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1 GREGORY C. GLYNN, Cal. Bar No. 039999
E-mail: GlynnG@sec.gov
2 MARC J. BLAU, Cal. Bar No. 198162
E-mail: BlauM@sec.gov
3 LUCEE S. KIRKA, Cal. Bar No. 121685
Email: KirkaL@sec.gov

4 Attorneys for Plaintiff
5 Securities and Exchange Commission
Rosalind R. Tyson, Regional Director
6 Michele Wein Layne, Associate Regional Director
John M. McCoy III, Regional Trial Counsel
7 5670 Wilshire Boulevard, 11th Floor
Los Angeles, California 90036
8 Telephone: (323) 965-3998
Facsimile: (323) 965-3908
9

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11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA
13 WESTERN DIVISION

14 SECURITIES AND EXCHANGE
15 COMMISSION,

16 Plaintiff,

17 vs.

18 MITCHELL, PORTER &
WILLIAMS, INC., THE ADIVANALA
19 AA INVESTMENT TRUST, AB3, INC.,
and THOMAS L. MITCHELL,

20 Defendants.
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Case No. **CV 10-01576-PSG (FFM/s)**

**COMPLAINT FOR VIOLATION OF
THE FEDERAL SECURITIES LAWS**

1 Plaintiff Securities and Exchange Commission (“Commission”) alleges as
2 follows:

3 **JURISDICTION AND VENUE**

4 1. This Court has jurisdiction over this action pursuant to Sections 20(b),
5 20(d)(1) and 22(a) of the Securities Act of 1933 (“Securities Act”), 15 U.S.C. §§
6 77t(b), 77t(d)(1) & 77v(a), Sections 21(d)(1), 21(d)(3)(A), 21(e) and 27 of the
7 Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. §§ 78u(d)(1),
8 78u(d)(3)(A), 78u(e) & 78aa, and Sections 209 and 214 of the Investment Advisers
9 Act of 1940 (“Advisers Act”), 15 U.S.C. § 209(d), 80b-14 15 U.S.C. § 80b-9(d).
10 Defendants Mitchell, Porter & Williams, Inc. (“MPW”), The Adivanala AA
11 Investment Trust (the “AAA Trust”), AB3, Inc (“AB3”) and Thomas L. Mitchell
12 (“Mitchell”) have, directly or indirectly, made use of the means or instrumentalities
13 of interstate commerce, of the mails, or of the facilities of a national securities
14 exchange, in connection with the transactions, acts, practices, and courses of
15 business alleged in this Complaint.

16 2. Venue is proper in this district pursuant to Section 22(a) of the
17 Securities Act, 15 U.S.C. § 77v(a), Section 27 of the Exchange Act, 15 U.S.C. §
18 78aa, and Section 214 of the Advisers Act, 15 U.S.C. § 80b-214, because certain of
19 the transactions, acts, practices, and courses of conduct constituting violations of
20 the federal securities laws occurred within this district, each of the entity
21 defendants is located in this district, and each of the individual defendants resides
22 in this district.

23 **SUMMARY**

24 3. The present case involves an ongoing Ponzi scheme operated by the
25 Defendants targeting retiring MTA bus operators in Los Angeles. Mitchell is the
26 individual principal behind MPW, an SEC registered investment adviser. He also
27 controls the two other investment entities: the AAA Trust and AB3. Since at least
28 1995, Mitchell has raised at least \$14.7 million from at least 82 clients nationwide

1 through a fraudulent promissory note offering issued by the AAA Trust and AB3.

2 4. Mitchell solicits his clients, most of whom are either eligible to retire
3 or recently retired Los Angeles MTA bus operators, through word of mouth
4 referrals. He convinces these clients to take their MTA retirement pensions in a
5 lump sum payment, rather than as a monthly annuity, and then encourages them to
6 roll this money into a custodial IRA account which is then invested in one of the
7 promissory note programs offered through Mitchell's adviser entity, MPW. The
8 AAA Trust and AB3 promissory notes are almost identical in style and substance,
9 offering rates of return ranging from 10-15% for 3 to 6 year terms.

