June 22, 2012

From: Faye B. Feinstein

Re: **UPDATE regarding (1) distribution from the Baetis Fund to Gryphon and Pantera and (2) Final Judgment Against James E. Putman in SEC Enforcement Action and Putman's Motion for Reconsideration**

(1) <u>Distribution from Baetis Fund</u>

The resolution of a long-pending coverage dispute has resulted in payment to The Baetis Fund ("Baetis") of the proceeds of a life insurance policy that was an asset of Baetis. At my request, Baetis has distributed the following amounts to Gryphon and Pantera, the two WM Funds invested in Baetis:

GRYPHON: $6,751,866.85

PANTERA: $ 241,138.10

The money distributed from Baetis will be included in a third interim distribution that I anticipate making this summer.

The general partner of Baetis – Wood, Hat & Silver LLC ("WHS") – has asserted a right under the Baetis partnership agreement to retain $777,000.55 in Baetis to cover expenses of winding Baetis down, including potential legal fees. The disposition of these funds remains at issue.

(2) <u>Final Judgment Against James E. Putman in SEC Enforcement Action</u>

Recently, I posted to my web site at www.wealthmgmt.com the opinion of the receivership Court, granting the motion of the Securities and Exchange Commission ("SEC") for summary judgment against James Putman in the SEC's enforcement action. (The Court's opinion in support of its Final Judgment was previously posted to the my web site under the heading

Decision and Order of April 24, 2012, Granting Summary Judgment to SEC Against James E. Putman; I have since posted the amended version of that document, which corrects the date at the end of the opinion.) "Summary judgment" means that the SEC was asking the Court to rule in favor of the SEC without a trial, on the ground that no material facts were, or could be, disputed by Putman in the case and the law required a ruling against Putman.

On May 21, 2012, the Court entered its *Final Judgment as to Defendant James E. Putman*, in which it granted the SEC all the relief the SEC requested, including entering injunctions barring Putman from violating federal securities and investment advisory laws and ordering Putman to disgorge $1,660,129 (comprising the $1,240,000 of undisclosed commissions he received in connection with steering investments by the WM Funds into life insurance premium financing vehicles and a civil penalty of $130,000).

The Court's Final Judgment orders Putman to deposit the money with the clerk of the Court. The SEC may propose to the Court a plan for the distribution of any money Putman deposits, although, given Putman's personal bankruptcy, my understanding is that the SEC does not anticipate any significant payments to be forthcoming from Putman.

The next day, Putman filed a motion asking the Court to reconsider the Final Judgment against him. Putman says that he did not understand the nature of the SEC's summary judgment motion and, if he had understood, he would have challenged the factual allegations made by the SEC. Among other things, he asserts that he never misrepresented the suitability of the WM Funds for any investor and never intentionally defrauded investors. The SEC filed an objection, and Putman filed a reply; the Court will likely rule without holding a hearing.

Attached to this memo are (1) a copy of the Final Judgment entered against Putman in the SEC enforcement action and (2) Putman's motion for reconsideration, the SEC's objection, and Putman's reply.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN
GREEN BAY DIVISION

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v. Civil Action No. 09-C-506

WEALTH MANAGEMENT LLC;
JAMES PUTMAN; and SIMONE FEVOLA,

Defendants, and

WML GRYPHON FUND LLC;
WML WATCH STONE PARTNERS, L.P.; WML PANTERA PARTNERS, L.P.; WML PALISADE PARTNERS, L.P.; WML L3, LLC; and WML QUETZAL PARTNERS, L.P.,

Relief Defendants.

FINAL JUDGMENT AS TO DEFENDANT JAMES E. PUTMAN

The Securities and Exchange Commission (Commission) having filed a Complaint against Defendant James E. Putman ("Putman") or ("Defendant"), and the Court having issued a Decision and Order on April 24, 2012 granting summary judgment to the Commission on all claims against Putman, and awarding all relief requested by the Commission in its motion for summary judgment:

I.

IT IS HEREBY ORDERED, Adjudged, And Decreed that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

(a) to employ any device, scheme, or artifice to defraud;

(b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or

c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

II.

IT IS HEREBY FURTHER ORDERED, Adjudged, And Decreed that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating Section 17(a) of the Securities Act of 1933 (the "Securities Act") [15 U.S.C. §77q(a)] in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly:

(1) to employ any device, scheme, or artifice to defraud;

(2) to obtain money or property by means of any untrue statement of a material fact or

any omission of a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

(3) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

III.

IT IS HEREBY FURTHER ORDERED, Adjudged, And Decreed that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating Sections 206(1) and (2) of the Investment Advisers Act of 1940 ("Advisers Act") [15 U.S.C. § 80b-6(1) and (2)], while acting as an investment adviser within the meaning of Section 202(11) of the Advisers Act [15 U.S.C. § 80b-2(11)], by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly:

(a) to employ any device, scheme, or artifice to defraud any client or prospective client; or

(b) to engage in any transaction, practice, or course of business which operate as a fraud or deceit upon any client or prospective client.

IV.

IT IS HEREBY FURTHER ORDERED, Adjudged, And Decreed that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating Sections 206(4) of the Advisers Act [15 U.S.C. §§80b-6(4)] and Rule 206(4)-8 promulgated thereunder [17 C.F.R. §§275.206(4)-8], while acting as investment advisers within the meaning of Section 202(11) of the Advisers Act [15 U.S.C. § 80b-2(11)], by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, to make any untrue statement of a material fact or to omit to state a material fact necessary to make the statements made, in light of the circumstances under which they are made, not misleading, to any investor or prospective investor in a pooled investment vehicle or otherwise engage in any act, practice, or course of business that is fraudulent, deceptive, or manipulative with respect to any investor or prospective investor in the pooled investment vehicle.

V.

IT IS HEREBY FURTHER ORDERED, Adjudged, And Decreed that Defendant is liable for disgorgement of $1.24 million, representing profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of $290,129, and a civil penalty of $130,000, for a total monetary judgment amount of $1,660,129. The Commission may enforce the Court's judgment for disgorgement and prejudgment interest by moving for civil contempt (and/or through other collection procedures authorized by law) at any time after ten days following entry of this Final Judgment. In response to any such civil contempt motion by the Commission, the defendant may assert any legally permissible defense. Payments under this paragraph shall be made to the Clerk of this Court, together with a cover letter identifying James E. Putman as a defendant in this action; setting forth the title and civil action number of this action and the name of this Court; and specifying that payment is made pursuant to this Final Judgment. Defendant shall simultaneously transmit photocopies of each such payment and letter to the

Commission's counsel in this action. Defendant relinquishes all legal and equitable right, title, and interest in such payments, and no part of the funds shall be returned to Defendant. The Clerk shall deposit the funds into an interest bearing account with the Court Registry Investment System (ACRIS) or any other type of interest bearing account that is utilized by the Court. These funds, together with any interest and income earned thereon (collectively, the "Fund"), shall be held in the interest bearing account until further order of the Court. In accordance with 28 U.S.C. § 1914 and the guidelines set by the Director of the Administrative Office of the United States Courts, the Clerk is directed, without further order of this Court, to deduct from the income earned on the money in the Fund a fee equal to ten percent of the income earned on the Fund. Such fee shall not exceed that authorized by the Judicial Conference of the United States. The Commission may propose a plan to distribute the Fund subject to the Court's approval. Defendant shall pay post-judgment interest on any delinquent amounts pursuant to 28 USC § 1961.

VI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

Dated this 18th day of May, 2012.

s/ William C. Griesbach
WILLIAM C. GRIESBACH
U.S. DISTRICT JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN
GREEN BAY DIVISION

'12 MAY 22 A8:38

SECURITIES AND EXCHANGE COMMISSION
Plaintiff
V.

Wealth Management LLC;
JAMES E. PUTMAN; et al.

CIVIL ACTION NO: 09-CV-506

JUDGE WILLIAM C. GRIESBACH

DEFENDANT JAMES PUTMAN'S MOTION FOR RECONSIDERATION AND FOR LEAVE TO FIND A RESPONSE TO MOTION FOR SUMMARY JUDGMENT

Defendant James Putman respectfully asks this Court for an extension of time in order for him to prepare and present his defense of claims made by plaintiff Securities and Exchange Commission in their Motion for Summary Judgment dated 9/9/2012.

GROUNDS FOR EXTENSION

A. Defendant, James Putman is representing himself Pro Se and is inexperienced in these kinds of legal proceedings.
B. Putman had some confusion about the nature of the SEC's motion for Summary Judgment and he now understands the importance of informing the Court of disputed factual issues.
C. There are numerous disputed issues of fact of which this court should be aware.

Sample Disputed Issues of Fact

A. By way of example only, the following facts upon which the SEC asserted there was no material issue are disputed:
    a. Putman denies that he misrepresented the suitability of the WM Funds for WM clients, especially Gryphon and WatchStone. Putman didn't state that the WM Funds would be comparable to diversified bond funds. The WM Funds were presented as pools of Investment Strategies that were Alternative to Stock and Bonds.
    b. Putman believed that the information that was produced by Wealth Management's Chief Investment Officer, Simone Fevola, CFA, CAIA and his investment team was accurate and truthful.
    c. Putman had reason to believe that appropriate disclosures were made to clients and regulators by Fevola and members of the Wealth Management Compliance Committee. This group was responsible for filing the Form ADV and assuring all disclosures were correct for Wealth Management LLC and the 6 WM Funds. Putman was not involved

with these activities. In 2008 Putman disclosed the Quadrimus Fee-Sharing arrangement with the WM Board, Staff and Clients when Fevola confirmed that he had not included this information on the SEC's disclosure Form ADV.

d. Putman denied he acted with Scienter to defraud clients. Putman believed that the information provided to him and the WM Fund investors was accurate and truthful.

e. . Investors were informed from the start that the WM Funds would be invested in non-traditional investment strategies.

f. Gryphon and WatchStone's written Offering Documents disclosed that the funds could be invested in a wide range of investments ranging from high quality debt securities to private investments and hedge funds

g. The investment decisions for Gryphon, WatchStone and the other WM Funds were not made jointly by Putman and Fevola. Fevola solely made all of the investment decisions for the WM Funds. Fevola was responsible for the due diligence, security selection, management and maintenance of the WM Funds.

RELIEF SOUGHT

Defendant Putman respectfully requests 30 days to respond to the Plaintiff SEC's claims and to provide the supporting documentation for them and the above mentioned Arguments. Putman believes that the Court may take a different view of this case with this information. This extended time period is requested as Putman has no staff, funds or other support to produce this information in a shorter time period.

Respectfully Submitted,

5/21/2012

James E. Putman
Defendant, Pro Se
311 Cleveland Street
Menasha, WI 54952
(920)722-0137
performanceworksinc@gmail.com

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN
GREEN BAY DIVISION

'12 MAY 22 A8:38

SECURITIES AND EXCHANGE COMMISSION
Plaintiff
V.
Wealth Management LLC;
JAMES E. PUTMAN; et al.

