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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-17811

In the Matter of

HANS PETER BLACK and
INTERINVEST
CORPORATION, INC.,

Respondents.

DIVISION OF ENFORCEMENT'S MOTION FOR FINDINGS OF DEFAULT AGAINST RESPONDENTS AND FOR IMPOSITION OF REMDIAL SANCTIONS

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I. Introduction

The Division of Enforcement (the "Division"), pursuant to Rules 155(a) and 220(f) of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f) moves for entry of an Order finding Respondents Interinvest Corporation, Inc. ("Interinvest") and Hans Peter Black ("Black" and collectively "Respondents") in default and determining this proceeding against them upon consideration of the record. The Division further moves for appropriate sanctions against both Interinvest and Black. Specifically, the Division moves this Court to find that it is in the public interest to revoke Respondent Interinvest's investment adviser registration, and to impose a permanent, collateral bar on Black. The Division sets forth the grounds below.[1]

II. Procedural History

On January 24, 2017, the Commission instituted this proceeding pursuant to Sections 203(e) and (f) of the Investment Advisers Act of 1940 ("Advisers Act"). The Secretary served the Order Instituting Proceedings on Interinvest, a Massachusetts-based investment adviser, by mail. The Secretary served the OIP on Black, a Canadian cititzen and resident, by international mail service.

On Janurary 27, 2017, the Chief Administrative Law Judge issued an order scheduling a hearing for February 21, 2017 and designated an Administrative Law judge to preside over that hearing and these proceedings. On February 13, 2017, the Court issued an order postponing the hearing and directing the Division to file, by February 21, a declaration regarding the status of service of the OIP on Respondents.

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[1] In support of this motion, the Division has also submitted an Appendix of Declarations, which contains the factual material cited in Section IV, *infra*, explaining the factual background of the Respondents' misconduct.

On February 21, 2017, the Division filed its declaration. *See* Division of Enforcement's Declaration Regarding Service of OIP ("Division Decl."). This sworn declaration shows that on January 24, 2017, the Secretary sent a copy of the OIP by certified mail to Interinvest, an SEC-registered investment adviser, and that the Postal service confirmed its attempted delivery. Division Decl., p.2 & Exs.1&2. This service by certified mail and attempted delivery on an SEC-registered investment adviser is compliant with Rule 141(a)(2)(iii) of the Commission's Rules of Practice. The Commission's declaration further evidences that Black, a resident of Canada, was served on February 15, 2017 by a Canadian process server who hand-delivered a copy of the OIP to Black's Montreal office and left it with the person in charge of the office. Division Decl., pp.2-3 & Exs. 3&4. This service by process server to person in charge of Respondent Black's business office is compliant with Rules 141(a)(2)(iv) and 141(a)(2)(1) of the Commission's Rules of Practice.

On February 23, 2017, the Court issued an order scheduling a prehearing conference and ordering Respondent Interinvest to show cause. The Court found that Interinvest was properly served on January 30, 2017, that its answer to the OIP was due on February 22, 2017, and that Interinvest had failed to file an answer. The Court then ordered Interinvest to show cause by March 6, 2017 why it should not be found in default. In the same order, the Court found that Respondent Black was properly served with the OIP on February 15, 2017, and that Black's answer to the OIP would be due on March 7, 2017. The Court then set March 21, 2017 as the date for a telephonic prehearing conference.

On March 9, 2017, the Court issued an order to Respondent Black requiring him to show cause why he should not be found in default and have this proceeding determined against him due to his failure to file an answer or otherwise defend this proceeding. The Court further cancelled the

telephonic prehearing conference and ordered the Division to file a motion for default and sanctions against the Respondents by April 14, 2017. Neither Black, nor Interinvest responded to the Court's orders to show cause.

III. Division's Motion for Default Against Respondents

Because the Respondents have never responded to the OIP or otherwise defended this proceeding, they are in default. Rule 155(a) of the Commission's Rules of Practice states that:

> A party to a proceeding may be deemed to be in default and the Commission or the hearing officer may determine the proceeding against the party upon the consideration of the record, including the order instituting proceedings, the allegations of which may be deemed to be true, if that party fails: . . .
>
> (2) To answer, to respond to a dispositive motion within the time provided, or otherwise to defend the proceeding . . . .

Moreover, the OIP provides that "If Respondent fails to file the directed answer . . . the Respondent may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true . . . ." (OIP at p.2)

As set forth above, Respondents were properly served with a copy of the OIP. To date, Respondents Interinvest and Black have not filed answers, responded to the Court's orders to show cause, or otherwise defended this proceeding in any way. Accordingly, the Division requests that the Court find the Respondents to be in default.

IV. Factual Background Concerning Respondents' Misconduct

A. Respondents' Investment Adviser Business

Respondent Interinvest is an SEC-registered investment adviser and has been one since Repondent Black founded the company in 1980. *See* OIP, File No. 3-17811 (hereinafter "OIP"), at

¶II.A.1-2;[2] Division Decl., p.2 & Ex.1 (attaching Interinvest's most recent Form ADV). From the firm's founding until June 2015, Interinvest clients paid fees ranging from 1-2% of assets under management in return for the company's investment advice. OIP, ¶II.A.1. As of April 2015, Interinvest purported to manage almost $95 million in 78 accounts, principally on behalf of individual investor clients. *Id.*

From the firm's founding through June 2015, Black was Interinvest's principal client relationship manager, providing investment advice to clients in exchange for the fees paid to Interinvest. OIP, ¶II.A.2. During this period, Black held various executive titles, including Chairman, President, Chief Compliance Officer and Chief Investment Officer. *Id.* Despite the variety of titles and position, Black was, at all relevant times, an Interinvest control person, and exercised exclusive direction over the management of client portfolios, and held ultimate operational responsibility and control of Interinvest. *Id.*

