

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

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 77099 / February 9, 2016**

**INVESTMENT COMPANY ACT OF 1940**  
**Release No. 31991 / February 9, 2016**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-16888**

**In the Matter of**

**PHILLIP CORY ROBERTS, and**  
**BAY PEAK, LLC,**

**Respondents.**

**ORDER MAKING FINDINGS AND  
IMPOSING REMEDIAL SANCTIONS  
AND A CEASE-AND-DESIST ORDER  
PURSUANT TO SECTIONS 15(b) AND  
21C OF THE SECURITIES EXCHANGE  
ACT OF 1934 AND SECTION 9(b) OF  
THE INVESTMENT COMPANY ACT  
OF 1940**

**I.**

On October 8, 2015, the Securities and Exchange Commission (“Commission”) instituted proceedings pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”), and Section 9(b) of the Investment Company Act of 1940 (“Investment Company Act”), against Phillip Cory Roberts (“Roberts”) and Bay Peak, LLC (“Bay Peak”) (collectively, “Respondents”).

**II.**

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, and except as provided herein in Section V., Respondents consent to the entry of this Order Making Findings and Imposing Remedial Sanctions and a Cease-and Desist Order Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 and Section 9(b) of the Investment Company Act of 1940, (“Order”), as set forth below.

### III.

On the basis of this Order and Respondent's Offer, the Commission finds<sup>1</sup> that

#### SUMMARY

Phillip Cory Roberts created Bay Peak, LLC in 2005 to acquire domestic shell companies for reverse merger transactions with China-based operating companies and to engage in transactions to finance those business combinations and the resulting issuers. Since at least 2007, Roberts and Bay Peak have participated in no less than nine corporate financings or reverse mergers involving Chinese operating companies. Since the formation of Bay Peak in 2005, neither Roberts nor Bay Peak has been registered with the Commission in any capacity.

In a typical deal, Roberts and Bay Peak located a Chinese company seeking financing in the U.S. markets and negotiated to reverse merge the company's operating entity into one of the shells acquired by Bay Peak and Roberts for that purpose. In the process, Roberts and Bay Peak met with the operating company's management to sell Bay Peak's shells and services. Roberts and Bay Peak then would work to raise capital through private placements, warrant financings, initial public offerings ("IPOs"), or direct investment. Roberts and Bay Peak participated in key steps of the financing process on behalf of the parties to the deals by, among other things, directly soliciting investors and hiring agents to solicit investors; communicating with warrant holders on behalf of the entities; drafting and editing private placement memoranda and SEC registration statements; participating in discussions about how to structure financings; and providing direct financing.

As a result of Roberts' and Bay Peak's regular participation in such activities as part of their business, each acted as an unregistered broker in violation of Section 15(a)(1) of the Exchange Act.

#### RESPONDENTS

1. Phillip Cory Roberts, age 50, is a United States citizen who resides in Mill Valley, California. Roberts was registered as an associated person of Salomon Smith Barney Inc. from 1996 to 1999, during which time he passed the Series 7, 63, and 65 examinations. According to the Central Registration Depository, maintained by the Financial Industry Regulatory Authority, his broker-dealer license has not been active since 1999. At all relevant times, Roberts was the managing member of Bay Peak and exercised control over the entity's activities, but was not registered with the Commission.

2. Bay Peak, LLC ("Bay Peak") is a limited liability company that was established in 2005 in the State of California. During the relevant time period, Bay Peak marketed itself as "a privately held investment firm" that sourced, developed and executed investment opportunities globally, including by managing public listings of operating companies through merger

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

transactions with shell companies. Bay Peak has never been registered with the Commission in any capacity.

### **OTHER RELEVANT ENTITIES**

3. Fuqi International, Inc. (“Fuqi”) is a company with operations based in China. In November 2006, Fuqi and a shell company controlled by Bay Peak completed a reverse merger. On December 29, 2006, Fuqi filed an Exchange Act Form 10-12G to register its common stock pursuant to Section 12(g) of the Exchange Act. On October 23, 2007, Fuqi’s Securities Act Form S-1 registration statement for its initial public offering of common stock became effective along with its Exchange Act Form 8-A/12B registering its common stock pursuant to Section 12(b) of the Exchange Act, and Fuqi’s common stock began trading on the NASDAQ Global Market. On June 3, 2011, NASDAQ filed a Form 25 delisting Fuqi’s common stock as of June 13, 2011, and deregistering the common stock from Section 12(b). Thereafter, Fuqi’s common stock reverted to its previous Section 12(g) registration. On July 1, 2013, Fuqi consented to the entry of an order revoking Fuqi’s Exchange Act Section 12 registration.