CIVIL ACTION NO: 09-CV-506

JUDGE WILLIAM C. GRIESBACH

CERTIFICATE OF SERVICE
FOR
DEFENDANT JAMES PUTMAN'S MOTION FOR RECONSIDERATION AND FOR LEAVE TO FIND A RESPONSE TO MOTION FOR SUMMARY JUDGMENT

Defendant has delivered a copy of this motion in person to:

Judge William C. Griesbach
United States District Court
Eastern District of Wisconsin
125 South Jefferson St.
Room 201
Green Bay, WI 54301

Defendant has sent a copy of this motion via USPS to the following:

Eric Phillips
3123531942
SEC-CHICAGO REGIONAL
SUITE 900
175 W. JACKSON BLVD.
CHICAGO IL 60604-2815

Respectfully Submitted,

______________________ Dated May 22, 2012

James E. Putman
311 Cleveland St.
Menasha, WI 54952
920-722-0137
performanceworksinc@gmail.com

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN
GREEN BAY DIVISION

SECURITIES AND EXCHANGE COMMISSION,	:	
Plaintiff,	:	
v.	:	**Civil Action No: 09-C-506**
WEALTH MANAGEMENT LLC; JAMES PUTMAN; and SIMONE FEVOLA,	:	**Judge William C. Griesbach**
Defendants, and	:	
WML GRYPHON FUND LLC; WML WATCH STONE PARTNERS, L.P.; WML PANTERA PARTNERS, L.P.; WML PALISADE PARTNERS, L.P.; WML L3, LLC; and WML QUETZAL PARTNERS, L.P.,	:	
Relief Defendants.	:	

PLAINTIFF'S RESPONSE TO DEFENDANT JAMES PUTMAN'S MOTION FOR RECONSIDERATION

Plaintiff, the United States Securities and Exchange Commission ("SEC"), respectfully submits this response to Defendant James Putman's ("Putman") "Motion for Reconsideration and Leave to Find (sic) a Response to Motion for Summary Judgment." Putman does not offer the Court any valid reason why it should reconsider the entry of summary judgment against Putman. Instead, Putman's Motion for Reconsideration demonstrates why the Court's entry of summary judgment against Putman was proper.

I. PROCEDURAL BACKGROUND

The SEC filed its Complaint against Putman and others in May 2009. The SEC's Complaint alleged, among other things, that Putman was the founder and CEO of Wealth Management LLC ("WM") , an Appleton, Wisconsin financial planning firm that managed six unregistered investment pools, referred to as the WM Funds. The Complaint alleged that Putman engaged in a kickback scheme in which Putman accepted at least $1.24 million in undisclosed payments derived from the WM Funds' investments in life settlements, which were loans made for the purpose of paying life insurance premiums. (*See* Docket Entry No. 1)

During the period of discovery, Putman did not depose a single witness or propound a single interrogatory. He did not attend most of the depositions taken by the SEC.

On July 13, 2011, Putman, proceeding as a *pro se* litigant, filed a motion for summary judgment against the SEC, which this Court denied on March 14, 2012. (*See* Docket Entries Nos. 363, 388) On September 9, 2011, the SEC filed a motion for summary judgment against Putman. (*See* Docket Entry No. 376) As required by Civil Local Rule 56(a) governing *pro se* litigation, the SEC's motion for summary judgment included a short and plain statement that any factual assertion in the SEC's admissible documentary evidence would be accepted as true unless Putman submitted his own documentary evidence contradicting the factual assertion. (*Id.*) The SEC's motion contained additional notice required by this rule. (*Id.*)[1] Putman does not dispute that he received this notice. Putman failed to respond to the SEC's motion for summary judgment, which the Court granted on April 24, 2012. Now, ten months after Putman filed his own motion for summary judgment, eight months after the SEC moved for summary judgment, and seven months after Putman's response was due, Putman belatedly requests a 30-day

[1] Although the SEC intended to set forth the entire text to Fed. R. Civ. P. 56(c)(d) and (e), Civil L.R. 56(a), Civil L.R. 56(b), and Civil L.R. 7 in the motion, the SEC now realizes that it inadvertently did not include the text to Civil L.R. 56(a)(2) and Civil L.R. 56(b) in the motion.

"extension of time" to respond to the SEC's motion for summary judgment, a request that Putman never made during the eight-month period between the September 9, 2011 filing of the SEC's motion and the Court's April 24, 2012 ruling.

II. PUTMAN DOES NOT SATISFY THE REQUIREMENTS FOR RECONSIDERATION OF THE COURT'S RULING

As this Court has recognized, a motion for reconsideration "serves a very limited purpose in federal civil litigation." *Stone v. Pollard*, 2010 WL 3743827 at *1 (E.D. Wis., Sept. 21, 2010) (denying motion for reconsideration of dismissal of petition for habeas corpus); *see also Kaeser Compressors v. Compressor & Pump Repair Servs.*, 2011 WL 3881017 at *1-*2 (E.D. Wis., Sept. 2, 2011). Such motions are disfavored and should rarely be brought. *Id.* (citing *Bank of Waunakee v. Rochester Cheese Sales*, 906 F.2d 1185, 1191 (7th Cir. 1990)).

A Rule 59(e) motion for reconsideration should be used only (1) to correct manifest errors of law or fact, or (2) to present newly discovered evidence. A "manifest error" is the "wholesale disregard, misapplication, or failure to recognize controlling precedent." *Oto v. Metro Life Ins. Co.*, 224 F.3d 601, 606 (7th Cir. 2000). However, where, as here, "the only arguable basis for relief present in the motion . . . is 'excusable neglect'" for the failure to file a response, the court should apply the standards governing a motion under Rule 60(b). *Harrington v. City of Chicago*, 433 F.3d 542, 546 (7th Cir. 2006). The relevant circumstances for courts to consider regarding excusable neglect under Rule 60(b) include: (1) the reasons for the delay, including whether it was within the reasonable control of the movant; (2) the danger of prejudice to the non-moving party; (3) the length of the delay and its potential impact on judicial proceedings; and (4) whether the movant acted in good faith. *See Robb v. Norfolk & Western Ry.*, 122 F.3d 354, 359 (7th Cir. 1997) (quoting *Pioneer Inv. Servs. v. Brunswick Assocs. Ltd P'ship*, 507 U.S. 380, 395 (1993)).

A. Putman Does Not Demonstrate Excusable Neglect For His Failure to Respond to The SEC's Motion for Summary Judgment

Putman does not demonstrate excusable neglect. He does not offer any explanation for why he never filed a response to the SEC's motion for summary judgment during the eight-month period in which it was pending. Instead, he now asks for an extension of time to respond, stating that he is "inexperienced in these kinds of legal proceedings" and he "had some confusion about the nature of the SEC's motion for Summary Judgment" but now "understands the importance of informing the Court of disputed factual issues." (Motion at 1) Putman does not claim that he lacked an understanding of the basic requirement that he file a response or the required timeframe for doing so.

Putman's self-serving assertions hardly are enough to show good cause for not responding to the SEC's motion for summary judgment for eight months. Instead, they are strikingly similar to the excuses offered by litigants in cases in which courts have found a lack of excusable neglect for a party's failure to respond to a motion for summary judgment. For example, in *Cato v. Thompson*, 118 Fed. Appx. 93, 97 (7^{th} Cir. 2004), the trial court granted the defendants' motion for summary judgment after the plaintiff failed to respond to the motion. *Id.* at 94. The plaintiff moved to reconsider, claiming that her attorney failed to file a response to the motion due to the failure to diary the deadline for responding, an overwhelming trial schedule, and an unfamiliarity with the local rules establishing the briefing schedule. *Id.* at 95. The trial court rejected the motion, and the Seventh Circuit affirmed, holding that the proffered reasons for failing to respond to the summary judgment motion did not qualify as excusable neglect. *Id.* at 97.

Similarly, in *Vela v. Dawdy*, 2011 WL 3880424 (S.D. Ill., Sept. 2, 2011), a *pro se* plaintiff moved to reconsider the court's entry of summary judgment against him, claiming that he could not respond to a motion for summary judgment when required because as a result of his incarceration he could not access his legal mail or a law library. *Id.* at *1. The Court held that the plaintiff's reasons for failing to respond to the motion for summary judgment did not qualify as excusable neglect. *Id.* at *2. Other courts likewise have rejected attempts by *pro se* litigants to re-open summary judgment briefing after the litigants failed to respond to a summary judgment motion. *See, e.g.*, *Payton v. Hartford*, 2011 WL 5403190 (E.D. La., Nov. 8, 2011) (denying motion to reconsider grant of summary judgment and holding that alleged health setback did not constitute excusable neglect for *pro se* litigant's failure to respond to motion for summary judgment); *Jones v. Neuman*, 2007 WL 1459460 (D.N.J., May 15, 2007) (denying motion to reconsider and holding that plaintiff did not demonstrate excusable neglect where he filed a response to the motion for summary judgment late and with the wrong judge); *accord Hoeft v. Sears*, 2010 WL 785989 at *2 (W.D. Wis., Mar. 4, 2010) (striking *pro se* litigant's response to motion for summary judgment which was filed after deadline for responding).

These cases reflect that Putman's status as a *pro se* litigant does not excuse his failure to respond to the SEC's motion for summary judgment. Cases such as *Vela, Payton, Jones*, and *Hoeft, supra*, all involved *pro se* litigants, and in all those cases, the courts found that the *pro se* litigants' failure to respond to the motion for summary judgment was inexcusable. The Seventh Circuit has been clear that "[*p]ro se* litigants are entitled to a limited degree of procedural protections as provided by statutes and case law, but they are not entitled to claim complete dispensation of procedural rules." *Casio Computer Co., Ltd. v. Noren*, 35 Fed. Appx. 247, 250 (7th Cir. 2002) (affirming entry of default judgment against *pro se* litigant) (citation omitted).

Indeed, in the context of a motion for summary judgment, the Seventh Circuit has established procedural protections requiring that *pro se* litigants receive notice of the consequences of a failure to respond appropriately to the motion. *See Timms v. Frank*, 953 F.2d 281, 285 (7th Cir. 1982). Specifically, the notice must include a short and plain statement in ordinary English that any factual assertion will be taken as true unless the *pro se* litigant submits evidence contradicting the assertion. *Id.*[2] The SEC's motion for summary judgment complied with these requirements by providing a plain statement that "any factual assertions in the SEC's affidavits, declarations, or other admissible documentary evidence will be accepted by the Court as being true unless James Putman submits his own affidavits, declarations, or other admissible documentary evidence contradicting the factual assertion", and by reciting the pertinent text of Fed. R. Civ. P. 56 which reflects this concept. Putman, as the founder and CEO of an investment advisory and financial planning firm, is relatively sophisticated, and there is no reason to believe that the notice required by the Seventh Circuit and provided to Putman was insufficient. Indeed, there can be little doubt that Putman understood the nature of summary judgment procedure, since he filed his own summary judgment motion prior to the SEC filing its motion.

