Initial Decision Release No. 1387
Administrative Proceeding
File No. 3-16509

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

In the Matter of

Edward M. Daspin, a/k/a "Edward (Ed) Michael", **Luigi Agostini**, and **Lawrence R. Lux**

Initial Decision
October 16, 2019

Appearances: Kevin P. McGrath and Barry O'Connell for the Division of Enforcement, Securities and Exchange Commission

Edward M. Daspin, pro se

Before: Brenda P. Murray, Chief Administrative Law Judge

Background

The Securities and Exchange Commission issued an order instituting proceedings (OIP) on April 23, 2015, pursuant to Section 8A of the Securities Act of 1933 and Sections 15(b) and 21C of the Securities Exchange Act of 1934, alleging violations of the securities statutes by Edward M. Daspin and others from December 2010 through approximately June 2012.[1] OIP at 1-2.

[1] The Commission accepted offers of settlement from Lawrence R. Lux and Luigi Agostini. *Edward M. Daspin*, Securities Act Release Nos. 9963, 2015 SEC LEXIS 4287 (Oct. 16, 2015); 10243, 2016 SEC LEXIS 4086 (Nov. 1, 2016).

Much has happened in the intervening four-plus years.[2] The proceeding was reassigned to me on September 12, 2018, for a new hearing. *Pending Admin. Proc.*, Admin. Proc. Rulings Release No. 5955, 2018 SEC LEXIS 2264, at *2, *4 (ALJ Sept. 12, 2018).

In April and May 2019, I held ten days of hearing at which the Division of Enforcement presented testimony from ten witnesses and Daspin testified on behalf of himself. I admitted approximately 290 exhibits into evidence. The Division filed initial and reply post-hearing memoranda on July 3 and August 7, 2019, respectively. Since the close of the hearing, Daspin sent several emails and documents, which I have made part of the record and considered. During the hearing, I agreed to consider legal arguments Daspin's counsel advanced during the Wells process as his briefs.

Motion to Exclude Daspin's Testimony

As a preliminary matter, I will address the Division's motion to prohibit Daspin from testifying on the grounds that he failed to comply with prehearing orders, on which I had previously deferred ruling. *See Daspin*, Admin. Proc. Rulings Release No. 6538, 2019 SEC LEXIS 820, at *2 (ALJ Apr. 10, 2019); Tr. 8-9. I now deny the motion. In my judgment, the Division was not disadvantaged by Daspin's failure to comply with my prior orders, so exclusion of his testimony would be disproportionate.

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[2] On June 15, 2015, an administrative law judge postponed the hearing indefinitely. *Daspin*, Admin. Proc. Rulings Release No. 2810, 2015 SEC LEXIS 2387, at *2. A second administrative law judge lifted the postponement and ultimately found Daspin in default. *Daspin*, Admin. Proc. Rulings Release Nos. 2999, 2015 SEC LEXIS 3137, at *1 (ALJ July 31, 2015); 3041, 2015 SEC LEXIS 3348, at *4-9 (ALJ Aug. 14, 2015); 3683, 2016 SEC LEXIS 886, at *22 (ALJ Mar. 8, 2016); *see also Daspin*, Initial Decision Release No. 1051, 2016 SEC LEXIS 2928 (ALJ Aug. 23, 2016).

The Commission remanded the proceeding for ratification on November 30, 2017. *Pending Admin. Proc.,* Securities Act Release No. 10440, 2017 SEC LEXIS 3724, at *2-3, *7; *see Daspin*, Admin. Proc. Rulings Release No. 5619, 2018 SEC LEXIS 520, at *67-70 (ALJ Feb. 20, 2018). As the result of *Lucia v. SEC*, 138 S. Ct. 2044 (2018), the proceeding was then stayed from June 21 through August 22, 2018, at which point the Commission remanded all pending administrative proceedings for new hearings. *Pending Admin. Proc.,* Securities Act Release Nos. 10510, 2018 SEC LEXIS 1490 (June 21, 2018); 10536, 2018 SEC LEXIS 2058, at *2-3, *8 (Aug. 22, 2018).

Issues

Daspin is charged with willfully violating (1) Securities Act Section 17(a), Exchange Act Sections 10(b) and 20(b), and Rule 10b-5, 15 U.S.C. §§ 77q(a), 78j(b), 78t(b); 17 C.F.R. § 240.10b-5, as a result of his fraudulent conduct related to the securities offerings of Worldwide Mixed Martial Arts Sports, Inc. (WMMA), and WMMA Distribution, Inc.; (2) Securities Act Section 5(a) and (c), 15 U.S.C. § 77e(a), (c), by selling or offering to sell non-exempt unregistered securities; and (3) Exchange Act Section 15(a), 15 U.S.C. § 78*o*(a), by acting as an unregistered broker. OIP at 2-3, 14; Div. Br. 78-103.

My factual findings and legal conclusions are based on the entire record. I applied preponderance of the evidence as the standard of proof. *See Steadman v. SEC*, 450 U.S. 91, 101-04 (1981). I have considered and rejected all arguments and proposed findings and conclusions that are inconsistent with this decision.

Facts

The WMMA Companies

"Very" applies to all aspects of Edward Michael Daspin. He is smart, engaging, aggressive, persuasive, excitable, at times charming, and prone to swearing and yelling. *E.g.*, Div. Ex. 577; Tr. 1823-25, 2673-74, 3399; *cf.* Tr. 774-75 (allegation by the Division that after a witness testified at the hearing, Daspin called the witness an "[expletive] liar, and one of these days I'm going to get you," which Daspin denied saying). Daspin considers himself a strategic planner, a visionary, a deal maker with a career of putting pieces together to organize companies; by his own account he has bought 350 companies and been sued many times but never lost. Tr. 2673-74, 2814, 2875, 3016, 3124-25, 3129. In 1978, Daspin was jailed for six months for a felony bankruptcy fraud conviction. Ans. at 8; Tr. 1878, 2814; *see generally United States v. Daspin*, No. 77-cr-238 (D.N.J.); *United States v. Daspin*, 77-cr-196 (S.D.N.Y.) He says that mistake has caused him forty years of pain and believes that federal prisoners who have served their sentences should be pardoned. Tr. 2814-15, 3019.

In 2010, Daspin came up with the idea of creating an international league of mixed martial arts (MMA) tournaments where winners of local and area fights would compete against one another and move up in brackets leading to national and international championship matches. Tr. 68-70. MMA "is a full-contact combat sport that allows a wide variety of fighting techniques (such as Greco-Roman Wrestling, Kickboxing, Boxing, Karate, Jujitsu, etc.) to be used in a bout." Div. Ex. 1 at 7. At the time, there was one

large mixed martial arts organization in the United States, but Daspin's innovative idea—which he initially developed with Luigi Agostini, a close friend of Daspin's son, and people he had worked with in other businesses—was for an international operation. Tr. 3021, 3050-51, 3070-71, 3096-98, 3260-64. He envisioned letting local promoters keep the live gate proceeds, and the WMMA companies would build a worldwide tournament and sell the programing. Tr. 2884-85. Daspin envisioned the creation of national leagues in the United States and fifteen other countries, each managed by sixteen subsidiaries and broken into regions. Div. Ex. 3 at 7; Div. Ex. 450; Tr. 720, 999-1003, 2884-85. The plan was to generate substantial revenues from pay-per-view sales, closed-circuit-television permits, delayed-broadcast television sales, and the like. Div. Ex. 3 at 7. Four country companies were to be operating by 2012. Div. Ex. 1 at 9. The companies would split the revenue from ticket sales with local and regional MMA promoters, who control the individual fighters, because their cooperation was crucial. Tr. 71-73.

Daspin designed and put in place a convoluted (to put it mildly) legal structure involving a number of entities that he controlled. He initially funded the operation with a loan from his wife. Div. Ex. 147; Tr. 3298, 3302-06. The central structure consisted of three companies. WMMA, incorporated in April 2010, was the principal operating company that would create the international MMA league that Daspin envisioned. OIP at 4; Ans. at 8. WMMA Distribution, a Nevada corporation formerly known as American Graphics Communications and Distribution Services, was created to distribute WMMA-branded content.[3] Ans. at 8. From an operations perspective, there was no functional difference between the two companies; the same people worked on the same projects. Tr. 2238-39.

By agreement, WMMA Distribution had the exclusive right to distribute films of WMMA fights and reality shows and branded products. Div. Ex. 209. The internet distribution of rights to view the fights and the sale of WMMA-branded digital content and related products were important elements in Daspin's plan. OIP at 4; Ans. at 8-9. Arrangements were made for a website at the end of August 2011 with the expectation that it would be available no later than October 2011, but there was no website in December 2011. Div. Ex. 600.

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[3] Two early WMMA Distribution board members, Lawrence May and David Frischman, are Daspin's business partner and brother-in-law, respectively. Tr. 940-41.

WMMA Holdings, Inc., incorporated in Nevada on January 12, 2011, was formed to be the holding company of WMMA and WMMA Distribution. Ans. at 9; Div. Ex. 200. In addition to these three companies, Worldwide MMA USA, Inc. (WMMA USA), was formed as the national subsidiary for the United States. Div. Ex. 1 at 6-7, 30. I will refer to these entities collectively as the WMMA companies.

During almost the entire relevant period, the boards of WMMA, WMMA Holdings, and WMMA USA consisted of Agostini as chairman, Lawrence R. Lux as chief executive officer, and Douglas L. Main as president and secretary. Tr. 126; Div. Exs. 200, 201, 207, 207A. Lux was a businessman with many years of experience, including stints as managing director of National Geographic Interactive and president of Playboy.com, and his involvement lent a patina of respectability to the enterprise for some of the investors. Tr. 44, 46-47, 50-52; *see, e.g.*, Tr. 2246, 2307, 2340, 2563-64. Lux met Daspin at First Capital Corporation, where Daspin was the managing partner. Tr. 52-53. Daspin testified that the boards were chosen by consensus, but his account of a group discussion is implausible given that the positions of Lux and Main were established earlier by their employment agreements. *Compare* Tr. 3425, *with* Div. Exs. 55 at 1, 149 at 1, 149A at 1; Tr. 74-75, 87, 783-84, 819-22. The WMMA board met quarterly, and Daspin attended often at the invitation of the board. Tr. 474-77, 698. Daspin arranged for his wife, Joan Daspin, and Agostini to be the only individuals authorized to sign checks on the companies' bank accounts and in control of access to many of the companies' financial records. Tr. 127, 136-38, 185, 321, 848, 1657, 1669, 1675-76, 1722; Div. Exs. 200, 201, 207, 207A. Agostini transmitted material that Daspin dictated to the other board members for signature without discussion. Tr. 126, 822, 833-34, 841.

Daspin considered Agostini as the executive chairman, Lux and Main as the operators, and himself through his private consulting company MacKenzie Mergers & Acquisitions, Inc. (MacKenzie), as the fundraiser. Tr. 3290. The evidence confirms that Daspin controlled the fundraising for the WMMA companies but it contradicts his claim that he did not control the day-to-day operations. Lux and Main testified that board resolutions concerning the WMMA companies' structure and transactions originated with Daspin, who "controlled all the conceptual direction of everything." Tr. 848; *e.g.*, Tr. 199, 233-35, 700, 841, 914-15, 967-69. Daspin negotiated all the employment contracts, including Lux's contract. *E.g.*, Tr. 74-75, 87, 127, 821-22; Div. Ex. 55. And Daspin dictated every decision made by Lux, Main, and other officers with respect to everything from major contractual agreements to the organization of MMA events. For example, the board signed a resolution on December 14, 2010, stating that it reviewed and affirmed all

prior contracts. Ex. 207 at 1; Tr. 122, 129-32. But the board had not done any review. Tr. 138. Because he needed income, Lux would sign odd papers and resolutions prepared by Daspin that he did not understand. Tr. 701; *see, e.g.*, Tr. 193-97.

In addition, Daspin put agreements in place so that boards of all WMMA companies held common shares in trust for Mrs. Daspin. Tr. 165-66. Specifically, Daspin's private consulting company, Consultants for Business & Industry, Inc. (CBI), which later became MacKenzie, transferred the right to controlling shares of WMMA Holdings to three family limited partnerships. Tr. 3307-08. Mrs. Daspin owned and controlled the general partner of those limited partnerships. Div. Exs. 69 at 1, 78 at 1. By agreements dated December 30, 2010, and January 12, 2011, the three partnerships that Mrs. Daspin controlled transferred their rights to WMMA Holdings common stock for one dollar each to Agostini, Lux, and Main for the next five years. Div. Exs. 69 at 1, 77 at 1, 78 at 1, 80 at 1, 80A at 1; *see* Tr. 687, 892-98.

Mrs. Daspin retained warrants that gave her the right to repurchase the shares of the holding company at any time. Div. Exs. 69 at 1, 77 at 1, 78 at 1-2, 80A at 1-2; *see* Tr. 697, 900, 1873-74. The board members' rights to dispose of the stock were restricted and each agreed that they owed a fiduciary duty to Mrs. Daspin and her limited partnerships. Div. Exs. 80 at 1-2, 80A at 1-2. The agreements also provided that if any board member was paid $8,000 or more a month, then MacKenzie or Mrs. Daspin would be paid $17,500 per month. Div. Exs. 69 at 1-2, 77 at 1-2; Tr. 166-67.

Daspin would later cause Mrs. Daspin to purchase the warrants in July 2012, when Daspin believed that people were conspiring against him. Div. Exs. 506 at 1-2, 507 at 1-2; *see* Div. Ex. 469. In the aftermath, Daspin became a director of WMMA, WMMA Distribution, and WMMA USA, and Mrs. Daspin became an officer of WMMA. Div. Exs. 22, 215; Tr. 1060-62.

Consulting Contract

MacKenzie became the exclusive provider to the WMMA companies of a list of services memorialized in an agreement titled "Services Agreement and Resolutions of Board of Directors" dated December 15, 2010, between MacKenzie and WMMA Holdings, WMMA, and WMMA Distribution, which

bears the signatures of Daspin and the WMMA board members—but Lux and Main did not negotiate the contract.[4] Ex. 204; *see* Tr. 94-95, 877-79.

Daspin drafted the consulting contract that made MacKenzie the exclusive provider of human resource recruiting, financial advisory services, and other management advisory services to the WMMA companies. OIP at 4; Ans. at 9; Exs. 55A at 1, 204 at 1; *see* Tr. 82-83, 85-86, 96-97. Daspin was the primary provider of services under the MacKenzie contract; for all intents and purposes, Daspin and MacKenzie were one and the same. Tr. 223, 226, 228, 787, 954; *see* Tr. 357. The WMMA board signed and ratified agreements and resolutions that Daspin acting through MacKenzie negotiated and drafted. *E.g.*, Tr. 99, 138, 144-47, 867. The consulting contract and side agreements specified that Lux and Main—WMMA's CEO and president, respectively—required written authority from MacKenzie to enter any contract. Div. Exs. 55A at 2; 369 at 2; *see* Tr. 87-88, 90-93, 99-100, 884. Lux had never seen a contract with these terms in his professional experience and interpreted them to mean that MacKenzie controlled the WMMA companies. Tr. 87-90. Daspin constantly reminded people that the consulting contract proscribed anyone from doing anything without MacKenzie's approval. Tr. 346-47, 350-55, 370, 630-31, 688-89; Div. Exs. 247 at LA 11820, 600 at JD 969-70, 604 at SEC-LuxL-E-15570.

The consulting contract provided that the maximum hourly fee for MacKenzie's services was between $200 and $350 depending on the service. Div. Exs. 55A at 1, 369 at 1. In addition, MacKenzie received a ten percent override, paid monthly, on all compensation a "Sweat Equity" executive—who made no monetary investment in the WMMA companies—received up to a minimum of $25,000, and a five percent override per month thereafter. Div. Exs. 55A at 1, 369 at 1; *see* Tr. 288, 679, 1229. In the case of cash investors, MacKenzie received a minimum of $25,000 of the executive's first year compensation and then a five percent override on the following years' compensation over $10,416.66 a month. Div. Exs. 55A at 1, 369 at 1-2.

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[4] The original consulting contract was with CBI. Div. Ex. 204 at 1. On January 20, 2011, the WMMA companies and CBI agreed that CBI would assign its service agreement to MacKenzie. Div. Ex. 205 at 1. Daspin signed for CBI, Lawrence May signed for MacKenzie, and Lux, Agostini, and Main signed for the WMMA companies. *Id.* at 2; *see* Tr. 218-23, 953. Daspin became MacKenzie's vice president. OIP at 4; Ans. at 9. Lux and Main did not know the reason for the transfer of services to MacKenzie. Tr. 221-22, 953. Because MacKenzie assumed CBI's role, I will refer to both companies as MacKenzie unless the distinction is relevant.

