UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9396 / March 22, 2013

SECURITIES EXCHANGE ACT OF 1934
Release No. 69208 / March 22, 2013

INVESTMENT ADVISERS ACT OF 1940
Release No. 3571 / March 22, 2013

INVESTMENT COMPANY ACT OF 1940
Release No. 30435 / March 22, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-15255

In the Matter of	:	**ORDER INSTITUTING**
	:	**ADMINISTRATIVE AND CEASE-**
JOHN THOMAS CAPITAL MANAGEMENT	:	**AND-DESIST PROCEEDINGS**
GROUP LLC, d/b/a PATRIOT28 LLC,	:	**PURSUANT TO SECTION 8A OF**
	:	**THE SECURITIES ACT OF 1933,**
GEORGE R. JARKESY JR.,	:	**SECTIONS 15(b)(4), 15(b)(6) AND 21C**
	:	**OF THE SECURITIES EXCHANGE**
JOHN THOMAS FINANCIAL, INC., and	:	**ACT OF 1934, SECTIONS 203(e), 203(f),**
	:	**AND 203(k) OF THE INVESTMENT**
ANASTASIOS "TOMMY' BELESIS,	:	**ADVISERS ACT OF 1940 AND**
	:	**SECTION 9(b) OF THE**
Respondents.	:	**INVESTMENT COMPANY ACT**
	:	**OF 1940 AND NOTICE OF HEARING**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 ("Securities Act"), Sections 15(b)(4), 15(b)(6) and 21C of the Securities Exchange Act of 1934 ("Exchange Act"), Sections 203(e), 203(f) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act"), and Section 9(b) of the Investment Company Act of 1940 ("Investment Company Act") against John Thomas Capital Management Group LLC, d/b/a Patriot28 LLC ("JTCM"), George R. Jarkesy Jr. ("Jarkesy"), John Thomas Financial, Inc. ("JTF") and Anastasios "Tommy" Belesis ("Belesis") (collectively "Respondents").

II.

After an investigation, the Division of Enforcement alleges that:

A. SUMMARY

1. This case concerns fraudulent conduct by Jarkesy, the manager of two hedge funds formerly known as the John Thomas Bridge and Opportunity Fund LP I ("Fund I") and John Thomas Bridge and Opportunity Fund LP II ("Fund II," collectively the "Funds"), and the Funds' adviser, formerly known as JTCM. As alleged herein, Jarkesy also elevated the interests of Respondents JTF and Belesis over those of the Funds by steering millions of dollars in bloated fees to the broker-dealer.

2. Jarkesy and JTCM launched Fund I in 2007 and Fund II in 2009. Since September 2011, the Funds have been known as Patriot Bridge and Opportunity Fund LP I and LP II and the adviser has been known as Patriot28 LLC.[1]

3. The Funds invest in three asset classes: bridge loans to start-up companies; equity investments principally in microcap companies; and life settlement policies. The Funds' assets under management peaked at approximately $30 million at the end of 2011.

4. Among other things, Jarkesy and JTCM:

a. recorded arbitrary valuations without any reasonable basis for certain of the Funds' largest holdings, thus causing the Funds' performance figures to be false and misleading and their own compensation to be falsely inflated;

b. marketed the Funds on the basis of false representations about, among other things, the identities of their auditor and prime broker; and

c. breached their fiduciary duty of full and fair disclosure to the Funds by failing to disclose their repeated favoring of the pecuniary interests of Belesis, the chief executive officer of JTF, and JTF, which served as the Funds' placement agent.

5. While they shared the same brand name, JTCM (the adviser) purported to be wholly independent of JTF (the placement agent).

6. Notwithstanding representations that he was "responsible for all of the investment decisions" of the Funds, Jarkesy capitulated to Belesis' aggressive demands regarding certain investment decisions. JTCM's purported independence from JTF was a

[1] This Order Instituting Proceedings will refer to the Funds and the adviser by the names they used at their inception.

sham designed to enrich Belesis at the expense of the Funds, and to insulate him from future accusations of wrongdoing.

7. In addition to capitulating to Belesis' demands regarding certain Fund activities, Jarkesy and JTCM abandoned their fiduciary duty to the Funds by negotiating arrangements whereby borrowing companies would divert large fees to JTF and Belesis using proceeds received from the Funds. For example, in connection with certain bridge loans made by Fund I, Belesis (acting through JTF) received hundreds of thousands of dollars in "fees" for providing little or no services.

