



Sections 203(f) and 203(k) of the Advisers Act, Section 9(b) of the Investment Company Act, and Rule 102(e) of the Commission’s Rules of Practice<sup>2</sup>, against Kelly D. Kaeser (“Kaeser”).

## II.

In anticipation of the institution of these proceedings, Alpha Titans, McCormack and Kaeser (collectively, “Respondents”) have submitted Offers of Settlement (“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, and except as provided herein in Section V as to McCormack, Respondents consent to the entry of this Order Instituting Public Administrative and Cease-and-Desist Proceedings Pursuant to Section 4C of the Securities Exchange Act of 1934, Sections 203(e), 203(f) and 203(k) of the Investment Advisers Act of 1940, Section 9(b) of the Investment Company Act of 1940, and Rule 102(e) of the Commission’s Rules of Practice, 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 finds<sup>3</sup> that:

### A. SUMMARY

1. Over a period of four years, Alpha Titans LLC (“Alpha Titans”), an investment adviser registered with the Commission that advises private funds, and its principal, Timothy P. McCormack, used fund assets to pay for adviser-related operating expenses in a manner (1) not clearly authorized under the funds’ operating documents, and (2) not accurately reflected in the funds’ financial statements as related party transactions. Alpha Titans breached its fiduciary duty when it used the assets of fund clients to pay its expenses without clear authorization in the funds’ operating documents. Further, Alpha Titans and McCormack distributed materially misleading financial statements for the funds that inadequately and incorrectly described the total amount of Alpha Titans’ expenses paid by the funds and the related party relationships. In addition, because

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The Commission may censure any person, or deny, temporarily or permanently, to any person the privilege of appearing or practicing before the Commission in any way, if that person is found . . . to have willfully violated, or willfully aided and abetted the violation of, any provision of the securities laws or the rules and regulations thereunder.

<sup>2</sup> Rule 102(e)(1)(iii) provides, in pertinent part, that:

The Commission may . . . deny, temporarily or permanently, the privilege of appearing or practicing before it . . . to any person who is found...to have willfully violated, or willfully aided and abetted the violation of any provision of the Federal securities laws or the rules and regulations thereunder.

<sup>3</sup> 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.

the funds' financial statements did not reflect certain related party relationships and material transactions, they were not prepared in accordance with Generally Accepted Accounting Principles ("GAAP"), and thus Alpha Titans violated the custody rule. Alpha Titans also violated the compliance rule under the Advisers Act. Kelly D. Kaeser, Alpha Titans' general counsel and chief operating officer, aided and abetted and was a cause of these violations.

## **B. RESPONDENTS**

2. **Alpha Titans LLC** is a California limited liability company based in Santa Barbara, California. It has been registered with the Commission as an investment adviser since 2007. As a registered investment adviser, Alpha Titans is subject to the custody rule promulgated under Section 206(4) of the Advisers Act and set forth as Rule 206(4)-2 thereunder. In lieu of submitting to surprise examinations, Alpha Titans elected to comply with the custody rule by distributing to the private funds' investors annual audited financial statements prepared in accordance with GAAP, and audited by an independent public accountant registered with, and subject to regular inspection by, the PCAOB, within 120 days of the end of the fiscal year.

3. **Timothy P. McCormack**, age 58, is a resident of Santa Barbara, California. McCormack is Alpha Titans' founder, 95% owner, chief executive officer, managing member, chief investment officer and chief compliance officer. Before starting Alpha Titans in 2007, McCormack owned Santa Barbara Alpha Strategies, Inc. ("SBAS"), an investment adviser formerly registered with the Commission. In 2007, he rolled SBAS's operations and employees over to Alpha Titans and later dissolved SBAS. At all relevant times, McCormack was responsible for the management of Alpha Titans' business.

4. **Kelly D. Kaeser, Esq.**, age 46, is a resident of Moorpark, California. He has been Alpha Titans' general counsel since 2007 and chief operating officer since 2009. From 2006 to 2009, Kaeser was general counsel for SBAS, and from 2005 to 2006, he worked for a small, private law firm specializing in employment law. Kaeser is an attorney currently licensed in the state of California and has appeared and practiced before the Commission.

