UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9198 / March 23, 2011

SECURITIES EXCHANGE ACT OF 1934
Release No. 64114 / March 23, 2011

INVESTMENT ADVISERS ACT OF 1940
Release No. 3179 / March 23, 2011

INVESTMENT COMPANY ACT OF 1940
Release No. 29615 / March 23, 2011

ADMINISTRATIVE PROCEEDING
File No. 3-14304

In the Matter of

ROMAN LYNIUK,

Respondent.

ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS 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 AND NOTICE OF HEARING

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 15(b)(6) 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 ("Investment Company Act") against Roman Lyniuk ("Respondent" or "Lyniuk").

II.

After an investigation, the Division of Enforcement (the "Division") alleges that:

A. SUMMARY

1. This matter concerns fraudulent conduct by Lyniuk, the founder and manager of Atlantis Capital Management, L.P. (the "Fund"), a small hedge fund located in New York and New Jersey. Respondent created the Fund in late 1996 and managed it through its investment adviser, Atlantis Capital Markets, LLC. From approximately late 1996 through the middle of 2004, the Fund consisted solely of capital provided by Respondent and his friends and family members. By 2004, all or most of that capital had been withdrawn and/or lost through trading. In 2004, Respondent began successfully marketing the Fund to potential outside investors, in part by providing misleading historical trading results to third-party hedge fund information providers.

2. After attracting outside capital, Respondent engaged in egregious self-dealing by obtaining undisclosed compensation of at least $400,000, including rebates on brokerage commissions that were generated through the Fund's trading, and a referral fee of $40,000 in connection with his investment of $500,000 of the Fund's assets in a start-up venture that offered limited liquidity.

3. In August and September 2006, the Fund lost approximately 29% and 57% of its net asset value, respectively. The August losses were trading losses. The September losses resulted from a combination of factors, including a) a write-down of the Fund's investment in the start-up venture, which previously had been carried at face value; b) the transfer of Fund assets to cover losses in Respondent's personal trading accounts; and c) additional trading losses.

4. Most of the Fund's investors sought redemption of their interests shortly after they learned of the disastrous August 2006 losses. Instead of promptly calculating the investors' net asset values and redeeming them, however, Respondent misappropriated most of the remaining funds by transferring money into a new fund and by making unauthorized payments to himself and his friends. Investors eventually received only about 10% of the amount in their capital accounts as of July 31, 2006.

5. Since approximately mid-2006 and as recently as December 2010, Respondent has been attempting to obtain investors for a new fund, Pacific Capital Markets Cayman LDC ("Pacific"). From mid-2007 through December 2010, Respondent had been promoting Pacific through a third-party hedge fund information provider, based on false and misleading information concerning the history, assets under management, and performance of the fund.

B. RESPONDENT

6. Respondent, age 54, resides in Rumson, New Jersey and was the founder and manager of Atlantis Capital Management, L.P. and Atlantis Capital Markets N.A., LLC. Respondent holds Series 3, 7, and 63 licenses and held a variety of positions in

the financial industry prior to starting the Fund. From approximately November 1996 through September 2006 (the "Relevant Period"), Respondent managed Atlantis Capital Management L.P. and Atlantis Capital Markets N.A., LLC. During that period, Respondent was a registered representative associated with a variety of broker-dealers registered with the Commission. From June 2009 to October 2010, Respondent was employed by Tullett Prebon Financial Services LLC, a broker-dealer registered with the Commission, as a registered representative.

C. OTHER RELEVANT ENTITIES

7. At all relevant times, the Fund, Atlantis Capital Management, L.P., was a limited partnership registered in the State of Delaware that was formerly based in New York, New York and Rumson, New Jersey. Respondent founded the partnership in November 1996.

8. At all relevant times, Atlantis Capital Markets N.A., LLC ("Atlantis Capital Markets") was a Delaware limited liability company based in New York, New York and was the General Partner of, and unregistered investment adviser to, the Fund. Respondent was the principal and sole owner of Atlantis Capital Markets.

9. From approximately August 2000 through at least December 31, 2006, Atlantis Capital Markets Securities, LLC ("ACM Securities") was a Delaware limited liability company based in New York, New York. From approximately March 2002 through October 2003, ACM Securities was a registered broker-dealer. Its registration was canceled by Commission order in October 2003. Respondent was the principal and sole owner of ACM Securities.

