

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI

CASE NO. 12-CV-00080-CEJ

_____)
SECURITIES AND EXCHANGE)
COMMISSION,)
)
Plaintiff,)
)
v.)
)
BURTON DOUGLAS MORRISS,)
ACARTHA GROUP, LLC,)
MIC VII, LLC,)
ACARTHA TECHNOLOGY PARTNERS, LP,)
and)
GRYPHON INVESTMENTS III, LLC,)
)
Defendants. and)
)
MORRISS HOLDINGS, LLC,)
)
Relief Defendant.)
_____)

**PLAINTIFF’S NOTICE OF FILING CONSENT
OF DEFENDANTS ACARTHA GROUP, LLC; MIC VII, LLC;
ACARTHA TECHNOLOGY PARTNERS, LP; AND GRYPHON INVESTMENTS III,
LLC TO JUDGMENT OF PERMANENT INJUNCTION AND OTHER RELIEF AND
REQUEST FOR ENTRY OF JUDGMENT**

Plaintiff Securities and Exchange Commission files the Consent to Permanent Injunctions and Other Relief of Claire M. Schenk, the court-appointed Receiver of Acartha Group, LLC; MIC VII, LLC; Acartha Technology Partners, LP; and Gryphon Investments III, LLC (collectively, the “Investment Entities”) and the Proposed Judgment to which the Receiver has consented. The Commission received the Receiver’s consent on March 6, 2012. If the Court enters the Judgment, then the only remaining issues in this case as to the Investment Entities

would be the amounts of disgorgement and civil penalty. The Receiver and the Commission will attempt to resolve these remaining issues in the future.

March 6, 2012

Respectfully submitted,

By: s/ Adam L. Schwartz
Adam L. Schwartz, Esq.
Senior Trial Counsel
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Attorneys for Plaintiff
**SECURITIES AND EXCHANGE
COMMISSION**
801 Brickell Avenue, Suite 1800
Miami, Florida 33131
Telephone: (305) 982-6300
Facsimile: (305) 536-4154

CERTIFICATE OF SERVICE

I hereby certify that on March 6, 2012, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to the following:

Stephen B. Higgins, Esq.
Kevin Carnie, Esq.
Brian A. Lamping, Esq.
Thompson Coburn LLP
One US Bank Plaza
St. Louis, Missouri 63101
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Counsel for Receiver

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Counsel for Defendant Burton D. Morriss

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Counsel for Relief Defendant Morriss Holdings, LLC

s/Adam L. Schwartz
Adam L. Schwartz

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI

CASE NO. 4:12-CV-80-CEJ

SECURITIES AND EXCHANGE COMMISSION,)
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Plaintiff,)
v.)
)
BURTON DOUGLAS MORRISS,)
ACARTHA GROUP, LLC,)
MIC VII, LLC,)
ACARTHA TECHNOLOGY PARTNERS, LP, and)
GRYPHON INVESTMENTS III, LLC,)
)
Defendants, and)
)
MORRISS HOLDINGS, LLC,)
)
Relief Defendant.)
)

**CONSENT OF DEFENDANTS ACARTHA
GROUP, LLC; MIC VII, LLC; ACARTHA TECHNOLOGY
PARTNERS, LP; AND GRYPHON INVESTMENTS III, LLC**

1. Defendants Acartha Group, LLC; MIC VII, LLC; Acartha Technology Partners, LP (“ATP”); and Gryphon Investments III, LLC acknowledge service of the complaint and admit to the jurisdiction of this Court over them and the subject matter of this action. Receiver Claire M. Schenk, Esq., is executing this Consent on behalf of Acartha Group, MIC VII, ATP, and Gryphon Investments by virtue of the Court’s January 17, 2012 Order appointing her as Receiver over these entities.

2. Without admitting or denying the allegations of the complaint (except as to personal and subject matter jurisdiction, which they admit), Acartha Group, MIC VII, ATP, and Gryphon Investments consent to the entry of the Judgment of Permanent Injunction and Other Relief in the form attached (the “Judgment”) and incorporated by reference herein, which, among other things:

Initials: cms

- (a) permanently restrains and enjoins Acartha Group, MIC VII, ATP, and Gryphon Investments from violation of Section 17(a) of the Securities Act of 1933 (“Securities Act”), 15 U.S.C. § 77q(a);
- (b) permanently restrains and enjoins Acartha Group, MIC VII, ATP, and Gryphon Investments from violation of Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. § 78j(b), and Exchange Act Rule 10b-5, 17 C.F.R. §240.10b-5;
- (c) permanently restrains and enjoins Acartha Group and Gryphon Investments from violation of Sections 206(1), 206(2), and 206(4) of the Investment Advisers Act of 1940 (“Advisers Act”), 15 U.S.C. §§ 80b-6(1), 80b-6(2), and 80b-6(4), and Advisers Act Rule 206(4)-8(a)(2), 17 C.F.R. § 275.206-4(8)(a)(2); and
- (d) provides for the imposition of disgorgement, plus prejudgment interest, and a civil penalty.

