

Exhibit A

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10595 / December 21, 2018

SECURITIES EXCHANGE ACT OF 1934
Release No. 84913 / December 21, 2018

ADMINISTRATIVE PROCEEDING
File No. 3-15514

In the Matter of

**FRANK H. CHIAPPONE,
ANDREW G. GUZZETTI,
WILLIAM F. LEX,
THOMAS E. LIVINGSTON,
BRIAN T. MAYER, and
PHILIP S. RABINOVICH,**

Respondents.

**ORDER MAKING FINDINGS AND
IMPOSING REMEDIAL SANCTIONS
AND A CEASE-AND-DESIST ORDER
PURSUANT TO SECTION 8A OF THE
SECURITIES ACT OF 1933 AND
SECTIONS 15(b) AND 21C OF THE
SECURITIES EXCHANGE ACT OF
1934**

I.

On September 23, 2013, 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) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”), Section 203(f) of the Investment Advisers Act of 1940 (“Advisers Act”), and Section 9(b) of the Investment Company Act of 1940 (“Company Act”) against Frank H. Chiappone, Andrew G. Guzzetti, William F. Lex, Thomas E. Livingston, Brian T. Mayer, and Philip S. Rabinovich (“Respondents”). After an initial decision had issued in this matter and an appeal by the Respondents to the Commission was pending and fully briefed, the Commission remanded the case to Chief Judge Murray for reassignment to a new Administrative Law Judge (“ALJ”) pursuant to the Supreme Court’s decision in *Lucia v. SEC*, 138 S. Ct. 2044 (2018).

II.

Respondents have submitted Offers of Settlement (the “Offers”) which the Commission has determined to accept in light of *Lucia v. SEC*. 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 Respondents and the subject matter of these proceedings, which are admitted, Respondents consent to the entry of this Order Making Findings and Imposing

Remedial Sanctions Pursuant to Section 8A of the Securities Act of 1933 and Sections 15(b) and 21C of the Securities Exchange Act of 1934 (“Order”), as set forth below.

Respondents and the Division recognize that, according to *Lucia v. SEC*, Respondents are entitled to a “new hearing” before “another ALJ (or the Commission itself).” 138 S. Ct. at 2055. Respondents knowingly and voluntarily waive any claim or entitlement to such a new hearing before another ALJ or the Commission itself. Respondents also knowingly and voluntarily waive any and all challenges to the administrative proceedings or any and all orders that were issued during or at the conclusion of those proceedings, whether before the ALJ, the Commission, or any court, based upon any alleged or actual defect in the appointment of ALJ Brenda Murray.

III.

On the basis of this order and Respondents’ Offers, the Commission finds that:

A. RESPONDENTS

1. **Frank H. Chiappone**, 63 years old, is a resident of Clifton Park, NY. He was registered with McGinn Smith & Co., Inc. (“MS & Co.”) from February 1989 to December 2009, and worked from MS & Co.’s Clifton Park, New York branch office.

2. **Andrew G. Guzzetti**, 71 years old, is a resident of Saratoga Springs, NY. He was registered with MS & Co. from September 2004 to December 2009, and worked from MS & Co.’s Clifton Park, New York branch office.

3. **William F. Lex**, 72 years old, is a resident of Phoenixville, PA. He was registered with MS & Co. from January 1983 to December 2009, and was based in King of Prussia, Pennsylvania. In October 2010, the Financial Industry Regulatory Authority suspended Lex for failure to pay a FINRA arbitration award concerning an MS & Co. private placement customer.

4. **Thomas E. Livingston**, 60 years old, is a resident of Slingerlands, NY. He was registered with MS & Co. from October 1988 to December 2009, and became a 20% shareholder of McGinn Smith Holdings, LLC (“MS Holdings”) in 2004.

5. **Brian T. Mayer**, 45 years old, is a resident of Princeton, NJ. Mayer was registered with MS & Co. from July 2001 to December 2009 and McGinn Smith Advisors, LLC (“MS Advisors”) from February 2006 to April 2009, and worked from MS & Co.’s New York City branch office.

6. **Philip S. Rabinovich**, 44 years old, is a resident of Roslyn, NY. He was registered with MS & Co. from July 2001 to December 2009 and MS Advisors from August 2006 to December 2009, and worked from MS & Co.’s New York City branch office.

