

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

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 68275 / November 20, 2012**

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 3504 / November 20, 2012**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-15103**

**In the Matter of**

**GARY R. MARKS,**

**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 Gary R. Marks (“Respondent”).

**II.**

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over him and the subject matter of these proceedings, and the findings contained in Section III.2 below, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions (“Order”), as set forth below.

### III.

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

1. Respondent was at all relevant times the chief executive officer and sole owner of an investment adviser formerly registered with the Commission, Sky Bell Asset Management, LLC ("Sky Bell"). At all relevant times, Respondent held a Series 65 license. During a portion of the relevant period, Marks was an associated person of a broker-dealer. Respondent no longer manages any Sky Bell hedge funds. Respondent, 61 years old, is a resident of Kihei, Hawaii.

2. On October 25, 2012, a final judgment was entered by consent against Respondent, permanently enjoining him from future violations of Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-8 promulgated thereunder, and Sections 17(a)(2) and 17(a)(3) of the Securities Act of 1933, in the civil action entitled *Securities and Exchange Commission v. Gary R. Marks*, Civil Action Number 3:12-cv-04486-WHA, in the United States District Court for the Northern District of California.

3. The Commission's complaint alleged that Respondent managed and recommended various fund of funds hedge funds through Sky Bell, including the Agile Sky Alliance Fund ("Alliance Fund") that was co-managed with the Agile Group, PipeLine Investors ("PipeLine"), Night Watch Partners ("Night Watch"), and Sky Bell Offshore Partners ("Offshore Fund") (collectively "Sky Bell Hedge Funds"). The Commission's complaint alleged that between at least 2005 and September 2007, Defendant negligently misrepresented the level of correlation and diversification among certain Sky Bell Hedge Funds. Furthermore, the Complaint alleged that between at least 2005 and 2008, Defendant also: a) made unsuitable investment recommendations to certain advisory clients to invest most of their investment portfolio in Sky Bell Hedge Funds, b) negligently failed to disclose that PipeLine invested significantly in a purported subadviser's fund, and c) negligently provided misleading information to certain investors about the liquidity problems at the Alliance 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 Marks' Offer.

Accordingly, it is hereby ORDERED:

Pursuant to Section 203(f) of the Advisers Act and Section 15(b) of the Exchange Act, that Respondent Marks 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