3. Acartha Group, MIC VII, ATP, and Gryphon Investments agree the Court shall order disgorgement of ill-gotten gains, prejudgment interest, and a civil penalty pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), Section 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3), and Section 209(e) of the Advisers Act, 15 U.S.C. § 80b-9(e). Acartha Group, MIC VII, ATP, and Gryphon Investments further agree that the amount of the disgorgement and civil penalty shall be determined by the Court upon motion of the Commission, and that prejudgment interest shall be calculated from September 30, 2011, based on the rate of interest used by the Internal Revenue Service for the underpayment of federal income tax as set forth in 26 U.S.C. § 6621(a)(2). Acartha Group, MIC VII, ATP, and Gryphon

Investments further agree that in connection with the Commission's motion for disgorgement and a civil penalty, and at any hearing held on such a motion: (a) Acartha Group, MIC VII, ATP, and Gryphon Investments will be precluded from arguing that they did not violate the federal securities laws as alleged in the complaint; (b) Acartha Group, MIC VII, ATP, and Gryphon Investments may not challenge the validity of this Consent or the Judgment; (c) solely for the purposes of such motion, the allegations of the complaint shall be accepted as and deemed true by the Court; and (d) the Court may determine the issues raised in the motion on the basis of affidavits, declarations, excerpts of sworn deposition or investigative testimony, and documentary evidence, without regard to the standards for summary judgment contained in Rule 56(c) of the Federal Rules of Civil Procedure. In connection with the Commission's motion for a civil penalty, the parties may take discovery, including discovery from appropriate non-parties.

4. Acartha Group, MIC VII, ATP, and Gryphon Investments waive the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure.

5. Acartha Group, MIC VII, ATP, and Gryphon Investments waive the right, if any, to a jury trial and to appeal from the entry of the Judgment.

6. Acartha Group, MIC VII, ATP, and Gryphon Investments enter into this Consent voluntarily and represent that no threats, offers, promises, or inducements of any kind have been made by the Commission or any member, officer, employee, agent, or representative of the Commission to any of them or anyone acting on their behalf to induce them to enter into this Consent.

7. Acartha Group, MIC VII, ATP, and Gryphon Investments agree that this Consent shall be incorporated into the Judgment with the same force and effect as if fully set forth therein.

8. Acartha Group, MIC VII, ATP, and Gryphon Investments will not oppose the enforcement of the Judgment on the ground, if any exists, that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure, and hereby waives any objection based thereon.

9. Acartha Group, MIC VII, ATP, and Gryphon Investments waive service of the Judgment and agree that entry of the Judgment by the Court and filing with the Clerk of the Court will constitute notice to them of its terms and conditions.

10. Consistent with 17 C.F.R. §202.5(f), this Consent resolves only the claims asserted against Acartha Group, MIC VII, ATP, and Gryphon Investments in this civil proceeding. Acartha Group, MIC VII, ATP, and Gryphon Investments advise that no promise or representation has been made by the Commission or any member, officer, employee, agent, or representative of the Commission with regard to any criminal liability that may have arisen or may arise from the facts underlying this action or immunity from any such criminal liability. Acartha Group, MIC VII, ATP, and Gryphon Investments waive any claim of Double Jeopardy based upon the settlement of this proceeding, including the imposition of any remedy or civil penalty herein. Acartha Group, MIC VII, ATP, and Gryphon Investments further acknowledge that the Court's entry of a permanent injunction may have collateral consequences under federal or state law and the rules and regulations of self-regulatory organizations, licensing boards, and other regulatory organizations. Such collateral consequences include, but are not limited to, a statutory disqualification with respect to membership or participation in, or association with a member of, a self-regulatory organization. This statutory disqualification has consequences that are separate from

any sanction imposed in an administrative proceeding. In addition, in any disciplinary proceeding before the Commission based on the entry of the injunction in this action, Acartha Group, MIC VII, ATP, and Gryphon Investments understand that they shall not be permitted to contest the factual allegations of the complaint in this action.

