

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT COMPANY ACT OF 1940
Release No. 30502 / May 2, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-15313

In the Matter of

**NORTHERN LIGHTS
COMPLIANCE SERVICES, LLC,
GEMINI FUND SERVICES, LLC,
MICHAEL MIOLA, LESTER M.
BRYAN, ANTHONY J. HERTL,
GARY W. LANZEN, AND MARK H.
TAYLOR,**

Respondents.

**ORDER INSTITUTING CEASE-AND-DESIST
PROCEEDINGS PURSUANT TO SECTION
9(f) 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 that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 9(f) of the Investment Company Act of 1940 (“Investment Company Act”) against Northern Lights Compliance Services, LLC, Gemini Fund Services, LLC, Michael Miola, Lester M. Bryan, Anthony J. Hertl, Gary W. Lanzen, and Mark H. Taylor (collectively “Respondents”).

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 Cease-and-Desist Proceedings Pursuant to Section 9(f) 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 Respondents' Offers, the Commission finds¹ that:

Summary

This proceeding relates to certain disclosure, reporting, recordkeeping and compliance violations associated with the turnkey operations of Northern Lights Fund Trust and Northern Lights Variable Trust, two series trusts registered with the Commission as open-end investment companies (collectively, the "Trusts"). During the period January 2009 through December 2010 (the "relevant period"), the Trusts collectively included up to 71 series, most of which were managed by different, unaffiliated advisers and sub-advisers. During this same time, the Trusts utilized, on behalf of each series, the administrative services of Gemini Fund Services, LLC ("GFS"), the chief compliance officer ("CCO") services of Northern Lights Compliance Services, LLC ("NLCS") and shared a common board of five trustees (the "Trustees"). As more fully described below, NLCS, GFS and the Trustees were a cause of certain series' violations of the federal securities laws.

Section 15(c) of the Investment Company Act imposes a duty on the directors of a registered investment company to request and evaluate, and a duty on an adviser to furnish, such information as may reasonably be necessary for the directors to evaluate the terms of an advisory contract. In accordance with fund filing disclosure requirements, a relevant fund's next shareholder report must discuss, in reasonable detail, the material factors and conclusions that formed the basis for the directors' approval or renewal of that contract. Boilerplate disclosure of the evaluation process for advisory contracts does not provide meaningful disclosure. However, on certain occasions during the relevant period, disclosures included in shareholder reports concerning the Trustees' evaluation process filed by certain series of the Trusts contained boilerplate disclosures that were materially untrue or misleading in violation of Section 34(b) of the Investment Company Act. GFS made these disclosures in the fund shareholder reports based on board minutes reviewed by the Trusts' outside counsel, and then reviewed and approved by the Trustees. The Trustees therefore were a cause of these violations. In addition, GFS failed to ensure that certain shareholder reports contained the required disclosures concerning the Trustees' evaluation process and failed to ensure that certain series within the Trusts maintained and preserved their Section 15(c) files in accordance with Investment Company Act recordkeeping requirements. Accordingly, GFS caused those series' violations of Sections 30(e) and 31(a) of the Investment Company Act and Rules 30e-1 and 31a-2(a)(6) thereunder.

¹ The findings herein are made pursuant to Respondents' Offers of Settlement and are not binding on any other person or entity in this or any other proceeding.

During the relevant period, NLCS and the Trustees were also a cause of certain series' violations of Rule 38a-1(a)(1) under the Investment Company Act, which requires registered investment companies to adopt and implement written policies and procedures reasonably designed to prevent violation of the federal securities laws. Specifically, NLCS and the Trustees failed to implement those series' policies and procedures to the extent they required the series' CCO to provide the advisers' compliance manuals to the Trustees for their review or, as an alternative, summaries of the compliance programs upon which the Trustees could rely in approving the compliance manuals of the series' new advisers.

Respondents

1. Northern Lights Compliance Services, LLC ("NLCS"), a Nebraska limited liability company based in Omaha, Nebraska and Hauppauge, New York, is an affiliate of GFS and provides CCO services to investment companies. NLCS has provided its CCO services to the Trusts and their respective series since the Trusts' inception.

2. Gemini Fund Services, LLC ("GFS"), a Nebraska limited liability company based in Omaha, Nebraska and Hauppauge, New York, is a full-service mutual fund administrator, providing comprehensive services to mutual funds for fund administration, fund accounting, transfer agent services, and custody administration. GFS has acted as the fund administrator to the Trusts and their respective series since the Trusts' inception.

