FILE NO. ____________

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against TODD ALLEN DUCKSON,
a Minnesota Attorney,
Registration No. 219125.

PETITION FOR DISCIPLINARY ACTION

TO THE SUPREME COURT OF THE STATE OF MINNESOTA:

The Director of the Office of Lawyers Professional Responsibility, hereinafter Director, files this petition upon the parties' agreement pursuant to Rules 10(a) and 12(a), Rules on Lawyers Professional Responsibility. The Director alleges:

The above-named attorney, hereinafter respondent, was admitted to practice law in Minnesota on October 25, 1991. Respondent currently practices law in Minneapolis, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

Background

1. Jeffrey Gardner (Gardner) is a real estate developer. In the 1990s, Gardner created several special purpose limited liability companies to own individual real estate development projects. Gardner's companies included Heritage Development, Argus Homes, Omni Investment Properties, and Assured Financial (all owned and operated by Gardner). Gardner's companies acquired undeveloped land with conventional bank financing (hereinafter unaffiliated lenders) secured by a first mortgage.

2. In 1999, Gardner created Hennessey Financial, LLC (Hennessey Financial) to finance his real estate development companies. Hennessey Financial was a

mezzanine real estate lender.[1] In that regard, the unaffiliated lenders held a more senior position on Hennessey Financial's real estate loans.

3. Initially, Gardner raised money for Hennessey Financial through individual investors who were given preferred shares in Hennessey Financial. Hennessey Financial had over 200 investors.

4. In 2004, Gardner expanded Hennessey Financial's ability to raise capital and formed the Hennessey Financial Monthly Income Fund, later renamed Capital Solutions Monthly Income Fund (hereinafter "the Fund"). From its inception, the Fund offered and sold investments for private placement through Confidential Offering Memoranda (COMs).[2] COMs were the Fund's governing documents and were updated from time to time.[3] The Fund also provided investors with Confidential Informational Memoranda (CIMs). CIMs summarized the information in the COMs.

5. The Fund raised money to provide financing to Hennessey Financial through the sale of limited partnership interests to accredited investors. The Fund had approximately 450 limited partners/investors (partners). Partners of the Fund consisted of nurses, retirees, teachers, as well as multi-millionaires and real estate developers.

6. Partners of the Fund were to receive a 12% fixed annual return, disbursed on a monthly basis, primarily from the interest received from Hennessey Financial.

---

[1] A mezzanine real estate loan is a loan in which the lender's (Hennessey Financial) security interest in the real estate is subordinate to a more senior lender, similar to a second mortgage.

[2] Private placements, as opposed to publicly-traded issues, involve the sale of securities to a relatively small number of select investors as a way of raising capital. Private placement is the opposite of a public issue, in which securities are made available for sale on the open market. Since a private placement is offered to a few, select individuals, the placement does not have to be registered with the Securities and Exchange Commission (SEC). In many cases, detailed financial information is not disclosed and the need for a prospectus is waived. Finally, since the placements are private rather than public, the average investor is only made aware of the placement after it has occurred.

[3] A COM is a legal document stating the objectives, risks and terms of investment involved with a private placement. This includes items such as the financial statements, management biographies, detailed description of the business, etc. An offering memorandum serves to provide buyers with information on the offering and to protect the sellers from the liability associated with selling unregistered securities.

Partners were required to hold their investment in the Fund for a four-year term. Profits were maintained within the Fund as capital until the Fund's dissolution.

7. The Fund required partners to sign a subscription agreement before investing. The subscription agreement certified that each partner had reviewed the Fund's COMs and relied on nothing other than the COMs and the subscription agreement in deciding whether to invest in the Fund.

8. Gardner generated income for the Fund by making the mezzanine loans to his real estate development companies at an annual rate of 18% - 30%. The Fund received a security interest in Hennessey Financial's assets until the properties were sold. When one of Gardner's real estate development companies sold a development project, they paid Hennessey Financial, who then paid the Fund. Hennessey Financial was the Fund's sole borrower and major source of income.

