

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9551 / February 25, 2014

SECURITIES EXCHANGE ACT OF 1934
Release No. 71610 / February 25, 2014

INVESTMENT ADVISERS ACT OF 1940
Release No. 3785 / February 25, 2014

INVESTMENT COMPANY ACT OF 1940
Release No. 30926 / February 25, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15766

In the Matter of CLEAN ENERGY CAPITAL, LLC and SCOTT A. BRITTENHAM, Respondents.

ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933, SECTIONS 15(b) AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934, SECTIONS 203(e), 203(f) AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940, AND SECTION 9(b) OF THE INVESTMENT COMPANY ACT OF 1940 AND NOTICE OF HEARING

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted 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"), Sections 203(e), 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 Clean Energy Capital, LLC and Scott A. Brittenham (collectively, "Respondents").

II.

After an investigation, the Division of Enforcement alleges that:

SUMMARY

1. This proceeding involves misconduct by Clean Energy Capital, LLC ("CEC"), a registered investment adviser, and its founder, president, and main portfolio manager, Scott A. Brittenham ("Brittenham") with respect to 20 private equity funds sold and managed by CEC, primarily under the name Ethanol Capital Partnership, L.P. (the "ECP Funds").

2. From 2008 to the present, CEC and Brittenham have committed a number of violations with respect to the ECP Funds. First, CEC and Brittenham misappropriated more than \$3 million from the funds by improperly allocating CEC's expenses to the funds without adequate disclosure to investors. Second, to enable the funds to pay for these inappropriate expenses, CEC and Brittenham secretly caused the funds to borrow money from CEC at unfavorable rates, pledging the funds' own assets as collateral. Third, beginning in August 2011, CEC changed the calculation of dividend distributions for certain of the funds, adversely affecting the dividends received by investors in Series A, B and C. This was also done without disclosure to investors. Fourth, in 2009, CEC and Brittenham falsely induced one of the previous investors to invest in a new ECP Fund, by knowingly misrepresenting the amounts of the investments by Brittenham and another cofounder ("Co-Founder") in the new fund. Fifth, CEC violated the custody rule by failing to use a qualified custodian and failing to segregate fund assets. Sixth, and relatedly, CEC's compliance policy was inadequate because it incorrectly described the custody rule, resulting in the

above violation. Seventh, for the funds offered in late 2008-2010 – Funds R, T and V – CEC concealed Co-Founder’s SEC disciplinary history in the offering documents for the funds.

B. RESPONDENTS

3. Respondent CEC is a limited liability company based in Tucson, Arizona that was organized in Delaware in 2004 under the name Ethanol Capital Management, LLC. On October 26, 2007, CEC registered with the Commission as an investment adviser. In 2009, CEC changed its name to Clean Energy Capital, LLC.

4. Respondent Brittenham resides in Tucson, Arizona. Brittenham is the co-founder, CEO, and main portfolio manager of CEC. Brittenham has an 85% ownership interest in CEC and a 50% voting interest, and is also an investor in two ECP Funds managed by CEC. Brittenham holds Series 7 and 63 licenses. In 2004, in connection with Brittenham’s role at a mortgage broker based in Seattle, Washington, the Washington State Department of Financial Institutions charged Brittenham with misleading borrowers and engaging in unfair and deceptive practices. In 2005, Brittenham consented to the entry of an order that prohibited him from participating in the conduct of the affairs of any mortgage broker in Washington for 10 years and ordered restitution to 11 consumers.

C. OTHER RELEVANT ENTITIES

5. Ethanol Capital Partners, L.P., a Delaware limited partnership, was organized on May 27, 2004. CEC marketed 19 separate private equity funds to investors using this partnership, offering each as separate “series” that were named Ethanol Capital Partners, L.P. Series A, B, C, D, E, G, H, I, J, L, M, N, O, P, Q, R, S, T, and V. CEC also marketed a fund named Tennessee Ethanol Partners, L.P. (“TEP”), which is a Delaware limited partnership that was organized on June 10, 2005. In total, the 20 ECP Funds raised \$64 million from hundreds of investors. The ECP Funds did not register with the Commission as investment companies.

