

STATE OF NEW JERSEY  
BUREAU OF SECURITIES  
P.O. Box 47029  
Newark, New Jersey 07101  
Telephone (973) 504-3600

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IN THE MATTER OF:

Nicholas L. Lattanzio  
(CRD# 866966);

Pasquale A. Montesanti  
(CRD# 2102728);

Black Diamond Capital  
Appreciation Fund, L.P. a/k/a Black  
Diamond Capital Appreciation Fund, LLP;

Black Diamond Investments, LP;

Black Diamond Investments, LLC; and

Black Diamond GP, LLC,

Respondents.

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**SUMMARY PENALTY  
ORDER**

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Pursuant to the authority granted to Laura H. Posner, Chief of the New Jersey Bureau of Securities ("Bureau Chief"), under the Uniform Securities Law (1997), N.J.S.A. 49:3-47 et seq. ("Securities Law") and certain regulations, and based on a review of the relevant facts, including documents and information obtained during the investigation by the New Jersey Bureau of Securities ("Bureau"), the Bureau Chief hereby finds that there is good cause and it is in the public interest to enter this Summary Penalty Order, and makes the following findings of fact and conclusions of law:

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## FINDINGS OF FACT

### Respondents

1. Nicholas L. Lattanzio (CRD# 866966) (“Lattanzio”), residing in Montclair, New Jersey, and West Orange, New Jersey, was registered with the Bureau as an agent of at least three broker-dealers between September 1993 and June 2005. Since June 2005, Lattanzio has not been registered with the Bureau in any capacity.
2. Lattanzio controls all aspects of (1) Black Diamond Investments, LP; (2) Black Diamond Investments, LLC; (3) Black Diamond GP, LLC; and (4) Black Diamond Capital Appreciation Fund, L.P. (collectively, the “Black Diamond Entities”) including, but not limited to, the Black Diamond Entities’ finances. Lattanzio established each of the Black Diamond Entities and is the authorized signatory of each of the Black Diamond Entities’ bank and brokerage accounts.
3. Black Diamond Investments, LP (“BDI”) is a New Jersey limited partnership formed on or about February 2, 2010. BDI maintains a business address at 546 Valley Road, Upper Montclair, New Jersey. The general partner of BDI is Black Diamond Investments, LLC. Limited partners of BDI are Nicholas Lattanzio and the Lattanzio Family Trust, of which Lattanzio is a Trustee. BDI’s limited partnership certificate states the character of BDI’s business is “investment management.” BDI is an unregistered investment adviser for Black Diamond Capital Appreciation Fund, L.P.
4. Black Diamond Investments, LLC (“BDILLC”) is a New Jersey limited liability company formed on or about December 9, 2009. BDI maintains a business address at 546 Valley Road, Upper Montclair, New Jersey. Lattanzio is the sole member of BDILLC. BDILLC is the general partner of both BDI and Black Diamond GP, LLC.

5. Black Diamond Capital Appreciation Fund, LP (“BD Fund”), also known as Black Diamond Capital Appreciation Fund, LLP, is a New Jersey limited partnership formed on or about December 7, 2009. BD Fund maintains a business address at 546 Valley Road, Upper Montclair, New Jersey. Black Diamond GP, LLC (“BDGP”) is the general partner of BD Fund. BDI is an unregistered investment adviser for the BD Fund.

6. BDGP is a New Jersey limited liability company formed on or about December 9, 2009. BDGP maintains a business address at 546 Valley Road, Upper Montclair, New Jersey. The sole member of BDGP is Black Diamond LLC. BDGP is the general partner of BD Fund.

7. Pasquale Montesanti (CRD# 2102728) (“Montesanti”), residing in Fairfield, Connecticut, has never been registered with the Bureau in any capacity. Montesanti owns an unincorporated business entity called International Lending Services with a Post Office box address in Southport, Connecticut. Montesanti used this unincorporated entity to solicit certain investors to invest in the BD Fund for a fee. In addition, Montesanti received bi-weekly paychecks from BDI between August 2014 and December 2014.

8. Lattanzio, BDI, BDILLC, BD Fund, BDGP, and Montesanti are collectively referred to herein as the “Respondents.”

#### **Summary of Respondents’ Scheme**

9. Between August 2011 and August 2014, Respondents orchestrated a scheme involving at least \$4,000,000 that included the offer and/or sale of securities and investment advisory services to investors. Two of the investors were companies seeking capital to finance their business activities. An additional individual investor was seeking to engage in currency trading.

10. Between October 2013 and August 2014, Respondents offered investors the opportunity for outside funding to engage in business projects and invest in investment strategies directed by

Lattanzio, and BDGP, BDI, and the BD Fund through Lattanzio. This opportunity for outside funding required investors to make a “capital deposit” with the BD Fund directly or with BDI, which would transfer the moneys to the BD Fund. Respondents falsely represented that this capital deposit would be invested in several strategies, and that investor funds would be secure and available to be returned if the funding fell through. Specifically, according to the private placement memoranda and other documents given to investors, the BD Fund’s “investment objective” was to “maximize income and capital appreciation by investing in a variety of highly liquid fixed income” securities using “proprietary investment strategies.”

