UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9667 / October 17, 2014

SECURITIES EXCHANGE ACT OF 1934
Release No. 73386 / October 17, 2014

INVESTMENT ADVISERS ACT OF 1940
Release No. 3955 / October 17, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15766

In the Matter of

CLEAN ENERGY CAPITAL, LLC and SCOTT A. BRITTENHAM,

Respondents.

ORDER MAKING FINDINGS AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933, SECTION 15(b) OF THE SECURITIES EXCHANGE ACT OF 1934, AND SECTIONS 203(e), 203(f) AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940

I.

On February 25, 2014, the Securities and Exchange Commission ("Commission") instituted proceedings pursuant to Section 8A of the Securities Act of 1933 ("Securities Act"), Sections 15(b) and 21C of the Securities Exchange Act of 1934 ("Exchange Act"), Sections 203(e), 203(f) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act"), and Section 9(b) of the Investment Company Act of 1940 ("Investment Company Act") against Respondents Clean Energy Capital, LLC ("CEC") and Scott A. Brittenham ("Brittenham") (collectively "Respondents").

II.

Respondents have submitted Offers of Settlement (the "Offers") 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 Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Section 8A of the Securities Act, Section 15(b) of the Exchange Act, Sections 203(e), 203(f) and 203(k) of the Advisers Act ("Order"), as set forth below.

III.

On the basis of this Order and Respondents' Offers, the Commission finds[1] that:

Summary

1. This proceeding involved breaches of fiduciary duty and materially misleading statements and omissions by CEC, an investment adviser formerly registered with the Commission, and its founder, president, and main portfolio manager, Scott A. Brittenham ("Brittenham"), with respect to 20 private equity funds sold and managed by CEC, primarily under the name Ethanol Capital Partnership, L.P. (the "ECP Funds").

2. From 2008 to the present, CEC and Brittenham committed a number of violations with respect to the ECP Funds arising from the following negligent actions: First, CEC and Brittenham allocated certain CEC expenses, including the majority of Brittenham's own compensation, to the ECP Funds without adequate disclosure to investors. Second, CEC and Brittenham caused the funds to borrow money from CEC without notice to investors, pledging the ECP Funds' own assets as collateral. Third, beginning in August 2011, CEC changed the calculation of dividend distributions for certain of the Funds, adversely affecting the dividends received by investors in Series A, B and C. Fourth, in 2009, CEC and Brittenham accepted an investment in a new ECP Fund from a prior investor after misrepresenting the amounts of the investments by Brittenham and another co-founder ("Co-Founder") in the new fund. Fifth, CEC violated the custody rule by failing to use a qualified custodian and failing to segregate ECP Fund assets. Sixth, and relatedly, CEC's compliance policy was inadequate to the extent it incorrectly described the custody rule, resulting in the above violation. Seventh, for the ECP Funds offered in late 2008-2010 – Funds R, T and V – CEC omitted Co-Founder's SEC disciplinary history in the offering documents for the funds.

Respondents

3. **CEC** is a limited liability company based in Tucson, Arizona that was organized in Delaware in 2004 under the name Ethanol Capital Management, LLC. On October 26, 2007, CEC registered with the Commission as an investment adviser. In 2009, CEC changed its name to Clean Energy Capital, LLC. In 2012, CEC determined that it was ineligible to register with the Commission because of the size of its assets under management, and as of March, 2014, CEC is no longer registered.

[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.

4. **Brittenham** is CEC's co-founder, CEO and control person. Brittenham has an 85% ownership interest in CEC and a 50% voting interest, and is also an investor in two ECP Funds managed by CEC. At all relevant times, Brittenham was responsible for the management of CEC's business.

Other Relevant Entities

5. **Ethanol Capital Partners, L.P.,** a Delaware limited partnership, was organized on May 27, 2004. CEC marketed 19 separate private equity funds to investors using this partnership, offering each as separate "series" that were named Ethanol Capital Partners, L.P. Series A, B, C, D, E, G, H, I, J, L, M, N, O, P, Q, R, S, T, and V. CEC also marketed a fund named Tennessee Ethanol Partners, L.P. ("TEP"), which is a Delaware limited partnership that was organized on June 10, 2005. In total, the 20 ECP Funds raised $64 million from hundreds of investors.

