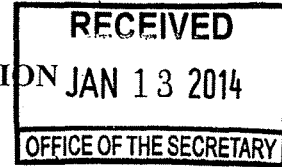


**UNITED STATES OF AMERICA
Before The
SECURITIES AND EXCHANGE COMMISSION**



**Administrative Proceeding
File No. 3-14630**

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In the Matter of :
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:
DANIEL J. GALLAGHER, :
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:
:
Respondent. :
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:
----- X

DECLARATION OF KEVIN P. MCGRATH IN SUPPORT OF THE DIVISION OF ENFORCEMENT'S MOTION FOR SUMMARY DISPOSITION

I, Kevin P. McGrath, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am employed as a Senior Trial Counsel in the Division of Enforcement in the New York Regional Office of the Securities and Exchange Commission. I submit this declaration in support of the Division of Enforcement's Motion for Summary Disposition.
2. Attached hereto as Exhibit A is a true and correct copy of the Financial Industry Regulatory Agency BrokerCheck Report for Daniel J. Gallagher, dated January 2, 2014.
3. Attached hereto as Exhibit B is a true and correct copy of the Memorandum Order and Final Judgment, dated August 17, 2009, in Securities and Exchange Commission v. Christopher Castaldo et al., 08-CIV-8397 (S.D.N.Y.) (JSR).
4. Attached hereto as Exhibit C is a true and correct copy of the July 31, 2009 hearing transcript in Securities and Exchange Commission v. Christopher Castaldo et al.

5. Attached hereto as Exhibit D is a true and correct copy of the Amended Order Instituting Proceedings, dated October 18, 2013, in In the Matter of Daniel J. Gallagher, A.P. File No.3-14630.

6. Attached hereto as Exhibit E is a true and correct copy of the December 1, 2011 Indictment in United States v. Gallagher, 11-CR-806 (E.D.N.Y.)(LDW) (“United States v. Gallagher”).

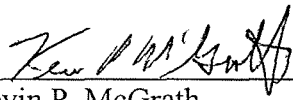
7. Attached hereto as Exhibit F is a true and correct copy of the July 10, 2013 Amended Judgment in United States v. Gallagher.

8. Attached hereto as Exhibit G is a true and correct copy of the sentencing transcript, dated April 23, 2013, in United States v. Gallagher.

9. Attached hereto as Exhibit H is a true and correct copy of the transcript of the December 5, 2013 pre-hearing teleconference in In the Matter of Daniel J. Gallagher.

I declare under penalty of perjury that the foregoing is true and correct.

Executed: January 9, 2014
New York, New York



Kevin P. McGrath

EXHIBIT A

BrokerCheck Report**DANIEL JAMES GALLAGHER**

CRD# 2092711

Report #29692-87299, data current as of Thursday, January 02, 2014.

| <u>Section Title</u> | <u>Page(s)</u> |
|-------------------------------------|----------------|
| Report Summary | 1 |
| Broker Qualifications | 2 - 3 |
| Registration and Employment History | 4 - 5 |
| Disclosure Events | 6 |

About BrokerCheck®



BrokerCheck offers information on all current-and many former-FINRA-registered securities brokers, and all current and former FINRA-registered securities firms. FINRA strongly encourages investors to use BrokerCheck to check the background of securities brokers and brokerage firms before deciding to conduct, or continue to conduct, business with them.

- **What is included in a BrokerCheck report?**

BrokerCheck reports for individual brokers include information such as employment history, professional qualifications, disciplinary actions, criminal convictions, civil judgments and arbitration awards. BrokerCheck reports for brokerage firms include information on a firm's profile, history, and operations, as well as many of the same disclosure events mentioned above.

Please note that the information contained in a BrokerCheck report may include pending actions or allegations that may be contested, unresolved or unproven. In the end, these actions or allegations may be resolved in favor of the broker or brokerage firm, or concluded through a negotiated settlement with no admission or finding of wrongdoing.

- **Where did this information come from?**

The information contained in BrokerCheck comes from FINRA's Central Registration Depository, or CRD® and is a combination of:

- information FINRA and/or the Securities and Exchange Commission (SEC) require brokers and brokerage firms to submit as part of the registration and licensing process, and
- information that regulators report regarding disciplinary actions or allegations against firms or brokers.

- **How current is this information?**

Generally, active brokerage firms and brokers are required to update their professional and disciplinary information in CRD within 30 days. Under most circumstances, information reported by brokerage firms, brokers and regulators is available in BrokerCheck the next business day.

- **What if I want to check the background of an investment adviser firm or investment adviser representative?**

To check the background of an investment adviser firm or representative, you can search for the firm or individual in BrokerCheck. If your search is successful, click on the link provided to view the available licensing and registration information in the SEC's Investment Adviser Public Disclosure (IAPD) website at <http://www.adviserinfo.sec.gov>. In the alternative, you may search the IAPD website directly or contact your state securities regulator at <http://www.nasaa.org>.

- **Are there other resources I can use to check the background of investment professionals?**

FINRA recommends that you learn as much as possible about an investment professional before deciding to work with them. Your state securities regulator can help you research brokers and investment adviser representatives doing business in your state.

Thank you for using FINRA BrokerCheck.



Using this site/information means that you accept the FINRA BrokerCheck Terms and Conditions. A complete list of Terms and Conditions can be found at brokercheck.finra.org



For additional information about the contents of this report, please refer to the User Guidance or www.finra.org/brokercheck. It provides a glossary of terms and a list of frequently asked questions, as well as additional resources. For more information about FINRA, visit www.finra.org.

DANIEL J. GALLAGHER

CRD# 2092711

Report Summary for this Broker



This broker is not currently registered with FINRA.

This report summary provides an overview of the broker's professional background and conduct. Additional information can be found in the detailed report.

Broker Qualifications

This broker is not currently registered with FINRA.

This broker has passed:

- 0 Principal/Supervisory Exams
- 1 General Industry/Product Exam
- 1 State Securities Law Exam

Registration History

This broker was previously registered with the following FINRA firm(s):

EKN FINANCIAL SERVICES INC.
CRD# 113525
MELVILLE, NY
12/2010 - 06/2011

VISION SECURITIES INC.
CRD# 35001
PORT WASHINGTON, NY
06/2005 - 01/2010

VISION SECURITIES INC.
CRD# 35001
PORT WASHINGTON, NY
06/2001 - 06/2005

Disclosure Events

All individuals registered to sell securities or provide investment advice are required to disclose customer complaints and arbitrations, regulatory actions, employment terminations, bankruptcy filings, and criminal or civil judicial proceedings.

Are there events disclosed about this broker? Yes

The following types of disclosures have been reported:

| Type | Count |
|------------------|-------|
| Regulatory Event | 8 |
| Criminal | 2 |
| Civil Event | 1 |
| Customer Dispute | 12 |
| Judgment/Lien | 2 |

Broker Qualifications



Registrations

This section provides the self-regulatory organizations (SROs) and U.S. states/territories the broker is currently registered and licensed with, the category of each license, and the date on which it became effective. This section also provides, for every brokerage firm with which the broker is currently employed, the address of each branch where the broker works.

This broker is not currently registered with FINRA.

Broker Qualifications



Industry Exams this Broker has Passed

This section includes all securities industry exams that the broker has passed. Under limited circumstances, a broker may attain a registration after receiving an exam waiver based on exams the broker has passed and/or qualifying work experience. Any exam waivers that the broker has received are not included below.

This individual has passed 0 principal/supervisory exams, 1 general industry/product exam, and 1 state securities law exam.

Principal/Supervisory Exams

| Exam | Category | Date |
|--------------------------|----------|------|
| No information reported. | | |

General Industry/Product Exams

| Exam | Category | Date |
|---|----------|------------|
| General Securities Representative Examination | Series 7 | 07/06/1999 |

State Securities Law Exams

| Exam | Category | Date |
|--|-----------|------------|
| Uniform Securities Agent State Law Examination | Series 63 | 11/30/1990 |

Additional information about the above exams or other exams FINRA administers to brokers and other securities professionals can be found at www.finra.org/brokerqualifications/registeredrep/.

Registration and Employment History



Registration History

The broker previously was registered with the following FINRA firms:

| Registration Dates | Firm Name | CRD# | Branch Location |
|--------------------|---------------------------------|--------|---------------------|
| 12/2010 - 06/2011 | EKN FINANCIAL SERVICES INC. | 113525 | MELVILLE, NY |
| 06/2005 - 01/2010 | VISION SECURITIES INC. | 35001 | PORT WASHINGTON, NY |
| 06/2001 - 06/2005 | VISION SECURITIES INC. | 35001 | PORT WASHINGTON, NY |
| 07/1999 - 06/2001 | D.L. CROMWELL INVESTMENTS, INC. | 37730 | BOCA RATON, FL |
| 01/1997 - 12/1998 | D.L. CROMWELL INVESTMENTS, INC. | 37730 | |
| 11/1990 - 12/1996 | STRATTON OAKMONT INC. | 18692 | LAKE SUCCESS, NY |

Employment History

Below is the broker's employment history for up to the last 10 years.

Please note that the broker is required to provide this information only while registered with FINRA and the information is not updated after the broker ceases to be registered. Therefore, an employment end date of "Present" may not reflect the broker's current employment status.

| Employment Dates | Employer Name | Employer Location |
|-------------------|-----------------------------|---------------------|
| 11/2010 - Present | EKN FINANCIAL SERVICES, INC | MELVILLE, NY |
| 09/2009 - Present | NANO ACQUISITION GROUP, LLC | PORT WASHINGTON, NY |
| 05/2001 - Present | GCG HOLDINGS, INC | PORT WASHINGTON, NY |
| 05/2001 - 01/2010 | VISION SECURITIES, INC. | GARDEN CITY, NY |

Other Business Activities

This section includes information, if any, as provided by the broker regarding other business activities the broker is currently engaged in either as a proprietor, partner, officer, director, employee, trustee, agent or otherwise. This section does not include non-investment related activity that is exclusively charitable, civic, religious or fraternal and is recognized as tax exempt.

I AM A OWNER, STOCKHOLDER AND EMPLOYEE OF GCG HOLDINGS, INC. GCG HOLDINGS INC IS A HOLDING COMPANY WHO INTENDS TO INVEST IN OTHER BUSINESSES. MY HOURS COULD RANGE FROM 2 TO 5 HOURS A WEEK. MY START DATE WAS OCTOBER 2000. VISION SECURITIES RECENTLY RECIEVED APPROVAL THROUGH THE CMI PROCESS. I WAS NOT AWARE THAT THIS INFO WAS NOT PREVIOUSLY RECORDED

Registration and Employment History



Other Business Activities, continued

DJG PRIVATE EQUITY/14 GRAYWOOD RD, PT WASHINGTON/INVESTMENT-RELATED/UMBRELLA COMPANY TO OTHER SUBSIDIARIES OF PRIVATE COMPANIES/POSITION - FOUNDER; EVALUATE OTHER BUSINESSES/COMPENSATION - SALARY + SHARES/TIME SPENT - APPROX 3 HOURS PER WEEK, NOT DURING MARKET HOURS./ STARTED WORKING 1/3/11

Disclosure Events



What you should know about reported disclosure events:

1. All individuals registered to sell securities or provide investment advice are required to disclose customer complaints and arbitrations, regulatory actions, employment terminations, bankruptcy filings, and criminal or civil judicial proceedings.
2. **Certain thresholds must be met before an event is reported to CRD, for example:**
 - A law enforcement agency must file formal charges before a broker is required to disclose a particular criminal event.
 - A customer dispute must involve allegations that a broker engaged in activity that violates certain rules or conduct governing the industry and that the activity resulted in damages of at least \$5,000.
3. **Disclosure events in BrokerCheck reports come from different sources:**
 - As mentioned at the beginning of this report, information contained in BrokerCheck comes from brokers, brokerage firms and regulators. When more than one of these sources reports information for the same disclosure event, all versions of the event will appear in the BrokerCheck report. The different versions will be separated by a solid line with the reporting source labeled.
4. **There are different statuses and dispositions for disclosure events:**
 - A disclosure event may have a status of *pending*, *on appeal*, or *final*.
 - A "pending" event involves allegations that have not been proven or formally adjudicated.
 - An event that is "on appeal" involves allegations that have been adjudicated but are currently being appealed.
 - A "final" event has been concluded and its resolution is not subject to change.
 - A final event generally has a disposition of *adjudicated*, *settled* or *otherwise resolved*.
 - An "adjudicated" matter includes a disposition by (1) a court of law in a criminal or civil matter, or (2) an administrative panel in an action brought by a regulator that is contested by the party charged with some alleged wrongdoing.
 - A "settled" matter generally involves an agreement by the parties to resolve the matter. Please note that brokers and brokerage firms may choose to settle customer disputes or regulatory matters for business or other reasons.
 - A "resolved" matter usually involves no payment to the customer and no finding of wrongdoing on the part of the individual broker. Such matters generally involve customer disputes.

For your convenience, below is a matrix of the number and status of disclosure events involving this broker. Further information regarding these events can be found in the subsequent pages of this report. You also may wish to contact the broker to obtain further information regarding these events.

| | Pending | Final | On Appeal |
|------------------|---------|-------|-----------|
| Regulatory Event | 1 | 7 | 0 |

| | | | |
|------------------|-----|---|-----|
| Criminal | 0 | 2 | 0 |
| Civil Event | 0 | 1 | 0 |
| Customer Dispute | 5 | 7 | N/A |
| Judgment/Lien | N/A | 2 | N/A |

Disclosure Event Details

When evaluating this information, please keep in mind that a disclosure event may be pending or involve allegations that are contested and have not been resolved or proven. The matter may, in the end, be withdrawn, dismissed, resolved in favor of the broker, or concluded through a negotiated settlement for certain business reasons (e.g., to maintain customer relationships or to limit the litigation costs associated with disputing the allegations) with no admission or finding of wrongdoing.

This report provides the information exactly as it was reported to CRD and therefore some of the specific data fields contained in the report may be blank if the information was not provided to CRD.

Regulatory - Final

This type of disclosure event may involves (1) a final, formal proceeding initiated by a regulatory authority (e.g., a state securities agency, self-regulatory organization, federal regulatory such as the Securities and Exchange Commission, foreign financial regulatory body) for a violation of investment-related rules or regulations; or (2) a revocation or suspension of a broker's authority to act as an attorney, accountant, or federal contractor.

Disclosure 1 of 7

| | |
|--|---|
| Reporting Source: | Regulator |
| Regulatory Action Initiated By: | FINRA |
| Sanction(s) Sought: | Other: N/A |
| Date Initiated: | 02/02/2010 |
| Docket/Case Number: | <u>2008011701203</u> |
| Employing firm when activity occurred which led to the regulatory action: | VISION SECURITIES INC. |
| Product Type: | No Product |
| Allegations: | FINRA RULES 2010, 8210, NASD RULES 1021, 1021(A), 2110, 3012, 3013: GALLAGHER ACTED IN THE CAPACITY OF A PRINCIPAL REGISTRANT ALTHOUGH HE HAD NOT TAKEN THE S24 EXAM AND WAS NOT REGISTERED IN THE CAPACITY OF A PRINCIPAL. GALLAGHER WAS RESPONSIBLE FOR THE FIRM ADHERING TO THE REQUIREMENTS TO ESTABLISH, MAINTAIN AND ENFORCE WRITTEN SUPERVISORY CONTROL POLICIES AND ENSURING THE COMPLETION OF AN ANNUAL CERTIFICATION CERTIFYING THAT THE FIRM HAD IN PLACE PROCESSES TO ESTABLISH, MAINTAIN, REVIEW, TEST AND MODIFY WRITTEN COMPLIANCE POLICIES AND WRITTEN SUPERVISORY PROCEDURES TO COMPLY WITH APPLICABLE SECURITIES RULES AND REGULATIONS. |



GALLAGHER ACTIVELY ENGAGED IN THE MANAGEMENT OF THE SECURITIES BUSINESS WITHOUT THE NECESSARY REGISTRATIONS. WHILE TESTIFYING AT A FINRA ON-THE-RECORD (OTR) INTERVIEW, GALLAGHER FAILED TO RESPOND TO QUESTIONS. GALLAGHER ALSO WILLFULLY FAILED TO TIMELY AMEND HIS FORM U4 WITH MATERIAL FACTS.

Current Status: Final

Action Appealed To: SRO

Date Appeal filed: 07/12/2011

Appeal Limitation Details:

Resolution: Decision

Does the order constitute a final order based on violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct? No

Resolution Date: 01/14/2013

Sanctions Ordered: Bar (Permanent)
Monetary Penalty other than Fines

If the regulator is the SEC, CFTC, or an SRO, did the action result in a finding of a willful violation or failure to supervise? No

(1) willfully violated any provision of the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, or any rule or regulation under any of such Acts, or any of the rules of the Municipal Securities Rulemaking Board, or to have been unable to comply with any provision of such Act, rule or regulation?

(2) willfully aided, abetted, counseled, commanded, induced, or procured the violation by any person of any provision of the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, or any rule or regulation under any of such Acts, or any of the rules of the Municipal Securities Rulemaking Board? or

(3) failed reasonably to supervise another person subject to your supervision, with a view to preventing the violation by such person of any provision of the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, or any rule or regulation under any such Acts, or any of the rules of the Municipal Securities Rulemaking Board?

Sanction 1 of 1

Sanction Type: Bar (Permanent)
Capacities Affected: ANY CAPACITY
Duration: N/A
Start Date: 12/12/2012
End Date:

Monetary Sanction 1 of 1

Monetary Related Sanction: Monetary Penalty other than Fines
Total Amount: \$5,605.25
Portion Levied against individual: \$5,605.25

Payment Plan:

Is Payment Plan Current:
Date Paid by individual:
Was any portion of penalty waived? No

Amount Waived:

Summary: HEARING PANEL DECISION RENDERED JUNE 13, 2011 WHEREIN

GALLAGHER IS BARRED FROM ASSOCIATION WITH ANY FINRA MEMBER IN ANY CAPACITY FOR VIOLATING: (1) FINRA RULES 8210 AND 2010 BY FAILING TO ANSWER QUESTIONS DURING HIS OTRS; (2) NASD RULES 1021(A) AND 2110 BY ACTING AS AN UNREGISTERED PRINCIPAL; AND (3) NASD RULE 2110 BY CIRCUMVENTING HEIGHTENED SUPERVISION THAT HAD BEEN IMPOSED ON HIM BY FINRA AND STATES. BECAUSE OF THE BAR, SANCTIONS ARE NOT IMPOSED AGAINST GALLAGHER FOR VIOLATING: (1) FINRA RULE 2010 AND NASD RULE 2110 BY WILLFULLY FAILING TO AMEND HIS FORM U4 TO DISCLOSE A MATERIAL FACT AND (2) NASD RULES 3012, 3013, AND 2110 BY FAILING TO ADOPT AND CERTIFY HIS FIRM'S COMPLIANCE AND SUPERVISORY PROCESSES. GALLAGHER IS ALSO ORDERED TO PAY, JOINTLY AND SEVERALLY, COSTS IN THE AMOUNT OF \$4,137. THE COSTS SHALL BE PAYABLE ON A DATE SET BY FINRA, BUT NOT LESS THAN 30 DAYS AFTER THIS DECISION BECOMES FINRA'S FINAL DISCIPLINARY ACTION IN THIS MATTER. ON JULY 12, 2011, GALLAGHER APPEALED THE HEARING PANEL'S DECISION TO THE NATIONAL ADJUDICATORY COUNCIL (NAC). NAC DECISION RENDERED DECEMBER 12, 2012 WHEREIN THE NAC AFFIRMS THE HEARING PANEL'S FINDINGS OF VIOLATIONS, AND AFFIRMS, IN PART, THE HEARING PANEL'S SANCTIONS. THE NAC AFFIRMS THE BARS FOR GALLAGHER'S ACTING AS AN UNREGISTERED PRINCIPAL, IN VIOLATION OF NASD RULES 1021(A) AND 2110; HIS REFUSAL TO RESPOND TO QUESTIONS DURING OTR TESTIMONY, IN VIOLATION OF FINRA RULES 2010 AND 8210; AND HIS CIRCUMVENTION OF HEIGHTENED SUPERVISION REQUIREMENTS, IN VIOLATION OF NASD RULE 2110. THE NAC DECIDED TO BAR GALLAGHER FOR WILLFULLY FAILING TO AMEND HIS FORM U4, IN VIOLATION OF FINRA RULE 2010 AND NASD RULE 2110. IT ALSO FINES HIM \$10,000 AND SUSPENDS HIM IN ALL CAPACITIES FOR ONE YEAR FOR FAILING TO ADOPT A SUPERVISORY CONTROL SYSTEM AND FAILING TO CONDUCT AN ANNUAL CERTIFICATION FOR THE SUPERVISORY CONTROL SYSTEM, IN VIOLATION OF NASD RULES 2110, 3012 AND 3013. THE NAC DOES NOT IMPOSE THIS FINE OR SUSPENSION IN LIGHT OF THE BARS IT ALREADY HAD IMPOSED. THE NAC ALSO AFFIRMS THE HEARING PANEL'S ORDER THAT GALLAGHER PAY, JOINTLY AND SEVERALLY, HEARING COSTS OF \$4,137 AND IMPOSE ON GALLAGHER APPEAL COSTS OF \$1,468.25. THE BARS ARE EFFECTIVE AS OF THE DATE OF THIS DECISION. THIS DECISION INCLUDES A FINDING THAT GALLAGHER WILLFULLY OMITTED TO STATE A MATERIAL FACT ON A FORM U4, AND THAT UNDER SECTION 3(A)(39)(F) OF THE SECURITIES EXCHANGE ACT OF 1934 AND ARTICLE III, SECTION 4 OF FINRA'S BY-LAWS, THIS OMISSION MAKES HIM SUBJECT TO STATUTORY DISQUALIFICATION WITH RESPECT TO ASSOCIATION WITH A MEMBER. THE DECISION IS FINAL JANUARY 14, 2013.

Reporting Source: Firm
Regulatory Action Initiated By: FINRA
Sanction(s) Sought: Other: N/A
Date Initiated: 02/02/2010
Docket/Case Number: 2008011701203
Employing firm when activity occurred which led to the regulatory action: VISION SECURITIES INC.

Product Type: No Product

Allegations: FINRA RULES 2010, 8210, NASD RULES 1021, 1021(A), 2110, 3012, 3013: GALLAGHER ACTED IN THE CAPACITY OF A PRINCIPAL REGISTRANT ALTHOUGH HE HAD NOT TAKEN THE S24 EXAM AND WAS NOT REGISTERED IN THE CAPACITY OF A PRINCIPAL. GALLAGHER WAS RESPONSIBLE FOR THE FIRM ADHERING TO THE REQUIREMENTS TO ESTABLISH, MAINTAIN AND ENFORCE WRITTEN SUPERVISORY CONTROL POLICIES AND ENSURING THE COMPLETION OF AN ANNUAL CERTIFICATION CERTIFYING THAT THE FIRM HAD IN PLACE PROCESSES TO ESTABLISH, MAINTAIN, REVIEW, TEST AND MODIFY WRITTEN COMPLIANCE POLICIES AND WRITTEN SUPERVISORY PROCEDURES TO COMPLY WITH APPLICABLE SECURITIES RULES AND REGULATIONS. GALLAGHER ACTIVELY ENGAGED IN THE MANAGEMENT OF THE SECURITIES BUSINESS WITHOUT THE NECESSARY REGISTRATIONS. WHILE TESTIFYING AT A FINRA ON-THE-RECORD (OTR) INTERVIEW, GALLAGHER FAILED TO RESPOND TO QUESTIONS. GALLAGHER ALSO WILLFULLY FAILED TO TIMELY AMEND HIS FORM U4 WITH MATERIAL FACTS.

Current Status: Pending

Summary: FINRA RULES 2010, 8210, NASD RULES 1021, 1021(A), 2110, 3012, 3013: GALLAGHER ACTED IN THE CAPACITY OF A PRINCIPAL REGISTRANT ALTHOUGH HE HAD NOT TAKEN THE S24 EXAM AND WAS NOT REGISTERED IN THE CAPACITY OF A PRINCIPAL. GALLAGHER WAS RESPONSIBLE FOR THE FIRM ADHERING TO THE REQUIREMENTS TO ESTABLISH, MAINTAIN AND ENFORCE WRITTEN SUPERVISORY CONTROL POLICIES AND ENSURING THE COMPLETION OF AN ANNUAL CERTIFICATION CERTIFYING THAT THE FIRM HAD IN PLACE PROCESSES TO ESTABLISH, MAINTAIN, REVIEW, TEST AND MODIFY WRITTEN COMPLIANCE POLICIES AND WRITTEN SUPERVISORY PROCEDURES TO COMPLY WITH APPLICABLE SECURITIES RULES AND REGULATIONS.



GALLAGHER ACTIVELY ENGAGED IN THE MANAGEMENT OF THE SECURITIES BUSINESS WITHOUT THE NECESSARY REGISTRATIONS. WHILE TESTIFYING AT A FINRA ON-THE-RECORD (OTR) INTERVIEW, GALLAGHER FAILED TO RESPOND TO QUESTIONS. GALLAGHER ALSO WILLFULLY FAILED TO TIMELY AMEND HIS FORM U4 WITH MATERIAL FACTS.

Reporting Source: Broker
Regulatory Action Initiated By: FINRA
Sanction(s) Sought: Other: N/A
Date Initiated: 02/02/2010
Docket/Case Number: 2008011701203
Employing firm when activity occurred which led to the regulatory action: VISION SECURITIES, INC.

Product Type: No Product

Allegations: ARTICLE V, SECTION 2 OF FINRA'S BY-LAWS, FINRA RULES 2010, 8210, NASD RULES 1021, 1021(A), 2110, 3012, 3013-GALLAGHER ACTED IN THE CAPACITY OF A PRINCIPAL REGISTRANT ALTHOUGH HE HAD NOT TAKEN THE S24 EXAM AND WAS NOT REGISTERED IN THE CAPACITY OF A PRINCIPAL. GALLAGHER WAS RESPONSIBLE FOR THE FIRM ADHERING TO THE REQUIREMENTS TO ESTABLISH, MAINTAIN AND ENFORCE WRITTEN SUPERVISORY CONTROL POLICIES AND ENSURING THE COMPLETION OF AN ANNUAL CERTIFICATION CERTIFYING THAT THE FIRM HAD IN PLACE PROCESSES TO ESTABLISH, MAINTAIN, REVIEW, TEST AND MODIFY WRITTEN COMPLIANCE POLICIES AND WRITTEN SUPERVISORY PROCEDURES TO COMPLY WITH APPLICABLE SECURITIES RULES AND REGULATIONS. GALLAGHER ACTIVELY ENGAGED IN THE MANAGEMENT OF THE SECURITIES BUSINESS WITHOUT THE NECESSARY REGISTRATIONS. WHILE TESTIFYING AT A FINRA ON-THE-RECORD (OTR) INTERVIEW, GALLAGHER FAILED TO RESPOND TO QUESTIONS. GALLAGHER ALSO WILLFULLY FAILED TO TIMELY AMEND HIS FORM U4 WITH MATERIAL FACTS.

Current Status: Pending

Disclosure 2 of 7

Reporting Source: Regulator

Regulatory Action Initiated By: NEW JERSEY BUREAU OF SECURITIES AND NEW JERSEY OFFICE OF ADMINISTRATIVE LAW

Sanction(s) Sought: Civil and Administrative Penalty(ies)/Fine(s)

Date Initiated: 10/11/2007

Docket/Case Number: 2010-039 / DOCKET NO. BOS 12197-07 AND BOS 12198-07

Employing firm when activity occurred which led to the regulatory action: VISION SECURITIES (CRD# 35001)

Product Type: No Product

Allegations: FAILURE TO COMPLY WITH NOTIFICATION REQUIREMENTS IN THE HEIGHTENED SUPERVISION AGREEMENT FOR GALLAGHER.

