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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

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<b>SECURITIES AND EXCHANGE COMMISSION,</b>	:	
	:	<b>Civil No.</b>
<b>Plaintiff,</b>	:	
	:	
<b>-against-</b>	:	<b>Jury Trial Demanded</b>
	:	
<b>NICHOLAS LATTANZIO,</b>	:	
<b>BLACK DIAMOND INVESTMENTS, LP,</b>	:	
<b>BLACK DIAMOND GP, LLC,</b>	:	
<b>BLACK DIAMOND INVESTMENTS LLC, AND</b>	:	
<b>BLACK DIAMOND CAPITAL APPRECIATION</b>	:	
<b>FUND, L.P.,</b>	:	
	:	
<b>Defendants.</b>	:	
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**COMPLAINT**

Plaintiff Securities and Exchange Commission (“Commission”) alleges the following against defendants Nicholas Lattanzio (“Lattanzio”), Black Diamond Investments, LP (“Black Diamond Investments”), Black Diamond GP, LLC (“Black Diamond GP”), Black Diamond Investments LLC (“Black Diamond LLC”) and Black Diamond Capital Appreciation Fund, L.P. (“Black Diamond Fund” or “the Fund”) (collectively, “Defendants”):

## SUMMARY OF ALLEGATIONS

1. This case involves an offering fraud perpetrated by Lattanzio, a purported hedge fund manager, who misappropriated approximately \$5 million from private investors for his own personal use. From in or around August 2011 to August 2014, Lattanzio offered and sold interests in the Black Diamond Fund, promising investors that their money would be used to make various lucrative investments. Instead, Lattanzio simply stole most of the money he raised.

2. According to the Fund's private placement memorandum and other documents given to investors, the Fund's "investment objective" was to "maximize income and capital appreciation by investing in a variety of highly liquid fixed income" securities using "proprietary investment strategies." While Lattanzio temporarily invested a limited amount of the investor money deposited into the Fund, he quickly depleted the Fund's assets in order to finance a lavish lifestyle for himself and his family. Among other things, he used Fund assets to purchase a \$1 million-plus home in Montclair, New Jersey, to repay over \$760,000 in credit card debt, to buy a \$124,000 luxury car and merchandise from Tiffany & Co. worth over \$100,000, and to pay for his children's tuition at an elite private school and his membership at an exclusive golf club. He also withdrew over approximately \$570,000 in cash or checks written to himself and his girlfriend ("Girlfriend A"), and paid over \$30,000 to a yacht broker.

3. Among the investors were two small companies that were looking for capital to finance their business activities. Lattanzio, acting directly and through one or more representatives, told executives of the two small companies that they would be able to secure capital through a lending facility on the condition that the companies first invest with Black Diamond Fund a percentage of the capital they were seeking. Lattanzio and his representatives also guaranteed that

the companies could withdraw their money from the Fund in the event that the lending facility was not consummated within a specified period of time.

4. As a result, each of the two companies invested approximately \$2 million in the Black Diamond Fund, but neither company ever obtained financing and, despite repeated requests, Lattanzio never returned any of their money.

5. By virtue of the conduct alleged herein, the Defendants, directly or indirectly, singly or in concert, violated and are otherwise liable for violations of the federal securities laws, as follows:

(a) Each of the Defendants violated Section 17(a) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. § 77q(a)], Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5];

(b) Lattanzio, Black Diamond Investments, Black Diamond GP, and Black Diamond LLC violated Sections 206(1), 206(2) and 206(4) of the Investment Advisers Act of 1940 (“Advisers Act”) [15 U.S.C. §§ 80b-6(1), (2) and (4)], and Rule 206(4)-8 thereunder [17 C.F.R. § 275.206(4)-8];

(c) Lattanzio is also liable as a controlling person pursuant to Section 20(a) of the Exchange Act [15 U.S.C. § 78t(a)] for the violations committed by Black Diamond Fund, Black Diamond Investments, Black Diamond GP, and Black Diamond LLC of Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)], Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5];

(d) Lattanzio is further liable pursuant to Section 15(b) of the Securities Act [15 U.S.C. § 77o(b)] and Section 20(e) of the Exchange Act [15 U.S.C. § 78t(e)] for aiding and abetting the violations committed by Black Diamond Fund, Black Diamond Investments, Black Diamond GP,

and Black Diamond LLC of Section 17(a) if the Securities Act [15 U.S.C. § 77q(a)], Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5]; and

(e) In addition, Lattanzio is liable pursuant to Section 209 of the Advisers Act for aiding and abetting the violations committed by Black Diamond Investments, Black Diamond GP and Black Diamond LLC of Sections 206(1), 206(2) and 206(4) of the Advisers Act [15 U.S.C. §§ 80b-6(1), (2) and (4)], and Rule 206(4)-8 thereunder [17 C.F.R. 275.206(4)-8].

6. Unless the Defendants are permanently restrained and enjoined, they will again engage in the acts, practices, transactions and courses of business set forth in this complaint and in acts, practices, transactions and courses of business of similar type and object.

