UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9180 / February 2, 2011

ADMINISTRATIVE PROCEEDING
File No. 3-14218

In the Matter of

DON S. HERSHMAN,

Respondent.

ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933, MAKING FINDINGS, AND IMPOSING A CEASE-AND-DESIST ORDER

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 ("Securities Act"), against Don S. Hershman ("Hershman" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Making Findings, and Imposing a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds[1] that:

SUMMARY

1. Between 2005 and 2008, Wextrust Capital LLC and its affiliates ("Wextrust") raised approximately $270 million from over 1,400 investors in at least 70 fraudulent private placement securities offerings for real estate, African diamond mining, commodities, and other ventures. On August 11, 2008, the Commission filed an emergency civil enforcement action against Wextrust and its principals in Federal District Court in the Southern District of New York in a case titled *SEC v. Byers, et al.*, No. 08-cv-7104 (S.D.N.Y.). Wextrust and its assets are now being administered by an equity receiver (the "Receiver") appointed in the case.

2. In 2005, the law firm of Much Shelist Denenberg Ament & Rubenstein, PC ("Much Shelist") began to provide real-estate related legal services to Wextrust. Soon thereafter, Hershman, who was one of Much Shelist's securities lawyers, became Wextrust's primary outside securities counsel. In that role he prepared or reviewed disclosure documents disseminated by Wextrust and its affiliates to potential investors in approximately 16 offerings that raised over $127 million.

3. Over the course of his representation of Wextrust between 2005 and 2008, Hershman became increasingly aware of facts that he knew or should have known were material facts that were not disclosed in Wextrust offering documents. In 2006 and early 2007, Hershman learned that Wextrust engaged in the undisclosed over-raising of funds and had taken actions inconsistent with prior disclosures made to investors in an offering that he believed were sufficiently material to require Wextrust to offer rescission rights to investors. By late 2007, Hershman also learned that Joseph Shereshevsky ("Shereshevsky"), one of Wextrust's two principal executives, pleaded guilty to conspiracy to commit bank fraud in June 2003 and that he had lied to Hershman about his criminal conviction at the inception of the client relationship. By that time he also learned that a major investor had sued Wextrust for rescission of an offering he had worked on alleging material misrepresentations and omissions in the offering documents. In February of 2008, approximately two months after learning of Shereshevsky's fraud conviction, Hershman was alerted by Wextrust's CFO that Shereshevsky controlled Wextrust's bank accounts and that the CFO was having difficulty accessing those accounts to pay business expenses. Notwithstanding Hershman's knowledge of these facts, he continued to work or supervise work on private placement offerings for Wextrust that failed to disclose the principal's prior felony fraud conviction and Wextrust's prior over-raises. In April 2008, Hershman also worked on one offering

[1] The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding. .

that he knew would have the effect of diluting cash flow from investors in a prior offering that he had supervised. Because of that inconsistency, Hershman advised Wextrust that he did not condone the structure of the deal, but nonetheless agreed to advise Wextrust regarding the deal and did not insist on disclosure of the dilution to the prior investors.

RESPONDENT

4. **Hershman**, age 53, resides in Highland Park, Illinois. He joined the law firm of Much Shelist in 2000 as an equity partner and became a member of the management committee in 2005. From 2005 to August 2008, Hershman was a billing partner for Much Shelist's representation of Wextrust and received compensation based on those billings. During that time, Much Shelist was primary securities counsel to Wextrust.

OTHER RELEVANT ENTITIES

5. **Much Shelist** is a full-service law firm engaged primarily in real estate law with its principal place of business in Chicago, Illinois. The firm was founded in 1970, has approximately 85 attorneys, and maintains a second office in Irvine, California.

6. **Wextrust Capital, LLC** ("Wextrust Capital") was an Illinois limited liability company formed by Steven Byers in 2003. Wextrust Capital solicited investments through private placement offerings into a variety of investment vehicles through its affiliated broker-dealer, Wextrust Securities LLC, and managed those investments through other affiliates. Among the investment vehicles for which Wextrust Capital solicited investments were holding companies that Wextrust Capital formed for the purpose of holding equity interests in other companies. Wextrust Capital was headquartered in Chicago, Illinois and maintained offices all over the United States, including in New York, New York, as well as Israel and South Africa. From 2005, acting through Wextrust Securities LLC and affiliated entities, Wextrust Capital and its principals raised approximately $270 million from approximately 1,400 investors throughout the United States and abroad. Altogether, since the formation of the Wextrust Securities in 2005, Wextrust Capital and its principals conducted approximately 70 private placement offerings and created approximately 150 entities in the form of limited liability companies or similar vehicles for the offerings.

