

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
September 30, 2004

Administrative Proceeding
File No. 3-11692

In the Matter of

RAYMOND JAMES FINANCIAL
SERVICES, INC.,
J. STEPHEN PUTNAM and
DAVID LEE ULLOM,

Respondents.

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

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”), Sections 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”), and Section 203(f) of the Investment Advisers Act of 1940 (“Advisers Act”) against Raymond James Financial Services, Inc. (“Raymond James”), J. Stephen Putnam (“Putnam”) and David Lee Ullom (“Ullom”).

II.

As a result of an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. **Raymond James**, a wholly-owned subsidiary of Raymond James Financial, Inc. (“Raymond James Financial”), is a Florida corporation registered with the Commission as a broker-dealer and investment adviser pursuant to Section 15(b) of the Exchange Act and Section 203(a) of the Advisers Act, respectively. Raymond James has its principal place of business in St. Petersburg, Florida.

2. **Putnam**, age 61, resides in Tarpon Springs, Florida. Putnam was associated with Raymond James (and/or its predecessors) from in or about July 1983

until March 2000, at which time he assumed the title of executive vice president of special projects at Raymond James Financial. During the relevant period, Putnam was employed as the president and chief operating officer of Raymond James and was registered with Raymond James as a general securities representative, general securities principal, municipal securities principal, and registered options principal. During the relevant period, Putnam was a person associated with a broker or dealer and with an investment adviser.

3. **Ullom**, age 66, is a resident of Greene, Rhode Island. During the relevant period, Ullom was employed as the branch office manager of a Raymond James office located in Cranston, Rhode Island (the “Cranston Branch”). Ullom was registered with Raymond James as a general securities representative, general securities principal, municipal securities principal, financial and operations principal, and registered options principal from in or about January 1999 until he was discharged by Raymond James in or about November 2002. Ullom had been associated with Raymond James or its predecessors since in or about June 1992. During the relevant period, Ullom was a person associated with a broker or dealer and with an investment adviser.

OTHER RELEVANT PARTIES

4. **Dennis S. Herula** (“Herula”), age 56, was a Raymond James registered representative from in or about August 1999 until his termination in or about December 2000. He was assigned to the Cranston Branch of Raymond James, which was managed by Ullom. Throughout most of his tenure at Raymond James, notwithstanding his assigned location, Herula worked from his house and from locations other than the Cranston Branch.

5. **Brite Business Corporation** (“Brite Business”), now defunct, was incorporated in Delaware in or about April 1999 and dissolved by the State of Delaware in or about March 2001. During the relevant period, Brite Business maintained a brokerage account at Raymond James in which it held funds of Brite Business investors, for use in a purported investment program.

6. **Mary Lee Capalbo (a.k.a. Mary Lee Capalbo Herula)** (“Capalbo”), age 52, was both Herula’s wife and an attorney licensed to practice in the State of Rhode Island at all relevant times.

7. **Martin D. Fife** (“Fife”), now deceased, was the president of Brite Business at all relevant times.

C. FACTS

Summary

8. In connection with a fraudulent scheme, Herula, a Raymond James registered representative, and several other individuals worked together to solicit investors to deposit approximately \$44.5 million in an account at Raymond James held in the name of Brite Business during the period from November 1999 through March 2000. These investors were generally promised that, at no risk to their initial investments, they would receive astronomical returns through various Brite Business activities, including a sophisticated trading program. In his capacity as a Raymond James representative, Herula made numerous false representations to Brite Business investors to the effect that the funds they invested in Brite Business would remain under their control in an account at Raymond James and that Raymond James would safeguard those funds. Putnam and Ullom were aware of the suspicious nature of some of Brite Business's activities, and were aware that Herula was making and/or had made misrepresentations on behalf of Raymond James in connection with these activities, but they did not take timely steps sufficient to address those misrepresentations or to stop Herula from making further misrepresentations.

9. Of the approximately \$44.5 million that was deposited in the Brite Business account at Raymond James, approximately \$15.5 million was dissipated and never returned to investors. Most of the dissipated funds were transferred to an account at Raymond James controlled by Herula's wife, Capalbo (the "Capalbo Account"). Ullom and, in at least two cases, Putnam, facilitated the dissipation of these funds by approving the transfers to Capalbo's account. In addition, Herula convinced another Raymond James client to transfer \$1 million from that investor's account at Raymond James to the Capalbo Account. In total, approximately \$16.5 million in investor funds was dissipated. Of the investor funds transferred to the Capalbo Account, Herula and Capalbo misappropriated approximately \$8.7 million for their personal benefit. The majority of the remainder was dissipated to other individuals and institutions.

