SECURITIES AND EXCHANGE COMMISSION

This file is maintained pursuant to the Freedom of Information Act (5 U.S.C. 552). It contains a copy of each decision, order, rule or similar action of the Commission, for **November 2012**, with respect to which the final votes of individual Members of the Commission are required to be made available for public inspection pursuant to the provisions of that Act.

Unless otherwise noted, each of the following individual Members of the Commission voted affirmatively upon each action of the Commission shown in the file:

MARY L. SCHAPIRO, CHAIRMAN

ELISSE B. WALTER, COMMISSIONER

LUIS A. AGUILAR, COMMISSIONER

TROY A. PAREDES, COMMISSIONER

DANIEL L. GALLAGHER, COMMISSIONER

(44 Documents)

Commissioner Gallagher
not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9332 / July 5, 2012

SECURITIES EXCHANGE ACT OF 1934
Release No. 67359 / July 5, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-14863

In the Matter of **UBS FINANCIAL SERVICES INC. OF PUERTO RICO** **Respondent.**	**ORDER EXTENDING TIME TO RETAIN AN INDEPENDENT THIRD-PARTY CONSULTANT**

I.

On May 1, 2012, the Commission issued an 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, Making Findings, and Imposing Remedial Sanctions and a Cease-And-Desist Order ("Order") against Respondent UBS Financial Services Inc. of Puerto Rico ("UBS PR"), Securities Act Rel. No. 9318, Securities Exchange Act Rel. No. 66893 (May 1, 2012).

Among other things, the Commission ordered UBS PR to retain, within sixty days of the entry of the Order, an independent third-party consultant, not unacceptable to the staff of the Commission, to review UBS PR's closed-end fund disclosures and trading and pricing policies, procedures, and practices for adequacy.

UBS PR has requested additional time necessary to retain an independent third-party consultant, not unacceptable to the staff of the Commission, and UBS PR has consented to do so by August 10, 2012.

II.

Accordingly, IT IS ORDERED that:

A. The time for UBS PR to retain an independent third-party consultant, not unacceptable to the staff of the Commission, has been extended to August 10, 2012.

By the Commission.

Elizabeth M. Murphy

Elizabeth M. Murphy
Secretary

SECURITIES AND EXCHANGE COMMISSION

17 CFR Ch. II

[Release Nos. 33-9367, 34-68140, IA-3498, IC-30256, File No. S7-11-12]

Regulatory Flexibility Agenda

AGENCY: Securities and Exchange Commission.

ACTION: Notice of semiannual regulatory agenda.

SUMMARY: The Securities and Exchange Commission approved the publication of an agenda of its rulemaking actions pursuant to the Regulatory Flexibility Act. The agenda, which is not a part of or attached to this document, was submitted by the Commission to the Regulatory Information Service Center for inclusion in the Unified Agenda of Federal Regulatory and Deregulatory Actions, which is scheduled for publication in its entirety on www.reginfo.gov in October 2012. The version of the Unified Agenda to be published in the Federal Register will include only those rules for which the agency has indicated that preparation of an analysis under the Regulatory Flexibility Act is required. Information in the Commission's agenda was accurate on November 2, 2012, the date on which the Commission's staff completed compilation of the data. To the extent possible, rulemaking actions by the Commission after that date will be reflected in the agenda. The Commission invites questions and public comment on the agenda and on the individual agenda entries.

DATES: Comments should be received on or before [30 days after publication in the Federal Register].

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/other.shtml); or

- Send an e-mail to rule-comments@sec.gov. Please include File Number S7-11-12 on the subject line; or
- Use the Federal eRulemaking Portal (http://www.regulations.gov). Follow the instructions for submitting comments.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number S7-11-12. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (http://www.sec.gov/rules/other.shtml). Comments are also available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Anne Sullivan, Office of the General Counsel, 202-551-5019.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act ("RFA"), (Pub. L. No. 96-354, 94 Stat. 1164 (September 19, 1980), requires each federal agency in April and October of each year to publish in the Federal Register an agenda identifying rules that the agency expects to consider in the next twelve months that are likely to have a significant economic impact on a substantial number of small entities (5 U.S.C. 602(a)). The RFA specifically provides that publication of the agenda does not preclude an agency from considering or acting on any matter not included in the agenda, and that an agency is not required to consider or act on any matter that is included in the agenda (5 U.S.C. 602(d)). Actions that do not have an estimated date are placed in the long term category; the Commission may nevertheless act on items in that category within the next twelve months. The agenda includes new entries, entries carried over from previous publications, and rulemaking actions that have been completed (or withdrawn) since publication of the last agenda. The Commission invites public comment on the agenda and on the individual agenda entries.

By the Commission.

Elizabeth M. Murphy

Elizabeth M. Murphy
Secretary

Dated: November 2, 2012

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-68147; File No. SR-OCC-2012-17)

November 2, 2012

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of No Objection to Advance Notice Filing, as Modified by Amendment No. 1 Thereto, Relating to the Margining of Segregated Futures Customer Accounts on a Gross Basis

I. Introduction

On September 14, 2012, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") an advance notice concerning a proposed rule change SR-OCC-2012-17 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")[1] and Rule 19b-4 thereunder.[2] The proposed rule change was published in the Federal Register on September 26, 2012.[3] The advance notice was published in the Federal Register on October 1, 2012.[4] On October 11, 2012, OCC filed Amendment No. 1 to the proposed rule change and the advance notice.[5] The

1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

3 "Notice of Filing of Proposed Rule Change Relating to the Margining of Segregated Futures Customer Accounts on a Gross Basis," Release No. 34-67896 (September 20, 2012), 77 FR 59231 (September 26, 2012).

4 "Advance Notice Relating to the Margining of Segregated Futures Customer Accounts on a Gross Basis," Release No. 34-67921 (September 25, 2012), 77 FR 59998 (October 1, 2012).

5 In Amendment No. 1, OCC proposed wording changes and responded to a CFTC interpretation concerning what constitutes initial margin. Specifically, it amended the text of Rule 601 by inserting the word "initial" before the word "margin," to more closely parallel CFTC Rule 39.13(g)(8)(i)[5] which references "initial margin." It also amended Item 3 of Form 19b-4 to, first, include CFTC's definition of "initial margin" and second, to clarify which components of OCC's margin calculations meets the definition of "initial margin" as the term is defined under CFTC Rules.

Commission received no comment letters on either publication. This publication serves as a notice of no objection to the advance notice.

II. Description of the Proposed Rule Change

This advance notice concerns a proposed rule change. The purpose of this proposed rule change is to provide for the calculation of initial margin for OCC segregated futures customer accounts on a gross basis, as required by CFTC Rule 39.13(g)(8)(i).[6]

The CFTC's Customer Gross Margin Rule

On October 18, 2011, the CFTC issued final regulations implementing many of the new statutory core principles for CFTC-registered derivatives clearing organizations ("DCOs") enacted under the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"). As a registered DCO (as well as a registered securities clearing agency), OCC has previously implemented rule changes designed to bring OCC into compliance with CFTC rules applicable to DCOs that went into effect on January 9, 2012[7] and May 7, 2012.[8] OCC believes it is necessary to amend its Rules in order to ensure compliance with the gross margin rule, which requires a DCO to "collect initial margin on a gross basis for each clearing member's customer account(s) equal to the sum of the initial margin amounts that would be required by the derivatives clearing organization for each individual customer within that account if each individual customer were a clearing

---

Amendment No. 1 is technical in nature, and therefore the Commission is not publishing Amendment No. 1 for public comment.

6 17 CFR 39.13(g)(8)(i).

7 See SR-OCC-2011-18.

8 See SR-OCC-2012-06.

member"[9] as required by CFTC Rule 39.13(g)(8)(i). The gross margin rule goes into effect on November 8, 2012; however, OCC proposed to begin complying with the gross margin rule on November 5, 2012 as described herein.

OCC's System for Calculating Margin

OCC currently calculates margin requirements for each clearing member's segregated futures customer account held at OCC on a net basis by applying OCC's System for Theoretical Analysis and Numerical Simulations ("STANS"). STANS calculates initial margin with respect to each account of a clearing member, including each clearing member's futures customer account(s), on a net basis. STANS includes both a net asset value ("NAV") component and a risk component, with the risk component being the equivalent of "initial margin" as that term is defined under CFTC Rules. The NAV component marks all positions to market and nets long and short positions to determine the NAV of each clearing member's portfolio of customer positions. The NAV component represents the cost to liquidate the portfolio at current prices by selling the net long positions and buying in the net short positions. The risk component is estimated by means of an expected shortfall risk measure obtained from "Monte Carlo" simulations designed to measure the additional asset value required in any portfolio to eliminate an unacceptable level of risk that the portfolio would liquidate to a deficit.

OCC presently lacks sufficient information about individual customer positions to calculate initial margin at the level of each individual customer. However, OCC has been coordinating with other DCOs to establish an industry-wide mechanism for complying with the customer gross margin rule. Pursuant to this new system, each DCO's clearing

---

9 Derivatives Clearing Organization General Provisions and Core Principles, 76 FR 69334, 69439 (November 8, 2011).

members will submit data files to the DCO identifying positions by numerical customer identifiers.[10] OCC will use this information to calculate initial margins, using STANS, for each customer identifier of a clearing member and to aggregate those initial margin calculations to determine the total futures customer margin requirement for the clearing member's segregated futures customer account(s) held at OCC.[11] OCC will then compare the aggregate positions reported by each clearing member with its own records and make any needed adjustments to the initial margin calculation to ensure all positions on OCC's books are properly margined.

Proposed By-Law and Rule Changes

The proposed changes to OCC's Rules provide for the calculation of initial margin for segregated futures customer accounts on a gross basis and mandate submission of the clearing member data files necessary to allow OCC to calculate initial margin at the level of each futures customer. In the event that the data included in these data files is incomplete (for example, if OCC shows positions held in a clearing member's segregated futures accounts, but those positions are not reflected in the data file), OCC will create a

---

10 The position data provided to OCC by clearing members will not include (a) information with respect to the allocation of margin assets to particular customers, nor (b) information with respect to settlement obligations arising from the exercise, assignment or maturity of cleared contracts. For this reason, OCC will treat all margin assets and settlement obligations for each account to which the gross margin rule applies as being in sub-accounts of the Clearing Member. OCC will calculate margin, using STANS, separately for each sub-account and will aggregate the calculated margin requirements at the level of the clearing member's segregated futures customer account to which the sub-accounts relate.

11 OCC currently carries the following account types that are segregated pursuant to Section 4d of the Commodity Exchange Act: Segregated Futures Accounts, Segregated Futures Professional Accounts, non-Proprietary X-M accounts, and internal non-proprietary cross-margining accounts. All such accounts would be margined on a gross basis under the proposed amendments to OCC Rule 601.

separate sub-account to be used for initial margin calculation purposes only. Positions recorded on OCC's books and records, but not reflected in the data file, will be attributed to this sub-account and an initial margin amount will be calculated for the sub-account. This initial margin amount will be added to a clearing member's initial margin requirement. OCC has determined to adopt this approach to dealing with discrepancies between its own records and clearing member data files in order to ensure that OCC does not collect an inadequate amount of initial margin from clearing members.

III. Description of the Advance Notice

OCC filed its proposed rule change as an advance notice pursuant to Section 806(e)(1) of the Payment, Clearing, and Settlement Supervision Act of 2010 ("Clearing Supervision Act") because OCC believed it could be deemed to materially affect the nature or level of risks presented by OCC. OCC's proposed rule changes would require the collection of futures customer margin on a gross basis in order to comply with CFTC Rule 39.13(g)(8)(i). This is expected to lead to an increase in the amount of margin OCC collects from its clearing members with respect to their segregated futures customer accounts held at OCC, as well as a corresponding decrease in OCC's default risk with respect to those accounts. This decreased risk may be material. While the amount of initial margin collected by OCC with respect to segregated futures customer accounts of clearing members will increase, the fundamental processes used by OCC to calculate such initial margin requirements will continue to rely on STANS, which OCC is not proposing to change as a result of the gross margin rule. OCC therefore does not expect that the nature of its risks with respect to segregated futures customer accounts will change, merely that the level of such risk will change.

The industry-wide effort to implement gross initial margining for segregated futures customer accounts could pose operational risks to OCC due to the complexities involved in the exchange of customer-level position data between clearing members and OCC and in ensuring that OCC is prepared to process the information received and incorporate it into its own margin calculations. Implementing the customer gross margin rule changes on November 8, 2012 (a Thursday) could also exacerbate the operational challenges involved in implementing customer gross margining. In order to mitigate these challenges, OCC and other DCOs have determined that it is advisable to implement these changes in advance of the CFTC's mandatory November 8, 2012 compliance date, on November 5, 2012 (a Monday). This is being done in coordination with other DCOs and in order to avoid a mid-week implementation date. As the Rule change described herein is mandated by regulations to which OCC is subject as a registered DCO, OCC has no discretion in whether to implement these Rule changes. Nevertheless, OCC believes that these Rule changes will not diminish OCC's ability to ensure the safeguarding of securities and funds in OCC's custody or control or for which OCC is responsible.

IV. Analysis of Advance Notice

Standard of Review

A registered clearing agency that has been designated as a systemically important financial market utility ("FMU") by the Financial Stability Oversight Council ("FSOC") must provide advance notice of all changes to its rules, procedures or operations that could, as defined in the rules of the supervisory agency, materially affect the nature or level of risk presented by the clearing agency.[12] Absent an extension or request for additional information, as discussed in greater detail below, the Commission is required to notify the clearing agency of any objection regarding the proposed change within the 60 day time frame established by Title VIII of the Dodd-Frank Act ("Title VIII").[13] A designated clearing agency may not implement a change to which its supervisory agency has objected;[14] however, the clearing agency is explicitly permitted to implement a change if it has not received an objection from its supervisory agency within the same 60 day time period.[15]

Although Title VIII does not specify a standard that the Commission must apply to determine whether to object to an advance notice, the Commission believes that the purpose of Title VIII, as stated under Section 802(b),[16] is relevant to the review of advance notices.

The stated purpose of Title VIII is to mitigate systemic risk in the financial system and promote financial stability, by (among other things) authorizing the Federal Reserve Board to promote uniform risk management standards for systemically important FMUs,

---

12 12 U.S.C. 5465(e). See also, Process for Submissions for Review of Security-Based Swaps for Mandatory Clearing and Notice Filing Requirements for Clearing Agencies; Technical Amendments to Rule 19b-4 and Form 19b-4 Applicable to All Self-Regulatory Organizations, Rel. No. 34-63557 (December 15, 2010), 75 FR 82490 (December 30, 2010) (Proposing Release); Rel. No. 34-67286 (June 28, 2012), 77 FR 41602 (July 13, 2012) (Adopting Release).

13 12 U.S.C. 5465(e)(1)(E).

14 12 U.S.C. 5465(e)(1)(F).

15 12 U.S.C. 5465(e)(1)(G).

16 12 U.S.C. 5461(b).

and providing an enhanced role for the Federal Reserve Board in the supervising of risk management standards for systemically important FMUs.[17] Therefore, the Commission believes that when reviewing advance notices for FMUs, the consistency of an advance notice with Title VIII may be judged principally by reference to the consistency of the advance notice with applicable rules of the Federal Reserve Board governing payment, clearing, and settlement activity of the designated FMU.[18]

Section 805(a) requires the Federal Reserve Board and authorizes the Commission to prescribe standards for the payment, clearing, and settlement activities of FMUs designated as systemically important, in consultation with the supervisory agencies. Section 805(b) of the Clearing Supervision Act[19] requires that the objectives and principles for the risk management standards prescribed under Section 805(a) shall be to:

- Promote robust risk management and safety and soundness;
- Reduce systemic risks; and
- Support the stability of the broader financial system.

The relevant rules of the Federal Reserve Board prescribing risk management standards for designated FMUs by their terms do not apply to designated FMUs that are clearing agencies registered with the Commission.[20] Therefore, the Commission believes that the objectives and principles by which the Federal Reserve Board is required and the Commission is authorized to promulgate such rules, as expressed in Section 805(b) of Title

---

17 12 U.S.C. 5461(b).

18 See Financial Market Utilities, 77 FR 45907 (Aug. 2, 2012).

19 12 U.S.C. 5464(b).

20 12 CFR 234.1(b).

VIII,[21] are the appropriate standards at this time by which to evaluate advance notices.[22] Accordingly, the analysis set forth below is organized by reference to the stated objectives and principles in Section 805(b).

Discussion of Advance Notice

OCC's proposed rule changes are expected to increase the amount of margin collected with respect to clearing members' segregated futures accounts held at OCC. This higher level of margin is expected to lead to a corresponding decrease in OCC's default risk with respect to those accounts. And while the level of risk is expected to change, OCC does not expect that the nature of its risks to change because the fundamental processes used to calculate initial margin will continue to rely on the same system for margin calculations. In addition, OCC represents that the rule change does not diminish OCC's ability to ensure the safeguarding of the securities and funds in OCC's custody or control.

Moreover, OCC is making these changes in order to facilitate compliance with a CFTC requirement. Its ability to comply with relevant regulatory requirements and to not be faced with inconsistent regulatory requirements (as would be the case if the Commission objected to the proposal) promotes legal certainty and predictability as to what OCC will

21 12 U.S.C. 5464(b).

22 The risk management standards that have been adopted by the Commission in Rule 17Ad-22 are substantially similar to those of the Federal Reserve Board applicable to designated FMUs other than those designated clearing organizations registered with the CFTC or clearing agencies registered with the Commission. See Clearing Agency Standards, Exchange Act Release No. 34-68080 (Oct.22, 2012). To the extent such Commission standards are in effect at the time advance notices are reviewed in the future, the standards would be relevant to the analysis. Moreover, the analysis of clearing agency rule filings under the Exchange Act would incorporate such standards directly.

require from its clearing members. This legal certainty and predictability promotes the objectives and principles described above.

For these reasons, the Commission finds that OCC's proposed rule change promotes robust risk management and safety and soundness, reduces systemic risks and supports the stability of the broader financial system, and therefore does not object to the advance notice.

V. Conclusion

IT IS THEREFORE NOTICED, pursuant to Section 806(e)(1)(I) of the Clearing Supervision Act,[23] that, the Commission DOES NOT OBJECT to proposed rule change (File No. SR-OCC-2012-17) and that OCC be and hereby is AUTHORIZED to implement proposed rule change (File No. SR-OCC-2012-17) as of the date of this notice or the date of the "Order Approving Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to the Margining of Segregated Futures Customer Accounts on a Gross Basis" (File No. SR-OCC-2012-17), whichever is later.

By the Commission.

Kevin M. O'Neill

Kevin M. O'Neill
Deputy Secretary

[23] 12 U.S.C. 5465(e)(1)(I).

Commissioner Walter
not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 3497 / November 2, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-15087

In the Matter of Eugenio Verzili, Respondent.	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 203(f) OF THE INVESTMENT ADVISERS ACT OF 1940, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") against Eugenio Verzili ("Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings and the findings contained in Section III.2 below, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 203(f) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

1. Respondent owns at least 25% of Juno Mother Earth Asset Management LLC ("Juno"), a registered investment adviser, and, along with Arturo Allan Rodriguez Lopez a/k/a Arturo Rodriguez ("Rodriguez"), controls the day-to-day operations of Juno. Respondent has been the Chief Executive Officer of Juno since approximately 2006 and, as of December 2007, the Chief Compliance Officer. Respondent, age 46, resides in Miami Beach, Florida.

2. On July 3, 2012, a final judgment was entered by consent against Respondent, permanently enjoining Respondent from violations of Section 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934, and Rule 10b-5 thereunder, and Sections 203A, 206(1), 206(2), 206(4) and 207 of the Advisers Act, and Rules 206(4)-2 and 206(4)-8 thereunder, in the civil action entitled <u>Securities and Exchange Commission v. Juno Mother Earth Asset Management, LLC, et al.</u>, Civil Action Number 11 Civ. 1778 (TPG), in the United States District Court for the Southern District of New York.

3. The Commission's Complaint alleged that Respondent, Rodriguez and Juno orchestrated a multi-faceted scheme to defraud a hedge fund under their control, as well as the investors in the fund, and failed to comply with their fiduciary obligations to the hedge fund, through: (a) misappropriating approximately $1.8 million of assets from a Juno-advised hedge fund; (b) fraudulently concealing their misappropriation from the fund's independent directors; (c) inflating and misrepresenting Juno's assets under management by approximately $40 million; (d) filing false Forms ADV with the Commission that, among other things, failed to disclose transactions between Juno and the hedge fund; (e) concealing Juno's precarious financial condition; and (f) misrepresenting the amount of capital certain Juno partners had invested in a Juno-advised fund.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent's Offer.

Accordingly, it is hereby ORDERED pursuant to Section 203(f) of the Advisers Act that Respondent be, and hereby is:

> barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.

Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
BEFORE THE
SECURITES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 34-68160/November 5, 2012

ORDER GRANTING REGISTRATION OF HR RATINGS DE MÉXICO, S.A. DE C.V. AS A NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATION

HR Ratings de México, S.A. de C.V., a credit rating agency, furnished to the Securities and Exchange Commission ("Commission") an application for registration as a nationally recognized statistical rating organization ("NRSRO") under Section 15E of the Securities Exchange Act of 1934 ("Exchange Act") for the class of credit ratings described in clause (v) of Section 3(a)(62)(B) of the Exchange Act. The Commission finds that the application furnished by HR Ratings de México, S.A. de C.V. is in the form required by Exchange Act Section 15E, Exchange Act Rule 17g-1 (17 CFR 240.17g-1), and Form NRSRO (17 CFR 249b.300) and contains the information described in subparagraph (B) of Section 15E(a)(1) of the Exchange Act.

Based on the application, the Commission finds that the requirements of Section 15E of the Exchange Act are satisfied.

Accordingly,

IT IS ORDERED, under paragraph (a)(2)(A) of Section 15E of the Exchange Act, that the registration of HR Ratings de México, S.A. de C.V. with the Commission as an NRSRO under Section 15E of the Exchange Act for the class of credit ratings described in clause (v) of Section 3(a)(62)(B) of the Exchange Act is granted.

By the Commission.

Elizabeth M. Murphy

Elizabeth M. Murphy
Secretary

Approved by Staff
- Paredes - Gallagher
dissent as to
collateral bars

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 3499 / November 7, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-14889

In the Matter of JAMES E. PUTMAN, Respondent.	ORDER MAKING FINDINGS AND IMPOSING REMEDIAL SANCTIONS PURSUANT TO SECTION 203(f) OF THE INVESTMENT ADVISERS ACT OF 1940

I.

On May 23, 2012, the Securities and Exchange Commission ("Commission") instituted proceedings pursuant to Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") against James E. Putman ("Putman" or "Respondent").

II.

Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings and the findings contained in Section III.2 below, which are admitted, Respondent consents to the entry of this Order Making Findings and Imposing Remedial Sanctions Pursuant to Section 203(f) of the Investment Advisers Act of 1940 ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

1. Putman, age 60, resides in Menasha, Wisconsin. He was the President of Wealth Management, LLC, an investment adviser formerly registered with the Commission, from 1985 until 2005, and its Chief Executive Officer and Chairman of the Board from 1997 through May 2009.

2. On April 24, 2012, a Judgment was entered against Putman, who appeared *pro se*, permanently enjoining him from future violations of Sections 206(1), 206(2), and 206(4) of the Advisers Act and Rule 206(4)-8 thereunder, Section 17(a) of the Securities Act of 1933, and Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, in the civil action entitled Securities and Exchange Commission v. Wealth Management LLC, et al., Civil Action Number 1:09-cv-506, in the United States District Court for the Eastern District of Wisconsin.

3. The Commission's complaint alleged that Putman accepted $1.24 million in payments which were not properly disclosed that were derived from certain investments made by four of the six unregistered funds managed by Wealth Management LLC while continuing to cause clients to invest in those funds.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Putman's Offer.

Accordingly, it is hereby ORDERED pursuant to Section 203(f) of the Advisers Act that Respondent Putman be, and hereby is:

> barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.

Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 68184 / November 8, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-15088

In the Matter of **Castle Hill Associates, Inc.,** **Centurion Health Corp. (f/k/a Templemore Acquisition Corp.),** **CFO Advisory Group, Inc.,** **Chromatics Color Sciences International, Inc.,** **Creative Resources, Inc.,** **Crown Financial Holdings, Inc. (f/k/a Crown Financial Group, Inc.),** **Crown Jewel Resources Corp., and** **Crystal Mountain, Inc.,** **Respondents.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS AND NOTICE OF HEARING PURSUANT TO SECTION 12(j) OF THE SECURITIES EXCHANGE ACT OF 1934**

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against Respondents Castle Hill Associates, Inc., Centurion Health Corp. (f/k/a Templemore Acquisition Corp.), CFO Advisory Group, Inc., Chromatics Color Sciences International, Inc., Creative Resources, Inc., Crown Financial Holdings, Inc.(f/k/a Crown Financial Group, Inc.), Crown Jewel Resources Corp., and Crystal Mountain, Inc.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

6 of 44

1. Castle Hill Associates, Inc. (CIK No. 1115585) is a void Delaware corporation located in New York, New York with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Castle Hill Associates is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended July 31, 2001, which reported a net loss of over $3,900 for the prior three months.

2. Centurion Health Corp. (f/k/a Templemore Acquisition Corp.) (CIK No. 1106649) is a forfeited Delaware corporation located in New York, New York with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Centurion Health Corp. is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended September 30, 2001, which reported a net loss of over $1,000 for the prior nine months.

3. CFO Advisory Group, Inc. (CIK No. 1431559) is a void Delaware corporation located in New York, New York with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). CFO Advisory Group is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended September 30, 2008.

4. Chromatics Color Sciences International, Inc. (CIK No. 892495) is a New York corporation located in Riverdale, New York with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Chromatics Color Sciences International is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended March 31, 2002, which reported a net loss of over $850,000 for the prior three months. As of November 1, 2012, the company's stock (symbol "CCSI") was traded on the over-the-counter markets.

5. Creative Resources, Inc. (CIK No. 814919) is a permanently revoked Nevada corporation located in Danbury, Connecticut with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Creative Resources is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended December 31, 1997.

6. Crown Financial Holdings, Inc. (CIK No. 1318309) (f/k/a Crown Financial Group, Inc. (CIK No. 913781)) is a New Jersey corporation located in Jersey City, New Jersey with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Crown Financial Holdings is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-K for the period ended January 31, 2005, which reported a net loss of over $5.7 million for the prior nine months. As of November 1, 2012, the company's stock (symbol "CFGI") was traded on the over-the-counter markets.

7. Crown Jewel Resources Corp. (CIK No. 354195) is a void Delaware corporation located in New York, New York with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Crown Jewel Resources is delinquent in its periodic filings with the Commission, having not filed any periodic

reports since it filed a Form 10-QSB for the period ended September 30, 2002, which reported a net loss of over $918,000 for the prior nine months.

8. Crystal Mountain, Inc. (CIK No. 26020) is a Washington corporation located in Crystal Mountain, Washington with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Crystal Mountain is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB/A for the period ended January 31, 1997, which reported a net loss of over $941,000 for the prior nine months.

B. DELINQUENT PERIODIC FILINGS

9. As discussed in more detail above, all of the Respondents are delinquent in their periodic filings with the Commission, have repeatedly failed to meet their obligations to file timely periodic reports, and failed to heed delinquency letters sent to them by the Division of Corporation Finance requesting compliance with their periodic filing obligations or, through their failure to maintain a valid address on file with the Commission as required by Commission rules, did not receive such letters.

10. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports, and Rule 13a-13 requires domestic issuers to file quarterly reports.

11. As a result of the foregoing, Respondents failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

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

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke the registration of each class of securities registered pursuant to Section 12 of the Exchange Act of the Respondents identified in Section II hereof, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondents.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened 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 HEREBY FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Respondents fail to file the directed Answers, or fail to appear at a hearing after being duly notified, the Respondents, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondents, may be deemed in default and the proceedings may be determined against them 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 Respondents personally or by certified, registered, or Express Mail, or by other means permitted by the Commission Rules of Practice.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 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.

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

Chairman Schapiro
Commissioner Paredes
not participating
Commissioner Gallagher
Disapproval

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

Securities Exchange Act of 1934
Release No. 68197/November 8, 2012

In the Matter of AMERICAN PETROLEUM INSTITUTE, CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, INDEPENDENT PETROLEUM ASSOCIATION OF AMERICA, AND NATIONAL FOREIGN TRADE COUNCIL'S MOTION FOR STAY OF RULE 13q-1 AND RELATED AMENDMENTS TO FORM SD	ORDER DENYING STAY

The American Petroleum Institute, Chamber of Commerce of the United States of America, Independent Petroleum Association of America, and National Foreign Trade Council ("Movants") have submitted a motion for a stay of Exchange Act Rule 13q-1's effective date and related amendments to Form SD. *See* Mot. for Stay of Rule 13q-1 and Related Amendments to New Form SD (available at http://www.sec.gov/rules/final/2012/34-67717-motion-stay.pdf) ("Stay Motion"). For the reasons discussed below, the motion is denied.

BACKGROUND

On August 22, 2012, the Commission promulgated Rule 13q-1 and certain related amendments to new Form SD pursuant to Section 13(q) of the Exchange Act, which was added by Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. Section 13(q) directs the Commission to "issue final rules that require each resource extraction issuer to include in an annual report of the resource extraction issuer information relating to any payment made by the resource extraction issuer, a subsidiary of the resource extraction issuer, or an entity under the control of the resource extraction issuer to a foreign government or the Federal Government for the purpose of the commercial development of oil, natural gas, or minerals[.]" Exchange Act § 13(q)(2)(A). The Commission adopted Rule 13q-1 and amended new Form SD to implement the Section 13(q) disclosure requirements. A resource extraction issuer must comply with the new rules and form for fiscal years ending after September 30, 2013, and each annual report will be due no later than 150 days after the end of the issuer's most recent fiscal year. Accordingly, the first reports under Rule 13q-1 would not be due *until* February 28, 2014 at the earliest.

On October 10, 2012, Movants filed a petition for review in the United States Court of Appeals for the District of Columbia Circuit challenging Rule 13q-1 and the related amendments to Form SD. Case No. 12-1398 (D.C. Cir. filed Oct. 10, 2012). On the same day, Movants filed a complaint in the United States District Court for the District of Columbia challenging the validity of Rule 13q-1 on several grounds. Case No. 12-CV-1668 (D.D.C. filed Oct. 10, 2012).

On October 25, 2012, Movants submitted a motion requesting that the Commission stay the effective date of Rule 13q-1 and the related amendments to Form SD. Movants assert that a stay during the pendency of their challenge to Rule 13q-1 is warranted because four alleged defects in the rulemaking make it likely that they will succeed in their petition for review or, at a minimum, raise substantial questions about the rule's validity: (1) "the Commission erred in declining to exercise its exemptive authority, *see* 15 U.S.C. §§ 78mm, 78l(h), to provide an exemption to public companies in cases where disclosure is prohibited by foreign law or the terms of commercial contracts," Stay Motion at 5; (2) "the Commission improperly imposed a public, company-specific disclosure requirement that it erroneously believed was compelled by the statutory text," *id.* at 9; (3) "the Commission failed to define 'project,' an integral term of the Rule," *id.* at 12; and (4) "the Commission failed to properly consider the costs and benefits of the Rule," *id.* at 13.

Movants further assert that their "members are likely to suffer irreparable harm in the absence of a stay[.]" *Id.* at 15. They allege five such harms: (1) the "initial compliance costs [that] will begin to accrue immediately[] as companies prepare for the reporting that must begin in early 2014," *id.* at 16; (2) "immediate, serious competitive disadvantage" in bidding and negotiating new contracts in countries that "allow [the payment disclosures required by Rule 13q-1], but may disfavor it," Stay Motion at 16, 17; (3) "effects on companies' *existing* contracts and operations" where either the relevant contract or host country law may prohibit disclosure, *id.* at 17; (4) "competitive harms that companies might suffer from disclosure of confidential or proprietary pricing information," *id.* at 18; and (5) injury to the issuers' First Amendment rights by being forced "to make involuntary representations to the public on controversial topics," *id.* at 19.

On November 1—while the stay motion was still pending—the court of appeals directed expedited briefing and argument of the Movants' petition for review. Under the court of appeals' schedule, the last brief is to be filed on January 28, 2013, with argument to occur "on the first appropriate date" thereafter.

DISCUSSION

In considering Movants' motion for a stay, we are guided by the familiar four-factor framework that both this Commission and the courts generally use to consider whether a stay during litigation is appropriate:

1. whether there is a strong likelihood that a party will succeed on the merits in a proceeding challenging the particular Commission action (or, if the other factors strongly favor a stay, that there is a substantial case on the merits);

2. whether, without a stay, a party will suffer imminent, irreparable injury;

3. whether there will be substantial harm to any person if the stay were granted; and

4. whether the issuance of a stay would likely serve the public interest.

See Order Preliminarily Considering Whether to Issue Stay Sua Sponte, SEC Release No. 33870, File No. SR-MSRB-94-2, 1994 WL 117920 (Apr. 7, 1994). Whether a stay is appropriate turns on a balancing of the strength of the requesting party's arguments in each of the four areas. *See id.* ("The evaluation of these factors will vary with the equities and circumstances of each case."). If the arguments for one factor are particularly strong, a stay may be appropriate even if the arguments on the other factors are less convincing.[1]

A. Movants have failed to demonstrate imminent, irreparable harm.

Notwithstanding the inherent flexibility of the four-factor framework, a party seeking a stay *must* demonstrate some imminent, irreparable harm. *CityFed Financial Corp. v. Office of Thrift Supervision*, 58 F.3d 738, 747 (D.C. Cir. 1995). Failure to do so alone is a sufficient basis to deny a stay.

We find that Movants have failed to carry their burden to demonstrate imminent, irreparable harm. In reaching this conclusion, we are mindful of the court of appeals' expedited briefing and argument schedule, which may yield a determination on Rule 13q-1's validity as soon as the Spring of 2013—a little less than a year before the first Form SD filings would be due.

Movants have failed to demonstrate that their first category of alleged harm—initial compliance costs to prepare to record, collect and report the payment information required under the rule—constitutes irreparable harm. "[O]rdinary compliance costs are typically insufficient to constitute irreparable harm." *Freedom Holdings, Inc. v. Spitzer*, 408 F.3d 112, 115 (2d Cir. 2005); *see, e.g., Am. Hosp. Ass'n v. Harris*, 625 F.2d 1328, 1331 (7th Cir. 1980) ("[I]njury resulting from attempted compliance with government regulation ordinarily is not irreparable harm."); *A.O. Smith Corp. v. FTC*, 530 F.2d 515, 527-28 (3d Cir. 1976) ("Any time a corporation complies with a government regulation that requires corporation action, it spends money and loses profits; yet it could hardly be contended that proof of such an injury, alone, would satisfy the requisite for a preliminary injunction.").[2]

---

1 In their application for a stay, Movants argue that we need not apply the traditional four-factor analysis to determine whether a stay is appropriate here. *See* 5 U.S.C. § 705 (stay during litigation where "justice so requires"); 15 U.S.C. § 78y(c)(2) (same). We believe that the four-factor analysis, while not strictly required, is a useful framework to guide our consideration of whether a stay is warranted here.

2 Movants fail to discuss the extent to which, if any, the initial compliance costs are connected to the four purported defects with the rule that they assert in

Only where compliance costs would significantly harm or impair the regulated entities' operations can these costs rise to the level of an irreparable harm. *A.O. Smith*, 530 F.2d at 527-29; *see also Eastern Bridge, LLC v. Chao*, 320 F.3d 84, 90 (1st Cir. 2003). The Rule 13q-1 adopting release described the initial compliance costs as follows:

- For an average small issuer (*i.e.*, an issuer with market capitalization under $75 million), the total initial compliance cost is likely to range from a lower bound of $10,180 to an upper bound of $106,890. Disclosure of Payments by Resource Extraction Issuers ("Adopting Release"), 77 Fed. Reg. 56365, 56409 (Sept. 12, 2012).

- For an average large issuer (*i.e.*, an issuer with market capitalization at or exceeding $75 million), the total initial compliance cost is likely to range from a lower bound of $90,080 to an upper bound of $945,840. *Id.*

Movants have not disputed these ranges in their stay application, nor have they claimed that these initial compliance costs would significantly harm or impair any of their members' operations.[3] Therefore, Movants have not shown that the initial compliance costs that Movants' members may experience prior to the adjudication of their challenge to Rule 13q-1 qualify for this limited exception.

Movants' second category of claimed harm—competitive disadvantage in bidding and negotiating new contracts in countries that allow the Rule 13q-1 disclosures but that may disfavor the disclosures—is too "speculative and unsupported by evidence" to warrant a stay. *In re Application of Whitehall*

---

their stay motion. Notwithstanding this absence, based on the comments that we received during the rulemaking, we believe that a significant portion of initial compliance costs follow from the Congressional mandate in Section 13(q) and thus are not causally linked to any of the rule's alleged defects.

3 We note that it is unlikely that most resource extraction issuers would bear the full initial compliance costs by the date the court of appeals issues a ruling on their challenge to Rule 13q-1 in light of the expedited briefing and argument schedule; this further weakens any contention that these costs constitute an irreparable injury.

Wellington Investments, Inc., Release No. 43051, 2000 WL 985754, at *2 (July 18, 2000). *See, e.g.*, *In re Bd. of Trade of the City of Chicago*, Release No. 18523, 1982 WL 523516, at *4 (Mar. 3, 1982) (same). *See also Wisc. Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985) (per curiam) (injury "must be both certain and great; it must be actual and not theoretical"). Movants have not shown that any of their members are likely to suffer this harm before the court of appeals renders its determination of the rule's validity. But even supposing that a few of Movants' members might suffer this harm during the litigation, Movants have further failed to show that this harm would likely be on a scale that would significantly impact their members' operations so as to constitute an irreparable injury.

We similarly find that Movants have not demonstrated that their members will suffer an irreparable harm with respect to the third category of claimed harm—detrimental effects on their existing contracts and operations where either the relevant contract or the host country's law may prohibit disclosure. Turning first to the claim of harm connected to contracts that may prohibit disclosure, any such harm is not imminent since the first disclosures under Rule 13q-1 would not occur until February 28, 2014 at the earliest, which will likely be well after the court of appeals has reached a decision on the rule's validity. *See also Petties ex rel. Martin v. D.C.*, 662 F.3d 564, 570 (D.C. Cir. 2011) (quoting *Chaplaincy of Full Gospel Churches v. England*, 454 F.3d 290 (D.C. Cir. 2006)) (explaining that irreparable harm requires "injury … of such imminence that there is a clear and present need for equitable relief"). Moreover, Movants have not demonstrated that at this juncture any risk of harm is actual and not speculative. *See Nat'l Ass'n of Mortg. Brokers v. Bd. of Governors*, 773 F. Supp. 2d 151, 181 (D.D.C. 2011) (explaining that bare allegations and speculations are insufficient). All that Movants assert to support a stay now is that "[c]oncerned foreign governments *may* be interested to know long before 2014 whether the information they consider confidential and sensitive will be disclosed by their counter-parties." Stay Motion at 17 (emphasis added). Such speculation of uncertain harm does not demonstrate irreparable harm.[4]

---

[4] Further, as we discussed in Rule 13q-1's adopting release, there is considerable doubt that Movants' members do in fact face an appreciable risk of breaching any non-disclosure provisions in their contracts with host countries because (1) these contracts typically allow for disclosure to be made when required by law for reporting purposes, and (2) Movants' members in any event may be able to address any disclosure issues through the contract negotiation process.

With respect to any potential costs that Movants' members might experience as a result of foreign laws that may prohibit disclosure, Movants have not demonstrated that these are either sufficiently certain or imminent to warrant a stay at this juncture. Movants have failed to establish sufficient certainty of an injury because they have not demonstrated that it is likely that any foreign government currently prohibits the Rule 13q-1 disclosures. Although Movants have alleged that four countries bar the disclosures, their submissions on this issue during the rulemaking process (as well as those of others taking the same position) were both unpersuasive and vigorously contested by other commentators. *See* Adopting Release, 77 Fed. Reg. at 56372 & n.84. Moreover, as the adopting release stated, resource extraction issuers that are subject to foreign-law disclosure prohibitions "may ... be able to seek authorization from the host country in order to disclose such information." *Id.* at 56403 Movants do not contend either that this option is unavailable or that their members were denied permission from a host country after seeking authority to disclose information as required by Rule 13q-1.

Movants assert that, as a prophylactic measure to avoid violating the host country's law, some of their members may need to sell assets and abandon contracts in host countries that purportedly prohibit disclosure before the disclosure is required under Rule 13q-1. Although the Rule 13q-1 adopting release acknowledged the possibility that issuers could potentially need to sell assets in host countries, Adopting Release, 77 Fed. Reg. at 56412., the release made clear that such a scenario would be contingent on a number of presently speculative factors—*i.e.*, whether in fact (i) the host countries' laws prohibit the Rule 13q-1 disclosures, *see id.* at 56411, 56413, (ii) the host countries would be unwilling to grant authority to the resource extraction issuers to disclose the information, *see id.* at 56413, and (iii) third parties would be unwilling to acquire the assets at a fair-market value, *see id.* Moreover, Movants have not offered evidence that any of their members are in fact likely to sell assets *before* the court of appeals issues its decision on the validity of the rule. Given these uncertainties, we are not persuaded that any such potential sales are likely or imminent.

As to the last two categories of alleged injury—competitive harms resulting from competitors' use of the disclosed information and impairment of the First

---

Adopting Release, 77 Fed. Reg. at 56373. These additional considerations make the potential harm from a breach of contract even more speculative.

Amendment right of free speech—Movants have not demonstrated that these are imminent so as to warrant a stay. Both of these claimed harms would result (if at all) only with the public disclosure of the Form SD filings. However, as discussed above, the first disclosures under Rule 13q-1 are not due until February 28, 2014 at the earliest. In light of the court of appeals' expedited briefing and argument schedule, we believe that it is likely that the court will render a decision on the rule's validity well before these alleged harms could occur, making a stay to avoid these harms unnecessary at this juncture. *See e.g.*, *Chaplaincy of Full Gospel Churches*, 454 F.3d at 301 ("[M]ovants [must] do more than merely allege a violation of freedom of expression in order to satisfy the irreparable injury prong .... [M]ovants must show that their 'First Amendment interests are either threatened or in fact being impaired at the time relief is sought.'") (quoting *Nat'l Treasury Employees Union v. United States*, 927 F.2d 1253, 1254-55 (D.C. Cir. 1991)); *Wagner v. Taylor*, 836 F.2d 566, 576 n. 76 (D.C. Cir. 1987) (party seeking relief must show "the imminence of a First Amendment violation").

B. Movants have not demonstrated a likelihood of success on the merits.

As stated above, Movants identified four alleged defects in the Rule 13q-1 rulemaking that they claim make it likely that they will succeed in their petition for review or, at a minimum, raise substantial questions about the rule's validity: (1) the lack of an exemption for resource extraction issuers in cases where disclosure is prohibited by foreign law or the terms of commercial contracts; (2) the public, company-specific disclosure requirement; (3) the decision not to define "project;" and (4) the Commission's alleged failure to adequately consider the costs and benefits of the rule.

We have considered each of these claimed errors under the "likelihood of success on the merits" standard—rather than the less-demanding "substantial case on the merits" standard—because Movants failed to make a strong showing of imminent, irreparable harm. We do not find that the Movants have demonstrated a likelihood of success.

Our conclusion is based on our view of the strength of the explanations that were set forth in the Rule 13q-1 adopting release. With respect to the first three issues, which involve questions of statutory construction, as the adopting release explains, the text, structure, legislative history, and purpose of Section 13(q) demonstrate that the Commission's construction of that provision is not only reasonable, but correct. With respect to Movants' challenge to the Commission's consideration of the costs and benefits, we believe that the release contains an appropriately thorough economic analysis. Among other things, the adopting release quantified the costs where possible (*see* Adopting Release, Part III.D) and otherwise provided qualitative analysis (*see* Adopting Release, Part III.C); to the limited extent that commentators provided cost projections, the release analyzed and considered those projections (*see* Adopting Release, Part III.D); and the release identified and discussed uncertainties underlying the estimates of benefits and costs.

C. Other equitable considerations counsel against the issuance of a stay.

We believe that it is appropriate to analyze the last two factors of the four-factor stay analysis together because, in the context of Rule 13q-1, any harm that third parties might suffer as a result of a stay significantly overlaps with the relevant public interest considerations.

On balance, we are not persuaded that the requested stay would serve the public interest. As we stated in the adopting release for Rule 13q-1, Congress enacted Section 13(q) to advance this country's interest in promoting accountability, stability, and good governance, among other goals. Adopting Release, 77 Fed. Reg. at 56398. Congress also determined that Section 13(q) "would help empower citizens to hold their governments to account for the decisions made by their governments in the management of valuable oil, gas, and mineral resources and revenues." 156 Cong. Rec. S3816 (May 17, 2010) (statement of Senator Richard Lugar, co-sponsor of Section 13(q)).[5] Any delay resulting from a stay would potentially frustrate Congress's desire to achieve these benefits.

---

5 We also note that investors and other commentators during the rulemaking process stated that the required disclosures will provide valuable information to investors when assessing risks and making investment decisions. Adopting Release, 77 Fed. Reg. at 56398.

CONCLUSION

Accordingly, Movants' request for a stay of Rule 13q-1's effective date and related amendments to Form SD is denied.[6]

By the Commission.

Elizabeth M. Murphy

Elizabeth M. Murphy
Secretary

[6] Oxfam America filed a response to Movants' stay motion in which Oxfam argued that we lack statutory authority to grant a stay of Rule 13q-1 because our general stay authority conflicts with the mandatory effective date that Congress established in Section 13(q). *See* Response of Oxfam America to Motion for Stay of Rule 13q-1 and Related Amendments to New Form SD, at 2-4 (Nov. 1, 2012). We decline to reach this issue, however, because we find that a stay is not appropriate here under the traditional four-factor framework for assessing stay motions.

Chairman Schapiro
Commissioner Paredes
not participating

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Release No. 68210 / November 9, 2012

Admin. Proc. File No. 3-14613

In the Matter of the Application of

ROBERT D. TUCKER
1481 Fifth Avenue, Apt 8-D
New York, NY 10035

For Review of Disciplinary Action Taken by

FINRA

OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION—REVIEW OF DISCIPLINARY PROCEEDINGS

Violations of Membership and Conduct Rules

Misstatements and Omissions on Forms U4

During the course of seven years, applicant—a registered representative of a member firm of a registered securities association—failed to disclose, on the Forms U4 he completed for eleven employers, three judgments, two bankruptcies, a federal tax lien, and a state tax lien. *Held*, association's findings of violation and sanctions imposed are *sustained*.

APPEARANCES:

Robert B. Tucker, pro se.

Marc Menchel, *Alan Lawhead*, *Carla Carloni*, and *Colleen E. Durbin*, for the Financial Industry Regulatory Authority, Inc.

Appeal filed: October 31, 2011
Last brief received: April 26, 2012

8 of 44

I.

Robert D. Tucker, a registered representative of a FINRA member firm,[1] seeks review of a FINRA disciplinary action.[2] FINRA found that during the course of seven years Tucker failed to disclose, on Uniform Applications for Securities Industry Registration or Transfer ("Forms U4") he completed for eleven employers, three judgments, two bankruptcies, a federal tax lien, and a state tax lien in violation of NASD IM-1000-1 and Conduct Rule 2110.[3] As sanctions, the self-regulatory organization suspended Tucker from associating with any FINRA member in any capacity for two years and required that, at the conclusion of his suspension, he re-qualify as a corporate securities limited representative. In addition, because FINRA found that his failures to disclose the judgments, bankruptcies, and federal tax lien (though not the state tax lien) were willful and material, it concluded that Tucker was statutorily disqualified from future association with FINRA member firms.[4] Costs were also assessed. We base our findings on an independent review of the record.

---

1 Tucker has been associated with ICM Capital Markets Ltd. since January 2010. We take official notice of this information on BrokerCheck, an electronic database maintained by FINRA and available at www.finra.org/Investors?toolsCalculators/BrokerCheck. *See* 17 C.F.R. § 201.323 (rule of practice relating to official notice).

2 The Financial Industry Regulatory Authority, Inc. is a private, not-for-profit, self-regulatory organization registered with, and overseen by, the Securities and Exchange Commission. It was created in July 2007 following the consolidation of the National Association of Securities Dealers, Inc. and the member regulation, enforcement, and arbitration functions of the NYSE Regulation, Inc. *[No Name in Original]*, Securities Exchange Act Release No. 56751, 2007 SEC LEXIS 2902, at *3–4 (Nov. 6, 2007); *Order Approving Proposed Rule Change to Amend the By-Laws of NASD to Implement Governance and Related Changes To Accomm. the Consol. of the Member Firm Regulatory Functions of NASD and NYSE Reg., Inc.*, Exchange Act Release No. 56145, 2007 SEC LEXIS 1640, at *133 (July 26, 2007). The consolidation of the two SROs eliminated their overlapping jurisdiction and set in motion the writing of a uniform set of rules to be administered by the surviving entity—a process that continues to this day. Though the case at hand was instituted after the consolidation, some of the conduct at issue took place before then. Accordingly, this opinion refers to those conduct rules that were in place at the time.

3 NASD IM-1000-1 prohibits the filing, in connection with registration as a registered representative, of information that is "incomplete or inaccurate so as to be misleading, or which could in any way tend to mislead, or the failure to correct such filing." NASD Conduct Rule 2110 requires members to observe "high standards of commercial honor and just and equitable principles of trade."

4 Securities Exchange Act § 3(a)(39)(F), 15 U.S.C. § 78c(a)(39) (defining statutory disqualification). Under Article III, § 3(b) of FINRA's By-Laws, a statutorily disqualified person cannot become or remain associated with a FINRA member unless the disqualified person's member firm applies for, and is granted in FINRA's discretion, relief from the statutory disqualification.

II.