## **C. OTHER RELEVANT ENTITIES**

5. **Alpha Titans LP**, a Delaware limited partnership, is an onshore hedge fund formed by McCormack in September 2007; Alpha Titans is the general partner. **Alpha Titans, Ltd.**, a Cayman Islands exempted company, is an offshore hedge fund formed by McCormack in October 2007 and managed by Alpha Titans. **Alpha Titans MF SPC** (the "Master Fund"), a Cayman Islands segregated portfolio company, is a hedge fund formed by McCormack in October 2007. Alpha Titans pools together assets from Alpha Titans LP and Alpha Titans, Ltd. by investing their assets in the Master Fund. Alpha Titans and McCormack control these funds.

6. **Montreux Partners SPC** ("Montreux"), a Cayman Islands exempted segregated portfolio company, and **Trading Solutions Ltd.** ("Trading Solutions"), a Cayman Islands exempted company, are special purpose vehicles for use with the Master Fund's investments. McCormack formed Montreux and Trading Solutions in February 2008 and June 2009, respectively, and he directed all activities, management and operating policies of both entities.

## D. FACTS

### Background

7. Alpha Titans, an investment adviser founded and operated by McCormack, is the general partner of Alpha Titans LP and the manager of Alpha Titans, Ltd. (collectively, the “Feeder Funds”). Limited partners and shareholders invested money in the Feeder Funds. McCormack then directed that money to flow to the Master Fund. The Master Fund purchased equity options from Trading Solutions with the Feeder Funds’ money. Trading Solutions invested that money in Montreux. Ultimately, Montreux used the Feeder Funds’ money to invest in unrelated private funds. McCormack formed and directed all activities, management and operating policies of Alpha Titans, the Feeder Funds, the Master Fund, Trading Solutions and Montreux.

8. Investments in the Feeder Funds are primarily governed by private placement memoranda (“PPMs”) and the funds’ respective limited partnership and operating agreements, which Kaeser created for each fund. Kaeser also prepared Alpha Titans’ Forms ADV and amendments thereto, which were filed with the Commission in order to register Alpha Titans as an investment adviser and maintain such registration. McCormack assisted with the preparation of the PPMs, agreements, and Forms ADV, and ultimately approved each of them.

9. The Feeder Funds paid Alpha Titans management and performance fees. In 2009 and 2010, Alpha Titans charged the Feeder Funds management fees of 1% annually; in 2011 and 2012, Alpha Titans charged the Feeder Funds management fees ranging from 1% to 2% annually. During the relevant time period, the Feeder Funds paid Alpha Titans over \$2 million in management fees.

### Alpha Titans Used Feeder Funds’ Assets to Pay Its Own Expenses, Which Was Not Clearly Authorized by the Feeder Funds’ Operational Documents

10. Alpha Titans and McCormack paid most of Alpha Titans’ operational expenses with the Feeder Funds’ assets, including Alpha Titans’ employee salaries and health benefits, rent, parking, utilities, computer equipment, technology services, and other operational costs. The use of fund assets to pay for these expenses created significant conflict of interest between Alpha Titans and McCormack on the one hand, and the Feeder Funds on the other.

11. In particular, after the Feeder Funds’ assets were invested in the Master Fund and, ultimately, invested in Montreux, McCormack authorized the Master Fund and Montreux to pay most of Alpha Titans’ operational expenses. Kaeser also made some of these payments from the Montreux account.

12. Alpha Titans LP’s PPMs dated August 2009 and later, contained the following disclosure:

The Partnership bears all of the expenses incurred by it or by others on its behalf or for its benefit, including ordinary operational and administrative expenses, expenses incurred in connection with the continuing offering of the Interests, expenses incurred in direct or indirect investment activities,

financing and transaction costs, interest expenses on funds borrowed on its behalf, and extraordinary expenses, if any. For example, the Partnership bears a pro rata portion of certain operational, administrative and other expenses of the General Partner that are incurred for the benefit of the Partnership.

13. Alpha Titans Ltd.'s PPMs dated August 2009 and later, contained a similar disclosure, but it replaced "Partnership" for "Company" to reflect the organizational structure of that fund.

14. Alpha Titans, McCormack and Kaeser distributed the Feeder Funds' August 2009 PPMs (and similar iterations dated thereafter) to new investors in the Feeder Funds and to existing investors who made new investments after August 2009.

15. While the operating and limited partnership agreements provided that "[t]he Fund shall bear all the costs and expenses of its operation," the agreements did not contain any language stating that the Feeder Funds would bear the cost of any of Alpha Titans' operational or administrative expenses.

