UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-14536

In the Matter of	:
MONTFORD AND COMPANY, INC.	
d/b/a MONTFORD ASSOCIATES,	:
and	:
ERNEST V. MONTFORD, SR.,	:
Respondents.	
	:

DIVISION OF ENFORCEMENT'S POST-HEARING BRIEF

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Pursuant to Rule of Practice 340, the Division of Enforcement of the United States Securities and Exchange Commission ("Division") respectfully submits this Post-Hearing Brief in connection with the hearing held on November 7, 2011.

I. INTRODUCTION

As the Court correctly noted at the opening of the hearing, the key facts in this case are not in dispute: Respondent Ernest V. Montford, Sr., ("Montford") and Respondent Montford and Company, Inc. d/b/a Montford Associates ("Montford Associates"), an Atlanta, Georgia-based registered investment adviser (collectively, "Respondents") accepted a fee of $210,000 from SJK Investment Management, LLC, a money manager recommended by Respondents, and failed to disclose it on the firm's Forms ADV for both 2009 and 2010.[1] [T. 6-10.] In addition, during those same years, Respondent Montford Associates affirmatively represented to investors in Schedule F to its Form ADV Part II, which was prepared and approved by Respondent Montford, that the firm "**do[es] not accept any fees from investment managers . . . .**" (Emphasis added.) [Exs. 28 and 29.]

Respondents' acceptance of the $210,000 fee, therefore, was contrary both to the responses Respondents gave to conflict-related questions on their Forms ADV, and to Respondents' voluntary and unqualified use of the language "any fees" in Schedule F to those Forms. The end result is that Respondents (a) took money *after* having affirmatively represented to their clients that they did not accept any fees from investment managers, and (b) *continued to represent*, throughout 2010, that they did not accept any fees from investment managers when, in

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[1] Exhibits from the trial will be identified by their exhibit number ("Ex. __" for the Division's exhibits; "R-__" for Respondent's exhibits). The transcript of the trial will be identified as "T. __."

fact, they had made an agreement for payment with an investment manager in 2009 and been paid $130,000 (the first of two payments under that agreement) by that investment manager in January 2010. Succinctly stated, the statement "[w]e do not accept any fees from investment managers . . ." from Schedule F to the firm's Form ADV Part II became untrue during 2009, yet was never amended, and was *false when made* in 2010. These facts are admitted and/or were not contested at the hearing.

At the hearing, Respondents offered a small handful of arguments, none of which constitute a defense to the Division's claims. Respondents claimed, for example, that the money they received from money manager SJK Investment Management, LLC ("SJK") was not to compensate them for recommending SJK to their clients, but was instead meant to pay Respondents for their time and effort in connection with the administration of transferring Respondents' clients' money to SJK. There are a number of facts that debunk this theory, perhaps the most prominent of which is that Montford has admitted that part of what Respondents were paid for was meeting with clients to recommend SJK. Moreover, Montford never kept track of the time spent on this supposed administrative work, and never told Kowalewski how much time he had spent. Respondents also suggested that their advice was not fraudulent because Montford honestly believed, based on past performance, that SJK was a good investment. This issue is legally irrelevant, as the Supreme Court long ago rejected the argument that an adviser subject to a conflict can avoid liability through an "honest" belief that the subject investment was sound, and/or the assertion that the advice was not offered in exchange for admitted pecuniary gain. SEC v. Capital Gains Research Bureau, Inc., 375 U.S. 180, 200-01 (1963). Respondents also claimed that the advice to invest with SJK was not fraudulent because

it was given prior to August 2009, when Respondents demanded money from SJK. This argument similarly fails – even if the Court allowed Respondents to manipulate the facts so finely (which, given that the only evidence of the date of the agreement is Montford's own testimony, it absolutely should not), Respondents' argument looks past their conduct during late 2009 and 2010. During 2010 alone, Respondents' clients made at least four significant additional investment decisions, involving approximately $10 million, regarding SJK that Respondents advised them to make.

The disclosure required by the Commission's Forms ADV is clear and Respondents knowingly and intentionally filed Forms and used marketing materials touting their independence while also demanding and receiving compensation from a money manager. Respondents' independence was compromised, and Respondents had a duty to disclose that during 2009 and certainly during 2010. Accordingly, the Division has demonstrated that Respondent Montford Associates violated Sections 206(1), 206(2), 204 and 207 of the Investment Advisers Act of 1940 ("Advisers Act"), as well as Rule 204-1(a)(2) thereunder, and that Respondent Montford violated Sections 206(1), 206(2) and 207 of the Advisers Act, and aided and abetted and caused Respondent Montford Associates' violations of Section 204 of the Advisers Act and Rule 204-1(a)(2) thereunder. The Court should issue an Initial Decision finding Respondents liable for those violations and imposing remedies as suggested below.

II. FACTS

A. Background on Montford and Montford Associates

Respondent Montford resides in Atlanta, Georgia. Montford is President, Chief Executive Officer, Chief Compliance Officer, and 100% owner of Respondent Montford

Associates. Montford Associates is a registered investment adviser with its principal place of business in Atlanta, Georgia. Montford founded Montford Associates in April 1989 and has been working in the investment advisory business for twenty-three years. [T. 14-15.] He began working in the securities industry as a registered representative with Merrill Lynch in 1972 and thus is nearly a forty-year veteran of the securities industry. [Ex. 2; T. 15-18.] During 2009-2010, Montford Associates had approximately 30 clients and $800 million under management. [T. 20.] At that time, Montford Associates' clients primarily included pension plans, school endowments, and various non-profit organizations. [Ex. 11; T. 33.] Montford Associates' clients are typically institutional investors that are conservative, risk averse and place value on stability and consistency. [T. 20-21.] Montford Associates provides a range of investment advisory services to institutional investors, including: (1) assessing investment objectives; (2) advising on appropriate asset allocation; (3) recommending investment managers; and (4) monitoring portfolio and manager performance. [T. 20.] Montford Associates does not manage clients' investments directly, nor does it have the authority to execute client trades. Instead, Montford Associates identifies and recommends investment managers who then invest in various securities for the benefit of Montford Associates' clients. Montford Associates charges clients an annual fee, paid quarterly, based on assets under management. The annual fee ranges, depending on various factors, from 8 to 20 basis points of the client's assets. [T. 19.] In 2009, Montford Associates' gross revenues were approximately $600,000. In 2010, Montford Associates' gross revenues were $830,000, approximately $620,000 of which was in the form of fees for providing investment advisory services to clients. [T. 21.] As discussed more below,

the remaining $210,000 in revenue – approximately 25% of the firm's total revenue in 2010 – was in the form of undisclosed fees paid by SJK.

B. Montford Associates' Forms ADV Disclosure and Promotional Materials

Montford attracted clients in part by touting its independence. During 2009-2010 (and before), Montford Associates prominently and repeatedly claimed to provide "independent" investment advice. Montford Associates' Forms ADV during the relevant period included several representations regarding the firm's independence. This included Part I of Montford Associates' Form ADV filed on May 8, 2009. [Ex. 59.] In that document, which was signed by Montford, Item 8.A.2 is filled out to indicate that Montford did not buy or sell for himself securities that were also recommended to advisory clients. [T. 23.] Additionally, Item 8.B.3 reflects that Montford "did not have any sales interest in the securities recommended." [T. 23-24.] The following year's Part I of Form ADV, filed on March 26, 2010, included the same responses to Items 8.A.2 and 8.B.3. [Ex. 5.] Montford Associates' pattern of claiming independence also extended to its Form ADV Part II, which Montford testified he helped prepare and approved. [T. 30.] Specifically, Montford Associates' Forms ADV Part II, as filed with the Commission on March 4, 2009 [Ex. 28] and March 29, 2010 [Ex. 29], each stated under Item 13.A that Montford and Montford Associates received no economic benefit from non-clients in connection with giving advice to clients. [T. 24-25; 29-30.] Schedule F of those same filings represented that Montford Associates would "disclose to clients … all matters that reasonably could be expected to impair [the firm's] ability to make unbiased and objective recommendations." Also in Schedule F, both the 2009 and 2010 Forms ADV specifically represented that "[w]e do not accept **any** fees from investment managers or mutual funds."

