UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
March 21, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-14684

In the Matter of

ANTHONY FIELDS, CPA
d/b/a ANTHONY FIELDS &
ASSOCIATES and d/b/a
PLATINUM SECURITIES
BROKERS,

Respondent.

THE DIVISION OF ENFORCEMENT'S OPPOSITION TO RESPONDENT'S APPEAL OF THE INITIAL DECISION

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I. INTRODUCTION

The Law Judge correctly ruled that Respondent Anthony Fields ("Respondent" or "Fields") willfully violated the antifraud provisions of the federal securities laws by using social media and the Internet to offer fictitious "prime bank securities" and to falsely portray himself as the experienced head of brokerage and SEC-registered investment advisory firms with a large inventory of U.S. Treasury securities and multi-billion dollar purchase and sale contracts. The evidence proved overwhelmingly that the "bank guarantees" and "mid-term notes" that Fields offered in purported denominations of hundreds of millions and even billions of dollars existed only in his imagination. Fields also had no inventory of U.S. Treasury securities, no real contracts, no assets under management, no experience as an investment adviser, no professional staff and no right to register with the Commission. What Fields did have was access to social media and the Internet to reach a virtually unlimited audience of potential victims for a dangerous new variation of prime bank securities fraud. Whether or not Fields actually believes his rationalizations for the many misrepresentations he made to potential investors, the Law Judge properly ruled that he acted with at least a reckless degree of scienter. In consideration of the egregiousness of Fields' violations, his complete lack of assurance against future misconduct and the danger to investors, the Law Judge also properly ruled that Fields should be ordered to cease and desist from his illegal conduct, be subject to permanent association and industry bars and pay a meaningful penalty.

The Petition for Review ("Petition") blatantly misstates the Initial Decision, rehashes the same implausible arguments that the Law Judge considered and properly rejected, thoroughly misperceives the law and assumes unsupportable and irrational conclusions about the evidence. Fields' assertion that the Law Judge failed to address the Division of Enforcement's ("Division") charges is both bewildering and completely refuted by the Initial Decision itself, which makes

detailed findings regarding those charges and Fields' purported defenses. Fields' insistence that he "proved" that prime bank securities really do exist and are traded on secretive secondary markets in Europe defies reason and merely expresses disagreement with the Law Judge's findings, which were based on reliable, probative and substantial evidence, and were in accord with other tribunals and regulatory authorities that have encountered prime bank fraud schemes. Fields' assertion that a permanent industry bar is too harsh a sanction is refuted by his continued unwillingness to acknowledge even the most obvious facts about his misconduct or to provide any assurances against future misconduct. Accordingly, the Commission should affirm the Initial Decision in all respects.

II. PROCEDURAL HISTORY

The Order Instituting Proceedings ("OIP") in this case was issued on January 4, 2011. Pre-Hearing Briefs were filed on May 7, 2012. Law Judge Carol Fox Foelak held a two-day hearing on May 21 - 22, 2012, in Washington, D.C. Fields was called to testify in the Division's case and also testified in his own case. John Stark ("Stark") testified on behalf of the Division as an expert on prime bank securities fraud schemes.[1] The Law Judge admitted 67 exhibits offered by the Division and one, two-page exhibit offered by Fields. Post-Hearing Briefs and Proposed Findings of Fact and Conclusions of Law were filed. The Initial Decision was issued on December 5, 2012. It certifies the record index that the Secretary had issued on August 9, 2012. Fields filed his Petition on December 27, 2012. The Order Granting Petition for Review and

[1] "Stark was accepted as an expert on the identification and analysis of prime bank securities fraud schemes and the dangers presented by such schemes perpetrated using social media [and] the Internet. Stark has had a lengthy career specializing in this area with the Commission and then with Stroz Friedberg, a risk management and consulting firm that does digital forensics, electronic discovery, risk and security consulting, due diligence, private investigations, and compliance consulting." *See* Initial Decision, p. 2. n. 2 (record citations omitted).

Scheduling Briefs ("Scheduling Order") was issued on January 18, 2013. Fields filed his opening brief on or about February 19, 2013. His reply brief will be due on April 4, 2013.[2]

III. THE INITIAL DECISION

The Law Judge found in a twenty-page decision that Fields had offered nonexistent "prime bank" instruments for sale on social media websites; acted as a broker without being registered with the Commission; improperly registered his company, Anthony Fields & Associates ("AFA"), as an investment adviser with the Commission without being eligible to do so; made material misrepresentations on the websites of AFA and his purported brokerage firm, Platinum Securities Brokers ("Platinum"), and in AFA's Form ADV and brochure; and that AFA did not have a policies and procedures manual as required. Accordingly, the Law Judge found that Fields had willfully violated the antifraud provisions set forth in Sections 17(a)(1) and 17(a)(3) of the Securities Act of 1933 ("Securities Act") and in Sections 206(1), 206(2) and 206(4) of the Investment Advisers Act of 1940 ("Advisers Act") and Rule 206(4)-1(a)(5) thereunder. The Law Judge also found that Fields had violated Section 15(a) of the Securities Exchange Act of 1934 ("Exchange Act") and Sections 203A and 207 of the Advisers Act and Rule 206 (4)-7. The Law Judge found that the Division failed to prove that Fields did not have a written code of ethics and did not maintain required books and records in violation of Sections 204 and 204A of the Advisers Act and Rules 204-2(a)(11), 204-2(e)(3)(i) and 204A-1 thereunder. In view of these determinations, the Law Judge found that a cease and desist order and association and industry bars are appropriate remedies and that a Civil Money Penalty in the

[2] On February 19, 2013, Fields filed a *pro se* complaint against the Commission in the United States District Court for the Northern District of Illinois. The complaint alleges that the Commission has defamed Fields by virtue of the Initial Decision, and seeks $250 million in damages and other relief. The Division understands that the Commission's Office of General Counsel, in coordination with the U.S. Attorney Office in Chicago, will prepare an appropriate response to the Fields complaint.

amount of $150,000 should be assessed. The Findings of Fact contained in the Initial Decision, and the evidence cited in support thereof, are set forth below.[3]

A. Background

1. Anthony Fields

Fields resides in the Chicago, Illinois area and is an accountant. *See* Initial Decision ("Init. Dec.") 3; Transcript of Proceedings, May 21, 2012 ("5/21 Tr."), 23, 25. Fields was licensed as a CPA in Illinois; his license lapsed in 2003. Init. Dec. 3; 5/21 Tr. 24. Fields studied for the series 7 and series 63 examinations offered by the Financial Industry Regulatory Authority ("FINRA"), but did not take and/or pass either exam. Init. Dec. 3; 5/21 Tr. 74-76. Fields has never owned any publicly-traded stocks or bonds, except for a $100 U.S. Treasury security that he bought on Treasury Direct to see how the system worked. Init. Dec. 3; 5/21 Tr. 50-51, 190-91.

2. Anthony Fields & Associates

Fields is the sole proprietor of AFA. Init. Dec. 3; 5/21 Tr. 27. His residence is its office. Init. Dec. 3; 5/21 Tr. 40. The Law Judge found that Fields has conducted an accounting business under the AFA name since 1989, and its only revenues have come from income tax preparation. Init. Dec. 3; 5/21 Tr. 26, 47. Fields registered AFA as an investment adviser with the Commission in 2010. Init. Dec. 3; Div. Ex. 5. AFA never had any assets under management. Init. Dec. , 2; 5/21 Tr. 60-63.[4] Nor did it have any employees (other than Fields' ex-wife who was not paid and did not perform any investment advisory services). Init. Dec. 3; 5/21 Tr. 43-45.

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[3] In accordance with SEC Rule of Practice 411(d), the summary will focus on the record pertaining to the exceptions identified in Respondent's Petition for Review and on sanctions as referenced in the Scheduling Order.

[4] Two potential clients registered with AFA but never received any investment advice or paid any fees. Init. Dec. 3; 5/21 Tr. 54-59.

