

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

In the Matter of

THRASOS TOMMY PETROU

INITIAL DECISION

August 19, 2015

APPEARANCES: Richard G. Primoff, Karen M. Lee, and Leslie Kazon for the Division of Enforcement, Securities and Exchange Commission

Elliot H. Lutzker, Charles Capetanakis, and Andrew K. Rafalaf, Davidoff Hutcher & Citron LLP, for Respondent Thrasos Tommy Petrou

BEFORE: Cameron Elliot, Administrative Law Judge

Summary

This Initial Decision finds that it is in the public interest for Respondent Thrasos Tommy Petrou to pay a total of \$15,000 in disgorgement.

Procedural Background

On October 27, 2014, the Securities and Exchange Commission (Commission) issued an Order Instituting Administrative and Cease-and-Desist Proceedings (OIP) against Petrou, pursuant to Section 21C of the Securities Exchange Act of 1934 (Exchange Act) and Section 203(f) of the Investment Advisers Act of 1940 (Advisers Act). The OIP alleges that between 2009 and 2012, Petrou violated Rule 105 of Regulation M under the Exchange Act (Rule 105). OIP at 2. Rule 105 prohibits buying an equity security that is the subject of a covered public offering from an underwriter or broker or dealer participating in the offering, after having sold short the same security during the restricted period. *Id.* at 2-3 (citing 17 C.F.R. § 242.105).

Petrou submitted an Offer of Settlement, which the Commission accepted. OIP at 1. Pursuant to the settlement, the Commission censured Petrou and ordered him to cease and desist from committing or causing any violations and future violations of Rule 105. *Id.* at 5. Petrou agreed to additional proceedings to determine what, if any, disgorgement, prejudgment interest, and civil penalties are in the public interest. *Id.* He also agreed that, solely for purposes of such additional proceedings, the allegations of the OIP “shall be accepted as and deemed true by the hearing officer,” and that the remaining issues may be determined “on the basis of affidavits,

declarations, excerpts of sworn deposition or investigative testimony, and documentary evidence.” *Id.* The OIP included a chart of twenty-eight violative trades. *Id.* at Appendix (Appendix).

On February 6, 2015, the Division filed its Motion for Summary Division (Div. Mot.), to which were attached two declarations and six exhibits. Petrou timely filed an Opposition to the Division’s Motion for Summary Disposition, and the Division timely filed a Reply. On February 9, 2015, Petrou filed his Motion for Summary Division, to which were attached a declaration and two exhibits, an Affidavit of Thrastos Tommy Petrou, and a collection of Petrou’s financial records. The Division timely filed an Opposition to Petrou’s Motion for Summary Disposition, and Petrou timely filed a Reply.

I initially found that not all issues of material fact had been resolved by the parties’ motions, including the proper amount of disgorgement. *See Thrastos Tommy Petrou*, Admin. Proc. Rulings Release No. 2446, 2015 SEC LEXIS 1027 (Mar. 20, 2015). The Division thereafter filed a supplemental brief, to which was attached declarations and exhibits in support of the Division’s calculation of disgorgement, and Petrou filed a supplemental brief, to which was attached a second Affidavit of Thrastos Tommy Petrou and additional financial records. After reviewing the parties’ supplemental filings, I determined that genuine issues of material fact remained as to Petrou’s state of mind and his inability to pay a monetary sanction. *See Thrastos Tommy Petrou*, Admin. Proc. Rulings Release No. 2596, 2015 SEC LEXIS 1597 (Apr. 27, 2015). The parties then filed a stipulation (Stipulation) regarding the proper amount of disgorgement.

The hearing was held on June 8, 2015, in New York City. The admitted exhibits are listed in the Record Index issued by the Office of the Secretary. The parties filed post-hearing briefs on July 10 and 13, 2015.¹

Legal Standard

The findings and conclusions in this Initial Decision are based on the record, including facts officially noticed pursuant to Rule 323 of the Commission’s Rules of Practice (Rules), and the allegations of the OIP are taken as true. *See* OIP at 5; 17 C.F.R. § 201.323. The parties’ filings and all documents and exhibits of record have been fully reviewed and carefully considered. Preponderance of the evidence has been applied as the standard of proof. *See Steadman v. SEC*, 450 U.S. 91, 101-04 (1981). All arguments and proposed findings and conclusions that are inconsistent with this Initial Decision have been considered and rejected.

¹ Citations to the hearing transcript are noted as “Tr. ___.” Citations to exhibits offered by the Division and Respondent are noted as “Div. Ex. ___” and “Resp. Ex. ___,” respectively. The Division’s and Respondent’s post-hearing briefs are noted as “Div. Br. ___” and “Resp. Br. ___,” respectively.

