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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. SPYGLASS EQUITY SYSTEMS, INC., RICHARD L. CARTER, PRESTON L. SJOBLOM, TYSON D. ELLIOTT, FLATIRON CAPITAL PARTNERS, LLC, FLATIRON SYSTEMS, LLC, AND DAVID E. HOWARD II, Defendants.	CASE NUMBER **COMPLAINT FOR VIOLATIONS OF THE UNITED STATES SECURITIES LAWS**

Plaintiff, United States Securities and Exchange Commission ("Commission"), states and alleges as follows for its Complaint for violations of the United States securities laws against Defendants Flatiron Capital Partners, LLC ("Flatiron Capital"), Flatiron Systems, LLC ("Flatiron Systems"), David E. Howard II ("Howard"), Spyglass Equity Systems, Inc. ("Spyglass"), Richard L. Carter ("Carter"), Preston L. Sjoblom ("Sjoblom"), and Tyson D. Elliott ("Elliott"):

SUMMARY

1. From November 2007 through January 2009, Howard, using his entities Flatiron Capital and Flatiron Systems, and Carter, Sjoblom and Elliott (until August, 2008), using their company, Spyglass, engaged in a scheme to defraud almost 200 investors located in approximately 38 states, resulting in investor losses of over $3 million.

2. As part of the scheme, Howard, Flatiron Capital, and Flatiron Systems offered and sold unregistered securities which were sold to investors through Spyglass, a telemarketing firm functioning as a "boiler room" located in Los Angeles, California. During the scheme, defendants made materially misleading statements and omissions to investors regarding the securities being offered by Flatiron Capital and Flatiron

Systems (the “Flatiron entities”) and two stock trading systems that were used to induce investors to invest their funds.

3. Pursuant to the scheme, the defendants agreed that Spyglass would locate individuals to purchase membership interests (i.e., securities) in Flatiron Capital and Flatiron Systems, which Spyglass telemarketers did through cold-calling and high-pressure sales tactics. Using scripts and lead lists, Spyglass telemarketers, under the control of Elliott, until May, 2008, Carter, and Sjoblom, fraudulently touted two different stock trading systems that purported to trade stocks profitably for investors based on algorithms or computer models. In order to close sales, the Spyglass telemarketers grossly misrepresented the functionality and operational success of the trading systems and the fees to be charged investors. Among other misrepresentations, they stated that the trading systems had achieved successful historical results. They stated or implied that the Flatiron entities were legitimate broker-dealers, clearing their trades through nationally-known brokerage firms, and that separate brokerage accounts would be established for each investor which would be used in trading utilizing the trading systems. These statements were false. In reality, the trading systems had not been successfully used. The Flatiron entities were not legitimate broker-dealers and they did not clear trades through

nationally-known brokerage firms. Instead, Howard and others commingled investors' funds in trading accounts established at unaffiliated trading companies. Howard along with others conducted unprofitable trading in the trading accounts, using a variety of strategies, not limited to the trading systems.

4. As part of the scheme, Howard and the Flatiron entities made additional misleading statements and omissions to investors. For example, in written materials provided to investors, Howard and the Flatiron entities falsely represented or implied that trading would be limited to the purported trading systems, that investor costs would be limited, and that investors would have separate, "designated" accounts. Howard also made several false and misleading lulling statements to investors as the scheme unraveled, going so far as to subsidize several investors, falsifying their account statement to reflect inflated results.

5. By late 2008, the scheme failed as the trading systems and other trades placed by Howard and others were unprofitable and investors incurred substantial losses. Howard made desperate attempts to pacify investors by falsely claiming he was conducting an audit of a non-existent entity. At the same time, Spyglass, Sjoblom and Carter were receiving, and rejecting, requests from investors for reimbursement of their license

fees. Shortly thereafter, the defendants ceased operations, their phones were disconnected or the numbers were changed, and investors were left in the dark.

6. Each of the defendants profited from the scheme. Howard misappropriated nearly $500,000 in investor funds, over $300,000 of which he used for personal expenses, including travel, personal and adult entertainment, and gifts for his girlfriend. During the scheme, Spyglass earned “licensing fees” (i.e., commissions) of approximately $1,130,000. Spyglass then made payments from the investor money of approximately $139,260 to Carter, $170,988 to Elliott, and $208,916 to Sjoblom. Howard also received payments of at least $20,400 from Spyglass.

7. The Commission brings this civil action seeking permanent injunctions, disgorgement plus prejudgment and post judgment interest, and civil penalties for violations of Sections 10(b) and 15(a) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. §§ 78j(b) and o(a)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder; Sections 5(a), 5(c) and 17(a) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. § 77e(a), e(c) and q(a)]; Section 7(a) of the Investment Company Act of 1940 (“Investment Company Act”) [15 U.S.C. § 80a-7]; and Sections 206(1), (2) and (4) of the Investment Advisers Act of 1940 (“Advisers Act”)

[15 U.S.C. §§ 80b-6(1), (2) and (4)] and Rule 206(4)-8 [17 C.F.R. § 206(4)-8] thereunder.

JURISDICTION AND VENUE

8. The Commission brings this action pursuant to the authority conferred upon it by Section 20(b) of the Securities Act [15 U.S.C. § 77t(b)], Sections 21(d) and 21(e) of the Exchange Act [15 U.S.C. §§ 78u(d) and 78(u)(e)], Section 209(d) of the Advisers Act [15 U.S.C. § 80b-9(d)], and Section 42 of the Investment Company Act [15 U.S.C. § 80a-41].

9. This Court has jurisdiction over this action pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)], Section 27 of the Exchange Act [15 U.S.C. § 78aa], Section 214 of the Advisers Act [15 U.S.C. § 80b-14], Section 44 of the Investment Company Act [15 U.S.C. § 80a-43], and 28 U.S.C. § 1331. Venue lies in this Court pursuant to Securities Act Section 22(a) [15 U.S.C. § 77v(a)], Exchange Act Section 27 [15 U.S.C. § 78aa], Advisers Act Section 214 [15 U.S.C. § 80b-14], Investment Company Act Section 44 [15 U.S.C. § 80a-43], and 28 U.S.C. § 1391(b)(1) & (2). Many of the acts, practices, and courses of conduct alleged in this Complaint occurred in this district and one or more defendants reside within this district.