D. FACTUAL BACKGROUND

6. CEC, which was founded by Brittenham and Co-Founder, is the investment adviser for the private equity funds, ECP Funds. There are 20 ECP Funds, and they all have the same investment strategy: investment in private ethanol production plants through various portfolio companies.

7. Investments in the ECP Funds (in the form of limited partnership interests) are primarily governed by two documents created for each of the funds: private placement memoranda (“PPMs”) and limited partnership agreements (“LPAs”). Brittenham had final authority over these offering documents.

8. As alleged further below, CEC, improperly and without sufficient disclosure, (1) allocated many of its own expenses to the ECP Funds, (2) made unauthorized loans to the funds and pledged their assets as collateral, and (3) changed its method of calculating the amount of distributions from the funds to their limited partners in order to increase the distributions to CEC. In addition, Brittenham misled a potential investor about his own and Co-Founder’s investments in a fund. Moreover, in some instances, CEC failed to disclose Co-Founder’s past disciplinary history. CEC also failed to comply with the custody rule and also failed to adopt compliance policies and procedures reasonably designed to prevent violations of the Advisers Act and its rules.

1. CEC and Brittenham Improperly Allocated CEC Expenses to the ECP Funds

9. From at least 2008 to the present, CEC and Brittenham improperly allocated at least \$3 million of expenses, primarily for CEC employee compensation and CEC office expenses, to 19 of the ECP Funds (Series A-E, G-J, L-T, and TEP) (the “Improper Expenses”). As a result, these 19 ECP Funds effectively paid CEC’s expenses.

10. The ECP Funds are separate legal entities that own interests in private entities; because of the nature of these vehicles, the ECP Funds do not have any officers or employees. They pay CEC a management fee of 1.5% to 3% of fund assets, and also pay CEC portions of the dividends the funds received from the portfolio companies and portions of the proceeds from sales of portfolio company

stock.

11. All of the expenses incurred by CEC and the ECP Funds were grouped into three broad categories: (i) CEC-only expenses; (ii) ECP Fund-only expenses; and (iii) expenses split between CEC and the ECP Funds. For the third category (the "Split Expenses"), CEC generally allocated 70% of the Split Expenses to all of the ECP Funds based on each Fund's net capital contributions, and 30% to CEC (the "Split Ratio"). This 70-30 Split Ratio was used because CEC had determined that roughly two-thirds of its expenses related to the operation of the ECP Funds. As a result, even though the Split Ratio was applied to each fund, the ratio was not derived from expenses actually attributable to a particular fund.

12. CEC misallocated at least \$3 million (after the Split Ratio was applied) of Improper Expenses by improperly designating some of its own expenses as Split Expenses. The largest of the Improper Expenses included the salaries of the majority of CEC employees, executive bonuses, health benefits, retirement benefits, and rent.

13. Approximately \$1.1 million of the Improper Expenses went to Brittenham, including 70% of a \$100,000 bonus he awarded himself in 2009.

14. Other Improper Expenses included: education and tuition costs for CEC employees, employee hiring costs, gifts, group photos, legal fees for estate planning, maintenance costs on CEC's offices, CEC checks and letterheads, office and mobile telephone, bottled water, office lunches, car washes and insurance, holiday cards, CEC's registration expenses, and business cards, and charges relating to transporting Brittenham's daughter to and from school.

15. The PPMs and the LPAs for the 19 ECP Funds that were misallocated these Improper Expenses did not disclose that these funds would bear the expenses.

16. Moreover, several of the PPMs specifically state that these Improper Expenses should not be paid by the funds. For example, 14 of the Funds' PPMs expressly state that CEC would pay its own management expenses; of these, 12 PPMs state that CEC would pay the compensation of its employees.

17. Most of the Funds' LPAs described the list of expenses that could be borne by the Funds as "reasonable" partnership expenses "related to the acquisition or disposition of securities."