The SEC would suffer prejudice if Putman were allowed to file a response to the SEC's motion for summary judgment now. This case has been pending since May 2009. Putman's motion, if granted, would essentially result in almost a year's worth of delay in these proceedings. The SEC is entitled to a reasonably prompt resolution of its claims. Similarly, the Court would be adversely impacted if resolution of this case were delayed by nearly a year because Putman failed to file a response to the SEC's motion for summary judgment in the eight-month period in which the motion was pending.

[2] Even where *Timms* notice is not provided, a court may grant summary judgment against a *pro se* litigant if it appears that the litigant was not prejudiced by the lack of notice -- that is, if he could not have established the existence of a genuine issue of material fact, even if given notice. *See Banks v. Andersen Consulting*, 1997 WL 433711 at * 3 (N.D.Ill., July 17, 1997); *Timms*, 953 F.2d at 286; *Sellers v. Henman*, 41 F.3d 1100, 1101 (7th Cir. 1994).

Putman has not demonstrated good faith. He would have demonstrated good faith if, for example, he had asked the court for an extension of time during the eight-month period in which the SEC's motion for summary judgment was pending. Instead, Putman waited until the Court issued its ruling. Now unsatisfied with the ruling, Putman asks the Court for additional time to respond when the time to respond long has passed.

Under established precedent and the standards for evaluating excusable neglect, Putman has failed to justify reopening these proceedings against him, and the Court should deny Putman's motion for reconsideration.

B. Putman's Response Would Not Change the Outcome

Additionally, a belated responsive filing by Putman would merely prolong these proceedings and would not change the outcome. Putman does not point to any documentary evidence he would be able to produce to rebut any of the SEC's claims. Indeed, Putman did not take any depositions in this case, and it appears unlikely he would be able to obtain affidavits other than his own. But any affidavit from Putman would be fatally undermined by Putman's own words and Putman's own documents.

For example, consider Putman's claim in his motion that he "didn't state that the WM Funds would be comparable to diversified bond funds" and that Putman would be able to dispute this factual finding if given the chance. (Putman Mot. at 1) WM's own notes of Putman's meetings with clients show exactly what the Court found: Putman told clients that the WM Funds would serve as a substitute for traditional fixed-income investments such as diversified bond funds. *See* Docket Entry 378, Ex. 4, 5/28/03 Meeting Notes Between WM and Client (portions redacted) (Putman "discussed the WML Gryphon Fund LLC, Wealth Management's replacement for bonds"; Ex. 4, 01/28/04 Meeting Notes Between WM and Client (portions redacted) (Putman told clients that Gryphon and WatchStone "have the same performance goals: Stable principal, outperform the Merrill Lynch U.S. Master Bond Index, and produce an 8% distributable return and some additional capital gain."); Ex. 4, 10/10/03 Meeting Notes Between WM and Client (portions redacted) (Putman told clients that "Wealth Management has launched the WML Gryphon Fund, an income generator, created to produce income in lieu of bonds or bond funds.") WM created these meeting notes through Putman's dictation of the notes immediately after Putman's meeting with a client. Putman then gave the dictation to a WM secretary, who would transcribe them. Putman would review the transcription of the meeting notes for accuracy before WM sent the notes out to clients. *See* Docket Entry 378, Ex. 1, Putman Dep. at p. 198 l. 18- p. 199 l. 5. Putman's own statements in these meeting notes are party admissions by him, *see* Fed. R. Evid. 801 (d)(2), and he would not be able to rebut them through a belated self-serving affidavit or otherwise.

Moreover, most of the "Sample Disputed Issues of Fact" in Putman's Motion are simply conclusory statements about his state of mind which would carry little weight on summary judgment in the face of the SEC's documentary evidence to the contrary. Putman asserts that he believed that the information provided by his former co-defendant was accurate and truthful, believed that the information provided to WM clients was accurate and truthful, believed that appropriate disclosures were made to WM clients, and "denies that he acted with scienter to defraud clients." (Putman Mot. at 1-2) But Putman does not state or suggest that he would be able to offer the Court any admissible evidence to rebut the admissible evidence that the SEC provided in support of its motion for summary judgment. Putman still does not seem to understand that summary judgment is essentially "a trial in miniature, on affidavits, so that not submitting counter affidavits is the equivalent of not presenting any evidence at all." *Lewis v.*

Faulkner, 689 F.2d 100, 102 (7th Cir. 1982). Putman does not and cannot promise that he has any actual evidence to rebut the SEC's evidence, as opposed to mere conclusory statements. Therefore, he offers no prospect that the outcome of this case would be any different if he were allowed to make an untimely filing in response to the SEC's September 2011 motion for summary judgment.

CONCLUSION

WHEREFORE, for the foregoing reasons, the SEC respectfully requests that the Court deny Defendant James Putman's motion for reconsideration and award the SEC such other and further relief as this Court deems just.

Dated: June 6, 2012

Respectfully submitted,

/s/ Eric M. Phillips

Eric M. Phillips (IL Bar # 6237871)
U.S. Securities and Exchange Commission
175 W. Jackson Blvd., Suite 900
Chicago, Illinois 60604
(312) 353-7390

Attorneys for the Plaintiff, the United States Securities and Exchange Commission

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN
GREEN BAY DIVISION

'12 JUN 15 A11 :41

JC

SECURITIES AND EXCHANGE COMMISSION
Plaintiff

V.

Wealth Management LLC;
JAMES E. PUTMAN; et al.

CIVIL ACTION NO: 09-CV-506

JUDGE WILLIAM C. GRIESBACH

DEFENDANT JAMES PUTMAN'S ANSWER TO THE PLAINTIFF'S RESPONSE TO MOTION FOR RECONSIDERATION

I. Defendant James Putman respectfully submits this answer to the Plaintiff SEC's Response to Defendant James Putman's motion for Reconsideration. Putman is representing himself Pro Se and is inexperienced in many of the nuances of the Federal Court Procedures. He had some confusion as to the scope of relief sought by the Plaintiff and is seeking relief from the order and asks the court for time to present the proof of his comments in the following paragraphs. The Plaintiff claimed and the Court re-stated in the Amended Decision and Order statements that were incorrect, incomplete and need clarification.

II. Plaintiff's attorney, Mr. Eric Phillips has made many observations in his Plaintiff's Response; Putman didn't attend all depositions, didn't depose a single witness and didn't respond in time but offers information that wasn't previously presented to the Court. There are facts which that were left out or taken out of context that Putman believes that the Court should know. The defendant doesn't have access to or the knowledge of what cases to cite or where to find them to defend his position. The defendant has not been incarcerated or in bad health and if those are the reasons for reconsideration, Putman doesn't qualify. Inexperience in Federal Court Procedures and the lack of funds are his only explanation.

III. The demise of Wealth Management LLC and the WM Funds has been a tragic loss for so many people; WM Clients, WM Staff and WMLLC owners. The Defendant's responses can't minimize the financial damage that has occurred. He wishes that efforts to recover the WM Funds investors' lost assets are successful and that facts surrounding this case can be clarified for the Court. Putman did not need to question former WM Clients. Most have experienced tragic financial stress for years and he didn't want to put them through any more. Putman attended depositions of Thomas Riek and Joseph Aaron as he had specific questions for them. He did not depose any other witnesses as he did not have the financial ability to pay for deposition expenses or the transcriptions. Any false statements made by

Depotees or questions that Putman may have asked weren't directly relevant to this defense. The Defendant plans to use documents which already exist either in hard copy or digitally to defend and explain his points.

Unfortunately, the Plaintiff has spent a great deal of money and time litigating this case which could have been settled 3 years ago. Putman attempted to settle his case 3 times with the SEC only to receive no response. He was willing to agree to the Plaintiff's settlement but he was requesting a waiver on the collection of the financial claim. Now, the Defendant has no assets, little income and no ability to pay any portion of the Plaintiff's financial demands. The Defendant was clearly aware in May of 2009 that his net worth would soon be negative and that he wasn't going to be employed in the financial services industry. The Receiver assured the Defendant that he wouldn't receive any distribution benefits from any of the WM Funds he was invested in including those in his retirement account. Regardless, the Plaintiff planned to enforce the financial judgment. On the third settlement request the Plaintiff stated that they no longer were interested in settling as they wanted to litigate the case. However on May 1st, 2012 the Plaintiff made another offer to settle which still did not include a waiver. Putman refused to sign as it indicated that the Defendant didn't admit or deny the Plaintiff's claims and once signed, the claims could not be denied in the future. The Defendant does deny their claims and explains in more detail in the following paragraphs.

The Plaintiff Securities and Exchange Commission (SEC) has made false statements since the case was first opened in May of 2009. For example, on the first day in Court, SEC attorney Mr. Steven Levine declared that the Defendant and Wealth Management LLC were defrauding their clients and investors by running a Ponzi scheme. In the Receiver's second report, as a footnote on Page 5, she stated **"The Receiver has no basis to assume that there was any ponzi scheme involved in connection with the Company or the WM Funds" (Tab A)**.

Putman hopes that this Court will see that the Quadrimus non-disclosure was an error of Omission and not one of Intent to Mislead and defraud his clients and friends and that Scienter was not part of these events.

Putman also disagrees with the Plaintiff demanding a lifetime bar from him associating with an investment adviser. Putman believed that the WM Funds were the best investment he could offer to the WM Clients which would address their concerns and deliver the results that their financial plans needed. He was also an investor in WML WatchStone LLC, WML Pantera Partners LP and WML Quetzal LP and his wife is invested in WatchStone for her IRA. Putman believed that the WM Funds were being managed well and that the performance data was accurate. Simone Fevola, CFA, CAIA (Fevola) was Wealth Management's (WM) President, Chief Investment Officer and manager of the WM Funds. His responsibilities were, among others, to create, manage and monitor the WM Funds as well as report to the investors, WM Board, staff and others on a regular basis. Fevola, not Putman, made all of the investment decisions solely. Though we all believed he was performing well, his investment choices and asset allocations were responsible, in part for the massive losses in the WM Funds for the WM Clients. The SEC settled their case with Fevola years ago and he received a three year suspension from being associated with an investment adviser and credit for the money he invested in the WM Funds. This seems incongruous with his actions which led to the devastation of the investments in the WM Funds and the amount of control Fevola had over the company. When asked why Fevola received a 3 year suspension instead of a lifetime bar and credit for his investment in the WM Funds, Mr. Phillips responded only that he came forth first – he didn't – he was brought to the meeting which was arranged by Ms. Patalkis with the approval of the WM Board of Managers who excluded Putman.