8. Jarkesy and JTCM placed the interests of Belesis and JTF above the interests of the Funds, thereby violating the fiduciary duty that they owed to the Funds. For example, after being berated by Belesis for not delivering enough fees, Jarkesy promised him in an email in late 2009, "*We will never retreat we will never surrender and we will always try to get you as much [fees] as possible, Everytime [sic] without exception!*"

B. <u>RESPONDENTS</u>

9. Respondent JTCM is an unregistered investment adviser that serves as the general partner of two hedge funds, John Thomas Bridge and Opportunity Fund LP I and John Thomas Bridge and Opportunity Fund LP II. It is based in Houston, Texas.

10. Respondent Jarkesy, age 38, of Tomball, Texas, is the manager of JTCM. In that capacity, Jarkesy purportedly controls all operations and activities of JTCM and the Funds. Jarkesy is a frequent media commentator, a radio talk show host, and the founder of the National Eagles and Angels Association, an organization designed to introduce investors to start-up companies in need of financing.

11. Respondent Belesis, age 38, of New York, New York, is the founder and chief executive officer of JTF, which is based in New York. Until late 2011, JTF was the primary placement agent for the Funds, and was one of several broker-dealers that executed equity trade orders for the Funds. Belesis and Jarkesy became acquainted in 2003.

12. Respondent JTF is a broker-dealer registered with the Commission and a member of the Financial Industry Regulatory Authority ("FINRA"). Approximately 125 registered representatives are associated with the firm. JTF is wholly owned by ATB Holding Company LLC, which is controlled by Belesis. JTF offers brokerage and investment services, investment banking services and private wealth management.

C. <u>FRAUD ON THE FUNDS</u>

<u>Background</u>

13. Jarkesy created JTCM as an unregistered investment adviser in 2007 to serve as the adviser to Fund I. The venture grew from Jarkesy's prior successes with bridge loan financings.

14. In 2009, Jarkesy and JTCM formed a twin fund: Fund II. With the termination of Fund I scheduled for 2012, Fund II was formed in order to hold certain longer-term investments, including life settlement policies that had not matured. Initially, Fund II was structured to solicit foreign investors but when none bought shares, JTCM opened Fund II to domestic investors.

15. Jarkesy and JTCM purport to invest the Funds in three asset classes: (i) equity investments, including shares of stock, options and warrants, mostly in speculative microcap companies that are either not traded publicly or thinly-traded over the counter; (ii) bridge loans to public and non-public growth-stage companies; and (iii) life settlement policies. Although only Fund I is invested in life settlement policies, Fund II is invested in Fund I.

16. The Funds' limited partnership agreements ("LPAs") with shareholders provide that publicly traded securities will be valued at market price, dealer-supplied prices or by pricing models, but that Jarkesy may exercise his discretion in adjusting the values of both public and non-public holdings. The LPAs also provide that Jarkesy, as manager, has the discretion to value the Funds' non-publicly traded holdings as he "may reasonably determine." The Annual Financial Statements JTCM provided to investors, which included the independent auditors' report, stated that JTCM "records its investments at fair value" and had adopted Financial Accounting Standard 157 for purposes of valuation of the Funds' holdings, although JTCM has no records of its pricing analysis to support its valuation.

17. Jarkesy, as the manager of JTCM, was solely responsible for ensuring that the values assigned to the Funds' investments were consistent with representations in the LPAs.

18. The Funds' former administrator calculated the Funds' monthly net asset value based on valuation data provided by JTCM and Jarkesy. The administrator explicitly defined itself as a "scorekeeper" that did not independently analyze or verify the valuation data it was provided.

19. The Funds' former independent auditor expressly limited the scope of its valuation work to verifying that the Funds had correctly recorded the price of publicly traded securities; the auditor did not verify the valuation Jarkesy and JTCM assigned to non-publicly traded holdings. In practice, Jarkesy often invoked his discretion in order to misprice certain of the Funds' holdings.

20. Each Fund has a lock-up period. Fund I's lock-up period was five years and was scheduled to expire in September 2012, when the Fund was to terminate. At that time, Jarkesy and JTCM were expected to distribute its assets in cash and/or in kind, although distribution was incomplete by the end of December 2012. Fund II's lock-up period is four years and Fund II is scheduled to terminate no later than 2019. With Jarkesy's consent and

at his discretion, and provided they pay a penalty fee, investors can redeem their shares before the respective lock-up periods expire.