Background

6. CEC, which was founded by Brittenham and Co-Founder, is the investment adviser for the private equity funds, ECP Funds. The 20 ECP Funds all have the same investment strategy: investment in private ethanol production plants through various portfolio companies.

7. Investments in the ECP Funds (in the form of limited partnership interests) are primarily governed by two documents created for each of the Funds: private placement memoranda ("PPMs") and limited partnership agreements ("LPAs"). Brittenham had final authority over these offering documents.

CEC and Brittenham Misallocated Certain CEC Expenses to the ECP Funds

8. From at least 2008 to the present, CEC and Brittenham allocated certain CEC overhead expenses, including compensation paid to Brittenham, to the ECP Funds.

9. The ECP Funds are separate legal entities that own interests in private entities; because of the nature of these vehicles, the ECP Funds do not have any officers or employees. They pay CEC a management fee of 1.5% to 3% of Fund assets, and also pay CEC portions of the dividends the Funds received from the portfolio companies and portions of the proceeds from sales of portfolio company stock.

10. All of the expenses incurred by CEC and the ECP Funds were grouped into three broad categories: (i) CEC-only expenses; (ii) ECP Fund-only expenses; and (iii) expenses split between CEC and the ECP Funds. For the third category (the "Split Expenses"), CEC generally allocated 70% of the Split Expenses to all of the ECP Funds identically based on each Fund's net capital contributions, although the actual expense may not have been incurred by a particular Fund, and 30% to CEC (the "Split Ratio"). This 70-30 Split Ratio was used because CEC had

determined that roughly two-thirds of its expenses related to the operation of the ECP Funds. As a result, even though the Split Ratio was applied to each Fund, the ratio was not derived from expenses actually attributable to a particular Fund.

11. Brittenham's compensation accounted for approximately $1.1 million of the Split Expenses from at least 2008 to 2011, including 70% of a $100,000 bonus he received in 2009.

12. For 8 of the Funds, the PPMs and the LPAs did not disclose that these Funds would bear the Split Expenses, and the PPMs stated that CEC would pay its own overhead costs.

13. In addition, CEC's Forms ADV, Part 2 filed on July 20, 2011 and March 30, 2012 did not disclose the sharing of expenses between CEC and the ECP Funds, and did not disclose the Split Expenses. Specifically, item 5 of Part 2A describes the fees charged to manage the Funds as being no greater than 3% annually, and did not mention any sharing of expenses, or that the ECP Funds were paying the majority of Brittenham's compensation through the Split Expenses.

14. CEC also did not expressly disclose the Split Ratio to investors. Further, while the Funds' audited financial statements included a line item for "office overhead," the financial statements did not adequately explain the nature of the Split Expenses. Moreover, Fund investors did not receive audited financial statements until January 2013.

15. By allocating the majority of Brittenham's compensation to the ECP Funds, CEC and Brittenham breached their fiduciary duties to the ECP Funds. The allocation of these expenses to the ECP Funds constituted a conflict of interest that was not expressly disclosed in the Funds' PPMs or LPAs. Also, as 85% owner of CEC, Brittenham took distributions from CEC's profits, and thus also benefitted from the undisclosed misallocation of other CEC expenses to the ECP Funds through the Split Expenses.

16. As a co-founder and controlling owner of CEC, and with ultimate authority over the Fund disclosures, Brittenham knew or should have known that the Split Expenses were not expressly disclosed in the PPMs or LPAs. Brittenham also knew or should have known that the Split Expenses were not reasonable operational expenses of the ECP Funds and were not adequately disclosed to its investors. Because Brittenham is CEC's co-founder and CEO, his negligence is attributable to CEC.

17. Brittenham, as a co-founder and controlling owner of CEC and as a signatory of the Forms ADV, over which he had ultimate authority, and CEC omitted material facts regarding the Split Expenses from the Forms ADV. The misstatements and omissions concerning the Split Expenses in the PPMs and LPAs were material because they impacted investors' investment returns.

CEC and Brittenham Issued Unauthorized Loans to the ECP Funds Collateralized by Securities Owned by the ECP Funds

18. From September 2008 through September 2012, CEC issued loans to 17 ECP Funds. At the time, these Funds had insufficient cash reserves to pay their expenses. The loans were thus needed to continue allocating the Split Expenses to the ECP Funds.