#### **JURISDICTION AND VENUE**

7. The Commission brings this action pursuant to authority conferred by Section 20(b) of the Securities Act [15 U.S.C. § 77t(b)], Section 21(d)(1) of the Exchange Act [15 U.S.C. § 78u(d)(1)], and Section 209(d) of the Advisers Act [15 U.S.C. §§ 80b-9(d)], and seeks to restrain and permanently enjoin the Defendants from engaging in the acts, practices, transactions and courses of business alleged herein. In addition, the Commission seeks a final judgment ordering the Defendants to (i) disgorge their ill-gotten gains, together with prejudgment interest thereon, including an order holding each of the Defendants jointly and severally liable for the ill-gotten gains of each of the other Defendants; (ii) pay civil monetary penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)], Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)], and Sections 209(e) and 209(f) of the Advisers Act [15 U.S.C. §§ 80b-9(e) and (f)]; and (iii) provide an accounting.

8. This Court has jurisdiction over this action pursuant to 28 U.S.C. §1331, Sections 20(b), 20(d) and 22(a) of the Securities Act [15 U.S.C. §§ 77t(b), 77t(d),77v(a)]; Sections 21(d), 21(e), and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), and 78aa], and Sections 209 and 214 of the Advisers Act [15 U.S.C. §§ 80b-9, 80b-14].

9. Venue is proper in this District pursuant to 28 U.S.C. §1391(b)(2), Section 22(a) of the Securities Act [15 U.S.C. §77v(a)], Section 27 of the Exchange Act [15 U.S.C. §78aa], and Section 214 of the Advisers Act [15 U.S.C. § 80b-14]. Many of the acts, practices, events, transactions, communications, courses of business and other matters alleged herein occurred in the District of New Jersey, including misrepresentations made to investors and misappropriation of investor funds. Moreover, (i) Lattanzio resides in the District of New Jersey and/or resided there during the relevant period; and (ii) Black Diamond Fund, Black Diamond Investments, Black Diamond GP and Black Diamond LLC have their principal place of business in the District of New Jersey.

10. In connection with the conduct alleged in this complaint, the Defendants, directly or indirectly, singly or in concert, have made use of the means or instruments of transportation or communication in, and the means or instrumentalities of, interstate commerce, or of the mails.

### **THE DEFENDANTS**

11. **Lattanzio**, age 58, resides in Montclair, New Jersey and, during parts of the relevant period, also resided in West Orange, New Jersey. Lattanzio is the 100% owner of Black Diamond Investments LLC, through which he controls Black Diamond Fund, Black Diamond Investments, LP and Black Diamond GP, LLC. He also owns 90% of Black Diamond Investments, and the other 10% is owned by the Lattanzio Family Trust, of which he is Trustee.

12. **Black Diamond Fund** is a Delaware limited partnership with its principal place of business in Montclair, New Jersey. Black Diamond Fund serves as a purported investment vehicle for its limited partners. Black Diamond Fund is advised and managed by Black Diamond Investments and the Fund's general partner, Black Diamond GP.

13. **Black Diamond Investments** is a New Jersey limited partnership with its principal place of business in Montclair, New Jersey. Black Diamond Investments is an unregistered investment advisor for Black Diamond Fund. The general partner of Black Diamond Investments is Black Diamond LLC.

14. **Black Diamond GP** is a New Jersey limited liability company with its principal place of business in Montclair, New Jersey. Black Diamond GP is the general partner of Black Diamond Fund and manages that entity. The sole member of Black Diamond GP is Black Diamond LLC.

15. **Black Diamond LLC** is a New Jersey limited liability company with its principal place of business in Montclair, New Jersey. Black Diamond LLC is 100% owned by Lattanzio. Black Diamond LLC is the general partner of Black Diamond Investments and is the sole member of Black Diamond GP.

#### **RELEVANT INDIVIDUALS AND ENTITIES**

16. **Company A** is, upon information and belief, a Delaware corporation that has a principal place of business in New York, New York and is engaged in the oil and gas business.

17. **Company B** is, upon information and belief, a Georgia limited liability corporation that has a principal place of business in Atlanta, Georgia and, through an affiliate, is engaged in the business of managing and developing hotels.

18. **Associate A** is an individual who is associated with a purported lending company that shares a mailing address with Associate A in Southport, CT. Through that company, Associate A acted as Lattanzio's agent and, on Lattanzio's behalf, solicited Company A and Company B, along with others, to participate in the Black Diamond Fund offering at issue here.

### **THE DEFENDANTS' FRAUDULENT SCHEME**

19. Through oral and written misrepresentations made by Lattanzio and by Associate A, acting on Lattanzio's behalf, Lattanzio induced investors, including Company A and Company B, to transfer approximately \$5 million to Black Diamond Fund for a purported investment in the Fund. Lattanzio and Associate A told investors, including Company A and Company B, that Black Diamond Fund would invest the funds in securities and, in at least some instances, that the investment would remain secure and liquid and subject to a guaranteed right of redemption. Lattanzio then stole virtually all the money invested in the Fund.

