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UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

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UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

CASE NO.:

SECURITIES AND EXCHANGE )  
 COMMISSION, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 JAMES DAVIS RISHER and )  
 DANIEL JOSEPH SEBASTIAN, )  
 )  
 Defendants. )  
 \_\_\_\_\_ )

6:11-cv-1440-01-18GJK

COMPLAINT

Plaintiff Securities and Exchange Commission alleges:

INTRODUCTION

1. From no later than January 2007 through July 2010, Defendants James Davis Risher and Daniel Joseph Sebastian operated a Ponzi scheme and raised approximately \$22 million from more than 100 investors nationwide and in Canada. Many of these investors were Florida teachers and retirees. The Defendants purportedly operated a private fund marketed under the names "Managed Capital Fund," "Safe Harbor Private Equity Fund," and "Preservation of Principal Fund" (collectively, the "Fund").

2. Risher and Sebastian represented to investors the Fund would only be used for investments in equities through a FINRA-regulated clearinghouse. In reality, Risher invested only a fraction of investor funds in equities through a broker-dealer. Instead, he misappropriated the majority of the money for personal use.

3. Throughout the fraud, the Defendants made materially false and misleading representations and omissions regarding the Fund's investment strategy, the safety of investing in the Fund, the existence of audited financial statements, and the investment returns. Additionally, Risher did not disclose to investors he spent 11 of the last 21 years in state and federal prisons after being convicted of numerous crimes including securities and mail fraud.

4. As a result of the conduct described in this Complaint, the Defendants violated Sections 5(a) and (c) and 17(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. §§77e(a) and (c) and 77q(a); and Section 10(b) and Rule 10b-5 of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. §78j(b) and 17 C.F.R. §240.10b-5. Risher and Sebastian also aided and abetted the Fund's 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. Risher additionally violated Sections 206(1), 206(2), and 206(4) of the Investment Advisers Act of 1940 ("Advisers Act") and Rule 206(4)-8 of the Advisers Act, 15 U.S.C. § 80b-6(1), 80b-6(2), and 80b-6(4) and 17 C.F.R. § 275.206(4)-8 and Sebastian aided and abetted Risher's violations of Section 206(4) and Rule 206(4)-8 of the Advisers Act, 17 C.F.R. § 275.206(4)-8.

5. The Commission requests that the Court enter: (1) a permanent injunction restraining and enjoining Risher and Sebastian from violating the federal securities laws; (2) an order directing Risher and Sebastian to disgorge all profits or proceeds they received as a result of the acts and/or courses of conduct complained of, with prejudgment interest; and (3) an order directing Risher and Sebastian to pay civil money penalties.

#### **DEFENDANTS**

6. Risher is a resident of Sanibel, Florida. He was the Fund's sole trader and has an extensive criminal history, including the following:

- In January 1990, Risher pled guilty to 20 counts of theft by taking in Fulton County, Georgia. The court sentenced him to ten years in prison.
- In February 1990, Risher pled guilty to a bad check offense in the Superior Court of Gwinnett County, Georgia. The court sentenced him to twelve months to run consecutively with the sentencing detailed in the September 1990 offense below.
- In September 1990, Risher pled guilty to three counts of theft by taking and two counts of violating the Georgia Securities Act in the Superior Court of Cobb County, Georgia. The court sentenced him to ten years in prison.
- In November 1990, Risher pled guilty to two counts of violating the Georgia Securities Act and two counts of theft by taking in the Superior Court of Houston County, Georgia. The court sentenced him to five years in prison.
- In November 1996, Risher pled guilty to one count of mail fraud, one count of federal securities fraud, and two counts of money laundering in the Middle District of Florida. The court sentenced him to 92 months in prison.

7. Sebastian is a resident of Celebration, Florida. He does business under the unregistered, fictitious name of "Safe Harbor." Until April 2004, Sebastian operated an insurance agency in Florida. He represented himself to investors as the principal and manager of the Fund's operations.