4. Trunkbow International Holdings Limited (“Trunkbow”) is a company with operations based in China. In February 2010, Trunkbow and a shell company controlled by Bay Peak completed a reverse merger. On June 4, 2010, Trunkbow filed an Exchange Act Form 10-12G to register its common stock pursuant to Section 12(g) of the Exchange Act. On February 2, 2011, Trunkbow’s Securities Act Form S-1 registration statement for its initial public offering of common stock became effective along with its Exchange Act Form 8-A/12B registering its common stock pursuant to Section 12(b) of the Exchange Act, and Trunkbow’s common stock began trading on the NASDAQ Global Market. On April 14, 2014, NASDAQ filed a Form 25 delisting Trunkbow’s common stock as of April 24, 2014, and deregistering the common stock from Section 12(b). Thereafter, Trunkbow’s common stock reverted to its previous Section 12(g) registration. On April 24, 2014, Trunkbow filed a Form 15-12G terminating Trunkbow’s Exchange Act Section 12 registration. Roberts, in his capacity as a director of the company, signed Trunkbow’s Form S-1 and Forms S-1/A dated: October 14, 2010; November 16, 2010; December 15, 2010; January 6, 2011; January 14, 2011; and February 2, 2011. Roberts resigned as a member of Trunkbow’s Board of Directors on March 30, 2011.

5. Asia Leechdom Holding Corporation (“Asia Leechdom”) is a Nevada corporation with operations based in China through its indirect subsidiary, Tianjin BOAI Pharmaceuticals, Co. Ltd. (BOAI). On May 28, 2010, a Bay Peak shell company, Bay Peak 6 Acquisition Corp., and Asia Leechdom completed a reverse merger. Roberts, who had been a director of the shell company, remained a director after the merger. On February 14, 2011, Asia Leechdom filed a Form 10-12G to register its common stock pursuant to Section 12(g) of the Exchange Act. Roberts signed the Form 10-12G. On December 29, 2011, Asia Leechdom filed a Form 15-12G terminating its Section 12 registration.

### **FACTS**

6. Roberts created Bay Peak in 2005 for the purpose of engaging in reverse merger transactions with China-based operating companies.

7. Bay Peak and Roberts solicited and structured the transactions between shell companies controlled by Roberts and Chinese companies and actively participated in efforts to finance those business combinations. They also raised capital for some of the resulting issuers through additional securities offerings. Since at least 2007, Roberts and Bay Peak have participated in no less than nine corporate financings or reverse mergers involving China-based operating companies, including transactions involving Fuqi, Trunkbow, and Asia Leechdom. In addition, Roberts, on behalf of Bay Peak, signed financial advisory agreements in connection with possible financings for at least 13 other Chinese companies. The Financial Advisory Agreements typically included some or all of the following services: (i) assist the Company in evaluating the manner of effectuating a going public transaction; (ii) providing services in preparation for a “Going Public Transaction,” including website, PowerPoint and due diligence package creation; (iii) negotiating investment terms with the lead underwriter; and (iv) assisting the Company in capital-raising activities through introductions to potential investors (which may or may not be affiliates of Bay Peak). Compensation was often in the form of an “Advisory Fee” calculated as a percentage of the gross proceeds raised from a financing as well as reimbursement of expenses.

8. Since the formation of Bay Peak in 2005, neither Roberts nor Bay Peak has been registered with the Commission in any capacity.

**A. Roberts’ and Bay Peak’s Description of its Services and Shells**

9. Roberts and Bay Peak marketed their services and shells for use in transactions through a website on which they held themselves out as “manag[ing] the Initial Public Listing process from pre-transaction origination to the development of financing alternatives,” including “deal origination,” “financing,” and “going public.” On that site, they claimed “a proven track record of success in international investment banking and investment management” and listed ten “successful” deals they had managed on behalf of Chinese companies seeking to enter the U.S. securities markets. The website also included press releases describing Bay Peak’s successful financings and reverse mergers and testimonials from issuers praising Bay Peak and Roberts for their role in the companies’ corporate financings and IPOs.

10. Roberts also distributed other materials that described the services that Bay Peak could provide to “Target Companies.” These documents stated, “Bay Peak is the principal owner of publicly held US bankruptcy shells that we use to transact mergers and acquisitions with profitable operating companies. We establish a new Initial Public Listing for the operating company on the AMEX, NASDAQ or OTC.BB. Our Initial Public Listing process is specifically tailored for efficiency in raising capital. To complete an initial public listing, the operating company executes a merger transaction with one of the BayPeak Acquisition Companies (BPAC) *simultaneously* [italics in original] with a capital raise. The capital raise is executed through a free-trading warrant that enables the operating company to determine the valuations and timing of the capital it needs. . . . BayPeak manages the process from pre-transaction origination to the development of financing alternatives. We will supply all of the relevant transaction documentation necessary for a successful execution of the listing process.”

11. Roberts further described Bay Peak's business in a February 2006 email, "My company, BayPeak LLC, assists Asian based companies to raise capital and attain a public listing on a US stock market." Roberts elaborated in an October 2007 email, stating, "I control 16 bankruptcy shell companies that I use to do reverse merger transactions with Asia based companies. We close the merger transaction simultaneous with a capital raise."

12. Roberts sent an email to a China-based target company in which he referred the company to Bay Peak's website and said, "...[Bay Peak owns] 15 shell companies that I use for reverse merger transactions with Chinese companies. We also directly invest in each transaction.... We . . . invested \$3M USD into the company and then raise approximately \$75M USD in an IPO. I am currently engaged with 8 other Chinese companies to execute similar transactions as I did with FUQI." Roberts attached to his email a PowerPoint presentation titled "Discussion materials for: Target Company." The presentation stated, in part, "BayPeak manages the process from pre-transaction origination to the development of financing alternatives. We provide investment valuation analysis and a guaranteed minimum capital raise and maximum dilution upon the closing of the [Alternative Public Listing process] . . . . Bay Peak llc provides an Institutional quality shell company structured for quick and easy merger transactions. They provide a focused value proposition to the operating company, the investors and the investment banks that assist them."

