

Initial Decision Release No. 1383  
Administrative Proceeding  
File No. 3-17849

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

In the Matter of

**Angel Oak Capital Partners, LLC,  
Peraza Capital & Investment, LLC,  
Sreeniwas Prabhu, and  
David W. Wells**

**Initial Decision**  
August 23, 2019

Appearances: John D. Worland, Jr., Stephan J. Schlegelmilch, Fuad Rana, and Christina M. Adams,  
for the Division of Enforcement,  
Securities and Exchange Commission

Mark David Hunter, Jenny D. Johnson-Sardella,  
and Robert C. Harris, Hunter Taubman Fischer & Li  
LLC, for Respondent Peraza Capital & Investment, LLC

Before: James E. Grimes, Administrative Law Judge

### **Summary**

This is a partially settled proceeding in which Respondent Angel Oak Capital Partners, LLC, has conceded that it violated the broker-dealer registration requirement found in Section 15(a) of the Securities Exchange Act of 1934, and Respondents Peraza Capital & Investment, LLC, Sreeniwas Prabhu, and David W. Wells have conceded that they caused Angel Oak's violation. The only remaining issues are whether Peraza should be ordered to pay disgorgement plus interest and a civil monetary penalty, and if so, in what amounts.

## Introduction

The Securities and Exchange Commission instituted this proceeding under Exchange Act Sections 15(b) and 21C.<sup>1</sup> The proceeding was instituted, based on Respondents' offers of settlement and concessions of liability, to determine whether Peraza should be ordered to pay disgorgement plus interest and a civil monetary penalty.

In December 2018 and January 2019, I denied the parties' motions for summary disposition and scheduled the merits hearing.<sup>2</sup> After the parties' later settlement discussions fell through, I held the merits hearing over the course of two days in May 2019, in Miami, Florida.

During the hearing, the Division called three witnesses, Peraza rested without calling any witnesses, and I admitted 73 of the parties' 75 joint exhibits.

## Findings of Fact

The terms of the OIP require me to accept the OIP's factual findings as true.<sup>3</sup> I therefore base the following findings of fact and conclusions on the OIP's binding factual findings and on the entirety of the remaining record. Outside of the binding factual findings in the OIP, I have applied preponderance of the evidence as the standard of proof.<sup>4</sup> All arguments that are inconsistent with this decision are rejected.

As noted, this case concerns violations of the broker-dealer registration requirement found in Section 15(a) of the Exchange Act. Section 15(a) makes it unlawful for a broker or a dealer to effect securities transactions unless the broker or dealer has registered with the Commission.<sup>5</sup> As Respondents

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<sup>1</sup> See 15 U.S.C. §§ 78o(b), 78u-3.

<sup>2</sup> *Angel Oak Capital Partners, LLC*, Admin. Proc. Rulings Release No. 6437, 2019 SEC LEXIS 71 (ALJ Feb. 1, 2019) (denying the Division's motion); *Angel Oak*, Admin. Proc. Rulings Release No. 6416, 2018 SEC LEXIS 3571 (ALJ Dec. 19, 2018) (denying Peraza's motion).

<sup>3</sup> OIP at 9.

<sup>4</sup> See *Rita J. McConville*, Exchange Act Release No. 51950, 2005 WL 1560276, at \*14 (June 30, 2005), *pet. denied*, 465 F.3d 780 (7th Cir. 2006).

<sup>5</sup> 15 U.S.C. § 78o(a).

agreed, Angel Oak violated Section 15(a) and Peraza, Prabhu, and Wells caused that violation.<sup>6</sup>

At the time of the OIP, Peraza had been a Commission-registered broker-dealer since 2002.<sup>7</sup> During the relevant time, however, Angel Oak was not registered with the Commission in any capacity.<sup>8</sup> Angel Oak is the general partner to Angel Oak Capital Advisors, LLC, which is a Commission-registered investment adviser.<sup>9</sup>

Prabhu is Capital Advisors' co-founder, managing partner, and chief investment officer.<sup>10</sup> He was associated with Peraza from September 2009 through September 2012.<sup>11</sup>

Wells is a Capital Advisors employee.<sup>12</sup> He was registered with Peraza from 2009 through 2014, when he was the branch manager and supervisor of its Atlanta office.<sup>13</sup> Peraza's Atlanta office was essentially composed of Angel Oak employees who were registered representatives of Peraza.<sup>14</sup>

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<sup>6</sup> OIP at 8.

<sup>7</sup> *Id.* at 4. Peraza has not been registered with FINRA or a national securities exchange since August 2017. J. Ex. 5 at 1–2 (Peraza's FINRA BrokerCheck report); *see* Tr. 126.

<sup>8</sup> OIP at 4.

<sup>9</sup> *Id.* at 3–4. To keep things straight, I will refer to Respondent Angel Oak Capital Partners, LLC, as Angel Oak and any other, related Angel Oak entities by the functional parts of their names. Entities such as Angel Oak Capital Advisors, LLC, and Angel Oak Capital Partners II, LLC, are thus respectively referenced as Capital Advisors and Capital Partners II.

<sup>10</sup> *Id.* at 4. Prabhu is also an owner of Angel Oak affiliate AOC Securities, LLC, which is a registered broker-dealer, Capital Partners II, and Angel Oak Consulting Group Portfolio Management, LLC. *Id.* at 4 & n.3.

<sup>11</sup> *Id.* at 4.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 2, 5.

In 2009, Angel Oak’s owners became interested in establishing and running a securities business.<sup>15</sup> To that end, they began negotiating an agreement with Peraza that would allow Angel Oak to run a securities business through Peraza in exchange for a portion of Angel Oak’s commission revenue.<sup>16</sup> In October 2009, Angel Oak and Peraza signed an “independent contractor agreement” (the Agreement).<sup>17</sup>

The Agreement expressly provided that Angel Oak would conduct a securities business through Peraza.<sup>18</sup> To this end, Peraza filed a Form BR with the Financial Industry Regulatory Authority (FINRA) “designating” Angel Oak’s Atlanta office as a Peraza branch office and an Office of Supervisory Jurisdiction.<sup>19</sup> And under the Agreement, Angel Oak’s employees who were involved in trading securities “were registered with FINRA as registered representatives of Peraza.”<sup>20</sup> The Agreement entitled Peraza to 15% of the commission revenue Angel Oak’s trades generated.<sup>21</sup>

Under the Agreement, Peraza provided Angel Oak with “a trading platform which allowed [it] ‘to operate a trading desk to execute trades in bonds and mortgage-backed securities.’”<sup>22</sup> Peraza also “provide[d] ‘all necessary back office support’” regarding Angel Oak’s “sales and trading

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<sup>15</sup> *Id.* at 4.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 2, 4; *see* J. Ex. 74.