B. RELEVANT ENTITIES AND INDIVIDUALS

7. **MS & Co.**, a New York corporation founded in 1980 by David Smith and Timothy McGinn, had its principal place of business at 99 Pine Street, Albany, NY, and

maintained branch offices at Clifton Park, NY, New York City, and King of Prussia, PA. MS & Co. was registered with the Commission as a broker-dealer beginning in 1980 and as an investment adviser in April 2009. It was owned by Smith (50%), McGinn (50%; 30% after 2004), and Livingston (20% after 2004). From 2003 to 2009, MS & Co. had about 55 employees, including about 35 registered representatives. On December 24, 2009, MS & Co. filed a partial BD-W. On March 9, 2010, MS & Co. also withdrew its investment adviser registration. FINRA terminated MS & Co.'s FINRA membership on August 4, 2010.

8. **MS Advisors** was a New York corporation formed in 2003 with its principal place of business at 99 Pine Street, Albany, New York. MS Advisors was owned by Smith (50%), McGinn (30%) and Livingston (20%). MS Advisors was registered as an investment adviser with the Commission from January 3, 2006 to April 24, 2009, and was the investment adviser to the Four Funds (defined below) until April 2009, when it was replaced by MS & Co.

9. **MS Holdings** was owned by Smith (50%), McGinn (30%) and Livingston (20%).

10. **McGinn, Smith Capital Holdings Corp. ("MS Capital")** was a New York corporation formed in 1989 with its principal place of business at 99 Pine Street, Albany, New York. MS Capital was owned by MS Holdings (52%), McGinn (24%) and Smith (24%). MS Capital was the indenture trustee, the servicing agent and the collateral agent for the Four Funds, and the trustee for all the Trusts created between 2006 and 2009. Smith was president and McGinn was chairman of the board.

11. The **Four Funds** were New York limited liability companies, whose managing member was MS Advisors. MS & Co. served as the placement agent for the Four Funds offerings, and MS Capital acted as the Trustee. The Four Funds shared offices with MS & Co. and the other McGinn Smith entities at 99 Pine Street, Albany, NY. The Four Funds offerings are listed below, along with the contractual rate of return, the maximum amount of the offering, and the date of the Private Placement Memorandum ("PPM"):

- (a) First Independent Income Notes, LLC ("FIIN"), 5%/7.5%/10.25% (\$20 million) (9/15/03);
- (b) First Excelsior Income Notes LLC ("FEIN"), 5%/7.5%/10.25% (\$20 million) (1/16/04);
- (c) Third Albany Income Notes, LLC ("TAIN"), 5.75%/7.75%/10.25% (\$30 million) (11/1/04); and
- (d) First Advisory Income Notes, LLC ("FAIN"), 6%/7.75%/10.25% (\$20 million) (10/1/05).

12. The **Trust Offerings** were offerings by special purpose entities, created to invest in contracts for burglar alarm service, "triple play" (broadband, cable and telephone) service or luxury cruises. MS & Co. acted as a placement agent and MS Capital acted as Trustee for the Trust Offerings. The Trust Offerings are listed below, along with the contractual rate of return, the maximum amount of the offering, and the date of the PPM:

- (a) TDM Cable Trust 06, 7.75%/9.25% (\$3,550,000) (11/13/06)
- (b) TDM Verifier Trust 07, 8.25%/9% (\$3,475,000) (2/23/07)

