

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

MICG Investment Management, LLC  
(CRD No. 104028),

and

Jeffrey A. Martinovich  
(CRD No. 2258793)

Respondents.

DISCIPLINARY PROCEEDING  
No. 2009016230501

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. The Respondents in this Complaint, MICG Investment Management, LLC (MICG) and Jeffrey A. Martinovich, sold to investors units of MICG Venture Strategies LLC (Venture), a hedge fund that they organized, controlled, and managed. Management and incentive performance fees that MICG and Martinovich collected for managing Venture were dependent upon the value of the assets the fund owned. In order to inflate the fees, the Respondents assigned unjustifiably high values to the assets, never relying on independent or legitimate valuations or valuation methods. The values they assigned to

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assets were manifestly flawed in certain instances for reasons that included the Respondents' disregard of readily available information. For example, at various times they valued equity interests (i) at a price that was more than three times the price at which a large quantity of the security was contemporaneously offered for sale to them, (ii) in excess of the price at which the security was then being offered by the issuer, and (iii) based upon a claimed ownership percentage that was greater than the amount that the issuer/manager informed them that Venture owned. In addition, MICG and Martinovich made material misrepresentations and omissions in the Private Placement Memoranda through which they sold the Venture units. They also caused false and misleading account statements to be sent to customers who owned Venture. As a result, the Respondents violated Section 10(b) of the Securities Exchange Act of 1934 (Exchange Act), Exchange Act Rule 10b-5 thereunder, NASD Conduct Rules 2120, 2330(a), 3110 and 2110, and FINRA Rules 2020, 2150(a) and 2010, and MICG violated Section 17(a) of the Exchange Act and Rule 17a-3 thereunder.

2. In addition, in December 2008, Martinovich recommended to an elderly, non-accredited MICG customer, and effected in that customer's account, a \$75,000 purchase of Venture without having reasonable grounds for believing the transaction was suitable for him. In making the recommendation, Martinovich failed to disclose material facts to the customer concerning his (Martinovich's) self-interest in the recommended purchase. As a result, Martinovich violated NASD Conduct Rules 2310, 2120 and 2110, NASD IM-

2310-2, FINRA Rules 2020 and 2010, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

### RESPONDENTS AND JURISDICTION

3. MICG has been a FINRA member since August 2000. Its principal office is located in Newport News, Virginia. It has been registered with the U.S. Securities and Exchange Commission (SEC) as a Broker/Dealer and as an Investment Advisor since about August 2000. At all relevant times, MICG introduced its customers' securities accounts through FINRA member firm FCC. On May 12, 2010, the firm filed a Form BDW. It has not yet been approved.
4. Martinovich first became registered with FINRA in August 1992. At all times since MICG's inception, he has been MICG's CEO, its managing member and its Financial Principal. He directly and indirectly holds about a 98% ownership interest in MICG.<sup>1</sup>

### FACTS

#### **Venture's Management and Sales of Venture Units**

5. In about June 2007, the Respondents formed Venture. From about June 8, 2007 and continuing to at least May 11, 2009, the Respondents offered and sold securities consisting of Venture non-voting Class A Units (Units) to investors (these Units constituted the only class of Venture Units that were sold). MICG was the only broker-dealer that sold Venture Units and the

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<sup>1</sup> In all substantive and material matters relevant to this complaint, MICG acted through Martinovich. Accordingly, references in this Complaint to Martinovich include MICG when appropriate, including with respect to all allegations that concern actions he took, or failed to take, on behalf of MICG.

Respondents offered and sold Venture Units principally (if not exclusively) to existing MICG customers. Any purchaser of Venture Units who did not have an existing securities account at MICG opened one in connection with making their investment, becoming an MICG customer. At all relevant times, the Respondents offered and sold Venture Units pursuant to a claimed exemption from registration under the Securities Act. MICG received a commission of up to 2% of the amount invested in connection with many sales of Venture Units. Respondents referred to Venture as a hedge fund.

6. From about June 8, 2007 to about November 30, 2007, the Respondents offered and sold Venture Units to investors pursuant to and utilizing a Confidential Private Placement Memorandum (PPM) dated January 1, 2007. Beginning about December 1, 2007 and at all times thereafter, the Respondents offered and sold Venture Units to investors pursuant to and utilizing a PPM dated December 1, 2007. No other PPM, or addendum or supplement thereto, was used in offering and selling the Units. Both Venture PPMs identified MICG as Venture's manager and identified Martinovich as MICG's managing member.
7. At all times relevant herein, Martinovich individually, in substance and actuality, managed and controlled Venture. As Venture's manager, Martinovich, among other things: supervised MICG employees who performed financial and/or administrative functions for Venture or relating to its investment activities; made all final investment decisions, deciding how money raised from the sale of units would be invested and what assets would

be purchased; determined the values that were assigned or attributed to, Venture's assets; determined whether to maintain the value(s) that he had assigned or attributed to Venture's assets or, alternatively, whether to change or modify the value he had assigned to any particular asset based on relevant circumstances; and, determined for each calendar year whether Venture would pay MICG an incentive performance fee and, if so, the amount.

8. Commencing on about June 7, 2007 and at all relevant times thereafter, the Respondents maintained a securities account for Venture at MICG. Accordingly, Venture was an MICG customer at all relevant times. FCC, as MICG's clearing firm, generated and issued monthly statements for Venture's securities account. The account had check writing privileges. Martinovich was the only person authorized to sign checks written against the account.
9. At all relevant times, FCC generated and sent monthly (or other periodic) account statements to MICG's customers, including customers who owned Venture Units. For customers who had owned Venture Units as of a statement date, their MICG account statement reflected that they held an ownership interest in Venture and the estimated total or market value of that interest.

#### **Venture's Two Private Placement Memoranda**

10. Both Venture PPMs pursuant to which the Respondents offered and sold Venture Units stated that the Units involved a high degree of risk, were suitable only for investors who had substantial financial resources and who could bear the total loss of their investment, and would only be offered and

sold to persons who qualified as accredited investors as defined and set forth in Regulation D promulgated under the Securities Act.

11. Both Venture PPMs defined the term "Net Asset Value" ("NAV") as, "the total assets of the Fund, including all cash, cash equivalents and other securities (each valued at fair market value (FMV), [*emphasis added*] less the total liabilities of the Fund determined in accordance with generally accepted accounting principles, consistently applied under the accrual method of accounting." The "Limited Liability Company Agreement of MICG Venture Strategies, LLC" contained the identical, or substantially identical, definition of the term NAV.
12. The two Venture PPMs separately defined "NAV per unit" as, "The NAV of any class of Units of the Fund divided by the number of Units of such class issued and outstanding as of the applicable Valuation Date." Both PPMs stated that after the end of each month the manager would prepare and send to investors an unaudited statement that would report the NAV of the fund and any changes therein.
13. The cover page and the "Summary" section of both Venture PPMs stated that Units were being priced at an initial offering price of \$50,000 per Class A Unit and thereafter at an offering price equal to the NAV per Class A Unit. In actuality, Martinovich consistently valued Venture Units, or caused them to be valued, on Unit owners' account statements and other relevant documents at a constant \$1.00 per Unit.

14. Both Venture PPMs stated that at the beginning of each calendar quarter, the Fund Manager would be paid a quarterly management fee equal to one-quarter of one percent ( $1/4$  of 1% -- approximately 1.0% annually) of the Net Asset Value of each Member's Book Capital Account (a term defined in the PPMs).
15. Both Venture PPMs stated that the Fund Manager would be allotted an "Incentive Allocation" equal to 20% based on, in substance, the net new appreciation in Venture's assets during each calendar year. Both PPMs further stated at pages (21 and 20) that the Fund Manager would receive compensation based on unrealized appreciation as well as realized appreciation in the Fund's NAV.
16. The January 1, 2007 Venture PPM contained no disclosure regarding who would value Venture's non-marketable or other assets or what process would be utilized to value its assets (other than that assets would be valued at FMV). The December 1, 2007 Venture PPM stated (at page 22) under a section headed "Valuation of Illiquid Assets," "The auditors of the Fund (currently HPLC) will value assets held in the Fund that are not marketable. The Auditors will use independent discretion and research along with Generally Accepted Accounting Principles to arrive at the acknowledged value for purposes of calculating the Fund Units' Net Asset Value." This disclosure was never thereafter revised or deleted by means of any supplement or addendum to the December 1, 2007 PPM or otherwise.

17. Both PPMs stated that the manager had a responsibility to investors to exercise good faith and fairness in all dealings affecting the fund. In addition, both contained a section headed "Standard of Care" that stated in part:

In acting on behalf of the Fund, a Member, Fund Manager or officer is to act in good faith and with that degree of care that an ordinarily prudent person in a like position would use under similar circumstances and perform diligently and faithfully his or its duties for the benefit of the Fund in accordance with the Fund's purposes, policies, procedures and objectives. . . . In performing his or its duties, the Member, Fund Manager or officer is entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented by: (a) one or more of the Fund's agents or employees; (b) counsel, public accountants, business, investment or financial consultants or advisors, or other persons as to matters believed to be within such person's professional or expert competence; or (c) a Member, Fund Manager or officer duly designated in accordance with the LLC Agreement . . . *so long as*, [emphasis added] in so relying, such Member, Fund Manager or officer shall be acting in good faith and with such degree of care, but the Member, Fund Manager or officer shall not be considered to be acting in good faith if he or it has knowledge concerning the matter in question that would cause such reliance to be unwarranted.

#### **Profile of EPV Solar, Inc. and Its Status**

18. From June 2007 through at least February 24, 2010, EPV Solar, Inc. (EPV), fka Energy Photovoltaics, Inc., was a private corporation headquartered in New Jersey that was engaged principally in the design, manufacture and sale of photovoltaic modules and systems that convert sunlight into energy. At all relevant times, there was *no* public trading market for EPV common stock or for any other securities it had issued. Moreover, no public trading market exists currently for any securities issued by EPV. At all times relevant herein, EPV did not file quarterly or annual reports with the SEC pursuant to any provision of the Exchange Act.

19. Commencing in about April 2007, EPV conducted a private offering of Convertible Senior Secured Notes Due 2010 (2007 Notes) pursuant to a Confidential PPM dated April 20, 2007. A FINRA member firm acted as the placement agent for the offering. EPV concluded the offering in about June 2007.
20. Commencing in about March 2009, EPV conducted a private offering whereby it offered to exchange all of the 2007 Notes for a new type of note. A different FINRA member firm acted as dealer manager for the offering. EPV concluded the exchange offering in about June 2009.
21. On or about February 24, 2010, EPV filed a voluntary petition in bankruptcy under Chapter 11 of the U.S. Bankruptcy Code in the U.S. Bankruptcy Court for the District of New Jersey.