<sup>18</sup> OIP at 4.

<sup>19</sup> *Id.* at 2. Form BR is used by FINRA members to register their branch offices. *See* Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change To Amend the Uniform Branch Office Registration Form (Form BR), 79 Fed. Reg. 12,547, 12,547 (Mar. 5, 2014). Under FINRA rules, a *branch office* is a “location where” persons associated with a FINRA member “regularly conduct[] the business of effecting [securities] transactions.” FINRA Rule 3110(f)(2)(A). An *Office of Supervisory Jurisdiction* is an office of a FINRA member at which certain enumerated functions, such as order execution and market making, take place. FINRA Rule 3110(f)(1).

<sup>20</sup> OIP at 2, 5.

<sup>21</sup> *Id.* at 2.

<sup>22</sup> *Id.* at 4–5.

activities.”<sup>23</sup> And all of Angel Oak’s trades under the Agreement were to “be cleared and settled by [Peraza’s] clearing firm.”<sup>24</sup>

Wells served as the branch manager of Peraza’s Atlanta office—meaning Angel Oak’s securities traders—and as the “supervisor of the employees that operated under the name of Angel Oak and engaged in trading activities as registered representatives of Peraza.”<sup>25</sup>

Under the Agreement, Angel Oak’s employees who were registered with Peraza began executing trades through Peraza’s trading platform in March 2010.<sup>26</sup> Between then and October 2014, they effected over 900 securities trades.<sup>27</sup> Commissions from those trades flowed from Peraza’s clearing firm to Peraza.<sup>28</sup> Peraza retained 15% plus expenses allocated to Angel Oak and transmitted the balance to Wells’s personal bank account.<sup>29</sup> Wells retained commission revenue for trades he handled and doled out the remaining funds to traders and to Angel Oak.<sup>30</sup> Peraza and Angel Oak received this commission revenue “through [the] arrangement” with each other, that is, because of the Agreement.<sup>31</sup>

As a factual matter, none of Angel Oak’s trades would have occurred but for the Agreement.<sup>32</sup> Specifically, Peraza registered Angel Oak’s traders; gave them access to its trading platform, including its settlement, clearing, and trade-support services; provided back office support; and interacted with

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<sup>23</sup> *Id.* at 4.

<sup>24</sup> *Id.* at 5.

<sup>25</sup> *Id.* at 3.

<sup>26</sup> *Id.* at 5.

<sup>27</sup> *Id.*

<sup>28</sup> Tr. 60–61.

<sup>29</sup> OIP at 5–6, 8. Initially, Peraza transmitted funds directly to Angel Oak. Tr. 59–60. But throughout the relevant time period, which was January 1, 2012, through October 2014, Peraza transmitted the funds to Wells. Tr. 60.

<sup>30</sup> OIP at 6, 8.

<sup>31</sup> *See id.* at 2–3, 8.

<sup>32</sup> *See id.* at 2–8.

clearing firms on Angel Oak's behalf.<sup>33</sup> Peraza thus "facilitated Angel Oak[s] ... ability to operate as an unregistered broker-dealer."<sup>34</sup>

Angel Oak's owners, however, were not all registered as broker-dealers or associated with a registered broker-dealer.<sup>35</sup> And these unregistered and unassociated individuals "controlled certain" aspects of Angel Oak's securities business, "including ... hiring new employees to engage in securities trading ... who became registered representatives of Peraza Capital, determining compensation (including transaction-based compensation)," "engaging in marketing activities," "and participating in relevant discussions [about] how to operate the securities business."<sup>36</sup>

Angel Oak also made all staffing decisions as to its securities business.<sup>37</sup> While operating under the Agreement, it hired new employees as its securities business grew.<sup>38</sup> The new employees received offer letters from Angel Oak, rather than Peraza, and Angel Oak set their salary, commission percentages, and amount of performance bonuses.<sup>39</sup>

During the time Angel Oak operated under the Agreement, it "held itself out as a broker-dealer."<sup>40</sup> It "marketed itself to prospective customers as providing broker-dealer services," but failed to "always disclos[e] its relationship with Peraza Capital."<sup>41</sup> Instead, it often used the Angel Oak name.<sup>42</sup> One of its marketing documents, "described the 'Angel Oak Family of

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<sup>33</sup> *Id.* at 2, 3, 8.

<sup>34</sup> *Id.* at 8; *see id.* at 3 (stating that Peraza's "assistance ... allowed Angel Oak ... to operate a brokerage business without registering as a broker-dealer").

<sup>35</sup> *Id.* at 6.

<sup>36</sup> *Id.* at 6; *see id.* at 7–8 ("Wells ... took direction from[] unregistered owners of Angel Oak ... regarding the operation of the securities business and its profitability.").

<sup>37</sup> *Id.* at 6.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.* at 2.

<sup>41</sup> *Id.* at 6.

<sup>42</sup> *Id.* at 2.

Companies” as “includ[ing] a ‘Full-Service Fixed Income Broker-Dealer.’”<sup>43</sup> Additionally, customers regularly received trade confirmations showing that Angel Oak was involved in the trade.<sup>44</sup>

Throughout the operative period of the Agreement, Peraza “knew or should have known that” Angel Oak’s “owners ..., who were not all registered as broker-dealers or associated with a registered broker-dealer, were controlling the securities activities of the employees involved in the securities business.”<sup>45</sup> Although it was not registered as a broker or dealer, Angel Oak received approximately \$3,054,288 in transaction-based compensation.<sup>46</sup>

During the hearing, the Division called Brian Palechek, a CPA employed by the Commission, to testify.<sup>47</sup> He testified about how the \$3,054,288 figure in the OIP for Angel Oak’s commission revenue under the Agreement was derived and the seeming inconsistency between that binding figure and the similarly binding findings in the OIP as to the percentage of commission revenue Angel Oak and Peraza received.

