INITIAL DECISION RELEASE NO. 1033
ADMINISTRATIVE PROCEEDING
File No. 3-16801

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

In the Matter of BENNETT GROUP FINANCIAL SERVICES, LLC, and DAWN J. BENNETT	INITIAL DECISION OF DEFAULT July 11, 2016

APPEARANCES: Michael J. Rinaldi, Patricia A. Paw, and Brendan P. McGlynn for the Division of Enforcement, Securities and Exchange Commission

Gregory Morvillo and Eugene Ingoglia of Morvillo LLP for Respondents

BEFORE: James E. Grimes, Administrative Law Judge

Summary

In this initial decision, I find that Respondent Bennett Group Financial Services, LLC, and Dawn J. Bennett willfully violated Section 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934, Exchange Act Rule 10b-5, and Section 206(1) and (2) of the Investment Advisers Act of 1940. I also find that Bennett Group willfully violated, and Bennett willfully aided and abetted and caused the violations of, Section 206(4) of the Advisers Act and Advisers Act Rules 206(4)-1(a)(5) and 206(4)-7. I order Respondents to cease and desist from further violations of these provisions and bar Bennett from the securities industry. Additionally, I order Respondents to pay disgorgement of $556,102, jointly and severally, plus prejudgment interest, and Bennett Group to pay a civil penalty of $2.9 million and Bennett to pay a civil penalty of $600,000.

Introduction

The Securities and Exchange Commission instituted this proceeding against Respondents in September 2015 with an order instituting administrative and cease-and-desist proceedings (OIP) under Section 8A of the Securities Act; Sections 15(b) and 21C of the Exchange Act; Section 203(e), (f), and (k) of the Advisers Act; and Section 9(b) of the Investment Company Act of 1940. The OIP alleges that Respondents willfully violated Securities Act Section 17(a), Exchange Act Section 10(b) and Rule 10b-5, and Advisers Act Section 206(1) and (2). OIP at 10. It further alleges that Bennett Group willfully violated, and Bennett willfully aided and

abetted and caused the violations of, Advisers Act Section 206(4) and Rules 206(4)-1(a)(5) and 206(4)-7. *Id.* at 10-11.

On October 30, 2015, Respondents filed an action in district court seeking to enjoin this proceeding. Complaint, *Bennett v. SEC*, No. 15-cv-3325 (D. Md.), ECF No. 1. Among other arguments, Respondents asserted that the manner in which the Commission's administrative law judges are appointed violates the Constitution's Appointments Clause. *Bennett v. SEC*, No. 15-cv-3325, 2015 WL 9183445, at *1 (D. Md. Dec. 17, 2015). The district court dismissed the case for lack of jurisdiction, *id.* at *1, *10, and Respondents appealed, *see Bennett v. SEC*, No. 15-2584 (4th Cir.). To date, the appeal is still pending. Respondents filed their answer on November 2, 2015, denying the majority of the OIP's allegations. On January 6, 2016, Respondents moved to have this proceeding declared unconstitutional, again arguing that my appointment violates the Appointments Clause of the Constitution. Based on Commission precedent, I denied the motion. *Bennett Grp. Fin. Servs., LLC*, Admin. Proc. Rulings Release No. 3494, 2016 SEC LEXIS 112 (ALJ Jan. 12, 2016). Before the hearing, Respondents informed my office and the Division of Enforcement that they would not participate in the hearing. Respondents acknowledged that by failing to appear at the hearing, they could be found in default, the facts of the OIP could be found true, and the proceeding could be decided against them. *Bennett Grp. Fin. Servs., LLC*, Admin. Proc. Rulings Release No. 3453, 2015 SEC LEXIS 5358, at *2 n.1 (ALJ Dec. 31, 2015); Prehearing Tr. 26-27.

The hearing in this proceeding took place on January 27, 2016. Neither Respondents nor their counsel appeared at the hearing. Tr. 9-10. As a result, I found Respondents in default. Tr. 10; *see* 17 C.F.R. § 201.310. The Division called eleven witnesses and I admitted the prior sworn testimony of six witnesses, including Bennett, and over three hundred exhibits. *See Bennett Grp. Fin. Servs., LLC*, Admin. Proc. Rulings Release No. 3656, 2016 SEC LEXIS 768 (ALJ Mar. 1, 2016); Admin. Proc. Rulings Release No. 3588, 2016 SEC LEXIS 478 (ALJ Feb. 9, 2016); Tr. 3-8, 11-12.

Findings of fact

I base the following findings of fact and conclusions on the entire record, including the OIP, the allegations of which I deem to be true. 17 C.F.R. § 201.155(a). I have applied preponderance of the evidence as the standard of proof. *See Steadman v. SEC*, 450 U.S. 91, 100-04 (1981). All arguments and proposed findings and conclusions that are inconsistent with this decision are rejected.

This case concerns material misrepresentations and omissions by Respondents regarding their assets under management (AUM) and their clients' performance which were made to retain existing and attract new customers. OIP ¶ 1. Respondents repeatedly overstated their AUM by at least $1.5 billion in Barron's magazine, on a radio show hosted by Bennett, and in various other advertisements and communications with existing and prospective clients to create the impression that Respondents were larger and more successful players in the industry than was actually the case. OIP ¶¶ 2, 11. Also, on the radio show, Bennett touted Bennett Group's claimed highly profitable investment returns, asserting these returns placed Bennett Group in the top 1% of firms worldwide. OIP ¶ 3. Bennett did not disclose as she should have that the

purported returns were those of a model portfolio and did not reflect actual customer returns. OIP ¶ 3. In addition, Respondents failed to adopt and implement adequate written policies and procedures related to the calculation and advertisement of AUM and investment returns. OIP ¶ 4.

Respondents' wrongdoing is evinced, in part, by their subsequent obstructive behavior during the Division's investigation to cover up their wrongdoing. OIP ¶ 1. Respondents falsely asserted to the Division that they gave advice regarding short-term cash management to three corporate clients regarding over $1.5 billion in corporate assets when they never provided any form of management for assets in excess of approximately $407 million. OIP ¶ 5.

A. Respondents' background

Bennett Group, a Delaware limited liability company and financial services firm, is headquartered in Washington, D.C. OIP ¶ 6; Answer ¶ 6; Ex. 10. During October 2009 through 2011, most key Bennett Group employees were registered representatives associated with Western International Securities, Inc., a broker-dealer registered with the Commission.[1] OIP ¶ 6; Answer ¶ 6; Ex. 274 at 3, 6. Almost all of Bennett Group's revenue was generated through commissions earned by the registered representatives, who provided nondiscretionary services. OIP ¶ 6; Answer ¶ 6; Ex. 365 at 19. The brokerage firms paid commissions directly to Bennett individually, who then transferred the funds to Bennett Group. Ex. 365 at 18-20. Bennett Group registered with the Commission as an investment adviser in 2008 and withdrew that registration in September 2013. OIP ¶ 6; Answer ¶ 6; Bennett Group Investment Adviser Public Disclosure Record (showing a termination effective date of September 6, 2013).[2] Bennett owns approximately ninety-two percent of Bennett Group and controls all aspects of Bennett Group's operations; Bradley Mascho and Tim Augustin own the remainder. OIP ¶ 6; Answer ¶ 6; Ex. 284; Ex. 360 at 54-57; Ex. 365 at 9-11. Mascho is Bennett Group's managing director of research, a financial advisor and registered representative, and an officer. Ex. 284; Ex. 365 at 9, 206. During 2009 through 2011, Augustin was Bennett Group's chief compliance officer (CCO) (until July 2011), chief operating officer (COO), and a financial advisor and registered representative. Ex. 180 at 12; Ex. 284; Ex. 360 at 38-41.

Bennett, age fifty-three at the time the OIP was issued, lives in Chevy Chase, Maryland. OIP ¶ 7; Answer ¶ 7. In addition to her majority ownership, she is also the founder and chief executive officer of Bennett Group. OIP ¶ 7; Answer ¶ 7; Ex. 284; Ex. 361 at 176-77. Bennett has been a registered representative affiliated with various registered broker-dealers since at least February 1987. OIP ¶ 7; Answer ¶ 7; Ex. 274 at 6. Bennett holds Series 7, 63, and 65 securities licenses. OIP ¶ 7; Answer ¶ 7; Ex. 274 at 5; Ex. 361 at 183. Bennett has been found liable in arbitration proceedings involving allegations of churning, misrepresentations and omissions, unauthorized trading, and unsuitability. OIP ¶ 7; Ex. 272 at 1, 3; Ex. 274 at 14-18.

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[1] Until October 2009, Bennett was registered with Royal Alliance Associates, Inc., also a broker-dealer registered with the Commission. Ex. 274 at 3, 6.

[2] Under Rule of Practice 323, 17 C.F.R. § 201.323, I take official notice of the Commission's Investment Adviser Public Disclosure records.

B. Statements regarding AUM

From at least 2009 through 2011, Bennett and Bennett Group claimed to be managing assets totaling $1.1 billion to over $2 billion. OIP ¶ 8; Answer ¶ 8. Respondents made these claims in various ways, including through Barron's, a nationally circulated industry periodical that ranked financial advisors, and a variety of other advertisements and communications directed to existing and prospective customers and clients. OIP ¶¶ 8, 11. In reality, Bennett and Bennett Group managed no more than approximately $407 million, of which approximately $338 million were brokerage assets, $67 million were pension consulting assets, and $1.1 million were advisory assets. OIP ¶¶ 8, 21; *see, e.g.*, Exs. 78-84.

Bennett and her firm misrepresented AUM in order to inflate their stature and thereby attract new customers and clients to the firm by creating the impression that they were larger and more successful players than they in fact were. OIP ¶ 9. At the time Respondents made their misstatements about AUM, they had a fledgling investment advisory business that they hoped to bolster by attracting new advisory clients, lured by Respondents' claims of industry success and impressive investment returns. OIP ¶ 9.

After Bennett and Bennett Group made these claims regarding AUM, prospective customers and clients became customers and clients, thereby generating compensation for Bennett and Bennett Group, including brokerage commissions earned through the purchase or sale of securities. OIP ¶ 10. Further, existing customers and clients bought or sold securities through Bennett and her firm after receiving these communications, which generated compensation, including commissions, for Bennett and her firm. OIP ¶ 10.

1. Barron's

From 2009 through 2011, Respondents made three submissions to Barron's magazine for its rankings of independent financial advisors, claiming they managed assets of $1.1 billion, $1.3 billion, and $1.8 billion, respectively. OIP ¶¶ 11-12; Answer ¶ 11; *see* Exs. 29-31. During the investigation, Bennett agreed that these amounts "indicate[d] the amount of assets under management that [Bennett Group] had at any particular time." Ex. 361 at 193-94. The rankings "reflect[] the volume of assets overseen by the advisors and their teams, revenue generated for the firms and the quality of the advisors' practices." Ex. 89 at 2; OIP ¶ 12.

Barron's used an online form to collect the information it used in its rankings process. Ex. 33. The form requests a multitude of information, including background on the advisor, the amount of revenue generated from certain types of accounts, typical account size and net worth, and the amount of assets managed. *Id.* During the investigation, Bennett testified that she did not complete the form herself but that Augustin, Mascho, and a couple other employees completed it. Ex. 361 at 67. Augustin testified during the investigation that at Bennett's direction, he completed the Barron's submission form for the 2009 rankings, with the assistance of other employees, including Mascho. Ex. 360 at 168-69. Augustin stated that he "filled out as much of it as [he] could . . . which included brokerage assets," then passed the form to Mascho who was aware of additional assets. *Id.* at 169. To the best of Augustin's knowledge, the form then went to Bennett, who "added the assets that she had been advising on and then it was

submitted." *Id.* at 169. Mascho testified during the investigation that "the whole staff," including Bennett, Augustin, and himself, "usually help[ed] provide data for" the submissions to Barron's. Ex. 365 at 58. He stated that he was probably tasked with providing the numbers for assets and retirement plans and "maybe the number of accounts." *Id.* at 64-65. He also testified that Bennett provided the data for the international and uncompensated assets because she worked "exclusively with those unique clients." *Id.* at 74.

After publication in Barron's, Bennett and Bennett Group promoted their Barron's rankings and repeated the misrepresentations contained in the Barron's publications through email, the firm's web site, social media, article reprints, and other means to existing and prospective customers and clients. OIP ¶ 14. In at least 2010 and 2011, Bennett Group's web site linked users to various articles written by Bennett in which she touted the Barron's rankings. OIP ¶ 17. In addition, Bennett and Bennett Group frequently referred to the Barron's rankings in email messages and other communications with existing and prospective customers and clients. OIP ¶ 17.

a. "Top 100 Women Financial Advisors"

The 2009 ranking for the top one hundred women financial advisors was published by Barron's in June 2009. Ex. 89 at 1; *see* Ex. 29. Based on the information provided by Respondents, Barron's ranked Bennett fifth and showed that she managed $1.1 billion in assets, with a typical account size of $2 million and a typical customer net worth of $3.5 million. OIP ¶ 12; Ex. 29 at 1. Bennett's ranking placed her among and above the top advisors from well-known advisory firms. Exs. 89-90.

Bennett was prominently featured in the ranking; she was quoted several times in an accompanying article, which featured her photograph and profile. Ex. 89 at 1-4. The profile states that her returns "are significantly higher than the market" and that her "approach is lower-risk than that of many of her peers." *Id.* at 3. It also quotes Bennett as saying "I am competitive, but I'm not going to chase the greed" and that her "decisions will get my clients across the finish line in first place years from now." *Id.* at 3-4. The article also notes that the ranking "includes a reshuffling of the top five," including "two new members," one of whom was Bennett. *Id.* at 2.

On June 17, 2009, Respondents issued a press release announcing Bennett's placement on the Barron's ranking list. Ex. 36. The release includes a statement from Bennett: "We are proud to be so highly regarded by the magazine and pleased to be one of only two DC firms to make the list. It's an honor to be chosen among the thousands of financial advisors in the country by such a prestigious financial magazine as Barron's." *Id.* The release also notes that Bennett Group manages $1.3 billion for individuals, corporations, and foundations. *Id.* Respondents included a link to the article on Bennett Group's website. Ex. 254 at 1.

Bennett directed firm employees to send marketing emails to current and prospective customers and clients touting her ranking. OIP ¶ 15. In June 2010, Bennett Group, through Mascho, sent dozens of emails to prospective clients highlighting its AUM and Bennett's ranking as a top woman financial advisor: "Last year, ***Barron's*** ranked Dawn Bennett as #4 in their 'Top

100 Women Financial Advisors'. Our firm has size, strength and stability with assets under management of $1.5 billion."[3] OIP ¶¶ 14-15; Answer ¶ 15; Exs. 91-92, 94-95, 97-108, 111-16, 118-48 at 1; Ex. 96 at 3; *see also* Ex. 250 at 1 ("We have $1.5 billion in assets(and growing)."). Many of these emails also attached a reprint of the article. Exs. 92, 94, 103-07, 114, 116, 118-22, 134, 148 at 5-6; Exs. 111, 113, 123, 125, 129, 133, 136, 143-45 at 6-7; Exs. 112, 115 at 10-11; Exs. 126, 130, 137, 140 at 7-8; Ex. 138 at 12-13; Exs. 139, 147, 250 at 4-5; Ex. 142 at 13-14.

On June 26, 2010, Bennett Group ordered 1,125 copies of the Barron's issue ranking Bennett as fifth in its "Top 100 Women Financial Advisors." OIP ¶ 16; Ex. 162; Ex. 361 at 79. Bennett Group then sent at least 125 copies of the Barron's article to existing and prospective customers and clients. OIP ¶ 16; Ex. 162.

b. "Top 100 Independent Financial Advisors"

In August 2009, Barron's published its ranking of the top one hundred independent financial advisors. Ex. 32 at 2; OIP ¶ 12; *see* Ex. 30. Based on the information provided by Respondents, Barron's ranked Bennett twenty-sixth and showed that she managed $1.3 billion in assets, with a typical account size of $2 million and a typical customer net worth of $3.5 million. Ex. 30 at 1; OIP ¶ 12.

In response to the ranking's public release, Bill Bongiorno, Respondents' public relations advisor, emailed Bennett congratulating her on her ranking. Ex. 32 at 2; Ex. 361 at 77-78. Bennett replied, stating "26? Wish I were in top ten…. Somehow with the number 26 it does not mean much." *Id.* at 1 (ellipses in original). Bongiorno replied, "I had a client no. 23 last year, got calls from people looking to invest millions. Anywhere on the list is good. He's not on it this year. Of course everyone wants to be no. 1." *Id.* Bennett responded, "It would be nice to get a few of those calls!" *Id.*

c. "2011 Top Advisor Rankings: Washington, D.C."

Barron's published its 2011 top advisor rankings for Washington, D.C., ranking Bennett second. OIP ¶ 12; Ex. 31. Based on the information provided by Respondents, Barron's reported that Bennett managed $1.8 billion in assets, with a typical account size of $3 million and a typical customer net worth of $5 million. OIP ¶¶ 12-13; Exs. 31, 33. Bennett and her firm made additional statements to Barron's, which were in turn published by the magazine. OIP ¶ 13.

