

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING  
File No. 3-16359

In the Matter of

Glen Allan Galemmo,

Respondent.

GALEMMO'S TRAVERSE  
RESPONSE IN OPPOSITION TO  
SECURITIES & EXCHANGE COMMISSION  
BRIEF IN OPPOSITION TO  
RESPONDENT'S REQUEST TO  
VACATE CERTAIN REMEDIAL  
SANCTIONS

Comes Now, Glen Allen Galemmo (Respondent) filing this definitive response in regard to the SEC's February 24, 2017 Response in Opposition to vacate sanction on "allegations of misconduct" the NRSRO bars entered that extends beyond July 21, 2010" in regards to the D.C. Circuits 2015 decision regarding Kock v. SEC, 793 F.3d, 147, 158 (Finding "impermissibly retroactive" NRSRO and municipal advisor bars imposed based on conduct pre-dating Dodd-Frank") and would respectfully state for the record the following additional facts:

**A. Procedural History:**

During 1994 Thru 1998, Respondent while living in Raleigh, North Carolina became a SEC registered Broker/Dealer and a Private Equity Trader for other firms while learning the business.

During 1999 Thru 2003, Respondent went out on his own, started his own Investment Firm and was registered as a Broker Dealer and an Investment Advisor.

During 2003 with the changes to SEC Regulations, Respondent decided to sell his "Broker/Dealer" firm to a small group from New York. Then during

2003 Respondent, instructed Luther "Lynn" Shelby the (FNOP) for Queen City Investment Advisors, LLC to close this business. Mr. Shelby's address and phone number are as follows for verification by Commission through their office of General Counsel. Luther Lynn Shelby at [REDACTED], Coldwater, MS 38618. Tel: [REDACTED].

During the remainder of 2003 thru 2013, Respondent organized and managed a private placement for accredited and qualified investors. Queen City Investment Fund II LLC. A detailed, Confidential Offering Memorandum, Operating and Subscription Agreements were provided to prospective investors. Prospective investors were urged to review and consult with their respective legal, investment and accounting advisors prior to making an investment in Queen City Investment Fund II. (See Exhibit #1)

Respondent has never taken the test to become a "Commodity Pool Operator or Municipal Advisor". As such, Respondent has never acted in the capacity of a Commodity Pool Operator or Municipal Advisor.

On January 23, 2015, the Commission issued an order making the findings and imposing remedial sanctions (the "Order") against Glen Allan Galemmo. The Order, among other things, barred Galemmo from association with any Nationally Recognized Statistical Rating Organization ("NRSRO") or municipal advisor. Subsequent to the Order, the Commission issued a statement regarding Koch v. SEC - where the court vacated NRSRO and municipal advisor bars because the conduct that served as the basis for the bars predated the enactment of the Dodd Frank Wall Street Reform and Consumer Protection Act on July 21, 2010 - and invited persons who had been barred from such associations to request the bars be vacated if "all of the conduct relevant to such bar(s) occurred before July 22, 2010.

On April 11, 2016, Galemmo filed a request to vacate the NRSRO and municipal advisor bars entered against him. The Order appears, however, to contain allegations of misconduct supporting the bars that extends beyond July 21, 2010. As a result, the Commission's consideration of Galemmo's request to vacate would be assisted by briefing on the question of whether relevant misconduct continued past July 21, 2010 and, if it did, whether the bars should be vacated notwithstanding such post Dodd-Frank misconduct.

The General Counsel's office for the SEC Commission in it's order allowed: "Each party ... to file, by March 31, 2017, an opposition brief not to exceed 2,500 words."

The SEC Commission through Jason A. Howard and John E. Birkenheier Counsel for the SEC Enforcement Division filed it's opposition brief February 24, 2017.

Respondent Galemmo waited for copies of his SEC file from Counsel on his 2/13/2017 request in his brief entitled Galemmo's Response to SEC's order requesting additional briefing to no avail. The SEC to date has refused to provide at Respondent's cost a complete copy of his SEC file.

Respondent with his brief entitled Galemmo's Traverse Response in Opposition to Respondent's request to vacate certain remedial sanctions would put the SEC on notice that Respondent yet again requests a copy of his complete SEC file at his cost to be paid upon production of copies and a billing statement for same. Respondent has no idea what is in the file as his former Counsel BGD LAW Firm, Benjamin Dusing, and Angela Hayden are embroiled with the respondent in legal proceedings in the Sixth Circuit Court of Appeals in United States v. Galemmo, Appeal no. 16-4053.

