

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES ACT OF 1933**  
**Release No. 9751 / April 17, 2015**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 74753 / April 17, 2015**

**INVESTMENT COMPANY ACT OF 1940**  
**Release No. 31555 / April 17, 2015**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-16498**

**In the Matter of**

**RUSSELL C. SCHALK, JR.**

**Respondent.**

**ORDER INSTITUTING ADMINISTRATIVE  
AND CEASE-AND-DESIST PROCEEDINGS,  
PURSUANT TO SECTION 8A OF THE  
SECURITIES ACT OF 1933, SECTION 21C  
OF THE SECURITIES EXCHANGE ACT OF  
1934, AND SECTION 9(b) OF THE  
INVESTMENT COMPANY ACT OF 1940,  
MAKING FINDINGS, AND IMPOSING  
REMEDIAL SANCTIONS AND A CEASE-  
AND-DESIST ORDER 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”), Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), and Section 9(b) of the Investment Company Act of 1940 (“Investment Company Act”), against Russell C. Schalk, Jr. (“Respondent” or “Schalk”).

**II.**

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the

Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Section 21C of the Securities Exchange Act of 1934, and Section 9(b) of the Investment Company Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order") and Notice of Hearing, as set forth below.

### **III.**

On the basis of this Order and Respondent's Offer, the Commission finds<sup>1</sup> that:

#### **Summary**

From January 2007 to March 2012, Schalk violated Section 5(a) and 5(c) of the Securities Act in connection with unregistered offers and sales of at least \$1,973,000 of the securities of Raintree Racing, LLC ("Raintree Racing"), and at least \$362,000 of the securities of Raintree Thoroughbred Farm, Inc. ("Raintree Farm") to at least sixteen investors in at least six states. In connection with these sales, Schalk made material misrepresentations and failed to disclose material facts to investors concerning (i) the merits and risks associated with the investment, (ii) the speculative nature of the promised 20% return on investment, (iii) the safety of invested principal, and (iv) the financial condition of Raintree Racing. In addition, Schalk prepared Raintree Farm Private Placement Memoranda (PPMs), and prepared and enabled the distribution of account statements to investors that made material misrepresentations and omissions concerning the financial condition of Raintree Farm. Schalk also diverted at least \$220,000 of Raintree Racing and Raintree Farm assets to his personal bank account. As a result of the conduct described above, investors lost \$1,472,959.

#### **Respondent**

1. Schalk, 60 years old, resides in Hunt Valley, Maryland, and is currently employed by First Incentive Travel International as a Vice President of Sales. Schalk was the sole control person and a one third owner of Raintree Racing and has been, and is, the sole control person, as well as the President, Chief Executive Officer and Secretary-Treasurer of Raintree Farm.

#### **Other Relevant Entities**

2. Raintree Racing was created in 2007 as a Maryland limited liability company whose principal place of business was Towson, Maryland. Raintree Racing was engaged

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<sup>1</sup> The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

in the purchase and sale of thoroughbred horses. Raintree Racing has never registered with the Commission and has never registered an offering of securities under the Securities Act. Raintree Racing has had essentially no business activity since early 2012.

3. A second owner of Raintree Racing (“Second Owner”), who was a one-third owner of Raintree Racing and a member of its Management Committee, was at relevant times an unregistered investment adviser to some investors in Raintree Racing and Raintree Farm.

4. Raintree Farm is a Delaware corporation which since 2002 has been engaged in the purchase, sale, and racing of thoroughbred horses. Raintree Farm has never registered with the Commission. In 2007 and 2010, Raintree Farm made filings pursuant to Securities Act Regulation D and Rule 506 thereunder for the offer and sale of its securities in private offerings. The common stock of Raintree Farm has never been publicly traded. Raintree Farm has had essentially no business activity since early 2012.

### **Facts**

#### **Misrepresentations and Omissions: Raintree Racing**

5. From 2007 to 2010, Schalk and the Second Owner solicited nearly \$2 million from certain investors in Raintree Racing. *See* Table I, below. While the Second Owner had direct contact with the investors, Schalk knew or was reckless in not knowing that Raintree Racing investors had been told they were making short-term principal protected loan-like investments in Raintree Racing.