Current Status: Final

Action Appealed To: State Court

Date Appeal filed: 11/15/2007

Appeal Limitation Details: PENDING A HEARING ON THE ADMINISTRATIVE COMPLAINT IN THE OFFICE OF ADMINISTRATIVE LAW AND REVIEW OF THE JUDGE'S INITIAL DECISION BY THE BUREAU CHIEF, GALLAGHER AGREES THAT HE WILL NOT ENGAGE IN ANY SECURITIES TRANSACTIONS FOR ANYONE IN, DIRECTED TO, OR FROM NEW JERSEY. THE SEPTEMBER 15, 2005 HEIGHTENED SUPERVISION AGREEMENT WILL REMAIN IN EFFECT UNTIL A FINAL DECISION IS ISSUED.

Resolution: STIPULATION OF SETTLEMENT

Does the order constitute a final order based on violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct? No

Resolution Date: 11/16/2010

Sanctions Ordered: Civil and Administrative Penalty(ies)/Fine(s)
Undertaking

Monetary Sanction 1 of 1

Monetary Related Sanction: Civil and Administrative Penalty(ies)/Fine(s)
Total Amount: \$15,000.00
Portion Levied against individual: \$15,000.00
Payment Plan: DUE 45 DAYS FROM DATE OF THE ORDER.
Is Payment Plan Current:
Date Paid by individual:
Was any portion of penalty waived? No
Amount Waived:

Summary: GALLAGHER ADMITTED TO FINDINGS OF FACT AND CONCLUSIONS OF LAW THAT HE DID NOT NOTIFY THE BUREAU OF FINRA AND SEC DISCLOSURE ITEMS AS REQUIRED BY A HEIGHTENED SUPERVISORY AGREEMENT, DID NOT MAINTAIN SATISFACTORY REVIEW REPORTS AS REQUIRED BY A HEIGHTENED SUPERVISORY AGREEMENT, DID NOT SEEK APPROVAL FOR CHANGES IN GALLAGHER'S SUPERVISOR. GALLAGHER MAY REAPPLY FOR REGISTRATION WITH A FINRA MEMBER FIRM UPON FULL PAYMENT OF THE CIVIL MONETARY PENALTY AND WILL BE SUBJECT TO A HEIGHTENED SUPERVISION AGREEMENT. DURING THE TERM OF THE AGREEMENT, GALLAGHER MAY NOT HAVE ANY OWNERSHIP OR FINANCIAL INTEREST IN HIS EMPLOYING FIRM. GALLAGHER'S CONTINUED REGISTRATION IS CONTINGENT UPON HIS BEING CURRENT ON HIS CIVIL MONETARY PENALTY AND DISGORGEMENT OBLIGATIONS PURSUANT TO THE JUDGEMENT ISSUED IN THE SEC ACTION.

Reporting Source: Broker
Regulatory Action Initiated By: NEW JERSEY BUREAU OF SECURITIES AND NEW JERSEY OFFICE OF ADMINISTRATIVE LAW
Sanction(s) Sought: Civil and Administrative Penalty(ies)/Fine(s)
Date Initiated: 10/11/2007
Docket/Case Number: 2010-039 / DOCKET NO BOS 12197-07 BOS 12198-07
Employing firm when activity occurred which led to the regulatory action: VISION SECURITIES, INC. (CRD #35001)
Product Type: No Product

Allegations: FAILURE TO COMPLY WITH NOTIFICATION REQUIREMENTS IN THE HEIGHTENED SUPERVISION AGREEMENT FOR GALLAGHER.

Current Status: Final

Action Appealed To: State Court

Date Appeal filed: 11/15/2007

Appeal Limitation Details: PENDING A HEARING ON THE ADMINISTRATIVE COMPLAINT IN THE OFFICE OF ADMINISTRATIVE LAW AND REVIEW OF THE JUDGE'S INITIAL DECISION BY THE BUREAU CHIEF, GALLAGHER AGREES THAT HE WILL NOT ENGAGE IN ANY SECURITIES TRANSACTIONS FOR ANYONE IN, DIRECTED TO, OR FROM NEW JERSEY. THE SEPTEMBER 15, 2005 HEIGHTENED SUPERVISION AGREEMENT WILL REMAIN IN EFFECT UNTIL A FINAL DECISION IS ISSUED.

Resolution: STIPULATION OF SETTLEMENT

Does the order constitute a final order based on violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct? No

Resolution Date: 11/16/2010

Sanctions Ordered: Civil and Administrative Penalty(ies)/Fine(s)
Undertaking

Monetary Sanction 1 of 1

Monetary Related Sanction: Civil and Administrative Penalty(ies)/Fine(s)

Total Amount: \$15,000.00

Portion Levied against individual: \$15,000.00

Payment Plan: DUE 45 DAYS FROM DATE OF THE ORDER

Is Payment Plan Current:

Date Paid by individual:

Was any portion of penalty waived? No

Amount Waived:

Summary: GALLAGHER ADMITTED TO FINDINGS OF FACT AND CONCLUSIONS OF

LAW THAT HE DID NOT NOTIFY THE BUREAU OF FINRA AND SEC DISCLOSURE ITEMS AS REQUIRED BY A HEIGHTENED SUPERVISORY AGREEMENT, DID NOT MAINTAIN SATISFACTORY REVIEW REPORTS AS REQUIRED BY A HEIGHTENED SUPERVISORY AGREEMENT, DID NOT SEEK APPROVAL FOR CHANGES IN GALLAGHER'S SUPERVISOR. GALLAGHER MAY REAPPLY FOR REGISTRATION WITH A FINRA MEMBER FIRM UPON FULL PAYMENT OF THE CIVIL MONETARY PENALTY AND WILL BE SUBJECT TO A HEIGHTENED SUPERVISION AGREEMENT. DURING THE TERM OF THE AGREEMENT, GALLAGHER MAY NOT HAVE ANY OWNERSHIP OR FINANCIAL INTEREST IN HIS EMPLOYING FIRM. GALLAGHER'S CONTINUED REGISTRATION IS CONTINGENT UPON HIS BEING CURRENT ON HIS CIVIL MONETARY PENALTY AND DISGORGEMENT OBLIGATIONS PURSUANT TO THE JUDGEMENT ISSUED IN THE SEC ACTION.

Disclosure 3 of 7

Reporting Source: Regulator
Regulatory Action Initiated By: NASD
Sanction(s) Sought:
Other Sanction(s) Sought:
Date Initiated: 07/02/2007
Docket/Case Number: NASD ARBITRATION CASE NO. 02-03107
Employing firm when activity occurred which led to the regulatory action: VISION SECURITIES INC.
Product Type: No Product
Other Product Type(s):
Allegations: RESPONDENT FAILED TO COMPLY WITH AN ARBITRATION AWARD OR SETTLEMENT AGREEMENT OR TO SATISFACTORILY RESPOND TO AN NASD REQUEST TO PROVIDE INFORMATION CONCERNING THE STATUS OF COMPLIANCE.
Current Status: Final
Resolution: Other

Does the order constitute a final order based on violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct? No

Resolution Date: 07/02/2007

Sanctions Ordered: Suspension

Other Sanctions Ordered:

Sanction Details: PURSUANT TO ARTICLE VI, SECTION 3 OF NASD BY-LAWS, AND NASD RULE 9554, RESPONDENT'S NASD REGISTRATION IS SUSPENDED JULY 2, 2007 FOR FAILING TO COMPLY WITH AN ARBITRATION AWARD OR SETTLEMENT AGREEMENT IN ARBITRATION CASE #02-03107 OR TO SATISFACTORILY RESPOND TO AN NASD REQUEST TO PROVIDE INFORMATION CONCERNING THE STATUS OF COMPLIANCE.

Summary: SUSPENSION LIFTED JULY 24, 2007; NASD RECEIVED NOTIFICATION THAT THE AWARD OR SETTLEMENT AGREEMENT HAS BEEN SATISFIED OR SATISFACTORY INFORMATION SHOWING VALID REASONS FOR NON-COMPLIANCE.

Reporting Source: Broker

Regulatory Action Initiated By: NASD

Sanction(s) Sought: Suspension

Date Initiated: 07/02/2007

Docket/Case Number: NASD ARBITRATION CASE NO. 02-03107

Employing firm when activity occurred which led to the regulatory action: VISION SECURITIES, INC.

Product Type: No Product

Allegations: RESPONDENT FAILED TO COMPLY WITH AN ARBITRATION AWARD OR SETTLEMENT AGREEMENT OR TO SATISFACTORILY RESPOND TO AN NASD REQUEST TO PROVIDE INFORMATION CONCERNING THE STATUS OF COMPLIANCE.

Current Status: Final

Resolution: SUSPENSION

Does the order constitute a final order based on violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct? No

Resolution Date: 07/02/2007

Sanctions Ordered: Suspension

Sanction 1 of 1

Sanction Type: Suspension

Capacities Affected: ALL CAPACITIES

Duration: INDEFINITE

Start Date: 07/02/2007

End Date:

Summary: SUSPENSION LIFTED JULY 24, 2007; NASD RECEIVED NOTIFICATION THAT THE AWARD OR SETTLEMENT AGREEMENT HAS BEEN SATISFIED OR SATISFACTORY INFORMATION SHOWING VALID REASONS FOR NON-COMPLIANCE.

Disclosure 4 of 7

Reporting Source: Regulator

Regulatory Action Initiated By: NASD

Sanction(s) Sought:

Date Initiated: 03/03/2005

Docket/Case Number: CLI050002

Employing firm when activity occurred which led to the regulatory action: VISION SECURITIES INC.

Product Type: No Product

Allegations: NASD CONDUCT RULE 2110 RESPONDENT, ACTING THROUGH HIS MEMBER FIRM, FAILED TO MAINTAIN THE REQUIRED NET CAPITAL, WHICH



RESULTED IN NET CAPITAL DEFICIENCIES. IN ADDITION, THE FIRM'S NET CAPITAL COMPUTATION INCORRECTLY INCLUDED PRIVATE PLACEMENT INCOME AS AN ALLOWABLE ASSET THAT SHOULD HAVE BEEN CLASSIFIED AS A NON-ALLOWABLE ASSET.

Current Status: Final

Resolution: Acceptance, Waiver & Consent(AWC)

Does the order constitute a final order based on violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct? No

Resolution Date: 03/03/2005

Sanctions Ordered: Censure
Civil and Administrative Penalty(ies)/Fine(s)

Summary: WITHOUT ADMITTING OR DENYING THE ALLEGATIONS, RESPONDENT CONSENTED TO THE DESCRIBED SANCTIONS AND TO THE ENTRY OF FINDINGS; THEREFORE, HE IS CENSURED AND FINED \$7,500, JOINTLY AND SEVERALLY. FINES PAID.

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Reporting Source: Broker

Regulatory Action Initiated By: NASD NOTICE OF ACCEPTANCE, WAIVER AND CONSENT NO. CLI050002.

Sanction(s) Sought: Civil and Administrative Penalt(ies) /Fine(s)

Other Sanction(s) Sought: A FINE OF \$7,500 AGAINST VISION OF WHICH \$5,000 IS JOINT AND SEVERAL WITH DAN GALLAGHER.

Date Initiated: 01/21/2005

Docket/Case Number: WAIVER AND CONSENT # CLI050002

Employing firm when activity occurred which led to the regulatory action: VISION SECURITIES

Product Type: Equity - OTC

Other Product Type(s):

Allegations: NET CAP VIOLATIONS

Current Status: Final
Resolution: Acceptance, Waiver & Consent(AWC)
Resolution Date: 03/03/2005
Sanctions Ordered: Censure
 Monetary/Fine \$5,000.00
Other Sanctions Ordered: RELATED TO NET CAP ISSUES.
Sanction Details: FINE VISION \$7,500, \$5,000 JOINT AND SEVERAL WITH DAN GALLAGHER.

Disclosure 5 of 7

Reporting Source: Regulator
Regulatory Action Initiated By: ILLINOIS SECURITIES DEPARTMENT
Sanction(s) Sought: Suspension
Other Sanction(s) Sought:
Date Initiated: 02/10/1999
Docket/Case Number: 9800592
Employing firm when activity occurred which led to the regulatory action: D.L. CROMWELL INVESTMENTS, INC.
Product Type: No Product
Other Product Type(s):
Allegations: RESPONDENT'S SALESPERSON REGISTRATION IN ILLINIS IS SUBJECT TO REVOCATION BASED UPON NASDR ORDER OF ACCEPTING RESPONDENT'S OFFER OF SETTLEMENT IN DISCIPLINARY PROCEEDING 970002, WHICH CENSURED, SUSPENDED FOR 6 MONTHS AND FINED \$15,000.
Current Status: Final
Resolution: Stipulation and Consent
Resolution Date: 12/07/1999
Sanctions Ordered: Monetary/Fine \$1,000.00

Other Sanctions Ordered: Suspension
 RESPONDENT IS SUSPENDED FOR 15 MONTHS FROM THE DATE OF THIS CONSENT ORDER WITH 6 MONTHS CREDIT GIVEN. RESPONDENT WILL BE SUBJECT TO ENHANCED AND INCREASED SUPERVISION FOR AN ADDITIONAL 6 MONTHS, AND WILL FURNISH AN AFFIDAVIT TO THE SECURITIES DEPARTMENT WITHIN THIRTY DAYS FROM ENTRY OF THIS CONSENT ORDER, STATING THE DETAILS OF THIS HIGHTENED SUPERVISION. RESPONDENT WILL PAY \$1,000 FOR CERTAIN COSTS OF THE INVESTIGATION.

Sanction Details: A NOTICE OF HEARING WAS ISSUED FEBRUARY 10, 1999.
 THE HEARING IS SET FOR APRIL 7, 1999.

A CONSENT ORDER OF SUSPENSION, ISSUED DECEMBER 7, 1999.

Summary: CONTACT: (217) 785-4948

Reporting Source: Firm
Regulatory Action Initiated By: ILLINOIS

Sanction(s) Sought:

Other Sanction(s) Sought:

Date Initiated: 02/10/1999

Docket/Case Number: 9800592

Employing firm when activity occurred which led to the regulatory action:

Product Type:

Other Product Type(s):

Allegations:

Current Status: Pending

Reporting Source: Broker
Regulatory Action Initiated By: STATE OF ILLINOIS*SEE FAQ #1*

Sanction(s) Sought: Censure
Date Initiated: 02/10/1999
Docket/Case Number: 9800592
Employing firm when activity occurred which led to the regulatory action: STRATTON OAKMONT ,INC.
Product Type: Equity-OTC
Allegations: I WAS NAMED IN AN ADMINISTRATIVE PROCEEDING BROUGHT BY THE STATE OF ILLINOIS BASED UPON AN NASD ACTION THAT WAS SETTLED IN NOVEMBER, 1998. THE PROCEEDING BROUGHT BY THE STATE OF ILLINOIS IS SOLELY BASED UPON THE PREVIOUSLY REPORTED NASD ACTION AND DOES NOT RAISE ANY NEW OR ADDITIONAL INFORMATION. ALSO, NO ILLINOIS CUSTOMERS (RESIDENTS) WERE NAMED.
Current Status: Final
Resolution: Stipulation and Consent
Does the order constitute a final order based on violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct? No
Resolution Date: 12/07/1999
Sanctions Ordered: Suspension
 Other: RESPONDENT IS SUSPENDED FOR 15 MONTHS FROM THE DATE OF THIS CONSENT ORDER WITH 6 MONTHS CREDIT GIVEN. RESPONDENT WILL BE SUBJECT TO ENHANCED AND INCREASED SUPERVISION FOR AN ADDITIONAL 6 MONTHS, AND WILL FURNISH AN AFFIDAVIT TO THE SECURITIES DEPARTMENT WITHIN THIRTY DAYS FROM ENTRY OF THIS CONSENT ORDER, STATING THE DETAILS OF THIS HIGHTENED SUPERVISION. RESPONDENT WILL PAY \$1,000 FOR CERTAIN COSTS OF THE INVESTIGATION.
Sanction 1 of 1
Sanction Type: Suspension
Capacities Affected: ALL CAPACITIES
Duration: 15 MONTHS

Start Date: 12/07/1999

End Date:

Summary: NOT PROVIDED

Disclosure 6 of 7

Reporting Source: Regulator

Regulatory Action Initiated By: NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

Sanction(s) Sought:

Other Sanction(s) Sought:

Date Initiated: 10/15/1997

Docket/Case Number: CAF970002

Employing firm when activity occurred which led to the regulatory action:

Product Type: Equity Listed (Common & Preferred Stock)

Other Product Type(s):

Allegations: VIOLATIONS OF NASD RULES 2110, 2120, 2310 (A), 2330(E), 3010, AND 3110.

Current Status: Final

Resolution: Decision & Order of Offer of Settlement

Resolution Date: 11/09/1998

Sanctions Ordered: Censure
Monetary/Fine \$15,000.00
Suspension

Other Sanctions Ordered:

Sanction Details: REQUIRED TO REQUALIFY BY SERIES 7 EXAMINATION PRIOR TO ACTING IN THAT CAPACITY.
THE SUSPENSION WILL COMMENCE 12/21/98, AND WILL CONCLUDE 6/18/99.

Summary: [TOP] COMPLAINT NO. CAF970002 FILED 10/15/97 AGAINST RESPONDENTS MICHAEL J. ALBINO, HOWARD S. GELFAND, ANDREW T. GREENE, DANIEL M. PORUSH, JORDAN I. SHAMAH, CHAD J.

BEANLAND, ERIC BLUMAN, IRA A. BOSHNACK, STEPHEN G. BUXTON, ANDREW S. FRIEDMAN, DEAN S. FRIEDMAN, KENNETH J. FUINA, DANIEL J. GALLAGHER, JAMES W. GAROFALO, JR., PAUL J. GRECO, DAVID S. HEREDIA, ROBERT W. KOCH, II, THOMAS A. NIEMCZYK, GEORGE PATSIS, MICHAEL J. RASKIN, FRANK RICCUITI, JR. RICHARD L. RINGEL, ROBERT J. ROSATO, PETER T. RUBENSTEIN, LAWRENCE T. SMITH, ROBERT F. SMITH, EDWARD C. SPARACIO, MICHAEL A. TALIERCIO, JOSEPH TESEO, PETER T. TSADILAS, BONINE C. VANDENBERG, APRIL WIENER, AND CLIFFORD B. OLSHAKER ALLEGING VIOLATIONS OF NASD RULES 2110, 2120, 2310 (A), 2330(E), 3010, AND 3110 IN THAT, IN CONNECTION WITH FRAUDULENT SALES PRACTICES AND UNAUTHORIZED TRANSACTIONS, BEANLAND, GALLAGHER, ET AL. ENGAGED IN BASELESS AND IMPROPER PRICE PREDICTIONS; GALLAGHER, GAROFALO, HEREDIA, KOCH, RICCUITI, RINGEL, L. SMITH, R. SMITH, SPARACIO, AND TALIERCIO MADE MISREPRESENTATIONS AS TO SPECIFIC ISSUERS; BLUMEN, GALLAGHER, ET AL. ENGAGED IN UNAUTHORIZED TRADING IN CUSTOMER ACCOUNTS; BLUMEN, BUXTON, D. FRIEDMAN, FUINA, GALLAGHER, GAROFALO, GRECO, HEREDIA, KOCH, NIEMCZYK, PATSIS, RASKIN, RINGEL, ROSATO, SHAMAH, L. SMITH, R. SMITH, SPARACIO, TALIERCIO, TESEO, TSADILAS AND VANDENBERG REFUSED OR FAILED TO EXECUTE CUSTOMER SELL ORDERS. 11/9/98, THE DECISION AND ORDER OF ACCEPTANCE OF OFFER OF SETTLEMENT SUBMITTED BY GALLAGHER WAS ISSUED; THEREFORE, HE IS CENSURED, FINED \$15,000, SUSPENDED FROM ASSOCIATION WITH ANY NASD MEMBER IN ANY CAPACITY FOR SIX MONTHS, AND REQUIRED TO REQUALIFY BY SERIES 7 EXAMINATION PRIOR TO ACTING IN THAT CAPACITY. THE SUSPENSION WILL COMMENCE 12/21/98, AND WILL CONCLUDE 6/18/99. 04-13-99, \$15,000 PAID ON 12/10/98, INVOICE #98-AF-937

Reporting Source: Broker
 Regulatory Action Initiated By: NASD
 Sanction(s) Sought:
 Other Sanction(s) Sought:
 Date Initiated: 10/15/1997
 Docket/Case Number: CAF970002

Employing firm when activity occurred which led to the regulatory action:

Product Type:

Other Product Type(s):

Allegations:

ALLEGED VIOLATION OF SEC 10(B) OF THE SECURITIES EXCHANGE ACT OF 1934, RULE 10B-5 THEREUNDER, AND CONDUCT RULES 2110 AND 2120. RESPONDENT WAS A REGISTERED REP. AT STRATTON OAKMONT. MADE BASELESS PRICE PREDICTIONS. MADE UNAUTHORIZED TRADES IN ACCOUNTS OF TWO CUSTOMERS. IMPROPERLY DISCOURAGED OR FAILED TO EXECUTE SELL ORDERS ON FOUR OCCASIONS.

Current Status:

Final

Resolution:

Decision & Order of Offer of Settlement

Resolution Date:

11/09/1998

Sanctions Ordered:

Censure
Monetary/Fine \$15,000.00
Suspension

Other Sanctions Ordered:

Sanction Details:

WITHOUT ADMITTING OR DENYING THE ALLEGATIONS, I AGREED TO BE CENSURED, SUSPENDED FROM ASSOCIATING WITH ANY MEMBER FIRM IN ANY CAPACITY FOR A PERIOD OF SIX MONTHS COMMENCING 12-21-98 THROUGH 06-18-99. PAYMENT OF A \$15,000 FINE, AND WILL REQUALIFY BY SERIES 7 EXAMINATION.

Summary:

NOT PROVIDED

Disclosure 7 of 7

Reporting Source:

Regulator

Regulatory Action Initiated By:

ROBERT D. TERRY, ASSISTANT SECURITIES COMMISSIONER OF GEORGIA

Sanction(s) Sought:

Other Sanction(s) Sought:

Date Initiated:

04/30/1998

Docket/Case Number: 50-95-0050 (BH)
Employing firm when activity occurred which led to the regulatory action: STRATTON OAKMONT INC.
Product Type:
Other Product Type(s):
Allegations: REPONDENT, IN CONNECTION WITH THE OFFER AND SALE OF SECURITIES IN GEORGIA, RECOMMENDED A PURCHASE WITHOUT REASONABLE GROUNDS TO BELIEVE SUCH RECOMMENDATION WAS SUITABLE FOR THE CUSTOMER.
Current Status: Final
Resolution: Stipulation and Consent
Resolution Date: 04/30/1998
Sanctions Ordered:
Other Sanctions Ordered:
Sanction Details: ON APRIL 30, 1998, A CONSENT ORDER WAS SIGNED IN WHICH THE RESPONDENT AGREES TO THE FOLLOWING: 1. HE SHALL NOT APPLY FOR REGISTRATION AS A SECURITIES SALESMAN IN GEORGIA FOR THREE YEARS FROM THE DATE OF THIS ORDER. 2. HE IS REPRIMANDED FOR HIS CONDUCT. 3. HE SHALL REIMBURSE THE STATE \$3,000.00 TO COVER THE COST OF THIS INVESTIGATION.
Summary: CONTACT: GEORGIA SECURITIES ENFORCEMENT, 404/656-6409.

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Reporting Source: Broker
Regulatory Action Initiated By: STATE OF GEORGIA SECURITIES COMMISSION
Sanction(s) Sought:
Other Sanction(s) Sought:
Date Initiated: 04/30/1998
Docket/Case Number: 50-95-0050 (BH)

Employing firm when activity occurred which led to the regulatory action: STRATTON OAKMONT INC.

Product Type:

Other Product Type(s):

Allegations: ALLEGES AGENT MADE MATERIAL MISREPRESENTATIONS AND OMISSIONS IN DEALING WITH GEORGIA RESIDENTS

Current Status: Final

Resolution: Stipulation and Consent

Resolution Date: 04/30/1998

Sanctions Ordered:

Other Sanctions Ordered:

Sanction Details: WITHOUT ADMITTING OR DENYING THE FACTS AND CONCLUSIONS OF LAW SET FORTH IN THE CONSENT ORDER, I HAVE NOT APPLIED FOR REGISTRATION AS A SECURITIES SALESPERSON IN THE STATE OF GEORGIA. I SHALL NOT APPLY FOR REGISTRATION AS A SECURITIES SALESPERSON IN THE STATE OF GEORGIA FOR A PERIOD OF 3 YEARS. I WAS REPRIMANDED AND REIMBURSED THE STATE OF GEORGIA IN THE AMOUNT OF \$3,000 TO COVER THE COST OF THE INVESTIGATION AND PROCEEDING.

Summary: THIS DPR IS TO CORRECT THE DRP SIGNED BY ME ON 07-17-98 WHICH WAS INCORRECTLY COPIED FROM THE CONSENT ORDER AS TO THE TERMS.

Regulatory - Pending

This type of disclosure event involves a pending formal proceeding initiated by a regulatory authority (e.g., a state securities agency, self-regulatory organization, federal regulatory agency such as the Securities and Exchange Commission, foreign financial regulatory body) for alleged violations of investment-related rules or regulations.

Disclosure 1 of 1

Reporting Source: Regulator

Regulatory Action Initiated By: UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Sanction(s) Sought: Cease and Desist
Other: N/A

Date Initiated: 11/16/2011

Docket/Case Number: 3-14630

Employing firm when activity occurred which led to the regulatory action: VISION SECURITIES, INC.

Product Type: Other: UNREGISTERED SECURITIES

Allegations: SEC ADMIN RELEASES 33-9468, 34-70712, OCTOBER 18, 2013: AMENDED ORDER -- THE SECURITIES AND EXCHANGE COMMISSION ("COMMISSION") DEEMED IT APPROPRIATE AND IN THE PUBLIC INTEREST THAT PUBLIC ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS BE INSTITUTED PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933 ("SECURITIES ACT"), AND SECTIONS 15(B) AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934 ("EXCHANGE ACT") AGAINST DANIEL J. GALLAGHER ("RESPONDENT" OR "GALLAGHER").

THE DIVISION OF ENFORCEMENT ALLEGES THAT: THE ACTION ARISES OUT OF GALLAGHER'S FRAUDULENT OFFERING OF SECURITIES OF A COMPANY. FROM OCTOBER 2009 THROUGH JULY 2010, GALLAGHER RAISED AT LEAST \$427,000 FROM TWELVE INVESTORS THROUGH THE SALE OF SECURITIES OF THE COMPANY, AN ENTITY THAT GALLAGHER FORMED. NOTWITHSTANDING GALLAGHER'S ORAL REPRESENTATIONS TO INVESTORS THAT THEIR FUNDS WOULD BE USED BY THE COMPANY TO ACQUIRE OR DEVELOP CERTAIN NANOTECHNOLOGY ASSETS, AND WRITTEN REPRESENTATIONS TO THE SAME EFFECT CONTAINED IN THE COMPANY'S OFFERING MATERIALS, GALLAGHER WITHDREW APPROXIMATELY \$392,000 - OR 92% OF THE FUNDS RAISED - FOR HIS PERSONAL USE. HE BEGAN TO DO SO ALMOST AS SOON AS THE COMPANY WAS FORMED AND EVEN AS HE CONTINUED TO RAISE ADDITIONAL MONEY FROM INVESTORS. GALLAGHER NEVER INFORMED

COMPANY INVESTORS THAT HE INTENDED TO MISAPPROPRIATE, OR HAD ALREADY MISAPPROPRIATED, VIRTUALLY ALL OF THEIR FUNDS FOR HIS PERSONAL USE. IN APRIL 2012, IN A CASE ENTITLED UNITED STATES V. GALLAGHER, 11-CR-806 (E.D.N.Y.)(LDW), GALLAGHER WAS CONVICTED OF ONE COUNT OF SECURITIES FRAUD AND TWO COUNTS OF WIRE FRAUD FOR SUBSTANTIALLY THE SAME FRAUD ON INVESTORS AT ISSUE IN THIS CASE.