Fields was AFA's chief compliance officer. Init. Dec. 3; 5/21 Tr. 25, 84-85; Div. Ex. 5 at 23. AFA had a policies and procedures manual and a written code of ethics that Fields obtained from a vendor. Init. Dec. 3; 5/21 Tr. 89-97. The time when this occurred cannot be pinpointed from the evidence of record, but Fields did not finalize the policies and procedures manual until after October 2010 and did not print these documents in hard copy until after late May 2011. Init. Dec. 3; 5/21 Tr. 89-97.

3. Platinum Securities Brokers

Fields is the sole proprietor of Platinum. Init. Dec. 3; 5/21 Tr. 64. His residence is its office. Init. Dec. 3; 5/21 Tr. 64. Fields registered Platinum as a broker-dealer with the Commission in March 2010. Init. Dec. 3; 5/21 Tr. 65. He withdrew the registration, effective in September 2010, because FINRA told him that Platinum did not meet the net capital requirements. Init. Dec. 3; 5/21 Tr. 65-66, 5/22 Tr. 192. Fields claims that he resubmitted Platinum's application thereafter, but did not offer any additional evidence of this. Init. Dec. 3; 5/21 Tr. 100-04, 176, 182. The Law Judge found that there was no other corroborating evidence. Init. Dec., 3. Accordingly, the Law Judge found that Platinum was not registered after September 2010. Init. Dec. 3. Platinum never provided brokerage services to any client, and Fields was never licensed as a registered representative. Init. Dec. 3; 5/21 Tr. 66-67. Platinum never had any revenues. Init. Dec. 3; 5/21 Tr. 68. Nor did it have any employees (other than Fields' ex-wife). Init. Dec. 3; 5/21 Tr. 64-65.

B. "Prime Bank" Instruments and Social Media

1. "Prime Bank" Instruments

So-called "prime bank" schemes typically are programs offering esoteric instruments associated with international banking that derive their supposed credibility from association with

a major bank. Init. Dec. 4; Transcript of Proceedings, May 22, 2012 ("5/22 Tr."), 62-65. They involve a purported secondary market for such "prime bank" instruments as standby letters of credit, bank guarantees, bank notes, and other formulations. Init. Dec. 4; 5/22 Tr. 7, 58.[5] There is in fact no secondary market for standby letters of credit, bank guarantees, or other prime bank instruments, and schemes that purport to sell such instruments on a secondary market are fraudulent. Init. Dec. 4; 5/22 Tr. 54-55, 72.

Prime bank schemes are typically shrouded in secrecy and characterized by a general lack of information, which is inexplicable and contrary to the best interest of investors. Init. Dec. 4; 5/22 Tr. 61, 66. Potential investors may be forbidden from contacting the bank allegedly involved in the scheme. Init. Dec. 4; 5/22 Tr. 61, 63, 108.

Prime bank schemes are usually unduly complex, with layers of unknown individuals, including the provider of the purported instrument involved in the transaction, for no understandable reason. Init. Dec. 4; 5/22 Tr. 94-95. The materials often refer to "top 10" or "AAA" rated banks, and may reference products such as Treasury bills, bonds, or certificates of deposit, or institutions such as the World Bank, Federal Reserve, or SWIFT to lend credibility and sophistication to the transaction. Init. Dec. 4-5; 5/22 Tr. 59, 62, 64, 66.[6] Typically they

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[5] The ALJ found that a legitimate standby letter of credit or bank guarantee might be used in international trade. For a fee, a bank, which has conducted due diligence on the buyer's credit, will guarantee payment to the seller of goods in another country; the seller can expect to receive any payment due because, in effect, the buyer's credit is replaced by the bank's. See Common Fraud Schemes, Federal Bureau of Investigation, http://www.fbi.gov/scams-safety/fraud (last visited Dec. 4, 2012); CitiBusiness Trade Services, Citibank Online, https://online.citibank.com/US/JRS/pands/detail.do?ID=CitiBizTrade (last visited Dec. 4, 2012). A standby letter of credit, therefore, is a private transaction between such a buyer and his bank; it is not possible to collateralize or securitize it and sell it on a secondary market. 5/22 Tr. 39, 41, 43, 46, 50, 55. Fields acknowledged that the purchaser in the purported secondary market would be subject to due diligence by the bank and would need the bank's authorization to purchase the guarantee. 5/21 Tr. 133.

[6] SWIFT stands for the Society for Worldwide InterBank Financial Telecommunication, which is a secure global communications network that is used by financial institutions to exchange information regarding transactions; it does not transfer funds. 5/22 Tr. 66-67; see also Swift Company Information, http://www.swift.com/info?lang=en (last visited Dec. 4, 2012).

refer to complex transactions of large magnitude that do not make economic sense. Init. Dec. 4; 5/22 Tr. 50-51, 64, 93.

The Law Judge noted that several federal and state government websites, of which official notice was taken pursuant to 17 C.F.R. § 201.323, warn against prime bank schemes. Init. Dec. 5.[7] For example, the TreasuryDirect website lists common terms associated with prime bank instrument fraud, some of which are a misuse of legitimate banking terms; they include "fresh cut," "roll," "debentures," "guarantees," "letters of credit," "seasoned," "mid-term notes," "tranche," "SWIFT," and "standby letter of credit." Init. Dec. 5.

2. Social Media

LinkedIn is an online social network with a business to business ("B2B") emphasis. Init. Dec. 5; 5/21 Tr. 111. LinkedIn has various discussion groups that users, such as Fields, can join. 5/21 Tr. 111-12. Such social media sites are an efficient way to reach potential investors. Init. Dec. 5; 5/22 Tr. 68-69. The Law Judge found that Fields advertised the availability of "bank guarantees" ("BGs") and "Mid-Term Notes" ("MTNs") on LinkedIn and on two other B2B sites, TradeKey and E-2/Commerce, during 2010 and 2011. Init. Dec. 5; 5/21 Tr. 112-15. Fields' profile on LinkedIn during 2010 and 2011 contained links to AFA's and Platinum's websites. Init. Dec. 5; 5/21 Tr.

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[7] See Common Fraud Schemes, Federal Bureau of Investigation, http://www.fbi.gov/scams-safety/fraud (last visited Dec. 4, 2012); Types of Consumer Fraud, Office of the Comptroller of the Currency, http://www.occ.gov/topics/consumer-protection/fraud-resources/types-consumer-fraud.html (last visited Dec. 4, 2012); Prime Bank Instrument Fraud, TreasuryDirect, http://www.treasurydirect.gov/instit/statreg/fraud/fraud_primebank.htm (last visited Dec. 4, 2012); New York Fed Archived Fraud Alerts, Federal Reserve Bank of New York, http://www.ny.frb.org/banking/FRBNY_archived_fraud_alerts.html (last visited Dec. 4, 2012); "Prime Bank" Scams, Connecticut Department of Banking, http://www.ct.gov/dob/ cwp/view.asp?a=2235&q=297952 (last visited Dec. 4, 2012); How Prime Bank Fraud Works, U.S. Securities and Exchange Commission, http://www.sec.gov/divisions/enforce/primebank/ howtheywork.shtml (last visited Dec. 4, 2012).

163-68; Div. Exs. 57, 57A. His profile on TradeKey also contained a link to AFA's website. Init. Dec. , 5; 5/21 Tr. 215-16; Div. Ex. 64.

C. Representations to Division Staff Concerning Transactions

On May 31, 2011, in a misguided attempt to show that AFA was qualified to be a Commission-registered investment adviser, Fields submitted to Division staff "contracts that I personally am engaged in as a Facilitator/introducer of Bank Gaurantees [sic] and MTNs (Mid Term Note). These contracts are very substantial and my commission on these contracts will provide the means necessary to support my advisery [sic] firm." Init. Dec. 5; Div. Ex. 37 at 1 and passim. The "contracts" were also admitted into evidence as Division Exhibits 13, 14, and 15.