9. Respondent was a capital partner with the national law firm of Hinshaw & Culbertson, of which Gardner and the Fund were clients. Respondent and his law firm were the primary drafters of the Fund's COMs. More than 30% of respondent's billable client hours were on behalf of Gardner and his affiliated companies.

10. Respondent and Gardner became very close friends.

11. While a partner at Hinshaw & Culbertson, respondent also owned a company he named Transactional Finance, LLC (Transactional Finance). In October 2008, respondent formed, owned and controlled a limited partnership he named Transactional Finance Fund Management, LP (Transactional Management). Transactional Finance became a part owner and controlling member of Transactional Management. Through Transactional Management respondent became the Fund's investment manager on October 26, 2008. Transactional Management received a 2% annual management fee.

12. In January 2009, respondent left Hinshaw & Culbertson and created a law firm he named DC Law, Chartered. Through DC Law, Chartered, respondent

continued to represent the Fund and to provide the Fund with legal services. As of October 2008, respondent had final sign-off authority on the Fund's COMs, CIMs, and other letters updating investors regarding the health and activities of the Fund.

13. NFP Securities is a brokerage firm that brought in a majority of the Fund's investors.

Events Leading up to Respondent's Securities Violations

14. In 2007 Hennessey Financial began to experience severe financial difficulties when its borrowers, Gardner's development real estate companies, defaulted on their loans.

15. In November 2007, respondent met with Gardner and several others and discussed the financial struggles of Hennessey Financial and the affiliated entities. Respondent met with Gardner in January and February 2008 to discuss the Fund's financial status.

16. In March 2008, Hennessey Financial voluntarily foreclosed on its borrowers who were in default of their payment obligations. Due to the significant number of borrowers in default, and due to subsequent voluntary foreclosures, in May 2008, Hennessey Financial itself defaulted on its obligations to the Fund.

17. In June 2008, the Fund voluntarily foreclosed on Hennessey Financial. Thereafter, the Fund assumed the debt associated with the properties acquired through Hennessey Financial's voluntary foreclosure. The unaffiliated lenders continued to hold a more senior position on Hennessey Financial's assets.

18. The Fund's economic future depended on its ability to sell the acquired real estate, which had significantly decreased in value due to the real estate crisis which began in 2007. After the foreclosure on Hennessey Financial, the assets in the Fund's portfolio were no longer able to generate cash flow as they previously had.

19. Although respondent was an attorney for the Fund, in June 2008 respondent represented Hennessey Financial in overseeing its voluntary foreclosure.

20. In October 2008, respondent became the Fund's investment manager and a fiduciary to the Fund. As fiduciary, respondent approved the Fund's payments and was required "to exercise good faith and integrity in handling the affairs of the Fund."

21. As of November 2008, respondent was in total control of the Fund.

22. In late 2008, respondent met with those brokers who sold the Fund to their clients and discussed the foreclosure of Hennessey Financial's assets. Respondent told the brokers that he believed the foreclosures were beneficial. Respondent stated that Hennessey Financial's equity in its real estate assets was worth millions of dollars more than its liabilities.

23. In December 2008, NFP Securities suspended offering the Fund to its customers pending the outcome of a third-party evaluation. NFP Securities hired an outside auditor to obtain a report on the Fund's financial health. Approximately two months later, NFP Securities ceased offering the Fund to its customers.

24. On January 1, 2009, respondent resigned as a partner of Hinshaw & Culbertson to manage the Fund through Transactional Management. Respondent did so because he believed he had an opportunity to make a lot of money on the foreclosed real estate assets held by the Fund. Respondent testified that he left Hinshaw to manage the Fund because he "was sure that [he] would make a lot of money for himself."

25. Respondent also formed DC Law, Chartered in January 2009. DC Law Chartered provided legal services to the Fund. In addition to doing legal work for the Fund, as owner of Transactional Management, respondent's functions included overseeing the Fund's operation of real estate assets, monitoring cash flows, responding to third-parties, etc. By no later than January 2009, respondent was also the chief manager and governor of CS Fund General Partner, LLC, the Fund's general partner.