21. JTF had several roles relating to the Funds, although JTF and JTCM purported to be wholly independent. JTF served as the primary placement agent for solicitation of investments in the Funds; it served as the investment bank for some of the companies that received bridge loans from the Funds; and it acted as the broker for many of the Funds' equity trades. To date, JTF has received millions of dollars in fees related to the Funds.

22. At the end of 2011, Jarkesy valued Fund I at approximately $18 million to $20 million and Fund II at approximately $10 million. The Funds' auditor reported Fund I's "total return since inception" was twenty-four percent. Together the Funds have approximately 120 investors.

23. Under the applicable LPAs, Jarkesy earns an incentive fee only after investors earn a nine percent return. After that, he earns a twenty percent incentive fee on any profits above the first nine percent. In addition, he earns a two percent management fee to cover operational costs of the Funds, including his own expenses, such as travel. To date, JTCM has received at least $1.3 million in management fees, and Jarkesy has received at least $260,000 as an incentive fee with more than $500,000 additionally accrued for his incentive but not yet paid.

<u>Jarkesy's Baseless Valuation of Fund Holdings</u>

24. Investors in the Funds received monthly statements indicating the value of their shares and gains or losses compared with previous time periods. Investors' monthly statements did not identify the Funds' holdings or the values of each of the Funds' positions, however the value of each investor's shares was derived from a portion of the Funds' overall values.

25. Jarkesy and JTCM misrepresented the value of shareholders' investments in the Funds, which were based on an arbitrary and *ad hoc* methodology that differed from disclosures in the LPAs. As alleged more fully herein, Jarkesy's and JTCM's misrepresentations included incorrect valuations of the Funds' equity positions in certain companies, incorrect valuations of the Funds' short-term notes provided to other companies, and misvaluing of at least two of the Funds' life settlement policies.

26. JTCM's internal monthly holdings reports identified the Funds' holdings and the values of each position. The holdings reports served as the basis for valuing investors' Fund shares, which JTCM reported to investors on monthly statements. In addition, JTCM used the internal holdings reports to establish the Funds' performance, which was shared with existing and prospective shareholders. Finally, the net asset values of the Funds were the basis for calculating Jarkesy's management and incentive fees, which were deducted from the Funds.

27. For certain of the Funds' holdings, Jarkesy arbitrarily inflated valuations, causing his management and incentive fees, and the valuation of investors' shares, to be materially overstated. Specific examples are provided below.

Company A: An Invented and Inconsistent Valuation

28. Company A was formed in April 2010 when Company C, a company in which the Funds had invested, merged with a third company.

29. JTF and Belesis had a long-standing relationship with Company C. JTF had raised substantial amounts of capital for the company through numerous private placements.

30. Jarkesy and JTCM first invested the Funds in Company C in 2009, when Fund I extended a bridge loan to the company. That loan was repaid, and another one was made at the end of the year. From that point on, neither of the Funds' loans to Company C was repaid; instead, the Funds received allotments of penalty shares of Company C and then Company A after the merger. In 2010, the Funds' positions in Company A had grown disproportionately to their other holdings so that nearly a third of each Fund's assets were invested in Company A.

31. By late 2010, the Company A position grew to a paper value of more than $8 million in Fund I, and more than $2 million in Fund II, or nearly a third of each Fund's values.

32. In various versions of JTCM's internal monthly holdings statements for the same time period, Jarkesy's valuations of Company A's equity position were inconsistent, such as with two versions of the January 2009 holdings statement that valued the Company A position at seventy-five cents and $750,000.

33. On JTCM's internal monthly holdings statements, Jarkesy recorded large swings in Company A's share value – ranging from more than three dollars per share in August 2010 to ten cents in December 2010 – that did not pertain to any underlying change in Company A's prospects or financial condition, and that he could not otherwise explain.

34. In addition, Jarkesy's valuation of Company A's shares was inconsistent across versions of the monthly holdings statements for the same period. On some versions of the same month's statement, Jarkesy listed Company A as either ten cents or one dollar per share. For at least one month, Jarkesy listed Company A's per-share value for Fund I differently than he listed it for Fund II.

35. The conflicting and inconsistent valuation of Company A was exacerbated in May 2011 by a typographical error made by JTCM's controller, who accidentally entered the value at two cents per share when it should have been sixty cents. After the error, Jarkesy retained an outside consultant to confirm his valuation.

36. The outside consultant, however, disregarded actual data and based its valuation on the assumption that Company A – a deeply troubled company that had never earned a single dollar – would generate $61 million in revenue in 2011.

