INITIAL DECISION RELEASE NO. 506
ADMINISTRATIVE PROCEEDING
FILE NO. 3-15124

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

In the Matter of	:	INITIAL DECISION AS TO
	:	JOHN O. YOUNG
DAVID F. BANDIMERE and	:	October 4, 2013
JOHN O. YOUNG	:	

APPEARANCES: Dugan Bliss and Thomas J. Krysa for the Division of Enforcement, Securities and Exchange Commission

Shaun Kaufman of Shaun Kaufman Law, P.C. for Respondent John O. Young

BEFORE: Cameron Elliot, Administrative Law Judge

SUMMARY

This Initial Decision finds that Respondent John O. Young (Young) willfully violated Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 (Securities Act) and Sections 10(b) and 15(a) of the Securities Exchange Act of 1934 (Exchange Act) and Exchange Act Rule 10b-5. This Initial Decision bars Young from association with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization (NRSRO), orders Young to disgorge $430,972.16, including prejudgment interest, imposes a civil penalty of $100,000, and orders Young to cease and desist from committing or causing violations of the above-listed provisions of the Securities and Exchange Acts.

I. Introduction

A. Procedural Background

The Securities and Exchange Commission (Commission or SEC) issued its Order Instituting Administrative Proceedings (OIP) on December 6, 2012, pursuant to Section 8A of the Securities Act, Sections 15(b) and 21C of the Exchange Act, Section 9(b) of the Investment Company Act of 1940 (Investment Company Act), and Sections 203(f) and (k) of the Investment Advisers Act of 1940 (Advisers Act). Young filed his Answer to the OIP on January 18, 2013.

On April 15, 2013, the Division of Enforcement (Division) and Young submitted the Division and Young's Stipulations as to Liability (Stipulation), in which Young stipulated that: 1) he is liable for the violations alleged against him in the OIP; 2) the facts contained in certain paragraphs of the OIP are true and correct as they relate to him; and 3) the facts contained on pages six through eight of the Division's March 8, 2013, Supplemental Statement Pursuant to the Court's Order on Respondents' Motions for More Definite Statement (MDS) under the heading "Respondent Young" are true and correct. Young did not stipulate to any relief requested by the Division.

The first day scheduled for hearing in this matter, April 22, 2013, was used to hold a settlement conference pursuant to 17 C.F.R. § 201.240, and at that time, the Division and Young agreed to resolve the issue of sanctions by motion practice rather than through a live hearing. The Division timely submitted its Motion for Sanctions Against Respondent John O. Young (Motion), Young timely submitted his Response to the Division's Motion for Sanctions (Oppo.), and the Division timely submitted its Reply in support of its Motion (Reply).[1]

B. Summary of Allegations and Arguments

The instant proceeding concerns Young's alleged violation of the antifraud and registration provisions of the Securities and Exchange Acts while allegedly operating as an unregistered broker in selling unregistered investments in IV Capital Ltd. (IV Capital) and Universal Consulting Resources LLC (UCR), two Ponzi schemes which the Commission brought actions against in 2011 and 2010, respectively. OIP at 2. The OIP alleges that these violations occurred through sales of IV Capital and UCR securities. Id. The OIP alleges that Young misled potential investors with misrepresentations about the nature and history of UCR, false claims that he was a partner in UCR, and false claims that he and his family had significantly invested in UCR. Id. The OIP asserts that, based on such allegations, Young violated Section 17(a) of the Securities Act and Sections 10(b) and 15(a) of the Exchange Act and Exchange Act Rule 10b-5. Id. The OIP also alleges that Young violated Securities Act Section 5 by selling unregistered securities in UCR and IV Capital when no exemption applied to the registration requirements. Id. The Division seeks a cease and desist order, disgorgement and prejudgment interest totaling $430,972.16, a civil penalty of $130,000, and a permanent direct and collateral associational bar. Motion at 8-11.

Young has stipulated that he is liable for the violations described in paragraphs 48 through 50 of the OIP, that is, that he violated Sections 5(a), 5(c), and 17(a) of the Securities Act,

[1] The Division attached to its Motion the transcripts of nine telephone calls between Young and investor Rich McDonald (Exs. 46, 47, and 49-55), which would have been offered in evidence at the hearing. Although the calls are probative of several issues, they do not pertain directly to the allegations in the OIP because McDonald did not invest through Young and there is no evidence that Young's statements on the calls are related to the purchase or sale of any securities. I have therefore not considered the calls in this Initial Decision. Young attached to his Oppo. six exhibits: an affidavit of Young (Ex. A), four affidavits of other persons (Exs. B-E), and portions of two operative reports from March 2007 regarding Young's heart surgery and colon surgery (Ex. F).