7. **Steven Byers ("Byers")**, age 48, was a resident of Oakbrook, Illinois until his arrest in August 2008. He was the Chairman of Wextrust Capital and President and Chief Executive Officer of Wextrust Equity Partners LLC, the arm of Wextrust focusing on income-producing properties, and also was an owner and controlling person of Wextrust Securities LLC. Together with Shereshevsky, he controlled Wextrust. On April 13, 2010, Byers pleaded guilty to one count each of conspiracy to commit securities fraud and securities fraud.

8. **Shereshevsky**, age 53, resided in Norfolk, Virginia until his arrest in August 2008. Shereshevsky was Wextrust Capital's Chief Operating Officer, and had been a key person in building the private equity group, greatly increased Wextrust's access to capital and was instrumental in founding Wextrust Securities LLC and in Wextrust's expansion into diamond mining investments in Africa. In March 1993, Shereshevsky was arrested for, among other things,

bank fraud. In June 2003, he pleaded guilty in the Southern District of New York to one felony count of conspiracy to commit bank fraud.

BACKGROUND

9. Byers formed Wextrust Capital in 2003. Prior to that time, Byers had been in the real estate financing business, and in 2002 he began to engage in private placement securities offerings as a way to refinance his real estate deals. Shereshevsky, who had worked as a property manager for one of Byers' real estate deals, joined Byers at Wextrust Capital at around the time of its inception. Together, Byers and Shereshevsky controlled Wextrust.

10. Between 2005 and 2008, Wextrust raised approximately $270 million from 1,400 investors in at least 70 fraudulent private placement securities offerings. Much Shelist had no association with Byers or Shereshevsky prior to Wextrust's introduction to Much Shelist in 2005. By the end of 2005, Hershman had become the primary billing partner for Wextrust securities matters and had overall responsibility for corporate securities work performed on its behalf until it was shut down in August 2008. Between 2005 and 2008, Hershman personally worked on or reviewed another attorney's work on 16 Wextrust private placement memoranda ("PPMs"), which allowed Wextrust to raise from investors more than $127 million.

HERSHMAN BECOMES AWARE OF MISSTATEMENTS AND OMISSIONS IN WEXTRUST PRIVATE PLACEMENT MEMORANDA

Material, Undisclosed Modifications to the IDEX Offering

11. In December 2005, a Much Shelist attorney, under Hershman's supervision, began preparing offering documents for the IDEX offering. The purpose of the IDEX offering, dated January 16, 2006, was to raise $23 million from investors in order to make a loan to and acquire a 40 percent equity interest in Pure Africa Minerals (Pty) ("PAM"), a South African holding company run by Byers and Shereshevsky, among others. The PPM represented that PAM, in turn, owned an equity stake in Vaticano Traders (Pty) Ltd. ("Vaticano"), a South African company engaged in the diamond-mining business. The PPM also represented that Vaticano owned certain mineral rights and permits with respect to three specific South African diamond mines.

12. In late 2005 and early 2006, while the attorney supervised by Hershman was preparing the IDEX offering documents, Hershman was made aware that documents evidencing both PAM's ownership of Vaticano and Vaticano's ownership of the mineral rights and mining permits could not be located. Hershman instructed Wextrust to disclose in the PPM that they "believed" the factual statements concerning ownership of Vaticano and the mineral rights and mining permits, but did not yet have confirming documentation as to such ownership. On January 19, 2006, Hershman learned from Shereshevsky that this disclosure was "becoming an issue with raising the money" from investors.

13. By February 15, 2006, Hershman received information that Shereshevsky had added to the IDEX structure two South African diamond mines, which were not identified in the original PPM sent to investors. Hershman learned that, consequently, some of the funds raised in

the IDEX offering were going to be used toward mining these two additional mines. At the same time, Hershman also learned that Wextrust had already raised $13.5 million from investors for the IDEX offering.

14. On February 16, 2006, Hershman recommended that Wextrust describe the new mines in a one-page supplement to the IDEX PPM and an amendment to the operating agreement and set up a telephone number for investors to call with questions. Hershman also advised Wextrust management that "[a]n investor may possibly have a right of rescission based on these new mines, but let's wait and see if anyone seems dissatisfied first."

