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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,	:	
	:	
Plaintiff,	:	
	:	**11 Civ. _____ ( )**
- against -	:	
	:	**COMPLAINT**
LLOYD V. BARRIGER,	:	
	:	
Defendant.	:	

Plaintiff Securities and Exchange Commission ("Commission"), for its complaint against Defendant Lloyd V. Barriger ("Barriger"), alleges as follows:

SUMMARY OF ALLEGATIONS

1. This action arises out of Barriger's fraudulent offer and sale of securities in two upstate New York real estate funds he managed – the Gaffken & Barriger Fund, LLC (the "G&B Fund," or the "Fund") and Campus Capital Corp. ("Campus") – and his fraud in the management of the two funds.

2. From at least July 2006 until March 5, 2008, when he froze the G&B Fund and disclosed to investors its true financial condition (the "relevant period"), Barriger, an

unregistered investment adviser, defrauded investors and prospective investors in the Fund by misrepresenting that the Fund was a relatively safe and liquid investment that paid a minimum return of 8% per year, referred to as the "Preferred Return." Barriger made these misrepresentations knowing, or recklessly disregarding, that the Fund's actual performance did not justify these performance claims, and without disclosing information about the Fund's true performance and financial condition – which rapidly deteriorated in 2007 and early 2008 as Barriger continued to raise money from new and existing investors.

3. Barriger also defrauded the G&B Fund itself by allocating the Preferred Return to investors when the Fund did not have sufficient income to justify the allocation, even after he knew or recklessly disregarded that the Fund had incurred and was continuing to incur losses, and even though doing so was inconsistent with Generally Accepted Accounting Principles ("GAAP") and with the provisions of the Fund's offering and organizing documents.

4. Moreover, Barriger misused Fund assets by causing the Fund (a) to pay cash distributions of the Preferred Returns to requesting Fund investors, and (b) to redeem investors at values reflecting the 8% per year Preferred Return, when the Fund had not generated sufficient income to justify the allocations and commensurately inflated values and/or had insufficient assets to support the payments.

5. By engaging in the foregoing conduct, Barriger breached his fiduciary duty to the Fund and defrauded the Fund.

6. Barriger also defrauded Campus and prospective investors in Campus by causing Campus to inject a total of nearly $2.5 million into the G&B Fund between August 2007 and April 2008 at a time when the G&B Fund was in distress, and by raising money for Campus without disclosing his use of Campus's assets to prop up the ailing G&B Fund. Campus's

offering materials expressly provided that Campus would engage in transactions with affiliates only "in good faith [and] in the best interest of the [fund]," at a price that is "fair," and on terms no less favorable to Campus than those that could have been obtained on an "arm's-length basis" from a non-affiliate. Barriger also caused Campus to engage in additional transactions that personally benefitted him and were contrary to Campus's restrictions on related- party transactions.

7. From its inception in January 1998 until March 2008, the G&B Fund raised at least $20 million through the sale of interests in the Fund to at least 120 investors. From its inception in October 2001 until July 2008, Campus Capital raised at least $12 million through the sale of Campus promissory notes to at least ninety investors. No registration statement was filed or in effect with respect to these sales of interests in the Fund or the sale by Campus of promissory notes, and neither offering otherwise qualified for an exemption from the registration requirements of Section 5 of the Securities Act of 1933 ("Securities Act").

VIOLATIONS

8. By virtue of the conduct alleged herein,

a. Barriger has engaged and is engaging in acts, practices and courses of business that constitute violations of Sections 5(a), 5(c) and 17(a) of the Securities Act, 15 U.S.C. §§ 77e(a), 77e(c), and 77q(a);

b. Barriger has engaged and is engaging in acts, practices and courses of business that constitute violations of Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5; and

c. Barriger has engaged and is engaging in acts, practices and courses of business that constitute violations of Sections 206(1) and 206(2) of the Investment Advisers Act of 1940 ("Advisers Act"), 15 U.S.C. §§ 80b-6(1) and 80b-6 (2).

9. Unless restrained and enjoined by the Court, Barriger will continue to engage in the transactions, acts, practices and courses of business alleged herein, and in transactions, acts, practices, and courses of business of a similar type and object.

10. By this action, the Commission seeks: (a) permanent injunctive relief; (b) disgorgement and prejudgment interest; (c) civil penalties; and (d) such further relief as the Court may deem appropriate.

JURISDICTION AND VENUE

11. The Commission brings this action pursuant to authority conferred by Sections 20(b) and 20(d) of the Securities Act, 15 U.S.C. §§ 77t(b) and 77t(d), Section 21(d) of the Exchange Act, 15 U.S.C. § 78u(d), and Sections 209(d) and 209(e) of the Advisers Act, 15 U.S.C. §§ 80b-9d and 80b-9e.

12. This 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(e) and 27 of the Exchange Act, 15 U.S.C. §§ 78u(e) and 78aa, and Sections 209(e) and 214 of the Advisers Act, 15 U.S.C. §§ 80b-9 and 80b-14.

13. Venue lies in this District pursuant to Section 22(a) of the Securities Act, 15 U.S.C. § 77v(a), Section 27 of the Exchange Act, 15 U.S.C. § 78aa, and Section 214 of the Advisers Act, 15 U.S.C. § 80b-14. Certain of the transactions, acts, practices and courses of business constituting the violations alleged herein occurred within the Southern District of New York.

THE DEFENDANT

14. **Lloyd V. Barriger**, 55, a resident of Damascus, Pennsylvania, is an unregistered investment adviser who conducted business in Monticello, New York. Barriger is, and was at all

relevant times, the president of the G&B Fund; the principal shareholder, director and officer of G&B Partners, Inc., the Fund's managing member and sole common shareholder; the sole owner of Bridgeville Management, LLC, the "investment manager" to the Fund, and an indirect owner of the entity that underwrote and serviced the Fund's loans. From Campus's inception in 2001 through July 2008, Barriger owned a 30% equity interest in Campus, and jointly controlled and co-managed Campus. During the relevant period, Barriger was also the chairman and CEO, and a registered representative and principal of, Barriger & Barriger, Inc., which was at all relevant times a registered broker-dealer.