10. As a result of Herula's fraudulent conduct, Raymond James violated Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. Raymond James, Putnam and Ullom also failed reasonably to supervise Herula, a person subject to their supervision, with a view to preventing or detecting Herula's violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. Raymond James also violated Section 17(a) of the Exchange Act and Rule 17a-4 thereunder by failing to preserve for three years, the first two years in an accessible place, electronic mail communications relating to its business as a member of an exchange, broker or dealer, and by failing to promptly furnish certain electronic mail communications to the Commission staff after the Commission staff requested those electronic mail communications.

The Brite Business Fraudulent Scheme

11. In 1999 and 2000, Herula and individuals associated with Brite Business (and a related company, Brite Business S.A.) engaged in a scheme pursuant to which they successfully solicited five investors to invest a total of approximately \$51.75 million with Brite Business. Among these investors were Rashed Mohamed Mahran Al Bloushi (“Bloushi”), who invested \$7.5 million; Rheume Holdings, Ltd. (“Rheume”), which invested \$12.5 million; and Four Star Financial Services (“Four Star”), which invested \$11.75 million, some of which was invested through an intermediary, Lewis Blackburn (“Blackburn”).

12. To induce these investors to provide their funds to Brite Business, Brite Business representatives fraudulently promised Bloushi, Rheume, Four Star, and the other investors that Brite Business would generate astronomical returns on their investments. For example, Brite Business representatives represented to Rheume that its \$12.5 million investment would generate, at a minimum, a return of 120% (or \$15 million) in a three-month period.

13. In or about October 1999, Fife, the president of Brite Business, opened a securities brokerage account at the Cranston Branch of Raymond James to facilitate the Brite Business scheme. The account was opened in Brite Business’s name, and at all relevant times, Herula was the designated registered representative on the account.

14. Of the \$51.75 million that Brite Business procured from investors, approximately \$44.5 million was deposited into the Brite Business account at Raymond James between November 1999 and March 2000. Of that \$44.5 million, approximately \$29 million was returned to three of the investors (including Four Star) who had demanded their money back. The remaining approximately \$15.5 million – including all of Rheume’s \$12.5 million investment and the majority of the \$5 million of Bloushi’s investment that was deposited with Raymond James – was misappropriated or otherwise dissipated from the Brite Business account at Raymond James.

Brite Business’s Balance Sheet Enhancement Program

15. By October 1999, as part of the Brite Business scheme, Fife was promoting a “balance sheet enhancement program.” In connection with this program, Fife planned to have Raymond James purchase for Brite Business U.S. Treasury bills (“T-bills”) on margin using Brite Business investor funds held in the Raymond James account. The stated purpose of the program was to give the appearance that Brite Business had a robust balance sheet, which purportedly would qualify Brite Business to bid on large, third-world development projects. According to Fife, once the projects were developed, investors would receive their principal back, as well as substantial profits generated from the third-world projects.

16. In October 1999, Putnam, Ullom, Herula, and others from Raymond James and/or its affiliates met with representatives of Brite Business to discuss its balance sheet enhancement program and Raymond James's possible role in that program.

17. During and after the October 1999 meeting, Putnam, Ullom and others from Raymond James and/or its affiliates expressed skepticism about the program and concern that Brite Business's motive was to misrepresent its financial picture. However, Raymond James employees also appreciated that Brite Business was offering Raymond James the opportunity to earn substantial fees by becoming involved in the program. Putnam and Ullom both expressed a reluctance to harm the relationship with Brite Business because they had hopes of doing more significant business with it and its seemingly influential principals.

18. In December 1999, notwithstanding the concern and skepticism expressed toward the balance sheet enhancement program by individuals at Raymond James and/or its affiliates, Herula, acting on instructions from Fife, utilized approximately \$12.4 million of Brite Business investor funds to purchase approximately \$115 million worth of T-bills on margin in the Raymond James account. Raymond James employees, including Putnam and Ullom, were aware of the transaction at or about the time it was made and understood it to have been executed in connection with Brite Business's balance sheet enhancement program.