B. Respondent Black's Other Consulting Businesses

In addition to Interinvest, Black controlled two private companies based in Montreal, Canada: Interinvest Consulting Corporation of Canada and Zurmont Research Incorporated ("Zurmont"). *See* Declaration of Michael (hereinafter "Vito Decl."), ¶3 & Ex. 3 (Interinvest April 2014 Form ADV Part 2A) at 25 (describing Zurmont as controlled by Black); *id.*, ¶10 & Ex. 14 (description of Interinvest Consulting and Zurmont provided by Black to Commission during March 2014 exam). Black is the president of and exercises management control over Zurmont, which purports to engage in economic and finance research for individual and corporate clients. *See* Vito Decl., ¶10 & Ex. 14 (description of Zurmont provided by Black to Commission during

[2] Under Rule 155(a) of the Commission's Rules of Practice, "the allegations" of the OIP against Interinvest and Black "may be deemed as true" because Interinvest and Black have defaulted by failing to answer or otherwise defend this proceeding.

March 2014 exam); *id.*, ¶11 & Ex. 15 (describing Zurmont as economic research firm with an expertise in macro-economic, equity and commodity markets and the provision of research and consulting services); *id.*, ¶12 & Ex. 16 (Zurmont company listing from Quebec authority); *id.*, ¶13 & Ex. 17 (Black's description of Zurmont to Quebec Autorité des Marchés Financiers ("QAMF")). The company's ownership is divided between Black and his mother. *Id.*, ¶13 & Ex. 17 (Black's description of Zurmont to Quebec Autorité des Marchés Financiers ("QAMF")).

C. *Respondents' Undisclosed Material Conflicts of Interest in Investing $17 Million of Client Funds in Four Canadian Penny Stock Companies*

Starting in 2006, Black took positions on the board of directors of four Canadian penny stock companies (hereinafter referred to as "Canadian Penny Stock Companies"): Tyhee Gold Corporation ("Tyhee Gold"), Amorfix Life Sciences, Ltd. ("Amorfix"), Wi2Wi Corporation ("Wi2Wi"), and Williams Creek Gold Limited ("Williams Creek"). In November 2006, Black accepted a position as a director of Amorfix, which he has held until his resignation in August 2014. *See* Vito Decl., ¶14 & Ex. 18 (June 11, 2014 Amorfix Annual Information Form) at 31; *id.*, ¶14 & Ex. 19 (Aug. 20, 2014 Amorfix press release). From at least 2011 until his resignation, Black was a member of the Corporate Governance and Nominating Committee and the Audit Committee. *See Id.*, ¶14 & Ex. 20 (Aug. 12, 2013 Amorfix Proxy Circular) at 4-6; *id.*, ¶14 & Ex. 21 (Aug. 13, 2012 Amorfix Proxy Circular) at 4-5; *id.*, ¶14 & Ex. 22 (Sept. 8, 2011 Amorfix Proxy Circular) at 4-6. Black also chaired the board's Finance Committee since its establishment in 2010 and, in that role, made recommendations on the pricing, size and form of capital raises. *See Id.*, ¶14 & Ex. 20 (Aug. 12, 2013 Amorfix Proxy Circular) at 19.

In 2006, Black accepted a position as director of Wi2Wi Corporation, which he held until his resignation in May 2015. *See Id.*, ¶14 & Ex. 23 (Oct. 2, 2014 Wi2Wi Management Information Circular) at 4; *id.*, ¶14 & Ex. 24 (Mar. 27, 2015 Wi2Wi press release). Black was listed as a

"promoter" of Wi2Wi in its November 2012 proxy circular because of his involvement in the negotiation of the company's going public transaction and, after the transaction closed, served as Chairman of the company until his resignation from the board. *See Id.*, ¶14 & Ex. 24 (Mar. 27, 2015 Wi2Wi press release); *id.*, ¶14 & Ex. 25 (Nov. 29, 2012 International Sovereign Energy Corp. and Wi2Wi Joint Management Information Circular) at 73. In 2014, Black also served on all three Wi2Wi board committees – the Governance and Nominating Committee, the Compensation Committee, and the Audit Committee. *See Id.*, ¶14 & Ex. 23 (Oct. 2, 2014 Wi2Wi Management Information Circular) at 4-5, 21-22. Wi2Wi's former CEO, who joined Wi2Wi in 2008 and left in March 2014, stated that, during his tenure, Black had control over financing decisions made at the company and had authority to spend company money. *See* Declaration of Reza Majidi-Ahy (hereinafter, "Ahy Decl."), ¶¶4, 6.

In May 2011, Black became a director or Tyhee Gold Corporation and held that position through at least April 2014. *See* Vito Decl., ¶14 & Ex. 26 (Apr. 10, 2014 Tyhee Information Circular) at 4. Black joined Tyhee's Audit Committee and Governance and Nominating Committees in 2011 upon election to the board, and became a member of the Compensation Committee in 2013. *See Id.*, ¶14 & Ex. 26 (Apr. 10, 2014 Tyhee Information Circular) at 4-5; *id.*, ¶14 & Ex. 27 (Apr. 5, 2011 Tyhee Information Circular) at 12-13; *id.*, ¶14 & Ex. 28 (Apr. 10, 2012 Tyhee Information Circular) at 5-6; *id.*, ¶14 & Ex. 29 (Apr. 1, 2013 Tyhee Information Circular) at 5-6.