10. At all relevant times, Respondent made virtually all decisions concerning the management of Atlantis Capital Markets and ACM Securities, exercised complete control over their bank and brokerage accounts, and supervised all trading decisions on behalf of these entities and the Fund.

D. RESPONDENT SOLICITED INVESTORS USING FALSE AND MISLEADING INFORMATION ABOUT THE FUND AND ITS HISTORICAL PERFORMANCE

11. Although the Fund was registered as a partnership in November 1996, it did not become fully operational until 2005. Prior to July 2004, the Fund's trading accounts contained only money provided by the Respondent and his family members. By early 2004, most of the Fund's assets had been withdrawn and/or lost through trading.

12. In 2003, Respondent became acquainted with an individual residing in California. The individual suggested that Respondent market his fund through third-party hedge fund information providers that collect performance information from hedge funds and make that information, together with analysis of that information, available to investors through internet sites and newsletters. The individual also suggested that Respondent establish an internet site of his own and make information available to investors through that site. In early 2004, Respondent entered into an agreement by which

the individual, through a newly-formed corporation ("Marketer A"), would provide marketing services to Respondent and his fund.

13. From approximately July 2004 through March 2006, Respondent offered and sold partnership interests in the Fund to at least 12 investors. Respondent obtained at least $6 million from these investors, most of which were entities or individuals residing in the United States. Some of the early investors withdrew their capital in or before July 2006, receiving the amount of their investment and, in some cases, a small profit.

14. By July 31, 2006, the Fund had nine investors, not including Respondent, who had invested approximately $168,000 of Respondent's own capital. The total net asset value of the Fund as of that date was approximately $10 million.

15. From approximately July 2004 through March 2006, Respondent solicited the investors by means of material misrepresentations and omissions. Respondent (together with Marketer A, which acted at Respondent's direction) provided these investors with documents containing material misstatements concerning the Fund and its history.

16. Respondent (or Marketer A, acting at Respondent's direction) falsely informed potential investors that the Fund had an "eight year track record" of strong performance in both good and bad markets. Among other documents, Respondent made this representation in a due diligence report and questionnaire (the "Due Diligence Report"), which was created in approximately late 2004 and updated in approximately June 2005. The existence of a strong track record in both good and bad markets was material to investors because it suggested that the Fund had, and had successfully employed, a low-risk trading strategy. In fact, although Respondent may have achieved the referenced results for himself and his family, the reported results included assets maintained in non-Fund accounts. In addition, Respondent did not trade Fund assets at all during part of the period from November 1996 through 2004. Respondent knew, or was reckless in not knowing, that the representation concerning the Fund's "eight year track record" was materially misleading.

17. Respondent (or Marketer A, acting at Respondent's direction) falsely informed potential investors, through the Due Diligence Report, that the Fund had had $20 million of assets under management in 1999. In fact, the Fund's assets (which consisted solely of the Respondent's family's capital) at the time were a fraction of that amount.

18. Respondent (or Marketer A, acting at Respondent's direction) falsely informed potential investors, through the Due Diligence Report, that the Fund was audited annually. In fact, as Respondent knew, the Fund had never been audited. Whether the Fund had been audited was material to investors, because the audit provided assurance that the investment adviser's representations about the Fund were accurate.

19. The Fund's marketing materials also specifically stated that the Fund would be audited for 2004. At some point after the marketing materials were

distributed, Respondent determined that an audit should not be performed for 2004, because its cost would be excessive. Respondent continued to represent that the Fund would be audited. Whether the Fund would be audited in the future was material to investors.

20. Respondent (or Marketer A, acting at Respondent's direction) falsely assured potential investors, through the Due Diligence Report, that the Fund had a fund administrator, and that funds could not be withdrawn from the Fund without approval from the fund administrator or auditor. The existence of a requirement that withdrawals be approved by a third party was material to investors because it would provide a check on improper withdrawals of Fund assets. In fact, as Respondent knew, the Fund had never had a fund administrator prior to late 2005, and Respondent had sole signing authority for the Fund's accounts.