Division Exhibit 13 is a document, dated March 7, 2011, attributed to W&F Investment Holding Ltd. ("W&F") relating to "Fresh Cut BG" issued by HSBC, Barclays Bank UK, or AA+ rated bank for 5 million to 10 billion "EURO/USD," with "tranches" in the tens and hundreds of millions. Init. Dec. 6. The document also identifies its subject as "SBLC," referring to "Standby Letter of Credit." Init. Dec. 6. The price is indicated as 42% of the face value of the instruments plus a 2% commission. Init. Dec. 6. [8] The document contains several warnings against contacting the banks purportedly involved, including a capitalized warning at the bottom of each page: "UNAUTHORIZED BANK CONTACTS RESULT IN CONTRACT TERMINATION." Init. Dec. 6.

Division Exhibit 14 is a document, dated March 17, 2011, attributed to IF Capital SA Limited with similar terms and a prohibition against contacting the banks purportedly involved.

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[8] Fields testified that a price such as "40+1%" meant a sales price of 40% of the face value of the instrument plus a commission of 1% of the face value. Init. Dec. 6. 5/21 Tr. 127-31.

Init. Dec. 6. Division Exhibit 15 is a document, dated March 16, 2011, attributed to Ocean Diamond International Limited and W&F relating to "Slightly Seasoned" €50 billion "Medium Term Notes, Senior Unsubordinated Bank debentures (cash-backed)" paying 7.5% interest. Init. Dec. 6. The price is indicated as 75% of the face value of the instruments plus a 1% commission. Init. Dec. 6. The document contains a prohibition against contacting the banks purportedly involved. Init. Dec. 6.

D. Disclosures Made to Potential Investors

1. AFA's Form ADV

According to the Commission's public official records, of which the Law Judge took official notice pursuant to 17 C.F.R. § 201.323, AFA's July 15, 2010, Form ADV,[9] in effect as of the time of the hearing, contains a number of unambiguously false representations – that AFA had assets under management of $25 million or more, that it had as clients high net worth individuals, pooled investment vehicles, and corporations or businesses, and that it had assets under management totaling $400 million[10] in four accounts. Init. Dec. 6. The Form ADV is also Division Exhibit 5. These representations were false because AFA did not have, and never has had, any assets under management; nor did it have four clients. Init. Dec. 6.[11] Attached to the Form ADV is AFA's brochure, which also contains inaccuracies, such as referring to Platinum as a registered broker-

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[9] Form ADV is the uniform form used by investment advisers to register with the Commission and state securities authorities. An investment adviser's most recent Form ADV appears on the Investment Adviser Public Disclosure website. Investment Adviser Public Disclosure, U.S. Securities and Exchange Commission, http://www.adviserinfo.sec.gov/IAPD/Content/IapdMain/ iapd_SiteMap.aspx (last visited Dec. 4, 2012).

[10] Fields explained the claim that AFA had hundreds of millions of dollars of assets under management as based on the concept of "unearned revenue." Init. Dec. 6; 5/21 Tr. 60-63, 79, 82-83, 101.

[11] Fields had discussions with as many as four potential clients but could not recall all of their names. Init. Dec. 6; 5/21 Tr. 80-83.

dealer, which was not true as of at least September 2010 when Platinum's withdrawal became effective. The brochure is also Division Exhibit 6. The brochure indicates that AFA specializes in investments in U.S. Treasury and other U.S. government securities. Init. Dec. 6-7.

2. Misrepresentations to Potential Investors on AFA's and Platinum's Websites

a. $50 Billion Contract

Division Exhibit 20 is a printout, on May 20, 2011, of AFA's website. Init. Dec. 7; 5/21 Tr. 177-78. Under a "What's New" banner, the website states, "Anthony Fields & Associates has acquired a $50 billion contract!" The $50 billion contract is Division Exhibit 9. Init. Dec. 7; 5/21 Tr. 195. The document, dated January 6, 2010, specifies AFA as the seller and East West Trading, LLC ("East-West"), as the purchaser of $50 billion of U.S. Treasury Strips with "possible rolls and extension" and tranches in the hundreds of millions of dollars. Div. Ex. 9. The price is indicated as 22% of the face value of the instruments plus a 1% commission. Div. Ex. 9. Fields dealt with Vincent Bach ("Bach") as the representative of East-West. Init. Dec. 7; 5/21 Tr. 197.

Fields had never dealt with, or even heard of, Bach before January 2010, but understood that Bach was a banker in Washington, D.C., and that Bach's grandfather owned a diamond mine in South Vietnam. Init. Dec. 7; 5/21 Tr. 197-98. Fields did not do any due diligence on Bach or East-West. Init. Dec. 7; 5/21 Tr. 198-99. Fields never received any money from East-West because he never sold it any securities. Init. Dec. 7; 5/21 Tr. 199. This was because Fields did not have $200 million to obtain the tranches to sell to East-West. Init. Dec. 7; 5/21 Tr. 199. Fields stated that he was planning to obtain the $200 million from Leston Williams ("Williams") of Lakeshore Ventures Group, Inc. ("Lakeshore"), via a contract that is Division Exhibit 16. Init. Dec. 7; 5/21 Tr. 201-03. However, that document calls for AFA, not Lakeshore, to procure the funds. Div. Ex. 16. Fields

addressed the discrepancy by stating that the written words of the document did not accurately describe how the contract was structured. Init. Dec. 7; 5/21 Tr. 203-05.

In a nutshell, the AFA website's representation that AFA had acquired a $50 billion contract was false: aside from the fact that his supposed buyer was a shadowy figure about whom Fields did no due diligence, Fields did not have any U.S. Treasury Strips and did not have the funding to buy them. His claim that he was planning to obtain the funding from Williams and Lakeshore in the face of a contract between AFA and Lakeshore that called for AFA, not Lakeshore, to procure the funding, underscores the misrepresentation. Init. Dec. 7.

b. Platinum – a "Primary Dealer"

The AFA website also notes that U.S. Treasury securities are issued through auctions and that participation in the auctions is limited to primary dealers that trade directly with the Federal Reserve System. Init. Dec. 7; Div. Ex. 20 at 3. The website continues, "[c]urrently there are 44 designated primary dealers. Our firm has an arrangement with the 45th primary dealer." Id. This was a reference to Platinum, which was not, in fact, a primary dealer, as Fields conceded, Init. Dec. 7; 5/21 Tr. 187, and according to the website of the Federal Reserve Bank of New York, of which official notice is taken pursuant to 17 C.F.R. § 201.323, which lists the primary dealers.[12] Currently there are twenty-one primary dealers; there were twenty as of February 2, 2011, and eighteen between that date and July 27, 2009. Init. Dec. 7-8. In harmony with representations on the AFA website, Platinum's website stated that it was a broker-dealer in U.S. Government securities and that

[12] Primary Dealers List, Federal Reserve Bank of New York, http://www.newyorkfed.org/markets/pridealers_current.html (last visited Dec. 4, 2012).

it had "a portfolio of over 25,000 U.S. Government securities." Init. Dec. 8; 5/21 Tr. 168, 174-76; Div. Ex. 21 at 3.

c. Staff

Although AFA and Platinum had no employees (other than Fields' ex-wife), AFA's website stated, "[o]ur group of investment professionals are on hand when you need them!" Init. Dec. 8; 5/21 Tr. 177-81; Div. Ex. 20 at 1-3. Likewise, Platinum's website stated, "[w]e have a dedicated team of Government securities researchers waiting for your call 24 hours a day." Init. Dec. 8; Div. Ex. 21 at 4.

d. Respondent's Explanations of AFA, Platinum Website Representations

Fields explained the representation on Platinum's website that it had "a portfolio of over 25,000 U.S. Government securities" as meaning that various brokers, such as Fidelity or Merrill Lynch, had such securities, and "[t]heir inventory is my inventory." Init. Dec. 8; 5/21 Tr. 175. Similarly, he explained the representation on the AFA website about "[o]ur group of investment professionals" as including all persons with whom he had contact at such entities as "Pershing, Fidelity, Merrill Lynch, DTCC," etc. Init. Dec. 8; 5/21 Tr. 180-81. He used similar reasoning to explain his claimed relationship to "top ten world banks" such as Barclays (recently opened checking account), HSBC (has spoken by telephone to a director and registered to open an account), JP Morgan Chase (checking account, knows an officer with whom he has not discussed BGs), and UBS (knows an officer). Init. Dec. 8; 5/21 Tr. 108-10, 136-43.

e. Respondent's Offerings on Social Media

Fields advertised the availability of BGs and MTNs on LinkedIn and on two other B2B sites, TradeKey and E-2/Commerce, during 2010 and 2011. Init. Dec. 8; 5/21 Tr. 112-17. He received approximately twenty to forty responses. Init. Dec. 8; 5/21 Tr. 115-16, 209-11; Div. Ex.

