

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

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 3396 / April 17, 2012**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-14849**

**In the Matter of**

**DAVID E. HOWARD II,**

**Respondent.**

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

**I.**

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

**II.**

After an investigation, the Division of Enforcement alleges that:

1. Between December 2007 and May 2008, Flatiron Capital Partners, LLC (“FCP”) was a Delaware LLC which operated as an investment company, purportedly trading securities through the use of an automated trading system.

2. Between April 2008 and March 2009, Flatiron Systems, LLC (“FS”) was a Florida LLC which operated as an investment company that purported to trade securities using an automated trading system.

3. Respondent was a co-managing member of FCP and the sole managing member of FS. Respondent has never been registered or associated with any entity registered with the Commission.

4. On April 6, 2012 a final judgment was entered against Howard, permanently enjoining him from future violations of Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934, Rule 10(b)-5 thereunder, Sections 206(1), 206(2), and 206(4) of the Advisers Act, and Rule 206(4)-8 thereunder in the civil action entitled *Securities and Exchange Commission v. Spyglass Equity Systems, Inc.*, Civil Action Number 2:11-cv-02371 JAK, in the United States District Court for the Central District of California.

5. The Commission's complaint alleged, among other things, that, between December 2007 and January 2009, approximately 192 investors, located in at least 38 states, purchased Limited Liability Company membership interests in FCP and FS. Investors were persuaded through false and misleading statements made by Howard and others to invest approximately \$2.15 million in FCP and FS, and in addition, paid approximately \$1.1 million in purported "license fees" for access to their trading systems. Thereafter, Howard misused and/or misappropriated almost \$500,000 of the investor money and he and other principals lost the majority of the remaining funds through unsuccessful trading. Investors lost over \$3 million in the scheme.

### 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 are true and, in connection therewith, to afford Respondent an opportunity to establish any defenses to such allegations; and

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

### IV.

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

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

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

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

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

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

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

Elizabeth M. Murphy  
Secretary