20. According to Black Diamond Fund documents, Black Diamond Investments and Black Diamond GP advised and managed the Fund, while Black Diamond LLC was the general partner of Black Diamond Investments and sole member of Black Diamond GP. In addition, an investment management agreement that Lattanzio entered into with at least one investor also identified Black Diamond LLC as an investment manager. All three entities were owned and/or controlled by Lattanzio and operated as alter egos through which he purported to engage in the business of providing investment advice regarding securities for compensation. According to Fund documents, Lattanzio was responsible, as an "investment advisor" and "principal decision maker," for the selection of investments and the management of the Fund, and he held himself out to investors as an investment adviser. In fact, Lattanzio's posture as an investment adviser was simply a ruse to defraud the Fund's investors.

### **The Misrepresentations to Company A**

21. Upon information and belief, Company A is an entity that acquires distressed oil and gas assets and manages those assets. In October 2013, while seeking external sources of funding, Company A was introduced to Associate A, who was acting as a representative of Lattanzio and Black Diamond Fund. Associate A told officers of Company A that he was capable of arranging project financing for Company A in the form of a \$20 million credit facility from a third party. Associate A also told Company A that, as a condition for securing the credit facility, Company A would first be required to invest \$2 million with Black Diamond Fund.

22. In the course of those discussions, Associate A made, on Lattanzio's behalf, a number of representations to Company A about Black Diamond Fund that were materially false and misleading. Associate A provided Company A with a document titled "Project Financing Through Black Diamond and/or a Black Diamond 'Funding Partner.'" According to this document, the financing sought by Company A was to be provided either directly by Black Diamond Fund or through a "funding partner." In either scenario, Company A was required to make a "Capital Deposit" in the Fund, and the financing for Company A would take one of two forms. If the financing was provided by a third party, it would be in the form of a loan to Company A by the third party. If Black Diamond Fund was the source of the financing for Company A, it would be in the form of a "return on investment" made by Company A with the Fund. The document further provided that if the financing was not made available to Company A within 120 days, Company A's deposit could be withdrawn from the Fund immediately.

23. In an October 22, 2013 email, Associate A further represented, on Lattanzio's behalf, that Associate A would be "paid by Black Diamond and the funding entity on the back side," and that "Black Diamond is relied upon to manage the funds on deposit in Black Diamond



[so as] to pay any underwriting expenses necessary to close the loan without invading the principal deposit.” In this email, Associate A reiterated that Black Diamond Fund would return the invested funds to Company A either upon a failure to finalize the credit facility within 120 days or upon “90% funding” of the credit facility. Associate A further told Company A that the funds would only be invested by Black Diamond Fund after the credit facility had been finalized, and would be maintained by Black Diamond Fund in a segregated account until that time.

24. On or about December 2, 2013, Associate A also provided to Company A, on Lattanzio’s behalf, a document titled “Broad Terms Of A Proposal To Provide Funding To [Company A] For The Development Of Its Existing Oil Fields And Its Expansion Program” (“Company A Term Sheet”). This document memorialized the terms described above, including the requirement that Company A “make a deposit of at least Two Million US Dollars (\$2,000,000) to a Capital Contribution Account through Black Diamond . . . in exchange for shares in the Black Diamond Capital Appreciation Fund LLP via a Private Placement Memorandum before underwriting or engagement of the lending process starts.” The Company A Term Sheet reiterated that Company A could withdraw the full amount of its deposit from the Black Diamond Fund if the financing for Company A was not finalized within 120 days. On or about December 5, 2013, Lattanzio and Company A’s CEO signed a Letter of Understanding (“Company A LOU”) setting out the terms described above and attaching a Black Diamond Fund Confidential Private Placement Memorandum (“September 2013 PPM”) dated September 2013. In the Company A LOU, the PPM and the other documents described herein, the Defendants made a number of representations that, as described more fully below, were materially false and misleading because, at the time, Lattanzio intended to and did steal virtually all the money placed into the Fund rather than invest it.

25. According to the PPM, the Fund's "investment objective" was to "maximize income and capital appreciation by investing in a variety of highly liquid fixed income" securities using "proprietary investment strategies," including investing in (i) "investment grade fixed income financial instruments as a riskless principal, either as an intermediary between issuer and end-buyer, or through participating in the fixed income underwriting process as part of an underwriting syndicate;" and (ii) "callable and non-callable Triple-A rated debt obligations of the U.S. Treasury and the U.S. Agencies." The PPM also identified Lattanzio as managing member and "principal decision maker" for the Fund's adviser and general partner, Black Diamond Investments and Black Diamond GP, respectively. The Company A LOU purported to modify the PPM in two important respects, by providing Company A with a 120-day withdrawal guarantee for the \$2 million that Company A was to invest in the Fund and by requiring the Fund to pay Company A 5% of the "performance" of Company A's \$2 million investment on an annual basis.

