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Securities & Exchange Commission

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

)	
SECURITIES AND EXCHANGE COMMISSION,)	
)	COMPLAINT
PLAINTIFF,)	
)	
v.)	Civil No. 2:12-cv-00408-BCW
)	
RKC CAPITAL MANAGEMENT, LLC, a)	Magistrate Judge Brooke C. Wells
Delaware Limited Liability Company; RKC)	
CAPITAL, LLC, a Utah Limited Liability)	
Company; and RUSSELL K. CANNON,)	
)	
DEFENDANTS.)	
)	

Plaintiff, Securities and Exchange Commission (the “Commission”), for its Complaint against Defendants RKC Capital Management, LLC, RKC Capital, LLC and Russell K. Cannon (collectively, “Defendants”) alleges as follows:

INTRODUCTION

1. This matter involves a fraudulent scheme to artificially inflate the assets of a hedge fund, RKC Matador Fund, LLC (“Matador”), by the Defendants, in order to convince investors to invest in Matador and to charge excessive advisory fees.

2. RKC Capital Management, LLC (“RKC Management”) and RKC Capital, LLC (“RKC”) were Matador’s investment advisers and were retained to invest and manage Matador’s assets. Cannon was the sole person acting on behalf of RKC Management and RKC in their advisory capacity with Matador.

3. The Defendants engaged in fraudulent practices by, among other things, employing a manipulative trading practice called “marking the close” of a stock that comprised over 50% of Matador’s assets, and by instructing Matador’s fund administrator to price that stock above the market price for several months while the price of the stock was declining. As a result of those and other practices, Matador was overvalued by as much as 104% during the relevant period, from at least November 2007 through July 2011, and its performance returns were materially overstated.

4. Cannon is the sole founder, member and employee of RKC and the only person to act on RKC’s behalf. Cannon is also the controlling member of RKC Management, and is the only person to act on behalf of RKC Management in its advisory services to Matador.

5. RKC also provides investment advisory services to separately managed accounts, some of which were defrauded by RKC and Cannon as part of the scheme to overstate Matador’s assets and performance.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction by authority of Sections 20 and 22 of the Securities Act of 1933 (the “Securities Act”) [15 U.S.C. §§ 77t and 77v] and Sections 21 and Section 27 of the Securities Exchange Act of 1934 (the “Exchange Act”) [15 U.S.C. §§ 78u and 78aa].

7. Defendants, directly and indirectly, singly and in concert, have made use of the means and instrumentalities of interstate commerce and the mails in connection with the transactions, acts and courses of business alleged herein, certain of which have occurred within the District of Utah.

8. Venue for this action is proper in the District of Utah under Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and under Section 27 of the Exchange Act [15 U.S.C. § 78aa] because certain of the transactions, acts, practices, and courses of business alleged in this Complaint took place in this district and because certain of the defendants reside in and transact business in this district.

9. Defendants, unless restrained and enjoined by this Court, will continue to engage in the transactions, acts, practices, and course of business alleged herein and in transactions, acts, practices, and courses of business of similar purport and object.

10. Defendants' conduct took place in connection with the offer, purchase and/or sale of membership interests in Matador and in separately managed advisory accounts managed by RKC and Cannon.

DEFENDANTS

11. **RKC Capital, LLC** ("RKC"), is a Utah limited liability company, formed by Cannon on about November 13, 2006, with its principal place of business in Salt Lake City, Utah. It is wholly-owned by Cannon.

12. **RKC Capital Management, LLC** ("RKC Management"), is a Delaware limited liability company, formed by Cannon and others on about April 18, 2008, with the same principal place of business as RKC's in Salt Lake City, Utah. Cannon was a founder and is a

controlling member of RKC Management, and is the only member or employee of RKC Management to provide advisory services.

