BEFORE THE ARKANSAS SECURITIES COMMISSIONER
Case No. S-18-0059

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ARKANSAS SECURITIES DEPT.

IN THE MATTER OF
SECURITY ASSET MANAGEMENT, LLC and
WILLIAM BARNETT

COMPLAINT

The staff of the Arkansas Securities Department (Staff) hereby institutes formal administrative proceedings against Security Asset Management, LLC, (SAM) and William Barnett and in pursuance of that complaint states the following:

AUTHORITY

1. This complaint is filed and this proceeding instituted pursuant to the Arkansas Securities Act, Ark. Code Ann. §§ 23-42-101 through 509, (Act), the Rules of the Arkansas Securities Commissioner (Rules), and the Arkansas Administrative Procedures Act, Ark. Code Ann. §§ 25-15-201 through 220.

RESPONDENTS

2. William Thomas Barnett, CRD No. 1719440, is the managing member, president, founder and sole owner of Security Asset Management, LLC, CRD No. 127802 (SAM). Barnett is registered as an investment adviser representative of SAM. At all times relevant to this matter Barnett was a resident of northwestern Arkansas, where he still resides.

3. SAM is a state registered investment adviser formed by Barnett and registered in Arkansas on September 8, 2003. Its address is 3988 Belle Mead Street, Springdale,

Arkansas 72762-8251.

FACTUAL ALLEGATIONS

4. Although SAM and Barnett have been examined several times over the years, this action focuses primarily on an examination commenced in 2019 covering the twenty-five month period from January 2018 through January 2020 and two complaints from investors who had initially invested in 2011 and ceased doing business with SAM and Barnett in 2016 and 2017.

5. According to the ADVs (forms investment advisers are required to file with the Arkansas Securities Department (ASD) annually), SAM had 125 active accounts and ~\$6.6 million in assets under management in 2018 and 124 accounts and ~\$5.1 million in assets under management in 2019. Barnett managed all accounts with complete discretionary authority to make trades in the accounts and make decisions as to what securities to buy, sell or hold as he saw fit, without first getting the permission of the account holders to make those decisions.

GALECTIN THERAPEUTICS, INC. - GALT

6. Barnett, acting as the managing member of SAM, became unreasonably enthusiastic about the stock of Galectin Therapeutics, Inc., referred to hereafter as GALT, the stock symbol under which the stock trades on the NASDAQ stock exchange. GALT is a company formed in July 2000 as Pro-Pharmaceuticals, Inc. that has attempted to produce pharmaceutical drugs, principally a drug therapy for non-alcoholic steatohepatitis or NASH cirrhosis of the liver. Although it has attempted to produce such a drug therapy, it

has never been successful. In its most recent annual report filed with the United States Securities and Exchange Commission (SEC) on March 16, 2020, the following auditor's note, which is known as a going concern note, was included and is most illuminating (Italics and boldface in original):

> ***We have incurred net losses to date and must raise additional capital in order to continue to operate after September 30, 2021.***
>
> We have incurred net losses in each year since our inception in July 2000 and have no revenues. Our accumulated deficit as of December 31, 2019 was $216.4 million.
>
> * * *
>
> To obtain additional funding, we may need to enter into arrangements that require us to relinquish rights to certain technologies, products and/or potential markets. To the extent that additional capital is raised through the sale of equity, or securities convertible into equity, our equity holders may experience dilution of their proportionate ownership of the Company.
>
> ***We are a development stage company and have not yet generated any revenue.***
>
> We are a development stage company and have not generated any revenues to date. There is no assurance that we will obtain FDA approval of GR-MD-02 [also known as Belapectin, GALT's primary experimental drug for NASH cirrhosis] or any other of our products in development and, even if we do, that we will generate revenue sufficient to become profitable. Our failure to generate revenue and profit would likely lead to the loss of your investment.

7. This statement was not a statement of a recent development in GALT's business, but a comment on its entire twenty-year existence. This statement of no revenues and an accumulated deficit is repeated in GALT's annual reports filed with SEC each year. Filed in March of the next year, the reports filed on behalf of GALT for the calendar years 2017 and 2018 would have been available to Barnett and SAM in 2018 and 2019. The accumulated deficit grows each year, of course. The accumulated deficit in the annual report for 2017 was $181.2 million, and the accumulated deficit in the annual report for

2018 was $196.2 million.