10. In connection with the transactions, acts, practices, and courses of business described in this Complaint, the defendants, directly and indirectly, have made use of the means or instrumentalities of interstate commerce, of the mails, and/or of the means and instruments of transportation or communication in interstate commerce.

DEFENDANTS

11. Spyglass is a California corporation with its principal place of business in Los Angeles, California. Between October 2007 and March 2009, Spyglass operated as a telemarketing firm or boiler room purportedly selling equity trading systems. It was owned and operated by defendants Carter, Sjoblom and, until August 2008, Elliott. Spyglass ceased operations in March 2009; however, it is still listed with the State of California as an active corporation. Spyglass was not registered as a broker-dealer or investment adviser with the Commission.

12. Carter, age 42, is a resident of Torrance, California. At all times relevant to this Complaint, Carter was a co-owner and co-operator of Spyglass. Carter was also an owner and primary controller of The Trade Tech Institute, Inc. ("Trade Tech"), which purportedly sells licensed commodities and futures trading systems via telephone, and which Carter continues to own and operate. On information and belief, Trade Tech is a

telemarketing firm or boiler room similar to Spyglass. Carter has never been registered as a broker-dealer or investment adviser with the Commission or associated with a registered broker-dealer or investment adviser.

13. Sjoblom, age 40, is a resident of Great Falls, Virginia. In all relevant periods, he was a principal and a co-owner of Spyglass and was employed by Trade Tech as a sales and customer support representative. Sjoblom has not been associated with a registered broker-dealer since March 1998. He has not otherwise been associated with any entity registered with the Commission.

14. Elliott, age 30, is a resident of Hermosa Beach, California. From October 9, 2007 until August 18, 2008, he was a co-owner of Spyglass. In August 2008, Elliott sold his interest in Spyglass back to the company. Elliott was also an owner and primary controller of Trade Tech. He currently owns and operates a telemarketing firm selling commodities and futures trading systems. He has never been registered with the Commission in any capacity or associated with any registered entity.

15. Flatiron Capital is a Delaware limited liability company organized on May 23, 2007. Between December 2007 and May 2008, Flatiron Capital had offices in New York City, New York and operated as an

investment company, purportedly trading securities through the use of a trading system called the Sequence Trading System ("Sequence"). At all times relevant to this action, Howard was a co-managing member of Flatiron Capital. Flatiron Capital is not registered with the Commission in any capacity and has never filed a registration statement for its securities with the Commission.

16. Flatiron Systems was at relevant times a Florida limited liability company which was organized on March 24, 2008. Between April 2008 and March 2009, Flatiron Systems' principal place of business was in Boynton Beach, Florida and it also operated out of Spyglass' offices in Los Angeles, California. Flatiron Systems operated as an investment company that purported to trade securities using a trading system called the Pathfinder Trading System ("Pathfinder"). Howard was the sole managing member of Flatiron Systems. Flatiron Systems was never registered with the Commission in any capacity and has never filed a registration statement for its securities with the Commission.

17. Howard, age 31, is a resident of New York, New York. He was a co-managing member of Flatiron Capital and the sole managing member of Flatiron Systems. He is currently employed as marketing director for Forex Capital Trading Partners, Inc., a purported introducing broker in the

foreign exchange market. Howard has never been registered or associated with any entity registered with the Commission. During the period at issue, Howard acted as an investment adviser with respect to Flatiron Capital and Flatiron Systems and investors in those entities.

FACTUAL ALLEGATIONS

Spyglass Induces Investors to Buy Securities Issued by Howard's Flatiron Capital Using a Trading System as Bait

18. In 2007, Howard was engaging in the day-trading of stocks in downtown Manhattan. At the time, he and another individual he met through day-trading stocks decided to raise funds from investors through a recently formed company, Flatiron Capital, to trade in securities, preferably using an automated trading system.

19. By late 2007, Howard had made contact with an individual who had supposedly developed a trading system which became known as Sequence. Among other things, Sequence used signals and alerts that had been programmed into a trading platform to identify potential stocks for trading. Sequence was not an automated trading system was not a computer program and did not use algorithms to identify potential trades.

20. In late 2007, Howard met Sjoblom through the same individual who introduced him to Flatiron Capital. At the time, Sjoblom was working at Trade Tech, the telemarketing firm in Los Angeles, purportedly selling

licenses to commodities and futures trading systems. Shortly thereafter, Howard agreed with Sjoblom, to use Spyglass to market Sequence and to introduce investors to Flatiron Capital. Spyglass was set up in the same building as Trade Tech but on a different floor. .

21. During the relevant period, Spyglass essentially operated as a boiler room, employing 10 to 15 telemarketers, some whom wanted to be actors, to sell the Sequence system (and later the Pathfinder system as discussed below) to investors and to introduce them to the Flatiron entities using cold-calling techniques and lead lists.

22. As indicated above, Carter, Elliott, and Sjoblom co-owned and controlled Spyglass. Carter handled all the back office accounting and finances for Spyglass. Elliott was in charge of hiring, training, and supervising the sales staff until May 2008. Sjoblom was responsible for sales support and customer service, and after May 2008, was also in charge of training and supervising the sales staff. In addition to their responsibilities as managers, Elliott, and Sjoblom also occasionally made sales calls.

<u>Spyglass Markets the Sequence Trading System and Introduces Investors to Flatiron Capital Securities</u>

23. Beginning in November or December 2007, Spyglass promoted the Sequence trading system. During the period at issue, Spyglass

referred approximately 66 investors to Howard to purchase securities from Flatiron Capital earning “licensing fees” or commissions of approximately $380,000 and helping Howard to raise $602,465 in funds for Flatiron Capital.

