

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

In the Matter of

EDGAR R. PAGE AND
PAGEONE FINANCIAL INC.

INITIAL DECISION
June 25, 2015

APPEARANCES: Alexander Janghorbani and Eric M. Schmidt for the Division of Enforcement, Securities and Exchange Commission

Richard D. Marshall and John N. McClain, III, Ropes & Gray LLP, and Robert H. Iseman, Iseman, Cunningham, Riester & Hyde, LLP, for Respondents Edgar R. Page and PageOne Financial Inc.

BEFORE: Jason S. Patil, Administrative Law Judge

Summary

In this Initial Decision, I conclude that the appropriate remedial actions against Respondents include a five-year collateral bar against Respondent Edgar R. Page (Page), revocation of the registration of Respondent PageOne Financial Inc. (PageOne) as an investment adviser, and disgorgement of \$2,184,859.30 against Page and PageOne, with prejudgment interest, jointly and severally.

Introduction

The Securities and Exchange Commission instituted this proceeding with an Order Instituting Administrative and Cease-and-Desist Proceedings (OIP) on August 26, 2014. As authority, the OIP cited Sections 203(e), 203(f), and 203(k) of the Investment Advisers Act of 1940 and Section 9(b) of the Investment Company Act of 1940. The OIP alleged that Respondents failed to disclose a conflict of interest in violation of advisory obligations; and charged Respondents with primary violations of Advisers Act Sections 206(1), 206(2), and 207, and Page with aiding and abetting and causing PageOne's violations of Advisers Act Sections 206(1), 206(2), and 207.

On March 10, 2015, the Commission entered an Order Making Findings, Imposing Remedial Sanctions and a Cease-and-Desist Order, and Ordering Continuation of Proceedings, in which it found by consent that Respondents willfully violated Advisers Act Sections 206(1), 206(2), and 207, and that Page willfully aided and abetted and caused PageOne's violations of Advisers Act Sections 206(1), 206(2) and 207; ordered Respondents to cease and desist from committing or causing violations or any future violations of Advisers Act Sections 206(1), 206(2), and 207; censured Respondents; and ordered that the proceeding be continued before me to determine what, if any, disgorgement, prejudgment interest, civil penalties and/or other remedial action is appropriate against Respondents. *Edgar R. Page*, Advisers Act Release No. 4044, 2015 WL 1022503, at *1, *7-8 (Mar. 10, 2015) (Consent Order).

I held a hearing in this matter on that limited question of appropriate remedial action on April 20, 2015, in New York, New York. The hearing record then remained open until May 12, 2015, pending the receipt and admission of documents relevant to Respondents' alleged inability to pay.¹ *Edgar R. Page*, Admin. Proc. Rulings Release No. 2660, 2015 SEC LEXIS 1840 (May 12, 2015); Admin. Proc. Rulings Release No. 2629, 2015 SEC LEXIS 1712 (May 5, 2015).

Facts

Consistent with the terms of Respondents' Offer of Settlement with the Division, the findings made in the Consent Order were neither admitted nor denied, but are accepted and deemed true solely for the purposes of these additional proceedings to determine the appropriate remedy. *See* Respondents' Admitted² Amended Findings of Fact ¶ 3 (hereinafter "Resp. Adm. Am. FOF ¶ ___") (citing Respondents' Offer of Settlement); *see also* Consent Order, 2015 WL 1022503, at *1. I do not recite those factual contentions here, but pertinent facts are incorporated by reference below in the analysis of remedies.

Although the Commission's Consent Order endorsed the parties' settlement of liability issues and some remedies, it also permitted the parties to propound facts and present evidence relevant to the issue of what, if any, additional remedies are appropriate. Consent Order, 2015 WL 1022503, at *7. I have duly considered all such evidence, and where I have found a fact

¹ Citations to the Division's Exhibits and Respondents' Exhibits are noted as "Div. Ex. ___" and "Resp. Ex. ___," respectively. Respondents' and the Division's post-hearing briefs are noted as "Resp. Br. at ___" and "Div. Br. at ___," respectively. Respondents' and the Division's post-hearing reply briefs are noted as "Resp. Reply at ___" and "Div. Reply at ___," respectively. Citations to the transcript of the hearing are noted as "Tr. ___."

² Here, the word "Admitted" denotes the Division's expressly admitting, or not disputing, Respondents' proposed findings, *see* Div. Response to Respondents' Finding of Fact and Conclusions of Law; and my own determination that, in addition to the Division's agreement, that the evidence cited in support establishes that the proposition was at least more likely true than not.

supported by the preponderance of evidence, and relevant to any remaining remedies issues, I have noted both my finding and evidentiary support in my analysis below. *See Steadman v. SEC*, 450 U.S. 91, 100-04 (1981).

Respondents proposed a number of findings of fact based on purported investigative testimony of Sean Burke. *See* Respondents' Proposed Amended Findings of Fact ¶¶ 8-10, 12-13; Resp. Reply at 4 & n.5. Respondents had the opportunity to present Burke's testimony at the hearing, but elected not to do so. Notwithstanding Respondents' decision not to seek his testimony at the hearing, they could have moved, under Rule of Practice 235, 17 C.F.R. § 201.235, for the admission of his purported investigative testimony. Even assuming that Burke did not meet any of the criteria for unavailability, they could have nonetheless sought to use the testimony under Rule 235(a)(5).³ But, no such motion was ever made. On May 12, 2015, the record was closed, which was necessary to enable the parties' filing of post-hearing briefs and the timely issuance of an initial decision. *Edgar R. Page*, 2015 SEC LEXIS 1840. Thereafter, Respondents never moved to reopen the hearing record for the admission of Burke's testimony. Ultimately, Burke's investigative testimony is not part of the record in this case, and I have disregarded the factual propositions based on that purported testimony. However, to the extent that certain contentions are based on admitted exhibits reflecting communications involving Burke, I have duly considered such evidence.