3. Michael Miola ("Miola"), age 60, is a resident of Arizona. Miola is the founding trustee of the Trusts, and has been their chairman and the sole interested trustee since their inception. Miola is also an indirect owner of GFS and NLCS.

4. Lester M. Bryan ("Bryan"), age 68, is a resident of Utah. Bryan was an independent trustee of the Trusts since their inception until he retired from that position in December 2011.

5. Anthony J. Hertl ("Hertl"), age 63, is a resident of Florida. Hertl has been an independent trustee of the Trusts since their inception.

6. Gary W. Lanzen ("Lanzen"), age 59, is a resident of Nevada. Lanzen has been an independent trustee of the Trusts since their inception.

7. Mark H. Taylor ("Taylor"), age 49, is a resident of Ohio. Taylor has been an independent trustee of the Trusts since 2007.

Other Relevant Entities

8. Northern Lights Fund Trust (“NLFT”), a Delaware statutory trust with its principal place of business in Omaha, Nebraska, has been registered with the Commission as an open-end management investment company since January 2005. NLFT operates as a series company and was comprised of up to 64 series during the relevant period.

9. Northern Lights Variable Trust (“NLVT”), a Delaware statutory trust with its principal place of business in Omaha, Nebraska, has been registered with the Commission as an open-end management investment company since February 2006. NLVT, a variable insurance trust, operates as a series company and was comprised of up to 7 series during the relevant period.

Facts

The Trusts, Third-Party Service Providers and the Trustees

10. The Trusts are registered open-end series investment companies that were formed to allow advisers that are unaffiliated with each other to manage the portfolios of one or more mutual fund series. Specifically, by utilizing the administrative services of GFS, among other third-party service providers, and a common board of trustees and officers, the Trusts are marketed as a turnkey investment company platform to advisers who want to manage small to mid-size mutual funds (each a series of the Trust) without having to administer the day-to-day operations of a fund, including the management of corporate, board and regulatory governance. During the relevant period, NLFT and NLVT were comprised of up to 64 and 7 series, respectively, many of which were managed by different advisers and sub-advisers.

11. NLCS, an affiliate of GFS, is a company that was formed in 2004 to provide CCO services to mutual funds in light of the Commission’s adoption of Rule 38a-1 under the Investment Company Act in 2003. NLCS provides its CCO services to the Trusts and their respective series, and is also paid for its services out of fund assets based on a contract approved by the independent Trustees.

12. GFS is a full-service mutual fund administrator that provides comprehensive services to the Trusts and their respective series for fund administration, fund accounting, and transfer agent services based on a contract approved by the independent Trustees. GFS is affiliated with other service providers of the Trusts, excluding advisers. Each series within the Trusts pays for GFS’s services out of fund assets.

13. During the relevant period, the Trusts’ boards of trustees consisted of five individuals, four of whom were not an “interested person” of the Trusts as that term is defined under Section 2(a)(19) of the Investment Company Act. They included Miola, the sole interested trustee and chairman of the Trusts, and Bryan, Hertl, Lanzen and Taylor, the not interested trustees.

Section 15(c) of the Investment Company Act and the Related Fund Filing Reports and Disclosures

The Requirements of the Investment Company Act and the Rules Thereunder

14. The Investment Company Act assigns specific responsibilities upon the directors of a mutual fund for the protection of its shareholders, including the duty to evaluate the terms of a fund's advisory contract when approving the contract. Specifically, Section 15(c) of the Investment Company Act makes it unlawful for a fund to enter into or renew any advisory contract unless the terms of the contract are approved by a majority of the fund's independent directors. As part of the approval process, Section 15(c) imposes a specific duty on all directors to request and evaluate, and a duty on an adviser to furnish, such information as may reasonably be necessary for the directors to evaluate the terms of the adviser's contract. The directors' duty under this provision "is one of the most important fund governance obligations assigned to directors under the Investment Company Act." See Role of Independent Directors of Investment Companies, Investment Company Act Release No. 24082 (proposed Nov. 3, 1999)

15. While Section 15(c) does not define what is "reasonably necessary" to evaluate a contract's terms, the Commission has promulgated various fund filing disclosure requirements to better inform shareholders about a board's evaluation process when approving or renewing an advisory contract. First, in 1994, the Commission adopted the requirement that a fund disclose in its proxy statements the material factors that formed the basis for the board's recommendation that shareholders approve an advisory contract. See Amendments to Proxy Rules for Registered Investment Companies, Investment Company Act Release No. 20614 (Oct. 13, 1994). In 2001, the Commission adopted form amendments requiring funds to provide similar disclosures in their Statements of Additional Information ("SAI"). See Role of Independent Directors of Investment Companies, Investment Company Act Release No. 24816 (Jan. 16, 2001). As noted by the Commission in that adopting release, "[m]utual funds fees and expenses, including advisory fees, are extremely important to shareholders," and therefore "[f]unds are required to provide appropriate detail regarding the board's basis for approving an existing investment advisory contract, including the particular factors forming the basis of this determination." Particularly relevant here, with these new form amendments, the Commission reminded funds in enacting the release "that 'boilerplate' disclosure is not appropriate."