19. CEC set the interest rates on the loans, ranging from 11.86% to 17.38% annually. CEC entered into pledge agreements with these 17 ECP Funds giving CEC a first priority security interest in the respective Funds' assets, consisting of limited liability company interests in privately held portfolio companies. Brittenham executed the promissory notes pertaining to the loans and the pledge agreements on behalf of both CEC and the ECP Funds.

20. CEC had a conflict of interest in issuing the loans and having the ECP Funds pledge their assets as collateral, thereby misusing Fund assets. CEC financially benefitted from the loans and set the interest rate.

21. Each of the 17 ECP Funds had closed to new investors at the time it received the loan from CEC. The LPAs for 14 of the 17 ECP Funds did not permit the Funds to borrow money and issue promissory notes to pay expenses after the Fund had closed. Brittenham unilaterally and without notice to Fund investors amended the LPAs of these 14 ECP Funds to permit loans after the Funds had closed. Even if the LPAs had permitted such unilateral amendments, CEC, as the holder of the notes and security interest, had a conflict of interest and could not consent to the loans and pledges on behalf of the Funds without adequate disclosure to the investors.

22. As a co-founder and controlling owner of CEC, and with ultimate authority over the Fund disclosures, Brittenham knew or should have known that the loans or amendments to the LPAs were not disclosed to the investors. He also acted with negligence by knowingly executing the notes and pledge agreements, and unilaterally and without notice amending the LPAs. Because Brittenham is CEC's co-founder and CEO, his negligence is attributable to CEC.

23. Brittenham's and CEC's failure to disclose any information about the loans, pledges of Fund assets or the unilateral LPA amendments allowing for them was material.

24. Brittenham's and CEC's actions in taking pledges of the 17 ECP Funds' limited liability interests in their portfolio companies constituted principal transactions between CEC and the 17 ECP Funds. Neither CEC nor Brittenham provided written notice to or obtained consent from the 17 ECP Funds prior to each such transaction. CEC's knowledge and execution of the pledge agreements is insufficient to satisfy the notice and consent requirements given CEC's substantial conflict of interest relative to the ECP Funds with respect to the pledges.

CEC and Brittenham Changed CEC's Distribution Calculations Without Adequate Disclosure

25. Beginning as early as 2011, CEC and Brittenham changed in several respects the way CEC calculated distributions, to the detriment of Fund investors and with inadequate disclosure of these material changes to the investors.

26. The LPAs of the ECP Funds provided that the investors would receive distributions when a Fund received a dividend from one of its portfolio companies, or when a Fund sold the stock of its portfolio companies.

27. The LPAs disclosed that if a Fund had "distributable cash" as a result of a dividend, it would distribute that cash in a series of waterfall tiers. While the specific tiers varied among the different ECP Funds, they generally included a specified preferred return to the limited partners, a specified general partner "catch-up", and then a division of any remainder between the limited partners and the general partner according to a disclosed ratio. Section 1.1 of the LPAs defined "Distributable Cash" as the "excess of the sum of all cash receipts of all kinds over cash disbursements (or reserves therefore) for Partnership Expenses."

28. Before August 2011, CEC only calculated the amount available for distribution to a Fund's limited partners after first paying the Fund's operating expenses, while also reserving enough cash for future expenses ("working capital reserve").

29. However, in or around August 2011, CEC began treating the amounts used to replenish ECP Funds' working capital reserves as fulfilling the preferred return to the limited partners, and applied this change retroactively.

30. Also, beginning in at least August 2011, CEC improperly calculated the general partner catch-up. Instead of using the catch-up amount specified for CEC identified in the LPAs, CEC, without disclosure to investors, sometimes used higher catch-up amounts.

31. These changes to the distribution calculations adversely affected the dividends received by investors in Series A, B and C. CEC's and Brittenham's treatment of the distribution calculations and their failure to adequately disclose the treatment were material, as they directly affected investors' investment returns.

32. CEC and Brittenham knew or should have known that they calculated the distributions improperly and failed to disclose the distribution calculations adequately to the limited partners.

Misstatements by CEC and Brittenham Induced Investor A's Investment in Series R

33. During CEC's offering of Series R in September 2009, Investor A, a prospective and past investor in the ECP Funds, inquired about Brittenham's and Co-Founder's investments in the offering.