13. **Russell K. Cannon**, age 38, is the sole founder, member and employee of RKC and is the controlling member of RKC Management. Cannon formed Matador, and through RKC and RKC Management, is the controlling member and manager of Matador. Before forming RKC, Cannon had previously been a registered representative with Merrill Lynch and Smith Barney. Cannon is a resident of North Salt Lake, Utah

STATEMENT OF FACTS

BACKGROUND

14. Cannon was a licensed registered representative and worked for Merrill Lynch approximately from 1996 to 2001 and with Smith Barney approximately from 2001 to 2006.

15. In late 2006, Cannon left his employment as a registered representative with Smith Barney to establish a solo investment adviser practice. On about November 13, 2006 Cannon formed RKC and registered RKC with the Commission on about January 18, 2007. Soon thereafter, Cannon began soliciting clients through RKC to act as their investment adviser.

16. On about February 8, 2007 and about April 9, 2007, Cannon formed two hedge funds: RKC Matador Fund, LLC and RKC Market Neutral Fund, LLC, respectively. On about April 24, 2009, Cannon closed RKC Market Neutral Fund, LLC, and placed those investor funds in Matador.

17. On about April 18, 2008, Cannon formed RKC Management with an outside investor who provided capital and functioned in a non-advisory role. RKC Management was retained by Matador to serve as manager in about April 2008. Cannon was the only person to act in an advisory capacity with Matador.

18. By 2009 RKC managed over 130 separately managed client accounts (“RKC client accounts”) in addition to Matador. Through filings with the Commission, RKC claimed to have approximately \$32 million in assets under management. At its peak in December 2010, Matador claimed approximately \$6.2 million in assets under management (“AUM”).

A. MATADOR’S PURPORTED INVESTMENT STRATEGY.

19. Cannon represented to Matador investors that RKC’s and RKC Management’s investment strategy with Matador was to implement a five-step process – primarily using the “point and figure” methodology, together with an analysis of a stock’s “fundamentals” – to select and time RKC’s investment of Matador’s AUM.

20. “Point and figure” methodology is a technical analysis that involves charting the rise and fall of a stock’s closing price to determine entry and exit points based on supply and demand.

21. Despite those representations, the majority of Matador’s AUM were invested in Global Pari-Mutuel Investments, Inc. (“Global”), a penny stock company traded over-the-counter via the bulletin board and pink sheets. Trading over-the-counter via the bulletin board and pink sheets usually involves the trading of highly speculative securities because the companies issuing the securities typically cannot meet the listing requirements of an exchange.

22. Cannon’s father, Keith Cannon, was one of Global’s three members of its board of directors.

23. Because of Keith Cannon’s membership on Global’s board, Cannon was introduced to Global’s CEO, James Egide (“Egide”), with whom Cannon conversed about Global on a regular basis and through whom Matador provided private funding to Global.

B. DOCUMENTS PROVIDED TO INVESTORS DIRECTLY RELATED TO THEIR INVESTMENTS IN MATADOR.

24. When Cannon met with investors to convince them to invest in Matador, he provided investors with, among other things, various documents and a power point presentation. Included in those documents and power point presentation were representations concerning Matador's growth in AUM over time and Matador's performance returns.

25. On behalf of RKC and RKC Management, Cannon told investors that Matador's growth in AUM and performance returns were the result of RKC's and RKC Management's investment strategy.

26. Those documents, power point presentation and representations were used to solicit investments in Matador in the offer, purchase and sale of interests in Matador.

27. Once investors invested money in Matador, they received periodic statements from RKC and RKC Management, which reflected, among other things, Matador's increasing AUM and performance returns, the amount of money they invested in Matador, their previous and current balances in Matador, and their rate of return on their investment in Matador to date, and for stated periods.

28. Those investor statements informed investors of the performance of their investment in Matador and caused investors to invest, maintain, and/or increase, their investment in Matador.

C. CANNON HAD AN INCENTIVE TO OVERSTATE MATADOR'S ASSETS UNDER MANAGEMENT AND PERFORMANCE.

29. Cannon had a monetary incentive to overstate Matador's AUM, investment performance and investor holdings.

30. RKC and RKC Management entered into contracts with Matador which set forth the terms of RKC's and RKC Matador's engagements, and provided the terms by which RKC

and RKC Management would be compensated for their services (referred to as “Advisory Agreements”).