Using figures from January through July 2011, Palechek calculated that Angel Oak’s profit margin was approximately 37%.<sup>48</sup> After reviewing Angel Oak’s financial records, he determined that from August 2011 through 2014, its net profit was \$3,054,290.69.<sup>49</sup> Assuming a constant profit margin, Palechek calculated that the latter figure was 37% of Angel Oak’s 85% share of total commissions during that period. According to Palechek, this meant that Angel Oak’s gross commission income from August 2011 through 2014 was \$8,327,647.20.<sup>50</sup> Based on the fact that Angel Oak received 85% of the

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<sup>43</sup> *Id.* at 6.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.* at 8.

<sup>46</sup> *Id.* at 2, 6.

<sup>47</sup> *See* Tr. 16–18.

<sup>48</sup> Tr. 27–28; *see* *infra* note 50.

<sup>49</sup> Tr. 31; *see* Tr. 46 (affirming that \$3,054,290.69 represented the “net proceeds that [Angel Oak] received”), 48 (“that was the net amount that they had retained after paying any of the broke[r] expenses”).

<sup>50</sup> Tr. 33, 46–47. Because \$3,054,290.69 is 37% of \$8,254,839.70, not \$8,327,647.20, it is apparent that 37% is a rounded figure. And going back to Palechek’s original calculation of Angel Oak’s profit margin—commission

(continued...)

total commission revenue, Palechek calculated that the total commission revenue generated by Angel Oak's trades from August 2011 through 2014 was \$9,797,232.00.<sup>51</sup> And 15% of that figure—Peraza's share of commission revenue—is \$1,469,584.80.<sup>52</sup>

The Division also called Xiomara Perez to testify. She is an accountant and holds a series 28 license.<sup>53</sup> Perez worked at Peraza from 2009 through 2016 and served as its chief financial officer and financial and operations principal.<sup>54</sup> During the relevant time, her responsibilities included preparing commission calculations, filing certain financial reports with FINRA, preparing Peraza's financials, and handling Peraza's accounting responsibilities.<sup>55</sup> Perez was responsible for tracking commission revenue and expenses for the Atlanta branch office.<sup>56</sup>

On a monthly basis, Perez received Peraza's commission revenue from the clearing houses Peraza used, together with a description of assessed per-transaction ticket charges.<sup>57</sup> She explained that after receiving the revenue, she would prepare a calculation showing the gross commissions less ticket, clearing, and related charges, and send the calculation to Wells for his review.<sup>58</sup> On Wells's approval, Perez would wire him the calculated amount.<sup>59</sup>

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profit divided by commission income, Tr. 28—shows that the precise figure is 36.6676514%. *See* J. Ex. 12. Using that percentage yields the figures Palechek calculated.

<sup>51</sup> Tr. 36, 47. In the equation  $.85x = \$8,327,647.20$ ,  $x$  is \$9,797,232.00.

<sup>52</sup> Tr. 36.

<sup>53</sup> Tr. 52–53. A Series 28 license allows a person to serve as an introducing broker-dealer financial and operations principal. *See* <http://www.finra.org/industry/series28#permitted-activities>; *see also* FINRA Rule 1220(a)(4).

<sup>54</sup> Tr. 54–55.

<sup>55</sup> Tr. 57.

<sup>56</sup> Tr. 59.

<sup>57</sup> Tr. 60–61, 90–91, 111.

<sup>58</sup> Tr. 61–62, 91; *see* J. Exs. 16–44.

<sup>59</sup> Tr. 61–62, 91.

During its investigation, the Division asked Perez to prepare a spreadsheet showing revenue and expenses related to Angel Oak.<sup>60</sup> That spreadsheet, which covers 2009 through 2014, was admitted as joint exhibit 3. Subtracting figures before 2012 to avoid statute of limitations concerns, Perez's spreadsheet showed gross commission revenue of \$8,724,505.44, gross commissions to the Atlanta branch office of \$7,544,017.46, and commissions retained by Peraza of \$1,180,487.98.<sup>61</sup>

Perez's spreadsheet also lists overhead expenses that Peraza incurred in its support of operations in the Atlanta branch office.<sup>62</sup> For 2012 to 2014, these overhead expenses included legal, professional, consulting, and accounting fees, as well as occupancy and equipment allocations.<sup>63</sup> These expenses totaled \$795,256.88 for 2012 through 2014, and according to the spreadsheet, reduced Peraza's profits from the trading at the Atlanta branch office.<sup>64</sup> On the other hand, Peraza deducted direct transaction costs such as ticket charges from the money that it sent to Wells.<sup>65</sup> Those direct transaction costs, therefore, unlike the overhead expenses identified in the spreadsheet, did not affect Peraza's bottom line.<sup>66</sup>

On cross-examination, Perez explained that the Agreement was drafted by Peraza's counsel, Kevin Carreno, who was then a member of FINRA's board of governors.<sup>67</sup> She also further discussed the expenses listed on the spreadsheet that Peraza incurred but which were associated with Angel Oak and which were not charged to Angel Oak or withheld from revenue transmitted to Wells.<sup>68</sup> Perez explained that she allocated the expenses on a

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<sup>60</sup> Tr. 64.

<sup>61</sup> J. Ex. 3 at 1; Tr. 68.

<sup>62</sup> J. Ex. 3 at 1; Tr. 68, 76, 102–03, 111–12.

<sup>63</sup> J. Ex. 3 at 1; *see* Tr. 69–75.

<sup>64</sup> J. Ex. 3 at 1.

<sup>65</sup> Tr. 62–63, 91; *see* J. Exs. 16–44.

<sup>66</sup> *See, e.g.*, J. Ex. 28 at 3 (showing that Peraza first took its 15% cut of the commissions generated by the Atlanta branch, and then deducted the ticket charges before sending the remainder of the money on to Wells).