24 at 3, Div. Ex. 24A at 1. Fields does not have copies of some of these postings and communications as they have been deleted from LinkedIn and TradeKey; he did not maintain copies of this material himself. Init. Dec. 8; 5/21 Tr. 151-53; Div. Ex. 24 at 1.

For example, Fields posted notices to members of a LinkedIn discussion group named "Trade Platforms – Private Placement Programs (PPPs) – High Yield" offering BGs and MTNs and inviting interested persons to contact him. Init. Dec. 8. One notice offered "FRESH CUT BGs," "Cash Backed," issued by Deutsche Bank, Credit Suisse, HSBC, JP Morgan Chase, BNP Paribas, UBS, RBS, or Barclays for $500 billion with the "First Tranche" at $500 million. The price is indicated at 40% of the face value of the instrument plus a 1% commission to be paid to "Buy Side and Sell Side Consultants 50/50." Init. Dec. 8-9; 5/21 Tr. 121-32; Div. Ex. 25 at 2, Div. Ex. 25A at 2. Another notice to the same discussion group offered "FRESH CUT MTNs" issued by the same banks for $500 billion at 7.5% interest with the "First Tranche" at $500 million. The price is indicated at 30% of the face value of the instrument plus a 1% commission to be paid to "Buy Side and Sell Side Consultants 50/50." Init. Dec. 9; 5/21 Tr. 145-48; Div. Ex. 25 at 4, Div. Ex. 25A at 1. Fields received at least one response to this posting. Init. Dec. 9; 5/21 Tr. 207-11; Div. Ex. 25 at 4, Div. Ex. 25A at 1. Fields believed that the seller of both the BGs and MTNs was "Don Morgan," who was located in Switzerland and who Fields believed to be a relative of J.P. Morgan. Init. Dec. 9; 5/21 Tr. 141-42, 145, 148. Fields had never met, spoken with, or corresponded with "Don Morgan," but had corresponded with his representative whose name and location Fields was unsure of. Init. Dec. 9; 5/21 Tr. 145.

Fields posted another notice to the over 1,000 members of a LinkedIn discussion group named "Medium Term Notes (MTN) Exchange" offering "Slightly Seasoned" MTNs at a price of 66% plus 1% and received at least one response. Init. Dec. 9; 5/21 Tr. 160-61; Div. Ex. 24 at 3,

Div. Ex. 24A at 1. He also offered "fresh cut" BGs at a price of 40% plus 1% and "slightly seasoned" BGs at a price of 56% plus 1% "cash backed" "top 10 world banks" to a group named "Real Deals for MTN's and BG's." Init. Dec. 9; 5/21 Tr. 154-59; Div. Ex. 24 at 2, Div. Ex. 24A at 4. Fields expected to receive commissions for his role in the proposed transactions. Init. Dec. 9; 5/21 Tr. 131, 148, 161-62. Fields had not, up to that point, brokered any transactions in the instruments. Init. Dec. 9; 5/21 Tr. 158-59. He cannot now recall the identity of the seller[s] in the proposed transactions. Init. Dec. 9; 5/21 Tr. 159, 162.

In October 2010, Steve Dills ("Dills") responded to a posting by Fields on LinkedIn concerning a proposed transaction in MTNs. Init. Dec. 9; 5/21 Tr. 219-25; Div. Ex. 24 at 11, Div. Ex. 24A at 3. Fields told Dills that he was a principal of AFA. Init. Dec. 9; 5/21 Tr. 221. He emailed Dills on October 26, "I spoke to the sellers rep yesterday and they are putting things in motion." Init. Dec. 9; Div. Ex. 24 at 11, Div. Ex. 24A at 3. Fields did not actually have any MTNs but was hoping to find a seller and broker a transaction. Init. Dec. 9; 5/21 Tr. 223-25. Andreas Finger was the purported seller of the MTNs, but the identity of the real seller was secret. Init. Dec. 9; 5/21 Tr. 225, 5/22 Tr. 184. The transaction with Dills did not come to fruition, but Fields believes that Dills actually did purchase the MTNs, without Fields' intermediation, and then sold them to someone else. Init. Dec. 9; 5/21 Tr. 225, 5/22 Tr. 183-84.

f. Respondent's Role in the Events at Issue

Fields viewed his role as being a broker – limited to introducing a buyer and seller as an intermediary. Init. Dec. 9; 5/21 Tr. 143, 225, 5/22 Tr. 187, 199-200. He expected to be paid commissions for his role. Init. Dec. 9; 5/21 Tr. 131, 148, 161-62. Fields had not actually met, and was vague about the identity of, various individuals who were key to proposed transactions by which he was to have access to large quantities of BGs and MTNs. Init. Dec. 9; 5/21 Tr. 136-44,

148-49, 159, 162, 196-98, 201-02, 225, 5/22 Tr. 183-84. Fields believes that there is a secondary market for everything, even if the secondary market is a black market.[13] Init. Dec. 9; 5/22 Tr. 186, 190-91.

g. Plans for the Future

Fields was equivocal on whether he will continue to be involved with BGs and MTNs in the future. Init. Dec. 10; 5/21 Tr. 119-21, 5/22 Tr. 200-02.

IV. RESPONDENT'S EXCEPTIONS TO THE INITIAL DECISION

The "Statement of Issues to be Reviewed" ("Statement") contained in the Petition asserts that the Initial Decision failed to address the Division's allegations, asserts that no evidence supported those allegations and asserts that Fields affirmatively proved the existence of the securities he offered.[14] Thus, Fields has asserted the following exceptions to the Initial Decision:

First Exception.

The Allegation That The Respondent Was Selling Fraudulent Securities. The initial decision did not address the allegation made by the Division of Enforcement, that respondent was selling fictitious securities. In addition the Division of Enforcement failed to provide any evidence, written or oral, that would substantiate their allegation. *See* Petition, p. 3-4, ¶1.

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[13] As evidence that a secondary market exists for BGs and MTNs, Fields offered Respondent Exhibit 1, which contains a purported Credit Suisse "Letter of Guarantee" containing obvious typos. I.D. 9; Resp. Ex. 1 at 1. It is dated, variously, Nov. 4 201 [sic] (in the heading) and Oct. 4, 201 [sic] (in the body), and "shall be duly honoured" is rendered "shall by duly honoured." Id. The exhibit also includes a purported Bloomberg screenshot of a purported Deutsche Bank MTN with an ISIN that did not link back to Bloomberg. I.D. 9; 5/22 Tr. 176-79; Resp. Ex. 1 at 2. These documents are unquestionably fakes and do not provide evidence that there is a secondary market in BG or MTN instruments. Init. Dec. 9.

[14] Although the Statement sets forth four numbered paragraphs, it appears that Paragraphs 2 and 3 are intended to state the same exception.