11. Acartha Group, MIC VII, ATP, and Gryphon Investments understand and agree to comply with the Commission's policy "not to permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the allegation in the complaint or order for proceedings." 17 C.F.R. §202.5. In compliance with this policy, Acartha Group, MIC VII, ATP, and Gryphon Investments agree: (i) not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any allegation in the complaint or creating the impression that the complaint is without factual basis; and (ii) that upon the filing of this Consent, Acartha Group, MIC VII, ATP, and Gryphon Investments hereby withdraw any papers filed in this action to the extent that they deny any allegation in the complaint. If Acartha Group, MIC VII, ATP, and Gryphon Investments breach this agreement, the Commission may petition the Court to vacate the Judgment and restore this action to its active docket. Nothing in this paragraph affects Acartha Group's, MIC VII's, ATP's, or Gryphon Investments': (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which the Commission is not a party.

12. Acartha Group, MIC VII, ATP, and Gryphon Investments hereby waive any rights under the Equal Access to Justice Act, the Small Business Regulatory Enforcement Fairness Act of 1996, or any other provision of law to seek from the United States, or any agency, or any official of the United States acting in his or her official capacity, directly or indirectly, reimbursement of attorney's fees or other fees, expenses, or costs expended by Acartha Group,

MIC VII, ATP, and Gryphon Investments to defend against this action. For these purposes, Acartha Group, MIC VII, ATP, and Gryphon Investments agree they are not the prevailing party in this action since the parties have reached a good faith settlement.

13. Acartha Group, MIC VII, ATP, and Gryphon Investments agree the Commission may present the Judgment to the Court for signature and entry without further notice.

14. Acartha Group, MIC VII, ATP, and Gryphon Investments agree that this Court shall retain jurisdiction over this matter for the purpose of enforcing the terms of the Judgment.

Dated: 3-6, 2012

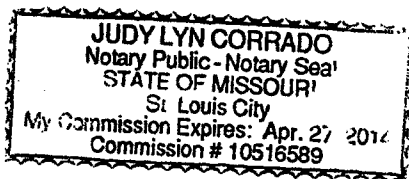
Claire M. Schenk
Claire M. Schenk, Esq., as Court-Appointed Receiver for Acartha Group, LLC; MIC VII, LLC; Acartha Technology Partners, LP; and Gryphon Investments III, LLC

STATE OF MISSOURI)
City) ss:
COUNTY OF St. Louis)

On this 6th day of March, 2012, before me personally appeared **Claire M. Schenk, Esq.**, who is personally known to me or _____ who produced a _____ driver's license bearing her name and photograph as identification, and who executed this Consent, and she acknowledged to me that she executed the same.

Judy Lyn Corrado
Notary Public

4-27-2014
Commission Expires:



Initials: _____

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI

CASE NO. 4:12-CV-80-CEJ

SECURITIES AND EXCHANGE COMMISSION,)
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Plaintiff,)
v.)
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BURTON DOUGLAS MORRISS,)
ACARTHA GROUP, LLC,)
MIC VII, LLC,)
ACARTHA TECHNOLOGY PARTNERS, LP, and)
GRYPHON INVESTMENTS III, LLC,)
)
Defendants, and)
)
MORRISS HOLDINGS, LLC,)
)
Relief Defendant.)
_____)

**JUDGMENT OF PERMANENT
INJUNCTION AND OTHER RELIEF AS TO
DEFENDANTS ACARTHA GROUP, LLC; MIC VII, LLC; ACARTHA
TECHNOLOGY PARTNERS, LP; AND GRYPHON INVESTMENTS III, LLC**

The Securities and Exchange Commission having filed a complaint, and the Court-Appointed Receiver Claire M. Schenk, Esq., acting on behalf of Defendants Acartha Group, LLC; MIC VII, LLC; Acartha Technology Partners, LP (“ATP”); and Gryphon Investments III, LLC having: entered a general appearance; consented to the Court’s jurisdiction over Acartha Group, MIC VII, ATP, and Gryphon Investments and the subject matter of this action; consented to entry of this Judgment without admitting or denying the allegations of the complaint (except as to personal and subject matter jurisdiction, which Acartha Group, MIC VII, ATP, and Gryphon Investments admit); waived findings of fact and conclusions of law; and waived any right to appeal from this Judgment:

I.

**VIOLATION OF SECTION 17(a)
OF THE SECURITIES ACT OF 1933**

IT IS ORDERED AND ADJUDGED that Acartha Group, MIC VII, ATP, and Gryphon Investments and their agents, servants, employees, attorneys, representatives, and all persons in active concert or participation with them who receive actual notice of this 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:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) 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
- (c) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

II.