**Respondents' Purchases of EPV Common Stock for Venture**

22. General Securities Principal BG became associated with MICG in about December 2006. BG's responsibilities at MICG involved primarily, if not exclusively, investment banking activities. At all relevant times, Martinovich was BG's immediate supervisor.
23. As of December 2006, BG had known a person named JPL, and/or known of him, for a number of years. JPL purported to own, operate and/or conduct business through, a company named SFI. BG had several direct contacts with JPL through about the first three to four months of 2007 pursuant to which JPL introduced BG to SG, who was then an EPV director. That introduction

to SG led, directly or indirectly, to Martinovich's purchases of EPV common stock for Venture described below.

24. Commencing about April 30, 2007 and continuing thereafter, BG had no further direct contact with JPL. BG, however, from about May 2007 through at least August 2009, communicated frequently with SG, who on various occasions communicated with JPL on behalf of BG and the Respondents.
25. On or about June 22, 2007, Martinovich purchased for Venture, or caused Venture to purchase, 1,000,500 (1.0005 million) shares of EPV common stock. Martinovich purchased the stock from one or more selling shareholders in a private transaction(s), not from EPV. SG arranged or participated in arranging, or acted as an intermediary in connection with, Venture's acquisition of the shares. Martinovich paid, or caused Venture to pay, about \$1,150,000 for the 1.0005 million shares of EPV common stock, or about \$1.15 per share. Martinovich paid for the shares on about June 14, 2007 by effecting, or causing to be effected, a wire transfer of funds out of Venture's securities account at MICG. Venture received the 1.0005 million EPV shares in its securities account at MICG on about June 22, 2007. When received by Venture, the certificates for the EPV shares bore a legend that restricted their resale.
26. In about July 2007, Martinovich purchased for Venture, or caused Venture to purchase, an additional 800,000 shares of EPV common stock. Martinovich purchased the stock from one or more selling shareholders in a private transaction(s), not from EPV. Martinovich paid, or caused Venture to pay,

about \$920,000 for the 800,000 shares or about \$1.15 per share. Martinovich paid for the shares by effecting, or causing to be effected, two wire transfers out of Venture's securities account at MICG that totaled \$920,000. The wire transfers occurred on or about July 27, 2007 and on or about August 1, 2007.

Venture received the 800,000 EPV shares in its securities account at MICG on about August 2, 2007 (although the securities were misidentified on Venture's August 2007 account statement).

27. When received by Venture, the 800,000 EPV common shares were subject to a restriction on resale.
28. The PPM for EPV's offering of the 2007 Notes reflected (at page 15) that EPV had about 113,453 shares of common stock issued and outstanding. Based on that approximate number of outstanding EPV common shares, Venture's 1.8005 million shares constituted about 1.5% of all issued and outstanding shares.
29. Venture still owned its 1.8005 million EPV shares when EPV filed for bankruptcy. A list of equity security holders that EPV filed with its bankruptcy petition showed that Venture's 1.8005 million shares constituted, at the time of the filing, about 0.62% of the outstanding shares. Thus, Venture's common stock ownership interest in EPV incurred substantial dilution from mid 2007 when Venture acquired the shares through about February 24, 2010 when EPV filed for bankruptcy. The list of equity security holders that EPV filed with its bankruptcy petition showed that JPL owned 449,000 shares of EPV common stock. Also, "Schedule G" to EPV's

bankruptcy petition (Executory Contracts and Unexpired Leases), filed on or about March 21, 2010, disclosed that EPV had a "Consulting Services Agreement" dated March 17, 2008 with SFI, Attention JPL.

**Incentive Fee and Management Fees Venture Paid MICG for 2007**

30. Venture's month-end account statements generated by FCC for June 2007 through September 2007 reflected that Venture's shares of EPV common stock had a "Current Price" of \$1.15 per share.
31. On or about October 17, 2007, Martinovich caused FCC to increase the price it was reflecting for Venture's 1.8005 million EPV common shares to \$1.94 per share. Venture's October 2007 month-end account statement that FCC generated reflected that Venture's EPV common shares had a "Current Price" of \$1.94 per share.
32. On or about December 12, 2007, Martinovich caused FCC again to increase the price it was reflecting for the EPV shares that Venture owned to \$2.13 per share. Venture's December 2007 month-end account statement that FCC generated for Venture's securities account reflected that Venture's EPV shares had a "Current Price" of \$2.13 per share. That account statement further showed that Venture's 1.8005 million EPV shares had a total "Current Market Value" of about \$3,835,000 and that Venture had an unrealized gain of about \$1,765,000 on the shares. In addition, Venture's December 31, 2007 audited financial statements that Martinovich prepared or caused to be prepared valued the EPV shares at \$2.13 per share.

33. Martinovich raised EPV's share price, or caused it to be raised, to \$2.13 per share, in purported reliance on an EPV business valuation that he received on about December 12, 2007 (December 2007 Valuation) and that supposedly and ostensibly had been prepared by JPL. Before receiving the December 2007 Valuation, the Respondents did not have any contact or communication of any nature with JPL concerning it.
34. Martinovich and MICG did not retain, employ or engage JPL to prepare the December 2007 Valuation and knew it was not prepared for, or for the use of, MICG or Venture. In addition, Martinovich did not make or conduct, or cause anyone to make or conduct on behalf of MICG or Venture, any material or meaningful inquiry concerning JPL to determine if he was subject to any actual or potential conflict or any self-interest that could or might impair his independence and/or objectivity in preparing the December 2007 Valuation. Moreover, Martinovich did not conduct or cause anyone to conduct on behalf of MICG or Venture, any material inquiry into JPL's qualifications, training, expertise or competence as it related to performing business valuations or appraisals. Among other things, Martinovich and MICG did not conduct or cause to be conducted any inquiry into whether JPL owned EPV stock, had any business or other relationship with EPV or its management, had any training or experience in performing business valuations for any purpose, held any business valuation accreditation or certification, belonged to any professional business valuation organization(s) or if there were other relevant matters bearing upon his qualifications, objectivity and independence. Also,

Martinovich did not conduct any inquiry or cause one to be conducted on behalf of MICG or Venture, and did not determine, the purpose for which JPL had prepared the December 2007 Valuation, for whom or for whose use he had prepared it, the effective date of the valuation or other relevant matters bearing upon whether it was reasonable or consistent with his ethical and fiduciary duties as Venture's manager, to use and/or rely upon it in valuing the EPV stock Venture owned.

35. On about December 21, 2007, Martinovich issued, or caused to be issued, a \$273,600 check (No. 1005) payable to MICG that was drawn against Venture's securities account at MICG and he deposited the check, or caused it to be deposited, to an MICG bank account (its primary operating account).
36. On about December 28, 2007, Martinovich wired, or caused to be wired, about \$83,419 from Venture's securities account at MICG to an MICG bank account (again its primary operating account).
37. The funds totaling about \$357,000 that Martinovich caused to Venture to pay MICG through the check and wire transfer constituted the payment of a 2007 incentive performance fee, or an estimated incentive performance fee, that was based on the claimed and purported unrealized gain of about \$1,765,000 on the 1.8005 million EPV shares that Venture owned.
38. Martinovich did not sell any EPV shares that Venture owned or cause any EPV shares to be sold in order to pay MICG an incentive fee totaling about \$357,000. Rather, Martinovich paid the incentive fee primarily or exclusively with capital contributions Venture had received from sales of Units.

39. After he caused Venture to pay MICG about \$357,000 as a 2007 incentive fee, Martinovich made adjustments to, or accepted and adopted certain adjustments in, the calculation of the incentive fee that Venture owed MICG for 2007. The adjustments reduced the amount determined to be owed by about \$20,000 to about \$337,000. Venture's audited financial statements for the period ending December 31, 2007 showed that Venture paid MICG a "Performance allocation fee" of \$337,060 for 2007. That performance allocation fee was based entirely on the purported unrealized gain in the EPV shares Venture owned.
40. For calendar year 2007, as shown in Venture's year-end 2007 audited financial statements, Martinovich caused Venture to pay MICG management fees of approximately \$20,100. A portion of the total amount Venture paid MICG as management fees for 2007 was based on, and derived through calculations that assigned, a value of \$1.94 per share and/or \$2.13 per share to Venture's 1.8005 million EPV shares.
41. After increasing the price of Venture's 1.8005 million EPV shares to \$2.13 per share, Martinovich maintained that price for the shares, or caused the price to be held at \$2.13 per share, through about December 31, 2008 for purposes of Venture's records and financial statements. All Venture account statements from December 31, 2007 through December 31, 2008 showed a "Current Price" of \$2.13 per share for Venture's EPV shares. However, as addressed below beginning at Paragraph 70, notwithstanding that Venture's December 31, 2008 account statement showed a price of \$2.13 per share for the EPV

shares, Martinovich ultimately valued the EPV shares Venture owned at \$2.88 per share for purposes of Venture's December 31, 2008 financial statements and other purposes.

#### **Venture's \$5 Million Investment in GSDP In 2008**

42. On or about December 4, 2007, General Sports Derby Partners LLC (GSDP) was formed as a limited liability company under the laws of Delaware. As set forth in the GSDP Operating Agreement, GSDP was organized, in substance, for the purpose of acquiring all shares of an English "limited company" and through that company substantially all shares of an entity that owned the Derby Rams (an English professional soccer team) and other assets including the stadium in which the Derby Rams played home games.
43. In or about January 2008, GSDP began to offer and sell Series A Preferred Units (Series A Units). The Series A Units were not registered with the SEC and were subject to various, and substantial, restrictions on sale. The cover page of the GSDP Operating Agreement stated that the Series A Units could not be sold or otherwise disposed of without "effective registration" under the Securities Act or an exemption therefrom and without "compliance with the other substantial restrictions on transferability set forth herein." GSDP intended to sell up to 500,000 Series A Units priced at \$100 per unit, raising up to \$50 million.
44. On or about January 17, 2008, Martinovich completed and executed on behalf of Venture, as its manager, certain documents including a Subscription

Agreement pursuant to which Venture acquired 50,000 GSDP Series A Units for \$5 million.

45. On or about January 25, 2008, GSDP, through a wholly owned subsidiary, completed a transaction whereby it acquired ownership of about 93% of the Derby Rams (which then played in the English Premier League), the team's stadium and other related assets. A previous owner retained an ownership interest of about 7% in the team and other assets. About two months thereafter, the Derby Rams were "relegated" to the English Championship League (a lesser league).
46. The GSDP balance sheet that was included with its December 31, 2008 audited financial statements showed that GSDP valued the transaction whereby it acquired about 93% of the Derby Rams and other assets, or recorded and carried the transaction for purposes of its financial statements, on a "cost basis" at \$33,456,511 (about \$33.45 million).
47. On about February 12, 2008, Martinovich received a letter from GSDP's manager. The letter stated, in substance, that based on the number of Series A Units that had been sold at that time (242,010), Venture had a current percentage interest in GSDP of 16.53% which constituted an "indirect ownership interest" in the Derby Rams of 15.37% (the product of 16.53% times .93). The letter further stated, in substance, that a total of 257,990 Series A Units were still authorized to be issued, that the manager intended to continue to offer and sell unissued Series A Units, and that as additional

Series A Units were sold and issued the "Percentage Interests" of existing Series A Unit holders would be adjusted accordingly.