In reality, only 1% of Bennett Group customers and clients at the time had account values of $3 million or more. OIP ¶ 13. And although Respondents claimed that Bennett Group's minimum account size was $2 million, 98% of customer and client accounts were under that threshold. OIP ¶ 13. As with the claims about AUM, Respondents made these statements to Barron's knowing that they would be reprinted and distributed to the public, including to current

[3] Respondents incorrectly referred to Bennett's ranking as #4 when she was actually ranked #5.

and prospective customers and clients, and that the statements' publication would bolster Bennett and Bennett Group, thereby inducing existing customers and clients to remain and enticing prospective clients and customers to hire Bennett Group. OIP ¶ 13.

2. Financial Myth Busting radio show

On or about May 9, 2010, Bennett began hosting "Financial Myth Busting with Dawn Bennett," a weekly radio show that aired on a Washington, D.C.-area AM radio station. OIP ¶ 18. Bennett Group paid between $1,500 and $3,850 weekly for the show to air, and Bennett hosted it and determined all of its content. OIP ¶ 18; Ex. 360 at 65.

During the show, Bennett touted Bennett Group and its services, and listeners were provided with Bennett Group's website address and its toll-free telephone number. OIP ¶ 19; *e.g.*, Ex. 74 at 50-51. Bennett and the firm promoted the show to existing and prospective customers and clients. OIP ¶ 19. They also added references to "our highly regarded weekly talk radio program-Financial Mythbusting," or the like, to proposal packages prepared for prospective customers and clients and to email messages sent by Bennett Group employees. *Id.*

During many of the Financial Myth Busting radio programs that aired from May 9, 2010, through January 30, 2011, Bennett claimed that she and Bennett Group managed assets ranging from $1.5 billion to over $2 billion. OIP ¶ 20. On the Facebook information page they maintained for the Financial Myth Busting show, Respondents also claimed that they managed "$1.5 billion of client assets." *Id.* The following statements were made during the show regarding Respondents' AUM:

- On May 9, 2010, Bennett stated, "I built the company with 1.5 billion and for the last fifteen years, my clients have seen consistent returns in the green." Ex. 74 at 2. Bennett's co-host noted that Bennett was "recognized by Barron's as one of the top five financial advisors in the June 2009 issue." *Id.* at 3. In response to her co-host's question as to whether she manages "over a billion dollars in assets," Bennett responded, "1.5 billion and growing." *Id.* at 14.
- On May 16, 2010, Bennett stated, "[T]hat's what we're practicing with the 1.5 billion that we have right now with money under management – and growing." Ex. 73 at 37.
- On June 13, 2010, Bennett stated, "I am the CEO of Bennett Group Financial Services in Washington D.C. We have $1.5 billion of assets under management." Ex. 71 at 2.
- On June 27, 2010, Bennett's co-host asked, "Since one of the main purposes of the show is to allow the real investor a chance to tap into your expertise as you handle a billion and a half and upwards of assets at Bennett Group Financial Services, would you explain, please, what a SEP-IRA is?" Ex. 69 at 35.
- On July 18, 2010, Bennett stated when introducing a participant on the show, "And let me just tell you, he's here to make sure that my twenty-five years of creating wealth for my clients and the 1.5 billion that we have under management . . ." Ex. 66 at 3.
- On the August 1, 2010, program, Bennett provided the same introduction but stated "because with 1.6 billion under management, I am known to move and think fast." Ex. 65 at 2.

- On August 8, 2010, Bennett stated, "I'm at the helm of 1.6 billion in assets of clients' financial dreams." Ex. 64 at 2-3.
- On August 22, 2010, Bennett's co-host stated, "Dawn is the expert. . . . [She] has twenty-five years['] experience in the field. She manages 1.6 billion in investments. She's ranked in the top one percent worldwide in returns on investments so there's your bonafides for the . . . Bennett Group." Ex. 63 at 18-19.
- On September 5, 2010, Bennett stated, "Just to remind everybody, I actually have a financial advisory firm. I'm the real thing. We manage about 1.6 billion and right now, our returns are probably one percent in the world." Ex. 61 at 2.
- On September 12, 2010, Bennett stated, "You know what, we have 1.6 billion under management, there isn't much I haven't seen in twenty-five years." Ex. 60 at 48-49.
- On September 19, 2010, Bennett's co-host stated, "Then let me take this second again, just to emphasize for folks, because sometimes you don't want to do this on your own. Dawn's been in this business for twenty-five years. She manages 1.6 billion in assets." Ex. 59 at 34.
- On October 3, 2010, Bennett's co-host stated, "Bennett Group manages 1.6 . . . billion in assets." Ex. 57 at 41.
- On October 10, 2010, Bennett stated, "You know what? We have 1.6 billion under management. There isn't much I haven't seen in twenty-five years." Ex. 56 at 50.
- On October 31, 2010, Bennett stated, "we're managing about 1.3 – 1.8 billion, actually," "[t]o the 1.8 billion that we have under management," and "our 401(k)s . . . [are] a large part of our 1.8 billion." Ex. 54 at 24, 35, 46.
- On December 12, 2010, Bennett stated, "I don't think we would have two billion in assets if I wasn't and also the people that surround me." Ex. 48 at 14.
- On December 26, 2010, Bennett stated, "You know what, we have 1.6 billion under management, there isn't much I haven't seen in twenty-five years, so ask away." Ex. 47 at 48.
- On January 16, 2011, Bennett stated, "I do manage two billion in assets" and "I rank in Barron's a lot." Ex. 46 at 21, 31.

Bennett also made claims regarding her typical or minimum account size: "You know what? Everyone who comes to me at this stage is certainly high net worth. We have a very high seven figure or seven digit requirement to walk through our door." Ex. 72 at 4.

Contrary to their claims regarding AUM, Bennett and Bennett Group never provided any form of management for assets in excess of at most approximately $407 million, including approximately $1.1 million in advisory assets, $67 million in pension consulting assets, and $338 million in brokerage assets. OIP ¶ 21.

3. Emails and Other Marketing Efforts

In addition to the emails touting Bennett's ranking as a top woman financial advisor, Bennett Group also sent emails highlighting its AUM. For instance, in September 2010, Mascho forwarded to Bennett an email he wrote to Connie McGinley, a branch manager at the broker-dealer with which Mascho and Bennett were registered before forming Bennett Group:

"We now manage a little over $1.6 billion AUM." Ex. 34; Ex. 274 at 6; Ex. 365 at 71. By November 2010, Respondents' AUM representation rose to $2 billion in holdings. Ex. 253.

In a marketing brochure prepared in 2011, Bennett Group claimed it managed "over $1.5 Billion in assets" and was "becoming the 'gold standard' for financial advisors in America and the world." Ex. 168 at 5. The brochure also highlighted: Bennett's top five ranking in Barron's Top 100 Women Financial Advisors in 2009; Bennett's "top quartile" ranking in Barron's Top 100 Independent Financial Advisors in 2009; and Bennett's weekly one-hour radio show. *Id.* at 7-8.

C. Statements Regarding Investment Returns

Bennett touted Bennett Group's investment returns and performance during her Financial Myth Busting radio program without disclosing that the returns were for a Bennett Group model portfolio and were not representative of actual investor performance. OIP ¶ 42. Bennett Group reported model returns and compared them to benchmarks such as the Standard & Poor's 500 index (S&P 500). OIP ¶ 42. The following statements were made on the show regarding Bennett Group's investment returns:

- On August 1, 2010, Bennett stated that her clients' "returns over the past three years was 17.77, in that range, versus the negative 5.61 for the S&P 500." Ex. 65 at 6. "[W]e are going to talk about the investments that we went into three years ago to help my clients exceed the – exceed the S&P 500 index for the three-year number by almost twenty percent." *Id.* at 14. "Three years ago, we pulled our clients out of anything that was dollar denominated. It was bold; I had never done that for my twenty-five year career. But the reality is, we benefited by almost twenty percent in the last three years, and we certainly don't feel a lot of the volatility going on in the stock market." *Id.* at 22.
- On September 5 and 12, 2010, Bennett stated that her clients were up approximately eight percent for the year. Ex. 60 at 40; Ex. 61 at 47.
- On September 19, 2010, Bennett said "[y]ou know, our group is up ten percent year to date when the S&P 500 is only up about 50 basis points. And then some people are going to say, okay. And if you told this guy that, he goes, oh yeah, big for the year. But I've got to tell you, last year we were up forty-two percent. Our three-year number was up seventeen percent. Our ten-year number was up twelve." Ex. 59 at 32; *see id.* at 51. Bennett's co-host stated that Bennett is "[i]n the top one percent worldwide in return on investment." *Id.* at 34.
- On September 26, 2010, Bennett stated "[n]ow, I will say like last year, for example, we returned forty-two percent. . . . You know, this year we're up ten percent, we're probably going to end up being strong, you know as long as our asset classes continue to run and we think they will because they have the data and the reason to be running up behind them, but the reality is that most advisors aren't in that position." Ex. 58 at 33-34. Later on she also said, "we're at ten and a quarter right now, through yesterday's close." *Id.* at 38.
- On October 31, 2010, Bennett said "[a]nd we are up close to, I think, year-to-date thirty percent. . . . So, our returns put us in the top one percent." Ex. 54 at 24.

- On November 14, 2010, Bennett said that year to date, Bennett Group was up thirty percent; the following week she said it was up "close to thirty-one percent." Ex. 51 at 11; Ex. 52 at 42-43.
- On December 5, 2010, Bennett stated "[w]e developed our new economic era based on the data was showing us that's where we needed to be and last year we were up forty-two percent. This year up thirty-one percent." Ex. 49 at 48.
- On December 12, 2010, she said "[e]ven though you might have a tough economy, like we're in a tough economy now, it's not great for a lot of investors, but we're up thirty-two percent." Ex. 48 at 22.
- On January 16, 2011, Bennett explained that she "was considered an expert in different fields. And obviously, we've had consistent returns. I mean, the good thing is, when I was on Kudlow, Kudlow knew that, you know, for example, in 2010, we returned thirty-seven percent, and in 2009 forty-two percent, and in 2008, six percent, and in the 2007, eight percent.[4] You know, but – you know, in 2008, most people actually returned negative thirty-seven percent to negative sixty percent." Ex. 46 at 29. Later during the show, she also said that in "2006 we had a sixteen percent return. Again, 2007, an eight percent return. The most important number to me is, we were up six percent in 2008, but the S&P was actually negative thirty-seven percent." *Id.* at 46.

During various Financial Myth Busting broadcasts occurring between May 2010 and February 2011, Bennett represented these investor returns as actual returns. OIP ¶ 43. She also claimed on numerous occasions that Bennett Group's returns ranked in the top 1% of investment advisers worldwide in investment performance. OIP ¶ 43. In reality, a significant portion of Bennett Group customer accounts were not invested in accordance with the model portfolio. OIP ¶ 43; *see* Ex. 163 at 5.

At no time during the radio shows did Bennett disclose that the returns she touted were actually model returns or the fact that actual client returns might differ. OIP ¶ 44. Indeed, Bennett Group had retained an accounting firm to assist with respect to the model portfolio, and the accounting firm had advised Bennett that when discussing portfolio returns, she should follow Commission guidance expressed in a no-action letter issued to Clover Capital Management, Inc. OIP ¶ 44; Ex. 269 at 1, 3. In the letter, Commission Staff states that:

> the use of model or actual [portfolio] results in an advertisement would be false or misleading under Rule 206(4)-1(a)(5) if it implies, or a reader would infer from it, something about the adviser's competence or about future investment results that would not be true had the advertisement included all material facts. Any adviser using such an advertisement must ensure that the advertisement discloses all material facts concerning the model or

[4] Lawrence Kudlow is the former host of several CNBC television shows, including "The Kudlow Report" and is currently a senior contributor at CNBC; he also hosts his own radio show called "The Larry Kudlow Show." Larry Kudlow Profile, CNBC, http://www.cnbc.com/larry-kudlow/ (last visited June 29, 2016).

> actual results so as to avoid these unwarranted implications or inferences.

Ex. 269 at 8 (footnote omitted). Despite this advice—as well as Bennett's obligations under the federal securities laws—Bennett did not disclosure that the touted returns were from a model portfolio and actual returns might differ were never made on the radio show. OIP ¶ 44. Bennett admitted during her investigative testimony that references during her radio show to client returns were for Bennett Group's model portfolio and not actual client returns. Ex. 361 at 283-84; *see* Answer ¶¶ 42, 44 ("Bennett did not verbally discuss on the radio show the method by which the returns she referenced were calculated.").

D. Investor Testimony

1. Steven Santagati

Steven Santagati is a television personality who has worked for ESPN and Inside Edition and authored a relationship advice book. Tr. 65-66. Bennett was his financial advisor. Tr. 66. He met Bennett in the waiting room of a publicity firm in about 2007 or 2008. Tr. 66, 68. Bennett told Santagati that he should invest with her and because she was just starting out, she would "do [him] a favor." Tr. 67-68. She told him that he could be doing a lot better with his money using a financial advisor rather than an accountant and mutual funds. Tr. 67. Santagati invested approximately $400,000, which was his life savings, with Bennett. Tr. 68. Later, he sold some property and transferred an additional almost $700,000 for her management, as well as all the money he earned from the sale of his book. Tr. 68.

Bennett told Santagati that he "could trust her, . . . she was one of the best in the business, if not the best and she managed billions of dollars, over a billion dollars in people's money," he was "a small fry in her portfolio," and more savvy investors trusted her. Tr. 70. Santagati explained that Bennett "set a tone" for him not to question her, though Santagati acknowledged that even if he had questioned, he would not know what he was asking about anyway. Tr. 70. Santagati trusted Bennett "100 percent" because she told him there were safeguards in place so he did not have to worry about her losing his money or doing something illegal and because she was the expert and he was not. Tr. 71.

Santagati told Bennett that he planned to live off his savings in his retirement and that he needed to be conservative. Tr. 74. He also told Bennett that he did not take chances financially and that he only wanted his money to grow. Tr. 75. Santagati testified that Bennett boasted about her Barron's rankings and shared with him the articles many times during their relationship. Tr. 69-70. After receiving these documents, Santagati continued to invest with Bennett and send her additional money. Tr. 70.

Bennett relied on her claimed AUM to try to convince Santagati to solicit additional clients. Tr. 71-72. She continually referenced her ranking in Barron's and emphasized the billion dollar AUM figure. Tr. 71. Bennett asked Santagati to refer his friends with decent-sized portfolios to her and tell them that that she could guarantee she could do better than their current advisors. Tr. 72.

Santagati lost all of his money—over $1 million—when the "bubble burst." Tr. 69, 72-73. Bennett promised to make his money back as the value of his account fell, but Santagati eventually realized that she could not and that "something [was] very, very wrong here." Tr. 72-73. After he left Bennett Group, Santagati looked up a former Bennett Group employee, John Koorey. Tr. 73. Santagati asked Koorey how Bennett could have lost so much money for him and possibly her other clients and yet keep all of her clients. Tr. 73. Koorey laughed, as if Santagati was "naïve," and said that Bennett did not manage billions of dollars; he admitted that "[s]he maybe, maybe manages high [$]300 million or $400 million in assets." Tr. 73-74. Santagati is currently in arbitration with Bennett. Tr. 69.

2. John "Jack" Crowley

John "Jack" Crowley hired Bennett in either 2004 or 2005. Tr. 89. He initially invested several hundred thousand dollars with Bennett and Bennett Group. Tr. 89. Crowley eventually invested over $1 million. Tr. 89-90. Through oral conversations and in reading written materials about how her AUM was "more than a billion or billions under management," Bennett gave Crowley the impression that he was a "[s]maller than usual" "player." Tr. 90. Crowley was impressed by the "size of" Bennett's firm. Tr. 94. That size was one of many considerations that went into his view of working with Bennett Group. Tr. 93-95. The size of her portfolio was important because the fact that other larger parties had decided to invest with her led him to believe that Bennett Group was "a very credible organization." Tr. 94-95.

Before he made his first investment with Bennett, Crowley was told that Bennett was a "large player in the financial industry." Tr. 95. After he learned of her Barron's ranking he continued to make securities transactions through her. Tr. 92, 95. Bennett also tried to get Crowley to solicit additional clients. On May 5, 2010, Bennett emailed Crowley and his business partner, Mark Fuller. Tr. 92; Ex. 355. She asked that they pass along the women financial advisors article to the management of a company they were working with in the hopes that she could manage its 401(k) plan. Tr. 91-92; Ex. 355.

Crowley suffered losses in his account with Bennett Group and stopped investing with Bennett after 2010. Tr. 92, 95-96. He prevailed in an arbitration action he filed against Bennett with FINRA. Tr. 92-93; Ex. 272.

3. Phillips Peter

Phillips Peter holds a bachelor's degree and a law degree from the University of Virginia. Tr. 105. He served in the United States Army, worked at two large law firms, and "then joined the General Electric legal operation," where he eventually rose to general counsel of GE Credit Financial Services. Tr. 105. Since then, he has served as the general manager of the consumer side of GE Credit and then served as a corporate officer of General Electric for twenty-one years. Tr. 105-06. After that, Peter retired and joined another law firm in Washington, D.C., and for the last year has been with Ridge Global as a senior vice president concentrating in cyber security and cyber insurance. Tr. 106.