- (c) Firstline Senior Trust 07, 9.25% (\$1,850,000) (5/19/07)
- (d) Firstline Trust 07, 11% (\$1,867,000) (5/19/07)
- (e) Firstline Senior Trust 07 Series B, 9.5% (\$1,435,000) (10/19/07)
- (f) TDM Luxury Cruise Trust 07, 10% (\$3,630,000) (7/16/07)
- (g) Firstline Trust 07 Series B, 11% (\$2,115,000) (10/19/07)
- (h) TDM Verifier Trust 08, 8.50%/10% (\$3,850,000) (12/17/07)
- (i) Cruise Charter Ventures Trust 08, 13% (\$3,250,000) (2/14/08)
- (j) Integrated Excellence Sr. Trust 08, 9% (\$900,000) (5/30/08)
- (k) Integrated Excellence Jr. Trust 08, 10% (\$580,000) (5/30/08) (l) Fortress Trust 08, 13% (\$3,060,000) (9/24/08)
- (m) TDM Cable Trust 06, 10% (\$1,380,000) (11/17/08)
- (n) TDM Verifier Trust 09, 10% (\$1,300,000) (12/15/08)
- (o) TDMM Cable Jr Trust 09, 11% (\$1,325,000) (1/19/09)
- (p) TDMM Cable Sr. Trust 09, 9% (\$1,550,000) (1/19/09)
- (q) TDM Verifier Trust 07R, 9% (\$2,100,000) (2/2/09)
- (r) TDM Verifier Trust 08R, 9% (\$2,005,000) (7/6/09)
- (s) TDMM Benchmark Trust 09, 8%, 9%, 10%, 11%, 12% (\$3,000,000) (8/20/09)
- (t) TDM Verifier Trust 11, 9% (\$1,550,000) (9/3/09)
- (u) Cruise Charter Ventures, LLC, 12% (\$400,000) (9/25/09)

13. **McGinn Smith Transaction Funding (“MSTF”)** was a New York corporation formed in 2008. MS & Co. was the sales agent for the \$10 million MSTF offering on April 22, 2008.

14. **Timothy M. McGinn** was the chairman, secretary and co-owner of MS & Co. From July 2003 through May 2006, McGinn served as CEO of Integrated Alarm Services Group, Inc. (“IASG”), which went public in July 2003. In September 2011, FINRA permanently barred McGinn from associating with any FINRA member. In February 2013, a jury in the Northern District of New York found McGinn guilty of multiple counts of mail and wire fraud, securities fraud, and filing false tax returns. In August 2013, McGinn was sentenced to 15 years in prison..

15. **David L. Smith** was the president and chief executive officer of MS & Co. and the manager of the Four Funds. Until 2007, Smith was also the chief compliance officer of MS & Co. In September 2011, FINRA permanently barred Smith from associating with any FINRA member. In February 2013, a jury in the Northern District of New York found Smith guilty of multiple counts of mail and wire fraud, securities fraud, and filing false tax returns. On August 7, 2013, Smith was sentenced to 10 years in prison.

C. THE DISTRICT COURT ACTION

16. On April 20, 2010, the Commission filed a civil action in the United States District Court for the Northern District of New York against McGinn, Smith, and numerous entities controlled or owned by McGinn and Smith (the “McGinn Smith Entities”), charging them with securities fraud and other federal securities violations in connection with the actions described herein. *See SEC v. McGinn Smith & Co., Inc., et al.*, 10-CV-457 (N.D.N.Y.) (GLS-CFH) (the “District Court Action”). That same date, the Court granted the Commission’s motion

for a temporary restraining order and appointed a Receiver over the McGinn Smith Entities. *See id.* (Dkt. Nos. 4, 5, 96). All the McGinn Smith Entities—including MS & Co., MS Advisors, MS Capital, MS Holdings, FIIN, FEIN, FAIN and TAIN—remain under the Receiver’s control. Pursuant to a Court- approved distribution plan (the “Plan”), the Receiver is in the process of distributing collected assets to investors. *Id.* (Dkt. No. 904).

D. OVERVIEW

17. Chiappone, Lex, Mayer, and Rabinovich were among the top- selling brokers at MS & Co. Livingston sold MS & Co. private placements and was an MS & Co. principal. Guzzetti was a managing director at MS & Co. and he supervised the MS & Co. brokers. Based on the conduct described below

- (a) Chiappone, Lex, Livingston, Mayer, and Rabinovich (the “Selling Respondents”) violated Section 17(a)(2) and (3) of the Securities Act by negligently failing to perform sufficient due diligence to form a reasonable basis for their recommendations of the Four Funds and Trust Offerings to their customers.
- (b) Guzzetti failed reasonably to supervise the Selling Respondents, with a view to preventing their violations, pursuant to Section 15(b)(6), incorporating by reference Section 15(b)(4)(E) of the Exchange Act.