48. Based on the letter Martinovich received on about February 12, 2008 from GSDP's manager and other circumstances, Martinovich and MICG knew that Venture's percentage interest in GSDP could decline over time and that there was a high likelihood it would decline.
49. At all times relevant to this Complaint, there was no public trading market for, or public trading in, the GSDP Series A Units and there is currently no public trading market for the Series A Units.

**Incentive Fee and Management Fees Venture Paid MICG for 2008**

50. In about November 2008, Martinovich invested about \$350,000 on Venture's behalf in, or caused Venture to invest about \$350,000 in, a private offering of securities by a limited liability company that used the proceeds to acquire senior debt of a company in the crane rental business. As of December 1, 2008, Venture's assets consisted principally of 1.8005 million EPV common shares, 50,000 GSDP Series A Units and the investment interest it acquired in November 2008 for \$350,000. As of December 8, 2008, Venture's assets included about \$17,900 in cash or cash equivalents held in its securities account at MICG (excluding a \$7,500 check issued against that account on about December 8, 2008 that had not yet cleared).
51. On or about December 5, 2008, Martinovich recommended to MW, who was an existing customer at MICG with whom Martinovich had dealt for several years, that he invest in Venture. MW owned two Individual Retirement

Accounts (IRAs) at MICG. MW signed a Venture subscription agreement on about December 16, 2008, subscribing to invest \$75,000 in Venture.

Martinovich signed the subscription agreement as MW's representative. MW was *not* an accredited investor and, in December 2008, he was about 70 years old. On about December 17, 2008, Martinovich effected or caused to be effected, about 35 sales of various securities, principally various "iShares" exchange traded funds, in one of MW's IRAs. The sales totaled about \$75,000. MW's purchase of Venture Units was completed on about December 30, 2008 (see paragraph 56 below).

52. On about December 15, 2008 Martinovich composed an e-mail and sent it to three MICG representatives. As the subject he entered "EPV public trading - process starting Jan 15." Martinovich stated in the e-mail, "Ladies - I am going to touch base with some of our existing clients to slide a little more over to the fund prior to year end - let me know if you want to know the story and have a few to add - thanks." The "fund" referred to in the e-mail was Venture.
53. On about December 19, 2008 and on about December 23, 2008, Venture received \$100,000 in its securities account at MICG from the sale of Venture Units to two investors (but not MW). These two sales raised the amount of cash in Venture's account to about \$115,000. Venture's cash position remained at about \$115,000 through December 29.
54. On about December 24, 2008, Martinovich composed and sent an e-mail to several MICG employees bearing the subject description, "Hedge fund valuation changes." In the e-mail, Martinovich gave instructions to change

the values of the investments Venture owned. The e-mail also contained instructions concerning MICG's other two proprietary hedge funds. As for all three funds, Martinovich instructed, "Ensure this happens this week and is properly reflected on December statements going out first of January."

55. Regarding Venture specifically, Martinovich instructed that EPV should be, "bumped up to \$2.16 per share . . . (so a gain of \$54,001.5)." As for Venture's investment in GSDP, Martinovich instructed in the e-mail that the "Derby Rams" were valued then at \$54,250,000, so 14% of \$54,250,000 equaled \$7,595,000. After giving instructions in the e-mail relating to the investment made in November 2008, Martinovich stated that the auditor had estimated Venture's expenses for 2008 would be about \$200,000. Martinovich then stated in the e-mail, "So the number for the incentive fee calculation should be \$2,690,178 minus approx. \$200k expenses = \$2,690,178 [sic] X 20% = \$538,035.60.<sup>2</sup> . . . This needs to be adjusted now and paid now prior to year end. . . . Plus ensure the Mgt. fee is distributed this week – make sure enough cash in."

56. On or about December 30, 2008, Martinovich transferred, or caused to be transferred, \$75,000 from one of MW's IRAs at MICG to Venture's securities account to complete MW's Venture purchase. On December 30 and 31, Venture received, in total, an additional \$300,000 (excluding MW's \$75,000) in its securities account at MICG from sales of Venture Units to two investors.

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<sup>2</sup> Martinovich made what Complainant presumes to have been an inadvertent error in failing to subtract the \$200,000 of expenses from the figure of \$2,690,178. Subtracting the \$200,000 from that figure, the correct calculation would have been,  $2,490,178 \times 20\% = \$498,035.60$ .

Including the \$300,000 referred to in the preceding sentence, as of December 31, 2008, Venture's account at MICG held about \$490,000 in cash.

57. On about December 30, 2008 Martinovich issued, or caused to be issued, a check drawn against Venture's securities account [REDACTED] payable to MICG in the approximate amount of \$6,400. He issued this check to pay MICG additional management fees, on top of the amounts previously paid, for the second and/or third quarter of 2008. On about December 31, 2008 Martinovich issued, or caused to be issued, a check drawn against Venture's securities account [REDACTED] payable to MICG in the approximate amount of \$22,000. He issued this check to pay MICG management fees for the fourth quarter of 2008. Martinovich deposited both checks, or caused them to be deposited, to MICG's bank account on or about December 31, 2008.
58. As shown in Venture's year-end 2008 audited financial statements, Martinovich caused Venture to pay MICG total management fees of approximately \$87,200 for 2008.
59. On December 31, 2008, Martinovich issued, or caused to be issued, a check drawn against Venture's securities account [REDACTED] payable to MICG in the amount of \$450,000. The words "2008 Incentive Fee" were written on the "memo" line of the check. Martinovich deposited the \$450,000 check or caused it to be deposited to MICG's bank account on December 31, 2008.
60. Martinovich intended the \$450,000 check as the payment of, and he issued it for the purpose of paying, an incentive fee or estimated incentive fee to MICG

for 2008 based on the purported unrealized appreciation in Venture's assets during 2008 consistent with his December 24, 2008 e-mail described above.

61. When he issued the \$450,000 check on December 31, 2008, Martinovich had not received any valuation or appraisal of the FMV of Venture's 50,000 GSDP Series A Units as of December 31, 2008 (or any other contemporaneous valuation date), had not received any valuation or appraisal of the FMV of the Derby Rams and other assets GSDP owned as of December 31, 2008 (or any other contemporaneous valuation date) and had not retained or engaged anyone to perform any appraisal or valuation of the FMV of Venture's Series A Units or of the assets GSDP owned. Moreover, he had no knowledge of any contemporaneous transactions in GSDP Series A Units that supported the \$7.595 million value he assigned to them in the December 24, 2008 e-mail and he had no other *bona fide* documentary or other support for the assigned value. As of December 31, 2008, the issuer of the Series A Units was continuing to offer Series A Units for sale at \$100 per unit, the price Martinovich paid for Venture's Series A Units.<sup>3</sup> In fact, the issuer sold additional Series A Units at \$100 per unit after December 31, 2008.

62. When he issued the \$450,000 check on December 31, 2008, Martinovich had not received any valuation or appraisal of the FMV of Venture's 1.8005 million EPV shares as of December 31, 2008 (or any other contemporaneous valuation date), and had not retained or engaged anyone to perform any such appraisal or valuation. Moreover, he had no knowledge of any

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<sup>3</sup>As of December 31, 2008, not all of the original 500,000 Series A Units that the issuers was offering for sale had been sold.

contemporaneous transactions in EPV common stock that supported the price he assigned to the shares in his December 24, 2008 e-mail and he had no other *bona fide* documentary or other support for the assigned share price.

**Change Made to Value Assigned to the Derby Rams after December 31, 2008**

63. In conducting Venture's audit and/or MICG's audit in or about January 2009 for year-end 2008, MU (HPLC's owner and MICG's auditor) reviewed the value Martinovich had assigned in his December 24, 2008 e-mail to Venture's ownership interest in the Derby Rams (i.e., to Venture's 50,000 GSDP Series A Units). MU concluded, in substance, that the \$7.595 million value that Martinovich had assigned to GSDP Series A Units was excessive, unwarranted or unreasonably high. MU advised Martinovich of his foregoing conclusion and told Martinovich, in substance, that unless he reduced the value assigned to GSDP, he (MU) would have to qualify his opinion regarding Venture's financial statements or take some other appropriate action to indicate his disagreement with the value. In reaching his conclusion, MU did not perform or conduct any *bona fide* valuation or appraisal of the FMV of Venture's 50,000 Series A Units as of December 31, 2008. Among other things, he did not apply and follow, or reach his conclusions in conformance with, professional valuation standards of the AICPA, the Uniform Standards of Professional Appraisal Practice and/or any other recognized or established valuation or appraisal standards.
64. Martinovich ultimately acquiesced to MU's conclusion about the appropriate value as of December 31, 2008 for Venture's investment in GSDP. For

purposes of Venture's 2008 year-end audited financial statements, including its December 31, 2008 Balance Sheet, Martinovich assigned a value of \$6,006,000 (hereafter \$6 million) to the GSDP investment. Martinovich used that value for purposes of calculating and determining the *actual* incentive performance fee (addressed below) that Venture owed MICG for 2008.

65. The \$6 million value that Martinovich ultimately assigned to the GSDP investment was derived and calculated as follows: an estimated "fair value" of 55,000,000 pounds was assigned to the "Derby Rams"; that amount was discounted to 30,000,000 pounds; a dollar/pound currency conversion rate of 1.43 was applied yielding a discounted value of \$42 million; and, the \$42 million discounted value was multiplied by 14%, the ownership percentage Martinovich claimed Venture held in GSDP, yielding \$6 million.
66. In ultimately valuing Venture's interest in GSDP as of December 31, 2008 at \$6 million (representing about a 20% increase over the amount Venture paid earlier in 2008), Martinovich disregarded the fact that GSDP was continuing to sell Series A Units at \$100 per Unit and the effect such sales would have on the amount Venture could receive for its Series A Units if it sought to sell them. He also disregarded the restrictions on resale and how such restrictions might affect the current FMV of the Series A Units.
67. Moreover, Martinovich did not engage or retain any person or entity to perform or conduct, on behalf of MICG or Venture, a *bona fide* appraisal or valuation of the FMV of Venture's 50,000 Series A Units as of December 31, 2008 in ultimately valuing the investment interest at \$6 million. In valuing

Venture's investment in GSDP at about \$6 million, Martinovich had no knowledge of any sale of GSDP units that occurred on, or reasonably contemporaneous to, December 31, 2008, in an arm's length transaction, at a price higher than \$100 per Unit that would support the value he assigned to Venture's investment.