13. Typically, using business contacts and Chinese-speaking employees of Bay Peak, Roberts and Bay Peak would locate a Chinese company seeking financing in the U.S. markets and negotiate to reverse merge the company's operating entity into one of the shells acquired by Bay Peak and Roberts for that purpose.

14. The reverse merger transaction was Bay Peak's mechanism to convert a privately-held operating company to a publicly-held one and thereby facilitate listing of the public company's shares on a U.S. exchange. Listing and public trading would enable the company to raise capital more easily. The shells controlled by Bay Peak and Roberts typically had warrant structures that could be used by the companies resulting from the reverse mergers to raise capital through a call of the warrants. If the pre-existing warrant holders elected to exercise their warrants, they would then become shareholders in the new companies.

15. The Chinese operating companies would also typically employ Bay Peak to provide additional services in connection with the reverse merger transactions and subsequent efforts to raise capital through private placements, warrant financings, or IPOs.

16. Some of the services that Bay Peak and Roberts regularly provided on behalf of its clients included explaining different options by which the companies could raise capital; participating in discussions about how to structure financings; communicating with warrant holders on behalf of issuers; soliciting investors on behalf of issuers to purchase the issuers' equity securities and hiring agents to solicit investors to purchase the securities of Bay Peak's issuer clients; drafting and editing private placement memoranda and SEC registration statements; introducing the companies to other investment banks; and providing direct short-term financing for services the issuers needed to complete the transactions.

## **Soliciting Investors**

17. Prior to the reverse merger transactions, Roberts and Bay Peak often entered into financial advisory agreements with client companies that contained provisions stating that Bay Peak would assist the companies in capital-raising activities and would be compensated for, among other things, introductions to potential investors.

18. For example, in April 2008, Roberts entered into an agreement on behalf of Bay Peak to provide a Chinese energy company (“Company 1”) with “financial advisory and consulting services related to . . . one or more offerings of equity securities of the Company [,] . . . a going public transaction between the Company and a public shell domiciled in the United States . . . [, and] a restructuring plan . . . .” Pursuant to the agreement, Bay Peak agreed to act on a “best efforts basis” to provide services including “assist[ing] the Company with a private Financing of a minimum \$12 million dollars from the sale of shares of capital stock of the Company . . . through (a) introductions to potential investors, placement agents or underwriters (it is understood that BayPeak is not an ‘investment banking’ firm or ‘broker-dealer), as permitted by applicable law, and/or (b) conversion or exercise of warrants or other convertible securities issued by the shell company.”

19. The agreement’s disclaimer that Bay Peak was not an investment banking firm or broker-dealer notwithstanding, Roberts and Bay Peak directly solicited potential investors on behalf of Company 1.

20. On October 28, 2008, Roberts, identifying himself as managing member of Bay Peak, emailed the managing partner of a private equity firm, stating, “Thanks for taking the time to meet up last Friday. I wanted to follow up on our conversations about taking a look at [a] specific opportunity to determine if you may have some interest in participating. I have attached a [PowerPoint] for [Company 1] which is one of my deals that we will start looking for a small equity round of financing soon . . . .”

21. Roberts often solicited institutional investors to invest in the companies involved in Bay Peak’s reverse merger transactions.

22. On May 7, 2008, Roberts emailed two PowerPoint presentations containing information about a Chinese nutritional supplement company (“Company 2”) and another Chinese energy company (“Company 3”) to an employee of an institutional investment firm with the message: “attached is some basic information in a [PowerPoint] for a couple of deals that I am doing. Let me know if you may have some interest, would love to talk to you about them.” On May 14, 2008, another employee of the investment firm emailed Roberts, “Thank you for organizing the conference call for [Company 3] . . . . After consideration we decided to pass [on Company 2]. Thank you for sharing this opportunity with us.” Roberts responded, “Could you let me know what you thought of the [Company 2] project, and what was the determining factor in your decision to pas[s]? It will help me better understand the projects that you may have an interest in. I expect to have at least 3 more ready in the next 2 months.” The investment firm employee responded to Roberts’s question, explaining the reasons that “we don’t think it is a good time to invest in [Company 2].”

23. Roberts had previously entered into agreements on behalf of Bay Peak to receive transaction-based compensation in the form of equity and a finder's fee for providing Companies 2 and 3 with assistance with capital-raising activities, among other services.

24. Similarly, Roberts and Bay Peak represented that they had entered into a consulting agreement with a brewery with operations in China ("Company 4") that provided that Bay Peak would assist the company in capital-raising activities. Roberts subsequently emailed a potential investor on June 23, 2011, "remember the Chinese Beer company I told you about? any interest in taking a look. Need to raise minimum \$4 million but up to \$10 million. Have an engagement signed. Done some DD [due diligence]. Terms are good and the economics are great . . . [ellipsis in original] especially if I can negotiate one more thing in the deal." The potential investor expressed interest. A few days later, Roberts emailed the investor again, and they made arrangements to meet in person.