Respondent would also place the SEC on notice in regards to the fact that the Appeal will address Affirmative Misadvice by Counsel in failing to proceed to Trial and the withdrawing of the plea contract breached by the Government and disavowing the Statement of Facts relied upon by SEC Counsel to reach it's conclusions while moving to dismiss any SEC Sanctions in Respondent's case.

**B. Definitive Response:**

Respondent proffers the following facts for the Commissions review and analysis.

- 1) Respondent ceased being a Broker-Dealer in 2003.
- 2) In 2003 Respondent closed his Broker-Dealer, Investment Advisory Company through his (FNOP) Luther "Lynn" Shelby.
- 3) Respondent has never been a Commodity Pool Operator or Municipal Advisor.

As such in summation, Respondent would proffer that personally he was very conscious of the SEC Rules and Regulations throughout his career and structured his business to always be in strict compliance with SEC Requirements. The Commission should note that Respondent was never paid as an investment advisor after 2003 when he started his own "private placement" corporation Queen City Fund II, LLC.

**c. conclusion:**

Respondent would request the Commission to take note of several points and answer questions that he has on several points as follows:

1. In its response to the Respondent's April 11, 2016 communication, with regard to the applicability of Respondent's actions as the Managing Member of the Queen City Investment Fund II, and in the context of Dodd-Frank, and Koch v. SEC, did the Commission's determine that the Respondent was a Commodity Pool Operator, Broker-Dealer, Municipal or Investment Advisor? If the answer is yes, Respondent respectfully request that the Commission provide the factual basis and analysis for its conclusion. Respondent proffers that the Queen City Investments documents, federal securities laws exemptions which were relied upon by Queen City's management and Investors, and the compensation terms of Queen City Managing Member, precluded a find that the Respondent was a Commodity Pool Operator, Broker-Dealer, Municipal or Investment Advisor. Furthermore, Respondent did not receive any communication from the Commission while he was the Managing Member of Queen City Investment Fund II informing him that he was not entitled

to rely on the federal securities law exemptions that apply to those who manage investment funds limited to accredited and qualified investors and or that he was a Broker-Dealer, Commodity Pool Operator, Investment or Municipal Advisor.

Respondent requests that the Commission provide him with a letter acknowledging that the Commission is imposing sanctions on the Respondent in his capacity as the Managing Member of Queen City Investment Fund II, not as a Commodity Pool Operator, Broker-Dealer, Municipal and Investment Advisor.

2. In the past Commission has sent SEC related material to the law offices of Benjamin Dusing and Angela Hayden at BGD LAW in Covington, Kentucky. (See, Exh. 1). This law firm and these lawyers have not represented Respondent since November 17, 2014. (See, Exh. 2). As such all future filings by the SEC must be served on Respondent at Glen Galemno, Fed. Reg. No. [REDACTED], [REDACTED] - Durham B, P.O. Box [REDACTED], Butner, NC [REDACTED].

3. Respondent would like to notify the Commission that he has an active case with the United States Commodity Futures Trading Commission in United States District Court, Southern District of Ohio, Western Division, before Judge Michael Barrett, U.S.D.J. in U.S.C.F.T.C. v. Glen Galemno, Case No. 1:14-cv-738. Respondent would point out for the Commission in Judge Barrett's most recent Order in this case filed 3/30/2016, Doc. #18, that the U.S.C.F.T.C. moved for Default Judgement and on page 4 of the Order: "This Court finds that the meritorious defense factor weighs in favor of setting aside the default.". As in essence Respondent has supplied ample evidence that he was not a commodities pool operator under the Commodity Exchange Act and disputes some of the factual basis for the Commissions claims. See, Exh. 3.


4. Respondent would request a complete copy of his entire SEC File No. 74124 and Administrative Proceeding File No. 3-16359 as former retained counsel refuses to provide the file on this Administrative Proceeding and Respondent is left guessing what the Commission actually wants. Of course Respondent is willing to pay for file reproduction costs and mailing to this address.