Elsewhere, Fields indicates that this exception pertains to the Initial Decision's findings with respect to his representation that he had a large inventory of U.S. Treasury securities and contracts to purchase and sell billions of dollars' worth of such securities. *See* Petition, p. 5.

Second Exception.

> The Allegation That The Respondent was Selling Fictitious Financial Instruments (Bank Guarantees (BGs) and European Mid Term Notes (MTNs) (EMTNs) The initial decision did not address the allegation made by the Division of Enforcement, that respondent was selling fictitious securities (Securities that do not exist) which was one of the core issues of their allegations. *See* Petition, p. 4, ¶ 2.
>
> The Allegation that the respondent was advertising the Sell of Fictitious Prime Bank Instruments on Social Media websites. Although the allegation was based on the Division's concept that Bank Guarantees and MtNs [sic] did not exist, which was proven to be the logic of individuals that were unaware of the existence of these financial instruments. [sic] *See* Petition, p. 4, #¶ 3.

Third Exception.

> Judge's Initial Order prohibiting association with Brokers, advisers, etc., permanently The initial decision by the Administrative Law Judge is very unjust and the penalty should not be as excessive as that which is handed down from a Judge to a convicted murderer. *See* Petition, p. 4, ¶ 4.[15]

In addition, though unclear whether intended as separate exceptions, Fields' opening brief ("Resp. Brief") includes the arguments that "[t]here is no recklessness or fraud or intent to defraud if the respondent purchased the securities for his own benefit" (Resp. Brief, 8, ¶ 33) and that his conduct cannot be considered reckless because his target market was accredited investors

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[15]The Petition also contains what can only be described as a bizarre section titled "supplemental information" (Petition, 6-8) and attaches an equally bizarre "Exhibit D" regarding a purported 10 billion euros transaction involving Fields. Fields asserts that the president of Ghana has expressed concern with the Division's allegations in either this proceeding or some other proceeding (it is unclear which) because they have caused a bank to freeze accounts and thereby interrupt some type of major transaction involving Fields, an airline and prime bank securities. Although these events are said to have occurred in March 2012, Fields did not offer "Exhibit D" as evidence at the May 2012 hearing though he did claim to have had dealings with entities in Ghana. 5/21 Tr. 118. The Petition also attaches an "Exhibit C"– which Fields asserts is an example of a $100 million "letter of Guarantee from Credit Suisse" – that also was not offered at the hearing. Finally, the Petition has a tab for an "Exhibit A" but no actual document is associated with that tab. Fields has not filed a motion for leave to submit additional evidence in accordance with SEC Rule of Practice 402.

in private placements (Resp. Brief, 9-11, ¶¶37-44). The Division will address those arguments in the course of addressing Defendants' formally stated exceptions. Fields seems to make the additional argument that the Initial Decision would be defective under the Private Securities Litigation Reform Act ("PSLRA") (Resp. Brief, 8-9, ¶¶34-35) but that is an obvious *non sequitur* and will not be addressed herein since the PSLRA does not apply in SEC enforcement actions.

V. ARGUMENT

A. Standard of Review

The Commission is entitled to conduct *de novo* review of initial decisions of hearing officers. As stated in Rule 411(a) of the SEC Rules of Practice, the Commission may "make any findings or conclusions that in its judgment are proper and on the basis of the record." 17 C.F.R. § 201.411(a). The Commission has observed that Section 7(c) of the Administrative Procedure Act [5 U.S.C. § 556(d)] provides that an order issued by an administrative agency must be supported by "reliable, probative and substantial evidence" and stated "[t]hat standard has traditionally been held to be satisfied when the agency decides on the 'preponderance of the evidence.'" *Norman Pollisky, Allan Harris, Aaron J. Gabriel,* 43 S.E.C. 458 (1967) at *1.[16] The Commission has also stated that "[c]redibilty determinations are the prerogative of the trier of fact, and are ordinarily entitled to great weight in our review of the record." *Fundamental Portfolio Advisors, Inc., Lance M. Brofman, and Fundamental Service Corporation,* Securities Act Release No. 8251, Exchange Act Release No. 48177, Advisers Act Release No. 2146, Investment Company Act Release No. 26099, 2003 WL 21658248 (July 15, 2003) at n. 57. "The

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[16] *In the Matter of Norman Pollisky* noted that the "substantial evidence" standard applies to the review of Commission orders by courts of appeal in accordance with Section 25 of the Exchange Act and similar provisions in the other federal securities law that the Commission administers. *See also, Steadman v. SEC,* 450 U.S. 91, 97-104 (1981).

Commission will reject initial fact-finders [sic] determination as to credibility only when the record contains 'substantial evidence' to the contrary." *Id., quoting C. James Padgett,* 52 S.E.C. 1257, 1277 n. 65 (1997).

SEC Rule of Practice 411(d), titled "Limitations on Matters Reviewed," provides that "[r]eview of an initial decision shall be limited to the issues specified in the petition for review of the issues, if any, specified in the briefing schedule order" unless the Commission determines otherwise. 17 C.F.R. § 201.411(d). The Petition in this case appears to specify the issues noted above in Section IV of this Brief. In addition, the Scheduling Order states that "[p]ursuant to Rule of Practice 411(d), the Commission will determine what sanctions, if any, are appropriate in this matter."

B. The Initial Decision Squarely Addresses Respondent's Misrepresentations Concerning Prime Bank Securities and Properly Finds Violations of the Anti-Fraud Provisions of the Securities Laws

Fields is simply wrong in asserting that the Initial Decision fails to address the Division's charges regarding the offering of fictitious prime bank securities. *See* Petition, 3-6: Resp. Brief, 2-6. Fields asserts that "the order was vague" and quotes the Initial Decision's ordering paragraphs [Resp. Brief, 2-4, *quoting* Init. Dec. 19-20], while ignoring its eight-page Findings of Fact and nine-page Conclusions of Law. *See* Init. Dec. 2-19. Many of the Findings and Conclusions that Fields ignores pertain to the Division's charges regarding his offering of fictitious prime bank securities.

Fields is equally wrong in asserting that the Initial Decision is unsupported by competent evidence and improperly fails to credit his evidence of the existence of prime bank securities. *See* Petition, 4-8; Resp. Brief, 4-8. The Initial Decision's Findings are supported by substantial documentary evidence that the Division introduced at the hearing, including Fields' own emails

and social media postings offering BGs and MTNs and the purported contracts he claimed governed the purchase and sales of billions of dollars' worth of such instruments. Init. Dec. 5-6, 8-9. The Initial Decision is also supported by critical admissions made by Fields during his testimony, as well as the inherent implausibility of his testimony. For example, Fields admitted that he did not have $500 billion worth of BGs – or any BGs at all - at the time he was posting messages on LinkedIn about their availability on specified terms. 5/21Tr. 135-136. Fields has never bought or sold a BG. 5/21 Tr. 158. Fields has never brokered the sale or purchase of an MTN. 5/21 Tr. 158-159. In fact, Fields had never bought or sold a security of any kind at the time of his postings about $1 trillion worth of BGs and MTNs on social media platforms. Div. Ex. 22, pp. 30-31. Moreover, Fields' only contacts with the various financial institutions that his postings named as the supposed issuers of the BGs were inconsequential, such as allegedly having once spoken on the phone with an HSBC director about BGs and his status as a checking account customer at JP Morgan Chase. 5/21 Tr. 136-140, 142-143.

Fields not only made the critical admissions noted above but was unable to provide a plausible explanation of what he thought BGs and MTNs were. Fields asserted that a BG is "a secured note from the bank saying that they would pay in the event that the holder of the guarantee default[s]." 5/21 Tr. 132. According to Fields, "if the bank issued me a bank guarantee and I reverted that bank guarantee to you, for example, or after I concluded my transaction where I needed that bank guarantee and you needed a bank guarantee and I sold it to you, then you would have to go through the due diligence by the bank in order for it to authorize me to forward it to you." 5/21 Tr. 133. Fields further asserted that "you trade [BGs] on the market but you have to get the bank to endorse the trade" and that the seller of the BG would

essentially "cosign" the buyer's application to the bank so that the buyer could use the purchased BG as a letter of credit for some specific commercial purpose. 5/21 Tr. 133-135.