GALECTIN RISK FACTORS

8. Each annual report, a Form 10-K, contains an entire section devoted to risk factors. Individual risks are repeated throughout the report, and the reader is referred to the Risk Factor section quite frequently. These factors are extensively detailed and are comprised of fourteen to eighteen single-spaced pages. The risks are arranged under four broad headings, as follows:

   a. "Risks Related to Our Company." Under this heading the statement set out above in ¶ 6 appears in substantially the same form each year. It includes other risks, also.

      i. A principal risk is the risk that GALT's primary lead drug candidate, GR-MD-02, also known as Belapectin, will not get the approval of the United States Food and Drug Administration (FDA), as set out above.

      ii. This risk of product liability lawsuits for which GALT has no product liability insurance coverage, is noted.

      iii. The risk of intense competition is noted.

      iv. The risk of litigation expenses in connection with shareholder derivative actions and other class actions involving the federal securities laws are noted. In the 2017 and 2018 10-Ks, to which Barnett and SAM had access, litigation was noted. Although GALT was ultimately successful in that litigation (as reported in the 2019 10-K), other such litigation in the future cannot be ruled out. In fact the risk factor section of the 10-Ks strongly suggest in all its subsections that such litigation is common in this type of business.

b. "Risks Related to the Regulation of our Products." These are risks regarding the ability to profit from a drug that can only occur if the approval of the FDA in this country and many other counterparts to the FDA in other countries is obtained. This subsection of the 10-K sets out the arduous process for obtaining FDA approval and the many opportunities for failure.

c. "Risks Related to Our Intellectual Property." In order to profit from a drug, a company must also have the patent to that drug. Owning patents is stated to be "critical to our business," but fraught with uncertainty. Patents for pharmaceuticals is stated to "involve complex legal and factual questions for which important legal principles remain unresolved," and the situation outside the United States is described as "even more uncertain." Accordingly, the reader is warned, GALT could incur "substantial costs as a result of litigation or other proceedings relating to patent and other intellectual property rights and we may be unable to protect our rights to, or use of, our technology."

d. "Risks Related to Our Common Stock." The risks set out in this subsection could be familiar to those who buy and sell securities for a living, but not to normal retail investors.

   i. The risk of not being able to obtain FDA approval, which would put GALT out of business, is probably the primary risk.

   ii. The ability of the GALT board of directors to issue other shares of stock that would dilute or negatively impact the price of GALT common stock already purchased is a listed risk.

iii. Nevada corporate law, which applies to GALT, is said to make it more difficult for another company to acquire GALT, which might prevent GALT shareholders from realizing a profit, should GALT become a takeover target.

iv. A large risk is the ownership of a controlling part of the shares of GALT in one investor, the 10X Fund, and several directors, which could be used to the detriment of minority shareholders.

v. These two risks are particularly noteworthy (Italics and boldface in original):

> ***We have not paid cash dividends in the past and do not expect to pay cash dividends in the foreseeable future.***
>
> * * *
>
> ***At times, our shares of common stock and warrants have been thinly traded, so you may be unable to sell at or near ask prices or even at all if you need to sell your shares to raise money or otherwise desire to liquidate your shares.***

9. Rather than share these risk factors, Barnett actively promoted GALT and purchased large amounts of the stock in his clients' accounts. Barnett sporadically sent his clients short newsletters, mailings and emails that contained information about topics other than GALT but were usually devoted primarily to GALT. Usually, over half the information and sometimes all of it was about GALT. Barnett sent these communications to his clients as though he were trying to obtain his clients' permission to make decisions, even though he had complete discretion, and he always followed his own advice, purchasing

more and more GALT stock. In these missives Barnett would openly refer to GALT as the primary asset in all client accounts, once referring to GALT as "our largest holding." (Letter, February 18, 2019) He would predict that an FDA trial of a GALT drug was about to show that GALT's product was about to be approved and make GALT stock worth a great deal more than SAM clients had paid for it. There were many events that were touted as a basis for anticipating a great surge in GALT stock price.

