INITIAL DECISION RELEASE NO. 953
ADMINISTRATIVE PROCEEDING
FILE NO. 3-16318

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

In the Matter of MICHAEL W. CROW, ALEXANDRE S. CLUG, AURUM MINING, LLC, PANAM TERRA, INC., AND THE CORSAIR GROUP, INC.	INITIAL DECISION February 8, 2016

APPEARANCES: David Stoelting and Ibrahim M.S. Bah for the Division of Enforcement, Securities and Exchange Commission

Mark C. Perry, Mark C. Perry, P.A., for Alexandre S. Clug, Aurum Mining, LLC, Panam Terra, Inc., and The Corsair Group, Inc.

Michael W. Crow, pro se

BEFORE: Jason S. Patil, Administrative Law Judge

SUMMARY

This initial decision finds that: 1) Michael W. Crow, Alexandre S. Clug, and Aurum Mining, LLC, violated Section 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934, and Rule 10b-5 thereunder, and Crow and Clug aided and abetted and caused Aurum's violations of those provisions; 2) PanAm Terra, Inc., violated Securities Act Section 17(a)(2); 3) Crow, Clug, and The Corsair Group, Inc., violated Exchange Act Section 15(a)(1), and Crow and Clug aided and abetted and caused Corsair's violation; and 4) Crow violated Exchange Act Section 15(b)(6)(B), and Clug aided and abetted and caused that violation.

I order the following sanctions as to Crow: 1) permanent bar from association with a municipal securities dealer, municipal adviser, transfer agent, and nationally recognized statistical rating organization; 2) permanent bar from participating in an offering of penny stock; 3) permanent bar from acting or serving as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter; 4)

cease-and-desist order; 5) disgorgement of $447,971 plus prejudgment interest; and 6) civil penalties of $982,500. I also order the following sanctions as to Clug: 1) permanent bar from association with a broker, dealer, investment adviser, municipal securities dealer, municipal adviser, transfer agent, or nationally recognized statistical rating organization; 2) permanent bar from participating in an offering of penny stock; 3) permanent bar from acting or serving as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter; and 4) disgorgement of $50,000 plus prejudgment interest.

I. INTRODUCTION

A. Procedural Background

The Securities and Exchange Commission issued an order instituting proceedings (OIP) on December 16, 2014, pursuant to Section 8A of the Securities Act, Sections 15(b) and 21C of the Exchange Act, and Section 9(b) of the Investment Company Act of 1940, against Respondents. A hearing was held in Miami, Florida, from July 13-21, 2015, and continued telephonically on July 30, 2015. The admitted exhibits are listed in the revised record index issued by the Secretary of the Commission on February 5, 2016. Post-hearing briefing is complete.[1]

B. Summary of Allegations

In summary, the OIP alleges that Respondents Crow and Clug used their companies, Aurum, PanAm, and Corsair, as part of a "money-making scheme[]" to raise funds from investors and use those funds to personally benefit themselves. OIP at 5. As part of that scheme, Crow and Clug allegedly made numerous misrepresentations and omissions to investors including not fully disclosing Crow's regulatory disciplinary history and providing false and misleading updates regarding the status of Aurum's and PanAm's operations in South America. *Id.* at 5-12. In addition, the OIP alleges that Crow and Clug operated Corsair as an unregistered broker-dealer by referring investors to a separate investment opportunity and receiving fees for those referrals. *Id.* at 13. As a result of this alleged misconduct, the OIP alleges that: 1) Crow, Clug, Aurum, and PanAm willfully violated Securities Act Section 17(a), Exchange Act Section 10(b), and Exchange Act Rule 10b-5, and Crow and Clug willfully aided and abetted and caused these violations by Aurum and PanAm; 2) PanAm willfully violated, and Crow and Clug willfully aided and abetted and caused PanAm's violations, of Exchange Act Section 13(a) and Rules 12b-20, 13a-1, and 13a-13; 3) Clug willfully violated Exchange Act Rule 13a-14; 4) Crow, Clug, and Corsair willfully violated Exchange Act Section 15(a)(1), and Crow and Clug willfully

[1] Citations to the hearing transcript are noted as "Tr. __." Citations to the Division's exhibits and Respondents' exhibits are noted as "Div. Ex. __" and "Resp. Ex. __," respectively. Citations to the Division's post-hearing filings are noted as "Div. Br." and "Div. Reply." Citations to Respondents' post-hearing filings are noted as "Crow Opp." and "Clug Opp." Citations to the parties' proposed findings of fact and conclusions of law and their responses to proposed findings of fact and conclusions of law are similarly noted.

aided and abetted and caused Corsair's violation; and 5) Crow willfully violated Exchange Act Section 15(b)(6)(B), and Clug willfully aided and abetted and caused that violation.

Respondents deny these allegations. They object to the characterization of Aurum and PanAm as a "money-making scheme" and state they were pursuing legitimate farming and mining opportunities in South America and did not make false and misleading representations to investors. Answer at 7; *see id.* at 7-25. Crow and Clug argue that the funds they received from Aurum and PanAm through Corsair were properly earned through the work and services they provided through a management contract that was disclosed to investors. *Id.* at 8-9. Respondents also deny that Corsair operated as an unregistered broker-dealer. *Id.* at 25-26. Respondents assert two affirmative defenses: (1) that this proceeding violates the Equal Protection Clause of the United States Constitution; and (2) that certain claims or relief sought may be barred by the statute of limitations.[2] *Id.* at 27.

II. FINDINGS OF FACT

I base the following findings of fact and conclusions on the entire record and the demeanor of the witnesses who testified at the hearing, applying preponderance of the evidence as the standard of proof. *See Steadman v. SEC*, 450 U.S. 91, 100-04 (1981). All arguments and proposed findings and conclusions of that are inconsistent with this decision are rejected.

A. Respondents

1. Michael Crow

Crow graduated cum laude with a B.S. in accounting from San Diego State University, and graduated from Harvard Business School's Owner/President Management program. Div. Ex. 68 at 21. He previously served as a senior consultant and certified public accountant with Price Waterhouse's international department, with clients that included the government of Singapore, Nike, Microsoft, Berkeley International, and Hewlett Packard. *Id.* Crow then served as the senior vice president and CFO of Security Pacific International, the holding company for Security Pacific Corporation's international corporate subsidiaries throughout Asia, Europe, and Latin America. *Id.* He then served as a senior vice president and deputy to the vice chairman of Security Pacific Corporation, with responsibility for the financial services group including merchant banking, international organizations, and asset management. *Id.*

From November 1990 through March 1994, Crow was president and chairman of the board of Wilshire Technologies, Inc., a public company. Div. Ex. 684 at 3-4; Tr. 1121, 1131. Crow founded National Investment Managers, a pension administration firm with over $11 billion in assets and operations in seventeen U.S. cities that was ultimately sold to a private equity firm, and Superfly Advertising, an internet marketing platform company that was sold to a public company. Div. Ex. 68 at 20. Crow was president of Aberdeen Holdings Ltd., a private venture firm that had several successful initial public offerings. *Id.* Crow also founded Crow &

[2] As Respondents do not further argue their statute of limitations claim, this initial decision does not address that argument.

Co., a trading and merchant banking firm. *Id.* at 21. Preceding the circumstances surrounding the facts of this proceeding, Crow was the founder, chairman, and CEO of DC Associates, a New York-based merchant bank with several funds under management. *Id.* at 20.

Crow's Disciplinary History

On September 24, 1996, the Commission filed a complaint in the U.S. District Court for the Southern District of California against Crow. Div. Ex. 684 at 2. The complaint alleged that while Crow was employed at Wilshire, he caused the company to materially overstate its earnings, issue materially misleading press releases, and file materially misleading periodic financial reports with the Commission. *Id.* at 4-17. The complaint also alleged that Crow sold Wilshire shares while in possession of material, non-public information regarding Wilshire's overstatement of earnings and avoided losses that he would have otherwise incurred if the market had received accurate information about Wilshire. *Id.* at 2-3. Without admitting or denying the allegations, Crow consented to the entry of a judgment on April 16, 1998, which, among other things, 1) enjoined Crow from violating Securities Act Section 17(a), Exchange Act Sections 10(b), 13(a), 13(b)(2)(A), and 13(b)(2)(B), and Exchange Act Rules 10b-5, 12b-20, 13a-13, 13b2-1, and 13b2-2; 2) permanently barred Crow from acting as an officer or director of any issuer that has a class of securities registered pursuant to Exchange Act Section 12 or that is required to file reports pursuant to Exchange Act Section 15(d); and 3) ordered Crow to pay disgorgement of $1,248,444 and prejudgment interest of $225,773. Div. Ex. 685 at 3-8. The court did not, however, require Crow to actually pay the disgorgement and prejudgment interest because of Crow's representations that he would transfer stock worth around $2,800,000 to settle a related class action lawsuit, *In re Wilshire Technologies Securities Litigation*, 94-cv-0400-B (S.D. Cal.). *Id.* at 8.

On April 22, 1998, based on the district court's April 16, 1998, final judgment, the Commission issued an OIP making findings and imposing remedial sanctions against Crow. *Michael W. Crow*, Exchange Act Release No. 39902, 1998 SEC LEXIS 742; Div. Ex. 800 ¶ 11. In this order, Crow consented to a bar, without admitting or denying the Commission's findings, denying him the privilege of appearing or practicing before the Commission as an accountant. *Michael W. Crow*, 1998 SEC LEXIS 742, at *2, *6; Div. Ex. 800 ¶ 11.

On May 15, 2007, the Commission filed a complaint in the U.S. District Court for the Southern District of New York against Crow and others alleging that, among other things, Crow acted as an unregistered principal of Duncan Capital LLC, a registered broker-dealer, in violation of Exchange Act Section 15(a). Div. Exs. 687-88. The Commission also alleged that Crow controlled virtually every significant aspect of Duncan Capital's operations and received the vast majority of its profits, but that Duncan Capital did not identify Crow as an officer, director, or other "control affiliate" of the firm in its regulatory filings or disclose his prior regulatory history. Div. Ex. 687 at 2; Div. Ex. 688 at 2. On November 5, 2008, after a seven-day bench trial, the district court made certain findings of fact, including the following:

> There is no assurance that Crow can be trusted in the future to comply with securities laws. Crow has not acknowledged any wrongdoing. He had been enjoined once already and has acted in breach of the terms of that consent

> agreement with the SEC. In his actions at the Duncans, he has demonstrated a willingness to disregard the advice of counsel and he took steps to cover up what he was actually doing. His conduct was egregious and he acted with scienter. In addition, he perjured himself in this court.

Div. Ex. 689 at 5; Div. Ex. 690 at 1. The court found that Crow had aided and abetted violations of Exchange Act Sections 15(a), 15(b)(1), and 15(b)(7) and Exchange Act Rules 15b3-1 and 15b7-1. Div. Ex. 690 at 2. On November 13, 2008, the court issued a final judgment enjoining Crow from aiding and abetting violations of those provisions; and ordering Crow to pay $6,996,103.87 in disgorgement and prejudgment interest, jointly and severally with others, along with a civil monetary penalty of $250,000. Div. Ex. 690 at 2-5, 10-12.

On December 12, 2008, the Commission issued an OIP against Crow. *Michael W. Crow*, Exchange Act Release No. 59094, 2008 WL 5220551; Div. Ex. 692 at 1. Following a motion for summary disposition filed by the Division of Enforcement, the chief administrative law judge issued an initial decision on April 22, 2009, which stated:

> Crow's actions were egregious on their face, a fact affirmed by the findings [of the district court] following a lengthy bench trial, and the almost five-and-a-half million dollars in disgorgement [the district court] ordered, exclusive of prejudgment interest. Based on evidence from Crow and others, [the district court] found that Crow acted with scienter and that he perjured himself in court. Crow's actions were not isolated, but continued for over a year, and followed separate proceedings in 1998 where a federal district court enjoined him from future antifraud violations and barred him from serving as an officer or director of a public company, and the Commission, in an administrative proceeding, denied him the privilege of appearing before the Commission as an accountant. Crow's conduct demonstrates that he is an unreformed recidivist who poses a serious future threat to the investing public.

Div. Ex. 692 at 5. Based on her findings and conclusions, the law judge barred Crow from association with any broker, dealer, or investment adviser. *Id.* On May 29, 2009, after Crow's time for filing a petition for review expired, the law judge's initial decision became "the final decision of the Commission with respect to Michael W. Crow." Div. Ex. 693. Crow did not appeal to a federal court of appeals.

Crow's Bankruptcy Proceeding

On January 22, 2010, Crow filed a voluntary petition in the U.S. Bankruptcy Court for the Southern District of California under Chapter 7 of the Bankruptcy Code. Div. Ex. 691. The petition listed assets of only $27,997.81 in "personal property" and liabilities of $11,516,291. Div. Ex. 691 at 4. Crow's listed liabilities – in addition to the $7.2 million owed under the 2008 district court judgment – include: (a) "business judgment" for $500,000; (b) "judgment on business loan guaranty" for $502,140; (c) "judgment on guaranty of business loan" for $1 million; (d) two "guarant[ies] of business line of credit" totaling $300,000; (e) "judgment on guaranty of business real property lease" for $80,000; (f) "alleged business loan" of $30,000; (g)

three "business loans" totaling $330,000; (h) "alleged sales tax owed by ZipDirect, Inc." of $10,000 owed to the State of California; (i) "personal property tax" of $68,000 owed to San Diego County; (j) "income tax" of $96,000 owed to the Franchise Tax Board; (k) $677,000 in legal fees to several law firms; and (l) "spousal support, child support" of $472,000 owed to Crow's first two wives. Div. Ex. 691 at 16, 18-21, 24. There is no evidence that Crow ever made any payments toward the disgorgement, prejudgment interest, and civil penalty owed under the 2008 district court judgment. According to Crow, the judgment is a scheduled preferential, non-dischargeable liability in his bankruptcy proceeding that he cannot pay until that case is resolved. *Cf. id.* The bankruptcy proceeding is ongoing.

2. Alexandre Clug

Clug graduated with honors from the United States Military Academy at West Point in 1991 with a B.S. in electrical engineering, and completed his military service with the U.S. Army Corps of Engineers in 1995, following postings in the United States and Europe. Div. Ex. 68 at 20; Tr. 1462, 1464. In 1999, Clug obtained an M.B.A. from the Anderson School of Management at UCLA, and then worked in Venezuela for several years for eTelix Telecommunications. Div. Ex. 68 at 20; Tr. 1463-64. As CEO and President of eTelix, he built a sales force of 6,000 individuals. Div. Ex. 68 at 20; Tr. 1463. Clug also assisted the launch of a Latin American online payment firm in partnership with Visa International, among other accomplishments and positions involving business in Latin America. Div. Ex. 68 at 20. Clug does not hold any securities licenses. Div. Ex. 800 ¶ 2.

Crow and Clug's Business Relationship Begins

Clug and Crow's business relationship began in New York in 2005 when Clug relocated there and joined DC Associates as chief operating officer. Tr. 1464-66. Clug "always wanted to get into private equity finance," and reported to Crow at DC Associates. Tr. 1465-67. During this time, Crow told Clug about the 1998 district court judgment. Tr. 1469. According to Clug, Crow eventually resigned from DC Associates due to the 2007-08 district court action. Tr. 1468, 1471. Clug continued to work for DC Associates until it failed in 2009. After residing in London, where he had been working on "getting [a] company . . . up and going," he moved to Miami, Florida, to liquidate DC Associates. Tr. 1468, 1470, 1472-73. Clug blamed the failure of DC Associates primarily on the 2008 market crash. Tr. 1468.

In early 2010, Crow contacted Clug with a new business opportunity. Tr. 1473-74; Div. Ex. 810. Crow wrote in a "[m]emo to [Clug]," "the following is what I am proposing to get us started again . . . act as my right hand man in most matters with emphasis on making sure deals are tracking and being fulfilled, operations, so we have recurring revenue." Div. Ex. 810. While Clug could not recall receiving the memo, he testified that he briefly participated for one or two initial payments. Tr. 1473-74; *see* Div. Ex. 810 (stating "Compensation- $5k Feb . . . $7.5k March . . ."). Around this time, Clug was not aware of Crow's bankruptcy filing. Tr. 1474-75. Clug testified that Crow did not tell him about the bankruptcy until "about the time just before I got deposed in his bankruptcy." Tr. 1475. Clug's deposition took place as early as January 2012. Div. Ex. 805 at 16; Tr. 1475.

3. PanAm Terra

PanAm is a Nevada corporation with its principal place of business in Miami, Florida. Div. Ex. 800 ¶ 4. Formerly known as Duncan Technology Group, PanAm evolved from an entity which existed since 2001. *Id.* In April 2011, it was renamed "PanAm Terra, Inc.," and registered its common stock with the Commission pursuant to Exchange Act Section 12(g). *Id.* PanAm deregistered its common stock in May 2013. *Id.* Clug served as PanAm's CEO and chairman of the board from at least April 2011 until July 2012, when he resigned as CEO but remained as chairman. *Id.* PanAm's public filings did not identify Crow as an officer or director of PanAm. *Id.*

4. Aurum Mining, LLC

Aurum is a Nevada limited liability company established in April 2011, with its principal place of business in Miami, Florida. Div. Ex. 800 ¶ 3. Crow, through Raven Holdings, LLC, and Clug, through Dolphin Group, LLC, owned 50% each of Aurum's voting shares. *Id.* Crow and Clug served as managers of Aurum from April 2011 until at least March 2014. *Id.* Angel Lana also served as a manager of Aurum during this period. *Id.* Aurum Mining Peru, S.A., is a Peruvian subsidiary of Aurum based in Lima, Peru. *Id.* ¶ 6.

5. The Corsair Group

Corsair is a Florida corporation incorporated in April 2011 with its principal place of business in Miami, Florida. Div. Ex. 800 ¶ 5. Clug and Crow owned and controlled Corsair. *Id.* Corsair has never been registered with the Commission in any capacity. *Id.*

B. Other Related Parties

1. Angel Lana

Lana, age fifty-seven at the time of the hearing, lives in Boca Raton, Florida. Tr. 808. In 1980, he graduated from Florida State University with a B.S. in accounting. Tr. 808. In 1981, he became a CPA in Florida. Tr. 808-09. After a few years working at CPA firms, Lana started a solo practice preparing tax returns. Tr. 809-10. Lana was the CFO of both PanAm and Aurum. Tr. 810-11, 815-16, 819.

Before Lana became CFO of PanAm, he had experience assisting public companies in their filings and accounting as part of his CPA practice, Tr. 810, 940, but had not been a CFO nor worked in the finance department of a company, Tr. 816, 940.

Lana first met Clug through Clug's father, who has been Lana's client for more than twenty years. Tr. 814-15. Lana did not have a personal friendship with Clug until 2010. Tr. 815. Clug first approached Lana about becoming involved with PanAm and unofficially offered him the role of CFO, describing the company as "having to do with agricultural real estate." Tr. 815-16. Later on, the topic of Aurum came up and Clug told him it would be a gold mining operation in Latin America; Lana had no experience in either mining or geology. Tr. 817-18.

Lana was at first unaware of Crow's involvement in PanAm and Aurum, only learning of it "late in the game." Tr. 816-19. Clug told Lana about the 2008 district court judgment against Crow in April 2011. Div. Ex. 751; Tr. 819-20. At some point, Lana was told about Crow's Chapter 7 bankruptcy filing. Tr. 820.

The Commission issued a settled OIP against Lana in connection with the facts at issue in this proceeding. Div. Ex. 803. The OIP determined that Lana willfully violated Securities Act Section 17(a)(2) and (3). *Id.* at 6. As a result of these violations, Lana agreed to forego any compensation due to him from, and cease raising any funds for, Aurum and any entity owned and controlled, directly or indirectly, by either Crow or Clug. *Id.* Additionally, Lana was ordered to cease and desist from committing or causing any violations or future violations of Securities Act Section 17(a); denied the privilege of appearing or practicing before the Commission as an accountant with the right to reapply after five years; and ordered to pay a civil penalty of $50,000. *Id.* at 7-8. Lana acknowledged that the Commission limited its civil penalty to $50,000 in exchange for his agreement to cooperate with the Commission in its investigation. *Id.* at 9.

2. Steve Ross

Ross took over the role of CEO of PanAm after Clug. Div. Exs. 431, 432. Ross attended Harvard University for three-and-a-half years but left before graduating; he later returned to attend the advanced management program at Harvard Business School. Tr. 1611-12. His first job out of college was at a diversified energy firm and he was part of a structured management program that nurtured and secured executives. Tr. 1612. Ross then held a variety of jobs in the computer industry, including at Dell Computer Systems and the North American subsidiary of Toshiba. Tr. 1613-15. After Toshiba, Ross affiliated with a number of different investment bankers and private equity firms and looked for opportunities to make personal investments in companies, join their boards, and take on management roles. Tr. 1616. Ross worked at Dyntek, a public company, as chairman and CEO, until he left in 2005. Tr. 1616-17.

Ross met Crow around 2005 or 2006 when he became aware of National Investment Managers, which was a business concept created by Crow. Tr. 1617, 1620. Ross made two investments in early capital rounds and was asked to sit on its board, and later became its CEO. Tr. 1617. During his tenure of about four years, Ross grew the company into the largest independent company that aggregated third-party administrators, small financial services firms, and financial and retirement planning. Tr. 1617-18. Crow served as a consultant to the company while Ross was its CEO and was also a shareholder. Tr. 1620-21.

3. George Charles Cody Price and ABS

George Charles Cody Price was the founder, principal, and manager of an unregistered investment adviser called ABS Manager LLC. Div. Ex. 199 at 3; Div. Ex. 267; Div. Ex. 809 at 4; Tr. 844. Crow knew Price and introduced him and ABS to Clug. Tr. 1940.

Corsair entered into a referral agreement with ABS where Corsair would introduce investors to ABS in exchange for compensation. Div. Ex. 199. Investors in ABS were able to

borrow up to seventy percent of their investment through a line of credit to invest in Aurum. Div. Exs. 201, 206, 231; Tr. 844.

On February 8, 2013, the Commission sued ABS and Price alleging securities fraud in three funds they managed, including the ABS Fund. Div. Exs. 560, 809. On July 16, 2015, final consent judgments were entered against ABS and Price based on voluntary settlements on a neither admit nor deny basis, enjoining them from further violations of the antifraud provisions of the federal securities laws and ordering them to pay disgorgement and prejudgment interest of $362,648.83, jointly and severally, Price to pay a $150,000 civil penalty, and ABS to pay a $725,000 civil penalty. Div. Exs. 811, 812. On November 5, 2015, the Commission instituted administrative proceedings against Price under Section 203(f) of the Investment Advisers Act of 1940. *George Charles Cody Price*, Advisers Act Release No. 4259, 2015 SEC LEXIS 4606.

C. PanAm Terra

In early to mid-2010, Crow and Clug discussed the idea of creating a public company that would manage agricultural land in Latin America. Tr. 1479; *see* Div. Ex. 19 at 1. Both Crow and Clug testified that they previously had discussed investing in Latin American farmland and other assets when they worked together at DC Associates. Tr. 1107, 1477-78, 2225-26. Crow and Clug discussed the idea that Clug would rename one of his companies, Ascentia Biomedical Corp., to PanAm Terra and have a new Form 10 prepared. Div. Ex. 19 at 1; Tr. 2226; *see* Tr. 1495. By November 2010, Crow and Clug were actively planning the launch of PanAm as a public company, with Clug sending Crow a to-do list dividing most of the tasks between themselves. Div. Exs. 28, 30. As PanAm progressed, Clug periodically emailed Crow, asking for his thoughts on proposals or keeping him informed on PanAm developments. Div. Exs. 47, 100, 135, 166, 184, 248, 249, 250, 412. He also kept Crow informed of the status of PanAm's Commission filings. Div. Exs. 75, 91, 394, 459. Crow recruited and recommended candidates for PanAm's board of directors, including Chad Mooney, who Clug selected. Div. Ex. 741; *see* Tr. 2083. Crow also recommended others who Clug did not choose, such as Daniel Najor. Tr. 2082-83; *see also* Div. Ex. 27 at 1. Crow was ultimately involved in select communications between other officers and directors of PanAm. *See, e.g.*, Div. Exs. 479, 787.

PanAm's business plan was to develop a management company that would find, conduct due diligence on, and acquire farmland in Latin America. Resp. Ex. 77 at 7, 19. PanAm would not own the farmland directly, but it would raise funds for each deal on a stand-alone basis, and manage it for large institutional investors. Tr. 2226-27, 2230; *see generally* Resp. Ex 77 at 7-8, 17, 19.

On April 29, 2011, PanAm filed a Form 10, which is the general form to register securities under Exchange Act Section 12(b) or 12(g). Div. Ex. 708. PanAm's registration statement went effective on June 28, 2011, sixty days after it was filed. Div. Ex. 709 at 1. On that date, PanAm became subject to the reporting requirements of Exchange Act Section 13(a). *Id.* PanAm subsequently filed periodic reports including a Form 10-K for 2011 and Forms 10-Q in 2011 and 2012. Div. Exs. 824-25, 835-36, 838-39. Those reports did not mention Crow. Div. Exs. 824-25, 835-36, 838-39. As CEO, Clug, and later Ross, executed Rule 13a-14 certifications

of PanAm's Commission filings. Div. Ex. 824 at 22, 24; Div. Ex. 825 at 22, 24; Div. Ex. 835 at 74, 76; Div. Ex. 836 at 22, 24; Div. Ex. 838 at 25, 27; Div. Ex. 839 at 26, 28.

As CFO of PanAm, Lana, in conjunction with the CEO and the company's counsel, Bob Brantl, was responsible for the company's filings, financial statements, and audits. Tr. 480, 498, 1630-31. Clug and Crow were ultimately critical of Lana's performance as CFO of PanAm, especially with respect to Lana's difficulty in satisfying PanAm's reporting obligations on time. Div. Exs. 394, 404, 413, 414, 459.

From January 2011 to March 2013, PanAm raised $400,000 from investors. Div. Ex. 2A at 11-12. The $400,000 raised from the investors came mostly from Lana's clients. Div. Ex. 556 at 1. PanAm investors signed subscription agreements which stated:

> The Subscriber has relied solely upon (a) the information contained in the Executive Brief of PanAm Terra dated May, 2011, and (b) any information furnished in written form by the Company to the Subscriber and signed by the Company. The Subscriber is not relying upon any oral representations or other written information in making the decision to purchase the Shares.

Div. Exs. 122, 145, 165, 168, 170, 189. In addition to the executive brief, potential investors were referred to PanAm's public filings on EDGAR. Div. Ex. 309 at 1.

The May 2011 executive brief states that PanAm "is in process with a Form 10 and application for listing on the [Over-The-Counter Bulletin Board (OTCBB)] submitted on April 29, 2011." Div. Ex. 309 at 12. Although PanAm filed its Form 10 on April 29, no such application for listing on the OTCBB was filed on that date. Div. Ex. 717 at 22 (Form 10-K filed for the period ended December 31, 2011, states: "There is no market for the Company's common stock, nor has there been any price quoted publicly for the common stock within the past three years. Soon after the effective date of this registration statement, Management intends to apply for a listing on the OTC Bulletin Board"). It is not clear who included the language concerning the April 29, 2011, submission in the executive brief.

On March 10, 2011, PanAm, under its former name Ascentia Biomedical Corp. f/k/a Duncan Technology Group, Inc., issued an on demand convertible note to Pacific Trade Ltd., a Crow-owned company, replacing a prior $25,000 note dated December 20, 2010. Div. Exs. 746, 831. The note was to mature on September 10, 2012. Div. Ex. 746. On March 15, 2011, PanAm issued another on demand convertible note to Pacific Trade in satisfaction of an invoice for services in amount of $28,156 from Pacific Trade dated February 21, 2011. Div. Ex. 747. That note was to mature on September 15, 2012. *Id.* The March 10 note provided for a conversion into 193,528,384 common shares and the March 15 note provided for a conversion into 47,320,358 common shares of PanAm's stock at any time prior to the maturity date. Div. Exs. 746, 747. Both notes contained a provision that would prohibit Crow from receiving shares that increased his beneficial ownership to more than 4.99% of the then outstanding common stock of PanAm. Div. Exs. 746, 747. PanAm subsequently reported the convertible notes in its periodic filings as notes payable. Tr. 480; *see also* Div. Ex. 717 at 38-39; Div. Ex. 836 at 12-13; Div. Ex. 838 at 13-14; Div. Ex. 839 at 14-15.

