administrative proceeding, that disciplinary history is properly considered a mitigating factor); *Robert L. Burns*, Advisers Act Release No. 3260, 2011 WL 3407859, at *11 (Aug. 5, 2011) (considering petitioner's clean disciplinary history as a mitigating factor in an appeal from an administrative law judge's initial decision).

[56] *Keyes*, 2006 SEC LEXIS 2631, at*24 (Respondent's "cooperation in the [NASD] investigation was consistent with the responsibilities he agreed to when he became an associated person and does not constitute substantial assistance.").

[57] *See Richard A Neaton*, Exchange Act Release No. 65598, 2011 SEC LEXIS 3719, at *36 (Oct. 20, 2011) ("We have previously held that [settlement] negotiations are not relevant to our determination of sanctions in a contested proceeding."); *Clyde J. Bruff*, Exchange Act Release No. 40583, 1998 SEC LEXIS 2266, at *14 (Oct. 21, 1998) ("The NASD is not obligated to accept [a settlement] offer once made."), *petition denied*, 198 F.3d 253 (9th Cir. 1999).

[58] Houston specifically refers to the sanction imposed upon settlement by Letter of Acceptance, Waiver and Consent in FINRA Case Nos. 2012033265101, 201024740901, 2011029832701, and 2012031636001.

[59] *Michael C. Pattison, CPA*, Exchange Act Release No. 67900, 2012 SEC LEXIS 2973, at *47 (Sept. 20, 2012); *Castle Sec. Corp.*, Exchange Act Release No. 52580, 2005 SEC LEXIS 2628, at *18 n.24 (Oct. 11, 2005) (same).

the appropriate sanction in any case "depends on the particular facts and circumstances presented."[60] "Litigated cases typically present a fuller, more developed record of facts and circumstances for purposes of assessing appropriate sanctions than do settled matters."[61]

Houston contends that lesser sanctions are warranted because his conduct did not result in injury to investors. But the OTR that NASD requested pursuant to Rule 8210 concerned whether the Boyd trust, an investor and First Wall Street customer, was harmed by Houston's trustee activities. It was Houston's refusal to attend the OTR that impeded NASD's ability to determine whether there was any harm to the Boyd trust.[62]

Houston contends that the suspensions imposed should be vacated because he has suffered enough as a result of this proceeding. Houston asserts that the two plus years in which he has not been "able to practice [his] trade is enough to prevent the recurrence of misconduct." But any collateral consequence that Houston may have suffered as a result of his misconduct or from the disciplinary proceeding that followed, such as the impact on his reputation, career, or finances, is not a mitigating factor.[63]

Houston further contends that the consequences to his career from this proceeding have been exacerbated because NASD, despite knowing that Houston did not have legal counsel, did not inform him that our prior decision vacating the sanctions imposed and remanding the proceeding for a sanctions redetermination meant that he was no longer prohibited from associating with a member firm. As a result, Houston contends, he "sat out another full year

---

60 *Pattison*, 2012 SEC LEXIS 2973, at *49; *see also Dennis S. Kaminski*, Exchange Act Release No. 65347, 2011 SEC LEXIS 3225, at *41 (Sept. 16, 2011) ("[W]e consistently have held that the appropriateness of the sanctions imposed depends on the facts and circumstances of the particular case and cannot be determined precisely by comparison with action taken in other cases."); *Butz v. Glover Livestock Comm'n Co., Inc.*, 411 U.S. 182, 187 (1973) (holding that "[t]he employment of a sanction within the authority of an administrative agency is . . . not rendered invalid in a particular case because it is more severe than sanctions imposed in other cases"); *Geiger v. SEC*, 363 F.3d 481, 488 (D.C. Cir. 2004) (holding that, because the "Commission is not obligated to make its sanctions uniform," court would not compare sanction imposed in case to those imposed in previous cases).

61 *Pattison*, 2012 SEC LEXIS 2973, at *49.

62 *Paz Sec.*, 2008 SEC LEXIS 820, at *17-20 (finding lack of evidence of customer harm not to be mitigating where "NASD was prevented from determining whether Applicants engaged in . . . potentially harmful conduct . . . because Applicants did not answer its information requests").

63 *See, e.g., Jason A. Craig*, Exchange Act Release No. 59137, 2008 SEC LEXIS 2844, at *27 (Dec. 22, 2008) ("We also do not consider mitigating the economic disadvantages [respondent] alleges he suffered because they are a result of his misconduct."); *Ramiro Jose Sugranes*, Exchange Act Release No. 35311, 1995 SEC LEXIS 234, at *4 (Feb. 1, 1995) ("[A]ny difficulty [Respondent] has encountered in securing employment is a direct consequence of his own misconduct, rather than a reason for reducing his suspension.").

believing [he] was still suspended."[64] But Houston's misunderstanding is not reasonable considering that the order accompanying our prior decision stated clearly "that the sanction imposed by [NASD] on Kent M. Houston in this proceeding . . . is, vacated."[65] Moreover, NASD had no obligation to explain our prior decision to Houston or otherwise provide him with legal advice.

Finally, for the first time in this proceeding, Houston contends that he is unable to pay the fines imposed. But Houston has failed to carry his burden of proving inability to pay because he did not provide any supporting evidence for this contention.[66] Moreover, Houston did not show below that his financial hardship has resulted from a subsequent change in circumstances.[67]

Accordingly, for the foregoing reasons, we find that the sanctions imposed on Houston are neither excessive nor oppressive within the meaning of Exchange Act Section 19(e).

An appropriate order will issue.[68]

By the Commission (Chair WHITE and Commissioners AGUILAR, GALLAGHER and STEIN); Commissioner PIWOWAR not participating.

Jill M. Peterson
Assistant Secretary

---

64 Houston claims that NASD's inaction was "[d]eliberate[] and [i]ntentional[]," and that it knew he believed he was still suspended. This claim is not supported by the record.

65 *Houston*, 2011 SEC LEXIS 4491, at *30.

66 *See Castle Sec.*, 2005 SEC LEXIS 2628, at *19 (finding that respondent did not meet its "burden of demonstrating an inability to pay" because respondent did not introduce documentation concerning the deterioration in its financial situation); *Michael H. Novick*, Exchange Act Release No. 37503, 1996 SEC LEXIS 1994, at *6 (July 31, 1996) (noting that respondent "bears the burden of demonstrating an inability to pay the fine" in an NASD proceeding); 2007 Sanction Guidelines at 5 ("The burden is on the respondent to raise the issue of inability to pay and to provide evidence thereof.").

67 2007 Sanction Guidelines at 5 ("If a respondent does not raise the issue of inability to pay during the initial consideration of a matter before 'trial-level' Adjudicators, Adjudicators considering the matter on appeal generally will presume the issue of inability to pay to have been waived (unless the inability to pay is alleged to have resulted from a subsequent change in circumstances).").

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

Commissioner Piwowar not participating

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Release No. 71589 / February 20, 2014

Admin. Proc. File No. 3-14175r

In the Matter of the Application of

KENT M. HOUSTON
Carlsbad, California 92009

For Review of Disciplinary Action Taken by

FINRA

OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION -- REVIEW OF DISCIPLINARY PROCEEDINGS

Sanctions Imposed by Registered Securities Association on Remand

On remand, registered securities association modified the sanctions imposed on a former general securities representative of a member firm for violating association rules for (i) engaging in outside business activities without providing his member firm with written notice; (ii) failing to appear for an on-the-record interview with association staff; and (iii) engaging in conduct inconsistent with just and equitable principals of trade. *Held*, association's modification of sanctions *sustained.*

APPEARANCES:

Kent M. Houston, pro se.

Alan Lawhead, Carla Carloni, and *Megan Rauch* for FINRA.

Appeal filed: March 22, 2013
Last brief received: June 26, 2013

I.

Kent M. Houston, formerly a general securities representative with First Wall Street Corp. ("First Wall Street" or "the Firm"), a former NASD member firm, has appealed a decision by FINRA's National Adjudicatory Council ("NAC") reconsidering and modifying sanctions.[1] On December 20, 2011,[2] we sustained the NAC's findings of fact and findings that Houston violated (i) NASD Rules 3030 and 2110 by engaging in outside business activity without providing written notice to his member firm, and (ii) NASD Rules 8210 and 2110 by failing to appear for an on-the-record interview ("OTR") with NASD staff.[3] But we also vacated the sanction imposed and remanded the proceeding to the NAC for a sanctions redetermination.[4]

We found that the sanction imposed—a bar for violating Rules 8210 and 2110[5]—was based on an NAC determination that Houston's failure to appear for the OTR constituted a complete failure to respond to NASD's Rule 8210 request. This determination, we found, did not take into account that Houston had responded, apparently to NASD's satisfaction, to two other Rule 8210 requests, and at least partially to a third Rule 8210 request.[6] We stated that "because Houston did respond in some manner to NASD's request, any sanction imposed, whether a bar or

---

1 On July 26, 2007, the Commission approved a proposed rule change filed by the National Association of Securities Dealers, Inc. ("NASD") to amend NASD's Restated Certificate of Incorporation to reflect its name change to Financial Industry Regulatory Authority, Inc. ("FINRA") in connection with the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc. *Order Granting Proposed Rule Change Relating to Restated Certificate of Incorporation of NASD*, Exchange Act Release No. 56146, 2007 SEC LEXIS 1641 (July 26, 2007). Because this disciplinary proceeding was instituted before that date, we continue to use the designation NASD.

2 *Kent M. Houston*, Exchange Act Release No. 66014, 2011 SEC LEXIS 4491 (Dec. 20, 2011) (the "December 20, 2011 Opinion").

3 Following the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc. into FINRA, FINRA began developing a new "Consolidated Rulebook" of FINRA Rules. The first phase of the new consolidated rules became effective on December 15, 2008. *See* FINRA Regulatory Notice 08-57 (Oct. 2008). Because the complaint in this case was filed before the consolidated rules took effect, NASD rules apply. *See John B. Busacca, III*, Exchange Act Release No. 63312, 2010 SEC LEXIS 3787, at *2 n.2 (Nov. 12, 2010), *petition denied*, 449 F. App'x 886 (11th Cir. 2011).

4 *Houston*, 2011 SEC LEXIS 4491, at *27.

5 In light of the bar imposed for violating Rules 8210 and 2110, the NAC assessed but initially declined to impose sanctions for Houston's failure to disclose his outside business activity in violation of Rules 3030 and 2110.

6 *Houston*, 2011 SEC LEXIS 4491, at *24-25. All of the Rule 8210 requests at issue "were part of the same investigation by NASD." *Id.* at *25.

otherwise, should analyze factors other than the presumptive unfitness indicated by a failure to respond in any manner."[7]

On remand, the NAC suspended Houston for two years and fined him $25,000 for his failure to provide OTR testimony in violation of Rules 8210 and 2110. The NAC also imposed a consecutive one-year suspension and an additional $50,000 fine for Houston's failure to provide notice to the Firm of his outside business activity in violation of Rules 3030 and 2110. We base our findings on an independent review of the record, and sustain the sanctions imposed.

II.

A. Findings of fact and violations of NASD Rules.

We presume familiarity with our prior findings.[8] As noted, we sustained the NAC's findings of fact and findings that Houston violated (i) Rules 3030 and 2110 by engaging in outside business activity without providing the required notice to First Wall Street,[9] and (ii) Rules 8210 and 2110 by refusing to attend the OTR.[10]

To summarize those findings, Houston failed to give First Wall Street prompt written notice that he was appointed on April 24, 2001, to serve with his great aunt, Veta M. Boyd, as co-trustee of a trust established in 1971 for the benefit of Mrs. Boyd and her late husband.[11] Houston also failed to give First Wall Street prompt written notice when he was appointed as the trust's sole trustee in June 2005. These failures were in contravention not only of Rule 3030 but also First Wall Street's periodic requests from 2002 through 2005 that Houston disclose any outside business activities.

---

7 *Id.*

8 *Id.*

9 NASD Rule 3030 prohibits a person associated with a member from being employed by, or accepting compensation from, "any other person as a result of any business activity . . . outside the scope of his relationship with his employer firm, unless he has provided prompt written notice to the member."

NASD Rule 2110 requires adherence to "high standards of commercial honor and just and equitable principles of trade." Rule 2110 is violated by any conduct that violates another NASD rule. *See, e.g.*, *Wanda P. Sears*, Exchange Act Release No. 58075, 2008 SEC LEXIS 1521, at *19 n.28 (July 1, 2008).

10 NASD Rule 8210(a)(1) provides that NASD may require a person associated with a member "to provide information orally, in writing, or electronically . . . and to testify at a location specified by NASD staff."

11 Boyd's husband, Walter L. Boyd, died in 1986. The trust was established in 1971 to pay the trust's net income to the Boyds on a monthly basis.

Indeed, Houston did not disclose his trustee activities when he signed First Wall Street's "Independent Contractor Agreement" in 2002 and 2003 despite the fact that the agreement (i) stated that Houston was to notify the Firm of such activities, and (ii) appended an "Outside Business Activity Notification Form."[12] Houston then misrepresented on another First Wall Street form in 2004 that he had not "conducted any outside business activities during the past year."[13]

Houston continued with his deception in 2005. He did not disclose his trustee activities after receiving a Firm memorandum on August 29, 2005, stating that registered representatives and staff should contact the compliance department "immediately in writing if you are currently listed as a trustee, . . . or if you perform any duties that involve compensation of any kind that does not come through the firm in the form of commissions and is not included on your form U4 as an approved outside business activity."[14] Houston then again misrepresented on another First Wall Street form in October 2005 that he had not "accepted any appointment as trustee . . . over any client including my immediate family during the past year."[15]

An NASD examination in December 2005 led to the discovery of Houston's outside business activity. During that examination, First Wall Street's chief compliance officer learned that Houston had check-writing authority on an account that Houston had opened for the trust at the Firm in 2001 (the "Boyd Trust Account").[16] The Firm subsequently learned that Houston had become sole trustee of the Boyd trust and that Houston had written numerous checks on the Boyd Trust Account, some of which were payable to Houston's home equity line of credit account at Countrywide Bank. The Firm opened a formal investigation into Houston's trustee activities, and terminated Houston after he failed to cooperate.[17]

---

[12] The agreement expressly mentioned acting as a trustee as an example of an outside business activity. Houston did not complete the appended form in 2002 or 2003.

[13] This form was entitled "Outside Business Activities Statement," and was separate from the form appended to the Firm's "Independent Contractor Agreement."

[14] Houston misrepresented on his Forms U4 (Uniform Application for Securities Industry Registration or Transfer) dated July 29, 2005, and October 20, 2005, that he was not engaged in an outside business activity.

[15] This form was attached to a second Firm memorandum dated September 8, 2005 reminding registered representatives that they are required to request approval for acting as a trustee.

[16] The account application listed Houston and Mrs. Boyd as co-successor trustees and Houston as the account representative. Houston was able to write checks on the account without Mrs. Boyd's signature.

[17] As discussed in detail in the December 20, 2011 Opinion, Houston provided some but not all of the information and documents requested by the Firm before refusing to cooperate. And some of the information he provided was false.

It turned out that Houston had written checks on the Boyd Trust Account to pay himself over $355,000 in compensation from 2003 through January 2006.[18] Houston paid himself $41,600 in 2003, $167,000 in 2004, $119,000 in 2005, and $27,500 in January 2006.[19]

After his termination, NASD began investigating Houston's possible misconduct at First Wall Street. NASD sent two Rule 8210 requests to Houston in June and August 2006, which Houston appears to have complied with to NASD's satisfaction. NASD sent a third Rule 8210 request to Houston in September 2006, to which Houston only partially responded. To obtain a complete response, NASD sent follow-up letters to Houston in October and November 2006 repeating the request from September. Houston again failed to provide a complete response.

On September 7, 2007, NASD sent Houston a letter requesting that he appear for an OTR. After obtaining NASD's agreement to twice reschedule the OTR, Houston sent NASD a letter stating that he had "nothing further to add and [would] not be attending the (OTR)." The FINRA disciplinary action followed.

III.

Pursuant to Exchange Act Section 19(e)(2), we will sustain a FINRA sanction unless we find, "having due regard for the public interest and the protection of investors," that the sanction is excessive or oppressive or imposes an unnecessary or inappropriate burden on competition.[20] As part of this review, we must consider any aggravating or mitigating factors[21] and whether the sanctions imposed by FINRA are remedial in nature and not punitive.[22]

Although the Commission is not bound by FINRA's Sanction Guidelines, we use them as a benchmark in conducting our review under Exchange Act Section 19(e)(2).[23] We acknowledge

---

[18] The trust agreement authorized compensation for the trustee. Some of the checks were made payable to Houston and others to Houston's Countrywide account.

[19] Mrs. Boyd also wrote approximately $99,000 worth of checks to Houston from the Boyd Trust Account in 2001 and 2002. Houston also received commissions for transactions in the Boyd Trust Account.

[20] 15 U.S.C. § 78s(e)(2). Houston does not claim, and the record does not show, that FINRA's action imposed an unnecessary or inappropriate burden on competition.

[21] *See Saad v. SEC*, 718 F.3d 904, 906 (D.C. Cir. 2013); *PAZ Sec., Inc. v. SEC*, 494 F.3d 1059, 1064-65 (D.C. Cir. 2007).

[22] *See Paz Sec.*, 494 F.3d at 1065 ("The purpose of the order [must be] remedial, not penal.") (quoting *Wright v. SEC*, 112 F.2d 89, 94 (2d Cir. 1940)).

[23] *John Joseph Plunkett,* Exchange Act Release No. 69766, 2013 SEC LEXIS 1699, at *42 (June 14, 2013). FINRA revised its Sanction Guidelines in 2011, but the NAC on remand applied the prior version of the Sanction Guidelines (cited hereinafter as the "2007 Sanction Guidelines"). The NAC noted that, in the usual proceeding, it applies the revised version of the Sanction Guidelines, which "are effective as of the date of publication, and apply to all

(continued...)

that the Sanction Guidelines "do not prescribe fixed sanctions for particular violations" and "are not intended to be absolute."[24]

A. The sanctions imposed for violating Rules 8210 and 2110 were neither excessive nor oppressive.

The Sanction Guidelines state that a bar is standard "[i]f the individual did not respond [to Rule 8210 requests] in any manner."[25] But where mitigation exists, the Sanction Guidelines provide that an adjudicator should "consider suspending the individual in any or all capacities for up to two years."[26] The Sanction Guidelines also recommend a fine of $10,000 to $25,000 for "[f]ailure to [r]espond [c]ompletely."[27]

The Sanction Guidelines also identify two "principal considerations" for determining sanctions where an individual has failed to respond to Rule 8210 requests. They are (i) the "[n]ature of the information requested"; and (ii) "[w]hether the requested information has been provided and, if so, . . . the number of requests made, the time respondent took to respond, and the degree of regulatory pressure required to obtain a response."[28] The NAC's decision to suspend Houston for two years and fine him $25,000 for his failure to provide OTR testimony in violation of Rules 8210 and 2110 is supported by application of these considerations.

First, the OTR that Houston refused to attend was important. It concerned the nature and scope of Houston's outside business activity. As we previously have stated, prompt notice to firms of an associated person's outside business activity permits the firm to object to the outside activity at a meaningful time and exercise any appropriate supervision.[29]

(...continued)
disciplinary matters, including pending matters." FINRA Sanction Guidelines at 8 (2011). But the NAC applied the 2007 Sanction Guidelines on remand because it was "in effect at the time [it] issued its initial decision in December 2010 (and during Houston's appeal to the Commission)."

[24] 2007 Sanction Guidelines at 1.

[25] *Id.* at 35. The 2011 revisions to the Sanction Guidelines provide that a bar is standard where an individual has provided a partial but incomplete response to a Rule 8210 request "unless the person can demonstrate that the information provided substantially complied with all aspects of the request." FINRA Sanction Guidelines at 33 (2011).

[26] 2007 Sanction Guidelines at 35. The Sanction Guidelines include a list of non-exhaustive aggravating and mitigating factors. *See id.* at 6-7.

[27] *See id.* at 35. A higher range of $25,000 to $50,000 is recommended for "[f]ailure to [r]espond" in any manner. *Id.* And a lower range of $2,500 to $25,000 is recommended for "[f]ailure to [r]espond [i]n a [t]imely [m]anner." *Id.*

[28] *Id.*

[29] *Sears*, 2008 SEC LEXIS 1521, at *26-27; *see also* Order Approving Proposed Rule Change Relating to Outside Business Activities of Associated Persons of Member Firms, Exchange Act
(continued...)

Houston argues that information concerning his outside business activity was unimportant by the time of the OTR because he had admitted to NASD that he had violated Rule 3030. But an associated person may not "second guess" NASD's requests for information, or "take it upon [himself] to determine whether information is material to an NASD investigation of [his] conduct."[30] And "Rule 8210(a) has no requirement that NASD explain its reasons for making the information request or justify its relevance."[31]

Moreover, Houston misunderstands the purpose of the OTR. Information concerning Houston's outside business activity was important not only because it concerned Houston's Rule 3030 violation but also because it concerned whether Houston defrauded and misappropriated funds from the Boyd trust. Houston's refusal to attend the OTR, therefore, impeded NASD's investigation into potentially serious misconduct against a customer of his firm.

Second, despite NASD's repeated requests and granting of accommodations to Houston, NASD was still unable to obtain Houston's attendance at the OTR. Houston responded to NASD's initial letter scheduling the OTR by stating that he would attend only if NASD provided him with (i) the "[w]ording of the 2110 violation in question"; (ii) "[s]entencing guidelines on violation 2110 & 3030"; and (iii) "[r]ecent broker history of sentences handed down and accepted by" respondents for violating Rules 3030 and 2110. NASD repeated its request in a subsequent letter, warning Houston that he could not impose conditions on his testimony and that failure to appear and testify at the OTR would be "grounds for formal disciplinary action."[32] But NASD also accommodated Houston by directing him to the location on NASD's website for the text of Rule 2110, the Sanction Guidelines, synopses of settled disciplinary actions, and hearing panel and NAC decisions. NASD then twice postponed the OTR to accommodate Houston

---

(...continued)
Release No. 26178, 1988 SEC LEXIS 2032, at *1 (Oct. 13, 1988) (approving NASD's enactment of Rule 3030 to address the securities industry's growing concern about preventing harm to the investing public or a firm's entanglement in legal difficulties based on an associated person's unmonitored outside business activities); Proposed Rule Change by NASD Relating to Outside Business Activities of Associated Persons, Exchange Act Release No. 26063, 1988 SEC LEXIS 1841, at *2-3 (Sept. 6, 1988).

[30] *CMG Institutional Trading, LLC*, Exchange Act Release No. 59325, 2009 SEC LEXIS 215, at *21, *26 (Jan. 30, 2009) (citation omitted); *Charles C. Fawcett, IV*, Exchange Act Release No. 56770, 2007 SEC LEXIS 2598, at *18-19 (Nov. 8, 2007) ("As we have often noted, recipients of requests under Rule 8210 must promptly respond to the requests or explain why they cannot. They may not refuse such requests on the grounds of relevance or otherwise set conditions on their compliance, and NASD is not required to justify its information requests in order to obtain compliance from members and their associated persons.").