Findings of Fact and Conclusions of Law

A. Background

1. Participants

Petrou is forty-one years old and resides in Brooklyn, New York. OIP at 2; Div. Ex. 6 at 1. He has never been associated with a registered broker-dealer or registered investment adviser, and he holds no securities licenses. OIP at 2; Tr. 60; Div. Ex. 6 at 1. He was employed part-time as a securities trader for Lighthouse Capital, an unregistered entity, until April 1, 2015. OIP at 2; Tr. 70-73; Div. Ex. 6 at 2-3. He is currently unemployed. Tr. 73-76; Resp. Br. at 12.

Worldwide Capital, Inc. (Worldwide), was a Delaware corporation with its principal place of business in Nassau County, New York. OIP at 2. Worldwide was the alter ego of Jeffrey W. Lynn (Lynn), who formed it for the purpose of trading his own capital. *Id.*; Div. Ex. 6 at 2. Worldwide has never been registered with the Commission in any capacity. OIP at 2. Petrou met Lynn through Carmela Brocco, a Worldwide employee. Tr. 61; Div. Ex. 6 at 1. Petrou was employed at Worldwide from approximately April 2008 until approximately January 2012. OIP at 2; Div. Ex. 6 at 1. When he was first hired, Petrou performed administrative tasks and cold called brokers using a script provided by Lynn. Tr. 61-62; Div. Ex. 2 at 37-38; Div. Ex. 6 at 1-2. He was eventually promoted and permitted to trade using Worldwide's funds. OIP at 2; Tr. 62; Div. Ex. 6 at 1-2. By virtue of his trading for Worldwide, Petrou acted as an investment adviser to Worldwide and Lynn. OIP at 4. Prior to working at Worldwide, Petrou had no securities training or experience in the securities industry. Tr. 38; Div. Ex. 6 at 1. Worldwide and Lynn were the respondents in a settled administrative proceeding, in which they were ordered to cease and desist from committing or causing any violations and future violations of Rule 105, and to pay civil penalties, disgorgement, and prejudgment interest totaling over \$7 million. *Worldwide Capital, Inc.*, Exchange Act Release No. 71653, 2014 WL 847042 (Mar. 5, 2014)²; OIP at 2.

War Chest Capital Partners LLC (War Chest) was a Delaware limited liability company with its principal place of business in New York, New York. OIP at 3. War Chest has never been registered with the Commission in any capacity, but provided investment advisory services to one unregistered domestic investment fund with total assets under management of approximately \$8 million (War Chest Fund), by managing the War Chest Fund's portfolio. *Id.* at 3-4. Petrou was employed at War Chest, where he traded securities, from approximately September 2010 until approximately February 2013. *Id.* at 2; Div. Ex. 6 at 1. By virtue of his trading at War Chest, for the War Chest Fund, Petrou acted as an investment adviser to the War Chest Fund and was an associated person of War Chest, which was an investment adviser to the War Chest Fund. OIP at 4. War Chest was the respondent in a settled administrative proceeding, in which it was ordered to cease and desist from committing or causing any violations and future violations of Rule 105, and to pay civil penalties, disgorgement, and prejudgment interest totaling approximately \$328,000. *War Chest Capital Partners LLC*, Exchange Act Release No. 70411, 2013 WL 5203268 (Sept. 16, 2013); OIP at 3.

² I have taken official notice of the Commission orders cited herein. *See* 17 C.F.R. § 201.323.

2. Business Models and Trading Strategies

Under the terms of Petrou's arrangement with Worldwide, Worldwide funded Petrou's trading, and the two shared equally in the profits and were equally liable for the losses generated by his trading. OIP at 3; Tr. 28-29; Div. Ex. 6 at 2. Petrou received his share of the profits each month, and if there was a loss, it carried forward to offset future gains. Div. Ex. 6 at 2. Petrou received no other compensation or benefits from Worldwide. *Id.* Others traded at Worldwide under similar arrangements. *See* OIP at 3; Div. Ex. 6 at 2.

Petrou owns three entities, TTP Capital Inc. (TTP), CHF Properties Inc., and Kyrton Equity Holdings, Inc. Tr. 29; Div. Ex. 6 at 2. Petrou's share of trading profits was paid either to Petrou personally, or to one of these entities, and Petrou also used TTP to purchase an apartment and register a car. Div. Ex. 6 at 2. Petrou traded at Worldwide using Worldwide funds, but used brokerage accounts in his entities' names to purchase shares in covered public offerings. OIP at 3; Tr. 29-31, 34; Div. Ex. 6 at 2. Many of Petrou's sales of equity securities, including short sales, were executed through an account in Worldwide's name at one of several broker-dealers. OIP at 3; Tr. 34-35. However, all of Petrou's trades for Worldwide were executed, cleared, and settled in a Worldwide master account at Worldwide's prime broker. OIP at 4.

