UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 70161 / August 12, 2013

INVESTMENT ADVISERS ACT OF 1940
Release No. 3646 / August 12, 2013

INVESTMENT COMPANY ACT OF 1940
Release No. 30649 / August 12, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-15268

In the Matter of	:	
	:	ORDER MAKING FINDINGS AND
RICHARD P. SANDRU	:	IMPOSING SANCTIONS BY
	:	DEFAULT

The Securities and Exchange Commission (Commission) instituted this proceeding with an Order Instituting Administrative Proceedings (OIP) on April 8, 2013, pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 (Exchange Act), Sections 203(f) and 203(k) of the Investment Advisers Act of 1940 (Advisers Act), and Section 9(b) of the Investment Company Act of 1940 (Investment Company Act).

On May 1, 2013, counsel for the Division of Enforcement (Division) and counsel for Respondent filed a Joint Motion to Postpone the Hearing Date and Schedule a Telephonic Prehearing Conference, in which they stated that Respondent had been served with the OIP through counsel on April 9, 2013. I held a telephonic prehearing conference on May 6, 2013, attended by counsel for the Division but not by Respondent or counsel for Respondent. Rule 220(b) of the Commission's Rules of Practice (Rules) requires respondents to file their Answers to the OIP within twenty days after service. See OIP at 5; 17 C.F.R. § 201.220(b). Additionally, at the prehearing conference the Division represented that it had been in contact with counsel for Respondent and that counsel had stated that he would not attend the prehearing conference and that Respondent intended to default in this proceeding. On May 7, 2013, I issued an order finding Respondent in default and directing the Division to file a motion requesting relief and supported by sufficient evidence consistent with Rapoport v. SEC, 682 F.3d 98 (D.C. Cir. 2012). On July 26, 2013 the Division filed a Motion for Sanctions (Motion) against Respondent, to which was attached seven exhibits (Exs. 1-7).

Respondent failed to timely file his Answer to the OIP, and failed to participate in the May 6, 2013 prehearing conference. Respondent is therefore in default for failing to answer the

OIP, participate in a prehearing conference, or otherwise defend the proceeding. See 17 C.F.R. §§ 201.155(a), .220(f), .221(f). Accordingly, the allegations in the OIP are deemed true and this proceeding is determined against him by default.

FINDINGS OF FACT

Respondent was forty-two years of age and resided in Fort Myers, Florida when the OIP issued. OIP, p. 2. From July 1, 2009 until April 29, 2011, Respondent was an investment adviser representative associated with Cambridge Investment Research Advisors, Inc. (Cambridge IA), an investment adviser registered with the Commission, and a registered representative associated with Cambridge Investment Research, Inc. (Cambridge BD), a broker-dealer registered with the Commission (collectively, Cambridge). Id.; Ex. 4. Before that, from September 20, 2002 until June 29, 2009, Respondent was an investment adviser representative and a registered representative associated with another registered investment adviser and broker-dealer. OIP, p. 2.

Cambridge IA, an Iowa corporation with its principal place of business in Fairfield, Iowa, has been registered with the Commission as an investment adviser since February 3, 2005. OIP, p. 2. Respondent worked in the Perrysburg, Ohio branch office. Id. Cambridge BD, an Iowa corporation with its principal place of business in Fairfield, Iowa, has been registered with the Commission as a broker-dealer since December 11, 1995. Id.

Respondent joined Cambridge on July 1, 2009. OIP, p. 2. He supervised two other Cambridge representatives along with various administrative assistants. Id. By the time Respondent left Cambridge at the end of April 2011, he was managing approximately $47 million in assets for about 180 advisory clients who collectively held about 480 accounts. Id. These accounts were discretionary, and funds were maintained in custodial accounts by a custodian. Id.

Respondent executed two different but related schemes to defraud his clients. First, from at least December 2009 through March 2011, while associated with Cambridge IA, Respondent misappropriated at least $308,850 in purported "financial planning" fees from at least forty-seven advisory clients, by forging their signatures on or adding costs to Financial Planning Engagement agreements (FPEs) after the clients had already signed them and without his clients' knowledge or authorization. OIP, p. 3. In all cases, Respondent failed to provide the financial planning services described in the FPEs. Id.