[31] *CMG Institutional Trading*, 2009 SEC LEXIS 215, at *26; *Morton Bruce Erenstein*, Exchange Act Release No. 56768, 2007 SEC LEXIS 2596, at *13 (Nov. 8, 2007), *aff'd*, 316 F. App'x 865 (11th Cir. 2008).

[32] *See* note 30.

before finally receiving a letter from him stating that he had "nothing further to add and [would] not be attending the (OTR)."

Moreover, while Houston responded to NASD's initial three Rule 8210 requests for information and documents, his responses to those requests were untimely and his response to the third request was incomplete.[33] In fact, NASD sent Houston two follow-up letters demanding that he fully comply with its third Rule 8210 request, but he still failed to produce all the documents requested. These included copies of checks written from Houston's Countrywide account,[34] documents substantiating payments Houston claimed were for Mrs. Boyd's care, and Houston's tax returns for 2003 through 2005.[35]

Houston contends that the severity of his Rule 8210 violation is mitigated by the fact that he misunderstood the purpose of the OTR. Houston claims that he thought the OTR "was provided to [him] if [he] wanted to fight the [outside business activity] issue," and that he did not attend because he "admitted [his] guilt" and "asked to move on to an equitable settlement." Houston blames NASD for his purported misunderstanding because it did not explain that the OTR "was for further questioning" despite knowing that Houston "did not have legal counsel."[36]

Houston's contention has no merit. NASD's letter to Houston scheduling the OTR stated clearly that the OTR was an "on-the-record interview" pursuant to Rule 8210, and that Houston was "obligated to appear."[37] NASD's letter neither stated nor implied that the OTR was a hearing or that a determination had been made to charge Houston with Rule violations. Moreover, Houston was responsible for understanding his obligations as a securities professional, including those under Rule 8210.[38]

---

[33] The record belies Houston's contention that he provided all information and documents requested in a timely manner. Houston's responses to NASD's initial three Rule 8210 requests were each approximately two weeks late, and he never fully responded to the third request.

[34] Houston claimed that Countrywide does "not send checks."

[35] Houston questioned NASD's "legal authority" for requesting his tax returns.

[36] Houston claims that NASD neglected to explain the purpose of the OTR so that it could charge him with violating Rule 8210, and that NASD told him he "didn't need legal counsel as . . . [he] was pleading guilty to the outside business activity charge." Neither claim is supported by the record.

[37] In a subsequent letter, NASD reiterated that the OTR was an "on-the-record interview" and that NASD was authorized pursuant to Rule 8210 to require Houston "to provide information and to testify at a location specified by the Staff." The letter reminded Houston that he was "obligated to appear" and that "failure to appear and testify truthfully, alone, is grounds for formal disciplinary action."

[38] *See Hans N. Beerbaum*, Exchange Act Release No. 55731, 2007 SEC LEXIS 971, at *19 & n.22 (May 9, 2007) ("We have repeatedly held that members and their associated persons cannot shift their burden of compliance to the NASD.") (internal quotation omitted); *Kirk A. Knapp*, Exchange Act Release No. 30391, 1992 SEC LEXIS 430, at *11 n.15 (Feb. 21, 1992)

(continued...)

Finally, the sanctions are remedial and not punitive. We have stressed the importance of Rule 8210 in connection with NASD's "obligation to police the activities of its members and associated persons."[39] "Without subpoena power, NASD must rely on Rule 8210 to obtain information from its members necessary to carry out its investigations and fulfill its regulatory mandate."[40] Failure to respond to Rule 8210 requests "impedes NASD's ability to detect misconduct that threatens investors and markets."[41] It is therefore "critically important to the self-regulatory system that members and associated persons cooperate with NASD investigations."[42] Houston's misconduct was therefore serious, and the sanctions imposed will protect the public by encouraging Houston (upon the lifting of his suspension) as well as others to respond to Rule 8210 requests completely and in a timely manner.[43]

B. The sanctions imposed for violating Rules 3030 and 2110 were neither excessive nor oppressive.

The Sanction Guidelines state that a suspension of up to one year for violating Rule 3030 should be considered "[w]hen the outside business activities involve aggravating conduct."[44] The Sanction Guidelines also recommend a fine of $2,500 to $50,000.[45]

(...continued)
(Respondent "cannot shift his responsibility for compliance with regulatory requirements to . . . NASD.").

[39] *CMG Institutional Trading*, 2009 SEC LEXIS 215, at *15 (quoting *Paz Sec. Inc.*, Exchange Act Release No. 57656, 2008 SEC LEXIS 820, at *12 (Apr. 11, 2008), *petition denied*, 566 F.3d 1172 (D.C. Cir. 2009)).

[40] *Id.* at 15.

[41] *Howard Brett Berger*, Exchange Act Release No. 58950, 2008 SEC LEXIS 3141, at *13-14 (Nov. 14, 2008), *petition denied*, 347 F. App'x 692 (2d Cir. 2009); *see also Joseph Patrick Hannan,* Exchange Act Release No. 40438, 1998 SEC LEXIS 1955, at *9 (Sept. 14, 1998) ("We have repeatedly stressed the importance of cooperation in NASD investigations . . . . Failures to comply [with Rule 8210 requests] are serious violations because they subvert the NASD's ability to carry out its regulatory responsibilities.").

[42] *Erenstein*, 316 F. App'x at 871.

[43] *See Siegel v. SEC*, 592 F.3d 147, 158 (D.C. Cir. 2010) (noting that deterrence may be considered as part of the overall remedial inquiry in determining sanctions).

[44] 2007 Sanction Guidelines at 14. The Sanction Guidelines recommend a 30-day suspension "[w]hen the outside business activities do not involve aggravating conduct." *Id.* And the Sanction Guidelines recommend a bar or suspension longer than one year "[i]n egregious cases, including those involving a substantial volume of activity or significant injury to customers of the firm." *Id.*

[45] *Id.*

The Sanction Guidelines further identify five "principal considerations" for determining sanctions for violating Rule 3030. They are (i) "[w]hether the outside activity involved customers of the firm"; (ii) "[w]hether outside activity resulted directly or indirectly in injury to customers of the firm and, if so, the nature and extent of the injury"; (iii) the "duration of the outside activity, the number of customers, and the dollar volume of sales"; (iv) "[w]hether the respondent's marketing and sale of the product or service could have created the impression that the employer (member firm) had approved the product or service";[46] and (v) "[w]hether the respondent misled his or her employer member firm about the existence of the outside activity or otherwise concealed the activity from the firm."[47]

The NAC's decision to impose an additional and consecutive one-year suspension and $50,000 fine for Houston's failure to provide prompt written notice of his outside business activity to the Firm in violation of Rules 3030 and 2110 is supported by application of the above considerations.[48] Indeed, Houston's misconduct involved four significant principal considerations: firm customer, duration, substantial monetary gain, and concealment.[49] Houston's outside business activity not only involved a First Wall Street customer, the Boyd trust, but also extended over a long period of time (2001 through 2005). Houston's outside business activity resulted in substantial gain of over $450,000 for Houston, including approximately $355,000 in checks that Houston wrote to himself or his home equity line of credit from the Boyd Trust Account. And Houston repeatedly misled First Wall Street about his trustee activities. As discussed above, Houston misrepresented on one form that he sent the Firm in 2004 that he had not "conducted any outside business activities during the past year," and he misrepresented on another form that he sent the Firm in 2005 that he had not "accepted any appointment as trustee . . . over any client including my immediate family during the past year."[50]

---

[46] This proceeding does not involve the marketing and sale of First Wall Street products or services, and therefore the fourth principal consideration is not applicable here.

[47] 2007 Sanction Guidelines at 14. The Sanction Guidelines also list as principal considerations in determining sanctions for all violations, among other factors, "[w]hether the respondent engaged in the misconduct over an extended period of time," "[w]hether the respondent's misconduct resulted in the potential for respondent's monetary or other gain," and "[w]hether the respondent attempted to conceal his or her misconduct or to lull into inactivity, mislead, [or] deceive . . . the member firm with which he or she is/was associated". *Id.* at 6-7.

[48] It should be noted with respect to the second principal consideration that, while NASD was investigating whether Houston's trustee activities resulted in injury to the Boyd trust through the misappropriation of its funds, Houston's refusal to attend the OTR impeded NASD's investigation into this issue. We therefore make no finding with respect to whether there was or was not customer harm. For similar reasons discussed below, we also reject Houston's contention that a lack of investor injury warrants lesser sanctions.

[49] *See* 2007 Sanction Guidelines at 6-7, 14.

[50] This pattern of deception, and Houston's additional failure to report his trustee activities in response to repeated requests from the Firm, disprove Houston's contention that there was no aggravating conduct here and that he merely failed to "correctly sign[]" certain documents.

We find no mitigating factors here. Houston contends that, before the commencement of this proceeding, he admitted culpability to NASD for violating Rules 3030 and 2110. Houston further contends that he accepts responsibility for his actions and will not commit future violations. But acceptance of responsibility is mitigating only when it occurs "prior to detection and intervention by the firm . . . or a regulator."[51] Moreover, Houston's assurances are unconvincing because of his attempts to shift blame for his misconduct. For instance, Houston asserts that he never would have violated Rule 3030 if the Firm's "compliance officer had caught [his] mistake [in signing an incorrect business activity form] and sent it back to [him] for correction."

Houston further claims that the Firm "knew of [his] trustee activities" because the file he set up for the Boyd Trust Account in 2001 included a "legal document of [his] appointment as [c]o-[t]rustee," and because his name was on the Boyd Trust Account checks which were "shown on [the Boyd trust's] monthly statement for [the] compliance examination."[52] Regardless of whether the Boyd Trust Account file or the Boyd trust's monthly statement indicated that Houston was serving as a trustee, Houston remained responsible as an associated person to provide prompt notice of his outside business activity "in the form required by" the Firm.[53] Houston cannot shift his responsibility for compliance with Rule 3030 to a supervisor, compliance officer, or anyone else at the Firm.[54] Houston's attempt to do so demonstrates a fundamental misunderstanding of his responsibilities as a securities professional.

C. Houston's remaining contentions lack merit.

We reject Houston's remaining contentions. Houston contends that his lack of disciplinary history should be considered mitigating. FINRA has repeatedly held that a lack of disciplinary history is not mitigating for purposes of sanctions because an associated person should not be rewarded for acting in accordance with his duties as a securities professional. We

---

[51] 2007 Sanction Guidelines at 6.

[52] Houston also claims that First Wall Street knew of his trustee activities because (i) it was the Firm's idea that he receive compensation for his services as a trustee because he "could not receive trading commissions"; (ii) he sent First Wall Street a document appointing him as sole trustee in late 2005; and (iii) the Firm's compliance department had him under special supervision "[a]s a trustee on [the Boyd Trust] account, as broker of record and with [First Wall Street] as dealer of record," and that he "had monthly meetings with compliance concerning any and all activities of Boyd's account." These claims are not supported by the record.

[53] NASD Rule 3030. Moreover, as discussed above, Houston not only failed to provide notice of his trustee activities on the forms provided by First Wall Street, he also falsely claimed on certain of those forms that he had no such activities.

[54] *See Scott Epstein*, Exchange Act Release No. 59328, 2009 SEC LEXIS 217, at *73 (Jan. 30, 2009) ("We have held repeatedly that a respondent cannot shift his or her responsibility for compliance with an applicable requirement to a supervisor.") (citation and internal quotation omitted), *aff'd*, 416 F. App'x 142 (3d Cir. 2010).

find FINRA's application of its Sanctions Guidelines reasonable and have consistently affirmed FINRA's choice in so holding.[55]

Houston contends that he "provided seven years of substantial assistance in this investigation" by meeting his "obligation to provide [h]onest and [t]ruthful information requested of [him] in a timely manner without regulatory pressure." In addition to the fact that this contention is contradicted by the record as set forth above, associated persons do not provide substantial assistance by fulfilling their obligations to cooperate with NASD investigations.[56] There is also no indication in the record that Houston otherwise provided substantial assistance to NASD.

Houston contends that he should receive credit because he wanted to settle this proceeding and that NASD "never negotiated in good faith." But NASD had no obligation to settle this proceeding on Houston's terms, and settlement negotiations are irrelevant to the sanctions determination.[57] Moreover, the record does not contain any evidence that NASD acted in bad faith.

Houston contends that the sanctions imposed by the NAC should have been in line with lesser sanctions that have been imposed in proceedings settled by NASD.[58] But "[w]e have repeatedly observed that comparisons to sanctions in settled cases are inappropriate" because pragmatic considerations justify the acceptance of lesser sanctions in negotiating a settlement "such as the avoidance of time-and-manpower-consuming adversary proceedings."[59] Moreover,

---

[55] *Philippe N. Keyes*, Exchange Act Release No. 54723, 2006 SEC LEXIS 2631, at*23 (Nov. 8, 2006). *But cf. Matthew J. Collins v. SEC*, 736 F.3d 521, 526 (D.C. Cir. 2013) (noting, in the context of an appeal from an administrative proceeding, that disciplinary history is properly considered a mitigating factor); *Robert L. Burns*, Advisers Act Release No. 3260, 2011 WL 3407859, at *11 (Aug. 5, 2011) (considering petitioner's clean disciplinary history as a mitigating factor in an appeal from an administrative law judge's initial decision).

[56] *Keyes*, 2006 SEC LEXIS 2631, at*24 (Respondent's "cooperation in the [NASD] investigation was consistent with the responsibilities he agreed to when he became an associated person and does not constitute substantial assistance.").

[57] *See Richard A Neaton*, Exchange Act Release No. 65598, 2011 SEC LEXIS 3719, at *36 (Oct. 20, 2011) ("We have previously held that [settlement] negotiations are not relevant to our determination of sanctions in a contested proceeding."); *Clyde J. Bruff*, Exchange Act Release No. 40583, 1998 SEC LEXIS 2266, at *14 (Oct. 21, 1998) ("The NASD is not obligated to accept [a settlement] offer once made."), *petition denied*, 198 F.3d 253 (9th Cir. 1999).

[58] Houston specifically refers to the sanction imposed upon settlement by Letter of Acceptance, Waiver and Consent in FINRA Case Nos. 2012033265101, 201024740901, 2011029832701, and 2012031636001.

[59] *Michael C. Pattison, CPA*, Exchange Act Release No. 67900, 2012 SEC LEXIS 2973, at *47 (Sept. 20, 2012); *Castle Sec. Corp.*, Exchange Act Release No. 52580, 2005 SEC LEXIS 2628, at *18 n.24 (Oct. 11, 2005) (same).

the appropriate sanction in any case "depends on the particular facts and circumstances presented."[60] "Litigated cases typically present a fuller, more developed record of facts and circumstances for purposes of assessing appropriate sanctions than do settled matters."[61]

Houston contends that lesser sanctions are warranted because his conduct did not result in injury to investors. But the OTR that NASD requested pursuant to Rule 8210 concerned whether the Boyd trust, an investor and First Wall Street customer, was harmed by Houston's trustee activities. It was Houston's refusal to attend the OTR that impeded NASD's ability to determine whether there was any harm to the Boyd trust.[62]

Houston contends that the suspensions imposed should be vacated because he has suffered enough as a result of this proceeding. Houston asserts that the two plus years in which he has not been "able to practice [his] trade is enough to prevent the recurrence of misconduct." But any collateral consequence that Houston may have suffered as a result of his misconduct or from the disciplinary proceeding that followed, such as the impact on his reputation, career, or finances, is not a mitigating factor.[63]

Houston further contends that the consequences to his career from this proceeding have been exacerbated because NASD, despite knowing that Houston did not have legal counsel, did not inform him that our prior decision vacating the sanctions imposed and remanding the proceeding for a sanctions redetermination meant that he was no longer prohibited from associating with a member firm. As a result, Houston contends, he "sat out another full year

---

[60] *Pattison*, 2012 SEC LEXIS 2973, at *49; *see also Dennis S. Kaminski*, Exchange Act Release No. 65347, 2011 SEC LEXIS 3225, at *41 (Sept. 16, 2011) ("[W]e consistently have held that the appropriateness of the sanctions imposed depends on the facts and circumstances of the particular case and cannot be determined precisely by comparison with action taken in other cases."); *Butz v. Glover Livestock Comm'n Co., Inc.*, 411 U.S. 182, 187 (1973) (holding that "[t]he employment of a sanction within the authority of an administrative agency is . . . not rendered invalid in a particular case because it is more severe than sanctions imposed in other cases"); *Geiger v. SEC*, 363 F.3d 481, 488 (D.C. Cir. 2004) (holding that, because the "Commission is not obligated to make its sanctions uniform," court would not compare sanction imposed in case to those imposed in previous cases).

[61] *Pattison*, 2012 SEC LEXIS 2973, at *49.

[62] *Paz Sec.*, 2008 SEC LEXIS 820, at *17-20 (finding lack of evidence of customer harm not to be mitigating where "NASD was prevented from determining whether Applicants engaged in . . . potentially harmful conduct . . . because Applicants did not answer its information requests").

[63] *See, e.g.*, *Jason A. Craig*, Exchange Act Release No. 59137, 2008 SEC LEXIS 2844, at *27 (Dec. 22, 2008) ("We also do not consider mitigating the economic disadvantages [respondent] alleges he suffered because they are a result of his misconduct."); *Ramiro Jose Sugranes*, Exchange Act Release No. 35311, 1995 SEC LEXIS 234, at *4 (Feb. 1, 1995) ("[A]ny difficulty [Respondent] has encountered in securing employment is a direct consequence of his own misconduct, rather than a reason for reducing his suspension.").

believing [he] was still suspended."[64] But Houston's misunderstanding is not reasonable considering that the order accompanying our prior decision stated clearly "that the sanction imposed by [NASD] on Kent M. Houston in this proceeding . . . is, vacated."[65] Moreover, NASD had no obligation to explain our prior decision to Houston or otherwise provide him with legal advice.

Finally, for the first time in this proceeding, Houston contends that he is unable to pay the fines imposed. But Houston has failed to carry his burden of proving inability to pay because he did not provide any supporting evidence for this contention.[66] Moreover, Houston did not show below that his financial hardship has resulted from a subsequent change in circumstances.[67]

Accordingly, for the foregoing reasons, we find that the sanctions imposed on Houston are neither excessive nor oppressive within the meaning of Exchange Act Section 19(e).

An appropriate order will issue.[68]

By the Commission (Chair WHITE and Commissioners AGUILAR, GALLAGHER and STEIN); Commissioner PIWOWAR not participating.

Elizabeth M. Murphy
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

---

64 Houston claims that NASD's inaction was "[d]eliberate[] and [i]ntentional[]," and that it knew he believed he was still suspended. This claim is not supported by the record.

65 *Houston*, 2011 SEC LEXIS 4491, at *30.

See Castle Sec., 2005 SEC LEXIS 2628, at *19 (finding that respondent did not meet its "burden of demonstrating an inability to pay" because respondent did not introduce documentation concerning the deterioration in its financial situation); *Michael H. Novick*, Exchange Act Release No. 37503, 1996 SEC LEXIS 1994, at *6 (July 31, 1996) (noting that respondent "bears the burden of demonstrating an inability to pay the fine" in an NASD proceeding); 2007 Sanction Guidelines at 5 ("The burden is on the respondent to raise the issue of inability to pay and to provide evidence thereof.").

67 2007 Sanction Guidelines at 5 ("If a respondent does not raise the issue of inability to pay during the initial consideration of a matter before 'trial-level' Adjudicators, Adjudicators considering the matter on appeal generally will presume the issue of inability to pay to have been waived (unless the inability to pay is alleged to have resulted from a subsequent change in circumstances).").

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

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 71589 / February 20, 2014

Admin. Proc. File No. 3-14175r

In the Matter of the Application of

KENT M. HOUSTON
Carlsbad, California 92009

For Review of Disciplinary Action Taken by

FINRA

ORDER SUSTAINING DISCIPLINARY ACTION TAKEN BY FINRA

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

ORDERED that the sanctions imposed by FINRA on Kent M. Houston be, and they hereby are, sustained.

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 EXCHANGE ACT OF 1934
Release No. 71587 / February 20, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15761

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

I.

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

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, Respondent consents to the Commission's jurisdiction over him and the subject matter of these proceedings and to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934, 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 January 1995 through July 2007, Tripodi was a registered representative associated with Joseph Stevens & Co., Inc., which at the time of his association was a broker-dealer registered with the Commission. Joseph Stevens & Co., Inc. ceased to be registered with the Commission as of August 2008. Tripodi, age 44, is a resident of New Jersey.

2. On July 27, 2011, before the New York Supreme Court in People v. Michael Tripodi, Case No. 02394-2009 (N.Y. Sup. Ct.), Tripodi pleaded guilty to one felony count of attempted enterprise corruption in violation of Penal Law § 110/460.20(1)(a) and one felony count of grand larceny in the third degree in violation of New York Penal Law § 155.35. The grand larceny count to which Tripodi pleaded guilty alleged that, between April 2003 and October 2005, he stole more than three thousand dollars from an individual.

3. On May 21, 2012, at Tripodi's sentencing hearing, the court accepted the sentencing recommendation of the Office of the Attorney General of the State of New York to allow Tripodi to withdraw his plea as to the attempted enterprise corruption count and to convert his plea as to grand larceny in the third degree to a plea of guilty to the lesser included charge of a misdemeanor count of attempted grand larceny in the fourth degree in violation of New York Penal Law § 110/155.30(1). Tripodi was sentenced to three years of probation and ordered to pay $186,342 in restitution.

IV.

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

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

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 3781 / February 20, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15759

In the Matter of

JERRY S. WILLIAMS,

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 Jerry S. Williams ("Williams" or "Respondent").

II.

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

III.

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

1. Williams, age 46, is a resident of Mesa, Arizona. During at least 2010, Williams was the investment adviser to the U.S. High Performance Fund ("USHPF" or the "Fund"), an investment company located in New Zealand. Neither Williams nor the USHPF were ever registered with the Commission.

2. On February 12, 2014, a final judgment was entered by consent against Williams, permanently enjoining him from future violations of Sections 17(a) and 17(b) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, and Sections 206(1) and 206(2) of the Advisers Act, in the civil action entitled Securities and Exchange Commission v. Jerry S. Williams, et al., Civil Action Number 3:12-cv-01068 (RNC), in the United States District Court for the District of Connecticut.