(Emphasis added.) Montford testified that disclosure has been a part of the firm's Form ADV for as long as it has been operating. [T. 26; 30.] Montford testified that Respondents did not amend Montford Associates' 2009 Forms ADV Part I or II between the time of their filing in 2009 and the filing of the 2010 versions in March 2010. [T. 26-27.]

Furthermore, Montford Associates' promotional materials also included claims regarding the firm's independence. Montford Associates' website advertised the firm as "a source of independent investment advice for institutional investors." [Answer, ¶7.] The website also contained articles touting the benefits of an "independent" investment adviser. In one such article, Montford Associates states "[t]he best investment advisors are *independent* – without affiliations to ... money managers." [Ex. 10 (emphasis in original); T. 31.] That article concludes with the following statement: "In sum, the *benefits* of having an impartial investment evaluator are several, but at the core of the concept is expert, experienced advice to the fiduciary without concern about conflicts of interest which occur with managers, banks, insurance firms, and brokers." [Ex. 10 (emphasis in original); T. 32.] In another entitled "Montford Associates Offers Expert Independent Guidance," Respondent Montford is quoted as saying that clients "need a strategy they can trust, because investments ... should be based on merit, not ... undisclosed compensation." [Ex. 11; T. 33.]

Respondents' efforts to create the appearance of independence were successful. Many of Respondents' clients whose representatives testified at the hearing emphasized the importance of Montford's purported independence in their decision to retain or discharge Montford Associates. [T. 194:18-20 (Monroe); 222:1-3 (Albert); 256:23 (Barrow).]

C. Montford's Historical Relationship with Kowalewski and SJK

From at least 2002 through 2010, Stanley J. Kowalewski ("Kowalewski") was an investment manager. Respondent Montford testified that he was first introduced to Kowalewski in 2002. Respondent Montford began recommending Kowalewski as a manager of a "fund of funds" to Montford Associates' clients beginning in late 2003, and four or five of them invested in Kowalewski's fund. [T. 34-35.] Montford Associates' clients transferred their investments to remain with Kowalewski after he became affiliated in 2005 with Columbia Partners, a registered investment adviser based in the Washington, D.C. area, and several additional Montford Associates clients also invested at some point prior to July 2009. [T. 36-37.] By July 2009, ten of Montford Associates' clients were invested with Kowalewski at Columbia Partners for a total of approximately $50 million. Those clients were: St. Joseph's/Candler Hospital (which included separate accounts for three entities, the Candler Depreciation Fund, Geechee Reinsurance, and the Wachovia Defined Benefit Retirement Plan), Sea Island Company retirement plan, the Community Foundation for Northeast Georgia, Fieldale Farms, Georgia Ports Authority, Holy Family Hospital Foundation, Resort Hotel Insurance Company, the Tallulah Falls School Endowment, Savannah Country Day School, and Piedmont College. [T. 37-39.]

D. Kowalewski and SJK Paid Montford Associates to Recommend SJK to Montford Associates' Clients

In June 2009, Kowalewski told Montford that Kowalewski might leave to start his own firm. [T. 39.] In July 2009, Kowalewski in fact left Columbia Partners and created SJK. [T. 43.] Through Montford's knowledge of his clients, he understood that they were concerned about changing their investments to follow Kowalewski. Montford testified that Montford

Associates' clients were conservative, risk-averse, and generally uncomfortable with change. [T. 42-43.] Montford's clients were also suspicious of hedge funds at that time, just a few months after the Madoff scandal became public. [T. 39.] Montford believed it would be challenging to convince his clients to switch to Kowalewski's new firm, but he recommended that all ten of the Columbia clients follow Kowalewski anyway. [T. 43-46.]

Also in July 2009, Columbia Partners notified Montford's clients that it intended to exit the "fund of funds" business. [Ex. 49.] Around that time, Montford began meeting with the ten clients who were invested with Kowalewski at Columbia Partners to recommend that they transfer their investments to SJK. [T. 66-67; 149-150.] Montford also agreed to help Kowalewski in convincing Montford Associates' clients to invest with SJK and to aid in the administrative process of transferring the investments. [T. 47-48.] Montford counseled Kowalewski on how to best present himself and his strategy to Montford's clients, but Montford did not disclose that fact to the clients themselves. [T. 48-53.] With the exception of Piedmont College, all of Montford Associates' clients that were invested with Kowalewski at Columbia Partners agreed, upon Montford's recommendation, to move their investments to SJK. Montford testified that he and Montford Associates performed substantial administrative "work" in connection with that transfer, and in August 2009, he demanded payment from Kowaleski for it. Kowalewski agreed to pay Montford. [T. 55-58.] During the summer of 2009, Kowalewski set the initial amount of the fee at $130,000.[2] The amount to be paid was not negotiated, but was instead unilaterally decided by Kowalewski, and Montford had no understanding of how the

[2] Despite Montford's contention at the hearing that the "summer" could include "late October or the first of November," the Division demonstrated that during the investigation, Montford unequivocally testified that Kowalewski told him in "the summer of '09" that Montford would receive $130,000. [T. 58-59.]

amount was determined. [T. 58-59; 61.] Neither Montford nor anyone at Montford Associates kept track of their time spent on the work for SJK, and Montford did not communicate to SJK any estimate of time spent on the alleged administrative work. The agreement was not memorialized in any way. [T. 73.]

The "work" that Montford provided in exchange for the fee consisted of two categories. First, Montford met with his clients on behalf of SJK to recommend continuing to do business with SJK. [T. 61-66.] At the hearing, Montford admitted meeting with his clients to recommend SJK, but denied that those meetings were part of what he was paid for. [T. 61-67.] But his investigative testimony – which was identified by Montford as his prior sworn testimony – clearly demonstrates that on December 17, 2010, a time much closer to the events in question, he testified that those meetings were covered by the money from Kowalewski:

> [Murnahan:]. Okay. Would you please take a look at Exhibit 61, flip to page 108. Starting on line 19, read that question, please.
> [Montford:]. "Let me ask a question to make sure I understand the universe of services you provide. In connection with this $130,000, you met – is it fair to say that you met with [your] clients on behalf of SJK to recommend continuing to do business with SJK?"
> "It is fair, yes."
> "Is that accurate?" Question.
> "Yes."

[T. 62.] At the hearing, Montford attempted to suggest that the client meetings were exclusively about the alleged "administrative nightmare" caused by the Columbia Partners during the transition. [T. 62.] Those efforts were unpersuasive. Montford later testified that he and his staff divided up the nine or ten clients involved and met with each of them to talk about Columbia Partners' decision to exit the fund of funds business **and "talked with them about SJK . . . .**" [T. 66-67 (emphasis added).] Those meetings took place between July 10, 2009 and the middle

of August 2009. [Id.] Most of them were via telephone and they did not last more than an hour or two. [Id.] Montford then confirmed that those meetings were part of the "work" that SJK's fee covered. [T. 67.]

