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MIDDLE DISTRICT OF FLORIDA
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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

CASE NO.

SECURITIES AND EXCHANGE COMMISSION,)
)
Plaintiff,)
v.)
)
ROBERT L. BUCKHANNON,)
TERRY D. RAWSTERN,)
DALE E. ST. JEAN,)
GREGORY D. TINDALL,)
RICHARD D. MITTASCH,)
CHRISTOPHER T. PAGANES,)
GLENN M. BARIKMO and)
IMPERIUM INVESTMENT ADVISORS, LLC,)
)
Defendants.)
_____)

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COMPLAINT

Plaintiff Securities and Exchange Commission alleges as follows:

I. INTRODUCTION

1. From April 2008 through April 2010, Robert Buckhannon, Terry Rawstern, Dale St. Jean, and Gregory Tindall, the managing members of two Bradenton, Florida-based hedge funds (“Managing Members”), engaged in a fraudulent scheme to misappropriate \$34 million they raised for the hedge funds. The Managing Members, with the assistance of Defendants Richard Mittasch, Christopher Paganes, Glenn Barikmo, and Imperium Investment Advisors LLC, commingled investor money from three separate offerings and then looted and bankrupted the hedge funds by steering millions of dollars to themselves.

2. To carry out their scheme, the Defendants misrepresented the performance and profitability of the hedge funds, Arcanum Equity Fund, LLC (“Arcanum”) and Vestium Equity

Fund, LLC (“Vestium”) (together, the “Funds”). Based on these bogus profits, the Defendants took more than \$1.3 million in profit-based fees and compensation to which they were not entitled.

3. The Defendants also misrepresented how they used investor funds. They blatantly disregarded the Funds’ investment parameters and steered more than \$15 million dollars into loans and other deals with companies in which they had undisclosed financial interests.

4. In addition, the Defendants misrepresented there were several safeguards over Vestium investors’ money, including an independent trustee to hold investor money in a custody account and ensure the money was properly invested. The Defendants also falsely promised investors an independent fund administrator would prepare monthly account statements and an independent certified accountant would value Vestium’s assets.

5. Finally, Buckhannon, St. Jean, Tindall and the other Defendants misappropriated and took unauthorized, undisclosed loans from investor funds.

6. In April 2010, as a result of the Defendants’ fraudulent scheme, the Funds voluntarily filed for Chapter 7 bankruptcy and are now under the control of Court-appointed trustees.

7. Through their conduct, the Defendants violated Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. § 78j(b), and Exchange Act Rule 10b-5, 17 C.F.R. § 240.10b-5. Buckhannon and Rawstern also violated Section 17(a) of the Securities Act of 1933 (“Securities Act”), 15 U.S.C. § 77q(a); the Managing Members additionally violated Sections 206(1), 206(2), and 206(4) of the Investment Advisers Act of 1940 (“Advisers Act”), 15 U.S.C. §§ 80b-6(1), 80b-6(2), and 80b-6(4), and Advisers Act Rule 206-4(8), 17 C.F.R. §

275.206-4(8); and Mittasch, Paganes, Barikmo and Imperium Investment Advisors LLC (“Imperium”) aided and abetted the Managing Members’ violations of Sections 206(1), 206(2) and 206(4) of the Advisers Act, and Advisers Act Rule 206(4)-8. Unless the Court enjoins the Defendants, they are reasonably likely to continue to violate these laws.

II. DEFENDANTS

8. **Buckhannon**, age 49, is a licensed chiropractor residing in Las Vegas, Nevada. He is a managing member of Arcanum and CEO, president and a managing member of Vestium Management Group, LLC, Vestium’s manager.

9. **Rawstern**, age 61, resides in Bradenton, Florida. He is a managing member of Arcanum and secretary, vice president and a managing member of Vestium Management Group.

10. **St. Jean**, age 51, is a Canadian citizen and resides in Alberta, Canada. He is a managing member of Arcanum and treasurer, vice president and a managing member of Vestium Management Group. St. Jean is also the principal of Transcap Corporation, a Canadian investment company that received millions of dollars from the Funds.

11. **Tindall**, age 49, is a Canadian citizen and resides in Alberta, Canada. He is a managing member of both Arcanum and Vestium Management Group. Tindall is also a principal of Transcap.