5. [REDACTED]

In closing Respondent would like to thank the Commission Thru Ms. Lynn M Powalski, Deputy Secretary for the opportunity to clarify his position. Further stating that Respondent has been and will continue to be forthcoming in any requests or assistance that Respondent can be to the Commission on this case and others.

Respectfully Submitted by,

Date: 3/29/2017  
Executed under the Pains  
and Penalties of Perjury  
Pursuant to 28 USC §1746

  
Glen Galemno, Pro Se  
Fed. Reg. No. [REDACTED]  
P.O. Box [REDACTED]  
Butner, NC [REDACTED]

**EXHIBIT 1**

## NOTICES

NO PERSON IS AUTHORIZED TO GIVE ANY INFORMATION OR MAKE ANY REPRESENTATIONS NOT CONTAINED HEREIN, AND, IF GIVEN OR MADE, SUCH INFORMATION OR REPRESENTATIONS MUST NOT BE RELIED UPON AS HAVING BEEN AUTHORIZED. THE DELIVERY OF THIS MEMORANDUM AT ANY TIME DOES NOT IMPLY THAT THE INFORMATION CONTAINED HEREIN IS CORRECT AS OF ANY TIME SUBSEQUENT TO THE DATE OF ITS ISSUE.

THIS MEMORANDUM DOES NOT CONSTITUTE AN OFFER TO SELL, OR A SOLICITATION OF AN OFFER TO BUY, A SECURITY IN ANY JURISDICTION IN WHICH IT IS UNLAWFUL TO MAKE SUCH AN OFFER OR TO ANY PERSON TO WHOM IT IS UNLAWFUL TO MAKE SUCH AN OFFER OR SOLICITATION IN SUCH JURISDICTION.

INVESTMENT IN THE INTERESTS INVOLVES A HIGH DEGREE OF RISK AND IS SUITABLE ONLY FOR A SOPHISTICATED INVESTOR FOR WHICH SUCH INVESTMENT DOES NOT CONSTITUTE A COMPLETE INVESTMENT PROGRAM AND WHICH FULLY UNDERSTANDS AND IS WILLING TO ASSUME THE RISKS INVOLVED. ONLY A PERSON OR ENTITY WHICH QUALIFIES FOR PURPOSES OF THE ACT MAY INVEST IN THE INTERESTS. NO PERSON WHICH IS NOT CAPABLE INDEPENDENTLY OF EVALUATING ANY INFORMATION CONTAINED IN THIS MEMORANDUM AND THE RISKS INVOLVED IN THE PURCHASE OF THE INTERESTS SHOULD CONSIDER DOING SO.

A PROSPECTIVE PURCHASER OF INTERESTS SHOULD NOT CONSTRUE THE CONTENTS OF THIS MEMORANDUM AS TAX OR LEGAL ADVICE. THIS MEMORANDUM SHOULD BE REVIEWED BY THE PROSPECTIVE PURCHASER AND ITS INVESTMENT, TAX, LEGAL OR OTHER ADVISERS.

EXECUTIVE OFFICERS AND REPRESENTATIVES OF THE MANAGING MEMBER ARE AVAILABLE TO EACH PROSPECTIVE INVESTOR AND/OR ITS REPRESENTATIVES TO ANSWER QUESTIONS CONCERNING THE TERMS AND CONDITIONS OF THIS OFFERING OF INTERESTS AND TO FURNISH ANY ADDITIONAL INFORMATION, TO THE EXTENT THAT THEY POSSESS OR CAN ACQUIRE IT WITHOUT UNREASONABLE EFFORT OR EXPENSE, NECESSARY TO VERIFY THE ACCURACY OF THE INFORMATION SET FORTH HEREIN OR TO ENABLE IT TO EVALUATE THE MERITS AND RISKS RELATING TO THE PURCHASE OF INTERESTS.

BY ACCEPTING RECEIPT OF THIS MEMORANDUM, EACH PROSPECTIVE INVESTOR AGREES NOT TO DUPLICATE OR TO FURNISH COPIES OF THIS MEMORANDUM TO PERSONS OTHER THAN SUCH OFFEREE'S INVESTMENT, TAX, ACCOUNTING OR LEGAL ADVISERS AND AGREES TO RETURN THIS MEMORANDUM TO THE MANAGING MEMBER PROMPTLY AFTER SUCH TIME AS SUCH OFFEREE IS NO LONGER CONSIDERING AN INVESTMENT IN THE INTERESTS.