3. The Commission's complaint alleged, among other things, that during 2010, Williams perpetrated a fraudulent scalping scheme involving the stock of Green Oasis Environmental, Inc. ("Green Oasis"). As part of the fraudulent scheme, Williams told the USHPF that he would apply a trading strategy, called a "Float Lock Down," while trading for the benefit of the Fund. According to Williams' Float Lock Down strategy, certain market participants, specifically market makers, routinely engaged in "naked short selling" of penny stock companies – i.e., selling short stocks without having arranged to borrow the stock needed to cover their short position. Williams claimed that by purchasing all the outstanding shares of a company (the "float") whose stock the market makers had sold short, they could create a "short squeeze" that would force the market makers to eventually cover their short position at prices dictated by those who had accumulated the float. In fact, the purported Float Lock Down strategy was simply a pretext for Williams to drive up the share price of a stock so that he could sell his personal holdings of the stock at higher prices. From July 7, 2010 through August 11, 2010, as the investment adviser to the USHPF, Williams purchased over 2.6 million shares of Green Oasis stock for the Fund. Green Oasis' share price, which had been trading at around $0.24 per share for several days, rose to $0.31 per share by the close of trading on July 7, 2010. Williams continued to purchase additional shares for the USHPF through August 11, 2010, and the share price rose to over $0.72 per share, often trading well above $0.60 per share. As the Green Oasis share price rose, Williams sold his personal holdings of Green Oasis stock for $78,844, realizing profits of approximately $36,000. Williams never disclosed to the USHPF, its trustee, or investors in the Fund, that he was selling his personal holdings of Green Oasis stock while simultaneously purchasing large amounts of Green Oasis stock for the USHPF. As a result, Williams defrauded the USHPF, its trustee, and investors in the Fund.

IV.

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

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

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-71596; File No. 4-668)

February 21, 2014

Joint Industry Plan; BATS Exchange, Inc., BATS-Y Exchange, Inc., BOX Options Exchange LLC, C2 Options Exchange, Incorporated, Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., International Securities Exchange, LLC, Miami International Securities Exchange LLC, 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, NYSE Arca, Inc. and Topaz Exchange, LLC; Order Approving Proposed National Market System Plan Governing the Process of Selecting a Plan Processor and Developing a Plan for the Consolidated Audit Trail

I. Introduction

On September 3, 2013, BATS Exchange, Inc., BATS-Y Exchange, Inc., BOX Options Exchange LLC, C2 Options Exchange, Incorporated, Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., International Securities Exchange, LLC, Miami International Securities Exchange LLC, 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, NYSE Arca, Inc., and Topaz Exchange, LLC (collectively, "SROs" or "Participants") filed with the Securities and Exchange Commission ("Commission" or "SEC") pursuant to Section 11A of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 608 thereunder,[2] a proposed National Market System ("NMS") Plan Governing the Process of Selecting a Plan Processor and Developing a Plan for the Consolidated Audit Trail ("Plan").[3]

---

1 15 U.S.C. 78k-1.

2 17 CFR 242.608.

3 See letter to Elizabeth M. Murphy, Secretary, Commission, from the SROs dated August 23, 2013 ("Submission Letter").

The Participants requested that the Commission approve the Plan.[4] The Plan was published for comment in the Federal Register on November 21, 2013.[5] The Commission received six comment letters from five commenters in response to the proposal.[6] On January 31, 2014, the Participants to the Plan responded to the comment letters.[7] This order approves the Plan.

II. Background

On July 11, 2012, the Commission adopted Rule 613 under the Act to require the SROs to jointly submit an NMS plan ("CAT NMS Plan") to create, implement, and maintain a

---

4 Id. at 1.

5 See Securities Exchange Act Release No. 70892 (November 15, 2013), 78 FR 69910 ("Notice").

6 See letters to Elizabeth M. Murphy, Secretary, Commission, from Marcia E. Asquith, Senior Vice President and Corporate Secretary, Financial Industry Regulatory Authority, Inc. ("FINRA"), dated December 20, 2013 ("FINRA Letter"); from Anonymous ("Anonymous 1"), dated December 23, 2013 ("Anonymous 1 Letter"); from Theodore R. Lazo, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association ("SIFMA"), dated December 23, 2013 ("SIFMA Letter"); from Manisha Kimmel, Executive Director, Financial Information Forum ("FIF"), dated December 23, 2013 ("FIF Letter"); Anonymous ("Anonymous 2"), dated December 23, 2013 ("Anonymous 2 Letter") from Manisha Kimmel, Executive Director, FIF, dated January 24, 2014 ("FIF Letter II").

FINRA notes that it has two roles with respect to the development of the consolidated audit trail: (1) a role as a Participant in developing the CAT NMS Plan (as defined below) ("SRO Side") and (2) a role as an entity that has submitted an intent to submit a Bid (as defined below) in response to the RFP (as defined below) ("Bid Side"). FINRA notes that it has implemented a communications firewall between the SRO Side and the Bid Side, including policies and procedures designed to prevent the members of the SRO Side and the Bid Side from communicating with one another about non-public matters involving the consolidated audit trail. The FINRA Letter was submitted by the Bid Side. See FINRA Letter at 1.

Copies of all comments received on the proposed Plan are available on the Commission's website, located at http://www.sec.gov/comments/4-668/4-668.shtml. Comments are also available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. ET.

7 See letter to Elizabeth M. Murphy, Secretary, Commission, from the Participants, dated January 31, 2014 ("Response Letter").

consolidated order tracking system, or consolidated audit trail ("CAT"), with respect to the trading of NMS securities, that would capture customer and order event information for orders in NMS securities, across all markets, from the time of order inception through routing, cancellation, modification, or execution.[8] Rule 613 outlines a broad framework for the creation, implementation, and maintenance of the consolidated audit trail, including the minimum elements the Commission believes are necessary for an effective consolidated audit trail. In instances where Rule 613 sets forth minimum requirements for the consolidated audit trail, the Rule provides flexibility to the SROs to draft the requirements of the CAT NMS Plan in a way that best achieves the objectives of the Rule. Specifically, Rule 613 incorporates a series of twelve "considerations" that the Participants must address in the CAT NMS Plan, including:

- the specific details and features of the CAT NMS Plan;
- the Participants' analysis of the CAT NMS Plan's costs and impact on competition, efficiency, and capital formation;
- the process in developing the CAT NMS Plan;
- information about the implementation of the CAT NMS Plan; and
- milestones for the creation of the consolidated audit trail.[9]

As part of the discussion of these "considerations," the Participants must include cost estimates for the proposed solution, and a discussion of the costs and benefits of alternate solutions considered but not proposed.[10] In addition, Rule 613 requires that the Participants: (1) provide an estimate of the costs associated with creating, implementing, and maintaining the

---

8 See Securities Exchange Act Release No. 67457 (July 18, 2012), 77 FR 45722 (August 1, 2013) ("Adopting Release").

9 See Rule 613(a)(1)(i)-(xii).

10 See Rule 613(a)(1)(vii); Rule 613(a)(1)(xii).

consolidated audit trail under the terms of the CAT NMS Plan submitted to the Commission for its consideration; (2) discuss the costs, benefits, and rationale for the choices made in developing the CAT NMS Plan submitted; and (3) provide their own analysis of the submitted CAT NMS Plan's potential impact on competition, efficiency, and capital formation.[11] These detailed requirements are intended to ensure that the Commission and the public have sufficiently detailed information to carefully consider all aspects of the CAT NMS Plan ultimately submitted by the Participants.[12]

In light of the numerous specific requirements of Rule 613, the Participants concluded that publication of a request for proposal ("RFP") was necessary to ensure that potential alternative solutions to creating the consolidated audit trail can be presented and considered by the Participants and that a detailed and meaningful cost/benefit analysis can be performed, both of which are required considerations to be addressed in the CAT NMS Plan.[13] The Participants published the RFP on February 26, 2013, and requested that any potential bidders notify the Participants of their intent to bid by March 5, 2013. Thirty-one firms submitted an intent to bid in response to the publication of the RFP; four of the firms were Participants or Affiliates of Participants.[14]

---

11 See Rule 613(a)(1)(viii).

12 See Adopting Release, supra note 8, at 45725.

13 See Submission Letter, supra note 3, at 3.

14 Since that time, 13 firms—including two Participants and one Affiliate of a Participant—have formally notified the Participants that they will not submit bids as primary bidders. A list of firms that submitted an intent to bid is located on the Participants' website at www.catnmsplan.com ("CAT NMS Plan Website"). According to the Plan, "[a]n 'Affiliate' of an entity means any entity controlling, controlled by, or under common control with such entity." See Section I(A) of the Plan.

III. Description of the Proposal

The Participants filed the Plan to govern how the SROs will proceed with formulating and submitting the CAT NMS Plan—and, as part of that process, how to review, evaluate, and narrow down the bids submitted in response to the RFP ("Bids")[15]—and ultimately choosing the plan processor that will build, operate, and maintain the consolidated audit trail ("Plan Processor").[16]

A. Governance

Section III of the Plan establishes the overall governance structure the Participants have chosen.[17] Specifically, the Participants propose establishing an Operating Committee responsible for formulating, drafting, and filing with the Commission the CAT NMS Plan and for ensuring the Participants' joint obligations under Rule 613 are met in a timely and efficient manner. As set forth in Section III(B) of the Plan, each Participant will select one individual and one substitute to serve on the Operating Committee; however, other representatives of each Participant are permitted to attend Operating Committee meetings. Section III of the Plan also establishes the procedures for the Operating Committee, including provisions regarding meetings, Participants' voting rights, and voting requirements.

---

15 See Section I(C) of the Plan.

16 See Submission Letter, supra note 3, at 4.

17 Section I sets forth the definitions used throughout the Plan, and Section II lists the Participants and establishes the requirements for admission of new, or withdrawal of existing, Participants. Each currently approved national securities exchange and national securities association subject to Rule 613(a)(1) is a Participant in the Plan. Section II(B) of the Plan provides that any entity approved by the Commission as a national securities exchange or national securities association under the Act after the effectiveness of the Plan shall become a Participant by satisfying each of the following requirements: (1) effecting an amendment to the Plan by executing a copy of the Plan as then in effect (with the only change being the addition of the new Participant's name in Section II of the Plan) and submitting such amendment to the Commission for approval; and (2) providing each then-current Participant with a copy of such executed Plan.

B. Conflicts of Interest

The Participants recognize their important regulatory obligations with respect to the development of the CAT NMS Plan, and ultimately the creation and operation of the consolidated audit trail.[18] However, they also recognize that Participants or Affiliates of Participants may also be Bidders seeking to serve as the Plan Processor or may be a subcontractor to Bidders seeking to serve as the Plan Processor.[19] Accordingly, the Participants have sought to mitigate these potential conflicts of interest by including in the Plan multiple provisions, which are described below, designed to balance these competing factors. The Participants believe that the Plan achieves this balance by allowing all Participants to participate meaningfully in the process of creating the CAT NMS Plan and choosing the Plan Processor while imposing strict requirements to ensure that the participation is independent and that the process is fair and transparent.[20]

C. Plan Processor Selection Process

1. Bidder Shortlist Determination

Sections V and VI of the Plan[21] set forth the process for the Participants' evaluation, and narrowing down, of the Bids, and choosing the Plan Processor.[22] Pursuant to these Sections, the

---

18 See Notice, supra note 5, at 69911.

19 Id.

20 Id.

21 Section IV of the Plan governs amendments to the Plan. In general, except with respect to the addition of new Participants, any change to the Plan requires a written amendment that sets forth the change, is executed by over two-thirds of the Participants, and is approved by the Commission pursuant to Rule 608 of the Act or otherwise becomes effective under Rule 608.

22 Initial steps in the evaluation and selection process will be performed pursuant to the Plan; the final two rounds of evaluation and voting, as well as the final selection of the Plan Processor, will be performed pursuant to the CAT NMS Plan. The sections of the CAT NMS Plan governing these final two voting rounds are set forth in Sections VI(D)

evaluation of Bids and selection of the Plan Processor will be performed by a Selection Committee composed of one senior officer from each Participant ("Voting Senior Officer").[23] The SROs noted that, because of the potential conflicts of interest noted above, the Plan includes multiple requirements to increase the independence of the Voting Senior Officer who participates on the Selection Committee on behalf of a Bidding Participant.[24] The criteria set forth in Section V(D) of the Plan include requirements concerning the Voting Senior Officer's job responsibilities, decision-making authority, and reporting, and require that the Bidding Participant establishes functional separation between its Plan responsibilities and its business/commercial (including market operations) functions. In addition, the criteria prohibit any disclosure of information regarding the Bid to the Voting Senior Officer and prohibit the Voting Senior Officer from disclosing any non-public information gained in his or her role as such. According to the SROs, these criteria are intended to insulate the Voting Senior Officer

---

and (E) of the Plan and will be incorporated into the CAT NMS Plan. The Participants believe it is essential that the entire process be laid out in the Plan so that the Commission can consider and approve the entire evaluation and selection process, even though the final two voting rounds, including the selection of the Plan Processor, will not be conducted until after the approval of the CAT NMS Plan. See Submission Letter, supra note 3, at 4.

23 In the case of Affiliated Participants, one individual may be (but is not required to be) the Voting Senior Officer for more than one or all of the Affiliated Participants.

24 The Plan defines a "Bidding Participant" broadly to include any Participant that: (1) submits a Bid; (2) is an Affiliate of an entity that submits a Bid; or (3) is included, or is an Affiliate of an entity that is included, as a Material Subcontractor as part of a Bid. See Section I(E) of the Plan. A "Material Subcontractor" is "any entity that is known to the Participant to be included as part of a Bid as a vendor, subcontractor, service provider, or in any other similar capacity and, excluding products or services offered by the Participant to one or more Bidders on terms subject to a fee filing approved by the SEC, (1) is anticipated to derive 5% or more of its annual revenue in any given year from services provided in such capacity; or (2) accounts for 5% or more of the total estimated annual cost of the Bid for any given year." See Section I(J) of the Plan. The Plan provides that "[a]n entity will not be considered a 'Material Subcontractor' solely due to the entity providing services associated with any of the entity's regulatory functions as a self-regulatory organization registered with the SEC." See id.

from any inside knowledge regarding the Bid (while also preventing any information about the evaluation process from being shared with staff preparing the Bidding Participant's Bid) and to reduce any potential personal motivation that may exist that could improperly influence a Voting Senior Officer's decisions.[25]

Any action requiring a vote by the Selection Committee under the Plan can only be taken in a meeting in which all Participants entitled to vote are present.[26] All votes taken by the Selection Committee are confidential and non-public, and a Participant's individual votes will not be disclosed to other Participants or to the public.[27] For this reason, the Plan provides that votes of the Selection Committee will be tabulated by an independent third party approved by the Operating Committee.[28] Moreover, the Participants do not anticipate that aggregate votes or anonymized voting distribution numbers will be provided to the Participants following votes by the Selection Committee.[29]

The Plan divides the processes for review and evaluation of Bids, and selection of the Plan Processor, into four separate stages. After Bids are submitted,[30] Section VI(A) of the Plan provides that the Selection Committee will review them to determine which are Qualified Bids (i.e., Bids that contain sufficient information to allow the Voting Senior Officers to meaningfully

---

25 See Notice, supra note 5, at 69912. As described below, even with the independence criteria in place, the Plan also requires recusal by the Voting Senior Officer from certain votes.

26 See Section V(C)(1) of the Plan.

27 See Section V(B)(4) of the Plan.

28 Id.

29 See Notice, supra note 5, at 69912.

30 The Participants anticipate that Bids must be submitted four weeks after the Commission approves the Plan. See id.

assess and evaluate them).[31] At this initial stage, if two-thirds or more of the Participants determine that a Bid does not meet the threshold for a Qualified Bid, the Bid will be eliminated from further consideration. The Participants believe this initial step will ensure that only those Bids meeting a minimum level of detail and sufficiency will move forward in the process, and insufficient Bids can be eliminated.[32]

Following the elimination of Bids that are not Qualified Bids, each Qualified Bidder will be provided the opportunity to present its Bid to the Selection Committee.[33] After the Qualified Bidders have made their presentations, the Selection Committee will establish a subset of Bids that will move on in the process ("Shortlisted Bids").[34] The Plan provides that, if there are six or fewer Qualified Bids submitted, all of those Bids will be selected as Shortlisted Bids.[35] If there are more than six but fewer than eleven Qualified Bids, the Selection Committee will choose five Shortlisted Bids, and, if there are eleven or more Qualified Bids, the Selection Committee will choose 50% of the Qualified Bids as Shortlisted Bids.[36]

---

31 The Plan defines a Qualified Bid as "a Bid that is deemed by the Selection Committee to include sufficient information regarding the Bidder's ability to provide the necessary capabilities to create, implement, and maintain a consolidated audit trail so that such Bid can be effectively evaluated by the Selection Committee." See Section I(Q) of the Plan. The Plan provides that, "[w]hen evaluating whether a Bid is a Qualified Bid, each member of the Selection Committee shall consider whether the Bid adequately addresses the evaluation factors set forth in the RFP, and apply such weighting and priority to the factors as such member of the Selection Committee deems appropriate in his or her professional judgment." See id.

32 See Notice, supra note 5, at 69912.

33 See Section VI(B)(1) of the Plan.

34 See Section VI(B)(2) of the Plan.

35 See id.

36 See Sections VI(B)(3)-(4) of the Plan. The Plan provides that, if there is an odd number of Qualified Bids, the number of Shortlisted Bids to be chosen will be rounded up to the next whole number (e.g., if there are thirteen Qualified Bids, seven Shortlisted Bids will be selected). See Section VI(B)(4) of the Plan. In the event of a tie to select the

When voting to select the Shortlisted Bids from among the Qualified Bids, each Voting Senior Officer must rank his or her selections, and the points assigned to the rankings increase in single-point increments.[37] Thus, for example, if five Shortlisted Bids are to be chosen, each Participant will vote for its top five choices in rank order, with the first choice being given five points, the second choice four points, the third choice three points, the fourth choice two points, and the fifth choice one point. The Plan also provides that at least two Non-SRO Bids must be included as Shortlisted Bids, provided there are two Non-SRO Bids that are Qualified Bids.[38] According to the SROs, this provision further reduces the impact of potential conflicts of interest in choosing Shortlisted Bids.[39] If, following the vote, no Non-SRO Bids have been selected as Shortlisted Bids, the Plan requires that the two Non-SRO Bids receiving the highest cumulative votes be added as Shortlisted Bids.[40] If, in this scenario, a single Non-SRO Bid was a Qualified Bid, that Non-SRO Bid would be added as a Shortlisted Bid.[41] The Participants believe selecting Shortlisted Bids is appropriate both to ensure that Bidders submit a complete and thorough Bid initially and so that Qualified Bidders will know whether they have a realistic opportunity to be selected as the Plan Processor after the CAT NMS Plan is approved.[42]

Shortlisted Bids, all such tied Qualified Bids will be Shortlisted Bids. See Section VI(B)(3)(c) of the Plan.

37 See Section VI(B)(3) of the Plan.

38 Id. The Plan defines a "Non-SRO Bid" as "a Bid that does not include a Bidding Participant." See Section I(L) of the Plan.

39 See Notice, supra note 5, at 69912-13

40 See Section VI(B)(3)(d) of the Plan.

41 Id.

42 See Notice, supra note 5, at 69912.

2. Bid Revision and Selection of Plan Processor

Following the selection of Shortlisted Bids, the Participants will identify the optimal proposed solution(s) for the consolidated audit trail for inclusion in the CAT NMS Plan for submission to the Commission.[43] As a part of this process, and the overall review and evaluation of Shortlisted Bids, the Selection Committee may consult with the advisory committee required and established by Rule 613 ("Advisory Committee"). If the Commission approves the CAT NMS Plan, the Selection Committee will determine, by majority vote, which Shortlisted Bidders will have the opportunity to revise their Bids in light of the provisions in the final, approved CAT NMS Plan.[44] In making a decision whether to permit a Shortlisted Bidder to revise its Bid, the Selection Committee will consider the provisions in the CAT NMS Plan as well as the content of the Shortlisted Bidder's initial Bid. According to the SROs, to reduce potential conflicts of interest, the Plan also provides that, if a Bid submitted by or including a Bidding Participant or an Affiliate of a Bidding Participant is a Shortlisted Bidder, that Bidding Participant must recuse itself from all votes regarding whether a Shortlisted Bidder will be permitted to revise its Bid.[45]

Section VI(E) provides that, after the permitted Shortlisted Bidders submit any revisions, the Selection Committee will select the Plan Processor from the Shortlisted Bids in two rounds of voting where, subject to the recusal provision described below, each Participant has one vote. In the first round, each Participant will select a first and second choice, with the first choice receiving two points and the second choice receiving one point. The two Shortlisted Bids

---

43 See Submission Letter, supra note 3, at 7; Section VI(D) of the Plan.

44 See Section IV(D)(1) of the Plan.

45 See Notice, supra note 5, at 69913. See Section V(B)(2) of the Plan.

receiving the highest cumulative scores in the first round will advance to the second round.[46] In the event of a tie resulting in more than two Shortlisted Bids advancing to the second round, the tie will be broken by assigning one point per vote to the tied Shortlisted Bids, and the one with the most votes will advance. If this procedure fails to break the tie, a revote will be taken on the tied Shortlisted Bids with each vote receiving one point. If the tie persists, the Participants will identify areas for discussion, and revotes will be taken until the tie is broken.[47]

Once two Shortlisted Bids have been chosen, the Participants will vote for a single Shortlisted Bid from the final two to determine the Plan Processor.[48] If one or both of the final Bids is submitted by or includes a Bidding Participant or an Affiliate of a Bidding Participant, the Bidding Participant must recuse itself from the final vote.[49] In the event of a tie, a revote will be taken. If the tie persists, the Participants will identify areas for discussion and, following these discussions, revotes will be taken until the tie is broken.[50] As set forth in Section VII of the Plan, following the selection of the Plan Processor, the Participants will file with the Commission a statement identifying the Plan Processor and including the information required by Rule 608.

D. Implementation

The terms of the Plan will be operative immediately upon approval of the Plan by the Commission. The Participants have announced that Bids must be submitted four weeks after the

---

46 See Section VI(E)(3) of the Plan. Each round of voting throughout the Plan is independent of other rounds.

47 Id.

48 See Section VI(E)(4)(b) of the Plan.

49 See Section V(B)(2) of the Plan.

50 See Section VI(E)(4)(c) of the Plan.

Commission's approval of the Plan.[51] The Participants will begin reviewing and evaluating the Bids pursuant to Section VI of the Plan upon receipt of the Bids, and anticipate that it will take seven months to evaluate the Bids and submit the CAT NMS Plan to the Commission pursuant to Sections VI(A) and (B) of the Plan.[52] As noted above, upon approval of the CAT NMS Plan, the Plan will automatically terminate. The review of revised Shortlisted Bids and the selection of the Plan Processor will be undertaken as set forth in Sections VI(D) and (E) of the Plan as those sections are incorporated into the CAT NMS Plan.