12. **Mittasch**, age 39, resides in Plainview, New York. He is the CEO of Vestium’s trustee, Imperium. He was a co-signatory, with Paganes, for Vestium’s bank account. He holds Series 6, 7, 63 and 24 securities licenses. From July 2007 through September 2008, Mittasch was affiliated with Maximum Financial Investment Group, Inc., a broker-dealer formerly registered with the Commission. Maximum served as trustee for Vestium and provided various

broker-dealer services for Arcanum until the Financial Industry Regulatory Authority (“FINRA”) expelled it for anti-money laundering and net capital rule violations.

13. **Paganes**, age 41, resides in Clarkston, Michigan. He is a managing member of Imperium. He was a co-signatory for Vestium’s bank account. Paganes holds Series 7 and 63 licenses (and formerly held Series 4, 8, 24, 28 and 53 licenses). Between January 1996 and September 2008, Paganes served as Maximum’s CEO. In August 2009, FINRA permanently barred Paganes from serving in any principal capacity at a securities firm and suspended him from associating with any securities firm for nine months based on his conduct while he was Maximum’s chief compliance officer.

14. **Barikmo**, age 48, resides in Garden City, Michigan. Barikmo is a managing member of Imperium and holds Series 4, 6, 7, 8, 53 and 63 licenses. Barikmo was affiliated with Maximum between January 2006 and September 2008.

15. **Imperium** is a New York limited liability company created in August 2008. Its principal place of business is in Mineola, New York. Mittasch, Paganes and Barikmo are Imperium’s three managing members. Imperium is registered as an investment adviser with the Commission and replaced Maximum as Vestium’s trustee in October 2008. Imperium was formed the same month FINRA expelled Maximum.

III. JURISDICTION AND VENUE

16. In connection with the conduct alleged in this Complaint, the Defendants, directly and indirectly, singly or in concert with others, have made use of the means or instrumentalities of interstate commerce, the means or instruments of transportation and communication in interstate commerce, and the mails.

17. The Court has jurisdiction over this action pursuant to Sections 20(d) and 22(a) of the Securities Act, 15 U.S.C. §§ 77t(d) and 77v(a); Sections 21(d) and 27 of the Exchange Act, 15 U.S.C. §§ 78u(d) and 78aa; and Sections 209(d) and 214 of the Advisers Act, 15 U.S.C. §§80b-9(d) and 80b-14.

18. The Court has personal jurisdiction over the Defendants, and venue is proper in the Middle District of Florida, because many of the Defendants' acts and transactions constituting violations of the Securities, Exchange, and Advisers Acts occurred in the Middle District of Florida as described throughout this complaint. In addition, the principal places of business of the Funds and Vestium Management Group are in the Middle District of Florida, and Rawstern resides in the Middle District of Florida.

19. From the Funds' Bradenton offices, Rawstern offered and sold investments in the Funds, processed investments and redemptions, and participated in the Funds' investment decisions. During the period from April 2008 to April 2010 (the "Relevant Period"), Rawstern and Buckhannon, who resides in Las Vegas, regularly communicated about the Funds' business by email and the telephone.

20. Along with Rawstern, Buckhannon offered and sold investments in the Funds. Buckhannon also was involved in the Funds' investment decisions and he and Rawstern authorized Imperium and its three managing members to disburse the Funds' money for investments and other purposes.

21. St. Jean participated in the Funds' investment decisions, signed investment contracts on behalf of the Funds, and traded for the Funds. Tindall was responsible for due diligence on at least three of the Funds' investments. He also visited the United States for the Funds' business. For example, in mid-2009, Tindall attended a meeting in Las Vegas with

Buckhannon, Rawstern, and Mittasch to discuss a mining company in which the Funds subsequently invested. Tindall also signed investment contracts on behalf of the Funds, and participated in other Funds' investment decisions, including profit distributions to the Managing Members.

22. During the Relevant Period, St. Jean and Tindall regularly communicated by email and telephone with Rawstern, Buckhannon, and Imperium and its three managing members, all located in the United States, about the Funds' business.

23. Also, during the Relevant Period, Imperium, Barikmo, Paganes and Mittasch regularly communicated about the Funds' business with Rawstern in Bradenton by email and telephone. In early 2008, Mittasch, Barikmo and Paganes attended a meeting in Bradenton about formation of Vestium.

IV. THE DEFENDANTS' FRAUDULENT INVESTMENT SCHEME

A. The Offer And Sale of The Funds' Securities

24. The Funds raised money from investors for investments the Managing Members selected. Between April and December 2008, the Managing Members raised about \$23 million selling Arcanum notes to 90 investors.