11. While a limited amount of the money deposited into the BD Fund was invested temporarily, Lattanzio and the Black Diamond entities quickly misused investors’ funds for the personal benefit of Lattanzio, Montesanti, and their families. Among other things, Lattanzio used investor funds to purchase a more than \$1,000,000 home in Montclair, New Jersey, to purchase a \$124,000 luxury car, to purchase over \$100,000 in merchandise from Tiffany & Co., to repay over \$550,000 in credit card debt, and to pay for his membership at an exclusive golf club. In addition, Lattanzio withdrew approximately \$500,000 in cash or checks written to himself and his girlfriend and paid more than \$30,000 to a yacht broker. Montesanti received investor funds from Lattanzio and the Black Diamond Entities for, among other things, paychecks and a payment to a university that Montesanti’s daughter attended.

12. In or around August 2011, Lattanzio and BDI also made false representations to an advisory client in connection with currency trading. Specifically Lattanzio and BDI falsely told at least one investor – RP – that if he invested in BDI, BDI would invest the same amount of money. BDI would then engage in currency trading on behalf of both the investor and BDI, and they would share profits and losses equally. Despite RP’s investment of \$50,000 in BDI, BDI never contributed any money to the currency trading.

**A. Lattanzio and BDI's Solicitation of an Advisory Client**

13. On or about August 26, 2011, BDI entered into an Investment Management Agreement, signed by Lattanzio on behalf of BDI, with individual RP ("RP Agreement"). The RP Agreement authorized BDI, as investment manager, to (1) have discretionary investment authority over certain assets of RP; and (2) execute a trading strategy on behalf of RP.

14. The strategy, as described in an exhibit to the RP Agreement, called for both RP and BDI to invest \$50,000 towards currency trading and share profits and losses equally.

15. On or about August 31, 2011, RP wired \$50,000 into a BD Fund account held at Wells Fargo Advisors LLC ("WFA"), and controlled by Lattanzio.

18. On or about October 6, 2011, the BD Fund and BDI through Lattanzio, directed a wire transfer of \$49,975 of RP's money from the BD Fund account at WFA to Bank of America for the benefit of a Forex Capital Markets account in the name of Black Diamond Capital.

19. Neither Lattanzio, nor BDI, nor the BD Fund wired any other funds to this account, despite the provisions of the RP Agreement requiring BDI to also invest \$50,000 towards currency trading with RP.

20. On or about November 29, 2012, a wire transfer of \$44,397.80 originated from Bank of America on behalf of a Forex Capital Markets account in the name of "Black Diamond Capital Appreciation Fund LP" to the BD Fund account at WFA.

**B. Respondents' Offer and Sale of BD Fund Interests**

**i. Respondent's Offer and Sale of BD Fund Interests to Obtain a Credit Facility for Company A in Exchange for a \$2,000,000 Investment in the BD Fund**

21. Company A, headquartered in New York, New York, is a company that acquires and manages distressed oil and gas assets ("Company A"). In 2013, Company A sought potential

sources of financing for its business.

22. In or around October 2013, Company A was introduced by a third-party to Montesanti and International Lending Services.

23. In or around October 2013, Montesanti introduced Company A to Lattanzio and the Black Diamond Entities. Over the course of a number of conversations, Montesanti told Company A that Lattanzio and the Black Diamond Entities could assist Company A in securing financing for its business in the form of a \$20,000,000 credit facility from a third-party.

24. On or around October 22, 2013, Montesanti represented to Company A by email that Montesanti gets "paid by Black Diamond and the funding entity on the back side." Further, Montesanti stated that Black Diamond would be responsible for returning Company A's investment if Company A did not receive a draw from the loan in 120 days or when [Company A's] credit facility was "90% funded."

25. On October 25, 2013, Montesanti provided Company A with offering materials for the BD Fund including, but not limited to, a Private Placement Memorandum dated September 2013 ("2013 BD Fund PPM"). The 2013 BD Fund PPM disclosed, among other things, the types of investments and investment strategies the BD Fund used in order to "maximize income and capital appreciation."

26. The 2013 BD Fund PPM offered investors securities in the form of limited partnership interests in the BD Fund.

27. On October 25, 2013, Montesanti also provided Company A with a Letter of Understanding (the "Company A LOU"). The Company A LOU described the requirement that Company A deposit \$2,000,000 into the BD Fund to obtain project financing. Specifically, the Company A LOU stated that Company A's deposit into the BD Fund represented the required 10% capital contribution required for an unnamed lender to provide project financing to

Company A in the amount of \$20,000,000. The Company A LOU was signed on or around December 5, 2014 by Company A and Lattanzio on behalf of BDGP.

28. The Company A LOU further stated that the 2013 BD Fund PPM is to be amended by a "Side Letter" to state that Company A will (i) receive 5% of the performance of its investment in the BD Fund commencing thirty days after Company A has a binding commitment from a lender, and (ii) be able to withdraw its deposit without penalty if Company A has not received a binding commitment from a lender within 120 days.