The other component of the supposed administrative work Montford and Montford Associates provided to SJK in exchange for the money was negotiating with Columbia Partners on behalf of the clients. Montford never met with any representatives of Columbia Partners in person, but he spoke with them on the phone and corresponded with them over a three month period during the summer and fall of 2009. [T. 68.] Montford acknowledged that he and the firm were already being paid $600,000 in advisory fees by their clients during that year. When asked why he charged Kowalewski for interactions with Columbia that were ostensibly on behalf of Montford Associates' clients, Montford testified that "it was appropriate, I felt, that Stan pay us for our work because he was going to get some benefit from it eventually." [T. 71.] Similarly, when asked why he did not seek to charge his clients for work purportedly done on their behalf, Montford conceded that his clients would not have paid for it because in their minds, such work was already Montford's responsibility: "I'm not going to call them up unnecessarily and say, I want you to do all this. They'll say, are you crazy? I'm not going to do that, why don't you do it." [T. 72.]

On September 24, 2009, Will Monroe, the chair of the Savannah Country Day School endowment committee, sent an e-mail to Montford raising several "concerns" about the investment advice received from Montford – which was to invest with SJK – and emphasizing that the committee was seeking Montford's independent judgment (". . . as our paid consultant I do not want to dictate what you say."). [T. 83-90; Ex. 34.] One of the concerns Monroe raised

was expressly about news reports involving Kowalewski. Montford responded to Monroe's concern about those news reports on September 28, 2009, but he did not mention the fee arrangement with Kowalewski. That was three days before Savannah Country Day School's initial investment transferred into the SJK fund on October 1, 2009. [T. 83-90; Ex. 35.] Thus, at the time Montford responded to a specific question about Kowalewski and did not disclose the fee arrangement, Savannah Country Day School was not yet invested with SJK.[3] Monroe testified that the endowment committee would have wanted to know about such an arrangement because Savannah Country Day School was "paying for independent advice. We didn't want his judgment to be clouded in any way." [T. 194.]

E. Montford Had Other Undisclosed Conflicts

The evidence presented at the hearing demonstrated that Respondent Montford was subject to other undisclosed conflicts of interest that were likewise contrary to his representations of independence. Montford testified that during 2009, Kowalewski took Montford on a three-day fishing trip to Bozeman, Montana. Montford testified that Kowalewski paid for transportation, hotel, food and fishing guides. Montford conceded that he never disclosed the trip to his clients. [T. 74-75.]

Similarly, at some point prior to July 30, 2010, Montford invested a personal IRA rollover with SJK. [Ex. 19.] The value of the account was $235,000. Montford never disclosed his investment with SJK to his clients, and failed to amend his disclosure on Form ADV Part I,

[3] Savannah Country Day School was not the only client victimized by Montford's omissions in 2009. The evidence at the hearing showed that on October 15, 2009, Piedmont College's investment committee met to make its final decision with respect to Montford's advice. [T. 102-103; Ex. 68.] Although Piedmont College decided not to invest with SJK, Montford admitted that he attended the meeting and reiterated his advice – without, of course, disclosing the fee arrangement with SJK. As an advisory client, Piedmont College was entitled to that material information, irrespective of the fact that they ultimately declined to follow Montford's advice.

Item 8.A.2, which expressly asks whether the adviser or any related person buys or sells for themselves securities that they also recommend to advisory clients. In addition, with respect to that same IRA investment, Montford conceded that SJK stopped charging him management or incentive fees starting with the performance period ended July 30, 2010, thus putting him in the same investment pool with his clients (the same pool he had recommended to them) but on more favorable terms. Montford never disclosed that fact to his clients. [T. 75-77.]

F. Montford Invoiced SJK for $130,000 in November 2009 But Failed to Disclose that Fee Arrangement in Contemporaneous Client Communications

Montford sent an invoice for $130,000 to SJK on November 2, 2009. [Ex. 8.] The face of the invoice reflected that it was for "consulting services for the SJK Investment Management, LLC launch," and Montford testified that he considered that a "fee" for consulting. [T. 90.] Upon receipt, Kowalewski asked Montford to change the description on the invoice and resubmit it. [T. 90.] Montford resubmitted the invoice for $130,000 on November 30, 2009 using the description "marketing and syndication fee for the SJK Investment Management, LLC launch." [Ex. 4, p. CC-6; T. 92.] Montford claimed at the hearing that the language was dictated by Kowalewski and was not an accurate description of his services. However, Montford conceded that he agreed to include it on the invoice, and he essentially admitted that he had previously testified that the description was accurate. [T. 92-93.]

Also in November 2009, Kowalewski promised Montford that he would pay Montford additional fees beyond the $130,000. Kowalewski explained that he was going to pay Montford the $130,000 at the end of 2009, and the remainder of the fee after SJK finished its first year in business. Montford claimed that Kowalewski did not indicate how much Montford would be paid at the end of that year. [T. 93.]

During this same time, Montford was communicating with clients – and advising further investment with SJK – without ever disclosing the growing fee arrangement between him and Kowalewski. On November 10, 2009, Montford followed up the November 2, 2009 invoice by e-mailing Kowalewski and asking whether SJK could pay Montford by wire transfer. [Ex. 66.] On November 11, 2009, Kowalewski replied to Montford acknowledging receipt of the November 2, 2009 invoice and advising that it would be processed. [Id.] Montford wrote back the same day, in the midst of correspondence specifically about when and how he would be paid the $130,000, and told Kowalewski "[b]y the way, we are advising Fieldale Farms to give you another $800,000." [Ex. 66.] Yet these concurrent communications between Montford and Kowalewski and between Montford and his clients at Fieldale Farms never resulted in a disclosure of the fee arrangement. [T. 94-95.]

Similarly, on November 17, 2009, Montford and another Montford Associates employee attended via teleconference a meeting of the board of the Resort Hotel Insurance Company. [T. 97.] The minutes of the meeting reflect that there "was a discussion held regarding the possibility of hiring an additional fund of fund manager or replacing the existing fund of fund manager (SJK Absolute Return Fund, LLC)." [Ex. 64.] This meeting took place only two weeks after Montford sent Kowalewski the November 2, 2009 invoice for $130,000, so the materiality of the fee amount was fresh in his mind. While his client considered whether to keep SJK or replace it, however, Montford stayed silent, never mentioning his considerable financial relationship with SJK or his expectation of additional money in the future.

Also on November 17, 2009, Montford sent an e-mail to his clients invested with SJK regarding "Transition of Funds." [T. 98-100.] In that message, which was sent only two weeks

after the November 2, 2009 invoice and about a week after Montford's e-mail exchange with Kowalewski asking to be paid by wire transfer, Montford wrote to "update [his clients] on [their] investment with SJK Absolute Return Fund of Funds." [Ex. 15.] Montford provided substantial information about the status of the funds being transferred from Columbia Partners, but again failed to mention the significant financial transaction with Kowalewski. Additionally, Montford included the statement that "Stan Kowalewski's SJK Investment Management, LLC includes the team that has worked with him in Greensboro for years, and they are taking care of the details in the transition," yet omitted any reference to the purportedly arduous work that his firm performed in connection with it. [Ex. 15; T. 55, 57-58; 68-70]

G. Having Received $130,000 in January 2010, Montford Advises Additional Investments with SJK Without Disclosing the Conflicts

In early January 2010, Montford received payment of $130,000 from SJK in satisfaction of the invoice sent on November 30, 2009. [T. 104; Ex. 4, p. CC-6.] At the hearing, Montford admitted that after receiving that payment, he continued to recommend that his clients invest additional funds with SJK without disclosing the money. [T. 105.] As a result, between the spring and early fall of 2010, three of Montford's clients made additional investments of approximately $10 million in the Absolute Return Funds based on Montford's recommendation.