18. In addition, CEC's Forms ADV, Part 2 filed on July 20, 2011 and March 30, 2012 did not disclose the sharing of expenses between CEC and the ECP Funds, and did not disclose that the 19 ECP Funds were allocated the Improper Expenses. Specifically, item 5 of Part 2A describe the fees charged to manage the funds as being no greater than 3% annually, and did not mention any sharing of expenses.

19. CEC treated all the ECP Funds identically with respect to the Improper Expenses, even though the actual expenses may not have been an expense for the particular fund.

20. CEC also did not disclose the Split Ratio to investors. Further, while the Funds' audited financial statements included a line item for "office overhead," the financial statements did not adequately explain the nature of the Improper Expenses. Moreover, Fund investors did not receive audited financial statements until January 2013.

21. By allocating the Improper Expenses to the ECP Funds, CEC and Brittenham committed fraud and breached their fiduciary duties to the ECP Funds. The allocation of CEC's expenses to the ECP Funds constituted a conflict of interest that was not adequately disclosed in the PPMs or LPAs. Also, as 85% owner of CEC, Brittenham took distributions from CEC's profits, and thus benefitted from the undisclosed misallocation of CEC expenses to the ECP Funds.

22. As a co-founder and controlling owner of CEC, and with ultimate authority over the fund disclosures, Brittenham knew, or was reckless or negligent in not knowing, that the Improper Expenses were not adequately disclosed in the PPMs or LPAs. Brittenham also knew, or was reckless or negligent in not knowing, that the Improper Expenses were not reasonable operational expenses of a private equity fund, and were not disclosed to its investors. Because Brittenham is CEC's co-founder and CEO, his scienter is attributable to CEC.

23. Brittenham, as a co-founder and controlling owner of CEC and as a signatory of the Form ADVs, over which he had ultimate authority, and CEC willfully omitted material facts regarding the Improper Expenses from the Form ADVs. The misstatements and omissions concerning the Improper Expenses in the PPMs and LPAs were material because they impacted investors' investment returns.

2. CEC and Brittenham Issued Unauthorized Loans to the ECP Funds

24. From September 2008 through September 2012, CEC issued loans to 17 ECP Funds (Series D-E, G-J, L-T, V and TEP) (the "Unauthorized Loans"). At the time, these Funds had insufficient cash reserves to pay their expenses. The Unauthorized Loans were thus needed to continue allocating the Improper Expenses to the ECP Funds.

25. CEC set the interest rates on the Unauthorized Loans, ranging from 11.86% to 17.38% annually. CEC entered into pledge agreements with these 17 ECP Funds giving CEC a first priority security interest in the respective Funds' assets. Brittenham executed the notes pertaining to the Unauthorized Loans and the pledge agreements on behalf of both CEC and the ECP Funds.

26. CEC had a conflict of interest in issuing the Unauthorized Loans and having the ECP Funds pledge their assets as collateral, thereby misusing and jeopardizing fund assets. CEC financially benefitted from the loans and set the interest rate.

27. Each of the 17 ECP Funds had closed to new investors at the time it received the Unauthorized Loan from CEC. The LPAs for 14 of the 17 ECP Funds did not permit the funds to borrow money to pay expenses after the fund had closed. Brittenham unilaterally and without notice to fund investors amended the LPAs of these 14 ECP Funds to permit loans after the funds had closed. CEC, as an adverse party with a conflict of interest, could not consent to the loans on behalf of the funds.

28. As a co-founder and controlling owner of CEC, and with ultimate authority over the fund disclosures, Brittenham knew, or was reckless or negligent in not knowing, that the Unauthorized Loans or amendments to the LPAs were not disclosed to the investors. He also acted with scienter by knowingly executing the notes and pledge agreements, and unilaterally and without notice amending the LPAs, or he was reckless or negligent in doing so. Because Brittenham is CEC's co-founder and CEO, his scienter is attributable to CEC.

29. Brittenham's and CEC's failure to disclose any information about the Unauthorized Loans or the unilateral LPA amendments allowing for the loans or the pledge of fund assets was material.