29. In or around November 2013, Montesanti provided a document to Company A entitled, "Project Financing Through Black Diamond and/or a Black Diamond 'Funding Partner'" as an overview of the capital funding process. The document stated that project financing "can be provided *either* directly by Black Diamond, (BD), *or* from a Black Diamond 'Funding Partner', (BDFP)" (emphasis in original). Both scenarios required a "Capital Deposit into the Black Diamond Capital Appreciation Fund." The document further stated that if the financing was not made available to Company A by BDFP within 120 days, Company A's deposit could be withdrawn by Company A from the BD Fund immediately.

30. On or about December 2, 2013, Montesanti provided a document on International Lending Services letterhead to Company A entitled, "Broad Terms of a Proposal to Provide Funding to [Company A] For the Development of Its Existing Oil Fields and Its Expansion Program" (the "Company A Proposal"). The Company A Proposal memorialized certain terms stated above, and stated that International Lending Services, "[i]n association with its Partners, Investors and subsidiary companies, hereinafter referred to as Participants" would obtain \$20,000,000 in development capital for Company A, but that in order to do so, Company A first needed to deposit \$2,000,000, or 10% of the amount of financing sought, "in exchange for shares in the Black Diamond Capital Appreciation Fund LLP via a Private Placement

Memorandum....” Further, the Company A Proposal stated that after a 120 day due diligence period, Company A was entitled to withdraw its deposit plus any earned interest from the BD Fund if the credit funding facility was not completed.

31. On December 6, 2013, Montesanti emailed and represented to Company A that the BD Fund “holds and manages your funds,” and that “your funds are secure and available to be returned at the end of 120 days in the unlikely event that you do not receive your funding” from the named third party lender.

32. Montesanti attached to the December 6, 2013 email a document containing information about the BD Fund. The document, titled “Black Diamond Capital Appreciation Fund, L.P.” (“BD Fund Summary Sheet”), stated that the BD Fund’s “investment objective is to maximize income and capital appreciation by investing in a variety of highly-liquid fixed income instruments.” This BD Fund Summary Sheet also represented that the BD Fund had generated “historical pro forma returns” of 18.14% and had \$952,394 in “total cumulative portfolio earnings” per million dollars under management from inception, or January 2008, through March 2013.

33. On or about December 9, 2013, Montesanti, on behalf of International Lending Services, and Company A executed the BCM Proposal and agreed to its terms.

34. On or about December 9, 2013, Company A, through its CEO, executed a Subscription Agreement and Limited Partnership Agreement to purchase \$2,000,000 in limited partnership interests of the BD Fund.

35. On or about December 11, 2013, Company A met with Lattanzio and Montesanti in New York City where Lattanzio and/or Montesanti again represented that the BD Fund had an annual rate of return of 18% since 2008.

36. On or about December 20, 2013, Company A’s largest single equity holder deposited

\$2,000,000 into an account at Barclays Bank for the BD Fund's administrator in the name of the BD Fund on behalf of Company A.

37. On December 23, 2013, Lattanzio confirmed by email that he received Company A's deposit. The next day, December 24, 2013, \$1,979,600 of the money in the Barclays Bank account of the BD Fund's administrator in the name of the BD Fund was wire transferred and deposited into a BD Fund Wells Fargo Advisors LLC ("WFA") brokerage account.

38. Immediately upon receipt of Company A's deposit into the BDI Fund WFA account on December 24, 2013, Lattanzio made a series of transfers and a purchase from the BD Fund WFA account.

39. Between December 24, 2013 and August 20, 2014, at least \$1,424,740.67 was transferred to a BDI WFA account and at least \$164,185 was transferred to Lattanzio's personal WFA account from the BD Fund WFA account.

40. On December 26, 2013, Lattanzio used Company A's deposit in the BD Fund WFA account to purchase a luxury vehicle for \$124,000.

**ii. Company A Does Not Receive a Credit Facility**

41. After making its \$2,000,000 transfer to the BD Fund's administrator in December 2013, Company A made numerous attempts to obtain information about the status of the credit facility from Lattanzio and Montesanti.

42. On or about April 3, 2014, Company A emailed Montesanti and asked him for information about when the funding commitment would close. Montesanti responded the same day that, "We received the required docs from the financial institution today. We have been advised that everything that we need to close will be in the lawyers [sic] escrow in 7-10 banking days."

43. By April 25, 2014, Company A still had not received a credit facility. Instead, on that date, Montesanti emailed Company A stating that, "I have been advised that next week you will receive your firm commitment, term sheet, and proof of funds to close. The escrow expenses have been confirmed, and everyone is ready to go."

44. On September 19, 2014, Montesanti sent an email to Company A addressing a previous email Company A had sent to Lattanzio with questions and concerns about its investment. In the email to Company A, Montesanti stated that (i) Company A's investment with BD Fund is an investment in a hedge fund, (ii) BD Fund committed to return Company A's principal plus 5% interest "at the end of one year or after 90 days if [Company A] did not wish to proceed" with the financing, (iii) Company A's investment was invested in "Government Back Mortgages," and (iv) if Company A wants to redeem from the BD Fund then "we [will] honour [sic] your request, cash you out of the positions at current value, subtract any fees, and return the difference to your financial partners."