MacKenzie was to receive a $25,000 fee for negotiating transactions and contracts with regional promoters, advertisers, television networks, vendors, investors, and other third parties. Div. Exs. 55A at 2, 369 at 2.

Lux considered the consulting agreement to be an impediment to fundraising because institutional investors and venture capitalists wanted funds spent on projects going forward. Tr. 499, 703-04, 706. Moreover, he and others could do the things that MacKenzie was being paid to do; Lux acknowledged Daspin's skill as a fundraiser but he and the other board members had fundraising experience and could have recruited staff. Tr. 99, 703-07. Lux thought that payments to MacKenzie were very large as a percentage of overall expenditures. Tr. 492.

By December 15, 2011, MacKenzie had invoiced WMMA for $827,018.10 in fees earned under the consulting contract and calculated an outstanding balance of over $2 million. Div. Ex. 94; *see* Tr. 1019-20. From December 2010 through August 31, 2012, the WMMA companies paid CBI and MacKenzie a total of $383,488.95. Div. Ex. 495.

International Marketing Corp. Contract

In December 2010, WMMA and WMMA Holdings signed an agreement and resolution to enter a strategic alliance with Beryl Wolk's International Marketing Corp. (IMC), for use of its database of some 840 million email addresses. Div. Exs. 207 at 1, 520 at 1; *see* Tr. 106-112. Daspin considered Wolk a successful direct mail marketer and was eager to enter into the agreement. Tr. 243-44, 3099-100. The letter agreement provided that MacKenzie was authorized to negotiate on behalf of the WMMA companies and would receive a fee of $250,000 for each ten percent downward reduction of IMC's request for fifty percent profit sharing. Div. Ex. 520 at 1. Lux, who signed the agreement on behalf of the WMMA companies, had no knowledge about why the agreement assumed that IMC would receive fifty percent of WMMA's profits and did not understand the business rationale for compensating MacKenzie for negotiating down from that number. Tr. 106-10.

On February 3, 2011, WMMA signed a "Partially-Exclusive Strategic Alliance Agreement" with IMC. Div. Ex. 12; *see also* Div. Ex. 12A (unexecuted, but more legible, copy). WMMA agreed to pay IMC a ten percent fee, instead of the fifty percent fee originally contemplated. Div. Ex. 12 at LA 7011. In the agreement, IMC represented that it owned or has available assets including a "worldwide email list with Eight Hundred and Forty Million double opt-in addresses of which ___ million are U.S. email addresses," but Wolk never filled in the number of U.S. email addresses. Div.

12 at LA 7015; *see* Tr. 256-57. Double opt-in lists filter out incorrect addresses and confirm that each recipient wants to receive emails from the list by requiring that he or she follow a confirmation link sent in an email following his or her first request to receive emails. Div. Ex. 487 at 10; Tr. 260, 1409-10. Wolk eliminated a provision in the agreement guaranteeing a two percent response rate. Div. Ex. 12 at LA 7010; Tr. 254-55. Wolk and IMC never provided WMMA with information to confirm that it actually had 840 million email addresses and never provided any demographic breakdown of the list. Tr. 250-53, 257, 3023. The WMMA companies did not do a test run using the data before entering into the contract. Tr. 254. The WMMA board resolution, nevertheless, valued the arrangement at approximately $5 million and stated that a portion of this amount should be reflected in WMMA's and WMMA USA's financial statements. Div. Ex. 20; Tr. 198-99.

Daspin was the driving force on the intercompany relationships and the IMC contract. Tr. 926. He took credit for negotiating the contract and believed the strategic alliance with IMC would result in substantial business for the WMMA companies. Tr. 243-46. Lux, the CEO, was not involved in negotiating or approving the strategic alliance. Tr. 243.

MacKenzie later charged WMMA $1 million for negotiating the agreement, claiming that it persuaded IMC to settle for ten percent, rather than fifty percent, of any profits. Div. Ex. 94 at EMD 5733; *see* Tr. 110. WMMA never paid; MacKenzie reinvested the $1 million in WMMA by taking equity in the company in lieu of cash. Tr. 1025; Div. Ex. 94 at EMD 5733.

The WMMA companies used the database twice and it had no positive effect. Tr. 259-60. Lux testified that marketing MMA events had "[z]ero effect." Tr. 259.

The WMMA Private Placement Memoranda

The WMMA companies produced four private placement memoranda (PPMs): July 2011 PPMs for WMMA and WMMA Distribution and January 2012 PPMs for the same two companies. Div. Exs. 1-4; *see* Tr. 310.

Daspin dictated the contents of the PPMs to Mike Nwogugu and Andrew Young.[5] Tr. 309-12, 1082, 1234-37, 1256; *see, e.g.*, Div. Ex. 450; Tr. 997-98.

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[5] According to the PPMs, Nwogugu was either a senior or executive vice president of WMMA and WMMA Distribution who earned a bachelor's degree from the City University of New York and an MBA from Columbia University, attended Suffolk University Law School, and was a CPA in

Persons at the WMMA companies tried to re-write or edit the PPMs but Daspin told them that he was controlling everything the company was putting out. *E.g.*, Tr. 1006-08, 1014-17, 1236-1238; Div. Exs. 517at 1, 524 at 1. Draft PPMs were circulated with instructions, such as "do not make any changes to the document without getting clearance from Ed Michael." Tr. 3410 (capitalization altered); *see also* Tr. 3412-13.

According to Daspin, he relied on Nwogugu's advice that the securities were exempt from registration even though he knew that Nwogugu was not a lawyer. Tr. 3051-54, 3378. Daspin testified further that he relied on a law firm and an accounting firm to approve draft PPMs, even though that was expressly not within the scope of agreements with those firms. Tr. 3052-53, 3374-77.

The PPMs listed as many as twenty-four persons as members of WMMA's and WMMA Distribution's management teams. Div. Exs. 1 at 54-58, 2 at 15-18, 3 at 56-61, 4 at 14-17; *see* Tr. 957-67. Among those listed in the PPMs, MacKenzie is identified as the entity providing human resources, negotiations, M&A, and financial advisory services to both companies. Div. Exs. 1 at 58, 3 at 61. But Daspin's name does not appear in any of the PPMs despite his role in the WMMA companies. *See* Div. Exs. 1 at 54-58, 2 at 15-19, 3 at 56-61, 4 at 14-18; Tr. 226, 956-57. By contrast, Main testified that many of those listed were not involved in managing the WMMA companies. Tr. 957-67. For example, Main did not really know Craig Eaton, described as general counsel, or Joseph P. Pryzhocki, labeled controller and treasurer, and believed that they were Daspin's friends. Tr. 962-63. Main testified that WMMA never retained outside counsel and never had certified or audited financials. Tr. 962-63. Others, such as Wolk, were not part of WMMA. Tr. 961. The evidence is that the management team lists included many people who were either not actually part of the WMMA companies or were only tangentially involved, while omitting the central figure behind the companies: Daspin.

Maryland and a certified management accountant in New Jersey. Div. Exs. 1 at 56, 2 at 17, 3 at 58-59, 4 at 16. Main thought Nwogugu was associated with Daspin, rather than the WMMA companies. Tr. 991.

Young graduated from Rutgers in 2009, and worked at WMMA and WMMA Distribution for approximately eighteen months as vice president of communications and public relations. Div. Exs. 1 at 57, 2 at 17, 3 at 60, 4 at 15; Tr. 1222-23.

The WMMA PPMs each listed over thirty completed or possible related party transactions. Div. Exs. 1 at 30-36, 3 at 29-35. At least thirty of them did not originate with the WMMA board or were not discussed by the board. Tr. 235, 969.

The WMMA PPMs included forecasted financial statements, including projected consolidated balance sheets, as appendices. *E.g.*, Div. Ex. 1 at 70-80. All of the financial statements contained a boilerplate disclaimer that the pro forma financial statement was based on estimates, the numbers were contingent on assumptions, and there was no guarantee or assurance that the forecasted sales, assets, and cash flow would be achieved. *E.g.*, *id.* at 78. Investors were urged to conduct due diligence and consult an adviser. *E.g.*, *id.*

Both WMMA PPMs featured the IMC agreement as a substantial asset. They stated that IMC's database contained over 130 million U.S. mobile phone numbers, four million user websites, and over 840 million "opt-in e-mail addresses." Div. Exs. 1 at 30, 3 at 28. However, as noted, IMC never provided WMMA with any support for these numbers and WMMA made no independent efforts to confirm that they were accurate. Tr. 250-53, 257, 3023. Nevertheless, the July 2011 WMMA PPM states that the value of the strategic alliance agreement to the WMMA companies was $5 million, with $1.25 million attributed to the United States and $3.75 million "arbitrarily" allotted to WMMA entities in other countries. Div. Ex. 1 at 31; Tr. 266-67; *see also* Div. Ex. 1 at 77-78 (showing that IMC contract made up entirely of "WMMA Contract Rights" in forecasted consolidated balance sheet). Lux and Main did not agree with the valuation. Tr. 199-200, 204-08, 926-303. Daspin claims without any corroborating documentation that he originally valued the database at $1 million, but Nwogugu raised the value to $5 million. Tr. 2873-75. But Daspin, through MacKenzie, was responsible for the $5 million valuation. Div. Ex. 96 at 1; Tr. 283-84; *see* Div. Ex. 1 at 78. And Daspin admits that he was responsible for further inflating the valuation just a few months later. Tr. 2875-77.

The January 2012 PPM represented that the IMC contract, a long-term intangible asset, was worth $82 million based on appraised value by MacKenzie. Div. Ex. 3 at 28, 45-46; Tr. 373-34.[6] The PPM represented that WMMA's remaining assets were worth only $9.281 million combined. Div.

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[6] The forecasted consolidated balance sheet from the July 2011 PPM, which valued the IMC contract at $5 million, was still attached as an appendix. Div. Ex. 3 at 78-79.

Ex. 3 at 45. As with the original $5 million valuation, Daspin generated the $82 million valuation. Div. Ex. 481A at 64-66, 70-71, 75.

Although Daspin testified that only Nwogugu disagreed with the assessment, Tr. 3140, WMMA's board did not agree with Daspin's valuations at the time and aired their concerns. Lux stated that "there literally was no way" to justify the original $5 million valuation. Tr. 268. And he testified that he and others at a board meeting voiced concerns about how the value of the email database went from $5 million in July 2011 to $82 million in January 2012, but Daspin made clear that the subject was not up for discussion. Tr. 375-77. Daspin told Lux and the others that the higher valuation was necessary to "get further investment." Tr. 376. Similarly, Main had found that it would cost WMMA about $300 to purchase email lists with one million names that were targeted by age, location, and income—unlike the IMC database. Div. Ex. 608 at 1; Tr. 974-79. Main told Daspin early on that the value of the email database was "zero," and Daspin told him not to ever say that again. Tr. 1052-53.

The forecasted consolidated balance sheet in the July 2011 PPM for WMMA showed Daspin's cash projections for stub-period 2011 of $33 million; for 2012 it was $148 million; for 2013 it was $373 million; for 2014 it was $980; for 2015 it was $2.38 billion; and for 2016 it was $4.69 billion. Div. Ex. 1 at 77; Tr. 315, 317-19. The $33 million cash—based on Daspin's estimates of the profit on $130 million in revenue from a charitable event in Ghana—constituted all of the projected current assets for 2011. Div. Ex. 1 at 71, 77; Tr. 325-26, 334-35. Lux considered these cash projections implausible. Tr. 318-20. Also implausible were the revenue projections in the billions, which would require every person in the United States to pay enormous amounts of money on pay-per-view WMMA fights. Tr. 315. In fact, the WMMA companies had no net business income in 2011. Tr. 1629.

The January 2012 PPM included the same forecasted consolidated balance sheets from July 2011 even though they were out-of-date on their face. Div. Ex. 3 at 78-79. The balance sheets still represented that the companies had $33 million in cash for the stub-period 2011. *Id.* at 78. But the charitable event in Ghana never happened. Tr. 379. Lux testified that as of January 2012, the companies did not have $33 million in cash. Tr. 378. He believed that the implausible revenue projections in the PPMs, the description of numerous intercompany transactions, and the use of funds to pay off accrued debts would be a red flag to investors. Tr. 313-16, 319-20. Lux considered that no legitimate investor would be able to understand the convoluted language in the January 2012 PPM, and the financial projections were unreasonable on their face. Tr. 541-42.

Employee Solicitation

Starting as early as December 2010, but in earnest after the July 2011 WMMA PPM was completed, MacKenzie advertised for employees for the WMMA companies on internet sites that offered high salaried professional positions, such as Sixfigurejobs.com and Ladders. Tr. 290-92, 315, 638, 1265. Young sent out more than a thousand emails to people who responded to the advertisements. Tr. 1271. Daspin drafted the emails, which stated that the person had been recommended by a consulting company for positions at WMMA and WMMA Distribution paying between $125,000 and $250,000 a year, plus performance compensation of the same amount. Tr. 1271, 1562; *see, e.g.*, Div. Ex. 157 at SEC-TP-583–84; Div. Exs. 336, 422. The emails described the WMMA companies as athletic entertainment marketing and distribution companies focused on mixed martial arts telecasting and branded products worldwide. *E.g.*, Div. Exs. 336, 422. Some of the emails represented that the WMMA companies intended to have a public offering by 2017 when their revenue was projected to be $3.5 billion with a thirty-three percent after tax profit. *E.g.*, Div. Ex. 336; Tr. 1554.

Hundreds of people who signed and returned a non-disclosure agreement were sent a company overview and an invitation for an initial interview by phone or videoconference. Tr. 1264-66, 1268-69; *see* Tr. 3394-95. Young would schedule interviews before the applicants' resumes were reviewed. Tr. 1274. Daspin or Rich Burnham, vice president of human resources, conducted the initial interviews. Tr. 1277. During these interviews Daspin introduced himself as Ed Michael because, as he told Young, his last name was "poison" and he did not "want anyone to turn away." Tr. 1278; *see* Tr. 298-99.

Daspin decided who should be called in for interviews and introduced himself as an outside consultant who provided services to the company. Tr. 297-99, 1037-39. According to Daspin, 250 applicants visited the WMMA companies for in-person interviews after the screener interviews. Tr. 3394-95. Daspin and Burnham conducted in-person interviews with a board member. Tr. 1092-93, 1289. Young did not participate in in-person interviews but he gave the person being interviewed a copy of the PPM; Young estimates he distributed between 100 and 150 copies of the PPMs. Tr. 1287-90, 1317. Young testified that Daspin regularly disclosed his prior criminal history at the end of the in-person interview, but that he would "try to tell" applicants traveling by plane before they bought their airfare. Tr. 1285-86. Daspin referred to job seekers as prospective joint venture investment operators. Tr. 1260. During the in-person interviews, he would pressure applicants to invest $250,000 or more to secure the positions for which they applied, with more senior positions explicitly tied to more

substantial investments. *E.g.*, Tr. 1582, 1595, 1598, 2232, 2235, 2372; Div. Ex. 238 at 2-3. If applicants did not have liquid funds, Daspin would encourage them to use funds in their retirement accounts. *E.g.*, Tr. 1594, 2373. Above all, Daspin emphasized that senior executives who want to be hired make their investment at the time of contract execution because the leaders of any WMMA company need to have "skin in the game." Div. Ex. 296 at LA 22607; Tr. 1280-81, 2838-40. The subscription agreement for shares described the investment as risky and noted that investors could lose their investment. Tr. 1999, 2005-08. The WMMA board signed the employment contracts. Tr. 1095.

Because the WMMA companies had no funds, salaries for all employees were accrued until there was a profit. Tr. 467. The job seekers that invested funds to obtain positions agreed to allow the WMMA companies to repurchase a small percent of their shares each month in lieu of salary. Tr. 640, 2258-59. For example, Thomas Sullivan understood that instead of salaries, investors sold "a portion of the shares that [they] purchased forward in an agreed-upon amount and then [they] would receive the cash from that forward sale on a monthly basis." Tr. 1828.

From at least January 2011 until August 2012, seven people invested $2.4 million in unregistered offerings of WMMA company securities. Ans. at 6; Tr. 711-12. The evidence shows that persons were hired because they were investors and not because they were necessary members of the management team for the WMMA companies. After July 2011, for example, Daspin negotiated the hiring of Ara Bederjikian, Theresa Puccio, and Sullivan as three high-level financial people. Tr. 337-40, 1039-40. Lux and Main saw no need for a pre-revenue company to have made these duplicative hires and believed it was because they were investors. Tr. 340-41, 1039-41.