30. Brittenham's actions with respect to the Unauthorized Loans and CEC's issuance of the Unauthorized Loans and the associated pledges of fund assets were part of a fraudulent scheme, as neither the loans nor the pledges would have been necessary if CEC and Brittenham had not allocated the Improper Expenses to the ECP Funds.

31. Brittenham's and CEC's material omissions concerning the Unauthorized Loans and the pledges of fund assets occurred in the offer or sale of, and in connection with the purchase or sale of, securities, because CEC and Brittenham pledged the ECP Funds' securities as collateral for the loans.

32. Brittenham's and CEC's actions in entering into pledges with the 17 ECP Funds constituted principal transactions between CEC and the 17 ECP Funds. Neither CEC nor Brittenham provided written notice to or obtained consent from the 17 ECP Funds prior to each transaction. CEC's knowledge and execution of the pledge agreements is insufficient given CEC's substantial conflict and position as an adverse party to the ECP Funds with respect to the pledges.

3. CEC and Brittenham Improperly Changed CEC's Distribution Calculations

33. Beginning as early as 2011, CEC and Brittenham changed in several respects the way CEC calculates distributions, to the detriment of fund investors and with inadequate or no disclosure of these material changes to the investors.

34. The LPAs of the ECP Funds provided that the investors would receive distributions when a fund received a dividend from one of its portfolio companies, or when a fund sold the stock of its portfolio companies.

35. The LPAs disclosed that if a fund had "distributable cash" as a result of a dividend, it would distribute that cash in a series of waterfall tiers. While the specific tiers varied among the different ECP Funds, they generally included a specified preferred return to the limited partners, a specified general partner "catch-up", and then a division of any remainder between the limited partners and the general partner according to a disclosed ratio. Section 1.1 of the LPAs defined "Distributable Cash" as the "excess of the sum of all cash receipts of all kinds over cash disbursements (or reserves therefore) for Partnership Expenses".

36. Before August 2011, CEC only calculated the amount available for distribution to a fund's limited partners after first paying the fund's operating expenses, while also reserving enough cash for future expenses ("working capital reserve").

37. However, in or around August 2011, CEC began treating the amounts used to replenish ECP Funds' working capital reserves as fulfilling the preferred return to the limited partners, and applied this change retroactively.

38. Also, beginning in at least August 2011, CEC improperly calculated the general partner catch-up. Instead of using the catch-up amount specified for CEC identified in the LPAs, CEC, without disclosure to investors, sometimes used higher catch-up amounts.

39. These changes to the distribution calculations adversely affected the dividends received by investors in Series A, B and C. CEC's and Brittenham's treatment of the distribution calculations and their failure to adequately disclose the treatment were material, as they directly affected investors' investment returns.

40. CEC and Brittenham acted with scienter by knowingly, recklessly or negligently calculating the distributions improperly and failing to disclose the distribution calculations adequately to the limited partners.

4. CEC and Brittenham Fraudulently Induced Investor A's Investment in Series R

41. During CEC's offering of Series R in September 2009, Investor A, a prospective and past investor in the ECP Funds, inquired about Brittenham's and Co- Founder's co-investments in the offering.

42. On or about September 21, 2009, Brittenham told Investor A that he and Co-Founder were investing \$100,000 each.

43. On or about September 23, 2009, CEC's then-CFO and Chief Compliance Officer ("CEC's CCO") forwarded emails he had received from Investor A to Brittenham, which made clear that (i) Brittenham's and Co-Founder's investments of \$100,000 each were important to Investor A's decision to invest and (ii) Investor A believed that each of them was investing \$100,000.

44. CEC's CCO accused Brittenham of asking him to lie to Investor A. On or about September 24, 2009, CEC's CCO emailed Brittenham and specifically accused Brittenham of asking him to lie to Investor A about the amount of Brittenham's investment. CEC's CCO refused and resigned over the matter.

45. Based on his belief that both Brittenham and Co-Founder were investing \$100,000 each, Investor A invested \$250,000 in Series R on or about September 24, 2009. Brittenham and Co-Founder each invested \$25,000 in Series R.

46. Brittenham's misrepresentation to Investor A was material. Investor A expressly stated that the amounts of Brittenham's and Co-Founder's coinvestments were important to him.