16. In 2004, the Commission again adopted form amendments, which replaced the previous SAI requirements² and require that when a fund board approves or renews any advisory contract, the fund's next shareholder report must discuss, in reasonable detail, the material factors and conclusions with respect thereto that formed the basis for the directors' approval or renewal of that contract. See Disclosure Regarding the Approval of Investment Advisory Contracts by Directors of Investment Companies, Investment Company Act Release No. 26486 (June 30, 2004).

² Specifically, the Commission removed the requirement for disclosure in a fund's SAI with respect to the board's approval of any existing investment advisory contract as long as the fund's prospectus includes a statement that a discussion regarding the basis for the board's approval is available in the fund's annual or semi-annual report. See Disclosure Regarding the Approval of Investment Advisory Contracts by Directors of Investment Companies, Investment Company Act Release No. 26486 (June 30, 2004).

In support of these amendments, the Commission reasoned that the visibility of this disclosure to fund shareholders “may encourage funds to provide a meaningful explanation of the board’s basis for approving an investment advisory contract,” which “in turn, may encourage fund boards to consider investment advisory contracts more carefully.”

17. In addition, as part of the 2004 form amendments described in paragraph 16, above, the Commission adopted several enhancements to the existing disclosure requirements to address “concerns regarding the adequacy of review of advisory contracts and management fees by fund boards” with the notion that “[i]ncreased transparency with respect to investment advisory contracts, and fees paid for advisory services, will assist investors in making informed choices among funds and encourage fund boards to engage in vigorous and independent oversight of advisory contracts.” Investment Company Act Release No. 26486. Specifically, as to the approval or renewal of an advisory contract, funds must include a discussion in their shareholder reports concerning, at a minimum: (1) the nature, extent, and quality of the services to be provided by the investment adviser; (2) the investment performance of the fund and the investment adviser; (3) the costs of the services to be provided and profits to be realized by the investment adviser and its affiliates from the relationship with the fund; (4) the extent to which economies of scale would be realized as the fund grows; and (5) whether fee levels reflect these economies of scale for the benefit of fund investors. See Form N-1A, Item 27(d)(6)(i). Furthermore, Form N-1A requires that the shareholder report indicate whether the board relied upon fee comparisons with other funds or types of clients in approving the contract and, if so, describe the comparisons that were relied upon and how they assisted the board in concluding that the contract should be approved. Id.

18. As noted by the Commission, “[i]t would be difficult for a board to reach a final conclusion as to whether to approve an advisory contract without reaching conclusions as to each material factor.” Investment Company Act Release No. 26486 (Emphasis added). Therefore, the form amendments require a discussion of “how the board evaluated each factor,” and indicate that “conclusory statements or a list of factors” will not be considered sufficient disclosure. See Form N-1A, Item 27(d)(6), Instruction No. 2. Thus, the Commission addressed some commenters’ views that such specific disclosure “would be useful in ensuring that the discussion has reasonable detail and does not rely on boilerplate disclosure.” Investment Company Act Release No. 26486.

19. In connection with a board’s Section 15(c) evaluation process, the Commission also amended a fund recordkeeping rule, Rule 31a-2 under the Investment Company Act, which requires that funds retain copies of the written materials that directors considered in approving or renewing an advisory contract. Rule 31a-2(a)(6) under the Investment Company Act. According to the Commission, that requirement was designed “to improve the documentation of a fund board’s basis for approving an advisory contract, which would assist [the Commission’s] examination staff in determining whether fund directors are fulfilling their fiduciary duties when approving advisory contracts.” See Investment Company Governance, Investment Company Act Release No. 26520 (July 27, 2004) (amending Rule 31a-2).