On April 11, 2011, Clug advised Lana about Crow's prior Commission case. Div. Ex. 751. Lana was aware that Crow was barred from serving as an officer or director of a public company, and never saw Crow "act in any capacity as an officer or director of PanAm." Tr. 987. In Lana's view, Crow only served as a consultant to and did not have a significant role in PanAm. Tr. 879.

Effective April 15, 2011, PanAm's board approved a one for one hundred reverse split of its common stock. Div. Ex. 197 at 43. As a result, the notes held by Crow became convertible into 2,408,488 shares, but Crow was still limited by the blocker provisions, limiting his beneficial share ownership to 4.99%. Div. Ex. 708 at 41; *see* Div. Exs. 746, 747.

Beginning by at least April 2011, Crow recruited investors in PanAm. For example, on April 25, 2011, Crow forwarded a PanAm proposed term sheet that Clug sent him to a potential investor, Simon Leach, and called it "a proposal on how we can have your fund take an early loan stake and then double its money." Div. Ex. 42 at 1. Crow stressed that there would be little risk because Leach would receive "a first [lien] on assets so if nothing ever[] happened you would have a shell which is worth over $250k on the OTCBB." *Id.* Clug and Crow continued to speak about the deal with Leach in June 2011. Div. Ex. 63. In September 2011, Crow emailed another potential investor. Div. Ex. 82. In November and December 2011, Crow held a meeting with Jeff Dyment regarding "fund raising and capital formation" for PanAm, and worked on at least one other fundraising issue. Div. Exs. 150, 190. Crow also negotiated in support of PanAm with the Mickelson Group through 2012. Div. Ex. 43 at 1; Div. Ex. 376; Div. Ex. 464; Div. Ex. 504; Div. Ex. 512.

On May 27, 2011, the Commission's Division of Corporation Finance issued a letter to Clug asking whether Pacific Trade, the holder of the $25,000 and $28,000 convertible notes, was a related party. Div. Ex. 709 at 6. On August 22, 2011, Clug responded that it was not. Div. Ex. 710 at 16-18. On March 16, 2012, Corporation Finance again wrote to Clug to ask him to "identify the natural person that beneficially owns the convertible notes. Considering the substantial nature of the convertible note, please revise to discuss the relationship between Mr. Clug and Pacific Trade Ltd. and its control person." Div. Ex. 830 at 1. Clug's March 28 response stated: "Michael Crow has sole control over the voting and disposition of shares owned by Pacific Trade Ltd." Div. Ex. 831 at 3. It also stated that "Pacific Trade Ltd. may not convert the Notes into shares that would cause the aggregate number of shares owned by Pacific Trade Ltd. and its affiliates to exceed 4.99% of the Company's outstanding shares." *Id.*

On April 5, 2012, Clug emailed responses to questions from Ashley Dillon at Pennaluna, a market maker, indicating that "PanAm Terra is not currently working with any consultants or public relations firms." Div. Ex. 309 at 4. Clug also attached the May 2011 PanAm executive brief as the document used to solicit investors. *Id.* at 1, 6.

On May 18, 2012, Clug instructed Lana to provide the May 2011 PanAm executive brief to investors and to "make sure that you point out that the business plan is very out of date, including the financial/share projections" because "they are actually much better now" and that investors "should refer to public filings." Div. Ex. 389 at 1. The attached executive brief stated that "[b]y the end of our third year when we project to own 20,000 hectares with a value of $280

million our company, using the 1.5 multiple, would have an enterprise value of approximately $500 million. This would represent more than a six-fold increase in per share price." *Id.* at 24.

PanAm sought to transition the role of CEO from Clug to Steve Ross by mid-2012. *See, e.g.*, Div. Ex. 398 ("Contract for you is set and being incorporated into board package. Alex resigns etc. He is looking at pan am board meeting wi[t]h you and board on Friday July 6."); Div. Ex. 412. Clug and Ross knew each other years before the creation of PanAm and were introduced to each other by Crow. Tr. 1622. Crow commended Ross as "an excellent public [company] CEO." Div. Ex. 128 at 1. In May 2012, Crow provided an introduction and consultant services with respect to PanAm's negotiations with Ross. Div. Ex. 398. At Clug's request, Crow prepared a draft of Ross's employment agreement with PanAm. Div. Ex. 395. Crow then asked Clug to review his draft of the Ross employment agreement. *Id.* Clug sent Ross his ultimate contract of employment as CEO. Div. Ex. 397.

In June 2012, Crow recommended that someone other than Lana do the work on the Commission filings because he was frustrated that Lana was behind schedule and that Crow was being adversely affected as a PanAm investor. Div. Exs. 413-15; Tr. 1657. Since Crow had no control over PanAm, Lana did not take Crow's suggestion seriously. Tr. 911. Clug rejected Crow's suggestion that he replace Lana. Tr. 1657.

PanAm's board of directors only met once in person, on July 6, 2012. Div. Ex. 431; Tr. 1830. That day Clug resigned as CEO and became chairman of the board of directors, and Ross became CEO. Div. Exs. 431-32. Clug recruited Henry Gewanter, someone not known to Crow, to be one of two "independent directors" on PanAm's board. Tr. 1825; Resp. Ex. 131; Div. Ex. 197 at 49, 52. Crow briefly joined the July 2012 board meeting to give a presentation about various aspects of agricultural land in Latin America. Tr. 1829. After the board meeting, Crow met informally with the board. Tr. 1833. Crow did not otherwise participate in PanAm's July 2012 board meeting or the board's decision-making. Tr. 1829. Gewanter felt that Crow "didn't try to influence any member of the board at any time." Tr. 1829.

Chad Mooney, a member of PanAm's board who did not testify in person, submitted a declaration under penalty of perjury that Crow was not a control person, officer, or director of PanAm. Resp. Exs. 130, 160. He declared, in pertinent part, that "[a]t no time . . . did Michael Crow ever direct me to make or not make any corporate decisions for PanAm, and at no time did I ever witness any activity or conduct of Michael Crow that demonstrated that he was an officer, director or control person of PanAm." Resp. Ex. 160. Mooney also declared that at no time was he "aware that Michael Crow prepared any quarterly or annual filings for PanAm with the Securities and Exchange Commission or assisted in the preparation of these filings or any filings with the SEC." *Id.* To Mooney's "knowledge, Michael Crow did not perform any service for PanAm other than that of a consultant through Corsair."[3] *Id.*

[3] The Division contends that Mooney's declaration should be given "little weight" because he was not subject to cross-examination, but I note that his declaration is consistent with further evidence demonstrating a similar understanding by the other PanAm officials. Div. Response to Clug's FOF & COL at 5; Tr. 960, 987, 1638-41, 1839.

Crow was not a signer on any bank account for PanAm, he approved no expenses or personnel, and had no authority to bind the company. Tr. 967-68, 1638, 1829. Crow had no operations role in PanAm, Tr. 987, 1638, and Crow did not go on any business trips with Ross to Uruguay, Tr. 1625. Crow testified that he never met with the Uruguay firm engaged to carry out the purchase of the farmland. Tr. 1376.

On July 6, 2012, the same day that Ross replaced Clug as CEO and Clug became chairman, PanAm and Corsair entered into an advisory agreement in which PanAm engaged Corsair "to act as financial and management consultant to the Company and to provide recommendations to the Company in connection with management issues, equity or debt financing as well as with other financial matters." Div. Ex. 434 at 1. Ross testified he knew that Corsair included Crow and Clug, that "the idea was to provide some continuity," and that "as part of the consulting agreement, Alex Clug principally, but also Michael Crow was available for consultation" and "introductions like Mickelson Capital." Tr. 1640. The agreement with PanAm was executed by Ross as CEO of PanAm and approved by the board of directors. Div. Ex. 431; Div. Ex. 434 at 6. The advisory agreement required PanAm to pay Corsair $5,000 per month, and higher amounts if certain fundraising projections were met. Div. Ex. 434 at 3. Ross testified that he "didn't take direction from Corsair." Tr. 1640.

Throughout his tenure, Ross looked to Clug and Crow for guidance in his role as CEO. Div. Exs. 454, 508, 512. Ross knew Crow was barred from being an officer or director of a public company. Tr. 1637. In Ross's view, Crow was a consultant who did not have any direct involvement in PanAm's operations. Tr. 1621, 1638-39.

Ross subsequently worked on a potential transaction for PanAm that was over $100 million. Tr. 1628. However, in Gewanter's view, Ross "was supposed to raise money from institutional investors to get the company up and running" and that "[h]is performance in that regard was disappointing." Tr. 1831.

On August 27, 2012, Crow emailed Clug to advise him that Crow's passport renewal was suspended until he paid past due alimony and child support. Div. Ex. 796. Two days later, Crow emailed Lana with a proposal to "get my arrears handled so my passport is renewed." Div. Ex. 460. Crow's proposal to Lana was as follows:

> The Pacific Trade Note which was from the $25,000 early investment is convertible into about 1.8 million shares. The note matures soon so either I have to convert it or the company will have to extend it. In the meantime, I can convert in part into common shares and sell them in a direct private deal to accredited investor. I suggest a price of 25 cents with 5 cents to whomever is helping with the trade (ie angel) so I net 20 cents.

Id. Crow's email stated that PanAm's counsel "Bob Brantl can oversee everything." *Id.*

On September 13, 2012, Crow emailed Lana asking "[p]lease see if you can at least get me that 25k ASAP." Div. Ex. 465. Lana understood that the shares Crow intended to sell would come from the conversion of Crow's $25,000 convertible note. Tr. 919. On September 14,

2012, Crow emailed Lana a draft "letter for investors to sign," providing for the purchase by the investor of PanAm shares, with the instructions "the attached letter should be what you are looking for." Div. Ex. 467 at 1-2. Lana consulted with Brantl and received approval for the sale and its structure. Tr. 935, 957. Lana testified that he asked Brantl if "[he was] certain" and Brantl replied "it can be done." Tr. 957. When asked if he told Brantl of "all the facts," Lana replied, "[a]bsolutely all of them." Tr. 957-58, 1003. Ross was aware of the transaction as well. Tr. 1631. Ross worked with Lana and Brantl to make sure all was recorded properly. Tr. 1631.

Lana solicited three Aurum investors, Mitchell Melnick, Simon Stern, and Elisa Ramirez, to each purchase 100,000 PanAm shares for $0.25 per share. *See* Div. Ex. 466; Tr. 949-50, 1005, 1394. Lana did not tell them the seller was Crow. Tr. 66, 68-69, 927. Lana was just interested in getting them stock at a good price. Tr. 927. Lana believed in PanAm and its future stock value and thought his clients were getting a good deal. Tr. 949; Resp. Ex. 193 at 13. Crow had no communications with these investors on this sale. Tr. 992. Lana asked Melnick, Stern, and Ramirez to pay the $25,000 purchase price to him, through his personal checking account at Bank of America, and not to PanAm. Tr. 925-27. After receiving the $75,000 in his checking account from the three investors on September 17 and 21, 2012, Lana wired the funds to Crow's personal account on September 18 and 24, 2012. Div. Ex. 485 at 2-3; Tr. 926.

Lana did not tell the three investors – Melnick, Stern, and Ramirez – that their funds used to purchase the PanAm shares were transferred to Crow and not to PanAm. Tr. 927. Melnick testified he believed that his $25,000 was going to fund PanAm's business operations. Tr. 69. Stern also believed that his $25,000 would go to PanAm's business operations because he knew PanAm "would need money to get [off] the ground." Tr. 158; *see also* Tr. 159. Lana knew that the $75,000 transferred to Crow for PanAm shares could have been used by PanAm for business operations. Tr. 927. Clug knew about the transfers to Crow and that the $75,000 was routed through Lana's personal bank account. Div. Ex. 472.

On September 20, 2012, two days after the $75,000 transfers, Lana emailed Clug to tell him that PanAm's auditor, Nathan Hartman, wanted written confirmation that the Pacific Trade notes, which would have just matured, had been extended. Div. Ex. 475. On September 25, 2012, Crow signed confirmation form requests for both the $25,000 and $28,000 convertible notes and emailed the signed forms to Hartman, copying Lana. Div. Ex. 477 at 1-3. Hartman testified that he did not have any problems with the note extension and that it was standard course for small companies. Tr. 493. In October 2012, Hartman emailed Clug and Ross, asking whether the two notes had been officially extended and requested executed copies of the extensions. Div. Ex. 493. After some back and forth between Clug, Lana, and Ross, Clug told Lana and Ross that he "[would] take care of the note extensions w Pacific Trade." *Id.* Clug then created extension agreements that stated they were signed as of September 10 and 15, 2012 (based on prior verbal agreements), for the notes and signed them on behalf of PanAm as CEO, which he no longer was (Ross was the CEO by that time). Div. Exs. 494, 496. After receiving Crow's signature, Clug sent the executed note extension agreements to Lana and Ross. Div. Ex. 497.

On November 9, 2012, Clug, Lana, and Ross received a letter from Crow containing information to be submitted to the transfer agent: "[r]estricted common shares are to be

transferred to each of the people mentioned below. This will be from conversion of the note in the amount of $ 25,000 plus interest representing 1,935,284 common shares when converted." Div. Ex. 506 at 2. The list of names attached to Crow's letter included Melnick, Stern, and Ramirez, for 100,000 common shares each. *Id.*

From September to December 2012, PanAm's Citibank account balance decreased from $119,349 to $22,405. Div. Ex. 2A at 14.

On January 23, 2013, PanAm filed its Form 10-Q for the period ended September 30, 2012. Div. Ex. 839. In the disclosure regarding the $25,000 and $28,000 convertible notes, the Form 10-Q stated that "[o]n September 10, 2012, the [] note was modified to extend the maturity and note conversion deadline dates to September 10, 2015," and "[o]n September 15, 2012, the note was modified to extend the maturity and note conversion deadline dates to September 15, 2015." Div. Ex. 839 at 14; *see also* Tr. 489. Crow's conversion and the stock sales to the three investors were not reported in the subsequent events section of the 10-Q. *See* Div. Ex. 839 at 19. Lana testified that he believed "that the transaction would have been recorded when – when the actual shares were actually issued by the transfer agent." Tr. 994. He stated that he generally would have disclosed the Crow note transaction as a subsequent event. Tr. 994. Lana admitted "he missed that disclosure," he "wish[ed] [he] had disclosed it," and that he "didn't think it was material." Tr. 995, 1013-14. Hartman, PanAm's CPA, testified "the transaction between two shareholders . . . would not be recorded in the financial statements," Tr. 496-97, and that there "is no requirement to report [the sale of shares between private shareholders] to . . . auditors," Tr. 497. Hartman also stated that "[t]here would be a requirement to – to report the conversion of the shares." Tr. 497. Hartman testified that Crow's conversion was not disclosed to him, that the conversion was a material transaction, and that his firm, Peterson Sullivan, would have withdrawn as PanAm's auditor had it known of the transaction. Tr. 489-91.

By February 2013, PanAm had spent all of the money raised from investors but had not acquired a single asset. Div. Ex. 2A at 14; Div. Ex. 800 ¶ 16. Ross advised the board that PanAm could not continue as a public company. Div. Ex. 557 at 2. On May 1, 2013, PanAm filed a Form 15 and withdrew its registration with the Commission as a reporting company. Div. Ex. 841.

D. Aurum

In April 2011, Crow, Clug, and Lana formed Aurum Mining, LLC, a Nevada limited liability company, with the intent to enter the gold mining business in South America. Div. Ex. 62 at 3; Tr. 941-42. Crow, Clug, and Lana are the managers of the company. Div. Ex. 68 at 7; Tr. 942; *see also* Div. Ex. 62 at 12.

Aurum's Class B membership units have all of the voting rights. Div. Ex. 62 at 3. The Class B units were held by Crow through his company Raven Holdings LLC, and by Clug through his company Dolphin Group LLC. *Id.* at 27, 29; *see* Div. Ex. 756; Tr. 1038. Aurum's nonvoting Class A membership units were subsequently offered to investors. Div. Ex. 62 at 29.

Crow and Clug were the two signatories of Aurum's bank accounts. Div. Ex. 2A at 21; Tr. 831-32. Lana did not exercise control over Aurum's bank accounts. Div. Ex. 2A at 21; Tr. 831-32. Lana asked Clug for "access to the bank statements in order to record the transactions" in his role as CFO and was given access. Tr. 833. Lana felt he had no authority to pay debts or invoices of Aurum, though it is unclear whether he ever asked for such authority. Tr. 834. Lana had control over Aurum's accounting and tax returns. Tr. 833.

1. Aurum's Consulting Agreement with Corsair

In an advisory agreement dated June 1, 2011, Aurum engaged Corsair as a "financial and management consultant." Resp. Ex. 7 at 1. The advisory agreement required Aurum, while its "operations are not generating revenues," to pay Corsair a retainer fee of $25,000 per month. *Id.* at 3. Crow signed the advisory agreement as chairman of Corsair and Clug signed as CEO of Aurum. *Id.* at 7. From February 2012 through November 2013, Aurum paid $625,000 to Corsair pursuant to that agreement. Div. Ex. 2A at 17.

2. May 2011 Term Sheet

When preparing Aurum's first private placement memorandum, Clug told Lana about the need to raise $1 million and suggested that Lana present the opportunity to some of his clients who were accredited investors. Tr. 821. Lana agreed to speak with his clients about investing in Aurum, even though he had never presented his clients with any investment opportunities in the past. Tr. 821-22. Lana was aware of the importance of securing "strategic investors" – investors who could recommend Aurum to other investors. Div. Ex. 59; Tr. 826-27. From 2011 through early 2014, Lana informed Crow and Clug of contacts with actual and potential investors. Div. Exs. 59, 73, 218; Div. Ex. 429 at 1; Div. Ex. 533.

Crow and Clug drafted Aurum's May 2011 term sheet, Div. Exs. 50, 696, in support of the effort to raise funds for a Batalha gold project in Brazil (referred to as Batalha, Batalha JV, or Batalha joint venture), which was intended to be a joint venture between Aurum and a Brazilian entity named Arthom Participacoes, Ltda. Div. Ex. 51; Div. Ex. 800 ¶¶ 7-8. Arthom was owned by Arthur Ribeiro and Thomas Raiss. Div. Ex. 800 ¶ 7; Tr. 288. Raiss testified that he and his partners, including John Coogan, a West Point classmate of Clug's, had supplied an investment proposal to Clug and Crow showing projections that there were eighteen tons of gold available from tailings in the Tapajós gold region, of which Batalha was a part.[4] Tr. 1578, 1591; Resp. Ex.

[4] According to Raiss, tailings are rejects from mine processing that certain mine companies do not bother to further process, but still contain some amount of gold. Tr. 1576-77, 1591. Raiss described seeing

> mines that were working and making a good profit, primary mines working and making a good profit with a half a gram per ton, a little bit over half a gram per ton, where they have a lot more intense work to do than we would have to do with reprocessing existing rejects. These rejects, basically they lie on top – usually in river valleys, and they – it's sand-like material which basically you have to pump into a set of equipment, depending on what the industrial analysis gives you. . . .

190 at 10. Clug relied on his classmate Coogan for the early information on Brazil and the Batalha project. Tr. 2074. The proposal supplied by Coogan was later used by Clug in correspondence with prospective investors. *Compare* Div. Ex. 55 at 9 ("With gold at $1,500 and assuming that we actually recover 4 g/ton (test results indicate an average of 4.8 g/ton) then, in this scenario, each $100,000 could return over $13.8 million."), *with* Resp. Ex. 190 at 19 ("We have an average of 4.8 grams per ton."); *see also* Div. Ex. 56; Tr. 1508-11. Raiss hired and used an independent geologist and independent labs to evaluate Batalha and report the results to Crow and Clug. Tr. 1583. They took "close to 300 different [core] samples." Tr. 1583. Coogan provided initial projections of gold values worth revenue of $819,000 per month or approximately $10 million per year just for an initial small parcel and small startup volume of a pilot plant. Tr. 2072-73; Div. Ex. 20. Clug obtained an estimate of 105 tons of gold from Raiss with respect to the whole site. Div. Ex. 44 at 1; Tr. 2087. The work completed by Coogan and Raiss led Clug to believe that the Batalha project had a potential of "$300 million over the next five years." Tr. 2081; Div. Ex. 24.

Lana testified that the term sheet was given to potential investors. Tr. 825; *see* Div. Ex. 51. According to that term sheet interest on the notes was "8% accrued annually and paid all at maturity," and maturity was nine months, or earlier, upon a conversion event. Div. Ex. 51 at 1. The notes were convertible at the holders' choice prior to maturity. Resp. Ex. 14 at 1; Div. Ex. 58 at 1; Div. Ex. 676 at 1. Another conversion option was that

> Upon the financing and closing of the acquisition on the land and rights for the gold deal known as Baltalha event (the "Close"), the principal and all accrued but unpaid interest may be converted, at the election of the Holder, into the underlying common stock or LLC units at the offering price contained herein less a 50% discount.

Div. Ex. 51 at 1. The term sheet stated that the note proceeds would be used to "complete due diligence including final report from engineers, legal, travel and costs related to the land purchase and startup operations." *Id.* at 1-2. The term sheet also stated that Aurum "will have a 49% interest in the JV that owns the land and rights to the gold property. . . . [Aurum] has a binding royalty agreement in place with International Mining Rights in recognition of the assignment of its membership units representing 100% of the company." *Id.* at 1. The term sheet also stated the notes were "[s]ecured by all assets" of Aurum, but it did not state whether Aurum had any assets at that time. *Id.* Aurum had no bank account until May 31, 2011. Div. Ex. 2A at 6-7.

On May 21, 2011, Clug emailed Arnold Ferolito to solicit an investment in Aurum. Div. Ex. 56 at 2. In a May 25 email, Clug stated that Aurum would be "extracting and selling gold"; he projected "a return of over $5 million" from a $100,000 investment based on initial testing

---

> So one has to test in which way one best can extract either the loose gold or the gold which is still attached to some type of other material, quartz, sulfides, whatever.

Tr. 1576-77.

results of one gram per ton, but stated that "our testing has consistently shown results of 4.8g/t, not 1g/t, so . . . your $100K could return $48 million." *Id.* at 1. In the same email, Clug advised that the project may not work out. *Id.* Ferolito felt the investment was "[h]ighly speculative." Tr. 1988. On May 27, 2011, Ferolito, who purchased a senior secured convertible note for $100,000, emailed Clug to advise him that "there are many scams going on in Brazil in regards to Gold mines." Div. Ex. 57 at 1. Clug responded that "I am indeed very aware of scams in Brazil . . . Our funds are also being used to directly purchase the mining equipment and not going to any Brazilians." *Id.*

On May 31, 2011, Lana emailed Clug a list of eight investors Lana recruited. Div. Ex. 59. All investors represented that they met the accredited investor definition and completed the required subscription documents and filings.[5] Resp. Ex. 38; Tr. 114. Lana identified both Stern and Melnick as strategic investors. Div. Ex. 59. Investors that Lana recruited testified that they read, understood, and believed the representations they received from Aurum in private placement memoranda, update letters, and its business plan. Tr. 60, 102-03, 114, 134-35, 1548, 1558-59. The investors understood that Aurum had no intention of taking a large mining approach, and would aim for "quick-to-production" opportunities. Tr. 110, 166. The investors knew that investment in gold production was risky and the projections and estimates were speculative and could not be relied upon. Tr. 118, 120, 1518. For example, Aurum investor Howard Paul Hollander testified that:

> I knew it was risky, and I knew that I had the money to invest and was willing to risk it. I knew that both Michael and Alex were learning the business, they didn't have a lot of experience, but were using local experts to advise them and get the business going. So it was – it was a calculated risk I was willing to take.

Tr. 1521. Hollander testified that Clug "[a]bsolutely" told him the projections in Aurum's documents were not accurate. Tr. 1559-60. Another Aurum investor, Ferolito, agreed that he knew the Aurum investment was risky, but believed in the managers of Aurum. Tr. 1988; *see* Tr. 1986.

By June 2011, Aurum's first $250,000 was raised through the sale of nine "Senior Secured Convertible Notes." Div. Ex. 2A at 10; Resp. Exs. 14, 38; Div. Ex. 51. Of the $250,000 raised through the notes, $165,577 – 66% – went to Crow and Clug. Div. Ex. 2A at 10. The amount also includes at least $40,816.57 for reimbursement of Clug's expenses and $1,189.29 of Crow's expenses to benefit Aurum. Div. Ex. 2A at 10; Resp. Ex. 175.

[5] Rule 501 of Regulation D of the Securities Act includes the following in the definition of an accredited investor: (1) any person whose individual net worth or joint net worth with their spouse, exceeds $1 million; and (2) any person who, in each of the two most recent years, had an individual income in excess of $200,000, or joint income with their spouse in excess of $300,000, and has a reasonable expectation of reaching the same income level in the current year. 17 C.F.R. § 230.501. After 2012, the $1 million net worth could not include the value of a primary residence.

3. August 2011 PPM

After the nine convertible notes, Aurum then recruited investors using private placement memoranda (PPMs), beginning in August 2011. *See, e.g.*, Div. Ex. 68. Clug testified that Aurum's counsel, Brantl, drafted the August 2011 PPM and Crow, Clug, and Lana had the opportunity to review and comment. Tr. 2127; Div. Ex. 64 at 2. The August 2011 PPM provided a detailed description of Crow's professional background, including his designation as a CPA and his work experience prior to becoming president and chairman of Wilshire. Div. Ex. 68 at 20-21. However, it omitted Crow's role and activities at Wilshire, his history of securities laws violations, and his pending bankruptcy. *Id.* The August 2011 PPM sought to raise $1 million (200,000 units) to $2 million (400,000 units) through the sale of non-voting Class A membership units at $5 per unit. *Id.* at 5. The minimum investment was $25,000 and the closing date, at the latest, was December 31, 2011. *Id.* The PPM stated under "Method of Offering and Expenses" that "[n]o subscription will be accepted unless gross proceeds of at least $1,000,000 have been realized in the Offering." *Id.* at 10. Lana gave the August 2011 PPM to potential investors. Tr. 829. Only $115,000 was raised. Div. Ex. 2A at 4. The August 2011 PPM contained the following statements regarding closing, including the closing conditions:

> The Class A Membership Units will be offered until October 31, 2011 (unless extended by the Managers to a date no later than December 31, 2011). No subscriptions will be accepted until gross proceeds of US$1,000,000 have been realized in the Offering and the Closing Conditions described below have been satisfied. Thereafter, all funds received from subscriptions will be immediately available for use by the Company.
>
> The initial closing will not occur, the money will be kept in a Company segregated bank account serving as an "escrow", and no subscriptions will be accepted, until the following conditions (the "Closing Conditions") have been satisfied:
>
> Aurum Mining LLC and Arthom (Brazilian joint venture partners) have formed Batalha JV on terms substantially the same as are reflected in this Memorandum.
>
> A geological report has been received from Charles George Pereira Da Silva Schalken, or other qualified and licensed geologist, attesting to his opinion regarding the average and/or total gold content of the tailings in the Initial Parcel. Management will then make the decision to go forward or not with initial operations.
>
> An opinion of Brazilian legal counsel has been received stating that:
>
> a. Batalha JV has been duly formed under Brazilian law and Aurum Mining LLC, or its wholly owned subsidiary is necessary to comply with Brazil law, owns a minimum of 49% in the JV subject to the required full funding of US$2.5 million;

b. Batalha JV owns or has irrevocable rights to the land and mining rights to the Initial Parcel;

c. Batalha JV has received the licenses from the Brazilian government required to carry out its business plan with respect to the Initial Parcel.

Div. Ex. 68 at 5-6; *see also id.* at 15.

The PPM explained the consequences of failing to satisfy the closing conditions as follows: "If the Company is unable to satisfy the Closing Conditions prior to the termination of the Offering . . . all funds received with respect to that subscription will promptly be refunded to investors without interest or deduction for commission or expenses." Div. Ex. 68 at 38.