THIS MEMORANDUM DOES NOT CONTAIN AN UNTRUE STATEMENT OF A MATERIAL FACT OR OMIT TO STATE A MATERIAL FACT NECESSARY TO MAKE THE STATEMENTS MADE HEREIN, IN LIGHT OF THE CIRCUMSTANCES UNDER WHICH THEY WERE MADE, NOT MISLEADING. IT CONTAINS A FAIR SUMMARY OF THE MATERIAL TERMS OF DOCUMENTS PURPORTED TO BE SUMMARIZED HEREIN.

NOTICE TO ARIZONA RESIDENTS

THESE SECURITIES ARE OFFERED PURSUANT TO AN EXEMPTION FROM REGISTRATION WITH THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION. THE COMMISSION DOES NOT PASS UPON THE MERITS OF ANY SECURITIES NOR DOES IT PASS UPON THE ACCURACY OF COMPLETENESS OF ANY OFFERING CIRCULAR OR OTHER SELLING LITERATURE.

NOTICE TO CALIFORNIA RESIDENTS

THE SECURITIES OFFERED HEREBY HAVE NOT BEEN QUALIFIED WITH THE COMMISSION OF CORPORATIONS OF THE STATE OF CALIFORNIA UNDER THE CALIFORNIA CORPORATE SECURITIES LAW OF 1968, AS, IN RELIANCE UPON THE EXEMPTION FROM QUALIFICATION PROVIDED BY SECTION 25102(f) AND/OR 25102(n) OF THAT LAW. FURTHER, THE SECURITIES OFFERED HEREBY HAVE NOT BEEN REGISTERED OR QUALIFIED UNDER THE SECURITIES LAWS OF ANY OTHER STATE OR JURISDICTION AND ARE BEING SOLD IN RELIANCE UPON EXEMPTIONS FROM THE QUALIFICATION REQUIREMENTS OF SUCH APPLICABLE STATE SECURITIES LAWS.

THESE SECURITIES MAY ONLY BE SOLD TO INVESTORS, EACH OF WHOM CAN REPRESENT THAT HE/SHE HAS A PREEXISTING PERSONAL OR BUSINESS RELATIONSHIP WITH THE SPONSOR OR ANY OF ITS OFFICERS, DIRECTORS OR CONTROLLING PERSONS, OR HAS, THROUGH HIMSELF/HERSELF OR THROUGH HIS/HER UNAFFILIATED PROFESSIONAL ADVISER, THE BUSINESS OR FINANCIAL EXPERIENCE TO PROTECT HIS COMMON STOCK IN CONNECTION WITH HIS/HER SUBSCRIPTION TO THE COMMON STOCK. IT IS UNLAWFUL TO CONSUMMATE A SALE OR TRANSFER OF THIS SECURITY, OR ANY INTEREST THEREIN, OR TO RECEIVE ANY CONSIDERATION THEREFROM, WITHOUT THE PRIOR WRITTEN CONSENT OF THE COMMISSIONER OF CORPORATIONS OF THE STATE OF CALIFORNIA, EXCEPT AS PERMITTED IN THE COMMISSIONER'S RULES.

NOTICE TO FLORIDA RESIDENTS

THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION NOR HAS THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS MEMORANDUM. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE. IN ADDITION, WHEN SECURITIES ARE SOLD TO 5 OR MORE FLORIDA RESIDENTS, ALL FLORIDA RESIDENTS SHALL HAVE THE PRIVILEGE OF VOIDING THE PURCHASE WITHIN THREE (3) DAYS AFTER THE AVAILABILITY OF THAT PRIVILEGE IS COMMUNICATED TO SUCH PURCHASER.

NOTICE TO KENTUCKY RESIDENTS

THESE SECURITIES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR THE SECURITIES ACT OF KENTUCKY, BY REASON OF SPECIFIC EXEMPTIONS THEREUNDER RELATING TO THE LIMITED AVAILABILITY OF THE OFFERING. THESE SECURITIES CANNOT BE SOLD, TRANSFERRED, OR OTHERWISE DISPOSED OF TO ANY PERSON OR ENTITY UNLESS THEY ARE SUBSEQUENTLY REGISTERED OR AN EXEMPTION FROM REGISTRATION IS AVAILABLE.