10 5. According to a December 2009 Confidential Private Placement
11 Memorandum ("PPM"), the AAA Trust was able to offer such high rates of return
12 to investors by "using leverage to invest in certain government backed bond funds
13 and zero coupon discount bonds." In reality, Mitchell is operating a Ponzi scheme,
14 and has invested almost no investor money in the past year. Rather, between April
15 and December 2009, Mitchell used the \$1.4 million he raised from six new clients
16 to make over \$1 million in interest payments to existing investors, as well as keep
17 over \$300,000 in the form of payments to his adviser entity MPW. Mitchell has
18 also admitted to the Commission's examiners that the AAA Trust does not have
19 any assets other than the cash currently in its bank account. Finally, Mitchell
20 admitted that in 2010 alone, he now owes \$1.2 million in interest and principal
21 payments to his investors.

22 6. The Defendants, by engaging in the conduct described in this
23 Complaint, have violated, and unless enjoined will continue to violate, the
24 antifraud and registration provisions of the federal securities laws. By this
25 Complaint, the Commission seeks emergency relief against the Defendants,
26 including a temporary restraining order, an asset freeze, an order prohibiting the
27 destruction of documents, and an order expediting discovery, as well as
28 preliminary and permanent injunctions, disgorgement with prejudgment interest,

1 and civil penalties.

2 **THE DEFENDANTS**

3 7. **Mitchell, Porter & Williams, Inc.** (“MPW”) is a California
4 corporation formed in October 2000 and is based in Los Angeles, California,
5 where it has three office locations. Its corporate status with the state of California
6 is currently suspended. MPW registered with the Commission as an investment
7 adviser in 2005, but failed to withdraw its registration when, after 120 days from
8 its registration’s effective date, the firm did not have at least \$25 million in assets
9 under management. In November 2009, MPW filed a Form ADV and claimed to
10 have \$26 million in assets under management. In fact, MPW has much less money
11 under management.

12 8. **The Adivanala AA Investment Trust** (the “AAA Trust”) is a
13 California trust formed in January 1993. Thomas L. Mitchell and a second
14 individual named Louie Cole are the trustees. According to Mitchell, the AAA
15 Trust has raised approximately \$11.5 million from investors since 1995 through its
16 promissory note offering. Neither the AAA Trust nor its securities offering is
17 registered with the Commission in any capacity.

18 9. **AB3, Inc.** (“AB3”) is a Nevada corporation formed in 1998. John
19 Jones is the sole officer and director of the company, although it appears that
20 Mitchell is intimately involved with the company’s activities. According to
21 Mitchell, AB3 has raised approximately \$3.5 million from investors through its
22 promissory note offering. Neither AB3 nor its securities offering is registered with
23 the Commission in any capacity.

24 10. **Thomas L. Mitchell**, (“Mitchell”) age 64, is a resident of Los
25 Angeles, California. Mitchell is the principal of MPW. He has not been associated
26 with a registered broker-dealer since 1996.

1 **STATEMENT OF FACTS**

2 **A. The Nature of the Offerings**

3 11. MPW is registered with the Commission as an investment adviser and
4 Mitchell is its principal. Since at least 1995, Mitchell has solicited advisory clients
5 to invest in the AAA Trust and AB3 note offerings through his advisory firm,
6 MPW. Most of his clients are referred to him by existing clients, many of whom
7 are bus operators preparing to retire from the Los Angeles County Metropolitan
8 Transit Authority ("MTA"), and as such, are entitled to either a lump sum payment
9 or other options, including a lifetime retirement annuity. Mitchell convinces these
10 potential retirees to take their MTA retirement benefits in a lump sum in lieu of
11 monthly payments. He then recommends that they give this lump sum to him to
12 manage it for them.

13 12. One client received a letter, dated June 1, 2008, from MPW, signed by
14 Mitchell, stating that, during the past fourteen years MPW had "been privileged to
15 assist a number of LACMTA retirees with establishing retirement plans..."
16 Further, the letter touts MPW's association with a number of well known financial
17 institutions, and concludes by advising the client to open an IRA rollover account
18 as a first step.