Daspin and others were compensated based on the investments made by job seekers, who invested funds to get a job. MacKenzie billed for thousands of dollars depending on whether job applicants were hired and invested. *See* Div. Exs. 55A at 1-2, 369 at 1-2; *see* Tr. 288, 679, 1229. Of the money that MacKenzie was paid, including that for recruitment fees, the vast majority was directed to Daspin. *See* Div. Ex. 497 at 1-3; Tr. 1182-83. As for others, Young, for example, received approximately $500 for each person who invested. Tr. 1283-84. By contrast, the investors were repaid only $188,741.53 through the stock repurchases. Div. Ex. 494 at 4.

Operations

In the fall of 2011, WMMA expected its first event to be a combination fight and concert in Ghana in December 2011. Div. Ex. 1 at 12; Tr. 321,

1566-67. As with all of its events, WMMA characterized the Ghana event as charitable because it intended that some portion of the proceeds would go to charity. Tr. 326. The event never happened. Tr. 1026, 1628. The site was chosen because someone at WMMA knew someone in Ghana with alleged connections to the country's leader. Tr. 321-22. WMMA told at least one job prospect that WMMA would be the guest of the Ghanaian government and it expected the event at the Accra National Stadium to be sold out and its share of the profits to be $30 million. Div. Ex. 157 at SEC-TP-579-80; Tr. 1566-69. The WMMA PPM for July 2011 projected that the event would produce pay-per-view revenues of almost $100 million based on the subscription of 8.3 million people and an additional $30 million through product sales, sponsorships, and gate receipts. Div. Ex. 1 at 71, 76; Tr. 325-26. However, at the time WMMA did not have arrangements in place to offer pay-per-view. Tr. 327-28, 331. Nor did it have any products to sell. Tr. 328, 333-34. No fighters had been chosen for the event. Tr. 324, 331. Lux never expected the event in Ghana to occur. Tr. 336-37. And Main objected to the event because the WMMA companies did not yet have a footprint in the business and it would be ridiculously expensive. Tr. 1028. The event failed because the alleged promoters were not positioned to carry out the proposal. Tr. 323; *see* Tr. 3105-08.

The WMMA companies next planned a March 31, 2012, event in El Paso with professional martial arts fighters which it referred to as the Wounded Warrior event. Tr. 359-61, 1776. An unaudited, non-GAAP balance sheet as of October 30, 2011, was prepared internally for submission to Texas boxing authorities in connection with the event. Tr. 1146-47. Sullivan refused to agree with Daspin when the financial team was preparing the pro forma balance sheet to submit because Daspin wanted to show the asset value of the IMC contract as $82 million. Tr. 1702-10. After arguing with Sullivan for a week, Daspin went directly to the board for approval of the $82 million valuation for the database, "dressing it up" with footnotes and warning legends, but Sullivan never agreed with the valuation. Tr. 1709-10, 2213-14.

Main opposed having the event because the fighters were not top-of-the-line and he did not think pay-per-view would be successful. Tr. 1055-56. Daspin decided to proceed and to offer pay-per-view, which Gregg Lange, senior vice president of broadcasting and communications for WMMA and WMMA Distribution, considered a blunder. Tr. 2238, 2324, 2331.

IMC was supposed to assist with marketing, but according to Lange, Lux could not get them to do so. Tr. 2325-26. Based on the results, WMMA's chief technology officer concluded that the database was either worthless or IMC did not send out emails. Tr. 363-64, 959-60.

Daspin testified that he did not want to do the El Paso event, the web site was not functioning at the time, and others caused the loss of over a million dollars. Tr. 3133-34. He claims that others planned the event because he was touring Brazil and the United Kingdom signing up international promoters. Tr. 3108-11.

Following a loss of approximately $800,000 on the El Paso event, the WMMA companies' financial condition was dire, and things came to an essentially dead halt because there was no cash. Tr. 1053, 2280.

Other than the event at El Paso, it is not clear that the WMMA companies held any further events. The company only entered four or five contracts with regional promoters, not the 130 that it projected. Tr. 1001-02; *see* Div. Ex. 450 at LA 46435. There was testimony that WMMA's logo was present at events in Arizona, London, and Brazil. Tr. 593. Daspin also claimed that he had reached agreements with two of the largest bookies in England to make book on the WMMA companies' fights. Tr. 2878. In sum, the primary source of revenue for the WMMA companies was their investors. *See* Div. Exs. 499-503; Tr. 3298.

WMMA's Bankruptcy

On November 14, 2013, certain creditors of WMMA filed an involuntary bankruptcy petition under 11 U.S.C. § 303(a). *See* Involuntary Petition, *In re Worldwide Martial Arts Sports, Inc.*, No. 13-35006-RG (Bankr. D.N.J.). Alfred T. Giuliano, a graduate of Widener University and a certified public accountant, certified fraud examiner, certified insolvency and restructuring advisor, and certified distressed business evaluator, was appointed bankruptcy trustee and tasked with determining whether the company had any assets of value following filing. Tr. 1781-82. He found that the debtor ceased operations in 2012 and operated at a loss of more than $1.3 million during the first half of that year. Div. Ex. 456 at SEC-Exh-5–6; Tr. 1748. He was not provided any documents that evidenced a source of revenue, profits from events, or assets of any value. Div. Ex. 456 at SEC-Exh-6; Tr. 1748-49. Giuliano reported that Daspin exercised significant control over the debtor, there were not many financial records, and no documents showed revenue from the IMC contract. Div. Ex. 456 at SEC-Exh-7; Tr. 1747, 1749. Daspin made filings claiming that the IMC contract had a value of $80 million, but Giuliano determined it had no value. Tr. 1751-53. The creditors who made the filing ultimately asked that it be dismissed and Giuliano concurred. Tr. 1752.

Investors and a Prospective Investor

Ara Bederjikian

Bederjikian invested $360,000 in the WMMA companies. Div. Ex. 494 at 2. He recouped only $47,250 through the share repurchase program; he lost the remainder of his investment. *Id.*

Michael Diamond

Diamond is a Maryland public high school teacher with a bachelor's degree in marketing and distribution management from Syracuse University and two master's degrees from Johns Hopkins University. Tr. 2650-53. Prior to full time teaching, Diamond's career included eighteen years with Ringling Brothers Barnum and Bailey Circus, where he was vice president of the merchandising and concessions division. *Id.* Ringling's motto was "There's a sucker born every minute." Tr. 2666-67 (capitalization altered). After posting a resume online in late 2011 or early 2012 on Monster.com for positions that paid $250,000 and up, Diamond received a phone message from Daspin saying that Diamond was perfect for the position in that salary range with the WMMA companies. Tr. 2654-57. Daspin did not mention making an investment. Tr. 58, 2707.

Sometime before January 9, 2012, Diamond drove to New Jersey and was interviewed by Daspin and a large group of people. Tr. 2661-65. Daspin was engaging, warm, and personable, but after a few hours, Diamond felt uncomfortable because Daspin was the only one who was excited, and everyone was trying too hard to get him to join the company. Tr. 2665-67, 2693. That day, Diamond sat in on a call during which Daspin said that Diamond was going to join the company and that he knew how to do contracts and bookings, neither of which was true. Tr. 2671-72. Diamond was concerned that company executives did not seem qualified for their positions. Tr. 2672-73. For example, Diamond was introduced to a former liquor salesman who was the vice president of marketing. Tr. 2672-73.

Diamond's discomfort increased when Daspin began asking how much money he had to invest and that investing would result in an executive position. Tr. 2668-69. It was clear to Diamond that an investment was required to become associated with the company in any capacity. Tr. 2702. Diamond came to believe he was wanted for his money, not his skills and experience. Tr. 2675-76. Diamond admits to being intimidated by a group of men who he sensed were tough individuals, so he negotiated an exit by telling Daspin what he wanted to hear—that he would invest when he had no intention of doing so. Tr. 2669, 2694-95. But Diamond did not sign the contract that had been prepared. Tr. 2693. If Diamond had known an

investment was required, he would not have taken a day off and driven to New Jersey for the interview. Tr. 2681-82.

Later, after he saw warnings online about dealing with Daspin, Diamond emailed Daspin that he was not interested and there was no need for further contact. Tr. 2676. Daspin and Burnham continued to call and email Diamond; they tried to intimidate him to change his mind in communications that became aggressive and unprofessional. Tr. 2677-81, 2683-88, 3228-32; Div. Ex. 631.

Darin Heisterkamp

Heisterkamp has undergraduate degrees in German language and literature and in international studies and a graduate degree in international business management. Tr. 2360-61. He has worked as a business development and marketing sales professional since 1990. Tr. 2361, 2377.

On December 9, 2011, Heisterkamp received an email from Young in response to a job resume he had posted online. Div. Ex. 422. Heisterkamp understood from the email that WMMA was an established, global integrated entertainment media company and he found the proposed salaries of between $125,000 and $250,000 a year plus $250,000 in performance compensation to be very attractive. Tr. 2364-65; *see* Div. Ex. 422. Heisterkamp signed a nondisclosure agreement on December 12, 2011. Div. Ex. 337. During the initial telephonic interview that followed, Burnham mentioned that there might be an opportunity for equity in the company. Tr. 2366.

At the in-person interview in January 2012, Daspin, who Heisterkamp only knew as "Ed," a consultant, suggested using funds in Heisterkamp's 401(k) for a $250,000 or $350,000 investment, and Puccio described the benefits of each investment level. Tr. 2368-73, 2475. Heisterkamp found it meaningful that Daspin represented that the WMMA companies had already signed on partners in the United Kingdom and Brazil and had solid prospects in Ireland and Germany. Tr. 2557. Daspin told Heisterkamp that everything about the WMMA companies' financial situation was in the copy of the January 2012 WMMA PPM, including its out-of-date appendices, which Heisterkamp received at the in-person interview. Div. Exs. 154, 154A; Tr. 2374-76, 2391, 2490-91. Daspin said the financial statements were unaudited, but represented that the WMMA companies were well funded. Tr. 2558. Heisterkamp understood the PPM's forecasted consolidated balance sheet to mean that WMMA had over $33 million in cash to fund current operations. Div. Ex. 154A at 78; Tr. 2392-94, 2433, 2545. Heisterkamp acknowledges reading warnings about future business risks in the PPM but he considered this to be boilerplate and did not take it to mean

the company was severely suffering under economic conditions or had competition that prevented it from being successful. Tr. 2518-21.

Heisterkamp believed it was significant that WMMA had a strategic alliance with IMC, which was valued by MacKenzie at $82 million; but, reviewing the PPM, he did not know that WMMA had not verified that the database could reach WMMA's target audience or that Daspin was involved in MacKenzie's valuation of the IMC database. Tr. 2378-84, 2389. Heisterkamp also did not know that Daspin family trusts effectively controlled the WMMA companies. Tr. 2463.

Daspin and the January 2012 WMMA PPM were not truthful on at least two of the three matters that were important to Heisterkamp as an investor—(1) the financial condition of the company, holding $33 million in cash; (2) the marketing database; and (3) whether the tournament schedule was in place to provide a revenue stream. *See* Tr. 2373-74, 2381, 2563. And, as detailed below, Heisterkamp would soon learn that there was no programming prepared or events scheduled. Tr. 2469.

Heisterkamp negotiated his employment and investment with Daspin and testified that he began working when he signed an employment agreement to become chief executive officer of a "to-be-incorporated" WMMA Distribution subsidiary, which had no other employees, and senior vice president of marketing technology of WMMA on January 23, 2012. Div. Ex. 57 at 1; Tr. 2404-05, 2555-56. According to his contract, Heisterkamp would earn $12,500 a month when the WMMA companies had $2.5 million in the bank, which Heisterkamp believed was already satisfied because of the WMMA PPM. Div. Ex. 57 at 3; Tr. 2433. Because he needed income, he would not have accepted the position if he had known that he would not receive any salary. Tr. 2464-65. After Heisterkamp signed the agreement, Puccio sent him an email stating that Daspin was insisting on getting his investment funds. Tr. 2539-40.

Heisterkamp invested $351,000 in securities of the WMMA companies in February and April 2012. Div. Exs. 58-60, 185; Tr. 2395-2403.

Heisterkamp first wired $235,217 on February 1, 2012. Div. Exs. 59-60, 367; Tr. 2414-17, 2620. On February 8, 2012, Burnham asked Heisterkamp to sign the subscription agreement and back date his signature to January 23, 2012. Tr. 2419-20, 2475; Div. Ex. 370; *see* 367 at SEC-Heisterkamp-E-3504, -3511. Although he warranted in the subscription agreement that he was an accredited investor, Heisterkamp was not one, he did not know what was required to be one when he signed the agreement, and he invested before he signed it. Div. Ex. 367 at SEC-Heisterkamp-E-3501; Tr. 2499-03, 2538,

2623, 2625. Daspin never discussed being an accredited investor with Heisterkamp. Tr. 2623-24.

Heisterkamp found out the company did not have sufficient cash to pay his salary two days after signing the subscription agreement. Tr. 2436-37. It soon became obvious to Heisterkamp that Daspin made every decision about the WMMA companies' operations, and that the companies as described to him were not real and did not have assets, programming, or scheduled events. Tr. 2422-23, 2429, 2432, 2447-48, 2469, 2560. Even so, Heisterkamp made another investment in April 2012 because he wanted the company to be successful, he would have lost everything if he walked away, and he was told that if he did not make the payment he would be held in breach of contract and his position would be eliminated. Tr. 2486, 2491-92.

Heisterkamp had reviewed the background of people associated with the WMMA companies before he invested, but he did not research Daspin because the name did not appear in any of the information he received about the companies. Tr. 2426-27. When he learned Daspin's full name, he was stunned to learn that Edward Michael Daspin was associated with numerous instances of fraud, resembling Heisterkamp's experience, where individuals were encouraged to invest in a sham company and lost their money. Tr. 2426-27. Heisterkamp testified that he would not have invested in the WMMA companies if he had known of Daspin's business activities and the terms of the consulting contract. Tr. 2466-68.

Daspin knew that Heisterkamp drained his entire 401(k) account, refinanced his home, and borrowed funds to put together $351,000 to invest in the WMMA companies. Tr. 2411-13. Heisterkamp understood from Daspin and Puccio that his 401(k) funds would go into an equivalent qualified account at the WMMA companies. Tr. 2406, 2410-11, 2553-54.

Heisterkamp received only three months of payments under the stock repurchase program, at which point he was told that the WMMA companies had no money. Tr. 2441-42.

On July 10, 2012, Heisterkamp received an email from Agostini requesting his voluntary resignation so that the WMMA companies could seek new investors and Daspin could avoid legal action. Div. Ex. 414; Tr. 2442-46. Heisterkamp did not sign the document, and on August 22, 2012, Agostini notified him that he had been voluntarily terminated even though Heisterkamp had not agreed to leave his positions. Div. Exs. 407, 414; Tr. 2452-57. The last notice stated that WMMA retained the right to take action as the result of Heisterkamp's conduct, which Heisterkamp

understood to be a threat to coerce him into signing the termination agreement. Tr. 2457-59.

Heisterkamp's economic loss has been devastating; he had to file for bankruptcy and is now homeless. Tr. 2469-70. He lost all but $26,325 of his investment. Div. Ex. 494 at 4.

Gregg Lange

Lange holds a bachelor's degree from Princeton University, a master's from Boston University, and an MBA from Harvard University. Tr. 2215. Lange's employers include ABC television, PricewaterhouseCoopers and Scient, and he has consulted for broadcast and media companies. Tr. 2215-17.

Lange received an email dated May 26, 2011, after he had posted his resume on SixFigureJobs.com, stating that he had been recommended by a human resources consultant for a position with WMMA companies. Div. Ex. 336; Tr. 2218-20. After phone conversations with Burnham and signing a non-disclosure agreement, Lange was interviewed in person by Lux, Agostini, Main, Daspin, and others in September 2011. Tr. 2222-29. Daspin introduced himself as "Edward Michael" and talked about "everything." Tr. 2229. They told Lange that everyone had skin in the game or, stated differently, a financial investment in the company; Lange then realized this was not a job interview but an investment opportunity. Tr. 2229-32, 2245-46. The requested amount was $500,000 with a $250,000 minimum set by Daspin and Lux. Tr. 2232-35. A greater investment would improve the person's job title. Tr. 2234. Lange testified that there were inflated titles all over the place. Tr. 2340. There was no mention of sweat equity. Tr. 2235-36.