After Respondent either obtained or forged his clients' signatures on the FPEs, he faxed or sent the FPEs to Cambridge through the Cambridge Logistics and Information Center (CLIC), thereby causing Cambridge's corporate accounting office to debit financial planning fees from the client's account. OIP, p. 3. Cambridge then paid Respondent 91% of these financial planning fees as part of his compensation by electronically transferring the funds to Respondent's account by direct deposit. Id. Respondent received approximately $280,000 in fraudulently obtained financial planning fees. Id. The fees charged to clients for the purported financial planning services ranged from $500 to $5,000 per FPE. Id. At least 107 fraudulent FPEs were submitted to Cambridge by Respondent. Id. Several clients were charged four or five times over several months for unauthorized and unperformed financial planning services.

Id.

Respondent's second scheme involved misrepresented account balances and fraudulently obtained advisory fees. Beginning in at least 2008, while he was associated with another registered investment adviser and broker-dealer, Respondent lost money through his trading in several client accounts. OIP, p. 3. Respondent had told some of these clients, several of whom were elderly and/or retired, that they would be able to take substantial monthly withdrawals from their accounts for the rest of their lives or at least for many years. Id. Many of these clients followed Respondent to Cambridge. Id. While at Cambridge, to conceal his losses and the clients' inability to take the large monthly withdrawals that he had recommended, Respondent orally and in writing falsely represented to at least six clients that the amounts reflected on their monthly statements from Cambridge were inaccurate and/or that they had other separate or "guaranteed" accounts that contained additional funds. Id.

Respondent made these misrepresentations in order to induce his clients to allow him to continue to purchase and sell securities in their accounts and receive advisory fees from their dwindling account balances. OIP, p. 4. He also wanted to preserve his relationship with these clients, many of whom had friends or relatives who were also clients. Id. Based on the inflated account values provided by Respondent, the clients continued to allow Respondent to manage their accounts, and he incurred additional losses through his trading. Id. The clients also continued taking large monthly withdrawals, which further depleted their accounts. Id.

Respondent sold securities, including money market funds, in his clients' accounts to cover the large monthly withdrawals that he had previously recommended. OIP, p. 4. When certain clients' funds were completely exhausted, Respondent went as far as to pay their monthly distributions out of his own pocket in order to prevent his scheme from being discovered. Id. By the time that Respondent's scheme was discovered, these clients had little, if anything, left in their accounts. Id. However, before that time, Respondent had collected advisory fees from their dwindling funds. Id.

Following Respondent's departure from Cambridge, Cambridge's compliance department received information that Respondent had charged clients for financial planning services without authorization and without performing the services, and that he had misrepresented to certain clients the true balance of their accounts. Ex. 4. Cambridge's internal investigation revealed that Respondent charged and collected financial planning fees from at least forty adivsory clients without providing such services to them. Id.

The Division began an investigation of Respondent, which culminated in the instant OIP. Ex. 5, p. 2; Motion, p. 5. During the investigation, Respondent asserted his Fifth Amendment privilege against self-incrimination and declined to answer any questions. Ex. 7; Motion, p. 5. The investigation revealed that Respondent submitted a total of approximately 107 fraudulent FPEs to Cambridge from October 21, 2009 to March 7, 2011. Ex. 5, p. 2. This resulted in unauthorized fees of at least $308,850 charged to at least forty-seven advisory clients. Id. Respondent received 91% of those fees, totaling $281,054.50. Id., p. 3. In several cases, the unauthorized fees exceeded 10% of the value of the accounts. Id. The investigation also revealed that from August 7, 2009 to April 9, 2011, Respondent received compensation

from Cambridge in the form of advisory fees, totaling $139,722.21. Id. A client-by-client analysis showed that Respondent received approximately $79,846.12 of this total after he first either took an unauthorized FPE fee from a client, or materially misstated the value of the client's accounts. Id.; Motion, p. 7 n.1.

The Division has submitted approximately thirty-eight Attestations (Attestation) from Respondent's clients. Ex. 6. All the Attestations describe unauthorized FPE fees, and provide the date of the first such unauthorized FPE fee as to that client. Id. In many instances, the clients attest that they would not have authorized the fees if they had known of them. Id. Additionally, two Attestations describe specific misrepresentations by Respondent. Robert Newton attested that although he was aware of the FPE charges when they were incurred, he understood them to be maintenance fees Respondent charged for managing his retirement funds. Id. Thomas Thomas attested that he asked Respondent about the FPE charges when they were debited from his account, and that Respondent explained that they were part of the maintenance fees he charged Thomas for providing financial advice. Id. Later Respondent told Thomas that they were fees charged by mutual fund companies. Id.