Fields' description of BGs in his hearing testimony bears no resemblance to the sales pitches he made on LinkedIn, which mentioned nothing about the need for banks to endorse BGs or for the buyer to submit a bank application that Fields would cosign. But even taking Fields' hearing testimony at face value, it makes no sense. As the Law Judge correctly found based on record evidence and sources officially noticed in accordance with 17 C.F.R § 201.323:

> A legitimate standby letter of credit or bank guarantee might be used in international trade. For a fee, a bank, which has conducted due diligence on the buyer's credit, will guarantee payment to the seller of goods in another country; the seller can expect to receive any payment due because, in effect, the buyer's credit is replaced by the bank's. See Common Fraud Schemes, Federal Bureau of Investigation, http://www.fbi.gov/scams-safety/fraud (last visited Dec. 4, 2012); CitiBusiness Trade Services, Citibank Online, https://online.citibank.com/US/JRS/pands/detail.do?ID=CitiBizTrade (last visited Dec. 4, 2012). A standby letter of credit, therefore, is a private transaction between such a buyer and his bank; it is not possible to collateralize or securitize it and sell it on a secondary market. 5/22 Tr. 39, 41, 43, 46, 50, 55. Fields acknowledged that the purchaser in the purported secondary market would be subject to due diligence by the bank and would need the bank's authorization to purchase the guarantee. 5/21 Tr. 133.

Perhaps Fields' most fantastic testimony concerned the alleged sellers of the prime bank securities he marketed. Fields asserted that he personally was not the seller of the BGs he advertised but instead was a "facilitator or introducer of the product." Tr. 140-142. Fields testified that "several people" were the actual sellers of the 500 billion worth of BGs advertised in Fields' LinkedIn postings. 5/21 Tr. 140-141. When asked to identify them, Fields testified that he believes an individual named "Don Morgan" was the seller "at that particular time." 5/21 Tr. 140-142. Fields does not know Don Morgan but thinks he is the grandson of the famous tycoon, J.P. Morgan. 5/21 Tr. 141-142. Fields claimed to have heard about Don Morgan from an "associate" who was a compliance director for a "trading platform" whose name he could not recall. 5/21 Tr. 141. Fields claims to have corresponded with Don Morgan's "representative,"

"Lars Gunnerson, or something to that effect," whose whereabouts Fields did not know. Init. Dec.; 5/21 Tr. 145.[17]

Fields' assertion that the Initial Decision improperly failed to credit the two-page exhibit that he introduced [Petition, 7: Resp. Brief, 6] is, to say the least, unpersuasive. The purported Credit Suisse "letter of guarantee" that Fields introduced is one-page long and contains obvious typos, nonsensical dates and other glaring internal inconsistencies. Init. Dec. 9, n. 14. The "purported Bloomberg screenshot of a purported Deutsche Bank MTN" that Fields introduced into evidence was shown to have a purported ISIN that did not link back to Bloomberg. *Id.* The Law Judge was entirely correct to conclude that these documents – which were the *only* documents Fields introduced -- were "fakes" that are not probative of the existence of prime bank securities. *Id.*[18]

The Law Judge's application of the law to the facts was also explicit and unassailable. In considering whether Fields willfully violated the antifraud provisions of the Securities and Advisers Acts [Sections 17(a)(1) and 17(a)(3) of the Securities Act and Sections 206(1), 206(2), and 206(4) of the Advisers Act and Rule 206(4)-1(a)(5) thereunder] the Law Judge correctly concluded that the BGs and MTNs which Fields offered, though fictional, were "securities" within the meaning of the

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[17] Fields also asserted that "Don Morgan" was the seller of the $500 billion worth of MTNs advertised in Fields' postings on LinkedIn. 5/21 Tr. 147-148. Thus, Fields testified that he was acting "on behalf of" Don Morgan with respect to the offering of $1 trillion dollars worth of securities, consisting of $500 billion worth of BGs and $500 billion worth of MTNs. 5/21 Tr. 149-150. Asked for documentation, Fields testified that he received a "letter of intent" but was not sure whether it was produced to the Division during the investigative phase. 5/21 Tr. 148-149. Fields did not offer any documentation at the hearing concerning Don Morgan or the $1 trillion worth of securities Fields claimed to have been offering on Don Morgan's behalf. Fields testified that he did not remember who the seller was for BGs and MTNs that he advertised in other postings on LinkedIn. Tr. 157-159 and Div. Ex. 24A, p. 4 (Post titled "Real Deals for MTN's and BG's"); 5/21 Tr. 160-162 and Div. Ex. 24A, p. 1 (Post titled "Medium Term Notes (MTN) Exchange).

[18] As previously noted, "Exhibit D" to the Petition is neither part of the record nor subject to a motion pursuant to SEC Rule of Practice 452. The materials complied in Exhibit D have no circumstantial guarantees of trustworthiness, relevance or probative value in any event. Accordingly, Exhibit D should be ignored for purposes of this appeal.

antifraud provisions. Init. Dec. 13-14. The Law Judge expressly found that Fields had "offered" to sell fictional securities, acted with at least a reckless degree of scienter and made material misrepresentations. Init. Dec. 15. The Law Judge also expressly found that Fields was involved in a scheme to defraud by attempting to broker transactions in BGs and MTNs. *Id.* Each of these conclusions is supported by the record.

Finally, Fields' assertion that "[t]here is no recklessness or fraud or intent to defraud if the respondent purchased the securities for his own benefit" (Resp. Brief, 8, ¶ 33) provides no basis to reject the Initial Decision. Whatever Fields may mean by that cryptic assertion, he has identified no evidence that the Law Judge failed to consider in finding that Fields "offered" to sell fictitious securities to potential investors with at least a reckless state of mind. Fields is no more persuasive in asserting that his conduct cannot be considered reckless because his target market was accredited investors in private placements. (Resp. Brief, 9-11, ¶¶37-44). Even accepting *arguendo* that Fields meant to target only accredited investors and leaving aside that his solicitations were widely disseminated, Fields has not cited any authority (and cannot) to support his implicit arguments that the anti-fraud laws do not apply to offers made to accredited investors and that an investment adviser's fiduciary duties do not apply to such investors. Offering fictional securities to accredited investors in private offerings is still securities fraud. In addition, reliance is not an element of violation in SEC enforcement actions.[19]

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[19] *See Geman v. SEC,* 334 F.3d 1183, 1191 (10th Cir. 2003)("[t]he SEC is not required to prove reliance or injury in enforcement actions"). *Accord SEC v. Capital Gains Research Bureau, Inc.* 375 U.S. 180, 191-92 (1963); *SEC v. Blavin,* 760 F, 2d 706, 711 (6th Cir. 1985; *SEC v. Rana Research, Inc.,* 8 F. 3d 1358, 1363 & n. 4 (9th Cir, 1993).

C. The Initial Decision Squarely Addresses Respondent's Misrepresentations Concerning U.S Treasury Securities and Multi-Billion Dollar Contracts and Properly Finds Violations of the Anti-Fraud Provisions of the Securities Laws

Fields is wrong in asserting that the Initial Decision fails to address the Division's charges regarding his various misrepresentations about U.S. Treasury Securities and supposed multi-billion dollar contracts. *See* Petition, 3-5: Resp. Brief, 2-4, 7 and 9. The Initial Decision explicitly addresses these charges and makes specific findings on the operative facts including those relating to Platinum supposedly being a "primary dealer" of U.S. Treasury securities, AFA and Platinum supposedly having "teams" of experienced professionals on staff and Fields' assertions about having a $50 billion contract, as well as Fields' various nonsensical rationales for making those blatantly false and misleading representations. *See* Init. Dec. 7-8, 13-15.