47. It was false and misleading for Brittenham to represent to Investor A that he and Co-Founder were each investing \$100,000 because Brittenham knew, or was reckless or negligent in not knowing, that

each was investing only \$25,000. Moreover, Brittenham knew that Investor A was mistaken concerning how much he and Co-Founder were investing, and knew that it was important to his decision to invest, yet Brittenham did not take steps to inform Investor A of the true amounts of the coinvestments. Because Brittenham is CEC's co-founder and CEO, his scienter is attributed to CEC.

48. The material misstatements and omissions to Investor A concerning Brittenham's and Co-Founder's co-investments occurred in the offer and sale of, and in connection with the purchase or sale of, interests in Series R.

5. CEC Failed to Use a Qualified Custodian and Did Not Segregate Client Assets

49. Rather than utilize a qualified custodian, CEC kept original stock certificates for securities owned by the ECP Funds in its office. CEC did not send audited financial statements to the limited partners of the ECP Funds until January 2013, at which time it sent audited financial statements for fiscal year 2011. No audited financial statements have been sent since January 2013. CEC has also never obtained a surprise exam.

50. In addition to the improper custody of the stock certificates, since August 2010, CEC has kept the ECP Funds' cash assets in a single bank account. Only one entity, identified as Ethanol Capital Partners, LP, owns the assets in the account. TEP, which is a separately registered limited partnership, shared the same bank account as the other ECP Funds. As a result, the cash assets held by the ECP Funds are commingled.

6. CEC's Compliance Policies Were Inadequate

51. CEC's compliance policies dated February 2008, October 2009 and March 2010, described the private offering exception to the custody rule, Rule 206(4)-2(b) under the Advisers Act, by incorrectly stating that the adviser need only comply with one of the three prongs, rather than all three. The May 2012 policy corrected the description of Rule 206(4)-2(b)(2)(i) to require that all three prongs be satisfied, but inaccurately went on to state that the "securities must fall into one of the above-described exceptions."

52. The description of the exception did not provide that, even if the Funds satisfied the exception in Rule 206(4)-2(b)(2)(i), CEC would still need to comply with the provision in Rule 206(4)-2(b)(2)(ii) relating to the preparation and distribution of audited financial statements. CEC did not do so.

7. CEC Omitted Co-Founder's Prior SEC Violations from the Offering Documents for Three ECP Funds

53. The PPMs for Series R, T and V offerings of the ECP Funds, which were offered and sold to investors from December 2008 through June 2010, did not disclose Co-Founder's previous disciplinary settlement with the Commission. In 2002, the Commission found that Co-Founder violated Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and caused and willfully aided and abetted violations of Sections 206(1) and (2) of the Advisers Act. The Commission censured Co-Founder and ordered him to cease and desist from committing or causing any violations and or future violations of the foregoing provisions, and pay a civil penalty of \$25,000. This was in stark contrast to prior PPMs for the other ECP Funds, where this matter had been disclosed.

54. As a co-founder and controlling owner of CEC, and with ultimate authority over the fund disclosures, Brittenham knew, or was reckless or negligent in not knowing, that Co-Founder's disciplinary history was not disclosed in the PPMs for these three ECP Funds. Because Brittenham is CEC's co-founder and CEO, his scienter is attributed to CEC.

55. This omission was material, because during these offerings, Co-Founder was a control person for CEC. He was one of CEC's principals and solicited investors for the ECP Funds.

E. VIOLATIONS

56. As a result of the conduct described above, CEC and Brittenham willfully violated Section 17(a) of

the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in the offer or sale of securities and in connection with the purchase or sale of securities.

57. As a result of the conduct described above, CEC and Brittenham willfully violated Sections 206(1), 206(2) and 206(4) of the Advisers Act and Rule 206(4)- 8(a) promulgated thereunder, which prohibit fraudulent conduct by an investment adviser.