#### **JURISDICTION AND VENUE**

8. This Court has jurisdiction over this action pursuant to Sections 20(b), 20(d) and 22(a) of the Securities Act, 15 U.S.C. §§ 77t(b), 77t(d) and 77v(a); Sections 21(d) and 27 of the Exchange Act, 15 U.S.C. §§ 78u(d) and 78aa; and Section 214 of the Advisers Act, 15 U.S.C. § 80b-14.

9. This Court has personal jurisdiction over the Defendants and venue is proper in the Middle District of Florida because many of the Defendants' acts and transactions constituting violations of the Securities Act, the Exchange Act, and the Advisers Act occurred in the Middle District of Florida. For example, the Defendants held promotional events for the Fund in Orlando

and Lakeland. In addition, the Defendants reside in the Middle District of Florida, and Safe Harbor's office was located in the Middle District of Florida until it closed in September 2010.

10. In connection with the conduct alleged in this Complaint, the Defendants, directly and indirectly, singly or in concert with others, made use of the means or instrumentalities of interstate commerce, the means or instruments of transportation and communication in interstate commerce, and the mails.

### **FACTUAL ALLEGATIONS**

#### **A. The Fund Offering**

11. The Defendants met through a mutual acquaintance in 2006 and established the Fund in 2007. Beginning in early 2007, they touted themselves in Fund offering documents as "two unique individuals" who used their expertise to "create an investment vehicle that would allow investors to capitalize from both bull and bear markets." They encouraged investors to purchase shares in the Fund that would purportedly provide a pro rata share of the Fund's profits.

12. In early 2007, Risher gave Sebastian several sets of offering materials for the Managed Capital Fund, to use to solicit investors into the Fund. Risher and Sebastian used these offering materials to seek investors from 2007 through early 2010. They then prepared substantially similar offering materials and changed the name of the fund to the "Safe Harbor Private Equity Fund."

13. The Fund offered three investment strategies at varying levels of risk. Risher and Sebastian claimed the Fund invested in blue chip stocks, exchange-listed equities, options, and other investment vehicles, depending on the strategy employed. The Fund's stated goal was to achieve annualized returns ranging from 12% to 51% using the three strategies. The Fund's offering materials boasted a successful history of net returns ranging from 14% to more than 124% annually,

dating back to 2000, when Risher claimed he operated the Fund under the name “Managed Capital Fund.”

14. The offering materials stated the management fee was 2% of assets under management and the performance fee was 20% of profits. Sebastian and Risher split the fees equally and Risher wired Sebastian his portion on a quarterly basis.

15. From 2007 through July 2010, Sebastian solicited his former insurance customers, educators, retirees, and members of several churches in Florida. During the same time period, he also solicited investors in California, other states, and Canada. Sebastian persuaded his former customers to roll over the funds in their insurance and annuity products into the Fund. He told his customers the Fund would provide a higher rate of return than they could receive from the products he had previously sold them. At least one investor liquidated an annuity she had purchased from Sebastian and invested the proceeds in the Fund.

16. Defendant Risher, for compensation, engaged in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, including shares of the Fund.

17. Investors in the Fund purchased shares purportedly representing a pro rata slice of the Fund. No registration statement was filed or in effect with the Commission pursuant to the Securities Act with respect to any offering of the Fund.

18. From 2007 through July 2010, Sebastian provided investors with Fund offering materials and drafted and electronically signed Fund newsletters, which touted Risher’s trading skill and substantial investment experience. Sebastian distributed Fund newsletters on at least the following dates:

October 9, 2007  
December 4, 2007

October 15, 2008  
June 16, 2009

January 7, 2008  
February 7, 2008  
September 17, 2008  
September 25, 2008  
October 8, 2008

July 10, 2009  
June 15, 2010  
July 12, 2010  
August 23, 2010  
August 25, 2010

Sebastian also sent out undated newsletters, which he drafted and electronically signed, to investors in December 2008 and the fall of 2009.

19. In early 2010, Sebastian gave investors a DVD containing, among other things, video testimonials about Sebastian and Safe Harbor from other investors.

