

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

**DEFERRED PROSECUTION AGREEMENT**

1. In connection with an investigation, the Division of Enforcement ("Division") of the United States Securities and Exchange Commission ("Commission") alleges that Scott Jonathan Herckis ("Respondent"), the former Fund Administrator for the Heppelwhite Fund, LP (the "Fund"), in 2011 and 2012, aided and abetted violations of Section 17(a) of the Securities Act of 1933 ("Securities Act"), Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), and Rule 10b-5 thereunder, and Sections 206(1), (2) and (4) of the Investment Advisers Act of 1940 ("Advisers Act") and Rule 206(4)-8 thereunder, by improperly transferring Fund assets to the Fund's manager, and by preparing and providing materially overstated account statements to Fund investors ("Investigation"). Prior to a public enforcement action being brought by the Commission against him, Respondent has offered to accept responsibility for his conduct and to admit the factual statements contained in Paragraph 6 in any future Commission enforcement action in the event he breaches this Agreement. Accordingly, the Commission and the Respondent enter into this deferred prosecution agreement ("Agreement") on the following terms and conditions:

**ELIGIBILITY**

2. The Respondent certifies that he has never been charged or found guilty of violating the federal securities laws, or a party to a civil action or administrative proceeding concerning allegations or findings of violations of the federal securities laws.

**TERM**

3. The Respondent understands and agrees that the provisions of this Agreement are in full force and effect from November 8, 2013 to November 8, 2018 (the "Deferred Period"), unless expressly stated otherwise.

**COOPERATION**

4. The Respondent agrees to cooperate fully and truthfully in the Investigation and any other related enforcement litigation or proceedings to which the Commission is a party (the "Proceedings"), regardless of the time period in which the cooperation is required. In addition, the Respondent agrees to cooperate fully and truthfully, when directed by the Division's staff, in an official investigation or proceeding by any federal, state, or self-regulatory organization ("Other Proceedings"). The full, truthful, and continuing cooperation of the Respondent shall include, but not be limited to:

a. producing all non-privileged documents and other materials to the Commission as requested by the Division's staff, wherever located, in the possession, custody, or control of the Respondent;

- b. appearing for interviews, at such times and places, as requested by the Division's staff;
- c. responding fully and truthfully to all inquiries, when requested to do so by the Division's staff, in connection with the Proceedings or Other Proceedings;
- d. testifying at trial and other judicial proceedings, when requested to do so by the Division's staff, in connection with the Proceedings or Other Proceedings;
- e. accepting service by mail or facsimile transmission of notices or subpoenas for documents or testimony at depositions, hearings, trials or in connection with the Proceedings or Other Proceedings;
- f. appointing his undersigned attorney as agent to receive service of such notices and subpoenas;
- g. waiving the territorial limits on service contained in Rule 45 of the Federal Rules of Civil Procedure and any applicable local rules, when requested to appear by the Division's staff; and
- h. entering into tolling agreements, when requested to do so by the Division's staff, during the period of cooperation.

#### STATUTE OF LIMITATIONS

5. The Respondent agrees that the running of any statute of limitations applicable to any action or proceeding against him authorized, instituted, or brought by or on behalf of the Commission arising out of the Investigation ("Proceeding"), including any sanctions or relief that may be imposed therein, is tolled and suspended during the Deferred Period.

a. The Respondent and any of his attorneys or agents shall not include the Deferred Period in the calculation of the running of any statute of limitations or for any other time-related defense applicable to the Proceeding, including any sanctions or relief that may be imposed therein, in asserting or relying upon any such time-related defense.

b. This agreement shall not affect any applicable statute of limitations defense or any other time-related defense that may be available to Respondent before the commencement of the Deferred Period or be construed to revive a Proceeding that may be barred by any applicable statute of limitations or any other time-related defense before the commencement of the Deferred Period.

c. The running of any statute of limitations applicable to the Proceeding shall commence again after the end of the Deferred Period, unless there is an extension of the Deferred Period executed in writing by or on behalf of the parties hereto.

d. This agreement shall not be construed as an admission by the Commission relating to the applicability of any statute of limitations to the Proceeding, including any sanctions or relief that may be imposed therein, or to the length of any limitations period that may apply, or to the applicability of any other time-related defense.