25. Arcanum sold its investments through a nationwide network of approximately 30 sales agents. Arcanum paid these sales agents commissions. Buckhannon and Rawstern made presentations to these sales people in California and elsewhere to tell them about the investments the Funds offered. In addition, during this period, Buckhannon and Rawstern solicited groups of investors on conference calls.

26. The Arcanum offering materials the Managing Members used to raise the \$23 million stated Arcanum would use investors' money only to buy medium-term notes with a

credit rating of "A+." The offering materials also stated the Managing Members were entitled to 50 percent of Arcanum's trading profits.

27. In May 2008, the Managing Members formed Vestium. Buckhannon and Rawstern began offering and selling membership interests in Vestium that June. Instead of selling notes, Vestium was structured like a more typical hedge fund, where investors bought membership interests. Vestium's operating agreement, which was included in its offering materials, designated Vestium Management Group as its managing member, with exclusive authority to make business decisions for the Fund. The offering documents also provided that the four Managing Members, as principals of Vestium Management Group, were entitled to a management fee of two percent of Vestium's assets under management, paid pro rata monthly, and 20 percent of Vestium's monthly profits.

28. Vestium's offering materials, dated June 9, 2008, also included a trust indenture agreement between Vestium and Maximum, which Paganes and Barikmo signed. The trust indenture, and the private placement memorandum that was part of the offering materials, both stated Maximum would be Vestium's trustee. Mittasch, Paganes and Barikmo were Maximum's principals. The trust indenture and the private placement memorandum provided that Vestium would deposit all offering proceeds in a corporate custody account with U.S. Bank, N.A. that Maximum controlled, and which the trust indenture governed.

29. Vestium's June 9 private placement memorandum and trust indenture also stated the Managing Members were required to invest all of the money raised in the offering in medium-term notes with a credit rating of "A" or better, certificates of deposit, or money market funds. The offering materials also represented that, before releasing funds from the Vestium

custody account, Maximum was obliged to ensure the Managing Members were investing the funds according to the restrictions in the offering documents.

30. Using the June 9 offering materials, the Managing Members raised an additional \$10.7 million by selling Vestium membership interests to 10 investors. Buckhannon and Rawstern solicited these 10 investors.

31. After FINRA expelled Maximum in August 2008, Mittasch, Paganes and Barikmo formed and became principals of Imperium, which then replaced Maximum as Vestium's trustee. In December 2008, Buckhannon, Rawstern and St. Jean solicited Arcanum investors to sign an "Exchange Agreement" to convert their Arcanum notes into Vestium membership interests. They convinced 47 Arcanum investors to sign agreements to exchange approximately \$9 million of Arcanum notes for Vestium membership interests.

32. Vestium's offering materials for the conversion, dated December 12, 2008, included a trust indenture agreement between Vestium and Imperium. Mittasch ratified the trust indenture, which provided that Vestium would deposit all offering proceeds in a corporate custody account with U.S. Bank, N.A. that Imperium controlled, and which the trust indenture governed.

33. Vestium's December 12 private placement memorandum and trust indenture limited investment of the approximately \$9 million of exchanged Arcanum notes to highly-rated medium-term notes, certain bank debt instruments such as certificates of deposit, or "physical commodities investments" with a "predetermined exit buyer" which "in most cases [would pay] a settlement . . . prior to the [fund] having to settle with its sellers." The December 12 offering materials also represented that Imperium, as trustee, would not release any funds from the custody account for purposes the trust indenture did not permit.

B. Misrepresentations and Omissions to Investors

1. The Defendants Misrepresented How They Would Use Investor Funds

34. Relevant Period, the Defendants blatantly disregarded the investment parameters in the Funds' offering materials. Despite the clear limitations in both Funds' offering materials, the Defendants invested millions of dollars of the Funds' money in investments that fell outside the scope of even the most permissive of the Funds' offering documents. The Defendants also commingled and invested Arcanum and Vestium funds without regard to which of the two Funds the money came from. They steered millions of dollars to companies in which they had a financial interest, almost all of which they have not paid back to the now-bankrupt Funds. The following are three examples:

a. The Funds Transfer \$2.5 Million to Buckhannon and Mittasch's Company

35. In Las Vegas on July 8 and 9, 2009, Mittasch, acting on behalf of his company Global Commodities Partners LLC, presented a potential investment opportunity to the Funds. Tindall and Buckhannon represented the Funds at the meeting. The investment opportunity concerned the Tonopah Mine, a property owned by Shea Mining and Milling LLC.

