SECURITIES AND EXCHANGE COMMISSION

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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 JO WHITE, CHAIR

LUIS A. AGUILAR, COMMISSIONER

DANIEL M. GALLAGHER, COMMISSIONER

KARA M. STEIN, COMMISSIONER

MICHAEL S. PIWOWAR, COMMISSIONER

(71 DOCUMENTS)

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 71234 / January 6, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15665

In the Matter of China Metallic Resources, Inc., China Timber Work Enterprises, Inc., Linda Illumination, Inc., and Premier International Hotel Group, 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 China Metallic Resources, Inc., China Timber Work Enterprises, Inc., Linda Illumination, Inc., and Premier International Hotel Group, Inc.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. China Metallic Resources, Inc. (CIK No. 1445191) is a void Delaware corporation located in Kowloon, Hong Kong with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). China Metallic 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, 2010, which reported a net loss of $500 for the prior three months.

2. China Timber Work Enterprises, Inc. (CIK No. 1445188) is a void Delaware corporation located in Kowloon, Hong Kong with a class of securities registered with the

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Commission pursuant to Exchange Act Section 12(g). China Timber 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, 2010, which reported a net loss of $500 for the prior three months.

3. Linda Illumination, Inc. (CIK No. 1476678) is a void Delaware corporation located in Guangdong, China with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Linda Illumination 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 $106,605 for the prior nine months.

4. Premier International Hotel Group, Inc. (CIK No. 1503508) is a revoked Nevada corporation located in Reno, Nevada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Premier 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 $1,306 for the prior three months.

B. DELINQUENT PERIODIC FILINGS

5. 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.

6. 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.

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

美利坚合众国
证券交易委员会

1934 年证券交易法
发行编号

行政程序
文档编号

关于

中国金属资源有限公司（China Metallic Resources, Inc.），
中国木材加工实业有限公司（China Timber Work Enterprises, Inc.），
广州林达照明工业有限公司（Linda Illumination, Inc.），和
Premier International Hotel Group, Inc.，

答辩人

依据《1934 年证券交易法》第 12 条 (j) 款启动行政程序的指令和听证通知书

第一部分

证券交易委员会（"委员会"）认为，为保护投资者而依据《1934 年证券交易法》（"交易法"）第 12 条 (j)款在此向答辩人中国金属资源有限公司（China Metallic Resources, Inc.）、中国木材加工实业有限公司（China Timber Work Enterprises, Inc.）、广州林达照明工业有限公司（Linda Illumination, Inc.）以及 Premier International Hotel Group, Inc.启动公共行政程序是必要且适当的。

第二部分

经过调查，执法司指控如下：

A. 答辩人

1. 中国金属资源有限公司（China Metallic Resources, Inc.）（CIK 编号 1445191）是一家位于香港九龙的无效的特拉华州公司，依据交易法第 12 条 (g) 款在委员会登记了一类证券。中国金属（China Metallic）怠于向委员会提交定期申报，自提交了截至 2010 年 10 月 31 日的表 10-Q，报告前三个月净亏损为 500 美元后，其再未提交任何定期申报。

2. 中国木材加工实业有限公司（China Timber Work Enterprises, Inc.）（CIK 编号 1445188）是一家位于香港九龙的无效的特拉华州公司，依据交易法第 12 条 (g) 款在委员会登记了一类证券。中国木材（China Timber）怠于向委员会提交定期申报，自提交了截至 2010 年 10 月 31 日的表 10-Q，报告前三个月净亏损为 500 美元后，其再未提交任何定期申报。

3. 广州林达照明工业有限公司（Linda Illumination, Inc.）（CIK 编号 1476678）是一家位于中国广东的无效的特拉华州公司，依据交易法第 12 条 (g) 款在委员会登记了一类证券。林达照明（Linda Illumination）怠于向委员会提交定期申报，自提交了截至 2010 年 9 月 30 日的表 10-Q，报告前九个月净亏损为 106,605 美元后，其再未提交任何定期申报。

4. Premier International Hotel Group, Inc.（CIK 编号 1503508）是一家位于内华达里诺的被撤销的内华达州公司，依据交易法第 12 条 (g) 款在委员会登记了一类证券。Premier 怠于向委员会提交定期申报，自提交了截至 2010 年 11 月 30 日的表 10-Q，报告前三个月净亏损为 1,306 美元后，其再未提交任何定期申报。

B. 怠于提交定期申报

5. 如上文详述， 所有答辩人均怠于向委员会定期申报，已经多次不履行其按时提交定期申报的义务，且对委员会公司财务部门发出的违规告知函未能给予应有的注意，或者由于其未按照委员会规则保持一个有效的文件收发地址，而没有收到上述函件。

6. 交易法第 13 条 (a) 款及据此颁布的规则要求，依交易法第 12 条登记的证券发行人，应向委员会定期申报当前准确信息，即使该登记是在第 12 条 (g) 款下自动形成的。具体来说，规则 13a-1 要求发行人提交年度报告，规则 13a-13 要求国内发行人提交季度报告。

7. 基于以上原因，答辩人违反了交易法第 13 条 (a) 款及规则 13a-1 和/或 13a-13。

第三部分

鉴于执法司提出的指控，委员会认为，为保护投资者而提请裁决公共行政程序是必要且适当的。

A.　　本文第二部分的指控是否属实以及，与此相关的，给答辩人就上述指控提出任何抗辩的机会；和

B.　　为保护投资者而对本文第二部分认定的答辩人、交易法规则 12b-2 或 12g-3 项下的任何继承者、以及任何答辩人的任何新的公司，依交易法第 12 条所登记的每一类证券，予以不超过十二个月的暂停或者撤销登记，是否必要且适当。

第四部分

兹指令，在依委员会《行为规范》第 110 条[17 C.F.R. § 201.110] 下达进一步指令来任命行政法法官之前，将在指定的时间和地点举行公开听证，对本文第三部分所述问题进行取证。

兹进一步指令，根据委员会《行为规范》第 220 条(b)款 [17 C.F.R. §201.220(b)]，答辩人应在本指令送达后十(10)日内提交对于本指令所述指控的答辩。

依据委员会《行为规范》第 155 条(a)款、第 220 条(f)款、第 221 条(f)款、以及第 310 条[17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), 201.310]，如果答辩人在被正式通知后未能提交该等答辩或者未能出席听证，那么答辩人、交易法规则 12b-2 或 12g-3 项下的任何继承者、以及任何答辩人的任何新的公司，会被视为缺席听证，且在审议本指令时结果会对他们不利，本指令所述指控可能会被裁决属实。

本指令须当面，或通过证实、登记，或经特快专递，或通过委员会《行为规范》允许的其他方式，立即送达答辩人。

进一步指令，依据委员会《行为规范》第 360 条(a)款(2)项[17 C.F.R. §201.360(a)(2)]，行政法法官应在不迟于本指令送达之日起第 120 天作出初步裁决。

在无适当豁免的情况下，任何参与行使本次或事实上与之相关的任何调查或控诉职能的委员会高级职员或雇员，不得被允许参加或建言对本次事件的裁决，除非是经通知作为本次程序的证人或律师。本次程序不属于《行政程序法》第 551 条所指的“规则制定”， 本程序不受第 553 条 所限制，任何最终的委员会行动生效日期不得予以延迟。

委员会发布。

Elizabeth M. Murphy
秘书

送达清单

委员会《行为规范》第 141 条规定，秘书或经委员会正式授权的其他职员，应将依据《1934 年证券交易法》第 12 条 (j) 款启动行政程序的指令和听证通知书的副本（简称“指令”），送达答辩人及其法定代理人。

所附指令已被送至如下各方和其它有权知晓的人士：

Brenda P. Murray 法官
首席行政法法官
证券交易委员会
100 F St., N.E.
Washington, DC 20549-2557

Neil J. Welch, Jr., Esq.
执行司
证券交易委员会
100 F St., N.E.
Washington, DC 20549-6010

通过国际快递优先邮件：
中国金属资源有限公司（China Metallic Resources, Inc.）
香港九龙长沙湾长裕街 15 号
永明工业中心 4 层 405 室

通过国际快递优先邮件：
中国木材加工实业有限公司（China Timber Work Enterprises, Inc.）
香港九龙长沙湾长裕街 15 号
永明工业中心 4 层 405 室

根据《海牙公约》送达：
广州林达照明工业有限公司（Linda Illumination, Inc.）
中国广东省广州市
白云区人和镇
第二经济合作社
工业园 1 号
邮编： 510470

通过快递优先邮件：
Premier International Hotel Group, Inc.
4790 Caughlin Parkway, Suite 387
Reno, NV 89519

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 71235 / January 6, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15666

In the Matter of **Asia Health & Beauty Treasure, Inc., Asia Growth Private Equity 1, Ltd., Asia Growth Private Equity 2, Ltd., Asia Growth Private Equity 3, Ltd., Asia Private Equity SPAC 1, Asia Private Equity SPAC 2, and Asia Private Equity SPAC 3,** **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 Asia Health & Beauty Treasure, Inc., Asia Growth Private Equity 1, Ltd., Asia Growth Private Equity 2, Ltd., Asia Growth Private Equity 3, Ltd., Asia Private Equity SPAC 1, Asia Private Equity SPAC 2, and Asia Private Equity SPAC 3.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Asia Health & Beauty Treasure, Inc. (CIK No. 1445194) is a void Delaware corporation located in Kowloon, Hong Kong with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Asia Health 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, 2010, which reported a net loss of $500 for the prior three months.

2. Asia Growth Private Equity 1, Ltd. (CIK No. 1475958) is a delinquent British Virgin Islands corporation located in Hong Kong with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Asia Growth Private Equity 1 is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 20-F for the period ended September 30, 2010, which reported a net loss of $245,800 for the prior twelve months.

3. Asia Growth Private Equity 2, Ltd. (CIK No. 1475959) is a delinquent British Virgin Islands corporation located in Hong Kong with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Asia Growth Private Equity 2 is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 20-F for the period ended September 30, 2010, which reported a net loss of $245,800 for the prior twelve months.

4. Asia Growth Private Equity 3, Ltd. (CIK No. 1475960) is a delinquent British Virgin Islands corporation located in Hong Kong with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Asia Growth Private Equity 3 is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 20-F for the period ended September 30, 2010, which reported a net loss of $245,800 for the prior twelve months.

5. Asia Private Equity SPAC 1 (CIK No. 1475955) is an inactive British Virgin Islands corporation located in Hong Kong with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Asia Private Equity SPAC 1 is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 20-F for the period ended September 30, 2010, which reported a net loss of $244,617 for the prior twelve months.

6. Asia Private Equity SPAC 2 (CIK No. 1475956) is a delinquent British Virgin Islands corporation located in Hong Kong with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Asia Private Equity SPAC 2 is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 20-F for the period ended September 30, 2010, which reported a net loss of $244,617 for the prior twelve months.

7. Asia Private Equity SPAC 3 (CIK No. 1475957) is a delinquent British Virgin Islands corporation located in Hong Kong with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Asia Private Equity SPAC 3 is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 20-F for the period ended September 30, 2010, which reported a net loss of $244,617 for the prior twelve 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/or 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 Gallagher
Commissioner Piwowar
not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 71240 / January 6, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15668

In the Matter of **Axius Holdings, LLC and Henry Robertelli,** **Respondents.**	**ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO 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 public cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act") against Axius Holdings, LLC ("Axius") and Henry Robertelli ("Robertelli") (collectively, "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 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 a Cease-and-Desist Order ("Order"), as set forth below.

III.

Respondents

1. Henry Robertelli ("Robertelli"), age 42, resides in Atlanta, Georgia. Robertelli is the owner, sole employee, and managing member of Axius Holdings, LLC.

2. Axius Holdings, LLC ("Axius") is a Delaware limited liability company with its principal place of business located in Atlanta, Georgia. Robertelli serves as the company's owner, sole employee, and managing member. Robertelli operates Axius as a proprietary trading firm through which he invests his own capital. Robertelli (1) has discretionary trading authority over various brokerage accounts held in the name of, and for the benefit of, Axius, (2) makes all investment decisions for Axius, and (3) executes all trades for the company.

Background

3. Rule 105 of Regulation M ("Rule 105") of the Exchange Act makes it unlawful for a person to purchase securities in a public offering (underwritten on a firm commitment basis) if that person sold short the security that is the subject of the offering during the restricted period defined in the rule. 17 C.F.R. § 242.105; see Short Selling in Connection with a Public Offering, Exchange Act Rel. No. 56206, 72 Fed. Reg. 45094 (Aug. 10, 2007) (effective Oct. 9, 2007). Rule 105 defines the "restricted period" as the shorter of the period: (1) beginning five business days before the pricing of the offered securities and ending with such pricing; or (2) beginning with the initial filing of covered registration statement or notification on Form 1-A or Form 1-E and ending with the pricing.

4. Rule 105 applies irrespective of the short seller's intent in effectuating the short sale. Id. at 45103. "The prohibition on purchasing offered securities . . . provides a bright line demarcation of prohibited conduct consistent with the prophylactic nature of Regulation M." Id. at 45096.

Respondents' Violation of Rule 105 of Regulation M

5. Between June 2008 and March 2010, at the direction of Robertelli, Axius participated in 13 offerings covered by Rule 105 (hereinafter collectively referred to as "covered" offerings) by companies whose stock Axius shorted at the direction of Robertelli during the applicable restricted periods.

6. On June 18, 2008, at the direction of Robertelli, Axius sold short 7,000 shares of Atlas Pipeline Partners, LP ("APL") at prices ranging between \$37.52 and \$37.90. On June 18, 2008, APL announced the pricing of a covered offering of 5 million shares of its common stock at \$37.52 per share. At the direction of Robertelli, Axius received an allocation of 1,500 shares in the offering. The associated profits were \$93.43.

7. On July 8 and July 9, 2008, at the direction of Robertelli, Axius sold short 7,800 shares of Chesapeake Energy Corp ("CHK") at prices ranging between $57.72 and $60.50. On July 9, 2008, CHK announced the pricing of a covered offering of 25 million shares of its common stock at $57.25 per share. At the direct of Robertelli, Axius received an allocation of 300 shares in the offering. The associated profits were $374.27.

8. On November 5, 2008, at the direction of Robertelli, Axius sold short 12,100 shares of Pepco Holdings, Inc. ("POM") at prices ranging between $17.57 and $18.30 per share. On November 6, 2008, POM announced the pricing of a covered offering of 14 million shares of its common stock at $16.50 per share. At the direction of Robertelli, Axius received an allocation of 5,000 shares in the offering. The associated profits were $6,978.51.

9. From October 31 through November 6, 2008, at the direction of Robertelli, Axius sold short 19,000 shares of Wells Fargo & Co. ("WFC") at prices ranging between $28.50 and $31.07 per share. On November 6, 2008, WFC announced the pricing of a covered offering of 407.5 million shares of its common stock at $27.00 per share. At the direction of Robertelli, Axius received an allocation of 10,500 shares in the offering. The associated profits were $19,486.34.

10. On November 10, 2009, at the direction of Robertelli, Axius sold short 1,400 shares of Nustar Energy ("NS") at prices ranging between $52.10 and $52.11 per share. On November 10, 2009, NS announced the pricing of a covered offering of 5 million shares of its common stock at $52.45 per share. At the direction of Robertelli, Axius received an allocation of 1,000 shares in the offering. There were no associated profits.

11. On November 17, 2009, at the direction of Robertelli, Axius sold short 250 shares of American Water Works Co. Inc. ("AWK") at prices ranging between $20.25 and $21.60 per share. On November 17, 2009, AWK announced the pricing of a covered offering of 37.4 million shares of its common stock at $21.63 per share. At the direction of Robertelli, Axius received an allocation of 3,200 shares in the offering. There were no associated profits.

12. On December 7, 2009, at the direction of Robertelli, Axius sold short 12,500 shares of New York Community Bancorp, Inc. ("NYB") at prices ranging between $13.10 and $14.00 per share. On December 7, 2009, NYB announced the pricing of a covered offering of 60 million shares of its common stock at $13.00 per share. At the direction of Robertelli, Axius received an allocation of 5,000 shares in the offering. The associated profits were $1,844.00.

13. On December 7, 2009, at the direction of Robertelli, Axius sold short 500 shares of Medidata Solutions, Inc. ("MDSO") at prices ranging between $16.00 and $16.02 per share. On December 9, 2009, MDSO announced the pricing of a covered offering of 5.5 million shares of its common stock at $15.00 per share. At the direction of Robertelli,

Axius received an allocation of 2,500 shares in the offering. The associated profits were $501.60.

14. On December 9, 2009, at the direction of Robertelli, Axius sold short 2,800 shares of Apollo Investment Corp ("AINV") at prices ranging between $9.80 and $9.85 per share. On December 9, 2009, AINV announced the pricing of a covered offering of 10 million shares of its common stock at $9.82 per share. At the direction of Robertelli, Axius received an allocation of 3,000 shares in the offering. The associated profits were $89.00.

15. On January 12, 2010, at the direction of Robertelli, Axius sold short 3,000 shares of Orient-Express Hotel, Ltd. ("OEH") at prices ranging between $10.05 and $10.37 per share. On January 12, 2010, OEH announced the pricing of a covered offering of 12 million shares of its common stock at $10.00 per share. At the direction of Robertelli, Axius received an allocation of 300 shares in the offering. The associated profits were $31.00.

16. On January 12, 2010, at the direction of Robertelli, Axius sold short 8,100 shares of Government Properties Income Trust ("GOV") at prices ranging between $22.35 and $22.90 per share. On January 14, 2010, GOV announced the pricing of a covered offering of 8.5 million shares of its common stock at $21.50 per share. At the direction of Robertelli, Axius received an allocation of 1,600 shares in the offering. The associated profits were $1,513.09.

17. On January 20, 2010, at the direction of Robertelli, Axius sold short 2,900 shares of Charles Schwab Corp ("SCHW") at a price of $19.00 per share. On January 20, 2010, SCHW announced the pricing of a covered offering of 26.3 million shares of its common stock at $19.00 per share. At the direction of Robertelli, Axius received an allocation of 2,400 shares in the offering. There were no associated profits.

18. On March 1, 2010, at the direction of Robertelli, Axius sold short 4,000 shares of LTX-Credence Corp ("LTXC") at prices ranging between $2.83 and $2.95 per share. On March 2, 2010, LTXC announced the pricing of a covered offering of 15.5 million shares of its common stock at $2.85 per share. At the direction of Robertelli, Axius received an allocation of 3,500 shares in the offering. The associated profits were $192.50.

19. Through the trading described in paragraphs 6 through 18, Axius and Robertelli realized profits and obtained related benefits totaling approximately $31,103.74.

20. As a result of this conduct, Respondents violated Rule 105 of Regulation M under the Exchange Act.

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 21C of the Exchange Act, Respondents Axius and Robertelli cease and desist from committing or causing any violations and any future violations of Rule 105 of Regulation M of the Exchange Act.

B. Respondents shall, jointly and severally, within 30 days of the entry of this Order, pay disgorgement of $31,103.74, prejudgment interest of $3,778.07, and a civil money penalty in the amount of $26,000 to the Securities and Exchange Commission. 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) Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;[1]
(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

[1] The minimum threshold for transmission of payment electronically is $1,000,000. For amounts below the threshold, Respondents must make payments pursuant to option (2) or (3) above.

Payments by check or money order must be accompanied by a cover letter identifying Axius and Robertelli 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 William P. Hicks, Division of Enforcement, Securities and Exchange Commission, 950 East Paces Ferry Rd., Suite 900, Atlanta, GA, 30326.

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

Release No. 34-71238

Responsibilities of the General Counsel

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission ("Commission") is amending its rules to reflect that the Commission's General Counsel is responsible for providing advice to Commission attorneys on professional responsibility issues relating to their official duties and investigating allegations of professional misconduct by Commission staff and, where appropriate, making referrals to state professional boards or societies.

EFFECTIVE DATE: [Insert date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Richard M. Humes, Associate General Counsel, at (202) 551-5140, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549; Shira Pavis Minton, Ethics Counsel, at (202) 551-7938, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549.

SUPPLEMENTARY INFORMATION

I. Discussion

These amendments conform the Commission's regulations, in part 200 of Title 17 of the Code of Federal Regulations, to the current responsibilities of the General Counsel. They do so by adding language that describes the General Counsel's responsibility for providing advice to Commission attorneys on professional responsibility issues relating to their official duties, investigating allegations of professional misconduct by

Commission staff and, where appropriate, making referrals to state professional boards or societies. In addition, the amendments clarify that the Ethics Counsel is not responsible for investigating and potentially referring allegations of professional misconduct by Commission staff. Finally, the amendments include several minor corrections to provisions that relate to the responsibilities of the Ethics Counsel.

II. Related Matters

A. Administrative Procedure Act and Other Administrative Laws

The Commission has determined that these amendments to its rules relate solely to the agency's organization, procedure, or practice. Accordingly, the provisions of the Administrative Procedure Act regarding notice of proposed rulemaking and opportunity for public participation are not applicable.[1] The Regulatory Flexibility Act, therefore, does not apply.[2] Because these rules relate solely to the agency's organization, procedure, or practice and do not substantially affect the rights or obligations of non-agency parties, they are not subject to the Small Business Regulatory Enforcement Fairness Act.[3] Finally, these amendments do not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1995, as amended.[4]

B. Consideration of Burden on Competition

Section 23(a)(2) of the Exchange Act requires the Commission, in making rules pursuant to any provision of the Exchange Act, to consider among other matters the

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[1] 5 U.S.C. 553(b).

[2] 5 U.S.C. 601 - 612.

[3] 5 U.S.C. 804.

[4] 44 U.S.C. 3501 - 3520.

impact any such rule would have on competition. The Commission does not believe that the amendments that the Commission is adopting today will have any impact on competition.

STATUTORY AUTHORITY

The amendments to the Commission's rules are adopted pursuant to 15 U.S.C. 77o, 77s, 77sss, 78d, 78d-1, 78d-2, 78w, 78ll(d), 78mm, 80a-37, 80b-11, and 7202.

List of Subjects in 17 CFR Part 200

Administrative practice and procedure, Authority delegations (Government agencies), Organization and functions (Government agencies).

TEXT OF AMENDMENTS

In accordance with the preamble, the Commission hereby amends Title 17, Chapter II of the Code of Federal Regulations as follows:

PART 200 – ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

Subpart A–Organization and Program Management

1. The authority citation for Part 200, Subpart A, continues to read, in part, as follows:

Authority: 15 U.S.C. 77o, 77s, 77sss, 78d, 78d-1, 78d-2, 78w, 78ll(d), 78mm, 80a-37, 80b-11, 7202, and 7211 et seq., unless otherwise noted.

* * * * *

2. In § 200.21 paragraph (a), after the fourth sentence, that begins with "In addition, he or she is responsible", add the sentences "The General Counsel is responsible for providing advice to Commission attorneys on professional responsibility issues relating to their official duties. The General Counsel is further responsible for

investigating allegations of professional misconduct by Commission staff and, where appropriate, making referrals to state professional boards or societies."

3. In § 200.21a:

a. In paragraph (a), remove the phrase "Office of Administrative and Personnel Management," and add in its place, "Office of Human Resources, the Office of Government Ethics,";

b. In paragraph (b)(1), at the end of the paragraph, add the phrase "that relate to the Commission's Ethics Program";

c. In paragraph (b)(2), at the end of the paragraph, add the phrase ", which the Ethics Counsel shall refer to the General Counsel";

d. Remove paragraph (b)(7);

e. Redesignate paragraph (b)(8) as (b)(7).

Subpart M–Regulation Concerning Conduct of Members and Employees and Former Members and Employees of the Commission

4. The authority citation for Part 200, Subpart M, continues to read as follows:

Authority: 15 U.S.C. 77s, 77sss, 78w, 80a-37, 80b-11; E.O. 11222, 3 CFR, 1964-1965 Comp., p. 36; 5 CFR 735.104 and 5 CFR 2634; and 5 CFR 2635, unless otherwise noted.

5. In § 200.735-15:

a. Remove paragraph (b).

b. Redesignate paragraphs (c), (d) (e) and (f) as paragraphs (b), (c), (d) and (e), respectively.

c. In the first sentence of newly redesignated paragraph (b), remove the words "any Deputy Counselor or."

d. In newly redesignated paragraph (c), remove the words "and Deputy Counselors,". Also in newly redesignated paragraph (c), remove the words "they receive" and add in their place "he or she receives" wherever they appear.

By the Commission.

Elizabeth M. Murphy

Elizabeth M. Murphy
Secretary

Dated: January 6, 2014

Commissioner Gallagher
Commissioner Piwowar
not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 71239 / January 6, 2014

INVESTMENT ADVISERS ACT OF 1940
Release No. 3750 / January 6, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15667

In the Matter of **John Durrett,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934 AND SECTION 203(f) 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 Section 21C of the Securities Exchange Act of 1934 ("Exchange Act") and Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") against John Durrett ("Durrett" 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, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934 and Section 203(f) 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.

Respondent

1. John Durrett ("Durrett"), 45, currently resides in Kansas City, Missouri. From approximately 2003 to 2010, Durrett was the owner and principal of Pembroke Partners, LLC, a sole proprietorship (and unregistered investment adviser) through which Durrett managed brokerage accounts for Pembroke Capital Partners Fund I, L.P., an affiliated investment fund, as well as two separate trusts of his family. Prior to forming Pembroke Partners, LLC in 2003, Durrett worked over time as a registered representative of three different registered broker-dealers. Durrett held Series 7, 24, 27, 53 and 63 securities licenses.

Other Related Entities

2. Pembroke Partners, LLC ("Pembroke Partners") was an unregistered investment adviser firm operated by Durrett as a Georgia sole proprietorship with its principal place of business located in Atlanta, Georgia. Pembroke Partners was dissolved in early 2011.

3. Pembroke Capital Partners Fund I, L.P. ("Pembroke Capital") was an unregistered investment fund structured as a Georgia limited partnership for which Pembroke Partners served as the general partner and investment adviser. Pembroke Capital dissolved in late 2010.

Background

4. Rule 105 of Regulation M ("Rule 105") of the Exchange Act was amended in 2007 in order to address the proliferation of trading strategies designed to conceal violations of the prior rule. See Short Selling in Connection with a Public Offering, Exchange Act Rel. No. 56206, 72 Fed. Reg. 45094 (Aug. 10, 2007) (effective Oct. 9, 2007).

As amended, Rule 105 makes it unlawful for a person to purchase securities in a public offering if that person sold short the security that is the subject of the offering during the restricted period defined in the rule. 17 C.F.R. § 242.105; Rule 105 defines the "restricted period" as the shorter of the period: (1) beginning five business days before the pricing of the offered securities and ending with such pricing; or (2) beginning with the initial filing of covered registration statement or notification on Form 1-A or Form 1-E and ending with the pricing.

5. Rule 105 applies irrespective of the short seller's intent in effectuating the short sale. Id. at 45103. "The prohibition on purchasing offered securities . . . provides a bright line demarcation of prohibited conduct consistent with the prophylactic nature of Regulation M." Id. at 45096.

Structure and Operation of Pembroke Partners, LLC

6. Durrett formed Pembroke Partners, an unregistered investment adviser firm, as a Georgia sole proprietorship in 2003. As the founder, owner, and sole principal of Pembroke Partners, Durrett had discretionary trading authority, made all investment decisions, and executed trades in individual securities for the three managed accounts (the "managed accounts"), including a brokerage account for Pembroke Capital Partners Fund I, L.P. ("Pembroke Capital"), an investment fund for which Pembroke Partners served as the general partner, as well as two brokerage accounts held in the name of, and for the benefit of, separate trusts of his family. Through Pembroke Partners, Durrett received advisory fees for managing the three accounts. At all times during its operation, Pembroke Partners maintained less than $5 million in assets under management across its three managed accounts.

7. Durrett employed the same "long-short" trading strategy for each of Pembroke Partners' managed accounts. In order to take advantage of anticipated downward pricing pressure, Durrett would short the stock of companies filing amendments to shelf registration statements, initial Well-Known Seasoned Issuer registration statements, or related documents indicating upcoming follow-on or secondary offerings (hereinafter collectively referred to as "covered offerings"). In certain instances, at Durrett's direction, the managed accounts also received allocations in same companies' covered offerings.

8. Durrett typically coordinated the trading activity for the managed accounts by shorting the same companies' stock and participating in the same related covered offerings. As the only person making investment decisions and executing trades for Pembroke Partners' managed accounts, Durrett was fully aware of all securities positions, investment decisions, and related trading matters for each of the accounts. In some instances, at Durrett's direction, each of the managed accounts would sell short the same companies' stock and also receive allocations in the related covered offerings. In other instances, at Durrett's direction, the shorting activity and offering participation took place in different managed accounts.

Respondent's Violation of Rule 105 of Regulation M

9. In connection with 15 covered offerings that took place between May 2008 and September 2010, Durrett violated Rule 105 by shorting the issuing companies' shares in one or more of the managed accounts during the applicable restricted periods and also participating in the covered offerings through one or more of the managed accounts.

10. On May 6, 2008, Durrett sold short a total of 6,600 shares of Federal National Mortgage Association ("Fannie Mae" or "FNMA") in one or more of the managed accounts at prices ranging between $25.50 and $30.76 per share. On May 8, 2008, FNMA announced the pricing of a covered offering of 82 million shares of its common stock at $27.50 per share. At Durrett's direction, one or more of the managed accounts received a total allocation of 2,600 shares in the offering.

11. On September 9, 2008, Durrett sold short a total of 5,000 shares of Kimco Realty ("KIM") in one or more of the managed accounts at a price of $38.35 per share. On September 9, 2008, KIM announced the pricing of a covered offering of 10 million shares of its common stock at $37.10 per share. At Durrett's direction, one or more of the managed accounts received a total allocation of 13,500 shares in the offering.

12. On November 17, 2009, Durrett sold short a total of 7,500 shares of Longtop Financial Technologies, Ltd. ("LFT") in one or more of the managed accounts at prices ranging between $30.25 and $32.18 per share. On November 17, 2009, LFT announced the pricing of a covered offering of 3.7 million shares of its common stock at $31.25 per share. At Durrett's direction, one or more of the managed accounts received a total allocation of 200 shares in the offering.

13. On December 7, 2009, Durrett sold short a total of 11,800 shares of Triangle Capital Corporation ("TCAP") in one or more of the managed accounts at prices ranging between $12.50 and $12.90 per share. On December 8, 2009, TCAP announced the pricing of a covered offering of 1.5 million shares of its common stock at $12.00 per share. At Durrett's direction, one or more of the managed accounts received a total allocation of 25,000 shares in the offering.

14. On December 10, 2009, Durrett sold short a total of 5,000 shares of Dendreon Corporation ("DNDN") in one or more of the managed accounts at prices ranging between $26.10 and $26.15 per share. On December 10, 2009, DNDN announced the pricing of a covered offering of 15 million shares of its common stock at $24.75 per share. At Durrett's direction, one or more of the managed accounts received a total allocation of 1,300 shares in the offering.

15. On January 11, 2010, Durrett sold short a total of 8,000 shares of Invesco Mortgage Capital, Inc. ("IVR") in one or more of the managed accounts at prices ranging between $21.91 and $22.20 per share. On January 11, 2010, IVR announced the pricing of a covered offering of 7 million shares of its common stock at $21.25 per share. At

Durrett's direction, one or more of the managed accounts received a total allocation of 3,200 shares in the offering.

16. On January 12, 2010, Durrett sold short a total of 3,800 shares of Main Street Capital Corporation ("MAIN") in one or more of the managed accounts at prices ranging between $15.55 and $15.92 per share. On January 13, 2010, MAIN announced the pricing of a covered offering of 2.5 million shares of its common stock at $14.75 per share. At Durrett's direction, one or more of the managed accounts received a total allocation of 26,150 shares in the offering.

17. On January 12, 2010, Durrett sold short a total of 8,000 shares of Government Properties Income Trust ("GOV") in one or more of the managed accounts at prices ranging between $22.36 and $22.51 per share. On January 14, 2010, GOV announced the pricing of a covered offering of 8.5 million shares of its common stock at $21.50 per share. At Durrett's direction, one or more of the managed accounts received a total allocation of 300 shares in the offering.

18. On January 19 and 21, 2010, Durrett sold short a total of 25,100 shares of Centene Corporation ("CNC") in one or more of the managed accounts at prices ranging between $19.30 and $20.90 per share. On January 21, 2010, CNC announced the pricing of a covered offering of 5 million shares of its common stock at $19.25 per share. At Durrett's direction, one or more of the managed accounts received a total allocation of 1,500 shares in the offering.

19. On January 25 and 26, 2010, Durrett sold short a total of 14,600 shares of Ares Capital Corporation ("ARCC") in one or more of the managed accounts at prices ranging between $12.92 and $13.165 per share. On January 26, 2010, ARCC announced the pricing of a covered offering of 21 million shares of its common stock at $12.75 per share. At Durrett's direction, one or more of the managed accounts received a total allocation of 15,800 shares in the offering.

20. On March 17, 2010, Durrett sold short a total of 4,000 shares of Hartford Financial Services Group ("HIG") in one or more of the managed accounts at a price of $28.50 per share. On March 17, 2010, HIG announced the pricing of a covered offering of 52.25 million shares of its common stock at $27.75 per share. At Durrett's direction, one or more of the managed accounts received a total allocation of 1,900 shares in the offering.

21. On April 12, 2010, Durrett sold short a total of 10,000 shares of Compass Diversified ("CODI") in one or more of the managed accounts at prices ranging between $16.00 and $16.05 per share. On April 13, 2010, CODI announced the pricing of a covered offering of 6.4 million shares of its common stock at $15.10 per share. At Durrett's direction, one or more of the managed accounts received a total allocation of 22,300 shares in the offering.

22. On May 5, 2010, Durrett sold short a total of 17,100 shares of Radian Group, Inc. ("RDN") in one or more of the managed accounts at prices ranging between

$11.74 and $12.50 per share. On May 5, 2010, RDN announced the pricing of a covered offering of 50 million shares of its common stock at $11.00 per share. At Durrett's direction, one or more of the managed accounts received a total allocation of 900 shares in the offering.

23. On August 16, 2010, Durrett sold short a total of 5,800 shares of Main Street Capital Corporation ("MAIN") in one or more of the managed accounts at an average price of $15.73 per share. On August 17, 2010, MAIN announced the pricing of a covered offering of 2.8 million shares of its common stock at $15.00 per share. At Durrett's direction, one or more of the managed accounts received a total allocation of 15,000 shares in the offering.

24. On September 16, 2010, Durrett sold short a total of 10,000 shares of Apollo Commercial Real Estate Finance, Inc. ("ARI") in one or more of the managed accounts at prices ranging between $16.50 and $16.53 per share. On September 16, 2010, ARI announced the pricing of a covered offering of 6 million shares of its common stock at $16.00 per share. At Durrett's direction, one or more of the managed accounts received a total allocation of 700 shares in the offering.

25. Through the trading described in paragraphs 10 to 24, the managed accounts realized profits and obtained related benefits totaling $44,729.02.

26. As a result of this conduct, Respondent willfully[1] violated Rule 105 of Regulation M under the Exchange Act.

IV.

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

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Durrett cease and desist from committing or causing any violations and any future violations of Rule 105 of Regulation M of the Exchange Act.

B. Durrett is censured.

C. Durrett shall, within 30 days of the entry of this Order, pay disgorgement of $44,729.02, prejudgment interest of $4,442.04, and a civil money penalty in the amount of

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[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)). 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)).

$26,000 to the Securities and Exchange Commission. 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]
(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 Durrett 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 William P. Hicks, Division of Enforcement, Securities and Exchange Commission, 950 East Paces Ferry Rd., Suite 900, Atlanta, GA, 30326.

By the Commission.

Elizabeth M. Murphy
Secretary

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

[2] The minimum threshold for transmission of payment electronically is $1,000,000. For amounts below the threshold, Respondent must make payments pursuant to option (2) or (3) above.

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 71241 / January 7, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15669

In the Matter of	ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS AND NOTICE OF HEARING PURSUANT TO SECTION 12(j) OF THE SECURITIES EXCHANGE ACT OF 1934
Environmental Energy Services, Inc., IDI Global, Inc., Inform Worldwide Holdings, Inc., Iptimize, Inc., NGEN, Inc. (a/k/a Nanogen, Inc.), and Patron Systems, Inc. Respondents.	

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. Environmental Energy Services, Inc. ("EESV")[1] (CIK No. 748055) is a void Delaware corporation located in Boise, Idaho with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). EESV 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 applicable to common shareholders of $2,176,258 for the prior nine months. As of January 2, 2014, the common stock of EESV was quoted on OTC Link (formerly "Pink Sheets") operated by OTC Markets Group Inc. ("OTC

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

Link"), had seven market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

2. IDI Global, Inc. ("IDIBQ") (CIK No. 1110418) is a revoked Nevada corporation located in Provo, Utah with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). IDIBQ 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 $340,120 for the prior nine months. As of January 2, 2014, the common stock of IDIBQ was quoted on OTC Link, had five market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

3. Inform Worldwide Holdings, Inc. ("IWWI") (CIK No. 1076038) is a dissolved Florida corporation located in Henderson, Nevada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). IWWI 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, 2007, which reported a net loss of $831,503 for the prior six months. As of January 2, 2014, the common stock of IWWI was quoted on OTC Link, had five market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

4. Iptimize, Inc. ("IPZI") (CIK No. 1374835) is a forfeited Delaware corporation located in Denver, Colorado with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). IPZI 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 $8,249,144 for the prior year. On October 14, 2009, IPZI filed a Chapter 7 petition in the U.S. Bankruptcy Court for the District of Colorado, which was closed on March 23, 2011. As of January 2, 2014, the common stock of IPZI was quoted on OTC Link, had five market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

5. NGEN, Inc. (a/k/a Nanogen, Inc.) ("NGEN") (CIK No. 1030339) is a void Delaware corporation located in San Diego, California with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). NGEN 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 $36,103,000 for the prior nine months. On May 13, 2009, NGEN filed a Chapter 11 petition in the U.S. Bankruptcy Court for the District of Delaware, which was converted to a Chapter 7 petition on November 24, 2009, and was still pending as of January 2, 2014. As of January 2, 2014, the common stock of NGEN was quoted on OTC Link, had nine market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

6. Patron Systems, Inc. ("PTRN") (CIK No. 1075043) is a void Delaware corporation located in Boulder, Colorado with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). PTRN 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 $2,158,042 for the prior three months. As of January 2, 2014, the common stock of PTRN was quoted on OTC Link, had seven market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

B. DELINQUENT PERIODIC FILINGS

7. 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.

8. 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 issuers to file quarterly reports.

9. 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

January 7, 2014

In the Matter of **Environmental Energy Services, Inc.,** **IDI Global, Inc.,** **Inform Worldwide Holdings, Inc.,** **Iptimize, Inc.,** **NGEN, Inc.** **(a/k/a Nanogen, Inc.), and** **Patron Systems, 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 Environmental Energy Services, 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 IDI Global, 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 Inform Worldwide Holdings, 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 Iptimize, 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 NGEN, Inc. (a/k/a Nanogen, 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 Patron Systems, Inc. because it has not filed any periodic reports since the period ended March 31, 2007.

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 January 7, 2014, through 11:59 p.m. EST on January 21, 2014.

By the Commission.

Elizabeth M. Murphy
Secretary

By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 71243 / January 7, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15670

In the Matter of **Matech Corp.,** **MNC Corporation,** **(a/k/a Monaco Coach Corporation),** **Pacific Fuel Cell Corp., and** **Penn Octane 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. Matech Corp. ("MTCH") [1] (CIK No. 1036668) is a void Delaware corporation located in Los Angeles, California with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). MTCH 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. On November 16, 2010, MTCH filed a Chapter 7 petition in the U.S. Bankruptcy Court for the Central District of California, which was dismissed on October 18, 2011. As of January 2, 2014, the common stock of MTCH was quoted on OTC Link (formerly "Pink Sheets") operated by OTC Markets Group Inc. ("OTC Link"), had eight market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

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

2. MNC Corporation (a/k/a Monaco Coach Corporation) ("MCOAQ") (CIK No. 910619) is a forfeited Delaware corporation located in Coburg, Oregon with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). MCOAQ 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 27, 2008, which reported a net loss of $89,910,000 for the prior nine months. On March 5, 2009, MCOAQ filed a Chapter 11 petition in the U.S. Bankruptcy Court for the District of Delaware, which was converted to a Chapter 7 petition on June 29, 2009, and was still pending as of January 2, 2014. As of January 2, 2014, the common stock of MCOAQ 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. Pacific Fuel Cell Corp. ("PFCEQ") (CIK No. 1098578) is a defaulted Nevada corporation located in Tustin, California with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). PFCEQ 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, 2008, which reported a net loss of $822,052 for the prior six months. On May 20, 2010, PFCEQ filed a Chapter 7 petition in the U.S. Bankruptcy Court for the Central District of California, which was closed on November 18, 2010. As of January 2, 2014, the common stock of PFCEQ 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. Penn Octane Corporation ("POCC") (CIK No. 893813) is a void Delaware corporation located in El Segundo, California with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). POCC 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 $1,358,000 for the prior three months. As of January 2, 2014, the common stock of POCC was quoted on OTC Link, had eight market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

B. DELINQUENT PERIODIC FILINGS

5. 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.

6. 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 issuers to file quarterly reports.

7. 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

By: Jill M. Peterson
Assistant Secretary

UNITED STATE OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

January 7, 2014

In the Matter of

Matech Corp.,
MNC Corporation
(a/k/a Monaco Coach Corporation),
Pacific Fuel Cell Corp., and
Penn Octane 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 Matech Corp. 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 MNC Corporation (a/k/a Monaco Coach Corporation) because it has not filed any periodic reports since the period ended September 27, 2008

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Pacific Fuel Cell Corp. because it has not filed any periodic reports since the period ended June 30, 2008

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Penn Octane Corp. 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 January 7, 2014, through 11:59 p.m. EST on January 21, 2014.

By the Commission

Elizabeth M. Murphy
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-71247; File No. 4-631)

January 7, 2013

Joint Industry Plan; Notice of Filing of the Sixth Amendment to the National Market System Plan to Address Extraordinary Market Volatility by BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, The Nasdaq Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange LLC, NYSE MKT LLC, and NYSE Arca, Inc.

Pursuant to Section 11A of the Securities Exchange Act of 1934 ("Act")[1] and Rule 608 thereunder[2], notice is hereby given that, on December 3, 2013, The NASDAQ OMX Group, on behalf of NASDAQ OMX BX, Inc. ("BX"), NASDAQ OMX PHLX LLC ("Phlx"), and the Nasdaq Stock Market LLC ("Nasdaq"), and the following parties to the National Market System Plan: BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., National Stock Exchange, Inc., New York Stock Exchange LLC, NYSE MKT LLC, NYSE Arca, Inc., (collectively with BX, Phlx, and Nasdaq, the "Participants"), filed with the Securities and Exchange Commission (the "Commission") a proposal to amend the Plan to Address Extraordinary Market Volatility ("Plan").[3] The proposal represents the sixth amendment to the Plan ("Sixth Amendment"), and reflects changes unanimously approved by the Participants. The Sixth Amendment to the Plan proposes to make technical changes to the implementation schedule of the Plan. A copy of the Plan, as proposed to be amended, is attached as Exhibit A hereto. The Commission is publishing this notice to solicit

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1 15 U.S.C. 78k-1.

2 17 CFR 242.608.

3 See Letter from Jeffrey S. Davis, Vice President & Deputy General Counsel, The NASDAQ OMX Group, to Elizabeth M. Murphy, Secretary, Commission, dated December 3, 2013 ("Transmittal Letter").

comments from interested persons on the Sixth Amendment to the Plan.

I. Rule 608(a) of Regulation NMS

A. Purpose of the Plan

The Participants filed the Plan in order to create a market-wide limit up-limit down mechanism that is intended to address extraordinary market volatility in "NMS Stocks," as defined in Rule 600(b)(47) of Regulation NMS under the Act.[4] The Plan sets forth procedures that provide for market-wide limit up-limit down requirements that would be designed to prevent trades in individual NMS Stocks from occurring outside of the specified Price Bands.[5] These limit up-limit down requirements would be coupled with Trading Pauses, as defined in Section I(Y) of the Plan, to accommodate more fundamental price moves (as opposed to erroneous trades or momentary gaps in liquidity).

As set forth in Section V of the Plan, the price bands would consist of a Lower Price Band and an Upper Price Band for each NMS Stock.[6] The price bands would be calculated by the Securities Information Processors ("SIPs" or "Processors") responsible for consolidation of information for an NMS Stock pursuant to Rule 603(b) of Regulation NMS under the Act.[7] Those price bands would be based on a Reference Price[8] for each NMS Stock that equals the arithmetic mean price of Eligible Reported Transactions for the NMS Stock over the immediately preceding five-minute period. The price bands for an NMS Stock would be calculated by applying the Percentage Parameter for such NMS Stock to the Reference Price,

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4 17 CFR 242.600(b)(47). See also Section I(H) of the Plan.

5 See Section V of the Plan.

6 Capitalized terms used herein but not otherwise defined shall have the meaning ascribed to such terms in the Plan. See Exhibit A, infra.

7 17 CFR 242.603(b). The Plan refers to this entity as the Processor.

8 See Section I(T) of the Plan.

with the Lower Price Band being a Percentage Parameter[9] below the Reference Price, and the Upper Price Band being a Percentage Parameter above the Reference Price. Between 9:30 a.m. and 9:45 a.m. ET and 3:35 p.m. and 4:00 p.m. ET, the price bands would be calculated by applying double the Percentage Parameters.

The Processors would also calculate a Pro-Forma Reference Price for each NMS Stock on a continuous basis during Regular Trading Hours. If a Pro-Forma Reference Price did not move by one percent or more from the Reference Price in effect, no new price bands would be disseminated, and the current Reference Price would remain the effective Reference Price. If the Pro-Forma Reference Price moved by one percent or more from the Reference Price in effect, the Pro-Forma Reference Price would become the Reference Price, and the Processors would disseminate new price bands based on the new Reference Price. Each new Reference Price would remain in effect for at least 30 seconds.

When one side of the market for an individual security is outside the applicable price band, the Processors would be required to disseminate such National Best Bid[10] or National Best

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9 As initially proposed by the Participants, the Percentage Parameters for Tier 1 NMS Stocks (i.e., stocks in the S&P 500 Index or Russell 1000 Index and certain ETPs) with a Reference Price of $1.00 or more would be five percent and less than $1.00 would be the lesser of (a) $0.15 or (b) 75 percent. The Percentage Parameters for Tier 2 NMS Stocks (i.e., all NMS Stocks other than those in Tier 1) with a Reference Price of $1.00 or more would be 10 percent and less than $1.00 would be the lesser of (a) $0.15 or (b) 75 percent. The Percentage Parameters for a Tier 2 NMS Stock that is a leveraged ETP would be the applicable Percentage Parameter set forth above multiplied by the leverage ratio of such product. On May 24, 2012, the Participants amended the Plan to create a 20% price band for Tier 1 and Tier 2 stocks with a Reference Price of $0.75 or more and up to and including $3.00. The Percentage Parameter for stocks with a Reference Price below $0.75 would be the lesser of (a) $0.15 or (b) 75 percent. See Letter from Janet M. McGinness, Senior Vice President, Legal and Corporate Secretary, NYSE Euronext, to Elizabeth M. Murphy, Secretary, Commission, dated May 24, 2012 ("First Amendment").

10 17 CFR 242.600(b)(42). See also Section I(G) of the Plan.

Offer[11] with an appropriate flag identifying it as non-executable. When the other side of the market reaches the applicable price band, the market for an individual security would enter a Limit State,[12] and the Processors would be required to disseminate such National Best Offer or National Best Bid with an appropriate flag identifying it as a Limit State Quotation.[13] All trading would immediately enter a Limit State if the National Best Offer equals the Lower Limit Band and does not cross the National Best Bid, or the National Best Bid equals the Upper Limit Band and does not cross the National Best Offer. Trading for an NMS Stock would exit a Limit State if, within 15 seconds of entering the Limit State, all Limit State Quotations were executed or canceled in their entirety. If the market did not exit a Limit State within 15 seconds, then the Primary Listing Exchange would declare a five-minute trading pause, which would be applicable to all markets trading the security.

These limit up-limit down requirements would be coupled with trading pauses[14] to accommodate more fundamental price moves (as opposed to erroneous trades or momentary gaps in liquidity). As set forth in more detail in the Plan, all trading centers[15] in NMS Stocks, including both those operated by Participants and those operated by members of Participants, would be required to establish, maintain, and enforce written policies and procedures that are

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11 Id.

12 A stock enters the Limit State if the National Best Offer equals the Lower Price Band and does not cross the National Best Bid, or the National Best Bid equals the Upper Price Band and does not cross the National Best Offer. See Section VI(B) of the Plan.

13 See Section I(D) of the Plan.

14 The primary listing market would declare a trading pause in an NMS Stock; upon notification by the primary listing market, the Processor would disseminate this information to the public. No trades in that NMS Stock could occur during the trading pause, but all bids and offers may be displayed. See Section VII(A) of the Plan.

15 As defined in Section I(X) of the Plan, a trading center shall have the meaning provided in Rule 600(b)(78) of Regulation NMS under the Act.

reasonably designed to comply with the limit up-limit down and trading pause requirements specified in the Plan.

Under the Plan, all trading centers would be required to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the display of offers below the Lower Price Band and bids above the Upper Price Band for an NMS Stock. The Processors would disseminate an offer below the Lower Price Band or bid above the Upper Price Band that nevertheless inadvertently may be submitted despite such reasonable policies and procedures, but with an appropriate flag identifying it as non-executable; such bid or offer would not be included in National Best Bid or National Best Offer calculations. In addition, all trading centers would be required to develop, maintain, and enforce policies and procedures reasonably designed to prevent trades at prices outside the price bands, with the exception of single-priced opening, reopening, and closing transactions on the Primary Listing Exchange.

As stated by the Participants in the Plan, the limit up-limit down mechanism is intended to reduce the negative impacts of sudden, unanticipated price movements in NMS Stocks,[16] thereby protecting investors and promoting a fair and orderly market.[17] In particular, the Plan is designed to address the type of sudden price movements that the market experienced on the afternoon of May 6, 2010.[18]

The following summarizes the Sixth Amendment to the Plan and the rationale behind those changes:

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16 17 CFR 242.600(b)(47).

17 See Transmittal Letter, supra note 3.

18 The limit up-limit down mechanism set forth in the Plan would replace the existing single-stock circuit breaker pilot. See e.g., Securities Exchange Act Release Nos. 62251 (June 10, 2010), 75 FR 34183 (June 16, 2010) (SR-FINRA-2010-025); 62883 (September 10, 2010), 75 FR 56608 (September 16, 2010) (SR-FINRA-2010-033).

The Participants propose to amend Section VIII.B of the Plan to establish a new implementation schedule for Phase II of the Plan. The Plan currently provides that eight months after the initial date of Plan operations, the Plan shall fully apply (A) to all NMS Stocks and (B) beginning at 9:30 a.m. ET, and ending at 4:00 p.m. ET each trading day, or earlier in the case of an early scheduled close. Because the initial date of Plan operations was April 8, 2013, the Plan currently provides that it shall be fully implemented by December 8, 2013.

The Participants now propose to amend Section VIII.B to provide that Phase II shall be separated into two sub-phases. The first sub-phase (Phase II.A.) would apply the Plan to all NMS Stocks beginning at 9:30 a.m. ET, and ending at 3:45 p.m. ET each trading day, or earlier in the case of an early scheduled close by December 8, 2013 as planned. The second sub-phase (Phase II.B.) would cause the Plan to apply to all NMS Stocks beginning at 9:30 a.m. ET, and ending at 4:00 p.m. ET each trading day, or earlier in the case of an early scheduled close by February 24, 2014. The Participants propose to make this change to accommodate a longer implementation period for Phase II.B. of the Plan, which is currently scheduled to be complete on December 8, 2013.

The Participants believe that this proposed amendment is technical and ministerial in nature because it simply extends the implementation period of the Plan with respect to Phase II.B. of the Plan, and it does not change any substantive elements of the Plan. The Participants note that at least two Participants plan to file proposed changes to their exchange rules to revise the manner by which they will interact with the Plan near the close. Specifically, the Participants will be proposing that if a Trading Pause is declared for an NMS Stock within the last ten minutes of trading, the Primary Listing Exchange will attempt to close the NMS Stock using a modified version of its established closing procedures. The Participants believe that the proposal to extend the implementation period is necessary to provide additional time for the amendment their exchange rules to go through the notice and comment period and approval process.

In addition, the proposed modification to the implementation schedule is in response to requests by the securities industry for additional time for systems testing by Participants and the securities industry, particularly to test with proposed Exchange rule and system modifications around the close.[19] The Participants believe that providing additional time for the Participants and the securities industry to test the manner by which the Plan operates around the close, particularly when there is a trading pause less than five minutes before the scheduled close of trading, is necessary and appropriate in the public interest and for the protection of investors.

The Participants believe it is important to implement all elements of the Plan in a prudent and cautious manner; however this interest is heightened where the Plan impacts the close of trading. A significant volume of trading occurs at the close, including in closing crosses on multiple exchanges. Additionally, the closing prices reached and disseminated by the Exchanges are used to price billions of dollars of mutual funds and other investments held by millions of individual investors and institutions. Accordingly, the need for thorough testing by all Participants and members is critical. The Participants believe that the proposed implementation date of February 24, 2014, for Phase II.B. provides sufficient time to perform this thorough testing.

B. Governing or Constituent Documents

19 See Letter from T.R. Lazo, Managing Director and Associate General Counsel, SIFMA to John Ramsey, Acting Director, Division of Trading and Markets, Securities and Exchange Commission, dated July 10, 2013. The Participants note that SIFMA supports the proposed adjustment to the implementation schedule of Phase II of the Plan.

The governing documents of the Processor, as defined in Section I(P) of the Plan, will not be affected by the Plan, but once the Plan is implemented, the Processor's obligations will change, as set forth in detail in the Plan.

C. Implementation of Plan

The initial date of the Plan operations was April 8, 2013.

D. Development and Implementation Phases

The Plan will be implemented as a one-year pilot program in two Phases, consistent with Section VIII of the Plan: Phase I of Plan implementation began on April 8, 2013 and was completed on May 3, 2013. Implementation of Phase II of the Plan began on August 5, 2013. Pursuant to this proposed amendment, Phase II.A. of the implementation., which applies the Plan to all NMS Stocks beginning at 9:30 a.m. ET, and ending at 3:45 p.m. ET each trading day, or earlier in the case of an early scheduled close will be completed by December 8, 2013 as planned. Phase II.B. of the implementation, which causes the Plan to apply to all NMS Stocks beginning at 9:30 a.m. ET, and ending at 4:00 p.m. ET each trading day, or earlier in the case of an early scheduled close, will be completed by February 24, 2014. The Participants are hereby filing to extend the completion date for Phase II.B. to February 24, 2014, at which time the Plan will apply to all NMS Stocks until 4:00 p.m. ET, or earlier in the case of an early scheduled close.

E. Analysis of Impact on Competition

The proposed Plan does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Participants do not believe that the proposed Plan introduces terms that are unreasonably discriminatory for the purposes of Section 11A(c)(1)(D) of the Act.[20]

F. Written Understanding or Agreements relating to Interpretation of, or Participation in, Plan

The Participants have no written understandings or agreements relating to interpretation of the Plan. Section II(C) of the Plan sets forth how any entity registered as a national securities exchange or national securities association may become a Participant.

G. Approval of Amendment of the Plan

Each of the Plan's Participants has executed a written amended Plan.

H. Terms and Conditions of Access

Section II(C) of the Plan provides that any entity registered as a national securities exchange or national securities association under the Act may become a Participant by: (1) becoming a participant in the applicable Market Data Plans, as defined in Section I(F) of the Plan; (2) executing a copy of the Plan, as then in effect; (3) providing each then-current Participant with a copy of such executed Plan; and (4) effecting an amendment to the Plan as specified in Section III(B) of the Plan.

I. Method of Determination and Imposition, and Amount of, Fees and Charges

Not applicable.

J. Method and Frequency of Processor Evaluation

Not applicable.

K. Dispute Resolution

Section III(C) of the Plan provides for each Participant to designate an individual to

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20 15 U.S.C. 78k-1(c)(1)(D).

represent the Participant as a member of an Operating Committee.[21] No later than the initial date of the Plan, the Operating Committee shall designate one member of the Operating Committee to act as the Chair of the Operating Committee. Any recommendation for an amendment to the Plan from the Operating Committee that receives an affirmative vote of at least two-thirds of the Participants, but is less than unanimous, shall be submitted to the Commission as a request for an amendment to the Plan initiated by the Commission under Rule 608.[22]

On October 13, 2013, the Operating Committee, duly constituted and chaired by Mr. Burke Cook of NASDAQ OMX, met and voted to amend the Plan as set forth herein in accordance with Section III(C) of the Plan.

II. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the Sixth Amendment to the Plan is consistent with the Act. Comments may be submitted by any of the following methods:

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 4-631 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 4-631. This file number should be included on the

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21 See Section I(J) of the Plan.

22 17 CFR 242.608.

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 Sixth Amendment to the Plan that are filed with the Commission, and all written communications relating to the Sixth Amendment to the Plan 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 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the Participants' principal offices. 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 4-631 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 M. O'Neill
Deputy Secretary

EXHIBIT A

Proposed new language is italicized; proposed deletions are in [brackets].

PLAN TO ADDRESS EXTRAORDINARY MARKET VOLATILITY

SUBMITTED TO

THE SECURITIES AND EXCHANGE COMMISSION

PURSUANT TO RULE 608 OF REGULATION NMS

UNDER THE

SECURITIES EXCHANGE ACT OF 1934

Table of Contents

Preamble

The Participants submit to the SEC this Plan establishing procedures to address extraordinary volatility in NMS Stocks. The procedures provide for market-wide limit up-limit down requirements that prevent trades in individual NMS Stocks from occurring outside of the specified Price Bands. These limit up-limit down requirements are coupled with Trading Pauses to accommodate more fundamental price moves. The Plan procedures are designed, among other things, to protect investors and promote fair and orderly markets. The Participants developed this Plan pursuant to Rule 608(a)(3) of Regulation NMS under the Exchange Act, which authorizes the Participants to act jointly in preparing, filing, and implementing national market system plans.

I. <u>Definitions</u>

(A) "Eligible Reported Transactions" shall have the meaning prescribed by the Operating Committee and shall generally mean transactions that are eligible to update the last sale price of an NMS Stock.

(B) "Exchange Act" means the Securities Exchange Act of 1934, as amended.

(C) "Limit State" shall have the meaning provided in Section VI of the Plan.

(D) "Limit State Quotation" shall have the meaning provided in Section VI of the Plan.

(E) "Lower Price Band" shall have the meaning provided in Section V of the Plan.

(F) "Market Data Plans" shall mean the effective national market system plans through which the Participants act jointly to disseminate consolidated information in compliance with Rule 603(b) of Regulation NMS under the Exchange Act.

(G) "National Best Bid" and "National Best Offer" shall have the meaning provided in Rule 600(b)(42) of Regulation NMS under the Exchange Act.

(H) "NMS Stock" shall have the meaning provided in Rule 600(b)(47) of Regulation NMS under the Exchange Act.

(I) "Opening Price" shall mean the price of a transaction that opens trading on the Primary Listing Exchange, or, if the Primary Listing Exchange opens with quotations, the midpoint of those quotations.

(J) "Operating Committee" shall have the meaning provided in Section III(C) of the Plan.

(K) "Participant" means a party to the Plan.

(L) "Plan" means the plan set forth in this instrument, as amended from time to time in accordance with its provisions.

(M) "Percentage Parameter" shall mean the percentages for each tier of NMS Stocks set forth in Appendix A of the Plan.

(N) "Price Bands" shall have the meaning provided in Section V of the Plan.

(O) "Primary Listing Exchange" shall mean the Participant on which an NMS Stock is listed. If an NMS Stock is listed on more than one Participant, the Participant on which the NMS Stock has been listed the longest shall be the Primary Listing Exchange.

(P) "Processor" shall mean the single plan processor responsible for the consolidation of information for an NMS Stock pursuant to Rule 603(b) of Regulation NMS under the Exchange Act.

(Q) "Pro-Forma Reference Price" shall have the meaning provided in Section V(A)(2) of the Plan.

(R) "Regular Trading Hours" shall have the meaning provided in Rule 600(b)(64) of Regulation NMS under the Exchange Act. For purposes of the Plan, Regular Trading Hours can end earlier than 4:00 p.m. ET in the case of an early scheduled close.

(S) "Regulatory Halt" shall have the meaning specified in the Market Data Plans.

(T) "Reference Price" shall have the meaning provided in Section V of the Plan.

(U) "Reopening Price" shall mean the price of a transaction that reopens trading on the Primary Listing Exchange following a Trading Pause or a Regulatory Halt, or, if the Primary Listing Exchange reopens with quotations, the midpoint of those quotations.

(V) "SEC" shall mean the United States Securities and Exchange Commission.

(W) "Straddle State" shall have the meaning provided in Section VII(A)(2) of the Plan.

(X) "Trading center" shall have the meaning provided in Rule 600(b)(78) of Regulation NMS under the Exchange Act.

(Y) "Trading Pause" shall have the meaning provided in Section VII of the Plan.

(Z) "Upper Price Band" shall have the meaning provided in Section V of the Plan.

II. Parties

(A) List of Parties

The parties to the Plan are as follows:

(1) BATS Exchange, Inc.
8050 Marshall Drive
Lenexa, Kansas 66214

(2) BATS Y-Exchange, Inc.
8050 Marshall Drive
Lenexa, Kansas 66214

(3) Chicago Board Options Exchange, Incorporated
400 South LaSalle Street
Chicago, Illinois 60605

(4) Chicago Stock Exchange, Inc.
440 South LaSalle Street
Chicago, Illinois 60605

(5) EDGA Exchange, Inc.
545 Washington Boulevard
Sixth Floor
Jersey City, NJ 07310

(6) EDGX Exchange, Inc.
545 Washington Boulevard
Sixth Floor
Jersey City, NJ 07310

(7) Financial Industry Regulatory Authority, Inc.
1735 K Street, NW

Washington, DC 20006

(8) NASDAQ OMX BX, Inc.
One Liberty Plaza
New York, New York 10006

(9) NASDAQ OMX PHLX LLC
1900 Market Street
Philadelphia, Pennsylvania 19103

(10) The Nasdaq Stock Market LLC
1 Liberty Plaza
165 Broadway
New York, NY 10006

(11) National Stock Exchange, Inc.
101 Hudson, Suite 1200
Jersey City, NJ 07302

(12) New York Stock Exchange LLC
11 Wall Street
New York, New York 10005

(13) NYSE MKT LLC
20 Broad Street
New York, New York 10005

(14) NYSE Arca, Inc.
100 South Wacker Drive
Suite 1800
Chicago, IL 60606

(B) Compliance Undertaking

By subscribing to and submitting the Plan for approval by the SEC, each Participant agrees to comply with and to enforce compliance, as required by Rule 608(c) of Regulation NMS under the Exchange Act, by its members with the provisions of the Plan. To this end, each Participant shall adopt a rule requiring compliance by its members with the provisions of the Plan, and each Participant shall take such actions as are necessary and appropriate as a participant of the Market Data Plans to cause and enable the Processor for each NMS Stock to fulfill the functions set forth in this Plan.

(C) New Participants

The Participants agree that any entity registered as a national securities exchange or national securities association under the Exchange Act may become a Participant by: (1) becoming a participant in the applicable Market Data Plans; (2) executing a copy of the Plan, as then in effect; (3) providing each then-current Participant with a copy of such executed Plan; and (4) effecting an amendment to the Plan as specified in Section III(B) of the Plan.

(D) Advisory Committee

(1) Formation. Notwithstanding other provisions of this Plan, an Advisory Committee to the Plan shall be formed and shall function in accordance with the provisions set forth in this section.

(2) Composition. Members of the Advisory Committee shall be selected for two-year terms as follows:

(A) Advisory Committee Selections. By affirmative vote of a majority of the Participants, the Participants shall select at least one representatives from each of the following categories to be members of the Advisory Committee: (1) a broker-dealer with a substantial retail investor customer base; (2) a broker-dealer with a substantial institutional investor customer base; (3) an alternative trading system; (4) a broker-dealer that primarily engages in trading for its own account; and (5) an investor.

(3) Function. Members of the Advisory Committee shall have the right to submit their views to the Operating Committee on Plan matters, prior to a decision by the Operating

Committee on such matters. Such matters shall include, but not be limited to, proposed material amendments to the Plan.

(4) Meetings and Information. Members of the Advisory Committee shall have the right to attend meetings of the Operating Committee and to receive any information concerning Plan matters; provided, however, that the Operating Committee may meet in executive session if, by affirmative vote of a majority of the Participants, the Operating Committee determines that an item of Plan business requires confidential treatment.

III. Amendments to Plan

(A) General Amendments

Except with respect to the addition of new Participants to the Plan, any proposed change in, addition to, or deletion from the Plan shall be effected by means of a written amendment to the Plan that: (1) sets forth the change, addition, or deletion; (2) is executed on behalf of each Participant; and, (3) is approved by the SEC pursuant to Rule 608 of Regulation NMS under the Exchange Act, or otherwise becomes effective under Rule 608 of Regulation NMS under the Exchange Act.

(B) New Participants

With respect to new Participants, an amendment to the Plan may be effected by the new national securities exchange or national securities association executing a copy of the Plan, as then in effect (with the only changes being the addition of the new Participant's name in Section II(A) of the Plan) and submitting such executed Plan to the SEC for approval. The amendment shall be effective when it is approved by the SEC in accordance with Rule 608 of Regulation NMS under the Exchange Act or otherwise becomes effective pursuant to Rule 608 of Regulation NMS under the Exchange Act.

(C) <u>Operating Committee</u>

(1) Each Participant shall select from its staff one individual to represent the Participant as a member of an Operating Committee, together with a substitute for such individual. The substitute may participate in deliberations of the Operating Committee and shall be considered a voting member thereof only in the absence of the primary representative. Each Participant shall have one vote on all matters considered by the Operating Committee. No later than the initial date of Plan operations, the Operating Committee shall designate one member of the Operating Committee to act as the Chair of the Operating Committee.

(2) The Operating Committee shall monitor the procedures established pursuant to this Plan and advise the Participants with respect to any deficiencies, problems, or recommendations as the Operating Committee may deem appropriate. The Operating Committee shall establish specifications and procedures for the implementation and operation of the Plan that are consistent with the provisions of this Plan and the Appendixes thereto. With respect to matters in this paragraph, Operating Committee decisions shall be approved by a simple majority vote.

(3) Any recommendation for an amendment to the Plan from the Operating Committee that receives an affirmative vote of at least two-thirds of the Participants, but is less than unanimous, shall be submitted to the SEC as a request for an amendment to the Plan initiated by the Commission under Rule 608 of Regulation NMS.

IV. <u>Trading Center Policies and Procedures</u>

All trading centers in NMS Stocks, including both those operated by Participants and those operated by members of Participants, shall establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with the limit up - limit down requirements specified in Sections VI of the Plan, and to comply with the Trading Pauses specified in Section VII of the Plan.

V. Price Bands

(A) Calculation and Dissemination of Price Bands

(1) The Processor for each NMS stock shall calculate and disseminate to the public a Lower Price Band and an Upper Price Band during Regular Trading Hours for such NMS Stock. The Price Bands shall be based on a Reference Price for each NMS Stock that equals the arithmetic mean price of Eligible Reported Transactions for the NMS stock over the immediately preceding five-minute period (except for periods following openings and reopenings, which are addressed below). If no Eligible Reported Transactions for the NMS Stock have occurred over the immediately preceding five-minute period, the previous Reference Price shall remain in effect. The Price Bands for an NMS Stock shall be calculated by applying the Percentage Parameter for such NMS Stock to the Reference Price, with the Lower Price Band being a Percentage Parameter below the Reference Price, and the Upper Price Band being a Percentage Parameter above the Reference Price. The Price Bands shall be calculated during Regular Trading Hours. Between 9:30 a.m. and 9:45 a.m. ET, and 3:35 p.m. and 4:00 p.m. ET, or in the case of an early scheduled close, during the last 25 minutes of trading before the early scheduled close, the Price Bands shall be calculated by applying double the Percentage Parameters set forth in Appendix A. If a Reopening Price does not occur within ten minutes after the beginning of a Trading Pause, the Price Band, for the first 30 seconds following the reopening after that Trading Pause, shall be calculated by applying triple the Percentage Parameters set forth in Appendix A.

(2) The Processor shall calculate a Pro-Forma Reference Price on a continuous basis during Regular Trading Hours, as specified in Section V(A)(1) of the Plan. If a Pro-Forma

Reference Price has not moved by 1% or more from the Reference Price currently in effect, no new Price Bands shall be disseminated, and the current Reference Price shall remain the effective Reference Price. When the Pro-Forma Reference Price has moved by 1% or more from the Reference Price currently in effect, the Pro-Forma Reference Price shall become the Reference Price, and the Processor shall disseminate new Price Bands based on the new Reference Price; provided, however, that each new Reference Price shall remain in effect for at least 30 seconds.

(B) Openings

(1) Except when a Regulatory Halt is in effect at the start of Regular Trading Hours, the first Reference Price for a trading day shall be the Opening Price on the Primary Listing Exchange in an NMS Stock if such Opening Price occurs less than five minutes after the start of Regular Trading Hours. During the period less than five minutes after the Opening Price, a Pro-Forma Reference Price shall be updated on a continuous basis to be the arithmetic mean price of Eligible Reported Transactions for the NMS Stock during the period following the Opening Price (including the Opening Price), and if it differs from the current Reference Price by 1% or more shall become the new Reference Price, except that a new Reference Price shall remain in effect for at least 30 seconds. Subsequent Reference Prices shall be calculated as specified in Section V(A) of the Plan.