THE $5 BILLION BUYOUT

10. Barnett touted a coming buyout of GALT for $5 billion that would push the GALT share price to $50.

a. Barnett first mentioned this anticipated buyout in a January 12, 2018 newsletter. If GALT sold for $5 billion, which Barnett asserted was the stated buyout price a year ago, the share price would be $50.

b. The $5 billion buyout price was mentioned again in a June 13, 2018 email, where Barnett stated the stock price could go to $18 by the end of the year because Barnett stated that he "personally heard Dr. Traber [then president, CEO and chief medical officer of GALT] in December 2016 state, off the cuff, that $5 billion might be a fair price" for GALT before it was announced GALT "was now a "'PROVEN" NASH cirrhosis success," apparently in June 2018.

c. In a newsletter dated October 18, 2019 this coupling of a $5 billion buyout price and a $50 share price was attributed to a December 2017 GALT shareholders' meeting. In this newsletter Barnett placed a headline on the front page reading "GALECTIN

THERAPEUTICS. THE BEST, BY FAR, EXPECTED, IS YET TO COME. Pg 2." Pages 2, 3 and 4 of the newsletter concerned only GALT. The 3-page GALT portion of the newsletter went from a start on page 2 of extensive praise for GALT's work in NASH cirrhosis to criticism of GALT management for concentrating only on its work in NASH cirrhosis, but ended up recommending that investors invest even more (and Barnett followed his own recommendation, of course).

i. Praise for GALT (Newsletter, page 2):

> No other company is even close to entering the phase 3 FDA human trial for NASH CIRRHOSIS. Also, no other company showed a measurable improvement in any patients' cirrhosis.
>
> * * *
>
> A successful trial end of 2 years of dosing should cause our stock price explosion, due to expected drug sales in the $Billions$.
> GOOD NEWS. We should not have to wait 3 or 4 years for a price explosion. In 2018 Galectin announced they were offering bonuses for a successful buyout, and the (not reported) price tossed out at the December 2017 Shareholders meeting was, "5 billion would be acceptable." That would equal about $50 a share.
>
> * * *
>
> Stay invested ALL you can. Add to your account balance if you can.

ii. Criticism of GALT (Newsletter, pages 3 and 4):

> There are many indications of the effectiveness of Galectin's Belapectin that have been tested on animals and humans. Cancer, the biggest, so far has had no money invested toward it . . . The company executives still have a "tunnel vision" approach to the best path to profitability, that being cirrhosis. Wrong. It is more expensive, more difficult to fund, more difficult to enroll subject[s], and then to execute the trials. It also takes much longer to finish the human trials and test for results than in other diseases. The myopic vision at Galectin is insane to all of us.
>
> * * *
>
> P.S.~ There was, as usual, an attack of the GALT share price after the presentation on Wednesday with only minor success. It may take a few days to end. Big news still pending.

THE RIGHTS OFFERING

11. On March 6, 2019, GALT filed a registration statement with the SEC for an offering of subscription rights for units of GALT consisting of shares of common stock and warrants and was referred to as a Rights Offering. After three more filings, it was effective on April 12, 2019[1]. It allowed existing owners of GALT common stock and holders of warrants purchased in 2015 to purchase these units. Warrants lock in a stock price for a period of time. These warrants allowed the owners of them to purchase GALT stock for $7.00 per share within seven years of the closing of the offering, which was set for late May 2019. The price of these units would be the lesser of $5.50 per unit or 95% of the "volume weighted average price" of GALT stock for the twenty-five day period including the expiration date. GALT anticipated raising $70.1 million and use it for general working capital and for the cost of a Phase 3 clinical trial for GR-MD-02, Belapectin, which would entail one year to enroll participants and two more years of study. The estimated cost of the Phase 3 trial was stated at approximately $100 million.

RIGHTS OFFERING CLIENT COMMUNICATIONS

12. Beginning with a mailing on March 6, 2019, Barnett devoted most of his communications with clients to this offering. Most of the communications he sent his clients from this date until a mailing sent out dated July 11, 2019 were devoted to this offering. The communications focused on the details of the offering, itself, which were somewhat confusing, even to Barnett, and the details of the Phase 3 clinical trial for Belapectin.

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[1]The first three filings had been incomplete.

a. Barnett announced the offering in a March 6, 2019 mailing that largely quoted the first GALT filing with the SEC. Details followed quickly with a mailing dated March 11, 2019. In this mailing, after an attempt to explain the offering, Barnett stated:

> Note. Sales in the billions, or at least millions, could begin in about two years. Other research could also significantly spike up the price as at past announcements. There are no guarantees of future price rallies, but I sent a Regeneron[2] price history previously. If GALT prices rise similarly when sales begin, that would translate to $40 to $50 potentially.

b. On March 23, 2019 Barnett sent an email to his clients. Two of the four paragraphs were devoted to GALT. He noted that on Friday, March 22, GALT had posted "a very **compelling update**" on its website. GALT was said to be the only one of three companies in an "FDA stage 3 trial" because the other two companies that had been at that stage of development had announced their failures several days before. In the last paragraph Barnett stated that "Soon Galectin will offer **RIGHTS and WARRANTS** to all shareholders.