20. Also in early 2010, Risher solicited new investors and told at least one prospective investor during a telephone call he was in charge of trading securities for the Fund. He described to this investor the trading strategies the Fund employed and represented it had yielded an annual return of 19% in 2007.

21. Throughout the fraud, Sebastian also hosted numerous annual golf tournaments and other promotional events for investors, which Risher sometimes attended. At an investor event held on March 12 through 14, 2010 at an Orlando resort, Sebastian told investors in a speech, “[Y]ou invest in this fund and all of a sudden you start making more money than you’ve ever made in your life with your investors. And then all of a sudden you start making enough money where you don’t have to go to work...[a]t Safe Harbor, you could retire today, like right now. And I’m telling you, you get rid of the struggle.”

22. Risher also spoke to investors at this meeting, saying his job was to “keep us what we like to call market neutral, and that means that we have the ability to profit hopefully on the upside as things go up and to try to remain with a bias toward things unexpectedly going bad and going short when things go down.” Sebastian recorded his speech and included it along with investor testimonials in offering materials he distributed to existing and prospective investors.

23. Sebastian directed investors to send their investments by wire or check to a bank account in the name of Jade Asset Group, which was under Risher and his wife's exclusive control. Some investors also made their investment checks out to Capital Trading Partners, LLC, Managed Capital, LLC, and Isle FX Trading, LLC, all controlled by Risher. Risher signed and sent investors confirmations for the receipt of their funds. Investors understood their funds purchased purported shares in the Fund. Many investors rolled over their retirement savings. At least two investors drew on their home equity lines of credit to invest in the Fund, relying on the Defendants' representations of the Fund's safety and success.

24. Contrary to the stated strategies of the Fund, Risher placed only \$2.5 million of the \$22 million he and Sebastian raised in brokerage accounts for trading. Furthermore, bank and brokerage records indicate Risher lost \$890,000 of the \$2.5 million invested through his trading activity.

25. Instead of investing investor funds as promised, Risher and Sebastian paid themselves purported management and performance fees of \$4.8 million and \$3.3 million, respectively. Based on the performance of the Fund, these payments were not due to the Defendants. They also used the money to honor periodic distribution and redemption requests totaling approximately \$3.6 million between January 2007 and July 2010. Additionally, Risher used another \$4.5 million of investor funds for jewelry, gifts, purchases of real property in North Carolina and Florida, and personal expenses such as credit card and property tax payments.

26. During the scheme, Sebastian sent investors account statements showing purported quarterly returns ranging from 2.28% to 5.64%. The quarterly statements displayed account balances and percent returns, but contained no information about specific trades or securities held, and never showed losses. Without seeing records of the supporting trading activity or a complete

list of the Fund's holdings, Sebastian generated the statements using purported percentage returns for each of the Fund's strategies that Risher sent him through email or text messages. He also calculated the Defendants' management and performance fees based on these communications from Risher.

27. Additionally, Sebastian and sent investors periodic newsletters, which he drafted and signed, reporting on the Fund's returns and operations. For example, in the October 8, 2008 newsletter, Sebastian told investors "we will preserve your principle [sic] at all cost." In the December 2008 newsletter, he told investors he "made sure before a single dollar went into the Private Equity Fund that [Risher] was not to trade at more than 1:1 [leverage] except with rare exception." Sebastian repeatedly touted Risher's trading expertise and ability, as well as the Fund's success in comparison to other investments. The same December 2008 newsletter said, "no matter which way the market goes, you can see why [Risher] has never had so much as a down quarter for the entire life of the fund which has been in existence for going on nine years now."

28. In the fall 2009 newsletter, Sebastian also discussed specific trades the Fund had purportedly made and told investors he spent three weeks in September 2009 sitting next to Risher and observing his trading.