26. In early 2009, partners who had been early investors in the Fund reached their four-year term required by the subscription agreement. At that point, some sought to redeem their investment. The Fund had assets, but little cash to pay to those wanting to redeem their money in addition to maintaining the Fund's properties, paying senior lienholders, together with making monthly payments to the Fund's existing partners.

27. As of January 2009, the Fund was no longer investing in new real estate development projects but was instead just trying to maintain itself.

28. The Fund needed more capital. To raise additional capital, in February 2009 respondent caused the Fund to offer "Series I Preferred Notes." Respondent informed existing partners that they could upgrade their investment to a senior position by making an additional 30% investment, with 10% annual distribution paid monthly. According to respondent, the Series I Preferred Notes promised senior investors would receive priority payout over partners if the Fund dissolved. Some partners invested additional funds to buy the Series I Preferred Notes, others did not.

29. Due to market conditions, in March 2009, respondent reduced Fund payments to the partners from 12% to 6%. In June 2009, partners' monthly distribution rate went to zero.

30. In June 2009, the Fund merged with a newly renamed corporation, True North Finance Corporation (True North,) formally known as CS Financing Corporation. Respondent became president of True North and the Fund became a subsidiary of True North. Respondent converted the investments of the Fund's limited partners, who had not converted their limited partnerships into Series I Preferred Notes, into shares of True North. As such, these investors no longer held an interest in the Fund.

31. In November 2009, Series I Preferred Note holders in the Fund stopped receiving interest payments altogether.

32. The Fund's November 2009 COM stated, "Based upon the advice of the Investment Manager [i.e., respondent], the Fund lends to the Borrowers. The Fund also makes loans to the Borrowers which are secured by the Notes [i.e., Series I Preferred Notes]. The Investment Manager and General Partner [i.e., respondent] are almost entirely beneficially owned by the GP Member [i.e., respondent]. As such, the GP Member has total control of the Fund and the entities that own the Fund Notes."

33. The November 2009 COM also stated that respondent, the GP Member, "has beneficial voting control of the General Partner which controls the Fund" and that respondent has the ability and authority to operate and control the General Partner and the Investment Manager in all respects.

34. On June 30, 2010, respondent transferred the assets of the Fund to a liquidating trust and retained himself, through Transactional Management, as the Fund's trustee. The liquidating trust held the real estate assets that the Fund acquired as a result of its foreclosure on Hennessey Financial. The remaining Series 1 Note investors became beneficiaries of the liquidating trust for the Fund.

35. Respondent, through True North, then executed a "Quit Claim Bill of Sale" and conveyed True North's real estate interests in the Fund into the liquidating trust, at which point the Fund was no longer part of True North. The property that the Fund had acquired in the voluntary foreclosure of Hennessey Financial went with the Fund. Therefore, the former Fund partners, now shareholders of True North, no longer had access to profits from the sale of the properties in the liquidating trust.

36. By early 2011, most of the properties the Fund acquired from Hennessey Financial were lost to foreclosure.

37. Although neither the senior note holders nor the Fund partners received their monthly interest payments, Transactional Management, i.e., respondent, as the Fund's trustee, continued to receive a management fee.

Federal Civil Lawsuit

38. In September 2010, the SEC filed a civil federal action against respondent and his affiliated companies (the Fund and Transactional Management), among other defendants, alleging violations of the SEC's securities laws during the period of March 2008 through December 2009.

39. The Fund and Transactional Management are entities and can act only through their officers, employees and agents, in this case, respondent. The court noted in its memorandum, "Documents don't write themselves." Respondent had controlling ownership and decision-making authority over Transactional Management, had acquired total control over the Fund, as well as providing legal advice and representation. (*See* paragraphs 32 – 35 above.)

40. During the March 2008 through December 2009 time period, the Fund issued four COMs and three CIMs. Respondent and his law firm were the primary drafters of the COMs. After October 2008, respondent was the primary drafter of the COMs and CIMs and had ultimate sign-off authority over what information was contained in the investment documents before the Fund formally distributed the information to its investors, potential investors and brokers.