IV. Comment Letters and Response Letter

The Commission received six comment letters from five commenters on the proposed Plan.[53] Three of the commenters generally supported the Plan.[54] All of the commenters had concerns with, and/or questions regarding, specific details on the terms of the Plan, collectively identifying three main issues – (1) industry participation in the evaluation of Bidders, the selection of the Plan Processor, and the drafting of the CAT NMS Plan; (2) transparency in SRO decision-making; and (3) conflicts of interest – and offering suggestions as to how those concerns and/or questions could be addressed.[55] The Participants responded to the comments regarding the proposal.[56]

A. Industry Participation

As proposed in the Plan, only the SROs will participate in the selection process, and they

---

51 See Notice, supra note 5, at 69913.

52 Id.

53 See supra note 6.

54 See FINRA Letter at 1; SIFMA Letter at 1; FIF Letter at 1.

55 See FINRA Letter at 1-2; Anonymous 1 Letter at 1; SIFMA Letter at 1; FIF Letter at 1-2; Anonymous 2 Letter at 1; FIF Letter II at 2-3.

56 See Response Letter, supra, note 7.

may consult with the Advisory Committee when reviewing and evaluating the Shortlisted Bids.[57] Three commenters believe that industry participation in the selection process is important, and they suggest varying solutions to ensure that such participation is required by the Plan.[58]

One commenter states that the process should include the integrated involvement and meaningful participation of representatives of the broker-dealer community.[59] Specifically, the commenter states that there should be public representation on the Operating Committee, and that non-SRO, industry members should be involved in the evaluation of Bidders and the selection of the Plan Processor.[60] The commenter believes that "[t]he unique expertise and insight of the broker-dealer community complements that of the SROs and would bring the perspective of the entities that will be providing the 'lion's share' of the reported data to the CAT."[61] This commenter additionally recommends that the Participants amend the Plan to establish the Advisory Committee as part of this Plan, as opposed to waiting for the submission of the CAT NMS Plan, with safeguards and procedural protections to assure that the SROs fully consider the views of the committee.[62] Another commenter states that it supports consultation with the Advisory Committee as part of the selection process so long as safeguards are put in

---

57 See Sections II and VI(D)(2) of the Plan.

58 See SIFMA Letter; FINRA Letter; and FIF Letter.

59 See SIFMA Letter at 1.

60 Id. at 2-4.

61 Id. at 3.

62 Id. at 4-5. In particular, the commenter suggests that the Plan should require the SROs: (1) to document and provide the Advisory Committee with a written statement, explaining the reasons for any SRO rejection of a written recommendation submitted by the committee; and (2) to prepare agendas for meetings and provide documents to be discussed at the meetings in advance to give committee members sufficient time to analyze information and formulate views. Id.

place to ensure the confidentiality of the Bidders' information is protected.[63] A third commenter believes that the Advisory Committee's scope of participation is extremely limited and should be expanded and it recommends that the SROs should be required to consult the Advisory Committee when reviewing the Shortlisted Bids to select the Plan Processor.[64]

In response to these comments, the SROs indicate how the Operating Committee has provided, and will continue to provide, for industry participation in the development of the CAT NMS Plan.[65] In response to the comment that Advisory Committee consultation should be mandatory as part of the review of Shortlisted Bidders, the SROs noted that they will consult proactively with the industry for input on key aspects of the Bids, so long as the selection process is not impaired, especially with regard to maintaining Bidder confidential information.[66] The SROs also note that they created the CAT Development Advisory Group ("DAG") and that the DAG has been, and will continue to be, a valuable source of input for the development of the CAT NMS Plan.[67] The SROs state that they will continue to engage the industry on key topics

---

63 See FINRA Letter at 4. The commenter requests clarification on whether members of the Advisory Committee would be required to sign a non-disclosure agreement ("NDA") if they are given access to confidential information as part of any consultation with the Selection Committee. Id. at 3-4.

64 See FIF Letter at 4.

65 See Response Letter, supra note 7, at 2-4.

66 Id. The SROs, however, note that the creation of the Advisory Committee that is required by Rule 613(b)(7) ("Rule 613 Advisory Committee") is not germane to the Plan. The SROs state that the requirement in Rule 613(b)(7) is that the CAT NMS Plan establish an Advisory Committee to advise the SROs on the implementation, operation and administration of the consolidated audit trail. The SROs then state that the Rule 613 Advisory Committee will be established in the CAT NMS Plan, and that the CAT NMS Plan will provide specifics as to the role of the Rule 613 Advisory Committee in the process of reviewing and evaluating Bids. Id. at 2.

67 Id. at 2-4. The SROs also note their previous engagement with industry through posting industry questions on the CAT NMS Plan Website and conducting open meetings. Id. at n.5.

pertaining to aspects of the Bids that directly affect the industry.[68] The SROs further state that, after Bids are received in response to the RFP, they are committed to providing the DAG with anonymized information taken from Bids that will provide the DAG members with enough specificity to allow them to understand the comparative advantages and disadvantages of the options being considered by the SROs, so that they can contribute in a meaningful way to the SROs' analysis of such information.[69] The SROs further note that they intend to work with the DAG to identify the particular sections of the RFP that will benefit from industry input during the evaluation of Bids.[70] The SROs also explain that they understand that broad industry input during the development of the CAT NMS Plan is critical to selecting optimal proposed solutions, and that they will continue to hold discussions with the DAG at the greatest level of detail possible without compromising a fair selection process and confidential Bid information.[71]

B. Transparency

Several commenters stress the importance of transparency in the Bidder selection process and the standards the SROs will employ for review of Bids.[72] One commenter states that the Commission should not approve the Plan unless it is amended to provide public disclosure of the selection process.[73] The commenter recommends that the SROs publish the Bidders and the contents of the Bids, explaining that the Bids should be available to the public to inform the

---

68 Id. at 2.

69 Id. at 3. The SROs note that this information sharing will occur only after executed NDAs are in place with the appropriate industry members. Id. at n. 7.

70 Id. at 3.

71 Id.

72 See FINRA Letter at 1-2; SIFMA Letter at 1-3; FIF Letter at 2-3; FIF Letter II at 2.

73 See SIFMA Letter at 3.

discussion regarding the costs and benefits, and technological feasibility of different solutions.[74] The commenter believes that these responses to the RFP and the SROs' rationale for eliminating them from consideration as the Plan Processor will be important for the industry to consider in commenting on the CAT NMS Plan.[75]

Another commenter recommends that the SROs share information contained in the Bids, specifically relating to the functions and interfaces of the entities (i.e., broker-dealers and SROs) that are required to report to the CAT ("CAT Reporters"), so that the industry can provide feedback to the SROs for assessment of Bidder responses.[76] The commenter believes that broad input from the DAG during the CAT NMS Plan development process is critical to ensure that the SROs consider issues from the CAT Reporter perspective.[77] The commenter maintains that this information would represent an external description of the Plan Processor and should not require any disclosure of internal implementations or proprietary information from the Bidders.[78] Further, the commenter argues that this level of information will be public information once the CAT NMS Plan is published as Rule 613 requires that the CAT NMS Plan be sufficiently detailed to describe the alternatives to the solution selected by the SROs.[79] The commenter also argues that because Bids cannot be revised prior to the submission of the CAT NMS Plan pursuant to the proposed Plan, information leakage should not be a concern.[80]

---

74 Id. at 2.

75 Id.

76 See FIF Letter at 2-3; and FIF Letter II at 2-3.

77 See FIF Letter II at 3.

78 See FIF Letter at 3.

79 See FIF Letter II at 2-3.

80 Id. at 2.

The commenter also opines that if the SROs deem it necessary to require DAG members to sign NDAs in order to share confidential portions of Bidders' responses, any such NDAs should be targeted and finite in nature, specifically noting that DAG discussions on CAT Reporter functionality should not be subject to an NDA.[81] The commenter states that only confidential portions of Bids should be covered by NDAs, and that to the greatest extent possible, information relating to Bidders' responses should be publicly available to facilitate critical outreach from the DAG.[82]

In response to these comments, the SROs state that they do not intend to publish the content of the Bids in order to manage a fair process and to address Bidders' concerns regarding the confidentiality of proprietary and other sensitive information during the selection process.[83] The SROs represent that this is standard industry practice.[84] The SROs further indicate that, as required by Rule 613, the CAT NMS Plan submitted will discuss appropriate and anonymized elements of the Bids that were not selected, including the relative advantages and disadvantages of each solution, an assessment of the costs and benefits, and the basis upon which the SROs selected the optimal proposed solutions in the CAT NMS Plan.[85] The SROs also note that the CAT NMS Plan will be subject to notice and comment.[86] However, the SROs state that they will seek industry feedback on proposed approaches and key themes of the RFP responses.[87]

---

81 See FIF Letter II at 3.

82 Id.

83 See Response Letter, supra note 7, at 9.

84 Id.

85 Id.

86 Id.

87 Id. at 8.

The SROs also state that, prior to any consultation with the Advisory Committee or the DAG about information contained in a Bid, the SROs will require the execution of an NDA.[88] In response to the comment regarding the scope of NDAs, the SROs state that NDAs will be appropriately drafted to protect confidential information while allowing for meaningful discussion between the SROs and members of the Advisory Committee or the DAG.[89]

Three commenters recommend that the selection criteria used to evaluate the Bids be publicly available.[90] Specifically, one commenter states that, if the evaluation criteria are thorough and known to all parties (i.e., SROs, Bidders, the industry and the Commission), the process will be more transparent and fair.[91] This commenter suggests that the evaluation process and criteria used in the final two rounds of voting be published prior to each round of voting, or at a minimum reviewed with the industry via the DAG.[92] Another commenter requests clarification regarding the criteria that Voting Senior Officers will employ when reviewing and ranking Bids, both when selecting the Shortlisted Bids from the Qualified Bids and when selecting the Plan Processor from the Shortlisted Bids.[93] A third commenter suggests that the SROs should publish information about the results of each round of voting (e.g., the total votes received by each Bidder or a ranking of the Bidders by voting result).[94]

In response to these comments, the SROs agree to publish more detailed descriptions of the evaluation criteria listed in the RFP, which will be used by each SRO as a guideline when

---

88 Id.

89 Id.

90 See FINRA Letter at 2; SIFMA Letter at 3; FIF Letter at 2.

91 See FIF Letter at 2.

92 Id.

93 See FINRA Letter at 2.

94 See SIFMA Letter at 3.

evaluating Bids.[95] The SROs note that the evaluation criteria can be broadly grouped into the following five areas: (1) technical architecture, (2) operations – technical (processing capability), (3) operations – non-technical, (4) company information, and (5) contract and terms. The SROs further provide lists of criteria within each of the five areas in the Response Letter.[96] The SROs explain that each SRO's assessment will be informed by the defined criteria noted above but that an individual SRO may determine that other factors are important in making its independent evaluation of a Bid.[97] The SROs do not intend to publish voting results.[98] The SROs state that this approach is considered standard industry practice and there is no articulated benefit to making this information publicly available. The SROs state that they are concerned that the public disclosure of such information may incorrectly and inaccurately suggest the relative strength of a particular Bid without any meaningful context.[99]

One commenter recommends that the minutes of the SRO Operating Committee meetings be made public, in order to further increase transparency and serve as a communications vehicle for informing the industry of the CAT governance actions and decisions.[100] In response to this comment, the SROs indicate that the Operating Committee meeting minutes will not be made public either prior to or after approval of the CAT NMS Plan.[101] The SROs state that, in managing a fair process and maintaining Bidder confidentiality as provided for in the NDA executed with the Bidders, the SROs will not publish Operating Committee minutes during the

---

95 See Response Letter, supra note 7, at 4.

96 Id. at 4-5.

97 Id. at 5.

98 Id. at 9.

99 Id.

100 See FIF Letter at 2.

101 See Response Letter, supra note 7, at 10.

Bid evaluation and selection process.[102] The SROs believe that this approach encourages effective and critical review of the Bids as well as open and frank discussions in light of all material considerations, including timing and complexity.[103] The SROs explain that the decisions made by the Operating Committee regarding aspects of the Bids will be reflected in the CAT NMS Plan, which will be open to public comment, and will include an analysis of both the optimal proposed solutions and those solutions not selected, thus providing the public with the opportunity to consider the SROs' decisions.[104] The SROs further state that, once the CAT NMS Plan has been approved and the Advisory Committee has been established, members of that committee will have the right to attend CAT management committee meetings, except for executive sessions, and, as such, will have access to the minutes from such meetings, as well as the right to receive information concerning the operation of the central repository and to provide their views to the SROs.[105]

Finally, one commenter requests clarification on whether the optimal proposed solutions for the CAT NMS Plan will be the product of an individual Bid or a composite of select portions of multiple Bids.[106] If it will be the latter, the commenter questions how the SROs will determine the costs and benefits of such solutions.[107] In response to this comment, the SROs clarify that the optimal proposed solutions could include approaches from different Bids in order to identify a

---

102 Id.

103 Id.

104 Id.

105 Id. The SROs state, however, that consistent with standard industry practices, the SROs will not share the minutes with the industry as a whole. Id.

106 See FIF Letter at 2.

107 Id.

solution that best meets the requirements of Rule 613.[108] The SROs recognize that there may be inherent challenges in combining elements of separate solutions, but they want to ensure the flexibility in the evaluation process to identify a holistic solution that is better suited to meet the requirements of Rule 613, while not being limited to the components of any individual Bid.[109] The SROs intend to consult with the DAG and the industry as part of the review of anonymized solutions from the Bids, including, but not limited to, requesting input on the technical and operational specifications of the proposed solutions, and the associated cost-benefit analysis.[110]

C. Conflicts of Interest

Two commenters express concerns that the provisions in the Plan that are intended to address conflicts of interest are insufficient.[111] One commenter questions the genuineness of the separation through firewalls within the SROs intended to segregate individuals participating in the selection process from those participating in the bidding process.[112] The commenter also expresses concern that it is challenging to enforce and monitor such restrictions.[113] The commenter further recommends that the Plan either limit the Bidders to non-SROs or only to SROs.[114] Another commenter recommends that the Plan require Bidding Participants to be recused from both rounds of voting on Shortlisted Bids, not just the second round of voting to select the Plan Processor.[115]

---

108 See Response Letter, supra note 7, at 8.

109 Id.

110 Id. at 4.

111 See Anonymous 1 Letter at 1; Anonymous 2 Letter at 1.

112 See Anonymous 1 Letter at 1.

113 Id.

114 Id.

115 See Anonymous 2 Letter at 1. The commenter has submitted an intent to bid on the RFP. Id.

In response to these comments, the SROs note the important regulatory obligations that exist for each of them with respect to the creation and operation of the CAT, and that it is essential that each one contribute to the development of the CAT NMS Plan and the selection of the Plan Processor.[116] However, the SROs recognize that SROs or Affiliates of SROs may also be Bidders seeking to serve as the Plan Processor or may be included as part of a Bid.[117] The SROs represent that they have sought to mitigate these potential conflicts of interest by including in the Plan multiple provisions designed to balance these competing factors, and have established information barriers, which they believe are sufficient to maintain functional separation between employees representing a specific SRO as part of the consortium planning the CAT and employees developing Bids.[118] The SROs state that the implementation of information barriers is considered a standard industry practice for mitigating the risks of conflicts of interests.[119] The SROs continue to believe that the Plan achieves this balance by allowing all SROs to participate meaningfully in the process of creating the CAT NMS Plan and choosing the Plan Processor, while imposing strict requirements to ensure that the participation is independent and that the process is fair and transparent.[120]

Distinct from the concern regarding potential conflicts of interest arising from an SRO that is also a Bidder, one commenter suggests that the Plan or NDA should be amended to require, even for SROs that are not Bidders or Affiliates of Bidders, the functional separation of

---

116 See Response Letter, supra note 7, at 7.

117 Id.

118 Id.

119 Id.

120 Id.

employees representing an SRO for purposes of the selection process and its business or commercial functions to safeguard against misuse of Bidders' confidential information.[121]

The SROs state that, although the Bidding Participants are required to maintain the functional separation suggested by the commenter, it will not be practical for all other SROs to isolate their employees that participate in the Bid evaluation and selection process, as varying skillsets will be required to fully evaluate the Bids, and many SROs are faced with resource constraints that would make them unable to wall off certain personnel without either decreasing the expertise available to evaluate Bids or having inadequate resources to manage their business/commercial functions.[122] While the SROs state that it is not practical to isolate non-Bidding SRO employees participating in the Bid evaluation and selection process from other SRO employees, they represent that, to protect Bidders' confidential information, all SROs will adhere to the section of the NDA executed with Bidders that restricts the distribution and use of Bid information by SROs, their affiliates, agents, advisors, and contractors by obligating such parties:

> (i) to hold the Disclosing Party's Confidential Information in strict confidence and to protect such Confidential Information from disclosure to others (including, without limitation, all precautions the Receiving Party employs with respect to its own Confidential Information), (ii) no [sic] to divulge any such Confidential Information … other than to its Representatives for the purpose of assisting the Receiving Party with respect to the CAT NMS Selection Process, and (ii) [sic] not to make use whatsoever at any time of Confidential Information except to evaluate and

121 See FINRA Letter at 4.

122 Id.

discuss the CAT NMS Selection Process … the Receiving Party shall ensure that its Representatives comply with this Agreement as if they were parties to this Agreement.[123]

D. Other Issues

1. Revision of Bids

The proposed Plan provides that, following approval of the CAT NMS Plan, upon a majority vote of the Selection Committee, Shortlisted Bidders will be permitted to revise their Bids provided that revisions are necessary or appropriate in light of the Shortlisted Bidder's initial Bid and the provisions in the approved CAT NMS Plan. One commenter recommends that the Selection Committee instead should only allow revised Bids: (1) after the first round of voting on the Shortlisted Bidders, at which time the list of Bidders would be narrowed to two; and (2) only for the purposes of confirming that the final two Bidders have proposals that meet the requirements of the approved CAT NMS Plan.[124] The commenter also believes that, if revisions would require material changes to the Bid of either of the two remaining Bidders, both Bidders should be permitted to revise their Bids.[125] This commenter is concerned that allowing Bidders to revise their Bids too early in the selection process could materially impact the depth and breadth of information that Bidders are willing to provide in their initial Bids.[126] Under the Plan as proposed, the commenter believes that Bidders will not have a strong incentive to put forth their best ideas, processes, systems, and methods in response to the initial RFP, and will

123 See Response Letter, supra note 7, at 10-11.

124 See FINRA Letter at 2-3.

125 Id at 3.

126 Id at 3.

include only enough information to meet the Qualified Bidder threshold.[127] Contrary to this position, another commenter believes that all Bidders should be permitted to revise their Bids, based on the provisions contained in the approved CAT NMS Plan, and recommends removing the requirement that the Selection Committee grant permission to revise Bids.[128]

In response to these comments, the SROs state that they recognize the value of allowing the Shortlisted Bidders to revise their Bids and expect that including this component in the Plan will result in better quality and more comprehensive Bids from all Bidders.[129] Further, the SROs note that preserving their discretion to limit revision of Bids is important, particularly in the instance where there are six or fewer Bidders, all of whom would automatically become Shortlisted Bidders.[130] The SROs believe that without SRO discretion to determine which Bidders can revise their Bids, Bidders may not provide detailed information in their initial Bids, but will await the final structure of the CAT NMS Plan to provide full information in their revised Bids.[131] Therefore, the SROs believe they need discretion to not allow a Shortlisted Bidder to revise its Bid if the initial Bid did not clearly communicate a cogent, workable plan and evidence the ability to execute the plan.[132] Accordingly, the SROs will assess whether revisions are necessary or appropriate in light of the content of the Shortlisted Bidder's initial Bid and the provisions of the approved CAT NMS Plan.[133] More specifically, the SROs anticipate permitting revision of Bids where the initial Bid clearly communicated a feasible CAT

---

127 Id.

128 See FIF Letter at 4.

129 See Response Letter, supra note 7, at 6.

130 Id.

131 Id.

132 Id.

133 Id.

approach and showed a substantial likelihood that the Bidder could implement the approach contained in the approved CAT NMS Plan.[134] The SROs believe this is consistent with standard industry practices when managing an RFP process.[135]

2. Timing

Two commenters express concerns with timing related to the selection process.[136] One commenter takes issue with the due date for Bids in response to the RFP being four weeks after approval of this Plan.[137] Specifically, the commenter believes that Bidding Participants are likely to have information about the final selection process and associated timeline for approval before it is made publicly available, and that Bidders must have adequate time to modify their Bids to reengage subcontractors and product/service providers, as well as to update prices for technology components.[138] Accordingly, the commenter recommends that the due date for Bids in response to the RFP be 12 weeks after approval of the Plan.[139] Another commenter does not believe that two months after effectiveness of the CAT NMS Plan is sufficient time for the SROs to select a Plan Processor from among the Shortlisted Bidders, particularly if there are significant changes from the proposed and approved CAT NMS Plan.[140] The commenter recommends a four- to six-month period to allow the Shortlisted Bidders time to revise their Bids to reflect the approved

---

134 Id.

135 Id.

136 See Anonymous 2 Letter at 1; FIF Letter at 5.

137 See Anonymous 2 Letter at 1.

138 Id.

139 Id.

140 See FIF Letter at 5.

CAT NMS Plan, and to allow the SROs time to consider the Bids and seek industry and technical expertise to aid their evaluation process.[141]

In response to the comment regarding the due date for Bids, the SROs indicate that the anticipated deadline four weeks after the approval of the Plan is based on the current requirement to submit the CAT NMS Plan by September 30, 2014.[142] However, the SROs note that, if the approved Plan has a material impact on the Bidders' ability to respond to the RFP, then the due date may be extended.[143] In response to the comment regarding the timeframe to select the Plan Processor, the SROs note that that requirement is mandated by Rule 613(a)(3)(i) and that they hope to meet the deadline.[144] Going forward, the SROs indicate that they will continue to evaluate whether, and how much, additional time they may be required to seek from the Commission for the selection of the Plan Processor.[145]

3. Quorum Standard

One commenter is concerned that the quorum standard for the Selection Committee is too difficult and could lead to delays.[146] Specifically, the commenter notes that each SRO's Voting Senior Officer is a very unique employee and is concerned that such individuals may not always be available for meetings of the Selection Committee.[147] The commenter further believes that, because all Voting Senior Officers are required to be present in order to have a quorum of the

---

141 Id.

142 See Response Letter, supra note 7, at 11-12.

143 Id. at 12. Any such changes to the due date will be communicated to Bidders as soon as such a decision is made. Id.

144 Id. at 11.

145 Id.

146 See FIF Letter at 2.

147 Id.

Selection Committee, delays in the evaluation and voting procedures could occur.[148] Consequently, the commenter recommends that an alternate member, with less stringent qualifications, be considered as a voting substitute for the Voting Senior Officer, but any actions taken by the voting substitute would continue to be the direct responsibility of the Voting Senior Officer.[149]

In response to this comment, the SROs state that they will ensure that all Voting Senior Officers will be in attendance for all voting processes as part of the Plan Processor selection, either in person or telephonically, as permitted under operation of the CAT beyond the selection of the Plan Processor.[150] The SROs further indicate that the Plan does not affect the operation of the CAT beyond the selection of the Plan Processor, and, as such, the SROs will include additional personnel with voting rights as part of the broader governance of the CAT.[151]

4. Information Sharing

Another commenter expresses a concern related to information sharing with Bidders.[152] Specifically, the commenter believes that some Bidders may be affiliated or associated with members of the DAG and, therefore, may have access to information relating to DAG discussions that other Bidders do not.[153] The commenter further believes that all Bidders should have uniform information relating to DAG discussions and recommends that a formal process be developed under which the SROs disseminate information to all Bidders relating to DAG

148 Id.

149 Id.

150 See Response Letter, supra note 7, at 7.

151 Id. at 7-8.

152 See FINRA Letter at 4.

153 Id.

discussions that are relevant to the Bidding process.[154] Another commenter similarly stated that the Bidders and all other interested parties should have access to DAG discussions.[155] The commenter recommended that all DAG meeting materials and minutes could be posted on the CAT NMS Plan Website to achieve this goal.[156]

In response to the concern that some Bidders will have access to the DAG discussions while others will not, the SROs state that, prior to consultation on any aspect of information included in a Bid, the SROs intend to require the execution of NDAs by members of the Advisory Committee or the DAG, thus facilitating communication and mitigating the confidentiality risks of proprietary Bidder information.[157] Additionally, the SROs indicate that it will be a requirement that no member of the Advisory Committee or the DAG will have affiliations with Bidding entities, unless such members have functional separation between their representatives on the DAG and their representatives involved with entities preparing or participating in a Bid similar to those restrictions imposed on Bidding SROs under Section V(D) of the Plan.[158]

In response to comments recommending the dissemination of DAG materials, the SROs state that they are committed to holding an open dialogue with industry members during the development of the CAT NMS Plan and will host additional industry outreach events to communicate, among other updates, decisions and ongoing discussion topics from DAG

---

154 Id at 4-5.

155 See FIF Letter II at 2.

156 Id.

157 See Response Letter, supra note 7, at 8.

158 Id. at 9.

meetings.[159] The SROs state that they will post to the CAT NMS Plan Website those materials from DAG discussions that are deemed to be non-confidential information regarding the CAT NMS Plan development and Bidder evaluation process, such as gap analyses regarding the sunsetting of existing regulatory systems.[160] However, the SROs state that not all DAG materials will be posted to the website in order to safeguard confidential information and maintain a fair process.[161]

V. Discussion and Commission Findings

After carefully considering the proposed Plan, the issues raised by the comment letters, and the Response Letter, including the commitments contained therein, the Commission has determined to approve the Plan pursuant to Section 11A(a)(3)(B) of the Act[162] and Rule 608,[163] in that it is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of, a national market system.[164] Rule 613 mandates that the SROs develop the CAT NMS Plan, and the SROs have voluntarily filed this Plan for the purpose of facilitating that development. The Commission believes the Plan is reasonably designed to govern the process by which the SROs will formulate and submit the CAT NMS Plan, including the review, evaluation, and narrowing down of Bids in response to the RFP, and ultimately choosing the Plan Processor that will build, operate, and maintain the consolidated audit trail. The Commission believes that the

---

159 Id. at 9.

160 Id.

161 Id.

162 15 U.S.C. 78k-1(a)(3)(B).