**TABLE I**

**Raintree Racing**

**Investments – 2007 to 2010**

<b>Investor</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>Total</b>
<b>1</b>	\$100,000	\$0	\$0	\$0	\$100,000
<b>2</b>	300,000	365,000	340,000	132,247	1,137,247
<b>3</b>	25,000	0	0	0	25,000
<b>4</b>	0	0	0	15,000	15,000
<b>5</b>	25,000	0	0	1,000	26,000
<b>6</b>	25,000	25,000	0	1,000	51,000
<b>7</b>	0	0	30,000	1,500	31,500
<b>8</b>	0	100,000	32,000	3,000	135,000
<b>9</b>	0	0	30,000	0	30,000
<b>10</b>	0	0	130,000	0	130,000
<b>11</b>	0	0	0	75,000	75,000
<b>12</b>	0	0	128,000	0	128,000
<b>13</b>	0	2,000	0	0	2,000
<b>14</b>	25,000	25,000	0	0	50,000
<b>15</b>	0	25,000	0	0	25,000
<b>16</b>	10,000	0	0	3,000	13,000
<b>Total</b>	<b>\$510,000</b>	<b>\$542,000</b>	<b>\$690,000</b>	<b>\$231,747</b>	<b>\$1,973,747</b>

6. Specifically, Raintree Racing investors identified in Table I were provided agreements stating that (i) funds were to be invested for a fixed period not to exceed one year, (ii) invested principal would be returned at the maturity date, and (iii) investors would receive an annualized return of 20% on their investment. Schalk signed one or more of these agreements on behalf of Raintree Racing. In addition, Schalk was copied on multiple emails sent to investors attaching agreements and asking that investors execute the agreements and return them to Schalk.

7. Consistent with the representation that the Raintree Racing investments were akin to principal-protected loans, beginning in 2007, investors received from Raintree Racing checks accompanied by cover letters, both of which had been signed by Schalk and indicated the checks to be interest payments. *See* Table II, below. Furthermore, Schalk knew that from 2007 until 2010, Form 1099 INT tax documents provided to investors represented payments to Raintree Racing investors as “interest” payments.

**TABLE II****Raintree Racing****Interest and Principal Payments to Investors – 2007 to 2010<sup>2</sup>**

<b>Investor</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>Net Loss<sup>3</sup></b>
<b>1</b>	\$7,637	\$110,000	\$0	\$0	(\$17,637)
<b>2</b>	4,812	75,418	241,379	78,367	737,271
<b>3</b>	1,250	28,750	0	0	(5,000)
<b>4</b>	0	0	0	(495)	14,505
<b>5</b>	0	5,000	5,000	1,500	14,500
<b>6</b>	0	6,834	31,569	1,500	11,097
<b>7</b>	0	0	4,500	1,500	25,500
<b>8</b>	0	57,095	5,577	4,600	67,728
<b>9</b>	4,583	7,091	8,937	4,100	5,289
<b>10</b>	0	0	3,197	14,592	112,211
<b>11</b>	0	0	0	0	75,000
<b>12</b>	0	0	6,400	5,650	115,950
<b>13</b>	0	0	0	0	2,000
<b>14</b>	3,153	7,228	10,000	5,000	24,619
<b>15</b>	0	2,596	5,000	2,500	14,904
<b>16</b>	8,333	12,000	12,000	3,000	(22,333)
<b>Total</b>	<b>\$29,768</b>	<b>\$312,012</b>	<b>\$333,559</b>	<b>\$122,804</b>	<b>\$1,175,604</b>

8. While investors were told that their investment principal was not at risk, in fact it was. Schalk, who controlled both Raintree Racing and Raintree Farm, regularly transferred funds from Raintree Racing to Raintree Farm. Specifically, from 2007 through 2010, at least \$668,000 was transferred from Raintree Racing to Raintree Farm. *See* Table III, below. These funds were used to pay expenses of Raintree Farm. Not only was this practice contrary to what investors were told about how their funds would be used, but the partnership documents organizing Raintree Racing did not authorize such transfers.