For example, in the spring of 2010, Montford Associates client Tallulah Falls School received approximately $1 million that previously had been invested with Wachovia and Citigroup. [T. 106-107.] These funds were the remainder of a larger investment that Tallulah Falls School had redeemed earlier. [Id.] The bulk of the funds had been returned by Wachovia and Citigroup prior to 2010 and invested in an account at Columbia Partners. [Id.] By the spring of 2010, however, Tallulah Falls School no longer had that account, and as Montford admitted at

the hearing, the school had an independent investment decision to make, as it could have done anything with that money. [Id.] Montford recommended that Tallulah Falls School invest the money with SJK, and Tallulah Falls School followed Montford's advice. [Id.] During the course of giving that advice, Montford did not disclose the fee arrangement he reached with Kowalewski in August 2009, the $130,000 he received from SJK in January 2010, or the expectation he had of receiving even more money from Kowalewski later that same year. [Id.]

Similarly, in June 2010, at Montford's recommendation, Fieldale Farms moved $1.5 million it had invested in equities to SJK. [T. 107-108.] Montford pitched this change to his client as a "rebalancing" of Fieldale Farm's holdings, but irrespective of the characterization, the end result was that Fieldale Farms invested $1.5 million additional dollars with SJK that had been invested somewhere else.[4] [Id.] Montford failed to disclose any of his conflicts of interest to Fieldale Farms while encouraging the firm, apparently over several months, to increase its investment with SJK. [Id.]

Additionally, in September 2010, Montford recommended that St. Joseph's/Candler Hospital invest an additional $7.4 million with SJK, this time into the SJK Long/Short Equity Fund. [T. 108-110; Ex. 31.] The two St. Joseph's/Candler Hospital entities that were advised to participate were the Funded Depreciation account and the Geechee Reinsurance. As reflected on the face of Exhibit 31, Montford's written recommendation of the investment, the SJK Long/Short Equity Fund was a new fund started by SJK on July 1, 2010, and Montford expressly noted that "[w]e have worked with SJK Partners for many years and we are impressed with their

[4] This investment appears to be the culmination of the advice Montford signaled to Kowalewski in his November 11, 2009 e-mail message, which read ". . . we are advising Fieldale Farms to give you another $800,000. It is a rebalancing." [Ex. 66.]

experience, knowledge and expertise." The document did not mention, however, Montford's fee arrangement with SJK, and of course, Montford conceded that he never told any of his clients about his financial relationship with Kowalewksi before January 2011. This conduct is particularly egregious given both the amount of money involved and the fact that the end of SJK's first year in business was approaching and Montford was aware that Kowalewski had promised to send him even more money at that time. On Montford's recommendation, St. Joseph's/Candler Hospital invested more than $7 million in the SJK Long/Short Equity Fund in October 2010.[5]

Also in September 2010, Montford actively convinced another client, Savannah Country Day School, to reverse its decision to withdraw its more than $1.3 million investment from SJK. The school's endowment committee had, at a meeting in April 2010 at which Montford was not present, voted to fire SJK and withdraw its investment. [T. 111-114; Ex. 24.] When Montford was informed of the decision, he wrote a lengthy e-mail dated April 12, 2010 to the endowment committee that referenced – in the first sentence – Montford Associates' "fiduciary responsibility" and "express[ed] our disagreement with the change." [Ex. 24.] Montford went on to identify in bullet points "the reasons SJK Partners matters to SCDS: . . . ." Montford did not list the fee arrangement with SJK, the $130,000 he had already received, or the expectation he had of receiving more money later in 2010. However, Montford forwarded the message to Kowalewski on April 15, 2010. The endowment committee apparently tabled action and the matter came back up in September 2010. [T. 117.]

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[5] These events were very close in time, October 2010 is the same month that, according to Montford, Kowalewski called him and said "I owe you some more money," referencing the second payment. [T. 120-21.]

In September 2010, Montford asked for a meeting with the endowment committee to reiterate in person his advice that SJK not be terminated. [T. 117-18.] In anticipation of that meeting, Montford sent another e-mail to the endowment committee. [Ex. 25.] In that message, dated September 3, 2010, Montford reminded the committee of Montford Associates' role as their investment advisor, writing that "[w]hile the committee has the final decision we participate and advise in the investments for SCDS. As your advisor that is what we are engaged to do." Montford also reaffirmed his recommendation of SJK: "An upcoming change is also a factor in our position of keeping SJK." The message indicated that the meeting Montford requested was scheduled for the following week.[6] Montford testified that he attended that meeting, that he recommended keeping SJK, and that the committee voted to keep SJK on the basis of that recommendation. [T. 120.] As with all the investment decisions on which he gave advice in 2010, he did not disclose his fee arrangement with Kowalewski, the $130,000 he received in January 2010, the promise Kowalewski made to pay him more in late 2010, the Bozeman, Montana fishing trip Kowalewski treated Montford to, or the fact that, by this time, Montford was an investor in the same funds as his clients but under more favorable terms.

Savannah Country Day School endowment committee chair Will Monroe testified that, at a meeting in September 2010, Montford was asked whether he was paid anything by money managers and that Montford responded that the only revenue he received was from his clients such as Savannah Country Day School. [T. 188-89, 199-202.] The official minutes from the endowment committee's meeting of September 23, 2010 also reflect that statement, reading

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[6] Exhibit 25 shows on its face that Montford also forwarded this message to Kowalewski, just as he had forwarded Exhibit 24.

"[Montford] stated the only revenue he receives is from his clients like us and no managers pay him anything." [Ex. 57, p. SEC-SCDS-000860.]

H. Montford Invoiced SJK a Second Time in November 2010 and Receives $80,000, Bringing Montford Associates Total 2010 Revenue from a Money Manager to $210,000

In late October 2010, Kowalewski called Montford and, as Kowalewski had promised in the fall of 2009, told Montford to send another invoice to SJK because SJK had been operating for approximately a year. [T. 120-22.] Montford testified that Kowalewski said "I owe you some more money" and Montford replied "great, what is it?" Kowalewski unilaterally set the amount at $80,000, and, according to Montford, the money was to compensate Montford for the same services Montford had conferred in 2009 and for which Montford already had been paid $130,000. Montford testified that he did not know how Kowalewski calculated the amount of the payments. Yet Montford agreed to submit the invoice with the same language as before and, on November 1, 2010, sent an invoice to SJK in the amount of $80,000 for "Marketing and Syndication Fee for the SJK Investment Management LLC Launch." [Ex. 17.] SJK wired the funds to Montford Associates in November 2010. [T. 123.]

Montford testified that Montford Associates' total revenue for 2010 was approximately $830,000. Of that, $620,000 was for giving investment advice to clients such as St. Joseph's/Candler Hospital, Fieldale Farms, Tallulah Falls School and Savannah Country Day School. The remaining $210,000 came from SJK Investment Management, LLC, the same money manager that Montford had recommended to those clients and others in 2009 and 2010.

I. Montford's Omissions were Material

Montford's failure to disclose the fee arrangement with SJK was material. Respondents' clients whose representatives testified at the hearing indicated that Montford's independence was a critical issue for them when weighing his advice, and that they would have wanted to know about any fee arrangement with a money manager, irrespective of what the payments were for. [T. 188, 194, 202 (Monroe for Savannah Country Day School); 220-21 (Albert for St. Joseph's/Candler Hospital); 256-258 (Barrow for Sea Island and Resort Hotels); 274 (Roberts for Georgia Ports Authority); 287-88 (Short for the Community Foundation for Northeast Georgia).]

J. Montford Failed to be Forthcoming and Truthful with Commission Staff or Clients Regarding His Fee Arrangement with SJK

On December 9, 2010, the Division's investigative staff sent Montford a subpoena in connection with an investigation of SJK. [Ex. 1.] The subpoena attachment included only four document requests. One of them was "[a]ll documents regarding any payment or other benefit (travel, entertainment, etc.) provided to you by Kowalewski, SJK or any investment fund advised by Kowalewski or SJK." When Montford responded to the subpoena on December 15, 2010, he did not produce his November 1, 2010 invoice to SJK for $80,000. [Ex. 17; T. 127-29.] At the hearing, Montford conceded that his response to the SEC's subpoena came only six weeks after he had sent the second invoice to SJK, but his explanation was essentially that he forgot about it. [T. 127-28.] Moreover, when Montford provided testimony before the staff on December 17, 2010, he was asked numerous questions about the initial payment from SJK, yet he never mentioned that he had received another payment of $80,000 from SJK just seven weeks earlier. Montford finally produced the additional invoice in February 2010, after he had engaged counsel.