Lange signed an employment contract on November 1, 2011, to become senior vice president of broadcasting and communications of WMMA and WMMA Distribution and agreed that he would invest $250,000. Tr. 2240-41; Div. Exs. 169, 170, 184, 359 at 1-2, 494 at 3. Before he invested, Lange received the July 2011 WMMA PPM and learned from Daspin of his felony conviction. Tr. 2251-52, 2342. The strategic alliance with IMC affected Lange's decision to invest; however, Lange later found the description of the strategic alliance in the PPM to be a lie. Tr. 2253, 2256-58, 2297-98. While he worked for the WMMA companies, Lange never saw evidence of the strategic alliance in terms of operations or activities. Tr. 2255-58, 2322, 2325. If Lange had known that the IMC valuation was a fabrication, he would not have invested because a lie in the PPM would be "an instant red flag." Tr. 2297-98.

Lange considered the financial projections in the PPM to be outlandishly high but still thought that the business would be profitable. Tr. 2309-10. Lange read the risk section in the PPMs that described the WMMA companies as risky first-stage startups and knew that there was a significant chance of losing his investment. Tr. 2316-17, 2344.

Lange considers the terms of the MacKenzie consulting contract to be terrible for a startup company, but he did not find out about the specifics until after he invested. Tr. 2296. Lange learned that Daspin controlled the board and that Daspin family partnerships in effect controlled WMMA Holdings, which if he had known would have impacted his decision to invest. Tr. 2293-97. Lange considers the most obvious deception prior to his investment was that Daspin had veto control over everything, which he did not learn until March or April 2012. Tr. 2351-52.

The stock buyback program was important to Lange. Tr. 2244, 2259-60. But no one had told him that the stock repurchase program could be suspended if the board determined there was insufficient cash. Tr. 2273-74.

Lange ignored Agostini's August 22, 2012, letter, which noted his voluntary termination, because it was false. Div. Ex. 406; Tr. 2283-84. Lange lost all but $20,312.50 of his investment. Div. Ex. 494 at 3; *see also* Tr. 2298 (remembering the amount as "roughly 33 thousand dollars").

Donald Lockett

Lockett invested $325,000 in the WMMA companies. Div. Ex. 494 at 4. Other than receiving a few thousand dollars as reimbursement for expenses, he received no money from the WMMA companies; he lost his entire investment. *Id.* Lockett died before the hearing was held. *See* Tr. 2802, 2808.

Douglas Main

Main has bachelor's and doctor of chiropractic medicine degrees. Tr. 716. His oldest son was a professional MMA fighter. Tr. 717-18. Daspin contacted Main in the fall of 2010 about joining a new MMA venture as an officer and possible investor, and told him that his family had already invested $1 million. Tr. 718, 727, 730-31, 748; Div. Ex. 34 at JD 100. Daspin intimated that there were other investors, but Main would be the first. Tr. 731; *see* Div. Ex. 494. Daspin rejected Main's offer to invest of $100,000 as "too little." Tr. 731, 769. Instead, on December 13, 2010, Daspin told Main that if he invested $250,000 he would become a founding partner of WMMA and WMMA Holdings and hold various positions as an officer and director of the WMMA companies. Tr. 764-65; Div. Ex. 329. Daspin was the only person

Main spoke to about his investment, job responsibilities, travel expenses, or compensation; Main believed that Daspin was responsible for determining his positions. Tr. 766-68, 783-87, 814.

On December 13, 2010, Main and Agostini signed two agreements by which Main became a board member, secretary, and president of WMMA, WMMA USA, and WMMA Distribution. Tr. 114-20, 769-773; Div. Exs. 149 at 1, 151 at 1. Main was given more senior positions because he agreed to increase his investment to $333,333. Tr. 781-82; *compare* Div. Ex. 149A at 1, *with* Div. Ex. 149 at 1.

Main wrote a $250,000 check to WMMA on December 15, 2010, and a check for $83,333 to WMMA Holdings on March 31, 2011. Div. Exs. 166, 176; Tr. 815-17. Main decided to invest in large part because Daspin represented that the father of the owner of a well-known local martial arts promoter, Ring of Combat, was his best friend, and that father and son were "stockholders" in WMMA Holdings, and that Ring of Combat would be the northeast regional promoter for WMMA's national championship tentatively scheduled for June 2011. Tr. 753; Div. Ex. 321. In fact, "there were never signed contracts": Ring of Combat was a non-investor and did not engage with WMMA in promoting any events, including the June 2011 national championship that never occurred. Tr. 760, 790-91, 3009-11; Div. Ex. 149 at 1.

Main began working part time at WMMA in December 2010 or January 2011 and stopped in late 2012. Tr. 1037-38. But Daspin directed everything, and Main signed board resolutions at Agostini's request. *E.g.*, Tr. 897-99, 912-15, 950-54; Div. Ex. 200. Among other things, Main's signature appeared on board resolutions before he became a board member, and he signed resolutions where the proposal did not originate with the board but ratified Daspin's actions without board discussion. Tr. 823-24, 827-50, 888-90, 916-20; Div. Exs. 151, 202, 207, 207A, 211.

Main testified that Daspin controlled spending because he issued directives and had Agostini write checks. Tr. 1096. Main never saw a company bank statement and never signed a company check. Tr. 871. Main signed certain documents as corporate secretary, including resolutions to banks authorizing Agostini and another officer authority to co-sign checks. Tr. 1097-1110. Main testified that the only board resolution not authored by Daspin or Agostini occurred at the end of the WMMA companies' existence, when the financial officers attempted to gain control of the companies' finances, but Agostini refused to relinquish the checkbook. Tr. 1115-18.

Main returned the shares he held in trust for Mrs. Daspin on July 28, 2012, at Daspin's direction and resigned from the board on September 4, 2012. Tr. 1063, 1067, 1141; Div. Exs. 435, 507. Although he received over $80,000 in various reimbursements and fees, Main lost his entire $333,333 investment. Tr. 749; Div. Ex. 494 at 1.

Theresa Puccio

Puccio signed an employment agreement on September 20, 2011, to become senior vice president, treasurer, and interim chief financial officer of WMMA. Div. Ex. 62 at 1, 7. As part of the agreement, Puccio agreed to buy $400,000 worth of shares of WMMA and WMMA Distribution securities. *Id.* at 2. Puccio's total investment was $500,000. Div. Ex. 494 at 2; Tr. 2085-86. Like the other investors, Puccio's base salary of $12,500 a month would accrue but not be paid until the WMMA companies reached a certain pretax monthly income level. Div. Ex. 62 at 4. Puccio sent financial reports to the board. Tr. 491.

Although she initially bought into Daspin's business model, by June 2011, Puccio was concerned for her investment and led a meeting of investors in June 2012, which Daspin viewed as a dishonest attempt to take control of the company. Tr. 2209-10, 2299-300, 3130, 3382. In her July 3, 2012, resignation letter, Puccio stated that by December 2011, it became clear to almost all investors that the company was a Ponzi scheme, and she denounced the financial information in the PPM. Tr. 2570-76; Daspin Ex. 17. Daspin responded to Puccio's complaints with personal, insulting, threatening emails. Tr. 3232-51.

Puccio regained only $52,587.77 of her $500,000 investment through the share repurchase program. Div. Ex. 494 at 2.

Thomas Sullivan

Sullivan graduated from St. Lawrence University with a major in economics and from Northeastern University with an MBA. Tr. 1548. Sullivan was employed in the financial services sector for several years and in 1997 became treasurer and chief risk officer for Progress Energy in Raleigh, North Carolina. Tr. 1548. Progress Energy merged with Duke Energy Power, and as a result Sullivan was unemployed at the end of 2010. Tr. 1551, 1652-53.

Sullivan was contacted by Young using a boilerplate email and was interviewed via Skype and in-person on August 10 and 18, 2011. Div. Exs. 63A, 157. At the in-person interview, Daspin, who was the only interviewer who spoke, described an environment where everyone had skin in

the game, given that they were all investors and thus working for the same outcome. Tr. 1576-80. Sullivan was surprised by Daspin's request for a $250,000 investment as a requirement for the job because he was there for a job interview. Tr. 1583-84.

At the interview, Sullivan received and reviewed a copy of the July 2011 WMMA and WMMA Distribution PPMs, which referenced to the consulting contract with MacKenzie, but he did not see the contract and was not told that the WMMA companies owed MacKenzie $859,000. Tr. 1613, 1909, 1962-64, 2201. Sullivan understood the $33 million shown as cash and current assets on the forecasted balance sheet of WMMA to be an estimate of cash at the end of 2011. Div. Ex. 300 at 74; Tr. 1613-18, 1628. Sullivan understood the similar entry in the WMMA Distribution PPM to mean that it would have just over $59 million in its cash account by then. Div. Ex. 303 at 54; Tr. 1641-42. In addition, Daspin told Sullivan that the financial condition of the company was adequate and there was enough cash on hand to cover stock buybacks until the company got off the ground, but Sullivan never saw audited financial statements. Tr. 1649, 1914-15. Burnham and Main told Sullivan before he invested that Daspin was a consultant whose role would diminish. Tr. 1903, 2046-47. Sullivan knew from the PPMs that WMMA Holdings owned over ninety percent of the WMMA companies, but he did not know that Mrs. Daspin had warrants to purchase those shares from the board members of the WMMA companies and would not have invested if he had. Tr. 1870-71, 1874-75.

On September 28, 2011, Sullivan signed an employment agreement to become senior vice president and chief financial officer of WMMA and WMMA Distribution. Div. Ex. 63 at 1. Daspin told Sullivan of his felony conviction right before Sullivan invested. Tr. 1878, 1989. At Daspin's suggestion, Sullivan used over half of his 401(k) account to invest $351,000 in the WMMA companies. Tr. 1593-94, 1599-1603, 1837. He invested $351,000 instead of $250,000 because Daspin told him that he could be CFO with a larger investment. Tr. 1597-98. Sullivan negotiated his employment, the amount he had to invest to become CFO, and his responsibilities with Daspin. Tr. 1598, 1654. Sullivan never received share certificates. Tr. 1867. Sullivan did not receive any salary but was paid $8,775 a month as part of the stock buy-back plan. Tr. 1835; Div. Exs. 448, 494 at 3.

When Sullivan began working with two other investors with financial skills, Bederjikian and Puccio, Sullivan discovered that data were not available to produce financials and the only historical information was in the PPMs. Tr. 1655, 1658, 1669-71, 1676. There was no organizational chart and Sullivan's daily interactions were with Daspin. Tr. 1656. Within the first two months of employment, Sullivan realized that Daspin did not act as a

consultant but made the final decisions and ran the companies. Tr. 1807, 2203. Sullivan did not interact much with the board other than to provide financial reports. Tr. 2203-04.

It took Sullivan about two months to get bank statements, copies of contracts, and business records. Tr. 1661-65, 1671-72, 1677-78. He discovered that the bank statements and records of written checks had not been reconciled for approximately twelve months. Tr. 1657-58, 1665-66, 1669. After accessing QuickBooks, which the WMMA companies were using as a check register, and bank statements, the financial team produced non-audited financial statements that showed the WMMA companies with $657,912 in cash on November 30, 2011. Div. Ex. 609 at 2; Tr. 1654, 1657-58, 1710-13. Sullivan testified that these non-audited financials demonstrated there was no $33 million cash account and no way that the pro forma projections in the PPM were going to be realized by year's end. Tr. 1668.

But Sullivan also discovered that the problems with the financial projections in the July 2011 PPMs should have been discovered before November. He discovered that during the summer of 2011, the WMMA companies had less than $100,000, and Mrs. Daspin lent the companies $125,000, which was fully repaid in November 2011. Tr. 1627, 1717; Div. Ex. 609 at 2. Sullivan determined that—at the time they were created—the forecasted financial statements had no reasonable basis for stating that by the end of the year, WMMA would have an ending cash balance of $33 million or net income before taxes of $7.3 million and $20 million cash flow from the sale of common stock to investors. Tr. 1633; *see* Div. Ex. 300 at 74, 76. Sullivan also learned that because WMMA Distribution had not paid anything for the contract with WMMA, there was no recognized value and no basis for showing a $22 million asset in the financials that were part of the July 2011 WMMA Distribution PPM. Tr. 1646-47; *see* Div. Ex. 303 at 54. Similarly, Sullivan at first could not find documentation to support the $5 million value shown in the PPM for the ICM strategic alliance before finally establishing that, for accounting purposes, it should have been valued at $1. Tr. 1692-1700; *see* Div. Ex. 300 at 31.

The WMMA companies had no internal basic accounting controls or procedures and the financial team made unsuccessful attempts to have management establish a structure for access to bank statements, internal controls, risk management, and procedures for signing checks. Tr. 1670-71, 1684-89, 1972. For example, Sullivan found very thin documentation for loans from Mrs. Daspin and, similarly, it was difficult to find documentation for other material contracts such as with IMC and MacKenzie. Tr. 1679, 1681-82.

Sullivan found that the WMMA companies did not have the documentation required for audited financials and Sullivan was unaware that an auditing firm had ever been retained. Tr. 1970. Agostini had, in fact, confirmed an auditing engagement letter from McGladrey & Pullen, LLP, on December 2, 2011, but no one had told Sullivan, even though he was the CFO. Daspin Ex. 8; Tr. 2090-96, 2205-06. There is no evidence that McGladrey ever completed the audit. *See* Tr. 2205-06.

Sullivan began to have conflicts with Daspin early on. As noted, in October 2011, Sullivan refused to agree with Daspin's $82 million valuation of the IMC contract. Tr. 1702-10. Then, around that time, likely November 2011, Sullivan refused to participate in capital raising meetings, and he was barred from sessions with outside vendors. Tr. 1859. He believes he was exiled because he knew things that Daspin did not want potential investors to learn. Tr. 2046.

Starting in November 2011, Sullivan and Bederjikian approached Daspin and the board about what they believed to be lies they had been told and concerns that the company would go bankrupt in three months if it continued to pay the consulting fees. Tr. 1735-37, 1739. Sullivan did not understand why MacKenzie was needed to continue performing responsibilities after people were hired to do those jobs; he had expected MacKenzie's role to diminish over time. Tr. 1981.

On December 1, 2011, Daspin responded with a statement detailing the basis for the outstanding balance of recruitment fees owed of $859,393.10. Div. Ex. 36 at SEC-Bederjikian-P-338; Tr. 1741, 1785, 1788. Sullivan then sent the board an analysis of Daspin's proposal—which recommended strengthening the balance sheet by swapping the outstanding balance owed MacKenzie into an equity investment and capping the monthly cash payment to $21,475, Div. Ex. 36 at SEC-Bederjikian-P-335—that detailed what Sullivan considered to be problems with Daspin's proposal for MacKenzie's consulting contract. Div. Ex. 83; Tr. 1790-1805, 1811.

A few days later, Sullivan and Bederjikian met with Agostini and Main to tell them that: the company was not what had been described in the PPMs, they were concerned about MacKenzie's fees, the unprofessional environment was difficult, and they did not want to be associated with the company going forward and wanted their funds refunded. Tr. 1807-08, 1855-56, 2045, 2103. Daspin joined the discussion, which got heated; Daspin ultimately threw his arms up in the air, swore at Sullivan and Bederjikian, and stormed out of the room. Tr. 2045, 2184-85. After the meeting, Daspin pressured Sullivan to sign an agreement stating that Sullivan would not take legal action against Daspin and the WMMA companies and apologized for casting aspersion on

the WMMA companies, MacKenzie, and Daspin. Div. Ex. 139; Tr. 1738, 2042-44. Verbally threatening Sullivan, Daspin told Sullivan that he needed to sign the agreement because prison was terrible and Daspin was never going back. Tr. 1738, 1817-18, 2043-44. Around that time, Sullivan was told to report to Puccio—his former subordinate—but he retained his CFO status. Tr. 1821, 1852, 1973, 2099-2100, 2105, 2142, 2339.

In July and August 2012, Agostini requested that Sullivan sign a separation agreement and general release. Div. Exs. 137, 409; Tr. 1849-50, 1860, 1867-69. Sullivan refused to sign because he did not want others to repeat his experience and get involved in this investment with these people. Tr. 1857-59, 1869.

Sullivan received $42,266.26 through the share repurchase program, but lost the rest of his investment and was never paid a salary. Div. Ex. 494 at 3; *see* Tr. 1598, 1830, 1884-85. This experience has been a devastating, life-changing event for Sullivan. Tr. 1883-87.

Expert Evidence

Carl Sheeler

Sheeler, a valuation expert, earned a Ph.D. in finance from Union Institute and University, Cincinnati, Ohio; a master's in operations management from Command & Staff War College, Quantico, Virginia; and a bachelor's in business and industrial psychology from the University of Illinois. Div. Ex. 488 at 1. Sheeler has been an expert in about fifty court cases, has engaged in about 120 asset valuations, and has, until recently, been accredited by three national valuation associations for roughly twenty years. Div. Ex. 488 at 3, 7-10; Tr. 1370-74, 1378. I ruled without objection that Sheeler was a valuation expert. Tr. 1379.

