UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9236 / July 13, 2011

SECURITIES EXCHANGE ACT OF 1934
Release No. 64877 / July 13, 2011

INVESTMENT ADVISERS ACT OF 1940
Release No. 3238 / July 13, 2011

INVESTMENT COMPANY ACT OF 1940
Release No. 29724 / July 13, 2011

ADMINISTRATIVE PROCEEDING
File No. 3-14304

In the Matter of

ROMAN LYNIUK,

Respondent.

ORDER MAKING FINDINGS AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933, SECTIONS 15(b)(6) AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934, SECTIONS 203(f) AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940 AND SECTION 9(b) OF THE INVESTMENT COMPANY ACT OF 1940

I.

On March 23, 2011, the Securities and Exchange Commission ("Commission") instituted public administrative and cease-and-desist proceedings pursuant to Section 8A of the Securities Act of 1933 ("Securities Act"), Sections 15(b)(6) and 21C of the Securities Exchange Act of 1934 ("Exchange Act"), Sections 203(f) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act") and Section 9(b) of the Investment Company Act of 1940 ("Investment Company Act") against Roman Lyniuk ("Respondent" or "Lyniuk").

II.

Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Section 8A of the Securities Act of 1933, Sections 15(b) and 21C of the Securities Exchange Act of 1934, Sections 203(f) and 203(k) of the Investment Advisers Act of 1940, and Section 9(b) of the Investment Company Act of 1940 ("Order"), as set forth below.

III.

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

A. <u>SUMMARY</u>

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

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

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

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

5. Since approximately mid-2006 and as recently as December 2010, Respondent has been attempting to obtain investors for a new fund, Pacific Capital Markets Cayman LDC ("Pacific"). From mid-2007 through December 2010, Respondent had been

promoting Pacific through a third-party hedge fund information provider, based on false and misleading information concerning the history, assets under management, and performance of the fund.

B. RESPONDENT

6. Respondent, age 54, resides in Rumson, New Jersey and was the founder and manager of Atlantis Capital Management, L.P. and Atlantis Capital Markets N.A., LLC. Respondent holds Series 3, 7, and 63 licenses and held a variety of positions in the financial industry prior to starting the Fund. From approximately November 1996 through September 2006 (the "Relevant Period"), Respondent managed Atlantis Capital Management L.P. and Atlantis Capital Markets N.A., LLC. During that period, Respondent was a registered representative associated with a variety of broker-dealers registered with the Commission. From June 2009 to October 2010, Respondent was employed by Tullett Prebon Financial Services LLC, a broker-dealer registered with the Commission, as a registered representative.

C. OTHER RELEVANT ENTITIES

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

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

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

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

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

11. Although the Fund was registered as a partnership in November 1996, it did not become fully operational until 2005. Prior to July 2004, the Fund's trading

accounts contained only money provided by the Respondent and his family members. By early 2004, most of the Fund's assets had been withdrawn and/or lost through trading.

12. In 2003, Respondent became acquainted with an individual residing in California. The individual suggested that Respondent market his fund through third-party hedge fund information providers that collect performance information from hedge funds and make that information, together with analysis of that information, available to investors through internet sites and newsletters. The individual also suggested that Respondent establish an internet site of his own and make information available to investors through that site. In early 2004, Respondent entered into an agreement by which the individual, through a newly-formed corporation ("Marketer A"), would provide marketing services to Respondent and his fund.

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

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

15. During the Relevant Period, Respondent solicited the investors by means of material misrepresentations and omissions. Respondent (together with Marketer A, which acted at Respondent's direction) provided these investors with documents containing material misstatements concerning the Fund and its history.

16. Respondent (or Marketer A, acting at Respondent's direction) falsely informed potential investors that the Fund had an "eight year track record" of strong performance in both good and bad markets. Among other documents, Respondent made this representation in a due diligence report and questionnaire (the "Due Diligence Report"), which was created in approximately late 2004 and updated in approximately June 2005. In fact, although Respondent may have achieved the referenced results for himself and his family, the reported results included assets maintained in non-Fund accounts. Respondent knew, or was reckless in not knowing, that the representation concerning the Fund's "eight year track record" was materially misleading.

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

18. Respondent (or Marketer A, acting at Respondent's direction) falsely informed potential investors, through the Due Diligence Report, that the Fund was audited annually. In fact, as Respondent knew, the Fund had never been audited.

19. The Fund's marketing materials also specifically stated that the Fund would be audited for 2004. At some point after the marketing materials were distributed, Respondent determined that an audit should not be performed for 2004, because its cost would be excessive. Respondent continued to represent that the Fund would be audited.

20. Respondent (or Marketer A, acting at Respondent's direction) falsely assured potential investors, through the Due Diligence Report, that the Fund had a fund administrator, and that funds could not be withdrawn from the Fund without approval from the fund administrator or auditor. In fact, as Respondent knew, the Fund had never had a fund administrator prior to late 2005, and Respondent had sole signing authority for the Fund's accounts.

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

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

23. Respondent's misrepresentations concerning the participation of the two individuals referenced in paragraphs 21 and 22 above were material to investors. The misrepresentations falsely suggested that the Fund would employ, and had years of experience employing, a risk-averse stock arbitrage strategy overseen by experienced trading professionals. In fact, the Fund had no such employees and had limited, if any, experience employing that strategy.