Worldwide's principal trading strategy, which Petrou also employed, was to obtain the maximum allocations possible for short-term trading in initial public offerings and follow-on and secondary offerings (collectively, deal stocks). OIP at 3; Tr. 32-33. According to Petrou, Lynn actively encouraged Petrou and other traders at Worldwide to sell short deal stocks in a manner that, as Petrou eventually learned, violated Rule 105. Tr. 63; Div. Ex. 6 at 2.

In 2011, after Petrou went to work for War Chest, he "began to wind down the frequency" of his trades for Worldwide. Div. Ex. 6 at 2. He executed a trade for Worldwide on January 12, 2012, but ceased trading for Worldwide sometime during that month. OIP at 2-3, Appendix; Div. Ex. 6 at 1. Though Petrou had incurred losses as a result of his trading at the time he left Worldwide in January 2012, Petrou did not pay back this money to Lynn, explaining that Lynn "just thought it was best if we just stopped doing business together." Div. Ex. 2 at 65-66.

The War Chest Fund funded Petrou's trading in a manner similar to Worldwide's model, with the two sharing equally in profits and losses. OIP at 4. Others traded at War Chest, as well. *Id.* One such person created, owned, and controlled an entity through which War Chest retained Petrou. *Id.* One of War Chest's trading strategies, which Petrou also employed, was to buy and sell short publicly traded equity and debt securities. *Id.* Petrou sold short securities in covered offerings through one master account in the name of the War Chest Fund at one of several broker-dealers. *Id.* As he did at Worldwide, Petrou opened multiple accounts at large broker-dealers in the names of multiple corporate entities he created, owned, and controlled, and in the names of several of his relatives. *Id.* Petrou purchased shares in covered offerings through these accounts. *Id.*; Tr. 63.

3. Violative Trades

Between December 2009 and January 12, 2012, Petrou willfully violated Rule 105 twenty-eight times, in connection with twenty covered offerings, by purchasing offering shares from an underwriter or broker or dealer participating in a covered offering, after having sold short the same security during the restricted period. OIP at 2, 4-5, Appendix. The violative trades are summarized in the Appendix.

Petrou's largest violative trade, by a wide margin, was his first: a short sale of 868,300 shares of Citigroup, Inc. (Citigroup), at an average price of \$3.56 per share, followed by a purchase of 2,500,000 shares of Citigroup at an offering price of \$3.15 per share. Appendix. The Citigroup trade resulted in a profit of \$356,003, as measured by the difference between the average short position price and the offering price, or \$0.41, multiplied by the number of matching shares, or 868,300. Div. Ex. 5 at 4 & Ex. A; *see* Div. Ex. 6 at 2. This trade also resulted in the purchase of the remaining 1,631,700 offered shares (the "overage") at a \$0.03 per share discount to the prevailing, volume weighted average price (VWAP). Div. Ex. 5 at 3-4 & Ex. A. The Citigroup trade accounted for approximately 80% of Petrou's trading profits on the violative trades. Div. Ex. 5 at Ex. A; Div. Ex. 6 at 2.

In total, Petrou's violative trading resulted in gains on matching short sales totaling \$451,369.31, out of which Petrou was paid 50%, or \$225,684.66. Div. Ex. 5 at Ex. A. Nine of Petrou's violative trades involved overages, and four of these involved offering prices which were less than both the VWAP and Petrou's average sales price. *Id.*; Div. Ex. 7 at 2 & Ex. 1. As to these four trades, the sum of the difference between the offering price and the VWAP for each trade, multiplied by the overage in each trade, was \$58,342, and the sum of the difference between the offering price and Petrou's average actual sales price was \$284,039. Div. Ex. 5 at Ex. A; Div. Ex. 7 at 2 & Ex. 1. However, the parties have stipulated that "the appropriate measure of Respondent's ill-gotten gains" uses the VWAP rather than actual sales prices for overage trades. Stipulation at 1. Accordingly, the stipulated disgorgement amount is \$254,855.66. *Id.* The parties agree that prejudgment interest on that amount, through June 30, 2015, is \$45,971.32. Div. Br. at 7 & n.6.

B. Disputed Issues

The parties principally dispute two issues: whether Petrou acted deliberately or recklessly when violating Rule 105; and to what degree Petrou is unable to pay a monetary sanction. *See* Div. Br. at 5-9; Resp. Br. at 6-7.

1. Petrou's Actual Knowledge of his Rule 105 Violations

The Division first took Petrou's investigative testimony on October 8, 2013. Div. Ex. 2. Petrou testified that Howard Bloom (Bloom) was the "owner" of War Chest, and that Bloom told him that short selling deal stock was "not part of their practice," because "[t]hey didn't deem it proper." *Id.* at 33-35, 105-06. Petrou understood that he could not short sell deal stock at War Chest as soon as he started working there, that is, as of September 2010, although he later testified that it was "[p]robably" November or December 2010 because that is when he started

opening accounts and trading at War Chest. *Id.* at 34, 109-10. By contrast, he understood that at Worldwide, he could short sell before an offering, but “just couldn’t cover with the allocation shares.” *Id.* at 35. Petrou first testified that Lynn explained this to him when he started at Worldwide, in April 2008, but subsequently clarified that the conversation did not take place until later that summer, when he had more accounts open at Worldwide from which to buy deal stock. *Id.* at 35-36, 47, 51-53.