36. On August 17, 2009, Mittasch signed, on behalf of Imperium, an opinion letter to Vestium stating the Tonopah Mine deal was an appropriate investment for Vestium and certifying that "there are no conflict of interest issues in regard to rendering this opinion."

37. Two days later, Buckhannon signed an "Asset Purchase and Refining Agreement" obliging Arcanum to pay \$6 million to Shea Mining in three installments. On August 19 and 24, 2009, Buckhannon withdrew a total of \$2.5 million from an Arcanum bank account to pay the first installment to Shea Mining.

38. However, Buckhannon was a founder of Shea Mining and planned to enter into an employment contract with Shea and receive a share of the business's revenues. Mittasch was also part of Shea Mining's management team and drafted Shea Mining's business plan. Mittasch planned to enter into an employment contract to manage Shea Mining's operations through Global Commodities Partners.

39. The Shea Mining deal was a conflict of interest for Mittasch, Buckhannon and Imperium. Buckhannon and Mittasch had fiduciary obligations to Vestium and Arcanum and to the Funds' investors. The Funds' private placement memoranda and trust indentures did not authorize the Shea Mining deal because it was not an investment in medium-term notes or a physical commodities transaction with a pre-determined exit buyer. Further, Buckhannon, Mittasch, and Imperium did not disclose to investors Buckhannon and Mittasch's direct financial interest in the multi-million transaction.

b. The Funds Transfer \$12.9 Million To Transcap

40. St. Jean and Tindall were the two principals of Transcap Corporation. Between October 2008 and July 2009, the Funds transferred more than \$12.9 million dollars to Transcap.

41. The Managing Members, including St. Jean and Tindall, approved these transfers to Transcap from the Funds' bank accounts.

42. For example, on October 20, 2008, St. Jean emailed Buckhannon and Mittasch to request a wire transfer of \$5.2 million to Transcap's bank account in Canada. On October 22, 2008, Buckhannon emailed a request for a \$5.2 million wire from one of Arcanum's bank accounts to Transcap. He copied Tindall and Mittasch on the email. Several days later, after Arcanum's bank transferred the funds, St. Jean and Mittasch, on behalf of Transcap and

Vestium, respectively, signed a promissory note from Transcap to Vestium for the \$5.2 million, plus accrued interest.

43. Paganes also participated in at least one of the transfers to Transcap. On March 31, 2009, he told U.S. Bank to make a \$200,000 wire transfer from the Vestium custody account at U.S. Bank to Transcap's bank account in Canada.

44. The Managing Members did not disclose to investors the \$12.9 million in transfers to Transcap that violated the Funds' investment parameters. Further, Buckhannon, Tindall, St. Jean, Mittasch and Paganes did not disclose the conflict of interest the transfers posed, which was a breach of their fiduciary duty to the Funds and investors.

c. The Funds Transfer \$500,000 To Paganes' Kokomo Capital Fund LLC

45. In February 2009, the Managing Members and Imperium approved a \$500,000 payment to a joint venture they referred to as "King Snake Ore" that involved Kokomo Capital Fund LLC. Paganes was a managing member of Kokomo Capital.

46. When Tindall, Buckhannon and Mittasch approved the King Snake Ore deal involving Kokomo, they knew Paganes was affiliated with Kokomo.

47. Mittasch signed a written opinion on behalf of Imperium dated February 18, 2009, stating the deal involving Kokomo was "an appropriate investment for the Vestium Equity Fund, LLC" and was consistent with Vestium's offering documents.

48. However, the undisclosed Kokomo funding was fraudulent because Mittasch, Paganes, Imperium, Buckhannon and Tindall knew Paganes was both a managing member of Vestium's trustee and a principal of Kokomo, and therefore had a conflict of interest with the Funds and the Funds' investors. Additionally, the payment to Kokomo violated the Funds' investment parameters.

2. The Defendants Misrepresented There Were Safeguards Over Investors' Money

a. The Purported Independent Trustee

49. Vestium's offering materials promised investors an independent trustee would take custody of their funds and safeguard them from improper uses. Vestium's private placement memorandum dated June 9, 2008 stated Maximum would be the Fund's trustee. Vestium's December 12, 2008 private placement memorandum stated that Imperium would replace Maximum as the Fund's trustee. Both offering memoranda stated a trust indenture agreement between Vestium and the trustee, either Maximum or Imperium, governed the circumstances under which the trustee could release investor funds.

50. The trust indenture the Managing Members provided to investors with Vestium's June 9, 2008 offering materials permitted Maximum to release funds it held in custody only for investments in highly-rated medium-term notes, money market funds, or certificates of deposit.