Under the heading "Financial Projections," the August 2011 PPM stated that "[t]he projections indicate a return of a potential $100,000 Class A capital contribution as $1,700,000 which is 17x the original investment, over 6 ½ years with no value given to the residual value of the assets or property." Div. Ex. 68 at 12. Similarly, in a section entitled "Cash Flow Projection," the PPM projected that an initial investment of $100,000 would return "Total Cash" of $1,706,940, an "Internal Rate of Return" of 165%. *Id.* at 20. The PPM also provided that the projections were "based upon its best estimates, values and variables from its Brazil partner and other sources," "[n]o assurance can be given that these projections can or will be achieved," "[t]he projection must be understood . . . as merely a statement of the results we would expect if all relevant conditions remain unchanged and our underlying assumptions about the future proved accurate," and "[i]t should be assumed that these projections WILL NOT be achieved and only a good faith effort on the part of management is expected." *Id.* at 12, 17.

The August 2011 PPM represented that "Arthom purchased the property and mining rights in June 2010." Div. Ex. 68 at 14; *see also id.* at 11. It contained the following explanation as to the license of the joint venture:

> Brazil grants two types of mining licenses:
>
> 1. The first is designed for low investment operations. This type of right can only be granted to Brazilian born citizens.
>
> 2. The second is granted to larger Brazilian or foreign mining concerns and allows for more extensive and deeper mining.
>
> ***Arthom has obtained the first type of license*** for the entire parcel that it will contribute to the Batalha JV, and the second type for 220 hectares. We can begin mining immediately and apply for the second type of license, obtained from the Brazilian Mining Department's branch for licenses (DNPM – Departamento de Pesquisas Minerais).

Id. at 16 (emphasis added). The PPM also represented that equipment had been purchased by Arthom. *Id.* at 15.

As Crow and Clug recognized in a series of September 2011 emails, the testing for the Batalha property was inconclusive. Div. Exs. 81, 85, 92. Bruno Palacio, a Brazilian mining engineer working with Aurum, testified that as of September 2011 no opinion about the viability of the project could be made. Tr. 224. In an October 22, 2011, email to Crow, Clug, and Raiss, Palacio said that the "geologist we hired is a criminal and made us lose 2 and a half months work," and estimated total content at only 24,576 ounces, an estimate he described as "not 100% wrong, but are not reliable either." Div. Ex. 112 at 1. On December 12, 2011, Palacio emailed Clug testing results showing the possibility of only 30,084 ounces of gold, and a negative EBITDA of $1,727,601. Div. Ex. 162 at 5. Palacio never determined the total gold content for the Batalha property. Tr. 226.

Crow and Clug traveled to Peru in November 2011, and Paul Luna Belfiore, a Peruvian contact, scouted several properties, including one called Molle Huacan. Div. Ex. 186.

4. December 2011 PPM

Aurum's second PPM, dated December 31, 2011, was drafted and reviewed by Brantl, Crow, Clug, and Lana. Div. Exs. 124, 125; Tr. 947, 1671, 1751, 2130-31. The December 2011 PPM provided to investors states that "[b]ackgrounds of Messrs Clug, Lana and Crow can be found in this document and at [the data room] including discussion of any past litigation," but did not include any information on Crow's then-pending bankruptcy case or specifically mention his past Commission litigation. Div. Ex. 314 at 10. It sought to raise up to $2 million through the sale of non-voting Class A membership units at $5 per unit. *Id.* at 2. The minimum investment was $25,000 and the offering could be extended to December 31, 2012. *Id.* at 6. The December 2011 PPM was finalized in January 2012. Div. Exs. 203, 204.

Under the heading "Financial Projections," the December 2011 PPM stated that "[t]he projections indicate a return on the Initial Investment of a potential $100,000 Class A capital contribution as 40 times, or $4 million, over 7 years." Div. Ex. 314 at 12. Likewise, the section entitled "Summary of Projected Returns on Investment" projected a "Dividend Distribution[]" of $4,000,000 from an initial investment of $100,000, which represented a "Multiple Returned on Investment: 40x." *Id.* at 21. However, it also warned that the projections were "based upon its best estimates, values and variables from its Brazil and Peruvian partners and other sources" and that "[n]o assurance can be given that these projections can or will be achieved." *Id.* at 12.

One of the investors, Melnick, noted the PPM's projection of the forty times return of the initial investment when he made his investment. Tr. 61. While he did not believe the return "was going to be 40 times" his investment, Tr. 61, he hoped to receive some multiple of his initial investment as a return, Tr. 61-62. At the same time, Melnick understood he could lose all his money invested in Aurum because of the risky nature of the investment. Tr. 91-92.

In a section entitled "Cash Flow Projection – Brazil," the December 2011 PPM contained a detailed table projecting "Cash Flow after Investments and Taxes – Cumulative" of $7,067,262 in Year 1, $45,833,531 in Year 2, and $63,837,721 in Year 3. Div. Ex. 314 at 17, 19. It also cautioned that the projection is "merely a statement of the results we would expect if all relevant conditions remain unchanged and our underlying assumptions about the future proved accurate,"

"[b]ecause those expectations and projection are very seldom fulfilled, the projection must be understood as a model for the purpose of explanation rather than as a prediction of something that we expect to happen," and "[i]t should be assumed that these projections WILL NOT be achieved and only a good faith effort on the part of management is expected." *Id.* at 17.

The December 2011 PPM represented that Arthom owned or controlled the land or mining rights to the Batalha property. Div. Ex. 314 at 8, 11-12, 14-15. The PPM states that "Arthom owns a parcel of 3,742 hectares of land in the Tapajós region of Brazil," "Arthom purchased the property and mining rights in June 2010," and "Arthom has contributed its 3,742 hectares to Batalha[.]" *Id.* at 11-12, 15.

Raiss believed that Arthom acquired mining rights to Batalha, which was reported by Crow and Clug in the PPM and related documents. Tr. 1578. Raiss explained that "[he] acquired the rights in the way they were able to be acquired within the Brazilian legal system that surrounds mining, which is a separate legal system than the normal legal system." Tr. 1578. He explained that the mining licensing process had already been started by another individual, and at that point, the mining rights could not be directly sold. Tr. 1578-79. However, he claimed that Arthom contracted with this individual where "he signed over the rights to me . . . of the land, and the mining rights he owned in such a way that technically and legally I could do with the area whatever I wanted to do." Tr. 1579. On cross-examination, Raiss clarified that the power of attorney contract was contingent upon the Brazilian government granting the mining licenses. Tr. 1592. He said he never told Crow and Clug that Arthom had purchased the land or that the mining rights had been obtained from the Brazilian government. Tr. 1593-94. Raiss told Crow and Clug in a March 3, 2012, email that the rights "are not in Arthoms name in the mining department, they are in the original owners name . . . as are the land rights." Resp. Ex. 170. He continued:

> To pass them to anyone, the large tailings area has to have a Research License(one of the actions I set in motion last year and responded and registered 15th march 2012), this will then be ceded to Batalha and once one has the final license it can be passed to Batalha, also as a cession. . . . I will re send the POA that gives me the irrevocable rights over land and mining rights and is registered at the municipal notary in Itaituba.

Id. Palacio testified that Clug and Crow could rely on Raiss' explanations on the transfer of the Batalha rights. Tr. 273.

The December 2011 PPM stated that "[n]o subscriptions will be accepted until gross proceeds of US$250,000 for Class A Membership Units have been realized and the Closing Conditions described below have been satisfied." Div. Ex. 314 at 6. Unlike the August 2011 PPM, however, the December 2011 PPM did not specify any actual closing conditions. *Id.*

The December 2011 PPM stated that the offering proceeds would be

> used to purchase equipment on the first project to extract gold located in a parcel of 3,742 hectares of land in the Tapajós region of Brazil that have been

> contributed to Batalha by Arthom in exchange for a 50% ownership in Batalha. Aurum intends to expand its operations beyond the tailings processing on the Initial Parcel, by acquiring additional mining rights in other gold-bearing parcels in Brazil and Peru. The first parcel, the 3,740 hectares owned by Batalha which in turn is 50% owned by Aurum, is ready to initiate processing. . . . Aurum is currently negotiating final terms for the acquisition of three properties in Peru.

Div. Ex. 314 at 6.

The PPM stated that Crow and Clug, through their entities, Dolphin and Raven, would own all of Aurum's Class B voting units "in consideration of the efforts of the Corsair Group Inc in organizing Aurum Mining, advancing all the costs and time, formulating its business plan, and contributing the Letter of Intent and the rights attached to Aurum Mining LLC." Div. Ex. 314 at 7.

The section titled "Cash Flow Projection – Peru" stated "current estimates for the returns on Aurum's Peruvian projects are believed to exceed the returns obtained on its Brazilian Initial Property, because of the quick-to-production nature and high gold concentration on those mines . . . . Aurum is in the process of acquiring several properties and completing the geology." Div. Ex. 314 at 20.

5. January 2012 Update to August 2011 PPM

Crow, Clug, and Lana drafted a January 2012 update to the August 2011 PPM, which was sent to the investors who invested pursuant to the August 2011 PPM. Div. Exs. 196, 218. It stated, in part:

> We have been busy at Aurum Mining LLC in 2011 and wanted to give you an update on our progress. As you know, we started 2011 focused on acquiring an interest in Batalha, a 3,742 hectare property in northern Brazil with our partners there. We additionally wanted to complete the initial tests and geology to ascertain the reserves. We have completed all of this successfully.
>
> * * *
>
> We are pleased to announce the following accomplishments:
>
> 1. Closed on acquiring the 50% interest in Batalha, our Brazil gold project. Over 200 test holes have been completed and analyzed and we expect final "official" reserve reports in the range of 271,000 ounces or $407 million of gold at a projected long term price of $1,500 per ounce. (Note: as of 01/05/2012 gold's price is $ 1,622 per ounce)
>
> 2. Reached terms on the acquisition of two gold properties in Peru. These reserves are currently estimated to range from 50,000 to 200,000 ounces each.

These are quick to production properties and geological testing is easier due to the current informal mining activity on them. . . .

3. Built out a management team in Peru and Brazil to capitalize on these opportunities.

4. Began the process for NI-43101 mining independent reports for all the properties.

5. Developed a mining plan around both Peru and Brazil mining properties.

6. Initiated discussions on raising and or merging the operations with large gold institutions interested in our properties at substantial multiples of prices Aurum is paying.

7. We have satisfied the conditions of closing on the Aurum original PPM.

* * *

As part of our updating you, we need you to confirm certain aspects of your investment into Aurum Mining LLC and your subscription documents.

After your review of the [amended] PPM, please acknowledge the following to us so we may proceed to close on the initial round as per the Amended PPM:

1. I have reviewed the Amended Private Placement Memorandum dated December 31, 2011 in its entirety and have consulted with any advisors as I may deem appropriate.

2. My subscription document and investor questionnaire is still accurate in its entirety.

3. I wish to continue my investment and receive my Class A Membership Units in Aurum Mining LLC.

Div. Ex. 218 at 2-3 (formatting altered). A substantially similar letter was prepared for the senior convertible note holders, except it omitted the information regarding the closing conditions of the August 2011 PPM and the acknowledgments. Div. Ex. 202; Resp. Ex. 25; Tr. 1764. Several of the senior convertible note holders also purchased Aurum shares through the August 2011 PPM. *Compare* Div. Ex. 2A at 10, *with* Div. Ex. 2A at 4 (investors in both are Benny and Rosalind Menendez, Melnick, Stern, and Ronald Sicilia).

Crow and Clug testified that Brantl inserted the line "[w]e have satisfied the conditions of closing on the Aurum original PPM" into the January 2012 update, but there is no documentary evidence showing who inserted that line. Tr. 1064-65, 1712; Div. Ex. 218 at 2; *see* Div. Ex. 196. A draft circulated by Lana to Clug on December 31, 2011, showing Lana's changes highlighted

in bold red, already contains that line, not bolded. Div. Ex. 196. Crow testified that he did not know why the line was included in the January 2012 update, because the closing conditions were not met, but admitted that it "slipped through our process." Tr. 1065-66. The January 2012 update was sent by Lana to investors on behalf of the three managers of Aurum. Tr. 969; Div. Ex. 226; *see* Div. Ex. 218. All of the original August 2011 PPM investors agreed to continue their investment in Aurum, signing the acknowledgment statement. Div. Exs. 209, 211-13, 216-18, 221, 228-30, 251; Tr. 1713-15; *see* Div. Ex. 2A.

Following the issuance of the December 2011 PPM and January 2012 update letters, the nine secured convertible noteholders agreed to convert their notes into Class A membership units in Aurum, rather than receive their principal plus interest. Tr. 847.

6. Investing in Aurum through ABS

On January 5, 2012, Crow sent Clug and Lana "a basic draft of outline for due diligence" on ABS and indicated that he would coordinate with Lana. Div. Ex. 205. Clug responded by asking whether they needed legal approval on any marketing materials. *Id.* Following the due diligence, Clug believed ABS was a legitimate fund, as demonstrated by the fact that he recommended it to his father. Resp. Ex. 92; Tr. 1940-41.

That month, Crow and Clug drafted a term sheet, reviewed by Lana, to enable investors to invest in the ABS Fund's Ginnie Mae portfolio and borrow seventy percent against their ABS investments, through a line of credit, to invest in Aurum. Div. Exs. 201, 206, 231; Tr. 844. It is unclear whether that draft term sheet was distributed to potential investors. Tr. 1940.

On January 10, 2012, Crow, on behalf of Corsair, signed a referral agreement between Corsair and ABS with an effective date of January 1, 2012. Div. Ex. 199; Tr. 1043-44. The referral agreement provided that:

> The Consultant [Corsair] may from time to time introduce potential investors to Manager [ABS] in return for Manager's agreement to compensate Consultant for these services if an investment is made in one or more funds managed by Manager. The Consultant's sole role and responsibility is to serve as an intermediary by introducing potential Fund investors to Manager.
>
> . . .
>
> In the event that any Investor makes an investment in any Fund, Manager agrees to pay the Consultant a fixed fee equal to a 3% ("Fee") paid out over 90 days, typically the first 1% after 30 days, the second 1% 30 days after, then the final 1% 30 days after. Every year a client stays in the fund there will be additional fee of 1% paid annually to consultant.

Div. Ex. 199 at 1-2. The Corsair-ABS referral agreement states that Corsair is not a FINRA registered broker-dealer and that it "has been advised by company counsel that it is exempt or excluded from registration." *Id.* at 2, 4. Corsair was never registered as a broker-dealer with the

Commission. Div. Ex. 800 ¶¶ 5, 17. Neither Crow nor Clug was registered as or associated with any registered broker-dealer. *Id.* ¶ 17. Clug knew that Crow had been barred from associating with a broker-dealer before this time. Tr. 1469.

Crow believed that the arrangement with ABS would be highly profitable. On January 17, 2012, he provided the following assessment to Price of the investments Corsair could refer:

> Just to give you an idea on what we are thinking we can do between our direct referrals and those we set up and will go thru us, we believe we can introduce for you
>
> | | |
> |---|---|
> | Q1 2012 | $ 2,000,000 |
> | Q2 2012 | $ 4,000,000 |
> | Q3 2012 | $ 4,000,000 |
> | Total | $ 10,000,000 |
>
> This is just what we need to execute out plan on what these people might choose to reinvest from their line. WE believe we can do a lot more if you want to scale into it and might be able to get as much as $ 25 million to you this year. The ability to set up offshore accounts and or structure is important for the bigger money sources we have.

Div. Ex. 233 at 2-3. Under the referral fee agreement, Corsair would earn $300,000 on a $10 million investment, and $750,000 on a $25 million investment. *See* Div. Ex. 199 at 2 (3% of $10 million is $300,000 and 3% of $25 million is $750,000).

In February 2012, Price and his associate Jay Cowan made a presentation of ABS Fund investments to Aurum investors in Boca Raton, Florida, which Crow and Clug attended. Tr. 131, 133, 144. At the meeting, Price told potential investors that ABS was paying an interest rate of roughly eleven percent. Tr. 144-45. After the meeting, Cowan emailed Clug expressing gratitude for the introductions to the investors. Div. Ex. 258.

Lana recommended the ABS Fund investment – paired with the line of credit feature allowing for additional Aurum investments – to some of his clients. Div. Ex. 262. Lana purported to be affiliated with Corsair for the purposes of the ABS transactions. *See id.* (email from Alana@thecorsairgroup.com). In the subject line of an email to Price requesting the ABS Fund prospectus and other materials for a potential investor, he identified himself as "ANGEL LANA CFO (THE CORSAIR GROUP)." Div. Ex. 241. Crow and Clug were copied on the email. *Id.* Lana used his Corsair email address to make investor referrals to ABS on behalf of Corsair, copying Crow and Clug on those emails. Div. Exs. 243, 244, 260, 262. Lana testified that Clug established the preceding email address and insisted that Lana use it. Tr. 854. Lana testified that Clug and Crow were not involved with direct communications between investors and the ABS Fund. Tr. 973. All of the investors were prior relationships of, and introductions by, Lana, with the exception of Clug's father who was also a long-time client of Lana. Tr. 941, 1950. Although Clug recommended ABS to his father, Tr. 1941, ABS dealt directly with his father, Tr. 1950.

Lana introduced Melnick to ABS. Tr. 55. Melnick and his father Harry each invested $100,000. Tr. 55-56. Melnick invested in ABS based on Lana's representation that ABS was "relatively safe . . . compared to the more speculative nature of the mining operation." Tr. 55. Melnick never spoke with Clug or Crow about ABS and understood that it was separate from Aurum. Tr. 114. Gerald Millstein, another Aurum investor, also invested $100,000 in ABS. Div. Ex. 422 at 2. Clug congratulated Lana on the ABS sales. Div. Ex. 269.

When the Aurum investors began putting money into ABS, Price emailed Crow and Clug to advise that they could begin billing for Corsair's referral fees. Div. Exs. 267, 276. The $100,000 investments in ABS by Melnick, Melnick's father, and Millstein entitled Corsair to $3,000 each. This is reflected in the first invoice, dated March 26, 2012, which Corsair sent to ABS:

Description	Amount
Consulting Fee per agreement - $3,000 (M. Melnick) - 1/3 due every 30 days	$1,000.00
Consulting Fee per agreement - $3,000 (H. Melnick) - 1/3 due every 30 days	$1,000.00
Consulting Fee per agreement - $3,000 (Millstein) - 1/3 due every 30 days	$1,000.00
Total	$3,000.00

Div. Ex. 308 (formatting altered); *see also* Div. Ex. 266. Clug drafted a similar March 2012 invoice for Crow's review. Div. Ex. 300. Price, in an April 2012 email to Crow and Clug, called the payments due under the invoices referral fees. Div. Ex. 330. The April 2012 invoice sent from Corsair to ABS reflected an additional $3,000 referral fee due to Corsair because of a $100,000 investment in ABS by Clug's father. Div. Ex. 321. The May 2012 invoice sent from Corsair to ABS, like previous invoices, had columns listing by name each Aurum investor, the consulting fee per agreement, the statement "1/3 due every 30 days," and the amount due. Div. Ex. 364. The total amount due in the "Description" column was 3% of the investors' ABS investment, per the referral agreement. *Id.*

In June 2012, ABS and Corsair superseded the referral agreement with a new agreement that changed the method of payment to a flat fee. Div. Ex. 61; Resp. Exs. 91, 128;[6] Tr. 1942-43. In the new agreement, ABS engaged Corsair "to act as financial and management consultant," and "to provide recommendations" in exchange for a fixed-fee of $5,000 per month through December 2012. Div. Ex. 61 at 1-2. According to Clug, Price had originally proposed the superseded "success-fee-based compensation" structure, but counsel later advised that success-based fees should be canceled. Tr. 1942. Crow also testified that the switch to the flat fee resulted from a review by counsel. Tr. 1052.

The June and July 2012 invoices listed a flat fee of $5,000 per month, and the references in the preceding invoices to "per agreement," to individual investors, and "1/3 due every 30 days" are not present. Div. Exs. 425, 443. A November 2012 statement summarizes all the payments made by ABS to Corsair, along with the "Invoices From February through December

[6] The 2011 dates on the cover pages of those signed exhibits appear to be typographical errors, and should read 2012 in light of the content of the letters, and given that an effective date of June 1, 2012, was consistent with the transition to flat fee payments. *See* Tr. 1948-49; Div. Ex. 500.

2012," and correspondingly reflects the change to a $5,000 monthly flat fee after June 2012. Div. Ex. 500. That invoice shows the "Total Payments" received by Corsair from ABS to be $39,563.31. *Id.*; *see also* Div. Ex 2A at 18.

Excluding the referral of Aurum investors to ABS, there is sparse evidence of consulting services performed by Corsair for ABS. *See., e.g.*, Resp. Exs. 92, 93. Crow explained the lack of documentation was due to the fact that he and Clug worked in offices next to each other so there was no need to email. Tr. 1042-43. Despite the absence of documentation, Clug recalled various services that Corsair performed for ABS unrelated to referrals, such as "tighten[ing] up their process in terms of valuation of assets, monthly reporting, [and] getting it online." Tr. 1942.

7. Batalha Opportunity Starts to Fall Through

On February 24, 2012, Raiss emailed Crow regarding Ribeiro's share in Arthom as he was not contributing financially to the project: "I have come to the end of my financial resources and am unable to continue and as the result am not willing to continue anything without being absolutely [sure] of funding" the Batalha JV. Div. Ex. 261 at 1. Crow suggested potentially taking over Ribeiro's share. *Id.* Raiss emailed Crow on February 28 summarizing a talk between the two of them regarding the future of Batalha, among other things removing Ribeiro as CEO and Aurum's potentially increased ownership share in Arthom. Div. Ex. 264. Crow then accused Raiss of "poor results and misappropriated funds" and threatened to "engage lawyers." *Id.*

On March 2, 2012, Crow emailed Raiss, copying Clug, that "[w]e just got off the phone with our law firm in Brazil . . . they keep telling us the rights are not in Arthoms name right now and it[']s a third party." Div. Ex. 270 at 1. Raiss explained that while the rights were "not in Arthoms name in the mining department" but "in the original owners name," he had a power of attorney that gives him "the irrevocable rights over land and mining rights and is registered at the municipal notary." *Id.* On March 8, 2012, Azevedo Sette, the Brazilian law firm hired by Crow and Clug, advised them that "[w]e still have no proof that Batalha has mining rights and land nor that it has the right to acquire such mining rights and land. We don[']t reco[m]mend any further investment at this point." Div. Ex. 274 at 1; *see also* Div. Ex. 310. Crow then emailed Raiss that "[o]ur law firm can not [sic] find any evidence that you have the mining rights." Div. Ex. 282. Raiss then wrote to Aurum's Brazil law firm that "we never said we owned the mining rights." Div. Ex. 283 at 1. Raiss explained that he obtained the mining rights through an irrevocable power of attorney and a contract to transfer them to Arthom. *Id.* Azevedo Sette, advised Crow and Clug on April 5, 2012 that "Arthur and Arthom are in breach of the JV Agreement since they have not incorporated Batalha (at least not as it is described in the JV agreement, having Aurum as shareholder) nor have they transferred any mining rights so far." Div. Ex. 334. Also on that day, Raiss emailed Palacio and Ribeiro to state that he had "just agreed with [Crow] on the non-continuation of participation of Aurum in Batalha or any other project." Div. Ex. 335 at 1.

8. 1st Quarter 2012 Update

Beginning in mid-April 2012, Aurum began issuing quarterly update reports to investors drafted by Crow, Clug, and Lana. Div. Ex. 326 at 1; Div. Ex. 438 at 1; Div. Ex. 444 at 1; Div. Ex. 551 at 1; Tr. 1382. Clug and Crow ensured Lana provided the quarterly reports to almost all of the investors. Tr. 1804-05; Div. Exs. 430, 448, 760. The exceptions may have been two investors – Ferolito and Farly Barone – who Clug may have provided quarterly reports to directly. Tr. 1804-05. Investors read the quarterly reports and believed them. Tr. 74-75, 151-52.

Lana began sending out the 1st Quarter 2012 report (dated April 16, 2012) around April 17, 2012. Div. Ex. 369. It stated that "Aurum is continuing to raise its initial $2 million from its private placement. . . . If you or anyone else desires to increase their stake, now is the time to do so." *Id.* at 6. It contained the following positive statements about the geology reports for the Cobre Sur mine in Peru:

a. "[A] property adjacent to [Cobre Sur] is operating at what we believe is about 700 tons a day with similar grades of about 8 g/ton. We anticipate that our mining results will be in line with those of these adjacent properties, which would make [Cobre Sur] very attractive to mine on a larger scale, or to be bought by a major producer as we go into production and establish our reserves through additional testing and evaluation." *Id.* at 3.

b. "Our initial sampling has indicated head grades of gold ranging from 4g/ton to 28g/ton." *Id.*

c. "Our own local geologists estimate that Cobre Sur has at least 500,000 ounces of gold that can be mined near the surface. If this is correct, . . . this is worth $42.5 million (at $85 per ounce, the most conservative valuation . . .) and, if fully mined is worth $800 million over the subsequent years." *Id.*[7]

d. "We are in the process of obtaining our mining permits, and preparing the site for production of an initial 50 tons per day by third quarter 2012. We will also be building a processing plant, some on site and some off site, and/or working with one or more partners to process the gold. We anticipate the mine will be cash flow positive within 3-4 months of opening."[8] *Id.*

e. "Please note that our first full 12 months of production ramping up from zero to 85 tons a day is estimated to generate approximately $2 million in cash available for

[7] These numbers appear to be derived from Aurum's in-situ valuation spreadsheets. Resp. Exs. 97, 119.

[8] The update letter does not appear to specify an opening date.

distribution to Aurum Mining LLC. In the second year this increases to $5.4 million."[9] *Id.* at 4.

It also contained the following positive statements about the geology reports for the Molle Huacan mine in Peru:

f. "Our initial tests indicated grades ranging from 4g/t on a very large deposit, to 38g/t on smaller veins. This property may lend itself to an even larger scale production than that at Cobre Sur due to the large gold deposits/veins and underlying geology." *Id.*

g. "We anticipate this is an excellent gold property that has similar if not better economics than Cobre Sur. We believe that this property has the potential to produce total gold resources of 500,000+ ounces." *Id.* at 5.

h. "[U]ntil we initiate production at Cobre Sur, we will not likely move forward on starting [Molle Huacan]. Our plan is to have [Cobre Sur] in production and cash flowing before we bring [Molle Huacan] on line, which we estimate will be achieved by the fourth quarter of 2012. Other potential acquisitions are presently on hold until we move these two properties into production or until we have additional capital that allows Aurum to make additional acquisitions." *Id.*

i. "Cash flow projections for this project are very similar to those for Cobre Sur. Approximately $2 million in cash available for distribution to Aurum Mining LLC over the first 12 months of production and $5.4 million for the second year are reasonable expectations." *Id.*

The 1st Quarter 2012 report was updated as of May 1, 2012. Div. Ex. 373. While the information provided regarding Cobre Sur and Molle Huacan was similar, Aurum said the following about Molle Huacan, which in many cases was practically identical to what it had said about Cobre Sur in the prior version of the 1st Quarter 2012 report:

> Our own local geologists estimate that Molle Huacan has at least 500,000 ounces of gold that can be mined near the surface. If this is correct, at today's value for gold in the ground, . . . Molle Huacan is worth $42.5 million (at $85 per ounce, the most conservative valuation . . .) and, if fully mined would cash flow $800 million over the subsequent years.
>
> We are in the process of preparing the site for production of an initial 50 tons per day by third quarter 2012. We will also be building a processing plant, some on site and some off site, and/or working with one or more partners to process the ore. We anticipate the mine will be cash flow positive within 3-4 months of opening. . . .

[9] These numbers appear to be derived from Aurum's financial model. Resp. Ex. 98.

> Please note that our first full 12 months of production at Molle Huacan, ramping up from zero to 75 tons a day, is estimated to generate approximately $2 million in cash available for distribution to Aurum Mining LLC. In the second year this increases to $5.4 million. However, with additional capital investment it is possible to increase production up to 350 tons/day under the permit process we plan on filing.