Peter hired Bennett as his financial advisor in the spring of 2009. Tr. 106. He met Bennett at a reception at Tudor Place in Washington, D.C., a National Historic Preservation property that was owned by his ancestor Thomas Peter, the husband of Martha Washington's granddaughter. Tr. 107-08. Bennett introduced herself to Peter and told him that she ran a financial advisory business and had just been on television with Larry Kudlow, whom Peter had previously met. Tr. 108. She described her business, saying that she was in the top one percent of financial advisors and managed over $1 billion. Tr. 108. She also told Peter that she represented Mount Vernon Ladies' Association (the Association), something that caught his attention due to his ancestral connections. Tr. 108. Bennett spoke about Barron's and told Peter that Barron's would be ranking her fifth among top women financial advisors that year. Tr. 109.

Peter investigated Bennett and her firm and spoke to a reference provided by Bennett with the Association. Tr. 108. Much later, Peter learned that the Association had stopped working with Bennett, something she never disclosed to him. Tr. 108-09. Peter initially transferred half of his assets to Bennett. Tr. 108-10. Soon after reviewing the June 2009 Barron's ranking, Peter transferred the remainder of his investment assets to Bennett. Tr. 109, 111. When he first started working with Bennett she managed about $12 to $15 million of his assets; she said she would "take [him] to 60 million."[5] Tr. 114.

Bennett wanted Peter to speak with a contact of his at General Electric, who was responsible for creating a list of financial advisors that current or retired General Electric officers could use. Tr. 109, 111; Ex. 319. Based on Bennett's representations and the Barron's ranking, Peter sent the Barron's article to his contact. Tr. 109. If Peter had known that the ranking was not based on accurate financial data, he would never have sent it to his contact, nor transferred the remainder of his assets to Bennett to manage. Tr. 109. The ranking heavily influenced his decision to move money to Bennett Group because he "always looked at Barron's as one of the pillars of reporting on the financial industry and [he] had subscribed to it and so this was very meaningful" to him. Tr. 115. Also, the fact that Bennett Group's AUM was over $1 billion influenced Peter's decision to move his money to Bennett Group. Tr. 115.

At Bennett's urging, Peter listened to Bennett's radio show after he became her client. Tr. 112, 115. On the show, Bennett spoke about her investment strategies and mentioned the assets she said Bennett Group managed. Tr. 112. Everything Peter heard about Bennett's ranking in Barron's, from the Association's reference, and on the radio show indicated to Peter that Bennett was a "successful player in the industry." Tr. 112.

Peter suffered losses during Bennett's management of his assets. Tr. 113. As of March 2011, she managed $25.9 million of his money; by March 2012, the value of his assets had declined by $17.6 million to $8.3 million. Tr. 113; Ex. 352. Bennett did not explain why Peter's account value had dropped so precipitously. Tr. 113. As it was dropping, he told Bennett that his account could not go below $10 million because the losses represented "years of hard work . . . being wiped out." Tr. 113. When the value dropped below $10 million, Peter wanted to withdraw his assets; Bennett told him if he stayed, she would personally see that his assets were

[5] Although the transcript states a range of assets of "somewhere around 12 to 50 million," Peter testified the range was actually $12 to $15 million. Tr. 114.

at least $10 million by the end of 2012 even if she had to put her own funds into that. Tr. 113-14. Peter moved his assets in April or May 2012 to UBS. Tr. 114.

4. Eric Zlatin

Eric Zlatin invested with Bennett Group after seeing the Barron's top one hundred women advisors ranking. Tr. 118. Before reading the article, he had never heard of Bennett or Bennett Group. Tr. 118. As a result of seeing the article and then communicating with Bennett, Zlatin decided to transfer $500,000 to Bennett Group. Tr. 118. Zlatin believed that advisors who managed over $1 billion had "made it, you've arrived." Tr. 119. He could not, however, recall whether Bennett Group's claimed AUM influenced him. Tr. 119. Since the Barron's article was very favorable, he thinks it is possible it led him to call Bennett. Tr. 119. Zlatin could not say whether a smaller number would have changed his mind, but said it could have. Tr. 119. Zlatin opined that if he had seen a number in the $350-$400 million range he would have thought it was not that large for a financial planner and would have considered Bennett Group "a relatively small shop compared to seeing . . . a billion or more." Tr. 119-20. If not for seeing the Barron's article and Bennett's ranking, he would have never heard of Bennett or Bennett Group and would not have invested through her. Tr. 120. Zlatin picked Bennett rather than the advisors ranked one through four because she was so prominently featured and there was a large photograph of her that accompanied the article. Tr. 120. Zlatin also liked the "backstory that talked about" her "investing in emerging markets." Tr. 120. Zlatin is no longer a client of Bennett Group. Tr. 118.

5. James Hammond

James Hammond is currently retired but previously worked for Deloitte & Touche. Tr. 175. He became a customer of Bennett between twelve and fifteen years ago and invested approximately "a couple hundred thousand dollars. Tr. 175-76. He is no longer a client. Tr. 175-76.

Although Hammond heard the number $2 billion on occasion in relation to Bennett Group's AUM, it did not "really influence [him] one way or the other because [it] was such a large number." Tr. 176. Because he is an auditor, he would have questioned Bennett if the $2 billion number was inflated from a much smaller number. Tr. 176-77. After he heard the claims about $2 billion, he kept his money at the firm and conducted securities transactions. Tr. 177.

E. Bennett Group's compliance procedures and implementation

Bennett Group adopted a "Written Supervisory Policies and Procedures Manual" in June 2009, which was updated at least in June 2010. OIP ¶ 46; Ex. 180. In adopting written supervisory policies and procedures, Bennett Group used an "off-the-shelf" compliance manual from Compliance Advisory Services. OIP ¶ 46; Ex. 360 at 107. Augustin testified that he made "[m]inor" changes to the policy in an attempt to "tailor it to [Bennett Group] specifically." Ex. 360 at 107. He failed, however, to tailor it to Bennett Group's specific operations and needs, including for calculation and review of managed assets and appropriate review of advertising and promotional content such as the Financial Myth Busting radio show. OIP ¶ 46; Ex. 360 at

107-08. The manual designated Augustin as the CCO and allowed him to delegate certain supervisory responsibilities to others but he never did so. Ex. 180 at 12; Ex. 360 at 107-08, 110. The manual also required an annual review of Bennett Group's policies and procedures and their implementation. Ex. 180 at 52. Augustin testified that to conduct this yearly review, he completed a compliance checklist, though "there wasn't much to test." Ex. 360 at 111-13.

These policies and procedures, which were in any event inadequate, were not implemented. OIP ¶ 47. For instance, Bennett made the decisions for the firm—including determining AUM and how investment returns would be described on the radio show—with effectively no supervision from anyone at Bennett Group. OIP ¶ 47. The manual also specifically detailed the appropriate disclosures for discussions of model performance returns, including disclosures of costs, risks, strategies, and variations from actual client performance, and prohibited advertising that contained any untrue or misleading statements. OIP ¶ 47; Ex. 180 at 78-80. These provisions, too, were not implemented. OIP ¶ 47.

Bennett was essentially able to operate Bennett Group unchecked, and her firm's policies and procedures otherwise were not implemented with respect to her claims about AUM and investment returns. OIP ¶ 48. She exploited that circumstance to make outlandish claims to bolster her reputation and that of her firm, so that existing customers and clients would be kept and new ones could be obtained. OIP ¶ 48.

Others at the firm, including the other co-owners, were unable to verify portions of the AUM calculations, in particular the claims related to short-term assets. Ex. 360 at 179-80; Ex. 365 at 207-09. For instance, Mascho and Augustin could verify through company records the assets held through the brokerage, but had to rely on Bennett for the short-term asset figures. Ex. 360 at 152-56, 159, 179; Ex. 365 at 208-09. Augustin testified that after the top women financial advisors ranking was published, he questioned Bennett and Mascho about the basis for the assertion that Bennett Group's AUM was $1.1 billion. Ex. 360 at 209, 211, 213. Augustin characterized the ranking as "a bit of a surprise." *Id.* at 213. Bennett told him that the AUM figure was comprised of brokerage assets, pension assets, and short-term cash for corporate clients she advised on "on the outside." *Id.* at 213-14. Augustin commented that he had "no basis to judge whether [the $1.1 billion figure] was right or wrong." *Id.* at 214.

Augustin testified during the investigation that he had never seen the 2011 Barron's ranking before being shown it when he testified. Ex. 360 at 151. He was unable to verify whether the stated $1.8 billion in assets managed was correct, stating that he "ha[d] no idea" and that the figure was "not representative of the assets that were certainly on the advisor." *Id.* at 150-51. Augustin was initially surprised when Respondents appeared in the Barron's rankings, thinking that because Bennett Group was a relatively new firm, it would not have made it. *Id.* at 163, 165.

Augustin also testified that he could not recall whether Bennett made claims regarding AUM on the radio show and that he only became aware of the AUM claims made on the show after "seeing [them] in a transcript that was provided to the SEC." Ex. 360 at 157.

F. Respondents' actions during the examination and investigation

In 2011, the Commission's Office of Compliance Inspections and Examinations (OCIE) conducted an examination of Bennett Group. Tr. 32; *see* OIP ¶ 24. Robert Thomas was the exam manager for the examination and Darren Goins was the examiner. Tr. 32. During the examination, Thomas and Goins interviewed Bennett several times. Tr. 32. As part of the examination, Thomas and Goins discovered Respondents' claims regarding AUM, including obtaining the Barron's issues ranking Bennett as a top five woman financial advisor and number twenty-six independent advisor in the country and learning that Bennett hosted a weekly radio show. Tr. 33-35, 40. Despite OCIE's request for all questionnaires or requests for proposals, Bennett Group did not provide the Barron's issue ranking Bennett as the number two advisor in Washington, D.C., or the questionnaire submitted for the ranking. Tr. 35-37. Thomas testified that Respondents claimed they did not provide these documents during the examination because the ranking was not considered an advertisement as it had not yet been distributed to clients. Tr. 35-36.

During the examination, Thomas and Goins reviewed brokerage records from Royal Alliance and Western. Tr. 41. The brokerage records show that Bennett Group had approximately $338 million AUM in brokerage assets and $67 million AUM for pension consulting clients. Tr. 42. When questioned during the examination and subsequent investigation about the basis for the claims of AUM, Bennett and Bennett Group made a series of statements in an effort to substantiate the claims. OIP ¶ 24.

Among other things, Bennett asserted that the claims of managing over $1 billion were defensible because she provided uncompensated short-term cash management advice to three corporate clients: Dimension Data for $706 million, Omega World Travel for $150 million, and the Association for $100 million. OIP ¶ 25; Tr. 42-45; Ex. 35 at 2; Ex. 151. Thomas and Goins asked for any documentation, including any contracts, email correspondence with the firms, written recommendations on investments, fee billing, or anything to substantiate that Bennett Group provided services to these firms, but Bennett Group could not provide any documentation. Tr. 44. According to Thomas, Bennett stated that all the information was provided verbally and that the only thing she could provide was an annual report for Dimension Data, which was located online and did not relate to Bennett Group. Tr. 44-45. Bennett was the sole source of information regarding the short-term cash management for these organizations. Tr. 45; Div. Ex. 361 at 243, 254.

During the Division's investigation, Bennett argued that her total AUM was calculated by adding "[t]he assets that we managed across the board in every asset class," including the short-term cash management and the assets held at the brokerage firms. Ex. 361 at 97-100, 197-98, 203-04. Bennett conceded that if the Dimension Data figure alone were removed from this equation, then the claims published in Barron's regarding assets managed would be false. *Id.* at 209.

Bennett continued to claim during the investigation that she provided short-term cash management to Dimension Data, Omega, and the Association. Ex. 361 at 198. Between her first investigative testimony in December 2013 and her second in January 2015, Bennett produced

copies of documents—three "Project Request Forms" and three sets of annotated outlines for weekly pension calls—she claimed substantiated her short-term cash management. OIP ¶¶ 25, 32; Exs. 75-77, 177-79. These documents had been the subject of a subpoena issued prior to the first testimony but were not produced until later. OIP ¶ 32. Respondents were unable to produce the originals and claimed they were lost in an office move. OIP ¶¶ 26, 32. According to Bennett, these project request forms reflect notes she took after having conversations with people at Dimension Data and Omega World Travel. Ex. 361 at 204-05, 214-15. One project request form, dated September 10, 2010, contained notes that Dimension Data had approximately $1.2 billion for short-term cash management. Ex. 75; Ex. 361 at 261. Another form, dated December 21, 2010, contained notes that Dimension Data had $1.575 billion. Ex. 76; Ex. 361 at 261. Bennett stated that these funds increased due to an acquisition in which Dimension Data obtained additional funds. Ex. 361 at 261.

1. Dimension Data Holdings

Dimension Data is a multinational information technology company based in South Africa. Tr. 49; OIP ¶ 28; Ex. 166. From approximately March 1, 2006, through March 31, 2011, Bennett served as financial advisor to the investment committee overseeing the 401(k) retirement plan for Dimension Data's employees in the United States. OIP ¶ 29; Ex. 174; Ex. 361 at 34-36. In this role, she communicated with Dimension Data's human resources director in Virginia, occasionally attended meetings of the company's 401(k) committee, provided investment recommendations for the 401(k) plan, and monitored the performance of the selected mutual funds. OIP ¶ 29; Ex. 361 at 36. The total amount of employee assets in the 401(k) plan during her tenure as advisor was approximately $40 million. OIP ¶ 29; Ex. 361 at 36-37.

During the 2011 examination, Respondents said that they included within the assets managed figure approximately $706 million of Dimension Data's cash assets, for which they supposedly provided short-term investment advice. OIP ¶ 30; Ex. 151.

When Bennett first testified during the investigation in December 2013, she said that during weekly telephone calls between 2005 and 2011, she gave advice to Adrian Liddiard, the CFO of Dimension Data's United States-based business unit, about how to manage over $1 billion in Dimension Data's cash. OIP ¶ 31; Ex. 361 at 37, 43-44. Liddiard, however, had left Dimension Data in February 2006. OIP ¶ 31; Ex. 361 at 255. Upon testifying a second time in January 2015, Bennett changed her story and said that she actually provided the advice to Liddiard's successor, Daniel Celoni. OIP ¶ 31; Ex. 361 at 255-56.

Celoni testified during the investigation that to the best of his knowledge he had never met Bennett in person nor received advice of the sort Bennett claimed from Bennett or anyone else at Bennett Group. OIP ¶ 31; Ex. 362 at 23-24, 58, 95-96. The only time he spoke with Bennett was during meetings to discuss the company's 401(k) for employees in the United States. Ex. 362 at 58-59. Celoni stated that short-term cash management and other investment decisions were handled by the South African office. *Id.* at 37-38, 43. He also stated that he did not believe that he or anyone else at Dimension Data's offices in the United States had the authority to execute or discuss securities transactions on behalf of the company, especially an

investment of more than $1.5 billion, and he was unaware of anyone ever doing so. *Id.* at 81-82, 96.

Bennett also testified during the investigation that Dimension Data's former COO, Wesley Johnston, was aware of Bennett's short-term cash management advice. Ex. 361 at 44, 256. She also produced an affidavit from Johnston in which he purported to have indirect knowledge of the short-term cash management advice that Bennett provided. OIP ¶ 33; Ex. 85; Ex. 361 at 355; *see* Ex. 363 at 24-26. According to the affidavit, Johnston received "regular briefings" from Liddiard and Celoni about the advice. OIP ¶ 33; Ex. 85 ¶ 8. But during subsequent testimony, Johnston retracted the pertinent parts of the affidavit, including the claim that he received regular briefings. OIP ¶ 33; Ex. 363 at 68-69. Johnston also stated in the affidavit that Bennett was "extremely diligent and very responsive, and clearly expended her time and effort providing investment recommendations to Dimension Data." Ex. 85 ¶ 13. However, although he attested that this statement was based upon his personal knowledge, during his investigative testimony he conceded that he had no personal knowledge about Bennett's diligence with respect to Dimension Data's investments; this statement referred to his interactions with Bennett as his own financial advisor. Ex. 85 ¶ 1; Ex. 363 at 21, 75-76.

It is apparent that Johnston's personal relationship with Bennett influenced his affidavit. In addition to the fact that Johnston is Bennett's client, he also communicated with Bennett outside the business context; Johnston referred to Bennett as an "acquaintance" and Bennett referred to Johnston as a "friend." Ex. 361 at 344; Ex. 363 at 20-21, 23-24. Bennett provided Johnston some swimming advice while he was training for a triathlon, connected him with other motorcycle riders as part of the Sturgis motorcycle rally in South Dakota, and "sometimes" socialized with him and his wife. Ex. 361 at 344-45, 347-49; Ex. 363 at 23-24.

Brian Howard is the Dimension Data group treasurer in South Africa. Tr. 49. He has been with Dimension Data since 2003, first as assistant group treasurer and since 2010 as group treasurer. Tr. 49. Generally, his job duties involve risk management, focusing on foreign exchange and cash management within the group. Tr. 49-50. Because of the nature of his positions, he is aware of Dimension Data's finances and investments, including any investment of short-term cash. Tr. 50.

