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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-15124

In the Matter of

DAVID F. BANDIMERE and JOHN O. YOUNG

DIVISION OF ENFORCEMENT'S PRE-HEARING BRIEF

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I. INTRODUCTION

David Bandimere violated the registration and anti-fraud provisions of the securities laws when he brokered the sale of unregistered securities in two investment schemes – IV Capital and Universal Consulting Resources – to more than 60 investors from Colorado and across the United States. Bandimere raised more than $9 million from 2006 until 2010, and earned approximately $735,000 in commissions for bringing the investors into the schemes. While brokering these investments, he repeatedly misled investors by painting a rosy picture of the safety and success of the investments even though he knew of – but failed to disclose – a host of red flags and negative facts about the investment schemes and their principals. In fact, IV Capital and Universal Consulting Resources (or "UCR") were both Ponzi schemes, and the investors that Bandimere had introduced to those investments suffered devastating losses.

Bandimere unquestionably acted as a broker. He was involved in all aspects of the securities transactions in IV Capital and UCR, including meeting with investors, describing the investments, answering investors' questions, handling investors' paperwork, sending investors' funds to IV Capital and UCR, and distributing investors' returns. That alone is enough to make Bandimere a broker. On top of that, he earned substantial transaction-based compensation – one of the hallmarks of a broker – by being paid based on the amount of funds he brought into the schemes. He also unquestionably sold securities. Both IV Capital and UCR were plainly investment contracts: Bandimere's investors paid money and anticipated profits based on the efforts of IV Capital and UCR, not based on any efforts of their own. But despite brokering securities, neither Bandimere nor the offerings of the investments he sold were ever registered with the Commission.

In addition to acting as an unregistered broker and selling unregistered securities, Bandimere repeatedly misled his investors. He consistently painted a positive picture of IV Capital and UCR, describing their consistent returns, touting his experience with and the skills of the principals, and generally assuring investors that these investments were good options. Bandimere told many investors that each investment was operated by talented traders involved in a variety of stocks, bonds, commodities, and bank notes. Critically, he promoted the investments on the purported quality of the traders and not on the quality of any particular market in which these individuals operated. However, Bandimere knew – but did not disclose – various red flags and negative facts, including that the principal of UCR had a history of failed financial dealings; that the principal of IV Capital had a previous a run-in with the SEC; that IV Capital and UCR lacked basic financial and account documentation; and that there were months where Bandimere didn't receive all of the funds he was promised from the investments. In addition, Bandimere failed to disclose his compensation arrangement: that he was being paid substantial commissions based on the amount of investments made, which further called into question the sustainability of the schemes. As a result of generally seeing only the positive side of the investments, numerous individuals made investments that they otherwise would not have made.

The result of Bandimere's conduct was devastating to his investors. Many invested all or nearly all of their life savings through Bandimere. When IV Capital and UCR collapsed, the financial impact was extraordinary. For example, one investor – Rick Moravec – was forced to sell his home in Colorado and move to what was essentially an unfinished garage in northern Wisconsin. Another – Deborah Pickering – suffered such severe financial and physical consequences that she was recently evicted from her brother's home and cannot travel to testify at the upcoming hearing. Put simply, Bandimere took nearly everything from some of his

investors, put that money into schemes that he knew had serious risks and red flags, and as a result many investors suffered life changing financial losses.

As the Commission has previously recognized, broker registration requirements – and the accompanying training and regulatory standards – play a critical role in protecting investors. With a properly trained and registered broker, "[i]nvestors are assured that" the broker "ha[s] the requisite professional training and that they must conduct their business according to regulatory standards." Persons Deemed Not to Be Brokers, Exchange Act Release No. 22172, 33 SEC Docket 652, 1985 WL 634795, at *2 (June 27, 1985). "Registered broker-dealers are subject to a comprehensive regulatory scheme designed to ensure that customers are treated fairly, that they receive adequate disclosure and that the broker-dealer is financially capable of transacting business." *Id.* This case demonstrates precisely why this registration scheme is so important. Instead of treating investors fairly and making sure they received all relevant information, Bandimere took significant sums of money – in some cases nearly everything the investors had – and placed those funds in investments that he claimed were good despite myriad red flags, all the while pocketing nearly three quarters of a million dollars in commissions. Bandimere should be found liable for the violations charged in the OIP. Bandimere should be ordered to disgorge those commissions and pay a civil penalty as well. And Bandimere should be barred from ever participating in the securities industry again.