25. A Bay Peak contract employee also solicited another potential investor on behalf of Company 4. In August 2011, the Bay Peak employee emailed Roberts to inform him that a Chinese investment fund "is interested to put in \$10M-\$20M. We supposed to have a conference today with its senior Vice President . . . to further discuss [Company 4]."

26. Company 4 subsequently terminated its agreement with Bay Peak. In October 2011, the Bay Peak contract employee emailed Roberts that "4 US legal attorneys have reviewed it saying that we wouldn't win the lawsuit if we go after [Company 4]. Also, they will ask SEC to investigate Baypeak for illegal fundraising activities because we don't have the license."

27. Bay Peak and Roberts communicated with potential investors to solicit them as a regular part of their business. In an October 2010 email to the Bay Peak contract employee, Roberts stated, "I need to create a password protected data room so that I can share documents with investors." Roberts sent the employee a link to an example of such a data room and told the employee, "this is a dataroom for a deal that I am working on with someone else. this is a virtual data room which is hosted by a company. I want to create one with the same functionality on my Bay Peak website. We will have multiple deals so I want to make sure that the data room can give different password protection to each deal."

28. Roberts and Bay Peak also participated in seminars at which they communicated with investors in order to, among other things, solicit transactions. One of Roberts's investment partners emailed Roberts before a scheduled investor seminar: "We are proposing two meetings – one in the morning just for Warrantholders . . . . Then another meeting in the afternoon for new investors . . . ." Roberts agreed to attend the seminar. A flyer for a March 24, 2010 seminar advertised "An Invitation to Meet Our China Connection Cory Roberts" and stated that attendees would learn about "Opportunities for you, as a Stock and/or Warrant Holder."

29. In addition to direct solicitations, Roberts and Bay Peak communicated with investors in partnership with third parties. For example, an analyst report named Roberts as a "Key Partner" of Ground Floor Capital ("GFC"), a firm affiliated with an investor with whom Roberts had previously worked, and stated that GFC had "partnered with BayPeak . . . [t]o work to allow high growth Chinese companies to become listed in the United States by way of a reverse merger.

GFC and BayPeak are currently seeking investors to help finalize a reverse merger and listing . . . .”

30. On at least two occasions, Bay Peak entered into consulting agreements with third parties “to research and identify” investors and investment funds that may be potential investors for Bay Peak clients. Bay Peak was to pay these consultants a “consultation” or “success” fee based on a percentage of the funds raised.

31. These consultants later introduced two potential investors to Bay Peak in connection with the Asia Leechdom deal.

### **Roberts’ and Bay Peak’s Solicitation Activity in Concert with Investment Banks**

32. Although a registered investment bank was also often involved in the financing transactions in which Roberts and Bay Peak participated, Roberts and Bay Peak acted as unregistered brokers in connection with those deals.

33. For example, in September 2007, an employee of an investment bank engaged by Fuqi emailed Roberts, telling him “you owe me a list of potential investors . . . .” On the same day, Roberts contacted more than a dozen individuals affiliated with hedge funds and investment firms to personally invite them to attend an IPO road show for Fuqi.

34. In another February 2010 email, Roberts informed an employee of the investment bank that was engaged as part of a financing transaction for Trunkbow that an investor that Roberts had previously contacted about investing in Trunkbow “was passing” and added that he was “Trying to bring in a couple of other guys.” The investment bank employee told Roberts, “Get me what ever you can.”

### **Structuring Transactions**

35. Roberts also advised issuers about the desirability of structuring securities transactions in particular ways. For example, Roberts participated in the structuring of Trunkbow’s financing transactions by convincing the investment bank to use a warrant structure that had the potential to maximize the number of shareholders, thereby meeting minimum shareholder requirements for Trunkbow’s listing on NASDAQ.

36. With a number of companies, Roberts and Bay Peak entered into financial advisory agreements that provided that Bay Peak would advise and assist the companies in structuring and effecting securities transactions. As one example, in addition to the agreements discussed in connection with the representative engagements below, in December 2007, Bay Peak’s agreement with Company 3 stated that Bay Peak would “assist the Company in evaluating the manner of effectuating a going public transaction with a public shell company . . . [and] use best-efforts to complete the Going Public Transaction.”

37. Similarly, in April 2007, Roberts and Bay Peak received a signed agreement from another company with operations in China (“Company 5”) that provided that Bay Peak would

provide “advice and assistance in connection with: a. Introducing potential investors to the Financing [and] b. Reviewing financial information and assisting in negotiations of the financial terms and structure of the Financing.”

### **Providing Pre-Transaction Financing**

38. Roberts and his investor group often advanced money to Bay Peak’s client companies to cover transaction-related expenses. Bay Peak advertised that it would provide up to \$1 million for transaction financing as “development loans” for payment of pre-transaction legal expenses, US GAAP audits, and “work capital.”

39. This pre-transaction financing allowed the issuers to, among other things, hire professionals to create audit reports, draft private placement memoranda, and draft and file registration statements with the Commission.

40. Bay Peak also advertised that it would provide convertible bridge financing of up to \$3 million to facilitate private placements and that Bay Peak and affiliated investment funds (Roberts’ and Bay Peak’s investor partner group) would invest up to \$20 million in pre-IPO financing.

41. Roberts and Bay Peak, by their participation in reverse merger transactions and corporate financings, engaged in a business of regularly effecting securities transactions in the accounts of solicited investors, their investment partners, and Bay Peak’s client companies.