21. Although Respondent hired a fund administrator in late 2005, he continued to write checks on the Fund's accounts in 2006, including checks payable to himself, without obtaining a signature from the fund administrator or auditor. Respondent knew that he continued to make withdrawals from the Fund without a signature from the fund administrator or auditor, but he failed to disclose this material fact to investors.

22. Respondent (or Marketer A, acting at Respondent's direction) falsely informed potential investors that the Fund would have a "team of traders," including a specific trader who had exercised investment discretion over Respondent's account at certain times during the 2000-2002 period. In fact, as Respondent knew, that trader had stopped trading for the Fund years before and had repeatedly declined Respondent's requests to resume trading for the Fund.

23. Despite the fact that this individual had previously instructed Respondent to remove his name from the Fund's marketing materials, Respondent distributed materials in 2004, including a version of the Due Diligence Report, that falsely described this individual as "Director of Stock Arbitrage" for the Fund. The marketing materials also falsely represented that a second individual, who also had stopped trading for the Fund years before, would be employed as "stock arbitrageur" for the Fund. These two individuals were the only employees identified in the marketing materials as Fund employees responsible for stock arbitrage trading.

24. According to a section of the marketing materials entitled "breakdown by strategy," stock arbitrage represented 50% of the Fund's strategy.

25. Respondent's misrepresentations concerning the participation of the two individuals referenced in paragraphs 22 through 24 above were material to investors. The misrepresentations falsely suggested that the Fund would employ, and had years of experience employing, a risk-averse stock arbitrage strategy overseen by experienced trading professionals. In fact, the Fund had no such employees and had limited, if any, experience employing that strategy.

26. Respondent (or Marketer A, acting at Respondent's direction) provided investors with a chart, included in the Due Diligence Report, that purported to represent the Fund's monthly returns since 1997. The Fund's purported monthly returns were material to investors. Respondent knew that this chart was false and misleading in that, among other things, it failed to disclose that: a) the returns referenced (if they had been achieved at all) were not exclusively the returns of the Fund, but included those of other accounts that were traded primarily by Respondent and at times by other traders; b) the returns had been achieved (if at all) using riskier strategies and higher leverage than Respondent expected to use for the Fund; and c) the returns did not reflect any expenses other than trading costs, while the Fund would bear substantial costs for administrator's fees, legal fees, accountants' fees, and marketing expenses – expenses that would materially decrease the Fund's returns, particularly if shared among only a few investors.

27. Respondent also manipulated the report of monthly returns in the Due Diligence Report to make his trading strategy appear less risky and more consistent than it was. For the period from November 1999 through June 2001, an accounting review indicated that Respondent's accounts had achieved monthly returns of up to 136%. For months after June 2001, his returns were much lower than his purported returns in the prior period. To make his returns appear more consistent to investors, Respondent's marketing materials reported monthly returns for November 1999 through June 2001 that were approximately 10% of the results his accountant reported. For months after June 2001, Respondent's chart included 100% of the returns reported by his accountant. Respondent intentionally manipulated his returns by dividing his higher monthly returns by ten, because he knew that consistency was important to investors. The returns reviewed by the accountant for the earlier period, while potentially attractive to investors because they were higher, would have been a red flag for investors who wanted low risk and low volatility. Respondent's failure to disclose that he had divided these results by ten was material.

28. Respondent knowingly provided false and misleading information about the Fund's historical performance to Marketer A. Marketer A, acting at Respondent's direction, relayed the false and misleading information to at least two third-party hedge fund information providers, which made the information available to investors through newsletters and over the internet. This information included the same materially misleading information about the Fund's historical returns described in paragraphs 1 through 27 above. Relying on this information, a report from a prominent third-party hedge fund information provider ("Hedge Fund Information Provider A") for the period ending September 30, 2003, listed the Fund as the seventh best performing fund over the past 60 months. Hedge Fund Information Provider A's rankings were based on a proprietary ratio that used the performance information provided by the reporting hedge funds to calculate a ratio that took into account both performance and risk. Respondent featured the Hedge Fund Information Provider A ranking in the Fund's marketing materials, even though he knew it was false and misleading.

29. Respondent knowingly provided false information to Hedge Fund Information Provider A concerning the Fund's assets under management. For example, he represented that the Fund had $5 million dollars in assets under management from January to July 2002. In reality, the Fund had little or no assets under management that year.