Petrou testified about a particular transaction which he discussed with Bloom in which Petrou received stock at 2:00 p.m. for a deal which had not been priced yet. Div. Ex. 2 at 107. According to Petrou, Bloom told him that “the interpretation of that law, it wasn’t clear on whether or not I could sell it, and he thought I could sell it. And he was wrong.” *Id.* Petrou was then asked if it had ever occurred to him that “Worldwide’s policy might not comply with the law in light of the more conservative War Chest policy?” *Id.* at 107-08. Petrou responded: “When I moved over to War Chest and I did that with that stock, that’s when I realized that it was – but I had already moved from Worldwide at that time, I think.” *Id.* at 108. He then testified that he could not remember when that incident occurred. *Id.* A few minutes later, he testified that, as a result of his concern, he spoke to Lynn because he “really didn’t want to be [at Worldwide] anymore,” suggesting that he “realized” there might be a problem near the time he left Worldwide, that is, near December 2011. *Id.* at 108-11. He also explained that he wanted to leave Worldwide because Lynn did not have enough capital for Petrou to trade with and be able to make back his losses. *Id.* at 110-11.

The Division took Petrou’s investigative testimony again on September 18, 2014. Div. Ex. 3. Petrou testified that “[o]n several occasions,” including “[f]rom the beginning,” Lynn told him that Petrou could “short in advance of an offering,” and that Lynn’s lawyer told Lynn that doing so was legal “as long as there were two separate accounts and as long as we didn’t – as long as we didn’t use the secondary offering stock to cover the short.” *Id.* at 19-21. Petrou remembered that he “looked into it and . . . that it did say that as long as it’s two separate accounts, you can do that, somewhere in that Rule 105.” *Id.* at 20. Petrou remembered two separate conversations with Lynn, and that during the second conversation, Lynn “reassured” Petrou that Lynn had spoken to counsel and that “it was legal.” *Id.* at 21. Petrou could not remember precisely when these conversations took place or what prompted him to seek reassurance from Lynn about the trading practice, suggesting that he might have read an article on the subject. *Id.*

Petrou then testified that War Chest did not want Petrou to “short[] any deals,” but that Bloom told him that if a deal “was already priced,” Petrou could sell if the shares were already in his account, that is, if it was not a short sale at all. Div. Ex. 3 at 22-23, 27. Petrou acted on this advice on several occasions, selling deal stock once his broker told him the shares were in his account. *Id.* at 26-27. The reason Bloom did not want short selling in advance of “getting the stock” was “Rule 105,” and Petrou understood that if he had sold short in that way, “I would have gotten fired.” *Id.* at 28. Petrou initially testified that this conversation took place between September 2010 and February 2011, clarifying that it occurred sometime after he first started at War Chest in September 2010 because he “didn’t really do much business with War Chest until the new year.” *Id.* at 22-23. He later testified that because he “left Worldwide Capital after that

conversation,” the conversation must have occurred between December 2011 and February 2012, and that, ultimately, he “can’t remember exactly” when it occurred. *Id.* at 28-32.

Petrou states in his February 2015 affidavit that “[d]uring most of my tenure at Worldwide, I was not aware that short selling in connection with a public offering in violation of Rule 105 of Regulation M was impermissible under the federal securities laws.” Div. Ex. 6 at 2. He states that Lynn told him “[o]n the second or third occasion I asked Mr. Lynn about this issue” that Lynn’s attorney said that the practice was legal, and further states that the attorney never gave Petrou the advice personally. *Id.* He states that Bloom told him about the “complete prohibition on short selling immediately in advance of a registered public offering under Rule 105,” but that he “do[es] not have a clear recollection of when the conversation actually took place.” *Id.* Finally, he states that “[a]t no time after I learned about the prohibition of Rule 105 from Mr. Bloom did I believe that I was violating Rule 105 at either Worldwide or War Chest.” *Id.*

At the hearing, Petrou was asked again about the timing and content of his conversations with Lynn and Bloom. He testified that he asked Lynn approximately three different times whether his trading practice at Worldwide violated securities rules. Tr. 36. He could not recall at what point between 2008 and 2012 these conversations occurred. Tr. 36-37. He repeated many of the details contained in his February 2015 affidavit, including his recollection that on the second occasion on which he asked Lynn about the trading practice, Lynn assured him that his lawyer deemed the practice “perfectly legal.” Tr. 37. Petrou was insistent that it was he who approached Lynn with questions about the practice’s legality, but could not recall what prompted him to do so. Tr. 40-41, 63. According to Petrou, Lynn never told him it was illegal to purchase securities in a follow on or secondary public offering, having sold short the same security during the restricted period. Tr. 62-63.