c. On April 12, 2019, the date of the effective registration statement filed with the SEC, Barnett sent his clients an email with portions of the registration statement reprinted verbatim. On the next day, April 13, 2019, Barnett sent his clients a newsletter with attachments, one of which was the "entire 77 page Official SEC filing by Galectin." In the first paragraph Barnett seemed to couch his statements with warnings and caution, stating that he was "not making any blanket recommendations to buy this

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[2]A very successful pharmaceutical company founded in 1988 whose share price is currently around $475.

offer" and that "you may have to **wait three years** or so to exercise the '**warrants**' for a possibly significant profit," Barnett expressed great enthusiasm in the rest of the newsletter.

i. "Perhaps enormous profits could result as Phase 3 trials end." Barnett detailed the Phase 3 trial as lasting three years and including 500 to 600 patients. Expressing great confidence that the trial would be successful, Barnett stated "500 humans get to LIVE!!"

ii. After several pages of confusing explanations of how much money expended for warrants would result in how much profit, Barnett recommended buying warrants, after comparing them to options on real estate.

> I have stated that in three years, as Galectin completes a successful FDA Cirrhosis 3 trial, the first full year of sales should exceed $15 billion dollars conservatively. There is NO OTHER COMPANY in or planning to soon begin enrolling cirrhosis patients in a phase 3 FDA trial. AND, it appears that the outcome set by the FDA has already been accomplished in the level 2 trial. The price target after the top line results in 2022 should be greatly higher than today's price.

d. In a May 4, 2019 mailing Barnett states the deadline of May 23, 2019 to buy into the rights/warrants offering. Even though Barnett stated that "<u>I will make no recommendation on your behalf</u>," he first stated that the new shares included in the offering were "below the average market price" and:

> What is fairly certain is: Galectin will raise the funds to complete the FDA III cirrhosis trial; the trial will be successful; sales of the drug that stops the cirrhosis' progression for millions of people will go on sale worldwide. . . . I believe this is a good deal.

e. In a May 28, 2019 newsletter Barnett stated that GALT had "just raised $47 million to begin the final FDA Phase III registration trial" and now had the funds to complete it in about three years. He was proud of his clients for helping raise this money. Barnett then once again failed to explain the details of the offering or how much each client had increased his or her holdings of GALT. Attached to the newsletter was the new Asset Allocation Questionnaire,, which allowed clients to allocate just how big a percentage of their accounts should be invested in GALT.

f. On June 14, 2019 Barnett sent another mailing to his clients expressing his pride in them for "doing the right thing" and telling them they "should be proud for purchases of Galectin RIGHTs. Time will prove their true value." He devoted the remainder of this mailing to an explanation of what his clients just purchased, noting that there was "a DISCREPANCY between my notice and our current holdings of Warrants."

g. On July 11, 2019, Barnett sent another mailing correcting the last mailing explaining "**your <u>correct number</u> of a <u>much larger number of warrants</u>** in your accounts." He also opined, quoting a GALT insider regarding the Phase 3 clinical trial that "Odds of success are 'extremely high" . . . Wonderful."

RIGHTS OFFERING RISK FACTORS

13. The registration statement for the Rights Offering filed on April 12 was a document over 70 pages long. As with the form 10-K annual reports, it contained a Risk Factor section. Barnett referred to this section of the registration statement by a verbatim reprinting of a warning in the statement to read the Risk Factors section in an email to clients on April

12, 2019 and in a statement in the newsletter dated April 13, 2019 in which Barnett stated he had sent the entire registration statement to his clients along with the newsletter. Other than those two oblique references, Barnett never mentioned or discussed the risk Factors section of the Risk Factors section. Many of these risk factors are the same as those set out in the Form 10-K annual reports, and discussion of those in relation to the Rights Offering will not be repeated. However, those risk factors apply to the Rights Offering, also. Several of the risk factors peculiar to the Rights Offering that Barnett did not mention are significant and need to be pointed out:

a. ***The subscription price determined for this rights offering is not an indication of our value.*** The subscription price is "not necessarily related to our book value, net worth or any other established criteria of value . . . Particularly with the floor price of $4.00 pe share . . . , we cannot give any assurance that our common shares will trade at or above the subscription price in any given time period."

b. ***There is no guarantee that by the time the Units are delivered to you, the market price of our common stock will be above your subscription price.*** The price paid for Units, regardless of which price it might be, might well be more than the stock price at the time the purchase id finalized and the Units are delivered.

c. ***There is no public market for the warrants included in the Units.*** The warrants are not traded on any established stock exchange, and GALT does not intend to list them on any established stock exchange. Thus, once purchased, they cannot be sold.

d. ***The tax treatment of the rights offering may be treated as a taxable event to you.***

Although GALT does not believe the distribution of subscription rights is taxable, the Internal Revenue Service might not agree and might consider it a "disproportionate distribution" pursuant to §305 of the Internal Revenue Code, which would be fully taxable.