19 13. Mitchell meets with the clients, and, using their projected lump sum
20 payment as a baseline, prepares a document detailing his projection as to what the
21 client could potentially earn by investing in a "Fixed Rate Account" (the
22 promissory note offering) and/or "Variable Rate Bond Funds." This document
23 also contains Mitchell's proposal for a "Balanced Account," recommending that
24 the client invest the majority of his or her lump sum payment into a promissory
25 note, held in an IRA custodial account. The document also suggests that the client
26 use the remainder of the lump sum payment to open an IRA rollover brokerage
27 account, over which until recently Mitchell had limited trading authority. The
28 document then projects 20% per year growth in this trading account, through

1 investments in growth funds and equities.

2 14. Mitchell has given different explanations to different clients as to how
3 he is able to generate his purported large rates of return through the AAA Trust and
4 AB3 promissory note program. He told one client that her money would be put
5 into an interest bearing account that was federally insured up to \$250,000.
6 Mitchell told another client that his money would be used to buy stocks and bonds.

7 **B. The Private Placement Memorandum**

8 15. In December 2009, at the request of a new IRA account custodian,
9 Mitchell created a PPM for the AAA Trust. The December 2009 PPM states that
10 the AAA Trust's current investment strategy was based on "using leverage to
11 invest in certain government backed bond funds and zero coupon discount bonds."
12 The PPM also states that the AAA Trust will use the offering proceeds to purchase
13 a "wide variety of investment types," including "securities, debt instruments,
14 bonds, preferred stock, common stock, zero coupon bonds, bond funds and
15 exchange traded funds."

16 16. The PPM describes MPW as an "SEC-registered investment advisory
17 firm" and that Mitchell "has primary responsibility for raising funds for [the AAA
18 Trust] and is also largely responsible for providing advice to the [AAA Trust]
19 regarding the suitability of any specific investment and asset type with respect to
20 adherence to investor goals and the guidelines established by [the Trust]."

21 17. Finally, the PPM discloses that MPW, as the placement agent, is
22 entitled to a 10% commission for the notes it sells through the offering.

23 18. The notes offered by the AAA Trust and AB3 are nearly identical in
24 form and substance. Both are three page documents, summarizing the term of the
25 loan (typically between 3 to 6 years), the interest rate (10 -15% per year), the
26 monthly payment amount, and various other rights and obligations of the borrower
27 and lender. No mention is made of how either entity will use the funds, or how
28 they will generate the specified large returns needed to make the required interest

1 and principal payments. Although other individuals sign the notes, Mitchell signs
2 both entities' notes as a witness, and the notes are then countersigned by the client.
3 Other than the promissory notes, MPW's clients do not sign any other agreements
4 with MPW, such as a client management agreement disclosing MPW's fees.

5 **C. Mitchell is Operating a Ponzi Scheme**

6 19. Rather than investing client money into stock, bonds or real estate, the
7 defendants are in actuality operating a Ponzi scheme. The following charts
8 summarize the deposits and withdrawals made to and from the AAA Trust bank
9 account for the time period between April 2009 and December 2009:

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Credit In	Amount
Investors	\$1,419,970
AB3	\$366,150
MPW	\$25,645
AAA Trust brokerage account	\$202,181
Misc.	\$4,725
Total In	\$2,018,671

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Debit Out	Amount
Investors	\$1,152,826
MPW's "operating expenses"	\$303,146
AB3	\$183,100
AAA Trust brokerage account	\$152,200
Misc.	\$33,623
Total Out	\$1,824,895

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20. As the above tables illustrate, for at least the past year, Mitchell has simply used new investor money to make interest payments due to the existing AAA Trust investors based upon their promissory notes. Moreover, Mitchell has essentially taken 20% of the new investor monies for himself in the form of

1 “operating expenses.” This is twice the amount disclosed in the PPM. Mitchell
2 has used this money to fund his inflated lifestyle, including luxury car payments,
3 mortgage payments, payments for a cruise, and tickets to sporting events. Mitchell
4 did transfer \$152,200 to the AAA Trust’s brokerage account, but only actually
5 invested \$32,361 of this money, comprised of two United States Treasury Bonds
6 and some Citigroup stock.

7 21. The rest of the money was not invested but merely wired back to the
8 AAA Trust’s bank account and disbursed as detailed above. Finally there appears
9 to be no significant difference between the purpose of AB3 and the AAA Trust, as
10 money has been freely commingled between both entities’ bank accounts.