Respondent also represented that the Fund had $10 million of assets under management in April 2004. The Fund's true assets under management at the time, if any, were a fraction of that amount.

30. Respondent made some of the false and misleading marketing materials described in paragraphs 1 through 29 above available to investors through an internet site that he established for the purpose of soliciting investors.

E. RESPONDENT MADE MATERIAL MISREPRESENTATIONS CONCERNING THE NATURE OF THE FUND'S INVESTMENTS

31. Respondent (or Marketer A, acting at Respondent's direction) provided potential investors with a document that summarized the Fund's fourteen "layers of risk control" and emphasized the consistent performance of the "fund" during both bull and bear markets. The document stated, among other things, that "only low-risk or risk-adverse strategies are employed" and that there was "no single position having more than a 5% effect on the portfolio's return."

32. In March 2005, Respondent invested $500,000 of the Fund's assets in a newly-formed, private company named Insured Development Equity Advisors LLC ("IDEA") through execution of a promissory note payable to "Atlantis Capital Group." Atlantis Capital Group was a name used by Respondent to refer to all of the entities he operated.

33. At the time it was made, the amount of the IDEA investment exceeded 10% of the net asset value of the Fund.

34. The IDEA investment was inconsistent with the Due Diligence Report. Both versions of the report stated that all investments were in liquid, listed issues and could be exited at "the click of a mouse," and that "[b]ecause only listed securities are traded, there is virtually no counter party credit risk."

35. The Due Diligence Report further stated that "[n]either the fund management nor the basic investment strategy (in place for nearly eight years) is expected to change," and that if and when any such change occurred, investors would be given "advance written notice and an opportunity to reduce or withdraw their investment within 30 days." Despite this assurance, Respondent did not provide written notice to investors before making the IDEA investment, even though the investment was inconsistent with several aspects of the Fund's advertised strategy, including its "risk-averse" investment approach, its limitation on the size of individual positions, and its focus on listed, liquid securities.

F. RESPONDENT FAILED TO DISCLOSE SIGNIFICANT CONFLICTS OF INTEREST CONCERNING HIS INVESTMENT DECISIONS FOR THE FUND

36. In late 2004 and 2005, Respondent (or Marketer A, acting at Respondent's direction) represented to potential investors through the Due Diligence

Report that there were no "conflicts of interest by any owner, principal, manager or advisor of [the] fund not disclosed in [the] subscription documents."

37. Respondent did not make the IDEA investment because he believed it was in the Fund's interest. He made the investment because he expected that IDEA would hire him and/or his defunct broker-dealer, ACM Securities, to provide "asset management" services, as he admitted in an email dated December 28, 2006.

38. In March and April 2005, Respondent personally received $40,000 from IDEA. Respondent had done little or no work for IDEA at the time the payments were made, and the payments were not made pursuant to a written agreement setting forth the anticipated goods or services for which he received them.

39. Respondent's acceptance of the IDEA payment and expectation of financial benefits if IDEA became operational made it impossible for him to fairly evaluate the risky IDEA investment.

40. From at least May 2005 through at least September 2006, Respondent also received rebates on brokerage commissions, or similar undisclosed compensation, from many of the broker-dealers at which he traded the Fund's other assets. The compensation from each broker-dealer was based on the aggregate volume of trading in all accounts managed by Respondent at that broker-dealer, including both the Fund accounts and other accounts that Respondent traded.

41. From 2005 through September 2006, Respondent accepted undisclosed volume-based compensation totaling at least $400,000.

42. In approximately June 2005, Respondent updated the Due Diligence Report, in which he had previously represented that there were no undisclosed conflicts of interest. Despite the significant conflicts of interest presented by his compensation from IDEA and his receipt of volume-based compensation in connection with the Fund's trading, Respondent continued to represent that the Fund's advisers had no undisclosed conflicts of interest.

43. Respondent's conflicts of interest were material to investors, because they called into question Respondent's ability to fairly evaluate potential transactions on behalf of the Fund.