16. The only PPM the investors who first invested in the Feeder Funds after August 2009 received was the PPM with the language excerpted above in paragraph 12. By contrast, those investors who had first invested in the Feeder Funds before August 2009 received a more detailed expense disclosure about the type and scope of Alpha Titans' expenses that the Feeder Funds would pay. McCormack and Kaeser later revised the PPMs, removing this more specific disclosure along with approximately ten pages of text from each PPM. As a result, Alpha Titans and McCormack were not clearly authorized to use the Feeder Funds' assets to pay most of Alpha Titans' operational expenses with money raised from investors who received the inadequate expense disclosure after August 2009. Of the total payments made from the Feeder Funds' assets to pay Alpha Titans' expenses, \$469,522 is attributable to money raised by Alpha Titans and McCormack from investors who invested after August 2009 and received only the inadequate disclosure.

**Alpha Titans' Forms ADV Did Not Disclose That It Used  
Client Assets to Pay Most of Its Operational Expenses**

17. Alpha Titans' Form ADV Parts 1 and 2 for 2009 through 2012 did not disclose that Alpha Titans' clients paid most of Alpha Titans' operating expenses, which constituted compensation to the adviser.

18. Item 5.E of Part 1 of Form ADV for 2009, 2010, 2011 and 2012 required that an investment adviser identify the ways it is "compensated for providing [its] investment advisory services." In response, Alpha Titans indicated only that it received a percentage of assets under management and performance-based fees. Alpha Titans did not disclose that, in addition to such amounts, Alpha Titans' clients paid most of the adviser's operating expenses, which constituted compensation to the adviser, even though Item 5.E required an investment adviser to indicate whether it received "other" forms of compensation, and to specify the nature of that compensation.

19. Items 1.A and 1.D of Part 2 of Form ADV for 2009 and 2010 required that an investment adviser provide, on Schedule F, the adviser's "basic fee schedule" and "how fees are charged." In response, Alpha Titans indicated that it received "asset-based management fees" and "performance based compensation." Alpha Titans did not disclose that, in addition to such amounts, Alpha Titans' clients paid most of the adviser's operating expenses, which constituted compensation to the adviser.

20. Items 5.A and 6 of Part 2A of Form ADV for 2011 and 2012 required that an investment adviser describe in its Brochure how the adviser is compensated for advisory services. In response, Alpha Titans indicated that it received "asset-based management fees" and "performance based compensation." Alpha Titans did not disclose that, in addition to such amounts, Alpha Titans' clients paid most of the adviser's operating expenses, which constituted compensation to the adviser.

21. McCormack signed the 2009, 2010, 2011 and 2012 Forms ADV for Alpha Titans.

**The Audited Financial Statements Failed to Disclose the Feeder Funds' Payment of Adviser-Related Operating Expenses and Thus, Were Not in Compliance with GAAP**

22. Alpha Titans, as part of its reliance on the exception to the custody rule for an adviser to a pooled investment vehicle found in Rule 206(4)-2(b)(4), engaged a PCAOB-registered auditor as the Feeder Funds' and the Master Fund's independent public accountant to audit their financial statements for the fiscal years ended December 31, 2009, 2010, 2011 and 2012. To comply with the custody rule, Alpha Titans apparently intended to provide the Feeder Funds' limited partners and shareholders with GAAP-compliant financial statements of the Feeder Funds and the Master Fund, pursuant to the custody rule exception found in Advisers Act Rule 206(4)-2(b)(4).

23. GAAP provides disclosure requirements for related party relationships and transactions in financial statements. (*See, generally*, Financial Accounting Standards Board (FASB) Accounting Standards Codification (ASC) 850-10-50) Alpha Titans, the Feeder Funds, the Master Fund, Montreux and Trading Solutions were related parties because, for purposes of GAAP, McCormack had common control over each entity since McCormack formed and directed all investment activities and operating policies of each entity. (*See* ASC 850-10-20, *et seq.*) At McCormack's directive, Kaeser performed work on behalf of each entity, and Kaeser knew that McCormack had common control over all of the entities. This common control allowed McCormack to pay Alpha Titans' adviser-related operational expenses, including employee salaries, rent and other related expenses, using money held by Montreux and the Master Fund. This led to operating results of the Feeder Funds and the Master Fund that could have been "significantly different" from those that would have been obtained if McCormack did not have the control and ability to cause these entities to pay Alpha Titans' adviser-related operating expenses. (*See* ASC 850-10-50-6) The Master Fund's and Montreux's payments of Alpha Titans' adviser-related operating expenses were material related party transactions in fiscal years 2009 through 2012.