A. Tucker's Forms U4

Tucker entered the securities industry in 1989 and first registered with FINRA in 1991. During the roughly twenty years since first registering, he has been associated with twenty-three FINRA member firms. This case concerns the Forms U4 Tucker completed when he registered with eleven of those firms from 2001 through 2008. The firms and dates those forms were filed are as follows:

Firm	Date
Broadband Capital Management, LLC	01/08/2001
InvestPrivate, Inc. (currently DPEC Capital, Inc.)	04/10/2001
Schneider Securities, Inc.	08/28/2001
GunnAllen Financial, Inc.	09/27/2002
vFinance Investments, Inc.	02/09/2005
Pointe Capital, LLC	05/19/2005
Meyers Associates, L.P.	06/01/2005
Prestige Financial Center, Inc.	01/31/2007
Perrin, Holdin and Davenport Capital Corp. (PHD Capital)	10/08/2007
Brill Securities, Inc.	12/20/2007
Bishop Rosen & Co., Inc.	06/16/2008

As relevant here, the Forms U4 asked: (i) whether the registrant had any unsatisfied judgments or liens against him (the "Judgments-and-Liens Question"); and (ii) if, within the past ten years, he had "made a compromise with creditors, filed a bankruptcy petition, or been the subject of an involuntary bankruptcy petition" (the "Bankruptcy Question"). Each of the forms required an explanation for any questions answered in the affirmative. The forms also required Tucker to certify that he had "read and underst[ood] the items and instructions on th[e] form and that [his] answers . . . [were] true and complete to the best of [his] knowledge." By signing the forms, Tucker also acknowledged that false or misleading answers could subject him to administrative, civil, or criminal penalties.

On each, Tucker responded "no" to the Judgments-and-Liens and the Bankruptcy Questions and failed to identify any of the judgments, bankruptcy filings, federal tax lien, or state tax lien described below.

1. 2000–2003: Pre-Bankruptcy Judgments and Federal Tax Lien

American Express and the Hamlet Golf & Country Club Judgments. On March 3, 2000, a Civil Court of the City of New York entered a $10,058.62 default judgment against Tucker in favor of American Express Travel Related Services Co., Inc. ("AmEx") relating to an unpaid credit card balance after Tucker failed to answer a November 1999 summons that warned that failure to answer would result in a default judgment. By January 9, 2001, he was notified that his funds could be garnished to satisfy that judgment. In February 2001, funds were in fact garnished from his bank account, in partial satisfaction of it.

On July 17, 2002, the Hamlet Golf & Country Club, Inc. (the "Country Club") obtained a judgment against Tucker and his wife for $37,511.67 relating to unpaid membership fees. Tucker received notice of it when it was entered.

Federal Tax Lien. During this period, Tucker received numerous notices from the Internal Revenue Service regarding unpaid federal income taxes going back to 1994. When Tucker failed to pay those taxes, the IRS filed a federal tax lien of $329,917.63 against him on June 4, 2002.

2. 2002 and 2004 Bankruptcy Filings

Attempting to resolve the IRS's claim, Tucker filed two voluntary petitions for bankruptcy—one in 2002 and one in 2004. Tucker listed himself as the only debtor in both of these filings.[5]

2002 Bankruptcy Filing. Tucker made the first bankruptcy filing on June 10, 2002, about a week after the federal tax lien was filed, through a voluntary petition under Chapter 11 of the United States Bankruptcy Code (the "2002 Bankruptcy Filing"). That case was later dismissed on April 15, 2004.

2004 Bankruptcy Filing. Tucker filed a second voluntary petition under Chapter 13 of the Bankruptcy Code on August 3, 2004 (the "2004 Bankruptcy Filing," together with the 2002 Bankruptcy Filing, the "Bankruptcy Filings").[6] In the 2004 Bankruptcy Filing, Tucker listed both AmEx and the IRS as creditors. The Country Club also filed a notice of appearance in this

---

5 In addition, Tucker's then-wife separately filed for bankruptcy on April 26, 2004 and December 13, 2005.

6 Tucker testified that he started the bankruptcy process to protect his assets from the IRS tax liens and to stop IRS attempts to garnish his salary, but his rationale for making two separate Bankruptcy Filings is not clear from the record. The documents from the Bankruptcy Filings indicate that the first bankruptcy case was dismissed based on a motion by the United States Trustee and that Tucker then filed the second bankruptcy through a separate voluntary petition. During Tucker's investigative testimony, however, he denied that the 2004 Bankruptcy Filing was a separate case, claiming that it was a conversion of the 2002 Bankruptcy Filing.

bankruptcy proceeding on March 29, 2005.[7] The case was ultimately converted to a Chapter 7 bankruptcy on September 8, 2005 and terminated on July 20, 2007.

3. 2006–2007: State Tax Lien and FSA Judgment

State Tax Lien. On September 19, 2006, the New York State Tax Commission filed a $7,980 lien against Tucker for unpaid state taxes.

Friedman, Schnaier & Associates Judgment. On December 18, 2007, several months after Tucker left Prestige Financial, the Supreme Court of the State of New York entered a $48,000 judgment against him in favor of Friedman, Schnaier & Associates ("FSA"), a brokerage firm owned by Prestige Financial.[8] During FINRA's investigation, Tucker testified under oath that he learned of this judgment around June 2008 while he was with Brill Securities,[9] and that approximately half of it had not been satisfied as of July 31, 2008 (the date his investigative testimony was taken).

B. FINRA's Investigation

Tucker's Response to FINRA's Request for Information. On February 5, 2008, a FINRA investigator asked Tucker to provide, pursuant to NASD Procedural Rule 8210,

---

[7] In April 2005, eight months after filing the second bankruptcy petition, Tucker notified vFinance of his intent to sever their relationship. According to the Uniform Termination Notice for Securities Industry Registration ("Form U5") the firm filed on June 9, 2005, he did so without disclosing this bankruptcy filing to the firm or to FINRA's predecessor, NASD. Files it later gave to FINRA suggested that vFinance learned about the 2004 Bankruptcy Filing through an online search it performed on May 11, 2005—after Tucker had given notice. The Form U5 also described a physical altercation between Tucker and his supervisor when Tucker collected his last paycheck.

The AmEx and Country Club judgments were discharged on March 29, 2006 in the second bankruptcy case. The federal tax lien was not. It remained outstanding as of the date the Form U4 was filed for Bishop Rosen; it was still outstanding when FINRA's hearing began. There is no evidence in the record that this lien was ever discharged.

[8] This was based on a confession of judgment signed by Tucker on June 13, 2007 in connection with an amount his firm lost when, ostensibly, a customer would not pay for a trade Tucker executed. *Cf. Dep't of Enf. v. J. Alexander Secs., Inc.*, Complaint No. CAF010021, 2004 NASD Discip. LEXIS 16, at *10 n.6 (NAC Aug. 16, 2004) ("The term 'DK,' or 'Don't Know,' is used when brokers question a trade and exchange comparison sheets to verify the details of the transaction").

[9] Although Tucker testified at the hearing that he did not know that FSA had obtained a judgment against him, the hearing panel did not find his testimony convincing and instead credited his earlier, contrary investigative testimony. *Dep't of Enf. v. Tucker*, Complaint No. 2007009981201, 2010 FINRA Discip. LEXIS 30, at *14 (OHO May 10, 2010), *aff'd as to liability, mod. as to sanctions*, 2011 FINRA Discip. LEXIS 66 (NAC Oct. 4, 2011).

information about his Forms U4.[10] Among other things, the investigator asked about Tucker's Bankruptcy Filings, identifying each by their court tracking numbers. Tucker responded weeks later in a letter dated February 26, 2008. But rather than address those filings, he instead deflected the request by describing another made by his wife in 2004, the significance of which he downplayed.[11] Specifically, Tucker said that the

> issue of bankruptcy filings was the result of bad advice from a lawyer that my wife had retained. She filed a Chapter-13 and I was going to be the Administrator. This was immediately dismissed because of her not being employed. Perhaps I should have put this on my U-4. It was an oversight and I will take the necessary steps to correct this matter.

Later in 2008, after sending this letter, Tucker became associated with Bishop Rosen. He completed and certified his Bishop Rosen pre-hire and U4 disclosure forms without disclosing any of the judgments, bankruptcies, or liens.

Tucker's Investigative Testimony. During his sworn testimony before FINRA on July 31, 2008, Tucker acknowledged that the Forms U4 at issue were inaccurate, though not initially. When first asked about his Bankruptcy Filings, he instead focused on those of his wife—that is, until he was confronted with documents confirming that his and his wife's bankruptcy filings were separate. He then testified that his Bankruptcy Filings had "been in the back of [his] mind" and acknowledged that he should have disclosed them, but did not because he was "embarrassed," adding, "If you want to say, Tucker, you're out, okay, that's something that you have to decide."

As for the judgments and liens, Tucker said he did not disclose them because he contested them. The firms, he said, "pretty much didn't know about" some of the judgments and liens. Tucker also admitted that he bore responsibility for the false answers, conceding that "I sign the forms. It's not the firm because I signed the forms."

Notwithstanding those admissions, Tucker later asserted that some—though not all—of the firms he was associated with shared some responsibility for his failure to make proper disclosures. GunnAllen, he claimed, knew that his wages might be garnished. He also said that he spoke with compliance representatives at Meyers Associates, Brill Securities, and Bishop Rosen about his inaccurate Forms U4 and the need to amend them. The consensus of advice he

---

10 The investigator also asked the firms for copies of Tucker's Form U4 disclosures and other employment records. Though FINRA lacks subpoena power, its staff has the right to ask member firms and associated persons to provide information, documents, and testimony upon request pursuant to Rule 8210. *See, e.g., Howard Brett Berger,* Exchange Act Release No. 58950, 2008 SEC LEXIS 3141, at *13 (Nov. 14, 2008) (sustaining a bar imposed by NASD for failures to comply with Rule 8210), *petition denied*, 347 F. App'x 692 (2d Cir. 2009).

11 *See supra* note 5.

said he received, however, was that he should delay correcting them until his legal liabilities were resolved. Once that occurred, he should amend the forms "as soon as possible." Notwithstanding this purported advice, no amendments to the forms had been filed through the end of 2009.[12]

FINRA's Disciplinary Proceeding. FINRA's Division of Enforcement initiated this proceeding on February 24, 2009 with a complaint that alleged three causes of action based on Tucker's willful failures to disclose the three judgments, two bankruptcies, and the federal tax lien on Forms U4. A fourth cause of action alleged a non-willful failure to disclose the state tax lien.[13] Instead of filing his answer when it was originally due, Tucker successfully moved for additional time. When he did file his answer on April 7, 2009, he said he was unable to admit or deny the allegations in the complaint and moved for a more definite statement. The hearing officer denied Tucker's motion on April 9, 2009 and ordered him to file an amended answer by April 30, 2009 that responded specifically to each allegation in the complaint. Tucker failed to do so.

During a pre-hearing conference on May 6, 2009, the hearing officer asked Tucker about his failure to file his amended answer, explained what was required, and agreed to allow him to file his amended answer the next day. When the hearing officer asked Tucker about his plans for the hearing, Tucker said he was in the process of retaining counsel and expected to call two or three witnesses. The parties and the hearing officer agreed to schedule the hearing to begin six months later on November 17, 2009.

After receiving yet another extension of time from the hearing officer, Tucker finally filed his amended answer on May 11, 2009. In response to the Bankruptcy Question charges, he again failed to address the two separate bankruptcy filings he made on his own behalf. Instead, he said, "The U.S. bankruptcy was filed on behalf of [his] wife and [him]self." He also said that various firms knew about his bankruptcy filings; that Schneider Securities failed to update his Form U4; that he told the Brill Securities compliance department that he wanted to amend his Form U4; and that he submitted amendment forms to Bishop Rosen.

Days later, on May 14, 2009, the parties agreed to a scheduling order that set (among other things) filing deadlines for pre-hearing briefs, stipulations, witness lists, exhibit lists, and exhibits. During the summer of 2009, an attorney entered, but then withdrew, an appearance for Tucker.

---

12 At the February 2010 hearing, the FINRA investigator testified that no Form U4 amendments were filed to disclose Tucker's judgments, bankruptcies, or liens through the end of 2009.

13 After the complaint was filed, Tucker completed and certified Forms U4 to register his association with Mercer Capital Ltd. in May 2009 and Union Financial Corp. in September 2009. Notwithstanding the earlier discussions he had with compliance representatives at other firms, the Rule 8210 request he received from FINRA, the discussion he had with FINRA staff during his on-the-record investigative testimony, and the filing of a formal disciplinary action against him, neither Form U4 disclosed Tucker's judgments, bankruptcies, or tax liens.

Thereafter, Tucker's participation in the proceeding deteriorated. While Enforcement filed all of its pre-hearing submissions, Tucker failed to file any.

During what was supposed to be the final pre-hearing telephone conference on November 6, Tucker said that he had looked through Enforcement's pre-hearing brief and exhibits. The hearing officer then asked Tucker about his failure to file any of his own. Tucker offered no explanation for his failure to file a pre-hearing brief, stipulations, witness list, or exhibit list. As for exhibits, he said he was prevented from doing so because a lawyer he previously worked with refused to release them until Tucker paid him for services rendered. The hearing officer gave Tucker until November 13, 2009—four days before the scheduled hearing date—to submit these exhibits, warning Tucker that he would be precluded from introducing them at the hearing if he failed to do so. Tucker acknowledged the warning and his obligation to meet the deadline, but ultimately did not comply, filing no submissions.

On November 17, 2009—the date the hearing was scheduled to begin—the hearing officer, two panelists, and counsel for Enforcement arrived at FINRA's New York office prepared to begin. Tucker did not appear. Instead, he notified the Office of Hearing Officers that day that he was ill and unable to participate. The hearing officer rescheduled the hearing for November 20, 2009.

On November 19, 2009, Tucker filed an emergency motion asking for a further postponement. He argued that he needed additional time to address his health concerns and to retain counsel. In his motion, Tucker said that he "recognize[d] that the charges against me are very serious, and threaten my ability to make a living and work in the industry." He also represented that he was able to hire a lawyer, though he would not be available until mid-January. Tucker also sought leave to introduce a pre-hearing memorandum and a witness and exhibit list. The hearing officer granted Tucker's motion for postponement over Enforcement's objection and directed the parties to pick a hearing date in January 2010. The hearing officer denied Tucker's request for leave to make pre-hearing submissions, noting that Tucker gave no reason for why he missed the previous extended deadline.

At the final pre-hearing conference on December 1, 2009, Tucker said that he had chosen counsel whose schedule required a further delay in the hearing. He would not, however, reveal counsel's identity when asked. The parties agreed that the hearing would begin on January 21, 2010.

Notwithstanding his earlier statements, Tucker represented himself at the hearing. In its case-in-chief, Enforcement called three witnesses—a FINRA investigator and the chief compliance officers (each, a "CCO") for PHD Capital and Bishop Rosen. In his defense, Tucker used Enforcement's exhibits and cross-examined Enforcement's witnesses. But having failed to meet the various submission deadlines, Tucker was not permitted to present additional exhibits or witnesses. He was, however, allowed to testify on his own behalf.

The PHD Capital CCO testified that, when he assisted Tucker with his Form U4, Tucker did not (i) tell him about the judgments, bankruptcies, or liens; (ii) disclose them in his Form U4 documentation; or (iii) ask the CCO about his disclosure obligations. Instead, Tucker volunteered that a bankruptcy may appear on his background check but that it was his wife's. Tucker also gave the PHD Capital CCO a document from his wife's bankruptcy to support this claim.[14]

As noted, Tucker was hired by Bishop Rosen after he learned that FINRA was examining his Form U4 filings. The CCO of Bishop Rosen testified that Tucker did not disclose the judgments, bankruptcies, or liens in his pre-hire or Form U4 documentation. Then, about two months after Tucker's Form U4 filing, Bishop Rosen's registration department began receiving levies—including one from the IRS indicating that Tucker owed $1.9 million for tax years 1994 through 2005.[15] The CCO further described an e-mail that the firm sent to Tucker after it received the levies, pointing out that the liens were not reflected on his Form U4. The firm's e-mail asked Tucker to complete an amended written response to the Form U4 Judgments-and-Liens Question. That e-mail attached copies of Tucker's original Form U4, which falsely answered no to that question. The CCO also testified that he had numerous discussions with Tucker about why the federal tax lien had not been disclosed on his Form U4 or registration documents from his previous employer. He said that, when confronted, Tucker consistently denied responsibility, claiming that his wife, not he, had filed for bankruptcy, that he would "be vindicated in court," that the lien would be cancelled, and that most of the federal tax levy had been reversed. The CCO also said his firm considers judgments, bankruptcies and liens that are disclosed on the Form U4 to be a critical measure of a representative's business judgment, and that such items raise questions about the financial advice a registered representative gives to his customers.

Tucker's testimony at the hearing was varied and inconsistent. Much of his testimony was inconsistent with the documentary evidence and his earlier sworn testimony. He denied knowledge of and responsibility for the judgments, repeatedly avoided answering direct questions about the federal tax lien and his Form U4 disclosures, and said he disclosed his bankruptcies on some (though not all) of the Forms U4 he submitted. For instance, he claimed that officers from Broadband Capital, GunnAllen, and vFinance advised him not to disclose his bankruptcy filings given that he had not done so in the past. Doing so now, they ostensibly said, would only raise "red flags." During his summation, he claimed that other unspecified firms received IRS notices,

---

14 PHD Capital sent a copy of this document, which is included in the record, to FINRA during its investigation.

15 This IRS levy covered an unpaid balance and accrued statutory additions of $597,763.25 in connection with the federal tax lien recorded in 2002, described above. The levy also showed an unpaid IRS balance and statutory additions of $1,334,823.06 in connection with an additional federal tax lien that the IRS recorded on April 3, 2008, which covered taxes for 1994, 1997–2000, 2002–2003, and 2005. This lien was recorded before Tucker completed his Bishop Rosen Form U4, though he was not charged in the complaint with a failure to disclose the 2008 federal tax lien on this Form U4.

The e-mail also attached notices from the City Marshall of the City of New York and the Supreme Court of the State of New York seeking to garnish Tucker's Bishop Rosen salary to cover his other outstanding financial obligations.

that he discussed with them the liens, and that he was advised against amending his forms (again because filing such amendments would only raise "red flags"). In alluding to these purported discussions with firm officials, Tucker did not explain how they related to his repeated and consistent pattern of false filings at each of eleven firms over a seven-year period. Tucker did concede, however, that he completed two additional Forms U4 after giving his sworn investigative testimony and after receiving FINRA's complaint, but that he did not disclose the bankruptcies or liens on either.[16]

C. The FINRA Decisions

On May 10, 2010, the hearing panel issued its decision finding that Tucker willfully failed to disclose the three judgments, two bankruptcies, and federal tax lien, and that he failed to disclose the state tax lien. ("Willfulness" as to the state tax lien was never charged.) It then barred Tucker from associating with any FINRA member firm and found him statutorily disqualified. Based on its observation of Tucker at the hearing, the panel also found that his testimony denying responsibility was not credible, concluding:

> Tucker repeatedly made a calculated decision to hide his financial problems from numerous firms. At the hearing, he showed no remorse and took no responsibility for his actions. His answers to questions were frequently evasive and dissembling. The Hearing Panel believes that Tucker lacks respect for FINRA's rules and processes.[17]

Tucker appealed the decision to FINRA's National Adjudicatory Council. On October 4, 2011, the NAC affirmed the hearing panel's findings as to liability, giving considerable weight and deference to its credibility findings and describing Tucker's testimony as "evasive and contradictory, evincing his continued refusal to admit his failures to disclose."[18] Tucker, who was represented by counsel before the NAC, argued that FINRA's failure to provide him with an attorney deprived him of a fair hearing. The NAC held that respondents are not entitled to have counsel appointed in a FINRA disciplinary proceeding and that the hearing was fundamentally fair, noting (among other things) that it "was delayed several times based on Tucker's representations that he was hiring an attorney, thereby providing [him] with ample opportunities to actually do so."[19] The NAC rejected Tucker's other substantive and procedural arguments.[20]

---

16 *See supra* note 13.

17 2010 FINRA Discip. LEXIS 30, at *20; *see also id.* at *10 (finding his denials of his sworn investigative testimony not credible) & *18 (finding, after observing his testimony describing various purported amendment attempts and discussions with firm officials, that "Tucker knew about the federal tax lien, bankruptcies and judgments, but purposely chose not to disclose them on his Forms U4").

18 2011 FINRA Discip. LEXIS 66, at *14.

19 *Id.* at *25.

Nevertheless, it reduced the bar imposed by the hearing panel to a two-year suspension with a requirement that he requalify as a corporate securities limited representative, and assessed costs.[21] This appeal followed.[22]

Here, Tucker does not deny that he knew about the judgments, bankruptcies, and liens against him and that he falsely answered "no" to the Judgments-and-Liens Question and the Bankruptcy Question in the Forms U4 that were filed. Instead, he attempts to shift responsibility for his misconduct to the firms by claiming that they were aware of and responsible for his false disclosures. He also argues that various procedural deficiencies during the hearing prevented him from fairly defending himself against FINRA's charges. None of Tucker's arguments warrant a different result.

III.

A. Tucker Violated NASD IM-1000-1 and Conduct Rule 2110 by Providing Incorrect Answers on His Forms U4

Registered representatives, such as Tucker, represent their firms to the public. Before they can align themselves with any member firm, they must complete and file with FINRA a Form U4. The importance of that form, as a regulatory tool, cannot be overstated.

Form U4 is used by all self-regulatory organizations (including FINRA), state regulators, and broker-dealers to determine and monitor the fitness of securities professionals who seek initial or continued registration with a member firm.[23] The public can also access the information

---

20 Tucker argued that he was prejudiced by his lack of counsel at the hearing, and supported this claim by submitting four examples of documents that he had been prevented from offering into evidence. After reviewing these documents, the NAC "independently conclude[d] that [they did] not alter [it]s view of the facts and violations" and were not "material or exculpatory" because they could not "extinguish or even diminish Tucker's obligation to disclose his bankruptcies, judgments, and liens on his Forms U4." *Id.* at *26–27. It also reviewed and affirmed the hearing officer's decision to preclude Tucker from offering additional evidence at the hearing under Rule 9280(b)(2), which states that a party shall not be permitted to use evidence at a hearing unless the party complies with the scheduled pre-hearing submission deadlines or has substantial justification for failing to do so and such failure was harmless. Noting the multiple opportunities that Tucker was afforded to produce this evidence before the hearing, the NAC found that Tucker failed to provide substantial justification for his failure to abide by the pre-hearing order, and that such failure was not harmless. *Id.* at *27 n.9.

21 Finding that Tucker's multiple violations could be traced to his "ongoing desire to conceal his myriad financial woes," the NAC aggregated them when assessing sanctions. *Id.* at *28.

22 In this appeal, Tucker requested an extension of the briefing schedule, again citing efforts to secure counsel. After an extension was granted, Tucker proceeded on a *pro se* basis.

23 *Rosario R. Ruggiero*, Exchange Act Release No. 37070, 52 SEC 725, 1996 SEC LEXIS 990, at *8–9 (Apr. 5, 1996).

reported in the form, via BrokerCheck®,[24] which can be used when deciding to whom to entrust investor monies.[25] Truthful answers to the form's inquiries can serve as an early warning mechanism, identifying individuals with troubled pasts or suspect financial histories.[26] Untruthful answers call into question an associated person's ability to comply with regulatory requirements. The form is critical to the effectiveness of the screening process used to determine who may enter (and remain in) the industry.[27] It ultimately serves as a means of protecting the investing public.[28]

For that reason, every Form U4 filed with FINRA must be accurate, and must be kept current through supplemental amendments that are to be filed within thirty days of learning of the facts and circumstances giving rise to the amendment.[29] "The duty to provide accurate information and to amend the Form U4 to provide current information assures regulatory organizations, employers, and members of the public that they have all material, current information about the securities professional with whom they are dealing."[30]

---

24 According to FINRA's website:

> BrokerCheck is a free tool to help investors research the professional backgrounds of current and former FINRA-registered firms and brokers, as well as investment adviser firms and representatives. It should be the first resource investors turn to when choosing whether to do business or continue to do business with a particular firm or individual.

FINRA website, at http://www.finra.org/Investors/ToolsCalculators/BrokerCheck.

25 *See Scott Mathis*, Exchange Act Release No. 61120, 2009 SEC LEXIS 4376, at *29 (Dec. 7, 2009), *petition denied*, 671 F.3d 210 (2d Cir. 2012).

26 *Mathis*, 2009 SEC LEXIS 4376, at *16; *Timothy H. Emerson Jr.*, Exchange Act Release No. 60328, 2009 SEC LEXIS 2417, at *7 n.8 (July 17, 2009); *Douglas J. Toth*, Exchange Act Release No. 58074, 2008 SEC LEXIS 1520, at *18 (July 1, 2008), *petition denied*, 319 F. App'x 184, 2009 U.S. App. LEXIS 7226 (3d Cir. 2009). Depending on what is learned, a firm may decide not to hire the individual or, alternatively, place that individual on heightened supervision.

27 *Mathis*, 2009 SEC LEXIS 4376, at *16; *Emerson*, 2009 SEC LEXIS 2417, at *7 n.8 (July 17, 2009); *Toth*, 2008 SEC LEXIS 1520, at *18; *Ruggiero*, 1996 SEC LEXIS 990, at *9; *Thomas R. Alton*, Exchange Act Release No. 36058, 52 SEC 380, 1995 SEC LEXIS 1975, at *4 (Aug. 4, 1995), *aff'd*, 105 F.3d 664 (9th Cir. 1996) (Table).

28 *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965). Inadequate disclosure "undermines [FINRA]'s ability to carry out its self-regulatory functions." *Richard J. Lanigan*, Exchange Act Release No. 36028, 52 SEC 375, 1995 SEC LEXIS 1899, at *5 (July 27, 1995); *see also* NASD Notice to Members 04-09, 2004 NASD LEXIS 11, at *2 (Feb. 2004) (reporting information "may form the basis for examinations and investigations and, ultimately, disciplinary action. The receipt of timely and complete information . . . is essential to NASD's fulfillment of its role as a self-regulatory organization").

29 FINRA By-Laws of the Corporation, Art. V, § 2(c). On his Forms U4, Tucker certified that he had an obligation to keep his Forms U4 current at all times and to file timely supplementary amendments.

30 *Richard A. Neaton*, Exchange Act Release No. 65598, 2011 SEC LEXIS 3719, at *17–18 (Oct. 20, 2011).

As of October 2012, there were 635,488 registered representatives in 163,370 branch offices of 4,333 FINRA member firms.[31] FINRA "cannot investigate the veracity of every detail in each document filed with it, [and] must depend on its members to report to it accurately and clearly in a manner that is not misleading."[32] Because of this, NASD IM-1000-1 prohibits the filing, in connection with the membership or registration as a registered representative, of information so incomplete or inaccurate as to be misleading.[33]

> Every person submitting [a] Form U4 has the obligation to ensure that the information provided on the form is true and accurate. Filing a misleading Form U4, in addition to violating Membership Rule IM-1000-1, violates the standard of just and equitable principles of trade to which every person associated with a [FINRA] member is held.[34]

Association with any FINRA member firm is contingent upon the successful completion of a Form U4. Each time Tucker aligned himself with a new firm, he completed a new Form U4, certified that he understood the questions, and certified that his answers were accurate and complete. On these forms, Tucker falsely answered "no" to the Judgments-and-Liens Question and the Bankruptcy Question. He also failed to disclose the AmEx, Country Club, and FSA judgments; his two Bankruptcy Filings; and the federal and state tax liens—all of which were items covered by the plain language of the Form U4 questions.

Tucker's false answers to the Judgments-and-Liens Question and the Bankruptcy Question violated his duty under IM-1000-1 to provide full, accurate, and non-misleading information in connection with his registration. As the Bishop Rosen CCO testified, the judgments, bankruptcies, and liens Tucker failed to disclose on the Forms U4 constituted serious financial problems critical to evaluating his fitness to associate in the securities industry and the firm's ability to assess his business judgment.[35] These serious financial problems raise concerns about

---

[31] FINRA website, at http://www.finra.org/Newsroom/Statistics (Statistical Review 2007–2012) (last visited Nov. 8, 2012).

[32] *Robert E. Kauffman*, Exchange Act Release No. 33219, 51 SEC 838, 1993 SEC LEXIS 3163, at *3 (Nov. 18, 1993), *aff'd*, 40 F.3d 1240 (3d Cir. 1994) (Table).

[33] NASD IM-1000-1. "This rule applies to Form U4." *Mathis*, 2009 SEC LEXIS 4376, at *16.

[34] *Mathis*, 2009 SEC LEXIS 4376, at *16. *Accord Toth*, 2008 SEC LEXIS 1520, at *18; *Kauffman*, 1993 SEC LEXIS 3163, at *5. *See also Stephen G. Gluckman*, Exchange Act Release No. 41628, 54 SEC 175, 1999 SEC LEXIS 1395, at *22 (July 20, 1999) (noting the Commission's "long-standing and judicially-recognized policy that a violation of another Commission or NASD rule or regulation . . . constitutes a violation of" the NASD rule regarding just and equitable principles of trade). *See generally Dep't of Enf. v. Shvarts*, Complaint No. CAF980029, 2000 NASD Discip. LEXIS 6, at *11–18 (NAC June 2, 2000) (analyzing the scope of Rule 2110).

[35] *Mathis*, 671 F.3d at 220.

whether Tucker could responsibly manage his own financial affairs, and ultimately cast doubt on his ability to provide trustworthy financial advice and services to investors relying on him to act on their behalf as a securities industry professional.[36] These judgments, bankruptcies, and liens also reflected significant outside financial pressures that could affect his judgment when providing financial services.[37] By providing false answers, Tucker violated his own disclosure responsibilities under IM-1000-1. Those false answers also undermined the firms' ability to screen his fitness to associate with them and, if applicable, to determine whether they should place him on heightened supervision.[38]

A representative's truthfulness in answering the financial disclosure questions on the Form U4 is a particularly critical measure of fitness for the industry because a commitment to accurate, complete, and non-misleading financial disclosure is central to any securities professional's responsibilities.[39] As this case demonstrates, an inability or unwillingness to honestly answer straightforward questions on a written, certified registration form casts doubt on the individual's commitment to truthfulness and accuracy in other situations requiring financial disclosure to regulators and investors.[40]

Tucker's actions also reflect poorly on his commitment to his regulatory responsibilities in general. Tucker did not confine his false and misleading explanations to the Form U4 registration forms described in the complaint. He also gave false and misleading explanations and documentation to his firms, to FINRA staff, and to the hearing panel. He even continued to provide false answers on Forms U4 he completed after FINRA investigated this matter and filed its complaint instituting these proceedings. A history involving multiple false filings and misleading financial disclosures is highly problematic in any person participating in an industry that "presents continual opportunities for dishonesty and abuse, and depends heavily on the integrity of its participants and on investors' confidence."[41]

---

36 *See Mathis*, 2009 SEC LEXIS 4376, at *29.

37 *See id.*

38 *Jason A. Craig*, Exchange Act Release No. 59137, 2008 SEC LEXIS 2844, at *28 (Dec. 22, 2008); *see also Neaton*, 2011 SEC LEXIS 3719, at *41 ("Neaton deprived Securian, Mutual, FINRA, and his customers of information on which to determine whether to hire him, and if so, whether he required heightened supervision, whether to do business with him, or whether to permit him to register").

39 *Cf. Don Warner Reinhard*, Exchange Act Release No. 63720, 2011 SEC LEXIS 158, at *21 (Jan. 14, 2011) (noting that "false statements to the government and others concerning financial matters and . . . concealing assets and lying about their disposition" is highly relevant to determining "fit[ness] to work in an industry where honesty and rectitude concerning financial matters is crucial").

40 *Dep't of Enf. v. Neaton*, Complaint No. 2007009082902, 2011 FINRA Discip. LEXIS 13, at *32 (NAC Jan. 7, 2011).

41 *Conrad P. Seghers*, Investment Advisers Act Release No. 2656, 2007 SEC LEXIS 2238, at *27 (Sept. 26, 2007), *petition denied*, 548 F.3d 129 (D.C. Cir. 2008).

Without challenging the documents establishing his false and misleading Form U4 submissions, Tucker suggests he should be excused because several—though not all—of the firms "were aware of [his] financial situation."[42] He claims that he explained his circumstances to various firm personnel and that they also learned about these issues from credit reports and other third-party notices they received. He also claims that he tried to address the incorrect disclosures at issue by speaking with representatives of some of the firms about amending his Forms U4 (even though no amendments were ever filed).

By submitting false answers on each Form U4, Tucker violated IM-1000-1 and Conduct Rule 2110. Tucker, like any other securities industry professional, "must take responsibility for compliance" with the form and "cannot be excused for lack of knowledge, understanding or appreciation of" its requirements.[43] He cannot avoid responsibility for his own false responses, particularly given that the language of the forms (which Tucker certified that he understood) is unambiguous.[44] Tucker—not the firms—was in the best position to provide accurate information about the judgments, bankruptcies, and liens covered by the questions in the Forms U4,[45] demonstrating why it was appropriate that he bore "primary responsibility for maintaining [their] accuracy."[46]

---

42 Petition for Review at 1 (Mar. 23, 2012).

43 *Guang Lu*, Exchange Act Release No. 51047, 58 SEC 43, 2005 SEC LEXIS 117, at *22 (Jan. 14, 2005) (rejecting defense that firm's president advised against Form U4 disclosure), *aff'd*, 179 F. App'x 702, 2006 U.S. App. LEXIS 24875 (D.C. Cir. 2006) (unpublished); *see also Craig*, 2008 SEC LEXIS 2844, at *15 (noting that a representative "cannot shift his responsibility to comply with NASD rules to his firm"). Representatives have a duty to make accurate and complete disclosure and a "culpable state of mind" is not necessary to establish a violation of IM-1000-1. *Craig*, 2008 SEC LEXIS 2844, at *13. Tucker also acknowledged this when he testified during the investigation, stating: "I sign the forms. It's not the firm because I signed the forms."

44 During his investigative testimony, Tucker suggested that he was entitled to withhold disclosure of the judgments and liens if he contested them. This is not the case and he offered no support for this argument. The Judgments-and-Liens Question covers *any* unsatisfied judgments or liens against the registered representative. *See Mathis*, 2009 SEC LEXIS 4376, at *21 (rejecting applicant's claim that the question was ambiguous, noting that it "contains no limitations on the kind of liens required to be disclosed").

45 Tucker also claims that credit reports requested by Bishop Rosen on June 3, 2008 and August 22, 2008 demonstrate Bishop Rosen's knowledge of reportable events. But Tucker's violative Form U4 disclosures are not excused by the availability of relevant information through third parties—particularly given the evidence that Tucker offered evasive and misleading explanations for why he answered the questions the way he did.

46 *Toth*, 2008 SEC LEXIS 1520, at *25 (citing *Guang Lu*, 2005 SEC LEXIS 117, at *22). We do not suggest that firms or others can disclaim responsibility for the accuracy of registration filings they make or the advice they give to persons answering registration questions. The Forms U4 in the record required the firms to certify that they took "appropriate steps to verify the accuracy and completeness of the information contained in and with" the forms that they filed on Tucker's behalf. *See also* Form U4 (05/2009) available at http://www.finra.org/web/groups/industry/@ip/@comp/@regis/documents/appsupportdocs/p015112.pdf. *See Kauffman*, 1993 SEC LEXIS 3163, at *5 ("Every person submitting registration documents has the obligation to

(continued...)

The purpose of Form U4 is to provide information that is accurate, timely, and complete so that it can be relied upon by firms, regulators, and investors. Any private discussions Tucker had with his firms during interviews, after filing a Form U4, or otherwise—to the extent they occurred—do not excuse his decision to provide false, or omit, information on the form.[47] Tucker's claim that he unsuccessfully tried to amend some of the forms also does not excuse his past filings.[48] Tucker was not charged with a failure to amend and attempts to amend do not excuse past false violative filings, particularly when he has admitted that he made those false filings to avoid scrutiny. In any event, no amendments were ever made.

B. Tucker Is Statutorily Disqualified

The Securities Acts Amendments of 1975 introduced the concept of a "statutory disqualification."[49] As enacted, a person is subject to a statutory disqualification under Exchange Act § 3(a)(39)(F) if, among other things, he "has *willfully* made or caused to be made in any application . . . to become associated with a member of a self-regulatory organization . . . any statement which was at the time, and in light of the circumstances under which it was made, false or misleading with respect to any *material* fact, or has omitted to state . . . any *material* fact which is required to be stated therein."[50]

---

ensure that the information printed therein is true and accurate."); FINRA Regulatory Notice 09-33, 2009 FINRA LEXIS 96, at *7 (June 2009) (stating that FINRA Rule 1122—the successor to IM-1000-1—clarifies that the obligation to file complete and accurate membership and registration information applies to both FINRA member firms and their associated persons).

[47] "[A] member firm's own interpretations of the securities laws and rules do not protect associated persons. To hold otherwise would permit every broker-dealer to interpret the laws and rules to its liking and would result in enormous inconsistency of enforcement." *Alton*, 1995 SEC LEXIS 1975, at *8 n.12; *see also Barry C. Wilson*, Exchange Act Release No. 37867, 52 SEC 1070, 1996 SEC LEXIS 3012, at *9 n.12 (Oct. 25, 1996) (noting that "failings on the part of certain firm personnel do not excuse misconduct by others").

Even if, contrary to our holding, private discussions with firm officials could excuse false filings, the hearing panel found Tucker's testimony to be "evasive and dissembling" and ultimately not credible. *Tucker*, 2010 FINRA Discip. LEXIS 30, at *20. We concur with the panel's credibility findings, which are entitled to considerable weight. *Janet Gurley Katz*, Exchange Act Release No. 61449, 2010 SEC LEXIS 994, at *49 & 49 n.22 (Feb. 1, 2010), *petition denied*, 647 F.3d 1156 (D.C. Cir. 2011); *see also Laurie Jones Canady*, Exchange Act Release No. 41250, 54 SEC 65, 1999 SEC LEXIS 669, at *27 (Apr. 5, 1999).

[48] Filing misleading information and failing to correct past misleading filings are separate offenses under IM-1000-1. *See, e.g., Toth*, 2008 SEC LEXIS 1520, at *25–26 (finding that representative violated IM-1000-1 both by causing a false answer on his Form U4 and by failing to have the form amended thereafter).

[49] *See Proposal to Adopt Secs. Exch. Act Rules 19d-1, 2 and 3, and 19h-1; Proposed Rescission of Secs. Exch. Act Rules 15Ab-1 and 15Ag-1*, Exchange Act Release No. 12561, 1976 SEC LEXIS 1382, at *5 (June 21, 1976).

[50] 15 U.S.C. § 78c(a)(39)(F) (emphasis added).

1. Tucker's Violations Were Willful

A willful violation under the federal securities laws simply means "'that the person charged with the duty knows what he is doing.'"[51] It is not necessary to additionally find that Tucker "was aware of the rule he violated or that he acted with a culpable state of mind."[52] A failure to disclose is willful under Exchange Act § 3(a)(39)(F) if the respondent of his own volition provides false answers on his Form U4.[53]

Tucker challenges FINRA's finding of willfulness by claiming that he discussed his financial difficulties with representatives of Schneider Securities, vFinance, PHD Capital, and Bishop Rosen and that he attempted to amend the Forms U4 registering his association with Schneider Securities, vFinance, and Bishop Rosen (albeit unsuccessfully). His claims, however, do not controvert FINRA's findings.

Tucker acted willfully by voluntarily supplying false answers to the Judgments-and-Liens Question and the Bankruptcy Question on the Forms U4[54] while he was aware of the judgments, bankruptcies, and the federal tax lien.[55] His false answers and omissions were neither involuntary

---

[51] *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)).

[52] *Craig*, 2008 SEC LEXIS 2844, at *13. *Accord Mathis*, 671 F.3d at 217; *Wonsover*, 205 F.3d at 414; *Neaton*, 2011 SEC LEXIS 3719, at *21.

[53] *Mathis*, 2009 SEC LEXIS 4376, at *19; *see also Mathis*, 671 F.3d at 216 (finding that the Commission "did not abuse its discretion when it concluded that Mathis willfully failed to disclose . . . tax liens within the meaning of [Exchange Act] § 3(a)(39)(F) because he 'voluntarily provided false answers on his Form U4'").

[54] We find that, after he made the 2002 Bankruptcy Filing, Tucker willfully failed to disclose it on the September 2002 Form U4 registering his association with GunnAllen and willfully failed to disclose either of the Bankruptcy Filings on each subsequent Form U4 (*i.e.*, vFinance, Pointe Capital, Meyers Associates, Prestige Financial, PHD Capital, Brill Securities, and Bishop Rosen). We find he willfully failed to disclose the AmEx judgment, which was filed in March 2000, on the Broadband Capital Form U4 filed in January 2001 and each subsequent Form U4 filed through its March 2006 discharge in bankruptcy (*i.e.*, InvestPrivate, Schneider Securities, GunnAllen, vFinance, Pointe Capital, and Meyers Associates). We find he willfully failed to disclose the Country Club judgment, which he received in July 2002, on the GunnAllen Form U4 on September 2002 and each subsequent Form U4 filed through its March 2006 discharge in bankruptcy (*i.e.*, vFinance, Pointe Capital, and Meyers Associates). We find he willfully failed to disclose the federal tax lien, publicly filed in June 2002, on the GunnAllen Form U4 filed in September 2002 and each subsequent Form U4 (*i.e.*, vFinance, Pointe Capital, Meyers Associates, Prestige Financial, PHD Capital, Brill Securities, and Bishop Rosen). We further find he willfully failed to disclose the FSA judgment, which he acknowledged he knew of while at Brill Securities, on the next Form U4 filed in June 2008 to register his association with Bishop Rosen.

[55] FINRA's complaint did not allege that Tucker's failure to disclose the state tax lien was willful. Accordingly, we do not make a finding regarding its willfulness. In any case, we note that an Exchange Act statutory disqualification can be triggered by a single willful violation. *See* Exchange Act § 3(a)(39)(F), 15 U.S.C. § 78c(a)(39)(F) (covering any willful statement or omission made on any application for association with a member firm).

nor inadvertent. Though Tucker's financial difficulties had "been in the back of [his] mind," he decided against accurately answering the Form U4 questions in order to avoid raising "red flags." He repeatedly acted to conceal his poor financial history—further confirming the willfulness of his actions.[56] Tucker was presented with successive opportunities to set the record straight, but consistently avoided doing so by attributing his bankruptcies and liens to his wife and errors by the IRS. He engaged in this strategy when completing the Forms U4, when later confronted with evidence of inaccuracies in his previously-filed forms, and even in response to FINRA's investigative inquiries.

In addition, Tucker's descriptions of attempts to amend the Forms U4—particularly in light of the filings he made after these purported attempts—reinforce rather than undermine these willfulness findings. Tucker's own statements indicate that he attempted amendments only after the firm by which he was then employed learned from *others* about his bankruptcy filings and outstanding liens. For instance, Tucker claims that he sent Schneider a Form U4 amendment reflecting "the IRS info as well as the liens info" *after* the IRS attempted to garnish his firm wages.[57] Thus, he was indisputably aware—at least as of 2002 when his association with Schneider ended—of the federal lien and the Form U4 disclosure obligation it triggered. Even if Schneider did not immediately file the amended Form U4 that Tucker claims he completed, each Form U4 he later completed presented an opportunity to make full disclosure. Yet Tucker continued to provide false answers on eight Forms U4 he submitted over the next seven years and acknowledged that he did so to avoid drawing attention to his financial history.[58] Even after

---

[56] Although scienter is not necessary to establish willfulness, we note that efforts to conceal violative conduct demonstrate scienter. *See, e.g.*, *SEC v. Ficken*, 546 F.3d 45, 52 (1st Cir. 2008) (scienter was demonstrated when brokers misrepresented their and their customers' identities in order to facilitate trades that otherwise would have been blocked); *SEC v. Seghers*, 298 F. App'x 319, 334 (5th Cir. 2008) (unpublished) (motive to conceal problems with investments, "although not alone sufficient, is relevant to showing scienter").

[57] Tucker's Brief at 3.

[58] The other attempts Tucker mentions in his brief do not stand up to this admission that he delayed filing Form U4 amendments and his pattern of blaming others for his own misconduct. Further evidence of this pattern includes his failure to file amendments even after he gave investigative testimony acknowledging his responsibility for inaccuracies on his prior Forms U4 and his decision to file additional false Forms U4 after the complaint was filed. Although Tucker does not specify the timing of his purported attempts to amend, his testimony and other evidence indicates that any efforts he might have made were most likely prompted by his firm's receipt of relevant information from another source.

For instance, Tucker argues that he sent an e-mail to vFinance on May 12, 2005 that evidenced his attempts to amend his Form U4. That e-mail, however, was ostensibly sent three months after he submitted his Form U4 for vFinance, a day after vFinance received notice of one of his bankruptcy filings from a court report, and after he had already given notice to terminate his association with the firm. Tucker also claims that he completed an amended Form U4 for Bishop Rosen. The evidence, however, suggests that any such attempt was two months after he submitted his original Form U4 for Bishop Rosen and after the firm began inquiring about multiple levies it received and asked him to amend the form. Tucker also claims that he discussed submitting, at an unspecified future date, an amended form for PHD Capital. But Tucker testified during the hearing that PHD Capital received IRS notices *after* his association began and, according to his brief, he delayed any update until after he opened a branch office.

(continued...)

FINRA sued Tucker in this case, he continued to file inaccurate Forms U4—further confirming that his pattern of non-disclosure did not result from a misunderstanding or inadvertence.

2. The Information Tucker Failed to Disclose Was Material

The information Tucker excluded from the eleven Forms U4 at issue was material. We have held that the test for determining whether information not disclosed on a Form U4 is material is whether the omitted information would have "significantly altered the total mix of information made available."[59] We have also deemed omitted facts material when they "would have assumed actual significance in the deliberations of" the representative's employers, regulators, and investors.[60] "[A]ccurate disclosure on Forms U4 regarding a registered representative's serious financial problems" are of "inarguable importance" in the industry.[61] The judgments, bankruptcies, and liens were significant because they cast doubt on Tucker's ability to manage his personal financial affairs and provide investors with appropriate financial advice. The materiality of such information is particularly evident when, as in this case, their disclosure should have been triggered by specific questions on the Form U4.[62] "[E]ssentially all the information that is reportable on the Form U4 is material."[63]

During his investigative testimony he discussed amending his Form U4 with Brill, but then admitted those discussions were prompted by a call by a third party to the firm regarding the FSA judgment.

59 *Mathis*, 2009 SEC LEXIS 4376, at *29 & 29 n.27 (citing *TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976)); *see also Basic Inc. v. Levinson*, 485 U.S. 224, 231-32 (1988) (stating that a fact is material if there is a "substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the total mix of information made available"); *cf. Warwick Capital Mgmt., Inc.*, Advisers Act Release No. 2694, 2008 SEC LEXIS 96, at *25 & 25 n.27 (Jan. 16, 2008) (applying "total mix" standard for determining materiality of information on investment adviser registration form and stating that false statements are material when they address "qualities that would be important to clients and prospective clients in selecting an investment adviser").

60 *Mathis*, 2009 SEC LEXIS 4376, at *31 (citing *TSC Indus.*, 426 U.S. at 449).

61 *Mathis*, 671 F.3d at 220.

62 Tucker himself recognized the materiality of this information when he testified that he decided against making accurate disclosure on the Form U4 because he wanted to avoid raising red flags.

63 *Dep't of Enf. v. Knight*, Complaint No. C10020060, 2004 NASD Discip. LEXIS 5, at *13 (NAC Apr. 27, 2004); *see also Mathis*, 2009 SEC LEXIS 4376, at *28–29 (rejecting challenge to similar FINRA finding).

C. Tucker's Procedural Arguments

1. Tucker's *Pro Se* Status Did Not Deprive Him of a Fair Hearing

Exchange Act § 15A(b)(8) requires FINRA to provide a fair procedure for disciplining its members and associated persons.[64] Section 15A(h)(1) of that Act highlights how this is achieved; *i.e.*, by filing specific charges, notifying a respondent of those charges, giving him a chance to defend himself, and by keeping a record of those proceedings so that they may be reviewed (if necessary) on appeal.[65] Fairness is determined by examining the entire record.[66]

Tucker claims FINRA denied him a fair hearing because it failed to give him free legal representation, which he asserts prevented him from effectively responding to the charges against him. Although FINRA's rules permit the participation of counsel, it is well established that "there is no right to counsel in [its] disciplinary proceedings."[67] Moreover, we have conducted an independent review of the record and find that the proceedings complied with the statute. Tucker was given appropriate opportunities to present evidence and arguments, to testify, and to cross-examine witnesses.[68] And FINRA evaluated his testimony and defenses against the evidence that was introduced and applicable legal standards.

Tucker claims that, as a result of his *pro se* status, he "was often prevented from finishing statements, was interrupted while asking questions, and was even given misleading and inaccurate information that trained counsel would have been better able to respond to."[69] He also claims that the hearing officer denied him a fair opportunity to demonstrate that his conduct was not willful. After reviewing the transcript and record, we do not find that the hearing officer exceeded her authority under FINRA Rule 9235(a), which authorizes hearing officers to "regulat[e] the course

---

64 15 U.S.C. § 78o-3(b)(8). *See Scott Epstein*, Exchange Act Release No. 59328, 2009 SEC LEXIS 217, at *51 (Jan. 30, 2009).

65 15 U.S.C. § 78o-3(h)(1).

66 *See Mark H. Love*, Exchange Act Release No. 49248, 57 SEC 315, 2004 SEC LEXIS 318, at *16 (Feb. 13, 2004).

67 *Craig*, 2008 SEC LEXIS 2844, at *23; *see also, e.g., Sundra Escott-Russell*, Exchange Act Release No. 43363, 54 SEC 867, 2000 SEC LEXIS 2053, at *16 n.18 (Sept. 27, 2000) ("Although the NASD provisions 'permit the participation of counsel[,] . . . there is no constitutional or statutory right to counsel in NASD disciplinary proceedings.'" (quoting *Falcon Trading Group, Ltd.*, Exchange Act Release No. 36619, 52 SEC 554, 1995 SEC LEXIS 3454, at *13–14 (Dec. 21, 1995), *aff'd*, 102 F.3d 579 (D.C. Cir. 1996))).