CONCLUSIONS OF LAW

Exchange Act Section 10(b) makes it unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange:

> (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). Exchange Act Rule 10b-5 makes it unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

> (a) To employ any device, scheme, or artifice to defraud,
>
> (b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or
>
> (c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

17 C.F.R. § 240.10b-5.

Advisers Act Section 206 makes it unlawful for any investment adviser, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly:

> (1) to employ any device, scheme, or artifice to defraud any client or prospective client; (2) to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client.

15 U.S.C. § 80b-6.

Scienter is required to establish violations of Exchange Act Section 10(b) and Rule 10b-5, and of Advisers Act Section 206(1). Aaron v. SEC, 446 U.S. 680, 690-91, 695-97 (1980); SEC v. Steadman, 967 F.2d 636, 641 & n.3 (D.C. Cir. 1992). It is "a mental state embracing intent to deceive, manipulate, or defraud." Aaron, 446 U.S. at 686 n.5; Ernst & Ernst v. Hochfelder, 425 U.S. 185, 193 & n.12 (1976); Steadman, 967 F.2d at 641. Material misrepresentations and omissions violate Exchange Act Section 10(b) and Rule 10b-5, and Advisers Act Sections 206(1) and 206(2). The standard of materiality is whether or not a reasonable investor or prospective investor would have considered the information important in deciding whether or not to invest. See Basic Inc. v. Levinson, 485 U.S. 224, 231-32, 240 (1988); TSC Indus., Inc. v. Northway, Inc., 426 U.S. 438, 449 (1976); Steadman, 967 F.2d at 643.

Respondent violated Exchange Act Section 10(b) and Rule 10b-5, and Advisers Act Sections 206(1) and 206(2). He forged and altered documents so that he could charge his investment advisory clients unauthorized FPE fees without their knowledge. He sold securities out of his clients' accounts without their knowledge or approval to cover the large monthly withdrawals that he had previously recommended to them. He lied and concealed information to lull his clients into thinking that their accounts were not being depleted, so that he could continue to receive advisory fees. He was associated with both an investment adviser and a broker-dealer at the time, and he used a fax machine, i.e., a means of interstate commerce, to obtain his share of the unauthorized FPE fees. He acted with scienter, as evidenced by his forgery and false statements, and his misrepresentations were material, as evidenced by the clients who attested that they would not have approved the fraudulent FPE fees.

SANCTIONS

The Division requests that I: (1) order Respondent to cease and desist from violating Exchange Act Section 10(b) and Rule 10b-5, and Advisers Act Sections 206(1) and 206(2); (2) permanently bar Respondent from association with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, and nationally recognized statistical rating organization (NRSRO), and impose an investment company bar and penny stock bar; (3) order Respondent to pay disgorgement and prejudgment interest; and (4) order Respondent to pay civil penalties in an amount equal to the amount of disgorgement. Motion, pp. 6-14.

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank), which took effect July 22, 2010, approximately halfway through Respondent's course of misconduct,

changed some of the sanction provisions applicable here. See Pub. L. No. 111-203, 124 Stat. 1376 (2010). The Commission has determined that the collateral associational bars now available under Section 925 of Dodd-Frank are not impermissibly retroactive. See John W. Lawton, Advisers Act Release No. 3513 (Dec. 13, 2012), 105 SEC Docket 61722, 61737. The disgorgement and civil penalty provisions of the Exchange Act, the Advisers Act, and the Investment Company Act were amended by Section 929P of Dodd-Frank by removing the willfulness requirement (see infra), but only in relation to cease-and-desist proceedings. 15 U.S.C. § 78u-2(a)(2)(A); 15 U.S.C. § 80b-3(i)(1)(B); 15 U.S.C. § 80a-9(d)(1)(B). Although this is a cease-and-desist proceeding under the Exchange Act and Advisers Act, it is not a cease-and-desist proceeding under the Investment Company Act. OIP, p. 1. Because I find that Respondent acted willfully, and that disgorgement and a civil penalty are warranted under all three Acts, including in particular the Investment Company Act, I need not address the retroactivity issue presented by Section 929P of Dodd-Frank. See 15 U.S.C. § 80a-9(d)(1)(A)(i).