58. As a result of the conduct described above with respect to the Unauthorized Loans, CEC and Brittenham willfully violated Section 206(3) of the Advisers Act, which prohibits an investment adviser from "acting as principal for his own account, knowingly to sell any security to or purchase any security from a client...without disclosing to such client in writing before the completion of such transaction the capacity in which he is acting and obtaining the consent of the client to such transaction."

59. As a result of the conduct described above, CEC willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-2 promulgated thereunder, which make it a fraudulent, deceptive or manipulative act for any registered investment adviser to have custody of clients' funds or securities, unless, among other requirements, a "qualified custodian" maintains those funds and securities in a separate account for each client under that client's name or in accounts that contain only the clients' funds and securities under the adviser's name as an agent or trustee for the clients.

60. As a result of the conduct described above, CEC willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-7 promulgated thereunder, which require investment advisers to adopt and implement written policies and procedures reasonably designed to prevent violation of the Advisers Act and its rules.

61. As a result of the conduct described above, CEC and Brittenham willfully violated Section 207 of the Advisers Act, which makes it "unlawful for any person willfully to make any untrue statement of a material fact in any registration application or report filed with the Commission . . . or willfully to omit to state in any such application or report any material fact which is required to be stated therein."

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 and cease-and-desist proceedings be instituted to determine:

- A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondents an opportunity to establish any defenses to such allegations;
- B. What, if any, remedial action is appropriate in the public interest against CEC pursuant to Section 203(e) of the Advisers Act including, but not limited to, disgorgement and civil penalties pursuant to Section 203 of the Advisers Act;
- C. What, if any, remedial action is appropriate in the public interest against Brittenham pursuant to Section 203(f) of the Advisers Act including, but not limited to, disgorgement and civil penalties pursuant to Section 203 of the Advisers Act;
- D. What, if any, remedial action is appropriate in the public interest against Brittenham pursuant to Section 15(b) of the Exchange Act including, but not limited to, disgorgement and civil penalties pursuant to Section 21C of the Exchange Act;
- E. What, if any, remedial action is appropriate in the public interest against Respondents pursuant to Section 9(b) of the Investment Company Act, including but not limited to, disgorgement and civil penalties pursuant to Section 9 of the Investment Company Act;
- F. Whether, pursuant to Section 8A of the Securities Act, Section 21C of the Exchange Act, and Section 203(k) of the Advisers Act, CEC should be ordered to cease and desist from committing or causing violations of 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), 206(2), 206(3), 206(4), and 207 of the Advisers Act and Rules 206(4)-2, 206(4)-7, and 206(4)-8 thereunder; whether CEC should be ordered to pay a civil penalty pursuant to Section 8A(g) of the Securities Act, Section 21B(a) of the Exchange Act, Section 203(i) of the Advisers Act, and Section 9(d) of the Investment Company Act; and whether CEC should be ordered to pay disgorgement pursuant to Section 8A(e) of the Securities Act, Sections 21B(e) and 21C(e) of the Exchange Act, Section 203 of the Advisers Act, and Section 9(e) of the Investment Company Act; and

G. Whether, pursuant to Section 8A of the Securities Act, Section 21C of the Exchange Act, and Section 203(k) of the Advisers Act, Brittenham should be ordered to cease and desist from committing or causing violations of 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), 206(2), 206(3), 206(4), and 207 of the Advisers Act and Rule 206(4)-8 thereunder; whether Brittenham should be ordered to pay a civil penalty pursuant to Section 8A(g) of the Securities Act, Section 21B(a) of the Exchange Act, Section 203(i) of the Advisers Act, and Section 9(d) of the Investment Company Act; and whether Brittenham should be ordered to pay disgorgement pursuant to Section 8A(e) of the Securities Act, Sections 21B(e) and 21C(e) of the Exchange Act, Section 203 of the Advisers Act, and Section 9(e) of the Investment Company 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 not earlier than 30 days and not later than 60 days from service of this Order 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 Respondents 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 Respondents fail to file the directed answer, or fail to appear at a hearing after being duly notified, Respondents may be deemed in default and the proceedings may be determined against them 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. This Order shall be served forthwith upon Respondents personally or by certified mail.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 300 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

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 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.

Elizabeth M. Murphy
Secretary