OTHER RELEVANT ENTITIES

15. **The Gaffken & Barriger Fund, LLC** is an unregistered investment fund, incorporated in Delaware with its principal place of business at 198 Bridgeville Road, Monticello, New York. It has never been registered as an investment company and its securities have never been subject to a registered offering and are not traded on any exchange. Since approximately 2005, the Fund has been managed by Bridgeville Management, LLC, an unregistered entity wholly owned and controlled by Lloyd Barriger.

16. **Campus Capital Corp.** is an unregistered investment fund, largely invested in real estate-related assets, incorporated in New York with its principal place of business in Liberty, New York. From its formation until July 2008, Campus was jointly controlled and co-managed by Campus's co-manager and Lloyd Barriger, who respectively owned 50% and 30% of its common stock. In July 2008, Lloyd Barriger sold his interest in Campus back to the fund.

17. **Barriger & Barriger, Inc.** was, during the relevant period, a broker-dealer registered with the Commission, with its principal place of business in Monticello, New York in the same offices as the G&B Fund. Barriger & Barriger is co-owned by Lloyd Barriger and

another individual. On February 1, 2011, Barriger & Barriger ceased to be registered as a broker-dealer.

18. **G&B Partners, Inc.** is a New York limited liability company wholly owned and controlled by Barriger with its principal place of business at the Fund's offices in Monticello, New York. G&B Partners is the managing member of the G&B Fund, and it in turn appointed Gaffken & Barriger Co., Inc., and then Bridgeville Management, LLC, both wholly owned and controlled by Lloyd Barriger, to manage the G&B Fund's investments.

19. **Bridgeville Management, LLC** was the investment manager of the G&B Fund from 2005 to 2008, replacing Gaffken & Barriger Co., Inc., which managed the G&B Fund from 1998 until 2005. Both entities had their principal place of business at the Fund's offices in Monticello, New York and were wholly owned and controlled by Lloyd Barriger.

FACTS

20. Throughout the relevant period, the G&B Fund was managed by Barriger, who was the president of the Fund; the principal shareholder and director of G&B Partners, the Fund's managing member and sole common shareholder; and the sole owner of Bridgeville Management, the Fund's "Investment Manager," which he controlled. Barriger was assisted in the management of the Fund by the Fund's vice president, now deceased (the "VP"). For his management of the Fund, Barriger received, through Bridgeville, a monthly fee based on a percentage of the net asset value of the Fund's assets under management – 0.0833% and, as of January 1, 2007, 0.1250%.

21. Throughout the relevant period, Barriger was also the public face of the Fund – he raised all the money for the Fund and dealt with the Fund's investors.

The Fund's Investment Strategy and Capital Structure

22. Although the Fund's original investment strategy focused on microcap securities, soon after it commenced operations in 1998 it began making collateralized loans to real estate developers. In 2005, the Fund formally adopted real estate lending as its primary investment strategy. As reflected in amendments to the Fund's limited liability company agreement effective August 1, 2005, the Fund's stated purpose was "investing, holding, and trading in real estate, real estate loans, real estate securities, other securities and other financial instruments and rights thereto[.]"

23. The Fund amended its offering and operating documents again in 2007, but its investment strategy remained focused on real estate lending. According to its January 1, 2007 private placement memorandum (the "PPM"), [1] the Fund's stated purpose was "to hold primarily real estate collateralized commercial mortgage loans . . . and other mortgage and real estate related assets . . . and a limited amount of non-real estate assets." The Fund was also permitted to invest in "readily marketable securities" and "mortgage backed securities," and during the relevant period it also held equity securities, including common stock.

24. According to the PPM, the Fund's primary strategy was "hard money lending" – making high interest short-term bridge loans to real estate developers that could not obtain traditional bank financing. In accordance with that strategy, the Fund primarily made short-term

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[1] Unless otherwise indicated, references in this complaint to the "PPM" are to the private placement memorandum dated January 1, 2007. The Fund's limited liability company agreement was again amended and was restated as of January 1, 2007 and, unless otherwise indicated, references to the "amended operating agreement" are to the Fund's limited liability company agreement as amended effective August 1, 2005 and the Amended and Restated Limited Liability Company Agreement dated as of January 1, 2007.

loans (typically twelve months or less) to real estate developers, collateralized by the underlying real estate, with a loan-to-value ratio purportedly of no greater than 70%.

25. Most of the projects financed by the Fund were in the development stage and thus were not generating income. As a result, the borrowers generally were unable make the periodic payments on their loans. Thus, when the loans were made, a portion of the loan proceeds was used to establish a pre-funded "interest reserve" account from which interest payments were drawn during an initial period of the loan (ranging from three to twelve months). Repayment of the loan principal at maturity required a successful exit strategy for the borrower, specifically, the sale of the property or the arrangement of replacement financing. If the borrower was unable to sell the property or obtain new financing, the Fund would have to foreclose on the loan and seek to sell the collateral, or refinance the loan itself.

26. The Fund was also leveraged. During the relevant period, it had a line of credit ($15 million until February 2007 and $20 million thereafter) from a finance company (the "secured lender"), secured by a first priority security interest in all of the Fund's assets.

27. The Fund's agreement with its secured lender contained numerous restrictions, including, most importantly, (a) a provision defining loans more than forty days past due as "non-performing" and thus ineligible for the "borrowing base," the pool of loans that served as collateral for the credit line; and (b) providing that if 10% or more of the Fund's loan portfolio became "non-performing," the Fund would be in default, entitling is secured lender, in its discretion, to seize the Fund's assets to pay down the credit line.