24. Spyglass telemarketers told investors that they would be given a limited opportunity to purchase a license to a proven stock trading system – Sequence. Sequence was essentially used to entice investors to place funds with Flatiron Capital. Howard allowed Spyglass to charge investors a license fee, which essentially constituted a commission, so that Spyglass would refer investors to Flatiron. Spyglass typically charged about $6,000 per “license”.

25. Spyglass employed telemarketers who acted as “openers” and “closers” in order to market and sell Sequence and to refer investors to Flatiron Capital. The telemarketers worked from scripts that were posted to the walls of the Spyglass offices that were written primarily by Sjoblom and Elliott, and sometimes reviewed by Howard.

26. In marketing Sequence and to induce investors to purchase Flatiron Capital securities, Spyglass, Carter, Sjoblom, Elliott, and and/or telemarketers under their supervision and control falsely claimed or implied that:

- Spyglass had been using Sequence to trade, or monitoring trading using Sequence, for more than 10 months and that that trading had generated net returns of over 12% or more per month.

- Sequence would generate automated trades, that trades would be selected using algorithms, or that trades would be selected by a computer program.

- Flatiron Capital was a prestigious firm trading institutional funds and retirement accounts.

- Flatiron Capital cleared through Morgan Stanley or Goldman Sachs.

- Sequence was a limited opportunity designed for high net-worth individuals.

27. In fact, these claims were materially false and misleading because:

- Spyglass had not been using Sequence to trade, or monitoring trading using Sequence, for more than 10 months. Instead, Sjoblom first learned of Sequence in November 2007, at the earliest. Carter and Elliott, as well as Sjoblom, knew that Spyglass had not been using Sequence to trade, or monitoring trading using Sequence, for more than 10 months. In addition, at least Spyglass, Sjoblom and Elliot were aware that the information Spyglass received did not reflect actual trading.

- Sequence did not generate automated trades, select trades using algorithms, or use a computer program that selected trades. Rather, Sequence was a system of signals or information suggesting potential trades which the trader could follow or ignore

- Flatiron Capital was not a prestigious firm trading institutional funds and retirement accounts.

- Flatiron Capital did not clear its trades through Morgan Stanley or Goldman Sachs.

- Sequence was not a limited opportunity designed for high net-worth individuals. Instead, it was sold to anyone who wanted to buy it.

28. Spyglass, Sjoblom, Elliott, and Carter each knew or was reckless in not knowing that Sequence did not generate automated trades, select trades using algorithms, or use a computer program that selected trades.

29. Spyglass, Sjoblom, Elliott, and Carter each knew or was reckless in not knowing that Flatiron Capital was not a prestigious firm trading institutional funds and retirement accounts, Flatiron Capital did not clear its trades through Morgan Stanley or Goldman Sachs, and Sequence was not a limited opportunity designed for high net-worth individuals.

<u>The Spyglass Defendants Provided Sales Agreements to Investors that Contained Additional Misleading Statements and Omissions</u>

30. In connection with the marketing of Sequence, interested investors were mailed a sales agreement either electronically or through the mail system. The sales agreement provided that the "Customer wishes to become a client of Spyglass by purchasing access to certain software for use in trading equities" and "Spyglass is duly authorized and has the right

to sell various software including the System to Customer…". "System" was defined as the Sequence Trading System.

31. The Sequence sales agreement further provided that investors would have to establish a brokerage account to utilize the trading system. The agreement stated that the "Customer hereby agrees to establish a brokerage account ("Customer's Account") and to execute a limited power of attorney granting the brokerage firm at which Customer's Account is held the right to execute for Customer's Account all trades generated by the System." Investors were also mailed a "Sequence License Receipt" which showed the "Brokerage Contact Person" as Howard at Flatiron Capital.

32. In addition, the sales agreement contained a "Performance Based Guarantee." The Performance Based Guarantee provided that the "Customer shall have the right … to request a refund of the purchase price if the system fails to generate a net profit … at the conclusion of the one hundred and eighty (180) day period."

33. The Sequence sales agreement was materially false and misleading because:

- Sequence was not a software program, but was rather a system of signals or information suggesting potential trades which the trader could follow or ignore.
- Trading was not conducted solely through Sequence.

- Howard and Flatiron Capital were not registered broker-dealers, or associated with a registered broker-dealer.

- Howard and Flatiron Capital did not set up separate brokerage accounts for individual investors, but rather invested them with unaffiliated trading companies through which their funds were further commingled.

- Spyglass did not set aside funds necessary to meet the Performance Based Guarantee.

34. Spyglass and Sjoblom each knew or was reckless in not knowing that Sequence was not a software program.

35. Spyglass, Carter, Sjoblom, and Elliott each knew or was reckless in not knowing that Howard and Flatiron Capital were not registered brokers or associated with a registered broker-dealer, that they were not going to set up separate brokerage accounts for investors, and that funds were not set aside to meet the Performance Based Guarantee.

<u>Howard and Flatiron Capital Made Additional Misleading Statements and Omissions to Investors</u>

36. After an investor had purchased access to Sequence, the Spyglass defendants referred the investor to Howard and Flatiron Capital. Howard and Flatiron Capital mailed the investor a package including an "Operating Agreement of Flatiron Capital Partners for Sequence Trading System", a Sequence trading agreement, and a Sequence new account

application. The package also included a welcome letter from Howard which directed investors to send funds to Flatiron Capital.

37. Among other things, the trading agreement falsely stated that Flatiron Capital would assign to the Client (i.e., the investor) one or more "Designated Firm Accounts" which would be maintained by Flatiron Capital. Similarly, the operating agreement defined "Designated Trading Account" as a "separate trading account of the Company's (proprietary) trading account established and maintained for each Member." In addition, the welcome letter indicated that "all the account information for each account" was included in the welcome package. It further requested that investors fill out the paperwork and return it "along with funding for the account." In fact, investors were not assigned "Designated Firm Accounts." Instead all investor funds were deposited into a Flatiron Capital bank account and then disbursed to accounts at unaffiliated trading companies where the funds were comingled with funds of other unrelated investors.