(2) If the Opening Price on the Primary Listing Exchange in an NMS Stock does not occur within five minutes after the start of Regular Trading Hours, the first Reference Price for a trading day shall be the arithmetic mean price of Eligible Reported Transactions for the NMS Stock over the preceding five minute time period, and subsequent Reference Prices shall be calculated as specified in Section V(A) of the Plan.

(C) Reopenings

(1) Following a Trading Pause in an NMS Stock, and if the Primary Listing Exchange has not declared a Regulatory Halt, the next Reference Price shall be the Reopening Price on the Primary Listing Exchange if such Reopening Price occurs within ten minutes after the beginning of the Trading Pause, and subsequent Reference Prices shall be determined in the manner prescribed for normal openings, as specified in Section V(B)(1) of the Plan. If such Reopening Price does not occur within ten minutes after the beginning of the Trading Pause, the first Reference Price following the Trading Pause shall be equal to the last effective Reference Price before the Trading Pause. Subsequent Reference Prices shall be calculated as specified in Section V(A) of the Plan.

(2) Following a Regulatory Halt, the next Reference Price shall be the Opening or Reopening Price on the Primary Listing Exchange if such Opening or Reopening Price occurs within five minutes after the end of the Regulatory Halt, and subsequent Reference Prices shall be determined in the manner prescribed for normal openings, as specified in Section V(B)(1) of the Plan. If such Opening or Reopening Price has not occurred within five minutes after the end of the Regulatory Halt, the Reference Price shall be equal to the arithmetic mean price of Eligible Reported Transactions for the NMS Stock over the preceding five minute time period, and subsequent Reference Prices shall be calculated as specified in Section V(A) of the Plan.

VI. Limit Up-Limit Down Requirements

(A) Limitations on Trades and Quotations Outside of Price Bands

(1) All trading centers in NMS Stocks, including both those operated by Participants and those operated by members of Participants, shall establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent trades at prices that are below the

Lower Price Band or above the Upper Price Band for an NMS Stock. Single-priced opening, reopening, and closing transactions on the Primary Listing Exchange, however, shall be excluded from this limitation. In addition, any transaction that both (i) does not update the last sale price (except if solely because the transaction was reported late or because the transaction was an odd-lot sized transaction), and (ii) is excepted or exempt from Rule 611 under Regulation NMS shall be excluded from this limitation.

(2) When a National Best Bid is below the Lower Price Band or a National Best Offer is above the Upper Price Band for an NMS Stock, the Processor shall disseminate such National Best Bid or National Best Offer with an appropriate flag identifying it as non-executable. When a National Best Offer is equal to the Lower Price Band or a National Best Bid is equal to the Upper Price Band for an NMS Stock, the Processor shall distribute such National Best Bid or National Best Offer with an appropriate flag identifying it as a "Limit State Quotation".

(3) All trading centers in NMS Stocks, including both those operated by Participants and those operated by members of Participants, shall establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent the display of offers below the Lower Price Band and bids above the Upper Price Band for an NMS Stock. The Processor shall disseminate an offer below the Lower Price Band or bid above the Upper Price Band that may be submitted despite such reasonable policies and procedures, but with an appropriate flag identifying it as non-executable; provided, however, that any such bid or offer shall not be included in National Best Bid or National Best Offer calculations.

(B) Entering and Exiting a Limit State

(1) All trading for an NMS Stock shall immediately enter a Limit State if the National Best Offer equals the Lower Price Band and does not cross the National Best Bid, or the National Best Bid equals the Upper Price Band and does not cross the National Best Offer.

(2) When trading for an NMS Stock enters a Limit State, the Processor shall disseminate this information by identifying the relevant quotation (i.e., a National Best Offer that equals the Lower Price Band or a National Best Bid that equals the Upper Price Band) as a Limit State Quotation. At this point, the Processor shall cease calculating and disseminating updated Reference Prices and Price Bands for the NMS Stock until either trading exits the Limit State or trading resumes with an opening or re-opening as provided in Section V.

(3) Trading for an NMS Stock shall exit a Limit State if, within 15 seconds of entering the Limit State, the entire size of all Limit State Quotations are executed or cancelled.

(4) If trading for an NMS Stock exits a Limit State within 15 seconds of entry, the Processor shall immediately calculate and disseminate updated Price Bands based on a Reference Price that equals the arithmetic mean price of Eligible Reported Transactions for the NMS Stock over the immediately preceding five-minute period (including the period of the Limit State).

(5) If trading for an NMS Stock does not exit a Limit State within 15 seconds of entry, the Limit State will terminate when the Primary Listing Exchange declares a Trading Pause pursuant to Section VII of the Plan or at the end of Regular Trading Hours.

VII. Trading Pauses

(A) Declaration of Trading Pauses

(1) If trading for an NMS Stock does not exit a Limit State within 15 seconds of entry during Regular Trading Hours, then the Primary Listing Exchange shall declare a Trading Pause for such NMS Stock and shall notify the Processor.

(2) The Primary Listing Exchange may also declare a Trading Pause for an NMS Stock when an NMS Stock is in a Straddle State, which is when National Best Bid (Offer) is below (above) the Lower (Upper) Price Band and the NMS Stock is not in a Limit State, and trading in that NMS Stock deviates from normal trading characteristics such that declaring a Trading Pause would support the Plan's goal to address extraordinary market volatility. The Primary Listing Exchange shall develop policies and procedures for determining when it would declare a Trading Pause in such circumstances. If a Trading Pause is declared for an NMS Stock under this provision, the Primary Listing Exchange shall notify the Processor.

(3) The Processor shall disseminate Trading Pause information to the public. No trades in an NMS Stock shall occur during a Trading Pause, but all bids and offers may be displayed.

(B) Reopening of Trading During Regular Trading Hours

(1) Five minutes after declaring a Trading Pause for an NMS Stock, and if the Primary Listing Exchange has not declared a Regulatory Halt, the Primary Listing Exchange shall attempt to reopen trading using its established reopening procedures. The Trading Pause shall end when the Primary Listing Exchange reports a Reopening Price.

(2) The Primary Listing Exchange shall notify the Processor if it is unable to reopen trading in an NMS Stock for any reason other than a significant order imbalance and if it has not declared a Regulatory Halt. The Processor shall disseminate this information to the public, and all trading centers may begin trading the NMS Stock at this time.

(3) If the Primary Listing Exchange does not report a Reopening Price within ten minutes after the declaration of a Trading Pause in an NMS Stock, and has not declared a Regulatory Halt, all trading centers may begin trading the NMS Stock.

(4) When trading begins after a Trading Pause, the Processor shall update the Price Bands as set forth in Section V(C)(1) of the Plan.

(C) Trading Pauses Within Ten Minutes of the End of Regular Trading Hours

(1) If a Trading Pause for an NMS Stock is declared in the last ten minutes of trading before the end of Regular Trading Hours, the Primary Listing Exchange shall not reopen trading and shall attempt to execute a closing transaction using its established closing procedures. All trading centers may begin trading the NMS Stock when the Primary Listing Exchange executes a closing transaction.

(2) If the Primary Listing Exchange does not execute a closing transaction within five minutes after the end of Regular Trading Hours, all trading centers may begin trading the NMS Stock.

VIII. Implementation

The initial date of Plan operations shall be April 8, 2013.

(A) Phase I

(1) On the initial date of Plan operations, Phase I of Plan implementation shall begin in select symbols from the Tier 1 NMS Stocks identified in Appendix A of the Plan.

(2) Three months after the initial date of Plan operations, or such earlier date as may be announced by the Processor with at least 30 days notice, the Plan shall fully apply to all Tier 1 NMS Stocks identified in Appendix A of the Plan.

(3) During Phase I, the first Price Bands for a trading day shall be calculated and disseminated 15 minutes after the start of Regular Trading Hours as specified in Section (V)(A) of the Plan. No Price Bands shall be calculated and disseminated and therefore trading shall not enter a Limit State less than 30 minutes before the end of Regular Trading Hours.

(B) Phase II – Full Implementation

Phase II.A.: Eight months after the initial date of Plan operations, or such earlier date as may be announced by the Processor with at least 30 days notice, the Plan shall fully apply (i) to all NMS Stocks; and (ii) beginning at 9:30 a.m. ET, and ending at 3:45 [4:00] p.m. ET each trading day, or earlier in the case of an early scheduled close.

Phase II.B.: By February 24, 2014, or such earlier date as may be announced by the Processor with at least 30 days notice, the Plan shall fully apply (i) to all NMS Stocks; and (ii) beginning at 9:30 a.m. ET, and ending at 4:00 p.m. ET each trading day, or earlier in the case of an early scheduled close.

(C) Pilot

The Plan shall be implemented on a one-year pilot basis.

IX. Withdrawal from Plan

If a Participant obtains SEC approval to withdraw from the Plan, such Participant may withdraw from the Plan at any time on not less than 30 days' prior written notice to each of the other Participants. At such time, the withdrawing Participant shall have no further rights or obligations under the Plan.

X. Counterparts and Signatures

The Plan may be executed in any number of counterparts, no one of which need contain all signatures of all Participants, and as many of such counterparts as shall together contain all such signatures shall constitute one and the same instrument.

IN WITNESS THEREOF, this Plan has been executed as of the __ day of November 2013 by each of the parties hereto.

BATS EXCHANGE, INC.

BY:__________________________

BATS Y-EXCHANGE, INC.

BY:__________________________

CHICAGO BOARD OPTIONS EXCHANGE, INCORPORATED

BY:__________________________

CHICAGO STOCK EXCHANGE, INC.

BY:__________________________

EDGA EXCHANGE, INC.

BY:__________________________

EDGX EXCHANGE, INC.

BY:__________________________

FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC.

BY:__________________________

NASDAQ OMX BX, INC.

BY:__________________________

NASDAQ OMX PHLX LLC

BY:__________________________

THE NASDAQ STOCK MARKET LLC

BY:__________________________

NATIONAL STOCK EXCHANGE, INC.

BY:__________________________

NEW YORK STOCK EXCHANGE LLC

BY:__________________________

NYSE MKT LLC

BY:__________________________

NYSE ARCA, INC.

BY:__________________________

Appendix A – Percentage Parameters

I. Tier 1 NMS Stocks

(1) Tier 1 NMS Stocks shall include all NMS Stocks included in the S&P 500 Index, the Russell 1000 Index, and the exchange-traded products ("ETP") listed on Schedule 1 to this Appendix. Schedule 1 to the Appendix will be reviewed and updated semi-annually based on the fiscal year by the Primary Listing Exchange to add ETPs that meet the criteria, or delete ETPs that are no longer eligible. To determine eligibility for an ETP to be included as a Tier 1 NMS Stock, all ETPs across multiple asset classes and issuers, including domestic equity, international equity, fixed income, currency, and commodities and futures will be identified. Leveraged ETPs will be excluded and the list will be sorted by notional consolidated average daily volume ("CADV"). The period used to measure CADV will be from the first day of the previous fiscal half year up until one week before the beginning of the next fiscal half year. Daily volumes will be multiplied by closing prices and then averaged over the period. ETPs, including inverse ETPs, that trade over $2,000,000 CADV will be eligible to be included as a Tier 1 NMS Stock. The semi-annual updates to Schedule 1 do not require an amendment to the Plan. The Primary Listing Exchanges will maintain the updated Schedule 1 on their respective websites.

(2) The Percentage Parameters for Tier 1 NMS Stocks with a Reference Price more than $3.00 shall be 5%.

(3) The Percentage Parameters for Tier 1 NMS Stocks with a Reference Price equal to $0.75 and up to and including $3.00 shall be 20%.

(4) The Percentage Parameters for Tier 1 NMS Stocks with a Reference Price less than $0.75 shall be the lesser of (a) $0.15 or (b) 75%.

(5) The Reference Price used for determining which Percentage Parameter shall be applicable during a trading day shall be based on the closing price of the NMS Stock on the Primary Listing Exchange on the previous trading day, or if no closing price exists, the last sale on the Primary Listing Exchange reported by the Processor.

II. <u>Tier 2 NMS Stocks</u>

(1) Tier 2 NMS Stocks shall include all NMS Stocks other than those in Tier 1, provided, however, that all rights and warrants are excluded from the Plan.

(2) The Percentage Parameters for Tier 2 NMS Stocks with a Reference Price more than $3.00 shall be 10%.

(3) The Percentage Parameters for Tier 2 NMS Stocks with a Reference Price equal to $0.75 and up to and including $3.00 shall be 20%.

(4) The Percentage Parameters for Tier 2 NMS Stocks with a Reference Price less than $0.75 shall be the lesser of (a) $0.15 or (b) 75%.

(5) Notwithstanding the foregoing, the Percentage Parameters for a Tier 2 NMS Stock that is a leveraged ETP shall be the applicable Percentage Parameter set forth in clauses (2), (3), or (4) above, multiplied by the leverage ratio of such product.

(6) The Reference Price used for determining which Percentage Parameter shall be applicable during a trading day shall be based on the closing price of the NMS Stock on the Primary Listing Exchange on the previous trading day, or if no closing price exists, the last sale on the Primary Listing Exchange reported by the Processor.

Appendix A – Schedule 1

Ticker	Name	Primary Exchange
AAXJ	iShares MSCI All Country Asia ex Japan Index Fund	NASDAQ GM
ACWI	iShares MSCI ACWI Index Fund	NASDAQ GM
ACWV	iShares MSCI All Country World Minimum Volatility Index Fund	NYSE Arca
ACWX	iShares MSCI ACWI ex US Index Fund	NASDAQ GM
AGG	iShares Core Total US Bond Market ETF	NYSE Arca
AGOL	ETFS Asian Gold Trust	NYSE Arca
AGZ	iShares Barclays Agency Bond Fund	NYSE Arca
ALD	WisdomTree Asia Local Debt Fund	NYSE Arca
AMJ	JPMorgan Alerian MLP Index ETN	NYSE Arca
AMLP	Alerian MLP ETF	NYSE Arca
AMU	ETRACS Alerian MLP Index ETN	NYSE Arca
BAB	PowerShares Build America Bond Portfolio	NYSE Arca
BAL	iPath Dow Jones-UBS Cotton Subindex Total Return Callable ETN	NYSE Arca
BBH	Market Vectors Biotech ETF	NYSE Arca
BDG	PowerShares DB Base Metals Long ETN	NYSE Arca
BFOR	Barron's 400 ETF	NYSE Arca
BIK	SPDR S&P BRIC 40 ETF	NYSE Arca
BIL	SPDR Barclays 1-3 Month T-Bill	NYSE Arca
BIV	Vanguard Intermediate-Term Bond ETF	NYSE Arca
BKF	iShares MSCI BRIC Index Fund	NYSE Arca
BKLN	PowerShares Senior Loan Portfolio	NYSE Arca
BLV	Vanguard Long-Term Bond ETF	NYSE Arca
BND	Vanguard Total Bond Market ETF	NYSE Arca
BNDX	Vanguard Total International Bond ETF	NASDAQ GM
BNO	United States Brent Oil Fund LP	NYSE Arca
BOND	Pimco Total Return ETF	NYSE Arca
BOS	PowerShares DB Base Metals Short ETN	NYSE Arca
BRF	Market Vectors Brazil Small-Cap ETF	NYSE Arca
BSJE	Guggenheim BulletShares 2014 High Yield Corporate Bond ETF	NYSE Arca
BSJF	Guggenheim BulletShares 2015 High Yield Corporate Bond ETF	NYSE Arca
BSV	Vanguard Short-Term Bond ETF	NYSE Arca
BWV	iPath CBOE S&P 500 BuyWrite Index ETN	NYSE Arca
BWX	SPDR Barclays International Treasury Bond ETF	NYSE Arca
CEW	WisdomTree Emerging Currency Fund	NYSE Arca
CFT	iShares Barclays Credit Bond Fund	NYSE Arca
CHIQ	Global X China Consumer ETF	NYSE Arca
CIU	iShares Barclays Intermediate Credit Bond Fund	NYSE Arca

Ticker	Name	Primary Exchange
CLY	iShares 10+ Year Credit Bond Fund	NYSE Arca
CMF	iShares S&P California AMT-Free Municipal Bond Fund	NYSE Arca
CORN	Teucrium Corn Fund	NYSE Arca
CSD	Guggenheim Spin-Off ETF	NYSE Arca
CSJ	iShares Barclays 1-3 Year Credit Bond Fund	NYSE Arca
CUT	Guggenheim Timber ETF	NYSE Arca
CVY	Guggenheim Multi-Asset Income ETF	NYSE Arca
CWB	SPDR Barclays Convertible Securities ETF	NYSE Arca
CWI	SPDR MSCI ACWI ex-US ETF	NYSE Arca
DBA	PowerShares DB Agriculture Fund	NYSE Arca
DBB	PowerShares DB Base Metals Fund	NYSE Arca
DBC	PowerShares DB Commodity Index Tracking Fund	NYSE Arca
DBE	PowerShares DB Energy Fund	NYSE Arca
DBJP	db X-trackers MSCI Japan Hedged Equity Fund	NYSE Arca
DBO	PowerShares DB Oil Fund	NYSE Arca
DBP	PowerShares DB Precious Metals Fund	NYSE Arca
DBV	PowerShares DB G10 Currency Harvest Fund	NYSE Arca
DEM	WisdomTree Emerging Markets Equity Income Fund	NYSE Arca
DES	WisdomTree SmallCap Dividend Fund	NYSE Arca
DFJ	WisdomTree Japan SmallCap Dividend Fund	NYSE Arca
DGL	PowerShares DB Gold Fund	NYSE Arca
DGS	WisdomTree Emerging Markets SmallCap Dividend Fund	NYSE Arca
DGZ	PowerShares DB Gold Short ETN	NYSE Arca
DHS	WisdomTree Equity Income Fund	NYSE Arca
DIA	SPDR Dow Jones Industrial Average ETF Trust	NYSE Arca
DJCI	ETRACS DJ-UBS Commodity Index Total Return ETN	NYSE Arca
DJP	iPath Dow Jones-UBS Commodity Index Total Return ETN	NYSE Arca
DLN	WisdomTree LargeCap Dividend Fund	NYSE Arca
DLS	WisdomTree International SmallCap Dividend Fund	NYSE Arca
DOG	ProShares Short Dow30	NYSE Arca
DON	WisdomTree MidCap Dividend Fund	NYSE Arca
DTN	WisdomTree Dividend Ex-Financials Fund	NYSE Arca
DVY	iShares Dow Jones Select Dividend Index Fund	NYSE Arca
DWX	SPDR S&P International Dividend ETF	NYSE Arca
DXJ	WisdomTree Japan Hedged Equity Fund	NYSE Arca
EBND	SPDR Barclays Emerging Markets Local Bond ETF	NYSE Arca
ECH	iShares MSCI Chile Capped Investable Market Index Fund	NYSE Arca
ECON	EGShares Emerging Markets Consumer ETF	NYSE Arca
EDIV	SPDR S&P Emerging Markets Dividend ETF	NYSE Arca
EDV	Vanguard Extended Duration Treasury ETF	NYSE Arca
EEM	iShares MSCI Emerging Markets Index Fund	NYSE Arca

Ticker	Name	Primary Exchange
EEMA	iShares MSCI Emerging Markets Asia Index	NASDAQ GM
EEMV	iShares MSCI Emerging Markets Minimum Volatility Index Fund	NYSE Arca
EFA	iShares MSCI EAFE Index Fund	NYSE Arca
EFAV	iShares MSCI EAFE Minimum Volatility Index Fund	NYSE Arca
EFG	iShares MSCI EAFE Growth Index	NYSE Arca
EFV	iShares MSCI EAFE Value Index	NYSE Arca
EFZ	ProShares Short MSCI EAFE	NYSE Arca
EIDO	iSHARES MSCI Indonesia Investable Market Index Fund	NYSE Arca
ELD	WisdomTree Emerging Markets Local Debt Fund	NYSE Arca
ELR	SPDR Dow Jones Large Cap ETF	NYSE Arca
EMB	iShares JPMorgan USD Emerging Markets Bond Fund	NYSE Arca
EMLC	Market Vectors Emerging Markets Local Currency Bond ETF	NYSE Arca
EMM	SPDR Dow Jones Mid Cap ETF	NYSE Arca
ENZL	iShares MSCI New Zealand Capped Investable Market Index Fund	NYSE Arca
EPHE	iShares MSCI Philippines Investable Market Index Fund	NYSE Arca
EPI	WisdomTree India Earnings Fund	NYSE Arca
EPOL	iShares MSCI Poland Capped Investable Market Index Fund	NYSE Arca
EPP	iShares MSCI Pacific ex-Japan Index Fund	NYSE Arca
EPU	iShares MSCI All Peru Capped Index Fund	NYSE Arca
ERUS	iShares MSCI Russia Capped Index Fund	NYSE Arca
EUM	ProShares Short MSCI Emerging Markets	NYSE Arca
EWA	iShares MSCI Australia Index Fund	NYSE Arca
EWC	iShares MSCI Canada Index Fund	NYSE Arca
EWD	iShares MSCI Sweden Index Fund	NYSE Arca
EWG	iShares MSCI Germany Index Fund	NYSE Arca
EWH	iShares MSCI Hong Kong Index Fund	NYSE Arca
EWI	iShares MSCI Italy Capped Index Fund	NYSE Arca
EWJ	iShares MSCI Japan Index Fund	NYSE Arca
EWL	iShares MSCI Switzerland Capped Index Fund	NYSE Arca
EWM	iShares MSCI Malaysia Index Fund	NYSE Arca
EWN	iShares MSCI Netherlands Investable Market Index Fund	NYSE Arca
EWO	iShares MSCI Austria Capped Investable Market Index Fund	NYSE Arca
EWP	iShares MSCI Spain Capped Index Fund	NYSE Arca
EWQ	iShares MSCI France Index Fund	NYSE Arca
EWS	iShares MSCI Singapore Index Fund	NYSE Arca
EWT	iShares MSCI Taiwan Index Fund	NYSE Arca
EWU	iShares MSCI United Kingdom Index Fund	NYSE Arca
EWW	iShares MSCI Mexico Capped Investable Market Index Fund	NYSE Arca
EWX	SPDR S&P Emerging Markets SmallCap ETF	NYSE Arca
EWY	iShares MSCI South Korea Capped Index Fund	NYSE Arca
EWZ	iShares MSCI Brazil Capped Index Fund	NYSE Arca

Ticker	Name	Primary Exchange
EXI	iShares S&P Global Industrials Sector Index Fund	NYSE Arca
EZA	iShares MSCI South Africa Index Fund	NYSE Arca
EZU	iShares MSCI EMU Index Fund	NYSE Arca
FBT	First Trust NYSE Arca Biotechnology Index Fund	NYSE Arca
FCG	First Trust ISE-Revere Natural Gas Index Fund	NYSE Arca
FDL	First Trust Morningstar Dividend Leaders Index	NYSE Arca
FDN	First Trust Dow Jones Internet Index Fund	NYSE Arca
FEM	First Trust Emerging Markets AlphaDEX Fund	NYSE Arca
FEX	First Trust Large Cap Core AlphaDEX Fund	NYSE Arca
FEZ	SPDR EURO STOXX 50 ETF	NYSE Arca
FGD	First Trust DJ Global Select Dividend Index Fund	NYSE Arca
FLOT	iShares Floating Rate Note Fund	NYSE Arca
FLRN	SPDR Barclays Investment Grade Floating Rate ETF	NYSE Arca
FM	iShares MSCI Frontier 100 ETF	NYSE Arca
FNX	First Trust Mid Cap Core AlphaDEX Fund	NYSE Arca
FRI	First Trust S&P REIT Index Fund	NYSE Arca
FTA	First Trust Large Cap Value AlphaDEX Fund	NYSE Arca
FVD	First Trust Value Line Dividend Index Fund	NYSE Arca
FXA	CurrencyShares Australian Dollar Trust	NYSE Arca
FXB	CurrencyShares British Pound Sterling Trust	NYSE Arca
FXC	CurrencyShares Canadian Dollar Trust	NYSE Arca
FXD	First Trust Consumer Discretionary AlphaDEX Fund	NYSE Arca
FXE	CurrencyShares Euro Trust	NYSE Arca
FXF	CurrencyShares Swiss Franc Trust	NYSE Arca
FXG	First Trust Consumer Staples AlphaDEX Fund	NYSE Arca
FXH	First Trust Health Care AlphaDEX Fund	NYSE Arca
FXI	iShares FTSE China 25 Index Fund	NYSE Arca
FXL	First Trust Technology AlphaDEX Fund	NYSE Arca
FXO	First Trust Financial AlphaDEX Fund	NYSE Arca
FXY	CurrencyShares Japanese Yen Trust	NYSE Arca
FXZ	First Trust Materials AlphaDEX Fund	NYSE Arca
GCC	GreenHaven Continuous Commodity Index Fund	NYSE Arca
GDX	Market Vectors Gold Miners ETF	NYSE Arca
GDXJ	Market Vectors Junior Gold Miners ETF	NYSE Arca
GII	SPDR S&P Global Infrastructure ETF	NYSE Arca
GIY	Guggenheim Enhanced Core Bond ETF	NYSE Arca
GLD	SPDR Gold Shares	NYSE Arca
GMF	SPDR S&P Emerging Asia Pacific ETF	NYSE Arca
GMM	SPDR S&P Emerging Markets ETF	NYSE Arca
GMTB	Columbia Core Bond ETF	NYSE Arca
GNR	SPDR S&P Global Natural Resources ETF	NYSE Arca

Ticker	Name	Primary Exchange
GOVT	iShares Barclays U.S. Treasury Bond Fund	NYSE Arca
GSG	iShares S&P GSCI Commodity Indexed Trust	NYSE Arca
GSP	iPath GSCI Total Return Index ETN	NYSE Arca
GSY	Guggenheim Enhanced Short Duration Bond ETF	NYSE Arca
GUNR	FlexShares Global Upstream Natural Resources Index Fund	NYSE Arca
GVI	iShares Barclays Intermediate Government/Credit Bond Fund	NYSE Arca
GWL	SPDR S&P World ex-US ETF	NYSE Arca
GWX	SPDR S&P International Small Cap ETF	NYSE Arca
GXC	SPDR S&P China ETF	NYSE Arca
GXG	Global X FTSE Colombia 20 ETF	NYSE Arca
HAO	Guggenheim China Small Cap ETF	NYSE Arca
HDGE	Ranger Equity Bear ETF	NYSE Arca
HDV	iShares High Dividend Equity Fund	NYSE Arca
HEDJ	WisdomTree Europe Hedged Equity Fund	NYSE Arca
HUSE	Huntington US Equity Rotation Strategy ETF	NYSE Arca
HYD	Market Vectors High Yield Municipal Index ETF	NYSE Arca
HYG	iShares iBoxx $ High Yield Corporate Bond Fund	NYSE Arca
HYLD	Peritus High Yield ETF	NYSE Arca
HYMB	SPDR Nuveen S&P High Yield Municipal Bond ETF	NYSE Arca
HYS	PIMCO 0-5 Year High Yield Corporate Bond Index Exchange-Traded Fund	NYSE Arca
IAI	iShares Dow Jones US Broker Dealers Index Fund	NYSE Arca
IAT	iShares Dow Jones US Regional Banks Index Fund	NYSE Arca
IAU	iShares Gold Trust	NYSE Arca
IBB	iShares Nasdaq Biotechnology Index Fund	NASDAQ GM
IBND	SPDR Barclays International Corporate Bond ETF	NYSE Arca
ICF	iShares Cohen & Steers Realty Majors Index Fund	NYSE Arca
IDU	iShares Dow Jones US Utilities Sector Index Fund	NYSE Arca
IDV	iShares Dow Jones International Select Dividend Index Fund	NYSE Arca
IDX	Market Vectors Indonesia Index ETF	NYSE Arca
IEF	iShares Barclays 7-10 Year Treasury Bond Fund	NYSE Arca
IEFA	iShares Core MSCI EAFE ETF	NYSE Arca
IEI	iShares Barclays 3-7 Year Treasury Bond Fund	NYSE Arca
IELG	iShares Enhanced U.S. Large-Cap ETF	NYSE Arca
IEMG	iShares Core MSCI Emerging Markets ETF	NYSE Arca
IEO	iShares Dow Jones US Oil & Gas Exploration & Production Index Fund	NYSE Arca
IESM	iShares Enhanced U.S. Small-Cap ETF	NYSE Arca
IEV	iShares S&P Europe 350 Index Fund	NYSE Arca
IEZ	iShares Dow Jones US Oil Equipment & Services Index Fund	NYSE Arca
IFGL	iShares FTSE EPRA/NAREIT Developed Real Estate ex-US Index Fund	NASDAQ GM
IGE	iShares S&P North American Natural Resources Sector Index Fund	NYSE Arca

Ticker	Name	Primary Exchange
IGF	iShares S&P Global Infrastructure Index Fund	NYSE Arca
IGM	iShares S&P North American Technology Sector Index Fund	NYSE Arca
IGN	iShares S&P North American Technology-Multimedia Networking Index Fund	NYSE Arca
IGOV	iShares S&P/Citigroup International Treasury Bond Fund	NASDAQ GM
IGS	ProShares Short Investment Grade Corporate	NYSE Arca
IGV	iShares S&P North American Technology-Software Index Fund	NYSE Arca
IHE	iShares Dow Jones US Pharmaceuticals Index Fund	NYSE Arca
IHF	iShares Dow Jones US Healthcare Providers Index Fund	NYSE Arca
IHI	iShares Dow Jones US Medical Devices Index Fund	NYSE Arca
IHY	Market Vectors International High Yield Bond ETF	NYSE Arca
IJH	iShares Core S&P Mid-Cap ETF	NYSE Arca
IJJ	iShares S&P MidCap 400/BARRA Value Index Fund	NYSE Arca
IJK	iShares S&P MidCap 400 Growth Index Fund	NYSE Arca
IJR	iShares Core S&P Small-Cap ETF	NYSE Arca
IJS	iShares S&P SmallCap 600 Value Index Fund	NYSE Arca
IJT	iShares S&P SmallCap 600/BARRA Growth Index Fund	NYSE Arca
ILF	iShares S&P Latin America 40 Index Fund	NYSE Arca
ILTB	iShares Core Long-Term US Bond ETF	NYSE Arca
INDA	iShares MSCI India Index Fund	BATS
INDY	iShares India 50 ETF	NASDAQ GM
INP	iPath MSCI India Index ETN	NYSE Arca
IOO	iShares S&P Global 100 Index Fund	NYSE Arca
IPE	SPDR Barclays TIPS ETF	NYSE Arca
ISHG	iShares S&P/Citigroup 1-3 Year International Treasury Bond Fund	NASDAQ GM
ITB	iShares Dow Jones US Home Construction Index Fund	NYSE Arca
ITM	Market Vectors Intermediate Municipal ETF	NYSE Arca
ITOT	iShares Core S&P Total US Stock Market ETF	NYSE Arca
ITR	SPDR Barclays Intermediate Term Corporate Bond ETF	NYSE Arca
IVE	iShares S&P 500 Value Index Fund	NYSE Arca
IVOO	Vanguard S&P Mid-Cap 400 ETF	NYSE Arca
IVV	iShares Core S&P 500 ETF	NYSE Arca
IVW	iShares S&P 500 Growth Index Fund	NYSE Arca
IWB	iShares Russell 1000 Index Fund	NYSE Arca
IWC	iShares Russell Microcap Index Fund	NYSE Arca
IWD	iShares Russell 1000 Value Index Fund	NYSE Arca
IWF	iShares Russell 1000 Growth Index Fund	NYSE Arca
IWM	iShares Russell 2000 Index Fund	NYSE Arca
IWN	iShares Russell 2000 Value Index Fund	NYSE Arca
IWO	iShares Russell 2000 Growth Index Fund	NYSE Arca
IWP	iShares Russell Midcap Growth Index Fund	NYSE Arca
IWR	iShares Russell Midcap Index Fund	NYSE Arca

Ticker	Name	Primary Exchange
IWS	iShares Russell Midcap Value Index Fund	NYSE Arca
IWV	iShares Russell 3000 Index Fund	NYSE Arca
IXC	iShares S&P Global Energy Sector Index Fund	NYSE Arca
IXG	iShares S&P Global Financials Sector Index Fund	NYSE Arca
IXJ	iShares S&P Global Healthcare Sector Index Fund	NYSE Arca
IXN	iShares S&P Global Technology Sector Index Fund	NYSE Arca
IXP	iShares S&P Global Telecommunications Sector Index Fund	NYSE Arca
IYC	iShares Dow Jones US Consumer Services Sector Index Fund	NYSE Arca
IYE	iShares Dow Jones US Energy Sector Index Fund	NYSE Arca
IYF	iShares Dow Jones US Financial Sector Index Fund	NYSE Arca
IYG	iShares Dow Jones US Financial Services Index Fund	NYSE Arca
IYH	iShares Dow Jones US Healthcare Sector Index Fund	NYSE Arca
IYJ	iShares Dow Jones US Industrial Sector Index Fund	NYSE Arca
IYK	iShares Dow Jones US Consumer Goods Sector Index Fund	NYSE Arca
IYM	iShares Dow Jones US Basic Materials Sector Index Fund	NYSE Arca
IYR	iShares Dow Jones US Real Estate Index Fund	NYSE Arca
IYT	iShares Dow Jones Transportation Average Index Fund	NYSE Arca
IYW	iShares Dow Jones US Technology Sector Index Fund	NYSE Arca
IYY	iShares Dow Jones US Index Fund	NYSE Arca
IYZ	iShares Dow Jones US Telecommunications Sector Index Fund	NYSE Arca
JJC	iPath Dow Jones-UBS Copper Subindex Total Return ETN	NYSE Arca
JJG	iPath Dow Jones-UBS Grains Subindex Total Return ETN	NYSE Arca
JKF	iShares Morningstar Large Value Index Fund	NYSE Arca
JKL	iShares Morningstar Small Value Index Fund	NYSE Arca
JNK	SPDR Barclays High Yield Bond ETF	NYSE Arca
JO	iPath Dow Jones-UBS Coffee Subindex Total Return ETN	NYSE Arca
JXI	iShares S&P Global Utilities Sector Index Fund	NYSE Arca
KBE	SPDR S&P Bank ETF	NYSE Arca
KBWB	PowerShares KBW Bank Portfolio	NYSE Arca
KBWD	PowerShares KBW High Dividend Yield Financial Portfolio	NYSE Arca
KIE	SPDR S&P Insurance ETF	NYSE Arca
KOL	Market Vectors Coal ETF	NYSE Arca
KRE	SPDR S&P Regional Banking ETF	NYSE Arca
KXI	iShares S&P Global Consumer Staples Sector Index Fund	NYSE Arca
LAG	SPDR Barclays Aggregate Bond ETF	NYSE Arca
LEMB	iShares Emerging Markets Local Currency Bond Fund	NYSE Arca
LQD	iShares iBoxx Investment Grade Corporate Bond Fund	NYSE Arca
LTPZ	PIMCO 15+ Year U.S. TIPS Index Exchange-Traded Fund	NYSE Arca
LWC	SPDR Barclays Long Term Corporate Bond ETF	NYSE Arca
MBB	iShares Barclays MBS Bond Fund	NYSE Arca
MBG	SPDR Barclays Mortgage Backed Bond ETF	NYSE Arca

Ticker	Name	Primary Exchange
MCHI	iShares MSCI China Index Fund	NYSE Arca
MDIV	First Trust NASDAQ US Multi-Asset Diversified Income Index Fun	NASDAQ GM
MDY	SPDR S&P MidCap 400 ETF Trust	NYSE Arca
MGC	Vanguard Mega Cap ETF	NYSE Arca
MGK	Vanguard Mega Cap Growth ETF	NYSE Arca
MGV	Vanguard Mega Cap Value ETF	NYSE Arca
MINT	PIMCO Enhanced Short Maturity Exchange-Traded Fund	NYSE Arca
MLPI	ETRACS Alerian MLP Infrastructure Index ETN	NYSE Arca
MLPN	Credit Suisse Cushing 30 MLP Index ETN	NYSE Arca
MOO	Market Vectors Agribusiness ETF	NYSE Arca
MUB	iShares S&P National Municipal Bond Fund	NYSE Arca
MXI	iShares S&P Global Materials Sector Index Fund	NYSE Arca
MYY	ProShares Short MidCap 400	NYSE Arca
NKY	MAXIS Nikkei 225 Index Fund ETF	NYSE Arca
OEF	iShares S&P 100 Index Fund	NYSE Arca
OIH	Market Vectors Oil Service ETF	NYSE Arca
OIL	iPath Goldman Sachs Crude Oil Total Return Index ETN	NYSE Arca
PALL	ETFS Physical Palladium Shares	NYSE Arca
PBJ	Powershares Dynamic Food & Beverage Portfolio	NYSE Arca
PBP	PowerShares S&P 500 BuyWrite Portfolio	NYSE Arca
PBS	Powershares Dynamic Media Portfolio	NYSE Arca
PCEF	PowerShares CEF Income Composite Portfolio	NYSE Arca
PCY	PowerShares Emerging Markets Sovereign Debt Portfolio	NYSE Arca
PDP	Powershares DWA Technical Leaders Portfolio	NYSE Arca
PFF	iShares S&P US Preferred Stock Index Fund	NYSE Arca
PGF	PowerShares Financial Preferred Portfolio	NYSE Arca
PGX	PowerShares Preferred Portfolio	NYSE Arca
PHB	PowerShares Fundamental High Yield Corporate Bond Portfolio	NYSE Arca
PHDG	PS S&P Downside Hdgd	NYSE Arca
PHO	PowerShares Water Resources Portfolio	NYSE Arca
PHYS	Sprott Physical Gold Trust	NYSE Arca
PID	PowerShares International Dividend Achievers Portfolio	NYSE Arca
PIE	PowerShares DWA Emerging Markets Technical Leaders Portfolio	NYSE Arca
PIN	PowerShares India Portfolio	NYSE Arca
PIZ	PowerShares DWA Developed Markets Technical Leaders Portfolio	NYSE Arca
PJP	Powershares Dynamic Pharmaceuticals Portfolio	NYSE Arca
PKW	PowerShares Buyback Achievers Portfolio	NYSE Arca
PPH	Market Vectors Pharmaceutical ETF	NYSE Arca
PPLT	ETFS Platinum Trust	NYSE Arca
PRF	Powershares FTSE RAFI US 1000 Portfolio	NYSE Arca
PRFZ	PowerShares FTSE RAFI US 1500 Small-Mid Portfolio	NASDAQ GM

Ticker	Name	Primary Exchange
PSK	SPDR Wells Fargo Preferred Stock ETF	NYSE Arca
PSLV	Sprott Physical Silver Trust	NYSE Arca
PSP	PowerShares Global Listed Private Equity Portfolio	NYSE Arca
PSQ	ProShares Short QQQ	NYSE Arca
PWV	PowerShares Dynamic Large Cap Value Portfolio	NYSE Arca
PXF	PowerShares FTSE RAFI Developed Markets ex-U.S. Portfolio	NYSE Arca
PXH	PowerShares FTSE RAFI Emerging Markets Portfolio	NYSE Arca
PZA	PowerShares Insured National Municipal Bond Portfolio	NYSE Arca
QAI	IndexIQ ETF Trust - IQ Hedge Multi-Strategy Tracker ETF	NYSE Arca
QQQ	Powershares QQQ Trust Series 1	NASDAQ GM
REM	iShares FTSE NAREIT Mortgage Plus Capped Index Fund	NYSE Arca
REZ	iShares FTSE NAREIT Residential Plus Capped Index Fund	NYSE Arca
RFG	Guggenheim S&P Midcap 400 Pure Growth ETF	NYSE Arca
RJA	ELEMENTS Linked to the Rogers International Commodity Index - Agri Tot Return	NYSE Arca
RJI	ELEMENTS Linked to the Rogers International Commodity Index - Total Return	NYSE Arca
RPG	Guggenheim S&P 500 Pure Growth ETF	NYSE Arca
RPV	Guggenheim S&P 500 Pure Value ETF	NYSE Arca
RSP	Guggenheim S&P 500 Equal Weight ETF	NYSE Arca
RSX	Market Vectors Russia ETF	NYSE Arca
RTH	Market Vectors Retail ETF	NYSE Arca
RWM	ProShares Short Russell2000	NYSE Arca
RWO	SPDR Dow Jones Global Real Estate ETF	NYSE Arca
RWR	SPDR Dow Jones REIT ETF	NYSE Arca
RWX	SPDR Dow Jones International Real Estate ETF	NYSE Arca
RXI	iShares S&P Global Consumer Discretionary Sector Index Fund	NYSE Arca
SAGG	Direxion Daily Total Bond Market Bear 1x Shares	NYSE Arca
SBB	ProShares Short SmallCap600	NYSE Arca
SCHA	Schwab US Small-Cap ETF	NYSE Arca
SCHB	Schwab US Broad Market ETF	NYSE Arca
SCHD	Schwab US Dividend Equity ETF	NYSE Arca
SCHE	Schwab Emerging Markets Equity ETF	NYSE Arca
SCHF	Schwab International Equity ETF	NYSE Arca
SCHG	Schwab U.S. Large-Cap Growth ETF	NYSE Arca
SCHH	Schwab U.S. REIT ETF	NYSE Arca
SCHM	Schwab U.S. Mid-Cap ETF	NYSE Arca
SCHO	Schwab Short-Term U.S. Treasury ETF	NYSE Arca
SCHP	Schwab U.S. TIPs ETF	NYSE Arca
SCHR	Schwab Intermediate-Term U.S. Treasury ETF	NYSE Arca
SCHV	Schwab U.S. Large-Cap Value ETF	NYSE Arca
SCHX	Schwab US Large-Cap ETF	NYSE Arca

Ticker	Name	Primary Exchange
SCHZ	Schwab U.S. Aggregate Bond ETF	NYSE Arca
SCIF	Market Vectors India Small-Cap Index ETF	NYSE Arca
SCPB	SPDR Barclays Short Term Corporate Bond ETF	NYSE Arca
SCZ	iShares MSCI EAFE Small Cap Index Fund	NYSE Arca
SDIV	Global X SuperDividend ETF	NYSE Arca
SDY	SPDR S&P Dividend ETF	NYSE Arca
SGOL	ETFS Gold Trust	NYSE Arca
SH	ProShares Short S&P500	NYSE Arca
SHM	SPDR Nuveen Barclays Short Term Municipal Bond ETF	NYSE Arca
SHV	iShares Barclays Short Treasury Bond Fund	NYSE Arca
SHY	iShares Barclays 1-3 Year Treasury Bond Fund	NYSE Arca
SIL	Global X Silver Miners ETF	NYSE Arca
SIVR	ETFS Physical Silver Shares	NYSE Arca
SJB	ProShares Short High Yield	NYSE Arca
SJNK	SPDR Barclays Short Term High Yield Bond ETF	NYSE Arca
SLV	iShares Silver Trust	NYSE Arca
SLX	Market Vectors Steel Index Fund	NYSE Arca
SLY	SPDR S&P 600 Small CapETF	NYSE Arca
SMH	Market Vectors Semiconductor ETF	NYSE Arca
SNLN	Highland/iBoxx Senior Loan ETF	NYSE Arca
SOXX	iShares PHLX SOX Semiconductor Sector Index Fund	NASDAQ GM
SPHB	PowerShares S&P 500 High Beta Port ETF	NYSE Arca
SPHD	PowerShares S&P 500 High Dividend Portfolio	NYSE Arca
SPLV	PowerShares S&P 500 Low Volatility Portfolio	NYSE Arca
SPPP	Sprott Physical Platinum & Palladium Trust	NYSE Arca
SPY	SPDR S&P 500 ETF Trust	NYSE Arca
SPYG	SPDR S&P 500 Growth ETF	NYSE Arca
SPYV	SPDR S&P 500 Value ETF	NYSE Arca
SRLN	SPDR Blackstone / GSO Senior Loan ETF	NYSE Arca
STIP	iShares Barclays 0-5 Year TIPS Bond Fund	NYSE Arca
STPZ	PIMCO 1-5 Year U.S. TIPS Index Exchange-Traded Fund	NYSE Arca
SUB	iShares S&P Short Term National AMT-Free Municipal Bond Fund	NYSE Arca
SVXY	ProShares Short VIX Short-Term Futures ETF	NYSE Arca
SYLD	Cambria Shareholder Yield ETF	NYSE Arca
TAN	Guggenheim Solar ETF	NYSE Arca
TAO	Guggenheim China Real Estate ETF	NYSE Arca
TBF	ProShares Short 20+ Year Treasury	NYSE Arca
TBX	ProShares Short 7-10 Treasury	NYSE Arca
TDTT	FlexShares iBoxx 3-Year Target Duration TIPS Index Fund	NYSE Arca
TFI	SPDR Nuveen Barclays Municipal Bond ETF	NYSE Arca
THD	iShares MSCI Thailand Capped Investable Market Index Fund	NYSE Arca

Ticker	Name	Primary Exchange
TIP	iShares Barclays TIPS Bond Fund	NYSE Arca
TLH	iShares Barclays 10-20 Year Treasury Bond Fund	NYSE Arca
TLT	iShares Barclays 20+ Year Treasury Bond Fund	NYSE Arca
TUR	iShares MSCI Turkey Index Fund	NYSE Arca
UNG	United States Natural Gas Fund LP	NYSE Arca
USCI	United States Commodity Index Fund	NYSE Arca
USMV	iShares MSCI USA Minimum Volatility Index Fund	NYSE Arca
USO	United States Oil Fund LP	NYSE Arca
UUP	PowerShares DB US Dollar Index Bullish Fund	NYSE Arca
VAW	Vanguard Materials ETF	NYSE Arca
VB	Vanguard Small-Cap ETF	NYSE Arca
VBK	Vanguard Small-Cap Growth ETF	NYSE Arca
VBR	Vanguard Small-Cap Value ETF	NYSE Arca
VCIT	Vanguard Intermediate-Term Corporate Bond ETF	NASDAQ GM
VCLT	Vanguard Long-Term Corporate Bond ETF	NASDAQ GM
VCR	Vanguard Consumer Discretionary ETF	NYSE Arca
VCSH	Vanguard Short-Term Corporate Bond ETF	NASDAQ GM
VDC	Vanguard Consumer Staples ETF	NYSE Arca
VDE	Vanguard Energy ETF	NYSE Arca
VEA	Vanguard FTSE Developed Markets ETF	NYSE Arca
VEU	Vanguard FTSE All-World ex-US ETF	NYSE Arca
VFH	Vanguard Financials ETF	NYSE Arca
VGIT	Vanguard Intermediate-Term Government Bond ETF	NASDAQ GM
VGK	Vanguard FTSE Europe ETF	NYSE Arca
VGLT	Vanguard Long-Term Government Bond ETF	NASDAQ GM
VGSH	Vanguard Short-Term Government Bond ETF	NASDAQ GM
VGT	Vanguard Information Technology ETF	NYSE Arca
VHT	Vanguard Health Care ETF	NYSE Arca
VIG	Vanguard Dividend Appreciation ETF	NYSE Arca
VIIX	VelocityShares VIX Short Term ETN	NYSE Arca
VIIZ	VelocityShares VIX Medium Term ETN	NYSE Arca
VIOO	Vanguard S&P Small-Cap 600 ETF	NYSE Arca
VIS	Vanguard Industrials ETF	NYSE Arca
VIXM	ProShares VIX Mid-Term Futures ETF	NYSE Arca
VIXY	ProShares VIX Short-Term Futures ETF	NYSE Arca
VMBS	Vanguard Mortgage-Backed Securities ETF	NASDAQ GM
VNM	Market Vectors Vietnam ETF	NYSE Arca
VNQ	Vanguard REIT ETF	NYSE Arca
VNQI	Vanguard Global ex-U.S. Real Estate ETF	NASDAQ GM
VO	Vanguard Mid-Cap ETF	NYSE Arca
VOE	Vanguard Mid-Cap Value ETF	NYSE Arca

Ticker	Name	Primary Exchange
VONE	Vanguard Russell 1000	NASDAQ GM
VONG	Vanguard Russell 1000 Growth ETF	NASDAQ GM
VONV	Vanguard Russell 1000 Value	NASDAQ GM
VOO	Vanguard S&P 500 ETF	NYSE Arca
VOOG	Vanguard S&P 500 Growth ETF	NYSE Arca
VOOV	Vanguard S&P 500 Value ETF	NYSE Arca
VOT	Vanguard Mid-Cap Growth ETF	NYSE Arca
VOX	Vanguard Telecommunication Services ETF	NYSE Arca
VPL	Vanguard FTSE Pacific ETF	NYSE Arca
VPU	Vanguard Utilities ETF	NYSE Arca
VQT	Barclays ETN+ ETNs Linked to the S&P 500 Dynamic VEQTORTM TotaL Return Index	NYSE Arca
VSS	Vanguard FTSE All World ex-US Small-Cap ETF	NYSE Arca
VT	Vanguard Total World Stock ETF	NYSE Arca
VTHR	Vanguard Russell 3000	NASDAQ GM
VTI	Vanguard Total Stock Market ETF	NYSE Arca
VTIP	Vanguard Short-Term Inflation-Protected Securities ETF	NASDAQ GM
VTV	Vanguard Value ETF	NYSE Arca
VTWG	Vanguard Russell 2000 Growth	NASDAQ GM
VTWO	Vanguard Russell 2000	NASDAQ GM
VTWV	Vanguard Russell 2000 Value	NASDAQ GM
VUG	Vanguard Growth ETF	NYSE Arca
VV	Vanguard Large-Cap ETF	NYSE Arca
VWO	Vanguard FTSE Emerging Markets ETF	NYSE Arca
VWOB	Vanguard Emerging Markets Government Bond ETF	NASDAQ GM
VXF	Vanguard Extended Market ETF	NYSE Arca
VXUS	Vanguard Total International Stock ETF	NASDAQ GM
VXX	iPATH S&P 500 VIX Short-Term Futures ETN	NYSE Arca
VXZ	iPATH S&P 500 VIX Mid-Term Futures ETN	NYSE Arca
VYM	Vanguard High Dividend Yield ETF	NYSE Arca
WIP	SPDR DB International Government Inflation-Protected Bond ETF	NYSE Arca
WOOD	iShares S&P Global Timber & Forestry Index Fund	NASDAQ GM
XBI	SPDR S&P Biotech ETF	NYSE Arca
XES	SPDR S&P Oil & Gas Equipment & Services ETF	NYSE Arca
XHB	SPDR S&P Homebuilders ETF	NYSE Arca
XIV	VelocityShares Daily Inverse VIX Short Term ETN	NYSE Arca
XLB	Materials Select Sector SPDR Fund	NYSE Arca
XLE	Energy Select Sector SPDR Fund	NYSE Arca
XLF	Financial Select Sector SPDR Fund	NYSE Arca
XLG	Guggenheim Russell Top 50 Mega Cap ETF	NYSE Arca
XLI	Industrial Select Sector SPDR Fund	NYSE Arca
XLK	Technology Select Sector SPDR Fund	NYSE Arca

Ticker	Name	Primary Exchange
XLP	Consumer Staples Select Sector SPDR Fund	NYSE Arca
XLU	Utilities Select Sector SPDR Fund	NYSE Arca
XLV	Health Care Select Sector SPDR Fund	NYSE Arca
XLY	Consumer Discretionary Select Sector SPDR Fund	NYSE Arca
XME	SPDR S&P Metals & Mining ETF	NYSE Arca
XOP	SPDR S&P Oil & Gas Exploration & Production ETF	NYSE Arca
XPH	SPDR S&P Pharmaceuticals ETF	NYSE Arca
XRT	SPDR S&P Retail ETF	NYSE Arca
XSD	SPDR S&P Semiconductor ETF	NYSE Arca
XVZ	iPath S&P 500 Dynamic VIX ETN	NYSE Arca
YMLP	Yorkville High Income MLP	NYSE Arca
ZIV	VelocityShares Daily Inverse VIX Medium Term ETN	NYSE Arca
ZROZ	PIMCO 25+ Year Zero Coupon U.S. Treasury Index Exchange-Traded Fund	NYSE Arca

Appendix B – Data

Unless otherwise specified, the following data shall be collected and transmitted to the SEC in an agreed-upon format on a monthly basis, to be provided 30 calendar days following month end. Unless otherwise specified, the Primary Listing Exchanges shall be responsible for collecting and transmitting the data to the SEC. Data collected in connection with Sections II(E) – (G) below shall be transmitted to the SEC with a request for confidential treatment under the Freedom of Information Act. 5 U.S.C. 552, and the SEC's rules and regulations thereunder.

I. **Summary Statistics**

A. Frequency with which NMS Stocks enter a Limit State. Such summary data shall be broken down as follows:

1.Partition stocks by category

a. Tier 1 non-ETP issues > $3.00

b. Tier 1 non-ETP issues >= $0.75 and <= $3.00

c. Tier 1 non-ETP issues < $0.75

d. Tier 1 non-leveraged ETPs in each of above categories

e. Tier 1 leveraged ETPs in each of above categories

f. Tier 2 non-ETPs in each of above categories

g. Tier 2 non-leveraged ETPs in each of above categories

h. Tier 2 leveraged ETPs in each of above categories

2.Partition by time of day

a. Opening (prior to 9:45 am ET)

b. Regular (between 9:45 am ET and 3:35 pm ET)

c. Closing (after 3:35 pm ET)

d. Within five minutes of a Trading Pause re-open or IPO open

3. Track reasons for entering a Limit State, such as:

a. Liquidity gap –price reverts from a Limit State Quotation and returns to trading within the Price Bands

b. Broken trades

c. Primary Listing Exchange manually declares a Trading Pause pursuant to Section (VII)(2) of the Plan

d. Other

B. Determine (1), (2) and (3) for when a Trading Pause has been declared for an NMS Stock pursuant to the Plan.

II. **Raw Data** *(all Participants, except A-E, which are for the Primary Listing Exchanges only)*

A. Record of every Straddle State.

1. Ticker, date, time entered, time exited, flag for ending with Limit State, flag for ending with manual override.

2. Pipe delimited with field names as first record.

B. Record of every Price Band

1. Ticker, date, time at beginning of Price Band, Upper Price Band, Lower Price Band

2. Pipe delimited with field names as first record

C. Record of every Limit State

1. Ticker, date, time entered, time exited, flag for halt

2. Pipe delimited with field names as first record

D. Record of every Trading Pause or halt

1. Ticker, date, time entered, time exited, type of halt (i.e., regulatory halt, non-regulatory halt, Trading Pause pursuant to the Plan, other)

2. Pipe delimited with field names as first record

E. Data set or orders entered into reopening auctions during halts or Trading Pauses

1. Arrivals, Changes, Cancels, # shares, limit/market, side, Limit State side

2.Pipe delimited with field name as first record

F. Data set of order events received during Limit States

G. Summary data on order flow of arrivals and cancellations for each 15-second period for discrete time periods and sample stocks to be determined by the SEC in subsequent data requests. Must indicate side(s) of Limit State.

1.Market/marketable sell orders arrivals and executions

a. Count

b. Shares

c. Shares executed

2.Market/marketable buy orders arrivals and executions

a. Count

b. Shares

c. Shares executed

3.Count arriving, volume arriving and shares executing in limit sell orders above NBBO mid-point

4.Count arriving, volume arriving and shares executing in limit sell orders at or below NBBO mid-point (non-marketable)

5.Count arriving, volume arriving and shares executing in limit buy orders at or above NBBO mid-point (non-marketable)

6.Count arriving, volume arriving and shares executing in limit buy orders below NBBO mid-point

7.Count and volume arriving of limit sell orders priced at or above NBBO mid-point plus $0.05

8.Count and volume arriving of limit buy orders priced at or below NBBO mid-point minus $0.05

9.Count and volume of (3-8) for cancels

10. Include: ticker, date, time at start, time of Limit State, all data item fields in 1, last sale prior to 15-second period (null if no trades today), range during 15-second period, last trade during 15-second period

III. **At least two months prior to the end of the Pilot Period, all Participants shall provide to the SEC assessments relating to the impact of the Plan and calibration of the Percentage Parameters as follows:**

A. Assess the statistical and economic impact on liquidity of approaching Price Bands.

B. Assess the statistical and economic impact of the Price Bands on erroneous trades.

C. Assess the statistical and economic impact of the appropriateness of the Percentage Parameters used for the Price Bands.

D. Assess whether the Limit State is the appropriate length to allow for liquidity replenishment when a Limit State is reached because of a temporary liquidity gap.

E. Evaluate concerns from the options markets regarding the statistical and economic impact of Limit States on liquidity and market quality in the options markets. (Participants that operate options exchange should also prepare such assessment reports.)

F. Assess whether the process for entering a Limit State should be adjusted and whether Straddle States are problematic.

G. Assess whether the process for exiting a Limit State should be adjusted.

H. Assess whether the Trading Pauses are too long or short and whether the reopening procedures should be adjusted.

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 71260 / January 8, 2014

INVESTMENT ADVISERS ACT OF 1940
Release No. 3752 / January 8, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15672

In the Matter of **SANDEEP AGGARWAL,** **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 Sandeep Aggarwal ("Aggarwal" 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. Aggarwal, age 40, resides in India. From April 2008 until April 2010, he was the senior internet research analyst at Collins Stewart LLC, a registered broker dealer and registered investment adviser that was subsequently acquired by Canaccord Financial, and is now known as Canaccord Genuity Inc. During his employment at Collins Stewart, Aggarwal held Series 7, 63, 86 and 87 licenses.

2. On July 30, 2013, the Commission filed an amended complaint in a previously filed civil action naming Aggarwal as a defendant, SEC v. Richard Lee and Sandeep Aggarwal, Civil Action No. 13-CV-5185 (S.D.N.Y.). On December 6, 2013, the Court entered an order permanently enjoining Aggarwal, by consent, from future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

3. The Commission's amended complaint alleges that in July 2009 Aggarwal learned confidential details about the progress of negotiations concerning the formation of a partnership between two technology companies from an individual who worked at one of the companies. Aggarwal tipped the information to a portfolio manager at a hedge fund advisory firm, who subsequently traded securities based on the tip. Aggarwal knew, recklessly disregarded, or should have known, that the material non-public information he received and tipped was disclosed or misappropriated in breach of a fiduciary duty, or similar relationship of trust and confidence.

4. On November 8, 2013, Aggarwal pleaded guilty to one count of securities fraud and one count of conspiracy to commit securities fraud in violation of 15 U.S.C. §§ 78j(b) and 78ff and 18 U.S.C. § 371 before the United States District Court for the Southern District of New York, in United States v. Sandeep Aggarwal, 13-CR-884.

5. The counts of the criminal information to which Aggarwal pleaded guilty alleged, inter alia, that Aggarwal, and others, conspired and agreed together to commit securities fraud.

IV.

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

Chair White
not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 71261 / January 9, 2014

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3525 / January 9, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15673

In the Matter of ALCOA INC., Respondent.	ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO 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 21C of the Securities Exchange Act of 1934 ("Exchange Act"), against Alcoa Inc. ("Alcoa" 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 the Respondent and the subject matter of these proceedings, and 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 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

1. These proceedings arise from violations of the Foreign Corrupt Practices Act of 1977 (the "FCPA") [15 U.S.C. § 78dd] by Respondent Alcoa Inc. ("Alcoa") concerning alumina sales to Aluminium Bahrain B.S.C. ("Alba"), an aluminum manufacturer owned primarily by the Kingdom of Bahrain.

2. Between 1989 and 2009, Alcoa of Australia ("AofA") and Alcoa World Alumina LLC ("AWA") (collectively, the "AWAC Subsidiaries") retained a consultant to act as their middleman in connection with sales of alumina to Alba and knew or consciously disregarded the fact that the relationship with the consultant was designed to generate funds that facilitated corrupt payments to Bahraini officials. The consultant was paid a commission on sales where he acted as an agent and received a markup on sales where he acted as a purported distributor. On sales where the consultant acted as a purported distributor, no legitimate services were provided to justify the role of the consultant as a distributor. The consultant used these funds to enrich himself and pay bribes to senior government officials of Bahrain.

3. The commission payments to the consultant and the alumina sales to the consultant made pursuant to the distribution agreements were improperly recorded in Alcoa's books and records as legitimate commissions or sales to a distributor and did not accurately reflect the transactions. The false entries were initially recorded by the AWAC Subsidiaries which were then consolidated into Alcoa's books and records. During the relevant period, Alcoa also lacked sufficient internal controls to prevent and detect the improper payments.

Respondent

4. **Alcoa** is a corporation organized under the laws of the Commonwealth of Pennsylvania. Until 2006, Alcoa's principal place of business was in Pittsburgh, Pennsylvania, in the Western District of Pennsylvania. In 2006, Alcoa moved its principal place of business to New York, New York. Alcoa issues and maintains a class of publicly traded securities registered pursuant to Section 12(b) of the Securities Exchange Act of 1934, which are traded on the New York Stock Exchange.

5. Alcoa is a global provider of primary aluminum and fabricated aluminum. Alcoa is also a global provider of smelter grade alumina, the raw material that is supplied to smelters to

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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.

produce aluminum. Alcoa refines alumina from bauxite it extracts from its global mining operations. Alcoa operates worldwide through subsidiaries and affiliated entities in North America, Asia, Australia, Europe, South America, Africa and the Caribbean.

Other Relevant Entities and Persons

6. **Alcoa World Alumina and Chemicals** ("AWAC") is an unincorporated global bauxite mining and alumina refining enterprise formed in 1995 between Alcoa and Alumina Limited ("Alumina"), the majority and minority owners of AWAC, respectively. AWAC operates through a number of affiliated enterprise companies, including AofA and AWA, with each enterprise company being owned by Alcoa and Alumina in proportion to their respective ownership interests in the AWAC enterprise. In matters of strategy and policy, the AWAC enterprise companies receive direction and counsel from a "Strategic Council" that is chaired by Alcoa. Alcoa controls the Strategic Council and as such the operations and personnel of AWAC report to Alcoa personnel in New York.

7. **Alcoa of Australia Limited** ("AofA") is the AWAC enterprise company that owns and operates AWAC's bauxite mining and alumina refining assets in Australia. AofA's principal place of business was located in Melbourne, in the state of Victoria, Australia, until 1996, and is now located in Perth, in the state of Western Australia. AofA owns and operates mines in Western Australia that extract bauxite, which AofA then processes into smelter grade alumina in refineries it owns and operates. AofA sells the smelter grade alumina to aluminum smelters it owns in the state of Victoria as well as to customers and alumina traders around the world. AofA maintains bank accounts in the United States. AofA's books, records, and accounts are consolidated into Alcoa's books and records and reported by Alcoa in its financial statements.

8. **Alcoa World Alumina LLC** ("AWA") is a Limited Liability Company formed under Delaware law, which maintains its principal place of business in Pittsburgh, Pennsylvania, in the Western District of Pennsylvania. AWA owns and operates (either directly or indirectly) bauxite mining and alumina refining assets in North America, Europe, South America, and the Caribbean. AWA is an AWAC enterprise company. Beginning in or around 2000, executives at AWA's offices in Pittsburgh and Knoxville, Tennessee, assumed primary responsibility for all of AWAC's relationships with global alumina customers, including Alba. AWA personnel responsible for these functions reported to Alcoa personnel in New York.

9. **Consultant A** is an international middleman who resides in London and is a citizen of Canada, Jordan, and the United Kingdom. Consultant A had close contacts with certain members of Bahrain's Royal Family, some of whom were senior officials in the Government of Bahrain. Consultant A met with Alcoa executives to discuss matters relating to the relationship with Alba. Consultant A operates through many shell companies, including Alumet Ltd ("Alumet") and AA Alumina and Chemicals Ltd ("AAAC").

10. **Aluminium Bahrain B.S.C.** ("Alba") is an aluminum smelter operating in Bahrain. At the relevant times, the state holding company of the Kingdom of Bahrain, the Mumtalakat, which was controlled by the Bahrain Ministry of Finance, held 77 percent of the

shares of Alba. The Saudi Basic Industries Corporation ("SABIC"), which is majority-owned and controlled by the government of the Kingdom of Saudi Arabia, held a twenty percent minority stake in Alba, and three percent of Alba's shares were held by a German investment group. The majority of profits earned by Alba belonged to the Mumtalakat, though part of the profit was permitted to be used by Alba for its operations. The Bahrain Ministry of Finance had to approve any change in Alba's capital structure and had to be consulted on any major capital projects or contracts material to Alba's operations. Members of the Royal Family of Bahrain and representatives of the government sat on the Board of Directors of Alba, controlled its Board, and had primary authority in selecting its chief executive officer and chief financial officer.

Facts

11. Alcoa's global bauxite and alumina refining business (the "Alumina Segment") is part of the Global Primary Products group, one of Alcoa's three business lines. The Alumina Segment operationally consists of multiple subsidiaries. During the relevant time period, the Alumina Segment reported to the global head of the Global Primary Products group, who was an executive of Alcoa and reported directly to Alcoa's CEO.

12. Alcoa exercised control over the Alumina Segment, including the AWAC Subsidiaries. Alcoa appointed the majority of seats on the AWAC Strategic Council, and the head of Global Primary Products served as its chair. Alcoa and AofA transferred personnel between them, including alumina sales staff; Alcoa set the business and financial goals for AWAC and coordinated the legal, audit, and compliance functions of AWAC; and the AWAC Subsidiaries' employees managing the Alba alumina business reported functionally to the global head of the Alumina Segment. Alba was a significant alumina customer for Alcoa's Alumina Segment and during the relevant period, members of Alcoa senior management met both with Alba officials and Consultant A to discuss matters related to the Alba relationship, including a proposed joint venture between Alcoa and Alba. During this time, Alcoa was aware that Consultant A was an agent and distributor with respect to AofA's sales of alumina to Alba and that terms of related contracts were reviewed and approved by senior managers of Alcoa's Alumina Segment in the United States.

13. From at least 1989 to 2009, AofA supplied alumina to Alba through a series of multi-year contracts. During this period, Alba was one of Alcoa's largest alumina customers purchasing a total of nearly 19 million metric tons beginning with an annual volume of 300,000 metric tons increasing to 1.6 million metric tons.

14. Beginning in approximately 1989, AofA retained Consultant A to assist in long-term contract negotiations with Alba and Bahraini government officials, including the negotiation and execution of a new long-term alumina supply agreement in 1990 (the "1990 Supply Agreement.")

15. By 1996, Consultant A was playing a significant role in the relationship between the AWAC Subsidiaries and Alba. Around this time, Alba complained to the AWAC Subsidiaries that it was paying an above-market price for alumina. AofA learned that Alba was seeking to increase its alumina supply requirements from 600,000 metric tons a year up to

970,000 metric tons a year, and that other major global suppliers of alumina were seeking to capture these additional requirements. The AWAC Subsidiaries' sales team decided that, to "comply with business norms in the Middle East[,]" the AWAC Subsidiaries would propose supplying some of Alba's alumina through Alumet, which was one of Consultant A's shell companies, which would pay the "required commission." An AofA manager proposed using Consultant A as the intermediary because Consultant A was "well versed in the normal ways of Middle East business" and "will keep the various stakeholders in the Alba smelter happy…."

16. Despite the red flags inherent in this arrangement, AofA's in-house counsel approved the arrangement without conducting any due diligence or otherwise determining whether there was a legitimate business purpose for the use of a third party intermediary.

17. The AWAC Subsidiaries' sales managers traveled to London in August 1996 to meet with Consultant A to discuss this proposal to route some of AofA's alumina through Consultant A's company for resale to Alba. Upon their return to Australia, an AWA manager told other members of the AWAC Subsidiaries sales team that:

> It feels like we subsidise the Sheiks and end up with a 5 year outcome that is about $10-15/t lower than the average of the rest of our business.

18. In September 1996, the AWAC Subsidiaries' sales managers traveled to London to meet with Alba and Consultant A and agreed to an addendum to the 1990 Supply Agreement ("1996 Addendum"). Under the 1990 Agreement, AofA was supplying 600,000 metric tons per year to Alba under a formula pricing structure (as opposed to a "market"-based price). Under the 1996 Addendum, AofA agreed to supply Alba with an additional 285,000 metric tons per year through one of Consultant A's shell companies using a "market"-based price that resulted in pricing that was, at times, actually below market and allowed Consultant A to mark up his sales of alumina to Alba.

19. Employees at AWA and AofA either knew or were willfully blind to the high probability that Consultant A would use his commissions and markup to pay bribes. For example, in an internal document memorializing the negotiations surrounding the 1996 Addendum, a member of AofA's alumina sales staff wrote:

> The methodology of business in the Middle East is a complex web of interactions that are necessarily difficult to understand to disguise the payment of commissions. We have in the past maintained a position of paying our agent a 1% commission on the basis of the agent work that he has done for us. We have also, however, been asked by Alba to supply some cargoes through other intermediaries, including our agent, on various occasions and we can only assume at the purpose this serves….Given that we want to supply the full tonnage going into the future we need to fix on the best methodology for us given the commission requirements and the contract structure.

20. The sales staff was concerned that the monies paid to Consultant A come from Consultant A's markup on sales to Alba, rather than through increased commission payments.

An AWA manager was concerned that the monies paid to Consultant A not come at AofA's expense and that the sales to Consultant A "protect our position."

21. In 2001, with the coming expiration of the 1990 Supply Agreement and 1996 Addendum, AWA approached Alba to extend and expand the alumina supply relationship. Alba agreed to extend the existing supply relationship ("2001 Extension"). Following the 2001 Extension, AofA stopped selling alumina directly to Alba; all AofA alumina destined for Alba was instead routed through AAAC, which was one of Consultant A's shell companies.

22. In 2004, AofA entered into another distribution agreement with Consultant A that involved the sale of up to 1.6 million metric tons of alumina to Alba every year through AAAC, which was a shell company of Consultant A. This arrangement lasted until approximately December 31, 2009.

23. The 2001 Extension and 2004 purported distributorship agreements facilitated the corrupt payments by allowing Consultant A to impose an inflated markup on his purported sales of alumina to Alba and used the markup from those sales to enrich himself and pay bribes to senior government officials of Bahrain.