Sections 10(b) and 15(a) of the Exchange Act, and Exchange Act Rule 10b-5. Stipulation at 1. Young has also stipulated to the facts alleged in paragraphs 1, 3, 4, 6-11, 15-18, and 39-47 of the OIP, as those facts relate to him, and to the facts contained on pages 6 through 8 of the MDS under the heading "Respondent Young." Stipulation at 1. Although Young "acknowledges that he made mistakes and that his friends were hurt," he argues, in sum and substance, that he was duped by Richard Dalton (Dalton), the operator of the UCR Ponzi scheme. Oppo. at 2-4. He does not oppose the imposition of a cease and desist order or an associational bar, but he urges a total monetary sanction of no more than $315,989. Oppo. at 5-6; Ex. A.

II. Findings of Fact

The findings and conclusions herein 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, 102 (1981). I have taken official notice of certain material facts found in the files of U.S. District Courts and in the public official records of the Commission, pursuant to 17 C.F.R. § 201.323. I have considered and rejected all arguments, proposed findings, and conclusions that are inconsistent with this Initial Decision.

A. Respondent and Other Relevant Individuals and Entities

1. Young

Young is a resident of Superior, Colorado, and was 69 years old at the time the OIP was issued. OIP at 3; Stipulation at 1. He is not registered with the Commission as a broker or dealer or investment adviser and is not associated with a registered broker or dealer or investment adviser. OIP at 3; Stipulation at 1.

2. Richard Dalton and UCR

Dalton, age 65 at the time the OIP was issued, is a resident of Golden, Colorado. OIP at 3; Stipulation at 1. Dalton was the Director of Finance, general manager, and only employee of UCR. OIP at 3; Stipulation at 1. UCR is a New Mexico limited liability company with its principal place of business in Dalton's home at Golden, Colorado. OIP at 3; Stipulation at 1. Dalton never registered with the Commission as a broker or investment adviser and was not associated with a registered broker-dealer or investment adviser. OIP at 3; Stipulation at 1. Neither UCR nor UCR securities were ever registered with the Commission. OIP at 3; Stipulation at 1.

On February 28, 2012, the Commission obtained an amended default judgment against Dalton and UCR. SEC v. Universal Consulting Res., No. 10-cv-2794-REB-KLM (D. Colo.). Among other violations, the court found that Dalton had violated Securities Act Section 5 by offering unregistered securities in UCR. Id. The court stated that there was no registration statement in effect for the UCR securities and no exemption applied to the registration requirements for the UCR securities. Id. Dalton was ordered to pay, jointly and severally with UCR, $7,549,458 in disgorgement plus prejudgment interest of $744,032, and a civil penalty of $7,549,458 on December 7, 2011. Id. In a Commission administrative proceeding, Dalton was

barred by default from association with a broker, dealer, investment adviser, municipal securities dealer, or transfer agent, and from participating in an offering of penny stock. Richard Dalton, Exchange Act Release No. 66547 (Mar. 9, 2012), 103 SEC Docket 51963.

Dalton was also criminally charged, by indictment dated October 19, 2011, for his conduct in connection with the sale of interests in UCR, and he pled guilty to money laundering and was sentenced to 120 months of imprisonment followed by three years of supervised release in United States v. Dalton, No. 11-cr-430-CMA-01 (D. Colo. June 30, 2013).

3. Larry Michael Parrish and IV Capital

Larry Michael Parrish, age 47 at the time the OIP was issued, is a resident of Walkersville, Maryland, and he was the President and sole Director of IV Capital. OIP at 3; Stipulation at 1. IV Capital is a Nevis corporation owned and managed by Parrish. OIP at 3; Stipulation at 1. Neither IV Capital nor IV Capital securities were ever registered with the Commission. OIP at 3; Stipulation at 1.