37. In June 2011, shortly after receiving the consultant's report, Jarkesy wrote off the Funds' investment in Company A.

38. Jarkesy's valuations of Company A shares were arbitrary and inconsistent with Jarkesy's obligation to use his discretion to make reasonable valuation determinations as disclosed in the LPAs, and resulted in the recording of unreasonable and unsupported valuations on JTCM's monthly holdings reports. The phony valuations on the monthly holdings lists served as the basis for valuing shareholders' individual positions in the Funds, which were reported to them on monthly statements. Performance results for the Funds, and management and incentive fees for the adviser and manager, also were derived from the baseless and unreasonable values Jarkesy recorded on the monthly holdings lists.

Company B: Jarkesy Hired Promoters to Boost the Share Price

39. In 1996, Jarkesy personally invested in a publicly traded shell company (the "shell") that, after a later merger, would become Company B. Jarkesy was chairman of the board of directors of the shell; in 2007, when he formed JTCM and the Funds, he stepped down as chairman but remained a director.

40. Jarkesy and JTCM invested approximately $200,000 of the Funds' money in the shell in late 2009, and the Funds became the shell company's controlling shareholders. The shell merged with a small, private oil and gas company in the summer of 2010 to form Company B, a microcap oil and gas exploration company. The Funds owned approximately twenty-five percent of Company B's unrestricted stock after the merger, which Jarkesy valued by reference to its publicly quoted share price. At the time, public trading of Company B's shares in the over the counter market had only recently commenced and was extremely thin.

41. Between November and December 2010, Company B's share price jumped from $1 to $4. Accordingly, Jarkesy revalued the position on JTCM's monthly holdings reports, causing a material improvement in the Funds' performance. The beneficial spike in Company B's stock price did not, however, correlate to any disclosed corporate event.

42. About a year later, in late 2011, Jarkesy testified under oath that the sudden increase in Company B's stock price may have been due to a bank extending a loan to the company, thereby indicating to the marketplace that Company B had upside as a company. No such bank loan was extended to Company B between November and December 2010, when its share price jumped.

43. Jarkesy was in fact directly responsible for orchestrating the increase in Company B's share price at the end of 2010 through a promotion campaign he financed using money in Fund I's bank account. In December 2010, he authorized at least three

wire transfers totaling $35,000 from Fund I's bank account to a promotional firm he selected to tout Company B and its stock.

44. Jarkesy's transfers from Fund I to the promoter coincided with the jump in Company B's share price. As a result, Jarkesy was able to record unreasonable and unsustainable valuations for the Funds' Company B shares at the same time he was writing down the value of the Company A holding, thus stabilizing the Funds' year-end performance.

45. Jarkesy also manipulated the value of Company B's shares in JTCM's records in other ways. For example, at a time when the market – and Jarkesy – valued Company B shares at $1 each, he sold 300,000 shares from Fund I to Fund II at twenty-two cents per share. Then, after the shares had been transferred to Fund II, he re-valued them in Fund II at $1 per share.

46. Jarkesy also recorded values for Company B's warrants held by the Funds that were inconsistent with the valuation methods disclosed in the LPAs. Between August and December 2010, his values for the warrants ranged from twelve cents to $6.92. While a warrant's value often correlates with the value of the stock, which for Company B increased from $1 to $4 during that time period, it rarely rises higher than the value of the stock, particularly in the case of a speculative penny stock. Jarkesy's work papers for his valuation of Company B warrants reflect that he calculated the value based on an inaccurate share price, which therefore generated warrant values inconsistent with the methods disclosed in the LPAs.

47. Furthermore, Jarkesy's accounting for the Funds' holdings of shares of Company B are at odds with Company B's filings with the Commission. Company B reported a reverse stock split effective in September 2010, but the Funds' holdings reports for August 2010 prematurely reflected the reverse split and thereby enabled Jarkesy to record a premature benefit from the reverse split.

<u>Company D: Jarkesy Also Hired Promoters to Boost Share Price</u>

48. Company D is a publicly traded microcap company in which Jarkesy invested both personally and on behalf of the Funds. Until February 2012, Jarkesy was a director of Company D.

49. Jarkesy, as a director of Company D, voted to hire three different promotional firms in early 2011 to promote the company. Jarkesy paid the promoters directly from Fund I's bank account and with cash that Fund II loaned to Company D that was earmarked for paying promoters. In addition, the promoters were compensated with Company D shares.

50. As with his use of Fund money to finance the Company B promotional campaign, Jarkesy's direct and indirect financing of Company D's promotion with Fund

assets was designed to boost the value of the Funds' large equity positions in Company D and maintain the Funds' overall performance.