38. Howard and Flatiron Capital knew that investors were not assigned "Designated Firm Accounts" and that, instead, all investor funds were deposited into a Flatiron Capital bank account and then disbursed to accounts not belonging to Flatiron Capital where the funds were comingled with funds of other unrelated investors.

39. The Sequence trading agreement also provided that the Client would be entered into all trades executed by Sequence. This statement was misleading because the trading agreement implied that investor funds would be traded using Sequence. In fact, as discussed below, trading was not limited to those "executed" by Sequence; rather, much of the trading was executed by Howard along with others without using Sequence. Howard and Flatiron Capital each knew or was reckless in not knowing that trading using investor funds would not be limited to those directed by Sequence.

40. The trading agreement further falsely stated that the Client would receive 80 percent of the trading profits generated by Flatiron Capital, subject to a two percent management charge. In fact, Howard and Flatiron Capital used investor funds in excess of their allotted share to pay trading expenses, the business expenses of Flatiron Capital and personal expenses of Howard, including rent, personal and adult entertainment, and gifts for his girlfriend.

<u>Howard and Flatiron Capital's Trading of Investor Funds Was Not Profitable</u>

41. Instead of placing investor funds into separate brokerage accounts, Flatiron Capital and Howard pooled investor funds and placed them with certain unaffiliated trading companies that were not registered

broker-dealers but which allowed customers to deposit funds into pooled accounts and make self-directed trades through those accounts.

42. While Spyglass and Flatiron Capital had represented that trading in stock or equities would be based on the operation of Sequence, not all the trading was based on Sequence but, instead, some was determined by Howard and others who invested not only in equities, but in commodities and other instruments. Flatiron Capital did not keep sufficient records to determine which investor funds were traded using Sequence and which investor funds were traded by Howard and others.

43. By March, 2008, it was clear that the trading conducted by Flatiron Capital for the investors was not profitable. As a result, Sjoblom told Howard that he was concerned that Spyglass would have to make refunds based on the Performance Based Guarantee in the Sequence Sales Agreement which provided that Spyglass would refund the license fees if Sequence did not deliver profitable trading results after 180 days.

44. Howard told Sjoblom that he was considering a new trading system, the Pathfinder system, being developed by another individual. Despite the fact that Pathfinder was not fully developed, Sjoblom and Howard decided to market Pathfinder to investors through Spyglass and Howard’s newly-formed entity, Flatiron Systems.

Sjoblom and Howard Induce Existing Flatiron Capital Investors to Transfer their Funds from Sequence to Pathfinder using a Misleading Offer Letter

45. In March 2008, Sjoblom drafted a letter for Spyglass to send to existing Flatiron Capital investors and he sent it to Howard for Howard's approval. The purpose of the letter was to market the Pathfinder system and to induce existing Flatiron Capital investors to move their investments to the new entity, Flatiron Systems, and a new ostensible trading system, Pathfinder. Howard agreed that Spyglass should issue the letter and in April 2008, the letter was sent to Sequence investors.

46. The Pathfinder System Offer letter directed investors to fill out an enclosed form and send it to Howard at Flatiron Systems. The form authorized Howard to transfer the investors' funds from Sequence to Pathfinder. Some but not all of the Sequence investors agreed to transfer their funds.

47. The Pathfinder System Offer letter falsely represented that:

- "Recently the Sequence system has done an excellent job of holding fast during the extraordinarily tough market conditions" but that "the reversals that are constantly occurring during the day while the markets are trading cause for an overall flat result on Sequence".

- Pathfinder was "[a] system that can do extremely well in these market conditions and has proved itself in every way" and that "[r]esults from January, February, and March 2008 are stellar" resulting in returns ranging from 23.5% per month to over 100% per month.

48. The letter was materially false and misleading because:

- Sequence had not done an excellent job of holding fast during the extraordinarily tough market conditions. Nor was there "an overall flat result [using] Sequence." In fact, Flatiron Capital was suffering trading losses.

- At the time the Pathfinder System Offer letter was sent to investors, Pathfinder was incomplete, had not proven itself in any way, and had not generated any actual returns.

49. Sjoblom, Carter, Elliott, and Howard all knew or were reckless in not knowing that Flatiron Capital was suffering trading losses. Sjoblom and Howard each knew or was reckless in not knowing that Pathfinder was incomplete, had not proven itself in any way, and had not generated any actual returns.

Spyglass Markets Pathfinder and Introduces Investors to Flatiron Systems Securities

50. By April 2008, Spyglass began to cold-call investors to market the new trading system, Pathfinder. During the period at issue, Spyglass referred approximately 126 new investors to purchase securities from Flatiron Systems, earning "licensing fees" or commissions of approximately $750,000 and raising $1,548,000 in capital for Flatiron Systems.

51. Sjoblom, Elliott, and Carter participated in drafting the sales scripts that were used by the Spyglass telemarketers to market Pathfinder and to locate investors to refer to Flatiron Systems. The scripts were

placed on the walls of Spyglass' offices and telemarketers continued to use cold-calling techniques and lead lists to locate investors.

52. In marketing Pathfinder and to induce investors to purchase Flatiron Systems securities, Spyglass, Carter, Elliott, Sjoblom, and/or telemarketers under their supervision and control falsely claimed or implied that:

- Pathfinder had been trading live for over a year and that that trading had generated returns of an average of 20% or more per month.
- Pathfinder would generate automated trades, that trades would be selected using algorithms or that trades would be selected by a computer program.
- Flatiron Systems was a prestigious and reputable firm.
- Flatiron Systems cleared through Morgan Stanley or Goldman Sachs.
- Pathfinder was a limited opportunity.