45. Company A also inquired with Lattanzio as to the performance of its investment in the BD Fund.

46. In response to one such request, Lattanzio sent a series of emails to Company A dated September 3, 2014, in which Lattanzio (i) apologized for not providing Company A with copies of a quarterly statements showing the performance of Company A's investment, (ii) agreed to provide such quarterly statements, and (iii) told Company A that he wants "to refresh [Company A's] memory that [Company A] is getting paid a 5% interest rate regardless how the funds are performing."

47. Company A also made direct requests to Lattanzio to redeem its investment in the BD Fund.

48. In an email from Lattanzio to Company A dated September 4, 2014, Lattanzio responded to Company A's request for return of its investment by stating that the funds can be sent only to the sender of funds, or Company A's largest equity holder.

49. In a series of emails exchanged on September 18 and 19, 2014 between Company A and Lattanzio, Lattanzio made several representations to Company A about the credit facility and its investment in the BD Fund. Specifically, Lattanzio stated that: (i) the earliest redemption date was the first week in January 2015, but Lattanzio would "make every effort to redeem [Company A] out earlier;" (ii) Lattanzio would provide Company A with the BD Fund's NAV or net asset value; and (iii) liquidating Company A's investment in the BD Fund would cause a very large loss for Company A "or anyone else in the fund."

50. To date, Company A still has not received a credit facility, any monthly or quarterly statement about its investment in the BD Fund, or the return of its investment from BD Fund.

**iii. Company A is the Only Investor in the BD Fund**

51. A publicly available document and a representation by Lattanzio to the Bureau both indicate that Company A was the only investor in the BD Fund.

52. On August 8, 2014, BD Fund filed a Form D with the U.S. Securities and Exchange Commission stating that \$2,000,000 in limited partnership interests had been sold. As detailed above, Company A's investment into the BD Fund was \$2,000,000.

53. Further, in a letter response to the Bureau dated March 9, 2015, BDI and BD Fund represented through their counsel that the only investor in the BD Fund was Company A.

**iv. Respondents Made Materially False and Misleading Statements and Omissions to Company A**

54. Respondents made the following materially false and/or misleading statements to investors in connection with the offer and sale of the BD Fund Interests:

- a. Net proceeds of the offering will be invested in accordance with the investment policy (2013 BD Fund PPM);
- b. The investment objective of the BD Fund is to maximize income and capital appreciation (2013 BD Fund PPM);
- c. The BD Fund will utilize several risk management methodologies to “protect capital and maximize return [sic]” (2013 BD Fund PPM);
- d. The management fee of the BD Fund is 2% per annum, or 0.167% monthly (2013 BD Fund PPM);
- e. BDGP and BDI, as General Partner and Investment Adviser, respectively, are entitled to reimbursement of expenses in connection with the organization of the BD Fund (2013 BD Fund PPM);
- f. The BD Fund achieved average annual “historical pro forma returns” of 18.14% and \$952,394 in cumulative portfolio earnings “Per One Million Dollars of Capital Under Management” from inception, or January 2008, through March 2013, with a high return of 32.32% in 2009 (BD Fund Summary);
- g. Investor funds are “secure and available to be returned at the end of 120 days in the unlikely event that you do not receive you [sic] funding” (December 6, 2014 email from Montesanti to Company A);

- h. Company A could withdraw its deposit and interest from the BD Fund if the financing was not made available to Company A as a result of the Black Diamond Entities' efforts within 120 days (emails and numerous BD Fund documents sent to Company A by Montesanti to Company A between October 2013 and December 2013);
- i. Company A was receiving a 5% interest rate on its investment in the BD Fund regardless of how the BD Fund was performing (September 3, 2014 according to email from Lattanzio to Company A);
- j. BD Fund committed to return Company A's principal plus 5% interest "at the end of one year or after 90 days if [Company A] did not wish to proceed" with the financing (September 19, 2014 email from Montesanti to Company A on September 19, 2014);
- k. Company A's investment was invested in "Government Back Mortgages" (September 19, 2014 email from Montesanti to Company A);
- l. BD Fund, Lattanzio, and Montesanti would honor the redemption request from Company A (September 19, 2014 email from Montesanti to Company A); and
- m. That there were multiple investors in the BD Fund (September 18, 2014 email from Lattanzio to Company A).

55. As detailed below, in connection with the offer and sale of the BD Fund Interests, Respondents also omitted to disclose material information to Company A, including that Company A's \$2,000,000 investment in the BD Fund would be misused for, among other things, Lattanzio's personal expenses, in the following ways:

- a. \$124,000 to purchase a luxury vehicle for the personal benefit of Lattanzio from a Land Rover dealership;

- b. \$102,185 to purchase jewelry from Tiffany & Co.;
- c. \$603,129.18 in bi-weekly paychecks to Lattanzio, and other BDI employees, including Lattanzio's girlfriend;
- d. \$469,485 to pay down Lattanzio's personal credit card debt;
- e. \$54,470 for private school tuition for Lattanzio's two children;
- f. \$113,071.46 in checks payable to Lattanzio, Montesanti, a BDI employee, and Lattanzio's girlfriend;
- g. \$11,500 to pay for loans to Montesanti and another BDI employee;
- h. \$6,000 in loan repayments to Lattanzio's girlfriend;
- i. \$4,000 payment to Lattanzio's girlfriend for "Return of Capital;"
- j. \$50,670.48 in cash withdrawals and checks payable to "Cash", some of which were cashed by Lattanzio;
- k. \$50,301.24 in check card purchases by Lattanzio;
- l. \$30,000 to pay a yacht and boat broker in Florida towards a boat purchase for Lattanzio;
- m. \$39,080.18 to pay for Lattanzio's country club;
- n. \$25,170 to an individual for rent at a home rented by Lattanzio;
- o. \$6,187 to pay Lattanzio's back taxes to the IRS, and the States of New Jersey and New York; and
- p. \$49,007.38 in wire transfers to an individual in the United Kingdom, including one for an "interest payment."