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

for administrator's fees, legal fees, accountants' fees, and marketing expenses – expenses that would materially decrease the Fund's returns, particularly if shared among only a few investors.

25. Respondent also manipulated the report of monthly returns in the Due Diligence Report to make his trading strategy appear less risky and more consistent than it was.

26. Respondent knowingly provided false and misleading information about the Fund's historical performance to Marketer A. Marketer A, acting at Respondent's direction, relayed the false and misleading information to at least two third-party hedge fund information providers, which made the information available to investors through newsletters and over the internet. This information included the same materially misleading information about the Fund's historical returns described in paragraphs 1 through 25 above.

27. Respondent knowingly provided false information to Hedge Fund Information Provider A concerning the Fund's assets under management. For example, he represented that the Fund had $5 million dollars in assets under management from January to July 2002. In reality, the Fund had little or no assets under management that year. Respondent also represented that the Fund had $10 million of assets under management in April 2004. The Fund's true assets under management at the time, if any, were a fraction of that amount.

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

28. Respondent (or Marketer A, acting at Respondent's direction) provided potential investors with a document that summarized the Fund's fourteen "layers of risk control" and emphasized the consistent performance of the "fund" during both bull and bear markets.

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

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

31. The Due Diligence Report further stated that "[n]either the fund management nor the basic investment strategy (in place for nearly eight years) is expected to change," and that if and when any such change occurred, investors would be given "advance written notice and an opportunity to reduce or withdraw their investment within 30 days." Despite this assurance, Respondent did not provide written notice to investors

before making the IDEA investment, even though the investment was inconsistent with several aspects of the Fund's advertised strategy, including its "risk-averse" investment approach, its limitation on the size of individual positions, and its focus on listed, liquid securities.

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

32. In late 2004 and 2005, Respondent (or Marketer A, acting at Respondent's direction) represented to potential investors through the Due Diligence Report that there were no "conflicts of interest by any owner, principal, manager or advisor of [the] fund not disclosed in [the] subscription documents."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

H. RESPONDENT BLATANTLY MISAPPROPRIATED ASSETS

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

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

54. Respondent also used the Fund's assets to pay substantial compensation to himself and his business partner, Marketer B, before the redemptions were made. From September 2006 through March 2007, Respondent wrote $74,000 in checks from the Fund's bank account to himself, to cash, and to entities he controlled. Respondent knew, or was reckless in not knowing, that these payments were not authorized by the Fund's offering documents. From September 2006 through March 2007, Respondent wrote $22,500 in checks from the Fund's bank account to Marketer B. These payments were made in exchange for Marketer B's promise to obtain $20 million in capital for Respondent's new hedge fund, Pacific Capital Markets. Respondent knew, or was reckless

in not knowing, that the Fund's offering documents did not authorize the use of Fund assets to solicit investors for other hedge funds.

55. In February and March 2007, the investors who had requested redemptions in September 2006 received redemptions in the amount of approximately 10% of their accounts' values as of July 31, 2006.

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

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

I. RESPONDENT CONTINUES TO SOLICIT CAPITAL BASED ON FALSE INFORMATION

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

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

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

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

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

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

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

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

J. RESPONDENT FABRICATED EXCULPATORY EVIDENCE

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

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

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

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

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

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

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

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

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

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

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

K. VIOLATIONS

75. The misstatements and omissions of fact found in this Order were material.

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

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

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

Disgorgement and Civil Penalties

79. Respondent has submitted a sworn Statement of Financial Condition dated May 24, 2011 and other evidence and has asserted his inability to pay disgorgement plus prejudgment interest and a civil penalty.

IV

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

Accordingly, pursuant to Section 8A of the Securities Act, Sections 15(b)(6) and 21C of the Exchange Act, Sections 203(f) and 203(k) of the Advisers Act and Section 9(b) of the Investment Company Act, it is hereby ORDERED that:

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

B. Respondent Lyniuk be, and hereby is:

> barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization;
>
> prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter; and
>
> barred from participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

C. Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

D. Respondent shall pay disgorgement of $4,072,500 and prejudgment interest of $1,181,606, but that payment of such amount is waived based upon Respondent’s sworn representations in his Statement of Financial Condition dated May 24, 2011 and other documents submitted to the Commission.

E. Based upon Respondent's sworn representations in his Statement of Financial Condition dated May 24, 2011 and other documents submitted to the Commission, the Commission is not imposing a penalty against Respondent.

F. The Division of Enforcement ("Division") may, at any time following the entry of this Order, petition the Commission to: (1) reopen this matter to consider whether Respondent provided accurate and complete financial information at the time such representations were made; and (2) seek an order directing payment of disgorgement and pre-judgment interest, and the maximum penalty allowable under the law. No other issue shall be considered in connection with this petition other than whether the financial information provided by Respondent was fraudulent, misleading, inaccurate, or incomplete in any material respect. Respondent may not, by way of defense to any such petition: (1) contest the findings in this Order; (2) assert that payment of disgorgement and interest should not be ordered; (3) contest the amount of disgorgement and interest to be ordered; (5) assert that payment of a penalty should not be ordered; (6) contest the imposition of the maximum penalty allowable under the law; or (7) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

By the Commission.

Elizabeth M. Murphy
Secretary