53. These representations were materially false and misleading because:

- Pathfinder was not completed at the time Spyglass began selling it. Even in January 2009, when Spyglass was making its last sales, Pathfinder had been in existence for less than a year. Pathfinder never generated returns in excess of 20% per month.
- Pathfinder did not generate automated trades, select trades using algorithms, or use a computer program that selected

trades. Rather, Pathfinder was a system of signals or information suggesting potential trades which the trader could follow or ignore.

- Flatiron Systems was not a prestigious or reputable firm.
- Flatiron Systems did not clear its trades through Morgan Stanley or Goldman Sachs.
- Pathfinder was not a limited opportunity. Instead, it was sold to everyone who wanted to buy it.

54. Spyglass, Sjoblom, Elliott, and Carter each knew or was reckless in not knowing that the above statements and misrepresentations were materially false and misleading.

The Spyglass Defendants Provided Sales Agreements to Investors that Contained Additional Misleading Statements and Omissions

55. Similar to the procedures established relating to the Sequence system, the Spyglass defendants provided a written sales agreement to investors who were interested in Pathfinder. In fact, the Pathfinder sales agreement was nearly identical to the Sequence sales agreement.

56. The Pathfinder sales agreement provided that the "Customer wishes to become a client of Spyglass by purchasing access to certain software for use in trading equities;" and "Spyglass is duly authorized and has the right to sell various software including the System to Customer…". "System" was defined as the Pathfinder Trading System.

57. The Pathfinder sales agreement further provided that investors would have to establish a brokerage account to utilize the trading system and trade equities. The agreement stated that the "Customer hereby agrees to establish a brokerage account ("Customer's Account") and to execute a limited power of attorney granting the brokerage firm at which Customer's Account is held the right to execute for Customer's Account all trades generated by the System." Investors were also mailed a "Pathfinder License Receipt" which showed the "Brokerage Contact Person" as Howard at Flatiron Systems.

58. In addition, the Pathfinder sales agreement contained a "Performance Based Guarantee." The Performance Based Guarantee provided that the "Customer shall have the right … to request a refund of the purchase price if the system fails to generate a net profit … at the conclusion of the one hundred and eighty (180) day period."

59. The Pathfinder sales agreement was materially false and misleading because:

- Pathfinder was not a software program but was rather a system of signals or information suggesting potential trades which the trader could follow or ignore.
- Trading was not limited to stocks or equities, but instead included commodities, futures, and risky off-market investments.

- Howard and Flatiron Systems were not registered broker-dealers or associated with a registered broker-dealer.

- Howard and Flatiron Systems did not set up separate brokerage accounts for individual investors, but rather invested them with unaffiliated trading companies through which their funds were further commingled.

- Spyglass did not set aside funds to meet the Performance Base Guarantee.

60. Spyglass, Sjoblom, Elliott, and Carter each knew, or was reckless in not knowing, that Pathfinder was not a software program.

61. Spyglass and Carter each knew that trading was not limited to equities because Carter requested that investor funds be invested in off-market investments.

62. Spyglass, Carter, Elliott, and Sjoblom each knew or was reckless in not knowing that neither Howard nor Flatiron Systems were registered broker-dealers or associated with a registered broker-dealer.

Howard and Flatiron Systems Made Additional Misleading Statements and Omissions to Investors

63. Similar to the procedure that was established for Sequence, after an investor had purchased access to Pathfinder, the Spyglass defendants referred the investor to Howard and Flatiron Systems. Thereafter, Howard caused an investor package to be mailed to the prospective investors through an administrative assistant hired by Carter

and located at the Spyglass offices. The package included an "Operating Agreement of Flatiron Systems for Pathfinder Trading System", a Pathfinder trading agreement, and a new account application. The package also included a welcome letter from Howard and funding instructions. The welcome letter instructed investors to return the signed documents to the Flatiron Systems administrative assistant at Spyglass and to send funds to accounts controlled by Howard.

64. The Pathfinder welcome letter from Howard falsely stated that "[w]e at Flatiron Systems … believe that the Pathfinder System will continue to have the incredible success we have seen throughout the year." In fact, Pathfinder had not had "incredible success seen throughout the year." It either was not ready for trading or was generating poor returns.

65. Flatiron Systems, Howard, Spyglass, Carter, Elliott, and Sjoblom each knew or was reckless in not knowing that Pathfinder had not had "incredible success seen throughout the year" and was either not ready for trading or was generating poor returns.

66. Among other things, the Pathfinder trading agreement falsely represented that Flatiron Systems would assign to the Client (i.e., the investor) one or more "Designated Firm Accounts" which would be

maintained by Flatiron Systems. Similarly, the Pathfinder Operating Agreement defined “Designated Trading Account” as a “separate sub-account of the Company’s (proprietary) trading account established and maintained for each Member.” In fact, investors were not assigned separate accounts. Nor did Flatiron Systems have a proprietary trading account. Instead all investor funds were deposited into a Flatiron Systems bank account and then disbursed to accounts belonging to unaffiliated trading companies where the funds were comingled with funds of other unrelated investors.

67. Howard and Flatiron Systems each knew or was reckless in not knowing that investors were not assigned separate accounts or sub-accounts and that, instead, all investor funds were deposited into a Flatiron Systems bank account and then disbursed to accounts not belonging to Flatiron Systems where the funds were comingled with funds of other unrelated investors.

68. The Trading Agreement also provided the Client would be entered into all trades executed by Pathfinder. This statement was misleading because while the Pathfinder trading agreement implied that investor funds would be traded using Pathfinder; as discussed below, trading was not limited to those “executed” by Pathfinder and trades were

executed by Howard and others involving equities, commodities, futures, and off-market investments. Howard, Flatiron Systems, and Carter each knew or was reckless in not knowing that trading using investor funds would not be limited to those directed by Pathfinder.

69. The Pathfinder trading agreement further falsely stated that the Client would receive 80 percent of the trading profits generated by Flatiron Systems subject to a two percent management charge. In fact, Howard and Flatiron Systems used investor funds to pay trading expenses, the business expenses of Flatiron Systems, and personal expenses of Howard, including rent, personal and adult entertainment, and gifts for his girlfriend.