**C. Offer of BD Fund Interests and Investment Adviser Conduct**

**i. Offer to Obtain a Credit Facility for Company B in Exchange for a \$1,950,000 Investment in the BD Fund**

56. In or around June 2013 – shortly after the Company A’s investment and Respondents’ subsequent misuse of Company A’s investment funds – investor Company B (“Company B”), a company seeking potential sources of financing to develop land and construct a hotel in Georgia, was introduced by a third party to Lattanzio and the Black Diamond Entities. Company B was then introduced by Lattanzio to Montesanti and International Lending Services, who Company B understood to be agents of the Black Diamond Entities.
57. On July 23, 2014, Montesanti provided Company B with offering materials from the BD Fund including, but not limited to, a BD Fund PPM dated March 2014 (“2014 BD Fund PPM”) and Due Diligence Questionnaire (“BD Fund DDQ”).
58. On or about July 24, 2014, Montesanti provided a document on International Lending Services letterhead to Company B called the “Broad Terms of a Proposal to Provide Funding to HED III, LLC (hereinafter “Borrower”) to Construct a New 106 Room Fairfield Inn & Suites Hotel by Marriott in Dalton, Georgia” (the “Company B Proposal”). The Company B Proposal stated International Lending Services, “[i]n association with its Partners, Investors and subsidiary companies, hereinafter referred to as Participants” would obtain \$8,875,000 in financing for Company B, but that in order to do so, Company B first needed to invest \$1,950,000 in the BD Fund. The Company B Proposal stated that Company B would receive an annual “amount” – or return – of 6%. The Company B Proposal further stated that Company B could withdraw its deposit, plus any interest earned, from the BD Fund during a 90 day due diligence period if Company B did not find the funding terms acceptable.

59. On July 24, 2014, Montesanti provided Company B with a Letter of Understanding (the "Company B LOU"). The Company B LOU, between BDGP and Company B, described Company B's loan request and the requirement that Company B make an "immediate deposit" into the BD Fund. The Company B LOU further stated that it was modifying the 2014 BD Fund PPM to state that (i) Company B was entitled to withdraw all of its deposit from the BD Fund if Company B did not receive a funding commitment within 90 days and (ii) Company B would receive 6% annualized of the performance of its deposit in the BD Fund.

60. On or about July 30, 2014, BDI through Lattanzio, entered into an Investment Management Agreement with Company B ("Company B Agreement"). The Company B Agreement authorized BDI, as investment manager, to have discretionary investment authority over certain assets of Company B. Further, the Company B Agreement stated Company B's investment deposit of \$1,950,000 represented a 22% equity contribution required by an unnamed lender to consider and potentially finance \$8,850,000 for Company B's hotel construction project.

61. The Company B Agreement also made the following representations, among others:

- a. BDI would invest Company B's funds in "investment grade fixed income financial instruments" and/or "callable and non-callable Triple A rated debt obligations of the U.S. Treasury and the U.S. Agencies";
- b. Company B could redeem all or a portion of its deposit with BDI seventy (70) business days after the date of Company B's investment without being subject to any "Early Withdrawal Fee if [Company B] ha[d] not received and accepted a Project Participation Agreement from [BDI]"; and
- c. BDI would instruct financial intermediaries to pay a management fee of no more than 2% of Company B's deposit under management.

62. On August 21, 2014, Company B wired \$1,950,000 into the BD Fund account held at WFA.

63. Immediately upon receipt of Company B's funds into the BDI Fund WFA account on August 21, 2014, Lattanzio made a purchase and a series of transfers from the BD Fund WFA account.

64. On August 21, 2014, the day Company B's funds were received in the BD Fund WFA account, Lattanzio made a wire transfer from the BD Fund WFA account in the amount of \$1,048,956 to purchase a home in Montclair, New Jersey as a residence for himself and his girlfriend.

65. Between August 21, 2014 and November 3, 2014 at least \$759,379.73 was transferred to the BDI's WFA account from the BD Fund account.

**ii. Lattanzio and BDI Misrepresent Company B's Assets Under Management to Company B**

66. On or about December 12, 2014, Lattanzio, and BDI through Lattanzio, signed and sent a letter to Company B stating that as of November 30, 2014, Company B's interest in the BD Fund had received \$58,688.35 in interest and capital gains.

67. The letter to Company B from BDI further stated that as of November 30, 2014: (i) Company B's capital account was \$2,008,688.95; (ii) accrued fees would be deducted at year end; and (iii) the current value of the accruals was \$9,750.00.

68. In reality, as of November 30, 2014, the value of the BD Fund's WFA account into which Company B's assets were deposited in August 2014 was \$0.00.