51. The trust indenture the Managing Members provided to investors with Vestium's December 12, 2008 offering materials permitted Imperium to release funds it held in custody only for investments in highly-rated medium-term notes, physical commodities transactions with a pre-determined exit buyer, deposits with a bank whose obligations were rated "A" or better, money market funds, or certificates of deposit.

52. Imperium and its principals reviewed Vestium's offering materials, including the trust indentures, but did not safeguard Vestium's investor funds from impermissible uses. Instead, Mittasch and Paganes, who had signatory authority over Vestium's custody account, authorized disbursement of millions of dollars in investor funds from Vestium's custody account for transactions the trust indentures and private placement memoranda did not permit.

53. For example, in November 2008, Mittasch authorized the release of \$300,000 from Vestium's custody account to invest in an uncollateralized joint-venture investment with his own company, Global Commodities. Tindall and Mittasch signed a Revenue Stream Purchase Agreement dated December 11, 2008 on behalf of Arcanum and Global Commodities, respectively. On February 12, 2009, Buckhannon transferred another \$200,000 to Global Commodities.

54. Mittasch did not disclose his conflict of interest as both a principal of Vestium's trustee and a principal of Global Commodities. Moreover, the Funds' trust indentures and private placement memoranda did not permit the transaction.

55. In addition to approving this Global Commodities deal, Imperium and its principals approved similarly conflicted and improper Fund payments to Shea Mining, Kokomo, and Transcap.

b. Vestium's Purported Independent Certified Accountant

56. Vestium's June 9 and December 12 private placement memoranda stated Vestium would have an independent certified account involved with "[a]ll matters concerning valuation of assets."

57. Despite these representations in Vestium's offering materials, the Managing Members did not retain an independent certified accountant to value Vestium's assets. Instead, Vestium Management Group, of which the Managing Members were principals, charged the Arcanum Fund \$240,000 and charged the Vestium Fund more than \$250,000 for accounting services it purportedly provided to the Funds.

c. Vestium's Purported Independent Administrator

58. In addition, Vestium's December 12, 2008 private placement memorandum stated the fund's independent administrator, U.S. Bank Fund Services LLC, would prepare monthly account statements. However, U.S. Bank could not provide any fund administration services to Vestium. Despite numerous requests U.S. Bank made to Buchannon, Rawstern, and Imperium's principals in mid- to late-2008, they never gave the bank access to Vestium's custody account, its security pricing process, or its trade ticket and other securities transaction-related information the bank needed to prepare the monthly statements.

d. Investors' Right to Redeem Their Money From the Funds

59. Vestium's offering documents also assured investors they could redeem their investments after an initial "lock-up" period. The June 9 private placement memorandum provided investors could redeem their interests on 30 days notice after they had been invested in the fund for 90 days. The December 12 private placement memorandum provided investors could redeem their interests on 30 days notice after they had been invested in the fund for 180 days.

60. However, because the Defendants used millions of dollars to make improper investments, and pay themselves bogus monthly profit payments, Vestium did not have sufficient cash to pay redemptions when investors requested them. Nor did Arcanum have enough cash to pay investors the principal and interest due to them as their notes came due. By mid-2009, the Funds owed investors more than \$3 million. But the Defendants ignored these obligations to investors and continued using investor capital for improper investments and their own compensation.

61. The Defendants went to great lengths to avoid returning money to Fund investors. To help placate investors who wanted redemptions, the Defendants used detailed, color-coded contact sheets to keep track of communications with investors seeking redemptions and other payments from the Funds. These schedules included the date and amount of the requested redemption, the investor's reason for the redemption request, and an assessment of how likely the investor was to take legal action or report the Funds' failure to redeem the money to regulators.

62. In a February 24, 2009 e-mail, Buckhannon told the three other Managing Members, Rawstern, St. Jean and Tindall, that pending investor redemption requests "can be strung out for a bit" while they pursued other investment opportunities.

63. On August 18, 2009, Buckhannon sent a letter to the Funds' investors explaining the Funds lacked the necessary capital to pay investor redemptions. However, the very next day, Buckhannon transferred \$2.5 million of Arcanum's funds to Shea Mining.

64. Further, between July 30 and August 31, 2009, although the Managing Members claimed not to have enough cash to meet redemptions, they took \$205,000 in partner draws from Arcanum.