Montford also concealed this additional payment from his clients. On January 21, 2011, Montford sent an e-mail to Wade Herring, chair of the board of directors at Savannah Country Day School. [T. 131; Ex. 41.] In the e-mail, which was sent after the school had fired Montford Associates in the wake of the SEC's action against SJK, Montford writes "I'm told SCDS has decided to let us go because we charged SJK a business consulting fee in 2009" and he goes on "to explain the facts about the fee . . . ." In so doing, however, Montford makes the statement that "SJK needed assistance in transferring the accounts to its own operations. My company agreed to assist in that process, **for a negotiated fee of $130,000**." At the hearing, Montford conceded that the assertion in the message that the fee was negotiated was contrary to sworn testimony he had given prior that day, and he had no explanation for why he failed to mention the additional $80,000 he received from SJK only a couple months before. [T. 130-31.]

In addition, Montford took no action to inform his clients about the $210,000 even after he got his Wells Notice from the staff and these proceedings were instituted. Thus, even after being informed that the Division intended to bring fraud claims against him for his failure to disclose the Kowalewski payments, Montford still withheld the facts regarding the payments from clients – some of whom learned about them for the first time when called by the staff in preparation for the hearing. [T. 289 (Short).]

III. LEGAL ANALYSIS

A. Montford and Montford Associates Violated Section 206 of the Advisers Act

The Division alleges that Respondents violated the antifraud provisions – Sections 206(1) and 206(2) – of the Advisers Act. Those sections read:

> It shall be 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; and

(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(1), (2). As noted by the Supreme Court in SEC v. Capital Gains Research Bureau, Inc., 375 U.S. 180 (1963), conflicts of interest were a primary concern behind the promulgation of the Advisers Act:

> The report [that culminated in the Advisers Act] reflects the attitude – shared by investment advisers and the Commission – that **investment advisers could not 'completely perform their basic function** – furnishing to clients on a personal basis competent, unbiased, and continuous advice regarding the sound management of their investments – **unless all conflicts of interest between the investment counsel and the client were removed.' The report stressed that affiliations by investment advisers with investment bankers or corporations might be 'an impediment to a disinterested, objective, or critical attitude toward an investment by clients . . . .'**

375 U.S. 187-88 (emphasis added) (footnotes omitted). The Supreme Court emphasized that the conflicts that come within the ambit of the Advisers Act include any financial benefit to the adviser other than the fee from his client:

> **This concern was not limited to deliberate or conscious impediments to objectivity**. Both the advisers and the Commission were well aware that **whenever advice to a client might result in financial benefit to the adviser – other than the fee for his advice – 'that advice to a client might in some way be tinged with that pecuniary interest (whether consciously or) subconsciously motivated . . . .'**
>
> * * *
>
> The Investment Advisers Act of 1940 thus reflects a congressional recognition 'of the delicate fiduciary nature of an investment advisory relationship,' as well as a **congressional intent to eliminate, or at least to expose, all conflicts of interest which might incline an investment adviser – consciously or unconsciously – to render advice which was not disinterested.**

375 U.S. 187-92 (emphasis added) (footnotes omitted). Accordingly, any financial benefit to the advisor apart from advisory fees presents a conflict – irrespective of why the benefit was

purportedly conferred – because such a financial incentive tends to taint the advisor's objectivity and judgment.

Section 206 was thus enacted to benefit the clients of investment advisers. Transamerica Mortgage Advisers, Inc. v. Lewis, 444 U.S. 11, 17 (1979). To that end, "section 206 established 'federal fiduciary standards' to govern the conduct of investment advisers." Id. at 17. As part of these fiduciary standards, the Supreme Court has interpreted the Advisers Act to require the investment adviser to disclose all conflicts of interest which might incline it to consciously or unconsciously render advice which is not disinterested. It has imposed upon the investment adviser "an affirmative duty of 'utmost good faith, and full and fair disclosure of all material facts,'" as well as an affirmative obligation to employ reasonable care to avoid misleading its clients. Capital Gains Research, 375 U.S. at 189–192, 194.

The standard for materiality under Section 206 is that set forth by the Supreme Court in TSC Industries, Inc. v. Northway, Inc., 426 U.S. 438 (1976): "An omitted fact is material if there is a substantial likelihood that a reasonable shareholder would consider it important" when making an investment decision. Steadman v. SEC, 603 F.2d 1126, 1130 (5th Cir. 1979), *aff'd.*, 450 U.S. 91 (1981). "It is indisputable that potential conflicts of interest are 'material' facts with respect to clients and the Commission." Vernazza v. SEC, 327 F.3d 851, 859 (9th Cir. 2003).

Violations of Section 206(1) require scienter. When demonstrating scienter, the Division must show that Respondents knew or were reckless in not knowing that they failed to disclose material information to their clients and the investing public. In the Matter of IMS/CPAS & Associates, et al., Admin. Rel. No. 119, 1998 WL 7448 (Jan. 12, 1998), citing Ernst & Ernst v. Hochfelder, 425 U.S. 185, 194 n.12 (1976) and Hollinger v. Titan Capital Corp., 914 F.2d 1564,

1569-70 (9th Cir. 1990) (en banc); see also Bryant v. Avado Brands, Inc., 187 F.3d 1271, 1282 (11th Cir. 1999) (confirming "extreme recklessness" satisfies scienter in the 11th Circuit). Under § 206(2) there is no required showing of scienter. In addition, the Commission has stated that "[a]n investment adviser's failure to disclose an actual or potential conflict violates Section 206(2)." In The Matter of O'Brien Partners, Inc., Advisers Act Rel. No. 1772, (Oct. 27, 1998) (settled proceeding).

Respondents violated Section 206(1) and (2).[7] Montford and Montford Associates represented both implicitly (in their response to Item 13.A of Form ADV Part II) and explicitly (in Schedule F) in their Forms ADV that they accepted no fees from investment managers. This disclosure was in place before the events of 2009 occurred, and was reiterated in the firm's 2010 Form ADV. Yet, Respondents expressly requested money from SJK, an investment manager, received $210,000, and did not disclose it. There simply is no room for debate that Respondents were subject to an undisclosed conflict of interest, about which they had made an affirmative misrepresentation, and this was doubly true after Respondents published their Form ADV Part II on March 29, 2010.

Regarding materiality, "it is indisputable that potential conflicts of interest are 'material' facts with respect to clients and the Commission." Vernazza, 327 F.3d at 859. Indeed, each of the clients who testified at the hearing indicated that they would have wanted to know about these payments. [T. 188, 194, 202 (Monroe for Savannah Country Day School); 220-21 (Albert for St. Joseph's/Candler Hospital); 256-258 (Barrow for Sea Island and Resort Hotels); 274

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[7] Montford was acting as an investment adviser and thus can be held directly liable under Section 206. See In re John J. Kenny and Nicholson/Kenny Capital Management, Inc., Advisers Act Rel. No. 2128 (May 14, 2003) (Commission opinion).

(Roberts for Georgia Ports Authority); 287-88 (Short for the Community Foundation for Northeast Georgia).]