34. On or about September 21, 2009, Brittenham told Investor A that he and Co-Founder were investing $100,000 each.

35. On or about September 23, 2009, CEC's then-CFO and Chief Compliance Officer forwarded emails he had received from Investor A to Brittenham, which conveyed that (i) Brittenham's and Co-Founder's investments of $100,000 each were important to Investor A's decision to invest and (ii) Investor A believed that each of them was investing $100,000.

36. Based on his belief that both Brittenham and Co-Founder were investing $100,000 each, Investor A invested $250,000 in Series R on or about September 24, 2009. Brittenham and Co-Founder each invested $25,000 in Series R.

37. The amounts of Brittenham's and Co-Founder's investments were material. Investor A expressly stated that the amounts of Brittenham's and Co-Founder's co-investments were important to him.

38. Brittenham knew or should have known that Investor A was mistaken concerning how much he and Co-Founder were investing and that it was important to Investor A's decision to invest, and Brittenham did not take steps to inform Investor A of the true amounts of the co-investments. Because Brittenham is CEC's co-founder and CEO, his negligence is attributed to CEC.

CEC Failed to Use a Qualified Custodian and Did Not Segregate Client Assets

39. Rather than utilize a qualified custodian, CEC kept original stock certificates for securities owned by the ECP Funds in its office. CEC did not send audited financial statements to the limited partners of the ECP Funds until January 2013, at which time it sent audited financial statements for fiscal year 2011. CEC has also never obtained a surprise exam.

40. In addition to the improper custody of the stock certificates, from August 2010 to September 2013, CEC kept the ECP Funds' cash assets in a single "master" bank account. Notwithstanding the existence of a separate subaccount at the bank for each ECP Fund, only one entity, identified as Ethanol Capital Partners, LP, owned all the assets of the subaccounts through the master account. TEP, which is a separately registered limited partnership, shared the same bank account as the other ECP Funds. As a result, the cash assets held by the ECP Funds were commingled.

CEC's Compliance Policies Were Inadequate

41. CEC's compliance policies dated February 2008, October 2009 and March 2010, in describing the private offering exception to the custody rule, Rule 206(4)-2(b) under the Advisers Act, incorrectly substituted the word "or" for the word "and," and therefore incorrectly stated that the adviser need only comply with *one* of the three prongs, rather than *all* three. The

May 2012 policy corrected the description of Rule 206(4)-2(b)(2)(i) to require that all three prongs be satisfied, but inaccurately went on to state that the "securities must fall into one of the above-described exceptions."

42. The description of the exception did not provide that, even if the Funds satisfied the exception in Rule 206(4)-2(b)(2)(i), CEC would still need to comply with the provision in Rule 206(4)-2(b)(2)(ii) relating to the preparation and distribution of audited financial statements. CEC did not so comply.

CEC and Brittenham Negligently Omitted Co-Founder's Prior SEC Violations from the Offering Documents for Three ECP Funds

43. The PPMs for Series R, T and V offerings of the ECP Funds, which were offered and sold to investors from December 2008 through June 2010, did not disclose Co-Founder's previous disciplinary settlement with the Commission. In 2002, the Commission found that Co-Founder violated Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and caused and willfully aided and abetted violations of Sections 206(1) and (2) of the Advisers Act. The Commission censured Co-Founder and ordered him to cease and desist from committing or causing any violations and/or future violations of the foregoing provisions, and pay a civil penalty of $25,000. This matter had been disclosed in prior PPMs for the other ECP Funds.

44. This omission was material, because during these offerings, Co-Founder was a control person for CEC. He was one of CEC's principals and solicited investors for the ECP Funds.

45. As a co-founder and controlling owner of CEC, and with ultimate authority over the Fund disclosures, Brittenham knew or should have known that Co-Founder's disciplinary history was material and was not disclosed in the PPMs for these three ECP Funds. Because Brittenham is CEC's co-founder and CEO, his negligence is attributed to CEC.

Violations

46. As a result of the conduct described above, CEC and Brittenham willfully violated Section 17(a)(2) of the Securities Act, which makes it unlawful for any person in the offer or sale of securities, directly or indirectly, to "obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading."