Sheeler was retained by the Division to assess the $82 million valuation of the IMC email list and opine on the due diligence used to reach that figure. Div. Ex. 487 at 5; *see* Tr. 1389. His expert report, dated November 23, 2015, was written when he was a managing director of Berkeley Research Group, LLC. Div. Ex. 487 at 1, 4; Tr. 1387.

Sheeler observed that Daspin did not perform the requisite due diligence before entering the IMC agreement, that is, he failed to (1) examine the origin of the database; (2) inquire as to the opt-in status; (3) validate the contents of the list by confirming the number of email addresses and the ownership of or access to those addresses; (4) confirm demographic and geographic breakdown of the list, including the recipient's interest in MMA; and (5) inquire about how the list was going to be updated given that

unmaintained lists degrade by twenty percent per year. Div. Ex. 487 at 3, 9-13; Tr. 1397-1404, 1411-12, 1424-36. According to Sheeler, for example, the double opt-in character of an address is only valuable if the double opt-in is for emails concerning the recipient's particular interest, and there was no indication that the addresses in the IMC database had agreed to receive MMA emails. Div. Ex. 487 at 10-11; Tr. 1410-12; *see* Tr. 1415-16, 1446.

Sheeler concluded that Daspin's primary valuation methodology was flawed. Div. Ex. 487 at 18; Tr. 1440. To reach his valuation of $82 million, Daspin assumed that each email address was worth one thousandth of a dollar ($0.001) and that the value of the IMC list could be determined by multiplying that value by ten transmissions annually for ten years, so that a list with 830 million addresses would be worth $83 million, less $1 million for MacKenzie's commission. Div. Ex. 487 at 17. Sheeler had never before seen anyone use this methodology to value a similar asset. Tr. 1440.

Sheeler identified three significant errors in Daspin's valuation. First, there was no reasonable basis to assume IMC had access to 840 million[7] emails and would continue to have access for the duration of the agreement because Daspin had not completed the due diligence necessary to confirm ownership and maintenance of the database. Div. Ex. 487 at 19-20; Tr. 1428-29. With respect to the size of IMC's database, Sheeler considered IMC's refusal to identify how many of the emails were U.S. email addresses to be one of four red flags. Div. Ex. 487 at 10, 19; Tr. 1397. The other red flags were the uncertainty about who owned the emails and the terms of access, IMC's refusal to guarantee a two percent response rate, and Wolk's refusal in 2010 to answer Daspin's questions regarding the list's composition. Div. Ex. 487 at 19; Tr. 1441-42. Second, there was no reasonable basis to assume that each email had equal value because, among other things, Daspin had not completed the due diligence necessary to confirm the demographic characteristics of the addresses. Div. Ex. 487 at 20-21; Tr. 1445-46. Third, there was no reasonable basis to increase the value per email one hundred fold. Div. Ex. 487 at 21-23. No recognized valuation method increases the value of an email address based on usage given the address could be invalid, and even for valid, targeted addresses, it would be unreasonable to assume that each email would result in income. Div. Ex. 487 at 17, 22-23; Tr. 1446-48, 1450-51.

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[7] Daspin and Sheeler both at times referred to there being 830 million and 840 million email addresses in the database. The actual number is immaterial, but 830 million was the number that Daspin used to justify his $82 million valuation.

Sheeler also found no merit in Daspin's alternative justification for the $82 million, which was based on WMMA companies' projected financials. Div. Ex. 487 at 17-19. Daspin applied a two-and-a-half percent risk rate of the cumulative earnings before interest, taxes, depreciation, and amortization from a five-year forecast to arrive at $180 million with a present day value of $129 million—implying that the WMMA companies would have an undiscounted cumulative EBITDA of $7.2 billion over that period. Div. Ex. 487 at 17-18 & n.73; Tr. 1475-81. Sheeler characterized the risk rate that Daspin applied as arbitrary, Daspin's assumptions about single event revenue as ridiculous, and the projected financials as purely speculative and not based on sound reasoning. Div. Ex. 487 at 18.

After rejecting Daspin's methodologies, Sheeler opined that there are three accepted valuation methods: the cost approach, the market approach, and the income approach.

The cost approach asks how much it would cost to reproduce an exact duplicate of an asset or to replace an asset with the functional equivalent. Div. Ex. 487 at 24. Based on information from two major list brokers, Sheeler determined that in 2010 and 2011, the price of buying an untargeted 840-million-email list in an arms-length transaction was about $420,000. Div. Ex. 487 at 25; Tr. 1453. Even assuming Daspin's fixed per unit cost of $0.001 for an untargeted list, a cost approach would result in a value of $840,000. Div. Ex. 487 at 25; Tr. 1456-57. To buy a targeted database would have cost WMMA no more than $2.2 million, with $1.2 million being a more appropriate valuation. Div. Ex. 487 at 3, 25-27; *see also* Tr. 1464-66. And regardless of which cost valuation is used, the actual cost would be lower because the WMMA companies were only obtaining the right to use the IMC database, not purchasing it outright. Div. Ex. 487 at 26; Tr. 1454.

The market approach asks how much similar assets or businesses would be worth in an arms-length transaction. Div. Ex. 487 at 27-28. Sheeler found that application of a market approach to Daspin's $82 million valuation would require the WMMA companies to generate annual revenue of at least $140 million, which was implausible. *Id.* at 3; *see id.* at 28-30.

And the income approach asks how much income an asset will generate based on historical or projected income. *Id.* at 30. Sheeler concluded that this approach was inapplicable because the WMMA companies had no operational history and the pro forma projections were highly speculative and unreasonable. *Id.* at 3; *see id.* at 30-32.

Of the three alternative methodologies, Sheeler determined that cost method was the most appropriate method to use in this situation, and that

the IMC contract should be valued at no more than $2.2 million using assumptions most favorable to Daspin; a more accurate figure would be less than $420,000. Tr. 1454, 1469-70; *see also* Tr. 1455-57.

Sheeler's expert opinions are unrefuted in the record.

Division's Summary Evidence

Elizabeth Baier

Baier, a Division staff accountant, earned an MBA degree with a concentration in finance from Hofstra University and has worked in various sections of the Division during her twenty-nine year Commission career. Tr. 1210-12. She prepared fourteen summary exhibits using the bank account records for the WMMA companies and MacKenzie. Tr. 1169-1204; *see* Div. Exs. 493-504. The underlying records are in evidence. Div. Exs. 489-92. According to Baier's uncontested testimony, the WMMA companies raised $2,470,333 from December 2010 through June 2012 from Bederjikian, Heisterkamp, Lange, Lockett, Main, Puccio, and Sullivan. Div. Ex. 493; *see* Tr. 1176-77.

The contents of Baier's exhibits were not contested.

Arguments of the Parties

The Division's Initial Brief

The Division filed its post-hearing brief on July 3, 2019.

Antifraud Violations

The Division believes that Daspin used a plethora of methods to engage in a scheme to defraud investors in violation of the antifraud provisions and to cause the WMMA companies to do the same. Div. Br. 78-93. It contends that Daspin concealed his family's ownership and control of the WMMA companies and resulting conflicts of interest through the companies' complicated intercorporate structure and omissions in the PPMs—which Daspin "made"—and oral communications to potential investors. *Id.* at 79-80, 82, 87-88, 91. It argues that he lured investors in with false promises of high paying jobs. *Id.* at 80. In addition, the Division argues that Daspin misrepresented material financial information, including the value of the ICM contract and the current assets of the company. *Id.* at 80-85, 89-92. According to the Division, these material omissions and misstatements were made knowingly or recklessly in violation of Securities Act Section 17(a)(1) and Exchange Act Rule 10b-5 and, at a minimum, were made negligently in violation of Securities Act Section 17(a)(2) and (3) or were. *Id.* at 78-92.

In addition, the Division contends that Daspin knowingly or recklessly caused the WMMA companies to make material omissions and misrepresentations in violation of Exchange Act Section 20(b). *Id.* at 93.

Registration Violations

Noting that Daspin has admitted that the WMMA companies' securities were not registered with the Commission, the Division contends that Daspin violated Securities Act Section 5 by offering and selling the WMMA companies' stock. Div. Br. 94-95. The Division rejects the claim that the offering was exempt from registration under Rule 506 of Regulation D because the offerings were sold through general solicitations and the investors were not accredited. *Id.* at 95-97. It maintains further that Securities Act Section 4(a)(2) is inapplicable because the sale of securities was public based on the number of offerees, their sophistication, the size and manner of the offering, and the relationship of the offerees to the issuer. *Id.* at 97-98.

Observing also that Daspin has admitted that he was not affiliated with a registered broker-dealer, the Division insists that Daspin violated Exchange Act Section 15(a) by engaging in the business of effecting transactions in securities for the account of others. *Id.* at 98. According to the Division, Daspin meets the hallmark requirements necessary to be a broker: he received commissions, he negotiated investments, he gave investors advice, and he actively found investors. *Id.* at 99-103.

Requested Relief

The Division argues that the public interest weighs in favor of various sanctions. Div. Br. 104-08. It contends that: Daspin's actions were egregious and caused harm to investors by, among other things, luring job seekers with false promises of high paying jobs and defrauding investors of over $2 million. *Id.* at 104-05. Daspin's fraudulent actions were recurrent and he induced six investors to make over twenty investments. *Id.* at 105-06. The many aspects of Daspin's conduct show that he acted with a high degree of scienter by, for example, identifying himself as "Ed," a consultant, and concealing the Daspin family ownership of the WMMA companies. *Id.* at 106. Daspin's failure to acknowledge wrongdoing, his conduct in ignoring procedural orders and subpoenas, and his comments during the course of this proceeding indicate a high risk that Daspin will violate the securities statutes in the future. *Id.* at 106-08.

Based on the public interest, the Division requests a cease-and-desist order and an industry bar. *Id.* at 108.

In addition, the Division would require Daspin to disgorge $383,488.95, plus pre-judgment interest, based on the amount the WMMA companies paid to CBI and MacKenzie—fees that largely went to Daspin or his wife, according to the Division. *Id.* at 108-10. Finally, while the egregious violations are numerous, the Division has taken what it describes as a conservative position and would assess a third-tier penalty of $150,000 for each of six investors for the antifraud violations, and two first-tier penalties of $7,500 each for the registration violations. *Id.* at 110-13.

Daspin's Initial Brief and Other Materials

Daspin submitted several short emails and documents in the months since the end of the hearing, including an unpaginated longer document on July 27, 2019, which I deemed to be his initial brief even though it was not timely filed. *See Daspin*, Admin. Proc. Rulings Release No. 6646, 2019 SEC LEXIS 1890 (ALJ July 30, 2019). In addition, I ruled during the hearing that I would consider the written legal arguments submitted by Daspin's prior counsel during the Wells process as part of his legal argument. Tr. 2842-44, 2849-50, 2856-60, 2863.[8] And, because Daspin is not represented by counsel, I would look to his comments during the hearing to provide additional context for these arguments where appropriate. I have done so.

Daspin's arguments challenge the veracity of the evidence provided by the documents and other witnesses and argue that the evidence provides a different interpretation of the events.

Daspin denies that he ran the WMMA companies. Daspin Br. 12, 16; Div. Ex. 638. Daspin denies that he controlled the WMMA companies by noting that MacKenzie's actions on behalf of the companies required approval of two board members and that the board could fire him. Daspin Br. 5; *see* Tr. 426. Daspin maintains that he did not function as the de facto CEO, but as a consultant he assisted the directors in what they requested. Daspin Br. 16; Tr. 3118.

Daspin believes that he is innocent of the allegations and the WMMA companies were a rational business and not a ploy to steal money from people as the Division contends. Tr. 559, 2828. He asserts that investor funds were used to pay for operations, consultants, vendor services, and employee draws; no one got rich off the WMMA companies. Daspin Br. 7; Tr. 3122. He claims that MacKenzie billed $3 million and received only $224,000. Daspin Br. 2,

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[8] Daspin's Wells submission was offered as Daspin Ex. 12D, but was not admitted. Tr. 2859-60.

10, 16; Tr. 3119. And that he and his wife invested $2.5 million in the WMMA companies but charged no interest on loans and received no income. Tr. 2813-14, 2828, 3029. Daspin argues that what occurred was a business failure and the Division has confused a situation of mismanagement and underfunding with violations of the securities laws. Daspin Br. 6, 17; Tr. 3008, 3097-98; Wells Submission 2. He charges that this proceeding is a hoax and that his primary consideration was for the company to be a success and fees were secondary. Daspin Br. 6; Tr. 2882.

Daspin is emphatic that the PPMs were Nwogugu's work product and that Nwogugu wrote the summary of the related party transactions, which were largely Daspin's idea. Daspin Br. 10-11, 16; Tr. 2791, 3080-81, 3361-64, 3412. He is also emphatic that the board approved related party transactions and that there was no intent to defraud. Daspin Br. 5; Wells Submission 40. Daspin also considers the WMMA companies' financial projections in the PPMs to be reasonable. He argues that an average of eight regional promoters in sixteen countries would produce 164 events and have a cash flow of $2.3 billion; he believes that a public company with this cash flow would sell for ten times its cash flow or $23 billion. *See* Tr. 555-56. He maintains that his $82 million valuation of the IMC contract was appropriate. Daspin Br. 3, 5, 9; Tr. 2877, 2879, 3155. And he asserts that it cannot have been unreasonable because the board approved the valuation. Wells Submission 40; Tr. 2880.

Daspin denies that he was offering securities for sale and that there was anything deceptive about what he told potential investors. Daspin asserts that initially the WMMA companies wanted to hire promoters and sweat equity people, not investors. Tr. 3101. Daspin insists that MacKenzie advertised for job applicants, and the PPMs were for people who wanted to invest in the WMMA companies after hearing his personal history. Tr. 549, 3075-76. He argues that the evidence shows that he told applicants at the interview about his felony conviction. Daspin Br. 4; Tr. 3081-82, 3084. And, insofar as the PPMs disguised his involvement, he claims that he sold his consulting company to MacKenzie and Mrs. Daspin put her shares in trust because Lux and Main came to him and suggested that his name should not be associated with the company and that Mrs. Daspin not be a shareholder. Tr. 2873-74, 3076-77; *see* Tr. 3368-69, 3401-02. People made an independent decision and no one forced anyone to make an investment; in addition, the subscription agreement described the investment as risky and stated that investors could lose their investment. Daspin Br. 3-4, 9; Tr. 549, 3094-95; *see* Tr. 1999, 2005-08. Daspin believes he made full disclosure before people invested. Daspin Br. 4; Tr. 3084.

Daspin contends that he never sold a share of stock. Tr. 3094. He says that he did not receive commissions because MacKenzie received largely recruitment fees where the compensation was based on projected first year salary, not on securities transactions, and no additional compensation was received for subsequent investments. Daspin Br. 4; Wells Submission 21, 26. Daspin considers the Division's claim that the human resource fees he received were investment banking fees absurd. Daspin Br. 17; Tr. 3125-27. Even if Daspin's compensation is considered transaction based, he argues that other factors indicate that he did not provide broker-dealer services, but rather services provided by other professionals, such as employment recruiters and business advisors. Wells Submission 26-27.

Daspin contends that disgruntled investors colluded and conspired among themselves and with the Division to create a story that he acted to destroy the WMMA companies when the Daspin family had the most to gain from success. Daspin Br. 1, 5, 8, 12, 17; Tr. 2782, 2816, 2821, 3118. Daspin claims that Bederjikian, Main, and Sullivan omitted a material fact in their submission in the bankruptcy proceeding, which shows they are not credible. Daspin Br. 12; Tr. 2813-14. And he calls Lux, Main, Sullivan, and Heisterkamp liars and perjurers based on their testimony in this proceeding. Daspin Br. 11.

Daspin insists he has done nothing wrong, that he never knew about or intended any fraud, and that he deserves to be paid for the damage the Commission has caused him. Daspin Br. 5, 17; Tr. 2898, 3053-54, 3060-61. If he had the energy and is paid a portion of what he lost, Daspin claims that he would restart the WMMA companies, which failed because the wrong people were hired. Tr. 3103.

Daspin requests that the allegations against him be dismissed and that he be reimbursed for time at his hourly rate. Daspin Br. 1; Tr. 3159.