The Commission obtained a default judgment against Parrish on September 25, 2012, in SEC v. Larry Michael Parrish, No. 11-cv-558-WJM-MJW (D. Colo.). The court found that Parrish had violated Sections 5(a) and 5(c) of the Securities Act by offering unregistered securities in IV Capital and had violated the antifraud provisions of the federal securities laws, among other violations, and ordered him to pay disgorgement of $4,139,857.55, plus $847,919.71 in prejudgment interest, and a civil penalty of $4,987,777.26. Id. On May 24, 2013, Parrish settled an administrative proceeding with the Commission and the Commission entered an Order Making Findings and Imposing Remedial Sanctions Pursuant to Section 15(b) of the Exchange Act and Section 203(f) of the Advisers Act, which barred Parrish from association with any broker, dealer, investment adviser, municipal securities dealer, or transfer agent, and barred him from participating in any offering of a penny stock. Larry Michael Parrish, Exchange Act Release No. 69637, 2013 SEC Lexis 1524 (May 24, 2013). Parrish pled guilty on May 28, 2013 to one count of wire fraud for his misconduct in connection with IV Capital, and he is scheduled to be sentenced on November 15, 2013. United States v. Larry Michael Parrish, No. 12-cr-00342 (D. Md. May 28, 2013).

Previously, in April 2005, the Commission brought an action against Parrish for his involvement in a prime bank scheme in SEC v. Z-Par Holdings, Inc., No. 05-cv-1031 (D. Md. Apr. 14, 2005), and Parrish consented to a preliminary injunction, an asset freeze, under which he returned $7.5 million to investors, and a permanent injunction. OIP at 3; Bandimere Answer at 3. Parrish also consented to an administrative order barring him from associating with any broker or dealer with the right to reapply for association after at least five years. Larry Michael Parrish, Exchange Act Release No. 55779 (May 17, 2007), 90 SEC Docket 2015; OIP at 3-4; Stipulation at 1.

B. The Ponzi Schemes

Between November 2005 and October 2009, Parrish raised $9.2 million for IV Capital from at least seventy investors across the country. OIP at 4; Stipulation at 1. Parrish promised to

earn a monthly minimum return of five percent with half being paid to the investor and IV Capital retaining the other half. OIP at 4; Stipulation at 1. Parrish represented that investor funds would be safely escrowed while the trades in commodities, stocks, and options were made with funds from a line of credit secured by those investor funds. OIP at 4; Stipulation at 1. Parrish claimed that he and several partners, all of whom were successful traders, owned and operated IV Capital as an offshore company. OIP at 4; Stipulation at 1. In reality, Parrish invested only a fraction of investor funds and misappropriated investor money for his own personal use. OIP at 4; Stipulation at 1. In addition to soliciting investors directly, Parrish also established a sales force by offering commissions to individuals who brought in new investors. OIP at 4; Stipulation at 1. One of the original IV Capital sales agents, Dalton, left to operate a separate Ponzi scheme through his company UCR. OIP at 4; Stipulation at 1. Parrish paid brokers, including Young, for bringing in new investors.

From at least March 2007 through June 2010, Dalton, through his company UCR, raised approximately $12 million from at least 129 investors in thirteen states. OIP at 5; Stipulation at 1. Dalton conducted two offerings, which were referred to as the "Trading Program" and the "Diamond Program." OIP at 5; Stipulation at 1. The Trading Program began around March 2007 when Dalton solicited investors to place their money with UCR in order to fund a purported overseas bank note trading program. OIP at 5; Stipulation at 1. Dalton told investors that their funds were held in an escrow account at a bank in the United States and that a "European Trader" would use the value of that account, but not the actual funds, to obtain leveraged funds to purchase and sell bank notes. OIP at 5; Stipulation at 1. According to Dalton, the trading was profitable enough that he was able to guarantee returns of at least 48 percent per year to investors. OIP at 5; Stipulation at 1. Dalton offered the Diamond Program beginning in 2008 when he told investors that UCR facilitated the funding of diamond transactions in Africa. OIP at 5; Stipulation at 1. Similar to the Trading Program, investor funds were to be held in an escrow account at a bank in the United States and a diamond trader would use the value of that account, but not the actual funds, to obtain leveraged funds to purchase and sell diamonds. OIP at 5; Stipulation at 1. Dalton told investors that UCR would participate in one transaction per month with a minimum return of 10 percent per month. OIP at 5; Stipulation at 1. In reality, Dalton invested only a fraction of investor funds and misappropriated investor money for his own personal use, while using new investor funds to make monthly earnings payments to existing investors. OIP at 5; Stipulation at 1. Dalton paid brokers, including Young, for bringing in new investors. OIP at 5; Stipulation at 1.