CLIENT COMMUNICATIONS OVERALL

14. The only time Barnett alluded to the risk factors set out in both the 10-K annual reports and the Rights Offering registration statement was in a newsletter he issued on November 16, 2019 in which he discussed a GALT press release concerning the FDA testing then being conducted. There was concern expressed in the press release about the length of time that testing might go on and the amount of money it might cost if the FDA required GALT to test for a longer period, up to two years, which was put at $100 - 115 million. As Barnett quoted from the GALT press release: "There can be no assurance that we will be successful in obtaining financing to support our operations beyond December 31, 2020, or, if available, that any such financing will be on terms acceptable to us." Barnett discounted this risk statement, saying it was "common wording Galectin, and all companies in this situation, place into every projection of cash flow. It is part of the 'STATEMENT OF RISKS.'" Barnett discounted it further by quoting Lou Holtz and assuring his clients that as long as the FDA testing continues to be successful, the money needed will take care of itself. Barnett emphasized this point with a rhetorical question: "How much trouble was it to raise 50 million this year? None."

CHARACTERIZATION OF GALT AS A GOING CONCERN

15. Central to all of Barnett's communications with his clients was the absence of any acknowledgment of the type of company GALT was. As stated in the Risk Factors set out in ¶ 6, above, GALT was a pharmaceutical "development stage company" that has "not generated any revenues to date." As was also made clear in the Risk Factor sections of the 10-Ks, a pharmaceutical development stage company is one that has not yet developed any drug products that can be marketed and sold to generate revenue and profit. To the contrary, Barnett always referred to GALT as a going concern, one that was actively in business, generating revenue and making a profit.

a. For example in the December 22, 2018 mailing Barnett urged his clients to buy more GALT common stock because the GALT insiders (presumably those who owned a majority of and ran GALT) were dumping (selling) their preferred stock, which he said paid an 8% dividend, and buying common stock. Ignored was the risk factor set out in ¶ 8.d.v that GALT has never paid dividends on common stock and does not expect to do so in the foreseeable future.

b. In the January 2, 2019 email, which recapped 2018, it was stated that GALT made a profit in 2018 of 8.4%, which was the amount the stock closed higher at the end of 2018 than it started out ($3.34 per share to $3.62 per share). The difference in the share price of such a company over the course of a year is not profit. As stated in the risk factor that has appeared in every 10-K report is the warning that GALT has not obtained FDA approval of any drug that would generate revenue and, even if it did obtain such approval, the is no assurance that " we will generate revenue sufficient to become profitable." Further, "Our failure to generate revenue and profit would likely lead to the loss of your investment."

c. In a February 18, 2019 email Barnett told his clients that GALT "will soon release its fourth quarter [2018] earnings report." As noted above in ¶ 6, there are no earnings, and there are no earnings reports.

16. Barnett seemed to be GALT's biggest booster, but the factual basis for this enthusiasm was sparse to nonexistent. As noted above, the 10-Ks filed by GALT for the calendar years 2017 and 2018, which were available to Barnett and SAM in 2018 and 2019, both reported that the company had never made any revenue or made a profit since its founding in 2000 and had a deficit in 2017 of $181.2 million, and a deficit in 2018 of $196.2 million. All the risk factors noted above in these reports are relevant to these rosy predictions of great returns on GALT stock put out by Barnett and SAM. Nevertheless, Barnett consistently and persistently recommended increasing his clients' holdings of GALT and then increased those holdings.

RECOMMENDING GALT STOCK BASED ON PERSONAL STORY AND RELIGION

17. In the newsletter dated January 12, 2018, Barnett tells his clients that if they "do not know my story about how God was working through me these years concerning Galectin," come to a "celebration event where I will repeat my story." He does not claim that the GALT experimental drug was used in his experience, but he uses his survival as a basis for his excitement about GALT. This story contains a religious element, which appears in

Barnett's advocacy of GALT sporadically. He also told this story in a newsletter to clients dated November 16, 2019 where he ended a six-page promotion of GALT stock with: "God is still in the miracle business as He blesses his creation today through medical sciences. It is God's work." Alongside this emotional story and the occasional peppering of his communications with religious references is Barnett's ceaseless urging to buy more GALT shares.