11 22. MPC and Mitchell have also failed to provide Commission examiners
12 with all the records required to be kept by regulated investment advisers in the
13 ordinary and regular course of their business. In particular, MPW failed to
14 maintain a number of categories of documents as required under Section 204 of the
15 Advisers Act and Rule 204-2 thereunder. These documents included cash receipts
16 and disbursements, general and auxiliary ledgers reflecting income and expense
17 accounts, order memoranda, financial statements, written communications, powers
18 of attorney, copies of the code of ethics, access person reports, record of ADV
19 offer and delivery, compliance policies and procedures, and securities position
20 records. MPW also failed to maintain certain records for at least five years, the
21 first two within their office as required under Rule 204-2(e)(1) of the Advisers Act.
22 Additionally, MPW should not have registered with the Commission due to the
23 fact that it has less than \$25 million in assets under management in accordance
24 with Section 203A of the Advisers Act, 15 U.S.C. § 80b-3a.

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- 1 a. with scienter, employed devices, schemes, or artifices to
2 defraud;
- 3 b. obtained money or property by means of untrue statements of a
4 material fact or by omitting to state a material fact necessary in order
5 to make the statements made, in light of the circumstances under
6 which they were made, not misleading; or
- 7 c. engaged in transactions, practices, or courses of business which
8 operated or would operate as a fraud or deceit upon the purchaser.

9 29. By engaging in the conduct described above, Defendants and each of
10 them, violated, and unless restrained and enjoined will continue to violate, Section
11 17(a) of the Securities Act, 15 U.S.C. § 77q(a).

12 **THIRD CLAIM FOR RELIEF**

13 **FRAUD IN CONNECTION WITH THE PURCHASE OR SALE OF**
14 **SECURITIES**

15 **Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder**
16 **(Against All Defendants)**

17 30. The Commission realleges and incorporates by reference paragraphs 1
18 through 22 above.

19 31. Defendants MPW, AAA Trust, AB3 and Mitchell and each of them,
20 by engaging in the conduct described above, directly or indirectly, in connection
21 with the purchase or sale of a security, by the use of means or instrumentalities of
22 interstate commerce, of the mails, or of the facilities of a national securities
23 exchange, with scienter:

- 24 a. employed devices, schemes, or artifices to defraud;
- 25 b. made untrue statements of a material fact or omitted to state a
26 material fact necessary in order to make the statements made, in light
27 of the circumstances under which they were made, not misleading; or
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1 c. engaged in acts, practices, or courses of business which
2 operated or would operate as a fraud or deceit upon other persons.

3 32. By engaging in the conduct described above, and each of them,
4 violated, and unless restrained and enjoined will continue to violate, Section 10(b)
5 of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. §
6 240.10b-5.

7 **FOURTH CLAIM FOR RELIEF**

8 **FRAUD BY INVESTMENT ADVISER**

9 **Violations of Section 206(1) and (2) of the Advisers Act**

10 **(Against Defendants MPW and Mitchell)**

11 33. The Commission realleges and incorporates by reference paragraphs 1
12 through 22 above.

13 34. Defendants MPW and Mitchell and each of them, by engaging in the
14 conduct described above, directly or indirectly, by use of the mails or any means or
15 instrumentality of interstate commerce or:

16 (1). employed devices, schemes, or artifices to defraud a client or
17 prospective;

18 (2). engaged in transactions, practices, or courses of business which
19 operated or would operate as a fraud or deceit upon any client or
20 prospective client.

21 35. By engaging in the conduct described above, Defendants MPW and
22 Mitchell and each of them, violated, and unless restrained and enjoined will
23 continue to violate, Section 206(1) and (2) of the Advisers Act, 15 U.S.C. § 80b-6
24 (1) and (2).

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1 **FIFTH CLAIM FOR RELIEF**

2 **FRAUD BY AN INVESTMENT ADVISER**

3 **Violations of 206(4) of the Advisers Act and Rule 206(4)-8 Thereunder**

4 **(Against MPW and Mitchell)**

5 36. The Commission realleges and incorporates by reference paragraphs 1
6 through 22 above.