C. Young's Sales and Misrepresentations

Dalton introduced Young to Parrish around 2005. OIP at 10; Stipulation at 1. Young spoke with Parrish about IV Capital, and introduced one of his son's best friends, David Smith (Smith), to Parrish. OIP at 10; Stipulation at 1. Between 2006 and 2009, Young directly offered IV Capital to at least five potential investors, but only one person actually made an investment in IV Capital. OIP at 10; Stipulation at 1. With regard to that investor, Young handled all the paperwork, answered questions, and handled the monthly payouts to the investor after receiving the money from Parrish. OIP at 10; Stipulation at 1. Young also had a compensation arrangement with Smith to compensate him for his role in introducing Smith to Parrish. OIP at 10; Stipulation at 1. Specifically, Young received 30 percent of all the commission payments received by Smith every month from Parrish. OIP at 10; Stipulation at 1.

Young was a friend of Dalton for over twenty years, and had some previous business relationships with him throughout that time period. OIP at 10; Stipulation at 1. In 2007, Dalton explained his UCR Trading Program to Young, and asked Young whether he would be interested in selling the UCR Trading Program to potential investors. OIP at 10; Stipulation at 1. He offered Young a commission for bringing in investors. OIP at 10; Stipulation at 1. Between 2007 and 2010, Young solicited approximately twenty investors to invest over $2.5 million in UCR's Trading Program. OIP at 10; Stipulation at 1. The securities Young sold were unregistered. OIP at 12; Stipulation at 1. There was no registration statement in effect for the UCR or IV Capital securities and no exemption applied to the registration requirements for them. OIP at 12; Stipulation at 1.

Between 2007 and 2010, Young actively recruited and solicited potential investors in the UCR Trading Program, and encouraged those investors to find other investors. OIP at 10; Stipulation at 1. For example, Young sent an email to an investor in 2008 stating that "as a friend, and in light of the current turmoil in the financial markets, I hope that you would give me a call sometime at your convenience. We are not in the traditional markets. Our clients' funds are secured in an escrow account at a major bank and do not move. Our returns are exceptional (really exceptional) and distributed monthly… and our clients are grateful they can sleep at night." OIP at 10; Stipulation at 1. He later wrote to that investor that if she had "any associates who might enjoy a legitimate and serious [return on investment], I would appreciate an opportunity to sit down with them." OIP at 10; Stipulation at 1.

When Young discussed the UCR and IV Capital investments with potential investors, he described the guaranteed returns, the traders, and generally how each program worked. OIP at 11; Stipulation at 1. He provided the investment agreement to investors, answered their questions, and sometimes sent that signed agreement to UCR or IV Capital. OIP at 11; Stipulation at 1. Many of Young's investors in UCR never spoke with Dalton before making their investments. OIP at 11; Stipulation at 1. The investors generally sent their money directly to UCR and received their profit payments directly from UCR. OIP at 11; Stipulation at 1. However, for a few months in 2010, Dalton sent a single payment to Young for all of Young's investors, and then Young distributed the profit payments to each investor. OIP at 11; Stipulation at 1. As noted, Young handled all the payments to his single investor in IV Capital.

Young was paid a commission by Dalton for bringing in new investors of between one and two percent per month of each investor's capital investment in UCR. OIP at 11; Stipulation at 1. In addition, a few investors that Young brought in also recruited additional investors, and Young agreed to split his commission with them. OIP at 11; Stipulation at 1. Dalton would generally pay Young the commission, and then Young would send the payment to the recruiting investor. OIP at 11; Stipulation at 1. Young also received commissions directly from Parrish for his single investor as well as from Smith for his role in introducing Smith to Parrish. OIP at 11; Stipulation at 1. In total, Young received at least $400,000 in net commission payments, i.e., transaction-based compensation, between 2007 and 2010 (after subtracting payments made to downstream sales agents), representing the vast majority of his income during that period. OIP at 2, 11; Stipulation at 1.

Beginning no later than May 2008 and continuing through April 2010, Young made at least four general representations to investors that he knew or should have known were false or misleading when he was selling the investment. OIP at 11; MDS at 6; Stipulation at 1. He told three investors, beginning in approximately December 2008, that Dalton's UCR program had been in existence for seven to nine years, when he knew Dalton did not start UCR until 2007. MDS at 6-7; Stipulation at 1. He knew or should have known this was false or misleading no later than December 2007. MDS at 6; Stipulation at 1. Young has provided an affidavit from David Thistle, an investor, who attested that Young did not make this misrepresentation to him. Ex. E. This is undisputed, and the Division does not contend that David Thistle was one of the three investors to whom Young made this misrepresentation. MDS at 7.