#### STATEMENT OF FACTS

6. If this case had gone to trial, the Commission would have presented evidence sufficient to prove the following facts:

a. Herckis, age 42, is a certified public accountant who resides in Stamford, Connecticut. Herckis is the owner and managing member of SJH Financial, LLC, a financial and accounting services firm in Stamford, Connecticut.

b. From December 2010 through September 2012, Herckis, through his firm SJH, was the Fund Administrator for Heppelwhite Fund, LP, a Delaware limited partnership. During the relevant time period, Heppelwhite operated as a hedge fund with offices in Stamford, Connecticut. The Fund had approximately twenty-five investors and at least six million dollars in assets.

c. Berton M. Hochfeld, age 66, is the sole shareholder and manager of Hochfeld Capital Management, L.L.C. ("HCM"), a Delaware corporation. HCM is the General Partner of the Fund. Hochfeld, through HCM, managed the Fund during the relevant time period. Hochfeld was charged with securities fraud by the Commission and consented to a judgment ordering an injunction, an asset freeze, and other relief in November 2012. *See S.E.C. v. Hochfeld et al.*, 12-CV-8202 (S.D.N.Y.). Hochfeld also pled guilty to securities fraud and wire fraud in a related criminal case in January 2013. *See U.S.A. v. Hochfeld*, 13-CR-00021 (S.D.N.Y.).

d. In December 2010, Hochfeld hired Herckis as the Fund Administrator for the Fund. Herckis was paid a fixed fee of \$4,000 per month. Herckis' responsibilities for the Fund included, among other things, calculating the performance of the Fund's investments, preparing monthly account statements for Fund investors, managing and accounting for contributions to, and withdrawals from, investor accounts at the Fund, paying Fund expenses, and corresponding with potential investors. Herckis had no prior experience as a fund administrator.

e. HCM, as the General Partner, and each of the Fund's limited partners ("investors"), had capital accounts at the Fund. Pursuant to a Limited Partnership Agreement, HCM was required to maintain a balance in its capital account equal to at least 1% of the Fund's total assets. The Fund was prohibited from making loans to HCM or Hochfeld, and was prohibited from commingling Fund assets with funds from any other source.

f. When Herckis became the Fund Administrator in late 2010, HCM's capital account at the Fund had a positive balance. Throughout his tenure as the Fund Administrator, when instructed by Hochfeld, Herckis would arrange transfers of money

from the Fund to accounts owned or controlled by Hochfeld. Herckis accounted for these transfers as withdrawals from HCM's capital account at the Fund. By April or May 2011, Herckis realized that as a result of these transfers, HCM's capital account at the Fund was overdrawn and had a negative balance.

g. Notwithstanding this negative balance, Herckis continued to transfer money from the Fund to Hochfeld when instructed. For example, in March 2012, Herckis authorized a transfer of \$64,000 from the Fund's bank account to Hochfeld. At the time, HCM's capital account already was overdrawn by approximately \$600,000.

h. Over time, Herckis began to question Hochfeld about these transfers and the negative balance in HCM's capital account. Hochfeld repeatedly assured Herckis that he would repay the Fund. Ultimately, through these improper transfers that Herckis authorized, Hochfeld misappropriated more than \$1.5 million from the Fund. Herckis knew, or was reckless in not knowing, that these transfers were improper.

i. As the Fund Administrator at Heppelwhite, Herckis was responsible for calculating the Fund's monthly rate of return, and preparing and providing investors with monthly account statements. Herckis also provided potential investors with marketing materials that included the Fund's current and historic monthly and annual rates of return.

j. Throughout his tenure as the Fund Administrator, the monthly account statements that Herckis prepared and provided to investors, and the rate of return information he provided to potential investors, were materially overstated. These documents and information were materially overstated as a result of several factors, including historical inaccuracies in the Fund's books and records, Hochfeld's misappropriation of assets from the Fund, and Herckis' use of unsupported and inaccurate rates of return on the Fund's investments. Herckis knew, or was reckless in not knowing, of these material misstatements.