28. In August 2005, the Fund adopted a new capital structure pursuant to which the Fund's losses to date and going forward were to be allocated to Barriger, as the sole owner of G&B Partners, the Fund's managing member, and the Fund's profits were to be allocated first to

Fund investors. This new structure was reflected in an amendment to the Fund's limited liability operating agreement effective as of August 1, 2005 and disclosed in the Fund's private placement memorandum as of January 1, 2007. Pursuant to this new structure, during the relevant period, Fund investors were referred to as "Preferred Members" and were deemed holders of "Preferred Interests" or "Preferred Units." G&B Partners, which was wholly owned by Barriger, was the sole holder of "Common Units" or "Common Interests." Under the terms of the Fund's operating agreement (as amended in 2005 and as further amended and restated in 2007) and PPM, the Fund's net profits were to be allocated first to the "Preferred Members," *i.e.* outside investors, in the form of an 8% per year "Preferred Return," and thereafter to the common equity, *i.e.* Barriger. The amended operating agreement and PPM also provided that Barriger could, in his discretion, declare a special dividend or distribution to investors over and above the 8% Preferred Return.

29. According to the PPM and amended operating agreement, to the extent the Fund earned a Net Profit, it would make a monthly "distribution," or allocation, of the Preferred Return to investors, which they could reinvest or "receive on a current basis," at the investor's option. Thus, according to the Fund's offering and operating documents, the "Preferred Return" was supposed to be based upon, and subject to, the Fund's performance.

30. The Fund's offering and operating documents restricted redemptions to situations involving the investor's death or financial hardship, and even in such cases redemption was at the discretion of the Fund. Despite these restrictions, until March 2008 when he froze redemptions and distributions, Barriger generally granted redemption requests. When soliciting investments in the Fund, Barriger often touted the Fund's practice of liberally granting

redemption requests and the liberal redemption policy was also set forth in the September 2007 brochure.

31. Beginning in October 2005, investors received statements every quarter showing that they had been allocated the Preferred Return. The statements were labeled "Statement of Account," and were signed by Barriger. The statements reported the opening and closing balances in the investor's "account" with the Fund, the investor's contributions and withdrawals during the period, and the "Income" earned on the investor's investment, on a monthly basis for the preceding year and on an annual basis going back to the inception of the investor's "account." The statements were issued quarterly but, starting in 2006, the Preferred Return was allocated, and compounded, monthly. Barriger thus lead investors to believe that the Fund had actually earned sufficient profit for each period to fund the Preferred Return that was credited.

32. These account statements were false and misleading because they reported income that had not been earned and account balances that were inflated by the cumulative amount of the Preferred Return improperly allocated to the investor over time.

33. In addition to the account statements, investors received letters from Barriger accompanying their account statements. The letters contained very brief, and generally positive, discussions of selected developments during the period.

34. As is set forth in detail below, by no later than July 2006, Barriger knew or recklessly disregarded that the account statements were false and misleading. In fact, the Fund sustained losses in 2005 and thereafter lacked the wherewithal to fund the Preferred Return or the inflated account balances.

35. Not only did the account statements contain these misrepresentations, but they were reflected in misrepresentations about the Fund's returns in the PPM. The PPM set forth

what purported to be the growth in the net asset value of a hypothetical $100,000 investment in the Fund for each year from 1998 through 2006. The annual increases in this hypothetical Fund investment were set forth twice, once in numerical form and separately in a bar graph and showed smooth and steady increasing returns. For 2005 and 2006, the PPM reflects that the hypothetical Fund investment increased by approximately 8% each year, which was false. Moreover, for reasons explained below, Barriger knew or recklessly disregarded that this portrayal of returns was false.

The Offer and Sale of Interests in the Fund

36. Although the Fund's offering documents and operating agreements contained detailed requirements for the minimum dollar amount of an investment and investor suitability standards, these requirements were not followed. Instead, from the Fund's inception in 1998 until March 5, 2008, when he announced that the Fund was frozen, Barriger continuously offered and sold interests in the Fund to essentially anyone who expressed an interest. The Fund failed to obtain and maintain a complete set of investor records, including signed subscription agreements reflecting each investor's qualification as an accredited investor and many of the Fund's investors were not, in fact, accredited.

37. In total, the Fund raised at least $20 million from at least 120 investors. At least $12.6 million was raised by Barriger when he knew or recklessly disregarded that investors and prospective investors were being misled about the Fund's performance and financial condition.

Barriger Fraudulently Obtained Interests in the G&B Fund by Means of Misleading Statements About the Fund's Performance and Financial Condition and by Omitting Material Information About the Fund's Financial Condition.

38. Notwithstanding that the Fund incurred a loss for 2005, and would have been unable to redeem investors' interests or pay them their reported income for 2005 and the

following years, from October 2005 onward, Barriger issued account statements misrepresenting to investors that they had earned the 8% Preferred Return, and he bolstered these misrepresentations by sending letters to investors touting the Fund's prospects.

39. By at least July 2006, Barriger knew or recklessly disregarded that the account statements and his letters to investors were false and misleading in light of the Fund's true performance, as is set forth in more detail below.

40. By early 2007, Barriger's statements to investors in the account statements and letters to investors were also misleading in light of the Fund's deteriorating financial condition. As is set forth in more detail below, starting in early 2007 and accelerating in August 2007, the Fund's financial condition became considerably more precarious as the mortgage loans in the Funds investment portfolio began to deteriorate at a rapid pace. In March 2007, the Fund defaulted on its secured credit agreement with its secured lender, and it remained in default for much of the period thereafter.

In Mid-2006, the Fund's Accountants Advised That It Was Improper to Credit Investors' Accounts with the Preferred Return.

41. In July 2006, in the course of the independent accountants' review of the Fund's 2005 financial statements, Barriger became aware that the Preferred Returns he was reporting to investors as income were not supported by the Fund's performance.

42. The accountants advised that before any returns could be allocated to investors, the Fund's income would have to be sufficient to first make up the 2005 loss. On June 16, 2006, Barriger received the accountants' draft report and the 2005 financial statements reflecting their review. The financial statements showed that the Fund had incurred a loss of nearly $600,000 for 2005 and reflected that investor equity overall was overstated by $1 million. Accordingly, the amount of investors' equity on the Fund's 2005 financial statements was approximately $1

million less than the value of investors' equity reflected in the account balances Barriger had reported to investors in the quarterly account statements. During the relevant period, Barriger did not inform investors of this reduction in the value of their interests in the Fund.