41. The SEC alleged that respondent engaged in a scheme to defraud investors and that respondent made material misstatements and omissions in promoting risky investments or he aided and abetted in the communication of the misstatements and omissions in violation of Section 17(a) of the Securities Act of 1933,[4]

---

[4] Section 17(a)(2) and (3) provides that it is unlawful in the offer or sale of securities "to obtain money or property" by means of an untrue material statement of fact or omission, or to engage in any practice or course of business "which operates or would operate as a fraud or deceit upon the purchaser." For a violation of § 17(a)(1), it must be proven that respondent acted with scienter, § 17(a)(2) or (3) only require negligence.

Section 10(b) of the Exchange Act of 1934,[5] and Rule 10b-5,[6] as more fully described below.

42. Claims of securities fraud under § 10(b), Rule 10b-5 or § 17(a)(1) must prove that respondent made a "material misstatement or omission in connection with the offer, sale, or purchase of a security by means of interstate commerce," and did so with scienter; § 17(a)(2) and (3) only requires negligence. Four non-isolated violations of § 10(b) and Rule 10b-5 or § 17(a) of the securities and exchange laws survived respondent's motion for summary dismissal.

Statements Downplaying Investment Risks

43. In March 2008, Hennessey Financial voluntarily foreclosed on its affiliated borrowers and in June 2008, the Fund voluntarily foreclosed on Hennessey Financial. The March 2008 COM did not disclose that Hennessey Financial properties had defaulted on their loans. The March 2008 COM stated that "voluntarily surrendered collateral" backed the Fund's loans to Hennessey Financial. As the attorney for the Fund, respondent participated in drafting the March 2008 COM, which did not disclose the above information to investors.

44. COMs were also issued in November 2008, February 2009, and November 2009, well after Hennessey Financial had defaulted on its obligations to the Fund. Each of the COMs contained a section entitled "Risks Factors"; however, none of the COMs

---

[5] Section 10(b) of the Exchange Act forbids the "use or employ, in connection with the purchase or sale of any security . . . [of] any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the [SEC] may prescribe as necessary or appropriate in the public interest or for the protection of investors." *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 318 (2007) (quoting 15 U.S.C. § 78j(b)).

[6] Rule 10b-5 states: "It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange, (a) To employ any device, scheme, or artifice to defraud, (b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or (c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security." 17 C.F.R. § 240.10b-5.

informed investors that Hennessey Financial and its affiliated borrowers had "defaulted" on their obligations to the Fund. Instead, the last page of the November 2008 and February 2009 COMs, under the subtitle of "Notes to Financial Statements," informed the Fund's partners that in May 2008, Hennessey Financial "failed to meet certain economic covenants." Respondent chose the language "failed to meet certain economic covenants" over more direct language suggested by the Fund's CFO.

45. The Fund, under respondent's management, misstated and omitted key information in its representations to its partners, investors and brokers. Although the COMs contained warnings about risk, those warnings were buried in the midst of false or misleading statements, so that the total mix of information violated securities laws.

Failed Strategy

46. The Fund's investment strategy was to raise money through investors and to make loans to Hennessey Financial. Hennessey Financial was to make mezzanine loans at 18% interest or more to its affiliated real estate development companies. The development companies were to buy raw property, improve it and then sell it. The developers repaid Hennessey Financial who then repaid the Fund, allowing the Fund to pay 12% annually to its partners. Any profits were maintained within the Fund as capital until the Fund dissolved.

47. At all times the Fund's ability to pay its partners relied upon the sale of the real estate developed by Hennessey Financial's affiliated companies. However, given that the majority of the loans made by Hennessey Financial were mezzanine loans, the real estate as an asset was subordinate to that of the senior lienholder.