68. Moreover, the \$6 million value Martinovich ultimately assigned to Venture's investment in GSDP as of December 31, 2008 was not otherwise premised or grounded on any *bona fide*, legitimate or reliable documentary or other support for the FMV of the 50,000 Series A Units Venture owned.
69. Considered in isolation, the effect of reducing the value assigned to the GSDP investment to about \$6 million (from the \$7,595,000 value Martinovich assigned to the DR in his December 24, 2008 e-mail) was to reduce Venture's unrealized gain as of December 31, 2008 on the Series A Units by about \$1,595,000. That amount accounted for about \$319,000 (20% times \$1.595 million) of the \$450,000 estimated incentive fee that Martinovich caused Venture to pay MICG on December 31, 2008.

**Increase in the Value Assigned to EPV Shares after December 31, 2008**

70. In about early December 2008, Martinovich began preparing a draft of an EPV business valuation in much the same form, and containing much the same content, as JPL's December 2007 Valuation. Martinovich intended to use it as a preliminary template or draft of a year-end 2008 EPV business valuation that would assign a value to, or contain an opinion regarding the value of, EPV common stock as of December 31, 2008. Martinovich prepared

this draft valuation as a Microsoft WORD document. Martinovich's draft valuation assigned a value of \$2.16 per share to EPV common stock, the value he used in his December 24, 2008 e-mail (see paragraphs 54 and 55 above).

71. Martinovich planned, without communicating himself with JPL, and without any associated person of MICG communicating with JPL in any manner, to have JPL review it, put the "valuation" on SFI letterhead, sign it and issue it as his (JPL's) work. To accomplish this plan, Martinovich intended that BG, on Martinovich's and MICG's behalf, would seek SG's help.
72. On about January 4, 2009, BG composed and sent an e-mail to Martinovich that stated, "FYI ... we are almost done, and it looks good." Attached to, and/or forwarded with BG's e-mail were: e-mails exchanged earlier between SG and JPL that BG had received from SG; and, an undated and unsigned "EPV Business Valuation" in the form of a .pdf document or similar form. The "Conclusion" section of the valuation assigned a \$2.16 per share value to EPV common stock.
73. On about January 7, 2007, BG received an e-mail from SG that stated, "Here is the new valuation report from [JPL] stating that in his opinion the value of [EPV] common stock today is \$2.42/share." Attached to and/or forwarded with the e-mail was an undated and unsigned "EPV Business Valuation" in the form of a .pdf document or similar form, purportedly prepared by JPL. The "Conclusion" section of the valuation assigned a \$2.42 per share value to EPV common stock, about a 13.5% increase from the December 31, 2007

value. The document stated therein that, in 2008, publicly traded solar stocks had dropped by an average of 76% in market value.

74. On or about January 12, 2009, Martinovich sent or transmitted the valuation referred to in the foregoing paragraph to MU for his use in conducting Venture's audit. On the same day, MU sent Martinovich an e-mail notifying him that the valuation needed to be on letterhead and signed.
75. On January 15, 2009, BG received an e-mail from SG to which was attached a document consisting of an "EPV Business Valuation" that was in form and content substantially identical to the valuation BG had received from SG on January 7 with the following exceptions: the contents of the first page were printed on SFI letterhead; and the last page had JPL's purported signature with the handwritten date 12-30-08. As with the prior unsigned and undated version of the document, the "Conclusion" section of the valuation assigned a \$2.42 per share value to EPV common stock. BG sent or transmitted the signed and dated EPV valuation to Martinovich on January 15, 2009. Martinovich in turn sent or transmitted it to MU on January 15, 2009 for his use in conducting Venture's audit.
76. Later in the day on January 15, 2009, BG composed and sent Martinovich an e-mail, the body of which stated in its entirety, "Let me know...." Attached to and/or transmitted with the e-mail was a Microsoft WORD document identified as "MODIFIED EPV Valuation 1-6-09 JPL.docx." The attached WORD document was, in form and content, identical or substantially identical

to the EPV Business Valuation that BG had received earlier that day except that:

- the first page was *not* on SFI letterhead;
- the last page contained no signature or date;
- the document showed and reflected, apparently through the "*Track Changes*" feature of Microsoft WORD, that the discount percentage used in valuing the EPV shares had been changed by reducing it, at two places to a lower figure (the deleted discount figures appeared on the document); and,
- the document showed and reflected, again apparently through the "*Track Changes*" feature of Microsoft WORD, that the price \$2.42 had been changed to a higher amount at two places (the deleted \$2.42 amounts appeared on the document): at the first location, \$2.42 had been changed to a price range of "\$2.79-\$2.98; and, in the "Conclusion," the \$2.42 per share price had been changed to \$2.88.

77. BG subsequently, on or about January 16, 2009, sent or transmitted a document that was identical, or substantially identical, to the WORD "red-lined" document described in paragraph 76 above to SG by e-mail. Martinovich and BG intended for SG to send the document to JPL and to ask JPL to reissue his EPV valuation with the changes incorporated in it.
78. On or about January 16, 2009, after he had sent the document described in paragraph 76 above to SG, BG composed and sent to Martinovich an e-mail that stated in part, "SG doesn't see a problem with the valuation. He will send it back and we should get it by Monday or Tuesday."
79. On about January 16, 2006, BG received an e-mail from SG that stated in part, "This will confirm that I have 1.5M shares available from two selling shareholders at a price net to MICG of \$0.90 per share. . . . I would suggest

that MICG market the shares to its clients at \$1.00 per share.” The “shares” referred to in the e-mail consisted of EPV common stock. BG conveyed the substance of that e-mail to Martinovich by no later than January 20, 2009.

80. On or about January 19, 2009, Martinovich composed and sent an e-mail to several MICG employees. The e-mail stated in part, “please confirm this week EPV price changed to \$2.88 and update Values of all Venture Shareholders updated now so on January Statements – should be up 16% (so about 18% for December).”
81. On or about January 23, 2009, BG received an e-mail from SG that stated in part, “As requested, here is [JPL’s] revised EPV Valuation.” Attached to and/or forwarded with SG’s e-mail to BG was an “EPV Business Valuation” in the form of a .pdf document or similar form, purportedly prepared by JPL (January 2009 Valuation). The contents of the first page were printed on SFI letterhead and the last page had JPL’s purported signature with the handwritten date 12-31-08. The January 2009 Valuation contained the changes that were contained in and shown on the “red-lined” WORD document BG sent to Martinovich on January 15, 2009 (see paragraph 76 above) and in the “red-lined” WORD document BG sent to SG on January 16, 2009 (see paragraph 77 above). Thus, the “Conclusion” section of the EPV valuation that BG received from SG on January 23 assigned a per share value of \$2.88 to EPV’s common stock. The \$2.88 per share value represented about a 35% increase from the December 31, 1007 value Martinovich has assigned to the shares. This version of the EPV valuation also stated that, in

2008, publicly traded solar stocks had dropped by an average of 76% in market value.

82. BG forwarded or transmitted the January 2009 Valuation to Martinovich by e-mail on January 23, 2009. On or about January 28, 2009, Martinovich sent or transmitted the January 2009 Valuation to MU for his use in conducting Venture's audit.
83. Regarding the January 2009 Valuation, Martinovich did not retain, employ or engage JPL to prepare it and knew it was not prepared for, or for the use of, MICG or Venture. Martinovich had no communication of any nature with JPL concerning the January 2009 Valuation, nor did BG or any other associated person of MICG. Martinovich did not make or conduct, or cause anyone to make or conduct on behalf of MICG or Venture any material or meaningful inquiry concerning JPL to determine, and Martinovich did not determine, if JPL was subject to any actual or potential conflict or any self-interest that could or might impair his independence and/or objectivity in preparing the January 2009 Valuation. Moreover, Martinovich did not conduct or cause anyone to conduct any inquiry into JPL's qualifications, training, expertise or competence as it related to performing business valuations or appraisals. Among other things, Martinovich did not conduct or cause to be conducted any inquiry into whether JPL: owned EPV stock; had any business or other relationship with EPV or its management; had any training or experience in performing business valuations for any purpose; held any business valuation accreditation or certification; belonged to any

professional business valuation organization(s); or, other relevant matters bearing upon his qualifications, objectivity and independence. Also, Martinovich did not conduct any inquiry or cause one to be conducted on behalf of MICG or Venture, and did not determine, the purpose for which JPL had prepared the December 2007 Valuation, for whom or for whose use he had prepared it, or other relevant matters bearing upon whether it was reasonable or consistent with his ethical and fiduciary duties as Venture's manager, to use and/or rely upon it in valuing the EPV stock Venture owned.

84. In fact, Martinovich and BG solicited JPL through SG, or sought SG's assistance in soliciting JPL, to raise arbitrarily and without any reasonable basis, the per share value he assigned to EPV common stock as of December 31, 2008 to \$2.88 to meet his (Martinovich's) and MICG's needs and serve their interests including their financial interests, in particular their interest in retaining and their need to justify retaining the bulk of the \$450,00 incentive performance fee Venture had paid MICG on December 31, 2008.
85. Ultimately, Martinovich valued the 1.8005 million EPV shares that Venture owned, or caused them to be valued, at \$2.88 per share for purposes of Venture's 2008 year-end audited financial statements including Venture's audited December 31, 2008 Balance Sheet and for purposes of his calculation of the final *actual* incentive fee Venture owed MICG for 2008 (addressed below). The \$2.88 per share value that Martinovich ultimately assigned to Venture's investment in GSDP as of December 31, 2008 was not premised on

grounded on any *bona fide*, legitimate or reliable documentary or other support for the FMV of the shares.

86. After Martinovich assigned the price of \$2.88 per share, or caused that price to be assigned, to Venture's EPV shares on about January 19, 2009 (applying the value back to December 31, 2008) through at least April 30, 2010, he never lowered the share price shown for EPV on Venture's monthly account statements price. As of November 31, 2009 and thereafter, Venture's account showed N/A for the price of EPV. However, in calculating the estimated total value of Venture Unit owner's investment interest in Venture that Martinovich caused to be shown on the monthly account statements of customers who owned Venture, Martinovich used the EPV price per share of \$2.88 through April 2010. He continued using that price through April 2010 for purposes of calculating the values shown for Venture on customer statements even though he knew that \$2.88 per share was materially excessive based on various events and circumstances including (but not limited to): on about January 19, 2009, an offer was communicated to MICG on behalf of two shareholders to sell EPV stock to MICG at \$0.90 per share (see Paragraph 79 above); in or about February 2009, Martinovich purchased, or arranged the purchase of, EPV stock from an EPV shareholder and director in a private transaction at a price of about \$1.15 per share (the purchase was made through a new limited liability company he (Martinovich) formed on behalf of several business acquaintances); beginning at least by late 2008 and continuing through 2009, EPV's business deteriorated materially and it experienced through that period

severe business adversity and stress, attributable in substantial part to the U.S. and global credit market and economic conditions; JPL issued an EPV valuation in March 2009 that valued EPV's common stock at a price substantially lower than \$2.88; the number of EPV common shares outstanding increased substantially, causing substantial dilution to Venture's 1.8005 million shares; and, EPV filed a petition in bankruptcy on about February 24, 2010.