In March 2010, Black became a director of Williams Creek and held the position until July 2010, when he declined to stand for election because of purported "inadvertent incompleteness" in Williams Creek's proxy information circular. *See Id.*, ¶14 & Ex. 30 (Mar. 24, 2010 Williams Creek press release) at 2; *id.*, ¶14 & Ex. 31 (Aug. 9, 2010 Williams Creek press release) at 1. In

November 2010, after he stepped down from the board, Black was granted stock options on the same terms granted to the members of the board "for consulting services [he] agreed to provide . . . and in recognition of past consulting services rendered to the Company." *See Id.*, ¶14 & Ex. 32 (Nov. 9, 2010 Williams Creek press release). Black re-joined Williams Creek's board in November 2011 and held that position through at least June 2014. *See Id.*, ¶14 & Ex. 33 (June 26, 2014 Williams Creek Management Information Circular) at 15. By 2014, Black was appointed Chairman, interim Chief Executive Officer, and interim Chief Financial Officer of Williams Creek and had joined the company's Audit Committee and Investment Committee. *Id.* at 15, 19. In his role as member of the Investment Committee of the board, Black was tasked with considering investment opportunities. *Id.* at 13.

Black's participation as member of the board of directors involved fundraising for these struggling businesses from Interinvest clients. For example, R.M-A., who was the Chief Executive Officer ("CEO") of Wi2Wi from 2008 until March 2014, worked with Black in fundraising for the company. *See* Ahy Decl., ¶¶2, 4-5. During R.M-A.'s tenure, the company often lacked funding to satisfy outstanding expenses and to enable it to manufacture product to satisfy client orders. *See* Ahy Decl., ¶4. Wi2Wi relied on Black to raise funding necessary to continue its operations. *See* Ahy Decl., ¶4. Black had almost full control of all financing decisions at Wi2Wi, including decisions regarding whether, when, and how to seek equity or debt financing from outside investors. *See* Ahy Decl., ¶4. On a number of occasions, R.M-A. personally informed Black that Wi2Wi needed additional funding to sustain its operations. *See* Ahy Decl., ¶5. In board meetings, Black would, from time to time, represent that additional funds would be made available from Interinvest client accounts. *See* Ahy Decl., ¶5. During the period of 2008 to March 2015, Black

invested approximately $5.5 million of Interinvest client money in Wi2Wi. *See* Declaration of John McCann (hereinafter "McCann Decl."), ¶7(a).

As another example, from 2008 to 2013, Black, as a director of Amorfix, held shared responsibility for executing the company's financing strategy. During the period, Black reported to the board on progress of this strategy and was responsible for the vast majority of investments made in Amorfix. *See* Vito Decl., ¶15 & Ex. 34 (Jan. 28, 2013 draft Amorfix board meeting minutes) at 2; *id.*, ¶16 & Ex. 35 (Apr. 16, 2015 email from Hans Black). During the period of 2008 to March 2015, Respondents invested approximately $1 million of client money in Amorfix. *See* McCann Decl., ¶7(a).

In addition to his participation on the boards of these Canadian Penny Stock Companies, since 2010, Black, through his entity Zurmont, received over $1.7 million (in Canadian dollars) in expense reimbursements and consulting fees from the Canadian Penny Stock Companies. *See* McCann Decl., ¶5; Vito Decl., ¶17 & Ex. 36 (Mar. 23, 2015 letter from Tyhee regarding payments to Black); *id.*, ¶18 & Ex. 37 (Wi2Wi invoices from Zurmont); *id.*, ¶19 & Ex. 38 (Wi2Wi summary of payments to Zurmont); *id.*, ¶20 & Ex. 39 (Feb. 6, 2014 email regarding Zurmont invoice to Amorfix); *id.*, ¶14 & Ex. 40 (July 29, 2011 Williams Creek press release); *id.*, ¶11 & Ex. 15 (June 1, 2011 Memorandum of Understanding between Williams Creek and Zurmont); *id.*, ¶14 & Ex. 41 (Williams Creek financial statements as of Jan. 31, 2014 and 2013) at 25; *id.*, ¶14 & Ex. 42 (Williams Creek financial statements as of Oct. 31, 2014) at 23. Black, through Zurmont, received in excess of $900,000 (CAD) from Tyhee since December 2011, more than $550,000 from Williams Creek since January 2012, almost $240,000 (CAD) from Wi2Wi since November 2012 to pay for expenses dating back to 2008, and billed at least $20,000 (CAD) to Amorfix in January 2014. *See* McCann Decl., ¶5. The payments Black obtained from Williams Creek were pursuant

to a purported consulting arrangement. *See* McCann Decl., ¶5(b); Vito Decl., ¶11 & Ex. 15 (June 1, 2011 Memorandum of Understanding between Williams Creek and Zurmont); *id.*, ¶14 & Ex. 40 (July 29, 2011 Williams Creek press release); *id.*, ¶11 & Ex. 15 (June 1, 2011 Memorandum of Understanding between Williams Creek and Zurmont); *id.*, ¶14 & Ex. 41 (Williams Creek financial statements as of Jan. 31, 2014 and 2013) at 25; *id.*, ¶14 & Ex. 42 (Williams Creek financial statements as of Oct. 31, 2014) at 23. The payments Zurmont obtained from and billed to Tyhee, Wi2Wi, and Amorfix were principally purported reimbursements for lavish travel and meal expenses from more than eighty purported business trips, but also included purported reimbursement for operational items such as phone bills, copying expenses, personnel time, and legal fees. *See* McCann Decl., ¶5(a), (c), and (d); Vito Decl., ¶17 & Ex. 36 (Mar. 23, 2015 letter from Tyhee regarding payments to Black); *id.*, ¶18 & Ex. 37 (Wi2Wi invoices from Zurmont); *id.*, ¶19 & Ex. 38 (Wi2Wi summary of payments to Zurmont); *id.*, ¶20 & Ex. 39 (Feb. 6, 2014 email regarding Zurmont invoice to Amorfix). With respect to Wi2Wi, in particular, Black, as an active controlling director of the corporation, determined whether and when Wi2Wi would pay expense reimbursements to Zurmont. Ahy Decl., ¶6.