68 *See Craig*, 2008 SEC LEXIS 2844, at *23 (finding that the proceeding was fair when applicant "had the opportunity to present evidence and arguments in his favor, to testify, and to cross-examine witnesses").

69 Tucker's Brief in Support of Reversal and Modification of Sanctions at 3 (NAC Sept. 17, 2010) ("NAC Brief").

of the hearing" and to "resolv[e] any and all procedural and evidentiary matters."[70] Tucker's claims focus on instances in which the hearing officer exercised this authority by addressing the admissibility of evidence and directing questions and testimony onto matters relevant to the charged violations. Moreover, the transcript does not support Tucker's argument that the panel improperly "refus[ed] to let him explain the relevance of his dealings with his superiors at various firms regarding the circumstances surrounding his U4 nondisclosures."[71] He was directly asked, and testified, about such discussions during the hearing.[72] We find no fault with the hearing panel's conclusion that Tucker's testimony was not credible and the NAC's finding that his testimony lacked veracity[73]—conclusions that are amply supported by the evidence. In our *de novo* review we have considered Tucker's claims regarding his purported discussions at various firms in light of his pattern of filings reflected in the entirety of the record and for the reasons discussed above conclude that they do not excuse his violative filings or demonstrate a lack of willfulness.[74]

Tucker also suggests that his lack of counsel prevented him from developing defenses to the charged violations. In the NAC appeal, Tucker's counsel argued that "experienced counsel might have been able to interview prospective witnesses that would buttress—or

---

70 *See also Epstein,* 2009 SEC LEXIS 217, at *63–64 (relying on NASD Rule 9235).

71 NAC Brief at 10.

72 The hearing officer interrupted Enforcement's examination of Tucker at the hearing by stating that "what compliance directors may or may not have told him is irrelevant." But this did not prevent Tucker from describing such discussions. Tucker was asked, for example: "on any of the Forms U4 . . . did you disclose that you had filed for bankruptcy"; "on the ones that you did not, why did you not disclose the bankruptcies?"; "What compliance officer told you not to disclose your personal bankruptcies?"; and "It's your testimony today that multiple compliance officers told you not to disclose your bankruptcies?" In response, Tucker testified that he discussed the bankruptcies with compliance officers at Broadband Capital, vFinance, and GunnAllen; that he attempted to amend the Schneider and Bishop Rosen Forms U4 to reflect his bankruptcy filing; and that he "spoke at length" and "negotiated" with representatives of PHD Capital in connection with "[his] bankruptcy, as well as [his] wife's bankruptcy and anything that's out there" because he was planning to open a PHD Capital branch office.

73 2011 FINRA Discip LEXIS 66, at *20.

74 Such *de novo* review by the NAC and the Commission dissipates any harm that may have resulted from any improper procedural decisions made at the hearing level. *See Heath v. SEC*, 586 F.3d 122, 142 (2d Cir. 2009) ("[B]ecause the SEC conducted a thorough, *de novo* review of the record, any procedural errors that may have been committed by the [NYSE's] Chief Hearing Officer are cured"); *Robert Tretiak*, Exchange Act Release No. 47534, 56 SEC 209, 2003 SEC LEXIS 653, at *39 (Mar. 19, 2003) (finding that *dé novo* review "dissipates even the possibility of unfairness"); *Frank J. Custable*, Exchange Act Release No. 33324, 51 SEC 855, 1993 SEC LEXIS 3437, at *19 (Dec. 10, 1993) (stating that *de novo* review by NASD appellate panel and Commission "dissipates any harm" that may have resulted from staff irregularities); *Robert Bruce Orkin*, Exchange Act Release No. 32035, 51 SEC 336, 1993 SEC LEXIS 726, at *19 (Mar. 23, 1993) (finding that the Commission's "*de novo* review . . . cures whatever bias or disregard of precedent or evidence, if any, that may have existed below"), *aff'd*, 31 F.3d 1056 (11th Cir. 1994).

articulate—[Tucker]'s position," "obtain [relevant documents] and get them admitted into evidence," or cross-examine witnesses to "reveal facts that would lead to a different result regarding the issue of willfulness."[75] Tucker's brief to the Commission includes similar arguments. But Tucker's repeated failures to comply with FINRA's requirements for introducing additional or more probative evidence in support of his position and his speculation about how he might have benefitted from counsel to articulate or develop evidence supporting his defense do not demonstrate unfairness in the proceedings or entitle him to relief or procedural accommodation.[76] Ultimately, "[i]t is the respondent's obligation, not [FINRA]'s, to marshal all the evidence in his defense,"[77] and any failure to "adduce available evidence to meet the charges against him and show mitigating factors does not entitle him to have the proceedings reopened after the issuance of an adverse decision."[78]

We also note that the hearing officer repeatedly tried to accommodate Tucker's *pro se* status well before the hearing took place. She explained to Tucker that FINRA would not provide him with counsel and, during the pre-hearing conferences, repeatedly asked about his efforts to secure counsel. Tucker said he would be represented at the hearing. She also granted Tucker numerous extensions, in part to accommodate Tucker's *pro se* status and purported efforts to secure counsel, ultimately delaying the hearing by approximately two months. Given these efforts, it would be particularly inappropriate for Tucker to "be permitted to gamble on one course of action" by proceeding *pro se* after repeatedly indicating that he would be represented and, "upon an unfavorable decision, to try another course of action."[79]

---

75 Reply Brief in Further Support of Reversal and Modification of Sanctions at 3 (NAC Oct. 28, 2010).

76 *See supra* note 20. Under Rule 9252 of FINRA's Code of Procedure, a respondent may, under certain specified conditions, request that FINRA compel member firms or associated persons to testify or produce documents. Rule 9252 provides that such request, if timely, will only be granted if, among other things, the information sought is relevant, material, and non-cumulative; the request is not "unreasonable, excessive in scope, or unduly burdensome"; the respondent has demonstrated reasonable efforts to secure such material by other means; and the materials or testimony are sought from persons subject to FINRA jurisdiction. Tucker did not timely comply with any of these requirements. He also offers no reasonable basis to conclude that such a request, even if timely made, would have satisfied these requirements or produced relevant documents, particularly when the FINRA investigator in this case contacted the firms to obtain copies of relevant Forms U4 and employment files. As noted above, disciplinary proceedings by SROs such as FINRA do not provide for subpoenas. *See supra* note 10; *see also Thomas E. Warren*, Exchange Act Release No. 33677, 51 SEC 1015, 1994 SEC LEXIS 508, at *12 n.22 (Feb. 24, 1994), *aff'd*, 69 F.3d 549 (10th Cir. 1995) (table).

77 *Ronald Earl Smits*, Exchange Act Release No. 30787, 50 SEC 1020, 1992 SEC LEXIS 1251, at *10 (June 8, 1992).

78 *Epstein*, 2009 SEC LEXIS 217, at *60 n.52. Here, the pre-hearing transcript shows that Tucker understood the need to produce evidence before the hearing.

79 *Gross v. SEC*, 418 F.2d 103, 108 (2d Cir. 1969).

2. Tucker Has Not Satisfied the Requirements for Adducing Additional Evidence on Appeal

Below, Tucker repeatedly ignored the deadlines for exchanging and filing exhibits. Tucker also ignored those accommodations the hearing officer made that would have allowed him to file such exhibits as late as the week before the hearing.[80] As a result, the hearing officer ultimately precluded him from introducing any exhibits of his own at the hearing. (He was permitted, however, to use those exhibits previously submitted by Enforcement, which he did.)

On appeal, with no attempt to seek permission, Tucker attached more than thirty proposed exhibits to his brief. Those documents were apparently included to support his claim that he tried to amend some of the Forms U4; to illustrate shared culpability or other wrongdoing by some of the firms and their representatives; and to downplay the importance of the information required to be disclosed on the Forms U4 or the egregiousness of his violations. Several of these exhibits are duplicates of documents already in the record, which we already considered as part of our review. As for the rest, we evaluate requests to adduce additional evidence under SEC Rule of Practice 452, which requires that such additional evidence be accompanied by a showing "with particularity that the evidence is material and that there were reasonable grounds for failing to produce the evidence previously."[81] In attaching the new exhibits, Tucker failed to satisfy either of these requirements and we therefore decline to admit them.[82] They are also not material because they are not offered in support of claims that would excuse or mitigate the violations or

---

80 The hearing was originally scheduled for November 17, 2009 and the deadline for submitting exhibits was extended to November 13, 2009. Tucker later sought, and was granted, a delay of the hearing to January 21, 2010. In requesting this postponement, Tucker also sought a further extension of his deadline to introduce a pre-hearing memorandum, a witness list, and an exhibit list. Although the hearing officer postponed the hearing date, she rejected this request to further extend the deadline for pre-hearing submissions.

81 17 C.F.R. § 201.452; *see also* 17 C.F.R. § 201.460(c) (providing that documents not admitted at hearing "shall not be considered a part of the record before the Commission"); *CMG Inst'l Trading, LLC*, Exchange Act Release No. 59325, 2009 SEC LEXIS 215, at *18 & 18 n.20 (Jan. 30, 2009) (determining not to adduce into the record documents proffered when applicants did not file a motion under Rule 452).

82 *See John Edward Mullins*, Exchange Act Release No. 66373, 2012 SEC LEXIS 464, at *56 n.60 (Feb. 10, 2012) (declining to admit exhibits attached to an applicant's brief that were "not material to [the applicant's] case" and that addressed issues not under review); *Daniel C. Montano*, Exchange Act Release No. 40243, 53 SEC 681, 1998 SEC LEXIS 2874, at *18 (July 22, 1998) (declining to admit proffered evidence that was not material to the allegations in the case).

address the relevant issues in this case. In addition, Tucker has not explained his failure to introduce the exhibits earlier; we find no reasonable grounds for that failure.[83]

V.

Pursuant to Exchange Act § 19(e)(2), we sustain FINRA sanctions unless we find, giving due regard to the public interest and the protection of investors, that the sanctions are excessive, oppressive, or impose an unnecessary or inappropriate burden on competition.[84] Tucker asks that his two-year suspension be reduced and the requirement that he requalify be eliminated. We find no basis for reducing these sanctions. We begin by noting that they are consistent with FINRA's Sanction Guidelines.[85] For individuals filing a false, misleading, or inaccurate Form U4, the Guidelines recommend a fine of between $2,500 and $50,000 and a suspension of five-to-thirty business days. The Guidelines recommend that adjudicators consider a longer suspension of up to two years or a bar in egregious cases, such as when false, misleading, or inaccurate Form U4 filings have been made repeatedly.[86] The Guidelines also invite consideration of the "[n]ature and significance of [the] information," whether the violation "resulted in a statutorily disqualified

---

[83] For example, Tucker includes as an exhibit an affidavit from a person that was never identified as a witness in any of his earlier filings. That affidavit by Carlos Clarke, dated March 19, 2012, and sworn and notarized on March 20, 2012, states:

> My name is Carlos Clarke and I was with Mr. Tucker when he interviewed at PHD Capital, Meyers Associates, [vFinance], Prestige Financial and Pointe Capital[,]Inc. During each of these he made them aware of his Bankruptcies and liens. Most of the firms advised him to be defer [sic] initially and later on amend the Form U4. I attest to this as being truthful.

As an initial matter, Tucker's failure to adduce this affidavit or identify Clarke as a potential witness earlier in this case casts doubt on its reliability. Additionally, the discussions and advice mentioned in the affidavit—even if they occurred—do not excuse false and misleading Form U4 disclosures. Nor, in light of the other evidence and Tucker's purported amendment attempts, does the affidavit suggest that Tucker reasonably believed that full disclosure on the Forms U4 was not required. In any event, Tucker has not offered any explanation for why this and other documents could not have been submitted earlier, before the deadline for filing such had passed.

[84] 15 U.S.C. § 78s(e)(2). Exchange Act § 19(e)(2) permits us to cancel, reduce, or remit a FINRA sanction, but does not authorize us to increase the sanction. *Id.*; *see also Gregory W. Gray*, Exchange Act Release No. 60361, 2009 SEC LEXIS 2554, at *39 n.41 (July 22, 2009) (noting that the Exchange Act does not authorize the Commission to increase a NYSE disciplinary sanction). Tucker does not claim, nor does the record show, that FINRA's action imposed an unnecessary or inappropriate burden on competition.

[85] FINRA promulgated the Sanction Guidelines to achieve greater consistency, uniformity, and fairness in its sanctions. Although the Guidelines do not bind our consideration of the sanctions, they serve as a benchmark for our review under Exchange Act § 19(e)(2). *Craig*, 2008 SEC LEXIS 2844, at *18 n.27.

[86] FINRA Sanction Guidelines at 74, at http://www.finra.org/web/groups/industry/@ip/@enf/@sg/documents/industry/p011038.pdf.

individual becoming or remaining associated with a firm," and whether it "resulted in harm to a registered person, another member firm or any other person or entity."[87]

Tucker's failures to disclose the judgments, bankruptcies, and liens were egregious. Over seven years, Tucker was responsible for eleven false and misleading Forms U4.[88] The multiple and longstanding judgments, bankruptcies, and liens that he failed to disclose involved large dollar amounts and longstanding financial obligations to multiple creditors. They were material reflections on his business judgment and the financial pressures and distractions he continually faced while rendering investment advice. His false and misleading filings egregiously violated the standard of "candor and forthrightness" required of associated persons during the registration process.[89] And he continued to make such misrepresentations even after the complaint in this case was filed. Accurate and timely disclosure would have provided material information to the firms with which he sought employment and to existing and potential customers. As he acknowledged, such information could have affected the regulatory scrutiny applied to his filings and conduct.

Tucker's ongoing attempts to conceal and evade responsibility for the underlying bankruptcies and federal tax lien aggravate the seriousness of his violations and demonstrate the extent to which he was willing to go to avoid his regulatory responsibilities.[90] Tucker's persistent attempts to deflect blame onto others and his pattern of hiding and mischaracterizing the underlying events to the firms and even to FINRA during its investigation suggests that he is likely to engage in similar misconduct in the future. This pattern of deflection and misdirection also discredits his claims that he believed disclosure was not required based on discussions with firm

---

87 *Id.* at 73.

88 The Sanctions Guidelines set forth "Principal Considerations in Determining Sanctions" applicable to all violations, including whether the respondent "accepted responsibility for and acknowledged the misconduct . . . prior to detection"; "demonstrated reasonable reliance on competent legal or accounting advice"; "engaged in numerous acts and/or a pattern of misconduct"; "engaged in the misconduct over an extended period of time"; "attempted to conceal his or her misconduct or to lull into inactivity [or] mislead . . . regulatory authorities or . . . the member firm"; "attempted to . . . conceal information from FINRA, or to provide inaccurate or misleading testimony or documentary information to FINRA." FINRA Sanction Guidelines at 6–7. Here, we find that Tucker repeatedly failed to accept responsibility for his actions, failed to demonstrate that he reasonably relied on advice from others, engaged in a pattern of misconduct over a long period of time, and took numerous steps to conceal his misconduct from the firms and even from FINRA, including by providing evasive and contradictory testimony. Moreover, Tucker was not entitled to reasonably rely on any advice to withhold disclosure on his Forms U4 (assuming for the sake of argument that such advice was actually given) because, among other things, the questions triggering his disclosure obligations were unambiguous and he misrepresented his financial history during discussions with the firms. *See supra* notes 43–45 & 58 and accompanying text.

89 *Mathis*, 2009 SEC LEXIS 4376, at *16; *see also Craig*, 2008 SEC LEXIS 2844, at *15 ("[t]he effectiveness of the form depends on applicants' candid disclosures").

90 *See Craig*, 2008 SEC LEXIS 2844, at *22 (noting that a "failure to take responsibility for his conduct makes recurrence more likely").

officials. Tucker had opportunities to make accurate filings each time he associated with a new member firm but repeatedly chose not to—even after he acknowledged the deficiencies in his past filings. He continued to make false filings long after he claims he submitted amended forms at Schneider and other firms, after FINRA began its investigation, after he represented he would correct his earlier filings, after he gave investigative testimony acknowledging his failures to disclose, and even after FINRA filed its complaint in this case. Like FINRA, we conclude that his explanations and testimony were evasive and contradictory and that they ultimately reveal a disconcerting failure to acknowledge his own responsibility in this matter.

We find no mitigating factors.[91] Contrary to Tucker's assertion that his repeated violations were harmless, his employers, regulators, and investors were entitled to rely on the disclosures he submitted as part of the Form U4 registration process. His false and misleading disclosures undermined efforts by each of these stakeholders in the securities industry to gather accurate information and to detect risks.[92]

Tucker's attempts to shift blame for his own repeated misconduct cast doubt on his commitment to the high standards of conduct demanded of associated persons and ultimately suggests an opportunistic attitude towards disclosure and compliance. Tucker consistently failed to acknowledge the wrongfulness of his conduct—that he had a duty to respond fully and accurately on *each of the* Forms U4 that he completed and certified and that others were entitled to rely upon in terms of accuracy and completeness. Here, Tucker's migration among eleven firms over seven years, and consistent certifications of inaccurate information with each, highlights the difficulty in detecting a representative's past failures to disclose. Accordingly, we find that suspension and license requalification is an appropriate remedial response.[93] We find these

---

[91] We are not persuaded by the NAC's decision to aggregate the repeated Form U4 violations for sanctioning purposes because they each related to Tucker's "ongoing desire to conceal his myriad financial woes." We note that an ongoing desire to conceal or mislead will commonly be present in cases presenting repeated Form U4 violations and such a long-standing attitude aggravates rather than mitigates the seriousness of repeated violations. Aggregating violations that occur over such a long period could inadvertently discourage representatives from filing corrected answers on Forms U4 once a pattern of violative filings has begun. As noted above, however, the Exchange Act does not authorize us to increase sanctions imposed by the NAC. *See supra* note 84.

[92] Tucker also cites the sanctions imposed in other cases involving Form U4 violations to suggest that the sanctions are inappropriate. It is well established, however, that the determination of appropriate remedial action "depends on the facts and circumstances of each particular case and cannot be precisely determined by comparison with the action taken in other proceedings." *PAZ Sec., Inc.*, Exchange Act Release No. 57656, 2008 SEC LEXIS 820, at *30–31 (Apr. 11, 2008) (citing *Butz v. Glover Livestock Comm'n Co.*, 411 U.S. 182, 187 (1973)), *petition denied*, 566 F.3d 1172 (D.C. Cir. 2009); *see also Geiger v. SEC*, 363 F.3d 481, 488 (D.C. Cir. 2004) (declining to "compare this sanction to those imposed in previous cases."); *Hiller v. SEC*, 429 F.2d 856, 858 (2d Cir. 1970) ("[W]e cannot disturb the sanctions ordered in one case because they were different from those imposed in an entirely different proceeding."). The circumstances of this case are more than sufficient to establish a basis for the sanctions imposed.

[93] FINRA's Sanction Guidelines state that requalification may serve a remedial purpose if "respondent's action . . . demonstrated a lack of knowledge or familiarity with the rules and laws governing the securities

(continued...)

sanctions are also appropriate to encourage other representatives to provide complete and accurate Form U4 disclosures even when "detection of dishonest responses seems unlikely."[94] They also serve the public interest in "maintain[ing] a high level of business ethics in the securities industry" based on timely, accurate, and complete disclosure to investors.[95]

Accordingly, we sustain these sanctions because they are neither excessive nor oppressive, are remedial, and will protect investors and the public interest. They also impose no unnecessary or inappropriate burden on competition.

An appropriate order will issue.[96]

By the Commission (Commissioners WALTER, AGUILAR and GALLAGHER); Chairman SCHAPIRO and Commissioner PAREDES not participating.

Elizabeth M. Murphy

Elizabeth M. Murphy
Secretary

---

industry." FINRA Sanction Guidelines at 5. We find requalification here appropriate to remedy Tucker's refusal to recognize the violative nature of his own conduct and to remind him of his disclosure obligations in any future Form U4 or other industry filings. *See Pacific On-Line Trading & Sec., Inc.*, Exchange Act Release No. 48473, 56 SEC 1111, 2003 SEC LEXIS 2164, at *22 (Sept. 10, 2003) (affirming requalification when the applicant demonstrated a "continued refusal to appreciate" the violative nature of his past misconduct); *see also Harry Gliksman*, Exchange Act Release No. 42255, 54 SEC 471, 1999 SEC LEXIS 2685, at *488 (Dec. 20, 1999) (finding the requirement to requalify as a general securities principal is appropriate to remind applicant of his obligations), *aff'd*, 24 F. App'x 702 (9th Cir. 2001) (unpublished).

[94] *Neaton*, 2011 SEC LEXIS 3719, at *45.

[95] *Mathis*, 671 F.3d at 217; *see also Steadman v. SEC*, 603 F.2d 1126, 1142 (5th Cir. 1979) ("[T]he Commission also may consider the likely deterrent effect its sanctions will have on others in the industry."); *PAZ Sec., Inc. v. SEC*, 494 F.3d 1059, 1066 (D.C. Cir. 2007) (noting that although "'general deterrence is not, by itself, sufficient justification for expulsion or suspension . . . it may be considered as part of the overall remedial inquiry'" (quoting *McCarthy v. SEC*, 406 F.3d 179, 189 (2d Cir. 2005)).

[96] We have considered all the arguments advanced by the parties. We reject or sustain them to the extent that they are inconsistent or in accord with the views expressed herein.

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 68210 / November 9, 2012

Admin. Proc. File No. 3-14613

In the Matter of the Application of

ROBERT D. TUCKER
1481 Fifth Avenue, Apt 8-D
New York, NY 10035

For Review of Disciplinary Action Taken by

FINRA

ORDER SUSTAINING DISCIPLINARY ACTION TAKEN BY FINRA

On the basis of the Commission's opinion issued this day, it is

ORDERED that the disciplinary action taken by FINRA against Robert B. Tucker is hereby sustained.

By the Commission.

Elizabeth M. Murphy

Elizabeth M. Murphy
Secretary

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 68214 / November 13, 2012

Admin. Proc. File No. 3-15020

In the Matter of JILAINE H. BAUER, ESQ.	ORDER DENYING MOTION TO LIFT TEMPORARY SUSPENSION AND DIRECTING HEARING

On September 12, 2012, we issued an order instituting proceedings ("OIP") against Jilaine H. Bauer, Esq., pursuant to Commission Rule of Practice 102(e)(3)(i)(B).[1] The OIP temporarily suspended Bauer, an attorney licensed in Illinois and Wisconsin, from appearing or practicing before the Commission.[2] Bauer has now filed a petition, pursuant to Rule 102(e)(3)(ii),[3] requesting that her temporary suspension be lifted. For the reasons set forth below, we have determined to deny Bauer's petition and set the matter down for hearing.

Bauer was the former general counsel, chief compliance officer, secretary, and senior vice president of Heartland Advisors, Inc. ("HAI") and the former vice president of Heartland Group, Inc. ("Heartland Group"). On December 11, 2003, the Commission filed a civil injunctive action against Bauer (and others) in the U.S. District Court for the Eastern District of Wisconsin alleging, among other things, that Bauer violated the federal securities laws by engaging in insider trading in the shares of Heartland Group's Short Duration High-Yield Municipal Fund (the "Short Duration Fund"). Specifically, the complaint alleged that on October 3, 2000, Bauer sold her shares in the Short Duration Fund with knowledge that it had liquidity and pricing problems. The complaint further alleged that, as a result of her sale, Bauer avoided losses in the amount of $20,033.25.

1 17 C.F.R. § 201.102(e)(3)(i)(B) (authorizing the Commission to temporarily suspend from appearing or practicing before it an attorney who has been "[f]ound by any court of competent jurisdiction in an action brought by the Commission to which he or she is a party or found by the Commission in any administrative proceeding to which he or she is a party to have violated (unless the violation was found not to have been willful) or aided and abetted the violation of any provision of the Federal securities laws or of the rules and regulations thereunder").

2 *Jilaine H. Bauer, Esq.*, Securities Exchange Act Release No. 67845, 2012 WL 3992034 (Sept. 12, 2012).

3 17 C.F.R. § 201.102(e)(3)(ii).

On May 25, 2011, the district court granted the Commission's motion for summary judgment on its insider trading claims against Bauer, finding that Bauer possessed material, nonpublic information when she sold her shares in the Short Duration Fund, and that she acted with scienter.[4] On June 15, 2012, the district court entered a final judgment against Bauer, finding that she violated Section 17(a) of the Securities Act of 1933 and Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder,[5] and ordering her to disgorge $20,033.25, plus prejudgment interest.[6] The district court determined that permanent injunctive relief and a monetary penalty should not be imposed.[7] Bauer thereafter appealed the district court's final judgment to the U.S. Court of Appeals for the Seventh Circuit.[8] Her appeal is in its early stages.

In issuing the OIP, we found it "appropriate and in the public interest" that Bauer be temporarily suspended from appearing or practicing before the Commission based on the findings of the Eastern District of Wisconsin, a court of competent jurisdiction, in an action brought by the Commission, that Bauer violated the federal securities laws. We stated that the temporary suspension would become permanent unless Bauer filed a petition seeking to lift it within thirty days of service of the OIP, pursuant to Rule 102(e)(3)(ii). We further advised that, pursuant to Rule 102(e)(3)(iii), upon receipt of such a petition, we would either lift the temporary suspension, set the matter down for a hearing, or both.

In her petition, Bauer advances a host of arguments challenging the temporary suspension, including the following: (1) the temporary suspension was based on stale, twelve-year old facts and therefore barred by the statute of limitations set forth in 28 U.S.C. § 2462, due process, and fundamental fairness; (2) the public interest factors contained in *Steadman v. SEC*[9] have already been adjudicated in her favor when the district court declined to enter a permanent injunction and should not be relitigated in this administrative proceeding; (3) even if the *Steadman* factors were to be relitigated here, the Commission would have to reach the same conclusion as the district court; (4) a Rule 102(e) suspension is a "penalty" within the meaning of *Johnson v. SEC*,[10] and the inappropriateness of a penalty has already been adjudicated in Bauer's favor when the district court declined to assess a monetary penalty; and (5) the temporary suspension should be lifted for the reasons stated in Bauer's appellate brief filed in the Seventh Circuit and incorporated by reference in her petition to lift the temporary suspension.

---

4 *SEC v. Bauer,* No. 03-C-1427, 2011 WL 2115924 (E.D. Wis. May 25, 2011)

5 15 U.S.C. § 77q(a), 15 U.S.C. § 78j(b), & 17 C.F.R. § 240.10b-5.

6 *SEC v. Bauer*, No. 03-C-1427, 2012 WL 2217045 (E.D. Wis. June 15, 2012).

7 *Id.*

8 *SEC v. Bauer,* No. 03-C-1427, 2012 WL 2217045 (E.D. Wis. June 15, 2012), *appeal docketed*, No. 12-2860 (7th Cir. Aug. 10, 2012).

9 603 F.2d 1126 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981).

10 87 F.3d 484 (D.C. Cir. 1996).

The Office of the General Counsel ("OGC") has opposed Bauer's petition. OGC argues, among other things, that: (1) this Rule 102(e)(3) follow-on proceeding was timely brought, having accrued on June 15, 2012, when the district court entered its final judgment against Bauer in the civil injunctive action, and the proceeding does not violate due process and is not fundamentally unfair; (2) the district court's consideration of certain *Steadman* factors does not collaterally estop the Commission from considering those factors from the standpoint of protecting its processes; (3) even assuming, for the sake of argument, that a Rule 102(e)(3) suspension is a "penalty," the district court's failure to impose a monetary penalty in the civil injunctive action has no bearing on the Commission's decision whether to impose a suspension in this follow-on proceeding; (4) a pending federal appeal does not render the district court's final judgment ineffective as a basis for Commission action under Rule 102(e)(3)[11]; and (5) Bauer cannot relitigate the district court's final judgment in this Rule 102(e)(3) proceeding.[12]

Rule 102(e)(3)(iii) provides that, "[w]ithin 30 days after filing of a petition [to lift a temporary suspension] in accordance with paragraph (e)(3)(ii) of this section, the Commission *shall* either lift the temporary suspension, or set the matter down for hearing at a time and place designated by the Commission, or both."[13] We have determined to deny Bauer's petition and set the matter down for hearing before an administrative law judge.[14] Continuing Bauer's temporary suspension pending a hearing on the issues raised in her petition serves the public interest and protects the Commission's processes. As discussed, Bauer was found by a district court to have violated the federal securities laws by engaging in insider trading. That finding provided a statutory basis for the Commission to temporarily suspend Bauer without preliminary hearing. Bauer remains licensed as an attorney in two different states and continues to work in the securities field as a compliance consultant. She thus remains in a position to harm the Commission's processes if the temporary suspension is lifted and she is permitted to practice before the Commission pending the outcome of a hearing.

---

11 *See, e.g., Michael T. Studer*, Exchange Act Release No. 50411, 57 SEC 890, 2004 WL 2104496, at *3 (Sept. 20, 2004) ("[T]he fact that Studer is still litigating that action [on appeal] does not affect [the Commission's] statutory authority to conduct this proceeding."), *aff'd*, 148 F. App'x 58 (2d Cir. 2005). Were Bauer to prevail on appeal before the Seventh Circuit, she could apply to the Commission for reinstatement to practice under Rule 102(e)(5). *See* 17 C.F.R. § 201.102(e)(5).

12 *See* 17 C.F.R. § 201.102(e)(3)(iv) (stating that, in any hearing held on a petition filed in accordance with Rule 102(e)(3)(ii), the petitioner may not contest any findings made against him or fact admitted by him in the underlying proceeding); *see also, e.g., Jose P. Zollino*, Exchange Act Release No. 55107, 2007 WL 98919, at *4 n.20 (Jan. 16, 2007) (the appropriate forum for respondent's challenges to the underlying litigation is in the court of appeals).

13 17 C.F.R. § 201.102(e)(3)(iii) (emphasis added).

14 The Commission has denied similar petitions in the recent past. *See, e.g., Mitchell Segal, Esq.*, Exchange Act Release No. 67930, 2012 WL 4458283 (Sept. 26, 2012); *Ran H. Furman*, Exchange Act Release No. 65680, 2011 WL 5231425 (Nov. 3, 2011); *Michael C. Pattison, CPA*, Exchange Act Release No. 64598, 2011 WL 2169094 (June 3, 2011); *Carl W. Jasper, CPA*, Exchange Act Release No. 64077, 2011 WL 881508 (Mar. 11, 2011); *William D. Shovers*, Exchange Act Release No. 59874, 2009 WL 1271170 (May 6, 2009); *Chris G. Gunderson, Esq.*, Exchange Act Release No. 56396, 2007 WL 2668485 (Sept. 12, 2007); *Ulysses Thomas Ware*, Exchange Act Release No. 51222, 2005 WL 399675 (Feb. 17, 2005); *Daniel S. Lezak*, Exchange Act Release No. 50729, 2004 WL 2721400 (Nov. 23, 2004); *Herbert M. Campbell, III*, Exchange Act Release No. 43422, 2000 WL WL 1482918 (Oct. 6, 2000).

Under the circumstances, we find it appropriate to continue Bauer's suspension pending the holding of a public hearing and decision by an administrative law judge. As provided in Rule 102(e)(3)(iii), we will set the matter down for a public hearing. We express no opinion as to the merits of Bauer's claims.

Accordingly, IT IS ORDERED that this proceeding be set down for a public hearing before an administrative law judge in accordance with Commission Rule of Practice 110. As specified in Rule of Practice 102(e)(3)(iii), the hearing in this matter shall be expedited in accordance with Rule of Practice 500; it is further

ORDERED that the administrative law judge shall issue an initial decision no later than 210 days from the date of service of this Order; and it is further

ORDERED that the temporary suspension of Jilaine H. Bauer, Esq., entered on September 12, 2012, remain in effect pending a hearing and decision in this matter.

By the Commission.

Elizabeth M. Murphy

Elizabeth M. Murphy
Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 68235 / November 14, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-15092

In the Matter of **JAMES S. QUAY a/k/a JIM QUAY a/k/a STEPHEN QUAY a/k/a STEPHEN JAMESON,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 15(b) OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") against James S. Quay a/k/a Jim Quay, Stephen Quay, and Stephen Jameson ("James Quay" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings and the findings contained in Section III.2 below, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

1. Between at least October 2007 and January 2009, James Quay acted as an unregistered broker in violation of Section 15(a) of the Exchange Act by soliciting individuals to purchase securities and effecting securities transactions for individuals in exchange for his receipt of transaction based compensation.

2. On October 18, 2012, a final judgment was entered by consent against James Quay, permanently enjoining him from future violations of Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 ("Securities Act"), Sections 10(b) and 15(a) of the Exchange Act and Rule 10b-5 thereunder, in the civil action entitled Securities and Exchange Commission v. James S. Quay, et al., Civil Action No. 1:12-cv-03429-RWS, in the United States District Court for the Northern District of Georgia.

3. The Commission's complaint alleged, among other things, that, from at least October 2007 until at least January 2012, James Quay failed to disclose to actual or potential investors: (1) compensation, revenue or commissions derived from their participation or investment; (2) information regarding prior or current criminal, regulatory or professional licensure actions; (3) material information regarding the use of investor funds; (4) overstating investment returns; (5) understating investment risks; or (6) misrepresenting the nature of an investment.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent James Quay's Offer.

Accordingly, it is hereby ORDERED pursuant to Section 15(b)(6) of the Exchange Act that Respondent James Quay be, and hereby is:

barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization; and

barred from participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 68234 / November 14, 2012

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3424 / November 14, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-15091

In the Matter of **JAMES S. QUAY a/k/a JIM QUAY a/k/a STEPHEN QUAY a/k/a STEPHEN JAMESON,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO RULE 102(e) OF THE COMMISSION'S RULES OF PRACTICE, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted against James S. Quay a/k/a Jim Quay, Stephen Quay, and Stephen Jameson ("James Quay" or "Respondent") pursuant to Rule 102(e)(3)(i) of the Commission's Rules of Practice.[1]

---

[1] Rule 102(e)(3)(i) provides, in relevant part, that:

> The Commission, with due regard to the public interest and without preliminary hearing, may, by order, . . . suspend from appearing or practicing before it any . . . attorney ... accountant . . . who has been by name . . . permanently enjoined by any court of competent jurisdiction, by reason of his or her misconduct in an action brought by the Commission, from violating or aiding and abetting the violation of any provision of the Federal securities laws or of the rules and regulations thereunder.

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, and the findings contained in Section III.2 below, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Rule 102(e) of the Commission's Rules of Practice, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

1. James Quay, age 51, was previously an attorney licensed in the states of Georgia, Oklahoma, and Texas and has since been disbarred in Georgia and Texas, stemming from his 2005 federal criminal conviction for filing a false income tax return for which he was sentenced to 15 months incarceration. Although not licensed as a certified public accountant, James Quay purports to have sat for and passed the Uniform Certified Public Accountant Examination.

2. On October 18, 2012, a final judgment was entered by consent against James Quay, permanently enjoining him from future violations of Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 ("Securities Act"), Sections 10(b) and 15(a) of the Exchange Act and Rule 10b-5 thereunder, in the civil action entitled Securities and Exchange Commission v. James S. Quay, et al., Civil Action No. 1:12-cv-03429-RWS, in the United States District Court for the Northern District of Georgia.

3. The Commission's complaint alleged, among other things, that, from at least October 2007 until at least January 2012, James Quay failed to disclose to actual or potential investors: (1) compensation, revenue or commissions derived from their participation or investment; (2) information regarding prior or current criminal, regulatory or professional licensure actions; (3) material information regarding the use of investor funds; (4) overstating investment returns; (5) understating investment risks; or (6) misrepresenting the nature of an investment.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanction agreed to in Respondent James Quay's Offer.

Accordingly, it is hereby ORDERED, effective immediately, that:

A. James Quay is suspended from appearing or practicing before the Commission as an accountant.

B. James Quay is suspended from appearing or practicing before the Commission as an attorney.

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Commissioner Walter not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 3501 / November 14, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-15093

In the Matter of **GARTH RONALD PETERSON,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 203(f) OF THE INVESTMENT ADVISERS ACT OF 1940, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS**

I.

The Securities and Exchange Commission ("Commission" or "SEC") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") against Garth Ronald Peterson ("Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, Respondent consents to the Commission's jurisdiction over him and the subject matter of these proceedings and to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 203(f) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

1. Morgan Stanley & Co. Inc. ("Morgan Stanley") is a Delaware corporation with its principal place of business in New York, New York. At all pertinent times, Morgan Stanley Real Estate ("MSRE") was the business line around which Morgan Stanley organized its employees and its internal reporting of its global real estate investing business. Morgan Stanley in part conducted its real estate investing business through wholly-owned SEC-registered investment advisers to, and minority investors in, approximately a half-dozen investment companies, a/k/a funds, organized as Delaware limited partnerships. For each fund, Morgan Stanley formed a wholly-owned adviser that it registered with the SEC with its principal office and place of business at a Morgan Stanley address in New York, NY, and a website address of www.morganstanley.com/realestate. As advisers and general partners to these funds, Morgan Stanley, through its employees in its MSRE business unit, raised capital and made and managed real estate investments world-wide.

2. Respondent Garth Peterson is a U.S. citizen and resident of Singapore. Peterson began working for Morgan Stanley in 2002 in Hong Kong. He was made the head of the Shanghai office of MSRE when that office first opened in 2006 and became a Managing Director of Morgan Stanley in 2007. Peterson's principal responsibility at Morgan Stanley was to evaluate, negotiate, acquire, manage and sell their real estate investments on behalf of Morgan Stanley's advisers and funds.

3. On May 3, 2012, a final judgment was entered by consent against Peterson, permanently enjoining him from future violations of Sections 13(b)(5) and 30A of the Securities Exchange Act of 1934 ("Exchange Act") and Sections 206(1) and 206(2) of the Advisers Act and ordering him to pay disgorgement, in the civil action entitled Securities and Exchange Commission v. Garth Peterson, Civil Action Number CV12-2033, in the United States District Court for the Eastern District of New York.

4. The Commission's complaint alleged that Peterson, from at least 2004 to 2007 while employed at MSRE, secretly acquired millions of dollars worth of real estate investments from Morgan Stanley's funds for himself, the former Chairman of a Chinese state-owned entity with influence over the success of Morgan Stanley's real estate business in Shanghai ("the Chinese Official"), and others. Peterson also arranged to have paid to himself and the Chinese Official at least $1.8 million in what he misrepresented were finder's fees Morgan Stanley's funds owed to third parties. In exchange for offers and payments from Peterson, the Chinese Official helped Peterson and Morgan Stanley obtain business while personally benefitting from some of these same investments.

5. On April 25, 2012, Peterson pled guilty to one count of conspiracy to violate the Exchange Act's internal controls provisions in violation of Title 18 United States Code, Section 371 before the United States District Court for the Eastern District of New York, in United States v. Garth Peterson, Crim. Information No. CR12-224. On August 28, 2012, a judgment in the criminal case was entered against Peterson. He was sentenced to a prison term of nine months and three years of supervised release.

6. In connection with that plea, Peterson admitted that, from at least in or around October 2004 until at least in or around August 2006, within the Eastern District of New York and elsewhere, Peterson, together with others, did knowingly and willfully conspire to circumvent the system of internal accounting controls of Morgan Stanley and Morgan Stanley Real Estate, which controls were sufficient to provide reasonable assurances that, among other things, transactions were executed in accordance with management's general and specific authorization, transactions were recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles and any other criteria applicable to such statements and to ensure that Morgan Stanley maintained accountability for its assets, and access to assets was permitted only in accordance with management's general or specific authorization, contrary to Title 15, United States Code, Sections 78m(b)(5) and 78ff(a).

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Peterson's Offer.

Accordingly, it is hereby ORDERED pursuant to Section 203(f) of the Advisers Act that Respondent Peterson be, and hereby is:

> barred from association with any broker, dealer, investment adviser, municipal securities dealer, or transfer agent.

Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

By the Commission,

Elizabeth M. Murphy
Secretary

Lynn M. Powalski

By: Lynn M. Powalski
Deputy Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 68236 / November 14, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-15094

In the Matter of

MICHAEL J. SOUTHWORTH,

Respondent.

ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 15(b) OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") against Respondent Michael Southworth ("Southworth").

II.

In anticipation of the institution of these proceedings, Southworth has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings and the findings contained in Section III.3 below, which are admitted, Southworth consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

On the basis of this Order and Southworth's Offer, the Commission finds that:

1. Southworth, 44 years old, is a resident of Mesa, Arizona. Southworth does not hold any securities licenses.

2. From at least 2007 to 2011, Southworth and his wife were the sole owners of The Investors Registry, LLC ("TIR"), an Arizona limited liability company, and Southworth was the managing member of TIR. From at least December 2007 to approximately March 2011, Southworth unlawfully touted the securities of five issuers and, during this time, made use of the mails or means or instrumentalities of interstate commerce to effect transactions in or to induce or attempt to induce the purchase or sale of securities without being registered in accordance with Section 15(b) of the Exchange Act.

3. On November 7, 2012, a final judgment was entered by consent against Southworth, permanently enjoining him from future violations of Section 17(b) of the Securities Act of 1933 ("Securities Act") and Section 15(a) of the Exchange Act in the civil action entitled Securities and Exchange Commission v. The Investors Registry, LLC and Michael J. Southworth, Civil Action Number 2:12-cv-02214-MEA, in the United States District Court for the District of Arizona.

4. The Commission's complaint alleged that, from at least December 2007 to approximately March 2011, in violation of Section 17(b) of the Securities Act, in exchange for cash and/or securities that he received from five issuers, Southworth published, gave publicity to, or circulated communications which, though not purporting to offer securities for sale, described securities, without fully disclosing the receipt of the consideration paid, including the amount thereof. The complaint also alleged that Southworth acted as an unregistered broker.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Southworth's Offer.

Accordingly, it is hereby ORDERED pursuant to Section 15(b)(6) of the Exchange Act that Southworth be, and hereby is:

> Barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization with the right to apply for reentry after three (3) years to the appropriate self-regulatory organization, or if there is none, to the Commission.

Any reapplication for association by Southworth will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against Southworth, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 68224 / November 14, 2012

INVESTMENT COMPANY ACT OF 1940
Release No. 30261/ November 14, 2012

ORDER UNDER SECTION 17A AND SECTION 36 OF THE SECURITIES EXCHANGE ACT OF 1934 GRANTING EXEMPTIONS FROM SPECIFIED PROVISIONS OF THE EXCHANGE ACT AND CERTAIN RULES THEREUNDER

ORDER UNDER SECTION 6(c) AND SECTION 38(a) OF THE INVESTMENT COMPANY ACT OF 1940 GRANTING EXEMPTIONS FROM SPECIFIED PROVISIONS OF THE INVESTMENT COMPANY ACT AND CERTAIN RULES THEREUNDER

Section 36 of the Securities Exchange Act of 1934 (the "Exchange Act") authorizes the Securities and Exchange Commission (the "Commission"), by rule, regulation or order, to exempt, either conditionally or unconditionally, any person, security or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the Exchange Act or any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.

Section 17A(c)(1) of the Exchange Act provides that the appropriate regulatory agency, by rule or by order, upon its own motion or upon application, may conditionally or unconditionally exempt any person or security or class of persons or securities from any provision of that section or any rule or regulation prescribed under Section 17A, if the appropriate regulatory agency finds that such exemption is in the public interest and consistent with the protection of investors and the purposes of this section, including the prompt and accurate clearance and settlement of securities transactions and the safeguarding of securities and funds.[1]

Section 6(c) of the Investment Company Act of 1940 (the "Company Act") provides that the Commission may conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the Company Act, or any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Company Act. Section 38(a) of the Company Act provides that the Commission may make, issue, amend and rescind such rules and regulations and such orders as are necessary or appropriate to the exercise of the powers conferred upon the Commission under the Company Act. The necessity for prompt action of the Commission does not permit prior notice of the Commission's action.

Hurricane Sandy made landfall along the mid-Atlantic Coast on October 29, 2012. The storm and subsequent flooding have displaced individuals and businesses and disrupted communications and transportation across the mid-Atlantic region. We are issuing this Order to address the needs of companies and individuals directly or indirectly affected by Hurricane Sandy that must comply with the requirements of the federal securities laws.

I. FILING REQUIREMENTS FOR REGISTRANTS AND OTHER PERSONS

[1] Section 3(a)(34)(B) of the Exchange Act defines "appropriate regulatory authority" when used in the context of transfer agents as generally: (1) the Comptroller of the Currency, in the case of a national bank or a subsidiary of such bank; (2) the Board of Governors of the Federal Reserve System, in the case of a state member bank of the Federal Reserve System, a subsidiary thereof, a bank holding company or a subsidiary of a bank holding company; (3) the Federal Deposit Insurance Corporation, in the case of a bank insured by the Federal Deposit Insurance Corporation; and (4) the Commission, in the case of all other transfer agents. Section 17A(c)(1) also requires that the Commission not object to the use of exemptive authority in instances where an appropriate regulatory authority other than the Commission is providing exemptive relief.

The lack of communications, transportation, electricity, facilities and available staff and professional advisors as a result of Hurricane Sandy could hamper the efforts of public companies and other persons with filing obligations to meet their filing deadlines. At the same time, investors have an interest in the timely availability of required information about these companies and the activities of persons required to file schedules and reports with respect to these companies. While the Commission believes that the relief from filing requirements provided by this Order is both necessary in the public interest and consistent with the protection of investors, we remind public companies and other persons who are the subjects of this Order to continue to evaluate their obligations to make materially accurate and complete disclosures in accordance with the anti-fraud provisions of the federal securities laws.

Accordingly, IT IS ORDERED, pursuant to Section 36 of the Exchange Act, that a registrant (as defined in Exchange Act Rule 12b-2) subject to the reporting requirements of Exchange Act Section 13(a) or 15(d), and any person required to make any filings with respect to such a registrant, is exempt from any requirement to file or furnish materials with the Commission under Exchange Act Sections 13(a), 13(d), 13(f), 13(g), 14(a), 14(c), 15(d) and 16(a), Regulations 13A, 13D, 13G, 14A, 14C and 15D, and Exchange Act Rules 13f-1 and 16a-3, as applicable, for the period from and including October 29, 2012 to November 20, 2012, where the conditions below are satisfied.

Conditions.

(a) The registrant or person other than a registrant is not able to meet a filing deadline due to Hurricane Sandy and its aftermath;

(b) The registrant or person other than a registrant files with the Commission any report, schedule or form required to be filed during the period from and including October 29, 2012 to November 20, 2012, on or before November 21, 2012; and

(c) In any such report, schedule or form filed pursuant to this Order, the registrant or person other than a registrant must disclose that it is relying on this Order and state the reasons why, in good faith, it could not file such report, schedule or form on a timely basis.

II. FURNISHING OF PROXY AND INFORMATION STATEMENTS

The conditions in the areas affected by Hurricane Sandy, including displacement of thousands of individuals and the destruction of property, have prevented and will continue to prevent the delivery of mail to the affected areas. In light of these conditions, we believe that relief is warranted for those seeking to comply with our rules imposing requirements to furnish materials to security holders when mail delivery is not possible.

Accordingly, IT IS ORDERED, pursuant to Section 36 of the Exchange Act, that a registrant or any other person is exempt from the requirements to furnish proxy statements, annual reports and other soliciting materials, as applicable (the "Soliciting Materials"), under Exchange Act Rules 14a-3 and 14a-12, and the requirements to furnish information statements and annual reports, as applicable (the "Information Materials"), under Exchange Act Rules 14c-2 and 14c-3, where the conditions below are satisfied.

Conditions.

(a) The registrant's security holder has a mailing address located within a zip code where, as a result of Hurricane Sandy, the United States Postal Service has suspended mail service of the type or class customarily used by the registrant;

(b) The registrant or other person making a solicitation has followed normal procedure when furnishing the Soliciting Materials to the security holder in order to ensure that the

Soliciting Materials preceded or accompanied the proxy, as required by the rules applicable to the particular form of Soliciting Materials, or, in the case of Information Materials, the registrant has followed normal procedure when furnishing the Information Materials to the security holder in accordance with the rules applicable to Information Materials; and

(c) If requested by the security holder, the registrant or other person provides the Soliciting Materials or Information Materials by a means reasonably designed to furnish the Soliciting Materials or Information Materials to the security holder.

Any registrant or other person unable to meet a deadline (including any shareholder who is unable to meet a deadline applicable to a shareholder proposal) or a delivery obligation as a result of Hurricane Sandy, or in need of other assistance related to their public filings, should contact the Division of Corporation Finance at (202) 551-3500 or at https://tts.sec.gov/cgi-bin/corp_fin_interpretive. The Division will consider any requests on a case-by-case basis.

III. RELIEF RELATING SPECIFICALLY TO REGISTERED INVESTMENT COMPANIES REGARDING TRANSMITTAL OF ANNUAL AND SEMI-ANNUAL REPORTS TO INVESTORS REQUIRED BY THE COMPANY ACT AND THE RULES THEREUNDER

For reasons similar to those cited in Section II, we believe that relief is warranted for the transmittal by registered management investment companies and registered unit investment trusts (collectively, "registered investment companies") of annual and semi-annual reports to investors.

Accordingly, IT IS ORDERED, pursuant to Sections 6(c) and 38(a) of the Company Act that, for the period from and including October 29, 2012 to November 20, 2012, a registered investment company is exempt from the requirements of Section 30(e) of the

Company Act and Rule 30e-1 thereunder to transmit annual and semi-annual reports to investors affected by Hurricane Sandy; and

For the period from and including October 29, 2012 to November 20, 2012, a registered unit investment trust is exempt from the requirements of Section 30(e) of the Company Act and Rule 30e-2 thereunder to transmit annual and semi-annual reports to unitholders affected by Hurricane Sandy,

Provided that:

(a) The affected investor's mailing address for transmittal as listed in the records of the registered investment company has a zip code for which the United States Postal Service has suspended mail service, as a result of Hurricane Sandy, of the type or class customarily used by the registered investment company for transmittal of reports; and

(b) The registered investment company or other person promptly transmits the reports to affected investors: (i) if requested by the investor; or (ii) at the earlier of November 21, 2012 or the resumption of the applicable mail service.