24. The Feeder Funds' and the Master Fund's audited financial statements for fiscal years 2009 through 2012 were not in compliance with GAAP. In particular, the Feeder Funds'

and the Master Fund's audited financial statements for fiscal years 2009 through 2012 did not disclose (i) the related party relationships among Alpha Titans, the Feeder Funds, the Master Fund, Trading Solutions and Montreux, and McCormack's common control of these entities, and (ii) the material related party transactions concerning the Master Fund's and Montreux's payments of Alpha Titans' adviser-related operating expenses.

25. Neither the Feeder Funds' nor the Master Fund's 2009 financial statements disclosed (i) the related party relationships, (ii) that Montreux paid \$208,712 of related party expenses, and (iii) that \$287,420 of the Master Fund's operating expenses were related party transactions. The 2009 financial statements for the Feeder Funds included a note disclosing (collectively) only \$318 of related party transactions and did not make any disclosure as to the related party relationships. Further, the Master Fund's financial statements included operating expenses totaling \$319,823, but did not disclose that \$287,420 (or 90%) was attributable to Alpha Titans' employee payroll and benefits, which were related party transactions. Rather, the notes to the financial statements disclosed only \$1,226 in related party transactions and did not describe the related party relationships.

26. Neither the Feeder Funds' nor the Master Fund's 2010 financial statements disclosed (i) the related party relationships, (ii) that Montreux paid \$361,429 of related party expenses, and (iii) that all of the Master Fund's operating expenses were related party transactions. Instead, the 2010 financial statements for the Feeder Funds included a note indicating there were no related party transactions. For example, in Alpha Titans LP's 2010 financial statements, the note provided "Pursuant to the terms of the Fund's limited partnership, the General Partner is able to pay expenses on behalf of the Fund and subsequently be reimbursed for actual overhead costs and expenses that are directly connected with the management and operations of the Fund. For the year ended December 31, 2010, there was no reimbursement." The Master Fund's financial statements included operating expenses totaling \$634,895, but did not disclose that 100% of it was attributable to Alpha Titans' employee payroll and benefits, which were related party transactions. Rather, the notes to the financial statements disclosed only \$1,043 in related party transactions and did not explain the related party relationships.

27. Neither the Feeder Funds' nor the Master Fund's 2011 financial statements disclosed (i) the related party relationships, (ii) that Montreux paid \$537,999 of related party expenses, and (iii) that \$614,995 of the Master Fund's operating expenses were related party transactions. Instead, the 2011 financial statements for the Feeder Funds and the Master Fund included a note indicating there were no related party transactions. For example, in Alpha Titans LP's 2011 financial statements, the note provided "Pursuant to the terms of the Fund's limited partnership agreement, the General Partner is able to pay expenses on behalf of the Fund and subsequently be reimbursed for actual overhead costs and expenses that are directly connected with the management and operations of the Fund. For the year ended December 31, 2011, there was no reimbursement." The Master Fund's financial statements included operating expenses totaling \$700,736, but did not disclose that \$614,995 (or 88%) was attributable to Alpha Titans' employee payroll, benefits, and other employee payments, which were related party transactions.

28. Neither the Feeder Funds' nor the Master Fund's 2012 financial statements disclosed (i) all the related party relationships, and (ii) that Montreux paid \$339,639 of related

party expenses. Instead, the 2012 financial statements for the Feeder Funds included a note indicating there were no related party transactions. For example, in Alpha Titans LP's 2012 financial statements, the note provided "Pursuant to the terms of the Fund's limited partnership agreement, the General Partner is able to pay expenses on behalf of the Fund and subsequently be reimbursed for actual overhead costs and expenses that are directly connected with the management and operations of the Fund. For the year ended December 31, 2012, there was no reimbursement." The Master Fund's financial statements included operating expenses totaling \$781,732. Unlike previous years, the notes to the financial statements provided some additional detail, explaining that "During 2012, employees of the Investment Manager did provide services to the Company in the amount of \$467,267 and were paid by the Company."

29. Overall, from 2009 through 2012, Montreux paid a total of \$1,447,777 in related party transactions that were not disclosed in the Feeder Funds' or the Master Fund's financial statements. In addition, from 2009 through 2011, the Master Fund paid a total of \$1,537,309 of Alpha Titans' employee payroll, benefits and other employee payments that were not identified as related party transactions in the notes to the financial statements, but instead were listed simply as "operating expenses" on the income statement for the Master Fund.