From 2010 through March 2014, while Black was servicing and being paid by these companies, Respondents Interinvest and Black poured over $17 million of Interinvest client money in the Canadian Penny Stock Companies without first disclosing (i) Black's positions with the Canadian Penny Stock Companies, (ii) Black's affiliation with, and control of, Zurmont, (iii) the financial arrangements between Zurmont and the Canadian Penny Stock Companies, or (iv) the cash payments from the Canadian Penny Stock Companies to Zurmont. *See* Declaration of Peggy Block (hereinafter, "Block Decl."), ¶9; Declaration of John Frederick (hereinafter, "Frederick Decl."), ¶¶7, 9; Declaration of Frederic Greenberg (hereinafter, "Greenberg Decl."), ¶¶9, 11.

Indeed, from 2011 through March 2014, Interinvest's written form ADV, which the Respondents filed with the Commission and distributed to potential and existing Interinvest clients, failed to disclose these material facts. *See* Vito Decl., ¶3 & Ex. 43 (Mar. 31, 2011 Interinvest Form ADV Part 2) at 24-25; *id.*, ¶3 & Ex. 44 (Mar. 29, 2012 Interinvest Form ADV Part 2) at 22-23; *id.*, ¶3 & Ex. 45 (Mar. 28, 2013 Interinvest Form ADV Part 2); *id.*, ¶3 & Ex. 46 (Mar. 31, 2014 Interinvest Form ADV Part 2) at 24-25; Block Decl., ¶6; Frederick Decl., ¶6.[3]

In February and March 2014, Interinvest's Chief Compliance Officer ("CCO") recommended that the Respondents refrain from additional trading in the Canadian Penny Stock Companies. *See Id.*, ¶21 & Ex. 47 (Mar. 20, 2014 Email from Alexander Black to Hans Black regarding Canadian Penny Stock Company investments); *id.*, ¶22 & Ex. 48 (Feb. 28, 2014 Email from Alexander Black to Hans Black regarding Canadian Penny Stock Company investments). On February 28, 2014, the CCO informed Black that Interinvest "can not do any more Wi2Wi notes or other private placements for clients." *See Id.*, ¶22 & Ex. 48 (Feb. 28, 2014 Email from Alexander Black to Hans Black regarding Canadian Penny Stock Company investments). On March 20, 2014, the CCO again warned Black that trading in the Canadian Penny Stocks may have resulted in a breach of fiduciary duty to Interinvest's clients and recommended that the Respondents cease trading in these stocks. *See Id.*, ¶21 & Ex. 47 (Mar. 20, 2014 Email from Alexander Black to Hans Black regarding Canadian Penny Stock Company investments). Despite these admonitions from Interinvest's CCO, Black continued to invest Interinvest clients in the Canadian Penny Stock

[3] Investment Advisers Act Rule 204-3 requires investment advisers to deliver a copy of their current Form ADV to current or prospective clients before or at the time that an investment advisory contract is entered. Additionally, investment advisers must deliver either (i) a current Form ADV, or (ii) a summary of material changes, to their clients annually, if there has been any material change to the brochure since the last annual updating amendment. 17 C.F.R. §275.204-3.

Companies through participations in offerings made by Tyhee in October 2014 and through other purchases in the open market for all four Canadian Penny Stock Companies throughout 2014 and into 2015. *See* McCann Decl., ¶8(a); Vito Decl., ¶23 & Ex. 49 (Interinvest trade blotter for period from Dec. 31, 2013 to Apr. 20, 2015).

D. Respondents' Fraudulent Commitment of Client Funds to High-Risk Investments in Unproven and Unprofitable Canadian Penny Stock Companies

Interinvest represents that its investment strategy takes a "conservative, risk averse investment approach" with an emphasis on "capital preservation." *See* Vito Decl., *Id.*, ¶8 & Ex. 12 (snapshot of Interinvest website, http://www.interinvest.com) at 2, 7; *id.*, ¶9 & Ex. 13 (Interinvest email to prospective client) at SEC-Interinvest-E-0149494-98 (describing adviser's investment "style"). Consistent with this promoted strategy, certain Interinvest clients signed advisory agreements directing that their portfolio be managed in an highly conservative manner, requesting "utmost security, lowest possible risk, greatest safety[, u]ltra conservative" or "long term growth without excessive risk." *See* Vito Decl., ¶6 & Ex. 8 (Interinvest advisory agreement with Rorty) at Schedule A (describing investment objectives and policies); *id.*, ¶7 & Ex.11 (Interinvest advisory agreement with Frederick) at Schedule A, (3)(a) (describing investment objectives and policies). In addition, other Interinvest clients spoke directly with Respondent Black, who was Interinvest's Chief Investment Officer, and told him that their risk tolerance was low, that they did not want to be invested in risky or growth stocks, or that they did not want to be invested in high risk investments. *See* Block Decl., ¶3; Greenberg Decl., ¶4.

Respondents' significant investment of client funds in the financially troubled Canadian Penny Stock Companies violated Interinvest's stated investment strategy and the direction of its clients. For the entire time period that Interinvest clients have been invested with these companies, from 2010 through 2014, Tyhee Gold and Williams Creek have been mining exploration

companies. During this period, these companies operated at a loss, with no revenues, because they are purportedly still in search of profitable mining operations. Indeed, in each year from 2010 through 2014, the audited financial statements for these companies contain going concern disclosures based on the companies' current losses, accumulating deficits, and inability to finance day to day operations through operations. *See* Vito Decl., ¶14, Ex. 41 (Williams Creek annual financial statements for years ending January 31, 2014 and 2013); Ex. 50 (Williams Creek annual financial statements for years ending January 31, 2010 and 2009); Ex. 51 (Williams Creek annual financial statements for years ending January 31, 2011 and 2010); Ex. 52 (Williams Creek annual financial statements for years ending January 31, 2012 and 2011); Ex. 53 (Williams Creek annual financial statements for years ending January 31, 2013 and 2012); Ex. 54 (Williams Creek annual financial statements for years ending January 31, 2015 and 2014); Ex. 55 (Tyhee annual financial statements for years ending November 30, 2010 and 2009); Ex. 56 (Tyhee annual financial statements for years ending November 30, 2011 and 2010); Ex. 57 (Tyhee annual financial statements for years ending November 30, 2012 and 2011); and Ex. 58 (Tyhee annual financial statements for years ending November 30, 2013 and 2012).