43. Although the Fund had a profit the following year (2006), the profit was not sufficient to make up for the Fund's 2005 loss and cover the amount of Preferred Returns that had been reported to investors for 2005 and 2006. Accordingly, during the course of their audit, the accountants reduced investors' equity for 2006 by the amount of this shortfall, and included a note in the Fund's 2006 audited financial statements disclosing the $775,000 shortfall between the Preferred Returns that had been reported to investors in 2006 and the Fund's actual income for the year. Shortly thereafter, the accountants were advised that their services were no longer needed, and that they would not be retained for the following year's audit.

44. The 2006 financial statements were the only audited financial statements prepared for the Fund. An audit of the Fund's 2007 financial statements was commenced but never completed.

45. The Fund's financial statements were not provided to investors or prospective investors, and investors were not otherwise informed that the Preferred Return reflected on their account statements did not reflect the actual return on their investment

46. Barriger was aware of the discrepancy between the Preferred Returns reported to investors in the quarterly account statements and the Fund's actual performance, as determined by its accountants and set forth on its 2005 and 2006 financial statements. Among other things:

- The Fund's VP copied Barriger on an April 28, 2006 email to the Fund's accountants explaining how the Fund accounted for the allocation of Preferred Returns to investors when the Fund lacked sufficient income to support the allocation.

- The Fund's VP copied Barriger on an April 28, 2006 email to the Fund's secured lender, in which the Fund's VP acknowledged that the Fund's internal accounting for income and losses in connection with the Fund's 2005 financial statements differed from the treatment of income and loss permitted by the Fund's independent accountants.

- In an email dated June 16, 2006, the Fund's VP forwarded to Barriger a draft of the Fund's 2005 financial statement reflecting the $1 million reduction in investor equity required by the Fund's accountants.

- Barriger was copied on an April 20, 2007 email from the Fund's VP to the Fund's secured lender in which the Fund's VP explained that following the Fund's restructuring in 2005, the Fund allocated an 8% return to investors regardless of whether the Fund's performance supported the allocation and regardless of the fact that GAAP did not permit allocation of income to investors if the Fund had a loss.

- The Fund's VP copied Barriger on a June 4, 2007 email forwarding the Fund's 2006 audited financial statements to the Fund's bank, disclosing the $775,000 shortfall between the Fund's income and the returns allocated to investors in 2006.

47. In September 2006, Barriger sent existing investors a "review" of the Fund prepared by Fund management, which contained annual performance figures for the eight years of the Fund's operation, 1998 through 2005. The review was false and misleading because, for every year after the second, the performance shown was positive, and for 2005 the reported return was 7.62%, even though the Fund had actually incurred a loss for 2005.

48. In the third and fourth quarters of 2006, Barriger raised an additional $3 million of investments in the Fund, approximately $1.4 million of which came from existing investors, who had been receiving account statements falsely reporting Preferred Returns and account balances inflated by the Preferred Returns that had been credited improperly.

Over the First Six Months of 2007, Barriger Continued to Fraudulently Obtain Investments in the Fund as the Fund's Financial Condition Deteriorated.

49. As the real estate market deteriorated in 2007, the Fund's borrowers began to default in increasing numbers, and the Fund began to experience significant liquidity problems.

In March 2007, the Fund defaulted on its credit agreement with its secured lender, and it remained in default for much of the period thereafter. Delinquencies in the Fund's loan portfolio spiked to a little over 25% in July 2007, increased to 30% in October, and increased to over 35% in November.

50. The Fund's liquidity crunch was exacerbated by the terms of the Fund's credit agreement with its secured lender. Under the agreement, whenever a loan pledged as collateral became delinquent, the Fund was required to remove it from the collateral pool (the "borrowing base"), and either repay the secured lender the amount it had borrowed against the loan, thereby reducing the outstanding balance on the credit line, or substitute a new, performing loan. Moreover, when ten percent or more of the Fund's borrowing base became delinquent, the Fund was in default under the credit agreement.

51. Faced with a dearth of eligible borrowers to whom it could make new loans in the deteriorating real estate market, and lacking the cash to do so even if it could have found qualified borrowers, the Fund increasingly found itself in the position of having to raise new cash with which to repay its secured lender. In an effort to stave off default and improve the Fund's liquidity, in the first half of 2007, the Fund's VP, with Barriger's knowledge, engaged in transactions pursuant to which the Fund purportedly "sold" loans to other hard money lenders, but agreed to guarantee payment of principal and interest should the borrowers default, and further agreed to repurchase the loans on demand at the discretion of the purchaser.

52. Although temporarily moving these loans out of the Fund's borrowing base and raising immediate cash in the short term, as a practical matter the transactions did not improve the Fund's financial position because the Fund remained obligated for the full amount of principal and interest on the loans.

53. Moreover, the transactions were costly to the Fund because it was obligated to pay interest to the purchasers, at a rate of 12% per annum. From January to May 2007, the Fund raised approximately $3.7 million from the sale of four such loans, two of which it subsequently repurchased at face value in late 2007 for $2 million. During 2007, the Fund paid the purchasers interest of approximately $366,000 on all four loans, $207,000 of which it paid on the two loans it repurchased.

54. Despite these cash infusions, by late March 2007, the Fund was in default on its credit agreement with its secured lender. The Fund's VP advised Barriger of this in a March 29, 2007 email.

55. On April 18, 2007, November 16, 2007 and July 28, 2008, its secured lender sent the Fund reservation of rights letters, noting that the delinquency rate in the Fund's loan portfolio exceeded 10% (the default trigger) for each of the prior months and all preceding months, beginning with March 2007.

56. Notwithstanding his knowledge of the Fund's precarious financial condition, Barriger continued to paint a rosy – and misleading – picture of the Fund's liquidity and prospects. His April 2, 2007 letter to investors accompanying their quarterly statements not only failed to disclose anything about the Fund's liquidity shortfall or its default under its agreement with its secured lender, but it contained misleading statements about the Fund's business, specifically its purported immunity from the decline in the subprime real estate market, which by then was the subject of media reports. Barriger's April 2, 2007 letter to investors stated, in its entirety:

> Your Fund has furthered its progress on the various fronts we have discussed before; most notable perhaps was its secured lender's raise in the amount of our credit line with them to $20,000,000. Total assets now exceed $32,000,000.