Id. at 3; *see* Div. Ex. 369 at 3-4. Regarding Cobre Sur, the May 2012 version of the update stated that "[c]ash flow projections for this project are very similar to those for Molle Huacan" and that development of Cobre Sur would not move forward until production was initiated at Molle Huacan. Div. Ex. 373 at 4-5. The April 2012 version stated nearly the same thing, except the mines were reversed, with Molle Huacan's cash flow projections being compared to those of Cobre Sur, and Molle Huacan's production being delayed until Cobre Sur began producing. Div. Ex. 369 at 5.

With regard to Batalha, both the original and revised updates advised that it could yet become operational in the longer term:

> We are in discussions with our Brazilian partner to amend the joint venture agreement so that we would have absolute control over the key operational, financial and legal aspects of this business moving forward and possibly increasing our ownership in the project. In the mean time, we will concentrate our efforts on developing the Peruvian properties as they are quick to production and cash flowing, which the Brazilian project will take longer to make operational.

Div. Ex. 369 at 5-6; Div. Ex. 373 at 5. An earlier draft version from April 3 noted that: "Our Batalha JV has had several operation and partner challenges" and "some of the testing from the second set of geology work completed came back with lower results in the tailings fields than the original tests." Div. Ex. 326 at 4. However, that unfavorable language was removed because, in the intervening month, Clug developed the understanding that the lower test results were mistaken. Tr. 1587; Clug Response to Div. FOF & COL at 8.

9. Steven Park

On February 13, 2012, at Aurum's request, Steven L. Park, an independent consulting geologist residing in Lima, Peru, submitted a proposal to Crow and Clug "for writing a 'first phase' NI 43-101 compliant technical report that would include a Measured and Indicated Resource statement on the Molle Huacan property."[10] Div. Ex. 252. A consultant agreement signed that day between Aurum Peru and Park provides that Park will prepare "a technical report compliant with NI 43-101 (CIM) standards on Aurum's mining prospect Molle Huacan located in the Department of Arequipa, Peru." Div. Ex. 246 at 1.

[10] An NI 43-101 report "dictates how scientific and technical information on mineral properties will be reported for publicly listed companies . . . in Canada." Tr. 361.

In April 2012, Park made a field visit to Molle Huacan with Paul Luna and Elias Garate, Aurum's principal local geologist on site, to examine the vein, mineralization, and take reference samples in order ascertain the grade of the vein. Tr. 531-32. They walked the length of the Monica vein in the primary zone where most of the sampling and work had been done, where there were small mining workings, and Park took about a dozen samples. Tr. 532-33, 536. Another geologist with Park took another "40 or 44 samples," but due to computer problems the "location data" of these additional samples could not be recovered. Tr. 536. Park also collected over sixty samples at the Cobre Sur site. Div. Ex. 347.

On April 16, 2012, Park emailed Clug with Cobre Sur's preliminary results, stating "[t]he 9 samples that I took on the visit to Cobre Sur with you came back really low, highest was 0.9 g/t Au." Div. Ex. 347. Park continued, "[h]ope there are some higher numbers from [the 52] samples taken underground." *Id.* On April 17, 2012, Park received and advised Clug and Crow about the remaining Cobre Sur results, telling them that he had a meeting with the engineering group that was going to perform the resource calculation and "it was decided to shelve the project for lack of grade." Div. Ex. 604 at 3. Only four of the fifty-two samples came in over "4 g/t Au." *Id.* According to Park, the "only way to improve the situation [was] to take the risk to drive drift along the vein underground, ie, start mining . . . but there's no guarantee." *Id.* On April 28, 2012, Park responded to Crow's request to produce a "'project of merit' type report" for Cobre Sur by saying such a test was "a tough sell" based on the current test results. *Id.* at 4. At some point after this, Park conducted tests for copper in Cobre Sur. *Id.* at 6. On May 16, 2012, Park received the results and notified Crow and Clug that they were "not encouraging" and that he did not "see a way to save Cobre Sur other than to take the risk to explore for more veins." *Id.* at 7.

On May 16, 2012, Clug emailed Luna and copied Crow, writing with regards to the copper results that Cobre Sur "[l]ooks like a write off!" and that it was "[n]o surprise based on our sampling." Div. Ex. 384; *see also* Div. Ex. 382 (May 15, 2012, email stating that Cobre Sur "may be a complete write-off!"). Less than two hours later, Clug solicited an investor using the December 2011 PPM and the May version of the 1st Quarter 2012 update letter containing positive projections on Cobre Sur. Div. Exs. 384-85. Crow, Clug, and Lana had numerous communications with investors between May 5 and July 12, 2012, including Keith Ullrich who invested $50,000 on May 31, 2012. Div. Ex. 2A at 4; Div. Exs. 372-74, 385, 399, 409, 410, 429, 435.

10. 2nd Quarter 2012 Update

The 2nd Quarter 2012 update, dated July 24, 2012, disseminated by Lana, discussed on the one hand, the "excellent results" from Molle Huacan," the "large disseminated gold content" at Alta Gold, and, on the other, problems with Brazil and Cobre Sur. Div. Ex. 450 at 1, 4, 6-7.

a. "We believe our proposed processing plants will be able to process the production from our mines and still provide us with excess capacity that we can opportunistically use in buying concentrate and ore, thus generating significant cash flow at minimal risk for Aurum." *Id.* at 3.

b. "Along with our geologists we have now uncovered at least 10 significant gold veins and one in which we know there is a lot of copper. The veins have initially tested as high as 24 g/ton. Our senior geologist, Elias Garate, is becoming increasingly convinced that Molle Huacan is a major gold concession and may have more than 1 million ounces of gold." *Id.*[11]

c. "Our testing on [Cobre Sur] has been disappointing. . . . Given our excellent results at Molle Huacan and several promising deals in the works, such a[s] Alta Gold, we are working with our team to see if we want to continue to explore this property or pass on it and focus on our better assets." *Id.* at 4.

d. "Alta Gold . . . basically consists of two mountains, one of which is a very large disseminated gold ore body. . . . These concessions encompass two mountains which we have named Base Mountain for its base metals and Alta Mountain for its large gold deposit." *Id.* at 4-5.

e. Regarding Batalha: "We have not yet been able to resolve our differences with our local Brazil partner. They did not put up their share of capital . . . The Brazil partners did not disclose to us all the salient facts regarding the property, some of which make it more expensive to mine the tailings." *Id.* at 6-7.

f. "In addition to processing our own ore from our concessions, initially from Molle Huacan, any remaining capacity may be utilized to process the production from other sources, which will generate further cash flow to Aurum. This gives our processing plants the ability to ramp up with our production and process material from others at a high profit margin, with little risk." *Id.* at 7.

g. "Our initial metallurgy tests on Molle Huacan show over 82% recovery for flotation of gold, which is very good news." *Id.* at 8.

h. "Our goal is to be able to initiate mining of the ore from Molle Huacan by the end of Q3 of 2012 and process ourselves by Q2 of 2013. In the meantime we are evaluating ways to process our ore during our plant and permit build outs." *Id.* at 8.

i. "We are nearing completion of the private placement. Our projections continue to be that we will be able to place the first mine into production in 2012 and fully build out the mining and processing to support the operation." *Id.* at 8.

j. "Our assets are becoming very valuable and we may want to look for liquidity event opportunities in 2013 that would allow us to ramp up more quickly and/or give our Members cash distributions." *Id.* at 9.

[11] This estimate was Garate's (Resp. Ex. 68b at 5), based on data summarized in Respondent Exhibit 46, a list of sample test results from March 2012 to February 2013, that Crow explained was created by "Elias Garate and the lab team at Molle Huacan." Tr. 1302-03.

11. September 2012 PPM

Aurum's third PPM, dated September 15, 2012, sought to raise up to $1 million through the sale of non-voting Class A membership units at $5 per unit. Div. Ex. 469 at 1. The minimum investment was $25,000 and the offering sunset date was December 31, 2012. *Id.* at 4. The September 2012 PPM contained a detailed professional background profile for Crow, Clug, and Lana and referred investors to an online data room for "discussion of Mr. Crow's 2008 litigation with the SEC over an investment and ownership of a broker dealer without the requisite securities license and subsequent bankruptcy following the financial meltdown of 2008." *Id.* at 8, 11-13. It also contained a link to data room where it stated that information on Crow's Commission litigation was posted. *Id.* at 8.

The PPM represented that Aurum, through its 80% owned Peruvian subsidiary Aurum Mining Peru, owned Molle Huacan mine. Div. Ex. 469 at 6. It provided "highlights" on Molle Huacan, including that:

> we have now uncovered at least 10 significant gold veins and one in which we know there is a lot of copper. The veins have initially tested as high as 24g/ton. Our senior geologist, Elias Garate, is becoming increasingly convinced that Molle Huacan is a major gold concession and may have more than 1 million ounces of gold.

Id. at 9. The PPM also stated: "Our goal is to be able to initiate mining of the ore from Molle Huacan by the end of Q3 of 2012 and process ourselves by Q2 of 2013." *Id.* at 11.

In addition, the PPM represented that Aurum, through its 80% owned Peruvian subsidiary called Admiral Cove Partners S.A., owned a 505-hectare property in Peru known as Alta Gold. Div. Ex. 469 at 6, 9. It represented that Alta Gold consisted of "two mountains, one of which is a very large disseminated gold ore body" and that

> [t]hese concessions encompass two mountains which we have named Base Mountain for its base metals and Alta Mountain for its large gold deposit. . . . Our plan is to map, test, reopen the elaborate tunnel systems, obtain the Glencore drilling and mining data we have been told we can obtain, and work towards an NI 43-101 resource report. This large property may well be suited to be a very large open pit gold mine with elaborate tunnels that allow for silver and zinc to be mined at lower levels on Alta Mountain, and with Base Mountain suitable for underground mining of silver, platinum and zinc.

Id. at 9-10. It continued, "[w]e may however sell or [joint venture] one or more of the mountains on the concessions, which could have a large value, especially for a public company given the type of large disseminated ore body and potential for open pit mining of gold." *Id.* at 10.

The PPM also stated that Aurum had purchased "new mineral processing equipment" for $250,000 including

> three excellent mills, two 100 ton large mills that can be used in a flotation or cyanide plant and one 50 ton mill that can also be used in any plant type and can be used to service a smaller concession. The rest of the equipment we purchased is needed for flotation, a required process for copper and frequently for silver and for gold depending on metallurgy. Our initial metallurgy tests on Molle Huacan show over 82% recovery for flotation of gold, which is very good news.
>
> We expect the purchase of the equipment . . . will enable us to build the Molle Huacan processing plant as well as start another plant in the North of Peru near Trujillo where we have been approached and begun discussions on processing 3rd party materials.

Id. at 11. The PPM also represented that

> [i]n addition to processing our own ore from our concessions, initially from Molle Huacan, any remaining capacity may be utilized to process the production from other sources, which will generate further cash flow to Aurum. This gives our processing plants the ability to ramp up with our production and process material from others at a high profit margin.

Id. at 10.

The PPM also referred investors to the online data room for additional information stating, "[m]uch of the data room contents may change over time as the business evolves and develops and the data room updated." *Id.* at 7.

12. Park's October 2012 Report

Park's written report, dated October 8, 2012, was entitled "Preliminary Exploration Report on the Molle Huacan Property." Div. Ex. 484. Park found that the overall average of the sample was fairly low. Tr. 550-51; Div. Ex. 484 at 6. Park's report concluded that "[g]iven the low average grade and small tonnage potential, [Molle Huacan] is not ready for production. It should be considered as an exploration target that will require significant expenditure in field work in order to discover and locate sufficient resources to move to the production stage." Div. Ex. 484 at 7. Park emailed his Molle Huacan report to Crow and Clug. Div. Ex. 604 at 7.

Ten days after receiving the Park report, on October 17, 2012, Crow and Clug had an email exchange in which they decided not to disclose the report or its findings to investors:

> CROW TO CLUG: any reason we shouldn[']t attach full steve parks report and elias re[p]ort with the [business] plan? [P]arks is just a project of merit anyway…more work needed to move it into reserves or inferred…
>
> CLUG TO CROW: You know the audience this is going to better than I do so your call. I only worry that an unsophisticated viewer would see one of Park's conclusions as rather negative. Specifically: Given the low average grade and small tonnage potential, this

Property is not ready for production. It should be considered as an exploration target that will require significant expenditure in field work in order to discover and locate sufficient resources to move to the production stage.

CROW TO CLUG: that[']s what I was worried about [a]s well…suggest we just keep it back…we can have him amend his report inexpensively with new test data and samples in channel along wide vein…cheap and worth it.

CLUG TO CROW: Agreed.

Div. Ex. 490 (ellipses in original). Aurum did not ask Park to amend his report based on the recent sampling data. Tr. 1182-84 *see* Resp. Ex. 46 (summary list of sample test results from March 2012 to February 2013); *see also* Resp. Exs. 45, 48 at Reports No. 4, 6 (English only), 63, 66b, 68b.

13. 3rd Quarter 2012 Update

The 3rd Quarter 2012 update, dated November 5, 2012, did not mention Park's October 2012 report on Molle Huacan. Div. Ex. 503. Instead, the letter reported Aurum's "internal estimate of 1.254 million ounces of gold," the "projected 2013 net cash flow" for Molle Huacan of $9 million, and offered that if investors "wish to increase [their] stake" that they do so by November 30, 2012. *Id.* at 1, 3, 5. The update contained the following representations:

a. "Completed all metallurgy tests, exploration modeling and mining plan. Metallurgy results have been excellent and indicate high recovery rates at lower costs." *Id.* at 1.

b. "Completed geological analysis along lines of a NI 43101. Tests results helped to ascertain our internal estimate of 1.254 million ounces of gold on just the Monica ore/vein body." *Id.*

c. "Purchased, overhauled, and delivered over $200,000 at cost of mining equipment which, if purchased new would have cost over $1 million and taken 6-9 months to be delivered." *Id.*

d. "Developed a mining plan to use benching and heap leaching on site. This allows for a faster ramp up of 2013 volume and cash flow." *Id.*

e. "Building a heap leach processing plant on site for volume processing of our gold." *Id.*

f. "First day of operational mining projected to be November 25, [2012,] with processing and cash flow starting by January 2013." *Id.*

g. "We are also exploring various offers to joint venture, finance and IPO this mine." *Id.* at 2.

h. "Our goal is to get Molle Huacan into production and cash flowing while continuously mapping and exploring our gold resource." *Id.*

i. "We may discuss outsourcing the production ramp-up to firms that have extensive management, equipment, capital and experience in operating mines of over 1,000 tons a day. We will need to drill and better define a resource before contracting with such a firm." *Id.* at 2-3.

j. "The Molle Huacan operational business plan . . . is the basis of our discussions with potential funding sources and our potential JV partners that are looking at investing $10 million cash for a minority partnership interest, the % of which will be based on the results of an independently produced 43-101 mining report." *Id.* at 3.

k. "The projected 2013 net cash flow for this mine ONLY is over $9,000,000. Obviously there are certain key variables and conditions that can affect this outcome. We are confident that these numbers are achievable and have all the required equipment, management and systems in place to manage this operational growth at Molle Huacan." *Id.*

l. "Alta Gold . . . basically consists of two mountains, one of which is a very large disseminated gold ore body." *Id.*

m. "So far, we have identified five separate opportunities within Alta Gold. There is also an existing network of tunnels (estimated to have cost over $30 million to construct) that we will begin exploring. Our initial research indicates that these tunnels may have large amounts of Gold/Silver/Zinc but we need to confirm this, and are doing so with our team full time on site." *Id.*

n. "We expect that [Alta Gold] will be very substantial . . . . It is a six month development plan which will give us the information to ascertain the proper path to liquidity. This is a big project and has a big upside." *Id.* at 5.

o. "We have decided to increase our liquidity on hand from approximately $800,000 now to $1,300,000 and thus need to raise an additional $500,000. This minimal dilution is necessary in order to have sufficient cash on hand to put Molle Huacan into production, process at Molle Huacan using heap leaching, and finish the development work at Alta Gold. . . . Given the excellent upside and valuation now per membership unit, we are first offering this to our existing members. If you wish to increase your stake please do so by November 30, 2012. If not, we will seek the funds from other investors. We wish to close by December 31, 2012." *Id.*

p. "Our view is that the large gold companies have high-cost low-return business models and are under pressure from shareholders to justify their capital expenditures. . . . Our apparently unique approach of focusing on lower-risk quick-to-production gold mines will be a very attractive solution for these large companies. It is better for them to buy gold production rather than develop it internally. In the meantime, our focus is on production along with development and cash flow." *Id.* at 6.

q. "We remain optimistic about Aurum Mining LLC and are very appreciative of your support." *Id.*

This update letter directly resulted in at least two additional investments in Aurum. After reviewing it, Melnick emailed Lana and Clug to thank them for the "recent quarterly update" and wrote, "[i]n response to the section in the update that mentions a new offering of $500,000, presumably at $5 per Unit, please note that I would like to purchase an additional 10,000 Units for $50,000. Let me know what the next steps are to conclude a purchase of additional Units." Div. Ex. 516; *see also* Tr. 77-78. Melnick's business partner, Arthur Weinshank, also made an investment of $25,000 as a result of the 3rd Quarter 2012 report. Tr. 79-80; Div. Ex. 2A-4; Div. Ex. 532.

14. January 2013 PPM

Aurum's fourth PPM was dated January 1, 2013. Div. Ex. 577 at 2. The January 2013 PPM sought to raise up to $1 million through the sale of non-voting Class A membership units at $5 per unit. *Id.* The minimum investment was $25,000 and the offering sunset date was December 31, 2013. *Id.* at 5. Consistent with the quarterly reports sent to investors in the latter part of 2012, the January 2013 PPM focused on the two Peru projects: Molle Huacan and Alta Gold, and reiterated virtually identical positive language as contained in the September 2012 PPM, with minor updates of progress that had been made. *Compare* Div. Ex. 577 at 10-12, *with* Div. Ex. 469 at 9-11. The January 2013 PPM contained two references to Crow's prior Commission cases. First, under "Risk Factors," it stated that:

> Backgrounds of Messrs Clug, Lana and Crow can be found in this document and at [a linked site] including discussion of Mr. Crow's 2008 litigation with the SEC over an investment and ownership of a broker dealer without the requisite securities license and subsequent bankruptcy following the financial meltdown of 2008.

Div. Ex. 577 at 9. Crow's biographical disclosure in the January 2013 PPM replicated the disclosures in the two prior PPMs, but added: "In 2008 Mr. Crow litigated with the SEC regarding an investment, ownership and relationship with a broker dealer. The finding was that the investment and activity required a license and Mr. Crow was ordered to pay a fine and restitution. The details are available at [a linked site]." *Id.* at 13.

15. 4th Quarter 2012 Update

An undated 4th Quarter 2012 report, circulated in early 2013, focused on Aurum's "going public in Canada, and other markets," and told investors that Aurum's value "could be in the range of $484 million," that an NI 43-101 report had been started "to independently confirm our gold reserves," that there was a "$50 million estimated IPO valuation for the Molle Huacan mine alone," and that Aurum wished to raise additional funds, hoping that its members would consider increasing their investments. Div. Ex. 552 at 31-39. The update letter contained the following representations:

a. "Initial plant has been increased to 400 ton a day capacity, up significantly from prior plans. Completed additional sampling and geology testing in accordance with NI 43-101 standards (Canadian world-wide standard for independent geological appraisals.)" *Id.* at 31.

b. "Test results have been excellent and have helped to increase our internal estimate of 1,254,000 ounces of gold.[12] Given the new veins, higher grades, and larger ore structures, the gold estimate appears to be significantly higher, perhaps as much as double." *Id.*

c. "Developed a final mining plan to simultaneously use benching and tunneling on site. This allows for a faster ramp-up of 2013 volume and cash flow. Increased initial production estimate to 380 tons a day." *Id.*

d. "Initial production now expected by March 15, 2013 due to delays in permits, equipment and facilities build out. Due to the delays and some additional costs which were unexpected, Aurum is low on working capital." *Id.*

e. "We have evaluated our financing options to raise the needed $500,000 plus required to place the mine into production and process the ore into gold/carbon concentrate, and then sell it . . . . Our conclusion is to pursue several options at once. We have executed a letter of intent to complete an Initial Public Offering (IPO) in Canada on the Toronto market (TSX or CNSX) for our Molle Huacan property with a $10-$15 million cash funding included. . . . Upon achieving additional reserves with a drilling program and/or 2015 EBITDA, the valuation could be in the $200-$400 million range. . . . This valuation and funding would allow us to return the cash capital from our Class A members upon the IPO funding." *Id.* at 34.

f. "For Molle Huacan only, assuming a $50 million market value at the IPO and $4.225M cash available for distribution, then each Unit A Member would receive

[12] The 4th Quarter 2012 update letter's estimate of 1.254 million ounces of gold is consistent with Garate's estimate. Resp. Ex. 68b at 5.

approximately $16 per unit owned ($5 in cash and $11 in stock). If the Company achieves its plan per above then the share price should increase substantially." *Id.*

g. "[I]n addition to our members' receiving the return of their entire investment at the IPO, the achievement of our aforementioned year 2014 operational target goals could result, based on reasonable industry valuation metrics, in a per membership unit value of the Public Company stock ranging from $45 to $90 per share." *Id.* at 34-35.

h. "Based on an in-situ value of $135 per ounce (see business plan in data room for further details) and assuming estimated gold reserves of 2 million ounces, then the Company could be valued at $270 million. . . . [o]ur estimated resources [] should significantly increase that valuation. In that case the valuation could be in the range of $484 million." *Id.* at 35.

i. "Alta Gold . . . consists of two mountains, one of which is a potentially large disseminated gold ore body. . . . Will need drilling tests to provide [] confirmation." *Id.* at 36.

j. "[W]e believe Alta Gold is an excellent gold exploration project with a strong possibility that the Zinc-Lead areas underground in existing tunnels, are still commercial. The price of Zinc is now over 4 times the price since when the previous mining company . . . discontinued operations using up to a 5% cut off grade for zinc. At this level of zinc and with only minor additional metals, we would have approximately $140 per ton to process, which is very commercial." *Id.* at 37.

k. "We have decided to increase our liquidity on hand from approximately $200,000 now to a minimum of $700,000 and thus need to raise an additional $500,000. . . . Given the excellent upside and valuation now per membership unit, we are first offering this to our existing members at the original price per membership unit. If you wish to increase your stake please do so by February 28, 2013. If not, we will seek the funds from other investors. We wish to close by March 31, 2013. We are talking to several groups that may make an offer to pre-buy the gold concentrate, or loan the funds, with the terms uncertain and perhaps expensive. Aurum Mining will be in a better position to negotiate terms on financing if we have the required additional $500,000 in equity from our current Members." *Id.* at 38.

l. "Our only concern is having the sufficient funds on hand to make sure we can move Molle Huacan into production and cash flow from there on." *Id.*

This update letter was corrected by a subsequent supplement that contained select caveats and risk disclosures, and clarified the prospect of an IPO in Canada. Resp. Ex. 149. The letter explained that the proposed transaction would not actually be an IPO, but would likely be "a reverse merger into a publicly traded Toronto shell company. . . . [T]he reverse

merger/IPO would be simultaneous with a private placement of debt and/or stock . . . [and] the funding would depend on the success of the offering." *Id.* at 1.

16. Peter Daubeny

In early 2013, Richard Evans of RwE Growth Partners asked Peter Daubeny, a Canadian geologist, to evaluate Molle Huacan from a geological perspective and to prepare an NI 43-101 report. Tr. 359-61. In accordance with NI 43-101 standards, Daubeny asked for all documents relating to mineral exploration on Molle Huacan. Tr. 362-63. Daubeny testified that he received "[v]ery little that [he] could use" and that it seemed to him that "there [were] gaps in the history of the property that [were] not being provided." Tr. 363. Clug gave Daubeny a report written by Garate. Tr. 363; Div. Ex. 662. Clug did not give Daubeny Park's October 2012 report. Tr. 365-66. Crow and Clug never asked Park to provide his report to Daubeny. Tr. 1318. Park's report was, as Daubeny testified, "a sort of document that I needed to write my own report. It's the sort of document that I would have expected to be given to me when I asked for it, or asked for this type of document, prior to my trip to Peru. And at the very latest, it should have been given to me afterwards." Tr. 366. As Respondents' expert Park testified, as a matter of practice, all prior geological reports on a particular property are given to a geologist preparing an NI 43-101 report on that property. Tr. 1322.

Daubeny travelled to Peru on February 13-14, 2013. Tr. 375. Upon arrival in Peru, Daubeny met with Crow and Clug in Lima. Tr. 375. Crow and Clug told Daubeny that Molle Huacan would be in production in the second quarter of 2013. Tr. 376. Daubeny visited Molle Huacan with Clug, Garate, and Paul Luna-Belfiore. Tr. 379. Molle Huacan appeared to Daubeny to be "a mineral exploration project in the very earliest stages of exploration." Tr. 379. His report, dated May 24, 2013, found that the "Molle Huacan property does not contain any know[n] mineral resources or reserves" but concluded that it has "merit for further exploration." Div. Ex. 581 at 1, 25-26. However, Daubeny's NI 43-101 report contributed to a $20 million valuation of Aurum by RwE Growth Partners, an independent accredited valuation company. *Id.*; Resp. Ex. 52 at 2, 14, 25.

On February 18, 2013, Crow emailed Bruce Hollander, copying Clug and Lana that "we are asking for the $500,000 in additional equity from our members." Div. Ex. 554. Crow, referring to the 4th Quarter 2012 report, said that "[e]verything is going well, just a bit delayed." *Id.*

17. 1st Quarter 2013 Update

An undated 1st Quarter 2013 update stated that Aurum's "focus is now on the two properties of Molle Huacan and Alta Gold," and that Aurum remained committed to "concentrating on quick to production and lower risk properties in areas known to contain precious metals." Div. Ex. 592 at 3. A photograph showed "1,000 ton leaching vats under construction." *Id.* at 5. The update contained the following representations:

a. The leach processing plant is "expected to be operational by August 1, 2013. Plant capacity has been increased to 1,500 tons a day capacity (up from the initial estimate of 350 tons a day)." *Id.* at 3.

b. "We started and completed the independent NI 43-101 with a geologist from Canada to independently confirm our project as a project of merit. Copy of this large report is in our data room." *Id.*[13]

c. "Developed a mining plan to simultaneously use benching and tunneling on site. This allows for a faster ramp-up of volume and cash flow beginning August 1, 2013." *Id.* at 4.

d. "The first year production goal reflected in our Forecasted Statement of Operations (presented later in this Report) is approximately 900 tons a day, increasing to approximately 1,245 tons a day in year 2 and subsequent years." *Id.*

e. "Initial production and processing now expected by August 1, 2013. Delays in permits, equipment and facilities build out pushed us to this date." *Id.*

f. "Completed an independent business valuation per Canada securities standards for $21.5 million. Copy in the data room. This is pre-production and before further sampling (which we continuously do)." *Id.*

g. "We continued our geological sampling and metallurgy testing. Although testing results vary with location and technique, the overall results indicate that our mineral is ideal for a high volume operation and a good fit for the leaching process plant that we are building." *Id.*

h. A section entitled "Cash Flow Analysis" states that "[o]ur first year cash flow projections for the Molle Huacan mine remains strong. The Molle Huacan mine has the potential for very good production volume, although we will not know for sure until we drill and also mine the property and develop the levels below the surface. We will be working on these objectives for the duration of 2013." *Id.* at 8.

i. "[W]e elected to focus our resources, people and capital, on Molle Huacan in order to promote its production, processing and cash flow phases." *Id.* at 9.

j. Under the forecasted statement of operations, Molle Huacan was projected to produce and process 182,940 ounces of gold and receive net income of $109,423,818 over five years. *Id.*

[13] This letter contains a direct link to the data room and was still active during the hearing in July 2015. Div. Ex. 592 at 9.

k. Alta Gold "basically consists of two mountains, one of which is a potentially large disseminated gold ore body. . . . Will need drilling tests to confirm our initial estimates of the potential." *Id.* at 9-10.

l. "[W]e believe Alta Gold has the potential to be an excellent gold exploration project with a strong possibility that the Zinc-Lead areas underground in existing tunnels are still commercial. The price of Zinc is now over 4 times the market price when the previous mining company . . . discontinued operations using up to a 5% cut off grade for zinc. At this level of zinc and with only minor additional metals, we would have approximately $140 per ton to process, which is very commercial." *Id.* at 10.

m. "We plan to have Molle Huacan funded and in operation and then use some of the cash flow expected to be generated by the Molle Huacan operation to finish the Alta Gold operation." *Id.*

n. "As of June 10, 2013 we have raised a total of $662,715 [based on the January 2013 PPM]. We would like to finish the placement and then have one of the gold lenders we are talking to pre-buy or loan against future delivery of gold. These conversations with lenders are currently underway." *Id.* at 12.

o. "We expect to be able to make dividend distributions after some ramp up period and reserves are established to support the operation. Although difficult to predict, -- we - hope to make significant dividend distributions toward the end of the first year of production." *Id.* at 13.

p. "Currently, the state of the public markets is distressed for mining companies and valuations are very low. We have determined that it would not be in the best interests of our members to[] attempt to initiate a Canadian (or other foreign stock market) public listing this year." *Id.*

q. "[W]e have been mining the Molle Huacan property and are proceeding into production. After the completion of the first full year of production, we expect to have more resources and reserves established and we will weigh our options to maximize valuation for our investors." *Id.*

18. 2nd Quarter 2013 to 2nd Quarter 2015

Ciro de la Cruz's July 2013 "Mining Plan" stated that Molle Huacan had a "potential" of 1,082,951 total ounces, and contained a chart stating that the Monica Vein is eighteen meters wide and 1,925 meters long. Resp. Ex. 66b at 2.