**B. The REIT Offering**

29. From no later than December 2009 through January 2010, the Defendants also solicited investors to invest in the Safe Harbor Real Estate Investment Trust ("REIT") by purchasing shares of the REIT. Sebastian told investors via telephone calls, e-mail, and in-person meetings, Risher was going to use investor proceeds to fund the purchase of distressed real property at a discount and investors would profit from the sale of the property. Investors received statements reflecting only that they had invested in a "Real Estate Asset Management Trust" and containing no



other information about the investment. The supposed minimum investment was \$100,000, and investors could roll \$50,000 over from the Fund into the REIT program. Investors made their checks for the balance out to Isle FX Trading.

30. The Defendants raised more than \$890,000 from 13 investors in the REIT offering. Instead of using the funds to invest in a REIT, Risher transferred them into a brokerage account and lost more than \$71,000 through trading equities. He transferred more than half of the remainder into several bank accounts he controlled and spent the rest by June 2010 on jewelry, electronics, foreign currency, payments to a construction company, and other personal expenditures.

**C. Roles of Sebastian and Risher**

31. From 2007 through July 2010, Sebastian distributed offering materials to investors representing Sebastian as the Fund's managing partner and Risher as responsible for handling the trading operations. In reality, Risher alone had control over nearly all aspects of the Fund, including managing investor funds. Sebastian's primary activities were marketing the Fund and corresponding with investors. Sebastian did not have access to the bank or brokerage accounts where investor funds were held, and Risher denied him access when requested. Instead, Risher would transfer investor funds to accounts held by Preservation of Principal, LLC and LBT Group, Inc., both entities Sebastian controlled. Sebastian received his share of the management and performance fees through the LBT Group account.

32. During the scheme, Risher was frequently late in wiring the distribution funds and his share of the performance fee. Sebastian questioned Risher about the reasons for the delays on numerous occasions. Risher blamed the delays on an inability to liquidate the funds on time or incorrect wiring instructions. In one instance in late 2007, Sebastian emailed Risher in reference to Risher's late wires, saying he was acting more like a rookie than an experienced trader. In October

2009, Sebastian asked Risher to add him as an authorized agent on all accounts associated with the Fund so he could have some control over the timeliness of the funds disbursed to the Preservation of Principal bank account for investor distributions. Risher never gave him access.

33. In middle 2008, Risher provided Sebastian with two sets of false financial statements for the Fund. These documents were purportedly financial statements for Jade Asset Group and professed to have been audited by an auditing firm out of Bermuda, which in fact did not exist. The purported audit opinion letter accompanying the statements stated the audit was conducted “in accordance with the standards of the Public Company Accounting Oversight Board (United Kingdom),” which did not exist. These statements improperly reported investor deposits as revenues instead of capital contributions. Furthermore, each of the documents purported to be an “annual” financial statement, but they were issued only six months apart. Finally, the statements contained many references to irrelevant facts apparently copied from another source, such as executive compensation, stockholders and stock option plans, a failed corporate acquisition, the company’s board of directors, and its earnings per share.

34. In August 2009, Risher provided Sebastian with another set of fabricated financial statements for the Fund. Entitled “Capital Trading Partners, LLC Assembled Financial Statements,” they covered the period from January 1 to April 30, 2009, but did not mention the Fund’s name. These statements stated they “are not prepared with an expression of any form of opinion or assurance and they are prepared by an entity that is not licensed by the Florida Board of Accountancy.” The statements reflect a beginning capital balance of approximately \$4.5 million (which was almost \$10 million less than Risher and Sebastian had raised at the time) and an ending balance of \$0. Risher told Sebastian these later statements were for Strategy One’s invested assets but not its cash positions.

35. In May 2010, Sebastian became further concerned with Risher's handling of investor funds. Risher had sent two checks totaling \$125,000 directly sent to an investor to cover the investor's withdrawal request, but the checks were returned for insufficient funds. He ultimately paid the investor, but did so in three installments over two months.

36. Risher provided Sebastian with very limited financial and trading records for the Fund, and when he did, they were fabricated. On several occasions, Risher substituted the Fund's brokerage records with records for another brokerage account over which he had discretionary trading authority. The account belonged to an unrelated entity and did not contain any money belonging to Fund investors. For example, on August 19, 2009, Risher gave Sebastian two brokerage account summaries from this unrelated account with the brokerage account names and numbers redacted, along with a small accompanying list of purported trades, for use in preparing to solicit two prospective investors into the Fund.