47. As a result of the conduct described above, CEC and Brittenham willfully violated Section 206(2) of the Advisers Act, which makes it unlawful for any investment adviser, directly or indirectly, to "engage in any transaction, practice or course of business which operates as a fraud or deceit upon any client or prospective client."

48. As a result of the conduct described above, CEC and Brittenham willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-8 promulgated thereunder, which makes it unlawful for any investment adviser to a pooled investment vehicle to "[m]ake any untrue statement of a material fact or to omit to state a material fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading, to any investor or prospective investor in the pooled investment vehicle" or "engage in any act, practice, or course of business that is fraudulent, deceptive, or manipulative with respect to any investor or prospective investor in the pooled investment vehicle."

49. As a result of the conduct described above, CEC and Brittenham willfully violated Section 206(3) of the Advisers Act, which makes it unlawful for any investment adviser, directly or indirectly, "acting as principal for his own account, knowingly to sell any security to or purchase any security from a client…without disclosing to such client in writing before the completion of such transaction the capacity in which he is acting and obtaining the consent of the client to such transaction."

50. As a result of the conduct described above, CEC willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-2 promulgated thereunder, which prohibit a registered investment adviser from having custody of clients' funds or securities, unless, among other requirements, a "qualified custodian" maintains those funds and securities in a separate account for each client under that client's name or in accounts that contain only the clients' funds and securities under the adviser's name as an agent or trustee for the clients.

51. As a result of the conduct described above, CEC willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-7 promulgated thereunder, which require investment advisers to adopt and implement written policies and procedures reasonably designed to prevent violation of the Advisers Act and its rules.

52. As a result of the conduct described above, CEC and Brittenham willfully violated Section 207 of the Advisers Act, which makes it "unlawful for any person willfully to make any untrue statement of a material fact in any registration application or report filed with the Commission . . . or willfully to omit to state in any such application or report any material fact which is required to be stated therein."

Undertakings

Respondents have undertaken to:

1. Retain, not later than 45 days after the date of this Order, at CEC's expense, an independent consultant not unacceptable to the Commission's staff (the "Independent Consultant"). CEC shall require the Independent Consultant to:

   a. conduct a comprehensive review of CEC's current policies, procedures, and systems with respect to accounting and financial statements, disclosure, custody and compliance (collectively the "Policies/Systems");

b. make recommendations for changes or improvements to the Policies/Systems and a procedure for implementing the recommended changes or improvements; and

c. conduct an annual review, for each of the following two years from the date of the issuance of the Independent Consultant's initial report, to assess whether CEC is complying with its revised Policies/Systems and whether the revised Policies/Systems are effective in achieving their stated purposes, and make additional recommendations for changes or improvements to the Policies/Systems, if needed.

2. No later than 10 days following the date of the Independent Consultant's engagement, provide to the Commission staff a copy of an engagement letter detailing the Independent Consultant's responsibilities pursuant to paragraph 1 above. To ensure independence, CEC shall not have the authority to terminate the Independent Consultant without prior written approval of the Commission's staff.

3. Arrange for the Independent Consultant to issue its first report within 90 days after the date of the engagement. For the annual reviews conducted for each of the following two years, arrange for the Independent Consultant to issue each of these reports 365 days following the preceding report. Within 10 days after the issuance of each of the reports, CEC shall require the Independent Consultant to submit to Marshall Sprung, Co-Chief, Asset Management Unit, of the Commission's Los Angeles Regional Office a copy of the Independent Consultant's reports. The Independent Consultant's reports shall describe the review performed and the conclusions reached and shall include any recommendations deemed necessary to make the Policies/Systems adequate and address the deficiencies set forth in Section III of the Order.

4. Within thirty days of receipt of the Independent Consultant's reports, adopt all recommendations contained in the reports and remedy any deficiencies in its written policies, procedures, and systems; provided, however, that as to any recommendation that CEC believes is unnecessary or inappropriate, CEC may, within fifteen days of receipt of the reports, advise the Independent Consultant in writing of any recommendations that it considers to be unnecessary or inappropriate and propose in writing an alternative policy or procedure designed to achieve the same objective or purpose.