Howard's and Flatiron Systems' Trading of Investor Funds Was Not Profitable

70. Similar to the investor funds associated with Flatiron Capital, Howard and Flatiron Systems deposited the funds they received from investors into pooled accounts with certain unaffiliated trading companies that were not registered broker-dealers but which allowed their customers to deposit funds into pooled accounts and make self-directed trades through those accounts.

71. While Flatiron Systems and Spyglass had represented that trading would be limited to stocks or equities and be based on the

operation of Pathfinder, not all the trading was in equities or based on Pathfinder. Howard and several others also traded investor funds. Among other investments, Howard allowed some investor funds to be used to trade in oil and gas futures. In addition, at least $250,000 of investor funds was used by Howard, at Carter's request, to fund a private placement connected to Carter and a business venture of Carter's.

72. Flatiron Systems did not keep sufficient records to determine which investor funds were traded using Pathfinder and which investor funds were traded without using Pathfinder.

73. Howard's and Flatiron Systems' trading and investments of investor funds was not profitable and investors incurred significant losses.

The Scheme Unravels and Howard Falsifies Account Statements and Makes False and Misleading Lulling Statements

74. By mid-2008, it was clear that both Sequence and Pathfinder were not profitable trading systems, and investors were suffering losses. In addition, some investors were reaching the 180 day time period for the Performance Based Guarantee. In June, 2008, at the request of Spyglass, Carter, and Sjoblom, Howard "subsidized" several investors, falsifying their account statements to reflect higher results than actually occurred.

75. In December 2008, Howard sent a false and misleading letter to investors for the purpose of lulling them and concealing the fraudulent scheme. The letter falsely represented, among other things, that:

- "[T]rading has been voluntarily halted by [Howard] so that a voluntary, independent audit can be performed of the accounting done by Pathfinder Trading Technologies, LLC and the accounting firm hired by Pathfinder Trading Technologies, LLC which has been managing the statements to members of Flatiron Systems, LLC."
- The audit was initiated "as a result of noticing what may be possible discrepancies by the accounting firm and/or Pathfinder Trading Technologies, LLC in recent statements that have been received."
- The audit would take no longer than 60 days.
- After the audit was completed either "the accounts will all be closed and your [sic] will promptly receive your remaining distribution" or "you will have your choice to close your account and take the remaining funds in distribution or continue trading through a different LLC…"

76. The December 2008 letter was materially false and misleading because:

- There was no audit.
- Pathfinder Trading Technologies, LLC did not exist.
- Howard and Flatiron Systems did not stop trading voluntarily but rather because their trading had been unsuccessful, resulting in the loss of a significant portion of the investors' money.

- Flatiron Systems did not set up brokerage accounts for individual investors but instead pooled investor funds.

77. Howard and Flatiron Systems each knew or was reckless in not knowing that the December 2008 letter was materially false and misleading.

78. In March 2009, Howard drafted another lulling letter that made additional false statements. The letter falsely stated, "[a]fter meeting with the accountants we were forced to realize that the audit procedures … are taking much longer than expected." The letter went on to state, "[w]ith the total collapse of the U.S. capital markets, and subsequent equities market decline, public accounting firms are very overburdened with work … I assure you that my attorneys' [sic] and accountants have been diligently working on every aspect of this."

79. Howard's statements in the March 2009 letter were false. In truth, Howard never met with or hired accountants to perform an audit. In addition, Howard never hired attorneys for an audit. Howard and Flatiron Systems each knew or was reckless in not knowing that the March 2009 letter was materially false and misleading.

Flatiron Systems and Spyglass Shut Down

80. In early 2009, soon after the March lulling letter, Howard and Flatiron Systems ceased business operations, their phone numbers were

disconnected or changed, and investors were no longer able to contact them.

81. As it became evident that the Pathfinder investment had been unprofitable, investors began contacting Spyglass in increasing numbers and requesting refunds of the license fee they had paid as provided in the Performance Guarantee provisions of the Sales Agreement. However, Spyglass had not reserved any of the sales proceeds to cover refunds. Only a few investors were granted refunds by Spyglass and some of those investors received only partial payments.

82. By early 2009, Spyglass, Sjoblom, and Carter had stopped all communications with investors, closed their offices and disconnected their telephones.

Defendants Received and Misappropriated Investor Funds

83. Spyglass received approximately $380,000 from its sales of Sequence and approximately $750,000 from its sales of Pathfinder for "licensing fees" or commissions.

84. Between December 2007 and February 2009, Spyglass paid Carter $139,260.

85. Between December 2007 and February 2009, Spyglass paid Sjoblom $208,916.

86. Between December 2007 and February 2009, Spyglass paid Elliott $170,988.

87. Howard deposited investor funds in his personal bank account and used checks and debit cards for the Flatiron Capital or Flatiron Systems bank account holding investor funds to pay personal expenses such as rent and to buy clothing, jewelry for himself, a necklace from Tiffany's for his girlfriend, and flowers for his girlfriend. Howard also spent large amounts of investor funds for entertainment, including adult entertainment, often in the company of Carter, spending as much as $5,000 per night.

88. Between December 2007 and February 2009, Howard misappropriated or misused almost $500,000 in investor funds.

89. Between December 2007 and February 2009, Spyglass paid Howard $20,400.

Howard, Flatiron Capital and Flatiron Systems Sold Unregistered Securities

90. Section 5 of the Securities Act prohibits any offers, directly or indirectly, to sell a security unless a registration statement for that security has been filed with the Commission. A registration statement is transaction specific. Each sale of a security must either be made pursuant to a registration statement or fall under a registration exemption.

91. Howard, Flatiron Capital, and Flatiron Systems sold securities in the form of LLC membership interests in Flatiron Capital and Flatiron Systems to investors referred to them by Spyglass using the mails or systems of interstate commerce. Flatiron Capital securities were offered and sold in at least 38 states and Flatiron Systems securities were offered and sold in at least 24 states. The membership interests in Flatiron Capital and Flatiron Systems were investment contracts, which are securities under federal law. At the time of the offers and sales of the securities in Flatiron Capital and Flatiron Systems, there were no registration statements filed or in effect for them and no registration exemption applied to sales of those securities.