163 17 CFR 242.608. In approving this Plan, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

164 17 CFR 242.608(b)(2). See also 15 U.S.C. 78k-1(a).

Plan should thereby help promote the goals of investor protection, and fair and orderly markets, by describing the process of developing the CAT NMS Plan, selecting a Plan Processor, and ultimately creating the consolidated audit trail, which will substantially enhance the ability of the SROs and the Commission to oversee today's securities markets and fulfill their responsibilities under the federal securities laws.

The Commission notes that, in response to the comments regarding industry participation in the selection process,[165] the SROs state that the DAG is a valuable source of input for the development of the CAT NMS Plan, and commit to provide the DAG with anonymized information taken from Bids with enough specificity to allow the DAG to understand the comparative advantages and disadvantages of the options being considered so that the DAG can contribute in a meaningful way to the SROs' analysis of Bid information.[166] The SROs also commit to continue to work with the DAG to identify the particular sections of the RFP that will benefit from industry input, and to solicit the views of the DAG and the industry for the required cost-benefit analysis, while adhering to their responsibility to maintain the confidentiality of the Bid submissions.[167] The Commission believes that such an ongoing and open dialogue between the SROs and the DAG during the selection process is appropriate, and will facilitate the drafting of a detailed and thoughtful CAT NMS Plan, as contemplated by Rule 613. The Commission encourages the SROs to consult with and utilize the DAG to inform their decision making processes.

---

165 See SIFMA Letter at 1-5; FINRA Letter at 4; and FIF Letter at 4.

166 See Response Letter, supra note 7, at 2-4.

167 Id.

With respect to the comments on the transparency of the selection process,[168] the SROs reiterate their commitment to provide transparency to the industry during the selection process and thereafter, and agree to provide more detailed descriptions of their evaluation criteria in the RFP.[169] The SROs, however, recognize the need to balance full transparency with Bidder concerns about the confidentiality of proprietary information, in addition to more general concerns about inhibiting an open dialogue during the decision-making process. In light of these concerns, the SROs decline to publish the contents of the Bids, the Operating Committee minutes, or the SRO voting results.[170] The Commission believes in the importance of a transparent process with respect to the development of the CAT NMS Plan and to the selection of a Plan Processor, but at the same time recognizes the legitimate concerns of Bidders regarding the confidentiality of proprietary and other sensitive information, and the desire by the SROs to encourage Bidders to provide sufficiently detailed Bids to facilitate the development of a robust CAT NMS Plan. The Commission believes that the SROs have appropriately balanced these competing goals as described above.

To address concerns regarding potential conflicts of interest in the selection process,[171] the SROs included in the Plan multiple provisions that are intended to balance the need for SROs to participate in the process given the important regulatory obligations that exist for each of them with respect to the creation and operation of the CAT, with the potential for conflicts of interest

---

168 See FINRA Letter at 1-2; SIFMA Letter at 1-3; FIF Letter at 2-3.

169 See Response Letter, supra note 7, at 4-5.

170 Id. at 9-10. The Commission further notes that keeping voting information non-public can help address conflicts of interest by limiting the ability of outsiders to observe and reward certain voting behavior.

171 See Anonymous 1 Letter at 1; Anonymous 2 Letter at 1.

that can arise when an SRO is a Bidding Participant.[172] The Commission believes that the SROs have included reasonable steps to address the concerns about conflicts of interest.

With regard to the issue of when and under what circumstances Bidders should be permitted to revise their Bids, one commenter encourages the SROs to liberalize the proposed Plan's approach to allowing revisions while another commenter suggests that the SROs increase restrictions on the ability of Bidders to revise their Bids.[173] In their Response Letter, the SROs state that they will not modify their proposal to permit each Shortlisted Bidder the opportunity to revise its Bid only if a majority of the Selection Committee believes that revisions by the particular Bidder are "necessary or appropriate." As noted above, the SROs believe that without SRO discretion to determine which Bidders can revise their Bids, Bidders may not provide detailed information in their initial Bids, but will await the final structure of the CAT NMS Plan to provide full information in their revised Bids.[174] The Commission believes that the SROs' approach is reasonably designed to help assure that the SROs receive sufficiently detailed information to develop the CAT NMS Plan.

With respect to the comments raised by a commenter relating to the due date for Bids[175] (four weeks after Commission approval of the Selection NMS Plan), the Commission notes that the SROs explain that the timeframe is based on the current requirement to submit the CAT NMS Plan by September 30, 2014, and note that, if the approved Plan has a material impact on the Bidders' ability to respond to the RFP, then the SROs may extend this date.[176] Regarding the

---

172 See Response Letter, supra note 7, at 7.

173 See FIF Letter at 4; FINRA Letter at 2-3.

174 See Response Letter, supra note 7, at 6.

175 See Anonymous 2 Letter at 1.

176 See Response Letter, supra note 7, at 11-12.

comments made by another commenter relating to the two-month period for the selection of the Plan Processor,[177] the Commission notes that this is a deadline imposed by Rule 613(a)(3)(i)[178] and that the SROs state that they hope to meet this deadline but will continue to evaluate whether, and, if so, how much, additional time may be required, and will seek additional time from the Commission for the selection of the Plan Processor if needed.[179]

With respect to the comment regarding the quorum requirement for Selection Committee meetings,[180] the Commission notes that the SROs state that they will ensure that all Voting Senior Officers will be in attendance for all voting processes as part of the Plan Processor selection, either in person or telephonically.[181] With respect to the concerns regarding information sharing,[182] the Commission notes that, in addition to requiring NDAs, the SROs have indicated that no member of the Advisory Committee or the DAG will be permitted to have affiliations with Bidding entities, unless such members have functional separation between their representatives on the DAG and their representatives involved with entities preparing or participating in a Bid.[183]

The Commission finds that the Plan is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of, a national market system and that it is reasonably designed to achieve its objective of facilitating the development of the CAT NMS Plan and the

---

177 See FIF Letter at 5.

178 See Response Letter, supra note 7, at 11.

179 Id.

180 See FIF Letter at 2.

181 See Response Letter, supra note 7, at 7.

182 See FINRA Letter at 4-5.

183 See Response Letter, supra note 7, at 9.

selection of the Plan Processor. Accordingly, the Commission expects that the Participants will implement the Plan as described, and complete the evaluation of the Bids and submission of the CAT NMS Plan as required by Rule 613.[184]

VI. Conclusion

IT IS THEREFORE ORDERED, pursuant to Sections 11A of the Act,[185] and the rules thereunder, that the Plan (File No. 4-668) is approved and declared effective, and the Participants are authorized to act jointly to implement the Plan as a means of facilitating a national market system.

By the Commission.

Kevin M. O'Neill

Kevin M. O'Neill
Deputy Secretary

---

184 Rule 613(a)(1) required the SROs to file the CAT NMS Plan 270 days from the date of publication of the Adopting Release in the Federal Register. See 17 CFR 242.613(a)(1). The Adopting Released was published on August 1, 2012, thus establishing April 28, 2013 as the initial deadline for the submission of the CAT NMS Plan. See Adopting Release, supra note 8. Since April 28, 2013, was a Sunday, in accordance with Rule 160(a) of the Commission's Rules of Practice, the deadline for filing the CAT NMS plan was Monday, April 29, 2013. On March 7, 2013, the Commission granted a request from the SROs for a temporary exemption from this deadline until December 6, 2013. See Securities Exchange Act Release No. 69060, 78 FR 15771 (March 12, 2013); and letter to Elizabeth M. Murphy, Secretary, Commission, from Robert L.D. Colby, Executive Vice President and Chief Legal Officer, FINRA, dated February 7, 2013. On December 6, 2013, the Commission granted a second request from the SROs for a temporary exemption from the new deadline until September 30, 2014. See Securities Exchange Act Release No. 71018, 78 FR 75669 (December 12, 2013); and letter to Elizabeth M. Murphy, Secretary, Commission, from Robert L.D. Colby, Executive Vice President and Chief Legal Officer, FINRA, dated November 7, 2013.

185 15 U.S.C. 78k-1.

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT 1934
Release No. 71599 / February 21, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15765

In the Matter of

Fabrizio Neves,

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 Fabrizio Neves ("Neves" 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. Respondent Neves, 44, is a Brazilian citizen and resident, and also maintains a residence in Miami, Florida. From approximately May 2006 until November 2009, Neves held Series 7 and 66 licenses, and was a part owner of and registered representative associated with LatAm Investments, LLC, a broker-dealer registered with the Commission during that time period.

2. On February 12, 2014, the United States District Court for the Southern District of Florida entered a judgment by consent against Neves in the civil action entitled Securities and Exchange Commission v. Fabrizio Neves and Jose Luna, Case No. 12-cv-23131, permanently enjoining Neves from future violations of Section 17(a) of the Securities Act of 1933 and Section 10(b) of the Exchange Act and Exchange Act Rule 10b-5, and aiding and abetting violations of Section 15(c) of the Exchange Act.

3. The Commission's complaint alleged that from November 2006 until September 2009, Neves knowingly engaged in a scheme to defraud certain LatAm customers by charging them millions of dollars in higher prices and excessive fees by interpositioning and excessively marking up or marking down structured notes. The complaint alleged that, as a result of the scheme, Neves received millions of dollars in commission and other payments.

IV.

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

Accordingly, it is hereby ORDERED:

Pursuant to Section 15(b)(6) of the Exchange Act, Respondent Neves 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

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 3783 / February 21, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15608

In the Matter of ANTHONY J. KLATCH, II, Respondent.	ORDER MAKING FINDINGS AND IMPOSING REMEDIAL SANCTIONS PURSUANT TO SECTION 203(f) OF THE INVESTMENT ADVISERS ACT OF 1940

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest to enter this Order Making Findings and Imposing Remedial Sanctions Pursuant to Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") against Anthony J. Klatch, II ("Klatch" or "Respondent").

II.

Following the institution of these proceedings on November 6, 2013, Respondent has submitted an Offer of Settlement ("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 Making Findings and Imposing Remedial Sanctions Pursuant to Section 203(f) of the Investment Advisers Act of 1940 ("Order"), as set forth below.

III.

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

A. RESPONDENT

1. Klatch, age 29, is incarcerated at FCI Talladega Federal Correctional Facility in Talladega, Alabama. Klatch served as portfolio manager of TASK Capital Partners, LP ("TASK Fund"), a hedge fund, and made investment decisions concerning the fund's assets, from the fund's

inception in January 2009 to its demise in March 2010. Klatch never registered with the Commission, but he acted as an unregistered investment adviser during the time in which he engaged in the conduct underlying the order of criminal conviction and order of permanent injunction described below.

2. As the TASK Fund's sole portfolio manager, Klatch directed transactions in equities, options, equity and index options, and futures. In fact, Klatch was the only authorized trader on the fund's brokerage accounts.

3. Klatch also provided investment advice to at least one individual. Specifically, in June 2009, Klatch presented a written analysis to a then-potential investor in which he outlined the investor's financial needs and retirement goals, and recommended that the investor liquidate about $1.85 million worth of stock he owned and invest the after-tax proceeds in the TASK Fund. In September 2009, the investor followed the advice, liquidated his stock and invested $1.48 million in the TASK Fund.

4. In the first couple of weeks of October 2009, the TASK Fund lost over $1 million, with Klatch at the helm as portfolio manager directing risky trading strategies.

5. Klatch compensated himself for investment services he provided to the TASK Fund and the investor by misappropriating fund assets for personal expenses and purported performance fees. The fund's bank records show, for example, that Klatch took over $66,955 for purported expenses, such as tickets to a professional hockey game costing $15,400, as well as over $44,000 for "performance" fees on returns the TASK Fund supposedly generated during the second quarter of 2009. In reality, the TASK Fund did not generate profits in any month or quarter; the rates of return for each of the three months comprising the fund's second quarter of 2009 were negative 68.80 percent, negative 96.29 percent, and 0 percent, respectively. Nothing in the investment management agreement or any other TASK fund document concerning Klatch's investment management activities entitled Klatch to performance fees where, as here, the fund did not perform.

B. RESPONDENT'S CRIMINAL CONVICTION

6. On October 28, 2011, Klatch entered a guilty plea to one count of conspiracy in violation of Title 18, United States Code, Section 371; one count of securities fraud in violation of Title 15, United States Code, Section 77q (Section 17 of the Securities Act of 1933); one count of wire fraud in violation of Title 18, United States Code, Section 1343; and one count of money laundering in violation of Title 18, United States Code, Section 1956(a)(1)(B)(i), before the United States District Court for the Southern District of Alabama, in *United States v. Anthony J. Klatch, II*, Crim. Indictment No. 11 Cr. 202 (WS). On August 24, 2012, the District Court sentenced Klatch to five years in prison based on his guilty plea and ordered him to make restitution of the total proceeds invested in the TASK Fund, or slightly more than $2.3 million.

7. The counts of the criminal indictment to which Klatch pleaded guilty alleged, among other things, that in or about and between January 2009 and January 2010, Klatch knowingly and willfully made materially false statements to TASK Fund investors and misappropriated a portion of the fund's assets. In connection with his plea, Klatch admitted that:

a. In January 2009, Klatch and his partner formed the TASK Fund. Klatch served as the fund's Senior Managing Director and Chief Investment Officer.

b. After creating the TASK Fund, Klatch and others solicited individuals to invest in the fund through various means, including prospectuses containing material misrepresentations and materially misleading omissions.

c. From April to October 2009, seven investors invested, through interstate wire transfers, about $2.3 million in the TASK Fund. Klatch and his partner managed the $2.3 million invested in the fund.

d. The TASK Fund invested only about 60% of the proceeds, which Klatch and his partner lost over a period of eight months through a series of investments.

e. In December 2009 and January 2010, Klatch and others falsely told TASK Fund investors that a single bad trade wiped out their entire investment.

f. Klatch and his partner used the remaining 40% of investors' proceeds for non-investment related expenditures. Of this amount, $180,592.45 ended up in Klatch's personal bank account through a series of transactions, which Klatch knew were designed to conceal the nature, location, source, ownership, or control of the proceeds.

8. Klatch's plea agreement contains admissions showing that Klatch acted as an investment adviser for purposes of Section 203(f). Klatch admitted in his plea agreement that, while serving as the TASK Fund's Senior Managing Director and Chief Investment Officer, he: (1) committed securities fraud and other offenses while co-managing slightly more than $2.3 million of TASK Fund assets; (2) made false and misleading statements to investors in soliciting their TASK Fund investments and in connection with the fund's trading activities; and (3) improperly obtained approximately $180,000 from the TASK Fund, which he diverted for personal benefit.

C. ENTRY OF THE INJUNCTION

9. On March 28, 2012, the CFTC obtained a default judgment against Klatch in *CFTC v. Anthony J. Klatch II, et al.*, No. 11 Civ. 5191 (S.D.N.Y.), a civil injunctive action, relating to charges stemming from Klatch's solicitation of investors and the operation of certain commodity pools, including the TASK Fund. In addition to enjoining Klatch from violating certain provisions of the Commodity Exchange Act, the judgment entered by the United States District Court for the Southern District of New York prohibited Klatch from entering into transactions involving futures, options, commodity options, security futures products, and foreign currency. Additionally, the judgment prohibits Klatch from applying for registration or claiming exemption from registration with the CFTC in any capacity and from acting as a principal, agent, or any other officer or employee of any person registered, exempted from registration, or required to be registered with the CFTC.

10. For purposes of entering the default judgment, the district court accepted the CFTC's allegations as true, including that Klatch: served as the Managing Director and Chief Investment Officer of the Commodity Pool Operator (CPO) of the TASK Fund; misappropriated TASK Fund

monies; and made material misrepresentations to TASK Fund investors or pool participants about historical performance and risk controls. The district court determined that Klatch was a control person because he exercised control over the fund's bank and trading accounts, personally solicited investors, and acted as the Managing Director and Chief Investment Officer of the fund's CPO. The district court also found that Klatch knew of, and participated in, the fraud and knew he obtained fund money in excess of earned fees.

11. Finally, the district court relied on Klatch's criminal plea agreement, described above, finding that the facts to which Klatch admitted sufficed to establish violations of the Commodity Exchange 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 Klatch's Offer.

Accordingly, it is hereby ORDERED pursuant to Section 203(f) of the Advisers Act that Respondent Klatch be, and hereby is barred from association with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.

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

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 71593 / February 21, 2014

INVESTMENT ADVISERS ACT OF 1940
Release No. 3782 / February 21, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15763

In the Matter of

CREDIT SUISSE GROUP AG

Respondent.

ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTIONS 15(b)(4) AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934 AND SECTIONS 203(e) AND (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 (the "Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 15(b)(4) and 21C of the Securities Exchange Act of 1934 (the "Exchange Act") and Sections 203(e) and (k) of the Investment Advisers Act of 1940 (the "Advisers Act") against Credit Suisse Group AG ("CSAG" or the "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. Respondent admits the facts set forth in Section III.B. through F. below, acknowledges that its conduct violated the federal securities laws, admits the Commission's jurisdiction over it and the subject matter of these proceedings and consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 15(b)(4) and 21C of the Securities Exchange Act of 1934 and Sections 203(e) and (k) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (the "Order"), as set forth below.

III.

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

A. Summary

1. From at least 2002 until its exit from its business of providing broker-dealer and investment adviser services to certain U.S. clients (the "U.S. cross-border securities business"), which CSAG began in 2008, CSAG, through actions of certain of its relationship managers ("RMs") violated the federal securities laws by providing certain cross-border brokerage and investment advisory services to U.S. clients. During that time, CSAG had as many as 8,500 client accounts that held securities and were beneficially owned by U.S. residents. CSAG RMs solicited and provided broker-dealer and advisory services to some of these clients. CSAG was aware that in certain instances, if its representatives provided such services in the United States or by use of the mails or through interstate commerce, this would have required U.S. broker-dealer and investment adviser registration and that CSAG was not registered. CSAG realized approximately $82 million in pre-tax income through the unlawful aspects of the U.S. cross-border securities business.

2. With limited exceptions, any person who operates in the United States, or who makes use of the mails or any other means or instrumentality of interstate commerce, to engage in the business of effecting transactions in securities for the account of others, or to engage in a regular business of buying and selling securities for the person's own account, must register with the Commission as a broker-dealer. Similarly, unless there is an applicable exemption, any person who for compensation engages in the business of advising others about the advisability of investment in securities must be registered as an investment adviser.

3. Certain CSAG representatives, among other things, traveled to the United States to solicit new clients and service existing clients by providing investment advice and by inducing and attempting to induce securities transactions. In connection with these activities, certain CSAG representatives met with existing and prospective clients and communicated with them through email and the mails. CSAG received transaction-based compensation and advisory fees for these services. These activities required registration.

4. CSAG understood that there was risk of violating the federal securities laws by providing broker-dealer and investment adviser services to U.S. clients. To manage and mitigate the risk that prohibited broker-dealer and investment adviser services might be provided to U.S. clients, beginning in 2002, CSAG enacted directives and policies which prohibited its representatives from engaging in the improper conduct described in the Order. These directives and policies were designed to allow the U.S. clients to be serviced in a manner consistent with the federal securities laws. Beginning in 2002, CSAG also arranged for certain of its legal and compliance staff and RMs in Switzerland with at least one U.S. client to be trained on the

---

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

directives and policies. CSAG did not expand this training to all RMs worldwide with U.S. clients until 2008. CSAG did not effectively implement these policies and did not sufficiently monitor the U.S. cross-border securities business. As a result, violations of CSAG's policies and the federal securities laws occurred.