A. Willfulness and the Public Interest Factors

Some of the requested sanctions are only appropriate if Respondent's violations were willful. 15 U.S.C. § 78o(b)(4)(D), (6)(A)(i) (associational bar and penny stock bar pursuant to the Exchange Act); 15 U.S.C. § 80a-9(b)(2) (investment company bar pursuant to the Investment Company Act); 15 U.S.C. § 80a-9(d)(1)(A)(i), (e) (civil penalties and disgorgement in proceedings instituted under Investment Company Act Section 9(b)); 15 U.S.C. § 80b-3(e)(5), (f) (associational bar pursuant to the Advisers Act). A finding of willfulness does not require intent to violate the law, but merely intent to do the act which constitutes a violation of the law. Wonsover v. SEC, 205 F.3d 408, 414 (D.C. Cir. 2000); Arthur Lipper Corp. v. SEC, 547 F.2d 171, 180 (2d Cir. 1976).

Respondent plainly acted willfully. He forged and altered documents, sold securities out of his clients' accounts without their knowledge or approval, lied and concealed material information, and sent faxes in furtherance of his scheme.

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

Respondent's conduct was egregious and recurrent. He defrauded dozens of clients over a period exceeding eighteen months, in many cases by forgery, and generated ill-gotten gains of approximately $360,000. He acted with a high degree of scienter, as demonstrated by his forgery and false statements. He has offered no assurances against future violations and has not recognized the wrongful nature of his conduct. He has been in the securities industry since 2002

and his occupation obviously presents opportunities for future violations. Every Steadman factor weighs in favor of a heavy sanction.

B. Cease-and-Desist Order

Section 21C(a) of the Exchange Act and Section 203(k) of the Advisers Act authorize the Commission to impose a cease-and-desist order on any person who "is violating, has violated, or is about to violate" any provision of either Act or rules thereunder. 15 U.S.C. § 78u-3(a);15 U.S.C. § 80b-3(k). While some likelihood of future violation must be present, the required showing is "significantly less than that required for an injunction." KPMG Peat Marwick LLP, 54 S.E.C. 1135, 1183-91 (2001). Indeed, absent evidence to the contrary, a single past violation ordinarily suffices to establish a risk of future violations. Id. at 1191. In evaluating the propriety of a cease-and-desist order, the Commission considers the Steadman factors, as well as the recency of the violation, the resulting degree of harm to investors or the marketplace, and the effect of other sanctions. Id. at 1192.

Respondent's violations resulted in an average loss to each client of less than $10,000, and Respondent's other sanctions are severe. Despite these slightly mitigating considerations, the Steadman factors weigh heavily in favor of the requested relief, and the violations were relatively recent, in that they continued until April 2011. A cease-and-desist order is thus warranted under the totality of the circumstances.

C. Industry Bars

Section 203(f) of the Advisers Acts authorizes the Commission to bar a person from association with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or NRSRO, if that person has willfully violated any provision of the Exchange Act or the Advisers Act, and the bar is in the public interest. 15 U.S.C. § 80b-3(e)(5), (f). On the same terms, Section 15(b)(6) of the Exchange Act authorizes the same associational bars, and also authorizes a bar on participating in an offering of a penny stock. 15 U.S.C § 78o(b)(4)(D), (6)(A)(i). Also on the same terms, Section 9(b) of the Investment Company Act authorizes a bar on association with an investment company. 15 U.S.C. § 80a-9(b)(2). Based on the Steadman factors, Respondent is unquestionably unfit to serve in the securities industry in any capacity. He will therefore be permanently barred from association with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, and NRSRO, and from association with an investment company and participating in an offering of penny stock.

D. Disgorgement

Section 21C(e) of the Exchange Act and Section 203(k)(5) of the Advisers Act authorize the Commission to order disgorgement of ill-gotten gains, including reasonable interest. 15 U.S.C. § 78u-3(e); 15 U.S.C. § 80b-3(k)(5). Section 9(e) of the Investment Company Act also authorizes disgorgement in cases of willful violations. 15 U.S.C. § 80a-9(d)(1)(A)(i), (e). "Disgorgement is an equitable remedy designed to deprive a wrongdoer of his unjust enrichment and to deter others from violating the securities laws." See SEC v. First City Fin. Corp., 890

F.2d 1215, 1230 (D.C. Cir. 1989). The Commission is authorized to order violators of the federal securities laws to disgorge the value of the proceeds they obtained by virtue of their wrongdoing. SEC v. Fishbach Corp., 133 F.3d 170, 175 (2d. Cir. 1997). Requiring a violator to pay prejudgment interest prevents the violator from profiting from their securities violation. See SEC v. Moran, 944 F. Supp. 286, 295 (S.D.N.Y. 1996). Under Rule 600, "[p]rejudgment interest shall be due on any sum required to be paid pursuant to an order of disgorgement." 17 C.F.R. § 201.600(a). The amount of prejudgment interest is calculated from "the first day of the month following each . . . violation through the last day of the month preceding the month in which payment of disgorgement is made." Id.