### **Compensation**

42. In return for their efforts and the use of a Bay Peak-controlled shell company, Roberts and Bay Peak typically received negotiated compensation in the form of shares, advisory and consulting fees, and bonus payments; some of which was paid as transaction-based compensation.

## **B. Representative Engagements**

### **Fuqi**

43. Fuqi was the first transaction negotiated and structured by Roberts and Bay Peak using a Bay Peak-controlled shell for a reverse merger. In November 2006, Fuqi and a Bay Peak shell executed a negotiated share exchange agreement to effect the reverse merger.

44. Roberts initiated his and Bay Peak’s participation in the Fuqi transaction by conducting due diligence on Fuqi and meeting with the company’s management to explain how Bay Peak could manage a capital raise through a warrant financing and an IPO in the U.S. markets. In one email, Roberts wrote, “Fuqi still has 2 series of warrants outstanding. Those warrants should be put into a Unit and used to raise the capital and help build the market.”

45. Roberts and Bay Peak also assumed certain expenses associated with the reverse merger between Fuqi and the Bay Peak-controlled shell including legal fees for opinion letters, the drafting of merger documents, and the preparation of a Form 10 filed with the Commission.

46. On May 2, 2007, Roberts, on behalf of Bay Peak, entered into an advisory agreement with Fuqi that provided that it would pay Bay Peak an advisory fee of \$10,000 and a “bonus fee of six percent (6%) of the gross proceeds of the Financing if the Company successfully raises more than Two Million Dollars (\$2,000,000) from the [warrant] Call.” The “Financing” was defined in the agreement as “the capital raising event resulting solely from the exercise of the Company’s outstanding Series C Plan Warrants and Series E Plan Warrants following the Company’s completion of the call for redemption of such warrants.” In return, Roberts, on behalf of Bay Peak, agreed to provide “advice to the extent requested by the Company in connection with the Financing.”

47. Roberts and Bay Peak participated in setting the exercise price for warrants and provided advice to Fuqi and the investment bank on the timing of the warrant call. Roberts also strategized with Fuqi on the process of making a warrant call prior to the company’s IPO.

48. On July 2, 2007, Fuqi filed a Form S-1 with the SEC. In it, the company stated that it had “entered into a letter agreement with Bay Peak to assist us in the potential exercise of outstanding Series C Plan Warrants and Series E Plan Warrants . . . .” In return for their services in connection with the warrant call, Roberts and Bay Peak were compensated in the form of a “‘bonus fee’ of 6% of the gross proceeds from the exercise of the Warrants (approximately \$178,000).” Bay Peak also received an “advisory fee” of \$10,000 and was reimbursed for expenses of \$10,000.

49. Furthermore, Roberts and Bay Peak participated in discussions with the lead underwriter in the deal to analyze financing options and potential structures to raise capital. He described his role to one potential institutional investor in Fuqi as follows: “the investment bank, the company and I all agreed to do an IPO. Since we made this determination, we decided to only raise a small bridge financing. . . . My investor [sic] own the warrants that are associated with my shells and look to invest a minimum of \$3 to \$5mm in each of the companies that we execute a merger with. If the company needs to raise more than \$10mm we bring in 3rd party funds to participate along with us.”

50. Roberts and Bay Peak continued to provide services to Fuqi in connection with the company’s subsequent IPO. In September 2007, Roberts sent emails that he signed as “Managing Member” of Bay Peak to more than a dozen individuals affiliated with hedge funds and investment firms to invite them to attend an IPO road show for Fuqi. In several of the emails, Roberts wrote, “I have one of my portfolio companies getting ready to do an IPO road show. . . . I wanted to see if you may be interested.” Fuqi completed an IPO in October 2007, and began trading on NASDAQ.

51. Roberts and Bay Peak used the success of the Fuqi deal to solicit others for additional deals. In one email to a potential investor on October 24, 2007, Roberts wrote, “my china deal is up and trading. . . . [ellipse in original] FUQI thought you may be interested. I have

five more deals that I am working on, could use some help! Could use some money to invest in these deals!!!!!!!!!!!!!!”

52. Roberts later described Bay Peak’s involvement with Fuqi in an email in which he stated, “We close the merger transaction simultaneous with a capital raise. The first transaction I did with one of these shells is listed on NASDAQ under ticker FUQI. We directly invested \$3M USD into the company and then did a full registered public offering for \$67M USD.”

53. Bay Peak also featured its participation in the Fuqi deal on its website. In November 2010, Roberts emailed the CFO of Fuqi, “I have been revising my Website and wanted to see if I could put a quote in from you. :) is it ok with you for me to put this in? I hope it’s true!!!” The quote, which Roberts told Fuqi’s CFO that he (Roberts) had drafted, stated, “Baypeak was our first foreign investor and assisted us in our IPO. Cory continues to be a valued shareholder and friend.” Fuqi’s CFO responded, “It is fine to quote these facts.” The quote, attributed to Fuqi’s CFO, was placed on Bay Peak’s website.

### **Trunkbow**

54. In February 2010, Roberts and Bay Peak participated in a reverse merger between a Bay Peak-controlled shell and Trunkbow. Concurrent with the reverse merger transaction, Trunkbow engaged in a simultaneous call of warrants and a private placement.

