

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**  
August 23, 2005

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-12015**

**In the Matter of**  
  
**Barry Alan Bingham,**  
  
**Respondent.**

**ORDER INSTITUTING**  
**ADMINISTRATIVE PROCEEDINGS**  
**PURSUANT TO SECTION 15(b) OF THE**  
**SECURITIES EXCHANGE ACT OF 1934**  
**AND SECTION 203(f) OF THE**  
**INVESTMENT ADVISERS ACT OF 1940**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 (“Exchange Act”) and Section 203(f) of the Investment Advisers Act of 1940 (“Advisers Act”) against Barry Alan Bingham (“Bingham”).

**II.**

After an investigation, the Division of Enforcement alleges that:

A. Bingham, 37 years old, is a former resident of Atlanta, Georgia. He is currently in the custody of the United States Bureau of Prisons.

B. From approximately August 2000 through November 2002, Bingham, individually and acting through Bingham Capital Management Corporation, which he controlled, engaged for compensation in the business of advising clients on investing in securities. For a portion of this period, from approximately April 2002 through at least November 2002, Bingham was associated with a broker-dealer registered with the Commission.

C. On April 28, 2005, Bingham pled guilty to one felony count of securities fraud in violation of Title 15 U.S.C. §§ 78j(b) and 78j(ff) before the United States District Court for the Northern District of Georgia, in United States v. Barry Bingham, Case No. 1:05-CR-0184-BBM. On June 30, 2005, a judgment in the criminal case was entered against Bingham. He was sentenced to a prison term of twelve months and one day followed by three years of supervised release, required to pay a fine of \$1,000, and ordered to make criminal restitution in the amount of \$105,572.00.

D. The criminal information to which Bingham pled guilty alleged, *inter alia*, that, from on or about September, 2001 to on or about August, 2002, Respondent: (a) did knowingly and willfully devise and intend to devise a scheme and artifice to defraud investors and prospective investors in Bingham Growth Partners, L.P., and obtain money and property by means of materially false and fraudulent pretenses, representations, and promises; and (b) used the means and instrumentalities of interstate commerce and the mails and the facilities of the national securities exchanges to perpetrate his fraud.

### III.

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

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

B. What, if any, remedial action is appropriate and in the public interest against Bingham pursuant to Section 15(b) of the Exchange Act and Section 203(f) of the Advisers Act.

### IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

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

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

IT IS FURTHER ORDERED that an Administrative Law Judge shall file an initial decision with respect to this matter no later than 210 days from the date of the service of this Order, as provided by Rule 360(a)(2) of the Commission's Rules of Practice, 17 C.F.R. § 360(a)(2).

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

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to this notice. Since this proceeding is not “rule making” within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Jonathan G. Katz  
Secretary