The Disclosures Included Within Certain Shareholder Reports Regarding the Trustees' Section 15(c) Evaluation Process

20. During the relevant period, the Trustees conducted fifteen board meetings during which they considered whether to approve or renew a total of 113 advisory and 32 sub-advisory contracts in accordance with their duties under Section 15(c) of the Investment Company Act. The board meetings also covered other official business of the Trusts and their series, and typically lasted at least a full day. The number of advisory contracts that the Trustees considered varied with respect to each meeting as did the time for which the Trustees discussed each contract, with more time typically spent on new contracts and less on renewals. Because of the large number of series within the Trusts, the Trustees often had to consider several new contracts and renewals at each board meeting, and at two separate board meetings, the Trustees considered over twenty contracts. The Trustees understood that fund shareholder reports were required to disclose the material factors considered and conclusions reached by them in deciding to approve or renew a fund's advisory contract. In all cases, the Trustees knew that the disclosures required to be contained in the shareholder reports would be prepared by GFS and were subject to the review and approval of the Trust's outside counsel prior to their publication. The Trustees further understood that their meeting minutes should document their consideration of and conclusions reached with respect to such material factors. For each contract consideration, and on the advice of the Trusts' outside counsel, the Trustees requested information from the relevant adviser related to the factors discussed in paragraph 17, above, including information related to fee comparisons. Outside counsel solicited and reviewed the information received in response to these requests for completeness on an adviser-by-adviser basis in advance of each board meeting, and the information was then used by the Trustees to evaluate the terms of the advisory contract.

21. Each board meeting included an individual who was responsible, as the note taker or secretary to the Trusts, for taking notes that would be used to draft the board minutes. The secretary was also responsible for preparing and finalizing the board minutes. Typically, the secretary created the first draft of the minutes with the assistance of various GFS paralegals, who were responsible for providing the secretary with a "bones" draft of the minutes normally within six weeks after the relevant board meeting. The paralegals drafted the "bones" version based on their review of the meeting agenda and use of a minutes template, which included boilerplate language concerning the material factors and conclusions which formed the basis for the Trustees' Section 15(c) approval or renewal of the advisory contracts. These initial drafts were supplemented with details by the Trusts' corporate secretary, and then reviewed for accuracy, revised, and approved by the Trusts' outside counsel who led the Trustees in the Section 15(c) process and participated in each meeting.

22. After the secretary finalized the minutes, and they were reviewed and revised by the Trusts' outside counsel using notes taken at the meeting, the minutes were submitted to the Trustees for their review and final approval typically weeks or months after the meeting occurred. During the relevant period, the Trustees were advised by the Trusts' outside counsel that "[m]eeting minutes are the official record of the Board meetings and document the fulfillment by the Board of its regulatory responsibilities. Trustees should review the minutes to confirm that they accurately reflect Board discussions." The minutes, as reviewed and approved by the

Trustees, were later used by GFS to draft those sections of the applicable fund shareholder reports that included a discussion of the Trustees' Section 15(c) evaluation process. Like the minutes, these fund filing disclosures included, among other things, the boilerplate language concerning the material factors and conclusions which formed the basis for the Trustees' approval or renewal of the advisory contracts.

23. During the relevant period, there were instances where certain series' shareholder report disclosures concerning the Trustees' Section 15(c) evaluation process were materially untrue or misleading, in that the boilerplate disclosures either misrepresented material information considered by the Trustees or omitted material information concerning how the Trustees evaluated certain factors. Examples of such untrue or misleading disclosures included:

- a. Example 1: In connection with the Trustees' decision to renew an advisory contract, the applicable fund shareholder report disclosed that the adviser "had provided the Board with written materials regarding . . . the level of the advisory fees charged compared with the fees charged to comparable mutual funds or accounts," and that the Trustees "discussed the comparison of management fees and total operating expense data and reviewed the Fund's advisory fees and overall expenses compared to a peer group of similarly managed funds," and ultimately concluded that the Fund's advisory fee was "acceptable in light of the quality of the services the Fund currently receives from the Adviser, and the level of fees paid by funds in the peer group." However, these boilerplate statements were materially untrue since the adviser had not provided any advisory fee peer group information to the Trustees for their consideration.
- b. Example 2: In connection with the Trustees' decision to renew an advisory contract, the applicable fund shareholder report disclosed that the Trustees "discussed the comparison of management fees and total operating expense data and reviewed the Fund's advisory fees and overall expenses compared to a peer group of similarly managed funds. . . . The Trustees concluded that the Fund's advisory fees and expense ratio were acceptable in light of the quality of the services the Fund currently receives from the Adviser, and the level of fees paid by a peer group of other similarly managed mutual funds of comparable size." However, these boilerplate statements were materially misleading since they implied that the fund was paying fees that were not materially higher than the middle of its peer group range when, in fact, the adviser's approved fee was materially higher than all of the fees of the adviser's selected peer group of 74 funds and nearly double the peer group's mean fee. Therefore, the reference to "the level of fees paid by funds in the selected peer group," without further meaningful discussion about the adviser's comparable fee and other information considered by the Trustees, did not provide current and prospective fund shareholders with all necessary material facts concerning the basis for the Trustees' conclusion that the advisory fee was acceptable.