Registered investment companies experiencing difficulties in complying with their obligations after November 20, 2012, with the filing of Forms N-SAR or N-MFP, or in need of additional information or assistance regarding issues arising under the Company Act, should contact the Division of Investment Management, Office of Chief Counsel, at (202) 551-6865 or IMOCC@sec.gov. Registered investment advisers experiencing difficulties arising from Hurricane Sandy in complying with their obligations such as the filing of Form PF, or in need of additional information or assistance regarding issues arising under the Investment Advisers Act of 1940, should contact the Division of Investment Management, Office of Investment Adviser Regulation, at (202) 551-6999 or IARDLive@sec.gov.

IV. TRANSFER AGENT COMPLIANCE WITH SECTIONS 17A AND 17(f) OF THE EXCHANGE ACT

Exchange Act Section 17A and Section 17(f), as well as the rules promulgated under Sections 17A and 17(f), contain requirements for registered transfer agents relating to, among other things, processing securities transfers, safekeeping of investor and issuer funds and securities, and maintaining records of investor ownership. Following the events of Hurricane Sandy, registered transfer agents located in the affected region may have difficulty complying with some or all of their obligations as registered transfer agents. In addition, registered transfer agents located outside the affected region in many cases may be unable to conduct business with entities or securityholders inside the region, thereby making it difficult to process securities transactions and corporate actions in conformance with Section 17A, Section 17(f) and the rules thereunder.

While the national clearance and settlement system continues to operate well in light of this emergency, the Commission recognizes that securities transfers and payments to and from securityholders in the affected region may present compliance issues for many transfer agents. Therefore, the Commission is using its authority under Section 17A and Section 36 of the Exchange Act to relax temporarily certain regulatory provisions in order to provide transfer agents with flexibility in coping with the situation.[2] The Commission finds the following exemption to be in the public interest and consistent with the protection of investors and the purpose of Section 17A of the Exchange Act, including the prompt and accurate clearance and settlement of securities transactions and the safeguarding of securities and funds.

---

[2] This order temporarily exempts transfer agents from the requirements of (1) Section 17A of the Exchange Act and Rules 17Ad-1 through 17Ad-20 thereunder and (2) Section 17(f) of the Exchange Act and Rules 17f-1 and 17f-2 thereunder.

Accordingly, IT IS ORDERED, pursuant to Sections 17A and 36 of the Exchange Act, that any registered transfer agent that is unable to comply with Section 17A and Section 17(f) of the Exchange Act and the rules promulgated thereunder, as applicable, due to Hurricane Sandy and its aftermath is hereby temporarily exempted from complying with such provisions for the period from and including October 29, 2012 to December 1, 2012, where the conditions below are satisfied.

Conditions.

(a) A registered transfer agent relying on this Order must notify the Commission in writing by November 19, 2012 of the following:

(1) The transfer agent is relying on this Order;

(2) A statement of the reasons why, in good faith, the transfer agent is unable to comply with Section 17A and Section 17(f) of the Exchange Act and the rules promulgated thereunder, as applicable;

(3) If the transfer agent knows or believes that the books and records it is required to maintain pursuant to Section 17A and the rules thereunder were lost, destroyed or materially damaged, information, to the extent reasonably available, as to the type of books and records that were maintained, the names of the issuers for whom such books and records were maintained, the extent of the loss of, or damage to, such books and records, and the steps taken to ameliorate any such loss or damage; and

(4) If the transfer agent knows or believes that funds or securities belonging to either issuers or securityholders and within its possession were, for any reason, lost, destroyed, stolen or unaccounted for, information, to the extent reasonably available, regarding the dollar amount of any such funds and the number of such securities and the steps taken to ameliorate any such loss; and

(b) Transfer agents that have custody or possession of any securityholder or issuer funds or securities shall use all reasonable means available to ensure that all such securities are held in safekeeping and are handled, in light of all facts and circumstances, in a manner reasonably free from risk of theft, loss, or destruction and that all funds are protected against misuse. To the extent possible, all securityholder or issuer funds that remain in the custody of the transfer agent shall be maintained in a separate bank account held for the exclusive benefit of securityholders until such funds are properly remitted.

The notification required under (a) above shall be sent to:

U.S. Securities and Exchange Commission
Division of Trading and Markets
100 F Street, NE
Washington, DC 20549-7010

The Commission encourages registered transfer agents and the issuers for whom they act to inform affected securityholders whom they should contact concerning their accounts, their access to funds or securities, and other shareholder concerns. If feasible, issuers and their transfer agents should consider placing a notice on their websites or providing toll free numbers to respond to inquiries.

Transfer agents experiencing difficulties in complying with obligations after December 1, 2012, or in need of additional information, should contact the Division of Trading and Markets at (202) 551-5777 or at tradingandmarkets@sec.gov.

V. INDEPENDENCE – BOOKKEEPING OR OTHER SERVICES RELATED TO THE ACCOUNTING RECORDS OR FINANCIAL STATEMENTS OF THE AUDIT CLIENT

The conditions in the areas affected by Hurricane Sandy, including displacement of individuals, the destruction of property and loss or destruction of corporate records, may require extraordinary efforts to reconstruct lost or destroyed accounting records. The

Commission understands that in this unique situation an audit client may look to its auditor for assistance in reconstruction of its accounting records because of the auditor's knowledge of the client's financial systems and records. Under Section 10A(g)(1) of the Exchange Act and Rule 2-01(c)(4)(i) of Regulation S-X, auditors are prohibited from providing bookkeeping or other services relating to the accounting records of the audit client, and in Rule 2-01(c)(4)(i) of Regulation S-X, these prohibited services are described as including "maintaining or preparing the audit client's accounting records" or "preparing or originating source data underlying the audit client's financial statements." In light of the conditions in areas affected by Hurricane Sandy, however, we believe that limited relief from these prohibitions is warranted for those registrants and other persons that are required to comply with the independence requirements of the federal securities laws and the Commission's rules and regulations thereunder and that are affected by those conditions. Accordingly, IT IS ORDERED, pursuant to Section 36 of the Exchange Act, that independent certified public accountants engaged to provide audit services to registrants and other persons required to comply with the independence requirements of the federal securities laws and the Commission's rules and regulations thereunder are exempt from the requirements of Section 10A(g)(1) of the Exchange Act and Rule 2-01(c)(4)(i) of Regulation S-X, where the conditions below are satisfied.

Conditions.

(a) Services provided by the auditor are limited to reconstruction of previously existing accounting records that were lost or destroyed as a result of Hurricane Sandy and such services cease as soon as the audit client's lost or destroyed records are reconstructed, its financial systems are fully operational and the client can effect an orderly and efficient transition to management or other service provider; and

(b) Services provided by the auditor to its audit client pursuant to this Order are subject to pre-approval by the audit client's audit committee as required by Rule 2-01(c)(7) of Regulation S-X.

Auditors or audit clients with questions about this section of the Order or with other questions relating to auditor independence are encouraged to call the Office of the Chief Accountant directly at (202) 551-5300.

By the Commission.

Elizabeth M. Murphy

Elizabeth M. Murphy

Secretary

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-68225; File No. AN-OCC-2012-04)

November 14, 2012

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Advance Notice to Revise the Method for Determining the Minimum Clearing Fund Size to Include Consideration of the Amount Necessary to Draw on Secured Credit Facilities

Pursuant to Section 806(e)(1) of the Payment, Clearing, and Settlement Supervision Act of 2010 ("Clearing Supervision Act")[1] and Rule 19b-4(n)(1)(i),[2] notice is hereby given that on October 18, 2012, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the advance notice described in Items I, II, and III below, which Items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the advance notice from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Advance Notice

OCC proposes to revise the method for determining the minimum clearing fund size to include consideration of the amount necessary for OCC to draw on its secured credit facilities.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Advance Notice

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the advance notice and discussed any comments it received on the advance notice. The text of these statements may be examined at the places specified in Item IV below. OCC

1 12 U.S.C. 5465(e)(1).

2 17 CFR 240.19b-4(n)(i).

has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[3]

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Advance Notice

The purpose of this advance notice is to implement a minimum clearing fund size equal to 110% of the amount of committed credit facilities secured by the clearing fund to ensure that the amount of the clearing fund likely will exceed the required collateral value that would be necessary for OCC to be able to draw in full on such credit facilities. OCC's clearing fund is primarily intended to provide a high degree of assurance that market integrity will be maintained in the event that one or more clearing members or other specified entities to which OCC has credit exposure fails to meet its obligations.[4] This includes the potential use of the clearing fund as a source of liquidity should it ever be the case that OCC is unable to obtain prompt delivery of, or convert promptly to cash, any asset credited to the account of a suspended clearing member.

On September 23, 2011, the Commission approved a proposed rule change by OCC to establish the size of OCC's clearing fund as the amount that is required, within a confidence level selected by OCC, to sustain the maximum anticipated loss under a defined set of scenarios

---

3 The Commission has modified the text of the summaries prepared by OCC.

4 Under Article VIII, Section 1 of OCC's By-Laws, the clearing fund may be used to pay losses suffered by OCC: (1) as a result of the failure of a clearing member to perform its obligations with regard to any exchange transaction accepted by OCC; (2) as a result of a clearing member's failure to perform its obligations in respect of an exchange transaction or an exercised/assigned options contract, or any other contract or obligations in respect of which OCC is liable; (3) as a result of the failure of a clearing member to perform its obligations in respect of stock loan or borrow positions; (4) as a result of a liquidation of a suspended clearing member's open positions; (5) in connection with protective transactions of a suspended clearing member; (6) as a result of a failure of any clearing member to make any other required payment or to render any other required performance; or (7) as a result of a failure of any bank or securities or commodities clearing organization to perform its obligations to OCC.

as determined by OCC, subject to a minimum clearing fund size of $1 billion.[5] OCC implemented this change in May 2012. Until that time, the size of OCC's clearing fund was calculated each month as a fixed percentage of the average total daily margin requirement for the preceding month, provided that the calculation resulted in a clearing fund of $1 billion or more.[6]

Under the formula that is implemented for determining the size of the clearing fund as a result of the May 2012 change, OCC's Rules provide that the amount of the fund is equal to the larger of the amount of the charge to the fund that would result from (i) a default by the single "clearing member group"[7] whose default would be likely to result in the largest draw against the clearing fund or (ii) an event involving the near-simultaneous default of two randomly-selected "clearing member groups" in each case as calculated by OCC with a confidence level selected by OCC.[8] The size of the clearing fund continues to be recalculated monthly, based on a monthly averaging of daily calculations for the previous month, and it is subject to a requirement that its minimum size may not be less than $1 billion.

---

5 Securities Exchange Act Release No. 34-65386 (September 23, 2011), 76 FR 60572 (September 29, 2011) (SR-OCC-2011-10).

6 If the calculation did not result in a clearing fund size of $1 billion or more, then the percentage of the average total daily margin requirement for the preceding month that resulted in a fund level of at least $1 billion would be applied. However, in no event was the percentage permitted to exceed 7%. With the rule change approved in September 2011, this 7% limiting factor on the minimum clearing fund size was eliminated.

7 The term "clearing member group" is defined in OCC's By-Laws to mean a clearing member and any member affiliates of the clearing member.

8 The confidence levels employed by OCC in calculating the charge likely to result from a default by OCC's largest "clearing member group" and the default of two randomly-selected "clearing member groups" were approved by the Commission at 99% and 99.9%, respectively. However, the Commission approval order notes that OCC retains discretion to employ different confidence levels in these calculations provided that OCC will not employ confidence levels of less than 99% without first filing a proposed rule change.

This minimum dollar size for OCC's clearing fund is the subject of this advance notice. OCC maintains committed credit facilities that are secured by the clearing fund in order to provide a source of liquidity in the event of a default by a clearing member or one of OCC's settlement banks. The change arises out of a regular review that OCC conducts in order to determine the appropriate aggregate amount of such committed credit facilities. In addition to its liquidity exposure to the potential failure of a clearing member, OCC also evaluates its liquidity exposure to settlement banks in respect of their ability to wire net settlement proceeds in time for OCC to meet its settlement obligations at one or more of OCC's other settlement banks as well as OCC's credit exposure to banks that issue letters of credit on behalf of clearing members as a form of margin.

OCC's committed credit facilities are secured by assets in the clearing fund and certain margin deposits of suspended clearing members. In light of the uncertainty regarding the amount of margin assets of a suspended clearing member that might be eligible at any given point to support borrowing under the secured credit facilities, OCC has considered the availability of funds based on a consideration of the amount of the clearing fund deposits available as collateral. To draw on the full amount of its credit facilities secured by the clearing fund, the size of the clearing fund would need to be approximately $2.2 billion. The $2.2 billion figure reflects a 10% increase above the total size of such credit facilities, which is meant to account for the percentage discount applied to collateral pledged by OCC in determining the amount available for borrowing.

Based on monthly recalculation information, the size of OCC's clearing fund during the period from July 2011 to July 2012 was less than $2.2 billion on eight occasions. Therefore, to address the risk that the assets in the clearing fund might at any time be insufficient to enable

OCC to meet potential liquidity needs by fully accessing its committed credit facilities that are secured by the clearing fund, the proposed rule change described by the advance notice would amend the requirement that the minimum size of the clearing fund cannot be less than $1 billion by providing instead that the minimum clearing fund size would be equal to the greater of either $1 billion or 110% of the amount of such committed credit facilities. OCC proposes to denote the credit facility component of the minimum clearing fund requirement as a percentage of the total amount of the credit facilities that OCC actually secures with clearing fund assets because OCC negotiates these credit facility agreements, including size and other terms, on an annual basis and the total size is therefore subject to change.

(B) Clearing Agency's Statement on Burden on Competition

OCC does not believe that the proposed changes contained in the advance notice will have any impact or impose any burden on competition.

(C) Clearing Agency's Statement on Comments on the Advance Notice Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule changes contained in the advance notice.

III. Date of Effectiveness of the Advance Notice and Timing for Commission Action

The proposed changes contained in the advance notice may be implemented pursuant to Section 806(e) (1)(G) of Clearing Supervision Act[9] if the Commission does not object to the proposed changes within 60 days of the later of (i) the date that the advance notice was filed with

---

9 12 U.S.C. 5465.

the Commission or (ii) the date that any additional information requested by the Commission is received. The clearing agency shall not implement the proposed changes contained in the advance notice if the Commission objects to the proposed changes.

The Commission may extend the period for review by an additional 60 days if the proposed changes raise novel or complex issues, subject to the Commission providing the clearing agency with prompt written notice of the extension. Proposed changes may be implemented in fewer than 60 days from the date the advance notice is filed, or the date further information requested by the Commission is received, if the Commission notifies the clearing agency in writing that it does not object to the proposed changes and authorizes the clearing agency to implement the proposed changes on an earlier date, subject to any conditions imposed by the Commission.

The proposals contained in this advance notice shall not take effect until all regulatory actions required with respect to the proposals are completed.[10] The clearing agency shall post notice on its website of proposed changes that are implemented.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Comments may be submitted by any of the following methods:

---

10 OCC also filed the proposals contained in this advance notice as a proposed rule change under Section 19(b)(1) of the Exchange Act and Rule 19b-4 thereunder. 15 U.S.C. 78s(b)(1); 17 CFR 240.19b-4. Pursuant to Section 19(b)(2) of the Exchange Act, within forty-five days of the date of publication of the proposed rule change in the Federal Register or within such longer period up to ninety days if the Commission designates or the self-regulatory organization consents the Commission will either: (i) by order approve or disapprove the proposed rule change or (ii) institute proceedings to determine whether the proposed rule change should be disapproved. 17 U.S.C. 78s(b)(2)(A). See Securities Exchange Act Release No. 34-68130 (November 1, 2012), 77 FR 66900 (November 7, 2012) (SR-OCC-2012-19).

Electronic Comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/sro.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number AN-OCC-2012-04 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number AN-OCC-2012-04. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (http://www.sec.gov/rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the advance notice that are filed with the Commission, and all written communications relating to the advance notice between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings also will be available for inspection and copying at the principal office of OCC and on OCC's website at http://www.optionsclearing.com/components/docs/legal/rules_and_bylaws/sr_occ_12_19.pdf.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number AN-OCC-2012-04 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

By the Commission.

Kevin M. O'Neill

Kevin O'Neill
Deputy Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 68221 / November 14, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-15090

In the Matter of	
DIAS Holding, Inc., **EarthBlock Technologies, Inc.,** **Ensurapet, Inc.,** **FIIC Holdings, Inc.,** **GeM Solutions, Inc.,** **Gold Star Tutoring Services Inc., and** **GPS Industries, Inc.,** **Respondents.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS AND NOTICE OF HEARING PURSUANT TO SECTION 12(j) OF THE SECURITIES EXCHANGE ACT OF 1934**

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against the Respondents named in the caption.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. DIAS Holding, Inc. ("DSHL") [1] (CIK No. 1162867) is a void Delaware corporation located in Allen Park, Michigan with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). DSHL is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended September 30, 2009, which reported a net loss of $660,094 for the prior nine months. As of November 8, 2012, the common stock of DSHL was quoted on OTC Link

[1] The short form of each issuer's name is also its stock symbol.

(formerly "Pink Sheets") operated by OTC Markets Inc. ("OTC Link"), had six market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

2. EarthBlock Technologies, Inc. ("EBLC") (CIK No. 1103719) is a revoked Nevada corporation located in Cincinnati, Ohio with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). EBLC is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-KSB for the period ended December 31, 2007, which reported a net loss of $702,619 for the prior year. As of November 8, 2012, the common stock of EBLC was quoted on OTC Link, had eight market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

3. Ensurapet, Inc. ("EPTI") (CIK No. 1353867) is a defaulted Nevada corporation located in North Canton, Ohio with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). EPTI is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-K for the period ended December 31, 2008, which reported a net loss of $572,756 for the prior year. As of November 8, 2012, the common stock of EPTI was quoted on OTC Link, had eight market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

4. FIIC Holdings, Inc. ("FIIH") (CIK No. 1077720) is a void Delaware corporation located in Powell, Ohio with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). FIIH is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended September 30, 2007, which reported a net loss of $1,702,627 for the prior nine months. As of November 8, 2012, the common stock of FIIH was quoted on OTC Link, had six market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

5. GeM Solutions, Inc. ("GMSL") (CIK No. 1132590) is a delinquent Delaware corporation located in Naples, Florida with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). GMSL is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended March 31, 2007, which reported a net loss of $4,996,210 for the prior nine months. On September 20, 2007, GMSL filed a Chapter 11 petition in the U.S. Bankruptcy Court for the District of Delaware, which was terminated on December 27, 2011. As of November 8, 2012, the common stock of GMSL was quoted on OTC Link, had seven market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

6. Gold Star Tutoring Services, Inc. ("GSTZ") (CIK No. 1431528) is a dissolved Florida corporation located in Boca Raton, Florida with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). GSTZ is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended September 30, 2009, which reported a net loss of $19,064 for the prior nine months. As of November 8, 2012, the common stock of GSTZ was quoted on OTC Link, had six market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

7. GPS Industries, Inc. ("GPSNQ") (CIK No. 29233) is a revoked Nevada corporation located in Sarasota, Florida with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). GPSNQ is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended March 31, 2009, which reported a net loss of $2,833,000 for the prior three months. On July 31, 2009, GPSNQ filed a Chapter 11 petition in the U.S. Bankruptcy Court for the Middle District of Florida, which was still pending as of November 8, 2012. As of November 8, 2012, the common stock of GPSNQ was quoted on OTC Link, had six market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

B. DELINQUENT PERIODIC FILINGS

8. As discussed in more detail above, all of the Respondents are delinquent in their periodic filings with the Commission, have repeatedly failed to meet their obligations to file timely periodic reports, and failed to heed delinquency letters sent to them by the Division of Corporation Finance requesting compliance with their periodic filing obligations or, through their failure to maintain a valid address on file with the Commission as required by Commission rules, did not receive such letters.

9. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports, and Rule 13a-13 requires domestic issuers to file quarterly reports.

10. As a result of the foregoing, Respondents failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

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

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke the registration of each class of securities registered pursuant to Section 12 of the Exchange Act of the Respondents identified in Section II hereof, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondents.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened 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 HEREBY FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Respondents fail to file the directed Answers, or fail to appear at a hearing after being duly notified, the Respondents, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondents, 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 Respondents personally or by certified, registered, or Express Mail, or by other means permitted by the Commission Rules of Practice.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 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.

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
November 14, 2012

In the Matter of **DIAS Holding, Inc.,** **EarthBlock Technologies, Inc.,** **Ensurapet, Inc.,** **FIIC Holdings, Inc.,** **GeM Solutions, Inc.,** **Gold Star Tutoring Services Inc., and** **GPS Industries, Inc.,** **File No. 500-1**	**ORDER OF SUSPENSION OF TRADING**

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of DIAS Holding, Inc. because it has not filed any periodic reports since the period ended September 30, 2009.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of EarthBlock Technologies, Inc. because it has not filed any periodic reports since the period ended December 31, 2007.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Ensurapet, Inc. because it has not filed any periodic reports since the period ended December 31, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of FIIC Holdings, Inc. because it has not filed any periodic reports since the period ended September 30, 2007.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Gold Star Tutoring Services, Inc. because it has not filed any periodic reports since the period ended September 30, 2009.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of GeM Solutions, Inc. because it has not filed any periodic reports since the period ended March 31, 2007.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of GPS Industries, Inc. because it has not filed any periodic reports since the period ended March 31, 2009.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies. Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EST on November 14, 2012, through 11:59 p.m. EST on November 28, 2012.

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 68248 / November 15, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-15096

In the Matter of Changed E-Mail, Inc., Channel America Broadcasting, Inc., Charys Holding Co., Inc., Children's Wonderland, Inc., Cornerstone Ministries Investments, Inc., County Seat Stores, Inc., CRCB Corp., Crowley Financial Services, Inc., Crystal Finance Holding Corp., and Cumberland Mountain Bancshares, Inc., Respondents.	ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS AND NOTICE OF HEARING PURSUANT TO SECTION 12(j) OF THE SECURITIES EXCHANGE ACT OF 1934

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against Respondents Changed E-Mail, Inc., Channel America Broadcasting, Inc., Charys Holding Co., Inc., Children's Wonderland, Inc., Cornerstone Ministries Investments, Inc., County Seat Stores, Inc., CRCB Corp., Crowley Financial Services, Inc., Crystal Finance Holding Corp., and Cumberland Mountain Bancshares, Inc.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Changed E-Mail, Inc. (CIK No. 1116186) is a dissolved Georgia corporation located in Atlanta, Georgia with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Changed E-Mail is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-SB/A registration statement on August 29, 2000, which reported a net loss of $16 between the company's March 9, 2000 inception and April 30, 2000.

2. Channel America Broadcasting, Inc. (CIK No. 33115) is a dissolved Florida corporation located in Lakeland, Florida with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Channel American Broadcasting is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended September 30, 1996, which reported a net loss of over $7.7 million for the prior nine months.

3. Charys Holding Co., Inc. (CIK No. 845879) is a forfeited Delaware corporation located in Atlanta, Georgia with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Charys Holding Co. is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-KSB for the period ended April 30, 2007, which reported a net loss of over $309 million for the prior twelve months. On February 14, 2008, Charys Holding Co. filed a Chapter 11 petition in the U.S. Bankruptcy Court for the District of Delaware, and the case was still pending as of August 27, 2012.

4. Children's Wonderland, Inc. (CIK No. 916933) is a suspended California corporation located in Alpharetta, Georgia with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Children's Wonderland is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-KSB for the period ended June 30, 2000. On October 29, 2002, a Chapter 7 petition was filed against Children's Wonderland in the U.S. Bankruptcy Court for the Central District of California, and the case was terminated on January 29, 2003.

5. Cornerstone Ministries Investments, Inc. (CIK No. 1035270) is a Georgia corporation located in Cumming, Georgia with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Cornerstone Ministries Investments is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended September 30, 2007, which reported a net loss of over $417,000 for the prior nine months.

6. County Seat Stores, Inc. (CIK No. 910112) is a dissolved Minnesota corporation located in New York, New York with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). County Seat Stores is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended October 31, 1998, which reported a net loss of over $40 million for the prior thirty-nine weeks. On October 17, 1996, County Seat Stores filed a Chapter 11 petition in the U.S. Bankruptcy Court for the District of Delaware, and the case was terminated on December 21, 2006. On January 22, 1999,

County Seat Stores filed a separate Chapter 11 petition in the U.S. Bankruptcy Court for the Southern District of New York, and the case was terminated on March 25, 2005.

7. CRCB Corp. (CIK No. 1084359) is a dissolved Florida corporation located in Fort Lauderdale, Florida with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). CRCB is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended September 30, 2001, which reported a net loss of $913 for prior nine months.

8. Crowley Financial Services, Inc. (CIK No. 792455) is a dissolved Florida corporation located in Fort Lauderdale, Florida with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Crowley Financial Services is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended September 30, 1993, which reported a net loss of over $675,000 for the prior nine months.

9. Crystal Finance Holding Corp. (CIK No. 1122110) is a Delaware corporation located in Aventura, Florida with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Crystal Finance Holding is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB/A for the period ended September 30, 2006, which reported a net loss of over $9,000 for the prior nine months.

10. Cumberland Mountain Bancshares, Inc. (CIK No. 1029093) is a dissolved Tennessee corporation located in Middlesboro, Kentucky with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Cumberland Mountain Bancshares is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-KSB40 for the period ended June 30, 2001, which reported a net loss of over $878,000 for the prior year.

B. DELINQUENT PERIODIC FILINGS

11. As discussed in more detail above, all of the Respondents are delinquent in their periodic filings with the Commission, have repeatedly failed to meet their obligations to file timely periodic reports, and failed to heed delinquency letters sent to them by the Division of Corporation Finance requesting compliance with their periodic filing obligations or, through their failure to maintain a valid address on file with the Commission as required by Commission rules, did not receive such letters.

12. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports, and Rule 13a-13 requires domestic issuers to file quarterly reports.

13. As a result of the foregoing, Respondents failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

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

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke the registration of each class of securities registered pursuant to Section 12 of the Exchange Act of the Respondents identified in Section II hereof, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondents.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened 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 HEREBY FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Respondents fail to file the directed Answers, or fail to appear at a hearing after being duly notified, the Respondents, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondents, may be deemed in default and the proceedings may be determined against them 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 Respondents personally or by certified, registered, or Express Mail, or by other means permitted by the Commission Rules of Practice.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 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.

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

Commissioner Paredes not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT COMPANY ACT OF 1940
Release No. 30264 / November 15, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-15095

In the Matter of MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY, Respondent.	ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTIONS 9(b) AND 9(f) OF THE INVESTMENT COMPANY ACT OF 1940, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER

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 Sections 9(b) and 9(f) of the Investment Company Act of 1940 ("Investment Company Act") against Massachusetts Mutual Life Insurance Company ("Respondent" or "MassMutual").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer"), which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 9(b) and 9(f) of the Investment Company Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds[1] that:

Summary

From September 2007 to March 2009, MassMutual offered a Guaranteed Minimum Income Benefit (GMIB) rider—GMIB 5—as an optional feature to the MassMutual Transitions Select and MassMutual Evolution variable annuity products. MassMutual also offered GMIB 6 from September 2007 to December 2008. For an additional fee, the GMIB rider benefit sets a minimum floor for a future amount that can be applied to an annuity option (the "GMIB value"). The GMIB value increases by a compound annual interest rate of 5% for GMIB 5 or 6% for GMIB 6, and allows contract owners to make withdrawals any time during the accumulation period. These riders included a maximum GMIB value or "cap" that limited the amount to which the GMIB value could increase. During the time period that MassMutual offered the GMIB 5 and GMIB 6 riders for sale, its prospectuses and sales literature did not sufficiently explain that once the GMIB value reached the cap, withdrawals would cause *pro-rata* reductions in the GMIB value in many instances. MassMutual's failure, in its disclosures, to sufficiently explain the effect of the cap on withdrawals confused sales agents and others. For example, some believed that a customer could allow the GMIB value to accumulate until it reached the cap and then begin taking withdrawals—a strategy that in fact, under certain circumstances, would have resulted in a rapid decline in the amount available to be annuitized. By taking post-cap withdrawals, contract owners could, under certain circumstances, be left with no future income stream. MassMutual was aware that some sales agents and others did not understand the effect of post-cap withdrawals, which should have led it to improve its disclosures more quickly than it did. Beginning May 1, 2009, MassMutual revised its prospectuses to better explain the consequences of taking withdrawals after the GMIB value reaches the cap.[2] Given the operation of these features, the earliest contract owners could have reached the cap is the year 2022. Recently, MassMutual has undertaken the remedial step of removing the cap entirely from these riders.

---

1 The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

2 The findings herein concern MassMutual's prospectuses filed prior to May 1, 2009 that explain the GMIB 5 and GMIB 6 riders, and sales literature used during the time period that MassMutual offered the GMIB 5 and GMIB 6 riders for sale.

Respondent

MassMutual is a diversified financial services company providing life insurance, disability income insurance, long-term care insurance, annuities, retirement and other products to individual and institutional customers. It is organized as a mutual life insurance company and is a registered investment adviser. During the relevant period, MassMutual offered for sale variable annuities called "MassMutual Transitions Select" and "MassMutual Evolution." The Transitions Select and Evolution annuities are described in prospectuses filed with the Commission under the Securities Act of 1933 ("Securities Act") and the Investment Company Act. The annuities' investment choices include funds that are offered through Massachusetts Mutual Variable Annuity Separate Account 4, a registered investment company. MassMutual, as the depositor of Massachusetts Mutual Variable Annuity Separate Account 4, filed the prospectuses describing the Transitions Select and Evolution contracts. MassMutual prepared sales literature for these variable annuities, which is filed with the Financial Industry Regulatory Authority ("Finra") before distribution.[3]

Background

1. MassMutual designs and offers for sale variable annuities including annuities called "Transitions Select" and "Evolution" through prospectuses, sales literature, and wholesalers employed by MassMutual to promote the company's annuity products and explain their features to sales agents.

2. A variable annuity is a hybrid product that is both a security and an insurance contract. The contract owner makes purchase payment(s) to the insurance company and the insurance company agrees to make periodic annuity payments to the contract owner beginning either immediately or at some future date. Variable annuities generally have two contract phases: the "accumulation phase" and the "income phase." During the accumulation phase, contract owners can allocate their purchase payments to be invested in a range of investment options. The principal and investment returns in variable annuities are subject to market risk. As a result, depending on market conditions, the principal plus the accumulated compound returns may be the same, worth more, or less than the sum of purchase payments. The income phase commences when contract owners choose to "annuitize" by surrendering control over their contract assets to the insurance company in return for an income stream. While annuity contracts are designed to provide income to contract owners during the income phase, contract owners generally are permitted to make withdrawals during the accumulation phase subject to conditions, such as surrender charges in the earlier years of the contract.

---

3 Sales literature filed with Finra is deemed filed with the Commission pursuant to Rule 24b-3 under the Investment Company Act.

3. On September 1, 2007, MassMutual began offering two Guaranteed Minimum Income Benefit riders, called Guaranteed Income Plus 5 ("GMIB 5") and Guaranteed Income Plus 6 ("GMIB 6") (collectively, "GMIB riders"). MassMutual offered these riders as optional features to its Transitions Select and Evolution variable annuities. MassMutual offered GMIB riders through prospectuses included in registration statements filed with the Commission. By July 2009, the aggregate investment in GMIB riders, measured by GMIB value, was approximately $2.5 billion.

4. GMIB riders provide a guaranteed minimum floor for a future amount that can be applied to an annuity payment.

5. A variable annuity with a GMIB rider reflects two values, the contract value and the GMIB value. The contract value fluctuates with the performance of the underlying investment. The GMIB value automatically increases on the contract issue date and each contract anniversary thereafter by 5% (GMIB 5) or 6% (GMIB 6), subject to conditions. MassMutual refers to these annual increases as interest credits and described them as follows in the prospectuses: "On each contract anniversary we will increase your GMIB value by an annual interest rate of 5% for GMIB 5 and 6% for GMIB 6 . . ." Generally, when the contract owners, or investors, annuitize, they will choose to annuitize the greater of the GMIB value or the contract value.[4] Specific annuity payment amounts are calculated according to the guaranteed payout rates in the contract, or current payout rates.

6. MassMutual advertised its GMIB riders as providing "Income Now"—referring to the right to make withdrawals during the contract's accumulation phase—and "Income Later"—referring to the right to receive an income stream in the form of annuity payments. Regarding the Income Later feature, MassMutual's sales literature highlighted the guarantee provided by the riders: "Even if your contract value drops to zero, you can apply your GMIB value to a fixed or variable annuity." This provision protects contract owners against poor investment returns, and enables contract owners to make withdrawals, subject to conditions, while preserving the ability to annuitize based on the (higher) GMIB value.

7. Regarding the Income Now feature, the MassMutual GMIB riders have a "dollar-for-dollar" withdrawal feature. This means that their GMIB value will decline only by the dollar amount of any withdrawal, so long as the withdrawal does not exceed the annual interest credit. If the annual interest credit is, for example, 6%, a contract owner can withdraw during that contract year an amount equal to the amount of interest credited during that contract year and the GMIB value will remain constant in comparison to the GMIB value at the preceding contract year end. The prospectuses described this feature as follows: "During each contract year, we will

[4] For purposes of this Order, the terms "contract owners" and " investors" are used interchangeably to refer to the purchasers of the GMIB riders.

lower your GMIB value for each dollar that you withdraw up to and equal to the current contract year interest earned on your GMIB value."

8. For any portion of a withdrawal that exceeds the current contract year interest earned on the GMIB value, MassMutual will adjust the GMIB value downward by an amount tied to the percentage decrease in the contract value. The prospectuses described the excess withdrawal feature as follows: "During each contract year, for any amount you withdraw that exceeds the current contract year interest earned on your GMIB value, we reflect that withdrawal amount as a percentage of contract value. We use the percentage of contract value to lower the GMIB value by the same percentage."

9. The prospectuses also disclosed the formula used to calculate the *pro-rata* adjustment for excess withdrawals:

> A divided by B, with the result multiplied by C, where:
>
> A = the withdrawal amount in excess of the current contract year interest credited on the GMIB value;
> B = the contract value immediately prior to the withdrawal; and
> C = the most recently calculated GMIB value.

10. During the relevant period, MassMutual limited the growth of the GMIB value on the riders. It placed a cap of 200% (GMIB 5) and 250% (GMIB 6)—of the purchase payments made during the first two years—on the GMIB value, subject to conditions. If the contract value exceeded the GMIB value, the investor could reset the GMIB value to the (higher) contract value and the new cap would be 200% or 250% of the newly-reset GMIB value, subject to conditions. Absent a reset or withdrawals, the GMIB value on a GMIB 5 rider would reach the cap approximately 15 years after the contract commenced. Absent a reset or withdrawals, the GMIB value on a GMIB 6 rider would reach the cap approximately 16 years after the contract commenced.

11. Neither the prospectuses nor the sales literature sufficiently explained that, if the GMIB value reached the cap, the GMIB value would no longer earn interest. In fact, a disclosure that appeared in the prospectuses, for the first 11 months that MassMutual offered GMIB 5 and 6 riders, implied that interest would continue to accrue after the GMIB value reached the cap: "If the GMIB value is higher than the maximum GMIB value allowed, then your GMIB value will equal the maximum." This disclosure created the impression that MassMutual would continue to credit interest after the GMIB value reached the cap and, consequently, that dollar-for-dollar withdrawals would remain available. Investors could reasonably infer that if the GMIB value reached the cap, as long as their annual withdrawals did not exceed the annual interest credits, their GMIB values would remain at the maximum level (200% or 250%). Similarly, investors

might have inferred that, even if they took excess withdrawals, they could replenish their GMIB values through annual interest credits. This was not, in fact, how the GMIB riders worked.

12. If the GMIB value reached the cap, MassMutual would no longer credit interest to the GMIB account. Because no interest would be credited to the GMIB value at that point, MassMutual would deem every dollar withdrawn to be an excess withdrawal and reduce the GMIB value *pro rata*. For example, if a $200,000 cap were reached on a GMIB 5 rider with a contract value of $100,000, and the contract owner were to withdraw $10,000 (or 5% of the GMIB value), the contract value would decline by $10,000. But the *pro-rata* adjustment to the GMIB value would be $20,000. The new GMIB value would be $180,000 and, as a result, the value of a future annuity income stream would decline. In this scenario—where the contract value is less than the GMIB value—after a number of similar withdrawals, depending on market conditions, both the contract value and the GMIB value could decline to zero. As a result, the contract owner would not have an amount to apply to an annuity and, consequently, would have no future income stream. MassMutual ultimately improved its disclosures to explain the effect of taking withdrawals after reaching the cap, but not until after it had stopped offering the riders. In revised prospectuses issued in May 2009, MassMutual disclosed, with respect to GMIB 5 riders: "Once the maximum GMIB value is reached, unless a reset occurs, the 5% interest credit will no longer be applied and all withdrawals from the contract will reduce the GMIB value in direct proportion to the contract value reduction." The prospectuses contained the same disclosure with respect to GMIB 6 riders.

13. While MassMutual was offering GMIB 5 and GMIB 6 riders, its prospectuses and generic sales literature did not specifically disclose the effect of taking withdrawals after the GMIB value reached the cap, including that: (a) after reaching the cap, MassMutual would no longer apply an interest credit for purposes of taking withdrawals of up to 5% or 6% of the GMIB value, and (b) at that point in the contract, MassMutual would deem all withdrawals to be excess withdrawals that would reduce the GMIB value in direct proportion to the contract value reduction. The disclosures that MassMutual did make—that withdrawals exceeding the interest credited will cause a *pro-rata* adjustment to the GMIB value, and that MassMutual placed a cap on the GMIB value—were insufficient to inform investors of how a key aspect of this feature operated. MassMutual's prospectuses and sales literature also did not sufficiently explain that, once the cap is reached, absent a reset MassMutual will never again credit interest. Thus, contract owners who take withdrawals in the contract years after the GMIB value reached the cap would not, absent a reset, replenish the GMIB value through further interest credits.

14. A number of MassMutual sales agents, wholesalers, and at least one annuity specialist at another insurance sales agency did not understand, from MassMutual's disclosures, that all withdrawals taken in the contract years after the GMIB value reached the cap would result in *pro-rata* reductions of the GMIB value. After reviewing MassMutual's prospectuses and other disclosures, they believed that, if the GMIB value reached the cap, contract owners would continue to earn the annual interest credit—even though the GMIB value was capped—and could take dollar-for-dollar withdrawals annually up to the amount of the credit. After such withdrawals, they misunderstood, the GMIB value would remain at the cap. They mistakenly

believed, for example, that if a $200,000 cap were reached on a GMIB 5 rider with a contract value of $100,000, and the contract owner were to withdraw $10,000, the GMIB value would decline dollar-for-dollar, by $10,000. They further concluded, mistakenly, that the GMIB value would remain at the capped amount of $200,000, because the dollar-for-dollar decline in GMIB value would be offset by the annual interest credit.

15. Because MassMutual's disclosures failed to sufficiently explain this aspect of the feature, some sales agents mistakenly believed that contract owners could maximize their benefits by (1) waiting until the GMIB value reaches the cap, then (2) taking annual 5% or 6% withdrawals, and then (3) annuitizing their contracts in order to receive an income stream tied to the maximum GMIB value. If followed, that investment strategy could have severe adverse consequences. By taking withdrawals annually after the cap is reached, contract owners would proportionately reduce their GMIB values and, in turn, decrease the value of their future income streams. In a worst case scenario, contract owners would withdraw all of their contract value and be left with nothing to annuitize and, consequently, no future income stream.

16. While MassMutual was offering GMIB riders, there were indications that sales agents and others did not understand the effect of post-cap withdrawals on the GMIB value, which should have alerted it to the fact that its disclosures were inadequate. Among them were:

a. In January 2008, in preparation for offering MassMutual's GMIB riders to its customers, a broker-dealer's affiliated insurance sales agency published an analysis of the GMIB 6 rider for its registered representatives. The analysis, prepared based on MassMutual's prospectuses, its sales literature, and communications with MassMutual employees, contains a statement that mistakenly represented that, if the GMIB value reached the cap, annual interest credits and the ability to withdraw up to the amount of those credits would remain available to contract owners. Before the insurance sales agency published the analysis, it showed a MassMutual GMIB product expert and MassMutual sales personnel a draft version that included the erroneous description of the rider, but MassMutual did not correct it. After publication, MassMutual senior sales personnel circulated the analysis among its wholesalers without identifying the error.

b. In April 2008, a MassMutual external wholesaler[5] emailed his supervisor his incorrect understanding of the effect of post-cap withdrawals: "Apparently our illustration system will not show any withdraws at any time if the GMIB caps out at the 250%. It is my understanding that the systematic withdraws can still be done and the guarantee income is still available. It is just capped." The wholesaler's email was forwarded to at least two GMIB product experts at MassMutual. None of the email recipients corrected the wholesaler on his misunderstanding. When, in September 2008,

[5] MassMutual had two classes of wholesalers: external wholesalers who met with sales agents in the field, and internal wholesalers who provided sales support to external wholesalers and sales agents.

the wholesaler learned of the effect of taking withdrawals after the GMIB value reached the cap, he copied another wholesaler on an email in which he wrote, in part, that "[t]his doesn't sound like anything I learned."

c. In September 2008, a Sales Support Director emailed one of the company's GMIB product experts that MassMutual's wholesalers were not informing sales agents of the effect of taking withdrawals after the GMIB value reaches the cap. He wrote, in part: "I would never use this term with a producer [a sales agent] but I feel this is a 'gotcha' . . . . I'm sure there is not a single wholesaler (internal or external) that warns reps and agents that if the client begins withdrawals after hitting the cap the 'dollar-for-dollar' treatment is lost."

d. In October 2008, a supervisory internal wholesaler at MassMutual emailed an external wholesaler and his supervisor that the fact that MassMutual would adjust the GMIB value *pro rata* for all withdrawals taken after the cap "is not clear in the prospectus. I read it and it really is hidden . . . . Almost in code."

e. In November 2008, a sales agent at a general agency of MassMutual complained, to a liaison to MassMutual's home office, that the *pro-rata* adjustment after the cap "is not how it was sold to us, and in turn not how we sold it to our clients. Every agent I have spoken in our office and elsewhere is not aware of this."

17. On December 2, 2008, MassMutual ceased offering GMIB 6 riders, and on March 31, 2009, MassMutual ceased offering GMIB 5 riders. On May 1, 2009, MassMutual revised its prospectuses to explain the consequences of taking withdrawals after the GMIB value reaches the cap.

18. Beginning in April 2012, MassMutual sought the necessary regulatory approvals to eliminate the cap on the GMIB riders. All necessary regulatory approvals to eliminate the cap were received by July 2012, and the change has been communicated to all interested contract owners.

19. As a result of the conduct described above, MassMutual willfully[6] violated Section 34(b) of the Investment Company Act, which makes it unlawful for any person to make any untrue statement of a material fact or to omit to state any fact necessary in order to prevent the statements made, in the light of the circumstances under which they were made, from being

[6] A willful violation of the securities laws means merely "'that the person charged with the duty knows what he is doing.'" *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor "'also be aware that he is violating one of the Rules or Acts.'" *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

materially misleading in any registration statement, application, report, account, record, or other document filed with the Commission or the keeping of which is required pursuant to Section 31(a) of the Investment Company Act. Prospectus disclosures that do not go far enough in explaining the features of a product violate Investment Company Act Section 34(b). *In re Fundamental Portfolio Advisors, Inc.*, 56 SEC 651, 675 (2003) ("prospectus disclosures, while accurate, do not go far enough").

<u>MassMutual's Remedial Effort</u>

In determining to not impose a greater penalty, the Commission considered that, in 2012, after the conclusion of the Division of Enforcement's investigation in this matter, MassMutual announced that it would eliminate the cap on the GMIB riders. In a prospectus supplement filed with the Commission on April 16, 2012, MassMutual disclosed that, subject to state approval, there will no longer be a maximum GMIB value for the GMIB 5 and GMIB 6 riders. By July 2012, all states had approved the removal of the maximum GMIB value. MassMutual's remedial actions guarantee that no contract owner will ever reach the cap and are intended to ensure that ultimately no contract owner will be harmed by MassMutual's violation.

IV.

In view of the foregoing, the Commission deems it appropriate, in the public interest, to impose the sanctions agreed to in Respondent's Offer.

Accordingly, pursuant to Section 9(b) and 9(f) of the Investment Company Act, it is hereby ORDERED that

A. Respondent shall cease and desist from committing or causing any violations and any future violations of Section 34(b) of the Investment Company Act.

B. Respondent shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of $1,625,000 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Payment must be made in one of the following ways:

(1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm; or

(3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to: Enterprise Services Center, Accounts Receivable Branch, HQ Bldg, Room 181, AMZ-341, 6500 South MacArthur Blvd, Oklahoma City, OK 73169.

Payments by check or money order must be accompanied by a cover letter identifying MassMutual as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Stephen L. Cohen, Division of Enforcement, Securities and Exchange Commission, 100 F. St., NE, Washington, DC 20549-5553.

By the Commission.

Elizabeth M. Murphy
Secretary

Lynn M. Powalski

By: Lynn M. Powalski
Deputy Secretary

Commissioner Paredes not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 68249 / November 16, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-15097

In the Matter of Wonder Auto Technology, Inc., Respondent.	ORDER INSTITUTING PROCEEDINGS, MAKING FINDINGS, AND REVOKING REGISTRATION OF SECURITIES PURSUANT TO SECTION 12(j) OF THE SECURITIES EXCHANGE ACT OF 1934

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act"), against Wonder Auto Technology, Inc. ("Wonder Auto" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, Respondent consents to the entry of this Order Instituting Proceedings, Making Findings, and Revoking Registration of Securities Pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds[1] that:

1. Wonder Auto, a Nevada corporation, is headquartered in Jinzhou City, Liaoning Province, in the People's Republic of China. The company operates primarily in China through various subsidiaries, and reports that it designs, develops, manufactures and markets automotive electrical parts, safety and suspension products, and engine components. Wonder Auto's securities are registered pursuant to Section 12(g) of the Exchange Act and quoted on OTC Link under the symbol "WATG.PK."

2. Wonder Auto has failed to comply with Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13 thereunder while its common stock was registered with the Commission because it is delinquent in filing its required periodic reports. Wonder Auto filed its last annual report on Form 10-K for the year ended December 31, 2009 on March 15, 2010, and its last quarterly report on Form 10-Q for the quarter ended September 30, 2010 on November 9, 2010. Wonder Auto has not filed two annual reports for the years ended December 31, 2010 and December 31, 2011, and has not filed five quarterly reports for the quarters ended March 31, 2011, June 30, 2011, September 30, 2011, March 31, 2012, and June 30, 2012.

IV.

Section 12(j) of the Exchange Act provides as follows:

> The Commission is authorized, by order, as it deems necessary or appropriate for the protection of investors to deny, to suspend the effective date of, to suspend for a period not exceeding twelve months, or to revoke the registration of a security, if the Commission finds, on the record after notice and opportunity for hearing, that the issuer of such security has failed to comply with any provision of this title or the rules and regulations thereunder. No member of a national securities exchange, broker, or dealer shall make use of the mails or any means of instrumentality of interstate commerce to effect any transaction in, or to induce the purchase or sale of, any security the registration of which has been and is suspended or revoked pursuant to the preceding sentence.

In view of the foregoing, the Commission finds that it is necessary and appropriate for the protection of investors to impose the sanction specified in Respondent's Offer.

---

[1] The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Accordingly, it is hereby ORDERED, pursuant to Section 12(j) of the Exchange Act, that registration of each class of Respondent's securities registered pursuant to Section 12 of the Exchange Act be, and hereby is, revoked.

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Commissioner Paredes
Commissioner Gallagher
Disapproved

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9368 / November 16, 2012

SECURITIES EXCHANGE ACT OF 1934
Release No. 68251 / November 16, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-15098

In the Matter of **Credit Suisse Securities (USA) LLC;** **DLJ Mortgage Capital, Inc.;** **Credit Suisse First Boston Mortgage Acceptance Corp.;** **Credit Suisse First Boston Mortgage Securities Corp.; and** **Asset Backed Securities Corporation** **Respondents.**	**ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933 AND SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING A CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 ("Securities Act") and Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), against Credit Suisse Securities (USA) LLC, DLJ Mortgage Capital, Inc., Credit Suisse First Boston Mortgage Acceptance Corp., Credit Suisse First Boston Mortgage Securities Corp., and Asset Backed Securities Corporation ("Respondents").

II.

In anticipation of the institution of these proceedings, Respondents have submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the

20 of 44

Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over them and the subject matter of these proceedings, which are admitted, Respondents consent to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933 and Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondents' Offer, the Commission finds[1] that:

<u>Summary</u>

This matter involves two separate practices in which Credit Suisse Securities (USA) LLC, and affiliated entities (collectively, "Credit Suisse") engaged with respect to residential mortgage-backed securities ("RMBS") it sponsored and/or underwrote.

First, from approximately 2005 to 2010, Credit Suisse entered into a number of financial settlements with loan originators related to early defaulting loans it had previously sold to securitization trusts it sponsored, and then kept the proceeds of those settlements without notifying or compensating the RMBS trusts that owned the loans (the "bulk settlement" practice). Credit Suisse failed to disclose this practice to its RMBS investors. Additionally, with respect to certain RMBS transactions, Credit Suisse failed to comply with offering document provisions that required it to repurchase certain early defaulting loans. As a result of this conduct, Credit Suisse improperly obtained approximately $55,747,769.