II. BACKGROUND

A. Respondent and Related Parties

1. Bandimere

Bandimere is a resident of Golden, Colorado. He was 67 years old at the time the OIP was issued. He was the managing or co-managing member of the three LLCs – Victoria

Investors, Ministry Minded Investors, and Exito Capital – through which investors' money was pooled and sent to IV Capital and UCR. He has never been registered with the Commission as a broker or dealer or investment adviser and has never been associated with a registered broker or dealer or investment adviser. Even so, he acted as an unregistered broker in selling the IV Capital and UCR investments at issue in this matter. Indeed, in connection with those investments, he was paid nearly three-quarters of a million dollars in commissions (which Bandimere calls "management fees").

2. The LLCs

a. Victoria Investors LLC

Victoria Investors LLC ("Victoria") is a Colorado LLC formed in April 2007. Bandimere managed Victoria. Victoria was used by Bandimere to collect investor funds to invest in IV Capital and UCR. Victoria has never been registered with the Commission.

b. Exito Capital LLC

Exito Capital LLC ("Exito") is a Colorado LLC formed in June 2007. Exito was co-managed by Bandimere and Cameron Syke, an attorney from Denver, Colorado. Exito was used by Bandimere to collect investor funds to invest in IV Capital and UCR. Exito has never been registered with the Commission.

c. Ministry Minded Investors LLC

Ministry Minded Investors LLC ("MMI") is a Colorado LLC formed in September 2008. Bandimere managed MMI. As with the other LLC's, MMI was used by Bandimere to collect investor funds to invest in IV Capital and UCR. MMI has never been registered with the Commission.

3. Larry Michael Parrish and IV Capital

Larry Michael Parrish ("Parrish") was 47 at the time the OIP was issued, and was during the relevant time period a resident of Walkersville, Maryland. Parrish was the president and sole director of IV Capital, a Nevis corporation that Parrish owned and managed. IV Capital purported to be a proprietary trading company with traders in the U.S. and U.K. Neither IV Capital nor IV Capital securities offerings were ever registered with the Commission.

On March 7, 2011, the Commission brought a federal court action against Parrish alleging that IV Capital was a Ponzi scheme. The Commission obtained a default judgment against Parrish in 2012. Among other things, the district court found that Parrish had violated Section 5 of the Securities Act by offering unregistered securities in IV Capital, as well as finding violations of the anti-fraud provisions, broker registration provisions, and requirements of the Advisers Act. *See SEC v. Parrish*, No. 11-CV-00558-WJM-MJW, 2012 WL 4378114 (D. Colo. Sept. 25, 2012). The U.S. Attorney's office for the District of Maryland indicted Parrish, and on May 28, 2013 Parrish pled guilty to wire fraud. *See* Plea Agreement, Doc. # 71, *United States v. Parrish*, No. 12-CR-00342 (D. Md. May 28, 2013). Parrish was sentenced to 108 months of imprisonment and ordered to pay $4 million in restitution. *See* Judgment, Doc. # 101, *United States v. Parrish*, No. 12-CR-00342 (D. Md. Feb. 5. 2014).

Previously, in April 2005, the Commission brought an action against Parrish for his involvement in a prime bank scheme. *See SEC v. Z-Par Holdings, Inc.*, No. 05-CV-1031 (D. Md. filed Apr. 14, 2005); *see also* Litigation Release No. 19185, 85 SEC Docket 788, 2005 WL 873454 (Apr. 15, 2005). In that case, Parrish consented to a preliminary injunction, an asset freeze under which $7.5 million was returned to investors, and a permanent injunction. *See* Litigation Release No. 20121 (May 17, 2007), *available at* https://www.sec.gov/litigation/

litreleases/2007/lr20121.htm. Parrish also consented to an administrative order barring him from associating with any broker or dealer, with the right to re-apply for association after at least five years. *In the Matter of Parrish*, Exchange Act Release No. 55779, 90 SEC Docket 1786, 2007 WL 1452642 (May 17, 2007).