26. On December 6, 2013, Associate A again represented to Company A in an email that Black Diamond Fund would "hold[] and manage[] your funds," and that "your funds are secure and available to be returned at the end of 120 days in the unlikely event that you do not receive you [*sic*] funding" from the designated third party. Associate A attached to this email an information sheet ("Information Sheet") bearing a Black Diamond Fund heading and stating, like the PPM did, that the Fund's "investment objective is to maximize income and capital appreciation by investing in a variety of highly-liquid fixed income instruments." The Information Sheet also stated that the Fund's investment strategy had generated "historical pro forma returns" of 18.14% and over \$900,000 in "cumulative portfolio earnings" per million dollars under management from January 2008 through March 2013.

27. On December 9, 2013, Company A's CEO signed the Company A Term Sheet and executed a Limited Partnership Agreement and Subscription Agreement, through which Company A purchased a limited partnership interest in Black Diamond Fund for \$2 million. Representatives of Company A then met in person with both Lattanzio and Associate A at Company A's New York City offices on December 11, 2013. At that meeting, Lattanzio and Associate A made further representations about the investment quality, asset size and prior performance of the Black Diamond Fund. Specifically, Lattanzio and Associate A represented that the Black Diamond Fund was a well-established fund with a significant history, multiple investors, assets under management of approximately \$100 million and an annual average return of 18 percent since 2008.

28. On December 20, 2013, Company A's largest investor transferred \$2 million on Company A's behalf to the Black Diamond Fund's administrator, which in turn wired \$1,979,600 to the Fund's brokerage account on December 24, 2013.

29. As Lattanzio knew or recklessly disregarded, the representations described in paragraphs 21-27 were materially false and misleading. The fundamental premise that Lattanzio presented to Company A was completely false, as there was no credit facility forthcoming and Lattanzio had no intention of returning the funds to Company A. Lattanzio did not maintain Company A's funds in a segregated account, but rather began dissipating those funds while discussions about the purported credit facility were still ongoing. The descriptions of the Fund's investment strategy and track record of sizable returns were also materially false and misleading, as Black Diamond Fund had no meaningful investment track record of any kind, let alone a track record utilizing the strategy described in the PPM and other documents provided to Company A. Moreover, on April 14, 2014, Black Diamond Fund filed a petition to confirm an arbitration

award in which the Fund stated that the only partners in the Fund were Lattanzio and Company A. Similarly, on August 4, 2014, Black Diamond Fund filed a Form D with the Commission stating that the Fund had only sold \$2 million in limited partnership interests – the amount sold to Company A. The reference to "historical pro forma" returns in the Information Sheet was also false to the extent it purported to convey a proven track record of success, which the Fund lacked, and was, in any event, materially false and misleading because Lattanzio had no investment strategy and no track record at all – just a plan to steal money from Company A.

30. After transferring the \$2 million to the Black Diamond Fund's administrator, Company A repeatedly sought information from Lattanzio about the status of the credit facility and, when it became apparent to Company A that the financing from a third-party was not coming to fruition, sought to redeem its investment. In response, Lattanzio sought to dissuade Company A from persisting with its withdrawal request by falsely claiming that the financing was imminent or had been received and making other misrepresentations. Among other things, Lattanzio falsely claimed, including in emails, that (i) he believed that Company A had received the promised credit facility; (ii) there had been investment activity in Company A's account at the Fund and that he would provide information about the purported investment activity to Company A; (iii) he could not process the redemption request because of incorrect wire instructions or other technical problems; and (iv) a redemption would cause a loss to other investors in the Fund.

31. As described below in paragraphs 39-43, Lattanzio knew or recklessly disregarded that these later representations were, like the earlier representations, materially false and misleading, because he had already used, and was continuing to use, substantial amounts of

money in the Fund to pay various personal expenses and had otherwise misappropriated, and was continuing to misappropriate, Fund assets.

**The Misrepresentations to Company B**

32. Lattanzio defrauded Company B out of almost \$2 million in similar fashion. Company B is involved in managing and developing hotels. In June 2014, while seeking funding to finance development of a hotel in Georgia, Company B was introduced to Associate A. As with Company A, Associate A acted as Lattanzio's agent and, in fact, told Company B that he was an employee of Black Diamond. Between July 23 and July 30, 2014, Associate A emailed Company B a number of documents setting out the terms of Black Diamond's proposed financing arrangement, including (i) a broad term sheet ("Company B Term Sheet"), (ii) a Black Diamond Fund Confidential Private Placement Memorandum dated March 2014 ("March 2014 PPM"), (iii) subscription documents for Black Diamond Fund and its Cayman Islands feeder fund, (iv) a Black Diamond Capital Appreciation Fund, LP Due Diligence Questionnaire ("Questionnaire"), draft management and operating agreements for the special purpose vehicle that would act as the credit facility for the Company B project, and (v) a proposed Letter of Understanding ("Company B LOU").