Howard testified that Dimension Data has had a centralized treasury operation since at least 2006; all of its subsidiaries are mandated to centralize cash within a centralized structure. Tr. 50. The centralized cash position is determined by a treasury committee, which comprises the group CFO, the group chairman, and various other finance management individuals within Dimension Data. Tr. 50-51. The centralized cash position is then sent to the treasury operation for implementation and operations. Tr. 51. The treasury committee has never had a United States-based participant or employee, and no United States-based employee had a role with respect to investment transactions. Tr. 51. No employee in the United States has made recommendations regarding short-term cash or any other investment transactions. Tr. 51. To the best of Howard's knowledge, Dimension Data never sought, received, or followed any investment recommendation or advice from Respondents related to investment of assets belonging to any Dimension Data corporation or the holding company. Tr. 51-52. Howard never met, spoke with, or communicated with Bennett or any other employee of Bennett Group.

Tr. 52. The largest amount of assets held by Dimension Data Holdings was slightly over $1 billion around 2000, when it was listed on the London Stock Exchange. Tr. 52. The largest amount since then was around $650 million in 2008, which was comprised of about $350 million in the London cash pool and $300 million in countries that prohibit repatriation of assets. Tr. 52. It would have been impossible for investment decisions of the magnitude at issue here to have been made without Howard's knowledge. Tr. 52-53.

2. Omega World Travel

Omega is a Virginia-based travel agency. OIP ¶ 36; Ex. 166. Bennett and Bennett Group advised Omega's 401(k) plan from approximately 1988 until 2012, when Bennett was terminated. OIP ¶ 36; Tr. 100. The largest amount of employee assets in the plan during Bennett's tenure was approximately $35 million; during 2009-2012, the plan had around $11 million in assets. OIP ¶ 36; Tr. 100. In addition to the plan assets, Bennett told examiners that she advised Omega on short-term investments of approximately $150 million and testified during the investigation that the figure was "[p]robably close to about 50 to 100 million." OIP ¶ 37; Ex. 151; Ex. 361 at 54. The project request forms stated that Bennett advised on $20 to $25 million. Exs. 75-77. Bennett also claimed during her first investigative testimony that her communications about this subject involved weekly telephone calls and in-person meetings with Dan Bohan, Omega's founder and owner. OIP ¶ 37; Ex. 361 at 49-50.

Gloria Bohan is and always has been the CEO of Omega. Tr. 98-99. Dan Bohan, her husband, passed away August 5, 2010. Tr. 99. After he became ill in May 2004, he was unable to work at Omega. Tr. 99; OIP ¶ 37. Upon being confronted with the fact that Dan Bohan was either deceased or incapacitated at the time Bennett claimed she met or spoke with him, Bennett changed her story. OIP ¶ 38. Bennett testified that the communications regarding short-term cash management had been with Gloria Bohan and not her husband. OIP ¶ 38.

Gloria Bohan testified that as CEO of Omega, she would always have been aware of its operations and finances. Tr. 99-100. Gloria Bohan also stated that as a financial consultant to Omega's 401(k) plan, she expected Bennett to review the investments of the employees in the plan and to be available if anyone needed clarification. Tr. 103. Because of this role, Bennett largely worked with Omega's benefits group and human resources department. Tr. 103. Bennett and her firm did not provide any other services to Omega. Tr. 100-01; OIP ¶ 37. Gloria Bohan never communicated with Bennett or anybody at Bennett Group regarding the investment of Omega's corporate assets, including short-term cash management. Tr. 101-02; OIP ¶ 37. Since at least 2005, Omega has not had $25 million for short-term cash investments and instead has depended on lines of credit. Tr. 101-02; OIP ¶ 37.

3. Mount Vernon Ladies' Association

Mount Vernon Ladies' Association is a 501(c)(3) nonprofit organization that is responsible for caring for George Washington's home in Virginia and educating the world about Washington's life. Tr. 79; OIP ¶ 39; Ex. 166. The Association's endowment in 2006 was approximately $100 million; by 2010 it was around $125 to $150 million. Tr. 79, 81; OIP ¶ 39.

Bennett provided financial advisory services to the Association's investment committee from 2006 to October 27, 2009. OIP ¶ 39; Ex. 175.

Bennett told OCIE examiners in 2011 that at that time she provided $100 million in short-term cash management to the Association. Ex. 151. During her investigative testimony, Bennett stated that although she was terminated by the Association in October 2009, she had to "unwind [its] positions" and she "helped" Barton Groh, the Association's CFO and a personal client of Bennett's, "with some other issues." Ex. 361 at 56-57. As such, she claimed that her relationship with the Association continued through 2010 and 2011. *Id.* at 57. In support of this, Bennett provided records that purported to show that she participated in "[w]eekly [c]all[s]" with the Association up until April 2010, after Bennett Group was terminated in October 2009. *See* Ex. 179; Ex. 361 at 409. Bennett also claimed to have performed pension consulting services – "clean up, re-organize . . . paperwork . . . set up the investments" – on approximately $6.5 million of the Association's assets. Ex. 361 at 203; *see* Exs. 80-82, 84.

Groh testified he was the CFO of the Association from January 2006 through October 2010 and the COO from then until April 2014. Tr. 79. As CFO, Groh was responsible for all the finances, internal controls, audit, and management of investment funds. Tr. 79. Groh testified that Bennett first managed $7.5 million and later $30 to $35 million for the Association, with other advisors handling the remainder of the endowment. Tr. 80-83. Bennett Group did not manage $100 million for the Association as short-term cash or in any other way; and while Bennett made a pitch to manage the pension plan, she was not selected for either the Association's pension or 403(b) retirement plan. Tr. 82-83. Groh also testified that at the time Bennett was terminated, Groh spoke with Bennett and made clear to her that she would no longer provide investment management services for the Association and there would be no further opportunities in the foreseeable future for her to do so. Tr. 84. On October 27, 2009, the date the Association terminated her services, the Association directed Bennett to immediately transfer all funds she managed to the Association's bank account. OIP ¶ 40; Ex. 175. When asked about the documentation of Bennett's claimed weekly calls, Groh testified that he did not initiate any calls to Bennett or anyone else at Bennett Group regarding the Association's investments. Tr. 85.

G. False statements to the District of Columbia securities regulator[6]

In October 2013, Senayet Meaza, Director of Market Examination for the District of Columbia Department of Insurance, Securities and Banking (District of Columbia securities regulator), wrote Bennett regarding the AUM claims in the June 2009 Barron's ranking. Ex. 87. The letter stated, in part:

[6] Although Bennett was not charged with making false statements to the District of Columbia securities regulator, I may consider facts outside the OIP when assessing sanctions. *See Robert Bruce Lohmann*, Exchange Act Release No. 48092, 2003 SEC LEXIS 3171, at *17 n.20 (June 26, 2003) (permitting consideration of conduct not charged in the OIP for purposes of assessing sanctions).

> In June 8, 2009, you were listed by Barron's magazine as one of the top five Women Financial Advisors, with assets under management of more than a billion dollars. In that year, you were the owner of [Bennett Group]. The Form ADV that was filed [f]or [Bennett Group] on the IARD/CRD system on March 3, 2009, reported that the assets under management of the firm were zero dollars. We are concerned about the discrepancies between the information reported in the contemporaneous official filing of [Bennett Group] and the amount of assets under your management and other information about your activities as reported in the June 8, 2009 issue of Barron's magazine.

Ex. 87 at 1. The letter also asked several questions, including whether Bennett Group had used the ranking as advertising or promotional material and whether there were any other publications ranking Bennett as a top advisor. *Id.* at 2.

In a response dated December 31, 2013, Bennett wrote:

> In 2009, [Bennett Group] was dually registered with FINRA as an investment advisor on the broker-dealer side with asset under management of over $1 Billion and [Bennett Group] was also registered with the SEC as a RIA Pension Consultant with no assets under management as an RIA as per our ADV filing as you noted. In 2009 [Bennett Group] filed with the SEC a form ADV to start the registration process to open our own Mutual Fund, Bennett Group of Funds. There were no assets under our management in the mutual fund in 2009 as per the SEC ADV filing. However, our client's brokerage accounts had assets in excess of $1 Billion (and still do).

Ex. 86 at 1. Bennett also wrote that use of the Barron's ranking was "infrequent" and that she was "not aware of any other publications where we were listed as a top manager/advisor." *Id.* at 2.

H. Expert Testimony

1. Howard Schneider

Howard Schneider testified about industry standards relevant to Bennett Group and Bennett in connection with (1) adopting and implementing written policies and procedures reasonably designed to prevent violations of the securities laws; (2) conducting an annual review of those policies and procedures; and (3) designating a CCO who is knowledgeable and competent for those purposes. Ex. 181 at 3.

Schneider is a senior consultant at Charles River Associates International, where he specializes in providing consulting and expert witness services to a variety of clients in the

financial services business, with a particular emphasis on futures and derivatives products. Ex. 181 at 2. He previously practiced law at Stroock & Stroock & Lavan and Katten Muchin Rosenman, served as the first general counsel of the Commodity Futures Trading Commission, served as general counsel and senior counsel at MF Global and its predecessors, and served as a managing director at Navigant Economics. *Id.* Additionally, he is chairman of the board of PJM Interconnection, LLC, which is responsible for the operation of the largest power grid in North America. *Id.* He has devoted a good portion of his legal career to advising clients on compliance-related matters, including securities and futures transactions. *Id.* He has experience supervising an office that was responsible for compliance manuals and implementation of compliance directives. *Id.* at 2-3.

Schneider testified that as a registered investment adviser from January 2009 until September 2013, Bennett Group was required to comply with Advisers Act Rule 206(4)-7, which requires registered firms to adopt and implement written policies and procedures designed to prevent Advisers Act violations, review at least annually the adequacy of those policies and procedures and the effectiveness of their implementation, and designate an individual as a CCO. Ex. 181 at 5, 8-9.

The relevant policies and procedures of Bennett Group's "Written Supervisory Policies and Procedures Manual" (adopted June 2009, updated June 1, 2010) are: (1) supervision – the appointment of Tim Augustin as CCO; (2) Code of Ethics, in particular nos. 8 and 14 of the ethical business standards; (3) record keeping requirements, including standards for written communications, advertising recommendations, performance calculation documents, written policy and procedures manual, annual review, and performance numbers; and (4) communications with clients, including standards for advertising/sales literature and performance advertising. Ex. 181 at 6.

Augustin made minor changes to a template of the manual, which was provided by Compliance Advisory Services through Dawn Bond. Ex. 181 at 7. Schneider found it problematic that Bennett disavowed any involvement with Bond because as CEO and principal owner of Bennett Group, she had overall supervisory responsibility for Bennett Group and its activities. *Id.*

Schneider testified that it was apparent from Augustin's investigative testimony that he was not knowledgeable about the Advisers Act and its various rules and regulations and that he did very little to try to educate himself on its applicability to Bennett Group. Ex. 181 at 7, 14. Schneider opined that Augustin did not adequately perform his role as a CCO as envisioned by the SEC under Rule 206(4)-7, or as is customary in the business. *Id.* at 14-15.

Schneider opined that the manual generally contains most of the policies and procedures one would expect of an investment adviser and would fit in with usual industry practice. Ex. 181 at 9. But though the document "contains provisions which are sound and well written," it appears to be "an 'off-the-shelf' policy and procedures manual for a generic" investment adviser. *Id.* In Schneider's opinion, the manual was ineffective for Bennett Group in two ways: (1) the manual was not specific and it did not contain policies and procedures specifically tailored to what constitutes and how to calculate AUM; and (2) policies and procedures delineated in the

manual were not followed, such as how to report prior performance or "model" performances. *Id.* at 10. The manual contained nothing about a definition for AUM. Tr. 55.

According to Schneider, "[o]nce it became apparent that the calculation of AUM, or even the concept of assets managed, was an issue with the Barron's lists and the radio show statements, policies and procedures should have been established by the CCO to cover both the calculation of AUM/assets managed and what assets comprise AUM/assets managed." Ex. 181 at 10-11 (internal footnotes omitted); *see* Tr. 56. For instance, to the extent Bennett Group managed distinct sets of assets, such as broker/dealer accounts, 401(k)/pension advisory assets, and short-term cash management, customized procedures were required in order to measure these categories, especially with respect to the 401(k)/pension and short-term cash management since these assets were not held in Bennett Group accounts. Ex. 181 at 11. Since the broker-dealer accounts were under Bennett Group's control, anybody could easily verify what the number was. Tr. 58. Schneider believed that the CCO verified the 401(k)/pension assets by reverse engineering the trail of commissions. Tr. 58. Nobody verified the short-term cash management assets. Tr. 58. Customized procedures should have addressed issues related to determining the frequency with which asset advisory services were performed to consider whether the advice was "continuing," as well as which non-fee advisory assets would or should be included in the calculations. Ex. 181 at 11. It would not have been unreasonable for them to take the system they used to calculate the AUM for the Form ADV and use that. Tr. 58-59; Ex. 181 at 11 n.21.

Schneider was also troubled that no control was exercised over Bennett's authority to determine assets managed or her ability to make statements regarding it on the radio show. Ex. 181 at 11. This should have at least been done with respect to the cash management figures for Dimension Data, Omega, and the Association because only Bennett purported to have any information about those figures. *Id.* at 11-12.

Schneider found the following instances of non-compliance with the manual:

- The performance advertising section requires certain disclosures when providing performance numbers for a model portfolio. When discussing model performance on the radio show, Bennett did not provide complete disclosures, nor did anyone insist she should. Ex. 181 at 12.
- Under the manual, an advertisement includes any notice or announcement in any publication or by radio. Any advertisement was subject to review and approval by the CCO before it is used for the first time. The CCO did not review the radio show materials before their first use, nor did anyone else. *Id.*
- The CCO's reliance on Western's compliance department to provide compliance reviews was misplaced because he did not verify the underlying facts or numbers provided to Western or what procedures or methodologies Western used.[7] *Id.* at 13.
- No one at Bennett Group reviewed the policies and procedures at least annually. *Id.*

[7] As discussed *supra*, Western was the broker-dealer with which Bennett and Bennett Group employees were previously associated.

2. Dr. Russell R. Wermers

Dr. Russell R. Wermers earned his Ph.D. in finance at the University of California, Los Angeles. Ex. 165 at 1. He is a professor of finance at the Smith School of Business, University of Maryland at College Park. *Id.* His main research interests include best practices in the evaluation of investment manager performance, the study of characteristics that affect fund performance and investor flows, the efficiency of securities markets, and the impact of information on investors' decisions. *Id.* He has previously served as an assistant professor at the University of Colorado; a consultant for Goldman Sachs Asset Management, the Office of Financial Research of the U.S. Department of the Treasury, and others; and as an analyst for The Unocal Corporation. *Id.*

The Division retained Dr. Wermers to evaluate the materiality of Respondents' statements regarding AUM and the performance of Bennett Group's portfolio without clarifying that its returns represented those of a model portfolio instead of actual historical client returns. Ex. 165 at 8.

Dr. Wermers opined that investors base their investment decisions on salient information, including AUM and historical returns. Ex. 165 at 9-11. Due to the complexity of the investment decision-making process, investors use heuristics to simply the process. *Id.* at 10. Investors are especially influenced by salient information, or information that conforms to their prior beliefs and that is readily available and easily recalled. *Id.* at 11. Information can acquire salience through advertising, repeated reference, and vividness. *Id.*

AUM is one type of salient information used by investors because it is widely disseminated in the financial industry by investment managers and financial publications such as Barron's. Ex. 165 at 11. Information on historical returns is also salient information as it is widely disseminated in the financial industry through information intermediaries, such as Morningstar, which ranks investment managers. *Id.* at 12. Investors tend to believe that AUM and historical returns are related to each other in that AUM can be reflective of an investment manager's historical performance. *Id.* at 12-13.

Dr. Wermers stated that investors are especially influenced by information presented to them through advertising and other media, which builds salience, when making investment decisions. Ex. 165 at 9, 14-15. For instance, strong performance statistics influence investors to invest in well-known funds and funds that conduct more extensive marketing or receive more media attention. *Id.* at 14-15.

Dr. Wermers found that Respondents' alleged misstatements about AUM were material because investors consider AUM to be important in their investment decisions and because the AUM misstatements "are large by any reasonable standard." Ex. 165 at 9, 15-22. The alleged misstatements had a substantial effect on Bennett Group's placement with respect to AUM among all the advisers listed in the 2009 issue. *Id.* at 17-18 & Fig. 2a ($1.3 billion AUM placed Bennett Group at 42 out of 100, while $372.7 million would have placed Bennett Group at 96 out of 100). Similarly, the alleged misstatements also had a substantial effect on Bennett Group's placement with respect to AUM among the top twenty Washington, D.C., financial

advisors listed in the 2011 issue. *Id.* at 19-20 & Fig. 2b ($1.8 billion placed Bennett Group at 5 out of 20, while $413.8 million would have placed Bennett Group out of the top 20). Although Barron's does not rely solely on AUM to determine its rankings, the fact that AUM plays a role in the Barron's ranking, along with the magnitude of the misstatement, suggests that Bennett Group's Barron's ranking would have been different if Respondents used the accurate figures. *Id.* at 18 & n.53, 20 & n.56.

Additionally, the amounts of the alleged misstatements—$1.1 billion consisting of the purported short-term cash management assets plus the additional Association pension and endowment figures—exceeded the median value for total assets reported by the other investment advisers in the 2009 and 2011 Barron's rankings—$1 billion. Ex. 165 at 20. The amounts of the alleged misstatements are also large relative to the amount of assets Bennett Group was actually managing. *Id.* at 20-21 ($1.1 billion of alleged misstated assets versus $381.4 million in actual assets). The amounts of the alleged misstatements—Dimension Data alone accounted for sixty-two to seventy-eight percent of the total assets claimed by Respondents—are also large relative to reasonable thresholds for error reporting, which is twenty percent. *Id.* at 21. Finally, $1.0 billion in AUM by itself is an important threshold for investment advisers; fewer than ten percent of advisers manage assets greater than $1 billion. *Id.* at 22 & nn.64-65.