24. From 2002 to 2004, AWA caused Consultant A and AAAC, one of his shell companies to receive in excess of $79 million in markups on alumina sales to Alba. Consultant A also received a commission under the terms of the 2001 Extension. The 2001 Extension provided for a commission of 0.125 percent of all payments made by Consultant A to AofA for alumina. From 2002 to 2004, AofA paid Consultant A "commissions" of $493,509.

25. In 2002, Alcoa was attempting to negotiate a joint venture with Alba, in which Alcoa would supply Alba with alumina from the AWAC system's refineries, and, in exchange, Alba would supply Alcoa with aluminum. Alcoa retained Consultant A to act as a consultant and to privately lobby a Bahraini government official on behalf of Alcoa, and Alcoa entered a consulting agreement with Consultant A pursuant to which Consultant A would receive an $8 million "success fee" based on limited specified negotiation "advice and assistance to Alcoa" if the joint venture were successful.

26. As part of the negotiations, Alcoa proposed a joint venture structure that contemplated supplying alumina to Alba through a distributor. On or about March 26, 2003, an in-house attorney in Alcoa's legal department raised questions about the deal, and requested an explanation for the role of the distributor. On or about March 27, 2003, AWA sales executive responded that "[t]he Distributorship rol[e] is something the Bahrain Government wants" and that Alcoa "shouldn't get too involved with how the Distributor and the Government interact. We are currently selling the alumina we supply to Alba through a Distributor."

27. On September 15, 2003, Alcoa and Alba agreed to a Memorandum of Understanding ("MOU") outlining an equity investment by Alcoa in Alba and providing for alumina to be sold to the Government of Bahrain, as majority shareholder of Alba, "directly or through an associated company of Alcoa satisfactory to GoB [Government of Bahrain] and Alcoa." The MOU was approved by the same Bahraini government official on behalf of Alba

that Consultant A had been hired to lobby. Subsequently, the joint venture negotiations fell through, and Consultant A was never paid the $8 million success fee.

28. By the summer of 2004, AofA was supplying approximately one million metric tons of alumina annually to Alba, but Consultant A's companies were invoicing Alba for the shipments. Unlike a true distributorship, Consultant A's companies never took possession of the alumina, assisted with the shipping arrangements, or otherwise performed any legitimate services for either the AWAC Subsidiaries or Alba. The only function the shell companies provided was to invoice Alba for the shipments at a significant markup.

29. Alba's obligations under pre-existing supply arrangements with AofA were set to expire at the end of 2004. In the summer of 2004, AWA sought to secure a new long term alumina supply agreement with Alba. On or around August 5, 2004, Alcoa management was advised by a former senior Alcoa executive who had a relationship with Consultant A that if they attempted to negotiate a direct contractual relationship between AofA and Alba, rather than negotiate a supply arrangement through Consultant A and one of his companies, some or all of Alba's business could be lost to another alumina supplier.

30. On or about August 19, 2004, AWA management met with Consultant A at Consultant A's London Office to discuss using Consultant A's companies "as Alcoa's exclusive distributor in the region." On or about August 22, 2004, an AWA executive negotiating with Consultant A sent an email documenting with more specificity certain items that were discussed at the meeting. Among them, the executive noted that "[w]e agreed to supply [Consultant A] with pricing indications for supply to [AAAC, one of Consultant A's shell companies] by 8/24 so he can have these for his meeting with [a Bahraini official]. We mentioned pricing close to 14%." The email also noted that "[a Bahraini official] is holding on to publishing [Alba's] alumina tender [to the market] until he has further discussions with [Consultant A] on 8/29." The pricing terms per metric ton of alumina that the AWA executive quoted to Consultant A at the meeting in London were less than the pricing terms for Alba that an AWA sales executive had quoted to a Bahraini official approximately one month earlier.

31. On or around September 29, 2004, AWA facilitated Consultant A's tendering a bid to supply Alba up to 1.6 million metric tons of alumina for ten years commencing in 2005. On or about October 8, 2004, the in-house attorney responsible for supporting the alumina business suggested terminating the consulting agreement that Alcoa had entered with Consultant A in connection with the proposed joint venture, as "the terms of [Consultant A's] current engagement created a lot of anxiety in the organization." However, an AWA executive decided that the consultancy agreement should not be terminated until AofA had secured a new long-term alumina supply agreement with Alba.

32. On or about November 1, 2004, a Bahraini official caused Alba to accept Consultant A's tender offer for a ten-year supply of alumina. On or about December 31, 2004, AofA entered a sham ten-year distributorship agreement with AAAC, one of Consultant A's shell companies to purportedly supply annually up to 1.78 million metric tons of alumina for sale to Alba from 2005 to 2014 (the "2005 Alba Supply Agreement"). It was actually AofA that would continue shipping the alumina directly from its refineries in Western Australia to Alba.

33. On or about March 4, 2005, a representative of Consultant A sent another Bahraini government official a final, unexecuted contract for the purported supply agreement between Consultant A and Alba. On or about June 8, 2005, the final agreement negotiated between Consultant A and Alba was signed by that government official on behalf of Alba. The agreement's effective date was January 1, 2005, and its term was through December 31, 2014. The agreement provided that Consultant A would supply Alba with 1.508 million metric tons of alumina in 2005 and 1.6 million metric tons of alumina thereafter for each remaining contract year. Alba was required to bear the cost of shipping and insurance.

34. For sales of alumina to Alba, Consultant A did not receive payment until after Consultant A was bound to pay AofA. Given the discrepancy in the timing of payment, Consultant A sought a line of credit from Alcoa to cover the cost of alumina shipments to Alba until Alba remitted payment to Consultant A. Alcoa's policies and procedures required its customers to submit financial statements for an extension of credit. Consultant A, however, refused to provide financial statements to Alcoa's credit department. Nevertheless, in or around December 2004, senior management of AWA invoked an override procedure that resulted in an Alcoa executive approving a $23 million line of credit to Consultant A's companies.

35. Thereafter, in each of contract years 2005 through 2009, Alcoa continued to grant overrides to extend increasing credit lines to Consultant A's purported distributorships. By 2007, Alcoa was extending a credit line of $58 million. During this period, Alcoa granted Consultant A credit lines that were significantly greater than those granted by Alcoa to any other third party. By facilitating the extension of credit to Consultant A, AWA enabled the purported distributorship scheme by allowing Consultant A to defer paying AofA for the multi-million dollar shipments of alumina to Alba until Consultant A received payment from Alba.

36. From 2005 through 2009, AWA caused Consultant A to receive in excess of $188 million on the markup of alumina sales to Alba. This money was transferred from the initial accounts in which payment from Alba was received through various bank accounts controlled by Consultant A, including accounts in the name of shell companies.

37. The AWAC Subsidiaries knew or consciously disregarded the fact that Consultant A was inserted into the Alba sales supply chain to generate funds to pay bribes to Bahraini officials. Ultimately, these funds facilitated at least $110 million in corrupt payments to Bahraini officials. The vast majority of those funds were generated from the markup between the price Consultant A sold to Alba and the price that AofA sold to Consultant A. Those funds were also generated from the commissions that AofA paid to Consultant A.

38. The recipients of the corrupt payments included a senior Bahraini official, members of the board of directors of Alba, and senior management of Alba. Examples of the corrupt payments include:

- In August 2003, Consultant A's shell companies made 2 payments totaling $7 million to accounts for the benefit of a Bahraini government official who Consultant A had been retained to lobby. Two weeks later, Alcoa and Alba signed an agreement in principle to have Alcoa participate in Alba's plant expansion.

- In October 2004, Consultant A's shell company paid $1 million to an account for the benefit of that same government official. Shortly thereafter, Alba agreed in principle to Alcoa's offer for the 2005 Alba Supply Agreement.

- In or around the time of the execution of the final 2005 Alba Supply Agreement, Consultant A-controlled companies paid another Bahraini government official and/or his beneficiaries $41 million in three payments.

Legal Standards and Violations

C. Under Section 21C(a) 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 or any rule or regulation thereunder, and upon any other person that is, was, or would be a cause of the violation, due to an act of omission the person knew or should have known would contribute to such violation.

FCPA Violations

D. Under Section 30A(a) of the Exchange Act it is unlawful for any issuer, officer, director, employee, or agent of such issuer or any stockholder thereof acting on behalf of the issuer, to make use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value to any foreign official or any person, while knowing that all or a portion of such money or thing of value will be offered, given, or promised, directly or indirectly, to any foreign official for the purposes of (i) influencing any act or decision of such foreign official in his official capacity, (ii) inducing such foreign official to do or omit to do any act in violation of the lawful duty of such official, or (iii) securing any improper advantage in order to assist such issuer in obtaining or retaining business for or with, or directing business to, any person. [15 U.S.C. § 78dd-1].

E. Additionally, under Section 30A(g) of the Exchange Act it is unlawful for any issuer organized under the laws of the United States, or a State, territory, possession, or commonwealth of the United States or for any United States person that is an officer, director, employee, or agent of such issuer or a stockholder thereof acting on behalf of such issuer, to corruptly do any act outside the United States in furtherance of an offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value to any of the persons or entities set forth in paragraphs (i), (ii), and (iii) of subsection (a) of this section for the purposes set forth therein, irrespective of whether such issuer or such officer, director, employee, agent, or stockholder makes use of the mails or any means or instrumentality of interstate commerce in furtherance of such offer, gift, payment, promise, or authorization.

F. This Order contains no findings that an officer, director or employee of Alcoa knowingly engaged in the bribe scheme. As described above, Alcoa violated Section 30A of the Exchange Act by reason of its agents, including subsidiaries AWA and AofA, indirectly paying bribes to foreign officials in Bahrain in order to obtain or retain business. AWA, AofA, and their employees all acted as "agents" of Alcoa during the relevant time, and were acting within the scope of their authority when participating in the bribe scheme. As described above, Alcoa exercised control over the Alumina Segment, including the AWAC Subsidiaries. Alcoa appointed the majority of seats on the AWAC Strategic Council, and the head of the Global Primary Products group served as its chair. Alcoa and AofA transferred personnel between them, including alumina sales staff; Alcoa set the business and financial goals for AWAC and coordinated the legal, audit, and compliance functions of AWAC; and the AWAC Subsidiaries' employees managing the Alba alumina business reported functionally to the global head of the Alumina Segment. Alba was a significant alumina customer for Alcoa's Alumina Segment and during the relevant period, members of Alcoa senior management met both with Alba officials and Consultant A to discuss matters related to the Alba relationship, including a proposed joint venture between Alcoa and Alba. During this time, Alcoa was aware that Consultant A was an agent and distributor with respect to AofA's sales of alumina to Alba and that terms of related contracts were reviewed and approved by senior managers of Alcoa's Alumina Segment in the United States.

G. Under Section 13(b)(2)(A) of the Exchange Act issuers are required to make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and disposition of the assets of the issuer. [15 U.S.C. § 78m(b)(2)(A)].

H. Under Section 13(b)(2)(B) of the Exchange Act issuers are required to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that (i) transactions are executed in accordance with management's general or specific authorization; (ii) transactions are recorded as necessary (I) to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and (II) to maintain accountability for assets; (iii) access to assets is permitted only in accordance with management's general or specific authorization; and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences. [15 U.S.C. § 78m(b)(2)(B)].

I. As described above, Alcoa violated Section 13(b)(2)(A) of the Exchange Act by improperly recording the payments, to Consultant A, as agent commissions when the true purpose of these payments was to make corrupt payments to Bahraini officials. Alcoa violated Section 13(b)(2)(A) when Alcoa recorded the sales to Consultant A as a distributor. The false entries were initially recorded by the AWAC Subsidiaries which were then consolidated and reported by Alcoa in its consolidated financial statements. Alcoa also violated Section 13(b)(2)(B) by failing to devise and maintain sufficient accounting controls to detect and prevent the making of improper payments to foreign officials.

Alcoa's Remedial Efforts

J. Alcoa made an initial voluntary disclosure of certain of these issues to the Commission and Department of Justice in February 2008, and thereafter Alcoa's Board of Directors appointed a Special Committee of the Board of Directors to oversee an internal investigation by independent counsel. Alcoa's counsel regularly reported on the results of the investigation and fully cooperated with the staff of the Commission.

K. Alcoa also undertook extensive remedial actions including: a comprehensive compliance review of anti-corruption policies and procedures, including its relationship with intermediaries; enhancing its internal controls and compliance functions; developing and implementing enhanced FCPA compliance procedures, including the development and implementation of policies and procedures such as the due diligence and contracting procedure for intermediaries; and conducting comprehensive anti-corruption training throughout the organization.

Criminal Plea Agreement

Respondent's subsidiary AWA has agreed, with the United States Department of Justice, Criminal Division, Fraud Section, to plead guilty for criminal conduct relating to certain of the findings in the Order.

IV.

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

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent Alcoa cease and desist from committing or causing any violations and any future violations of Sections 30A, 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act;

B. Respondent shall pay disgorgement of $175,000,000. A portion of Respondent's disgorgement obligation in the amount of $14,000,000 shall be deemed satisfied by Respondent's payment of $14,000,000 in forfeiture as part of Respondent's resolution with the United States Department of Justice ("DOJ") filed in the Western District of Pennsylvania. In the event that Respondent's resolution with DOJ requires a forfeiture payment less than $14,000,000, the Respondent acknowledges that its disgorgement obligation will be credited up to the amount of the payment required by Respondent's resolution with DOJ, with the remaining balance due and payable to the Securities and Exchange Commission within 14 days of payment pursuant to Respondent's resolution with DOJ. In light of the impact of the disgorgement payment upon Respondent's financial condition and its potential to substantially jeopardize Alcoa's ability to fund its sustaining and improving capital expenditures, its ability to invest in research and development, its ability to fund its pension obligations, and its ability to maintain necessary cash reserves to fund its operations and meet its liabilities, Respondent shall pay the disgorgement in five equal payments based upon the following schedule:

Amount	Date Due
$32,200,000	January 9, 2014
$32,200,000	January 9, 2015
$32,200,000	January 9, 2016
$32,200,000	January 9, 2017
$32,200,000	January 9, 2018

If timely payment of disgorgement is not made within 14 days of when due, 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 Alcoa Inc. 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 Charles Cain, Deputy Unit Chief, FCPA Unit, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549.

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Commissioner Aguilar not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 71270 / January 9, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15675

In the Matter of **Marcus S. Spillson,** **Respondent.**	**ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS 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 Marcus S. Spillson ("Respondent" or "Spillson").

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, which are admitted, Respondent consents 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 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

1. This matter involves insider trading by Spillson in the securities of Petrohawk Energy Corporation ("Petrohawk") in advance of the July 14, 2011 announcement that BHP Billiton Limited ("BHP") had agreed to acquire Petrohawk.

2. During the weeks leading up to the announcement, Spillson received material nonpublic information about the proposed acquisition of Petrohawk from Individual A, a Petrohawk employee, and then traded on the basis of that information. As a result of his improper use of the insider information, Spillson generated trading profits of $154,821.91.

3. By virtue of his conduct, Spillson violated Sections 10(b) and 14(e) of the Exchange Act and Rules 10b-5 and 14e-3 thereunder.

Respondent

4. *Spillson*, age 32, resides in Houston, Texas. He is employed as a landman and has worked professionally in the oil and gas industry since 2003.

Other Relevant Persons

5. *Petrohawk Energy Corporation*, an independent oil and natural gas company, was during the relevant time period headquartered in Houston, Texas. Its common stock was registered with the Commission pursuant to Section 12(b) of the Exchange Act until after it was acquired by BHP. Petrohawk's common stock traded on the New York Stock Exchange ("NYSE") (former ticker symbol HK) and options on Petrohawk's stock traded on multiple U.S. options exchanges.

6. *Individual A*, age 32, resides in Houston, Texas. During the relevant time period, Individual A was employed by Petrohawk and worked and resided in Tulsa, Oklahoma. Spillson and Individual A attended college together and have been close personal friends for more than ten years. The two worked together previously and have been business partners in the oil and gas industry.

Facts

7. On May 26, 2011, representatives of BHP contacted Petrohawk to inquire about the possibility of a meeting to discuss potential business opportunities. Meetings

[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.

were held over the course of the next few weeks, and by June 14, 2011, BHP had made it known that it was interested in acquiring Petrohawk. Over the next several weeks, the companies held preliminary discussions, which involved the Board of Directors of both companies as well as outside legal and financial advisors. These discussions culminated in the execution of confidentiality and exclusivity agreements on June 23, 2011.

8. Immediately thereafter, and continuing through July 14, 2011, BHP's representatives conducted a due diligence investigation of Petrohawk's business. As part of the due diligence process, representatives of Petrohawk made available certain nonpublic technical information about Petrohawk's operations to BHP. During the time of BHP's due diligence investigation, several senior managers in Petrohawk's Tulsa, Oklahoma office first became involved in the proposed acquisition. One of the managers, a vice president in charge of Petrohawk's land operations, was a supervisor of Individual A and head of the department in which Individual A worked.

9. During the period of BHP's due diligence, Individual A came to learn material nonpublic information that Petrohawk had been approached regarding a potential acquisition. In particular, Individual A's supervisor was actively involved in responding to requests for information from BHP regarding Petrohawk's land operations. The supervisor sought the assistance of Individual A in compiling information to be provided to BHP. During the period of BHP's due diligence, Individual A also worked in close proximity to senior managers in Petrohawk's Tulsa, Oklahoma office, who were, by late June 2011, all aware of the proposed acquisition of Petrohawk by BHP. More generally, during the period of BHP's due diligence, Individual A was in regular contact (including multiple times per day) with senior managers in Petrohawk's Tulsa, Oklahoma office, who were all aware of the proposed acquisition of Petrohawk by BHP.

10. In the evening of June 28, 2011, days after the start of BHP's due diligence investigation, and on the same day that Individual A was asked to respond to requests for information from his supervisor, Spillson and Individual A had several telephone conversations and exchanged text messages. Shortly after the last telephone call and text message of the day, Spillson logged into a retirement trading account, in which he had conducted limited trading activity several years earlier.

11. The next morning, on June 29, 2011, Spillson opened a new brokerage account and funded it with a substantial cash deposit.

12. On July 6, 2011, Spillson purchased 75 Petrohawk September 2011 call option contracts with a $31 strike price and 250 Petrohawk September 2011 call option contracts with a $35 strike price. A few days later, on July 12, 2011, Spillson purchased an additional 25 Petrohawk September 2011 call option contracts with a $31 strike price.

13. Spillson's purchase of Petrohawk call options was highly unusual. Spillson had not previously traded in options nor had he traded in Petrohawk securities. His purchase of Petrohawk options was his largest securities purchase ever, and his first significant securities purchase in three years. Spillson also purchased substantially out-of-

the money call options set to expire in two months; during the preceding two years, Petrohawk's stock had never traded higher than $28.18. Spillson's call option purchases further accounted for a significant percentage of the option series trade volume on the dates in question (including 100% in two instances), as reflected in the following chart:

Trade Date	HK Option Series	Series Trade Volume %
July 6, 2011	Buy 75 HK Sep $31 Calls	100%
July 6, 2011	Buy 250 HK Sep $35 Calls	79.37%
July 12, 2011	Buy 25 HK Sep $31 Calls	100%

14. Between the time that Spillson opened his brokerage account on June 29, 2011 and the date of his last trade on July 12, 2011, Spillson and Individual A were in regular contact via telephone and text message. During this period, BHP's due diligence investigation of Petrohawk's business was on-going. During this same period, Spillson logged into his brokerage account on numerous occasions, often multiple times per day.

15. On July 14, 2011, Petrohawk and BHP executed the merger agreement and issued a press release announcing the transaction. Under the agreement, BHP agreed to pay $38.75 per share in cash to acquire Petrohawk in a deal valued at $12.1 billion. The market reacted significantly to the news. On July 15, 2011, the first day of trading after the announcement, Petrohawk's share price closed at $38.17, an increase of 62.5% from the previous day's closing price.

16. On July 15, 2011, Spillson sold his Petrohawk securities for profits of $154,821.91.

17. Subsequently, on July 25, 2011, BHP commenced a tender offer for all outstanding shares of Petrohawk common stock.

18. Spillson's purchase of Petrohawk options on July 6 and July 12, 2011 was on the basis of material, nonpublic information about the proposed acquisition of Petrohawk unlawfully tipped by Individual A. Individual A tipped that information to Spillson in breach of a fiduciary duty owed to Petrohawk and obtained a personal benefit. Spillson knew or had reason to know that the information tipped to him by Individual A was in breach of a duty owed to Petrohawk.

19. Spillson's purchase of Petrohawk options on July 6 and July 12, 2011 was also on the basis of material, nonpublic information communicated to him by Individual A relating to a tender offer, after a substantial step or steps to commence a tender offer had been taken, which information Spillson knew or had reason to know was nonpublic and had been acquired from an employee of Petrohawk.

20. As a result of the conduct described above, Spillson violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in the purchase or sale of securities, and further violated Section 14(e) of the Exchange Act and Rule 14e-3 thereunder, which prohibit any fraudulent, deceptive, or manipulative acts or practices in connection with any tender offer.

IV.

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

Accordingly, pursuant to Section 21C of the Exchange Act, it is hereby ORDERED that:

A. Spillson shall cease and desist from committing or causing any violations and any future violations of Sections 10(b) and 14(e) of the Exchange Act and Rules 10b-5 and 14e-3 thereunder.

B. Spillson shall pay to the United States Treasury disgorgement of $154,821.91, prejudgment interest of $10,635.57, and a civil money penalty of 154,821.91, for a total of $320,279.39. Payment shall be made in the following installments: $100,000 within ten (10) days of the entry of this Order; and the remaining balance shall be paid in installments over the following five years, in quarterly payments of $11,013.97, due on January 1, April 1, July 1, and October 1 respectively, until paid in full. No post-order interest is imposed if the Respondent makes payment in accordance with the foregoing schedule. If any payment is not made by the date payment is required or in the amount required by this Order, the entire outstanding balance, plus any additional post-order interest accrued pursuant to 31 U.S.C. § 3717 and Rule 600 of the Commission's Rules of Practice, shall be due and payable immediately. 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]
(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 Marcus S. Spillson 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

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[2] The minimum threshold for transmission of payment electronically is $1,000,000. For amounts below the threshold, Respondent must make payments pursuant to option (2) or (3) above.

L. Cohen, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549-5553.

C. Based upon Respondent's sworn representations in his Statement of Financial Condition dated September 5, 2013 and other documents submitted to the Commission, the Commission is permitting Respondent to make payment of disgorgement, prejudgment interest, and a civil penalty on the payment schedule outlined above.

D. The Division of Enforcement ("Division") may, at any time following the entry of this Order, petition the Commission to: (1) reopen this matter to consider whether Respondent 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. Respondent 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.

By the Commission.

Elizabeth M. Murphy
Secretary

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

Commissioner Aguilar not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9508 / January 9, 2014

SECURITIES EXCHANGE ACT OF 1934
Release No. 71264 / January 9, 2014

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3526 / January 9, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15674

In the Matter of

MICHAEL MENDES,

Respondent.

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 Michael Mendes ("Mendes" 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, which are admitted, Respondent consents 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 Respondent's Offer, the Commission finds[1] that:

Summary

1. These proceedings involve the role of Michael Mendes in Diamond Foods, Inc.'s ("Diamond") inaccurate accounting of costs related to its walnut business in 2010 and 2011. In publicly-disclosed financial statements for fiscal years ending July 31, 2010 and 2011, Diamond understated the costs associated with acquiring walnuts from growers, resulting in overstated earnings. Diamond restated its annual and periodic financial statements beginning with the quarter ended January 31, 2010 and continued through the year-ended July 31, 2011. When Diamond restated its financial results from those periods, the company's reported earnings decreased by $10.5 million for its 2010 fiscal year, and $23.6 million for its 2011 fiscal year.

2. As Diamond's CEO during the relevant time, Mendes had an important role in ensuring the accuracy of the financial reporting of the company, including certifying the financial statements contained in Form 10-K annual reports filed with the Commission, reviewing and approving other periodic reports and earnings releases, and signing representation letters relied on by the company's independent auditors.

3. During the relevant time period, Mendes was involved in the determination of the walnut prices that Diamond would pay walnut growers, and he was aware of reports of prices paid by other walnut purchasers to growers for their 2009 and 2010 crops which were significantly higher than prices paid by Diamond. At the same time, Mendes was involved in the decision to make two special payments to growers, paid around the same time that Diamond paid the final installment for the walnut crops delivered by its growers. These payments are described further below as the "continuity" and "momentum" payments. Mendes was also aware that these special payments were not recognized as costs associated with walnuts acquired during fiscal years 2010 and 2011, respectively.

4. Mendes acted unreasonably under the circumstances in certifying the accuracy of financial statements that Diamond included in public filings, including several filings related to offers of Diamond stock. Mendes' conduct in connection with the two special payments made to Diamond growers also caused Diamond to violate various provisions requiring accurate books and records and controls designed to ensure accurate financial reporting.

Respondent

5. Michael Mendes, age 50, is a resident of San Francisco, California. Mendes joined Diamond's International Sales and Marketing Division in 1991, and was appointed chief executive officer in 1997. Mendes joined the Diamond Board of Directors in 2005 and became its Chairman in 2010. Mendes served as Diamond's CEO and Chairman until February 2012.

[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.

Other Relevant Entity

6. Diamond is a Delaware corporation headquartered in San Francisco, California that markets and sells various snack foods and nuts. Diamond was founded in 1912 as a cooperative by California walnut growers, and became a public company after an initial public offering ("IPO") in 2005. Since its IPO, Diamond has expanded into snack foods through acquisitions while maintaining its original walnut business. Diamond's common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act and is listed on NASDAQ under the ticker "DMND."

Facts

A. Diamond Foods and its Walnut Business

7. Diamond's stock has been publicly traded since its initial public offering in 2005. At that time, Diamond's principal business was buying walnuts from California-based growers and reselling the walnuts through various distribution channels to the retail market. Since its 2005 IPO, Diamond has expanded into other snack food businesses and by 2010 it was a fast-growing snack food conglomerate. While no longer the sole focus of Diamond's business, walnuts still represented Diamond's largest commodity cost as of fiscal year 2010.

8. During the relevant time period, 2009 through 2011, Diamond acquired its walnuts through long-term supply contracts with walnut growers. These contracts generally obligated the growers to sell, and Diamond to buy, the grower's entire crop each year, and Diamond was obligated to pay a price determined by Diamond "in good faith."

9. Diamond's business model focused on selling the walnuts to established retailers under annual sales contracts. These sales contracts were often negotiated in advance of the fall harvest and delivery of the walnuts to Diamond. Diamond's growers would deliver the walnut crops each fall and Diamond would pay the growers for those walnuts in a series of payments starting with a "delivery payment" at the time of the fall harvest and culminating in a "final payment" in August of the following year.

B. Determining and Accounting for the Walnut Cost

10. Because Diamond would begin selling delivered walnuts before the final payment was made to growers, in its quarterly financial statements Diamond accounted for the costs of walnuts sold using an estimate of the total price Diamond would pay to growers for a particular crop. Once the final payment was made, in August of the year following delivery, Diamond would use the total payments made to growers for the crop as the basis for recording the cost of the walnuts sold during the fiscal year.

11. The actual prices Diamond paid growers varied by walnut variety, size of a grower's crop, quality of the crop, and other factors, but the accounting department and management referred to an average price paid for a given crop across all growers, varieties, and qualities. For example, for fiscal year ended July 31, 2009, Diamond reported a blended total walnut cost of 71 cents per pound, though individual growers might have received more or less than that amount.

12. Diamond's contracts with its growers stated: "The Final Price will be determined in good faith, taking into account market conditions, quality, variety, and other relevant factors." Diamond also disclosed how it determined walnut prices in the "Critical Accounting Policies" section of its Forms 10-K for 2010 and 2011: "This purchase price will be a price determined by us in good faith, taking into account market conditions, crop size, quality, and nut varieties, among other relevant factors."

13. Generally accepted accounting principles ("GAAP") required Diamond to record inventory at acquisition cost in the period that the walnuts were purchased, and to record cost of sales in the period in which the inventory was sold.

14. Each quarter, Diamond's finance department would prepare a memorandum justifying the walnut price used to value walnut inventory and the cost of the walnuts sold during the quarter. This memorandum was provided to the company's independent auditors, and the auditors relied on the memorandum as a representation that the walnut price had been determined in accordance with the accounting policy disclosed in the company's Forms 10-K.

C. The Q2 2010 Walnut Cost Estimate

15. In the first quarter of the 2010 fiscal year, Diamond recorded an estimated cost for the 2009 walnut crop of 82 cents per pound. At the end of the second quarter, ending January 31, 2010, Diamond recorded an estimated walnut cost of 72 cents per pound. The recorded estimated walnut cost was adjusted by 10 cents per pound although Diamond management was aware of reports that some other walnut purchasers were paying some growers prices higher than the second quarter estimate.

16. Diamond filed a Form 10-Q with the Commission on February 25, 2010, and included financial statements that accounted for walnut costs at the adjusted estimate of 72 cents per pound. On March 1, 2010, Diamond filed a prospectus related to a proposed stock sale to pay a portion of the acquisition costs associated with Diamond's acquisition of a snack food company, and the prospectus incorporated the Form 10-Q.

D. 2010 Final Payment Includes a Special "Continuity" Payment

17. In the spring and summer of 2010, Diamond management, including Mendes, began discussing a special payment to walnut growers they termed a "continuity" payment. Some of Diamond's growers had been voicing increasing dissatisfaction with the estimated final walnut price of 71 cents per pound that had been communicated in the spring of 2010. In July 2010, with the final payment to growers for the 2009 crop just a month away, Mendes and three other senior Diamond employees visited several large growers. During these meetings, Diamond management told the growers that they would receive a competitive price for the 2009 crop they had delivered to Diamond.

18. The next month, in August 2010, Diamond made its final 2009 crop payment to its growers and included in that final payment an additional amount that Diamond described in a letter to growers as a "continuity" payment. The additional payment amount, above the average 71 cents per pound "final price" already communicated, was an additional payment of approximately 10 cents per pound. The letter to growers did not clearly explain the purpose of

the payment or inform growers that the payment was an advance payment for the 2010 crop. Mendes reviewed and approved the letter before it was sent to growers.

19. Instead, the letter stated that the August check "represents both the final payment on the 2009 crop and a continuity payment reflecting the value of the multi-year supply arrangement with our Diamond walnut growers." The additional payment, if considered in conjunction with the previous installments and final payment amounts, would have brought Diamond closer to the walnut prices paid by some other walnut purchasers for the 2009 crop. Some growers believed that the continuity payment was an additional payment for the already-delivered 2009 crop.

20. The total amount of the "continuity" payment included in payments to Diamond's growers was about $20 million. Diamond's finance department did not record the impact of the continuity payment to inventory, payables to growers, or costs of goods sold for the walnuts acquired and sold during fiscal year 2010. Diamond's financial statements prepared for the fiscal year ending July 31, 2010, as disclosed in an earnings release attached to a Form 8-K and in Diamond's Form 10-K, failed to recognize the continuity payment in that fiscal year.

21. Diamond's independent auditors inquired about the additional payment included with the final payment to growers, and employees in Diamond's finance department told the auditors that the payment was an advance for the next year's crop. The auditors required the issue be addressed in the management representation letter prepared by Diamond's finance department and signed by Mendes and other senior management, and the letter specifically stated that the continuity payment was for the upcoming crop and did not represent a payment for the 2009 crop.

22. In a Form S-4 registration statement filed on June 20, 2011, Diamond offered securities to be issued in connection with Diamond's proposed acquisition of a snack food division of a large consumer products company. The registration statement incorporated the financial statements included in the Form 10-K for the fiscal year ended July 31, 2010.

23. On November 11, 2012, Diamond issued restated financial statements for the year ended July 31, 2010. The restated financial statements recognized the impact of the continuity payment and increased the reported value of inventory, payables to growers, and cost of goods sold during the fiscal year. Diamond's 2010 restated earnings were 40 percent lower than had been originally reported.

E. 2011 Walnut Payment Is Followed By a Special "Momentum" Payment

24. In the fall of 2010, growers delivered the 2010 crop to Diamond. Based on the amount Diamond paid its growers in the initial installment of the delivery payments, some growers once again expressed concern that Diamond was paying significantly below what some other walnut purchasers were paying growers. The quarterly estimate of the walnut price was recorded as 74 cents per pound at the end of the quarter ending April 30, 2011. Diamond's grower relations department learned of some of these grower concerns regarding Diamond's walnut payments being significantly below prices that some other walnut purchasers were paying some growers.

25. In the spring and summer of 2011, Diamond management began discussing a special additional payment to walnut growers they termed the "momentum payment." The growers were paid a final payment for the 2010 crop on August 31, 2011, and then two days later Diamond paid these same growers an additional amount averaging about 30 cents per pound. The additional special payments totaled about $60 million for Diamond.

26. An August 31, 2011 letter to growers told the growers that they would be receiving two payments, a final payment and a "momentum payment." The letter did not clearly identify the momentum payment as an advance on the next year's crop. The letter stated that "Enclosed you will find your 2010 crop value statement summary and payment. . . . Additionally, on September 2nd we will mail a momentum payment designed to reflect the projected market environment prior to your delivery of the 2011 crop. ...The momentum payment is independent of and incremental to your upcoming delivery payment." Some growers were unclear about whether the momentum payment was an additional payment that should be associated with the delivered crop or as an advance on the next year's undelivered crop.

27. Diamond's finance department did not record the momentum payment to inventory, payables to growers, or costs of goods sold for the walnuts acquired and sold during fiscal year 2011. As such, Diamond's annual financial statements prepared for the fiscal year ending July 31, 2011, as disclosed in an earnings release attached to a Form 8-K and in Diamond's Form 10-K, failed to recognize the momentum payment in fiscal year 2011.

28. On September 16, 2011, Diamond filed an amendment to the Form S-4 registration statement offering securities in connection with the proposed acquisition of a snack food division of a large consumer products company, and incorporated by reference the Form 10-K filed for the year ended July 31, 2011.

29. On November 11, 2012, Diamond issued restated financial statements for the year ended July 31, 2011. The restated financial statements recognized the impact of the momentum payment as an increase to acquiring inventory, payables to growers, and cost of goods sold. Diamond's 2011 restated earnings were 47 percent lower than had been originally reported.

F. Mendes' Role in Diamond's Inaccurate Financial Statements

30. As CEO, Mendes was responsible for certifying the accuracy of Diamond's financial statements and other disclosures in Diamond's periodic reports. Mendes supervised the company's chief financial officer, who in turn supervised the finance department and grower relations department. The grower relations department was responsible for communicating with and making payments to growers. Mendes received reports of prices that some other walnut purchasers were paying growers for walnuts in 2010 and 2011, and in some instances Mendes met directly with Diamond growers. Mendes was also involved in determining quarterly walnut cost estimates and approved the amount of the total payment made to growers for each crop.

31. Mendes signed and certified the Form 10-K for the year ended July 31, 2010, which included financial statements that did not account for the "continuity payment" as a cost of the walnuts acquired during the fiscal year. Likewise, Mendes signed and certified the Form

10-K for the year ended July 31, 2011, which included financial statements that did not account for the "momentum payment" as a cost of the walnuts acquired during that fiscal year. Mendes also signed and certified the Forms 10-Q for the second and third quarters of 2010, and the first, second, and third quarters of 2011. All of those financial statements were subsequently restated. Mendes also signed and certified the January 1, 2010, June 20, 2011, and September 16, 2011 registration statements which incorporated the financial statements which were later restated.

32. Mendes reasonably should have known that Diamond's Form 10-Ks for fiscal year 2010 and 2011, earnings releases for those years attached to Forms 8-K, and Diamond's 10-Qs for the second and third quarters of 2010, and the first, second, and third quarters of 2011, all of which were subsequently restated, were inaccurate. Among other things, Mendes received reports that some walnut purchasers were paying higher walnut prices for the 2009 and 2010 crops compared with Diamond, participated in discussions regarding the continuity payment and momentum payment, and reviewed grower correspondence regarding the payments which did not clearly identify the continuity and momentum payments as advance payments. Mendes thus did not act reasonably in certifying the accuracy of Diamond's financial statements in the fiscal years that were restated, and his conduct caused Diamond to violate various provisions requiring accurate books and records and controls designed to ensure accurate financial reporting.

33. Although he was not directly involved in discussions with Diamond's auditors regarding the accounting treatment for the continuity payment or momentum payment, Mendes was aware of representations made to the auditors and signed a representation letter sent to the independent auditors in connection with the audit of the 2010 financial statements. That letter stated that the continuity payment was unrelated to the 2009 crop delivery, but omitted facts that Mendes knew or should have known, including that growers had expressed confusion about the purpose of the continuity payment, that some growers considered the continuity payment as a part of the final payment for the 2009 crop, and that Diamond's recorded 2009 crop payment was significantly below the price paid by some other walnut purchasers. Because of these omissions, Mendes reasonably should have known that the statement to the auditors was incomplete.

34. Mendes received $2.7 million in bonuses related to Diamond's fiscal year 2010 and fiscal year 2011 results. Of this amount, approximately $1.6 million of the bonus amounts were directly tied to earnings per share (EPS) goals, while the remaining $1.1 million of the bonus amounts related to other management objectives. Mendes has voluntarily repaid these bonus amounts to Diamond. Mendes also forfeited claims to an additional $1.8 million in employment benefits.

Violations

35. Section 17(a)(2) of the Securities Act makes it unlawful "in the offer or sale of any securities . . . to obtain 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." Section 17(a)(3) of the Securities Act makes it unlawful "in the offer or sale of any securities . . . to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser." No finding of scienter is required to establish a violation of Sections 17(a)(2) and 17(a)(3); negligent conduct is sufficient. *Aaron v. SEC*, 446 U.S. 680, 696-97

(1980). Negligence is a failure by an actor to conform conduct to the standard of "a reasonable [person] under like circumstances." *See* Restatement (Second) of Torts §§ 282 and 283. As a result of the conduct described above, Mendes violated Sections 17(a)(2) and (a)(3) of the Securities Act.

36. Rule 13a-14 of the Exchange Act requires every principal executive of an issuer to certify reports required pursuant to Section 13(a) at the time of the filing of the report. As a result of the conduct described above, Mendes violated Exchange Act Rule 13a-14.

37. Rule 13b2-1 of the Exchange Act prohibits any person from falsifying or causing to be falsified any book, record, or account subject to Section 13(b)(2)(A) of the Exchange Act. As a result of the conduct described above, Mendes violated Exchange Act Rule 13b2-1.

38. Rule 13b2-2 of the Exchange Act prohibits any officer from either (1) making or causing to be made a materially false or misleading statement to an accountant, or (2) omitting to state, or causing another person to omit to state, any material fact necessary in order to make statements made, in light of the circumstances under which such statements were made, not misleading, to an accountant, in connection with any audit, review, or examination of the financial statements of an issuer subject to the reporting requirements of Section 13(a). As a result of the conduct described above, Mendes violated Rule 13b2-2 of the Exchange Act.

39. Section 13(a) of the Exchange Act and Exchange Act Rules 13a-1, 13a-11, and 13a-13 require issuers of securities registered pursuant to Section 12 of the Exchange Act to file with the Commission accurate periodic reports, including annual reports on Form 10-K, current reports Form 8-K, and quarterly reports on Form 10-Q. Rule 12b-20 further requires that the required reports must contain any material information necessary to make the required statements made in the reports not misleading. As a result of the conduct described above, Mendes caused violation of these provisions by Diamond Foods.

40. Section 13(b)(2)(A) of the Exchange Act requires reporting companies to make and keep books, records, and accounts which, in reasonable detail, accurately and fairly reflect their transactions and dispositions of their assets. As a result of the conduct described above, Mendes caused violation of Section 13(b)(2)(A) of the Exchange Act by Diamond Foods.

41. Section 13(b)(2)(B) requires issuers of securities registered pursuant to Section 12 of the Exchange Act to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions are recorded as necessary to permit preparation of financial statements in accordance with GAAP. As a result of the conduct described above, Mendes caused violation of Section 13(b)(2)(B) of the Exchange Act by Diamond Foods.

IV.

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

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 8A of the Securities Act, Respondent cease and desist from committing or causing any violations and any future violations of Sections 17(a)(2) and (a)(3) of the Securities Act.

B. Pursuant to Section 21C of the Exchange Act, Respondent 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, 13b2-1, and 13b2-2 thereunder.

C. Respondent shall, within 30 days of the entry of this Order, pay a civil money penalty in the amount of $125,000 to the Securities and Exchange Commission. 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 make direct payment from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm; or
(2) 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 Michael Mendes 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 Michael S. Dicke, Division of Enforcement, Securities and Exchange Commission, 44 Montgomery Street, Suite 2800, San Francisco, California 94104.

D. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, a Fair Fund is created for the penalty referenced in paragraph C above. Regardless of whether any such Fair Fund distribution is 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, Respondent agrees that in any Related Investor Action, he shall not argue that he is entitled to, nor shall he 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, Respondent agrees that he 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 Respondent 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.

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Chair White
Commissioner Gallagher
not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 71274 / January 9, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-11359

In the Matter of **Alliance Capital Management, LP** **Respondent.**	**ORDER AMENDING THE PLAN OF DISTRIBUTION**

On March 13, 2008, the Commission published a Notice of Proposed Plan of Distribution ("Plan") proposed by the Division of Enforcement in connection with this proceeding (Securities Exchange Act Rel. No. 57489). The Commission received no comments and on May 15, 2008, the Plan was approved (Exchange Act Rel. No. 57825).

The Plan provides that a Fair Fund be distributed by the Fund Administrator[1] to injured investors according to the methodology set forth in the Plan.[2] To date, of the approximately $346.4 million disbursed, a residual amount of approximately $61.9 million remains undistributed.[3] This amount is currently in the Plan's Final Settlement Account.

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1 Capitalized terms in this order, unless otherwise noted, refer to defined terms in the approved Plan.

2 In addition to approximately $27.3 million in interest earned to date, the Fair Fund is comprised of $321,230,003 in disgorgements and civil penalties, $250 million of which comes from the Alliance settlement, $70.38 million from the Daniel Calugar settlement, and a total of $850,003 paid by Alliance officers Malone, Carifa and Laughlin, as described in the order approving the Plan. *See* Exchange Act Rel. No. 57825.

3 By Order Directing Disbursement of Fair Fund dated January 22, 2009, the Commission ordered the first disbursement, composed of $46,166,264.96. *See* Exchange Act Rel. No. 59280. By Order Directing Disbursement of Fair Fund dated February 11, 2009, the Commission ordered the second disbursement, composed of $79,178,672.81. *See* Exchange Act Rel. No. 59389. By Order Directing Disbursement of Fair Fund dated March 31, 2009, the Commission ordered the third disbursement, composed of $63,141,852.24. *See* Exchange Act Rel. No. 59657. By Order Directing Disbursement of Fair Fund dated

Section 3.7.5 of the Plan provides that any residual amount in the Final Settlement Account, after all Fair Fund assets have been distributed to injured investors, be remitted to the Alliance Funds, based on the proportion of Adjusted Losses incurred in each Alliance Fund, after provisions for any taxes have been made and prior to the termination of the Fair Fund. The current residual amount is $61,884,846.69, which includes $4,745,346.31 in checks that were refused or returned, $20,424,661.03 in checks that were deemed undeliverable and $33,305,305.77 in checks that were delivered but uncashed. Upon further consultation with the Commission staff, the Independent Distribution Consultant ("IDC") and the Fund Administrator have determined that certain enhanced measures described below ("Enhanced Measures"), beyond those in the Plan and already implemented, could result in more checks being cashed by eligible harmed investors with uncashed payments ("Unpaid Distributees"). Therefore, consistent with the Plan's primary object to distribute funds to affected investors at the time of the misconduct and with the concurrence of the IDC and Alliance, the Plan is amended as follows:

A. Checks Previously Refused or Returned: Working with the IDC, the Fund Administrator shall reissue and mail previously refused or returned checks of $5,000 or more for which new custodian or beneficiary information has become available since the last distribution tranche. Additional commercially reasonable best efforts, if necessary, may be made by the Fund Administrator in consultation with the IDC and, as appropriate, the Commission staff, if the IDC or Fund Administrator becomes aware of new custodian or beneficiary information for the distribution of any previously refused or returned check prior to the completion of the Enhanced Measures.

B. Checks Previously Deemed Undeliverable: (1) For all checks of $5,000 or more previously deemed undeliverable, the Fund Administrator shall conduct manual tracing activities, including, but not limited to, manual LexisNexis searches, research on the internet, research in proprietary databases, and research on FINRA's website. The Fund Administrator shall mail all checks of $5,000 or more previously deemed undeliverable using either the new information from the manual searches or existing information in the Fair Fund's database for those checks for which new information cannot be obtained. In addition, two days after the checks are mailed ("Check Mailing Date"), the Fund Administrator shall mail a courtesy letter in a form reviewed and approved by the Commission staff ("Courtesy Letter"), via first class mail, to Unpaid Distributees reminding them about the 90-day stale date of the recently mailed checks and encouraging them to cash their checks before the deadline.

April 28, 2009, the Commission ordered the fourth disbursement, composed of $49,910,496.49. *See* Exchange Act Rel. No. 59832. By Order Directing Disbursement of Fair Fund dated May 14, 2009, the Commission ordered the fifth disbursement, composed of $56,642,634.13. *See* Exchange Act Rel. No. 59926. By Order Directing Disbursement of Fair Fund dated August 5, 2009, the Commission ordered the sixth disbursement, composed of $46,942,173.23. *See* Exchange Act Rel. No. 60446. By Order Directing Disbursement of Fair Fund dated May 31, 2011, the Commission ordered the seventh disbursement, composed of $9,738,605.02. *See* Exchange Act Rel. No. 64568.

The Fund Administrator shall mail additional Courtesy Letters two weeks and then six weeks after the Check Mailing Date to Unpaid Distributees with delivered but outstanding checks. Furthermore, the Fund Administrator shall engage in a live calling campaign to encourage Unpaid Distributees with checks outstanding after six weeks to cash their checks. In support of the live calling campaign, and working with the Fund Administrator, the IDC shall engage in commercially reasonable best efforts to research telephone numbers for Unpaid Distributees and attempt up to two live calls each to Unpaid Distributees with outstanding checks.

(2) For all previously deemed undeliverable checks of $1,000 or more, but less than $5,000, the Fund Administrator shall reissue and mail these checks, via first class mail, using existing information in the Fair Fund's database or any new forwarding address that becomes known to the IDC or Fund Administrator prior to the completion of the Enhanced Measures.

C. Checks Previously Delivered but Uncashed: (1) The Fund Administrator shall reissue and mail, via first class mail, all previously delivered but uncashed checks of $100 or more (but less than $1,000). Two days after the Check Mailing Date, the Fund Administrator shall send Courtesy Letters to the Unpaid Distributees, via first class mail, reminding them about the 90-day stale date of the checks and encouraging them to cash the checks before the deadline.

(2) The Fund Administrator also shall reissue and mail, via first class mail, all previously delivered but uncashed checks of $1,000 or more. The Fund Administrator shall send Courtesy Letters to Unpaid Distributees, via first class mail, reminding them about the recently mailed checks two days after the Check Mailing Date, with additional Courtesy Letters to be mailed two weeks and then six weeks after the Check Mailing Date to Unpaid Distributees with delivered but outstanding checks.

(3) For delivered checks of $1,000 or more that remain outstanding after six weeks from the Check Mailing Date, the Fund Administrator shall research and locate phone numbers and attempt up to two live calls each to Unpaid Distributees reminding them about the deadline and encouraging them to cash their checks before the deadline.

(4) If any of the previously delivered but uncashed checks are returned as undeliverable, the standard search process outlined in Section 4.5 of the Plan shall be implemented. If any of these checks of $5,000 or more are returned as undeliverable and the standard search process fails to lead to a delivered check, the manual search process for undeliverable checks described in Paragraph B(1) above shall be implemented.

D. Issuance of Checks: The Fund Administrator, in coordination with the IDC, shall issue and mail checks to Unpaid Distributees that are identified as a result of the Enhanced Steps as soon as practicable. The IDC shall have discretion, subject to

Commission staff's approval, to request that the Fund Administrator reissue and mail any other checks consistent with the Plan, as amended.

E. Stale Dates for Issued Checks: Checks issued as a result of the Enhanced Measures shall have a stale date of 90 days after issuance. The IDC may, in his discretion, request that the Fund Administrator reissue a check which was issued pursuant to this Amended Order authorizing the Enhanced Measures, but only if the request for reissuance is post-marked before the stale date of the original check (i.e., within 90 days after the original issuance). Any check so reissued will have a stale date no later than 60 days after the stale date of the originally issued check.

F. Costs of Enhanced Measures: Alliance will pay, but shall be reimbursed from the Fair Fund, for the fees and expenses of the IDC and the Fund Administrator that are attributable to the Enhanced Measures, subject to review and approval by the Commission staff. Such reimbursable costs, however, are not to exceed $600,000 ("Total Reimbursable Amount"). Fees and expenses of the IDC and the Fund Administrator which are not attributable to the Enhanced Measures, as determined by the Commission staff, shall be borne by Alliance in accordance with the Commission's Amended Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940, and 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, against Alliance Capital Management, L.P., dated January 15, 2004, and shall not be reimbursed from the Fair Fund. Accordingly, fees and expenses attributable to the Enhanced Measures, but which exceed the Total Reimbursable Amount shall not be reimbursed.

G. Amount to be Reserved from the Residual: The amount of $605,000 will be reserved from the Fair Fund's Final Settlement Account ("Reserved Amount") to pay: (1) the Total Reimbursable Amount of the Enhanced Measures as described above; (2) estimated tax liabilities of the Fair Fund; and (3) any other obligations of the Fair Fund. The remainder of the Final Settlement Account shall be available to cover check issuances that result from the Enhanced Measures and for the resolution of inquiries and disputes in accordance with Section 4.9 of the Plan prior to the Residual Distribution.

H. The Residual Distribution: Any amount remaining in the Final Settlement Account, less the Reserve Amount, after the completion of the Enhanced Measures shall be considered the Residual and shall be distributed to the affected Alliance Funds in accordance with the Plan.

I. Remaining Amount to be Disbursed to Treasury: Any amount remaining in the Fair Fund after the Residual Distribution and payment of Fair Fund's obligations shall be disbursed to Treasury in accordance with Section 10.2 of the Plan.

J. Certification of Completion of Enhanced Measures: The Fund Administrator and the IDC shall each submit a certification to the Commission staff attesting to the completion of all steps required by the Enhanced Measures prior to, or contemporaneously with, the submission of a validated payment file for the Residual Distribution.

Accordingly, it is ORDERED that:

1. Pursuant to Rule 1105(g) of the Fair Fund Rules, 17 C.F.R. § 201.1105(g), that the Plan is amended as described above;

2. The Secretary is authorized to issue, but shall delay the issuance of an Order Directing Disbursement of up to $33.1 million to injured investors upon the Secretary's receipt of a certification by the Commission staff that a validated payment file has been received and accepted by the Commission staff in accordance with the Plan.

3. The Secretary is authorized to issue, but shall delay the issuance of an Order Directing Disbursement of the Fair Fund's Residual of at least $28.2 million but not more than $61.9 million to the eligible Alliance Funds, upon the Secretary's receipt of a certification by the Commission staff that the validated payment file has been received and accepted by the Commission staff in accordance with the Plan.

By the Commission.

Elizabeth M. Murphy
Secretary

Lynn M. Powalski

By: Lynn M. Powalski
Deputy Secretary

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 300

[Release No. SIPA-172; File No. SIPC-2012-01]

Rules of the Securities Investor Protection Corporation

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission ("Commission") is approving a proposed rule change filed by the Securities Investor Protection Corporation ("SIPC"). The proposed rule change amends SIPC Rule 400 ("Rule 400"), entitled "Rules Relating to Satisfaction of Customer Claims for Standardized Options," which relates to the satisfaction of customer claims for standardized options under the Securities Investor Protection Act of 1970 ("SIPA"). Because SIPC rules have the force and effect as if promulgated by the Commission, the rules are published in Title 17 of the Code of Federal Regulations, where the rule change will be reflected.

EFFECTIVE DATE: [Insert date 30 days after the date of publication in the Federal Register]

FOR FURTHER INFORMATION CONTACT: Michael A. Macchiaroli, Associate Director, at (202) 551-5525; Thomas K. McGowan, Deputy Associate Director, at (202) 551-5521; Sheila Dombal Swartz, Special Counsel, at (202) 551-5545; or Kimberly N. Chehardy, Special Counsel, at (202) 551-5791, Office of Financial Responsibility, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-7010.

SUPPLEMENTARY INFORMATION: The Commission is approving a proposed rule change filed by SIPC, amending Rule 400, 17 CFR 300.400 under SIPA.

the definition of Standardized Options to include options issued by a Commission-registered securities clearing agency or a foreign securities clearing agency, i.e., a cleared over-the-counter option ("OTC Option").

In light of experience and knowledge gained from the liquidation of Lehman Brothers Inc. ("Lehman") and other SIPA proceedings, SIPC has determined that allowing SIPA trustees the flexibility, subject to SIPC approval, of transferring customers' options positions or of liquidating their positions, would be beneficial to the investing public and consistent with the customer protection purposes of SIPA. SIPC stated that the ability to transfer Standardized Options positions to another brokerage in lieu of an automatic closeout gives SIPA trustees more flexibility in handling such customer assets after the commencement of a SIPA liquidation proceeding, and more closely approximates what the customer would expect to be in his account but for the failure of the broker-dealer.

This is particularly true where the trustee, as in the Lehman case, was able promptly to effectuate bulk transfers of customer accounts to other brokerages enabling customers to regain access to their accounts in the form in which the accounts existed pre-liquidation, with comparatively minimal disruption. In such instances, customers generally are better served by having their options positions transferred with their other securities to their accounts at their new broker-dealer. SIPC stated that proposed amendments would provide clear authority for a SIPA trustee to transfer the Standardized Options positions, with SIPC's consent. This greater flexibility in the treatment of open positions would enhance customer protection under exigent circumstances, and potentially avoid exacerbating the turmoil or harm to customers and/or the markets that could be caused by the forced liquidation of open positions.

Commission a copy of any proposed amendment to a SIPC rule.[9] Section 3(e)(2)(B) of SIPA provides that within thirty-five days after the date of publication of the notice of filing of a proposed rule change, the Commission shall: (1) by order approve the proposed rule change; or (2) institute proceedings to determine whether the proposed rule change should be disapproved.[10] Further, section 3(e)(2)(D) of SIPA provides that the Commission shall approve a proposed rule change if it finds that the proposed rule change is in the public interest and is consistent with the purposes of SIPA.[11]

The Commission finds, pursuant to section 3(e)(2)(D) of SIPA, that the proposed rule change is in the public interest and consistent with the purposes of SIPA. First, as noted above, SIPC has determined that allowing SIPA trustees the flexibility, subject to SIPC approval, to transfer customers' options positions or to liquidate their positions, would be beneficial to the investing public and consistent with the customer protection purposes of SIPA. The ability to transfer Standardized Options positions to another brokerage instead of being required to close them out gives SIPA trustees more flexibility in handling customer assets after the commencement of a SIPA liquidation proceeding. Second, SIPA noted that modifying the definition of Standardized Options under paragraph (h) of Rule 400 to include OTC Options would enhance the protections afforded customers in the event of a liquidation of their broker-dealer. This modification also clarifies that – like exchange-traded options – OTC Options would be deemed Standardized Options subject to closeout or transfer in a SIPA liquidation proceeding. Accordingly, the Commission finds that the proposed SIPC rule change is in the public interest and is consistent with the purposes of the SIPA.

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9 15 U.S.C. 78ccc(e)(2)(A).

10 15 U.S.C. 78ccc(e)(2)(B).

11 15 U.S.C. 78ccc(e)(2)(D).

b. In paragraph (e), adding the phrase "except to the extent that such positions have been transferred as provided in paragraph (b) of this section" after the phrase "section 7(b)(1) of the Act"; and

c. In paragraph (h), adding the phrase ", and any other option that is a security under section 16(14) of the Act, 15 U.S.C. 78lll(14), and is issued by a securities clearing agency registered under section 17A of the Securities Exchange Act of 1934, 15 U.S.C. 78q-1, or a foreign securities clearing agency" after the phrase "foreign securities exchange".

By the Commission.

Elizabeth M. Murphy

Elizabeth M. Murphy
Secretary

Date: January 9, 2014

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240, 249 and 250

Release No. 34-71288; File No. S7-45-10

RIN 3235-AK86

Temporary Stay of Final Rule on Registration of Municipal Advisors

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; stay.

SUMMARY: The Securities and Exchange Commission ("Commission") is staying temporarily Rules 15Ba1-1 through 15Ba1-8 and Rule 15Bc4-1 ("Rules") under the Securities Exchange Act of 1934 and Forms MA, MA-I, MA-W, and MA-NR ("Forms") until July 1, 2014 and making conforming, non-substantive amendments to Rule 15Ba1-8 regarding recordkeeping requirements to conform the dates referenced in certain provisions of that rule to the July 1, 2014 date (the "Amendment"). The effective date for the Rules and Forms was January 13, 2014. This stay of the Rules and Forms means that persons are not required to comply with the Rules and Forms until July 1, 2014. The Amendment is the only action the Commission is taking in this release with respect to the Rules and Forms. Therefore, the phased-in compliance period that begins on July 1, 2014, for the requirement to use the Forms to register as municipal advisors under the Rules remains unchanged.

DATES: Effective [Insert Date of Filing at the Federal Register]. 17 CFR 240.15Ba1-1 to 15Ba1-8, 17 CFR 249.1300, 1310, 1320, and 1330, and 17 CFR 250.15Bc4-1 are stayed until July 1, 2014 as of [Insert Date of Filing at the Federal Register].

On September 20, 2013, the Commission issued Rules and Forms to provide for municipal advisor registration under a permanent registration regime.[4] The effective date for the Rules and Forms was January 13, 2014. The Commission provided a phased-in compliance period, beginning on July 1, 2014, for the requirement to use the Forms to register as municipal advisors under the Rules. Municipal advisors currently are subject to the statutory regime under Section 15B of the Exchange Act, which imposes on municipal advisors a fiduciary duty to municipal entities, and the temporary registration regime under which municipal advisors are required to register with the Commission on Form MA-T under the interim final temporary Rule 15Ba2-6T.

Market participants have requested additional time before the Rules and Forms apply to them to address a number of issues regarding implementation of and compliance with the Rules, including, among other things, adapting their policies and procedures, developing supervisory practices and internal controls, adapting their account and investment tracking systems, developing recordkeeping procedures, adapting their business models and practices, educating their personnel with respect to this regulatory regime, and developing training programs to establish effective compliance with the Rules.[5]

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[4] See Registration of Municipal Advisors, Release No. 34-70462 (September 20, 2013), 78 FR 67467 (November 12, 2013), available at http://www.sec.gov/rules/final/2013/34-70462.pdf (the "Adopting Release").

[5] See letters from Mike Nicholas, Chief Executive Officer, Bond Dealers of America, dated November 8, 2013; Karen L. Barr, General Counsel, Investment Adviser Association; Laura L. Grossman, Assistant General Counsel, Investment Adviser Association; Timothy W. Cameron, Managing Director, Asset Management Group, Securities Industry and Financial Markets Association; and Matthew J. Nevins, Managing Director and Associate General Counsel, Asset Management Group, Securities Industry and Financial Markets Association, dated January 2, 2014; Leslie M. Norwood, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, dated January 9, 2014; and Cristeena Naser, Vice President and Senior Counsel, Center for Securities, Trust & Investments, American Bankers Association, dated January 10, 2014.

municipal entities, enhancing the quality of municipal advice, and protecting investors in the municipal securities market through an effective municipal advisor registration regime while providing appropriate relief to industry participants that need additional time to understand the scope and application of the Rules and to implement effective compliance with the Rules. The Commission also believes that the stay of the Rules and Forms until July 1, 2014 pursuant to the Amendment is appropriate since July 1, 2014 is the first day of the phased-in compliance period for municipal advisors to comply with the requirement to register as municipal advisors using the Forms under the Rules.

The Administrative Procedure Act ("APA") generally requires an agency to publish notice of a proposed rulemaking in the Federal Register.[8] This requirement does not apply, however, if the agency "for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest."[9] The Rules and Forms are effective beginning January 13, 2014, but the Commission has been made aware of the need for additional time for market participants to analyze, implement, and comply with the Rules, and thus is taking immediate action. In addition, the Commission notes that the Amendment only stays the Rules and Forms until July 1, 2014 and makes conforming, non-substantive date changes. It does not substantively change the Rules and Forms that were subject to notice and public comment and discussed in the Adopting Release. The Amendment merely preserves the status quo until July 1, 2014, which will provide municipal advisors and other municipal market participants with additional time to analyze, implement, and comply with the Rules. For these reasons, and the reasons

[8] See 5 U.S.C. 553(b).

[9] See 5 U.S.C. 553(b)(3)(B).

would require any new or additional "collection of information" as such term is defined in the PRA and will not impose any new burdens or costs upon municipal advisors.

The Commission is sensitive to the costs and benefits of its rules. Section 3(f) of the Exchange Act requires the Commission, whenever it engages in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action would promote efficiency, competition, and capital formation.[13] In addition, Section 23(a)(2) of the Exchange Act requires the Commission, when making rules under the Exchange Act, to consider the impact such rules would have on competition.[14] Section 23(a)(2) of the Exchange Act prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.[15]

As discussed above, the Amendment only stays the Rules and Forms to July 1, 2014 and makes conforming, non-substantive date changes. It does not substantively change the Rules and Forms. The temporary registration regime currently in effect serves as the economic baseline against which the costs and benefits, as well as the impact on efficiency, competition, and capital formation, of the Amendment are measured.

In the Adopting Release, the Commission discussed the costs and benefits of the temporary registration regime and the current state of the municipal advisor market.[16] Since the Commission is only staying the Rules and Forms until July 1, 2014 and making

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[13] See 15 U.S.C. 78c(f).

[14] See 15 U.S.C. 78w(a)(2).

[15] See 15 U.S.C. 78w(a)(2).

[16] See Adopting Release, supra note 4, at Section VIII.C.

Text of Rule and Amendments

For the reasons set out above, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 240 – GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The general authority citation for part 240 continues to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77z-3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78k, 78k-1, 78*l*, 78m, 78n, 78n-1, 78*o*, 78*o*-4, 78p, 78q, 78q-1, 78s, 78u-5, 78w, 78x, 78*ll*, 78mm, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4, 80b-11, and 7201 *et seq.;* 18 U.S.C. 1350; and 12 U.S.C. 5221(e)(3) unless otherwise noted.

* * * * *

2. Section 240.15Ba1-8 is amended by:

   a. In paragraph (a)(3)(ii), removing the phrase "January 13, 2014" and adding in its place "July 1, 2014";

   b. In paragraph (a)(6), removing the phrase "January 13, 2014" and adding in its place "July 1, 2014";

   c. In paragraph (a)(7)(ii), removing the phrase "January 13, 2014" and adding in its place "July 1, 2014";

   d. In paragraph (b)(2), removing the phrase "January 13, 2014" and adding in its place "July 1, 2014".

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 71292 / January 14, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15676

In the Matter of **David H. Frederickson, Esq.,** **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 David H. Frederickson ("Frederickson " or "Respondent") pursuant to Rule 102(e)(3)(i) of the Commission's Rules of Practice.[1]

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)

[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 . . . 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.

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. Frederickson, age 74, is an attorney licensed in California and a resident of Redondo Beach, California. He operates as a sole practitioner through The Law Offices of David H. Frederickson.

2. On September 27, 2013, the Commission filed a complaint against Frederickson in Securities and Exchange Commission v. David H. Frederickson and The Law Offices of David H. Frederickson, Civil Action Number 1:13-cv-05787-RMB-AMD, in the United States District Court for the District of New Jersey. On January 6, 2014, the court entered an order permanently enjoining Frederickson by consent from violating or aiding and abetting violations of Section 17(a) of the Securities Act of 1933 and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Exchange Act Rule 10b-5. The final judgment also enjoined Frederickson from providing professional legal or escrow services in connection with, or from participating directly or indirectly in, the issuance, offer, or sale of securities involving bank guarantees, medium-term notes, standby letters of credit, structured notes, and similar instruments; provided, however, that such injunction did not prevent him from purchasing or selling securities listed on a national securities exchange. The final judgment ordered Frederickson, jointly with his law firm, to pay disgorgement of $6,790, prejudgment interest in the amount of $467, and a $25,000 civil penalty, for a total of $32,257.

3. The Commission's Complaint alleged, among other things, that Frederickson, acting through his law firm, participated in and aided and abetted a high-yield investment scheme perpetrated by Brett A. Cooper during 2010 and 2011. The Complaint alleged that Frederickson and his firm served as escrow agent in two transactions through which two investors deposited $350,000 into his client trust account during 2010 and 2011, which funds were then paid out to Cooper or his designee at Cooper's direction. The Complaint further alleged that Frederickson stated in letters provided to the two investors that their investments were secured by collateral over which he held a power of attorney. The Complaint alleges that Frederickson knew or was reckless in not knowing that his representations in these letters were false and misleading, and that he was participating in fictitious investment transactions with Cooper.

IV.

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

Accordingly, it is hereby ORDERED pursuant to Rule 102(e)(3)(i) of the Commission's Rules of Practice, effective immediately, that:

David H. Frederickson is suspended from appearing or practicing before the Commission as an attorney.

By the Commission.

Elizabeth M. Murphy

Elizabeth M. Murphy
Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9511 / January 14, 2014

SECURITIES EXCHANGE ACT OF 1934
Release No. 71298 / January 14, 2014

INVESTMENT ADVISERS ACT OF 1940
Release No. 3755 / January 14, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15413

In the Matter of RICHARD D. HICKS, Respondent.	**ORDER MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933, SECTIONS 15(b) AND 21C OF THE SECURUTIES EXCHANGE ACT OF 1934 AND SECTIONS 203(f) AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest to enter this Order Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Section 8A of the Securities Act of 1933 ("Securities Act"), Sections 15(b) and 21C of the Securities Exchange Act of 1934 ("Exchange Act") and Sections 203(f) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act") against Richard D. Hicks ("Respondent" or "Hicks").

II.

Following the institution of these proceedings on August 13, 2013, Respondent 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 Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to

Section 8A of the Securities Act of 1933, Sections 15(b) and 21C of the Securities Exchange Act of 1934 and Sections 203(f) and 203(k) of the Investment Advisers Act of 1940 as to Richard D. Hicks ("Order"), as set forth below.

III.

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

Summary

These proceeding arise out of an investigation conducted by the Division of Enforcement ("Division").

Respondent

1. Hicks, 51, is a resident of Tyler, Texas. He is the founder and controlling person of Elder Advisory Services, LLC ("Elder Advisory"). Hicks has never held a securities license. He has operated Elder Advisory and its predecessor business since 1995.

Other Relevant Entities

2. Elder Advisory Services, is a Texas limited liability company located in Tyler, Texas and owned by Hicks and his wife. Elder Advisory's business involves assisting people whose family members need to enter care facilities, in protecting estate assets and qualifying for Medicaid benefits. It has never been registered as either a broker-dealer or investment adviser. In 2001 Hicks consented to an injunctive order issued by the Texas Supreme Court, for practicing law without a license through Elder Advisory.[1] Thereafter, he affiliated with an attorney in Tyler whose firm agreed to review all recommendations of a legal nature made through Elder Advisory.

In June 2013, the attorney discovered that Hicks had been using his name to provide legal advice to Elder Advisory clients without his knowledge. He obtained an ex parte temporary restraining order against Hicks, and Hicks agreed to a temporary injunction.[2]

3. National Note of Utah, LC ("National Note") is a Utah limited liability company formerly with its principal place of business in West Jordan, Utah. National Note purported to purchase, manage, and sell real property and also buy and sell loans backed by real property interests. From at least 2004 to mid-2012, National Note sold over $100 million in promissory notes to approximately 600 investors. National Note promised investors a guaranteed return of 12% a year, paid quarterly from the company's profits from real estate investments and lending. It raised these new investor funds, however, by means of a private

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[1] Unauthorized Practice of Law Committee for the Supreme Court of Texas v. Richard Hicks, Individually and d/b/a Elder Advisory Services, Case No. 01-0118B.

[2] Peter G. Milne vs. Richard Hicks et al., Cause No. 13-1388B, 114th Judicial District, Smith County, TX.

placement memorandum ("PPM") and sales materials that contained material misstatements and omissions.

By the fall of 2010, National Note was having difficulty making some payments to investors. By approximately September 2011, it was no longer able to make payments on a timely basis, and within a few months it had ceased making payments altogether. On June 25, 2012, the Commission filed an emergency action against National Note and its principal in federal district court, alleging that National Note was a widespread offering fraud and Ponzi scheme.[3] On August 17, 2012, National Note and its principal consented to a preliminary injunction in that case. Both assets continue to be subject to a freeze, and a receiver is in control of the company's business.

Background

4. Between December 2006 and February 2012, Hicks offered and sold over $1.8 million of National Note securities to 12 investors. Their investments came largely from their savings and retirement funds.

5. Hicks offered and sold these securities without a registration statement being filed or in effect.

6. Hicks first learned of National Note in 2005 or 2006 from a personal friend who was a registered representative at a brokerage firm. This friend explained to Hicks that he himself would not be permitted to sell this kind of investment by his firm. This was a potential indication that National Note was not a sound investment.

7. Hicks called National Note and obtained its sales materials, which consisted of a folder containing a glossy brochure and a copy of its PPM. He then provided the PPM and sales brochure to potential investors.

8. Hicks located potential investors in National Note through his company, Elder Advisory. He used a questionnaire to gather background information from new clients, including detailed information regarding the client's assets, in order to determine the client's eligibility for Medicaid. He then created a recommendation for the client. In the course of reviewing his clients' estates, he was also able to gather information about their retirement funds and other assets.

9. Beginning in 2006, Hicks began recommending to some of his clients that they invest in National Note. Hicks stressed to them that they were going to need National Note's purported 12% guaranteed return in order to afford nursing homes for themselves or their family members.