AS A RESULT OF THE CONDUCT, GALLAGHER WILLFULLY VIOLATED SECTION 17(A) OF THE SECURITIES ACT [15 U.S.C. § 77Q(A)(2)], AND 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].

Current Status:

Pending

Summary:

THE ADMINISTRATIVE LAW JUDGE SHALL ISSUE AN INITIAL DECISION NO LATER THAN 300 DAYS FROM THE DATE OF SERVICE OF THE AMENDED ORDER, PURSUANT TO RULE 360(A)(2) OF THE COMMISSION'S RULES OF PRACTICE, 17 CFR § 201.360(A)(2).

Criminal - Final Disposition

This type of disclosure event involves a criminal charge against the broker that has resulted in a conviction, acquittal, dismissal, or plea. The criminal matter may pertain to any felony or certain misdemeanor offenses, including bribery, perjury, forgery, counterfeiting, extortion, fraud, and wrongful taking of property.

Disclosure 1 of 2

| | |
|--|---|
| Reporting Source: | Regulator |
| Formal Charges were brought in: | Federal Court |
| Name of Court: | UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK |
| Location of Court: | CENTRAL ISLIP, NY |
| Docket/Case #: | 2:11-CR-806 |
| Charge Date: | 11/10/2011 |
| Charge(s) 1 of 4 | |
| Formal Charge(s)/Description: | SECURITIES FRAUD (COUNT 1) |
| No of Counts: | 1 |
| Felony or Misdemeanor: | Felony |
| Plea for each charge: | NOT GUILTY |
| Disposition of charge: | Convicted |
| Charge(s) 2 of 4 | |
| Formal Charge(s)/Description: | WIRE FRAUD (COUNTS 3 & 6) |
| No of Counts: | 2 |
| Felony or Misdemeanor: | Felony |
| Plea for each charge: | NOT GUILTY |
| Disposition of charge: | Convicted |
| Charge(s) 3 of 4 | |
| Formal Charge(s)/Description: | WIRE FRAUD (COUNT 2) |
| No of Counts: | 1 |

Felony or Misdemeanor: Felony
Plea for each charge: NOT GUILTY
Disposition of charge: Found not guilty
Charge(s) 4 of 4
Formal Charge(s)/Description: WIRE FRAUD (COUNTS 4 & 5)
No of Counts: 2
Felony or Misdemeanor: Felony
Plea for each charge: NOT GUILTY
Disposition of charge: JURY UNDECIDED; DISMISSED UPON MOTION OF GOVERNMENT
Current Status: Final
Status Date: 04/09/2012
Disposition Date: 04/09/2012
Sentence/Penalty: GALLAGHER IS AWAITING SENTENCING.
Summary: ON NOVEMBER 10, 2011, GALLAGHER WAS INDICTED IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK ON CHARGES OF SECURITIES AND WIRE FRAUD. THERE WAS A JURY TRIAL AND, ON APRIL 9, 2012, GALLAGHER WAS FOUND GUILTY OF ONE COUNT OF SECURITIES FRAUD AND TWO COUNTS OF WIRE FRAUD.

Disclosure 2 of 2

Reporting Source: Broker
Court Details: STATE OF NEW YORK COUNTY OF NASSAU
 CR#204CR0095409
Charge Date: 11/22/2004
Charge Details: CRIMINAL POSSESSION OF A WEAPON IN THE THIRD DEGREE. MR. GALLAGHER PLEADS NOT GUILTY DUE TO THE FACT THAT THE FIREARM IS NOT HIS. THE PERSON MR. GALLAGHER WAS WITH HAS ADMITTED TO THE OFFICER OF THE COURT THAT THE FIREARM WAS HIS AND NOT MR. GALLAGHERS AND WE EXPECT THIS CHARGE TO BE DISMISSED.
Felony? Yes
Current Status: Final

Status Date: 10/26/2005

Disposition Details: CRIMINAL POSSESSION OF A WEAPON 3RD DEGREE INDICTMENT
845N-2005. THIS CHARGE WAS DISMISSED.

Civil - Final

This type of disclosure event involves (1) an injunction issued by a court in connection with investment-related activity, (2) a finding by a court of a violation of any investment-related statute or regulation, or (3) an action brought by a state or foreign financial regulatory authority that is dismissed by a court pursuant to a settlement agreement.

Disclosure 1 of 1

Reporting Source: Regulator

Initiated By: UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Relief Sought: Civil and Administrative Penalty(ies)/Fine(s)
Disgorgement
Injunction
Monetary Penalty other than Fines

Date Court Action Filed: 09/30/2008

Product Type: No Product

Type of Court: Federal Court

Name of Court: UNITED STATES DISTRICT COURT

Location of Court: SOUTHERN DISTRICT OF NEW YORK

Docket/Case #: 08 CIV. 8397 (JSR)

Employing firm when activity occurred which led to the action: VISION SECURITIES INC.,

Allegations: SEC LITIGATION RELEASE 20764, OCTOBER 1, 2008: SECTION 20(E) OF THE EXCHANGE ACT AS AIDER AND ABETTOR OF A FIRM VIOLATIONS OF SECTION 15(B)(7) OF THE EXCHANGE ACT AND RULE 15B3-1, AND SECTION 20(E) OF THE EXCHANGE ACT AS AN AIDER AND ABETTOR OF A FIRM'S VIOLATIONS OF SECTION 17(A) OF THE EXCHANGE ACT AND RULE 15B7-1 - ON SEPTEMBER 30, 2008, THE COMMISSION FILED A CIVIL INJUNCTIVE ACTION CHARGING DANIEL JAMES GALLAGHER, HIS FIRM AND OTHERS WITH VIOLATIONS OF THE BROKER-DEALER REGISTRATION AND REPORTING REQUIREMENTS. THE COMMISSION'S COMPLAINT ALLEGED THAT, FROM APPROXIMATELY MAY 2005 THROUGH FEBRUARY 2007, INDIVIDUAL SOLICITED INVESTORS, AND RECEIVED TRANSACTION-BASED COMPENSATION, IN CONNECTION WITH THREE OFFERINGS OF SECURITIES, INCLUDING ONE OFFERING CONDUCTED UNDER THE AUSPICES OF GALLAGHER'S FIRM, AND THAT A SECOND INDIVIDUAL SOLICITED INVESTORS AND RECEIVED TRANSACTION-BASED COMPENSATION IN CONNECTION WITH ONE OF THESE OFFERINGS. ACCORDING TO THE COMPLAINT, THIS CONDUCT WAS ILLEGAL BECAUSE

THESE INDIVIDUALS WERE NOT REGISTERED AS BROKERS, AND ONE OF THEM WAS NOT A REGISTERED REPRESENTATIVE OF GALLAGHER'S FIRM. MOREOVER, THE INDIVIDUAL'S BROKERAGE ACTIVITIES VIOLATED THE TERMS OF A COMMISSION ORDER PREVIOUSLY ENTERED AGAINST HIM. IN ADDITION, THE COMPLAINT ALLEGED THAT GALLAGHER'S FIRM FILED NUMEROUS INACCURATE FORM BD AMENDMENTS, IN WHICH IT FAILED TO DISCLOSE GALLAGHER'S CONTROL OF THE FIRM.

Current Status: Final

Resolution: Judgment Rendered

Resolution Date: 08/17/2009

Sanctions Ordered or Relief Granted: Civil and Administrative Penalty(ies)/Fine(s)
Disgorgement
Monetary Penalty other than Fines

Monetary Sanction 1 of 3

Monetary Sanction: Monetary Fine

Total Amount: \$24,000.00

Portion against individual: 24000

Date Paid:

Portion Waived: No

Amount Waived:

Monetary Sanction 2 of 3

Monetary Sanction: PREJUDGMENT INTEREST

Total Amount: \$29,251.32

Portion against individual: 29251.32

Date Paid:

Portion Waived: No

Amount Waived:

Monetary Sanction 3 of 3

Monetary Sanction: Disgorgement

Total Amount: \$126,466.91

Portion against individual: 126466.91

Date Paid:

Portion Waived:

No

Amount Waived:

Summary:

SEC LITIGATION RELEASE 21146, JULY 22, 2009: ON JULY 20, 2009, A FEDERAL JURY RETURNED A VERDICT IN THE SEC'S FAVOR AGAINST DANIEL JAMES GALLAGHER AND HIS FIRM, A REGISTERED BROKER-DEALER HE CONTROLLED. AFTER A SIX-DAY TRIAL BEFORE THE U.S. DISTRICT COURT JUDGE, THE JURY FOUND HIS FIRM LIABLE ON THE SEC'S CLAIM THAT AN INDIVIDUAL ACTED AS AN UNLICENSED BROKER WITH RESPECT TO AN OFFERING OF SECURITIES AND DID SO IN CLOSE, CONTROLLING ASSOCIATION WITH THE FIRM, AND THAT GALLAGHER KNOWINGLY ASSISTED HIS FIRM IN THE VIOLATION. THE COURT HAS SCHEDULED A HEARING TO CONSIDER APPROPRIATE RELIEF AGAINST THE DEFENDANTS ON JULY 31.

ON AUGUST 18, 2009, THE HONORABLE JUDGE FOR THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK ISSUED A MEMORANDUM ORDER AND FINAL JUDGMENT AGAINST DEFENDANT GALLAGHER. DEFENDANT DANIEL GALLAGHER IS HEREBY ORDERED TO PAY, JOINTLY AND SEVERALLY, DISGORGEMENT IN THE AMOUNT OF \$126,466.91, PLUS PRE-JUDGMENT INTEREST IN THE AMOUNT OF \$29,251.32, FOR A TOTAL OF \$155,718.23. A CIVIL MONETARY PENALTY OF \$24,000 IS HEREBY IMPOSED ON GALLAGHER, JOINTLY AND SEVERALLY.

ON NOVEMBER 2, 2009, THE HONORABLE JUDGE FOR THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK DENIED DEFENDANT'S MOTION FOR RELIEF FROM THE PORTION OF THE FINAL JUDGMENT HOLDING HIM JOINTLY AND SEVERALLY LIABLE FOR THE DISGORGEMENT AMOUNT.

SEC LITIGATION RELEASE 22598, JANUARY 23, 2013: ON AUGUST 17, 2009, U.S. DISTRICT COURT JUDGE ISSUED A MEMORANDUM ORDER AND FINAL JUDGMENT ("ORDER") WITH RESPECT TO DANIEL JAMES GALLAGHER. THE ORDER WAS ENTERED FOLLOWING A HEARING ON REMEDIES AND A TRIAL THAT HAD RESULTED IN A JURY VERDICT AGAINST GALLAGHER.

THE JUDGE DECLINED TO IMPOSE INJUNCTIVE RELIEF AGAINST ANY OF THE DEFENDANTS, BUT ORDERED THE FOLLOWING MONETARY RELIEF: AS TO GALLAGHER, JOINTLY AND SEVERALLY: \$126,466.91 IN DISGORGEMENT, \$29,251.32, IN PREJUDGMENT INTEREST, AND \$24,000 IN CIVIL MONEY PENALTIES, WITH PAYMENTS OF DISGORGEMENT AND PREJUDGMENT INTEREST TO BE MADE IN MONTHLY INSTALLMENTS IN AMOUNTS BASED ON THE DEFENDANTS' GROSS INCOME, MINUS AN

AMOUNT REFLECTING GALLAGHER'S SUPPORT OBLIGATIONS TO HIS
EX-WIFE AND CHILDREN.

Reporting Source: Broker

Initiated By: UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Relief Sought: Civil and Administrative Penalty(ies)/Fine(s)
Disgorgement
Injunction
Monetary Penalty other than Fines

Date Court Action Filed: 09/30/2008

Product Type: No Product

Type of Court: Federal Court

Name of Court: UNITED STATES DISTRICT COURT

Location of Court: SOUTHERN DISTRICT OF NEW YORK

Docket/Case #: 08 CIV. 8397 (JSR)

Employing firm when activity occurred which led to the action: VISION SECURITIES, INC.

Allegations: SEC LITIGATION RELEASE 20764, OCTOBER 1, 2008: SECTION 20(E) OF THE EXCHANGE ACT AS AIDER AND ABETTOR OF A FIRM VIOLATIONS OF SECTION 15(B)(7) OF THE EXCHANGE ACT AND RULE 15B3-1, AND SECTION 20(E) OF THE EXCHANGE ACT AS AN AIDER AND ABETTOR OF A FIRM'S VIOLATIONS OF SECTION 17(A) OF THE EXCHANGE ACT AND RULE 15B7-1 - ON SEPTEMBER 30, 2008, THE COMMISSION FILED A CIVIL INJUNCTIVE ACTION CHARGING DANIEL JAMES GALLAGHER, HIS FIRM AND OTHERS WITH VIOLATIONS OF THE BROKER-DEALER REGISTRATION AND REPORTING REQUIREMENTS. THE COMMISSION'S COMPLAINT ALLEGES THAT, FROM APPROXIMATELY MAY 2005 THROUGH FEBRUARY 2007, INDIVIDUALS SOLICITED INVESTORS, AND RECEIVED TRANSACTION-BASED COMPENSATION, IN CONNECTION WITH THREE OFFERINGS OF SECURITIES, INCLUDING ONE OFFERING CONDUCTED UNDER THE AUSPICES OF GALLAGHER'S FIRM, AND THAT A SECOND INDIVIDUAL SOLICITED INVESTORS AND RECEIVED TRANSACTION-BASED COMPENSATION IN CONNECTION WITH ONE OF THESE OFFERINGS. ACCORDING TO THE COMPLAINT, THIS CONDUCT WAS ILLEGAL BECAUSE THESE INDIVIDUALS WERE NOT REGISTERED AS BROKERS, AND ONE OF THEM WAS NOT A REGISTERED REPRESENTATIVE OF GALLAGHER'S FIRM.

MOREOVER, THE INDIVIDUAL'S BROKERAGE ACTIVITIES VIOLATED THE TERMS OF A COMMISSION ORDER PREVIOUSLY ENTERED AGAINST HIM. IN ADDITION, THE COMPLAINT ALLEGES THAT GALLAGHER'S FIRM FILED NUMEROUS INACCURATE FORM BD AMENDMENTS, IN WHICH IT FAILED TO DISCLOSE GALLAGHER'S CONTROL OF THE FIRM.

Current Status: Final
Resolution: Judgment Rendered
Resolution Date: 08/17/2009
Sanctions Ordered or Relief Granted: Civil and Administrative Penalty(ies)/Fine(s)
 Disgorgement
 Monetary Penalty other than Fines

Monetary Sanction 1 of 3

Monetary Sanction: Disgorgement
Total Amount: \$126,466.91
Portion against individual: 126466.91
Date Paid:
Portion Waived: No
Amount Waived:

Monetary Sanction 2 of 3

Monetary Sanction: Monetary Fine
Total Amount: \$24,000.00
Portion against individual: 24000
Date Paid:
Portion Waived: No
Amount Waived:

Monetary Sanction 3 of 3

Monetary Sanction: PREJUDGEMENT INTEREST
Total Amount: \$29,251.32
Portion against individual: 29251.32
Date Paid:
Portion Waived: No

Amount Waived:

Summary:

SEC LITIGATION RELEASE 21146, JULY 22, 2009: ON JULY 20, 2009, A FEDERAL JURY RETURNED A VERDICT IN THE SEC'S FAVOR AGAINST DANIEL JAMES GALLAGHER AND HIS FIRM, A REGISTERED BROKER-DEALER HE CONTROLLED. AFTER A SIX-DAY TRIAL BEFORE THE U.S. DISTRICT COURT JUDGE, THE JURY FOUND HIS FIRM LIABLE ON THE SEC'S CLAIM THAT AN INDIVIDUAL ACTED AS AN UNLICENSED BROKER WITH RESPECT TO AN OFFERING OF SECURITIES AND DID SO IN CLOSE, CONTROLLING ASSOCIATION WITH THE FIRM, AND THAT GALLAGHER KNOWINGLY ASSISTED HIS FIRM IN THE VIOLATION. THE COURT HAS SCHEDULED A HEARING TO CONSIDER APPROPRIATE RELIEF AGAINST THE DEFENDANTS ON JULY 31. ON AUGUST 18, 2009, THE HONORABLE JUDGE FOR THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK ISSUED A MEMORANDUM ORDER AND FINAL JUDGMENT AGAINST DEFENDANT GALLAGHER. DEFENDANT DANIEL GALLAGHER IS HEREBY ORDERED TO PAY, JOINTLY AND SEVERALLY, DISGORGEMENT IN THE AMOUNT OF \$126,466.91, PLUS PRE-JUDGMENT INTEREST IN THE AMOUNT OF \$29,251.32, FOR A TOTAL OF \$155,718.23. A CIVIL MONETARY PENALTY OF \$24,000 IS HEREBY IMPOSED ON GALLAGHER, JOINTLY AND SEVERALLY. ON NOVEMBER 2, 2009, THE HONORABLE JUDGE FOR THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK DENIED DEFENDANT'S MOTION FOR RELIEF FROM THE PORTION OF THE FINAL JUDGMENT HOLDING HIM JOINTLY AND SEVERALLY LIABLE FOR THE DISGORGEMENT AMOUNT.

Customer Dispute - Award/Judgment

This type of disclosure event involves a final, consumer-initiated, investment-related arbitration or civil suit containing allegations of sales practice violations against the broker that resulted in an arbitration award or civil judgment for the customer.

Disclosure 1 of 1

Reporting Source: Regulator
Employing firm when activities occurred which led to the complaint: D.L. CROMWELL INVESTMENTS, INC.
Allegations: COMMON LAW FRAUD; NEGLIGENCE; BREACH OF FIDUCIARY DUTY; AND UNSUITABILITY.
Product Type: Other
Other Product Type(s): STOCK
Alleged Damages: \$700,000.00

Arbitration Information

Arbitration/Reparation Claim filed with and Docket/Case No.: NASD - CASE #02-03107
Date Notice/Process Served: 05/20/2002
Arbitration Pending? No
Disposition: Award
Disposition Date: 05/02/2003
Disposition Detail: RESPONDENT IS JOINTLY AND SEVERALLY LIABLE FOR AND SHALL PAY TO CLAIMANTS THE SUM OF \$175,000.00 IN COMPENSATORY DAMAGES, PLUS INTEREST.

Reporting Source: Firm
Employing firm when activities occurred which led to the complaint: D.L. CROMWELL INVESTMENT, INC.
Allegations: MISREPRESENTATION
Product Type: Equity - OTC
Alleged Damages: \$256,000.00

Customer Complaint Information

Date Complaint Received: 08/31/2001
 Complaint Pending? Yes
 Settlement Amount:
 Individual Contribution
 Amount:

Reporting Source: Broker
 Employing firm when activities occurred which led to the complaint: D.L. CROMWELL INVESTMENTS, INC.
 Allegations: CSR CLAIM MISREPRESENTATIONS
 Product Type: Equity - OTC
 Alleged Damages: \$256,000.00

Customer Complaint Information

Date Complaint Received: 05/08/2002
 Complaint Pending? No
 Status: Arbitration/Reparation
 Status Date: 06/09/2003
 Settlement Amount: \$190,000.00
 Individual Contribution
 Amount:

Arbitration Information

Arbitration/Reparation Claim filed with and Docket/Case No.: NASD-DR CASE # 02-03107 FILED, FILED WITH NASD
 Date Notice/Process Served: 06/14/2002
 Arbitration Pending? No
 Disposition: Award to Customer
 Disposition Date: 04/30/2003

Monetary Compensation
Amount:
Individual Contribution
Amount:

\$190,000.00



Customer Dispute - Settled

This type of disclosure event involves a consumer-initiated, investment-related complaint, arbitration proceeding or civil suit containing allegations of sale practice violations against the broker that resulted in a monetary settlement to the customer.

Disclosure 1 of 6

Reporting Source: Broker

Employing firm when activities occurred which led to the complaint: D. L. CROMWELL INVESTMENTS, INC.

Allegations: ALLEGED MISREPRESENTATION

Product Type: Equity - OTC

Alleged Damages: \$415,977.00

Customer Complaint Information

Date Complaint Received: 06/16/1999

Complaint Pending? No

Status: Arbitration/Reparation

Status Date: 06/16/1999

Settlement Amount:

Individual Contribution Amount:

Arbitration Information

Arbitration/Reparation Claim filed with and Docket/Case No.: NASD 99-02354

Date Notice/Process Served: 06/16/1999

Arbitration Pending? No

Disposition: Settled

Disposition Date: 05/01/2000

Monetary Compensation Amount: \$300,000.00

Individual Contribution Amount: \$0.00

Summary: WITHDRAWN WITH PREJUDICE BEFORE CASE WAS SETTLED.

Disclosure 2 of 6

Reporting Source: Broker
Employing firm when activities occurred which led to the complaint: D. L. CROMWELL INVESTMENTS, INC.

Allegations: ALLEGED VIOLATION OF SEC 10(B) SECURITIES EXCHANGE ACT OF 1934, 15 U.S.C. SECC 78J AND S.E.C. RULE 10(B) AND/OR OKLAHOMA LAW, TITLE 71.O.X. 408 (A)(2) AND (C)(2)-UNSUITABILITY, MISREPRESENTATION; COMMON LAW BREACH OF FIDUCIARY DUTY, NEGLIGENCE, FRAUD & DECEIPT, LOST OPPORTUNITY, BREACH OF EXPRESS OR IMPLIED CONTRACT.

Product Type: Equity - OTC

Alleged Damages: \$257,359.38

Customer Complaint Information

Date Complaint Received: 07/29/1999
Complaint Pending? No
Status: Arbitration/Reparation
Status Date: 07/26/1999

Settlement Amount:

Individual Contribution Amount:

Arbitration Information

Arbitration/Reparation Claim filed with and Docket/Case No.: NASD 99-03092

Date Notice/Process Served: 07/26/1999

Arbitration Pending? No

Disposition: Settled

Disposition Date: 04/01/2000

Monetary Compensation Amount: \$145,000.00

Individual Contribution Amount: \$0.00

Summary: WITHDRAWN WITH PREJUDICE BEFORE CASE WAS SETTLED.

Disclosure 3 of 6

Reporting Source: Regulator

Employing firm when activities occurred which led to the complaint:

Allegations: CHURNING; SUITABILITY; BRCH OF FIDUCIARY DT; UNAUTHORIZED TRADING

Product Type:

Alleged Damages: \$700,000.00

Arbitration Information

Arbitration/Reparation Claim filed with and Docket/Case No.: UNKNOWN - CASE #97-02183

Date Notice/Process Served: 08/08/1997

Arbitration Pending? No

Disposition: Settled

Disposition Date: 09/16/1998

Disposition Detail: CASE CLOSED,SETTLED/OTHER
** PARTIES SETTLED THRU MEDIATION **

Reporting Source: Broker

Employing firm when activities occurred which led to the complaint:

Allegations: ALLEGED CHURNING, SUITABILITY, BREACH OF FIDUCIARY DUTY, UNAUTHORIZED TRADING. ALLEGED DAMAGES: \$700,000

Product Type:

Alleged Damages: \$700,000.00

Customer Complaint Information

Date Complaint Received:
 Complaint Pending? No
 Status: Arbitration/Reparation
 Status Date: 09/16/1998
 Settlement Amount:

Individual Contribution Amount:

Arbitration Information

Arbitration/Reparation Claim filed with and Docket/Case No.: NASD; 97-02183

Date Notice/Process Served: 08/08/1997

Arbitration Pending? No

Disposition: Settled

Disposition Date: 09/16/1998

Monetary Compensation Amount: \$50,000.00

Individual Contribution Amount: \$0.00

Summary: THE MATTER WAS SETTLED IN THE AMOUNT OF \$50,000, PRIOR TO AN ARBITRATION AWARD. I DID NOT CONTRIBUTE TO THE SETTLEMENT. NOT PROVIDED

Disclosure 4 of 6

Reporting Source: Regulator
 Employing firm when activities occurred which led to the complaint: STRATTON OAKMONT INC.

Allegations: MISREPRESENTATION; EXECUTIONS-FAILURE TO EXECUTE; UNAUTHORIZED TRADING

Product Type:

Alleged Damages:

Arbitration Information

Arbitration/Reparation Claim filed with and Docket/Case No.: UNKNOWN - CASE #95-05712

Date Notice/Process Served: 01/02/1996

Arbitration Pending? No

Disposition: Settled

Disposition Date: 07/11/1996

Disposition Detail: CASE CLOSED, SETTLED/OTHER OTHER COSTS, RELIEF REQUEST IS WITHDRAWN/SETTLED/ETC, AWARD AMOUNT JOINTLY AND SEVERALLY; ATTORNEY'S FEES, RELIEF REQUEST IS WITHDRAWN/SETTLED/ETC, AWARD AMOUNT JOINTLY AND SEVERALLY

Reporting Source: Broker

Employing firm when activities occurred which led to the complaint: STRATTON OAKMONT INC.

Allegations: ALLEGED MISREPRESENTATION, FAILURE TO EXECUTE, UNAUTHORIZED TRADING. THE ONLY ALLEGATION AGAINST ME WAS FAILURE TO EXECUTE A SELL ORDER.

Product Type:

Alleged Damages:

Customer Complaint Information

Date Complaint Received:

Complaint Pending? No

Status: Arbitration/Reparation

Status Date: 07/11/1996

Settlement Amount:

Individual Contribution Amount:

Arbitration Information

Arbitration/Reparation Claim filed with and Docket/Case No.: NASD; 95-05712

Date Notice/Process Served: 01/02/1996

Arbitration Pending? No

Disposition: Settled

Disposition Date: 07/11/1996

Monetary Compensation Amount: \$25,000.00

Individual Contribution Amount:

Summary: THE CASE WAS SETTLED AS THE THE FIRM IN THE AMOUNT OF \$25,000 AND THE ALLEGATION AGAINST ME WAS WITHDRAWN WITH PREJUDICE. I WAS NOT THE BROKER OF RECORD, BUT MERELY ANSWERED THE CLIENT'S CALL IN THE ABSENCE OF MR [CUSTOMER]BROKER NOT PROVIDED

Disclosure 5 of 6

Reporting Source: Firm

Employing firm when activities occurred which led to the complaint:

Allegations: ALLEGED BLUE SKY VIOLATIONS, FAILURE TO SELL & LOSSES OF \$48,370.