19. On this T-bill transaction, Raymond James received from Brite Business approximately \$1.78 million in margin interest and approximately \$32,000 in commissions and fees. Those payments to Raymond James were made from Brite Business investor funds.

20. In January 2000, due to continuing concerns voiced at Raymond James about Brite Business, Putnam and Raymond James Financial's senior vice president and corporate secretary, who also served as corporate counsel, met with Fife and other Brite Business representatives. The purpose of the meeting was to learn more about the balance sheet enhancement program, including Fife's motive in purchasing, for approximately \$12.4 million, T-bills worth \$115 million on margin when the margin interest exceeded the interest generated on the T-bills. Later the same month, in the wake of the meeting, Putnam decided that Raymond James should have no further involvement with Brite Business. Putnam was skeptical as to whether Brite Business's program was an accepted business practice, and he found the program to be "less than forthright." Putnam promptly notified Ullom and others at Raymond James of this decision.

21. Notwithstanding Putnam's decision, Putnam and Ullom continued to allow Brite Business to maintain its brokerage account at Raymond James and continued to permit money to be deposited into and disbursed from the account. They also allowed Herula to continue performing business activities for Brite Business while he was a registered representative for Raymond James.

Herula's Misrepresentations in Brite Business's Fraudulent Scheme

22. During the period from December 1999 through November 2000, Herula sent out numerous pieces of correspondence both to prospective and actual Brite Business investors in connection with Brite Business's fraudulent scheme. This correspondence, which contained material misrepresentations, was often written on Raymond James letterhead and signed by Herula, purportedly in his capacity as a Raymond James investment manager.

23. In January 2000, for example, Herula sent an e-mail from his Raymond James e-mail account soliciting an investor to deposit \$100 million at Raymond James in connection with Brite Business activities. The e-mail, which was signed by Herula as a representative of Raymond James, stated that Brite Business agreed to ensure the potential investor a 10% return on the investment. In the e-mail, Herula also directed the investor to the Raymond James Web site to view Raymond James products, services, and financial information. Herula forwarded the e-mail to Ullom just days after he sent it. Ullom, however, failed to make adequate inquiry into the circumstances surrounding this e-mail and did not take reasonable steps to stop Herula from making further similar statements on behalf of Raymond James.

24. During the period from January 2000 through March 2000, Herula sent several letters to Bloushi, a Brite Business investor. Bloushi had deposited \$7.5 million with Brite Business in or about June 1999, approximately \$5 million of which was transferred to the Brite Business account at Raymond James in October 1999. As of early 2000, Bloushi had still not received any of the profits he had been promised on his investment with Brite Business. In Herula's letters, written on Raymond James letterhead, Herula attempted to "lull" Bloushi by making various misrepresentations regarding the status of the Brite Business activities in which Bloushi had supposedly invested. During the same period, Herula sent at least one letter making similar misrepresentations to another investor, who had deposited \$10 million into the Brite Business account at Raymond James in or about December 1999.

25. In March 2000, Herula wrote a letter to Rheume (the "Rheume Letter"). He drafted the letter on Raymond James letterhead and purported to sign it in his capacity as a Raymond James investment manager. In the letter, Herula wrote that Raymond James had received irrevocable instructions from Brite Business regarding a potential deposit of \$12.5 million from Rheume for the purpose of completing a purchase of US T-bills, notes, or bonds. Herula falsely represented that "Raymond James will follow those instructions with the full faith and backing of the company to assure the funds deposited by Rheume Holdings Ltd. will not be withdrawn from the account without written instructions of Rheume Holdings Ltd." Further, Herula falsely stated that "Raymond James will return the funds in full, without delays or encumbrances, upon the maturity of the T-Bill, Note or Bond transaction." By his letter, Herula also conveyed "a full faith assurance for Rheume Holdings Ltd. that your funds will not be at risk at any time during or after the anticipated transactions and, as such, the funds plus interest will be returned, intact, as long as the T-Bill, Note or Bond are held to maturity."