The Division's Reply Brief

The Division filed its reply brief on August 7, 2019, challenging as false what it sees as Daspin's primary arguments. According to the Division, Daspin: (1) controlled the WMMA companies; (2) raised money from investors; (3) controlled the contents of the PPMs; (4) intentionally overvalued the IMC email database; and (5) intended to "milk" the WMMA companies through the consulting contract. Div. Reply 1-11. Furthermore, the Division contends that Daspin is wrong that: (6) the investor witnesses lied; (7) several witnesses said he did nothing wrong; and (8) he was not acting as an unregistered broker. *Id.* at 11-17. In conclusion, the Division urges that because of Daspin's extensive fraudulent conduct, his refusal to

acknowledge wrongdoing, and his behavior during this proceeding, the requested sanctions are appropriate. *Id.* at 17-19.

Legal Conclusions

Violations of Securities Act Section 17(a), Exchange Act Section 10(b), and Exchange Act Rule 10b-5

Securities Act Section 17(a) makes it 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).

Similarly, Exchange Act Section 10(b) makes it 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:

> To use or employ, in connection with the purchase or sale of any security . . . any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

15 U.S.C. § 78j(b).

Adopted under Section 10(b), Exchange Act Rule 10b-5 makes it 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,
>
> in connection with the purchase or sale of any security.

17 C.F.R. § 240.10b-5.

Use of interstate commerce or the mails

Violations of the antifraud provisions must be committed by use of the mails or any means or instrumentality of interstate commerce. 15 U.S.C. §§ 77q, 78j(b); 17 C.F.R. § 240.10b-5. This phrase is construed broadly, "so as to be satisfied by . . . intrastate telephone calls, and by even the most ancillary mailings." *SEC v. Softpoint, Inc.*, 958 F. Supp. 846, 865 (S.D.N.Y. 1997), *aff'd*, 159 F.3d 1348 (2d Cir. 1998). And it includes the use of the internet as a channel of interstate commerce. *Larry C. Grossman*, Securities Act Release No. 10227, 2016 WL 5571616, at *4 n.11 (Sept. 30, 2016), *vacated in part on other grounds*, Securities Act Release No. 10659, 2019 WL 2870969 (July 3, 2019); *Anthony Fields, CPA*, Securities Act Release No. 9727, 2015 WL 728005, at *6 & n.17 (Feb. 20, 2015).

The use of instruments of interstate commerce and mail was central to Daspin's scheme. At Daspin's direction, Young sent hundreds of emails and had conversations via Skype, an internet-based video teleconference service, with people who responded to the job advertisements that Daspin directed be placed on internet sites like Sixfigurejobs.com and Ladders. Tr. 1265, 1268-71. Daspin communicated by phone and conducted in-person interviews with job seekers from several states who traveled to New Jersey for interviews. Tr. 1277, 2661-65. Daspin was also the main author of PPMs that were circulated outside New Jersey. Tr. 309-12, 1082, 1234-37, 1256, 1287-90, 1317.

Scienter or negligence

Violations of Sections 17(a)(1), Section 10(b), and Rule 10b-5 require a showing of scienter. *Aaron v. SEC*, 446 U.S. 680, 695-97, 701-02 (1980). Scienter is "a mental state embracing intent to deceive, manipulate, or

defraud." *Aaron*, 446 U.S. at 686 n.5 (quoting *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 194 n.12 (1976)). Reckless conduct—*i.e.*, conduct that is highly unreasonable and an extreme departure from the standards of ordinary care—may establish scienter. *S. Cherry St., LLC v. Hennessee Grp.*, 573 F.3d 98, 109 (2d Cir. 2009).

By contrast, violations of Section 17(a)(2) and (3) require a showing of only negligence, defined as

> [t]he failure to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation; any conduct that falls below the legal standard established to protect others against unreasonable risk of harm, except for conduct that is intentionally, wantonly, or willfully disregardful of others' rights; the doing of what a reasonable and prudent person would not do under the particular circumstances, or the failure to do what such a person would do under the circumstances.

Negligence, *Black's Law Dictionary* 1245 (11th ed. 2019); *see Aaron*, 446 U.S. at 701-02; *Fields*, 2015 WL 728005, at *10.

The overwhelming evidence is that Daspin controlled all the events and knowingly performed or directed all the activities at issue. Tr. 126, 165-66, 193-94, 833, 841, 848, 1096, 1807, 2203, 2297, 2351-52. Daspin was therefore knowingly responsible for the deceptive and manipulative conduct described in the factual findings and reiterated below.

Daspin's defense that the WMMA companies' boards approved most of the activities is invalid because he controlled the board. Daspin made Agostini board chairman; there is nothing in the record that shows Agostini was qualified to lead a startup, and all of the evidence from persons who were on the scene is that he simply transmitted direction and orders from Daspin. *See* Tr. 126, 822, 833-34, 841. Daspin gave Agostini and Mrs. Daspin exclusive authorization to sign checks and control the companies' financial records. Tr. 127, 136-38, 185, 321, 848, 1657, 1669, 1675-76, 1722; Div. Exs. 200, 201, 207, 207A. The other two board members, Lux and Main, signed whatever Daspin wanted them to sign without discussion. *See, e.g.*, Tr. 235, 823-24, 827-50, 888-90, 916-20, 969. Lux signed things he did not understand or agree with because he needed the salary. Tr. 100, 701. Main was a chiropractor by profession with no experience in running a media business.

Scheme to defraud

The antifraud provisions prohibit schemes to defraud and any other conduct that would operate as a fraud. 15 U.S.C. § 77q(a)(1), (3); 17 C.F.R. § 240.10b-5(a), (c); *see Lorenzo v. SEC*, 139 S. Ct. 1094, 1101 (2019); *Scheme*, *Black's* 1612 (defining scheme as "[a]n artful plot or plan, usu[ally] to deceive others").

The overwhelming evidence is that Daspin engaged in a scheme to find people with means and convincing them to buy securities by concealing critical information about the nature of the companies whose securities he was offering and selling. Tr. 290-92, 315, 638, 1265, 1269, 1271, 1562. Given the method of solicitation—placing advertisements on job websites catering to persons qualified to be high-paid executives—potential investors thought that they were interviewing with Daspin for a high-paying position. *E.g.*, Tr. 58, 1583-84, 2218-20, 2707. Persons responding to the solicitation did not know that this was a bait-and-switch scheme. It was only at the in-person interview when most of them learned from Daspin that it was necessary to make an investment of $250,000 or more to be hired. *E.g.*, Tr. 2229-35, 2245-46. *But see* Tr. 2366, 2372 (Burnham mentioned to Heisterkamp "that there may be an opportunity to have equity in the company" during a phone conversation). The results of Daspin's conduct demonstrates that convincing individuals to invest as much as possible—as opposed to hiring management personnel suitable to the companies' needs—was his primary goal. As he told Lux, "[w]e're selling jobs here." Tr. 284-85. Among tactics he employed, Daspin encouraged potential investors to make large investments, using retirement accounts if necessary, to obtain more senior titles rather than evaluating their experience and credentials to make placement decisions. *E.g.*, Tr. 731, 769, 1594, 1597-98, 2373. In addition, he hired Sullivan, Puccio, and Bederjikian even though their positions were redundant. Tr. 337-40, 1039-40. And when Diamond refused to invest, Daspin became aggressive and angry. Tr. 2677-81, 2683-88, 3228-32; Div. Ex. 631.

Investors and a potential investor testified that they were deceived and would not have been interested if they had known that they would be expected to invest *and* were unlikely to receive the promised salaries. For example, if Diamond had known an investment was required, he would not have taken a day off of work to drive to New Jersey for the job interview. Tr. 2681-82. And if Lange and Heisterkamp had been told that they would not be paid until the WMMA companies met certain benchmarks, they would not have responded to the advertisement and the initial emails and phone calls. Tr. 2295-96, 2464-65.

In addition to disguising the true purpose of the employment solicitations, Daspin took other steps to ensure that prospective investors would be unaware of the true nature of the WMMA companies. He concealed his wife's *ownership* of the companies by making the board members hold the substantial majority of the shares of WMMA Holdings in trust for three family limited partnerships, which were owned and controlled by Mrs. Daspin. Div. Exs. 69 at 1, 77 at 1, 78 at 1, 80 at 1, 80A at 1; Tr. 165-66, 687, 892-98. And Daspin concealed his *control* of the WMMA companies by operating as a "consultant" through MacKenzie when, in fact, he was the ultimate decision maker. Div. Exs. 55A at 2, 369 at 2; *see* Tr. 87-88, 90-93, 99-100, 223, 226, 228, 787, 884, 954. Daspin also concealed his identity and background in the materials distributed to potential investors and often waited to disclose his personal information until the last moment before they invested. *See* Tr. 1285-86.

Taken as a whole, Daspin's efforts to encourage the purchase of securities under false pretenses amounts to a fraudulent scheme to deprive investors of their money. Perhaps even more significant than not knowing an investment was required for a position, was the fact that investors did not know the truth about the companies. Investors testified that they would not have invested had they known about the actual ownership and control of the WMMA companies. For example, Heisterkamp would not have invested if he had been aware of the terms of the MacKenzie consulting agreement or if he had had a chance to research Daspin's personal history. Tr. 2466-68. And Lange would not have invested if he had known about the Daspins' ownership of the WMMA companies and Daspin's veto power over operations. Tr. 2239-97, 2351-52; *cf.* Tr. 88 (Lux testified that he had never before seen a contract requiring a CEO to get written permission from a consultant).

Material misstatements or omissions

Apart from the prohibition of fraudulent schemes, the antifraud provisions also prohibit material misrepresentations or omissions. 15 U.S.C. § 77q(a)(2); 17 C.F.R. § 240.10b-5(b). A fact is material if there is a substantial likelihood that a reasonable investor would consider it important in deciding how to invest their money. *Basic Inc. v. Levinson*, 485 U.S. 224, 231-32, 240 (1988).

Daspin made at least four categories of material misstatements or omissions while soliciting investment in the WMMA companies. Daspin made some orally and some were made in the PPMs of WMMA and WMMA Distribution that he authored. Daspin is responsible for the content of the latter as the maker of the statements, within the meaning of Rule 10b-5(b), because he had "ultimate authority over the statement[s], including [their]

content and whether and how to communicate [them]." *Janus Capital Grp. v. First Derivative Traders*, 564 U.S. 135, 142 (2011); *see* Tr. 309-12, 1082, 1234-37, 1256. Further, Daspin, directly or indirectly, obtained money "by means of" the materially false statements and omissions within the meaning of Section 17(a)(2). *See* 15 U.S.C. § 77q(a)(2); *SEC v. Stoker*, 865 F. Supp. 2d 457, 465 (S.D.N.Y. 2012). He received compensation through the course of employing the below-noted material misstatements and omissions.

1. The most egregious materially false representations were those in the PPMs regarding the value attributed to the use of 840 million double opt-in email addresses as a result of the strategic alliance with IMC, and how that value was determined. *See* Div. Exs. 1 at 30, 3 at 28. The July 2011 PPM put the value of this asset at $5 million.[9] Div. Ex. 1 at 31; Tr. 266-67. The January 2012 PPM raised the value to $82 million. Div. Ex. 3 at 28, 45-46; Tr. 373-74. The evidence shows that neither of these valuations was justified. *See Marini v. Adamo*, 995 F. Supp. 2d 155, 190 (E.D.N.Y. 2014) ("inflated values [of assets] constitute material misrepresentations").

The overwhelming evidence is that Daspin did not do the requisite due diligence as to the value of the double opt-in email database before entering the contract and setting its value. Sheeler opined that Daspin failed to complete any of the due diligence required to properly value the asset, including a complete failure to verify Wolk's representations about the contents of the database and to determine whether the database was tailored to be a useful marketing tool for the WMMA companies over the life of the IMC contract. Div. Ex. 487 at 3, 9-13; Tr. 1397-1404, 1411-12, 1424-36. This expert opinion is undisputed. Indeed, many of the deficiencies identified by Sheeler were raised by board members when Daspin was valuing the IMC contract. *See, e.g.*, Tr. 268 ("there literally was no way" to justify Daspin's valuation, according to Lux), 1052-53 (database worth "Zero," according to Main). Main even attempted to do some market analysis and determined that a targeted database could have been purchased for a fraction of Daspin's valuations of the IMC contracts. Div. Ex. 608 at 1; Tr. 974-79. Instead of engaging with the concerns raised by others, Daspin refused to discuss the topic. Tr. 376-77. He pressured the board to sign off on the later $82 million valuation even though Sullivan refused to agree to it. Tr. 1708-10, 2213-14. None of these deficiencies were disclosed in the PPMs. Because he did not do

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[9] There is no other evidence that corroborates Daspin's claim that he originally valued the database at $1 million, but Nwogugu raised the value to $5 million. Tr. 2873-75.

any due diligence and failed to heed warnings that his valuations were unjustified, Daspin must have known that his numbers were not accurate.

Sheeler demonstrated that Daspin did not use any recognized valuation methodology. Div. Ex. 487 at 18; Tr. 1440; *accord Rockies Fund, Inc. v. SEC*, 428 F.3d 1088, 1097 (D.C. Cir. 2005) (concluding that "a haphazard process for valuing the largest holding" shows a reckless disregard for accuracy). If Daspin had used a proper valuation methodology, the IMC contract was worth only $420,000. Div. Ex. 487 at 25; Tr. 1454, 1469-70. And its actual worth was likely far less based on its subsequent performance, which revealed that Wolk's limited representations about the content of the database were inaccurate. The two times that the WMMA companies tried to use the database, it did nothing. Tr. 259-60. IMC failed to assist with marketing the El Paso event, and WMMA's chief technology officer concluded that the database was "junk." Div. Ex. 103 at LA 0025851; Tr. 361-64, 959-60, 2325-26. Lange, who was nominally in charge of broadcasting and communications, never saw evidence of the strategic alliance in terms of operations or activities. Tr. 2255-58, 2322, 2325. Later, Daspin and Sullivan were unable to provide Giuliano, the bankruptcy trustee, with any documents supporting revenue from the IMC contract, so Giuliano concluded that WMMA had no assets of value. Div. Ex. 456 at SEC-Exh-7.

The evidence shows that investors considered these misrepresentations and omissions about one of the WMMA companies' largest assets to be material to their decision to invest. *See Rockies Fund*, 428 F.3d at 1097 (affirming Commission conclusion "that an overvaluation of the Fund's largest asset would have been significant information for potential Fund investors"). The IMC contract was material to Lange's decision to invest. Tr. 2253, 2256-58, 2297-98. If he had known that the IMC valuation was a fabrication he would not have invested because it would have been an "instant red flag." Tr. 2297-98. Similarly, Heisterkamp testified that it would have affected his investment decision if he had known that Daspin had determined the value of the IMC contract without any testing or confirmation. Tr. 2378-84.

2. The PPMs also misrepresented other aspects of the WMMA companies' financial status, and these misrepresentations were compounded by oral misrepresentations by Daspin. *See United States v. Reyes*, 577 F.3d 1069, 1076 (9th Cir. 2009) ("information regarding a company's financial condition is material"). Daspin told Heisterkamp that the WMMA companies were well funded and that the January 2012 WMMA PPM had "all [the] answers." Div. Exs. 154, 154A; Tr. 2374-76, 2391, 2490-91, 2558; *see also* Tr. 1914-15 (Daspin deflected Sullivan's questions about cash balances by saying that there was enough cash on hand to cover stock buybacks until the

company got off the ground). As a result, Heisterkamp believed that WMMA had over $33 million in cash at the end of 2011. Div. Ex. 154A at 78; Tr. 2392-94, 2433, 2545. It did not. Tr. 378. From December 2010 through August 5, 2013, the WMMA companies received only $5.25 million total, including investor funds totaling $2.47 million. Div. Exs. 493, 503.

Investors' decisions were affected by the inaccurate picture of the financial condition of the WMMA companies. To Heisterkamp, for example, the $33 million in cash was one of three factors crucial to his decision. Tr. 2373-74, 2563.

3. Investors were not told that Daspin's wife indirectly owned the WMMA companies, which was material information. *See SEC v. Blatt*, 583 F.2d 1325, 1331-32 (5th Cir. 1978) (holding that failure to disclose beneficial ownership is objectively material). In addition to structuring the WMMA companies to obscure the true owner as described above, Daspin failed to make any disclosure about, among other things, his wife's right to repurchase the shares of the holding company at any time. Div. Exs. 69 at 1, 77 at 1, 78 at 1-2, 80A at 1-2; Tr. 697, 900, 1873-74. He also did not disclose that each board member had a fiduciary duty to Mrs. Daspin, which conflicted with the fiduciary duty that they owed to the WMMA companies. Div. Exs. 80 at 1-2, 80A at 1-2; *see* Nev. Rev. Stat. § 78.138(1); *Leavitt v. Leisure Sports Inc.*, 734 P.2d 1221, 1224 (Nev. 1987). None of this was disclosed in the PPMs.