With respect to scienter, a number of facts support the finding that Respondents were either aware of the misrepresentation or reckless in not knowing. Perhaps the most blatant evidence of scienter is Montford's failure to disclose the money while advocating additional investments of nearly $10 million in 2010, well after he had demanded payment from Kowalewski, sent an invoice and been paid $130,000, and had the expectation of receiving more money from Kowalewski later that same year. Montford was a 40-year veteran of the securities industry – it is not plausible that he was unaware of the conflict, especially after he received the first payment. Similarly, Montford's conduct in actively convincing Savannah Country Day School to reverse its decision to withdraw from SJK in September 2010 is particularly egregious in light of his knowingly false statement to the investment committee that "the only revenue he receives is from his clients" and "no managers pay him anything." [Ex. 57, p. SEC-SCDS-000860.] The minutes in which those quotes appear are incredibly powerful evidence – there is no reason to doubt a contemporaneously created business record made before the SEC brought an action against Kowalewski. Also, Montford's silence during the November 17, 2009 Resort Hotel board meeting, while his client discussed possibly replacing SJK and sought his unbiased input, reflects knowing fraudulent conduct, especially when juxtaposed against Montford's November 2, 2009 invoice to SJK and his November 10-11, 2009 e-mail correspondence with Kowalewski showing that the fee arrangement was fresh in his mind. Finally, and perhaps most importantly, despite his weak attempts to change his answer at the hearing, as set forth in Section

D., the record reflects that Montford previously gave sworn testimony that he was paid to recommend SJK to his clients.

At the hearing, Montford claimed that he demanded money from Kowalewski to compensate Montford Associates for "administrative" time spent facilitating the transfer of invested funds from Columbia to SJK. Several facts undermine that assertion. First, neither Montford nor anyone at Montford Associates kept track of their time spent on the work for SJK. It simply is not credible that the money was meant to compensate Montford and his employees for their time if no one kept a record of how much time was spent. Second, the fee arrangement accounted for ¼ of the firm's total revenue in 2010, but was never reduced to writing. The sizable amount of the fee is totally incongruent with the informality of an unwritten agreement, and this fact belies the argument that the money was for a legitimate purpose. Third, Montford claims he demanded the money, but did not request a particular amount and had no idea how the amount was determined. Letting Kowalewski unilaterally control the methodology and the amount is inconsistent with Montford's contention that this was an above-board, arms-length transaction. Fourth, the invoices for which Montford was ultimately paid were for "Marketing . . ." Montford claims, of course, that the language was dictated by Kowalewski, but he provided no evidence of that beyond his own testimony. And, as reflected by key excerpts of Montford's investigative testimony that were introduced during the hearing, in December 2010, Montford admitted under oath that part of what he was paid for was meeting with his clients on behalf of SJK to recommend continuing to do business with SJK. Montford's claim that he misunderstood the question is not credible, and in any event he admits that during the relevant time, he was recommending investing with SJK and that he was meeting with his clients. He also admitted

that his clients were conservative, valued stability, were suspicious of hedge funds and adverse to change. Thus, to the extent Montford can be said to have charged Kowalewski for his time, that time was spent convincing his clients to follow Kowalewski.

Montford also suggested that the advice to invest with SJK was not tainted because it was given, at least initially, prior to his demand for payment. Even assuming, *arguendo*, Montford's convenient contention that the fee arrangement was reached after Respondents had recommended SJK to their clients (a position that the Division submits is flatly incredible), that is not a defense to the Division's claims because it is factually incorrect. Montford's decision not to disclose this obvious impediment to his independent judgment had a huge impact on investment decisions his clients made in 2010 because several clients invested additional monies – totaling close to $10 million – during that year *based on his advice*. That advice, given in 2010, came well after the agreement was made, and indeed after money had changed hands. Second, Montford's failure to meet his fiduciary obligation was not without harm in the period following August 2009. Montford's failure to disclose the deal in his September 2009 response to concerns raised by Savannah Country Day School or during the November 2009 meeting of the Resort Hotels Insurance Company board constitutes egregious conduct when viewed in context. These conservative, risk-averse clients were raising concerns about, and considering replacing, SJK. They had a right to know all the facts when making their decision, yet Montford let them assume his advice was, as he always touted, independent.

Montford similarly claimed that the money was not given in exchange for recommending SJK – allegedly, his advice would have been the same regardless of the fee because the firm's historic returns were good and he honestly believed it was a sound investment. This argument is

legally irrelevant because the Supreme Court has rejected it. As noted above, in Capital Gains Research, the Supreme Court addressed the application of Section 206 to conflicts of interest and ruled, *inter alia*, that the SEC is not required to parse the many motivations that may have played a role in giving investment advice – instead the onus is on investment advisers to disclose all material facts. 375 U.S. at 191-95; 200-01. Addressing essentially the same argument Respondents raise here, the Supreme Court wrote:

> **Respondents argue, finally, that their advice was 'honest' in the sense that they believed it was sound and did not offer it for the purpose of furthering personal pecuniary objectives.** This, of course, is but another way of putting the rejected argument that the elements of technical common-law fraud-particularly intent-must be established before an injunction requiring disclosure may be ordered. It is the practice itself, however, with its potential for abuse, which 'operates as a fraud or deceit' within the meaning of the Act when relevant information is suppressed. The Investment Advisers Act of 1940 was 'directed not only at dishonor, but also at conduct that tempts dishonor.' United States v. Mississippi Valley Generating Co., 364 U.S. 520, 549, 81 S.Ct. 294, 308, 309, 5 L.Ed.2d 268. Failure to disclose material facts must be deemed fraud or deceit within its intended meaning, for, as the experience of the 1920's and 1930's amply reveals, the darkness and ignorance of commercial secrecy are the conditions upon which predatory practices best thrive. **To impose upon the Securities and Exchange Commission the burden of showing deliberate dishonesty as a condition precedent to protecting investors through the prophylaxis of disclosure would effectively nullify the protective purposes of the statute. Reading the Act in light of its background we find no such requirement commanded. Neither the Commission nor the courts should be required 'to separate the mental urges,'** Peterson v. Greenville, 373 U.S. 244, 248, 83 S.Ct. 1119, 1121, 10 L.Ed.2d 323, of an investment adviser, for '(t)he motives of man are too complex * * * to separate * * *.' Mosser v. Darrow, 341 U.S. 267, 271, 71 S.Ct. 680, 682, 95 L.Ed. 927. The statute, in recognition of the adviser's fiduciary relationship to his clients, requires that his advice be disinterested. To insure this it empowers the courts to require disclosure of material facts. **It misconceives the purpose of the statute to confine its application to 'dishonest' as opposed to 'honest' motives.**

375 U.S. at 200-01 (emphasis added). Accordingly, the Division is not required to separate Montford's "honest" and "dishonest" motives. "It is the practice itself," which here was the fee

arrangement, that "operates as a fraud or deceit." Id. Thus, it is irrelevant what Respondents claim the money was for. The operative facts are that Montford made an agreement with, and received money from, a money manager who he was recommending to his clients.

The Division presented strong evidence of materiality and scienter in this case, and Respondents' defenses are based on faulty premises and are legally irrelevant. The Court should find that Respondents violated Section 206(1) as well as 206(2) of the Advisers Act.

B. Montford and Montford Associates Violated Section 207 of the Advisers Act

Section 207 of the Advisers Act makes it unlawful for any person willfully to make any untrue statement of a material fact or omit to state any material fact required to be stated in an application or report filed with the Commission.[8] Montford and Montford Associates violated Section 207. Montford Associates' Form ADV Part II, dated March 29, 2010, which was prepared by Montford and deemed filed with the Commission, contained material misstatements and/or omitted to state material facts required to be stated in the Forms ADV. [Ex. 29.] Specifically, Item 13.A of Form ADV Part II stated that Montford and Montford Associates received no economic benefit from a non-client in connection with giving advice to clients. Schedule F stated that Montford Associates would "disclose to clients ... all matters that reasonably could be expected to impair [the firm's] ability to make unbiased and objective recommendations." Also in Schedule F, the Forms ADV specifically disclosed that the firm did "not accept any fees from investment managers . . . ." Given the relationship with SJK discussed

[8] A willful violation of the securities laws means merely "'that the person charged with the duty knows what he is doing.'" Wonsover v. SEC, 205 F.3d 408, 414 (D.C. Cir. 2000), quoting Hughes v. SEC, 174 F.2d 969, 977 (D.C. Cir. 1949).

above, these statements materially misstated the facts at the time and, as such, the 2010 Form ADV was false when filed in violation of Section 207.