Spyglass, Sjoblom, Carter, and Elliott Acted as Unregistered Broker-Dealers

92. Section 15(a)(1) of the Exchange Act prohibits a broker or dealer from using jurisdictional means such as the telephone or mails to effect transactions in securities unless the broker or dealer is registered with the Commission. Section 3(a)(4) of the Exchange Act defines a "broker" as any person who is engaged in the business of effecting transactions in securities for the accounts of others.

93. Sjoblom, Carter and Elliot, the principals of Spyglass, hired and controlled a sales force to solicit investors nationwide by telephone.

Spyglass's sales force actively recruited investors, advised them on the merits of an investment with Flatiron Capital or Flatiron Systems, and then put them in contact with Howard to complete the transaction. Spyglass and its principals were compensated for each transaction that they helped to complete.

94. In some instances, Sjoblom and Elliot personally recruited investors, advised them on the merits of an investment with the Flatiron entities, and then put them in contact with Howard to complete the transaction. Sjoblom and Elliot received additional compensation for each individual transaction that they personally helped to complete.

95. Spyglass, Sjoblom, Carter and Elliot were not registered with the Commission as broker-dealers and they were not affiliated with any broker-dealers at the time of the offers and sales of Flatiron Capital or Flatiron Systems securities.

Flatiron Capital and Flatiron Systems Failed to Register as Investment Companies

96. Flatiron Capital and Flatiron Systems were investment companies. Section 3(a)(1) of the Investment Company Act defines "investment company" to include "any issuer which – (A) is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, or trading in securities." The only

business that Flatiron Capital and Flatiron Systems proposed to engage in, and did engage in, was the investing, reinvesting, or trading in securities.

97. Section 3(c) excludes several categories of businesses from the definition of investment company; however, Flatiron Capital and Flatiron Systems do not fall within any of these categories. Specifically Flatiron Capital and Flatiron Systems are not excluded under Sections 3(c)(1) and (7) of the Investment Company Act because their securities were sold in public offerings to individuals who were not “qualified purchasers”.

98. Section 7(a) of the Investment Company Act prohibits investment companies from, among other things, offering or selling securities through interstate commerce unless they are registered under the Act. As previously described, Flatiron Capital and Flatiron Systems securities were offered to investors nationwide. Flatiron Capital securities were offered and sold in at least 38 states and Flatiron Systems securities were offered and sold in at least 24 states.

99. Although required to do so, neither Flatiron Capital nor Flatiron Systems registered with the Commission as an investment company at any time.

Howard Was an Investment Adviser to Flatiron Capital and Flatiron Systems

100. Section 202(a)(11) of the Investment Advisers Act defines the term “investment adviser” to mean any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities.

101. Howard was a managing member of both Flatiron Capital and Flatiron Systems. Howard initially shared management responsibilities with a co-manager at Flatiron Capital and then later took on all of the responsibilities. At Flatiron Systems, Howard was the sole managing member and exercised complete control. As a managing member of Flatiron Capital and Flatiron Systems, Howard directed the investments by the funds; investing their assets in equities, commodities and private placements.

102. Howard advised Flatiron Capital and Flatiron Systems on the value and trading of securities in exchange for compensation. Howard received approximately $36,000 in compensation from Flatiron Capital and approximately $281,000 from Flatiron Systems.

103. Therefore, Howard was an investment adviser to Flatiron Capital and Flatiron Systems as defined under Section 202(a)(11) of the Investment Advisers Act.

CLAIMS FOR RELIEF

FIRST CLAIM
Against Howard, Flatiron Capital and Flatiron Systems
Fraud in the Offer or Sale of Securities
Violations of Section 17(a) of the Securities Act
[15 U.S.C. § 77q(a)]

104. As a result of the conduct alleged in paragraphs 1 through 103, defendants Flatiron Capital, Flatiron Systems and Howard have, directly or indirectly, with scienter, in the offer or sale of securities, by use of the means or instruments of transportation or communication in interstate commerce or by use of the mails, employed a device, scheme, or artifice to defraud in violation of Section 17(a)(1) of the Securities Act.

105. As a result of the conduct alleged in paragraphs 1 through 103, defendants Flatiron Capital, Flatiron Systems and Howard have, directly or indirectly, in the offer or sale of securities, by use of the means or instruments of transportation or communication in interstate commerce or by use of the mails obtained money or property by means of untrue statements of material fact or by omissions to state material facts necessary to make the statements made, in light of the circumstances

under which they were made, not misleading in violation of Section 17(a)(2) of the Securities Act.

106. As a result of the conduct alleged in paragraphs 1 through 103, defendants Flatiron Capital, Flatiron Systems and Howard engaged in transactions, practices, or courses of business which have been or are operating as a fraud or deceit upon the purchasers of securities in violation of Section 17(a)(3) of the Securities Act.

107. Unless restrained and enjoined defendants Flatiron Capital, Flatiron Systems and Howard will, in the future, violate Section 17(a) of the Securities Act.