37. Toward the end of the scheme in July 2010, Sebastian again asked Risher for the Fund's brokerage records and Risher provided him with more false documentation in the form of several screenshots of unrelated brokerage accounts balances for the Fund, totaling \$21.3 million. These screenshots did not indicate dates or account numbers.

#### **MISREPRESENTATIONS AND OMISSIONS**

38. From 2007 through July 2010, Risher and Sebastian made a number of material false statements and omissions to investors regarding, among other things, the Fund's investment strategy, Risher's criminal history, the safety of investors' principal, the existence of audited financial statements, and the Fund's investment returns.

**A. Misrepresentation of Investment Strategy**

39. Risher and Sebastian misrepresented to investors the Fund's investment strategy consisted of trading in equities, and failed to disclose they were operating a Ponzi scheme.

40. Risher acted as the primary drafter of the written offering materials, which Sebastian distributed to investors. The written offering materials describe the Fund's three strategies for trading equities through a FINRA-registered clearinghouse. Sebastian repeatedly discussed the Fund's trading activity in newsletters he drafted, signed, and sent to investors. Furthermore, Risher gave a speech to investors at a Fund event in Orlando, Florida in March 2010, briefly explaining his equity trading strategy.

41. Risher knew the statements about trading were false. He knew the Fund had no meaningful source of income other than money from new investors because he had deposited only a small fraction of the \$22 million raised into brokerage accounts and conducted minimal trading activity.

42. Sebastian held himself out to investors as the manager of the Fund's operations but never acted in this capacity and ignored several red flags about the veracity of the statements. First, he never saw any complete brokerage statements for the Fund or list of the Fund's investment holdings. Second, the limited brokerage records he did see were redacted, incomplete, and reflected significantly less than what he knew the full balance of the Fund's assets should have been at the time.

**B. Failure to Disclose Risher's Criminal History**

43. From 2007 through July 2010, Risher knowingly misrepresented to investors his criminal and business background. Risher's biography, which he wrote and included in the Fund's offering materials, misrepresented him as, among other things, having worked for a brokerage firm

between 1977 and 1998, and owning retail brokerage and wealth and asset management businesses. The Fund's written offering materials also contained fictitious historical returns of the Fund in the materials dating back to 2000. In reality, Risher spent almost four years between February 1990 and November 1993 in prison, in part for convictions in 1990 based on violations of Georgia securities laws. He later spent almost seven years between February 1996 and October 2002 in a federal penitentiary in Florida for a conviction in 1996 on violations of the federal securities laws. He was incarcerated once more in 2003 for a probation violation in Georgia. Risher did not disclose to investors that for at least six of the 21 years between 1977 and 1998, during which he was purportedly growing a "thriving" retail brokerage business, he was actually in prison for securities fraud. Furthermore, Risher has actually never held any securities licenses nor been associated with or owned a registered broker-dealer.

**C. Misrepresentation of the Safety of the Investment**

44. From 2007 through July 2010, Sebastian orally told several investors during telephone calls and in-person meetings they would never lose their principal investments in the Fund. He also provided some investors with written guarantees from Safehaven Inc., a company he wholly owned, claiming all money deposited into the Fund would be guaranteed against loss, and that Safehaven would reimburse any loss. According to the guarantee, which he drafted and signed, Sebastian, as Fund manager, was required to keep a stop loss on all active trades placed in the Fund, and the Fund was required to maintain a certain cash reserve at all times.

45. Sebastian's oral and written guarantees were baseless. He had no basis to claim investors would not lose their principal in a fund that day traded public equities. Second, Sebastian knew Safehaven had no assets to reimburse investors for losses, making his guarantee meaningless.

Third, Sebastian, knew he had no access to the Fund's brokerage accounts to be able to place a stop loss on the trades or to verify the Fund maintained the appropriate cash reserve, which it did not.