5. CSAG undertook initiatives that could have lessened the risk of violating the federal securities laws but they were not effectively implemented or monitored. In 2002, CSAG created a new Swiss-based legal entity with broker-dealer and investment adviser registrations. CSAG attempted to transfer U.S. clients that had submitted W-9 forms to CSAG to support 1099 reporting to the Internal Revenue Service (the "IRS") to the new registered entity starting in 2002 (the "W9 U.S. clients"), but those transfers were not complete until 2008, six years after they were first begun. CSAG also engaged in efforts from 2000 to 2006 to centralize the remainder of the U.S. cross-border securities business at a single desk. These efforts met with resistance both from clients and from certain RMs, who were not sufficiently incentivized to, or sanctioned for failing to transfer the accounts. CSAG's internal audit division audited the desk primarily responsible for servicing U.S. clients on four occasions during the relevant period to determine whether the U.S. clients were being serviced in a compliant manner. Several travel reports provided to internal audit suggest that RMs provided broker-dealer and investment adviser services to U.S. clients while on travel to the United States. However, several other travel reports were edited, before they were provided to internal audit, by RMs who serviced U.S. clients on CSAG's Switzerland-based North America International desk, internally referred to as "SALN," to omit any mention of conduct that violated the federal securities laws that was disclosed in the original versions of these reports. Although the preliminary findings of at least one audit indicated issues with compliance with CSAG's policies and directives for servicing U.S. clients at that desk, after discussions between internal audit and the head of that desk, the final internal audit report of the U.S. cross-border securities business found no significant issues despite the fact that some of the travel reports provided to internal audit reflected visits with prospective U.S. clients and the receipt of new money from those clients was estimated to have a potential value of millions of U.S. dollars.

6. Beginning in October 2008, following the well-publicized civil and criminal investigation of UBS AG ("UBS"), another large Switzerland-based multinational financial services company, arising from UBS's provision of cross-border banking, broker-dealer and investment adviser services to U.S. clients, CSAG determined to exit from the U.S. cross-border securities business. CSAG initially focused on exiting non-U.S. domiciliary entities with U.S. beneficial owners. In April 2009, the exit process expanded to U.S. resident account holders and CSAG ceased taking new U.S. client accounts outside a U.S. registered CSAG entity. As a result of these actions, the number of U.S. client accounts decreased from 2009 forward and the majority of U.S. client accounts were closed or transferred by 2010. Nonetheless, it took CSAG almost five years – from 2009 to mid-2013 – to decrease the average securities assets under management in U.S. client accounts from, in the aggregate, approximately $5.75 billion in 2008 to approximately $34 million by mid-2013. CSAG continued to collect some broker-dealer and investment adviser fees on certain accounts of U.S. clients that held securities until the relevant account was terminated.

7. Because certain of its representatives provided broker-dealer and investment adviser services in the United States at a time when CSAG was not registered with the

Commission as a broker-dealer or investment adviser, CSAG willfully[2] violated Exchange Act Section 15(a) and Advisers Act Section 203(a).

B. Respondent

8. **Credit Suisse Group AG ("CSAG")** is a corporation incorporated and domiciled in Switzerland. It is a multinational financial services holding company that provides a broad range of services to individual and corporate clients. CSAG is headquartered in Zurich, Switzerland, and its registered shares are listed in Switzerland on the SIX Swiss Exchange, and in the United States, in the form of American Depositary Shares, on the New York Stock Exchange. CSAG's operating subsidiaries include Credit Suisse Securities (USA) LLC ("CSSU"), which was formerly known as Credit Suisse First Boston Corporation. CSSU is headquartered in New York, is a member of FINRA, and is registered with the Commission as a broker-dealer and investment adviser. None of the conduct described in this Order is attributed to CSSU. Clariden Leu was another of CSAG's subsidiaries which was integrated into CSAG and ceased to exist as a distinct legal entity with effect from January 1, 2012. Clariden Leu had been formed by the merger of five predecessor subsidiary banks in 2007, and was a wholly-owned subsidiary of CSAG since that time.

C. CSAG's U.S. Cross-Border Securities Business

9. During the period from at least 2002 through 2008, CSAG, through actions of certain of its RMs, engaged in broker-dealer and investment adviser activities with U.S. clients. Among other things, CSAG RMs solicited, established, and maintained brokerage and investment advisory accounts for certain U.S. clients; accepted and executed orders for securities transactions; actively solicited securities transactions; handled certain U.S. clients' funds and securities; provided account statements and other account information; and provided investment advice. Certain of these activities required registration under the federal securities laws. For these and other services provided to certain U.S. clients, CSAG received transaction-based compensation or investment adviser fees.

10. Approximately 20 SALN RMs serviced the accounts of U.S. clients on desks physically located in Zurich and Geneva, Switzerland. Between 2002 and 2003, SALN had up to approximately 4,300 U.S. client accounts consisting of up to approximately $1.6 billion in securities assets under management.

11. Approximately 430 CSAG RMs employed on other desks or at other Swiss-based offices of CSAG which were not focused on U.S. clients also serviced the accounts of U.S. clients.

---

[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)).

From at least 2002 through 2008, CSAG RMs outside of SALN had up to 4,800 U.S. client accounts consisting of up to approximately $3 billion in securities assets under management.

12. In addition, Clariden Leu also employed approximately 240 RMs who provided broker-dealer and investment adviser services to U.S. clients and were not part of a dedicated U.S. desk. Prior to the merger of Clariden Leu into CSAG, Clariden Leu RMs had up to approximately 1,500 U.S. client accounts consisting of up to approximately $2 billion in securities assets under management. At the time of the merger, Clariden Leu had approximately 133 U.S. client accounts consisting of approximately $52.6 million in securities assets under management.

13. The assets under management associated with, and pre-tax income generated from, the U.S. clients and U.S. client accounts referred to in Paragraphs 10 through 12 were booked in Switzerland.

14. With respect to certain of these accounts, certain RMs used a variety of U.S. jurisdictional means to engage unlawfully in the U.S. cross-border securities business without appropriate registration. For example, certain RMs traveled to the United States to meet with existing and prospective clients to provide investment advice and/or solicit securities transactions. SALN's management encouraged that travel; minutes from an SALN meeting that occurred on January 1, 2003 stated SALN management's view that "business trips will no longer be allowed if no prospecting is included. *Every trip will involve at least one prospect per day (travelling days included).*"

15. From 2001 through 2008, certain SALN RMs made approximately 107 trips to the United States. Certain of these trips involved visits with dozens of U.S. clients and prospective U.S. clients, and the provision or solicitation of broker-dealer and/or investment adviser services.

a. For example, between April 29 and May 4, 2003, the head of SALN traveled to New York in order to visit with 32 U.S. clients with assets under management in the amount of approximately $129 million. He also visited with 5 prospective U.S. clients; one of the 5 prospective U.S. clients opened an account with CSAG valued at approximately $744,000. The head of SALN submitted a travel report that stated that retention of existing clients and prevention of account closings as one of the reasons for the trip.

b. In 2004, the deputy head of SALN traveled to New York, Washington, D.C., and Florida in order to visit with 39 U.S. clients with assets under management in the amount of approximately $111 million. She also visited with 2 prospective U.S. clients; the prospects opened accounts with CSAG which were estimated to have a potential value of approximately $2 million.

c. In April 2005, the head of SALN traveled to the United States and Canada, in order to visit with 30 current U.S. clients with assets under management in the amount of approximately $67 million. He also visited with 2 prospective U.S. clients; the prospects opened accounts with CSAG collectively valued at approximately $4 million. In October 2005, an SALN RM traveled to California in order to visit with 30 U.S. clients with assets under management in the amount of approximately $39 million. The RM also visited with 2 prospective U.S. clients; the

prospects opened accounts with CSAG which were estimated to have a potential value of approximately $3 million. The RM noted that "[r]etention [m]anagement," "[i]ncreas[ing] asset base from existing clients," and "[a]ccount openings with new clients (prospects)" were among the goals of the trip.

d. In 2006, SALN personnel traveled to Florida, New York, and two locations in Canada, in order to visit with up to 336 U.S. clients with assets under management valued at up to approximately $865 million. They also visited with up to 51 prospective U.S. clients; 21 prospects were expected to potentially open accounts with CSAG which were estimated to have a potential value of approximately $41 million.

e. As late as June 2007, another SALN RM traveled to California in order to visit with 40 U.S. clients with assets under management valued at approximately $88 million. One purpose of the SALN RM's visits with the U.S. clients was to provide broker-dealer and investment adviser services. The RM also discussed with some of the existing U.S. clients the possibility that they might deposit additional assets with CSAG which were estimated to have a potential value of at least approximately $29 million.

16. In addition to traveling to the United States, certain RMs with U.S. clients also communicated securities-related information to their U.S. clients by means of interstate commerce while the clients were present in the United States, including through mails, telephone and e-mail. Certain RMs provided investment adviser and broker-dealer services to these U.S. clients and made recommendations as to what types of accounts would be most appropriate for them, as well as advice as to the merits of various types of investments.

D. CSAG Charged Certain U.S. Clients Broker-Dealer and Investment Adviser Fees

17. From 2002 through 2008, CSAG had as many as 8,500 U.S. client accounts which held securities. During that time period, the total securities assets under management across all of the U.S. client accounts that held securities averaged approximately $5.6 billion. In 2008, CSAG commenced the process of exiting from the U.S. cross-border securities business. In 2009, the securities assets under management had declined to under $4 billion, and in 2010 to under $2 billion. CSAG's securities assets under management across U.S. client accounts continued to decline in 2011 and 2012 and, by mid-2013, had decreased to approximately $34 million. During this time period, CSAG continued to collect some broker-dealer and investment adviser fees on certain U.S. client accounts.

18. Beginning in 2008, following the much-publicized civil and criminal tax investigation of UBS arising from its provision of cross-border banking, broker-dealer and investment adviser services to certain of its U.S. clients, CSAG took steps to completely close the U.S. cross-border securities business beginning in 2008 and took additional measures designed to ensure that it was not providing investment advice or broker-dealer services to these clients in violation of the federal securities laws, which are described below in Paragraphs 41 through 44 of this Order. However, during this time, CSAG continued to collect a fee for broker-dealer services from certain U.S. clients until the relevant U.S. client account was terminated.

E. CSAG Was Not Registered with the Commission to Provide Broker-Dealer or Investment Adviser Services to U.S. Clients

19. The above-referenced activities were engaged in at a time during which CSAG was not registered as a broker-dealer under Exchange Act Section 15(a) or as an investment adviser under Advisers Act Section 203(a), and CSAG was not exempted from registration as a broker-dealer or investment adviser.

F. CSAG's Efforts to Address the U.S. Cross-Border Securities Business

20. Throughout the period in question, CSAG was aware of the broker-dealer and investment adviser registration requirements related to the provision of certain cross-border broker-dealer and investment adviser services to U.S. clients.

1. "Project OldCo/NewCo" – The Creation of a Switzerland-Based Registered Broker-Dealer and Investment Adviser

21. At least as early as November 6, 2000, U.S. cross-border issues rose to the attention of the executive board of CSAG's private banking unit (the "PBEB") during a PBEB meeting where the board discussed "the business case for a new model servicing offshore US clients." The participants in the meeting – which included several of the most senior executives of CSAG's private banking unit – were advised that the federal securities laws did not allow entities – like CSAG – that were not registered with the Commission to actively engage in certain marketing activities and provide investment advice to U.S. clients using the means and instrumentalities of interstate commerce. The PBEB agreed to "create a Swiss-based SEC registered vehicle with unrestricted access to the US market" to service W-9 U.S. clients.

22. At a subsequent PBEB meeting on April 24, 2001, the PBEB was provided with more details of what was then called "Project OldCo/NewCo" – the new registered broker-dealer and investment adviser. The PBEB was informed that the new legal entity arising from Project OldCo/NewCo would be named Credit Suisse Private Advisors ("CSPA"). Clients who had submitted W9 forms were expected to be transferred to CSPA. Separately, approximately 6,000 non-W-9 U.S. clients were expected to be centralized at the SALN desk.

23. Although CSAG created CSPA in mid-2002, the transfer and centralization exercise proposed in 2000 and 2001 did not occur as originally scheduled. In fact, it took over six years to complete. By September 2006, less than 20% of the W-9 U.S. clients had agreed to be transferred. In some cases, certain RMs did not want to give up their clients to RMs in the new entity. CSAG did not offer incentives for RMs to transfer their W-9 U.S. clients to CSPA or impose sanctions on RMs if they did not. In other cases, clients resisted the transfer.

2. U.S. Persons and Cross-Border Directives and Policies

24. During the time that the PBEB was considering the establishment of CSPA, on November 26, 2002, CSAG enacted a directive governing relationships with U.S. clients (the "U.S. persons directive"). The U.S. persons directive included restrictions governing communications with U.S. persons and travel to the U.S. and also included a prohibition on providing investment

advice in the United States. Thereafter, on January 24, 2004, CSAG enacted a directive governing foreign travel by RMs in CSAG's private banking unit (the "cross-border directive"). The purposes of the U.S. persons and cross-border directives were to provide guidelines to RMs for conducting the U.S. cross-border securities business according to the federal securities laws, to ensure that traveling RMs complied with local laws governing the cross-border provision of financial services, and "to avoid regulatory and reputational risk," "to ensure uniform adherence to the restrictions applicable under US law to bank relationships with US Persons and US Taxpayers," and "to ensure the bank does not trigger the US licensing requirements." CSAG periodically updated these directives.

25. CSAG provided training to SALN RMs with U.S. clients on these directives, in addition to hundreds of other RMs outside of SALN as well as at Clariden Leu. Training was required for RMs in Switzerland with at least one U.S. client. Trainings occurred periodically during the period from 2002 through 2008. Among other things, the training presentations specifically advised the RMs that CSAG was not a broker-dealer or investment adviser registered with the Commission and, as such, the RMs could not solicit any transaction related to securities or travel to the United States to conduct any business that would be deemed solicitation or investment advice. The presentations also warned RMs that violations of the directives potentially could cause CSAG to face "reputational risks" such as "negative publicity," a decline in CSAG's stock price, customer base, revenues, costly litigation, and "'soft costs' (change in business practices, etc.)." CSAG management expected RMs to comply with the various restrictions associated with U.S. clients. However, CSAG did not require RMs to certify that they had completed country-specific cross-border training before they were allowed to travel until a new initiative was implemented in 2008. No such certificates had previously been required.

26. Notwithstanding the enactment of these directives and policies and the training provided, certain RMs continued to engage in behavior that violated not only CSAG's directives and policies, but also the federal securities laws through providing broker-dealer and investment adviser services to U.S. clients and prospective U.S. clients while on travel in the United States and through securities-related communications to U.S. clients, as described in Paragraphs 9 through 16 of this Order.

3. Internal Audits of SALN

27. In addition to enacting the directives and policies described in Paragraphs 24 through 26 of this Order, CSAG also conducted internal audits of SALN to ensure compliance with the directives and policies regarding U.S. clients. In 2006, certain RMs outside of SALN had up to approximately 6,200 U.S. client accounts consisting of up to approximately $4.6 billion in securities assets under management. CSAG did not conduct any internal audits specifically focused on the U.S. cross-border securities business outside of SALN.

28. CSAG conducted internal audits of SALN in 2001, 2003, 2006 and 2009. The 2001, 2003 and 2009 audits either found "no issues" or "minor issues," despite the fact that some of the travel reports provided to internal audit reflected visits with prospective U.S. clients and the receipt of new money from those clients was estimated to have a potential value of millions of U.S. dollars.

29. During the 2006 internal audit of SALN, CSAG's internal auditors were provided with travel reports that were edited by SALN employees to omit any mention of conduct that violated the federal securities laws. The original versions of the edited reports suggested that RMs provided broker-dealer and investment adviser services to U.S. clients while on travel to the United States. Internal audit also received reports that reflected that certain SALN RMs had met with prospective U.S. clients and had obtained new assets. CSAG's 2006 audit of SALN preliminarily raised concerns that certain SALN RMs may have violated the U.S. persons directive during business trips to the United States. However, following meetings between members of CSAG's internal auditors and the head of SALN, these preliminary findings were excluded from the final audit report.

4. "Project W9"

30. By 2006, CSAG had made little progress in the transfer of the W-9 U.S. clients to CSPA or the centralization of non-W-9 U.S. clients with SALN; in fact, only approximately $500 million in assets under management belonging to U.S. clients had been transferred to CSPA, which was less than 20% of the population of W-9 U.S. clients. Furthermore, the transfer and consolidation exercise discussed in executive board meetings in 2000 and 2001, described in more detail above in Paragraphs 21 and 22 of this Order, also was behind plan; only 60% of assets under management belonging to non-W-9 U.S. clients had been transferred. Again, management had not offered sufficient incentives to RMs to effect transfers or imposed penalties for not effecting transfers.

31. As a result, in September 2006, CSAG's management initiated "Project W9." The purpose of Project W9 was to execute the executive board decision of 2000 in two phases: the first phase, dubbed "QuickWin," involved identifying all W-9 U.S. clients throughout CSAG and asking them to agree to a move to CSPA. W-9 U.S. clients that were not willing to move their accounts to CSPA would be required to close their accounts. The second phase, dubbed "Phase 2," involved transferring the non-W-9 U.S. clients to SALN and to provide specialized training for certain of the SALN RMs on what they could – and could not – do with respect to such accounts.

32. CSAG anticipated completing the QuickWin phase of Project W9 by the end of October 2007 and the Phase 2 phase of Project W9 by the end of December 2007.

33. As with the efforts in 2000, the 2006 Project W9 proved difficult. At the outset of Project W9, the head of SALN wrote an e-mail to his immediate supervisor on September 12, 2006, stating: "The 'Centralization of W9 in CSPA' exercise is becoming a real struggle. If clients are to be centralized in the intended manner, it needs to be clear from the outset that the transferring area will be compensated/who has to bear the expected losses."

34. By March 2007, ten months before the anticipated completion of the QuickWin phase of Project W9, the head of Project W9 reported to CSAG's Private Banking Management Committee that the transfer of the W-9 U.S. clients was behind schedule. Part of the delay was attributed to the fact that certain of the RMs had sought exceptions to the directive to move their W-9 U.S. client accounts to CSPA or close them. Although the vast majority of the exceptions

was denied, it took management several months to complete the process of receiving and reviewing exceptions.

35. While there was slow progress on the QuickWin phase of Project W9 during this period, there was no discernible progress on the Phase 2 migration of non-W-9 U.S. clients to SALN.

36. Moreover, at the same time that CSAG was working on Project W9, SALN faced internal pressures to continue to grow the U.S. cross-border securities business. For example, in November 8, 2007, an SALN presentation regarding collaboration between SALN and a Miami-based group of RMs responsible for Latin-American clients highlighted the following three "project goals," each of which contemplates expanding the U.S. cross-border securities business:

a. "Each team-member acquires one client with AuM > USD 5 mn [sic] within the next 12 months[;]"

b. "Each team introduces at least one existing client to the other team (US -> offshore and Offshore -> US) until the next workshop[;]" and

c. "Each team has met at least one project-relevant new prospect until the next workshop[.]"

37. From 2005 through 2007, CSAG did, in fact, grow its business with U.S. clients: In 2005, CSAG acquired net new assets of approximately $296 million; in 2006, approximately $714 million; and in 2007, approximately $177 million.

5. The "Cross-Border+ (Plus) Project"

38. In 2006, CSAG initiated another project – the "Cross-Border+ (Plus) Project" (the "CB+ Project"). An impetus for the CB+ Project was the March 2006 arrest of several CSAG bankers in Brazil, including the head of CSAG's private banking unit in Brazil, for conducting business in violation of Brazil's laws. The CB+ Project is an ongoing global initiative covering over 80 countries, including the United States, and was described internally as an effort to "set out how CS and its business units should conduct cross-border business going forward with clear guidance on acceptable business activities," and it was divided into various "workstreams" to cover all of the regions where CSAG did business. The end deliverables were "country manuals" designed to provide RMs with guidance on how to conduct business in all of the countries where CSAG had a presence, as well as training modules and revisions to existing cross-border policies.

39. The CB+ Project included a review of CSAG's policies regarding the U.S. cross-border securities business. As a result of the CB+ Project, CSAG's U.S. persons policy was revised to provide that "RMs may travel to the US to visit existing clients only if the visit is initiated by the client is for a purely and exclusively social nature and no discussion is had relating to securities or investments. As a prerequisite for such travel, the RM must complete a US Cross-Border training session and follow the procedures for obtaining the relevant travel approval. Visits to prospective clients are not permitted."

40. During the CB+ Project, in September 2007, the then-head of SALN complained to his direct superior that "the altered parameters the bank wants to do business on, not only is the scope of action getting very constrained, but people have no air left to breathe. . . . The latest changes will make this business impossible."

6. CSAG's Closure of its U.S. Cross-Border Securities Business

41. In January 2008, UBS publicly announced that it would no longer allow new U.S. clients seeking securities-related services; rather, it would only allow U.S. clients seeking banking services to open accounts. Following a much-publicized U.S. Department of Justice criminal tax investigation, in July 2008, UBS formally announced that it would cease providing banking services to U.S. clients through its non-U.S. regulated entities.

42. Following UBS's July 2008 announcement, CSAG circulated a legal and compliance alert that prohibited inflows of funds into existing or newly opened accounts from UBS and another Swiss bank that had come under fire for helping U.S. citizens shelter assets from the IRS and evade taxes. The alert also required accounts for non-U.S. domiciled companies with a U.S. taxpayer beneficial owner to demonstrate U.S. tax compliance and be opened with a U.S.-licensed arm of CSAG.

43. During this time period, in the wake of the news regarding UBS, CSAG's management began an examination of CSAG's U.S. cross-border securities business. The examination was internally referred to as the "US Project." As a result of this analysis, in late 2008 CSAG's management decided to only retain those non-U.S. domiciliary companies with U.S. beneficial owners who could prove tax compliance. In Spring 2009, CSAG stopped opening new U.S. client accounts for U.S. residents and existing U.S. resident clients were offered a choice: transfer to CSPA and become tax compliant (if they had not done so already) or leave the bank.

44. By 2010, CSAG had either transferred or terminated the vast majority of its relationships with U.S. clients. Until the termination of the accounts, CSAG continued to collect some broker-dealer and investment adviser fees from certain U.S. clients through at least June 2013. However, during this period, CSAG took certain measures designed to prevent violations of the federal securities laws, including, but not limited to, not charging, or limiting the collection of, fees or commissions for certain U.S. client accounts, corresponding with the U.S. clients and suggesting that they take action to close or transfer their accounts, and placing a "no service" flag on certain U.S. client accounts that blocked broker-dealer transactions with respect to the account. From 2002 to 2010, CSAG realized pre-tax income of approximately $82 million from the U.S. cross-border securities business. From January 2011 onwards, CSAG realized pre-tax income of less than $409,000.

G. Violations

45. As a result of the conduct described above, CSAG willfully violated Exchange Act Section 15(a) and Advisers Act Section 203(a).