87. For calendar year 2009, Martinovich and MICG charged Venture total management fees of approximately \$91,542 and they caused Venture to pay MICG, through checks issued against Venture's securities account or otherwise, about \$78,005. At year-end 2009, Martinovich and MICG recorded on MICG's books and records a receivable due from Venture of about \$13,537.62 for the 2009 management fees that MICG had charged to Venture but that Venture had not yet paid. A portion of the total management fees that the Respondents charged Venture, and that Venture paid MICG, as management fees for 2009 was based on and derived through calculations that improperly assigned a value of \$2.88 per share to the EPV common stock that Venture owned. Moreover, on information and belief, for the first quarter of 2010, Martinovich and MICG charged Venture management fees of about \$25,623. On information and belief, in calculating the management fees that MICG charged Venture for the first quarter of 2010, Martinovich improperly valued the 1.8005 million EPV shares at \$2.88 for at least a portion of the period.

**Martinovich's Ultimate, and Erroneous, 2008 Incentive Fee Calculation**

88. Ultimately, Martinovich determined that the actual amount Venture owed MICG as an incentive fee for 2008 was about \$428,000, about \$22,000 less than the estimated amount (\$450,000) he caused Venture to pay MICG on December 31, 2008. Venture's December 31, 2008 audited financial statements (issued with its auditor's report on about April 10, 2009) reflected that Venture's expenses included a performance allocation fee of \$428,196.
89. In determining that actual performance fee, Martinovich valued Venture's 1.8005 million EPV shares at \$2.88 per share and he valued Venture's investment in GSDP at \$6 million. The \$6 million value assigned to its investment in GSDP was premised and dependent on Venture holding a 14% ownership interest in GSDP.
90. After he determined that the actual incentive fee that Venture owed MICG for 2008 was about \$428,000 (about \$22,000 less than the estimated amount he caused Venture to pay MICG on December 31, 2008), Martinovich did not, until about seven months later, take any action or cause any action to be taken to return any of the approximately \$22,000 that Venture overpaid MICG.
91. On or about March 18, 2009, Martinovich received a letter dated March 17, 2009 (which was addressed to him personally) from the manager of GSDP. Enclosed with the letter was Venture's GSDP Form K-1 for 2008, a GSDP Table of Members as of December 31, 2008 and a separate letter addressed to Venture from a public accounting firm named BDO. The cover letter addressed to Martinovich stated in the body that the enclosed Table of

Members reflected that at the end of 2008, Venture's percentage interest in GSDP was 11.9%.

92. The enclosed Table of Members also showed that Venture's 50,000 Series A Units constituted a percentage interest of 11.9%.<sup>4</sup> Moreover, BDO's letter stated that the information in it was being provided to Venture for use in preparing its 2008 tax return and that, "the items below reflect your 11.900000 percent interest in GSPS." Martinovich separately received at some point from GSDP a Table of Members as of December 31, 2008 that reflected the identity of *all* owners of both Series A Units and Common Units and their respective percentage interest (which added up to 100%). That Table of Members showed that Venture held an 11.9% interest in GSDP as of December 31, 2008. Both the abbreviated Table of Members and the full Table of Members showed that the owner of common units issued by GSDP held a percentage interest of 20% in GSDP even though the owner of the common units had not contributed any capital. Finally, the Form K-1 that Venture received from GSDP showed that Venture's share of profit was 11.9%.
93. As a result of Martinovich using 14% as Venture's percentage interest in GSDP, rather than 11.9%, to calculate the incentive fee that Venture purportedly owed MICG for 2008, the ultimate amount he determined that Venture owed MICG as a 2008 incentive fee (about \$428,000 based on the asset values he used) and that was reflected on Venture's December 31, 2008

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<sup>4</sup> The enclosed Table of Members showed only Venture's percentage interest (not that of any other Series A Unit owner) and the percentage interest of the member owning common units.

financial statements substantially and materially exceeded the amount that a calculation using the correct 11.9% ownership interest would have produced (as set forth more specifically in the next paragraph).

94. Based on the discounted value of approximately \$42 million that Martinovich used for the "Derby Rams" (in actuality, Venture's 50,000 Series A Units) in his final actual 2008 incentive fee computation, and applying Venture's correct 11.9% ownership interest, Martinovich's computation should have yielded a value of about \$5,105,100 (.119 times \$42 million) for Venture's investment in GSDP as of December 31, 2008, not \$6 million. Thus, using the discounted value of \$42 million and the correct 11.9% ownership interest, Martinovich's actual incentive fee computation should have produced an unrealized gain of about \$105,000 on the 50,000 GSDP Series A Units, *not* \$1 million, and should have produced (based on the values he assigned to Venture's assets) an incentive fee of only about \$249,000 (not about \$428,000). Accordingly, the \$895,000 difference (\$1 million minus \$105,000) resulted in Martinovich's actual incentive fee calculation producing an incentive fee amount that was about \$179,000 (20% of \$895,000) greater than the amount the calculation would have produced if the correct 11.9% ownership interest had been used, and Venture's December 31, 2008 financial statements reflected an incentive fee expense that was about \$179,000 greater than properly should have been reflected.
95. Martinovich did not at any time after receiving the Form K-1 and other documents referenced above from GSDP's manager take any action to re-

calculate or correct the actual 2008 incentive fee calculation and/or to return any of the money (approximately \$179,000) that Venture overpaid MICG.

To the date of this Complaint he has not repaid, or caused MICG to repay, any of the \$179,000 overpayment to Venture.

**Account Statements Sent to MICG Customers Who Owned Venture Units**

96. At the times relevant herein, FCC, as MICG's clearing firm, generated, and sent to MICG customers, by mail or electronically, monthly (or other periodic) statements for securities accounts that the customers maintained at MICG.
97. At all times relevant herein, the Respondents, with respect to MICG customers who held an ownership interest in Venture, had the responsibility of reporting or providing to FCC, either directly or through one or more third parties, Venture's Unit value (i.e., NAV) so FCC could accurately prepare customers' monthly account statements and accurately reflect on them Venture's Unit value and the total current value of each customer's Venture ownership interest. That responsibility encompassed an ongoing obligation to recalculate the Unit value of Venture's Units as necessary based on changes in the FMV of Venture's assets or other circumstances and to ensure any change (increase or decrease) in Venture's Unit value was timely reported to FCC to be shown on subsequent statements. Circumstances that would cause Venture's total NAV and its NAV per Unit value to change would be known only to the Martinovich and MICG, and included a change in the value

Respondents were assigning to an asset, the assessment or payment of management fees and the assessment or payment of incentive fees.

98. With respect to Venture's Unit value, FCC's only responsibility was to reflect on customers' statements the value that Martinovich and MICG provided it (or, if Respondents did not update or change the value, to continue to reflect the most recent value Respondents had provided). The Respondents were responsible for the validity and accuracy of the Venture Unit value shown on account statements of customers who owned Venture Units.
99. In addition, Respondents had the responsibility for reporting or providing to FCC for customers who owned Venture, either directly or through one or more third parties, the number of Venture Units the customer owned so FCC could accurately prepare customers' monthly account statements and accurately reflect on them the number of Venture Units owned and the total current value of each customer's investment in Venture. The Respondents' responsibility encompassed an ongoing obligation to ensure that any change (increase or decrease) in the number of Units a customer owned since the previous month-end was timely reported to FCC for purposes of preparing subsequent account statements. Circumstances that would cause the number of Units a customer owned to change would be known only to Martinovich and MICG, and included a customer's full or partial redemption of Units, a customer's initial purchase of Units or purchase of additional Units, an assessment of management fees and/or an assessment of incentive fees.

100. With respect to the number of Venture Units a particular customer owned and the total current value of their Venture investment, FCC's only responsibility was to reflect and report on monthly account statements the number of units that Respondents provided FCC for each customer (or, if Respondents did not update or change the number of units, to continue to reflect the most recent number the Respondents had provided for any particular customer) and the total value that resulted mathematically from multiplying the Unit value times the number of Units a customer owned. The Respondents were responsible for the validity and accuracy of the information FCC reported on the customers' account statements regarding the number of Venture Units a customer owned and the total current value of their Venture investment.
101. From about June 2007 through at least April 2010, Martinovich caused FCC to reflect on account statements that FCC generated and sent to MICG customers who owned Venture Units that the Venture Units had a constant estimated unit value of \$1.00.<sup>5</sup> He did so notwithstanding the fact that establishing a constant Unit value of \$1.00 and causing FCC to show it on customers' statements contradicted various terms of and disclosures in Venture's two PPMs and in its Operating Agreement including the terms defining "NAV" and "NAV per unit" (see paragraphs 11 and 12 above).
102. In addition, for all months from about June 2007 through at least April 2010, based on the information Martinovich and MICG provided or caused to be provided to FCC, it generated and sent to customers who owned Venture an

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<sup>5</sup> The statements FCC generated and sent to customers did not show a dollar symbol (\$) next to the estimated per unit value or next to the amounts in the total estimated value column.

account statement that showed the number of Units the respective customer owned and the estimated total value or market value of their Venture investment. On each account statement, the number of Venture Units shown thereon and total (or market) value of the Units were identical numbers since the estimated total or market value was derived by multiplying the number of Units times the \$1.00 per Unit value.

103. At the times relevant to this Complaint, the Respondents did not at any time report to Venture Unit owners, or cause to be reported to them, on their MICG account statements or otherwise, the respective dollar amount charged to, or assessed against, their ownership interest in Venture for incentive fees or management fees, or the dollar amount by which the total current value of their Venture investment had decreased based on incentive fees or management fees that Venture had paid to MICG. Since the Respondents maintained a constant \$1.00 per Unit value for Venture, they did not at any time report to Venture Unit owners or cause to be reported to them on their MICG account statements or otherwise, any change in Venture's per Unit value that resulted from the assessment and/or payment of management or incentive fees to MICG.