55. Roberts and Bay Peak were involved in structuring Trunkbow’s reverse merger transaction and its concurrent capital raise.

56. According to a term sheet between a Bay Peak-controlled shell company and Trunkbow, which was signed by Roberts on behalf of the shell company, Trunkbow would receive bridge financing of \$2 million from Bay Peak and/or affiliated persons in connection with the contemplated reverse merger transaction. Roberts and Bay Peak would arrange for an investor group to exercise outstanding warrants in the shell company for an aggregate exercise price of \$4 to \$8 million, with the price per share determined by a negotiated formula. In exchange for these commitments, after the reverse merger transaction was completed, Bay Peak and the minority shareholders in the shell would own 5% of the issued and outstanding shares of the merged company.

57. Roberts and Bay Peak participated in the structuring of Trunkbow’s financing transactions by advocating for a process that had the potential to maximize the number of shareholders and therefore help Trunkbow satisfy NASDAQ’s minimum shareholder requirements for listing. The lead investment bank participating in the transaction initially planned to create three separate offerings for Trunkbow. Roberts objected, writing to the bank’s Managing Head of China Investment Banking, “This will not list up on NASDAQ now. We will be stuck with doing a registered offering. What is the motivation behind executing this through 3 separate offerings?” After a discussion with Roberts, the warrant structure for which Roberts advocated was adopted.

58. Roberts described his and Bay Peak’s involvement with Trunkbow in a November 29, 2009 email to a potential investor, “Just signed up a very exciting deal! I am providing a \$2M bridge to the company on Monday and then they are doing a \$15M raise. We are coming in with

around \$5M and [an investment bank] is engaged to raise the rest... [ellipsis in original] which looks like it is pretty much completed. Would love for you to take a look and see if you are interested. The Company is called Trunkbow....” The potential investor requested additional information, and, in response, Roberts forwarded “the latest investor presentation” and commented, “attached a presentation but I don’t think that it is very good . . . [ellipsis in original] really misses the real value proposition and competitive advantages.” Roberts and the prospective investor then discussed arrangements to speak further by telephone.

59. In an email to another potential investor in December 2009, Roberts wrote, “I just signed up a new deal which I have been working in coordination with . . . the investment bank which completed the FUQI IPO for me[.]. I have attached the company presentation and the terms to the financing. I just bridged the company \$2M this week. I am excited about this one -- they have a huge opportunity and the valuations are right. There is a large strategic [sic] that has committed and other investors outside of my group that has [sic] committed \$20M -- but I have the right to invest \$4M to \$8M with my guys. We are putting in \$4M and have another group coming in for \$2M so there is \$2M left in our allocation. (I am limiting the total capital raise to \$20M)[.] Let’s talk about this one when you have some time.”

60. Roberts and Bay Peak continued to assist Trunkbow in raising additional capital after the bridge loan agreement was in place. He did this by contacting warrant holders in connection with Trunkbow’s warrant call and other investors in connection with Trunkbow’s private placement.

61. In his capacity as managing member of Bay Peak, Roberts met with the CEO and CFO of an investor that ultimately invested in Trunkbow. During that meeting, Roberts discussed Trunkbow with the potential investor and explained why Bay Peak had chosen to participate in a merger transaction with the company.

62. Roberts also provided feedback to the lead investment bank regarding “information he would like to see” in Trunkbow’s private placement memorandum that was used to solicit investors. Once prepared, Roberts and Bay Peak also distributed the document to several potential investors.

63. Roberts and Bay Peak created a document with a “bayPeak llc” header on each page that described Trunkbow’s business, financials, and financing plans. The document stated that, “Trunkbow has entered into a Share Exchange Agreement to complete a reverse merger transaction with bayPeak 5 Acquisition Corp ‘BPAC 5’ [a shell company provided by Bay Peak] upon a minimum financing of \$10 million. Investors may purchase common stock in Trunkbow through the exercise of an existing warrant which, once called by the company, entitles each holder to convert one warrant into one share of common stock. Through this offering, we are seeking to raise up to \$25 million in proceeds for issuance of 37% of our total equity post closing.” The final page of the document stated, “For more information please contact Cory Roberts” or another person with a “baypeak.com” email address.

64. Similar documents were created for at least two other deals, including Asia Leechdom, discussed below.

65. In a January 6, 2010 email, Roberts followed up with the potential investor he contacted in November 2009 about investing in Trunkbow. Roberts wrote, “Things are progressing quickly on all of these deals I am working on. I have attached our internal executive summary for both Trunkbow and BOAI. Let me know if you have an interest. We will have a PPM [private placement memorandum] on Trunkbow by the end of this week . . . .”

66. Roberts continued to discuss the opportunity to invest in Trunkbow with the prospective investor in a January 19, 2010 email. Roberts wrote, “I attached a financial model. . . . Let’s talk soon if you are interested because this is over subscribed at this point. I am pushing to get more of the offering and should be able to since we are leading and providing the shell. They will most likely cut some of the Chinese investors back to make room.”

67. In a February 2, 2010 email, Roberts, as managing member of Bay Peak, contacted another potential investor in Trunkbow, writing, “Just wanted to give you a heads up on a deal I am closing this week. Would love for you to participate. Let me know if you have an interest, the PPM [private placement memorandum] is attached. We are the lead investor with \$6M on top of this \$20M that is being completed with [investment bank] as the banker.”