<sup>67</sup> Tr. 92–93; *see* Tr. 124 (affirming that Carreno was Peraza's "in-house counsel").

<sup>68</sup> Tr. 95–103.

profit and loss statement she prepared at the Division's request, but had not calculated the expenses contemporaneously.<sup>69</sup> She said they represented her "educated allocation."<sup>70</sup>

Sam Lewis was Peraza's president and chief investment officer from approximately 2001 through 2017.<sup>71</sup> He signed Peraza's offer of settlement on Peraza's behalf.<sup>72</sup>

Lewis's testimony revealed that Peraza has settled charges with FINRA three times.<sup>73</sup> In 2005, Peraza settled allegations related to its failure to comply with certain anti-money laundering requirements in the Bank Secrecy Act, and agreed to a censure and \$10,000 fine.<sup>74</sup>

In 2010, it settled allegations that it failed to maintain required minimum net capital on three separate days in 2008, failed to file or failed to timely file notifications of its failures to maintain net capital, failed to maintain accurate books and records, and filed two inaccurate reports with FINRA.<sup>75</sup> Peraza agreed to a censure and a \$12,500 fine.<sup>76</sup>

Finally, in 2014 Peraza settled allegations that during a three-month window in 2012, it failed to report 83 transactions to FINRA's Trade Reporting and Compliance Engine (TRACE), which represented 29% of the

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<sup>69</sup> Tr. 104–05.

<sup>70</sup> Tr. 105.

<sup>71</sup> Tr. 118, 125.

<sup>72</sup> J. Ex. 75 at 14; Tr. 129–30.

<sup>73</sup> See Tr. 132; J. Exs. 13–15. Peraza's first settlement was with FINRA's predecessor, the NASD. See J. Ex. 13. For ease of reference, and because it makes no difference for present purposes, I will refer to all settlements as being with FINRA.

<sup>74</sup> J. Ex.13; see 31 U.S.C. § 5318; United and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT Act) Act of 2001, Pub. L. No. 107–56, § 356(a), 115 Stat. 272; 31 C.F.R. § 103.19 (2005); FINRA Rule 3310.

<sup>75</sup> J. Ex. 14 at 2.

<sup>76</sup> *Id.*

transactions it was required to report during that period.<sup>77</sup> Peraza agreed to a censure and \$10,000 fine.<sup>78</sup> Without contradiction, both Perez and Lewis explained that this violation related to a branch office's failure to timely file TRACE reports.<sup>79</sup>

In each settlement, Peraza agreed that on the settlement offer's acceptance, the settlement could "be considered in any future actions brought by FINRA or any other regulator against the firm."<sup>80</sup>

On cross-examination, Lewis testified that no customer had ever complained about the trades that are the subject of this proceeding.<sup>81</sup> He also opined that absent Peraza's relationship with Angel Oak, customers still would have paid commissions on their trades in the same amounts.<sup>82</sup>

### Issues

A. Whether Peraza must pay disgorgement and prejudgment interest?

B. Whether Peraza should pay a civil monetary penalty as a result of the fact that it caused Angel Oak's violation of Section 15(a)?

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<sup>77</sup> J. Ex. 15 at 1–2. The NASD developed TRACE to respond to concerns about the need for greater "transparency in, and better surveillance of, the corporate debt market." Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by the National Association of Securities Dealers, Inc. Relating to Permanent Fee Structure for the Trade Reporting and Compliance Engine (TRACE), 68 Fed. Reg. 62,483, 62,486 (Nov. 4, 2003).

<sup>78</sup> J. Ex. 15 at 2.

<sup>79</sup> Tr. 85, 144–45 (explaining that Wells entered the trades in question), 148.

<sup>80</sup> J. Ex. 13 at 1; J. Ex. 14 at 4; J. Ex. 15 at 3. Peraza's FINRA BrokerCheck report indicates that these three settlements were accepted. J. Ex. 5 at 19–24.

<sup>81</sup> Tr. 150.

<sup>82</sup> Tr. 153.

## Discussion and Conclusions of Law

### 1. *Peraza must disgorge the commission revenue it received under the Agreement.*

As noted, because Peraza’s settlement and the OIP resolve the issue of whether Peraza caused Angel Oak’s violation of Section 15(a), the only remaining questions are whether Peraza should be ordered to pay disgorgement and interest and a civil monetary penalty and, if so, how much.

By statute, the Commission has the authority to order respondents to pay disgorgement and interest in cases where the Commission may impose a penalty under Exchange Act Section 21B and in cases brought under Section 21C.<sup>83</sup> Disgorgement is an equitable, discretionary remedy, which is intended to prevent unjust enrichment and to act as a deterrent.<sup>84</sup> To establish the appropriate amount of disgorgement, the Division need only show “a reasonable approximation of profits causally connected to the violation” in question.<sup>85</sup> Ordinarily, once the Division makes the required showing, the

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<sup>83</sup> 15 U.S.C. §§ 78u-2(e), 78u-3(e).

<sup>84</sup> See 15 U.S.C. §§ 78u-2(e), 78u-3(e) (providing that the Commission “may” order disgorgement); *SEC v. First City Fin. Corp.*, 890 F.2d 1215, 1230 (D.C. Cir. 1989). The Supreme Court’s decision in *Kokesh v. SEC*, 137 S. Ct. 1635, 1643 (2017), that disgorgement is a penalty for statute of limitations purposes, did not change the fact that disgorgement is “primarily an equitable remedy ‘designed to deprive a wrongdoer of his unjust enrichment.’” *SEC v. Analytica Bio-Energy Corp.*, 317 F. Supp. 3d 574, 580 (D.D.C. 2018) (quoting *First City Fin.*, 890 F.2d at 1230)); accord *United States v. Meyer*, 376 F. Supp. 3d 1290, 1295 (S.D. Fla. 2019) (“*Kokesh* certainly did not discuss or overrule the longstanding precedent of categorizing disgorgement as an equitable remedy”) (quoting *United States v. Rapower-3, LLC*, 294 F. Supp. 3d 1238, 1242 (D. Utah 2018)).