30. McCormack and Kaeser each reviewed the financial statements. In addition, McCormack signed the Feeder Funds' and Master Fund's management representations letters to the auditor for the 2009 financial statements, and McCormack and Kaeser signed the Feeder Funds' and Master Fund's management representations letters to the auditor for the 2010, 2011 and 2012 financial statements. Each management representation letter inaccurately stated that the related party relationships and transactions had been properly recorded and disclosed in the financial statements.

31. For the 2009 through 2012 fiscal year-ends, the audit reports from the PCAOB-registered auditor attached to the Feeder Funds' and Master Fund's financial statements stated that the auditor had audited each financial statement in accordance with generally accepted auditing standards, and included unqualified opinions for each entity, in each year, that the financial statements were presented fairly in conformity with GAAP. This was inaccurate, as the audited financial statements were not GAAP compliant.

32. Alpha Titans, McCormack and Kaeser distributed to investors the Feeder Funds' and the Master Fund's audited financial statements, which were not prepared in accordance with GAAP. Because the audited financial statements were not GAAP compliant, Alpha Titans, with substantial assistance from McCormack and Kaeser, failed to meet the requirements for the exception to the custody rule found in Advisers Act Rule 206(4)-2(b)(4), for fiscal years 2009 through 2012.

33. In addition, Alpha Titans, McCormack and Kaeser did not otherwise supplement the inaccurate financial statements by advising the Feeder Funds' investors of the total amount of Alpha Titans' operational expenses paid using the Feeder Funds' assets. Thus, the Feeder Funds' investors were misled as to the total amount of fund assets that were used to pay these expenses.



## **Alpha Titans Had Inadequate Compliance Policies and Procedures**

34. McCormack and Kaeser were responsible for preparing, reviewing and updating Alpha Titans' written compliance policies and procedures.

35. From 2009 through 2012, Alpha Titans' compliance manual did not include policies and procedures to address McCormack's control of related parties, and how that control might affect related party transactions and required disclosures. In particular, the manual lacked provisions reasonably designed to prevent violations of the Advisers Act arising from failures to disclose material conflicts of interest or to act in the best interest of clients in connection with related party transactions involving Alpha Titans' private fund clients.

### **E. VIOLATIONS**

36. As a result of the conduct described above, Alpha Titans and McCormack willfully<sup>4</sup> violated, and Kaeser willfully aided and abetted and caused their violation of, 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." Scier is not required to establish a violation of Section 206(2), but rather may rest on a finding of negligence. *SEC v. Steadman*, 967 F.2d 636, 643 n.5 (D.C. Cir. 1992) (citing *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 194-95 (1963)).

37. As a result of the conduct described above, Alpha Titans and McCormack willfully violated, and Kaeser willfully aided and abetted and caused their violation of, 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." A violation of Section 206(4) and the rules thereunder does not require scier. *Steadman*, 967 F.2d at 647.

38. As a result of the conduct described above, Alpha Titans willfully violated, and McCormack and Kaeser willfully aided and abetted and caused Alpha Titans' violations of, Section 206(4) of the Advisers Act and Rule 206(4)-2, the custody rule, promulgated thereunder.<sup>5</sup> The custody rule imposes specific requirements on registered advisers who have custody of client funds and securities. Alpha Titans had custody of client funds and securities within the meaning of the rule. Among other things, the custody rule generally requires that

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<sup>4</sup> A willful violation of the securities laws means merely "that the person charged with the duty knows what he is doing." *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor "also be aware that he is violating one of the Rules or Acts." *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

<sup>5</sup> The custody rule was amended in December 2009, effective March 12, 2010. Here, the violations relate to both the pre- and post-amendment versions of the rule.

client assets be maintained with a qualified custodian, who must provide account statements to the investors at least quarterly, and requires client assets to be verified through an annual surprise examination by an independent public accountant. Rule 206(4)-2(b)(4) provides an exception to these requirements with respect to certain pooled investment vehicles. This exception, upon which Alpha Titans purported to rely, requires the vehicle to be audited by an independent public accountant, and requires GAAP-compliant audited financial statements to be distributed to investors within 120 days of the end of the vehicle's fiscal year. As a result of the conduct described above, the financial statements of the Feeder Funds and the Master Fund for fiscal years 2009 through 2012 were not GAAP compliant.

39. As a result of the conduct described above, Alpha Titans willfully violated, and McCormack and Kaeser willfully aided and abetted and caused Alpha Titans' violations of, 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.