E. THE MS & CO. OFFERINGS

18. David Smith and Timothy McGinn created and controlled the Four Funds and Trust Offerings. The offerings raised more than \$125 million from more than 750 investors. Investor losses exceeded \$87 million.

19. The Four Funds offerings raised at least \$85 million. Smith controlled the issuers, prepared the PPMs, set the terms of the offerings, controlled the investor money, and made all the investment decisions. Pursuant to the PPMs, Four Funds investors were to receive quarterly interest payments and a return of principal upon maturity. Each offering had three tranches: the five-year “secured junior” notes paid 10.25%; the three or five year “secured senior subordinated” paid 7.5% or 7.75%; and the one-year “secured senior” notes paid 5%, 5.75% or 6%.

20. Although the Four Funds’ PPMs labeled each tranche as “secured,” there were almost no secured assets subject to forfeiture in the event that a particular Fund failed.

21. According to the PPMs, MS & Co., as the placement agent, was to receive a commission of 2% of the offering proceeds. In addition, according to the PPMs, the brokers were entitled to “incentive commissions . . . [paid] to our managing member’s salesmen at the rate of 2% of the aggregate principal amount of the notes per year over the term of the notes.”

22. As the PPMs for the offerings stated, each of the Four Funds was:

formed to identify and acquire various public and/or private investments, which may include, without limitation, debt securities, collateralized debt obligations, bonds, equity securities, trust preferred, collateralized stock, convertible stock, bridge loans, leases, mortgages, equipment leases, securitized cash flow instruments, and any other investments that may add value to our portfolio

23. Smith invested proceeds of the Four Funds in entities that were affiliated with MS & Co., in venture capital investments, and purchased \$12.8 million of pre-2003 MS & Co. offerings to pay interest or redemptions to investors. For example, Smith invested \$8.8 million in alsoT IP Management (“alsoT”), a venture capital start-up company, partially-owned and controlled by Livingston and Smith. alsoT never earned any revenue. The Four Funds’ investments did not generate sufficient returns required to meet the issuers’ obligations to investors.

24. In 2006, McGinn returned to MS & Co. on a full-time basis after nearly three years as CEO of IASG. McGinn created the twenty-one Trust Offerings, plus MSTF, that raised over \$41 million. The Trust Offerings funded entities engaged in specific areas, such as burglar alarm service, triple play service, or luxury cruises. The PPMs for the Trust Offerings identified Livingston as the Treasurer for the Trustee, MS Holdings.

25. Smith and McGinn misused investor funds raised for the Trust Offerings. For example, they took for personal use millions of dollars in offering proceeds, used investor funds to pay earlier noteholders, and used the Trust Offering proceeds to satisfy liquidity needs for other MS & Co. entities.

1. Red Flags Surrounding the Four Funds Offerings.

26. Chiappone, Lex, Livingston, Mayer, and Rabinovich were negligent in not performing adequate due diligence in order to form a reasonable basis for their recommendations of the Four Funds to their customers. The PPMs for the Four Funds made disclosures that should have caused the Selling Respondents, as associated persons of a broker-dealer, to conduct additional inquiries.

- a. The PPMs disclosed conflicts of interest between the issuers and MS & Co. Smith owned and controlled each of the issuers—which were new, single-purpose entities with no operating history—as well as the placement agent (MS & Co.) and the trustee. Smith also had total control over the disposition of investor funds, with no oversight or control. As a result, the Respondents should have made specific inquiries as to how customer money would be invested before recommending the Four Funds to their customers; and
- b. The PPMs stated that the Four Funds could engage in related party transactions and acquire investments “from our managing member [MS Advisors] or any affiliate,” could “purchase securities from issuers in

offerings for which [MS & Co.] is acting as underwriter or placement agent,” and that “[a]ffiliates of the placement agent may purchase a portion of the notes offered hereby.” Respondents should have made specific inquiries regarding the entities into which customer money would be invested before recommending the Four Funds to their customers.

27. From the commencement of the FIIN offering in September 2003 until January 2008, Smith provided the MS & Co. brokers with scant information about how he had invested the offering proceeds. Questions by the brokers were deflected with the claim that Smith had made loans to local Albany businesses with Four Funds proceeds, and those businesses desired anonymity. Smith’s refusal to provide meaningful information should have prompted the Respondents to further question the propriety of the Four Funds.