<sup>85</sup> *First City Fin.*, 890 F.2d at 1231; see *SEC v. Warren*, 534 F.3d 1368, 1370 (11th Cir. 2008); see also *Montford & Co. v. SEC*, 793 F.3d 76, 83–84 (D.C. Cir. 2015) (“[t]he touchstone of a disgorgement calculation is identifying a causal link between the illegal activity and the profit sought to be disgorged”) (quoting *SEC v. UNIOIL*, 951 F.2d 1304, 1306 (D.C. Cir. 1991) (Edwards, J., concurring)) (alteration in original); cf. *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 15 (1971) (“breadth and flexibility are inherent in equitable remedies”).

burden shifts to the respondent to show “that the disgorgement figure was not a reasonable approximation.”<sup>86</sup>

Here, the Division has shown, and Peraza has not seriously disputed, that Peraza’s 15% share of commissions earned during the life of the Agreement was \$1,521,705.87. To avoid statute of limitations issues, however, the Division seeks only \$1,180,487.98, the amount earned after 2011. This figure is drawn from Ms. Perez’s calculation. Because she kept Peraza’s books and then, during the Commission’s investigation, calculated Peraza’s and Angel Oak’s share of commission revenue, her calculations persuasively establish the amount of commissions earned after 2011. Because, as discussed below, these commissions are causally connected to the violation, \$1,180,487.98 represents an appropriate amount of disgorgement.<sup>87</sup>

Although it does not dispute this figure,<sup>88</sup> Peraza argues that Angel Oak’s trades were legal because Angel Oak’s traders were registered with Peraza.<sup>89</sup> But this argument runs headlong into the binding factual findings in the OIP. As the OIP details, Peraza “received commissions as a result of [its] arrangement” with Angel Oak, under which it “facilitated” Angel Oak’s “ability to operate as an unregistered broker-dealer.”<sup>90</sup> And Peraza did this by (1) registering some of Angel Oak’s employees, and (2) allowing Angel Oak access to Peraza’s trading platform.<sup>91</sup> So the fact Angel Oak’s employees were registered is not necessarily evidence the trades were legal; but it is evidence of Peraza’s efforts that caused Angel’s Oak’s violation of Section 15(a). Moreover, *all* of the 900 trades “were cleared through Peraza[’s] ... clearing firm,” something that would not have happened but for the Agreement and

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<sup>86</sup> *SEC v. Calvo*, 378 F.3d 1211, 1217 (11th Cir. 2004).

<sup>87</sup> *Cf. optionsXpress, Inc.*, Exchange Act Release No. 78621, 2016 WL 4413227, at \*36 (Aug. 18, 2016) (finding that the commissions that the respondent earned by impermissibly executing buy-writes to satisfy its close-out obligations represented “an appropriate disgorgement amount”), *abrogated in part on other grounds by Lucia v. SEC*, 138 S. Ct. 2044 (2018).

<sup>88</sup> *See* Resp’t’s Post-hearing Br. at 3 (affirming that “[t]he total amount of gross commissions that Peraza received between 2012 and 2014, as a result of the 900 trades, was \$1,180,487.98”).

<sup>89</sup> *Id.* at 3, 8.

<sup>90</sup> OIP at 6, 8.

<sup>91</sup> *Id.* at 3, 8.

Peraza’s facilitation of Angel Oak’s violation.<sup>92</sup> Had it not been for the Agreement, none of the trades would have occurred through Peraza’s trading platform and Peraza would not have earned the commissions it did. In short, *all* of the trades occurred and commissions were earned under the auspices of the Agreement and are causally connected to Angel Oak’s Section 15(a) violation, which Peraza caused. Under the binding terms of the OIP, all of the trades were a core component of the illegal activity.

Peraza also suggested during the merits hearing that once it started paying Wells—who then disbursed the commission revenue—and stopped paying Angel Oak directly, the Agreement ceased to have effect and no trades were entered under it.<sup>93</sup> This is a red herring as the trades occurred and commissions were earned as a result of the arrangement between Angel Oak and Peraza, as the binding facts in the OIP establish. Whether Peraza paid Angel Oak directly or through Wells is irrelevant.

Peraza also argues that disgorgement should be offset by its legitimate expenses, including legal and professional fees, accounting fees, and equipment allocations.<sup>94</sup> In making this argument, it continues to assert that the 900 trades were “legal trades,” and although Peraza “‘facilitated’ Angel Oak in operating as an unregistered broker-dealer,” the back-office support it provided to Angel Oak to support the legal trades should be offset from the disgorgement amount.<sup>95</sup>

In general, “securities law violators may not offset their disgorgement liability with business expenses.”<sup>96</sup> But precedent on this point typically deals with wholly illegitimate enterprises that exist to defraud investors.<sup>97</sup> And here, there is no evidence Angel Oak’s customers were defrauded, did not

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<sup>92</sup> *Id.* at 5.

<sup>93</sup> Tr. 194–95, 202–03.

<sup>94</sup> Resp’t’s Post-hearing Br. at 6–9; Resp’t’s Reply at 2–4; *see* J. Ex. 3 at 1. Peraza does not attempt to argue that its disgorgement should be reduced by direct transaction costs such as clearinghouse expenses. Indeed, as noted above, the record demonstrates that those costs were paid by Angel Oak, not Peraza. Tr. 62–63, 91; *see* J. Exs. 16–44.

<sup>95</sup> Resp’t’s Post-hearing Br. at 8–9.

<sup>96</sup> *SEC v. Markusen*, 143 F. Supp. 3d 877, 893 (D. Minn. 2015).

<sup>97</sup> *See id.*; *see also SEC v. Kenton Capital, Ltd.*, 69 F. Supp. 2d 1, 17 (D.D.C. 1998)).

receive the securities they wanted to purchase, or were charged unreasonable commissions. From the customers' perspectives, nothing untoward happened.