Dr. Wermers also found that the alleged mischaracterizations of model portfolio returns as actual historical client returns were material because investors consider historical returns during their decision-making process. Ex. 165 at 9, 22-25. The fact that Bennett did not disclose that the reported returns were based on a model portfolio is material because the difference between model portfolio returns and actual returns can be significant and lead to a biased expectation by investors about the risk-return characteristics of that portfolio going forward. *Id.* at 23. First, investment results in a model portfolio can be "cherry-picked" by (1) "seed[ing]" different strategies over a period of time and picking "the strategy that worked the best since its origination"; and (2) choosing a time period that results in the highest returns. *Id.* at 23-24. Second, investment results in a model portfolio do not take into account actual costs: (1) trading costs in a model portfolio are usually based on idealized trading costs; and (2) most model portfolios ignore the cost of investment research and other support services. *Id.* at 24. Dr. Wermers additionally points out that the model portfolio returns used by Bennett Group differed from actual client returns by an average of 3.21%. *Id.* at 25. He also notes that the standard deviation of client returns indicates that there was substantial variation in client returns, suggesting that the returns for specific client accounts were much higher or much lower than the average. *Id.* at 24-25 & Fig. 3.

I. Tolling of Any Applicable Limitation Periods

Bennett and Bennett Group signed tolling agreements that tolled any applicable statute of limitations for the period from July 31, 2014, through October 1, 2014, and signed additional tolling agreements that further tolled any applicable statute of limitations for the period from October 1, 2014, through January 2, 2015. OIP ¶ 49; Exs. 182-84, 186.

Issues

The antifraud provisions prohibit frauds committed in connection with the offer, purchase, or sale of securities. Respondents made numerous materially misleading statements and omissions to boost their reputation and retain existing and attract new customers. Did Respondents violate the antifraud provisions? Because Respondents were investment advisers, did they further violate various provisions of the Advisers Act and its rules by publishing, circulating, or distributing false and misleading advertisements and by failing to adopt and implement adequate policies and procedures reasonably designed to prevent violations?

Discussion and conclusions of law

A. Legal Principles

The OIP charges Respondents with willful violations of Securities Act Section 17(a), Exchange Act Section 10(b) and Rule 10b-5, and Advisers Act Section 206(1) and (2). OIP ¶¶ 50-51. It also charges Bennett Group with willfully violating, and Bennett with willfully aiding and abetting and causing those violations of, Advisers Act Section 206(4) and Rules 206(4)-1(a)(5) and 206(4)-7. OIP ¶¶ 52-53.

Securities Act Section 17(a) provides that:

> It shall be unlawful for any person in the offer or sale of any securities . . . by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly—
>
> (1) to employ any device, scheme, or artifice to defraud, or
>
> (2) to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
>
> (3) to engage in any transaction, practice or course of business which operates or would operate as a fraud or deceit upon the purchaser.

15 U.S.C. § 77q(a).

Exchange Act Section 10(b) and Rule 10b-5 provide that in connection with the purchase or sale of any security:

> It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange,

> (a) To employ any device, scheme, or artifice to defraud,
>
> (b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or
>
> (c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

17 C.F.R. § 240.10b-5; *see* 15 U.S.C. § 78j(b).

Securities Act Section 17(a) and Exchange Act Section 10(b) and Rule 10b-5 "prohibit some of the same [fraudulent] conduct," *United States v. Naftalin*, 441 U.S. 768, 778 (1979); however, Section 10(b), Rule 10b-5, and Section 17(a)(1) require a showing of scienter while Section 17(a)(2) and (3) requires only a showing of negligence, *Aaron v. SEC*, 446 U.S. 680, 691, 695-97 (1980). Further, Rule 10b-5 is subject to Section 10(b)'s requirement that the misconduct involve manipulation or deception. *See* 15 U.S.C. § 78j(b); *Central Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.*, 511 U.S. 164, 173-74 (1994). This requirement is met where a respondent "engaged in conduct that had the principal purpose and effect of creating a false appearance of fact in furtherance of the scheme." *Simpson v. AOL Time Warner Inc.*, 452 F.3d 1040, 1048 (9th Cir. 2006), *vacated on other grounds, Avis Budget Grp., Inc. v. Cal. State Teachers' Ret. Sys.*, 552 U.S. 1162 (2008); *cf. SEC v. Dorozhko*, 574 F.3d 42, 50 (2d Cir. 2009) ("In its ordinary meaning, 'deceptive' covers a wide spectrum of conduct involving cheating or trading in falsehoods.").

Advisers Act Section 206(1) and (2) makes it:

> unlawful for any investment adviser, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly—
>
> (1) to employ any device, scheme, or artifice to defraud any client or prospective client; [or]
>
> (2) to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client.

15 U.S.C. § 80b-6(1), (2). "The 'fundamental purpose of [the Advisers Act is] to substitute a philosophy of full disclosure for the philosophy of caveat emptor and thus . . . achieve a high standard of business ethics in the securities industry.'" *Montford & Co.*, Advisers Act Release No. 3829, 2014 SEC LEXIS 1529, at *51-52 (May 2, 2014) (quoting *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 186 (1963)), *pet. denied*, 793 F.3d 76 (D.C. Cir. 2015). Section 206, therefore, "establishes 'federal fiduciary standards' to govern the conduct of investment advisers." *Transamerica Mortg. Advisors, Inc. v. Lewis*, 444 U.S. 11, 17 (1979)

(quoting *Santa Fe Indus. v. Green*, 430 U.S. 462, 471 n.11 (1977)). As a result, investment advisers must fully disclose all material facts and "employ reasonable care to avoid misleading [their] clients." *Montford & Co.*, 2014 SEC LEXIS 1529, at *50. Advisers Act Section 206(1) requires a showing of scienter while Advisers Act Section 206(2) requires only a showing of negligence. *Id.* at *55-56; *see SEC v. Steadman*, 967 F.2d 636, 641 & n.3 (D.C. Cir. 1992).

Advisers Act Section 206(4) prohibits any investment adviser from "engag[ing] in any act, practice, or course of business which is fraudulent, deceptive, or manipulative." 15 U.S.C. § 80b-6(4). Advisers Act Rule 206(4)-1(a) states that "[i]t shall constitute a fraudulent, deceptive, or manipulative act, practice, or course of business . . . for any investment adviser registered or required to be registered . . . , directly or indirectly, to publish, circulate, or distribute any advertisement . . . (5) Which contains any untrue statement of a material fact, or which is otherwise false or misleading." 17 C.F.R. § 275.206(4)-1(a)(5). Advisers Act Rule 206(4)-7 requires investment advisers to (a) "[a]dopt and implement written policies and procedures reasonably designed to prevent violation[s]" of the Advisers Act and rules thereunder; (b) "[r]eview, no less frequently than annually, the adequacy of the policies and procedures established pursuant to this section and the effectiveness of their implementation"; and (c) designate a chief compliance officer responsible for administering these policies and procedures. 17 C.F.R. § 275.206(4)-7. A showing of negligence is sufficient to support violations of Advisers Act Section 206(4) and Rules 206(4)-1(a)(5) and 206(4)-7. *ZPR Inv. Mgmt., Inc.*, Advisers Act Release No. 4249, 2015 SEC LEXIS 4474, at *35 (Oct. 30, 2015); *Anthony Fields, CPA*, Securities Act Release No. 9727, 2015 SEC LEXIS 662, at *58-59 (Feb. 20, 2015).

B. Bennett Group and Bennett violated Securities Act Section 17(a), Exchange Act Section 10(b) and Rule 10b-5, and Advisers Act Section 206(1) and (2).

The Division argues that Respondents violated the antifraud provisions of the Securities Act and Exchange Act by making false and misleading statements regarding AUM and client performance. Div. Br. at 32-35. Though its brief primarily focuses on the Securities Act Section 17(a)(2) and Exchange Act Rule 10b-5(b) violations, the Division maintains that Respondents' conduct also violates Securities Act Section 17(a)(1) and (3) and Exchange Act Rule 10b-5(a) and (c). *Id.* at 35 n.40. Securities Act Section 17(a)(2) and Exchange Act Rule 10b-5(b) address liability for false statements and omissions. *David F. Bandimere*, Securities Act Release No. 9972, 2015 SEC LEXIS 4472, at *40 & n.59 (Oct. 29, 2015), *pet. for review docketed*, No. 15-9586 (10th Cir. Dec. 22, 2015). Exchange Act Rule 10b-5(a) and (c) and Securities Act Section 17(a)(1) encompass "all scienter-based, misstatement-related misconduct."[8] *John P. Flannery*,

[8] Courts have held that "[a] defendant may only be liable as part of a fraudulent scheme based upon misrepresentations and omissions under Rule[] 10b-5(a) or (c) when the scheme also encompasses conduct beyond those misrepresentations or omissions." *WPP Luxembourg Gamma Three Sarl v. Spot Runner, Inc.*, 655 F.3d 1039, 1057 (9th Cir. 2011); *see also Pub. Pension Fund Grp. v. KV Pharm. Co.*, 679 F.3d 972, 987 (8th Cir. 2012); *Lentell v. Merrill Lynch & Co.*, 396 F.3d 161, 177-78 (2d Cir. 2005); *SEC v. St. Anselm Expl. Co.*, 936 F. Supp. 2d 1281, 1298-99 (D. Colo. 2013); *SEC v. Benger*, 931 F. Supp. 2d 908, 913-16 (N.D. Ill. 2013); *SEC v. Familant*, 910 F. Supp. 2d 83, 93-94 (D.D.C. 2012); *In re Nat'l Century Fin. Enters.,*

Securities Act Release No. 9689, 2014 SEC LEXIS 4981, at *42, *58-59 (Dec. 15, 2014), *vacated on other grounds*, 810 F.3d 1 (1st Cir. 2015). Finally, Securities Act Section 17(a)(3) premises liability on engaging in "any transaction, practice, or course of business." 15 U.S.C. § 77q(a)(3). "[A]n isolated misstatement unaccompanied by other conduct does not give rise to liability under this provision" because "a single misstatement, without more and never acted upon" does not constitute a "transaction," "practice," or "course of business." *Anthony Fields, CPA*, 2015 SEC LEXIS 662, at *40.

The Division also argues that Respondents violated Advisers Act Section 206(1) and (2). Div. Br. at 35-36. In their answer, Respondents asserted that they are not investment advisers subject to liability under the Advisers Act. Answer at 16. An investment adviser is a "person who, for compensation, engages in the business of advising others . . . as to the value of securities or as to the advisability of investing in, purchasing, or selling securities." 15 U.S.C. § 80b-2(a)(11). Respondents fall within this definition because they received compensation in the form of commissions for the investment advice they provided to their clients. Also, Bennett Group was registered with the Commission as an investment adviser from 2008 to 2013. Bennett, as Bennett Group's founder, CEO, and majority owner, is also a primary violator under the Advisers Act. *See Koch v. SEC*, 793 F.3d 147, 156-57 (D.C. Cir. 2015) (registered investment adviser's principal and sole owner liable as a primary violator under Advisers Act Section 206(1) and (2)), *cert. denied*, 136 S. Ct. 1492 (2016).

"Facts establishing a violation of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act also support a violation of Sections 206(1) and 206(2) of the Advisers Act." *SEC v. Locke Capital Mgmt.*, 794 F. Supp. 2d 355, 368 (D.R.I. 2011); *David Henry Disraeli*, Securities Act Release No. 8880, 2007 SEC LEXIS 3015, at *33 (Dec. 21, 2007), *pet. denied*, 334 F. App'x 334 (D.C. Cir. 2009); *see SEC v. Rana Research, Inc.*, 8 F.3d 1358, 1363 n.4 (9th Cir. 1993).

As discussed below, Respondents made material false statements about their AUM and investor returns, which violated Exchange Act Rule 10b-5(b). Also, with respect to Securities Act Section 17(a)(2), Respondents "obtain[ed] money or property by means of" their misstatements, as they used such misstatements to attract clients and earn commissions through trading in client accounts. 15 U.S.C. § 77q(a)(2); *see John P. Flannery*, 2014 SEC LEXIS 4981, at *33-34 & n.38. Further, the false statements and Respondents' accompanying conduct—such as disseminating misstatements via Barron's publications and then redistributing such publications, and repeatedly making such false statements through various media such as a radio show, all to induce investors to keep or place assets under their management—constituted fraudulent schemes, devices, and practices within the meaning of Securities Act Section 17(a)(1) and (3), Exchange Act Rule 10b-5(a) and (c), and Advisers Act Section 206(1) and (2).

Inc., Inv. Litig., No. 2:03-MD-1565, 2006 WL 469468, at *21 (S.D. Ohio Feb. 27, 2006). In its now-vacated opinion in *Flannery*, the Commission disagreed with this approach. *See* 2014 SEC LEXIS 4981, at *49-51. I need not decide whether *Flannery*'s interpretation remains viable because Respondents' conduct involved more than mere misstatements or omissions.

1. Preliminary issues: Nexus requirement and interstate commerce

As an initial matter, the nexus requirements of Securities Act Section 17(a) – "in the offer or sale of any securities" – and Exchange Act Section 10(b) and Rule 10b-5 – "in connection with the purchase or sale of any security" – are met. 15 U.S.C. §§ 77q(a), 78j(b); 17 C.F.R. 240.10b-5. For Securities Act Section 17(a), the "in the offer or sale of any securities" language is construed broadly to "encompass the entire selling process." *Pinter v. Dahl*, 486 U.S. 622, 643 (1988). For Exchange Act Section 10(b) and Rule 10b-5, the "in connection with" requirement is also construed broadly, *see SEC v. Zandford*, 535 U.S. 813, 813-14 (2002), and is met whenever "fraudulent activity . . . 'touches' or 'coincides' with a securities transaction," *SEC v. Pirate Investor LLC*, 580 F.3d 233, 244 (4th Cir. 2009) (quoting *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Dabit*, 547 U.S. 71, 85 (2006)); *cf. Naftalin*, 441 U.S. at 773 n.4 (1979) (noting that the Supreme Court has used Section 17(a)'s phrase "in the offer or sale" interchangeably with Exchange Act Section 10(b)'s phrase "in connection with"). In determining whether the nexus requirement is met, courts consider several non-exclusive factors, including two most relevant here: "whether the defendant intended to induce a securities transaction," and "whether material misrepresentations were disseminated to the public in a medium upon which a reasonable investor would rely." *Pirate Investor LLC*, 580 F.3d at 244 (internal quotation marks omitted). "[A] close fit with one factor may well be enough for a fraud to result in § 10(b) liability." *Id.* at 245.

Here, Respondents' misstatements were made or disseminated through various media—including the Barron's publications, a radio show, emails to clients and prospective clients, and a marketing brochure—with the intent to retain existing and attract new advisory clients. And ultimately Respondents advised and made trades for those clients. "The only reasonable inference that can be drawn from the facts of this case is that the misrepresentations were made to induce real customers to place their assets under [Respondents'] management for security trading, which sufficiently connects [Respondents'] conduct to the sale of securities." *Locke Capital Mgmt.*, 794 F. Supp. 2d at 367. Additionally, Respondents' misstatements about AUM were, at least in some instances, disseminated to the public via Barron's, a well-regarded nationally circulated periodical, upon which a reasonable investor would presumably rely and upon which some investors in fact relied in placing their assets under Respondents' management. *See Semerenko v. Cendant Corp.*, 223 F.3d 165, 176 (3rd Cir. 2000) ("[W]here the fraud alleged involves the public dissemination of information in a medium upon which an investor would presumably rely, the 'in connection with' element may be established by proof of the materiality of the misrepresentation and the means of its dissemination.").

Finally, the misstatements and omissions were made in interstate commerce, including the use of telephones and the internet and via radio. 15 U.S.C. §§ 77b(a)(7), 78c(a)(17); *see United States v. Napier*, 787 F.3d 333, 345 (6th Cir. 2015); *United States v. Barlow*, 568 F.3d 215, 220-21 & n.18 (5th Cir. 2009).

