

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

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

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-15435**

**In the Matter of**  
  
**David B. Welliver,**  
  
**Respondent.**

**ORDER INSTITUTING**  
**ADMINISTRATIVE PROCEEDINGS**  
**PURSUANT TO SECTION 203(f) OF THE**  
**INVESTMENT ADVISERS ACT OF 1940,**  
**MAKING FINDINGS, AND IMPOSING**  
**REMEDIAL SANCTIONS**

**I.**

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

**II.**

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over him and the subject matter of these proceedings and the findings contained in Sections III.2 and III.4 below, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 203(f) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions (“Order”), as set forth below.

### III.

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

1. Welliver was the Chief Executive Officer and Chief Investment Officer of Dblaine Capital, LLC ("Dblaine Capital"), an investment adviser based in Buffalo, Minnesota and registered with the Commission during the relevant period. Welliver was also President, Chief Executive Officer, Treasurer, Chief Financial and Accounting Officer, Secretary and Chairman of the Board of Trustees for the Dblaine Investment Trust, a registered investment company. At all relevant times, Dblaine Capital served as investment adviser to both series of the Dblaine Investment Trust: the Dblaine Fund and the Dblaine Disciplined Fund. At all relevant times, Welliver served as portfolio manager to the Dblaine Fund and the Dblaine Investment Trust. Welliver, 52 years old, is a resident of Buffalo, Minnesota.

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

3. The Commission's complaint alleged that, from at least October 2010 to August 2011, Welliver breached his fiduciary duty to the Dblaine Fund by, among other things, entering into an improper and undisclosed *quid pro quo* agreement pursuant to which he and Dblaine Capital obtained \$4 million in loans in exchange for investing Dblaine Fund assets in an illiquid private placement that was affiliated with the lender. The complaint also alleged that Welliver and Dblaine Capital made these investments even though they knew that the investments violated various investments restrictions and policies governing the Dblaine Fund, as set forth in the Dblaine Fund's registration statement and other Commission filings. The complaint further alleged that Welliver and Dblaine Capital fraudulently provided the Dblaine Fund with inaccurate, inflated valuations for the private placement security and, as a result, Welliver and Dblaine Capital caused the Dblaine Fund to misstate its net asset value in Commission filings, shareholder reports and other publicly available documents, and to offer, sell, and redeem securities at a price other than the current net asset value of the Dblaine Fund. The complaint also alleged that Welliver and Dblaine Capital engaged in improper affiliated transactions with the Dblaine Fund; improperly suspended redemptions in the fund; and failed to adopt and implement policies and procedures reasonably designed to prevent violations of the federal securities laws. Finally, the Commission's complaint alleged that Welliver and Dblaine Capital ultimately discovered that the private placement security was worthless, but continued their fraud by concealing this from Dblaine Fund investors. The complaint alleged that, while the Dblaine Fund's investors suffered almost total losses as a result of the investment in the private placement, Welliver enriched himself by spending at least \$500,000 of the loans proceeds for his personal benefit.

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

#### IV.

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

Accordingly, it is hereby ORDERED pursuant to Section 203(f) of the Advisers Act that Respondent Welliver be, and hereby is:

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

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

By the Commission.

Elizabeth M. Murphy  
Secretary