By October or November 2013, when investor Hollander visited Molle Huacan, he observed an operating heap leach plant, and during his testimony identified various videos and pictures that show a working mine and processing plant. Tr. 1524-34, 1549; Resp. Ex. Pics. 7, 9, 13-16, 20; Resp. Ex. Vids. 2, 3, 6, 8, 9. Regardless of Aurum's results, the various videos and

photographs depict a mining site with a considerable amount of infrastructure, personnel, and operational activity that appears to have been ongoing for quite some time.

On November 26, 2013, Aurum managers held a meeting in Coral Gables, Florida, to "update the investors on what was happening in Peru." Tr. 896-97. Clug led the two-hour meeting. Tr. 896-97. Clug told Aurum investors that he and Crow did not receive compensation. Tr. 322. The investors knew that Corsair received compensation from Aurum, but did not complain about it. Tr. 948-49, 1569; Div. Ex. 314 at 7-8. Weissman asked Clug "how much cash they had left?" and Clug responded "about a half million dollars." Tr. 319. In fact, at this time Aurum had Citibank (US) accounts that totaled $63,301, and two Aurum Peru accounts had $344 and S/.2,890 Peruvian soles (approximately $1,070). Div. Ex. 2A at 6-7; Div. Ex. 3A at 6, 8.

Clug told investors that "production would commence in December [2013]," and that there had been no production up till that point because "everything always takes longer than one anticipates." Tr. 897-98; *see also* Tr. 902. Clug did not discuss either Park's October 2012 report or Daubeny's NI 43-101 report. Tr. 898.

In December 2013, Aurum processed its first and only gold "dore bar" that was sold, according to Clug, for "a little less than $5,000." Tr. 1910; Resp. Ex. 9. Clug was disappointed in the results because they were not as expected. Tr. 1909. In January 2014, Clug told Lana in a telephone call that "unfortunately, they did process product and that the results were very poor, that . . . the expectations were absolutely not met, and that the amount of gold that was extracted was very minimal." Tr. 903-04. Lana was "devastated" because he "was always expecting good results." Tr. 904. Lana told most of his investors about the results, and the investors were "extremely disappointed." Tr. 905-06.

Lana told Clug that an investor meeting should be convened to tell them about these results, but Clug "didn't want to hold a meeting" of all the investors. Tr. 904-05. Clug instead would be "glad to meet them on a one-on-one basis." Tr. 905.

On January 30, 2014, Crow received an email from Hollander, asking: "Have we sold any gold yet & at what price? These are questions that everyone is looking for answers. Lastly, where in time do we realistically stand on your forecast?" Div. Ex. 627. Crow responded to Hollander that day:

> The actual geology in production was way below what independent geologist and our people said. Marginal mine. But good news is [w]e have several mines in area that we can buy mineral and process in our place while we find solution to our problem in the mine. Basically too much dilution when we mine the veins and it dilutes our grade by 80 percent. Not what we expected. This will be a steady cash flow business [i]dea now is to take alta gold ([]old peru bar mine) and use it as vehicle to do merchant banking here[.] We are offered a nice deal in Europe to take it public and have capital. And stay out of USA.

Id.

In February 2014, Aurum investors learned that Crow had been working on developing a mineral processing plant in Peru independent of Aurum Mining and were upset because that plant would compete with Aurum. Div. Ex. 633; Div. Ex. 635 at 1; Div. Ex. 642 at 1.

Crow and Clug lost control of Molle Huacan in early 2014. Div. Exs. 628, 629, 637. By April 15, 2014, as acknowledged in the master agreement among Crow, Clug, and Aurum, "the mining concession [at Molle Huacan had] reverted to its owner." Div. Ex. 799 at 1. In the master agreement Crow: (a) resigned from his position as a manager of Aurum Mining, LLC; (b) exchanged his equity position in Aurum for a 20% equity position in Alta Gold, S.A., a subsidiary of Aurum; (c) assumed through his affiliate $800,000 in debt of Aurum Mining Peru; and (d) agreed to operate Aurum Mining Peru and "pay 10% of its revenue to Aurum through December 31, 2015 or until $4,000,000 has been paid." *Id.* at 20. The master agreement also terminated the advisory agreement and the incentive agreement between Aurum and Corsair. *Id.* at 22. In the master agreement, four investors and Clug released Crow from all liabilities. *Id.* at 13-19.

In September 2014, Standard Tolling, a Canadian public company, issued a press release announcing that it had entered into a binding letter of intent with Crow to acquire the processing plant from Crow's Peruvian company in exchange for substantial equity compensation to Crow and assumption of $1.325 million of Crow's debt obligations. Div. Ex. 808.

Park wrote an NI 43-101 report dated May 22, 2015, on the Alta Gold site. Resp. Ex. 105. Park found no evidence of an ore body at Alta Gold. Tr. 1319, 1321. Park's report for Alta Gold, which was "based on limited field investigation and a relatively small, but sufficient, number of points," found an "Inferred Mineral Resource," which the report defines to mean that "the potential quantity and grade . . . is conceptual in nature and involves far greater uncertainty . . . than the estimation of resource categories of higher levels of confidence. An estimated Inferred Resource should not be assumed to exist or to be economically minable." Resp. Ex. 105 at 63, 69. Park's 2015 report concluded that "[a]n exploration program is recommended." *Id.* at 70. In June 2015, Crow and Clug sent Park's geological report to Aurum's investors along with a cover letter they wrote that described Crow and Clug's litigation positions in the current proceeding. Tr. 1321-22.

19. Risk Disclosures

a. August 2011 PPM

The August 2011 PPM warns that "[t]he purchase of the Class A Membership Units is speculative and involves a high degree of risk. Investors who cannot afford the loss of their entire investment should not purchase Class A Membership Units." Div. Ex. 68 at 9. It also includes five pages of risk disclosures, including the following general disclosures regarding operating a business in a foreign country and the various laws, rules, and regulations associated with that, among other things: (1) warnings regarding potential income taxes owed in the United States by Class A members; (2) that the tax rates, rules, and regulations in both the United States and Brazil could change; (3) that the Batalha joint venture is subject to Brazilian environmental, mining, and other rules, laws, and regulations, which could change in the future; (4) that Aurum

may have to rely on Brazilian law to enforce its rights, which could be difficult or disadvantageous for a United States-based company; (5) that the Class A membership units are unregistered securities; (6) that the business could be affected by political and constitutional uncertainty in Brazil; (7) that Batalha's results will be subject to exchange rate risks; (8) that Batalha could incur losses as a result of weather-related phenomena, political events, and criminal activities; and (9) that Aurum has no business insurance coverage, which could require it to spend significant resources in the event of a disruption of the business or other contingency. *Id.* at 9-10, 24-27.

The August 2011 PPM also contains the following risk disclosures more specifically related to the gold mining business and Aurum's business relationships:

a. "The business plan of Batalha JV is subject to a high degree of risk of failure and operates in a foreign country. Until the equipment is installed and purchased, gold is processed and operations continue for some time, the Company and its Managers cannot accurately determine the amount of recoverable gold in the Initial Parcel. In addition, the Initial Parcel is located in difficult terrain, and the project of installing our equipment, operating the equipment, logistics of the mine and its management of employees, and delivering the gold to market will require complex logistical determinations that, if faulty, could result in a loss of equipment and/or gold. Gold operations are extremely risky and speculative." *Id.* at 9.

b. "Class A Members may not transfer their Class A Membership Units without the consent of the Managers, and will find no market available for their Units even if they obtain the requisite consent. . . . An investment in a Class A Membership Interest requires a long term commitment with no certainty of return. Distributions will be made only after the successful recovery of gold, its processing, sale at market prices, the payment of expenses, and funding of certain reserves." *Id.* at 9, 27.

c. "The terms on which the Managers and the Advisory Company will be compensated by the Company were determined by the Managers, two of whom are the owners of the Advisory Company. No disinterested party has confirmed the fairness of those terms and there is no certainty that the Managers or the Advisory Company can fulfill its obligations." *Id.* at 9.

d. "Management of the JV is centered around citizens of Brazil and other employees to be hired. There is risk that they lack the experience, skill and ability to fulfill their obligations and execute successfully." *Id.*

e. "The Company is newly formed and has no operating history. . . . We are a start-up operation with no operating history and no revenues to date. While the management of Batalha JV has substantial relevant experience in the industry, it is a newly formed entity with no operating history upon which to evaluate its future performance. A number of critical steps must be taken before Batalha JV will be in a position to begin operations. The metallurgical plant has not been built, and significant design decisions remain to be made. A substantial portion of the necessary equipment has not yet been purchased, and the logistics, including plans to enable operations to continue through the rainy season, have not been fully developed. It is not possible

at this stage to predict the problems that may arise and the additional expenses that may be incurred before the project is operational and revenues from the sales of gold are generated. It cannot be guaranteed that the enterprise will ever be profitable." *Id.* at 9, 25 (formatting altered).

f. "The JV is located in difficult terrain with limited availability to move equipment and supplies when there are floods and difficult environmental conditions. . . . The site is, and the processing plant will be, located in a remote area. It will be difficult to access the site through transportation other than small aircraft. The major highway in the region is susceptible to flooding, which would require transportation by boat. The roads that run to the site are passable only with four-wheel drive vehicles and are subject to seasonal closings due to heavy rainfall. Site visits by ground transportation require a 10 hour journey with two river crossings by small ferry. This inaccessibility may make the project more vulnerable to disruptions in its supply chain. While the plant equipment will be designed to operate in the environment and efforts will be made to use easily available parts, significant stoppages of production could occur if heavy equipment needed to be replaced, with the resulting delay in revenue recognition. Malaria, and other infectious diseases typical of tropical climates, could be rapidly transmitted among employees and management working in close proximity on the site, and the associated treatment or evacuation of workers could result in production delays. Also, the remote location, along with the easily concealed and tradable nature of gold, exacerbates the security concerns." *Id.* at 10, 26 (formatting altered).

g. "The price of gold fluctuates and may fall which will reduce the revenue and cash available to the Company. . . . Substantially all of Batalha JV's revenues will be derived from the sale of gold, so decreases in the price of gold may have a material adverse affect on Batalha JV's financial results and profitability, and a major decline could cause Batalha JV to fail. Although the price of gold has recently trended higher, there can be no certainty that it will maintain its current level." *Id.* at 10, 25 (formatting altered). The PPM goes on to list the various causes of fluctuation in the market price of gold. *Id.* at 25-26.

h. "The Company is reliant on the Managers, Messrs Clug and Crow. The Managers may make decisions that reduce the cash available for Members of the Company or impair the ability of the company to achieve its full potential." *Id.* at 10.

i. "The Company is reliant on the JV management and has only limited ability to make changes subject to the JV agreement." *Id.*

j. "The results of an investment in a Class A Membership Unit will depend on the ability of the Managers to secure additional financing. New sources of financing may be required for Aurum Mining for two separate reasons. Under the terms of its agreement with Arthom, if decided by the Board of Directors, Company is obligated to provide Batalha JV within a two year period up to a $12.5 million loan secured by the assets and revenue stream of Batalha JV. To the extent that this loan is not obtained within this period, Company's interest in the revenue of Batalha JV will be reduced by one percentage point for every $657,895 by which the loan is less than $12.5 million, but never reduced below its previously obtained irrevocable economic interest. This will in turn reduce the share of Class A Members in the revenues of Batalha JV. Even if financing is obtained, it may not be on terms and conditions that are

favorable for Batalha JV, Aurum Mining or the Class A Members. Beyond these contractual terms, the business may require additional financing if revenues do not materialize in the timeframe and amounts projected. If funding is achieved through the sale of additional Class A Membership Units, the value of the then-current Memberships will be diluted. A failure to obtain adequate funding could require management of Batalha JV to revise its business model and curtail any expansion. If operating cash flow and new financing are not sufficient to meet working capital requirements, the business would be adversely affected and may not be able to stay in operation. At this time, there can be no assurances that the Managers will be able to obtain all or a portion of the $12.5 million loan or any required additional funding." *Id.* at 24-25 (formatting altered).

k. "While significant testing has been done on the tailings on Batalha JV's property, there is a material risk that the actual amount of gold recovered from each ton of tailings processed will be substantially less than that suggested by the testing. Testing on the property has been done through sampling of tailings on the site. Actual results may vary significantly, and there can be no assurance that the recovery rates shown in the samples will prove to be representative of the tailings that are actually processed. This risk may be higher because the gold recovered was from a relatively small number of the samples. Because the amount of gold recovered from these few samples was high, the average yield of gold per ton of tailings was increased materially. If the rate of gold recovery is less than projected, the financial results and profitability of Batalha JV will be less favorable than anticipated. If the rate proves to be less than 1 gram per ton of tailings, Batalha JV could fail." *Id.* at 25 (formatting altered).

l. "The projections included in this Private Offering Memorandum are based on a series of assumptions which may not prove to be accurate. The projections for returns and distributions on a Class A Membership Interest shown in this Private Offering Memorandum are intended to be illustrative of potential returns under a set of assumptions, which may not correctly reflect future conditions. Among these assumptions are those that relate to the recovery rate of gold from the tailings, the successful implementation of a processing system, the capital cost and operating expense structure, including the prices of fuel and other inputs, and the future price of gold. Inflation in Brazil could increase expenses, but not have a corresponding positive impact on the price of gold. Because of the unusual degree of uncertainty surrounding these factors, investors are encouraged not to rely on the returns and distributions shown in the projections." *Id.* at 26 (formatting altered).

b. December 2011 PPM

The risk disclosures in the December 2011 PPM are substantially similar to the disclosures contained in the August 2011 PPM. *Compare* Div. Ex. 68 at 9-10, 24-27, *with* Div. Ex. 314 at 9-11, 26-29. One main difference was due to Aurum's expansion into Peru; many risk disclosures were modified to take into account Aurum's business interests in both Brazil and Peru. *See, e.g.*, Div. Ex. 314 at 10. Also, instead of referring to Batalha JV, the December 2011 PPM frequently refers to Aurum instead. *See, e.g.*, *id.* at 9.

Due to the new business in Peru, the following disclosure was added to paragraph a, as described above: "Many of the anticipated acquisitions of gold properties in Peru and other

countries are in remote geographical regions, making logistics and management/oversight more difficult than ordinary." *Id.* at 10.

The risk disclosure contained in the August 2011 PPM regarding securing additional financing, described in paragraph j above, is modified in the December 2011 PPM to omit many of the specific details regarding the terms of the agreement with Arthom and Aurum's requirement to provide up to a $12.5 million loan. *Compare* Div. Ex. 68 at 24-25, *with* Div. Ex. 314 at 26. Instead, the December 2011 PPM describes the financing requirement as follows: "If decided by the Board of Directors, Company will need to provide Batalha sufficient funds to start production, acquire additional properties and have working capital. If not obtained, the Initial Property and other results will in turn reduce the cash to be distributed." Div. Ex. 314 at 26.

The final significant difference between the August and December 2011 PPMs is that the December 2011 PPM lowered the gold recovery failure rate from 1 gram per ton of tailings to .5 grams per ton of tailings. *Compare* Div. Ex. 68 at 25, *with* Div. Ex. 314 at 27.

c. September 2012 and January 2013 PPMs

The risk disclosures contained in the September 2012 PPM are again substantially similar to the risk disclosures contained in the December 2011 PPM. *Compare* Div. Ex. 314 at 9-11, 26-29, *with* Div. Ex. 469 at 7-8, 13-16. The main differences are that most references to Batalha were removed, the risk disclosures primarily focus on the Peru operations, and there is no longer any mention of a specified failure rate. *See, e.g.*, Div. Ex. 469 at 8, 14.

The following risk disclosure was added to the September 2012 PPM: "Members should expect that a significant number of the properties acquired and tested will not prove to be economically viable. Also, delays in obtaining permits to mine or process minerals can significantly hurt the Company and its cash flow. The regulations surrounding permits and mining in Peru change frequently." *Id.* The risk disclosures in the September 2012 PPM also contemplate mining other minerals in addition to gold. *Id.* ("The price of gold and other minerals being mined fluctuates and may fall, which would reduce the revenue and cash available to the Company.").

The risk disclosures in the January 2013 PPM are almost exactly the same as the ones contained in the September 2012 PPM except that the disclosure regarding projections, described above in paragraph *l*, are omitted. *Compare* Div. Ex. 469 at 7-8, 13-16, *with* Div. Ex. 577 at 8-9, 14-17.

20. Mining Expertise

a. Aurum's Peruvian Experts

Aurum's exploration and attempted exploitation of the Monica vein at Molle Huacan was shepherded primarily by two of its local personnel: a senior geologist, Elias Garate, and a mining superintendent, Ciro de la Cruz. According to his biography, Garate has "vast experience

in gold, silver and copper deposits, and has occupied key positions in exploration and mining companies, being specialized in gold metallurgy, construction and operation of gold agitation plants, gold and silver leaching pad plants." Resp. Ex. 154 at 1. He professedly led exploration teams in Peru resulting in the development of other mines with daily production approaching 3,000 metric tons. *Id.*

Garate's initial, undated report on Molle Huacan states that it "is a property of merit . . . worthy of continued exploration and exploitation." Div. Ex. 662 at 4. He recommended a phase I program of gridding and sampling, and "[b]ased on the sampling results, a hauling program" consisting of taking 350 tons of mineral per day to leach pads. *Id.* at 15.

Garate authored two estimates of Molle Huacan's gold potential. Div. Ex. 1 at 49. In September 2012, he estimated a potential of 1,254,000 ounces of gold. *Id.*; Resp. Ex. 68b at 5. On January 11, 2013, Garate doubled his prior estimate, reporting to Aurum's management, "WE HAVE, AS GOLD POTENTIAL, TWO MILLION, EIGHT HUNDRED AND FORTY-TWO THOUSAND, FOUR HUNDRED AND FORTY-THREE OUNCES." Resp. Ex. 71b at 1 (capitalization in original); Div. Ex. 1 at 49.

Ciro de la Cruz issued a Molle Huacan project monthly report for February 2013 based on the first two weeks he spent there. Div. Ex. 802 at 2. His report acknowledged, "[t]here is no geological information as to the depth of the Monica vein, the gold grades, the volume of reserves and resources, etc." *Id.* at 4. He recommended "systematic sampl[ing]" to ascertain which sections of the Monica vein were economically exploitable. *Id.* However, his report reflected that "[f]or the first phase it is thought that 100% of the stretch[[14]] will have economic mineral results." *Id.* He described the first phase as surface mining, "operating a bank of 5 m" along the 1401 meters of the Monica vein, which would produce 260,000 tons of ore over a 2.5-year period. *Id.* at 5.

b. Division's Expert

The Division's mining expert, Allan Moran, received a B.S. in geological engineering from the Colorado School of Mines in 1970, then worked as a geologist in the mining and mineral exploration business up until the present. Div. Ex. 1 at 66. He has evaluated gold properties for more than twenty years, including in Peru. Tr. 668-69; Div. Ex. 1 at 72-73. His experience in gold mining ranges from small artisanal mining, to small-scale mining of veins, to large-scale open pit mining. Tr. 669. Moran is a registered geologist and a certified professional geologist and, by virtue of his education, professional affiliation, and work experience, is a "qualified person" under Canada's NI 43-101. Div. Ex. 1 at 66, 68-77.

Moran did not visit Molle Huacan, nor did he communicate with any member of Aurum's mining team, so he did not have first-hand knowledge of the nature and extent of any mining or

[14] The stretch he refers to is the largest known expanse of the Monica vein.

mineral processing there. Tr. 783; *see* Div. Ex. 1 at 4.[15] Instead, Moran reviewed the geological data and documents relating to Molle Huacan. *Id.* at 4, 10-11, 59-64; Tr. 672. Based on his review, Moran concluded that:

> Molle Huacan has, at best, a very small conceptual Mineral Exploration Potential that is not attractive for potential mining, even if a Mineral Resource could be discovered and delineated, because in my opinion, the vein mineralization is too narrow to justify mining interest by any exploration/mining company I have knowledge of.
>
> ***
>
> There was no gold deposit discovered at Molle Huacan. There is no Mineral Resource yet defined at Molle Huacan. There is no supporting documentation to justify constructing a gold mine or a gold processing plant at Molle Huacan . . .
>
> ***
>
> By January 2014, Aurum acknowledged that Molle Huacan was a bust; Mr. Crow stated in an e-mail the following: *"The actual geology in production was way below what independent geologist and our people said. Marginal Mine. Basically too much dilution when we mine the vein and it dilutes our grade by 80%."*

Div. Ex. 1 at 4-5 (italics in original); *see id.* at 34; Tr. 698.

The phrase "quick to production" used by Aurum with respect to Molle Huacan, in Moran's view, "has no specific meaning in the mining industry." Div. Ex. 1 at 34, 37. Based on Aurum's actions, Moran concluded that Aurum meant "to bypass the mid-stage and advanced-stage exploration activities, and to bypass conducting a Feasibility Study, to proceed directly to funding of production at Molle Huacan, with nothing more than early exploration stage sampling." *Id.* at 37. Moran agreed that it is possible to begin production by "drifting the vein" without first defining an ore body or drilling and that Ciro de La Cruz advocated commencing production immediately. Tr. 726-27, 761; Div. Ex. 802 at 4-6. In Moran's view that approach was not supported by the available information. Div. Ex. 1 at 40.

Moran distinguished between the terms mineral exploration potential, mineral resource, and mineral reserve as follows:

---

[15] As a result, Moran's report contains the apparently inaccurate statement that "[t]here has been no mining by Aurum at Molle Huacan, and no heap leach processing or any other form of mineral processing at Molle Huacan." Div. Ex. 1 at 42. I find that this inaccuracy is immaterial, because Moran's opinion that such activities would be unwise is based on other information. The fact that Aurum conducted operational activities based on the ultimately unsupported findings and recommendations of their locally employed experts does not undercut Moran's opinions.

- A Mineral Exploration Potential (an "unrealized possibility") is an estimate of what a geologist hopes to find, upon completion of exploration. It represents a conceptual target. It is based on very minimal information of the geological style of mineralization; such as vein length, width, hypothesized depth and average grade of mineralization sampled;

- A Mineral Resource is a defined term used as a mining industry standard worldwide, and refers to an estimate of mineralization that has been defined in the ground through sufficient drilling and sampling to establish with sufficient confidence the dimensions (length, width, depth) of a mineralized body of rock, and the continuity of the grade of mineralization within that body. A Mineral Resource (a "measured actuality") is defined in 3-dimensional space as to location and dimensions based on actual internal measurements;

- A Mineral Reserve is that portion of a Mineral Resource that has been demonstrated to be economically viable to mine and process for the recovery of metal. A Mineral Reserve is also commonly called an "ore body", and is defined after detailed feasibility studies on deposit modeling, mining, processing, infrastructure, environmental concerns, and cost analysis.

Div. Ex. 1 at 22; *see* Tr. at 678-79. Moran further explained "[t]he term *Mineral Resource* and the more specific term of *Inferred Mineral Resource* are specific defined terms by international reporting standards, as used by companies presenting information on mineral exploration and development properties." Div. Ex. 1 at 22 (italics in original); *see id.* at 23-25. A common problem Moran finds in Latin America is the conflation of the terms "resources" and "reserves" by locals. Tr. 787.

Moran's report and hearing testimony addressed Garate's report of January 11, 2013, finding a mineral potential of 2,842,443 ounces of gold, and the statement three weeks later in Aurum's business plan that "[w]e estimate that the Molle Huacan property currently has inferred gold mineral resources of a minimum 2,842,000 ounces, calculated solely on the Monica vein using a length of 1,700 meters and a depth of 500 meters." Div. Ex. 1 at 27-28; Tr. 701. According to Moran, "[r]eporting an estimate of Mineral Exploration Potential as an Inferred Mineral Resource is incorrect and misleading to investors." Div. Ex. 1 at 48. Moran found the leap from "mineral potential" in the Garate report to "inferred gold mineral resources" in the business plan inexplicable and unjustified. Tr. 701-02. Applying the governing international methodology, Moran found that one could not estimate an inferred mineral resource for Molle Huacan. Div. Ex. 1 at 25-33, 38.

Moran found that "Garate's estimates are highly exaggerated and not supported by Aurum's own data." Div. Ex. 1 at 31. Noting that Aurum's production estimates "increase dramatically" over time, Moran testified that such production estimates were inappropriate and unjustified. *Id.* at 41; Tr. 698. Moran also found that "[v]erification sampling by P. Daubeny resulted in anomalous but consistently lower gold grades; casting doubt on the representative nature of Aurum's sampling." Div. Ex. 1 at 14; *see id.* at 15 (noting "almost uniformly lower gold content than Aurum's assay results").

Moran reviewed the statements in Aurum's 1st Quarter 2013 report that "[p]lant capacity increased to 1500 tons a day," and that, under the forecasted statement of operations, Molle Huacan would produce and process 182,940 ounces of gold and receive net income of $109.4 million. Div. Ex. 1 at 41. Moran found that these representations were "simply not based on any supporting documentation." *Id.*

Moran found that, at best, the mineral exploration potential of Molle Huacan was less than 1.5 percent of the inferred mineral resource that Aurum represented to its investors:

> The Aurum data does not support the estimate of a Mineral Exploration Potential in excess of 40,000 ounces. This is an optimistic estimate of what could possibly be present, if drilling is successful, and is dramatically less than the 2,842,000 ounces of Inferred Mineral Resource that Aurum's management purports to have at Molle Huacan.

Div. Ex. 1 at 14; *see id.* at 19, 49.

Moran reviewed Daubeny's NI 43-101 report and testified that it seemed fairly accurate. Tr. 696.

c. Respondents' Expert

In addition to testifying as a fact witness with regard to his activities at Molle Huacan in 2012, Park provided expert testimony at the hearing. He is an independent consulting geologist in Lima, Peru, with over thirty years of mineral exploration experience. Resp. Ex. 105 at 75. He is a graduate of Mackay School of Mines and received a master of science in economic geology. *Id.* He is a "Qualified Person" as defined by NI 43-101 by virtue of his qualifications, experience, and professional registration as certified professional geologist with the American Institute of Professional Geologists." *Id.* at 14.

Park testified that he did not generally object to Moran's report. Tr. 1274. Park agreed with Moran in various respects, including these:

- Molle Huacan's mineral exploration potential was 30,000 to 40,000 ounces of gold in a narrow vein zone. Tr. 1283.