5. With respect to any recommendation with which CEC and the Independent Consultant do not agree, attempt in good faith to reach an agreement with the Independent Consultant within thirty days of receipt of the reports. In the event that CEC and the Independent Consultant are unable to agree on an alternative proposal acceptable to the Commission's staff, CEC will abide by the original recommendation of the Independent Consultant.

6. Within thirty days after the date of the Independent Consultant's second annual report, submit an affidavit to the Commission's staff stating that it has implemented any and all

recommendations of the Independent Consultant, or explaining the circumstances under which it has not implemented such recommendations.

7. Cooperate fully with the Independent Consultant and provide the Independent Consultant with access to its files, books, records and personnel as reasonably requested for the Independent Consultant's review.

8. Require the Independent 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 Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with CEC, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement will also provide that the Independent 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 Consultant in performance of his/her duties under this Order shall not, without prior written consent of the Los Angeles Regional Office, enter into any employment, consultant, attorney-client, auditing or other professional relationship with CEC, or any of its 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.

9. Certify, in writing, compliance with the undertaking(s) set forth above. The certification shall identify the undertaking(s), 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 Marshall Sprung, Co-Chief, Asset Management Unit, of the Commission's Los Angeles Regional Office, 444 S. Flower Street, Los Angeles, California, 90071, 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.

IV.

In view of the foregoing, the Commission deems it appropriate, in the public interest, and for the protection of investors to impose the sanctions agreed to in Respondents' Offers.

Accordingly, pursuant to Section 8A of the Securities Act, Section 15(b) of the Exchange Act, and Sections 203(e), 203(f) and 203(k) of the Advisers Act, it is hereby ORDERED that:

A. Respondent CEC shall cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act and Sections 206(2), 206(3), 206(4) and 207 of the Advisers Act and Rules 206(4)-2, 206(4)-7, and 206(4)-8 promulgated thereunder.

B. Respondent Brittenham shall cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act and Sections 206(2), 206(3), 206(4) and 207 of the Advisers Act and Rule 206(4)-8 promulgated thereunder.

C. Respondents CEC and Brittenham are censured.

D. Respondents shall pay disgorgement and prejudgment interest as follows:

1. Respondents shall pay disgorgement of $1,918,157.00 and prejudgment interest of $102,873.91 (the "Disgorgement Amount").

2. A total of $957,587.73 and prejudgment interest of $51,436.95 of the Disgorgement Amount shall be paid to ECP Funds Series A, B and C or their investors. Such Funds will sell the equity of their portfolio companies and make final distributions to investors. Those distributions shall include reimbursement of all amounts collected in payment of expenses, including amounts attributable to the changes in the calculation of distributions in 2011. To the extent such Funds do not sell the equity of their portfolio companies and make final distributions to investors within forty-five (45) days after the entry of this Order, any unreimbursed portion shall added to and augment the Disgorgement Fund referred to in paragraph IV.D.3 below. Respondents shall provide the Commission staff with evidence of such reimbursement in a form acceptable to the Commission staff.

3. A total of $960,569.27 and prejudgment interest of $51,436.96 of the Disgorgement Amount (the "Disgorgement Fund"), shall be disgorged consistent with the provisions of this Subsection D. Within forty five (45) days of entry of this Order, Respondents shall deposit the full amount of the Disgorgement Fund into an escrow account acceptable to the Commission staff and Respondents shall provide the Commission staff with evidence of such deposit in a form acceptable to the Commission staff. If timely deposit is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600.

4. Respondents shall be responsible for administering the Disgorgement Fund. Respondents shall pay applicable portions of the Disgorgement Fund to affected ECF Funds, or to investors in those ECP Funds that have been terminated, pursuant to a disbursement calculation (the "Calculation") that has been submitted to, reviewed and approved by the Commission staff in accordance with this Subsection D. If the total amount otherwise payable to a payee is less than $25.00, Respondents shall instead pay such amount to the Commission for transmittal to the United States Treasury as provided in this Subsection D.