48. Under the "Investment Objective and Strategy" section of the Fund's March 2008 COM, partners and potential partners of the Fund were told that the down turn in the economy deterred others from making mezzanine loans, "thereby providing an opportunity for the Fund to make loans with a greater yield, better covenants and at

a loan-to-value ratio that will increase when the real estate market recovers." The COM warned partners that if the Fund waited for the real estate market to improve, the Fund would "lose an opportunity to finance numerous quality projects."

49. However, by the end of March 2008, Argus, Omni and Heritage had already defaulted on their payments and were being foreclosed upon, cutting off critical cash flows to the Fund.

50. In May 2008, an update letter to partners referred to the global financial crisis as, "creating higher demand for non-traditional lenders" like Hennessey Financial. However, in May 2008, respondent knew Hennessey Financial was in serious financial trouble and was itself to be voluntarily foreclosed upon by the Fund.

51. The October 2008 Update Letter to partners stated that the "tightening by traditional lenders creates an extraordinary opportunity for the Fund to bring fresh capital selectively to markets which are currently underserved."

52. However, by October 2008, the Fund's main source of revenue and only borrower was no longer viable.

53. The November 2008, February 2009 and November 2009 COMs described a modified strategy. The COMs told partners and potential investors that the Fund would make a determination as to which real estate markets would quickly rebound and would turn its investment dollars to those markets. The COMs and the CIMs covering those periods discussed the benefits created by the credit crisis and the downturn in the real estate market.

54. Other materials disbursed at the time respondent had total control over the Fund, served as its investment manager and attorney, indicated to partners, investors and brokers that the financial crisis created opportunities for the Fund to "assume the role of senior lender" or purchase the "senior loans at a substantial discount" from the banks holding the senior loans.

55. These COMs indicated that the Fund used partners' and investors' money to make real estate loans and other investments. The COMs omitted the fact that Hennessey Financial had defaulted, the Fund had foreclosed and assumed Hennessey Financial's assets, and the Fund needed to use its available assets to satisfy the more senior debt obligations on the already encumbered properties. The Fund was not investing in new real estate development projects and the Fund failed to inform its partners and potential investors of that basic fact.

56. By February 2009, following the failure and default of Hennessey Financial and after learning that NFP Securities had permanently ceased offering the Fund to its clients, the reality of the Fund's financial health still remained hidden. At a time when the Fund was desperate to raise additional capital from new investors, the February 2009 Update Letter stated that the financial crisis had created "unprecedented investment opportunities." Relying upon the information in the February 2009 COM and the February 2009 Update Letter, new investors continued to invest into the Fund.

57. Respondent failed to explicitly inform partners and potential investors that the Fund's original strategy had failed, that its assets had dropped precipitously in value and that the market for those assets was drying up. Instead, respondent created a façade of urgency for increased investment in the Fund.

58. Respondent drafted and signed off on COMs which painted a picture of cutting edge investments which were not taking place, while at the same time he obscured facts pertaining to Hennessey Financial's defaults and lack of cash flow.

Foreclosure Terminology

59. The COM for March 2008 described the foreclosed real estate developments as "voluntarily surrendered collateral." Use of the term "voluntarily surrendered collateral" to inform investors of the default of the real estate development companies and foreclosure of assets, without mentioning the effects on the Fund's cash flows, misrepresented the events which had occurred.

60. In the final draft of the November 2008 COM, respondent inserted the phrase "failed to meet certain economic covenants" in place of the word "default" and referenced Hennessey Financial's default in an obscure part of the COM. At the time respondent did so, he knew the Fund was increasingly dependent on new capital to remain viable and to pay its partners.

61. The Update Letter issued in February 2009 stated, "In May 2008, concerns about affiliated party risk and counter party creditworthiness led the Fund to enter into a voluntary foreclosure process with [Hennessey Financial] to acquire all of its assets." The February 2009 Update Letter was misleading in that it failed to state that the Fund's only borrower was insolvent and no longer making payments to the Fund. This information was critical to the partners' investment.

62. In the summer of 2009, a NFP Securities broker complained that NFP Securities was unaware of the foreclosures and that the Fund had not been forthcoming in what was actually happening with Hennessey Financial.