7 37. At all times alleged in the Complaint, MPW and Mitchell each were
8 investment advisers as defined under the Advisers Act. Specifically, MPW was
9 registered with the Commission as an investment-adviser, and Mitchell exercised
10 exclusive control over MPW. Mitchell and MPW managed the investments of the
11 clients in exchange for compensation in the form of a management fee.

12 38. Mitchell and MPW, by engaging in the conduct described above,
13 directly or indirectly, by use of the mails or means and instrumentalities of
14 interstate commerce:

15 a. engaged in transactions, practices, or courses of business which
16 operate as a fraud or deceit upon investors in the AAA Trust and
17 AB3;

18 b. made untrue statements of a material fact or omitted to state a
19 material fact necessary to make the statements made, in the light of
20 the circumstances under which they were made, not misleading, to
21 investors or prospective investors in a pooled investment vehicle; or

22 c. otherwise engaged in acts, practices, or courses of business that
23 were fraudulent, deceptive, or manipulative with respect to investors
24 or prospective investors in a pooled investment vehicle.

25 39. By reason of the activities described herein, Mitchell and MPW have
26 violated and unless restrained and enjoined will continue to violate Sections 206(4)
27 of the Advisers Act, 15 U.S.C. § 80b-6(4), and Rule 206(4)-8, 17 C.F.R.
28 § 275.206(4)-8, thereunder.

1 **SIXTH CLAIM FOR RELIEF**

2 **FAILURE OF INVESTMENT ADVISER TO KEEP RECORDS AND TO**
3 **PROVIDE SAME FOR COMMISSION EXAMINATION**

4 **Violations of Section 204 of the Advisers Act and Rule 204-2 Thereunder**
5 **(Against Defendants MPW and Mitchell)**

6 40. The Commission realleges and incorporates by reference paragraphs 1
7 through 22 above.

8 41. Defendant MPW made use of the mails and means and
9 instrumentalities of interstate commerce in connection with its business as an
10 investment adviser and was required to make and keep certain prescribed records
11 as necessary or appropriate in the public interest and for the protection of investors.
12 The documents which MPW failed to keep and maintain included cash receipts and
13 disbursements, general and auxiliary ledgers reflecting income and expense
14 accounts, order memoranda, financial statements, written communications, powers
15 of attorney, copies of the code of ethics, access person reports, record of ADV
16 offer and delivery, compliance policies and procedures, and securities position
17 records. MPW also failed to maintain certain records for at least five years, the
18 first two within their office as required under Rule 204-2(e)(1) of the Advisers Act,
19 17 C.F.R. § 275-204-2(e)(1).

20 42. Such records were subject at any time, and from time to time, to such
21 reasonable periodic, special or other examinations by representatives of the
22 Commission.

23 43. Defendant MPW has failed to keep and maintain such records and has
24 further failed to provide such required records to Commission examiners for such
25 review as may be required by the public interest and for the protection of investors,
26 as required by Section 204 of the Advisers Act, 15 U.S.C. § 80b-4 and Rule 204-2,
27 17 C.F.R. § 275.204-2.

1 44. By engaging in the conduct described above, Defendant MPW
2 violated, and unless restrained and enjoined will continue to violate, Section 204 of
3 the Advisers Act, 15 U.S.C. § 80b-4 and Rule 204-2, 17 C.F.R. § 275.204-2.
4 Defendant Mitchell has aided and abetted and caused the violations by MPW of
5 Section 204 of the Advisers Act, 15 U.S.C. § 80b-4 and Rule 204-2, 17 C.F.R. §
6 275.204-2.

7 **SEVENTH CLAIM FOR RELIEF**
8 **INELIGIBILITY OF INVESTMENT ADVISER**
9 **FOR FEDERAL REGISTRATION**
10 **Violations of Section 203A of the Advisers Act**
11 **(Against Defendants MPW and Mitchell)**

12 45. The Commission realleges and incorporates by reference paragraphs 1
13 through 22 above.

14 46. MPW maintains its principal office and place of business within the
15 State of California and has assets under management of less than \$25,000,000.
16 MPW is not otherwise exempt from the provisions of Section 203A of the Advisers
17 Act, 15 U.S.C. § 80b-3a. MPW is ineligible to register as a federal investment
18 adviser and is required to register with the appropriate state entity under Section
19 203 of the Advisers Act, 15 U.S.C. Section 80b-3.