Similarly, Amorfix' annual audited financial statements for the year ended March 31, 2011 describe it as a "development stage" medical treatment and diagnostic company. *See* Vito Decl., ¶14 & Ex. 59 (Amofix financial statements for years ended March 31, 2011 and 2010). Although the company generated small amounts of revenue each year from 2010 to 2014, these revenues have been dwarfed by expenses. Each year the company reported over $2 million (CAD) in net losses. Over the same period, the company's accumulated deficit has grown from $23.8 million (CAD) to $34 million (CAD). As with the mining exploration companies, in each year from 2010 through 2014, the audited financial statements for Amorfix contain going concern disclosures

based on the company's current losses, accumulating deficits, and inability to finance day to day operations through operations. *See* Vito Decl., ¶14 & Ex. 59 (Amorfix annual financial statements for years ending March 31, 2011 and 2010); Ex. 60 (Amorfix annual financial statements for years ending March 31, 2012 and 2011); Ex. 61 (Amorfix annual financial statements for years ending March 31, 2013 and 2012); and Ex. 62 (Amorfix annual financial statements for years ending March 31, 2014 and 2013).

Wi2Wi, a company purportedly engaged in design, manufacture, and marketing of products used for wireless applications, publicly issued two audited financial statements covering annual periods from 2011 to 2013. Respondent Black approved and signed these consolidated financial statements on behalf of the board. According these statements, Wi2Wi generated consistent net losses of over $2 million each year, and its accumulated deficit has climbed from $18.6 million to $30.1 million. And, just like Amorfix, each year, Wi2Wi's financial statements contained going concern disclosures based on the company's recurring losses, increasing deficits, and inability to generate a profit from operations. *See* Vito Decl., ¶14 & Ex. 63 (Wi2Wi annual financial statements for years ending December 31, 2012 and 2011); Ex. 64 (Wi2Wi annual financial statements for years ending December 31, 2013 and 2012).

From 2010 to March 2015, Respondents committed more than $17 million of Interinvest client assets to investments in these nonperforming, unprofitable, and highly uncertain Canadian Penny Stock Companies. *See* McCann Decl., ¶7(a). By March 2015, Interinvest client portfolios held, in some cases, positions in the Canadian Penny Stock Companies that accounted for at least a quarter of their total assets under management. *Id.*, ¶7(b). Interinvest client positions in Tyhee Gold Corporation ("Tyhee") alone accounted for, in some cases, at least ten percent of their total assets under management. *Id.*

E. Respondents' Lack of Cooperation with Commission Investigation and Frustration of Client Directions

In March 2014, the Commission initiated a routine examination of Interinvest that involved a series of requests for information and an on-site review. *See* Vito Decl., ¶24 & Ex. 66 (Commission Exam Deficiency Letter to Interinvest) at 1 (describing exam). In August 2014, in the midst of the examination, Interinvest's then-Chief Compliance Officer and President left Interinvest and Black assumed his duties. *See* Vito Decl., ¶25 & Ex. 67 (response to Commission subpoena from Alex Black, former CCO), at 1 (stating position as CCO ended in August, 2014); *id.*, ¶3 & Ex. 3 (Interinvest April 2014 Form ADV Part 2A) at 22 (providing that Black oversees his own trading activity); *id.*, ¶3, Ex. 4 (Interinvest April 2015 Form ADV) at 2 (describing Black as CCO, President and Chief Investment Officer). In January 2015, at the conclusion of the Commission's examination, Black and Interinvest acknowledged that additional disclosures to clients were necessary to address certain deficiencies identified by the Commission. Black and Interinvest also acknowledged that the company had deficiencies in its compliance practices. *See* Vito Decl, ¶25 & Ex. 68 (Jan. 16, 2015 letter from Black regarding Commission exam) at 4-6, 11-13. Despite Respondents' acknowledged compliance failures, Interinvest did not implement any of the additional disclosures Respondents acknowledged were necessary in response to the Commission's deficiency letter. *Compare* Vito Decl, ¶25 & Ex. 68 (Jan. 16, 2015 letter from Black regarding Commission exam) at 4-6, 11-13 *with id.*, ¶3 & Ex. 3 (Interinvest April 2014 Form ADV Part 2A) at 22 (providing that Black oversees his own trading activity) (failing to contain additional disclosures promised in response to deficiency letter).

In February 2015, the Commission sent Interinvest a subpoena requesting, among other things, documentation of the company's bank accounts, trading records, and compliance policies and procedures. *See* Vito Decl., ¶27 & Ex. 69 (Feb. 13, 2015 Commission subpoena to

Interinvest). Interinvest and Black failed to comply with the subpoena, including Black's own proposed extended timeline for responding to the subpoena. *Id.*, ¶28 & Ex. 70 (correspondence between Commission and Black documenting extensions of time and failures to comply). In April 2015, Commission staff spoke to Interinvest's then-receptionist, who stated (1) she was the only employee working in the company's Boston office, (2) she was unaware of any compliance documentation, and (3) she had not been instructed to gather readily available documents responsive to the subpoena. *See* Vito Decl., ¶29.