46. In the spring of 2009, Sebastian signed and sent a newsletter to investors claiming investors' funds were safe and assuring them that if Risher ever tried to "abscond with all the money in the fund, [Sebastian] would very quickly see what was happening." Sebastian told investors in another newsletter he signed that "[Risher], as well as my self [sic], along with a team of other people have the ability to, at any time, go into the books and make certain that everything is in order and according to what is being reported to the members." Sebastian knew this was false because he did not have access to the bank or brokerage accounts where investors' money was purportedly held.

47. The written offering materials Risher drafted also misrepresented to investors all the Fund's assets were held at, and all trades were cleared through, a FINRA-registered clearinghouse. Risher sent at least one investor a letter he signed stating the investors' funds would be "[p]rotected at all times by Securities Investor Protection Corporation ("SIPC") for the full amount of [his] principal balance," although this "does not insure against losses incurred in the trading process, only against theft, fraud, and malfeasance." Risher knew these statements were false because he had deposited only a small fraction of the \$22 million raised into brokerage accounts that SIPC insured. Sebastian knew or was extremely reckless in not knowing these misrepresentations in the offering materials he distributed were false because the limited brokerage records he saw reflected significantly less than what the full balance of the Fund's assets should have been at the time. Furthermore, he ignored the red flags that the brokerage records were redacted and incomplete.

48. Finally, the offering materials misrepresented the Fund was registered in Bermuda. It was not.

**D. Misrepresentation of Existence of Audited Financial Statements**

49. The Fund's offering materials, which Risher drafted and Sebastian distributed, also falsely represented the Fund's results were audited and verified by Capital Requirements, Ltd., of Hamilton, Bermuda. No such entity has ever registered or been incorporated in Bermuda. Risher knew these statements were false.

50. Sebastian further signed and distributed a newsletter to investors in 2009 claiming the Fund "is audited by an organization in Bermuda and every line item is looked at closely and scrutinized."

51. Sebastian knew or was extremely reckless in not knowing the Fund did not have audited financial statements for several reasons. First, the only financial documents he saw covered only the brief period from January 2007 to March 2008, and he ignored red flags that these were fake. Second, the remaining financial documents he saw covered the period from January to April 2009, and indicated on their face they were not audited. Finally, at no point during the approximately 3 ½ years he was involved in the Fund did he see an audit engagement letter, speak with any auditor, or provide any auditors with information pertaining to the Preservation of Principal distribution account, to which only he and his assistant had access.

**E. False Account Statements**

52. Risher and Sebastian lulled investors with false account statements, reflecting annual returns of at least 14%. These statements, which Sebastian prepared and distributed based on performance figures Risher sent him each reporting period, had no basis. Risher knew, based on his control of the Fund's bank and brokerage accounts, the Fund's returns he provided Sebastian were false.

53. Sebastian knew or was extremely reckless in not knowing the returns in the account statements were false. He simply entered the percentage returns he obtained from Risher into computer software to generate the investor statements. He then sent them to investors without questioning why there were never any losses after the market downturn during the scheme. Nor did he ever see brokerage statements, a complete list of investment holdings, or any other financial record supporting the persistent positive returns.

**F. Misappropriation of Investor Funds**

54. Risher misappropriated investor funds for his personal benefit. He received approximately \$4.8 million in performance fees based on the Fund's fictitious returns. Additionally, Risher used approximately \$3.2 million of investor funds for jewelry, gifts, and purchases of real property in North Carolina and Florida. He used another \$1.3 million to cover personal expenses such as credit card and property tax payments.

**COUNT I**

**Sale of Unregistered Securities in Violation of  
Sections 5(a) and 5(c) of the Securities Act**

55. The Commission realleges and incorporates Paragraphs 1 through 54 of this Complaint.

56. No registration statement was filed or in effect with the Commission pursuant to the Securities Act with respect to the securities and transactions described in this Complaint and no exemption from registration existed with respect to these securities and transactions.