In his motion to reconsider, the Defendant made the following responses to the Plaintiff's claims in their Motion for Summary Judgment and Motion to deny Reconsideration:

1. Putman did not mislead investors as to the safety of the WM investments.
2. Putman did not state that the WM Funds were the same as high quality fixed income bonds.
3. The non-disclosure of Quadrimus was an error of Omission not of intentional fraud.
4. Putman did not "abruptly" decide to invest WM Clients money into "alternative" investments.
5. Putman didn't cause the WM Funds to be invested into two principal types of investments: life insurance premium finance and "mezzanine" real estate lending funds.
6. Putman didn't direct more of the WM funds into life insurance premium finance arrangements.
7. Putman didn't suspend client redemptions from the WM Funds.
8. WM Funds' losses were not due, as the Plaintiff claims "to Putman's shocking greed and disregard for his fiduciary duties to his clients".
9. Putman did not create six alternative non-traditional investment funds.
10. Putman did not represent that Gryphon and WatchStone were conservative investments similar to diversified bond funds.
11. Putman did not represent to investors that Gryphon or WatchStone would mostly invest in investment grade debt securities.
12. The Plaintiff focuses on two of the investments within Gryphon and WatchStone; MKA Capital and Baetis/Brown funds to emphasize the over allocation to these strategies. They don't comment on the 17 other investments these funds had in their portfolios and why they all declined in value.
13. Putman did not make investment selections in the WM Funds.
14. Fevola wanted to make all final decisions as to what was invested in the Baetis and Brown funds. Putman didn't make those decisions.
15. When Putman reported that the Quadrimus income wasn't properly disclosed, the WM Board of Managers removed him and chose to retain Fevola to manage the WM Funds, even though he was also a member of the Quadrimus LLC.

History of Wealth Management

In order for the Court to better understand his explanations of the listed items above, the Defendant believes that the Court should know at least a small piece of the history of WM:

1985

Wealth Management Inc.

Wealth Management (WM) was started in 1985 as an affiliate company of Schenck & Associates a regional CPA firm headquartered in Appleton, WI. WM offered Financial Planning services primarily to Schenck & Associates' clients. As a result of a merger with the Appleton Office of Gaarder and Miller Associates in 1987, WM began offering investment management services utilizing stock and bond mutual funds.

1990-1997

In 1990 WM's assets under management had grown to $3 million and Putman proposed to the WM Board of Directors to hire an Investment Manager so that he could continue focusing on Financial Planning. The Board agreed to hire Thomas Riek (Riek) as the first full time investment management professional. During Riek's tenure WM assets under management grew to over $100 million by the end of 1994. Riek had asked for the opportunity to manage client portfolios using individual stocks. The WM Board approved a plan to create a pooled fund in which Riek would buy and sell stocks for the benefit of the fund's investors. With the help of Scott Moehrke and Carol Gehl of the Milwaukee office of Godfrey & Kahn (G&K), the fund's documents were drafted, edited and ready to launch on July 1, 1995. On June 30, 1995 Riek tendered his resignation from his position at WM leaving to work for a former WM/Schenck client who sold his business and was looking for a full time investment manager for him and his family's money. The pooled fund was tabled. Post Riek there were two Investment Managers that produced adequate to poor results.

1997, 1998, 1999

In early 1997 during days of market volatility and client unrest, Putman was given the opportunity to buy out the Schenck & Associates WM owners which was finalized in the latter part of 1997. Though not comforting to the WM clients, the WM staff made all efforts to calm their fears and encouraged them to stay as clients. Most WM clients stayed with the WM Staff but others chose to leave and find other investment advisers. The new LLC's buyout was funded by Putman, WM clients and employees who bought equity units and promissory notes. Putman worked with Carol Gehl at G&K on the Offering Documents and Operating Agreement for WMLLC. Putman wanted a Board of Managers that would have the final say on important issues related to the company. WM has been a Board Managed company since its inception. Though Putman and his family owned a majority of the equity of WMLLC, the WM Board of Managers controlled the company. Each Board member, of which Putman was one, had only one vote. All of the first Board members were equity owners (members) of the LLC, except for one. The one non-equity owner stayed on the Board a short period of time and chose not to purchase equity in the firm, but chose to stay on as a client.

Toward the end of the 1990s, WM clients were getting more and more concerned that their WM stock and bond mutual fund performance was not keeping pace with the markets. The telecom and high tech stocks and the US Stock indices were producing returns much higher than the diversified WM stock and bond mutual fund accounts. Putman and WM urged WM Clients to focus on the long term presenting historical data on US and Global stock indices showing how the markets fluctuate and seem to rise over the long run. Regardless WM lost clients to other advisers as they were looking for better returns. WM also worked hard to appease those that stayed. It always appeared that investment returns were never high enough and the investment management fees were never low enough.

The Dow Jones Industrial average in 1997 was up +22%, 1998 +15% and 1999 +25%, the NASDAQ: 1997 +22%, 1998 +38% and 1999 +85%. More and more WM clients were demanding better performance from their WM portfolios as the indices were posting these outsized returns. In an attempt to appease clients and give them the ability to invest in individual stocks WM entered into a relationship with North Star Asset Management to provide stock selection and portfolio management expertise. Though clients could see the stock transactions in their portfolios, the North Star strategies still didn't solve all of the WM clients' desires for higher performance. Their portfolios were diversified and looked and performed like personalized mutual funds.

Our next attempt to address clients' desires for individual stocks for their portfolios was to hire John Moffat, a former Trust Company president and an investment manager in his own firm which focused on stock selection and portfolio management. Moffat had been President for Wood County Trust when trust assets grew from $250mm to $500mm. He left Wood County Trust and formed Buena Vista Investment Management. Moffat's strategies included mutual funds and stocks. Putman proposed Moffat to the WM Board and business manager. They all liked what Moffat had to bring to WM and he was hired in 1999. Moffat seemed to be producing good results for most WM portfolios until April of 2000 when the tech bubble burst.

2000 - 2003

Most all of the individual stocks and diversified mutual funds that Moffat selected began their 3 year decline in value with massive volatility. The Dow Jones Industrial Average dropped almost 4000 points (-34%) from its peak during this time. After seeing the effect that this volatility was having on their portfolios, many WM Clients started panicking and some left WM for other advisers. Others were demanding that Putman and WM develop a way to minimize this volatility. They didn't like the individual stocks that Moffat had selected as many of them dropped in value in excess of the market indices. Putman advised them to hold their portfolios and not sell at the bottom. Many did until 2003 when the market recovery gave some the opportunity to change their investment direction.

While consoling and consulting clients with battered portfolios during 2000, 2001, 2002 and 2003 Putman heard WM clients say, these are paraphrased; *"Make me 8% and I don't care how"*, *"I want to invest in stocks, but not those that go down"*, *"I want to invest in Real Estate, but I don't want to be a* *landlord" and "I want to invest in the next Microsoft"*. Instead of ignoring their comments and desires and letting them leave WM for other firms, Putman decided that WM had to make one more effort to achieve WM clients' happiness. Putman actually believed that he could find the right staff, experience and expertise to develop a way to address all of the WM Clients' needs. Needless to say, these were difficult years for all parties involved.

Alternative Investments

Seeing the stock market recover and the economy seeming to improve, Putman felt that WM had to create an investment fund that had the potential to produce 8% consistently. He had spoken with friends in the NAPFA organization that had been integrating "alternative" strategies into client portfolios for many years with various degrees of success. Using their input and polling clients at meetings it appeared that a WM alternative investment fund would be useful and in demand. Putman proposed this to the WM Board of Managers who liked the idea but agreed that we didn't have the staff or talent to create and manage these kinds of investments.

Yale Endowment

Putman also found a good base for historical performance and asset allocation in the Yale Endowment. The Endowment for Yale University seemed to be managed for the needs of the university that paralleled the needs of retirees. The Endowment was to produce a regular stream of income, protect principal against inflation and volatility and plan for the asset base to last for many generations into the future.

Yale Endowment Asset Allocation (as of June 30, 2002)

Domestic Equity 15.4%	*Real Assets* 20.5*
Absolute Return 26.5	*Fixed Income 10.0*
Foreign Equity 12.8	*Cash 0.3 6.2*
Private Equity 14.4	

WM already had options for Domestic and Foreign Equity and Fixed income in the WM Equity and Fixed Income Mutual Fund Strategy. Private Equity was too illiquid and It was difficult to hold precious metals or stones, but investment in energy could be a possibility. Absolute Return is what seemed to be the one strategy that WM didn't offer and a strategy with a target return which was what WM Clients wanted. Focusing on these kinds of investments led WM to create the Gryphon, WatchStone, Pantera and Palisade funds.

Moffat Terminated

The members of the WM Board of Managers were both WM Clients as well as Managers of the company and were becoming increasingly unhappy with Moffat's performance and indicated that Putman needed to fire him and find a new investment manager one with experience in stocks, bonds, mutual funds, portfolio management as well as alternative investments. To maintain a smooth transition, Putman began the process to find a new Chief Investment Officer before terminating Moffat.

Simone O. Fevola CFA

While preparing to post a classified ad on the CFA website, Simone Fevola's resume and cover letter arrived in the mail at WM. His resume was well written and indicated that he earned a Masters Degree and held the Chartered Financial Analyst (CFA) designation. He had over 20 years of investment experience ranging from heading the bond research department at Merrill Lynch Asset Management then rising to manage one of their bond mutual funds. He had stock and bond portfolio management at a private firm in California as well as working with third party products and alternatives at CITI Group in New York City. He had managed offshore funds for Bank Hapoalim (NY) clients before moving to take a position with an Appleton, WI based financial adviser. In addition, Putman sought out other candidates for the position, but none had Fevola's credentials and Curriculum Vitae.
Not willing to hire him without review, Putman presented Fevola's CV to the WM Board of Managers, the WM Business manager, Don Smith and key staff members; Jane Dias, Amy Fuss and Lori Coonen. Putman called Fevola's references at each of his places of employment for the prior 5 years. Most claiming that he was "the smartest guy they ever met....and he was a good guy to go have beers with!" Each WM Board and Staff member met with and interviewed Fevola prior to WM making an offer of employment. Everyone agreed that he was what WM needed. Once hired, Moffat was terminated.

2003+

All seemed to be going well in 2002 as Fevola was getting acclimated to WM, its staff and clients. He also heard, first hand and felt the clients' woes as it related to how their investment values had declined. After attending many client meetings, Fevola understood why Putman felt WM needed an alternative investment fund to generate consistent returns and reduce volatility in their portfolios.

Carol Gehl (G&K) was again contacted to begin the process of starting a collective fund. Carol and Scott Moehrke constructed the documents for the first WM Collective fund in 1995 which Riek was to manage. Putman asked if that document could be used as WM had $25,000 invested in it. Ms. Gehl recommended that WM start with a new document to reflect the new investment direction as it could take as much to restructure the old one as create a new fund document. Putman and Fevola explained that this fund would be invested in mostly alternative investment strategies, but should allow a switch to other forms of income generating funds including corporate and government bonds and mutual funds. Gehl drafted the disclosure documents with wide latitude for investment options which was reviewed by Fevola and Putman. Deferring to the attorneys' expertise in drafting documents and knowledge in securities issues Putman and Fevola approved the WML Gryphon Fund LLC's (Gryphon) documents.