NOTICE TO INDIANA RESIDENTS

THESE SECURITIES ARE OFFERED PURSUANT TO A CLAIM OF EXEMPTION UNDER SECTION 23-2-1-3 OF THE INDIANA CODE. THESE SECURITIES ARE SUBJECT TO

The Company anticipates that most of its funds will generally be invested in securities or other instruments or deposited to satisfy margin requirements and does not generally intend to maintain substantial cash balances outside of margin accounts for long periods of time. To the extent the Company has excess funds that are not invested in securities or deposited to satisfy margin requirements, such funds are expected to be held in interest bearing money market or brokerage accounts or high-grade short-term investments, in each case in the United States.

#### **Cash and Cash Equivalents**

The Company reserves the right to maintain significant amounts in cash, particularly when the Managing Member believes the Company should follow a temporary defensive posture, or when the Managing Member determines that opportunities for investing are unattractive. Among the cash equivalents which the Company may acquire are: obligations of the United States Government, its agencies or instrumentalities; commercial paper, and certificates of deposit and bankers' acceptances issued by domestic branches of U.S. banks that are members of the Bank Insurance Fund. The Company also may enter into repurchase or reverse repurchase agreements, may purchase shares of money market mutual funds properly registered under the securities laws, and may receive interest paid on its credit balances with securities firms or others. There is no restriction on the amount of time that Company funds may be held prior to being utilized. All funds will be received in the name of the Company, and funds held as margin deposits will be properly segregated in accordance with applicable regulations.

#### **Relationship with Portfolio Companies and Investment Restrictions**

The Company will not ordinarily acquire investment positions with the intention of seeking control or substantially influencing the control of a particular issuer. However, there may be situations that, in the judgment of the Managing Member, require active efforts to seek changes in particular management policies or strategies. In such situations, the Managing Member may, either alone or with other investors, make its views known to management and may seek to influence, in a manner consistent with the Company's investment objectives and resources, the management or policies of a particular issuer. In no circumstances will the Company take legal or management control or become involved in the day-to-day management of a portfolio company.

#### **Diversification and Concentration**

It is not a goal of the Company to maintain a highly diversified portfolio. The Managing Member focuses on a limited number of investments that it can follow closely. Moreover, the Company Agreement imposes no limits on the concentration of the Company's investments in particular securities, industries, or sectors. There are instances where the Managing Member may feel that it is in the best interest of the Company to effect a transaction outside of these guidelines. This may represent a special risk in that the level of diversification of the Company's portfolio may be lower than a well-diversified portfolio.

#### **Inherent Risks**

**An investment in the Company should be viewed as a speculative investment. It is not intended as a complete investment program and is designed only for investors who have adequate means of providing for their needs and contingencies without relying on distributions or withdrawals from their Company accounts, who are financially able maintain their investment and who can afford the loss of their investment.** There can be no assurance that the Company will achieve its investment objectives. All potential investors in the Company should understand the investment approaches and techniques that the Managing Member expects to use in the management of the Company and the particular risks associated with those approaches and techniques. See "RISK FACTORS."

the Company. Accordingly, the Company anticipates that it may, in certain circumstances, compete with such affiliated Companies as may come into existence for the same or similar securities. This may be the case notwithstanding that the Company may have significantly dissimilar investment objectives from the affiliated Companies.

Notwithstanding significantly different investment objectives, assuming particular securities are "suitable" for the Company and other Limited Liability Companies with which the Managing Member (or its Affiliates) are affiliated, conflicts of interest may arise as to which of the Companies (including the Company) should proceed to acquire the investment securities. The Managing Member will seek to resolve these conflicts in as equitable a manner as possible under the prevailing facts and circumstances, but there is no assurance that any such conflicts will be resolved in a manner advantageous to the Company.

#### **Competition with the Company from Managed Accounts for Securities Transactions**

The Managing Member is free to manage accounts for investors, investment vehicles, itself, its employees, its principals, and their respective families, and is free to trade on the basis of methods similar or identical to those employed by the Managing Member in the performance of services for the Company, or methods which are entirely independent of such methods. Non-Managing Members will not be permitted to inspect the records of accounts or any written policies relating to such Managing Member or its affiliates, except in the discretion of the Managing Member.