31. RKC’s and RKC Management’s Advisory Agreements provided two types of fees that RKC and RKC Management were to earn for their services: a management fee and an incentive allocation.

32. The management fee provided RKC and RKC Management a monthly fee based on Matador’s total AUM. The amount of the management fee was one percent of Matador’s total AUM.

33. Cannon had an incentive to maximize and overstate Matador’s AUM because his compensation, through RKC and RKC Management, would increase as Matador’s AUM increased.

34. The incentive allocation was designed to reward RKC and RKC Management for generating increasingly positive investment returns for Matador. The incentive allocation was an allocation to RKC and RKC Management of approximately 20% of Matador’s net increase each year. The incentive allocation was calculated on a monthly basis, and was netted at year end.

35. Because of the incentive allocation, Cannon had an incentive to maximize Matador’s monthly performance returns to generate large incentive allocations to himself through RKC and RKC Management.

D. CANNON’S TRADING IN GLOBAL STOCK.

36. Cannon’s trading in Global stock on behalf of Matador does not match the investment strategy Cannon touted in Matador’s offering documents.

37. Rather than actively buying and selling Global’s stock based on indicators derived from the point and figure strategy and the stock’s fundamentals, Matador almost exclusively

purchased Global's stock and rarely sold it.

38. For example, during the period from August 9, 2007 through July 27, 2011, Matador purchased over 1.7 million shares of Global stock on the open market, but only sold a total of approximately 23,200 shares on ten trading days during that same period.

39. As a result of such heavy buying activity, Global quickly became Matador's largest investment, and within a few months consistently comprised more than 50% of Matador's total AUM.

40. As a result of its purchases, Matador also became Global's largest shareholder, outside of current and former Global management.

41. During the period from late 2007 through late 2009, the accounts managed by and related to Cannon, RKC and RKC Management were most often the only non-broker-dealer purchasers of Global's stock in the market.

42. Since its formation in 1997 Global has never had a profitable quarter, has gone through several unsuccessful business plans, has depended on private financing primarily to fund its operations, and has always had a "going-concern" qualification from its auditors.

E. CANNON "MARKED THE CLOSE" OF GLOBAL STOCK.

43. As part of his effort to artificially inflate the price of Global's stock at month end, Cannon engaged in a trading technique whereby he would place significant numbers of orders to buy Global stock (referred to as "bids") near the end of the trading day, usually at increasing prices, in order to influence the price of Global stock to rise. This trading practice is referred to as "marking the close."

44. Cannon often engaged in the practice of marking the close of Global's stock on the last trading day of the month, apparently because the securities held by Matador were priced

at month-end for the preparation of Matador's monthly financial statements.

45. Matador's monthly financial statements reflected Matador's AUM. Matador's AUM were used to calculate RKC's and RKC Management's management fees.

46. The change in Matador's AUM from month-to-month was used to determine Matador's monthly performance returns. Matador's monthly performance returns were used to calculate RKC's and RKC Management's incentive allocations.

47. From the period of November 2007 through December 2009, Cannon regularly engaged in a pattern of marking the close in Global stock at month end, primarily using Matador's account, but also utilizing other RKC client accounts.

48. For example, in 13 separate months, on average Matador placed approximately 28% of the month's orders on the last trading day of the month, and approximately 70% of those orders were placed within the last hour of the trading day.

49. Furthermore, of all Matador orders executed on the last trading day, approximately 79% were executed during the last hour of trading.

50. In almost all of the dates in which Cannon marked the close of Global's stock at month-end, Matador's bid price increased throughout the day, usually ending with the highest bid placed in the last few seconds or minutes of the day.

51. In addition to marking the close, Cannon also matched orders. A matched order is when the same person is controlling accounts which serve as both the buyer and the seller of the stock.