Gryphon **(make me 8% and I don't care how)**

Gryphon was launched in May of 2003 and it was presented to investors as a fund invested primarily in strategies alternative to the traditional bonds and fixed income investments. The Fund was offered to those that met the *SEC's definition of Accredited Investors* for consideration. Even with the stock markets rebounding, WM clients watched and tracked the Gryphon's monthly reports with anticipation. Though it seemed to be a good idea, most wanted to see how it worked before making the investment. Some monitored the Fund's reports for many months, some even for years before they made their decision. Once they were ready to invest, each WM client investor would have to complete the Subscription Documents to become a member investor in the Fund. This was a very involved process which each investor had to complete themselves. Neither WM nor any of WM's staff could sign or authorize the documents which transferred WM clients' monies into the Gryphon fund without the clients' full approval authorization. From the time of the first investment into the Gryphon Fund, it was WM's desire was to inform investors or prospective investors as to what was happening within the Gryphon Fund.

WM Investment team produced monthly reports showing asset allocation, the names and strategies of the sub-managers, returns net of fees and a brief summary of what happened during the month. The purpose of these reports was to keep WM clients and investors and their other advisors up to date. There was a great deal of detail in the monthly reports that were mailed and/or sent electronically to current investors, interested qualified prospective investors and their respective CPAs and/or attorneys. Even the WM clients' other advisors would be able to track the Gryphon Fund and know what was happening and be able to question Fevola and the WM Investment team. Fevola selected the compliance consultants, accountants, administrator, auditors, reporting software, trustee, gate keeper and other services and providers that were needed to keep and maintain the Gryphon fund. He also selected his staff that assisted him in maintaining, managing and monitoring internal operations of the Gryphon Fund. Fevola coordinated with the compliance consultants, attorney and the WM Compliance team to meet the requirements for disclosure.

Gryphon was launched with $1.85 million in assets from 7 investors. From the start, Gryphon was well liked by the WM clients. To them it appeared like WM listened and took the initiative to create something that addressed their concerns and could possibly produce what they needed to maintain their lifestyle and maintain the principal of their investment portfolios. Initially Fevola contacted Putman's sources for investment ideas. Eventually, Fevola would source his own ideas for investments. In 2002 Tom Riek had reappeared and approached Putman about an investment he had become familiar with – Argent Classic "C" units. This investment paid 10% with 60 day liquidity. This is the kind of investment that would appease the WM Clients. Putman introduced Riek to Fevola whose job it would be to perform the due diligence on this offering. Fevola was charged with identifying, analyzing and scrutinizing all aspects of Gryphon, especially the investments and asset allocation. Fevola was very familiar with the Convertible Arbitrage strategy which Argent Management of Greenwich, CT utilized and he was able to get comfortable with the firm after speaking with Argent's key management staff. Riek introduced Joseph Aaron to Fevola and Putman. Aaron was a hedge fund manager who Riek met after he left WM. Aaron presented his funds for investment consideration by Gryphon. Fevola and Riek appeared to be on the same level when it came to due diligence and analysis. Aaron had the experience and contacts with Fund Managers. Confirming Aaron's and other WM Funds' sub-managers' backgrounds was part of Fevola's due diligence research process.

After doing his due diligence research, Fevola chose to make an investment in the Argent Classic "C" fund. He would also invest in Argent's Low Leverage fund and the Aaron's Baetis fund. By the end of 2003 Gryphon had $18 million in assets and was invested in six different sub-managers in 7 funds or accounts; Baetis, Cutthroat, Five States, WML Income, Argent C Units, WMS Structured Income Fund and KACIP. The first monthly loss of (- .2%) was due to an investment made in the WML Income portfolio that Fevola also managed. It included money market funds, bond funds and individual securities. The other sub-managers appeared to perform as expected. The plan for Gryphon was to have investments, a portion of which could be liquidated within days, a portion that could be liquidated monthly, a portion quarterly and a smaller part that might take as long as a year or more to sell. Most investors had a long time horizon of 5+ years and didn't need immediate liquidity. They needed access to money to support their monthly and annual needs. They wanted low volatility, good investment returns and the ability to pass a portion of their investments on to their children and grandchildren.

In the years since its formation Fevola invested in the following sub-managers, in addition to Baetis, Brown (financed insurance) and MKA Capital (real estate finance) in the Gryphon Fund:

- Trans Sierra – (Mutual Fund trading/cash trading)
- Argent-(convertible arbitrage funding)
- Strategic – (preferred equity return)
- Gulf Island Waterpark – (direct mezzanine lending)
- Murvin & Meier Gas- (natural gas development)
- KACIP –(multi strategy hedged income)
- Five States Energy –(income producing oil properties)
- Cadogan-(capital structure arbitrage)
- Matlin Patterson-(distressed opportunities)
- Sagecrest – (private company finance)
- MAP – (natural gas royalty interests)
- Touchstone – (distressed muni debt)
- Caddis – (10% loan)
- Stewardship – (small company finance)
- ALMA – (income producing oil wells)
- WMS Structured Settlement –(discount settlement/annuity buyouts)
- Washington Fund – (discount settlement/annuity buyouts)
- Silar-(distressed securities arbitrage)

WML L3 LLC (I would like to Own Real Estate without Becoming a Landlord)

In addition to Gryphon, Fevola and his investment team created, managed and maintained the WML L3 LLC (L3) was launched in the first half of 2003 and invested in Main Street Commons- Green Bay, Blue

Oaks Marketplace – Rocklin, CA, Country Springs Hotel and Conference Center – Waukesha, WI, MKA Real Estate Opportunity Fund – Southwest US properties and an investment in development property in Appleton, WI. This was done to address those client requests for. Blue Oaks Marketplace sold out before the General Partner expected but created a positive return for L3. The other properties and investments were expected to take 5-15 years to develop. Fevola coordinated with the compliance consultants, attorney and the WM Compliance team to meet the requirements for disclosure.

2004

WML WatchStone Partners LP

WM next created a fund named WML WatchStone Partners, LP (WatchStone). WM Investors liked how Gryphon was performing and wanted the same performance for their IRAs. Gryphon was limited to the number of IRA accounts that could be invested, so Fevola worked with a new attorney, Charles Hall to draft a document for this new fund. He utilized some of the professionals from Gryphon and L3 and added some new ones. He and his investment and compliance teams worked to launch this new LP for the benefit of the WM Clients' IRAs. As with Gryphon and L3, these were reviewed and advised by counsel who filed Blue Sky registrations with the individual States where required. The investment targets were the same as Gryphon but taking into consideration things like Unrelated Business Taxable Income (UBTI) and other issues that can negatively affect IRAs. Some IRA investors were liquidated out of Gryphon and invested into WatchStone. As with Gryphon, WatchStone's performance was consistent with low volatility. All of us at WM believed that we were on to a great way to deliver performance to clients that would achieve their financial planning goals.

Firms that WM Funds used were Charles Schwab & Co – Custodian, Fiduciary Partners, Inc. – trustee and gatekeeper, Woodfield Fund Administration – administration and monthly performance and value calculations, Grant Thornton – Accounting and Tax advisers to WM, Drinker, Biddle and Reath and the Law Offices of Charles Hall – compliance and document drafting, Mc Gladrey – WM Fund auditors. Fevola coordinated with the compliance consultants, attorney and the WM Compliance team to meet the requirements for disclosure.

WML Quetzal Partners, LP (I Want to Invest in Stocks but Not Those That Go Down)

With a base of consistent earning funds like Gryphon and WatchStone and L3 for real estate investing, launching the WML Quetzal Partners, LP (Quetzal). Hedging the downside of stock investing was what WM clients were looking for in 2000 while they saw their stocks and equity mutual fund values vacillate and decline in excess of 30%. At the time, many wanted to know what safeguard WM was going to put into place to protect their assets as the stock market drops continued. The Moffat/WM response was that WM Was a long term "buy and hold" investor and that the clients should hold on to their positions until the market comes back, adding to their positions as the markets sank. In some cases losses were recovered by 2004 and into 2005, however, this was too long of a time for most WM clients and they didn't want to go through that kind of volatility again. Investors can handle risk when their investment values are going up but not when they are going down. Under further analysis WM started understanding that investors didn't want to suffer fluctuations from any market, they just wanted their portfolios to go up all the time. They didn't want to worry about what was happening daily in the stock market. They wanted to enjoy their lives and let WM worry so they didn't have to.

Not all WM clients chose to invest in Quetzal but for those that did, Fevola found sub-managers that utilized strategies that had upside potential with downside protection:

- Strategic Equity Capital LLC - tactical trading in Exchange Traded Funds (ETFs)
- VERITAS Equity Long/Short Fund LLC
- WML internally managed portfolio of hedged mutual funds
- FFC – Flaherty & Crumrine – Claymore Preferred Securities Income Fund
- Bonanza Capital –small/micro cap Long/Short manager
- Argent Classic Convertible Arbitrage Fund "B" Units
- Sage Opportunity Fund Long/Short Equity
- 3rd Avenue Special Situations LP – a special situations fund that capitalized on recapitalizations, restructurings, etc.

Quetzal had similar associated professional firms providing valuations, accounting, administrative, trustee/gatekeeper, custodian and auditors. Fevola coordinated with the compliance consultants, attorney and the WM Compliance team to meet the requirements for disclosure.

2005

WML Palisade Partners, LP

Many of the WM client accounts were invested within IRAs. When WatchStone got close to the 85 investor mark (99 is the limit), WML Palisade Partners, LP (Palisade) was formed. Like WatchStone, it was structured for IRAs only. The first investment that Fevola made in this fund was in the MKA Real Estate Qualified Fund, LLC one which the managers gave us 30 day liquidity with a 30 day notice. A few months later Range Tree, Strategic and UTC was added along with the WML portfolio that was managed for liquidity. Later in 2006 Sagecrest and Washington Fund were added. Ravinia was added in 2007. By end of 2007 Palisade delivered a +8.09% which resulted in an annualized 11.39% since inception.

As with the other WM Funds, Fevola had the document drafted and engaged the other specialists to provide valuations, accounting, administrative, trustee/gatekeeper, custodian and auditors.

Confidence

By the end of 2005 the WM Clients, Staff, Management and Board of Managers were feeling good about what had transpired at WM over the past 3 years. WM was growing in numbers of new clients, revenue and assets under management. The WM Funds with Fevola at the helm were producing returns in the ranges of expectation with very little volatility. Fevola was presenting his reports to the Board members at the semi-annual meetings as well as in the interim when he would talk to them about their investment accounts.