57. From January 2007 through July 2010, the Defendants directly and indirectly:

- (a) made use of the means or instruments of transportation or communication in interstate commerce or of the mails to sell securities as described herein, through the use or medium of a prospectus or otherwise;



- (b) carried securities or caused such securities, as described herein, to be carried through the mails or in interstate commerce, by any means or instruments of transportation, for the purpose of sale or delivery after sale; or
- (c) made use of the means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of any prospectus or otherwise, as described herein, without a registration statement having been filed or being in effect with the Commission as to such securities.

58. By reason of the foregoing, the Defendants violated and, unless enjoined are reasonably likely to continue to violate, Sections 5(a) and (c) of the Securities Act, 15 U.S.C. § 77e(a) and (c).

## COUNT II

### **Fraud in the Offer or Sale of Securities in Violation of Section 17(a)(1) of the Securities Act**

59. The Commission realleges and incorporates Paragraphs 1 through 54 of this Complaint.

60. From January 2007 through July 2010, the Defendants, directly and indirectly, by use of the means or instruments of transportation or communication in interstate commerce and by use of the mails, in the offer or sale of securities, knowingly, willfully or recklessly employed devices, schemes or artifices to defraud.

61. By reason of the foregoing, the Defendants, directly and indirectly, violated and, unless enjoined, are reasonably likely to continue to violate Section 17(a)(1) of the Securities Act, 15 U.S.C. § 77q(a)(1).

**COUNT III**

**Fraud in the Offer or Sale of Securities in Violation of  
Sections 17(a)(2) and 17(a)(3) of the Securities Act**

62. The Commission realleges and incorporates Paragraphs 1 through 54 of this Complaint.

63. From January 2007 through July 2010, the Defendants, directly and indirectly, by use of the means or instruments of transportation or communication in interstate commerce and by the use of the mails, in the offer or sale of securities:

(a) obtained money or property by means of untrue statements of material facts and omissions to state material facts necessary to make the statements made, in the light of the circumstances under which they were made, not misleading; or

(b) engaged in transactions, practices and courses of business which operated as a fraud or deceit upon purchasers of such securities.

64. By reason of the foregoing, the Defendants, directly and indirectly, violated and, unless enjoined, are reasonably likely to continue to violate Sections 17(a)(2) and 17(a)(3) of the Securities Act, 15 U.S.C. §§ 77(q)(a)(2) and 77(q)(a)(3).

**COUNT IV**

**Fraud in Connection with the Purchase or Sale of Securities in  
Violation of Section 10(b) of the Exchange Act and Rule 10b-5**

65. The Commission realleges and incorporates Paragraphs 1 through 54 of this Complaint.

66. From January 2007 through July 2010, the Defendants, directly and indirectly, by use of the means and instrumentality of interstate commerce, and of the mails in connection with the purchase or sale of securities, knowingly, willfully or recklessly:

- (a) employed devices, schemes or artifices to defraud;
- (b) made untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
- (c) engaged in acts, practices and courses of business which have operated as a fraud upon the purchasers of such securities.

67. By reason of the foregoing, the Defendants, directly or indirectly, violated and, unless enjoined, are reasonably likely to continue to violate, Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b) and Rule 10b-5, 17 C.F.R. § 240.10b-5.

#### **COUNT V**

##### **Aiding and Abetting violations of Section 10(b) and Rule 10b-5 of the Exchange Act**

68. The Commission realleges and incorporates Paragraphs 1 through 54 of this Complaint.

69. From January 2007 through July 2010, the Fund, directly and indirectly, by use of the means and instrumentality of interstate commerce, and of the mails in connection with the purchase or sale of securities, knowingly, willfully or recklessly:

- (a) employed devices, schemes or artifices to defraud;
- (b) made untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
- (c) engaged in acts, practices and courses of business which have operated as a fraud upon the purchasers of such securities.

70. Risher and Sebastian, from no later than January 2007 through July 2010, knowingly or recklessly substantially assisted the Fund's violations of Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5.