Based on the Steadman factors, disgorgement and prejudgment interest are warranted. The Division has provided evidence that Respondent earned $281,054.50 in fraudulent FPE fees, as well as $79,846.12 in advisory fees after he first either took an unauthorized FPE fee from a client or materially misstated the value of the client's account, for a total of $360,900.62. Ex. 5, pp. 2-3. This is a reasonable estimate of Respondent's ill-gotten gains. The Division has also calculated $24,810.80 in prejudgment interest on the total, beginning from April 30, 2011, the last day of the month in which Respondent left Cambridge's employment. Ex. 5, p. 3. Accordingly, Respondent will be ordered to pay $360,900.62 in disgorgement and $24,810.80 in prejudgment interest.

E. Civil Penalties

Section 21B of the Exchange Act and Section 203(i) of the Advisers Act authorize the Commission to impose a civil monetary penalty if a respondent has violated either Act. 15 U.S.C. § 78u-2(a)(2)(A); 15 U.S.C. § 80b-3(i)(1)(B). Section 9(d) of the Investment Company Act also authorizes civil money penalties in cases of willful violations. 15 U.S.C. § 80a-9(d)(1)(A)(i). A three-tier system identifies the maximum amount of a civil penalty. 15 U.S.C. § 78u-2(b); 15 U.S.C. § 80a-9(d)(2); 15 U.S.C. § 80b-3(i)(2). Respondent's violative conduct occurred after March 3, 2009 and before March 5, 2013. For each act or omission by a natural person in that period, the maximum penalty in the first tier is $7,500; in the second tier, $75,000; and in the third tier, $150,000. See 17 C.F.R. § 201.1004; 15 U.S.C. § 78u-2(b); 15 U.S.C. § 80a-9(d)(2); 15 U.S.C. § 80b-3(i)(2). A first-tier penalty is imposed for each statutory violation. 15 U.S.C. § 78u-2(b)(1); 15 U.S.C. § 80a-9(d)(2)(A); 15 U.S.C. § 80b-3(i)(2)(A). A second-tier penalty is permissible where the conduct involves fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement. 15 U.S.C. § 78u-2(b)(2); 15 U.S.C. § 80a-9(d)(2)(B); 15 U.S.C. § 80b-3(i)(2)(B). A third-tier penalty involves conduct where such state of mind is present and where the conduct directly or indirectly (i) resulted in substantial losses, (ii) created a significant risk of substantial losses to other persons, or (iii) resulted in substantial pecuniary gain to the person who committed the act or omission. 15 U.S.C. § 78u-2(b)(3); 15 U.S.C. § 80a-9(d)(2)(C); 15 U.S.C. § 80b-3(i)(2)(C).

The Commission must also find that such a penalty is in the public interest. 15 U.S.C. § 78u-2(c); 15 U.S.C. § 80a-9(d)(3); 15 U.S.C. § 80b-3(i)(3). Six factors (not the Steadman factors) are relevant: (1) whether the violation involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement, (2) the resulting harm to other persons, (3) any unjust enrichment and prior restitution, (4) the respondent's prior regulatory record, (5) the need to deter the respondent and other persons, and (6) such other matters as justice may require. 15

U.S.C. § 78u-2(c); 15 U.S.C. § 80a-9(d)(3); 15 U.S.C. § 80b-3(i)(3). "Not all factors may be relevant in a given case, and the factors need not all carry equal weight." See Robert G. Weeks, Initial Decision Release No. 199 (Feb. 4, 2002), 76 SEC Docket 2609, 2671. "To impose second-tier penalties, the Commission must determine how many violations occurred and how many violations are attributable to each person." Rapoport, 682 F.3d at 108.

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

> (1) the egregiousness of the violations at issue, (2) defendants' scienter, (3) the repeated nature of the violations, (4) defendants' failure to admit to their wrongdoing; (5) whether defendants' conduct created substantial losses or the risk of substantial losses to other persons; (6) defendants' lack of cooperation and honesty with authorities, if any; and (7) whether the penalty that would otherwise be appropriate should be reduced due to defendants' demonstrated current and future financial condition.