51. The promotional campaigns that Jarkesy financed with Fund money had the effect of enhancing Jarkesy's own remuneration. If the promotional campaigns were successful in raising the share prices for publicly traded holdings of the Funds, such as Company D and Company B, then the Funds' valuation would increase – along with Jarkesy's compensation, which was based on the Funds' value and performance.

52. Jarkesy also used cash from the Funds to make several short-term bridge loans to Company D. Throughout 2010, Jarkesy valued $1.3 million of these loans at par in Fund I's portfolio. In reality, Company D – as disclosed in its 2010 Form 10-K filed with the Commission – had defaulted on those loans as of December 31, 2009. As a result, Fund I's valuation falsely reflected a par value for the loans when at best, the position would have been worth the value of whatever penalty shares the Fund expected to receive in exchange for repayment of the loans.

<u>Life Settlement Policies: Inconsistent Values in Fund Documents</u>

53. Jarkesy and JTCM purchased twelve life settlement policies in Fund I. When the first policy paid off on the death benefit in the spring of 2011, the proceeds were distributed to investors. The Funds acquired the life settlement policies, and assumed responsibility for payment of their premiums, to obtain the payouts that would occur upon the death of the individuals covered by the policies.

54. Jarkesy claimed – and told at least one Fund investor – that JTCM retained one of his former business associates to value the life settlement policies using a Milliman model, an industry standard valuation tool used to calculate the net present value of policies. The associate purportedly inputted life expectancies provided by third-party agencies, which he then used to generate the value of the policies. However, the Funds' former auditors' work papers indicate that it was Jarkesy, not his associate, who valued the life settlement policies using the Milliman model. Thus, investors received different information about who was responsible for the valuation of the assets meant to hedge the Funds' risky, speculative investments, undermining the reliability of what was represented to be the conservative side of the Funds.

55. Between February and March 2010, JTCM's internal documents showed that the values of two of the life settlement policies more than doubled, one rising from $900,000 to nearly $2.6 million and the other increasing from $526,000 to $1.4 million. In calculation tables JTCM purportedly used to value the policies, however, no such increase was indicated. The internal documents, which are inconsistent with the calculation tables, were the basis of monthly statements that were sent to investors.

56. Jarkesy has explained that the two life settlement policies were revalued based on a suggestion from the Funds' former auditor. However, the auditor's suggestions would have changed the values by approximately three percent, while Jarkesy's baseless

changes resulted in increasing the two policies by 167 percent and 184 percent, respectively, thereby increasing the Funds' overall asset value by nearly twelve percent. Management fees payable to JTCM and Jarkesy, and Jarkesy's incentive fees, were correspondingly increased as a percentage of the overall asset value of the Funds.

JTCM's Sales Materials Contain Misrepresentations

57. Jarkesy controlled all aspects of the creation of JTCM's marketing materials. JTCM's and Jarkesy's marketing materials for the Funds contained material misrepresentations about the Funds' performance, allocation of assets, and service providers – including prime broker and auditor – that Jarkesy included to create an appearance of legitimacy.

58. Jarkesy materially exaggerated aspects of JTCM's operations in sales and marketing materials, including that:

a. JTCM engaged in "detailed legal and technical due diligence" before investing Fund assets when, in fact, such diligence consisted merely of cursory analysis conducted by Jarkesy, for example, his seeking free advice from academic or industry experts and investors in the Funds;

b. JTCM employed many expert consultants when, in fact, Jarkesy had yet to hire his only in-house analyst at the time the literature was prepared;

c. as manager, Jarkesy had more than 10 years of experience, "both years as a professional as well as years in the firm;"

d. estimated annual returns of Fund I would be thirty percent; and

e. no investment would exceed five percent of either Fund's value when, in fact, at least one investment (Company A and its predecessor company, Company C) exceeded a third of the value of each Fund in 2010.

The Funds' Auditor was not KPMG

59. Investor updates and other marketing materials created by Jarkesy and JTCM between 2008 and 2010 identified KPMG LLP, among others, as the auditor of Fund I. Other marketing materials also identified KPMG as auditor for both Fund I and Fund II. Belesis and JTF marketed Fund I and Fund II to potential investors with the understanding that KPMG was the auditor of both Funds.

60. KPMG never audited Fund I.

61. KPMG also never audited Fund II. In 2009, Fund II was created as a vehicle for foreign investors and JTCM and Jarkesy retained KPMG's Cayman Island office for audit work. When no foreigners invested in Fund II, the Fund was opened to American investors and KPMG resigned without having done any substantive audit work.