Young told seven investors, beginning in approximately May 2008, that he and his family members had invested in UCR when they did not. MDS at 6-7; Stipulation at 1. He knew or should have known this was false or misleading no later than December 2007. MDS at 6; Stipulation at 1. Young now does not recall telling investors that he and his family had invested in UCR. Ex. A at 1. David Thistle and investor Douglas Black (Black) attest in their affidavits that Young did not tell them that he or his family had invested in UCR. Exs. B, E. This is undisputed, and the Division does not contend that David Thistle or Black were among the seven investors to whom Young made this misrepresentation. MDS at 7. Contrary to Young's argument, investors Gene Petersen (Petersen) and J.J. Johnson in fact say nothing in their affidavits about this particular misrepresentation. Exs. C, D.

Young told seven investors, beginning in approximately November 2008, that he was a partner of Dalton when he was not. MDS at 6-7; Stipulation at 1. He knew or should have known this was false or misleading no later than December 2007. MDS at 6; Stipulation at 1. Young now denies making this misrepresentation. Ex. A at 1 ("I **did not** tell potential investors that I was a partner." (emphasis in original)). Investors David Thistle, Black, and Petersen also deny it, however, the Division does not contend that Black or Petersen were among the seven investors to whom Young made this misrepresentation. Exs. B, C, E; MDS at 7. J.J. Johnson, an investor who may or may not be Scott Johnson, one of the seven to whom Young stipulated making this misrepresentation, attests that Young said he was "a 'partner' in the UCR/Dalton plan," but understood that to mean a "working" partner. Ex. D. To the extent that David Thistle and J.J. Johnson deny being told this misrepresentation, I reject their affidavits as inconsistent with the stipulated facts.

Young told seven investors, beginning in approximately September 2008, that Dalton's access to the investment program was based upon special access to investments given to former military members without any evidence that such a program existed. MDS at 6-7; Stipulation at 1. He knew or should have known this was false or misleading no later than December 2007. MDS at 6; Stipulation at 1.

These specific misrepresentations were critical in convincing potential investors to invest in UCR, and were therefore material. OIP at 11; Stipulation at 1. The representations that Young was a partner and had invested both his money and his family's money gave investors confidence that Young truly understood UCR's business and believed strongly in its ability to earn high profits. OIP at 11; Stipulation at 1. The representation about the long history of UCR gave

investors confidence in the security and performance of the investment over a long period of time. OIP at 11; Stipulation at 1. Finally, the representation about Dalton's access as a former military member provided investors with a potential explanation about why Dalton was able to earn such high returns. OIP at 11; Stipulation at 1.

III. Conclusions of Law

Young has stipulated that he willfully violated Sections 5(a), 5(c), and 17(a) of the Securities Act, Sections 10(b) and 15(a) of the Exchange Act, and Exchange Act Rule 10b-5. OIP at 12; Stipulation at 1. Accordingly, I find that Young violated Sections 5(a), 5(c), and 17(a) of the Securities Act, Sections 10(b) and 15(a) of the Exchange Act, and Exchange Act Rule 10b-5.

IV. Sanctions

The Division requests that I: (1) order Young to cease and desist from committing or causing violations of, and any future violations of, Sections 5 and 17(a) of the Securities Act and Sections 10(b) and 15(a) of the Exchange Act, and Rule 10b-5 thereunder; (2) permanently bar Young, directly and collaterally, from the securities industry pursuant to Section 15(b) of the Exchange Act, Section 203(f) of the Advisers Act, and/or Section 9(b) of the Investment Company Act; (3) order Young to pay $400,000 in disgorgement plus prejudgment interest of $30,972.16, calculated from the last possible date of violation alleged in the OIP (December 31, 2010) through May 1, 2013, pursuant to Section 8A of the Securities Act, Section 21C of the Exchange Act, Section 203(k) of the Advisers Act, and/or Section 9(e) of the Investment Company Act; and (4) impose civil penalties on Young of $130,000 pursuant to Section 8A of the Securities Act, Section 21B of the Exchange Act, Section 203(i) of the Advisers Act, and/or Section 9(d) of the Investment Company Act. Motion at 8.

When considering whether an administrative sanction serves the public interest, the Commission considers the factors identified in Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979), aff'd on other grounds, 450 U.S. 91 (1981): the egregiousness of the respondent's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the respondent's assurances against future violations, the respondent's recognition of the wrongful nature of his or her conduct, and the likelihood that the respondent's occupation will present opportunities for future violations (Steadman factors). Gary M. Kornman, Advisers Act Release No. 2840 (Feb. 13, 2009), 95 SEC Docket 14246, 14255, pet. denied, 592 F.3d 173 (D.C. Cir. 2010). The Commission's inquiry into the appropriate sanction to protect the public interest is a flexible one, and no one factor is dispositive. Id.