10. Of the 12 investors Hicks placed in National Note, at least half were not accredited and were also unsophisticated. Hicks never discussed accreditation with his clients and

3 SEC v. National Note of Utah, LC, Civil Action No. 2:12-cv-00591 (D. Utah).

did not himself understand the concept. Nevertheless, he filled out the National Note accreditation questionnaire for most of his clients.

11. Hicks also acted as purchaser representative under Regulation D for at least three investors. In the Purchaser Representative Questionnaire Hicks filled out and signed for his clients, he made the following misrepresentations:

a. that he had had prior experience in advising clients with respect to investments similar to National Note;
b. that he, either alone or together with the investor, had such knowledge and experience in financial and business matters generally and in similar investments in particular so as to be capable of evaluating the merits and risks of the proposed investment; and
c. that he had disclosed to the investor all compensation he was to receive from National Note.

12. Hicks had been told by his friend in the brokerage industry that National Note investors had a collateral interest in real property to secure their investment. Although he only received such a collateral document from National Note for the first few of his clients, Hicks assumed that all his clients had such a security interest. He took no steps to verify this assumption, however.

13. National Note paid Hicks a commission of 2% of the amount invested by people he solicited, for a total of $33,591 in commissions. Hicks did not tell his clients that National Note was paying him a commission.

14. Hicks provided his clients with the National Note sales packet, which included its sales brochure, the PPM and other related documents. These materials, however, contained the following material misrepresentations:

a. the brochure, PPM and attached financial statements represented that National Note paid investor returns from the profits it earned from its real estate business; but in reality National Note was a Ponzi scheme;
b. the brochure and PPM stated that National Note was able to guarantee its investors 12% annually because it was successfully investing the funds in projects earning annual returns of 15-20%, but in fact National Note was earning no such returns;
c. the PPM, and the promissory notes investors received, stated that investor funds were secured by notes and trust deeds and/or security agreements secured by real estate, mobile homes and/or vehicles. This was untrue. Investors had no lien or security interest and were unsecured creditors;

15. The National Note materials also omitted to state material facts:

a. National Note was insolvent; and
b. since approximately 2010, National Note's real estate transactions had been exclusively with related parties.

16. In addition to giving National Note's PPM and brochure to prospective investors, Hicks repeated some of the above misrepresentations to his clients. He told them that National Note made its money in real estate; that their investments would be collateralized; and that they would receive a 12% return, guaranteed.

17. National Note's claim of a guaranteed 12% return was too good to be true, and Hicks repeated it to potential investors without a reasonable basis to believe that the claimed rate of return was true.

18. The National Note PPM Hicks gave his clients included financial statements that were unaudited and out of date. Hicks never requested additional financial statements from National Note.

19. National Note was an unsuitable investment for Hicks' elderly clients. Hicks knew that his clients were seeking to preserve assets to meet care facility costs, and in many cases were investing their retirement savings. By contrast, National Note was an extremely speculative, unsecured investment.

20. In October 2010, the note held by a client of Hicks matured. That client had decided that he wanted National Note to return his $500,000 principal. Hicks and the client contacted an employee of National Note together to request the return of the principal; however, the National Note employee responded that National Note was unable to return the client's principal at that time. When the client contacted Hicks shortly thereafter, Hick informed his client that National Note was having cashflow problems and could not return the principal. Hicks' client never received even a partial return of his principal.

21. Consequently, Hicks was aware, as early as October 2010, that National Note did not have sufficient funds to make payments to certain investors. Nevertheless, he subsequently solicited two clients to invest without mentioning this material fact. One of these clients invested $229,000 in November 2010. The other, who was an existing National Note investor, made an additional principal investment of $25,000 in January 2011.

22. By approximately September 2011, National Note was no longer able to make payments on a timely basis, and within a few months it had ceased making payments altogether.

23. From the fall of 2011 through the spring of 2012, Hicks exchanged numerous e-mails with National Note inquiring as to when his clients could expect their interest payments. He explained that his clients were anxiously awaiting these payments. Nevertheless, he solicited one more client to invest in National Note without telling him that National Note was no longer making payments. This client invested $55,000 in February 2012.

24. As a result of the conduct described above, Hicks willfully violated Sections 5(a), 5(c) and 17(a) of the Securities Act and Sections 10(b) and 15(a) of the Exchange Act and

Rule 10b-5 thereunder, which prohibit fraudulent conduct in the offer or sale of securities and in connection with the purchase or sale of securities.

25. As a result of the conduct described above, Hicks willfully violated Sections 206(1) and 206(2) of the Advisers Act, which prohibit fraudulent conduct by an investment adviser.

Disgorgement and Civil Penalties

26. Respondent has submitted a sworn Statement of Financial Condition dated September 29, 2013 and other evidence and has asserted his inability to pay disgorgement plus prejudgment interest or a civil penalty.

IV.

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

Accordingly, pursuant to Section 8A of the Securities Act, Sections 15(b) and 21C of the Exchange Act and Sections 203(f) and 203(k) of the Advisers Act it is hereby ORDERED that:

A. Respondent Hicks cease and desist from committing or causing any violations and any future violations of Sections 5(a), 5(c) and 17(a) of the Securities Act, Sections 10(b) and 15(a) of the Exchange Act and Rule 10b-5 promulgated thereunder, and Sections 206(1) and 206(2) of the Advisers Act.

B. Respondent Hicks 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.

C. 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.

D. Respondent shall pay disgorgement of $33,591.00 and prejudgment interest of $15,106.36, but payment of such amount is waived and the Commission is not imposing a civil penalty based upon Respondent's sworn representations in his Statement of Financial Condition dated September 29, 2013 and other documents submitted to the Commission.

E. The Division may, at any time following the entry of this Order, petition the Commission to: (1) reopen this matter to consider whether Respondent provided accurate and complete financial information at the time such representations were made; and (2) seek an order directing payment of disgorgement, together with prejudgment interest thereon, and 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. Respondent may not, by way of defense to any such petition: (1) contest the findings of this Order; (2) assert that payment of disgorgement, prejudgment interest thereon, and a penalty should not be ordered; (3) contest the amount of disgorgement and prejudgment interest ordered; (4) contest the imposition of the maximum penalty allowable under the law; or (5) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

By the Commission.

Elizabeth M. Murphy
Secretary

Kevin M. O'Neill

By: Kevin M. O'Neill
Deputy Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 71301 / January 14, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-12432

In the Matter of **BISYS Fund Services Inc.,** **Respondent.**	**ORDER AUTHORIZING THE TRANSFER OF RESIDUAL FUNDS AND ANY FUTURE FUNDS RECEIVED BY THE FAIR FUND TO THE U.S. TREASURY, DISCHARGING THE FUND ADMINISTRATOR, AND TERMINATING THE FAIR FUND**

On September 26, 2006, the Securities & 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 Section 203(k) of the Investment Advisers Act of 1940, and Sections 9(b) and 9(f) of the Investment Company Act of 1940 ("Order") against BISYS Fund Services, Inc. ("BISYS") (Advisers Act Release No. 2554 (Sept. 26, 2006)). The Commission simultaneously accepted BISYS's offer of settlement. The Order required BISYS to pay disgorgement of $9,698,835, prejudgment interest of $1,703,981.66, and a civil money penalty of $10,000,000. The Order also created a Fair Fund pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended.

On September 25, 2009, the Commission issued an Order Approving Distribution Plan, Appointing a Fund Administrator, and Waiving Bond, whereby Rust Consulting, Inc. ("Rust") was appointed as the fund administrator (Exchange Act Release No. 60719 (Sept. 25, 2009)). On July 14, 2010, the Commission issued an Order Directing Disbursement of Fair Fund that authorized the disbursement of $22,422,911.40 (Exchange Act Release No. 62498 (July 14, 2010)).

The Fair Fund distributed $22,422,911.40 to twenty seven mutual fund families affected by the conduct discussed in the Order. The Fair Fund was allocated proportionally: first, by distributing the portion of the disgorgement and prejudgment interest amounts attributable to each Fund Family; and second, by distributing the penalty based on the amount of administration fees paid by each Fund Family that were allocated to marketing expenses during the period July 1, 1999 through June 30, 2004. Approximately 99.94% of the Fair Fund was distributed. The residual amount principally reflects net refunds from Federal and District of Columbia tax authorities.

Paragraph 31 of the Plan provides that the Fair Fund is eligible for termination after (1) the final accounting by the fund administrator has been submitted and approved by the Commission; (2) all taxes and fees have been paid; and (3) all remaining funds or any residuals have been transferred to the U.S. Treasury. A final accounting report, which was submitted to the Commission pursuant to Rule 1105(f) of the Commission's Rules on Fair Fund and Disgorgement Plans, has been approved. All taxes and fees have been paid and the Commission is in possession of the remaining funds.

Accordingly, IT IS ORDERED that:

1. The $12,765.58 balance in the Fair Fund shall be transferred to the U.S. Treasury, and any future funds received by the Fair Fund will also be transferred to the U.S. Treasury;
2. The fund administrator is discharged; and
3. The Fair Fund is terminated.

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. 71304 / January 15, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15677

In the Matter of Aden Solutions Inc., Lumonall, Inc., Smart Comm International Ltd., Tissera, Inc., Ungava Mines, Inc., Unity Wireless Corporation, and Zupintra Corporation, 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]

1. Aden Solutions Inc. ("ADSU") (CIK No. 1427639) is a revoked Nevada corporation located in Toronto, Ontario, Canada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). ADSU 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, 2011, which reported a net loss of $40,883 for the prior nine months. As of January 13, 2014, the common stock of ADSU was traded on the over-the-counter markets.

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

2. Lumonall, Inc. ("LUNL") (CIK No. 1099561) is a revoked Nevada corporation located in King City, Ontario, Canada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). LUNL 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, 2009, which reported a net loss of $445,740 for the prior nine months. As of January 13, 2014, the common stock of LUNL was quoted on OTC Link (formerly "Pink Sheets") operated by OTC Markets Group Inc. ("OTC Link"), had five market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

3. Smart Comm International Ltd. ("SCMI") (CIK No. 1219584) is a revoked Nevada corporation located in London, England with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). SCMI 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 $2,631,961 for the prior nine months. As of January 13, 2014, the common stock of SCMI was quoted on OTC Link, had five market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

4. Tissera, Inc. ("TSSR") (CIK No. 1122573) is an inactive Washington corporation located in Herzlia, Israel with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). TSSR 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, 2008, which reported a net loss of $227,000 for the prior three months. As of January 13, 2014, the common stock of TSSR was quoted on OTC Link, had seven market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

5. Ungava Mines, Inc. ("UGVMF") (CIK No. 1041019) is an Ontario corporation located in Missisauga, Ontario, Canada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). UGVMF is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 20-F for the period ended November 30, 2007, which reported a net loss of $2,083,220 Canadian for the prior year. As of January 13, 2014, the common stock of UGVMF was quoted on OTC Link, had three market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

6. Unity Wireless Corporation ("UTYW") (CIK No. 1100451) is a void Delaware corporation located in Ilit, Israel with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). UTYW 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, 2008, which reported a loss for the period of $2,177,278 for the prior three months. As of January 13, 2014, the common stock of UTYW was quoted on OTC Link, had seven market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

7. Zupintra Corporation, Inc. ("ZUPC") (CIK No. 1136386) 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). ZUPC 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 June 30, 2007, which reported a net loss of $1,377,534 for the prior three months. As of January 13, 2014, the common stock of ZUPC was quoted on OTC Link, had seven 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 all issuers to file annual reports, and Rule 13a-13 requires domestic issuers, and foreign private issuers electing to report as 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/or 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

Elizabeth M. Murphy
Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

January 15, 2014

In the Matter of

Power Air Corporation,
Wescorp Energy, Inc., and
World Ventures, 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 Power Air Corporation because it has not filed any periodic reports since the period ended June 30, 2010.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Wescorp Energy, Inc. because it has not filed any periodic reports since the period ended September 30, 2011.

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

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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 January 15, 2014, through 11:59 p.m. EST on January 29, 2014.

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. 71306 / January 15, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15678

In the Matter of **Power Air Corporation,** **Wescorp Energy, Inc., and** **World Ventures, 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]

1. Power Air Corporation ("PWAZQ") (CIK No. 1310261) is a revoked Nevada corporation located in Coquitlam, British Columbia, Canada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). PWAZQ 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, 2010, which reported a net loss of $1,018,681 for the prior nine months. On February 21, 2012, PWAZQ filed a Chapter 7 petition in the U.S. Bankruptcy Court for the District of Nevada, which was closed on November 6, 2013. As of January 13, 2014, the common stock of PWAZQ was quoted on OTC Link (formerly "Pink Sheets") operated by OTC Markets Group Inc. ("OTC Link"), had eight market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

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

2. Wescorp Energy, Inc. ("WSCE") (CIK No. 1069489) is a void Delaware corporation located in Edmonton, Alberta with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). WSCE 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, 2011, which reported a net loss of $4,364,897 for the prior nine months. As of January 13, 2014, the common stock of WSCE 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. World Ventures, Inc. ("WVNTF") (CIK No. 861398) is British Columbia corporation located in Nanaimo, British Columbia, Canada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). WVNTF is delinquent in its periodic filings with the Commission, having not filed an annual report since it filed a Form 20-F for the period ended October 31, 2009, which reported a net loss of $197,204 Canadian for the prior year. As of January 13, 2014, the common stock of WVNTF was quoted on OTC Link, had five market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

B. DELINQUENT PERIODIC FILINGS

4. 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.

5. 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 all issuers to file annual reports, and Rule 13a-13 requires domestic issuers, and foreign private issuers electing to report as domestic issuers, to file quarterly reports.

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

Elizabeth M. Murphy
Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

January 15, 2014

In the Matter of **Lumonall, Inc.,** **Smart Comm International Ltd.,** **Tissera, Inc.,** **Ungava Mines, Inc.,** **Unity Wireless Corporation, and** **Zupintra Corporation, 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 Lumonall, Inc. because it has not filed any periodic reports since the period ended December 31, 2009.

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

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

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

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

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 January 15, 2014, through 11:59 p.m. EST on January 29, 2014.

By the Commission.

Elizabeth M. Murphy

Elizabeth M. Murphy
Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

January 15, 2014

In the Matter of **Power Air Corporation,** **Wescorp Energy, Inc., and** **World Ventures, 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 Power Air Corporation because it has not filed any periodic reports since the period ended June 30, 2010.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Wescorp Energy, Inc. because it has not filed any periodic reports since the period ended September 30, 2011.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of World Ventures, Inc. because it has not filed any periodic reports since the period ended October 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 January 15, 2014, through 11:59 p.m. EST on January 29, 2014.

By the Commission.

Elizabeth M. Murphy

Elizabeth M. Murphy
Secretary

Commissioner Aguilar not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 71315 / January 15, 2014

INVESTMENT ADVISERS ACT OF 1940
Release No. 3757 / January 15, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15679

In the Matter of

LOUIS J. SCHAUFELE III,

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 Louis J. Schaufele III ("Schaufele" 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 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. Schaufele, 58 years old, is a resident of Dallas, Texas. Schaufele was a registered representative associated with broker-dealers registered with the Commission between 1987 and 2011. Between 2003 and 2011, the broker-dealers with which Schaufele was associated were also registered investment advisers with the Commission.

2. On January 9, 2014, a final judgment was entered by consent against Schaufele, permanently enjoining him from future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, in the civil action entitled Securities and Exchange Commission v. Sam Wyly, et al., Civil Action Number 1:10-CV-5760 (SAS), in the United States District Court for the Southern District of New York.

3. The Commission's complaint alleged that Schaufele committed insider trading in October 1999, by purchasing 4000 shares of Sterling Software while in possession of material non-public information regarding the intention of his customers, who were the Sterling Software's chairman and vice-chairman, to engage in a transaction in Sterling Software stock. The Commission's complaint further alleged that Schaufele aided and abetted his customers' commission of a fraudulent scheme to avoid and evade SEC reporting requirements by concealing from and affirmatively misrepresenting to his brokerage firm superiors his customers' control over securities nominally held by numerous offshore trusts and corporations.

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 and 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, or transfer agent; 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;

with the right to apply for reentry after five (5) years to the appropriate self-regulatory organization, or if there is none, to the Commission.

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

By: Lynn M. Powalski
Deputy Secretary

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9512 / January 16, 2014

SECURITIES EXCHANGE ACT OF 1934
Release No. 71333 / January 16, 2014

Admin. Proc. File No. 3-15124

In the Matter of DAVID F. BANDIMERE	ORDER DENYING MOTION FOR SUMMARY AFFIRMANCE, GRANTING PETITION FOR REVIEW, AND SCHEDULING BRIEFS

On October 8, 2013, an administrative law judge issued an initial decision finding that David F. Bandimere willfully violated 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 Exchange Act Rule 10b-5 (the "Initial Decision").[1] The Initial Decision barred Bandimere from association with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, ordered Bandimere to disgorge $638,056.33 plus prejudgment interest, imposed a civil penalty of $390,000, and ordered Bandimere to cease and desist from committing or causing violations of the above-listed provisions.[2] Bandimere filed a petition for review of the Initial Decision, and the Division of Enforcement filed a motion for summary affirmance of that decision. Bandimere opposes the motion. We have determined to deny the Division's motion, grant Bandimere's petition for review, and establish a briefing schedule for the review proceeding.

After a six-day hearing with testimony by an expert witness and fact witnesses, including investors, the law judge issued an eighty-nine page opinion finding that Bandimere violated antifraud and registration provisions of the Securities and Exchange Acts while operating as an unregistered broker when he misled potential investors about investments in two Ponzi schemes,

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1 *David F. Bandimere*, Initial Decision Release No. 507, 2013 SEC LEXIS 3142 (Oct. 8, 2013).

2 *Id.* at *234-55.

IV Capital Ltd. ("IV Capital") and Universal Consulting Resources ("UCR").[3] The law judge found that Bandimere acted with scienter when he presented a one-sided, positive view of the IV Capital and UCR investments and failed to disclose red flags and potentially negative facts relating to those investments.

Bandimere filed a timely petition for review, arguing, among other things, that the findings of violation were not supported by a preponderance of evidence in the record taken as a whole and were clearly erroneous, and that some of those findings were based upon improper legal standards. Bandimere also argued that he "was not given adequate notice of the facts and law on which the violations found in the Initial Decision were based, thereby depriving him of his rights to notice under the Commission's Rules of Practice (including specifically Rule 20(b)(3)), the Administrative Procedure Act, and due process of law, and a fair opportunity to defend himself"; that he was deprived of equal protection because he was "singled out by having the claims against him brought administratively to deprive him of procedural rights that would have assisted his defense, that otherwise would have been available to him"; that he was "deprived of his rights under the Commission's Rules of Practice, the Administrative Procedure Act, and due process of law" to have documents produced that were relevant to his defense and to have irrelevant evidence excluded at the hearing; and that the Initial Decision "found that [Bandimere] violated standards of conduct as to which he was not given notice, in violation of his rights under the Administrative Procedure Act and due process of law." Finally, Bandimere argued that the sanctions imposed and the disgorgement ordered were arbitrary, capricious, inconsistent with legal (and in some instances statutory) standards, and not supported by the record.

The Division argues that summary affirmance is warranted because "there was no prejudicial error committed in the conduct of the proceeding, and the Initial Decision does not embody an exercise of discretion or decision of law or policy that is important and that the Commission should review." With respect to most of the issues Bandimere raised in his petition for review, the Division states that they were "thoroughly considered, and properly rejected, by

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3 The law judge also found that Bandimere failed to establish that an exemption to the registration requirements of the Securities Act applied to the sales at issue. *Id.* at *138 n.32.

The Commission had taken action against the perpetrators of the Ponzi schemes before the order instituting proceedings against Bandimere was issued. *See id.* at *7-10 (discussing proceedings against Richard Dalton and UCR, and against Larry Michael Parrish in connection with his activities related to IV Capital).

The Order Instituting Proceedings in this matter contained allegations against both Bandimere and John O. Young. However, the law judge issued a separate initial decision as to Young. *David F. Bandimere*, Initial Decision Release No. 506, 2013 SEC LEXIS 3135 (Oct. 4, 2013). The initial decision as to Young has now become final. *John O. Young*, Securities Act Release No. 9483, 2013 SEC LEXIS 3696 (Nov. 22, 2013). Young is not a party to this proceeding.

the ALJ," that the law judge made his findings "based on the evidence at the hearing," and that the law judge further found, based on the evidence at the hearing, that Bandimere's "legal and factual arguments [that contradicted or were inconsistent with those findings] were meritless." The Division asserts that, because the law judge made those findings, these issues do not merit consideration by the Commission.[4]

The Division further contends that Bandimere was given adequate notice of the facts and law on which the violations found in the Initial Decision were based, as well as the standards of conduct on which those violations were based; that the law judge, in the Initial Decision, "meticulously analyze[d], for nearly 90 pages, on a point-by-point basis, whether the Division proved the specific allegations of the OIP"; that the law judge "limited his findings of violation to those alleged in the OIP"; and that the law judge considered and rejected Bandimere's due process argument. Finally, the Division contends that Bandimere's argument that he was deprived of his rights because the Division did not produce evidence that was relevant to his defense was thoroughly considered and rejected by the law judge, both in a pre-hearing order and during the hearing.[5] Thus, the Division asserts, none of these issues merits review by the Commission.

Bandimere opposes the motion, contending that his petition raises issues that the Commission should decide on appeal. He emphasizes that the Commission has found that summary affirmance is appropriate only in rare circumstances and argues that the circumstances here are not appropriate for summary affirmance. Bandimere contends that the Division did not prove its securities fraud claim, that the law judge misconstrued the term "willful" in concluding that Bandimere willfully violated Sections 5 and 15(a), and that the law judge incorrectly found, for purposes of Section 5, that he was a "seller" within the meaning of the Securities Act. For purposes of Section 15(a), Bandimere "disputes that he was engaged in the business of effecting securities transactions for the accounts of others, and therefore, he disputes that he was acting as an unregistered broker." Bandimere repeats his assertion that he was denied equal protection and argues that he was deprived of due process because he was not given timely notice of the theory of scienter that was used against him. Bandimere characterizes several of the issues he raises as important ones that the Commission should decide, including "whether a law judge has the authority to afford a respondent relief on [an equal protection] defense [such as the one he asserts], and if so, whether the Commission's decision to proceed administratively is reviewable at all, and the circumstances under which a claim asserting a violation of equal protection can be

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4 The Division addresses in this way Bandimere's arguments that he did not willfully violate Securities Act Sections 5 and 17(a), Exchange Act Sections 10(b) and 15(a), and Exchange Act Rule 10b-5; that he established certain affirmative defenses; and that the imposition of a cease-and-desist order, civil penalties, and an associational bar and the order to pay disgorgement were inappropriate.

5 The Division points out that the law judge "conducted an in camera review of otherwise privileged material to determine whether that material contained any material exculpatory evidence" and concluded that it did not.

presented and proved in [an] administrative proceeding," whether his consultation with counsel should have precluded a finding that he acted willfully, and whether the law judge properly used his discretion in imposing the sanctions at issue on Bandimere and on ordering disgorgement in the amount specified.

Commission Rule of Practice 411(e) governs our review of motions for summary affirmance.[6] Rule 411(e) permits the Commission to grant summary affirmance if it finds "that no issue raised in the initial decision warrants consideration by the Commission of further oral or written argument," but summary affirmance is not to be granted "upon a reasonable showing that a prejudicial error was committed in the conduct of the proceeding or that the decision embodies an exercise of discretion or decision of law or policy that is important and that the Commission should review."[7] We have previously observed that "[s]ummary affirmance is rare, given that generally we have an interest in articulating our views on important matters of public interest and the parties have a right to full consideration of those matters"[8] although it may be appropriate when it is clear that "submission of briefs by the parties will not benefit us in reaching a decision."[9] In our 2011 decision in *Eric S. Butler*, we recognized that "[a]lthough we generally have limited application of this rule in conducting our reviews, we may apply it in the future where . . . the relevant facts are undisputed and the initial decision does not embody an important question of law or policy warranting further review by the Commission."[10]

Based on our preliminary review of the record and the parties' submissions, we do not view this case to be an appropriate vehicle for the abbreviated summary affirmance process. An extensive record was developed below, and the process culminated in a detailed and lengthy decision by the law judge. The petitioner has raised multiple issues based on facts developed in the record and permissible inferences to be drawn from those facts. This matter thus differs from *Butler*, where we recognized the potential appropriateness of summary affirmance in a follow-on proceeding in which the petitioner was "precluded from challenging the underlying convictions" on which the proceeding was based, rendering key factual issues not open to challenge on

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6 17 C.F.R. § 201.411(e).

7 *Id.*

8 *Theodore W. Urban,* Order Denying Motion for Summary Affirmance, Securities Exchange Act Release No. 63456, 2010 SEC LEXIS 4054, at *6 (Dec. 7, 2010) (citing *Richard Cannistraro*, Exchange Act Release No. 39521, 1998 SEC LEXIS 15, at *4 n.3 (Jan. 1, 1998)); *see also Terry T. Steen*, Exchange Act Release No. 38675, 1997 SEC LEXIS 1157, at *3 (May 27, 1997) (denying summary affirmance and noting that such action is appropriate only where there are "compelling reasons").

9 *Cannistraro*, 1998 SEC LEXIS 15, at *4 n.3.

10 *Eric S. Butler*, Exchange Act Release No. 65204, 2011 SEC LEXIS 3002, at *2 n.2 (Aug. 26, 2011).

appeal.[11] In this matter, our *de novo* review of the record will include resolution of the multiple factual challenges raised by Bandimere's petition.[12] Moreover, the appeal raises issues as to which we have an interest in articulating our views, including the interpretation of frequently litigated antifraud and registration provisions of the securities laws and potentially the selection of appropriate sanctions.

We believe that the submission of briefs, with discussion of relevant parts of the record and analysis of the issues, will aid us in reaching a decision in this case.[13] We therefore deny the Division's motion, though our denial should not be construed as suggesting any view as to the outcome of this case.

Pursuant to Commission Rule of Practice 411,[14] Bandimere's petition for review of the Initial Decision is granted. Pursuant to Rule of Practice 411(d),[15] the Commission has determined on its own initiative to review what sanctions, if any, are appropriate in this matter.

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11 *Id.*, 2011 SEC LEXIS 65204, at *23. The initial decision in *Butler* was decided by summary disposition, pursuant to Rule of Practice 250, 17 C.F.R. § 201.250. Since deciding *Butler*, we have granted summary affirmance in several proceedings charging failure to make required periodic findings, where the factual issues on review were also by nature limited in scope. *See A-Power Energy Generation Sys., Ltd.*, Exchange Act Release No. 69439, 2013 SEC LEXIS 1204, at *1-4 (Apr. 24, 2013); *Andover Holdings, Inc.*, Exchange Act Release No. 68966, 2013 SEC LEXIS 548, at *1-3 (Feb. 21, 2013). These matters had also been decided below by summary disposition. We declined to grant summary affirmance in a proceeding, in which, as here, "an extensive record was developed," with eleven days of hearings and approximately 500 exhibits, and "a lengthy decision" was issued by the law judge. *John P. Flannery*, Securities Act Release No. 9307, 2012 SEC LEXIS 1024, at *7 (Mar. 30, 2012).

12 *See* Rule of Practice 411(a), 17 C.F.R. § 201.411(a) ("The Commission may affirm, reverse, modify, set aside or remand for further proceedings, in whole or in part, an initial decision by a hearing officer and may make any findings or conclusions that in its judgment are proper and on the basis of the record."). Although we grant "considerable weight and deference" to credibility determinations of law judges and other initial factfinders, we judge those determinations against the weight of the evidence. *E.g., Guy P. Riordan*, Securities Act Release No. 4166, 2009 SEC LEXIS 4166, at *44 (Dec. 11, 2009), *petition denied*, 627 F.3d 1230 (D.C. Cir. 2010); *Leslie A. Arouh*, Exchange Act Release No. 50889, 2004 SEC LEXIS 3015, at *33 n.40 (Dec. 20, 2004); *Anthony Tricarico*, Exchange Act Release No. 32356, 1993 SEC LEXIS 1346, at *7 (May 24, 1993).

13 In accordance with Rule 411(e), we have delayed issuance of a briefing schedule order pending determination of the motion for summary affirmance. 17 C.F.R. § 201.411(e).

14 17 C.F.R. § 201.411.

15 17 C.F.R. § 201.411(d).

Accordingly, IT IS ORDERED that the motion for summary affirmance filed by the Division of Enforcement be, and it hereby is, denied; and it is further

ORDERED, pursuant to Rule 450(a) of the Rules of Practice,[16] that a brief in support of the petition for review shall be filed by February 18, 2014. A brief in opposition shall be filed by March 20, 2014, and any reply brief shall be filed by April 3, 2014.[17] Pursuant to Rule of Practice 180(c),[18] failure to file a brief in support of the petition may result in dismissal of this review proceeding.

By the Commission.

Elizabeth M. Murphy
Secretary

Lynn M. Powalski

By: Lynn M. Powalski
Deputy Secretary

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16 17 C.F.R. § 201.450(a).

17 As provided by Rule of Practice 450(a), no briefs in addition to those specified in this schedule may be filed without leave of the Commission. Attention is called to Rules 150-53, 17 C.F.R. §§ 201.150-153, with respect to form and service, and Rules of Practice 450(b) and (c), 17 C.F.R. §§ 201.450(b), 201.450(c), with respect to content and length limitations. Requests for extensions of time to file briefs and for additional words are disfavored.

18 17 C.F.R. § 201.180(c).

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9513 / January 17, 2014

SECURITIES EXCHANGE ACT OF 1934
Release No. 71348 / January 17, 2014

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3529 / January 17, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15680

In the Matter of **EUGENE M. EGEBERG III, CPA,** **Respondent.**	**ORDER INSTITUTING PUBLIC ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933, SECTIONS 4C AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934, AND RULES 102(e)(1)(ii) AND (iii) OF THE COMMISSION'S RULES OF PRACTICE AND NOTICE OF HEARING**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 ("Securities Act"), Sections 4C[1] and 21C of the Securities

[1] Section 4C provides, in relevant part, that:

"The Commission may censure any person, or deny, temporarily or permanently, to any person the privilege of appearing or practicing before the Commission in any way, if that person is found . . . (2) to be lacking in character or integrity, or to have engaged in unethical or improper professional conduct; or (3) to have willfully violated, or willfully aided and abetted the violation of, any provision of the securities laws or the rules and regulations thereunder."

Exchange Act of 1934 ("Exchange Act"), and Rules 102(e)(1)(ii) and (iii) of the Commission's Rules of Practice[2] against Respondent Eugene M. Egeberg III, CPA ("Egeberg" or "Respondent").

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

1. Eugene M. Egeberg III, CPA ("Respondent" or "Egeberg"), a resident of Hampstead, Maryland, operates a self-named sole-proprietorship accounting firm in Baltimore, Maryland. Egeberg is a Maryland-licensed CPA and was previously registered with the Public Company Accounting Oversight Board ("PCAOB") before his voluntary request for withdrawal was accepted by the Board in November 2012.

B. RELATED ISSUERS

2. Fox Petroleum, Inc. ("Fox Petroleum") is a Nevada corporation located in New York, New York with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Egeberg audited Fox Petroleum's financial statements for its fiscal years ended February 28, 2010, February 28, 2011, and February 28, 2012.

3. RPM Advantage, Inc. ("RPM Advantage") is a Nevada corporation located in Houston, Texas. RPM Advantage's stock was previously registered with the Commission pursuant to Exchange Act Section 12(g). On November 8, 2011, and again on January 30, 2012, RPM Advantage had its registration revoked by the Commission pursuant to Exchange Act Section 12(j). Egeberg audited RPM Advantage's financial statements for its fiscal years ended December 31, 2006 through December 31, 2010.

C. FACTS

Failure to Conduct Audits with Due Professional Care and Skepticism, and Failure to Obtain Competent and Sufficient Evidential Matter.

4. AU[3] §230.01, *Due Professional Care in the Performance of Work*, requires that an auditor exercise due professional care in the planning and performance of an audit, and in preparation of the audit report. Due professional care requires an auditor to exercise professional skepticism throughout the audit process. AU § 230.07-08. Similarly, AU § 326, *Evidential Matter*, required that the auditor obtain sufficient competent audit evidence to support the opinion

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[2] Rule 102(e)(1)(ii) & (iii) provide, in pertinent part, that: (ii) "The Commission may . . . deny, temporarily or permanently, the privilege of appearing or practicing before it . . . to any person who is found . . . to have engaged in unethical or improper professional conduct;" and (iii) "to have willfully violated, . . . any provision of the Federal securities laws or the rules and regulations thereunder."

[3] References in this order are to the PCAOB standards in effect at the time of the relevant conduct.

expressed in the auditor's report, for fiscal years beginning before December 15, 2010. AU § 315.09, *Communications Between Predecessor and Successor Auditors*, requires a successor auditor to make specific and reasonable inquiries of the predecessor auditor regarding information that might bear on the integrity of management, disagreements with management as to accounting principles or auditing procedures, communications to audit committees regarding fraud or illegal acts by clients, and the predecessor auditor's understanding as to the reasons for the change of auditors.

5. Egeberg violated AU § 230 by conducting the purported Fox Petroleum audits for Fiscal Years 2010 and 2011, without exercising appropriate due professional care or professional skepticism and violated AU § 326 by failing to obtain sufficient evidential matter. Egeberg did so by failing to perform any audit tests or procedures to determine the accuracy of Fox Petroleum's financial statements. On a checklist Egeberg completed for Fox Petroleum, he noted, for example, that the company's large accounts payable balance was a troublesome audit area.[4] Egeberg, however, performed no tests to determine whether the balance was accurate. Instead, Egeberg simply concluded that management's representations were adequate. *See also* AU § 333.02, *Management Representations*, which states, in part, "...[R]epresentations from management are part of the evidential matter the independent auditor obtains, but they are not a substitute for the application of those auditing procedures necessary to afford a reasonable basis for an opinion regarding the financial statements under audit."

6. Similarly, Egeberg noted that unrecorded liabilities were a potential fraud risk for Fox Petroleum, but that his concerns were satisfied by the company's "overhauled financials." Egeberg never identified what he was specifically referring to by that, nor did he point to any documentation showing how the supposed overhauls satisfied him. Egeberg's acceptance of these assertions at face value, without further inspection or procedures, constituted a failure to exercise due professional care and skepticism and a failure to obtain sufficient competent evidential matter.

7. Egeberg was also required to inquire with the prior auditor for Fox Petroleum's 2009 financial statements, the period immediately prior to the 2010 financial period. Egeberg never inquired with the previous auditor regarding Fox Petroleum, in violation of AU § 315. Fox Petroleum's 2010 financial statements had already been audited and filed with the Commission in a Form 10-K, but the prior auditor, who was hired to audit just that one period, had his PCAOB registration permanently revoked on October 19, 2010 for non-cooperation with a PCAOB investigation. Egeberg was unaware that his audit of the 2010 financial statements was a re-audit, even though it was public knowledge and the Form 10-K was available on the Commission's website. Egeberg was required to try to inquire with the prior auditor regarding the re-audit of the 2010 financial statements for Fox Petroleum, pursuant to AU § 315.14.

[4] Egeberg downloaded the checklist from the American Institute of Certified Public Accountants' ("AICPA") website. This checklist came from the AICPA's Peer Review Program Manual. AICPA STANDARDS FOR PERFORMING AND REPORTING ON PEER REVIEWS § 20, 400, *et seq.* (Am. Inst. of Certified Pub. Accountants 2009). The checklist was designed as part of the AICPA's Peer Review Programs and was designed for independent reviewers to examine member-auditors' engagements after completion of the engagement to promote accounting and auditing quality. (AICPA STANDARDS FOR PERFORMING AND REPORTING ON PEER REVIEWS § 1000.02 (Am. Inst. of Certified Pub. Accountants 2013).

8. Egeberg also violated AU § 230 by conducting the purported RPM Advantage audits without excercising appropriate due professional care or professional skepticism and violated AU § 326 by failing to obtain sufficient competent evidential matter. Much like with Fox Petroleum, Egeberg failed to document any audit procedures he performed for any of RPM Advantage's financial balances on its financial statements. Moreover, it is questionable that Egeberg actually audited RPM Advantage's financial statements, because they were arithmetically incorrect.

9. Egeberg claimed he inquired about RPM Advantage's predecessor auditor, but he determined that the auditor was "unavailable." RPM Advantage's prior auditor had, on January 7, 2010, just one month prior to Egeberg's engagement, been suspended from appearance or practice before the Commission as an accountant with the right to apply for reinstatement after five years pursuant to Rule of Practice 102(e)(1)(ii) and (iii) for numerous audit deficiencies, including failure to exercise due professional care and failure to maintain adequate audit documentation. The order suspending the prior auditor was publicly available, and a minimal search would have informed Egeberg of the suspension.

10. An example of Egeberg's lack of due care and skepticism on the RPM Advantage audits is the lack of work to obtain audit evidence to analyze the impact of the balances carried over from the 2005 financial statements on the 2006 financial statements and consistency of accounting principles. *See* AU § 315.12. Egeberg noted on his checklist for RPM Advantage, under the section for past adjustments and risk, that the financial statements were materially misstated and that "there was no method to ascertain." Egeberg claimed that the only records the company had were the previous SEC filings, and thus he had no method to ascertain past adjustments. Egeberg failed to point to any actual procedures that he performed. Egeberg had no audit work papers, and had no other evidence to overcome his lack of audit documentation on the subject. Because there were no records for prior periods and because Egeberg did not make inquiries of the prior auditor for RPM Advantage, due professional care and skepticism should have caused him to apply appropriate auditing procedures to account balances at the beginning of fiscal year 2006 and to transactions in prior periods, but he did not. *See* AU § 315.12. *See also* AU § 315.13 ("[t]he successor auditor's review of the predecessor auditor's working papers may affect the nature, timing, and extent of the successor auditor's procedures with respect to the opening balances and consistency of accounting principles.")

Failure to Obtain Engagement Quality Reviews.

11. Auditing Standard No. 7, *Engagement Quality Review*, requires an engagement quality review and concurring approval of issuance for each audit engagement and for each engagement to review interim financial information for fiscal years beginning after December 15, 2009. The engagement quality reviewer may not be the same person as the engagement partner. A sole practice firm, like Egeberg's, is thus required to engage a qualified individual from outside the firm to serve as the engagement quality reviewer.

12. Egeberg failed to obtain an engagement quality review for the Fox Petroleum audit engagement for its fiscal years ended February 28, 2011 and February 28, 2012, and for the audit

of RPM Advantage's financial statements for its fiscal year ended December 31, 2010, in violation of Auditing Standard No. 7.

Deficiencies in the Audits of Fox Petroleum's Subsidiaries.

13. In September 2011, Fox Petroleum purchased two companies, Renfro Energy, LLC ("Renfro") and Cameron Parish Pipelines, LLC ("CPP"). Fox Petroleum engaged Egeberg to conduct audits of Renfro and CPP for each company's fiscal years ended December 31, 2009 and December 31, 2010. On November 1, 2011, at 11:49 p.m., the CEO of Fox Petroleum emailed Egeberg informing him of the purchase of the two companies. The CEO told Egeberg that the two companies' financial statements would need to be audited as part of the purchase agreement, and that the two separate auditors for each company were unable to complete the audits by November 3, less than two days later. The Fox Petroleum CEO asked whether Egeberg would be able to complete the audits for both companies for fiscal years 2009 and 2010 within the less than two-day period, and told Egeberg that a $5 million credit line was contingent upon the deal closing, and that if the deal closed on time, Egeberg would be able to collect outstanding bills for his audit of Fox Petroleum that he had thus far been unable to collect. Less than forty hours later, Egeberg signed off on the audits of four years' worth of financial statements for Renfro and CPP. Egeberg provided audit reports stating that he conducted the audits in accordance with PCAOB standards. Those audit reports, along with the financial statements for Renfro and CPP, were both included in a Form 8-K that Fox Petroleum publicly filed on November 3, 2011.

14. It is implausible that Egeberg could have conducted proper audits for Renfro and CPP, each with two years of financial statements, in such a short time, regardless of the companies' small sizes. Further, each company had separate auditors who were each unable to complete the audits in this short time, despite having already begun the work. Similarly troubling is that Fox Petroleum's CEO enticed Egeberg to complete the two audits under significant pressure by promising him past-due payment owed for the Fox Petroleum audits, but only if Egeberg could complete the audits in the two-day timeframe. These circumstances suggest that Egeberg rubber-stamped the audit reports to help Fox Petroleum acquire the $5 million credit line in hopes of payment for his completed audit of Fox Petroleum.

15. Neither Renfro nor CPP were SEC issuers. Notwithstanding, Egeberg included in his audit report for each company the statement that the audits were conducted "in accordance with standards required by the [PCAOB]." The audit reports were subsequently included on Forms 8-K filed by Fox Petroleum with the Commission. The egregiously deficient audits of Renfro and CPP further demonstrate Egeberg's pattern of poor audit work and strengthen the need for the Rule 102(e) suspension.

16. Egeberg violated Auditing Standard No. 3, *Audit Documentation,* for his audits of Renfro and CPP because he had no evidence demonstrating that he performed audit work for Renfro or CPP. Egeberg's failure to maintain documentation places a burden upon the auditor to provide persuasive other evidence that sufficient procedures were performed, sufficient evidence was obtained, and appropriate conclusions were reached with respect to the relevant financial statement assertions, which Egeberg failed to do.

17. Egeberg failed to perform the audits of Renfro and CPP with due professional care and professional skepticism, in violation of AU § 230. Egeberg also failed to collect competent evidential matter for those audits, in violation of AU § 326. Egeberg has provided no documented evidence of procedures performed to ensure that Renfro's and CPP's financial statements were presented fairly and accurately. Similarly, Egeberg could not identify any procedures performed to determine the accuracy of the financial statements.

18. Egeberg violated Auditing Standard No. 7 by failing to obtain an engagement quality review for Renfro's and CPP's fiscal years ended December 31, 2010.

Additonal Audit Deficiencies in RPM Advantage and Fox Petroleum Audits.

19. Egeberg lacked the knowledge, proficiency, training, and skill to audit issuers registered with the Commission. AU §§ 210 and 230, *Training and Proficiency of the Independent Auditor* and *Due Professional Care in the Performance of Work*, respectively, which require that an audit be performed by "a person or persons having adequate technical training and proficiency as an auditor." AU § 210.01. PCAOB auditing standards further require that auditors engage in audit tasks "commensurate with their level of knowledge, skill, and ability so that they can evaluate the audit evidence they are examining," and that "[t]he auditor with final responsibility for the engagement should know, at a minimum, the relevant professional accounting and auditing standards . . . ." AU § 230.06.

20. Egeberg has never had any audit training. He has taken only four courses during his professional career relating to audits and audit procedures, with at least two of them being self-directed online courses completed as part of his continuing professional education requirements. The extent of Egeberg's professional practice since college has primarily been preparing tax returns and general ledger bookkeeping for individuals and businesses. Yet he issued audit reports covering financial statements for as many as twenty public companies before withdrawing his PCAOB registration.

21. Because he had no training, Egeberg conducted all of his audits according to a checklist he downloaded from the AICPA's website, as discussed *supra* in footnote 4. This checklist came from the AICPA's Peer Review Program Manual. AICPA STANDARDS FOR PERFORMING AND REPORTING ON PEER REVIEWS § 20,400, *et seq.* (Am. Inst. of Certified Pub. Accountants 2009). The peer review checklist that Egeberg used for his engagements was not designed to substitute for the more rigorous and detail-oriented requirements for audit engagements. Furthermore, AICPA's Peer Review Program is not applicable to Commission issuers. *Id.* §1000.03.

22. By following the Peer Review Program checklist, without any other experience or guidance, Egeberg demonstrated his complete lack of understanding of public company audits. Following these checklists also contributed to Egeberg's performance of grossly deficient audits.

Failure to Design and Plan Audits.

23. AU § 311, *Planning and Supervision*, required that for audits of companies with fiscal years beginning before December 15, 2010,

the auditor should consider the nature, extent, and timing of work to be performed and should prepare a written audit program (or set of written audit programs) for every audit. The audit program should set forth in reasonable detail the audit procedures that the auditor believes are necessary to accomplish the objectives of the audit. The form of the audit program and the extent of its detail will vary with the circumstances. In developing the program, the auditor should be guided by the results of the planning considerations and procedures. As the audit progresses, changed conditions may make it necessary to modify planned audit procedures.

AU §311.05.

24. Egeberg was required to design and plan audit procedures and programs for each audit engagement. The audit programs should have taken into consideration, among other things, the companies' industries, the companies' business practices, and judgments of potential materiality and risk. AU § 311. Egeberg failed to perform any of these planning activities. Instead, he simply followed the Peer Review Program checklist for each of his clients, which simply asks whether the auditor properly designed an audit for the client, and for each of Egeberg's clients, he checked "yes." There was no planning by Egeberg for any of the audits for 2006 to 2011, in violation of AU § 311.

Egeberg's Complete Lack of Audit Work Papers.

25. Egeberg's audits completely lacked audit work papers. Thus, Egeberg repeatedly violated Auditing Standard No. 3, ¶ 6, *Audit Documentation* , which requires that audit documentation "contain sufficient information to enable an experienced auditor, having no previous connection with the engagement (a) to understand the nature, timing, extent, and results of the procedures performed, evidence obtained, and conclusions reached, and (b) to determine who performed the work and the date such work was completed as well as the person who reviewed the work and the date of such review." An auditor that has not adequately documented that he performed a procedure, obtained evidence, or reached an appropriate conclusion must demonstrate with persuasive other evidence that it did so, and oral assertions and explanations alone do not constitute persuasive other evidence. *See* Auditing Standard No. 3, ¶ 9.

Egeberg's Failure to Issue Accurate Audit Reports.

26. PCAOB standards require that the auditor's report contain an opinion on the financial statements taken as a whole and contain a clear indication of the character of the auditor's work. The auditor can determine that he is able to issue an audit report containing an unqualified opinion only if he has conducted the audit in accordance with standards set forth by the PCAOB. (AU § 508.07, *Reports on Audited Financial Statements.*)

27. Additionally, Regulation S-X, 17 CFR § 210 *et seq.*, prescribes the qualifications of accountants and the contents of the accountants' reports that must be submitted with corporate financial statements. In particular, it requires that the financial statements of a public corporation must be audited by an accountant in accordance with Generally Accepted Auditing Standards

("GAAS"). 17 CFR § 210.1-02(d). "[R]eferences in Commission rules and staff guidance and in the federal securities laws to GAAS or to specific standards under GAAS, as they relate to issuers, should be understood to mean the standards of the PCAOB plus any applicable rules of the Commission." (*See* SEC Release No. 34-49708 (May 14, 2004)). Thus, an auditor violates Regulation S-X Rule 2-02(b)(1) if it issues a report stating that it had conducted its audit in accordance with PCAOB standards when it had not. *See Andrew Sims, CPA,* Rel. No. 34-59584, AAER No. 2950 (Mar. 17, 2009) (settled action).

28. The culmination of Egeberg's numerous audit deficiencies made any representation by Egeberg in his audit reports that his audits complied with PCAOB standards inaccurate. Egeberg falsely made these representations in his audit reports for RPM Advantage and Fox Petroleum, and Fox Petroleum's subsidiaries, Renfro and CPP.

D. VIOLATIONS

29. Section 102(e)(1) of the Commission's Rules of Practice provides that: "The Commission may censure a person or deny, temporarily or permanently, the privilege of appearing or practicing before it in any way to any person who is found by the Commission after notice and opportunity for hearing in the matter: . . . (ii) to be lacking in character or integrity or to have engaged in unethical or improper professional conduct; or (iii) to have willfully violated, ... any provision of the Federal securities laws or the rules and regulations thereunder." Section 4C of the Exchange Act provides, in relevant part, that: "The Commission may censure any person, or deny, temporarily or permanently, to any person the privilege of appearing or practicing before the Commission in any way, if that person is found . . . (2) to ... have engaged in ... improper professional conduct; or (3) to have willfully violated, . . . any provision of the securities laws or the rules and regulations thereunder."

30. Section 4C of the Exchange Act and Rule 102(e)(1)(iv) of the Commission's Rules of Practice define improper professional conduct with respect to persons licensed to practice as accountants. Section 4C of the Exchange Act and Rule 102(e)(1)(iv) of the Commission's Rules of Practice provide that improper professional conduct means "intentional or knowing conduct, including reckless conduct, that results in a violation of applicable professional standards" Rule 102(e)(1)(iv)(A); and the following two types of negligent conduct:

(1) a single instance of highly unreasonable conduct that results in a violation of applicable professional standards in circumstances in which an accountant knows, or should know, that heightened scrutiny is warranted.

(2) repeated instances of unreasonable conduct, each resulting in a violation of applicable professional standards, that indicate a lack of competence to practice before the Commission. Rule 102(e)(1)(iv)(B).

As noted previously, "unreasonable conduct" as used in this provision means ordinary negligence. *See In re Dohan & Co. CPA, et al.*, Int. Dec. Rel. No. 420, at p. 16 (June 27, 2011), final, Securities Exchange Act Rel. No. 64970 (July 26, 2011). The Commission defines recklessness under Rule 102(e) to be the same as recklessness under the antifraud provisions. Thus, recklessness is "an extreme departure from the standards of ordinary care, . . . which presents a danger of misleading buyers or sellers that is either known to the [actor] or is so obvious that the actor must have been aware of it." Amendment to Rule 102(e) of the Commission's Rules of Practice, 63 Fed. Reg. 57164, 57167 (Oct. 26, 1998). It is "a lesser form of intent," "not merely a heightened form of ordinary negligence." *Id.* (internal citations and quotations omitted). Egeberg's conduct of falsely representing that his audit reports were conducted in accordance with PCAOB standards was reckless and intentional under Rule 102(e).

31. As a result of the conduct described above, Egeberg engaged in improper professional conduct within the meaning of Section 4C of the Exchange Act and Rule 102(e)(1)(iv)(B)(2) of the Commission's Rules of Practice. Egeberg's unreasonable conduct included his failures with respect to his audits of Fox Petroleum for its fiscal years ended February 28, 2010, 2011, and 2012, and his audits of Fox Petroleum subsidiaries Renfro and CPP for their fiscal years ended December 31, 2009 and 2010. These repeated instances of unreasonable conduct resulted in violations of PCAOB Standards AU Section 210, AU Section 230, AU Section 311, AU Section 315, AU Section 326, AU Section 508, Auditing Standard No. 3, and Auditing Standard No. 7.

32. Egeberg engaged in improper professional conduct under Rule 102(e)(1)(ii), and willfully violated Exchange Act Section 10(b) and Rule 10b-5(b) thereunder, and Rule 2-02(b)(1) of Regulation S-X, which calls for sanction under Rule 102(e)(1)(iii), because his auditing practices were so deficient that the audits amounted to no audits as all. *SEC v. Price Waterhouse*, 797 F. Supp. 1217, 1240 (S.D.N.Y. 1992) citing *McLean v. Alexander*, 599 F.2d 1190, 1198 (3rd Cir. 1979). An auditor violates Exchange Act Section 10(b) and Rule 10b-5 thereunder by issuing false audit reports. Egeberg violated these antifraud provisions by intentionally issuing audit reports that falsely stated that his audits were conducted in accordance with PCAOB standards, and these statements were material. Egeberg's audits were not conducted in accordance with PCAOB standards, but instead constituted complete departures from professional standards.

33. Egeberg willfully violated Regulation S-X Rule 2-02(b)(1) because he issued reports stating that he had conducted his audits of RPM Advantage, Fox Petroleum, Renfro, and CPP in accordance with PCAOB standards, when he had not.

III.

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

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

B. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Rules 102(e)(1)(ii) and (iii) of the Commission's Rules of Practice; and

C. Whether, pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act, Respondent should be ordered to cease and desist from committing or causing violations of and any future violations of Exchange Act Section 10(b), and Rules 10b-5(b) and Regulations S-X Rule 2-02(b)(1) thereunder, whether Respondent should be ordered to pay a civil money penalty pursuant to Section 8A(g) of the Securities Act and Section 21B of the Exchange Act, and whether Respondent should be ordered to pay disgorgement pursuant to Section 8A(e) of the Securities Act, and Sections 21B(e) and 21C(e) of the Exchange Act.

IV.

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

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

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

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

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

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

Elizabeth M. Murphy
Secretary

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9514 / January 17, 2014

SECURITIES EXCHANGE ACT OF 1934
Release No. 71354 / January 17, 2014

INVESTMENT COMPANY ACT OF 1940
Release No. 30886 / January 17, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-14848

In the Matter of	ORDER DIRECTING REVIEW AND ISSUING NOTICE THAT INITIAL DECISION HAS BECOME FINAL AS TO THOMAS E. STERN
OPTIONSXPRESS, INC., THOMAS E. STERN, and JONATHAN I. FELDMAN	

Respondent Thomas E. Stern timely petitioned for review of the administrative law judge's initial decision issued on June 7, 2013.[1] On October 25, 2013, Stern withdrew his petition for review and filed an unopposed motion for entry of a notice of finality.

On November 5, 2013, a notice that the law judge's initial decision has become the final decision of the Commission as to Stern was issued pursuant to delegated authority.[2] On November 15, the notice of finality was brought before the Commission for review on its own initiative pursuant to Rule 431(c).[3]

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[1] *optionsXpress, Inc.*, Initial Decision Release No. 490, 2013 WL 2471113 (June 7, 2013).

[2] *optionsXpress, Inc.*, Exchange Act Release No. 70809, 2013 WL 5915242 (Nov. 5, 2013). The November 5 notice of finality is hereby vacated.

[3] 17 C.F.R. § 201.431(c). We find it unnecessary for the parties to "file a statement in support of or in opposition to" the entry of a notice of finality pursuant to Rule 431(d). *Id.* § 201.431(d). Therefore, pursuant to Rule 100(c), we find that it would "serve the interests of justice and not result in prejudice" to any party to this proceeding to suspend the operation of Rule 431(d). *Id.* § 201.100(c) (permitting the Commission to "by order direct, in a particular

(continued . . .)

We have considered Stern's October 25 withdrawal of his petition for review and unopposed request for entry of a notice of finality. Accordingly, notice is hereby given, pursuant to Rule 360(d)(2) of the Commission's Rules of Practice,[4] that the initial decision of the administrative law judge has become the final decision of the Commission with respect to Stern. The orders contained in that decision are hereby declared effective. The initial decision ordered that Stern shall cease and desist from causing and aiding and abetting violations of Section 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934, Exchange Act Rules 10b-5 and 10b-21, and Rule 204 of Regulation SHO. The initial decision further ordered that Stern is barred from being associated with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization or from participating in an offering of penny stock and prohibited permanently 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. The initial decision further ordered that Stern pay a civil monetary penalty in the amount of $75,000.

By the Commission.

Elizabeth M. Murphy
Secretary

(...continued)
proceeding, that an alternative procedure shall apply or that compliance with an otherwise applicable rule is unnecessary").

4 17 C.F.R. § 201.360(d)(2).

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Release No. 71340 / January 17, 2014

Admin. Proc. File No. 3-15259

In the Matter of the Application of

CAPWEST SECURITIES, INC.
c/o H. Thomas Fehn, Esq.
Fields, Fehn & Sherwin
1175 Wilshire Boulevard, 15th Floor
Los Angeles, CA 90025

For Review of Disciplinary Action Taken by

FINRA

OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION—REVIEW OF DISCIPLINARY PROCEEDING

Failure to Comply with Advertising Rules

Failure to Supervise

Conduct Inconsistent with Just and Equitable Principles of Trade

Former member firm of registered securities association violated content standards applicable to communications with the public, in that the communications: (1) were not fair and balanced and failed to provide a sound basis for evaluating the products and services being promoted; (2) used exaggerated and/or misleading statements; (3) used prohibited statements projecting results of the services or products being promoted; and (4) used customer testimonials without the requisite disclosures. Former member firm also violated supervisory standards by failing to implement effectively the firm's supervisory procedures. As a result of these violations, former member firm engaged in conduct inconsistent with just and equitable principles of trade. *Held*, association's findings of violations and the sanctions it imposed are *sustained*.

APPEARANCES:

H. Thomas Fehn, *Gregory J. Sherwin*, and *Orly Davidi*, of *Fields, Fehn, & Sherwin*, for CapWest Securities, Inc.

Alan Lawhead, *Andrew Love*, and *Gary J. Dernelle*, for the Financial Industry Regulatory Authority, Inc.

Appeal filed: March 29, 2013
Last brief received: June 21, 2013

I.

CapWest Securities, Inc., formerly a FINRA member firm,[1] seeks review of FINRA disciplinary action. FINRA found that, during the period from October 1, 2006 to March 31, 2007, CapWest violated NASD Conduct Rules 2210 and 2110 through its use of violative public communications,[2] for which FINRA fined CapWest $25,000 and censured the Firm. FINRA

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[1] CapWest became a FINRA member in 1992. The Firm's headquarters were in Lakewood, Colorado, and it maintained thirty branch offices with forty-five total registered representatives nationwide. On September 23, 2011, FINRA cancelled CapWest's registration because of the Firm's failure to pay outstanding fees, and the Firm is no longer in business. CapWest filed a brief in support of its appeal, but never filed a reply brief, as permitted by the briefing order.

[2] On July 26, 2007, the Commission approved a proposed rule change that NASD filed seeking to amend its Certificate of Incorporation to reflect its name change to the Financial Industry Regulatory Authority, Inc. ("FINRA"), in connection with the consolidation of its member firm regulatory functions with NYSE Regulation, Inc. *See* Securities Exchange Act Release No. 56148, 2007 SEC LEXIS 1648 (July 26, 2007). Following the consolidation, FINRA began developing a new "Consolidated Rulebook" of FINRA Rules. The first phase of the new consolidated rules became effective on December 15, 2008. *See* Exchange Act Release No. 58643 (Sept. 25, 2008), 73 Fed. Reg. 57,174 (Oct. 1, 2008).

NASD Conduct Rule 2210 set forth content standards for member communications with customers or the public. On March 29, 2012, the Commission approved new FINRA rules governing member firm communications with the public, consolidated in FINRA Rule 2210, which became effective February 4, 2013. The new rules do not alter, in any material respect, the standards that FINRA applied in this case. *See FINRA Regulatory Notice 12-29*, 2012 FINRA LEXIS 36, at *40-43 (June 2012).

NASD Conduct Rule 2110 required members to "observe high standards of commercial honor and just and equitable principles of trade" in the conduct of their business. In September 2008, the Commission approved the new FINRA Rule 2010, which replaced NASD Rule 2110. The new rule, which became effective December 15, 2008, does not alter, in any material respect, the prior rule. *See FINRA Regulatory Notice 08-57*, 2008 FINRA LEXIS 50 (Oct. 2008).

(continued...)

further found that CapWest failed to implement its supervisory system effectively with regard to reviewing the communications at issue, in violation of NASD Conduct Rules 3010 and 2110,[3] for which FINRA fined CapWest $25,000.[4] We base our findings on an independent review of the record.

II.

A. Section 1031 Exchanges and TIC investments proliferated in the early 2000s, prompting NASD to issue *Notice to Members 05-18*.

This matter relates to public communications that CapWest used to promote tax-deferred exchanges of real property under Section 1031 of the Internal Revenue Code ("Section 1031 Exchanges"), as well as tenancy-in-common ("TIC") investments. Section 1031 of the IRC permits an investor to defer paying capital gains tax otherwise due on the sale of real estate held for productive use in a trade or business or for investment by exchanging the investment for "like-kind" property of equal or greater value.[5] One of the ways that a Section 1031 Exchange can be accomplished, subject to certain requirements, is through a TIC, in which an investor obtains an undivided fractional interest in real property.[6]

(...continued)

FINRA's disciplinary action here was instituted after the consolidation of NASD and NYSE, but the conduct at issue took place before the relevant consolidated rules took effect. Accordingly, NASD conduct rules apply.

3 NASD Conduct Rule 3010 required, among other things, that members "establish and maintain a system to supervise the activities of" registered representatives and other associated persons "that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable NASD Rules." In July 2013, FINRA noticed a proposed new consolidated rule regarding supervision. Exchange Act Release No. 69902 (July 1, 2013), 78 FR 40792 (July 8, 2013) (Notice of Filing of a Proposed Rule Change to Adopt Rules Regarding Supervision in the Consolidated FINRA Rulebook).

4 FINRA also assessed hearing costs in the amount of $2,867.75.

5 26 U.S.C. § 1031(a)(1).

6 In a typical TIC, the profits (if any) are derived mostly through the efforts of the sponsor and the management company, which manage and lease the acquired property. *NASD Notice to Members 05-18*, 2005 NASD LEXIS 25, at *6 (Mar. 2005). The sponsor also ordinarily structures the TIC, including the up-front fees and expenses charged to the tenants-in-common, and negotiates the sale price and loan for the acquired property. *Id.* A TIC, standing alone, would not ordinarily constitute a security. *See id.*, at *6 n.5. But when a TIC is sold by a sponsor pursuant to a contractual arrangement and involves pooling assets and sharing the risks and rewards of the investment with other tenants-in-common, this generally constitutes an investment contract and, thus, a security. *See, e.g., SEC v. Edwards*, 540 U.S. 389, 394 (2004) (defining "investment contract" as depending on "whether the scheme involves an investment . . . with profits to come solely from the efforts of others" (citing *SEC v. W.J. Howey Co.*, 328 U.S. 293, 301 (1946)); *Anthony H. Barkate*, Exchange Act Release No. 49542, 2004 SEC LEXIS 806, at *10 (Apr. 8, 2004) (finding "an investment in a common enterprise with a reasonable

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The sales volume of TICs grew significantly during the early 2000s, from approximately $150 million in 2001 to approximately $2 billion in 2004.[7] Given the growth in use of these products and some of the risks involved in TIC investments, NASD issued *Notice to Members 05-18*, which noted that TICs are illiquid investments for which no secondary market exists and that subsequent sales of the investment property may occur at a discount to the value of the real property interest underlying the TIC.[8] NASD further pointed out the risk that the fees and expenses charged by the TIC sponsor have the potential to outweigh the tax benefits associated with a Section 1031 Exchange.[9] NASD warned its members of their obligation to comply with all applicable conduct rules when selling TICs, specifically highlighting the obligation to "ensure that promotional materials used by the member are fair, accurate, and balanced."[10]

B. FINRA Advertising Regulation conducted a sweep of certain member firms' public communications related to the sale of TICs, including those of CapWest, resulting in disciplinary proceedings.

Approximately two years after the issuance of *Notice to Members 05-18*, FINRA's Department of Advertising Regulation conducted a "sweep," in which it requested that a group of thirty member firms, including CapWest, produce all of the public communications the firms used in promoting 1031 Exchanges and TICs during the six-month period from October 2006 through March 2007 (the "Sweep Period").[11] In response to the sweep, CapWest produced 268 documents, which took multiple forms, including newsletters, websites, seminar presentations, newspaper and magazine advertisements, form letters, a radio interview script, brochures, and postcards. After reviewing the materials CapWest submitted, Advertising Regulation referred the Firm to FINRA's Department of Enforcement for disciplinary action. On March 4, 2010, FINRA's Department of Enforcement filed a complaint against CapWest, charging that 166 of the 268 communications violated NASD conduct rules regarding public communications and that the Firm had violated NASD's supervisory standards with respect to the communications at issue. On April 12, 2011, a FINRA Hearing Panel conducted a one-day hearing.

FINRA presented its case through a single witness, J. Martin Levine, the FINRA Advertising Regulation investigator responsible for reviewing the communications CapWest submitted in response to the sweep. Levine testified with respect to the procedures FINRA followed in conducting the sweep, and he reviewed the communications at issue to explain the

(...continued)
expectation of profits to be derived from the entrepreneurial efforts of others" to be an investment contract).

7 2005 NASD LEXIS 25, at *4.

8 *Id.* at *10.

9 *Id.* at *11.

10 *Id.* at *8.

11 During the Sweep Period, CapWest sold 111 TIC securities to its customers, for a total value of $31.6 million.

basis for the proceeding. FINRA also introduced each of the allegedly violative communications as hearing exhibits. As CapWest stipulated, at the time of the sweep, its "supervisory system required registered representatives to submit proposed advertisements and sales literature to the firm's Compliance Department and obtain approval for those materials prior to use," and "CapWest supervisory personnel approved all of the 166 pieces of advertising and sales literature related to TICs . . . filed in this disciplinary proceeding."[12]

CapWest also presented only one witness, its president and chief executive officer, who testified regarding his purchase of the Firm around the time of the violations, and about the remedial steps the Firm subsequently took to comply with the applicable conduct rules. Among other things, the CEO conceded that he was not fully aware of "what the rules were" with respect to advertising content until the time of the sweep, after which the Firm attempted to "get things done the right way."[13] The Hearing Panel found that CapWest had committed the violations as charged in the complaint, censured CapWest, and fined the Firm $150,000 for the content standards violations.

CapWest did not appeal the Hearing Panel's decision. FINRA's National Adjudicatory Council ("NAC"), however, called the matter to review the appropriateness of the fine the Hearing Panel imposed for the Rule 2210 and 2110 violations.[14] The NAC determined that the $150,000 fine was excessive because, it found, a majority of the violations were "inadvertent" and the result of a systemic problem in the Firm's implementation of its supervisory system, many of the communications were targeted to accredited investors, and several of the communications were repeated multiple times in identical form. As a result, the NAC reduced the fine from $150,000 to $25,000. The NAC further affirmed the Hearing Panel's findings that CapWest violated Rules 3010 and 2110 by failing to implement effectively its supervisory procedures, in that all 166 violative communications were approved by supervisory personnel of the Firm. The NAC found that, while CapWest "reasonably designed" its supervisory system to ensure compliance—and it was undisputed that the Firm's supervisory personnel reviewed the violative communications—the Firm "did not provide [its] principals, or the Firm's registered representatives, with adequate training and guidance concerning these standards." It also

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12 The Firm's Written Supervisory Policies and Procedures regarding communications with the public, in effect at the time of the sweep, stated, "The [CapWest] Home Office or your [Office of Supervisory Jurisdiction] must pre-approve and receive final copies of ***ALL*** advertising done by registered representatives." (Emphasis in original.).

13 Some of the new procedures CapWest implemented after the sweep included tracking each individual piece of advertising, hiring a new compliance officer experienced with the advertising rules, sending the compliance officer to FINRA's annual advertising conferences, and tasking the compliance officer with ensuring that all communications with the public contain the appropriate disclosures identified by FINRA examiners in the sweep.

14 FINRA Rule 9312 authorizes the NAC to call for review on its own motion the disciplinary decisions of a FINRA hearing panel. Both parties submitted briefs and appeared at oral argument before the NAC.

affirmed the $25,000 fine the Hearing Panel imposed for the supervisory violations.[15] CapWest subsequently filed this appeal.[16]

III.

NASD Rule 2210(d)(1) contained conduct standards applicable to all member firm communications with the public, including the requirements that such communications: (i) "shall be based on principles of fair dealing and good faith, must be fair and balanced, and must provide a sound basis for evaluating the facts in regard to any particular security or type of security, industry, or service;"[17] (ii) shall not contain "any false, exaggerated, unwarranted or misleading statement or claim;"[18] and (iii) "may not predict or project performance, imply that past performance will recur or make any exaggerated or unwarranted claim, opinion or forecast."[19] Rule 2210(d)(2) required that advertisements or sales literature "providing any testimonial . . . must prominently disclose . . . : (i) the fact that the testimonial may not be representative of the experience of other clients; [and] (ii) the fact that the testimonial is no

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15 CapWest did not appeal the Hearing Panel's decision to the NAC, nor did the NAC call for review on its own motion the portion of the Hearing Panel's decision in which it found Rule 3010 violations and imposed sanctions for those violations. Nonetheless, the NAC determined to "address [the supervisory] issues . . . to provide the parties with a final FINRA decision that addresses all aspects of the case."

16 FINRA claims that CapWest "waived all claims to contest the Hearing Panel's findings that the Firm violated FINRA rules [by failing to appeal the Hearing Panel's decision to the NAC]." It is, however, the decision of the NAC, not the Hearing Panel, that is before us on appeal. In any event, when affirming a final FINRA disciplinary action, we must determine whether the FINRA member engaged in the acts or practices found by FINRA, and whether those acts or practices violated FINRA's Rules. *See* 15 U.S.C. § 78s(e)(1)(A) (directing the Commission to affirm FINRA disciplinary sanctions if it finds, among other things, that the applicant "has engaged in such acts or practices . . . as the self-regulatory organization has found him to have engaged in [and] that such acts or practices . . . are in violation of such provisions of . . . the rules of the self-regulatory organization").

17 NASD Rule 2210(d)(1)(A). This subsection of the Rule further states, "No member may omit any material fact or qualification if the omission, in light of the context of the material presented, would cause the communications to be misleading."

18 NASD Rule 2210(d)(1)(B).

19 NASD Rule 2210(d)(1)(D). This provision permits "a hypothetical illustration of mathematical principles . . . provided that it does not predict or project the performance of an investment or investment strategy."

guarantee of future performance or success."[20] FINRA found that CapWest violated NASD Rules 2210(d)(1) and 2210(d)(2), as well as NASD Rule 2110.[21]

FINRA found that some of the communications violated multiple NASD Rule provisions, for multiple reasons, while other communications violated only one provision. The following discussion analyzes CapWest's violative communications under each of the FINRA Rule provisions at issue.[22]

A. CapWest violated NASD Rules 2210(d)(1)(A) and 2110 because certain communications promoted the use of Section 1031 Exchanges or TICs without including an explanation of their features or without any mention of the potential risks, including the lack of liquidity, involved in TIC investments.

We sustain FINRA's findings that 154 of CapWest's 166 violative communications violated NASD Rules 2210(d)(1)(A) and 2110.[23] Certain communications promoted the use of 1031 Exchanges or TICs without providing a sound basis for evaluating the facts regarding them, as required by NASD Rule 2210(d)(1)(A).[24] For example, a CapWest registered representative in San Luis Obispo, California, used an advertisement in real estate industry publications on four occasions during the Sweep Period,[25] which included a photograph of pieces on a chess board with the question, "What's Your Next Move?" in large bold type. The advertisement stated in large print, "1031 Exchanges might just be the best kept secret in the Internal Revenue Code." It also touted several benefits of 1031 Exchanges. The advertisement did not, however, include

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20 NASD Rule 2210(d)(2)(A)(i) and (ii).