C. Montford Associates Violated, and Montford Aided, Abetted, and Caused Violations of, Section 204 of the Advisers Act

Section 204 of the Advisers Act and Rule 204-1(a)(2) thereunder require filing and periodic amendment of Form ADV by investment advisers. Rule 204-1(a)(2) expressly provides that a registrant must amend its Form ADV as required by the instructions to the Form ADV. The instructions to the Form ADV specify that a registrant must, in addition to the annual amendment, update, among other things, its brochure (Part II of Form ADV) promptly if information provided therein becomes materially inaccurate. Montford Associates violated Section 204 and Rule 204-1(a)(2). Specifically, Montford Associates' Form ADV Part II for 2009, prepared by Montford and deemed filed with the Commission in March 2009, contained the same disclosures set forth above regarding the 2010 Form ADV, and became materially inaccurate when Montford agreed to receive fees from SJK in August 2009. [Ex. 28.] Montford Associates failed to amend the form, as required by Section 204 of the Advisers Act and Rule 204-1(a)(2), and otherwise failed to correct the materially inaccurate statements.

To establish aiding and abetting liability, the Division must show (i) a securities law violation by a primary wrongdoer, (ii) knowledge of the violation by the person sought to be charged, and (iii) proof that the person sought to be charged substantially assisted in the primary wrongdoing. See Armstrong v. McAlpin, 699 F.2d 79, 91 (2nd Cir. 1983). "Causing liability" requires that: (1) a primary violation occurred; (2) an act or omission by the respondent contributed to the violation; and (3) the respondent knew or should have known that his or her conduct would contribute to the violation. Respondent Montford was President, Chief Executive

Officer, Chief Compliance Officer, and 100% owner of Respondent Montford Associates and, through his knowing misconduct, Montford Associates violated Section 204 and Rule 204-1(a)(2) of the Advisers Act. As such, Montford aided, abetted, and caused those violations.

IV. RELIEF REQUESTED

A. Cease-and-Desist Order

Section 203(k) of the Advisers Act authorizes the Commission to enter an order requiring any person that violated or is, was, or would be a cause of the violation, due to an act or omission the person knew or should have known would contribute to such violation, to cease and desist from committing such violation and any future violation of the same provision, rule or regulation. While there must be "some" risk of future violations, that risk:

> need not be very great to warrant issuing a cease-and-desist order. Absent evidence to the contrary, a finding of violation raises a sufficient risk of future violation. To put it another way, evidence showing that a respondent violated the law once probably also shows a risk of repetition that merits our ordering him to cease and desist.

In re KPMG Peat Marwick, LLP, 74 S.E.C. 357, 2001 WL 47245 at *24 (Jan. 19, 2001). When determining whether to impose a cease-and-desist order, the Court also should consider a range of traditional factors, including:

> the egregiousness of the defendant's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the defendant's assurances against future violations, the defendant's recognition of the wrongful nature of his conduct, and the likelihood that the defendant'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); see also In the Matter of Richard C. Spangler, Inc., 46 S.E.C. 238, 254 n.67 (1976). No one criterion is dispositive.

At the hearing, the Division demonstrated that Respondents told their clients that they did not accept "any fees" from money managers like Kowlewski. Montford made these representations to his clients directly, and he and Montford Associates made them through Forms ADVs filed with the Commission. Yet Montford has admitted that he took $210,000 from Kowalewski and never disclosed it to his clients, thus establishing a violation. Applying the factors, Montford acted with a high degree of scienter. The evidence of his fraudulent intent was highlighted by his failure to disclose the money while advocating additional investments in 2010, well after he had demanded payment from Kowalewski, sent an invoice and been paid $130,000, and had the expectation of receiving more money from Kowalewski in the future. His conduct with respect to Savannah Country Day School's decision to not withdraw from SJK in September 2010 is particularly egregious in light of his intentionally false representation to the investment committee that "the only revenue he receives is from his clients" and "no managers pay him anything." [Ex. 57, p. SEC-SCDS-000860.] As stated earlier, Montford's failure to disclose the fee arrangement during the November 17, 2009 Resort Hotel board meeting, while his client openly discussed possibly replacing SJK with Montford as investment adviser, demonstrates scienter.

In addition, Montford's assurances against future violations are not sincere. As evidenced by his response to the SEC's subpoena and his post-firing communication with Savannah Country Day School's Wade Herring, Montford is not forthcoming and truthful about this matter. He reveals only what he is forced to. And of course, if he continues to operate Montford Associates as an investment advisor, his occupation will present opportunities for future violations.

Accordingly, based upon the evidence presented at the hearing in this matter, the Court should order Respondents Montford and Montford Associates to cease and desist from committing or causing violations of and any future violations of Sections 206(1), 206(2), 204 and 207 of the Advisers Act and Rule 204-1(a)(2) thereunder.

B. Disgorgement Plus Prejudgment Interest

Section 203(j) of the Advisers Act allows the Commission to seek an order requiring disgorgement, including prejudgment interest, in administrative proceedings in which the Commission may impose a money penalty. The Commission may also seek disgorgement and prejudgment interest in the cease-and-desist proceedings pursuant to Section 203(k) of the Advisers Act. Disgorgement in an investment adviser case based on a failure to disclose a conflict of interest caused by improper compensation is equal to the amount paid under the agreement – this prevents Respondents from "keep[ing] the fruits of their fraud." In the Matter of IMS/CPAS & Associates, et al., Admin. Rel. No. 119, 1998 WL 7448 at *14 (Jan. 12, 1998); see also SEC v. Washington Co. Utility Dist., et al., 676 F.2d 218, 227 (1981) (reversing district court decision denying disgorgement; "[b]ecause we hold [Defendant] liable for the failure to disclose those payments, we conclude that the district court should order [Defendant] to disgorge a sum of money equal to the total value of all the payments he received . . . .")

In this case, Respondents concede they were paid $210,000 and their failure to disclose receipt of the monies – regardless of why it was received – is the fraud and, as such, should be disgorged. IMS/CPAS, 1998 WL 7448 at *14; Washington Co. Utility Dist., et al., 676 F.2d at 227. Thus, Respondents should disgorge $210,000. Regarding prejudgment interest, Rule of Practice 600 specifies that it should begin on the first day of the month following each violation.

17 § C.F.R. 201.600(a). Under these facts, there are a variety of dates that could be chosen, but the Division suggests April 1, 2010, as it is the first day of the month following the March 29, 2010 adoption of Respondents' Form ADV Part II that retained the language "[w]e do not accept any fees from investment managers . . . ." Using that date and the hearing date as the parameters, prejudgment interest equals $7,907.98.[9] SEC v. First City Financial Corp., Ltd., 890 F.2d 1215, 1231 (D.C. Cir. 1989).

C. Civil Penalties

Section 203(i) of the Advisers Act allows the Commission to impose a civil penalty in proceedings instituted pursuant to Sections 203(e) and (f) of the Advisers Act. Six factors are relevant in determining whether civil monetary penalties are in the public interest: (1) deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; (2) direct or indirect harm to others; (3) unjust enrichment; (4) prior violations; (5) deterrence; and (6) such other matters as justice may require. See Section 203(i) of the Advisors Act. "Not all factors may be relevant in a given case, and the factors need not all carry equal weight." In the Matter of Robert G. Weeks, Admin. Proc. File No. 3-9952.