**FIRST CAUSE OF ACTION – MARTINOVICH AND MICG**

**Improper Valuation of EPV Common Stock as of December 31, 2007 Giving Rise to  
Improper Incentive and Management Fee Payments to MICG in 2007 and 2008  
(NASD Conduct Rule 2110 and FINRA Rule 2010)**

104. The Department realleges and incorporates by reference paragraphs 1 through 103 above.

105. Martinovich and MICG, in raising the price at which the EPV shares Venture owned were being valued to about \$1.94 per share on or about October 17, 2007 (or causing it to be raised to that price): knew that \$1.94 per share did not constitute a legitimate, justifiable, or reasonable value to assign as the FMV of the shares, and/or knew they had no proper or tenable basis to believe the increase was warranted and that \$1.94 per share constituted legitimate, justifiable or reasonable price to assign as the FMV of the shares; or, alternatively, acted in reckless disregard of whether \$1.94 per share constituted a legitimate, justifiable or reasonable price to assign as the FMV of the shares or constituted a price that they had any viable prospect of receiving in an arm's length sale to a willing buyer with reasonable knowledge of relevant facts if they were to attempt to sell all or a portion of the shares.
106. MICG and Martinovich, in valuing, or causing to be valued, the 1.8005 million EPV shares that Venture owned at \$2.13 per share beginning on or about December 12, 2007, and in causing Venture to pay MICG an incentive performance fee for 2007 of approximately \$337,000 based on the purported unrealized appreciation of the EPV shares from about \$1.15 per share (the price Venture paid for them) to \$2.13 per share:
- A) knew that \$2.13 per share did not constitute a legitimate, justifiable, or reasonable value to assign as the FMV of the shares, and/or knew they had no proper or tenable basis upon which to claim that \$2.13 per share constituted a legitimate, justifiable or reasonable price to assign

as the FMV of the EPV shares Venture owned for reasons including (but not limited to):

- there was no public trading market for, or public trading in, EPV common stock that established its FMV;
- the \$2.13 per share value was not supported by actual transactions in the stock of which they had knowledge;
- the shares Venture owned were subject to restrictions on resale;
- they had not valued the shares in accordance with the terms of the Venture PPM dated December 1, 2007 (as set forth in Paragraph 16 above) in that the shares were not valued by HPLC (Venture's auditor) or any other independent party;
- in addition to failing to value the shares in accordance with the PPM, they did not retain or engage on behalf of MICG and/or Venture any person or entity who was qualified and had no material conflict of interest, to appraise the 1.8005 million shares that Venture owned, as of December 31, 2007, using FMV as the valuation standard and knowing the intended purpose of the appraisal;
- Venture owned an extremely small percentage of EPV's total outstanding common stock and its shares conferred no control over EPV's business operations or ability to exercise such control; and
- they knew \$2.13 per share did not constitute an amount that they had any viable prospect of receiving in an arm's length sale to a willing buyer with reasonable knowledge of relevant facts if they were to attempt to sell all or a portion of the shares, or had no reasonable to believe they could receive that price in an arm's length transaction; and/or,

B) for reasons and based on circumstances including those set forth in (A) above, acted in reckless disregard of their ethical, fiduciary and other responsibilities to Venture's investors and exhibited reckless disregard for whether \$2.13 per share constituted a legitimate, justifiable or

reasonable price to assign to the shares and use as the basis for paying  
MICG an incentive fee for 2007.

107. If, and to whatever extent that, Martinovich and MICG relied on JPL's December 2007 Valuation in valuing the EPV shares Venture owned at \$2.13 per share beginning on about December 12, 2007, such reliance constituted an extreme departure from the standard of ordinary care required of member firms and securities industry professionals, evinced extreme bad faith and/or was in reckless disregard of their ethical and fiduciary responsibilities to Venture and its investors under all relevant circumstances including but not limited to those set forth in Paragraphs 34 and 106(A) above.
108. For reasons including those set forth in Paragraphs 34 and 106(A) above, in causing Venture to pay MICG management fees for 2007 that in part were based on values of \$1.94 per share and \$2.13 per share for EPV, which values they improperly, unreasonably and/or recklessly assigned to the shares, the Respondents either 1) knew the management fees were excessive, or 2) recklessly disregarded their ethical and fiduciary responsibilities to ensure the management fees Venture paid MICG were premised on legitimate, justifiable and reasonable asset values under a FMV standard.
109. For reasons including those set forth in Paragraphs 34 and 106(A) above, in causing Venture to pay MICG management fees totaling about \$87,200 for calendar year 2008 (which were paid at various times during 2008 including on December 30 and 31 as alleged in Paragraph 57 above), that were in part based on value for EPV of \$2.13 per share for EPV, which value they

improperly, unreasonably and/or recklessly assigned through most of 2008 to the shares, the Respondents either 1) knew that the management fees were excessive, or 2) recklessly disregarded their ethical and fiduciary responsibilities to ensure the management fees Venture paid MICG were premised on legitimate, justifiable and reasonable asset values under a FMV standard.

110. By breaching their fiduciary duties and ethical responsibilities to Venture and its investors (who were MICG customers), in connection with paying incentive and management fees, Martinovich and MICG violated NASD Conduct Rule 2110 insofar as the conduct occurred before December 15, 2008 and violated FINRA Rule 2010 insofar as the conduct occurred after December 14, 2008.

SECOND CAUSE OF ACTION – MARTINOVICH AND MICG

Misuse of Funds Arising from Illegitimate EPV Share Values Assigned in 2007  
(NASD Conduct Rules 2330(a) and 2110)

111. The Department realleges and incorporates by reference paragraphs 1 through 103 above.
112. At the times relevant herein, Venture maintained a securities account at MICG and was an MICG customer, and all Venture Unit owners maintained a securities account at MICG and were MICG customers.
113. Martinovich and MICG, in raising the value assigned to Venture's 1.8005 million EPV shares to \$1.94 per share in October 2007, and in subsequently raising the value assigned to the shares to \$2.13 per share in December 2007, contrived excessive and unwarranted share values in order to create an

ostensibly legitimate basis for Venture to pay MICG a substantial incentive fee for 2007 that MICG was not entitled to receive, and in order to increase, improperly and in bad faith, the amount that MICG would receive from Venture as management fees above what MICG was entitled to receive. Moreover, MICG was not entitled to most or all of the approximately \$337,000 it received from Venture as a 2007 incentive fee, and MICG was not legitimately entitled to a substantial portion of the total management fees it received from Venture for 2007, because those fees (incentive and management) were based on illegitimate and excessive EPV share values.

114. By misusing customer funds, Martinovich and MICG violated NASD Conduct Rules 2330(a) and 2110.

#### THIRD CAUSE OF ACTION – MARTINOVICH AND MICG

Improper Valuation of Venture Assets as of December 31, 2008 Giving Rise to Improper Incentive and Management Fee Payments to MICG in 2008, 2009 and 2010 (FINRA Rule 2010)

115. The Department realleges and incorporates by reference paragraphs 1 through 103 above.
116. Martinovich and MICG, in valuing, or causing to be valued, the 1.8005 million EPV shares that Venture owned (or causing the shares to be valued) at \$2.88 per share as of December 31, 2008 and in causing Venture to pay MICG an incentive performance fee for 2008 that was in substantial part based on the purported unrealized appreciation of the EPV shares from \$2.13 per share as of December 31, 2007 to \$2.88 per share as of December 31, 2008:

A) knew that \$2.88 per share did not constitute a legitimate, justifiable, or reasonable value to assign as the FMV of the shares, and/or knew they had no proper or tenable basis upon which to claim that \$2.88 per share constituted a legitimate, justifiable or reasonable price to assign as the FMV of the shares for reasons including (but not limited to):

- there was no public trading market for, or public trading in, EPV common stock that established its FMV;
- the \$2.88 per share value was not supported by actual transactions in the stock of which they had knowledge;
- they had not valued the shares in accordance with the terms of the Venture PPM dated December 1, 2007 (as set forth in Paragraph 16 above) in that the shares were not valued by HPLC or any other independent party;
- in addition to failing to value the shares in accordance with the PPM, they did not retain or engage on behalf of MICG and/or Venture any person or entity who was qualified and had no material conflict of interest, to appraise the 1.8005 million shares that Venture owned, as of December 31, 2008, using FMV as the valuation standard and knowing the intended purpose of the appraisal;
- they had knowledge of a contemporaneous offer on behalf of one or more EPV shareholders to sell a substantial quantity of EPV shares to MICG at or about \$0.90 per share;
- Venture owned an extremely small percentage of EPV's total outstanding common stock and its shares conferred no control over EPV's business operations or ability to exercise such control;
- they knew \$2.88 per share did not constitute an amount that they had any viable prospect of receiving in an arm's length sale to a willing buyer with reasonable knowledge of relevant facts if they were to attempt to sell all or a portion of the shares, or had no reasonable to believe they could receive that price in an arm's length transaction;
- they did not obtain and consider, in establishing the value, any documents such as EPV financial statements as of December 31,

2008 (or any other date) that contained information concerning its actual business status and financial results; and/or

- they had solicited JPL, through a third party, to raise arbitrarily and without any reasonable basis, his purported opinion regarding the per share value of EPV stock as of December 31, 2008 to meet their needs and serve their self-interest; and/or,

B) for reasons and based on circumstances including those set forth in (A) above, acted in reckless disregard of their ethical, fiduciary and other responsibilities to Venture's investors and exhibited reckless disregard for whether \$2.88 per share constituted a legitimate, justifiable or reasonable value to assign to the shares and use as the basis for paying MICG an incentive fee for 2008.

117. If, and to whatever extent that, Martinovich and MICG relied on JPL's January 2009 Valuation in valuing the EPV shares Venture owned at \$2.88 per share as of December 31, 2008 and in determining the incentive fee that Venture owed MICG for 2008, such reliance constituted an extreme departure from the standard of ordinary care required of member firms and securities industry professionals, evinced extreme bad faith and/or was in reckless disregard of their ethical and fiduciary responsibilities to Venture and its investors under all relevant circumstances including but not limited to those set forth in Paragraph 83 above.

118. Martinovich and MICG, in valuing, or causing to be valued, Venture's ownership interest in GSDP at \$6 million as of December 31, 2008, and in causing Venture to pay MICG an incentive performance fee for 2008 that was

in substantial part based on the purported unrealized gain of \$1 million on Venture's ownership interest in GSDP through 2008:

- A) knew that \$6 million did not constitute a legitimate, justifiable, or reasonable value to assign to Venture's 50,000 GSDP Series A Units, and/or had no proper or tenable basis upon which to claim that \$6 million constituted a legitimate, justifiable or reasonable value to assign as the FMV of the 50,000 Series A Units for reasons including (but not limited to):
- there was no public trading market for, or public trading in, the Series A Units that established their FMV;
  - the \$6 million value was not supported by any actual transactions in the Series A Units of which they had knowledge;
  - Venture's Series A Units were subject to substantial restrictions on resale;
  - they had not valued the Series A Units in accordance with the Venture PPM dated December 1, 2007 (as set forth in Paragraph 16 above) in that the shares were not valued by HPLC or any other independent party;
  - in addition to failing to value the Series A Units in accordance with the PPM, they did not retain or engage on behalf of MICG and/or Venture any person or entity who was qualified and had no material conflict of interest, to appraise the 50,000 Series A Units that Venture owned, as of December 31, 2008, using FMV as the valuation standard and knowing the intended purpose of the appraisal;
  - they knew GSDP was continuing to offer unissued GSDP Series A Units for sale at the original per unit price and disregarded the impact such offers would have on the price Venture could receive if it sought to sell its Series A Units;
  - they knew or in the exercise of reasonable diligence should have known that they had not used the correct percentage ownership that Venture's 50,000 Series A Units represented; and/or

- they had no reasonable basis to believe that \$6 million constituted an amount that they had any viable prospect of receiving for the 50,000 Series A Units in an arm's length sale to a willing buyer with reasonable knowledge of relevant facts; and/or,

B) for reasons and based on circumstances including those set forth in (A) above, acted in reckless disregard of their ethical, fiduciary and other responsibilities to Venture's investors and exhibited reckless disregard for whether \$6 million constituted a legitimate, justifiable or reasonable value to place on the Series A Units and use as the basis for paying MICG an incentive fee for 2008.