In denying the Division's motion for summary disposition, I left open the possibility that Peraza could demonstrate that offsetting expenses is appropriate.<sup>98</sup> But Peraza has failed to establish entitlement to an offset. During the hearing, Peraza conceded that Angel Oak did not enter other trades, legitimate or otherwise, outside of the 900 trades discussed in the OIP.<sup>99</sup> Nor did it attempt to establish that for any of those 900 trades, Angel Oak was not holding itself out as a broker-dealer. And although no customers were harmed or mistreated, all of those 900 trades were nonetheless at the core of Peraza's and Angel Oak's illegal activities. Angel Oak, an unregistered broker-dealer, should not have been engaged in the business of effecting these securities transactions.<sup>100</sup> Peraza, therefore, cannot demonstrate that any of its expenditures related to Angel Oak were legitimate because it should not have incurred any expenses to support Angel Oak.<sup>101</sup> The "back

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<sup>98</sup> *Angel Oak*, 2019 SEC LEXIS 71, at \* 12–13. In *SEC v. JT Wallenbrock & Assocs.*, the Ninth Circuit granted that in "some circumstances, [a] broker" subject to disgorgement "might be entitled to offset expenses customarily incurred in the purchase and sale of such stock if the investor would have had to pay for such expenses in any legitimate transaction." 440 F.3d 1109, 1114 (9th Cir. 2006). The court, however, declined to rely on that rationale because the defendants' "entire business enterprise and related expenses were not legitimate at all, and no aspect of the defendants' conduct [could] be fairly characterized as a 'function of the way a securities firm does business.'" *Id.* at 1115 (quoting and contrasting *SEC v. Thomas James Assocs., Inc.*, 738 F. Supp. 88, 95 (W.D.N.Y. 1990)).

<sup>99</sup> Tr. 195–97.

<sup>100</sup> In its reply brief, Peraza argues that "the OIP contains no findings that Peraza was not a legitimate broker-dealer" or that it "was created for a fraudulent or illegal purpose." Resp't's Reply Br. at 3. This is true, but the issue is not whether Peraza is legitimate; the question is whether its business expenses related to the trades were legitimate, and Peraza has not shown that they were, as the expenses were in furtherance of Angel Oak's illegal broker activities.

<sup>101</sup> The fact that Angel Oak conducted no legitimate business serves to distinguish a case on which Peraza relies. *SEC v. Gold Standard Mining Corp.*, No. 12-cv-5662, 2016 WL 6892101, at \*5 (C.D. Cal. May 26, 2016) (offsetting certain expenses because the company was "a legitimate accounting firm . . . that . . . performed legitimate accounting services for other customers"); see Resp't's Post-hearing Br. at 8–9. Peraza also relies on

(continued...)

office” expenses identified by Perez, including legal fees, professional fees, and occupancy and equipment allocations, are among the kind of expenditures that facilitated Angel Oak’s illegal broker activities.<sup>102</sup> There is therefore no basis to apportion legitimate expenses associated with Angel Oak’s trades and Peraza’s support of Angel Oak. As the binding facts in the OIP reveal, those trades and that support were core components of the unlawful conduct.<sup>103</sup>

The OIP directs that if disgorgement is ordered, Peraza must pay prejudgment interest calculated from October 1, 2014.<sup>104</sup> Based on that starting date and a disgorgement amount of \$1,180,487.98, the Division calculates that as of the end of June 2019, Peraza should be ordered to pay \$245,322.60 in prejudgment interest.<sup>105</sup> Peraza does not challenge this calculation. I order Peraza to pay prejudgment interest, which will be calculated from October 1, 2014, to the last day of the month preceding the month in which payment of disgorgement is made.<sup>106</sup>

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*SEC v. Hall*, No. 15-cv-23489, at 12–16 (S.D. Fla. April 13, 2017), ECF No. 142, in which a court could not determine a reasonable disgorgement amount because the Commission’s request appeared not to account for substantial offsets. Resp’t’s Post-hearing Br. at 7. It is not clear exactly how the facts in *Hall* are comparable to the matter here, and in any event, although Peraza does not mention it, the district court in *Hall* later granted reconsideration and declined to offset expenses against disgorgement. *SEC v. Hall*, No. 15-cv-23489, 2017 WL 3635108 (S.D. Fla. June 29, 2017), *aff’d*, 759 F. App’x 877 (11th Cir. 2019), *petition for cert. filed*, (U.S. May 20, 2019) (No. 18-1471).

<sup>102</sup> See J. Ex. 3 at 1; J. Ex. 74 at 2 (Agreement states that Peraza will provide back office support services to Angel Oak in addition to a trading platform); OIP at 4.

<sup>103</sup> Peraza asserts that “the 900 trades themselves did not violate any federal securities laws.” Resp’t’s Post-hearing Br. at 8. Whether the trades were legal independent of Angel Oak’s illegal broker activities misses the point. As the OIP established, Angel Oak’s trading activities were a core component of its unlawful operation as an unregistered broker-dealer.

<sup>104</sup> OIP at 9.

<sup>105</sup> Div. Post-hearing Br. at 19; *id.* at App’x. 1.

<sup>106</sup> See 17 C.F.R. § 201.600(a).

2. *Peraza must pay a maximum first-tier penalty.*

The next question is whether to impose a civil monetary penalty. Section 21B of the Exchange Act gives the Commission the authority, in cease-and-desist proceedings instituted under Section 21C, to impose monetary penalties against any respondent that causes a violation of the Exchange Act.<sup>107</sup> Although the Exchange Act creates a three-tiered system based on increasing degrees of culpability for imposing civil penalties, the Division seeks only a first-tier (*i.e.*, the lowest level) penalty of \$75,000. A first-tier penalty may be imposed simply based on the determination that a respondent caused a violation.<sup>108</sup> This statutory requirement is met here. Peraza's settlement and the binding conclusion in the OIP show that Peraza caused a violation of Section 15(a).

To determine whether to impose a civil monetary penalty, however, I must weigh the public-interest factors listed in Section 21B(c),<sup>109</sup> bearing in mind that there is no requirement that all factors be shown before imposing a penalty.<sup>110</sup>

The first factor is whether Peraza's conduct "involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement."<sup>111</sup> Peraza did not commit fraud. And the record does not

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<sup>107</sup> 15 U.S.C. § 78u-2(a)(2)(B).

<sup>108</sup> 15 U.S.C. § 78u-2(b)(1).