65. Imperium and its principals also helped the Managing Members deceive investors with respect to the Funds' ability to pay redemptions and meet other obligations to investors. In addition to attempting to dissuade investors from redeeming their investments, Mittasch, Paganes and Barikmo signed a September 2009 opinion letter from Imperium to Vestium falsely certifying the value of Funds' assets "exceeds all outstanding liabilities of the Funds," and certifying the Funds' investments were consistent with the investment authority in the Funds' offering materials.

66. In addition, on November 17, 2009, Barikmo, on behalf of Imperium, sent an email to Vestium investors stating “Imperium works solely on behalf of the Fund,” and that Imperium had determined the assets of the Fund exceeded the obligations of the Fund. Barikmo’s email also stated Imperium was working with the Managing Members and the “counter parties” to the Funds’ investments to generate enough cash to meet investors’ redemption requests.

67. However, these statements by Imperium and its principals were false because of the conflicts of interest between Imperium and Vestium arising from Vestium’s investments in companies in which Mittasch and Paganes had a financial stake. They were also false because in November 2009, Vestium had no independent accountant or any other legitimate process to value its assets, so there was no reasonable basis for Barikmo’s statement that Vestium’s assets exceeded its liabilities. Finally, based on the millions of dollars in overdue payments from the “counter parties” to Vestium’s conflicted, improper investments, there were no realistic prospects for payments to Vestium in November 2009.

C. Other Fraudulent Conduct

1. The Managing Members Took Payments Based On The Funds’ False Profits

68. The Managing Members improperly took fees based on the Funds’ fictitious profits. Arcanum sent investors monthly account statements reporting the fund was profitable in each month from July through the end of December 2008. Similarly, Vestium sent investors monthly account statements reporting the fund was profitable in each month from January through the end of July 2009. In May 2009, both the Funds sent newsletters to investors that reported the Funds had been consistently profitable since inception.

69. However, during 2008 and 2009 the Funds were not profitable. On the contrary, they lost approximately \$8.1 million in that period. Buckhannon knew the monthly account statements and newsletters were false because he simply made up a monthly percentage return figure and reported it to the Vestium Management Group consultant who prepared the Funds' monthly statements.

70. In addition, in May 2009, Rawstern sent an email to the other three Managing Members which stated the Funds were overdue to pay more than \$3 million in redemption requests and monthly profit payments. Rawstern's email also stated that counter-parties to four separate investments the Managing Members were relying on to return more than \$5 million in principal and profits were not making payments provided for in the investment agreements, and had no prospects of paying.

71. Arcanum's offering materials stated the Managing Members were entitled to 50 percent of Arcanum's trading profits. However, Arcanum was not profitable. Nevertheless, the four Managing Members took \$956,830 as profit-based partner draws in 2008 and 2009.

72. St. Jean, who had a fiduciary duty to investors, took partner draws from Arcanum totaling \$141,500 in 2008 and 2009 without taking any steps to determine whether the Fund was actually profitable.

73. Tindall, who had a fiduciary duty to investors, took partner draws from Arcanum totaling \$160,000 in 2008 and 2009 without taking any steps to determine whether the Fund was actually profitable.

74. Vestium's offering documents provided the Managing Members and the trustee (either Maximum or Imperium) each were entitled to annual management fees of two percent of Vestium's net asset value, paid pro rata monthly, and 20 percent of its monthly profits.

However, Vestium was not profitable and the Managing Members, who knew they had not retained an independent accountant to value the Fund's assets, significantly overvalued the Fund's illiquid, improper investments. The Managing Members paid fees to Vestium Management Group based on these false profits and inflated asset values that were not subject to any independent audit, accounting or other review. In 2008 and 2009, the Managing Members paid these bogus fees to Vestium Management Group using investor money. As principals of Vestium Management Group, Buckhannon and Rawstern paid themselves more than \$570,000 in salary, most of it from these bogus fees.

75. Arcanum's offering document and Vestium's June 9 and December 12 private placement memoranda provided that investors could choose to withdraw any profits each month. During 2008 and early 2009, to help conceal their fraud, raise additional funds, and lull existing investors into leaving their money in the Funds, the Managing Members used investor funds to pay approximately \$6 million in bogus monthly "profit" payments to other Fund investors who opted to receive monthly profit payouts.