> You probably have noticed a great deal of negative news recently regarding sub-prime mortgages. Some have asked me if this affects us. Actually, what is making headlines is ***residential*** mortgages of lower quality; we are ***commercial*** property bridge lenders and consequently are really in a different business. (Years ago we made a few loans with residential collateral, but this is not our standard practice today.)
>
> We continue on the same course, working to improve our efficiency and profitability, always keeping in mind the duty we owe you to protect your money while earning a competitive return. Your quarterly statements are enclosed, and your next statements will be out in early July. We enjoy hearing from you and we wish you a pleasant spring.

(emphasis in original).

57. What Barriger failed to disclose, and investors were not otherwise told, was that a substantial percentage of the Fund's bridge loans went to developers of residential properties. In addition, the Fund was in default on its agreement with its secured lender and was strapped for cash. Accordingly, the "competitive return" reported to investors was entirely fictional.

Barriger Fraudulently Obtained Investments for the Fund in the Second Half of 2007as its Financial Condition Became Increasingly Dire.

58. As a result of the rising delinquencies in its loan portfolio, the Fund's operating cash shortfall increased in the second half of 2007. That is, the Fund's cash expenditures exceeded its cash receipts from borrowers. It was only through its financing activities that the Fund was able to fund its operations and make periodic payments to its secured lender so that it could continue to make draws on its credit line.

59. From August 2007 through March 2008, the Fund raised nearly $5 million from the Fund's VP's parents, Campus Capital, Campus's co-manager, other friends and family of Barriger or the Fund's VP, and several other individuals (the "private note holders"), through the issuance of promissory notes paying 12% interest.

60. The fact that the Fund was further leveraging itself was not disclosed to the Fund's investors.

61. Beginning in August 2007, the pace of Barriger's fund raising from investors accelerated, even as the real estate market continued to deteriorate, and it became increasingly apparent to Barriger that the Fund's business model was not sustainable.

62. Mortgage financing for commercial real estate development essentially dried up in mid-August 2007, which meant that take-out financing for the Fund's borrowers, many of whom were by then in default, was no longer available. By September 2007, Barriger knew that the hard-money lending business model was not working and would be abandoned by the Fund.

63. The severity of the situation was apparent to Barriger, who stated in August 22, 2007 emails to the Fund's VP: "We are in survival mode now just to weather the storm." "Does it seem to you also that we are currently seeing a bunch of things happen that strongly point to a major change in our business model?" to which the Fund's VP replied: "I've felt for a while that this model would be very difficult to make work. I am in a bit of a panic just hoping we can hold it together."

64. The Fund's financial condition substantially deteriorated in 2007 and early 2008 as a result of rising delinquencies and defaults in its loan portfolio. An audit of the Fund for 2007 was commenced but never completed. However, the Fund's 2007 books and records show that the Fund had a loss of approximately $7.4 million for the year. As a result of the failure of its borrowers to repay their loans, the Fund's cumulative operating cash shortfall eventually reached over $11 million by March 2008, when Barriger froze the Fund.

65. In the period leading up to March 2008, it was only by raising new money from investors, obtaining loans from several of its investors in exchange for promissory notes, and obtaining funds from Campus Capital, that the Fund was able to stay afloat.

66. From July 2006 until March 5, 2008, the Fund obtained approximately $6.9 million in additional investments from approximately 38 existing investors – investors who had received at least one false and misleading account statement reflecting the fictitious Preferred Returns and inflated account balance.

67. In addition, during that period, the Fund raised approximately $5.7 million from approximately 35 new investors, much if not all of which had been obtained by Barriger based on false and misleading representations about the Fund's safety, steady return and liquidity..

68. In soliciting these additional Fund investments, Barriger continued to represent that the Fund was a safe investment that generated an 8% return and that investors could redeem their investments on short notice. He did not tell investors and prospective investors, and they were not otherwise informed, that: (a) the Fund had incurred a loss of $600,000 in 2005 and its income in 2006 and 2007 was insufficient to support the Preferred Returns it had already allocated and reported to investors, much less the Preferred Return it continued to offer; (b) that payments of the Preferred Return were in fact an undisclosed return of capital rather than a return on investment; (c) the percentage of non-performing loans in the Fund's portfolio was increasing dramatically and was over 25% by August 2007, and over 35% most of the time after November 2007; (d) the Fund was in default on its credit line and its secured lender could seize its assets at any time; (e) the Fund had very little liquidity and could not meet any substantial amount of withdrawal requests; and (f) the Fund's ability to pay cash redemptions and distributions of the

Preferred Return to those investors who chose to receive, rather than reinvest, it, was being largely funded by new investments.

69. As described below, Barriger also misrepresented the Fund's safety, liquidity and returns in oral solicitations.

70. Barriger hosted an annual dinner for existing Fund investors each year, usually in the fall. At these dinners, Barriger consistently represented that the Fund was safe and secure, as he did in September 2007. At the September 2007 dinner, Barriger reiterated the Fund's promise to pay a minimum 8% annual return, which he said distinguished it from other funds. He also brushed off questions about rising delinquencies in the residential real estate market and said that the Fund had not been affected by the mortgage crisis because it was "really in a different business." (Barriger had made the same representation earlier in the year, in his April 2, 2007 letter to investors.)

71. At Barriger's direction, a marketing brochure for the Fund was also distributed at the September 2007 dinner. Under the slogan "A decade of stability, growth and prosperity," the brochure said in pertinent part:

> The Gaffken & Barriger Fund provides flexible investment options to investors looking for consistent returns. The fund currently pays a fixed rate of 8% annually and the managing partner has the option of declaring a bonus dividend at any time. Although not required to do so, the managing partner maintains a policy of permitting investors to add or withdraw money from the fund at any time, allowing them to achieve a good return while keeping their assets liquid. Some investors choose to receive a regular monthly check; others choose to let their interest compound by re-investing each month.

After the September 2007 dinner, Barriger also occasionally provided the brochure to prospective investors.