63. While the COMs contained language warning of risks, the words and terms chosen by respondent, such as "failed to meet certain economic covenants," "voluntarily surrendered collateral," and "concerns about affiliated party risk and counter party creditworthiness" were unclear and buried in obscure sections of the COMs.

64. As attorney for the Fund, respondent reviewed and participated in drafting each of these COMs. By October 2008 respondent had total control of the Fund and had ultimate sign-off authority on materials sent to partners, investors and brokers. Burying significant information about the Hennessey Financial foreclosures in the later portions of the COMs and choosing abstract and confusing terminology was done in an attempt to deceive investors.

Using New Investor Funds to Pay Existing Investors

65. With Hennessey Financial's failure to bring in money from real estate development, the Fund needed new investors to remain viable and to pay interest to the established partners. Nearly all of the Fund's resources were needed to maintain the properties, pay senior lienholders and pay the limited partners' 12% return on investment. To maintain solvency, the Fund began to use new investors' money to pay its obligations and did not make new investments in real estate development projects.

66. Under "Custodian Agreements," the November 2008, February 2009, and November 2009 COMs disclosed the possibility that the Fund's financial resources could be dedicated to these purposes. However, investors were not told that nearly all of the Fund's resources were being expended to keep it from failure.

67. In an email dated February 2, 2009, respondent wrote to his associates about a meeting with NFP Securities. Respondent wrote that NFP Securities was very critical of the Fund's portfolio and its ability to generate cash. Respondent stated, "It was clear to me, at least, that the Fund can't count on additional equity financing to support its projects. As such, it may be best for the investors to suspend monthly distributions."

68. On February 5, 2009, respondent wrote his two associates about offering a new senior investment product to the Fund. Respondent named the new product "Series I Preferred Note Offering." Respondent suggested that existing partners be allowed to upgrade all of their investment to a senior position by making an additional 30% investment and in exchange receive preferential treatment.

69. Although NFP Securities had suspended offering the Fund to its investors, respondent stated that NFP Securities "had a duty" to allow the Fund to make this offering to existing partners. Respondent stated that NFP Securities was required to give their clients an opportunity to upgrade their investment to a senior position. If

NFP Securities failed to do so, they would be liable to their investors for not being given the opportunity to do so.

70. On February 24, 2009, respondent sent out written materials and a COM announcing the Series I Preferred Note Offering. The February 2009 COM and respondent's announcement of the note offering said nothing about a possible cut or suspension in distribution to limited partners. Nor did the written materials state that the purpose of the offering was to generate money to stave off the Fund's insolvency.

71. By March 2009 investors who had been limited partners began to invest in the Series I Preferred Notes and became noteholders. On March 26, 2009, respondent sent a letter stating that distributions to the Fund's limited partners were being cut from 12% to 6%.

72. On May 27, 2009, respondent stated in an email, "Without substantial additional capitalization, both the Fund and [CS Financing, later True North] will collapse spectacularly." In November 2009, the Fund stopped making payments to partners and noteholders altogether. Nonetheless, investors continued to invest in the Fund relying upon the information contained in respondent's February 2009 COM, which said nothing about the cut to limited partners or the possibility of a pending spectacular collapse.

Trial and Post-Trial

73. The federal lawsuit was actively litigated for three years. From September 17, 2013, through October 22, 2013, the case was presented to a jury. The jury found respondent liable for direct violations of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 by the Fund; aiding and abetting the Fund's violations of Section 10(b) & Rule 10b-5 by respondent; and direct violations of Section 17(a) of the Securities Act of 1933 by respondent and the Fund from March 2008

through October 2008. The jury found respondent's violations were made knowingly or with reckless disregard.

74. The jury found liability of direct violations of Section 10(b) and Rule 10b-5 by respondent, the Fund and Transactional Management. The jury also found direct violations of Section 17(a) of the Securities Act by respondent and the Fund for the period of October 2008 through December 2009. The jury concluded that respondent's and the Fund's direct violations of Section 17(a) were made knowingly, with recklessness and negligence.