It is possible that orders for the account of the Managing Member or its principals may be entered in advance of the Company for legitimate and explainable reasons such as a neutral order allocation system, a different trading program, or a higher risk level of trading. However, any such proprietary trading is subject to the duty of the Managing Member to exercise good faith and fairness in all matters effecting Non-Managing Members and client accounts, respectively.

#### **Competition with the Company from Affiliates of the Managing Member for the Time and Services of Common Officers and Directors**

Messrs. Galemmo and Blackledge, the managing members of the Managing Member are involved in other activities in addition to the management of the Company. Accordingly, conflicts of interest may arise in the allocation of time to the management of the Company. Messrs. Galemmo and Blackledge will devote such time to the affairs of the Company as they, within their sole discretion, determine to be necessary for the benefit of the Company in accordance with their fiduciary duties.

#### **Conflicts as to Investment Opportunities**

The Managing Member is obligated to use its best efforts to provide the Company with continuing and suitable investment opportunities consistent with its investment objectives, policies and strategies; however, the Managing Member is not required to present to the Company any investment opportunity which has come to its attention even if such opportunity is consistent with the investment objectives, policies and strategies of the Company. Accordingly, the Company may not be given the opportunity to participate in certain investments made by the Managing Member and its Affiliates. In addition, if the Company rejects an investment opportunity for any reason, the Managing Member and its Affiliates may accept it. The Managing Member will endeavor to resolve conflicts of interest with respect to investment opportunities in a manner deemed equitable to all to the extent possible under the prevailing facts and circumstances and consistent with the Managing Member's fiduciary duties.

### **RISK FACTORS**

Prospective investors should carefully consider the risks involved in an investment in the Company, including but not limited to those discussed below. Many of those risks are discussed more fully elsewhere in this Memorandum. Prospective investors should consult their own legal, tax, and financial advisers as to all these risks and an investment in the Company generally.

### *Other Possible Tax Law Changes*

No assurance can be given that legislative, administrative or judicial changes will not occur which will alter either prospectively or retroactively, the tax considerations or risk factors discussed in this Memorandum. Existing and prospective Non-Managing Members should seek, and must rely on, the advice of their own tax advisers with respect to the possible impact on their investment of any future proposed tax legislation or administrative or judicial action.

### **Regulatory Matters**

#### *Investment Company Regulation*

The Company intends to rely on the provisions of Section 3(c)(1) of the Federal Investment Company Act of 1940 (the "ICA") to avoid requirements that it register as an "investment company" under and comply with the substantive provisions of the ICA. If the Company were registered as an investment company, the ICA would require, among other things, that the Company have a board of directors some of whom were unrelated to the Managing Member, compel certain custodial arrangements, and regulate the relationship and transactions between the Company and the Managing Member. Compliance with some of those provisions could possibly reduce certain risks of loss by the Company or Non-Managing Members, although such compliance could significantly increase the Company's operating expenses and limit the Company's investment and trading activities. Interpretations of Section 3(c)(1) are complex and uncertain in several respects and, as a result, there can be no assurance that the Company will remain entitled to rely on that Section. If the Company were found not to have been entitled to such reliance, it and the Managing Member could be subject to legal actions by the SEC and others and the Company could be forced to terminate its business under adverse circumstances.

#### *Investment Adviser Regulation*

The Company intends to rely on the provisions of the Investment Advisers Act of 1940, as amended (the "Advisers Act") and under comparable state laws to avoid requirements that it register as an "investment adviser" under and comply with the substantive provisions of the Advisers Act or comparable state laws. If the Managing Member were registered as an investment adviser, the Advisers Act and comparable state laws would require, among other things, that Non-Managing Members meet certain financial requirements, compel certain custodial arrangements, and regulate the relationship and transactions between the Company and the Managing Member. Compliance with some of those provisions could possibly reduce certain risks by the Company or Non-Managing Members. Interpretations of the Advisers Act and comparable state laws are complex and uncertain in several respects and, as a result, there can be no assurance that the Company will remain entitled to rely on that Section. If the Company were found not to have been entitled to such reliance, it and the Managing Member could be subject to legal actions by the SEC and others and the Company could be forced to terminate its business under adverse circumstances.