Petrou testified at the hearing that when he started working at War Chest, Bloom told him that it was against War Chest’s policy to short sell deal stocks because Bloom believed he would lose money doing it. Tr. 64. Petrou estimated that this conversation happened in approximately November 2010, after he had been with War Chest for a couple of months and had some accounts open. Tr. 67-68. Petrou testified that Bloom did eventually tell him that the trading practice was not just against War Chest’s policy but also illegal; he believed this conversation occurred in January or February 2012. Tr. 65. While he clarified that he did not remember exactly when Bloom told him about Rule 105’s prohibition on the trading practice, he believed this time frame in early 2012 was correct because he recalled leaving Worldwide shortly thereafter. Tr. 42, 65-66. He explained that “[a]fter I spoke to Howard Bloom about this Rule 105, I decided that I didn’t want to be part of [W]orldwide anymore because that’s what they were still doing.” Tr. 66.

In its motion for summary disposition, the Division contends that “there can be no dispute that after February 2011 (at the latest), [Petrou] violated Rule 105 with full knowledge that his conduct was unlawful, or at a minimum with reckless disregard for the regulatory requirements of Rule 105.” Div. Mot. at 7. In its post-hearing brief, the Division argues that Petrou acted with reckless disregard of Rule 105’s requirements when committing at least

sixteen of the violative trades, those which occurred after Petrou began working for War Chest in early 2011. Div. Br. at 5-6.

Petrou's post-hearing brief emphasizes his prior lack of securities experience and his dependence on his superiors at Worldwide and War Chest for training and guidance. *See* Resp. Br. at 2-4. Petrou maintains that he did not learn that shorting deal stocks was illegal until January or February of 2012, and that he did not act with deliberate or reckless disregard of Rule 105 with respect to any of the violative trades since all of the trades occurred before this time. *Id.* at 6.

Petrou has testified three times – in October 2013, in September 2014, and at the June 2015 hearing – that he could not remember exactly when Bloom told him that short selling in advance of an offering was illegal. Div. Ex. 2 at 107-08; Div. Ex. 3 at 30; Tr. 65. This is consistent with Petrou's affidavit, in which he states that he "do[es] not have a clear recollection of when the conversation actually took place." Div. Ex. 6 at 2. Though he lacks a memory of the precise date of the conversation with Bloom, Petrou has also testified consistently about when it occurred relative to his departure from Worldwide – that is, that he left Worldwide shortly thereafter. Div. Ex. 2 at 108-11; Div. Ex. 3 at 28-32; Tr. 65-66. Because Petrou left Worldwide in "approximately January 2012," and his last violative trade occurred on January 12, 2012, it is possible that the conversation with Bloom took place on or after January 13, 2012, and the Division has presented no evidence to the contrary. OIP at 2-3, Appendix; Div. Ex. 6 at 1. In particular, the Division did not call any other witnesses to refute Petrou's testimony, or offer in evidence any documents that refute Petrou's testimony. I therefore conclude that the Division has failed to show that Petrou committed any of the twenty-eight violative trades with actual knowledge of their illegality.

2. Petrou's Alleged Recklessness

The Division argues that even if Petrou was unaware until January 2012 that Worldwide's anti-shorting policy was motivated by Rule 105, Petrou still acted recklessly when making sixteen trades that violated War Chest's policy (eight at Worldwide and eight at War Chest) between March 29, 2011, and January 2012. Div. Br. at 5-6. But the relevant question is not simply whether Petrou was reckless in violating the policy. Instead, the question is whether his "misconduct involved . . . reckless disregard of a regulatory requirement." 15 U.S.C. §§ 78u-2(b)(2), 80b-3(i)(2)(B) (emphasis added). As noted above, the Division has presented no evidence to contradict Petrou's testimony that he was not told that War Chest's policy was related to Rule 105 prior to January 2012. It has also failed to explain why Petrou nonetheless should have known that the policy was motivated by a regulatory requirement, as opposed to a trading policy.

Petrou testified that until early 2012 he believed War Chest's anti-shorting policy was the result of financial considerations – Bloom's determination that War Chest would "lose money" shorting stocks obtained from IPOs, secondary offerings, and follow-on offerings. Tr. 64 ("As far as I remember [Bloom] told me that was against their policy, it was not his business model. He thought he would lose money doing it."). According to Petrou, his concerns about the

practice were assuaged by Lynn, who assured him that the practice was legal and had been approved by a securities attorney. Tr. 101-02; Div. Ex. 3 at 20-21.