k. In addition, over time Herckis knew that there was a growing discrepancy between the Fund's net asset value ("NAV") that he calculated using the Fund's internal records (which Herckis used to create the monthly account statements for investors), and the NAV reported by the Fund's prime broker, which was materially lower. After Herckis was unable to resolve the discrepancy on his own, he eventually persuaded Hochfeld to hire an outside consultant. Throughout 2012, Herckis worked with the outside consultant, and the Fund's prime broker, to resolve the NAV discrepancy, which by June 2012, had grown to approximately \$1.5 million.

l. In September 2012, as a result of Herckis' growing concerns about HCM's overdrawn capital account and the material NAV discrepancy, Herckis resigned as the Fund Administrator and contacted government authorities. Herckis voluntarily provided immediate and complete cooperation in the resulting SEC investigation, including producing voluminous documents and helping SEC staff understand how Hochfeld was able to perpetrate his fraud. As a result, the SEC was able to file an emergency action and freeze more than \$6 million in assets of the Fund, HCM, and Hochfeld which, subject to court approval, will be distributed to the Fund's investors.

## PROHIBITIONS

7. During the Deferred Period, the Respondent understands and agrees to comply with the following prohibitions:
- a. to refrain from violating the federal and state securities laws; and
  - b. to refrain from violating the applicable rules promulgated by any self-regulatory organization or professional licensing board;
  - c. to refrain from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization;
  - d. to refrain from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter; and
  - e. to refrain from acting or serving as a fund administrator for, or providing any other services to, any hedge fund or registered investment company.

## UNDERTAKINGS

8. During the Deferred Period, the Respondent understands and agrees to perform the following undertakings:
- a. to provide written notification to the Division, within five days, if he has been questioned, charged, or convicted of an offense by any federal, state, or local law enforcement organization or regulatory agency;
  - b. to provide written notification to the Division, within five days, if he has been questioned, a formal or informal complaint has been made against him, or disciplinary action has been taken against him by any self-regulatory organization or professional licensing board;
  - c. to pay disgorgement obtained or retained as a result of the violations alleged in Paragraph 1 in the amount of \$48,000, together with prejudgment interest in the amount of \$2,290, within 30 days by delivering payment into the Fair Fund created in *SEC v. Hochfeld, et al.*, 12-CV-8202 (S.D.N.Y.), along with a letter identifying the Respondent and specifying that the payment is made pursuant to a deferred prosecution agreement entered into with the Commission on November 8, 2013, and sending an additional copy of the letter and check in accordance with the service requirements of Paragraph 11. Respondent shall send an additional copy of the letter and check to Nancy Chase Burton, Esq., Plan Administrator for the Heppelwhite Fund Fair Fund, Securities and Exchange Commission, 100 F Street N.E., Washington, DC, 20549-5628.

d. to provide the Division with a written certification of compliance with the prohibitions and undertakings in this Agreement between forty-five and sixty days before the end of the Deferred Period.

#### PUBLIC STATEMENTS

9. After the Deferred Period begins, on November 8, 2013, the Respondent agrees not to take any action or to make or permit any public statement through present or future attorneys, employees, agents, or other persons authorized to speak for him, except in legal proceedings in which the Commission is not a party, denying, directly or indirectly, any aspect of this Agreement or creating the impression that the statements in Paragraph 6 of this Agreement are without factual basis. If it is determined by the Commission that a public statement by the Respondent or any related person contradicts in whole or in part this Agreement, at its sole discretion, the Commission may bring an enforcement action in accordance with Paragraphs 12 through 14.

10. Prior to issuing a press release concerning this Agreement, the Respondent agrees to have the text of the release approved by the staff of the Division.

#### SERVICE

11. The Respondent agrees to serve by hand delivery or by next-day mail all written notices and correspondence required by or related to this Agreement to Brian O. Quinn, Assistant Director, 100 F Street N.E., Washington, DC 20549-5030, (202) 551-4982, unless otherwise directed in writing by the staff of the Division.

#### VIOLATION OF AGREEMENT

12. The Respondent understands and agrees that it shall be a violation of this Agreement if he knowingly provides false or misleading information or materials in connection with the Proceedings or Other Proceedings. In the event of such misconduct, the Division will advise the Commission of the Respondent's misconduct and may make a criminal referral for providing false information (18 U.S.C. § 1001), perjury (18 U.S.C. § 1621), making false statements or declarations in court proceedings (18 U.S.C. § 1623), contempt (18 U.S.C. §§ 401-402) and/or obstructing justice (18 U.S.C. § 1503 *et seq.*).