68. Roberts contacted another prospective investor in a February 4, 2010 email with the subject “Trunkbow PPM.” In the email, Roberts wrote, “This is the offering document. Let me know if you want to do a little bit.” On February 16, the potential investor wrote back, “thinking of doing 100k.” Roberts responded the same day, “I forgot I sent that to you. We closed with \$22.5M last week.” The potential investor replied, “So I guess I missed it. I wish I’d known the deadline. Damn.” Roberts wrote back the next day, “There will be others.”

69. In another email Roberts sent on February 5, 2010, he told an employee of the lead investment bank, “I brought in 37 investors and for \$66,400. [W]hich almost pays for all my expenses. fyi – still trying to bring this one guy in.” A few days later, on February 8, Roberts contacted the lead investment bank in an email with the subject “new investor” and asked that the bank send the investor required forms to finalize his investment in Trunkbow.

70. Roberts also assisted Trunkbow in conducting an IPO in February 2011. Two months before the IPO, Roberts told an investment bank that he had “several” investors for whom he wanted to set up accounts and about whom he wanted to discuss allocation amounts.

71. In December 2010, Roberts sent an email to his investor group asking whether they could “stir up some broker/retail interest” if Trunkbow added a stop in Vancouver for its IPO road show.

72. After the merger transaction, Bay Peak owned approximately 5% of the issued and outstanding shares of Trunkbow, which amounted to 1,352,332 shares of stock and 100,000 warrants.

73. Roberts resigned from Trunkbow’s board of directors on March 31, 2011, shortly after the IPO was completed.

74. The CEO of Trunkbow is quoted on Bay Peak’s website as saying, “Bay Peak provided our bridge financing and led our initial investment round and provided us with assistance and guidance for a successful listing onto NASDAQ. We are happy to have Cory still serving on our Board.”

### **Asia Leechdom**

75. On May 28, 2010, another Bay Peak shell company completed a reverse merger with Asia Leechdom, the 100% owner of BOAI. Subsequently, on or about June 1, 2010, Bay Peak posted on its website, at the direction of Roberts, a press release announcing the merger and the raising of \$8,000,000 on behalf of the company through the exercise of warrants.

76. Roberts described Bay Peak’s engagement with BOAI in a December 1, 2009 email as follows, “I signed up another company named BOAI Pharmaceuticals this past week as well. It tried to go out and raise money earlier this year but was unsuccessful . . . [ellipsis in original] I think that their positioning was all wrong. The company is audited and ready to move forward, so we are doing a financing.”

77. In a December 9, 2009 email to one of his investor partners with the subject “BOAI,” Roberts wrote, “Let’s discuss how we want to move this financing forward. The SEA [Share Exchange Agreement] closes contingent upon a \$10M capital raise but they will close this with as little as \$5M if we can close before March 1st. Can work a small fee into this for another group we bring in to complete the transaction. Let’s try to figure this one out.”

78. In the months leading up to the reverse merger, Roberts directly solicited investors on behalf of BOAI/Asia Leechdom.

79. On December 17, 2009, Roberts emailed a prospective investor, “I wanted to follow up with you about BOAI. . . . I would like to know if your investment group still has an interest in investing along side our investment and how much they are interested in investing?” On December 28, 2009, the prospective investor emailed Roberts, “Would you please send me the latest business plan of Boai?” On December 30, 2009, Roberts sent the potential investor a document that he described as “our internal executive summary.” In a subsequent email, Roberts described the document as “the BOAI executive summary that we are using to discuss the opportunity with investors.” The document contained a “bayPeak llc” header on each page and concluded with the statement, “For more information please contact Cory Roberts” or another person with a “baypeak.com” email address.

80. Roberts emailed his investor partner on March 18, 2010, “my guy says he is in for \$1M . . . . I think I may have another small hedge fund in for \$1M but have to work on him some more. . . . I have 2 other guys I will send them info. after I call them tomorrow . . . [ellipsis in original] they could come in for \$1M each as well but may be a long shot.” The partner responded, “Good job teammate!”

81. On March 29, 2010, Roberts sent an email with the subject “BOAI deal” to the same potential investor to whom Roberts had sent an “internal executive summary for both Trunkbow and BOAI” by email on January 6, 2010 (described in paragraph 65, above). In the

March 29 email Roberts wrote, “I don’t think I ever sent you final info on this deal. You should take a look at it. let me know.”

82. In addition to directly soliciting investors, Roberts facilitated communications between several prospective investors and company management. In one February 1, 2010 email, an employee of a potential institutional investor wrote to Roberts, “Thanks for the time today to discuss BOAI and your structure. . . . If [BOAI’s chairman] is available on Thursday or Friday, I think it would be worth a visit.” Roberts responded that another employee of the institutional investor had “connected with my guys in BJ [Beijing] and will visit the company this Sat.” The potential investor replied, “Great. Thanks for the setting this up.”

83. In another February 11, 2010 email, Roberts provided detailed information about BOAI/Asia Leechdom in response to questions described as “[p]oints of focus for one investor who is deciding on how much to commit.”