15. On February 24, 2006, Hershman learned from Wextrust management that Shereshevsky had "change[d] the [IDEX] deal completely." Specifically, Hershman learned that money originally slated to be used to acquire the remaining interests in Vaticano and provide Vaticano with working capital was instead going to be used to purchase other mining properties and related equipment. On March 8, 2006 Hershman, through an attorney he supervised, again advised Wextrust to issue a supplement to the PPM and finally advised Wextrust to offer those IDEX investors who had already invested a right of rescission.

16. On March 23, 2006 – two months after the date of the original IDEX offering – Wextrust's Chief Compliance Officer informed Hershman by email that the "cowboys" (that is, Wextrust management) intended to increase the IDEX offering from $23 million to $28 million, which would have the effect of diluting investors. By the end of April 2006 – four months after Much Shelist began work on the offering and two months after learning that Wextrust planned to increase the IDEX raise – the Much Shelist attorney supervised by Hershman was still drafting a supplement and rescission letter. The attorney and Hershman agreed that they would not finalize the rescission letter and PPM supplement until they were sure Wextrust had finished changing the terms of the IDEX deal, even though they believed the changes that had already occurred were likely material enough to warrant the offer of rescission rights and the offering was ongoing. On May 15, 2006, a Wextrust employee informed the Much Shelist attorney supervised by Hershman and another Much Shelist attorney in an email that the IDEX "rescission letter and amendment went out."

17. Hershman knew that he and Much Shelist were listed as a notice party for IDEX and Wextrust in the IDEX operating agreement appended to the PPM.

18. Ultimately, Wextrust raised $30,340,000 from investors for the offering although the PPM disclosed that the raise would be limited to $23,000,000. The money raised in the IDEX offering was transferred to various accounts in Africa and has been dissipated.

19. In October 2007, Hershman learned that an investor in IDEX had filed a private action against Wextrust alleging fraud based on many of the same misrepresentations and omissions that Hershman had previously addressed in connection with the IDEX offering (e.g., misstatements concerning Vaticano's ownership of diamond mines; modifications to the use of proceeds; and change in loan structure). The investor also sought rescission of its investment in IDEX. Upon learning of the allegations in the lawsuit, Hershman knew or should have known that

Wextrust management may never have sent to investors the rescission letter or PPM supplement that Hershman had earlier advised be issued.

Shereshevsky's Felony Conviction for Conspiracy to Commit Bank Fraud

20. In November 2007, Hershman learned from one of his partners handling another lawsuit alleging securities fraud against Wextrust that Shereshevsky had previously been convicted of conspiracy to commit bank fraud in 2003. Prior to commencing work for Wextrust, Hershman had asked Shereshevsky if he had ever been convicted of a crime, to which Shereshevsky responded that he had not. Even though Hershman knew that Shereshevsky had lied to him and was a convicted felon, he continued to prepare PPMs for Wextrust without insisting that Shereshevsky's conviction be disclosed.

21. Between the time Hershman learned of Shereshevsky's conviction in November 2007 and February 2008, Much Shelist prepared Wextrust offerings that permitted Wextrust to raise more than $7.5 million from investors. Several of the PPMs for those offerings identified Shereshevsky as a key member of management and described him as "a principal and integral part of the management team," "a key asset in building the private equity group," and the person who "has brought focus and vision to the Manager's investment and merchant banking divisions." Those PPM's also described Shereshevsky's prior experience in the diamond business and noted that he "is a member of the Executive Board of Hampton Roads School in Norfolk, Virginia and a member of Congregation Bnai Israel." None of the PPMs disclosed Shereshevsky's criminal conviction or prior over-raises by Wextrust. Other PPMs failed to disclose Shereshevsky's role or conviction at all, although Hershman knew or should have known that Shereshevsky had control of Wextrust activities and also had control over the company's operating accounts.[2]

The Undisclosed Over-Raising in Connection with Offerings

22. On May 29, 2007, Hershman was informed that, as of that date, Wextrust raised $9.2 million for an $8 million private placement that Hershman prepared, known as Hamptons of Hinsdale. Hershman advised Wextrust's Chief Compliance Officer to "fix" the Hamptons of Hinsdale over-raise and to offer investors rescission rights if necessary, but he never followed up to make sure his advice was adhered to. By October 2007, when Hershman learned of the IDEX investor's rescission lawsuit, Hershman was on notice that Wextrust may have also conducted an undisclosed over-raise in connection with the IDEX offering.