- Garate's high estimates of gold at Molle Huacan lacked adequate support. Tr. 1283-84, 1335. Park testified that Garate "did have some good sample results" but that Park's results were not as high. Tr. 537.

- Representing an estimate of mineral exploration potential as inferred mineral resources was "incorrect and misleading," however Park recognized that each geologist would have "his or her interpretation of where you draw the line between mineral potential and inferred resources" and noted that his opinion differed from Moran's opinion. Tr. 1279-80, 1283; *see also* Tr. 1281.

Park found that it would have been infeasible for Aurum to "drift" the Molle Huacan vein to produce more than twenty to fifty tons per day. Tr. 1289. Park had never seen the "benching," or surface mining, approach recommended by Aurum's Peruvian geologists carried out on a vein at any other gold operation. Tr. 1295-97.

Yet, Park did not rule out bringing Molle Huacan into production. Tr. 551. Park testified that one could begin small production immediately and quickly while exploring and without drilling. Tr. 551, 1242. Park testified that he recently had a client that purchased a small artisanal gold mine with the goal to put it immediately to production and quickly ramp up its volumes. Tr. 1243-44. Park testified in that case "[t]he miner that was working the mine, it was producing probably on the order of less than two tons per day and the client's idea is to ramp up production to around 20 to 30 tons a day." Tr. 1244. He testified concerning another property he worked on "with the idea of developing a 50-ton-a-day production . . . taking out vein material which had an average grade of probably half an ounce of gold" while drifting along the vein. Tr. 1241-42.

While Park disagreed with certain findings and recommendations of Aurum's local experts, he testified that Clug and Crow should have been able to rely on Garate and Ciro de la Cruz, who both had ample experience in mining, managing mines, and production. Tr. 1255, 1259-60, 1277, 1306.

Park had no major criticisms of the Daubeny NI 43-101 report. Tr. 1313-14.

d. Peter Daubeny

Daubeny is a professional geologist and holds a bachelor's degree from the University of British Columbia and a master's degree in mineral exploration from Queen's University in Kingston, Ontario. Tr. 356-57. He received professional accreditation in 2004 with the Association of Professional Engineers and Geoscientists of British Columbia. Tr. 356-57.

Daubeny testified that the conclusions in Park's 2012 report on Molle Huacan were "very accurate." Tr. 367.

Daubeny saw no evidence supporting the estimate of 1.254 million ounces of gold in the Monica vein at Molle Huacan. Tr. 381. Daubeny took samples at Molle Huacan that were analyzed by an accredited laboratory in Vancouver. Tr. 385-86. He was "surprised when [he] got the results" that "showed much less gold in them than [he] had expected." Tr. 386. Daubeny also reviewed Aurum's sampling results and believed that "the samples had been poorly documented." Tr. 369.

Daubeny acknowledged that an artisanal miner's approach does not require them to have an "ore" body defined before going into production. Tr. 434.

III. CONCLUSIONS OF LAW

As a preliminary matter, Respondents assert that this proceeding violates select constitutional provisions. *E.g.*, Clug Br. at 21. Commission precedent effectively forecloses Respondents' constitutional challenges at this stage. *See David F. Bandimere*, Securities Act Release No. 9972, 2015 SEC LEXIS 4472, at *68-86 (Oct. 29, 2015) (stating that an equal protection claim is not "legally cognizable" in an agency's decision to bring charges in one forum over other and appointment of administrative law judges are not subject to the requirements of the Appointments Clause); *Timbervest, LLC*, Investment Advisers Act of 1940 Release No. 4197, 2015 SEC LEXIS 3854, at *89-119 (Sept. 17, 2015) (same and there are no constitutional concerns related to the "dual for-cause removal restrictions" in the context of administrative law judges); *Raymond J. Lucia Cos.*, Exchange Act Release No. 75837, 2015 SEC LEXIS 3628, at *76-90 (Sept. 3, 2015) (administrative law judges are not inferior officers under the Appointments Clause); *Harding Advisory LLC*, Securities Act Release No. 9561, 2014 SEC LEXIS 4546, at *35 n.46 (Mar. 14, 2014) (noting that "the Seventh Amendment does not prohibit Congress from assigning the factfinding function and initial adjudication to an administrative forum with which the jury would be incompatible").

A. Exchange Act Section 10(b), Rule 10b-5, and Securities Act Section 17(a)

The Division alleges that as a result of the conduct outlined above, Crow, Clug, Aurum, and PanAm willfully violated Exchange Act Section 10(b), Rule 10b-5, and Securities Act Section 17(a), and Crow and Clug willfully aided and abetted and caused these violations by Aurum and PanAm.[16] Div. Br. at 3-4, 7-23; OIP at 13.

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 . . .
>
> . . . .
>
> (b) 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). Rule 10b-5 makes it:

> unlawful for any person, directly or indirectly . . .
>
> (a) To employ any device, scheme, or artifice to defraud,

[16] Willful means that the respondent knows what he is doing. *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (a finding of willfulness does not require intent to violate the law, but merely intent to commit the act which constitutes the violation).

> (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. To demonstrate liability under Section 10(b) and Rule 10b-5, the Division must show that Respondents acted with scienter, which is defined as an "intent to deceive, manipulate, or defraud." *Aaron v. SEC*, 446 U.S. 680, 686 & n.5, 691 (1980); *John P. Flannery*, Securities Act Release No. 9689, 2014 SEC LEXIS 4981, at *30 (Dec. 15, 2014), *pet. granted and vacated on other grounds*, --- F.3d ----, Nos. 15-1080, 15-1117, 2015 WL 8121647 (1st Cir. Dec. 8, 2015). "Scienter may be established by a showing of knowing misconduct or severe recklessness." *SEC v. Monterosso*, 756 F.3d 1326, 1335 (11th Cir. 2014) (quoting *SEC v. Carriba Air, Inc.*, 681 F.2d 1318, 1324 (11th Cir. 1982)). Severe recklessness means conduct that is "an extreme departure of the standards of ordinary care, which presents a danger of misleading buyers or sellers that is either known to the defendant or is so obvious that the actor must have been aware of it." *Id.* (quoting *Carriba*, 681 F.2d at 1324). "[O]nly conduct that is itself manipulative or deceptive violates Rule 10b-5." *John P. Flannery*, 2014 SEC LEXIS 4981, at *38-39. Misrepresentations violate not only Rule 10b-5(b) but also subsections (a) and (c). *Id.* at *42 ("[P]rimary liability under Rule 10b-5(a) and (c) *also* encompasses the 'making' of a fraudulent misstatement to investors, as well as the drafting or devising of such a misstatement.").

Securities Act Section 17(a) provides that:

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

15 U.S.C. § 77q(a). In order to prove a violation under paragraph (1), the Division must prove that Respondents acted with scienter. *Aaron*, 446 U.S. at 697. Liability under paragraphs (2)

and (3) can be predicated on a showing of negligence. *John P. Flannery*, 2014 SEC LEXIS 4981, at *31.

Section 17(a)(1), which prohibits the employment of "any device, scheme, or artifice to defraud," encompasses "all scienter-based, misstatement-related misconduct." *John P. Flannery*, 2014 SEC LEXIS 4981, at *58. Because a misstatement qualifies as "a 'device' or 'artifice' to defraud," anyone "who (with scienter) 'makes,'" "drafts[,] or devises" "a material misstatement in the offer or sale of a security has violated Section 17(a)(1)." *Id.* at *58-59. Liability under Section 17(a)(2) "turns on whether one has obtained money or property 'by means of' an untrue statement." *Id.* at *33. Finally, Section 17(a)(3) premises liability on "any transaction, practice, or course of business." 15 U.S.C. § 77q(a)(3). "[W]hile a misstatement (or misstatement-related activity) may fairly be characterized as an 'act,' a misstatement is not a 'transaction.'" *John P. Flannery*, 2014 SEC LEXIS 4981, at *61. As a result, subsection (a)(3) does not apply to "'acts' . . . that are not 'transactions,' 'practices' or 'courses of business.'" *Id.* at *61-62. However, one may violate Section 17(a)(3) by making multiple misstatements. *Id.* at *62-63 ("Of course, one who *repeatedly* makes or drafts such misstatements over a period of time may well have engaged in a fraudulent 'practice' or 'course of business' [under 17(a)(3)], but not every isolated act will qualify.").

Exchange Act Section 10(b), Rule 10b-5, and Securities Act Section 17(a) require an interstate commerce nexus. 15 U.S.C. §§ 77q(a), 78j; 17 C.F.R. § 240.10b-5. This nexus is satisfied through the use of the telephone, mail, and wires to sell securities. *See David F. Bandimere*, 2015 SEC LEXIS 4472, at *18-20 & n.21 ("The required interstate nexus is de minimis and is satisfied by even 'tangential mailings or intrastate phone calls.'"). In Exchange Act Section 10(b) and Rule 10b-5, the phrase "in connection with" "should be construed 'not technically and restrictively, but flexibly to effectuate its remedial purposes.'" *SEC v. Zandford*, 535 U.S. 813, 819 (2002) (quoting *Affiliated Ute Citizens of Utah v. United States*, 406 U.S. 128, 151(1972)).

Misrepresentations and omissions must be material to be actionable under the preceding provisions. 15 U.S.C. § 77q(a); 17 C.F.R. § 240.10b-5; *see Basic Inc. v. Levinson*, 485 U.S. 224, 231 (1988). Information is considered material if there is a substantial likelihood that a reasonable investor would consider such information important in making an investment decision or if the information would significantly alter the total mix of available information. *Basic*, 485 U.S. at 231-32. However, the information need not be important enough that it would necessarily cause a reasonable investor to change his or her investment decision. *SEC v. Meltzer*, 440 F. Supp. 2d 179, 190 (E.D.N.Y. 2006) (citing *Folger Adam Co. v. PMI Indus., Inc.*, 938 F.2d 1529, 1533 (2d Cir. 1991)).

To establish aiding and abetting liability there must be: (1) a primary violation; (2) the aider and abettor provided substantial assistance to the primary violator; and (3) the requisite scienter. *Graham v. SEC*, 222 F.3d 994, 1000 (D.C. Cir. 2000). The scienter element is satisfied if the person aiding, abetting or causing the violation "knew of, or recklessly disregarded, the wronging and [their] role in furthering it." *vFinance Invs., Inc.*, Exchange Act Release No. 62448, 2010 SEC LEXIS 2216, at * (July 2, 2010) (citations omitted).

For causing liability, three elements must be established: (1) a primary violation; (2) an act or omission by the respondent was a cause of the primary violation; and (3) the respondent knew, or should have known, that his conduct would contribute to the violation. *Robert M. Fuller*, Securities Act Release No. 8273, 2003 SEC LEXIS 2041, at *13-14 (Aug. 25, 2003), *pet. denied*, 95 F. App'x 361 (D.C. Cir. 2004). One who aids and abets a primary violation is necessarily a cause of that violation. *Montford & Co.*, Advisers Act Release No. 3829, 2014 SEC LEXIS 1529, at *71 (May 2, 2014), *pet. denied*, 793 F.3d 76 (D.C. Cir. 2015).

1. Violations relating to Aurum

As a preliminary matter, although the Division cited selectively to early overtures by Crow and Clug relaying information from Arthom they then thought reliable, such as the projection of $5 billion of gold potential in the Brazil properties under consideration, these preliminary representations were not ultimately used to secure any investments. Div. Br. at 7-8. They were, by their nature, preliminary email exchanges encouraging further discussion and gauging interest. By contrast, the documents by which investments in Aurum were formally offered and sold were the May 2011 term sheet, convertible notes, Aurum PPMs, and the quarterly updates, which in pertinent part clarified and corrected statements in the PPMs.

The Division alleges the following categories of misstatements: 1) misrepresentations and omissions contained in the May 2011 term sheet, Div. Br. at 8-10; 2) misrepresentations and omissions regarding the August 2011 PPM closing conditions, *id.* at 10-11; 3) misstatements regarding mining and land rights in Brazil and purchasing equipment, *id.* at 11-12; 4) misstatements regarding the gold content and cash flow projections of the Brazil and Peru properties, *id.* at 12-16; 5) misrepresentations regarding Crow's background, *id.* at 16-17; and 6) misstatements regarding how investor funds would be spent, *id.* at 17-18. Crow and Clug disagree, arguing among other things that 1) investors were aware of how funds would be spent, including compensating Crow and Clug and reimbursing them for their expenses; 2) Crow and Clug reasonably relied upon information supplied to them by experts in making the projections; and 3) investors were aware they were investing in a very risky venture. *See* Clug Br. at 11-17; Crow Br. at 8-16.

a. May 2011 Term Sheet

The Term Sheet dated May 10, 2011, drafted in part by Crow and Clug, offered convertible notes issued by Aurum. *See* Div. Ex. 51. The Division argues the following misrepresentations regarding the term sheet: 1) the term sheet described the notes as "secured" while at that time Aurum had no assets; 2) the use of proceeds section did not disclose that funds would be paid to Crow and Clug; 3) the representation regarding a 49% interest in the joint venture was false; and 4) in January 2012, Crow and Clug misrepresented that the preconditions allowing the triggering of the conversion option had occurred, resulting in the investors converting their notes into equity. Div. Br. at 8-10. Aurum generated $250,000 in investments through sales of these notes in June 2011.

As a preliminary matter, I find immaterial the statements describing the notes as "secured" while at that time Aurum had no assets. The investors were aware that Aurum was a

new company and that it was raising funds to begin operations; those funds provided the assets, whether in cash or in land or equipment purchased later on, against which the notes could be secured. I also find that compensation and reimbursement of expenses to Crow and Clug, both directly and indirectly, were adequately disclosed through the language regarding use of proceeds for legal, travel, and costs related to the land purchase and startup operations. Div. Ex. 51 at 2. I do not find that the term sheet's language regarding use of proceeds and the Batalha joint venture to be a material misrepresentation. Aurum did in fact conduct due diligence on the Brazil property, as confirmed by Palacio's testimony, and there were various legal and travel expenses associated with the effort to secure mining rights. I do not find a material misrepresentation in the language that Aurum "will have a 49% interest in the JV that owns the land and rights to the gold property" because, at the time the term sheet was issued, it was the intent to obtain the rights to the gold property to the extent permitted by Brazilian law. *Id.* at 1.

A material misrepresentation occurred later regarding the preconditions allowing the triggering of the conversion option, namely, when "the financing and closing of the acquisition on the land and rights for gold deal known as Baltalha [sic] event" occurred. Div. Ex. 51 at 1. Aurum represented that it had "[c]losed on acquiring the 50% interest in Batalha" – even though that was not the case – so that investors, rather than receiving a return of their investment, were persuaded to convert their investment into shares of Aurum. Div. Ex. 202 at 2. Under the notes, investors could receive principal plus interest at maturity nine months later, in spring 2012. Div. Ex. 51 at 1. However, the term sheet also provided that upon the triggering event, "the principal and all accrued but unpaid interest may be converted, at the election of the Holder, into … [Aurum Mining] LLC units at the offering price contained herein less a 50% discount." *Id.* By those terms, because the land and rights for Batalha were never obtained, the conversion option was unavailable. All noteholders elected to convert, so instead of receiving their principal and interest, they became Aurum shareholders. The representation regarding the Batalha closing is material, because a reasonable investor would have wanted to know that the requirement for conversion was never met when deciding whether to either continue an investment in Aurum by converting to equity or terminating the investment through repayment of the note.

b. August 2011 PPM

The Division argues that the August 2011 PPM misrepresented the gold estimates, cash flow projections, and Arthom's ownership of land and mining rights in Brazil. Div. Br. at 11-13. The Division also argues that in January 2012, Crow and Clug lied to investors, notifying them that the closing conditions of the August 2011 PPM had been met when in reality they had not. Div. Br. at 10-11. Crow and Clug argue that any misrepresentations in the August 2011 were corrected because they offered these investors "rescission." Crow Br. at 5; Clug Br. at 12-13.

The August 2011 PPM, again written in part by Crow and Clug, contained closing conditions that if not met, required Aurum to promptly return all funds to investors. The closing conditions, in pertinent part, assured investors that their money would only be used if 1) $1 million was raised; 2) the joint venture was formed; 3) Aurum received a report issued from a licensed geologist attesting to the total gold content of the Batalha property; and 4) Aurum received an opinion of Brazilian legal counsel stating that the joint venture was duly formed, that the joint venture had irrevocable land and mining rights, and all necessary licenses were

obtained.[17] Div. Ex. 68 at 5-6. The total amount raised through the August 2011 PPM was only $115,000 – $885,000 below the $1 million minimum. Div. Ex. 2A at 4. There is no evidence of the required geology report, legal opinion, or that the joint venture obtained irrevocable rights, although certain mining rights were obtained.

The original seven investors under the August 2011 PPM agreed to continue their investments under the terms of the December 2011 PPM, which had only one closing condition – that Aurum raise $250,000. Div. Ex. 314 at 6. The January 2012 letter offering "rescission," as Crow and Clug claim, does not explicitly state a rescission offer. *See* Div. Ex. 218. Instead it announces a list of positive accomplishments, including that Aurum had "satisfied the conditions of closing" in the August 2011 PPM and asked the investors to "confirm certain aspects of [their] investment" and indicate whether the investors wished to continue their investment. Div. Ex. 218 at 2-3. The statement that Aurum had satisfied the closing conditions was clearly false. Moreover, based on the chronology of when those investors agreed to continue their investments under the less stringent PPM, that misstatement clearly would have been material to a reasonable investor. Under the August 2011 PPM, investors had the right to have their money returned to them if the closing conditions were not met; by opting into the December 2011 PPM under the false pretense that the August 2011 PPM closing conditions had been met, they decided to keep their money invested in Aurum. Crow and Clug faulted Aurum's counsel, Brantl, for including the line. However, they, not Brantl, finalized and issued the document; and Crow admitted that this sentence was categorically false in that essentially none of the August 2011 PPM's conditions were ever met. Tr. 1065-66; *see SEC v. Levin*, No. 12-21917-CIV, 2013 WL 5588224, at *14 & n.5 (S.D. Fla. Oct. 10, 2013) ("[A] person makes a statement for purposes of Rule 10b-5 when that person *has control* over the content, regardless of whether the person actually drafts the content.").

Apart from the misstatement relating to Aurum satisfying the closing conditions, I do not find that the gold estimates and corresponding cash projections for the gold properties in the August 2011 PPM were material misrepresentations. While the highly favorable estimates were not ultimately confirmed, from the outset Crow and Clug based them on data and information they received from local subject matter experts. Furthermore, the PPMs gave investors considerable pause to believe that they could rely upon these projections, and investors were advised of numerous circumstances in Latin America that may prevent the operational success and preclude a profit. For example, the PPM language that "[i]t should be assumed that these projections WILL NOT be achieved and only a good faith effort on the part of management is expected" was plainly forewarned. *E.g.*, Div. Ex. 68 at 17. The PPMs also provided multiple pages of risk disclosures, many specific to the gold mining business. *See supra* for a discussion of those risk disclosures. All investors understood that Aurum was a high-risk investment with the potential of a high reward, and that they may lose all of their money. Thus, I do not find that

[17] Although the Division also claims that Aurum was obliged to segregate certain funds in a formal escrow account, that is not an express requirement of the PPM, which instead appears to indicate that a segregated bank account could serve in lieu of a formal escrow account. While I acknowledge that the language of the PPM is equivocal on this point, I do not think that a reasonable investor would have been misled, and, as such, do not find that a misrepresentation took place, or in any event.

Aurum's initial favorable projections for its mining property prospects to be a material misrepresentation. Offering documents, which include meaningful – i.e., not boilerplate – cautionary language that informs investors of the risk inherent in any investment, render such initial return projections immaterial for purposes of federal securities laws. *SEC v. Merch. Capital, LLC*, 483 F.3d 747, 767-68 (11th Cir. 2007).

c. December 2011 PPM

Regarding the December 2011 PPM, the Division argues that the gold estimates, cash flow projections, and claims that Arthom owned the land and mining rights in Brazil were all untrue. Div. Br. at 11-14. In particular, the Division claims the statements that "Arthom has contributed its 3,742 hectares to Batalha" and "[t]he rights and land on the [Batalha] Initial Parcel were owned or controlled by Arthom" were false. *Id.* at 12.

While I do not fault the August 2011 PPM's projections with respect to Batalha, notwithstanding the various caveats in the December 2011 PPM, I find that latter document's projected investor return for Batalha – of forty times a return versus seventeen times a return reported in August – represented a material misrepresentation. *Compare* Div. Ex. 68 at 12, *with* Div. Ex. 314 at 12. To make initial, optimistic projections, based on data and information to date but caveated with disclaimers, may be immaterial; but without any reasonable basis to then more than double such projections is of great concern. Respondents failed to explain or justify the dramatically increased profit projection. For example, there was no intervening expert assessment that projected profits would double; Clug and Crow did not have any information to justify doubling their projected profits. To do so was severely reckless, and obviously material to investors, because, even though they knew they could not rely on the projections, a reasonable investor would want to know that the projection had been doubled, without any additional support. I can only conclude that Clug and Crow doubled the profit projection to entice additional investors.

Regarding Arthom's ownership and control of Batalha's land and mining rights, these statements do not qualify as a violation because at that time they were made, Crow and Clug believed that Arthom legally controlled the mining rights through the power of attorney process described by Raiss. Only later did Crow and Clug learn this was not the case.

For Peru, the December 2011 PPM projected that "returns on Aurum's Peruvian projects are believed to exceed the returns obtained on its Brazilian Initial Property, because of the quick-to-production nature and high gold concentration on those mines." Div. Ex. 314 at 20. For the Peru projections, as with the initial Brazil projections, I find that Crow and Clug could reasonably rely upon the data and information they had available at the time as interpreted by their local, in-house subject matter experts. The most experienced in-house expert was Garate, and, while his projections appear to have been overblown, the mining experts who testified at the hearing all concurred that he had the background and experience to make assessments of gold potential for the Peru properties.

d. Crow and Clug's Further Reliance on Experts

The Division argues that Crow and Clug's reliance on Garate and Aurum's other in-house employees was unreasonable due to a considerable number of red flags and contradictory evidence. Div. Br. at 14-16. The Division cites to Garate's mistakes on the Cobre Sur property and the reports received from the independent geologists. *Id.* at 15-16.

Even after Crow and Clug received conflicting information from independent, outside experts, I find that they were able to continue relying on in-house experts, who were present on a day-to-day basis, but I differ with the Respondents in that they ignored and minimized the independent expert information, especially to the extent in keeping it from Aurum investors. It is precisely because Crow and Clug have no expertise in geology that it was reasonable that they deferred to their in-house geologists and relied on them for projections. By the same token, however, I find that, as non-geologists, they were extremely reckless in deciding to keep Park's findings from investors and Daubeny.

Park conducted a site visit and sampling at Molle Huacan in April 2012. Due to errors by Aurum's in-house staff with some of the sampling, the final report was delayed to October 2012. Park's assessment, which was later confirmed by two other geologists, in pertinent part, was that Molle Huacan had no proven gold resources, and he could not confirm or validate the in-house geologists' dramatic estimates of gold potential. Crow and Clug clearly credited Park's opinion, because, as recently as the hearing, in addition to calling him as a fact witness, they paid him to provide expert witness testimony in their defense. In October 2012, Crow and Clug faced a critical decision: whether to tell Aurum's investors that Park's independent geological report they had commissioned on Molle Huacan largely contradicted and undercut their previous disclosures to investors. His report found that Molle Huacan, which Crow and Clug had touted as a "quick to production" gold mine, instead had low average gold grades, small tonnage potential, and was not ready for production. After Clug predicted that investors would view this report as "rather negative," Crow and Clug agreed to, in Crow's words, "keep it back" from investors. Div. Ex. 490. Crow and Clug never referenced it, even in the data room, surmising (in their non-expert opinions) that tests taken after his site visit had rendered his assessment inaccurate. Though Park was available for follow up, they decided to presume that subsequent data would have changed his opinion without asking him. While I agree that some additional sampling and testing was done following Park's site visit, it was reckless for Crow and Clug to assume that these activities obviated Park's findings. It was severely reckless to keep this material information a secret. Investors would have wanted to be aware that an independent geologist had made such findings. Instead, Crow and Clug provided investors with ever-increasing reports of Molle Huacan's gold in late 2012 and 2013.

For example, the September 2012 and January 2013 PPMs represented to investors that Aurum's in-house geologist is "convinced that Molle Huacan is a major gold concession and may have more than 1 million ounces of gold." Div. Ex. 469 at 9; Div. Ex. 577 at 10. While I find it reasonable to relay such in-house estimates, their failure to advise investors of Park's October 2012 report on that property in the January 2013 PPM, which portrays a starkly different picture of Molle Huacan, underscores why his report is precisely the sort of information a

reasonable investor would want to have before committing funds to a project which may have much less potential than their in-house geologist suggests.

While Crow and Clug did include the report of Daubeny, the next independent geologist who examined Molle Huacan, in Aurum's online data room, and noted it in the first quarter 2013 update letter, they failed to note any of the negative aspects of his report, which were considerable. Crow and Clug only told investors that Daubeny's report "confirm[ed] our project as a project of merit" and that a "[c]opy of this large report is in our data room." Div. Ex. 592 at 3. Because Crow and Clug never provided Park's report to Daubeny, Daubeny reached all the conclusions in his report independently of Park. Thus, at the point Crow and Clug received Daubeny's report, they knew they had independent verification of crucial points in Park's report, i.e., that there were no gold reserves at Molle Huacan, there was no confirmation of their in-house geologists' dramatic estimates of gold potential, and that the tests conducted by the independent, outside geologist showed lower levels of gold that their in-house sampling. At the point Crow and Clug were in receipt of Daubeny's report, they had a further, separate reason to credit Park's findings. And yet, they continued to keep that information from investors. Their omission of negative history, particularly Park's report, is not rendered immaterial by the generic cautionary statements. "What may once have been a good faith projection became, with experience, a materially misleading omission of material fact." *Merch. Capital*, 483 F.3d at 769; *see Meltzer*, 440 F. Supp. 2d at 189 (stating that "[a]n egregious refusal to see the obvious, or to investigate the doubtful, may in some cases give rise to an inference of recklessness" (quoting *Chill v. Gen. Elec. Co.*, 101 F.3d 263, 269 (2d Cir. 1996)) (alteration in original)).

e. Use of the Term "Inferred Reserves"

In addition to the material omission of concealing Park's report, I further find that Crow and Clug's decision to report gold amounts to investors in terms of "inferred reserves" as opposed to potential was extremely reckless and a material misrepresentation. Their in-house experts largely reported potential gold, not reserves, and it seems Crow and Clug independently elected to denominate the gold as inferred reserves, ignoring numerous references of their own staff to gold potential, ostensibly because "inferred reserves" sounded more enticing when selling investments in Aurum. While the precise meaning of potential, reserves, and resources may have escaped Crow and Clug, and may not have actually mattered a great deal to the testifying investors, a reasonable investor in a gold mining operation would want to know that the gold in question was more than notional potential. Even in this proceeding, Respondents cite to Daubeny's reference to 195,000 ounces of gold potential as $273 million of gold at $1,400 an ounce. *See* Clug Br. at 8. Yet, in addition to that amount of gold being purely notional, those figures wholly ignore whether any of it would be economically feasible to extract. Thus, even if at some point it was determined the property had gold reserves in that quantity, if the average cost to extract the gold was $1,400 per ounce, even assuming no operating costs, the endeavor would yield no profit. Again, Crow and Clug's decision to call the gold at Molle Huacan a reserve, instead of potential gold, was reckless.

f. Crow's Background

Crow's background regarding his prior SEC cases and corresponding industry bars were not disclosed to Aurum investors until at least the December 2011 PPM, and his bankruptcy proceedings were not disclosed until the September 2012 PPM.[18] Both categories of omissions were material. *See, e.g.*, *Merch. Capital*, 483 F.3d at 770-71 (failure to disclose management's personal bankruptcy and a previous cease-and-desist order, which prohibited the sale of unregistered securities, were material omissions); *SEC v. Carriba Air, Inc.*, 681 F.2d 1318, 1323 (11th Cir. 1982) (finding that failure to disclose a company's bankruptcy was a material omission); *SEC v. Weintraub*, No. 11-21549-CIV, 2011 WL 6935280 at * 4-5 (S.D. Fla. Dec. 30, 2011) (finding recidivist defendant's tender offer documents materially misleading for failing to disclose his criminal record, officer and director bar, personal bankruptcy, and unpaid Commission judgment); *SEC v. Kirkland*, 521 F. Supp. 2d 1281, 1303 (M.D. Fla. 2007) (noting that failure to disclose "[d]esist and [r]efrain" orders entered against management was a material omission); *Siemers v. Wells Fargo & Co.*, No. C 05-4518 WHA, 2007 WL 1140660, at *8 (N.D. Cal. Apr. 17, 2007) (stressing the materiality of information indicating management's lack of integrity). While no investor returned his or her money after receiving these disclosures concerning Crow's background, that does not defeat the principle that a reasonable investor would want to know that one of the two principals of a company that he or she was about to invest in had committed serious securities laws violations and was currently in bankruptcy proceedings. Crow kept his bankruptcy from others as well. Indeed, Clug only found out shortly before he was to be deposed in relation to those proceedings. Thus, I find that Crow strove to minimize his past securities law violations, but the other Aurum officers knew generally that Crow had run afoul of the Commission before: indeed, that fact informed their understanding of why Crow could not serve as an officer or director of PanAm, a public company. I find that Crow's failure to advise others of his bankruptcy, and corresponding failure to include notice of it to investors until late 2012, was severely reckless. Likewise, the failure of both Crow and Clug to disclose Crow's securities law violations from May to December 2011 was similarly reckless. I do not find that either of the preceding omissions was intentional, because both were eventually disclosed to investors, but, the dilatory nature of the disclosures reflects much more than mere carelessness or oversight.

g. Use of Investor Funds

I do not find that Aurum made material misrepresentations with respect to how investor funds would be spent. The Division acknowledges that Aurum's PPM disclosed that its managers would be paid reasonable compensation, and that its arrangement with Corsair was also disclosed. Div. Br. at 17-18. The PPMs also contained generous language regarding the managers' broad discretion to expend funds for operational purposes, which is what, in large part, the money was spent for. I have previously found that, at least at Molle Huacan, there was considerable evidence of mining activity, infrastructure and equipment that was developed over a long period of time, as best described by Hollander's testimony and the video and photographic exhibits. *See supra*.