13. The Respondent understands and agrees that it shall be a violation of this Agreement if he violates the federal securities laws after entering into this agreement. It is further understood and agreed that should the Division determine that the Respondent has failed to comply with any term or condition of this Agreement, the Division will notify the Respondent or his counsel of this fact and provide an opportunity for the Respondent to make a submission consistent with the procedures set forth in the Securities Act of 1933 Release No. 5310. Under these circumstances, the Division may, in its sole discretion and not subject to judicial review, recommend to the Commission an enforcement action against the Respondent for any securities law violations, including,

but not limited to, the substantive offenses relating to the Investigation. Nothing in this agreement limits the Division's discretion to recommend to the Commission an enforcement action against the Respondent for future violations of the federal securities laws, without notice, to protect the public interest.

14. The Respondent understands and agrees that in any future enforcement action resulting from his violation of the Agreement, any documents, statements, information, testimony, or evidence provided by him during the Proceedings or Other Proceedings, and any leads derived there from, may be used against him in future legal proceedings.

15. In the event he breaches this Agreement, the Respondent agrees to admit in any future Commission enforcement action the factual statements contained in Paragraph 6 above pursuant to Federal Rule of Evidence 801(d)(2).

#### COMPLIANCE WITH AGREEMENT

16. Subject to the full, truthful, and continuing cooperation of the Respondent, as described in Paragraph 4, and compliance by Respondent with all obligations, prohibitions and undertakings in the Agreement during the Deferred Period, the Commission agrees not to bring any enforcement action or proceeding against the Respondent arising from the Investigation, after the conclusion of the Deferred Period.

17. The Respondent understands and agrees that this Agreement does not bind other federal, state or self-regulatory organizations, but the Division may, at its discretion, issue a letter to these organizations detailing the fact, manner, and extent of his cooperation during the Proceedings or Other Proceedings, upon the written request of the Respondent.

18. The Respondent understands and agrees that the Agreement only provides protection against enforcement actions arising from the Investigation and does not relate to any other violations or any individual or entity other than the Respondent.

#### VOLUNTARY AGREEMENT

19. The Respondent's decision to enter into this Agreement is freely and voluntarily made and is not the result of force, threats, assurances, promises, or representations other than those contained in this Agreement.

20. The Respondent has read and understands this Agreement. Furthermore, he has reviewed all legal and factual aspects of this matter with his attorney and is fully satisfied with his attorney's legal representation. The Respondent has thoroughly reviewed this Agreement with his attorney and has received satisfactory explanations concerning each paragraph of the Agreement. After conferring with his attorney and considering all available alternatives, the Respondent has made a knowing decision to enter into the Agreement.

ENTIRETY OF AGREEMENT

21. This Agreement constitutes the entire agreement between the Commission and the Respondent, and supersedes all prior understandings, if any, whether oral or written, relating to the subject matter herein.

22. This Agreement cannot be modified except in writing, signed by the Respondent and a representative of the Commission.

23. In the event an ambiguity or a question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto, and no presumption or burden of proof shall arise favoring or disfavoring the Commission or the Respondent by virtue of the authorship of any of the provisions of the Agreement.

The signatories below acknowledge acceptance of the foregoing terms and conditions.

RESPONDENT

11/2/13  
Date

[Signature]  
SCOTT JONATHAN HERCKIS

The foregoing instrument was acknowledged before me this 8 day of November, 2013, by [Signature], who 1 is a personally known to me or 1 who has produced a valid driver's license as identification and who did take an oath.

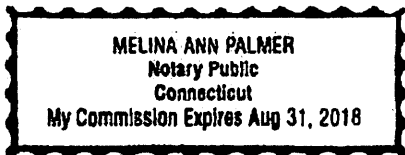
[Signature]

Notary Public

State:

Commission number:

Commission expiration:





RESPONDENT'S COUNSEL

Approved as to form:

11-8-13

Date

Bridget Moore

Bridget Moore, Esq.  
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SECURITIES AND EXCHANGE COMMISSION  
DIVISION OF ENFORCEMENT

11/8/2013

Date

Scott W. Friestad

Scott W. Friestad  
Associate Director