2. The statements regarding AUM and investor returns were materially false and misleading.

The Division alleges two categories of misstatements regarding Respondents' AUM and client performance. Div. Br. at 32; *see* OIP ¶¶ 8-23, 42-45; Div. FOF ¶¶ 17-84. With respect to Respondents' AUM, the Division argues that over a two-year period, Respondents overstated their AUM by amounts ranging from $700 million to $1.6 billion. Div. FOF ¶ 17. With respect to client performance, the Division argues that Respondents inflated client performance "by passing off the results of a Bennett Group 'model portfolio' as those of actual clients." Div. FOF ¶ 44.

a. Statements regarding AUM

From at least 2009 through 2011, Respondents falsely claimed to manage assets totaling $1.1 billion to over $2 billion when in fact they only managed at most approximately $407 million, of which $1.1 million were advisory assets, $67 million were pension consulting assets, and $338 million were brokerage assets. OIP ¶¶ 8, 21. These false statements were made or disseminated through various media, such as the Barron's rankings magazines, the Financial Myth Busting radio show, emails to clients and prospective clients, and a marketing brochure.[9]

In 2009, 2010, and 2011, Respondents represented to Barron's that they managed $1.1 billion, $1.3 billion, and $1.8 billion, respectively. Exs. 29-31 at 1; Ex. 33 at 4, 6 (listing "Total Individual Assets" and "Total Team Assets" of $1,800,000,000); Ex. 361 at 193-94. As part of her scheme to defraud, Bennett—after providing false information to Barron's—redistributed Barron's publications with these misstatements to clients and prospective clients, or referenced such publications in communications with clients and prospective clients, all in an attempt to give false impressions about her business and its success. *See, e.g.*, Exs. 36, 91-92, 162; Ex. 254 at 1; Ex. 361 at 79. Bennett made similar claims during multiple Financial Myth Busting episodes, stating that her AUM ranged from $1.5 billion to over $2 billion. OIP ¶ 20; *see, e.g.*, Ex. 48 at 14; Ex. 54 at 24, 35, 46; Ex. 65 at 2; Ex. 74 at 2, 14. Respondents also used email and marketing materials touting Bennett's Barron's rankings and the inflated AUM figures. *See, e.g.*, Ex. 34; Ex. 91; Ex. 168 at 5, 7-8; Ex. 253.

Respondents' representations regarding AUM were false and misleading, and their attempts to cover-up the falsity of such misstatements backfired. For example, Bennett claimed that the difference between the $407 million and the $1.1 to $2 billion amounts was due to cash management services provided to corporate clients. Ex. 361 at 97-100, 197, 203-04. Bennett stated that she provided short-term cash management to Dimension Data, Omega, and the Association. *Id.* at 198. These claims made to justify Respondents' AUM figures were untrue.

[9] To be clear, Respondents' liability under Rule 10b-5(b) is premised on false statements they "ma[d]e." 17 C.F.R. § 240.10b-5(b). The misstatements that appeared in the Barron's publications do not fall within the scope of Rule 10b-5(b), as there is no indication that Respondents had "ultimate authority over" the content of the Barron's publications. *Janus Capital Grp., Inc. v. First Derivative Traders*, 564 U.S. 135, 142 (2011).

Witnesses from Dimension Data, Omega, and the Association all denied receiving short-term cash management services from Respondents.

At various points throughout the examination and investigation, Bennett claimed that she provided short-term cash management for Dimension Data for $706 million, $1.2 billion, and $1.575 billion, and she said that Liddiard, Celoni, and Johnston could substantiate her claims. OIP ¶ 25; Tr. 42-45; Ex. 35 at 2-3; Ex. 75; Ex. 76; Ex. 151; Ex. 361 at 255-56, 261. She first said she worked with Liddiard, but was forced to change her story after being confronted with the fact that Liddiard had left Dimension Data in February 2006. OIP ¶ 31; Ex. 361 at 37, 43-44, 255-56. Then she said she worked with Celoni, who testified during the investigation that Bennett did not provide such advice. OIP ¶ 31; Ex. 361 at 255-56; Ex. 362 at 23-24, 58, 95-96. Finally, Johnston, who provided an affidavit at Bennett's request stating that he had indirect knowledge of Bennett's short-term cash management, retracted the pertinent portions of his affidavit during his investigative testimony. OIP ¶ 33; Ex. 85; Ex. 361 at 44, 256, 355; Ex. 363 at 24-25, 68-69.

During the hearing, Dimension Data's group treasurer in South Africa, who is aware of the company's finances and investments, testified that: (1) the treasury committee, which determines the company's centralized cash position, never consulted with Bennett or any person in the United States regarding short-term cash management; (2) it would have been impossible for Bennett to have provided short-term cash management in the amount she claimed without his knowledge; and (3) the largest amount of assets ever held by Dimension Data Holdings was slightly over $1 billion in 2000, but the largest amount since then was $650 million in 2008. Tr. 49-53.

Bennett's claims regarding Omega and the Association were similarly unsupported. Bennett claimed she provided short-term cash management services to Omega for $150 million, but later adjusted that amount down to $50 or $100 million. OIP ¶¶ 25, 37; Tr. 42-45; Ex. 35 at 2; Ex. 151; Ex. 361 at 53-54. In support, she named Dan Bohan as her contact, but again, changed her story when confronted with the fact that Dan Bohan was incapacitated by illness and later passed away, claiming that she worked with Dan's wife, Gloria. OIP ¶¶ 37-38; Ex. 361 at 49-51. Gloria Bohan testified at the hearing that: (1) Dan had been unable to work at Omega starting in May 2004 due to an illness and that he passed away in August 2010; (2) Bennett did not provide any additional services to Omega other than providing advice on Omega's retirement plan; and (3) Omega did not have $25 million for short-term cash investments and in fact depended on lines of credit. Tr. 99-102; OIP ¶¶ 36-37.

Bennett claimed she provided short-term cash management services to the Association for $100 million, even after the Association's investment committee terminated her investment advice services in October 2009. OIP ¶¶ 25, 39-41; Tr. 42-45; Ex. 151; Ex. 175. She claimed that she continued working with Groh after her termination and provided purported weekly call documents in support. Ex. 179; Ex. 361 at 57, 409-11. During the hearing, Groh testified that: (1) Bennett Group did not manage $100 million in short-term cash management; and (2) Bennett did not provide any services to the Association after it terminated her. Tr. 82, 84-85; OIP ¶ 40.

In sum, the falsity of the statements regarding AUM is well established. Further, Respondents' misstatements regarding AUM were material. A misstatement is material if "there [is] a substantial likelihood that the disclosure of the omitted fact would have been viewed by [a] reasonable investor as having significantly altered the 'total mix' of information made available." *Basic Inc. v. Levinson*, 485 U.S. 224, 231-32 (1988) (quoting *TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976)).

I credit Dr. Wermers' testimony. He explained that these misstatements were material because investors consider AUM to be important in their investment decisions and the misstatements themselves were so large, inflating Bennett Group's AUM by $1.1 billion. Ex. 165 at 9, 15-22. Dr. Wermers stated that $1 billion in AUM is an important threshold for investment advisers as fewer than ten percent of advisers reach that level. *Id.* at 22 & nn.64-65. Also, AUM is widely disseminated in the financial industry by investment managers and financial publications. *Id.* at 11. According to Dr. Wermers, the misstatements, totaling about $1.1 billion: (1) exceeded the median value for total assets reported by the other investment advisers included in the 2009 and 2011 Barron's rankings, which was $1 billion; (2) are large relative to the amount of assets Bennett Group actually managed, approximately 2.8 times larger; and (3) likely had a substantial effect on Bennett Group's placement with respect to AUM among all advisers listed in the 2009 issue ranking top financial advisors and the top twenty Washington, D.C., financial advisors listed in the 2011 issue. *Id.* at 17-21 & Figs. 2a, 2b.

Respondents' misstatements regarding AUM and the Barron's rankings influenced most of the investors who testified at the hearing. Santagati and Crowley continued to invest with Bennett after seeing the Barron's rankings, and the rankings heavily influenced Peter's decision to move money to Bennett Group. Tr. 70, 92, 95, 115. Crowley found the over $1 billion in AUM impressive and Peter found it meaningful, and it was one of the factors that influenced their decisions to work with Bennett. Tr. 93-94, 115. Crowley testified that the $1 billion AUM figure was important because it lent credibility to Bennett Group, in part because it indicated that other larger parties were also working with Bennett. Tr. 94-95. Peter testified that had he known that the Barron's ranking was not based on financially accurate data, he never would have transferred the remainder of his assets for Bennett to manage. Tr. 109. Zlatin had never heard of Bennett or Bennett Group before seeing the Barron's top women advisors ranking and, but for the article, he never would have learned of the firm nor invested any money through it. Tr. 118, 120. Zlatin testified that AUM of $1 billion or more signified that a firm had "made it" and thought it was possible that the figure influenced his decision to invest with Bennett Group. Tr. 119. A smaller AUM such as $350-400 million was not as impressive to him and he would have considered a firm handling that amount to be "a relatively small shop." Tr. 119-20. Even Hammond, who testified that AUM did not influence his investment decision, stated that he would have questioned Bennett about a highly inflated AUM.[10] Tr. 176-77.

[10] Because the test of materiality is objective, "the reaction of individual investors is not determinative of materiality." *S.W. Hatfield, CPA*, Exchange Act Release No. 73763, 2014 SEC LEXIS 4691, at *23 (Dec. 5, 2014) (quoting *David Henry Disraeli*, Exchange Act Release No. 57027, 2007 SEC LEXIS 3015, at *23 (Dec. 21, 2007)). The subjective reactions of several investors are nonetheless informative and serve to confirm the evident materiality of Respondents' statements.

In light of this undisputed evidence, I conclude that Respondents' misstatements about AUM were material. *See Locke Capital Mgmt.*, 794 F. Supp. 2d at 367 ("[I]t is undisputed that investors rely on assets under management in deciding which investment advisor to entrust their funds."); *Warwick Capital Mgmt., Inc.*, Advisers Act Release No. 2694, 2008 WL 149127, at *8 (Jan. 16, 2008) (finding that false statements regarding AUM are material because they give "an erroneous impression of [an adviser's] size and asset base, qualities that would be important to clients and prospective clients in selecting an investment adviser"). Moreover, because Bennett was personally involved in making and disseminating these false statements, in part by directing Bennett Group employees to send emails regarding the Barron's rankings and Bennett Group's AUM, such misconduct "can be seen as 'impugn[ing] the integrity of management,' which in itself would be material to investors." *In re Monster Worldwide, Inc. Sec. Litig.*, 251 F.R.D. 132, 139 (S.D.N.Y. 2008) (alteration in original, internal citation omitted); *see United States v. Hatfield*, 724 F. Supp. 2d 321, 328 (E.D.N.Y. 2010) ("It is well-settled that information impugning management's integrity is material to shareholders.").

b. Statements regarding investor returns

Bennett made many statements regarding her clients' investment returns on the Financial Myth Busting radio show. In particular, she compared her clients' performance to benchmarks, such as the S&P 500. OIP ¶ 42; *see, e.g.*, Ex. 65 at 6, 14. She also claimed that these returns ranked in the top 1% of investment advisers worldwide in investment performance. OIP ¶ 43; *see, e.g.*, Ex. 54 at 24. These statements were misleading because Bennett did not disclose that this performance information was derived from a Bennett Group model portfolio and was not representative of actual investor performance. OIP ¶ 42. Also, a significant portion of Bennett Group's customer accounts were not invested in accordance with the model. OIP ¶ 43; *see* Ex. 163 at 5.

Respondents' misstatements and omissions regarding investor returns were material. *See Warwick Capital Mgmt., Inc.*, 2008 WL 149127, at *9 (finding that misstatements regarding performance are material because "investors routinely consider an adviser's past investment performance . . . when making investment decisions"). I again credit Dr. Wermers' testimony. He testified that Respondents' statements regarding client performance that omitted reference to a model portfolio were material because investors consider historical returns in their decision-making process. Ex. 165 at 9, 22-25. Dr. Wermers stated that the difference between model portfolio returns and actual returns can be significant, in part due to the fact that model portfolios do not take into account actual costs for trading, investment research, and other support services. *Id.* at 23-24. As a result, investors could develop a biased expectation about the risk-return characteristics of the portfolio going forward. *Id.* at 23. Dr. Wermers found that Bennett Group's model portfolio returns differed from actual client returns by an average of 3.21% with a standard deviation that suggests that the returns for specific client accounts were either much higher or much lower than the average. *Id.* at 24-25 & Fig. 3.

3. Respondents acted with scienter.

Scienter is "a mental state embracing intent to deceive, manipulate, or defraud." *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 193 n.12 (1976). A reckless state of mind, which is "an

extreme departure from the standards of ordinary care . . . to the extent that the danger was either known to the [respondent] or so obvious that the [respondent] must have been aware of it," is enough to establish scienter. *Makor Issues & Rights, Ltd. v. Tellabs Inc.*, 513 F.3d 702, 704 (7th Cir. 2008); *Montford & Co.*, 2014 SEC LEXIS 1529, at *56 n.108. By virtue of her position within Bennett Group as founder, CEO, and majority owner, Bennett knew the true extent of the assets managed and was the person responsible for inflating AUM figures. For these same reasons, her scienter can be imputed to Bennett Group. *See SEC v. Mgmt. Dynamics, Inc.*, 515 F.2d 801, 812 (2d Cir. 1975); *SEC v. Manor Nursing Ctrs.*, 458 F.2d 1082, 1096 n.16 (2d Cir. 1972) (scienter of an individual who controls a business entity may be imputed to that entity).

Bennett's scienter is further demonstrated by the fact that she took steps to cover up her misstatements by inventing her short-term cash management role with Dimension Data, Omega, and the Association during OCIE's examination and the Division's investigation. Similarly, it is telling that Bennett's story to the District of Columbia securities regulator differed significantly from the story she told the Commission. When questioned by the District of Columbia securities regulator about the difference between the public claims in Barron's regarding AUM and what was published in Bennett Group's Form ADV, Bennett responded that the $1 billion in AUM was in client brokerage assets in 2009 and still was as of the end of December 2013.

Bennett also acted with scienter when she made the misleading statements regarding Respondents' clients' investment returns. Bennett admitted during her investigative testimony that she knew she was referring to model returns when discussing portfolio returns on the radio show. She was at least reckless in not disclosing that the returns she mentioned during the radio broadcast were from a model portfolio and not actual client returns, and that actual returns could differ, because she had been previously advised to do just that by an accounting firm Bennett Group retained for assistance with the model portfolio.

In sum, Respondents made multiple material misstatements with scienter regarding AUM and investor performance. They therefore violated Securities Act Section 17(a)(1) and (2), Exchange Act Section 10(b), and Exchange Act Rule 10b-5(a), (b), and (c). *John P. Flannery*, 2014 SEC LEXIS 4981 at *32-34, *42, *58-59. With respect to Securities Act Section 17(a)(3), the question is whether Respondents "engage[d] in any transaction, practice, or course of business which operate[d] or would operate as a fraud or deceit upon the purchaser." 15 U.S.C. § 77q(a)(3). While Section 17(a)(3) does not encompass an act that is not a "transaction," "practice" or "course of business," "repeatedly mak[ing] or draft[ing] . . . [material] misstatements over a period of time may well" be conduct that would qualify as "a fraudulent 'practice' or 'course of business.'" *Anthony Fields, CPA*, 2015 SEC LEXIS 662, at *40 (quoting *John P. Flannery*, 2014 SEC LEXIS 4981, at *62). My finding of liability under Securities Act Section 17(a)(1) largely resolves this question. Respondents made repeated material misstatements regarding AUM and investor performance to attract new and retain existing clients, and by doing so, Respondents engaged in "a fraudulent 'practice' or 'course of business'" and are also liable under Securities Act Section 17(a)(3). *Id.* Additionally, because Respondents are investment advisers, they also violated Advisers Act Section 206(1) and (2).

Respondents' violations were willful. Willfulness "means intentionally committing the act which constitutes the violation" and does not require the respondent to "be aware that [s]he is

violating one of the Rules or Acts." *Wonsover v. SEC*, 205 F.3d 408, 413-15 (D.C. Cir. 2000) (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)). A finding of scienter supports a finding of willfulness. *Donald L. Koch*, Exchange Act Release No. 72179, 2014 SEC LEXIS 1684, at *48 n.139 (May 16, 2014), *pet. granted in part on other grounds*, 793 F.3d 147 (D.C. Cir. 2015).

C. Bennett Group violated Advisers Act Section 206(4), Rule 206(4)-1(a)(5), and Rule 206(4)-7; and Bennett aided and abetted and caused those violations.

The Division claims that Bennett Group circulated and distributed advertisements containing false and misleading statements regarding its AUM and performance, thus violating Advisers Act Section 206(4) and Rule 206(4)-1(a)(5), and that Bennett aided and abetted and caused those violations. OIP ¶ 52; Div. Br. at 36-37. The Division also argues that Bennett Group's compliance procedures were deficient and not properly implemented under Rule 206(4)-7, and Bennett "fostered" Bennett Group's violation, because Bennett Group did not (1) adopt policies and procedures that addressed the calculation and advertisement of AUM and client performance; (2) conduct any annual reviews; and (3) appoint a knowledgeable and competent CCO. Div. Br. at 37-39.

To demonstrate liability for aiding and abetting, the Division must show

> (1) the existence of a securities law violation by the primary (as opposed to the aiding and abetting) party; (2) knowledge of this violation on the part of the aider and abettor; and (3) "substantial assistance" by the aider and abettor in the achievement of the primary violation.

SEC v. Apuzzo, 689 F.3d 204, 211 (2d Cir. 2012). The substantial assistance prong may be satisfied by a respondent's failure to act where she "has a clear duty to act and the failure to act itself constitutes the underlying primary violation." *vFinance Invs., Inc.*, Exchange Act Release No. 62448, 2010 SEC LEXIS 2216, at *44-45 (July 2, 2010); *see Armstrong v. McAlpin*, 699 F.2d 79, 91 (2d Cir. 1983) (recognizing that inaction may be treated as substantial assistance when "it was in conscious and reckless violation of a duty to act").