62. One set of JTCM marketing materials for Fund I dated June 1, 2007, identified Malone & Bailey, P.C., now known as MaloneBailey LLP, as the auditor. MaloneBailey never audited either of JTCM's Funds.

63. Contrary to much of Jarkesy's and JTCM's marketing materials, neither KPMG nor MaloneBailey ever audited the Funds. The actual auditor of the Funds was a small Houston-based firm that resigned from the engagement in 2011.

<u>The Funds' Prime Broker was not Deutsche Bank</u>

64. Jarkesy's and JTCM's marketing materials for the Funds identified Deutsche Bank, among others, as the Funds' prime broker. Deutsche Bank, however, never had a prime brokerage agreement with JTCM, and requested that the designation "prime broker" be removed from the private placement memorandum ("PPM") for Fund II, which had an inactive retail account at Deutsche Bank for six months in 2009.

65. After Deutsche Bank requested that the false designation of "prime broker" be removed from Fund II's PPM, JTCM and Jarkesy continued to falsely identify it as the Funds' prime broker in other marketing materials.

<u>The Undisclosed Role of Belesis and JTF in Fund Operations</u>

66. JTCM – acting through Jarkesy, its manager – represented that it was solely responsible for managing the Funds. The only disclosed connection between JTF and JTCM was JTF's role as placement agent and potential broker-dealer for the Funds' securities transactions. There was no disclosure – or even suggestion – that JTF or Belesis would become involved in JTCM's and the Funds' investment activities.

67. To underscore the independence of JTCM and JTF, JTCM's website included a disclaimer indicating that other than using JTF as a placement agent, JTCM had no business relationship with JTF.

68. Belesis was aware of the disclaimer distancing JTCM from JTF because he used it as a model in an unrelated business venture.

69. In reality, Belesis frequently sought to intervene in the Funds' business decisions. As leverage, Belesis conveyed to Jarkesy – often in a profane and belligerent manner – that the millions of dollars invested into the Funds by JTF customers required Jarkesy to follow Belesis' instructions.

70. In light of his improper meddling in the Funds' business, Belesis separately indicated to registered representatives at JTF that the independence of JTCM and JTF on paper would be a helpful fact in the event anything improper happened with respect to the Funds.

71. For example, Belesis – sometimes, but not always, in collaboration with Jarkesy – periodically guided how the Funds' money would be invested in Company A. Company A's chief executive officer requested that Belesis allocate Fund money to pay operating costs, including rent, payroll and payments to Company A's service providers. The Funds' bank records show debits to pay certain Company A expenses.

72. In some cases, Belesis' decisions regarding Company A, one of the Funds' largest holdings, overrode the decisions of Company A's corporate officers, who implored him to handle company affairs differently. As one example, Company A officers were displeased with Belesis' choice of chief financial officer for the company, who they thought required too high a salary.

73. As another example, Company A's officer complained that Belesis prematurely completed a stock purchase agreement that they had wanted to revise. However, Company A's officers had no choice but to accept Belesis' decisions about their company because of Belesis' influence over when, how and if money would flow to Company A from the Funds, the company's main source of capital.

74. Belesis also supplanted Jarkesy as the decision maker for JTCM in connection with certain of the Funds' investments in Company B. Indeed, Belesis' role was clear when the Funds extended a bridge loan to Company B and the proceeds were delayed in arriving at the company. The company president and chief executive officer addressed Belesis – not Jarkesy, the supposed exclusive manager of the Funds – about the delay, and Belesis reassured him, *"You will have it, smoke a nice cigar*."

75. Numerous emails reflect Jarkesy's subservience to Belesis and efforts to please him by offering him benefits from the Funds' investment activities, including cash, fees and securities.

<u>The Undisclosed Business Relationship between JTCM and JTF</u>

76. In addition to the undisclosed influence Belesis exerted over the Funds' operations, JTCM and Jarkesy, despite publicly professing their independence from JTF, were in fact actively seeking to generate revenue for JTF and Belesis. For example, in March 2009, a JTCM employee wrote to Belesis:

> George [Jarkesy] and I have worked hard over the past month creating a backlog of potential clients for JTF and JTCM….We now have two or three that could be JTF clients in a matter of weeks with tens of thousands of dollars in monthly fees not to mention [another business transaction] already in the bag….

> The failure of your staff to execute payment on our contract has put a stop to our progress. . . . I still have high hopes for the potential of this liaison between JTF, JTCM … and myself. Based upon your email below I estimate that you feel same. George, I know is optimistic of the potential that this relationship holds….