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

Respondent's violations involved fraud, they caused significant financial harm to Respondent's many clients, resulting in substantial unjust enrichment to Respondent with no restitution, and they were egregious and repeated. Respondent has not admitted to his wrongdoing, did not cooperate with the investigation, and has offered no evidence of his financial condition. His misconduct is of a kind that demands deterrence. In short, every relevant factor, including the Steadman factors, weighs in favor of a substantial civil penalty, except for Respondent's prior regulatory record, as to which the record is silent.

As a matter of statutory interpretation, the unit of violation is the individual false representation, in the case of Exchange Act Rule 10b-5(b), and the individual transaction, in the case of Section 206(2) of the Advisers Act. 17 C.F.R. § 240.10b-5(b); 15 U.S.C. § 80b-6(2). Respondent's violations involved 107 fraudulent FPEs, and false representations to six different clients, or 113 violations in total. Respondent acted with scienter, so each violation involved at least deliberate or reckless disregard of a regulatory requirement, and his conduct resulted in substantial pecuniary gain to himself. Thus, third-tier penalties are justified, and the maximum penalty is $16,950,000 (113 x $150,000). However, the Division seeks civil penalties equal to the amount of disgorgement, or approximately $360,000. Because the requested penalty prejudices Respondent far less than using total transactions as the unit of violation, and is otherwise amply warranted by the evidence, I will limit the civil penalty to that requested by the Division. See U.S. v. Bajakajian, 524 U.S. 321, 337 (1998) (fines and penalties should not be "grossly disproportional to the gravity of the . . . offense"). Accordingly, a civil penalty of $360,900.62 will be imposed.

ORDER

IT IS ORDERED, pursuant to Section 21C(a) of the Securities Exchange Act of 1934 and Section 203(k) of the Investment Advisers Act of 1940, that Richard P. Sandru CEASE AND DESIST from committing or causing any violations, or any future violations, of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, and of Section 206 of the Investment Advisers Act of 1940;

IT IS FURTHER ORDERED, pursuant to Section 15(b)(6) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940, that Richard P. Sandru is permanently BARRED from association with brokers, dealers, investment advisers, municipal securities dealers, transfer agents, municipal advisors, and nationally recognized statistical rating organizations;

IT IS FURTHER ORDERED, pursuant to Section 15(b)(6) of the Securities Exchange Act of 1934, that Richard P. Sandru is 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 or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock;

IT IS FURTHER ORDERED, pursuant to Section 9(b) of the Investment Company Act of 1940, that Richard P. Sandru is 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;

IT IS FURTHER ORDERED, pursuant to Section 21C(a) of the Securities Exchange Act of 1934, Section 203(k) of the Investment Advisers Act of 1940, and Section 9(e) of the Investment Company Act of 1940, that Richard P. Sandru shall pay DISGORGEMENT in the amount of $360,900.62, as well as prejudgment interest in the amount of $24,810.80;

IT IS FURTHER ORDERED, pursuant to Section 21B of the Securities Exchange Act of 1934, Section 203(i) of the Investment Advisers Act of 1940, and Section 9(d) of the Investment Company Act of 1940, that Richard P. Sandru shall pay a CIVIL MONETARY PENALTY in the amount of $360,900.62; and

Payment shall be made no later than twenty-one days after the date of this Order. Payment shall be made by certified check, United States postal money order, bank cashier's check, wire transfer, or bank money order, payable to the Securities and Exchange Commission. The payment, and a cover letter identifying Respondent and Administrative Proceeding No. 3-15268, shall be delivered to: Enterprises Services Center, Accounts Receivable Branch, HQ Bldg., Room 181, AMZ-341, 6500 South MacArthur Blvd., Oklahoma City, OK 73169. A copy of the cover letter and instrument of payment shall be sent to the Commission's Division of Enforcement, directed to the attention of counsel of record.

Respondent is notified that he may move to set aside the default in this case. Rule 155(b) of the Commission's Rules of Practice permits me, at any time prior to the filing of the initial decision, and the Commission, at any time, to set aside a default for good cause, in order to prevent injustice and on such conditions as may be appropriate. 17 C.F.R. § 201.155(b). A motion to set aside a default shall be made within a reasonable time, state the reasons for the failure to appear or defend, and specify the nature of the proposed defense in the proceeding. Id.

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Cameron Elliot
Administrative Law Judge