75. Following the jury verdict, parties briefed the court addressing what, if any, penalties/remedies should be imposed upon respondent and the entities he controlled. The matter of penalties/remedies was heard by the court on January 30, 2014. On June 27, 2014, the court filed its memorandum opinion and order.

76. The court found that respondent's conduct "occurred over the better part of two years, and was repeated a number of times, with a number of different investors. The offering documents presented to investors were modified and re-issued with false information on four occasions."

77. The court found:

> To keep their ongoing scheme afloat, Defendants developed documents and e-mails and made statements to investors that attempted to convince new investors that their investments were unique. Defendants represented to potential investors that while other investments were failing as a result of the crashing economy, Defendants' investments would actually benefit from the failing economy. At the same time, Defendants knew that their business model and their past similar investments had failed. Defendants purposefully re-named and re-worked their products in a way that worked around past issues and induced investment so they could attain additional funding.

78. The court found that respondent continued to pay himself, including management fees, legal fees and transaction fees, notwithstanding the fact that respondent knew he could not pay all of the investors.

79. The court found that the evidence and the credibility of the witnesses clearly supported the jury's verdict and that respondent acted with a "high level of scienter."

80. The court permanently enjoined the Fund, Transactional Finance and respondent from committing any future violation of Section 10(b) and Rule 10b-5 of the Securities Exchange Act of 1934; Section 17(a) of the Securities Act; and from aiding and abetting violations of any securities law. The court barred respondent from serving as an officer or director of a publicly traded corporation for a period of ten years.

81. The court ordered respondent, Transactional Management and the Fund to pay a total of $16,621,044 for disgorgement of unjust gains and civil penalties, and a total of $3,166,107 in prejudgment interest. Respondent appealed.

Unjust Enrichment

82. From March 2008 through December 2009, the Fund raised $21,845,888 from investors and paid $9,782,458 to investors in monthly distributions. The evidence at trial showed that partners/investors invested millions of dollars in a Fund that had no meaningful income and had substantial liabilities. The Fund could not have sustained itself without attracting those investors. Therefore, "all money received was so interrelated to the misrepresentations and omissions that they all constitute ill-gotten gains." The court ordered a total of $12,063,430 disgorgement.

83. From November 2008 through January 2012, respondent transferred $2,960,771 from Transactional Management to Transactional Finance as profits. Transactional Management was owned by Transactional Finance, which was owned by respondent. In addition, Transactional Management (i.e., respondent) continued to

earn and be paid management fees. Transactional Management/respondent received $3,000,000 in management fees.

84. Respondent caused the Fund to stop paying investors. The court found the funds paid to respondent's companies were wrongly received and should have gone to the investors. The court found that even if respondent performed legitimate work on behalf of the Fund, that work was "so inextricably tied to the fraudulent procurement of funds, it cannot be separated."

85. True North, CS Southeast and CS Midwest are all affiliates of the Fund. From November 2008 until March 2012, the Fund or one of these related affiliates made multiple transfers directly to Transactional Finance. Although Transactional Finance transferred some of the funds back to the Fund or its affiliates, the net amount received by Transactional Finance was $709,500.

86. Additionally, respondent's American Express credit card bills were paid from the accounts of CS Midwest, CS Southwest, Transactional Management or True North. The amounts paid totaled approximately $466,343.

87. From June 2010 until November 2010, $275,000 was transferred from True North's bank account and paid to respondent. Respondent was in charge of True North at the time of the payments.

Loans

88. On October 26, 2008, respondent, though his company Transactional Management, became the investment manager and fiduciary of the Fund. Pursuant to the February 2009 COM, respondent was "accountable to the Fund as a fiduciary, and consequently must exercise good faith and integrity in handling the affairs of the Fund."