2. Red Flags Surrounding the Trust Offerings.

28. On January 8, 2008, Smith and McGinn held an all-day meeting to inform MS & Co. brokers that the Four Funds were in default, that payments to investors would be curtailed, and that the offerings would be restructured.

29. After January 2008, there were thirteen offerings by MSTF and the Trusts, which raised at least \$20 million. The Selling Respondents continued to sell these offerings under Guzzetti’s supervision. As a result of the accumulation of red flags since the launch of the Four Funds in September 2003, the Respondents should have conducted additional inquiries regarding any MS & Co. private placement before recommending them to their customers.

30. The Trust PPMs, like the Four Funds PPMs, raised red flags that should have caused the Respondents, as associated persons of a broker-dealer, to conduct additional inquiries prior to recommending the products to their customers. For example, the August 2009 TDMM Benchmark Trust 09 (“Benchmark”) PPM should have raised a red flag. Benchmark promised an 8 to 12% rate of return during a time when the prime rate was only 3.25%. Also, the PPM disclosed that only \$1,950,000 (approximately 65%) of the total \$3 million raised would actually be invested, with the remainder taken as in fees. Chiappone, Mayer, and Rabinovich, who recommended the Benchmark offering, did so without inquiring how MS & Co. intended to make 8 – 12% interest payments and redeem the principal upon maturity while taking over one-third of the money raised in fees.

31. Moreover, Respondents failed to check publicly-available information regarding offered the October 2007 Firstline Trust offering. In this offering, a McGinn Smith affiliate loaned the offering proceeds to Firstline Securities, Inc., a Utah corporation that sold residential alarm contracts. At the time of the offering, McGinn knew of threats by Firstline’s creditors, and was involved in trying to resolve the disputes. After the creditors filed suit, in January 2008, Firstline filed a voluntary petition for Chapter 11 bankruptcy in the U.S. Bankruptcy Court for the District of Utah. Lex, Chiappone, Rabinovich and Mayer sold Firstline trust certificates after the bankruptcy filing. Respondents were unaware of the bankruptcy filing until McGinn finally disclosed it to them on September 3, 2009.

F. COMMISSIONS EARNED ON MS & CO. PRIVATE PLACEMENTS

32. After September 23, 2008 (the “statutory period for disgorgement”), Chiappone earned \$23,329 in commissions on sales of MS & Co. private placements.

33. Within the statutory period for disgorgement, Lex earned \$72,726 in commissions on sales of MS & Co. private placements.

34. Within the statutory period for disgorgement, Livingston earned \$700 in commissions on sales of MS & Co. private placements.

35. Within the statutory period for disgorgement, Mayer earned \$17,791 in commissions on sales of MS & Co. private placements.

36. Within the statutory period for disgorgement, Rabinovich earned \$53,029 in commissions on sales of MS & Co. private placements.

G. GUZZETTI FAILED REASONABLY TO SUPERVISE

37. At MS & Co., Guzzetti was Head of Retail Sales, Managing Director, Private Client Group, and a Branch Manager. During this period, Guzzetti supervised MS & Co. registered representatives with regard to the Four Funds and Trust Offerings.

38. Guzzetti had direct supervisory responsibilities for the Selling Respondents. He carried out numerous managerial duties, including recruiting and hiring MS & Co. employees; assigning and reassigning customers to brokers; evaluating employee performances and awarding commissions; addressing customer grievances; answering employee questions regarding firm; and issuing instruction and guidance regarding specific financial products and transactions, administrative issues, and broader firm policy.

39. Guzzetti also sent regular e-mails summarizing MS & Co. products available for sale to customers and encouraged brokers to recommend them to customers. In a February 2006 email, for example, Guzzetti stated that “there are many investors sitting in money market accounts (fear of higher interest rates) who are losing return (cost of waiting). Our FAIN’S offer a way of locking in higher returns with \$ sitting in money markets waiting for the ‘top’ in interest rates.”

40. Guzzetti had a duty to investigate red flags that suggest misconduct may be occurring and to take action when made aware of suspicious conduct. Had Guzzetti responded reasonably to the red flags, he would have prevented the underlying violations committed by Chiappone, Lex, Livingston, Mayer, and Rabinovich.