72. Shortly thereafter, in late September 2007, Barriger met with a prospective investor, Investor A, a retired fashion photographer, who told Barriger that he was seeking a

safe, low-risk investment that would provide him and his family with a regular stream of income. He further explained that he needed to be able to withdraw funds as necessary.

73. Barriger recommended the Fund to Investor A, telling him it had been in existence for ten years and was very successful. Barriger also told Investor A that Barriger personally guaranteed the principal investments in the G&B Fund as well as an 8% annual return. He further told Investor A that he could access his investment within forty-eight hours if necessary, because the Fund maintained cash in a loan loss reserve. (In a brief Q&A distributed to existing investors along with their account statements for the quarter ended September 30, 2007, Barriger also referred to a personal guarantee: "From that problem came our new structure, whereby we personally guaranteed the principal and a floor minimum return of 8%.")

74. Barriger did not tell Investor A anything about the Fund's true performance or financial condition. With the exception of a one-page flyer that also touted the Fund's safety and 8% annual return, Investor A received no documents concerning his investment in the Fund. On September 27, the day after he met with Barriger, Investor A transferred $2 million to the Fund.

75. At the time Investor A made his investment, the Fund was experiencing a serious liquidity crunch, and was totally dependent upon new investor funds to keep its operations going. Upon receipt of Investor A's investment, plus an additional $20,000 from an existing investor, the Fund immediately made a $2.1 million payment on its line of credit with its secured lender, reducing the Fund's cash to virtually zero.

76. In total, Barriger raised nearly $3 million for the Fund in the third quarter of 2007. In addition to Investor A, six new investors invested approximately $98,000 and fourteen existing investors invested approximately an additional $854,000.

77. Barriger also organized a series of fundraising dinners in November 2007 to which he encouraged existing investors to invite prospective investors who might be interested in investing in the Fund.

78. Barriger also solicited additional investments in the Fund in one-on-one meetings with investors in late 2007. For example, Barriger met with Investor B, a retired funeral home director then in his late 60s. Investor B, who was a close friend of Barriger's, a customer of Barriger & Barriger, and a long-time investor in the Fund, asked Barriger for advice on how to invest $82,000 he had received in connection with the sale of his business. Barriger strongly recommended that Investor B invest it in the Fund, telling him that he would receive about $2,000 per month in income from the Fund (when the $82,000 was combined with Investor B's earlier investments) and explaining that the $2,000, when combined with his Social Security payments, would cover Investor B's monthly living expenses. At the end of December 2007, Investor B transferred $40,000 to the Fund.

79. During the fourth quarter of 2007, Barriger raised approximately $1.5 million in additional Fund investments. In total, from July through December 2007, Barriger raised approximately $4.4 million for the Fund from investors, approximately $2.7 million of which came from new investors and approximately $1.7 came from existing investors.

Barriger Fraudulently Obtained Additional Investments in the Fund in Early 2008.

80. In a letter dated December 31, 2007 accompanying investors' fourth quarter account statements, Barriger noted "The housing-asset bubble with related credit repercussions has begun to affect the entire real estate sector and the banking world, creating significant challenges." Barriger went on the say that the Fund was "in a batten-down-the-hatches mode" trying "to keep our balance sheet and liquidity as strong as possible during this storm."

81. Nevertheless, in the same letter Barriger attempted to allay any fears investors might have had by affirming that their principal balances had been maintained and that the Fund had allocated to investors the promised 8% Preferred Return for December 2007:

> Despite the difficult environment we have continued, as we promised you, to pay the "floor" of 8% on your money and to maintain your principal balances. Those two items remain our priorities.
>
> (emphasis added)

82. Barriger failed to disclose, however, that the delinquency rate on the Fund's loan portfolio exceeded 35% by the end of December 2007, and that the Fund was experiencing losses, not the profits suggested by the fact that it was continuing to allocate the 8% Preferred Return to investors. Barriger also failed to disclose that the Fund's ability to pay the Preferred Return to those investors who requested cash payment was dependent on new funds from investors.

83. Even after acknowledging to existing investors that the Fund was in a "batten-down-the-hatches mode," Barriger continued to solicit new investments in the Fund in the first two months of 2008.

84. For example, in early January 2008, Barriger met with Investor C, who had invested $135,000 with the Fund about eight years earlier when her husband died. Based on account statements she had received, Investor C believed she had been earning the promised annual return of 8% on her initial investment. She told Barriger that she had an additional $380,000 in cash that was not earning any interest, explained that she wanted her money to be conservatively invested, and asked him whether she should invest it in the Fund. Barriger encouraged her to invest the additional $380,000 in the Fund. Barriger expressly told Investor C not to worry about the real estate downturn, saying that it related solely to residential real estate,

as opposed to commercial real estate in which the Fund invested. Barriger told Investor C that the Fund never invested in "risky business." Barriger also told her she could withdraw her money at any time. On January 9, 2008, Investor C invested the additional $380,000 in the Fund, thereby placing all of her savings in the Fund.

85. In January 2008, Investor D, who had been a Barriger & Barriger customer and a Fund investor for approximately ten years, met with Barriger and the Fund's VP and told them that he had recently come into some money that he was looking to invest. Investor D told Barriger and the Fund's VP he wanted "safety and the ability to get money out." Barriger assured him the Fund was safe and that he could withdraw his money on two-to-three days' notice. On January 16, 2008, Investor D invested $375,000 in the Fund. Investor D was not told about the Fund's dire liquidity and delinquency problems when he invested in January 2008.

86. In January 2008, two of Barriger's brokerage clients, a husband and wife, Investors E and F, asked him for advice on how to invest the proceeds of two homes they had sold. Investors E and F told Barriger that they wanted "pretty safe" investments. Barriger suggested that they invest in certificates of deposit and the Fund, which Barriger said was not a high risk investment, and was not affected by the mortgage crisis that they had been reading about because the Fund did not make loans to individual home buyers. Barriger told Investors E and F the Fund paid an 8% return, and they could withdraw their money whenever they wanted. Based on Barriger's recommendation, Investors E and F purchased some CDs and, on January 23, 2008, invested $150,000 in the Fund. Barriger did not disclose the Fund's rising delinquencies or liquidity problems to Investors E and F.