40. As a result of the conduct described above, Alpha Titans and McCormack 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." Scienter is not required to establish liability under Section 207 of the Advisers Act; it merely requires willfulness. *SEC v. K.W. Brown & Co.*, 555 F. Supp. 2d 1275, 1309 (S.D. Fla. 2007).

## **F. CIVIL PENALTIES**

41. Respondent Kaeser has submitted a sworn Statement of Financial Condition dated December 15, 2014 and other evidence and has asserted his inability to pay a civil penalty.

## **G. UNDERTAKINGS**

42. Before the entry of this Order, Respondents Alpha Titans and McCormack had begun winding down the operations of Alpha Titans MF SPC, Alpha Titans LP, and Alpha Titans, Ltd. (the "Funds"), and shall continue that process. As part of that process, Alpha Titans and McCormack had discontinued the solicitation or acceptance of any investments for these or any other private funds from existing or new clients. Respondent Alpha Titans shall continue not to solicit or accept any new investments, including but not limited to capital contributions to the Funds or any other private funds, from its clients or others, and Alpha Titans shall not solicit or accept new clients.

43. Within thirty (30) days of entry of this Order, Respondents Alpha Titans and McCormack shall engage, at McCormack's own expense, an independent monitor ("Monitor") who is not unacceptable to the Commission staff, to:

- i. oversee the completion of the winding down of the Funds' operations;
- ii. submit to the Commission staff a quarterly report describing the status of the wind down and the status of all assets of the Funds; and

- iii. report any potential irregularities or misconduct involving the Funds or Alpha Titans to the Commission staff on an ongoing basis.

44. Respondents Alpha Titans and McCormack shall fully cooperate with the Monitor and provide the Monitor with access to any and all accounting and financial records and other documents and information the Monitor may request for review in the course of his/her/its duties.

45. Where practicable, Respondents Alpha Titans and McCormack shall provide the Monitor with five (5) days advance notice of all transactions involving more than \$50,000 of the Funds' assets; and for transactions where such notice is not practicable, Alpha Titans and McCormack shall provide the Monitor with notice of the completed transaction within two (2) business days after completion.

46. Respondents Alpha Titans and McCormack shall retain the Monitor, at McCormack's own expense, from the date of the engagement of the Monitor until such date when the Funds have ceased operations.

47. Respondent Alpha Titans shall not receive any compensation, including any salary, bonus or fees, from the Funds, and Respondent McCormack shall not receive any compensation, including any salary, bonus or fees, from Alpha Titans or the Funds.

48. Respondents Alpha Titans and McCormack shall certify, in writing, compliance with the undertakings 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 Marshall S. Sprung, Co-Chief, Asset Management Unit, Division of Enforcement, Securities and Exchange Commission, 444 S. Flower Street, Suite 900, Los Angeles, CA 90071, with a copy to the Office of Chief Counsel of the Division of Enforcement, Securities and Exchange Commission, 100 F. Street, NE, Washington, DC 20549, 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 and in the public interest to impose the sanctions agreed to in Respondents' Offers.

Accordingly, pursuant to Section 4C of the Exchange Act, Sections 203(e), 203(f) and 203(k) of the Advisers Act, Section 9(b) of the Investment Company Act, and Rule 102(e) of the Commission's Rules of Practice, it is hereby ORDERED that:

A. Respondents Alpha Titans and McCormack shall cease and desist from committing or causing any violations and any future violations of Sections 206(2), 206(4), and 207 of the Advisers Act and Rules 206(4)-2, 206(4)-7, and 206(4)-8 promulgated thereunder;

B. Respondent Kaeser shall cease and desist from committing or causing any violations and any future violations of Sections 206(2) and 206(4) of the Advisers Act and Rules 206(4)-2, 206(4)-7, and 206(4)-8 promulgated thereunder;

C. Respondent Alpha Titans shall be censured;

D. Respondents McCormack and Kaeser shall be, and hereby are:

- (1) suspended from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent or nationally recognized statistical rating organization for a period of twelve months, effective on the second Monday following the entry of this Order; and
- (2) prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter for a period of twelve months, effective on the second Monday following the entry of this Order;

provided, however, that McCormack may continue to remain associated with Alpha Titans (subject to oversight from the Monitor as provided in paragraphs 41 through 47 above) for not more than ninety (90) days, unless otherwise extended by the staff for good cause shown, to the extent necessary to (i) wind down the operations of the Funds and perform such functions as are necessary for such winding down, and (ii) administer the Disgorgement Fund as described in Subsections E(1) through E(10) below.