20 47. MPW has remained at all times relevant ineligible to register as a
21 federal investment adviser under Section 203 of the Advisers Act and must register
22 as required by Section 203A of the Advisers Act, 15 U.S.C. Section 80b-3a.

23 48. By engaging in the conduct described above, Defendant MPW has
24 violated, and unless restrained and enjoined will continue to violate, Section 203A
25 of the Advisers Act, 15 U.S.C. § 80b-3a. Defendant Mitchell has aided and abetted
26 and caused the violations by MPW of Section 203A of the Advisers Act, 15 U.S.C.
27 § 80b-3a.
28

1 **EIGHTH CLAIM FOR RELIEF**

2 **FAILURE TO ASSOCIATE WITH A BROKER-DEALER**

3 **Violation of Section 15(a) of the Exchange Act**

4 **(Against Mitchell Only)**

5 49. The Commission realleges and incorporates by reference paragraphs 1
6 through 22 above.

7 50. Defendant Mitchell, by engaging in the conduct described above,
8 made use of the mails or means or instrumentalities of interstate commerce to
9 effect transactions in, or to induce or attempt to induce the purchase or sale of
10 securities, without being associated with a broker or dealer in accordance with
11 Section 15(b) of the Exchange Act, 15 U.S.C. § 78o(b).

12 51. By engaging in the conduct described above, Defendant Mitchell
13 violated, and unless restrained and enjoined will continue to violate, Section 15(a)
14 of the Exchange Act, 15 U.S.C. § 78o(a).

15 **PRAYER FOR RELIEF**

16 WHEREFORE, the Commission respectfully requests that the Court:

17 **I.**

18 Issue findings of fact and conclusions of law that the Defendants committed
19 the alleged violations.

20 **II.**

21 Issue judgments, in forms consistent with Fed. R. Civ. P. 65(d), temporarily,
22 preliminarily and permanently enjoining the Defendants and their officers, agents,
23 servants, employees, and attorneys, and those persons in active concert or
24 participation with any of them, who receive actual notice of the judgment by
25 personal service or otherwise, and each of them, from violating Section 5(a) and
26 5(c) and 17(a) of the Securities Act, 15 U.S.C. §§ 77e(a) and (c), 77q(a), and
27 Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder,
28 17 C.F.R. § 240.10b-5 together with Section 15(a) of the Exchange Act, 15 U.S.C.

1 § 78o(a) and Sections 203A, 204, 206(1), 206(2) and 206(4) of the Advisers Act,
2 15 U.S.C. §§ 80b-3a, 80b-4, 80b-6 (1), (2) and (4) and the respective rules
3 promulgated thereunder.

4 **III.**

5 Issue, in a form consistent with Fed. R. Civ. P. 65, a temporary restraining
6 order and a preliminary injunction freezing the assets of each of the Defendants
7 and any entity affiliated with any of them, prohibiting each of the Defendants from
8 destroying documents, and granting expedited discovery, from each of the
9 Defendants.

10 **IV.**

11 Order each of the Defendants to disgorge all ill-gotten gains from their
12 illegal conduct, together with prejudgment interest thereon.

13 **V.**

14 Order each of the Defendants to pay civil penalties under Section 20(d) of
15 the Securities Act, 15 U.S.C. § 77t(d), Section 21(d)(3) of the Exchange Act, 15
16 U.S.C. § 78u(d)(3) and under Section 209 of the Advisers Act, 15 U.S.C. § 80b-9.

17 **VI.**

18 Retain jurisdiction of this action in accordance with the principles of equity
19 and the Federal Rules of Civil Procedure in order to implement and carry out the
20 terms of all orders and decrees that may be entered, or to entertain any suitable
21 application or motion for additional relief within the jurisdiction of this Court.

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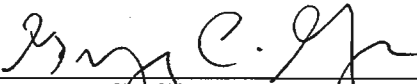
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VII.

Grant such other and further relief as this Court may determine to be just and necessary.

DATED: March 2 2010

Respectfully submitted,



Gregory C. Glynn
Attorney for Plaintiff
Securities and Exchange Commission