87. In January 2008, Investor B invested an additional $42,000 in the Fund. Investor B contacted Barriger about investing the remaining money he had received from the sale of his

business, and Barriger came to his house to pick up the check. When Investor B again asked Barriger if he should make the additional investment in the Fund, Barriger told Investor B he should invest in the Fund, and Barriger accepted Investor B's check.

88. At the end of January, in a letter dated January 31, 2008, Barriger announced a "special distribution" of .25% – in addition to the usual 8% annual return –, which he described as a tangible expression [of the Fund's] increasing CONFIDENCE in the Fund's future progress and profitability . . . " (emphasis in original). The special distribution was credited to investors' accounts. Given the Fund's losses at the time, this special distribution was utterly illusory.

89. Barriger continued to solicit and obtain investments in the Fund. In February 2008, Barriger raised $20,000 from a new investor and $10,000 from an existing investor and, on March 4, 2008, the day before Barriger froze the Fund, Barriger accepted an additional investment of $1,855 from an existing investor.

The G&B Fund Collapses

90. In early March 2008, Barriger finally informed investors of the full extent of the Fund's financial troubles. In a letter dated March 5, 2008, Barriger told investors that the Fund's loans were not being paid off and that the value of the Fund's collateral had fallen, acknowledging that, contrary to his prior assurances, the "global credit crunch that is so widely discussed in the media has clobbered us over the head, and hard." In the letter, Barriger also informed investors that the Fund would have to temporarily stop allowing investors to withdraw their money, stop distributing monthly income checks, and stop allocating the 8% Preferred Return so that the Fund could pay off debt and reduce its leverage. Barriger explained: "the

Fund needs the current available cash flow to properly maintain the Fund's assets rather than making distributions."

Campus Capital

91. Campus Capital is another upstate New York real estate investment fund that was managed, during the relevant period, by Barriger, along with Campus's co-manager who, respectively, owned 30% and 50% of the equity in Campus. All investment decisions on behalf of Campus were made jointly by Barriger and the co-manager. Campus's primary investment strategy was to make real estate-related investments, and most investments were in loans to real estate developers.

92. Since its founding in 2001, Campus raised a total of approximately $12 million from at least ninety investors through the sale of promissory notes – "accretion notes," which accrued interest at a stated rate to be paid at maturity, and "current interest notes," which paid interest quarterly. The interest rate varied with the term of the note; notes issued pursuant to an August 2005 private placement memorandum,[2] for example, were for terms of one, two, or three years, and paid interest of 6%, 7.5%, or 9%, respectively.

93. Barriger failed to obtain and maintain a complete set of records of Campus's investors including signed subscription agreements reflecting every investor's qualification as an accredited investor. Many of Campus's investors were not accredited.

[2] Although Campus was formed and began raising money through the sale of promissory notes in 2001, it issued only one private placement memorandum, dated August 1, 2005 (the "Campus PPM").

Barriger Defrauded Campus and Fraudulently Obtained Investments in Campus.

94. In an effort to provide additional liquidity to the G&B Fund while it was in trouble, Barriger convinced Campus's co-manager to agree to cause Campus Capital to inject a total of approximately $2.5 million into the G&B Fund from August 2007 through April 2008.

95. Specifically, during this period, Barriger and Campus's co-manager caused Campus to (1) purchase from the Fund, at face value, two non-performing loans for a total of $1.3 million in August 2007; and (2) inject a total of $1,050,000 in the Fund as follows: (a) investments of $550,000 in September 2007, $300,000 in December 2007, and $200,000 in February 2008 (in May 2008, at Campus's co-manager's insistence, the February $200,000 investment was converted into debt); and (b) a loan to the Fund $125,000 in April, 2008, *after* Barriger had frozen the Fund.

96. Barriger breached his fiduciary duty to Campus and misused its assets by investing them in the G&B Fund at a time when the G&B Fund was in financial distress, *i.e.* by using Campus's assets for the benefit of the G&B Fund and not for the benefit of Campus.

97. Barriger also misled new investors in Campus by not disclosing these investments in the G&B Fund, notwithstanding representations in the Campus PPM that Campus would engage in affiliated party transactions only if such transactions were entered into "in good faith [and] in the best interest of [Campus]," at a price that was "fair," and on terms no less favorable to [Campus] than those that could have been obtained on an "arm's-length basis" from a non-affiliate. In 2007 and 2008, investments in the G&B Fund, or bad loans purchased from it, represented approximately 19% of Campus's assets.

98. From September 2007 through July 2008, Barriger solicited and obtained $1.5 million in new investments from new and existing investors in Campus. In soliciting and

obtaining new investments in Campus during this period, however, Barriger did not disclose that Campus was substantially invested in the G&B Fund and was at risk of losing that entire investment given the G&B Fund's dire financial condition.

99. Barriger and Campus's co-manager also caused Campus to engage in other transactions that personally benefitted them and were inconsistent with the restrictions on related-party transactions in Campus's PPM. Specifically, Barriger and Campus's co-manager caused Campus to make (1) loans totaling approximately $1.17 million to yet another an entity co-owned by Barriger and Campus's co-manager through which Barriger and Campus's co-manager acquired real estate held in the name of Barriger, Campus's co-manager and others, but not Campus; and (2) interest-free loans totaling approximately $428,000 to Barriger personally.

100. At least eight investors, who invested a total of approximately $684,000 in Campus during the period September 2007 through July 2008, received the Campus PPM, which contained misrepresentations about limitations on related-party transactions. As a result, at least $684,000 of the approximately $1.5 million Campus raised through the issuance of promissory notes during the period September 2007 through July 2008 – after Campus was substantially invested in the G&B Fund – was fraudulently obtained.

101. Barriger knew, or recklessly disregarded, that the G&B Fund was experiencing financial difficulty at the time he convinced Campus's co-manager to agree to inject Campus's funds into the G&B Fund and while he was raising new investor funds for Campus even after he had caused Campus to be substantially invested in the G&B Fund.