18. Barnett runs a contest for his clients in which a client could win a prize from $300 to $1,200 if the GALT price on two days selected by the clients was within a certain range. *See* newsletter dated April 5, 2018. This contest, which Barnett named the Mustard Seed Contest, creates an expectation that GALT stock will increase in price and deliver investors a large profit.

19. The newsletters, the letters and the Mustard Seed Contest work together to create a "missing out" emotion among his clients that would push them to want more shares of GALT. They want to be there when GALT stock rises to many multiples of what they paid for it. Clients would therefore not mind seeing a larger and larger portion of their account is in GALT stock in order to avoid "missing out" on the promise of GALT stock.

PITCHING DIVERSIFIED HOLDINGS BUT MOST ACCOUNTS ALMOST THE SAME

20. Using a custodian broker-dealer that allowed investment advisers to construct model portfolios, Barnett constructed eight model portfolios, later reduced to five. One of them, the MLP (Manage Long-Term Position) portfolio, was comprised mainly of GALT stock and some cash holdings. The other four portfolios, the GRO(Growth), GRO-INC (Growth

and Income), BEST and AGG (Aggressive) were ostensibly designed to contain other types of securities and to meet other investment objectives or goals. Clients would fill out an asset allocation form specifying which of the portfolios would hold what percentage of their accounts.

21. Barnett would place trades in all accounts at once, a practice known as block trading. This resulted in a great deal of trading, but very little trading tailored to individual accounts.

22. According to the investment advisory service agreeement entered into by SAM's clients and the SAM investment policy statement, which was given to most clients at their initial signing, their accounts were supposed to be fairly diversified, and they were supposed to meet the clients' various investment goals, but in reality the accounts were all remarkably similar and were not very diversified. The result of Barnett's unrelenting touting of GALT resulted in a vast over-concentration of GALT stock in all SAM client accounts. The Staff's examination revealed that SAM accounts would hold 70% to 100% of GALT.

23. The Staff pulled twelve accounts with various risk tolerances and investment goals. An analysis of those accounts shows that the accounts all held a majority of GALT stock in them and at any given time would hold in excess of 90%. One account owned by a person who was 99 years old at the time of the exam held 100% of the account in GALT in April 2019. Further analysis of these accounts show that their accounts decreased in value as GALT decreased in value over the twenty-five months of the examination. At the end of 2017, GALT stock traded at $3.34 a share. At the end of 2018 it traded at $3.43, but at the end of 2019 the stock price had fallen to $2.86. Further examination of SAM accounts

including 2020 shows further decrease in account value. At the end of 2020 GALT stock was trading at $2.24 a share. As of January 25, 2021 GALT stock was trading at $2.16 a share. The accounts lost an average of 39% during the twenty-five month period of this examination.

24. In response to an offering of warrants in April 2019, Barnett changed the risk tolerances and investment goals to allow more aggressive risk taking on most of clients' investment advisory agreements by means of telephone calls to the clients. He would call, tell them he was making a change and mail them a changed form. No signatures were obtained. Changing the risk tolerances and investment goals made no real difference because all accounts remained with over-concentrations of GALT. In fact many accounts had higher over-concentrations before the change in risk tolerances and investment goals than after.

EXCESSIVE TRADING

25. Barnett also traded all accounts excessively using block trading. The Staff asked for Barnett's trading philosophy style in the initial examination letter dated November 2019. In a long response to this question, Barnett stated several things, but the most succinct seemed to be to determine what stocks to buy or sell by "utilizing price patterns," which should refer to patterns seen in the trading activity of a particular stock or market. However Barnett read the price patterns and whatever else he relied on, it resulted in a high volume of trading. Because of SAM's contract with its primary custodian, Folio, this trading did not cost SAM or the clients anything, especially if Barnett accomplished his trades by block trading. It is noteworthy, however, that many clients would receive 1099

forms (which the Internal Revenue Service creates and requires to be filed) from Folio disallowing many losses on trades as wash trades, which are not allowed by federal law. 26 U.S.C. § 1091. Wash trades in this sense are sales of securities resulting in losses where the seller acquired the same or identical stock within thirty days before or thirty days after the sales. Buying and selling the same stock is not rewarded by tax deductions. The 1099s reflecting the disallowance of a large amount of wash trades shows the unreasonably large amount of trading in the accounts of SAM clients. Barnett was engaging in excessive trading for no good reason.