Product Type:

Alleged Damages: \$48,370.00

Customer Complaint Information

Date Complaint Received: 04/22/1996

Complaint Pending? No

Status: Settled

Status Date:



Settlement Amount: \$32,408.00

Individual Contribution Amount:

Summary: THE CASE WAS SETTLED AS TO THE FIRM IN THE AMOUNT OF \$32,408 & THE ALLEGATIONS AGAINST DANIEL GALLAGHER.
Not Provided

Reporting Source: Broker

Employing firm when activities occurred which led to the complaint:

Allegations: ALLEGED BLUE SKY VIOLATIONS, FAILURE TO SELL & LOSSES OF 48,370.00

Product Type:

Alleged Damages: \$48,370.00

Customer Complaint Information

Date Complaint Received: 04/22/1996

Complaint Pending? No

Status: Settled

Status Date:

Settlement Amount: \$32,408.00

Individual Contribution Amount:

Summary: THE CASE WAS SETTLED AS TO THE FIRM IN THE AMOUNT OF \$32,408.00 & THE ALLEGATIONS AGAINST DANIEL GALLAGHER WERE WITHDRAWN.
Not Provided

Disclosure 6 of 6

Reporting Source: Regulator

Employing firm when activities occurred which led to the complaint: STRATTON OAKMONT, INC

Allegations: MISREPRESENTATION; MANIPULATION;
SUITABILITY; CHURNING

Product Type:

Alleged Damages: \$1,100,000.00

Arbitration Information

**Arbitration/Reparation Claim
filed with and Docket/Case
No.:** NASD - CASE #94-04494

Date Notice/Process Served: 12/20/1994

Arbitration Pending? No

Disposition: Settled

Disposition Date: 04/28/1997

Disposition Detail: CASE IS CLOSED, SETTLED
ACTUAL/COMPENSATORY DAMAGES, RELIEF
REQUEST IS WITHDRAWN/SETTLED/ETC, AWARD AMOUNT JOINTLY AND
SEVERALLY; ACTUAL/COMPENSATORY DAMAGES, RELIEF REQUEST IS
WITHDRAWN/SETTLED/ETC, AWARD AMOUNT JOINTLY AND SEVERALLY;
ACTUAL/COMPENSATORY DAMAGES, RELIEF REQUEST IS
WITHDRAWN/SETTLED/ETC, AWARD AMOUNT JOINTLY AND SEVERALLY;
ACTUAL/COMPENSATORY DAMAGES, RELIEF REQUEST IS
WITHDRAWN/SETTLED/ETC, AWARD AMOUNT JOINTLY AND SEVERALLY;
INTEREST, RELIEF REQUEST IS WITHDRAWN/SETTLED/ETC, AWARD
AMOUNT
JOINTLY AND SEVERALLY; PUNITIVE/EXEMPLARY DAMAGES, RELIEF
REQUEST IS WITHDRAWN/SETTLED/ETC, AWARD AMOUNT JOINTLY AND
SEVERALLY; TREBLE DAMAGES, RELIEF REQUEST IS
WITHDRAWN/SETTLED/ETC, AWARD AMOUNT JOINTLY AND SEVERALLY

Reporting Source: Broker

**Employing firm when
activities occurred which led
to the complaint:** STRATTON OAKMONT, INC

Allegations: ALLEGED MISREPRESENTATION, MANIPULATION,
SUITABILITY, CHURNING, ALLEGED DAMAGES;\$1,100,000

Product Type:

Alleged Damages: \$1,100,000.00

Customer Complaint Information

Date Complaint Received:

Complaint Pending? No

Status: Arbitration/Reparation

Status Date:

Settlement Amount:

Individual Contribution Amount:

Arbitration Information

Arbitration/Reparation Claim filed with and Docket/Case No.: NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.; 94-04494

Date Notice/Process Served: 12/20/1994

Arbitration Pending? No

Disposition: Settled

Disposition Date: 04/28/1997

Monetary Compensation Amount: \$400,000.00

Individual Contribution Amount: \$0.00

Summary: SETTLED FOR \$400,000. I DID NOT CONTRIBUTE TO THE SETTLEMENT NOT PROVIDED

Customer Dispute - Pending

This type of disclosure event involves (1) a pending consumer-initiated, investment-related arbitration or civil suit that contains allegations of sales practice violations against the broker; or (2) a pending, consumer-initiated, investment-related written complaint containing allegations that the broker engaged in, sales practice violations resulting in compensatory damages of at least \$5,000, forgery, theft, or misappropriation, or conversion of funds or securities.

Disclosure 1 of 5

Reporting Source: Firm
Employing firm when activities occurred which led to the complaint: D.L. CROMWELL INVESTMENTS, INC.
Allegations: MISREPRESENTATION
Product Type: Equity - OTC
Alleged Damages: \$34,000.00

Customer Complaint Information

Date Complaint Received: 08/21/2001
Complaint Pending? Yes
Settlement Amount:
Individual Contribution Amount:

Reporting Source: Broker
Employing firm when activities occurred which led to the complaint: D. L. CROMWELL INVESTMENTS, INC.
Allegations: CSR CLAIMS MISREPRESENTATIONS
Product Type: Equity - OTC
Alleged Damages: \$34,000.00

Customer Complaint Information

Date Complaint Received: 05/08/2002
Complaint Pending? Yes
Settlement Amount:
Individual Contribution

Amount:

Disclosure 2 of 5

Reporting Source: Firm
Employing firm when activities occurred which led to the complaint: D.L. CROMWELL INVESTMENT, INC.
Allegations: MISREPRESENTATION & UNSUITABLE
Product Type: Equity - OTC
Alleged Damages: \$4,000.00

Customer Complaint Information

Date Complaint Received: 06/28/2001
Complaint Pending? Yes
Settlement Amount:

Individual Contribution Amount:

Reporting Source: Broker
Employing firm when activities occurred which led to the complaint: D. L. CROMWELL INVESTMENTS, INC.
Allegations: CSR CLAIMS MISREPRESENTATIONS & UNSUITABLE TRANSACTIONS
Product Type: Equity - OTC
Alleged Damages: \$4,000.00

Customer Complaint Information

Date Complaint Received: 05/08/2002
Complaint Pending? Yes
Settlement Amount:

Individual Contribution Amount:

Disclosure 3 of 5

Reporting Source: Firm
Employing firm when activities occurred which led to the complaint: D.L. CROMWELL INVESTMENTS, INC.
Allegations: MISREPRESENTATION & UNSUITABLE
Product Type: Equity - OTC
Alleged Damages: \$100,000.00

Customer Complaint Information

Date Complaint Received: 06/11/2001
Complaint Pending? Yes
Settlement Amount:

Individual Contribution Amount:

Reporting Source: Broker
Employing firm when activities occurred which led to the complaint: D. L. CROMWELL INVESTMENTS, INC.
Allegations: CSR CLAIMS MISREPRESENTATIONS \$ UNSUITABLE TRANSACTIONS
Product Type: Equity - OTC
Alleged Damages: \$100,000.00

Customer Complaint Information

Date Complaint Received: 05/08/2002
Complaint Pending? Yes
Settlement Amount:

Individual Contribution Amount:

Disclosure 4 of 5

Reporting Source: Firm

Employing firm when activities occurred which led to the complaint: D.L. CROMWELL INVESTMENT, INC.

Allegations: MISREPRESENTATION & UNSUITABLE

Product Type: Equity - OTC

Alleged Damages: \$0.00

Customer Complaint Information

Date Complaint Received: 06/21/2001

Complaint Pending? Yes

Settlement Amount:

Individual Contribution Amount:

Reporting Source: Broker

Employing firm when activities occurred which led to the complaint: D. L. CROMWELL INVESTMENT, INC.

Allegations: CSR CLAIMS MISREPRESENTATIONS & UNSUITABLE TRADES I DID NOT SEE COMPLAINT THE ONLY INFO I HAVE IS WHATS STATED ON CRD. I AM NOT AWARE OF ANY COMPENSATORY DAMAGES

Product Type: Equity - OTC

Alleged Damages: \$0.00

Customer Complaint Information

Date Complaint Received: 05/08/2002

Complaint Pending? Yes

Settlement Amount:

Individual Contribution Amount:

Disclosure 5 of 5

Reporting Source: Broker

Employing firm when activities occurred which led to the complaint: DL CROMWELL INVESTMENTS

Allegations: ALLEGED MISREPRESENTATION

Product Type: Equity - OTC

Alleged Damages: \$85,000.00

Customer Complaint Information

Date Complaint Received: 03/03/2000

Complaint Pending? No

Status: Closed/No Action

Status Date: 02/22/1999

Settlement Amount:

Individual Contribution Amount:

Arbitration Information

Disposition:

Disposition Date: 02/22/1999

Summary: I SPOKE WITH SUZANNE IN PRODUCTIONS SUPPORT CASE # 227439. COMPLIANCE OFFICER FROM D.L. CROMWELL ACCIDENTALLY ANSWERED QUESTIONS 14 AND 15 ON THIS DRP. IN ORDER FOR ME TO SUBMIT THIS FILING DUE TO SYSTEM LIMITATIONS I MUST ANSWER NO TO QUESTION 8, CHOSE AN OPTION IN QUESTION 9 AND CHOOSE AN OPTION AND ENTER AN INVALID DATE IN QUESTIONS 17 AND 10 EVEN THOUGH THIS MATTER IS STILL PENDING AND HAS NEVER BEEN SENT TO ARBITRATION. IN ADDITION I HAVE ANSWERED YES TO QUESTION 2313A ON PAGE 3.--- DANIELLE TERZANO, COMPLIANCE FOR VISION SECURITIES BD# 35001

Judgment/Lien

This type of disclosure event involves an unsatisfied and outstanding judgments or liens against the broker.

Disclosure 1 of 2

Reporting Source: Broker
Judgment/Lien Holder: SEC
Judgment/Lien Amount: \$179,718.23
Judgment/Lien Type: Civil
Date Filed: 08/18/2009
Type of Court: Federal Court
Name of Court: UNITED STATES DISTRICT COURT
Location of Court: SOUTHERN DISTRICT OF NEW YORK
Docket/Case #: 08 CIV. 8397 (JSR)
Judgment/Lien Outstanding? Yes
Summary: WORKING OUT A PAYMENT SCHEDULE WITH THE SEC

Disclosure 2 of 2

Reporting Source: Broker
Judgment/Lien Holder: FRANK A DARABI
Judgment/Lien Amount: \$367,333.12
Judgment/Lien Type: Civil
Date Filed: 12/09/2009
Type of Court: State Court
Name of Court: SUPREME COURT OF THE STATE OF NEW YORK
Location of Court: NASSAU COUNTY, NY
Docket/Case #: 10/3145
Judgment/Lien Outstanding? Yes

End of Report



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EXHIBIT B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE COMMISSION,      :
                                           :
           Plaintiff,                      :      08 Civ. 8397 (JSR)
                                           :
           -v-                             :      MEMORANDUM ORDER AND
                                           :      FINAL JUDGMENT
                                           :
CHRISTOPHER CASTALDO, DANIEL JAMES       :
GALLAGHER, FRANK ZANGARA, B.H.I.        :
GROUP, INC., CORPORATE COMMUNICATIONS   :
CORP., and VISION SECURITIES, INC.,     :
                                           :
           Defendants.                    :
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JED S. RAKOFF, U.S.D.J.

The Securities and Exchange Commission ("SEC") brought this action alleging 1) that defendant Christopher Castaldo violated Section 15(a) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. § 78o(a), by acting as an unlicensed securities broker with respect to securities in two companies, Pricefish, Inc. ("Pricefish") and Golden Pacific Railroad, Inc. ("Golden Pacific"); 2) that defendant Vision Securities, Inc. ("Vision") violated section 15(b)(7) of the Exchange Act, 15 U.S.C. § 78o(b)(7), and Rule 15b7-1, 17 C.F.R. § 240.15b7-1, because Castaldo acted as an unlicensed securities broker with respect to securities in a third company, NanoDynamics, Inc. ("NanoDynamics") while he was associated with Vision; 3) that defendants Castaldo and Daniel Gallagher, who effectively runs Vision,¹ aided and abetted Vision's violation of §

¹ Gallagher testified that he is the chairman, secretary, and sole director of Vision. Trial Transcript ("Tr.") at 576-77.

15(b) (7) claims, Castaldo violated § 15(a) by acting as an unlicensed securities broker with respect to securities in NanoDynamics. The SEC sought (a) an injunction prohibiting these defendants from committing any future violations of §§ 15(a) and 15(b) (7) of the Exchange Act, (b) disgorgement of any monies earned through violations of the Act, and (c) civil monetary penalties.

The complaint also alleged violations by defendants Frank Zangara and B.H.I. Group, Inc., but these claims were dismissed on consent of all parties. See Stipulation of Voluntary Dismissal dated June 2, 2009. In addition, default judgment was entered against defendant Corporate Communications Corp. on June 29, 2009.

The Court held a one-week trial, at the conclusion of which, on July 20, 2009, the jury rendered a mixed verdict: it found Vision liable for violating § 15(b) (7) and Rule 15b7-1 and found Castaldo and Gallagher liable for aiding and abetting this violation; but it found Castaldo not liable on the SEC's other claims. The jury was not asked to determine the relief warranted by these determinations of liability, because, as both sides agreed, the relief here sought by the SEC is either equitable in nature, as in the case of injunctive relief and disgorgement, see Aaron v. SEC, 446 U.S. 680, 701 (1980); Chauffeurs, Teamsters, and Helpers Local No. 391 v. Terry, 494 U.S. 558, 570 (1990), or is allocated by statute to determination by the Court, as in the case of civil money penalties, see 15 U.S.C. § 78u(d) (3); see also Tull v. United States, 481 U.S.

He is also president and director of GCG Holdings, which is the sole owner of Vision. Id. at 575.

issue of liability in a civil penalty action but that the court may determine damages where a statute so provides). It therefore now falls to the Court to determine the appropriate remedies.

The SEC seeks 1) a permanent injunction prohibiting Castaldo, Gallagher, and Vision from committing any future violations of § 15(b)(7) of the Exchange Act; 2) disgorgement in the amount of \$208,500 from Castaldo and in the amount of \$126,466.91 from Gallagher and Vision jointly and severally; 3) pre-judgment interest on these disgorgement amounts, which, as of August 17, 2009, using the then-applicable IRS underpayment rates, would total \$48,225.29 for Castaldo and \$29,251.32 for Gallagher and Vision (the latter amount, again, payable jointly and severally by Gallagher and Vision); and finally 4) the maximum civil money penalties available under 15 U.S.C. § 78u(d)(3)(B)(ii) (as adjusted for inflation by 17 C.F.R. § 201.1003). Under these provisions, the maximum penalty for a natural person is currently the greater of \$65,000 or the gross amount of pecuniary gain, and the maximum penalty for a corporation is currently the greater of \$325,000 or the gross amount of pecuniary gain.

The Court held a hearing on July 31, 2009, at which all parties were given an opportunity to present their arguments

regarding appropriate remedies.² The Court also received written submissions from the parties following the hearing.

Having given careful consideration to all of the arguments advanced by the parties, the Court finds that injunctive relief is uncalled for here, since the likelihood of recidivism is low; that disgorgement is necessary and appropriate; and that, given the amount of the disgorgement and the defendants' limited financial circumstances, imposing the maximum civil monetary penalty on top of the disgorgement would be excessive, but a modest fine is appropriate. Accordingly, the Court renders final judgment as follows:

Defendant Castaldo is hereby ordered to pay to the SEC disgorgement in the amount of \$208,500, plus pre-judgment interest in the amount of \$48,225.29, for a total of \$256,725.29. This total amount shall be paid in monthly installments equal to 10% of Castaldo's gross income for the preceding month and shall be payable on the first day of each subsequent month beginning October 1, 2009.³

Defendants Daniel Gallagher and Vision Securities are hereby ordered to pay, jointly and severally, disgorgement in the amount of

²The Court gave the parties the opportunity to make written submissions in advance of this hearing; the SEC and Castaldo chose to do so.

³Beginning on the date of this order, interest will accrue on the unpaid balance of the disgorgement and pre-judgment interest owed by Castaldo and by Gallagher and Vision, in accordance with 28 U.S.C. § 1961(a).

\$126,466.91,⁴ plus pre-judgment interest in the amount of \$29,251.32, for a total of \$155,718.23. This total amount shall be paid in monthly installments equal to 10% of the sum of: (a) Vision's gross monthly income for the preceding month, and (b) and Gallagher's gross monthly income minus \$9,000 for the preceding month, and shall be payable on the first day of each subsequent month beginning October 1, 2009.⁵

Castaldo, Gallagher and Vision are hereby ordered to provide to the SEC such financial disclosures as the SEC requests in order to monitor their compliance with this payment schedule.

A civil monetary penalty of \$24,000 is hereby imposed on Castaldo. This amount shall be paid separate and apart from the

⁴ In the hearing on remedies, Gallagher and Vision challenged this amount as inaccurate but failed to point to any evidence in the record indicating that a different disgorgement amount is appropriate. On the contrary, the evidence shows--as the SEC contends--that \$126,466.91 represents the total amount of commissions paid to Vision for investments in NanoDynamics that were facilitated by Castaldo, less the amounts that Vision, in turn, paid to Castaldo. See SEC Trial Exs. 104A and 104B (showing commissions paid to Vision for NanoDynamics investments); SEC Trial Exs. 17 and 18 and Tr. 435, 553-54 (identifying investors who were introduced to Vision by Castaldo); and SEC Trial Exs. 15 and 51 (invoices and checks showing payments made to Castaldo for "client lists" and "leads").

⁵ The \$9,000 that is taken "off the top" in assessing Gallagher's gross monthly income represents an allowance for the child support and other related payments Gallagher is obligated to make under his divorce decree. See Transcript of hearing on remedies 7/31/09. Should Gallagher's financial obligations with respect to his children and/or ex-wife significantly increase before disgorgement has been paid in full, he may apply to the Court for an adjustment of the calculation of his monthly payment.

disgorgement payments in monthly installments of \$1,000 beginning October 1, 2009.

A civil monetary penalty of \$24,000 is hereby imposed on Gallagher and Vision, jointly and severally. This amount shall be paid, separate and apart from the disgorgement payments, in monthly installments of \$1,000 beginning October 1, 2009.

No injunctive relief will be imposed.

The Court will retain jurisdiction over this case for the limited purpose of ensuring compliance with this Order. In all other respects, this case is now closed, and the Clerk of the Court is therefore directed to close it on the docket.

SO ORDERED.

Dated: New York, NY
August 17, 2009



JED S. RAKOFF, U.S.D.J.

EXHIBIT C

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
-----X

3 SECURITIES AND EXCHANGE
4 COMMISSION,
5 Plaintiff,

6 v. 08 CV 08397 (JSR)

7 CHRISTOPHER CASTALDO,
8 DANIEL GALLAGHER,
9 VISION SECURITIES, INC.,
10 Defendants.

-----X
11 New York, N.Y.
12 July 31, 2009
13 5:30 p.m.

14 Before:

15 HON. JED S. RAKOFF,
16 District Judge

17 APPEARANCES

18 SECURITIES AND EXCHANGE COMMISSION
19 Attorneys for Plaintiff
20 BY: PREETHI KRISHNAMURTHY
21 JACK KAUFMAN

22 CHRISTOPHER CASTALDO, pro se
23 CERTILMAN BALIN ADLER & HYMAN
24 Attorneys for Defendants Daniel Gallagher
25 and Vision Securities, Inc.
BY: MARTIN UNGER

ALSO PRESENT: DANIEL GALLAGHER
LEONARD SCHMIDT, Paralegal

1 (In open court)

2 THE COURT: All right. This is SEC v. Castaldo, et
3 al, 08 CV 8397. would the parties please identify themselves.

July 31 (relief hearing) transcript

4 MR. KAUFMAN: Jack Kaufman for the SEC. Also with me
5 is Preethi Krishnamurthy, counsel for the SEC; and Leonard
6 Schmidt, a paralegal.

7 THE COURT: Good afternoon.

8 MR. UNGER: Martin P. Unger, Certilman, Balin, Adler &
9 Hyman, LLP, for defendants Dan Gallagher and Vision Securities.
10 And next to me is Dan Gallagher.

11 THE COURT: Good afternoon.

12 MR. CASTALDO: Christopher Castaldo, pro se defendant.

13 THE COURT: Good afternoon. Who is the gentleman
14 who's also here in the courtroom, I noticed was here during
15 trial, as well?

16 MR. GALLAGHER: That's my father, Patrick Gallagher.

17 THE COURT: He doesn't look old enough to be your
18 father.

19 MR. GALLAGHER: Thank you, your Honor.

20 THE COURT: All right. We're here for a determination
21 of what remedies, if any, should be imposed in light of the
22 jury's verdict.

23 Let me give you my preliminary view, because I think
24 it might expedite things to have that on the table.

25 This is very much subject to being changed after I

3

1 hear from counsel, but based on the papers, it seemed to me
2 that, first, the Court should grant the injunction requested by
3 the SEC that would prohibit future violations of the -- of
4 section 15(b)(7) and section -- and Rule 15b7-1

5 Second, it seems to me that the Court should grant
6 disgorgement, including prejudgment interest; but with respect
7 to the individuals, should make that payable as a percentage of
8 future earnings rather than now. I base that in part on what

July 31 (relief hearing) transcript

9 Mr. Castaldo has presented about his financial condition, and
10 that although, Mr. Unger, you did not submit anything directly
11 to the Court, you indicated you had made submissions to the SEC
12 and we can talk more about that.

13 When, for example, restitution is awarded in a
14 criminal case -- and it typically involves infinitely more than
15 most defendants can pay -- it is made payable in the future,
16 usually at the rate of 10 or 15 percent of a defendant's
17 monthly gross income.

18 Now, I'm not saying that this is on all fours -- in
19 fact, it is not on all fours -- with a criminal case, but it
20 seems to me that the philosophy behind that, even in a criminal
21 case where there has been proof beyond a reasonable doubt that
22 fraud or other misconduct has been committed, nevertheless, the
23 payment is made on a future basis. So it would seem to me that
24 same philosophy might apply even more in the case of a civil
25 misconduct.

4

1 Finally -- not finally, next. I'm skeptical that any
2 real purpose would be served here by fines, assuming the full
3 disgorgement is put in place, including interest, because
4 that's going to be a very substantial amount. I don't see that
5 any additional purpose would be served by fines. It's not that
6 the SEC isn't technically eligible to have fines imposed here,
7 it's just that I don't see the point.

8 And finally, I think there's an interesting question
9 as to whether or not the existing default judgment against
10 Corporate Communications Corporation should be modified in
11 light of the jury's verdict as to Mr. Castaldo on the two
12 counts that he was found to not be liable.

13 So those are, I stress again, just preliminary

July 31 (relief hearing) transcript

14 thoughts. And I may be persuaded totally differently on each
15 and every aspect of them, but let me begin by hearing from the
16 SEC.

17 MS. KRISHNAMURTHY: Thank you, your Honor. Well, I
18 don't want to waste the Court's time with respect to
19 injunctions. We obviously think injunctions should be granted
20 for all the reasons we stated in our brief, and we'll be happy
21 to address any counter-arguments the defendants make.

22 With respect to disgorgement, we don't have a problem
23 with a 10-to-15-percent payment of defendants' monthly gross
24 income. That's fine, as well. We think that's reasonable.

25 And with respect to the default judgment -- we would

1 expect that there would be some enforcement mechanism for that,
2 the --

3 THE COURT: There would be a contempt of court --

4 MS. KRISHNAMURTHY: Right.

5 THE COURT: -- not to pay it. And the Court would
6 retain jurisdiction over that period.

7 You should really keep your co-counsel in line here.

8 MR. KAUFMAN: Sorry, your Honor.

9 THE COURT: Go ahead.

10 MS. KRISHNAMURTHY: OK. And I'll come back to the
11 civil penalty. But with respect to the default judgment, we
12 are not -- we don't dispute that the portions of the default
13 judgment relating to the Golden Pacific and Pricefish
14 transactions are inconsistent with the jury verdict. And we've
15 looked at the law, and we think that it's appropriate to modify
16 the default judgment so that it reflects only a payment for the
17 NanoDynamics offering, as well as prejudgment interest for that
18 portion and a civil penalty.

July 31 (relief hearing) transcript

19 But we would just say that if there is -- we haven't
20 made any decision. If there is some ultimate appeal, and if
21 Mr. Castaldo is at some later time found liable for those two
22 transactions, we would reserve our right to come back and ask
23 that the default judgment be modified to reflect that.

24 THE COURT: All right. That all sounds very
25 straightforward. Let me hear --

6

1 MS. KRISHNAMURTHY: I just wanted to address the civil
2 penalty.

3 THE COURT: The fine, I'm sorry. Yes.

4 MS. KRISHNAMURTHY: Certainly we hear your Honor in
5 terms of the penalty, the purpose served by the penalty. I do
6 think that even though this is a nonfraud case, these
7 particular defendants deliberately disregarded regulatory
8 requirements. I mean the jury obviously found that they
9 knowingly did so.

10 THE COURT: Yeah. That was part of the finding of the
11 jury. So that's why I said there's no question in my mind that
12 you're eligible to have fines imposed on them; I just don't see
13 the point.

14 MS. KRISHNAMURTHY: well, we think, first of all, that
15 these defendants -- I mean whether or not they have money
16 today -- and I think there's some questions about that -- they
17 certainly are the kind of people who are going to earn money in
18 the future. And we think that at least some amount of penalty
19 can be paid in the future by these defendants and would serve
20 as a deterrent to them. And we would ask for some amount of
21 penalty.

22 THE COURT: See, I think I would have been more open
23 to that if there wasn't the interest payment. The interest

24 payment is a function, in part, of how long it took the case to
25 get to trial, and will also be -- because there will be

7

1 post-judgment interest, as well, so there will be interest
2 running until they pay this off.

3 Again, looking at it in practical terms, it seems to
4 me that will have the effect of making them feel some penalty,
5 some financial penalty, beyond the disgorgement of what they
6 unlawfully realized. I cannot argue with the logic of what
7 you're just saying, but it seems to me as a practical matter
8 the interest really serves that punitive purpose -- even though
9 interest is not supposed to serve that and a fine is supposed
10 to serve that -- but I think that the reality is money is still
11 fungible.

12 But let me think about it, and let me hear first from
13 Mr. Unger and then from Mr. Castaldo.

14 MR. UNGER: Your Honor, first of all, I thought we
15 were going to put -- I thought I was going to put Mr. Gallagher
16 on. I have a raft of financial information which I think is
17 very relevant to how this is --

18 THE COURT: The reason I remember the way it was left
19 was I gave you the option of either presenting that a couple
20 days before today or doing it today orally, and you have even
21 talked about possibly putting him on the stand, etc.

22 But what's the point if what I'm -- if he were next to
23 bankrupt today, it still would say nothing about whether he
24 should pay money in the future. So given that the SEC is not
25 opposing that, I don't see the point.

8

1 You want to convince me -- if you put him on the

2 stand, the SEC, which says they have some doubts about this
3 information, may convince me that instead of having him pay
4 this money in the future, he should pay it right now. Do you
5 really want to do that?

6 MR. UNGER: Your Honor, there's hundreds of thousands
7 of dollars in judgments out there, to begin with. So I mean
8 I'm not worried about anybody convincing you that my clients
9 have money.

10 THE COURT: If he realized money unlawfully, then it
11 seems to me self-evident that he should be required to disgorge
12 that. But if he doesn't have the money to do that because of
13 all these other problems, then the way to do it is to do it
14 when he does have the money. And it's hard for me to see why
15 that's not appealing to you, but let me hear.

16 MR. UNGER: Well, even if you -- and I understand the
17 Court's position. But even if you -- and then I want to go
18 back to the injunction, which is the critical issue here.

19 But even if you were to look at that and you were to
20 look at, say, 10 percent, I'm not sure that that is a workable
21 number because he's got a divorce decree where he's obligated
22 to pay, and he's behind, I'm told, two or three months on that
23 already because there's no money.

24 If you were going to take that on top of what he's
25 obligated to pay to keep his children and alimony, you know,

9

1 may not be -- I think in terms of fashioning what percentage, I
2 think some of this may be very relevant. That's all I'm
3 saying, not looking at the future.

4 THE COURT: There are a couple of -- the probation
5 office in the analogy I'm using typically has 15 percent of
6 gross. What does he pay in alimony?

7 MR. UNGER: The way I figured it, it was \$8500 --
8 well, it's a total of \$8500 a month, plus health insurance,
9 plus an insurance policy is required to be maintained. And
10 then as time goes on, there's education expenses and other
11 things. And I have the divorce decree here, so I'm not trying
12 to make it up.