H. Undertakings

46. Respondent CSAG undertakes to take the following actions set forth below in Paragraphs 47 and 48 of this Order:

47. Within sixty (60) days of entry of this Order, Respondent shall retain an independent consultant (the "Independent Consultant"), not unacceptable to the Commission staff, to conduct an examination of the broker-dealer and investment adviser activities of Respondent to:

a. Verify that Respondent has completed the termination of the business described in this Order; and

b. Evaluate Respondent's existing policies and procedures, to ensure that they are reasonably capable of detecting and preventing any similar violative activity in the future.

48. In retaining the Independent Consultant, Respondent shall:

a. Require the Independent Consultant and any qualified persons working for the Independent Consultant (the "Qualified Persons") to have or to acquire within a reasonable period of time adequate knowledge and understanding of the relevant broker-dealer and investment adviser activities of Respondent and to possess sufficient competence and resources necessary to assess Respondent's termination of the business described in this Order;

b. Require the Independent Consultant to develop a written plan of sufficient scope and detail to enable the Independent Consultant to achieve the examination objectives described in this Order;

c. Require the Independent Consultant and any Qualified Persons to exercise due professional care and independence;

d. Cooperate fully with the Independent Consultant and any Qualified Persons and provide the Independent Consultant and Qualified Persons with access to files, books, records, and staff as requested for the Independent Consultant's examination;

e. Bear the full expense of the Independent Consultant's examination;

f. Require the Independent Consultant to complete its examination within one hundred twenty (120) days following retention by Respondent;

g. Require that, within thirty (30) days of completion of the examination, the Independent Consultant shall provide a final report as to whether Respondent fully has terminated the business described in this Order; and further require that the final report shall be provided to designated persons in the Division of Enforcement of the Commission;

h. Require the Independent Consultant and any Qualified Persons to provide the Commission staff with any documents or other information that the Commission requests regarding the Independent Consultant's work; provided that Respondent shall not assert, and shall

require the Independent Consultant and Qualified Persons not to assert, any privilege or work product claims in response to any of the Commission staff's requests; and provided further, that, in responding to requests from the Commission staff pursuant to this Paragraph of the Order, the Independent Consultant and Qualified Persons shall not be required to provide any information that they are prohibited from providing under the laws or regulations of Switzerland or other applicable foreign law; and

i. Require the Independent Consultant and any Qualified Persons to enter into an agreement that provides that:

1. For the period of the engagement and for a period of two (2) years from completion of the engagement, the Independent Consultant and any Qualified Persons shall not, without prior written consent of the Commission staff, enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity; and

2. The Independent Consultant and any Qualified Persons will require that any firm with which he/she/they is or are affiliated or of which he/she/they is or are a member shall not, without prior written consent of the Commission staff, enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.

49. Respondent shall complete the undertakings specified in Paragraphs 47 and 48 of this Order within the time period specified herein unless, upon written request, and for good cause shown by Respondent, the Commission staff grants Respondent such additional time as the Commission staff deems reasonable and necessary to implement the undertakings.

50. In determining whether to accept Respondent's Offer, the Commission has considered the undertakings described in Paragraphs 47 and 48 of this Order.

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 Sections 15(b)(4) and 21C of the Exchange Act and Sections 203(e) and (k) of the Advisers Act, it is hereby ORDERED that:

A. Respondent CSAG is censured;

B. Respondent CSAG cease-and-desist from committing or causing any violations and any future violations of Section 15(a) of the Exchange Act or Section 203(a) of the Advisers Act; and

C. Respondent shall, within ninety (90) days of the entry of this Order, pay disgorgement of $82,170,990, prejudgment interest of $64,340,024, and a civil money penalty in

the amount of $50,000,000 to the Securities and Exchange Commission for remission to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. Payment must be made in one of the following ways:

(1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm; or

(3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed 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 CSAG 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 Scott W. Friestad, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F Street, N.E., Washington, D.C. 20549-5010.

D. Respondent shall comply with the undertakings enumerated in Paragraphs 47 and 48 of this 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 ACT OF 1933
Release No. 9550 / February 21, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15763

In the Matter of

CREDIT SUISSE GROUP AG

Respondent.

ORDER UNDER RULE 602(e) OF THE SECURITIES ACT OF 1933 GRANTING A WAIVER OF THE RULE 602(c)(3) DISQUALIFICATION PROVISION

I.

Respondent Credit Suisse Group AG ("CSAG" or "Respondent") has submitted a letter, dated January 28, 2014, requesting a waiver of the Rule 602(c)(3) disqualification from relying on the exemption under Regulation E from registering securities of certain issuers under the Securities Act of 1933 (the "Securities Act") arising from Respondent's settlement of administrative and cease-and-desist proceedings commenced by the Commission.

II.

On February 6, 2014, pursuant to Respondent's Offer of Settlement, the Commission entered an Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 15(b)(4) and 21C of the Securities Exchange Act of 1934 and Sections 203(e) and (k) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (the "Order") against Respondent. Under the Order, the Commission found that from at least 2002 until its exit from its business of providing broker-dealer and investment adviser services to certain U.S. clients (the "U.S. cross-border securities business"), which exit CSAG began in 2008, CSAG, through actions of certain of its relationship managers ("RMs") violated the federal securities laws by providing certain cross-border brokerage and investment advisory services to U.S. clients. During that time, CSAG had as many as 8,500 client accounts that held securities and were beneficially owned by U.S. residents. CSAG RMs solicited and provided broker-dealer and advisory services to some of these clients. CSAG was aware that in certain instances, if its representatives provided such services in the United States or by use of the mails or through interstate commerce, this would have required U.S. broker-dealer and investment adviser registration and that CSAG was not registered. CSAG realized approximately $82 million in pre-tax income through the unlawful aspects of the U.S. cross-border securities business. As a result of the conduct described in the Order, the Commission found that CSAG willfully violated Section 15(a) of the Securities Exchange Act of 1934 (the

"Exchange Act") and Section 203(a) of the Investment Advisers Act of 1940 (the "Advisers Act"). In the Order, the Commission ordered that (1) CSAG is censured, (2) CSAG cease-and-desist from committing or causing any violations and any future violations of Exchange Act Section 15(a) or Advisers Act Section 203(a), (3) CSAG pay, within ninety (90) days of the entry of the Order, disgorgement of $82,170,990, prejudgment interest of $64,340,024, and a civil money penalty in the amount of $50,000,000 to the United States Treasury, and (4) that CSAG comply with its undertaking to retain, within 60 days from the entry of the order, and pay for an independent consultant to (i) verify that Respondent has completed the termination of the business described in this Order; and (ii) evaluate Respondent's existing policies and procedures, to ensure that they are reasonably capable of detecting and preventing any similar violative activity in the future.

III.

The Regulation E exemption is unavailable for the securities of small business investment company issuers or business development company issuers if, among others, any investment adviser to the issuer or underwriter of the securities to be offered is subject to an order of the Commission entered pursuant to Exchange Act Section 15(b) or Advisers Act Section 203(e). 17 C.F.R. § 230.602(c)(3). Rule 602(e) of Regulation E under the Securities Act provides, however, that the disqualification "shall not apply . . . if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the exemption be denied." 17 C.F.R. § 230.602(e).

IV.

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

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

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 71592 / February 21, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15762

In the Matter of LEONARD INSERRA, 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 Leonard Inserra ("Inserra" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, Respondent consents to the Commission's jurisdiction over him and the subject matter of these proceedings and to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934, 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 October 2000 to April 2005, Inserra was a registered representative associated with Joseph Stevens & Co., Inc., which, at the time of his association, was a broker-dealer registered with the Commission. Joseph Stevens & Co. ceased to be registered with the Commission as of August 2008. Inserra, age 41, is a resident of New York.

2. On May 9, 2012, before the New York Supreme Court in People v. Leonard Inserra, Case No. 6571-2006, Inserra pleaded guilty to one felony count of securities fraud in violation of New York General Business Law § 352-c(5) and one felony count of grand larceny in the second degree in violation of New York Penal Law § 155.40(1). On July 24, 2012, Inserra was sentenced in that proceeding to two five-year terms of probation, to run concurrently, and ordered to pay $102,123 in restitution to his victims.

3. The count of securities fraud of the criminal indictment to which Inserra pleaded guilty alleged that, between December 2000 and April 2004, Inserra intentionally engaged in a systematic ongoing course of conduct with the intent to defraud ten or more persons and to obtain property from such persons by false pretenses, representations, and promises, and so obtained property from one or more such persons while engaged in inducing and promoting the issuance, distribution, exchange, sale, negotiation, and purchase of the common shares of Repligen Corporation. The count of grand larceny of the criminal indictment to which Inserra pleaded guilty alleged that, between December 2000 and April 2004, Inserra stole more than fifty thousand dollars from an individual.

IV.

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

Accordingly, it is hereby ORDERED pursuant to Section 15(b)(6) of the Exchange Act that Respondent Inserra 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 Piwowar Not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9551 / February 25, 2014

SECURITIES EXCHANGE ACT OF 1934
Release No. 71610 / February 25, 2014

INVESTMENT ADVISERS ACT OF 1940
Release No. 3785 / February 25, 2014

INVESTMENT COMPANY ACT OF 1940
Release No. 30926 / February 25, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15766

In the Matter of **CLEAN ENERGY CAPITAL, LLC and SCOTT A. BRITTENHAM,** **Respondents.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933, SECTIONS 15(b) AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934, SECTIONS 203(e), 203(f) AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940, AND SECTION 9(b) OF THE INVESTMENT COMPANY ACT OF 1940 AND NOTICE OF HEARING**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 ("Securities Act"), Sections 15(b) and 21C of the Securities Exchange Act of 1934 ("Exchange Act"), Sections 203(e), 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 Clean Energy Capital, LLC and Scott A. Brittenham (collectively, "Respondents").

II.

After an investigation, the Division of Enforcement alleges that:

A. SUMMARY

1. This proceeding involves misconduct by Clean Energy Capital, LLC ("CEC"), a registered investment adviser, and its founder, president, and main portfolio manager, Scott A. Brittenham ("Brittenham") with respect to 20 private equity funds sold and managed by CEC, primarily under the name Ethanol Capital Partnership, L.P. (the "ECP Funds").

2. From 2008 to the present, CEC and Brittenham have committed a number of violations with respect to the ECP Funds. First, CEC and Brittenham misappropriated more than $3 million from the funds by improperly allocating CEC's expenses to the funds without adequate disclosure to investors. Second, to enable the funds to pay for these inappropriate expenses, CEC and Brittenham secretly caused the funds to borrow money from CEC at unfavorable rates, pledging the funds' own assets as collateral. Third, beginning in August 2011, CEC changed the calculation of dividend distributions for certain of the funds, adversely affecting the dividends received by investors in Series A, B and C. This was also done without disclosure to investors. Fourth, in 2009, CEC and Brittenham falsely induced one of the previous investors to invest in a new ECP Fund, by knowingly misrepresenting the amounts of the investments by Brittenham and another co-founder ("Co-Founder") in the new fund. Fifth, CEC violated the custody rule by failing to use a qualified custodian and failing to segregate fund assets. Sixth, and relatedly, CEC's compliance policy was inadequate because it incorrectly described the custody rule, resulting in the above violation. Seventh, for the funds offered in late 2008-2010 – Funds R, T and V – CEC concealed Co-Founder's SEC disciplinary history in the offering documents for the funds.

B. RESPONDENTS

3. Respondent CEC is a limited liability company based in Tucson, Arizona that was organized in Delaware in 2004 under the name Ethanol Capital Management, LLC. On October 26, 2007, CEC registered with the Commission as an investment adviser. In 2009, CEC changed its name to Clean Energy Capital, LLC.

4. Respondent Brittenham resides in Tucson, Arizona. Brittenham is the co-founder, CEO, and main portfolio manager of CEC. Brittenham has an 85% ownership interest in CEC and a 50% voting interest, and is also an investor in two ECP Funds managed by CEC. Brittenham holds Series 7 and 63 licenses. In 2004, in connection with Brittenham's role at a mortgage broker based in Seattle, Washington, the Washington State Department of Financial Institutions charged Brittenham with misleading borrowers and engaging in unfair and deceptive practices. In 2005, Brittenham consented to the entry of an order that prohibited him from participating in the conduct of the affairs of any mortgage broker in Washington for 10 years and ordered restitution to 11 consumers.

C. OTHER RELEVANT ENTITIES

5. Ethanol Capital Partners, L.P., a Delaware limited partnership, was organized on May 27, 2004. CEC marketed 19 separate private equity funds to investors using this partnership, offering each as separate "series" that were named Ethanol Capital Partners, L.P. Series A, B, C, D, E, G, H, I, J, L, M, N, O, P, Q, R, S, T, and V. CEC also marketed a fund named Tennessee Ethanol Partners, L.P. ("TEP"), which is a Delaware limited partnership that was organized on June 10, 2005. In total, the 20 ECP Funds raised $64 million from hundreds of investors. The ECP Funds did not register with the Commission as investment companies.

D. FACTUAL BACKGROUND

6. CEC, which was founded by Brittenham and Co-Founder, is the investment adviser for the private equity funds, ECP Funds. There are 20 ECP Funds, and they all have the same investment strategy: investment in private ethanol production plants through various portfolio companies.

7. Investments in the ECP Funds (in the form of limited partnership interests) are primarily governed by two documents created for each of the funds: private placement memoranda ("PPMs") and limited partnership agreements ("LPAs"). Brittenham had final authority over these offering documents.

8. As alleged further below, CEC, improperly and without sufficient disclosure, (1) allocated many of its own expenses to the ECP Funds, (2) made unauthorized loans to the funds and pledged their assets as collateral, and (3) changed its method of calculating the amount of distributions from the funds to their limited partners in order to increase the distributions to CEC. In addition, Brittenham misled a potential investor about his own and Co-Founder's investments in a fund. Moreover, in some instances, CEC failed to disclose Co-Founder's past disciplinary history. CEC also failed to comply with the custody rule and also failed to adopt compliance policies and procedures reasonably designed to prevent violations of the Advisers Act and its rules.

1. CEC and Brittenham Improperly Allocated CEC Expenses to the ECP Funds

9. From at least 2008 to the present, CEC and Brittenham improperly allocated at least $3 million of expenses, primarily for CEC employee compensation and CEC office expenses, to 19 of the ECP Funds (Series A-E, G-J, L-T, and TEP) (the "Improper Expenses"). As a result, these 19 ECP Funds effectively paid CEC's expenses.

10. The ECP Funds are separate legal entities that own interests in private entities; because of the nature of these vehicles, the ECP Funds do not have any officers or employees. They pay CEC a management fee of 1.5% to 3% of fund assets, and also pay CEC portions of the dividends the funds received from the portfolio companies and portions of the proceeds from sales of portfolio company stock.

11. All of the expenses incurred by CEC and the ECP Funds were grouped into three broad categories: (i) CEC-only expenses; (ii) ECP Fund-only expenses; and (iii) expenses split between CEC and the ECP Funds. For the third category (the "Split Expenses"), CEC generally allocated 70% of the Split Expenses to all of the ECP Funds based on each Fund's net capital contributions, and 30% to CEC (the "Split Ratio"). This 70-30 Split Ratio was used because CEC had determined that roughly two-thirds of its expenses related to the operation of the ECP Funds. As a result, even though the Split Ratio was applied to each fund, the ratio was not derived from expenses actually attributable to a particular fund.

12. CEC misallocated at least $3 million (after the Split Ratio was applied) of Improper Expenses by improperly designating some of its own expenses as Split Expenses. The largest of the Improper Expenses included the salaries of the majority of CEC employees, executive bonuses, health benefits, retirement benefits, and rent.

13. Approximately $1.1 million of the Improper Expenses went to Brittenham, including 70% of a $100,000 bonus he awarded himself in 2009.

14. Other Improper Expenses included: education and tuition costs for CEC employees, employee hiring costs, gifts, group photos, legal fees for estate planning, maintenance costs on CEC's offices, CEC checks and letterheads, office and mobile telephone, bottled water, office lunches, car washes and insurance, holiday cards, CEC's registration expenses, and business cards, and charges relating to transporting Brittenham's daughter to and from school.

15. The PPMs and the LPAs for the 19 ECP Funds that were misallocated these Improper Expenses did not disclose that these funds would bear the expenses.

16. Moreover, several of the PPMs specifically state that these Improper Expenses should not be paid by the funds. For example, 14 of the Funds' PPMs expressly state that CEC would pay its own management expenses; of these, 12 PPMs state that CEC would pay the compensation of its employees.

17. Most of the Funds' LPAs described the list of expenses that could be borne by the Funds as "reasonable" partnership expenses "related to the acquisition or disposition of securities."

18. In addition, CEC's Forms ADV, Part 2 filed on July 20, 2011 and March 30, 2012 did not disclose the sharing of expenses between CEC and the ECP Funds, and did not disclose that the 19 ECP Funds were allocated the Improper Expenses. Specifically, item 5 of Part 2A describe the fees charged to manage the funds as being no greater than 3% annually, and did not mention any sharing of expenses.

19. CEC treated all the ECP Funds identically with respect to the Improper Expenses, even though the actual expenses may not have been an expense for the particular fund.

20. CEC also did not disclose the Split Ratio to investors. Further, while the Funds' audited financial statements included a line item for "office overhead," the financial statements did not adequately explain the nature of the Improper Expenses. Moreover, Fund investors did not receive audited financial statements until January 2013.

21. By allocating the Improper Expenses to the ECP Funds, CEC and Brittenham committed fraud and breached their fiduciary duties to the ECP Funds. The allocation of CEC's expenses to the ECP Funds constituted a conflict of interest that was not adequately disclosed in the PPMs or LPAs. Also, as 85% owner of CEC, Brittenham took distributions from CEC's profits, and thus benefitted from the undisclosed misallocation of CEC expenses to the ECP Funds.

22. As a co-founder and controlling owner of CEC, and with ultimate authority over the fund disclosures, Brittenham knew, or was reckless or negligent in not knowing, that the Improper Expenses were not adequately disclosed in the PPMs or LPAs. Brittenham also knew, or was reckless or negligent in not knowing, that the Improper Expenses were not reasonable operational expenses of a private equity fund, and were not disclosed to its investors. Because Brittenham is CEC's co-founder and CEO, his scienter is attributable to CEC.

23. Brittenham, as a co-founder and controlling owner of CEC and as a signatory of the Form ADVs, over which he had ultimate authority, and CEC willfully omitted material facts regarding the Improper Expenses from the Form ADVs. The misstatements and omissions concerning the Improper Expenses in the PPMs and LPAs were material because they impacted investors' investment returns.

2. CEC and Brittenham Issued Unauthorized Loans to the ECP Funds

24. From September 2008 through September 2012, CEC issued loans to 17 ECP Funds (Series D-E, G-J, L-T, V and TEP) (the "Unauthorized Loans"). At the time, these Funds had insufficient cash reserves to pay their expenses. The Unauthorized Loans were thus needed to continue allocating the Improper Expenses to the ECP Funds.

25. CEC set the interest rates on the Unauthorized Loans, ranging from 11.86% to 17.38% annually. CEC entered into pledge agreements with these 17 ECP Funds giving CEC a first priority security interest in the respective Funds' assets. Brittenham executed the notes pertaining to the Unauthorized Loans and the pledge agreements on behalf of both CEC and the ECP Funds.

26. CEC had a conflict of interest in issuing the Unauthorized Loans and having the ECP Funds pledge their assets as collateral, thereby misusing and jeopardizing fund assets. CEC financially benefitted from the loans and set the interest rate.

27. Each of the 17 ECP Funds had closed to new investors at the time it received the Unauthorized Loan from CEC. The LPAs for 14 of the 17 ECP Funds did not permit the funds to borrow money to pay expenses after the fund had closed.

Brittenham unilaterally and without notice to fund investors amended the LPAs of these 14 ECP Funds to permit loans after the funds had closed. CEC, as an adverse party with a conflict of interest, could not consent to the loans on behalf of the funds.

28. As a co-founder and controlling owner of CEC, and with ultimate authority over the fund disclosures, Brittenham knew, or was reckless or negligent in not knowing, that the Unauthorized Loans or amendments to the LPAs were not disclosed to the investors. He also acted with scienter by knowingly executing the notes and pledge agreements, and unilaterally and without notice amending the LPAs, or he was reckless or negligent in doing so. Because Brittenham is CEC's co-founder and CEO, his scienter is attributable to CEC.

29. Brittenham's and CEC's failure to disclose any information about the Unauthorized Loans or the unilateral LPA amendments allowing for the loans or the pledge of fund assets was material.

30. Brittenham's actions with respect to the Unauthorized Loans and CEC's issuance of the Unauthorized Loans and the associated pledges of fund assets were part of a fraudulent scheme, as neither the loans nor the pledges would have been necessary if CEC and Brittenham had not allocated the Improper Expenses to the ECP Funds.

31. Brittenham's and CEC's material omissions concerning the Unauthorized Loans and the pledges of fund assets occurred in the offer or sale of, and in connection with the purchase or sale of, securities, because CEC and Brittenham pledged the ECP Funds' securities as collateral for the loans.

32. Brittenham's and CEC's actions in entering into pledges with the 17 ECP Funds constituted principal transactions between CEC and the 17 ECP Funds. Neither CEC nor Brittenham provided written notice to or obtained consent from the 17 ECP Funds prior to each transaction. CEC's knowledge and execution of the pledge agreements is insufficient given CEC's substantial conflict and position as an adverse party to the ECP Funds with respect to the pledges.

3. CEC and Brittenham Improperly Changed CEC's Distribution Calculations

33. Beginning as early as 2011, CEC and Brittenham changed in several respects the way CEC calculates distributions, to the detriment of fund investors and with inadequate or no disclosure of these material changes to the investors.

34. The LPAs of the ECP Funds provided that the investors would receive distributions when a fund received a dividend from one of its portfolio companies, or when a fund sold the stock of its portfolio companies.

35. The LPAs disclosed that if a fund had "distributable cash" as a result of a dividend, it would distribute that cash in a series of waterfall tiers. While the specific tiers varied among the different ECP Funds, they generally included a specified

preferred return to the limited partners, a specified general partner "catch-up", and then a division of any remainder between the limited partners and the general partner according to a disclosed ratio. Section 1.1 of the LPAs defined "Distributable Cash" as the "excess of the sum of all cash receipts of all kinds over cash disbursements (or reserves therefore) for Partnership Expenses".

36. Before August 2011, CEC only calculated the amount available for distribution to a fund's limited partners after first paying the fund's operating expenses, while also reserving enough cash for future expenses ("working capital reserve").

37. However, in or around August 2011, CEC began treating the amounts used to replenish ECP Funds' working capital reserves as fulfilling the preferred return to the limited partners, and applied this change retroactively.

38. Also, beginning in at least August 2011, CEC improperly calculated the general partner catch-up. Instead of using the catch-up amount specified for CEC identified in the LPAs, CEC, without disclosure to investors, sometimes used higher catch-up amounts.

39. These changes to the distribution calculations adversely affected the dividends received by investors in Series A, B and C. CEC's and Brittenham's treatment of the distribution calculations and their failure to adequately disclose the treatment were material, as they directly affected investors' investment returns.