Remedial Actions

Pursuant to the Consent Order, I have determined "what, if any, disgorgement, prejudgment interest, civil penalties and/or other remedial action is appropriate in the public interest against Respondents pursuant to Section 203 of the Advisers Act and Section 9 of the Investment Company Act." 2015 WL 1022503, at *7.

Associational Bar

Advisers Act Section 203(f) authorizes the Commission to bar Page from associating with an investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization if Page willfully violated, or aided and abetted any violation of, any provision of the Advisers Act, and was associated with an investment adviser at the time of the conduct; and such a bar is in the public interest. Similarly, Investment Company Act Section 9(b) allows the Commission to bar Page from serving or acting as an employee, officer, director, member of an advisory board, investment adviser, or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter, if Page willfully

³ That rule provides that a motion to introduce a prior sworn statement may be granted in the discretion of the presiding law judge if it would be desirable or in the interests of justice. 17 C.F.R. § 201.235(a)(5).

violated or willfully aided and abetted violations of the Advisers Act; and such a bar is in the public interest.

Page's violations were willful. He willfully violated Advisers Act Sections 206(1), 206(2), and 207, and also willfully aided and abetted and caused PageOne's violations of Advisers Act Sections 206(1), 206(2), and 207. Consent Order, 2015 WL 1022503, at *7. Page was associated with PageOne, a registered investment adviser, at the time of the conduct. *Id.* at *1. Page also controlled PageOne and was its Chairman, Chief Executive Officer, Chief Operating Officer, Lead Portfolio Manager, and Chairman of its Investment Committee. Consent Order, 2015 WL 1022503, *2, *4; *see SEC v. Berger*, 244 F. Supp. 2d 180, 193 (S.D.N.Y. 2001) ("Because [defendant] effectively controlled [the investment advisory firm] and its decisionmaking, [defendant] is also properly labeled an investment adviser within the meaning of the Advisers Act."); *John J. Kenny*, Securities Act of 1933 Release No. 8234, 2003 SEC LEXIS 1170, at *63 n.54 (May 14, 2003) ("An associated person may be charged as a primary violator under Section 206 where the activities of the associated person cause him or her to meet the broad definition of 'investment adviser.' . . . [C]ourts have found that an associated person is liable under Section 206 where the investment adviser is an alter ego of . . . or is controlled by the associated person."), *aff'd* 87 Fed. App'x 608 (8th Cir. 2004).

In determining whether a bar is in the public interest, the following six factors outlined in *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), must be considered: (1) the egregiousness of the respondent's actions; (2) the isolated or recurrent nature of the infraction; (3) the degree of scienter involved; (4) the sincerity of assurances against future violations; (5) the respondent's recognition of the wrongful nature of their conduct; and (6) the likelihood that the respondent's occupation will present opportunities for future violations. *See Brendan E. Murray*, Advisers Act Release No. 2809, 2008 SEC LEXIS 2924, at *34-35 (Nov. 21, 2008).

Egregiousness

I find that Page's violative conduct was, to some degree, egregious. Notwithstanding Page's fiduciary duty to disclose all conflicts of interest, *see SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 191-92, 194, 201 (1963), Page advised his clients to invest between \$13 and \$15 million in three private investment funds (the Private Funds), Consent Order, 2015 WL 1022503, at *1-2, without telling his clients that: (1) the Private Funds' manager (the Fund Manager) was in the process of acquiring at least forty-nine percent of PageOne, Consent Order, 2015 WL 1022503, at *1; Div. Ex. 183 (Stipulation of Facts) at 2, 6; (2) the acquisition would not close until Page convinced his clients to invest approximately \$20 million in the Private Funds, Consent Order, 2015 WL 1022503, at *3, *6; (3) the Fund Manager lacked sufficient funds to pay Page without his clients' investments, *id.* at *3; (4) Page at least once requested that client funds invested in the Private Funds be used as an acquisition payment, *id.*; and (5) from roughly early 2009 through September 2011, the Fund Manager paid Page—directly or indirectly—\$2.7 million, Consent Order, 2015 WL 1022503, at *3; Div. Ex. 183 at 7, Ex. B.

Page did not tell his clients he was working on a sale of PageOne to the Fund Manager because, in his view, it was “too dangerous.” Consent Order, 2015 WL 1022503, at *4. He believed “[i]t would cause thousands of clients to get extremely nervous if I was selling my firm.” *Id.* Page told PageOne’s Assistant Compliance Officer that he did not want to disclose the true nature of his relationship with the Fund Manager. *Id.* at *5.