21 We have held that a violation of another NASD rule constitutes a violation of NASD Rule 2110. *See, e.g., Stephen J. Gluckman*, Exchange Act Release No. 41628, 54 SEC 175, 1999 SEC LEXIS 1395, at *22 (July 20, 1999).

22 The specific communications that we have found violative, which mirror those found by FINRA, are listed in the attached Appendix.

23 Specifically, 127 of the 154 communications referenced, in a promotional manner, 1031 Exchanges without providing any explanation of their workings and features; 84 of the 154 communications referenced TICs without providing an explanation of their workings and features; and 126 of the 154 communications promoted positive features of TICs without including a balancing disclosure regarding the potential risks of such investments. At least one of these failures applied to each of the 154 communications.

24 *See Pac. On-Line Trading & Sec., Inc.*, Exchange Act Release No. 48473, 56 SEC 1111, 2003 SEC LEXIS 2164, at *14 (Sept. 10, 2003) (holding that member firm's statement on its website that the firm provided the "fastest access to the market today" violated Rule 2210(d)(1)(A) because, without additional information, "it did not provide a basis for investors to evaluate the assertion").

25 CX-42-CX-45. Each of the 166 communications that FINRA found violated NASD Rules was introduced as a hearing exhibit by FINRA's Department of Enforcement. We refer to them by their exhibit numbers, which are designated as "CX-__."

any discussion of how 1031 Exchanges work or the requirements for a given investment to qualify as a like-kind exchange.

Other CapWest communications promoted positive features of TICs in a way that was not fair and balanced, as required under NASD Rule 2210(d)(1)(A).[26] For example, one advertisement was published in identical form seventeen separate times in regional magazines, including *BrokerAgent*, *Haven*, *Central Coast*, and *Vintages*, a wine magazine.[27] It showed a photograph of a man and woman smiling as they open their home mailbox. The text reads, "I used to manage my investment property . . . now I manage my mailbox." The advertisement touts the "simplicity" of TIC investments, as well as their ability to "eliminate time intensive property management burdens associated with being a landlord." But the advertisement does not mention any of the negative attributes of such investments. Under NASD Rule 2210(d)(1)(A), sales literature used by member firms must "disclose in a balanced way the risks and rewards of the touted investment."[28] For example, the risk inherent in illiquid investments, such as the TIC investments being promoted here, must be disclosed,[29] as well as a downside risk analysis to balance statements about the investment's rewards.[30] Touting the benefits of the TIC investments without a balanced presentation of the risks entailed in the investment renders the communications misleading under NASD Rules.[31] The record here supports FINRA's finding

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[26] Some such risks, as discussed in *Notice to Members 05-18*, include the illiquidity of TIC securities (and the lack of a secondary market for such investments), the investor's loss of day-to-day control over property management decisions, the constraints resulting from the need for approval by other tenants-in-common regarding significant issues, such as upgrades or refurbishments to the property, the potentially significant management fees associated with a sponsored TIC investment, and the risk of loss of the principal invested. As Levine testified, "When you get into securitized tenant-in-common [investments], you don't have a direct say over day-to-day property management decisions. So if somebody wants to paint the building or something and cause you $30-80,000 in paint costs or something like that, if a majority votes on it, then it's done."

[27] CX-12-CX-29.

[28] *Jay Michael Fertman*, Exchange Act Release No. 33479, 51 SEC 943, 1994 SEC LEXIS 149, at *17 (Jan. 14, 1994). In order for an advertisement to be considered fair and balanced, it must include disclosure of relevant risks, including the risk of loss from the investment. *Pac. On-Line*, 2003 SEC LEXIS 2164, at *13-14 (citing *Fertman*).

[29] *Philippe N. Keyes*, Exchange Act Release No. 54723, 2006 SEC LEXIS 2631, at *12 (Nov. 8, 2006) (finding that advertisement, which touted the "solid growth" and "reliable income" of certain notes, was misleading and violated Rule 2210 because it did not disclose the risks caused by the illiquidity of the investments).

[30] *Philip L. Spartis*, Exchange Act Release No. 64489, 2011 SEC LEXIS 1693, at *29-30 (May 13, 2011) (finding a violation of NASD Rule 2210(d)(1)(A) where the firm "fail[ed] to include any downside risk analysis").

[31] *See Excel Fin., Inc.*, Exchange Act Release No. 39296, 53 SEC 303, 1997 SEC LEXIS 2292, at *16 (Nov. 4, 1997) (noting two-page summary's failure to include discussion of "the

(continued...)

that CapWest failed to provide the requisite balanced disclosure of the risks associated with TIC investments.

B. CapWest violated NASD Rules 2210(d)(1)(B) and 2110 by using communications that made exaggerated claims pertaining to the protection afforded to TIC investors by regulatory oversight or the tax benefits of 1031 Exchanges.

We sustain FINRA's findings that nine of the communications used by CapWest violated Rule 2210(d)(1)(B)'s prohibition against exaggerated or false and misleading claims. Six of these communications exaggerated the protection and security that TIC investors could expect as a result of regulatory oversight of the TIC industry. The advertisements in question described oversight by the Commission and other regulatory authorities as "an added benefit for investors" and suggested that oversight "guides [TIC sponsors] in straightforward practices that reflect ethics and disclosure." In a series of brochures touting the benefits of TICs, a CapWest registered representative in Seminole, Florida stated, among other things, "The SEC advocates full disclosure, and the sponsors . . . must follow many rules to be in compliance . . . ."[32] One of these brochures stated that a TIC investor receives protection from the "extensive" due diligence on such investments conducted by "the securities industry" which, the Firm asserted, "perform[s] thorough analysis to determine if the ownership structure is viable and whether the property is physically sound, economically profitable, has a likelihood of increasing in value, and can generate sufficient income to repay the debt obligation."[33] One page on the website of a real-estate company owned by this registered representative stated, "The real goal [of] all of this [oversight and regulation] is to make the sales and offerings and their regulations [sic] as secure as possible for investors, and bring clarity to any vague issues."[34]

CapWest disputes FINRA's finding that these six communications violated Rule 2210(d)(1)(B). The Firm argues that none of the communications contains the suggestion that a regulatory authority "approved" TIC investments, and further claims, without authority, that "a typical offering memorandum read by the investor will disclaim any such approval." The Firm argues that the statements found to be violative "in no way imply an increased likelihood of a successful investment." According to the Firm, "They simply make the observation that the securities industry is well regulated." The Firm correctly notes that regulatory oversight, in general, provides "investor protection," but this does not permit the Firm, as FINRA found, to make exaggerated claims regarding the "degree of oversight and safety afforded to" TIC investors as a result of such oversight.[35] For example, the statements that TICs are subject to

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offering's contingent and speculative nature, including the possibility of an adverse tax ruling, the lack of liquidity in the securities, and the potential fluctuations of real estate values").

32 CX-5-CX-8.

33 CX-8.

34 CX-76.

35 *Cf. Pac. On-Line*, 2003 SEC LEXIS 2164, at *14 (finding that "[i]mplying NASD endorsement" of a seminar, by stating that the principal leading the seminar had passed an

(continued...)

"thorough analysis" by "the securities industry" regarding, among other things, "whether the property is . . . economically profitable, has a likelihood of increasing in value, and can generate sufficient income to repay the debt obligation"[36] exaggerate the level of protection that industry and regulatory oversight provide to TIC investors, as well as the likelihood of a successful investment.

FINRA also found, and we agree, that CapWest violated Rule 2210(d)(1)(B) in three communications that included misleading and exaggerated statements indicating that 1031 Exchanges permit the investor to avoid taxes altogether when they merely allow taxes to be deferred. For example, a two-page brochure used by a CapWest registered representative in Sherwood, Oregon stated that a 1031 Exchange allows an investor to sell a property and purchase another "without a tax consequence."[37] The Sherwood registered representative also used a presentation that claimed, "By taking advantage of a § 1031 exchange, you may conserve equity by not paying tax on realized gain."[38]

NASD Rule 2210(d)(1)(B) prohibits member firms from making "any false, exaggerated, unwarranted, or misleading statement or claim in any communication with the public." CapWest does not address on appeal FINRA's findings of violation of Rule 2210(d)(1)(B) with respect to these three communications. Even if certain of these statements (such as the statement that a 1031 Exchange may be executed "without a tax consequence") may be literally true with respect to the initial transaction, the failure of the advertisement to explain the ultimate tax effect of a 1031 Exchange gave the misleading impression that taxes could be avoided altogether. The Firm's misleading and exaggerated statements regarding the regulatory protections afforded to TIC investments and its misleading and exaggerated statements regarding the tax consequences of TIC investments were material because there is a substantial likelihood that a reasonable investor would have considered the information important in the context of the communication.[39]

(...continued)
NASD Series 24 exam, violated NASD rules); NASD Rule 2210 Interpretive Material ("IM") 2210-4 (stating, in connection with limitations on member firms' use of FINRA's name in public communications, that the member must "neither state nor imply that . . . NASD or any other regulatory organization endorses, indemnifies or guarantees the member's business practices, selling methods, the class or type of securities offered, or any specific security").

[36] CX-8, CX-68, and CX-165.

[37] CX-9.

[38] CX-164.

[39] *Cf. Basic, Inc. v. Levinson*, 485 U.S. 224, 240 (1988) (stating that "materiality depends on the significance the reasonable investor would place on the withheld or misrepresented information," which is a fact-specific determination).

C. CapWest violated NASD Rules 2210(d)(1)(D) and 2110 because it used communications including improper performance predictions, performance claims, and forecasts.

We sustain FINRA's findings that thirteen of CapWest's communications violated NASD Rule 2210(d)(1)(D)'s prohibition on performance predictions and unwarranted forecasts. The communications included statements predicting that investors would realize positive returns on their investments, often citing specific percentage returns without including any explanation of the historical basis for these claims or any proviso that past results are no guarantee of future performance. One CapWest registered representative used several handouts which described TICs as having a "long term income stream," producing "effortless cash flow," and, on her real-estate website, stated that "TICs are popular because . . . the returns are generally projected and estimated. No management, no fuss, no tenant problems—simply a return on the investment—this is appealing to more and more people."[40] Other CapWest communications included specific percentage return projections. In a script for radio interviews,[41] a CapWest registered representative acknowledged that "each TIC deal will vary," but then stated that a "typical apartment deal today starts with a cash-on-cash return of about 6% to 6.9%;" "typical office and retail deals vary from 6.5% to 7.5%;" and "some of the other asset classes may pay higher, maybe 7.5% to 8%." An advertisement approved for use on Google stated that TICs could provide "potential monthly cash flow over 8%," while another advertisement, approved the same day for use on Yahoo stated, "TIC properties can potentially [provide] cash flow over 10%,"[42] without any explanation for the different figures in the two advertisements. None of these communications cited a basis for these projections.

CapWest defends the performance projections it used as "not promissory" and further states that they "appear to be true," citing only a book written by one of its registered representatives.[43] But the descriptions of the returns as "typical" and statements that TIC

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[40] CX-5, 6, 76, 158.

[41] CX-64. This document, entitled "Radio Interview Questions," is a seven-page suggested set of questions and answers for radio interviews related to a book about 1031 Exchanges and TICs written by the registered representative. The introduction to the document states, "The following questions are suggestions of those that may be asked in an interview – the structure and choice is up to the host."

[42] CX-75.

[43] Attached to its brief on appeal, CapWest included two exhibits. Exhibit A is an 87-page (not inclusive of introductory summary and exhibits) private placement memorandum, dated January 9, 2007, offering TIC securities in an entity called Cabot Turfway Ridge Acquisition, LLC, which was the owner of a 14.57-acre office park, including two office buildings, in Kentucky. Exhibit B is a full copy of a 2007 book "Effortless Cash Flow," authored by Kathy Heshelow.

Rule of Practice 452, 17 C.F.R. § 201.452, permits the submission of additional evidence based on a motion "show[ing] with particularity that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence previously." We exclude

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investments produce "simply a return on the investment" do not refer to past performance. None of the thirteen communications found to have violated this provision includes any disclosure or cautionary language that the results being cited do not guarantee future performance.

Without the requisite qualifying language and the historical basis for such claims and figures, the overall effect of these projections was to imply that an investor in TICs could expect the returns predicted in the communications.[44] As we have previously held, "the blanket nature of the statements made in the advertisements, appearing as they did with neither detail nor qualification, renders them violative of NASD Rules."[45]

(...continued)

these two exhibits because CapWest did not file a motion to introduce the exhibits, and it neither explains why it did not adduce them previously, as both exhibits were available prior to the commencement of FINRA's disciplinary proceeding, nor shows their materiality. *See, e.g., Joseph S. Amundsen*, Exchange Act Release No. 69406, 2013 SEC LEXIS 1148, at *46 n.83 (Apr. 18, 2013) (declining to admit evidence attached to applicant's brief where applicant failed to file a motion to adduce the evidence and where the evidence applicant sought to adduce was irrelevant to the matters at issue) (citing *Robert D. Tucker*, Exchange Act Release No. 68210, 2012 SEC LEXIS 3496, at *58-60 (Nov. 9, 2012)). CapWest contends that anyone who ultimately invested in a TIC would receive a PPM including risk and other disclosures similar to those in Exhibit A. As discussed above, however, Rule 2210 does not permit a member firm to rely on disclosures in other documents to fulfill its obligation to provide investors with a fair and balanced presentation. According to CapWest, Exhibit B (the "Effortless Cash Flow" book) establishes the "typical" rate of return for TICs during the period preceding the Firm's use of the communications at issue. Thus, according to the Firm, the advertisements projecting rates of return for TICs were based on historically accurate data, since the figures cited by the book roughly match those used in the violative communications. We first note that the book contains no support for the rates of return cited therein. Further, as discussed, it is not the historical rate of returns for TIC investments that is at issue here, but rather the Firm's failure to include information in the communications explaining the basis for the claims and noting that past performance is not necessarily predictive of future results.

44 *Daniel C. Montano*, Exchange Act Release No. 40243, 53 SEC 681, 1998 SEC LEXIS 2874, at *14 (July 22, 1998) (finding that registered representative's predictions in television advertisements of specific results and returns on investment implied to investors that they could expect to achieve such results, notwithstanding the representative's use of couching statements such as "you stand a chance" and "I think").

45 *Sheen Fin. Resources, Inc.*, Exchange Act Release No. 35477, 52 SEC 185, 1995 SEC LEXIS 613, at *12 (Mar. 13, 1995) (finding claims that investors in the products being touted could achieve specific returns and specific tax advantages by using the strategies discussed in the violative advertisements "imply that any investor may expect such results").

D. CapWest violated NASD Rules 2210(d)(2)(A)(i) and (ii) and 2110 by using a communication that included a customer testimonial without the requisite disclosures.

We sustain FINRA's finding that one CapWest communication violated NASD Rule 2210(d)(2)(A)(i) and (ii)'s requirement to include certain disclosures when using customer testimonials in public communications. The communication was in the form of a promotional postcard from a registered representative in Yorba Linda, California, that included three customer testimonials speaking to the representative's "character," "integrity," and his "keen interest in the financial welfare of his clients."[46] A third testimonial in the postcard stated, "every way you measure [him], on a scale of 1 to 10, he gets a 10!" The postcard did not include the disclosures required under Rule 2210: "that the testimonial may not be representative of the experience of other clients" and "that the testimonial is no guarantee of future performance or success."

In response to FINRA's finding, the Firm argues only that "it must be remembered that all of the 166 allegedly violative communications . . . do not relate to particular products or services." CapWest cites no authority to support its apparent position that these requirements apply only to testimonials in advertisements related to specific products or services, and there is nothing in Rule 2210 that would suggest that its scope is so limited. Rule 2210 applies equally to all member firm communications with the public.

E. CapWest's argument that the communications relating to TICs should be viewed in conjunction with the disclosures made in TIC offering documents is without merit because, under NASD Rules, advertisements must "stand on their own."

CapWest's primary argument in opposition to FINRA's findings of Rule 2210 violations is that its communications should not be viewed in isolation, but rather in conjunction with the disclosures provided in the private placement memoranda ("PPMs") that the Firm claims would always be provided to investors in connection with a TIC offering.[47] CapWest complains that

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46 CX-62.

47 CapWest contends that the communications should be viewed "in the context of the total mix of information available to the prospective investor," the materiality standard articulated by the Supreme Court in *Basic*, 485 U.S. at 231-32, and *TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, 448-49 (1976). This misapprehends Rule 2210's focus. NASD Rule 2210 focuses not on all information that is available to a potential investor, but on the content of the communication itself, requiring that the communication on its own be "fair and balanced" and "provide a sound basis for evaluating the facts in regard to any particular security or type of security, industry, or service." It is in this context that the NASD Rule introduces the concept of materiality: "No member may omit any material fact or qualification if the omission, in light of the context of the material presented, would cause the communications to be misleading." *See supra* note 17. As a result, we determine materiality here by looking to whether a fact is substantially likely to be considered important by a reasonable person reading the communication. Further, in its argument that "by the end of the disclosure process CapWest provided investors with all the

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"the NAC abandons rationality and common sense, because it isolates each communication from the context in which it is made." But, in determining whether an advertisement violated NASD Rule 2210, we look to the content of the advertisement alone, and not to other documents associated with the offering. As we have stated, "Advertisements must stand on their own when judged against the standards of [Rule 2210]."[48] Providing customers with PPMs for certain of the TICs that CapWest sold would not cure the Firm's failure to provide a balanced presentation in the communications.[49] Communications must include a balanced discussion of the risks of an investment and may not depend "on scattered information available to the customer" (including in PPMs and other offering documents) for the requisite disclosure of such risks.[50] We therefore reject CapWest's general argument that its communications did not violate Rule 2210 since the PPMs would include risk and other disclosures that were not included in the communications themselves.[51]

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[risk] factors" associated with a TIC investment, CapWest essentially acknowledges that the communications at issue omitted material information regarding the workings, features, and risk factors associated with the investments.

48 *Sheen*, 1995 SEC LEXIS 613, at *12 (holding that "defects in the advertisements" cannot be cured through detailed explanations elsewhere of the risks of the investments being promoted).

49 *Excel*, 1997 SEC LEXIS 2292, at *19 (finding that member firm communications, including those aimed at accredited investors, must "contain a balanced statement of the benefits of the investment and its risks").

50 *Spartis*, 2011 SEC LEXIS 1693, at *39 n.43 (citing *Pac. On-Line*, 2003 SEC LEXIS 2164, at *15 ("disclaimers of the risks of online trading provided to customers at . . . seminars and when . . . customers opened new accounts" failed to cure firm's misleading advertisement because "[a]dvertisements must stand on their own" under NASD's public communications rule); *Donner Corp. Int'l*, Exchange Act Release No. 55313, 2007 WL 516282, at *10 (Feb. 20, 2007) ("The research reports themselves needed to convey a complete and accurate picture and could not depend on information available to investors."); and other cases).

51 In addition to the arguments discussed above, CapWest contests the qualifications of FINRA's sole hearing witness, investigator Levine. CapWest contends that Levine "is not a lawyer, not an accountant, not a real estate licensee, not securities licensed and had never testified before" and "has never owned an interest in commercial real estate." On these bases, CapWest claims that Levine "was not qualified to provide any expert opinion." Because CapWest claims that the NAC "relied solely upon" Levine's testimony, it argues that "the decision is not supported by any substantial evidence in the record."

We find that FINRA did not, as CapWest suggests, rely solely on Levine's testimony to reach its conclusion that CapWest had violated NASD Rules. Instead, FINRA reviewed each of the communications and made its own findings of violation based on that review. Further, as noted above, the Firm did not call a witness of its own, as it was permitted to do, to rebut Levine's testimony. In addition, Levine testified not, as CapWest contends, "about the intricacies of TICs or 1031 exchanges," but rather about whether the 166 communications complied with NASD advertising rules, with which Levine was extensively familiar. We previously have

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F. CapWest violated NASD Rules 3010 and 2110 because it failed to implement its supervisory system effectively.

NASD Conduct Rule 3010 requires member firms to "establish and maintain" a supervisory system "reasonably designed to achieve" regulatory compliance. FINRA found that, although CapWest had "adequate" procedures in place during the Sweep Period, which required that all public communications be reviewed and approved by Firm supervisory personnel prior to being used by the Firm, the Firm violated Rule 3010 by failing to implement these procedures effectively, in that the supervisory personnel did not have an adequate understanding of the Firm's obligations under Rule 2210.

On appeal, CapWest does not directly address the supervisory violations FINRA found, but states merely that "if the communications . . . are not violative, supervision is not relevant." As discussed above, we find that the record amply supports FINRA's findings of Rule 2210 violations. In his testimony, CapWest's CEO acknowledged that, at the time of the sweep, he was not fully aware of "what the rules were" with respect to the Firm's compliance with NASD advertising requirements. His acknowledgment supports FINRA's finding that the supervisory system had not been implemented effectively at the time the Firm used the violative communications. Further, we agree with FINRA that the approval of all 166 violative communications by CapWest principals shows that those principals did not understand the content standards under Rule 2210 and thus could not effectively execute their supervisory duties.[52] Although the Firm had adequate supervisory procedures in place, it did not effectively implement them, which allowed the Firm to disseminate 166 violative public communications during a six-month period. The changes to the Firm's policies after the sweep, which were discussed by the Firm's CEO during his testimony, although commendable, do not excuse the violations.[53] Thus, we affirm FINRA's finding that CapWest violated NASD Rule 3010 by failing to implement its supervisory procedures effectively.

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considered similar testimony in finding violations of SRO rules. *See, e.g.*, *John R. D'Alessio*, Exchange Act Release No. 47627, 56 SEC 396, 2003 SEC LEXIS 806, at *37 (Apr. 3, 2003) (citing, in support of findings, hearing testimony of NYSE staff member that NYSE's regulatory position that sharing in profits and losses created an interest in an account). *Cf. Calais Res., Inc.*, Exchange Act Release No. 67312, 2012 SEC LEXIS 2023, at *8 (June 29, 2012) (citing Declaration of Commission staff member identifying material deficiencies in Commission filings in support of findings of violations). In any event, we have reviewed FINRA's findings *de novo* and agree, as discussed, that the communications violated the NASD Rules as alleged.

52 *See Richard F. Kresge*, Exchange Act Release No. 55988, 2007 SEC LEXIS 1407, at *35 (June 29, 2007) (finding that NASD supervisory rules require members to ensure that supervisors understand and can effectively conduct their duties); *see also* NASD Rule 3010(a)(6) (requiring member firms to make "[r]easonable efforts to determine that all supervisory personnel are qualified by virtue of experience or training to carry out their assigned responsibilities").

53 *Cf. John B. Busacca III*, Exchange Act Release No. 63312, 2010 SEC LEXIS 3787, at *43 (Nov. 12, 2010) ("Reasonable supervision . . . required Busacca . . . to address known deficiencies promptly . . . not only after regulatory action had commenced."); *Kresge*, 2007 SEC

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IV.

Under Exchange Act Section 19(e)(2), we sustain FINRA sanctions unless we find that, giving due regard to the public interest and the protection of investors, the sanctions are excessive, oppressive, or impose an unnecessary or inappropriate burden on competition.[54] CapWest takes the position that it committed no violations and thus no sanction is warranted.

A. The $25,000 fine FINRA imposed for CapWest's Rule 2210 violations is not excessive or oppressive.

In assessing the appropriate sanction to impose on CapWest, FINRA looked to its Sanction Guidelines, which it promulgated to achieve greater consistency, uniformity, and fairness in its sanctions.[55] Although the Guidelines do not bind us, they serve as a benchmark for our review under Exchange Act Section 19(e)(2).[56] The Guidelines provide "Principal Considerations in Determining Sanctions," which apply to sanctions for any violation of FINRA Rules.[57] The Principal Considerations applicable to all violations identify several factors to be weighed, including: whether the respondent engaged in numerous acts or a pattern of misconduct; whether the respondent voluntarily employed subsequent corrective measures, prior to detection or intervention by a regulator, to revise general or specific procedures to avoid recurrence of misconduct; whether the respondent's misconduct was the result of an intentional act, recklessness, or negligence; and the level of sophistication of the injured or affected customer.[58] The Principal Considerations specifically applicable to Rule 2210 violations require adjudicators to weigh whether the violative communications were circulated widely.[59]

As discussed above, many of the advertisements and sales literature at issue here were widely circulated, in magazines and other publications that were available to the general public or on websites that were unrestricted. The NAC correctly found the wide circulation of many of

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LEXIS 1407, at *37 ("Kresge's [remedial] actions occurred months after the misconduct at issue already had transpired and after [FINRA] began its investigation.").

[54] 15 U.S.C. § 78s(e)(2). CapWest does not claim, nor does the record show, that FINRA's action imposed an unnecessary or inappropriate burden on competition.

[55] *Richard A. Neaton*, Exchange Act Release No. 65598, 2011 SEC LEXIS 3719, at *39 n. 38 (Oct. 20, 2011).

[56] *Jason A. Craig*, Exchange Act Release No. 59137, 2008 SEC LEXIS 2844, at *18 n.27 (Dec. 22, 2008).

[57] *Guidelines*, at 6-7.

[58] In addition, under the General Principles Applicable to All Sanction Determinations, adjudicators are instructed that they "must always exercise judgment and discretion and consider appropriate aggravating and mitigating factors in determining remedial sanctions in each case." *Guidelines*, at 3.

[59] *Id.* at 79.

the communications to be an aggravating factor in its sanction determination.[60] The NAC also noted as aggravating that the Firm's misconduct would not have stopped absent FINRA's sweep and its subsequent enforcement action against the Firm.[61] Further, because CapWest did not make changes to its supervisory system until after FINRA detected and intervened to stop the violations, the improvements the Firm made to its supervisory system are not mitigating in assessing the appropriate sanction for the Firm's violations.[62]

The Principal Considerations for Rule 2210 violations also recommend differing sanctions depending on whether the adjudicator finds that the violations were "inadvertent," as opposed to finding them to have been "intentional or reckless." We agree with FINRA that CapWest's use of thirteen separate communications that included improper performance projections was egregious. Without providing the historical basis for such statements and without warning potential investors that past results do not guarantee future performance, the Firm misled the potential investors who received these communications by suggesting that they too could expect such returns. We also agree with FINRA that the Firm's use of six communications that touted the investor protections that regulatory oversight provides for TIC investments was misleading and egregious. By giving the impression that investors could rely on such protections to add "security" to their investments, the Firm made a highly misleading presentation. We find that the violations concerning these nineteen communications were at least reckless. For "intentional or reckless" violations, the Guidelines recommend a fine of at least $10,000 per violation, and as much as $100,000 per violation.[63] For these egregious violations alone, FINRA could have imposed a $190,000 fine, at the minimum sanction level of $10,000 per violation authorized by the Guidelines.

In addition to the egregious violations, FINRA found that CapWest committed at least 157 "inadvertent" violations of Rule 2210(d)(1)(A) and one "inadvertent" violation of Rule 2210(d)(2)(a)(i) and (ii). We agree that these 158 violations were committed inadvertently. Under the Guidelines, FINRA could have imposed a minimum fine of $1,000 each for these violations for a total fine of $158,000.[64]

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[60] It is an aggravating factor when the communications at issue are "freely available on [the member firm's] website and access to them [is] not restricted in any manner." *Donner*, 2007 WL 516282, at *13 n.64.

[61] *Guidelines*, at 6 (consideration 3: "whether [a] . . . member firm respondent voluntarily employed subsequent corrective measures, prior to detection or intervention . . . by a regulator, to revise general and/or specific procedures to avoid recurrence of misconduct").

[62] *Cf. Saad v. SEC*, 718 F.3d 904, 913-14 (D.C. Cir. 2013) (remanding proceeding where Commission did not fully address, in its sanctions analysis, the mitigative impact of the termination of applicant's employment before detection of the underlying misconduct by FINRA).

[63] *Guidelines*, at 80.

[64] *Id.* at 79.

We have previously held that an NYSE Rule, analogous to Rule 2210, "serves an important policy objective by encouraging NYSE members and their associated persons to provide full and fair disclosure to their investors."[65] CapWest thwarted this policy goal through its use of 166 violative communications. The NAC exercised its discretionary authority, resulting in a significant reduction of the $150,000 fine the Hearing Panel imposed, even though the NAC concurred with the Hearing Panel's findings of violation.[66] FINRA's fine of $25,000 for *all* of the Firm's violations is not excessive or oppressive.

B. The $25,000 fine FINRA imposed for the Firm's violations of Rule 3010 is neither excessive nor oppressive.

FINRA's Sanction Guidelines set out sanctions recommendations for violations of Rule 3010 for failure to supervise. The Guidelines recommend a fine of $5,000 to $50,000. The Guidelines recognize the following principal considerations in determining sanctions for a failure to supervise: (1) whether the respondent ignored "red flag" warnings that should have resulted in additional supervisory scrutiny and whether individuals responsible for underlying misconduct attempted to conceal misconduct from the respondent; (2) the nature, extent, size, and character of the underlying misconduct; and (3) the quality and degree of the supervisor's implementation of the firm's supervisory procedures and controls. Although there is no evidence of any red flags or attempts to conceal the misconduct here, CapWest's CEO acknowledged that he did not realize "what the rules were" regarding the Firm's communications with the public, which indicates that the Firm had failed to address its supervisory responsibilities regarding regulatory compliance in an appropriate manner. Given the large number of violative communications over a relatively short six-month period and the apparent failure of Firm supervisors to recognize these violations, a fine of $25,000, in the middle of the recommended range, is neither excessive nor oppressive.

Under these circumstances, we conclude that FINRA's sanctions are justified under its Sanction Guidelines, result from a thoughtful weighing of the relevant facts, and are appropriately remedial because they will serve as a reminder that member firms must comply with the advertising rules and deter others from engaging in similar misconduct.[67]

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65 *Spartis*, 2011 SEC LEXIS 1693, at *47-48.

66 Citing the *Guidelines*' statement that adjudicators, in assessing sanctions, should consider "the level of sophistication of the . . . affected customer," the NAC noted, as mitigating, that "the target audience . . . generally comprised accredited investors that already owned income-producing real estate and the . . . financial professionals who advise them." While such circumstances are not relevant to the determination of liability, they can be considered in assessing sanctions, as was done here.

67 *See McCarthy v. SEC*, 406 F.3d 179, 189 (2d Cir. 2005) ("[G]eneral deterrence . . . may be considered as part of the overall remedial inquiry.").

We find that the sanctions imposed against CapWest are neither excessive nor oppressive and are appropriate remedial sanctions for the violations, and we sustain FINRA's findings of violations.

An appropriate order will issue.[68]

By the Commission (Chair WHITE and Commissioners AGUILAR, GALLAGHER, STEIN and PIWOWAR).

Elizabeth M. Murphy
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

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68 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.

APPENDIX

NASD Rule Provision	Communications Violating the Provision
2210(d)(1)(A) – failure to make disclosures necessary for the communication to provide a fair and balanced presentation of the products and services being promoted or to provide a sound basis for evaluating such products or services	**154 Separate Communications** **Referenced 1031 Exchanges without explaining their workings and features (127 distinct communications):** CX-1, CX-2, CX-3, CX-4, CX-5, CX-6, CX-7, CX-30, CX-34, CX-35, CX-36, CX-37, CX-39, CX-42, CX-43, CX-44, CX-45, CX-47, CX-48, CX-49, CX-50, CX-51, CX-52, CX-53, CX-54, CX-55, CX-56, CX-57, CX-58, CX-59, CX-60, CX-61, CX-62, CX-65, CX-66, CX-67, CX-69, CX-70, CX-71, CX-72, CX-73, CX-76, CX-77, CX-78, CX-79, CX-80, CX-81, CX-83, CX-84-157, CX-158, CX-159, CX-160, CX-161, CX-162 **Referenced TIC investments without explaining their workings and features (84 communications, 2 distinct):** CX-30, CX-46, CX-61, CX-76, CX-80, CX-81, CX-82, CX-84-157, Cx-160, CX-161, CX-162 **Touted benefits of TIC investments without balancing presentation of risks, such as illiquidity, risk of principal loss, and potential that management fees will outweigh potential tax benefits (126 communications, 25 distinct):** CX-4, CX-9, CX-11, CX-12-29, CX-30, CX-33, CX-34-36, CX-37, CX-38, CX-39, CX-40, CX-41, CX-42-45, CX-47, CX-48, CX-49, CX-58, CX-59, CX-61, CX-62, CX-65, CX-67CX-69, CX-70, CX-71, CX-72, CX-76, CX-77, CX-79, CX-80, CX-81, CX-82, CX-83, CX-84-157, CX-159, CX-160, CX-162
2210(d)(1)(B) – communications that included exaggerated, unwarranted, or misleading statements.	**9 Total Communications** **Exaggerated the protection afforded to investors by regulatory oversight of TIC investments:** CX-5, CX-6, CX-8, CX-68, CX-76, CX-165 **Exaggerated the tax benefits of TIC investments:** CX-9, CX-164, CX-167

2210(d)(1)(D) – communications that predicted or projected performance or implied that past performance will recur.	**13 Total Communications:** CX-5, CX-6, CX-31, CX-32, CX-38, CX-63, CX-64, CX-73, CX-74, CX-75, CX-76, CX-158, CX-166
2210(d)(2)(A)(i) and (ii) – use of customer testimonials without the required disclosures.	**1 Communication:** CX-62

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 71340 / January 17, 2014

Admin. Proc. File No. 3-15259 (CORRECTED)

In the Matter of the Application of

CAPWEST SECURITIES, INC.
c/o H. Thomas Fehn, Esq.
Fields, Fehn & Sherwin
11755 Wilshire Blvd., 15th Floor
Los Angeles, CA 90025

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, and the sanctions imposed, by FINRA on CapWest Securities, Inc. be, and they hereby are, sustained.

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Commissioner Aguilar not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 71368 / January 22, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15681

In the Matter of **Michael B. Spadino,** **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 Michael B. Spadino ("Spadino" 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. Spadino, 49, is a resident of St. Paul, Minnesota. Spadino is not, and was not during the time of the conduct discussed below, registered as a broker-dealer or associated with a broker or dealer registered with the Commission.

2. On January 13, 2014, a final judgment was entered by consent against Spadino, permanently enjoining him from future violations of Section 15(a) of the Exchange Act, in the civil action entitled Securities and Exchange Commission v. Collyard, et al., Civil Action No. 11-cv-3656, in the United States District Court for the District of Minnesota.

3. The Commission's complaint alleged that, from approximately November 2007 to December 2008, Spadino, together with Marketing Concepts, Inc., a company solely owned and controlled by Spadino, sold over $1.5 million in the securities of Bixby Energy Systems, Inc. ("Bixby") to over 50 investors. The complaint further alleged, among other things, that Spadino and Marketing Concepts, Inc. solicited investors and fielded investor inquiries regarding Bixby. The complaint also alleged that as compensation for their sale of Bixby securities, Bixby paid Spadino and Marketing Concepts, Inc. commissions of at least $160,000 in cash. Finally, the complaint alleged that Spadino, while acting as a broker or dealer, effected transactions in, and induced and attempted to induce the purchase or sale of securities, when he was not registered with the Commission as a broker or dealer or associated with an entity registered with the Commission as a broker or dealer.

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, 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.

with the right to apply for reentry after three years to the appropriate self-regulatory organization, or if there is none, to the Commission.

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 ACT OF 1933
Release No. 9515 / January 22, 2014

SECURITIES EXCHANGE ACT OF 1934
Release No. 71364 / January 22, 2014

INVESTMENT ADVISERS ACT OF 1940
Release No. 3760 / January 22, 2014

INVESTMENT COMPANY ACT OF 1940
Release No. 30887 / January 22, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15430

In the Matter of **BRIAN WILLIAMSON,** **Respondent.**	**ORDER MAKING FINDINGS AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933, SECTIONS 15(b) AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934, SECTIONS 203(f) AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940, AND SECTION 9(b) OF THE INVESTMENT COMPANY ACT OF 1940**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest to enter this Order Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order pursuant to Section 8A of the Securities Act of 1933 ("Securities Act"), Sections 15(b) and 21C of the Securities Exchange Act of 1934 ("Exchange Act"), Sections 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 against Brian Williamson ("Respondent" or "Williamson").[1]

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[1] On August 20, 2013, the Commission instituted administrative and cease-and-desist proceedings pursuant to Section 8A of the Securities Act, Sections 15(b) and 21C of the

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 in which the Commission is a party, and without admitting or denying the findings contained herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order pursuant to Section 8A of the Securities Act of 1933, Sections 15(b) and 21C of the Securities Exchange Act of 1934, Sections 203(f) and 203(k) of the Investment Advisers Act of 1940, and Section 9(b) of the Investment Company Act of 1940 ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds[2] that:

A. **Summary**

1. From September 2009 through June 2010, Brian Williamson made material false and misleading statements and omissions to investors and prospective investors concerning the valuation of Oppenheimer Global Resource Private Equity Fund I, L.P. ("OGR"), a fund of private equity funds he managed.

2. From in or about September 2009 through at least mid-October 2009, Williamson sent, or directed others to send, prospective OGR investors marketing materials that reported an OGR internal rate of return ("IRR") for the quarter ended June 30, 2009 that, misleadingly, did not take into account OGR fees and expenses that would have greatly lowered OGR's reported IRR.

3. From late October 2009 through June 2010, Williamson misrepresented, or caused OGR to misrepresent, to OGR investors and prospective investors that the reported performance of the fund's investments was "based on the underlying managers' estimated values." In fact, during that time period, OGR's reported value of its largest single holding – Cartesian Investors-A, LLC ("Cartesian") – was based not on the value assigned by Cartesian's manager but, rather, on Williamson's own materially higher valuation, a change that materially increased OGR's reported IRR.

4. In October and November 2009, Williamson also made, or caused others to make, a number of additional material misrepresentations and omissions to individual OGR investors and potential investors (or their consultants) that were designed to hide Williamson's role in valuing

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Exchange Act, Sections 203(f) and 203(k) of the Advisers Act, and Section 9(b) of the Investment Company Act of 1940.

2 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.

Cartesian and to create the misleading impression that OGR's increased IRR was due to increased performance when, in fact, it was due to Williamson's revised valuation of Cartesian.

5. From in or about October 2009 through June 2010, Williamson, and Oppenheimer Asset Management Inc. ("OAM") personnel he supervised, marketed OGR to potential investors by, among other things, touting OGR's increased IRR, and OGR raised approximately $61 million.

B. <u>Respondent</u>

6. Brian Williamson, age 42, is a resident of Newtown, Pennsylvania. From December 2005 to December 2011, he was an employee of Oppenheimer & Co. Inc. ("OPCO") and OAM, Managing Director in Oppenheimer Alternative Investment Management, LLC ("OAIM") and the portfolio manager of OGR and other OAIM private equity funds. Williamson was also licensed as an attorney in Pennsylvania and New Jersey, and his current reported status in those states is "retired." He also was licensed as a certified public accountant in Pennsylvania, but that license is expired.

C. <u>Other Relevant Entities</u>

7. OAM is located in New York City and is registered with the Commission as an investment adviser. OAM is the sponsor of OGR, and OAM employees (including Williamson) provided investment advisory services to OGR. OAM is a subsidiary of E.A. Viner International Co., a subsidiary of Oppenheimer Holdings, Inc., a publicly held company listed on the New York Stock Exchange.

8. OAIM is located in New York City and is registered with the Commission as an investment adviser. At all relevant times, OAIM was wholly owned by OAM, and OAM was the sole member of OAIM. OAIM is the general partner of – and through employees of OAM, provides investment advisory services to – several funds, including OGR and other private equity funds. Accordingly, OAM and OAIM were OGR's investment advisers.

9. OPCO is located in New York City and is registered with the Commission as both a broker-dealer and investment adviser. OPCO is an affiliate of OAM and OAIM, and all persons who work for OAM and OAIM (including Williamson) are OPCO employees. OPCO is owned directly by E.A. Viner International Co., a subsidiary of Oppenheimer Holdings, Inc.

10. OGR is a fund of private equity funds previously managed by Williamson through OAM. OGR is organized as a Delaware limited partnership, with OAIM as its general partner, and OGR investors as its limited partners. Among other holdings, OGR holds an interest in Cartesian.

11. S.C. Fondul Proprietatea S.A ("Fondul") is a holding company established by the Romanian government to compensate its citizens whose land was seized by Romania's former communist regime. Fondul holds stakes in public and private Romanian energy and natural resource entities, such as power, gas and oil companies. In January 2011, Fondul was listed on the Bucharest Stock Exchange.

12. Cartesian Investors-A, LLC ("Cartesian") is a limited liability company that holds shares of Fondul for its members, who include Cartesian Capital Group Holdings, LLC ("Cartesian Capital"), Pangaea One-RDV Co-Investment Fund, L.P., and OGR. Fondul shares are Cartesian's only holding. Under Cartesian's "Limited Liability Company Agreement," Cartesian Capital is Cartesian's "Managing Member" and, as such (with certain express exceptions), manages the "business and affairs" of Cartesian, which include "making all investment decisions on behalf of [Cartesian]."

D. Background

13. Williamson supervised the formation of OGR in 2007, and at all relevant times was primarily responsible for managing it.

14. OGR began admitting limited partners in April 2008, and its target investment size was $200 million. Investment in OGR was initially scheduled to close at the end of October 2009, but as of September 30, 2009, OGR had received only approximately $71 million in commitments from investors. Williamson subsequently obtained the investors' consent for two extensions of the closing date, ultimately to June 30, 2010.

15. From at least September 2009 through June 2010, Williamson and the investment team of OAM employees that he managed – who acted at Williamson's direction at all relevant times – marketed OGR to potential investors. Williamson located potential OGR investors both through independent "consultants" (who provided investment advice to their institutional clients) and OPCO's own network of registered representatives.

16. As part of their OGR marketing strategy, Williamson and his team sent prospective investors pitch books which, among other things, summarized OGR's performance as of the end of particular quarters. Williamson was the individual at OAM with primary responsibility for the content of the OGR pitch books.

17. Williamson's team also sent existing OGR investors quarterly reports containing OGR performance summaries as of a particular quarter. Williamson signed the quarterly report letters and was the individual at OAM with primary responsibility for the content of the quarterly reports.

E. Misleading Statements and Omissions Concerning OGR's Gross IRR

18. In or about early July 2009, at Williamson's direction, Williamson's team created an OGR pitch book that included OGR performance summaries as of the first quarter of 2009 (i.e., as of March 31, 2009). The performance summary table contained a column labeled "IRR" that did not list any IRR numbers, only dashes. Williamson's team submitted the pitch book containing the first-quarter 2009 performance numbers to OAM's regulatory compliance team ("Compliance") for approval.

19. In early September 2009, Williamson instructed his team to update the OGR pitch book to replace the March 31 performance figures with June 30, 2009 (second quarter) performance figures. The updated pitch book reported total OGR IRR of 12.4%, a figure that did not take into account any fees and expenses associated with OGR.[3] In other words, the 12.4% IRR figure took into account neither the fees and expenses that OGR paid to its underlying fund managers nor the additional fees and expenses that OGR paid OAM. Williamson's team did not submit to Compliance the changes that the team made in September 2009 to the OGR pitch book.

20. As Williamson knew or recklessly disregarded in September 2009, OGR's IRR as of June 30, 2009 was materially lower than 12.4% if OGR's fees and expenses were taken into account. OGR's IRR was 3.8% when the fees and expenses that OGR paid its underlying funds were taken into account; and OGR's IRR was -6.3% (a negative rate of return) when the additional fees that OGR paid to OAM were taken into account. Nonetheless, the OGR pitch book that Williamson used in September and much of October 2009 misleadingly reported to prospective investors only the 12.4% IRR figure, without disclosing that that figure was gross of all fees and expenses. By contrast, Williamson's October 7, 2009 OGR quarterly report, sent to then-existing OGR investors, disclosed OGR's "net" IRR figures (3.8% and -6.3%) but did not report the 12.4% IRR figure.

21. On multiple occasions in September and October 2009 – including on at least September 11, September 29, October 12, October 19, and October 20, 2009 – Williamson either personally sent, or directed members of his team to send, the OGR pitch book containing the misleading 12.4% IRR figure to individual prospective investors or consultants.

22. In his October 19, 2009 cover email to a prospective investor (attaching the misleading pitch book), Williamson misleadingly stated:

> [OGR] has performed well since being launched in June of 2008 (update attached). The fund has a 12.4% IRR as compared to the publicly traded natural resource benchmarks which are down anywhere from 30 to 80% since we launched last June.

F. False OGR Pitch book and Quarterly-Report Statements Concerning Valuation

23. The OGR pitch book and October 7, 2009 quarterly report stated that the reported values of OGR investments were "based on the underlying managers' estimated values as of June 30, 2009." The quarterly report further stated, "[i]nformation about portfolio holdings and valuations of the underlying funds is based on information received from the portfolio managers of underlying funds."

24. As of October 2009, Cartesian was OGR's largest single investment. Cartesian's manager, Cartesian Capital, reported the "fair value" of Cartesian's holdings (i.e., its Fondul

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3 OGR's IRR essentially is a measure of the rate of growth of its investments and was calculated as of a particular quarter.

shares) on an annual basis and, for the year ended December 31, 2008, reported the fair value of those shares as equivalent to "cost." Cartesian Capital also managed a fund called Pangaea One, L.P. ("Pangaea"), which also held Fondul shares (among other investments). For the quarters ended June 30 and September 30, 2009, Cartesian Capital likewise reported the fair value of Pangaea's Fondul holding at "cost."

25. Until late October 2009, consistent with Cartesian Capital's reported valuations, OGR reported the value of its Cartesian investment at cost – that is, at approximately $6 million. Thus, until late October 2009, Williamson reported Cartesian's $6 million valuation in OGR's pitch books and quarterly reports and used that valuation to calculate and report OGR's IRR.

26. On October 15, 2009, Williamson's team submitted for the first time to Compliance an OGR pitch book containing the June 30, 2009 performance numbers, including the 12.4% IRR figure (and no "net" IRR figures). By October 22, Compliance had returned the OGR pitch book to Williamson's team with its final changes, which included a statement that "OGR valuation represents the reported value of the underlying funds less OGR fees and expenses but does not represent the actual realized performance of OGR" – i.e., referencing the need to take into account fees and expenses, which would lower OGR's reported IRR to at least 3.8%, if not -6.3%.

27. Williamson subsequently modified the OGR pitch book to take into account the first level of OGR's fees and expenses (those charged by the underlying managers) in reporting OGR's IRR. However, he raised OGR's reported IRR by increasing the reported value of Cartesian. On or about October 22, 2009, Williamson increased the reported value of Cartesian from $6 million to approximately $9 million. The $9 million valuation was Williamson's own – not Cartesian Capital's. Williamson based his new valuation on the price at which Fondul shares were issued by the Romanian government to claimants, also referred to as the "par" value of the Fondul shares (1 RON per share).

28. Williamson's higher Cartesian valuation raised OGR's reported June 30, 2009 IRR from 3.8% to 38% (taking into account fees and expenses paid by OGR to its underlying fund investments); and from -6.3% to 12.5% (taking into account the additional layers of fees that OGR paid to OAM).

29. On or about October 22, 2009, Williamson directed his team to amend the Compliance-reviewed OGR pitch book to remove the old 12.4% gross IRR figure – which was inconsistent with Williamson's new, higher, Cartesian valuation – and to replace it with the 38% IRR figure (which was net of the first level of OGR fees only). Williamson's team did not submit the modified pitch book to Compliance.

30. Notwithstanding Williamson's new Cartesian valuation, Williamson left in place the pitch book statement that OGR's June 30, 2009 asset values were "based on the underlying manager's estimated values." As Williamson knew or recklessly disregarded at the time, that statement was false because Cartesian's reported value was not based on Cartesian Capital's valuation but, rather, was based on Williamson's own unilateral change to a $9 million valuation.

31. Although Williamson thus revised OGR's June 30 quarter performance numbers in the pitch book, he did not revise the June 30 quarterly report (which reflected OGR's "net" IRR figures (3.8% and -6.3%) but did not report the 12.4% IRR figure) that he had sent to then-existing OGR investors on October 7, 2009. Nor did Williamson otherwise notify already-existing investors of OGR's revised June 30 quarter performance numbers.

32. From October 26, 2009 through June 2010, prospective OGR investors received OGR pitch books containing the false statement (described in paragraph 30 above) directly from Williamson, from Williamson's team (at Williamson's direction), and from OPCO representatives who received the pitch books from Williamson (or his team). A number of those prospective investors ultimately invested in OGR.

33. Williamson also used his own Cartesian valuation in the quarterly reports that he sent to then-existing investors for the third quarter of 2009 (sent January 5, 2010), and for the year ended December 31, 2009 (sent May 18, 2010). As Williamson knew or recklessly disregarded, those quarterly reports contained the same materially false statement that appeared in the pitch books (described in paragraph 30 above). At least one existing OGR investor increased its OGR investment after receiving a quarterly report containing the materially false statement.

34. The following chart compares OGR's IRR figures reported for Cartesian and for OGR as a whole – in its pitch books and quarterly reports from on or about October 22, 2009 through June 2010 – with the IRR that would have been reported had Williamson used Cartesian Capital's cost valuation of Fondul (per the statement contained in those disclosures), rather than his own par valuation:

	IRR of OGR Cartesian Investment		**Total OGR IRR**	
	OGR-Reported Cartesian IRR	Cartesian IRR Using Cartesian Valuation	OGR-Reported Total IRR	OGR IRR Using Cartesian Valuation
2Q2009	67.0%	-1.0%	38.3%	3.8%
3Q2009	53.5%	0.8%	31.8%	4.6%
4Q2009	37.8%	14.6%	21.0%	9.8%

35. In May 2010, Williamson approved a modification of the false statement in the OGR pitch book, but the modified statement was at least as misleading as the prior version, if not more so. The revised statement read:

> Net Asset Values are based on the underlying managers' estimated values as of 12/31/2009. However, the Net Asset Value for Fondul Real Asset Fund[4] is based on the

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[4] By that time, Cartesian's name had been changed to "Fondul Real Asset Fund."

9/30/2009 valuation, as the 12/31/2009 valuation has not yet been provided by the underlying manager.

36. Williamson knew or recklessly disregarded that the May 2010 revised statement was false and misleading because the September 30, 2009 valuation was Williamson's – not Cartesian Capital's – and because the revised statement implied that OGR had been using Cartesian Capital's valuations all along (and that OGR would be incorporating Cartesian Capital's December 31, 2009 valuation). In fact, when the statement appeared in the pitch book, Williamson had not used the Cartesian Capital valuation in seven months. At least one prospective investor who received the May 2010 pitch book later invested in OGR.

G. Additional False Statements Concerning OGR's Valuation

37. In October and November 2009, Williamson made, or caused other OPCO employees to make, a number of additional materially false statements – to both OGR investors and prospective investors and consultants – related to his decision to increase the reported value of OGR's Cartesian investment.

October 25, 2009 Email

38. On October 25, 2009, Williamson emailed an OPCO Executive Director and registered representative ("Broker A") the updated OGR pitch book containing the 38% IRR figure and false statement described above. As Williamson knew at the time, Broker A was about to make an OGR presentation to an important consultant. In his email, Williamson made the following false and misleading statement:

> Big change is the valuation of Fondul – still valued at a discount to par but marked up b/c we now have Franklin Tempalton [sic] working on some near term liquidity options.

39. As Williamson knew or recklessly disregarded at the time, his October 25, 2009 email was false and misleading because OGR no longer valued Fondul at a "discount" to par; rather, OGR valued Fondul at par (1 RON per share). Furthermore, contrary to Williamson's email, the "marked up" value of Fondul was due to Williamson's decision to increase Fondul's reported value from cost to par.

October 26, 2009 RFI

40. On or about October 26, 2009, Williamson approved a response to a request for information ("RFI") from a consultant concerning OGR, which included the revised OGR pitch book (with the 38.3% IRR figure). The RFI response misleadingly stated that "[OGR's] underlying managers are required to conduct FAS 157 compliant independent audits annually and typically conduct third party FAS 157 valuations quarterly." As Williamson knew or recklessly disregarded, the RFI response was misleading because it falsely implied that OGR's reported Cartesian valuation came from Cartesian Capital and had been "audited." In fact, the reported valuation came from Williamson and was unaudited.

October 26, 2009 Email

41. On October 26, 2009, Williamson caused an OAM vice president and head of business development ("OAM VP") to send an additional false email. The OAM VP emailed the revised June 30 pitch book (with the 38% IRR figure) to a contact attempting to introduce OGR to overseas investors (and copied Williamson on that email). The OAM VP based the text of the email on information that Williamson had provided. The email falsely and misleadingly stated:

> We have updated the presentation as a result of recent increased performance of our underlying managers (particularly Cartesian Investors A/Pangea One investments).

42. As Williamson knew or recklessly disregarded at the time, the October 26, 2009 email was false because the "updated presentation" was not the result of "recent increased performance" of Cartesian or Pangaea but, rather, the result of Williamson's decision to increase Cartesian's (and, consequently, OGR's) reported value as of June 30, 2009.

October 29, 2009 Email

43. On October 29, 2009, Williamson caused Broker A to email similar and additional false statements to a consultant who was analyzing OGR for its clients. The day before, the consultant had emailed Broker A several questions concerning OGR, including a request for "a little color on the differences in [OGR's] IRR between 12/31/08 and 6/30/09? It appears as though you've marked up your position, showing a 12.5% net IRR rather than a negative 9-10% as of 12/31/09 [sic]." Broker A forwarded the consultant's request to Williamson. The next day, October 29, Williamson emailed Broker A a response to send the consultant, which included the following false and misleading language:

> <u>Differences in IRR between 12/31/08 and 6/30/09</u>
>
> Our IRR calculations are all derived from the underlying managers and their third party valuation firms. We review the valuations with our independent auditors primarily for material changes in valuation and the methodology used to derive the valuation (i.e., is it in compliance with FAS 157 guidelines).
>
> As of 6/30/09, OGR's had two underlying funds that were written up by their 3rd party evaluation firms (Fondul and Tripod).
>
> - Fondul was written up to approximately 75% of the par value of the investment due to its continued performance in 2009. This valuation is still only approximately 65-70% of the underlying assets market value.

44. At the time that Williamson emailed Broker A the information set forth in the preceding paragraph, he knew or recklessly disregarded that it was false and misleading because he knew or recklessly disregarded that: (i) OGR's IRR calculations were not "all derived from the underlying managers' calculations and their third party valuation firms"; rather, they were derived

in part from Williamson's own valuation of Cartesian; (ii) Williamson's Cartesian valuation was not reviewed by an auditor; (iii) Williamson increased Fondul's value not to 75% of par value but, rather, to 100% of par value; and (iv) Williamson did not increase Fondul's reported value "due to its continued performance in 2009" but, rather, due to his own unilateral decision to increase it.

45. On October 29, Broker A responded by email to the consultant's October 28 email, including in his email the false information that Williamson had given him (and Broker A copied Williamson on his email). At least one of that consultant's clients invested in OGR after October 29, 2009.

46. On November 5, 2009, Broker A emailed an OGR presentation to a second consulting firm (which advised a fund that later invested in OGR). In his cover email, relying on the same false language that Williamson had provided to him on October 29, Broker A made virtually identical false statements to the second consulting firm:

> You will notice on pg. 12 of our presentation (attached) that as of 6/30/2009, the Cartesian Fund (story below) and Tripod have been written up by their 3rd party evaluation firms - contributing to the early performance of [OGR] (38.3% IRR)
>
> - Fondul was written up to approximately 75% of the par value of the investment due to its continued performance in 2009. This valuation is still only approximately 65-70% of the underlying assets market value.

<u>November 5, 2009 RFI</u>

47. On or about November 5, 2009, Williamson reviewed and approved a response to another RFI concerning OGR, which included the revised OGR pitch book. The November 5 RFI response misleadingly stated:

> [W]e require our underlying fund managers to utilize third party valuation firms that provide valuations of the respective portfolios in accordance with FASB 157. These valuations are then reviewed by their respective independent auditors. . . .

48. As Williamson knew or recklessly disregarded at the time, the November 5 RFI response, like the October 26 RFI response, falsely implied that OGR's reported Cartesian valuation came from Cartesian Capital and had been "audited."

<u>November 20 and 24, 2009 Emails</u>

49. On November 20, 2009, Williamson caused his team to send false and misleading information to a consultant for an existing OGR investor, to hide from the consultant the fact that Williamson had raised Cartesian's reported valuation (and, consequently, OGR's reported IRR). On November 17, 2009, the consultant had emailed Broker A "requesting a schedule of cash flows and valuations from all of the underlying managers." On November 19, Broker A forwarded the email to an analyst in Williamson's team, asking, "Can you provide me this info ..." On Friday,

November 20, the analyst forwarded the request to Williamson, asking him whether, in response, "to include the updated Fondul valuation." Williamson responded, "Yes. Include the updated valuation." Later that day, at Williamson's direction, the analyst emailed Broker A (and copied Williamson) two charts, which included OGR's updated IRR figures (including the 38% total IRR figure). The first chart also included the following false and misleading footnote, which Williamson drafted and/or approved and directed his analyst to send:

> [OGR] received revised Q2 2009 valuation information for [Cartesian] post distribution of the quarterly report. Revised valuation information reflected above.

50. As Williamson knew or recklessly disregarded at the time, the information that the analyst sent to Broker A on November 20 was false and misleading because it did not include the "underlying managers" Cartesian valuation (as the consultant had requested) but, rather, Williamson's own valuation. As Williamson also knew or recklessly disregarded, the footnote above was false and misleading because it stated, or at least implied, that OGR had received the new June 30, 2009 Cartesian "revised" valuation from Cartesian Capital, rather than Williamson, and because, in fact, OAM had not received any "revised" valuation information for the June 30, 2009 quarter from anyone.

51. On Tuesday, November 24, the analyst on Williamson's team emailed the same charts that she had sent Broker A the previous Friday, November 20 – in a slightly revised format – directly to the consultant (and copied Broker A).

H. Williamson and OAM Touted OGR's Increased Reported IRR to Prospective Investors

52. As Williamson admitted in testimony before the Division of Enforcement, OGR's performance mattered to his team's efforts to market OGR, and OGR's performance was at least part of prospective OGR investors' evaluations regarding whether to invest. Indeed, from at least November 2009 through June 2010, in their continuous efforts to market OGR to prospective investors, Williamson and his team repeatedly highlighted OGR's performance and, in particular, its 38% IRR.

53. For example, from November 16-24, 2009, an analyst in Williamson's team (at Williamson's direction) sent a series of at least eighteen similar emails pitching OGR to potential investors, consultants, and/or Oppenheimer financial advisors. Those emails prominently stated that:

> [OGR's] portfolio is currently valued at 1.3x cost and has generated a 38% IRR, all of which new investors will participate in. In comparison, the benchmark resource indices are down over 60% since inception.

54. On December 14, 2009, Williamson emailed an OGR presentation to a prospective investor, with a cover email also emphasizing OGR's 38% IRR:

> Our ability to select such managers and dissect their down-side price hedging strategies sets us apart from our peers—this is illustrated by our performance. OGR's IRR 38.3% to date v. liquid benchmarks which are down over 50%.

55. Williamson also approved similar language drafted by members of his team for use in soliciting investors. For example, in December 2009 he approved marketing emails drafted by the OAM VP touting OGR:

> Continued strong Fund performance of greater than 30% IRR (vs. -11% Cambridge top quartile benchmark).

56. On March 8, 2010, Williamson emailed another prospective investor, touting OGR's IRR performance:

> Over the last 18 months in our various meetings you have had the opportunity to watch us construct our portfolio and see its subsequent performance. Returns continue to be strong, with new investors getting to participate in our existing gains (31% IRR) – which will essentially mitigate or eliminate any J curve.

57. On April 19, 2010, Williamson again emailed a prospective investor, touting OGR's performance:

> You have very good visibility into the make up of our portfolio and also the ability to participate in the past positive performance (Q3 Value 1.2x cost). This performance, while no guarantee, should provide you the opportunity to avoid a J curve and show positive performance in the fund upon your commitment. It may also serve to effectively eliminate the costs associated with a fund of funds.

58. Also important to prospective investors was the source of OGR's valuations of its underlying funds, as such information permitted prospective investors properly to understand and evaluate the valuation methodology used. Indeed, it was particularly important for prospective investors to understand that, beginning in late October 2009, Williamson began to use a materially higher valuation for Cartesian than Cartesian Capital's valuation. Accurate reporting of this divergence from Cartesian Capital's valuation was necessary to permit prospective investors to compare and evaluate for themselves the relative merits of the two different valuations.

I. <u>Violations</u>

59. As a result of the conduct described above, Williamson willfully violated Section 17(a) of the Securities Act, which makes it unlawful for any person, in the offer or sale of any securities, directly or indirectly, to employ any device, scheme, or artifice to defraud, or to obtain 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, or to engage in any transaction, practice, or course of business which operators or would operate as a fraud or deceit upon the purchaser.

60. As a result of the conduct described above, Williamson willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which make it unlawful for any person, directly or indirectly, to employ any device, scheme, or artifice to defraud, to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security.

61. As a result of the conduct described above, Williamson willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder, which prohibits making any untrue statement of a material fact or omitting to state a material fact necessary to make the statements made, in light of the circumstances in which they were made, not misleading, to any investor or prospective investor in a pooled investment vehicle, and prohibits any fraudulent, deceptive or manipulative act, practice, or course of business by an investment adviser with respect to any investor or prospective investor in a pooled investment vehicle.

IV.

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

Accordingly, pursuant to Section 8A of the Securities Act, Sections 15(b) and 21C of the Exchange Act, Sections 203(f) and 203(k) of the Advisers Act, and Section 9(b) of the Investment Company Act, it is hereby ORDERED that:

A. Respondent Williamson cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder.

B. Respondent Williamson 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
>
> 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.

C. 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.

D. Respondent Williamson shall pay a civil money penalty in the amount of $100,000 to the Securities and Exchange Commission for remittance to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. Payment shall be made in the following installments:

(1) Defendant shall pay $50,000, within 5 business days of entry of the Order.

(2) Defendant shall pay the remaining $50,000, in two equal installments. The first installment of $25,000 shall be paid within 180 days of entry of the Order. The second installment of $25,000 shall be paid within 360 days of entry of the Order.

Payments shall be deemed made on the date they are received by the Enterprise Services Center. If any payment is not made by the date the payment is required by the Order, the entire outstanding balance of the civil money penalty, plus any additional 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 make direct payment from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm; or
(2) 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 Brian Williamson as the 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 Julie Riewe, Co-Chief of the Asset Management Unit, Division of Enforcement, Securities and Exchange Commission, 100 F. St., NE, Washington, DC 20549.

By the Commission.

Elizabeth M. Murphy
Elizabeth M. Murphy
Secretary

Chair White
Commissioner Aguilar
not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 71369 / January 23, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15682

In the Matter of TRENT MARTIN, 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 Trent Martin ("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, 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. Martin, age 34, is an Australian citizen currently residing in New York while awaiting resolution of the criminal proceedings further described below in paragraph 4. From at least August 2008 through November 2010, Martin was a registered representative associated with broker dealers registered with the Commission. He passed his series 7 exam in October 2008 and his series 63 exam in December 2008.

2. On December 26, 2013, a judgment was entered by consent against Martin, permanently enjoining him from future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, in the civil action entitled SEC v. Conradt, Civil Action No. 12 – 8676 – JSR, in the United States District Court for the Southern District of New York.

3. The Commission's complaint alleges that Martin misappropriated material nonpublic information about International Business Machines Corporation's ("IBM") 2009 acquisition of SPSS Inc. ("SPSS"), illegally traded on the basis of that information, and tipped that information to his roommate. The Commission further alleges that the roommate used that information to illegally trade and tipped the information to others who traded; and that the illegal trading resulted in ill-gotten gains exceeding $1 million.

4. On September 12, 2013, Martin pled guilty to conspiracy to commit securities fraud, in violation of Title 18 United States Code, Sections 371, in United States v. Martin, 12 Cr. 887 (S.D.N.Y.).

5. In connection with that plea, Martin admitted that:

(a) In approximately October 2008, Defendant was introduced to a lawyer (the "Lawyer") who worked at a major New York law firm and with whom, over the next several months, Defendant became close friends;

(b) Defendant and the Lawyer shared personal and professional confidences about their lives which they understood were to be maintained confidentially;

(c) In late May 2009, the Lawyer told Defendant about a new deal to which the Lawyer was assigned by his law firm involving IBM's possible acquisition of SPSS. The Lawyer also disclosed to Defendant the anticipated transaction price.

(d) Defendant knew that the information disclosed by the Lawyer about the possible acquisition was nonpublic and, if it was disclosed, would affect the share price of SPSS securities.

(e) Defendant also knew that the Lawyer expected him to maintain the confidentiality of the information and to not tell anybody else about it.

(f) In approximately June and July 2009, Defendant traded for his own personal account based on the information that had been provided to him by the Lawyer.

(g) Defendant disclosed to his roommate the parties to the proposed acquisition, the projected price, and that the information was nonpublic and from a confidential source. Defendant knew that in making this disclosure to his roommate he was violating the duty of trust and confidence that he owed to the Lawyer.

(h) Defendant made approximately $7,600 in profits from his trading in SPSS securities.

(i) Defendant knew that his actions were wrong and in violation of the law.

IV.

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

Accordingly, it is hereby ORDERED pursuant to Section 15(b)(6) of the Exchange Act, that Respondent Martin 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;

with the right to apply for reentry after five (5) years to the appropriate self-regulatory organization, or if there is none, to the Commission.

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 ACT OF 1933
Release No. 9517 / January 23, 2014

In the Matter of **Mobile Vault, Inc.** **Registration No. 333-189796**	**ORDER DENYING WITHDRAWAL OF REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933**

1. Mobile Vault, Inc. ("Mobile Vault") filed a Form S-1 registration statement with the Commission on July 3, 2013 and filed two pre-effective amendments thereto on September 18, 2013 and October 21, 2013 (collectively, the "Registration Statement"). Mobile Vault also filed a pre-effective amendment on August 26, 2013, but subsequently withdrew it on September 18, 2013. The Registration Statement is still pending. The Registration Statement was filed with respect to a primary offering of three million shares of common stock of Mobile Vault.

2. On January 10, 2014, Mobile Vault filed an application to withdraw the Registration Statement pursuant to Rule 477 of Regulation C of the Commission's General Rules and Regulations under the Securities Act of 1933 ("Securities Act"), 17 C.F.R. § 230.477.

3. After considering Mobile Vault's application, the Commission has determined that the granting of the withdrawal request is not consistent with the public interest and the protection of investors. Accordingly, it is hereby:

ORDERED that Mobile Vault's application to withdraw its registration statement on Form S-1 filed on July 3, 2013, and its amendments thereto filed on September 18, 2013 and October 21, 2013, is denied in accordance with Rule 477.

By the Commission.

Elizabeth M. Murphy

Elizabeth M. Murphy
Secretary

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-71376; File No. SR-OCC-2013-807)

January 23, 2014

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of No Objection to Advance Notice Filing Concerning the Governance Committee Charter

On November 26, 2013, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") advance notice SR-OCC-2013-807 ("Advance Notice") pursuant to Section 806(e)(1) of the Payment, Clearing, and Settlement Supervision Act of 2010 ("Clearing Supervision Act" or "Title VIII")[1] and Rule 19b-4(n)(1)(i) under the Securities Exchange Act of 1934 ("Exchange Act").[2] The Advance Notice was published for comment in the Federal Register on December 20, 2013.[3] The Commission did not receive any comments on the Advance Notice publication. This publication serves as a notice of no objection to the Advance Notice.

I. Description of the Advance Notice

This advance notice concerns the Board of Director's ("Board") formation of a Governance Committee ("GC") and its approval of the GC Charter. As set forth in the GC Charter, the purpose of the GC is to review the overall corporate governance of OCC

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

2 17 CFR 240.19b-4(n)(1)(i). OCC is a designated financial market utility and is required to file advance notices with the Commission. See 12 U.S.C. 5465(e). OCC also filed the proposal in this Advance Notice as a proposed rule change under Section 19(b)(1) of the Exchange Act and Rule 19b-4 thereunder, which was published for comment in the Federal Register on December 16, 2013. 15 U.S.C. 78s(b)(1); 17 CFR 240.19b-4. See Release No. 34-71030 (Dec. 11, 2013), 78 FR 76182 (Dec. 16, 2013) (SR-OCC-2013-18).

3 Release No. 34-71803 (Dec. 16, 2013), 78 FR 77181 (Dec. 20, 2013) (SR-OCC-2013-807) ("Notice").

and recommend improvements to OCC's Board. The GC Charter describes the role the GC plays in assisting the Board in fulfilling its responsibilities, as described in OCC's By-Laws and Rules, as well as specifying the policies and procedures governing the membership and organization, scope of authority, and specific functions and responsibilities of the GC. In addition, the guidelines for the composition of the GC as well as the policies regarding its meeting schedule, quorum rules, minute-keeping and reporting requirements are set forth in the GC Charter and conform to applicable requirements specified in OCC's By-Laws and Rules.

The GC is composed of not fewer than five Directors with at least one Public Director, one Exchange Director and one Member Director. Management Directors will not be members of the GC. The Board will designate a GC Chair and if the Chair is not present at a meeting, the members who are present will designate a member to serve as the Acting Chair. The GC will meet at least four times a year and a majority of the GC members constitutes a quorum. The GC is permitted to call executive sessions from which guests of the GC may be excluded, and GC members are permitted to participate in all meetings by conference telephone call or other means of communication that permit all meeting participants to hear each other. The GC Chair, or the Chair's designee, will report regularly to the Board on the GC's activities.