52. Cannon placed matched orders on at least five trades in 2007 and 2008.

53. Placing matched orders is also a manipulative trading technique designed to influence the price of a stock.

54. Cannon's trading technique of marking the close of Global's stock caused the price of Global stock to increase by between approximately 13% and 96% at various month ends from November 2007 through December 2009.

55. Cannon's trading technique of marking the close of Global's stock caused the month-end value of Matador's AUM to increase from between approximately 2% to 20% for various months from November 2007 through December 2009.

56. Neither Cannon's technique of marking the close of Global's stock, nor his matched trades, were ever disclosed to investors.

F. CANNON ULTIMATELY ABANDONED HIS EFFORTS TO MARK THE CLOSE OF GLOBAL STOCK, CHOOSING INSTEAD TO SIMPLY FIX THE PRICE OF GLOBAL'S STOCK ABOVE THE MARKET PRICE.

57. In the fall of 2009, Cannon added to his fraudulent activity of effecting manipulative trades in Global stock by instructing Matador's fund administrator, Strata Fund Services, LLC ("Strata"), to set the price of Matador's holdings in Global stock above the market price.

58. Pursuant to Matador's Limited Liability Company Agreement ("LLC Agreement"), the fair market value of Matador's total AUM were, in general, calculated by multiplying the last traded price of the relevant security at the close of business at month-end by the number of shares of the relevant security owned by Matador for that period.

59. In practice, the procedure utilized by RKC and RKC Management for determining the fair market value of Matador's AUM was as follows: Pursuant to its contract with Matador, Strata was responsible for, among other things, preparing Matador's financial statements. In general, the preparation of Matador's financial statements included calculating Matador's total AUM by obtaining Matador's monthly brokerage statements and multiplying the number of

shares owned by Matador in a given stock by the price per share as quoted in Matador's monthly brokerage statements.

60. The price per share quoted in Matador's monthly brokerage statements was simply the closing market price as quoted by the market on which Matador's holdings in securities were listed or quoted.

61. When Cannon was successful in influencing the price of Global's stock to rise at the end of the month through marking the close, the higher, manipulated price of Global's stock was reflected in Matador's brokerage statements. That higher, manipulated price was then used by Strata in its calculation of Matador's AUM.

62. Ultimately, as Cannon's efforts to mark the close of Global's stock became less effective, Cannon resorted to a different, but just as fraudulent, practice to overstate Matador's AUM and performance returns.

63. On September 30, 2009, Cannon attempted to mark the close of Global's stock, placing almost half of Matador's September trades on that day. During the last 40 minutes of trading, Cannon placed 13 orders, seven of which were executed at a high of \$1.15 per share.

64. However, two of Matador's orders, entered by Cannon near the close of the market at a bid of \$1.20 per share, were executed at 3:59:22, just 38 seconds before the market's close, at a price of \$.80 per share. These two trades were the last trades of the day. As such, according to Matador's brokerage statements, and pursuant to the pricing requirements of Matador's LLC Agreement, the price at which Strata was to price Matador's holding in Global stock was \$.80 per share. Since approximately 55% of Matador's AUM were held in Global stock at the time, utilizing the market price of \$.80 per share would have caused the total value of

Matador's holdings in Global stock to decline by approximately 30%, and the value of Matador's AUM would have declined by approximately over 20%.

65. Such a decline in Matador's total AUM would also be reflected in a similar 20% decline in the individual holdings of Matador investors.

66. Instead of accepting that closing price, Cannon instructed Strata to price Matador's holding in Global stock at \$1.15 per share rather than \$.80 per share, claiming "there was a decent amount of improper manipulation of the price today right at the close of the market."

67. Cannon failed to inform Strata that the closing price of \$.80 per share was derived, in fact, from his purchases.

68. Strata followed Cannon's instructions and priced Matador's holdings in Global at \$1.15 rather than \$.80 per share.

69. By pricing Matador's holdings in Global at \$1.15 per share, RKC Management represented to investors that Matador had \$3.4 million in total AUM as of September 30, 2009. In fact, Matador only had approximately \$2.7 million in total AUM pursuant to the market's closing price of Global stock on September 30, 2009 of \$.80 per share.