Separately, in late 2006, Credit Suisse underwrote two RMBS transactions that were collateralized by approximately $1.9 billion of subprime mortgages. In connection with its efforts to market and sell these RMBS, Credit Suisse made misleading statements regarding a key investor protection known as the "First Payment Default" ("FPD") covenant, which required the originators of the loans to repurchase certain delinquent loans or otherwise cure breaches of the covenant. If the originators were notified of and subsequently failed to repurchase or cure a breach of the FPD covenant within the meaning of the Pooling and Servicing Agreements ("PSAs"), Credit Suisse was required to do so. Notwithstanding this provision, Credit Suisse, without disclosure, did not ensure the removal of all such loans. As a result, investors sustained losses of approximately $10,056,561 on the loans that improperly remained in the RMBS trusts.

---

[1] The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Respondents

1. **Credit Suisse Securities (USA) LLC ("Credit Suisse Securities")**, is a Delaware limited liability company with headquarters in New York, New York. Credit Suisse Securities is a broker-dealer registered with the Commission. Credit Suisse Securities acted as underwriter for the RMBS offerings described in this Order. In that capacity, Credit Suisse Securities acquired the securities issued by the RMBS trusts and sold them to investors. Credit Suisse Securities' only formal role with the offer and sale of RMBS was as underwriter, but the individuals who acted for the sponsor and depositors in the transactions were employees of Credit Suisse Securities.

2. **DLJ Mortgage Capital, Inc. ("DLJMC")** is a Delaware corporation and an affiliate of Credit Suisse Securities with headquarters at Credit Suisse's office in New York. DLJMC was the sponsor of the RMBS transactions described in this Order. As sponsor, DLJMC purchased mortgage loans from originators and sold them to depositors for resale to the RMBS trusts.

3. **Credit Suisse First Boston Mortgage Acceptance Corp. ("CSFBMAC")** is a Delaware corporation and an affiliate of Credit Suisse Securities with headquarters at Credit Suisse's office in New York. CSFBMAC was a depositor for certain of the RMBS described in this Order. CSFBMAC acquired mortgage loans from the sponsor and sold them to the trusts pursuant to PSAs.

4. **Credit Suisse First Boston Mortgage Securities Corp. ("CSFBMSC")** is a Delaware corporation and an affiliate of Credit Suisse Securities with headquarters at Credit Suisse's office in New York. CSFBMSC was a depositor for certain of the RMBS described in this Order and operated in a similar fashion to CSFBMAC as described above.

5. **Asset Backed Securities Corporation ("ABSC")** is a Delaware corporation and an affiliate of Credit Suisse Securities with headquarters at Credit Suisse's office in New York. ABSC was a depositor for certain of the RMBS described in this Order and operated in a similar fashion to CSFBMAC and CSFBMSC as described above. During the relevant period, ABSC was subject to reporting obligations pursuant to Section 15(d) of the Exchange Act.

The Securitization Process

6. Credit Suisse structured and sold RMBS through the sponsor, depositor, and underwriter entities described above. With respect to the majority of the securitizations described herein, Credit Suisse, through DLJMC, began the process by purchasing mortgage loans from hundreds of different originators. DLJMC sold the loans to the depositors, and the depositors transferred the loans to the trusts in exchange for certificates representing the RMBS investments. The depositors sold the certificates to Credit Suisse Securities, the underwriter, which sold them to the public. The depositors remitted the funds that they received from Credit Suisse Securities to DLJMC as payment for the loans. Credit Suisse Securities obtained money

through its sales of securities to the public and received underwriting fees in connection with the RMBS transactions.

7. The loans were passed to the trusts through a depositor entity to ensure that the trust assets were "bankruptcy remote," and thus could not be encumbered by Credit Suisse's creditors. The transactions were also structured in this way to enable the trusts to qualify as Real Estate Mortgage Investment Conduits ("REMICs"), which receive favorable tax treatment. Because the trusts were REMICS, the sponsor and depositors were required to give up effective control of the loans.

8. The RMBS transactions also involved "servicer" entities, which were paid fees based on collections from borrowers. A Credit Suisse affiliate at times acted as the servicer for the mortgages in the pools. The servicers collected payments due from borrowers on the loans owned by the trusts and passed the payments to the trusts. The trusts used these funds to pay investors pursuant to the terms of the RMBS. When homeowners defaulted on their loans, the servicers were responsible for foreclosing on the properties on behalf of the trusts.

9. Credit Suisse made statements to the public in the offer and sale of RMBS. These statements appeared, among other places, in the following documents filed with the Commission (the "offering documents").

a. The Registration Statement. The depositors filed and signed Form S-3 registration statements with the Commission for each series of RMBS offerings. Each Form S-3 contained, among other things, a form prospectus describing the securities to be issued under that registration statement and a form PSA.

b. The Prospectus Supplement and Prospectus. The depositors filed a Prospectus Supplement and Prospectus that contained specific information related to each trust. The Prospectus Supplements and Prospectuses described, among other things, the structure of the bonds being offered and the characteristics of the loans backing the bonds. They also described some of the provisions of the PSAs pursuant to which the depositors transferred the loans to the trusts. The Prospectus Supplements and Prospectuses were not separately signed, but became a part of the previously signed and filed Forms S-3.

c. The PSA. The depositors filed Forms 8-K with the PSAs attached. The PSAs set forth, among other things, the roles, responsibilities, rights and obligations of the sponsor, depositor, servicer, and other parties to the transaction. The PSAs also conveyed the loans to the trusts and set forth representations and warranties of the sponsor regarding the loans. The PSAs were typically signed by officers of the sponsor, depositor, servicer, and others.

10. The depositors, DLJMC, and Credit Suisse Securities were all involved in the securitization process and in the preparation of the offering documents. The depositors signed and filed the Form S-3 registration statements. The depositors and DLJMC signed the PSAs, and the depositors filed them with the Forms 8-K. Credit Suisse Securities' and DLJMC's names appeared on the securitization documents as the underwriter and sponsor respectively, and Credit Suisse Securities' employees operated the depositors and sponsor.

Facts Related to Bulk Settlements

A. The Bulk Settlement Practice

11. Credit Suisse purchased loans from originators pursuant to Mortgage Loan Purchase Agreements ("MLPAs"). In the MLPAs, the originators typically committed to repurchase the loans if they breached various representations and warranties or if the borrower missed one of the first three payments due following Credit Suisse's purchase of the loan ("early payment defaults" or "EPDs"). In the relevant securitizations, Credit Suisse typically did not make an EPD representation to the trusts, in the PSA or otherwise. When Credit Suisse discovered that a loan suffered an EPD or otherwise breached an originator's representation or warranty, Credit Suisse often demanded that the originator repurchase the loan and delivered the loan back to the originator upon receiving the repurchase price. Credit Suisse made these repurchase demands both in situations where Credit Suisse owned the loan and where it had previously sold the loan to a RMBS trust.

12. If the originator agreed to repurchase a securitized loan, Credit Suisse repurchased it from the trust. These repurchases were often conducted pursuant to an optional repurchase provision included in the PSA to permit Credit Suisse to pursue repurchase claims against originators. However, Credit Suisse often settled repurchase claims against originators by accepting cash payments from the originator in lieu of repurchase. These settlements are described in this Order as "bulk settlements" because they often included cash payments for many different loans. When Credit Suisse entered into bulk settlements on securitized loans, it often did not repurchase the loans from the trusts or pay any of the settlement proceeds to the trusts that owned the loans. Instead, Credit Suisse retained the proceeds and left the loans underlying the bulk settlements in the trusts. In this manner, Credit Suisse collected additional funds on some early defaulting loans it had sold to RMBS trusts. Under the PSAs, Credit Suisse was obligated to repurchase any such loans that materially breached any of the representations and warranties that it made to the trusts.

13. By the beginning of 2005, bulk settlements were an established practice at Credit Suisse. Through DLJMC, Credit Suisse entered into approximately 110 bulk settlements with originators between 2005 and 2010. These bulk settlements involved loans from 75 different RMBS trusts whose securities Credit Suisse Securities offered and sold to the public from 2005 to 2007. Credit Suisse retained approximately $28.1 million it received from bulk settlements involving these loans, excluding the bulk settlement proceeds it received for loans included in the transactions described in paragraphs 14 and 15 below.

14. The PSAs for eight securitizations that occurred between April and December 2005 provided that Credit Suisse would repurchase loans from RMBS trusts if the loans were "subject to repurchase" by an originator pursuant to an EPD provision in an MLPA. Credit Suisse entered into bulk settlements related to approximately 385 loans owned by these eight RMBS trusts. In nearly every case, Credit Suisse issued repurchase demands to originators stating that it had determined that these loans violated the EPD provisions of the relevant MLPAs. Credit Suisse avoided approximately $18.3 million in losses by not repurchasing bulk settlement loans from these trusts.

15. In the offering documents for one securitization that occurred in February 2006, Credit Suisse transferred to the trust all of its rights under the MLPA with the originator of the underlying loans, and also represented that it would repurchase any loan on which the debtor failed to make the January 2006 scheduled payment. In April 2006, Credit Suisse demanded that the originator repurchase 393 loans that violated the EPD provisions in the MLPA and that had failed to make the January 2006 payment when originally due. Credit Suisse then entered into a bulk settlement with the originator and left approximately 231 of the 393 loans in the trust. Credit Suisse avoided approximately $9.3 million in losses by not repurchasing these bulk settlement loans from the trust.

16. Credit Suisse did not disclose its bulk settlement practice to investors in RMBS. Through the bulk settlement practice, Credit Suisse collected funds when loans it sold to RMBS trusts violated terms in MLPAs and this practice would have been material to investors' decisions whether to invest with Credit Suisse in these RMBS trusts had investors known about the practice. Almost all of the bulk settlements involved loans with EPDs, and, by at least 2007, Credit Suisse was aware that some investors were focused on EPDs. Because an EPD occurred almost immediately after the mortgage loan was originated, such a default was a red flag of a possible breach of underwriting standards or other loan origination problems.

17. In the PSAs for all of the relevant RMBS transactions, Credit Suisse made representations and warranties to the trusts concerning, among other things, characteristics of the loans and the process through which the originators underwrote the loans. Credit Suisse further represented that it would repurchase loans whenever it discovered or was notified of a material breach of one of its representations or warranties to the trusts. During the relevant period, Credit Suisse employees were aware that EPDs sometimes signaled origination and underwriting problems. Credit Suisse employees also knew that the bulk settlement practice had not been disclosed to investors and that investors were not aware of it. At least one Credit Suisse employee stated in an internal e-mail that bulk settlements would be a surprise and concern to RMBS investors. Credit Suisse told investors who inquired about EPDs that although it did not make an EPD representation to the trusts, Credit Suisse repurchased loans to enforce its EPD rights against originators. However, Credit Suisse did not disclose that at times it also enforced EPD rights without repurchasing loans.

18. Credit Suisse sampled 3% to 5% of all loans every month to identify deficiencies associated with origination of the loans. Through this loan quality review process, Credit Suisse learned facts that could constitute breaches of representations and warranties Credit Suisse made

to RMBS trusts. However, beginning in at least late 2007, when Credit Suisse issued a repurchase demand to an originator, it excluded the relevant loan from its quality review process. Because Credit Suisse sent repurchase demands to originators on EPD loans, during this time Credit Suisse did not perform a quality review process on these loans. As a result, Credit Suisse's quality review process did not identify evidence of breaches of its own representations and warranties on loans that were the subjects of bulk settlements. Credit Suisse also instituted a more general practice of repurchasing securitized loans that breached the EPD covenant of an MLPA only when an originator had paid Credit Suisse the full amount to repurchase the EPD loans.

B. Misleading Statements

19. The offering documents frequently disclosed that Credit Suisse had rights against originators, and that exercise of these rights was linked with repurchases of the relevant loans out of RMBS trusts. Credit Suisse included a provision in many of the relevant offering documents which stated that Credit Suisse had the right to repurchase loans from the trusts "to facilitate its rights" against originators based on a breach of the MLPA between Credit Suisse and the relevant originator. Credit Suisse also disclosed in many of its offering documents that, "[t]o mitigate" the risk that it would have to repurchase loans from the trusts, it "obtain[ed] appropriate representations and warranties" from originators. Credit Suisse did not disclose that it might exercise rights against originators by entering into settlements without repurchasing the loans from the trusts.

20. Offering documents for all of the RMBS transactions represented that the sponsor and depositor transferred all "right, title and interest" to the loans, as well as all "proceeds" from the loans, into the trusts. These documents also stated that the trusts qualified for REMIC tax status. Credit Suisse did not disclose that, despite this transfer and the relinquishment of control over the loans, Credit Suisse enforced rights against originators for loans owned by the trusts, without repurchasing them.

21. Items 1111(e) and 1111(g) of Regulation AB require disclosure of "representations and warranties made concerning the pool assets" and the remedies available for breaches of those representations and warranties, as well as a description of the "circumstances" under which "pool assets may be . . . removed from the asset pool, such as [for] a breach of a pool asset representation or warranty." As stated in paragraph 17 above, Credit Suisse represented that it would repurchase loans whenever it discovered or was notified of a material breach of one of its representations or warranties to the trust. These statements were misleading in light of Credit Suisse's undisclosed practices (1) to apply its loan quality review processes differently for loans subject to a repurchase request than other loans; and (2) to not repurchase loans for which Credit Suisse had made originator repurchase requests unless the originators agreed to repurchase them.

22. Credit Suisse also failed to make required disclosures designed to inform investors about potential conflicts of interest. Item 1119(c) of Regulation AB requires disclosure

of relationships, involving or relating to the pool assets, between the sponsor and originators of more than 10% of the pool assets. By virtue of its practice of making claims against originators on trust-owned assets, Credit Suisse maintained a relationship with originators relating to the pool assets. To the extent that Credit Suisse had such a relationship with originators of 10% or more of the trust assets, that relationship was required to be disclosed, but Credit Suisse failed to make the required disclosures.

23. Item 1104(c) of Regulation AB requires disclosure of "information or factors related to the sponsor that may be material to an analysis of the origination or performance of the pool assets." The bulk settlement practice was relevant to the origination of loans because Credit Suisse collected additional funds on early defaulting loans sold to RMBS trusts. Yet, the practice was not disclosed.

24. Credit Suisse made statements in offering documents for the nine transactions discussed in paragraphs 14 and 15 above about its obligation to repurchase certain EPD loans. These statements were misleading because Credit Suisse had established its practice of settling EPD claims against originators without repurchasing such loans from trusts and without disclosure of such practice to investors.

25. As a result of the negligent conduct described above, Credit Suisse violated Section 17(a)(2) of the Securities Act, which prohibits a person in the offer or sale of securities from directly or indirectly obtaining money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

C. Acts that Operated as a Fraud or Deceit upon Purchasers of RMBS Securities

26. The bulk settlement practice involved a number of acts that operated as a fraud or deceit on RMBS investors. These acts included, but were not limited to: (1) The settling of repurchase claims against originators, and keeping the consideration received, when Credit Suisse had sold the underlying loans to RMBS trusts; (2) The collection of settlement proceeds for securitizations where Credit Suisse had passed through its MLPA rights to an RMBS trust or had itself promised to repurchase certain EPD loans; (3) The application of different quality review procedures for loans that Credit Suisse sought to put back to originators and the practice of not repurchasing such loans from trusts unless the originators had agreed to repurchase them; (4) The failure to disclose the bulk settlement practice when answering investor questions about EPDs; and (5) The failure to notify trustees or investors about the benefits Credit Suisse retained related to securitized loans, despite knowing that investors were unaware of the bulk settlement practice.

27. As a result of the negligent conduct described above, Credit Suisse violated Section 17(a)(3) of the Securities Act, which prohibits a person in the offer or sale of securities from directly or indirectly engaging in any transaction, practice or course of business which operates or would operate as a fraud or deceit upon a purchaser of securities.

Facts Related to First Payment Defaults

D. The First Payment Default Provision

28. The second practice at issue relates to two November 2006 securitizations (the "November 2006 securitizations") which were collateralized by $1.9 billion of subprime mortgages originated by subsidiaries of two large subprime mortgage originators. The entity that sold $1.5 billion of the mortgages to Credit Suisse will hereinafter be referred to as the "Originator". The November 2006 securitizations were structured by a business within Credit Suisse's Fixed Income division known as the Asset Finance Capital Markets group (the "ABS group"). The ABS group held, with intent to sell, the junior net interest margin securities and the residuals in the deals.

29. The mortgage loan purchase agreement between Credit Suisse and the Originator contained a covenant known as the FPD covenant. The FPD covenant is similar to, but distinct from, the EPD provision that is described in sections A through C, *supra*. The FPD covenant required the Originator to repurchase or substitute any mortgage in the collateral pool that failed to make either its October 2006 mortgage payment ("October FPDs") or its November 2006 mortgage payment ("November FPDs") within 45 days of the operative due date (the "Determination Date"). If the Originator was notified of, and thereafter failed for any reason to repurchase, a mortgage that was in breach of the FPD covenant within the meaning of the PSA as of the Determination Date, DLJMC was required to repurchase the mortgage (the "FPD backstop"). As of November 30, 2006, all rights and interests in and concerning the FPD covenant were assigned to and assumed by the RMBS trusts for the benefit of investors.

30. Credit Suisse marketed to potential investors the protections afforded by the FPD covenant and the FPD backstop. Among other things, Credit Suisse stated in its marketing materials that "all First Payment Default Risk" was removed from its securitizations, that it "enforced" the FPD covenant in order to "mitigate the effect" of fraudulent mortgages, and that its interests were aligned with investors'. The FPD covenant and the FPD backstop were material to investors.

31. The Prospectus Supplements, which were filed with the Commission on December 1, 2006, informed prospective investors of the Originator's representation that, as of the October 23, 2006 closing date of the MLPA, no mortgage loan in the RMBS trust had been delinquent for more than 30 days in the prior 12 months.

32. The Prospectus Supplements also described the Originator's obligations with respect to loans that failed timely to make their November 2006 payment, stating that the Originator was obligated to repurchase any mortgage loan that was in breach of the FPD covenant 45 days after the mortgage loan's November 1, 2006 due date.

33. The PSAs for the November 2006 securitizations required Credit Suisse, "upon discovery" of a breach of the FPD covenant "in respect of any Mortgage Loan that materially

adversely affects the value of such Mortgage Loan" to notify the RMBS trustee of such breach. The RMBS trustee was then required to "cause the Originator . . . to cure such . . . breach." The PSAs for the November 2006 securitizations were executed by Credit Suisse on or around November 1, 2006, but were not publicly filed until mid-December 2006, at least two weeks after the RMBS notes for the November 2006 securitizations were sold to the public.

34. Credit Suisse began marketing the November 2006 securitizations on or about October 27, 2006. On November 15, 2006, Credit Suisse learned that the Originator's financial condition was deteriorating.

35. After learning of the Originator's deteriorating financial condition, Credit Suisse began closely monitoring its potential financial exposure to the Originator, which included exposure through the FPD backstop. During or shortly after a November 15, 2006 meeting with the Originator's senior management, at which the Originator reviewed its financial condition with a team from Credit Suisse, a manager in the ABS group sent one of his colleagues in the ABS group an e-mail stating: "Just making sure we are all over [the Originator] on the EPDs in our pool."

36. By mid-December, the number of FPDs in the November 2006 securitizations was, according to a manager in the ABS group, "unprecedented," and subprime originators "were losing their credit-worthiness in a hurry."

37. At or about the same time, Credit Suisse began working to limit the number of mortgages that were put back to the Originator pursuant to the FPD covenant. On December 19, 2006, Credit Suisse provided the Originator with documents reflecting "the final population of loans that qualify as [FPDs]" and instructed the Originator to repurchase the October FPDs by December 29, 2006. Credit Suisse further instructed the Originator to repurchase the November FPDs by January 10, 2007 (the "December 19 demand").

38. With respect to the October FPDs, the December 19 demand did not include 44 mortgages that qualified as FPDs because they had not made their October payment by the November 15, 2006 Determination Date.

39. In a series of communications with Credit Suisse following the December 19 demand, the Originator expressed reservations about its obligations concerning the November FPDs, and sought "flexibility" from Credit Suisse with respect to the FPD covenant.

40. Credit Suisse subsequently undertook a review of the November FPDs that were included in the December 19 demand. In its review, which was not disclosed to investors, Credit Suisse sought to determine which of the November FPDs were, in its view, most likely indicative of borrowers' inability to pay. On January 3, 2007, Credit Suisse sent a revised demand to the Originator (the "January 3 demand") reflecting the results of this review. The January 3 demand failed to include 85 mortgages that had qualified as November FPDs and that had been included in the December 19 demand.

41. Investors in the RMBS trusts were not informed that Credit Suisse did not demand a repurchase of all the mortgages that breached the FPD covenant.

42. In total, the more than 100 mortgages that breached the FPD covenant but that Credit Suisse failed to put back to the Originator caused losses of approximately $10 million to the November 2006 securitizations.

43. After the November 2006 securitizations closed, parties to the securitizations provided Regulation AB assessments pursuant to Items 1122(d)(4)(iii) and 1122(d)(4)(xiv), confirming that "additions, removals or substitutions to the asset pool [were] made," and "delinquencies [were] recognized" in accordance with the transaction agreements (the "Item 1122(d) sub-certifications").

44. In exhibits to Forms 10-K filed on March 30, 2007, ABSC certified that the Item 1122(d) sub-certifications did not "contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made . . . not misleading." ABSC's certification was misleading.

45. Credit Suisse obtained money from underwriting fees on the November 2006 securitizations, and through the sale of the mortgages to the RMBS trust on the closing date of the securitizations.

<u>E. Misleading Statements Concerning the First Payment Default Provision</u>

46. Credit Suisse misled investors in the November 2006 securitizations by making statements that <u>all</u> mortgage loans that breached the FPD covenant would be removed from the collateral pool for the November 2006 securitizations. Credit Suisse should have known that all loans that breached the FPD covenant would not be put back to the Originator.

47. Credit Suisse also represented that its interests were aligned with investors' interests by virtue of the FPD covenant. Credit Suisse failed to correct this representation when it became clear in mid-November 2006 that its interests were not completely aligned with investors' interests with respect to the FPD covenant.

48. As a result of the negligent conduct described above, Credit Suisse violated Section 17(a)(2) of the Securities Act, which prohibits a person in the offer and sale of securities from directly or indirectly obtaining money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

<u>F. Acts that Operated or Would Operate as a Fraud or Deceit upon Purchasers</u>

49. After learning of the Originator's dire financial condition, Credit Suisse limited the number of loans that were put back to the Originator as a result of breaches of the FPD covenant. Credit Suisse was motivated to limit the number of loans put back to the Originator

because, if the Originator refused or was unable to repurchase the loans, Credit Suisse, through its affiliate, DLJMC, was obligated to repurchase the loans that materially breached the FPD covenant directly from the securitization trust through the FPD backstop.

50. Credit Suisse failed to put back to the Originator more than 100 mortgages that were in breach of the FPD covenant. Credit Suisse did not disclose to the trustee or to investors that these mortgages would remain in the collateral pool for the November 2006 securitizations.

51. As a result of the negligent conduct described above, Credit Suisse violated Section 17(a)(3) of the Securities Act, which prohibits a person in the offer or sale of securities from directly or indirectly engaging in any transaction, practice or course of business which operates or would operate as a fraud or deceit upon a purchaser of securities.

G. Misleading Statements in ABSC's Regulation AB Certifications

52. As set forth in the forgoing paragraphs, ABSC's Regulation AB certifications for the November 2006 securitizations were materially misleading. As a result, ABSC violated Section 15(d) of the Exchange Act and Rules 12b-20, 15d-1, and 15d-14(d) thereunder, which require each issuer that has filed a Securities Act registration statement which has become effective to file with the Commission such information, documents and annual and quarterly reports as the Commission may require, and mandate that periodic reports contain such certifications and further material information as may be necessary to make the required statements not misleading.

Conclusion

53. As a result of the negligent conduct described above, Respondents Credit Suisse Securities (USA) LLC, DLJ Mortgage Capital, Inc., Credit Suisse First Boston Mortgage Acceptance Corp., Credit Suisse First Boston Mortgage Securities Corp., and Asset Backed Securities Corporation, and each of them, violated Sections 17(a)(2) and (3) of the Securities Act, and Asset Backed Securities Corporation violated Section 15(d) of the Exchange Act and Rules 12b-20, 15d-1, and 15d-14(d) thereunder.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondents' Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 8A of the Securities Act, Respondents Credit Suisse Securities (USA) LLC, DLJ Mortgage Capital, Inc., Credit Suisse First Boston Mortgage Acceptance Corp., Credit Suisse First Boston Mortgage Securities Corp., and Asset Backed Securities Corporation cease and desist from committing or causing any violations and any future violations of Sections 17(a)(2) and (3) of the Securities Act.

B. Pursuant to Section 21C of the Exchange Act, Respondent Asset Backed Securities Corporation cease and desist from committing or causing any violations and any future violations of Section 15(d) of the Exchange Act and Rules 12b-20, 15d-1, and 15d-14(d) thereunder.

C. All Respondents shall, jointly and severally, within ten (10) business days of the entry of this Order, pay disgorgement of $55,747,769, prejudgment interest of $13,000,000, and a civil money penalty in the amount of $33,000,000 to the Securities and Exchange Commission related to Bulk Settlements. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. Payment must be made in one of the following ways:

(1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
(2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm; or
(3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Credit Suisse Securities (USA) LLC, DLJ Mortgage Capital, Inc., Credit Suisse First Boston Mortgage Acceptance Corp., Credit Suisse First Boston Mortgage Securities Corp., and Asset Backed Securities Corporation as Respondents in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Kenneth Lench, Chief-Structured and New Products Unit, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549.

D. Respondents Credit Suisse Securities (USA) LLC and Asset Backed Securities Corporation shall, jointly and severally, within ten (10) business days of the entry of this Order, in addition to the payments ordered in paragraph IV.C above, pay disgorgement of $10,056,561, prejudgment interest of $2,200,000, and a civil money penalty in the amount of $6,000,000 to the Securities and Exchange Commission related to First Payment Defaults. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. Payment must be made in one of the following ways:

(1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm; or

(3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Credit Suisse Securities (USA) LLC and Asset Backed Securities Corporation as Respondents in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Kenneth Lench, Chief-Structured and New Products Unit, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549.

E. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, two separate Fair Funds may be created for the disgorgement, interest and penalties related to Bulk Settlements and First Payment Defaults referenced in paragraphs IV.C and IV.D above. Regardless of whether any such Fair Fund distributions are made, amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondents agree that in any Related Investor Action, they shall not argue that they are entitled to, nor shall they benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondents agree that they shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the Commission directs. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against any of the Respondents by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

F. The disgorgement, interest, and civil penalties paid to each Fair Fund shall be distributed pursuant to a distribution plan (the "Plan") to be administered in accordance with the Commission Rules of Practice governing Fair Funds and Disgorgement Plans. A Fund Administrator (the "Administrator") shall be appointed by the Commission. The Administrator will prepare, in coordination with the Commission staff, the Plan to distribute each Fair Fund resulting from this Order. The Plan will be subject to Commission approval. Respondents shall, jointly and severally, pay all reasonable administrative costs and expenses of each distribution, including the fees and expenses of a tax administrator, within thirty (30) days after receipt of an invoice for such services.

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Commissioner Walter not participating

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-30266; 812-14074]

Wells Fargo Bank, N.A., et al.; Notice of Application and Temporary Order

November 16, 2012

Agency: Securities and Exchange Commission ("Commission").

Action: Temporary order and notice of application for a permanent order under section 9(c) of the Investment Company Act of 1940 ("Act").

Summary of Application: Applicants have received a temporary order exempting them from section 9(a) of the Act, with respect to an injunction entered against Wells Fargo Bank, N.A. ("Wells Fargo Bank") on September 20, 2012, by the United States District Court for the District of Columbia, until the Commission takes final action on an application for a permanent order. Applicants have requested a permanent order.

Applicants: Wells Fargo Bank, First International Advisors, LLC ("First International"), Metropolitan West Capital Management, LLC ("Metropolitan West"), Golden Capital Management, LLC ("Golden Capital"), Alternative Strategies Brokerage Services, Inc. ("Alternative Strategies Brokerage"), Alternative Strategies Group, Inc. ("Alternative Strategies"), Wells Fargo Funds Management, LLC ("WF Funds Management"), Wells Capital Management Incorporated ("Wells Capital Management"), Peregrine Capital Management, Inc. ("Peregrine"), Galliard Capital Management, Inc. ("Galliard"), and Wells Fargo Funds Distributor, LLC ("WF Funds Distributor") (each an "Applicant" and collectively, the "Applicants").[1]

---

[1] Applicants request that any relief granted pursuant to the application also apply to any existing company of which Wells Fargo Bank is or may become an affiliated person within the meaning of section 2(a)(3) of the Act (together with the Applicants, the "Covered Persons").

Filing Date: The application was filed on August 31, 2012, and amended on September 21, 2012.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on December 11, 2012, and should be accompanied by proof of service on Applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

Addresses: Elizabeth M. Murphy, Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090. Applicants: Wells Fargo Bank, 101 North Phillips Avenue, Sioux Falls, SD 57104; First International, 30 Fenchurch Street, London, England, UK EC3M 3BD; Metropolitan West, 610 Newport Center Drive, Suite 1000, Newport Beach, CA 92660; Golden Capital, 5 Resource Square, Suite 400, 10715 David Taylor Drive, Charlotte, NC 28262; Alternative Strategies Brokerage, 401 South Tryon Street, Charlotte, NC 28202; Alternative Strategies, 401 South Tryon Street, TH 3, Charlotte, NC 28202; WF Funds Management and WF Funds Distributor, 525 Market Street, 12th Floor, San Francisco, CA 94105; Wells Capital Management, 525 Market Street, 10th Floor, San Francisco, CA 94105; Peregrine, 800 LaSalle Avenue, Suite 1850, Minneapolis, MN 55402; and Galliard, 800 LaSalle Avenue, Suite 1100, Minneapolis, MN 55402.

For Further Information Contact: Steven I. Amchan, Senior Counsel, at (202) 551-6826 or Daniele Marchesani, Branch Chief, at (202) 551-6821 (Division of Investment Management, Office of Investment Company Regulation).

Supplementary Information: The following is a temporary order and a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or an applicant using the Company name box, at http://www.sec.gov/search/search.htm or by calling (202) 551-8090.

Applicants' Representations:

1. Wells Fargo Bank is a national banking association wholly-owned, directly and indirectly, by Wells Fargo & Company ("Wells Fargo"). Through its direct and indirect subsidiaries, Wells Fargo, a registered financial holding company and bank holding company under the Bank Holding Company Act of 1956, as amended, offers banking, brokerage, advisory and other financial services to institutional and individual customers worldwide. Wells Fargo also is the ultimate parent of the other Applicants, who, as direct or indirect, majority-owned or wholly-owned, subsidiaries of the same ultimate parent, are, or may be considered to be, under common control with Wells Fargo Bank.

2. Effective December 1, 2011, and August 24, 2012, respectively, two separately identifiable departments within Wells Fargo Bank, Abbot Downing Investment Advisors and Wells Capital Management Singapore, each became registered as an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act") and each serves as an investment adviser to one or more Funds (as defined below). First International, Metropolitan West, Golden Capital, Alternative Strategies, WF Funds Management, Wells Capital Management, Peregrine, and Galliard are registered as investment advisers under the Advisers Act and serve as investment advisers or sub-advisers to various Funds. Alternative Strategies Brokerage and WF Funds Distributor are registered as broker-dealers under the Securities Exchange Act of 1934, and each serves as principal underwriter to various Funds. "Fund" means any registered investment company, including a registered unit investment trust ("UIT") or registered face

amount certificate company, as well as a business development company ("BDC") or employees' securities company ("ESC"). "Fund Servicing Activities" means acting as an adviser, sub-adviser or depositor to Funds, or principal underwriter for any registered open-end investment company, UIT, registered face amount company or ESC.

3. On July 12, 2012, the U.S. Department of Justice filed a complaint ("Complaint") against Wells Fargo Bank in the United States District Court for the District of Columbia ("District Court") in a civil action.[2] The Complaint alleged that Wells Fargo Bank engaged in a pattern or practice of discrimination on the basis of race and national origin in violation of the Equal Credit Opportunity Act ("ECOA") and the Fair Housing Act ("FHA"). More specifically, the Complaint alleged that Wells Fargo Bank's policies caused African-American and Hispanic borrowers to be placed into subprime loans at higher rates than similarly-situated white borrowers and to pay higher costs, fees and interest rates than similarly-situated white borrowers. Applicants state that Wells Fargo Bank has not been advised by the Department of Justice that any employee of Wells Fargo discriminated intentionally on the basis of race or national origin. On July 12, 2012, Wells Fargo Bank executed a Consent Order, in which it denied the allegations of the Complaint other than those facts deemed necessary to the jurisdiction of the District Court. Pursuant to that Consent Order, on September 20, 2012, the District Court entered a judgment that, among other things, enjoins Wells Fargo Bank from violating the anti-discrimination provisions of the ECOA and the FHA in connection with originating residential mortgages (the "Injunction"), and requires Wells Fargo Bank to pay $125 million in compensation to borrowers who may have suffered as a result of the alleged ECOA and FHA violations, contribute at least $50 million to a homebuyer assistance program, and implement

[2] *United States v. Wells Fargo Bank, N.A.*, No. 1:12-cv-01150 (D.D.C., July 12, 2012).

other measures that are designed to ensure Wells Fargo Bank's future adherence to fair lending practices.

Applicants' Legal Analysis:

1. Section 9(a)(2) of the Act, in relevant part, prohibits a person who has been enjoined from acting as a bank, or from engaging in or continuing any conduct or practice in connection with such activity, from acting, among other things, as an investment adviser or depositor of any registered investment company, or a principal underwriter for any registered open-end investment company, UIT or registered face-amount certificate company. Section 9(a)(3) of the Act extends the prohibitions of section 9(a)(2) to a company any affiliated person of which has been disqualified under the provisions of section 9(a)(2). Section 2(a)(3) of the Act defines "affiliated person" to include, among others, any person directly or indirectly controlling, controlled by, or under common control with, the other person. Applicants state that Wells Fargo Bank is, or may be considered to be, under common control with and therefore an affiliated person of each of the other Applicants. Applicants state that the entry of the Injunction may result in Applicants being subject to the disqualification provisions of section 9(a) of the Act because Wells Fargo Bank is enjoined from engaging in or continuing certain conduct and/or practices in connection with its banking activity.[3]

2. Section 9(c) of the Act provides that the Commission shall grant an application for exemption from the disqualification provisions of section 9(a) if it is established that these provisions, as applied to Applicants, are unduly or disproportionately severe or that the Applicants' conduct has been such as not to make it against the public interest or the protection of investors to grant the exemption. Applicants have filed an application pursuant to section 9(c)

[3] Applicants believe that the conduct and/or practices covered by the Injunction could be deemed to be in connection with Wells Fargo Bank's banking activity.

seeking temporary and permanent orders exempting the Applicants and the other Covered Persons from the disqualification provisions of section 9(a) of the Act. On September 21, 2012, Applicants received a temporary conditional order from the Commission exempting them from section 9(a) of the Act with respect to the Injunction from September 20, 2012 until the Commission takes final action on an application for a permanent order or, if earlier, November 16, 2012.

3. Applicants believe they meet the standard for exemption specified in section 9(c). Applicants state that the prohibitions of section 9(a) as applied to them would be unduly and disproportionately severe and that the conduct of Applicants has been such as not to make it against the public interest or the protection of investors to grant the exemption from section 9(a).

4. Applicants state that the conduct giving rise to the Injunction did not involve any of the Applicants acting in their capacity as investment adviser, sub-adviser, or principal underwriter for Funds. Applicants also state that the alleged conduct giving rise to the Injunction did not involve any Fund or the assets of any Fund for which they provided Fund Servicing Activities. Applicants further state that to the best of their reasonable knowledge: (i) none of the Applicants' (other than certain of Wells Fargo Bank's) current or former directors, officers or employees had any knowledge of, or had any involvement in, the conduct alleged in the Complaint to have constituted the alleged violations that provided a basis for the Injunction; (ii) the personnel who were involved in the violations alleged in the Complaint have had no involvement in, and will not have any future involvement in, providing advisory, sub-advisory, depository or underwriting services to Funds; and (iii) because the personnel of the Applicants involved in Fund Servicing Activities did not have any involvement in the alleged misconduct, shareholders of Funds that received investment advisory, depository and principal underwriting

services from the Applicants were not affected any differently than if those Funds had received services from any other non-affiliated investment adviser, depositor or principal underwriter.

5. Applicants further represent that the inability of Applicants to continue providing Fund Servicing Activities would result in potentially severe financial hardships for both the Funds and their shareholders. Applicants state that they will distribute written materials, including an offer to meet in person to discuss the materials, to the board of directors of each Fund, including the directors who are not "interested persons," as defined in section 2(a)(19) of the Act, of such Fund, and their independent legal counsel as defined in rule 0-1(a)(6) under the Act, if any, regarding the Injunction, any impact on the Funds, and the application. The Applicants will provide the Funds with all information concerning the Injunction and the application that is necessary for the Funds to fulfill their disclosure and other obligations under the federal securities laws.

6. Applicants also assert that, if the Applicants were barred from engaging in Fund Servicing Activities, the effect on their businesses and employees would be severe. The Applicants state that they have committed substantial capital and resources to establishing expertise in advising and sub-advising Funds and in support of their principal underwriting business.

7. Applicants state that several Applicants and certain of their affiliates have previously received orders under section 9(c), as described in greater detail in the application.

Applicants' Condition:

Applicants agree that any order granted by the Commission pursuant to the application will be subject to the following condition:

> Any temporary exemption granted pursuant to the application shall be without prejudice to, and shall not limit the Commission's rights in any manner with respect to, any

Commission investigation of, or administrative proceedings involving or against, Covered Persons, including without limitation, the consideration by the Commission of a permanent exemption from section 9(a) of the Act requested pursuant to the application, or the revocation or removal of any temporary exemptions granted under the Act in connection with the application.

Temporary Order:

The Commission has considered the matter and finds that Applicants have made the necessary showing to justify granting a temporary exemption.

Accordingly,

IT IS HEREBY ORDERED, pursuant to section 9(c) of the Act, that the Applicants and the other Covered Persons are granted a temporary exemption from the provisions of section 9(a), effective forthwith, solely with respect to the Injunction, subject to the condition in the application, until the date the Commission takes final action on their application for a permanent order.

By the Commission.

Elizabeth M. Murphy
Secretary

Kevin M. O'Neill

By: Kevin M. O'Neill
Deputy Secretary

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

Release No. IC-30268; File No. S7-07-11

RIN 3235-AL02

PURCHASE OF CERTAIN DEBT SECURITIES BY BUSINESS AND INDUSTRIAL DEVELOPMENT COMPANIES RELYING ON AN INVESTMENT COMPANY ACT EXEMPTION

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission ("Commission") is adopting a new rule under the Investment Company Act of 1940 ("Investment Company Act") to establish a standard of credit-worthiness in place of a statutory reference to credit ratings that the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") removes. The rule will establish the standard of credit quality that must be met by certain debt securities purchased by entities relying on the Investment Company Act exemption for business and industrial development companies.

DATE: Effective date: [insert date 30 days after publication in Federal Register.]

FOR FURTHER INFORMATION CONTACT: Anu Dubey, Senior Counsel, or Penelope Saltzman, Assistant Director (202) 551-6792, Office of Regulatory Policy, Division of Investment Management, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-8549.

SUPPLEMENTARY INFORMATION: The Commission is adopting new rule 6a-5 [17 CFR 270.6a-5] under the Investment Company Act.[1]

---

1 15 U.S.C. 80a-1. Unless otherwise noted, all references to statutory sections are to the Investment Company Act, and all references to rules under the Investment Company Act are to

Table of Contents

I. BACKGROUND

The Dodd-Frank Act was enacted on July 21, 2010.[2] Section 939(c) of the Dodd-Frank Act removes a reference to credit ratings from section 6(a)(5) of the Investment Company Act and replaces it with a reference to "such standards of credit-worthiness as the Commission shall adopt."[3] To implement this mandate, last year the Commission proposed new rule 6a-5 under the Investment Company Act that would establish a credit-worthiness standard to replace the credit rating reference in section 6(a)(5) of that Act that the Dodd-Frank Act eliminates.[4] We received

---

Title 17, Part 270 of the Code of Federal Regulations [17 CFR 270].

2 Pub. L. No. 111-203, 124 Stat. 1376 (2010).

3 Section 939(c) of the Dodd-Frank Act (amending section 6(a)(5)(A)(iv)(I) of the Investment Company Act). This amendment to the Investment Company Act becomes effective on July 21, 2012. *See* section 939(g) of the Dodd-Frank Act.

4 *See* References to Credit Ratings in Certain Investment Company Act Rules and Forms, Investment Company Act Release No. 29592 (Mar. 3, 2011) [76 FR 12896 (Mar. 9, 2011)] ("2011 Proposing Release"). In that release, we also proposed amendments to replace references to credit ratings in rules 2a-7 and 5b-3 under the Investment Company Act and Forms N-1A, N-2, N-3 and N-MFP under the Investment Company Act and the Securities Act of 1933 (15 U.S.C. 77a). Those proposed amendments would implement section 939A of the Dodd-Frank Act, which requires the Commission to review its regulations for any references to or requirements regarding credit ratings that require the use of an assessment of the credit-worthiness of a security or money market instrument, remove these references or requirements, and substitute in those regulations other standards of credit-worthiness that we determine to be appropriate. We intend to address the proposed amendments to rule 2a-7, rule 5b-3 and Forms N-1A, N-2, N-3 and N-MFP separately. Rule 3a-7 under the Investment Company Act also contains a reference to ratings. In August 2011, in a concept release soliciting comment on the treatment of asset-backed issuers under the Investment Company Act, we sought comment on the role, if any, that credit ratings should continue to play in the context of rule 3a-7. *See* Treatment of Asset-Backed Issuers under the Investment Company Act, Investment Company Act Release No. 29779 (Aug.

one comment letter regarding proposed rule 6a-5, which we discuss below.[5] Today, we are adopting new rule 6a-5, which implements section 939(c) of the Dodd-Frank Act.

II. DISCUSSION

Business and industrial development companies ("BIDCOs") are companies that operate under state statutes that provide direct investment and loan financing, as well as managerial assistance, to state and local enterprises.[6] Because they invest in securities, BIDCOs frequently meet the definition of "investment company" under the Investment Company Act.[7] In 1996, the Investment Company Act was amended to add section 6(a)(5) to exempt these companies from most provisions of the Act subject to certain conditions.[8] The statutory exemption was premised on states having a strong interest in overseeing the structure and operations of these companies,

---

31, 2011) [76 FR 55308 (Sept. 7, 2011)] at Section III.A.1.

5 The comment letters on the 2011 Proposing Release (File No. S7-07-11) are available at http://www.sec.gov/comments/s7-07-11/s70711.shtml. In addition, to facilitate public input on the Dodd-Frank Act, we provided a series of e-mail links, organized by topic on our website at http://www.sec.gov/spotlight/regreformcomments.shtml. The public comments we received in response to our solicitation for comment on Title IX of the Dodd-Frank Act (which includes sections 939 and 939A) are available on our website at http://www.sec.gov/comments/df-title-ix/credit-rating-agencies/credit-rating-agencies.shtml.

6 *See* Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 479, S. Rep. No. 103-166, at 11 (1993) ("1993 Senate Report").

7 For purposes of the Investment Company Act, an "investment company" means any issuer that: (A) is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, or trading in securities; (B) is engaged or proposes to engage in the business of issuing face-amount certificates of the installment type, or has been engaged in such business and has any such certificate outstanding; or (C) is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 per centum of the value of such issuer's total assets (exclusive of government securities and cash items) on an unconsolidated basis. 15 U.S.C. 80a-3(a)(1).

8 15 U.S.C. 80a-6(a)(5); Pub. L. No. 104-290 § 501, 110 Stat. 3416, 3444 (1996). Section 6(a)(5)(B) provides that section 9 and, to the extent necessary to enforce section 9, sections 38 through 51, apply to a BIDCO as though the company were a registered investment company. Among other conditions to reliance on the exemption in section 6(a)(5), a BIDCO may not issue redeemable securities.

thus rendering regulation under the Investment Company Act largely duplicative and unnecessary.[9]

BIDCOs that seek to rely on the exemption in section 6(a)(5) are limited with respect to the types of securities issued by investment companies and companies exempt from the definition of investment company under section 3(c)(1) or 3(c)(7) of the Investment Company Act ("private funds") that they may purchase. Specifically, section 6(a)(5)(A)(iv) prohibits these BIDCOs from purchasing securities issued by investment companies and private funds other than debt securities that are rated investment grade by at least one NRSRO and securities issued by registered open-end investment companies that invest at least 65 percent of their assets in investment grade securities or securities that the fund determines are comparable in quality.[10] This provision was intended to provide limited flexibility to invest capital not immediately needed for the company's long-term commitments.[11] Although the legislative history of the provision does not specifically explain why Congress restricted BIDCOs to acquiring "investment grade" debt of investment companies and private funds, as we noted in the 2011

---

9 *See* 1993 Senate Report, *supra* note 6, at 19 (further stating that states are well positioned to monitor these companies and address the needs of resident investors). Prior to the addition of section 6(a)(5), the Commission had granted orders to exempt BIDCOs from regulation under the Act. *See, e.g.*, The Idaho Company, Investment Company Release Nos. 18926 (Sept. 3, 1992) (notice) and 18985 (Sept. 30, 1992) (order).

10 15 U.S.C. 80a-6(a)(5)(A), as in effect prior to July 21, 2012 (exempting any company that is not engaged in the business of issuing redeemable securities, the operations of which are subject to regulation by the State in which the company is organized under a statute governing entities that provide financial or managerial assistance to enterprises doing business, or proposing to do business in that state if, among other things, the company does not purchase any security issued by an investment company or by any company that would be an investment company except for the exclusions from the definition of the term "investment company" under sections 3(c)(1) or 3(c)(7), other than (I) any debt security that is rated investment grade by not less than 1 nationally recognized statistical rating organization; or (II) any security issued by a registered open-end fund that is required by its investment policies to invest not less than 65% of its total assets in securities described in subclause (I) or securities that are determined by such registered open-end fund to be comparable in quality to securities described in subclause (I)).

11 *See* 1993 Senate Report, *supra* note 6, at 20.

Proposing Release, it may have been designed to limit BIDCOs to investing in debt securities of sufficiently high credit quality that they are likely to maintain a fairly stable market value and that could be liquidated easily, as appropriate, for the BIDCO to support its investment and financing activities.[12]

As described above, section 939(c) of the Dodd-Frank Act eliminates the credit rating reference in section 6(a)(5)(A)(iv) of the Investment Company Act. Instead of limiting BIDCOs to purchasing debt securities issued by investment companies and private funds that are rated "investment grade," the amendment requires such debt securities to meet "such standards of credit-worthiness as the Commission shall adopt."

We do not understand that the statutory amendment was intended to change the standard of credit quality represented by an investment grade rating. Accordingly, we are adopting rule 6a-5, as proposed, to establish a standard of credit-worthiness designed to achieve the same degree of risk limitation as the credit rating it replaces. Rule 6a-5 deems a BIDCO to have met the requirements for credit-worthiness of certain debt securities under section 6(a)(5)(A)(iv)(I) if the board of directors or members of the company (or its or their delegate) determines, at the time of purchase, that the debt security is (i) subject to no greater than moderate credit risk and (ii) sufficiently liquid that the security can be sold at or near its carrying value within a reasonably short period of time.[13] The board of directors or members of a BIDCO (or its or their

---

12 *See* 2011 Proposing Release, *supra* note 4, at Section II.D.

13 Rule 6a-5. The standard for credit-worthiness that we are adopting in rule 6a-5 is similar to the standard that we adopted in rule 10f-3 under the Investment Company Act. Rule 10f-3 defines eligible municipal securities as securities that are sufficiently liquid that they can be sold at or near their carrying value within a reasonably short period of time and either are subject to no greater than moderate credit risk or, if the issuer has been in operation for less than three years, the securities are subject to a minimal or low amount of credit risk. *See* rule 10f-3(a)(3).

delegate) would have to make this determination at the time of acquisition of the securities.[14] As a result of rule 6a-5, section 6(a)(5) of the Investment Company Act will also limit a BIDCO's investments in registered open-end funds to those funds that invest at least 65 percent of their assets in debt securities that meet our standard.[15]

The final rule does not, as one commenter suggested, include specific factors or tests that the board must apply in performing its credit analysis.[16] We believe that the new credit quality standards (that the debt security be subject to no greater than moderate credit risk and be sufficiently liquid that it can be sold at or near its carrying value within a reasonably short period of time) are clear enough for a BIDCO's board or members (or its or their delegate) to understand the risks acceptable under the rule. We note that the number and scope of factors that may be appropriate to making a credit quality determination with respect to a security may vary significantly depending on the particular security. We are concerned that prescribing a list of specific factors in a rule today might function as a limit to the credit quality analysis that boards or members would undertake and may not address information that would be relevant to credit quality determinations regarding new types of debt securities that investment companies or private funds may issue and in which BIDCOs may invest in the future.[17]

The standard we are adopting is designed to limit BIDCOs to purchasing debt securities

---

14 Rule 6a-5.

15 Section 6(a)(5)(A)(iv)(II) (permitting a BIDCO to purchase any security issued by a registered open-end fund that is required by its investment policies to invest not less than 65% of its total assets in securities described in subclause (I) (*i.e.,* securities that meet the standards of credit-worthiness that the Commission adopts) or securities that are determined by such registered open-end fund to be comparable in quality to securities described in subclause (I)).

16 *See* Better Markets Comment Letter (Apr. 25, 2011) ("Better Markets Comment Letter") (asserting that the proposed standard is vague and would undermine the reliability of a board's credit risk determinations and the board's accountability for such determinations).

17 We also agree with this commenter, who acknowledged that a reliable and objective shorthand measure of credit risk that could be incorporated into Commission regulations is currently unavailable. *See* Better Markets Comment Letter.

issued by investment companies or private funds of sufficiently high credit quality that they are likely to maintain a fairly stable market value and may be liquidated easily, as appropriate, for the BIDCO to support its investment and financing activities.[18] Debt securities (or their issuers) subject to a moderate level of credit risk would demonstrate at least average credit-worthiness relative to other similar debt issues (or issuers of similar debt).[19] Moderate credit risk would denote current low expectations of default risk associated with the security, with an adequate capacity for payment by the issuer of principal and interest.[20] In making their credit quality determinations, a BIDCO's board of directors or members (or its or their delegate) can also consider credit quality reports prepared by outside sources, including NRSRO ratings, that the BIDCO board or members conclude are credible and reliable for this purpose.