40. CEC and Brittenham acted with scienter by knowingly, recklessly or negligently calculating the distributions improperly and failing to disclose the distribution calculations adequately to the limited partners.

4. CEC and Brittenham Fraudulently Induced Investor A's Investment in Series R

41. During CEC's offering of Series R in September 2009, Investor A, a prospective and past investor in the ECP Funds, inquired about Brittenham's and Co-Founder's co-investments in the offering.

42. On or about September 21, 2009, Brittenham told Investor A that he and Co-Founder were investing $100,000 each.

43. On or about September 23, 2009, CEC's then-CFO and Chief Compliance Officer ("CEC's CCO") forwarded emails he had received from Investor A to Brittenham, which made clear that (i) Brittenham's and Co-Founder's investments of $100,000 each were important to Investor A's decision to invest and (ii) Investor A believed that each of them was investing $100,000.

44. CEC's CCO accused Brittenham of asking him to lie to Investor A. On or about September 24, 2009, CEC's CCO emailed Brittenham and specifically accused Brittenham of asking him to lie to Investor A about the amount of Brittenham's investment. CEC's CCO refused and resigned over the matter.

45. Based on his belief that both Brittenham and Co-Founder were investing $100,000 each, Investor A invested $250,000 in Series R on or about September 24, 2009. Brittenham and Co-Founder each invested $25,000 in Series R.

46. Brittenham's misrepresentation to Investor A was material. Investor A expressly stated that the amounts of Brittenham's and Co-Founder's co-investments were important to him.

47. It was false and misleading for Brittenham to represent to Investor A that he and Co-Founder were each investing $100,000 because Brittenham knew, or was reckless or negligent in not knowing, that each was investing only $25,000. Moreover, Brittenham knew that Investor A was mistaken concerning how much he and Co-Founder were investing, and knew that it was important to his decision to invest, yet Brittenham did not take steps to inform Investor A of the true amounts of the co-investments. Because Brittenham is CEC's co-founder and CEO, his scienter is attributed to CEC.

48. The material misstatements and omissions to Investor A concerning Brittenham's and Co-Founder's co-investments occurred in the offer and sale of, and in connection with the purchase or sale of, interests in Series R.

5. CEC Failed to Use a Qualified Custodian and Did Not Segregate Client Assets

49. Rather than utilize a qualified custodian, CEC kept original stock certificates for securities owned by the ECP Funds in its office. CEC did not send audited financial statements to the limited partners of the ECP Funds until January 2013, at which time it sent audited financial statements for fiscal year 2011. No audited financial statements have been sent since January 2013. CEC has also never obtained a surprise exam.

50. In addition to the improper custody of the stock certificates, since August 2010, CEC has kept the ECP Funds' cash assets in a *single* bank account. Only one entity, identified as Ethanol Capital Partners, LP, owns the assets in the account. TEP, which is a separately registered limited partnership, shared the same bank account as the other ECP Funds. As a result, the cash assets held by the ECP Funds are commingled.

6. CEC's Compliance Policies Were Inadequate

51. CEC's compliance policies dated February 2008, October 2009 and March 2010, described the private offering exception to the custody rule, Rule 206(4)-2(b) under the Advisers Act, by incorrectly stating that the adviser need only comply with *one* of the three prongs, rather than *all* three. The May 2012 policy corrected the description of Rule 206(4)-2(b)(2)(i) to require that all three prongs be satisfied, but inaccurately went on to state that the "securities must fall into one of the above-described exceptions."

52. The description of the exception did not provide that, even if the Funds satisfied the exception in Rule 206(4)-2(b)(2)(i), CEC would still need to comply with the provision in Rule 206(4)-2(b)(2)(ii) relating to the preparation and distribution of audited financial statements. CEC did not do so.

7. CEC Omitted Co-Founder's Prior SEC Violations from the Offering Documents for Three ECP Funds

53. The PPMs for Series R, T and V offerings of the ECP Funds, which were offered and sold to investors from December 2008 through June 2010, did not disclose Co-Founder's previous disciplinary settlement with the Commission. In 2002, the Commission found that Co-Founder violated Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and caused and willfully aided and abetted violations of Sections 206(1) and (2) of the Advisers Act. The Commission censured Co-Founder and ordered him to cease and desist from committing or causing any violations and or future violations of the foregoing provisions, and pay a civil penalty of $25,000. This was in stark contrast to prior PPMs for the other ECP Funds, where this matter had been disclosed.

54. As a co-founder and controlling owner of CEC, and with ultimate authority over the fund disclosures, Brittenham knew, or was reckless or negligent in not knowing, that Co-Founder's disciplinary history was not disclosed in the PPMs for these three ECP Funds. Because Brittenham is CEC's co-founder and CEO, his scienter is attributed to CEC.

55. This omission was material, because during these offerings, Co-Founder was a control person for CEC. He was one of CEC's principals and solicited investors for the ECP Funds.

E. VIOLATIONS

56. As a result of the conduct described above, CEC and Brittenham 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.

57. As a result of the conduct described above, CEC and Brittenham willfully violated Sections 206(1), 206(2) and 206(4) of the Advisers Act and Rule 206(4)-8(a) promulgated thereunder, which prohibit fraudulent conduct by an investment adviser.

58. As a result of the conduct described above with respect to the Unauthorized Loans, CEC and Brittenham willfully violated Section 206(3) of the Advisers Act, which prohibits an investment adviser from "acting as principal for his own account, knowingly to sell any security to or purchase any security from a client...without disclosing to such client in writing before the completion of such transaction the capacity in which he is acting and obtaining the consent of the client to such transaction."

59. As a result of the conduct described above, CEC willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-2 promulgated thereunder, which make it a fraudulent, deceptive or manipulative act for any registered investment adviser to have custody of clients' funds or securities, unless, among other requirements, a "qualified custodian" maintains those funds and securities in a separate account for each client under that client's name or in accounts that contain only the clients' funds and securities under the adviser's name as an agent or trustee for the clients.

60. As a result of the conduct described above, CEC willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-7 promulgated thereunder, which require investment advisers to adopt and implement written policies and procedures reasonably designed to prevent violation of the Advisers Act and its rules.

61. As a result of the conduct described above, CEC and Brittenham 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 CEC 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 Brittenham 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 Brittenham pursuant to Section 15(b) of the Exchange Act including, but not limited to, disgorgement and civil penalties pursuant to Section 21C of the Exchange Act;

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

F. Whether, pursuant to Section 8A of the Securities Act, Section 21C of the Exchange Act, and Section 203(k) of the Advisers Act, CEC 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 206(1), 206(2), 206(3), 206(4), and 207 of the Advisers Act and Rules 206(4)-2, 206(4)-7, and 206(4)-8 thereunder; whether CEC should be ordered to pay a civil penalty 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 CEC 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, Section 203 of the Advisers Act, and Section 9(e) of the Investment Company Act; and

G. Whether, pursuant to Section 8A of the Securities Act, Section 21C of the Exchange Act, and Section 203(k) of the Advisers Act, Brittenham 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 206(1), 206(2), 206(3), 206(4), and 207 of the Advisers Act and Rule 206(4)-8 thereunder; whether Brittenham should be ordered to pay a civil penalty 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 Brittenham 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, Section 203 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, 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
Secretary

By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 71612 / February 25, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15767

In the Matter of

VINCENT BUONAURO, JR.

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 Vincent Buonauro, Jr. ("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. From December 2006 to March 2009, Buonauro was the President and a Member of PermaPave Industries, LLC. From August 2008 to March 2009, he was also the Managing Member of PermaPave Industries, LLC. Buonauro has never been licensed to sell securities. Buonauro, 42 years old, is a resident of West Islip, New York.

2. On December 23, 2013, a final judgment was entered by consent against Buonauro, permanently enjoining him from future violations of Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 ("Securities Act") and Sections 10(b) and 15(a) of the Exchange Act and Rule 10b-5 thereunder in the civil action entitled Securities and Exchange Commission v. Eric Aronson, et al., Civil Action Number 11 Civ. 7033, 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 promissory notes, Buonauro falsely stated to investors that their funds would be used to purchase certain wholesale products for which there was substantial demand, misused and misappropriated investor funds, and otherwise engaged in a variety of conduct which operated as a fraud and deceit on investors. The complaint also alleged that Buonauro sold securities in unregistered offerings and, during these offers and sales, was not associated with a registered broker-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 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.

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

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200, 229, 230, 232, 239, 240, 243, and 249

Release Nos. 33-9552; 34-71611; File No. S7-08-10

RIN 3235-AK37

Re-Opening of Comment Period for Asset-Backed Securities Release

AGENCY: Securities and Exchange Commission

ACTION: Re-opening of comment period.

SUMMARY: The Securities and Exchange Commission is re-opening the comment period on two releases, Asset-Backed Securities, Securities Act Release No. 33-9117 (Apr. 7, 2010), 75 FR 23328 (the "2010 ABS Proposing Release") and Re-Proposal of Shelf Eligibility Conditions for Asset-Backed Securities, Securities Act Release No. 33-9244 (July 26, 2011), 76 FR 47948 (the "2011 ABS Re-Proposing Release"). The Commission is re-opening the comment period to permit interested persons to comment on an approach for the dissemination of potentially sensitive asset-level data. This approach is discussed in a staff memorandum included in the public comment file.

DATES: Comments should be received on or before March 28, 2014.

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

Electronic Comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/proposed.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number S7-08-10 on the subject line; or

- Use the Federal eRulemaking Portal (http://www.regulations.gov). Follow the instructions for submitting comments.

Paper Comments:

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

All submissions should refer to File Number S7-08-10. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (http://www.sec.gov/rules/proposed.shtml). Comments are also available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Rolaine S. Bancroft, Senior Special Counsel or Robert Errett, Special Counsel, in the Office of Structured Finance at (202) 551-3850, Division of Corporation Finance, U.S. Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-3628.

SUPPLEMENTARY INFORMATION: In 2010, the Commission proposed changes to the offering, disclosure, and reporting requirements for asset-backed securities ("ABS").[1] Among

---

[1] See Asset-Backed Securities, Release No. 33-9117 (Apr. 7, 2010) [75 FR 23328] (the "2010 ABS Proposing Release").

other things, the Commission proposed to require that, with some exceptions, prospectuses for public offerings of asset-backed securities and ongoing Exchange Act reports contain specified asset-level information about each of the assets in the pool in a standardized tagged data format. The 2010 ABS Proposing Release was published for comment in the Federal Register on May 3, 2010, and the initial comment period closed on August 2, 2010.

In July 2010, subsequent to the publication of the 2010 ABS Proposing Release, Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"), which required the Commission to prescribe several ABS-related rules. Some of the mandated rules were reflected in the 2010 ABS Proposing Release, while others were not. After considering the additional Dodd-Frank Act requirements, and considering comments received in connection with the 2010 ABS Proposing Release, the Commission re-proposed portions of the 2010 ABS Proposing Release in July 2011 seeking additional comment on asset-level disclosure provisions, and comment on Section 942(b) of the Dodd-Frank Act, which requires the Commission to adopt regulations to require asset-level information.[2] The 2011 ABS Re-Proposing Release was published for comment in the Federal Register on August 5, 2011, and the initial comment period closed on October 4, 2011.

We received comments in response to the proposals and requests for comment recommending that, among other things, because certain potentially sensitive data would form part of the required asset-level disclosures, the asset-level information be provided by means other than public dissemination on EDGAR.[3] For example, we received comments suggesting

---

2 See Re-Proposal of Shelf Eligibility Conditions for Asset-Backed Securities, Release No. 33-9244 (July 26, 2011) [76 FR 47948] (the "2011 ABS Re-Proposing Release").

3 See letters from Ally Financial Inc. et al dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release, Ally Financial Inc. et al dated Oct. 13, 2011 submitted in response to the 2011 ABS Re-

that information that may raise individual privacy concerns could be provided to investors through a limited-access Web site rather than through public dissemination of this information on EDGAR.[4]

The staff has prepared a memorandum summarizing additional information about the use of Web sites in the ABS market as a means to disseminate asset-level and other offering information.[5] The memorandum describes one potential method to address privacy concerns related to the dissemination of potentially sensitive asset-level data. This method would require issuers to make asset-level information available to investors and potential investors through a Web site that would allow issuers to restrict access to information as necessary to address privacy concerns. The Commission is considering this method and therefore re-opening the comment period to permit interested parties to comment on the staff memorandum, which has been included in the comment file, addressing these issues. The comment period will be re-opened for thirty days to allow comment on all aspects of the approach, including the benefits and costs of and reasonable alternatives to such an approach, for issuers to make asset-level data

---

Proposing Release, and Ally Financial Inc. et al dated Aug. 3, 2012 submitted in response to the 2011 ABS Re-Proposing Release ("VABSS IV") (urging the Commission "to consider whether loan-level data (or even grouped data) needs to be made publicly available or could be made available to investors and other legitimate users in a more limited manner, such as through a limited access website"). See also letters from Consumer Data Industry Association dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release (suggesting that the Commission require parties that want to access the data on EDGAR register to use the data, acknowledge the sensitive nature of the data and agree to maintain its confidentiality) and Epicurus Institute dated Aug. 1, 2010 submitted in response to the 2010 ABS Proposing Release (stating that they believe "that the prospectus should contain a hypertext link (with instructions for accessing a website to obtain the data)...[and only] prospective investors should have traceable access to the data, and that they never have the opportunity to download... raw data in any format").

4 See, e.g., letter from VABSS IV.

5 See Memorandum from the Commission's Division of Corporation Finance (dated February 25, 2014), which is available on the Commission's Internet Web site at http://www.sec.gov/comments/s7-08-10/s70810.shtml.

directly available to investors and potential investors, taking into account the possible sensitive nature of such data.

By the Commission.

Elizabeth M. Murphy

Elizabeth M. Murphy
Secretary

Date: February 25, 2014

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 71619 / February 26, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15768

In the Matter of

JOHN W. FEMENIA,

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 John W. Femenia ("Femenia" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, Respondent consents to the Commission's jurisdiction over him and the subject matter of these proceedings and to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934, 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. Femenia, age 32, is a resident of New York. From August 2009 to December 2012, Femenia was a registered representative associated with Wells Fargo Securities LLC ("Wells Fargo Securities"), a broker-dealer registered with the Commission. During this period, Femenia held a Series 7 securities license.

2. On October 1, 2013, Femenia was criminally convicted of one count of conspiracy to commit money laundering in violation of Title 18 United States Code, Section 1956(h), and one count of violating Title 18 United States Code, Section 371 by conspiring to commit insider trading, including conspiracy to violate Title 15 United States Code, Sections 78j(b) and 78ff, and Title 17 Code of Federal Regulations, Sections 240.10b-5 and 240.10b5-2 upon the entry of his guilty plea by the United States District Court for the Western District of North Carolina in United States v. John W. Femenia, No. 3:12cr386.

3. The counts of the indictment to which Femenia pled guilty alleged, inter alia, that from approximately March 2010 through approximately December 2012, Femenia engaged in an insider trading conspiracy by obtaining material, nonpublic information about upcoming corporate acquisitions from Wells Fargo Securities in breach of his duty of trust and loyalty to Wells Fargo Securities and its clients, and tipping the information to other conspirators who, in turn, traded profitably in the securities of the companies to be acquired.

IV.

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

Accordingly, it is hereby ORDERED pursuant to Section 15(b)(6) of the Exchange Act that Respondent Femenia 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 Gallagher not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 71628 / February 27, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15770

In the Matter of **ROBERT CUSTIS, Esq.,** **Respondent.**	**ORDER INSTITUTING PUBLIC 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 Robert Custis, Esq. ("Respondent" or "Custis") 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 (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.

proceedings, and the findings contained in Paragraph 2 of Section III 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. Custis, age 60, is a resident of Salem, Oregon. Custis is a member of the Oregon State Bar. Custis performed legal work for Grifphon Asset Management, LLC and Grifphon Holdings, LLC, and communicated with the investors of the funds controlled and managed by those entities.

2. On September 20, 2012, the Commission filed a complaint against Custis in SEC v. Yusaf Jawed, et al. (Case No. 3:12-CV-01696), in the United States District Court for the District of Oregon. On February 13, 2014, the court entered an order permanently enjoining Custis by consent, from future violations of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, and Section 206(4) of the Investment Advisors Act of 1940 and Rule 206(4)-8 thereunder.

3. The Commission's complaint alleged, among other things, that Custis was hired by Yusaf Jawed to perform legal work related to two investment advisors controlled by Jawed, Grifphon Asset Management, LLC and Grifphon Holdings, LLC. The complaint alleges that from late 2009 to November 2011 Custis made false and misleading statements to investors regarding a purported offer to purchase Grifphon funds' assets, telling investors that the investors would be repaid and make a profit from proceeds of the asset sale. According to the complaint, Custis knew, or was reckless in not knowing, that these representations were false.

IV.

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

Accordingly, it is hereby ORDERED pursuant to Rule 102(e)(3)(i) of the Commission's Rules of Practice, effective immediately, that:

A. Custis 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 Aguilar not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 71639 / February 28, 2014

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3541 / February 28, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15771

In the Matter of	
PAUL DESJOURDY, CPA, 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 Paul Desjourdy 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. From 1986 to at least 2012, Desjourdy was a certified public accountant licensed in Massachusetts.

2. Desjourdy is an attorney, whom the Commonwealth of Massachusetts admitted to practice law in 1989.

2. On January 16, 2014 , a judgment was entered convicting Desjourdy of one count of mail fraud and one count of conspiracy to commit securities fraud in violation of 18 United

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

States Code Sections 1341 and 371 before the United States District Court for the District of Massachusetts, in *United States v. Desjourdy*, No. 1:11-CR-10396-JLT.

3. As a result of this conviction, Desjourdy was sentenced to 18 months' probation, a $200 special assessment, and ordered to forfeit $54,000 as proceeds of his crimes.

III.

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

Accordingly, it is ORDERED, that Paul Desjourdy 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 EXCHANGE ACT OF 1934
Release No. 71638 / February 28, 2014

ADMINISTRATIVE PROCEEDING
File Nos. 3-14191 and 3-14192

In the Matters of **BNY Mellon Securities, LCC** **and** **Mark Shaw,** **Respondents.**	**ORDER APPROVING MODIFIED PLAN OF DISTRIBUTION, APPOINTING FUND ADMINISTRATOR, AND SETTING FUND ADMINISTRATOR BOND AMOUNT**

On January 14, 2011, the Securities and Exchange Commission ("Commission") issued an Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions against BNY Mellon Securities LLC ("Mellon Securities") (Exchange Act Rel. No. 63724 (Jan. 14, 2011)) ("Mellon Securities Order"). On the same day, the Commission issued a Corrected Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, and Sections 15(b) and 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order against Mark Shaw ("Shaw") (Securities Act Rel. No. 9174 (Jan. 14, 2011)) ("Shaw Order"). The Mellon Securities Order, among other things, required Mellon Securities to pay $19,297,016 disgorgement, plus prejudgment interest thereon of $3,748,431, and a civil penalty of $1,000,000, and created a Fair Fund, pursuant to Section 308(a) of the Sarbanes-Oxley Act of

2002, to compensate investors for losses attributable to certain cross trades conducted on their behalf by Mellon Securities ("Fair Fund"). The Shaw Order required Shaw to pay $195,300 disgorgement, plus prejudgment interest thereon of $23,291, and a civil penalty of $150,000, and provided that the monies paid by Shaw may be distributed by the Fair Fund established in the Mellon Securities Order. Both Mellon Securities and Shaw paid the sums the Commission ordered to be paid, creating a $24,414,038 Fair Fund, which is currently on deposit with the United States Treasury.

On January 31, 2013, pursuant to Rule 1103 of the Commission's Rules on Fair Fund and Disgorgement Plans, 17 C.F.R. § 201.1103, the Commission issued a Notice of Proposed Plan of Distribution and Opportunity for Comment ("Notice") for the distribution of monies placed into the Fair Fund to affected investors (Exchange Act Rel. No. 68796 (Jan. 31, 2013)). The Notice provided all interested parties thirty (30) days to submit a comment on the proposed Plan of Distribution ("Plan"). Where sufficient data is available ("in-sample period"), the Plan would compensate affected investors based on the difference between the prices that could have been expected had the cross trades at issue received best execution and the prices actually received due to the conduct described in the Mellon Securities and Shaw Orders. Where sufficient data is not available, the Plan would compensate affected investors based on an algorithm (developed utilizing data from the in-sample period, publicly available data, and regression analysis) designed to determine the impact on affected investors due to the conduct described in the Mellon Securities and Shaw Orders. No comments were received on the Plan.

The Division of Enforcement ("Division") now seeks approval of the Plan with a modification to require the fund administrator to obtain a bond in the amount of $24,414,038 pursuant to Rule 1105(c), 17 C.F.R. § 201.1105(c). The Plan, at the time of the Notice,

contemplated waiver of the bond. The Division believes requiring a bond is advisable because it provides protections to investors for errors resulting from negligence rather than the "gross negligence" standard of most insurance, and it provides the most direct recovery for the Fair Fund. In addition, the amount of the bond will cost approximately $80,000 per annum and, as compared to the coverage afforded, is a reasonable cost associated with the distribution. The cost of the bond will be paid from the Fair Fund, first from the interest earned, and if the interest is insufficient, then from its corpus.

As proposed in the Plan, the Division further seeks appointment of Boston Financial Data Services ("BFDS") as the fund administrator pursuant to Rule 1105(a), 17 C.F.R. § 201.1105(a). BFDS's fees and expenses will be paid by Mellon Securities.

Accordingly, IT IS HEREBY ORDERED that:

A. Pursuant to Rule 1104, 17 C.F.R. § 201.1104, the Plan is modified as described above, and approved with such modification;

B. BFDS is appointed as Fund Administrator for the Fair Fund pursuant to Rule 1105(a), 17 C.F.R. § 201.1105(a); and

C. The Fund Administrator, BFDS, shall obtain a bond in the manner prescribed in Rule 1105(c), 17 C.F.R. § 201.1105(c), in the approved amount of $24,414,038.

By the Commission.

Elizabeth M. Murphy
Secretary

By: Lynn M. Powalski
Deputy Secretary

Commissioner Aguilar not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

February 28, 2014

In the Matter of **Trilliant Exploration Corp.** **File No. 500-1**	**ORDER OF SUSPENSION OF TRADING**

It appears to the Securities and Exchange Commission that there is a lack of complete and accurate information concerning the securities of Trilliant Exploration Corp. ("Trilliant") because of questions that have been raised about the accuracy and reliability of publicly available information concerning, among other things, Trilliant's financial condition. Trilliant was a Nevada corporation based in New York, New York, whose corporate status was revoked in January 2013. Its securities are quoted on OTC Link (previously "Pink Sheets") operated by OTC Markets Group, Inc. under the ticker symbol "TTXP."

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. EST on February 28, 2014, through 11:59 p.m. EDT on March 13, 2014.

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson

79 of 79

By: Jill M. Peterson
Assistant Secretary