69. Like with Company A, Company B never obtained a credit facility through Respondents.

**iii. Respondent's Materially False and Misleading Statements to Company B and Omissions of Material Facts**

70. Respondents made numerous false and misleading statements in connection with the offer of BD Fund Interests to Company B and the solicitation of Company B as an advisory client including, but not limited to, the following:

- a. Net proceeds of the offering will be invested in accordance with the investment policy (2014 BD Fund PPM);
- b. The investment objective of the BD Fund is to maximize income and capital appreciation (2014 BD Fund PPM);
- c. Company B could withdraw 100% of its deposit with BD Fund if Company B had not received a funding commitment for its project after ninety (90) days (Company B LOU);
- d. Company B could redeem all or a portion of its deposit with BDI seventy (70) business days after the date of Company B's investment without being subject to any "Early Withdrawal Fee if [Company B] ha[d] not received and accepted a Project Participation Agreement from [BDI]" (Company B Agreement);
- e. The BD Fund's objectives were to: (i) produce current income, (ii) generate additional upside through capital gains on assets, and (iii) maintain value under multiple economic conditions through proprietary hedging formulas (BD Fund DDQ);
- f. As of September 2013, the BD Fund had \$100,000,000 under management (BD Fund DDQ);
- g. The BD Fund had achieved historical pro forma returns ranging from 8% to 34% with an average return of 18% "during the five and a half years since the

beginning of 2008” (BD Fund DDQ);

- h. Company B’s assets would be held in accounts directed by BDI (the “Accounts”) and (i) invested in an investment grade fixed income strategy, and (ii) using a strategy of investing in “callable and non-callable Triple-A rated debt obligations of the U.S Treasury and the U.S. Agencies” (Company B Agreement);
- i. Company B’s assets would only be held in government securities or bank certificates of deposit (August 15, 2014 email from Montesanti to Company B);
- j. BDI’s management fee was 2% of Company B’s funds under management (Company B Agreement);
- k. BDI was entitled to a performance fee equal to 100% of any net increase on assets over 1.5% during each 90-day “Performance Allocation Period” (Company B Agreement);
- l. Expenses relating to the administration of the Accounts would not exceed 2% of Company B’s assets (Company B Agreement); and
- m. BDI would furnish Company B with quarterly statements reflecting the status of the Accounts (Company B Agreement).

71. As detailed below, in connection solicitation of Company B as an advisory client, Respondents also omitted to disclose material information including that to Company B that Company B’s \$1,950,000 investment with BDI in the BD Fund would be misused including, among other things, for Lattanzio’s personal expenses, in the following ways:

- a. \$1,048,956 to purchase a home in Montclair, New Jersey in the name of the Nicholas Lattanzio 2014 Family Trust in August 2014 used as a residence upon purchase by Lattanzio and Lattanzio’s girlfriend;

- b. \$190,000 to a residential construction company in Montclair, New Jersey for “renovation expenses” and a “construction deposit” for Lattanzio’s Montclair, New Jersey residence;
- c. At least \$100,000 for the purchase of windows and doors for Lattanzio’s Montclair, New Jersey residence;
- d. At least \$50,000 in purchases at an architectural window and door company for an installation at Lattanzio’s Montclair, New Jersey residence;
- e. \$37,123.47 in bi-weekly paychecks to Lattanzio, Montesanti, and other BDI employees, including Lattanzio’s girlfriend. Electronic paychecks totaling \$54,126.31 were directed to Lattanzio and deposited into his personal WFA account;
- f. \$82,800.77 to a credit card company to pay down Lattanzio’s personal credit card debt;
- g. \$422,000 in checks payable to Lattanzio and Lattanzio’s girlfriend;
- h. \$2,000 in a check payable to Lattanzio’s girlfriend for “Return of Capital;”
- i. \$19,500 to Montesanti for “consulting fees;”
- j. At least \$1,000 for loans to Montesanti;
- k. \$24,000 to a university that Montesanti’s daughter attended;
- l. At least \$85,257.20 in checks payable to “Cash,” some of which were cashed by Lattanzio and cash withdrawals;
- m. \$6,382.02 in credit card purchases by Lattanzio;
- n. \$2,010.88 to a country club where Lattanzio is a member; and
- o. \$8,123 payable to an individual for rent at a home rented by Lattanzio.

**CONCLUSIONS OF LAW**

**LATTANZIO, MONTESANTI, BLACK DIAMOND CAPITAL APPRECIATION FUND, LP, BLACK DIAMOND INVESTMENTS, LP, BLACK DIAMOND INVESTMENTS, LLC, AND BLACK DIAMOND GP, LLC EMPLOYED A DEVICE, SCHEME, OR ARTIFICE TO DEFRAUD, IN VIOLATION OF N.J.S.A. 49:3-52(a)**

72. The preceding paragraphs are incorporated by reference as though set forth verbatim herein.

73. Lattanzio, Montesanti, Black Diamond Capital Appreciation Fund, LP, Black Diamond Investments, LP, Black Diamond Investments, LLC, and Black Diamond GP, LLC employed a device, scheme, or artifice to defraud investors, in connection with the offer and/or sale of the BD Fund Interests, in violation of N.J.S.A. 49:3-52(a) by, among other things:

- i. Misusing the funds of Company A and Company B; and
- ii. Making material misrepresentations and omitting material facts to Company A and Company B.