119. For reasons including those set forth in Paragraph 116(A) above, in causing Venture to pay MICG management fees totaling over \$91,500 for calendar year 2009, and in apparently charging Venture management fees for the first quarter of 2010, that were in whole or part based on the \$2.88 per share value that they had improperly, unreasonably or recklessly assigned to Venture's EPV shares effective as of December 31, 2008, the Respondents either 1) knew the management fees were excessive, or 2) recklessly disregarded their ethical and fiduciary responsibilities to ensure the management fees Venture paid MICG were fair, reasonable and premised on legitimate asset values under a FMV standard.

120. For reasons including those set forth in Paragraph 118(A) above, in causing Venture to pay MICG management fees totaling about \$91,500 for calendar year 2009, and in apparently charging Venture management fees for the first quarter of 2010, that were in whole or part based on the \$6 million value that

they had assigned to Venture's investment interest in GSDP effective December 31, 2008, the Respondents either 1) knew the management fees were excessive, or 2) recklessly disregarded their ethical and fiduciary responsibilities to ensure the management fees Venture paid MICG were fair, reasonable and premised on legitimate asset values under a FMV standard.

121. By breaching their fiduciary duties and ethical responsibilities to Venture and its investors (who were also MICG customers), Martinovich and MICG violated FINRA Rule 2010.

**FOURTH CAUSE OF ACTION – MARTINOVICH AND MICG**

**Misuse of Funds Arising from Illegitimate Asset Values Assigned at Year-End 2008  
(NASD Conduct Rule 2330(a) and FINRA Rule 2010)**

122. The Department realleges and incorporates by reference paragraphs 1 through 103 above.
123. Martinovich and MICG, in raising the value assigned to Venture's 1.8005 million EPV shares to \$2.88 per share in January 2009 effective as of December 31, 2008, contrived an excessive and unwarranted value in order to create an ostensibly legitimate basis for Venture to pay MICG a substantial incentive fee that MICG was not entitled to receive, and in order to increase, improperly and in bad faith, the amount that MICG would receive from Venture as management fees above what MICG was entitled to receive. In addition, in assigning a value of \$6 million to Venture's 50,000 GSDP Series A Units effective as of December 31, 2008, Martinovich and MICG contrived an excessive and unwarranted value for the Series A Units in order to create

an ostensibly legitimate basis for Venture to pay MICG a substantial incentive fee that MICG was not entitled to receive, and in order to increase, improperly and in bad faith, the amount that MICG would receive from Venture as management fees above what MICG was entitled to receive. MICG was not entitled to most or all of the approximately \$450,000 it received from Venture on December 31, 2008 as a 2008 incentive fee, and MICG was not entitled to a substantial portion the total amount of management fees it received from MICG for 2008, because those fees (incentive and management) were based on an illegitimate and excessive EPV share value and/or an illegitimate and excessive value assigned to the GSDP Series A Units.

124. By misusing customer funds, Martinovich and MICG violated NASD Conduct Rule 2330(a) and FINRA Rule 2010.

**FIFTH CAUSE OF ACTION – MARTINOVICH AND MICG**

**Misuse of Funds Based on Failing to Repay Venture the Amount by which the Estimated 2008 Incentive Fee Exceeded the Final Actual Fee  
(NASD Conduct Rule 2330(a) and FINRA Rule 2010)**

125. The Department realleges and incorporates by reference paragraphs 1 through 103 above.
126. After determining that the actual amount Venture owed MICG as an incentive performance fee that for 2008 was about \$428,000 (not \$450,000 as initially estimated and as paid on December 31, 2008), MICG and Martinovich immediately became subject to a legal, ethical and/or fiduciary duty to return to Venture, and its investors, the approximately \$22,000 that Venture had overpaid MICG. Martinovich however failed, for a period of about seven

months, to take any effective action to cause MICG to repay Venture the excessive amount MICG had received on about December 31, 2008 as a 2008 incentive fee. Moreover, until the events set forth in Paragraph 128 below occurred, Martinovich did not make, or cause to be made, any accounting entries in MICG's or Venture's records to establish or reflect that MICG owed Venture approximately \$22,000 and he did not create any documents memorializing the liability.

127. Instead of returning the funds, Martinovich and MICG improperly and wrongfully retained possession of the funds and wrongfully used or disposed of them in MICG's operations or otherwise, until about October 31, 2009, when he finally took action, or caused action to be taken, concerning the overpayment as detailed in the next paragraph.
128. On about October 28, 2009, FINRA staff sent the Respondents a letter requesting information pursuant to FINRA Rule 8210. Among other things, the letter requested (at paragraph 44) information concerning the approximately \$22,000 by which Venture had overpaid MICG including documents evidencing the return of the funds. On about November 30, 2009, Respondents submitted to FINRA (among other documents) three pages purporting to show portions of MICG's and Venture's General Ledger Detail Report. The three pages contained a number of accounting entries (which had been highlighted), all dated 10-31-09 and all with the comment "To Deduct Ovrpmnt of Venture Incentive F." The entries on the documents showed a credit of about \$22,152.02 to a MICG commissions receivable General Ledger

account and showed several debits totaling \$22,152.02 to about four Venture General Ledger accounts. In a letter to FINRA staff dated November 30, 2009, Martinovich explained, regarding FINRA's request about the overpayment, that the fee adjustment was recognized "in October" and that, "MICG was due management fees in excess of the amount and offset the payable and the receivable accounts."

129. By misusing customer funds, Martinovich and MICG violated NASD Conduct Rule 2330(a) and FINRA Rule 2010.

#### SIXTH CAUSE OF ACTION – MARTINOVICH AND MICG

Misuse of Funds Based on Failing to Repay Venture the Portion of the Estimated 2008 Incentive Fee Attributable to Using an Erroneous GSDP Ownership Percentage (NASD Conduct Rule 2330(a) and FINRA Rules 2150(a) and 2010)

130. The Department realleges and incorporates by reference paragraphs 1 through 103 above.
131. On about March 18, 2009, when Martinovich received the letter dated March 17, 2009 and the Form K-1 and other documents enclosed with it from GSDP's manager, which disclosed that Venture's percentage interest in GSDP and its share of profit as of December 31, 2008 were actually 11.9% (not 14% as Martinovich had used to calculate the amount Venture owed MICG as an incentive fee for 2008), Martinovich and MICG immediately became subject to a legal, ethical and/or fiduciary duty to recalculate the 2008 incentive fee using the correct percentage interest and return to Venture, and its investors, the excessive amount Venture had paid MICG because they had used an incorrect ownership percentage in calculating the fee. Martinovich, however,

failed to take any action, and to the date of this Complaint he has failed to take any action, to repay the excessive amount (approximately \$179,000) that MICG received from Venture because he used an incorrect GSDP ownership percentage in calculating the 2008 incentive fee. In addition, Martinovich did not make or cause to be made, and to the date of this Complaint he has not made or caused to be made, any accounting entries on MICG's or Venture's records to establish or reflect that MICG owes Venture those funds. He also has not created or caused to be created any documents memorializing the debt.

132. Instead of returning the funds, Martinovich and MICG improperly and wrongfully retained possession of the funds and/or wrongfully used or disposed of them in MICG's operations or otherwise.
133. Moreover, despite knowledge of the documents reflecting that Venture's ownership interest in GSDP as of December 31, 2008 was only 11.9%, Martinovich and MICG, by their actions and conduct, have manifested that they have no intention of returning the funds to Venture but intend to retain and use the funds permanently for their benefit.
134. By misusing customer funds, Martinovich and MICG violated NASD Conduct Rule 2330(a) and FINRA Rule 2010 insofar as the conduct occurred before December 15, 2009 and violated FINRA Rules 2150(a) and 2010 insofar as the conduct occurred after December 14, 2009.

SEVENTH CAUSE OF ACTION – MARTINOVICH AND MICG

Causing Materially False Account Statements to Be Sent to Venture Investors  
(Exchange Act Section 17(a) and Rule 17a-3 thereunder as to MICG,  
NASD Conduct Rules 3110 and 2110 and FINRA Rule 2010)

135. The Department realleges and incorporates by reference paragraphs 1 through 103 above.
136. From about June 2007 through about April 2010, the Respondents caused FCC to send monthly (or other periodic) account statements to MICG customers who owned Venture that were materially false and misleading as detailed below.
137. From about June 2007 through about April 2010, the Respondents caused FCC to generate and send monthly account statements to Venture Unit owners that reflected, on all Unit owners' account statements, a constant estimated value of \$1.00 of for Venture's Units (only Class A Units were issued).
138. From about January 2008 to about January 2009, Martinovich and MICG caused FCC to generate and send monthly account statements to Venture Unit owners that reflected a figure for the number of Venture Units owned and a figure for the estimated total value or estimated market value of those Units. During the specified period, in providing FCC those figures for each Venture investor, the Respondents based the figures on, and calculated them using, \$2.13 per share as the FMV of Venture's 1.8005 million EPV shares. However, for the reasons and based on the circumstances set forth above, the Respondents knew that value was not established in accordance with Venture's PPMs and its Operating Agreement, and they either knew that \$2.13 per share did not constitute a legitimate, justifiable or reasonable value

to assign as the FMV of the shares or assigned that value in reckless disregard for whether it constituted a legitimate, justifiable or reasonable value for the shares. As a result, the account statements sent to Venture Unit owners during the specified period were materially false and misleading in that the statements reflected an Estimated "Market Value" that was excessive and/or based on an EPV share value for which there was no *bona fide* support.

139. From about February 2009 to about April 2010, the Respondents caused FCC to generate and send monthly account statements to Venture Unit owners that reflected figures for the number of Venture Units owned and the estimated market value of those Units. During the specified period, in providing FCC those figures for each Venture investor, the Respondents based the figures on, and calculated them using, \$2.88 per share as the FMV of Venture's 1.8005 million EPV shares. However, for the reasons and based on the circumstances set forth in above, the Respondents knew that value was not established in accordance with Venture's PPMs and its Operating Agreement, and, at some or all times during the period, they either knew that \$2.88 per share did not constitute a legitimate, justifiable or reasonable value to assign as the FMV of the shares or assigned that value in reckless disregard for whether it constituted a legitimate, justifiable or reasonable value for the shares. As a result, the account statements sent to Venture Unit owners during the specified period were materially false and misleading in that the statements reflected an estimated market value that was excessive and/or based on an EPV share value for which there was no *bona fide* support.