77. In March 2009, the director of a company that JTCM and Jarkesy had steered to JTF asked to meet with Belesis before paying for JTF's services. In response, Belesis erupted at Jarkesy: "*GEORGE WHAT KIND OF BULL[…]T IS THIS*".

78. Jarkesy's reply indicates his allegiance to Belesis: "*I just told him to send the stock and money, sign the document or get lost*," he wrote. "*I think this will get done today. Nobody gets access to Tommy [Belesis] until they make us money!!!!!*"

<u>Jarkesy and JTCM Diverted the Funds' Money to Enrich Belesis and JTF</u>

79. In breach of his fiduciary duty to the Funds, Jarkesy, through his role at JTCM, actively negotiated fees on behalf of JTF and Belesis in connection with the Funds' activities, to the detriment of the Funds.

80. Jarkesy used his role as manager of the Funds to enrich Belesis and JTF, and kept an appreciative Belesis apprised of his efforts. For example, Jarkesy giddily wrote to Belesis in March 2010: "*[W]e are all going to make so much f[…]ing money this year, the clients of John Thomas are going to have a banner year….Write yourself a check and get ready to cash it $45 million.*" Belesis replied, "*Sounds great buddy, look forward to it…. Lol [laughing out loud],*" to which Jarkesy responded, "*Your [sic] going to not stop laughing when you are liquidating everyones [sic] stock*."

81. On another occasion, after Belesis complained that Jarkesy was not securing sufficient fees for JTF in February 2009, Jarkesy responded that "*we will always try to get you as much as possible, Everytime [sic] without exception!*"

82. Overall, Jarkesy's allegiance to Belesis and JTF cost the Funds significant sums of money, directly or indirectly, for placement fees, loans to small companies that then used the money to pay fees to JTF, and for unearned bridge loan fees JTF received for doing no work.

<u>Fund Money Was Routed to JTF for Unearned Bridge Loan Fees</u>

83. The Funds extended short-term bridge loans to small, usually private companies. In exchange for the loans, the Funds received interest on the amount of the loan and what Jarkesy called an "equity kicker" of stock, options or warrants in the company.

84. JTF and Belesis occasionally introduced Jarkesy and JTCM to candidates for bridge loans. For its involvement, JTF earned a fee of approximately thirteen percent of

each bridge loan the Funds made. Jarkesy and JTCM made no effort to negotiate a lower fee for JTF.

85. The Funds typically extended bridge loans to struggling, cash-poor ventures. Every dollar provided in the loan was essential to the borrowers' future prospects and, therefore, the Funds' investment in the borrowing companies and chances of ultimately being repaid. Jarkesy, however, often abandoned his fiduciary duties to the Funds and affirmatively negotiated arrangements whereby the borrowers would divert large fees to JTF using proceeds received from the Funds.

86. Jarkesy abandoned his fiduciary duties to the Funds and negotiated arrangements whereby the borrowing companies – in which the Funds were invested and from which the Funds sought repayment – would divert large fees to JTF using proceeds received from the Funds. Thus, Jarkesy, in his capacity as manager of the Funds, when negotiating bridge loans between the Funds and the borrowing companies, placed the interests of Belesis and JTF above the interests of JTCM's clients, the Funds, and assumed responsibility for negotiating on behalf of Belesis and JTF. As examples:

a. In March 2009, Jarkesy offered Belesis increasingly favorable fees on a bridge loan the Funds were extending to Company A, and also offered him commissions and warrants without Belesis requesting such benefits.

b. In February 2010, Jarkesy drafted a $130,000 commission for JTF in a term sheet for a $1 million bridge loan to a company that expressly informed him that it did not want to commit to long-term financing with JTF.

c. In May 2009, Jarkesy structured a transaction between the Funds and Company D specifically so that JTF and Belesis could be "the hero," as Jarkesy wrote in an email, and earn commissions and fees.

87. Belesis and JTF were willing recipients of the Funds' generosity provided by Jarkesy and JTCM, but it was Jarkesy who was responsible for negotiating their fees from the Funds' bridge loans.

88. So beholden was Jarkesy to Belesis and JTF that in some instances, Jarkesy negotiated and procured a fee for them even though they had not referred the borrower to the Funds for financing and had done, at most, minimal work relating to the loan. For example:

a. Jarkesy was a director of Company D and introduced the company to the Funds for a bridge loan and to JTF for long-term financing. When the Funds extended a bridge loan in October 2008, JTF received a full fee for having done merely negligible work relating to the loan.

b. Jarkesy was a director of Company B and brought the company to JTF for investment banking work in the summer of 2010. When the Funds extended a bridge loan to Company B, JTF received a fee on the loan despite having done only minor work on the loan or the referral.