4. Richard Dalton and Universal Consulting Resources

Richard Dalton ("Dalton") was 65 at the time the OIP was issued, and was during the relevant time period a resident of Golden, Colorado. Dalton was also the general manager, director of finance, and sole employee of Universal Consulting Resources ("UCR"), a New Mexico LLC whose principal place of business was Dalton's home. UCR purported to engage in international bank note and diamond trading. Neither UCR nor UCR securities were ever registered with the Commission.

On November 16, 2010, the Commission brought a federal court action against Dalton and UCR alleging UCR was a Ponzi scheme. *SEC v. Universal Consulting Resources LLC*, 10-CV-02794-REB-KLM, 2011 WL 6012536, at *1 (D. Colo. Dec. 1, 2011). The Commission obtained a default judgment on February 28, 2012. *See* Amended Default Judgment, Doc. # 99, *SEC v. Universal Consulting Resources LLC*, 10-CV-02794-REB-KLM (D. Colo.). Among other things, the district court found that Dalton had violated Section 5 of the Securities Act by offering unregistered securities in UCR, as well as finding violations of the antifraud and broker registration provisions. *See SEC v. Universal Consulting Resources LLC*, 10-CV-02794-REB-KLM, 2011 WL 6012536, at *3 (D. Colo. Dec. 1, 2011). Dalton was also barred by the Commission from association with a broker, dealer, investment adviser, municipal securities dealer, or transfer agent, and from participating in an offering of penny stock. *In the Matter of Richard Dalton*, Exchange Act Release No. 66547, 103 SEC Docket 634, 2012 WL 1028955

(Mar. 9, 2012). In addition, Dalton was indicted by the U.S. Attorney's Office for the District of Colorado for conduct in connection with the sale of interests in UCR, pled guilty to money laundering, and was sentenced to 120 months of imprisonment. *See United States v. Dalton*, No. 11-CR-430-CMA-01 (D. Colo. June 30, 2013).

Dalton is a long-time friend of Bandimere's.

B. Bandimere Begins Selling IV Capital Securities to Investors.

Dalton introduced Bandimere to Parrish in 2005. Dalton – who Bandimere understood to be an employee of Parrish's – assisted in setting up a meeting in Denver with Bandimere and his attorney during which Parrish explained the IV Capital investment. Parrish explained to Bandimere that the funds invested in IV Capital were kept in an account but, pursuant to an arrangement Parrish had with a bank, the funds were used to receive up to ten times the depository value of the account in leverage for trading. Parrish further explained that he had several people who actually traded the funds, including a protégé in New Jersey and a trader in Texas. Bandimere understood that IV Capital would pay investors monthly returns of 2.5%, which equates to annual returns of 30%. In 2005 and 2006, Bandimere invested approximately $200,000 with Parrish and IV Capital.

Approximately six months after Bandimere first invested, Bandimere began handling other people's investments in IV Capital. In 2006, Bandimere's son, mother-in-law, a few friends, and an employee of Bandimere's son became interest in investing in IV Capital based on their conversations with Bandimere. They gave Bandimere their own money, which he deposited in his personal account and then passed along to IV Capital. Bandimere would divvy up the investment returns that came into his personal account between himself and these other investors. Later in 2006, Bandimere discussed the IV Capital investment at a board of directors' meeting of

Global Connection International, a Christian non-profit on whose executive committee Bandimere served. Cameron Syke, a Denver-based attorney, also served on the Global Connections board. Bandimere and Syke had further discussions about the IV Capital investment, and in December 2006 Bandimere and Syke met with Parrish. Following that meeting, in January 2007, Global Connections invested $50,000 with Parrish, and Syke personally invested $80,000 with Parrish through Bandimere's personal account.