Page recommended investments with a high degree of risk, and Page’s clients ran the risk of substantial losses. Tr. at 71-72; Div. Ex. 1 at cover page; Div. Ex. 2 at cover page. That the investments were risky is supported by the experience of the Private Funds. Roughly twenty percent of his clients’ collective funds—\$3 million—went into one of the Private Funds, which collapsed. *See* Div. Ex. 182 at attached letter; Div. Ex. 183 at 48, Ex. A. Another one of the Private Funds—in which the vast majority of Respondents’ clients invested—returned to investors the dividends described in the underlying private placement memorandum and returned ten percent of principal invested to investors. *See* Resp. Adm. Am. FOF ¶ 52 (citing Tr. 174; Resp. Ex. 207 at 16). Unfortunately, on January 20, 2015, investors in that fund were informed that the fund had invested over \$6.8 million in the now-bankrupt Plattsburgh Suites, LLC. Div. Ex. 186. The ramifications of this loss are not yet clear.

While Respondents are correct that the poor performance of the Private Funds is not at least exclusively their fault, it is certainly their fault that their clients were recruited to invest in the Private Funds under false pretenses and without upfront disclosure of a significant conflict of interest. *See* Resp. Br. at 11. Further, Page acknowledged that making a full and complete disclosure of the conflict of interest—including that he was working on selling at least some of PageOne while routing funds to the buyer—would have made clients “extremely nervous” and would be “too dangerous”—presumably because the clients would no longer want to do business with Respondents. Consent Order, 2015 WL 1022503, at *4.

Because Page’s clients were recruited into the Private Funds, Respondents must not now be allowed to argue that it is not their fault their clients invested in those funds. For the reasons set forth above, I find that Respondents’ conduct was sufficiently egregious to support some form of an associational bar.

Frequency

Page’s Advisers Act violations relate to failures to disclose, done recklessly, over a two-and-a-half year period. First, from March through July 2009, during which his clients invested over \$4 million in the Private Funds, Respondents had not yet made any disclosures about their relationship with the Fund Manager. Consent Order, 2015 WL 1022503, at *4; Div. Ex. 179. Second, from July 31, 2009, through September 13, 2010, the PageOne Form ADV on file said that the Fund Manager may pay PageOne “on an annual basis, a referral fee of between 7.0 percent and 0.75 percent of the amount invested by the client.” *Id.* at *4-5. This disclosure was false as the payments from the Fund Manager were not “referral fees,” but rather down payments

on the acquisition of at least forty-nine percent of PageOne. Consent Order, 2015 WL 1022503, at *4; Tr. 107.

Third, on September 14, 2010, the PageOne Form ADV was again amended, eliminating the “between 7.0 percent and 0.75 percent” referral fee language. Consent Order, 2015 WL 1022503, at *5. Instead, that PageOne Form ADV stated that Page was paid by the Fund Manager for “consulting services” provided to the Fund Manager. *Id.* Page knew or recklessly disregarded that the disclosure statement was inaccurate and misleading. Consent Order, 2015 WL 1022503, at *6; Tr. 107; Div. Ex. 166 at 82-83. Page knew he was never a consultant of the Fund Manager. Consent Order, 2015 WL 1022503, at *6; Tr. at 107; Div. Ex. 166 at 82. Page nonetheless authorized this disclosure’s inclusion in the Form ADV and provided it to clients. Consent Order, 2015 WL 1022503, at *6; Tr. at 63.

Fourth, on March 1, 2011, the PageOne Form ADV was amended again with all references to the Fund Manager and the Private Funds removed. Consent Order, 2015 WL 1022503, at *6; Div. Ex. 61; Div. Ex. 183 at 10. However, the conflicts created by the Fund Manager’s acquisition had not ceased, because between March 1, 2011, and September 29, 2011, PageOne clients invested about \$1.9 million in the Private Funds, while the Fund Manager made installment payments to Page of approximately \$700,000, equivalent to more than thirty-five percent of PageOne clients’ investments in the Private Funds during that time. Consent Order, 2015 WL 1022503, at *6; Div. Ex. 179; Div. Ex. 183 at Exs. A-B. In addition, the March 1, 2011, Form ADV informed Respondents’ clients of “the existence of all material conflicts of interest, including the potential for our firm and our employees to earn compensation from advisory clients in addition to our firm’s advisory fees.” Div. Ex. 61 at Item 10. Page, as PageOne’s Chief Compliance Officer, was responsible for the Form ADV disclosure, and changes in disclosures were dependent on his approval; he was, thus, either aware—or exceedingly reckless in being unaware—that the Form ADV failed to accurately disclose the truth about Page’s relationships with the Fund Manager. Consent Order, 2015 WL 1022503, at *2, *6; Tr. at 56, 60-61, 172-73.

I conclude that Page’s pronounced recklessness, extending over a period of two and half years and pertaining to four PageOne Forms ADV, supports the imposition of an associational bar of some kind against Page. *See Warwick Capital Mgmt., Inc.*, Advisers Act Release No. 2694, 2008 WL 149127, at *10-11 (Jan. 16, 2008) (associational bar imposed in connection with failures of disclosure in Forms ADV).

Scienter

Respondents consented to findings that they violated Advisers Act Section 206(1), which requires a showing of scienter, meaning at least “extreme recklessness.” Consent Order, 2015 WL 1022503, at *7; *SEC v. Steadman*, 967 F.2d 636, 641 & n.3 (D.C. Cir. 1992). Such recklessness involves “conduct which is ‘highly unreasonable’ and which represents ‘an extreme

departure from the standards of ordinary care.” *Rolf v. Blyth, Eastman Dillon & Co.*, 570 F.2d 38, 47 (2d Cir. 1978) (quoting *Sanders v. John Nuveen & Co.*, 554 F.2d 790, 793 (7th Cir. 1977)), *amended*, No. 77-7104, 1978 WL 4098 (2d Cir. May 22, 1978). Page also consented to a finding that he “aided and abetted and caused” PageOne’s violations, which establishes Page’s scienter. Consent Order, 2015 WL 1022503, at *7; *see, e.g., SEC v. Howard*, 376 F.3d 1136 (D.C. Cir. 2004) (“scienter requirement for aiding and abetting liability”).