G. RESPONDENT USED THE FUND'S ASSETS AS COLLATERAL FOR HIS PERSONAL TRADING

44. In 2005 and 2006, Respondent established accounts for the Fund at several broker-dealers. Some of the broker-dealers were set up as limited liability companies, referred to in the industry as "proprietary trading firms," in which the Fund participated as a member rather than as a "customer." In these limited liability companies (the "LLCs"), all assets deposited became assets of the firm, and the depositor's "capital contribution" was placed in a sub-account of the firm's account with its clearing broker. At the LLCs, the members effectively pooled their capital for purposes of meeting margin

requirements. Respondent signed agreements with each LLC on behalf of the Fund and deposited Fund assets into sub-accounts set up for the Fund.

45. Without executing a separate agreement in the name of Respondent or another entity, Respondent set up additional member sub-accounts at the same LLCs in which the Fund's assets were held. Respondent traded his and his family's assets in these additional sub-accounts (the "Personal Accounts"), which were established in the name of Atlantis Capital Markets NA, LLC, Atlantis Capital Markets Securities, or other entities owned and controlled by Respondent.

46. Respondent explicitly agreed in writing with at least one of the LLCs ("Firm A") that the Fund's sub-account could be "cross margined" with Respondent's Personal Accounts. This meant that the Fund's assets would be considered in determining how much Respondent could borrow from the proprietary trading firm to support his securities transactions. It also meant that the assets in the Fund's sub-account could be used to cover margin calls issued with respect to the Personal Accounts.

47. In August 2006, the Fund suffered trading losses of approximately 29%. In September 2006, the Fund suffered additional losses.

48. In September 2006, the Fund's fund administrator concluded that the IDEA investment, which previously had been carried on the Fund's books at the face value of the promissory note, should be written down to zero.

49. In August and September 2006, Respondent also experienced trading losses in his Personal Accounts, which resulted in significant negative balances in his accounts at two proprietary trading firms. In September 2006, a second proprietary trading firm ("Firm B") transferred approximately $970,000 from the Fund's sub-account to offset the negative balance in Respondent's Personal Accounts.

50. The fund administrator calculated that these September events resulted in an additional 57% decrease in the value of the Fund.

51. In September 2006, after learning of the August and early September 2006 losses, most of the Fund's domestic investors requested redemptions of their interests in the Fund.

52. In September 2006, the fund administrator resigned. Respondent and his accountant assumed responsibility for calculating and paying redemptions.

53. On September 26, 2006, Respondent received notice that at the end of October, Firm A intended to "reflect the offset we have in our books" in the Fund sub-account and one of the Personal Accounts. Respondent was advised that "[t]his gives you until the end of October for capital to come in to clean this up before we go ahead and do the journal entry."

54. In October 2006, Firm A transferred approximately $1.8 million from the Fund's sub-account to offset the negative balance in Respondent's Personal Accounts.

55. Respondent knew that assets had been transferred from the Fund's accounts to cover his personal losses, but he did not disclose this material fact to each of the Fund's investors.

56. From October 2006 through March 2007, while the Fund's accountant was calculating the assets remaining in the Fund for the purpose of paying redemptions, Respondent advised investors that their redemptions were delayed because of an arbitration against the Fund's broker-dealer. Respondent failed to disclose to each investor that the arbitration involved the use of Fund assets to cover losses in his Personal Accounts at Firm B.

H. RESPONDENT BLATANTLY MISAPPROPRIATED ASSETS

57. In July 2006, Respondent registered a limited liability company named Pacific Capital Markets LLC in the State of Delaware. He also had drafted, and shared with a potential Australian investor, an offering memorandum for a fund named Pacific Capital Markets Cayman LDC ("Pacific"), a Cayman Islands exempted limited duration company. The documents reflected that a long-time friend of Respondent who had helped to market Atlantis ("Marketer B"), was to share responsibility with Respondent for managing the new fund and trading its investments.

58. In November 2006 and February 2007, before redemptions had been made to all of those Fund investors who had requested them, Respondent transferred over $850,000 from the Fund's bank accounts to a bank account in the name of Pacific Capital Markets, L.P.

59. Respondent also used the Fund's assets to pay substantial compensation to himself and his business partner, Marketer B, before the redemptions were made.