<sup>2</sup> Amounts presented include repayment of principal in 2008 of \$100,000 to investor 1, \$25,000 to investor 3, and \$45,000 to investor 8, and principal repayments in 2009 of \$80,000 to investor 2 and \$25,000 to investor 6.

<sup>3</sup> Represents total investment by each investor (*see* Table I, above) less interest payments and repayment of principal.

**TABLE III****Transfers from Raintree Racing to Raintree Farm – 2007 to 2010**

	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>Total</b>
<b>Transfers from Raintree Racing</b>	\$143,000	\$219,294	\$151,279	\$159,125	\$672,698
<b>Withdrawals from Raintree Racing</b>	87,500	17,500	42,500	0	147,500
<b>Total transfers from Raintree Racing to Raintree Farm</b>	230,500	236,794	193,779	159,125	820,198
<b>Less: Transfers from Raintree Farm to Raintree Racing</b>	(41,000)	(85,750)	(7,038)	(17,750)	(151,538)
<b>Net Transfers</b>	<b>\$189,500</b>	<b>\$151,044</b>	<b>\$186,741</b>	<b>\$141,375</b>	<b>\$668,660</b>

9. As the control person of Raintree Racing, Schalk knew or was reckless in not knowing that Raintree Racing funds should not be transferred to Raintree Farm. In an e-mail to Schalk dated June 10, 2010, the Second Owner questioned why Raintree Racing money was being used to cover Raintree Farm expenses: “Has the farm reimbursed RR for these expenses thus far? If not, when? The farm should be operating as a separate entity in my mind.” In a reply e-mail, Schalk falsely denied that Raintree Racing funds were used to fund Raintree Farm expenses.

10. Schalk knew that Raintree Racing did not have cash flow or other resources to pay Raintree Racing investors the promised 20% interest and return their principal. Schalk knew that Raintree Racing had net losses from operations in fiscal years 2009 through 2011 and had minimal income in earlier years. *See* Table IV, below. Schalk knew that Raintree Racing had no assets other than investor funds, and was dependent on infusion of funds from investors in order to continue operations. Raintree Racing ultimately suspended operations effective December 31, 2012.

**TABLE IV**

**Raintree Racing**

**Operating Results – 2007 to 2012<sup>4</sup>**

	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>
<b>Gross receipts</b>	\$69,731	\$255,000	\$205,000	\$58,000	\$0	\$0
<b>Less: interest</b>	(38,105)	(174,024)	(255,431)	(128,696)	0	0
<b>Less: other expenses</b>	(8,749)	(9,267)	(2,255)	(7,637)	(2,250)	(910)
<b>Net income (loss)</b>	\$22,877	\$71,709	(\$52,686)	(\$78,333)	(\$2,250)	(\$910)

11. E-Mails from Schalk to the Second Owner illustrate Raintree Racing’s lack of resources. In an e-mail to the Second Owner dated February 12, 2010, Schalk said: “I am in desperate need of some cash for the next 30 days or so. Is there anything you can do to help.” In an e-mail to the Second Owner dated March 4, 2010, Schalk said: “I have over \$20K of expenses past due on the farm. I am trying all available resources to come up with some money, even if it is a short term loan for 30-45 days.” In an e-mail to the Second Owner dated May 13, 2010, Schalk said: “I cannot pay the additional help tomorrow, which is bad enough, and there is no way that can go beyond Monday. . . I had dunning messages from the farm in [sic] Delaware, which will not release the horses until the bill gets paid . . . .”

12. Investors were never provided financial information sufficient to understand the true financial condition of Raintree Racing.

13. The misstatements and omissions described above relating to how invested funds were used, the risks associated with the investment and the financial condition of Raintree Racing were material to investors.