Fevola Buy out Talks

At Fevola's employee performance review meeting, Putman reviewed the positive progress that Fevola and WM has made to provide WM Clients and how he and the WM Funds have given them the hope that they can achieve their financial planning goals. The WM Funds had been achieving their target returns with minimal volatility. Clients, Staff and Board Members were all pleased with what Fevola has done so far with the WM Investment Dept. Fevola was in weekly contact with Charles Bergmann and regular contact with Ron Monica and Robert Coglianese. They all appeared comfortable with Fevola's control of the Investment Process. They all had access to Fevola and took advantage of it when they needed to talk with him whether it was personal business or WM business. At this meeting, Fevola stated that he wanted to buy out Putman and see him retired soon. After contemplating this for a while, Putman responded that he would consider retiring, but wanted to be sure that Fevola would run the company well. Putman wanted Fevola to create an Executive Committee consisting of Ms. Coonen as Director of Financial Planning and Chief Compliance Officer and Ms. Fuss as Director of Operations and Office Manager. This group would manage the day to day operations as well as their own departments. Ms. Coonen, as Chief Compliance Officer created a Compliance committee of which Fevola was a member. Ms Fuss managed the office finances, Human Resources and the office administration staff. Each department head was given the responsibility and authority to manage their teams as they saw fit. They had the ability to fire and hire their own staff.
The Executive Committee was invited to attend Board of Managers meetings and each would give their report to the board. Putman attended the weekly staff meetings and received financial and investment reports. Things were going well and Putman believed that this group could take WM into the next generation. He was starting to believe that it might be time for him to retire. As the months went by and the WM clients and Board members voiced their approval, Putman mentally pulled away from the company. He focused on client meetings and in many cases had members of the Financial Planning and Investment Team in attendance so that they could present their respective reports. This was done to efficiently pass Putman's client responsibilities on to the other WM Professionals.

The WM Staff respected and got along well with Fevola. Coonen and Fuss took their responsibilities seriously and led their teams well. Coonen led the Financial Planning team building it with qualified and well educated staff members that continued to improve the Financial Planning processes that had begun 30 years prior. Fuss had an excellent team of operations staff that fine tuned the data gathering, reporting, IT processes. This group began to implement a "paperless office" transition which would allow access to information at all times from any location.

2006

WML Pantera Partners, LP

At this point Gryphon had about 90 investors so it was decided to launch another WM fund – the WML Pantera Partners, LP (Pantera). Fevola and his Investment and Compliance committee members coordinated the preparatory work to launch a new fund. Fevola communicated with his team of advisors; attorneys, accountants, administrators, custodian and trustee/gatekeeper to have new fund documents drawn up in compliance with SEC guidelines and the individual states' Blue Sky regs, set up accounts with Charles Schwab, Fiduciary Partners, Inc., Woodfield Fund Administration, Grant Thornton, Mc Gladrey and others in order to properly launch this new fund. This fund would have the same investment targets as Gryphon and would utilize similar investments. Once established, Fevola chose to invest the first dollars in Strategic and MKA in addition to the WML liquidity account. Pantera had a good start, a negative third month and then proceeded to generate returns close to its 8% target.

Putman Retiring

Putman began thinking about the next phase of his life and how to eventually pass his clients on and leave the company. Things were running so well at WM that he felt that his input wasn't needed as much as it had been in the past, so he decided to spend more time with his family. He took little time off in the first twelve years of WM's existence and was now taking two week vacations. He started enjoying motorcycling and started planning to start an auto rental business that would operate out of a garage he was planning to buy. Putman also began reviewing Private Investment Offerings for a few of the WM Clients who had been investing in other companies. He liked reviewing business opportunities and as a practice, WM didn't recommend individual private investments for clients. Putman would pass any opportunities that appeared to be suitable for a WM Fund to Fevola for his review, scrutiny and due diligence.

2007

WM Fund Performance

All WM funds were performing within WM's and the WM Clients' expectations. The WM Clients were pleased that the WM Funds had continued to do what they had wanted; consistent returns and low volatility.

From May 2003 to the end of 2007 Gryphon had produced an annualized 9.64% return with a standard deviation of 2.53%. With returns and volatility at target there was little reason to question the fund, their sub-managers, Fevola's due diligence or his choice of asset allocation. No one asks questions when things are going well and most all Gryphon investors were pleased with how it was performing....and they didn't have to worry about the stock market.

1. **Putman did not mislead investors as to the safety of the WM investments. He did not state that the WM Funds were the same as high quality fixed income bonds. Putman did not represent that Gryphon and WatchStone were conservative investments similar to diversified bond funds.**

From the beginning of the planning stages of the first WM Alternative Fund which was eventually named the WML Gryphon Fund LLC (Gryphon), WM Clients were presented with the idea of a collective fund that was going to be in invested in securities **<u>other</u>** than the traditional stocks and bonds **(Tab B).** It was presented as a substitute for traditional bond funds as they weren't producing the income levels that the WM Clients needed to achieve their financial spending goals. Since May of 2003, monthly reports were sent to WM Fund investors, WM Clients that were interested in tracking the fund and any of the clients' other professional advisors; CPAs, tax professionals and attorneys **(Tab C).** The purpose of each monthly report was to clearly identify the investment strategies, their allocation in the fund and how the fund was performing. Our stated target for Gryphon was to achieve an 8% annual return net of expenses, produce a stable principal, provide quarterly distributions and earn a bit more than 8% if possible. In May of 2004 a Cumulative Performance line graph was added to the monthly report showing Gryphon's monthly performance as well as the Merrill Lynch Bond fund index as a comparative. The ML Bond Index was added when one WM Client asked to see how a bond index would compare. If Gryphon and the other similar WM Funds weren't performing as well as the general bond market, then WM Clients should be changed into a diversified bond portfolio. Putman and WM would tell WM Clients that Gryphon was created to be a bond substitute as bond funds in 2003 weren't generating the returns that WM Clients needed to make their Financial Plans work. Gryphon was never presented as a fund of "High Quality Low Risk Diversified Bonds" and the monthly reports prove that. However, the Gryphon offering documents indicate that "high quality fixed income investments" could be used in the portfolios **(Tab D)**. The Plaintiff doesn't include the other six paragraphs related to the Investment Objectives and Investment Strategy that could be used in Gryphon. The language in the offering documents came from the attorneys at Godfrey & Kahn. They may have begun with a "boiler plate" document and added what we wanted in Gryphon. Our directives to them were to give the investment manager wide latitude in the selection of investments. In the monthly reports Fevola would write an update about an existing investment or a summary of a new investment added to Gryphon. In the December 2003 report Gryphon had $18 million in assets and 7 investments. By the end of 2004 Gryphon had assets of $38 million and 14 different investments. Gryphon had produced an inception to date return of 15.92% in comparison to the ML Bond index of 6.28%. Fevola created Due Diligence files on each investment strategy with the historic performance of each sub-manager. Each sub-manager's investment strategy was clearly identified on the report. There was no intent to mislead investors, only to inform them of what WM was doing within Gryphon and the other WM Funds.

Additionally, the investors in the WM Funds were "accredited" investors within the meaning of Regulation D under the Securities Act of 1933 as amended:

The federal securities laws define the term accredited investor in Rule 501 of Regulation D as:

1. a bank, insurance company, registered investment company, business development company, or small business investment company;
2. an employee benefit plan, within the meaning of the Employee Retirement Income Security Act, if a bank, insurance company, or registered investment adviser makes the investment decisions, or if the plan has total assets in excess of $5 million;
3. a charitable organization, corporation, or partnership with assets exceeding $5 million;
4. a director, executive officer, or general partner of the company selling the securities;
5. a business in which all the equity owners are accredited investors;
6. a natural person who has individual net worth, or joint net worth with the person's spouse, that exceeds $1 million at the time of the purchase, excluding the value of the primary residence of such person;
7. a natural person with income exceeding $200,000 in each of the two most recent years or joint income with a spouse exceeding $300,000 for those years and a reasonable expectation of the same income level in the current year; or
8. a trust with assets in excess of $5 million, not formed to acquire the securities offered, whose purchases a sophisticated person makes.

2. The non-disclosure of Quadrimus was an error of Omission not of intentional fraud.

In late May of 2008 Putman attended an industry conference where a speaker presented on the topic of disclosures and compliance issues. On returning to the WM office, Putman met with Fevola and demanded that he show where Quadrimus was disclosed on the Form ADV. Fevola responded that it was "silent" meaning that Fevola had not made the required disclosures. Fevola reviewed the FORM ADV which was filed annually and all marketing material as a member of the WM Compliance Committee. Immediately after Fevola's "silent" response Putman had Fevola call WM's compliance and securities attorney, Jeff Blumberg at Drinker, Biddle & Reath and Putman relayed the information to Blumberg telling him that he wanted this corrected as soon as possible.

In retrospect Putman admits that he should never have accepted Riek's offer to share any monies with him or Fevola from any source. If WM and the WM Funds couldn't have received them, Fevola should have found a way to reduce fees, costs or other methods that would benefit the WM Fund investors. These were fees from agents that paid them from commissions that were received from activities related to investments within the WM Funds. The majority of the investments into Baetis and Brown were made by Fevola for the WM Funds from 2004 to 2005.

Fevola had been responsible for disclosures for the WM Funds since 2003 and for WM LLC since 2005 when he was named President of WM. As a member of the WM Compliance Committee he would review the FORM ADV for accuracy before the Chief Compliance Officer Lori M. Coonen would file it with the SEC **(Tab E)**. Putman relied on Fevola to scrutinize the investments made in the WM Funds and make all necessary disclosures.

When Quadrimus LLC was formed to receive these payments coordinated by Riek, Putman didn't think about disclosures and scrutiny of the arrangement, leaving the due diligence, scrutiny and disclosure details to Fevola. Additionally Putman didn't review the work done by

Ms. Coonen and her Compliance Committee as she didn't answer to the CEO or President, only to the Board of Managers. Putman didn't question Fevola or his Investment Committee on their choice of investments or asset allocation either. Both of these committees were made up of professionals who worked together to assure that all activities were handled properly.

The Plaintiff also claims that the Quadrimus deal was a *"Kick Back Scheme" – defined as **"a rebate, usually given secretively by a seller to a buyer or to one who influenced the buyer."*** Though Riek offered this income there was no Quid Pro Quo that went with it. Putman was not aware of any demands or requests for Fevola to invest additional monies into Baetis and/or Brown. In fact the opposite happened. In early 2006, Fevola had requested and received a liquidation of $12 million from the Baetis and/Brown funds which was returned to the WM Funds and was used for distributions to investors and to make other investments.