- c. Example 3: In connection with the Trustees' decision to approve an advisory contract, the applicable fund shareholder report disclosed that the Trustees "reviewed information regarding fees and expenses of comparable funds and concluded that [the adviser's] advisory fee and expense ratio were acceptable in light of the quality of the services the Fund expected to receive from the Adviser, and the level of fees paid by the funds in the peer group." However, these boilerplate statements were materially misleading since they implied that the fund was paying fees that were not materially higher than the middle of its peer group range when, in fact, the adviser's approved fee was materially higher than all of the fees of the adviser's selected peer group of 17 funds and more than double the peer group's mean fee. Therefore, the reference to "the level of fees paid by funds in the peer group," without further meaningful discussion about the adviser's comparable fee and other information considered by the Trustees, did not provide current and prospective fund shareholders with all necessary material facts concerning the basis for the Trustees' conclusion that the advisory was acceptable.

24. Although not created for public disclosure, the relevant board minutes were intended to summarize the key items addressed during the board meetings, and also formed the basis for the shareholder report disclosures, including the examples referenced in paragraph 23, above. The minutes, as drafted by GFS, reviewed and approved by the Trusts' outside counsel and then reviewed and approved by the Trustees, sometimes contained boilerplate language that was materially untrue or misleading.

The Failure by GFS to Ensure that Certain Series Maintained and Preserved Their Complete Section 15(c) Files

25. During the relevant period, GFS, as the fund administrator to all series of the Trusts, was contractually responsible for ensuring that the series maintained and preserved all documents and other written information that the Trustees considered in approving the series' advisory contracts in accordance with Rule 31a-2(a)(6) under the Investment Company Act. However, in several instances, certain series' Section 15(c) files were deficient and therefore failed to comply with the Rule. For example, on three occasions and at the advisers' request, written financial information provided by the advisers as part of their Section 15(c) submissions was discarded by GFS or returned to the advisers after the board meetings due to the advisers' concerns of confidentiality. Furthermore, on four other occasions, certain series failed to maintain written management fee peer group comparisons as submitted by the advisers. Finally, throughout most of the relevant period, certain series failed to maintain written 15(c) summaries that were prepared by the Trusts' outside counsel to assist the Trustees during their 15(c) analysis.

The Failure by GFS to Ensure that Certain Shareholder Reports Included All Disclosures Concerning the Trustees' Section 15(c) Evaluation Process

26. As the fund administrator to all series of the Trusts, GFS was also contractually responsible for preparing the series' shareholder reports, including those portions of the reports that

included a discussion of the Trustees' Section 15(c) evaluation process as required by Item 27(d)(6) of Form N-1A. However, on ten occasions during the relevant period, GFS failed to ensure that certain shareholder reports included the required discussion of the Trustees' evaluation process. After the Commission staff brought the issue to GFS' attention during the course of the staff's investigation, GFS thereafter promptly undertook remedial efforts to correct the error.

Rule 38a-1 under the Investment Company Act Concerning a Fund's Compliance Program

The Requirements of Rule 38a-1 under the Investment Company Act

27. In 2003, the Commission adopted Rule 38a-1 under the Investment Company Act, which generally requires fund boards to adopt and implement written policies and procedures reasonably designed to prevent the fund from violating the federal securities laws. See Compliance Programs of Investment Companies and Investment Advisers, Investment Company Act Release No. 26299 (Dec. 17, 2003). The Rule permits the Commission to address the failure of an adviser or fund to have in place adequate compliance controls, before that failure has a chance to harm clients or investors. To effectuate a fund's compliance program, Rule 38a-1 requires that each fund appoint a CCO who is responsible for administering the fund's policies and procedures as approved by its board.

28. Among other things, the Rule requires fund boards to approve the policies and procedures of fund service providers through which the fund conducts its activities, including the policies and procedures of the fund's adviser. The approval must be based on a finding by the board that the policies and procedures are reasonably designed to prevent violation of the federal securities laws by the fund and its service providers. See Rule 38a-1(a)(2). However, rather than requiring directors to review lengthy compliance manuals, the Commission indicated in the adopting release that "[d]irectors may satisfy their obligations under the rule by reviewing summaries of compliance programs prepared by the chief compliance officer," which should "familiarize the directors with the salient features of the programs (including programs of the service providers) and provide them with a good understanding of how the compliance programs address particularly significant compliance risks." Investment Company Act Release No. 26299.