A person who aids and abets a violation is necessarily a cause of the violation. *Eric J. Brown*, Exchange Act Release No. 66469, 2012 SEC LEXIS 636, at *33 (Feb. 27, 2012).

1. Advertisements

An advertisement includes

> any notice, circular, letter or other written communication addressed to more than one person, or any notice or other announcement in any publication or by radio or television, which offers (1) any analysis, report, or publication concerning securities, or which is to be used in making any determination as to when to

> buy or sell any security, or which security to buy or sell, or (2) any graph, chart, formula, or other device to be used in making any determination as to when to buy or sell any security, or which security to buy or sell, or (3) any other investment advisory service with regard to securities.

17 C.F.R. § 275.206(4)-1(b). The term "advertisement" is broadly defined. *Raymond J. Lucia Cos.*, Exchange Act Release No. 75837, 2015 SEC LEXIS 3628, at *56 (Sept. 3, 2015), *pet. for review filed*, No. 15-1345 (D.C. Cir. Oct. 5, 2015). "[C]onduct with respect to these rules must be measured from the viewpoint of a person unskilled and unsophisticated in investment matters." *SEC v. C.R. Richmond & Co.*, 565 F.2d 1101, 1104 (9th Cir. 1977).

The three Barron's issues ranking Bennett as a top woman financial advisor, top investment adviser, and top investment adviser in Washington, D.C., and Respondents' use of the Barron's rankings in promoting the business, as well as the Financial Myth Busting radio show, are all advertisements subject to Advisers Act Rule 206(4)-1(a)(5). *See ZPR Inv. Mgmt.*, 2015 SEC LEXIS 4474, at *26, *94 (finding that reports published by Morningstar, to which Respondents had submitted information for inclusion in a database of investment advisers, are advertisements). Barron's is a widely circulated magazine available to the general public for purchase; its content is also posted on the Internet. Respondents further circulated copies of the rankings, referred to Bennett's Barron's rankings in oral and written conversations, and highlighted this information by issuing a press release announcing Bennett's ranking as a top five woman financial advisor, ordering 1,125 copies of this article and sending 125 copies to existing and prospective clients, and forwarding the article by email to existing and prospective clients. Financial Myth Busting airs weekly on "[a] lot" of stations through Radio America, which also streams the show. Ex. 361 at 184-85. Bennett also posts recordings of each episode to a website dedicated to the show and makes the episodes available through podcasts. *See* Financial Myth Busting, http://www.financialmythbusting.com/ (last visited June 30, 2016). All of these documents and broadcasts "promote advisory services for the purpose of inducing potential clients to subscribe to" Respondents' investment advisory business, which falls within subpart (3) of the advertisement definition in Rule 206(4)-1(b). *C.R. Richmond & Co.*, 565 F.2d at 1105. During various Financial Myth Busting episodes, Bennett frequently advised listeners to invest in gold-related securities and noted that Bennett Group clients were heavily invested in gold and emerging markets, but not in domestic or European investments. *See, e.g.*, Ex. 58 at 2-8, 33-34, 37-39. She also answered call-in and emailed questions from the listeners regarding investing and securities. *See, e.g.*, *id.* at 3-4, 29-34. These actions fall within subpart (1) of the advertisement definition in Rule 206(4)-1(b). The article accompanying Bennett's ranking as a top five woman financial advisor also discussed Bennett's investment perspective regarding gold and emerging markets. *See* Ex. 29 at 2 (noting that Bennett "shifted a significant portion of her clients' assets into the emerging-markets arena," that a typical portfolio has a 50% emerging-markets allocation, and that clients have a heavy exposure to gold and other natural resources).

As previously discussed *supra*, the statements contained in the Barron's rankings and statements made on the Financial Myth Busting radio show were materially false and misleading. Bennett Group thus willfully violated Advisers Act Section 206(4) and Rule 206(4)-1(a)(5).

Bennett willfully aided and abetted and caused these violations. As CEO, founder, and owner, she completely controlled Bennett Group and its actions. As I found above, Bennett committed primary violations involving these misstatements and acted with scienter.

2. Policies and procedures

In determining whether an investment adviser violated Advisers Act Rule 206(4)-7, the Commission "consider[s] evidence about the steps the adviser took or failed to take to adopt and implement policies and procedures reasonably designed to prevent violations." *Donald L. Koch*, 2014 SEC LEXIS 1684, at *77. The evidence shows that Bennett Group adopted a compliance manual in June 2009, and updated it at least once in June 2010. *See* Ex. 180. Bennett Group used an "off-the-shelf" compliance manual to which Augustin made "[m]inor" changes in an attempt to "tailor it to [Bennett Group] specifically." Ex. 360 at 107. The Division's expert, Schneider, testified that the manual was not specific and did not contain policies and procedures specifically tailored to what constitutes AUM and how to calculate it. Ex. 181 at 9-10. According to Schneider, as Bennett Group's CCO, Augustin should have established policies and procedures to cover both the calculation of AUM and what assets comprise AUM once it became apparent that the calculation of AUM was an issue due to the Barron's rankings and radio show statements. *Id.* at 10-11.

Schneider further testified that the policies and procedures delineated in the manual were not followed in four instances. Ex. 181 at 10, 12-13. First, the manual required certain disclosures to be made when providing performance numbers for a model portfolio, however, when discussing model performance during Financial Myth Busting, Bennett did not provide these disclosures, nor did anyone insist she should. *Id.* at 12. Second, the manual required review and approval by the CCO of any advertisement; Augustin did not, nor did anyone else, review the radio show materials before their first use. *Id.* Third, Augustin's improperly relied on Western's compliance department to conduct compliance reviews. *Id.* at 13. Fourth, although the manual cites Advisers Act Rule 206(4)-7 as requiring an annual review of Bennett Group's policies and procedures, no annual review was conducted. *Id.*; *see* Ex. 180 at 52.

I credit Schneider's testimony and find that Bennett Group willfully violated Advisers Act Section 206(4) and Rule 206(4)-7 and Bennett willfully aided and abetted and caused those violations. First, as evinced by Schneider's testimony, Bennett Group's compliance manual was deficient and was not reasonably designed to prevent Advisers Act violations. As a result of the deficient compliance manual and its poor implementation, Bennett was essentially able to operate Bennett Group unchecked; she was able to make false claims regarding AUM and portfolio performance to bolster her and Bennett Group's reputation to retain existing clients and attract new ones. Second, Bennett Group did not annually review the adequacy and effectiveness of the compliance manual, as required by the rule. Ex. 181 at 13. Third, Bennett Group's appointed CCO was not qualified to be responsible for administering the compliance manual. Bennett willfully aided and abetted and caused these violations. As CEO, majority-owner, and the person who controlled Bennett Group, it was ultimately her responsibility that Bennett Group adopt and implement adequate written policies and procedures. Instead, she appointed a CCO with little to no experience to fulfill this function. *See* Ex. 360 at 36-48 (detailing Augustin's educational and work background). It is not surprising that he failed.

D. Respondents' constitutional claims are rejected.

In their answer, Respondents assert that the proceeding is unconstitutional because: (1) the proceeding is being held in violation of the Appointments Clause of Article II of the Constitution; (2) the proceeding violates Respondents' rights to procedural due process; and (3) the proceeding violates Respondents' rights to equal protection of the laws under the Constitution. Answer at 15-16. In a January 6, 2016, letter, Respondents moved to have the proceeding declared unconstitutional, arguing that my appointment and tenure protection violate the Appointments Clause of the Constitution, but failing to address the other constitutional arguments raised in their answer. I deem Respondents' undeveloped due process and equal protection arguments waived.

As I previously ruled, the Commission has rejected Respondents' unwaived constitutional arguments. *Bennett Grp. Fin. Servs., LLC*, 2016 SEC LEXIS 112 (citing *Timbervest, LLC*, Advisers Act Release No. 4197, 2015 SEC LEXIS 3854, at *89-112 (Sept. 17, 2015), *pet. for review docketed*, No. 15-1416 (D.C. Cir. Nov. 13, 2015),[11] and *David F. Bandimere*, 2015 SEC LEXIS 4472, at *74-86).

Sanctions

The Division requests a cease-and-desist order, a securities industry bar, disgorgement and prejudgment interest, and civil penalties. Div. Br. at 39. As is discussed below, I impose a cease-and-desist order against Respondents, bar Bennett from the securities industry, and order Respondents to pay disgorgement plus prejudgment interest and third-tier civil penalties.

A. Sanction Considerations

In determining the appropriateness of certain remedial sanctions in this proceeding, I am guided by the public interest factors set forth in *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981); *see Bernerd E. Young*, Exchange Act Release No. 10060, 2016 SEC LEXIS 1123, at *88-89 (Mar. 24, 2016). These factors include:

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

Bernerd E. Young, 2016 SEC LEXIS 1123, at *89. The Commission also considers the age of the violation and the degree of harm to investors and the marketplace resulting from the

[11] On June 24, 2016, the court of appeals remanded the record to the Commission for the limited purpose of allowing the Commission to consider additional evidence that could potentially affect the Commission's disgorgement order and held the appeal in abeyance pending further order of the court. *Timbervest, LLC v. SEC*, No. 15-1416 (D.C. Cir.).

violation. *Ralph W. LeBlanc*, Exchange Act Release No. 48254, 2003 SEC LEXIS 1793, at *26 (July 30, 2003). Additionally, in conjunction with other factors, the Commission considers the extent to which the sanction will have a deterrent effect. *Peter Siris*, Exchange Act Release No. 71068, 2013 SEC LEXIS 3924, at *48 n.72 (Dec. 12, 2013), *pet. denied*, 773 F.3d 89 (D.C. Cir. 2014).

The "inquiry into the appropriate sanction to protect the public interest is . . . flexible . . . and no one factor is dispositive." *Conrad P. Seghers*, Advisers Act Release No. 2656, 2007 SEC LEXIS 2238, at *13 (Sept. 26, 2007), *pet. denied*, 548 F.3d 129 (D.C. Cir. 2008). The determination of what is in the public interest "extends . . . to the public-at-large," *Christopher A. Lowry*, Investment Company Act Release No. 2052, 2002 SEC LEXIS 2346, at *20 (Aug. 30, 2002), *aff'd*, 340 F.3d 501 (8th Cir. 2003), "the welfare of investors as a class[,] and . . . standards of conduct in the securities business generally," *Arthur Lipper Corp.*, Exchange Act Release No. 11773, 1975 SEC LEXIS 527, at *52 (Oct. 24, 1975), *penalty modified*, *pet. otherwise denied*, 547 F.2d 171 (2d Cir. 1976). In assessing an appropriate sanction, I may consider matters outside the scope of the OIP. *See Calais Res. Inc.*, Exchange Act Release No. 67312, 2012 SEC LEXIS 2023, at *29 n.40 (June 29, 2012).

Respondents' conduct involved repeated fraudulent misstatements regarding AUM and investor returns, making "a severe sanction" warranted. *See Toby G. Scammell*, Advisers Act Release No. 3961, 2014 SEC LEXIS 4193, at *25 (Oct. 29, 2014) ("Fidelity to the public interest requires a severe sanction when a respondent's misconduct involves fraud because the securities business is one in which opportunities for dishonesty recur constantly." (internal quotation marks omitted)). Respondents' fraudulent conduct was recurrent; the fraudulent misstatements appeared in three Barron's issues, resulting in rankings of a top five woman financial advisor, twenty-sixth best independent investment advisor in the country, and number two in Washington, D.C. These misstatements were then further repeated on Bennett Group's website, in emails to current and prospective clients, and on Bennett's weekly radio show.

Respondents' conduct was particularly egregious in that they took advantage of investors, convincing them to invest large sums, in some circumstances their entire life savings, based on the false impression that Respondents were responsible for over $1 billion in assets. For instance, both Santagati and Crowley believed themselves to be small fish, compared to Respondents' other clients. Santagati trusted Bennett because, based on her statements, he thought she was one of the best in the business; similarly, based on AUM, Crowley thought Bennett was a credible financial advisor. Additionally, based on Respondents' misrepresentations, both Santagati and Peter assisted Respondents in soliciting additional clients through their connections. That Bennett lied—elaborately—to investigators reinforces my determination that Respondents' conduct was egregious. *See Peter J. Kisch*, Exchange Act Release No. 19005, 1982 WL 529109, at *6 n.23 (Aug. 24, 1982) ("[D]eception practiced on regulatory authorities . . . is clearly an aggravating factor to be considered in assessing appropriate sanctions."); *cf. Brogan v. United States*, 522 U.S. 398, 402 (1998) ("[S]ince it is the very purpose of an investigation to uncover the truth, any falsehood relating to the subject of the investigation perverts that function.")

Respondents' conduct reflects a high degree of scienter. Bennett purposefully inflated her AUM to make herself and Bennett Group look like more successful advisors than they really were. She added to her reputation by touting her clients' performance without disclosing that the returns she touted were from a model portfolio and were not actual investor returns. Then, when the Commission began asking questions, Bennett invented relationships with three organizations, claiming she provided cash management advice for over $1.5 billion in assets. Her scienter is even further demonstrated by the fact that she told a different story to the District of Columbia Securities Regulator, claiming that all of her AUM were brokerage assets. Ex. 86 at 1.

Respondents showed no recognition of the wrongful nature of their conduct nor made any assurances against future violations. When confronted with her lies during investigative testimony, instead of coming clean, she doubled down and continued to lie, such as when she claimed that her contact at Omega was actually not Dan Bohan, but instead was Gloria Bohan.

Respondents' conduct is clearly likely to continue. Even after the examination into their statements began, Respondents worked with Barron's and appeared in the 2011 rankings issue, failing to disclose this fact to the Commission's examiners at all, until asked. Additionally, Bennett continues to appear on Financial Myth Busting, broadcasting an episode about once every two weeks. *See* Bennett Group, http://www.bennettgroupfinancial.com/ (last accessed June 30, 2016) (webpage describing Bennett Group's services); http://www.financialmythbusting.com/.

Respondents' conduct started about seven years ago and continued for a period of two years. Respondents' investors were harmed by their misconduct. For instance, Santagati suffered over $1 million in losses while Peter lost $17.6 million. In summary, the public interest weighs in favor of a severe sanction for Respondents.

B. Industry bars

The Division requests an industry-wide collateral bar against Bennett under Exchange Act Section 15(b)(6), Advisers Act Section 203(f), and Investment Company Act Section 9(b). Div. Br. at 44 & nn.45-46. Exchange Act Section 15(b)(6) and Advisers Act Section 203(f) authorize bars from being associated with a broker, dealer, investment adviser, municipal securities dealer, municipal adviser, transfer agent, or nationally recognized statistical rating organization. 15 U.S.C. §§ 78*o*(b)(6), 80b-3(f). Exchange Act Section 15(b)(6) additionally authorizes a bar from participating in an offering of penny stock. 15 U.S.C. § 78*o*(b)(6). The latter bar applies if at the time of her misconduct, Bennett was associated with a broker or dealer. *Id.* Advisers Act Section 203(f) applies if at the time of her misconduct, Bennett was associated with an investment adviser. 15 U.S.C. § 80b-3(f). Both provisions may be invoked on a showing that a respondent willfully violated, or willfully aided and abetted a violation of, any provision of the Securities Act, Exchange Act, or Advisers Act, or the rules thereunder. 15 U.S.C. §§ 78*o*(b)(4)(D), (E), (6), 80b-3(e)(5), (6), (f). During the misconduct at issue, Bennett was associated with both a broker-dealer and investment adviser.

Investment Company Act Section 9(b) authorizes a bar from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or

principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter, if that person willfully violated, or willfully aided and abetted a violation of, any provision of the Securities Act, Exchange Act, or Advisers Act, or the rules thereunder. 15 U.S.C. § 80a-9(b).

In *Ross Mandell*, the Commission directed that before imposing an industry-wide bar, an administrative law judge must "review each case on its own facts to make findings regarding the respondent's fitness to participate in the industry in the barred capacities." Exchange Act Release No. 71668, 2014 SEC LEXIS 849, at *7-8 (Mar. 7, 2014) (internal quotation marks omitted). The administrative law judge's analysis "should be grounded in specific findings regarding the protective interests to be served by barring the respondent and the risk of future misconduct." *Id.* at *8 (internal quotation marks omitted).

Bennett is not fit to remain in the industry in any capacity.[12] Her numerous false statements regarding AUM and portfolio performance to attract new customers and retain existing ones caused investors to falsely place their trust in her and resulted in large losses. Her behavior and bald-faced lies made during the Commission's examination and investigation further demonstrate her untrustworthiness and unfitness. *See Mark Feathers*, Exchange Act Release No. 73634, 2014 WL 6449870, at *3 (Nov. 18, 2014) (stating that the "securities industry presents continual opportunities for dishonesty and abuse, and depends heavily on the integrity of its participants and on investors' confidence" (quoting *Tzemach David Netzer Korem*, Exchange Act Release No. 70044, 2013 WL 3864511, at *6 (July 26, 2013))). Additionally, Bennett's numerous violations raise an inference that she will engage in future violations, an inference she has done nothing to rebut. *Tzemach David Netzer Korem*, 2013 WL 3864511, at *6 n.50.