140. In addition, for the period from about February 2009 to about April 2010, the figures for the number of Venture Units an investor owned and the estimated market value of those Units shown on the account statements that FCC sent to Venture Unit owners were based on, and calculated using, \$6 million as the FMV of Venture's investment in GSDP. However, for the reasons and based on the circumstances set forth above, the Respondents knew that value was not established in accordance with Venture's PPMs and its Operating Agreement, and, at some or all times during the period, they either knew \$6 million did not constitute a legitimate, justifiable or reasonable value to assign as the FMV of the Venture's investment in GSDP or assigned that value in reckless disregard for whether \$6 million constituted a legitimate, justifiable or reasonable value for the investment interest. As a result, the account statements FCC sent to Venture Unit owners were independently materially false and misleading in that the statements reflected an estimated market value that was excessive and/or based on a value assigned to the GSDP investment for which there was no *bona fide* support.
141. By causing false and misleading account statements to be sent to Venture investors, MICG violated Section 17(a) of the Exchange Act and Rule 17a-3 thereunder, Martinovich and MICG violated NASD Conduct Rules 3110 and 2110 insofar as the conduct occurred before December 15, 2008, and they violated NASD Conduct Rule 3110 and FINRA Rule 2010 insofar as the conduct occurred after December 14, 2008.

EIGHTH CAUSE OF ACTION – MARTINOVICH AND MICG  
Fraud in Connection with the Purchase and Sale of Venture Units  
(Exchange Act Section 10(b) and Rule 10b -5 thereunder,  
NASD Conduct Rules 2120 and 2110 and FINRA Rules 2020 and 2010)

142. The Department realleges and incorporates by reference paragraphs 1 through 103 above.
143. From about June 2007 to about May 11, 2009, in connection with purchases and sales of Venture Units, the Respondents, by use of the means or instrumentalities of interstate commerce, or the mails, made untrue statements of a material fact and omitted to state material facts, and engaged in acts, practices or courses of business which operated as a fraud or deceit upon purchasers of Venture Units, all as more fully set forth below.
144. From about June 2007 through about November 30, 2007, the Respondents offered and sold Venture units to investors pursuant to, and they provided prospective investors, the Venture PPM dated January 1, 2007. Beginning about December 1, 2007 and at all times thereafter through at least May 11, 2009, the Respondents offered and sold Venture units to investors pursuant to, and they provided prospective investors, the Venture PPM dated December 1, 2007. The Venture PPM's contained untrue statements of material fact including but not limited to:
- Both PPM's falsely stated that assets including securities would be valued at FMV in determining the fund's NAV;
  - The December 1, 2007 PPM falsely stated that illiquid, non-marketable assets held in Venture would be valued by the fund's auditor, identified therein as HPLC;

- The December 1, 2007 PPM stated that the fund's auditor, in valuing illiquid, non-marketable assets, would use independent discretion and research, thereby falsely stating, implying and leading investors to believe that in valuing non-marketable assets the Respondents would retain or engage independent parties to value such assets and/or would obtain asset valuations that were conducted independently or by independent parties;
  - Both PPMs falsely disclosed how the NAV per unit would be calculated or determined in that the PPMs stated, in substance, that the NAV per unit would constitute the total NAV of the fund (calculated valuing assets at FMV) divided by the number of Units. In truth and actuality, the Respondents intended to establish, and they established, \$1.00 per Unit as the fund's NAV and they maintained it constantly. This constant \$1.00 Unit value effectively concealed how incentive fees and management fees affected an individual Unit owner's investment, specifically the respective amount of such fees that were allocated to and paid by each Unit owner; and
  - Both PPMs falsely stated that the fund manager would be allotted an Incentive Allocation of 20% of realized and unrealized gains on assets held in the fund, which plainly meant, and which any investor reasonably would understand to mean, legitimate gains properly determined in accordance with the terms of Venture's PPMs and operating agreement and, for non-marketable assets, employing and following legitimate and proper valuation methods and standards, whereas the Respondents twice knowingly or recklessly paid an Incentive Allocation to MICG based on unrealized gains that were not premised on the FMV of Venture's assets but rather on gains that were illegitimate, unjustified and/or contrived.
145. In connection with the sales of Venture Units, the Respondents failed to disclose material facts to investors, through the Venture PPMs or otherwise, including but not limited to:
- Beginning about October 17, 2007 and afterward, that the value(s) they had assigned to illiquid shares Venture owned of a non-publicly trading company had not been assigned in accordance with Venture's Operating Agreement and PPM in that the assets were not valued at FMV;
  - Beginning about December 12, 2007 and afterward, that the value(s) they had assigned to illiquid shares Venture owned of a non-public company had not been established or determined in accordance with Venture's Operating Agreement and PPM in that the assets had not been valued by HPLC and the values had not otherwise been established or determined independently or by independent parties;

- Beginning about December 12, 2007 and thereafter, that there was no legitimate, justifiable or reasonable basis for the value they had assigned to the illiquid shares of a non-public company that constituted Venture's principal asset;
- Beginning about December 21, 2007 and afterward, that they had caused Venture to pay an incentive fee of about \$337,000 to MICG for 2007 based on a value they had assigned to illiquid shares of a non-public company that had not been established in accordance with Venture's Operating Agreement and its PPM dated December 1, 2007 and for which there was no legitimate, justifiable or reasonable basis;
- Beginning about December 31, 2008 and thereafter, that they had caused Venture to pay an incentive fee of about \$450,000 to MICG for 2008 based on values they had assigned to two illiquid, non-publicly trading securities that had not been valued by HPLC and had not otherwise been determined or established independently;
- Beginning about December 31, 2008 and afterward, that they had caused Venture to pay an incentive fee of about \$450,000 to MICG for 2008 based on an asset values that had not been established in accordance with Venture's Operating Agreement and PPM dated December 1, 2007 in that, among other things, the assets were not valued at FMV; and
- Beginning about December 31, 2008 and afterward, that they had no legitimate, justifiable or reasonable basis for values they had assigned to two illiquid, non-publicly trading securities Venture owned that constituted the bulk of its assets.

146. By making material misrepresentations of fact and failing to disclose material facts in connection with purchases and sales of Venture Units, Martinovich and MICG willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, violated NASD Conduct Rules 2120 and 2110 insofar as their conduct occurred before December 15, 2008, and violated FINRA Rules 2020 and 2010 insofar as their conduct occurred after December 14, 2008.

NINTH CAUSE OF ACTION – MARTINOVICH

Unsuitable Recommendation and Failure to Disclose Material Facts  
(Exchange Act Section 10(b) and Rule 10b-5 thereunder,  
NASD Rules 2310, 2120 and 2110, NASD IM-2310-2 and  
FINRA Rules 2020 and 2010)

147. The Department realleges and incorporates by reference paragraphs 1 through 103 above.
148. In recommending to MW on or about December 5, 2008 that he invest in Venture, and in effecting MW's \$75,000 purchase of Venture in December 2008, Martinovich did not have reasonable grounds for believing that an investment in Venture was suitable for MW based on facts and information known to him (Martinovich). Martinovich had no reasonable grounds for believing the purchase of Venture was suitable for MW based on or for reasons including: MW's age; MW was *not* an accredited investor; Venture was a high-risk investment that was inconsistent with MW's investment objectives and investment needs; an investment in Venture was highly illiquid; the recommended purchase occurred in an IRA; and, MW had previously invested a substantial amount in another MICG hedge fund (MICGP) which he still owned, so the recommended purchase caused hedge fund investments to become an unsuitably high percentage of MW's investment portfolio.
149. Martinovich, in recommending, inducing and effecting MW's purchase of Venture, did so by means of deceptive or fraudulent devices, or engaged in deceptive or fraudulent conduct, in that he failed to disclose material facts to MW (beyond those alleged in Cause Eight above) about his (Martinovich's)

self-interest in the recommended purchase arising from his intended use of MW's funds. Specifically, Martinovich failed to disclose to MW:

- that once Venture received his funds, he (Martinovich) intended to use and apply the funds immediately (or cause them to be applied) to pay MICG an incentive fee and/or to pay it management fees from which he (Martinovich) would derive, direct and/or indirectly, financial and other benefit(s);
- that Venture did not have, or readily have, the means or ability, absent receiving funds from the sale of additional Units to investors like MW, to pay the incentive fee and management fees that he (Martinovich) intended to cause Venture to pay on or about December 31, 2008;
- that the incentive fee and management fees that he intended to cause Venture to pay to MICG using MW's funds were based on and calculated using asset values for two illiquid securities, which collectively constituted the bulk of Venture's assets, that had not been determined or established by Venture's auditor and had not otherwise been established independently and objectively but that he (Martinovich) had determined; and,
- that he (Martinovich) had no *bona fide* documentary or other support for the values he had assigned to the two assets and had no legitimate or reasonable basis for the asset values.

150. By recommending and effecting an unsuitable purchase of Venture to MW, Martinovich violated NASD Conduct Rules 2310 and 2110, IM-2310-2, and FINRA Rule 2010 (insofar as his conduct occurred after December 14, 2008) and, by failing to disclose to MW, in recommending the purchase, his self-interest in the transaction, Martinovich willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, violated NASD Conduct Rules 2120 and 2110 insofar as his fraudulent conduct alleged in this cause occurred before December 15, 2008, and violated FINRA Rules 2020 and 2010 insofar as his fraudulent conduct alleged in this cause occurred after December 14, 2008.

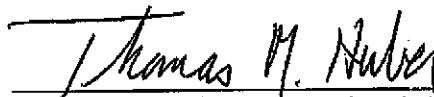
## RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. order that one or more of the sanctions provided under FINRA Rule 8310(a) be imposed, including that the Respondents be required to disgorge fully any and all ill-gotten gains and/or make full and complete restitution, together with interest.
- B. order that the Respondents bear such costs of the proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330.
- C. make specific findings that Martinovich and MICG willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder and that MICG willfully violated Section 17(a) of the Exchange Act and Rule 17a-3 thereunder.

## FINRA DEPARTMENT OF ENFORCEMENT

Date: May 14, 2010



Thomas M. Huber, Sr. Regional Counsel  
John M. D'Amico, Regional Chief Counsel  
FINRA Department of Enforcement  
1835 Market Street, Suite 1900  
Philadelphia, PA 19103  
Phone: (215) 963-1990  
Fax: (215) 496-0434  
[thomas.huber@finra.org](mailto:thomas.huber@finra.org)  
[john.d'amico@finra.org](mailto:john.d'amico@finra.org)