26. Also in or about March 2000, Robert Curl (“Curl”), a Rheume representative, traveled to the Cranston Branch of Raymond James to meet with Herula at his office there and to get Raymond James to confirm the safety of Rheume’s potential investment. During that meeting, Herula falsely told Curl, among other things, that Rheume’s funds would be segregated in an account at Raymond James in the investor’s name; that the funds would be invested by Brite Business in T-bills; and that the funds would be free from risk. Herula also falsely represented that the money would not be withdrawn without Rheume’s authorization.

27. On or about March 27, 2000, relying on the representations Herula made during his meeting with Curl and in the Rheume Letter, Rheume deposited approximately \$12.5 million into the Brite Business account at Raymond James.

28. Herula sent letters similar to the Rheume Letter, containing virtually identical representations, to other potential investors in early March 2000. Each of the letters was written on Raymond James letterhead and signed by Herula, purportedly in his capacity as a Raymond James investment manager. One such letter (the “Blackburn Letter”) went to Blackburn, an intermediary for Four Star, which invested \$11.75 million with Brite Business shortly after receiving the letter; \$7 million of this investment went into the Brite Business account at Raymond James.

29. Another such letter (“the Lanciano Letter”) was sent to Lanciano Limited in anticipation of its potential \$25 million deposit. In the letter dated March 1, 2000, Herula emphasized Raymond James’s size and stature and described Brite Business as “a valued client of Raymond James, maintaining an account with an aggregate nine-figure balance.” At the time, however, the Brite Business account had a net value of less than \$2 million.

30. In the Lanciano Letter, Herula also vouched for Brite Business and its financial plans, stating:

This letter is to confirm my review and understanding of the financial plans of Brite Business Corp. Upon extensive review and confirmation of the irrevocable instructions from Brite Business Corp., I am confident that the profits from their Treasury transactions will be used to honor their commitments and contract with you. Further, I know and have worked with our client, Brite Business, and can confirm that they are of the highest rank of moral character and business acumen.

In the balance of the Lanciano Letter, Herula repeated the same types of misrepresentations he had made in other letters to potential investors, *i.e.*, regarding the manner in which Raymond James would safeguard the funds and ensure that the funds would not be at risk at any time.

31. On March 20, 2000, a senior vice president at a Raymond James affiliate received a copy of the Lanciano Letter after questions were raised about Raymond James's representations in that letter. The Lanciano Letter was then forwarded to individuals at Raymond James, including its chief compliance officer, Putnam, and Ullom.

32. After reviewing the Lanciano Letter, Putnam contacted Herula on or about March 24, 2000. Herula assured Putnam that no money had come into the Brite Business account as a result of the Lanciano Letter and that no other letters of that nature had been sent. Putnam took Herula at his word and failed to take adequate steps to verify what Herula had told him. Among other things, Putnam failed to seek to determine whether other investors had placed money with Brite Business in its Raymond James account after being induced to do so by Herula's misrepresentations.

33. In his March 24 discussion with Herula, Putnam also instructed Herula that any future solicitation letters on Raymond James letterhead to prospective Brite Business investors would have to be reviewed by Putnam himself. Putnam also directed that a restriction be placed on the Brite Business account at Raymond James. This restriction required Putnam's approval prior to any disbursement of funds from the account. No other action was taken against Herula. Indeed, Raymond James, through Putnam and Ullom, allowed Herula to continue his work on Brite Business activities while he was a Raymond James registered representative.

34. On or about July 10, 2000, Four Star sent a letter to Herula demanding the return of the money that Four Star stated Blackburn had deposited on its behalf in the Brite Business account at Raymond James. Enclosed with the letter were several pieces of correspondence (including the Blackburn Letter) that Herula had sent to Blackburn. This correspondence, written by Herula on Raymond James letterhead, contained misrepresentations regarding, *inter alia*, Raymond James's safeguarding of the invested funds and the status of the T-bills purchased for Brite Business, as of March 2000 and May 2000.

35. Two days later, on July 12, 2000, Four Star sent a letter to Ullom reiterating its claim to the funds that had been invested on its behalf by Blackburn, and attaching some of the correspondence (*e.g.*, the Blackburn Letter) containing misrepresentations that Herula had made. Ullom promptly notified Putnam of the Blackburn Letter and the other correspondence he had received from Four Star.