102. Moreover, Barriger knew, or recklessly disregarded, that the transactions between Campus and the G&B Fund, and the additional self-interested transactions with Campus from

which he personally benefitted, were contrary to the stated restrictions on related party transactions set forth in Campus's PPM and were not in the best interest of Campus.

FIRST CLAIM FOR RELIEF

VIOLATIONS OF SECTIONS 5(a) AND 5(c) OF THE SECURITIES ACT 15 U.S.C. §§ 77e(a) AND 77e(c)

103. The Commission realleges and incorporates by reference each and every allegation contained in paragraphs 1 through 102.

104. Interests in the G&B Fund are securities within the meaning of Section 2(1) of the Securities Act, 15 U.S.C. § 77b(1), and Section 3(a)(10) of the Exchange Act, 15 U.S.C. § 78c(a)(10).

105. Promissory notes issued by Campus to investors are securities within the meaning of Section 2(1) of the Securities Act, 15 U.S.C. § 77b(1), and Section 3(a)(10) of the Exchange Act, 15 U.S.C. § 78c(a)(10).

106. From at least January 1998 through March 5, 2008, while no registration statement was filed with the Commission or was in effect, Barriger, directly or indirectly, offered and sold at least $20 million worth of interests in the G&B Fund to the public.

107. From at least October 2001 through July 2008, while no registration statement was filed with the Commission or was in effect, Barriger, directly or indirectly, offered and sold most of the at least $12 million worth of Campus notes sold to the public.

108. In offering and selling interests in the G&B Fund and Campus notes, Barriger used means or instruments of transportation or communication in interstate commerce, or the mails.

109. By reason of the foregoing, Barriger engaged and, unless enjoined, will continue to engage, directly or indirectly, in transactions, acts, practices and courses of business which

constitute violations of Sections 5(a) and 5(c) of the Securities Act, 15 U.S.C. §§ 77e(a) and 77e(c).

SECOND CLAIM FOR RELIEF

VIOLATIONS OF SECTION 17(a) OF THE SECURITIES ACT, 15 U.S.C. § 77q(a)

110. The Commission realleges and incorporates by reference each and every allegation contained in paragraphs 1 through 109.

111. Barriger, directly or indirectly, singly or in concert, by use of the means or instruments of transportation or communication in interstate commerce, or of the mails, in connection with the offer or sale of securities, has: (a) employed, and is employing, devices, schemes and artifices to defraud; (b) obtained, and is obtaining, money or property by means of untrue statements of material fact, or has omitted, and is omitting, to state material facts necessary in order to make statements made, in light of the circumstances under which they were made, not misleading; and (c) engaged, and is engaging, in transactions, acts, practices and courses of business which would operate as a fraud or deceit upon any person.

112. By reason of the acts, omissions, practices, and courses of business set forth in this complaint, Barriger has violated, is violating, and unless restrained and enjoined, will continue to violate, Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a), Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5.

THIRD CLAIM FOR RELIEF

VIOLATIONS OF SECTION 10(b) OF THE EXCHANGE ACT, 15 U.S.C. §78j(b), AND RULE 10b-5 THEREUNDER, 17 C.F.R. §240.10b-5

113. The Commission realleges and incorporates by reference each and every allegation contained in paragraphs 1 through 112.

114. Barriger, directly or indirectly, singly or in concert, by use of the means or instruments of transportation or communication in interstate commerce, or of the mails, in connection with the offer or sale of securities, has: (a) employed, and is employing, devices, schemes and artifices to defraud; (b) obtained, and is obtaining, money or property by means of untrue statements of material fact, or has omitted, and is omitting, to state material facts necessary in order to make statements made, in light of the circumstances under which they were made, not misleading; and (c) engaged, and is engaging, in transactions, acts, practices and courses of business which would operate as a fraud or deceit upon any person.

115. The misstatements and omissions of fact detailed above were material.

116. Defendant engaged in the conduct described above knowingly or with recklessness.

117. By reason of foregoing, Defendant has, directly or indirectly, singly or in concert, violated, is violating, and unless enjoined, will continue to violate, Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. §240.10b-5.

FOURTH CLAIM FOR RELIEF

VIOLATIONS OF SECTIONS 206(1) AND 206(2) OF THE ADVISERS ACT, 15 U.S.C. §§ 80b-6(1) and 80b-6(2)

118. The Commission realleges and incorporates by reference each and every allegation contained in paragraphs 1 through 117.

119. Throughout the relevant period, Barriger, while engaged in the business of advising others for compensation as to the advisability of investing in, purchasing, or selling securities, with scienter, by engaging in the acts and conduct alleged above, directly or indirectly, singly or in concert, by use of the mails or any means or instrumentality of interstate commerce or of the mails, has employed, and is employing devices, schemes and artifices to defraud their

clients, and has engaged, and is engaging, in transactions, practices and courses of business which operate as a fraud and deceit upon his clients.

120. By reason of the foregoing, Barriger engaged and, unless enjoined, will continue to engage, directly or indirectly, in transactions, acts, practices and courses of business which constitute violations of Sections 206(1) and 206(2) of the Advisers Act, 15 U.S.C. §§ 80b-6(1) and 80b-6(2).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Commission respectfully requests that the Court:

1. Enter a final judgment:

(a) Permanently restraining and enjoining Barriger, his agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, and each of them, from violating Sections 5(a), 5(c) and 17(a) of the Securities Act, 15 U.S.C. §§ 77e(a), 77e(c), and 77q(a), Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5, and Sections 206(1) and 206(2) of the Advisers Act, 15 U.S.C. §§ 80b-6(1) and 80b-6 (2);

(b) Directing Barriger to disgorge ill-gotten gains obtained through the violative conduct alleged in this complaint and directing Barriger to pay prejudgment interest thereon;

(c) Directing Barriger to pay civil money penalties pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), Section 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3), and Section 209(e) of the Investment Advisers Act, 15 U.S.C. § 80-9(e); and

2. Grant such other and further relief as the Court deems appropriate.

Dated: May 13, 2011
New York, New York

Respectfully submitted,

SECURITIES AND EXCHANGE COMMISSION

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