Reckless conduct is “conduct which is ‘highly unreasonable’ and which represents ‘an extreme departure from the standards of ordinary care . . . to the extent that the danger was either known to the defendant or so obvious that the defendant must have been aware of it.’” *Rolf v. Blyth, Eastman Dillon & Co.*, 570 F.2d 38, 47 (2d Cir. 1978) (quoting *Sanders v. John Nuveen & Co.*, 554 F.2d 790, 793 (7th Cir. 1977)). The Division does not present any argument that it was “highly unreasonable” for Petrou to believe, until his conversation with Bloom in January or February 2012, that War Chest’s anti-shorting policy enshrined a business decision rather than a regulatory requirement. Petrou has a high school degree but did not graduate from college. Tr. 58-59. He has never held any securities industry licenses or taken any courses of study related to the securities industry. Tr. 60. His “training” at Worldwide consisted of cold calling brokers using a script prepared by Lynn. Tr. 61-62; Div. Ex. 2 at 37-38. Petrou learned everything he knows about trading securities from his more experienced colleagues and superiors at Worldwide and War Chest. Tr. 60. While a veteran, licensed trader might have questioned the reasoning behind the different trading practices at Worldwide and War Chest, the Division points to no evidence contradicting Petrou’s claim that he was simply unaware that a regulatory requirement was at issue. Accordingly, I find that the Division has failed to show that Petrou acted with deliberate or reckless disregard of a regulatory requirement.

3. Petrou’s Ability to Pay

Under Section 21B(d) of the Exchange Act and Section 203(i)(4) of the Advisers Act, in any proceeding in which the Commission may impose a civil penalty, a respondent may present evidence of his ability to pay the penalty. 15 U.S.C. §§ 78u-2(d), 80b-3(i)(4). The Commission may, in its discretion, consider such evidence in determining whether a penalty is in the public interest. *Id.* Such evidence may relate to the extent of the respondent’s ability to continue in business and the collectability of the penalty, taking into account any other claims of the United States or third parties upon the respondent’s assets and the amount of the respondent’s assets. *Id.* Pursuant to Rule 630(a) of the Commission’s Rules of Practice, the Commission also considers evidence of ability to pay as a factor in determining whether a respondent should be required to pay disgorgement and interest. 17 C.F.R. § 201.630(a). In *First Secs. Transfer Sys., Inc.*, 52 S.E.C. 392, 397 (1995), the Commission stated that it is:

[C]ognizant of the inadvisability of assessing penalties so heavy that the persons against whom they are assessed are unable to pay them. Such a situation results in the expenditure of agency resources in unsuccessful attempts to collect the penalties. Moreover, the imposition of a sanction that cannot be enforced may ultimately render the deterrent message intended to be communicated by the sanction less meaningful.

Petrou submitted hundreds of pages of financial documents in support of his contention that he is unable to pay disgorgement or a monetary sanction, and he testified at length about his assets and liabilities. *See* Tr. 78-131; Div. Exs. 6, 11; Resp. Exs. A-T, V-Z, AA-EE. The documents he submitted include: statements of financial condition for himself and his wife; his

life insurance policy account statement; his personal and business bank account balances; his recent credit card statements; his personal tax returns for 2012-2014³, and his wife's and business entities' tax returns for 2011-2014; and documentation regarding real estate investments made by him. *See id.*

Petrou also hired Peter Vasilakos (Vasilakos), a certified public accountant, to review his finances and prepare a general ledger sorting his income and expenses into such categories as sales and other deposits, personal expenses, travel expenses, office expenses, and mortgage expenses. Tr. 134, 147-50; Resp. Ex. R. The general ledger is nearly 400 pages long and covers transactions made between approximately June 2008 and December 2014. Resp. Ex. R. According to Vasilakos, Petrou spent "a lot of money" on travel, entertainment, and gambling prior to 2012. Tr. 157-58. However, the weight of the evidence indicates that he spent the money he earned at Worldwide and War Chest in ways that could not be considered dissipation. *See, e.g.*, Tr. 143-45, 154-61, 163; Resp. Ex. R. Vasilakos could not identify specific expenses tied to the \$254,855.66 earned by Petrou on the violative trades. Tr. 152-53. However, he testified that his review of Petrou's finances revealed that, relative to Petrou's liabilities, Petrou has limited cash and limited additional non-liquid assets. Tr. 137, 153, 168; *see* Resp. Ex. A; Resp. Br. at 14. Nor do I agree with the Division's assertion that the minor errors and inconsistencies in Petrou's business entities' tax returns taint the credibility of the rest of his evidence of inability to pay. *See* Div. Br. at 8. In sum, it is clear that Petrou does not currently have the ability to pay the substantial disgorgement, prejudgment interest, and civil penalties sought by the Division.