70. In addition, by pricing Matador's holdings in Global at \$1.15 per share, RKC Management represented to investors a performance return for the month of September 2009 of -1.36%, rather than the actual performance return of approximately -19.8%.

71. In October 2009, the price of Global stock began to trade at lower, more erratic prices, ranging from \$.40 to \$1.05, with Matador on the buy side of all of the highest-priced trades. Matador's closing price for October 2009 was \$.75 per share.

72. For the valuation of Matador's total AUM for October 2009, Cannon instructed Strata to price Matador's holdings in Global stock at \$.85 per share, claiming it was "approximately between the closing bid and ask" for the last trade in October 2009. In fact, the mid-point between the last bid and ask in October 2009 was approximately \$.65 per share.

73. Global stock was traded in November 2009 at prices from \$.31 to \$.65 per share, with Cannon once again participating in all of the highest-priced trades for the month.

74. The last November trade in Global stock was on November 20, 2009. Matador was on the buy side of that trade, buying 100 shares at \$.65 per share, which became the market's closing price for Global stock for November 2009.

75. Nevertheless, Cannon instructed Strata to price Matador's holdings in Global stock for November 2009 at \$.89 per share. No explanation was given to Strata regarding the discrepancy between the closing price of \$.65 per share and the \$.89 per share Cannon instructed Strata to use.

76. For December 2009, Cannon resumed his practice of marking the close, influencing the price of the stock to rise from \$.45 per share to \$.88 per share for month-end and year-end pricing.

77. Cannon's brother, Shane Cannon, was on the selling side of Matador's purchase of 100 shares of Global stock at \$.88 per share on December 31, 2009. That trade was executed at approximately 3:59:27, thirty three seconds before market close.

78. From January through August 2010, the price of Global stock steadily declined, going from a high of \$.88 per share in mid-January to a low of \$.11 in April and settling into a price range of \$.15 to \$.35 per share through the summer of 2010.

79. Throughout this entire period, from January 2010 through August 2010, Cannon continued to fix the price of Global stock for Matador through instructions to Strata.

80. The closing market price of Global stock for each month from January 2010 through August 2010 was as follows: January \$.60; February \$.65; March \$.55; April \$.42; May \$.45; June \$.35; July \$.15 and August \$.30.

81. Nevertheless, for the month-end pricing from January 2010 through August 2010, Cannon instructed Strata to price Matador's holdings in Global stock at \$.88 per share, often instructing Strata to simply price Matador's holdings in Global with the same price used the previous month.

82. Cannon made no attempt during this period to follow the requirement of Matador's LLC Agreement to price its securities at the closing market price.

83. Cannon fixed the price of Matador's holdings in Global to avoid a significant decline in the value of Matador's AUM. Such a decline would have reduced the advisory fees RKC and RKC Management would have received from Matador. Such a decline would have also resulted in a substantial withdrawal of funds from Matador by investors.

84. Neither Cannon, RKC, nor RKC Management ever disclosed to investors that Cannon was instructing Strata to price Global stock using an artificial value as opposed to the closing price of the stock at month end. Nor did the Defendants ever disclose to investors that Matador's AUM and performance returns, as represented in documentation and oral statements made by the Defendants, were materially overstated as a result of these practices.

G. GLOBAL'S REVERSE MERGER.

85. During the first six months of 2010, Global's stock had been declining, likely because of Global's mounting losses. Global had never had a profitable quarter, and had been

unable to pay its auditors for fees incurred for Global's 2008 audit.

86. Because of its inability to pay its auditors for its 2008 audit, Global was unable to obtain an audit for its 2009 financial statements. Global was thus unable to file periodic reports with the Commission in 2010, including Global's Form 10-K for 2009.

87. As a result of its inability to file periodic reports with the Commission, in June 2010, Global filed a Form 15 with the Commission, terminating its registration with the Commission.

88. On about September 17, 2010, Global announced a securities purchase agreement by BERMASE, LLC, an outside investor, to infuse cash into Global in exchange for shares of stock.