In this case, Respondents conduct involves deceit, manipulation, and/or deliberate or reckless disregard of a regulatory requirement. As discussed above, Montford's conduct involves affirmative deceptions and misrepresentations demonstrating scienter. Montford's entire business model was based on his purported independence. All of his marketing materials contained representations regarding his independence. [Ex. 10; 11.] His Forms ADV contain

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[9] For the Court's convenience, the Dvision is including a Prejudgment Interest Report supporting its calculation as Exhibit A to this Post-Hearing Brief.

representations that he was independent. In fact, the reason Montford's clients hired him was because of his claimed independence. [T. 194:18-20 (Monroe); 222:1-3 (Albert); 256:23 (Barrow).] And importantly, Montford went beyond general claims of independence. Montford specifically disclosed that Respondents "do not accept **any** fees from investment managers." [Ex. 28; Ex. 29.]

Montford's deception was also very intimate. For example, as set forth above, Montford personally appeared at a meeting of Savannah County Day School's Endowment Committee in September 2010 to lobby for Kowalewski. The Endowment Committee had previously voted to terminate Kowalewski as an investment manager and was reconsidering its decision based on Montford's urging. [T. 196-201 (Monroe); Ex. 24; Ex. 57.] During this meeting, the Endowment Committee "directly and specifically" asked whether Montford received any compensation from money managers like Kowalewski. [T. 215 (Monroe); Ex. 57.] Montford lied and told the Committee he did not. [Id.].[10]

The truth was that Montford received $210,000 in illicit payments from Kowalewski – information that his clients viewed as critically important, even if it was only for "administrative services." [T. 202 (Monroe); 233 (Albert).] Additionally, Montford's affirmative misrepresentations to his clients caused them additional harm by inducing them to invest, or remain invested, with Kowalewski. Montford's clients testified that Montford's receipt of money from Kowalewski would have raised serious red flags regarding their investment with Kowalewski. [T. 263-66 (Barrow); 227-28 (Albert); 201-02 (Monroe).]

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10 In other instances, clients raised specific concerns about investing with Kowalewski during meetings where Montford was present, but at no point did Montord disclose he had received $210,000 from Kowalewski for promoting his product. [Ex. 64; T.262-64 (Barrow).]

Under these facts, the Division requests that the Court impose a civil penalty of $25,000 against each Respondent. See In the Matter of Hutchens Investment Management, Inc., et al., Admin. Proc. File No. 3-12290, Advisers Act Rel No. 2514 (May 9, 2006) ($25,000 penalty in Section 206 case involving failure to disclose payments to solicitor for referring clients); In the Matter of Schultze Asset Management, LLC, et al., Admin. Proc. File No. 3-12724, Advisers Act Rel No. 2633 (Aug. 15, 2007) ($50,000 individual penalty and $100,000 firm penalty in Section 206 case involving misrepresentations to clients about soft dollar arrangements); SEC v. Steven M. Bolla, et al, Civil Action No. 1:02-CV-01506 (D.D.C. Sept. 22, 2005) ($15,000 individual penalty and $50,000 firm penalty in Section 206 case involving failure to disclose SEC-imposed bar from associating with investment advisers).

D. The Court Should Bar Montford from Associating with an Investment Advisor

Section 203(e) of the Advisers Act authorizes the Commission to censure, place limitations on the activities, functions, or operations of, or suspend for a period not exceeding twelve months, or revoke the registration of an investment adviser, where it is in the public interest to do so, and where the adviser has been found to have violated the securities statutes. Section 203(f) of the Advisers Act authorizes the Commission to impose similar sanctions on persons associated with an investment adviser, including barring such person from being associated with an investment adviser.

As discussed above, the established criteria for determining what sanctions are appropriate in the public interest include deterrence and:

> the egregiousness of the defendant's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the defendant's assurances against future violations, the defendant's recognition of the wrongful nature of his

conduct, and the likelihood that the defendant'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); see also In the Matter of Richard C. Spangler, Inc., 46 S.E.C. 238, 254 n.67 (1976).

Here, Respondent Montford acted with a high degree of scienter and his infraction was consistent and recurrent – he repeatedly failed to disclose his relationship with Kowalewski even when presented with opportunities to do so on multiple occasions by several of his clients. In fact, even when queried by his clients in January 2011 about the Commission's lawsuit against Kowalewski, Montford failed to disclose the $210,000 payment. [T. 266 (Barrow).] Moreover, when later confronted by counsel for Savannah Country Day School with evidence of the initial $130,000 payment Montford received from Kowalewski, Montford failed to disclose that he had received an additional $80,000 from Kowalewski. [Ex. 41.] Montford has no explanation for this lack of candor. [T. 130.] Perhaps most disturbing, however, is that Montford told his clients nothing about the $210,000 after he got his Wells Notice from the staff and these proceedings were instituted. Thus, even after being informed that the Division intended to bring fraud claims against him for his failure to disclose the Kowalewski payments, Montford still did not tell his clients about the payments. [T. 289 (Short).]

Montford's pattern of omitting to provide information about the Kowalewski payments also occurred in his interactions with the Division staff. Montford failed to produce the second Kowalewski invoice for $80,000, even though all records of payments by Kowalewski were specifically sought by the Division's subpoena. The notion that Montford failed to produce the document inadvertently is not credible. The $80,000 payment was almost 10% of his entire 2010

income and was received on November 1, 2010, less than six weeks before his receipt of the Division's subpoena. [Ex. 1; Ex.17.]

Given Montford's continuing lack of candor and that his current occupation will present opportunities for future violations, the Division thus recommends that, Montford be barred from associating with any investment adviser. See In the Matter of Hutchens Investment Management, Inc., et al., Admin. Proc. File No. 3-12290, Advisers Act Rel No. 2514 (May 9, 2006) (3 month suspension in Section 206 case involving failure to disclose payments to solicitor for referring clients); In the Matter of IMS/CPAS & Associates, et al., Admin. Rel. No. 119, 1998 WL 7448 at *14 (Jan. 12, 1998) (6 month suspension in Section 206 case for failure to disclose compensation from money manager).

V. CONCLUSION

For the foregoing reasons, and based on the evidence presented by the Division at the hearing, the Court should find that Respondents violated the Advisers Act provisions set forth in the OIP and grant relief as requested herein.

This 21st day of December, 2011

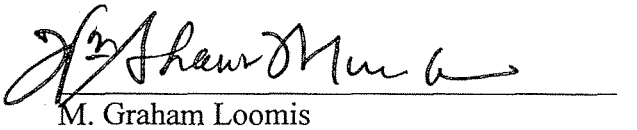

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EXHIBIT A

U.S. Securities and Exchange Commission

Division of Enforcement

Prejudgment Interest Report

Montford Associates - Prejudgment Interest on Disgorgement

Quarter Range	Annual Rate	Period Rate	Quarter Interest	Principal+Interest
Violation Amount				$130,000.00
05/01/2010-06/30/2010	4%	0.67%	$869.04	$130,869.04
07/01/2010-09/30/2010	4%	1.01%	$1,319.45	$132,188.49
10/01/2010-12/31/2010	4%	1.01%	$1,332.75	$133,521.24
01/01/2011-03/31/2011	3%	0.74%	$987.69	$134,508.93
04/01/2011-06/30/2011	4%	1%	$1,341.40	$135,850.33
07/01/2011-09/30/2011	4%	1.01%	$1,369.67	$137,220.00
10/01/2011-11/30/2011	3%	0.5%	$687.98	$137,907.98

Prejudgment Violation Range	Quarter Interest Total	Prejudgment Total
05/01/2010-11/30/2011	**$7,907.98**	**$137,907.98**