#### *Private Offering Exemption*






The Company intends to offer Interests on a continuing basis without registration under any securities laws in reliance on an exemption for "transactions by an issuer not involving any public offering." While the Managing Member believes reliance on such exemptions is justified, there can be no assurance that factors such as the manner in which offers and sales are made, concurrent offerings by other Companies, the scope of disclosure provided, failures to make notices, filings, or changes in applicable laws, regulations, or interpretations will not cause the Company to fail to qualify for such exemptions under Federal or one or more states' laws. Failure to so qualify could result in the rescission of sales of Interests at prices higher than the current value of those Interests, potentially affecting materially the Company's performance and business. Further, even nonmeritorious claims that offers and sales of Interests were not made in compliance with applicable securities laws could materially and adversely affect the Managing Member's ability to conduct the Company's business.

# BGD LAW

The Law Offices of Benjamin G. Dusing, PLLC

50 East Rivercenter Blvd  
Suite 820  
Covington, KY 41011  
(513)322-1900  
ahayden@bgdlaw.com  
www.bgdlaw.com

February 23, 2016

Glen Galemmo,   
  
  
P.O. Box   
Butner, NC 

RE: SEC

Dear Mr. Galemmo:

Enclosed please find correspondence from the SEC sent to you in car of our office.

Very truly yours,



Angela M. Hayden

AMH  
Enclosures

**EXHIBIT 2**



# BGDLAW

50 East RiverCenter Blvd  
Suite 820  
Covington, KY 41011  
P. (513)322-1900  
bdusing@bgdlaw.com  
www.bgdlaw.com

November 17, 2014

Mr. Glen Galemmo ( [REDACTED] )  
[REDACTED]  
[REDACTED]  
P.O. Box [REDACTED]  
Butner, NC [REDACTED]

RE: Termination of Representation  
United States v. Galemmo  
Bah v. Galemmo, et al.  
Wilner v. Galemmo, et al.,  
Capannari v. Galemmo, et al.

Dear Glen:

We wish to take this opportunity to thank you for allowing us to represent you in the above-referenced matters. This letter is to inform you that our legal relationship is now concluded. In order to conclude this matter, we will be filing motions/notices to withdraw as counsel for you and the various business entities. As you know, there are outstanding bills in all of these matters.

We are closing our file but will maintain a copy of the file, which will be kept for a period of 7 years. The file will then be destroyed unless you request that we store the file for a longer period of time. If you wish us to store the file for a longer period of time, you must instruct us to do so in writing within five days of the date of this letter.

As we discussed, we will continue to represent your wife, Kristine Galemmo, as it pertains to the claims made against her in the Bah and Capannari matters and with respect to the forfeiture proceedings. We will communicate directly with her regarding those matters.

If you have any questions please let us know.

November 17, 2014

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Very truly yours,  
BGD Law



Benjamin G. Dusing

BGD/amh

**EXHIBIT 3**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

U.S. Commodity Futures  
Trading Commission,

Plaintiff,

v.

Glen Galemmo,

Defendant.

Case No. 1:14cv738.

Judge Michael R. Barrett

ORDER

This matter is before the Court upon Plaintiff U.S. Commodity Futures Trading Commission's Motion for Default Judgment. (Doc. 12). Defendant Glen Galemmo has filed a letter opposing the Commission's Motion (Doc. 14), along with a Sealed Document in support (Doc. 15 SEALED). The Commission then filed a Reply. (Doc. 16). Defendant has recently filed a Traverse Reply based on Newly Discovered Financial Factual Data. (Doc. 17). In addition, the Court held a hearing on the Motion for Default Judgment. (Doc. 13). Defendant is proceeding *pro se* in this matter.

The Commission filed its Complaint on September 15, 2014. (Doc. 1). The Commission is seeking injunctive relief, a civil penalty and other equitable relief based on violations of the Commodity Exchange Act, 7 U.S.C. §§ 1, *et seq.* As described in the declaration attached to the Application for Default, Defendant executed a waiver of service of the summons on September 30, 2014. (Doc. 10-1, Eugene Smith Decl., ¶ 1; Doc. 4). Defendant is currently serving a fifteen-year sentence as a result of his guilty plea in criminal proceedings before this Court. *United States v. Glen Galemmo*, Case

No. 1:13-cr-00141-HJW.