89. In response to that information, the market price of Global's stock rose to \$.55 per share on September 18, and reached \$1.30 per share by September 27, 2010.

90. Ultimately, BERMASE effected a takeover of Global's board and management in December 2010. BERMASE intended to cause Global to develop an online gaming product utilizing the pari-mutuel wagering system.

91. During the first six months of 2011, BERMASE was unable to obtain outside financing for its business plan, and on about June 8, 2011, Global filed a Form 8-K with the Commission disclosing it was out of funds for continued development of its project.

92. On about June 16, 2011, Global filed a Form 8-K disclosing it had been notified by the consulting firm that provided Global's management services, Bendigo Partners, LLC, of a material breach of the consulting agreement.

93. On about August 2, 2011, Bendigo Partners terminated its consulting agreement with Global and Global no longer had a management team.

94. As a result of Global's declining business prospects in the first half of 2011, the price of Global stock began to decline, dropping from \$1.35 per share on May 9, 2011 to \$.15 per share on August 22, 2011.

95. The closing market price of Global stock from April through August 2011 was as follows: April \$1.35; May \$1.32; June \$.90; July \$.50; and August \$.26.

96. In response to Global's declining market price, Cannon began once again to instruct Strata to price Matador's holdings in Global's stock above the market price.

97. In April and May 2011, Cannon instructed Strata to price Global at \$1.45 per share, and in June and July 2011, Cannon instructed Strata to price Global at \$1.38 per share – both prices far exceeding the actual market prices of Global stock.

98. For Matador's asset calculation for August 2011, Cannon instructed Strata to price Global at \$1.37 per share, despite the fact that Global's closing market price for August 31, 2011 was \$.26 per share, stating: "As for month end...mark all shares of [Global stock] at \$1.37. That should have the Fund right around the flat line for the month or slightly down by my calculations." In response to that instruction, Strata asked Cannon for a "quick explanation as to why you valued [Global] shares at \$1.37. We will need this going forward as support for our files in cases where the price does not match the broker."

99. Thereafter, Cannon and Strata engaged in discussions related to Cannon's justification for his intention to price Global's stock above the closing price.

100. Ultimately, Cannon changed his pricing instructions, and Strata priced Global at the actual closing price for August 31, 2011 of \$.26 per share.

101. As a result of that re-pricing to market, Global's total AUM declined from the fictitious value of \$5.7 million for July 2011 to approximately \$2 million for August 2011.

H. CANNON OVERVALUED MATADOR'S CONVERTIBLE NOTE.

102. In addition to overstating Matador's AUM through manipulative trading and fixing the price of Matador's holdings in Global, Cannon overstated Matador's AUM by overvaluing a convertible note Matador had purchased from Global.

103. In October 2007, Cannon caused Matador to purchase a convertible note from Global for \$175,000. In September 2008, Global offered Matador additional shares if it converted the note to Global's common stock.

104. Cannon agreed, and in September 2008, the note and accrued interest were ostensibly converted to 501,667 shares of Global stock.

105. Despite the conversion, the asset of 501,667 shares of Global stock continued to be reflected on Matador's books as a convertible note until July 2010.

106. For the month of September 2008, Cannon caused the converted note to be reflected on Matador's books at approximately \$827,751. In fact, the value of that asset should have been reflected on Matador's financial statements at no more than approximately \$633,355.

107. For Matador's 2008 year-end financial statements, the 501,667 converted shares were reflected on Matador's books as a convertible note valued at \$874,750. The value of that asset should have been reflected on Matador's financial statements at no more than approximately \$471,567.

I. CANNON MISUSED RKC CLIENT ACCOUNTS IN FURTHERANCE OF HIS FRAUDULENT SCHEME.

108. Cannon misused RKC client accounts to assist his efforts to mark the close of Global's stock.

109. Cannon also used the accounts of one of his largest clients, Hal Harrison (“Harrison”), to record fictitious profits for Matador, in addition to using Harrison’s accounts to mark the close in Global’s stock.