36. After learning of this correspondence, Putnam initially contemplated terminating Herula and closing the Brite Business account, but chose to do neither. Ullom, who also had the authority to terminate Herula, did not do so either. Indeed, neither Putnam nor Ullom, nor anyone else at Raymond James, took disciplinary action against Herula at that time. In addition, neither Putnam nor Ullom, nor anyone else at Raymond James, took reasonable steps to ensure that others had not been similarly deceived by Herula and been induced to deposit funds in the Brite Business account as a result.

37. Despite their knowledge that Herula had sent out correspondence containing misrepresentations to solicit Brite Business investors and that he had done so purportedly in his capacity as a Raymond James investment manager, Putnam and Ullom allowed Herula to continue working at Raymond James (and performing business activities for Brite Business) until near the end of 2000.

38. Ullom also allowed Herula to continue working from home or other locations away from the Cranston Branch during that period even though he considered it difficult to supervise Herula when he was working off-site. For example, Ullom found it difficult to monitor Herula's activities, including his use of firm letterhead, because Herula was working off-site. According to Raymond James procedures established at that time, branch managers had sole discretion as to whether and when they should audit the activities of registered representatives who were working off-site. Despite his inability to effectively monitor Herula's activities, Ullom did not audit Herula's off-site office and allowed Herula to continue working from home or other locations away from the Cranston Branch during that period.

39. From mid-2000 through December 2000, however, Herula continued to send out correspondence purportedly in his capacity as a Raymond James investment manager. In correspondence to Rheume, for example, Herula made numerous false statements designed to convince Rheume that its \$12.5 million investment was still safe, when in fact Herula and others had already misappropriated or otherwise dissipated those funds.

40. Raymond James did not terminate Herula until December 2000, and only after Raymond James learned that Herula had sent out additional, improper correspondence to a potential investor.

The Misappropriation of Brite Business Investor Funds

41. In March 2000, after Putnam ordered that a restriction be placed on the Brite Business account at Raymond James, Fife, Herula, and Herula's wife, Capalbo, opened a separate brokerage account at Raymond James called the "Mary Lee Capalbo Esq. Special Client Account" (*i.e.*, the Capalbo Account). Herula served as the designated registered representative on that account at all relevant times.

42. From March 2000 through September 2000, the restriction on the Brite Business account remained in place so that funds were not to be disbursed from the account without Putnam's approval. Herula's branch manager, Ullom, was aware of this restriction and yet, during this period, approved transfers of millions of dollars of investors' funds from the Brite Business account into the Capalbo Account in violation of this restriction. In addition, during the same period, Putnam himself approved at least two transfers totaling millions of dollars out of the Brite Business account and into the Capalbo Account.

43. Ullom also approved subsequent transfers of large amounts from the Capalbo Account out of Raymond James to other individuals and entities. In addition, during the period from March 2000 through September 2000, Herula's wife also transferred millions of dollars from her account at Raymond James to accounts in her name at other financial institutions. These transfers were detailed on various internal reports which Ullom, as branch manager, was required to review on a regular basis.

44. In September 2000, Fife and Herula opened a separate brokerage account at Raymond James in the name of Seaview Development & Holdings, Ltd., another entity controlled by Fife. Thereafter, Fife and Herula transferred over \$1 million of Brite Business investor funds into that account from the Capalbo Account and separate Brite Business account at Raymond James. Herula served as the designated registered representative on that account at all relevant times. In October 2000, Raymond James received \$25,000 in fees in connection with that account.

45. In August 2000 and October 2000 respectively, Herula made two separate payments of \$50,000 each to an entity controlled by Ullom from accounts controlled by Capalbo. (In addition, in November 1999, the same Ullom entity had also received a check for \$90,000 from an account owned by Capalbo.)

46. In total, approximately \$15.5 million in Brite Business investor funds were dissipated from the Brite Business account at Raymond James. Most of these funds were transferred to the Capalbo Account and then transferred to individuals and entities outside of Raymond James. The rest was misappropriated or otherwise dissipated directly from the Brite Business account. Of the \$15.5 million from the Brite Business account (as well as an additional approximately \$1 million from the account of another Raymond James customer, discussed below), Herula and Capalbo misappropriated approximately \$8.7 million for their personal benefit.

47. Despite harboring suspicions about Brite Business's activities, being aware of misrepresentations that Herula was making on behalf of Raymond James to potential investors, and knowing that Capalbo was Herula's wife, Putnam and Ullom did not take effective action to investigate the circumstances surrounding these transfers to ensure that Herula and others were not misappropriating or otherwise dissipating investor funds. Indeed, Putnam and/or Ullom authorized many of these transfers.