<sup>109</sup> See 15 U.S.C. § 78u-2(c). In contrast to cases initiated under Section 15(b), the Commission is not expressly required in cease-and-desist proceedings instituted under Section 21C, to weigh the public interest before imposing monetary sanctions. Compare 15 U.S.C. § 78u-2(a)(1), with 15 U.S.C. § 78u-2(a)(2). I have previously determined in ruling on the Division's motion for summary disposition, however, that because the statutory factors found in Section 21B(c) provide an appropriate framework, I will weigh those factors in deciding whether to impose a monetary penalty. See *Angel Oak*, 2019 SEC LEXIS 71, at \*15 n.64.

<sup>110</sup> *R.E. Bassie & Co.*, Accounting and Auditing Enforcement Act Release No. 3354, 2012 WL 90269, at \*13 (Jan. 10, 2012); see *Phlo Corp.*, Exchange Act Release No. 55562, 2007 WL 966943, at \*15 & n.84 (Mar. 30, 2007) (imposing a penalty despite respondent's clean regulatory history and the absence of unjust enrichment).

<sup>111</sup> 15 U.S.C. § 78u-2(c)(1).

indicate that Peraza’s violations were knowing or reckless.<sup>112</sup> The very fact that the OIP found that Peraza caused Angel Oak’s violation—instead of that it aided or abetted the violation—suggests that Peraza lacked scienter.<sup>113</sup> Likewise, in its briefing in support of a penalty, the Division has not argued that Peraza acted with scienter.<sup>114</sup>

The second factor concerns “the harm to other persons resulting either directly or indirectly from” Peraza’s “act or omission.”<sup>115</sup> The Division presented no evidence that anyone suffered any harm because Peraza caused Angel Oak’s violation of Section 15(a).

The third factor concerns “unjust enrichment” but requires “taking into account any restitution made to persons injured by” the violation at issue.<sup>116</sup>

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<sup>112</sup> The OIP states that Peraza facilitated Angel Oak’s trading even though it “knew” that Angel Oak was not registered. OIP at 3. But this does not necessarily mean Peraza knew that Angel Oak was operating as an unregistered broker. The OIP also says that Peraza “knew or should have known” that unregistered Angel Oak employees were controlling the business. *Id.* at 3, 8. Although its meaning can vary with context, “the phrase ‘should have known’ . . . is classic negligence language.” *KPMG Peat Marwick LLP*, Exchange Act Release No. 43862, 2001 WL 47245, at \*20 (Jan. 19, 2001), *pet. denied*, 289 F.3d 109 (D.C. Cir. 2002). And because negligence is sufficient to establish causing liability, it is appropriate to “give the phrase its ordinary meaning.” *Id.* at 19–20.

<sup>113</sup> Although causing a primary violation which does not require scienter can be found based on negligence alone, an aiding and abetting violation requires knowing or reckless behavior. *See KPMG*, 2001 WL 47245, at \*19; *see also Graham v. SEC*, 222 F.3d 994, 1000 (D.C. Cir. 2000).

<sup>114</sup> In closing argument, the Division argued that the OIP’s finding that Peraza “knew or should have known” about Angel Oak’s activities demonstrates scienter. Tr. 216. But, as noted, the phrase “should have known” often connotes negligence. *KPMG*, 2001 WL 47245, at \*20. Moreover, the Division has not pressed these arguments in its briefing, arguing instead for a maximum first-tier civil penalty based on three factors—none of them Peraza’s scienter. Div. Post-hearing Br. at 21–23; Div. Reply Br. at 10–12. Indeed, when Peraza argued in its opening brief that it is undisputed that Peraza’s “violative conduct included no degree of scienter,” the Division did not respond in its reply. Resp’t’s Post-hearing Br. at 11.

<sup>115</sup> 15 U.S.C. § 78u-2(c)(2).

<sup>116</sup> 15 U.S.C. § 78u-2(c)(3).

The term *unjust enrichment* is not defined in the Exchange Act. It ordinarily refers, however, to obtaining funds at the expense of others.<sup>117</sup> Here, there is no evidence that Angel Oak’s customers did not actually receive the securities they bought or that Angel Oak preyed on customers, charging exorbitant commissions.<sup>118</sup> But both Angel Oak and Peraza received commission revenue, which, given the findings in the OIP, was illegitimate because Angel Oak was operating as an unregistered broker-dealer and Peraza facilitated its ability to do so. And Commission precedent suggests that revenue earned as a result of a Section 15(a) violation amounts to unjust enrichment.<sup>119</sup>

The fourth factor is Peraza’s regulatory history.<sup>120</sup> Peraza has settled allegations with FINRA on three separate occasions. In settling those allegations, Peraza agreed that its settlements could “be considered in any future actions brought by ... any ... regulator against the firm.”<sup>121</sup> Of the three violations, the Division focuses on the second, which involved three consecutive months in which Peraza was net capital deficient.<sup>122</sup> But these net capital violations occurred 11 years ago. Without minimizing the seriousness of these violations, their remoteness in time tends to lessen their current importance.

Instead, the most relevant settlement involved the 2012 failure of Peraza’s Atlanta branch office—which was staffed by Peraza’s registered representatives employed by Angel Oak—to report 83 transactions in

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<sup>117</sup> See Restatement (Third) of Restitution and Unjust Enrichment § 1 cmt. a (2011) (“the paradigm case of unjust enrichment is one in which the benefit on one side of the transaction corresponds to an observable loss on the other”); see also *Texas Pig Stands, Inc. v. Hard Rock Cafe Int’l, Inc.*, 951 F.2d 684, 694 & n.15 (5th Cir. 1992) (stating that “[t]he definition of unjust enrichment provided to the jury accurately” defined “[u]njust enrichment [as] the unjust retention of a benefit to the loss of another or unjust retention of money or property of another which is against the fundamental principles of justice or equity and good conscience”).

<sup>118</sup> See Tr. 153.

<sup>119</sup> See *Allen M. Perres*, Securities Act of 1933 Release No. 10287, 2017 WL 280080, at \*3–4 (Jan. 23, 2017), *pet. denied*, 695 F. App’x 980 (7th Cir. 2017).

<sup>120</sup> 15 U.S.C. § 78u-2(c)(4).