III. PAPERWORK REDUCTION ACT

The Paperwork Reduction Act of 1995 ("PRA") imposes certain requirements on federal agencies in connection with their conducting or sponsoring any collection of information as defined by the PRA. Rule 6a-5 does not create any new collections of information.

IV. ECONOMIC ANALYSIS

As discussed above, we are adopting a new rule to implement section 939(c) of the Dodd-Frank Act to replace a statutory reference to a credit rating with an alternative credit-worthiness standard. We considered the economic effects, including costs and benefits, of our proposed new rule in the 2011 Proposing Release and we discuss below the comment received related to our analysis.

---

18 *See supra* note 12 and accompanying text.

19 *See* References to Ratings of Nationally Recognized Statistical Rating Organizations, Investment Company Act Release No. 28939 (Oct. 5, 2009) [74 FR 52358 (Oct. 9, 2009)] at n.86 (release adopting amendments to rule 10f-3).

20 *Id.*

The Commission has discretion in adopting the alternative standard of credit-worthiness, and we undertake below to discuss the economic effects of the new rule that are within our discretion under the Dodd-Frank Act, in addition to the economic effects of removing rating references from statutory provisions, as mandated by the Dodd-Frank Act itself. The two types of costs and benefits may not be entirely separable to the extent that our discretion is exercised to realize the benefits intended by the Dodd-Frank Act. In evaluating the economic effects of new rule 6a-5, we compare section 6(a)(5) of the Investment Company Act, as currently in effect (which includes a reference to a rating), with the new rule we are adopting.

Rule 6a-5 establishes a credit-worthiness standard under section 6(a)(5)(A)(iv)(I) of the Investment Company Act. BIDCOs that seek to rely on the exemption in section 6(a)(5) of the Act are limited to investing in debt securities issued by investment companies and private funds if, at the time of purchase, the board of directors or members of the BIDCO (or its or their delegate) determines that the debt security is (i) subject to no greater than moderate credit risk and (ii) sufficiently liquid that the security can be sold at or near its carrying value within a reasonably short period of time.

We anticipate that the adoption of rule 6a-5 may result in certain benefits. First, we do not understand that by amending section 6(a)(5), Congress intended to change the credit quality of the debt securities that BIDCOs may purchase and our rule is designed to establish a similar credit quality standard in order to achieve the same limitation on risk as the credit rating it replaces. In particular, the amended standard is designed to limit BIDCOs to purchasing debt securities issued by investment companies or private funds of sufficiently high credit quality that they are likely to maintain a fairly stable market value and may be liquidated easily, as appropriate, for the BIDCO to support its investment and financing activities. Second, the subjective credit quality standard in amended rule 6a-5 may provide BIDCOs greater flexibility in determining the pool of eligible debt securities in which they may invest. Finally, the credit quality standard in new rule 6a-5 may further Congress' stated purpose of reducing reliance on ratings in the context of a BIDCO's purchase of certain debt securities.[21]

We also recognize that BIDCOs may incur some costs as a result of the adoption of new rule 6a-5. These may be internal costs or costs to consult outside legal counsel to evaluate whether changes to any policies and procedures the BIDCOs may have currently for acquiring debt securities issued by investment companies or private funds may be appropriate in light of the new rule. We expect that, although not required by the Investment Company Act, as a matter of good business practice, directors or members of most BIDCOs that do not currently have them may prepare policies and procedures to make the credit quality and liquidity determinations required by the new rule. Staff estimates that BIDCOs will incur the costs of preparing the procedures for making determinations of credit quality and liquidity under the rule once, and directors and members of BIDCOs (or their delegates) will be able to follow these procedures for purposes of making future determinations under the rule. Commission staff estimated in the 2011 Proposing Release that each BIDCO would incur, on average, an initial one-time cost of $1000 to prepare policies and procedures and an average of $1000 in annual costs for making credit determinations with respect to the acquisition of debt securities.[22] We received no

---

21 *See* Report of the House of Representatives Financial Services Committee to Accompany H.R. 4173, H. Rep. No. 111-517, at 871 (2010).

22 *See* 2011 Proposing Release, supra note 4, at n.112. Staff does not have reliable data and is not aware of any databases that compile information regarding the number of existing BIDCOs. Moreover, we received no data from commenters. We note that some state regulators disclose the number of BIDCOs registered in the state on the regulators' websites. Of those that do, the number of registered BIDCOs ranges from one to 10. *See, e.g.*, Louisiana Office of Financial Institutions at http://www.ofi.state.la.us/ (listing 10 BIDCOs in a directory of active BIDCOs); California Department of Financial Institutions at http://www.dfi.ca.gov/directory/bidco.asp (listing one BIDCO in a directory of BIDCOs). We estimate that each BIDCO would incur on

comments on those estimates. We note however, that under rule 6a-5, in evaluating whether debt securities issued by investment companies and private funds present moderate credit risk, boards of directors and members of BIDCOs (or its or their delegates) can consider credit quality determinations prepared by outside sources, including NRSRO ratings, that they conclude are credible and reliable for purposes of making these determinations, and we anticipate that many BIDCOs that invest cash in these types of debt securities will continue to do so. We expect that the ability to consider outside assessments will help minimize the burden on BIDCOs and contribute to a BIDCO's ability to make consistent and reliable credit quality determinations. Nevertheless, we recognize that some BIDCO boards or members may choose to hire consultants to assist in developing procedures and to make or oversee the determinations. Staff estimated in the 2011 Proposing Release that the cost to hire such consultants would be, on average, $8000 for each BIDCO.[23] We received no comments on this estimate.

---

average a one-time burden of 4 hours for a senior business analyst (under board or member delegation) to develop policies and procedures for evaluating credit and liquidity risk (4 hours x $237 per hour = $948). The staff estimates that the internal cost for time spent by a senior business analyst is $237 per hour. This estimate, as well as other internal time cost estimates made in this analysis, are derived from SIFMA's Management and Professional Earnings in the Securities Industry 2011, modified by Commission staff to account for an 1800-hour work week and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead. Commission staff believes that additional costs incurred by boards or members for review of procedures would be incorporated into BIDCOs' overall board or member costs and would not add any particular costs. In addition, Commission staff estimates that a BIDCO board or member is likely to delegate the credit risk determinations, and that such determinations would take on average 1 hour of a senior business analyst's time (at $237 per hour) to evaluate the credit quality for each of an average of four investment company or private fund debt securities that a BIDCO would purchase each year (4 hours x $237 per hour) for a total cost of $948 per year. Staff has calculated these estimates using an internal cost estimate for a business analyst's time that is updated from the one used in calculating the estimates in the 2011 Proposing Release.

23 *See* 2011 Proposing Release, *supra* note 4, at n.114 and accompanying text. Staff estimates that a BIDCO may need up to 16 hours of consulting advice to assist in developing procedures and to make or oversee the proposed determinations. Staff estimates that this advice would cost a BIDCO $500 per hour based on an understanding of the rates typically charged by outside consulting firms resulting in an average cost of $8000 for each BIDCO.

Adopting a new credit quality standard in place of the ratings requirement in section 6(a)(5)(A)(iv) of the Investment Company Act may result in other costs for BIDCOs and their investors. The minimum rating requirement in section 6(a)(5)(A)(iv) of the Act, before it was amended by the Dodd-Frank Act, established an objective standard that is easy to apply and may have limited BIDCOs from investing in securities that posed greater credit risks. The new rule instead requires BIDCO boards or members to assess credit quality by applying a subjective standard. We acknowledge that a BIDCO could invest in lower quality debt securities that it determines meets the standard in new rule 6a-5, and that it may be difficult for the Commission to challenge the determination of a BIDCO's directors or members (or their delegates). In addition, because credit quality assessments could differ across BIDCOs, the range of risk of investments may be broader than it is currently. We do not, however, believe that the new rule is likely to lead BIDCOs to invest in riskier securities because the standard we are adopting is very similar to the standard articulated by the rating agencies for investment grade securities.[24]

As part of our economic analysis, we considered alternatives to the standard that we are adopting in rule 6a-5. In particular, we considered including specific factors or tests that a fund board must apply in performing its credit analysis in the rule. As noted above, we believe that this alternative could function as a limit to a fund's credit quality analysis[25] and thus might result in a less effective credit quality determination than a BIDCO would perform under the credit

---

24 *See* Moody's Investor Service, Ratings Symbols and Definitions (June 2012), http://www.moodys.com/researchdocumentcontentpage.aspx?docid=PBC_79004, at 5 ("Obligations rated Baa are judged to be medium-grade and subject to moderate credit risk and as such may possess certain speculative characteristics."); FitchRatings, Definitions of Ratings and Other Forms of Opinion (Apr. 2012), http://www.fitchratings.com/web_content/ratings/fitch_ratings_definitions_and_scales.pdf, at 12 ("'BBB' ratings indicate that expectations of credit risk are currently low. The capacity for payment of financial commitments is considered adequate but adverse business or economic conditions are more likely to impair this capacity.") The term "investment grade" is generally used to describe the categories 'BBB' (or comparable) or above. *See id.*, at 6.

25 *See supra* paragraph accompanying note 17.

quality standard in the new rule, which could result in investments that expose the BIDCO to greater risk.

V. FINAL REGULATORY FLEXIBILITY ANALYSIS

The Commission has prepared the following Final Regulatory Flexibility Analysis ("FRFA") in accordance with section 4(a) of the Regulatory Flexibility Act regarding new rule 6a-5, which we are adopting today to give effect to provisions of the Dodd-Frank Act.[26] We prepared an Initial Regulatory Flexibility Analysis ("IRFA") in conjunction with the 2011 Proposing Release in March 2011.[27]

A. Need for and Objectives of the Rule and Form Amendments and New Rule

As described more fully in Sections I and II of this Release, the Commission is adopting new rule 6a-5 to set forth a standard of credit-worthiness for purposes of section 6(a)(5)(A)(iv) of the Investment Company Act, as anticipated by section 939(c) the Dodd Frank Act, which eliminates the investment grade standard from section 6(a)(5) of the Investment Company Act.

B. Significant Issues Raised by Public Comment

In the Proposing Release, we requested comment on the IRFA. In particular, we sought comment on how many small entities would be subject to the proposed new rule and whether the effect of the proposed new rule on small entities subject to it would be economically significant. None of the comment letters we received specifically addressed the IRFA. None of the comment letters specifically addressed the effect of the new rule on small BIDCOs.

C. Small Entities Subject to the Rule and Form Amendments and New Rule

New rule 6a-5 under the Investment Company Act would affect BIDCOs, including entities that are considered to be a small business or small organization (collectively, "small

---

26 5 U.S.C. 604(a).

27 *See* 2011 Proposing Release, *supra* note 4, at Section VIII.

entity") for purposes of the Regulatory Flexibility Act. Under the standards adopted by the Small Business Administration, small entities in the financial investment industry include entities with $7 million or less in annual receipts.[28] We do not have any data and are not aware of any databases that compile information regarding how many BIDCOs would be small entities under this definition. We also did not receive any comments from BIDCOs.

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

Rule 6a-5 imposes no reporting, recordkeeping or other compliance requirements.

E. Agency Action to Minimize Effect on Small Entities

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish our stated objectives, while minimizing any significant adverse effect on small entities. In connection with the new rule, the Commission considered the following alternatives: (i) establishing different compliance standards or timetables that take into account the resources available to small entities; (ii) clarifying, consolidating, or simplifying compliance and reporting requirements under the rule for small entities; (iii) use of performance rather than design standards; and (iv) exempting small entities from all or part of the requirements.

We believe that special compliance or reporting requirements for small entities, or an exemption from coverage for small entities, is not appropriate or consistent with investor protection or section 939(c) of the Dodd-Frank Act, which rule 6a-5 implements. With respect to rule 6a-5, we believe that special compliance requirements or timetables for small entities, or an exemption from coverage for small entities, may create a risk that those BIDCOs could acquire debt securities that are not of sufficiently high credit quality that they would be likely to maintain a fairly stable market value or be liquidated easily, as we believe may have been

---

28 13 CFR 121.201.

intended for the BIDCO to support its long-term commitments. Further consolidation or simplification of rule 6a-5 for BIDCOs that are small entities is inconsistent with the Commission's goals of fostering investor protection. Finally, rule 6a-5 uses performance rather than design standards for determining the credit quality of specific debt securities.

STATUTORY AUTHORITY

The Commission is adopting new rule 6a-5 under the authority set forth in section 38(a) of the Investment Company Act [15 U.S.C. 80a-37(a)] and section 939 of the Dodd-Frank Act, to be codified at section 6(a)(5)(A)(iv)(I) of the Investment Company Act [15 U.S.C. 80a-6(a)(5)(A)(iv)(I)].

List of Subjects

17 CFR Part 270

Investment companies, Reporting and recordkeeping requirements, Securities.

TEXT OF RULE

PART 270--RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The authority citation for Part 270 is revised to add a sub-authority in numerical order to read as follows:

Authority: 15 U.S.C. 80a-1 *et seq.*, 80a-34(d), 80a-37, and 80a-39, unless otherwise noted.

*   *   *   *   *

Section 270.6a-5 is also issued under 15 U.S.C. 80a-6(a)(5)(A)(iv)(I).

*   *   *   *   *

2. Section 270.6a-5 is added to read as follows:

§ 270.6a-5 Purchase of certain debt securities by companies relying on section 6(a)(5) of the Act.

For purposes of reliance on the exemption for certain companies under section 6(a)(5)(A) of the Act (15 U.S.C. 80a-6(a)(5)(A)), a company shall be deemed to have met the requirement for credit-worthiness of certain debt securities under section 6(a)(5)(A)(iv)(I) of the Investment Company Act (15 U.S.C. 80a-6(a)(5)(A)(iv)(I)) if, at the time of purchase, the board of directors (or its delegate) determines or members of the company (or their delegate) determine that the debt security is:

(a) Subject to no greater than moderate credit risk; and

(b) Sufficiently liquid that it can be sold at or near its carrying value within a reasonably short period of time.

By the Commission.

Elizabeth M. Murphy

Elizabeth M. Murphy
Secretary

Dated: November 19, 2012

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 68256 / November 19, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-15099

In the Matter of C.D. Acquisition Corp., Center Income Properties 2, LP, Chronodynamics, Ltd., Ciao Cucina Corp., Cintech Solutions, Inc., Compound Natural Foods, Inc., The Credit Store, Inc., and Crown Vantage, Inc., Respondents.	ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS AND NOTICE OF HEARING PURSUANT TO SECTION 12(j) OF THE SECURITIES EXCHANGE ACT OF 1934

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against Respondents C.D. Acquisition Corp., Center Income Properties 2, LP, Chronodynamics, Inc., Ciao Cucina Corp., Cintech Solutions, Inc., Compound Natural Foods, Inc., The Credit Store, Inc., and Crown Vantage, Inc.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. C.D. Acquisition Corp. (CIK No. 1127834) is a permanently revoked Nevada corporation located in Bismarck, North Dakota with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). C.D. Acquisition is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it

23 of 44

filed a Form 10-QSB for the period ended June 30, 2001, which reported a net loss of $1,100 for the prior six months.

2. Center Income Properties 2, LP (CIK No. 748685) is a dissolved Minnesota limited partnership located in Minneapolis, Minnesota with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Center Income Properties 2 is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-K for the period ended December 31, 1994.

3. Chronodynamics, Ltd. (CIK No. 828679) is a void Delaware corporation located in Dayton, Ohio with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Chronodynamics is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended March 31, 1996.

4. Ciao Cucina Corp. (CIK No. 942659) is a cancelled Ohio corporation located in Cincinnati, Ohio with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Ciao Cucina is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended July 12, 1998, which reported a net loss of over $1 million for the prior twenty-eight weeks. On December 11, 1998, the company filed a Chapter 7 petition in the U.S. Bankruptcy Court for the Southern District of Ohio, and the case was terminated on December 6, 2007. As of August 27, 2012, the company's stock (symbol "CIAQQ") was traded on the over-the-counter markets.

5. Cintech Solutions, Inc. (CIK No. 926038) is a cancelled Ohio corporation located in Cincinnati, Ohio with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Cintech Solutions is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended March 31, 2003, which reported a net loss of over $4.8 million for the prior nine months. On March 13, 2003, Cintech Solutions filed a Chapter 11 petition in the U.S. Bankruptcy Court for the Southern District of Ohio, and the case was terminated on March 3, 2005.

6. Compound Natural Foods, Inc. (CIK No. 1442513) is a revoked Nevada corporation located in Lone Tree, Colorado with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Compound Natural Foods is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-K for the period ended September 30, 2009, which reported a net loss of over $15,000 for the prior year.

7. The Credit Store, Inc. (CIK No. 1101851) is a void Delaware corporation located in Sioux Falls, South Dakota with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). The Credit Store is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended March 31, 2002, which reported a net loss of over $3.3 million for the prior nine months. On August 15, 2002, The Credit Store filed a

Chapter 7 petition in the U.S. Bankruptcy Court for the District of South Dakota, and the case was still pending as of November 13, 2012.

8. Crown Vantage, Inc. (CIK No. 948073) is a terminated Virginia corporation located in Cincinnati, Ohio with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Crown Vantage is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended September 24, 2000, which reported a net loss of over $165 million for the prior nine months. On March 15, 2000, Crown Vantage filed a Chapter 11 petition in the U.S. Bankruptcy Court for the Northern District of California, and the case was still pending as of November 13, 2012.

B. DELINQUENT PERIODIC FILINGS

9. As discussed in more detail above, all of the Respondents are delinquent in their periodic filings with the Commission, have repeatedly failed to meet their obligations to file timely periodic reports, and failed to heed delinquency letters sent to them by the Division of Corporation Finance requesting compliance with their periodic filing obligations or, through their failure to maintain a valid address on file with the Commission as required by Commission rules, did not receive such letters.

10. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports, and Rule 13a-13 requires domestic issuers to file quarterly reports.

11. As a result of the foregoing, Respondents failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

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

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke the registration of each class of securities registered pursuant to Section 12 of the Exchange Act of the Respondents identified in Section II hereof, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondents.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened 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 HEREBY FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Respondents fail to file the directed Answers, or fail to appear at a hearing after being duly notified, the Respondents, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondents, may be deemed in default and the proceedings may be determined against them 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 Respondents personally or by certified, registered, or Express Mail, or by other means permitted by the Commission Rules of Practice.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 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.

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 68259 / November 19, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-15100

In the Matter of **CHARLES C. SLOWEY, JR.,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 15(b) OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") against Charles C. Slowey, Jr. ("Respondent" or "Slowey").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, and the findings contained in Section III.2 below, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

1. From May 27, 2003 through February 4, 2006, Respondent was a registered representative at Advanced Planning Securities, Inc. ("Advanced Planning"), a broker-dealer that, from at least June 1, 2004 until December 31, 2008, was registered with the Commission pursuant to Section 15(b) of the Exchange Act. Slowey, age 68, resides in Plymouth, Massachusetts.

2. On October 22, 2012, a final judgment was entered by consent against Slowey, permanently enjoining him from future violations of Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 ("Securities Act") and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, in the civil action entitled Securities and Exchange Commission v. Charles C. Slowey, Jr., et al., Civil Action Number 09 Civ. 4547 (LDW) (ETB), in the United States District Court for the Eastern District of New York.

3. The Commission's Complaint alleges that Slowey made materially misleading statements to investors in real estate investment funds managed by him and misappropriated funds from these investors. The Complaint also alleges that from approximately March 2004 through August 2006, Slowey offered and sold securities for which there was no registration statement in effect and for which no exemption from the registration requirements applied.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent's Offer.

Accordingly, it is hereby ORDERED:

Pursuant to Section 15(b)(6) of the Exchange Act, that Respondent be, and hereby is:

> barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization; and
>
> barred from participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Commissioner Paredes
Commissioner Gallagher
Disapproved

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9369 / November 20, 2012

SECURITIES EXCHANGE ACT OF 1934
Release No. 68273 / November 20, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-15098

In the Matter of **Credit Suisse Securities (USA), LLC;** **DLJ Mortgage Capital, Inc.;** **Credit Suisse First Boston Mortgage Acceptance Corp.;** **Credit Suisse First Boston Mortgage Securities Corp.; and** **Asset Backed Securities Corporation** **Respondents.**	**ORDER UNDER SECTION 27A(b) OF THE SECURITIES ACT OF 1933 AND SECTION 21E(b) OF THE SECURITIES EXCHANGE ACT OF 1934, GRANTING WAIVERS OF THE DISQUALIFICATION PROVISIONS OF SECTION 27A(b)(1)(A)(ii) OF THE SECURITIES ACT OF 1933 AND SECTION 21E(b)(1)(A)(ii) OF THE SECURITIES EXCHANGE ACT OF 1934**

Credit Suisse Securities (USA), LLC, DLJ Mortgage Capital, Inc., Credit Suisse First Boston Mortgage Acceptance Corp., Credit Suisse First Boston Mortgage Securities Corp., and Asset Backed Securities Corporation (collectively, "Credit Suisse") have submitted a letter on behalf of themselves and their present and future affiliates, dated November 6, 2012, for a waiver of the disqualification provisions of Section 27A(b)(1)(A)(ii) of the Securities Act of 1933 ("Securities Act") and Section 21E(b)(1)(A)(ii) of the Securities Exchange Act of 1934 ("Exchange Act") arising from their settlement of cease-and-desist proceedings brought by the Commission.

On November 16, 2012, the Commission instituted cease-and-desist proceedings against Credit Suisse. In the Order instituting proceedings, the Commission found that Credit Suisse made misleading statements or failed to disclose facts concerning two separate practices with respect to residential mortgage-backed securities ("RMBS"): (1) Credit Suisse entered into financial settlements with loan originators related to early defaulting loans it had previously sold to securitization trusts it sponsored, and then kept the proceeds of those settlements without notifying or compensating the RMBS trusts that owned the loans, and, with respect to certain RMBS transactions, Credit Suisse failed to comply with offering document provisions that required it to repurchase certain early defaulting loans; and (2) Credit Suisse failed to remove certain loans from two RMBS trusts that breached a First Payment Default covenant. Based on these allegations, the Commission concluded that all of the Credit Suisse entities violated Sections 17(a)(2) and 17(a)(3) of the Securities Act and that Asset Backed Securities Corporation violated Section 15(d) of the Exchange Act and Rules 12b-20, 15d-1, and 15d-14(d). Without admitting or denying the findings, all of the Credit Suisse entities consented to the entry of an order requiring them to cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) and (3) of the Securities Act (the "Order"). Asset Backed Securities Corporation consented in the same Order to the entry of an order requiring it to cease and desist from committing or causing any violations and any future violations of Section 15(d) of the Exchange Act and Rules 12b-20, 15d-1, and 15d-14(d).

The safe harbor provisions of Section 27A(c) of the Securities Act and Section 21E(c) of the Exchange Act are not available for any forward looking statement that is "made with respect to the business or operations of an issuer, if the issuer . . . during the 3-year period preceding the date on which the statement was first made . . . has been made the subject of a judicial or administrative decree or order arising out of a governmental action that . . . (II) requires that the issuer cease and desist from violating the antifraud provisions of the securities laws . . . ." Section 27A(b)(1)(A)(ii) of the Securities Act and Section 21E(b)(1)(A)(ii) of the Exchange Act. The disqualifications may be waived "to the extent otherwise specifically provided by rule, regulation, or order of the Commission." Section 27A(b) of the Securities Act and Section 21E(b) of the Exchange Act.

Based on the representations set forth in Credit Suisse's letter, the Commission has determined that, under the circumstances, the request for a waiver of the disqualifications resulting from the issuance of the Commission's Order instituting proceedings is appropriate and should be granted.

Accordingly, IT IS ORDERED, pursuant to Section 27A(b) of the Securities Act and Section 21E(b) of the Exchange Act, that a waiver from the disqualification provisions of Section 27A(b)(1)(A)(ii) of the Securities Act and Section 21E(b)(1)(A)(ii) of the Exchange Act as to Credit Suisse Securities (USA), LLC, DLJ Mortgage Capital, Inc., Credit Suisse First Boston Mortgage Acceptance Corp., Credit Suisse First Boston Mortgage Securities Corp., and Asset Backed Securities Corporation and their present and future affiliates resulting from the entry of the Order is hereby granted.

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Commissioner Aguilar
Commissioner Gallagher
not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 68275 / November 20, 2012

INVESTMENT ADVISERS ACT OF 1940
Release No. 3504 / November 20, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-15103

In the Matter of

GARY R. MARKS,

Respondent.

ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 15(b) OF THE SECURITIES EXCHANGE ACT OF 1934 AND SECTION 203(f) OF THE INVESTMENT ADVISERS ACT OF 1940, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") against Gary R. Marks ("Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, and the findings contained in Section III.2 below, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

1. Respondent was at all relevant times the chief executive officer and sole owner of an investment adviser formerly registered with the Commission, Sky Bell Asset Management, LLC ("Sky Bell"). At all relevant times, Respondent held a Series 65 license. During a portion of the relevant period, Marks was an associated person of a broker-dealer. Respondent no longer manages any Sky Bell hedge funds. Respondent, 61 years old, is a resident of Kihei, Hawaii.

2. On October 25, 2012, a final judgment was entered by consent against Respondent, permanently enjoining him from future violations of Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-8 promulgated thereunder, and Sections 17(a)(2) and 17(a)(3) of the Securities Act of 1933, in the civil action entitled *Securities and Exchange Commission v. Gary R. Marks*, Civil Action Number 3:12-cv-04486-WHA, in the United States District Court for the Northern District of California.

3. The Commission's complaint alleged that Respondent managed and recommended various fund of funds hedge funds through Sky Bell, including the Agile Sky Alliance Fund ("Alliance Fund") that was co-managed with the Agile Group, PipeLine Investors ("PipeLine"), Night Watch Partners ("Night Watch"), and Sky Bell Offshore Partners ("Offshore Fund") (collectively "Sky Bell Hedge Funds"). The Commission's complaint alleged that between at least 2005 and September 2007, Defendant negligently misrepresented the level of correlation and diversification among certain Sky Bell Hedge Funds. Furthermore, the Complaint alleged that between at least 2005 and 2008, Defendant also: a) made unsuitable investment recommendations to certain advisory clients to invest most of their investment portfolio in Sky Bell Hedge Funds, b) negligently failed to disclose that PipeLine invested significantly in a purported subadviser's fund, and c) negligently provided misleading information to certain investors about the liquidity problems at the Alliance Fund.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Marks' Offer.

Accordingly, it is hereby ORDERED:

Pursuant to Section 203(f) of the Advisers Act and Section 15(b) of the Exchange Act, that Respondent Marks be, and hereby is barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, and barred from participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock. Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Commissioner Paredes not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 3503 / November 20, 2012

INVESTMENT COMPANY ACT OF 1940
Release No. 30278 / November 20, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-15102

In the Matter of

EVENS BARTHELEMY and
BARTHELEMY GROUP LLC,

Respondents.

ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTIONS 203(e), 203(f) AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940, AND SECTION 9(b) OF THE INVESTMENT COMPANY ACT OF 1940, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER

I.

The Securities and Exchange Commission ("SEC" or "Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 203(e), 203(f) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act"), and Section 9(b) of the Investment Company Act of 1940 ("Investment Company Act") against Evens Barthelemy and Barthelemy Group LLC (each a "Respondent").

II.

In anticipation of the institution of these proceedings, each Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over them and the subject matter of these proceedings, which are admitted, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 203(e), 203(f) and 203(k) of the Investment Advisers Act of 1940, and Section 9(b) of the Investment Company Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and each Respondent's Offer, the Commission finds that:

Summary

These proceedings arise out of improper SEC registration, materially false Form ADV filings, and compliance and record keeping failures by Barthelemy Group LLC ("Barthelemy Group" or "BG"), an investment adviser registered with the states of New York and New Jersey that is owned and managed by Evens Barthelemy ("Barthelemy"). Barthelemy improperly registered BG with the Commission in July 2009 under the Advisers Act multi-state adviser exemption from the prohibition against SEC registration, and thereafter improperly maintained BG's registration under the Act's $25 million assets under management ("AUM") exemption.[1] At all times since initially registering with the Commission, however, BG had no more than $5 million in AUM and was required to register in at most three states (rather than the thirty required under the multi-state exemption).

Further, in response to a request from the Commission's staff during a 2010 investment adviser exam of BG, Barthelemy misrepresented his firm's AUM as $26.28 million instead of $2.628 million in a spreadsheet. When questioned by the Exam staff later, Barthelemy conceded the inaccuracy, and in June 2011 Barthelemy withdrew his firm's SEC registration. In addition, BG lacked adequate compliance policies and procedures and failed to maintain various books and records required by the Advisers Act related to codes of ethics and providing or offering the firm's Form ADV Part II to clients.

Respondents

Barthelemy Group LLC (CRD No. 150907; SEC File No. 801-70414), is a New Jersey limited liability company wholly-owned by Evens Barthelemy with its primary office in New York, New York. It was registered as an investment adviser with the Commission from July 2009 until it withdrew its registration in June 2011. BG has been registered as an investment adviser with the states of New York and New Jersey since May and June 2011, respectively. During the pertinent period, BG offered non-discretionary investment advice to approximately thirty individual and institutional clients, charging quarterly fees based on a percentage of AUM.

Evens Barthelemy (CRD No. 12144231), age 45, formed and registered BG with the Commission as an investment adviser in July 2009 after having worked as a registered representative of two different broker dealers since 2000. He is BG's founder, sole owner, managing director, and Chief Compliance Officer, and he is the only person at BG who provides

1 Since the time pertinent to this matter, and pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act, H.R. 4173, 111th Cong. (2nd Sess. 2011), the Commission has increased the AUM thresholds for SEC registration. *See* Rules Implementing Amendments to the Investment Advisers Act of 1940, 76 Fed. Reg. 42,950 (July 19, 2011).

investment advice to clients. In New Jersey, Barthelemy is a registered Investment Adviser Representative. Barthelemy also sells insurance through BG, and has insurance licenses with New York, New Jersey and Pennsylvania. He has Series 63 and 65 securities licenses. Barthelemy also sells insurance through BG, and he has insurance licenses with New York, New Jersey and Pennsylvania.

Ineligibility for SEC Investment Adviser Registration

While BG was SEC-registered, Section 203A of the Advisers Act and Rule 203A-2(e) thereunder prohibited an investment adviser regulated or required to be regulated in the state in which it had its principal office and place of business from registering with the Commission, unless it had AUM in excess of $25 million or was required by the laws of thirty or more states to register as an investment adviser with the securities regulators of those states. In accordance with these Advisers Act provisions, a registrant was required to specify its basis for registration in Item 2 of Commission Form ADV Part 1. Form ADV also included instructions and definitions explaining these eligibility provisions.

For advisers selecting the multi-state adviser exemption as a basis for registration, a registrant was required to represent that it had concluded it was legally required to register with thirty or more states in Section 2.A(9) of Schedule D to Form ADV Part I. For advisers selecting the $25 million AUM exemption as a basis for registration, the relevant instructions in Form ADV explained, "[i]n determining the amount of your assets under management, include the securities portfolios for which you provide continuous and regulatory supervisory or management services as of the date of filing this Form ADV." Regardless of the basis for registration, an adviser was required to quantify its AUM and total number of accounts in Item 5.F of Form ADV Part I.

BG was not eligible for SEC registration under either the multi-state or the $25 million AUM exemption from the prohibition against SEC registration. Barthelemy filed his firm's initial Form ADV Part I with the Commission on July 9, 2009, and an amended version on November 16, 2009, that based the firm's registration on the multi-state adviser exemption under Item 2.A(9). In these filings, Barthelemy made the accompanying representations in Schedule D. However, the firm was not eligible for this multi-state exemption and Barthelemy's representations in Schedule D were false because BG was not required to be registered as an adviser by thirty or more states. In fact, BG never has been required to register with more than three states.

In March 2010, Barthelemy changed BG's basis for SEC registration in an amended Form ADV, claiming his firm met the $25 million AUM threshold under Item 2.A(1) of Part I. Furthermore, in all of BG's Forms ADV filed as late as 2011, Barthelemy also represented that the firm managed more than $26.5 million and between seventy and ninety accounts in Item 5.F. of Part I. BG was not eligible to register based on its AUM, however, and its AUM claims in Item 5.F were grossly overstated. For the first four months of BG's registration, neither Barthelemy nor BG was managing any client assets that would qualify as AUM. At no time thereafter did Barthelemy or his firm manage more than $5 million in client assets.

Barthelemy knew or should have known that his representations on BG's Forms ADV were false and that his firm was not eligible for SEC registration. Barthelemy alone prepared, signed and filed on the Commission's Investment Adviser Registration Depository all of BG's Forms ADV, including Parts I and II and all schedules and amendments thereto. Having read the instructions when completing Form ADV, Barthelemy was or should have been aware of what the multi-state exemption required and how AUM was to be calculated, and that his firm was not eligible under either registration provision at any time. Contrary to Form ADV's instructions, Barthelemy sought to include in the multi-state and AUM calculus certain aspirational client portfolios, including those he had serviced at previous employers. However, aspirational clients and their assets may not be included under Form ADV's definitions.[2]

Inflated AUM Reported to SEC Exam Staff

Barthelemy also misrepresented BG's AUM to Commission staff during a 2010 BG investment adviser exam. In response to an initial request from exam staff, Barthelemy provided an Excel spreadsheet listing all his clients and the assets he managed for each, which assets he totaled as \$26.28 million. The exam staff later learned from BG's independent custodian, however, that BG's assets totaled only \$2.6 million, and that the assets in BG's spreadsheet were inflated ten-fold. Barthelemy had downloaded client account values from the custodian's online platform, and then manually moved the decimal point for each client one place to the right. After being confronted by the exam staff, Barthelemy provided a corrected spreadsheet and later withdrew BG's SEC registration.

Compliance Failures

BG did not adopt written policies and procedures required by Rule 206(4)-7 of the Advisers Act that were reasonably designed to prevent violations of the Advisers Act and the rules thereunder by the firm and its supervised persons. Barthelemy, who prepared his firm's 2010 written Compliance, Supervisory Procedures and Policies Manual, adopted it largely verbatim from a 2009 version he obtained from his prior employment at a registered broker-dealer. That firm did not engage in the business of an investment adviser, and therefore the manual Barthelemy borrowed was not reasonably designed to prevent his small advisory firm from violating the Advisers Act and the rules promulgated thereunder. For instance, while BG's manual references the Securities Act of 1933 and the Securities Exchange Act of 1934, as well as other financial statutes and various FINRA rules and filings, there was no reference to the Advisers Act. Also, the firm's manual included duties of suitability and fairness, but failed to mention the fiduciary duty advisers owe their clients. BG's manual also included provisions about commission-based

---

2 At the time BG registered with the Commission, Rule 203A-2(d) under the Advisers Act provided a limited exception for newly formed investment advisers to register with the Commission based upon a "reasonable expectation" that they would have \$25 million under management prior to the end of 120 days. BG did not claim this exception, and otherwise was unable to rely on it. First, the exception required disclosure at the time of registration and BG did not disclose that its AUM were aspirational. Second, BG did not withdraw its registration 120 days after it became effective, even though it still did not meet the \$25 million threshold.

compensation, broker-dealer related filings, and broker-dealer books and records provisions, none of which were applicable to the firm or its employees. In adopting the broker-dealer manual from his prior employer, Barthelemy mostly merely substituted the term "investment adviser" for "registered representative" and substituted "client" for "customer." In addition, nobody at BG, including its CCO Barthelemy, conducted the annual review of its policies and procedures required by Advisers Act Rule 206(4)-7(b).

Books-and-Records Failures

Barthelemy did not cause BG to keep certain books and records required by the Advisers Act Rules and rules promulgated thereunder. BG did not have the written acknowledgements of the firm's code of ethics required by Rule 204-2(a)(12)(iii). Also, with respect to the requirement in Rule 204-3 to deliver or offer the firm's Form ADV, BG did not have a record of the dates that its ADV Part II was given or offered to clients or prospective clients as required by Rule 204-2(a)(14)(i).

Violations

A. As a result of the conduct described above, Barthelemy Group and Barthelemy willfully violated Section 207 of the Advisers Act, which makes it unlawful "for any person willfully to make any untrue statements of material fact in any registration application or report filed with the Commission under Section 203 or 204, or willfully to omit to state in any such application or report any material fact which is required to be stated therein."

B. As a result of the conduct described above, Barthelemy Group willfully violated, and Barthelemy willfully aided and abetted and caused BG's violations of, Section 203A of the Advisers Act, which while Barthelemy Group was SEC registered generally prohibited an adviser that was regulated or required to be regulated in the state in which it has its principal office and place of business from registering with the Commission, unless it had AUM in excess of $25 million or advised a registered investment company.[3]

C. As a result of the conduct described above, Barthelemy Group willfully violated, and Barthelemy willfully aided and abetted and caused Barthelemy Group's violations of, Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, which require, among other things, that a registered investment adviser: (a) implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and its rules; and (b) review at least annually its written policies and procedures and the effectiveness of their implementation.

D. As a result of the conduct described above, Barthelemy Group willfully violated, and Barthelemy willfully aided and abetted and caused BG's violations of, Section 204 of the

---

[3] *See supra* note 1.

Advisers Act and Rule 204-2(a) thereunder, which require, among other things, that a registered investment adviser make and keep the following:

1. records of the written acknowledgments of the receipt of the adviser's code of ethics that all supervised persons are required to provide under Advisers Act Rule 204A-1(a)(5); and

2. each Form ADV Part II or other written statement that complies with Advisers Act Rule 204-1(b), and each amendment or revision thereof, given or sent to any client or prospective client of such investment adviser in accordance with the provisions of Advisers Act Rule 204-3, and a record of the dates that each written statement, and each amendment or revision thereof, was given, or offered to be given, to any client or prospective client who subsequently becomes a client.

Civil Penalties

Each Respondent has submitted a sworn Statement of Financial Condition dated July 19, 2012, and other evidence and has asserted an inability to pay a civil penalty.

Undertakings

Respondent Barthelemy Group has undertaken to do the following:

A. within thirty (30) days following the entry of the Order, file and provide to the staff of the Commission ("the staff") an amended Form ADV for Barthelemy Group ("Amended Form ADV") that discloses all material terms of the Order;

B. after filing the Amended Form ADV and within thirty (30) days following the entry of the Order, mail a copy of the Amended Form ADV and a copy of the Order to each state regulator with which Barthelemy Group is registered as an investment adviser, or with which Barthelemy Group has a pending application for such registration, using commercially reasonable efforts to obtain an acknowledgment of receipt;

C. within thirty (30) days following the entry of the Order, mail or email a copy of the Amended Form ADV and a copy of the Order to each existing Barthelemy Group investment advisory client, together with a cover letter in a form not unacceptable to the Commission's staff, using commercially reasonable efforts to obtain an acknowledgment of receipt;

D. within thirty (30) days following the entry of the Order, post a copy of the Order on the home page, in a readily viewed area, of any and all Barthelemy Group website(s) for a period of two (2) years; and

E. certify, in writing, compliance with the undertaking(s) set forth above. The certification shall identify the undertaking(s), provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent Barthelemy Group agrees to provide such evidence. No later than sixty (60) days from the date of the completion of the undertakings, the certification and supporting material shall be submitted to Scott Weisman, Assistant Director, Division of Enforcement (100 F St., NE, Washington, DC 20549-5010-A), with a copy to the Office of Chief Counsel of the Division of Enforcement (100 F St., NE, Washington, DC 20549).

Respondent Barthelemy has undertaken to do the following:

A. cause Barthelemy Group to comply with its undertakings, as described above in Section III;

B. within thirty (30) days following the entry of this Order, mail a copy of the Amended Form ADV and a copy of the Order to each existing investment advisory client of Barthelemy, together with a cover letter in a form not unacceptable to the Commission's staff, using commercially reasonable efforts to obtain an acknowledgment of receipt;

C. within thirty (30) days following the entry of the Order, mail or email a copy of the Amended Form ADV and a copy of the Order to each state regulator from which Barthelemy has any securities license or with which Barthelemy has a pending application for any securities license, using commercially reasonable efforts to obtain an acknowledgment of receipt; and

D. certify, in writing, compliance with the undertaking(s) set forth above. The certification shall identify the undertaking(s), provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent Barthelemy agrees to provide such evidence. No later than sixty (60) days from the date of the completion of the undertakings, the certification and supporting material shall be submitted to Scott Weisman, Assistant Director, the Division of Enforcement (100 F St., NE, Washington, DC 20549-6010-A), with a copy to the Office of Chief Counsel of the Division of Enforcement (100 F St., NE, Washington, DC 20549).

In determining whether to accept the Offer, the Commission has considered these undertakings.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in the Offers of Respondents Barthelemy and Barthelemy Group.

Accordingly, pursuant Sections 203(e), 203(f) and 203(k) of the Advisers Act, and Section 9(b) of the Investment Company Act, it is hereby ORDERED that:

A. Respondents Barthelemy and Barthelemy Group cease and desist from committing or causing any violations and any future violations of Sections 203A, 204, 206(4) and 207 of the Advisers Act and Rules 204-2(a)(12)(iii), 204-2(a)(14)(i), and 206(4)-7 promulgated thereunder.

B. Respondent Barthelemy be, and hereby is:

> barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization. For a period of thirty days from the entry of this Order, and solely for the purposes of performing the undertakings in Section III above and completing the wind down of Barthelemy Group's investment advisory business, Barthelemy may (a) participate in advisory activities and (b) continue to be associated with Barthelemy Group while Barthelemy Group acts as an investment adviser; and
>
> prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter;

with the right to apply for reentry after two (2) years to the appropriate self-regulatory organization, or if there is none, to the Commission. Any reapplication for association by Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

C. Respondent Barthelemy Group is censured.

D. Based upon each Respondent's sworn representations in its Statement of Financial Condition dated July 19, 2012 and other documents submitted to the Commission, the Commission is not imposing a penalty against either Respondent.

E. The Division may, at any time following the entry of this Order, petition the Commission to: (1) reopen this matter to consider whether Respondents provided accurate and complete financial information at the time such representations were made; and (2) seek an order directing payment of the maximum civil penalty allowable under the law. No other issue shall be considered in connection with this petition other than whether the financial information provided by Respondent was fraudulent, misleading, inaccurate, or incomplete in any material respect.

Respondents may not, by way of defense to any such petition: (1) contest the findings in this Order; (2) assert that payment of a penalty should not be ordered; (3) contest the imposition of the maximum penalty allowable under the law; or (4) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

F. Respondents shall comply with the undertakings enumerated above in the Undertakings paragraphs of Section III.

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 3502 / November 20, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-15101

In the Matter of **EM Capital Management, LLC and Seth Richard Freeman** **Respondents.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTIONS 203(e), 203(f), AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER**

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 Sections 203(e), 203(f), and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act") against EM Capital Management, LLC ("EM Capital") and Seth Richard Freeman ("Freeman") (collectively "Respondents").

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the "Offers") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over them and the subject matter of these proceedings, which are admitted, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 203(e), 203(f), and 203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondents' Offers, the Commission finds that:

Summary

From December 2010 to mid-2012, EM Capital, a registered investment adviser located in Moraga, California, and its principal Freeman failed to furnish required books and records upon request by the Commission's Investment Adviser/Investment Company examination staff. The requested records included financial statements, e-mails, and documents relating to EM Capital's management of the EM Capital India Gateway Fund, a mutual fund that primarily invested in Indian equities. The staff repeatedly asked EM Capital and Freeman to produce the required books and records, and Freeman repeatedly promised to do so, but ultimately did not fully comply until September 2012, months after the staff notified him that it was considering enforcement action against him and the firm. As a result, EM Capital violated and Freeman aided and abetted and caused EM Capital's violations of Section 204 of the Advisers Act and Rule 204-2 thereunder, which requires SEC-registered investment advisers to produce required books and records to the Commission's staff.

Respondents

1. Respondent EM Capital Management, LLC is a registered investment adviser located in Moraga, California. As of June 2012, EM Capital reported assets under management of $2 million in its Form ADV. During the relevant time, EM Capital served as the investment adviser to the EM Capital India Gateway Fund, a registered investment company and a series of the Northern Lights Fund Trust. Freeman is Chief Executive Officer and majority interest-holder of EM Capital.

2. Respondent Seth Richard Freeman, age 54, resides in Moraga, California and is Chief Executive Officer and majority interest-holder of EM Capital.

Facts

3. The Commission's national examination program conducts examinations of investment advisers and investment companies, broker-dealers, self-regulatory organizations, clearing agencies, and transfer agents to fulfill its mission of promoting compliance, preventing fraud, monitoring risk, and informing Commission policy. Verification of an investment adviser's books and records is a vital part of the examination process. In the Matter of The Barr Financial Group, Inc., Admin. Proc. No. 3-9918 (June 21, 2002) (Initial Decision). By not producing books and records and submitting to an examination, registered entities thwart the Commission's ability to enforce the securities laws and thereby ensure that clients are treated fairly. In re Amaroq Asset Management, LLC, Admin. Proc. No. 3-12822 (July 14, 2008) (Initial Decision).

4. In December 2010, the Commission's Investment Adviser/Investment Company examination staff sent an initial request for required books and records to EM Capital. After some delay, EM Capital produced some of the requested materials, but did not furnish certain key records such as the firm's financials. In January 2011, EM Capital's principal, Freeman, e-mailed the staff and stated that financials would be "provided in approximately three weeks as we are reviewing calendar 2009 and working on 2010 and intend to provide 2010." Freeman did not provide the 2009 or 2010 financial statements within three weeks as promised.

5. In May 2011, when no financial statements were forthcoming, exam staff expanded the scope of its exam and provided Freeman with an expanded list of document requests. The staff explained that the expanded exam was in part the result of EM Capital's previous failure to furnish required books and records to the staff. Freeman produced some of the newly-requested material but still did not furnish the 2009 or 2010 financial statements. Freeman also did not furnish required books and records from several new categories requested by exam staff, including e-mail communication and documents related to EM Capital's management of the EM Capital India Gateway Fund.

6. After months of unsuccessful back-and-forth between Freeman and the exam staff, the Commission's Enforcement staff sent a document request for all outstanding items to EM Capital on July 27, 2011. As before, Freeman promised Commission staff that he would provide all of the requested information but did not fully comply. On May 29, 2012, Commission Enforcement staff sent Freeman a Wells notice indicating the staff intended to recommend that the Commission bring enforcement action against EM Capital and Freeman alleging that the Respondents failed to furnish required books and records to members of the Commission's examination staff. Freeman produced the last of the requested documents in September 2012.

Violations

7. As a result of the conduct described above, EM Capital willfully[1] violated Section 204 of the Advisers Act and Rules 204-2(a)(1), (2), and (6) thereunder. Section 204 of the Advisers Act requires investment advisers to make and keep certain records and furnish copies thereof, and to make and disseminate such reports as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors. Section 204 specifies that all records of investment advisers are subject to examination by representatives of the Commission. Rule 204-2 provides that investment advisers registered or required to be registered shall furnish on request true, accurate and current copies of various specific categories of books and records, including:

- A journal or journals, including cash receipts and disbursements, records, and any other records of original entry forming the basis of entries in any ledger;

- General and auxiliary ledgers (or other comparable records) reflecting asset, liability, reserve, capital, income and expense accounts; and

- All trial balances, financial statements, and internal audit working papers relating to the business of such investment adviser.

EM Capital failed to furnish these records for its advisory business.

[1] A willful violation of the securities laws means merely "'that the person charged with the duty knows what he is doing.'" *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)).

8. As a result of the conduct described above, Freeman willfully aided and abetted and caused EM Capital's violations of Section 204 of the Advisers Act and Rule 204-2 thereunder.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondents' Offers.

Accordingly, pursuant to Sections 203(e), 203(f), and 203(k) of the Advisers Act, it is hereby ORDERED that:

A. Respondents EM Capital and Freeman cease and desist from committing or causing any violations and any future violations of Section 204 of the Advisers Act and Rule 204-2 promulgated thereunder.

B. Respondents EM Capital and Freeman are censured.

C. Respondents EM Capital and Freeman shall, within 30 days of the entry of this Order, jointly and severally pay a civil money penalty in the amount of $20,000.00 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Payment must be made in one of the following ways:

(1) Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
(2) Respondents may make direct payment from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm; or
(3) Respondents may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying EM Capital and Freeman as Respondents in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Marshall S.

Sprung, Deputy Chief, Asset Management Unit, Los Angeles Regional Office, Securities and Exchange Commission, 5670 Wilshire Boulevard, Los Angeles, CA 90036.

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Commissioner Walter
not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 68284 / November 21, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-15104

In the Matter of **WARD K. CAPSTICK,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 15(b) OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") against Ward K. Capstick ("Capstick" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings and the findings contained in Section III.2 below, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that

1. Capstick, a resident of Snohomish, Washington, offered and sold the securities of various companies.

2. On October 30, 2012, a judgment was entered by consent against Capstick, permanently enjoining him from future violations of Sections 5(a), 5(c) and 17(a) of the Securities

Act of 1933 and Sections 10(b) and 15(a) of the Exchange Act and Rule 10b-5 thereunder in the civil action entitled *Securities and Exchange Commission v. Merendon Mining (Nevada) Inc., et al.*, Civil Action Number 2:10-cv-00955-RAJ, in the United States District Court for the Western District of Washington.

3. The Commission's complaint alleged that Capstick offered and sold the securities of the companies used to perpetrate a fraudulent scheme and directed others to do so as well. Capstick was also an officer and director of Merendon Mining (Nevada) Inc., one of the companies used to perpetrate the scheme.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Capstick's Offer.