Although the Division maintains that the mental state underlying Page’s violative conduct should be deemed intentionally fraudulent, I disagree. *See, e.g.*, Div. Reply at 5-6. The Consent Order reflects that Respondents agreed that they acted with scienter by committing the violations *either* knowingly *or* recklessly. Consent Order, 2015 WL 1022503, at *1-6. Because the parties’ settlement resulted in a Consent Order that specifies either knowing or reckless wrongdoing, Respondents can appropriately argue their conduct falls into the latter type of wrongdoing, *see, e.g.*, Resp. Br. at 4; and I find Respondents’ violations to be animated by Page’s heightened recklessness.

If Respondents had sought to intentionally defraud their clients through fraudulent disclosures, or failures to disclose, it seems extremely unlikely that they would have retained National Regulatory Services (NRS), a clearly legitimate, national firm providing compliance services to financial firms for the particular purpose of drafting or advising on the drafting of amended Forms ADV, and equally unlikely that they would disclose to NRS the arrangement with the Fund Manager. *See* Div. Exs. 11, 12; Resp. Exs. 94, 101, 102, 115, 155. If Page had intended to commit a fraud, he either would have not hired a legitimate compliance firm to draft the Forms ADV, or he would have hidden key facts from them. Neither was the case here. Although the absence of Burke’s investigative testimony prevents Respondents from establishing greater mitigating facts as to scienter, the documentary evidence nonetheless reflects at least some effort to engage specialized compliance services for preparation of the Forms ADV.

Page entrusted Burke with handling at least some compliance responsibilities.⁴ Tr. 168-69, 171-72. On July 15, 2009, NRS sent Burke a proposed consulting services agreement, which PageOne executed, formally engaging NRS to draft the amended Form ADV. *See* Resp. Adm. Am. FOF ¶ 19 (citing Resp. Exs. 94, 96). On July 17, 2009, Burke sent a private placement memorandum for one of the Private Funds to Michael Xifaras, an NRS employee who provided services to investment advisers.⁵ *See* Resp. Adm. Am. FOF ¶¶ 20, 23 (citing Resp. Exs. 101, 102, 103). On July 24, 2009, Xifaras emailed Burke, indicating that he was in the process of

⁴ Although the Division correctly maintains that Page was ultimately responsible for the final approval and issuance of PageOne’s Forms ADV, as a practical matter, Page trusted Burke to develop, review, and finalize disclosure language. Tr. 57-58, 62-65, 168-69, 171-72, 191.

⁵ Although Xifaras is an attorney, he was not retained as an attorney by PageOne. Tr. 168; Div. Ex. 11.

drafting the amended Form ADV and requesting detailed information regarding PageOne's existing Form ADV disclosures. *See* Resp. Adm. Am. FOF ¶ 24 (citing Resp. Ex. 101). Based upon information supplied by Burke, NRS drafted a proposed amended Form ADV and sent a copy to Burke for review. *See* Resp. Adm. Am. FOF ¶ 25 (citing Resp. Ex. 106). The PageOne Form ADV was again revised in April 2010 and June 2010, but no changes were made to the disclosures regarding the Private Funds. *See* Resp. Adm. Am. FOF ¶ 39 (citing Resp. Exs. 159, 160).

On September 14, 2010, Burke requested Xifaras's advice on a contemplated Form ADV amendment, saying "[w]e will now be charging 1% annually going forward to new clients . . . I also need to list that Ed page will be compensated as a consultant to the United Group. Was not sure how to word it. Can you help me with this?" *See* Resp. Adm. Am. FOF ¶ 42 (citing Resp. Ex. 97). On September 19, 2010, Xifaras responded with specific Form ADV language related to the Private Funds and Page's role as a "consultant" to United. *See* Respondents' Proposed Amended Findings of Fact ¶ 43 (citing Resp. Ex. 97). For this particular iteration of the Form ADV, Burke did not provide NRS with adequate information with which to draft an accurate disclosure because Page was in fact not a consultant to the Fund Manager. Although this amended Form ADV deleted the seven percent annual referral fee disclosure, it continued to state in the "Additional Compensation" section that "PageOne Financial will act as a solicitor for certain private investment funds, and for doing so will receive a referral fee." *See* Resp. Adm. Am. FOF ¶ 45 (citing Resp. Ex. 34).

On March 1, 2011, PageOne amended its Form ADV to remove all references to the Fund Manager and the Private Funds. *See* Resp. Adm. Am. FOF ¶ 46 (citing Resp. Ex. 28). The Investment Management Agreement distributed to clients after the amendment continued to state "Edgar R. Page, Chairman and Chief Financial Officer of PageOne Financial, is also employed as a consultant to The United Group of Companies, Inc. ('UGOC') [the Fund Manager]. UGOC is a real estate investment and development firm. Mr. Page is compensated for the consulting services he provides to UGOC." Resp. Adm. Am. FOF ¶ 47 (citing Resp. Ex. 199). Respondents ceased negotiating with the Fund Manager and recommending investments in the Private Funds in advance of any enforcement action by the Division." *See* Resp. Adm. Am. FOF ¶ 48 (citing Consent Order, 2015 WL 1022503, at *2-3; Div. Ex. 166 at 132-34).