74. Each violation of N.J.S.A. 49:3-52(a) by Lattanzio, Montesanti, Black Diamond Capital Appreciation Fund, LP, Black Diamond Investments, LP, Black Diamond Investments, LLC, and Black Diamond GP, LLC upon each investor is a separate violation of the Securities Law and is cause for the imposition of a civil monetary penalty for each separate violation pursuant to N.J.S.A. 49:3-70.1.

**LATTANZIO, MONTESANTI, BLACK DIAMOND CAPITAL APPRECIATION FUND, LP, BLACK DIAMOND INVESTMENTS, LP, BLACK DIAMOND INVESTMENTS, LLC, AND BLACK DIAMOND GP, LLC MADE UNTRUE STATEMENTS OF MATERIAL FACT OR OMITTED TO STATE MATERIAL FACTS NECESSARY IN ORDER TO MAKE THE STATEMENTS MADE IN LIGHT OF THE CIRCUMSTANCES UNDER WHICH THEY WERE MADE, NOT MISLEADING IN VIOLATION OF N.J.S.A. 49:3-52(b)**

75. The preceding paragraphs are incorporated by reference as though set forth verbatim herein.

76. Lattanzio, Montesanti, Black Diamond Capital Appreciation Fund, LP, Black Diamond Investments, LP, Black Diamond Investments, LLC, and Black Diamond GP, LLC made materially false and misleading statements and/or omitted to state material facts necessary in order to make the statements made in light of the circumstances under which they were made, not misleading to investors in connection with the offer and/or sale of BD Fund Interests to Company A and Company B, as described above.

77. Each omission of a material fact or materially false or misleading statement was in violation of N.J.S.A. 49:3-52(b).

78. Each violation of N.J.S.A. 49:3-52(b) by Lattanzio, Montesanti, Black Diamond Capital Appreciation Fund, LP, Black Diamond Investments, LP, Black Diamond Investments, LLC, and Black Diamond GP, LLC is a separate violation of the Securities Law and is cause for the imposition of a civil monetary penalty for each separate violation pursuant to N.J.S.A. 49:3-70.1.

**LATTANZIO, MONTESANTI, BLACK DIAMOND CAPITAL APPRECIATION FUND, LP, BLACK DIAMOND INVESTMENTS, LP, BLACK DIAMOND INVESTMENTS, LLC, AND BLACK DIAMOND GP, LLC ENGAGED IN AN ACT, PRACTICE, OR COURSE OF BUSINESS WHICH WOULD OPERATE AS A FRAUD OR DECEIT UPON ANY PERSON IN CONNECTION WITH THE OFFER, SALE OR PURCHASE OF SECURITIES IN VIOLATION OF N.J.S.A. 49:3-52(c)**

79. The preceding paragraphs are incorporated by reference as though set forth verbatim

**LATTANZIO, MONTESANTI, BLACK DIAMOND INVESTMENTS, LP, AND BLACK DIAMOND INVESTMENTS, LLC ENGAGED IN AN ACT, PRACTICE, OR COURSE OF BUSINESS WHICH WOULD OPERATE AS A FRAUD OR DECEIT UPON ANOTHER PERSON IN VIOLATION OF N.J.S.A. 49:3-53(a)(2)**

85. The preceding paragraphs are incorporated by reference as though set forth verbatim herein.

86. Lattanzio, Montesanti, Black Diamond Investments, LP, and Black Diamond Investments, LLC engaged in an act, practice, and course of business that operated as a fraud and/or deceit upon investors RP and Company B.

87. Each violation of N.J.S.A. 49:3-53(a)(2) by Lattanzio, Montesanti, Black Diamond Investments, LP, and Black Diamond Investments, LLC upon each investor is a separate violation of the Securities Law and is cause for the imposition of a civil monetary penalty for each separate violation pursuant to N.J.S.A. 49:3-70.1.

**LATTANZIO, MONTESANTI, BLACK DIAMOND INVESTMENTS, LP, AND BLACK DIAMOND INVESTMENTS, LLC ENGAGED IN DISHONEST OR UNETHICAL BUSINESS PRACTICES IN VIOLATION OF N.J.S.A. 49:3-53(a)(3) and N.J.A.C. 13:47A-6.3(a)(31)**

88. The preceding paragraphs are incorporated by reference as though set forth verbatim herein.

89. Pursuant to N.J.S.A. 49:3-53(a)(3): “It shall be unlawful for any person who receives, directly or indirectly, any compensation from another person for advising the other person as to the value of securities or their purchase or sale...to engage in dishonest or unethical practices as the bureau chief may by rule define...”

90. Pursuant to N.J.A.C. 13:47A-6.3(a): “‘Dishonest or unethical practices’ as used in N.J.S.A. 49:3-47 et seq., specifically in N.J.S.A. 49:3-53(a)(3)...shall include...(31.) [e]ngaging in any material misrepresentation or omission or engaging in any deceitful, deceptive or

fraudulent conduct involving any aspect of the ...investment advisory...industr[y]....”