The GC Charter sets forth certain functions and responsibilities for the GC including, but not limited to, the following: review the composition of the Board as a whole, including the Board's balance of participant and non-participant directors, business specialization, technical skills, diversity and other desired qualifications; review the Board's Charter for consistency with regulatory requirements, transparency of the governance process and other sound governance practice and recommend changes to the Board, where appropriate; review the committee structure of the Board, including the GC, and recommend changes to the Board, where appropriate; review OCC's policies and procedures for identifying and reviewing Board nominee candidates, including the criteria for Board nominees; develop and recommend to the Board a periodic process of self-evaluation of the role and performance of the Board, its committees and management in the governance of OCC; review OCC's policies on conflicts of interest of directors, including the OCC Directors Code of Conduct and recommend changes, where appropriate; and, review OCC's new director orientation program as well as OCC's training and education programs for Board members and recommend changes, where appropriate. In addition to the foregoing, the GC may undertake other and different activities, as appropriate, or as may be delegated to it by the Board. In discharging its role, the GC shall confer with management and other employees of OCC to the extent the GC deems it necessary to do so to fulfill its duties.[4]

II. Discussion and Commission Findings

Although Title VIII does not specify a standard of review for an advance notice, the Commission believes that the stated purpose of Title VIII is instructive.[5] The stated purpose of Title VIII is to mitigate systemic risk in the financial system and promote financial stability by, among other things, promoting uniform risk management standards

4 The GC, subject to the approval of the Board, is permitted to hire specialists or rely on outside advisors or specialists to assist it in carrying out the GC's activities. The GC has the authority to approve the fees and retention terms of such advisors and specialists.

5 See 12 U.S.C. 5461(b).

for systemically-important financial market utilities ("FMUs") and strengthening the liquidity of systemically important FMUs.[6]

Section 805(a)(2) of the Clearing Supervision Act[7] authorizes the Commission to prescribe risk management standards for the payment, clearing, and settlement activities of designated clearing entities and financial institutions engaged in designated activities for which it is the supervisory agency or the appropriate financial regulator. Section 805(b) of the Clearing Supervision Act[8] states that the objectives and principles for the risk management standards prescribed under Section 805(a) shall be to:

- promote robust risk management;
- promote safety and soundness;
- reduce systemic risks; and
- support the stability of the broader financial system.

The Commission has adopted risk management standards under Section 805(a)(2) of the Clearing Supervision Act[9] ("Clearing Agency Standards").[10] The Clearing Agency Standards became effective on January 2, 2013 and require registered clearing agencies that perform central counterparty ("CCP") services to establish, implement, maintain, and enforce written policies and procedures that are reasonably designed to meet certain

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6 Id.

7 12 U.S.C. 5464(a)(2).

8 12 U.S.C. 5464(b).

9 12 U.S.C. 5464(a)(2).

10 Rule 17Ad-22, 17 CFR 240.17Ad-22. Exchange Act Release No. 68080 (October 22, 2012), 77 FR 66220 (November 2, 2012) (S7-08-11).

minimum requirements for their operations and risk management practices on an ongoing basis.[11] As such, it is appropriate for the Commission to review advance notices against these Clearing Agency Standards and the objectives and principles of these risk management standards as described in Section 805(b) of the Clearing Supervision Act.[12]

OCC's GC, as described above, is tasked with reviewing the overall corporate governance of OCC and making recommendations to the Board for improvements. Consistent with Section 805(b) of the Clearing Supervision Act,[13] the Commission believes that OCC's GC should help promote robust risk management and mitigate systemic risk by enhancing the transparency of OCC's governance arrangements and providing a vehicle for the review of OCC's governance structure, policies and overall effectiveness and efficiency.

Commission Rule 17Ad-22(d)(8),[14] adopted as part of the Clearing Agency Standards,[15] requires that a registered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to "have governance arrangements that are clear and transparent to fulfill the public interest requirements in

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11 The Clearing Agency Standards are substantially similar to the risk management standards established by the Board of Governors of the Federal Reserve System ("Federal Reserve") governing the operations of designated DFMUs that are not clearing entities and financial institutions engaged in designated activities for which the Commission or the Commodity Futures Trading Commission is the Supervisory Agency. See Financial Market Utilities, 77 FR 45907 (August 2, 2012).

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

13 See 12 U.S.C. 5464(b).

14 17 CFR 240.17Ad-22(d)(8).

15 See supra note 10. Release No. 34-68080 (Oct. 22, 2012), 77 FR 66219 (November 2, 2012).

Section 17A of the Act applicable to clearing agencies, to support the objectives of owners and participants, and to promote the effectiveness of the clearing agency's risk management procedures." The Commission believes that the GC's review of OCC's governance structure and any related recommendations that clarify OCC's governance structure or further define governance responsibilities may help OCC fulfill these requirements. Moreover, the Commission believes that the GC may also aid in identifying any risks and inefficiencies in the current governance structure and making recommendations to the full Board to help mitigate those risks and eliminate any such inefficiencies.

III. Conclusion

IT IS THEREFORE NOTICED, pursuant to Section 806(e)(1)(I) of the Clearing Supervision Act,[16] that the Commission DOES NOT OBJECT to advance notice proposal (SR-OCC-2013-807) and that OCC is AUTHORIZED to implement the proposal as of the date of this notice or the date of an order by the Commission approving a proposed rule change that reflects rule changes that are consistent with this advance notice proposal (SR-OCC-2013-18), whichever is later.

By the Commission.

Elizabeth M. Murphy

Elizabeth M. Murphy
Secretary

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16 12 U.S.C. 5465(e)(1)(I).

SECURITIES AND EXCHANGE COMMISSION

17 CFR Chapter II

[Release Nos. 33-9516, 34-71370, 39-2494, IC-30890; File No. S7-02-14]

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 today 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 S7-02-14 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 to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to File No. S7-02-14. 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.[1] The rules and forms listed below are scheduled for review by staff of the Commission during the next 12 months. The list includes rules from 2002. 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:	**Requirements for Arthur Andersen LLP Auditing Clients.**
Citation:	17 CFR 210.2-02, 17 CFR 230.401a, 17 CFR 230.437a, 17 CFR 240.12b-37, and 17 CFR 260.19a-1.
Authority:	15 U.S.C. 77b, 15 U.S.C. 77d, 15 U.S.C. 77g, 15 U.S.C. 77h, 15 U.S.C. 77j, 15 U.S.C. 77s, 15 U.S.C. 77z-3, 15 U.S.C. 78c, 15

[1] Several of the rulemakings identified below included non-substantive rule amendments, such as conforming cross references. The Commission requests that commenters focus on the substantive aspects of the rulemakings indicated in the list.

U.S.C. 78d, 15 U.S.C. 78j, 15 U.S.C. 78l, 15 U.S.C. 78m, 15 U.S.C. 78n, 15 U.S.C. 78o, 15 U.S.C. 78w, 15 U.S.C. 78mm, 15 U.S.C. 77ddd, 15 U.S.C. 77eee, 15 U.S.C. 77ggg, 15 U.S.C. 77hhh, 15 U.S.C. 77jjj, 15 U.S.C. 77nnn and 15 U.S.C. 77sss.

Description: The rules were adopted to minimize any disruptions that may have occurred as a result of the indictment of Arthur Andersen LLP by modifying, in a manner appropriate to the protection of investors, the requirements for including audited financial statements in registration statements under the Securities Act of 1933 ("Securities Act") and filings required by the Trust Indenture Act of 1939 by registrants that are unable to or elect not to have Andersen issue a manually signed audit report, if the audit report was not issued on or before March 14, 2002.

Prior Commission Determination Under 5 U.S.C. 610: Pursuant to Section 553(b) of the Administrative Procedure Act (5 U.S.C. § 553(b)(B)) ("APA"), the Commission for good cause found that prior notice and public comment was unnecessary. Because the Commission found good cause that notice and comment were unnecessary, no regulatory flexibility analysis was required. The rules were adopted in Release No. 33-8070 (March 18, 2002).

Title: **Registration Form for Insurance Company Separate Accounts Registered as Unit Investment Trusts that Offer Variable Life Insurance Policies**

Citation: 17 CFR 239.17c (Securities Act)

17 CFR 274.11d (Investment Company Act)

Authority: 15 U.S.C. 77b, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77sss, 77z-3, 78c, 78d, 78*l*, 78m, 78n, 78o, 78t, 78w, 78*ll*(d), 78mm, 79t, 80a-8, 80a-24, 80a-28, 80a-29, 80a-30, 80a-37

Description: Form N-6 is a registration form used by separate accounts that are unit investment trusts that offer variable life insurance contracts to register under Investment Company Act of 1940 and to offer their securities under the Securities Act of 1933.

Prior Commission Determination Under 5 U.S.C. 605: A Regulatory Flexibility Act Certification was prepared in accordance with 5 U.S.C. 605(b) in conjunction with the adoption of Release No. 33-8088 (IC-25522), which was approved by the

Commission on April 12, 2002. At that time it was noted that the Commission had requested comments on the initial certification, which had been attached to the proposing release, but had received none.

Title:	**Amendment to Definition of "Equity Security."**
Citation:	17 CFR 230.405 and 17 CFR 240.3a11-1.
Authority:	15 U.S.C. 77f, 15 U.S.C. 77g, 15 U.S.C. 77j, 15 U.S.C. 77s(a), 15 U.S.C. 78c(b), and 15 U.S.C. 78w(a).
Description:	The rule amendments conform the definition of "equity security" in the rules under the Securities Act and the Securities Exchange Act of 1934 ("Exchange Act") to the statutory definitions with respect to security futures established in the Commodity Futures Modernization Act of 2000 ("CFMA").
Prior Commission Determination Under 5 U.S.C. 610:	Pursuant to Section 553(b) of the APA, the Commission for good cause found that prior notice and public comment was unnecessary. Because the Commission found good cause that notice and comment were unnecessary, no RFA analysis was required. The rules were adopted in Release No. 33-8091 (April 17, 2002).

Title:	**Mandated EDGAR Filing for Foreign Issuers.**
Citation:	17 CFR 230.493, 17 CFR 239.800, 17 CFR 249.250, 17 CFR 249.480, and 17 CFR 249.306.
Authority:	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(a), 15 U.S.C. 78c, 15 U.S.C. 78l, 15 U.S.C. 78m, 15 U.S.C. 78n, 15 U.S.C. 78o(d), 15 U.S.C. 78w, 15 U.S.C. 78ll, 15 U.S.C. 77ddd, 15 U.S.C. 77eee, 15 U.S.C. 77ggg, 15 U.S.C. 77jjj, and 15 U.S.C. 77sss.
Description:	The amendments require foreign private issuers and foreign governments to file electronically through the EDGAR system most of their securities documents, including registration statements under the Securities Act and registration statements, reports and other documents under the Exchange Act. The rule amendments also clarify when an issuer may submit an English summary instead of an English translation of a foreign language document; eliminate the requirement that any first-time EDGAR

filer, domestic or foreign, submit a paper copy of its electronic filing to the Commission; and permit a national securities exchange to file voluntarily on EDGAR a Form 25, which reports the delisting of a class of a company's securities.

Prior Commission Determination Under 5 U.S.C. 610:

Pursuant to Section 605(b) of the RFA, the Chairman of the Commission certified at the proposal stage on September 25, 2001 in Release No. 33-8016 that the rule revisions would not have a significant economic impact on a substantial number of small entities. The SEC solicited comments concerning the impact on small entities and the RFA certification, but received no comments. The rules were adopted in Release No. 33-8099 (May 14, 2002).

Title:

Cash Settlement and Regulatory Halt Requirements for Security Futures Products.

Citation:

17 CFR 240.6h-1

Authority:

15 U.S.C. 78f, 78i, 78o-3, 78s, 78w(a), and 78mm.

Description:

The Commodity Futures Trading Commission ("CFTC") and SEC adopted this rule generally to require that the final settlement price for each cash-settled security futures product fairly reflect the opening price of the underlying security or securities, and that trading in any security futures product halt when a regulatory halt is instituted with respect to a security or securities underlying the security futures product by the national securities exchange or national securities association listing the security. The rule sets forth more specifically how the exchange's or association's rules can satisfy provisions added to the Commodity Exchange Act ("CEA") and the Exchange Act by the CFMA.

Prior Commission Determination Under 5 U.S.C. 610:

Pursuant to Section 605(b) of the RFA, the Chairman of the Commission certified that the adopted rule 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. 34-44743 (August 24, 2001) as Appendix A. The SEC solicited comments concerning the impact on small entities and the RFA certification, but received no comments. The final rule was adopted in Release No. 34-45956 (May 17, 2002).

Title: **Assessments on Security Futures Transactions and Fees on Sales of Securities Resulting from Physical Settlement of Security Futures Pursuant to Section 31 of the Exchange Act.**

Citation: 17 CFR 240.31

Authority: 15 USC 78c(A), 78w(a), and 78ee

Description: The amendment clarifies how to calculate assessments required to be paid by national securities exchanges and national securities associations pursuant to Section 31(d) of the Exchange Act for security futures transactions. In addition, the amendment provides guidance on how to calculate fees required to be paid by national securities exchanges and national securities associations pursuant to Sections 31(b) and (c) of the Exchange Act, respectively, for sales of securities that result from the physical settlement of security futures.

Prior Commission Determination Under 5 U.S.C. 610: Pursuant to Section 605(b) of the RFA, the Chairman of the Commission certified that the amendment to the rule would not have a significant economic impact on a substantial number of small entities. This certification was attached to Proposing Release No. 45854 (May 1, 2002) as Appendix A. The SEC solicited comments concerning the impact on small entities and the RFA certification, but received no comments. The final rule was adopted in Release No. 34-46169. (July 8, 2002).

Title: **Customer Margin Rules Relating to Security Futures.**

Citation: 17 CFR 242.400 through 242.406

Authority: 15 USC 78c(A), 78f, 78g(c), 78o-3, and 78w(a)

Description: The CFTC and SEC adopted rules to establish margin requirements for security futures to preserve the financial integrity of markets trading security futures, prevent systemic risk, and require that the margin requirements for security futures be consistent with the margin requirements for comparable exchange-traded option contracts.

Prior Commission

Determination Under 5 U.S.C. 610:

Pursuant to Section 605(b) of the RFA, the Chairman of the Commission certified that the adopted rule would not have a significant economic impact on a substantial number of small entities. This certification was attached to Proposing Release No. 34-50720 (October 4, 2001) as Appendix A. The SEC solicited comments concerning the impact on small entities and the RFA certification, but received no comments. The final rules were adopted in Release No. 34-46292 (August 1, 2002).

Title:

Certification of Disclosure in Companies' Quarterly and Annual Reports.

Citation:

17 CFR 229.307, 17 CFR 240.13a-10, 17 CFR 240.13a-14, 17 CFR 240.13a-15, 17 CFR 240.15d-10, 17 CFR 240.15d-14, 17 CFR 240.15d-15, 17 CFR 240.12b-15, 17 CFR 249.308a, 17 CFR 249.310, 17 CFR 249.220f, 17 CFR 249.240f, 17 CFR 232.302.

Authority:

15 U.S.C. 78j(b), 15 U.S.C. 78m, 15 U.S.C. 78o(d), and 15 U.S.C. 78w(a), 15 U.S.C. 7202, 15 U.S.C. 7241.

Description:

The Commission adopted rules and amendments in light of Congress' directive in Section 302 of the Sarbanes-Oxley Act of 2002. The rules require an issuer's principal executive and financial officers each to certify the financial and other information contained in the issuer's quarterly and annual reports. The rules also require these officers to certify that: they are responsible for establishing, maintaining and regularly evaluating the effectiveness of the issuer's internal controls; they have made certain disclosures to the issuer's auditors and the audit committee of the board of directors about the issuer's internal controls; and they have included information in the issuer's quarterly and annual reports about their evaluation and whether there have been significant changes in the issuer's internal controls or in other factors that could significantly affect internal controls subsequent to the evaluation. In addition, the rules require issuers to maintain, and regularly evaluate the effectiveness of, disclosure controls and procedures designed to ensure that the information required in reports filed under the Exchange Act is recorded, processed, summarized and reported on a timely basis.

Prior Commission Determination Under 5 U.S.C. 610:	A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with Release No. 33-8124, approved by the Commission on August 28, 2002, which adopted the rules and amendments. The Commission considered comments received on the Initial Regulatory Flexibility Analysis in the analysis at that time.
Title:	**Rule 30a-2.**
Citation:	17 CFR 270.30a-2
Authority:	15 U.S.C. 78m, 78o(d), 80a-1 et seq., 80a-8, 80a-29, 80a-37; 7202 and 7241; and 18 U.S.C. 1350.
Description:	Rule 30a-2 under the Investment Company Act of 1940 generally requires that (a) each report filed on Form N-CSR (§§249.331 and 274.128) and Form N-Q (§§249.332 and 274.130) by a registered management investment company ("fund") must include the certifications in the form specified in Item 12(a)(2) of Form N-CSR or Item 3 of Form N-Q, as applicable, and (b) each report on Form N-CSR filed by a fund under Section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m(a) or 78o(d)) and that contains financial statements must be accompanied by the certifications required by Section 1350 of Chapter 63 of Title 18 of the United States Code (18 U.S.C. 1350).
Prior Commission Determination Under 5 U.S.C. 601:	A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. IC-25722; the release was approved by the Commission on August 28, 2002. Comments to the respective proposing release and any comments to the respective Initial Regulatory Flexibility Analysis were considered in connection with those rulemakings.
Title:	**Confirmation Requirements for Transactions of Security Futures Products Effected in Futures Accounts.**
Citation:	17 CFR 240.10b-10; 17 CFR 249.11d2-1

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77z-3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j-l, 78k, 78k-1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u-5, 78w, 78x, 78ll, 78mm, 79q, 79t, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4 and 80b-11

Description: The rule amendments and new rule were designed to clarify the disclosures broker-dealers effecting transactions in security futures products in futures accounts must make in the confirmations sent to customers regarding those transactions. The amendments provide that broker-dealers effecting transactions in security futures products in futures accounts do not have to disclose all of the information required by the SEC's confirmation disclosure rule, but rather require that the transaction confirmations for these accounts disclose specific information and notify customers that certain additional information will be available upon written request. One rule also exempts broker-dealers effecting transactions for customers in security futures products in a futures account from the disclosure requirements of Section 11(d)(2) of the Exchange Act.

Prior Commission Determination Under 5 U.S.C. 610: Pursuant to Section 605(b) of the RFA, the Chairman of the Commission certified that the proposed amendments to Rule 10b-10 and new Rule 11d2-1 would not have a significant economic impact on a substantial number of small entities. This certification was attached to Proposing Release No. 34-46014 (May 31, 2001) as Appendix A. The SEC solicited comments concerning the impact on small entities and the RFA certification, but received no comments. The rule and rule amendment were adopted in Release No. 34-46471 (September 6, 2002).

Title: **Applicability of CFTC and SEC Customer Protection, Recordkeeping, Reporting, and Bankruptcy Rules and the Securities Investor Protection Act of 1970 to Accounts Holding Security Futures Products.**

Citation: 17 CFR 240.15c3-3, 17 CFR 240.17a-3, 17 CFR 240.17a-4, 17 CFR 240.17a-5, 17 CFR 240.17a-7, 17 CFR 240.17a-11, 17 CFR 240.17a-13, and 17 CFR 240.17a-25

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77z-3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78fff, 78g, 78i, 78j, 78j-1, 78k, 78k-1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u-5, 78w, 78x, 78ll, 78mm, 79q, 79t, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4 and 80b-11

Description: The CFTC and SEC adopted rules under the CEA and the Securities Exchange Act as part of the joint regulatory framework under which futures commission merchants ("FCMs") and brokers or dealers ("broker-dealers" or "BDs") may effect transactions in security futures products for customers. The rules require all firms conducting business in security futures products to make disclosures to customers that transact business in security futures products concerning the protections provided by both the CEA and Exchange Act regulatory schemes, the regulatory scheme applicable to their accounts, and the alternative regulatory scheme not applicable to their accounts. In addition, the rules require that every firm engaged in this business that is fully-registered both as an FCM and as a broker-dealer establish written procedures regarding how customer security futures products are held. The rules also specify how CEA and Exchange Act recordkeeping, reporting, and certain other rules apply to security futures product transactions and accounts in which security futures products are held.

Prior Commission Determination Under 5 U.S.C. 610: Pursuant to Section 605(b) of the RFA, 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. 44854 (Sept. 26, 2001) as Appendix A. The SEC solicited comments concerning the impact on small entities and the RFA certification, but received no comments. The rules were adopted in Release No. 34-46473 (September 9, 2002).

Title: **Exemption for Standardized Options From Provisions of the Securities Act of 1933 and From the Registration Requirements of the Securities Exchange Act of 1934.**

Citation: 17 CFR 230.238, 17 CFR 240.9b-1, 17 CFR 240.12a-9, and 17 CFR 240.12h-1.

Authority: 15 U.S.C. 77s, 15 U.S.C. 77z-3, 15 U.S.C. 78l(h), 15 U.S.C. 78w(a), and 15 U.S.C. 78mm.

Description: The rules exempt standardized options issued by registered clearing agencies and traded on a national securities exchange from all the provisions of the Securities Act (other than the antifraud provisions) and the Exchange Act registration requirements. The rules also clarify that a security futures product is similarly exempted from the Exchange Act Section 12(g) registration requirements.

Prior Commission Determination Under 5 U.S.C. 610:

Pursuant to Section 605(b) of the RFA, the Chairman of the Commission certified at the proposal stage on July 25, 2002 in Release No. 33-8114 that the rule revisions would not have a significant economic impact on a substantial number of small entities. The SEC solicited comments concerning the impact on small entities and the RFA certification, but received no comments. The rules and rule amendments were adopted in Release No. 33-8171 (December 23, 2002).

By the Commission.

Elizabeth M. Murphy

Elizabeth M. Murphy
Secretary

Dated: January 23, 2014

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 71380 / January 24, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15684

In the Matter of **New Dragon Asia Corp.,** **Respondent.**	**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 respondent named in the caption.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT [1]

1. New Dragon Asia Corp. ("NDAC") (CIK No. 1089590) is a dissolved Florida corporation located in Longkou, Shandong Province, China with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). NDAC 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 25, 2011, which reported a net loss of $5,628,000 for the prior nine months. As of January 16, 2014, the common stock of NDAC was quoted on OTC Link (formerly "Pink Sheets") operated by OTC Markets Group Inc., had ten market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

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

B. DELINQUENT PERIODIC FILINGS

2. As discussed in more detail above, the Respondent is delinquent in its periodic filings with the Commission, has repeatedly failed to meet its obligations to file timely periodic reports and failed to bring its filings current in response to the delinquency letter sent to it by the Division of Corporation Finance requesting compliance with its periodic filing obligations.

3. 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.

4. As a result of the foregoing, the Respondent 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 Respondent 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 Respondent identified in Section II hereof, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of the Respondent.

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 the Respondent 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 the Respondent fails to file the directed Answer, or fails to appear at a hearing after being duly notified, the Respondent, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of the Respondent, may be deemed in default and the proceedings may be determined against it upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon the Respondent 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

Elizabeth M. Murphy
Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

January 24, 2014

In the Matter of **New Dragon Asia Corp.,** **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 New Dragon Asia Corp. because it has not filed any periodic reports since the period ended September 25, 2011.

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 company. 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 company is suspended for the period from 9:30 a.m. EST on January 24, 2014, through 11:59 p.m. EST on February 6, 2014.

By the Commission.

Elizabeth M. Murphy

Elizabeth M. Murphy
Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

January 24, 2014

In the Matter of **Jinhao Motor Company,** **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 Jinhao Motor Company because it has not filed any periodic reports since the period ended September 30, 2010.

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 company. 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 company is suspended for the period from 9:30 a.m. EST on January 24, 2014, through 11:59 p.m. EST on February 6, 2014.

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. 71382 / January 24, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15685

In the Matter of **Jinhao Motor Company,** **Respondent.**	**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 respondent named in the caption.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT [1]

1. Jinhao Motor Company ("GIMC") (CIK No. 1320691) is a defaulted Nevada corporation located in Zhaoqing City, Guangdon, China with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). GIMC 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 net income of $27,396,000 for the prior nine months. As of January 16, 2014, the common stock of GIMC was quoted on OTC Link (formerly "Pink Sheets") operated by OTC Markets Group Inc., had three market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

B. DELINQUENT PERIODIC FILINGS

2. As discussed in more detail above, the Respondent is delinquent in its periodic filings with the Commission, has repeatedly failed to meet its obligations to file timely periodic

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

reports and failed to bring its filings current in response to the delinquency letter sent to it by the Division of Corporation Finance requesting compliance with its periodic filing obligations.

3. 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.

4. As a result of the foregoing, the Respondent 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 Respondent 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 Respondent identified in Section II hereof, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of the Respondent.

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 the Respondent 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 the Respondent fails to file the directed Answer, or fails to appear at a hearing after being duly notified, the Respondent, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of the Respondent, may be deemed in default and the proceedings may be determined against it upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon the Respondent 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

Elizabeth M. Murphy
Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 71384 / January 24, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15686

In the Matter of **Advanced Pipe Fitting Technologies Inc.,** **Respondent.**	**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 respondent named in the caption.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT [1]

1. Advanced Pipe Fitting Technologies Inc. ("ADVP") (CIK No. 1478490) is a revoked Nevada corporation located in Beijing, China with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). ADVP 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 July 31, 2011, which reported a net loss of $4,525 for the prior nine months. As of January 16, 2014, the common shares of ADVP were quoted on OTC Link (formerly "Pink Sheets") operated by OTC Markets Group Inc., had four market makers, and were eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

B. DELINQUENT PERIODIC FILINGS

2. As discussed in more detail above, the Respondent is delinquent in its periodic filings with the Commission, has repeatedly failed to meet its obligations to file timely periodic

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

reports and failed to bring its filings current in response to the delinquency letter sent to it by the Division of Corporation Finance requesting compliance with its periodic filing obligations.

3. 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.

4. As a result of the foregoing, the Respondent 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 Respondent 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 Respondent identified in Section II hereof, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of the Respondent.

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 the Respondent 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 the Respondent fails to file the directed Answer, or fails to appear at a hearing after being duly notified, the Respondent, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of the Respondent, may be deemed in default and the proceedings may be determined against it upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon the Respondent 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

Elizabeth M. Murphy
Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

January 24, 2014

In the Matter of

Advanced Pipe Fitting Technologies 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 Advanced Pipe Fitting Technologies Inc. because it has not filed any periodic reports since the period ended July 31, 2011.

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 company. 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 company is suspended for the period from 9:30 a.m. EST on January 24, 2014, through 11:59 p.m. EST on February 6, 2014.

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. 71391 / January 24, 2014

Admin. Proc. File No. 3-15466

In the Matter of the Application of Mark Steven Steckler Zephyrhills, FL 33541 for Review of Disciplinary Action Taken by FINRA

ORDER GRANTING MOTION TO DISMISS APPLICATION FOR REVIEW

I.

Mark Steven Steckler, formerly a registered representative associated with Royal Alliance Associates, Inc., a FINRA member firm, seeks review of a FINRA disciplinary action. FINRA barred him from associating with any FINRA member in any capacity, effective June 10, 2013, because he failed to respond to two requests for information issued pursuant to FINRA Rule 8210.[1] On September 23, 2013, FINRA filed a motion to dismiss Steckler's application for review, arguing that Steckler failed to exhaust his administrative remedies. For the reasons set forth below, we have determined to grant FINRA's motion and dismiss the appeal.

II.

A. Steckler failed to respond to two Rule 8210 requests for information issued by FINRA.

Steckler was associated with Royal Alliance from November 18, 2005, until October 10, 2012. Royal Alliance filed a Uniform Termination Notice for Securities Industry Registration on

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1 FINRA Rule 8210(a)(1) states, in relevant part, that the staff has the right to "require a member, person associated with a member, or person subject to the Association's jurisdiction to provide information orally, in writing, or electronically . . . with respect to any matter involved in the investigation . . ." FINRA Rule 8210(a)(1).

Form U5,[2] disclosing that it permitted Steckler to resign from the firm effective October 10, 2012, because he had allegedly borrowed $800 from a customer in violation of firm policy.

On November 20, 2012, FINRA sent Steckler a letter by both first class and certified mail, pursuant to Rule 8210, to his address of record contained in the Central Registration Depository ("CRD"), which Steckler is required to keep current.[3] Among other things, that letter requested that he provide a signed statement in response to the allegations that he borrowed $800 from a firm customer, copies of all correspondence and memoranda referring or relating to the matter, and information about other complaints, if any, during the preceding three years of his association with Royal Alliance.[4] The deadline for his response was December 4. Steckler failed to respond.

On December 6, FINRA sent Steckler a second Rule 8210 request to his CRD address by first-class and certified mail, asking for the same information as in its earlier letter, a copy of which was attached. The certified mail receipt for this request was returned, signed by "Mark Steckler." The second request set a deadline of December 22 and warned Steckler that he could be subject to disciplinary action if he failed to respond. Steckler did not respond.

B. FINRA sanctioned Steckler.

On May 17, 2013, FINRA notified Steckler in writing, pursuant to FINRA Rule 9552(a), that it intended to suspend him from associating with any member firm in any capacity on June 10, 2013, unless he took corrective action before that date by complying with the Rule 8210 requests.[5] FINRA served the May 17, 2013, written notice on Steckler by overnight courier

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2 Broker-dealers, investment advisers, and issuers of securities must file a Form U5 with FINRA to terminate the registration of an individual associated with such broker-dealer, investment adviser, or issuer.

3 As part of the registration process, associated persons are required to sign and file with FINRA a Form U4, which obligates them to keep a current address on file with FINRA at all times. *Perpetual Sec., Inc.* Exchange Act Release No. 56613, 2007 SEC LEXIS 2353, at *35 (Oct. 4, 2007); *Nazmi C. Hassanieh*, Exchange Act Release No. 35029, 52 SEC 87, 1994 SEC LEXIS 3862, at *8 (Nov. 30, 1994). A notice issued pursuant to Rule 8210 is deemed received by such person when mailed to the individual's last known CRD address. FINRA Rule 8210(d); *see also* NASD Notice to Members 97-31, 1997 NASD LEXIS 35, at *1-2 (May 1997) (reminding registered persons to keep a current mailing address with NASD "[f]or at least two years *after* an individual registration has been terminated by the filing of . . . [a] Form U5") (emphasis in original).

4 The November 20, 2012 letter also requested that Steckler explain the reasons for two late CRD disclosures. There is no further explanation of those requests in the record.

5 FINRA Rule 9552(a) states that if an associated person fails to provide the staff with requested information pursuant to FINRA rules, the association may provide written notice

(continued...)

service and first-class mail to the same CRD address it used in sending the earlier Rule 8210 requests. [6] That notice also advised Steckler that he could request a hearing under Rule 9552(e), which, if made timely, would stay the effective date of the suspension.[7] The notice further warned Steckler that, if the suspension was imposed, FINRA would automatically bar him from associating with any member firm in any capacity on August 20, 2013, unless he requested termination of the suspension based on full compliance.[8] Steckler failed to take any action to comply with the outstanding requests or request a hearing.

On June 10, 2013, FINRA sent Steckler a letter informing him that, as of that date, he was suspended from associating with any FINRA member in any capacity pursuant to FINRA Rule 9552. That letter reminded Steckler that an automatic bar would be imposed on August 20, 2013, if he did not fully comply with the notice of suspension, which required him to respond to FINRA's two earlier Rule 8210 requests and file a request to terminate his suspension. FINRA served Steckler at the address that was on file with the CRD when FINRA served the Rule 8210 requests, as well as a new address that was on file as of June 10.

Steckler took no action to end his suspension by supplying the information requested by FINRA, and the automatic bar from associating with any member firm in any capacity took effect on August 20, 2013. On that date, FINRA sent Steckler a letter notifying him that he was barred and could appeal the decision by filing an application for review with the Commission.[9]

(...continued)
"specifying the nature of the failure and stating that a failure to take corrective action within 21 days after service of the notice will result in [a] suspension."

6 FINRA Rule 9552(b) provides for service of a notice of suspension in accordance with FINRA Rule 9134, which permits service by both mail and courier service at an individual's residential CRD address. FINRA Rule 9134(a) – (b)(1).

7 FINRA Rule 9559(c) provides that, "[u]nless the Chief Hearing Officer or the Hearing Officer assigned to the matter orders otherwise for good cause shown, a timely request for a hearing shall stay the effectiveness of a notice issued under Rule 9551 through 9556."

8 FINRA Rule 9552(f) permits a suspended individual to file a written request for termination of the suspension on the ground of full compliance with the notice of suspension. FINRA Rule 9552(h) provides that a suspended person who fails to request termination of the suspension within three months of issuance of the original notice of suspension will be barred automatically.

9 FINRA sent that letter to Steckler by overnight courier service and by first-class mail to the two addresses it used for the June 10 letter. There is no evidence that the letters sent by first-class mail were returned. The tracking information for the overnight courier service does not indicate whether the letters were received.

III.

We have emphasized that "[i]t is clearly proper to require that a statutory right to review be exercised in an orderly fashion, and to specify procedural steps which must be observed as a condition to securing review."[10] On this basis, we repeatedly have held that "we will not consider an application for review if the applicant failed to exhaust FINRA's procedures for contesting the sanction at issue."[11] As the Second Circuit has reasoned:

> Were SRO members, or former SRO members, free to bring their SRO-related grievances before the SEC without first exhausting SRO remedies, the self-regulatory function of SROs could be compromised. Moreover, like other administrative exhaustion requirements, the SEC's promotes the development of a record in a forum particularly suited to create it, upon which the Commission and, subsequently, the courts can more effectively conduct their review. It also provides SROs with the opportunity to correct their own errors prior to review by the Commission. The SEC's exhaustion requirement thus promotes the efficient resolution of disciplinary disputes between SROs and their members and is in harmony with Congress's delegation of authority to SROs to settle, in the first instance, disputes relating to their operations.[12]

The November 20 and December 6, 2012, Rule 8210 requests, which sought specific information related to Steckler's resignation, among other things, warned Steckler, respectively, that "[a]ny failure on your part to satisfy these obligations could expose you to sanctions, including a permanent bar from the securities industry" and that "[f]ailure to comply with this request may subject you to disciplinary action." The May 17, 2013, notice of suspension stated that FINRA intended to suspend Steckler on June 10, 2013, unless he took corrective action by complying with the Rule 8210 requests. The notice also stated that, alternatively, he could request a hearing under FINRA Rule 9552(e), which would have stayed the effectiveness of the

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10 *MFS Secs. Corp.*, Exchange Act Release No. 47626, 2003 WL 23354445, at *5 & n.29 (Apr. 3, 2003) (citing *Royal Secs. Corp.*, Exchange Act Release No. 5171, 36 SEC 275, 1955 SEC LEXIS 94, at *5 (May 20, 1955)), *aff'd*, 380 F.3d 611 (2d Cir. 2004).

11 *See, e.g.*, *Norman S. Chen*, Exchange Act Release No. 65345, 2011 SEC LEXIS 3224, at *6, 11 (Sept. 16, 2011) (dismissing applicant's appeal for failure to exhaust administrative remedies where FINRA barred applicant under Rule 9552 for failing to respond to Rule 8210 information requests); *Gregory S. Profeta*, Exchange Act Release No. 62055, 2010 SEC LEXIS 1563, at *5, 8 (May 6, 2010) (same); *Jeffrey A. King*, Exchange Act Release No. 52571, 2005 SEC LEXIS 2516, at *8-10 (Oct. 7, 2005) (same); *see also MFS Secs. Corp*, 2003 WL 23354445, at *5-6 (refusing to consider applicant's denial of access to services claim because applicant failed to exhaust New York Stock Exchange's procedures).

12 *MFS Secs. Corp. v. SEC*, 380 F.3d 611, 621-22 (2d Cir. 2004).

suspension under Rule 9559(c). But Steckler did not take corrective action or request a hearing. The May 17 and June 10 notices informed Steckler that, after the suspension took effect, he could request its termination based on full compliance. As noted, Steckler never replied to the Rule 8210 requests.

In response to FINRA's motion to dismiss, Steckler stated that he did not receive the FINRA correspondence in a timely manner because his was unable to receive mail per the policy of the residence at which he was residing temporarily.[13] But the Rule 8210 requests were deemed to have been received by Steckler when FINRA properly served him at his address on file with CRD.[14]

Further, Steckler did not substantiate his claim that he could not view the correspondence from FINRA because of the policies of his temporary residence. For example, Steckler did not provide the dates during which he was prevented from receiving mail. Steckler also did not dispute FINRA's contention that on December 12, 2013, he signed the certified receipt for the December Rule 8210 request. After receiving the December Rule 8210 request, Steckler could have responded or sought a hearing prior to the effective date of the suspension.

Finally, Steckler claimed in his response that he did not view the FINRA correspondence until June. Even if this were the case, viewing the correspondence at any point in June still provided him with sufficient time to respond to the Rule 8210 requests and seek to have the suspension terminated prior to the imposition of the bar on August 20. Steckler also stated in his response that after reviewing the correspondence in June, he phoned FINRA and was "told to request a review," which he claims he did "promptly."[15] Despite this claim, there is no evidence in the record that he requested a FINRA hearing. Under these circumstances, and given the well-established precedent discussed above, we see no basis for denying FINRA's motion to dismiss.

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[13] Steckler offers no additional explanation for his failure to comply with the Rule 8210 requests, request a hearing, or request that FINRA terminate the suspension prior to the August 20 deadline. Although Steckler made a substantive argument in his response concerning the alleged violations described in the Rule 8210 requests, we do not reach that argument because he failed to exhaust his administrative remedies.

[14] *Gilbert Torres Martinez*, Exchange Act Release No. 69405, 2013 SEC LEXIS 1147, at *4 n. 6 (April 18, 2013) (stating that a "notice issued pursuant to Rule 8210 is deemed received by such person when mailed to the individual's last known CRD address").

[15] Although FINRA attached a declaration to its reply brief concerning the June phone call with Steckler, we did not rely on the declaration in making our determination to grant the motion.

Accordingly, IT IS ORDERED that FINRA's motion to dismiss the application for review filed by Mark Steven Steckler is GRANTED.

By the Commission.

Elizabeth M. Murphy
Secretary

Lynn M. Powalski

By: Lynn M. Powalski
Deputy Secretary

Chair White
not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 71389 / January 24, 2014

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3530 / January 24, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15687

In the Matter of KPMG LLP, Respondent.	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTIONS 4C AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934 AND RULE 102(e) OF THE COMMISSION'S RULES OF PRACTICE, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 4C[1] and 21C of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 102(e) of the Commission's Rules of Practice against KPMG LLP ("KPMG" or "Respondent").[2]

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement ("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

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[1] Section 4C provides, in relevant part, that:

> The Commission may censure any person, or deny, temporarily or permanently, to any person the privilege of appearing or practicing before the Commission in any way, if that person is found . . . (2) to be lacking in character or integrity, or to have engaged in unethical or improper professional conduct . . . ."

[2] Rule 102(e)(1)(ii) provides, in pertinent part, that:

> The Commission may censure a person or deny, temporarily or permanently, the privilege of appearing or practicing before it in any way to any person who is found . . . to have engaged in unethical or improper professional conduct.

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 entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 4C and 21C of the Securities Exchange Act of 1934 and Rule 102(e) of the Commission's Rules of Practice, 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 that:

A. Summary

1. This matter concerns violations of the auditor independence rules by public accounting firm KPMG. The auditor independence rules are intended to ensure that auditors remain independent, both in fact and in appearance, from their Commission-registered audit clients ("SEC audit clients"). KPMG violated these rules concerning its relationships with and services provided to three of its public company audit clients or their affiliates. At various times from 2007 through the end of 2011, KPMG provided prohibited non-audit services to affiliates of three of its SEC audit clients: Company A, Company B and Company C. With regard to Company A, KPMG hired an employee who had recently retired from a senior position at Company A's affiliate, and then loaned him back to that affiliate to do the same work he had done as an employee of that affiliate. This engagement involved the loaned employee acting as a manager, employee and advocate for the affiliate, causing KPMG to violate Rule 2-01 of Regulation S-X of the Exchange Act. With regard to Company B, KPMG was its audit firm, but also provided various prohibited non-audit services, including restructuring, corporate finance, and expert services, to an affiliate of Company B. With regard to Company C, KPMG was its audit firm, but also provided prohibited non-audit services, including bookkeeping and payroll services, to affiliates of Company C. These non-audit services caused KPMG to violate the independence rules in relation to Company B and Company C. Finally, certain KPMG employees also owned stock in Company A and affiliates of Company B resulting in a further violation of the independence rules.

2. Despite this conduct, KPMG repeatedly represented that it was "independent" in audit reports issued on their financial statements, which were included or incorporated by reference in public filings with the Commission. By doing so, KPMG violated Rule 2-02(b) of Regulation S-X and Rule 10A-2 of the Exchange Act, and caused the three clients to violate Section 13(a) of the Exchange Act and Rule 13a-1 thereunder. KPMG's conduct also constituted improper professional conduct pursuant to Section 4C of the Exchange Act and Rule 102(e) of the Commission's Rules of Practice.

B. Respondent

3. KPMG is a limited liability partnership registered in Delaware and headquartered in New York, NY. KPMG is registered with the Public Company Accounting Oversight Board (the "PCAOB"). KPMG is the U.S. member firm of KPMG International Cooperative ("KPMGI"). Pursuant to Rule 2-01 of Regulation S-X, KPMGI's foreign member

firms are included within the definition of "accountant," which is defined to include associated entities.

C. Other Relevant Entities

4. Company A is a corporation located outside of the United States. Until September 2010, Company A's common stock was registered with the Commission pursuant to Section 12(b) of the Exchange Act and traded on the New York Stock Exchange ("NYSE") and one of KPMGI's member firms served as Company A's auditor. From August 2007 until June 2009, Company A held a minority interest in one of its U.S. affiliates. During the relevant time period, KPMG served as the U.S. affiliate's auditor.

5. Company B is a Delaware limited partnership. Company B's common limited partner units are registered with the Commission pursuant to Section 12(b) of the Exchange Act and trade on the NYSE. KPMG served as Company B's auditor from 2005 until late 2011.

6. Company C is a Delaware corporation. Company C's common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act and trades on the NYSE. KPMG has served as Company C's auditor since 2008.

D. Legal Background

7. The purpose of Rule 2-01 of Regulation S-X is to ensure that auditors are qualified and independent of their SEC audit clients[3] – both in fact and in appearance. The rule sets forth a non-exhaustive list of non-audit services which an auditor cannot provide to its audit clients and be considered independent. *See* 17 C.F.R. § 210-2.01(c)(4)(i)-(x). Among other things, it prohibits an auditor from providing bookkeeping services, payroll services, appraisal or valuation services, internal audit outsourcing services, legal services, expert services, and broker-dealer, investment adviser or investment bank services. *Id.* It also prohibits an auditor from designing and implementing financial information systems or performing human resources or management functions for its audit clients. *See* 17 C.F.R. § 210-2.01(c)(4)(ii), (vi) and (vii).

8. Pursuant to Rule 2-01(c)(4)(vi) of Regulation S-X, an auditor is specifically prohibited from "[a]cting, temporarily or permanently, as a director, officer, or employee of an audit client, or performing any decision-making, supervisory, or ongoing monitoring function for the audit client." 17 C.F.R. § 210-2.01(c)(4)(vi). Similarly, Preliminary Note 2 to Rule 2-01 of Regulation S-X makes clear that, in applying the general standard of auditor independence set forth in Rule 2-01(b), the Commission considers, among three other principles, whether a relationship or service "results in the accountant acting as management or an employee of the audit client." 17 C.F.R. § 210-2.01, Preliminary Note 2.

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[3] With certain exceptions that are not relevant here, "audit client" is defined as "the entity whose financial statements or other information is being audited, reviewed, or attested and any affiliates, of the audit client." 17 C.F.R. § 210-2.01(f)(6) (emphasis added). In turn, "affiliate" is defined to include "[a]n entity that has control over the audit client, over which the audit client has control, or which is under common control with the audit client, including the client's parents and subsidiaries. . . ." 17 C.F.R. § 210-2.01(f)(4)(i).

9. Under the "financial relationships" provision of Rule 2-01 of Regulation S-X,"[a]n accountant is not independent if, at any point during the audit and professional engagement period, the accountant has a direct financial interest or a material indirect financial interest in the accountant's audit client." 17 C.F.R. § 210-2.01(c)(1). This provision is triggered when "[t]he accounting firm or any covered person in the firm, or any of his or her immediate family members, has any direct investment in an audit client, such as stocks, bonds, notes, options, or other securities." 17 C.F.R. § 210-2.01(c)(1)(i)(A). As relevant here, "covered person" includes any partner in the "chain of command;" any "managerial employee . . . who has provided ten or more hours of non-audit services to the audit client;" and any partner "from an 'office' of the accounting firm in which the lead audit engagement partner principally practices in connection with the audit." 17 C.F.R. § 210-2.01(f)(11).

E. <u>Prohibited Services Provided to Affiliate of Company A</u>

10. In or around April 2007, an affiliate of Company A offered early retirement packages to certain employees as part of the affiliate's economic recovery plan. One employee who worked as Senior Tax Counsel in the affiliate's Office of Tax Affairs' Trade & Customs Group accepted an early retirement package effective August 31, 2007. Prior to retirement, this individual's work involved senior-level tasks, including tax compliance planning for the affiliate and its subsidiaries, as well as international customs planning and advice. Among other things, this individual was involved in planning related to the affiliate's international expansion efforts and responding to customs audits by international taxing authorities. This long-time employee's retirement created an immediate need for someone to fill this role for the affiliate of Company A.

11. In November 2007, after discussions with the affiliate of Company A about its staffing needs in this regard, KPMG hired the former employee of the affiliate to be loaned back to the affiliate. This employee was hired by KPMG at the manager level and loaned back to the affiliate of Company A to perform essentially the same senior-level work that this individual had performed as Senior Tax Counsel for the affiliate. In fact, the KPMG engagement letter specified that this individual was expected to devote all professional time over a period of two years "to assisting [the affiliate of Company A] with such tax consulting matters as [the affiliate's] management may specify related to global customs compliance matters." The individual had no other duties at KPMG.

12. Over the course of this engagement, the Company A affiliate's former employee performed a range of tax consulting work for the affiliate, all under the supervision of this individual's former supervisor at the affiliate. This individual's work was substantially the same as the work performed as an employee of the affiliate. It included responding to international customs audits and inquiries, as well as advocating on the affiliate's behalf in dealings with customs officials. As part of this work, this individual gathered information responsive to customs officials' inquiries and provided advice to the affiliate, based on prior experience at the affiliate, about how to present this information to these officials. During Fall/Winter of 2008, this individual also traveled with a team of the affiliate's employees to various European countries to meet with government officials on the affiliate's behalf. In addition, this individual took part in discussions regarding major operational and structural issues, including discussions regarding the structure of the affiliate's European operations.

13. From November 2007 until December 2008 (when KPMG terminated the engagement pursuant to which it loaned the Company A affiliate's former employee to the affiliate of Company A), all of this individual's professional time was spent doing work for the affiliate. In total, KPMG provided 1,897 hours of services in connection with this engagement with Company A's affiliate.

14. This engagement violated the independence rules because the affiliate's former employee acted as both a manager and an employee of Company A's affiliate and provided advocacy services for the affiliate. In addition, this individual was allowed to hold stock in Company A while providing manager-level services to Company A's affiliate for over a year, in further violation of the independence rules.

F. Prohibited Services Provided to Affiliate of Company B

15. KPMG was Company B's outside audit firm from 2005 until December 2011. On September 1, 2006, Company B became an affiliate of a large financial services firm when one of the financial services firm's subsidiaries purchased all the issued and outstanding stock of a controlling affiliate of Company B. The transaction resulted in the financial services firm becoming the owner of Company B's General Partner, which owned and controlled Company B. As a result of this transaction, and because KPMG was Company B's auditor at the time, the financial services firm should have been identified for independence purposes by KPMG as an affiliate of Company B as of September 1, 2006.

16. The financial services firm was a non-audit client of KPMG from at least 2006 through the end of 2011. KPMG provided a variety of non-audit services to the financial services firm, described further below. These services were appropriate until such time that Company B and the financial services firm became affiliates, at which point the non-audit services provided to the financial services firm became prohibited under the auditor independence rules.

17. From September 1, 2006 forward, Company B disclosed its relationship to the financial services firm in every annual report it filed with the Commission and also included a visual depiction of the relationship in these filings. Despite these public disclosures, the KPMG audit engagement teams for the Company B audits did not recognize the financial services firm as a controlling affiliate for independence purposes until late 2011. As a result, from September 1, 2006 until late 2011, KPMG provided a range of prohibited non-audit services to the financial services firm, including 67 instances of management functions, 20 instances of restructuring services, 13 instances of loaned staff services (involving KPMG employees providing services such as bookkeeping and expert services), six instances of corporate finance services and three other instances of expert services. KPMG also received contingent fees for services provided to the financial services firm in 26 instances, which was prohibited by Rule 2-01(c)(5). *See* 17 C.F.R. § 210-2.01(c)(5).

18. In late 2011, KPMG realized that the financial services firm should have been identified as an affiliate of Company B. In early December 2011, KPMG reported this fact to the Audit Committee of Company B's General Partner. On December 15, 2011, the Audit Committee terminated KPMG as Company B's auditor.

19. In addition, six partners in the KPMG chain of command and two partners in the KPMG office that conducted Company B's audits owned stock in the financial services firm, in further violation of the independence rules.

G. **Prohibited Services Provided to Affiliates of Company C**

20. During December 2007, KPMG was notified that Company C was requesting proposals from three firms, including KPMG, to perform the 2008 audit and quarterly reviews of its consolidated financial statements. During the ensuing client acceptance process for Company C's audit engagement, the KPMG audit engagement team learned that KPMG had been providing certain non-audit services to affiliates of Company C that KPMG would be prohibited from providing if it became Company C's independent auditor. These services included bookkeeping and payroll services provided to affiliates of Company C in eleven different countries. On February 22, 2008, Company C provided KPMG with a "Transition Plan" that identified these services, the countries in which the services were being provided, and actions being taken to transition the services to other providers. The Transition Plan specified that all such services would end by July 1, 2008.

21. On February 27, 2008, the KPMG audit engagement team – in consultation with the firm's Independence Group – concluded that, based on the perceived immateriality of the locations and services being provided, the Transition Plan was reasonable and KPMG's overall independence would not be impaired if it became the auditor for Company C but also continued providing the non-audit services to Company C's affiliates through July 1, 2008. On February 28, 2008, KPMG was appointed Company C's auditor and confirmed by letter to Company C that it was independent "with respect to [Company C] and its related entities under applicable SEC and PCAOB independence requirements." In the letter, KPMG acknowledged it was currently providing certain non-audit services to Company C's affiliates, but concluded that, "[b]ased on the nature of the matters identified and their planned timely resolution we do not believe these matters compromise the firm's independence."

22. In fact, from February 28, 2008 through June 2008, the non-audit services that KPMG continued to provide to Company C's affiliates, including bookkeeping and payroll services, constituted prohibited services in violation of the auditor independence rules (which do not provide for limited duration transition periods or include any exceptions based on the nature of the services provided).

H. **Violations**

23. As a result of the conduct described above, KPMG violated Rule 2-02(b) of Regulation S-X, which requires that each accountant's report state whether the audit was made in accordance with generally accepted auditing standards ("GAAS") (which standards require that auditors maintain strict independence from SEC audit clients). *See* PCAOB

Auditing Standards, *Independence*, AU § 220.03.[4] A violation occurred each time that KPMG issued an audit report for the three audit clients (or issued a consent for the filing of an audit report in later filings) that incorrectly stated that the audits were performed in accordance with the independence requirements of GAAS, where either the period covered by the audit, or the period of the audit work, or both, overlapped with prohibited conduct.

24. As a result of the conduct described above, KPMG violated Rule 10A-2 of the Exchange Act each time that it provided non-audit services that are prohibited under Rule 2-01(c)(4) of Regulation S-X to the three audit clients. Rule 10A-2 of the Exchange Act makes it unlawful for an auditor to fail to be independent of its audit clients under Rule 2-01(c)(4) of Regulation S-X.

25. As a result of the conduct described above, KPMG caused the three audit clients to violate Section 13(a) of the Exchange Act and Rule 13a-1 thereunder, which require that financial statements included in annual reports filed with the Commission be audited by an independent accountant. KPMG knew, or should have known, that its conduct would cause the audit clients to violate these reporting provisions.

26. As a result of the conduct described above, KPMG also engaged in improper professional conduct, as defined in Exchange Act Section 4C and Rule 102(e)(1)(ii) of the Commission's Rules of Practice.

I. Undertakings

Respondent has undertaken to:

Implement internal changes (the "proposed changes") to enhance KPMG's ability to educate and monitor compliance by its personnel with respect to the independence requirements under PCAOB standards and applicable Commission rules concerning the provision of non-audit services to SEC audit clients by achieving the following goals: (a) increasing personnel and expertise within KPMG's Independence Group, (b) improving KPMG's review procedures for both new service offerings and engagement-specific requests for non-audit services, (c) improving KPMG's independence policies, guidance, and training, and (d) improving KPMG's clearance and compliance procedures related to the independence rules.

Retain, within sixty (60) days after the entry of this Order, an independent consultant (the "Independent Consultant"), not unacceptable to the staff of the Commission. The Independent Consultant's role will be to review and evaluate whether the proposed changes have been designed and implemented in a manner reasonably sufficient to achieve the goals stated above concerning the provision of non-audit services to SEC audit clients. KPMG shall cooperate fully with the Independent Consultant and shall provide the Independent Consultant with access to its

[4] Pursuant to Commission Release 33-8422, GAAS, as used in Regulation S-X, means "the standards of the PCAOB plus any applicable Commission rules." Audit reports dated on or after May 24, 2004 – the effective date of PCAOB Auditing Standard 1 – are required to state they were performed in accordance with PCAOB standards. PCAOB rules and standards require auditors to be independent from their audit clients. *See, e.g.*, PCAOB Rule 3520, PCAOB Rule 3600T, and PCAOB AU § 220.

own files, books, records, and personnel as reasonably requested for the review. The Independent Consultant shall disclose to the staff of the Commission in the event that KPMG or any of its employees, agents, consultants, contractors, or anyone else acting on its behalf refuses to provide information necessary for the performance of the Independent Consultant's responsibilities. KPMG agrees that it will not take any action to retaliate against the Independent Consultant for such disclosures.

Require that the Independent Consultant issue a report, within six (6) months of being retained, summarizing his or her review and reporting on whether the proposed changes have been designed and implemented in a manner reasonably sufficient to achieve the goals stated above concerning the provision of non-audit services to SEC audit clients. Simultaneously with providing that report to KPMG, the Independent Consultant shall transmit a copy to LeeAnn Gaunt, Assistant Director, Division of Enforcement, Securities and Exchange Commission, 33 Arch Street, 23rd Floor, Boston, MA 02110. In the event that the Independent Consultant reports that the proposed changes have in some way failed to be designed and implemented in a manner reasonably sufficient to achieve the goals stated above concerning the provision of non-audit services to SEC audit clients, the report will include recommendations of procedures reasonably designed to do so.

Adopt all additional recommendations in the report of the Independent Consultant; provided, however, that, within sixty (60) days after the Independent Consultant serves the report, KPMG shall advise the Independent Consultant and the Commission, in writing of any recommendations that it considers unnecessary, unduly burdensome, impractical or costly. With respect to any recommendation that KPMG considers unnecessary, unduly burdensome, impractical or costly, KPMG need not adopt that recommendation at that time but shall propose in writing an alternative policy, procedure or system designed to achieve the same objective or purpose. As to any recommendation on which KPMG and the Independent Consultant do not agree, such parties shall attempt in good faith to reach an agreement within sixty (60) days after KPMG serves the written advice. In the event that KPMG and the Independent Consultant are unable to agree on an alternative proposal, KPMG will abide by the determinations of the Independent Consultant.

Require the Independent Consultant to enter into an agreement with KPMG that provides that, for the period of engagement and for a period of two (2) years from completion of the engagement, the Independent Consultant shall not enter into any employment, consultant, attorney-client, auditing, or other professional relationship with KPMG, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such. The agreement will also provide that the Independent Consultant will require that any firm with which he or she is affiliated or of which he or she is a member, and any person engaged to assist the Independent Consultant in performance of his or her duties under this Order shall not, without prior written consent of the Securities and Exchange Commission's Division of Enforcement, enter into any employment, consultant, attorney-client, auditing, or other professional relationship with KPMG, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two (2) years from completion of the engagement.

Certify, in writing, compliance with the undertakings set forth above. The certification shall identify the undertakings, 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 agrees to provide such evidence. The certification and supporting material shall be submitted to LeeAnn Gaunt, Assistant Director, Division of Enforcement at the address provided above, with a copy to the Office of Chief Counsel of the Enforcement Division, no later than sixty (60) days from the date of the completion of the undertakings.

These undertakings shall be binding upon any acquirer or successor-in-interest to KPMG's, or substantially all of KPMG's, audit practice for SEC audit clients.

For good cause shown, the Commission staff may extend any of the procedural dates set forth above.

IV.

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

Accordingly, pursuant to Sections 4C and 21C of the Exchange Act and Section 102(e) of the Commission's Rules of Practice, it is hereby ORDERED that:

A. Respondent shall cease and desist from committing or causing any violations and any future violations of Rule 2-02 of Regulation S-X, Rule 10A-2 of the Exchange Act, and Section 13(a) of the Exchange Act and Rule 13a-1 thereunder.

B. Respondent is censured.

C. Respondent shall, within fourteen (14) days of the entry of this Order, pay disgorgement of $5,266,347, prejudgment interest of $1,185,002, and a civil money penalty in the amount of $1,775,000, for a total of $8,226,349, to the United States Treasury. 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;[5]
(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 make payment by certified check, bank cashier's check, or United States postal money order, payable to the Securities and Exchange Commission and hand-delivered or mailed to:

[5] On December 31, 2012, the minimum threshold for transmission of payment electronically was increased to $1,000,000. For amounts below the threshold, Respondent must make payments pursuant to option (2) or (3) above.

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 shall be accompanied by a cover letter identifying KPMG as the Respondent and including the file number of these proceedings. A copy of the letter and check or money order must be sent to LeeAnn Gaunt, Assistant Director, Division of Enforcement at the address provided above.

D. Respondent shall comply with the undertakings enumerated in Section III.I above.

By the Commission.

Elizabeth M. Murphy
Secretary

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

Chair White not participating

SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 71390 / January 24, 2014

Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934: KPMG, LLP

I. Introduction

Rule 2-01 of Regulation S-X ("Rule 2-01")[1] is "designed to ensure that auditors are qualified and independent of their audit clients both in fact and in appearance."[2] Rule 2-01(b) sets forth the general standard of auditor independence, and Rule 2-01(c) sets forth a non-exclusive specification of circumstances inconsistent with the general standard. Among other things, Rule 2-01 prohibits an independent auditor from acting as an employee of an audit client.[3]

The Division of Enforcement ("Division"), in consultation with the Office of the Chief Accountant, has investigated whether the independence of KPMG LLP ("KPMG")[4] was impaired under Rule 2-01 when the firm loaned non-manager level tax professionals ("loaned staff")[5] to certain audit clients. The loaned staff for the particular engagements assisted audit clients in tax return preparation and other tax compliance work, at the places of business of the audit clients, used audit client-provided resources, and worked under the direction and supervision of the management of the audit clients.

The Commission has determined not to pursue an enforcement action with regard to these loaned staff engagements. As a result of the Division's investigation, however, the Commission deems it appropriate and in the public interest to issue this Report of Investigation ("Report") pursuant to Section 21(a) of the Exchange Act of 1934 ("Exchange Act") in order to address uncertainty regarding the Commission's interpretation of the "acting as an employee" provisions of Rule 2-01.[6]

II. Background Related to the "Acting as an Employee" Provisions of Rule 2-01

Rule 2-01 was comprehensively amended in 2000 "to modernize the Commission's rules for determining whether an auditor is independent in light of ..., [among other things,] employment relationships between auditors or their family members and audit clients, and the scope of services provided by audit firms to their audit clients."[7] Rule 2-01 was amended again in 2003 in light of the Sarbanes-Oxley Act of 2002, which strengthened the auditor independence requirements.[8]

Circumstances that raise questions about an accountant's independence always merit heightened scrutiny.[9] Our rule is designed to ensure that auditors are independent of their audit

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clients both in fact and in appearance.[10] Under the general standard of independence set forth in Rule 2-01(b), the Commission will not recognize an accountant as independent, with respect to an audit client, if the accountant is not, or a reasonable investor with knowledge of all relevant facts and circumstances would conclude that the accountant is not, capable of exercising objective and impartial judgment on all issues encompassed within the accountant's engagement.[11] Rule 2-01(c) enumerates certain circumstances that are inconsistent with the general standard.[12] Those enumerated circumstances are not an exhaustive list. As specifically noted in Rule 2-01, "[t]he rule does not purport to, and the Commission could not, consider all circumstances that raise independence concerns...."[13] Thus, Rule 2-01 describes the Commission's approach to independence issues and identifies the core principles that guide the Commission's application of the general standard, including that the Commission will consider all relevant facts and circumstances.

Rule 2-01 addresses the issue of acting as an employee of an audit client.[14] First, Preliminary Note 2 to Rule 2-01 makes clear that, in applying the general standard in Rule 2-01(b), the Commission considers, among three other principles, whether a relationship or service "results in the accountant acting as management or an employee of the audit client."[15] Second, Rule 2-01(c)(4)[16] identifies specific non-audit services that are deemed inconsistent with an auditor's independence,[17] including:

> Management functions. Acting, temporarily or permanently, as a director, officer, <u>or employee of an audit client</u>, or performing any decision-making, supervisory, or ongoing monitoring function for the audit client.[18]

Accordingly, under the guiding principles of the Preliminary Note and the specific prohibition in Rule 2-01(c)(4)(vi), an accountant cannot maintain its independence if it is acting as an employee of an audit client.

The legal consequence of an auditor lacking independence is that it violates, and causes its audit clients to violate, various provisions of the federal securities laws. For example, Rule 2-02(b) of Regulation S-X requires that each accountant's report state "whether the audit was made in accordance with generally accepted auditing standards ["GAAS"]."[19] GAAS, in turn, requires auditors to maintain strict independence from their audit clients.[20] Consequently, issuing an audit report falsely stating that the audit was performed in accordance with GAAS violates Rule 2-02(b).[21] Likewise, Exchange Act Rule 10A-2 separately provides that it shall be unlawful for an auditor not to be independent under Rule 2-01(c)(4).[22] In addition, any time that non-independent audit reports are filed with an SEC audit client's annual reports, this causes the audit client not to comply with Section 13(a) of the Exchange Act and Rule 13a-1 thereunder (requiring that financial statements included in annual reports filed with the Commission be audited by an independent accountant).[23] Under such circumstances, the auditor may also be held liable for causing such violations.[24]

III. Facts

A. KPMG's Internal Guidance Permitting Tax Loaned Staff Engagements

In March 2004, KPMG issued internal guidance prohibiting most loaned staff engagements with SEC audit clients, but permitting loaned staff engagements for certain tax services. Through testimony taken as part of this investigation, the Division learned that part of KPMG's rationale for continuing to allow loaned staff engagements for tax services was that auditors are permitted to provide tax services to audit clients and that the services to be provided were ministerial. The KPMG guidance specified that loaned staff were to be supervised by, and take direction from, the audit clients at the clients' places of business – effectively transferring control over the loaned staff to the audit client.

In August 2008, KPMG issued internal guidance that further revised its loaned staff policy. The 2008 KPMG guidance further restricted the conditions under which loaned staff services could be provided, but continued to allow loaned staff engagements with SEC audit clients for certain tax services. Among other things, the 2008 KPMG guidance: (i) prohibited loaning managers to SEC audit clients; (ii) specified that engagement letters must be preapproved by the client's audit committee and in KPMG's automated monitoring system; and (iii) specified that the engagements must be approved by KPMG's national office and could not exceed three months without pre-approval of the National Partner in Charge of Tax, Risk Management. The 2008 KPMG guidance further provided that loaned staff could not "perform management functions or act as an employee (even on a temporary basis)," but also provided that loaned staff "should report to a specified member of client management who will supervise the staff member, make all decisions affecting the staff member's work, and accept responsibility for the staff member's work."

B. KPMG Tax Loaned Staff Engagements

The Division's investigation identified that, from at least 2007 through 2011, KPMG entered into loaned staff engagements with multiple SEC audit clients. These loaned staff engagements involved non-manager level KPMG professionals performing junior level tasks related to tax compliance. For example, a typical task performed by the loaned staff was inputting data into federal or state tax returns using an audit client-issued computer, while being supervised by a member of the client's tax department. Among other things, KPMG loaned staff assigned to these engagements generally:

1. were supervised by, took sole direction from, and had their performance evaluated by, the audit clients' managers;
2. performed the same work as employees of the audit clients;

3. worked exclusively and continuously at the audit clients' places of business during such engagements for extended periods of time, ranging up to six months; and

4. used the audit clients' resources, including physical work spaces, client-issued computers and email addresses, and internal networks, spreadsheets and shared folders, to perform their loaned staff work.

KPMG paid the loaned staffers in accordance with its typical practices for compensating KPMG employees and continued to provide KPMG benefits to these individuals. Fees for loaned staff arrangements were billed to the audit clients in a manner similar to the manner in which KPMG bills its clients for other non-audit services.

IV. Discussion

Auditor independence can be impaired in numerous ways – one of which is the accountant acting as an employee of the audit client. As we have stated previously, "an auditor who provides services in a way that is tantamount to accepting an appointment as an ... employee of the audit client cannot be expected to be independent in auditing the financial consequences of management's decisions."[25] Rule 2-01(c)(4)(vi) reflects the Commission's view that such arrangements are incompatible with the dual goals of the independence requirement – that auditors are "independent of their audit clients both in fact and in appearance."[26] We take this opportunity to make three further points.

First, an auditor may not provide otherwise permissible non-audit services (such as permissible tax services) to an audit client in a manner that is inconsistent with other provisions of the independence rules (such as the prohibition against acting as an employee of the audit client).[27] Thus, an auditor must scrutinize both the nature of the proposed non-audit services, as well as the manner in which those services are to be delivered. Tax services are no different in this regard than any other non-audit services.

Second, an arrangement or relationship that results in an accountant acting as an employee of the audit client implicates Rule 2-01(c)(4)(vi), separate and apart from whether the accountant acted as a director or officer, or performed any decision-making, supervisory, or ongoing monitoring functions for the audit client.[28] We also point out that an accountant is not independent under Rule 2-01(c)(2)(i) when a current "professional employee of the accounting firm is employed by the audit client."[29] In further restricting such professionals from "acting as" audit client employees, Rule 2-01(c)(4)(vi) prohibits accountants from doing indirectly (acting as an employee) what they may not do directly (being an employee). Either situation has the potential to raise concerns that the firm and its employees will not be impartial in appearance and/or in fact.

Third, we considered whether the "acting as an employee" provision of Rule 2-01 provides a sufficient standard by which an accountant can assess its non-audit services. We believe that this provision requires accountants and audit committees to carefully consider whether the relationship or service in question would cause the accounting firm's professionals to resemble, in appearance and function, even on a temporary basis, the employees of the audit client. A key inquiry in this analysis is the degree of control that the audit client exercises over audit firm personnel. Where accounting firm personnel routinely work at the direction and under the supervision and control of audit client management, side-by-side with and in a capacity identical or substantially similar to the audit client's own employees at the audit client's place of business, the accounting firm's independence under Rule 2-01 could be put in jeopardy.

While no one factor is necessarily determinative, it is important to point out certain features that do *not* operate to exclude loaned staff arrangements from the prohibition of Rule 2-01(c)(4)(vi). For example, the fact that professionals loaned to an audit client may be junior-level in skill, experience or title, or are performing only ministerial tasks, does not exempt that individual from the prohibitions against acting as an employee of an audit client. Similarly, the fact that loaned staff were not directly paid by the audit client also does not exclude the relationship from the prohibition. Again, Rule 2-01 distinguishes between, and separately prohibits, "being" and "acting as" an employee of an audit client.

We note that today's statement is consistent with our prior statement that "an accounting firm can provide tax services to its audit clients without impairing the firm's independence."[30] As distinct from loaned staff arrangements, typical tax services engagements do not involve the audit firm providing *personnel* to the audit client, but rather involve the audit firm performing *services* for the audit client. Also, as distinct from loaned staff arrangements, auditor personnel working on typical tax services engagements are supervised by the firm's own managers who retain responsibility for directing the firm's personnel and ensuring the quality of their work product. For these reasons, typical tax services engagements do not present the same issues that loaned staff arrangements present.

Although every case must be evaluated on its own facts, as we have stated before:

> We remind registrants and accountants that auditor independence is not just a legal requirement. It is also a professional and ethical duty. That duty requires auditors to remain independent of audit clients, and includes an obligation to avoid situations that may lead outsiders to doubt [the auditor's] independence.[31]

As a result, "[i]n certain situations, whether or not legally required, the best course may be for the accountant to recuse himself or herself from an audit engagement," or, in the alternative, decline a non-audit engagement.[32] Accountants should particularly bear this in mind in evaluating relationships that may implicate the prohibition against acting as an employee, given that the prohibition is embedded in the core principles of auditor independence. Loaned staff arrangements, by their nature, appear inconsistent with the prohibition against acting as an employee. As noted in Preliminary Note 3 to Rule 2-01, registrants and accountants are encouraged to consult with the Commission's Office of the Chief Accountant before entering into relationships involving the provision of non-audit services if they have any questions about whether the arrangement may result in the accountant acting as an employee of the audit client.