Young argues that his misconduct was "an isolated incident and not part of [a] pattern." Oppo. at 5. This is clearly wrong. He made at least four different misrepresentations to twenty different investors over almost a two-year period, which caused those investors to put $2.5 million into two different Ponzi schemes. He earned at least $400,000 for his efforts. Young's misconduct was egregious and recurrent.

Young argues that his false and misleading statements were "the result of negligence, and . . . do not even rise to the level of reckless scienter." Oppo. at 2, 4. This argument is conclusively refuted by the facts to which Young has stipulated. He stipulated to the fact that he knew that his misrepresentations were false – not that he was negligent or reckless as to their truth or falsity, but that he knew. He cannot now walk that stipulation back, even with sworn affidavits. Knowingly making false statements to investors to convince them to invest, that is, lying and cheating, demonstrates a high degree of scienter.

I am satisfied by Young's assurances against future violations. He does not contest the imposition of "a ban from the securities industry," and asserts, persuasively, that he has "never been involved before and [he] will never be involved with it again." Ex. A at 2. Also, his occupation, which appears to be that of a traveling salesman, presents no opportunities for future violations. Id.

However, I am greatly concerned by his lack of recognition that his conduct was wrongful. His response to the Motion is replete with denials and rejections of the very facts to which he previously stipulated. For instance, his affidavit emphatically denies that he told potential investors that he was a partner in UCR. Ex. A at 1 ("I **did not** tell potential investors that I was a partner."). His affidavit also states that he does not recall "representing that I was invested at that time." Id. Yet he stipulated to the truth of both of these facts, and of the many other facts that support a severe sanction. He essentially blames everything on Dalton, who "tricked [him] in addition to misrepresenting things to the other victims." Ex. A at 2. It is laudable that Young concedes liability in a technical sense, and does not contest an associational bar and cease and desist order; it is most definitely not laudable that he cannot admit that he lied and cheated, and was compensated handsomely for it.

Although two of the Steadman factors weigh in favor of a lighter sanction, they are greatly outweighed by the egregiousness, recurrence, and high degree of scienter Young demonstrated. I place particular weight on Young's attempt to backpedal on his own culpability. Normally a concession of liability would weigh heavily in his favor, but Young has managed to completely nullify it. I have considered Young's medical condition, as demonstrated by his affidavit and his March 2007 operative reports, but it appears that he has regained sufficient health to work and to care for his disabled son and teenaged grandson. Ex. A at 2; Ex. F. Under the totality of the circumstances, a severe sanction is appropriate.

A. Cease and Desist Order

Section 21C of the Exchange Act, among other statutes, provides that the Commission may order a person found to be violating or to have violated a provision of the Exchange Act to cease and desist from such violations. 15 U.S.C. § 78u-3. While some likelihood of future violation must be present, the required showing is "significantly less than that required for an injunction." KPMG Peat Marwick LLP, 54 S.E.C. 1135, 1183-91 (2001). Indeed, absent evidence to the contrary, a single past violation ordinarily suffices to establish a risk of future violations. Id. at 1191. In evaluating the propriety of a cease and desist order, the Commission considers the Steadman factors, as well as the recency of the violation, the resulting harm to investors in the marketplace, and the effect of other sanctions. Id. at 1192.

As noted, the Steadman factors weigh in favor of a heavy sanction. Young's unlawful conduct continued until relatively recently and put a significant amount of investor funds at risk. Although the other sanctions are serious, a cease and desist order is warranted under the totality of the circumstances, particularly because Young does not contest it.

B. Associational Bar

Section 15(b)(6) of the Exchange Act, among other statutes, authorizes the Commission to bar a person from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, and NRSRO, if the person has willfully violated any provision of the Exchange Act and it is in the public interest. 15 U.S.C. § 78o(b)(6)(A). Young clearly has no business associating with the securities industry in any capacity, and does not even contest an associational bar, and will be permanently barred from associating with any broker or dealer. Additionally, the Commission has held that the requested collateral bar is not impermissibly retroactive, and it will be imposed as well. John W. Lawton, Advisers Act Release No. 3513 (Dec. 13, 2012), 105 SEC Docket 61722, 61737.