**Misrepresentations and Omissions: Raintree Farm**

14. In addition to the loan agreements documenting their investment in Raintree Racing as described above, Raintree Racing investors identified in Table I also received shares of Raintree Farm common stock, purportedly as “bonus” collateral for their investment in Raintree Racing. Investors were asked to submit Subscription Agreements in connection with their receipt of Raintree Farm shares. Schalk signed those agreements on behalf of Raintree Farm. In addition, in at least three instances during the period 2007 to 2011, as part of a \$2.5 million Raintree Farm

<sup>4</sup> As presented in Raintree Racing tax returns.

offering, at least three persons purchased Raintree Farm shares directly, in the aggregate amount of \$362,500, paying \$5.00 per share. *See* Table V, below. From 2007 through 2010, these investors received limited interest and principal payments. *Id.*

**TABLE V**

**Raintree Farm**

**Investments – 2007 to 2011**

<b>Investor</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>Total Investment</b>
<b>8</b>	\$85,000	\$25,000	\$30,000	\$19,500	\$0	\$159,500
<b>9</b>	0	0	0	11,000	4,000	15,000
<b>10</b>	0	130,000	29,500	28,500	0	188,000
<b>Total</b>	\$85,000	\$155,000	\$59,500	\$59,000	\$4,000	\$362,500

**Interest and Principal Payments to Investors – 2007 to 2010**

<b>Investor</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>Net Loss<sup>5</sup></b>
<b>8</b>	\$3,336	\$29,000	\$3,126	\$925	\$123,113
<b>9</b>	0	0	0	0	15,000
<b>10</b>	5,000	19,083	4,400	275	159,242
<b>Total</b>	\$8,336	\$48,083	\$7,526	\$1,200	\$297,355

15. Schalk assisted in the preparation of Raintree Farm PPMs dated July 1, 2007, and March 1, 2010, including providing information contained in the PPMs.

16. The Raintree Farm PPMs did not disclose the following material facts that were known by Schalk: (i) Raintree Farm operated at a material net loss since its inception in 2002 (*see* Table VI, below); (ii) Raintree Farm had minimal assets (*id.*); and (iii) Raintree Racing assets were funding Raintree Farm’s operations (*see* Tables III and V, above). Each of these facts would have been important to an investor in deciding whether to invest in Raintree Farm.

<sup>5</sup> Represents total investment by investor (*see* Table immediately above) less interest payments and repayment of principal.

**TABLE VI <sup>6</sup>****Raintree Farm****Operating Results – 2007 to 2012**

	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>
<b>Gross receipts</b>	\$16,386	\$53,512	\$162,666	\$44,685	\$21,094	\$10,220
<b>Less: expenses</b>	(132,720)	(145,232)	(198,649)	(146,886)	(89,285)	(71,866)
<b>Less: depreciation</b>	(13,408)	(3,692)	(58,598)	(26,083)	0	0
<b>Less: interest</b>	<b>0</b>	0	(746)	0	0	0
<b>Net income (loss)</b>	(\$129,742)	(\$95,412)	(\$95,327)	(\$128,284)	(\$68,181)	(\$61,646)

**Assets and Equity – 2007 to 2012**

	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>
<b>Assets</b>	\$46,323	\$70,900	\$22,339	\$17,933	\$3,422	\$2,745
<b>Equity</b>	(\$574,363)	(\$673,307)	(\$736,112)	(\$867,533)	(\$936,384)	(\$995,548)

17. Without any factual basis for the claim, in late 2012 and early 2013, Schalk prepared and distributed to Raintree Farm investors account statements which stated that Raintree Farm's net asset value per share was \$3.34. At the time Schalk valued the Raintree Farm shares, he knew that the shares had little or no value because he knew that Raintree Farm had minimal assets, had incurred continuing material net losses from at least 2007, had essentially no business activity in 2012, and had no viable prospect of resuming operations. *See* Table VI, above.

**Misappropriation of Funds**

18. From 2007 to 2011, Schalk diverted at least \$220,000 from Raintree Farm and Raintree Racing bank accounts to his personal bank account without the knowledge or authorization of Raintree Farm and Raintree Racing investors. *See* Table VII, below.

<sup>6</sup> As reported on tax returns for Raintree Farm.