The evidence also suggests that it is unlikely that Petrou will have the ability to pay the monetary sanctions sought by the Division for the foreseeable future. He does not have a college degree or any education or formal training in securities, and at least some of his trading accounts have been closed by the associated brokerage firms. Tr. 76-77; Resp. Ex. D. Petrou's pessimism regarding his prospects of future employment trading securities, given his recent failures in the industry and the existence of the cease-and-desist order and censure already ordered against him, seems warranted. OIP at 5; Tr. 75; Resp. Br. at 12. A return to his previous endeavors working as a waiter, bartender, and fitness instructor does not seem likely to generate an income substantial enough to support the Division's proposed financial sanctions. Tr. 75; Resp. Br. at 12. Accordingly, I find that Petrou has demonstrated an inability to pay a significant monetary sanction and I have considered this fact in determining the amount of disgorgement, prejudgment interest, and civil penalties that are in the public interest. *See* 15 U.S.C. §§ 78u-2(d), 80b-3(i)(4); 17 C.F.R. § 201.630.

Sanctions

The Division seeks disgorgement of \$254,855.66 and prejudgment interest of \$45,971.32. Div. Br. at 7. The Division also seeks both first and second-tier civil penalties against Petrou totaling \$1,290,000 if I find he acted with scienter; in the alternative, the Division seeks only first-tier penalties totaling \$210,000. *Id.*

³ While the Division notes that Petrou did not submit tax returns for 2009 and 2010, I do not agree that this means that "the information Petrou has provided is incomplete." Div. Br. at 8.

A. Civil Penalties

Civil penalties are authorized in this proceeding by Exchange Act Section 21B(a)(1)(A) and Advisers Act Section 203(i)(1)(A)(i), because Petrou willfully violated an Exchange Act Rule. *See* 15 U.S.C. §§ 78u-2(a)(1)(A), 80b-3(i)(1)(A)(i). 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), 80b-3(i)(2). The Commission may impose a “First tier” penalty of up to \$7,500 for each violative act or omission by an individual occurring, as pertinent here, after March 3, 2009. 15 U.S.C. §§ 78u-2(b)(1), 80b-3(i)(2)(A); 17 C.F.R. § 201.1004, Subpt. E, Table IV. Where a respondent’s misconduct involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement, the Commission may impose a “Second tier” penalty of up to \$75,000 for each act or omission by an individual. 15 U.S.C. §§ 78u-2(b)(2), 80b-3(i)(2)(B); 17 C.F.R. § 201.1004, Subpt. E, Table IV.

The Division seeks first-tier penalties for Petrou’s twelve violations preceding March 29, 2011, and second-tier penalties for each of the remaining sixteen violations. Div. Br. at 7. The record does not support second-tier penalties, however, because the Division has failed to show that Petrou acted in reckless disregard of a regulatory requirement. I will therefore consider only the imposition of first-tier penalties for Petrou’s twenty-eight violations. In determining whether a civil penalty is in the public interest, six factors may be considered: (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), 80b-3(i)(3); *Anthony Fields, CPA*, Exchange Act Release No. 74344, 2015 WL 728005, at *24 (Feb. 20, 2015). Within any particular tier, the Commission has discretion to set the amount of the penalty. *See Brendan E. Murray*, Advisers Act Release No. 2809, 2008 SEC LEXIS 2924, at *42 (Nov. 21, 2008); *The Rockies Fund, Inc.*, Exchange Act Release No. 54892, 2006 SEC LEXIS 2846, at *25 (Dec. 7, 2006). “[E]ach 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, 2013 WL 839840, at *3 (E.D.N.Y. Mar. 6, 2013) (internal quotation marks and citations omitted); *see also SEC v. Kern*, 425 F.3d 143, 153 (2d Cir. 2005).

Petrou’s violations did not involve fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement. While no person was directly harmed by Petrou’s conduct, his violations of Rule 105 affected the pricing of securities and thereby threatened the integrity of the market, on which all investors rely. He has stipulated to the receipt of \$254,855.66 in ill-gotten gains, and has paid no restitution. He has no prior regulatory record. In light of his genuine contrition and the fact that the Commission has already ordered a cease-and-desist order and censure against him, the deterrent effect of additional sanctions on Petrou is small. However, the deterrent effect on others in the industry remains substantial. Disregarding Petrou’s inability to pay, civil penalties of \$3,000 per violation, or \$84,000, would be appropriate. *See* 15 U.S.C. §§ 78u-2(d), 80b-3(i)(4); 17 C.F.R. § 201.630(a).