33. The Company B Term Sheet stated that Company B would receive \$8,875,000 in funding from an unidentified third party lender and that, in exchange, Company B was first required to invest \$1,950,000 with Black Diamond Fund. The Company B Term Sheet provided that Company B could withdraw its money from the Fund immediately if the prospective lender did not commit to provide Company B with financing within 90 days.

34. The March 2014 PPM was identical in all relevant respects to the September 2013 PPM and contained the same representations described above in paragraph 25. In the

Questionnaire, Lattanzio and Black Diamond Fund further represented that (i) the Fund's assets would be managed and invested by Lattanzio; (ii) Company B would have on-line access to its account activity, including monthly reports and audited financial statements; (iii) as of September 2013, the Fund already had \$100 million in assets under management or in commitments and an average return of 18% since 2008; and (iv) the Fund was capable of managing up to \$1 billion without additional staff or equipment. The Company B LOU, similar to the Company A LOU, purported to modify the PPM by allowing for immediate redemption of Company B's investment if it did not receive the promised financing within 90 days.

35. In meetings and calls that took place in June and July 2014, Lattanzio and Associate A further represented to Company B that: (1) the Fund already had over \$800 million in assets under management and anticipated reaching \$1 billion in the near future; (2) the credit facility would most likely come from Deutsche Bank, DBS Bank or Barclays, all of whom had purportedly worked with Black Diamond Fund in the past; (3) Company B's \$2 million would be held on deposit until the credit facility was finalized, at which point the \$2 million would be pooled with approximately \$48 million provided by other investors and invested with Deutsche Bank, DBS Bank or Barclays. For the reasons discussed above, the foregoing representations were all false because the Black Diamond Fund had no meaningful investment track record, lacked anywhere near the assets touted by Lattanzio and had no ties to Deutsche Bank, DBS Bank or Barclays. As he did with Company A's money, Lattanzio stole the Company B money rather than invest it.

36. On or about July 30, 2014, Company B's Chief Investment Officer signed an Investment Management Agreement ("IMA") providing that Black Diamond LLC and Lattanzio would be investment managers with respect to the funds invested by Company B. The IMA

provided, among other things, that Black Diamond LLC and Lattanzio would manage the funds consistent with an investment strategy identical to that set out in the March 2014 PPM and that Company B had the right to immediate redemption of its investment if it did not receive the promised financing within 70 days, as opposed to the 90 day time period set forth in the Company B Term Sheet.

37. In an August 15, 2014 email, Associate A reiterated to Company B that Lattanzio would invest its funds only in government securities or bank certificates of deposit. On August 21, 2014, a law firm in Georgia representing Company B wired \$1,950,000 directly to the Black Diamond Fund's brokerage account.

38. As with Company A, a credit facility never materialized, and Lattanzio had no intention of returning the funds to Company B. Nor did Company B ever receive on-line access to any account activity or any of the promised reports. Instead, Lattanzio provided Company B with nothing more than a briefly operative email link purporting to show the funds on deposit with the Fund's administrator and a letter claiming that Company B's investment with the Fund already had earned almost \$60,000. As described below in paragraphs 39-43, Lattanzio knew or recklessly disregarded that the representations about the purported financing, Black Diamond Fund's supposedly successful track record, its purported investment strategy and the purported investment return on Company B's money were, like the earlier representations, materially false and misleading, because he had already used, and was continuing to use, substantial amounts of money in the Fund to pay various personal expenses and had otherwise misappropriated, and was continuing to misappropriate, Fund assets.

**Lattanzio's Theft of the Offering Proceeds**

39. Lattanzio misappropriated virtually all of the approximately \$4 million that Black Diamond Fund received from Company A and Company B, as well as virtually all of an additional sum totaling over \$1 million that he obtained from others who had previously invested with Lattanzio and the Fund. Lattanzio used the Fund's money to pay his own living expenses, purchase luxury goods and services, including a home in Montclair, New Jersey, and to pay other expenses for Girlfriend A and his children. While Lattanzio did at times invest limited amounts of the money placed into the Fund, those investments were generally inconsistent with the purported investment strategy set out in the PPMs, and he ultimately liquidated those positions and stole the proceeds.

40. During the relevant period, the investor funds received by the Black Diamond Fund were maintained in brokerage accounts at Brokerage Firm A in the name of the Black Diamond entities. Lattanzio used the investor funds in those accounts as his own personal funds, sometimes directly taking funds from Black Diamond accounts to use for his own personal expenses, and sometimes first transferring the funds to his personal brokerage account at Brokerage Firm A. Aside from the money put into the Fund by investors, the only other meaningful sources of income for Lattanzio, Black Diamond Fund and the other defendants during the relevant period were approximately \$68,000 in Social Security payments from the account of his deceased wife for the benefit of his children (all of which was transferred to investment accounts for his children) and occasional deposits by Lattanzio and Girlfriend A totaling less than \$150,000. Lattanzio's personal account at Brokerage Firm A, and his personal expenses during the relevant period, were funded and paid for almost entirely with money transferred directly or indirectly from the Black Diamond Fund account.