NON-TRADITIONAL EXCHANGE TRADED PRODUCTS

26. In addition to GALT stock, Barnett also invested SAM clients in non-traditional exchange traded funds (ETFs), including inverse-leveraged ETFs. ETFs are investment funds traded as though they are equity stocks. Inverse ETFs are keyed to a particular index or market and designed to fluctuate inversely to that index or market. Leveraged ETFs increase or decrease in value by multiples, usually of two or three. For example, a leveraged ETF keyed to the S & P 500 (S&P) index will deliver returns of two or three times the change in the S&P, and an inverse leveraged ETF will deliver a multiple gain or loss of the inverse of the change in the index, e.g., a 20% loss on a 10% gain in the index. These ETFs all reset on a daily basis, which means that all gains or losses are realized each day. Holding these products for more than one day can result in compounded gains or losses.

27. Barnett also utilized exchange traded notes (ETNs), a security similar to ETFs which also track an index in the same way ETFs do. These can also be inverse and leveraged. These

are typically issued by banks and represent the unsecured debt obligations of banks, which make them carry more credit risk that ETFs.

28. Inverse-leveraged ETFs and ETNs (collectively, non-traditional exchange traded products, NT-ETPs) are hedging tools designed to deliver the return promised in one day. Adverse returns could result from holding them for longer than one day, particularly if the index to which the NT-ETP is keyed goes in a direction other than the direction anticipated when the NT-ETP was purchased. The prospectuses of all NT-ETPs plainly state this warning on the first or second page, usually in type that is highlighted in boldface, italics or some other fashion. Barnett kept NT-ETPs in client accounts for more than one day without conveying the risks of doing so to the clients involved.

MICROCAP AND PENNY STOCKS

29. Microcap or penny stocks are issued by companies that have a low capitalization of less than $300 million. The SEC defines penny stocks as those trading for less than $5.00 per share. Although microcap stocks might sell for a bit more than $5.00 per share, they usually are comparable to penny stocks. These stocks are often not traded on national stock exchanges and are often hard to value. Issuers may not have to file the same detailed financial statements with the SEC required of larger firms. Information about these companies and the value of the stock is not often easy to find. These types of stock are thinly traded, which means there is a low volume trading in these stocks, and they are subject to wild swings in price. A purchase of a large number of shares can easily drive the price up, and the sale of a large number of shares can easily drive the price down.

Such stocks are not suitable for older clients, which most of SAM clients were. Barnett invested the funds of SAM clients in these types of stocks without advising the clients involved of the risks involved.

30. One example of the dangers of penny stocks is Barnett's and SAM's recommendation and investment into the stock of Ampio Pharmaceuticals, Inc., represented to SAM clients as a great opportunity in an August 2018 email. Barnett invested his clients' accounts in Ampio but it has not been successful.

31. The written supervisory procedures of SAM do not take into account the trading of NT-ETPs, penny stocks or microcap stocks.

32. After the notice letter was sent to Barnett in November 2019, the Staff attempted to work with Barnett in early 2019 to allow him to remedy the situation and avoid the filing of a complaint. The Staff suggested correcting the over-concentration of GALT in client accounts by decreasing the amount of GALT stock in his clients accounts gradually in such a way as to not drive down the stock price and ceasing the incessant and forceful marketing of GALT stock without a reasonable basis in fact to recommend its purchase in any amount, but to no avail. Barnett refused to decrease the amount of GALT stock held by his clients or to change his ways in regard to GALT in any way. In fact, he actually increased the proportion of GALT in client accounts. He refused to any action to avoid the filing of a complaint.

WILLFUL VIOLATIONS OF THE ACT

UNSUITABLE RECOMMENDATIONS
RULE 308.02(a), RULES OF THE ARKANSAS SECURITIES COMMISSIONER

33. By continuously recommending to SAM clients the purchase of GALT stock with no reasonable basis in fact for doing so, Barnett and SAM made recommendations to clients without a reasonable basis for believing the recommendations were suitable for the clients based on all available information, a fraudulent, deceptive, dishonest or unethical practice of an investment adviser in violation of Rule 308.02(a), Rules of the Arkansas Securities Commissioner.