C. Cease-and-desist order

Section 8A(a) of the Securities Act, Section 21C(a) of the Exchange Act, and Section 203(k) of the Advisers Act authorize 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 or rule under the Securities Act, Exchange Act, and Advisers Act, respectively. 15 U.S.C. §§ 77h-1(a), 78u-3(a), 80b-3(k). These three statutes also allow the imposition of a cease-and-desist order against any person "that is, was, or would be a cause of the violation, due to an act or omission the person knew or should have known would contribute to such violation." 15 U.S.C. §§ 77h-1(a), 78u-3(a), 80b-3(k). In deciding whether to issue a cease-and-desist order, I must consider: (1) whether future violations are reasonably likely; (2) the seriousness of the violations at issue; (3) whether the violations are isolated or recurrent; (4) Respondents' state of mind; (5) whether

[12] Because Bennett's conduct continued after the enactment in 2010 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, imposing a bar from associating with municipal advisors and rating organizations is not impermissibly retroactive. *See Koch v. SEC*, 793 F.3d 147, 157-58 (D.C. Cir. 2015) (holding that the Commission cannot apply Dodd-Frank to bar a respondent from associating with municipal advisors and rating organizations based on conduct predating Dodd-Frank, because such an application is impermissibly retroactive), *cert. denied*, 136 S. Ct. 1492 (2016).

Respondents recognize the wrongful nature of their conduct; (6) the recency of the violations; (7) "whether the violations caused harm to investors or the marketplace"; (8) "whether [Respondents] will have the opportunity to commit future violations"; and (9) "the remedial function [a] cease-and-desist order would serve in the overall context of any other sanctions sought in the same proceeding." *Gordon Brent Pierce*, Securities Act Release No. 9555, 2014 SEC LEXIS 4544, at *82-83 (Mar. 7, 2014), *pet. denied*, 786 F.3d 1027 (D.C. Cir. 2015); *see KPMG Peat Marwick LLP*, Exchange Act Release No. 43862, 2001 SEC LEXIS 98, at *101 (Jan. 19, 2001), *recons. denied*, Exchange Act Release No. 44050, 2001 SEC LEXIS 422 (Mar. 5, 2001), *pet. denied*, 289 F.3d 109 (D.C. Cir. 2002).

Here, a cease-and-desist order is both necessary and appropriate. "Absent evidence to the contrary," a single past violation ordinarily suffices to establish a risk of future violations, and "evidence showing that a respondent violated the law once probably also shows a risk of repetition that merits . . . ordering him to cease and desist." *KPMG Peat Marwick LLP*, 2001 SEC LEXIS 98, at *102-03. The showing necessary to demonstrate the likelihood of future violations is "significantly less than that required for an injunction." *Id.* at *114. As previously discussed, Respondents made repeated false and misleading statements regarding AUM and portfolio returns; as a result, there is a substantial risk of future violations.

As I have already determined, Respondents' violations are serious. Several investors testified during the hearing that they suffered losses while clients of Respondents, with two losing $1 million and $17.6 million. Because misconduct involving fraud ordinarily warrants "a severe sanction," *Toby G. Scammell*, 2014 SEC LEXIS 4193, at *25, Respondents' repeated fraudulent misconduct warrants an order directing them to cease and desist from committing or causing violations of the federal securities laws.

D. Disgorgement

Section 8A(e) of the Securities Act, Sections 21B(e) and 21C(e) of the Exchange Act, Sections 203(j) and 203(k)(5) of the Advisers Act, and Section 9(e) of the Investment Company Act authorize disgorgement, including reasonable interest, in this proceeding. 15 U.S.C. §§ 77h-1(e), 78u-2(e), 78u-3(e), 80a-9(e) 80b-3(j), (k)(5). Disgorgement is equitable in nature and is intended to prevent unjust enrichment and to act as a deterrent. *SEC v. First City Fin. Corp.*, 890 F.2d 1215, 1230 (D.C. Cir. 1989). "Disgorgement deprives wrongdoers of the profits obtained from their violations." *Montford & Co. v. SEC*, 793 F.3d 76, 83 (D.C. Cir. 2015) (quoting *Zacharias v. SEC*, 569 F.3d 458, 472 (D.C. Cir. 2009)). As a result, "[t]he touchstone of a disgorgement calculation is identifying a causal link between the illegal activity and the profit sought to be disgorged." *Id.* at 83-84 (quoting *SEC v. UNIOIL*, 951 F.2d 1304, 1306 (D.C. Cir. 1991) (Edwards, J., concurring)). A disgorgement order "need only be a reasonable approximation of profits causally connected to the violation." *Montford & Co.*, 2014 SEC LEXIS 1529, at *94 (internal quotation marks omitted). At that point, "the burden shifts to the respondent to show that the amount of disgorgement is not a reasonable approximation." *Id.* It is thus the case that "[t]he risk of uncertainty in calculating disgorgement . . . fall[s] on the wrongdoer whose illegal conduct created that uncertainty." *Id.* (internal quotation marks omitted).

Brian Higgins, a staff accountant in the Division and a chartered financial analyst and CPA, provided four different ways to calculate disgorgement in this matter.[13] Tr. 125-26; Ex. 354. The first approach calculates disgorgement of $10,648,966 based on all commissions paid to Bennett between September 2009 and February 2011, the time period alleged in the OIP. Tr. 127-30; Ex. 354 at 4-6. The second approach calculates disgorgement of $1,503,160 based on commissions paid to Bennett during the last two months of the violation period. Tr. 130; Ex. 354 at 4, 7. The third approach calculates disgorgement of $721,238 based on an average of the last twelve months of commissions between March 2010 and February 2011. Tr. 130-31; Ex. 354 at 8. Finally, the fourth approach calculates disgorgement of $556,102 based on estimated commissions paid to Bennett based on new accounts opened between December 2009 and February 2011.[14] Tr. 131-32; Ex. 354 at 9.

The Division requests disgorgement on a joint and several basis. Div. Br. at 47 n.49. Although the Commissions were paid directly to Bennett, Bennett then transferred the commissions to Bennett Group. Ex. 365 at 18-20. Joint and several liability is appropriate here due to the nature of the violations and Bennett's role as CEO, majority-owner, and the person who controlled Bennett Group. *See, e.g., SEC v. Calvo*, 378 F.3d 1211, 1215 (11th Cir. 2004) ("It is a well settled principle that joint and several liability is appropriate in securities laws cases where two or more individuals or entities have close relationships in engaging in illegal conduct."); *SEC v. First Pac. Bancorp*, 142 F.3d 1186, 1191 (9th Cir. 1998) ("[W]here two or more individuals or entities collaborate or have a close relationship in engaging in the violations of the securities laws, they have been held jointly and severally liable for the disgorgement of illegally obtained proceeds.").

I reject the first three approaches and adopt the last approach for calculating disgorgement. The last approach is the most "reasonable approximation of profits causally connected to the violation[s]" because it measures the amount of commissions earned through new accounts. These new accounts were those most likely to have been affected by Respondents' false and misleading statements. Although the last approach does not take into account those investors who were already Respondents' clients and may have continued to retain Respondents based on the false and misleading statements, it would be difficult or impossible to parse out which investors stayed on with Bennett due to the misrepresentations. Because it is likely that Respondents' statements did not affect all of their clients, it would be unreasonable to order disgorgement of all commissions earned during the violation period. Prejudgment interest shall be calculated from March 1, 2011, through the last day of the month preceding the month in which payment of disgorgement is made. *See* 17 C.F.R. § 201.600(a).

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[13] Higgins relied on commission statements for Bennett and an Excel file that contained a listing of brokerage accounts managed by Bennett, both of which were produced by Western. Tr. 127; *see* Exs. 323-41.

[14] Higgins started in December 2009 and omits May 2010 from his calculation because he did not have that data. Tr. 132-33.

E. Civil Penalties

The Division requests a civil penalty of $600,000 for Bennett and $2.9 million for Bennett Group. Div. Br. at 47. The Division bases its request on a total of four violations based on the false and misleading statements regarding AUM and investor returns: (1) the three Barron's articles; (2) statements made on Financial Myth Busting regarding AUM; (3) statements made on Financial Myth Busting regarding investor performance; and (4) all other communications with current or prospective clients and customers. *Id.* at 49.

Exchange Act Section 21B(a)(1), Advisers Act Section 203(i)(1)(A), and Investment Company Act Section 9(d)(1)(A) authorize the Commission to impose civil monetary penalties against any person where such penalties are in the public interest and the person willfully violated any provision or rule of the Securities Act, the Exchange Act, the Investment Company Act, or the Advisers Act or "has willfully aided, abetted, counseled, commanded, induced, or procured such a violation by any other person."[15] 15 U.S.C. §§ 78u-2(a)(1), 80a-9(d)(1)(A), 80b-3(i)(1)(A). The statutes set out a three-tiered system for determining the maximum civil penalty for each act or omission. 15 U.S.C. §§ 78u-2(b), 80a-9(d)(2), 80b-3(i)(2). For the time period at issue, the maximum first-, second-, and third-tier penalty for each violation (1) for a natural person is $7,500, $75,000, and $150,000, respectively, and (2) for any other person is $75,000, $375,000, and $725,000, respectively. 17 C.F.R. § 201.1004, Subpt. E, Table IV.

A maximum third-tier penalty is permitted if: (1) the violations involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and (2) such acts or omissions directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons, or resulted in substantial pecuniary gain to the person who committed the acts or omissions. 15 U.S.C. §§ 78u-2(b)(3), 80a-9(d)(2)(C), 80b-3(i)(2)(C). Second-tier penalties may be imposed if the misconduct involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement. 15 U.S.C. §§ 78u-2(b)(2), 80a-9(d)(2)(B), 80b-3(i)(2)(B). First-tier penalties may be imposed simply for each violation. 15 U.S.C. §§ 78u-2(b)(1), 80a-9(d)(2)(A), 80b-3(i)(2)(A). Although the tier determines the maximum penalty, "each case 'has its own particular facts and circumstances which determine the appropriate penalty to be imposed'" within the tier. *SEC v. Opulentica, LLC*, 479 F. Supp. 2d 319, 331 (S.D.N.Y. 2007) (quoting *SEC v. Moran*, 944 F. Supp. 286, 296-97 (S.D.N.Y. 1996)). I thus have discretion in determining the appropriate penalty within a given tier. *See S.W. Hatfield, CPA*, 2014 SEC LEXIS 4691, at *48 (the Commission has "discretion in setting the amount of penalty"); *see also First Secs. Transfer Sys., Inc.*, Exchange Act Release No. 36183, 1995 SEC LEXIS 2261, at *11 (Sept. 1, 1995) ("Nothing in the language of the statute or its legislative history suggests that the Commission is prohibited from assessing any lesser amount up to the maximum."). The statutory requirements for imposition of third-tier penalties are met in this case with respect to Respondents' false and misleading misstatements regarding

[15] In their answer, Respondents argue that civil penalties authorized under Dodd-Frank may not be retroactively applied based on acts or omissions occurring before July 2010. *See* Answer at 17. I need not decide the issue as the proceeding was also brought under statutes that pre-date Dodd-Frank and authorize civil penalties.

AUM and investor returns. Respondents' violations involved fraud, deceit, manipulation, or a reckless disregard of a regulatory requirement and their conduct resulted in substantial losses to investors, as well as substantial pecuniary gain through the receipt of commissions.

The Exchange Act, Investment Company Act, and Advisers Act all contain a statutory list of six factors to consider when weighing the public interest in relation to monetary penalties: (1) whether the violation involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; (2) the resulting harm to other persons; (3) any unjust enrichment and prior restitution; (4) the respondent's prior regulatory record; (5) the need to deter the respondent and other persons; and (6) such other matters as justice may require. 15 U.S.C. §§ 78u-2(c), 80a-9(d)(3), 80b-3(i)(3). As I previously noted, the determination that the offenses involved fraud and deceit weigh heavily against Respondents. *See Toby G. Scammell*, 2014 SEC LEXIS 4193, at *25.

A monetary penalty may be assessed for "each . . . act or omission." 15 U.S.C. §§ 78u-2(b)(3), 80a-9(d)(2)(C), 80b-3(i)(2)(C). I classify Respondents' conduct into four categories of violations: (1) Respondents' scheme to disseminate false information via Barron's and their redistribution; (2) radio show claims regarding AUM; (3) radio show claims regarding performance; and (4) all other false and misleading communications with current or prospective clients and customers.[16] Bearing in mind that repeated fraudulent conduct warrants "a severe sanction," *Toby G. Scammell*, 2014 SEC LEXIS 4193, at *25, I note that each false and misleading statement reflects a high degree of scienter and resulted in substantial harm to Respondents' clients. I therefore will impose four penalties of $150,000 each against Bennett, for a total of $600,000, and four penalties of $725,000 each against Bennett Group, for a total of $2.9 million. The penalties will serve the important interest of deterring them from future securities violations as well as serve as a general deterrent to others who seek to defraud investors.

Record Certification

Under Rule 351(b) of the Commission's Rules of Practice, 17 C.F.R. § 201.351(b), I certify that the record includes the items set forth in the revised record index issued by the Secretary of the Commission on May 12, 2016.

[16] In their answer, Respondents assert a statute of limitations defense, arguing that "[t]o the extent the claims alleged in the OIP are founded on alleged violations of law occurring prior to April 7, 2010, those claims are barred by the applicable statute of limitations." Answer at 16. Respondents have the burden of proof in establishing an affirmative defense. Because Respondents opted to default this proceeding, the statute of limitations issue was not fully factually developed nor briefed by the parties. I thus reject Respondents' statute of limitations claims. In any event, each of the four violation categories consists of some conduct that occurred within the limitations period.

Order

Under Section 15(b)(6) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940, Dawn J. Bennett is BARRED from associating with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization. Under Section 15(b)(6) of the Securities Exchange Act of 1934, Dawn J. Bennett is further BARRED from participating in an offering of penny stock, including acting as a promoter, finder, consultant, agent, or other person who engages in activities with a broker, dealer, or issuer for purposes of the issuance of trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

Under Section 9(b) of the Investment Company Act of 1940, Dawn J. Bennett is PERMANENTLY PROHIBITED from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter.

Under Section 8A of the Securities Act of 1933, Section 21C of the Securities Exchange Act of 1934, and Section 203(k) of the Investment Advisers Act of 1940, Bennett Group Financial Services, LLC, and Dawn J. Bennett shall CEASE AND DESIST from committing or causing any violations or future violations of Section 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934, and Rule 10b-5 thereunder, and Sections 206(1), 206(2), and 206(4) of the Investment Advisers Act of 1940, and Rules 206(4)-1(a)(5) and 206(4)-7 thereunder.

Under Section 8A(e) of the Securities Act of 1933, Sections 21B(e) and 21C(e) of the Securities Exchange Act of 1934, Section 203(j) and (k)(5) of the Investment Advisers Act of 1940, and Section 9(e) of the Investment Company Act of 1940, Bennett Group Financial Services, LLC, and Dawn J. Bennett shall DISGORGE $556,102, jointly and severally, plus prejudgment interest. Prejudgment interest shall be calculated from March 1, 2011, to the last day of the month preceding the month in which payment of disgorgement is made, consistent with 17 C.F.R. § 201.600. Prejudgment interest shall be calculated at the underpayment rate of interest established under Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. § 6621(a)(2), and shall be compounded quarterly. 17 C.F.R. § 201.600(b). Interest shall continue to accrue on all funds owed until they are paid. 17 C.F.R. § 201.600(a).

Under Section 21B of the Securities Exchange Act of 1934, Section 203(i) of the Investment Advisers Act of 1940, and Section 9(d) of the Investment Company Act of 1940, Bennett Group Financial Services shall PAY A CIVIL MONEY PENALTY in the amount of $2.9 million and Dawn J. Bennett shall PAY A CIVIL MONEY PENALTY in the amount of $600,000.

Payment of disgorgement, prejudgment interest, and civil penalties shall be made no later than twenty-one days following the day this initial decision becomes final, unless the Commission directs otherwise. Payment shall be made in one of the following ways: (1) transmitted electronically to the Commission, which will provide detailed ACH transfer/Fedwire

instructions upon request; (2) direct payments from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm/htm; or (3) by certified check, bank cashier's check, bank money order, or United States postal money order made payable to the Securities and Exchange Commission and hand-delivered or mailed to the following address alongside a cover letter identifying Respondents and Administrative Proceeding No. 3-16801: Enterprises Services Center, Accounts Receivable Branch, HQ Bldg., Room 181, AMZ-341, 6500 South MacArthur Blvd., 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.

Under Rule of Practice 1100, I ORDER that any funds recovered by disgorgement, prejudgment interest, or civil penalties shall be placed in a fair fund for the benefit of investors harmed by the violations. 17 C.F.R. § 201.1100.

This initial decision shall become effective in accordance with and subject to the provisions of Rule of Practice 360, 17 C.F.R. § 201.360. Under that Rule, a party may file a petition for review of this initial decision within twenty-one days after service of the initial decision. Under Rule of Practice 111, a party may also file a motion to correct a manifest error of fact within ten days of the initial decision. *See* 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 order resolving such motion to correct a manifest error of fact. This 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 a 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.

A respondent may move to set aside a default. Rule 155(b) permits the Commission, at any time, to set aside a default for good cause, in order to prevent injustice and on such conditions as may be appropriate. 17 C.F.R. § 201.155(b). A motion to set aside a default shall be made within a reasonable time, state the reasons for the failure to appear or defend, and specify the nature of the proposed defense in the proceeding. *Id.*

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James E. Grimes
Administrative Law Judge