89. On November 24, 2008, the Fund, through respondent, made a $1,200,000 loan to respondent's company Transactional Finance. Within two days from the money

being made available to respondent, respondent transferred $1,000,000 to his E*Trade account. At the time, respondent was in total control of the Fund and respondent owned 100% of Transactional Finance. Respondent determined his own interest rate to be a fixed 6% interest rate. At that time, the Fund was paying out 12% to the limited partners.

90. Although these funds were considered by respondent to be a loan, the SEC's expert testified at trial that it would be hard for him to imagine "that an investor would be okay loaning $1.2 million for [respondent] to put into his E*Trade account."

91. Respondent was part owner in EAK, a men's clothing store. On May 25, 2007, respondent signed as third party grantor to a $250,000 loan made to EAK by Alliance Bank. Respondent, as owner of Transactional Finance, bought the loan from Alliance Bank. On November 10, 2008, respondent caused Transactional Finance to assign the EAK loan to CS Southeast Holdings. CS Southeast Holdings is a subsidiary of the Fund created and controlled by respondent. Effectively, EAK, a company in which respondent had ownership, owed $250,000 to CS Southeast Holdings, a company controlled by respondent. In November 2008, when respondent assigned interest in the EAK loan, Transactional Finance, i.e., respondent, received an upfront payment of $250,000.

92. On June 1, 2009, respondent entered into a loan transaction between another subsidiary of the Fund, CS Midwest Holdings, which respondent created and controlled, and Transactional Finance, in the amount of $250,000. The transaction involved Lansen Enterprises, a company owned by respondent's father-in-law. Respondent was the signor of the loan on behalf of Transactional Finance and was signor of the loan on behalf of CS Midwest Holdings.

93. Respondent made similar loan transactions with regard to companies in which he had a financial interest, namely Slingshot, Mold Solutions/Microbe Guard and Duraban. These loan transactions added up to hundreds of thousands of dollars.

94. After the Fund stopped paying partners and noteholders, respondent continued to pay himself.

95. Investors' combined losses could be measured in the millions of dollars, while respondent earned several million dollars in fees from his work on behalf of the Fund.

96. The court ordered respondent, the Fund, and Transactional Management to disgorge $12,063,430, plus prejudgment interest of $2,519,751; and respondent and Transactional Finance to disgorge $2,960,771, plus prejudgment interest in the amount of $340,862. The court ordered disgorgement against respondent in the amount of $709,500 representing funds sent to Transactional Finance, with $63,209 in prejudgment interest, $466,343 in American Express bills from February 2009 through January 2011, and $63,209 in prejudgment interest, and $275,000 in direct payments from True North's bank account to respondent from June 2010 to November 2010, and $31,430 in prejudgment interest.

97. Finally, the court imposed civil penalties against respondent and Transactional Finance in the amounts of $50,000 and $15,000, respectively.

98. Judgment was entered against respondent, as described above, and included within the court's June 27, 2014, order.

99. On July 29, 2014, respondent filed a motion for a new trial, or in the alternative, an amended judgment, with the court pursuant to Rule 59 of the Federal Rules of Civil Procedure. Respondent filed an accompanying memorandum of law therewith.

100. By order dated December 18, 2014, the court denied respondent's request and affirmed the original order for judgment.

101. Respondent subsequently filed an appeal with the Eighth Circuit on January 15, 2015, which remains pending as of the signing of this petition.

102. Respondent's conduct violated Rules 1.7(a)(1) and (2), 4.1, and 8.4(c), Minnesota Rules of Professional Conduct.

WHEREFORE, the Director respectfully prays for an order of this Court suspending or imposing otherwise appropriate discipline, awarding costs and disbursements pursuant to the Rules on Lawyers Professional Responsibility, and for such other, further or different relief as may be just and proper.

Dated: March 17, 2015.

MARTIN A. COLE
DIRECTOR OF THE OFFICE OF LAWYERS PROFESSIONAL RESPONSIBILITY
Attorney No. 148416
1500 Landmark Towers
345 St. Peter Street
St. Paul, MN 55102-1218
(651) 296-3952

and

CASSIE HANSON
SENIOR ASSISTANT DIRECTOR
Attorney No. 303422