B. Disgorgement

Disgorgement is authorized in this proceeding by Exchange Act Sections 21B(e) and 21C(e) and Advisers Act Section 203(j) and (k)(5), because Petrou violated an Exchange Act Rule. *See* 15 U.S.C. §§ 78u-2(e), 78u-3(e), 80b-3(j), (k)(5). Disgorgement 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). The amount of the disgorgement need only be a reasonable approximation of profits causally connected to the violation. *See Laurie Jones Canady*, 54 S.E.C. 65, 84 n.35 (1999) (quoting *SEC v. First Jersey Secs., Inc.*, 101 F.3d 1450, 1475 (2d Cir. 1996)), *pet. denied*, 230 F.3d 362 (D.C. Cir. 2000). Once the Division shows that its disgorgement figure reasonably approximates the amount of unjust enrichment, the burden shifts to the respondent to demonstrate that the Division's disgorgement figure is not a reasonable approximation. *Guy P. Riordan*, Securities Act of 1933 Release No. 9085, 2009 WL 4731397, at *20 (Dec. 11, 2009), *pet. denied*, 627 F.3d 1230 (D.C. Cir. 2010). Prejudgment interest is mandatory when disgorgement is ordered. *See* 17 C.F.R. § 201.600(a). Disgorgement is always in the public interest. *See Jay T. Comeaux*, Exchange Act Release No. 72896, 2014 WL 4160054, at *3 & n.18, *5 (Aug. 21, 2014) (ordering disgorgement without evaluation of the public interest factors).

As noted, the parties have stipulated to a disgorgement amount of \$254,855.66, with prejudgment interest of \$45,971.32. *See* Stipulation; Tr. 19-21; Div. Br. at 7 & n.6. Purchasing a quantity of a covered offering that matches the quantity of securities sold short during the restricted period violates Rule 105, and it is entirely reasonable to measure disgorgement as if the purchased securities were used to cover the short sale, even if they were not so used. *See, e.g., SEC v. Colonial Investment Mgmt. LLC*, 659 F. Supp. 2d 467, 486, 491 (S.D.N.Y. 2009), *aff'd*, 381 F. App'x 81 (2d Cir. 2010). The stipulated disgorgement amount is thus a reasonable approximation of profits causally connected to the violations, because it includes profits on matching trades and hypothetical profits on trades which could have taken place at the time Petrou received his offering shares. *See* Div. Ex. 5 at 3. It is a less reasonable approximation than the difference between actual sale price and actual purchase price, but it is still reasonable. *See Thrastos Tommy Petrou*, 2015 SEC LEXIS 1027, at *9-10. Accordingly, I find that the appropriate amount of disgorgement and prejudgment interest is \$254,855.66 and \$45,971.32, respectively.

C. Total Sanction

Under normal circumstances, therefore, a total monetary sanction of \$84,000 in civil penalties, \$254,855.66 in disgorgement, and \$45,971.32 in prejudgment interest would be warranted. However, because Petrou has decisively demonstrated a substantial inability to pay, I find that it is not in the public interest to impose civil penalties, and that he should only be ordered to disgorge \$15,000, with no separate prejudgment interest. *See* 15 U.S.C. §§ 78u-2(d), 80b-3(i)(4); 17 C.F.R. § 201.630(a).

Record Certification

Pursuant to 17 C.F.R. § 201.351(b), I certify that the record includes the items set forth in the Record Index issued by the Commission's Office of the Secretary on July 30, 2015, except

that Division Exhibits 1-3 have been sealed and replaced with redacted versions pursuant to my Order of August 3, 2015. *See Thrastos Tommy Petrou*, Admin. Proc. Rulings Release No. 3005, 2015 SEC LEXIS 3149.

Order

IT IS ORDERED that, pursuant to Sections 21B(e) and 21C(e) of the Securities Exchange Act of 1934 and Section 203(j) and (k)(5) of the Investment Advisers Act of 1940, Thrastos Tommy Petrou shall DISGORGE \$15,000.

Payment of disgorgement shall be made no later than twenty-one days following the day this Initial Decision becomes final, unless the Commission directs otherwise. Payment shall be made in one of the following ways: (1) transmitted electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request; (2) direct payments from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or (3) by certified check, United States postal money order, bank cashier's check, wire transfer, or bank money order, payable to the Securities and Exchange Commission.

Any payment by certified check, United States postal money order, bank cashier's check, wire transfer, or bank money order shall include a cover letter identifying the Respondent and Administrative Proceeding No. 3-16217, and shall be delivered to: Enterprises Services Center, Accounts Receivable Branch, HQ Bldg., Room 181, AMZ-341, 6500 South MacArthur Bld., Oklahoma City, Oklahoma 73169. A copy of the cover letter and instrument of payment shall be sent to the Commission's Division of Enforcement, directed to the attention of counsel of record.

This Initial Decision shall become effective in accordance with and subject to the provisions of Rule 360. *See* 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. *See* 17 C.F.R. § 201.111. If a motion to correct a manifest error of fact is filed by a party, then a party shall have twenty-one days to file a petition for review from the date of the 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 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 occurs, the Initial Decision shall not become final as to that party.

Cameron Elliot
Administrative Law Judge