3. Putman did not "abruptly" decide to invest WM Clients money into "alternative" investments

Once it became apparent that WM Clients should have an alternative investment option available to them, it took three years before WM was structured with the right Chief Investment Officer, staff, IT capabilities and ancillary support; legal, accounting, compliance, administration, custodial and trustee to launch the first alternative fund. Putman's focus on Alternative Investments started in 2000 after the Tech Bubble Burst causing concern, anger and panic. This dramatic decline of the US Stock Market was one of a series of volatile movements that eventually lasted for three years. Most all of the individual stocks and diversified mutual funds saw volatility with a drop from the top of over 35% **(Tab F).** Clients were seeing the effect these declines were having on their own portfolios, many worrying, most not wanting to open up their monthly brokerage reports and some leaving WM for other advisers. Putman recommended that they hold their current positions and not sell at the bottom waiting until the market rebounds. Many did but didn't couch their concern, worries and demands. Many thought they had to go back to work after being retired for years. Anger and disappointment over losses continued for 3 years until 2003 when a market recovery would give some of them a rebound in their portfolio values and the opportunity to change investment direction. Seeing clients during 2000, 2001 and 2002 was not easy. Trying to keep them focused on the long run, Putman kept hearing from WM Clients who stated in a variety of ways; ***"Make me 8% and I don't care how", "I want to invest in stocks, but not those that go down", "I want to invest in Real Estate, but I don't want to be a landlord" and "I want to invest in the next Microsoft".*** Instead of ignoring their comments and desires letting them leave WM for other firms, Putman decided that WM had to make one more effort to achieve WM Clients' desires of making investment returns of 8% per year. These were difficult years for all parties involved. WM's investment department didn't have a stellar track record after Riek left WM. He helped build the WM assets under management from $3 million in 1990 to over $100 million in 1995. After Riek's departure WM had two investment managers that were adequate at best, and then Putman integrated North Star Asset Management's strategies into WM Clients' portfolios. Even the depth of their investment management and research staff didn't produce the results that impressed WM Clients as they hoped. John Moffat joined WM in 1999 and his individual stock selections weren't making anyone happy including the members of the Board of Managers. They didn't like what Moffat's stock selections were doing to the WM portfolios and by 2002 they wanted him fired.

In 2002, the stock market was showing some signs of recovery and the economy seemed to be improving.

Putman felt that WM had to create an investment fund that would have the potential to deliver 6% to 8% consistently. He had spoken with members of the NAPFA organization that had been integrating "alternative" strategies into client portfolios for many years with various degrees of success. While researching, Putman found that Yale University's Endowment Fund used primarily non-traditional investments in their portfolios **(Tab G).** The investment objective of Yale's Endowment was very similar to what many WM Clients wanted: income for spending, stable principal and for their money to last for future generations. Even Peter Bernstein the founder of "The Journal of Portfolio Management" and publisher of "Economics & Portfolio Strategy" many referred to as a leader in the CFA community stated that for portfolios to survive they will have to include alternative strategies. He said that the old standard of "buy and hold" would hurt portfolios over the next decades. In 2005 economist Brian Beaulieu, CEO of ITR Economics was also speaking of the problems that stocks and bonds will be having over the next decades. Using their input and polling clients at meetings made it clear that a WM alternative investment fund would be useful and in demand. Putman proposed this to the **WM Board of Managers** who liked the idea but agreed that **WM didn't have the experience, staff or talent** to create and manage these kinds of investments. They knew Putman as the firm's lead Financial Planner and not the Investment Manager. Moffat was soon to be terminated at the Board's insistence and their directive was to create the environment in which an alternative fund could be launched. Therefore Fevola was hired as the new Chief Investment Officer who had stock, bond and alternative investment experience.

4. **PUTMAN didn't cause the WM Funds to invest into two principal types of investments: life insurance premium finance and "mezzanine" real estate lending funds. He didn't direct more of the WM funds into life insurance premium finance arrangements.**

   Putman didn't make investment decisions for the WM Funds. Fevola was the WM Fund Manager and solely made decisions for each portfolio. All investments made for the WM Funds were transacted in writing via signed authorizations through Fiduciary Partners Inc. Putman had no influence over Fevola's fund selection, scrutiny, due diligence or asset allocation. Putman would sometimes meet fund managers on his travels alone and with Fevola. He would report back to Fevola, but didn't make investment decisions. Fevola had a master's degree, was a Chartered Financial Analyst (CFA) and earned the Chartered Alternative Investment Analyst (CAIA) designation while at WM. Fevola was the Chief Investment Officer and Manager of the WM Funds. As Director of Investments he was also responsible for the traditional WM Equity and Fixed Income Mutual Fund portfolios which utilized stock and bond mutual funds. His references gave him positive reports **(Tab H)**. He delegated the day to day management of these funds to members of this investment team. There was no doubt that he was running the Investment process for WM.

5. **Putman didn't suspend client redemptions from the WM Funds**

   After the WM Funds' sub-managers begun experiencing liquidity problems, Fevola, with advice from Jeff Blumberg, WM's securities and compliance lawyer, instituted the limitation on redemptions in order to make distributions to all of the WM Funds investors who needed monthly cash. Chad Morley sent out an email to the WM Staff regarding this **(Tab I).** In some cases the distributions were smaller than they requested or had been receiving, but an effort was made to liquidate as much as possible.

6. **WM Funds' losses were not due to Putman's "shocking greed and disregard for his fiduciary duties to his clients".**

The WM Funds' losses were a result of a ***"Perfect Financial Storm".*** The Global Economic Collapse which began in 2007 **(Tab J)** as well as the introduction of FASB 157 **(Tab K)** caused securities to be reported at their fair value which is known as "Marking to Market". This rule affected all investments, especially private investments similar to those invested within the WM Funds. As a result most all of the sub-managers' values within the WM Funds dropped causing the WM Funds' values to drop.

The Global Economic Collapse caused an immediate and rapid loss of investment liquidity worldwide. The global illiquidity caused lenders to stop lending which affected most all of the WM Funds' sub-managers in addition to real estate, banks and insurance companies.
The Real Estate prices fell due to the lack of liquidity and the inability for lenders to get access to cash to make loans. Real estate properties globally and in the US declined between 20% and 80% in value and most have not risen to pre-Collapse levels yet.

Since hindsight is very clear, it is easy to criticize any action that didn't work out as planned. Banks were devastated by the credit crunch and falling real estate prices. Fevola and WM would have made portfolio changes if there was clarity as to what was to come. Though WM subscribed to many financial newsletters including the Bloomberg network, WM couldn't and didn't predict this pending disaster. WM was a small independent Financial Advisory firm in Appleton, Wisconsin and didn't have a large staff or deep economic research capabilities. At the same time firms with thousands of staff and huge economic analysis departments didn't see this coming either. The impactors that caused the failure of some of WM's sub-managers also caused the failure of Fannie Mae, Freddie Mac, Bear Stearns, Lehman Brothers, Washington Mutual, Wachovia, Citigroup and AIG and many others. Since the Economic Collapse begun in 2007, over 300 Banks and 100 Insurance companies have failed. Even the largest auto manufacturer, General Motors couldn't survive without a governmental bailout which cost all of the GM bondholders to lose the value of their investment.

The only sub-managers that held up their monthly value in the WM Funds' portfolios were the Baetis and Brown funds. Though they looked good on paper, the liquidity crunch affected them, too and they couldn't or wouldn't honor WM's request for liquidation. By 2009 when the receivership took over, many of the values of the sub-managers in the WM Funds had declined dramatically leaving Baetis and Brown's values to be what is now believed to be unrealistically high and their asset allocation to be higher than when they were first put in the WM Funds' portfolios.

The FASB 157 rule had been so devastating to the values of US companies and investments that it was changed in 2009.

Information was recently discovered by Attorney David Melnick which indicates that the Baetis and Brown financials appear to be fabricated since 2004. Melnick has spent a great deal of time searching for proof of sales of any life insurance policies that were sold since 2004. Unfortunately, Melnick has been unable to find proof that any policy sales transactions actually took place. If Melnick proves this to be true, then the investment performance of the WM Funds invested in Baetis and Brown would have been inflated and incorrect.

7. Putman did not create six alternative non-traditional investment funds.

Wealth Management LLC, the investment adviser created the six non-traditional funds. Putman felt it was necessary for the benefit of the WM Clients that they be created. Though Putman was involved at first in the creation of Gryphon, Fevola took charge of all aspects of each subsequent fund including naming them and selecting their logos, having WM's legal advisers draft the proper documents, assuring that the proper Federal and State disclosures were done, assuring the marketing materials were accurate and that they met SEC guidelines. He arranged for accounting, administration, custody, trustee and gatekeeper to be hired. He acquired the software to produce the monthly reports and trained the WM staff in how he wanted them produced. He provided the comments on new and current investments in each fund. The Plaintiff claims that Putman "keeps blaming" others. In this case, there is no blame, but credit as Fevola coordinated the professionals and staff that were associated with the WM Funds working together. It was Fevola's success driven attitude, his experience managing a billion dollar+ mutual fund for Merrill Lynch, his CFA training and global experience at Wall Street firms that allowed the WM funds to be created and succeed as long as they did. Putman didn't have the talent, experience or expertise to do this and never attempted to do this. Even the WM Board acknowledged this.

8. Putman did not represent to investors that Gryphon or WatchStone would mostly invest in investment grade debt securities.

From the start, Gryphon and WatchStone were presented to prospective investors as Alternative Investment Funds, not high quality bond funds. The goal for Gryphon and later on WatchStone is to provide an investment that had the potential to generate the WM Clients' goal return of 8% **without** being in the Stock or Bond markets.
The Plaintiff uses an excerpt from of the language in the WML Gryphon Fund LLC's Private Placement Memorandum (PPM). However they didn't include the rest of the investment information that followed. The next 5 paragraphs commented on the types of investments that

the manager was able to utilize and the asset allocation. The language in the PPM gave the WM investment manager wide latitude to invest in individual debt securities, corporate debt obligations as well as hedge funds and funds of funds (Managed Funds) which was done. There were no restrictions on the type of investments it may make. If debt securities were to be part of the asset allocation then "investment grade" debt securities would be the primary kind, however non-investment grade debt securities could be used. U.S. Government debt securities could be used, too. The money market mutual funds that were used in the portfolios had corporate and government debt securities in them. The investment Objectives and Strategies stated on Pages 1 and 2 of the PPM go on to state that the Asset Allocation among the various categories of investment under consideration by the Fund will be determined solely by the Managing Member (Wealth Management LLC). From time to time, the Fund may invest a significant amount of its assets in one, or in a small number of, such categories of investment and/or Managers.

It is expected that the Managing Member and the Managers will utilize various investment techniques including the use of short selling, leverage, forms of arbitrage and hedging. It goes on to say that the Fund is authorized to purchase index futures, financial futures and options thereon for hedging purposes. The Managing Member has wide latitude in the selection of investments. The Operating Agreement imposes no limits on the types of investment funds, separate accounts, securities or other instruments in which the Fund may invest nor does it impose limits on the types of positions, the concentration of investments, the amount of leverage or the number or nature of short positions the Fund or the Managed Funds may take. This is all clearly spelled out on page one and two in the PPM.