H. VIOLATIONS

41. As a result of the negligent conduct described above, Chiappone, Lex, Livingston, Mayer, and Rabinovich violated Section 17(a)(2) and (3) of the Securities Act.

42. As a result of the conduct described above, Guzzetti failed reasonably to

supervise the Selling Respondents pursuant to Section 15(b)(6), incorporating by reference Section 15(b)(4)(E) of the Exchange Act, with a view to preventing their violations of Section 17(a)(2) and (3) of the Securities Act, as set forth herein.

IV.

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

Accordingly, pursuant to Section 8A of the Securities Act and Sections 15(b) and 21C of the Exchange Act, it is hereby ORDERED that:

A. Chiappone, Lex, Livingston, Mayer, and Rabinovich shall cease and desist from committing or causing violations of and any future violations of Section 17(a)(2) and (3) of the Securities Act;

B. Livingston shall, within 30 days of the entry of this Order, pay a civil money penalty in the amount of \$85,000 in accordance with the instructions in paragraph IV(F), below. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717;

C. Guzzetti shall, within 30 days of the entry of this Order, pay a civil money penalty in the amount of \$20,000 in accordance with the instructions in paragraph IV(F), below. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717;

D. Chiappone, Lex, Livingston, Mayer, and Rabinovich shall pay disgorgement and prejudgment interest as set forth in paragraphs IV(D)(1) – IV(D)(5), below. Payments shall be made in accordance with the instructions in paragraph IV(F), below. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600.

1. Chiappone shall pay disgorgement of \$23,329 and prejudgment interest of \$3181.49 in three equal installments of \$8836.83, the first of which is due within 30 days of this Order, the second of which is due within 180 days of this Order, and the third of which is due within 364 days of this Order.

2. Lex shall, within 30 days of the entry of this Order, pay disgorgement of \$72,726 and prejudgment interest of \$9,918.02.

3. Livingston shall, within 30 days of the entry of this Order, pay disgorgement of \$700 and prejudgment interest of \$95.48.

4. Mayer shall, within 30 days of the entry of this Order, pay disgorgement of \$17,791 and prejudgment interest of \$2426.24.

5. Rabinovich shall, within 30 days of the entry of this Order, pay disgorgement of \$53,029 and prejudgment interest of \$7231.84.

E. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, a Fair Fund is created for the penalties referenced in paragraphs IV(B) and IV(C), above. Amounts

ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondents each agree that in any Related Investor Action, he shall not argue that he is entitled to, nor shall he benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondents each agree that he shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against any Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

F. Respondents shall satisfy their payment obligations set forth in paragraphs IV(B)-(D) of this Order by submitting payments to William J. Brown, the court-appointed Receiver in the District Court Action, for inclusion in the receivership estate established in that action and distribution pursuant to the court-approved Plan. Payment shall be (i) made by United States postal money order, certified check, bank cashier's check, or bank money order; (ii) made payable to "William J. Brown, Receiver"; (C) hand-delivered or mailed to William J. Brown, Phillips Lytle LLP, Omni Plaza, 30 South Pearl Street, Albany, New York 12207; and (D) submitted under cover letter that identifies the Respondent(s) submitting the payment and the name and number of this administrative proceeding (*Frank Chiappone, et al.*, Admin. Proc. No. 3-15514) and enclosing a copy of this Order. Further, Respondents shall simultaneously transmit photocopies of evidence of payment, the cover letter sent to the Receiver, and this Order to Lara Shalov Mehraban, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, 200 Vesey Street, Suite 400, New York, NY 10281. By making the payments required under this Order, the Respondents relinquish all legal and equitable right, title, and interest in such funds and no part of the funds shall be returned to the Respondents.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, the findings in this Order are true and admitted by Respondents, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondents under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondents of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. § 523(a)(19).

By the Commission.

Brent J. Fields
Secretary


By: Jill M. Peterson
Assistant Secretary

Service List

Rule 141 of the Commission's Rules of Practice provides that the Secretary, or another duly authorized officer of the Commission, shall serve a copy of the Order Instituting Administrative Proceedings Pursuant to Section 203(f) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions ("Order"), on the Respondent and his legal agent.

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

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