13 THE COURT: So it seems to me -- let's take a rough
14 estimate. It can't be more than 10,000 a month now, even
15 though it may be more --

16 MR. UNGER: 8500 plus health insurance, whatever that
17 is.

18 THE COURT: It's probably less than 10,000. So we
19 could make it 15 percent of his gross monthly income minus
20 10,000, so that would be taken off the top, and with need to
21 revisit if and when educational expenses come into play. That
22 might be an easy way to solve that issue.

23 No one is suggesting that this is going to be fun.
24 For better or worse, the jury has found him liable of a knowing
25 violation. But I'm trying to make it as practical as possible.
10

1 My feeling about this case, which I think bears
2 perhaps most on the issue of the fine, but has a more general
3 applicability, is that neither Mr. Gallagher nor Mr. Castaldo
4 are going to go down in history as evil men who set out to do
5 something terrible or anything like that. But I don't have any
6 doubt at all that the jury's verdict was the correct one; that
7 they knowingly set about ignoring and violating the statute and
8 rule here involved.

9 Because when all is said and done, they are not the
10 most punctilious of people. And I got to, in a ways, get a
11 good feel for both of them -- and it's both positive and

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12 negative, it's by no means all negative -- when they took the
13 stand; in Mr. Castaldo's case by his self-representation in
14 court, as well.

15 These are precisely the kind of defendants who I think
16 the SEC needs to bring these cases against not because they are
17 crooks, but because they are an incautious business people who,
18 when they are flying high or when they are in need of money,
19 are prepared to devise ways to try to get around the rules;
20 and, in doing so, they have often, as shown in this case,
21 stepped over the line.

22 I found them both in their different ways likable
23 human beings. But I don't have any doubt, any doubt, about the
24 fact that they knew they were violating these rules.

25 What I'm trying to do, fashioning all that into --

11

1 taking all of that into account, is to fashion remedies here
2 that don't ruin their lives or become meaningless paper
3 judgments that will never be paid or that will just give the
4 SEC something to trumpet about but won't have any real impact;
5 but at the same time I'm not about to give them a gold star
6 either. So I think you're going to have to live with
7 disgorgement perhaps in the fashion we've just been talking
8 about.

9 MR. UNGER: I wasn't trying to say that -- I mean we
10 accept whatever the jury did, it did. That, you know, isn't
11 what I was arguing about. I'm really more concerned with
12 permitting the company to get on with its existence, if it can,
13 and for Dan Gallagher to get on in a way that he can live while
14 also paying the penalty for what he did.

15 THE COURT: I agree with that. I agree with that.
16 And that's why, for example, I'm willing to take 10,000 off the

17 top so that it doesn't impact his obligations under his divorce
18 decree. Why in the world would you oppose the injunction? The
19 injunction says they'll never do it again. I hope they never
20 will do it again.

21 MR. UNGER: That's what this case has been about.

22 THE COURT: If they think they didn't do it, then I'm
23 sorry the jury has found against them. And if I were the
24 fact-finder, I find against them.

25 MR. UNGER: I'm not arguing that. The real issue in 12

1 this case is the injunction. And when you talk about ruining
2 your life or putting a company out of business, that is the
3 practical -- that could be the practical effect of the
4 injunction. And let me explain to you -- first of all --

5 THE COURT: The injunction only is as to -- it's not
6 an injunction against anything other than violating or aiding
7 and abetting violations of 15(b)(7) and Rule 15b7-1. And I'm
8 willing to bet that very few of their past, present and
9 prospective customers even know what that rule says. So...

10 MR. UNGER: That isn't the issue, your Honor.

11 THE COURT: Yeah.

12 MR. UNGER: The real problem here -- I mean I doubt
13 that anything like these unique set of facts is going to happen
14 again, anyway. But the real problem here is another portion of
15 Section 15 of the Securities Exchange Act of 1934. And that's
16 particularly 15(b)(4) or, alternatively, it's Article III,
17 Section 4, of the -- I guess what they now call the FINRA
18 bylaws.

19 And let me tell you what the problem is. Because the
20 problem is the effect of the injunction, as your Honor says, so
21 what, they probably are not going to do this again anyway and,

July 31 (relief hearing) transcript
22 you know, not being found to be swindlers or fraudsters or
23 anything like that.

24 The problem is that it is what is called -- and I
25 think the SEC will acknowledge that it's coming -- is what's

13

1 called a follow-on administrative proceeding. And that
2 follow-on administrative proceeding under Section 15(b)(4) -- I
3 think there may be another one also -- or under the FINRA rules
4 is what provides for administrative penalties beyond that,
5 including a potential bar for being in the securities business
6 for both Mr. Gallagher and Vision Securities. It doesn't
7 affect Mr. Castaldo in the same way because he's not in it.

8 THE COURT: I agree that's highly relevant. Let me
9 find out whether the SEC is planning to do that.

10 MS. KRISHNAMURTHY: Your Honor, we do have authority
11 to --

12 THE COURT: I know you have authority. Are you going
13 to do it or not?

14 MS. KRISHNAMURTHY: Yeah, we do intend to have a
15 follow-on administrative proceeding. I don't know what sort of
16 bar or suspension we'll be seeking, but we are certainly
17 planning to seek some period of time out, not from generally
18 being in the securities industry, but from being associated
19 with or acting as a broker dealer. And I should be clear, with
20 respect to both Mr. Castaldo and Mr. Gallagher, not with
21 respect to the brokerage firm itself, Vision Securities.

22 THE COURT: And will that determination, that
23 administrative determination, be affected as a matter of law or
24 as a matter of practice by whether there is an injunction
25 imposed by this Court or not?

14

July 31 (relief hearing) transcript

1 MS. KRISHNAMURTHY: It will be affected; although the
2 reality is the jury has now found that they knowingly violated
3 these provisions. So even if there isn't an injunction, we
4 could -- and presumably would, although no decision has been
5 made -- seek a similar sort of suspension bar based on willful
6 conduct.

7 THE COURT: well, I am troubled by -- it's not for me
8 to say whether they ought to be -- how the securities business
9 for a limited period of time or not, but it is certainly not --
10 contemplating what penalties I would impose here -- I was not
11 taking account of any collateral consequences and; now you are
12 making me aware of a substantial collateral consequence. And I
13 wonder whether I should really then impose the injunction.

14 When I was thinking about all this, the injunction was
15 the least relevant or the least important of all these things
16 because it all looked to me like it was a statement, You've
17 been naughty; don't do it again. And to which the average
18 defendant, even if they maintain their innocence, would say,
19 well, I maintain my innocence, but I promise I'll never do it
20 again. So for years the SEC used to go through these mindless
21 consent decrees that had no effect other than -- I shouldn't
22 say that. Theoretically imposed -- it gave the SEC the
23 ability, and which sometimes was of real value, to go running
24 back into court for contempt of court rather than having to go
25 through a whole full-blown trial on a new charge. So it was

15

1 not without meaningful in some cases.

2 But what I'm now becoming aware of is that you intend
3 to use it, as is your right, but outside what I had
4 contemplated as a basis for a considerably more onerous
5 penalty. I mean it's what -- Mr. Castaldo has not been acting

July 31 (relief hearing) transcript

6 as a broker except in where the jury found he was, and but it
7 is the heart of what Mr. Gallagher did.

8 So what do you expect him to do for a living while,
9 assuming you succeed, he gets, I don't know what you had in
10 mind, but let's say you had in mind a year, what do you expect
11 him to do to make a living?

12 MS. KRISHNAMURTHY: well, I don't know, your Honor.
13 He certainly has an undergraduate degree in economics; I'm sure
14 there are other things he can do for some limited period of
15 time.

16 THE COURT: I would feel totally different if these
17 were fraud claims, but they are not.

18 MS. KRISHNAMURTHY: I understand that, your Honor.
19 You mentioned the consent decrees that we typically get that
20 involve these injunctions. Typically, what we do is a consent
21 decree in district court with an injunction, along with some
22 agreement, a settlement offer in the administrative proceeding
23 with some amount of time out. And in nonfraud cases, we
24 typically do get timeouts, suspensions of some sort. They
25 usually are not permanent bars or five-year bars or three-year

16

1 bars or anything like that in nonfraud cases, but we do
2 typically get some sort of suspension. That's with respect to
3 us.

4 Obviously there are FINRA bylaws, too, and FINRA can
5 decide what it wants to do or not, what it wants to impose or
6 not impose based on the conduct. But I would say that
7 obviously the injunction is important, and we could use that
8 and intend to use that to go get follow-on administrative
9 relief.

10 But even in the absence of injunctions, our position

July 31 (relief hearing) transcript

11 is we'd be entitled to get that sort of relief anyway, because
12 this is willful conduct; the jury found that Mr. Gallagher and
13 Mr. Castaldo did it knowingly, and that's a basis, as well.

14 THE COURT: I'm not about to second-guess what some
15 other judge, administrative law judge or whatever, will decide
16 to do. All I'm saying is in fashioning the remedy before me, I
17 sit as a court of equity. And as a court of equity, I need to
18 take account of collateral consequences, as well as direct
19 consequences.

20 So if there is a meaningful possibility that this
21 injunction would be a material factor in imposing the other
22 penalty, that's something I have to take account of.

23 The jury's verdict is the jury's verdict. And, you
24 know, whatever use you want to make of that is beyond my
25 control, of course.

17

1 I'm a little surprised -- but it's not for me to
2 suggest this or not -- that given all the many factors
3 involved, that you and Mr. Unger had tried to negotiate an
4 appropriate settlement at this stage. It's not uncommon, in my
5 experience, for someone in Mr. Gallagher's position or his
6 company's position to give up their right of appeal and give up
7 their right to challenge any administrative proceeding and,
8 thus, save the SEC a lot of money, as well as time, in return
9 for the SEC, you know, not demanding as much as they might
10 otherwise be entitled to. But I want to make clear I'm going
11 to decide this without any of that in mind. I just really
12 state the obvious.

13 MS. KRISHNAMURTHY: We understand that may happen
14 ultimately. We may be willing to negotiate. We certainly
15 tried to settle this case with Mr. Gallagher prior to trial.

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16 THE COURT: Then, again, I actually -- I could see
17 from Mr. Gallagher's demeanor on the stand that he felt
18 aggrieved. He was wrong to feel aggrieved, in my view, but I
19 could -- I wasn't without certain admiration for his
20 challenging the SEC and putting it to its proof, because it's
21 so easy to cave in these kind of situations.

22 On the other hand, I think he blinded himself to the
23 reality of his prior conduct, because people do that, people--
24 you know, it's hard to be objective from either side.

25 Well, all right, let me think about all this.

18

1 Mr. Unger was there anything else you wanted to say?

2 MR. UNGER: Just one other point. I know your Honor
3 probably will look at 15(b)(4).

4 THE COURT: I certainly will now.

5 MR. UNGER: As to Vision Securities, since there's no
6 willful -- that's a strict liability provision. The injunction
7 is the trigger as to the company, not that it's going to
8 matter, since Mr. Gallagher is really the sole broker. There
9 are other registered people there.

10 THE COURT: Right.

11 MR. UNGER: But I thought I would just make that
12 point.

13 In terms of equity, there's a few other pieces. And,
14 by the way, I will say that we do talk. I mean I do talk with
15 the SEC, and I think we probably will talk, you know, once this
16 is over to see if --

17 THE COURT: Well, I didn't mean to -- I am not one of
18 those judges -- one of my very valued colleagues is such a
19 believer that settlements are good for all parties and for the
20 human spirit that he actually hands out pens, ballpoint pens,

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21 when cases settle. That's not my style. I like to keep out of
22 the settlement. So I went as far as I wanted to in just
23 raising that obvious point. But let's continue.

24 MR. UNGER: Let me just say, there are -- I think you
25 heard during trial that Vision is owned by a company called GCG¹⁹

1 Holdings, and it's owned 100 percent.

2 GCG Holdings, Inc. has numbers of investors in it; I
3 think Mr. Gallagher testified to some of that, not
4 Mr. Gallagher. He said he is not a shareholder, and he's not.
5 And I know because I keep the corporate books.

6 So if you look at it from that -- and these people are
7 just investors. They are not brokers, they are nothing to do
8 with this. And so to sort of put Vision out of business sort
9 of hurts all these people out there who have advanced large
10 sums of money over time to try and get this business off the
11 ground on a good footing. And so I think that's another sort
12 of a factor that should be considered. And I'm not excusing --
13 I understand what the jury did; I'm not excusing it. I
14 understand what your Honor said.

15 From an equity point of view, that's really all I have
16 to say, your Honor.

17 THE COURT: All right. Let me hear from Mr. Castaldo.

18 MR. CASTALDO: I don't know where to start, but I'll
19 just kind of throw it out there.

20 while this was all going on when Dan and I did
21 business together, I did get re-registered as a broker, and I
22 have not been able to get a job because I've had this looming
23 out there. So to have an injunction to prevent me from getting
24 back in the business, I've already taken a two-month sit -- a
25 two-year sit. I've went to firm after firm after firm, and

1 they said with an SEC item open, nobody would hire me.

2 THE COURT: I don't think that will be -- the problem
3 you're going to face, Mr. Castaldo, is the jury's verdict. And
4 regardless of whether there's an injunction or not, I can well
5 understand that you will have difficulties getting a job as a
6 broker with the jury having returned the verdict they did. And
7 I don't think there's anything this Court can do about that.

8 MR. CASTALDO: I think an injunction -- and that's
9 what my attorney that I've been consulting with on the side,
10 because I can't afford to hire him full-time --

11 THE COURT: Well, your mistake was way back -- not
12 your mistake, forgive me for saying this, but as Mr. O'Rourke,
13 I think, testified --

14 MR. CASTALDO: I understand that.

15 THE COURT: -- that when he suggested you ought to
16 sought an attorney way back when. But that's neither here nor
17 there.

18 MR. CASTALDO: Your Honor, if I made a mistake at that
19 point, I don't think I should have to pay the rest of my life
20 for it. I don't think anybody lost any money --

21 THE COURT: I found your letter very effective.

22 MR. CASTALDO: I want to get on with my life.

23 THE COURT: No, no, no. I mean this is why, as I said
24 to Mr. Gallagher, I say to you, as well, the monies have to
25 come back. That is really open and shut. But I want to do it

21

1 in a way that is the least painful as possible. If you are not
2 making any money in a given month, you are not going to pay
3 anything under this because the proposal that I have is, you

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4 know, that it be a percentage of your monthly income. And so
5 if you're making zero, you know, 10 percent or 15 percent of
6 zero is still zero.

7 I can't make it in the -- again, using, I hope not
8 overusing, the analogy from probation, I can't make it a
9 percentage of net income because experience has shown that
10 people in your situation, Mr. Gallagher's situation, always
11 have at least contingent liabilities that, if you wanted to,
12 would erase all monthly income, depending how they were
13 characterized. So it's always got to be a percentage of gross
14 income; that prevents fenagling.

15 But I don't have any problem making it a future small
16 percentage as time goes forward. And there were times when I
17 was surprised when the jury did ask you for your card because
18 you were describing your considerable talents in picking
19 winners in the past. And so, for example, what prevents you
20 from doing another newsletter?

21 MR. CASTALDO: I started a hedge fund; I can't get
22 investors. I look like a criminal on the internet. I lost
23 \$1,000,000 customer today because he saw all this information;
24 he says you're Bernie Madoff; he called me Bernie Madoff. I'm
25 good at what I do. If I cut a corner or we could make a

22

1 mistake, I don't think we should have to pay the rest of our
2 lives for it.

3 THE COURT: what you want is what the --

4 MR. CASTALDO: Your Honor --

5 THE COURT: -- what the facts don't permit, which is
6 you want to erase your prior mistake, and that's not within the
7 law.

8 MR. CASTALDO: Your Honor, I'm not saying that. what

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9 I'm saying is, all right, I want to get on with my life, all
10 right. My business is down to \$15,000 in revenues a month. I
11 have staff, payroll. I got \$50,000 in credit cards, another
12 \$200,000 in business loans because I've been paying my staff
13 and my bills with credit cards and debt. With the interest I'm
14 paying on that, I will never -- it's going to take me five
15 years to get away from it.

16 If you're going to impose a judgment against me, I
17 can't pay interest on that. I make 60 to \$80,000 a year. I
18 did \$450,000 in revenues last year; I did 600 grand -- I'm
19 lucky if I do 200,000 this year. I'm broke. I'm absolutely
20 broke. I have 50,000 -- I mean I can't pay interest.

21 THE COURT: I come back to --

22 MR. CASTALDO: If you want to slap a fine on me and
23 you're going to charge me 10 percent interest a year, I'll
24 never get out from under it. I'll never get out from under
25 this for years. What's the sense of interest? That's a death 23

1 sentence.

2 THE COURT: I hear you, but I think you are really
3 grossly exaggerating the situation.

4 MR. CASTALDO: How so?

5 THE COURT: Well, I'll tell you how so. First of all,
6 the overwhelming number of people who I have to sentence in
7 criminal cases are infinitely in worse shape economically than
8 you will ever be.

9 MR. CASTALDO: But that's --

10 THE COURT: Excuse me. Don't talk to me --

11 MR. CASTALDO: I'm sorry.

12 THE COURT: -- about how little money you're making --
13 though I'm very sympathetic to that -- without taking account

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14 of the vast majority, well over 90 percent, of the people in
15 the United States have never even remotely been in the economic
16 position that you were for years. So --

17 MR. CASTALDO: Your Honor --

18 THE COURT: -- you know, if we're talking about
19 everyday human beings, we're talking about people who are
20 making 40,000, 50,000, 60,000, and have four kids, and have
21 mortgages, and have bill collectors beating at their door.

22 And I have developed both a liking for you and an
23 acknowledgment of the difficulties you face, but let's not
24 carry it too far.

25 MR. CASTALDO: I'm not carrying it too far, your

24

1 Honor. What I'm saying is I haven't made money in two years
2 because of this. Not a dime. I will not make money. That's
3 why I'm so in debt, because I'm trying to keep my staff
4 together, which 60 percent of them are gone, and the rest of
5 them are ready to walk out because I owe them money.

6 If you think I did something wrong and I pay
7 restitution, listen, I'm a big boy. If I made a mistake, I'm
8 not going to say -- but I think interest is exorbitant, if I
9 said that correctly. I think to have an injunction which will
10 disallow me to get back into the business will severely hurt my
11 future potential to earn money.

12 An injunction cannot be accepted; that's what my
13 attorney said. And that's why we haven't settled this thing
14 with Jack and Preethi. It's just the injunction. I'll never
15 get registered again as a broker with any injunction, and Mr.
16 Unger says the same thing.

17 THE COURT: All right. So I will take all that into
18 account.

19 July 31 (relief hearing) transcript
Anything else that anyone wanted to say? I'll start
20 with the SEC.

21 MS. KRISHNAMURTHY: Your Honor, I just want to raise a
22 few points.

23 First, the point that Mr. Unger made with respect to
24 Vision Securities. We are not seeking a timeout for Vision
25 Securities, just for the two individuals in a follow-on

25

1 proceeding.

2 THE COURT: But what I will ask the SEC to do and do
3 some time in the next few days, is send me a revised amended
4 and proposed default judgment on the corporation, because I
5 agree with you that that needs to be revised in accordance with
6 what Mr. Castaldo requested.

7 MS. KRISHNAMURTHY: Absolutely. So first with respect
8 to Vision Securities, the injunction, there aren't going to be
9 these collateral consequences with respect to the injunction,
10 as far as we're concerned, because we are not seeking any sort
11 of timeout for the firm; it's only for Mr. Gallagher and
12 Mr. Castaldo. So that's the first point.

13 With respect to Mr. Unger's assertion that
14 Mr. Gallagher -- I think your Honor had wanted a \$10,000 setoff
15 for Mr. Gallagher's divorce expenses, alimony, child support.
16 Mr. Unger quoted a number, I think, of \$8500.

17 THE COURT: I threw in 10,000 to take account of the
18 other -- he said there was insurance and stuff like that. That
19 was probably too high, but it was an off-the-cuff suggestion.

20 MS. KRISHNAMURTHY: Right. And I would just say that
21 the starting point should actually be lower. I think Mr. Unger
22 is incorrect. He provided us a copy of the divorce decree, as
23 well. I think the monthly alimony and child support was 7500

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24 and not 8500. So that would reduce it to \$9,000 or even less.

25 THE COURT: Yeah.

26

1 MS. KRISHNAMURTHY: So I just wanted to make your
2 Honor aware of that.

3 Finally, we did not receive a copy of Mr. Castaldo's
4 letter to the Court on Wednesday.

5 THE COURT: I'm sorry. That is Mr. Castaldo's fault.
6 But it's three pages; let me have my law clerk copy it. But
7 I'll tell you -- let me quickly summarize it. It's not unlike
8 what he said here in court.

9 First of all, he, as, I'm sure, Mr. Gallagher does,
10 too, he continues to protest his innocence of the charge he was
11 found liable on and, you know, that would be an issue that
12 presumably he'll raise on appeal if there is any legal basis to
13 do so.

14 Then he points out that, quote, the three-year legal
15 battle with the SEC has destroyed my personal and business
16 financings. And he attaches an appendix, a one-page statement
17 of his present economic situation which shows very substantial
18 amounts due on a number of loans, on bills in arrears and
19 things of that sort.

20 Then he says that, you know, he passed the Series 7
21 exam two years ago, but he can't get a job for the reasons
22 stated. Then he repeats again why he thinks the allegations by
23 the SEC are baseless and unjust.

24 And so on the basis of that, he asks that the Court
25 impose little or nothing in the way of remedies here.

27

1 As with everything from Mr. Castaldo, it is, No. 1,
2 very well-written; it shows what an intelligent and talented

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3 man he is; No. 2, not without some power evoke the Court's
4 sympathy, which he does; but, No. 3, doesn't really come to
5 terms with the fact that he did, in the Court's view, make --
6 engage in knowing misconduct here.

7 I don't want to dwell on that endlessly, but I have to
8 state for the record my total disagreement with any suggestion
9 that he was not liable. I thought the jury's verdict as to
10 him, as with respect to the other defendants, was amply
11 justified.

12 So let me give this to my law clerk to make a copy
13 for -- and, Mr. Unger, did you get a copy, as well?

14 MR. UNGER: No, I did not.

15 THE COURT: All right. So we'll make a copy for both
16 of you.

17 MS. KRISHNAMURTHY: Thank you.

18 THE COURT: But I don't think there's anything that
19 hasn't been, in effect, already said in court.

20 MR. CASTALDO: Your Honor, I've already given a copy
21 of my financials to them; they have every bank statement --
22 they have all that information.

23 THE COURT: Yeah. What's the old cliché? No harm, no
24 foul.

25 MR. CASTALDO: All I'm asking, because I've been out

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1 and I've been forced to take a sit for two years, I just want
2 to get back to work, have to pay some money back.

3 THE COURT: All right. I definitely will take account
4 of that.

5 Yes, sir.

6 MR. UNGER: Your Honor, because there seems to be --
7 although I added it up again, and it is 8500. It is --

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8 THE COURT: Well, someone clearly -- the trouble is
9 that neither you nor Ms. Krishnamurthy have more than 20 toes
10 and fingers, so it's hard to get up there. But why don't you
11 tell me what the components are and I'll take a stab at it.

12 MR. UNGER: It's 2500 for what they call -- I'm not a
13 matrimonial lawyer, thank God -- spousal sort; it's 5,000 child
14 support; and it's \$1,000 a month to pay off a \$200,000 payment
15 to the wife on top of the others.

16 THE COURT: All right. So those three figures do come
17 to 8500.

18 MS. KRISHNAMURTHY: I apologize, your Honor. I didn't
19 realize that there was \$1,000 on top of the alimony and child
20 support.

21 THE COURT: So there we are. Very good.

22 MR. UNGER: Your Honor, I have just two other points.
23 One relating to Vision Securities and an injunction. Even if
24 the SEC chooses not to bring a follow-on proceeding as been
25 represented to you, we still have good old FINRA out there who

29

1 has exactly the same thing and the injunction would trigger --
2 we don't know what they are going to do. But my money wouldn't
3 be -- I think the smart money would be that it wouldn't be
4 good.

5 And the last point, your Honor, is --

6 THE COURT: And I actually think I have to take
7 account of the fact that in the current regulatory climate,
8 there would be some pressure, I think, on an organization like
9 FINRA to be tougher than it might otherwise be, because not
10 only has there been criticism of allegedly lax regulation
11 across-the-board, but FINRA as a nongovernmental entity --
12 although with quasi-governmental responsibilities -- is in a

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13 particularly tough position to have to justify itself, so to
14 speak. So I think there's -- I'm just saying -- I'm coming out
15 of your way. Believe me, I haven't decided anything. But I
16 think there's some force to that point.

17 MR. UNGER: The last point, your Honor -- and I assume
18 disgorgement is against all parties.

19 THE COURT: I'm going to order barring -- I will
20 rethink everything everyone said, but I don't see right now any
21 alternative but to ordering disgorgement across-the-board.

22 MR. UNGER: I'm not arguing.

23 THE COURT: Yeah.

24 MR. UNGER: I assume that the disgorgement between
25 Vision and Dan Gallagher will be jointly and --

30

1 THE COURT: It would have to be jointly and several.

2 MR. UNGER: And the problem I'm having is the
3 disgorgement amount. I read the brief, and I think it was
4 126,000. And I read -- I don't remember it was the pretrial
5 order or prior papers, I think it was 117,000 or something in
6 that area. It wasn't exact. And I think we still have to
7 figure out what the base number is.

8 THE COURT: Well, I mean the SEC has put forth its
9 numbers in quite some detail, both as to principal and
10 interest. If you want to challenge those numbers, what you
11 need to do, and I will give you a few days to do it, but you
12 need to put something in writing indicating the number you
13 think it should be and how you calculate it, and I give the SEC
14 a brief opportunity to respond. So if you want that
15 opportunity, I'm happy to do it. But right now the only
16 numbers that have been put before me that have been worked out
17 in any detail are the ones from the SEC.

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18 MR. UNGER: Are you talking about in the brief or
19 during the course of the trial?

20 THE COURT: Both. But the number they are asking for
21 now against Gallagher and Vision Securities jointly and
22 severally is \$126,466.91. And they explain how they get there;
23 because that's their calculation within a reasonable
24 approximation of the gain made by Gallagher and Vision
25 Securities from the investments that Mr. Castaldo's customers

31

1 made in NanoDynamics.

2 And on the same theory they get to -- for Mr. Castaldo
3 it's obviously a bigger amount -- they get to \$280,500. And
4 then the prejudgment interest is simply a percentage
5 calculation from that.

6 So I am happy to have anyone who wants, and this goes
7 for Mr. Castaldo, as well, if you want to put in a different
8 number based on a different calculation, I don't want to hear
9 more about -- though I will certainly take account of it --
10 that it should be a lower number just because you can't pay it,
11 it's too punitive, etc., etc. But if someone wants to
12 challenge the SEC's calculation from an arithmetic standpoint,
13 just as you just did on the divorce thing, I'm happy to have
14 you do that. But that's the only way I would reconsider those
15 figures.

16 MR. UNGER: If I could have just a few days.

17 THE COURT: Sure.

18 MR. UNGER: I'll have Mr. Gallagher take a look at
19 that.

20 THE COURT: Sure. All right. So why don't we say
21 this: Both Mr. Gallagher, Vision Securities and also
22 Mr. Castaldo, if he wishes to, can put in their own calculation

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23 of what the gains were from the NanoDynamics transactions. And
24 those need to be faxed to the Court by no later, what,
25 wednesday? Does that work for you, Mr. Unger?

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1 MR. UNGER: Yes, that's fine.