Gryphon, WatchStone, Palisade and Pantera were presented to WM Clients as Alternative Funds, not High Quality Bond Funds.

9. The Plaintiff focuses on two of the investments within Gryphon and WatchStone; MKA Capital and Baetis/Brown funds to emphasize the over allocation to these strategies. They don't comment on the 17 other investments that Gryphon and WatchStone had in their portfolios nor why they all declined in value.

As the Gryphon and WatchStone documents stated, the manager has wide latitude on investment selection and no limits on asset allocation. Fevola's efforts managing the WM Funds had produced positive results, in most cases, at or above expectations. There was no reason to question his processes. The securities and asset allocation was presented to WM Clients, prospective investors, WM Staff, WM Board Members and WM Clients' other advisers on a monthly basis. WM's intent was to inform at a level above the industry norm and not to confuse and mislead.

By 2009 when the Plaintiff SEC took control of WM and the WM Funds, Baetis, Brown and MKA appeared to be substantially overweight in the Gryphon and WatchStone portfolios. The primary reason is mathematics. The other sub-managers' fund values were affected by FASB 157, the Global Economic Collapse and World Wide Liquidity and Credit Crunch. When other Gryphon sub-managers; Gulf Islands, Matlin-Patterson, Sage Crest, Washington Fund, MKA, Silar, Touchstone and Alma reported their reduced values, MKA was 4.1% of the portfolio and Baetis was at 70% up from 42% a year earlier. The buoyed Baetis fund values were apparently not being affected by FASB 157 or the Global Economic Collapse. Even at the end of 2008 even with the inability to withdraw cash from Baetis it appeared that Fevola's allocation decisions were brilliant. Aaron produced a great deal of reports on the various deals that he and his contacts had in the works to sell the Life Insurance Policies in Baetis and Brown. Little did anyone at WM know that in 2012 Attorney David Melnick would discover the truth about Baetis and Brown's falsified values and reports. Melnick believes that even Fevola wouldn't have found this out if he would have done a typical due diligence investigation.

10. **Putman did not make investment selections in the WM Funds. Fevola wanted to make all final decisions as to what was invested in the Baetis and Brown funds before the manager Joseph Aaron made any trades. Putman didn't make those decisions.**

Putman knew his professional strengths were in the area of Financial Planning, big picture thinking and problem solving. After doing the Financial Planning and managing the WM Clients' investment for the first 5 years of WM's existence, he made the decision to focus on Financial Planning and not on investment management. That's why in 1990 the WM executive committee and Board of Directors agreed to seek out and add a full time Investment Manager. WM hired Thomas Riek as its first Investment Manager and he stayed until 1995. After Riek departed WM had two interim Investment Managers then hired John Moffat in 1999. Moffat was replaced in 2002 by Fevola as WM's Chief Investment Officer, Director of Investments and Head Portfolio Manager. Fevola had the experience, education and credentials that the WM Board of Managers and Management Team were seeking. Fevola hired his own investment team to assist him with managing the traditional portfolios and the WM Funds. Fevola didn't need, nor ask for Putman's input.

12. **When Putman reported that the Quadrimus income wasn't properly disclosed, the WM Board of Managers removed him.**

In late May of 2008 Putman attended an industry conference where a speaker made a presentation on the topic of SEC disclosures and compliance issues. On returning to the WM office, and recognizing that the Quadrimus arrangement fit the description of what the seminar speaker said needed to be disclosed, Putman met with Fevola and demanded that he show where Quadrimus was disclosed on the Form ADV. Fevola responded that it was "silent" meaning that Fevola had not made the required disclosures. Fevola reviewed the FORM ADV which was filed annually and all marketing material as a member of the WM Compliance Committee. Immediately after Fevola's "silent" response Putman had Fevola call WM's compliance and securities attorney, Jeff Blumberg at Drinker, Biddle & Reath and Putman relayed the information to Blumberg telling him that he wanted this corrected as soon as possible. Blumberg recommended that he bring in the firm's securities specialist Debra Patalkis from their Washington D.C. office for support. Ms. Patalkis, Blumberg, Putman and Fevola spoke and then Blumberg and Patalkis worked on a plan of action. Patalkis recommended that Putman and Fevola hire their own legal counsel and have them at the Board meeting. Blumberg suggested that the WM Board be told and then they (Blumberg and Patalkis) would work with the WM Board members directly as they represent WM, not Putman or Fevola. The Board meeting was scheduled for the next week, so the attorneys advised that the subject be kept quiet around the office until then.

At the Board meeting on June 5 Putman, alone, disclosed the information about Quadrimus and the non-disclosure infraction to the WM Board and Management team. Later Putman suggested that he also disclose this to the SEC and begin working on a plan to correct it, but counsel stated that Putman couldn't do that, only the WM Board of Managers could make that decision as WM was a Board managed company. After the Board meeting ended, Patalkis met with the Board Members, Fuss and Coonen. During the following week Patalkis deposed Putman at the Drinker Biddle Office in Chicago during a meeting of the WM Board which included Fuss and Coonen. Patalkis demanded that Putman do so without counsel or she would call the SEC and disclose the infraction to them so that they would take over the company. Putman agreed, against the advice of his own attorney and finished her questioning in about 2 hours. Soon after that date, citing irrational behavior and suicidal tendencies, the WM Board took steps to remove Putman from the firm and bar him from the premises. They gave no examples of irrational behavior or why they believed that Putman had suicidal tendencies. There were no psychiatric or psychological exams offered to or taken by Putman. The WM Board chose to retain Fevola as he had been and still was managing the WM Funds **(Tab L)**. Their plan was to keep the Quadrimus incident quiet and not disclose it to the SEC or the WM Clients. The Board would have Putman "retiring" immediately, among other things.

While at home, Putman was fielding calls from WM Clients and Friends wanting to know what was happening at WM. He was instructed by the WM Board and legal Counsel, Deb Patalkis of Drinker, Biddle & Reath and his own lawyer not to speak to anyone about what had transpired before he was barred from the firm. Patalkis, the Board members, Fuss and Coonen wanted Putman to leave WM quietly and sell his equity units in WM LLC to the Board and Management Team at a severe discount. If he didn't agree, they threatened to disclose the Quadrimus infraction to the SEC which would cause the failure of WMLLC which, they said, would embarrass Putman, cost him his company and bankrupt him. In August Patalkis and the Board's scheme fell apart. The SEC notified the WM Staff that they were doing a routine exam in September. As a result, Patalkis arranged for Fevola to "self-report" the Quadrimus story to the SEC's Chicago office before they discovered it in their audit. Putman wasn't aware that Patalkis was intentionally excluding him from the opportunity of attending the disclosure that he had suggested early on.

After Putman found out about Patalkis and Fevola's SEC meeting and self-disclosure, the WM Board's leverage and ability to extort his equity in WM was gone. At this point, Putman came to the conclusion that he was being set up by Patalkis to "take the fall" for Fevola not doing his job as President and a member of the Compliance Committee.

Putman requested the Board's approval to return to the WM Office so that he could visit with all or as many of his former clients as possible. They were not being informed of what was happening at WM or with their investment accounts. The WM Board and Management team refused his request and stated that they would call the SEC for an immediate takeover of WM and that he would be physically removed from the premises if he attempted a return to speak with any of the WM Clients. Ignoring their threats, Putman returned to the WM Office in mid October and began visiting with his former clients immediately. Fevola and Coonen both resigned the day he returned, but Coonen reconsidered and stayed until the end of the year. The WM Board threatened to resign also but stayed on for a short period of time. By mid-2009 Putman had met with or had spoken by phone to almost all of the former WM Clients and told them as much as he was permitted to say. The Receiver barred Putman from the WM premises in October of 2009 even though his pay had ceased in May 2009. He was told not to discuss WM or the WM Funds with the former WM Clients until her receivership was closed.

At the end of the day, did the Defendant, Putman, do the onerous things that the SEC has accused him of or implied? No.

Did he do anything fraudulent? No

Did he influence client investments for his own personal gain? No--in fact, his own funds were invested in the same manner, same funds, as the client investments.

Did he use poor judgment in relying on others (Riek and Fevola) in terms of the Quadrimus arrangement? <u>YES</u>--In hindsight, no matter how much he believed that Riek and Fevola, both of whom were experts in the investment areas and in SEC matters, assured him that the commission arrangement was proper--and could not be passed directly to the investors--and thereby would be left "laying on the table" if Quadrimus didn't receive the commissions, he should have brought the whole arrangement to the attention of the Wealth Management Board so that they were aware in advance of the arrangement being contemplated.

Did he rely too much on others to be sure that SEC reporting was accurate? <u>YES and NO</u>--While the report filed on behalf of WM did not include the Quadrimus disclosure, it was not Putman's job to author, review or approve the SEC filing. This responsibility was clearly vested in Fevola and Coonen, who were both highly compensated and very experienced in such matters and Putman should have been able to rely on them to report accurately and timely to the SEC. They simply failed in the trust that Putman and the Wealth Management Board had placed in both of them.

Ultimately, Putman broke no laws, violated no SEC regulations nor intentionally deceived anyone.

He is <u>guilty</u> of poor judgment (Quadrimus disclosure to the WM Board prior to entering into the arrangement) and being naïve (putting too much trust in Riek, Fevola and Coonen).

Though the Plaintiff SEC can bar or restrict any Investment Advisors or applicants, their application of their judgments are not consistent and are biased against Putman. It has become obvious that the SEC has wanted to make Putman an example of their protection of the industry, but they failed to do their research and missed the opportunity to present many of the important facts in this case. Putman has paid for his actions with the loss of his investment in the company; Wealth Management LLC and his investment in the WM Funds; WML WatchStone LLC, WML Pantera LP and WML Quetzal LP and the loss of income has caused him to file for bankruptcy protection. The Court ruling for the Plaintiff is an empty conquest. At the age of 60, Putman doesn't have the time or ability to earn enough to pay the interest on the judgment much less the principal amount of the disgorgement.

CONCLUSION

Relief Sought

1. The Defendant requests an opportunity to support his defense of the comments made by the Plaintiff that he believes to be false, misleading or incomplete. The Defendant has provided some, but not all documents to support his defense. He doesn't have access to all the documents needed to support his responses. He asks the Court to give him the time and authority to retrieve them. Though it may take more than 30 days to do so, he will complete his research to the best of his ability and report at the time indicated by this Court.

2. Wherefore, for the foregoing reasons, the Defendant, James Putman respectfully requests that the Court reconsider its Final Judgment and deny the Plaintiff SEC their demand for the financial and other relief that they have requested.

Dated: June 15, 2012

Respectfully Submitted,

James E. Putman

James E. Putman
311 Cleveland Street
Menasha, WI 54952
920-722-0137
performanceworksinc@gmail.com