In addition, Respondents have failed to follow client instructions to invest conservatively and to liquidate holdings of the Canadian Penny Stock Companies' stock. For example, in the Fall of 2012, Investor A told Black that his risk tolerance was low and that he did not want to invest in risky or growth stocks. *See* Greenberg Decl., ¶4. He further told Black that he wanted to decrease investments in gold-related stocks, like Tyhee Gold. *Id.*, ¶4. In the Spring of 2013, Investor A again told Black that he wanted to exit the stock market, but Black rebutted Investor A and told him that the gold-related investments were "money" not stocks. Black told Investor A that the gold-related stocks were trading one times earnings in the production of gold. Black told Investor A that his gold-related stocks produced a lot of gold. *Id.*, ¶5. With respect to Tyhee Gold, Black's statement of earnings was false. According to Tyhee Gold's board-approved financial statements for year ending November 30, 2013, the company reported net loss of approximately $2 million (in Canadian Dollars). *See* Vito Decl., ¶14 & Ex. 58 (Tyhee annual financial statements for years ending November 30, 2013 and 2012) at 1. Similarly, Tyhee Gold's quarterly financial statements for the period ending February 28, 2014 reported a net loss of over $900,000 (in Canadian Dollars). *See Id.*, ¶14 & Ex. 71 (Tyhee interim financial statements for the three months ending February 28, 2014 and February 28, 2013) at 1. Both sets of financial statements contained going

concern opinions indicating that the company had yet to attain profitable production operations. *See Id.*, ¶14 & Ex. 58 (Tyhee annual financial statements for years ending November 30, 2013 and 2012) at 5; *id.*, ¶14 & Ex. 71 (Tyhee interim financial statements for the three months ending February 28, 2014 and February 28, 2013) at 5. Later in 2014, Investor A specifically told Black to liquidate Tyhee Gold. Black told Investor A it was not a good idea, and refused to follow the instruction. Greenberg Decl., ¶7. Instead of selling gold-related stocks Black bought more for this client. *Id.*, ¶6. In March 2015, Investor A instructed Black to sell all of penny gold stocks. *Id.*, ¶14. By early May 2015, Black had still not sold these stocks. *Id.*, ¶¶18. In 2014, two other Interinvest clients terminated their investment advisory relationship because Black and Interinvest invested them in the high-risk Canadian Penny Stock Companies, incurring exposure to huge investment losses, and further refused to follow client instructions to liquidate those holdings and follow their preference for low risk investments. *See* Block Decl., ¶¶3-5; Frederick Decl., ¶¶2-5.

F. The Scope of Respondents' Long-Term, Large-Scale Deception of Their Investment Adviser Clients

Over the five year period from 2010 to February 2015, Respondents increased Interinvest client exposure to the Canadian Penny Stock Companies significantly. In January 2010, client accounts custodied at State Street Bank had purchased securities of the Canadian Penny Stock Companies at a cost of $1.2 million. *See* McCann Decl., ¶7(a). By February 2015, client accounts at the same bank had purchased $19 million in securities of the Canadian Penny Stock Companies. *Id.*, ¶7(a). Respondents continued to increase Interinvest client exposure even after Interinvest's former CCO recommended otherwise because of the potential breach of fiduciary duty arising from Black's conflict of interest. *See* Vito Decl., ¶21 & Ex. 47 (Mar. 20, 2014 email from CCO to Black regarding Interinvest Trading Practices); *id.*, ¶22 & Ex. 48 (Feb. 28, 2014 email from Interinvest CCO to Black regarding Wi2Wi investments for clients).

Respondents' purchases in client accounts from January to April 2015 alone amounter to more than $250,000. *See* McCann Declaration, ¶8(b) (tallying investments made from January through April 2015).

V. Commission's District Court Action Against Respondents

On June 16, 2015, the Commissoin filed a securities enforcement action and motion for temporary restraining order against Interinvest and Black. *See* Declaration of Richard Harper (hereinafter, "Harper Decl."), Tab 1 (Complaint), Tab 2 (Motion for Temporary Restraining Order). After service of the pleadings on the Respondents, and a subsequent hearing, the Court entered a preliminary injunction against Interinvest and Black on June 25, 2015. Harper Decl., Tab 3 (Preliminary Injunction Order). This injunction suspended Respondents' authority or control over Interinvest client accounts. *Id.* At a November 5, 2015 court hearing, the District Court entered default against Interinvest for its failure to answer or otherwise defend against the action. Harper Decl., Tab 4 (Memorandum and Order dated Nov. 18, 2015), p.4. The Court further entered default against Black because of his failure to respond to the complaint and his willful repeated disobedience of court orders. *Id.*

On December 23, 2016, the District Court granted the Commission's motion for default judgment against Interinvest and Black. Harper Decl., Tab 5 (Memorandum and Order dated December 23, 2016). The District Court judgments impose permanent injunctions against Interinvest and Black permanently enjoyining them from future violations of Section 17(a) of the Securities Act of 1933, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Sections 206(1) and 206(2) of the Advisers Act. *Id.*, Tab 6 (Final Judgment Against Interinvest), at I-III; Tab 7 (Final Judgment Against Black) at I-III. These judgments also order Respondents to pay disgorgement and prejudgment interest, for which they are jointly and severally liable, in

the total amount of $5,358,285. *Id.*, at IV. Finally, these judgments order Interinvest to pay a civil penalty of $1,500,000 and Black to pay a civil penalty of $2,000,000. *Id.*, at V. The District Court issued an accompanying memorandum and order explaining why these penalties were appropriate in light of the Respondents' prolonged, recurring and egregious misconduct, which the Respondents perpetrated with a "high degree of scienter." *Id.*, Tab 5 (Memorandum and Order dated December 23, 2016), at 3.

