

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

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 69093 / March 8, 2013**

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 3565 / March 8, 2013**

**INVESTMENT COMPANY ACT OF 1940**  
**Release No. 30419 / March 8, 2013**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-14351**

**In the Matter of**

**ROBERT DAVID  
BEAUCHENE,**

**Respondent.**

**AMENDED ORDER INSTITUTING  
ADMINISTRATIVE PROCEEDINGS  
PURSUANT TO SECTION 15(b) 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**

**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”), 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 Robert David Beauchene (“Beauchene” or “Respondent”).

## II.

After an investigation, the Division of Enforcement alleges that:

### SUMMARY

1. From approximately August 2005 through July 2007, Beauchene, an unregistered investment adviser, fraudulently raised at least \$160,000 from four investors for investment in a purported hedge fund called Rhombus Amalgamated Enterprises, Inc. (“Rhombus”).

2. Beauchene represented to prospective investors that, through Rhombus, he had over \$10 million assets under management; that he had earned annual returns of 10-20% on his securities trading in the past, and that Rhombus’s trading was based on analytical models developed by his partner in Rhombus, an experienced market analyst. Once he received their money, Beauchene repeatedly told the investors that Rhombus was earning positive returns and provided monthly statements to one of them showing hundreds of trades each month and positive returns – including an annual return of 47% for 2006 – for the investor’s account with New York-based, registered broker-dealer.

3. Those representations were false. Rhombus did not operate as a hedge fund, did not have any assets other than the approximately \$160,000 Beauchene raised from the four investors, and his purported partner – the touted hedge fund expert – was not involved in the management of Rhombus, did not provide any models to Beauchene, and had not authorized Beauchene to use his name to solicit investments in Rhombus. Rhombus had no track record, much less the impressive returns that Beauchene claimed, and was not generating positive returns for the investors – the monthly statements Beauchene provided to one investor were fabricated; the account referenced in the statements did not exist.

4. In reality, Rhombus was nothing more than a series of bank accounts into which Beauchene deposited investor funds, which he then used primarily to pay personal expenses and, to a lesser extent, to trade securities. And the little securities trading Beauchene did was consistently unsuccessful, resulting in losses every month the brokerage account was open, for a total loss of approximately \$25,000.

### RESPONDENT

5. **Beauchene**, age 45, currently resides in Wilmington, North Carolina. At various times from 1995 through July 2006, Beauchene was a registered representative of one of a series of six registered broker-dealers. At all relevant times, he was an investment adviser as defined by Section 202(a)(11) of the Advisers Act, and from at least February 2006 to July 2006 he was a registered representative of a registered broker-dealer headquartered in Philadelphia, Pennsylvania.

## **RELATED PERSON**

6. **Rhombus** is a New York State corporation formed by Beauchene in December 2002. Its stock is not registered and does not trade on any exchange. Beauchene is the president of Rhombus and its only officer or employee.

## **FACTS**

7. In approximately August 2005, Beauchene solicited Investor A to invest in Rhombus, which he described to the investor as a hedge fund. Beauchene told Investor A that his partner in Rhombus was an experienced market analyst who had sophisticated programs to assist with Rhombus's trading strategy and who regularly appeared on television to talk about hedge fund investing and stock market trends. Investor A invested a total of \$60,000 in Rhombus in five installments from August 2005 through July 2007. Once he invested, Beauchene consistently reported to Investor A that Rhombus was achieving positive returns. These positive reports convinced Investor A to repeatedly increase his investment in Rhombus.

8. In or around August 2005, Beauchene solicited Investor B for an investment in Rhombus. He represented to Investor B that Rhombus already managed \$10 million and did so using models and research provided by a partner of Beauchene's who had fifteen years of experience providing investment research to hedge funds. In September 2005, Investor B invested \$20,000 in Rhombus.

9. In or around July 2006, Beauchene solicited Investor C for an investment in Rhombus. Beauchene told Investor C that he had already raised \$10 to \$15 million for Rhombus; that Rhombus traded in an account with a New York-based, registered broker-dealer, and that his trading had been very successful. In August 2006, Investor C invested \$40,000 in Rhombus. The following month, Investor C began receiving monthly account statements purportedly issued by the broker-dealer for his account with Rhombus. The statements showed hundreds of trades supposedly made each month, the monthly profit or loss, and year-to-date returns. According to those statements, Investor C's account had earned a return of 47% for 2006 and 24% as of June 2007. The account statements Investor C received were fabrications, created by Beauchene who was at one time briefly associated with an affiliate of the broker-dealer.

10. In October 2006, Beauchene solicited Investor D and her husband (the "Ds") for an investment in Rhombus. Beauchene told the Ds that Rhombus already had \$10 million under management and that the fund was earning high returns. He also told them that Rhombus typically required a minimum initial investment of \$100,000, but he would waive the minimum and permit the Ds invest in \$10,000 increments. From November 2006 to May 2007, the Ds invested \$40,000 in Rhombus in three installments, at least one of which followed reports by Beauchene that the value of the Ds' investment had already increased by approximately 50%.

11. Beauchene's representations to Investors A, B, C, and the Ds described above were false. Rhombus was not a hedge fund and did not have any assets other than the approximately \$160,000 Beauchene raised from the four investors. Beauchene's purported

partner – the touted hedge fund expert – was not involved in the management of Rhombus, did not provide any models to Beauchene, and had not authorized Beauchene to use his name to solicit investments in Rhombus. Rhombus had no history of successful performance, and Beauchene did not use the funds he raised from Rhombus investors to trade in securities on their behalf, much less achieve the positive returns he reported. Instead, Beauchene spent most of the \$160,000 he received from investors from August 2005 through July 2007 on personal expenses. Beauchene also lost approximately \$25,000 of investors’ funds on securities trading; trading that did not correlate in any respect to the trading or performance he reported to the investors.

### **ENTRY OF RESPONDENT’S CRIMINAL CONVICTION**

12. On October 9, 2012, the court in United States v. Beauchene, 11-cr-01016 (JPO) (S.D.N.Y.) (the “Criminal Action”) entered a judgment against Respondent finding him guilty of one count of securities fraud [15 U.S.C. § 78j(b), 78ff, and 17 C.F.R. 240-10b-5] and one count of wire fraud [18 U.S.C. § 1343], each a felony, by defrauding Rhombus’ investors. Beauchene was sentenced to a prison term of 12 months and one day followed by three years of supervised release and ordered to make restitution of \$160,000.

13. The counts of the criminal information to which Beauchene pleaded guilty arose out of the same conduct alleged herein. For example, the criminal information alleged, among other things, that Respondent solicited investors to invest approximately \$160,000 in Rhombus based on false representations that (i) the investors would receive high returns on trading conducted by Rhombus; and (ii) Beauchene was managing millions of dollars in hedge fund assets.

### **VIOLATIONS**

14. As a result of the conduct described in paragraphs 1-11 above, Beauchene willfully violated Section 17(a) of the Securities Act of 1933, Section 10(b) of the Exchange Act and Rule 10b-5, thereunder, and Sections 206(1) and 206(2) of the Advisers Act.

### **III.**

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

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

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

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

D. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 9(b) of the Investment Company Act including, but not limited to, civil penalties pursuant to Section 9(d) of the Investment Company Act.

#### IV.

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

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

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

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

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 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.

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

Elizabeth M. Murphy  
Secretary