2. The Defendants Misappropriated And Took Improper, Undisclosed Loans From Investor Money

76. Buckhannon used the Funds' accounts to pay his personal expenses, misappropriating investor funds for himself, his family members and a friend. For example, in August 2008, he wired \$60,000 out of an Arcanum account to a jewelry store for the purchase of an engagement ring for his fiancé. In July 2009, Buckhannon wired an additional \$80,000 to a title company for the down payment on a Las Vegas house. In total, during the Relevant Period, Buckhannon funneled at least \$390,000 of investor money out of Fund accounts to himself, his father, two brothers, his fiancé's cousin and a friend.

77. Buckhannon knew he was not entitled to these funds because he asked the Funds' controller to classify these personal expenditures as business expenses of the Funds without any reasonable basis for such a classification.

78. St. Jean and Tindall took loans of approximately \$1.5 million through Transcap. These loans were part of the \$12.9 million the Managing Members improperly transferred to Transcap.

79. Imperium's principals also misappropriated investor money from the Funds. In October, November and December 2008, without authorization, they improperly skimmed more than \$80,000 from bond interest payments paid to Arcanum through an account at Maximum.

80. In July 2009, Imperium's principals misappropriated a \$25,000 wire transfer from Vestium without the Managing Members' knowledge or consent.

81. In October 2009, Paganes and Barikmo expected a \$239,000 wire transfer from Transcap as a partial loan repayment, and secretly opened a new account in Vestium's name. When Transcap sent the money to the Vestium account, Paganes and Barikmo misappropriated the entire amount.

82. In addition, Imperium borrowed more than \$240,000 in investor funds to pay legal fees for entities other than the Funds. More specifically, in February 2009, Paganes asked Buckhannon for a \$30,000 loan from the Funds to pay legal fees, including fees to defend Imperium's principals in a regulatory investigation of an unrelated Ponzi scheme. In August 2009, Paganes sent Buckhannon, Rawstern, Mittasch and Barikmo an email thanking Arcanum for loaning Imperium's principals money to pay their legal bills. Paganes attached to his email a draft promissory note from Imperium to Arcanum in the amount of \$51,500. In addition,

between April and October 2009, Buckhannon authorized approximately \$188,000 of investor funds to pay legal fees for another of Mittasch's companies, Global Commodities Group, LLC.

83. In May 2009, Rawstern transferred \$7,500 as a personal loan to Barikmo and informed Paganes and Mittasch about the transfer and its purpose.

84. Buckhannon, Rawstern and Imperium's principals did not disclose these loans to investors. Also, the Funds' offering materials did not allow the Managing Members to make loans using investor funds. In addition, the Managing Members loans to Imperium's principals were a conflict of interest between the principals, Buckhannon and Rawstern, and the investors and Funds to whom they owed a fiduciary duty.

V. CLAIMS FOR RELIEF

COUNT I

Fraud In Violation of Section 10(b) and Rule 10b-5 of the Exchange Act

(Against All Defendants)

85. The Commission repeats and realleges paragraphs 1 through 84 of its Complaint.

86. From at least April 2008 through April 2010, the Defendants, directly or indirectly, by use of the means and instrumentality of interstate commerce, and of the mails in connection with the purchase or sale of securities, knowingly, willfully or recklessly: (a) employed devices, schemes or artifices to defraud; (b) made untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or (c) engaged in acts, practices and courses of business which have operated, are now operating and will operate as a fraud upon the purchasers of such securities.

87. By reason of the foregoing, the Defendants directly or indirectly violated, and, unless enjoined, are reasonably likely to continue to violate, Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Exchange Act Rule 10b-5, 17 C.F.R. § 240.10b-5.

COUNT II

Fraud In Violation of Section 17(a)(1) of the Securities Act

(Against Buckhannon and Rawstern)

88. The Commission repeats and realleges paragraphs 1 through 84 of its Complaint.

89. From at least April 2008 through April 2010, Buckhannon and Rawstern, directly or indirectly, by use of the means or instruments of transportation or communication in interstate commerce and by use of the mails, in the offer or sale of securities, as described in this Complaint, knowingly, willfully or recklessly employed devices, schemes or artifices to defraud.

90. By reason of the foregoing, Buckhannon and Rawstern directly or indirectly violated, and, unless enjoined, are reasonably likely to continue to violate, Section 17(a)(1) of the Securities Act, 15 U.S.C. § 77q(a).

COUNT III

Fraud In Violation of Section 17(a)(2) and (3) of the Securities Act

(Against Buckhannon and Rawstern)

91. The Commission repeats and realleges paragraphs 1 through 84 of its Complaint.

92. From at least April 2008 through April 2010, Buckhannon and Rawstern, directly or indirectly, in the offer or sale of securities, by the use of means or instruments of transportation or communication in interstate commerce, or of the mails: (a) obtained money or property by means of untrue statements of material fact or by omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which

they were made, not misleading; or (b) engaged in transactions, practices or courses of business which operated or would operate as a fraud or deceit upon the purchasers of such securities.