VI. Argument In Support of Sanctions Against Respondents

This Court may impose sanctions against Interinvest and Black as long as the statutory preconditions of 203(e) and (f) have been met and the sanctions are in the public interest. Here, the permanent injunctions issued against Interinvest and Black meet those requirements. And, the public interest will be well served by strong sanctions taken against these Respondents, who engaged in a four-year long breach of fiduciary duty that was both willful and egregious, and who have further failed to acknowledge their wrongdoing, to defend themselves in enforcement proceedings, or to obey orders issued in those proceedings.

A. The Statutory Requirements To Impose Sanctions on Respondents Have Been Met

The District Court injunctions against Respondents trigger the statutory requirements for imposing sanctions. With regard to investment advisers, Section 203(e) of the Advisors Act provides that the Commission shall "censure, place limitations on the activities, functions, or operations of, suspend for a period not exceeding twelve months, or revoke the registration of any investment adviser" if it finds that doing so is in the public interest and the investment adviser committed or omitted any act enumerated in various subsections of Section 203(e) of the Advisers Act, including 203(e)(4). Section 203(e)(4) pertains to investment advisers who have been "permanently or temporarily enjoined by order, judgment, or decree of any court of

competent jurisdiction, ... from acting as an investment adviser, underwriter, broker, dealer, municipal securities dealer, government securities broker, government securities dealer, transfer agent, credit rating agency, . . ., or from engaging in or continuing any conduct or practice in connection with any such activity, or in connection with the purchase or sale of any security."

Similarly, with regard to persons associated with investment advisers, Section 203(f) of the Advisers Act provideds that the Commission shall "censure or place limitations on the activities of any person associated . . . or at the time of the alleged misconduct, associated . . . with an investment adviser, or suspend for a period not exceeding 12 months or bar any such person from being associated with an investment adviser, broker, dealer, municipal securities dealer, municipal adviser, transfer agent, or nationally recognized statistical rating organization," if it finds that doing so is in the public interest and that person "is enjoined from any action, conduct, or practice specified in" Section 203(e)(4), which is recited above.

Respondent Interinvest is an SEC-registered investment adviser. OIP, at ¶II.A.1-2; Division Decl., p.2 & Ex.1 (attaching Interinvest's most recent Form ADV). Respondent Black was associated with Interinvest during the time of the alleged misconduct. OIP, at ¶II.A.2. The District Court final judgments against Interinvest and Black impose permanent injunctions that meet the statutory requirements for each of them. *See* District Court App., Tab 7 (Final Judgment Against Interinvest); Tab 8 (Final Judgment Against Black). These final judgments separately enjoin Interinvest and Black from future violations of Section 17(a) of the Securities Act of 1933, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Sections 206(1) and 206(2) of the Advisers Act Harper Decl., Tab 6 (Final Judgment Against Interinvest), at I, II, and III; Tab 7 (Final Judgment Against Black), at I, II, and III. These injunctions enjoin Respondents from engaging in or continuing conduct or practices in connection with their offer,

purchase or sale of securities, or in connection with their activities as investment advisers. *See id.*

B. *Respondents' Misconduct Justifies Revoking Interinvest's Registration and Imposing a Permanent Collateral Bar Against Black*

Sections 203(e) and (f) of the Advisers Act provide that the Commission shall sanction respondents if such sanctions are in the public interest. The facts stated above demonstrate that this Court should revoke Interinvest's registration as an investment adviser and impose a permanent, collateral bar against Black.

To determine whether these sanctions are in the public interest, this Court must consider the factors set forth in *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979). *See, e.g., Douglas L. Swenson, CPA*, Admin. Proc. Rulings Release No. 795, 2015 SEC LEXIS 1957, at *13 (May 19, 2015). Those factors include "the egregiousness of the [respondent's] actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the [respondent's] assurances against future violations, the [respondent's] recognition of the wrongful nature of his conduct, and the likelihood that the [respondent's] occupation will present opportunities for future violations." *Id.* at *13-14 (*citing Steadman*, 603 F.2d at 1140). These factors are balanced against one another and no single factor is dispositive. *See Ross Mandell*, Exchange Act Rel. No. 71668, 2014 SEC LEXIS 4614, *14 (Mar. 7, 2014).

Here, there is no question that Respondents' conduct was egregious. Conduct that violates the antifraud provisions of the securities laws is "especially serious and is subject to the severest of sanctions under the securities laws." *Marshall E. Melton*, Advisers Act Rel. No. 2151, 2003 SEC LEXIS 1767, at *29-30 (July 25, 2003). Respondents were fiduciary investment advisers.[4]

[4] Interinvest was at all relevant times an SEC-registered investment adviser. OIP, at ¶II.A.1-2. Black was an investment adviser at the time of the misconduct because he was the principal

Section 206 of the Investment Advisers Act of 1940 ("Advisers Act") establishes a statutory fiduciary duty for investment advisers to act for the benefit of their clients. 15 U.S.C. §80b-6; *Transamerica Mortg. Advisors, Inc. v. Lewis*, 444 U.S. 11, 17 (1979). In creating this fiduciary duty, Congress intended "to eliminate, or at least expose, all conflicts of interest which might incline an investment adviser–consciously or unconsciously–to render advice which was not disinterested." *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 191-92 (1963). The fiduciary duty established by these sections imposes "an affirmative duty of utmost good faith," requiring investment advisers to make "full and fair disclosure of all material facts." *Capital Gains*, 375 U.S. at 194. Rather than honor this obligation, Respondents abused their position of trust for the enrichment of the Canadian Penny Stock Companies and, through Zurmont, Black. The evidence discussed above demonstrates that Respondents violated Sections Sections 206(1) and 206(2) of the Advisers Act[5] by failing to disclose (i) Black's massive conflicts of interest; (ii) that Respondents' commitment of $17 million in investor funds would result, and did result, in $1.7 million of that money being steered right back to Black through Zurmont, and (iii) the material unsuitability of the Canadian Penny Stock Investments when compared to Interinvests' touted investment strategy and specific client-directed investment strategy set forth in investment adviser agreements and/or told directly to Black.