Misrepresentations to Malcolm Monlezun and Misappropriation of His Funds

48. In September or October of 2000, Herula also misled another investor, Malcolm Monlezun ("Monlezun"), into depositing funds with Raymond James. In connection with a supposed investment opportunity involving a high-yield, inter-bank trading program in Europe, Herula solicited Monlezun and Monlezun's wife to open a money market account at Raymond James and to deposit \$1 million into it. Herula told Monlezun that Herula would be the financial adviser for the investment and that based on Herula's experience with such investments, Monlezun should expect to receive a return

of 10%-30% per month. Herula also told Monlezun that throughout the period of investment, Monlezun's funds would remain in the account at Raymond James and under the control of Monlezun and Monlezun's wife.

49. By in or about November 2000, Monlezun had yet to receive a return on his investment and expressed some frustration to Herula. Herula told Monlezun that he knew other individuals, including Fife, who had years of experience with these types of large-scale investments and he invited Monlezun to participate in an investment these individuals were pursuing. Herula told Monlezun that in order to participate in the investment, Monlezun's \$1 million investment would have to be pooled in the Capalbo Account with \$99 million collected from other investors. Herula did not tell Monlezun that Capalbo was Herula's wife. Relying on Herula's misrepresentations, Monlezun transferred the \$1 million from his money market account to the Capalbo Account. Ullom authorized the transfer without first contacting Monlezun, in violation of the Raymond James policies that required him to do so whenever a letter of authorization instructed a transfer or disbursement to a third party.

50. Shortly thereafter, the majority of Monlezun's funds were transferred from the Capalbo Account. Approximately \$400,000 of these funds was transferred to an account outside of Raymond James controlled by Capalbo on or about December 5, 2000.

51. Although Herula eventually repaid to Monlezun approximately \$125,000 in purported "interest" payments, the remaining \$875,000 he had invested was misappropriated and never returned.

Putnam, and Ullom, As Herula's Direct Supervisors, Each Failed Reasonably to Supervise Herula

52. Ullom was Herula's direct supervisor during the relevant period. Putnam (together with Ullom) also assumed some supervisory authority over Herula, including authority over Herula's business activities, his sending of correspondence on Raymond James letterhead, and transfers of money out of his customer accounts.

53. As set forth above, Putnam and Ullom each became aware of several "red flags" which alerted them to Herula's suspicious activity and potential misconduct, yet they failed to respond adequately to those red flags. Among other things, Putnam and Ullom were aware that Herula was conducting activities for a suspicious business venture and that Herula had improperly sent correspondence on Raymond James letterhead on several occasions during 2000, including correspondence that made false representations and promises on Raymond James's behalf.

54. Even after they became aware during 2000 that Herula had repeatedly sent out correspondence containing false representations on behalf of Raymond James, and even though Ullom was finding it difficult to supervise Herula when Herula was working off-site, neither Putnam nor Ullom inquired further or took any steps to address the conduct, such as restricting Herula's business activities, revoking his privilege of

working away from the Cranston Branch, or firing him, until approximately \$16.5 million of investor funds had been misappropriated or otherwise dissipated. Had Putnam and/or Ullom properly responded to the “red flags” which alerted them to Herula’s suspicious activity and potential misconduct by, for example, scrutinizing, investigating, or terminating Herula’s activities, they could have reasonably detected or prevented Herula’s violations of the federal securities laws.

**Raymond James and Putnam Failed Reasonably to Supervise Herula
By Failing to Establish Procedures or Systems to Implement Existing Procedures**

55. During the relevant period, Raymond James permitted registered representatives, including Herula, to work from their homes or other locations away from registered branch offices if the branch manager deemed it appropriate. However, Raymond James’s policies and procedures concerning the supervision of registered representatives who work away from registered branch offices and the examination of their files during this period were inadequate. Raymond James did not have any policies or procedures which specifically addressed the supervision of registered representatives who worked from home or other alternate locations, or the auditing of their off-site work locations. Raymond James did not require branch managers to inform the compliance department of alternate work locations of registered representatives unless that location was a registered NASD location, and Raymond James generally did not even know how many or which registered representatives may have been working from outside an NASD-registered office of Raymond James at any given time. A registered representative’s home or alternate work location was not subjected to audits by Raymond James unless the branch manager himself undertook such an audit in his or her sole discretion. Raymond James did not establish a system to ensure that any audits were conducted.