Fields is also wrong in asserting that no evidence supports the Initial Decision's findings and conclusions on these charges. Fields appears to labor under the mistaken impression that it was incumbent on the Division "to produce any securities into evidence ... that would be considered fraudulent and sold by the respondent." Petition, 5. No such evidence was required, however, because the OIP did not allege that Fields *succeeded in selling* any Treasury securities. What the OIP alleged, and what the evidence clearly showed, was that Fields *offered* a large inventory of Treasury securities for sale without having any such inventory, any right to represent that Platinum was a "primary dealer" or any basis for the many other misrepresentations he made about AFA and Platinum. *See* OIP ¶¶ 11, 17-18; Init. Dec. 2, 7-8. For example, Fields made numerous false and misleading claims on AFA's websites that he was forced to admit had no basis other than his aspirations, including the following claims:

- AFA's Company Bio page asserted that AFA "was organized to take advantage of the need to fill a gap in the Government securities market and a $2.5 billion

contract." Div. Ex. 20, p. 3. This statement was false. AFA did not have a $2.5 billion contract. 5/21 Tr. 183-184.[20]

- Fields asserted, in the "What's New" section on the AFA homepage, that "Anthony Fields & Associates has acquired a $50 billion contract!" Div. Ex. 20., p. 1. That statement was misleading at best, since AFA's supposed $50 billion contract consisted of a highly unrealistic contract that made no sense, and pursuant to which no money ever changed hands. 5/21 Tr. 194-206 and Div. Exs. 9 and 16.

- Fields asserted on the AFA Company Bio page that AFA "has an arrangement with the 45th primary dealer" of U.S. Treasury securities." Div. Ex. 20, p. 3. By "primary dealer," Fields was referring to "designated counterparties for the Federal Reserve Bank of New York in its execution of market operations to carry out U.S. monetary policy." *Id.* The statement that AFA had a relationship with a primary dealer was false. 5/21 Tr. 185-190; Init. Dec. 7-8.[21]

- Fields asserted on the AFA Company Bio page that "the management of Anthony Fields & Associates is experienced in company start-ups and securities trading in government securities in particular." Div. Ex. 20, p. 4. That statement was false as well. 5/21 Tr. 190-192.

- AFA's "Our Services" page explicitly offered to provide "Investment Advice," "Financial Planning," "Managed Discretionary Funds," and "Non Managed Discretionary Funds." Div. Ex. 20, pp. 6-7. Specific reference is made to "our expert investment team" and "our experienced investment and research team headed by Anthony Fields" despite Fields being the only person involved with AFA. These statements were misleading because Fields was the only professional associated with AFA and his experience as an investment adviser was *de minimis* at best. 5/21 Tr. 49 and 58-59.

- The "Frequently Asked Questions" section of the AFA websites contained what Fields intended as an offer to sell Treasury securities to high net worth individuals and institutional investors. Div. Ex. 20, pp. 8-9; 5/21 Tr. 192-193. That

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[20] Fields asserted implausibly that "I don't totally remember the circumstances surrounding that particular transaction, but I know it existed." 5/21/2012 Tr. 184:7-11.

[21] Fields also made false and highly misleading claims on Platinum's Website. Among these was the false assertion that Platinum had a "large, executable inventory, which provides access to more than 25,000 Government securities" and "a portfolio of over 25,000 Government securities." Div. Ex. 21, pp. 1, 3. That assertion was also false because Platinum did not have any securities inventory. Tr. 173-176. Fields's rationale for making the claim was: "I don't have... any inventory but I had the access to finding out whatever inventory you wanted to buy. I knew where to go to get it." 5/21/2012 Tr. 174:14-175:1.

statement was aspirational at best, since AFA never had any paying clients. 5/21 Tr. 58 and 192-194.

- AFA's homepage displayed a "Welcome to our Website" message which began with the statement that "Anthony Fields & Associates is Registered with the Securities and Exchange Commission as Investment Advisors." [sic] Div. Ex. 20, p. 1. AFA's website also had a "Company Bio" which stated that "Anthony Fields & Associates is an investment advisory firm registered with the Securities and Exchange Commission." Tr. 180-181 and Div. Ex. 20, p. 3. This statement was intended to convey the message that AFA was a bona fide investment advisory firm but was misleading because AFA was ineligible to register as an investment adviser with the SEC. Init. Dec. 12.

Notwithstanding his admissions, Fields appears to argue that the Law Judge erred because "the buyer was already aware of the fact the securities were not owned by the respondent and was willing to wait until the respondent acquired the funds to consummate the transaction." Petition, 5. Fields provides no record citation but presumably means to refer to his testimony concerning his purported $50 billion contract to sell U.S Treasury securities. Fields testified that he barely knew his supposed counterparties but understood they were willing to purchase securities in $200 million tranches as Fields acquired them (despite Fields having no purchase money or funding from any source). *See* 5/21Tr. 195:19-204:18. The Law Judge duly addressed this unbelievable testimony along with Fields' various rationales for his other misrepresentations about Treasury securities. Init. Dec. 7-8. The Law Judge certainly did not err in declining to credit Fields' ridiculous stories and rationales.[22]

[22] Moreover, the Law Judge's application of the law to the facts was once again explicit and well supported. In considering whether Fields violated the antifraud provisions of the Securities and Advisers Acts [Sections 17(a)(1) and 17(a)(3) of the Securities Act and Sections 206(1), 206(2), and 206(4) of the Advisers Act and Rule 206(4)-1(a)(5) thereunder], for example, the Law Judge correctly concluded that Fields violated those provisions by making material misstatements and omissions in AFA's Form ADV and on AFA's and Platinum's websites. Init. Dec. 13-15.

D. The Sanctions Imposed in the Initial Decision are Necessary and Appropriate

Fields has taken exception to the imposition of an industry bar. In addition, the Scheduling Order states that "the Commission will determine what sanctions, if any, are appropriate in this matter." As discussed below, the egregious nature of Fields' willful violations, his complete refusal to accept responsibility and the public interest, warrant significant sanctions at least in accord with the Initial Decision.

1. Sanctions Considerations

The Initial Decision correctly recognizes that, in determining sanctions, the Commission considers such factors as:

> 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*, 450 U.S. 91 (1981) (*quoting SEC v. Blatt*, 583 F.2d 1325, 1334 n.29 (5th Cir. 1978)).[23] The Commission treats violations occurring within the context of fiduciary relations with particular seriousness and due regard for the relationship of trust and confidence. *James C. Dawson,* Advisers Act Release No. 3057, 98 SEC Docket 3495, 2010 WL 2886183, at *3, 8-9 & n.16 (July 23, 2010); *Don Warner Reinhard,*

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[23] As the Law Judge noted, the Commission also considers the age of the violation and the degree of harm to investors and the marketplace resulting from the violation. *Marshall E. Melton*, 56 S.E.C. 695, 698 (2003). Additionally, the Commission considers the extent to which the sanction will have a deterrent effect. *Schield Mgmt. Co.,* Exchange Act Release No. 53201, Advisers Act Release No. 2477, 87 SEC Docket 848, 862 & n.46 2006 WL 231642 (Jan. 31, 2006). As the Commission has often emphasized, the public interest determination extends to the public-at-large, the welfare of investors as a class, and standards of conduct in the securities business generally. *See Christopher A. Lowry*, 55 S.E.C. 1133, 1145 (2002), aff'd, 340 F.3d 501 (8th Cir. 2003); *Arthur Lipper Corp.*, 46 S.E.C. 78, 100 (1975). The amount of a sanction depends on the facts of each case and the value of the sanction in preventing a recurrence. *See Berko v. SEC,* 316 F.2d 137, 141 (2d Cir. 1963); *see also Leo Glassman*, 46 S.E.C. 209, 211-12 (1975).