**SECTION 10(b) OF THE SECURITIES
EXCHANGE ACT OF 1934 AND EXCHANGE ACT RULE 10b-5**

IT IS FURTHER ORDERED AND ADJUDGED that Acartha Group, MIC VII, ATP, and Gryphon Investments and their agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this 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 ("Exchange Act"), 15 U.S.C. § 78j(b), and exchange act Rule 10b-5, 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.

III.

SECTIONS 206(1) AND 206(2) OF THE INVESTMENT ADVISERS ACT of 1940

IT IS FURTHER ORDERED AND ADJUDGED that Acartha Group and Gryphon Investments and their agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Sections 206(1) and 206(2) of the Investment Advisers Act of 1940 ("Advisers Act"), 15 U.S.C. §§ 80b-6(1) and (2), 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 clients or prospective clients;
- (b) to engage in transactions, practices and courses of business that operates as a fraud or deceit upon clients or prospective clients; or

- (c) to engage in acts, practices, and courses of business which are fraudulent, deceptive, or manipulative.

IV.

**VIOLATION OF ADVISERS ACT
SECTION 206(4) AND RULE 206(4)-8**

IT IS FURTHER ORDERED AND ADJUDGED that Acartha Group and Gryphon Investments, their 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 206(4) of the Advisers Act and Rule 206(4)-8(a)(2), by using the mails or any means or instrumentality of interstate commerce to engage in any act, practice, or course of business which is fraudulent, deceptive or manipulative, with respect to any investor or prospective investor in a pooled investment vehicle.

V.

DISGORGEMENT AND CIVIL PENALTY

IT IS FURTHER ORDERED AND ADJUDGED that Acartha Group, MIC VII, ATP, and Gryphon Investments shall pay disgorgement of ill-gotten gains, prejudgment interest thereon, and a civil penalty pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), Section 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3), and Section 209(e) of the Advisers Act, 15 U.S.C. § 80b-9(e). The Court shall determine the amounts of the disgorgement and civil penalty upon motion of the Commission. Prejudgment interest shall be calculated from September 30, 2011, based on the rate of interest used by the Internal Revenue Service for the underpayment of federal income tax as set forth in 26 U.S.C. § 6621(a)(2). In connection with the Commission's motion for disgorgement and/or a civil penalty, and at any hearing held on

such a motion: (a) Acartha Group, MIC VII, ATP, and Gryphon Investments will be precluded from arguing that they did not violate the federal securities laws as alleged in the complaint; (b) Acartha Group, MIC VII, ATP, and Gryphon Investments may not challenge the validity of the Consent or this Judgment; (c) solely for the purposes of such motion, the allegations of the complaint shall be accepted as and deemed true by the Court; and (d) the Court may determine the issues raised in the motion on the basis of affidavits, declarations, excerpts of sworn deposition or investigative testimony, and documentary evidence, without regard to the standards for summary judgment contained in Rule 56(c) of the Federal Rules of Civil Procedure. In connection with the Commission's motion for disgorgement and/or a civil penalty, the parties may take discovery, including discovery from appropriate non-parties.

VI.

INCORPORATION OF CONSENT

IT IS FURTHER ORDERED AND ADJUDGED that the Consent filed herewith is incorporated herein with the same force and effect as if fully set forth herein, and that Acartha Group, MIC VII, ATP, and Gryphon Investments shall comply with all of the undertakings and agreements set forth therein.

VII.

RETENTION OF JURISDICTION

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

DONE AND ORDERED in Chambers in St. Louis, Missouri, this ____ day of _____,
2012.

CAROL E. JACKSON
UNITED STATES DISTRICT JUDGE

Copy to:

All counsel of Record

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI

CASE NO. 4:12-CV-80-CEJ

SECURITIES AND EXCHANGE COMMISSION,)
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Plaintiff,)
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BURTON DOUGLAS MORRISS,)
ACARTHA GROUP, LLC,)
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Defendants, and)
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MORRISS HOLDINGS, LLC,)
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Relief Defendant.)
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INJUNCTION AND OTHER RELIEF AS TO
DEFENDANTS ACARTHA GROUP, LLC; MIC VII, LLC; ACARTHA
TECHNOLOGY PARTNERS, LP; AND GRYPHON INVESTMENTS III, LLC**

The Securities and Exchange Commission having filed a complaint, and the Court-Appointed Receiver Claire M. Schenk, Esq., acting on behalf of Defendants Acartha Group, LLC; MIC VII, LLC; Acartha Technology Partners, LP (“ATP”); and Gryphon Investments III, LLC having: entered a general appearance; consented to the Court’s jurisdiction over Acartha Group, MIC VII, ATP, and Gryphon Investments and the subject matter of this action; consented to entry of this Judgment without admitting or denying the allegations of the complaint (except as to personal and subject matter jurisdiction, which Acartha Group, MIC VII, ATP, and Gryphon Investments admit); waived findings of fact and conclusions of law; and waived any right to appeal from this Judgment:

I.