V. Conclusion

"Investor confidence in the integrity of publicly available financial information is the cornerstone of our securities markets."[33] As the U.S. Supreme Court has stated:

> By certifying the public reports that collectively depict a corporation's financial status, the independent auditor assumes a *public* responsibility transcending any employment relationship with the client. The independent public accountant performing this special function owes ultimate allegiance to the corporation's creditors and stockholders, as well as to the investing public. This "public watchdog" function demands that the accountant maintain total independence from the client at all times and requires complete fidelity to the public trust.[34]

Further, we have stated that:

> Investors must be able to rely on issuers' financial statements . . . . If investors do not believe that an auditor is independent of a company, they will derive little confidence from the auditor's opinion and will be far less likely to invest in that public company's securities.[35]

As explained above, providing certain non-audit services to an audit client can impair the auditor's independence. Moreover, auditors who provide non-audit services in a manner which impairs independence should expect to be held accountable. Consequently, auditors must be rigorous in assessing the independence implications inherent in providing such services and be mindful that auditors must strictly assess, not only whether the proposed non-audit services fall within one of the enumerated categories of expressly prohibited services, but also whether the manner in which the services are to be provided potentially impairs the auditors' independence, in fact or appearance.

By the Commission.

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[1] 17 C.F.R. § 210-2.01.

[2] Preliminary Note 1 to Rule 2-01. The term "audit client" is defined in Rule 2-01(f)(6).

[3] *See* Rule 2-01(c)(4)(vi) (prohibiting "[a]cting, temporarily or permanently, as a director, officer, or employee of an audit client"). The phrase "acting as an employee" is not defined in Rule 2-01.

[4] KPMG is a public accounting firm registered with the Public Company Accounting Oversight Board (the "PCAOB") that provides auditing, tax and advisory services to its clients. KPMG is the U.S. member firm of KPMG International Cooperative.

[5] The Commission recognizes that the term "secondment," as commonly used in countries outside of the United States, is analogous to the term "loaned staff engagement" used in the United States. As we have explained, a secondment or loaned staff engagement "'is a temporary transfer of [an audit firm] employee (or secondee) to the business of a client,' to perform work under the supervision and direction of the client rather than [the audit firm]." *In the Matter of KPMG Australia*, Rel. Nos. 34-63987 and AAER-3248 (Feb. 28, 2011) (quoting KPMG internal guidance).

[6] Section 21(a) of the Exchange Act authorizes the Commission to investigate "whether any person has violated, is violating, or is about to violate" the federal securities laws. "The Commission is authorized . . . to publish information concerning such violations, and to investigate any facts, conditions, practices, or matters which it may deem necessary or proper to aid in the enforcement of" the federal securities laws. This report does not allege any violation of the independence rules by KPMG and further does not allege that KPMG's independence with respect to any audit client was impaired. This Report also does not constitute factual findings or an adjudication of any issue addressed herein.

[7] *See* Final Rule: *Revision of the Commission's Auditor Independence Requirements*, Rel. Nos. 33-7919, 34-43602 and 35-27279, 65 Fed. Reg. 76,008 (Dec. 5, 2000) (the "2000 Release").

[8] *See* Final Rule: *Strengthening the Commission's Requirements Regarding Auditor Independence*, Rel. Nos. 33-8183, 34-47265 and 35-27642, 68 Fed. Reg. 6,006 (Feb. 5, 2003) (the "2003 Release").

[9] *See* Final Rule: *Amendment to Rule 102(e) of the Commission's Rules of Practice*, Rel. Nos. 33-7593, 34-40567, 35-26929, 63 Fed. Reg. 57,164 (Oct. 26, 1998).

[10] *See* Preliminary Note 1 to Rule 2-01.

[11] Rule 2-01(b) further provides that, "[i]n determining whether an accountant is independent, the Commission will consider all relevant circumstances, including all relationships between the accountant and the audit client, and not just those relating to reports filed with the Commission."

[12] *See, e.g.*, 2000 Release at 76,008 (stating that one main purpose of the amendments was to "identify certain non-audit services that, if provided by an auditor to public company audit clients, impair the auditor's independence").

[13] Preliminary Note 2 to Rule 2-01.

[14] Since the earliest days after the enactment of the federal securities laws, employment by an audit client has been deemed inconsistent with an accountant's independence. *See* Federal Trade Commission, Rules and Regulations under the Securities Act of 1933 (July 6, 1933), at Article 14 (providing that an accountant "will not be considered independent with respect to any person . . . with whom he is connected as an . . . employee, . . . or person performing similar function"); *see also Securities and Exchange Commission, Adoption of Regulation S-X*, 5 Fed. Reg. 954, 956 (Mar. 6, 1940) (adopting Rule 2-01(b), which prohibited independent accountants from being connected with an audit client as an employee).

[15] Preliminary Note 2 to Rule 2-01.

[16] The provisions in Rule 2-01(c)(1) to (c)(5) "reflect the application of the general standard to particular circumstances." Preliminary Note 2 to Rule 2-01.

[17] *See* Rule 2-01(c)(4)(i)-(x). Among other things, the rule prohibits an auditor from providing bookkeeping services, financial information system design and implementation services, appraisal and valuation services, actuarial services, internal audit outsourcing services, human resource services, broker-dealer, investment adviser or investment banking services, legal services or expert services to audit clients.

[18] Rule 2-01(c)(4)(vi) (emphasis added).

[19] 17 C.F.R. § 210.2-02(b).

[20] Pursuant to Release 33-8422, GAAS, as used in Regulation S-X, means "the standards of the PCAOB plus any applicable Commission rules." Audit reports dated on or after May 24, 2004 – the effective date of PCAOB Auditing Standard 1 – are required to state they were performed in accordance with PCAOB standards. PCAOB rules and standards require auditors to be independent from their audit clients. *See, e.g.*, PCAOB Rule 3520, PCAOB Rule 3600T, and PCAOB AU Section 220.

[21] *See, e.g., KPMG Peat Marwick LLP*, Rel. Nos. 34-43862 and AAER-1360, 2001 SEC LEXIS 98, at *78 (Jan. 19, 2001), *reconsideration denied*, Rel. Nos. 34-44050 and AAER-1374 (Mar. 8, 2001), *petition for review denied*, 289 F.3d 109 (D.C. Cir. 2002); *Deloitte & Touche (South Africa)*, Admin. Proc. No. 3-15129, Rel. Nos. 34-68432 and AAER-3428, 2012 SEC LEXIS 3866, at *10-11 (Dec. 13, 2012).

[22] 17 C.F.R. § 240.10A-2.

[23] *See SEC v. Savoy Indus., Inc.*, 587 F.2d 1149, 1167 (D.C. Cir. 1978) (holding that no showing of scienter is necessary to establish a violation of Exchange Act Section 13(a)).

[24] Under Section 21C of the Exchange Act, a person is a "cause" of another's primary violation if the person knew or should have known that his act or omission would contribute to the primary violation. In addition, a showing of negligence is sufficient to establish "causing" liability under Section 21C when a person is alleged to have caused a primary violation that does not require scienter. *See KPMG Peat Marwick LLP*, Rel. Nos. 34-43862 and AAER-1360, 2001 SEC LEXIS 98, at *82-84.

[25] *See* 2000 Release at 76,017.

[26] Preliminary Note 1 to Rule 2-01.

[27] *See also, e.g.*, the 2003 Release, where we stated:

> Nonetheless, merely labeling a service as a "tax service" will not necessarily eliminate its potential to impair independence under Rule 2-01(b). Audit committees and accountants should understand that providing certain tax services to an audit client would, as described below, or could, in certain circumstances, impair the independence of the accountant. Specifically, accountants would impair their independence by representing an audit client before a tax court, district court, or federal court of claims. In addition, audit committees also should scrutinize carefully the retention of an accountant in a transaction initially recommended by the accountant, the sole business purpose of which may be tax avoidance and the tax treatment of which may be not supported in the Internal Revenue Code and related regulations.

[28] The fact that the specific prohibition appears under the "management functions" heading has introduced some degree of ambiguity to the rule. However, both Preliminary Note 2 to Rule 2-01 – whether the relationship or provision of a service "results in the accountant acting as management <u>or</u> an employee of the audit client" and Rule 2-01(c)(4)(vi) – "acting, temporarily or permanently, as a director, officer, <u>or</u> employee" – are written in the disjunctive. *See* Preliminary Note 2 to Rule 2-01 and Rule 2-01(c)(4)(vi) (emphases added.)

[29] Rule 2-01(c)(2). "In the most basic sense, the accountant cannot be employed by his or her audit client and be independent." 2000 Release, 65 Fed. Reg. at 76,040.

[30] 2003 Release at 6,017.

[31] 2000 Release, 65 Fed. Reg. at 76,031 (quotations and footnotes omitted).

[32] *Id.*

[33] 2000 Release, 65 Fed. Reg. at 76,012.

[34] *U.S. v. Arthur Young & Company*, 465 U.S. 805, 817-818 (1984) (emphasis in original).

[35] *See* 2000 Release, 65 Fed. Reg. at 76,008.

Commissioner Aguilar
not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 3762 / January 27, 2014

INVESTMENT COMPANY ACT OF 1940
Release No. 30893 / January 27, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15688

In the Matter of WESTERN ASSET MANAGEMENT CO., Respondent.	ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTIONS 203(e) AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940, AND 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 203(e) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act"), and Sections 9(b) and 9(f) of the Investment Company Act of 1940 ("Investment Company Act") against Western Asset Management Co. ("Western" 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, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 203(e) and 203(k) of the Investment Advisers Act of 1940, and 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 that:

Summary

From 2007 through 2010, Western, a registered investment adviser to various clients, including registered investment companies ("RICs"), arranged dealer-interposed cross trade transactions in which counterparty dealers purchased fixed-income securities from certain Western advisory client accounts, and then resold the same securities to certain other Western advisory client accounts. Because many of these cross trades were effected between two RIC client accounts or between RIC and RIC-affiliated client accounts, Western aided and abetted and caused certain of its advisory clients unwittingly to violate Sections 17(a)(1) and (2) of the Investment Company Act.[1]

In addition, the manner in which Western effectuated the cross trades resulted in undisclosed favorable treatment of certain of its advisory clients over others, and, as a result, Western violated Section 206(2) of the Advisers Act. Specifically, Western executed the sell side of the cross transactions at the highest current independent bid price available for the securities, and executed the repurchase side of the cross trade transactions at a small markup over the sales price. By cross trading securities at the bid, rather than at an average between the bid and the ask, Western favored the buyers in the transactions over the sellers, even though both were advisory clients of Western and owed the same fiduciary duty.

Western's cross trading violations were caused in large part by its failure to adopt adequate policies and procedures to prevent unlawful cross trading effectuated by its trading personnel through these repurchases, and by its failure reasonably to supervise a trader who aided and abetted the violations of Sections 17(a)(1) and (2) of the Investment Company Act.

Respondent

Western is a registered investment adviser headquartered in Pasadena, California, that specializes in fixed-income asset management. The firm is a wholly-owned subsidiary of Legg Mason, Inc., a public company, and it provides investment advisory services primarily to corporations, municipalities and other governmental entities, pension and profit sharing plans, private investment vehicles and RICs. As of June 2013, Western had 516 clients, representing

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[1] Because many of these cross trades involved retirement accounts, certain of the trades also violated provisions of the Employee Retirement Income Security Act of 1974.

1,057 accounts, with assets under management of $436 billion. Western also provided advisory services to a Public Private Investment Fund ("PPIF"), the RLJ Western Asset Public/Private Master Fund, L.P., and its affiliated feeder funds.[2]

Background

1. These proceedings principally arise out of Western's practice of cross trading securities in a manner that violated the Investment Company Act's general prohibitions on cross trades between registered investment companies ("RICs"), and their first or second-degree affiliated persons.[3] Internal cross trades can benefit clients because the practice enables a manager to move securities among client accounts without having to expose the security to the market, thereby saving transaction and market costs that would otherwise be paid to executing broker-dealers. However, these transactions also pose substantial risks to clients due to the inherent conflict of interest for the adviser, which has a fiduciary duty of loyalty to its clients and also must seek to obtain best execution for both its buying and selling clients.

2. To guard against potential concerns that affiliated persons of a RIC may engage in self-dealing transactions with the fund, Sections 17(a)(1) and 17(a)(2) of the Investment Company Act generally prohibit any affiliated person of a RIC, or any affiliated person of such affiliated person, acting as principal, from knowingly selling a security to, or purchasing a security from, the investment company unless the person first obtains an exemptive order from the Commission pursuant to Section 17(b). The interpositioning of a dealer in these transactions does not remove them from the prohibitions of Section 17(a). *See* Section 48(a) of the Investment Company Act; *Exemption of Certain Purchase or Sale Transactions Between a Registered Investment Company and Certain Affiliated Persons Thereof*, S.E.C. Rel. No. IC-11136, at n.10 (Apr. 21, 1980) (the "17a-7 Release").

3. Rule 17a-7 under the Investment Company Act exempts from the prohibitions of Section 17(a) certain purchases and sales between RICs and certain affiliated persons, where the affiliation arises solely because the two have a common investment adviser, common directors, and/or common officers, provided that the transactions are effected in accordance with the

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[2] The Western PPIF was part of the U.S. Department of the Treasury's ("United States Treasury") Troubled Asset Relief Program ("TARP"), which was established to provide liquidity for so-called "toxic assets" on the balance sheets of financial institutions in order to clear distressed loans from bank balance sheets. Western was chosen for the program in June 2009, and the Western-advised PPIF was launched in November 2009, with combined public/private investments of $2.482 billion. Potential TARP abuses are investigated by the Office of the Special Inspector General for the TARP.

[3] A second degree (or second tier) affiliated person of a RIC is an affiliated person of an affiliated person of the RIC.

requirements set forth in Rule 17a-7. Among those is the requirement that the adviser execute the cross trade in accordance with the Rule's method for determining the "current market price," which, for most bonds, is defined as "the average of the highest current independent bid and lowest current independent offer, determined on the basis of reasonable inquiry."[4] To the extent the adviser pays a brokerage commission, fee or other remuneration in connection with cross trade transactions, the transactions would not be eligible for an exemption under the Rule.

4. The Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, also prohibits investment advisers, as fiduciaries, from engaging in cross trades with ERISA regulated accounts, unless certain exemptive criteria are met. *See* ERISA Section 406(b) (29 U.S.C. § 1106(b)). The exemptive criteria include the requirement that the transaction is effected at the independent current market price of the security, within the meaning of Rule 17a-7(b) under the Investment Company Act. *See* ERISA Section 408(b)(19)(B) (29 U.S.C. § 1108(b)(19)(B)).

5. The conflicts policy of the Western-advised PPIF, which was a pooled investment vehicle for the purposes of Rule 206(4)-8 under the Advisers Act, also prohibited certain trades between the PPIF and affiliates.[5]

6. Western's written internal cross trading policies and procedures largely prohibited Western employees from engaging in cross trades. The firm's compliance manuals in effect at the time prohibited cross trades involving retirement accounts subject to ERISA, and permitted cross trades involving RICs only in limited circumstances (*i.e.*, under the exemption provided by Rule 17a-7 under the Investment Company Act), and required the compliance group to preapprove any cross transaction, including those involving RICs. Western disclosed its cross trading policies in Item 12 of Part II of Form ADV Amendments that were filed with the Commission in 2007, 2008, 2009, and 2010.

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[4] The 17a-7 Release also states that "to the extent these transactions are effected at the 'bid' or 'asked' price rather than at an average of the two prices, they would not be in compliance with the rule's pricing requirements." *See* 17a-7 Release at p.3.

[5] The PPIF is a pooled investment vehicle because it would be an investment company but for its reliance on an exclusion from the definition of investment company provided by Section 3(c)(7) of the Investment Company Act. Rule 206(4)-8(b) under the Advisers Act defines a "pooled investment vehicle" as "any investment company as defined in section 3(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-3(a)) or any company that would be an investment company under section 3(a) of that Act but for the exclusion provided from that definition by either section 3(c)(1) or section 3(c)(7) of that Act (15 U.S.C. 80a-3(c)(1) or (7))." The PPIF participated in the transactions subject to this proceeding as a buyer and not as a seller.

Western Engaged in Prohibited Securities Transactions

7. Throughout the financial crisis, as Western's clients demanded account liquidations and as rating agency downgrades caused certain securities to be ineligible for certain of its client accounts, Western was required to sell non-agency mortgaged backed securities and similar assets into a sharply declining market. Believing that these securities represented good long-term investments for other clients, Western frequently sought to repurchase for those other clients the same securities it was required to sell. In its dealings with most counterparties, the sale and the repurchase were separate arms-length transactions.

8. In its dealings with several other counterparty dealers, however, Western engaged in unlawful cross trades by entering into prearranged sale and repurchase transactions. Specifically, prior to the sale transactions, Western and the dealers' representatives formed an agreement or understanding that the dealer would purchase securities from Western's selling client account and then sell the same securities to Western's purchasing client account. By interposing the dealer into prearranged sale and repurchase transactions involving RICs and first or second-degree affiliates of a RIC, Western caused the affected client accounts to engage in cross trades prohibited by the Investment Company Act, without having obtained an exemptive order or being able to rely on an exemptive rule. In the same manner, as described in a parallel proceeding announced by the Department of Labor, Western's cross trades involving client accounts governed by ERISA violated ERISA Section 406(b), and its cross trades involving the PPIF violated its agreement with the United States Treasury.

9. Western began engaging in prearranged cross transactions no later than January 2007, and it effected 88 cross transactions during 2007 with the dealers. Western executed the sale transactions at the highest current independent bid available for the securities, and executed the repurchase transactions at a small prearranged markup over the sale price. For example, in 2007, all but 1 of the 88 repurchases were effected at an identical markup over the sale price of just 0.03125% of the par value of the security, or, in bond parlance, a ½ "tick." In the eight-month period September 2009 through April 2010, Western caused its client accounts to engage in 108 prearranged sale and repurchase transactions, and 96% of these repurchases were effected at a 2 "tick" spread over the sale price. Western paid the markup to compensate the dealers for the administrative and other costs they incurred in connection with the transactions.

10. Western's pattern of interposing a dealer in transactions to cross securities among its RIC and RIC-affiliated clients, clients subject to ERISA, and the PPIF continued from January 2007 through approximately April 2010.

11. By avoiding exposing the cross traded securities to the market, Western saved market costs totaling approximately $12.4 million, but, because Western arranged to cross the securities at the bid price, it allocated the full benefit of these savings to its buying clients. As a result, Western deprived its affected selling clients of their share of the market savings, an amount totaling approximately $6.2 million.

12. At no time did Western's compliance systems and controls identify the impermissible cross trading, even though the overwhelming majority of trades, which should have been two separate arm's-length sale and repurchase transactions, were in reality effected at identical spreads – thereby suggesting impermissible cross trading.

13. While Western's compliance manual and Forms ADV restricted cross transactions involving RIC client accounts and accounts subject to ERISA, Western left oversight of these sale and repurchase transactions to a trader who did not take sufficient steps to ensure that the cross trades were not executed by prearrangement with interposed dealers. The trader also ignored red flags that suggested impermissible cross trading. Western did not devote sufficient resources to monitoring the sale and repurchase transactions, nor did it adequately supervise the trader to ensure compliance with the cross trading prohibitions. Western also failed to adequately train its trading personnel about prohibitions against interposing a dealer to effectuate cross trades.

14. In October 2009, Western began enhancing its compliance procedures for all sale and repurchase transactions, in anticipation of the expected November launch of the PPIF. Pursuant to its agreement with the United States Treasury, Western adopted policies explicitly forbidding any cross trades involving the PPIF it advised. Western for the first time also provided its trading personnel with compliance training addressing the prohibitions against interpositioning. For example, a training slide shown to its trading personnel reiterated the compliance manual instruction that cross transactions were prohibited absent preapproval, but also warned that "Running a trade through a broker does not eliminate a cross trade unless the broker actually takes risk on the position (does not know that we are interested in repurchasing the bond)," and cautioned that "Code words ('this is a compliance sale') should not be used."

15. These additional efforts proved ineffective in preventing interpositioning. Even after it adopted a more robust trading policy, Western did not employ additional resources to monitor and detect whether the sale and repurchase transactions complied with the cross trading rule, and it did not implement any procedures to detect or deter violative transactions in which its trading personnel interpositioned a broker-dealer. As a consequence, Western's trading personnel continued to effect improper cross trades.

16. In or about May 2011, Western retained a compliance consultant ("Remedial Consultant") to review its compliance policies, procedures and control processes as they relate to cross trading, and recommend remedial steps designed to ensure that Western's compliance control systems are reasonably designed to prevent violations of the federal securities laws pertaining to cross trading and the preferential treatment of some advisory clients. Following its review, the Remedial Consultant made certain recommendations, including that Western enhance its compliance monitoring of trading to identify potential cross trades, and revise its employee training to address the procedures and rules surrounding cross trading. Western has represented to the Commission that it has implemented all of the Remedial Consultant's recommendations.

Violations

17. As a result of the conduct described above, Respondent willfully aided and abetted and caused certain of its advisory account clients to violate Sections 17(a)(1) and 17(a)(2) of the Investment Company Act, which make it unlawful for any affiliated person or promoter of or principal underwriter for a RIC or any affiliated person of such a person, promoter, or principal underwriter, acting as principal (1) knowingly to sell any security or other property to such RIC or to any company controlled by such RIC, or (2) knowingly to purchase from such RIC, or from any company controlled by such RIC, any security or other property, unless the transaction complies with the exemptive requirements of Rule 17a-7 under the Investment Company Act, or the adviser obtains an exemptive order under Section 17(b) of the Investment Company Act.[6] Western did not seek an exemptive order for the cross transactions effected by Western, and the transactions were not exempt from the prohibition by virtue of Rule 17a-7 because the trades were not executed at a price equal to the average of the highest current independent bid to purchase that security and the lowest current independent offer to sell that security, and were made through one or more broker-dealers who received remuneration in connection with the transactions.

18. As a result of the conduct described above, Respondent willfully violated Section 206(2) of the Advisers Act, which prohibits any investment adviser from engaging in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client. Specifically, in its dealer interposed cross transactions, Western favored certain of its clients and failed to seek to obtain best price and execution for certain of its clients in these cross-trades when it allocated the full market savings obtained in the cross transactions to the buying client accounts in the transactions over the sellers.

19. As a result of the conduct described above, Respondent willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, which requires, among other things, that registered investment advisers adopt and implement written policies and procedures reasonably designed to prevent violations, by the investment adviser and its supervised persons, of the Advisers Act and rules. Specifically, Western failed to adopt and implement procedures reasonably designed to ensure compliance with the cross trading prohibitions, and, as a consequence, executed cross transactions in a manner that favored certain of its clients and failed to seek to obtain best execution for certain of its clients.

20. As a result of the conduct described above, Respondent willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-8(a)(2) thereunder, which prohibits any fraudulent, deceptive, or manipulative act, practice, or course of business by an investment adviser to any investor or prospective investor in a pooled investment vehicle. Contrary to Western's

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[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)).

representations to the United States Treasury, which, through the Western-advised PPIF, was an investor in a pooled investment vehicle for the purposes of Rule 206(4)-8, and inconsistently with the PPIF conflicts policy, Western engaged in cross trades involving the PPIF as a repurchasing account.

21. As a result of the conduct described above, Respondent willfully violated Section 207 of the Advisers Act which makes it unlawful for any person willfully to make any untrue statement of a material fact in any registration application or report filed with the Commission, or willfully to omit to state in any such application or report any material fact which is required to be stated therein. Part II of Western's Forms ADV filed with the Commission in 2007, 2008, 2009, and 2010 contained materially false statements regarding Western's cross trading.[7]

22. As a result of the conduct described above, Respondent failed reasonably to supervise a certain trader supervised by Western within the meaning of Section 203(e)(6) of the Advisers Act, with a view to preventing violations of the securities laws. Western failed to adopt and implement procedures reasonably designed to detect or prevent the trader from aiding and abetting violations of Sections 17(a)(1) and 17(a)(2) of the Investment Company Act.

Remedial Efforts

In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent and cooperation afforded the Commission staff.

Undertakings

Respondent has undertaken to:

Compliance Consultant

23. After one year from, but within 18 months of, the date of this Order, Respondent shall hire, at its expense, a compliance consultant ("Compliance Consultant") not unacceptable to the Commission's staff, to conduct a follow-up review to assess whether the Remedial Consultant's recommendations were fully implemented and whether Western's compliance systems and controls are adequate to ensure Western's compliance with the cross trading prohibitions of the Investment Company Act, including its duty to seek to obtain best execution for client transactions and its duty to treat all clients fairly, and shall cause the Compliance Consultant to recommend any additional policies or procedures which, on the basis of its review, the Compliance Consultant believes are necessary to ensure Western's continued compliance ("Recommendations").

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[7] During the relevant period, Rule 204-1(c) under the Advisers Act provided that Part II of Form ADV was considered filed with the Commission if the adviser maintained a copy in its files. The rule was amended in 2010. *See* IA Rel. No. 3060 (August. 12, 2010).

24. Respondent shall require the Compliance Consultant to submit to Western and the Commission staff, within 30 days of the completion of the follow-up review, and in any event no later than six-months after being retained by Western, a follow-up report describing the results of the Compliance Consultant's follow-up review and any Recommendations ("Report").

25. Respondent shall adopt all Recommendations of the Compliance Consultant within 60 days of the Report; provided, however, that within 45 days of the Report, Western shall in writing advise the Compliance Consultant and the staff of the Commission of any Recommendations that it considers to be unnecessary, inappropriate, or unduly burdensome. With respect to any Recommendation that Respondent considers unnecessary, inappropriate, or unduly burdensome, Respondent need not adopt that Recommendation at that time but shall propose in writing an alternative policy, procedure or system designed to achieve the same objective or purpose. As to any Recommendation on which Respondent and the Compliance Consultant do not agree, such parties shall attempt in good faith to reach an agreement within 30 days after Respondent serves the advice described above. In the event that Respondent and the Compliance Consultant are unable to agree on an alternative proposal, Respondent will abide by the determinations of the Compliance Consultant.

26. Within 90 days of Respondent's adoption of all of the Recommendations as determined pursuant to the procedures set forth herein, Respondent shall certify in writing to the Compliance Consultant and the Commission staff that Respondent has adopted and implemented all of the Recommendations. Unless otherwise directed by the Commission staff, all Reports, certifications, and other documents required to be provided to the Commission staff shall be sent to Valerie A. Szczepanik, Assistant Director, Asset Management Unit, New York Regional Office, Securities and Exchange Commission, 200 Vesey Street, Suite 400, New York, New York, 10281, or such other address as the Commission staff may provide.

27. Respondent shall cooperate fully with the Compliance Consultant and shall provide the Compliance Consultant with access to such of its files, books, records, and personnel as are reasonably requested by the Compliance Consultant for review.

Payment to Clients and Respondent-Administrated Distribution

28. Respondent undertakes to distribute, within 90 days of the date of this Order, a sum-total payment in the amount of $7,440,881 (the "Distribution Fund") in satisfaction of this proceeding and a related Department of Labor proceeding, to compensate its clients governed by ERISA and the Investment Company Act that were harmed when Western caused the sale of securities in the improper cross transactions that are the subject of this Order. The Distribution Fund represents the total amount by which these clients would have benefited had Western crossed the bonds at an independent market price, plus reasonable interest thereon.

29. Respondent shall be responsible for administering the distribution of the Distribution Fund. Respondent:

a. within 60 days of the entry of this Order will submit to the Commission staff a plan of allocation that identifies (1) each client that will receive a portion of the Distribution Fund ("Eligible Client"); (2) the exact amount of that payment as to each Eligible Client; and (3) the methodology used to determine the exact amount of that payment as to each Eligible Client; and

b. within 90 days of the entry of this Order will complete transmission of the Distribution Fund to all Eligible Clients.

30. Respondent agrees to be responsible for all tax compliance responsibilities associated with distribution of the Distribution Fund and that any costs or expenses related to the Distribution Fund, including taxes if any, shall be borne by Respondent.

31. Within 120 days after the date of the entry of the Order, Respondent shall submit to the Commission staff a final accounting and certification of the disposition of the Distribution Fund not unacceptable to the staff, which shall be in a format to be provided by the Commission staff. The final accounting and certification shall include: (i) the amount paid to each payee; (ii) the date of each payment; (iii) the check number or other identifier of money transferred; (iv) the date and amount of any returned payment; (v) a description of any effort to locate a prospective payee whose payment was returned; and (vi) an affirmation that the amount paid to the clients represents a fair calculation of the Distribution Fund. Respondent shall submit proof and supporting documentation of such payments in a form acceptable to Commission staff. Any and all supporting documentation for the accounting and certification shall be provided to the Commission staff upon request.

32. The Commission staff may extend any of the procedural dates for good cause shown. Deadlines for dates shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday the next business day shall be considered to be the last day.

33. Respondent shall certify, in writing, compliance with the undertakings set forth above. The certification shall identify the undertakings, 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 agrees to provide such evidence. The certification and supporting material shall be submitted to Valerie A. Szczepanik, Assistant Director, Asset Management Unit, New York Regional Office, Securities and Exchange Commission, 200 Vesey Street, Suite 400, New York, New York, 10281, no later than sixty (60) days from the date of the completion of the undertakings.

IV.

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

Accordingly, pursuant to Sections 203(e) and 203(k) of the Advisers Act, and Sections 9(b) and 9(f) of the Investment Company Act, it is hereby ORDERED that:

A. Respondent Western cease and desist from committing or causing any violations and any future violations of Sections 206(2), 206(4) and 207 of the Advisers Act and Rules 206(4)-7 and 206(4)-8 promulgated thereunder, and Sections 17(a)(1) and 17(a)(2) of the Investment Company Act.

B. Respondent Western is censured.

C. Respondent shall, within thirty (30) days of the entry of this Order, pay a civil money penalty in the amount of $1,000,000 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 Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Western 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 Valerie A. Szczepanik, Assistant Director, Asset Management Unit, New York Regional Office, Securities and Exchange Commission, 200 Vesey Street, Suite 400, New York, New York, 10281 or such other address as the Commission staff may provide.

D. Respondent shall comply with the undertakings enumerated in Paragraph 23-27 above.

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Commissioner Aguilar
not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 3763 / January 27, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15689

In the Matter of

WESTERN ASSET MANAGEMENT COMPANY,

Respondent.

ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTIONS 203(e) 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) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act"), against Western Asset Management Company ("Respondent" or "WAM").

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 203(e) and 203(k) of the Investment Advisers Act of 1940 and 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:

[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.

Summary

These proceedings arise out of an investment adviser's failure to disclose its violation of an issuer-imposed restriction prohibiting plans subject to Part 4 of Subtitle B of Title 1 of the Employee Retirement Income Security Act ("ERISA plans") from participating in a private placement. Respondent was aware no later than October 2008 that it had breached this offering restriction by allocating the security to ERISA accounts that it managed, yet failed to take prompt corrective action, contrary to its disclosed error correction policy. Specifically, Respondent did not notify most of its affected ERISA clients until August 2010, more than a year after Respondent had liquidated the securities out of all client accounts.

Respondent

1. Respondent Western Asset Management Company ("WAM"), a California corporation located in Pasadena, California, is an investment adviser registered with the Commission pursuant to Section 203(e) of the Advisers Act. WAM is a wholly-owned subsidiary of Legg Mason, Inc. As of September 30, 2013, WAM reported $442.7 billion in assets under management. WAM provides investment management services primarily to institutional clients such as pension plans and mutual funds. Many of WAM's clients are ERISA plans.

Background

2. WAM's compliance policies, including its error correction policy, were set forth in WAM's Form ADV and its compliance manual. A copy of the current Form ADV was sent to each client when its account was opened.

3. During the relevant period, WAM's policies and procedures required it to notify its clients of any breach or error resulting in a loss. Specifically, WAM disclosed the following Error Correction Policy in its Form ADV from 2007 through 2009:

> Western Asset's general policy, except where contractual arrangement or regulatory requirements provide otherwise, is (i) to make a client account whole for any net loss associated with a breach or an error (ii) to retain in a client's account, a net gain resulting from an error.
>
> ...
>
> Western categorizes breaches and errors as follows:
>
> 1. Breaches of investment guidelines and/or investment restrictions resulting from any transaction or other factor whereby a transaction and/or portfolio is not consistent with:
>   a. Regulatory requirements/restrictions (examples include, but are not limited to, legally improper or prohibited transactions with affiliates; legally improper or prohibited cash/currency transactions).
>   b. Client mandates (includes prospectus for a fund).
> 2. Operational Errors

a. Trading errors include, but are not limited to, execution of incorrect security transaction (other than as described above for breaches of guidelines, restrictions or regulations)

b. Settlement errors.

...

If breach or error occurs in a client portfolio, it is Western Asset's policy that the error will be corrected immediately or, in the case of guideline breaches, the client will be immediately be [sic] contacted to obtain a waiver. If a waiver is declined, the error will be promptly corrected. If the breach, after correction, results in a gain to the client, that gain is retained in the client portfolio. If the client suffers a loss as a result of the breach, Western Asset will reimburse the account.

4. WAM relied heavily on an automated compliance system from Charles River Development ("Charles River") to comply with client investment guidelines. Once the investment guidelines for a particular client were entered into Charles River, WAM could monitor pre- and post-trade compliance with client investment guidelines through the system.

5. As the portfolio managers selected a security for the clients, and before a trade was allocated to accounts, the compliance staff determined whether that security comported with client investment guidelines by running the proposed account allocations through Charles River. If a client had a restriction prohibiting the proposed trade, the system generated an alert and WAM's pre-trade compliance staff advised the trading desk that the trade had been rejected. In addition, each morning, compliance officers reviewed exception reports for their assigned accounts to identify any guideline issues triggered by the prior day's trading activity.

6. If the proposed investment was a new issue, WAM's compliance staff populated certain attributes of the security (features such as coupon rate, maturity, call date, registration status and ERISA eligibility) before the proposed trades were processed through Charles River for pre-trade review. WAM's compliance personnel used information obtained from outside providers like Bloomberg and its own trading desk to populate the data fields for a new security into Charles River. Compliance staff did not independently review any offering documents.

<u>WAM's Coding Error</u>

7. On January 31, 2007, WAM purchased $50 million of the initial offering of Glen Meadow, a $500 million private placement that was designed to provide subordinated debt financing to the Hartford Insurance Group ("Hartford"). Glen Meadow was designated by market data providers as a corporate security. WAM received the preliminary offering memorandum which stated on the first page that the securities may be offered or sold only to an "eligible purchaser," defined to exclude employee benefit plans subject to ERISA. The preliminary offering memorandum also required any participant in the offering to warrant that it was an eligible purchaser and agree to transfer the security only to other eligible purchasers, noting: "Any purported purchase or transfer of the Pass-Through Trust Securities in violation of this requirement will be void and without legal effect whatsoever. The purchaser understands and acknowledges that the Pass-Through Trust may also require the sale of its Pass-Through Trust

Securities held by persons that fail to provide such certifications or otherwise comply with the [eligible purchaser requirement]."

8. Glen Meadow was initially coded in WAM's automated compliance system as an asset-backed security that was non-ERISA eligible. On February 1, 2007, a portfolio compliance officer, following up on an exception report from an overnight compliance run, directed WAM's back office staff to change the security type from "asset-backed security" to "corporate debt." Charles River, however, had been configured so that slightly different fields appeared on screen depending on whether the security was designated asset-backed or corporate debt. Changing the designation of Glen Meadow from asset-backed to corporate debt resulted in Charles River automatically populating this field as ERISA eligible without any user input.

9. Although the trader on WAM's corporate desk who was responsible for Glen Meadow was copied on the email message directing WAM's back office staff to change the security designation thereby updating ERISA field, he did not raise any concerns about ERISA. Portfolio compliance staff told WAM's back office staff to ignore alerts triggered by the Glen Meadow security, assuring them that according to the trader on WAM's corporate desk, this was "a corporate note and is ERISA eligible." Neither the portfolio compliance staff nor the trader recognized, and accordingly neither advised the back office, that the security was not eligible for ERISA accounts.

10. In the following months, WAM continued purchasing the Glen Meadow security for the accounts of its clients, ultimately purchasing $204 million of Glen Meadow for 233 client accounts, including more than $90 million par value for 99 ERISA client accounts.

<u>WAM's Discovery and Failure to Disclose the Coding Error</u>

11. On October 7, 2008, WAM received an email message from a former institutional client (the "Former Client") notifying WAM that the Glen Meadow security WAM had purchased for the Former Client's master pension trust account was not ERISA eligible. By the time WAM received this notice, eight of the original 99 ERISA accounts that had purchased the Glen Meadow security were closed, transferred, or had exited the position.

12. Initially, upon learning of the coding error, WAM compliance staff changed the ERISA field in Charles River from ERISA eligible to ERISA ineligible. Re-coding the security in Charles River allowed compliance staff to run "fallout" reports to determine the impact of the error. The first fallout report completed on October 8, 2008 indicated that 94 accounts were impacted and many of these accounts were coded "[n]o non-ERISA [securities]."

13. Even though WAM had promptly identified the affected accounts, it did not immediately correct the error or notify clients. WAM's compliance staff instead completed an internal portfolio breach compliance report to document the issue reported by the Former Client. According to this report, the issue arose because "[t]he security was improperly coded as ERISA eligible when it was in fact a non-ERISA eligible security." The report also indicated that the price at purchase was "100," or par. The report further noted that when the Former Client transferred its account to a new adviser on October 1, 2008, Glen Meadow was trading at a price of $73.78, resulting in an unrealized loss of $226,872.95.

14. WAM then launched a three-month investigation into the matter. Although WAM acknowledged that an internal coding issue had caused it to breach an issuer-imposed offering restriction, WAM's compliance staff first determined that there was no "error" within the meaning of WAM's error correction policy, which specifically referenced regulatory, trading and settlement errors. WAM focused its investigation on whether there had been a violation of ERISA and whether any client guidelines had been breached. WAM staff conducted key word searches of client guidelines to determine whether any of the affected ERISA clients had guidelines forbidding investment in ERISA ineligible securities. The key word searches failed to uncover the applicable guidelines for two accounts belonging to one client. WAM compliance staff also failed to discover a guideline breach unrelated to ERISA in the account of a second client. As a result, they incorrectly concluded that the allocation of the Glen Meadow security to ERISA accounts did not violate the investment guidelines applicable to these three accounts. WAM also confirmed that the issuer-imposed restriction against participation in the offering by ERISA plans was still in place. In addition, WAM consulted with outside counsel on legal aspects of the issue.

15. In December 2008, WAM's committee which oversaw the resolution of possible investment compliance issues met and received a summary of the Glen Meadow matter from inside counsel. The committee concluded, based on the factual investigation and legal analysis of inside and outside counsel presented at that meeting, that there had been no guideline breaches and no "prohibited transaction" under ERISA, 29 U.S.C. 1106 (generally forbidding transactions between an ERISA plan, on the one hand, and a plan fiduciary or a party in interest, on the other), at the time of purchase, but that WAM might have potential exposure to the issuer for breaching the terms of the offering. In light of this information, the Committee did not discuss whether WAM had any obligations to notify clients of the allocation error under its Error Correction Policy.

16. Although WAM concluded there had been no guideline breaches or ERISA prohibited transaction affecting its clients, it realized that its ERISA clients might still be concerned. As a result, WAM explored selling the Glen Meadow position out of all ERISA accounts in February and March 2009. This effort met with little success. In an email dated March 6, 2009, a WAM trader advised his colleagues that although "we're still trying to find bids, the entire space is taking a hit and the liquidity for [Glen Meadow] is not particular [sic] well." During this time, the price of the Glen Meadow security continued to deteriorate. By March 10, 2009, real-time broker quotes for the Glen Meadow security had fallen to $22. These liquidity and pricing problems caused WAM to abandon its attempts to sell the security out of all ERISA accounts.

17. Because WAM concluded that no breach or error occurred, WAM did not notify its affected ERISA clients that it had allocated the Glen Meadow security to their accounts in violation of an issuer-imposed offering restriction. Nor did WAM offer to make its affected ERISA clients whole for losses attributable to the Glen Meadow security. By interpreting its error correction policy narrowly, WAM effectively exempted issues relating to the allocation of Glen Meadow to ERISA accounts from its own compliance controls.

18. In May 2009, Hartford announced it had received preliminary approval for Troubled Asset Relief Program funds, and liquidity and pricing for Glen Meadow improved.

Accordingly, WAM sold all holdings in the Glen Meadow security from ERISA and non-ERISA client accounts between May and June 2009 pursuant to a decision of the investment desk. Although WAM was able to sell Glen Meadow, the sales were at prices materially lower than the purchase prices for Glen Meadow for all of WAM's ERISA and non-ERISA clients.

19. Before executing these sales, WAM did not inform its ERISA clients that the Glen Meadow security had been allocated to their accounts due to its coding error. Nor did WAM advise its clients of its error immediately after selling the Glen Meadow security out of their accounts.

20. WAM did not notify its ERISA clients that it had erroneously purchased the Glen Meadow security for their accounts until August 2010, by which time WAM was aware of the SEC investigation.

WAM's Violations of Section 206(2) of the Advisers Act

21. As a result of the conduct described above, WAM willfully[2] violated Section 206(2) of the Advisers Act. This section prohibits any investment adviser from engaging in any transaction, practice or course of business which operates as a fraud or deceit upon any client or prospective client. Pursuant to Section 206(2), investment advisers have a fiduciary duty that requires them to act in the best interests of their clients and to make full and fair disclosure of all material facts.

22. Although WAM's senior management was aware of the misallocation of Glen Meadow to ERISA accounts no later than December 2008, WAM did not promptly disclose it to affected ERISA clients. Instead, WAM sold the security at prices well below par in May and June 2009, resulting in substantial losses to client portfolios. More importantly, WAM did not notify its ERISA clients that Glen Meadow had been allocated to their accounts in error until more than a year after it had sold the position across all accounts. By negligently buying Glen Meadow for certain of its ERISA clients, delaying disclosure of its error and failing to promptly reimburse its clients, WAM engaged in a transaction, practice or course of business which operated as a fraud or deceit upon its clients.

WAM's Violations of Section 206(4) of the Advisers Act and Rule 206(4)-7 Thereunder

23. As a result of the conduct described above, WAM also willfully violated Advisers Act Section 206(4) and Rule 206(4)-7 thereunder. Rule 206(4)-7 requires investment advisers to "[a]dopt and implement written policies and procedures reasonably designed to prevent violation" of the Advisers Act and its rules. The Commission has stated that an adviser's failure

[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)).

"to have adequate compliance policies and procedures in place will constitute a violation of our rules independent of any other securities law violation." Compliance Programs of Investment Companies and Investment Advisers, Advisers Act Rel. No. 2204, 68 F.R. 74714, 74715 (Dec. 24, 2003) ("Compliance Release"). The Compliance Release further provides that "[t]he policies and procedures should be designed to prevent violations from occurring, detect violations that have occurred, and correct promptly any violations that have occurred." 68 F.R. at 74716. The Compliance Release also states that "[e]ach adviser, in designing its policies and procedures, should first identify conflicts and other compliance factors creating risk exposure for the firm and its clients in light of the firm's particular operations, and then design policies and procedures that address those risks." 68 F.R. at 74716.

24. WAM's compliance policies and procedures required it to notify its clients of any breaches or errors resulting in a loss and to make clients whole for such losses. WAM's error correction policy applied to allocation and coding errors. In implementing this policy, however, WAM determined that the allocation of Glen Meadow to ERISA accounts did not trigger the notification or reimbursement provisions of WAM's error correction policy. By applying a narrow definition of the term "error" under its error correction policy, WAM was able to conclude that a coding and allocation issue affecting 99 ERISA client accounts did not require disclosure. As a result, WAM did not notify its ERISA clients that it had improperly allocated Glen Meadow to their accounts for nearly two years. WAM therefore violated Rule 206(4)-7 by failing to implement policies and procedures reasonably designed to ensure that errors and breaches are promptly corrected and disclosed to affected clients.

Respondent's Remedial Efforts

In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent and cooperation afforded the Commission staff.

Undertakings

Respondent has undertaken as follows:

25. Distribution to Clients.

a. Respondent has assessed how the Glen Meadow coding error affected ERISA clients. Using a methodology not unacceptable to the Commission staff, Respondent determined that 89 of Respondent's ERISA clients[3] were impacted by their holdings of the Glen Meadow securities based on a methodology comparing the performance of Glen Meadow and

[3] While 99 accounts were impacted by WAM's allocation error, WAM has reimbursed one client for Glen Meadow-related losses for guideline breaches in two of that client's accounts, and eight other accounts were closed, transferred, or did not hold the Glen Meadow security on the date WAM received notice of its allocation error. The Respondent's methodology for calculating client impact takes into account the prior reimbursement, and the Distribution does not include the eight accounts that were closed, transferred, or did not hold the Glen Meadow security on the date WAM received notice.

the performance other corporate financial bonds held by such ERISA client accounts during the relevant period.

b. Respondent has undertaken to make, within 60 days of the date of entry of this Order, a payment to the affected ERISA clients in the amount of $9,620,392 (the "Distribution"). This payment represents an approximation of the amount by which such clients were impacted as a result of the conduct set forth in this Order, plus reasonable interest.

c. Respondent shall be responsible for administering the payment of the Distribution to the 89 affected ERISA clients. Respondent shall:

i. deposit the amount of the Distribution into a segregated account such as a separate bank account (the "Distribution Account") within 30 days of the date of entry of the Order and provide the Commission staff with evidence of such deposit in a form acceptable to the Commission staff;

ii. submit to the Commission staff, within 30 days after the date of entry of the Order, a distribution plan ("Distribution Plan") that identifies (1) each ERISA client that will receive a portion of the Distribution, (2) the exact amount of that payment as to each client, and (3) the methodology used to determine the exact amount of that payment as to each client; and

iii. complete payment of the Distribution to the accounts of all affected ERISA clients pursuant to the Distribution Plan within 60 days after the date of entry of the Order.[4]

d. Respondent agrees to be responsible for all of Respondent's tax compliance responsibilities associated with the Distribution and shall retain any professional services necessary. The costs and expenses of any such professional services shall be borne by Respondent and the payment of taxes applicable to the Distribution Account, if any, shall not be paid out of Distribution funds.

e. Within 90 days after the date of entry of the Order, Respondent shall submit to the Commission staff for its approval a final accounting, in a form acceptable to the Commission, and certification of the disposition of the Distribution. The final accounting and certification shall include but not be limited to: (1) the amount paid to each payee, (2) the date of each payment, (3) the check number or other identifier of money transferred or proof of payment made, (4) the date and amount of any returned payment, (5) a description of any effort to locate a prospective payee whose payment was returned, or to whom payment was not made due to factors beyond Respondent's control, and (6) an affirmation that the amount of the Distribution represents a fair and accurate calculation of the approximate impact to ERISA accounts on their holdings of the Glen Meadow security, based on a methodology comparing the performance of

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[4] WAM has negotiated separate settlements of the Glen Meadow transactions with both the Commission and the Secretary of the United States Department of Labor. The Distribution reflects amounts to be paid in settlement of both agencies' respective actions.

Glen Meadow and the performance other corporate financial bonds held by such ERISA client accounts during the relevant period, plus reasonable interest. Any and all supporting documentation for the accounting and certification shall be provided to the Commission staff upon request. Respondent shall cooperate with reasonable requests for information in connection with the accounting and certification.

f. After Respondents have submitted the final accounting to the Commission staff, the staff shall submit the final accounting to the Commission for approval.

g. Commission staff may extend any of the procedural dates set forth in this paragraph 25 for good cause shown. Deadlines for dates relating to the Distribution shall be counted in calendar days except that if the last day falls on a weekend or federal holiday the next business day shall be considered to be the last day.

26. Independent Compliance Consultant.

a. Respondent shall retain, within 30 days of the date of entry of this Order, the services of an Independent Compliance Consultant not unacceptable to the Commission staff. The Independent Compliance Consultant's compensation and expenses shall be borne exclusively by Respondent. Respondent shall require the Independent Compliance Consultant to conduct a comprehensive review of Respondent's supervisory, compliance, and other policies and procedures designed to resolve allocation and coding errors by Respondent and its employees, including whether such policies and procedures are sufficiently detailed to constrain Respondent's discretion to determine whether such errors are subject to Respondent's Error Correction Policy. As part of its comprehensive review, the Independent Compliance Consultant will evaluate whether Respondent's Error Correction Policy adequately discloses Respondent's practices with respect to the treatment of such errors.

b. Respondent shall provide to the Commission staff, within thirty (30) days of retaining the Independent Compliance Consultant, a copy of an engagement letter detailing the Independent Consultant's responsibility, which shall include the reviews described in paragraph 26.a above.

c. Respondent shall require that, at the conclusion of the review, which Respondent shall request that the Independent Compliance Consultant complete in no more than 180 days after the date of entry of this Order, the Independent Compliance Consultant shall submit a Report to Respondent and the staff of the Commission. The Report shall address the issues described in paragraph 26.a above, and shall include a description of the review performed, the conclusions reached, the Independent Compliance Consultant's recommendations for changes in or improvements to policies and procedures for Respondent, and a procedure for implementing the recommended changes in or improvements to those policies and procedures.

d. Respondent shall adopt all recommendations contained in the Report of the Independent Compliance Consultant; provided, however, that, within 210 days after the date of entry of this Order, or within 30 days after delivery to WAM of the Report (whichever date is later) Respondent shall, in writing, advise the Independent Compliance Consultant and the staff of the Commission of any recommendations that it considers to be unnecessary, unduly burdensome, impractical, or inappropriate. With respect to any such recommendation, Respondent need not adopt that recommendation at that time but shall propose, in writing, an alternative policy, procedure or system designed to achieve the same objective or purpose.

e. As to any recommendation with respect to Respondent's policies and procedures on which Respondent and the Independent Compliance Consultant do not agree, such parties shall attempt in good faith to reach an agreement within 240 days of the date of entry of this Order, or within 60 days after delivery to WAM of the Report (whichever date is later). In the event Respondent and the Independent Compliance Consultant are unable to agree on an alternative proposal, Respondent shall abide by the determinations of the Independent Compliance Consultant.

f. Respondent shall cooperate fully with the Independent Compliance Consultant and shall provide the Independent Compliance Consultant with access to files, books, records, and personnel as reasonably requested for the review.

g. To ensure the independence of the Independent Compliance Consultant, Respondent shall not terminate the Independent Compliance Consultant or substitute another independent compliance consultant for the initial Independent Compliance Consultant without the prior written approval of the staff of the Commission. Respondent shall compensate the Independent Compliance Consultant for services rendered pursuant to this Order at its reasonable and customary rates. Neither Respondent nor any of its affiliates shall be in or have an attorney-client relationship with the Independent Compliance Consultant and neither Respondent nor its affiliates shall seek to invoke the attorney-client or any other doctrine or privilege to prevent the Independent Compliance Consultant from transmitting any information, reports, or documents to the staff of the Commission.

h. Except to the extent that the Independent Compliance Consultant is the same entity chosen for the Western Asset Management Company matter, AP File No. 3-15689, being settled with the SEC at the same time, Respondent shall require that the Independent Compliance Consultant, for the period of the engagement and for a period of two years from completion of the engagement, shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent or any of its present affiliates, directors, officers, employees, or agents acting in their capacity as such. Respondent shall require that any firm with which the Independent Compliance Consultant is affiliated in the performance of his, her or its duties under this Order shall not, without prior written consent of the staff of the Commission, enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.

27. Certification. Respondent shall certify, in writing, compliance with the undertakings set forth above. The certification shall identify the undertakings, 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 agrees to provide such evidence. The certification and supporting material shall be submitted to Lorraine B. Echavarria, Associate Director, Division of

Enforcement, Securities and Exchange Commission, Los Angeles Regional Office, 5670 Wilshire Blvd., 11th Floor, Los Angeles, CA 90036, with a copy to the Office of Chief Counsel of the Enforcement Division, no later than sixty (60) days from the date of the completion of the undertakings.

28. Recordkeeping. Respondent shall preserve for a period not less than six years from the end of the fiscal year last used, the first two years in an easily accessible place, any record of their compliance with the undertakings set forth above.

29. Deadlines. The staff of the Commission may extend any of the procedural dates set forth above for good cause shown.

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, pursuant to Sections 203(e) and 203(k) of the Advisers Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-7 promulgated thereunder.

B. Respondent is censured.

C. Respondent shall pay disgorgement of $8,111,582 and prejudgment interest of $1,508,810, which shall be deemed satisfied on compliance with the distribution undertaking described in paragraph 25.

D. Respondent shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of $1 million 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 Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Western Asset Management Company 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 Lorraine B. Echavarria, Associate Director, Division of Enforcement, Securities and Exchange Commission, Los Angeles Regional Office, 5670 Wilshire Blvd., 11th Floor, Los Angeles, CA 90036.

E. The Division of Enforcement ("Division") may, at any time following the entry of this Order, petition the Commission to: (1) reopen this matter to consider whether Respondent provided accurate and complete financial information at the time such representations were made; and (2) seek an order directing payment of disgorgement and pre-judgment interest. 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. Respondent may not, by way of defense to any such petition: (1) contest the findings in this Order; (2) assert that payment of disgorgement and interest should not be ordered; (3) contest the amount of disgorgement and interest to be ordered; or (4) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

F. Respondent shall comply with the undertakings enumerated in paragraphs 25-28 above.

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. 71398 / January 27, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15690

In the Matter of Kevin Patrick Brody, Respondent.	ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 15(b) OF THE SECURITIES EXCHANGE ACT OF 1934, AND NOTICE OF HEARING

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 Kevin Patrick Brody ("Respondent" or "Brody").

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

1. From November 2000 to September 2004, Brody was a registered representative associated with Joseph Stevens & Co., Inc., which at the time of his association was a broker-dealer registered with the Commission. Joseph Stevens & Co., Inc. ceased to be registered with the Commission as of August 2008. Brody, age 45, is a resident of Florida.

B. RESPONDENT'S CRIMINAL CONVICTION

2. On May 9, 2012, before the New York Supreme Court in People v. Kevin Brody, Indictment No. 3556-2006, Brody pleaded guilty to one felony count of securities fraud in violation of New York General Business Law § 352-c(5) and one felony count of grand larceny in the second degree in violation of New York Penal Law § 155.40. On June 28, 2012, Brody was

sentenced in that proceeding to five years of probation and ordered to pay $102,123 in restitution to his victims.

3. The count of securities fraud to which Brody pleaded guilty alleged, among other things, that between at least November 2000 and April 2004, Brody intentionally engaged in a scheme at Joseph Stevens & Co., Inc. with the intent to defraud at least ten persons by false and fraudulent pretenses, representations, and promises and so obtained property from at least one such person while engaged in inducing and promoting the issuance, distribution, exchange, sale, negotiation, and purchase of securities. The count of grand larceny to which Brody pleaded guilty alleged, among other things, that between November 2000 and April 2004, Brody stole money in excess of $50,000 from an individual.

III.

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

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

B. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 15(b)(6) of the Exchange Act.

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

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

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

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

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 210 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

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. 71399 / January 27, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15691

In the Matter of **JAMES A. RATHGEBER,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 15(b) OF THE SECURITIES EXCHANGE ACT OF 1934, AND NOTICE OF HEARING**

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 A. Rathgeber ("Respondent" or "Rathgeber").

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

1. From March 1994 to April 2008, Rathgeber was a registered representative associated with Joseph Stevens & Co., Inc., which at the time of his association was a broker-dealer registered with the Commission. Joseph Stevens & Co., Inc. ceased to be registered with the Commission as of August 2008. Rathgeber, age 50, is a resident of New York.

B. RESPONDENT'S CRIMINAL CONVICTION

2. On August 1, 2011, before the New York Supreme Court in People v. James Rathgeber, Case No. 02394-2009, Rathgeber pleaded guilty to six felony counts, including three counts of securities fraud in violation of General Business Law § 352-c(5), one count of grand larceny in the third degree in violation of New York Penal Law § 155.35, and two counts of grand larceny in the second degree in violation of New York Penal Law § 155.40(1). On December 2,

2011, Rathgeber was sentenced to five years of probation and ordered to pay $279,056.05 in restitution.

3. The counts of securities fraud to which Rathgeber pleaded guilty alleged, among other things, that between January 2001 and December 2005, Rathgeber intentionally engaged in a scheme at Joseph Stevens & Co., Inc. with the intent to defraud at least ten persons by false and fraudulent pretenses, representations, and promises and so obtained property from at least one such person while engaged in inducing and promoting the issuance, distribution, exchange, sale, negotiation, and purchase of securities. The counts of grand larceny to which Rathgeber pleaded guilty alleged, among other things, that between March 2003 and November 2005, Rathgeber stole money in excess of $100,000 from a number of individuals.

III.

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

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

B. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 15(b)(6) of the Exchange Act.

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

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

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

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

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 210 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

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

[illegible]HANGE ACT OF 1934
[illegible] January 28, 2014

SEC[illegible]IVE PROCEEDING
Re[illegible]

[illegible]r of Bancshares, Inc., [illegible]ndent.	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 Covenant Bancshares, Inc. ("Covenant Bancshares" 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, which are admitted, 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 that:

50 of 71

1. Covenant Bancshares (CIK No. 1488591) is a dissolved Illinois corporation located in Forest Park, Illinois. At all times relevant to this proceeding, the securities of Covenant Bancshares have been registered under Exchange Act Section 12(g).

2. Covenant Bancshares has failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder because it has not filed any periodic reports since it filed a Form 10-K for the period ended December 31, 2011.

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 or 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.

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

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 71412 / January 28, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15693

In the Matter of Colorado 2001C Limited Partnership (f/k/a PDC 2001-C Limited Partnership), 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 Colorado 2001C Limited Partnership (f/k/a PDC 2001-C Limited Partnership) ("Colorado 2001C" 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, which are admitted, 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 that:

1. Colorado 2001C (CIK No. 1156220) is a West Virginia limited partnership located in Denver, Colorado. At all times relevant to this proceeding, the securities of Colorado 2001C have been registered under Exchange Act Section 12(g). On September 16, 2013, Colorado 2001C filed a Chapter 11 petition in the U.S. Bankruptcy Court for the Northern District of Texas.

2. Colorado 2001C has failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder because it has not filed any periodic reports since it filed a Form 10-Q for the period ended March 31, 2005.

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 or 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.

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

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 71413 / January 28, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15694

In the Matter of Colorado 2001D Limited Partnership (f/k/a PDC 2001-D Limited Partnership), 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 Colorado 2001D Limited Partnership (f/k/a PDC 2001-D Limited Partnership) ("Colorado 2001D" 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, which are admitted, 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 that:

1. Colorado 2001D (CIK No. 1156216) is a West Virginia limited partnership located in Denver, Colorado. At all times relevant to this proceeding, the securities of Colorado 2001D have been registered under Exchange Act Section 12(g). On September 16, 2013, Colorado 2001D filed a Chapter 11 petition in the U.S. Bankruptcy Court for the Northern District of Texas.

2. Colorado 2001D has failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder because it has not filed any periodic reports since it filed a Form 10-Q for the period ended March 31, 2005.

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 or 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.

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

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 71414 / January 28, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15695

In the Matter of MICHAEL R. ENEA, 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 Michael R. Enea ("Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement ("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. Michael R. Enea, age 58, is a resident of Menomonee Falls, Wisconsin. From July 2006 through May 2013, Enea solicited investors to purchase securities offered by him and Credit Card Equipment Plus, Inc. At the time of these securities sales, Enea was not registered

as a broker or dealer with the Commission and was not associated with a registered broker or dealer in any capacity.

2. On November 27, 2013, a judgment was entered by consent against Enea, 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. Michael R. Enea*, Civil Action Number 13:2-cv-1151, in the United States District Court for the Eastern District of Wisconsin.

3. The Commission's complaint alleged that, from July 2006 through May 2013, Enea operated a Ponzi scheme through the fraudulent and unregistered offer and sale of securities to 18 investors totaling approximately $2.1 million. Enea represented to the investors that he would combine his funds with funds contributed by each investor and use the money to invest in a "credit card portfolio." Credit card portfolios, according to Enea, consisted of a group of retail merchants who pay fees to a third party credit card processor each time one of the merchants' customers makes a credit card transaction. Enea told investors that by investing in credit card portfolio from a credit card processor, he and the investor would receive monthly or quarterly payments. The payments to investors were purportedly generated by the payment of the transaction fees by the merchants to the credit card processors. In reality, Enea never purchased any credit card portfolios and instead used approximately $1.35 million of the investors' funds to make the monthly or quarterly payments to prior investors. Enea used the remaining approximately $760,000 he raised from investors to pay his personal and business expenses. Enea never told investors that he used their funds to make payments to previous investors or to pay his personal and business expenses. The complaint also alleged that Enea 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 Respondent Enea's Offer.

Accordingly, it is hereby ORDERED pursuant to Section 15(b)(6) of the Exchange Act that Respondent Enea 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 Gallagher
not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 71426 / January 28, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-11726

In the Matter of Fremont Investment Advisors, Inc., Respondent.	ORDER DISCHARGING FUND ADMINISTRATOR, TRANSFER OF RESIDUAL AND TERMINATING FAIR FUND

On November 4, 2004, the U.S. Securities and Exchange Commission ("Commission") issued an Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 and Sections 9(b) and 9(f) of the Investment Company Act of 1940, Making Findings, and Imposing Remedial Sanctions and Issuing a Cease-and-Desist Order ("Order") against Fremont Investment Advisors, Inc. (Advisers Act Rel. No. 2317 (Nov. 4, 2004)). In the Order, the Commission authorized the establishment of a Fair Fund, comprised of $4,146,000 in disgorgement, interest, and penalties paid by Respondent, for distribution to eligible investors to compensate them for losses resulting from market timing and late trading. The Order provided that the Fair Fund was to be distributed pursuant to a distribution plan (the "Plan") developed by an Independent Distribution Consultant.

On June 25, 2010, the Commission issued an Order Approving Plan, Appointing a Fund Administrator, and Waiving Bond (Exchange Act Rel. No. 62381 (June 25, 2010)). The Plan provided for the distribution of the Fair Fund to injured investors according to the methodology set forth in the Plan. The Commission subsequently issued two orders directing disbursement ("Disbursement Order"). The first Disbursement Order was issued on October 28, 2010, authorizing the disbursement of $4,663,245.18 (Exchange Act Rel. No. 63203 (Oct. 28, 2010)). The second Disbursement Order was issued on July 20, 2012, authorizing the disbursement of $688,000 to the Fremont mutual funds harmed by market timing and late trading (Exchange Act Rel. No. 67483 (June 25, 2010)).

Ultimately, the Fair Fund distributed 47,952 payments to injured investors and two payments to the funds for a total distribution of $4,664,013.34. The final payments were issued on or about October 1, 2012, and the distribution has been completed.

The Plan Administrator submitted a Final Accounting of the Fair 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. According to the Final Accounting, all liabilities have been satisfied and an amount of $4,699.71 remains in the Fair Fund.

Accordingly, IT IS ORDERED that:

1. The $4,699.71 remaining balance in the Fair Fund and any future funds returned to the Fair Fund shall be transferred to the U.S. Treasury;
2. The Fair Fund is terminated; and
3. The Fund Administrator, Rust Consulting, is discharged.

By the Commission.

Elizabeth M. Murphy
Secretary

By: Lynn M. Powalski
Deputy Secretary

Chair White
Commissioner Aguilar
not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 71428 / January 28, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15697

In the Matter of **THOMAS C. CONRADT, ESQ.,** **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 Thomas C. Conradt ("Respondent" or "Conradt") 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 . . . who has been by name (A) [p]ermanently 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; or (B) [f]ound by any court of competent jurisdiction in an action brought by the Commission 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.

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 admitting the Commission's jurisdiction over him and the subject matter of these proceedings, and the findings contained in Section III.2. below, 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. Conradt, age 35, resides in Denver, Colorado. Conradt is licensed to practice law in Maryland. From September 2008 through October 2009, Conradt was a registered representative associated with a broker-dealer and an investment adviser registered with the Commission. He passed his series 7 exam in February 2009.

2. On December 26, 2013, a judgment was entered by consent against Conradt, permanently enjoining him from future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, in the civil action entitled SEC v. Conradt, Civil Action No. 12 – 8676-JSR, in the United States District Court for the Southern District of New York. .

3. The Commission's complaint alleged, among other things, that Conradt's roommate misappropriated material nonpublic information about International Business Machines Corporation's 2009 acquisition of SPSS Inc., illegally traded, and tipped that information to Conradt. The Commission further alleged that Conradt used that information to illegally trade and tipped the information to others who traded, and that the illegal trading resulted in ill-gotten gains exceeding $1 million. The Commission alleged that, by knowingly or recklessly engaging in the conduct described in the complaint, Conradt violated Section 10(b) of the Exchange Act, and Rule 10b-5 thereunder.

IV.

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

Accordingly, it is hereby ORDERED pursuant to Rule 102(e)(3)(i) of the Commission's Rules of Practice, effective immediately, that Conradt 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

Chair White
Commissioner Aguilar
not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 71429 / January 28, 2014

INVESTMENT ADVISERS ACT OF 1940
Release No. 3765 / January 28, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15698

In the Matter of **THOMAS C. CONRADT,** **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 Thomas C. Conradt ("Conradt" 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. Conradt, age 35, resides in Denver, Colorado. Conradt is licensed to practice law in Maryland. From September 2008 through October 2009, Conradt was a registered representative associated with a broker-dealer and an investment adviser registered with the Commission. He passed his series 7 exam in February 2009.

2. On December 26, 2013, a judgment was entered by consent against Conradt, permanently enjoining him from future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, in the civil action entitled SEC v. Conradt, Civil Action No. 12 - 8676 - JSR, in the United States District Court for the Southern District of New York.

3. The Commission's complaint alleged, among other things, that Conradt's roommate misappropriated material nonpublic information about International Business Machines Corporation's 2009 acquisition of SPSS Inc., illegally traded, and tipped that information to Conradt. The Commission further alleged that Conradt used that information to illegally trade and tipped the information to others who traded, and that the illegal trading resulted in ill-gotten gains exceeding $1 million.

4. On April 3, 2013, Conradt pled guilty to two counts of securities fraud and to conspiracy to commit securities fraud, in violation of Title 18 United States Code, Sections 371 and 2; Title 15 United States Code, Sections 10(b) and 32(a), and Title 17 Code of Federal Regulations, Section 10b-5, in United States v. Conradt, 12 Crim. 887 (S.D.N.Y.).

5. In connection with that plea, Conradt admitted that:

(a) Respondent's roommate informed Respondent that SPSS, Inc., a company whose stock was publicly traded, was going to be acquired by IBM Corporation (the "Information");

(b) Respondent understood that the Information was inside information, that it was not publicly available, that it was material or important, and that his roommate should not have shared it with him;

(c) Respondent knew that it would be unlawful to buy or sell securities on the basis of the Information;

(d) On July 23, 2009 and on July 27, 2009, Respondent, willfully acting upon the Information, purchased a total of 140 shares of SPSS common stock;

(e) Respondent also willfully disclosed the Information to several of his work colleagues; and

(f) Following the public announcement of the Information on July 28, 2009, Respondent sold his 140 shares of SPSS common stock for a profit of approximately $2,000.

IV.

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

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 71430 / January 28, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15699

In the Matter of **FREDRIC AARON, Esq.,** **Respondent.**	:	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO RULE 102(e)(3) 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 Fredric Aaron ("Respondent" or "Aaron") pursuant to Rule 102(e)(3)(i) of the Commission's Rules of Practice.[1]

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.3. below, which are admitted, Respondent

[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 . . . who has been by name (A) [p]ermanently 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; or (B) [f]ound by any court of competent jurisdiction in an action brought by the Commission 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.

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. Aaron, age 49, is and has been a member of the bar of the state of New York since 1990. From October 2008 to February 2011, Aaron was an attorney for PermaPave Industries, LLC, PermaPave USA Corp., Permeable Distributions, Inc., Permeable Solutions, Inc., and Verigreen, LLC (collectively, the "PermaPave Entities") as well as for Eric Aronson. From November 2008 to February 2011, Aaron was also the Secretary and a director of Permeable Solutions, Inc. From June 2010 to February 2011, Aaron was the Secretary and a director of, and an attorney for, Interlink-US-Network, Ltd. ("Interlink").

2. Interlink was, at all relevant times, a California corporation with its principal place of business in Syosset, New York. Interlink purported to be engaged in the business of selling a device that it marketed as "FRED," which is a unit that enabled the wireless distribution of certain video and internet functions. At all relevant times, Interlink's common stock was registered with the Commission pursuant to Section 12(g) of the Securities Exchange Act of 1934 ("Exchange Act"), and traded on either the OTC Bulletin Board or the OTC Link (formerly "Pink Sheets").

3. On October 6, 2011, the Commission filed a complaint against Aaron in SEC v. Aronson, et al. (Civil Action No. 11 Civ. 7033), in the United States District Court for the Southern District of New York. On December 23, 2013, the court entered an order permanently enjoining Aaron by consent, from future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and from aiding and abetting violations of Section 13(a) of the Exchange Act and Rules 12b-20 and 13a-11 thereunder.

4. The Commission's complaint alleged, among other things, that Aaron participated in multiple offerings by the PermaPave Entities, a group of related companies that operated as a Ponzi scheme, and that he played a role in Interlink's filing of a Form 8-K on December 14, 2010 that contained material misstatements. The complaint alleged that Aaron conceived of several of the offerings, drafted the offering documents which contained misstatements, made misstatements to investors in group solicitation meetings, and was involved in the drafting of the false Form 8-K filed by Interlink that concerned a transaction with which he was involved.

IV.

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

Accordingly, it is hereby ORDERED pursuant to Rule 102(e)(3)(i) of the Commission's Rules of Practice, effective immediately, that:

A. Aaron is suspended from appearing or practicing before the Commission as an attorney for five years from the date of the Order.

B. After five years from the date of the Order, Respondent may request that the Commission consider his application to resume appearing and practicing before the Commission as an attorney. The application should be sent to the attention of the Office of the General Counsel.

C. In support of such an application, Respondent must provide a certificate of good standing from each state bar where Respondent is a member.