[18] Although the Commission litigation was not specifically mentioned, the December 2011 PPM did refer investors to the online data room for "past litigation." Div. Ex. 314 at 10.

Although the Division presented a capable summary witness, Sandra Yanez, whose review of the available financial records showed that the use of Aurum's funds could not be completely and accurately specified, Tr. 610-12, 615; Div. Ex. 3A at 28-29, I do not find based on that insufficient information that there were fraudulent misrepresentations in the use of investor funds. While Yanez's reports and testimony do demonstrate that it is possible that some investor funds were misappropriated, despite her best efforts, the evidence is simply insufficient to establish it is more likely than not that there was fraud in either the Respondents' representation of how funds were used, or their actual use.

h. Aurum's Violations

Crow and Clug controlled Aurum as the co-owners of all of Aurum's voting shares and through day-to-day operations as managers. They participated in the drafting and approval of all offering documents, including Aurum's PPMs and update letters. *See SEC v. Levin*, No. 12-21917-CIV, 2013 WL 5588224, at *14 & n.5 (S.D. Fla. Oct. 10, 2013) ("[A] person makes a statement for purposes of Rule 10b-5 when that person *has control* over the content, regardless of whether the person actually drafts the content."). Thus scienter of Crow and Clug is imputed to Aurum. *See SEC v. Mgmt. Dynamics*, *Inc.*, 515 F.2d 801, 812 (2d Cir. 1975); *SEC v. Manor Nursing Ctrs.*, 458 F.2d 1082, 1096 n.16 (2d Cir. 1972) (scienter of an individual who controls a business entity may be imputed to that entity). Thus, I find Aurum culpable for the preceding material misrepresentations of Crow and Clug. I also find that Crow and Clug willfully aided and abetted and caused Aurum's violations.

2. Violations relating to PanAm

In addition to the antifraud allegations, the Division also argues that PanAm willfully violated Exchange Act Section 13(a) and Rules 12b-20, 13a-1, and 13a-13; Crow and Clug willfully aided and abetted and caused PanAm's violations; and Clug willfully violated Exchange Act Rule 13a-14. Div. Br. at 4, 24. As a preliminary matter, Crow's liability with respect to PanAm's alleged violations is dependent on whether I find that Crow was an actual or de facto officer of PanAm. I find that the Division did not meet its burden of proof. Because Crow was never an actual or de facto officer of PanAm, PanAm was not required to make any disclosures regarding Crow.

Exchange Act Rules include in the definition of an officer a president, vice president, secretary, treasurer or principal financial officer, comptroller or principal accounting officer, any person routinely performing corresponding functions within an organization, and any other person who performs a policy-making function for a company. 17 C.F.R. §§ 240.3b-2, .3b-7, .16a-1(f). In determining who is an officer of a company, courts "reject reliance on an employee's title and instead . . . perform a fact-intensive analysis of the employee's duties and responsibilities to determine if they are a de facto officer." *SEC v. Prince*, 942 F. Supp. 2d 108, 133 (D.D.C. 2013). The reason for this is to ensure "that a company not be allowed to 'hide a significant figure in the management of a company' behind a vague title, such as 'consultant.'" *Id.* at 134 (citing *SEC v. Enterprises Sols., Inc.*, 142 F. Supp. 2d 561, 574 (S.D.N.Y. 2001)).

The Division argues that while Crow did not have an official officer title at PanAm, he acted as a de facto officer because he "performed policy-making functions similar to corporate presidents, chief executive officers, and other personnel typically tasked with policy-making functions." Div. Br. at 20-22. In support, the Division cites to its belief that Crow selected Ross as CEO and Mooney as director, negotiated on behalf of PanAm, closely monitored PanAm's public filings and threatened to discipline Lana, and was compensated for his work through Corsair. *Id.* at 22.

Crow served PanAm as an actual consultant and did not act as a policy-maker. PanAm had a board of directors and officers who set corporate policy and made decisions. PanAm was initially controlled by Clug, and later by Ross in the CEO role. While Crow recommended two individuals who ultimately served as an officer and a director of PanAm, he made other recommendations that were not followed by Clug or Ross. In addition, I disagree with the Division's intimation that Crow "selected" the CEO who replaced Clug. This characterization ignores the fact that Clug knew Ross years before the creation of PanAm, and that all witnesses agree that Ross was a sound choice for CEO based on his successful experience leading public companies. Though Crow, in his capacity as a PanAm investor, paid close attention to PanAm's public filings, and suggested that Lana be terminated because the filings were untimely, Lana never took the threat seriously because Crow had no ability to support that course of action. During the hearing, PanAm's officers and directors testified similarly – that Crow was not exercising policy-making functions and was not a de facto officer of the company. I find this uniform testimony to be credible. While one of the witnesses, Gewanter, was unaware of some of Crow's activities, even taking the limits of his knowledge into account, I find that on balance, the testimony of all individuals concerned, and the activities described, reflect Crow's role as a consultant and investor, and not as an officer.

The Division did not establish that Crow ever owned or controlled in excess of 4.99% of the shares of PanAm. His conversion of a convertible note into shares in order to sell some does not establish that Crow was a de facto officer, nor other wrongdoing by Clug or Crow. At the time of the conversion, CEO Ross, CFO Lana, and PanAm counsel Brantl were all aware of the note conversion by Crow and believed it to be a legal private transaction. Although Clug was not directly involved in this conversion and sale, based on Lana's testimony, the requirements for an advice of counsel defense were satisfied, in that Ross and Lana made a complete disclosure of the relevant facts of the intended conduct to Brantl, sought his advice on the legality of the intended conduct, received Brantl's advice that the intended conduct was legal, and relied in good faith on that advice. *See Markowski v. SEC*, 34 F.3d 99, 105 (2d Cir. 1994); *Rodney R. Schoemann*, Securities Act Release No. 9076, 2009 SEC LEXIS 3939, at *46 & n.41 (Oct. 23, 2009).

However, I find that PanAm incorrectly reported the facts and circumstances surrounding Crow's note conversion. PanAm's Form 10-Q for the period ended September 30, 2012, filed January 22, 2013, reported that the maturity dates of Crow's convertible notes had been extended but did not mention that Crow later converted one of the notes. Div. Ex. 839 at 14. Although Crow did not officially convert the note until after the third quarter, the conversion was not reported as a subsequent event, even though PanAm reported other subsequent events that occurred during the fourth quarter. *See id.* at 19. Hartman, PanAm's CPA, testified that the

conversion was a material transaction and should have been disclosed. Tr. 489-91. The omission of the conversion as a subsequent event was material given the number of shares that were subject to a conversion right. A reasonable investor would have wanted to know whether a noteholder with the right to receive such a large number of PanAm shares had converted all or a portion of the note, as that conversion would affect other investors' ownership percentage.

Lana, who previously settled allegations of misconduct against him, took responsibility for failing to include that information in periodic filings with the SEC. Lana was credible and sincere in apologizing for his failure to include it, though he believed the conversion was not material. I do not find that Lana acted with scienter, though he did act negligently. The Form 10-Q was signed by Ross. Div. Ex. 839 at 24, 26, 28. Thus, I do not hold Clug responsible for that omission, nor Crow. Ultimately, setting aside the failure to disclose the conversion, I conclude that the facts and circumstances show that Crow did not have sufficient control over PanAm to be deemed a de facto officer. *See Prince*, 942 F. Supp. 2d at 134-36. Because the Division's claims under Exchange Act Section 13(a) and Rules 12b-20, 13a-1, 13a-13, and 13a-14 are predicated on its contention that Crow was a de facto officer of PanAm, I reject those claims on the basis of my finding that he did not act as an officer. *See* Div. Br. at 24 (arguing that the violations stemmed from the failure to identify Crow as an officer in its Form 10-K and 10-Q filings).

On May 18, 2012, Clug instructed Lana to provide the PanAm executive brief, dated May 2011, to investors. Div. Ex. 389 at 1. The executive brief stated, in part that "the name and symbol change to PanAm is in process with a Form 10 and application for listing on the OTCBB submitted on April 29, 2011." *Id.* at 10. However, no application to the OTCBB had been submitted on April 29, 2011, though the Form 10 was filed on that date. Answer ¶ 66; Div. Ex. 708. The preceding statement concerning the application for OTCBB listing was made in error, and I find it to be the result of careless error in characterization, as opposed to an intentional or reckless act, since PanAm had commenced the process of seeking such a listing. As such I find Clug negligent in allowing it to be included. As then-CEO of the company, his negligence is properly attributed to PanAm, thus resulting in a violation of Securities Act Section 17(a)(2) because PanAm received investor money as a result of the representations in the executive brief.

I disagree that PanAm or Clug misled investors by stating that PanAm would use proceeds to acquire agricultural farmland in Latin America. According to all the witnesses who testified, a key aim of PanAm was to profitably manage agricultural lands in Latin America, and although the company never reached an operational stage, the evidence does not reflect that was Clug's fault. Indeed, according to one of PanAm's independent board members, the expectation was that bringing on Ross as CEO would result in the deals necessary to bring PanAm's core business into operation, but disappointingly Ross was unable to make good on those efforts. Tr. 1831.

B. Exchange Act Section 15

The Division alleges that Crow, Clug, and Corsair violated Exchange Act Section 15(a)(1); Crow and Clug willfully aided and abetted and caused Corsair's violation; Crow

willfully violated Exchange Act Section 15(b)(6)(B); and Clug willfully aided and abetted and caused Crow's violation. Div. Br. at 4, 24-27.

Exchange Act Section 15(a)(1) generally makes it "unlawful for any broker or dealer . . . to make use of the mails or any means or 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 in accordance with Exchange Act Section 15(b). 15 U.S.C. § 78*o*(a)(1). Scienter is not an element of a violation of Section 15(a)(1). *See SEC v. Martino*, 255 F. Supp. 2d 268, 283 (S.D.N.Y. 2003).

Exchange Act Section 3(a)(4) defines a broker as "any person engaged in the business of effecting transactions in securities for the account of others." 15 U.S.C. § 78c(a)(4). Activities indicating that a person is "engaged in the business" include actively soliciting investors, participating in the negotiation or structuring of securities transactions, receiving commissions or other transaction-based compensation, and giving advice as to the merits of investments. *See, e.g.*, *Martino*, 255 F. Supp. 2d at 283; *SEC v. Kenton Capital*, 69 F. Supp. 2d 1, 12-13 (D.D.C. 1998); *SEC v. Nat'l Exec. Planners*, 503 F. Supp. 1066, 1073 (M.D.N.C. 1980). A person need not engage in all or a particular number of these activities to be "engaged in the business." *SEC v. George*, 426 F.3d 786, 793, 797 (6th Cir. 2005) (finding that an unregistered individual violated Exchange Act Section 15(a) by soliciting "numerous investors to purchase securities" in fraudulent offerings, holding himself out as an intermediary, and receiving "transaction-related compensation in the form of investors' money," and another unregistered individual violated Section 15(a) by being "regularly involved in communications with and recruitment of investors for the purchase of securities"); *David F. Bandimere*, 2015 SEC LEXIS 4472, at *33-34.

Crow and Clug, as the principals of Corsair, entered into a "Referral Agreement" with ABS that required Corsair "to introduce potential investors" to ABS in return for ABS's agreement to compensate Corsair "if an investment is made in one or more [ABS] funds." Div. Ex. 199 at 1. The agreement entitled Corsair to a 3% fee (based on the amount invested by each investor) for each referred investor. *Id.* at 2. Aurum received additional benefits as a result of this agreement as ABS investors were able to borrow up to 70% of their investment to invest in Aurum. Div. Ex. 201. Although Crow and Clug did not introduce any investors directly to ABS – with the exception of Clug introducing his father – they encouraged Lana to do so, and directed him to use a Corsair email address in effecting the referrals. Div. Exs. 241, 243, 244, 260, 262; Tr. 854. Crow and Clug closely followed and praised Lana's success in steering investors to ABS. Div. Ex. 269. Lana's actions should be imputed to Crow and Clug as Lana portrayed himself as being associated with Corsair, which was owned and controlled by Crow and Clug, at Crow and Clug's direction. As a result of Lana's actions, Corsair, Crow, and Clug received referral fees from ABS.

Aurum received $39,563 from ABS in fee payments from April to November 2012. Div. Ex. 2A at 18. These payments were transaction-based compensation. *See David F. Bandimere*, 2015 SEC LEXIS 4472, at *32 (finding transaction based compensation where "compensation was based on the dollar amount of the original investment transactions"); *see also Cornhusker Energy Lexington, LLC v. Prospect St. Ventures*, No. 04-cv-586, 2006 WL 2620985, at *6 (D. Neb. Sept. 12, 2006) ("Transaction-based compensation . . . [is] one of the hallmarks of being a

broker-dealer."). For instance, the invoices submitted to ABS under the referral agreement, identified each customer referred by Corsair to ABS, and the payments adhere to the 3% formula set forth in the referral agreement, with "1/3 due every 30 days." Div. Exs. 308, 321, 364; *see* Tr. 55-56; Div. Ex. 422 at 2. Even after Corsair and ABS replaced the referral agreement with an agreement providing Corsair with a flat fee of $5,000 per month, I find that Corsair continued to receive transaction-based compensation. Though Crow and Clug testified that they had been providing select consulting services to ABS, there is at best sparse documentary evidence to back that up, and on these facts, it would be difficult to believe that ABS would have decided to pay Corsair that monthly amount if Corsair was not referring Aurum clients for investments in ABS. In particular, I note that there was no apparent difference between the vague consulting services that Corsair allegedly provided once the agreement shifted to a flat fee.

Respondent Clug admits that "Corsair mistakenly entered into a referral agreement with ABS" but claims Corsair "did not perform under the Agreement." Clug Br. at 18. While the referral agreement was certainly a mistake, the preceding evidence – particularly the first three months of referral payments – indicate that Corsair did in fact perform and was compensated under the terms of that agreement as a result. Accordingly, Crow, Clug, and Corsair violated Exchange Act Section 15(a)(1); Crow and Clug willfully aided and abetted and caused Corsair's violation.

Exchange Act Section 15(b)(6)(B) states that it is unlawful "for any person as to whom an order under [15(b)(6)(A)] is in effect, . . . willfully to become, or to be, associated with a broker or dealer in contravention of such order." 15 U.S.C. § 78*o*(b)(6)(B)(i). In 2009, Crow was barred from association with any broker, dealer, or investment adviser. Div. Ex. 692 at 5. Therefore, he willfully violated his broker-dealer bar by engaging in the conduct with Corsair and thus violated Exchange Act Section 15(b)(6)(B); Clug willfully aided and abetted and caused Crow's violations as the other principal of Corsair. Clug was aware of Crow's bar and should have known that entering into a referral agreement for transaction-based compensation would cause Crow to violate his bar.

IV. SANCTIONS

The Division seeks 1) penny stock and collateral bars against Crow and Clug; 2) cease-and-desist orders against Crow and Clug; 3) disgorgement of ill-gotten gains and prejudgment interest against Respondents; and 4) civil penalties against Respondents. Div. Br. at 27-35; Div. FOF & COL at 145. Clug argues that penalties are inappropriate because Respondents have no liability; he argues that in the event a penalty is imposed, it should be a first-tier civil penalty not to exceed $7,500 because Clug and the three entities have no prior violations and there is no need for deterrence as they have ceased raising money from investors. Clug Br. at 21. Both Crow and Clug assert an inability to pay. Clug Br. at 20-21; Tr. 1959-82, 2269-2300.

A. Bars

1. Penny Stock and Collateral Industry Bars

As mentioned earlier, Crow has been barred from associating with a broker, dealer, or investment adviser in addition to his officer and director bar and his prohibition from appearing or practicing before the Commission as an accountant. *See supra*. Since Crow's previous industry bar was imposed, the Dodd-Frank Wall Street Reform and Consumer Protection Act, effective as of July 22, 2010, amended Exchange Act Section 15(b)(6)(A) to empower the Commission to suspend or bar any person who, "at the time of the alleged misconduct . . . was associated . . . with a broker or dealer, or . . . was participating[] in an offering of penny stock" from association with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, or from participating in an offering of penny stock. 15 U.S.C. § 78*o*(b)(6)(A); *see* 15 U.S.C. § 78*o*(b)(6)(A) (2006) (bar limited to being associated with a broker or dealer or from participating in an offering of penny stock). The Commission may impose this bar if it finds that the bar is in the public interest and the person has willfully violated, or has willfully aided and abetted violations of, the federal securities laws. 15 U.S.C. § 78*o*(b)(4)(D), (E), (6)(A)(i).

Respondents argue that the shares at issue are not penny stock and thus a penny stock and collateral bar should not be imposed. Clug Br. at 19; Crow Response to Div. FOF & COL at 283. However, participation in an offering of penny stock is not a statutory prerequisite for a bar under Exchange Act Section 15(b)(6)(A). Crow and Clug meet the statutory prerequisites for the bar because at the time of the misconduct involving Aurum and Corsair, they were associated with Corsair, an unregistered broker. *Daniel Imperato*, Exchange Act Release No. 74596, 2015 SEC LEXIS 1377, at *13 & n.22 (Mar. 27, 2015) (Commission has the authority to sanction persons who act as or associate with unregistered brokers).

Investment Company Act Section 9(b) authorizes barring a respondent from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter, if the respondent: (1) willfully violated or willfully aided and abetted violations of any provision of the federal securities laws; and (2) such a bar is in the public interest. 15 U.S.C. § 80a-9(b).

Crow and Clug's primary and secondary violations of the Securities Act and Exchange Act were committed with scienter, and were therefore necessarily willful. *See David F. Bandimere*, 2015 SEC LEXIS 4472, at *109.

In determining whether a bar is in the public interest, the Commission considers the *Steadman* factors: (1) the egregiousness of the respondent's actions; (2) the isolated or recurrent nature of the infraction; (3) the degree of scienter involved; (4) the sincerity of assurances against future violations; (5) the respondent's recognition of the wrongful nature of his conduct; and (6) the likelihood that the respondent's occupation will present opportunities for future violations. *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981). The inquiry is a "flexible one, and no one factor is dispositive." *Eric S. Butler*,

Exchange Act Release No. 65204, 2011 SEC LEXIS 3002, at *14 (Aug. 26, 2011) (citations omitted).

The Division argues that Respondents' actions are egregious because "Crow and Clug each willfully committed fraud." Div. Br. at 28. However, willfulness is not a proxy for egregiousness,[19] and a finding of fraud, by itself, does not establish egregiousness, though the Commission has repeatedly held that "conduct that violates the antifraud provisions of the securities laws is especially serious and subject to the severest of sanctions." *Peter Siris*, Exchange Act Release No. 71068, 2013 SEC LEXIS 3924, at *23 (Dec. 12, 2013) (citations omitted), *pet. denied*, 773 F.3d 89 (D.C. Cir. 2014). Here, the misconduct can be summarized, with respect to Aurum, in seven respects: (1) a brief failure to disclose Crow's past litigation with the Commission; (2) a longer failure to disclose his pending bankruptcy proceeding (a fault I only attribute to Crow, who kept it from those around him until he had no choice but to disclose it); (3) the misrepresentation to the initial Aurum noteholders that the company had finalized the Batalha deal at a time when land had not been acquired nor mining rights secured; (4) the misrepresentation to the August 2011 PPM investors that the closing conditions had been met; (5) a subsequent, inexplicable doubling of projections of profits from the Batalha joint venture that investors may receive forty times their initial investment; (6) Crow and Clug's reckless representation of gold potential as "reserves"; and (7) Crow and Clug's decision to conceal Park's independent geological report on the Molle Huacan property from investors. The preceding conduct, taken as a whole, is sufficiently egregious to indicate that bars may be in the public interest. In addition to those reckless misrepresentations and omissions, there was also a negligent misrepresentation of PanAm's OTCBB status while Clug was CEO, the unlawful referral fee agreement between Corsair and ABS, and Crow's violation of his previous broker-dealer bar.

As to the isolated or recurrent nature of the infractions, the Division contends that "[t]he violations extended over a three-year period." Div. Br. at 28. However, within that period, on a day-to-day basis I find that neither Crow nor Clug were committing recurring infractions. The preceding violations relate to a handful of decision-points where Crow and Clug elected a course of action, typically with an extremely reckless disregard to the interests of investors. While their infractions did recur, to some extent, there was not frequently recurring misconduct. For Crow, however, given his history of past securities laws violations, I consider this most recent spate of violations to represent a recurrence of infractions, over a longer term, which are more than mere coincidence. Based on my findings in this case and his preceding Commission litigations, I find Crow's infractions sufficiently recurrent that this factor weighs heavily in favor of some form of bar. Clug, by contrast, has never been the subject of a Commission action before this one. While recurrence weighs less heavily against Clug, he nonetheless was complicit in various reckless or otherwise unlawful activities.

As to the degree of scienter involved, the misrepresentations of Crow and Clug were extremely reckless, which weighs in favor of a bar. Neither Crow nor Clug offered meaningful assurances against future violations, as both maintain they acted appropriately in their

[19] As discussed previously, a finding of willfulness does not require intent to violate the law. *See supra* n.16.

management of Aurum. While they acknowledge the technical violation with respect to the initial referral fee agreement with ABS (though claim that Corsair did not perform under the agreement), and Clug acknowledges the OTCBB error with PanAm, neither acknowledges that their conduct regarding Aurum was unlawful. Finally, absent penny stock and associational bars, based on their history and future prospects, both Crow and Clug would likely engage in activities that would present opportunities for future violations. Evidencing this risk, in June 2015, Crow and Clug wrote a letter to Aurum's investors stating that "there is indeed gold" at Molle Huacan and that they were looking for a potential merger partner. Div. Ex. 737. Such statements give me considerable concern for their future actions.

Based on the foregoing factors, I find that Crow and Clug should be barred from association with all of the industry groups specified under Exchange Act Section 15(b)(6), from participating in an offering of penny stock, and from serving or acting in any of the roles specified under Investment Company Act Section 9(b). *See Gary M. Kornman*, Exchange Act Release No. 59403, 2009 SEC LEXIS 367, at *23 (Feb. 13, 2009) ("The securities industry presents a great many opportunities for abuse and overreaching, and depends very heavily on the integrity of its participants. Indeed, the importance of honesty for a securities professional is so paramount that we have barred individuals even when the conviction was based on dishonest conduct unrelated to securities transactions or securities business." (internal quotation marks and footnote omitted)); *Richard C. Spangler, Inc.*, Exchange Act Release No. 12104, 1976 SEC LEXIS 2418, *34 (Feb. 12, 1976) ("When the past misconduct involves fraud, fidelity to the public interest requires us to be mindful of the fact that the securities business is one in which opportunities for dishonesty recur constantly and that this necessitates specialized legal treatment." (internal footnote omitted)). While the case for barring Crow is stronger, given his long-term history of securities law violations, the balance of the public interest factors and the need to protect investors support bars for Clug as well.

2. Officer and Director Bar

The Division seeks an officer-and-director bar against Clug under Securities Act Section 8A and Exchange Act Section 21C, which authorize the Commission, in a cease-and-desist proceeding, to prohibit "conditionally or unconditionally, and permanently or for such period of time as it shall determine" any person who violated Securities Act Section 17(a)(1) or Exchange Act Section 10(b) or the rules thereunder, respectively, from acting as an officer or director of an issuer if the person's conduct demonstrates "unfitness to serve as an officer or director" of an issuer. 15 U.S.C. §§ 77h-1(f), 78u-3(f). As the Division concedes, however, it did not seek an officer-and-director bar against Clug until after the hearing and for the first time in its post-hearing brief. *See* Div. Br. at 30 n.2. The OIP itself does not give clear notice that this charge would be at issue. *See* 17 C.F.R. § 201.200(b)(4) ("The order instituting proceedings shall . . . state the nature of any relief or action sought or taken."). The OIP's title simply states that this proceeding was instituted under Securities Act Section 8A, Exchange Act Sections 15(b) and 21C, and Investment Company Act Section 9(b). OIP at 1. The only other references to Securities Act Section 8A and Exchange Act Section 21C in the OIP specify that the relief sought under those provisions would consist of cease-and-desist orders and monetary sanctions, with no indication that any other remedy would be sought under those provisions. OIP Section III.E. By contrast, the OIP's references to Exchange Act Section 15(b) and Investment Company

Act Section 9(b) make apparent that the Division may seek any remedy authorized under those provisions. *Compare* OIP Section III.B & C ("What, if any, remedial action is appropriate in the public interest against Respondents pursuant to" Exchange Act Section 15(b) and Investment Company Act Section 9(b)), *with* Section III.E ("Whether, pursuant to Section 8A of the Securities Act, Section 21C of the Exchange Act and Section 9 of the Investment Company Act, Respondents should be ordered to cease and desist," "ordered to pay a civil penalty," and "ordered to pay disgorgement.").[20] Given the OIP's wording of the nature of relief sought that was later compounded by the Division's failure to mention that it would seek an officer-and-director bar until its post-hearing brief, it is doubtful that Clug had adequate notice and an adequate opportunity to defend against the charge. *See Jonathan Feins*, Exchange Act Release No. 41943, 1999 SEC LEXIS 2039, at *25-26 (Sept. 29, 1999) (administrative due process requires that a respondent have sufficient notice to "understand[] the issues and [be] afforded a full opportunity to meet the charges during the course of the proceeding").