Between September and February, the parties engaged in settlement discussions. (Id., ¶¶ 5-12). The Commission filed two motions for extensions of time on behalf of Defendant. (Docs. 5, 8). The Commission understood that Defendant was not represented by counsel. (Id., ¶5). When Defendant did not respond to the Commission's proposed terms of a consent order, and did not respond to the Complaint in a timely fashion, the Commission filed its Motion for Default.

Federal Rule of Civil Procedure 55(c) provides: "The court may set aside an entry of default for good cause, and it may set aside a default judgment under Rule 60(b)." When deciding whether to set aside a default, the court should consider three factors: (1) whether the default was the result of the defendant's willful or culpable conduct; (2) whether the plaintiff would be prejudiced by setting aside the judgment; and (3) whether the defendant presented any meritorious defenses following the default. *United Coin Meter Co., Inc. v. Seaboard Coastline R.R.*, 705 F.2d 839, 844-45 (6th Cir. 1989); see also *Dassault Systèmes, SA v. Childress*, 663 F.3d 832, 839 (6th Cir. 2011) (applying factors in context of a motion to set aside an entry of default under Rule 55(c)).

The Court concludes that there is good cause to set aside the entry of default in this matter. There is no evidence that Defendant's failure to answer or otherwise respond to the Commission's Complaint was willful or due to culpable conduct. Based on the declaration attached to the Application for Default, Defendant signed a waiver of service of the summons and engaged in discussions in an attempt to resolve the matter. The Court also notes that Defendant appeared by telephone for the hearing on the Commissioner's Motion for Default Judgment. (See Doc. 13). The Sixth Circuit has

instructed: "Where the defaulting party and counsel have not shown disrespect for the court, or have given evidence of respect for the court's process by their haste in acting to set aside the default, the courts have been inclined towards leniency." *Shepard Claims Serv., Inc. v. William Darrah & Assocs.*, 796 F.2d 190, 194 (6th Cir. 1986). Therefore, this factor weighs in favor of setting aside the default.

There is nothing in the record which would indicate that the Commission would be prejudiced by setting aside the judgment. Prejudice in this context must result in more than delay alone: "the delay must result in tangible harm such as loss of evidence, increased difficulties of discovery, or greater opportunity for fraud or collusion." *Thompson v. Am. Home Assur. Co.*, 95 F.3d 429, 434 (6th Cir. 1996) (citing *INVST Financial Group v. Chem-Nuclear Systems, Inc.*, 815 F.2d 391, 398 (6th Cir. 1987)). The Court notes that the Commission seeks a permanent injunction which would prohibit Glemmo and any of his agents, servants, employees, assigns and persons in active concert or participation with him to engage in conduct which violates the Commodity Exchange Act or trading commodity futures. However, there is no indication in the record that Glemmo or anyone working in concert or participation with him is currently engaged in this activity. Moreover, the Commission is seeking a civil penalty with the goal of deterrence. The Court notes that Commission's goal is still realized regardless of when any penalty is entered. Therefore, the Court finds that the "prejudice" factor weighs in favor of setting aside the default.

Finally, "[I]n order to establish a 'meritorious defense,' the defendant must state 'a defense good at law' which is sufficient if it contains 'even a hint of a suggestion which, if proven at trial, would constitute a complete defense.'" *Thompson*, 95 F.3d at

434 (citing *INVST Financial Group*, 815 F.2d at 398-99). "[E]ven conclusory assertions may be sufficient to establish the hint of a suggestion" needed to present a meritorious defense." *Dassault Systemes*, 663 F.3d at 843. In his letter filed in response to the Commissioner's Motion, Defendant argues that the amount of the Commission's civil monetary penalty is not supported by law. Defendant also argues that he was not acting as a "commodity pool operator" under the Commodity Exchange Act. In his Traverse Reply, Defendant also disputes some of the factual basis for the Commission's claims. Therefore, this Court finds that the "meritorious defense" factor weights in favor of setting aside the default.

Based on the foregoing, Plaintiff U.S. Commodity Futures Trading Commission's Motion for Default Judgment (Doc. 12) is **DENIED**.

**IT IS SO ORDERED.**

s/Michael R. Barrett  
JUDGE MICHAEL R. BARRETT

**EXHIBIT 4**



UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

DIVISION OF  
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May 2, 2016



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