D. In support of such an application, Respondent must also submit an affidavit truthfully stating, under penalty of perjury:

1. that Respondent has complied with the Order;

2. that Respondent:

   a. is not currently suspended or disbarred as an attorney by a court of the United States (or any agency of the United States) or the bar or court of any state, territory, district, commonwealth, or possession; and

   b. since the entry of the Order, has not been suspended as an attorney for an offense involving moral turpitude by a court of the United States (or any agency of the United States) or the bar or court of any state, territory, district, commonwealth, or possession, except for any suspension concerning the conduct that was the basis for the Order;

3. that Respondent, since the entry of the Order, has not been convicted of a felony or misdemeanor involving moral turpitude as set forth in Rule 102(e)(2) of the Commission's Rules of Practice; and

4. that Respondent, since the entry of the Order:

   a. has not been found by the Commission or a court of the United States to have committed a violation of the federal securities laws, except for any finding concerning the conduct that was the basis for the Order;

b. has not been charged by the Commission or the United States with a violation of the federal securities laws, except for any charge concerning the conduct that was the basis for the Order;

c. has not been found by a court of the United States (or any agency of the United States) or any state, territory, district, commonwealth, or possession, or any bar thereof, to have committed an offense involving moral turpitude, except for any finding concerning the conduct that was the basis for the Order; and

d. has not been charged by the United States (or any agency of the United States) or any state, territory, district, commonwealth, or possession, or any bar thereof, with having committed an offense involving moral turpitude, except for any charge concerning the conduct that was the basis for the Order.

E. If Respondent provides the documentation required in Paragraphs C and D, and the Commission determines that he truthfully attested to each of the items required in his affidavit, he shall by Commission order be permitted to resume appearing and practicing before the Commission as an attorney.

F. If Respondent is not able to truthfully attest to the statements required in Subparagraphs D(2)(b) or D(4), Respondent shall provide an explanation as to the facts and circumstances pertaining to the matter and the Commission may hold a hearing to determine whether there is good cause to permit him to resume appearing and practicing before the Commission as an attorney.

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. 71434 / January 29, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15700

In the Matter of **Gabriel Technologies Corp.,** **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 Gabriel Technologies Corp. ("Gabriel Technologies" 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, which are admitted, 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 that:

1. Gabriel Technologies (CIK No. 1009833) is a Delaware corporation located in San Francisco, California. At all times relevant to this proceeding, the securities of Gabriel Technologies have been registered under Exchange Act Section 12(g).

On February 14, 2013, Gabriel Technologies 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 May 30, 2013. As of May 30, 2013, the company's stock (symbol "GWLKQ") was quoted on the OTC Link, had seven market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

2. Gabriel Technologies has failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder because it has not filed any periodic reports with the Commission since the period ended March 31, 2007.

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 or 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.

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

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 71435 / January 29, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15702

In the Matter of **Scottrade, Inc.** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTIONS 15(b) AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934, 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 15(b) and 21C of the Securities Exchange Act of 1934 ("Exchange Act"), against Scottrade, Inc. ("Scottrade" 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. Scottrade admits the findings set forth in Section III below, admits the Commission's jurisdiction over it and the subject matter of these proceedings, and consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to 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"), as set forth below.

III.

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

Summary

It is a fundamental obligation of broker-dealers to provide complete and accurate blue sheet data when requested by representatives of the Commission to do so. Blue sheet data is critical to many aspects of the Commission's operations and its ability to discharge its enforcement and regulatory mandates. The failure of a broker-dealer to provide complete and accurate blue sheet information in response to a Commission request can impact the Commission's ability to discharge its statutory obligations, undermine the integrity of its investigations and examinations, and ultimately interfere with the Commission's ability to protect investors.

This action results from Scottrade's violation of the recordkeeping requirements of Section 17(a) of the Exchange Act and Rules 17a-4(j), 17a-25 and 17a-4(f)(3)(v) thereunder. From March 2006 through April 2012 (the "relevant period"), Scottrade failed to provide required accurate and complete blue sheet submissions to the Commission, and also failed to have an audit system that provided accountability regarding the inputting of records required to be maintained and preserved.[1]

Section 17 of the Exchange Act imposes on broker-dealers recordkeeping requirements that are essential to the Commission's ability to enforce the federal securities laws and to protect investors. To ensure the continued effectiveness of the Commission's enforcement and regulatory programs, broker-dealers must comply with, among other things: Rule 17a-25, requiring that broker-dealers submit electronically securities transaction information upon request by the Commission's staff; Rule 17a-4(j), requiring broker-dealers to furnish promptly true, complete, and current copies of those records upon request by the Commission's staff; and Rule 17a-4(f)(3)(v), requiring broker-dealers to have an audit system that provides for accountability regarding the inputting of records required to be maintained and preserved. Scottrade failed to comply with these requirements, as described below.

Respondent

1. Scottrade, Inc. is a private company incorporated in Arizona. Its principal place of business and headquarters is located in St. Louis, Missouri. Scottrade is a brokerage firm that provides financial services to individual investors through an online platform and its branch network. It has been registered with the Commission as a broker-dealer since 1980. In the fall of 1996, Scottrade expanded its services and introduced online trading at Scottrade.com.

[1] Blue sheets (so-called because of the traditional blue paper on which such records were reported and maintained prior to their conversion to an electronic format) are documents in a standardized format that are generated by market makers, brokers and/or clearing houses, at the request of the Commission and/or self-regulatory organizations ("SROs"), that provide detailed information about trades performed by a firm and its customers.

Background

A. Scottrade Failed to Retain and Produce Requested Blue Sheet Information

2. In 2003, Scottrade migrated to a new back office data processing system that was created and managed by a related company. Scottrade relied on this processing system for storing and providing the required electronically formatted information for the processing of blue sheet requests from the Commission and SROs.

3. In March 2006, Scottrade directed its related company to implement a code change to the program for the back office data processing system that was responsible for the handling of blue sheet requests made to Scottrade. As an inadvertent result of the change, from March 2006 through April 2012, Scottrade failed to report in its blue sheet responses to the Commission trades that were transferred from Scottrade's customers' accounts to its error accounts because the trades resulted from trading errors or because they were deemed fraudulent ("Error Account trades").

4. Although Scottrade's Information Systems Department conducted testing of the data processing system program after the coding change, its testing was inadequate and failed to reveal the exclusion of the Error Account trades. In addition, Scottrade's Compliance Department conducted annual testing of samples of its blue sheet responses that was inadequate and failed to reveal the error in its data processing system.

5. During the relevant period, Scottrade had in place certain procedures and policies with respect to the processing of blue sheet requests, but failed to take reasonable steps to establish or implement a system to ensure the maintenance and preservation of the required blue sheet data and the submission of accurate and complete blue sheets to the Commission.

6. During the relevant period, contrary to Scottrade's obligation to provide accurate and complete blue sheet data in response to the Commission's requests, Scottrade failed to provide the required information on 1,231 occasions.

7. During the relevant period, Scottrade did not have an audit system that provided for accountability regarding the inputting of records required to be maintained and preserved.

B. Discovery of Scottrade's Violations

8. In December 2011, in connection with a related investigation, the staff identified suspicious securities trades that took place in an intruded victim account at Scottrade and another online brokerage account from September to November 2011. As a result, the

Commission staff sent blue sheet requests to Scottrade concerning the securities involved in the suspicious trades.

9. The blue sheet data provided to the Commission staff by Scottrade failed to include responsive data regarding a number of instances of trading in the subject securities during September and October 2011 that resulted from unauthorized account intrusions.

10. After the Commission staff discovered the missing blue sheet data, it contacted Scottrade and was informed by the company that certain Error Account trades were inadvertently omitted from its blue sheet responses from March 2006 through April 2012.

11. Scottrade notified the Commission staff on April 25, 2012, that it had corrected the deficient code for the program for its data processing system responsible for blue sheet responses.

C. Violations of the Federal Securities Laws

12. As a result of the conduct described above, Scottrade willfully violated Section 17(a) of the Exchange Act and Exchange Act Rule 17a-4(j) by failing to "furnish promptly to a representative of the Commission legible, true, complete, and current copies of those records of the [broker-dealer] that are required to be preserved under [Rule 17a-4], or any other records of the [broker-dealer] subject to examination under Section 17(b) of the [Exchange Act] that are requested by the representative of the Commission."[2]

13. As a result of the conduct described above, Scottrade willfully violated Section 17(a) of the Exchange Act and Exchange Act Rule 17a-25 by failing to produce requested blue sheet data to the Commission staff, and by not properly maintaining and preserving the blue sheet data information.

14. As a result of the conduct described above, Scottrade willfully violated Section 17(a) of the Exchange Act and Exchange Act Rule 17a-4(f)(3)(v) by failing to have "in place an audit system providing for accountability regarding inputting of records required to be maintained and preserved pursuant to Rules 17a-3 and 17a-4 to electronic storage media and inputting of any changes made to every original and duplicate record maintained and preserved thereby."

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[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)).

D. Scottrade's Remedial Efforts

15. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Scottrade and cooperation afforded the Commission staff.

E. Undertakings

16. Scottrade has undertaken to retain an Independent Consultant as follows:

a) Scottrade shall retain, within 30 days of the date of this Order, at its expense, an Independent Consultant not unacceptable to the Commission's staff, to conduct a review of Scottrade's supervisory, compliance, and other policies and procedures designed to detect and prevent violations of the federal securities laws related to blue sheet submissions, and making, keeping and preserving required books and records. Scottrade shall cooperate fully with the Independent Consultant and shall provide the Independent Consultant with access to its files, books, records, and personnel as reasonably requested for the review;

b) Scottrade shall require that, at the conclusion of that review, which in no event will be more than 150 days after the date of the Independent Consultant's retention, the Independent Consultant will submit to Scottrade and to the Commission an Initial Report. The Initial Report will address the adequacy of Scottrade's policies and procedures to detect and prevent federal securities law violations related to blue sheet submissions, and making and keeping required books and records, and will include the Independent Consultant's recommendations thereon. The reports by the Independent Consultant will likely include confidential financial, proprietary, competitive business or commercial information. Public disclosure of the reports could discourage cooperation, impede pending or potential government investigations or undermine the objectives of the reporting requirement. For these reasons, among others, the reports and the contents thereof are intended to remain and shall remain non-public, except (1) pursuant to court order, (2) as agreed to by the parties in writing, (3) to the extent that the Commission determines in its sole discretion that disclosure would be in furtherance of the Commission's discharge of its duties and responsibilities, or (4) as otherwise required by law;

c) Within 30 days of transmittal of the Independent Consultant's Initial Report, Scottrade shall in writing advise the Independent Consultant of the recommendations that it has determined to accept and the recommendations that it considers to be unduly burdensome. With respect to any recommendation that Scottrade deems unduly burdensome, Scottrade may propose an alternative policy or procedure designed to achieve the same objective or purpose;

d) With respect to any recommendation or proposal as to which Scottrade and the Independent Consultant do not agree, Scottrade shall attempt in good faith to reach an agreement with the Independent Consultant. In the event the Independent Consultant and Scottrade are unable to agree on an alternative proposal, Scottrade shall abide by the recommendation of the Independent Consultant;

e) Within 90 days of transmittal of the Independent Consultant's Initial Report, Scottrade shall in writing advise the Independent Consultant and the Commission of the recommendations and proposals that it is adopting;

f) Scottrade shall require that the Independent Consultant complete the aforementioned review and submit a written Final Report thereon to Scottrade and to the Commission's staff within 330 days after the date of this Order. The Final Report will recite the efforts the Independent Consultant undertook to review Scottrade's supervisory functions, compliance mechanisms, and other policies and procedures, set forth the Independent Consultant's recommendations and Scottrade's proposals, and describe how Scottrade is implementing those recommendations and proposals;

g) Scottrade shall take all necessary and appropriate steps to adopt and implement all recommendations and proposals contained in the Independent Consultant's Final Report;

h) No later than one year after the date of this Order, unless extended pursuant to paragraph "i" below, Scottrade shall certify, in writing, compliance with the undertakings set forth above. The certification shall identify the undertakings, 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 Scottrade agrees to provide such evidence. The certification and supporting material shall be submitted to Kingdon Kase, Assistant Regional Director, with a copy to the Office of Chief Counsel of the Enforcement Division;

i) For good cause shown, and upon receipt of a timely application from the Independent Consultant or Scottrade, the Commission's staff may extend any of the procedural dates set forth above;

j) To ensure the independence of the Independent Consultant, Scottrade: (i) shall not have the authority to terminate the Independent Consultant, without the prior written approval of the Commission's staff; (ii) shall compensate the Independent Consultant, and persons engaged to assist the

Independent Consultant, for services rendered pursuant to this Order at their reasonable and customary rates; (iii) shall not be in and shall not have an attorney-client relationship with the Independent Consultant and shall not seek to invoke the attorney-client or any other doctrine or privilege to prevent the Independent Consultant from transmitting any information, reports, or documents to the Commission or its staff; and

k) Scottrade shall require the Independent Consultant to enter into an agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Independent Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Scottrade, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement will also provide that the Independent Consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Independent Consultant in performance of his/her duties under this Order shall not, without prior written consent of the Commission's staff, enter into any employment, consultant, attorney-client, auditing or other professional relationship with Scottrade, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.

IV.

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

Accordingly, pursuant to Sections 15(b) and 21C of the Exchange Act, it is hereby ORDERED that:

A. Scottrade shall cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Exchange Act and Rules 17a-4(j), 17a-25, and 17a-4(f)(3)(v) thereunder.

B. Scottrade is censured.

C. Scottrade shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of $2,500,000 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) Scottrade may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(2) Scottrade 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) Scottrade 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 Scottrade 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 Daniel M. Hawke, Regional Director, Philadelphia Regional Office, Securities and Exchange Commission, 701 Market Street, Philadelphia, Pennsylvania 19106-3252.

D. Scottrade shall comply with the undertakings enumerated in Section III.E. above.

By the Commission.

Elizabeth M. Murphy
Secretary

Kevin M. O'Neill

By: Kevin M. O'Neill
Deputy Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 71437 / January 29, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15703

In the Matter of **DOUGLAS COSTABILE,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 15(b) OF THE SECURITIES EXCHANGE ACT OF 1934 AND NOTICE OF HEARING**

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 Douglas Costabile ("Respondent" or "Costabile").

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

1. From January 2001 to January 2006, Costabile was a registered representative associated with Joseph Stevens & Co., Inc., which, at the time of his association, was a broker-dealer registered with the Commission. Joseph Stevens & Co. ceased to be registered with the Commission as of August 2008. Costabile, age 44, is a resident of New York.

B. RESPONDENT'S CRIMINAL CONVICTION

1. On August 24, 2009, before the New York Supreme Court in People v. Douglas Costabile, Case No. 2394-2009, Costabile pleaded guilty to one felony count of attempted enterprise corruption in violation of New York Penal Law § 110-460.20 and one count of grand

larceny in the third degree in violation of New York Penal Law § 155.35. On July 20, 2012, Costabile was sentenced in that proceeding to conditional discharge and ordered to pay $32,223 in restitution to his victims.

2. The attempted enterprise corruption count of the criminal indictment to which Costabile pleaded guilty arose out of the conduct of a broker-dealer and alleged, among other things, that between January 2001 and December 2005, Costabile participated in a scheme at Joseph Stevens & Co. to defraud investors by coordinating with traders to sell and buy stocks to and from their customers, after successfully manipulating the price of the stocks, at prices unfavorable to their customers, to generate illegally inflated profits that were shared by members of the criminal enterprise. The scheme involved the securities of numerous companies, including Cypress Bioscience, Inc. and Antigenics, Inc. The grand larceny count of the criminal indictment to which Costabile pleaded guilty alleged that between April 2003 and August 2004, Costabile stole more than three thousand dollars from an individual.

III.

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

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

B. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 15(b)(6) of the Exchange Act.

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III. hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

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

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

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

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 210 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

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. 71440 / January 30, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15706

In the Matter of **Frontier Financial Corporation,** **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 Frontier Financial Corporation ("FTBK" or "Respondent").

II.

In anticipation of the institution of these proceedings, FTBK 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, FTBK 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"), and to the findings as set forth below.

III.

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

1. FTBK (CIK No. 716457) is a Washington corporation located in Seattle, Washington with a class of securities registered with the Commission under Exchange Act Section 12. As of September 11, 2013, the common stock of FTBK (symbol FTBK) was traded on the over-the-counter markets.

2. FTBK has failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder because it has not filed any periodic reports with the Commission since the period ended December 31, 2009.

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 or 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 deems it necessary and appropriate for the protection of investors to impose the sanction specified in Respondent's Offer.

Accordingly, it is hereby ORDERED, pursuant to Section 12(j) of the Exchange Act, that registration of each class of FTBK'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

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 71443 / January 30, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15710

In the Matter of ANDREA LANDO-TANICO, 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 Andrea Lando-Tanico ("Lando-Tanico" 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 her and the subject matter of these proceedings, and the findings contained in Section III.3 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. Lando-Tanico, age 42, resides in Manalapan, New Jersey. From April 1997 to February 2002, she was a securities lending representative associated with Southwest Securities Inc., a broker-dealer registered with the Commission, and from April 2005 to June 2005, she was a securities lending representative associated with Janney Montgomery Scott, LLC, a broker-dealer registered with the Commission.

2. On September 24, 2007, the Commission filed an amended complaint against Lando-Tanico in the United States District Court for the Eastern District of New York alleging that she violated the antifraud provisions of the federal securities laws, *SEC v. Joseph Simone, et al.*, 07-cv-3928 (JG)(RML). The Commission's complaint alleges, among other things, that between 2003 and 2005, Lando-Tanico owned and operated a stock loan finding company called AJGT, Ltd. During this time period, Lando-Tanico knowingly engaged in a scheme to defraud broker-dealers in connection with the lending and borrowing of securities.

3. On November 9, 2011, the court entered a judgment which, among other things, permanently enjoined Lando-Tanico from violating Section 17(a) of the Securities Act of 1933 and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

IV.

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

Accordingly, it is hereby ORDERED pursuant to Section 15(b)(6) of the Exchange Act, that Respondent Lando-Tanico 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. 71438 / January 30, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15704

In the Matter of **Veridien Corporation,** **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 Veridien Corporation ("VRDE" or "Respondent").

II.

In anticipation of the institution of these proceedings, VRDE 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, VRDE 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"), and to the findings as set forth below.

III.

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

1. VRDE (CIK No. 1064011) is a Delaware corporation located in St. Petersburg, Florida with a class of securities registered with the Commission under Exchange Act Section 12. As of July 25, 2013, the common stock of VRDE

(symbol VRDE) was quoted on OTC Link, had six market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

2. VRDE has failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder because it has not filed any periodic reports with the Commission since the period ended September 30, 2008.

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 or 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 deems it necessary and appropriate for the protection of investors to impose the sanction specified in Respondent's Offer.

Accordingly, it is hereby ORDERED, pursuant to Section 12(j) of the Exchange Act, that registration of each class of VRDE'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

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 71441 / January 30, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15708

In the Matter of PATRICK VERDI, 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 Patrick Verdi ("Verdi" 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, 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. Verdi, age 72, resides in Cary, North Carolina. From August 1997 to December 2003, he was a securities lending representative associated with Schonfeld Securities, LLC ("Schonfeld"), a broker-dealer registered with the Commission.

2. On September 24, 2007, the Commission filed an amended complaint against Verdi in the United States District Court for the Eastern District of New York alleging that he violated the antifraud provisions of the federal securities laws, *SEC v. Joseph Simone, et al.*, 07-cv-3928 (JG)(RML). The Commission's complaint alleges, among other things, that between 2000 and 2004, Verdi controlled a stock loan finding company called GP Institutional Services, Inc. During this time period, Verdi knowingly engaged in a scheme to defraud broker-dealers in connection with the lending and borrowing of securities.

3. On May 17, 2012, the court entered a judgment which, among other things, permanently enjoined Verdi from violating Section 17(a) of the Securities Act of 1933 and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

4. On April 24, 2008, Verdi pled guilty to one count of conspiracy to commit securities and wire fraud in violation of Title 18 United States Code, Section 1349 before the United States District Court for the Eastern District of New York, in U.S. v. Patrick Verdi, 07-CR-709-01. On October 21, 2009, a judgment in the criminal case was entered against Verdi. He was sentenced to three years of probation, 250 hour of community service and ordered to make restitution in the amount of $1.1 million.

5. The count of the criminal indictment to which Verdi pled guilty alleged, inter alia, that Verdi, together with others, did knowingly and intentionally conspire to execute a scheme and artifice to defraud Schonfeld and others, and to obtain money and property from Schonfeld and others by means of materially false and fraudulent pretenses, representations and promises and in executing such scheme and artifice to defraud did so by means of wire communication in interstate and foreign commerce.

IV.

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

Accordingly, it is hereby ORDERED pursuant to Section 15(b)(6) of the Exchange Act, that Respondent Verdi 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 ACT OF 1933
Release No. 9521 / January 30, 2014

INVESTMENT ADVISERS ACT OF 1940
Release No. 3767 / January 30, 2014

INVESTMENT COMPANY ACT OF 1940
Release No. 30897 / January 30, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15707

In the Matter of Navigator Money Management, Inc. and Mark A. Grimaldi Respondents.	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933, SECTIONS 203(e), 203(f) AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940, AND 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 Section 8A of the Securities Act of 1933 ("Securities Act"), Sections 203(e), 203(f) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act"), and Sections 9(b) and 9(f) of the Investment Company Act of 1940 ("Investment Company Act") against Navigator Money Management, Inc. and Mark A. Grimaldi ("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 Section 8A of the Securities Act of 1933, Sections 203(e), 203(f) and 203(k) of the Investment Advisers Act of 1940, and 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 Respondents' Offers, the Commission finds[1] that:

A. Summary

1. This matter concerns advertising by registered investment adviser Navigator Money Management, Inc. ("NMM") and its president, majority owner, and chief compliance officer, Mark A. Grimaldi ("Grimaldi"). From 2008 through at least January 2012, NMM and Grimaldi, directly and indirectly through an affiliated Grimaldi-owned entity, issued false and misleading advertisements concerning (a) NMM's investment advice, (b) the performance of a mutual fund managed by NMM, Sector Rotation Fund (ticker: NAVFX) ("Sector Rotation (NAVFX)"), and (c) the performance of model portfolios recommended by Grimaldi. Among their misleading statements, Respondents selectively touted the past performance of Sector Rotation (NAVFX) and specific securities recommendations to clients, cherry-picking the best recommendations and ignoring less favorable recommendations.

2. These misrepresentations and omissions were made possible, in part, by NMM's failure to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and Investment Company Act and rules thereunder.

B. Respondents

3. **NMM** is a New York corporation with its principal place of business in Wappingers Falls, New York. NMM and its predecessor Prestige Asset Management Services, Inc. ("PAMS") have been registered as investment advisers with the Commission since 1996. NMM reported in its most recent filing with the Commission that it had $115 million in regulatory assets under management. NMM advises private client accounts on a discretionary basis and also is the investment adviser to Sector Rotation (NAVFX), a series of a registered investment company with approximately $21 million in assets. NMM has also reported in its most recent filing with the Commission that it is actively engaged in the business of publishing investment newsletters. These newsletters include *The Money Navigator, Fidelity Navigator, Sector Navigator*, and *No-Load Navigator* (collectively, the "Navigator Newsletters"), which are published through an affiliated entity, The Prestige Organization, Inc. ("Prestige").

4. **Grimaldi**, age 51, resides in Poughkeepsie, New York. Grimaldi is the president, chief compliance officer, and majority owner of NMM. In addition, Grimaldi is responsible for

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

managing the investments in both NMM's individual client accounts and in Sector Rotation (NAVFX). Grimaldi is also the majority owner of Prestige, the entity that acts as the publisher of the Navigator Newsletters. Grimaldi serves as the chief economist for each of the Navigator Newsletters and is responsible for authoring the main article in each newsletter as well as all model portfolio recommendations. As such, Grimaldi controls the content of the Navigator Newsletters.

C. Other Relevant Entities

5. **Prestige**, formerly known as Prestige Financial, Inc., is a New York corporation organized in April 1996 by Grimaldi. Prestige has published the Navigator Newsletters since 2005. Grimaldi is the majority owner of Prestige.

6. **Starboard Investment Trust** was organized on May 13, 2009 as a Delaware statutory trust with headquarters in Rocky Mount, North Carolina, and registered with the Commission as an open-end management investment company. Since June 28, 2011, Sector Rotation (NAVFX) has been a non-diversified series of Starboard Investment Trust. NMM has served as the investment adviser to Sector Rotation (NAVFX) since December 2009.

7. **World Funds Trust** was organized on January 17, 2008 as a Delaware statutory trust with headquarters in Richmond, Virginia, and registered with the Commission as an open-end management investment company. From December 30, 2009 through June 27, 2011, Sector Rotation (NAVFX) was a non-diversified series of World Funds Trust. NMM served as the investment adviser to Sector Rotation (NAVFX) during that same time period.

8. **ETF Opportunity Fund**, formerly called Navigator Fund ("Navigator Fund"), is registered with the Commission as an open-end investment company established under the laws of Ohio on January 2, 2004. From January 2008 through January 2009, NMM served as the co-manager of the Navigator Fund.

D. Background

9. In June 2004, Grimaldi arranged for his entity, Prestige, to purchase a 50% interest in the publisher of three monthly newsletters, called *Fidelity Navigator*, *Sector Navigator*, and *No-Load Navigator*. Prestige purchased the remaining 50% in 2005 and Prestige continues to publish the three newsletters today. In February 2011, Grimaldi and Person A, an author and host of a show on the television network CNBC, co-founded a new monthly investment newsletter, called *The Money Navigator*, which is also published through Prestige. By the end of 2011, *The Money Navigator* newsletter had more than 60,000 subscribers.

10. Grimaldi used the Navigator Newsletters to promote NMM's investment adviser business, to bring clients to NMM, and to solicit people to invest in Sector Rotation (NAVFX). Grimaldi was responsible for all investment advice described in the Navigator Newsletters and applied that same advice to his and NMM's clients. The model portfolios that Grimaldi recommends in the newsletters are the exact same models NMM uses to manage the investments of its approximately 600 private advisory clients. Indeed, the Navigator Newsletters promote

NMM's investment advisory services as a way to keep individual client accounts in line with a newsletter model portfolio that meets the clients' investment objectives. In addition, the newsletters tout NMM's investment decisions by, for example, claiming NMM is a "five-star money manager," and proclaiming successful investment recommendations made by NMM to its private clients, as detailed below.

11. On August 21, 2007, Grimaldi changed the name of his registered investment adviser from PAMS to NMM. NMM's press release states the name change was meant "to create more synergy with the[] #1 rated nationally recognized newsletters, the Navigator Newsletters."

12. In 2008, the Commission's exam staff conducted an examination of both the Navigator Fund and NMM. On September 30, 2008, the Commission's exam staff notified NMM that the newsletters published by Prestige could be considered advertisements of the Navigator Fund and NMM and subject to (a) Rule 482 under the Securities Act, which governs advertisements for investment companies, including mutual funds, and (b) Rule 206(4)-1 under the Advisers Act, which governs advertisements by investment advisers registered with the Commission.

E. Sector Rotation (NAVFX) Advertisements

13. On December 30, 2009, NMM began serving as the investment adviser to the mutual fund Sector Rotation (NAVFX).

14. Grimaldi used each of the four Navigator Newsletters to advertise and promote the mutual fund advised by NMM, Sector Rotation (NAVFX). Indeed, Grimaldi often included Sector Rotation (NAVFX) as one of the mutual funds the Navigator Newsletters recommend in model portfolios. In discussing the performance of Sector Rotation (NAVFX), Respondents have made several materially misleading statements in the Navigator Newsletters, including the following:

a. *The Money Navigator*, December 2011, includes an article signed by Grimaldi, stating: "The following is a summary of [Grimaldi's] recent interview with *Investors' Business Daily (IBD)* . . . Mark Grimaldi manages Sector Rotation (NAVFX)," which "was ranked number 1 out of 375 World Allocation funds tracked by Morningstar. Sector Rotation produced an average annual return of 10.25% from August 31, 2002, to October 31, 2011, vs. 5.47% for the S&P 500 Index, according to Morningstar." This statement is misleading for at least three reasons:

- Sector Rotation (NAVFX) did not have an average annual return of 10.25% and did not exist prior to December 30, 2009; rather, 10.25% was the hypothetical return of the similarly-named "Sector Rotation" model in the Sector *Navigator* newsletter—not the actual mutual fund. Sector Rotation's (NAVFX) average annual return from inception (December 30, 2009) to October 31, 2011 was 6.9%;

- The statement suggests that Grimaldi has had a role in the performance of the "Sector Rotation" model since 2002, but Grimaldi had no role in the model portfolio in the *Sector Navigator* newsletter until July 2004; and

- The statement omitted that Sector Rotation (NAVFX) was the best performing World Allocation fund only for the time period from October 13, 2010 through October 12, 2011. For other periods, Sector Rotation (NAVFX) had a poorer relative performance. For example, for the time period from January 1, 2011 through November 30, 2011, the day before publication of the newsletter, at least 100 other mutual funds outperformed Sector Rotation (NAVFX) in Morningstar's World Allocation category of more than 300 funds.

b. *The Money Navigator*, January 2012, recommends a model portfolio for which Grimaldi had sole responsibility with a 20% allocation in Sector Rotation (NAVFX), claiming that Sector Rotation (NAVFX) was "[r]anked 7 of 381 peers in 2011." This statement was false. In the Morningstar World Allocation category, there were 138 funds (out of 363) with higher returns than Sector Rotation (NAVFX) for 2011.

15. *Fidelity Navigator*, January 2010, includes a Grimaldi-authored article stating that investing in Sector Rotation (NAVFX) is an "easy way to add our Sector Rotation to your portfolio" after touting the "Sector ETF Rotation" model portfolio that "is virtually even since December 31, 2007. The S&P 500 is down almost 25% since then!" This is misleading because the mutual fund Sector Rotation (NAVFX) and the "Sector ETF Rotation" model portfolio held very different securities at that time, so investing in Sector Rotation (NAVFX) was not a means for an investor to achieve the same investment profile as the model portfolio.

F. Other Advertisements for NMM's Advisory Services

16. Respondents also repeatedly advertised their investment advisory services in a materially misleading way.

1. Model Portfolio Performance

17. Respondents frequently claimed that their investment advisory services would keep private client accounts in line with a model portfolio contained in the Navigator Newsletters, including through their "Navigator Auto Pilot (NAP) Compass Program," a program offered by NMM. For example, *The Money Navigator*, June 2011, under the heading "NAP Program NOW AVAILABLE" states "If you want the peace of mind knowing that your accounts will ALWAYS be re-allocated when the Navigator Team makes a change in the models, this program is for you." NMM manages on a discretionary basis approximately 600 clients' portfolios that generally follow one of the newsletters' model portfolios.

18. The Sector Rotation (NAVFX) website, controlled by Respondents, and the Navigator Newsletters also contained materially false or misleading statements concerning the performance of Grimaldi's model portfolios. For example, the following chart frequently

appeared in the Navigator Newsletters directly adjacent to solicitations to invest with NMM and Sector Rotation (NAVFX):

The Money Navigator *team has been ranked #1 for overall risk/return performance by Hulbert Financial Digest, a Dow Jones Company. All portfolio recommendations will be made by* The Money Navigator's *Chief Economist Mark Grimaldi. Mark will use his 25 years of experience to guide you to your financial goals. Take a look at the chart below to see how his Navigator growth models have beaten the S&P 500 benchmark since 2001.*

NAVIGATOR MODEL PORTFOLIO PERFORMANCE

NAVIGATOR PORTFOLIO	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	$100,000 Investment
Capital Appreciation	-2.47%	-5.39%	36.21%	20.72%	15.53%	9.15%	16.06%	-31.25%	24.58%	24.38%	$236,460.64
Growth & Income	14.06%	-8.89%	31.97%	16.76%	8.66%	9.92%	7.50%	-20.35%	10.68%	7.41%	$194,645.34
S&P 500 Benchmark	-12.01%	-22.14%	28.50%	10.74%	4.76%	16.60%	5.38%	-37.02%	19.79%	14.91%	$114,865.19

19. In addition to the newsletters, this advertisement also appeared in a similar form on the Sector Rotation (NAVFX) website. The advertisement was materially misleading in a number of ways:

- The statement that "his Navigator growth models have beaten the S&P benchmark since 2001" is misleading because neither NMM nor Grimaldi had any role in the performance of the model portfolios from 2001 through at least June 2004.

- Neither model "beat[] the S&P 500 benchmark" in 2009, as the newsletter claims. The "S&P 500 benchmark" refers to the Vanguard S&P 500 mutual fund, which had a 2009 annual return of 26.49%, not 19.79% as identified in this chart.

20. Grimaldi also touted the performance of another model, the "capital appreciation model," on NMM's Twitter account in March 2011, stating that "the April issue of the Money Navigator will give you an inside look of how I doubled the S&P500 the last 10 years w/o using low cost funds" and "[m]y cap app model has DOUBLED the S&P 500 the last 10 years." These statements were misleading because Respondents had no involvement in the performance of the capital appreciation model from 2001 through at least June 2004.

2. Advertisements Concerning Past Performance Recommendations

21. Respondents also made materially misleading statements concerning past performance recommendations by NMM in the Navigator Newsletters and on the website www.navigatornewsletters.com that do not comply with Rule 206(4)-1(a)(2) under the Advisers Act. The statements are misleading because they fail to include (i) a list of all recommendations by NMM within the past year with the name of the security and market prices, and (ii) a legend

stating: "it should not be assumed that recommendations made in the future will be profitable or will equal the performance of the securities in this list," as required by that Rule. For example:

a. *Fidelity Navigator*, June 2010, includes a Grimaldi-authored article, stating that on May 5, 2010, Grimaldi decided to sell BIPIX and purchase BTTRX resulting in a "17% net gain" for NMM's "Private Clients," compared to newsletter subscribers who only received a "13% net gain" because they did not receive the recommendation until May 6. This advertisement promoting NMM's services is misleading because it does not mention all of NMM's recommendations made within the preceding year, including at least two recommendations that resulted in net losses: (i) a February 1, 2010 trade in which Grimaldi recommended a simultaneous sale of BTFTX and purchase of RTPIX, resulting in a <u>8% net loss</u>; or (ii) a March 17, 2010 trade in which Grimaldi recommended a sale of PRRDX and purchase of DISSX, resulting in a <u>2% net loss</u> as of the date of the newsletter.

b. An NMM advertisement, signed by Grimaldi as NMM's "Chief Portfolio Manager" and appearing on the Navigator Newsletters' website, touts three specific successful past recommendations by NMM, without disclosing other unsuccessful recommendations during the same period: (i) purchasing zero coupon bonds in portfolios in August 2007, claiming that they "outperformed the S&P 500 by more than 45%," (ii) purchasing Treasury Inflation Protected Securities (TIPS) in January 2008, claiming they "outperformed the S&P 500 by more than 30%," and (iii) purchasing rising rates/floating rates funds in December 2008, claiming "so far this year this asset class has outperformed the S&P 500 by more than 38%."

G. <u>Morningstar Ratings</u>

22. From February 2009 through 2013, websites controlled by Respondents, form email correspondence with potential investors in Sector Rotation (NAVFX), and the Navigator Newsletters all advertised NMM's services and Sector Rotation (NAVFX) while proclaiming that NMM was a "five-star (Morningstar) money manager." This is materially misleading because (i) Morningstar rates mutual funds, not investment advisers; and (ii) since February 2009, NMM has not been the investment manager of any mutual fund rated five stars by Morningstar. Indeed, Sector Rotation (NAVFX) has never been rated higher than three stars by Morningstar for its three-year performance in Morningstar's Moderate Allocation category. Respondents had no reasonable basis for these statements and, indeed, in January 2012, Morningstar notified Grimaldi that their statements were inaccurate and unauthorized.

H. <u>NMM's Policies and Procedures</u>

23. NMM's written policies and procedures were not reasonably designed or implemented to ensure that the Navigator Newsletters and other advertisements provided to prospective and existing investors did not contain any false or misleading information. The policies and procedures concerning advertisements simply parroted the Commission's rule governing advertisements by investment advisers. NMM did not have any written policies and procedures specifically tailored to prevent advertisements in newsletters, client correspondence,

or other communications with clients (e.g., Twitter or websites) from violating the Commission's rules for advertisements by investment advisers or mutual funds.

I. Violations

24. As a result of the conduct described above, NMM willfully violated Section 17(a) of the Securities Act, which prohibits any person in the offer or sale of securities from, directly or indirectly, (1) employing any device, scheme, or artifice to defraud, (2) 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, or (3) engaging in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser. Among other things, Respondents made statements that failed to comply with Rule 482, which requires specific disclosures for performance advertisements by investment companies.

25. As a result of the conduct described above, Grimaldi willfully violated, aided and abetted and caused NMM's violations of Section 17(a) of the Securities Act.

26. As a result of the conduct described above, NMM willfully violated Section 206(1) of the Advisers Act, making it unlawful for any investment adviser, directly or indirectly, to employ any device, scheme, or artifice to defraud any client or prospective client, and Section 206(2) of the Advisers Act, making it unlawful for any investment adviser, directly or indirectly, to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client.

27. As a result of the conduct described above, NMM willfully violated Section 206(4) of the Advisers Act, which makes it unlawful for an investment adviser, directly or indirectly, to engage in any act, practice or course of business which is fraudulent, deceptive or manipulative. NMM willfully violated Section 206(4) of the Advisers Act by violating several rules under the Advisers Act, including Rule 206(4)-8, which prohibits (1) an investment adviser from making any untrue statement of a material fact or omitting to state a material fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading to any investor or prospective investor in the pooled investment vehicle, and (2) any fraudulent, deceptive, or manipulative act, practice, or course of business by an investment adviser to any investor or prospective investor in a pooled investment vehicle. NMM also willfully violated Rule 206(4)-1(a)(2), which, *inter alia*, makes it unlawful for an advertisement published by an investment adviser to refer, directly or indirectly, to any past specific recommendations that were profitable to any person without providing a complete list of all recommendations made within the immediately preceding period of at least one year. NMM also willfully violated Rule 206(4)-1(a)(5), which makes it unlawful for an investment adviser, directly or indirectly, to distribute an advertisement which contains any untrue statement of a material fact, or which is otherwise false and misleading.

28. As a result of the conduct described above, Grimaldi willfully violated, aided and abetted and caused NMM's violations of Sections 206(1), 206(2), and 206(4) of the Advisers Act and Rules 206(4)-1(a)(2), 206(4)-1(a)(5), and 206(4)-8 thereunder.

29. As a result of the conduct described above, Respondents willfully 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 materially misleading in any registration statement, application, report, account, record, or other document the keeping of which is required pursuant to section 31(a) of the Investment Company Act, including advertisements for investment companies. Among other things, Respondents made statements in advertisements that did not satisfy the requirements of Rules 482(d) and 482(g) under the Securities Act, which require advertisements containing performance data to include the average annual total return, the "length of and the last day of the period for which performance is measured," and to be "as of the most recent practicable date." Rule 34b-1 under the Investment Company Act deems any advertisement that omits information specified by Rules 482(d) and 482(g) to be materially misleading; consequently, Respondents' advertisements about Sector Rotation's (NAVFX) performance were materially misleading.

30. As a result of the conduct described above, NMM willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, which requires, among other things, that registered investment advisers adopt and implement written policies and procedures reasonably designed to prevent violations, by the investment adviser and its supervised persons, of the Advisers Act and its rules.

J. <u>Respondents' Remedial Efforts</u>

31. In determining to accept the Offers, the Commission considered certain remedial acts undertaken by Respondents.

K. <u>Undertakings</u>

Respondents have undertaken to:

32. <u>Procedures and Controls.</u> Establish internal procedures and controls reasonably designed to ensure the accuracy of Respondents' representations regarding NMM, Sector Rotation (NAVFX), and NMM's trading recommendations to any investor or potential investor, including those on their websites, Twitter accounts, and correspondence with clients and potential clients.

33. <u>Independent Consultant.</u>

a. Respondents shall retain, within sixty (60) days of the entry of this Order, the services of an independent compliance consultant (the "Independent Consultant") that is not unacceptable to the Commission staff. The Independent Consultant's compensation and expenses shall be borne exclusively by NMM.

b. Respondents shall require that the Independent Consultant perform annual reviews ("Reviews") of NMM's internal controls, policies and procedures, performance representations, and advertising materials for compliance with the Advisers Act and the Investment Company Act for a period of three years, with the first review as of December

31, 2013 the second review as of December 31, 2014, and the final review as of December 31, 2015.

c. Respondents shall require that the Independent Consultant review all advertising materials for compliance with the Advisers Act and the Investment Company Act through December 31, 2015, before such advertising materials are published, circulated, or distributed.

d. Respondents shall provide to the Commission staff, within thirty (30) days of retaining the Independent Consultant, a copy of an engagement letter detailing the Independent Consultant's responsibilities, which shall include the Reviews to be made by the Independent Consultant as described in this Order.

e. Respondents shall require that, within forty-five (45) days from the end of each annual review, the Independent Consultant shall submit a written and dated report of its findings to NMM and to the Commission staff (the "Report"). Respondents shall require that each Report include a description of the review performed, the names of the individuals who performed the review, the conclusions reached, the Independent Consultant's recommendations for changes in or improvements to NMM's policies and procedures and/or disclosures to investors, and a procedure for implementing the recommended changes in or improvements to NMM's policies and procedures and/or disclosures.

f. Respondents shall adopt all recommendations contained in the Report within sixty (60) days of the date of the receipt of the Report; provided, however, that within forty-five (45) days after the date of the applicable Report, Respondents shall in writing advise the Independent Consultant and the Commission staff of any recommendations that NMM considers to be unduly burdensome, impractical, or inappropriate. With respect to any recommendation that Respondents consider unduly burdensome, impractical or inappropriate, NMM need not adopt that recommendation at that time but shall propose in writing an alternative policy, procedure or system designed to achieve the same objective or purpose. As to any recommendation with respect to NMM policies and procedures on which Respondents and the Independent Consultant do not agree, Respondents and the Independent Consultant shall attempt in good faith to reach an agreement within sixty (60) days after the date of the applicable Report. Within fifteen (15) days after the conclusion of the discussion and evaluation by Respondents and the Independent Consultant, Respondents shall require that the Independent Consultant inform Respondents and the Commission staff in writing of the Independent Consultant's final determination concerning any recommendation that Respondents consider to be unduly burdensome, impractical, or inappropriate. Respondents shall abide by the determinations of the Independent Consultant and, within sixty (60) days after final agreement between Respondents and the Independent Consultant or final determination by the Independent Consultant, whichever occurs first, Respondents shall adopt and implement all of the recommendations that the Independent Consultant deems appropriate.

g. Within ninety (90) days of Respondents' adoption of all of the recommendations in a Report that the Independent Consultant deems appropriate, as determined pursuant to the procedures set forth herein, Respondents shall certify in writing to the Independent Consultant and the Commission staff that Respondents have adopted and implemented all of the Independent Consultant's recommendations in the applicable Report. Unless otherwise directed by the Commission staff, all Reports, certifications, and other documents required to be provided to the Commission staff shall be sent to Robert J. Keyes, Associate Regional Director, New York Regional Office, Securities and Exchange Commission, 200 Vesey Street, New York, New York, 10281, or such other address as the Commission staff may provide.

h. Respondents shall cooperate fully with the Independent Consultant and shall provide the Independent Consultant with access to such of NMM's files, books, records, and personnel as are reasonably requested by the Independent Consultant for review; provided that Respondents may satisfy its obligation to provide access to the Independent Consultant by physical delivery of documents to the Independent Consultant by email, ftp site and phone calls with personnel, and the Independent Consultant shall not be required to conduct on-site inspections of NMM's offices unless the Independent Consultant determines that an on-site inspection is necessary to perform its duties, in which case Respondents shall cooperate with the Independent Consultant to arrange a reasonable on-site inspection.

i. To ensure the independence of the Independent Consultant, Respondents: (1) shall not have the authority to terminate the Independent Consultant or substitute another independent compliance consultant for the initial Independent Consultant, without the prior written approval of the Commission staff; and (2) shall compensate the Independent Consultant and persons engaged to assist the Independent Consultant for services rendered pursuant to this Order at their reasonable and customary rates.

j. Respondents shall require the Independent Consultant to enter into an agreement that provides that for the period of engagement and for a period of two (2) years from completion of the engagement, the Independent Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with NMM, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such. The agreement will also provide that the Independent Consultant will require that any firm with which the Independent Consultant is affiliated or of which the Independent Consultant is a member, and any person engaged to assist the Independent Consultant in the performance of the Independent Consultant's duties under this Order shall not, without prior written consent of the Commission staff, enter into any employment, consultant, attorney-client, auditing or other professional relationship with NMM, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two (2) years after the engagement.

k. Respondents shall not be in, and shall not have an attorney-client relationship with the Independent Consultant and shall not seek to invoke the attorney-client privilege or any other doctrine or privilege to prevent the Independent Consultant from transmitting any information, reports, or documents to the staff of the Commission.

l. For good cause shown, the Commission staff may extend any of the procedural dates relating to the undertakings. Deadlines for procedural dates shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered to be the last day.

34. Notice to Advisory Clients.

a. Within ten (10) days of the entry of this Order, Respondents shall post prominently on the home page of each website the text of the Commission's litigation release concerning this Order, with a hyperlink to the entire Order. Respondents shall maintain the posting and hyperlink on their websites for a period of twelve (12) months from the entry of this Order.[2]

b. Within thirty (30) days of the entry of this Order, Respondents undertake to mail or-email a copy of NMM's Form ADV, which incorporates the paragraphs contained in Section III of this Order, to each of NMM's existing advisory clients as of the entry date of this Order, and specify that the entire Order will be posted on the homepage of NMM's website.

35. Respondents shall certify, in writing, their compliance with their undertakings set forth above. The certification shall identify the undertakings, 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 Respondents agree to provide such evidence. The certification and supporting material shall be submitted to Robert J. Keyes, Associate Regional Director, New York Regional Office, Securities and Exchange Commission, 200 Vesey Street, New York, New York, 10281, or such other address as the Commission staff may provide, with a copy to the Office of Chief Counsel of the Enforcement Division, no later than sixty (60) days from the date of the completion of the undertakings.

IV.

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

Accordingly, pursuant to Section 8A of the Securities Act, Sections 203(e), 203(f) and 203(k) of the Advisers Act, and Sections 9(b) and 9(f) of the Investment Company Act, it is hereby ORDERED that:

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2 Respondents shall post this information to the homepage of any website under their control, including www.navigatornewsletters.com, www.navigatormoney.com, www.moneynavigatoronline.com, and www.navfx.com.

A. Respondent NMM cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act, Sections 206(1), 206(2), and 206(4) of the Advisers Act and Rules 206(4)-1(a)(2), 206(4)-1(a)(5), 206(4)-7, and 206(4)-8 promulgated thereunder, and Section 34(b) of the Investment Company Act.

B. Respondent Grimaldi cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act, Sections 206(1), 206(2), and 206(4) of the Advisers Act and Rules 206(4)-1(a)(2), 206(4)-1(a)(5), and 206(4)-8 promulgated thereunder, and Section 34(b) of the Investment Company Act.

C. Respondents NMM and Grimaldi are censured.

D. Respondent Grimaldi shall pay a civil penalty of $100,000 to the United States Treasury, plus post judgment interest. Payment shall be made in the following installments: $35,000 within fourteen (14) days of the entry of this Order; $35,000 within one-hundred and eighty (180) days of the entry of this order; and a final payment of $30,000, plus any remaining balance, within three hundred and sixty (360) days of the entry of this Order. Payments shall be deemed made on the date they are received by the Commission and shall be applied first to post judgment interest, which accrues pursuant to 31 U.S.C. §3717 on any unpaid amounts due after fourteen (14) days of the issuance of this Order. Prior to making the final payment set forth herein, Respondents shall contact the staff of the Commission for the additional amount due for the final payment. If any payment is not made by the date the payment is required by this Order, the entire outstanding balance, plus any additional interest accrued pursuant to 31 U.S.C. § 3717, shall be due and payable immediately, without further application. Solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the allegations in the Order are true and admitted by Respondents, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondents under this Order is a debt for the violation by Respondents of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19). Payment must be made in one of the following ways:

(1) Grimaldi 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

(2) Grimaldi 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 Grimaldi 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 Robert J. Keyes, Associate Regional

Director, New York Regional Office, Securities and Exchange Commission, 200 Vesey Street, New York, New York, 10281, or such other address as the Commission staff may provide.

E. Respondents shall comply with the undertakings enumerated in paragraphs 32 through 35, above.

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. 71439 / January 30, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15705

In the Matter of **Horizon Financial Corp.,** **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 Horizon Financial Corp. ("HRZB" or "Respondent").

II.

In anticipation of the institution of these proceedings, HRZB 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, HRZB 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"), and to the findings as set forth below.

III.

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

1. HRZB (CIK No. 1002682) is a Washington corporation located in Seattle, Washington with a class of securities registered with the Commission under Exchange Act Section 12. As of September 11, 2013, the common stock of HRZB (symbol HRZB) was traded on the over-the-counter markets.

2. HRZB has failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder because it has not filed any periodic reports with the Commission since the period ended September 30, 2009.

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 or 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 deems it necessary and appropriate for the protection of investors to impose the sanction specified in Respondent's Offer.

Accordingly, it is hereby ORDERED, pursuant to Section 12(j) of the Exchange Act, that registration of each class of HRZB'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

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 71442 / January 30, 2014

INVESTMENT ADVISERS ACT OF 1940
Release No. 3768 / January 30, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15709

In the Matter of MELVYN NATHANSON, 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 Melvyn Nathanson ("Nathanson" 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.3 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. Nathanson, age 75, resides in Lady Lake, Florida. From at least 2003 through February 2006, Nathanson worked as a stock loan finder for SME Consultants, Inc. ("SME"). Through SME, Nathanson worked as a stock loan consultant for KDC Merger Arbitrage Fund, LP ("KDC"), a registered broker-dealer and investment adviser.

2. On September 24, 2008, the Commission filed a complaint against Nathanson in the United States District Court for the Southern District of New York alleging that he violated the antifraud provisions of the federal securities laws, *SEC v. Melvyn Nathanson, et al.*, 08-cv-8205 (LBS). The Commission's complaint alleges, among other things, that during the course of Nathanson's consulting work with KDC, he knowingly engaged in a scheme to defraud broker-dealers in connection with the lending and borrowing of securities.

3. On July 16, 2013, the court entered a judgment against Nathanson which, among other things, permanently enjoined him from violating Section 17(a) of the Securities Act of 1933 and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

IV.

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

Accordingly, it is hereby ORDERED that pursuant to Section 15(b)(6) of the Exchange Act and Section 203(f) of the Advisers Act, that Respondent Nathanson 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. 71459 / January 31, 2014

INVESTMENT ADVISERS ACT OF 1940
Release No. 3769 / January 31, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15711

In the Matter of **DANTE DEMIRO,** **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 AND NOTICE OF HEARING**

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 Dante DeMiro ("Respondent").

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

From April 2008 through July 2010, DeMiro was a registered representative associated with and an employee of Brookstone Securities, Inc., which, at the time, was registered with the Commission as a broker-dealer and as an investment adviser. Brookstone Securities' registration with the Commission as a broker-dealer ended in August 2012, and its registration with the Commission as an investment adviser ended in June 2012. DeMiro, 46 years old, is a resident of Michigan.

B. RESPONDENT'S CRIMINAL CONVICTION

1. On April 19, 2011, DeMiro pleaded guilty to two counts of wire fraud in violation of 18 U.S.C. § 1343 and three counts of bank fraud in violation of 18 U.S.C. § 1344, before the United States District Court for the Eastern District of Michigan, in United States v. Dante DeMiro, Case 2:10-CR-20594 (LPZ-RSW). On July 12, 2011, DeMiro was sentenced in that proceeding to a prison term of 120 months followed by four years of supervised release and ordered to make restitution in the amount of $12,900,904.

2. The wire fraud counts of the criminal information to which DeMiro pleaded guilty alleged, among other things, that: (1) he knowingly devised a scheme to defraud investors by convincing them to give him money, purportedly to invest on their behalf in various certificates of deposit; (2) he did not invest their funds as promised, but instead used the funds to purchase personal items and real property, gamble, make payments to other investors in the same scheme, and make loans to several individuals and a local jewelry store; and (3) for the purpose of executing the scheme, he had his victims authorize wire transfers of funds into Michigan from other states in March and April of 2009 and in March, May, and June of 2010. At the time of the alleged misconduct, DeMiro was a registered representative associated with and an employee of Brookstone Securities, a broker-dealer and investment adviser registered with the Commission.

III.

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

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

B. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 15(b) of the Exchange Act and Section 203(f) of the Advisers Act.

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

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

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

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

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 210 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

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. 71464 / January 31, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15714

In the Matter of ROSS INSERRA, 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 Ross Inserra ("Inserra" or "Respondent").

II.

In anticipation 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, Making Findings, and Imposing Remedial Sanctions ("Order") set forth below.

III.

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

1. From November of 2000 through April of 2005, Inserra was a registered representative associated with Joseph Stevens & Co., Inc., a broker-dealer registered with the Commission.

2. On May 9, 2012, Inserra pleaded guilty to one count of Securities Fraud in violation of N.Y. Gen. Bus. Law § 352-c(5) and to one count of Grand Larceny in the second degree in violation of N.Y. Penal Law § 155.40(1) before the Supreme Court of New York, in People v. Ross Inserra, SCI-01544 (N.Y. Sup. Ct. 2006). On July 30, 2012, Inserra was sentenced in that proceeding to two concurrent five-year terms of probation and ordered to make restitution in the amount of $102,123.00.

3. The securities fraud count of the criminal information to which Inserra pleaded guilty alleged, among other things, that from December 1, 2000 through April 25, 2004, Inserra intentionally engaged in a scheme with the intent to defraud ten or more persons and to obtain property from such persons by false and fraudulent pretenses, representations, and promises, and so obtained property from one and more such persons while engaged in inducing and promoting the issuance, distribution, exchange, sale, negotiation, and purchase of the common stock of Repligen Corporation. The grand larceny count of the criminal information to which Inserra pleaded guilty alleged that from December 1, 2000 through April 25, 2004, Inserra stole in excess of $50,000 from an individual.

IV.

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

Accordingly, it is hereby ORDERED pursuant to Section 15(b)(6) of the Exchange Act that Respondent Inserra 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 Aguilar not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 71463 / January 31, 2014

INVESTMENT ADVISERS ACT OF 1940
Release No. 3770 / January 31, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15713

In the Matter of

CHARLES W. ADAMS,

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 Charles W. Adams ("Adams" 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 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. Adams, age 59, is a resident of Conroe, Texas. During the relevant time period, Adams was a registered representative holding Series 4, 7, 24, 63, and 66 licenses. From September 1996 through December 2011, Adams was a registered representative associated with Raymond James Financial Services, Inc. ("Raymond James"), a broker-dealer registered with the Commission. From December 2001 through December 2011, Adams was Vice President for Investments with a financial and investment advisory firm that offered brokerage services through Raymond James. From December 2011 through September 2013, Adams was a registered representative associated with a broker-dealer registered with the Commission.

2. On January 13, 2014, a final judgment was entered by consent against Adams, permanently enjoining him from future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, in the civil action entitled Securities and Exchange Commission v. Mack D. Murrell, et al., Civil Action Number 1:13-CV-12856, in the United States District Court for the Eastern District of Michigan.

3. The Commission's complaint alleged that Adams engaged in unlawful insider trading by purchasing stock and options of Rohm & Haas Co. ("Rohm") based on material, non-public information in advance of the July 10, 2008 public announcement that The Dow Chemical Company was going to acquire Rohm. The complaint alleged that on July 9, 2008, Adams purchased two series of Rohm call options in a joint account he had with his wife. The complaint further alleged that on July 9, 2008, Adams also purchased a total of 1,500 shares of Rohm common stock in two customer accounts in which he had discretionary authority. The complaint alleged that, as a result of his illegal conduct, Adams profited by $64,450 and his two customers profited by a combined amount of $42,596.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Adams' 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 Adams be, and hereby is:

barred from association with any broker, dealer, investment adviser, municipal securities dealer, or transfer agent; 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 ACT OF 1933
Release No. 9522 / January 31, 2014

SECURITIES EXCHANGE ACT OF 1934
Release No. 71461 / January 31, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15712

In the Matter of **Gonul Colak and** **Milen K. Kostov,** **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 Gonul Colak ("Colak") and Milen K. Kostov ("Kostov") (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 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' Offers, the Commission finds[1] that:

Summary

1. These proceedings concern Colak's and Kostov's perpetration of an abusive "naked" short selling scheme.[2] From at least July 2010 through February 2012, Respondents engaged in a complex options trading strategy, which they hedged by establishing short positions. Respondents' accounts were at brokerage firms that prohibited short selling in certain hard to borrow securities, and thus, the brokerage firms required Respondents to close any short position resulting from options activity and to deliver securities within the standard three-day settlement period. Rather than deliver the securities, Respondents executed sham transactions to create the illusion that they had delivered when in fact they maintained these uncovered "naked" short positions. Through this scheme, Colak and Kostov engaged in manipulative and deceptive conduct in violation of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act, and Rules 10b-5 and 10b-21 thereunder.

2. The uncovered "naked" short positions that Respondents established were a key component of their complex trading strategy. From at least July 2010 through February 2012, Respondents established uncovered "naked" short positions in the securities of over 20 companies without taking any steps to deliver the securities and thus avoiding the costs associated with these obligations.

3. Respondents sold approximately $800 million worth of call options and purchased at least $1.2 billion worth of common stock in over 20 issuers. Over the course of their scheme, Respondents reaped trading profits of approximately $420,000 on an initial investment of $100,000. Respondents agreed that Colak would receive 68% of the profits for providing the initial funds and Kostov would receive 32% of the profits for executing the trading strategy.

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

[2] Abusive "naked" short selling refers generally to short selling securities without having the securities available for delivery and intentionally failing to deliver the securities within the standard three day settlement cycle. *See* Exchange Act Release No. 58774 (Oct. 14, 2008), 73 Fed. Reg. 61666,61667 (Oct. 17, 2008).

Respondents

4. **Colak**, 39, of Tallahassee, FL, is an assistant professor of finance at a Florida university.

5. **Kostov**, 40, of Tallahassee, FL, was an assistant professor of engineering at a Florida university.

Facts

6. Respondents met in late 2009 at a social function. In approximately January 2010, Kostov came up with the trading scheme at issue here, and Kostov presented the idea to Colak. The two began testing the strategy in April 2010. In July 2010, Respondents opened accounts at two different brokerage firms, using $30,000 of Colak's capital plus approximately $70,000 in borrowed funds. Over time, Respondents opened additional accounts at other brokerage firms and agreed to split the profits across all accounts so that Kostov received 32% of the profits.

7. The trading scheme involved purchasing and writing two pairs of options for the same underlying stock to generate profits as detailed below. Through an account in Colak's name ("Colak Account"), Respondents would establish a synthetic long position (*i.e.*, writing puts and buying calls with the same strike price and expiration) and a synthetic short position (*i.e.*, writing calls and buying puts with the same strike price and expiration). When creating the synthetic short position, the Colak Account wrote deep-in-the-money call options.[3]

8. Through an account at a different brokerage firm held in Kostov's name (the "Kostov Account"), Respondents would purchase the deep in-the-money call options by placing and pricing the buy orders from the Kostov Account in such a way as to match the sell orders from the Colak Account. The Kostov Account would then exercise the deep-in-the-money call options immediately, and sell the resultant common stock in the market.

9. The Kostov Account's exercise of the deep-in-the-money call options almost always resulted in the assignment[4] of the call options to the Colak Account, as the Colak Account

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[3] An "in-the-money" call option is an option that entitles its holder to buy stock below the current market price for that stock. A "deep-in-the-money" call option has a strike price that is substantially below the market price of that stock. Deep-in-the-money call options have a high likelihood that the purchaser will immediately exercise the option in order to purchase the stock at below market prices. Writing deep-in-the-money call options is, in essence, the economic equivalent of selling shares short.

[4] An assignment of an option refers to the notice to the seller of the option that the option has been exercised by the purchaser of the option. When an option is exercised, a market participant that is short that option will be assigned and will have to make delivery on the assignment of the exercised calls. The assignment is done on a random basis by The Options Clearing Corporation. For a participant that is assigned on one short call, the short option position is replaced with a position of short 100 shares of the underlying equity; those shares must be delivered within the standard three-day settlement period. For a participant that is assigned on one short put, the position is replaced with a position of long 100

represented the majority, or all, of the open interest in those options.[5] The deep in-the-money call options written by the Colak Account were not assigned to the Colak Account until the end of the trading day. The assignment of the call options created a short position in the Colak Account at the end of the trading day. The Colak Accounts were opened at brokerage firms that prohibited short selling in the underlying securities, and those firms required the Colak Account to purchase the underlying shares and close the short position.

10. Rather than purchase shares the following trading day, Respondents created the appearance of doing so while in reality maintaining their uncovered short position. To accomplish this, the Colak Account entered into a "reset trade," *i.e.*, the Colak Account would simultaneously purchase stock and write deep-in-the-money call options for the equivalent number of shares. The purchase of stock created the illusion that the Colak Account had satisfied its obligation to cover its short position. However, the writing of deep-in-the-money call options continued the "naked" short position.

11. Similar to how Respondents initially created the synthetic short position, the reset trades were effectuated by the Colak Account writing deep-in-the-money call options to the Kostov Account. After the Kostov Account purchased the deep in-the-money call options, the Kostov Account again exercised the calls and sold the resultant stock in the market. As a result of the Kostov Account exercising the deep-in-the-money calls, the Colak Account would once again get assigned, thus continuing its "naked" short position. The Colak Account ended the trading day in the same short position as it had at the beginning of the day, continuing its failure to cover its short position. These reset trades, exercise and assignment, and delivery failures by the accounts continued on a daily basis until the written put options (*i.e.*, the leg of the paired options trades that generated profits) expired.

12. Respondents knew or were reckless in not knowing that the account that wrote the call options would get assigned to deliver the shares that Respondents agreed to sell pursuant to the call option contracts that Respondents wrote.

13. When establishing their options positions, Respondents selected options of hard-to-borrow securities in which the price of the put options was higher relative to the price of the call options. Normally, the price of the put and the call will be in parity; however, when the stock associated with the options is hard-to-borrow, the higher cost of borrowing the stock is incorporated into the price of the put. By writing pairs of options in which the price of the put options was higher relative to the price of the call options, Respondents generated trading proceeds in excess of the proceeds that they would have been able to earn writing put options that were not associated with hard-to-borrow securities. The excess proceeds, which were derived from the underlying securities being hard-to-borrow, should have been offset by the cost of instituting and maintaining the associated short position that resulted from writing deep-in-the-money calls, for example, by

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shares of the underlying equity. Each assignment is transacted at the strike price of the respective options.

[5] Open interest refers to the number of contracts in existence at the beginning of trading.

effecting bona fide transactions to purchase, or borrow, the shares for delivery by settlement date. As noted above, however, Respondents used reset trades to avoid incurring these costs while maintaining the associated short position, and their initial upfront trading proceeds were never properly offset by the costs of maintaining the short position.[6]

14. By not delivering shares sold, Respondents were extracting a profit at the expense of purchasers of shares. Failure to deliver can have a negative effect on shareholders, potentially depriving them of the benefits of ownership, such as voting and lending.[7] For example, when the Respondents failed to deliver shares, the purchasers of these shares lost the ability to lend the shares to others, and to profit from making such loans. The amount of such purchasers' foregone profit for lending such stock was roughly equivalent to the amount Respondents received for establishing the initial position. In other words, Respondents transferred part of the value of the stock (*e.g.*, the value derived from lending the stock) from such purchasers to themselves.

15. Respondents conducted the trading strategy described above in at least the following securities during the following time periods:

Security	Ticker	First Reset Trade	Last Reset Trade
Brookfield Infrastructure Partners, LP	BIP	12/6/2010	12/19/2010
China Biotics, Inc.	CHBT	1/21/2011	6/15/2011
China MediaExpress Holdings Inc.	CCME	3/1/2011	5/19/2011
Colfax Corp.	CFX	12/22/2011	1/18/2012
Deer Consumer Products, Inc.	DEER	4/4/2011	6/19/2011
Education Management Corp.	EDMC	1/21/2011	1/18/2012
First Solar, Inc.	FSLR	6/21/2011	7/18/2011
Fusion-IO, Inc.	FIO	11/4/2011	12/16/2011
Groupon Inc.	GRPN	11/15/2011	1/20/2012
Harbin Electric, Inc.	HRBN	6/20/2011	10/19/2011
LDK Solar Co., Ltd.	LDK	8/30/2011	9/18/2011
LinkedIn Corp.	LNKD	6/28/2011	12/16/2011
MannKind Corp.	MNKD	12/14/2010	1/21/2011
MELA Sciences, Inc.	MELA	1/4/2011	1/23/2011
Molycorp Inc.	MCP	1/4/2011	1/23/2011
Motricity, Inc.	MOTR	11/22/2010	1/23/2011
RINO International Corp.	RINO	10/15/2010	11/21/2010
Sears Holding Corp.	SHLD	8/24/2011	2/8/2012
Shanda Interactive Entertainment Ltd. ADR	SNDA	1/18/2011	2/4/2011
The St. Joe Company	JOE	2/25/2011	3/15/2011

[6] For example, Respondents could have borrowed shares of these hard-to-borrow securities, which would have been very costly (and equivalent to the increased price of the put options that reflected the borrowing cost). Alternatively, Respondents could have placed bona-fide purchases of the shares, but that would have been costly and eliminated the directional neutrality of their position.

[7] *See* Exchange Act Release No. 58774 (Oct. 14, 2008), 73 Fed. Reg. 61666,61669 (Oct. 17, 2008).

Travelzoo Inc.	TZOO	9/16/2011	1/20/2012
Youku Tudou Inc. ADR	YOKU	3/25/2011	5/27/2011

Hiding the Scheme from the Brokerage Firms

16. Respondents took measures to avoid detection by the brokerage firms. The Colak Accounts were held at brokerage firms that prohibited short selling in hard-to-borrow stocks and that required traders to close any short position in such securities. The uncovered "naked" short positions that Respondents established were a key component of their trading strategy. Through their complex trading scheme and use of multiple accounts at different firms, Colak and Kostov circumvented the restrictions on short selling in hard-to-borrow stocks. They established multiple accounts at different brokerage firms and executed different parts of the trades through different accounts at different firms. At almost all times, the trades in the Kostov Account and the Colak Account were made by the same person and/or from the same computer. Because the trades were executed across multiple brokerage firms, no single brokerage firm had an understanding of the Respondents' trading strategy.

17. Further, Respondents made a number of misrepresentations to their brokerage firms in an effort to continue trading at the firms. Respondents frequently reassured their brokerage firms that the short position (*i.e.*, the position that resulted in the accounts' failures to deliver) was temporary and outside their control, when in fact Respondents were the cause of the assignment and resulting short position and the uncovered "naked" short position was a key component of their trading strategy. Respondents also claimed that they did not want to maintain a short position, when in fact they intended to maintain the short position until the put options expired. Finally, in response to questions about their trading strategy, Respondents falsely claimed to their brokerage firms that FINRA approved of their strategy. In fact, Respondents had not consulted with FINRA.

18. Respondents moved the short position from one brokerage firm to another every few days. This had the effect of spreading the accounts' failures to deliver across multiple brokerage firms, and helped Respondents to (at least temporarily) avoid detection. For example, in November 2011, Respondents moved a short position in one issuer between two brokerage firms every three days. Thus, by the time an account at the first brokerage firm would fail to deliver on the purchase of shares to close the short position, the position would appear to have been temporary and would have appeared to be closed. Respondents then continued the short position at the second brokerage firm, and after three days, Respondents moved the short position back to the first firm. By the time the account at the second brokerage firm would fail to deliver on the purchase of shares to close the short position, the position once again would have appeared to be closed. This continued until the options expired.

19. Between July 2010 and February 2012, Colak and Kostov reaped approximately $420,000 in profits as a result from their trading scheme, of which Colak received approximately $285,600 and Kostov received approximately $134,400.

Violations

20. As a result of the conduct described above, Respondents violated Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rules 10b-5 and 10b-21 thereunder, which prohibit fraudulent conduct in the offer or sale of securities and in connection with the purchase or sale of securities.

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, it is hereby ORDERED that:

A. Pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act Respondents Colak and Kostov cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rules 10b-5 and 10b-21 thereunder.

B. Colak shall pay disgorgement of $285,600, prejudgment interest of $21,975, and civil penalties of $150,000 to the United States Treasury. Payment shall be made in the following installments:

1. $357,575 within 10 days of entry of this Order;
2. $25,000 within 90 days of the entry of this Order;
3. $25,000 within 180 days of the entry of this Order;
4. $25,000 within 270 days of the entry of this Order;
5. $25,000 within 360 days of the 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 disgorgement, prejudgment interest, and civil penalties, plus any additional interest accrued pursuant to SEC Rule of Practice 600 or 31 U.S.C. §3717 from the date of this Order through the date of payment, shall be due and payable immediately, without further application. Such payments 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 Gonul Colak 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 Daniel M. Hawke, Division of Enforcement, Securities and Exchange Commission, Mellon Independence Center, 701 Market Street, Suite 2000, Philadelphia, PA 19106-1532.

C. Kostov shall pay disgorgement of $134,400, prejudgment interest of $10,340, and civil penalties of $70,000 to the United States Treasury. Payment shall be made in the following installments:

1. $100,000 within 10 days of entry of this Order;

2. $28,685 within 90 days of the entry of this Order;

3. $28,685 within 180 days of the entry of this Order;

4. $28,685 within 270 days of the entry of this Order;

5. $28,685 within 360 days of the 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 disgorgement, prejudgment interest, and civil penalties, plus any additional interest accrued pursuant to SEC Rule of Practice 600 or 31 U.S.C. §3717 from the date of this Order through the date of payment, shall be due and payable immediately, without further application. Such payments 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 Milen Kostov 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 Daniel M. Hawke, Division of Enforcement, Securities and Exchange Commission, Mellon Independence Center, 701 Market Street, Suite 2000, Philadelphia, PA 19106-1532.

By the Commission.

Elizabeth M. Murphy
Secretary

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