In sum, Respondents' disclosure infractions were not the result of intent to harm clients or ignore regulatory responsibilities, but in large part due to Page's reckless inattention to corporate compliance functions for which he held ultimate responsibility. Tr. at 172-91. I credit, as a mitigating fact in understanding Page's mental state, the fact that PageOne engaged NRS, and that Page relied heavily upon NRS and Burke in attempting to fashion sufficient Form ADV disclosures. *See Edgar R. Page*, Admin. Proc. Rulings Release No. 2213, 2015 SEC LEXIS 130 (Jan. 13, 2015). Regardless, with respect to each disclosure infraction in the Forms ADV, the deficiencies were Page's reckless failure.

Assurances against future violations

Page has pledged that he will not engage in future violative conduct, and judging from his demeanor, I believe his intentions to be sincere and credible. Tr. 190-91. Further, there is no evidence that Respondents have engaged in any violative conduct in the past four years, which bolsters Page's assurances.

Recognition of Wrongdoing

As an initial matter, Respondents deserve credit for agreeing to settle as to liability. Respondents have already been censured and ordered to cease and desist from committing future violations of the Advisers Act, and they consented to findings regarding the wrongful nature of their conduct for purposes of addressing remedial actions. Consent Order, 2015 WL 1022503, at *1, *7-8.

At the hearing, I was impressed by Page's sincerity in accepting responsibility and expressing remorse for his actions. Tr. 172-91. He stated on the record, "I accept full responsibility as a chief compliance officer for not having had a greater hand in this and understanding it greater, and, yes, I take full responsibility for not having had whatever language I should have had in here better." Tr. at 172. Page also proffered that he "accepts full responsibility for the disclosure violations alleged in the OIP." Respondents' Proposed Amended Findings of Fact ¶ 50. While the Division disputes this, *see* Div. Response to Respondents' Finding of Fact and Conclusions of Law, I view Page's proffer, made through counsel, as reflecting a sincere, recent, and clear recognition of responsibility.

The Division's suggestions that Page's testimony at the hearing, which provided color to the events described in the Consent Order, reflect Page's lack of appreciation of wrongdoing are unconvincing. *See, e.g.*, Div. Br. at 12 (accusing Page of shifting blame to Burke and NRS). I would hope that Page, on the witness stand, were to answer questions truthfully and completely, rather than to tactically craft answers to fit within the narrow bounds of the Commission's Consent Order. Respondents have made clear that they consent to the Consent Order's factual findings for the purposes of determining remedies, Consent Order, 2015 WL 1022503, at *1, *7; however, the Consent Order reflects that Respondents neither admit nor deny all allegations:

Respondents have submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and *without admitting or denying the findings herein, except as to the Commission's jurisdiction over them and the subject matter of these proceedings, which are admitted*, Respondents consent to the entry of this Order.

Id. at *1 (emphasis added); *see also* Tr. 44-46. Thus, Respondents acknowledge both that the Consent Order’s findings as to liability are conclusive in determining remedies and that they neither admit nor deny all factual findings. Tr. at 44-46. Assuming, *arguendo*, as the Division suggests, that the neither admit nor deny language should have no effect in this proceeding, I will not fault Page, a non-attorney with some college education, for his understanding of the plain language of the Consent Order and hold it against him. Div. Ex. 115; Div. Ex. 166 at 7-8. I can only expect a layperson to do his best to appreciate the legal significance of terms, on which—as this proceeding highlights—the attorneys who themselves negotiated the settlement agreement cannot agree. *Compare* Div. Br. at 16-17 & Proposed Findings of Fact and Conclusions of Law at 65-66, *with* Resp. Reply at 10-12.

Opportunities for future violations

Page is an investment adviser, an occupation which provides an opportunity to commit future violations. *See Berger*, 244 F. Supp. 2d at 193; *Francis V. Lorenzo*, Securities Act Release No. 9762, 2015 WL 1927763, at *14 (Apr. 29, 2015) (“As we have repeatedly observed, the securities industry presents continual opportunities for dishonesty and abuse, and depends heavily on the integrity of its participants and on investors’ confidence.” (citation and quotation marks omitted)). This factor thus supports imposing some form of associational bar on Page.

Conclusion Regarding Associational Bar

In considering all of the above factors, I conclude that a five-year associational bar is warranted. This period from which Page will be barred from the industry is twice as long as the two and a half years during which he committed reckless violations.⁶ Although Page’s conduct was somewhat egregious and prolonged, there are significant factors weighing against a lengthier bar, including his regrettable reliance on compliance professionals and his recognition of wrongful conduct. In addition, the remedies already ordered by the Commission, and ordered through this Initial Decision, work in tandem with this remedial bar to redress and deter other violative conduct. Finally, given Page’s age of sixty-three and health struggles, a five-year bar may mean that he will never return to work in the field in which he has spent his entire professional career. Resp. Adm. Am. FOF ¶ 4 (citing Tr. at 190); Resp. Ex. 217. This bar will deprive him of his current income stream, likely permanently. Its severity is both necessary and sufficient to serve the public interest.

⁶ Some of Page’s misconduct predated the July 21, 2010, enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act. Nonetheless, collateral bars premised upon pre-Dodd-Frank conduct are not impermissibly retroactive. *Anthony Fields, CPA*, Securities Act Release No. 9727, 2015 WL 728005, at *23 & n.148 (Feb. 20, 2015) (citing *Johnny Clifton*, Securities Act Release No. 9417, 2013 WL 3487076, at *13 (July 12, 2013)); *John W. Lawton*, Advisers Act Release No. 3513, 2012 WL 6208750, at *10 (Dec. 13, 2012).

PageOne's Registration

Advisers Act Section 203(e) authorizes the Commission to revoke an investment adviser's registration where (1) an investment adviser or person associated with an investment adviser has willfully made or caused to be made in any application for registration or report required to be filed with the Commission any statement that was materially false or misleading; and (2) revocation is in the public interest. *See Anthony Fields, CPA*, Securities Act Release No. 9727, 2015 WL 728005, at *23 (Feb. 20, 2015).

PageOne's Forms ADV are reports that were required to be filed with the Commission within the meaning of Advisers Act Section 203(e). *Id.* Page aided and abetted and caused PageOne's materially false or misleading disclosures in Forms ADV. Consent Order, 2015 WL 1022503, at *7. For the same reasons that the public interest supports a bar against Page, the public interest also supports revocation of PageOne's registration as an investment adviser.

Disgorgement and Civil Penalties

Advisers Act Section 203(k)(5) authorizes disgorgement, including reasonable interest, in cease-and-desist proceedings. Disgorgement of ill-gotten gains "is an equitable remedy designed to deprive a wrongdoer of his unjust enrichment and to deter others from violating the securities laws." *Montford & Co.*, Advisers Act Release No. 3829, 2014 SEC LEXIS 1529, at *94 (May 2, 2014) (quoting *SEC v. First City Fin. Corp.*, 890 F.2d 1215, 1230 (D.C. Cir. 1989)). "When calculating disgorgement, 'separating legal from illegal profits exactly may at times be a near-impossible task.'" *Id.* (quoting *First City*, 890 F.2d at 1231; *see SEC v. Whittemore*, 659 F.3d 1, 7 (D.C. Cir. 2011)). "As a result, disgorgement 'need only be a reasonable approximation of profits causally connected to the violation.'" *Montford & Co.*, 2014 SEC LEXIS 1529, at *94 (quoting *SEC v. Patel*, 61 F.3d 137, 139 (2d Cir. 1995)). "Once the Division shows that the disgorgement is a reasonable approximation, the burden shifts to the respondent to show that the amount of disgorgement is not a reasonable approximation." *Id.* (citing *SEC v. Happ*, 392 F.3d 12, 32 (1st Cir. 2004)). "The risk of uncertainty in calculating disgorgement should fall on the wrongdoer whose illegal conduct created that uncertainty." *Id.* (quoting *Happ*, 392 F.3d at 31); *accord SEC v. Platforms Wireless Int'l Corp.*, 617 F.3d 1072, 1096 (9th Cir. 2010).

In proceedings under Advisers Act Section 203(f), such as this, civil penalties are warranted only if the violations of the securities laws are willful and imposing penalties would be in the public interest. *John P. Flannery*, Securities Act Release No. 9689, 2014 WL 7145625, at *40 (Dec. 15, 2014) (citing 15 U.S.C. § 80b-3(i)(1)(A)). These factors are relevant to the public interest determination: (1) fraud; (2) harm to others; (3) unjust enrichment; (4) previous violations; (5) deterrence; and (6) such other matters as justice may require. 15 U.S.C. § 80b-3(i)(3); *John P. Flannery*, 2014 WL 7145625, at *40. In proceedings under Advisers Act Section 203(k), as is this one also, a violation of the Advisers Act alone is enough to substantiate the imposition of civil penalties. 15 U.S.C. § 80b-3(i)(1)(B).

Inability to Pay

Respondents maintain that they are in a precarious financial condition and are unable to pay significant disgorgement or penalties. *See* Resp. Br. at 19-21. A respondent's net worth and corresponding ability to pay may be relevant factors when determining civil penalties under the Advisers Act. *See* 15 U.S.C. 80b-3(i)(4) ("In any proceeding in which the Commission may impose a penalty under this section, a respondent may present evidence of the respondent's ability to pay such penalty. The Commission may, in its discretion, consider such evidence in determining whether such penalty is in the public interest."); 17 C.F.R. § 201.630. Ability to pay, however, is just one factor among many, considering it is discretionary, and it can be disregarded when the wrongful conduct is sufficiently egregious. *See* 15 U.S.C. 80b-3(i)(4); *Robert L. Burns*, Advisers Act Release No. 3260, 2011 WL 3407859, at *11 (Aug. 5, 2011).

While ability to pay may be considered also in determining disgorgement, *see* 17 C.F.R. § 201.630, it should be less relevant to disgorgement compared to civil penalties, because disgorgement is designed to reverse unjust enrichment, and giving ability to pay significant weight in the disgorgement context would create a perverse incentive for securities law violators to spend ill-gotten gains quickly and without restraint. *See SEC v. First Jersey Sec. 's Litig.*, 101 F.3d 1450, 1474 (2d Cir. 1996) ("The effective enforcement of the federal securities laws requires that the SEC be able to make violations unprofitable. The deterrent effect of an SEC enforcement action would be greatly undermined if securities law violators were not required to disgorge illicit profits." (citations omitted)).

The record reflects that Page has total liabilities outweighing his total assets, owes PageOne a large sum, and has expenses exceeding his current income. Resp. Exs. 214, 215, 216(a)-(i). When one considers the net worth of Page and PageOne in conjunction, liabilities essentially cancel assets. Resp. Exs. 214, 215, 216(a)-(i). Once Page is barred from the securities industry, given his ongoing expenses and liabilities, in the absence of finding different, well-paying work, he will be swallowed by debts. Page has already spent essentially all of the about \$2.7 million that he had received in earnest money deposits from United. Tr. 194-97; *see* Resp. Exs. 214, 215, 216(a)-(i).

I remain unpersuaded by the Division's objection to Respondents' maintaining inability to pay, on the grounds that the evidence Respondents have offered to prove inability do not meet the standards set forth in Rule 630(b), 17 C.F.R. § 201.630(b), which provides, "[t]he financial statement shall show the respondent's assets, liabilities, income or other funds received and expenses or other payments, *from the date of the first violation alleged against that respondent*" (emphasis added). *See* Div. Br. at 23. Because Respondents initially did not provide sufficiently inclusive financial information, I kept the record open post-hearing, required Respondents to produce additional financial records to avoid prejudice against the Division, and issued a number of subpoenas that assisted Respondents in complying with the language of Rule 630. Tr. 199-08; *see Edgar R. Page*, 2015 SEC LEXIS 1840; Resp. Ex. 216(a)-(i). The Division never objected

that this production was incomplete; and further waived the opportunity I offered them to question Page concerning those additional documents. *Edgar R. Page*, 2015 SEC LEXIS 1840. I find that the voluminous materials produced are sufficient to establish Respondents' inability to pay. *See* 17 C.F.R. § 201.630(b) ("Any respondent who asserts an inability to pay disgorgement, interest or penalties *may* be required to file a sworn financial disclosure statement and to keep the statement current." (emphasis added)); Resp. Exs. 214, 215, 216(a)-(i).

On the other hand, the voluminous materials also reflect that Page has a longstanding penchant for unwise or extravagant spending, making it wholly unsurprising that he long ago spent all the money he received from the Fund Manager. Page reports shockingly high monthly expenditures in 2014 including high non-mortgage household expenses. Resp. Ex. 214. In summer 2014, Page spent over \$100,000 on a new car and transferred about \$20,000 to his daughter so she could fix up a house. *Id.* In 2011, Page gave a daughter around \$40,000 for "Loan to purchase plane." Resp. Ex. 216(a). He also gifted well over \$100,000 in 2010 to friends and church. Resp. Exs. 216(a), 216(c).

I am convinced by the Division's argument that I should not consider Page's inability to pay as to disgorgement. *See* Div. Br. at 22. However, I will consider Respondents' inability to pay with respect to the issue of civil penalties.

Disgorgement

The Division seeks disgorgement, on a joint and several basis, of the \$2,751,345 the Fund Manager paid Respondents. *See* Div. Br. at 22; Resp. Br. at 20; Consent Order, 2015 WL 1022503, at *7 ("In April 2013, the Fund Manager wrote to E. Page seeking repayment of the promissory notes of \$2,751,345 in principal and \$933,486.32 in interest on the grounds that the acquisition had not closed."). I am not persuaded by Respondents' argument that payments from the Fund Manager should not be subject to disgorgement because "Respondents have not been enriched at all" and "Page received . . . loans with commercially reasonable terms for which [the Fund Manager] is now demanding repayment in full." Resp. Br. at 12. Disgorgement of the funds Respondents received is justified here because Respondents fraudulently failed to disclose the truth about Page's relationship with the Fund Manager. Whatever legal disputes might remain between Respondents and the Fund Manager, or a related party, they do not negate that Respondents were unjustly enriched. Furthermore, Page never transferred any equity in PageOne to the Fund Manager nor made payments to the Fund Manager on any of the promissory notes. Tr. at 141; Resp. Br. at 20.

I disagree with the Division that the full amount Respondents received from the Fund Manager is a reasonable approximation of profits causally connected to the violation. *See Montford & Co.*, 2014 SEC LEXIS 1529, at *94; Div. Br. at 19. First, from July 31, 2009, through September 13, 2010, Respondents' clients were aware that Respondents would receive up to seven percent of funds invested in the Fund Manager. Consent Order, 2015 WL 1022503,

at *2, *4-5. Notwithstanding the problems with that disclosure, because disgorgement is an equitable form of relief and clients were informed Respondents could receive seven percent of the investments in the Fund Manager during that period, it is appropriate to adjust the sum Page received from the Fund Manager by seven percent of the client investments (totaling \$7,999,400) during that period. Div. Ex. 179; Div. Ex. 183 at Ex. A. Likewise, the Division's proposed disgorgement should be discounted by \$559,958 ($7,999,400 * .07 = 559,958$).

Second, from September 14, 2010, to March 1, 2011, Respondents' clients knew that Respondents would receive a one percent annual management fee on money invested in the Private Funds, so the amount of disgorgement should be adjusted by \$6,527.70 ($652,770 * .01 = 6,527.70$). Consent Order, 2015 WL 1022503, at *5; Div. Ex. 179; Div. Ex. 183 at Ex. A.