2 THE COURT: And Mr. Castaldo, wednesday?

3 MR. CASTALDO: That's fine, your Honor.

4 THE COURT: OK. So that's limited to one page,
5 because I just want it on this limited issue.

6 MR. UNGER: I will advise the Court either way.

7 THE COURT: OK.

8 MR. UNGER: Whether we are going to contest it or not
9 going --

10 THE COURT: If any of the defendants does challenge
11 it, then the SEC has till Friday to put in a one-page response.

12 MR. UNGER: Your Honor, can Mr. Gallagher make a short
13 statement? He wants to make a statement to the Court.

14 THE COURT: Absolutely.

15 MR. UNGER: Thank you.

16 MR. GALLAGHER: I just want to apologize for
17 everything that's transpired. I built this company -- I built
18 this company to pass it down to my kids. And I didn't do
19 anything to hurt anybody. And the injunction will hurt me and
20 my family and this business and my investors and everyone
21 that's believed in me.

22 I'm truly sorry for everything that's transpired.

23 Thank you.

24 THE COURT: Thank you. Well, I will certainly take
25 account of that, as well.

33

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1 All right. So why don't we do this: I will rethink
2 now -- and I'm very grateful for this oral argument -- I'll
3 wait till either Wednesday or Friday, depending whether the SEC
4 has something to respond to or not, but no later than early the
5 following week I'll get out the final order.

6 And then something, Mr. Castaldo, you should be aware
7 of. After I issue the final judgment, then you have ten days
8 if you want to appeal and file a notice of appeal, you should
9 talk to the folks in the pro se office about how you go doing
10 that, because that's something I can't control.

11 If you don't file a notice in ten days, the Court of
12 Appeals will say you can't appeal. So they are very strict
13 about it. I have no power over that. So I just wanted to
14 alert you. That's ten business days, however, so it's really
15 like 14 days.

16 OK. Thank you all very much.

17 MS. KRISHNAMURTHY: Thank you, your Honor.

18 * * *

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EXHIBIT D

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9468 / October 18, 2013

SECURITIES EXCHANGE ACT OF 1934
Release No. 70712 / October 18, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-14630

In the Matter of

DANIEL J. GALLAGHER,

Respondent.

**AMENDED ORDER INSTITUTING
ADMINISTRATIVE AND CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 8A OF THE SECURITIES ACT
OF 1933, AND SECTIONS 15(b) AND 21C OF
THE SECURITIES EXCHANGE ACT OF
1934**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”), and Sections 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against Daniel J. Gallagher (“Respondent” or “Gallagher”).

II.

After an investigation, the Division of Enforcement alleges that:

SUMMARY

1. This action arises out of Gallagher’s fraudulent offering of securities of Nano Acquisition Group, LLC (“NAG” or “the Company”). From October 2009 through July 2010, Gallagher raised at least \$427,000 from twelve investors through the sale of securities of NAG, an entity that Gallagher formed. Notwithstanding Gallagher’s oral representations to investors that their funds would be used by NAG to acquire or develop certain nanotechnology assets, and written representations to the same effect contained in NAG’s offering materials, Gallagher

withdrew approximately \$392,000 – or 92% of the funds raised – for his personal use. He began to do so almost as soon as NAG was formed and even as he continued to raise additional money from investors. Gallagher never informed NAG investors that he intended to misappropriate, or had already misappropriated, virtually all of their funds for his personal use. In April 2012, in a case entitled *United States v. Gallagher*, 11-CR-806 (E.D.N.Y.)(LDW), Gallagher was convicted of one count of securities fraud and two counts of wire fraud for substantially the same fraud on investors at issue in this case.

RESPONDENT

2. **Gallagher**, age 48, resided in Port Washington, New York at all relevant times. Gallagher entered the securities industry in 1990. From May 2001 until January 2010, Gallagher was a registered representative of Vision Securities, Inc. and, through a holding company, was one of Vision's two controlling shareholders. Gallagher has been the subject of a number of prior disciplinary actions, including a prior Commission enforcement action, *SEC v. Christopher Castaldo et al.*, No. 08-Civ-8397 (S.D.N.Y.)(JSR), for his role in permitting Vision to employ an unlicensed securities salesman in connection with a private placement of Nanodynamics' securities.

RELATED ENTITIES

3. **Nano Acquisition Group, LLC** is a Delaware limited liability company formed in September 2009 with its principal place of business in Port Washington, New York. NAG has never been registered with the Commission in any capacity.

4. **Nanodynamics, Inc.** is a Delaware corporation that had its principal place of business in Buffalo, New York. On July 27, 2009, Nanodynamics filed for Chapter 7 bankruptcy. Nanodynamics owned and developed several patented technologies relating to the energy, environmental, and infrastructure markets, including certain nanotechnology and a fuel cell technology that NAG was interested in acquiring.

FACTS

Gallagher Formed NAG and Solicited Investors on Its Behalf

5. In September 2009, Gallagher formed NAG, for the ostensible purpose of raising capital, through an offering of securities, to be used to acquire the stock or assets, in whole or in part, of Nanodynamics, which was then in bankruptcy.

6. Although he had no formal role at NAG other than as a purported consultant, Gallagher had substantial influence over the management of NAG's affairs. He directed or conducted all aspects of NAG's securities offering, including retaining counsel, participating in the preparation of the offering materials, and soliciting all of the investments obtained in the offering.

7. Gallagher's involvement was not disclosed in NAG's offering materials. Instead, the offering materials, which included a Subscription Agreement and an Operating Agreement dated September 2009, as well as an undated Confidential Term Sheet (collectively, "offering materials"), designated a single "Managing Member" who was responsible "for the overall management of the company." During the relevant period, two individuals, appointed by Gallagher, served successively as NAG's Managing Member. Although, according to the terms of NAG's offering materials, the designated Managing Members were responsible for all of NAG's affairs, neither of them played a meaningful role in the management of the company.

8. Gallagher raised all the funds for NAG. Specifically, he solicited all of NAG's investors and told them that NAG had been formed to acquire the assets of Nanodynamics. Gallagher also caused NAG's offering materials, which contained clear limitations on the use of the offering proceeds, to be distributed to the investors. These materials contained certain representations that the sole purpose of the offering was "to acquire the stock or assets, in whole or in part, of Nanodynamics, Inc.," and that "[i]f the acquisition [of Nanodynamics' stock or assets] is unsuccessful the Company will return Members' investments, minus expenses not to exceed 3% of the funds raised not including any sales commission charges."¹ The offering memorandum and operating agreement also stipulated that "[n]o fees or salaries shall be paid to the Managing Member or any employees of the Company until at least \$1 million [of the \$7.5 million total offering] is raised." Gallagher worked closely with NAG's counsel in the preparation of the offering materials and was well aware of these restrictions.

Gallagher Misappropriated the Proceeds of NAG's Securities Offering

9. From October 2009 through July 2010, Gallagher obtained at least \$427,000 from twelve investors through the sale of interests in NAG. Gallagher first told investors that the money would be used to acquire the assets of Nanodynamics and, later, instead, to develop similar assets through a new company called Watt Fuel Cell Corporation.

10. Virtually none of the funds that Gallagher raised from NAG's investors were used to acquire the assets of Nanodynamics or develop similar assets through Watt Fuel Cell, yet no funds have been returned to the investors and none of the offering proceeds remain.

11. Instead, Gallagher misappropriated almost all of the funds he obtained from investors. Of the at least \$427,000 NAG raised from investors, Gallagher withdrew at least \$392,000 or 92% for his personal use. From October 2009 through July 2010, on an almost daily basis, Gallagher withdrew funds from NAG's bank accounts, by means of checks made out to himself or direct cash withdrawals, in amounts generally ranging from \$500 to \$3,000.

¹ In addition, the offering materials disclosed that Vision, as placement agent for the offering, would receive 7% of the total funds that it raised as a commission. Before any funds were raised, however, Vision was ordered by the Financial Industry Regulatory Authority ("FINRA") to cease selling securities.

12. Gallagher began withdrawing funds for his personal use almost as soon as he began obtaining funds from investors and continued to do so even as he raised additional funds from investors. By the time he raised a total of \$45,000 from two investors in December 2009, Gallagher had already withdrawn \$44,250, or approximately 18%, of the \$252,222 that he had raised from investors by that point. By the time he raised an additional \$39,800 in June 2010, he had already withdrawn approximately 89% of the amount he had raised from investors for his personal use.

Gallagher Concealed From Investors His Use of Their Funds

13. Gallagher never disclosed to NAG's investors that he withdrew, or intended to withdraw, most of their funds for his personal use.

14. On May 27, 2010, Gallagher wrote to NAG's investors, telling them "[a]fter nearly a year of sifting through the bankruptcy process of NanoDynamics . . . it has become apparent that the greatest potential for a return on investment is to develop the next generation fuel cell." Gallagher told the investors that their membership interests in NAG would be replaced by founders' shares in a Watt Fuel Cell, which would develop its own nanotechnology. Gallagher further represented that "[t]o date, Nano Acquisition Group, LLC has expended approximately \$300,000 in connection with analyzing all the assets of NanoDynamics, Inc. and [the Nanodynamics subsidiary that owned the key technologies], participating in the bankruptcy process, maintenance of the LLC [NAG], and the development of the new company."

15. Gallagher's May 27, 2010 letter to investors was false and misleading. No more than approximately \$35,000 of the approximately \$300,000 that Gallagher had obtained from investors to that point had been spent in connection with analyzing the assets of Nanodynamics, participating in the bankruptcy process, maintaining itself, or developing a new company. Instead, Gallagher had used most of investors' funds – over \$262,000 at that point – to compensate himself, a fact that he never disclosed to investors. Reasonable investors would not have purchased securities in NAG if they had known that Gallagher intended to misappropriate their money or had already done so.

16. On April 9, 2012, in a case entitled *United States v. Gallagher*, 11-CR-806 (E.D.N.Y.) (LDW), a jury convicted Gallagher of one count of securities fraud [Title 15, United States Code, Sections 78j(b) and 78ff; Title 18, United States Code, Sections 2 and 3551 *et seq.*] and two counts of wire fraud [Title 18, United States Code, Sections 1343, 2 and 3551 *et seq.*]. On April 23, 2013, Gallagher was sentenced to a term of imprisonment of thirty-one months, to be followed by a thirty-six month term of supervised release. As a condition of his supervised release, Gallagher was ordered "not [to] engage in employment, directly or indirectly, which involves securities or solicitation of funds from investors" and was further ordered to assist the U.S. Probation Department in verifying the job description of any employment he secures while under supervision. The determination of restitution was deferred to a later date.

17. The counts of the indictment upon which Gallagher was convicted arose from the same conduct alleged herein. For example, the indictment alleged, among other things, that:

- a. NAG “was founded by Gallagher in September 2009 for the purpose of acquiring assets of Nanodynamics, Inc. . . . Starting in or about September 2009, Gallagher offered equity securities in NAG to the public. NAG’s offering materials, which Gallagher participated in drafting, stated that NAG sought to raise approximately \$7.5 million [and that] ‘no fees or salaries shall be paid to the Managing Member or any employee of [NAG] until at least \$1 million is raised’ [and] if the acquisition [of Nanodynamics’ stock or assets] is unsuccessful, [NAG] will return the Members’ investments, minus expenses not to exceed 3% of the funds raised not including any sales commissions charges.”
- b. “In or about and between October 2009 and December 2009, Gallagher raised slightly more than \$310,000 in NAG from eleven investors. . . . Gallagher told the NAG investors in or about May 2010 that NAG had spent approximately \$300,000 to date on business purposes and that their NAG shares would be replaced by shares [in a new company called] Watt Fuel Cell Corporation (“Watt”).”
- c. “Beginning in or about June 2010, Gallagher began soliciting new investments in NAG and Watt. Gallagher and Watt initially agreed that Gallagher would receive shares in exchange for raising capital for Watt. In or about September 2010, Watt withdrew from this agreement. Between June 2010 and October 2011, Gallagher received more than \$190,000 [additional funds] from investors.”
- d. “Gallagher embezzled most of the investors’ money and converted it for his personal use. Of the approximately \$493,000 he raised from thirteen investors between October 2009 and September 2011, Gallagher stole approximately \$439,000, or about 89% of the invested funds, in cash withdrawals. . . . Gallagher covered up his scheme by misleading investors about how NAG and Watt were using their funds.”

VIOLATIONS

18. As a result of the conduct described above, Gallagher willfully violated Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)(2)], and 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].

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative and cease-and-desist proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondent an opportunity to establish any defenses to such allegations; and

B. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 15(b) of the Exchange Act including, but not limited to, disgorgement and prejudgment interest pursuant to Sections 21B and 21C of the Exchange Act.

C. Whether, pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act, Respondent should be ordered to cease and desist from committing or causing violations of and any future violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and whether Respondent should be ordered to pay disgorgement and prejudgment interest pursuant to Section 8A(e) of the Securities Act, and Sections 21B(e) and 21C(e) of the Exchange Act.

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened not earlier than 30 days and not later than 60 days from service of this Order at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondent shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If the Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against it upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Respondent personally or by certified mail.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 300 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice, 17 CFR § 201.360(a)(2).

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

For the Commission, by its Secretary, pursuant to delegated authority.

Elizabeth M. Murphy
Secretary

EXHIBIT E

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

★ DEC - 1 2011 ★

BROOKLYN OFFICE

JM:SCJ
F. #2011R00135

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA

- against -

DANIEL GALLAGHER,

Defendant.

-----X

INDICTMENT

CR 11

806

CR. NO. (T. 15, U.S.C., §§ 78j(b) and 78ff; T. 18, U.S.C., §§ 981(a)(1)(C), 1343, 2 and 3551 et seq.; T. 21, U.S.C., § 853(p); T. 28, U.S.C., § 2461(c))

WEXLER, J.
BROWN, M. J.

THE GRAND JURY CHARGES:

INTRODUCTION

At all times relevant to this Indictment, unless otherwise indicated:

The Defendant and His Companies

1. The defendant DANIEL GALLAGHER was a registered representative of Vision Securities Inc. ("Vision Securities"), a broker-dealer with its principal place of business in Port Washington, New York. GALLAGHER was one of the two controlling shareholders of GCG Holdings, Inc., the owner of Vision Securities. In or about September 2009, Vision Securities was directed by the Financial Industry Regulatory Authority to cease operating as a broker-dealer due to a capital deficiency.

2. Nano Acquisition Group, LLC ("NAG") was founded by GALLAGHER in September 2009. GALLAGHER founded NAG for the

purpose of acquiring assets of Nanodynamics, Inc.

("Nanodynamics"), a company that filed for Chapter 7 bankruptcy in or about July 2009. Nanodynamics owned several patented technologies, including a solid oxide fuel cell technology.

3. In or about August 2009, the United States District Court for the Southern District of New York imposed a civil monetary penalty and ordered disgorgement of illegally paid sales commissions in a civil enforcement action brought by the United States Securities and Exchange Commission against GALLAGHER and Vision Securities. The court found that GALLAGHER and Vision Securities had permitted an unlicensed individual to act as a broker in connection with sales of Nanodynamics.

The NAG Offering

4. Starting in or about September 2009, GALLAGHER offered equity securities in NAG to the public. NAG's offering materials, which GALLAGHER participated in drafting, stated that NAG sought to raise approximately \$7.5 million, which would be used to purchase assets from the Nanodynamics bankruptcy. The materials also stated that "[n]o fees or salaries shall be paid to the Managing Member or any employee of [NAG] until at least \$1 million is raised," and "[i]f the acquisition [of Nanodynamics stock or assets] is unsuccessful [NAG] will return the Members'

investments, minus expenses not to exceed 3% of the funds raised not including any sales commission charges."

5. NAG's offering materials identified Vision Securities as NAG's investment advisor and placement agent for the offering and disclosed that investors who purchased their NAG shares through Vision Securities would be charged a 7% sales commission.

6. In or about and between October 2009 and December 2009, GALLAGHER raised slightly more than \$300,000 in NAG from eleven investors. In or about January 2010, most of Nanodynamics' assets were sold to another entity. GALLAGHER told the NAG investors in or about May 2010 that NAG had spent approximately \$300,000 to date on business purposes and that their NAG shares would be replaced by shares in Watt Fuel Cell Corporation, ("WATT"), which would develop its own fuel cell technology.

7. Beginning in or about June 2010, GALLAGHER began soliciting new investments in WATT and NAG. GALLAGHER and WATT initially agreed that GALLAGHER would receive WATT shares in exchange for raising capital for WATT. In or about September 2010, WATT withdrew from this agreement. Between June 2010 and October 2011, GALLAGHER received more than \$190,000 from investors.

The Fraudulent Scheme

8. GALLAGHER embezzled most of the investors' money and converted it to his personal use. Of the approximately \$493,000 he raised from thirteen investors between October 2009 and September 2011, GALLAGHER stole approximately \$439,000, or about 89% of the invested funds, in cash withdrawals. GALLAGHER provided no more than \$500 of the more than \$190,000 he raised after June 2010 to WATT. GALLAGHER covered up his scheme by misleading investors about how NAG and WATT were using their funds.

COUNT ONE
(Securities Fraud)

9. The allegations contained in paragraphs one through eight are realleged and incorporated as though fully set forth in this paragraph.

10. In or about and between September 2009 and October 2011, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendant DANIEL GALLAGHER did knowingly and willfully use and employ one or more manipulative and deceptive devices and contrivances, contrary to Rule 10b-5 of the Rules and Regulations of the United States Securities and Exchange Commission, Title 17, Code of Federal Regulations, Section 240.10b-5, in that GALLAGHER did knowingly

and willfully (a) employ devices, schemes and artifices to defraud, (b) make untrue statements of material fact and omit to state material facts necessary in order to make the statements made, in the light of the circumstances in which they were made, not misleading, and (c) engage in acts, practices and courses of business which would and did operate as a fraud and deceit upon members of the investing public, in connection with the purchases and sales of investments in NAG and WATT, directly and indirectly, by use of means and instrumentalities of interstate commerce and the mails.

(Title 15, United States Code, Sections 78j(b) and 78ff; Title 18, United States Code, Sections 2 and 3551 et seq.)

COUNTS TWO THROUGH SIX
(Wire Fraud)

14. The allegations contained in paragraphs one through eight are realleged and incorporated as though fully set forth in this paragraph.

15. In or about and between September 2009 and October 2011, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendant DANIEL GALLAGHER did knowingly and intentionally devise a scheme and artifice to defraud the investors of NAG and WATT, and to obtain money and property from the investors of NAG and WATT by means of

materially false and fraudulent pretenses, representations and promises.

16. On or about the dates specified below, for the purpose of executing such scheme and artifice, the defendant DANIEL GALLAGHER transmitted and caused to be transmitted, by means of wire communication in interstate and foreign commerce, writings, signs, signals, pictures and sounds as described below:

| Count | Approx. Date | Description |
|-------|--------------|--|
| TWO | 10/26/2009 | Wire transfer of \$100,000 from the account of Investor #1, an individual whose identity is known to the Grand Jury, at Wachovia Bank in North Carolina to the account of NAG at Capital One Bank in Port Washington, New York |
| THREE | 5/27/10 | E-mail from the defendant DANIEL GALLAGHER in Port Washington, New York to investors in multiple states regarding expenditure of NAG funds |
| FOUR | 7/23/10 | Wire transfer of \$25,000 from the account of Investor #2, an individual whose identity is known to the Grand Jury, at Morgan Stanley Smith Barney in Virginia to the account of NAG at HSBC in Port Washington, New York |
| FIVE | 7/29/10 | Wire transfer of \$60,000 invested by Investor #3, an individual whose identity is known to the Grand Jury, from Wachovia Bank in Virginia to the account of NAG at HSBC in Port Washington, New York |

| | | |
|-----|----------|--|
| SIX | 5/4/2011 | Wire transfer of \$15,000 from the account of Investor #4, an individual whose identity is known to the Grand Jury, at Tower Federal Credit Union in Maryland to the account of NAG at HSBC in Port Washington, New York |
|-----|----------|--|

(Title 18, United States Code, Sections 1343, 2 and 3551 et seq.)

CRIMINAL FORFEITURE ALLEGATION

17. The United States hereby gives notice to the defendant charged in this Indictment that, upon his conviction of any of the offenses charged herein, the government will seek forfeiture in accordance with Title 18, United States Code, Sections 981(a)(1)(C), and Title 28, United States Code, Section 2461(c), which require any person convicted of any such offenses to forfeit any property which constitutes or is derived from proceeds traceable to a violation of any such offenses, including, but not limited to, a sum of money equal to the proceeds derived from such offense or offenses.

18. If any of the above-described forfeitable property, as a result of any act or omission of the defendant:

(a) cannot be located upon the exercise of due diligence;

(b) has been transferred or sold to, or deposited with, a third party;

(c) has been placed beyond the jurisdiction of the court;

(d) has been substantially diminished in value;
or

(e) has been commingled with other property which cannot be divided without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 28, United States Code, Section 2461(c), to seek forfeiture of any other property of the defendant up to the value of the forfeitable property described in this forfeiture allegation.

(Title 18, United States Code, Sections 981(a)(1)(C); Title 21, United States Code, Section 853(p); Title 28, United States Code, Section 2461(c))

A TRUE BILL

David Figueroa
FOREPERSON

Loretta E. Lynch
LORETTA E. LYNCH
UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK

No. _____ Action: _____

UNITED STATES DISTRICT COURT

EASTERN *District of* NEW YORK

CRIMINAL *Division*

THE UNITED STATES OF AMERICA

vs.

DANIEL GALLAGHER,

Defendant.

INDICTMENT

(T. 15, U.S.C., §§ 78j(b) and 78ff;
T. 18, U.S.C., §§ 981(a)(1)(C), 1343, 2 and 3551 et seq.;
T. 21, U.S.C., § 853(p); T. 28, U.S.C., § 2461(c))

A true bill.

Daniel Figaro.

Foreman

Filed in open court this _____ day,

of _____ A.D. 20 _____

Clerk

Bail, \$ _____

SHANNON C. JONES, Assistant U.S. Attorney (718) 254-6379

EXHIBIT F

UNITED STATES DISTRICT COURT

Eastern

New York

FILED
 IN CLERK'S OFFICE of
 U.S. DISTRICT COURT E.D.N.Y.

UNITED STATES OF AMERICA

AMENDED JUDGMENT IN A CRIMINAL CASE

V.

★ JUL 10 2013 ★

Daniel Gallagher

LONG ISLAND OFFICE

Case Number: 2:11-CR-0806-001

USM Number: 97657-004

Leonard Lato, Esq. (CJA)

Defendant's Attorney

Date of Original Judgment: 5/9/2013
 (Or Date of Last Amended Judgment)

Reason for Amendment:

- Correction of Sentence on Remand (18 U.S.C. 3742(f)(1) and (2))
- Reduction of Sentence for Changed Circumstances (Fed. R. Crim. P. 35(b))
- Correction of Sentence by Sentencing Court (Fed. R. Crim. P. 35(a))
- Correction of Sentence for Clerical Mistake (Fed. R. Crim. P. 36)
- Modification of Supervision Conditions (18 U.S.C. §§ 3563(c) or 3583(e))
- Modification of Imposed Term of Imprisonment for Extraordinary and Compelling Reasons (18 U.S.C. § 3582(c)(1))
- Modification of Imposed Term of Imprisonment for Retroactive Amendment(s) to the Sentencing Guidelines (18 U.S.C. § 3582(c)(2))
- Direct Motion to District Court Pursuant 28 U.S.C. § 2255 or 18 U.S.C. § 3559(c)(7)
- Modification of Restitution Order (18 U.S.C. § 3664)

THE DEFENDANT:

- pleaded guilty to count(s) _____
- pleaded nolo contendere to count(s) _____ which was accepted by the court.
- was found guilty on count(s) one (1), three (3) and six (6) of a six (6) count Indictment. after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

| Title & Section | Nature of Offense | Offense Ended | Count |
|--------------------|----------------------------------|---------------|-------|
| 15:78j(b) and 78ff | Securities Fraud, Class C Felony | 11/16/2011 | 1 |
| 18:1343 | Wire Fraud, Class B Felony | 11/16/2011 | 3, 6 |

The defendant is sentenced as provided in pages 2 through 10 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- The defendant has been found not guilty on count(s) two (2) of a six (6) count Indictment.
- Count(s) four (4) and five (5) is are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

7/10/2013
 Date of Imposition of Judgment
 s/ Leonard D. Wexler

 Signature of Judge
 Leonard D. Wexler Senior U.S.D.J.

 Name of Judge Title of Judge
7/10/2013
 Date

DEFENDANT: Daniel Gallagher
CASE NUMBER: 2:11-CR-0806-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of

Thirty-one (31) months as to count one (1).

Thirty-one (31) months as to count three (3) and six (6) to be served concurrent with each other and with count one (1).

The court makes the following recommendations to the Bureau of Prisons:

The defendant shall participate in a drug treatment or detoxification program approved by the US Probation Department.

The defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the United States Marshal for this district:

at _____ a.m. p.m. on _____

as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

before 2 p.m. on _____

as notified by the United States Marshal.

as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____ with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____

DEPUTY UNITED STATES MARSHAL

DEFENDANT: Daniel Gallagher
CASE NUMBER: 2:11-CR-0806-001

Judgment—Page 3 of 10

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of

Three (3) years as to count one (1).

Five (5) years as to count three (3) and six (6) to be served concurrent with each other and with count one (1).

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state, or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer in a manner and frequency directed by the court or probation officer;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record, personal history, or characteristics and shall permit the probation officer to make such notifications and confirm the defendant's compliance with such notification requirement.

DEFENDANT: Daniel Gallagher
CASE NUMBER: 2:11-CR-0806-001

SPECIAL CONDITIONS OF SUPERVISION

The defendant shall disclose all financial matters to the US Probation Department.

The defendant shall not engage in employment, directly or indirectly, which involves securities or solicitation of funds from investors and shall assist the US Probation Department in verifying the job description of any employment he secures while under supervision.

The defendant shall participate in an outpatient and/or inpatient drug treatment or detoxification program approved by the US Probation Department. The defendant shall contribute to the costs of such treatment/detoxification not to exceed an amount determined reasonable by the US Probation Department's Sliding Scale for Substance Abuse Treatment Services, and shall cooperate in securing any applicable third party payment, such as insurance of Medicaid. The defendant shall disclose all financial information and documents to the US Probation Department to assess his ability to pay. The defendant shall not consume any alcohol or other intoxicants during and after treatment/detoxification, unless granted a prescription by a licensed physician and proof of same is provided to the US Probation Department. The defendant shall submit to testing during and after treatment to ensure abstinence from drugs and alcohol.

The defendant shall participate in a mental health treatment program, as approved by the US Probation Department. The defendant shall contribute to the cost of such services rendered and/or any psychotropic medications prescribed to the degree he is reasonably able, and shall cooperate in securing any applicable third-party payment. The defendant shall disclose all financial information and documents to the US Probation Department to assess his ability to pay.

The defendant shall submit his person, residence, place of business, vehicle, or any other premises under his control to a search on the basis that the probation officer has reasonable belief that contraband or evidence of a violation of the conditions of release may be found. The search must also be conducted in a reasonable manner and at a reasonable time. Failure to submit to a search may be grounds for revocation. The defendant shall inform any other residents that the premises may be subject to search pursuant to this condition.

DEFENDANT: Daniel Gallagher
 CASE NUMBER: 2:11-CR-0806-001

CRIMINAL MONETARY PENALTIES

The defendant must pay the following total criminal monetary penalties under the schedule of payments on Sheet 6.

| | | | |
|--------|-------------------|-------------|--------------------|
| | <u>Assessment</u> | <u>Fine</u> | <u>Restitution</u> |
| TOTALS | \$ 300.00 | \$ | \$ |

The determination of restitution is deferred until _____ . An Amended Judgment in a Criminal Case (AO 245C) will be entered after such determination.