The Compliance Programs of the Trusts and Their Series

29. During the relevant period, the Trustees adopted and approved a compliance manual ("Compliance Manual") for the Trusts, which provided a written description of the Trusts' overall compliance program. Pursuant to a consulting agreement, NLCS provided its CCO services to the Trusts and their respective series through which NLCS was responsible for administering their compliance programs in conformity with the requirements of Rule 38a-1.

30. The Compliance Manual included the Trusts' policies and procedures for board approval of each service provider's compliance program. In tracking the requirements of Rule 38a-1(a)(2), the Compliance Manual instructed that the board's approval of the compliance programs of a fund's service providers must be based on a finding by the board that the providers' compliance programs are reasonably designed to prevent violations of the federal securities laws.

The Compliance Manual also instructed that the Trusts' CCO should provide the board with materials upon which the board could approve the service providers' compliance programs.

31. In satisfying the "materials" requirement as noted in paragraph 30, above, the Compliance Manual stated that the CCO could provide the board with the compliance manuals, policies, procedures and practices of each fund service provider for the board's own review or, as an alternative:

[s]ummaries of Compliance Programs prepared by the Chief Compliance Officer, legal counsel or other persons familiar with the Compliance Programs. The summaries should familiarize directors with the salient features of the Compliance Programs (including Compliance Programs of Fund Service Providers) and provide them with a good understanding of how the Compliance Programs address particularly significant compliance risks.

This quoted language of the Compliance Manual tracked the statement included within the Commission's adopting release for Rule 38a-1 as noted in paragraph 28, above. Furthermore, the Compliance Manual placed specific responsibility for implementing the Trusts' policies and procedures related to the board's approval of service providers' compliance programs upon the Trustees and the Trusts' CCO. The Trustees adopted the policies and procedures as outlined in the Trusts' Compliance Manual for each series that was added to the Trusts during the relevant period (the "Series' Compliance Manuals").

32. Despite the Series' Compliance Manuals, which delineated the alternative materials upon which the Trustees could rely when approving the compliance programs of the series' service providers, NLCS and the Trustees followed a different process for obtaining the Trustees' approval of the compliance programs of the series' advisers. Specifically, the Trustees' approval of the advisers' compliance programs during the relevant period was based primarily on a brief written statement prepared by NLCS at the conclusion of its compliance review, indicating that the advisers' compliance manuals were "sufficient and in use" and also indicating that the code of ethics and proxy voting policies were "compliant." This written statement was accompanied by a verbal representation by an NLCS representative at the relevant board meeting that the adviser's policies and procedures were adequate. However, the written statement and oral representation by NLCS did not constitute an adequate summary that familiarized the Trustees with the salient features of the advisers' compliance programs and that provided the Trustees sufficient understanding of how the programs addressed particularly significant risks.

33. Accordingly, by virtue of this deviation from the Series' Compliance Manuals, NLCS and the Trustees did not ensure that the series implemented their policies and procedures concerning the items upon which the Trustees could rely when the Trustees approved the compliance programs of the series' advisers.

Violations

The Trustees Caused Violations of Section 34(b) of the Investment Company Act

Certain Series' Shareholder Reports

34. Section 34(b) of the Investment Company Act makes it unlawful for any person to make any untrue statement of a material fact in a document filed or transmitted pursuant to the Investment Company Act or the keeping of which is required pursuant to Section 31(a). The same section makes it unlawful to omit to state from any such document any fact necessary in order to prevent the statements made therein, in light of the circumstances under which they were made, from being materially misleading. As noted in paragraph 20, above, the Trustees knew that fund shareholder reports are required to disclose the material factors considered, and conclusions reached, by the Trustees in deciding to approve or renew a fund's advisory contract. The Trustees further understood that their meeting minutes should document their consideration of, and conclusions reached with respect to, such material factors, and that the "Trustees should review the minutes to confirm that they accurately reflect Board discussions." As described in paragraph 24, above, certain board minutes reviewed and approved by the Trustees contained boilerplate language and materially untrue or misleading statements concerning the material factors and conclusions that formed, at least in part, the basis for the Trustees' renewal or approval of certain advisory contracts. These minutes were then used by GFS to draft the required disclosures within the applicable series' shareholder reports, which also included the materially untrue or misleading disclosures concerning the Trustees' Section 15(c) evaluation process. Accordingly, the Trustees were a cause of those series' violations of Section 34(b) of the Investment Company Act.