41. For example, on December 24, 2013, the same day on which the Fund received \$1,979,600 from Company A, Lattanzio began funding a payroll service that, in turn, wrote him regular payroll checks. Two days later, Lattanzio wrote a \$5,000 check from a Black Diamond Investments account to Girlfriend A and repaid over \$45,000 owed on a credit card held jointly by him and Girlfriend A out of the same account. Three days later, Lattanzio wired \$124,000 from a Black Diamond Fund account to a Land Rover dealer for a luxury vehicle that was registered in his name and used funds transferred from Black Diamond accounts to his personal account to purchase over \$100,000 in merchandise from Tiffany & Co. Over the next few weeks, Lattanzio spent large additional sums on personal expenses, including \$58,000 for a “real estate investment” and over \$40,000 in tuition to his children’s private school. Lattanzio also made multiple payments to Associate A and a \$134,000 payment to a Spanish law firm.

42. Lattanzio depleted the \$1,950,000 that the Fund received from Company B in similar fashion. On August 21, 2014, the same day on which those funds were received by Black Diamond Fund, Lattanzio wired from the Black Diamond Fund account \$19,500 (exactly 1% of the total Company B investment) to Associate A and \$1,048,956 to a real estate escrow account for the purchase of a home in Montclair, New Jersey. The deed for that home, in which Lattanzio now lives, is held in the name of the Nicholas Lattanzio 2014 Family Trust. Over the next two weeks, Lattanzio wrote checks to himself for a total of \$110,000, paid over \$60,000 in credit card debt, and paid \$24,000 to Salve Regina University for the benefit of Associate A’s daughter.

43. In addition to the one-time expenses described above, Lattanzio used money from the Black Diamond Fund account to pay a total of (i) over \$760,000 in personal credit card debt; (ii) over \$60,000 in private school tuition; (iii) over \$40,000 in country club expenses; (iv) over

\$30,000 to a yacht broker; and (v) at least \$200,000 to himself through the Fund's payroll service. In addition, Lattanzio withdrew approximately \$570,000 in the form of cash and checks payable to himself or Girlfriend A. He also transferred over \$130,000 to Associate A, plus at least \$31,000 in additional funds paid out to Associate A through payroll, direct payments for Associate A's utilities and payments to Associate A's daughter's university. During the relevant time period, Lattanzio and the Fund engaged in only limited investment activity, primarily investing in stocks (often on margin) and futures, with net losses of approximately \$233,000. To date, Lattanzio has not returned to Company A or Company B any of the money that they transferred to Black Diamond Fund.

**Lattanzio's Submission of False Documents to Commission Staff**

44. In response to a voluntary inquiry from Commission staff about, among other things, the Black Diamond Fund's books and records, Lattanzio provided Commission staff with documents purporting to show that Black Diamond Fund had loaned \$2 million to Girlfriend A in exchange for receiving a mortgage on real property in New Hampshire. This transaction was fabricated, as no such loan is reflected in the Fund's brokerage records. In any event, using the Fund's money to make a \$2 million loan to Girlfriend A would have been a blatant misuse of Fund assets by Lattanzio even if such a loan had occurred.

**FIRST CLAIM FOR RELIEF**  
**Violations of Section 17(a) of the Securities Act**  
**(All Defendants)**

45. The Commission realleges and incorporates by reference herein each and every allegation contained in paragraphs 1 through 44.

46. Defendants, directly or indirectly, singly or in concert, in the offer or sale of securities and by the use of the means of instruments of transportation or communication in

interstate commerce, knowingly or recklessly have: (a) employed devices, schemes, or artifices to defraud; (b) obtained money or property by means of untrue statements of a material fact or omissions of a material fact necessary in order to make the statement made, in light of the circumstances under which they were made, not misleading; and/or (c) engaged in transactions, practices, or courses of business which operated or would operate as a fraud or deceit upon the purchaser.

47. By reason of the foregoing, Defendants, directly or indirectly, singly or in concert, have violated, and unless enjoined will again violate, Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

**SECOND CLAIM FOR RELIEF**  
**Violations of Section 10(b) of the Exchange Act and Rule 10b-5**  
**(All Defendants)**

48. The Commission realleges and incorporates by reference herein each and every allegation contained in paragraphs 1 through 44.

49. Defendants, directly or indirectly, singly or in concert, in connection with the purchase or sale of securities and by the use of the means or instrumentalities of interstate commerce or of the mails, or of the facilities of a national securities exchange, knowingly or recklessly have: (a) employed devices, schemes, or artifices to defraud; (b) made untrue statements of a material fact or omitted to state a material fact necessary in order to make the statement made, in light of the circumstances under which they were made, not misleading; and/or (c) engaged in acts, transactions, practices, or courses of business which operated or would operate as a fraud or deceit upon other persons.