110. From about September 2008 through about September 2009, Cannon caused Harrison’s accounts to make about 22 open market purchases of Global’s stock, often placing trades on the last trading day of the month.

111. During this period, Cannon purchased approximately 143,500 shares of Global at an average price of approximately \$1.12 per share through Harrison’s accounts.

112. On about June 25, 2010, Cannon sold all of Harrison’s holdings in Global stock into Matador’s account at a price of about \$.35 per share.

113. By utilizing the sale of Global stock from Harrison’s accounts to Matador’s account, Matador was able to reduce its loss for the month, posting a loss for June 2010 of \$431,241. Without the Harrison trade, Matador would have posted a loss of approximately \$510,166 for June 2010.

114. Cannon’s email instructing Strata to price Global at \$.88 for June 2011 reflects Cannon’s motive in making the Harrison transaction: “After a very ugly month again . . . I am praying that I am still flat or slightly positive for the year????.”

115. From January 2010 to August 2010, Cannon caused Matador to purchase over 450,000 shares of Global at an average price of \$.35 per share. By instructing these shares to be valued at \$.88 per share each month, Cannon was able to generate false gains for Matador of over \$235,000.

116. Cannon utilized several other RKC client accounts to purchase Global stock in marking the close transactions.

117. As a result of the conduct described above, the Defendants overvalued Matador's AUM by as much as 104% and materially overstated Matador's performance returns and investor holdings.

118. As a result of the conduct described above, the Defendants made material misrepresentations to investors and potential investors in Matador through various oral statements and various documents provided to investors and potential investors, including correspondence, newsletters, reports, account statements, power point presentations and other documentation.

119. Those representations overstated Matador's AUM, performance returns, investment strategy, and investor holdings and returns in Matador.

FIRST CAUSE OF ACTION
EMPLOYMENT OF A DEVICE, SCHEME OR ARTIFICE TO DEFRAUD
Violation of Section 17(a)(1) of the Securities Act [15 U.S.C. § 77q(a)(1)]

120. The Commission realleges and incorporates by reference the allegations contained in Paragraphs 1 through 119, above.

121. Defendants, and each of them, by engaging in conduct described above, directly or indirectly, in the offer or sale of securities, by the use of the means or instruments of transportation or communication in interstate commerce or by use of the mails, with scienter, employed devices, schemes, or artifices to defraud.

122. By reason of the foregoing, Defendants, and each of them, directly or indirectly, violated, and unless restrained and enjoined by this Court, will continue to violate, Section 17(a)(1) of the Securities Act [15 U.S.C. § 77q(a)(1)].

SECOND CAUSE OF ACTION
FRAUD IN THE OFFER AND SALE OF SECURITIES
Violations of Section 17(a)(2) and (3) of the Securities Act
[15 U.S.C. § 77q(a)(2) and (3)]

123. The Commission realleges and incorporates by reference the allegations contained in Paragraphs 1 through 119, above.

124. Defendants, and each of them, by engaging in the conduct described above, directly and indirectly, in the offer and sale of securities, by the use of the means or instruments of transportation or communication in interstate commerce or by use of the mails, obtained money or property by means of untrue statements of material fact or by omitting to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, and engaged in transactions, practices, or courses of business which operate or would operate as a fraud or deceit upon the purchaser.

125. By reason of the foregoing, Defendants, and each of them, directly or indirectly, violated, and unless restrained and enjoined will continue to violate, Section 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. §§ 77q(a)(2) and 77q(a)(3)].

THIRD CAUSE OF ACTION
FRAUD IN CONNECTION WITH THE PURCHASE AND
SALE OF SECURITIES
Violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5
thereunder [17 C.F.R. § 240.10b-5]

126. The Commission realleges and incorporates by reference the allegations contained in Paragraphs 1 through 119, above.