**TABLE VII****Raintree Racing and Raintree Farm****Funds Diverted by Schalk – 2007 to 2011**

	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>Total</b>
<b>Transfers from Raintree Racing</b>	\$44,298	\$44,000	\$23,668	\$7,902	\$1,125	\$120,993
<b>Withdrawals from Raintree Racing</b>	22,500	6,125	17,000	0	0	45,625
<b>Transfers from Raintree Farm</b>	21,500	42,000	32,000	17,000	18,750	131,250
<b>Withdrawals from Raintree Farm</b>	5,000	0	0	0	0	5,000
<b>Total Funds Diverted</b>	93,298	92,125	72,668	24,902	19,875	302,868
<b>Less: Transfers from Schalk to Raintree Racing</b>	0	(5,000)	(1,000)	(2,500)	0	(8,500)
<b>Less: Transfers from Schalk to Raintree Farm</b>	(14,515)	(5,968)	(7,030)	(22,071)	(24,246)	(73,830)
<b>Net Funds Diverted</b>	\$78,783	\$81,157	\$64,638	\$331	(\$4,371)	\$220,538

Unregistered Offerings – Raintree Racing

19. From 2007 to 2011, Schalk, via interstate commerce or the mails, engaged in the offer and sale of nearly \$2 million of securities of Raintree Racing to at least sixteen investors in at least six states without a filed or effective registration statement for the offer and sale of these securities (*see* Table I, above).

20. Offers and sales of securities made via interstate commerce or the mails require registration unless they qualify for an exemption. Raintree Racing did not register any offering with the Commission, nor did it file any notices with the Commission claiming to rely on any exemption. In any event, the offers and sales of Raintree Racing securities described hereinabove did not qualify for exemption from registration.

21. In particular, the Raintree Racing offering did not comply with the exemption under Section 4(a)(2) of the Securities Act. Schalk, as the control person of Raintree Racing, offered and sold Raintree Racing securities to investors who did not have the knowledge and experience in financial and business matters, including experience in thoroughbred horse operations, to make them capable of evaluating the merits and risks of investments in Raintree Racing securities, and these unsophisticated investors did not have access to the type of information that would have been available in a registered offering.

22. The Raintree Racing offering also did not comply with any of the safe harbors in Rules 504, 505 and 506 of Regulation D under the Securities Act. First, Rule 504 was not available because the offering amount exceeded \$1 million. Second, Rules 505 and 506 were not available because some Raintree Racing investors did not have the income or assets necessary to qualify as accredited investors as defined in Rule 501(a) of Regulation D, and these unaccredited investors were not provided with the non-financial and financial information specified in Rule 502(b) of Regulation D, including an audited balance sheet. Rule 506 was also not available because some of the unaccredited investors were not sophisticated, as required by Rule 506(b) of Regulation D.

#### Unregistered Offerings – Raintree Farm

23. In connection with the sale of the Raintree Racing securities described in paragraph 20, Schalk issued “bonus” shares of Raintree Farm common stock to Raintree Racing investors.

24. Pursuant to the definition of “sale” in Securities Act Section 2(a)(3), those “bonus” shares are conclusively presumed to constitute a part of the investors’ purchase and to have been offered and sold for value. Therefore, the issuance of such shares constitutes a “sale” of Raintree Farm securities for the purposes of Section 5 of the Securities Act.

25. In addition, during the same 2007 to 2011 period, Schalk, via interstate commerce or the mails, engaged in the offer and sale of at least \$362,500 in the common stock of Raintree Farm to at least three investors. *See* Table V, above.

26. In 2007 and 2010, Raintree Farm filed Notices of Sales of Securities with the Commission pursuant to Rule 506 of Regulation D, each of which related to an offering of \$2.5 million of Raintree Farm stock. In the Notices, Raintree Farm purported to rely on an exemption pursuant to Rule 506 of Regulation D under the Securities Act, and represented that sales would be made only to accredited investors. While the notices were filed in 2007 and 2010, the offerings went beyond that period.

27. Schalk engaged in the offer and sale of Raintree Farm shares to persons who did not qualify as accredited investors. As described above, several Raintree Racing investors who

were issued Raintree Farm shares were unaccredited. In addition, some Raintree Farm investors reflected in Table V, above, did not qualify as accredited investors.