SECURITIES FRAUD
ARK. CODE ANN. § 23-42-307(2)
RULE 308.02(v), RULES OF THE ARKANSAS SECURITIES COMMISSIONER

34. By engaging in a constant, unrelenting campaign of pushing GALT that surpassed even that of the company issuing the stock, with no reasonable basis in fact for doing so, Barnett and SAM caused SAM clients to invest in GALT stock incessantly, resulting in a great over-concentration of GALT stock, and thus engaged in an act practice or course of business which operates or would operate as a fraud or deceit upon another, which is a violation of Ark. Code Ann. § 23-42-307(2) and Rule 308.02(v), Rules of the Arkansas Securities Commissioner.

SECURITIES FRAUD
ARK. CODE ANN. § 23-42-307(3)

35. By failing to inform investors of the many risk factors involved in investing in a company like GALT while recommending the investment in GALT stock, Barnett and SAM made

a material omission of fact, defined as a failure to state a material fact necessary in order to make the statements made not misleading in light of the circumstances under which they are made, a violation of Ark. Code Ann. § 23-42-307(3). These omissions are material because the risk factors omitted would have been significant to a reasonable investor.

UNSUITABLE RECOMMENDATION
RULE 308.02(a), RULES OF THE ARKANSAS SECURITIES COMMISSIONER

36. By recommending and then making purchases of NT-ETPs and holding them in client accounts for longer than one day, as the prospectuses of such securities plainly warn against doing, Barnett and SAM made recommendations to clients without a reasonable basis for believing the recommendations were suitable for the clients based on all available information, a fraudulent, deceptive, dishonest or unethical practice of an investment adviser in violation of Rule 308.02(a), Rules of the Arkansas Securities Commissioner.

UNSUITABLE RECOMMENDATION
RULE 308.02(a), RULES OF THE ARKANSAS SECURITIES COMMISSIONER

37. By recommending and then making purchases of microcap and penny stocks in client accounts without a reasonable basis for believing the recommendations were suitable for the clients based on all available information, Barnett and SAM engaged in a fraudulent, deceptive, dishonest or unethical practice of an investment adviser in violation of Rule 308.02(a), Rules of the Arkansas Securities Commissioner.

EXCESSIVE TRADING
RULE 308.01(e), RULES OF THE ARKANSAS SECURITIES COMMISSIONER

38. By using block trading to effect trades simultaneously in many client accounts, Barnett and SAM engaged in a very large amount of trading that had no discernible effect on the accounts, including buying and selling the same or similar stocks within thirty days. This type of trading was excessive in size and frequency in view of his clients' financial resources, investment objectives and risk tolerances and a a fraudulent, deceptive, dishonest or unethical practice of an investment adviser in violation of Rule 308.02(e), Rules of the Arkansas Securities Commissioner.

FAILURE TO ESTABLISH AND MAINTAIN WRITTEN SUPERVISORY PROCEDURES PERTAINING TO NON-TRADITIONAL EXCHANGED TRADED PRODUCTS, MICROCAP STOCKS AND PENNY STOCKS
RULE 301.01(c)(2), RULES OF THE ARKANSAS SECURITIES COMMISSIONER

39. The failure of Barnett and SAM to establish and maintain written supervisory procedures concerning NT-ETPs, microcap stocks and penny stocks was a violation of Rule 301.01(c)(2), Rules of the Arkansas Securities Commissioner, which requires that such written supervisory procedures be established, maintained and followed.

VIOLATION OF FIDUCIARY DUTY OWED BY INVESTMENT ADVISERS TO THEIR CLIENTS
RULE 308.02, RULES OF THE ARKANSAS SECURITIES COMMISSIONER

40. As stated in the first sentence of Rule 308.02, "Investment advisers have a duty to act primarily for the benefit of their clients," which means that investment advisers are fiduciaries who should act in the best interests of their clients. By acting as they did in all the violations set out above, Barnett and SAM did not act in the best interests of their

clients. This conclusion is especially true with respect to their activities concerning GALT, where they acted more in the interest of the issuer of GALT stock, Galectin Therapeutics, Inc., than that of their clients. Barnett lost all objectivity in dealing with GALT stock and approached it emotionally. Barnett's and SAM's actions caused SAM clients to incur great losses.

WHEREFORE, the Staff respectfully prays that the Commissioner revoke Barnett's and SAM's registrations for the willful violations of the Act and Rule set forth above in accordance with Ark. Code Ann. § 23-42-308(a)(2)(B).

The Staff further requests the Commissioner to set a date for a hearing and for all other just and proper relief as the Commissioner deems just and proper.

Respectfully submitted,

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