The Corresponding Board Minutes

35. Section 31(a) of the Investment Company Act requires registered investment companies to maintain and preserve such records as prescribed by Commission rules and regulations. Rule 31a-1(b)(4) thereunder requires each registered investment company to maintain minute books of directors' meetings. In connection with each meeting, the Trustees understood that their meeting minutes should document their consideration of the material factors considered, and conclusions reached, in deciding to approve or renew a fund's advisory contract, and that the "Trustee should review the minutes to confirm that they accurately reflect Board discussions." Accordingly, the Trustees also caused violations of Section 34(b) of the Investment Company Act by approving certain board minutes, as noted in paragraph 24, above, that were materially untrue or misleading.

NLCS and the Trustees Caused Certain Series' Violations of Rule 38a-1(a)(1) under the Investment Company Act by Failing to Ensure that those Series Implemented Their Policies and Procedures

36. Rule 38a-1(a)(1) under the Investment Company Act requires a fund to adopt and implement written policies and procedures reasonably designed to prevent violation of the federal securities laws by the fund, including policies and procedures that provide for the oversight of

compliance by the fund's investment adviser. As described above, the Series' Compliance Manuals required NLCS, which provided its CCO services to the series, to furnish the Trustees with materials upon which the Trustees could rely in order to approve the policies and procedures of the series' advisers. Such materials were to include either: (1) copies of the advisers' policies and procedures for the Trustees' review; or (2) a summary of the advisers' compliance programs prepared by NLCS that familiarized the Trustees with the salient features of the compliance programs and that provided the Trustees with a good understanding of how the advisers' compliance programs addressed particularly significant risks. However, this policy of the series was not implemented as the Trustees instead relied primarily upon a written statement prepared by NLCS at the conclusion of its compliance review, noting that the advisers' compliance manuals were "sufficient and in use" and also indicating that the code of ethics and proxy voting policies and procedures were "compliant," along with a representation by NLCS at the relevant board meeting that the advisers' policies and procedures were adequate. Accordingly, NLCS and the Trustees caused certain series' violations of Rule 38a-1(a)(1) since NLCS and the Trustees failed to ensure that the series implemented their own policies and procedures concerning the items upon which the Trustees could rely in approving the compliance manuals of the series' advisers.

GFS Caused Certain Series' Violations of Section 31(a) of the Investment Company Act and Rule 31a-2(a)(6) Thereunder

37. As noted above, Section 31(a) of the Investment Company Act requires registered investment companies to maintain and preserve such records as prescribed by Commission rules and regulations. Rule 31a-2(a)(6) thereunder pertains to the specific recordkeeping requirement regarding an investment company's Section 15(c) files. Specifically, the Rule requires each investment company to "[p]reserve for a period of not less than six years . . . any documents or other written information considered by the directors of the investment company pursuant to Section 15(c) of the Act in approving the terms or renewal of a contract[.]" As a result of the conduct described in paragraph 25, above, GFS caused certain series' violations of Section 31(a) of the Investment Company Act and Rule 31a-2(a)(6) thereunder by failing to ensure, as the fund administrator, that these series maintained and preserved copies of all documents considered by the Trustees in approving or renewing the advisory contracts to those series.

GFS Caused Certain Series' Violations of Section 30(e) of the Investment Company Act and Rule 30e-1 Thereunder

38. Section 30(e) of the Investment Company Act and Rule 30e-1 thereunder require management investment companies to send shareholders semi-annual and annual reports that contain such information as the Commission may require by rule or regulation. Form N-1A is used by open-end management investment companies, and was designed by the Commission "to provide investors with information that will assist them in making a decision about investing in an investment company." Item 27(d)(6) of Form N-1A requires that, if a fund's board approved any investment advisory contract during the fund's most recent fiscal half-year, the next such report must contain a discussion, in reasonable detail, concerning "the material factors and the conclusions with respect thereto that formed the basis for the board's approval." As a result of the conduct described in paragraph 26, above, GFS caused certain series' violations of Section 30(e) of

the Investment Company Act and Rule 30e-1 thereunder by failing to ensure, as the responsible party, that the series' shareholder reports issued during the relevant period contained the discussion required by Item 27(d)(6) of Form N-1A.