Exchange Act Release No. 63720, Advisers Act Release No. 3139, 100 SEC Docket 731, 2011 WL 121451, at *6 n.27 (Jan. 14, 2011) ("[T]he importance of honesty for a securities professional is so paramount that we have barred individuals even when the conviction was based on dishonest conduct unrelated to securities transactions or the securities business"). As an investment adviser (albeit one who had no clients and was not entitled to register AFA with the Commission), Fields owed clients "an affirmative duty of utmost good faith ... as well as an obligation to employ reasonable care to avoid misleading his clients." *Dawson*, 2010 WL 2886183, at *8. Yet the evidence demonstrates that Fields intentionally deceived prospective clients about his background, experience, expertise, connections to the Federal Reserve Bank of New York and the US Treasury and various well known financial institutions, not to mention extolling potential exponential returns from fictitious securities. Fields' conduct was egregious and created a substantial risk of loss for a virtually unlimited number of potential victims seeking investments or investment advice through the various forms of social media and website advertising Fields utilized.

2. Bar and Revocation

The Division requested that Fields be permanently barred from association with any broker or dealer pursuant to Section 15(b)(6) of the Exchange Act [15 U.S.C. § 78o(b)(6)], which authorizes the Commission to order such a bar on account of willful violation of any provision of the Securities Act or Exchange Act. Pursuant to Section 9(b) of the Investment Company Act of 1940 ("Investment Company Act"), the Division also requested that Fields be permanently barred from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, principal

municipal securities dealer or transfer agent on account of Fields' willful violations of Section 17(a) of the Securities Act and Sections 203A, 206(1) and 206(2) of the Adviser's Act and Rules 204A-1, 204-2 and 206(4)-(7).[24]

The Law Judge was correct in determining that Fields should be subject to the bars that the Division requested. Init. Dec. 19. Indeed, the fact that the industry bar is the only sanction that Fields has specifically challenged underscores exactly why one is needed: There is otherwise no assurance that Fields will stop committing securities fraud. Fields equivocated at the hearing as to whether he intends to offer prime banks securities in the future [Init. Dec. 10], has shown no recognition of the wrongful nature of his conduct [Init. Dec. 19], and has now filed a Petition that displays a remarkable detachment from reality. All this strongly suggests that he will offend again unless permanently barred. Furthermore, Fields has cited no evidence to support his assertion that a permanent industry bar would cause him hardship. To the contrary, the record shows that AFA and Platinum had no paying clients [Init. Dec. 3] and that Fields' supposed multi-billion dollar contracts to buy and sell securities were (to say the least) illusory. Init. Dec. 7. Accordingly, the Commission should adopt the Initial Decision's determination that a permanent association and industry bars will be ordered.[25]

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[24] Pursuant to Section 203A of the Advisers act, as amended by Section 410 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010) ("Dodd-Frank Act"), the Division also requested revocation of AFA's registration with the Commission as an investment adviser. Section 203A prohibits advisers subject to state regulation and examination regimes (including Illinois) from registering with the Commission unless they have at least $100 million in assets under management. The Initial Decision correctly finds that revocation is in the public interest and should be granted. Init. Dec. 19.

[25] A lack of a disciplinary history is not an impediment to imposing a bar for a Respondent's first adjudicated fraud violation. *Jaimie L. Solow,* Initial Decisions Release No. 357, 2008 WL 4222151, at *4 (ALJ Sept. 16, 2008) (*citing Robert Bruce Lohmann*, 56 S.E.C. 573, 582 (2003) and *Martin R. Kaiden*, 54 S.E.C. 194, 209 (1999)).

3. Cease-and-Desist Order

Sections 8A of the Securities Act, 21C(a) of the Exchange Act, and 203(k) of the Advisers Act authorize the Commission to issue a cease-and-desist order against a person who "is violating, has violated, or is about to violate" any provision of those Acts or rules thereunder. Whether there is a reasonable likelihood of such violations in the future must be considered. *KPMG Peat Marwick LLP,* 54 S.E.C. 1135, 1185 (2001). Such a showing is "significantly less than that required for an injunction." Id. at 1183-91. In determining whether a cease-and-desist order is appropriate, the Commission considers the *Steadman* factors quoted above, as well as the recency of the violation, the degree of harm to investors or the marketplace, and the combination of sanctions against the respondent. See id. at 1192; *see also WHX Corp. v. SEC*, 362 F.3d 854, 859-61 (D.C. Cir. 2004).

The Initial Decision was correct in finding that a cease and desist order should be granted. Init. Dec. 17-18. As the Law Judge found, Fields' conduct was egregious and recurrent, continuing for months. The conduct involved at least a reckless degree of scienter. The lack of assurances against future violations and recognition of the wrongful nature of the conduct goes beyond a vigorous defense of the charges. His chosen occupation in the financial industry will present opportunities for future violations. The violations were recent. Advertising fraudulent, non-existent securities for sale inherently harms the marketplace, harms the public-at-large, and adversely affects standards of conduct in the securities industry, even if no one remitted any funds to Fields.

4. Civil Money Penalty

Sections 8A of the Securities Act, 21B of the Exchange Act and 203(i) of the Advisers Act authorize the Commission to impose civil money penalties for willful violations of the

Securities, Exchange, Advisers, or Investment Company Acts or rules thereunder. In considering whether a penalty is in the public interest, the Commission may consider six factors: (1) fraud; (2) harm to others; (3) unjust enrichment; (4) previous violations; (5) deterrence; and (6) such other matters as justice may require. See Sections 21B(c) of the Exchange Act and 203(i)(3) of the Advisers Act; *New Allied Dev. Corp.*, 52 S.E.C. 1119, 1130 n.33 (1996); *First Sec. Transfer Sys., Inc.*, 52 S.E.C. 392, 395-96 (1995); *see also Jay Houston Meadows*, 52 S.E.C. 778, 787-88 (1996), aff'd, 119 F.3d 1219 (5th Cir. 1997); *Consol. Inv. Servs., Inc.*, 52 S.E.C. 582, 590-91 (1996).

The Initial Decision was correct in finding that Fields should be ordered to pay a third-tier penalty pursuant to Sections 21B(b)(3) of the Exchange Act and 203(i)(2)(C) of the Advisers Act. Under those provisions, for each violative act or omission after March 3, 2009, the maximum third-tier penalty is $150,000 for a natural person. 17 C.F.R. § 201.1004. As the Law Judge found, a $150,000 penalty is appropriate because Fields' violations "involved fraud [and] reckless disregard of a regulatory requirement" within the meaning of Sections 21B(c)(1) of the Exchange Act and 203(i)(3) of the Advisers Act. Init. Dec. 18. The Law Judge was also correct in finding that Fields' violations created a significant risk of substantial losses to other persons. Init. Dec. 18. Although the harm cannot be quantified, Fields' actions inherently harmed the marketplace and the public-at-large. Init. Dec. 18. Penalties in addition to the other sanctions ordered are in the public interest and necessary for the purpose of deterrence. See Sections 21B(c)(5) of the Exchange Act and 203(i)(3)(E) of the Advisers Act; see also H.R. Rep. No. 101-616 (1990). The Commission should adopt these findings.

CONCLUSION

For the foregoing reasons, and based upon the entire record in this matter, the Division respectfully submits that the Initial Decision was correct in finding that Fields (1) willfully violated the antifraud provisions set forth in Sections 17(a)(1) and 17(a)(3) of the Securities Act of 1933 ("Securities Act") and in Sections 206(1), 206(2) and 206(4) of the Investment Advisers Act of 1940 ("Advisers Act") and Rule 206(4)-1(a)(5) thereunder, and (2) violated Section 15(a) of the Securities Exchange Act of 1934 ("Exchange Act") and Sections 203A and 207 of the Advisers Act and Rule 206 (4)-7. The Commission should also find that the sanctions ordered by the Law Judge are warranted.

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Respectfully submitted,

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