SECOND CLAIM
Against All Defendants
Fraud in the Purchase or Sale of Securities
Violations of Section 10(b) and Rule 10b-5 of the Exchange Act
[15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5]

108. As a result of the conduct alleged in paragraphs 1 through 103, defendants Spyglass, Carter, Sjoblom, Elliott, Flatiron Capital, Flatiron Systems and Howard have, directly or indirectly, with scienter, by use of means or instrumentalities of interstate commerce or of the mails, or of any facility of a national securities exchange, used or employed, in connection with the purchase or sale of a security, a manipulative or deceptive device or contrivance in contravention of the rules and regulations of the SEC;

employed devices, schemes or artifices to defraud; made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or engaged in acts, practices or courses of business which operated or would operate as a fraud or deceit upon any person, in violation Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

109. Unless restrained and enjoined defendants Spyglass, Carter, Sjoblom, Elliott, Flatiron Capital, Flatiron Systems and Howard will, in the future, violate Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

THIRD CLAIM
Against Howard
Fraud by an Investment Advisor
Violations of Sections 206(1), (2) and (4) and Rule 206(4)-8 of the Advisers Act
[15 U.S.C. §§ 80b-6(1), (2) and (4) and 17 C.F.R. § 275.206(4)-8]

110. As a result of the conduct alleged in paragraphs 1 through 103, defendant Howard, while acting as an investment adviser, has, directly or indirectly, with scienter, by use of the means or instruments of interstate commerce or by use of the mails, employed devices, schemes, or artifices to defraud clients or prospective clients; engaged in transactions, practices, or courses of business which operated or operate as a fraud or deceit upon

any client or prospective client; and engaged in acts, practices, or courses of business which are fraudulent, deceptive, or manipulative.

111. Among other things, Howard made untrue statements of material facts and omitted to state material facts 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 pooled investment vehicles; and Howard otherwise engaged in acts, practices, or courses of business that are fraudulent, deceptive, or manipulative with respect to any investor or prospective investor in the pooled investment vehicle.

112. Unless restrained and enjoined defendant Howard will, in the future, violate Section 206 of the Advisers Act.

FOURTH CLAIM
Against Spyglass, Carter, Sjoblom and Elliott
Aiding and Abetting Fraud by an Investment Advisor
Aidng and Abetting Violations of Section 206(4)
and Rule 206(4)-8 of the Advisers Act
[15 U.S.C. § 80b-6(4) and 17 C.F.R. § 275.206(4)-8]

113. As a result of the conduct alleged in paragraphs 1 through 103, defendant Howard, engaged in violations of Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder.

114. Spyglass, Carter, Sjoblom and Elliott, with scienter, provided substantial assistance to Howard's violations of Section 206 (4) of the Advisers Act and Rule 206(4)-8 thereunder.

115. Unless restrained and enjoined defendant Spyglass, Carter, Sjoblom and Elliot will, in the future, aid and abet violations of Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder.

FIFTH CLAIM
Against Howard, Flatiron Capital and Flatiron Systems
Unregistered Sale of Securities
Violations of Sections 5(a) and 5(c) of the Securities Act
[15 U.S.C. §§ 77e(a) and e(c)]

116. As a result of the conduct alleged in paragraphs 1 through 103, defendants Flatiron Capital, Flatiron Systems and Howard have, directly or indirectly, made use of the means or instruments of transportation or communication in interstate commerce or of the mails to offer and sell securities, and carried or caused to be carried through the mails, or in interstate commerce, by means or instruments of transportation, such securities for the purpose of sale or for delivery after sale, when no registration statement had been filed or was in effect as to such securities in violation of Section 5(a) and 5(c) of the Securities Act.

117. Unless restrained and enjoined, defendants Flatiron Capital, Flatiron Systems and Howard will, in the future, violate Sections 5(a) and 5(c) of the Securities Act.

SIXTH CLAIM
Against Spyglass, Carter, Sjoblom and Elliott
Offers and Sales of Securities by an Unregistered Broker-Dealer
Violations of Exchange Act Section 15(a)
[15 U.S.C. § 78o(a)]

118. As a result of the conduct alleged in paragraphs 1 through 103, defendants Spyglass, Carter, Sjoblom and Elliott have, while not registered as or associated with a broker or dealer made use of the means or instruments of interstate commerce to induce or attempt to induce the purchase or sale of, a security in violation of Section 15(a) of the Exchange Act.

119. Unless restrained and enjoined defendants Spyglass, Carter, Sjoblom and Elliott will, in the future, violate Section 15(a) of the Exchange Act.

SEVENTH CLAIM
Against Flatiron Capital and Flatiron Systems
Offers and Sales of Securities by an
Unregistered Investment Company
Violations of Investment Company Act Section 7(a)
[15 U.S.C. § 80a-7]

120. As a result of the conduct alleged in paragraphs 1 through 103, defendants Flatiron Capital and Flatiron Systems have, while not registered

as an Investment Company, have made use of the means or instruments of interstate commerce to induce or attempt to induce the purchase or sale of a security in violation of Section 7(a) of the Investment Company Act.

121. Unless restrained and enjoined defendants Flatirons Capital and Flatiron Systems will, in the future, violate Section 7(a) of the Exchange Act.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court:

Find that defendants Spyglass, Carter, Sjoblom, Elliott, Flatiron Capital, Flatiron Systems and Howard committed the violations alleged;

I. Enter an Injunction, in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure, permanently restraining and enjoining defendants Spyglass, Carter, Sjoblom, Elliott, Flatiron Capital, Flatiron Systems and Howard, his or its agents, employees, and all persons in active concert or participation with them, from violating, directly or indirectly, the laws and rules alleged in this Complaint;

II. Order that defendants Spyglass, Carter, Sjoblom, Elliott, Flatiron Capital, Flatiron Systems and Howard disgorge all ill-gotten gains, including pre- and post-judgment interest, in the form of any benefits of any

kind received as a result of the acts and courses of conduct in this Complaint;

III. Order that defendants Spyglass, Carter, Sjoblom and Elliott pay civil penalties, including post-judgment interest, pursuant to Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)] and Section 209(e) of the Adviser's Act [15 U.S.C. § 80b-9(e)];

IV. Order that defendant Howard pay civil penalties, including post-judgment interest, pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)], Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)] and Section 209(e) of the Adviser's Act[15 U.S.C. § 80b-9(e)]; and

V. Order that defendants Flatiron Capital and Flatiron Systems pay civil penalties, including post-judgment interest, pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)], Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)] and Section 42(e) of the Investment Company Act [15 U.S.C. § 80a-41(e)]; and

VI. Order such other relief as is necessary and appropriate.

Respectfully Submitted

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