C. Disgorgement and Prejudgment Interest

Disgorgement pursuant to Section 21B of the Exchange Act, among other statutes, is an equitable remedy that requires a violator to give up wrongfully obtained profits causally related to the proven wrongdoing. See SEC v. First City Fin. Corp., 890 F.2d 1215, 1230-32 (D.C. Cir. 1989). It returns the violator to where he or she would have been absent the misconduct and deters others from violating the securities laws. Id.; see also Zacharias v. SEC, 569 F.3d 458, 471-73 (D.C. Cir. 2009). "Disgorgement need only be a reasonable approximation of the profits causally connected to the violation." Guy P. Riordan, Securities Act Release No. 9085 (Dec. 11, 2009), 97 SEC Docket 23445, 23480 (quoting First City Fin. Corp., Ltd., 890 F.2d at 1231), pet. denied, 627 F.3d 1230 (D.C. Cir. 2010). Once the Division shows that its disgorgement figure reasonably approximates the amount of unjust enrichment, the burden of going forward shifts to the respondent to demonstrate that the Division's disgorgement figure is not a reasonable approximation. Id. Any risk of uncertainty as to the disgorgement amount falls onto the wrongdoer whose illegal conduct created the uncertainty. See 890 F.2d at 1232.

Young stipulated that he received at least $400,000 in net commissions, that is, after subtracting commissions paid to downstream sales agents. He now asserts that he only received about $316,000 in commissions, but does not contest the amount of requested prejudgment interest, $30,972.16. Oppo. at 5-6; Ex. A at 1. I find that Young has failed to meet his burden of showing that the Division's request is not a reasonable approximation of the amount of his unjust enrichment. Accordingly, Young will be ordered to pay disgorgement and prejudgment interest of $430,972.16.

D. Civil Penalty

Under Section 21B(a)(2)(A) of the Exchange Act, among other statutes, the Commission may impose a civil penalty if it is in the public interest and if respondent "has violated any provision" of the Exchange Act. 15 U.S.C. § 78u-2(a)(2)(A). This section authorizes the

imposition of civil penalties where, as here, the proceeding was instituted pursuant to Exchange Act Section 21C. 15 U.S.C. § 78u-2(a)(2).[2]

A three-tier system establishes the maximum civil money penalty that may be imposed for each violation found. 15 U.S.C. § 78u-2(b). In the present case, where Young's misconduct involved fraud, deceit, 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 resulted in substantial pecuniary gain," the Commission may impose a "third-tier" penalty of up to $130,000 for each act or omission prior to March 3, 2009, and $150,000 for each act or omission thereafter. Id.; 17 C.F.R. § 201.1004, .1005 (adjusting the statutory amounts for inflation). In determining whether a penalty is in the public interest, the Commission may consider: 1) whether the violation involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; 2) the resulting harm to other persons; 3) any unjust enrichment and prior restitution; 4) the respondent's prior regulatory record; 5) the need to deter the respondent and other persons; and 6) such other matters as justice may require. 15 U.S.C. § 78u-2(c). "Not all factors may be relevant in a given case, and the factors need not all carry equal weight." Robert G. Weeks, Initial Decision Release No. 199 (Feb. 4, 2002), 76 SEC Docket 2609, 2671.

Young's most serious violations involved using manipulative or deceptive devices or contrivances in connection with the purchase or sale of securities, in violation of Exchange Act Section 10(b). 15 U.S.C. § 78j(b). As a matter of statutory interpretation, the unit of violation is either the individual purchase or sale or the individual deception. The record demonstrates at least twenty-four separate false statements made by Young to investors. MDS at 7. However, the Division seeks a one-time civil penalty rather than twenty-four separate penalties. Because imposing a single civil penalty prejudices Young less than imposing twenty-four, I find that there was one violation for purposes of the civil penalty calculation. Because Young acted with scienter and both created a significant risk of substantial losses to other persons and generated substantial pecuniary gain for himself, the violation falls into the third tier. Young shall, therefore, be assessed a single third-tier penalty. Although his violative conduct continued after March 3, 2009, a civil penalty calculated using pre-2009 rates prejudices Young less than one calculated using 2009 rates, and therefore pre-2009 rates shall apply.