The defendant shall make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

| | | | |
|----------------------|--------------------|----------------------------|-------------------------------|
| <u>Name of Payee</u> | <u>Total Loss*</u> | <u>Restitution Ordered</u> | <u>Priority or Percentage</u> |
|----------------------|--------------------|----------------------------|-------------------------------|

TOTALS \$ _____ \$ _____

Restitution amount ordered pursuant to plea agreement \$ _____

The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

The court determined that the defendant does not have the ability to pay interest, and it is ordered that:

the interest requirement is waived for fine restitution.

the interest requirement for fine restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Daniel Gallagher
CASE NUMBER: 2:11-CR-0806-001

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties shall be due as follows:

- A Lump sum payment of \$ 300.00 due immediately, balance due
 - not later than _____, or
 - in accordance with C, D, E, or F below; or
- B Payment to begin immediately (may be combined with C, D, or F below); or
- C Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F Special instructions regarding the payment of criminal monetary penalties:
No fines or restitution have been ordered.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Joint and Several Amount, and corresponding payee, if appropriate.

- The defendant shall pay the cost of prosecution.
- The defendant shall pay the following court cost(s):
- The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

EXHIBIT G

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X
:
UNITED STATES OF AMERICA
11-CR-00806

-against- :
United States Courthouse
Central Islip, New York
DANIEL GALLAGHER,
April 23, 2013
Defendant. : 11:00 a.m.

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TRANSCRIPT OF SENTENCE
BEFORE THE HONORABLE LEONARD D. WEXLER
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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BY: ALLEN BODE
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Proceedings recorded by mechanical stenography.
Transcript produced by computer.

1 THE CLERK: Calling criminal case 11-CR-806, USA
2 versus Daniel Gallagher. Counsel please state your
3 appearance for the record.

4 MR. BODE: Allen Bode for the government. Good
5 morning, your Honor.

6 MR. LATO: Leonard Lato. Good morning,
7 your Honor.

8 THE COURT: Counsel, have you seen the probation
9 report?

10 MR LATO: I have.

11 THE COURT: Any additions or corrections?

12 MR LATO: Only what's in my sentencing
13 memorandum.

14 THE COURT: You have a lot of things in your
15 sentencing memorandum. Any particular thing you want a
16 hearing, Fatico hearing on?

17 MR LATO: A hearing is not required because we
18 had a trial on the matter. The only things, two things
19 that are really important it's the loss and the
20 restitution. Those are the only two things that are going
21 to matter in terms of the sentencing.

22 THE COURT: Do you want hearings on them?

23 MR. LATO: No. If the Court recalls the trial
24 testimony and so forth.

25 THE COURT: I recall the trial testimony.

1 MR. LATO: Then I don't think there's any
2 additional facts that are needed at this point.

3 THE COURT: Okay.

4 MR. LATO: In other words, I have nothing
5 outside the record to put in.

6 MR. BODE: Your Honor, if I just might briefly
7 on the loss issue.

8 THE COURT: Wait awhile, let me get to the
9 defendant. Has your attorney gone over the probation
10 report with you?

11 THE DEFENDANT: Yes.

12 THE COURT: Other than what he said, are there
13 any additions or corrections?

14 THE DEFENDANT: I'm not quite sure, because I
15 know he made a lot of corrections, and --

16 THE COURT: It's limited it to just two items.

17 THE DEFENDANT: Okay. The only thing if I have
18 the opportunity to say right now.

19 THE COURT: You'll get an opportunity to talk.

20 MR. LATO: Your Honor, can I have a minute,
21 please.

22 THE COURT: Sure.

23 (Pause.)

24 MR. LATO: Nothing at this time.

25 THE COURT: I understand. Okay. Yes.

1 MR. BODE: Yes, your Honor. On the loss --
2 before I get to the loss though, just one thing,
3 Mr. Lato's third point which he didn't mention this
4 morning was the statutory maximum. Given that the
5 guidelines are well below the lesser statutory maximum,
6 the ten year, I don't think there's any reason for the
7 Court to reach findings whether it's a 10 year or a 30
8 year -- or 20 or 30 year maximum, so I'll concede that,
9 your Honor, since you're not going to give him more than
10 that anyway.

11 THE COURT: I think the issue is the amount of
12 time and the restitution.

13 MR. BODE: Yes. So in terms of the loss,
14 your Honor, I'd rest on the letter, the trial evidence I
15 think adjudicated already the arguments that Mr. Lato
16 makes in terms what the defendant's intention was. He
17 made the those same arguments in closing to the jury, and
18 the jury rejected them.

19 Just in terms of two factual arguments in
20 response to Mr. Lato's reply. One, the fact that the Watt
21 entity recently sold shares of common stock for \$2.80.
22 What that is, your Honor, is Watt issuing more stock to
23 take in more than \$50,000, that actually diminishes the
24 value of the stock for the remaining investors, the
25 investors who were defrauded here. So that I submit

1 doesn't support Mr. Lato's case in terms of the loss. And
2 the only other thing that I would note, Mr. Lato is
3 correct in that the SEC didn't seize Quinn's \$50,000, as
4 of this morning it's still with the SEC, Mr. Quinn signed
5 a -- agreed to cooperate with the SEC, so in terms of the
6 ultimate disposition of that I'm unclear as to what that
7 is, but it's still being held by the SEC as of today.

8 THE COURT: On the two issues that you want to
9 talk about.

10 MR LATO: A couple of things. One, if this
11 court were to follow the government's bad advice and
12 impose restitution, not only would the Circuit definitely
13 reverse on an order of restitution, but the appeals
14 section of the U.S. Attorney's office --

15 THE COURT: Stop. I agree with you on the
16 restitution.

17 MR. LATO: Okay. With respect to the intended
18 loss.

19 THE COURT: But that doesn't mean there's no
20 restitution. I'm going to direct after the sentencing
21 that probation determine who lost money and if they made
22 money or the father gave them money, there's no
23 restitution. But it doesn't affect the calculation as to
24 the amount.

25 MR. BODE: Exactly. Loss and restitution are

1 different. What I would suggest to your Honor --

2 THE COURT: Because I can't tell from the report
3 and your statements who is still out of money and they
4 would be the only ones who would have restitution.

5 MR. BODE: What I would suggest, your Honor, is
6 that rather than go with the speculative value in terms of
7 these nebulous shares, is that your Honor look at the
8 amount of money that Mr. Gallagher put in his own pocket,
9 which the testimony established at trial.

10 THE COURT: That can't be restitution.
11 Restitution goes to the people that are injured.

12 MR. BODE: I'd ask you make that a fine that
13 Mr. Gallagher has to pay, the amount he put in his own
14 pocket from the scheme.

15 THE COURT: I'll decide that. What are we
16 talking about. He's in jail. Does he have any assets?
17 You know that.

18 MR. BODE: I agree, your Honor, it's going to be
19 pennies on the dollar, but he was unjustly enriched.

20 THE COURT: Okay. What's the second thing.

21 MR. LATO: Just to correct Mr. Bode, you can't
22 impose a fine if you believe Mr. Gallagher doesn't the
23 have the wherewithal. Forfeiture is something else. So
24 to the extent the Court believes Mr. Gallagher was
25 unjustly enriched, the Court can and actually must impose

1 forfeiture.

2 THE COURT: You didn't hear what I was talking
3 about.

4 MR. LATO: I did. With respect to the intended
5 loss in terms of the guideline range, there's a dispute
6 between the government and the defense, okay. This is my
7 view, and Mr. Bode is wrong, as was the person who wrote
8 the letter, that the jury determined the loss. They did
9 not. The jury determined, and my view correctly so, that
10 Mr. Gallagher lied to the investors. All that was
11 required for the jury to find him guilty is that he made
12 material misrepresentations. The jury was not asked to
13 determine whether anyone lost money.

14 Having said that, I lay out in my letter and I
15 think that the evidence that the government cannot meet
16 its burden to show the contrary, because the government
17 does have the burden, that did Mr. Gallagher go about
18 things the wrong way? Yes.

19 THE COURT: What?

20 MR. LATO: Did he go about things in the wrong
21 way in the sense did he make misrepresentations to the
22 investors, yes, he did. Because if the Court recalls in
23 its charge to the jury, the belief that everything would
24 work out in the end does not excuse false representations.

25 THE COURT: True.

1 MR. LATO: So this is my view, based upon what
2 Mr. Gallagher did, he did believe it would all work out in
3 the end. Does that excuse his misrepresentations? No.
4 Does it negate his guilt? No. But it does go to the
5 intended loss.

6 So in my view he never intended a loss and
7 that's why the guideline range is only 4 to 10 months.
8 But the reality is this. Because the guidelines are
9 advisory only, the Court has a good feel for what type of
10 sentence this man deserves. And I lay out in my letter
11 that he has a drug and alcohol problem. In fact when he
12 was out on bail, your Honor was good to let him out, he
13 blew it, he tested positive because he's got a problem.

14 THE COURT: A number of times.

15 MR. LATO: Twice.

16 THE COURT: That's a number.

17 MR. LATO: We made a deal after the first one,
18 you test positive again you go in, he busted the deal and
19 he faced the wheel, he went right in.

20 MR. BODE: Over the defenses objection, but he
21 did go in.

22 MR. LATO: No, actually the second time --

23 MR. BODE: He did not consent.

24 MR. LATO: Instead of the crossed dog, I
25 admitted that he busted the deal, I asked, but I did not

1 pretend that he hadn't broken it.

2 Now, having said that, what should we do with
3 Mr. Gallagher and I'll tell what you he has. He has
4 contacted Daytop Village, in addition to all the great
5 things that he's done in jail in terms of AA meetings,
6 Gary Fryboy from the Nassau County jail wrote how he's
7 done great with other people, and your Honor mentioned
8 when your Honor put him in jail for testing positive,
9 you'll help everyone but yourself. He's helping himself.
10 And I said to him the only shot we have of really getting
11 you a sentence of say time served or suspending the
12 sentence for a couple of years, you've got to go into
13 rehab right away. Mr. Gallagher has contact Daytop
14 Village, they have a bed waiting for him, a 90 day
15 inpatient program, and I would ask your Honor to do this.
16 He's been in custody now just under 8 and a half months,
17 given the pretrial detention and the detention after you
18 revoked his bail. Give him a sentence of time served,
19 he's got 48 hours to go into rehab, he doesn't go in, he
20 violates, he goes back to jail. He'll be out there, in
21 fact I have a letter from the wife saying, and I just got
22 it last night, basically asking -- she's got kids to send
23 to college, child support, it will help me if he's out
24 earning money, Mike Leahy, couldn't make it today because
25 he got pulled over for a ticket.

1 THE COURT: I hope it wasn't DWI.

2 MR. LATO: No, he said it was unpaid cell phone
3 bill. Not that he owed money to Verizon but that he got a
4 ticket once for using a cellphone and hadn't paid it, so
5 he's probably going to be here after it ends. But he's
6 got a job for Mr. Gallagher, just like Mr. Gallagher was
7 working before your Honor revoked his bail. He doesn't
8 meet his obligations to his wife, put him in jail. He
9 tests positive, put him in jail his. He tests positive,
10 put him back in jail. Because you know what's unique
11 about this case, of all these investment schemes, what do
12 defendants do, they rip off the investors and the
13 investors are left out in the cold. Here, except for this
14 Mr. Quinn, and I still thinks that he belongs in
15 handcuffs, all of the investors who bought shares got
16 their shares and they're happy. They all said on the
17 stand I want my shares, everyone of them, I don't want my
18 money back, I want my shares. They got everything they
19 asked for. How many people are made whole. It's unique.

20 Did he do wrong? Yes. I'm asking you to do
21 what I said.

22 THE COURT: One of your arguments is because
23 they got their money I have to reduce the amount, that was
24 in your argument, too.

25 MR. LATO: You mean --

1 THE COURT: Did you say because of the amount
2 was so low of the loss, it should be reduced. That was
3 part of your argument.

4 MR. LATO: My argument is that an intended loss,
5 because there was cases out there a lot of them have to do
6 with unpaid loans. If the defendant intended to pay back
7 the money, that drops the loss. Does it excuse his guilt?
8 No. He still lied.

9 THE COURT: In other words, you're saying but it
10 does reduce the value because he intends to give it back.

11 MR. LATO: Yes. Yes.

12 MR. BODE: That's silly.

13 THE COURT: The bank robber who steals a million
14 dollars and gives it to his wife, when there's an
15 investigator she gives the money back because it's at the
16 time he did it, did he have the intent to steal it and I
17 think there's sufficient evidence --

18 MR. LATO: The jury --

19 THE COURT: Wait, please. I know you're going
20 to want to talk, let me do my talking first so the record
21 is clear.

22 MR. LATO: Sorry, Judge.

23 THE COURT: So the record is clear. His father
24 testified and what did his father say? And I made notes
25 way back then, on April 1, 2012, which I never do, but I

1 thought it was rather interesting, that his father
2 received one million shares without consideration. The
3 father on the stand testified that the son transferred one
4 million shares of stock to him without consideration but
5 the stock really belonged to his son. The reason for the
6 transfer was that the son's name was toxic, nobody ever
7 went into what was toxic. Son had -- the reason the son
8 had SEC violations and judgments which he didn't pay.
9 Actually the father could have been charged with a
10 conspiracy of fraud at that time.

11 MR. LATO: No, your Honor, I believe --

12 THE COURT: You don't think so? I think so.
13 Someone who knows it's fraud, who takes the stock so
14 they're deceiving stockholders, forgetting about the money
15 he spent in violation of the agreement, I'm just talking
16 about the transfer of stock to protect it, which was a
17 phony, it wasn't his stock he said it wasn't his stock,
18 who were deceiving people.

19 MR. LATO: Your Honor, I disagree with what
20 your Honor said, but however, it's not germane to what
21 your Honor intends to do to Mr. Gallagher.

22 THE COURT: No. You put in your argument
23 because he didn't intend to steal the money and they got
24 the money it doesn't count to the degree and you reduce it
25 to 11 months.

1 MR. LATO: My argument -- perhaps I was
2 unclear -- is this, that if Mr. Gallagher had not been
3 kicked out of the company because of his toxic past, if
4 everyone agreed that if we should have a prospectus and
5 people should Google Mr. Gallagher's name and see his past
6 problems with the SEC this company is going nowhere.
7 However, if Mr. Gallagher had stayed in the company and
8 got his million shares, everyone agrees that the shares
9 that the father got, the bulk of them really were Dan
10 Gallagher's.

11 THE COURT: There's a fraud over there.
12 Deceiving everybody.

13 MR. LATO: Who's to say if Dan Gallagher if he
14 got shares wouldn't have given them to the investors.

15 THE COURT: At the time he transferred it was
16 the fraud. What he intended to do later on we don't know.
17 But we know at the time he was deceiving stockholders,
18 SEC, bankrupt people who had judgments.

19 MR. BODE: May I, your Honor?

20 THE COURT: And the SEC again.

21 MR. LATO: He was certainly not deceiving in
22 terms it of the investors the people at Watt. Did he lie
23 to the people who gave him money about what was happening
24 at a given time? Yes, he did.

25 THE COURT: Okay.

1 MR. LATO: But, I still maintain based upon the
2 evidence that in the end --

3 THE COURT: In the end.

4 MR LATO: -- he would have given them their
5 shares.

6 Having said that, if there were in a pre-Booker
7 world, your Honor would have to decide this conclusively.
8 Because we're in a post-Booker world --

9 THE COURT: I agree with you on the first part.

10 MR. LATO: So if your Honor finds that the
11 guideline range is correct as the government says it to
12 be, I'm still asking your Honor to impose --

13 THE COURT: That's legitimate.

14 MR LATO: -- the same sentence.

15 MR. BODE: Your Honor, the evidence at trial
16 showed he put the money in his pocket. He said I'm
17 selling you these stocks, this stock, and he put the money
18 in his pocket. So in terms of --

19 THE COURT: What do you want to repeat what I
20 said.

21 MR. BODE: I'm saying the amount that he put in
22 his pocket, your Honor, satisfies the guideline
23 calculation.

24 THE COURT: Didn't I say that in the bank
25 robbery, the wife gives the money back, you don't drop the

1 degree because it's no longer a million dollars, it may be
2 10 dollars, no, it's at the time it occurred. I agree
3 with you on restitution, restitution is only given back to
4 the people who were hurt, has nothing to do with the
5 amount at the time.

6 You want to be heard. What do you want to say
7 something else?

8 MR LATO: Because Mr. Gallagher was talking to
9 me while this was going back and forth, I want to make
10 sure that he focuses on what's germane to his part at the
11 sentencing.

12 THE COURT: Yes. Okay.

13 MR. LATO: Mr. Gallagher obviously is telling me
14 that you have a couple of things wrong and I'm explaining
15 to him as follows. The Court has ruled. That's it.

16 THE COURT: He can tell me.

17 MR LATO: Okay.

18 THE COURT: I'll take it.

19 (Pause.)

20 MR. LATO: What Mr. Gallagher is telling me is
21 that he was the actual person who incorporated Watt, and I
22 think that's clear that he started the company and that he
23 told people --

24 THE COURT: That's not an issue, go ahead.

25 MR LATO: -- that they were going to get their

1 shares. In other words, what he's really telling me is I
2 did always intend, even though I went about everything the
3 wrong way, I did intend always to give them their shares.
4 Should I have been better about doing what I did? Yes.
5 But I always want to make good on that.

6 THE COURT: Did you deceive them by putting them
7 in your father's name without consideration?

8 THE DEFENDANT: No.

9 THE COURT: You don't think so.

10 Did you deceive the SEC who you're supposed to
11 report and you're barred from doing that, did you deceive
12 them?

13 MR. LATO: Your Honor --

14 THE COURT: He still won't accept his
15 responsibility.

16 THE DEFENDANT: Your Honor, I do accept my
17 responsibility.

18 MR. LATO: Just stop talking, please.
19 Your Honor, one of the reasons that I'm reluctant for
20 your Honor to engage in a discussion with Mr. Gallagher,
21 because of I don't want it to go into where are you
22 accepting, here's the thing --

23 THE COURT: He's hurting himself, I agree where
24 you, but he's right.

25 MR. LATO: Your Honor, he doesn't. I went over

1 this at the jail.

2 THE COURT: Okay.

3 MR. LATO: Shut up. Don't talk right now.

4 Because what happens is he goes into this extreme of
5 things and I said -- I got it through to him -- did you
6 misrepresent things to the investors when they were asking
7 you, Dan, what's going on? Yes, he did.

8 But why he's always getting caught up in
9 everything, is but I always wanted to make good. But I
10 explained it, but at the time they were asking you what's
11 going on? You were misrepresenting things. Yes. What
12 he's hung up on now is that he gets the feeling that
13 your Honor believes he never intended to give anybody
14 anything and he's saying no, that's not true, I was wrong,
15 I shouldn't have done it the way that I did it. And
16 that's why I'm afraid if it goes back and forth he's going
17 to get into other things about details that are not
18 material to what sentence the Court must impose because
19 the only issue now is what sentence should the Court
20 impose for what he did wrong. And I'm asking the Court to
21 hear from him in a minute about what he has to say about
22 his drug problem, and actually thanking the Court for
23 putting him in and the reason for that, in jail he got the
24 help he should have received a long time ago with the
25 drugs and the alcohol and he's got to continue do it when

1 he gets out. One moment, please.

2 Your Honor, have you read my submission and all
3 the attached letters?

4 THE COURT: And how. Wasn't I able to discuss
5 it with you?

6 MR. LATO: Yes.

7 THE COURT: It was a long letter that your
8 lawyer sent in; a number of things.

9 MR. LATO: In that case, your Honor, I am not
10 going to repeat what your Honor has read. Mr. Gallagher
11 has asked you to refer to certain parts of my memorandum,
12 unnecessary, your Honor has read it. May he now speak on
13 his own?

14 THE COURT: Sure.

15 THE DEFENDANT: First of all, your Honor, I just
16 want to recognize that everyone is in this courtroom today
17 because of my actions, I'm sorry for my actions. When you
18 put me jail it was probably the best thing that happened
19 to me because I joined the -- I volunteered for the drug
20 and alcohol program at Nassau Correctional Center, and
21 after five months of being in that program it probably
22 saved my life, and I learned more about myself and
23 addiction than all the other times I tried to get sober.

24 I made mistakes and I committed a crime,
25 your Honor, and what I'm asking -- I'm sorry to my family,

1 my parents have been here through the entire court case,
2 my brother Timmy is here from Bloomington, Colorado. I
3 have some other people from the facility I'm at, the
4 pastor, Yvonne is here to represent me, Mike Leahy has
5 offered me a place to live and a job, my former wife
6 desperately needs me out there earning a living for my
7 family, my kids are suffering because of this. If you
8 want to impose a fine on me I'll pay a fine. If you want
9 to hold jail over my head, hold it over my head. But I'm
10 sorry for what I did. It will never happen again.

11 THE COURT: Government.

12 MR. BODE: Judge, as your Honor has said, I
13 think Mr. Gallagher, he's saying the words he thinks he
14 needs to say, but I don't think he accepts responsibility.
15 I think Mr. Gallagher is a thief and he doesn't realize
16 he's a thief, sadly. I leave the punishment to
17 your Honor's discretion.

18 I think your Honor should give him a significant
19 sentence in terms of deterrence of him and others, and I
20 would ask your Honor as part of supervised release, that
21 your Honor prohibit him from engaging in employment where
22 he's soliciting funds from investors.

23 He still doesn't understand what he did wrong in
24 terms of that, and he's dangerous in that regard to
25 people's pocketbooks. These investors -- Mr. Gallagher

1 has the gift of gab. He still has them bamboozled. They
2 in essence bought magic beans that they think are worth a
3 lot of money. I submit at the end of the day they won't
4 be. But Mr. Gallagher has an amazing gift of gab and he's
5 still trying to employ it here this morning.

6 So I think it's important as part of his
7 supervised release that you prohibit him from working in
8 employment where he's taking money from investors.

9 MR. LATO: I must correct just one false thing
10 that Mr. Bode said. Some of it is opinion, it's
11 arguments, it's understandable, but bamboozled that it's
12 what it's worth like we have in Ponzi schemes, the case
13 agent is here, he has spoken to Caine Finnerty, who
14 developed the fuel cells. It's a real technology.

15 THE COURT: What is the judgment by the SEC,
16 concerning his continuing in the practice of security.

17 MR LATO: He can't.

18 MR. BODE: He has no license. But he can
19 still -- even after he lost his license he was taking
20 money from investors, your Honor, even up until, as I
21 recall --

22 THE COURT: He was doing it, that is part of
23 this crime, taking it from investors. That's the reason
24 they put it in his father's name.

25 MR. BODE: One moment please. And despite his

1 lack of licensure he was working at a commodities broker
2 at the time of his arrest.

3 MR. LATO: Your Honor, Mr. Gallagher is saying
4 there are certain things that are incorrect, but I think
5 we're quibbling here because whether he had the license 2,
6 3 years ago or didn't, he was convicted at the trial. The
7 jury reached the correct verdict based upon the evidence
8 the way it was presented.

9 THE COURT: Counsel, you're minimize everything,
10 the SEC barred him from doing it and he's doing it
11 knowingly, he's doing it by putting it in his father's
12 name so he's defrauding the SEC, defrauding the customers,
13 even though they love him there's a fraud going on.
14 That's what we're here to prevent.

15 MR LATO: I understand. Listen, I know
16 your Honor from a number of years. When your Honor has
17 his mind made up, I'm not going to continue to argue a
18 certain point.

19 Assuming everything that your Honor says is
20 correct, and we must assume that because your Honor is the
21 Judge, I'm asking you to give this man a chance, hold over
22 his head as you did before, and very simple, you do wrong,
23 you're getting the maximum, I don't want to hear it, I of
24 course will probably say a couple of things why you
25 shouldn't, but you will ignore me like you rightfully did,

1 when I tried to keep him out the second time. But that's
2 it. Give him a chance to better himself, he sought help
3 already in jail, he gets out there, you make good, you
4 work, you pay your wife, you pay child support, you don't
5 use drugs, you make one mistake, in you go, I'll see us,
6 several years. If he messes up, give him five years when
7 he comes back because he'll deserve it.

8 THE COURT: Everybody finished?

9 MR. BODE: Yes, your Honor, thank you.

10 MR. LATO: Yes.

11 THE COURT: Based upon what I said previously, I
12 am going to give him some break but not as much as you or
13 he wants. He's a violator. He violated this crime under
14 the SEC, he lied to his people that love him that he
15 wouldn't spend any of the money until he collected a
16 million dollars. 493,000 disappeared, not having anything
17 do with their advantage. It turned out to stock probably
18 is good, there's no question about it, but he's not. We
19 then give him a break and he's back on drugs. I know he
20 has a drug and alcohol problem but he's also a menace to
21 society because he is bright and capable.

22 The sentence of the court with respect to
23 Count One, 31 months, three years supervised release, a
24 hundred dollar special assessment.

25 As far as restitution, I'm going to direct the

1 probation department to redetermine the amount of what
2 people lost, and I'm going to add this to it, those who
3 testified and said they want to keep their stock, they
4 don't want it back, disregard them. Those who didn't
5 answer your first request, disregard them as far as
6 restitution.

7 So the restitution if any is only for the people
8 who suffered if there are any. I'm not going fine him, he
9 has no money. In respects to Count Three and Six, 31
10 months to run concurrent with each other, Three and Six
11 and concurrent to the Count One. There it's five years
12 supervised release, to run concurrent.

13 In addition, a hundred dollar special assessment
14 on each count which makes it a total of 300. I will
15 direct as part of the supervised release he is not to
16 engage in securities, salesman, assistant or in any other
17 way. He's dangerous. He doesn't even realize to this day
18 what he did was wrong.

19 The fact that he turns out to be right doesn't
20 make it right. He defrauded people. He will do it again.
21 He's very bright in what he does. That doesn't justify
22 the stealing.

23 You have the right to appeal. You have 10 days
24 to request an attorney. If you need an attorney, request
25 within 10 days so you have a right to appeal within 10

1 days. You have a right the to -- yes?

2 MR. BODE: I'd just ask your Honor that Mr. Lato
3 speak with the defendant so if he is going to file an
4 appeal, Mr. Lato take care of this before he is done with
5 his CJA appointment.

6 MR. LATO: Yes, I will discuss that with him. I
7 assume I have your Honor's permission to remain on the
8 appeal.

9 THE COURT: Yes.

10 MR LATO: Your Honor just one thing in terms of
11 a recommendation. Mr. Gallagher asked me if your Honor
12 would recommend that he go to a federal prison that has a
13 drug and alcohol rehab program.

14 THE COURT: Granted. Not only that, we'll put
15 you in the program, the 500 hour program for drug
16 treatment.

17 MR. LATO: Mr. Gallagher said will your Honor
18 recommend a federal camp, whatever that means, I don't
19 know what a camp is.

20 THE COURT: No.

21 MR. LATO: All right.

22 MR. BODE: Thank you, your Honor.

23 MR LATO: Thank you.

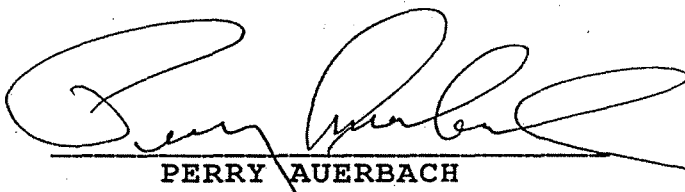
24 (Matter concluded.)

25

C E R T I F I C A T E

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3 STATE OF NEW YORK)
4 COUNTY OF SUFFOLK) : SS.:

5
6
7 I, Perry Auerbach, hereby certify that the
8 foregoing is a true transcript of my stenographic notes
9 from this proceeding.