71. By reason of the foregoing, Defendants Risher and Sebastian directly or indirectly violated, and, unless enjoined, are reasonably likely to continue to violate, Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5.

### **COUNT VI**

#### **Fraud by Investment Advisers in Violation of Section 206(1) and 206(2) of the Advisers Act (Against Defendant Risher)**

72. The Commission realleges and incorporates Paragraphs 1 through 54 of this Complaint.

73. During the relevant time period, Defendant Risher was an investment adviser within the meaning of Section 202(a)(11) of the Advisers Act, 15 U.S.C. § 80b-2(11).

74. From January 2007 through July 2010, Defendant Risher, by use of the mails, and the means and instrumentalities of interstate commerce, directly or indirectly, while acting as an investment adviser, knowingly, willfully, or recklessly:

- (a) employed devices, schemes, or artifices to defraud clients or prospective clients;
- (b) engaged in transactions, practices, and courses of business that operated as a fraud or deceit upon clients or prospective clients; and
- (c) engaged in acts, practices, and courses of business which were fraudulent, deceptive, or manipulative.

75. By reason of the foregoing, Defendant Risher, directly and indirectly, violated and, unless enjoined, is reasonably likely to continue to violate, Sections 206(1) and 206(2) of the Advisers Act, 15 U.S.C. §§ 80b-6(1) and 80b-6(2).

**COUNT VII**

**Fraud in Violation of Section 206(4) and Rule 206(4)-8  
(Against Defendant Risher As Primary Violator and  
Against Sebastian as Aider and Abettor)**

76. The Commission realleges and incorporates Paragraphs 1 through 54 of this Complaint.

77. From January 2007 through July 2010, Risher, directly and indirectly, while acting as an investment adviser, made untrue statements of material facts 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, to investors and prospective investors in a pooled investment vehicle.

78. Sebastian, by engaging in the conduct described above, knowingly or recklessly substantially assisted Risher's violations of Section 206(4) and Rule 206(4)-8 of the Advisers Act.

79. By reason of the foregoing, Risher and Sebastian, directly or indirectly, violated and, unless enjoined, are reasonably likely to continue to violate, 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.

**RELIEF REQUESTED**

**WHEREFORE**, the Commission respectfully requests that the Court:

I.

**Declaratory Relief**

Declare, determine and find that the Defendants committed the violations of the federal securities laws alleged in this Complaint.

**II.**

**Permanent Injunctive Relief**

Issue a Permanent Injunction restraining and enjoining the Defendants, their officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them, and each of them, from violating: (i) Sections 5(a) and 5(c) of the Securities Act; (ii) Section 17(a)(1) of the Securities Act; (iii) Sections 17(a)(2) and 17(a)(3) of the Securities Act; (iv) Section 10(b) of the Exchange Act and Rule 10b-5 thereunder; and (v) Sections 206(1), 206(2), and 206(4) of the Advisers Act, and (vi) Rule 206(4)-8 of promulgated under the Advisers Act, 17 C.F.R. § 275.206(4)-8.

**III.**

**Disgorgement**

Issue an Order directing the Defendants to disgorge all ill-gotten gains, including prejudgment interest, resulting from the acts or courses of conduct alleged in this Complaint.

**IV.**

**Penalties**

Issue an Order directing the Defendants to pay civil money penalties pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d) and Section 21(d) of the Exchange Act, 15 U.S.C. § 78u(d), and as to Risher, pursuant to Section 209(e) of the Advisers Act, 15 U.S.C. §80b-9(e).

**V.**

**Further Relief**

Grant such other and further relief as may be necessary and appropriate.

VI.

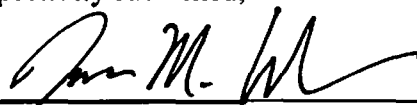
**Retention of Jurisdiction**

Further, the Commission respectfully requests the Court retain jurisdiction over this action in order to implement and carry out the terms of all orders and decrees that it may enter, or to entertain any suitable application or motion by the Commission for additional relief within the jurisdiction of this Court.

Respectfully submitted,

August 29, 2011

By:



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