127. Defendants, and each of them, by engaging in the conduct described above, directly or indirectly, by the use of means or instrumentalities of interstate commerce or use of the mails, in connection with the purchase or sale of securities, with scienter, (1) employed devices, schemes, or artifices to defraud; (2) made untrue statements of material fact or omitted

to state a material fact necessary in order to make statements made, in light of the circumstances under which they were made not misleading; or (3) engaged in acts, practices, or courses of business that operated or would operate as a fraud and deceit upon other persons.

128. By reason of the foregoing, Defendants, and each of them, violated, and unless restrained and enjoined will continue to violate, Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

**FOURTH CAUSE OF ACTION
FRAUD BY INVESTMENT ADVISERS
Violations of Section 206(1) and (2) [15 U.S.C. §§ 80(b)-6(1) and 80(b)-6(2)]**

129. The Commission realleges and incorporates by reference the allegations contained in Paragraphs 1 through 119, above.

130. Defendants, and each of them, by engaging in the conduct described above, directly or indirectly, by the use of the use of the mails or any means or instrumentality of interstate commerce, while acting as investment advisers, knowingly, willfully, or recklessly: (a) employed devices, schemes or artifices to defraud clients or prospective clients; (b) engaged in transactions, practices and courses of business that operated as a fraud or deceit upon clients or prospective clients; and (c) engaged in acts, practices and courses of business which were fraudulent, deceptive, or manipulative.

131. By reason of the foregoing, Defendants, and each of them, directly or indirectly violated, and unless enjoined will continue to violate, Sections 206(1) and 206(2) of the Advisers Act, 15 U.S.C. §§ 80(b)-6(1) and 80(b)-6(2).

**FIFTH CAUSE OF ACTION
FRAUD BY INVESTMENT ADVISERS AND
IN ADVISING POOLED INVESTMENT VEHICLES
Violations of Section 206(4) [15 U.S.C. § 80b-6(4)] of the Advisers Act and
Rule 206(4)-8 [17 C.F.R. § 275.206(4)-8] thereunder 78o(a)]**

132. The Commission realleges and incorporates by reference the allegations contained in Paragraphs 1 through 119, above.

133. Defendants, and each of them, by engaging in the conduct described above, directly or indirectly, by the use of the use of the mails or any means or instrumentality of interstate commerce, while acting as investment advisers, engaged in acts, practices or courses of business that were fraudulent, deceptive and manipulative.

134. Defendants, and each of them, while acting as investment advisers to pooled investment vehicles: (a) made untrue statements of material facts or omitted to state material facts necessary in order to make statements made, in light of the circumstances under which they were made, not misleading, to investors or prospective investors in the pooled investment vehicle; or (b) engaged in acts, practices, or courses of business that were fraudulent, deceptive, or manipulative with respect to investors or prospective investors in the pooled investment vehicle

135. By reason of the foregoing, Defendants, and each of them, violated, and unless restrained and enjoined will continue to violate Section 206(4) of the Advisers Act [15 U.S.C. §80b-6(4)] and Rule 206(4)-8 thereunder [17 C.F.R. § 275.206(4)-8].

RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests that this Court:

I

Issue findings of fact and conclusions of law that Defendants committed the violations charged herein.

II

Issue in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure orders that temporarily, preliminarily and permanently enjoin RKC Capital Management LLC, RKC Capital LLC, and Russell K. Cannon and their officers, agents, servants, employees, attorneys, and accountants, and those persons in active concert or participation with any of them, who receive actual notice of the order by personal service or otherwise, and each of them, from engaging in transactions, acts, practices, and courses of business described herein, and from engaging in conduct of similar purport and object in violation of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Sections 206(1), (2) and (4) of the Advisers Act and Rule 206(4)-8 thereunder.

III

Enter an order directing Cannon to pay civil money penalties pursuant to Section 20(d) of the Securities Act and Section 21(d)(3) of the Exchange Act.

IV

Enter an order directing Cannon to disgorge all ill-gotten gains received during the period of violative conduct and pay prejudgment interest on such ill-gotten gains.

V

Retain jurisdiction of this action in accordance with the principles of equity and the Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that may be entered, or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

Dated April 30, 2011.

Respectfully submitted,

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