Investors were dismayed when they learned about the arrangements. For example, Lange testified that it would have impacted his decision to invest if he had known that Daspin family partnerships controlled WMMA Holdings. Tr. 2293-97. The same is true for Heisterkamp. Tr. 2463.

4. Neither the PPMs nor any information provided to investors disclosed that Daspin set up and implemented a structure by which he ran the WMMA companies. *See Nelson v. Serwold*, 576 F.2d 1332, 1336 (9th Cir. 1978) (agreeing that the "failure to disclose the existence of the 'control group'" was a material omission). Daspin's name does not appear in the extensive lists of officers and directors in the PPMs. Div. Exs. 1 at 54-58, 2 at 15-19, 3 at 56-61, 4 at 14-18; Tr. 226, 956-57. Potential investors were told that Daspin was a consultant. *See, e.g.*, Tr. 297-99, 1037-39. Investors were not told that the consulting contract mentioned in the PPMs was most unusual in that it gave the consultant, Daspin operating through MacKenzie, exclusive control over the WMMA companies' hiring, operations, and contracting in exchange for large fees. OIP at 4; Ans. at 9; Exs. 55A at 1-2, 204 at 1, 369 at 1-2; *see* Tr. 82-83, 85-88, 90-93, 96-97, 99-100, 884, 3381-90. They did not know that Daspin appointed the entire three-member WMMA companies' boards and that the boards rubber stamped agreements and resolutions that Daspin,

acting through MacKenzie, negotiated and drafted. Div. Exs. 55 at 1, 149 at 1, 149A at 1; Tr. 74-75, 87, 99, 138, 144-47, 235, 783-84, 819-22, 867, 969.

The investors considered Daspin and MacKenzie's control of the WMMA companies material to their decisions to invest. Heisterkamp would not have invested if he had known about the terms of the consulting contract. Tr. 2466-68. And Lange considered the concealment of Daspin's veto power over everything "the most obvious deception." Tr. 2351-52.

Nexus with securities transaction

To come within the ambit of the federal securities laws, misconduct must be in connection with the purchase or sale of securities within the meaning of Exchange Act Section 10(b), and in the offer or sale of securities within the meaning of Securities Act Section 17(a). 15 U.S.C. §§ 77q, 78j(b); 17 C.F.R. § 240.10b-5. This nexus requirement is construed broadly. *See SEC v. Zandford*, 535 U.S. 813, 819-20 (2002); *United States v. Naftalin*, 441 U.S. 768, 772-73, 778 (1979). It is easily satisfied here because Daspin's scheme and the related material misrepresentations and omissions were all in connection with the actual sale of securities in the WMMA companies to seven investors. *See* OIP at 12; Ans. at 17; Div. Ex. 493; *see, e.g.*, Div. Ex. 367. And such misconduct was also in the offer of securities. *See, e.g.*, Tr. 1579-84, 2668-69.

* * *

Based on these findings, I conclude that Daspin violated Section 17(a), Section 10(b), and Rule 10b-5 either intentionally or, at a minimum, with reckless disregard for the truth.

Violations of Exchange Act Section 20(b)

Exchange Act Section 20(b) prohibits any person, directly or indirectly, from doing "any act or thing which . . . would be unlawful for such person to do under [the Exchange Act] or any rule or regulation thereunder through or by means of any other person," meaning any natural person or company. 15 U.S.C. §§ 78c(a)(9), 78t(b). Some courts, including the Court of Appeals for the D.C. Circuit, interpret Section 20(b) to require "knowing use of a controlled person by a controlling person." *SEC v. Savoy Indus., Inc.*, 587 F.2d 1149, 1170 (D.C. Cir. 1978) (quoting *SEC v. Coffey*, 493 F.2d 1304, 1318 (6th Cir. 1974)). *But see SEC v. Strebinger*, 114 F. Supp. 3d 1321, 1335 (N.D. Ga. 2015) (holding that Section 20(b) "does not . . . contain a 'control' limitation on liability").

Daspin violated Section 20(b) by causing WMMA and WMMA Distribution to disseminate PPMs containing material misrepresentations and omissions even assuming that the standard of knowing control is required. *See* Tr. 309-12, 1082, 1234-37, 1256. Daspin dominated every aspect of the WMMA companies through a complex corporate structure that he intentionally created to give him control through MacKenzie and his wife's concealed ownership of the companies. *See, e.g.*, OIP at 4; Ans. at 9; Exs. 55A at 1-2, 204 at 1, 369 at 1-2; *see* Tr. 82-83, 85-88, 90-93, 96-97, 99-100, 884, 3381-90.

Based on these findings, I conclude that Daspin violated Section 20(b).

Violations of Securities Act Section 5(a) and (c)

Securities Act Section 5(a) makes it unlawful, unless a registration statement is in effect as to a security, to (1) make use of any means or instruments in interstate commerce or of the mails to sell such security through the use or medium of any prospectus or otherwise; or (2) to carry or cause to be carried through the mails or in interstate commerce any such security for the purpose of sale or for delivery after sale. 15 U.S.C. § 77e(a). Securities Act Section 5(c) makes it unlawful for any person, directly or indirectly, to make use of any means or instruments in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of any prospectus or otherwise any security, unless a registration statement has been filed as to such security. 15 U.S.C. § 77e(c).

To establish a prima facie case that Daspin violated Section 5(a) and (c), the Division must show that he sold or offered to sell securities through the use of interstate facilities or the mails when no registration statement was in effect or filed as to those securities. 15 U.S.C. § 77e(a), (c); *see Ronald S. Bloomfield*, Securities Act Release No. 9553, 2014 WL 768828, at *7 (Feb. 27, 2014) (citing *SEC v. Cavanagh*, 445 F.3d 105, 111 n.13 (2d Cir. 2006), and *SEC v. Calvo*, 378 F.3d 1211, 1214-15 (11th Cir. 2004)), *pet. denied*, 649 F. App'x 546 (9th Cir. 2016). A showing of scienter is not required to establish a violation. *Bloomfield*, 2014 WL 768828, at *7 (citing *Calvo*, 378 F.3d at 1215, and *SEC v. Universal Major Indus. Corp.*, 546 F.2d 1044, 1047 (2d Cir. 1976)).

Daspin acknowledged that the securities of WMMA and WMMA Distribution were not registered with the Commission and he admitted that they were offered and sold to investors. OIP at 2-3, 12; Ans. at 6-7, 17 *see also* Div. Ex. 493. As noted, Daspin's interactions with investors took place in interstate commerce. Tr. 1265, 1268-71, 1277.

I find that the Division has established a prima facie case that the WMMA companies' securities were not exempt from registration so that the burden shifts to Daspin to show with evidence, "explicit, exact, and not built on conclusory statements," that an exemption from registration was available and applicable. *Bloomfield*, 2014 WL 768828, at *7 (quoting *Lively v. Hirschfeld*, 440 F.2d 631, 633 (10th Cir. 1971)); *see also Cavanagh*, 445 F.3d at 111 n.13 (citing *SEC v. Ralston Purina Co.*, 346 U.S. 119, 126 (1953)). Daspin argues that he relied on Nwogugu's advice and Nwogugu told him the securities were exempt from registration. Tr. 3051-54, 3378. Given that Nwogugu was not a lawyer, and Daspin's extensive experience in the securities business, that defense is implausible. Moreover, Daspin's assertion of reliance does not satisfy his burden to show that the securities were exempt.

Daspin does refer to "506" and argue that some investors lied about being "accredited," which suggests that he wishes to invoke Rule 506(c) of Regulation D of the Securities Act. *See* Daspin Br. 4; Tr. 1087, 3248. And all four PPMs stated "[t]his offering is based on the exemptions from registration as set forth in . . . Rule 506." Div. Exs. 1 at 4, 2 at 4, 3 at 4, 4 at 4. Rule 506(c) requires that the issuer take reasonable steps to verify that the purchasers are accredited investors, but there is no evidence that Daspin did this. 17 C.F.R. § 230.506(c)(2)(ii). There is no evidence that Daspin or anyone else associated with the WMMA companies took any steps to verify potential investors' income or net worth other than the representation required in investor subscription agreements. *E.g.*, Div. Ex. 367 at SEC-Heisterkamp-E-3501. An unsupported representation by the investor is not sufficient, especially when some investors did not even sign the subscription agreement until after they invested. *Accord* 17 C.F.R. § 230.506(c)(2)(ii)(A)-(C) (providing nonexclusive means of verifying income and assets). At the time he signed the subscription agreement, Heisterkamp, for example, did not know what was required to be an accredited investor and had not talked with Daspin about what was required, yet he had already invested. Tr. 2499-503, 2538, 2623-25.

Based on these findings, I conclude that Daspin violated Section 5(a) and (c).

Violations of Exchange Act Section 15(a)

Exchange Act Section 15(a) prohibits a broker or dealer to make use of the mails or any instrumentality of interstate commerce to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security unless such broker or dealer is registered with the Commission, is an associated person of a registered broker-dealer, or satisfies the conditions of

an exemption or safe harbor. 15 U.S.C. § 78*o*(a). Scienter is not required for a violation of Exchange Act Section 15(a). *See Fields*, 2015 WL 728005, at *17 (citing *SEC v. Martino*, 255 F. Supp. 2d 268, 283 (S.D.N.Y. 2003)).

A broker is "any person engaged in the business of effecting transactions in securities for the account of others." 15 U.S.C. § 78c(a)(4). "The phrase 'engaged in the business' means a 'level of participation in purchasing and selling securities involv[ing] more than a few isolated transactions.'" *Fields*, 2015 WL 728005, at *18 (alteration in original) (quoting *Gordon Wesley Sodoroff*, Exchange Act Release No. 31134, 1992 WL 224082, at *4 (Sept. 2, 1992)). Factors indicative of broker activity include whether the person held himself out as a broker-dealer, recruited or solicited potential investors, handled client funds and securities, negotiated with issuers, or received transaction-based compensation. *Id.* Other factors include whether investment advice was provided to investors, the dollar amount of securities sold, and the extent of advertisement and investor solicitation. *See SEC v. Kenton Capital, Ltd.*, 69 F. Supp. 2d 1, 12-13 (D.D.C. 1998); *Gary L. McDuff*, Exchange Act Release No. 74803, 2015 WL 1873119, at *2 n.16 (Apr. 23, 2015) (citing *SEC v. Bravata*, 3 F. Supp. 3d 638, 660 (E.D. Mich. 2014)).

The evidence establishes that Daspin violated Section 15(a). Daspin admits that he was not registered as a broker-dealer or associated with a registered broker-dealer. Ans. at 8. The testimony of Diamond, Heisterkamp, Lange, Main, and Sullivan and other evidence offered by the Division show that Daspin acted as a broker and, using the means of interstate commerce and the mails, attempted to induce investors to purchase the WMMA companies' securities and effected those purchases. Tr. 2369-73, 2475.

Daspin controlled the initial approach directed to potential investors because he drafted the emails that Young distributed to hundreds of people and he selected which potential investors to interview. Tr. 297, 1268-71. During the interview process, Daspin dominated the conversation and, in most cases, was the one to broach the topic of purchasing securities in the WMMA companies and recommend investment amounts. For example, during Diamond's interview, Daspin brought out documents showing different investment tiers, repeatedly asked how much money Diamond had to invest, and pressured him to sign a subscription agreement on the spot. Tr. 2668-70. Similarly, Daspin led the conversation with Heisterkamp and "introduced the opportunity to become an investor in the company," suggesting using funds in Heisterkamp's 401(k) for a $250,000 or $350,000 investment. Tr. 2368-73. When Lange interviewed, Daspin "was driving the train" and the participants, particularly Daspin, made clear that everyone had "skin in the game," that is, a minimum investment of $250,000.

Tr. 2227, 2228-36. Daspin was the only person Main spoke to about his investment; he pressured Main to invest more money, telling him that $100,000 was not enough, and then advised him on alternatives. Tr. 730-31, 766-69. And Sullivan was surprised that what was supposed to be a job interview turned into Daspin pitching him to make a $250,000 investment. Tr. 1583-84.

Daspin solicited and convinced seven people to invest a total of $2.4 million in securities in the WMMA companies. *See* Div. Ex. 493. And contrary to Daspin's argument, he received transaction-based compensation for soliciting those investments. *See* Daspin Br. 4; Wells Submission 21, 26. The MacKenzie contract expressly provided for additional compensation for investor employees as opposed to non-investor employees and employee salaries were tied to the amount invested. *See* Div. Exs. 55A at 1, 369 at 1-2; *see, e.g.*, Tr. 1595, 2372. Therefore Daspin was rewarded for investments and was rewarded more for larger investments. Considering the nature of his compensation in conjunction with the other factors, Daspin was plainly acting as a broker without being registered.

Based on these findings, I concluded that Daspin violated Section 15(a).

Sanctions

Cease-and-Desist Order

Securities Act Section 8A(a) and Exchange Act Section 21C(a) authorize issuance of a cease-and-desist order against any person found to have violated a provision of the Securities Act, Exchange Act, or a rule or regulation promulgated under either. 15 U.S.C. §§ 77h-1(a), 78u-3(a). To issue such an order, there must be some likelihood of future violations, but the required showing is "significantly less than that required for an injunction." *KPMG Peat Marwick LLP*, Exchange Act Release No. 43862, 2001 WL 47245, at *24, *26 (Jan. 19, 2001), *pet. denied*, 289 F.3d 109 (D.C. Cir. 2002). Absent evidence to the contrary, a single past violation ordinarily suffices to establish a risk of future violations. *Id.* at *24, *26 & n.147.

The Commission also considers the *Steadman* factors in determining whether to issue a cease-and-desist order: whether the violations were egregious; their frequency; the respondent's degree of scienter; the sincerity of the respondent's assurances against future violations; the respondent's recognition of wrongdoing; and the likelihood that the respondent's occupation will present opportunities for future violations. *Id.* at *26; *see Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981). In addition, the Commission considers "whether

the violation is recent, the degree of harm to investors or the marketplace resulting from the violation, and the remedial function to be served by the cease-and-desist order in the context of any other sanctions being sought in the same proceedings." *KPMG*, 2001 WL 47245, at *26. The Commission weighs these factors in light of the entire record, and no one factor is dispositive. *Id.*; *Montford & Co.*, Investment Advisers Act of 1940 Release No. 3829, 2014 WL 1744130, at *21 (May 2, 2014), *pet. denied*, 793 F.3d 76 (D.C. Cir. 2015).

Daspin's violations were egregious. The Commission considers fraudulent conduct to be "especially serious and subject to the severest of sanctions." *Peter Siris*, Exchange Act Release No. 71068, 2013 WL 6528874, at *6 (Dec. 12, 2013) (quoting *Vladimir Boris Bugarski*, Exchange Act Release No. 66842, 2012 WL 1377357, at *5 (Apr. 20, 2012)), *pet. denied*, 773 F.3d 89 (D.C. Cir. 2014). Daspin employed a fraudulent scheme to convince seven people to invest a total of $2.4 million in unregistered securities. *See* Div. Ex. 493. He concealed his identity and dramatically inflated the value of the WMMA companies' assets and lied about their cash balance. Tr. 297-99, 378, 1037-39; Div. Ex. 487 at 18. Of particular note is the fact that Daspin used misleading information and omissions to convince Heisterkamp and Sullivan to withdraw retirement funds to make investments, which resulted in crippling their finances and Heisterkamp filing for bankruptcy. *See* Tr. 1883-87, 2469-70. Daspin knew that to raise $351,000 Heisterkamp drained his entire 401(k) account, and refinanced his home and borrowed funds. Tr. 2411-13. And he represented to Heisterkamp that his funds would be rolled over into a qualified account at the WMMA companies even though there is no evidence that was possible. Tr. 2406, 2410-11, 2553-54. Similarly, at Daspin's suggestion, Sullivan drained over half of his 401(k) IRA accounts to invest $351,000. Tr. 1593-94, 1599-1603, 1837.