50. By reason of the foregoing, Defendants, directly or indirectly, singly or in concert, have violated, and unless enjoined will again violate, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

**THIRD CLAIM FOR RELIEF**  
**Violations of Sections 206(1) and 206(2) of the Advisers Act**  
**(Lattanzio, Black Diamond Investments,**  
**Black Diamond GP and Black Diamond LLC)**

51. The Commission realleges and incorporates by reference herein each and every allegation contained in paragraphs 1 through 44.

52. Lattanzio, Black Diamond Investments, Black Diamond GP and Black Diamond LLC at all relevant times were investment advisers within the meaning of Section 202(11) of the Advisers Act [15 U.S.C. § 80b-2(11)].

53. As investment advisers to Black Diamond Fund, Lattanzio, Black Diamond Investments, Black Diamond GP and Black Diamond LLC owed Black Diamond Fund fiduciary duties of utmost good faith, fidelity, and care to, among other things, make full and fair disclosure to it of all material facts, including any conflicts or potential conflicts of interest, as well as a duty to act in the best interests of Black Diamond Fund and not to act in their own interests to the detriment of Black Diamond Fund.

54. As investment advisers to Company B, Lattanzio and Black Diamond LLC owed Black Diamond Fund fiduciary duties of utmost good faith, fidelity, and care to, among other things, make full and fair disclosure to it of all material facts, including any conflicts or potential conflicts of interest, as well as a duty to act in the best interests of Company B and not to act in their own interests to the detriment of Company B.

55. During the relevant period, Black Diamond Fund, Lattanzio, Black Diamond Investments, Black Diamond GP, and Black Diamond LLC, by use of the mails, and the means

and instrumentalities of interstate commerce, directly or indirectly, while acting as investment advisers, have knowingly or recklessly: (1) employed devices, schemes, or artifices to defraud clients or prospective clients; or (2) engaged in transactions, practices, and courses of business that operated as a fraud or deceit upon clients or prospective clients.

56. By reason of the foregoing, Black Diamond Fund, Lattanzio, Black Diamond Investments, Black Diamond GP and Black Diamond LLC breached their fiduciary duties to Black Diamond Fund and have otherwise violated, and unless enjoined will again violate, Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1) and (2)].

**FOURTH CLAIM FOR RELIEF**  
**Violations of Sections 206(4) of the Advisers Act and Rule 206(4)-8**  
**(Lattanzio, Black Diamond Investments,**  
**Black Diamond GP and Black Diamond LLC)**

57. The Commission realleges and incorporates by reference herein each and every allegation contained in paragraphs 1 through 44.

58. Lattanzio, Black Diamond Investments, Black Diamond GP, and Black Diamond LLC at all relevant times were investment advisers within the meaning of Section 202(11) of the Advisers Act [15 U.S.C. § 80b-2(11)].

59. By engaging in the conduct alleged above, Lattanzio, Black Diamond Investments, Black Diamond GP and Black Diamond LLC, directly or indirectly, while acting as investment advisers, have knowingly or recklessly: (1) made untrue statements of material fact or omitted to state material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading, to investors or prospective investors in Black Diamond Fund; and (2) otherwise engaged in acts, practices or courses of business that were fraudulent, deceptive or manipulative with respect to investors or prospective investors in Black Diamond Fund.

60. By reason of the foregoing, Lattanzio, Black Diamond Investments, Black Diamond GP, and Black Diamond LLC violated, and unless enjoined will again violate, Section 206(4) of the Advisers Act [15 U.S.C. § 80b-6(4)], and Rule 206(4)-8 thereunder [17 C.F.R. 275.206(4)-8].

**FIFTH CLAIM FOR RELIEF**  
**Control Person Liability for Black Diamond Fund,  
Black Diamond Investments, Black Diamond GP  
and Black Diamond LLC's Violations of  
Section 10(b) of the Exchange Act and Rule 10b-5  
(Lattanzio)**

61. The Commission realleges and incorporates by reference herein each and every allegation contained in paragraphs 1 through 44.

62. As alleged above, Black Diamond Fund, Black Diamond Investments, Black Diamond GP and Black Diamond LLC violated Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

63. During the relevant period, Lattanzio was a controlling person of Black Diamond Fund, Black Diamond Investments, Black Diamond GP and Black Diamond LLC for purposes of Section 20(a) of the Exchange Act [15 U.S.C. § 78t(a)].

64. As alleged above, Lattanzio knowingly or recklessly engaged in fraudulent conduct that resulted in violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5] by Black Diamond Fund, Black Diamond Investments, Black Diamond GP and Black Diamond LLC.