89. Between 2008 and 2010, JTF was paid a total of $488,750 in fees from four bridge loans, including at least two for which it did nearly inconsequential work. JTF's fees came from the borrowing company, which paid the fees upon receipt of the bridge loan money from the Funds, thereby immediately diminishing the loans the Funds made by the amount of the fees Jarkesy arranged for JTF.

90. In addition to the bridge loan fees, Jarkesy and JTCM paid JTF more than $741,000 in brokerage commissions from the Funds' securities trades, and nearly $2.5 million in placement fees for selling shares of the Funds.

D. VIOLATIONS

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

2. As a result of the conduct described above, JTCM and Jarkesy willfully aided, abetted and caused the Funds' violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in the offer or sale of securities and in connection with the purchase or sale of securities.

3. As a result of the conduct described above, JTCM and Jarkesy willfully violated Sections 206(1), 206(2) and 206(4) of the Advisers Act, which prohibit fraudulent conduct by an investment adviser, and Rule 206(4)-8 thereunder, which prohibits making any untrue statement of a material fact or omitting to state a material fact necessary to make the statements made, in light of the circumstances in which they were made, not misleading to any investor or prospective investor in a pooled investment vehicle or otherwise engaging in any act, practice, or course of business that is fraudulent, deceptive or manipulative with respect to any investor or prospective investor in a pooled investment vehicle.

4. As a result of the conduct described above, JTF and Belesis willfully aided, abetted and caused JTCM's and Jarkesy's violations of Sections 206(1), 206(2) and 206(4) of the Advisers Act, which prohibit fraudulent conduct by an investment adviser, and Rule 206(4)-8 thereunder, which prohibits making any untrue statement of a material fact or omitting to state a material fact necessary to make the statements made, in light of the circumstances in which they were made, not misleading to any investor or prospective

investor in a pooled investment vehicle or otherwise engaging in any act, practice, or course of business that is fraudulent, deceptive or manipulative with respect to any investor or prospective investor in a pooled investment vehicle.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative and cease-and-desist proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondents an opportunity to establish any defenses to such allegations;

B. What, if any, remedial action is appropriate in the public interest against Respondents pursuant to Sections 15(b)(4) and 15(b)(6) of the Exchange Act including, but not limited to, disgorgement and civil penalties pursuant to Section 21B of the Exchange Act;

C. What, if any, remedial action is appropriate in the public interest against Respondents JTCM and Jarkesy pursuant to Section 203(f) of the Advisers Act including, but not limited to, disgorgement pursuant to Section 203(j), civil penalties pursuant to Section 203(i) and censure pursuant to Section 203(e) of the Advisers Act;

D. What, if any, remedial action is appropriate in the public interest against Respondents JTCM, Jarkesy, JTF and Belesis pursuant to Section 9(b) of the Investment Company Act including, but not limited to, disgorgement pursuant to Section 9(e) and civil penalties pursuant to Section 9(d) of the Investment Company Act; and

E. Whether, pursuant to Section 8A of the Securities Act, Section 21C of the Exchange Act, and Section 203(k) of the Advisers Act, Respondents should be ordered to cease and desist from committing or causing violations and any future violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Sections 206(1), 206(2) and 206(4) of the Advisers Act and Rule 206(4)-8 thereunder, whether Respondent Jarkesy should be prohibited from 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 if the conduct of that Respondent demonstrates unfitness to serve as an officer or director of any such issuer, whether Respondents should be ordered to pay a civil penalty pursuant to Section 8A(g) of the Securities Act, Section 21B(a) of the Exchange Act, Section 203(i) of the Advisers Act, and Section 9(d) of the Investment Company Act, and whether Respondents should be ordered to pay disgorgement pursuant to Section 8A(e) of the Securities Act, Sections 21B(e) and 21C(e) of the Exchange Act, Section 203(j) of the Advisers Act, and Section 9(e) of the Investment Company Act.

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened not earlier than 30 days and not later than 60 days from service of this Order at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondents fail to file the directed answer, or fail to appear at a hearing after being duly notified, the Respondents may be deemed in default and the proceedings may be determined against them upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Respondents personally or by certified mail.

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

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not “rule making” within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Elizabeth M. Murphy
Secretary