5. Respondents shall, within sixty (60) days from the entry of this Order, submit a proposed Calculation to the Commission staff for its review and

approval that identifies, at a minimum: (i) the name of each affected fund or the name of each ECP Fund investor and the ECP Fund in which the investor invested; (ii) the exact amount of the payment to be made to the ECP Fund or ECP Fund investor; and (iii) a description of the transactions ("Relevant Transactions") to which the payment relates. Respondents also shall provide to the Commission staff such additional information and supporting documentation relating to the Relevant Transactions as the Commission staff may request for the purpose of its review. No portion of the Disgorgement Fund shall be paid to any fund or fund investor directly or indirectly in the name of or for the benefit of CEC, Brittenham, or any other person with an ownership interest in CEC; provided, however, that this provision is not intended to affect the allocation and/or distribution of profits and losses of any ECP Fund as required by its limited partnership agreements. In the event of one or more objections by the Commission staff to Respondents' proposed Calculation and/or any of its information or supporting documents, Respondents shall submit a revised Calculation for the review and approval of the Commission staff and/or additional information or supporting document within ten (10) days of the date that Respondents are notified of the objection, which revised Calculation shall be subject to all of the provisions of this Subsection D.

6. Respondents shall complete the transmission of all amounts otherwise payable to affected ECP Funds and ECP Fund investors pursuant to a Calculation approved by the Commission staff within one hundred and twenty (120) days of the entry of this Order, unless such time period is extended as provided in paragraph (9) of this Subsection D.

7. If Respondents do not distribute or return any portion of the Disgorgement Fund for any reason, including an inability to locate an affected ECP Fund or ECP Fund investor or any factors beyond Respondents' control, or if Respondents have not transferred any portion of the Disgorgement Fund to a payee because that payee is due less than $25.00, Respondents shall transfer any such undistributed funds to the Commission for transmittal to the United States Treasury after the final accounting provided for in this Subsection D is approved by the Commission. Payment must be made in one of the following ways:

    (1) Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

    (2) 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

    (3) 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 CEC or Brittenham as Respondents 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 Marshall Sprung, Division of Enforcement, Securities and Exchange Commission, 444 S. Flower Street, 9th Floor, Los Angeles, California, 90071.

8. Respondents shall be responsible for any and all tax compliance responsibilities associated with the Disgorgement Fund and may retain any professional services necessary. The costs and expenses of any such professional services shall be borne by Respondents and shall not be paid out of the Disgorgement Fund.

9. Within two hundred and ten (210) days after the date of entry of this Order, Respondents shall submit to the Commission staff for its approval a final accounting and certification of the disposition of the Disgorgement Fund, which final accounting and certification shall be in a format to be provided by the Commission staff. The final accounting and certification shall include, but not be limited to: (i) the amount paid to each payee; (ii) the date of each payment; (iii) the check number or other identifier of money transferred; (iv) the date and amount of any returned payment; (v) a description of any effort to locate a prospective payee whose payment was returned or to whom payment was not made for any reason; and (vi) any amounts to be forwarded to the Commission for transfer to the United States Treasury. Respondents shall submit proof and supporting documentation of such payment (whether in the form of cancelled checks, or otherwise) in a form acceptable to the Commission staff and under a cover letter that identifies CEC and Brittenham as the Respondents in these proceedings and the file number of these proceedings to Marshall S. Sprung, Division of Enforcement, Securities and Exchange Commission, 444 S. Flower Street, 9th Floor, Los Angeles, CA 90071. Respondents shall provide any and all supporting documentation for the accounting and certification to the Commission staff upon its request and shall cooperate with any additional requests by the Commission staff in connection with the accounting and certification.

10. After Respondents have submitted the final accounting to the Commission staff, the staff shall submit the final accounting to the Commission for approval and shall request Commission approval to send any remaining amount to the United States Treasury.

11. The Commission staff may extend any of the procedural dates set forth in this Subsection D for good cause shown. Deadlines for dates relating to the Disgorgement Fund shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday the next business day shall be considered to be the last day.

E. Respondents shall, within 45 days of the entry of this Order, pay a civil money penalty in the amount of $225,000 to the Securities and Exchange Commission. This penalty is owed jointly and severally by Respondents CEC and Brittenham. If timely payment is 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 transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(2) 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

(3) 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 CEC or Brittenham as Respondents 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 Marshall Sprung, Division of Enforcement, Securities and Exchange Commission, 444 S. Flower Street, 9th Floor, Los Angeles, California, 90071.

F. Respondents shall comply with the undertakings enumerated in Section III above.

By the Commission.

Brent J. Fields
Secretary