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client relationship manager, had sole discretion over the management of client portfolios, and had ultimate operational responsibility and control of the firm. S*ee SEC v. Berger*, 244 F. Supp.2d 180, 192-93 (S.D.N.Y. 2001) (concluding individual who controlled investment adviser firm "is also properly labeled an investment adviser within the meaning of the Advisers Act").

[5] As explained in the Division's Motion for Temporary Restraining Order, which was based on the same evidentiary record, the Respondents' misconduct also violated Section 17(a) of the Securities Act of 1933 and Section 10(b) of the Securities and Exchange Act of 1934 and Rule 10b-5 thereunder. *See* Harper Decl., Tab 8 (Memorandum In Support of Motion for Temporary Restraining Order) at 24-26.

Respondents committed this fraudulent activity with a high degree of scienter. As set forth above, Black invested Interinvest clients at the same time that he (i) sat on the boards of the Canadian Penny Stock Companies and worked to promote their financing, (ii) incurred lavish expenses through travel, meals and hotels on behalf of the Canadian Penny Stock Companies, and (iii) billed these companies for consulting and expenses, through Zurmont. Indeed, as the CEO for Wi2Wi explained, Black even directed the payment of Zurmont's invoices. *See* Declaration of Reza Mejidi-Ahy ("Ahy Decl."), ¶6. Given Black's seats on the boards of the Canadian Penny Stock Companies, his direct involvement in their financing activities, his direct involvement in activities billed by Zurmont to the Canadian Penny Stock Companies, and his direct involvement in making sure these companies paid Zurmont's invoices, there is no doubt that he was aware of a material conflict of interest between his role as an investment adviser to look out for the best interests of his clients and his role as a director/promoter/consultant to these sputtering enterprises who reimbursed his expenses, or paid consultant his fees, in the search for more investor money. Further, Black continued his fraudulent activities even in the face of explicit compliance warnings to stop. In February and March 2014, when Interinvest's then-Chief Compliance Officer warned Black about the conflicts and warned Black to stop making these investments, Black simply ignored the warnings and kept on investing client money.[6]

The Respondents misconduct was not isolated or symptomatic of a momentary lapse in judgment. Rather the fraud carried on for over four years, from 2010 through 2014, and despite the compliance warnings to stop.

[6] As Interinvest's officer with ultimate operational responsibility and control over the company, Black's scienter is imputed to Interinvest. *See, e.g., In re Cabletron Sys.*, 311 F.3d 11, 40 (1st Cir. 2002); *SEC v. Manor Nursing Ctrs., Inc.*, 458 F2d 1082, 1089 n.3 (2d Cir. 1972).

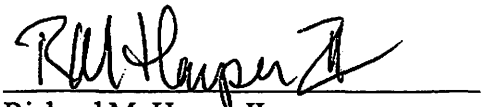
Respondents have not made any assurances against future violations or even acknowledged the wrongfulness of their actions. Indeed, the record shows that since the initiation of the Commission's investigation, Respondents have been uncooperative and "disobedient." Respondents stonewalled and ultimately failed to comply with a Commision subpoena for relevant business records. The Respondents' stonewalling of the investigation led the Commission to file its complaint and file a motion for preliminary injunctive relief. Following initiation of the Commission's District Court litigation, Respondents took no action to defend themselves or acknowledge their misconduct, which resulted in default judgments being enterted against them. Black was ultimately defaulted by the District Court his failure to respond to the complaint and his willful repeated disobedience of court orders. Harper Decl., Tab 4 (Memorandum and Order dated Nov. 18, 2015), p.4.

As of this moment, Interinvest and Black remain a clear and present danger for the commission of future violations. Interinvest is still an SEC-registered investment adviser, which Black founded and ran for over thirty years. Although the District Court imposed a permanent injunctions against future violations of the antifraud provisions of the securities laws, Black has already been defaulted by the District Court for his disobedience of its orders. The Respondents' egregious abuse of trust, the willfulness of their misconduct, their stonewalling of the Commission's investigation, and their failure to defend themselves or obey court orders in the District Court litigation demonstrate that they are unfit to serve as fiduciaries in the investment adviser industry. *See Don Warner Reinhard*, Exchange Act Rel. No. 63720, 2011 SEC LEXIS, *21 (Jan. 14, 2011) (noting IA industry is one "where honesty and rectitude concerning financial matters is critical.").

VII. Conclusion

Based upon the foregoing, the Division respectfully requests that the Court (i) find Respondents to be in default, (ii) revoke Respondent Interinvest's investment adviser registration, and (iii) bar Respondent Black from being associated with an investment adviser, broker, dealer, municipal securities dealer, municipal adviser, transfer agent, or nationally recognized statistical rating organization.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that an original and three copies of the foregoing were filed with the Securities and Exchange Commission, Office of the Secretary, 100 F Street, N.E., Washington, D.C. 20549-9303, and that a true and correct copy of the foregoing has been served this 14th day of April 2017, on the following persons entitled to notice as follows:

Brent J. Fields, Secretary
Office of the Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549
(by facsimile and UPS overnight)

The Honorable Cameron Elliot
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Securities and Exchange Commission
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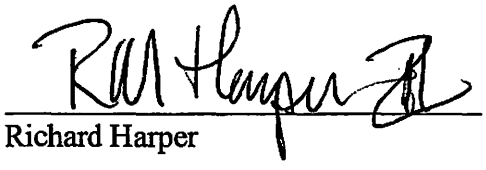

Richard Harper

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