<sup>121</sup> J. Ex. 13 at 1; J. Ex. 14 at 4; J. Ex. 15 at 3.

<sup>122</sup> Div. Post-hearing Br. at 22.

FINRA's TRACE program, involving 29% of the transactions it was required to report.<sup>123</sup> When considered in conjunction with the previous two violations and the current dispute, this latter settlement suggests a continuing problem regarding Peraza's ability to comply with the statutory and regulatory requirements that apply to it.

The fifth factor is deterrence.<sup>124</sup> On this score, because Section 15(a) "was enacted as an original part of the" Exchange Act,<sup>125</sup> its requirements are of "utmost importance in effecting the [Act's] purposes."<sup>126</sup> Section 15(a)'s registration requirement allows the Commission to "exercise[]" "discipline ... over those who ... engage in the securities business and" to "establish[]" "necessary standards ... with respect to training, experience, and records."<sup>127</sup> Given the Commission's mission—"protecting investors[,] ... safeguarding the integrity of the markets," and "making securities law violations unprofitable"<sup>128</sup>—and the importance of Section 15(a)'s requirements, the need for deterrence weighs against Peraza in favor of a monetary sanction.<sup>129</sup>

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<sup>123</sup> J. Ex. 15 at 2; Tr. 144–45, 148.

<sup>124</sup> 15 U.S.C. § 78u-2(c)(5).

<sup>125</sup> *Celsion Corp. v. Stearns Mgmt. Corp.*, 157 F. Supp. 2d 942, 947 (N.D. Ill. 2001).

<sup>126</sup> *Eastside Church of Christ v. Nat'l Plan, Inc.*, 391 F.2d 357, 362 (5th Cir. 1968); *Celsion*, 157 F. Supp. 2d at 947; *see Perres*, 2017 WL 280080, at \*3.

<sup>127</sup> *Eastside Church*, 391 F.2d at 362; *Perres*, 2017 WL 280080, at \*3.

<sup>128</sup> *Gordon Brent Pierce*, Securities Act Release No. 9555, 2014 WL 896757, at \*19 (Mar. 7, 2014) (quoting *SEC v. Rind*, 991 F.2d 1486, 1491 (9th Cir. 1993)), *pet. denied*, 786 F.3d 1027 (D.C. Cir. 2015).

<sup>129</sup> Peraza argues that a penalty will have no deterrent effect on it because it "has been administratively dissolved." Resp't's Post-hearing Br. at 11; *see* Resp't's Reply Br. at 6. But this ignores both the Commission's interest in deterring others from violating Section 15 and the fact that the Commission may validly weigh general deterrence, among other factors, in considering whether to impose a penalty. *See* 15 U.S.C. § 78u-2(c)(5); *see also David R. Wulf*, Investment Advisers Act of 1940 Release No. 4356, 2016 WL 1085661, \*4 & n.16 (Mar. 21, 2016), *vacated in part on other grounds*, Advisers Act Release No. 5287, 2019 WL 2903943 (July 5, 2019).

The final factor is whether there are any “other matters as justice may require.”<sup>130</sup> I’ve noted the importance of Section 15(a)’s registration requirement. Because Angel Oak’s violations of Section 15 involved 900 trades occurring over a period of years, those violations were persistent and not isolated.<sup>131</sup> Peraza thus caused repeated violations of a foundational requirement of the Exchange Act. This alone marks its conduct as serious, although given the lack of harm to investors and absence of evidence of fraud, I cannot say that its conduct is egregious. Nonetheless, the fact that the violations involved millions of dollars in commission revenue supports my determination that Peraza’s violations are serious.<sup>132</sup>

Considering the foregoing factors, I find it appropriate to impose a monetary penalty. Although no one was harmed, and Peraza’s scienter cannot be shown on this record, the company caused violations of a foundational requirement of the securities laws for several years following three previous violations. Imposing a penalty would further the Commission’s interest in protecting the investing public by serving as a deterrent to others who might otherwise follow Peraza’s example.

The Division seeks a full first-tier penalty. Because Peraza’s conduct was serious, recurrent, and followed several prior violations, I impose the full penalty in my discretion.

### **Record Certification**

I certify that the record includes the items set forth in the record index issued by the Secretary of the Commission on August 1, 2019.<sup>133</sup>

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<sup>130</sup> 15 U.S.C. § 78u-2(c)(6).

<sup>131</sup> See *Perres*, 2017 WL 280080, at \*1–4 (concerning registration violations involving 97 investors over a 29-month period). I reject Peraza’s argument that its violations were isolated and not repeated. Resp’t’s Post-hearing Br. at 11; Resp’t’s Reply Br. at 5. Even though the violations only occurred at one branch, every transaction entered into by Angel Oak at that branch is implicated in this case.

<sup>132</sup> Cf. *Perres*, 2017 WL 280080, at \*3–4.

<sup>133</sup> See 17 C.F.R. § 201.351(b).

## Order

Under Section 21B(a)(2) of the Securities Exchange Act of 1934, Peraza Capital & Investment, LLC, shall PAY A CIVIL MONEY PENALTY in the amount of \$75,000.

Under Sections 21B(e) and 21C(e) of the Securities Exchange Act of 1934, Peraza Capital & Investment, LLC, shall DISGORGE \$1,180,487.98, plus prejudgment interest. The prejudgment interest owed shall be calculated from October 1, 2014, to the last day of the month preceding the month in which payment of disgorgement is made. 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.<sup>134</sup>

Payment of civil penalties, disgorgement, and interest shall be made no later than 21 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/ofm>; 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 Respondent and Administrative Proceeding No. 3-17849: Enterprise 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.

This initial decision shall become effective in accordance with and subject to the provisions of Rule of Practice 360.<sup>135</sup> Under that rule, a party may file a petition for review of this initial decision within 21 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.<sup>136</sup> If a motion to correct a manifest error of fact is filed by a party,

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<sup>134</sup> 17 C.F.R. § 201.600(b).

<sup>135</sup> 17 C.F.R. § 201.360.

<sup>136</sup> See 17 C.F.R. § 201.111.

then a party shall have 21 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.

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James E. Grimes  
Administrative Law Judge