[2] On February 8, 2008, Wextrust's CFO, who was Hershman's longtime acquaintance and who had been recommended for his position at Wextrust by Hershman, advised Hershman that he was concerned about signing a financial representation letter for the year 2006 because he was not an employee at the time, and that he had problems with Shereshevsky's control of the operating accounts and, even though he was CFO, he could not pay Wextrust's bills.

The Undisclosed Dilution of IDEX Investors

23. In early March 2008, after Hershman knew for certain of at least one prior Wextrust over-raise and had notice of the possible IDEX over-raise, the Wextrust CFO's concerns regarding Shereshevsky's control over the operating accounts, and Shereshevsky's undisclosed felony fraud conviction, Hershman was asked to advise Wextrust with respect to a $25 million offering known as ATM II. After reviewing the draft offering documents that Wextrust provided, Hershman decided that he would not prepare, review or edit any of the offering documents for the ATM II transaction because he believed the structure of the transaction to be materially inconsistent with the structure of the IDEX transaction, which would adversely impact IDEX investors.

24. Specifically, Wextrust management determined to sell indirectly 10% of Wextrust's 60% equity share of PAM through the ATM II offering. In the IDEX transaction, IDEX investors received a 40% equity share of PAM in exchange for a loan made to PAM. Under the terms of the IDEX offering, Wextrust and its principals were only to be paid for certain loans they purported to make in connection with the entities involved after repayment in full of the loan made to PAM by the IDEX offering and the IDEX investors' capital contributions. However, the ATM II offering was structured in a way that a new loan to PAM would be made, which would be senior to the loan made by the IDEX offering, and the loans purportedly made to PAM by Wextrust during the IDEX offering would also be repaid before IDEX investors received payment on their capital contributions.

25. On March 18, 2008, Wextrust management forwarded to Hershman a copy of a letter from counsel for certain IDEX investors who had learned about the ATM II deal. The letter raised concerns about the potential dilution from the ATM II deal and requested relevant documents. Hershman advised Wextrust management that the proposed structure was not consistent with the terms of the IDEX transaction. Notwithstanding Hershman's legal advice and IDEX investors' concerns, Wextrust management decided to go forward with the proposed structure.

26. On April 17, 2008, Hershman executed an engagement letter in which Much Shelist agreed to represent ATM II in the transaction. The engagement letter stated that Much Shelist's "services will be limited to reviewing and editing the disclosure documentation prepared by employees of WexTrust Capital, including the Limited Liability Company Agreement of ATM and the subscription documentation, for purposes of compliance with U.S. securities laws." The engagement letter then specifically disclaimed responsibility for reviewing "the impact of the offering on governing documentation of PAM or the existing distribution agreement or the relationships among the various equity and debt holders of PAM." Hershman also supervised the preparation of ATM II's blue sky filings. Hershman's work on the ATM II transaction facilitated Wextrust in raising $1,250,000 from investors for the ATM II offering. The raise for ATM II was stopped only by the August 11, 2008 emergency action filed by the Commission and the arrests of Byers and Shereshevsky.

Hershman's Role in Preparing Offering Documents

27. Between 2005 and 2008, Hershman personally worked on or reviewed another Much Shelist attorney's work on 16 Wextrust private placements, which allowed Wextrust to raise from investors more than $127 million. At least six of those transactions were prepared by Hershman and another Much Shelist attorney in late 2007 and 2008, which permitted Wextrust to raise over $7.5 million from investors after Hershman knew that Shereshevsky had been convicted of felony conspiracy to commit bank fraud and that Wextrust had engaged in at least one undisclosed over-raising of funds. Much Shelist was identified as notice party for Wextrust or its affiliate in some of those offerings. Hershman also facilitated the ATM II offering even though Wextrust rejected his legal advice that it was materially inconsistent with the terms of the IDEX offering and would adversely affect IDEX investors in a material way. Hershman was paid $25,291 in fees for his work on Wextrust matters after the time he knew of Shereshevsky's felony conviction.

LEGAL CONCLUSIONS

28. Sections 17(a)(2) and 17(a)(3) of the Securities Act make it unlawful for any person in the offer or sale of any securities to obtain money or property by means of any material misrepresentations or omissions, or to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon the purchaser. *Ira Weiss*, Securities Act Rel. No. 8641 (Dec. 2, 2005) at 18. "[T]o fulfill the materiality requirement 'there must be a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information made available." *Basic Inc. v. Levinson*, 485 U.S. 224, 231-32 (1988) (citation omitted).