E. Respondents Alpha Titans and McCormack shall pay disgorgement and prejudgment interest as follows:

- (1) Respondents Alpha Titans and McCormack on a joint and several basis shall pay disgorgement of \$469,522 and prejudgment interest of \$28,928.14, consistent with the provisions of this Subsection E. Within ten (10) days of the entry of this Order, Alpha Titans and McCormack shall deposit the full amount of the disgorgement and prejudgment interest (the “Disgorgement Fund”) into an escrow account acceptable to the Commission staff and Alpha Titans and McCormack shall provide the Commission staff with evidence of such deposit in a form acceptable to the Commission staff. If timely deposit of the Disgorgement Fund is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600.
- (2) Alpha Titans and McCormack shall be responsible for administering the Disgorgement Fund. Alpha Titans and McCormack shall pay applicable portions of the Disgorgement Fund to the affected current and former investors in the Feeder Funds who invested in, or any time after, August 2009, while in receipt of the inadequate disclosures (the “Payees”),

pursuant to a disbursement calculation (the “Calculation”) that has been submitted to, and reviewed and approved by, the Commission staff in accordance with this Subsection E. No portion of the Disgorgement Fund shall be paid to any Payee directly or indirectly in the name of or for the benefit of Alpha Titans, McCormack or Kaeser, or any person with an ownership interest in Alpha Titans. Any such funds shall be transferred to the Commission for transfer to the United States Treasury in accordance with Subsection F below. For any current and former investor that is due an amount totaling less than ten dollars (\$10.00), Alpha Titans and McCormack shall instead pay such amount to the Commission for transfer to the United States Treasury in the manner provided in Subsection F below.

- (3) Alpha Titans and McCormack shall, within thirty (30) 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 and the name of each Payee; (ii) the percentage interest in the fund held by the Payee; and (iii) the exact amount of the payment to be made to the Payee. Alpha Titans and McCormack shall also provide to the Commission staff such additional information and supporting documentation as the Commission staff may request for the purpose of its review. In the event of one or more objections by the Commission staff to Alpha Titans’ and McCormack’s proposed Calculation and/or any of its information or supporting documentation, Alpha Titans and McCormack shall submit a revised Calculation for the review and approval of the Commission staff and/or additional information or supporting documentation within ten (10) days of the date that Alpha Titans and McCormack are notified of the objection, which revised Calculation shall be subject to all of the provisions of this Subsection E.
- (4) Alpha Titans and McCormack shall complete the transmission of all amounts otherwise payable to the Payees pursuant to the approved Calculation within ninety (90) days of the entry of this Order, unless such time period is extended as provided for in Subsection E(10) below.
- (5) If Alpha Titans and McCormack do not distribute or return any portion of the Disgorgement Fund for any reason, including an inability to locate a Payee or any factors beyond Alpha Titans’ and McCormack’s control, or if Alpha Titans and McCormack have not transferred any portion of the Disgorgement Fund to a Payee because that Payee is due less than \$10.00, Alpha Titans and McCormack 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 E(7) is approved by the Commission. Any such payment shall be made in accordance with Subsection F below.

- (6) Alpha Titans and McCormack 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 Alpha Titans and McCormack and shall not be paid out of the Disgorgement Fund.
- (7) Within ninety (90) days after the date of entry of this Order, Alpha Titans and McCormack shall submit for Commission staff approval a final accounting of the disposition of the Disgorgement Fund. The final accounting shall be on a standardized accounting form to be provided by the Commission staff and 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; and (v) any amounts to be forwarded to the Commission for transfer to the United States Treasury. In addition, Alpha Titans and McCormack shall provide to Commission staff a cover letter representing that all of the requirements of this Subsection E have been completed and that the information requested has been accurately reported to the Commission (“the certification”). Also included in the certification should be a description of any efforts to locate a prospective Payee whose payment was returned or to whom payment was not made for any reason.
- (8) Alpha Titans and McCormack shall submit proof and supporting documentation of such payment (whether in the form of cancelled checks, wire receipts, or otherwise) in a form acceptable to the Commission staff and under a cover letter that identifies Alpha Titans and McCormack as Respondents in these proceedings and the file number of these proceedings to C. Dabney O’Riordan, Assistant Regional Director, Asset Management Unit, Los Angeles Regional Office, Securities and Exchange Commission, 444 South Flower Street, Suite 900, Los Angeles, CA, 90071, or such other address the Commission staff may provide. Alpha Titans and McCormack 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.
- (9) After Alpha Titans and McCormack 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.
- (10) The Commission staff may extend any of the procedural dates set forth in this Subsection E 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.