Undertakings

Respondents have agreed to the following undertakings:

39. **Independent Compliance Consultant.** Respondents have undertaken:

- a. to hire, within 60 days of the Order, an Independent Compliance Consultant not unacceptable to the staff of the Commission. Respondents shall require the Independent Compliance Consultant to review: (i) the compliance procedures applicable to the advisory contract review process, disclosure, recordkeeping and reporting obligations as described in paragraphs 14-26, above; and (ii) the compliance procedures applicable to the compliance programs of the Trusts and their applicable series described in paragraphs 27-33, above. The Independent Compliance Consultant's compensation and expenses as outlined in paragraph 39.e. of this Order shall be borne exclusively by Respondents or any of their affiliates. Under no circumstances will such compensation and expenses be borne by the Trusts or their respective series. Respondents shall cooperate fully with the Independent Compliance Consultant and shall provide the Independent Compliance Consultant with access to any of their files, books, records and personnel as reasonably requested for review; provided, however, that Respondents need not provide access to materials as to which Respondents may assert a valid claim of the attorney-client privilege. The Independent Compliance Consultant shall maintain the confidentiality of any materials and information provided by Respondents, except to the extent it is included in the Report described below;
- b. to require that, at the conclusion of the review, which in no event shall be more than 180 days after the date of the Order, the Independent Compliance Consultant shall submit a Report to Respondents and the staff of the Commission. The Report shall address the issues described in paragraph 39.a. of these undertakings, and shall include a description of the review performed, the conclusions reached, the Independent Compliance Consultant's recommendation for changes in or improvements to policies and procedures of Respondents or the Trusts concerning the issues described in paragraph 39.a. of these undertakings and a procedure for implementing the recommended changes in or improvements to the procedures;
- c. to adopt all recommendations contained in the Report of the Independent Compliance Consultant; provided, however, that within 30 days after

receipt of the Report, Respondents shall in writing advise the Independent Compliance Consultant and the staff of the Commission of any recommendations that they consider to be unnecessary or inappropriate. With respect to any recommendation that Respondents consider unnecessary or inappropriate, Respondents need not adopt that recommendation at that time but shall propose in writing an alternative policy, procedure or system designed to achieve the same objective or purpose;

- d. that as to any recommendation with respect to the policies and procedures of Respondents or the Trusts on which Respondents and the Independent Compliance Consultant do not agree, such parties shall attempt in good faith to reach an agreement within 60 days after Respondents' receipt of the Independent Compliance Consultant's Report. In the event Respondents and the Independent Compliance Consultant are unable to agree on an alternative proposal acceptable to the staff of the Commission, Respondents will abide by the determinations of the Independent Compliance Consultant; provided, however, that Respondents may petition the Commission staff for relief from the recommendation;
- e. that Respondents (i) shall not have the authority to terminate the Independent Compliance Consultant without the prior written approval of the staff of the Commission before the completion of the Report; (ii) shall compensate the Independent Compliance Consultant, and persons engaged to assist the Independent Compliance Consultant, for services rendered pursuant to the Order at their reasonable and customary rates; (iii) shall not be in and shall not have an attorney-client relationship with the Independent Compliance Consultant and shall not seek to invoke the attorney-client or any other doctrine or privilege to prevent the Independent Compliance Consultant from transmitting any information, reports, or documents to the staff of the Commission;
- f. require the Independent Compliance Consultant 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 Compliance Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondents or the Trusts, or any of their present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement will also provide that the Independent Compliance 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 Compliance Consultant in performance of his/her duties under this Order shall not, without prior written consent of the staff of the Commission, enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondents or the Trusts,

or any of their 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;

- g. to certify, in writing, compliance with the undertakings according to the timelines set forth above. The certification shall identify the undertakings, 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 Noel M. Franklin, 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; and
- h. to preserve for a period of not less than five (5) years from the date of the Order, the first two years in an easily accessible place, any record of their compliance with the undertakings set forth in this paragraph.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondents' Offer.

Accordingly, pursuant to Section 9(f) of the Investment Company Act, it is hereby ORDERED that:

- A. Respondent NLCS cease and desist from committing or causing any violations and any future violations of Rule 38a-1 under the Investment Company Act;
- B. Respondent GFS cease and desist from committing or causing any violations and any future violations of Sections 30(e) and 31(a) of the Investment Company Act and Rules 30e-1 and 31a-2(a)(6) thereunder;
- C. Respondents Miola, Bryan, Hertl, Lanzen, and Taylor cease and desist from committing or causing any violations and any future violations of Section 34(b) of and Rule 38a-1(a)(1) under the Investment Company Act;
- D. Respondents GFS and NLCS shall, within 10 days of the entry of this Order, each pay a civil money penalty in the amount of \$50,000 to the United States Treasury. If timely payments are 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 Respondent's name as 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 Julie K. Lutz, Esq., Associate Director, Denver Regional Office, Securities and Exchange Commission, 1801 California Street, Suite 1500, Denver, Colorado 80202; and

E. Respondents shall comply with the undertakings enumerated in paragraph 39, above.

By the Commission.

Elizabeth M. Murphy
Secretary