56. Pursuant to Raymond James’s off-site work policy, Herula was allowed to work from his home and other locations away from the Cranston Branch for nearly his entire tenure at Raymond James. During this period, neither Ullom nor any other Raymond James employee ever audited or even inspected Herula’s offsite locations. The lack of oversight of Herula and his files during nearly his entire tenure at Raymond James while he worked away from the Cranston Branch allowed Herula to use his association with Raymond James to promote the Brite Business fraud. Had Ullom or Raymond James audited or even inspected Raymond James’s offsite locations, they could have detected the fact that Herula was continuing to make misrepresentations on behalf of Raymond James to solicit Brite Business investors despite restrictions that Putnam had placed on Herula’s use of Raymond James letterhead as a result of the Lanciano Letter, which in turn could have helped it to reasonably detect or prevent Herula’s violations of the federal securities laws.

57. As the president and chief operating officer of Raymond James during the relevant period, Putnam was ultimately responsible for but failed to establish at Raymond James adequate procedures concerning the supervision of registered representatives who work from home or other off-site locations, or the auditing of their off-site work

locations. In addition, he failed to establish a system to ensure that the procedures that did exist were properly implemented.

58. When Raymond James became aware of Herula's violations of firm procedures regarding unauthorized correspondence, it should have placed Herula on heightened supervision. Raymond James did not establish procedures to place Herula on heightened supervision. If Raymond James had placed Herula on heightened supervision during the relevant period, its compliance department personnel or others at the firm could have more closely scrutinized Herula's activities, detected his misappropriation and dissipation of funds, alerted Putnam or Ullom to the fact that Herula's misconduct was more serious than the misuse of letterhead, and confirmed that Herula's misrepresentations had caused investors to lose money. This could have been an important safeguard to detect and prevent Herula's violations of the federal securities laws.

59. As the president and chief operating officer of Raymond James during the relevant period, Putnam failed to establish at Raymond James procedures and a system to implement procedures concerning the heightened supervision of registered representatives when warranted.

60. During the relevant period, Raymond James did not monitor or audit the operating accounts of its branch offices. Raymond James purportedly instituted a policy during 2000 to begin auditing branch owners' operating accounts. However, Raymond James did not audit the Cranston Branch owner's operating account until at least 2002, despite the fact that Ullom was subject to a prior Commission Order issued in 1995 finding, among other things, that Ullom directed his bookkeeper to alter his advisory firm's financial records to hide income received from advisory clients. During the relevant period, internal auditors never checked the Cranston Branch's financial records, which reflected fund transfers totaling approximately \$190,000 from Herula and/or Capalbo to an entity that Raymond James knew was controlled in whole or in part by Ullom during 1999-2000. Had Raymond James established adequate procedures and systems to implement those procedures, and had the internal auditors checked the Cranston Branch's financial records, they could have discovered suspicious fund transfers totaling \$190,000 from Herula and/or Capalbo to Ullom's entity, which in turn could have helped it to reasonably detect or prevent Herula's violations of the federal securities laws.

61. As the president and chief operating officer of Raymond James during the relevant period, Putnam failed to establish at Raymond James procedures and a system to implement procedures concerning the monitoring or auditing of operating accounts of branch offices, and/or failed to ensure that the policy Raymond James purportedly instituted during 2000 concerning auditing branch owners' operating accounts was adequately implemented.

62. During the relevant period, Raymond James had specifically designated the Capalbo Account as an "employee-related" account on firm records and had records

indicating that Herula's wife held the Capalbo Account in her name and exercised control over the account.

63. Raymond James failed to establish adequate procedures and a system to implement procedures concerning the investigation of suspicious transfers identified by its reporting system. During the relevant period, Raymond James had an internal reporting system that included "exception" reports designed to identify potentially suspicious transfers between customer accounts and employee or employee-related accounts. Under the Raymond James policy in effect during the relevant period, these exception reports should have been reviewed on a daily basis by the firm's compliance department, and any transfers between customer and employee or employee-related accounts should have been investigated.