60. From September 2006 through March 2007, Respondent wrote $74,000 in checks from the Fund's bank account to himself, to cash, and to entities he controlled. Respondent knew, or was reckless in not knowing, that these payments were not authorized by the Fund's offering documents, because they significantly exceeded the management fee that he earned during that period, and the offering documents provided no other basis on which he could withdraw money from the Fund during a period in which it had experienced significant losses.

61. From September 2006 through March 2007, Respondent wrote $22,500 in checks from the Fund's bank account to Marketer B. These payments were made in exchange for Marketer B's promise to obtain $20 million in capital for Respondent's new hedge fund, Pacific Capital Markets. Respondent knew, or was reckless in not knowing, that the Fund's offering documents did not authorize the use of Fund assets to solicit investors for other hedge funds.

62. In February and March 2007, the investors who had requested redemptions in September 2006 received redemptions in the amount of approximately 10% of their accounts' values as of July 31, 2006. Respondent failed to provide any audit or other accounting to investors to explain the significant reduction in the value of their accounts.

63. Respondent failed to disclose to the redeeming investors the material fact that their redemptions had been reduced by Respondent's unauthorized payments to himself and Marketer B. Respondent also failed to disclose to each of the redeeming investors that their redemptions had been reduced by the amount of the LLCs' transfers to cover losses in Respondent's Personal Accounts.

64. Some investors did not seek redemptions in September 2006. From October 2006 to at least March 2007, Respondent provided false monthly statements to these investors. Respondent reported to one institutional investor that the monthly return for its investment in September 2006 was zero percent. In fact, as Respondent knew, the Fund lost approximately 57% in September 2006 and lost additional amounts in subsequent months. Two investors requested redemption later, in December 2007, but to date have not received any portion of their investment.

I. RESPONDENT CONTINUES TO SOLICIT CAPITAL BASED ON FALSE INFORMATION

65. From approximately September 2007 to December 13, 2010, Respondent provided materially misleading information and marketing materials to a third-party hedge fund information provider ("Hedge Fund Information Provider B") concerning the history and performance results of Pacific.

66. Respondent initially marketed Pacific under the name "Pacific Capital Markets Preservation of Capital Plus" and provided marketing materials to Hedge Fund Information Provider B stating that the "centerpiece of the program is the Collateralized Guaranteed Real Estate Note Program."

67. The marketing materials claimed that Pacific has "never had a negative month" since its inception in June 2002. In fact, as Respondent knew, Pacific did not exist until 2006.

68. In September 2007, Respondent informed Hedge Fund Information Provider B that Pacific had assets under management of $701 million onshore and $107 million offshore. Respondent knew that Hedge Fund Information Provider B would provide that information to potential investors. In fact, as Respondent knew, the only assets in Pacific at that time were the remainder of the approximately $850,000 that Respondent had transferred from the Fund to Pacific in November 2006 and February 2007.

69. In July 2009, Respondent began to market Pacific under the name "Pacific Capital Markets Preservation of Capital Absolute Alpha No Beta," and he updated

its marketing materials to reflect that the fund was engaged in the facilitation of private energy trades.

70. On September 29, 2010, Respondent provided updated marketing materials to Hedge Fund Information Provider B that hid his true identity and instead held himself out as an individual named "John RWL Adams." In October 2010, Respondent changed the name under which his mobile phone was registered to "John Adams."

71. In November 2010, Respondent instructed Hedge Fund Information Provider B to change Pacific's name to "Pacific Capital Markets Cayman LDC Absolute Alpha No Beta" and represented that it managed assets of 100 million dollars. Respondent knew that Hedge Fund Information Provider B would provide that information to potential investors. In fact, as Respondent knew, no investor contributions had been made to Pacific.

J. <u>RESPONDENT FABRICATED EXCULPATORY EVIDENCE</u>

72. In October 2010, Respondent received a validly issued investigative subpoena (the "Subpoena") that called for all documents relating to the Fund for the time period January 1, 2004 through the present, among other things.

73. On October 29, 2010, Respondent produced documents to the Division staff in response to the Subpoena.

74. At approximately the same time, Division staff received several similar versions of the Due Diligence Report described above from several investors in the Fund (the "Original Report"). The document appeared to be one that Lyniuk provided to prospective investors in late 2004 and 2005.

75. Respondent never produced a copy of the Original Report – or any similar document – to the Division staff in response to the Subpoena.