65. By reason of the foregoing, Lattanzio is liable as a controlling person pursuant to Section 20(a) of the Exchange Act [15 U.S.C. § 78t(a)] for Black Diamond Fund, Black Diamond Investments, Black Diamond GP and Black Diamond LLC's violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

**SIXTH CLAIM FOR RELIEF**  
**Aiding and Abetting Liability for Black  
Diamond Fund, Black Diamond Investments,  
Black Diamond GP and Black Diamond LLC's  
Violations of Section 10(b) of the Exchange Act and Rule 10b-5  
(Lattanzio)**

66. The Commission realleges and incorporates by reference herein each and every allegation contained in paragraphs 1 through 44.

67. As alleged above, Black Diamond Fund, Black Diamond Investments, Black Diamond GP and Black Diamond LLC violated Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

68. As alleged above, Lattanzio knowingly or recklessly engaged in fraudulent conduct that resulted in violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5] by Black Diamond Fund, Black Diamond Investments, Black Diamond GP and Black Diamond LLC.

69. By engaging in the conduct alleged above, Lattanzio knowingly or recklessly provided substantial assistance to Black Diamond Fund, Black Diamond Investments, Black Diamond GP and Black Diamond LLC with respect to their violations of Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)], Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

70. By reason of the foregoing, Lattanzio is liable pursuant to Section 15(b) of the Securities Act [15 U.S.C. § 77o(b)] and Section 20(e) of the Exchange Act [15 U.S.C. § 78t(e)] for aiding and abetting Black Diamond Fund, Black Diamond Investments, Black Diamond GP, and Black Diamond LLC's violations of Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)], Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

**SEVENTH CLAIM FOR RELIEF**

**Aiding and Abetting Liability for Black Diamond Investments,  
Black Diamond GP and Black Diamond LLC'S Violations of  
Sections 206(1), 206(2) and 206(4) of the Advisers Act and Rule 206(4)-8  
(Lattanzio)**

71. The Commission realleges and incorporates by reference herein each and every allegation contained in paragraphs 1 through 44.

72. As alleged above, Black Diamond Investments, Black Diamond GP and Black Diamond LLC violated Sections 206(1), 206(2) and 206(4) of the Advisers Act [15 U.S.C. §§ 80b-6(1), (2) and (4)], and Rule 206(4)-8 thereunder [17 C.F.R. 275.206(4)-8].

73. By engaging in the conduct alleged above, Lattanzio knowingly or recklessly provided substantial assistance to Black Diamond Investments, Black Diamond GP and Black Diamond LLC with respect to their violations of Sections 206(1), 206(2) and 206(4) of the Advisers Act [15 U.S.C. §§ 80b-6(1), (2) and (4)], and Rule 206(4)-8 thereunder [17 C.F.R. 275.206(4)-8].

74. By reason of the foregoing, Lattanzio is liable pursuant to Section 209 of the Advisers Act for aiding and abetting the violations committed by Black Diamond Investments, Black Diamond GP, and Black Diamond LLC of Sections 206(1), 206(2) and 206(4) of the Advisers Act [15 U.S.C. §§ 80b-6(1), (2) and (4)], and Rule 206(4)-8 thereunder [17 C.F.R. 275.206(4)-8].



**PRAYER FOR RELIEF**

**WHEREFORE**, the Commission respectfully requests a Final Judgment:

**I.**

Permanently enjoining Lattanzio, Black Diamond Fund, Black Diamond Investments, Black Diamond GP, and Black Diamond LLC from committing, aiding and abetting or otherwise engaging in conduct that would make them liable for the violations of the federal securities laws alleged in this complaint;

**II.**

Ordering the Defendants, jointly and severally, to disgorge the ill-gotten gains they received as a result of the violations alleged in this complaint, and ordering each of them to each pay prejudgment interest thereon;

**III.**

Ordering the Defendants to pay civil monetary penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t], Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)], and Section 209 of the Advisers Act [15 U.S.C. § 80b-9]; and

**IV.**

Granting such other and further relief as the Court may deem just and proper.

**JURY DEMAND**

Pursuant to Rule 39 of the Federal Rules of Civil Procedure, Plaintiff demands that this case be tried to a jury.

Dated: New York, New York  
June 10, 2015

Respectfully submitted,

*/s/ Andrew M. Calamari*

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\* Not admitted in New Jersey

**LOCAL RULE 11.2 CERTIFICATION**

Pursuant to Local Rule 11.2, I certify that the matter in controversy alleged in the foregoing Complaint is not the subject of any other action pending in any court, or of any pending arbitration or administrative proceeding.

*/s/ Andrew M. Calamari*

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**DESIGNATION OF AGENT FOR SERVICE**

Pursuant to Local Civil Rule 101.1(f), because the Securities and Exchange Commission (the “Commission”) does not have an office in this district, the United States Attorney for the District of New Jersey is hereby designated as eligible as an alternative to the Commission to receive service of all notices or papers in the above-captioned action. Therefore, service upon the United States or its authorized designee, Leticia B. Vandehaar, Deputy Chief, Civil Division, United States Attorney’s Office for the District of New Jersey, 970 Broad Street, Suite 700, Newark, NJ 07102, shall constitute service upon the Commission for purposes of this action.

*/s/ Andrew M. Calamari*

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