Accordingly, it is hereby ORDERED pursuant to Section 15(b)(6) of the Exchange Act, that Respondent Capstick be, and hereby is:

barred from association with any broker, dealer, investment adviser, municipal securities dealer, or transfer agent; and

barred from participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-68286; File No. S7-04-09)

November 26, 2012

ORDER EXTENDING TEMPORARY CONDITIONAL EXEMPTION FOR NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATIONS FROM REQUIREMENTS OF RULE 17g-5 UNDER THE SECURITIES EXCHANGE ACT OF 1934 AND REQUEST FOR COMMENT

I. Introduction

On May 19, 2010, the Securities and Exchange Commission ("Commission") conditionally exempted, with respect to certain credit ratings and until December 2, 2010, nationally recognized statistical rating organizations ("NRSROs") from certain requirements in Rule 17g-5(a)(3)[1] under the Securities Exchange Act of 1934 ("Exchange Act"), which had a compliance date of June 2, 2010.[2] Pursuant to the Order, an NRSRO is not required to comply with Rule 17g-5(a)(3) until December 2, 2010 with respect to credit ratings where: (1) the issuer of the structured finance product is a non-U.S. person; and (2) the NRSRO has a reasonable basis to conclude that the structured finance product will be offered and sold upon issuance, and that any arranger linked to the structured finance product will effect transactions of the structured finance product after issuance, only in transactions that occur outside the U.S. ("covered transactions").[3] On November 23, 2010, the Commission extended the conditional temporary exemption until December 2, 2011.[4] On November 16, 2011, the Commission extended the conditional temporary exemption until December 2, 2012.[5] The Commission is extending the

---

1 See 17 CFR 240.17g-5(a)(3).

2 See Exchange Act Release No. 62120 (May 19, 2010), 75 FR 28825 (May 24, 2010) ("Order").

3 See id. at 28827-28 (setting forth conditions of relief).

4 See Exchange Act Release No. 63363 (Nov. 23, 2010), 75 FR 73137 (Nov. 29, 2010) ("First Extension Order").

5 See Exchange Act Release No. 65765 (Nov. 16, 2011), 76 FR 72227 (Nov. 22, 2011) ("Second Extension Order").

temporary conditional exemption exempting NRSROs from complying with Rule 17g-5(a)(3) with respect to rating covered transactions until December 2, 2013.

II. Background

Rule 17g-5 identifies, in paragraphs (b) and (c) of the rule, a series of conflicts of interest arising from the business of determining credit ratings.[6] Paragraph (a) of Rule 17g-5[7] prohibits an NRSRO from issuing or maintaining a credit rating if it is subject to the conflicts of interest identified in paragraph (b) of Rule 17g-5 unless the NRSRO has taken the steps prescribed in paragraph (a)(1) (i.e., disclosed the type of conflict of interest in Exhibit 6 to Form NRSRO in accordance with Section 15E(a)(1)(B)(vi) of the Exchange Act[8] and Rule 17g-1)[9] and paragraph (a)(2) (i.e., established and is maintaining and enforcing written policies and procedures to address and manage conflicts of interest in accordance with Section 15E(h) of the Exchange Act).[10] Paragraph (c) of Rule 17g-5 specifically prohibits seven types of conflicts of interest. Consequently, an NRSRO is prohibited from issuing or maintaining a credit rating when it is subject to these conflicts regardless of whether it had disclosed them and established procedures reasonably designed to address them.

In December 2009, the Commission adopted subparagraph (a)(3) to Rule 17g-5. This provision requires an NRSRO that is hired by an arranger to determine an initial credit rating for a structured finance product to take certain steps designed to allow an NRSRO that is not hired by the arranger to nonetheless determine an initial credit rating – and subsequently monitor that

---

6 17 CFR 240.17g-5(b) and (c).

7 17 CFR 240.17g-5(a).

8 15 U.S.C. 78o-7(a)(1)(B)(vi).

9 17 CFR 240.17g-1.

10 15 U.S.C. 78o-7(h).

credit rating – for the structured finance product.[11] In particular, under Rule 17g-5(a)(3), an NRSRO is prohibited from issuing or maintaining a credit rating when it is subject to the conflict of interest identified in paragraph (b)(9) of Rule 17g-5 (i.e., being hired by an arranger to determine a credit rating for a structured finance product)[12] unless it has taken the steps prescribed in paragraphs (a)(1) and (2) of Rule 17g-5 (discussed above) and the steps prescribed in new paragraph (a)(3) of Rule 17g-5.[13] Rule 17g-5(a)(3), among other things, requires that the NRSRO must:

- Maintain on a password-protected Internet Web site a list of each structured finance product for which it currently is in the process of determining an initial credit rating in chronological order and identifying the type of structured finance product, the name of the issuer, the date the rating process was initiated, and the Internet Web site address where the arranger represents the information provided to the hired NRSRO can be accessed by other NRSROs;
- Provide free and unlimited access to such password-protected Internet Web site during the applicable calendar year to any NRSRO that provides it with a copy of the certification described in paragraph (e) of Rule 17g-5 that covers that calendar year;[14] and

11 See 17 CFR 240.17g-5(a)(3); see also Exchange Act Release No. 61050 (Nov. 23, 2009), 74 FR 63832 (Dec. 4, 2009) ("Adopting Release") at 63844-45.

12 Paragraph (b)(9) of Rule 17g-5 identifies the following conflict of interest: issuing or maintaining a credit rating for a security or money market instrument issued by an asset pool or as part of any asset-backed or mortgage-backed securities transaction that was paid for by the issuer, sponsor, or underwriter of the security or money market instrument. 17 CFR 240.17g-5(b)(9).

13 17 CFR 240.17g-5(a)(3).

14 Paragraph (e) of Rule 17g-5 requires that an NRSRO seeking to access the hired NRSRO's Internet Web site during the applicable calendar year must furnish the Commission with the following certification:

The undersigned hereby certifies that it will access the Internet Web sites described in 17 CFR §240.17g-5(a)(3) solely for the purpose of determining or monitoring credit ratings. Further, the undersigned certifies that it will keep the information it accesses pursuant to 17 CFR §240.17g-5(a)(3) confidential and treat it as

- Obtain from the arranger a written representation that can reasonably be relied upon that the arranger will, among other things, disclose on a password-protected Internet Web site the information it provides to the hired NRSRO to determine the initial credit rating (and monitor that credit rating) and provide access to the Web site to an NRSRO that provides it with a copy of the certification described in paragraph (e) of Rule 17g-5.[15]

---

material nonpublic information subject to its written policies and procedures established, maintained, and enforced pursuant to section 15E(g)(1) of the Act (15 U.S.C. 78o-7(g)(1)) and 17 CFR §240.17g-4. Further, the undersigned certifies that it will determine and maintain credit ratings for at least 10% of the issued securities and money market instruments for which it accesses information pursuant to 17 CFR §240.17g-5(a)(3)(iii), if it accesses such information for 10 or more issued securities or money market instruments in the calendar year covered by the certification. Further, the undersigned certifies one of the following as applicable: (1) In the most recent calendar year during which it accessed information pursuant to §17 CFR 240.17g-5(a)(3), the undersigned accessed information for [Insert Number] issued securities and money market instruments through Internet Web sites described in 17 CFR §240.17g-5(a)(3) and determined and maintained credit ratings for [Insert Number] of such securities and money market instruments; or (2) The undersigned previously has not accessed information pursuant to 17 CFR §240.17g-5(a)(3) 10 or more times during the most recently ended calendar year.

15 In particular, under paragraph (a)(3)(iii) of Rule 17g-5, the arranger must represent to the hired NRSRO that it will:

(1) Maintain the information described in paragraphs (a)(3)(iii)(C) and (a)(3)(iii)(D) of Rule 17g-5 available at an identified password-protected Internet Web site that presents the information in a manner indicating which information currently should be relied on to determine or monitor the credit rating;

(2) Provide access to such password-protected Internet Web site during the applicable calendar year to any NRSRO that provides it with a copy of the certification described in paragraph (e) of Rule 17g-5 that covers that calendar year, provided that such certification indicates that the nationally recognized statistical rating organization providing the certification either: (i) determined and maintained credit ratings for at least 10% of the issued securities and money market instruments for which it accessed information pursuant to paragraph (a)(3)(iii) of Rule 17g-5 in the calendar year prior to the year covered by the certification, if it accessed such information for 10 or more issued securities or money market instruments; or (ii) has not accessed information pursuant to paragraph (a)(3) of Rule 17g-5 10 or more times during the most recently ended calendar year;

(3) Post on such password-protected Internet Web site all information the arranger provides to the NRSRO, or contracts with a third party to provide to the NRSRO, for the purpose of determining the initial credit rating for the security or money market instrument, including information about the characteristics of the assets underlying or referenced by the security or money market instrument, and the legal structure of the security or money market instrument, at the same time such information is provided to the NRSRO; and

(4) Post on such password-protected Internet Web site all information the arranger provides to the NRSRO, or contracts with a third party to provide to the NRSRO, for the purpose of undertaking credit rating surveillance on the security or money market instrument, including information about the characteristics and performance of the assets underlying or referenced by the security or money market instrument at the same time such information is provided to the NRSRO.

The Commission stated in the Adopting Release that subparagraph Rule 17g-5(a)(3) is designed to address conflicts of interest and improve the quality of credit ratings for structured finance products by making it possible for more NRSROs to rate structured finance products.[16] For example, the Commission noted that when an NRSRO is hired to rate a structured finance product, some of the information it relies on to determine the rating is generally not made public.[17] As a result, structured finance products frequently are issued with ratings from only the one or two NRSROs that have been hired by the arranger, with the attendant conflict of interest that creates.[18] The Commission stated that subparagraph Rule 17g-5(a)(3) was designed to increase the number of credit ratings extant for a given structured finance product and, in particular, to promote the issuance of credit ratings by NRSROs that are not hired by arrangers.[19] The Commission's goal in adopting the rule was to provide users of credit ratings with more views on the creditworthiness of structured finance products.[20] In addition, the Commission stated that Rule 17g-5(a)(3) was designed to reduce the ability of arrangers to obtain better than warranted ratings by exerting influence over NRSROs hired to determine credit ratings for structured finance products.[21] Specifically, by opening up the rating process to more NRSROs, the Commission intended to make it easier for the hired NRSRO to resist such pressure by increasing the likelihood that any steps taken to inappropriately favor the arranger could be exposed to the market through the credit ratings issued by other NRSROs.[22]

---

16 Adopting Release at 63844.

17 Id.

18 Id.

19 Id.

20 Id.

21 Id.

22 Id.

Rule 17g-5(a)(3) became effective on February 2, 2010, and the compliance date for Rule 17g-5(a)(3) was June 2, 2010.

III. Extension of Conditional Temporary Extension

In the Order, the Commission requested comment generally, but also on a number of specific issues.[23] The Commission received six comment letter in response to this solicitation of comment.[24] The commenters expressed concern that the extraterritorial application of Rule 17g-5(a)(3) could, in the commenter's view, among other things, disrupt local securitization markets,[25] inhibit the ability of local firms to raise capital,[26] and conflict with local laws.[27] Several commenters also requested that the conditional temporary exemption be extended or made permanent.[28] The First Extension Order again solicited public comment on issues raised in connection with the extra-territorial application of Rule 17g-5(a)(3).[29] One commenter requested

---

23 See Order at 28828.

24 Letter from Masamichi Kono, Vice Commissioner for International Affairs, Financial Services Agency, Japan, to Elizabeth Murphy, Secretary, Commission, dated Nov. 12, 2010 ("Japan FSA Letter"); Letter from Masaru Ono, Executive Director, Securitization Forum of Japan, to Elizabeth Murphy, Secretary, Commission, dated Nov. 12, 2010 ("SFJ Letter"); Letter from Rick Watson, Managing Director, Association for Financial Markets in Europe / European Securitisation Forum, to Elizabeth Murphy, Secretary, Commission, dated Nov. 11, 2010 ("AFME Letter"); Letter from Jack Rando, Director, Capital Markets, Investment Industry Association of Canada, to Randall Roy, Assistant Director, Division of Trading and Markets ("Division"), Commission, dated Sep. 22, 2010 ("IIAC Letter"); Letter from Christopher Dalton, Chief Executive Officer, Australian Securitisation Forum, to Randall Roy, Assistant Director, Division, Commission, dated Jun. 27, 2010 ("AuSF Letter"); Letter from Takefumi Emori, Managing Director, Japan Credit Rating Agency, Ltd. ("JCR") to Elizabeth Murphy, Secretary, Commission, dated Jun. 25, 2010 ("JCR Letter").

25 See Japan FSA Letter; SFJ Letter; AFME Letter; JCR Letter; AuSF Letter.

26 See AFME Letter; JCR Letter; AuSF Letter.

27 See Japan FSA Letter; AFME Letter; JCR Letter; AuSF Letter; IIAC Letter. With respect to local laws, we note that the European Commission in recent months has issued a relevant proposal for amendments to the European Union Regulation on Credit Ratings. See "Regulation of the European Parliament and of the Counsel on amending Regulation (EC) No 1060/2009 on credit rating agencies" (available at http://ec.europa.eu/internal_market/securities/docs/agencies/100602_proposal_en.pdf).

28 See Japan FSA Letter; SFJ Letter; AFME Letter; JCR Letter.

29 See Letter from Tom Deutsch, Executive Director, American Securitization Forum, and Chris Dalton, Chief Executive Officer, Australian Securitization Forum, to Randall Roy, Assistant Director, and Joseph

that the Order be made permanent, citing many of the same reasons set forth in prior comment letters.[30] The Second Extension Order again solicited public comment on issues raised in connection with the extra-territorial application of Rule 17g-5(a)(3).[31] Commenters supported the exemption regarding the extra-territorial application of the Rule,[32] with one of those commenters again requesting that the Order be made permanent.[33]

Given the continued concerns about potential disruptions of local securitization markets, and because the Commission's consideration of the issues raised will benefit from additional time to engage in further dialogue with interested parties and to monitor market and regulatory developments, the Commission believes extending the conditional temporary exemption until December 2, 2013 is necessary or appropriate in the public interest, and is consistent with the protection of investors.

IV. Request for Comment

The Commission believes that it would be useful to continue to provide interested parties opportunity to comment. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (http://www.sec.gov/rules/exorders.shtml); or

---

Levinson, Special Counsel, Division, Commission, dated Aug. 9, 2011 ("ASF/AuSF Letter 1"); Letter from Jack Rando, Director, Capital Markets, Investment Industry Association of Canada, to Randall Roy, Assistant Director, Division, Commission, dated Nov. 2, 2011 ("IIAC Letter 2").

30 See ASF/AuSF Letter 1.

31 Letter from Chris Barnard to the Commission, dated Nov. 23, 2011 ("Barnard Letter"); Letter from Tom Deutsch, Executive Director, American Securitization Forum and Chris Dalton, Chief Executive Officer, Australian Securitisation Forum, to Thomas Butler, Director, Office of Credit Ratings, Randall Roy, Associate Director, and Joseph Levinson, Special Counsel, Division, dated Aug. 28, 2012 ("ASF/AuSF Letter 2").

32 See Barnard Letter; ASF/AuSF Letter 2.

33 See ASF/AuSF Letter 2.

- Send an e-mail to rule-comments@sec.gov. Please include File Number S7-04-09 on the subject line; or
- Use the Federal eRulemaking Portal (http://www.regulations.gov). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549–1090.

All submissions should refer to File Number S7-04-09. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (http://www.sec.gov/rules/exorders.shtml). Comments are also available for website viewing and printing in the Commission's Public Reference Room, 100 F St. NE, Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

V. Conclusion

For the foregoing reasons, the Commission believes it would be necessary or appropriate in the public interest and consistent with the protection of investors to extend the conditional temporary exemption exempting NRSROs from complying with Rule 17g-5(a)(3) with respect to rating covered transactions until December 2, 2013.

ACCORDINGLY,

IT IS HEREBY ORDERED, pursuant to Section 36 of the Exchange Act, that a nationally recognized statistical rating organization is exempt until December 2, 2013 from the requirements in Rule 17g-5(a)(3) (17 CFR 240.17g-5(a)(3)) for credit ratings where:

(1) The issuer of the security or money market instrument is not a U.S. person (as defined under Securities Act Rule 902(k)); and

(2) The nationally recognized statistical rating organization has a reasonable basis to conclude that the structured finance product will be offered and sold upon issuance, and that any arranger linked to the structured finance product will effect transactions of the structured finance product after issuance, only in transactions that occur outside the U.S.

By the Commission.

Elizabeth M. Murphy

Elizabeth M. Murphy
Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 68289 / November 26, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-14967

In the Matter of JOHN S. MORGAN, MARIAN I. MORGAN, and THOMAS D. WOODCOCK, JR., Respondents.	ORDER MAKING FINDINGS AND IMPOSING REMEDIAL SANCTIONS AS TO MARIAN I. MORGAN

I.

Respondent Marian I. Morgan has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over her and the subject matter of these proceedings and the findings contained in Section II.2 below, which are admitted, Ms. Morgan consents to the entry of this Order Making Findings and Imposing Remedial Sanctions ("Order"), as set forth below.

II.

On the basis of this Order and Ms. Morgan's Offer, the Commission finds that:

1. From at least April 2006 through June 2009, Marian I. Morgan was the Managing Director for Morgan European Holdings ApS ("MEH"), a Danish entity also known as MoneyTalks Inc. Using MEH, Marian I. Morgan offered and sold investments in a fictitious prime bank instrument trading program. She has never been associated with any registered broker-dealer.

2. On July 5, 2012, a final judgment was entered by default against Marian I. Morgan, permanently enjoining her from future violations of Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933, Sections 10(b) and 15(a) of the Securities Exchange Act of 1934, and Rule 10b-5 thereunder, in *Securities and Exchange Commission v. John S. Morgan, et al.*, Civil Action Number 8:09-cv-1093-RAL-EAJ, in the United States District Court for the Middle District of Florida.

3. The Commission's complaint alleged that, from 2006 through June 2009, defendant Marian I. Morgan engaged in a scheme to defraud investors by offering and selling investments in a fictitious prime bank instrument trading program. The complaint also alleged that Ms. Morgan sold unregistered securities.

III.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Marian I. Morgan's Offer.

Accordingly, it is hereby ORDERED pursuant to Section 15(b)(6) of the Exchange Act that Respondent Marian I. Morgan be, and hereby is:

> barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization; and
>
> barred from participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

Any reapplication for association by Ms. Morgan will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against Ms. Morgan, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

Commissioner Walter not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 68297 / November 27, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-15107

In the Matter of JM FINANCIAL INSTITUTIONAL SECURITIES PRIVATE LIMITED, Respondent.	ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 15(b) OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CENSURE

I.

The Securities and Exchange Commission ("Commission" or "SEC") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") against JM Financial Institutional Securities Private Limited ("Respondent" or "JM Financial").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer"), which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Censure, as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

A. SUMMARY

These proceedings arise out of JM Financial's solicitation of and provision of brokerage services to U.S. institutional investors from at least October 2007 until February 2012 without being registered as a broker-dealer as required by Section 15(a) of the Exchange Act. JM Financial also failed to meet the conditions for an exemption from registration for foreign broker-dealers provided by Rule 15a-6 under the Exchange Act.

B. RESPONDENT

JM Financial Institutional Securities Private Limited ("JM Financial") is a broker registered with the Securities and Exchange Board of India and based in Mumbai, India.

C. FACTS

From at least October 2007 until February 2012, using U.S. jurisdictional means, JM Financial solicited and provided brokerage services to U.S. investors.

As part of its cross-border activity with U.S. investors, JM Financial bought and sold securities of Indian issuers on Indian stock exchanges on behalf of at least 91 U.S. investors. During the relevant period, JM Financial received transaction-based compensation in the amount of approximately $2.3 million as a result of these transactions.

Further, JM Financial solicited and provided brokerage services to U.S. investors through certain commission sharing agreements with U.S. registered broker-dealers. Pursuant to these agreements, JM Financial provided its research to U.S. investors with the express understanding that the investors would pay for the research by directing commission income to JM Financial. During the relevant period, pursuant to these agreements, JM Financial received an additional approximately $552,000 in transaction-based compensation.

Further, in March 2011, JM Financial organized and sponsored a conference in New York to which JM Financial brought representatives of Indian issuers and invited U.S. investors.

Additionally, JM Financial participated as one of several broker-dealers in 28 initial public offerings, further public offerings, or private resales of securities of Indian issuers, predominantly in India, but for which some shares were marketed and/or sold to U.S. institutional investors. As part of its efforts to solicit U.S. investors for these offerings, JM Financial employees traveled with and brought to the United States representatives of these Indian issuers to meet with U.S. investors and potential investors. For its overall services to Indian issuers, JM Financial received approximately $24 million in total transaction-based compensation based upon a percentage of the value of the offerings, a portion of which was attributable to purchases by U.S. investors.

The above-referenced brokerage services were provided to U.S. investors through the use of U.S. mails or other means or instrumentalities of interstate commerce.

The brokerage services that JM Financial provided required registration as a broker-dealer with the Commission pursuant to Section 15(a) of the Exchange Act. However, JM Financial was not registered with the Commission as a broker-dealer. In addition, JM Financial's conduct did not meet the requirements to qualify for an exemption from registration provided to foreign broker-dealers by Rule 15a-6 under the Exchange Act. In particular, JM Financial could have conducted the above-referenced activities pursuant to a chaperoning agreement with a U.S. registered broker-dealer.

After being contacted by staff of the Commission, JM Financial undertook corrective action, including by entering into a Rule 15a-6 chaperoning agreement with a U.S. registered broker-dealer and initiating registration with the Commission as a broker-dealer.

D. VIOLATIONS

Absent an applicable exception or exemption, Section 15(a) of the Exchange Act generally prohibits a broker or dealer from making use of the mails or any means or instrumentality of interstate commerce to effect any transactions in, or to induce or attempt to induce the purchase or sale of any security without being registered with the Commission as a broker-dealer.

Section 3(a)(4) of the Exchange Act defines a "broker" as any person (other than a person meeting the conditions of an exception, exemption or safe harbor, such as an associated person of an issuer meeting the conditions of Rule 3a4-1 under the Exchange Act or a bank meeting the conditions of Regulation R) "engaged in the business of effecting transactions in securities for the accounts of others." JM Financial acted as a broker within this definition.

Rule 15a-6 under the Exchange Act provides conditional exemptions under which unregistered foreign broker-dealers may effect transactions with or for U.S. institutional investors and major institutional investors in certain limited circumstances. JM Financial acted as a broker outside the conditions of Rule 15a-6, and its solicitation of and provision of brokerage services to U.S. investors required broker-dealer registration. Inducing or attempting to induce securities transactions constitutes solicitation requiring broker-dealer registration. Solicitation is construed broadly to include both efforts to induce a single transaction and efforts to develop an ongoing securities business relationship.[1]

---

[1] *See Registration Requirements for Foreign Broker-Dealers*, Exchange Act Release No. 27017 (July 11, 1989), 54 FR 30013, 30017-18 (July 18, 1989) (In the context of the Exchange Act's broker-dealer registration requirement, solicitation includes "any affirmative effort by a broker or dealer intended to induce transactional business for the broker-dealer or its affiliates," including "efforts to induce a single transaction or to develop an ongoing securities business relationship," and examples of conduct considered solicitation include "telephone calls

Accordingly, as a result of conduct described above, JM Financial willfully[2] violated Section 15(a) of the Exchange Act.

E. JM FINANCIAL'S REMEDIAL EFFORTS

In determining to accept the Offer, the Commission considered remedial acts undertaken by Respondent and cooperation afforded the Commission staff.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent JM Financial's Offer.

Accordingly, pursuant to Section 15(b) of the Exchange Act, it is hereby ORDERED that:

A. Respondent JM Financial is censured; and

B. Respondent JM Financial shall, within 30 days of the entry of this Order, pay disgorgement of $425,000 and prejudgment interest of $18,545 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. Payment shall be: (A) made by wire transfer, United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) if paid by money order or check, such payment shall be hand-delivered or overnight mailed to Enterprise Services Center, HQ Bldg, Room 181, AMZ-341, 6500 South MacArthur Blvd, Oklahoma City, OK 73169; and (D) submitted under cover letter that identifies JM Financial as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Laura B. Josephs, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549-5010A.

C. Respondent acknowledges that the Commission is not imposing a civil penalty based upon its cooperation in a Commission investigation and/or related enforcement action. If at any time following the entry of the Order, the Division of Enforcement ("Division") obtains information indicating that Respondent knowingly provided materially false or misleading

---

from a broker-dealer to a customer encouraging use of the broker-dealer to effect transactions," "conducting investment seminars for U.S. investors, whether or not the seminars are hosted by a registered U.S. broker-dealer," and "recommending the purchase or sale of particular securities, with the anticipation that the customer will execute the recommended trade through the broker-dealer.")

[2] A willful violation of the securities laws means merely "'that the person charged with the duty knows what he is doing.'" *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor "'also be aware that he is violating one of the Rules or Acts.'" *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

information or materials to the Commission or in a related proceeding, the Division may, at its sole discretion and without prior notice to the Respondent, petition the Commission to reopen this matter and seek an order directing that the Respondent pay a civil money penalty. Respondent may not, by way of defense to any resulting administrative proceeding: (1) contest the findings in the Order; or (2) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 68298 / November 27, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-15108

In the Matter of **EDELWEISS FINANCIAL SERVICES LIMITED** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 15(b) OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CENSURE**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") against Edelweiss Financial Services Limited ("Respondent" or "Edelweiss").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Censure ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

A. SUMMARY

These proceedings arise out of Edelweiss's solicitation and provision of brokerage services from at least 2007 until July 2011 to U.S. institutional investors without registering as a broker-dealer as required by Section 15(a) of the Exchange Act. Edelweiss also failed to meet the conditions for an exemption from registration for foreign broker-dealers provided by Rule 15a-6 under the Exchange Act.

B. RESPONDENT

Edelweiss Financial Services Limited, formerly known as Edelweiss Capital Limited, is a financial services holding company based in Mumbai, India. Edelweiss Financial Services Limited and certain of its subsidiaries (collectively, "Edelweiss") are registered with the Securities and Exchange Board of India as broker-dealers licensed to carry on various broking activities within India, including the activities described in this Order.

C. FACTS

From at least 2007 until July 2011, using U.S. jurisdictional means, Edelweiss solicited and provided brokerage services to U.S. investors.

As part of its cross-border activity with U.S. investors, Edelweiss bought and sold securities of Indian issuers on Indian stock exchanges on behalf of U.S. investors. During the relevant period, Edelweiss received transaction-based compensation in the amount of approximately $9.4 million as a result of these transactions.

Edelweiss also participated as a lead or co-lead manager in the initial public offering or further public offering of seven Indian issuers in which shares were sold and/or marketed to U.S. investors. As part of its efforts to solicit U.S. investors for these offerings, Edelweiss employees contacted U.S. investors and potential investors via electronic mail and telephone calls and traveled with and brought to the United States representatives of these Indian issuers to meet with U.S. investors and potential investors. For this activity, Edelweiss received approximately $3.1 million in total transaction-based compensation based upon a percentage of the value of the offerings, a portion of which is attributable to U.S. investors.

In addition, Edelweiss participated in four private placements of securities structured as "Qualified Institutional Placements" under Indian law that were marketed to U.S. investors and in which certain U.S. investors invested.

Further, Edelweiss marketed to and solicited U.S. investors for 5 alternative asset funds, although these efforts did not result in any investments.

The brokerage services that Edelweiss provided required registration as a broker-dealer with the Commission pursuant to Section 15(a) of the Exchange Act. However, Edelweiss was not registered with the Commission as a broker-dealer. As an alternative to registration, Edelweiss could have provided these brokerage services in reliance on the exemption from registration provided to foreign broker-dealers by Rule 15a-6 under the Exchange Act. However, Edelweiss did not enter into a chaperoning agreement with a U.S. registered broker-dealer, which provides a means to qualify for the Rule 15a-6 exemption.

After being contacted by staff of the Commission, Edelweiss promptly undertook corrective action, including by immediately ceasing all cross-border U.S. business. In addition, Edelweiss has subsequently entered into a Rule 15a-6 chaperoning agreement with a U.S. registered broker-dealer pursuant to which it engages in certain U.S. cross-border business in reliance on Rule 15a-6.

D. VIOLATIONS

Absent an applicable exception or exemption, Section 15(a) of the Exchange Act generally prohibits a broker or dealer from making use of the mails or any means or instrumentality of interstate commerce to effect any transactions in, or to induce or attempt to induce the purchase or sale of any security without being registered with the Commission as a broker-dealer.

Section 3(a)(4) of the Exchange Act defines a "broker" as any person (other than a person meeting the conditions of an exception, exemption or safe harbor, such as an associated person of an issuer meeting the conditions of Rule 3a4-1 under the Exchange Act or a bank meeting the conditions of Regulation R) "engaged in the business of effecting transactions in securities for the accounts of others." Edelweiss acted as a broker within this definition.

Rule 15a-6 under the Exchange Act provides conditional exemptions under which unregistered foreign broker-dealers may effect transactions with or for U.S. institutional investors and major institutional investors in certain limited circumstances. Edelweiss acted as a broker outside the conditions of Rule 15a-6, and its solicitation of and provision of brokerage services to U.S. investors required broker-dealer registration. Inducing or attempting to induce securities transactions constitutes solicitation requiring broker-dealer registration. Solicitation is construed broadly to include both efforts to induce a single transaction and efforts to develop an ongoing securities business relationship.[1]

Accordingly, as a result of conduct described above, Edelweiss willfully[2] violated Section 15(a) of the Exchange Act.

E. EDELWEISS'S REMEDIAL EFFORTS

In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent and cooperation afforded the Commission staff.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Edelweiss's Offer.

Accordingly, pursuant to Section 15(b) of the Exchange Act, it is hereby ORDERED that:

A. Respondent Edelweiss is censured; and

B. Respondent Edelweiss shall, within 30 days of the entry of this Order, pay disgorgement of $540,000 and prejudgment interest of $28,347 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. Payment shall be: (A) made by wire transfer, United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) if paid by money order or check, such payment shall be hand-delivered or overnight mailed to Enterprise Services Center, HQ Bldg, Room 181, AMZ-341, 6500 South MacArthur Blvd, Oklahoma City, OK 73169; and (D) submitted under cover letter that identifies Edelweiss as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Laura B. Josephs, Division of

---

1 *See Registration Requirements for Foreign Broker-Dealers*, Exchange Act Release No. 27017 (July 11, 1989), 54 FR 30013, 30017-18 (July 18, 1989) (In the context of the Exchange Act's broker-dealer registration requirement, solicitation includes "any affirmative effort by a broker or dealer intended to induce transactional business for the broker-dealer or its affiliates," including "efforts to induce a single transaction or to develop an ongoing securities business relationship," and examples of conduct considered solicitation include "telephone calls from a broker-dealer to a customer encouraging use of the broker-dealer to effect transactions," "conducting investment seminars for U.S. investors, whether or not the seminars are hosted by a registered U.S. broker-dealer," and "recommending the purchase or sale of particular securities, with the anticipation that the customer will execute the recommended trade through the broker-dealer.")

2 A willful violation of the securities laws means merely "'that the person charged with the duty knows what he is doing.'" *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor "'also be aware that he is violating one of the Rules or Acts.'" *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549-5010A.

C. Respondent acknowledges that the Commission is not imposing a civil penalty based upon its cooperation in a Commission investigation and/or related enforcement action. If at any time following the entry of the Order, the Division of Enforcement ("Division") obtains information indicating that Respondent knowingly provided materially false or misleading information or materials to the Commission or in a related proceeding, the Division may, at its sole discretion and without prior notice to the Respondent, petition the Commission to reopen this matter and seek an order directing that the Respondent pay a civil money penalty. Respondent may not, by way of defense to any resulting administrative proceeding: (1) contest the findings in the Order; or (2) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Commissioner Walter
not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 68296 / November 27, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-15106

In the Matter of MOTILAL OSWAL SECURITIES LIMITED Respondent.	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 15(b) OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CENSURE**

I.

The Securities and Exchange Commission ("Commission" or "SEC") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") against Motilal Oswal Securities Limited ("Respondent" or "Motilal").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer"), which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Censure ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

A. SUMMARY

These proceedings arise out of Motilal's solicitation of and provision of brokerage services to U.S. institutional investors from at least 2007 until April 2011 without being registered as a broker-dealer as required by Section 15(a) of the Exchange Act. Motilal also failed to meet the conditions for an exemption from registration for foreign broker-dealers provided by Rule 15a-6 under the Exchange Act.

B. RESPONDENT

Motilal Oswal Securities Limited ("Motilal") is a broker-dealer registered with the Securities and Exchange Board of India and based in Mumbai, India.

C. FACTS

From at least 2007 until April 2011, using U.S. jurisdictional means, Motilal solicited and provided brokerage services to U.S. investors. As part of its solicitation of U.S. investors, Motilal organized and sponsored an annual conference in the United States to which Motilal brought representatives of Indian issuers and invited U.S. investors.

In addition to organizing these annual conferences in the United States, Motilal solicited U.S. investors by having its employees travel to the United States regularly to meet with U.S. investors for, among other purposes, presenting and discussing Motilal's analysts' research reports on Indian issuers and for attending corporate road shows with representatives of Indian issuers.

Further, Motilal bought and sold the securities of Indian issuers on Indian stock exchanges on behalf of U.S. investors in exchange for commissions and soft dollar payments. During the relevant period, as a result of these activities, Motilal received from at least 42 U.S. institutional investors transaction-based compensation in the amount of approximately $13.7 million.

Motilal solicited and provided the above-referenced brokerage services to U.S. investors through U.S. jurisdictional means, such as, telephones, facsimiles, mail or email.

The brokerage services that Motilal provided required registration as a broker-dealer with the Commission pursuant to Section 15(a) of the Exchange Act. However, Motilal was not registered with the Commission as a broker-dealer. In addition, Motilal's conduct did not meet the requirements to qualify for an exemption from registration provided to foreign broker-dealers by Rule 15a-6 under the Exchange Act. In particular, Motilal could have conducted the above-referenced activities pursuant to a chaperoning agreement with a U.S. registered broker-dealer.

After being contacted by staff of the Commission, Motilal promptly undertook corrective action, including by canceling a planned conference in the United States, entering into a Rule 15a-6 chaperoning agreement with a U.S. registered broker-dealer, and initiating registration with the Commission as a broker-dealer.

D. VIOLATIONS

Absent an applicable exception or exemption, Section 15(a) of the Exchange Act generally prohibits a broker or dealer from making use of the mails or any means or instrumentality of interstate commerce to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security without being registered with the Commission as a broker-dealer.

Section 3(a)(4) of the Exchange Act defines a "broker" as any person (other than a person meeting the conditions of an exception, exemption or safe harbor, such as an associated person of an issuer meeting the conditions of Rule 3a4-1 under the Exchange Act or a bank meeting the conditions of Regulation R) "engaged in the business of effecting transactions in securities for the accounts of others." Motilal acted as a broker within this definition.

Rule 15a-6 under the Exchange Act provides conditional exemptions under which unregistered foreign broker-dealers may effect transactions with or for U.S. institutional investors and major institutional investors in certain limited circumstances. Motilal acted as a broker outside the conditions of Rule 15a-6, and its solicitation of and provision of brokerage services to U.S. investors required broker-dealer registration. Inducing or attempting to induce securities transactions constitutes solicitation requiring broker-dealer registration. Solicitation is construed broadly to include both efforts to induce a single transaction and efforts to develop an ongoing securities business relationship.[1]

Accordingly, as a result of conduct described above, Motilal willfully[2] violated Section 15(a) of the Exchange Act.

---

[1] *See Registration Requirements for Foreign Broker-Dealers*, Exchange Act Release No. 27017 (July 11, 1989), 54 FR 30013, 30017-18 (July 18, 1989) (In the context of the Exchange Act's broker-dealer registration requirement, solicitation includes "any affirmative effort by a broker or dealer intended to induce transactional business for the broker-dealer or its affiliates," including "efforts to induce a single transaction or to develop an ongoing securities business relationship," and examples of conduct considered solicitation include "telephone calls from a broker-dealer to a customer encouraging use of the broker-dealer to effect transactions," "conducting investment seminars for U.S. investors, whether or not the seminars are hosted by a registered U.S. broker-dealer," and "recommending the purchase or sale of particular securities, with the anticipation that the customer will execute the recommended trade through the broker-dealer.")

[2] A willful violation of the securities laws means merely "'that the person charged with the duty knows what he is doing.'" *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor "'also be aware that he is violating one of the Rules or Acts.'" *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

E. MOTILAL'S REMEDIAL EFFORTS

In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent and cooperation afforded the Commission staff.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Motilal's Offer.

Accordingly, pursuant to Section 15(b) of the Exchange Act, it is hereby ORDERED that:

A. Respondent Motilal is censured; and

B. Respondent Motilal shall, within 30 days of the entry of this Order, pay disgorgement of $780,000 and prejudgment interest of $41,594 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. Payment shall be: (A) made by wire transfer, United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) if paid by money order or check, such payment shall be hand-delivered or overnight mailed to Enterprise Services Center, HQ Bldg, Room 181, AMZ-341, 6500 South MacArthur Blvd, Oklahoma City, OK 73169; and (D) submitted under cover letter that identifies Motilal as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Laura B. Josephs, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549-5010A.

C. Respondent acknowledges that the Commission is not imposing a civil penalty based upon its cooperation in a Commission investigation and/or related enforcement action. If at any time following the entry of the Order, the Division of Enforcement ("Division") obtains information indicating that Respondent knowingly provided materially false or misleading information or materials to the Commission or in a related proceeding, the Division may, at its sole discretion and without prior notice to the Respondent, petition the Commission to reopen this matter and seek an order directing that the Respondent pay a civil money penalty. Respondent may not, by way of defense to any resulting administrative proceeding: (1) contest the findings in the Order; or (2) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

Commissioner Walter
not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 68295 / November 27, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-15105

In the Matter of **AMBIT CAPITAL PVT. LTD.,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 15(b) OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CENSURE**

I.

The Securities and Exchange Commission ("Commission" or "SEC") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") against Ambit Capital Pvt. Ltd. ("Respondent" or "Ambit").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer"), which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Censure ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

A. SUMMARY

These proceedings arise out of Ambit's solicitation of and provision of brokerage services to U.S. institutional investors from at least January 2011 through at least October 2011 without being registered as a broker-dealer as required by Section 15(a) of the Exchange Act. Ambit also failed to meet the conditions for an exemption from registration for foreign broker-dealers provided by Rule 15a-6 under the Exchange Act.

B. RESPONDENT

Ambit Capital Pvt. Ltd. ("Ambit") is a broker-dealer registered with the Securities and Exchange Board of India and based in Mumbai, India.

C. FACTS

From at least January 2011 through at least April 2011, using U.S. jurisdictional means, Ambit systematically solicited U.S. institutional investors for the purpose of providing brokerage services. As part of its solicitation of U.S. investors, Ambit employees traveled on multiple occasions to the United States to meet with at least 19 U.S. investors. In addition, Ambit sent hundreds of research reports to U.S. investors and followed up on these reports. Further, Ambit solicited at least one U.S. investor through repeated telephone calls through at least October 2011.

When contacted by staff of the Commission in May 2011, Ambit's solicitation had not yet resulted in significant brokerage business from U.S. investors. However, Ambit had received some transaction-based compensation for buying and selling the securities of Indian issuers on Indian stock exchanges on behalf of U.S. investors.

Ambit solicited and provided the above-referenced brokerage services to U.S. investors through U.S. jurisdictional means, such as, telephones, facsimiles, mail or email.

The brokerage services that Ambit provided required registration as a broker-dealer with the Commission pursuant to Section 15(a) of the Exchange Act. However, Ambit was not registered with the Commission as a broker-dealer. In addition, Ambit's conduct did not meet the requirements to qualify for an exemption from registration provided to foreign broker-dealers by Rule 15a-6 under the Exchange Act. In particular, Ambit could have conducted the above-referenced activities pursuant to a chaperoning agreement with a U.S. registered broker-dealer.

After being contacted by staff of the Commission, Ambit entered into a Rule 15a-6 chaperoning agreement with a U.S. registered broker-dealer pursuant to which it may legally engage in certain U.S. cross-border business.

D. VIOLATIONS

Absent an applicable exception or exemption, Section 15(a) of the Exchange Act generally prohibits a broker or dealer from making use of the mails or any means or instrumentality of interstate commerce to effect any transactions in, or to induce or attempt to induce the purchase or sale of any security without being registered with the Commission as a broker-dealer.

Section 3(a)(4) of the Exchange Act defines a "broker" as any person (other than a person meeting the conditions of an exception, exemption or safe harbor, such as an associated person of an issuer meeting the conditions of Rule 3a4-1 under the Exchange Act or a bank meeting the conditions of Regulation R) "engaged in the business of effecting transactions in securities for the accounts of others." Ambit acted as a broker within this definition.

Rule 15a-6 under the Exchange Act provides conditional exemptions under which unregistered foreign broker-dealers may effect transactions with or for U.S. institutional investors and major institutional investors in certain limited circumstances. Ambit acted as a broker outside the conditions of Rule 15a-6, and its solicitation of and provision of brokerage services to U.S. investors required broker-dealer registration. Inducing or attempting to induce securities transactions constitutes solicitation requiring broker-dealer registration. Solicitation is construed broadly to include both efforts to induce a single transaction and efforts to develop an ongoing securities business relationship.[1]

Accordingly, as a result of conduct described above, Ambit willfully[2] violated Section 15(a) of the Exchange Act.

E. AMBIT'S REMEDIAL EFFORTS

In determining to accept the Offer, the Commission considered remedial acts undertaken by Respondent and cooperation afforded the Commission staff.

---

[1] *See Registration Requirements for Foreign Broker-Dealers*, Exchange Act Release No. 27017 (July 11, 1989), 54 FR 30013, 30017-18 (July 18, 1989) (In the context of the Exchange Act's broker-dealer registration requirement, solicitation includes "any affirmative effort by a broker or dealer intended to induce transactional business for the broker-dealer or its affiliates," including "efforts to induce a single transaction or to develop an ongoing securities business relationship," and examples of conduct considered solicitation include "telephone calls from a broker-dealer to a customer encouraging use of the broker-dealer to effect transactions," "conducting investment seminars for U.S. investors, whether or not the seminars are hosted by a registered U.S. broker-dealer," and "recommending the purchase or sale of particular securities, with the anticipation that the customer will execute the recommended trade through the broker-dealer.")

[2] A willful violation of the securities laws means merely "'that the person charged with the duty knows what he is doing.'" *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor "'also be aware that he is violating one of the Rules or Acts.'" *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Ambit's Offer.

Accordingly, pursuant to Section 15(b) of the Exchange Act, it is hereby ORDERED that:

A. Respondent Ambit is censured; and

B. Respondent Ambit shall, within 30 days of the entry of this Order, pay disgorgement of $30,000 and prejudgment interest of $910 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. Such payment shall be: (A) made by wire transfer, United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) if paid by money order or check, such payment shall be hand-delivered or overnight mailed to Enterprise Services Center, HQ Bldg, Room 181, AMZ-341, 6500 South MacArthur Blvd, Oklahoma City, OK 73169; and (D) submitted under cover letter that identifies Ambit as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Laura B. Josephs, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549-5010A.

C. Respondent acknowledges that the Commission is not imposing a civil penalty based upon its cooperation in a Commission investigation and/or related enforcement action. If at any time following the entry of the Order, the Division of Enforcement ("Division") obtains information indicating that Respondent knowingly provided materially false or misleading information or materials to the Commission or in a related proceeding, the Division may, at its sole discretion and without prior notice to the Respondent, petition the Commission to reopen this matter and seek an order directing that the Respondent pay a civil money penalty. Respondent may not, by way of defense to any resulting administrative proceeding: (1) contest the findings in the Order; or (2) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 68299 / November 27, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-12631

In the Matter of Morgan Stanley & Co. Incorporated, Respondent.	ORDER AUTHORIZING THE TRANSFER OF REMAINING FUNDS AND ANY FUTURE FUNDS RETURNED TO THE DISGORGEMENT FUND TO THE UNITED STATES TREASURY, TERMINATING THE DISGORGEMENT FUND, AND DISCHARGING THE PLAN ADMINISTRATOR

On May 9, 2007, the U.S. Securities and Exchange Commission ("Commission") issued an Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 ("Order") against Morgan Stanley & Company Incorporated ("MS & Co."). Exchange Act Release No. 55726 (May 9, 2007). Pursuant to the Order, MS & Co. paid $5,949,222 in disgorgement and $507,978 in prejudgment interest for a total payment of $6,457,200 ("Disgorgement Fund"). The Order also required MS & Co. to pay a civil money penalty of $1.5 million to the United States Treasury.

On August 25, 2009, the Commission issued an Order Approving Plan of Distribution. Exchange Act Release No. 60568 (August 25, 2009). The Commission subsequently issued three orders directing the disbursement of $3,933,737.70. The first Order Directing Disbursement of Disgorgement Fund was issued on May 24, 2010, authorizing the disbursement of $2,891,887.33. Exchange Act Release No. 62162 (May 24, 2010). The second Order Directing Disbursement of Disgorgement Fund was issued on November 30, 2010, authorizing the disbursement of $457,821.82. Exchange Act Release No. 63399 (November 30, 2010). The third Order Directing Disbursement of Disgorgement Fund was issued on March 11, 2011, authorizing the disbursement of $584,028.55. Exchange Act Release No. 64078 (March 11, 2011).

The final payments were issued on or about August 31, 2011, and the distribution has been completed. The Plan Administrator submitted a final accounting of the Disgorgement Fund pursuant to Rule 1105(f) of the Commission's Rules on Fair Fund and Disgorgement Plans. The final accounting was approved by the Commission. After all disbursements have been made and all liabilities have been satisfied pursuant to the plan, $3,838,484.53 remains.

Accordingly, IT IS ORDERED that:

1. The $3,838,484.53 remaining balance in the Disgorgement Fund and any future funds returned to the Disgorgement Fund shall be transferred to the United States Treasury;
2. The Disgorgement Fund is terminated; and
3. The Plan Administrator, Rust Consulting, Inc., is discharged.

By the Commission.

Elizabeth M. Murphy
Secretary

Lynn M. Powalski

By: Lynn M. Powalski
Deputy Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 68307 / November 28, 2012

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3425 / November 28, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-15109

In the Matter of **KCAP FINANCIAL, INC., DAYL W. PEARSON, MICHAEL I. WIRTH, CPA AND R. JONATHAN CORLESS,** **Respondents.**	**ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING CIVIL PENALTIES AND A CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act") against KCAP Financial, Inc., Dayl W. Pearson, Michael I. Wirth, CPA, and R. Jonathan Corless (collectively "Respondents").

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the "Offers") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over them and the subject matter of these proceedings, which are admitted, Respondents consent to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Civil Penalties and a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondents' Offers, the Commission finds[1] that:

Summary

From the end of 2008 through the middle of 2009, KCAP Financial, Inc. ("KCAP"), a business development company ("BDC"), materially overstated the value of its asset portfolio in its reported financial statements. During the relevant period, KCAP held two primary classes of assets in its portfolio: corporate debt consisting of senior secured term loans, junior term loans, mezzanine debt, and bonds issued primarily by privately-held middle market companies ("debt securities"); and investments in collateralized loan obligation funds ("CLOs").[2] During the 2008-09 financial crisis, KCAP did not account for certain market-based activity in determining the fair value of its debt securities. KCAP also did not account for certain market-based activity for its two largest CLO investments by fair valuing those investments at KCAP's cost. Moreover, KCAP's public filings were materially misleading because they stated that these two CLOs were valued using a discounted cash flow method that incorporated market data, when the CLOs were valued at KCAP's cost.

By not accounting for certain market-based activity, KCAP did not record and report the fair values of its assets in conformity with the Financial Accounting Standards Board Statement of Financial Accounting Standards 157 – Fair Value Measurements ("FAS 157") and Generally Accepted Accounting Principles ("GAAP"). In particular, FAS 157 calls for expanded disclosures about fair value measurements and requires that assets be fair valued based on an "exit price," which reflects the price that would be received to sell an asset in an orderly transaction between market participants at the measurement date.

In May 2010, KCAP disclosed that it needed to restate the fair values for certain of its debt securities and CLOs and that it had overstated its Net Asset Value by approximately 27% as of the December 31, 2008 valuation date. Also, KCAP's internal controls over financial reporting were not properly designed to value its illiquid assets because the company's valuation procedures did not adequately take into account certain market inputs. KCAP's asset overvaluation and internal controls failures violated the reporting, books and records, and internal controls provisions of the federal securities laws, namely Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13 promulgated thereunder.

---

1 The findings herein are made pursuant to Respondents' Offers and are not binding on any other person or entity in this or any other proceeding.

2 A CLO is a trust typically collateralized by a pool of loans, which may include, among others, domestic and foreign senior secured loans, senior unsecured loans, and subordinate corporate loans.

Dayl W. Pearson, KCAP's President and Chief Executive Officer, and R. Jonathan Corless, KCAP's Chief Investment Officer, had primary responsibility for calculating the fair value of KCAP's debt securities, while Michael I. Wirth, KCAP's Chief Financial Officer, had primary responsibility for calculating the fair value of KCAP's CLOs. Wirth was also responsible for KCAP's financial statements, and he prepared KCAP's disclosures concerning its valuation methodologies in KCAP's public filings. Pearson reviewed those valuation disclosures before they were filed.

Thus, Pearson, Wirth, and Corless each caused KCAP's reporting, books and records, and internal controls violations. Each also directly violated Exchange Act Rule 13b2-1 by causing KCAP's internal books and records to reflect the materially overstated fair values of certain of its debt securities and CLOs. Pearson and Wirth also violated Exchange Act Rule 13a-14 by signing various KCAP public filings with certifications that KCAP had designed sufficient internal controls over financial reporting.

Respondents

1. **KCAP Financial, Inc., f/k/a Kohlberg Capital Corporation ("KCAP")**, is an internally managed, non-diversified closed-end investment company that elected to be regulated as a BDC under the Investment Company Act of 1940 ("Investment Company Act"). KCAP also has a wholly-owned portfolio company, Katonah Debt Advisors, which manages its CLO funds. KCAP is incorporated in the State of Delaware and is headquartered in New York City. KCAP's common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act and trades on the NASDAQ Global Select Market. KCAP is required to file reports with the Commission pursuant to Section 13 of the Exchange Act.