84. In February 2010, Roberts was asked to arrange a private call between a prospective Chinese-speaking investor and the company’s chairman. Roberts agreed to set up the call, but refused to allow the investor to speak to the chairman without Roberts or one of his Chinese-speaking partners on the phone. In a February 26, 2010 email, Roberts wrote, “I am sure we can get a call set up with . . . the Chairman of BOAI for Monday at 3:30. However, I will not provide free access to anyone without either myself on the call or one of my team members. Since the call will be held in Chinese then I will have one of my partners on the call.” Roberts later added, “if he refuses to have one of my partners on the call while he speaks to the Chairman then I don’t want his money.”

85. Like in Trunkbow, Roberts circulated a document that described a “Private Offering” for the “China BOAI Financing.” The document had a “bayPeak llc” header on each page and stated, “Through this offering, we are seeking to raise a minimum of \$10 million in proceeds for issuance of 10% of our total equity post closing.” The final page of the document stated, “For more information please contact Cory Roberts” or another person with a “baypeak.com” email address. Roberts sent the document to at least two potential investors.

86. On November 4, 2011, Roberts and Bay Peak entered into an agreement with Asia Leechdom which contemplated the receipt of transaction-based compensation: “8% of the gross proceeds the Company receives from any Financing completed during the term of this Agreement. . . .” In return, Roberts and Bay Peak agreed to advise the company on “the manner of effectuating a going public transaction. . . .”

87. In November 2011, Roberts and Bay Peak entered into consulting agreements with two Chinese citizens for them to solicit investors in Asia Leechdom. Bay Peak agreed to pay the consultants a fee of 2% of the gross proceeds received from any potential investor.

88. The Chairwoman of BOAI (the 100% owner of Asia Leechdom) was quoted on Bay Peak’s website as saying, “We have been very pleased in working so closely with Bay Peak to complete our financing needs and our US listing. They really work hard for us.”

## **VIOLATIONS**

89. Section 15(a)(1) of the Exchange Act prohibits any broker that is a natural person not associated with a broker or dealer from using the mails or any other means of interstate commerce to “effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security,” unless he or she is registered with the Commission as a broker in accordance with Section 15(b) of the Act. As a result of the conduct described above, Roberts willfully violated Section 15(a)(1) of the Exchange Act by failing to register as a broker.<sup>2</sup>

90. Section 15(a)(1) of the Exchange Act prohibits any broker that is not a natural person from using the mails or any other means of interstate commerce to “effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security,” unless that broker is registered with the Commission in accordance with Section 15(b) of the Act. As a result of the conduct described above, Bay Peak willfully violated Section 15(a)(1) by failing to register as a broker.<sup>3</sup>

## **UNDERTAKINGS**

### **Roberts and Bay Peak Shall Return Shares of Eleven Remaining Shells**

91. Roberts and Bay Peak have undertaken to return, within thirty days (30) after the entry of this Order, all shares of the remaining eleven shell companies that they own to their treasuries to be cancelled. These eleven shell companies are:

- Bay Peak 3 Acquisition Corp.;
- Bay Peak 7 Acquisition Corp.;
- Bay Peak 8 Acquisition Corp.;
- Bay Peak 9 Acquisition Corp.;
- Bay Peak 10 Acquisition Corp.;
- TSI Vision;
- TSI Laser;
- Bay Peak 2 Opportunity Corp.;
- Bay Peak 3 Opportunity Corp.;
- Bay Peak 4 Opportunity Company;
- Bay Peak 5 Opportunity Company.

92. Roberts and Bay Peak shall certify, in writing, compliance with the undertakings set forth above. The certification shall identify the undertakings and provide a narrative supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Roberts and Bay Peak agree to

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<sup>2</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>3</sup> See *supra* footnote 2.

provide such evidence. The certification and supporting material shall be submitted to Antonia Chion, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F Street, N.E., Washington, D.C. 20549-5720B SP2, 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 and in the public interest to impose the sanctions agreed to in Respondent Roberts' and Bay Peak's Offer.

Accordingly, pursuant Sections 15(b) and 21C of the Exchange Act and Section 9(b) of the Investment Company Act, it is hereby ORDERED that:

A. Respondents Roberts and Bay Peak cease and desist from committing or causing any violations and any future violations of Section 15(a)(1) of the Exchange Act.

B. Respondent Roberts be, and hereby is:

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

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; and

barred from participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock,

with the right to apply for reentry after five (5) years to the appropriate self-regulatory organization, or if there is none, to the Commission.

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

D. Roberts and Bay Peak shall, within three hundred sixty-five (365) days of the entry of this Order, pay jointly and severally, disgorgement of \$114,141 and prejudgment interest of \$13,854.88 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3), with \$40,000 of this amount to be paid jointly and severally within ten (10) days of the entry of this Order. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600.

E. Roberts shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of \$10,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717.

F. Payments ordered in paragraphs D & E above 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 Phillip Cory Roberts and Bay Peak, LLC 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 Antonia Chion, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F Street, N.E., Washington, D.C. 20549-5720B SP2.

G. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent Roberts agrees that in any Related Investor Action, he shall not argue that he is entitled to, nor shall he benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent Roberts agrees that he shall, within 30 days after entry of a final

order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent Roberts by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

H. Respondent shall comply with the undertakings enumerated in paragraphs 91 and 92 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, the findings in this Order are true and admitted by Respondent, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent 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 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