F. Respondents Alpha Titans and McCormack on a joint and several basis shall, within ten (10) days of entry of the Order, pay a civil money penalty in the total amount of \$200,000 to the Securities and Exchange Commission. 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 Alpha Titans and McCormack may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondents Alpha Titans and McCormack 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 Alpha Titans and McCormack 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 Alpha Titans and McCormack 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, Co-Chief, Asset Management Unit, Division of Enforcement, Securities and Exchange Commission, 444 South Flower Street, Suite 900, Los Angeles, California 90071.

G. Based upon Respondent Kaeser's sworn representations in his Statement of Financial Condition dated December 15, 2014, and other documents submitted to the Commission, the Commission is not imposing a penalty against Respondent Kaeser.

H. The Division of Enforcement ("Division") may, at any time following the entry of this Order, petition the Commission to: (1) reopen this matter to consider whether Respondent Kaeser provided accurate and complete financial information at the time such representations were made; and (2) seek an order directing payment of the maximum civil penalty allowable under the law. No other issue shall be considered in connection with this petition other than whether the financial information provided by Respondent Kaeser was fraudulent, misleading, inaccurate, or incomplete in any material respect. Respondent Kaeser may not, by way of defense to any such petition: (1) contest the findings in this Order; (2) assert that payment of a penalty should not be ordered; (3) contest the imposition of the maximum penalty allowable under the law; or (4) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

I. Respondent Kaeser is suspended from appearing or practicing before the Commission as an attorney for 12 months from the date of this Order.

J. After 12 months from the date of the Order, Respondent Kaeser may request that the Commission consider his application to resume appearing and practicing before the Commission as an attorney. The application should be sent to the attention of the Office of the General Counsel.

K. In support of such an application, Respondent Kaeser must provide a certificate of good standing from each state bar where he is a member.

L. In support of such an application, Respondent Kaeser must also submit an affidavit truthfully stating, under penalty of perjury:

- (1) that Respondent Kaeser has complied with the Order;
- (2) that Respondent Kaeser:
  - a. is not currently suspended or disbarred as an attorney by a court of the United States (or any agency of the United States) or the bar or court of any state, territory, district, commonwealth, or possession; and
  - b. since the entry of the Order, has not been suspended as an attorney for an offense involving moral turpitude by a court of the United States (or any agency of the United States) or the bar or court of any state, territory, district, commonwealth, or possession, except for any suspension concerning the conduct that was the basis for the Order;
- (3) that Respondent Kaeser, since the entry of the Order, has not been convicted of a felony or misdemeanor involving moral turpitude as set forth in Rule 102(e)(2) of the Commission's Rules of Practice; and
- (4) that Respondent Kaeser, since the entry of the Order:
  - a. has not been found by the Commission or a court of the United States to have committed a violation of the federal securities laws, except for any finding concerning the conduct that was the basis for the Order;
  - b. has not been charged by the Commission or the United States with a violation of the federal securities laws, except for any charge concerning the conduct that was the basis for the Order;
  - c. has not been found by a court of the United States (or any agency of the United States) or any state, territory, district, commonwealth, or possession, or any bar thereof, to have



committed an offense involving moral turpitude, except for any finding concerning the conduct that was the basis for the Order; and

- d. has not been charged by the United States (or any agency of the United States) or any state, territory, district, commonwealth, or possession, or any bar thereof, with having committed an offense involving moral turpitude, except for any charge concerning the conduct that was the basis for the Order.

M. If Respondent Kaeser provides the documentation required in Paragraphs K and L, and the Commission determines that he truthfully attested to each of the items required in his affidavit, he shall by Commission order be permitted to resume appearing and practicing before the Commission as an attorney.

N. If Respondent Kaeser is not able to truthfully attest to the statements required in Subparagraphs L(2)(b) or L(4), Respondent Kaeser shall provide an explanation as to the facts and circumstances pertaining to the matter and the Commission may hold a hearing to determine whether there is good cause to permit him to resume appearing and practicing before the Commission as an attorney.

O. Respondents Alpha Titans and McCormack shall comply with the undertakings enumerated in Section III.42 through III.48 above.

## V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S. C. §523, that the findings in this Order are true and admitted by Respondent McCormack, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent McCormack under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondent McCormack of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

By the Commission.

Brent J. Fields  
Secretary