**VIOLATION OF SECTION 17(a)
OF THE SECURITIES ACT OF 1933**

IT IS ORDERED AND ADJUDGED that Acartha Group, MIC VII, ATP, and Gryphon Investments and their agents, servants, employees, attorneys, representatives, and all persons in active concert or participation with them who receive actual notice of this 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:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) 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
- (c) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

II.

**SECTION 10(b) OF THE SECURITIES
EXCHANGE ACT OF 1934 AND EXCHANGE ACT RULE 10b-5**

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indirectly, Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. § 78j(b), and exchange act Rule 10b-5, 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.

III.

SECTIONS 206(1) AND 206(2) OF THE INVESTMENT ADVISERS ACT of 1940

IT IS FURTHER ORDERED AND ADJUDGED that Acartha Group and Gryphon Investments and their agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Sections 206(1) and 206(2) of the Investment Advisers Act of 1940 ("Advisers Act"), 15 U.S.C. §§ 80b-6(1) and (2), 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 clients or prospective clients;
- (b) to engage in transactions, practices and courses of business that operates as a fraud or deceit upon clients or prospective clients; or

- (c) to engage in acts, practices, and courses of business which are fraudulent, deceptive, or manipulative.

IV.

**VIOLATION OF ADVISERS ACT
SECTION 206(4) AND RULE 206(4)-8**

IT IS FURTHER ORDERED AND ADJUDGED that Acartha Group and Gryphon Investments, their 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 206(4) of the Advisers Act and Rule 206(4)-8(a)(2), by using the mails or any means or instrumentality of interstate commerce to engage in any act, practice, or course of business which is fraudulent, deceptive or manipulative, with respect to any investor or prospective investor in a pooled investment vehicle.

V.

DISGORGEMENT AND CIVIL PENALTY

IT IS FURTHER ORDERED AND ADJUDGED that Acartha Group, MIC VII, ATP, and Gryphon Investments shall pay disgorgement of ill-gotten gains, prejudgment interest thereon, and a civil penalty pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), Section 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3), and Section 209(e) of the Advisers Act, 15 U.S.C. § 80b-9(e). The Court shall determine the amounts of the disgorgement and civil penalty upon motion of the Commission. Prejudgment interest shall be calculated from September 30, 2011, based on the rate of interest used by the Internal Revenue Service for the underpayment of federal income tax as set forth in 26 U.S.C. § 6621(a)(2). In connection with the Commission's motion for disgorgement and/or a civil penalty, and at any hearing held on

such a motion: (a) Acartha Group, MIC VII, ATP, and Gryphon Investments will be precluded from arguing that they did not violate the federal securities laws as alleged in the complaint; (b) Acartha Group, MIC VII, ATP, and Gryphon Investments may not challenge the validity of the Consent or this Judgment; (c) solely for the purposes of such motion, the allegations of the complaint shall be accepted as and deemed true by the Court; and (d) the Court may determine the issues raised in the motion on the basis of affidavits, declarations, excerpts of sworn deposition or investigative testimony, and documentary evidence, without regard to the standards for summary judgment contained in Rule 56(c) of the Federal Rules of Civil Procedure. In connection with the Commission's motion for disgorgement and/or a civil penalty, the parties may take discovery, including discovery from appropriate non-parties.

VI.

INCORPORATION OF CONSENT

IT IS FURTHER ORDERED AND ADJUDGED that the Consent filed herewith is incorporated herein with the same force and effect as if fully set forth herein, and that Acartha Group, MIC VII, ATP, and Gryphon Investments shall comply with all of the undertakings and agreements set forth therein.

VII.

RETENTION OF JURISDICTION

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

DONE AND ORDERED in Chambers in St. Louis, Missouri, this ____ day of _____,
2012.

CAROL E. JACKSON
UNITED STATES DISTRICT JUDGE

Copy to:

All counsel of Record