10
11 

12 PERRY AUERBACH
13 Official Court Reporter
14 U.S. District Court
15 Eastern District of New York
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EXHIBIT H

UNITED STATES DISTRICT COURT
SECURITIES AND EXCHANGE COMMISSION

In the Matter of:

DANIEL J. GALLAGHER,)
Respondent.) File No. NY-8335

WITNESS: ADMINISTRATIVE PROCEEDINGS

PAGES: 1-27

PLACE: Securities and Exchange Commission
3 World Financial Center
New York, New York 10281

DATE: December 5, 2013

The above-entitled matter came on for
hearing at 10:13 a.m.B E F O R E: THE HONORABLE CAROL FOX FOELAK
Administrative Law Judge
(Appearing telephonically)

Page 1

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Page 2

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3 On behalf of the Securities and Exchange Commission:
4
5 KEVIN McGRATH, Senior Trial Counsel
6
7 ENFORCEMENT DIVISION, NEW YORK REGIONAL OFFICE
8 UNITED STATES SECURITIES AND EXCHANGE COMMISSION
9 Three World Financial Center
10 New York, New York 10281-1022
11
12 On behalf of the Respondent:
13
14 DANIEL J. GALLAGHER, Pro Se
15 (Appearing telephonically)
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Page 3

1 PROCEEDINGS
2 THE COURT: This is for a hearing
3 conference in the matter of Daniel J. Gallagher,
4 File Number 3-14630. And this conference is being
5 held by telephone on December 5th, 2013 at about
6 10:00 a.m. Eastern Time, and I'm Judge Foelak.
7 And may I have your appearances for the
8 record, please.
9 MR. McGRATH: Yes. For the Plaintiff,
10 Securities and Exchange Commission, it's Kevin
11 McGrath. I'm Senior Trial Counsel in the SEC's
12 New York office.
13 THE COURT: Mr. Gallagher?
14 MR. GALLAGHER: Yes. Dan Gallagher here.
15 Thank you.
16 THE COURT: Okay. Are there any settlement
17 negotiations I should be apprised of?
18 MR. McGRATH: No, Your Honor. At this time
19 we'd be asking for permission to move for summary
20 disposition.
21 I believe that there hasn't been an answer
22 filed. I hesitate only because I often don't receive
23 communications that Mr. Gallagher sends to the
24 Commission's office until a number of weeks later,
25 when your office forwards them to me. I haven't

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1 received them directly.
2 But, assuming there hasn't been an answer
3 filed, which I don't believe there is, we would ask
4 for permission to move for summary disposition --
5 THE COURT: Okay. Stop right there. He
6 did file an answer. And actually -- anyway, he did
7 file an answer dated October 21st. Nonetheless, that
8 doesn't mean you couldn't file a Motion for Summary --
9 but, anyway, he did file an answer.
10 MR. McGRATH: All right, Your Honor.
11 Looking through my file -- well, I see a letter from
12 him on October 21st. If that's what the Court's
13 referring to and that's going to be deemed an answer,
14 that's fine. We can alternatively move on the
15 ground of, he's collaterally estopped based on his
16 criminal conviction.
17 THE COURT: Okay. Anyway, I'll certainly
18 consider that. Mr. Gallagher?
19 MR. GALLAGHER: Personally, I think my
20 response to the Summary Judgment was included in the
21 document -- the 20-page document I sent to you earlier
22 in the summer, sometime in June of 2013, that
23 addressed not only the Motion to Amend, but also
24 addressed anything having to do with the Summary
25 Judgment.

Page 5

1 I think I answered every single question
 2 that I was asked to answer in part 2 of the Summary,
 3 and I think this is the –
 4 And I did it in a prose style as opposed
 5 to, you know, answering, you know, one for one. And
 6 the reason I did that was to highlight the fact that
 7 the SEC doesn't read, entirely, the documents sent, as
 8 they do not read the NAG LLC documents.
 9 Either they've read them and they don't
 10 understand them or they read them and they have
 11 fraudulently omitted sections that they know prove my
 12 innocence.
 13 So, what I'd like to do is move this to a
 14 trial. I am rigorously defending myself in an appeal
 15 right now on a conviction, so, the conviction is not
 16 confirmed.
 17 I have a December 13th deadline for
 18 documents to return to the criminal court regarding my
 19 appeal and I do not wish, at this time, to be in a
 20 situation where, you know, I may be jeopardizing, you
 21 know, my criminal appeal while I'm dealing with the
 22 SEC.
 23 And I don't find any reason why the SEC has
 24 to move with this action right now. The SEC keeps
 25 saying that they're protecting the investing public.

Page 6

1 Well, I'm currently incarcerated until the summer
 2 of – this coming summer. So, I don't see a need to
 3 put a rush on this.
 4 And I think I'm entitled to, after being in
 5 this business 25 years and having owned a firm for
 6 over a decade without a single customer complaint
 7 lodged against me and my firm and had a single
 8 customer complaint in this NAG LLC issue, I think both
 9 you and the SEC have seen the letters to
 10 Judge Wexler from the investors. The investing public
 11 is very happy with what goes out.
 12 Therefore, I'm asking to not have a summary
 13 judgment. If the SEC does not want to try and
 14 negotiate some sort of settlement, then I'd like to go
 15 to trial.
 16 THE COURT: Okay. Well, let me just make a
 17 couple of points. In regard to, you know, this
 18 case – you are pursuing an appeal. And as far as
 19 what's the rush, I am required by the Commission's
 20 rules to wrap this thing up within a certain number of
 21 months. So, you know, don't blame Mr. McGrath for
 22 that one.
 23 MR. GALLAGHER: Okay.
 24 THE COURT: Okay. Because, there certainly
 25 are situations, many situations, where people are

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1 pursuing appeals and the administrative proceeding is
 2 based on the injunction or conviction or whatever it
 3 was that was entered in the District Court, and if the
 4 appeal reverses it or turns on the conviction, then
 5 the administrative proceedings, you know, any sanction
 6 put on as a result of the administration – the
 7 administrative proceeding would be done away with.
 8 So, it's the Commission's precedent not to
 9 wait for a resolution of appeal. But, indeed – and
 10 good you brought that up. Because, you know, you
 11 mentioned quite a few things in your file, you know,
 12 basically that you (unintelligible) facts were taken
 13 into account.
 14 And that's the proper way to pursue that,
 15 through Appeals, and it cannot be pursued in the
 16 administrative proceedings. You know, I can't undo
 17 the results of the judgment in the District Court.
 18 MR. GALLAGHER: But, Your Honor, aren't you
 19 required to wait for a confirmation of that judgment?
 20 THE COURT: No. I mean, the judgment is
 21 there. If it's overturned by the Court of Appeals,
 22 then the administrative proceeding is overturned.
 23 But, no. The Commission's precedent is,
 24 even if a person has appealed to the Court of Appeals,
 25 they go forward based on the judgment in the District

Page 8

1 Court.
 2 Okay. You mentioned – you sort of
 3 mentioned the possibility of settlement. I don't know
 4 what the Division of Enforcement had in mind, whether
 5 it would be anything more than an industry bar, but,
 6 maybe they would care to speak to that.
 7 MR. McGRATH: Yes, Your Honor. We would be
 8 seeking more than an industry bar. We would be
 9 seeking a significant amount of disgorgement here, all
 10 of the gotten gains that Mr. Gallagher received and
 11 sent, which would be over \$400,000.
 12 And unless he's interested in settling with
 13 us on some number in that range, which I can only
 14 anticipate, I don't expect that any settlement
 15 discussions would be very fruitful at this time. But,
 16 maybe he'll surprise me.
 17 THE COURT: Well, let me just explore that
 18 a little bit. You speak of filing a Motion for
 19 Summary Disposition. Certainly you can get an
 20 industry bar on the basis of that, but – because,
 21 there's no, really, material fact that this – this
 22 criminal judgment occurred.
 23 But, how much, if any, ill-gotten gains
 24 there were, as a matter of fact, you can't pursue that
 25 by summary disposition unless he agrees to it, which I

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1 doubt he will. So, that might be something to take
 2 into consideration.
 3 And I know that disgorgement,
 4 Mr. Gallagher -- and disgorgement is different from
 5 restitution. Restitution is what victims lost,
 6 disgorgement is what the wrongdoer gained. Like, a
 7 person could cause \$10 million in losses and, you
 8 know, only profit \$1. Or conversely.
 9 But, anyway, I notice that the Court, even
 10 though disgorgement and restitution are different,
 11 certainly, I notice that the Court imposed no
 12 restitution and that Mr. Gallagher is represented in a
 13 criminal matter by CJA attorney and wonders, you know,
 14 even if you, you know, went through a lengthy trial
 15 and, you know, proved that he received \$400,000 in
 16 ill-gotten gains, what would be the point?
 17 MR. McGRATH: Well, the point would be that
 18 he's still -- he's going to be out of jail, you know,
 19 in the next year or so and, given his history,
 20 frankly, and given how much he, at least, claims the
 21 stock that he gave to these investors and that he
 22 apparently has access to its worth, there very well
 23 could be money that we could collect from him in the
 24 future.
 25 He still has a long life ahead of him and

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1 there was a significant amount of money that he gained
 2 and we can document were spent for ways that were not
 3 intended by the investors.
 4 So, we think that there is value in
 5 pursuing that against him, Your Honor.
 6 MR. GALLAGHER: Your Honor, I challenge
 7 Mr. McGrath to document and prove that those moneys
 8 were spent in any way that was different than what was
 9 mentioned in the document.
 10 I'd like to have Mr. McGrath to agree on
 11 the record that the facts in this document, the
 12 Amended Order or the Cease and Desist of Summary
 13 Judgment, that he believes is via true and correct
 14 facts. I'd like to have him say that on the record.
 15 THE COURT: Let me just mention -- let me
 16 just interject one thing. This idea of Mr. Gallagher
 17 having future earnings that would enable him to pay
 18 off the alleged ill-gotten gains --
 19 You know, I see that one of the conditions
 20 placed on him by the trial judge was not to engage in
 21 the securities industry or having anything to do with
 22 securities or raising money. I just thought I'd
 23 mention that.
 24 MR. McGRATH: No, Your Honor. That's a
 25 valid point. Unfortunately, though, experience has

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1 taught us all that, often times people in that
 2 position don't necessarily honor injunctions or
 3 restrictions on post-conviction behavior and find
 4 themselves back in the same situation again. So,
 5 that's part of, you know, our history.
 6 But -- certain people. You can't predict
 7 everybody's behavior in the future. But, that's no
 8 guarantee that that won't happen in the future.
 9 MR. GALLAGHER: Your Honor, can we get back
 10 to my request that Mr. McGrath state on the record
 11 that he believes everything in this Amended Order and
 12 Cease and Desist of Summary Judgment are true and
 13 correct facts?
 14 MR. GALLAGHER: Your Honor, I don't know
 15 what the point of this is. This isn't a trial. The
 16 Commission has issued an amended order based on these
 17 facts. That's what's relevant.
 18 We're happy to go forward with the trial,
 19 if necessary, to prove these facts. I think summary
 20 disposition is the first step to, at least, eliminate
 21 certain of the relief that we're requesting.
 22 I'm happy to agree to whatever the schedule
 23 the Judge -- that you suggest we enter into. But, you
 24 know, that's the appropriate way to deal with the
 25 allegations in the OIP.

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1 MR. GALLAGHER: How do I prove that,
 2 Your Honor? I think these facts are not proven,
 3 nothing's confirmed in the criminal court. I don't
 4 even believe the SEC did a thorough investigation.
 5 And I can go through many, many instances in this
 6 document which they allege where they're a hundred
 7 percent wrong.
 8 And if we have to do that, I'm prepared to
 9 do that. Because, all Mr. McGrath has done is simply
 10 taken the rubber stamp (unintelligible) and has passed
 11 it along.
 12 He's added nothing more to it other than he
 13 wants to amend it based upon what one of the
 14 secretaries has mentioned was standard procedure. And
 15 there's nothing standard about the fact that --
 16 I'm a founder of the NAG LLC. I was the
 17 first managing member. He's saying this document is a
 18 hundred percent incorrect. Either he never fully read
 19 the NAG LLC document or he's purposely omitting
 20 sections which has been fraudulent. So, I believe
 21 it's one of those two.
 22 And I'd like to believe that maybe they
 23 just didn't read the document thoroughly, just because
 24 I've been in this industry for 25 years, so, I'd like
 25 to believe that they're not omitting or doing anything

Page 13

1 fraudulent, you know, to do what you use as a term,
 2 railroading.
 3 I'd like to believe that, if we all sat
 4 down and really went over the NAG LLC document, you'll
 5 see very clearly that I abided by every single letter
 6 of that document.
 7 And not only -- don't believe me, all
 8 right? Because, Mr. McGrath wants to talk about
 9 history, just don't compare me to anybody else. Read
 10 the letters from the members of the LLC -- and they
 11 are people. That's the public.
 12 They are telling a federal court judge,
 13 Judge Wexler, that this should have never happened,
 14 that I delivered as I said I would, that nothing went
 15 wrong, that this whole thing was a mistake, and all
 16 that's happening here is the SEC wants to get a little
 17 notch in their belt either before the end of the year
 18 or whatever. I don't know.
 19 But, I also want to say one more thing.
 20 There's a lot of ways to make money in this country.
 21 And I don't mean to go back and break the law. If I'm
 22 not allowed to do something once I get out of here,
 23 I'm not doing it. There's plenty of other ways to
 24 make money. I could start a trucking company and make
 25 money. I'm a hard worker.

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1 So, I don't need to be slandered or shown
 2 in the same light as Mr. McGrath wants to try and make
 3 this Judge and this Court believe that I'm one of the
 4 rest of the people who do whatever, you know, he keeps
 5 trying to bar me from doing. Because, that's not who
 6 I am.
 7 MR. McGRATH: Judge, can I make one very
 8 important point in response to this? In 2008
 9 Mr. Gallagher was named as a defendant in an action in
 10 the Federal District Court of New York in front of
 11 Judge Rakoff, the SEC vs. Christopher Castaldo,
 12 et al.
 13 He was found liable for violations of
 14 Section 15(b)(7) of the Exchange Act and 15(b)
 15 thereunder.
 16 Judge Rakoff issued a final judgment
 17 against Mr. Gallagher ordering him to pay
 18 disgorgement, prejudgment interest and civil penalties
 19 totaling \$155,000, none of which has been paid to
 20 date.
 21 Interestingly, Judge Rakoff declined to
 22 enjoin Mr. Gallagher because he concluded that, quote,
 23 "his likelihood of recidivism was low and declined to
 24 impose a penalty in the amount requested because it
 25 would be excessive, given Mr. Gallagher's limited

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1 financial resources."
 2 I was trying to be kind to Mr. Gallagher
 3 and not specifically refer to that, but it's just
 4 outrageous that he's making these representations to
 5 you after he was previously found liable in a separate
 6 SEC action and Judge Rakoff gave him leniency, refused
 7 to impose a penalty because of the less likelihood of
 8 recidivism.
 9 Unfortunately, Judge Rakoff was wrong,
 10 because Mr. Gallagher's been found guilty again. So,
 11 it's just outrageous that he's making these claims now
 12 that he wouldn't violate the law again.
 13 MR. GALLAGHER: Your Honor -- Mr. McGrath,
 14 don't try and be nice to me and hide behind the Queen
 15 of English and tell me that you were trying to have
 16 courtesy and not mention something that happened in
 17 the District Court of Manhattan.
 18 I've been a stockbroker 25 years. That's
 19 25 years of hard work, okay, and working for my
 20 investors, and you're going to bring up one issue in
 21 front of Judge Rakoff.
 22 He didn't give me an injunction because he
 23 couldn't give me an injunction. Because, he tried to
 24 give me injunction and could not enjoin me from what
 25 happened, okay?

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1 And at the end of the day, okay, I have an
 2 issue where I was trying to buy a guy's research firm,
 3 because the SEC said come -- as of 2001, independent
 4 research -- I was trying to buy a guy's research firm.
 5 It wouldn't seem that way because the woman from the
 6 SEC who clad herself in the American flag was
 7 Judge Rakoff's clerk for eight years prior. And she
 8 played the game with Rakoff.
 9 So, at the end of the day, yeah, I got a
 10 fine, okay? It's a \$155,000 fine. It's actually more
 11 than that. It's almost 190.
 12 But, let me explain something to you,
 13 Mr. McGrath. Before I got locked up I spoke monthly
 14 with Senior Attorney for the enforcement of the SEC,
 15 Mr. John Graubard, and he and I have e-mailed back and
 16 forth and back about his believing that when I have
 17 the money I will pay this money.
 18 So, don't try and play me like you're
 19 trying to do me a favor and not mention -- if there
 20 was one issue in front of a district judge and for
 21 25 years doing business --
 22 I owned a stockbroker's firm. I was fully
 23 approved by FINRA to own that stockbroker's firm. I
 24 don't have a single complaint in ten years. You want
 25 to talk about history? That's history.

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1 That's through 9/11, the market falling off
 2 a cliff, the dot-com fallout, the world going into a
 3 recession and (unintelligible) \$70 million bankruptcy,
 4 I ain't got a single compliant. And that's after
 5 FINRA, the SEC and the Justice Department hired
 6 130 investors in making claims against me. Not a
 7 single one did.
 8 MR. McGRATH: Well, Your Honor, again, I
 9 don't know how much more you want to hear, but, I
 10 actually have evidence that there were four times
 11 Mr. Gallagher has been disciplined by the NASD,
 12 including being barred by FINRA. So, I'm not sure
 13 what he's talking about, but.
 14 MR. GALLAGHER: I'm ready to discuss every
 15 one of them. Because, after a 25-year period, compare
 16 that to guys that own firms, compare it to the guys
 17 that own J.P. Morgan. Because, I'm willing to defend
 18 myself --
 19 THE COURT: Okay. Anyway, Mr. Gallagher,
 20 taking note of the fact that you take exception to
 21 various of the alleged facts that are in the OIC,
 22 really the only basis for his Motion for Summary
 23 Disposition is the facts of the conviction, you know,
 24 which I think we have to agree did occur. So, I just
 25 thought I would mention that.

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1 MR. GALLAGHER: Well, let me ask you,
 2 Your Honor, you said you're on a timeframe to which
 3 you have to move this along. I believe that I had
 4 read in one of your documents you have 300 days from
 5 today, I think, to make a decision.
 6 Now, what I'm asking for is a nine-month
 7 continuance. And let me address this and defend
 8 myself once I come out of the Manchester camp.
 9 THE COURT: Okay. A nine-month continuance
 10 is not in the cards. What I would suggest is that
 11 Mr. McGrath file his Motion for Summary Disposition,
 12 which you have, you know, sent me a reply to it and so
 13 on, and that would either get rid of part of the
 14 matter or the whole thing if Mr. McGrath rethinks
 15 whether he wants that or disgorgement, which he may
 16 want to rethink.
 17 Mr. McGrath, do you have a schedule in mind
 18 by which time you would file your Motion for Summary
 19 Disposition?
 20 MR. McGRATH: I could do it within three
 21 weeks for sure, Your Honor.
 22 THE COURT: And I think, Mr. Gallagher, you
 23 would have quite -- you know, like, a month or six
 24 weeks to reply because of the logistical difficulties
 25 that he may encounter.

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1 MR. GALLAGHER: Your Honor, let me ask you
 2 this: What prohibits you from pushing this off to a
 3 later date, the -- the filing, the asking Mr. McGrath
 4 to file a summary judgment?
 5 THE COURT: Okay. Let's put it this way.
 6 If there is going to be an in-person hearing, then it
 7 should take place -- it has to take place in the
 8 relatively near future.
 9 And if we get rid of this Motion for
 10 Summary Disposition, we'll at least know what it's
 11 going to be in the hearing.
 12 And that's just a case of -- well, anyway,
 13 you reading it and then you replying to it.
 14 MR. GALLAGHER: Well, I guess what I'm
 15 asking is, then, what was the purpose of this phone
 16 call? Because, we already -- based upon my stating
 17 that the conviction was confirmed yet because of an
 18 appeal, I understand that you allowed the order
 19 instituting a proceeding to be amended. I get that.
 20 I understand that.
 21 But then, it seems to me that this phone
 22 call was a waste of time, because, now you're allowing
 23 the SEC to go ahead and write a document of summary
 24 judgment, which you said earlier in this conversation
 25 that, based upon my conviction, you would probably

Page 20

1 grant.
 2 THE COURT: Well, it seems like he may --
 3 it's just not clear how much he wants. But, anyway --
 4 and what he's going to ask for, anyway, I guess, would
 5 be to bar you from the securities industry, which I
 6 guess you pretty much have been by a court.
 7 But, anyway -- okay. So --
 8 MR. GALLAGHER: Your Honor, I'm not barred
 9 by the court.
 10 THE COURT: No, no, no. Not in so many
 11 words, in different words.
 12 MR. GALLAGHER: I understand that. And
 13 because this conviction is not confirmed, I'm not even
 14 barred by FINRA. I'm still on appeal by FINRA.
 15 So, you know, the bottom line is, FINRA
 16 wasn't able to bring a proceeding against me and
 17 neither was the SEC, so FINRA made a referral to the
 18 SEC, the SEC made a referral to the Justice
 19 Department, the Justice Department had the money and
 20 rolled the dice, and they got a conviction based upon
 21 a testimony from my childhood friend in fourth grade
 22 who had twisted his statement on the witness stand --
 23 And my friend had never been in a situation
 24 like that. He was totally embarrassed and he ended up
 25 writing a letter to the judge afterwards saying he was

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1 played by the prosecution.
 2 So, that one sentence out of his mouth is
 3 what allowed me -- the prosecution to get a guilty
 4 verdict on his one statement, which said, with that,
 5 then brought the securities and wire fraud. So, on
 6 one sentence out of my best friend since fourth
 7 grade's mouth, all this has happened.
 8 And by the way, Your Honor, that's after
 9 the SEC contacted over 130 of my investors, spoke to
 10 all 12 of the people in NAG LLC, FINRA did the exact
 11 same thing, plus these 12 investors were visited by
 12 the FBI and the Justice Department and not a single
 13 person made a complaint against Dan Gallagher.
 14 And as I sit here today, the company that I
 15 founded, WATT Fuel Cell, is currently offering stock
 16 at \$5 a share and every one of my investors in NAG LLC
 17 own that stock at 53 cents.
 18 So, you know, I'm really in a situation
 19 here where I'm asking you to not rubber-stamp this and
 20 let this thing sit on a desk somewhere until, you
 21 know, my appeal is heard in criminal court.
 22 THE COURT: Okay. Well, what you say,
 23 you're pursuing that, then I guess there are probably
 24 other things if they have your conviction overturned.
 25 But, I am not authorized to overturn the facts

Page 22

1 underneath it.
 2 So, we're going to go ahead with this
 3 Motion for Summary Disposition and see where we go
 4 with it.
 5 Now, Mr. McGrath, what day -- you said
 6 three weeks, that's December 26th.
 7 MR. McGRATH: I just noticed that,
 8 Your Honor. I'd ask not to have to it due that day.
 9 The rest of the week is the holidays. I can file it
 10 by the -- I could shoot for filing it by the 28th,
 11 Your Honor, December 28th.
 12 THE COURT: Okay. So, let's put
 13 Mr. Gallagher's opposition to, like, February 3rd,
 14 which is the first Monday in February. So, that
 15 should hopefully be enough time.
 16 Okay. Does anyone have anything else?
 17 MR. GALLAGHER: I do, Your Honor. I'm
 18 still waiting for Mr. McGrath to admit that he agrees
 19 that everything that's in this document is true and
 20 correct facts.
 21 THE COURT: Mr. McGrath, if you want to
 22 file your motion, you know, after the holidays, then
 23 that's okay, too.
 24 MR. McGRATH: Well, Your Honor, given the
 25 date that you pushed it up for Mr. Gallagher, which I

Page 23

1 understand and I have no problem with, I wouldn't mind
 2 getting a little extra time there. I would appreciate
 3 that.
 4 THE COURT: Okay. Well, I'm going to push
 5 Mr. Gallagher, also.
 6 MR. McGRATH: That's fine.
 7 THE COURT: What about during the week of
 8 January 6th?
 9 MR. McGRATH: Any day that week's fine,
 10 Your Honor.
 11 THE COURT: Well, how about the 10th, and
 12 then Mr. Gallagher can have until, like, the 21st of
 13 February, which is a Friday.
 14 MR. McGRATH: I appreciate that,
 15 Your Honor.
 16 THE COURT: Okay. Does anyone have
 17 anything else?
 18 MR. GALLAGHER: No one's
 19 addressed the fact that I'm asking Mr. McGrath to
 20 state that he believes everything he put in the
 21 document is true and correct.
 22 MR. McGRATH: Your Honor, I've already
 23 addressed it.
 24 MR. GALLAGHER: What did you say? Just yes
 25 or no?

Page 24

1 THE COURT: Well, actually, Mr. McGrath is
 2 not a witness and who knows who wrote this document.
 3 I certainly don't know who wrote it.
 4 MR. GALLAGHER: Well, he sent me a document
 5 back in October saying that now he and Mr. Graubard
 6 agree that everything they put in these documents are
 7 true and correct. I read him just the statement. He
 8 said had said that. He reviewed those documents, he
 9 reviewed the NAG LLC, and he believes that these
 10 statements are true and correct.
 11 MR. McGRATH: Your Honor, I don't believe
 12 the purpose of this call is for me to be
 13 cross-examined by Mr. Gallagher. We have allegations
 14 that have been issued by the Commission and we are
 15 prepared to move forward and support them in the
 16 appropriate time and place.
 17 THE COURT: Okay. Very good. Does anyone
 18 have anything else?
 19 MR. McGRATH: No, Your Honor.
 20 THE COURT: Okay. Thank you everyone for
 21 your participation and I will memorialize this order
 22 and send it out to you.
 23 MR. McGRATH: Thank you, Your Honor.
 24 THE COURT: And goodbye.
 25 (Time noted: 10:42 a.m.)

Page 25

1 SCOPIST'S CERTIFICATE

2

3

4

5 I, TONI FREEMAN GREENE, hereby certify that

6 the foregoing transcript consisting of 27 pages is a

7 complete, true and accurate transcript of the hearing

8 held on Thursday, December 5, 2013 at 3 World

9 Financial Center, New York, New York, in the matter of

10 DANIEL J. GALLAGHER, RESPONDENT.

11 I, further certify that this proceeding was

12 reported by Toni Freeman Greene and that the foregoing

13 transcript has been scoped by me.

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18 TONI FREEMAN GREENE DATE

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24 UNITED STATES

25 SECURITIES AND EXCHANGE COMMISSION

Page 27

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2 In the Matter of: DANIEL J. GALLAGHER, RESPONDENT

3 File Number: NY-8335

4 Date: December 5, 2013

5 Location: 3 World Financial Center

6 New York, New York

7

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9 This is to certify that I, Toni Freeman

10 Greene, the undersigned, do hereby swear and affirm

11 that the attached proceedings before the United States

12 Securities and Exchange Commission were held according

13 to the record and that this is the original, complete,

14 true and accurate transcript that has been compared to

15 the reporting or recording accomplished at the

16 hearing.

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22 TONI FREEMAN GREENE DATE

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Page 26

1 REPORTER'S CERTIFICATE

2

3 I, TONI FREEMAN GREENE, reporter, hereby

4 certify that the foregoing transcript of 27 pages is

5 a complete, true and accurate transcript of the

6 testimony indicated, held on December 5, 2013, at

7 3 World Financial Center, New York, New York, in the

8 matter of DANIEL J. GALLAGHER, RESPONDENT.

9 I further certify that this proceeding was

10 reported by me and that the foregoing transcript was

11 prepared under my direction.

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18 TONI FREEMAN GREENE DATE

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25 PROOFREADER'S CERTIFICATE

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