64. During the relevant period, Raymond James had one type of exception report called the Manager Account Review System, or "MARS" report, which incorporated key components of several other internal reports into a single document for supervisory review, to track the activity of each branch office separately. Among other things, the MARS report was designed to alert branch managers and the Raymond James compliance department to suspicious account activity between customers and employees.

65. Under the Raymond James policy in effect during the relevant period, the Raymond James compliance department, as well as the branch manager, was responsible for reviewing MARS reports on a monthly basis. Despite this policy, Raymond James compliance personnel did not review MARS reports during the relevant period. In addition, Ullom, Herula's branch manager, did not discharge his responsibility to both review these reports and follow-up on the information contained in them once he did so.

66. Although it had certain policies and procedures in place during the relevant period to identify potentially suspicious transfers between customer accounts and employee or employee-related accounts, Raymond James did not adequately investigate transfers of millions of dollars from the Brite Business and Monlezun accounts to the Capalbo Account, even though its internal reporting system highlighted many of these transfers under sections of the reports designed to highlight transfers between customer and employee or employee-related accounts. If Raymond James had an adequate system in place during the relevant period concerning investigation of suspicious transfers to employee or employee-related accounts, and if it had in fact implemented that system, the firm could have reasonably detected and prevented Herula's violations of the federal securities laws.

67. As the president and chief operating officer of Raymond James during the relevant period, Putnam failed to establish at Raymond James procedures and a system to implement procedures concerning investigating suspicious transfers of funds between customer accounts and employee or employee-related accounts.

Raymond James's Books and Records Violations

68. During the relevant period, Raymond James did not have adequate systems or procedures in place to retain, and/or retain in an accessible location, electronic mail communications related to Herula, Brite Business, and other aspects of Raymond James's business.

69. Prior to January 2001, Raymond James had no system of electronic preservation of its branch offices' electronic mail (with the possible exception of branch office electronic mail sent to or received from Raymond James headquarters), and it had inadequate policies and procedures to ensure that hard copies of such electronic mail were preserved.

D. VIOLATIONS

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

2. As a result of the conduct described above, Respondents Raymond James, Putnam, and Ullom failed reasonably to supervise Herula, a person subject to their respective supervision, with a view to preventing or detecting Herula's violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. Section 15(b) of the Exchange Act and Section 203(f) of the Advisers Act provide for the imposition of sanctions against, respectively, (i) a broker or dealer or a person associated with a broker or dealer, and (ii) a person associated with an investment adviser, who has failed reasonably to supervise, with a view to preventing violations of the securities laws, another person who commits such a violation, if such other person is subject to his supervision.

3. As a result of the conduct described above, Respondent Raymond James willfully violated Section 17(a) of the Exchange Act and Rule 17a-4 thereunder. Section 17(a) provides that each broker, dealer, or member of a national securities exchange shall make and keep for prescribed periods such records, furnish copies thereof, and make and disseminate such reports as the Commission, by rule, prescribes as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title. Rule 17a-4(b)(4) requires each broker-dealer to preserve for a period of not less than 3 years, the first two years in an accessible place, originals of all communications received and copies of all communications sent by such member, broker or dealer (including inter-office memoranda and communications) relating to his business as such. Raymond James failed to comply with Section 17(a) and Rule 17a-4 by failing to preserve for three years, the first two years in an accessible place, electronic mail communications relating to its business as a member, broker or dealer, and by failing to promptly furnish certain electronic mail communications to the

Commission staff after the Commission staff requested those electronic mail communications

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 are true, and to afford the Respondents an opportunity to establish any defenses to such allegations;
- B. What, if any, remedial action is necessary and appropriate in the public interest, pursuant to Section 15(b) 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 necessary and appropriate in the public interest, pursuant to Section 203(f) of the Advisers Act, including, but not limited to, civil penalties pursuant to Section 203(i) of the Advisers Act;
- D. Whether, pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act, Respondent Raymond James should be ordered to cease and desist from committing or causing any violation and any future violation of Section 17(a) of the Securities Act; Section 10(b) of the Exchange Act and Rule 10b-5 thereunder; and Section 17(a) of the Exchange Act and Rule 17a-4 thereunder; and whether Respondent Raymond James should be required to pay disgorgement and interest pursuant to Section 8A(e) of the Securities Act and Section 21C(e) of the Exchange 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.

Jonathan G. Katz
Secretary