29. Proof of scienter is not required to establish violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act. Negligence alone is sufficient. *Aaron v. SEC*, 446 U.S. 680, 697 & 701-02 (1980). Negligence is defined as the failure to exercise reasonable care. *Weiss* at 19.

30. In view of Shereshevsky's central role in managing Wextrust and the positive description of his business and civic accomplishments in Wextrust PPMs, his prior conviction for conspiracy to commit bank fraud in June 2003 was a material fact that Wextrust should have disclosed to investors. *SEC v. Scott*, 565 F. Supp. 1513, 1527 (S.D.N.Y. 1983) (principal's prior fraud conviction was material information that should have been disclosed to investors). Failure to disclose past securities over-raises by Wextrust and the potential for dilution of investors is also a fact that a reasonable investor investing in Wextrust securities offerings would most likely find to be significant in making an investment decision.

31. Section 8A(a) of the Securities Act provides that the Commission may issue a cease-and-desist order against a person who is "a cause of [another person's] violation, due to an act or omission the person knew or should have known would contribute to such violation . . . ." Negligence alone is sufficient to establish causing liability for non-scienter violations. *KPMG, LLP v. SEC*, 289 F.3d 109 (D.C. Cir. 2002).

32. Section 8A(e) of the Securities Act authorizes the Commission to order disgorgement in a cease-and-desist proceeding instituted under Section 8A(a) of the Securities Act.

33. After learning of (i) Shereshevsky's fraud conviction, (ii) that Shereshevsky had lied to him about his prior conviction, (iii) at least one prior undisclosed Wextrust over-raise and the possibility of an undisclosed over-raise in connection with the IDEX offering, and (iv) concerns raised by Wextrust's CFO regarding Shereshevsky's control over the Wextrust operating accounts, Hershman knew or should have known that one or more of those facts were material facts that should have been disclosed in the Wextrust PPMs that he prepared or reviewed in late 2007 and 2008. Yet Hershman did not even request that Wextrust include such material facts in its private placement memoranda. Moreover, when confronted with ATM II offering that Hershman knew was inconsistent with the prior IDEX offering he had supervised and that would harm IDEX investors, Hershman nonetheless agreed to advise Wextrust on disclosures for the offering and to supervise Blue Sky laws filings to facilitate the offering. By virtue of his conduct, Hershman was a cause of Wextrust's violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Hershman's Offer.

Accordingly, it is hereby ORDERED that**:**

A. Pursuant to Section 8A of the Securities Act, Respondent Hershman cease and desist from committing or causing any violations and any future violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act.

B. Respondent shall, within 10 days of the entry of this Order, pay disgorgement of $25,291 and prejudgment interest of $4,042.10 to the Receiver appointed in *SEC v. Byers, et al.*, 08-cv-7104 (S.D.N.Y.). If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. Payment shall be: (A) made by wire transfer, United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to "Timothy J. Coleman, as Wextrust Receiver", c/o Freshfields Bruckhaus Deringer US LLP, 701 Pennsylvania Avenue, NW, Suite 600, Washington, DC 20004-2692; and (C) submitted under cover letter that identifies Don Hershman as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Andrew M. Calamari, Division of Enforcement, Securities and Exchange Commission, 3 World Financial

Center, New York, NY 10281. In accordance with Rule 1102 of the Commission's Rules of Practice [17 C.F.R. 201.1102], the procedures set forth herein shall govern the distribution of any funds paid pursuant to this Order.

By the Commission.

Elizabeth M. Murphy
Secretary

Service List

Rule 141 of the Commission's Rules of Practice provides that the Secretary, or another duly authorized officer of the Commission, shall serve a copy of the Order Instituting Cease-And-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Making Findings, and Imposing a Cease-And-Desist Order ("Order") on the Respondent and his legal agent.

The attached Order has been sent to the following parties and other persons entitled to notice:

Honorable Brenda P. Murray
Chief Administrative Law Judge
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-2557

Andrew M. Calamari, Esq.
New York Regional Office
Securities and Exchange Commission
Three World Financial Center
New York, NY 10281

Mr. Don S. Hershman
c/o James R. Streicker, Esq.
Cotsirilos, Tighe & Streicker, Ltd.
33 North Dearborn Street
Chicago, IL 60602

James R. Streicker, Esq.
Cotsirilos, Tighe & Streicker, Ltd.
33 North Dearborn Street
Chicago, IL 60602