93. By reason of the foregoing, Buckhannon and Rawstern directly or indirectly violated, and, unless enjoined, are reasonably likely to continue to violate, Sections 17(a)(2) and (3) of the Securities Act, 15 U.S.C. §§ 77q(a)(2) and (3).

COUNT IV

Fraud In Violation of Sections 206(1) and 206(2) of the Advisers Act

(Against Buckhannon, Rawstern, St. Jean and Tindall As Primary Violators and Against Imperium, Mittasch, Paganes and Barikmo As Aiders and Abettors)

94. The Commission repeats and realleges paragraphs 1 through 84 of its Complaint.

95. From at least April 2008 through April 2010, the Defendants, by engaging in the acts and conduct alleged above, while Buckhannon, Rawstern, St. Jean and Tindall were acting as investment advisers, by use of the mails, and the means and instrumentalities of interstate commerce, directly or indirectly, knowingly, willfully or recklessly: (a) employed devices, schemes, or artifices to defraud its clients or prospective clients; (b) engaged in transactions, practices, and courses of business which operated or would have operated as a fraud or deceit upon clients or prospective clients.

96. Mittasch, Paganes, Barikmo and Imperium, and each of them, by engaging in the conduct described above, knowingly provided substantial assistance to Buckhannon, Rawstern, St. Jean and Tindall's violations of Sections 206(1) and 206(2) of the Advisers Act.

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

COUNT V

Fraud In Violation of Section 206(4) and Rule 206(4)-8 of the Advisers Act

(Against Buckhannon, Rawstern, St. Jean and Tindall As Primary Violators and Against Imperium, Mittasch, Paganes and Barikmo As Aiders and Abettors)

98. The Commission repeats and realleges paragraphs 1 through 84 of its Complaint.

99. From at least April 2008 through April 2010, the Defendants, by engaging in the acts and conduct alleged above, while Buckhannon, Rawstern, St. Jean and Tindall were acting as investment advisers, by use of the mails, and the means and instrumentalities of interstate commerce, directly or indirectly: (a) engaged in acts, practices or courses of business which are fraudulent, deceptive, or manipulative; (b) made untrue statements of a material fact or omitted to state a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading, to any investor or prospective investor in a pooled investment vehicle.

100. Mittasch, Paganes, Barikmo and Imperium, and each of them, by engaging in the conduct described above, knowingly provided substantial assistance to Buckhannon, Rawstern, St. Jean and Tindall's violations of Sections 206(4) and Rule 206(4)-8 of the Advisers Act.

101. By reason of the foregoing, the Defendants directly or indirectly, violated and unless enjoined are reasonably likely to continue to violate, Section 206(4) of the Advisers Act, 15 U.S.C. §§ 80b-6(4), and Advisers Act Rule 206(4)-8, 17 C.F.R. § 275.206(4)-8.

RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests that the Court:

I.

Declaratory Relief

Declare, determine, and find that the Defendants have committed the violations of the federal securities laws alleged in this Complaint.

II.

Permanent Injunctive Relief

Issue permanent injunctions pursuant to Rule 65(d) of the Federal Rules of Civil Procedure enjoining: the Defendants, their agents, servants, employees, attorneys, representatives, and all persons in active concert or participation with them, and each of them, from directly or indirectly violating the statutes and rules they are accused of violating.

III.

Disgorgement

Issue an Order directing the Defendants to disgorge all ill-gotten gains, including prejudgment interest, resulting from the acts or courses of conduct alleged in this Complaint.

IV.

Penalties

Issue an Order directing the Defendants to pay civil money penalties pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d); Section 21(d) of the Exchange Act, 15 U.S.C. § 78(d)(3), and Section 209 of the Advisers Act, 15 U.S.C. §80b-9.

V.

Further Relief

Grant such other and further relief as may be necessary and appropriate.

VI.

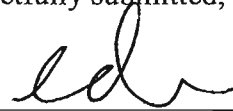
Retention of Jurisdiction

Further, the Commission respectfully requests that the Court retain jurisdiction over this action in order to implement and carry out the terms of all orders and decrees that it may enter, or to entertain any suitable application or motion by the Commission for additional relief within the jurisdiction of this Court.

Respectfully submitted,

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