Even if, as the Division posits, the omission of an officer-and-director bar was an unintentional oversight, that does not obviate the problem. Moreover, the Division's claim that Clug would not be prejudiced is unpersuasive. Even if the Wells letter indicated that an officer-and-director bar was a potential charge, the failure to provide notice in the course of the administrative proceeding until well after the close of evidence remains troubling. It would have been reasonable, given how the OIP was worded and absent evidence to the contrary, for Clug to presume that any such potential sanction was off the table. It is not the respondent's burden to infer what the Division intended to charge based on a pre-proceeding letter. Moreover, it bears to reason that if Clug was provided adequate notice, he would have presented additional and perhaps even mitigating evidence, such as developing a record about his potential prior public company roles before the conduct at issue and calling favorable witnesses from those companies to testify in his defense. *See* Tr. 1973. Unlike the more general public interest analysis discussed above, the officer-and-director bar addresses a respondent's fitness to serve in a management role at a public company, and examines, in part, his or her role and conduct at such a company. *SEC v. Patel*, 61 F.3d 137, 140-41 (2d Cir. 1995). Despite Clug's contemporaneous misconduct in dealing with other, non-public entities where Crow was a manager, his activities at PanAm, where Crow was only a consultant, were mostly lawful and appropriate. Forcing Clug to develop a strategy to defend against a requested sanction after the hearing and within the limited time frame of post-hearing briefing is at odds with the right to have an "opportunity to be heard 'at a meaningful time and in a meaningful manner.'" *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (citation omitted).

[20] Orders instituting proceedings in other cases have specifically requested officer-and-director bars. *See, e.g.*, *Laurie Bebo*, Exchange Act Release No. 73722, 2014 SEC LEXIS 4738, at *28 (Dec. 3, 2014) ("Whether, pursuant to Section 21C(f) of the Exchange Act, Respondents should be prohibited, conditionally or unconditionally, and permanently or for such period of time as the Commission shall determine, from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act, or that is required to file reports pursuant to Section 15(d) of the Exchange Act.").

Horning v. SEC, 570 F.3d 337 (D.C. Cir. 2009), is inapposite. In that case, the Division at least made clear what sanctions it was seeking after the presentation of its case-in-chief but before the close of evidence, and the court found that the respondent knew all along that a supervisory bar in some capacity was at issue.[21] *Horning*, 570 F.3d at 347. Here, the Division waited until its post-hearing brief to announce an entirely new sanction being sought. The burden on the Division to provide adequate notice is minimal, whereas the prejudice to a respondent could be profound. An officer-and-director bar is sweeping in breadth, prohibiting a barred individual from acting as an officer or director of any issuer with registered securities that is required to file certain reports. In these circumstances, it would not be appropriate or in the public interest to impose such bar on Clug.

B. Cease-and-Desist Orders[22]

Securities Act Section 8A and Exchange Act Section 21C(a) authorize the Commission to issue a cease-and-desist order against a person who "is violating, has violated, or is about to violate" any provision of those acts or rules thereunder, as well as any person who caused such violation "due to an act or omission the person knew or should have known would contribute to such violation." 15 U.S.C. §§ 77h-1(a), 78u-3(a).

In determining whether to issue a cease-and-desist order, the Commission considers the *Steadman* factors and: (1) whether there is a risk of future violations; (2) how recent the violations are; (3) whether the violations caused harm to investors or the marketplace; and (4) what remedial function the cease-and-desist order would serve in the overall context of any other sanctions sought in the same proceeding. *ZPR Inv. Mgmt., Inc.*, Advisers Act Release No. 4249, 2015 SEC LEXIS 4474, at *115-16 (Oct. 30, 2015). This inquiry is flexible, and no single factor is dispositive. *Gorden Brent Pierce*, Securities Act Release No. 9555, 2014 SEC LEXIS 839, at *83 (Mar. 7, 2014), *pet. denied*, 786 F.3d 1027 (D.C. Cir. 2015). Although "'some' risk is necessary, it need not be very great to warrant issuing a cease-and-desist order." *ZPR Inv. Mgmt., Inc.*, 2015 SEC LEXIS 4474, at *116. "Absent evidence to the contrary, a finding of violation raises a sufficient risk of future violation." *Id.* (internal quotation marks omitted).

As described above, the *Steadman* factors weigh in favor of imposing cease-and-desist orders on both Crow and Clug. In the *Steadman* analysis *supra*, I found that Crow and Clug's activities caused concern for future violations, and I believe that there is a reasonable likelihood

[21] The order instituting proceedings against Horning used broad language to describe the available sanctions: "What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 15(b)(6) of the Exchange Act *including, but not limited to*, civil penalties imposed pursuant to Section 21B of the Exchange Act, based on his failure reasonably to supervise persons subject to his supervision." *Stephen J. Horning*, Admin. Proc. No. 3-12156, 2006 WL 176754, at *6 (Jan. 20, 2006) (emphasis added).

[22] The OIP also authorizes me to consider whether a cease-and-desist order is proper pursuant to Investment Company Act Section 9. OIP at 14. However, a cease-and-desist order is improper as there were no violations of the Investment Company Act. *See* 15 U.S.C. § 80a-9(f)(1). In any event, the Division also does not request a cease-and-desist order pursuant to this provision.

of future violations. Additionally, given Crow's legacy of repetitive securities laws violations, I find it extremely likely that he will commit future violations. The violations are somewhat recent. As discussed more fully below with respect to civil penalties, investors were notably harmed. *See infra*. Based on my findings that Crow and Clug willfully violated select federal securities laws and the other sanctions ordered in this proceeding, I find that a cease-and-desist order is appropriate and in the public interest.

C. Monetary Sanctions

Securities Act Section 8A(e), Exchange Act Sections 21B(e) and 21C(e), and Investment Company Act Section 9(e) authorize disgorgement in this proceeding, including reasonable prejudgment interest. 15 U.S.C. §§ 77h-1(e), 78u-2(e), 78u-3(e), 80a-9(e). "Disgorgement is an equitable remedy designed to deprive wrongdoers of their unjust enrichment and deter others from similar misconduct." *Ronald S. Bloomfield*, Securities Act Release No. 9553, 2014 SEC LEXIS 698 (Feb. 27, 2014); *see also SEC v. Teo*, 746 F.3d 90, 104 (3d Cir. 2014) ("The SEC's use of the disgorgement remedy has been constructed around two objectives: to deprive a wrongdoer of his unjust enrichment and to deter others from violating securities laws." (citations and internal quotation marks omitted)), *cert. denied*, 135 S. Ct. 675 (2014); *SEC v. First Jersey Secs., Inc.*, 101 F.3d 1450, 1474 (2d Cir. 1996) ("The effective enforcement of the federal securities laws requires that the SEC be able to make violations unprofitable." (citation omitted)).

Securities Act Section 8A(g) and Exchange Act Section 21B(a)(2) authorize civil penalties where a respondent is violating, has violated, or is the cause of a violation of any provision of the Securities Act or Exchange Act, respectively, or their rules or regulations.[23] 15 U.S.C. §§ 77h-1(g), 78u-2(a)(2). Exchange Act Section 21B(a)(1) and Investment Company Act Section 9(d) authorize civil penalties when it is in the public interest where a respondent has willfully violated, or willfully aided or abetted a violation of, any provision of the Securities Act or Exchange Act or the rules and regulations thereunder. 15 U.S.C. §§ 78u-2(a)(1), 80a-9(d)(1)(A). The factors relevant to determining whether civil penalties are in the public interest are: (1) whether the violation involved fraud; (2) whether the violation resulted in harm to others; (3) the extent to which there was unjust enrichment; (4) whether the individual has committed previous violations; (5) the need to deter the individual and others; and (6) such other matters as justice may require. 15 U.S.C. §§ 78u-2(c), 80a-9(d)(3).

The statutes set out a three-tier system identifying the maximum amount of civil penalties, depending on the severity of the respondent's conduct. 15 U.S.C. §§ 77h-1(g)(2), 78u-2(b), 80a-9(d)(2). First-tier penalties are awarded for each act or omission. 15 U.S.C. §§ 77h-1(g)(2)(A), 78u-2(b)(1), 80a-9(d)(2)(A). Second-tier penalties are awarded in cases involving fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement. 15 U.S.C. §§ 77h-1(g)(2)(B), 78u-2(b)(2), 80a-9(d)(2)(B). Third-tier penalties are awarded in cases involving fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement and where the conduct in question directly or indirectly resulted in substantial losses

[23] Securities Act Section 8A(g) also requires that the penalty be in the public interest. 15 U.S.C. § 77h-1(g).

or created a significant risk of substantial losses to other persons, or resulted in substantial pecuniary gain to the person who committed the act or omission. 15 U.S.C. §§ 77h-1(g)(2)(C), 78u-2(b)(3), 80a-9(d)(2)(C). The maximum amounts of civil penalty for a violation after March 3, 2009, at the first tier are $7,500 (for natural person) and $75,000 (for entities), at the second tier are $75,000 (for natural person) and $375,000 (for entities), and at the third tier are $150,000 (for natural person) and $725,000 (for entities). 17 C.F.R. § 201.1004, Subpt. E, Table IV. For violations occurring after March 5, 2013, the maximum first-tier penalties for each violation are $7,500 (for natural person) and $80,000 (for entities), the maximum second-tier penalties for each violation are $80,000 (for natural person) and $400,000 (for entities), and the maximum third-tier penalties for each violation are $160,000 (for natural person) and $775,000 (for entities). *See* 17 C.F.R. § 201.1005, Subpt. E, Table V. I am authorized to award up to these penalty amounts "for each" violative "act or omission." 15 U.S.C. §§ 77h-1(g)(2), 78u-2(b), 80a-9(d)(2).

I have discretion in determining the appropriate penalty within a given tier. *See S.W. Hatfield, CPA*, Exchange Act Release No. 73763, 2014 SEC LEXIS 4691, at *48 (Dec. 5, 2014) (the Commission has "discretion in setting the amount of penalty"); *First Sec. Transfer Sys., Inc.*, Exchange Act Release No. 36183, 1995 SEC LEXIS 2261, at *11 n.15 (Sept. 1, 1995) ("Nothing in the language of the statute or its legislative history suggests that the Commission is prohibited from assessing any lesser amount up to the maximum.").

1. Inability to Pay

Respondents contend that they are unable to pay disgorgement or civil penalties. I took testimony during the hearing regarding this issue and in accordance with Rule 630, 17 C.F.R. § 201.630, both Respondents provided statements of financial condition and supporting documents, all of which I placed under seal pursuant to Rule 322, 17 C.F.R. § 201.322.[24] *Michael W. Crow*, Admin. Proc. Rulings Release No. 3001, 2015 SEC LEXIS 3139, at *1 (July 31, 2015). As a result, portions of this section subject to the protective order will be redacted.

The Commission may consider a respondent's ability to pay in determining civil penalties under the Securities Act, Exchange Act, and Investment Company Act. *See* 15 U.S.C. §§ 77h-1(g)(3), 78u-2(d), 80a-9(d)(4). However, even when a respondent demonstrates an inability to pay, the Commission has discretion not to waive the penalty, disgorgement, or prejudgment interest, "particularly when the misconduct is sufficiently egregious." *Robert L. Burns*, Advisers Act Release No. 3260, 2011 SEC LEXIS 2722, at *38-39 (Aug. 5, 2011) (citation omitted).

Clug

[redacted]

[24] I deem Crow's Statement of Financial Condition, and the other documents he submitted regarding his financial condition for the hearing on July 30, 2015, as Respondent Exhibit 194, which is admitted subject to the protective order.

[redacted] For the foregoing reasons, with the exception of $50,000, I find that Clug has convincingly demonstrated his inability to pay.

Crow

[redacted] Crow produced statements up through July 2015 for only three of the fifteen personal and corporate bank accounts he controlled, which include accounts of Crow, a joint account with his girlfriend Ines Temple, and accounts for Alta Mining, Alta Terra, and Grupo Alto. Div. Ex. 3A at 24-26; Tr. 626; Div. FOF at 133. [redacted] From April 2013 to November 2014, Crow's fifteen known Peruvian personal and corporate accounts received almost $1.7 million and S/.655,000 Peruvian soles.[25] Div. Ex. 3A at 24-26.

In this proceeding, Crow failed to provide monthly account statements for the last twelve months for any brokerage accounts, retirement plans, credit cards, or lines of credit that were requested. Resp. Ex. 194; *see* Div. FOF at 133. [redacted] While the lack of documentation and evidence concerning transfers does not necessarily establish any wrongdoing,

[25] These numbers were calculated by adding up the total inflows from outside sources, i.e., all amounts derived from inter-company transfers (denoted by entries with redacted numbers) are excluded.

these deficiencies are problems of proof for his inability to pay defense, for which Crow has the burden of proof.

[redacted] Considering outstanding disgorgement, prejudgment interest, or penalties owed to the Commission as evidence of a respondent's inability to pay would accord a perverse benefit to a prior securities law violator who has not satisfied that judgment. [redacted]

On January 28, 2016, Crow's bankruptcy trustee filed a notice that he and Crow entered into a compromise settlement and mutual release, subject to bankruptcy court approval.[27] Notice of Intended Action and Opportunity for Hearing, *In re Crow*, Bankr. No. 10-00978-LT7 (Bankr. S.D. Cal. Jan. 28, 2016), ECF No. 275 at 3. In it, Crow agrees to pay the trustee a $250,000 settlement payment, and use reasonable efforts to find a buyer to purchase 250,000 shares of Genesis stock from the bankruptcy estate. *Id.* at 4-5. Failure of the trustee to receive at least $1,000,000 from the sale of that stock by the end of 2016 would result in enforcement and collection actions against Crow for the remaining amount owed. *Id.* at 5-6. The trustee's notice was served on both the Commission's headquarters and its New York regional office. *Id.* at 30. As mentioned previously, that proceeding remains pending.

While Crow does appear to be in difficult financial circumstances, I find that he has fallen short of meeting his burden of proof of an inability to pay. *David Henry Disraeli*, Securities Act Release No. 8880, 2007 SEC LEXIS 3015, at *79 n.118, *80-81 (Dec. 21, 2007). While the lack of clarity with respect to financial transfers does not necessarily indicate impropriety, for Crow to satisfy his burden of proof he needed to provide the requested financial statements. In the absence of such evidence, it is simply impossible to make an informed decision about whether or not he is in fact truly unable to pay.

2. Disgorgement

The Division argues that Crow, Clug, Aurum, and PanAm "should be found jointly and severally liable for disgorgement of the total amount raised in the fraudulent Aurum and PanAm offerings, $4,395,777, plus prejudgment interest." Div. Reply at 14. I reject the Division's

[26] [redacted] In his settlement, which is pending bankruptcy court approval, discussed *infra*, he appears to relinquish claims to real property.

[27] I take official notice of this filing pursuant to Rule 323, 17 C.F.R. § 201.323.

request for joint and several liability as to Crow, Clug, Aurum, and PanAm, and reject the Division's request for disgorgement as to Aurum and PanAm because the disgorgement ordered as to Crow and Clug, as discussed more fully below, redresses Crow and Clug's unjust enrichment with regard to ability to pay, and because each of the entities is without money (according to the Division's own summary analysis).

With respect to the violations relating to Corsair, the proper measure of disgorgement is the full amount of the fees of $39,563 obtained by Corsair from ABS, and that number is included in the figures apportioned to Clug and Crow below. Div. Ex. 2A at 15; s*ee VanCook v. SEC*, 653 F.3d 130, 142 (2d Cir. 2011) (affirming Commission disgorgement award of all commissions earned on unlawful sales); *Matter of Kenneth R. Ward*, Securities Act Release No. 8210, 2003 SEC LEXIS 3175, at *59 (Mar. 19, 2003) (ordering disgorgement of commissions), *aff'd*, 75 Fed. App'x 320 (5th Cir. 2003).

With regard to the Aurum and PanAm violations, I disagree with the Division's contention that "disgorgement should be the full amount raised minus the amount returned . . . ." Div. Br. at 31. While that measure would be appropriate where the full amount unjustly enriched the violators, the Division has not "show[n] but-for causation between" these violations and the full amount. *Jay T. Comeaux*, Securities Act Release No. 9633, 2014 SEC LEXIS 3001, at *9 (Aug. 21, 2014). The Division's burden in establishing "a reasonable approximation of profits causally connected to the violation" is not onerous, *id.*, but it cannot assume without explanation that the full amount raised through a securities offering is automatically subject to disgorgement merely because some violations occurred around the same period that the offering took place. This is not a case where the violations made the entire offering a fraud.

Moreover, without a more specific analysis from the Division, it cannot be said that the full amount raised unjustly enriched Crow or Clug. *See SEC v. ETS Payphones, Inc.*, 408 F.3d 727, 735 (11th Cir. 2005) ("[T]he 'power to order disgorgement extends only to the amount with interest by which the defendant profited from his wrongdoing. Any further sum would constitute a penalty assessment.'" (quoting *SEC v. Blatt*, 583 F.2d 1325, 1335 (5th Cir. 1978))). Here, most of the money was never realized as a profit by either Crow or Clug, but rather was spent on startup and operational costs of Aurum, and startup costs of PanAm.[28] Although Aurum's expenditures were difficult to discern given the unspecific descriptions included in the books kept by its Peruvian accounting staff, imperfect records do not establish that proceeds were used improperly or unjustly enriched either Crow or Clug. In his post-hearing brief, Clug's position is that if "it is determined that disgorgement is appropriate," then "the appropriate amount would equate to $286,810.01" for all of the Division's alleged violations as to Aurum, presumably excluding any discount related to Clug's inability to pay. Clug Br. at 20; Clug FOF at 43-44. I accept Clug's concession that this is an appropriate amount of disgorgement with the caveat that

[28] While how a respondent choses to spend ill-gotten gains generally does not entitle the respondent to an offset in disgorgement, *see Richmark Capital Corp.*, Securities Act Release No. 8333, 2003 SEC LEXIS 2680, at *34 n.35 (Nov. 7, 2003), for the reasons noted above, the Division has not established that the full amount constitutes an illegal profit. The fact that the money was spent on business expenses does not constitute an offset, but rather goes to the issue of how much money raised by Aurum was actually realized by Crow and Clug as illicit profits.

the figure should be adjusted upward by $100,000 to include proceeds from the Aurum convertible note sales that he received in 2011. Div. Response to Clug FOF at 73; Div. Ex. 2A at 5, 10. I find that Crow received at least $65,000 from the 2011 Aurum convertible note sales and $363,190 from proceeds that came from Aurum investors, for a total of $428,190. Div. Ex. 2A at 10; Clug FOF at 44 (subtracting the $286,810 that Clug acknowledges benefits him from the $650,000). As co-owners of Corsair, each is responsible for half of the $39,563 received from ABS.

Disgorging Respondents' profits would prevent them from realizing ill-gotten gains from their fraudulent conduct and will deter others from committing comparable frauds in the future. *See First Jersey Secs.*, 101 F.3d at 1474. Given Clug's showing of an inability to pay, and his difficult financial circumstances, I discount the amount of disgorgement to $50,000 – [redacted]. I have considered the Division's argument that I should reject Clug's inability to pay defense as a matter of discretion, but, I decline to do so. While Clug's conduct with respect to Aurum was somewhat egregious, [redacted]. There was no evidence that Clug lived lavishly or spent money recklessly. He appeared to be as a sincere individual who made regrettable decisions, in large part because he attempted to undertake endeavors that he was ill-equipped for. He strove committedly to ensure the businesses succeeded, in order to return money to investors, but was unable to do so. He appears to be a hard-working, generally good person. As such, I find that it is reasonable to credit his convincing showing of an inability to pay and set the amount of disgorgement at $50,000. As to Crow, I find that disgorgement in the amount of $447,971 is a reasonable proxy for the amount he was unjustly enriched from Aurum and ABS.

"Prejudgment interest shall be due on any sum required to be paid pursuant to an order of disgorgement." 17 C.F.R. § 201.600(a). Prejudgment interest deprives a defendant of an interest-free loan in the amount of his ill-gotten gains, thereby preventing unjust enrichment. *SEC v. Grossman*, No. 87 Civ. 1031, 1997 U.S. Dist. LEXIS 6225, at *32 (S.D.N.Y. May 6, 1997), *aff'd in part and vacated in part on other grounds*, 173 F.3d 846 (2d Cir. 1999); *see also Ronald S. Bloomfield*, 2014 SEC LEXIS 698, at *21 (awarding prejudgment interest "to make violations unprofitable").[29] Accordingly, Respondents should pay prejudgment interest on the preceding amounts calculated from December 2013, the following month from when they last received profits, to the last day of the month preceding the month in which disgorgement is made, consistent with 17 C.F.R. § 201.600. Div. Ex. 2A at 17.

3. Civil Penalties

The violations at issue here warrant the imposition of third-tier civil penalties. First, Crow and Clug's violations undoubtedly involved fraud as I found that both Crow and Clug

[29] Interest "shall be due from the first day of the month following each such violation through the last day of the month preceding the month in which payment of disgorgement is made." 17 C.F.R. § 201.600(a). The Commission ordinarily calculates prejudgment interest quarterly based on Section 6621(a)(2) of the Internal Revenue Code. 17 C.F.R. § 201.600(b).

violated the antifraud provisions of the federal securities laws and that they acted at least severely recklessly by doing so.

Second, while I disagree with the Division's assertion that "Respondents' conduct caused *great harm* to investors," Div. Br. at 34 (emphasis added), I do find that there was notable harm. All the investors were accredited, and with respect to Aurum, consciously chose to invest in what they knew was an extremely risky enterprise. If there was "great harm" to investors, then the Division should have been able to elicit testimony to that effect from investor witnesses, but it did not. The investor witnesses did not complain that they wanted their investment returned. Even though all the investors would have cause to be disappointed with the specific misrepresentations I have identified, they all had the money to put at risk, knowing that they may well lose it all. While it is not known how things would have proceeded differently in the absence of the reckless misrepresentations, there was nonetheless harm because misrepresentations took place, and the several million dollars of investor money was ultimately lost without any return.

Third, Clug and Crow were unjustly enriched to the extent discussed above in the analysis of disgorgement, which supports the imposition of some sort of penalty. Fourth, Clug has no history of prior violations, which militates against the need for a penalty. By contrast, the nature and extent of Crow's prior violations and his past conduct weigh heavily in favor of ordering a penalty.

Fifth, the interest of deterrence is sufficiently addressed by subjecting Clug to full associational and penny stock bars, along with a cease-and-desist order. Further, because the disgorgement amount [redacted], it will have a strong deterrent effect. As to Crow, who is a repeated securities law violator, all tools to deter his future misconduct, including a penalty, are warranted. Given the past actions against him, it is clear that bars and disgorgement alone would not be sufficient to protect the public.

Finally, with respect to other matters that justice requires, I have found that Clug has established that he is unable to pay a civil penalty, especially in light of my disgorgement order, [redacted]. Balancing the foregoing factors, I have determined that a civil penalty is not appropriate as to Clug, but is necessary as to Crow.[30]

I find that third-tier penalties are appropriate because of Crow's severely reckless mental state and conduct that caused substantial actual investor losses, while Crow was unjustly enriched. Crow should be penalized for seven acts and omissions regarding Aurum: (1) the misrepresentation to the convertible note holders that the Batalha deal had been finalized when it had not; (2) the misrepresentation to the August 2011 PPM investors that the closing conditions had been met; (3) more than doubling the projected investor returns of Batalha from seventeen-times to forty-times without any reasonable basis; (4) concealing Park's negative findings on Molle Huacan; (5) the reckless representation of gold potential as "reserves"; (6) failure to disclose Crow's pending bankruptcy proceedings for most of the period; and (7) failing to

[30] I also decline to impose civil penalties on Aurum, PanAm, and Corsair for the same reasons as I declined to impose disgorgement on them as discussed *supra*.

disclose his past Commission litigation to the initial Aurum investors. For the first five acts, I find a penalty of $150,000 each is warranted. With regard to his bankruptcy proceeding, because it was belatedly corrected, $100,000 is sufficient. Even where a securities law violator's self-correction comes quite late, some credit should be given for those corrections and adjustments that violators themselves take prior to a Commission investigation or action. For the glaring failure to disclose the Commission litigation, because it took place only at the outset with the initial investors, but was corrected for the rest of the period, $50,000 is appropriate. Finally, I find that an additional first-tier penalty of $7,500 is warranted for Crow's execution and implementation of the referral fee agreement with ABS and second-tier penalty of $75,000 for violating his broker-dealer bar. In total, for Crow, third-tier penalties totaling $900,000 for seven violations relating to Aurum, the first-tier penalty of $7,500, and the second-tier penalty of $75,000 will be sufficient to safeguard the public interest.

V. 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 as revised on February 5, 2016, and Respondent Exhibit 194, which I order admitted into evidence.

ORDER

I ORDER that Respondent Exhibit 194, detailing the financial condition of Michael W. Crow, is ADMITTED.

I FURTHER ORDER the parties to jointly maintain and preserve genuine copies of the picture and video electronic exhibits, in the event they are requested to resubmit such exhibits in any appeal from the undersigned's initial decision. Unless directed otherwise by the Commission or an appellate court, the parties or a party resubmitting such electronic exhibits in appellate proceedings shall certify that they are true genuine copies of the exhibits admitted into evidence at the hearing in this proceeding.

I FURTHER ORDER that, pursuant to Section 15(b)(6) of the Securities Exchange Act of 1934:

> Michael W. Crow is PERMANENTLY BARRED from association with a municipal securities dealer, municipal adviser, transfer agent, or nationally recognized statistical rating organization.
>
> Alexandre S. Clug is PERMANENTLY BARRED from association with a broker, dealer, investment adviser, municipal securities dealer, municipal adviser, transfer agent, or nationally recognized statistical rating organization.

I FURTHER ORDER that, pursuant to Section 15(b)(6) of the Securities Exchange Act of 1934, Michael W. Crow and Alexandre S. Clug are PERMANENTLY BARRED from participating in an offering of penny stock, including acting as a promoter, finder, consultant, agent, or other person who engages in activities with a broker, dealer, or issuer for purposes of

the issuance of trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

I FURTHER ORDER that, pursuant to Section 9(b) of the Investment Company Act of 1940, Michael W. Crow and Alexandre S. Clug are PERMANENTLY BARRED from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter.

I FURTHER ORDER that, pursuant to Section 8A of the Securities Act of 1933 and Section 21C of the Securities Exchange Act of 1934, Michael W. Crow and Alexandre S. Clug shall CEASE AND DESIST from committing or causing violations, and any future violations of, Section 17(a) of the Securities Act of 1933, Sections 10(b), 15(a)(1), and 15(b)(6)(B) of the Securities Exchange Act of 1934, and Rule 10b-5 thereunder.

I FURTHER ORDER that, pursuant to Section 8A(e) of the Securities Act of 1933, Sections 21B(e) and 21C(e) of the Securities Exchange Act of 1934, and Section 9(e) of the Investment Company Act of 1940:

> Michael W. Crow shall PAY DISGORGEMENT in the amount of $447,971, plus prejudgment interest; and
>
> Alexandre S. Clug shall PAY DISGORGEMENT in the amount of $50,000, plus prejudgment interest.

Prejudgment interest shall be calculated from December 31, 2013, to the last day of the month preceding the month in which payment of disgorgement is made, consistent with 17 C.F.R. § 201.600. Prejudgment interest shall be calculated at the underpayment rate of interest established under Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. § 6621(a)(2), and shall be compounded quarterly. 17 C.F.R. § 201.600. Interest shall continue to accrue on all funds owed until they are paid.

I FURTHER ORDER that, pursuant to Section 8A(g) of the Securities Act of 1933, Section 21B(a) of the Securities Exchange Act of 1934, and Section 9(d) of the Investment Company Act of 1940 Michael W. Crow shall PAY A CIVIL MONEY PENALTY in the amount of $982,500.

Payment of civil penalties, disgorgement, and prejudgment interest shall be made no later than twenty-one days following the day this initial decision becomes final, unless the Commission directs otherwise. Payment shall be made in one of the following ways: (1) transmitted electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request; (2) direct payments from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm; or (3) by certified check, bank cashier's check, or United States postal money order made payable to the Securities and Exchange Commission and hand-delivered or mailed to the following address alongside a cover letter identifying Respondent and Administrative Proceeding No. 3-16318: Enterprises Services

Center, Accounts Receivable Branch, HQ Bldg., Room 181, AMZ-341, 6500 South MacArthur Blvd., Oklahoma City, Oklahoma 73169. A copy of the cover letter and instrument of payment shall be sent to the Commission's Division of Enforcement, directed to the attention of counsel of record.

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. 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 occur, the initial decision shall not become final as to that party.

_____
Jason S. Patil
Administrative Law Judge