2. **Dayl W. Pearson**, age 57, is a resident of Locust Valley, NY. Since December 2006, Pearson has been KCAP's President and Chief Executive Officer.

3. **Michael I. Wirth, CPA,** age 54, is a resident of Scarsdale, NY. Wirth is currently licensed as a CPA in New York. From December 2006 through June 2012, Wirth served as KCAP's Chief Financial Officer.

4. **R. Jonathan Corless**, age 60, is a resident of Pound Ridge, NY. Since December 2006, Corless has served as KCAP's Chief Investment Officer.

Background

5. During fiscal years 2008 and 2009, KCAP invested in debt securities issued by privately-held middle market companies. The middle market, as defined by KCAP, consisted of companies with Earnings Before Interest, Taxes, Depreciation, and Amortization ("EBITDA") of \$10 million to \$50 million and/or total debt of \$25 million to \$150 million. As of December 31, 2008, KCAP's investments in debt securities totaled approximately \$384 million and constituted 75% of the \$514 million in KCAP's investment portfolio.

6. KCAP also invested in the equity tranches of CLOs, primarily those managed by KCAP's wholly-owned investment adviser Katonah Debt Advisors. At December 31, 2008, KCAP's CLO investments totaled approximately $57 million and constituted 11% of KCAP's investment portfolio.

7. KCAP is regulated as a BDC under the Investment Company Act. A BDC is a type of closed-end investment company established by Congress to make capital more readily available to small, developing, and financially troubled companies that do not have ready access to the public capital markets or other forms of conventional financing. BDCs function like private equity or venture capital funds. As a BDC, KCAP is subject to the relevant requirements of the Investment Company Act to the same extent as a registered closed-end fund, including Section 2(a)(41)(B)(ii), which requires a registered fund's Board of Directors to determine, in good faith, the fair value of its portfolio assets when market quotations are not readily available.

8. In September 2006, the Financial Accounting Standards Board("FASB") issued FAS 157.[3] FAS 157 became effective for financial reporting fiscal periods beginning after November 2007. Thus, beginning with its financial statements for the first quarter of fiscal 2008, KCAP had to prepare its financial statements in conformity with FAS 157.

9. FAS 157 defines "fair value," establishes a framework for measuring fair value in accordance with GAAP and calls for expanded disclosures about fair value measurements. FAS 157 defines fair value as an exit price, which reflects the price that would be received to sell an asset in an orderly transaction between market participants at the measurement date. FAS 157 emphasizes that fair value is a market-based measurement, not an entity-specific measurement, and should be determined based on the assumptions market participants would use in pricing the asset.

10. FAS 157 outlines three broad approaches to measure fair value – the market approach, income approach, and/or cost approach and states that valuation techniques consistent with these three approaches shall be used to measure fair value. Under the market approach, prices and other relevant information generated by market transactions involving identical or comparable assets or liabilities are used to measure fair value. The income approach utilizes valuation techniques to convert future amounts to a single discounted present value amount. Lastly, the cost approach is based on the amount that currently would be required to replace the assets in service (i.e. current replacement cost).

11. FAS 157 establishes a fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value into three broad levels. The highest priority is given to quoted prices in active markets for identical assets or liabilities (Level One assets). The next highest priority is given to instances where quoted prices in active markets do not exist for the identical asset, but the asset's fair value can be calculated directly or indirectly based on observable

[3] Upon the codification of GAAP, which became effective for periods ending after September 15, 2009, FAS 157 became known as ASC 820 - Fair Value Measurements and Disclosures.

market inputs (Level Two assets).[4] The lowest priority is given to instances where observable market inputs are not available, and, therefore, the fair value of those assets is calculated through the use of management estimates of the assumptions that market participants would use in pricing the asset (Level Three assets).

12. In October 2008, FASB issued Statement FAS 157-3, which provided guidance on fair valuing assets in situations in which there is little, if any, market activity. Statement FAS 157-3 noted, among other things, that "[e]ven in times of market dislocation, it is not appropriate to conclude that all market activity represents forced liquidations or distressed sales."[5]

13. KCAP's fair value calculations for its debt securities were primarily performed by two senior KCAP officials – Pearson and Corless – with the assistance of a team of four internal credit analysts. Each quarter, the analysts prepared valuation summaries for each debt security. The analysts sent these summaries to Corless for review and approval. After reviewing the valuation packages and making adjustments to the values, Corless forwarded them to Pearson for review, additional adjustments, and approval. The valuation summaries were then sent to KCAP's Valuation Committee[6] for review and approval.

14. KCAP's fair value calculations for its CLOs were primarily performed by Wirth with the assistance of an analyst. Pearson reviewed the CLO valuations before Wirth sent them to the Valuation Committee for review and approval.

Materially Misstated Valuation of Debt Securities

15. KCAP was required to apply valuation methodologies consistent with FAS 157 beginning with the first quarter of 2008. For the first three quarters of 2008, KCAP classified some of its debt securities as liquid, and therefore determined their fair value based on third-party pricing services.

16. KCAP used an enterprise value ("EV") methodology to determine fair value for those debt securities that it determined were illiquid. The EV methodology calculated whether, in the event of a default or liquidation of the issuer, KCAP would receive full repayment of its loan. To apply the methodology, KCAP calculated an issuer's EV based on EBITDA valuation multiples of comparable companies. KCAP typically considered three EBITDA multiples: (1) the

---

[4] An example of a Level Two asset is an interest-rate swap where the components of the swap are observable data points like the quoted price of a 10-year Treasury bond. The quoted price of a 10-year Treasury bond can be used, either in whole or in part, as a proxy for the fair value of the interest-rate swap.

[5] Statement FAS 157-3 further noted that "it is not appropriate to automatically conclude that any transaction price is determinative of fair value. Determining fair value in a dislocated market depends on the facts and circumstances and may require the use of significant judgment about whether individual transactions are forced liquidations or distressed sales."

[6] KCAP's Board of Directors delegated their statutory obligation under the Investment Company Act to report investments at fair value to the Valuation Committee.

average comparable public companies based on size and industry; (2) the average of recent comparable private merger and acquisition transactions; and (3) an actual or implied multiple at the time of the issuer's most recent acquisition or restructuring.

17. If the issuer's EV was greater than the issuer's total outstanding debt that was senior to or the same seniority as the debt security held by KCAP, KCAP used the cost of the debt security as fair value. Conversely, if the issuer's EV was calculated to be less than the issuer's outstanding debt that was senior to or the same seniority as the debt held by KCAP, KCAP would adjust its fair value to be less than its cost.

18. The EV methodology did not, however, calculate or inform KCAP – or the public – what the exit price was for that security. Instead, the EV methodology provided KCAP an assessment of whether the entire principal balance owed to it was likely to be repaid by the debt issuer.

19. During the fourth quarter of 2008, Pearson and Corless classified all of KCAP's debt securities as illiquid, Level Three assets. Therefore, KCAP determined the fair value for all its debt securities solely using the EV methodology.[7] Pearson and Corless assumed that, due to market conditions in the fourth quarter of 2008, price quotes from third-party pricing services did not represent fair value. To the extent any of KCAP's debt securities traded during the fourth quarter of 2008, Pearson and Corless concluded that all such trades reflected distressed transactions.

20. Pearson's and Corless' decision not to use trade data from market transactions during the fourth quarter of 2008 – and to fair value all of KCAP's debt securities based on the EV methodology – caused KCAP to overstate the fair values for most of its debt securities. Upon restatement, 13 of KCAP's debt securities were fair valued using prices reported by third-party pricing services in the fourth quarter of 2008, which resulted in values significantly lower than KCAP's originally reported values at December 31, 2008.

21. Pearson and Corless were aware of and did not take into account numerous quotes or actual trades in the fourth quarter of 2008 involving several of KCAP's debt securities. For example, KCAP held a debt instrument issued by Ford Motor Credit Co. ("Ford"). On or about December 31, 2008, the Ford debt instrument held by KCAP was trading between 41-45% of par value. In early March 2009, before KCAP filed its Form 10-K, Ford made a tender offer to repurchase $500 million of the same Ford debt instrument held by KCAP at 38-47% of par value. Ford's offer was oversubscribed, and Ford subsequently repurchased an additional $700 million of its debt instrument at the same price (38-47% of par value).

22. Notwithstanding this market activity, when KCAP filed its Form 10-K for the period ending December 31, 2008, it valued the Ford debt instrument at 70% of par. When KCAP

[7] For the fourth quarter of 2008, KCAP began incorporating into the EV methodology a discounted cash flow analysis based on the *issuer's* projected cash flow. This approach, however, did not include a discounted cash flow analysis based on the principal and/or interest payments flowing from the *debt security* actually held by KCAP.

restated in May 2010, and took into account evidence of market-based activity, it re-valued the Ford debt significantly lower – at approximately 41% of par.

23. Similarly, KCAP also held two bonds – Freescale Semiconductor and Cooper-Standard Automotive – that had actual trading activity in December 2008 reported by the Trade Reporting and Compliance Engine ("TRACE"), a source for reports on secondary bond market trades in the United States. KCAP did not take into account the trading activity reported on TRACE for these bonds, which showed dramatically lower values than the fair values KCAP assigned to these bonds in its original 2008 financial statements. Compared to the restatement, KCAP's original valuations for Freescale Semiconductor and Cooper-Standard Automotive were overstated by 75% and 300%, respectively.

24. KCAP did not use an EV methodology to determine the fair value of its debt securities in its restatement. Rather, KCAP largely used an income-based approach, which involved projecting the cash flows of the principal and interest payments from the debt securities it held, and then discounting those payments to present value. Using the income approach, the vast majority of KCAP's debt securities were restated. Based on application of the EV methodology at December 31, 2008, KCAP fair valued 64 of its 135 debt securities (almost 50%) at par. Upon restatement, however, KCAP fair valued 10 of its 135 debt securities (less than 10%) at par.

Materially Misstated Valuation of CLOs

25. At year-end 2008, KCAP used different valuation methodologies depending upon the "seasoning," i.e., the number of contractual, quarterly cash payments made from the CLOs, to fair value the nine CLOs in its portfolio. Wirth was responsible for determining the appropriate valuation methodology to fair value KCAP's CLOs, and was primarily responsible for calculating the fair value of those assets.

26. For seven CLOs that had four or more contractual payments, KCAP used valuation models to fair value those CLOs. These valuation models took into account current market conditions. Those current market conditions were reflected in various inputs that were considered in KCAP's valuation models, such as discount, prepayment, and default rates.[8] These seven CLOs represented approximately 28% of KCAP's overall CLO portfolio. KCAP's two remaining CLOs – Katonah X and Katonah 2007-1 – represented a substantial portion (approximately 72%) of KCAP's overall CLO portfolio.

27. In 2007, KCAP purchased Katonah X in two tranches. As of December 31, 2008, Katonah X had generated four quarterly payments. Applying the valuation model KCAP used to fair value those CLOs that had four quarterly payments, Wirth calculated a fair value of $10.98

[8] A discount rate is applied to convert projected cash flows out of the CLO to their present value. A prepayment rate measures the percentage of loans in the CLO for which the principal will be repaid before the call date of the loan. A default rate measures the percentage of loans that are expected to default before the loan call date.

million for Katonah X.[9] Wirth, however, decided to use Katonah X's cost – $11.9 million – as its fair value.

28. By deciding to fair value Katonah X at cost, Wirth did not take into account the significant changes in market conditions, as reflected in changes to market discount, default, and prepayment rates, between KCAP's 2007 purchases and the December 2008 valuation date.

29. In early 2008, KCAP purchased the Katonah 2007-1 CLO for $28.9 million. Because this CLO had not yet generated four quarterly payments as of December 31, 2008, Wirth calculated the fair value of this CLO to be its cost. In so doing, Wirth did not take into account the market conditions of the fourth quarter of 2008, as those conditions were reflected in critical market-based inputs.

30. KCAP did not disclose that it valued the Katonah X and 2007-1 CLOs at cost. Rather, KCAP disclosed that, for more recently acquired CLOs (like Katonah X and Katonah 2007-1), it used a "discounted cash flow model for more recent CLO funds that utilizes prepayment and loss assumptions based on historical experience and projected performance, economic factors, the characteristics of the underlying cash flow and comparable yields for similar bonds or preferred shares." Wirth prepared this disclosure, which was contained in KCAP's public filings.

31. KCAP and Wirth did not incorporate market-based inputs, such as "prepayment and loss assumptions," into the valuation of Katonah X and Katonah 2007-1. Rather, KCAP valued those two CLOs at the cost it paid for them. Thus, KCAP's disclosures with respect to Katonah X and Katonah 2007-1 were materially misleading.

32. Upon restatement, KCAP fair valued Katonah X and Katonah 2007-1 based on a discounted cash flow method, and determined that their fair values at December 31, 2008 were overstated by 128%, or $6.7 million, and 35%, or $7.5 million, respectively.

The Restatement

33. On May 28, 2010, KCAP restated its financial statements for all four quarters of fiscal 2008 and for the first two quarters of fiscal 2009. For certain reporting periods, the restatement resulted in a significant decrease in the Net Asset Value of KCAP's assets. For example, as a result of the restatement, KCAP reported that its CLO investments were valued at $34.7 million, and had been overstated by 64%, or $21.9 million, in fiscal year 2008. KCAP's debt securities were valued at $353.9 million as a result of the restatement, and had been overstated by 9%, or $30.6 million, in fiscal year 2008. For the fiscal year ended December 31, 2008, KCAP overstated its Net Asset Value by 27%.

---

[9] Based on KCAP's valuation model that was applicable only to KCAP's more "seasoned" CLOs, *i.e.* those CLOs with numerous, contractual cash payments, Wirth calculated two additional fair values for Katonah X of $11.8 million and $14.3 million.

34. In the restatement, KCAP acknowledged that it had identified errors in its fair value measurements of its illiquid investments and it identified those errors through the use and weighting of additional valuation techniques and a broader consideration of secondary market inputs.

35. Moreover, KCAP stated that it had material weaknesses with respect to its internal controls for valuing its asset portfolio. KCAP acknowledged in the restatement that its "internal control over financial reporting was not properly designed to implement an appropriate valuation methodology and procedures to value the Company's illiquid investments consistent with the requirements of Fair Value Measurements and Disclosures as required by GAAP because the Company's prior valuation procedures did not adequately take into account certain market inputs and other data."[10]

Material Misstatements in KCAP's Public Filings

36. KCAP disseminated materially misstated valuations to the market in its Form 10-K for fiscal year 2008, its Forms 10-Q for the first two quarters of 2009, and in earnings releases filed on Forms 8-K from March through August 2009.

37. Pearson and Wirth each signed the Forms 10-Q for 2008, Form 10-K for 2008, and Forms 10-Q for the first two quarters of 2009 certifying that they had "[d]esigned such internal control over financial reporting, or caused such internal control over financial reporting to be designed under [their] supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles…." In light of the errors resulting in the restatement and KCAP's internal controls failures, these certifications were false.

Violations

38. Under Section 21C of the Exchange Act, the Commission may impose a cease-and-desist order upon any person who is violating, has violated, or is about to violate any provision of the Exchange Act and upon any other person that is, was, or would be a cause of the violation, due to an act or omission the person knew or should have known would contribute to such violation.

39. Section 13(a) of the Exchange Act requires issuers that have securities registered pursuant to Section 12 of the Exchange Act to file such periodic and other reports as the Commission may prescribe and in conformity with such rules as the Commission may promulgate. Exchange Act Rules 13a-1, 13a-11, and 13a-13 require the filing of annual, current, and quarterly

---

10 For example, as noted earlier, KCAP analysts prepared valuation summaries for each debt security which contained a calculated fair value. These summaries were sent to Pearson and Corless for review, and were then sent to KCAP's Valuation Committee, which consisted of three KCAP Board members. The Valuation Committee reviewed and approved the calculated values, and these calculated values were then reviewed and approved by the entire KCAP Board. These valuation summaries contained the relevant information needed to apply the EV methodology to calculate a fair value. In most instances, however, the valuation summaries did not contain a description of current market transactions or activity in the debt security at issue.

reports, respectively. In addition to the information expressly required to be included in such reports, Rule 12b-20 under the Exchange Act requires issuers to add such further material information, if any, as may be necessary to make the required statements, in the light of the circumstances under which they are made, not misleading. "The reporting provisions of the Exchange Act are clear and unequivocal, and they are satisfied only by the filing of complete, accurate, and timely reports." *SEC v. Savoy Industries*, 587 F.2d 1149, 1165 (D.C. Cir. 1978) (citing *SEC v. IMC Int'l, Inc.*, 384 F. Supp. 889, 893 (N.D. Tex. 1974)). A violation of the reporting provisions is established if a report is shown to contain materially false or misleading information. *SEC v. Kalvex, Inc.*, 425 F. Supp. 310, 316 (S.D.N.Y. 1975).

40. Section 13(b)(2)(A) of the Exchange Act requires issuers to "make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer." Section 13(b)(2)(B) of the Exchange Act requires issuers to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that, among other things, transactions are recorded to permit the preparation of financial statements in conformity with generally accepted accounting principles.

41. Exchange Act Rule 13b2-1 prohibits a person from, directly or indirectly, falsifying or causing to be falsified any book, record, or account subject to Section 13(b)(2)(A) of the Exchange Act.

42. Exchange Act Rule 13a-14, among other things, requires each principal executive, and principal financial officer to certify in each quarterly and annual report filed under Section 13(a) of the Exchange Act that such officer has reviewed the report and that such officer and the issuer's other certifying officer have designed internal control over financial reporting, or caused such internal control over financial reporting to be designed under their supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP.

43. By engaging in the conduct described above, KCAP violated Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder.

44. By engaging in the conduct described above, Pearson, Wirth, and Corless caused KCAP's violations and each violated Exchange Act Rule 13b2-1, and Pearson and Wirth each violated Exchange Act Rule 13a-14.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondents' Offers.

Accordingly, pursuant to Section 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent KCAP cease and desist from committing or causing any violations and any future violations of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13 promulgated thereunder.

B. Respondent Pearson cease and desist from committing or causing any violations and any future violations of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, 13a-13, 13a-14, and 13b2-1 promulgated thereunder.

C. Respondent Pearson shall, within 30 days of the entry of this Order, pay a civil money penalty in the amount of $50,000 to the United States Treasury. If timely payment is not made, interest shall accrue pursuant to 31 U.S.C. § 3717. Payment must be made in one of the following ways:

(1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
(2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm; or
(3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments made by check or money order must be accompanied by a letter identifying Dayl W. Pearson as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and money order or check shall be sent to Antonia Chion, Associate Director Division of Enforcement, U.S. Securities and Exchange Commission, 100 F Street, N.E., Mail Stop 5720-B, Washington, DC 20549-5720-B.

D. Respondent Wirth cease and desist from committing or causing any violations and any future violations of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, 13a-13, 13a-14, and 13b2-1 promulgated thereunder.

E. Respondent Wirth shall pay a civil money penalty in the amount of $50,000 to the United States Treasury. Payment shall be made in the following installments: (i) $8,333 within 30 days of entry of this Order, (ii) $8,333 within 60 days of entry of this Order, (iii) $8,333 within 90 days of entry of this Order, (iv) $8,333 within 120 days of entry of this Order, (v) $8,333 within 150 days of entry of this Order, and (vi) $8,335 within 180 days of entry of this Order. If any payment is not made by the date the payment is required by this Order, the entire outstanding balance of civil penalties, plus any interest accrued pursuant to 31 U.S.C. § 3717, shall be due and payable immediately, without further application. Payment must be made in one of the following ways:

(1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
(2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm; or
(3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a letter identifying Michael I. Wirth as a Respondent in these proceedings, and the file number of the proceedings; a copy of the cover letter and money order or check shall be sent to Antonia Chion, Associate Director Division of Enforcement, U.S. Securities and Exchange Commission, 100 F Street, N.E., Mail Stop 5720-B, Washington, DC 20549-5720-B.

F. Respondent Corless cease and desist from committing or causing any violations and any future violations of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, 13a-13, and 13b2-1 promulgated thereunder.

G. Respondent Corless shall, within 30 days of the entry of this Order, pay a civil money penalty in the amount of $25,000 to the United States Treasury. If timely payment is not made, interest shall accrue pursuant to 31 U.S.C. § 3717. Payment must be made in one of the following ways:

(1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
(2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm; or
(3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a letter identifying R. Jonathan Corless as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and money order or check shall be sent to Antonia Chion, Associate

Director Division of Enforcement, U.S. Securities and Exchange Commission, 100 F Street, N.E., Mail Stop 5720-B, Washington, DC 20549-5720-B.

By the Commission.

Elizabeth M. Murphy

Elizabeth M. Murphy
Secretary

SECURITIES AND EXCHANGE COMMISSION

17 CFR Chapter II

[Release Nos. 33-9370, 34-68309, 39-2487, IA-3506, IC-30282; File No. S7-12-12]

List of Rules to be Reviewed Pursuant to the Regulatory Flexibility Act

AGENCY: Securities and Exchange Commission.

ACTION: Publication of list of rules scheduled for review.

SUMMARY: The Securities and Exchange Commission is publishing a list of rules to be reviewed pursuant to Section 610 of the Regulatory Flexibility Act. The list is published to provide the public with notice that these rules are scheduled for review by the agency and to invite public comment on them.

DATES: Comments should be submitted by [insert date 30 days after publication in the Federal Register].

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form(http://www.sec.gov/rules/other.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number S7-12-12 on the subject line; or
- Use the Federal eRulemaking Portal (http://www.regulations.gov). Follow the instructions for submitting comments.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to File No. S7-12-12. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (http://www.sec.gov/rules/other.shtml). Comments also are available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Anne Sullivan, Office of the General Counsel, 202-551-5019.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act ("RFA"), codified at 5 U.S.C. 600-611, requires an agency to review its rules that have a significant economic impact upon a substantial number of small entities within ten years of the publication of such rules as final rules. 5 U.S.C. 610(a). The purpose of the review is "to determine whether such rules should be continued without change, or should be amended or rescinded . . . to minimize any significant economic impact of the rules upon a substantial number of such small entities." 5 U.S.C. 610(a). The RFA sets forth specific considerations that must be addressed in the review of each rule:

- the continued need for the rule;
- the nature of complaints or comments received concerning the rule from the public;
- the complexity of the rule;
- the extent to which the rule overlaps, duplicates or conflicts with other federal rules, and, to the extent feasible, with state and local governmental rules; and

- the length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule. 5 U.S.C. 610(c).

The Securities and Exchange Commission, as a matter of policy, reviews all final rules that it published for notice and comment to assess not only their continued compliance with the RFA, but also to assess generally their continued utility. The list below is therefore broader than that required by the RFA, and may include rules that do not have a significant economic impact on a substantial number of small entities. Where the Commission has previously made a determination of a rule's impact on small businesses, the determination is noted on the list.

The Commission particularly solicits public comment on whether the rules listed below affect small businesses in new or different ways than when they were first adopted. The rules and forms listed below are scheduled for review by staff of the Commission during the next twelve months. The list includes rules from 2001. When the Commission implemented the Act in 1980, it stated that it "intend[ed] to conduct a broader review [than that required by the RFA], with a view to identifying those rules in need of modification or even rescission." Securities Act Release No. 6302 (Mar. 20, 1981), 46 FR 19251 (Mar. 30, 1981).

List of Rules to be Reviewed

Title: Role of Independent Directors of Investment Companies

Citation: 17 CFR 270.2a19-3; 17 CFR 270.10e-1; 17 CFR 270.32a-4

Authority: 15 U.S.C. 80a-6(c), 80a-10(e), 80a-29(e), 80a-30, 80a-37(a)

Description: Rule 2a19-3 under the Investment Company Act ("Act") exempts an individual from being disqualified as an independent director of a registered investment company ("Fund") solely because he or she owns shares of an index fund that invests in the investment adviser or underwriter of the Fund, or their controlling persons. The exemption permits a director of a Fund to own shares of a registered investment company (including the Fund on which it serves) whose investment objective is to replicate the performance of one or more broad-based securities indices.

Rule 10e-1 under the Act suspends temporarily the board composition requirements of the Act and rules thereunder, if a Fund fails to meet those requirements by reason of the death, disqualification, or bona fide resignation of a director. Rule 10e-1 suspends the board composition requirements for 90 days if the board can fill the director vacancy, or 150 days if a shareholder vote is required to fill the vacancy.

Rule 32a-4 under the Act exempts Funds from the Act's requirement that shareholders vote on the selection of the Fund's independent public accountant if the Fund (i) establishes an audit committee composed solely of independent directors that oversees the fund's accounting and auditing processes; (ii) adopts an audit committee charter setting forth the committee's structure, duties, powers, and methods of operation, or sets out similar provisions in the Fund's charter or bylaws; and (iii) maintains a copy of such audit committee charter.

<u>Prior Commission Determination Under 5 U.S.C. 604:</u> A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. IC-24816, which was approved by the Commission on January 2, 2001. Comments on the proposing release and any comments on the Initial Regulatory Flexibility Analysis were considered at that time.

* * * * *

<u>Title:</u> Rule 35d-1

<u>Citation:</u> 17 CFR 270.35d-1

<u>Authority:</u> 15 U.S.C. 80a-8, 80a-29, 80a-33, 80a-34, and 80a-37

<u>Description:</u> Rule 35d-1 under the Act requires that an investment company with a name that suggests that the company focuses its investments in a particular type of investment (e.g., the ABC Stock Fund or XYZ Bond Fund), country or geographic region (e.g., The ABC Japan Fund or The XYZ Latin America Fund), or a particular industry (e.g., the ABC Utilities Fund or the XYZ Health Care Fund) invest at least 80% of its assets in the type of investment suggested by the name. Rule 35d-1 also addresses names that indicate that a Fund's distributions

are exempt from income tax or that its shares are guaranteed or approved by the United States government.

Prior Commission Determination Under 5 U.S.C. 604: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. IC-24828, which was approved by the Commission on January 17, 2001. Comments on the proposing release and any comments on the Initial Regulatory Flexibility Analysis were considered at that time.

* * * * *

Title: Integration of Abandoned Offerings.

Citation: 17 CFR 230.155, 17 CFR 230.429, 17 CFR 230.457, 17 CFR 230.477.

Authority: 15 U.S.C. 77b, 15 U.S.C. 77f, 15 U.S.C. 77g, 15 U.S.C. 77h, 15 U.S.C. 77j, 15 U.S.C. 77s, and 15 U.S.C. 77z-3.

Description: Rule 155 provides safe harbors for a registered offering following an abandoned private offering, or a private offering following an abandoned registered offering, without integrating the registered and private offerings in either case. The rule amendments facilitate reliance on the public-to-private safe harbor by providing automatic effectiveness for any application to withdraw an entire registration statement before it becomes effective, permitting filing fees to be offset from withdrawn registration statements and providing other technical changes to the calculation of filing fees in order to reduce the financial risk of a registered offering that is withdrawn.

Prior Commission Determination Under 5 U.S.C. 604: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with Release No. 33-7943, approved by the Commission on January 26, 2001, which adopted the rule and rule amendments. Comments on the proposing release were considered at that time. The Commission solicited comments concerning the impact on small entities and the Regulatory Flexibility Act certification, but received no comments.

* * * * *

Title: Electronic Submission of Securities Transaction Information by Exchange Members, Brokers, and Dealers

Citation: 17 CFR 240.17a-25

Authority: 15 U.S.C. 78a et seq.

Description: Rule 17a-25 requires brokers and dealers to submit electronically to the Commission, upon request, information on customer and firm securities trading. Rule 17a-25 is designed to improve the Commission's capacity to analyze electronic submissions of transaction information, thereby facilitating Commission enforcement investigations and other trading reconstructions.

Prior Commission Determination Under 5 U.S.C. 604: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. 34-44494, which was issued by the Commission on June 29, 2001. Comments on the proposing release and any comments on the Initial Regulatory Flexibility Analysis were considered at that time.

* * * * *

Title: Rule 5b-3

Citation: 17 CFR 270.5b-3

Authority: 15 U.S.C. 80a-1 et seq., 80a-34(d), 80a-37, 80a-39, unless otherwise noted.

Description: Rule 5b-3 under the Investment Company Act permits investment companies to treat a repurchase agreement as an acquisition of the underlying collateral, subject to certain conditions, in determining whether it is in compliance with the investment criteria for diversified funds set forth in section 5(b)(1) of the Act and the prohibition on fund acquisition of an interest in a broker-dealer in section 12(d)(3) of the Act. Rule 5b-3 also permits an investment company to treat the acquisition of a refunded security (which is a debt security whose principal and interest payments are to be paid by U.S. government securities that have been placed in an escrow account and are pledged only to the payment of the debt security) as an acquisition of the escrowed government securities, subject to certain conditions, for purposes of the diversification requirements of section 5(b)(1) of the Act.

Prior Commission Determination Under 5 U.S.C. 604: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of rule 5b-3 in Release No. IC-25058, which was approved by the Commission on July 5, 2001. Comments on the proposing release and any comments on the Initial Regulatory Flexibility Analyses were considered at that time.

* * * * *

Title: Registration of National Securities Exchanges Pursuant to Section 6(g) of the Securities Exchange Act of 1934 and Proposed Rule Changes of Certain National Securities Exchanges and Limited Purpose National Securities Associations

Citation: 17 CFR 240.6a-2, 17 CFR 240.6a-3, 17 CFR 240.6a-4, 17 CFR 240.19b-4, 17 CFR 240.19b-7, 17 CFR 249.10, 17 CFR 249.819; 17 CFR 249.822

Authority: 15 U.S.C. 78a et seq.

Description: The Commission adopted Rule 6a-4 under the Exchange Act and registration Form 1-N prescribing the requirements for designated contract markets and derivative transaction execution facilities to register as national securities exchanges pursuant to Section 6(g)(1) of the Exchange Act to trade security futures products. The Commission also adopted conforming amendments to Rules 6a-2 and 6a-3 under the Exchange Act and Rule 202.3 of the Commission's procedural rules. In addition, the Commission adopted Rule 19b-7, Form 19b-7, and amendments to Rule 19b-4 and Form 19b-4 to accommodate proposed rule changes submitted by national securities exchanges registered pursuant to Section 6(g) of the Exchange Act and limited purpose national securities associations registered pursuant to Section 15A(k) of the Exchange Act. These rules and forms, and amendments to existing rules and forms, were necessary to implement the Commodity Futures Modernization Act of 2000.

Prior Commission Determination Under 5 U.S.C. 605: Pursuant to 15 U.S.C. 605(b), the Chairman of the Commission certified that the adopted rules, forms, and conforming amendments would not have a significant economic impact on a substantial number of small entities. This certification, including the reasons therefor, was attached to Proposing Release No. 34-44279 (May 8, 2001) as Appendix A. The Commission solicited comments concerning the impact on small entities and the Regulatory Flexibility Act certification, but received no comments.

* * * * *

Title: Registration of Broker-Dealers Pursuant to Section 15(b)(11) of the Securities Exchange Act of 1934

Citation: 17 CFR 240.15a-10, 17 CFR 240.15b2-2, 17 CFR 15b11-1, 17 CFR Part 248, 17 CFR Part 249

Authority: 15 U.S.C. 78a et seq.; 15 U.S.C. 6801 et seq.

Description: The Commission adopted the following rules to implement provisions of the Commodity Futures Modernization Act of 2000 ("CFMA"). First, the Commission amended its broker-dealer registration requirements and adopted a new form to implement Section 203 of the CFMA to allow futures commission merchants and introducing brokers registered with the CFTC to register as broker-dealers by filing a notice with the Commission for the limited purpose of effecting transactions in security futures products. Second, the Commission adopted an exemption from registration under Section 15(a) of the Exchange Act to permit, subject to certain conditions, a broker-dealer registered by notice to trade security futures products regardless of the market on which the product was listed or traded. Third, the Commission adopted amendments to Regulation S-P to revise certain provisions of Regulation S-P in light of Section 124 of the CFMA, which made the privacy provisions of the Gramm-Leach-Bliley Act applicable to activity regulated by the CFTC. These amendments also permitted futures commission merchants and introducing brokers registered by notice as broker-dealers to comply with Regulation S-P by complying with the CFTC's financial privacy rules.

Prior Commission Determination Under 5 U.S.C. 605: Pursuant to 15 U.S.C. 605(b), the Chairman of the Commission certified that the proposed rules, forms, and conforming amendments would not have a significant economic impact on a substantial number of small entities. This certification, including the reasons therefore, was attached to Proposing Release No. 34-44455 (June 20, 2001) as Appendix A. The Commission solicited comments concerning the impact on small entities and the Regulatory Flexibility Act certification, but received no comments.

* * * * *

Title: Method for Determining Market Capitalization and Dollar Value of Average Daily Trading Volume; Application of the Definition of Narrow-Based Security Index

Citation: 17 CFR 240.3a55-1, 17 CFR 240.3a55-2, 17 CFR 240.3a55-3

Authority: 15 U.S.C. 78a et seq.

Description: The CFTC and the SEC (collectively, "Commissions") adopted joint final rules to implement new statutory provisions enacted by the Commodity Futures Modernization Act of 2000. Specifically, the CFMA directed the Commissions to jointly specify by rule or regulation the method to be used to determine "market capitalization" and "dollar value of average daily trading volume" for purposes of the new definition of "narrow-based security index," including exclusions from that definition, in the Commodity Exchange Act and the Exchange Act. The CFMA also directed the Commissions to jointly adopt rules or regulations that set forth the requirements for an index underlying a contract of sale for future delivery traded on or subject to the rules of a foreign board of trade to be excluded from the definition of "narrow-based security index."

Prior Commission Determination Under 5 U.S.C. 605: Pursuant to 15 U.S.C. 605(b), the Chairman of the Commission certified that the rules would not have a significant economic impact on a substantial number of small entities. This certification was attached to Proposing Release No. 34-44288 (May 9, 2001) as an Appendix. The Commission solicited comments concerning the impact on small entities and the Regulatory Flexibility Act certification, but received no comments.

* * * * *

Title: Options Disclosure Document.

Citation: 17 CFR 230.135b.

Authority: 15 U.S.C. 77b, 15 U.S.C. 77g, 15 U.S.C. 77j, 15 U.S.C. 77s, and 15 U.S.C. 77z-3.

Description: This rule clarifies that an options disclosure document prepared in accordance with Commission rules under the Securities Exchange Act of 1934 is not a prospectus and is not subject to civil liability under Section 12(a)(2) of the Securities Act. This amendment reduces legal uncertainty regarding whether such liability applies to these documents by codifying a long-standing interpretive position taken by the Division of Corporation Finance.

Prior Commission
Determination
Under
5 U.S.C. 605: Pursuant to the Regulatory Flexibility Act (5 U.S.C. § 605(b)), the Chairman of the Commission certified at the proposal stage on July 1, 1998 in Release No. 33-7550 that the rule revisions would not have a significant economic impact on a substantial number of small entities. The Commission solicited comments concerning the impact on small entities and the Regulatory Flexibility Act certification, but received no comments.

By the Commission.

Elizabeth M. Murphy

Elizabeth M. Murphy
Secretary

November 28, 2012

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 68315 / November 29, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-15110

In the Matter of Encore Clean Energy, Inc., Energy & Engine Technology Corp., Equity Media Holdings Corporation, eTotalSource, Inc., Extensions, Inc., Firepond, Inc., and GNC Energy Corporation, Respondents.	ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS AND NOTICE OF HEARING PURSUANT TO SECTION 12(j) OF THE SECURITIES EXCHANGE ACT OF 1934

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against the Respondents named in the caption.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Encore Clean Energy, Inc. ("ECLN") [1] (CIK No. 1036588) is a revoked Nevada corporation located in Dallas, Texas with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). ECLN is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended September 30, 2005, which reported a net loss of $1,398,808 for the prior nine months. As of November 27, 2012, the common stock of ECLN was quoted on OTC Link (formerly

[1] The short form of each issuer's name is also its stock symbol.

"Pink Sheets") operated by OTC Markets Group Inc. ("OTC Link"), had seven market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

2. Energy & Engine Technology Corp. ("EENT") (CIK No. 1121811) is a revoked Nevada corporation located in Plano, Texas with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). EENT is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended September 30, 2005, which reported a net loss of $4,209,104 for the prior nine months. On May 9, 2006, EENT was the subject of an involuntary Chapter 11 petition in the U.S. Bankruptcy Court for the District of Nevada, which was converted to a Chapter 7 petition on December 21, 2006, and was closed on June 3, 2010. As of November 27, 2012, the common stock of EENT was quoted on OTC Link, had seven market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

3. Equity Media Holdings Corporation ("EMDAQ") (CIK No. 1327012) is a void Delaware corporation located in Little Rock, Arkansas with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). EMDAQ is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended September 30, 2008, which reported a net loss of $53,670,790 for the prior nine months. On December 8, 2008, EMDAQ filed a Chapter 11 petition in the U.S. Bankruptcy Court for the Eastern District of Arkansas, which was converted to a Chapter 7 petition on June 21, 2010, and was still pending as of November 27, 2012. As of November 27, 2012, the common stock of EMDAQ was quoted on OTC Link, had six market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

4. eTotalSource, Inc. ("ETLS") (CIK No. 822998) is a delinquent Colorado corporation located in Milwaukee, Wisconsin with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). ETLS is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended September 30, 2008, which reported a net loss of $299,401 for the prior nine months. As of November 27, 2012, the common stock of ETLS was quoted on OTC Link, had twelve market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

5. Extensions, Inc. ("EXTI") (CIK No. 1082121) is a defaulted Nevada corporation located in Houston, Texas with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). EXTI is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended September 30, 2009, which reported a net loss of $49,890 for the prior nine months. As of November 27, 2012, the common stock of EXTI was quoted on OTC Link, had six market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

6. Firepond, Inc. ("FPNDQ") (CIK No. 1012316) is a forfeited Delaware corporation located in Mankato, Minnesota with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). FPNDQ is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended December 31, 2008, which reported a net loss of $4,302,703 for the prior six

months. On March 31, 2009, FPNDQ filed a Chapter 7 petition in the U.S. Bankruptcy Court for the District of Minnesota, which was still pending as of November 27, 2012. As of November 27, 2012, the common stock of FPNDQ was quoted on OTC Link, had eight market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

7. GNC Energy Corporation ("GNCE") (CIK No. 43398) is a void Delaware corporation located in Dallas, Texas with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). GNCE is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended September 30, 2003, which reported a net loss of $70,721 for the prior six months. As of November 27, 2012, the common stock of GNCE was quoted on OTC Link, had six market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

B. DELINQUENT PERIODIC FILINGS

8. As discussed in more detail above, all of the Respondents are delinquent in their periodic filings with the Commission, have repeatedly failed to meet their obligations to file timely periodic reports, and failed to heed delinquency letters sent to them by the Division of Corporation Finance requesting compliance with their periodic filing obligations or, through their failure to maintain a valid address on file with the Commission as required by Commission rules, did not receive such letters.

9. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports, and Rule 13a-13 requires domestic issuers to file quarterly reports.

10. As a result of the foregoing, Respondents failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

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

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke the registration of each class of securities registered pursuant to Section 12 of the Exchange Act of the Respondents identified in Section II hereof, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondents.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened 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 HEREBY FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Respondents fail to file the directed Answers, or fail to appear at a hearing after being duly notified, the Respondents, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondents, 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 Respondents personally or by certified, registered, or Express Mail, or by other means permitted by the Commission Rules of Practice.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 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.

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 68321 / November 29, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-15111

In the Matter of China Wesen Recycling Technology, Inc., Chopin Venture Group, Inc., Cogito Media Group, Inc., Crescendo Acquisition Corp., Crosswave Communications, Inc., Crown International, Inc., and Crysler Corp., Respondents.	ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS AND NOTICE OF HEARING PURSUANT TO SECTION 12(j) OF THE SECURITIES EXCHANGE ACT OF 1934

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against Respondents China Wesen Recycling Technology, Inc., Chopin Venture Group, Inc., Cogito Media Group, Inc., Crescendo Acquisition Corp., Crosswave Communications, Inc., Crown International, Inc., and Crysler Corp.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. China Wesen Recycling Technology, Inc. (CIK No. 1421524) is a Delaware corporation located in Guangzhou, China with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). China Wesen Recycling Technology is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended September 30, 2010, which reported a net loss of over $26,000 for the prior nine months.

2. Chopin Venture Group, Inc. (CIK No. 1140296) is a Nevada corporation located in Abbotsford, British Columbia, Canada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Chopin Venture Group is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended June 30, 2002, which reported a net loss of over $17,000 for the prior six months.

3. Cogito Media Group, Inc. (CIK No. 1420836) is a Colorado corporation located in Montreal, Quebec, Canada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Cogito Media Group is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended November 30, 2010, which reported a net loss of over $19.5 million for the prior nine months.

4. Crescendo Acquisition Corp. (CIK No. 1289813) is a void Delaware corporation located in Furstentum, Liechtenstein with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Crescendo Acquisition is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-KSB for the period ended December 31, 2005, which reported a net loss of over $11,000 for the prior year.

5. Crosswave Communications, Inc. (CIK No. 1119174) is a Japanese corporation located in Tokyo, Japan with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Crosswave Communications is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 20-F/A for the period ended March 31, 2002, which reported a net loss of over $100 million for the prior year.

6. Crown International, Inc. (CIK No. 1125782) is a dissolved Florida corporation located in Toronto, Ontario, Canada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Crown International is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended December 31, 2004, which reported a net loss of over $470,000 for the prior nine months.

7. Crysler Corp. (CIK No. 1172375) is a revoked Nevada corporation located in Calgary, Alberta, Canada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Crysler is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended September 30, 2002, which reported a net loss of $811 for the prior nine months.

B. DELINQUENT PERIODIC FILINGS

8. As discussed in more detail above, all of the Respondents are delinquent in their periodic filings with the Commission, have repeatedly failed to meet their obligations to file timely periodic reports, and failed to heed delinquency letters sent to

them by the Division of Corporation Finance requesting compliance with their periodic filing obligations or, through their failure to maintain a valid address on file with the Commission as required by Commission rules, did not receive such letters.

9. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports, and Rule 13a-13 requires domestic issuers to file quarterly reports.

10. As a result of the foregoing, Respondents failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

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

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke the registration of each class of securities registered pursuant to Section 12 of the Exchange Act of the Respondents identified in Section II hereof, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondents.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened 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 HEREBY FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Respondents fail to file the directed Answers, or fail to appear at a hearing after being duly notified, the Respondents, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondents, may be deemed in default and the proceedings may be determined against them 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 Respondents personally or by certified, registered, or Express Mail, or by other means permitted by the Commission Rules of Practice.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 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.

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

November 29, 2012

In the Matter of **Encore Clean Energy, Inc.,** **Energy & Engine Technology Corp.,** **Equity Media Holdings Corporation,** **eTotalSource, Inc.,** **Extensions, Inc.,** **Firepond, Inc., and** **GNC Energy Corporation,** **File No. 500-1**	**ORDER OF SUSPENSION OF TRADING**

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Encore Clean Energy, Inc. because it has not filed any periodic reports since the period ended September 30, 2005.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Energy & Engine Technology Corp. because it has not filed any periodic reports since the period ended September 30, 2005.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Equity Media Holdings Corporation because it has not filed any periodic reports since the period ended September 30, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of eTotalSource, Inc. because it has not filed any periodic reports since the period ended September 30, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Extensions, Inc. because it has not filed any periodic reports since the period ended September 30, 2009.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Firepond, Inc. because it has not filed any periodic reports since the period ended December 31, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of GNC Energy Corporation because it has not filed any periodic reports since the period ended September 30, 2003.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies. Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EST on November 29, 2012, through 11:59 p.m. EST on December 12, 2012.

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

2

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 68323 / November 29, 2012

INVESTMENT ADVISERS ACT OF 1940
Release No. 3507 / November 29, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-15112

In the Matter of	:	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 15(b) OF THE SECURITIES EXCHANGE ACT OF 1934 AND SECTION 203(f) OF THE INVESTMENT ADVISERS ACT OF 1940, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS**
ANGELO A. ALLECA,	:	
Respondent.	:	

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") against Angelo A. Alleca ("Respondent" or "Alleca").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings and the findings contained in Section III.2 below, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

1. Alleca was the president, chief operating officer, and chief compliance officer of two investment advisers registered with the Commission: Summit Wealth Management, Inc. ("Summit Wealth Management"), based in Atlanta, Georgia, and Summit Wealth Partners, Inc., based in Orlando, Florida. Alleca owned both companies through National Advisory Services, Inc., a holding company. Alleca has been associated with various registered broker-dealers, including G-2 Trading, LLC, and Trend Trader, LLC, and has held FINRA securities licenses including series 3, 7, 8, 9, 10, 24, 28, 55, 63, and 65 licenses. Alleca, 42 years old, is a resident of Buffalo, New York and Atlanta, Georgia.

2. On September 19, 2012, an order was entered by consent against Alleca, permanently enjoining him from future violations of Section 17(a) of the Securities Act of 1933 ("Securities Act"), Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Sections 206(1) and 206(2) of the Advisers Act, in the civil action entitled Securities and Exchange Commission v. Angelo A. Alleca, et al., Civil Action Number 1:12-cv-3261, in the United States District Court for the Northern District of Georgia.

3. The Commission's complaint alleged, in part, as follows: Alleca and Summit Wealth Management offered and sold interests in Summit Investment Fund, LP ("Summit Fund"), which they told their clients was operating as a fund-of-funds – meaning they were investing their money in other funds and investment products rather than directly in stocks and other securities. Alleca, instead, engaged in active securities trading with some of the money he raised from his clients for Summit Fund and he thereby incurred substantial losses. Alleca concealed the Summit Fund trading losses from investors and provided them with false account statements. Alleca subsequently created at least two additional hedge funds to raise money from Summit Wealth Management clients – Private Credit Opportunities Fund, LLC ("Credit Fund") and Asset Class Diversification Fund, LP ("Asset Fund"). Alleca planned to – and did – illegally misappropriate monies raised from the new funds in a Ponzi-like fashion in order to meet redemption requests in Summit Fund. Alleca's plan to cover up the losses in Summit Fund was unsuccessful because Credit Fund and Asset Fund incurred further trading losses. Alleca continued to issue false account statements to investors in Summit Fund, and he also issued false account statements to investors in Credit Fund and Asset Fund in order to hide the actual losses on the clients' investments. Alleca raised approximately $17 million from approximately 200 clients of Summit Wealth Management and dissipated virtually all of this sum in connection with his scheme.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Alleca's Offer.

Accordingly, it is hereby ORDERED pursuant to Section 15(b)(6) of the Exchange Act and Section 203(f) of the Advisers Act that Respondent Alleca be, and hereby is:

barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization; and

barred from participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 68331 / November 30, 2012

INVESTMENT ADVISERS ACT OF 1940
Release No. 3508 / November 30, 3012

ADMINISTRATIVE PROCEEDING
File No. 3-15114

In the Matter of **ANAND SEKARAN,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 15(b) OF THE SECURITIES EXCHANGE ACT OF 1934 AND SECTION 203(f) OF THE INVESTMENT ADVISERS ACT OF 1940, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") against Anand Sekaran ("Sekaran" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, Respondent consents to the Commission's jurisdiction over him and the subject matter of these proceedings and to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of

1934 and Section 203(f) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

1. Sekaran, 44 years old, is a resident of Miami, Florida.

2. Since 1997, Sekaran managed and controlled Wasson Capital Advisors Ltd., an unregistered investment adviser. From March 2011 through July 2011, Sekaran was associated with Tradewire Securities LLC, a registered broker-dealer.

3. On November 26, 2012, a final judgment was entered by consent against Sekaran and Wasson, permanently enjoining them from future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Sections 206(1) and 206(2) of the Advisers Act, in the civil action entitled Securities and Exchange Commission v. Anand Sekaran, et al., Civil Action No. 12-CV-8199, in the United States District Court for the Southern District of New York.

4. The Commission's complaint alleged, inter alia, that Sekaran, as an investment adviser, engaged in fraudulent conduct, including making material misrepresentations to clients, providing fabricated and misleading account statements to clients, and misappropriating client funds.

5. On November 9, 2012, Sekaran pled guilty to, inter alia, one count of securities fraud in violation of 15 U.S.C. §§ 78j(b) and 78ff, before the United States District Court for the Southern District of New York, in United States v. Anand Sekaran, Crim. Information No. 12-CR-821.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Sekaran's Offer.

Accordingly, it is hereby ORDERED pursuant to Section 15(b)(6) of the Exchange Act and Section 203(f) of the Advisers Act, that Respondent Sekaran be, and hereby is:

barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization; and

barred from participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 68327 / November 30, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-15113

In the Matter of **Stephen P. Amella,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 15(b) OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") against Stephen P. Amella ("Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings and the findings contained in Section III.2 below, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

1. Amella, age 41, is a resident of Niles, Illinois. From September 2007 through approximately June 2008, Amella was acting as an unregistered broker by soliciting prospective investors to purchase interests in a real estate joint venture operated by Titan Investment Partners Corp. ("Titan").

2. On September 25, 2012, a judgment was entered by consent against Amella, permanently enjoining him from, among other things, future violations of Section 15(a) of the Exchange Act, in the civil action entitled United States Securities and Exchange Commission v. Amella, et al., Civil Action Number 1:11-CV-6849, in the United States District Court for the Northern District of Illinois.

3. The Commission's complaint alleged that, in connection with the sale of interests in the Titan joint venture for which Amella was paid commissions, Amella falsely stated to investors that the Titan joint venture used investor money to purchase and develop real estate and that investors would receive a guaranteed 10% monthly return on their investments. The complaint also alleged that Amella failed to conduct a reasonable investigation into the legitimacy of the joint venture and the accuracy of his representations. The complaint alleged that the joint venture interests Amella sold and offered to sell were securities.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Amella's Offer.

Accordingly, it is hereby ORDERED pursuant to Section 15(b)(6) of the Exchange Act that Respondent Amella be, and hereby is:

> barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization; and
>
> barred from participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary