INITIAL DECISION RELEASE NO. 863
ADMINISTRATIVE PROCEEDING
FILE NO. 3-15974

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

In the Matter of		
	:	INITIAL DECISION AS TO
NATURAL BLUE RESOURCES, INC.,	:	JAMES E. COHEN and
JAMES E. COHEN, and	:	JOSEPH A. CORAZZI[1]
JOSEPH A. CORAZZI	:	August 18, 2015

APPEARANCES: Rua M. Kelly, Mayeti Gametchu, and Thomas J. Rappaport for the Division of Enforcement, Securities and Exchange Commission

Maranda E. Fritz and Eli B. Richlin of Thompson Hine LLP for James E. Cohen

Joseph A. Corazzi, *pro se*

BEFORE: Carol Fox Foelak, Administrative Law Judge

SUMMARY

This Initial Decision concludes that James E. Cohen (Cohen) and Joseph A. Corazzi (Corazzi) (collectively, Respondents) violated Sections 17(a)(1) and 17(a)(3) of the Securities Act of 1933 (Securities Act). The Initial Decision orders Respondents to cease and desist from further violations, imposes officer and director bars, and orders Cohen and Corazzi each to pay a civil money penalty of $75,000.

I. INTRODUCTION

A. Procedural Background

The Securities and Exchange Commission (Commission) instituted this proceeding with an Order Instituting Proceedings (OIP) on July 16, 2014, pursuant to Section 8A of the Securities Act and Sections 15(b) and 21C of the Securities Exchange Act of 1934 (Exchange Act). The

[1] The proceeding has ended as to Natural Blue Resources, Inc. *Natural Blue Res., Inc.*, Initial Decision Release No. 710, 2014 SEC LEXIS 4485 (A.L.J. Nov. 26, 2014), *finality order*, Securities Act of 1933 Release No. 9696 (Jan. 15, 2015).

undersigned held a seven-day hearing in Washington, D.C., on February 9-13 and 18-19, 2015. The Division of Enforcement (Division) called eleven witnesses from whom testimony was taken, including one expert. Cohen called two witnesses in his own case. Neither Cohen nor Corazzi was called by the Division, and neither testified in his own case.[2] Numerous exhibits were admitted into evidence.[3]

The findings and conclusions in this Initial Decision are based on the record and public official records regarding Respondents of which official notice has been taken, pursuant to 17 C.F.R. § 201.323. Preponderance of the evidence was applied as the standard of proof. *See Steadman v. SEC*, 450 U.S. 91, 96-104 (1981). Pursuant to the Administrative Procedure Act, 5 U.S.C. § 557(c), the following post-hearing pleadings were considered: (1) the Division's Post-Hearing Brief and Proposed Findings of Fact and Conclusions of Law; (2) Cohen's Post-Hearing Submission; (3) the Division's Post-Hearing Reply Brief; and (4) Cohen's Responses to the Division's Post-Hearing Brief and Proposed Findings of Fact and Conclusions of Law. Corazzi did not file his own post-hearing submission but, rather, adopted the legal and factual arguments of Cohen's filings and renewed his request for review of the denial of his motion for continuance.[4] All arguments and proposed findings and conclusions that are inconsistent with this Initial Decision were considered and rejected.

B. Allegations and Arguments of the Parties

This proceeding concerns Respondents' relationship with Natural Blue Resources, Inc. (Natural Blue). The OIP alleges that Respondents orchestrated a fraudulent scheme to control the operation and management of Natural Blue as *de facto* officers, while calling themselves outside "consultants," so as to conceal their past disciplinary histories from Natural Blue investors.

The Division of Enforcement (Division) is seeking cease-and-desist orders, disgorgement, civil monetary penalties, and officer and director bars against Respondents. Respondents argue that the charges are unproven and no sanctions should be imposed.

[2] Corazzi appeared at the hearing but did not call any witnesses, offer any exhibits, or otherwise present his own direct case.

[3] Citations to the transcript will be noted as "Tr. _." Citations to exhibits offered by the Division of Enforcement and by Cohen will be noted as "Div. Ex. __" and "Cohen. Ex. __," respectively. The Division's and Cohen's posthearing briefs are noted as "Div. Br. at __" and "Cohen Br. at __," respectively.

[4] *See Natural Blue Res., Inc.*, Admin. Proc. Rulings Release No. 2214, 2015 SEC LEXIS 143 (A.L.J. Jan. 13, 2015), *interlocutory review denied*, Securities Act Release No. 9722, 2015 SEC LEXIS 441 (Feb. 5, 2015).

II. FINDINGS OF FACT

A. Relevant Individuals and Entities

1. Natural Blue Resources, Inc.

Natural Blue was a publicly traded Delaware corporation created in July 2009 through the reverse merger[5] of Natural Blue Resources, Inc., a privately held Nevada corporation (Natural Blue Nevada) into Datameg Corporation (Datameg), a publicly traded Delaware corporation. Div. Ex. 300 ¶ 1. Natural Blue's purported mission was to create, acquire, or otherwise invest in environmentally friendly companies. *Id.* An early initiative undertaken by Natural Blue was to locate, purify, and sell water recovered from underground aquifers in New Mexico and elsewhere, where water resources are depleting. *Id.*

In or about March 2009, Natural Blue Nevada offered certain individuals and entities the opportunity to purchase its shares of stock at a cost of $.0001 or $.0002 per share. *Id.* ¶ 2. On or about April 14, 2009, Natural Blue Nevada commenced the offer and sale of additional shares through a private placement. *Id.* ¶ 3. In connection with the merger between Natural Blue Nevada and Datameg, holders of the initial shares of stock were able to exchange them, at the same ratio, for Natural Blue's publicly traded shares. *Id.* ¶ 4.

Beginning on July 24, 2009, Natural Blue's common stock traded under the symbol "NTUR" on the Over-the-Counter Bulletin Board (OTCBB). *Id.* ¶ 5. After it was removed from the OTCBB, its stock was quoted on OTC Link (formerly Pink Sheets). *Id.*

2. James E. Cohen

Cohen, of Windermere, Florida, held the title of "consultant" to Natural Blue. Cohen Answer ¶ 2. Cohen had been a registered representative for various broker-dealers from 1979 to 1997. Div. Ex. 300 ¶ 39. His disciplinary record includes a 1984 settlement, in which the Commission's settlement order found that he violated Securities Act Section 17(a)(1)-(3) and Exchange Act Section 10(b) and Rule 10b-5 while associated with a broker-dealer in 1981 and suspended him from association with any broker or dealer for thirty days. *Richard Nager*, Exchange Act Release No. 21179, 1984 SEC LEXIS 1047 (July 27, 1984).[6] On March 30, 1999,

[5] A reverse merger is "a merger between an active, privately held company and a publicly traded entity with limited operations. The merger is effectively a way for the private company to merge with and become a public company without going through an [Initial Public Offering]." Div. Ex. 301 at 16.

[6] Official notice of this public official record of the Commission is taken pursuant to 17 C.F.R. § 323. The suspension is also reflected in Financial Industry Regulatory Authority, Inc. (FINRA), records. *See* James E. Cohen BrokerCheck Report, *available at* http://brokercheck.finra.org (last visited July 24, 2015). Official notice is taken of this record as well. *See Joseph S. Amundsen*, Exchange Act Release No. 69406, 2013 SEC LEXIS 1148, at *2 n.1 (Apr. 18, 2013), *pet. denied*, 575 F. App'x 1 (D.C. Cir. 2014).

the National Association of Securities Dealers (NASD) accepted a Letter of Acceptance, Waiver and Consent, signed by Cohen, which resulted in a $200,000 fine, censure, and bar from association with any NASD member firm in any capacity. Div. Ex. 300 ¶ 40. On April 5, 2004, Cohen was convicted, on his plea of guilty, of attempted enterprise corruption and attempted grand larceny in the first degree under New York State law; he was sentenced to one to three years of incarceration and ordered to pay $545,000 in restitution. *Id.* ¶¶ 41-43.

3. Joseph A. Corazzi

Corazzi, of Albuquerque, New Mexico, held the title of "consultant" to Natural Blue. Corazzi Answer ¶ 15. From 1990 to 1999, Corazzi was Chairman and Chief Executive Officer (CEO) of Las Vegas Entertainment Network, Inc., a public company whose securities were registered with the Commission. Div. Ex. 300 ¶ 45. On October 8, 2002, the Commission filed a complaint against Las Vegas Entertainment Network, Inc., Corazzi, and others, in the United States District Court for the Central District of California, alleging violations of Sections 10(b), 13(a), and 14(a) of the Exchange Act and Rules 10b-5, 12b-20, 13a-13, and 14a-9 thereunder. *Id.* ¶ 46. On October 25, 2002, the United States District Court for the Central District of California entered a final judgment by consent against Corazzi, permanently enjoining him from violating Sections 10(b), 13(a), and 14(a) of the Exchange Act and Rules 10b-5, 12b-20, 13a-13, and 14a-9 thereunder, imposing a civil penalty of $75,000, and barring him permanently from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act or that is required to file reports pursuant to Section 15(d) of the Exchange Act. *Id.* ¶¶ 46-47.

4. Toney Anaya

Toney Anaya (Anaya) of Santa Fe, New Mexico, held several prominent positions throughout his career, including Governor of New Mexico, New Mexico Attorney General, Chief of Staff for the New Mexico Governor, and Assistant District Attorney for the First Judicial District in New Mexico. Tr. 783-89; Div. Ex. 269. Since 1986, Anaya has primarily focused on the private practice of law. Tr. 783-85; Div. Ex. 269 at 2. Anaya assisted the President of Mexico with the passage of the North American Free Trade Agreement, and in 2009 and 2010 he oversaw the implementation of federal stimulus funding in New Mexico under then-Governor Bill Richardson. Tr. 784; Div. Ex. 269 at 2. Anaya has served on various advisory boards and Boards of Directors (Boards). Tr. 992-993, 996, 998-1001; Div. Ex. 269 at 2. From March 2009 to August 2009, Anaya was CEO and a member of the Board of Natural Blue Nevada, and from August 2009 to January 2011, he was CEO and a member of the Board of Natural Blue. Div. Ex. 300 ¶ 1.

On May 2, 2014, Anaya entered into a cooperation agreement with the Division. Div. Exs. 295, 300 ¶ 36. On July 16, 2014, the Commission accepted an offer of settlement from Anaya, finding that Anaya willfully violated Section 17(a)(2) of the Securities Act by failing to disclose Cohen and Corazzi's disciplinary histories and control over Natural Blue in its filings with the Commission. Tr. 785-86; Div. Ex. 286 at 2, 5. The Commission issued a cease-and-desist order, barred Anaya from participating in a penny stock offering for five years, and directed that additional proceedings take place to determine what, if any, civil penalties against

Anaya are in the public interest. Div. Ex. 286 at 5-6; Div. Ex. 300 ¶ 36. Those proceedings are pending. *Toney Anaya*, Admin. Proc. File No. 3-15973.

5. Paul Pelosi, Jr.

Paul Pelosi, Jr. (Pelosi), is a real estate broker and resides in San Francisco, California. Tr. 472. He is the son of Congresswoman Nancy Pelosi, current Minority Leader of the U.S. House of Representatives (House) and former Speaker of the House. Tr. 484. Pelosi received undergraduate and law degrees from Georgetown University and has worked in the securities industry since 1996. Tr. 473; Div. Ex. 269 at 6. He has served on the Boards of several publicly traded companies, was President of the City of San Francisco's Commission on the Environment, and served as an advisor to the director of the NASA Ames Research Center. Tr. 473, 522-23, 541; Div. Ex. 269 at 6. From August 24, 2009, to January 10, 2010, Pelosi served as President and Board member of Natural Blue. Tr. 474, 479; Div. Ex. 300 ¶¶ 8, 10.

6. Blue Earth Solutions, Inc.

Blue Earth Solutions, Inc. (Blue Earth), was a Nevada corporation organized in March 2006 and primarily engaged in the business of recycling polystyrene foam. Div. Ex. 300 ¶ 20. It filed periodic reports with the Commission pursuant to Section 15(d) of the Exchange Act, and its securities were quoted on the OTCBB. *Id.* During the relevant time, Cohen's wife, Patricia Cohen, was the CEO, a Board member, and largest shareholder, and Respondent Cohen's son, James Cohen, Jr. (Cohen Jr.), was the company's Vice President of Sales and a Board member. *Id.* ¶ 21.

7. JEC Corp.

JEC Corp. was a Nevada corporation organized in May 2002. Div. Ex. 300 ¶ 22. JEC Corp. was owned by Patricia Cohen, and Cohen was its President. *Id.* Cohen and Corazzi entered into consulting agreements with Natural Blue through JEC Corp. *Id.* ¶¶ 24-25.

B. Creation of Natural Blue Nevada

Cohen and Corazzi's business relationship began over ten years ago. Tr. 51-52, 797-99. Although Cohen and Corazzi lost contact for several years, they reestablished contact to found Natural Blue Nevada in 2008. Tr. 393, 797-98. They planned for Natural Blue Nevada to become public since its inception. Tr. 481; Div. Exs. 9-10. To that end, in the second half of 2008, Cohen contacted Leonard Tocci (Tocci), head of American Marketing and Sales (AMS), a plastics company, to express interest in a business transaction between AMS and Natural Blue Nevada that would allow Natural Blue Nevada to become public. Tr. 38-39, 45, 276-77, 374-75. James Murphy (Murphy), head of Datameg, AMS's parent company, subsequently called Cohen and the two discussed a potential business transaction between Datameg and Natural Blue Nevada. Tr. 40-45.

1. Cohen and Corazzi Recruit Anaya to be CEO of Natural Blue Nevada/Natural Blue

In about 2007, Corazzi, whom Anaya did not recall previously meeting, approached Anaya and represented himself as a longtime acquaintance and political supporter. Tr. 787-88, 791, 795. At Corazzi's recommendation, Anaya invested $60,000 in a high-yield investment program of which Corazzi was a principal. Tr. 788; Div. Ex. 8. Corazzi provided Anaya with a Commodity Trading Advisor Disclosure Document disclosing Corazzi's bar from serving as an officer or director of a public company, which Corazzi claimed was "of no real consequence." Tr. 788-92; Div. Ex. 8 at 5. Anaya ultimately recouped the principal of his investment, but no income from it. Tr. 792. Later, Anaya provided Corazzi with an additional $60,000 for a real estate investment, which he never recovered. Tr. 793-95.

In early 2009, Corazzi called Anaya and explained that Corazzi and Cohen had formed a private company focusing on green energy projects, Natural Blue Nevada, which would soon become public through a reverse merger with a public company, Datameg. Tr. 796-99, 806-11. Corazzi praised Cohen as "one of the best he had met in terms of being able to develop businesses." Tr. 798-99. Cohen joined the call and along with Corazzi, told Anaya that Pelosi, who was then serving on the Board of Blue Earth (of which Cohen's wife was CEO), would be involved in the management of Natural Blue. Tr. 474, 799-801, 961; Div. Ex. 300 ¶ 21. Cohen and Corazzi told Anaya they wanted him to serve as Natural Blue's CEO and Chairman of its Board. Tr. 800-01, 961. Neither Pelosi nor Anaya, who were not acquainted, had any prior experience as officers of public companies. Tr. 473, 531, 785. However, Anaya had access to aquifers and Pelosi had "relationships and experience with technology companies that knew how to clean water." Tr. 477. Corazzi explained to Anaya that this arrangement "would be a way that [Corazzi] would be able to help repay the funds that [Anaya] had lost" earlier, and that Anaya was particularly well suited to be CEO and Chairman because of his reputation. Tr. 802-04. Corazzi and Cohen offered Anaya a monthly salary of $10,000 and a percentage of shares in the company, which Anaya accepted. Tr. 803, 854. It was understood by all that Anaya's role as CEO and Chairman would be a part-time position, because Anaya could not afford to leave his law practice for the salary that would be provided by Natural Blue. Tr. 802-03.

2. Initial Operations of Natural Blue Nevada

Natural Blue Nevada filed Articles of Incorporation in the Office of the Secretary of State of Nevada on March 2, 2009. Div. Ex. 9 at 1. On March 6, 2009, the Articles of Incorporation were adopted and Anaya was formally elected CEO, Chairman of the Board, and Treasurer, and Pelosi was elected President, Chief Operating Officer (COO), and Secretary. *Id*. at 2. Anaya devoted approximately two hours a day to managing Natural Blue Nevada. Tr. 821.

C. Creation of Natural Blue through Reverse Merger

As previously noted, Cohen contacted Tocci, head of AMS, and Murphy, head of Datameg, in 2008 to express interest in a potential business transaction that would enable Natural Blue Nevada to become public. Tr. 38-39, 45, 375. In early 2009, Murphy and Cohen met at Blue Earth's office in Clermont, Florida, to discuss water extraction in New Mexico. Tr. 40-44. Corazzi participated in the meeting by phone. Tr. 42. Cohen proposed that Natural Blue Nevada

reverse merge with Datameg, which would result in Natural Blue becoming a public company, and for Blue Earth to acquire AMS. Tr. 44-45, 53-54, 56. Cohen hoped that Natural Blue would eventually acquire Blue Earth. Tr. 133. Cohen and Corazzi told Murphy that Anaya and Pelosi would be involved in Natural Blue, which was significant to Murphy because Anaya and Pelosi's reputations "lent credibility" to the plan. Tr. 46-47, 51.

On March 6, 2009, the Natural Blue Nevada Board resolved that Cohen "investigate and report alternatives to the Board for the corporation concerning funding and becoming a reporting public company." Tr. 454; Div. Ex. 9 at 2. At that time, however, Cohen was already in the drafting stages of the reverse merger term sheet with Datameg. Div. Ex. 69 at 3 (attorney's invoice to Natural Blue Nevada reflecting a March 3, 2009, entry for a "[t]elephone conference with Cohen and Murphy re revisions and further revisions . . . to term sheet"). Upon Cohen's reporting on alternatives, the Natural Blue Nevada Board intended that the articles be amended to adjust the capital structure to reflect the following ownership:

- Toney Anaya - 24%
- Paul Pelosi, Jr. - 21%
- James Cohen, Sr., or designees - 20%
- Other Organizational Shares - 35%

Tr. 854, 1066-67; Div. Ex. 9 at 2. On March 17, 2009, the Natural Blue Nevada Board "authorize[d] and direct[ed] Mr. Cohen to proceed with the negotiation and drafting of a nonbinding term sheet with Datameg." Div. Ex. 10 at 2. At a March 31, 2009, Board meeting, Cohen presented a proposed nonbinding term sheet with Datameg. Tr. 821; Cohen Ex. 1. Anaya signed the transaction term sheet on April 1, 2009. Tr. 1069; Cohen Ex. 2.

Around the same time, Cohen asked Datameg's attorney, Paul Vuksich (Vuksich), if he could simultaneously represent Datameg and Natural Blue Nevada in the reverse merger. Tr. 289, 387; Div. Ex. 20 at 1. On April 28, 2009, Vuksich wrote a letter to Natural Blue Nevada's and Datameg's Boards, noting that "[as] I have discussed with James Cohen, Sr., I have been asked to immediately begin providing corporate counsel legal services to Natural Blue." Div. Ex. 20 at 1. In that letter, Vuksich sought written consent from both Datameg and Natural Blue Nevada to undertake simultaneous representation of both companies in the transaction. Tr. 290-91, 1107-08; Div. Ex. 20 at 1-2. Murphy and Anaya provided their consent to the dual representation. Tr. 291; Div. Ex. 20 at 3-4.

Pelosi performed due diligence on Datameg, which included reviewing Datameg's books and records and meeting with Vuksich to discuss the transaction. Tr. 482, 551-53; Cohen Ex. 32. Although Pelosi had some concerns with "over-the-counter stocks trading at five cents, [because] they tend to have challenges," he ultimately favored the reverse merger going forward. Tr. 483, 551-52. Anaya did not voice any opinion regarding the reverse merger with Datameg because he saw it as an "accomplished fact." Tr. 814. Vuksich was surprised to learn that Anaya "didn't seem to have a good grasp of corporate formalities" and was unaware "of the intricacies of how corporations and the documentation . . . had to be put together." Tr. 362, 457.

The reverse merger was approved by Natural Blue Nevada and Datameg shareholders and on July 24, 2009, the public company Natural Blue was formed. Tr. 45, 54, 57, 122-23, 149. As part of the transaction, existing shareholders had their percentage of ownership reduced. Tr. 158-59; Cohen Ex. 60. Ownership of Natural Blue for relevant individuals and entities at issue became the following:

Natural Blue Shares	Percent Owned	Shareholder Name(s) on Certificate
9,010,049	18.281%	Toney Anaya
8,125,133	16.486%	Paul Pelosi, Jr.
1,991,060	4.040%	Alyse P. Cohen[7]
1,991,060	4.040%	James Cohen, Jr.
1,970,948	3.999%	JEC Family Ltd[8]
1,882,457	3.820%	Patricia Cohen
1,810,054	3.673%	CA Capital Associates LLC[9]
518,480	1.052%	Paul Vuksich
804,469	1.632%	James Murphy

Cohen Ex. 55 at 4-5.

D. Selection of Natural Blue Officers, Directors, Employees, and Professional Service Providers

1. Selection of Officers and Directors

During the initial call in which they recruited Anaya, Cohen and Corazzi made clear to Anaya that they had already selected the Board. Tr. 800-01, 822-23. Anaya understood from early discussions with Cohen and Corazzi that "[Cohen and Corazzi] had formed [Natural Blue], that they were selecting the Board of Directors, [and] that they were designating Paul Pelosi as president and me as CEO." Tr. 805.

Cohen took the lead in identifying Natural Blue's initial Board members, whom shareholders ultimately approved via consent in lieu of meeting. Tr. 822-23, 960-61, 1119-21; Cohen Ex. 55. The initial Board consisted of Anaya, Pelosi, Samir Burshan (Burshan), Daryl Kim (Kim), and Murphy. Cohen Ex. 55. Burshan "had an ongoing relationship, business and personal," with Cohen and was a Board member of Blue Earth. Tr. 490, 1120. Kim was an acquaintance of Cohen's who lived in Orlando, Florida. Tr. 490. Two later Board members,

[7] Alyse P. Cohen is affiliated with Cohen; the Division presented evidence of this, and Cohen did not present evidence to contradict it. Tr. 1395.

[8] JEC Family Ltd is affiliated with Cohen; the Division presented evidence of this, and Cohen did not present evidence to contradict it. Tr. 1395-96.

[9] CA Capital Associates LLC is affiliated with Corazzi; the Division presented evidence of this, and neither Cohen nor Corazzi presented evidence to contradict it. Tr. 1396; Div. Ex. 253 at 3.

Paul Whitford and John McCall, also came at the recommendation of Corazzi and Cohen. Tr. 1122-23; Cohen Ex. 186. Anaya did not object to the composition of the Board as recommended by Cohen. Tr. 1121; Cohen Ex. 186.

Similarly, Cohen identified Natural Blue's officers, whom the Board approved at its first meeting: Anaya (CEO), Pelosi (President), Vuksich (Secretary and General Counsel), and Walter Cruickshank (Cruickshank) (Treasurer and CFO). Tr. 961, 1020, 1119-21, 1136; Div. Ex. 24. At the time Cohen recommended Cruickshank to be Natural Blue's Treasurer and CFO, Cruickshank was the controller for Blue Earth, where he had been hired by Cohen in 2008. Tr. 823-24, 1588, 1602-03, 1606.

Cruickshank only learned that he was the CFO when he was congratulated by others on the position. Tr. 1607-08. When Cruickshank asked Cohen about it, Cohen explained that Natural Blue "is a startup company" and that "it is not going to be that much work." Tr. 1608. Cruickshank was not offered any additional compensation to serve as the CFO of Natural Blue beyond what Blue Earth was already paying him, but was promised by Cohen and Anaya later on that he would be paid for his additional work. Tr. 1608-09. Other than what Cohen and Corazzi told Anaya, Anaya did not know anything else about Cruickshank's background and neither approved of nor disputed Cohen and Corazzi's selection. Tr. 824-25. In sum, Cohen and Corazzi selected individuals to become officers and directors, and Anaya approved the selections.

2. Selection of Attorneys

Following Vuksich's later resignation as General Counsel of Natural Blue, Cohen recommended that Natural Blue hire Jeffrey Decker (Decker), a Florida attorney at the BakerHostetler law firm, who had been recommended to him by Natural Blue's audit firm. Tr. 463, 570, 870, 1509. Cohen told Anaya he wanted to have counsel that was "closer physically to where [Cohen] was, as opposed to Mr. Vuksich, who [had been] across the country in California." Tr. 832-33. Anaya subsequently interviewed Decker and hired him in October 2009 to provide legal services. Tr. 1182-84, 1509-10, 1512; Div. Ex. 36; Div. Ex. 300 ¶ 11. BakerHostetler's engagement letter stated that the firm had run a conflicts check within its database for five individuals: Anaya, Pelosi, Burshan, Cohen, and Corazzi, as well as three companies: Natural Blue, Datameg, and Blue Earth. Div. Ex. 36 at 1.

After Decker resigned in May 2010, attorney Steve Rountree was hired at Corazzi's recommendation, and provided legal services to Natural Blue from April 2010 to May 2011. Tr. 1125, 1184-85; Div. Ex. 300 ¶ 11.

3. Selection of Auditors

Cohen recommended that Natural Blue hire Florida audit firm Cross, Fernandez & Riley (Cross), and Anaya accepted the recommendation. Tr. 570, 832. In the fall of 2009, Paul Horowitz (Horowitz), a Certified Public Accountant (CPA) at Cross, met Cohen and Cruickshank in Clermont, Florida, at Blue Earth's office, and the firm was engaged to provide services for Natural Blue as well as Blue Earth. Tr. 566, 569-71, 602.

Cross resigned in April 2010, and Natural Blue hired audit firm Silberstein Ungar PLLC (Silberstein) at Cohen's recommendation. Tr. 573, 1264-65.

4. Selection of Other Employees

At Cohen's recommendation, Natural Blue hired Bill McPherson, a bookkeeper at Blue Earth, to assist with information technology and to provide bookkeeping services to support Cruickshank in his role as CFO. Tr. 825-26, 931-32, 1604.

E. First Natural Blue Board Meeting

Vuksich prepared materials for Natural Blue's first Board meeting and shipped them to Cohen at Blue Earth's office in Clermont, Florida. Tr. 41-42, 312-13. On July 30, 2009, two days before the Board meeting, Cohen emailed Vuksich asking if he had "any word relating to my ability to be on the Board without public disclosure." Div. Ex. 24; Div. Ex. 299 at 2. Vuksich replied that although Cohen's "crimes are known on the message boards[,]" it was his legal opinion that Cohen's "service on the board need not disclose [his] criminal matters from over 5 years ago." Div. Ex. 299 at 2. Vuksich did not inform Anaya of Cohen's disciplinary history, but instead "treated [it] as a private communication." Tr. 433.

When Vuksich arrived in Orlando to attend the Board meeting, Cohen and Corazzi picked him up and took him on a tour of a recycling facility and Blue Earth's offices. Tr. 326-28. Vuksich had dinner with Cohen, Corazzi, Anaya, Pelosi, Murphy, Cruickshank, and Patricia Cohen. Tr. 330-31, 845. Prior to this trip, Vuksich had only spoken to Anaya on the phone. Tr. 333.

On August 1, 2009, the first Board meeting was held in Orlando, Florida, at the offices of Prism One, a technology company headed by Burshan, and shareholders formally consented to the election of Anaya, Pelosi, Murphy, Burshan, and Kim as Board members. Tr. 61, 833-34; Div. Ex. 24; Cohen Ex. 55. Anaya, Pelosi, Vuksich, and Cruickshank were elected officers of Natural Blue. Div. Ex. 24 at 2. Cohen, Corazzi, and Cohen Jr. were present at the Board meeting. Div. Ex. 24 at 1.

During the meeting, Cohen advised the Board that Natural Blue had acquired EcoWave, LLC (EcoWave), a company specializing in converting water debris to fertilizer. Tr. 489-90, 847-49; Div. Ex. 24 at 1; Cohen Ex. 432. After the meeting, Anaya asked Vuksich to prepare a "summary of obligations of Board Members to their corporate entity as well as to the company's investors," which Vuksich did. Tr. 437; Cohen Ex. 59 at 1.

F. Natural Blue's Acquisition of EcoWave LLC

Cohen first learned of EcoWave through Board member Kim, who had connections to EcoWave's plant in Seoul, South Korea. Tr. 490, 849. Anaya had not discussed the acquisition of EcoWave with anyone prior to the August 1, 2009, Board meeting. Tr. 850; Div. Ex. 24 at 1. Although Anaya recalled that during the first Board meeting Cohen "recommended [EcoWave] . . . as a good investment opportunity for the . . . company to pursue" and provided a "fairly

elaborate presentation with PowerPoint and handouts," Board minutes reflect that Natural Blue had already acquired EcoWave at that point. Tr. 849-50; Div. Ex. 24 at 1. Anaya felt positive about EcoWave and recalled that Pelosi was also in favor of the transaction because the water business proved challenging and Natural Blue was accruing many bills. Tr. 488-90, 555, 1129.

Initially, Board members Kim and Burshan were in charge of EcoWave. Tr. 1129. Following conflict between Cohen and Burshan, Burshan resigned and Anaya hired Cohen Jr. to manage EcoWave. Tr. 826, 1129.

G. Natural Blue Executes Consulting Agreements with Cohen and Corazzi

Cohen and Corazzi had planned to travel to West Virginia in November 2009 to meet investors and raise capital for Natural Blue. Tr. 857-58. On November 19, 2009, shortly before the fundraising trip was to occur, Anaya emailed Pelosi, Murphy, and Kim that the four of them needed to talk about "an urgent matter" regarding consulting agreements with Cohen and Corazzi. Cohen Ex. 89. Anaya urged Pelosi, Murphy, and Kim to convene because he had received a phone call from Corazzi informing him that Cohen was refusing to fly to West Virginia "unless [Natural Blue] had a formal [consulting] contract with him." Tr. 858-59. Corazzi emailed Anaya a proposed consulting contract which Corazzi said "absolutely had to be . . . agreed to or else the money . . . wasn't going to be pursued." Tr. 858.

Murphy and Pelosi raised objections to the consulting agreements on a two-hour Board phone call, because they felt that the agreements favored Respondents at Natural Blue's expense. Tr. 85-88, 195-96, 201, 503-05, 859; Div. Ex. 50; Cohen Ex. 85. However, Anaya strongly urged the Board to approve the contracts. Tr. 859. The Board ultimately approved the contracts and Natural Blue entered into an Engagement and Advisory Fee Agreement with JEC Corp. (owned by Patricia Cohen), pursuant to which JEC Corp. would represent Natural Blue in connection with certain prospective mergers and acquisitions and would use its best efforts to effectuate those transactions. Tr. 859; Div. Ex. 43 at 2; Div. Ex. 300 ¶¶ 20, 24. The agreement specified that JEC Corp.'s services to Natural Blue would be provided through Cohen and Corazzi. Div. Ex. 43 at 1; Div. Ex. 300 ¶ 24. Natural Blue also entered into an Advisory and Management Fee Agreement with JEC Corp., pursuant to which JEC Corp. would organize and manage a new Natural Blue subsidiary called Natural Blue Steel, Inc. (NBS). Tr. 859; Div. Ex. 44; Div. Ex. 300 ¶ 24-25. That agreement similarly specified that JEC Corp.'s services to Natural Blue would be provided through Cohen and Corazzi. Div. Ex. 44 at 1; Div. Ex. 300 ¶ 25. Although Pelosi had ultimately voted to approve the consulting agreements, he later emailed Anaya that he disagreed with the contracts. Tr. 866-67; Div. Ex. 50.

In total, Corazzi received $251,720 in payments from Natural Blue, while Cohen received $189,188, including reimbursements of expenses, which were not otherwise broken out. Tr. 1388-89; Div. Ex. 253. Natural Blue paid a total sum of $377,410 to officers and employees of Natural Blue in compensation. Div. Ex. 253.

H. Anaya's Control Over Natural Blue

When Anaya joined Natural Blue as Chairman and CEO, he understood that it was his responsibility to make "the material decisions with respect to the activities of the corporation." Tr. 1012. Anaya understood that Pelosi would be in charge of "the day-to-day operations as president" and expected that his own "role as chief executive officer of Natural Blue would be similar to that as chief executive officer of the State of New Mexico, in that [he] would be overseeing the various activities" of the company. Tr. 1015, 1057-58. As Governor, Anaya relied on the knowledge of his staff and their expertise in particular areas to make decisions, and his practice as Chairman and CEO of Natural Blue was similar. Tr. 403, 1011-12; Cohen Exs. 22, 31.

In his initial interactions with Anaya, Vuksich was surprised to learn that Anaya was not well-acquainted with Natural Blue's financials or corporate formalities. Tr. 362, 457. Nevertheless, he regarded Anaya as "the individual who ultimately had to make decisions on behalf of [Natural Blue]," and would consult Anaya regarding "anything significant . . . no matter who had given [him] inputs, [he] would go to him if it was – had to be approved." Tr. 389-90; Cohen Ex. 19. To Vuksich it was clear that Anaya was diligent in reviewing the material he sent him and "responded as the chief executive officer of the company." Tr. 395, 406-07. Similarly, during the time Decker served as legal counsel for Natural Blue, he had ongoing contact with Anaya and considered him "capable of serving as CEO or an executive role," despite his "obvious[]" lack of experience with financial reporting. Tr. 1513, 1537.

Anaya delegated many tasks to, and heavily relied on, Cohen and Corazzi. For example, Anaya relied on Corazzi to handle all communications and press releases and to manage the Natural Blue website. Tr. 885-87, 959; Div. Ex. 65; Cohen Ex. 230. Cohen and Corazzi frequently directed Anaya's decisions as CEO, and Anaya "deferred to [Cohen and Corazzi] a lot on most stuff." Tr. 218. For example, on September 30, 2010, Cohen emailed Anaya, directing him that "it is time to send a letter to shareholders from you[.] I would suggest you address the time that has [passed] and that we are finally rounding the corner with the beginning our first demo project." Div. Ex. 124. The next day, Anaya forwarded the email to Corazzi, asking him for "any thoughts on how [to] draft [the] letter." *Id*. Pelosi testified that Anaya would often send him items with a note that Cohen and Corazzi had "signed off" on them, without giving Pelosi or other Board members sufficient information to review before executing the decision. Tr. 560-61.

Anaya soon became frustrated with the prominent role Cohen and Corazzi occupied in the management of Natural Blue. "Cohen was constantly interacting, interfacing, interfering with employees, with Board members, giving direction to employees, trying to direct Board members in their carrying out of their responsibilities." Tr. 1144. Cohen and Corazzi routinely dealt with Natural Blue's attorneys without Anaya being present on a host of issues, including acquisitions and financial matters. Tr. 870, 1515-16, 1543; Div. Ex. 78. Cohen was more than merely an "activist shareholder," "[he] was trying to run the company as the founder of the company, the person who selected the Board members, the person who selected the staff." Tr. 1144-45. Anaya considered that Cohen's decisions were brought to the Board "basically [for] ratification," and that Cohen "was not expressing his opinion as a shareholder." Tr. 1144-45.

Cohen was present, either in person or by telephone, at all or most of the Natural Blue Board meetings. Tr. 479-80, 1520.

By August 2009, Anaya felt unable to carry out the role of CEO because Cohen "was making a lot of decisions and he was helping direct the operation of the company, to the point where [Anaya] expressed to Mr. Corazzi that [Anaya] needed to step down, that [Anaya] simply could not operate as a figurehead [because] . . . Cohen was just meddling too much in the day-to-day operations." Tr. 843, 1133-39. Anaya told Corazzi that he could not be "CEO in name only." Tr. 1137. However, Cohen assured Anaya he would allow both Anaya and Pelosi to perform the roles they had assumed, and Anaya agreed not resign. Tr. 844, 1139. For Anaya, "there were a lot of specific incidents that ultimately cumulatively led [him] to believe [that he] would never really be able to play the role of chairman and CEO [because] . . . Mr. Cohen . . . founded the company, the initial company, and . . . he selected the officers [and] . . . he brought his son, James Cohen, Jr. on to the payroll . . . ." Tr. 852. As a result, from Anaya's perspective, Cohen "was running the company" and acting as President and/or CEO. Tr. 856, 1146. Also, Anaya "never knew what [he] wasn't being told" by Cohen and Corazzi. Tr. 1033; Div. Ex. 83 (April 29, 2010, email from Cohen to Corazzi saying "lets not let Toney know we sent [the term sheet] already.").

In late April or early May 2010, Anaya learned that Cohen and Corazzi had purchased a building (the Hoover building) which had originally been identified by a consultant for Natural Blue, but which Cohen and Corazzi purchased on behalf of their own, separate company, without first offering it to Natural Blue. Tr. 902-04. Cohen admitted to Anaya that this event had transpired but blamed Corazzi. Tr. 903-05. Furious, Anaya temporarily suspended Cohen and Corazzi's contracts, with the Board's support. Tr. 903-04, 1030-31.

On August 22, 2010, Anaya emailed Corazzi, noting that he was "tired of the tirades like you just tried to lay on me" and that Anaya "could get no more than two words in before you would attack me with vulgarities and insults." Cohen Ex. 260 at 2. Anaya explained that "week after week, I have received absolutely no details from you – EVER – regarding the status of the steel deals." *Id*. Anaya noted that "if the shit hits the fan, it is me and me alone that will be on the firing line with the SEC and/or disgruntled shareholders. You can try and walk away as merely a 'consultant.'" *Id*.

On September 16, 2010, Anaya explained to Cohen that he was unable to "effectively manage [Natural Blue] for whatever length of time I may be here with you constantly second-guessing me on even trivial stuff and demanding I call you first on things." Div. Ex. 111. Anaya felt that he was "made to fail [because] . . . [CEO] decisions were basically taken out of my hands primarily by James Cohen, Sr., because I could never get access to the financial reports, the data that I would need to fully analyze what was going on." Tr. 1014.

Anaya's frustration continued and on September 20, 2010, Anaya emailed Cohen explaining that the "principal issue" he had with Cohen was "what authority you think you should have over me and the Board regarding management decisions . . . management decisions need to be left to the CEO – whomever that may be – with direction from the Board." Tr. 953-54; Div. Ex. 115. That same day, Anaya corresponded by email with Corazzi about

Respondents' consulting agreements. Tr. 957-58; Div. Ex. 116. Anaya explained to Corazzi that "Bob [Hunt] called me concerned that he was not getting to run the company as we had agreed; but, instead your email suggests that the three of you [Cohen, Corazzi and Hunt] run the company (i.e., he is an 'equal' and not 'President.')." Div. Ex. 116.

Anaya and Respondents also clashed when Cohen and Corazzi recommended that only 10% of revenue from subsidiary NBS flow up to Natural Blue. Tr. 963. On September 21, 2010, Anaya explained to Corazzi that "[i]t is sheer lunacy to have a consulting firm dictate, through me, to the parent company that owns 100% of the subsidiary what it can and cannot do with revenues flowing in. That is neither smart and probably not legal for me to do . . . ." Div. Ex. 119. Anaya emphasized to Corazzi that he did not "want to give up legal authority of [Natural Blue] to [Cohen,] who claims to 'only' be a 'consultant' when it suits him; and, to be the 'founder' when convenient to him." Tr. 965-66; Div. Ex. 116.

Despite his frustration, Anaya did not resign from Natural Blue in September 2010 because he felt there was "still some hope of piecing things . . . together with the [NBS] Division." Tr. 957.

I. Pelosi's Departure from Natural Blue

In August 2009, shortly after Natural Blue went public, Pelosi began a full-time job at a securities firm because he felt that his expertise in water business technology was not needed at Natural Blue. Tr. 507, 510. Pelosi acknowledged that as a result of this job, he was not in a position to run the day-to-day operations of Natural Blue. Tr. 510. At the time, Anaya was not aware that Pelosi had taken on a full-time job. Tr. 990. Although Pelosi kept his title of President, he testified that he was unable to reach Anaya for the next four months, despite various efforts. Tr. 508-09.

In late 2009, Cohen told Pelosi that the Natural Blue shareholders were unhappy with Pelosi's performance and that they had the "votes to vote [Pelosi] off" the Board. Tr. 223, 508. In December 2009, Cohen and Corazzi emailed Board members a "Written Consent of the Stockholders in Lieu of a Meeting," soliciting a signature to remove Pelosi. Div. Exs. 59, 264. On January 7, 2010, Pelosi emailed Cohen, noting that "the information that 27 million shares have been voted in favor of my resignation suggests current shareholders believe that my reduced role in the company is in [their] interest." Cohen Ex. 106. Pelosi realized that "it just wasn't in the cards," and rather than be fired, resigned as President and Board member, effective January 11, 2010. Tr. 509, 1027; Div. Ex. 300 ¶¶ 8, 10; Cohen Ex. 107 at 2.

On April 26, 2010, Pelosi emailed Anaya and Decker that he had received a "very confusing call" from Cohen in which Cohen threatened Pelosi and "said he was taking back [Pelosi's] shares in Natural Blue." Div. Ex. 80. Pelosi asked Anaya and Decker for clarification on whether "[Cohen] has any role with the company" because "[o]n many board calls I asked for this clarification and Chairman Toney represented that Jim Cohen was part of the company management . . . ." Div. Ex. 80. Pelosi testified that he was frustrated that Anaya did not simply give him his stock certificate and instead directed him to talk to Cohen. Tr. 517.

J. Investor Recruitment

Cohen was responsible for soliciting investors for Natural Blue, with assistance from Corazzi, and was the main contact for addressing "shareholder questions [and] financial matters." Tr. 76, 823, 888, 1240; Div. Ex. 37. Cohen responded to investor emails and represented to investors that he "handle[d] communications for the company." Div. Ex. 34.

It was uncommon for Anaya to attend investor meetings. Tr. 889. When Anaya inquired about investor meetings, he encountered resistance from Cohen and Corazzi, who did not want to discuss any details. Tr. 889. Cohen took custody of the stock certificates received from Natural Blue's transfer agent, and Corazzi directed Anaya to ensure the stock certificates were issued to investors. Tr. 1610-11; Div. Ex. 89.

On November 20, 2009, Cohen and Corazzi gave a presentation in Richlands, Virginia, to a group of fifteen investors. Tr. 230-31. They distributed pamphlets and told the audience that "the value of the [Natural Blue] stock could be in the range of 15 to 20 dollars" and that "anticipated revenues in 2010 would be somewhere between 200 million and 400 million dollars." Tr. 231-32. Respondents discussed Natural Blue's subsidiaries at great length and represented that NBS had procured contracts in the range of $60 million in value. Tr. 231. They also described Anaya and Pelosi's management roles at Natural Blue, despite the fact that at that time Pelosi had already taken on another full-time job. Tr. 233-34, 507-10. One of the audience members, Joseph Robinson, a 77 year old retired civil engineer, "was excited to see that [Anaya and Pelosi] were involved in Natural Blue." Tr. 234. From the presentation, Robinson had the "impression [] that [Cohen and Corazzi] were both involved in the day-to-day operations of Natural Blue Resources and their subsidiary companies." Tr. 233, 243. Robinson felt that there was an opportunity to "make a lot of money" and subsequently invested a total of $137,900 in Natural Blue in 2009 and 2010. Tr. 234-35. During this time, Robinson spoke often with Cohen and on occasion with Corazzi, but never met anyone else involved in Natural Blue's management. Tr. 236-38. At the end of 2010, Cohen stopped returning Robinson's calls, and Robinson never recovered any of his investment. Tr. 235. Robinson was not aware of Cohen and Corazzi's disciplinary histories when he invested in Natural Blue; had he been aware, he would never have invested. Tr. 236-37.

Another investor, Elizabeth Flaherty, an operations manager at AMS, invested between eight and nine thousand dollars in Natural Blue in 2009 or 2010 after she learned that Tocci, head of AMS, was investing in Natural Blue and that Anaya and Pelosi were involved in its management. Tr. 753-54. Flaherty spoke to Cohen many times on the phone in her capacity as an AMS employee and was under the impression that Cohen and Corazzi were "running" Natural Blue. Tr. 754-58, 761. She was not aware of Cohen and Corazzi's disciplinary histories when she invested and would never have invested had she known. Tr. 758-59. Flaherty lost all of her investment in Natural Blue. Tr. 759, 761.

In April 2010, Cohen, Corazzi, and Anaya met with a venture capital firm in New York City in an effort to raise capital. Tr. 887-90. Although Anaya attempted to obtain details about the meeting beforehand, he was "led to believe by Mr. Corazzi that it was such a sensitive meeting that if [Anaya] inquired too much or tried to reach out to him directly, [Anaya] could

mess up the deal." Tr. 890. Corazzi took the lead in making the presentation. Tr. 893. During a break in the presentation, Cohen confessed to Anaya that he had been in jail. Tr. 895. Anaya and Cohen did not have any further conversations about it and Anaya did not mention it to anyone but Steve Rountree, Natural Blue's attorney at the time. Tr. 895-96.

K. Control over Natural Blue's Books and Records, Disbursements of Payments, and Preparation of Financial Statements

1. Books and Records

Following Natural Blue's first Board meeting, Vuksich discussed Natural Blue's balance sheet liabilities with Anaya and realized that Anaya "was not apprised of the nature of the liabilities of Datameg that had been taken on [by Natural Blue] in the reverse merger." Tr. 338. Vuksich was surprised that Anaya did not know about the liabilities because he had assumed that "discussions of liabilities that went on between Mr. Murphy and Mr. Cohen would go straight back to Mr. Anaya." Tr. 345. Once Anaya learned about Datameg's liabilities, he called an "emergency" meeting to discuss the liabilities and had a heated exchange with Corazzi, upset that he had not been told about the debts Natural Blue had taken on. Tr. 350, 439; Div. Ex. 69 at 41.

Vuksich held custody of Natural Blue Nevada's books and records, which he transferred to Cruickshank when Cruickshank became CFO of Natural Blue. Tr. 340-41. Natural Blue's accounting records were stored on Natural Blue's server and hardcopy financial records were kept under Cruickshank's control in Clermont, Florida, in office space Natural Blue shared with Blue Earth. Tr. 41-42, 931, 1606, 1615.

Anaya did not have access to Natural Blue's financial records in Clermont, Florida, and suggested many times moving Natural Blue's operations, including the bookkeeping, to New Mexico to allow Anaya to "immediately assume control" and "better manage the company and its wholly-owned subsidiaries." Tr. 831, 934; Div. Exs. 109, 112; Cohen Ex. 149 at 2; Cohen Ex. 161 at 2. Anaya believed that Cohen directed both Cruickshank and McPherson to deliberately withhold financial documents from him. Tr. 1034-36, 1271. However, Cruickshank did not recall Cohen ever asking him not to send materials to Anaya, and could not recall whether or not Cohen had access to the passwords needed to access Natural Blue's financial records online. Tr. 1599, 1610.

When Cruickshank resigned as CFO of Natural Blue in August 2010, Anaya planned to fire McPherson and hire Anaya's daughter, Kristina Bibb, to replace him as bookkeeper. Tr. 943, 1588; Div. Ex. 300 ¶ 9; Cohen Ex. 11. In September 2010, Anaya contacted Cruickshank for help with putting together a budget for Natural Blue, but Cruickshank declined and informed Anaya that he would be suing Natural Blue and Blue Earth for money owed for his work while CFO. Tr. 941; Div. Ex. 109 at 3-4; Div. Ex. 112. When Cohen found out about the call and Anaya's plan to hire his daughter, he was furious and berated Anaya for having reached out to Cruickshank and for considering hiring his daughter as a bookkeeper. Tr. 943; Div. Ex. 111. Anaya sensed from the conversation that Cohen was upset that Anaya "was finding a way to take control of the financial records of the company and, with that, that [Anaya] was finding a way to

take control of the company." Tr. 944; Div. Ex. 111. Anaya was never able to "get the bookkeeping under [his] control." Tr. 831; Div. Ex. 55.

2. SEC Filings

Natural Blue's CFO was generally responsible for preparing Natural Blue's securities filings, in collaboration with several others. Tr. 869. During his term as CFO, Cruickshank prepared the financial statements using the general ledger of Natural Blue's reporting system. Tr. 1593. After receiving the attorney's approval, Cruickshank recalled distributing the draft filing to "all the management and/or who they designated it to be distributed to," to ultimately be approved by Anaya and the Board. Tr. 1593. However, drafts of securities filings typically came to Anaya from Corazzi, and Anaya, Cohen, Corazzi, Natural Blue's General Counsel, and its outside auditing firm reviewed them and provided feedback. Tr. 869-70, 910-11, 1254-56; Div. Ex. 95. Anaya submitted every public filing to Cohen and Corazzi for review, unless he knew the filing originated with either Cohen or Corazzi or had already been approved by them. Tr. 1088; Div. Exs. 95, 98, 267.

Cruickshank recalled an occasion when Corazzi called him regarding "when [Natural Blue was] filing the 10-K's or Q's" and Corazzi began "ranting and raving about [what Cruickshank] had to get [] done and screaming and hollering at [Cruickshank]." Tr. 1615. Cruickshank felt uncomfortable because Corazzi "wasn't an officer, as far as [he] knew," and therefore questioned whether Corazzi had "authorization to call [him] like that." Tr. 1616.

Decker, Natural Blue's attorney from October 2009 to May 2010, assisted with the preparation and correction of Natural Blue's public filings during that time. Tr. 1521-22; Div. Ex. 300 ¶ 11. Decker worked with Cruickshank with respect to accounting issues and recalled that Cruickshank would not prepare complex 8-Ks. Tr. 1523-25. Decker routinely communicated with Cohen and Corazzi, who, he understood, were authorized to contact him directly without Anaya's involvement. Tr. 870, 1543; Div. Ex. 78. However, Decker did not "recall having a lot of discussions or any discussions with [Cohen] on the totality of the 10-K under any circumstances." Tr. 1540-41. Decker testified that Anaya had the ultimate say as to whether to file a document or not. Tr. 1525; Cohen Exs. 117, 139.

Natural Blue's Form 10-K for 2009 was filed with the Commission on April 2, 2010, and Forms 10-Q for the first three quarters of 2010 were filed, respectively, on May 14, 2010, August 13, 2010, and November 22, 2010. Div. Ex. 300 ¶ 26. Natural Blue's Form 10-K for the year ended December 31, 2009, states that in November 2009, Natural Blue entered into a Management Agreement and an Advisory Agreement with JEC Corp. *Id*. at ¶ 27; Div. Ex. 75 at 32. It states that JEC Corp. "is owned by one of our shareholders and the shareholder is related to one of our consultants." Div. Ex. 75 at 32; Div. Ex. 300 ¶ 27. The Form 10-K itself does not specifically identify either Cohen or Corazzi or disclose their disciplinary histories. Div. Ex. 75 at 32. However, included as exhibits to the 10-K are both the Management Agreement and the Advisory Agreement that the company entered into with JEC Corp. *Id*. at Exs. 10.1, 10.2. These agreements list Cohen as "Chairman & CEO" of JEC Corp., and he executed both agreements. *Id*. Decker testified that he chose not to list Cohen or Corazzi in the securities filings because he did not feel that their responsibilities made them executive officers under the disclosure rules.

Tr. 1538. Anaya approved and signed the 2009 Form 10-K as Natural Blue's CEO. Div. Ex. 300 ¶ 27.

Natural Blue's Form 10-Q filings for the first three quarterly periods of 2010 contained the same disclosure about the Management Agreement and the Advisory Agreement with JEC Corp. Div. Exs. 84, 97, 134, 194; Div. Ex. 300 ¶ 28. As Natural Blue's CEO, Anaya approved and signed all these filings. Div. Ex. 300 ¶¶ 27, 30. Anaya felt comfortable signing the Sarbanes-Oxley certification based on what had been represented to him by Cruickshank, Corazzi, Cohen, the auditors, and legal counsel. Tr. 1016.

Anaya testified that Cruickshank resigned as CFO of Natural Blue because Cruickshank was not comfortable working with Cohen and was concerned about "getting himself into trouble." Tr. 933. However, Cruickshank denied ever telling Anaya that he was resigning because he was tired of dealing with Cohen or that he did not want to get in trouble. Tr. 1600-01. Instead, Cruickshank explained that he resigned because the CFO position was too much work, required him to live in a hotel, and he was often not paid on time. Tr. 1533, 1595, 1600, 1619-20; Cohen Ex. 149 at 2. Cruickshank's explanation is more believable and is found as fact.

After Cruickshank resigned in August 2010, Jehu Hand (Hand) became CFO on September 27, 2010. Tr. 910-11; Div. Ex. 300 ¶ 9. Cruickshank sent Hand "copies of [the] internal ledger and any detail that he asked for." Tr. 1598. During Hand's term as CFO, Hand, Cohen, Corazzi, and Rountree were in charge of preparing SEC filings for Natural Blue. Tr. 910.

When Erik Perry (Perry) later assumed office as CEO of Natural Blue on January 27, 2011, Perry told Anaya he had difficulty obtaining the records needed for Natural Blue to prepare its public filings. Tr. 1037-38; Div. Ex. 300 ¶ 7. Perry approved and signed a Form 8-K filed on February 2, 2011, and a Form 8-K/A filed on February 4, 2011, as Natural Blue's CEO. Div. Ex. 300 ¶ 34; Cohen Exs. 392, 393. Perry also approved and signed an amended Form 10-Q, filed on February 8, 2011, for the third quarter of 2010, that contained the same disclosure as previous filings regarding the Management Agreement and Advisory Agreement with JEC Corp. Div. Ex. 300 ¶ 35.

3. Relationship with Auditors

Although it was audit firm Cross's expectation that Cruickshank, as CFO, would be its primary contact at Natural Blue, Cruickshank was not because Cross found that "he was not very capable or didn't have the knowledge that [Cross] needed." Tr. 576, 601. Cross CPA Horowitz discussed both administrative and substantive matters with Cohen that Horowitz did not discuss with others, such as financial statement disclosure issues related to JEC Corp. Tr. 576-77, 580-81.

Horowitz developed concerns with Natural Blue because of the difficulties Cross encountered in obtaining information needed to conduct the audit. Tr. 583. In addition, Horowitz was concerned that Natural Blue was "situated right next to Mr. Cohen's office" and that "everyone sort of defers to [Cohen] as the guy in charge of the company" despite the fact

that "[h]e is not a named officer or principal of the company." Tr. 583-84. Horowitz never interacted with Pelosi, nor was he aware that he was President of Natural Blue. Tr. 578. Horowitz's first interaction with Anaya came in March 2010, shortly before Cross issued its audit report on April 5, 2010. Tr. 577-78; Cohen Ex. 424.

Natural Blue's account with Cross was in arrears. Tr. 577-78, 617; Cohen Ex. 426. Cross also became concerned about the "integrity of management" when it learned about Cohen's disciplinary history. Tr. 589. When Horowitz asked Cohen about his disciplinary history, Cohen denied that the records applied to him and claimed that his middle initial was not "E." Tr. 590. Moreover, Cohen told Horowitz that even if the records did refer to him, "this person is not barred from being involved with public companies. They are barred from dealing with broker-dealers." Tr. 590-91. Cross felt uncomfortable being associated with Cohen and resigned in April 2010. Tr. 573, 589-90; Cohen Exs. 425, 426. Silberstein was subsequently hired as Natural Blue's auditors at Cohen's recommendation. Tr. 1264-65.

4. Control over Natural Blue's Treasury Functions

Natural Blue's procedure for approving invoices required that Cohen approve invoices before Anaya would sign off on them. Tr. 828-30; Div. Exs. 23, 266; Cohen Ex. 11 (describing the need to "[p]ay invoices approved by [Cohen and Vuksich].").

Although only Cruickshank and Anaya had formal authority to make payments on behalf of Natural Blue, Cohen authorized wire transfers on his own. Tr. 1037, 1591. Additionally, Cohen had formal authority over Natural Blue's brokerage account. Div. Exs. 25, 27, 80.

L. 2011 Atlantic Transaction

Atlantic Dismantling and Site Contractors Corp. (Atlantic Dismantling) was a Massachusetts corporation organized in July 2008. Div. Ex. 300 ¶ 14. Atlantic Dismantling was in the business of demolition and site work, which it did principally as a subcontractor on local construction projects. *Id*. at ¶ 15. Atlantic Acquisitions, LLC (Atlantic), was a Massachusetts Limited Liability Company organized in July 2010 to engage in the business of salvaging and selling scrap metal. *Id*. at ¶¶ 16, 18. In January 2011, Atlantic became the parent company of Atlantic Dismantling. Div. Ex. 300 ¶ 17.

In October or November 2010, Eric Ross (Ross), principal of Watch Harbor Asset Management (Watch Harbor), met with Atlantic principals Salvatore Tecce (Tecce) and Joseph Montalto (Montalto) to discuss a potential business venture between Atlantic and Watch Harbor. Tr. 648-50. Atlantic was looking for financing that would allow it to demolish condemned buildings and sell the scrap materials. Tr. 649-50. Ross was eventually put in contact with Erik Perry (Perry) of Atlantic, who explained to Ross in late 2010 that Natural Blue was interested in acquiring Atlantic. Tr. 650, 657-58, 666-67. Ross advised Perry not to get involved with Natural Blue because of the regulatory and other challenges that it would face as a small public company. Tr. 665, 708. Nevertheless, Montalto and Perry participated in several conference calls with Cohen and Corazzi in November and December 2010. Tr. 1337-38. Although Montalto understood at this time that Anaya was the CEO of Natural Blue, he viewed Natural

Blue as Respondents' "baby," because Respondents had formed the company, and "[Respondents] were the ones trying to bring in the projects to the company to keep it going." Tr. 1338-39.

In January 2011, Cohen, Corazzi, Montalto, Perry, Tecce, and Robert Christoff, a developer, met in Miami, Florida, to discuss the budding agreement between Natural Blue and Atlantic. Tr. 1339-40. Cohen and Corazzi told Perry they wanted him to be the President and CEO of Natural Blue. Tr. 1341. Although Tecce had advised Respondents not to select Perry because Perry was "irrational" and a "loose cannon," Cohen and Corazzi explained that Perry was a good choice because he could be used as "'a puppet' to be [at] the forefront of the company." Tr. 1341. During the meeting, Perry, Corazzi, and Christoff phoned Ross and outlined the rough terms of a deal between Natural Blue and Atlantic. Tr. 671. Perry and Corazzi explained to Ross that Perry would be the new CEO of Natural Blue, and recruited Ross to serve as an advisor to the Natural Blue Board. Tr. 671-72; Div. Ex. 149. Ross subsequently communicated with Corazzi and provided revisions to a draft agreement between Watch Harbor and Natural Blue. Tr. 678-79; Div. Exs. 149, 150.

Anaya first learned the specific provisions of the Atlantic transaction in early January 2011 when Corazzi presented the contract to him. Tr. 970-71. Anaya felt the Atlantic transaction would "provide an exit strategy for [him] to get out of the company and leave it in much better shape than it probably had ever been, based on the representations in the contract." Tr. 970. Anaya never met the management of Atlantic in person, and spoke to Montalto for the first time about two weeks prior to the signing of the agreement. Tr. 970-71, 1328-29.

On January 5, 2011, Anaya emailed Corazzi his comments on the draft agreement with Atlantic. Cohen Ex. 332. Three days later, Anaya emailed Corazzi, Rountree and Cohen, asking that Atlantic's financial information be sent to Paul Whitford, an acquaintance of Corazzi's who had joined the Natural Blue Board, adding that "I don't need to see [the financial information] and would rely on [Whitford's] judgment." Tr. 906, 938-39; Div. Ex. 147 at 2. Anaya relied on "whatever due diligence had been done by Mr. Corazzi and Mr. Cohen, Sr., and their representations to me and to the Board . . . [as] the primary due diligence" for the Atlantic transaction. Tr. 977.

On January 13, 2011, Ross emailed Corazzi that he was interested in the offer. Tr. 682; Div. Ex. 149. Corazzi and Cohen were the only individuals from Natural Blue to whom Ross spoke regarding the transaction, and Ross's impression was that "Corazzi was making decisions for the company." Tr. 678-79, 682-83, 686, 702; Div. Ex. 152. During the negotiations, Ross "heard about Toney Anaya very infrequently at best." Tr. 688, 730-31.

On January 16, 2011, Anaya emailed Whitford:

> It would be so great – and, the normal way of doing business – to have full facts in front of us before we make any decisions regarding the future of [Natural Blue]. The reality, however, is that I/we will be at the mercy of whatever Joe [Corazzi] chooses to tell us about th[ese] negotiations with Atlantic, which, I suspect, will only be part of the truth and by no means the full facts.

Div. Ex. 260. On January 20, 2011, Cohen emailed Anaya another draft agreement with Atlantic and instructed him not to forward it to anyone and that he was "still negotiating." Cohen Ex. 351. Anaya responded with comments and questions regarding the agreement. *Id.*

On January 21, 2011, Anaya wrote Cohen, explaining: "I want this deal to go through as I can't take any more of what the last several months have been. If you would keep me advised as you have been negotiating, I would know what is in the agreement and why it is in there." Cohen Ex. 359. Anaya added that he would "go along with" whatever Corazzi negotiated, but requested that:

> [i]n asking me to sign something, please don't get [angry] when I ask questions that don't seem to have a clear answer on the face of the documents you sent. Also, please recognize that it is typical to ask me to sign something immediately, under the gun, or the world is going to cave in. A little more advance notice to me or involvement would certainly be beneficial.

Id. Anaya concluded his email by explaining that "[i]f this deal does not close, I will be stepping down and I will coordinate with you guys how that impacts you and the company. I want to close this deal or close my involvement with the company." *Id.*

Cohen was very upset when Anaya proposed certain changes that would affect the compensation Cohen was to receive for putting together the Atlantic transaction. Tr. 983-84. In the end, however, Cohen and Corazzi did agree to a few changes Anaya proposed. Tr. 985. After receiving a revised draft, on January 21, 2011, Anaya emailed Corazzi letting him know that "[i]t appears that the revised draft for Watch Harbor addresses the concerns I raised last night" and that he could "live with it now." Cohen Ex. 360.

Corazzi led a January 21, 2011, call that Ross set up between Natural Blue and Star Funding, a small private fund, to discuss Star Funding potentially funding the letter of credit for the Atlantic acquisition. Tr. 689-91; Div. Ex. 161. Perry and Cohen participated in that call. Div. Ex. 161. On January 22, 2011, Corazzi emailed Ross a copy of a non-compete and non-disclosure agreement which Ross had directly negotiated with Corazzi. Tr. 691-92; Div. Ex. 165.

On January 23, 2011, the consulting agreement between Watch Harbor and Natural Blue, signed by Anaya, went into effect. Tr. 694; Div. Ex. 166. That same day, Anaya signed the agreement with Atlantic; it was approved by the Natural Blue Board four days later, on January 27, 2011. Tr. 1318; Div. Exs. 168, 184, 300 ¶ 31; Cohen Ex. 365. On January 25, 2011, Natural Blue had issued a press release announcing that it had entered into "two key agreements to advance the growth, business interests, and future expected profitability of the Company." Div. Exs. 175, 300 ¶ 32. The release quoted Anaya as saying in a letter to Natural Blue shareholders that the agreement with Atlantic "provides for Atlantic to assign tens of millions of dollars in Atlantic steel contracts to [Natural Blue] and to pursue future steel contracts on behalf of Natural Blue Steel Atlantic, LLC, a wholly owned subsidiary to be formed by [Natural Blue]." *Id.* On January 28, 2011, Natural Blue announced that "the anticipated closing for the [Natural Blue]

and Atlantic Dismantling transaction has occurred." Div. Ex. 185. Pursuant to the agreement with Atlantic, Perry and Montalto were elected to the Natural Blue Board, with Perry elected Chairman of the Board and appointed as CEO, replacing Anaya. Tr. 1332-33, 1340-41; Div. Ex. 300 ¶ 33.

M. Removal of Perry as CEO of Natural Blue

Once Perry became CEO of Natural Blue on January 27, 2011, Anaya frequently emailed him to assist in the transition. Tr. 986-87. On February 26, 2011, Anaya cautioned Perry "not to let the inmates run the asylum." Div. Ex. 204. With that email, Anaya forwarded Perry a prior email he had sent to Cohen, and explained that "[t]his is only one of many, many communications I've had with [Cohen] wherein he reminds me that he founded the company and expects to have the right to keep dictating how the company should be run." *Id.* Anaya told Perry that he felt that "Mr. Cohen, Sr. and Mr. Corazzi had been running the company from day one and had created all the frustrations with me." Tr. 989.

Perry's tenure as CEO of Natural Blue was short-lived. Following a June 3, 2011, telephonic Board meeting in which the Board decided that Perry was not acting in the best interests of the shareholders, Perry was removed as CEO of Natural Blue. Tr. 1342-45; Div. Ex. 219; Div. Ex. 300 ¶ 7. Cohen listened in on the Board phone call but did not speak. Tr. 1343-44. After agreeing to remove Perry, the Board elected Phil Braeuning as CEO and Chairman, and Montalto as President. Tr. 1346; Div. Exs. 219, 300 ¶ 7. Montalto testified that Perry was "a control freak" who "was pursuing contracts that we knew could never be fulfilled or we knew that they weren't real." Tr. 1358. Moreover, Montalto testified that "one of the main reasons why [the Board] got rid of Erik Perry was the contract with Eric Ross. If that had gone through, it would have been . . . Erik Perry, Eric Ross, and Christoff running the company, and everybody else would have been out." Tr. 1353.

After the Board call ended, Montalto immediately called Braeuning and Cohen. Tr. 1347-48; Div. Ex. 218 at 23-77. During the call, Cohen referred to Natural Blue as "my company" and explained that by removing Perry, "we keep this company and, you know what, [Perry] can't turn around and arbitrarily say that the guys who created [Natural Blue] . . . we're going to zero you out . . . like Erik Perry has threatened multiple times." Div. Ex. 218 at 25, 28.

N. Expert Testimony[10]

Robert M. Daines (Daines) testified as an expert witness for the Division on corporate governance, specifically, the functional duties typically performed by corporate officers and

[10] To the extent that the expert's evidence does not lead to findings of fact, it will be summarized here and referred to as appropriate in the Conclusions of Law section of this Initial Decision.

directors.[11] Tr. 1435-89; Div. Ex. 301. He articulated his views in terms of their "economic" function. Tr. 1446, 1451, 1457-63, 1470-83; Div. Ex. 301 at 11-13.

1. Role of the Chairman of the Board of Directors and Board Members

The Board is elected by shareholders to represent their interest and it has two key roles: an advisory role – to provide strategic leadership or advice, and an oversight role – to supervise the company and its managers on behalf of shareholders. Div. Ex. 301 at 7-8.

The Board is "collectively responsible for the overall direction of the company and its senior executives" and "[t]ypically . . . delegat[es] responsibilities to the firm's senior executives and to committees of the Board." Div. Ex. 301 at 8. While Board members advise management on corporate strategy, they do not generally develop the strategy in detail or prepare the company's financial statements. *Id.*

The Chairman of the Board is responsible for running the Board and his obligations may include: presiding over board meetings; scheduling meetings, planning agendas and distributing materials in advance of meetings; board governance, including succession planning and director recruitment; helping to set and communicate the firm's priorities and strategic plans; evaluating management performance, management and director compensation; and merger-related activity. *Id.* When the Chairman is also an officer of the company, that person is often the CEO of the company. *Id.*

2. Key Officer Roles

To determine whether an individual served the economic function of an officer of a company, Daines would compare the individual's actions and responsibilities to the descriptions below for various officers, and examine the individual's acts to determine whether the individual had "general executive responsibility for the conduct of the business and affairs of the Corporation." Div. Ex. 301 at 9, 11.

To Daines, relevant factors evidencing whether certain individuals control the Board, CEO, or other officers' decisions would be whether the individuals direct that certain actions be taken, negotiate major transactions and seek approval only as a "rubber stamp," dictate the company's strategic direction, or act as a gatekeeper with regard to the books and records of the company and disbursement of funds. Div. Ex. 301 at 12-13.

Daines explained that it is common for companies to use consultants to raise capital and identify merger opportunities. Tr. 1488-89. Although senior executive officers receive advice and assistance from non-officers, Daines "would not expect advisers and consultants to have control over the details of the company's operations and strategic decisions." Div. Ex. 301 at 11.

[11] Daines is the Pritzker Professor of Law and Business at Stanford Law School, Professor of Finance at the Stanford Graduate School of Business, and the Co-Director of the Rock Center for Corporate Governance at Stanford University. Div. Ex. 301 at 2.

a. Chief Executive Officer (CEO)

The CEO's economic function is to direct the business and operations of the firm on shareholders' behalf. Div. Ex. 301 at 9. The CEO is hired by and answers to the Board, which monitors and advises the CEO in managing the firm's operations. *Id.* In determining whether an individual served the economic function of a CEO or other officer, Daines would consider whether the person "controlled or directed the [official] CEO (or other officer)." Div. Ex. 301 at 11. Moreover, Daines explained that "[i]f the CEO did not make an independent determination of the merits of a particular action, but instead acted as directed by the controller(s), the CEO's title would be merely formal and real control would reside with the person or group that controlled the Board." Div. Ex. 301 at 12.

b. Other Officers

The President is "a high-ranking officer of a company, second only to the CEO and Chairman." Div. Ex. 301 at 10. The President's specific role is determined by the Board. *Id.* The COO "is typically responsible for the day to day internal operations of their company and reports to the CEO of the company." *Id*. The CFO "is typically responsible for the books and records and official financial statements of the company, interacts with the audit committee of the Board of Directors and with the company's independent auditor." Div. Ex. 301 at 10, 13. The CFO generally oversees the treasury functions of the corporation and the company's key financial decisions, and may report to the CEO or Board of Directors. Div. Ex. 301 at 10.

O. Missing Witness

Respondents suggest that an adverse inference be drawn from the fact that the Division did not call "many other participants in the corporate process" to testify at the hearing. Cohen Br. at 1.

The undersigned has not drawn any inference adverse to the Division's case, or to Respondents', from the absence of the unidentified "participants in the corporate process." They were not unavailable to Respondents as witnesses. *See United States v. Cole*, 380 F.3d 422, 427 (8th Cir. 2004); *United States v. Torres*, 845 F.2d 1165, 1170 (2d Cir. 1988). Respondents could have subpoenaed them pursuant to 17 C.F.R. § 201.232. If the Division had interviewed these individuals in the investigation that led to this proceeding, their investigative testimony would have been available to Respondents long in advance of the hearing (unlike the situation in federal criminal cases[12] such as *Torres*).

[12] *See* 18 U.S.C. § 3500, commonly known at the Jencks Act.

III. CONCLUSIONS OF LAW

The OIP charges that Cohen and Corazzi willfully violated Sections 17(a)(1) and 17(a)(3) of the Securities Act.[13] As discussed below, it is concluded that Respondents willfully violated Securities Act Sections 17(a)(1) and 17(a)(3). According to the Division's theory of the case, Cohen and Corazzi (a) were *de facto* officers of Natural Blue; and (b) as such, effected a scheme to defraud within the meaning of Securities Act Sections 17(a)(1) and 17(a)(3) by concealing their role and, thus, their disciplinary history.

A. *De Facto* Officers

There is a dearth of precedent regarding what factors determine whether an individual is a *de facto* officer for the purpose of the antifraud provisions of the securities laws. The Division and Cohen (and by extension, Corazzi) both cite *SEC v. Prince*, 942 F. Supp. 2d 108 (D.D.C. 2013) as support for their respective positions, in addition to referring to Exchange Act Rules 3b-7 and 16a-1 (defining "officer" and "executive officer").[14] The court in *Prince* conducted an extensive analysis of the available precedent, including *C.R.A. Realty Corp. v. Crotty*, 878 F.2d 562 (2d Cir. 1989), *SEC v. Solucorp Indus., Ltd.*, 274 F. Supp. 2d 379 (S.D.N.Y. 2003), and *SEC v. Enters. Solutions*, 142 F. Supp. 2d 561 (S.D.N.Y. 2001).[15]

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[13] The Division abandoned claims that Respondents violated Section 10(b) of the Exchange Act and Rules 10b-5(a) and 10b-5(c) thereunder. *See* Div. Reply Br. at 16 ("there are no Exchange Act claims pending against [Respondents]."). Accordingly, this Initial Decision does not address those provisions.

[14] Exchange Act Rule 16a-1 defines "officer" as "president, principal financial officer, principal accounting officer (or, if there is no such accounting officer, the controller), any vice-president . . . in charge of a principal business unit, division or function (such as sales, administration or finance), any other officer who performs a policy-making function, or any other person who performs similar policy-making functions." Rule 3b-7 defines "executive officer" of a registrant as its "president, any vice president of the registrant in charge of a principal business unit, division or function (such as sales, administration, or finance), any other officer who performs a policy making function or any other person who performs similar policy making functions for the registrant."

[15] The Division also cites *U.S. Diagnostic Inc.*, Securities Act Release No. 7928, 2000 WL 1920604 (Dec. 20, 2000), which is a settlement. The Commission has stressed many times that settlements are not precedent. *See Richard J. Puccio*, Exchange Act Release No. 37849, 1996 SEC LEXIS 2987, at *10-11 (Oct. 22, 1996) (citing *David A. Gingras*, Exchange Act Release No. 31206, 1992 SEC LEXIS 2537, at *20 (Sept. 21, 1992), and cases cited therein); *Robert F. Lynch*, Exchange Act Release No. 11737, 1975 SEC LEXIS 599, at *12 (Oct. 15, 1975) (citing *Samuel H. Sloan*, Exchange Act Release No. 11376, 1975 SEC LEXIS 1742, at *12 n.24 (Apr. 28, 1975); *Haight & Co. Inc.*, Exchange Act Release No. 9082, 1971 SEC LEXIS 436, at *68-69 (Feb. 19, 1971); *Sec. Planners Assocs., Inc.*, Exchange Act Release No. 9421, 1971 SEC LEXIS 1035, at *13-14 (Dec. 17, 1971)); *see also Michigan Dep't of Natural Res. v. FERC*, 96 F.3d 1482, 1490 (D.C. Cir. 1996) and cases cited therein (settlements are not precedent). Like all

Whether or not an individual is a *de facto* officer depends on his function, not his title. *Prince*, 942 F. Supp. 2d at 133-37. *See also Crotty*, 878 F.2d at 563; *Solucorp*, 274 F. Supp. 2d at 382-87; *Enters. Solutions, Inc.*, 142 F. Supp. 2d at 574. A significant figure in the management of a company cannot hide behind a vague title, such as "consultant." *Id*. "The few cases that have found an employee to be a de facto officer because of their ability to make policy involved alleged 'consultants' who were actually in total control of a company." *Prince*, 942 F. Supp. 2d at 134 (citing *Solucorp*, 274 F. Supp. 2d at 383; *Enters. Solutions*, 142 F. Supp. 2d at 568).

The key officer function is policy making, which includes such areas as mergers and acquisitions, compensation, and contracts. *Prince*, 942 F. Supp. 2d at 134-36. In *Prince*, defendant Prince, an accountant, had a criminal and disciplinary history, including an accounting bar, which his company did not want disclosed to shareholders. *Id*. at 113-15. The court concluded that Prince was not a *de facto* officer despite having a great deal of influence over, and the office next to, the company's Chairman and CEO, as well as being one of the most highly paid employees at the company; the Chairman and CEO and the heads of various groups in the company had the ultimate authority to make or implement any policy. *Id*. at 113-136. Also, Prince could not sign contracts and did not have check writing or wire transfer authority. *Id*. at 115, 126. His criminal record and the fact that he was barred from practicing as an accountant before the Commission were well-known within the company. *Id*. at 120. The CEO, after consulting with counsel, had created a position for Prince that would not require disclosure in company filings. *Id*. at 114-15, 122. A series of "carveouts" were put in place to "fence in" Prince's roles and duties to ensure Prince was not assuming the role of an officer. *Id*. at 115. For example, Prince was not allowed to participate in accounting staff meetings or help prepare financial statements, and was denied "write" and "read" privileges with regard to certain network drives. *Id*. Nonetheless, Prince regularly made presentations to the Board and attended Board meetings, reviewed contracts and public filings, and held responsibility for acquisitions. *Id*. at 115-20. The court noted that the Division never alleged that Prince was "running the company," and ultimately concluded that Prince was not an officer and there was no "scheme to defraud." *Id*. at 134, 137-44.

In *Solucorp*, defendant Kemprowski had a criminal and disciplinary history, which led to his resigning as an officer and director of Solucorp and becoming a "consultant" instead. 274 F. Supp. 2d at 383. Yet he continued to occupy the company's largest office and received substantial compensation. *Id*. at 384. Like Cohen and Corazzi, Kemprowski was a forceful individual who made it well known that he was the founder of Solucorp and "responsible for raising money for the Company." *Id*. at 384. Also, as in this proceeding, trial witnesses described Solucorp as Kemprowski's "baby." *Id*. at 385. The court found that Kemprowski was an officer of Solucorp "in that he performed a policy-making function . . . akin to that of a president, principal financial officer or any vice president in charge of a business unit, division or function." *Id*. at 420.

Commission settlement orders, the *U.S. Diagnostic Inc*. settlement order contains a disclaimer to this effect: "The Commission's findings herein are made pursuant to [Respondents'] Offer of Settlement and are not binding upon any other person or entity in these or any other proceedings." 2000 WL 1920604, at *1 n.1.

As founders of Natural Blue Nevada, Cohen and Corazzi recruited Anaya and Pelosi to be officers of the public company. Various Board members, officers, employees, attorneys, and auditors were recommended by Cohen and Corazzi and, mostly, approved by Anaya or shareholder vote. However, Board minutes reflect the fact that Cohen finalized the acquisition of EcoWave without receiving Board approval. The Board approved the consulting agreements by which Cohen and Corazzi received compensation. While Anaya insisted on exercising his rightful authority, he considered that Cohen and Corazzi were at least attempting to continue running the company. Anaya complained that he did not receive timely information and was forced into approving decisions on short notice. He never knew what he was not being told. Cohen and Corazzi also were the face of the company in recruiting investors.

The record shows that Cohen and Corazzi assumed responsibility for Natural Blue's operations and strategic plans and thereby exercised the policy-making functions of public company officers and directors. Since founding Natural Blue Nevada together, Cohen and Corazzi guided the direction of the company. In his role as a "consultant," Cohen personally negotiated the reverse merger with Datameg that resulted in Natural Blue becoming a public company, selected Natural Blue's key officers, directors, employees, attorneys and auditors, including Anaya and Perry to serve as CEOs, negotiated and executed key transactions, including the EcoWave acquisition, participated in Board meetings, recruited investors, orchestrated Pelosi's ouster as President, reviewed and commented on public filings, arranged for Natural Blue's financial records to be kept in office space shared with his wife's company in Florida, had formal authority over Natural Blue's brokerage account, and frequently and aggressively berated the CEO. Cohen presented the EcoWave acquisition to the Board as a *fait accompli*. Cohen commenced negotiating the reverse merger with Datameg before informing the Board. Cohen approved invoices before Anaya signed off on them, and Cohen authorized wire transfers on his own. In sum, Cohen took on a role akin to the CEO, in which he performed a policy-making function that even made Natural Blue's own auditors uneasy, ultimately leading to their resignation.

Similarly, Corazzi, as co-founder of Natural Blue Nevada, had a critical role in selecting Anaya and Perry as CEOs, personally negotiating the Atlantic transaction, participating in reverse merger negotiations with Datameg, recruiting investors, handling press releases and managing the Natural Blue website, reviewing and commenting on public filings, selecting an audit firm, attending Board meetings, soliciting the ouster of Pelosi, and similarly displaying aggressive dominion over the CEO and on occasion the CFO. Corazzi's role, while not as prominent as Cohen's, still rose to the level of an officer, akin to that of a COO responsible for the day to day internal operations of the company, or at the very least that of a "vice-president . . . in charge of a principal business unit, division or function" within the meaning of Exchange Act Rule 3b-7.

Within a month of Natural Blue's going public, Pelosi had another full-time job and was therefore unable to carry out his duties as President of Natural Blue. This presented no problem for Natural Blue, however, given that Respondents were quick to assume the duties of overseeing its day-to-day operations. Unlike in *Prince*, no one at Natural Blue consulted counsel or put carveouts in place to limit Respondents' control and prevent them from serving as *de facto*

officers. *See Prince*, 942 F. Supp. 2d at 122. Rather, as in *Solucorp*, Cohen and Corazzi made clear to Natural Blue's officers, directors, and negotiating counterparts that they were the founders of Natural Blue and that the company was their "baby." Investors, however, were kept in the dark as to Respondents' true roles at Natural Blue.

Cohen and Corazzi unquestionably made policy-making decisions. Cohen and Corazzi selected Natural Blue's officers and directors – selections that were merely ratified by the Board or shareholders. Cohen informed the Board after the fact of the EcoWave acquisition, rather than soliciting the Board's approval beforehand, and in so doing usurped the Board's role. The fact that the Board may have subsequently thought it was a wise decision does not detract from the conclusion that Cohen made a policy-making decision. Similarly, Corazzi took the lead in negotiating and functionally approving the Atlantic transaction. Although Anaya's signature was on Natural Blue's contracts, the record demonstrates that Anaya fought Respondents for control of Natural Blue and, despite embarking on his role as CEO with good intentions, he largely ratified decisions Respondents had already made.

Respondents point to the facts that public filings were signed by Anaya, Cruikshank, and other officers, that the Board formally elected officers that were recommended by Respondents, and to instances of Anaya attempting to carry out his duties as CEO, as evidence that Respondents were not in control and that the final say rested with Anaya and other officers. Again, the fact that Natural Blue's officers and directors may have made every effort to execute their duties does not preclude the conclusion that Respondents operated as *de facto* officers of Natural Blue. Moreover, the fact that Respondents may have made sensible recommendations that officers and directors ratified is similarly not inconsistent with the conclusion that Respondents operated as *de facto* officers.

Unlike *Prince*, there is no evidence of record that Cohen and Corazzi's legal and disciplinary issues were widely known in Natural Blue. Anaya was aware of Corazzi's officer and director bar before he became involved with Natural Blue, but he did not learn of Cohen's conviction until Cohen divulged it in April 2010.

B. Antifraud Provisions

Respondents are charged with willful violations of Sections 17(a)(1) and 17(a)(3) of the Securities Act, which make it unlawful "in the offer or sale of" securities, by jurisdictional means, respectively, to: (1) employ any device, scheme, or artifice to defraud; or (2) engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

1. Scienter

Scienter is required to establish violations of Securities Act Section 17(a)(1). *Aaron v. SEC*, 446 U.S. 680, 695-97 (1980); *SEC v. Steadman*, 967 F.2d 636, 641 & n.3 (D.C. Cir. 1992). It is "a mental state embracing intent to deceive, manipulate, or defraud." *Aaron*, 446 U.S. at 686 n.5; *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 193 n.12 (1976); *SEC v. Steadman*, 967 F.2d at 641. Recklessness can satisfy the scienter requirement. *See SEC v. Steadman*, 967 F.2d

at 641-42; *David Disner*, Exchange Act Release No. 38234, 1997 SEC LEXIS 258, at *15 & n.20 (Feb. 4, 1997). Reckless conduct is "conduct which is 'highly unreasonable' and which represents 'an extreme departure from the standards of ordinary care . . . to the extent that the danger was either known to the defendant or so obvious that the defendant must have been aware of it.'" *Rolf v. Blyth, Eastman Dillon & Co., Inc.*, 570 F.2d 38, 47 (2d Cir. 1978) (quoting *Sanders v. John Nuveen & Co.*, 554 F.2d 790, 793 (7th Cir. 1977)).

Scienter is not required to establish a violation of Securities Act Section 17(a)(3); a showing of negligence is adequate. *See SEC v. Steadman*, 967 F.2d at 643 & n.5; *SEC v. Quan*, No. 11-cv-723, 2013 WL 5566252, at *16 (D. Minn. Oct. 8, 2013); *Fundamental Portfolio Advisors, Inc.*, Securities Act Release No. 8251, 2003 SEC LEXIS 1654, at *29 (July 15, 2003), *recons. denied*, Securities Act Release No. 8574, 2005 SEC LEXIS 1192 (May 23, 2005); *Byron G. Borgardt*, Securities Act Release No. 8274, 2003 SEC LEXIS 2048, at *37-38 (Aug. 25, 2003). Negligence is the failure to exercise reasonable care. *IFG Network Secs., Inc.*, Exchange Act Release No. 54127, 2006 SEC LEXIS 1600, at *37 (July 11, 2006).

2. Willfulness

Respondents are charged with *willful* violations of Securities Act Sections 17(a)(1) and 17(a)(3). A finding of willfulness does not require an intent to violate, but merely an intent to do the act which constitutes a violation. *See Steadman v. SEC*, 603 F.2d at 1135; *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965).

C. Antifraud Violations

1. Respondents' Actions Occurred in the Offer or Sale of Securities

The Supreme Court has adopted an expansive interpretation of "in the offer or sale of any securities" language contained in Section 17(a) of the Securities Act. 15 U.S.C. §§ 77q(a); *see Merrill Lynch, Pierce, Fenner & Smith Inc. v. Dabit*, 547 U.S. 71, 85 (2006) ("The requisite showing . . . is deception in connection with the purchase or sale of any security, not deception of an identifiable purchaser or seller." (internal quotation marks and citation omitted)); *United States v. Naftalin*, 441 U.S. 768, 773 (1979) ("in the offer or sale" is "expansive enough to encompass the entire selling process"). By directly soliciting investors for Natural Blue, Cohen and Corazzi engaged in the offer or sale of securities.

2. Violations

As a public corporation subject to Section 15(d) of the Exchange Act, Natural Blue was required to file annual reports on Form 10-K that disclosed the identity and business experience and legal proceedings of its officers and directors. *See* 17 C.F.R. § 229.401(e), (f); Form 10-K, Item 10. This requirement was a problem for Respondents – Corazzi was precluded from being an officer or director of Natural Blue, and Cohen was reluctant to publicize his criminal background. Respondents surmounted this difficulty by maintaining influential roles in the company under the guise of being consultants. Recruiting Anaya and Pelosi and others enabled them to do so. Anaya and Pelosi were prominent and accomplished individuals who added

credibility to the company, while others were previously associated with Cohen or Corazzi and might be expected to follow their direction. Anaya's good-faith attempt to execute his responsibilities as Chairman and CEO did not seriously impede Respondents' running the company.

The record shows that Respondents violated Securities Act Section 17(a)(3) through their course of business – essentially, to run Natural Blue under the guise of being consultants, while concealing negative information about their background. Each acted with at least a reckless degree of scienter in engaging in this course of business; Corazzi was subject to an officer and director bar, and Cohen had actually inquired as to the amount of public disclosure that would be required if he were to become a director. It is additionally concluded that Respondents' course of business amounted to a scheme to defraud in violation of Securities Act Section 17(a)(1).

A fraudulent course of conduct or scheme has been described as a situation where the person engages in "conduct that ha[s] the principal purpose and effect of creating a false appearance of fact in furtherance of the scheme." *See SEC v. Brown*, 740 F. Supp. 2d 148, 172 (D.D.C. 2010) (quoting *Simpson v. AOL Time Warner Inc.*, 452 F.3d 1040, 1048 (9th Cir. 2006), *vacated on other grounds*, *Avis Budget Group, Inc. v. Cal. Teachers' Ret. Sys.*, 552 U.S. 1162 (2008)). Contrary to Respondents' argument, a fraudulent scheme does not require a "sweeping conspiracy." Cohen Br. at 37.

Respondents argue that the Division's claim is, in essence, material misrepresentation or omission, and thus implicates *Janus Capital Grp., Inc. v. First Derivative Traders*, 131 S. Ct. 2296 (2011). Cohen Br. at 37. To the contrary, the Division has not alleged that Cohen or Corazzi made misstatements or omissions, nor are violations of Exchange Act Section 10(b) or Rule 10b-5 alleged, and thus *Janus* is not implicated. *See* Div. Reply Br. at 16; *John P. Flannery*, Securities Act Release No. 9689, 2014 SEC LEXIS 4981, at *57-58 (Dec. 15, 2014) (holding that the *Janus* "maker" requirement does not apply to Section 17(a) of the Securities Act).

To the extent Respondents argue the involvement of Natural Blue's lawyers in the preparation of the SEC filings is a defense, it fails. In considering whether to credit an advice of counsel claim, the Commission considers four elements: "that the person made complete disclosure to counsel, sought advice on the legality of the intended conduct, received advice that the intended conduct was legal, and relied in good faith on counsel's advice." *Howard Brett Berger*, Exchange Act Release No. 58950, 2008 SEC LEXIS 3141, at *38 (Nov. 14, 2008) (footnote citing precedent omitted), *pet. denied*, 347 F. App'x 692 (2d Cir. 2009), *cert. denied*, 559 U.S. 1102 (2010). Counsel must also be independent. *C.E. Carlson, Inc. v. SEC*, 859 F.2d 1429, 1436 (10th Cir. 1988); *Arthur Lipper Corp.*, 547 F.2d at 181-82. There is no evidence in the record that any Natural Blue attorney was asked for legal advice about Respondents' plans to adopt "consultant" titles as a way to avoid disclosure of their disciplinary histories and their roles as *de facto* officers. Moreover, even if Natural Blue's attorneys had been fully informed of Respondents' roles, Respondents' scienter renders any potential advice of counsel defense void. *See Pittsburgh Terminal Corp. v. Baltimore & Ohio R.R. Co.*, 680 F.2d 933, 943 (3d Cir. 1982) (rejecting reliance on counsel defense where defendants "know the materiality of the concealed information and intend the consequences of concealment"); *United States v. King*, 560 F.2d 122,

132 (2d Cir. 1977) ("[S]ignificant representations were made as to specific facts . . . [and] we cannot understand how a businessman who knows that such factual representations are untrue can screen himself by trying to rely on advice of counsel."); *Dolphin & Bradbury, Inc. v. SEC*, 512 F.3d 634, 641-44 (D.C. Cir. 2008) (noting, in part, that where petitioner "could not have had a genuine belief in" his statements' "completeness and accuracy," he could not rely on a reliance on counsel argument to negate scienter); *SEC v. Goldfield Deep Mines Co. of Nevada*, 758 F.2d 459, 467 (9th Cir. 1985) (reliance-on-professional defense not available where defendants "knew" that statements made in public filings "were false or misleading").

IV. SANCTIONS

The Division requests a cease-and-desist order, disgorgement, civil penalties, and officer and director bars. As discussed below, Cohen and Corazzi will be ordered to cease and desist from violations of Sections 17(a)(1) and 17(a)(3) of the Securities Act and to pay a second-tier penalty of $75,000 each; and officer and director bars will be ordered.[16]

A. Sanction Considerations

In determining sanctions, the Commission considers such factors as:

> the egregiousness of the [respondent's] actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the [respondent's] assurances against future violations, the defendant's recognition of the wrongful nature of his conduct, and the likelihood that the [respondent's] occupation will present opportunities for future violations.

Steadman, 603 F.2d 1126, 1140 (5th Cir. 1979) (quoting *SEC v. Blatt*, 583 F.2d 1325, 1334 n.29 (5th Cir. 1978)). The Commission also considers the age of the violation and the degree of harm to investors and the marketplace resulting from the violation. *Marshall E. Melton*, Exchange Act Release No. 48228, 2003 SEC LEXIS 1767, at *4-5 (July 25, 2003). Additionally, the Commission considers the extent to which the sanction will have a deterrent effect. *Schield Mgmt. Co.*, Exchange Act Release No. 53201, 2006 SEC LEXIS 195, at *35-36 & n.46 (Jan. 31, 2006). As the Commission has often emphasized, the public interest determination extends to the public-at-large, the welfare of investors as a class, and standards of conduct in the securities business generally. *See Christopher A. Lowry*, Investment Company Act of 1940 Release No. 2052, 2002 SEC LEXIS 2346, at *20 (Aug. 30, 2002), *aff'd*, 340 F.3d 501 (8th Cir. 2003); *Arthur Lipper Corp.*, 1975 SEC LEXIS 527, at *52. The amount of a sanction depends on the facts of each case and the value of the sanction in preventing a recurrence. *See Leo Glassman*, Exchange Act Release No. 11929, 1975 SEC LEXIS 111, at *7 (Dec. 16, 1975).

[16] A permanent officer and director bar is already in effect for Corazzi. *See* Div. Ex. 300 ¶ 47. However, this does not preclude imposition of an officer and director bar in this proceeding. *See Hunter Adams*, Exchange Act Release No. 51117, 2005 SEC LEXIS 225, at *4 n.6 (Feb. 1, 2005).

B. Cease and Desist

Securities Act Section 8A(a) authorizes the Commission to issue a cease-and-desist order against a person who "is violating, has violated, or is about to violate" any provision of the Securities Act. 15 U.S.C. § 77h-1(a). Whether there is a reasonable likelihood of such violations in the future must be considered. *KPMG Peat Marwick LLP*, Exchange Act Release No. 43862, 2001 SEC LEXIS 98, at *101 (Jan. 19, 2001). Such a showing is "significantly less than that required for an injunction." *Id*. at *114. In determining whether a cease-and-desist order is appropriate, the Commission considers the *Steadman* factors quoted above, as well as the recency of the violation, the degree of harm to investors or the marketplace, and the combination of sanctions against the respondent. *See WHX Corp. v. SEC*, 362 F.3d 854, 859-61 (D.C. Cir. 2004); *KPMG*, 2001 SEC LEXIS 98, at *116.

Respondents' conduct was egregious and recurrent, and the violations recent. Respondents conceived of their scheme and acted as undisclosed *de facto* officers of Natural Blue for approximately two years. Each one's conduct involved at least a reckless degree of scienter. Given Respondents' past criminal and disciplinary histories in the financial industry and their failure to reform since then, their occupations will present opportunities for future violations. Moreover, Respondents have not provided any assurances against future violations, further bolstering this concern.

Although the evidence of record does not quantify precisely the degree of harm to investors and the marketplace in dollars, harm to the marketplace is evident from the dishonest nature of Respondents' misconduct. In light of these considerations, a cease-and-desist order is appropriate.

C. Disgorgement

Securities Act Section 8A(e) authorizes disgorgement of ill-gotten gains, including reasonable interest, in cease-and-desist proceedings. 15 U.S.C. § 77h-1(e). 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., Inc. v. SEC*, No. 14-1126, 2015 WL 4153861, at * 7 (D.C. Cir. July 10, 2015) (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 Fin. Corp*., 890 F.2d at 1231). "Thus, 'disgorgement need only be a reasonable approximation of profits causally connected to the violation.'" *Id*.; *see SEC v. First Pac. Bancorp*, 142 F.3d 1186, 1192 n.6 (9th Cir. 1998) (holding disgorgement amount only needs to be a reasonable approximation of ill-gotten gains); *accord First City Fin. Corp.*, 890 F.2d at 1231-32; *Laurie Jones Canady*, Exchange Act Release No. 41250, 1999 SEC LEXIS 669, at *38 (Apr. 5, 1999) (quoting *SEC v. First Jersey Secs., Inc*., 101 F.3d 1450, 1475 (2d Cir. 1996)), *pet. denied*, 230 F.3d 362 (D.C. Cir. 2000).

Cohen and Corazzi provided real services to Natural Blue, for example, recruiting investors and negotiating the Atlantic transaction. The fact that Respondents' roles went far

beyond the scope of their consulting agreements and resulted in Securities Act violations does not mean, however, that all of the money they received from Natural Blue was unjust enrichment or ill-gotten gains. Respondents undoubtedly provided at least some legitimate services that were within the scope of their consultant agreements, for which remuneration was warranted.

To order disgorgement, a reasonable approximation of the profits connected to Respondents' roles as *de facto* officers of Natural Blue must be determined. However, the figures the Division presented as Respondents' total "compensation" are unreliable, because they consist of *all* money that Respondents received from Natural Blue, including reimbursements of expenses for their consulting work. Therefore, the figures are not only dubious because they include non-remuneration credits such as reimbursement, but also because the Division did not even attempt to distinguish between what amount might reasonably correspond to remuneration for legitimate consulting services provided, and what amount, if any, might reasonably correspond to improper remuneration for Respondents' roles as *de facto* officers. Thus, the Division failed to meet its initial burden of presenting a "reasonable approximation" of the profits connected to the violations. As a result, no disgorgement will be ordered.

D. Civil Money Penalty

Securities Act Section 8A(g) authorizes the Commission to impose civil money penalties against a person who is or has violated, or was the cause of the violation of, any provision of the Securities Act, where such penalties are in the public interest. 15 U.S.C. § 77h-1(g).

Penalties in addition to the other sanctions ordered are in the public interest. A second-tier penalty is appropriate because Respondents' violative acts involved fraud and a reckless disregard of a regulatory requirement. 15 U.S.C. § 77h-1(g)(2)(B). Under that provision, for each violative act or omission after February 14, 2005, and before March 4, 2009, the maximum second-tier penalty for each violation for a natural person is $65,000. 17 C.F.R. § 201.1003, Subpt. E, Table III. For each violative act or omission after March 3, 2009, and before March 6, 2013, the maximum second-tier penalty for each violation for a natural person is $75,000. 17 C.F.R. § 201.1004, Subpt. E, Table IV. The provisions, like most civil penalty statutes, leave the precise unit of violation undefined. *See* Colin S. Diver, *The Assessment and Mitigation of Civil Money Penalties by Federal Administrative Agencies*, 79 Colum. L. Rev. 1435, 1440-41 (1979).

The events at issue began in 2008 and continued into 2011. They will be considered as one course of action for each Respondent, and a second-tier civil penalty of $75,000 will be ordered against each. Combined with the other sanctions ordered, this penalty is in the public interest.

E. Officer and Director Bar

Securities Act Section 8A(f) authorizes a bar against a respondent who has violated Securities Act Section 17(a)(1) from acting as an officer or director of any issuer with a class of securities registered pursuant to Exchange Act Section 12 or that is required to file reports pursuant to Exchange Act Section 15(d), "if the conduct of that person demonstrates unfitness to serve as an officer or director of any such issuer." 15 U.S.C. § 77h-1(f). In line with the

reasoning in *Joseph P. Doxey*, Initial Decision Release No. 598, 2014 SEC LEXIS 1668, at *76-78 (A.L.J. May 15, 2014), the so-called Patel[17] factors will be applied in addition to the *Steadman* factors in evaluating the appropriateness of this sanction.

As discussed above, both Respondents violated Securities Act Section 17(a)(1) while acting with scienter and awareness of the deceptive and manipulative nature of their conduct. The violations continued for approximately two years. Each Respondent's history of misconduct and recidivism in the securities industry makes him a danger to investors. Without an officer and director bar, each would be free to assume officer and director roles in the future. Thus, it is appropriate and in the public interest to impose a permanent officer and director bar against each Respondent, and each will be barred from acting as an officer or director of any issuer with a class of securities registered pursuant to Exchange Act Section 12 or that is required to file reports pursuant to Exchange Act Section 15(d).

V. RECORD CERTIFICATION

Pursuant to Rule 351(b) of the Commission's Rules of Practice, 17 C.F.R. § 201.351(b), it is certified that the record includes the items set forth in the record index issued by the Secretary of the Commission on July 29, 2015, as corrected on August 14, 2015.[18]

VI. ORDER

IT IS ORDERED that, pursuant to Section 8A of the Securities Act, JAMES E. COHEN and JOSEPH A. CORAZZI CEASE AND DESIST from committing or causing any violations or future violations of Sections 17(a)(1) and 17(a)(3) of the Securities Act.

IT IS FURTHER ORDERED that, pursuant to Section 8A(g) of the Securities Act, JAMES E. COHEN and JOSEPH A. CORAZZI shall each PAY A CIVIL MONEY PENALTY OF $75,000.

IT IS FURTHER ORDERED that, pursuant to Section 8A(f) of the Securities Act, JAMES E. COHEN and JOSEPH A. CORAZZI are each BARRED from acting as an officer or director of any issuer that has a class of securities registered with the Commission pursuant to Section 12 of the Exchange Act or that is required to file reports pursuant to Section 15(d) of the Exchange Act.

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

[17] The Patel factors are: (1) the egregiousness of the underlying securities law violation; (2) recidivism; (3) the defendant's role or position in the fraud; (4) the degree of scienter; (5) the defendant's economic stake in the violation; and (6) the likelihood of recurrence. *SEC v. Bankosky*, 716 F.3d 45, 48 (2d Cir. 2013); *SEC v. Patel*, 61 F.3d 137, 141 (2d Cir. 1995).

[18] *See Natural Blue Res., Inc.*, Admin. Proc. Rulings Release No. 3042, 2015 SEC LEXIS 3350 (A.L.J. Aug. 14, 2015).

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. 3-15974, 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.

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Carol Fox Foelak
Administrative Law Judge