For all other periods and payments from the Fund Manager to Page, I find no reason to adjust the Division's proposed disgorgement further. *See SEC v. Hughes Cap. Corp.*, 917 F. Supp. 1080, 1086-87 (D.N.J. 1996) (refusing to offset disgorgement liability with business expenses), *aff'd*, 124 F.3d 449 (3d Cir. 1997). *But see* Resp. Br. at 16 ("the amount to be disgorged should be reduced by a sum equal to the legitimate business expenses Respondents paid using such funds"). Based on the two adjustments described above, I find the appropriate amount of disgorgement to be \$2,184,859.30 ($2,751,345 - 559,958 - 6,527.70 = 2,184,859.30$). Prejudgment interest on this disgorgement amount, calculated from October 1, 2011, to the last day of the month preceding the month in which disgorgement is made, consistent with 17 C.F.R. § 201.600, is also due.

Respondents are jointly and severally liable for the disgorgement amount with prejudgment interest, because Page and PageOne shared a close relationship in engaging in the violative conduct, and Page is effectively the alter ego of PageOne. *See SEC v. Monterosso*, 756 F.3d 1326, 1337-38 (11th Cir. 2014); *Daniel R. Lehl*, Securities Act Release No. 8102, 2002 SEC LEXIS 1796, at *50-53 (May 17, 2002), *aff'd*, 90 F.3d 1483 (10th Cir. 1996).

Civil Penalties

Because this proceeding was brought pursuant to Advisers Act Section 203(f), in addition to Section 203(k), the public interest factors outlined in Section 203(i) should be analyzed to assess the propriety of imposition of civil penalties. *See* 15 U.S.C. 80b-3(i). A number of these factors weigh in favor of a penalty: (1) Respondents' violations involved fraud caused by recklessness; (2) Respondents' clients are likely to have substantial losses in connection with their investment in the Private Funds; (3) Respondents were unjustly enriched with over \$2 million as a result of advising their clients to invest in the Private Funds; and (4) Page was disciplined by a previous employer for transacting business in general securities without a Series 7 license. Consent Order, 2015 WL 1022503, at *2, *7; Div. Ex. 115; Div. Ex. 183 at 48, Ex. A; Div. Ex. 186.

However, on these facts, I give the most weight to the deterrence factor, which weighs against imposition of civil penalties. The interest of deterrence is sufficiently addressed by a cease-and-desist order and censure—already ordered by the Commission, *see* Consent Order, 2015 WL 1022503, at *8—and by the associational bar, discussed above. Further, while deterrence is not the purpose of disgorgement; here, because the disgorgement amount exceeds Respondents’ assets, it will have a strong deterrent effect. Finally, based on my finding that Respondents lack a meaningful ability to pay, I have determined that a civil penalty is not appropriate in this proceeding. *See* 15 U.S.C. 80b-3(i)(4).

Record Certification

Pursuant to 17 C.F.R. § 201.351(b), I certify that the record includes the items set forth in the Record Index issued by the Commission’s Office of the Secretary on June 8, 2015.

Order

It is ORDERED that, pursuant to Section 203(f) of the Investment Advisers Act of 1940, and Section 9(b) of the Investment Company Act of 1940, Respondent Edgar R. Page is BARRED from associating with an investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, for a period of five (5) years from the date that this Initial Decision becomes final.

It is FURTHER ORDERED that, pursuant to Section 203(e) of the Investment Advisers Act of 1940, the registration of Respondent PageOne Financial Inc. as an investment adviser is REVOKED.

It is FURTHER ORDERED that, pursuant to Section 203(k)(5) of the Investment Advisers Act of 1940, Respondents Edgar R. Page and PageOne Financial Inc. shall jointly and severally PAY DISGORGEMENT in the amount of \$2,184,859.30, plus prejudgment interest on that amount, calculated from October 1, 2011, to the last day of the month preceding the month in which disgorgement is made, consistent with 17 C.F.R. § 201.600.

Payment of disgorgement, prejudgment interest, and civil penalties shall be made no later than twenty-one days following the day this Initial Decision becomes final, unless the Commission directs otherwise. Payment shall be made in one of the following ways: (1) transmitted electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request; (2) direct payments from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or (3) by certified check, United States postal money order, bank cashier’s check, wire transfer, or bank money order, payable to the Securities and Exchange Commission.

Any payment by certified check, United States postal money order, bank cashier’s check, wire transfer, or bank money order shall include a cover letter identifying the Respondent and

Administrative Proceeding No. 3-16037, and shall be delivered to: Enterprises Services Center, Accounts Receivable Branch, HQ Bldg., Room 181, AMZ-341, 6500 South MacArthur Bld., Oklahoma City, Oklahoma 73169. A copy of the cover letter and instrument of payment shall be sent to the Commission's Division of Enforcement, directed to the attention of counsel of record.

This Initial Decision shall become effective in accordance with and subject to the provisions of Rule 360 of the Commission's Rules of Practice, 17 C.F.R. § 201.360. Pursuant to that Rule, a party may file a petition for review of this Initial Decision within twenty-one days after service of the Initial Decision. A party may also file a motion to correct a manifest error of fact within ten days of the Initial Decision, pursuant to Rule 111 of the Commission's Rules of Practice, 17 C.F.R. § 201.111. If a motion to correct a manifest error of fact is filed by a party, then a party shall have twenty-one days to file a petition for review from the date of the undersigned's order resolving such motion to correct manifest error of fact. The Initial Decision will not become final until the Commission enters an order of finality. The Commission will enter an order of finality unless a party files a petition for review or motion to correct manifest error of fact or the Commission determines on its own initiative to review the Initial Decision as to a party. If any of these events occur, the Initial Decision shall not become final as to that party.

Jason S. Patil
Administrative Law Judge