28. Schalk knew or should have known that shares of Raintree Farm common stock were sold to investors who did not qualify as accredited investors. For example, Raintree Farm investors were sent subscription agreements. On several occasions, incomplete subscription agreements were returned without providing the information required to assess whether the investor qualified as an accredited investor. Schalk failed to take steps necessary to form a reasonable belief that those investors were accredited and, if they were not, that they had the knowledge and experience in financial and business matters, including experience in thoroughbred horse operations, to make them capable of evaluating the merits and risks of investment in Raintree Farm securities.

29. Also, the unaccredited Raintree Farm investors were not provided with the non-financial and financial information specified in Rule 502(b) of Regulation D, including at least an audited balance sheet. For the same reasons outlined in paragraphs 20 through 22 above, no other exemptions were available for this offering.

### **Violations**

30. As a result of the conduct described above, Schalk willfully violated Sections 5(a) and 5(c) of the Securities Act, which prohibit the offer and sale of securities by any person directly or indirectly through the use of any means of interstate commerce without a registration statement having been filed and being in effect as to those securities.

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

### **IV.**

Respondent undertakes to the following: In connection with this action and any related judicial or administrative proceeding or investigation commenced by the Commission or to which the Commission is a party, Respondent: (i) agrees to appear and be interviewed by Commission staff at such times and places as the staff requests upon reasonable notice; (ii) will accept service by mail or facsimile transmission of notices or subpoenas issued by the Commission for documents or testimony at depositions, hearings, or trials, or in connection with any related investigation by Commission staff; (iii) appoints Respondent's attorney of record as agent to receive service of such notices and subpoenas; and (iv) consents to personal jurisdiction over Respondent in any United States District Court for purposes of enforcing any such subpoena.

## V.

Pursuant to this Order, Respondent agrees to disgorgement of \$1,472,959, prejudgment interest of \$280,271.55, and a third tier civil penalty of \$1,600,000.00 based on the number of investors, and further agrees to additional proceedings to determine his ability to pay. In connection with such additional proceedings: (a) Respondent agrees that he will be precluded from arguing that he did not violate the federal securities laws described in this Order; (b) Respondent agrees that he may not challenge the validity of this Order, including amounts lost by investors and misappropriated by Respondent as stated in this Order; (c) solely for the purposes of such additional proceedings, the allegations of the Order shall be accepted as and deemed true by the hearing officer; and (d) the hearing officer may determine Respondent's ability to pay on the basis of affidavits, declarations, excerpts of sworn deposition or investigative testimony, and documentary evidence. Respondent reserves the right to contest his ability to pay the disgorgement, civil penalties, and prejudgment interest ordered.

## VI.

In view of the foregoing, the Commission deems it appropriate in the public interest to impose the sanctions agreed to in the Offer, and to institute proceedings to determine Respondent's ability to pay.

Accordingly, pursuant to Section 8A of the Securities Act, 21C of the Exchange Act, and Section 9(b) of the Investment Company Act, it is hereby ORDERED that:

- A. Respondent Schalk shall cease and desist from committing or causing any violations and any future violations of Sections 5(a), 5(c) and 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder;
- B. Respondent Schalk shall be, and hereby is, prohibited from serving or acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act, or that is required to file reports pursuant to Section 15(d) of the Exchange Act;
- C. Respondent Schalk shall be, and hereby is, prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter; and
- D. Respondent Schalk shall be found liable for disgorgement of \$1,472,959.00, a third tier civil penalty of \$1,600,000.00 based on the number of investors, and prejudgment interest of \$280,271.55, subject to additional proceedings to determine his ability to pay.

## VII.

IT IS ORDERED that Respondent's ability to pay the amounts set forth in Section V hereof shall be determined by 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, and that the Administrative Law Judge may determine Respondent's ability to pay in additional proceedings on motion of the Commission on the basis of affidavits, declarations, excerpts of sworn deposition or investigative testimony, and documentary evidence.

If Respondent fails to respond after being duly notified, Respondent may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rule 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), 221(f), and 201.310.

This Order shall be served forthwith upon Respondent 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, 17 C.F.R. § 201.360(a)(2).

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 in 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.

Brent J. Fields  
Secretary