76. On December 8 and 10, 2010, Respondent appeared for testimony before the Division staff. On December 10, 2010, the staff marked as an exhibit a version of the Original Report that was dated December 2004. The staff questioned Respondent about the exhibit, in particular certain representations that appeared to be false or misleading.

77. On January 14, 2011, the Division staff sent a Wells notice to Respondent. The notice advised Respondent that the Division intended to recommend charges against him. It further invited him to make a submission to the Commission explaining any reasons the Commission should not subject him to legal action. Respondent retained counsel shortly thereafter. The Division staff orally advised Respondent's counsel that it had concerns about certain representations in the Original Report.

78. On January 31, 2011, Respondent's counsel made a Wells submission on Respondent's behalf. Respondent's counsel attached an exculpatory version of the Due Diligence Report that neither Respondent nor any investor had ever produced to the staff (the "Exculpatory Report"). It differed materially from the Original Report in

certain respects. For example, the Exculpatory Report deleted a chart of purported historical returns that had been in the Original Report, it eliminated the Original Report's claims about historical assets under management, and it deleted references to the Fund's eight-year track record. The Division forwarded the Wells submission and attachments to the Commission.

79. On or about February 23, 2011, the United States District Court for the District of New Jersey issued a warrant for a search of Respondent's home for computers and electronic storage media, among other things.

80. On or about March 1, 2011, the Federal Bureau of Investigation ("FBI") executed the search warrant. The FBI seized an external storage device from Respondent's house containing at least one version of the Original Report and one version of the Exculpatory Report. Information on the seized storage device shows that Respondent created and/or modified the Exculpatory Report on December 12, 2010, just two days after Division staff questioned Respondent about potential misrepresentations in the Original Report.

81. Respondent appears to have fabricated the Exculpatory Report and presented it to the Commission in his Wells submission in an attempt to exculpate himself.

K. <u>VIOLATIONS</u>

82. The misstatements and omissions of fact alleged in this Order were material.

83. Respondent knew, or was reckless in not knowing, that his statements (and those of Marketer A, acting at his direction) were false and misleading.

84. As a result of the conduct described above, Respondent willfully violated Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in the offer and sale of securities and in connection with the purchase or sale of securities.

85. As a result of the conduct described above, Respondent willfully violated Sections 206(1) and 206(2) of the Advisers Act, which prohibit fraudulent conduct by an investment adviser with respect to its clients.

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 Section 15(b) of the Exchange Act including, but not limited to, disgorgement and civil penalties pursuant to Section 21B of the Exchange Act;

C. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 203(f) of the Advisers Act including, but not limited to, disgorgement pursuant to Section 203(j) and civil penalties pursuant to Section 203(i) of the Advisers Act;

D. What, if any, remedial action is appropriate and in the public interest against Respondent pursuant to Section 9(b) of the Investment Company Act, including, but not limited to, disgorgement pursuant to Section 9(e) and civil penalties pursuant to Section 9(d) of the Investment Company Act;

E. Whether, pursuant to Section 8A of the Securities Act, Section 21C of the Exchange Act, and Section 203(k) of the Advisers Act, Respondent should be ordered to cease and desist from committing or causing violations of and any future violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Sections 206(1) and (2) of the Advisers Act and whether Respondent should be ordered to pay disgorgement plus prejudgment interest thereon and provide an accounting pursuant to Section 8A(e) of the Securities Act, Section 21C(e) of the Exchange Act, and Section 203(k) 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 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
Secretary

<u>Service List</u>

Rule 141 of the Commission's Rules of Practice provides that the Secretary, or another duly authorized officer of the Commission, shall serve a copy of the Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Sections 15(b)(6) 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 and Notice of Hearing ("Order"), on the Respondent and his legal agent.

The attached Order has been sent to the following parties and other persons entitled to notice:

Honorable Brenda P. Murray

Chief Administrative Law Judge

Securities and Exchange Commission

100 F Street, N.E.

Washington, DC 20549-2557

Preethi Krishnamurthy, Esq.

New York Regional Office

Securities and Exchange Commission

Three World Financial Center, Room 400

New York, NY 10281

Mr. Roman Lyniuk

483 Locust Point Road

Rumson, NJ 07760