Although the tier determines the maximum penalty, "each case has its own particular facts and circumstances which determine the appropriate penalty to be imposed" within the tier. SEC v. Murray, No. OS-CV-4643 (MKB), 2013 WL 839840, at *3 (E.D.N.Y. Mar. 6, 2013) (quotation omitted); see also SEC v. Kern, 425 F.3d 143, 153 (2d Cir. 2005). In addition to the statutory factors cited above, courts consider:

> (1) the egregiousness of the violations at issue, (2) defendants' scienter, (3) the repeated nature of the violations, (4) defendants' failure to admit to their

[2] Although Young has not raised the issue of retroactivity, I note that a civil penalty is appropriate even under the version of Exchange Act Section 21B in effect at the time of his violations, because his misconduct was willful and this proceeding was instituted under Exchange Act Section 15(b). 15 U.S.C. § 78u-2(a)(1) (2006).

> wrongdoing; (5) whether defendants' conduct created substantial losses or the risk of substantial losses to other persons; (6) defendants' lack of cooperation and honesty with authorities, if any; and (7) whether the penalty that would otherwise be appropriate should be reduced due to defendants' demonstrated current and future financial condition.

SEC v. Lybrand, 281 F. Supp. 2d 726, 730 (S.D.N.Y. 2003), aff'd on other grounds, 425 F.3d 143 (2d Cir. 2005) (Lybrand factors).

As noted, the Steadman factors weigh in favor of a heavy sanction. Young acted deceitfully and received substantial unjust enrichment with no prior restitution, and the need to deter Young and others is considerable. On the other hand, Young has no prior regulatory record and apparently has been cooperative and honest with authorities. Although there is technically no proven harm to investors, his misconduct created at least a risk of the total loss of $2.5 million in investor funds in two Ponzi schemes. I address his financial condition below.

Overall, the mitigating factors are sufficient to warrant a civil penalty less than the maximum authorized, but above the maximum second-tier penalty. I place particular weight on the Steadman factors, the risk of substantial losses to other persons, and Young's unjust enrichment. Under the totality of circumstances, I find that a civil penalty of $100,000 is justified.

E. Inability to Pay

Young asserts that he completed a form entitled "Summary Financial Disclosure Statement" (Statement) in support of his claim that he lacks the ability to pay the monetary sanction requested by the Division. Ex. A at 2. Because the Statement is not of record, on September 26, 2013 I ordered Young to file a Form D-A or substantially similar information concerning his ability to pay, and to do so no later than October 1, 2013. David F. Bandimere, Administrative Proceedings Rulings Release No. 920 (Sep. 26, 2013). Young failed to do so, and I accordingly find that he has not met his burden of proving an inability to pay the monetary sanction in this proceeding.

V. Fair Fund

Pursuant to Rule 1100 of the Commission's Rules of Practice, 17 C.F.R. § 201.1100, I will require that the amount of disgorgement, prejudgment interest, and civil money penalty be used to create a Fair Fund for the benefit of investors in IV Capital and UCR securities.

VI. Order

IT IS ORDERED that, pursuant to Section 21C of the Securities Exchange Act of 1934, Respondent John O. Young shall CEASE AND DESIST from committing or causing any violations or future violations of Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933, Sections 10(b) and 15(a) of the Securities Exchange Act of 1934, and Rule 10b-5 of the Securities Exchange Act of 1934.

IT IS FURTHER ORDERED that, pursuant to Section 15(b) of the Securities Exchange Act of 1934, Respondent John O. Young is permanently BARRED from association with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.

IT IS FURTHER ORDERED that, pursuant to Section 21B of the Securities Exchange Act of 1934, Respondent John O. Young shall DISGORGE $430,972.16, which includes prejudgment interest.

IT IS FURTHER ORDERED that, pursuant to Section 21B of the Securities Exchange Act of 1934, Respondent John O. Young shall pay a CIVIL MONETARY PENALTY in the amount of $100,000.

IT IS FURTHER ORDERED, pursuant to Rule 1100 of the Commission's Rules of Practice, the disgorgement, prejudgment interest, and civil penalties shall be used to create a FAIR FUND for the benefit of harmed investors, to be set forth in the Division of Enforcement's plan of distribution. See 17 C.F.R. §§ 201.1100, .1101.

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

Payment of penalties and disgorgement plus prejudgment interest shall be made no later than the first day following the day this Initial Decision becomes final. Payment shall be made by certified check, United States postal money order, bank cashier's check, wire transfer, or bank money order, payable to the Securities and Exchange Commission. The payment, and a cover letter identifying Respondent and Administrative Proceeding No. 3-15124, shall be delivered to: Enterprises Services Center, Accounts Receivable Branch, HQ Bldg., Room 181, AMZ-341, 6500 South MacArthur Blvd., Oklahoma City, OK 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.

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Cameron Elliot
Administrative Law Judge