Daspin compounded his antifraud violations by soliciting investment in *unregistered* securities without *registering* as a broker. OIP at 3, 12; Ans. at 7-8, 17. The registration requirements of Securities Act Section 5 "are a keystone of the entire system of securities regulation," and failing to register securities alone can amount to egregious misconduct. *Allen M. Perres*, Securities Act Release No. 10287, 2017 WL 280080, at *3-4, *6 (Jan. 23, 2017) (quoting *Sirianni v. SEC*, 677 F.2d 1284, 1289 (9th Cir. 1982)), *pet. denied*, 695 F. App'x 980 (7th Cir. 2017). Requiring that brokers or dealers register with the Commission, Section 15(a) ensures "that customers . . . receive either the regulatory protections that result from a [broker] being registered himself or the protections that stem from the [broker] being supervised by a registered firm." *Fields*, 2015 WL 728005, at *17 (quoting *Charles A. Roth*, Exchange Act Release No. 31085, 1992 WL 216693, at *4 (Aug. 25, 1992), *pet.*

denied, 22 F.3d 1108 (D.C. Cir. 1994)). Daspin's failure to register himself or the WMMA companies' securities deprived investors of these regulatory protections, making it easier for Daspin to defraud them. *See Gordon Brent Pierce*, Securities Act Release No. 9555, 2014 WL 896757, at *23 (Mar. 7, 2014) (sale of unregistered shares "caus[ed] harm to investors and the marketplace by depriving investors of the full disclosure that would have allowed them to make informed investment decisions"), *pet. denied*, 786 F.3d 1027 (D.C. Cir. 2015).

Daspin's actions committed with scienter were repeated and frequent in that he directed a fraudulent activity that involved hundreds of interviews and the circulation of numerous PPMs containing material misrepresentations and omissions over two years. Tr. 1264-66, 1268-69, 1287-90, 1317, 3394-95.

Daspin does not admit wrongdoing or make any assurance that he will not violate the securities laws in the future. At the hearing and in post-hearing filings, he has been defiant: "You're never going to collect a dime from me. No matter what, you won't get a penny because I did nothing wrong." Tr. 3414. Instead he asserts that the Division is "here to kill people." *Id.* And he blames a "conspiracy" between the Division and most of the other witnesses. Daspin Br. 1, 8.

The risk of future violations is high. Daspin has almost dangerous powers of persuasion. *See, e.g.*, Tr. 2665. And there is a strong likelihood that he would continue to operate in the securities field if given the opportunity. He has stated "if I have enough energy and if I get paid a portion of what I lost, I would restart that company because I have the original promoters, and now I saw what the mistakes were." Tr. 3102-03.

For all these reasons, I find it is in the public interest to order that Daspin cease and desist from committing or causing violations, and any future violations, of the statutes and regulations he was found to have violated in this initial decision.

Industry and Penny Stock Bars

Exchange Act Section 15(b) authorizes industry and penny stock bars against a person who, while associated with a broker or dealer at the time of the misconduct, willfully violated provisions of the Securities Act, Exchange Act, or rules thereunder, if the bars are in the public interest. 15 U.S.C. §§ 78*o*(b)(4)(D), (6)(A). Because Daspin acted as an unregistered broker at the time of his misconduct, he is deemed to have been associated with one for purposes of Section 15(b). *James S. Tagliaferri*, Securities Act Release No. 10308, 2017 WL 632134, at *5 (Feb. 15, 2017); *McDuff*, 2015 WL

1873119, at *1 n.2. And Daspin's scienter establishes that his antifraud violations were also willful within the meaning of the federal securities laws. *See Bennett Grp. Fin. Servs., LLC*, Exchange Act Release No. 80347, 2017 WL 1176053, at *4 n.30 (Mar. 30, 2017); *cf. Robare Grp. v. SEC*, 922 F.3d 468, 479-80 (D.C. Cir. 2019). Given his control over the offering of the WMMA Companies' securities, his registration violations were also willful. *See Wonsover v. SEC*, 205 F.3d 408, 412, 414 (D.C. Cir. 2000).

The criteria for determining the public interest are the *Steadman* factors set out above. *Toby G. Scammell*, Advisers Act Release No. 3961, 2014 WL 5493265, at *5 (Oct. 29, 2014), *vacated in part on other grounds*, Advisers Act Release No. 5272, 2019 WL 2775920 (July 2, 2019). The Commission also considers the deterrent effect of administrative sanctions. *Siris*, 2013 WL 6528874, at *11 n.72. The public interest inquiry is "flexible" and "no one factor is dispositive." *Conrad P. Seghers*, Advisers Act Release No. 2656, 2007 WL 2790633, at *4 (Sept. 26, 2007), *pet. denied*, 548 F.3d 129 (D.C. Cir. 2008).

Given the results of the *Steadman* analysis, and to encourage both specific and general deterrence, I find it is in the best interest of protecting the public to impose full industry and penny stock bars against Daspin under Section 15(b).

Disgorgement

Securities Act Section 8A(e) and Exchange Act Section 21C(e) authorize disgorgement in cease-and-desist proceedings, and Exchange Act Section 21B(e) authorizes disgorgement in proceedings where civil monetary penalties may be imposed. 15 U.S.C. §§ 77h-1(e), 78u-2(e), 78u-3(e). Disgorgement is an equitable remedy designed to deprive the wrongdoer of unjust enrichment and thereby deter violations of the securities laws. *See SEC v. Fischbach Corp.*, 133 F.3d 170, 175 (2d. Cir. 1997); *Montford*, 2014 WL 1744130, at *22; *see also SEC v. First Jersey Sec., Inc.*, 101 F.3d 1450, 1474 (2d Cir. 1996). Disgorgement need only be a reasonable approximation of profits causally connected to the securities law violation, but legally and illegally obtained profits must be distinguished. *See SEC v. First City Fin. Corp.*, 890 F.2d 1215, 1231 (D.C. Cir. 1989).

Daspin controlled MacKenzie, and CBI before it. It is undisputed that from December 2010 through August 31, 2012, the WMMA companies paid CBI and MacKenzie a total of $383,488.95. Div. Ex. 495. Of those payments, $176,906.50 was paid by MacKenzie directly to Daspin or Mrs. Daspin and another $58,615.60 was paid to CBI. Div. Ex. 497 at 3. CBI, in turn, paid

$145,775.00 to Daspin and his wife. Div. Ex. 498 at 4. The total amount paid directly to the Daspins is $322,681.50.

Trying to apply a reasonable approximation of Daspin's profit causally related to the violations is difficult. As the Division asserts, certain payments to the Daspins were labeled vaguely as travel or expense reimbursement and the evidence is that Daspin and his wife paid into MacKenzie and CBI over $50,000. Div. Br. at 110; Div. Exs. 497 at 3, 498 at 4. However, neither the Division nor Daspin make a convincing showing for why I should depart from a strict calculation of the amount paid to Daspin and Mrs. Daspin that flowed to them from the WMMA companies and was causally connected to Daspin's violations. And where, as here, any purported business expenses were in furtherance of a fraudulent scheme rather than a legitimate business enterprise, disgorgement liability should not be offset. *See SEC v. JT Wallenbrock & Assocs.*, 440 F.3d 1109, 1115 (9th Cir. 2006).

Because it represents a reasonable approximation of his profits from the illegal scheme, I find that Daspin should disgorge $322,681.50, plus prejudgment interest as specified in the below order. *See* 17 C.F.R. § 201.600(a).

Civil Penalties

Securities Act Section 8A(g) and Exchange Act Section 21B(a)(2) authorize civil penalties in cease-and-desist proceedings against any person who has violated those acts or any rule thereunder, and Exchange Act Section 21B(a)(1) authorizes civil penalties in Section 15(b) proceedings against any person found to have willfully violated certain provisions of the securities laws. 15 U.S.C. §§ 77h-1(g)(1), 78u-2(a)(1)(A)&(2). As noted above, the evidence satisfies the requirement that Daspin's violations were willful. *See Bennett Grp.*, 2017 WL 1176053, at *4 n.30.

The penalty provisions set out a three-tiered system for determining the maximum civil penalty for each act or omission. Third-tier penalties are available where the misconduct involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement, and resulted in "substantial losses or created a significant risk of substantial losses to other persons" or "substantial pecuniary gain" to the respondent. 15 U.S.C. §§ 77h-1(g)(2)(C), 78u-2(b)(3). The D.C. Circuit has held that to impose penalties, "the Commission must determine how many violations occurred and how many are attributable to each person." *Rapoport v. SEC*, 682 F.3d 98, 108 (D.C. Cir. 2012).

The maximum civil penalty for a violation by a natural person between March 4, 2009, and March 5, 2013, at the first tier is $7,500, at the second

tier is $75,000, and at the third tier is $150,000. 17 C.F.R. § 201.1001 & Subpt. E, Table I.

To determine whether a penalty is in the public interest, the Commission considers: (1) whether the act or omission involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; (2) the harm caused to others; (3) any unjust enrichment; (4) the respondent's prior regulatory record; (5) the need for deterrence; and (6) such other matters as justice may require. 15 U.S.C. § 78u-2(c); *Timothy S. Dembski*, Securities Act Release No. 10326, 2017 WL 1103685, at *15 (Mar. 24, 2017), *pet. denied*, 726 F. App'x 841 (2d Cir. 2018).

Violations of Securities Act Section 17(a), Exchange Act Sections 10(b) and 20(b), and Exchange Act Rule 10b-5

With respect to Daspin's violations of the antifraud provisions, the Division seeks maximum third-tier penalty of $150,000 for six violations, one for each of the investors who was provided with a PPM before investing. *See* Div. Br. 113.

I find third-tier penalties are appropriate because Daspin's violations involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement and resulted in substantial financial losses to six investors and unjust enrichment to Daspin. All six investors lost most, if not all, of their investments of at least $250,000 each. Div. Ex. 494. Daspin caused each of the six investors to lose between $229,687.50 and $447,412.23; for two investors the invested funds represented all or a substantial part of their retirement funds. *Id.* at 2-4. At the same time, Daspin was unjustly enriched by at least $322,681.50. *See* Div. Exs. 497 at 3, 498 at 4. Daspin claims that his long ago criminal conviction caused his present day regulatory problems, which is not true but shows he has not learned from his past experience. *See* Ans. at 8; Tr. 1878, 2814. The evidence shows that the risk of future violations is high so that deterrence is a factor. Daspin has shown no recognition of wrongdoing and blames others for what occurred.

In addition to the six investors, Main is the seventh investor who invested before the first PPM based on Daspin's oral false representations. Daspin defrauded Main by stating that Daspin and his family had invested over $1 million, that persons well known in the MMA community would be involved, and by misrepresenting that there were prior investors to convince Main to invest more than $100,000. Tr. 731, 753, 760, 790-91. Main lost his entire $333,333 investment. Div. Ex. 494 at 1. I therefore will impose a seventh penalty of $150,000.

Violations of Securities Act Section 5(a) and (c) and Exchange Act Section 15(a)

The Division proposes two first-tier penalties for Daspin's registration violations. I disagree because the violations meet the definition of a third-tier penalty—they were part of Daspin's overall fraudulent scheme and involved deceit and deliberate or reckless disregard of regulatory requirements, resulting in substantial financial harm to investors and unjust enrichment. All the public interest factors considered with respect to the antifraud provisions apply here as well. Seven people were devastated by Daspin's conduct. Daspin violated each of these two provisions more than once. For these reasons, I will impose two third-tier penalties of $150,000 each. *Cf. Bloomfield*, 2014 WL 768828, at *88 & n.129 (imposing nine second-tier penalties for sale of nine unregistered securities, while noting that "[e]ach of the numerous unregistered sales of these nine securities could be considered a separate violation of Securities Act Section 5").

* * *

In total, I find that Daspin should pay civil penalties at the third-tier level for nine violations of the securities statutes.

Finally, there is a mechanism that allows defrauded investors a possibility of recovering their losses. *See* 17 C.F.R. § 201.1100. I will order the creation of a fair fund in the event that Daspin pays the disgorgement and penalty amounts ordered.

Record Certification

Pursuant to Commission Rule of Practice 351(b), 17 C.F.R. § 201.351(b), I certify that the record includes the items set forth in the record index issued by the Secretary of the Commission on August 19, 2019, supplemented as follows.

On July 29, 2019, I struck Daspin Exhibits 1, 1A, 2, 2A, 3, 3A, 4, 4A, 11, 12, 13, 14, and 16 from the record of the proceeding because Daspin had not submitted copies for the official record. 17 C.F.R. § 201.111(c); *Daspin*, Admin. Proc. Rulings Release No. 6645, 2019 SEC LEXIS 1882, at *2-3. On August 28, 2019, Daspin submitted to my office all of the materials that were struck, except for Daspin Exhibits 11, 12, 14, and 16, and, among other things, moved to have them accepted into the record. Objections to the record index were due by September 3, 2019; nonetheless, I accept the submitted exhibits back into the record, and will vacate the order striking them. *See* 17 C.F.R. § 201.111(c).

Order

I GRANT IN PART the motion to accept certain exhibits back into the record, submitted August 28, 2019; DENY IN PART the remainder of the motion; and VACATE *Edward M. Daspin*, Admin. Proc. Rulings Release No. 6645, 2019 SEC LEXIS 1882, at *2-3 (ALJ July 29, 2019), with respect to the following exhibits:

Daspin 1	TD Bank-related Worldwide Mixed Martial Arts Sports, Inc., certificate of resolution dated January 5, 2012 (Tr. 1097-1102)
Daspin 1A	Certificate of incumbency attached to Daspin 1 (Tr. 1103-04)
Daspin 2	TD-Bank-related Worldwide Distribution, Inc., certificate of resolution dated January 5, 2012 (Tr. 1104-05)
Daspin 2A	Certificate of incumbency attached to Daspin 2 (Tr. 1104-05)
Daspin 3	Capital One-related Worldwide MMA Sports, Inc., certificate of resolution dated January 12, 2012 (Tr. 1106-07)
Daspin 3A	Certificate of incumbency attached to Daspin 3 (Tr. 1106-07)
Daspin 4	Capital One-related WMMA Distribution, Inc., certificate of resolution dated January 12, 2012 (Tr. 1107-08)
Daspin 4A	Certificate of incumbency attached to Daspin 4 (Tr. 1107-08)
Daspin 13	Email dated Oct. 28, 2011, from Sullivan to Agostini, Lux, Main, Daspin, and an unknown person, and an email dated November 10, 2011, from Sullivan to the board with a Worldwide MMA Sports, Inc., consolidated balance sheet as of October 31, 2011 (internally compiled, unaudited) (Tr. 2174-79)

I DENY the Division of Enforcement's deferred motion for evidentiary sanctions, filed April 5, 2019, and decline to exclude the testimony of Edward M. Daspin.

I ORDER that, pursuant to Section 8A of the Securities Act of 1933 and Section 21C of the Securities Exchange Act of 1934, Edward M. Daspin a/k/a

"Edward (Ed) Michael" shall CEASE AND DESIST from committing or causing violations, and any future violations, of Sections 5(a) and (c) and 17(a) of the Securities Act of 1933, and Sections 10(b), 15(a), and 20(b) of the Securities Exchange Act of 1934, and Exchange Act Rule 10b-5.

I FURTHER ORDER that, pursuant to Section 15(b) of the Securities Exchange Act of 1934, Edward M. Daspin a/k/a "Edward (Ed) Michael" is BARRED from association with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, and from participating in an offering of penny stock, which includes: 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 or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

I FURTHER ORDER that, pursuant to Section 8A(e) of the Securities Act of 1933 and Sections 21B(e) and 21C(e) of the Securities Exchange Act of 1934, Edward M. Daspin a/k/a "Edward (Ed) Michael" shall DISGORGE $322,681.50, plus prejudgment interest. 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), shall be compounded quarterly, and shall run from June 1, 2012, through the last day of the month preceding the month in which payment is made.[10] 17 C.F.R. § 201.600.

I FURTHER ORDER that, pursuant to Section 8A(g) of the Securities Act of 1933 and Section 21B(a) of the Securities Exchange Act of 1934, Edward M. Daspin a/k/a "Edward (Ed) Michael" PAY A CIVIL MONEY PENALTY in the amount of $1,350,000.

I FURTHER ORDER that, pursuant to 17 C.F.R. § 201.1100, any funds recovered by way of disgorgement, prejudgment interest, or penalties shall be placed in a fair fund for the benefit of investors harmed by the violations.

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

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[10] I deem the last violation to have occurred no later than May 4, 2012, the date of the last payment by an investor. Div. Ex. 494 at 4. Prejudgment interest shall run from June 1, 2012, the first day of the following month. 17 C.F.R. § 201.600(a).

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, United States postal money order, bank cashier's check, or bank 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 File No. 3-16509: 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.

A party may file a petition for review of this initial decision within twenty-one days after service of the initial decision. 17 C.F.R. § 201.360(b). A party may also file a motion to correct a manifest error of fact within ten days of the initial decision, pursuant to Rule of Practice 111, 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 a 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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Brenda P. Murray
Chief Administrative Law Judge