91. Lattanzio, Montesanti, Black Diamond Investments, LP, and Black Diamond Investments, LLC engaged in dishonest or unethical business practices with respect to investors RP and Company B.

92. Each violation of N.J.S.A. 49:3-53(a)(3) by Lattanzio, Montesanti, Black Diamond Investments, LP, and Black Diamond Investments, LLC is a separate violation and is cause for the imposition of a civil monetary penalty for each separate violation of the Securities Law pursuant to N.J.S.A. 49:3-70.1.

**LATTANZIO, MONTESANTI, BLACK DIAMOND INVESTMENTS, LP, AND BLACK DIAMOND INVESTMENTS, LLC MADE UNTRUE STATEMENTS OF MATERIAL FACT OR OMITTED TO STATE MATERIAL FACTS NECESSARY IN ORDER TO MAKE THE STATEMENTS MADE IN LIGHT OF THE CIRCUMSTANCES UNDER WHICH THEY WERE MADE, NOT MISLEADING IN CONNECTION WITH THE SOLICITATION OF AN ADVISORY CLIENT IN VIOLATION OF N.J.S.A. 49:3-53(f)**

93. The preceding paragraphs are incorporated by reference as though set forth verbatim herein.

94. Lattanzio, Montesanti, Black Diamond Investments, LP, and Black Diamond Investments, LLC made materially false and misleading statements and/or omitted to state material facts necessary in order to make the statements made in light of the circumstances under which they were made, not misleading to investors RP and/or Company B in connection solicitation of advisory clients, as described above.

95. Each omission or materially false or misleading statement was in violation of N.J.S.A. 49:3-53(f).

96. Each violation of N.J.S.A. 49:3-53(f) by Lattanzio, Montesanti, Black Diamond Investments, LP, and Black Diamond Investments, LLC is a separate violation of the Securities

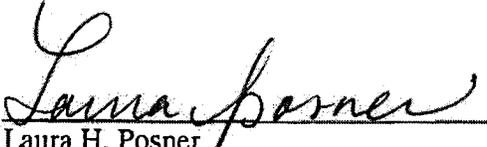
Law and is cause for the imposition of a civil monetary penalty for each separate violation pursuant to N.J.S.A. 49:3-70.1.

**THEREFORE**, it is on this 10<sup>th</sup> day of June 2015, hereby **ORDERED**,

97. That Nicholas Lattanzio, Pasquale Montesanti, Black Diamond Capital Appreciation Fund, LP, Black Diamond Investments, LP, Black Diamond Investments, LLC, and Black Diamond GP, LLC are jointly and severally assessed a civil monetary penalty in the amount of two million five-hundred thousand dollars (\$2,500,000), pursuant to N.J.S.A. 49:3-70.1, which is immediately due and payable to the "State of New Jersey, Bureau of Securities;"

98. That Nicholas Lattanzio, Pasquale Montesanti, Black Diamond Capital Appreciation Fund, LP, Black Diamond Investments, LP, Black Diamond Investments, LLC, and Black Diamond GP, LLC are **DENIED** all exemptions contained in N.J.S.A. 49:3-50 subsection (a) paragraph 9, 10, and 11 and subsection (b); and

99. That the exemptions to the registration requirements provided by N.J.S.A. 49:3-56(b), N.J.S.A. 49:3-56(c) and N.J.S.A. 49:3-56(g) are hereby **REVOKED** as to Nicholas Lattanzio, Pasquale Montesanti, Black Diamond Capital Appreciation Fund, LP, Black Diamond Investments, LP, Black Diamond Investments, LLC, and Black Diamond GP, LLC.

  
Laura H. Posner  
Chief, New Jersey Bureau of Securities

### **NOTICE OF RIGHT TO HEARING**

You are advised that upon service of notice of this Penalty Order issued by the Bureau Chief, Respondents shall have up to fifteen (15) days to respond to the Bureau in the form of a written answer and written request for a hearing. A request for a hearing must be accompanied by a written response, which addresses specifically each of the reasons set forth in the Order which formed the basis for its entry. A general denial is unacceptable. Within five (5) business days of receiving the written answer and request for a hearing, the Bureau Chief shall either transmit the matter to the Office of Administrative Law for a hearing, or schedule a hearing at the Bureau of Securities. At any hearing involving this matter, an individual respondent may appear on his/her own behalf or be represented by an attorney. If an applicant fails to respond by filing a written answer and request for a hearing with the Bureau within the fifteen (15) day prescribed period, the Order shall become a final order and remain in effect until modified or vacated.

**NOTICE OF OTHER ENFORCEMENT REMEDIES**

You are advised that the Uniform Securities Law (1997) N.J.S.A. 49:3-47 et seq., provides several enforcement remedies, which are available to be exercised by the Bureau Chief, either alone or in combination. These remedies include, in addition to this action, the right to seek and obtain injunctive and ancillary relief in a civil enforcement action, N.J.S.A. 49:3-69, and the right to seek and obtain civil penalties in an administrative or civil action, N.J.S.A. 49:3-70.1.

You are further advised that the entry of a Final Order does not preclude the Bureau Chief from seeking and obtaining other enforcement remedies against you in connection with the claims made against you in this action.