C. Bandimere Creates LLCs to Facilitate the Sale of Securities in IV Capital and UCR.

Syke expressed concern to Bandimere that he was handling other people's funds through his own personal checking account. As a result, Bandimere, with Syke's assistance, formed two Colorado LLCs in order to facilitate investments from others into IV Capital (rather than having those investments flow through Bandimere's personal account) in early 2007. Exito, which Syke co-managed with Bandimere, was initially established to include only a small group of accredited investors – Syke was concerned that anything more than a small group of sophisticated investors could lead to liability under the securities laws. Victoria was managed by Bandimere only, and included non-accredited investors. MMI, which Bandimere formed in late 2008 without the assistance of Syke, was also managed by Bandimere only. Although the LLCs started with a relatively small number of investors, ultimately Bandimere raised over $9 million from more than 60 investors located across the United States. While some of these investors were family and friends, Bandimere did not have a business or personal relationship with all of these investors.

Syke's testimony will show that while Syke was involved in the initial establishment of these LLCs, he did not represent them in any other capacity. Syke also did not advise Bandimere on whether the offerings through the LLCs were in compliance with Section 5 of the Securities

Act, and did not advise Bandimere on whether he was acting as an unregistered broker. Indeed, although Syke attempted to give Bandimere a general overview of the securities laws when Victoria was formed, he told Bandimere that if he was going to have more investors in the future, he needed to get the advice of counsel. Bandimere did not.

Initially, investors' funds were put only into IV Capital. However, by mid-2008, Bandimere also began offering investments in UCR. Bandimere understood that Dalton was involved in a trading program – Dalton was the intermediary to the person who would do the actual trading (the "UCR Trading Program"). Bandimere told investors that the UCR programs paid returns of 4% a month, or 48% a year. In 2009, Bandimere began offering investments in another UCR investment – a program that purportedly involved purchasing diamonds from the Congo and other places (the "UCR Diamond Program"). That program was supposed to offer significant returns on a per-transaction basis.

Bandimere was not paid a salary, but rather was paid substantial transaction-based compensation for bringing investors into IV Capital and UCR through the three LLCs. For IV Capital, Bandimere will acknowledge that he was paid 10% of the investors' returns (although he was not paid additional commissions on his own returns). In other words, if an investor invested $100,000 in IV Capital, the investor would receive $2,500 a month in returns, and Bandimere would receive $250 a month in commissions. For UCR, Bandimere will acknowledge that he was paid 2% of the total amount of the investors' funds. In other words, if an investor invested $100,000 in UCR, the investor would receive $4,000 a month in returns, and Bandimere would receive $2,000 in commissions. Initially, Bandimere used the terms "broker fee" and "commissions" to refer to these fees. At some point, Bandimere stopped calling them broker fees or commissions and began referring to them as "management fees," although neither the actual

method of compensation nor Bandimere's job responsibilities changed. At all times, for both IV Capital and UCR, Bandimere's compensation increased proportionately to increases in money investors invested. From 2006 to 2010, Bandimere's records will show that he was paid approximately $735,000 in transaction-based compensation.

D. Bandimere Is Involved At Key Points in the Distribution of IV Capital and UCR.

Bandimere often met potential investors at various religious or social club activities or through referrals from friends. Investor testimony will establish that Bandimere was involved throughout the entire investment process. For example, he would meet with investors and potential investors, describe the IV Capital and UCR investments, and answer questions from investors and potential investors. Bandimere also invited investors (and others) to his home to meet with Parrish on several occasions.

Once a potential investor decided to invest, Bandimere did not simply refer the investor to IV Capital or UCR. Instead, Bandimere handled the paperwork necessary for the investments. Bandimere accepted money from investors and sent that money to a specific bank account for either IV Capital or UCR. The funds pooled in these IV Capital and UCR bank accounts were allegedly used to make profitable trades (in the case of IV Capital) or to be used in the Trading Program or Diamond Program (in the case of UCR). Investor testimony will establish that the LLC members did not decide which trades or deals IV Capital and UCR would invest in, and Bandimere himself will acknowledge that he generally understood that it was the efforts of IV Capital and UCR (and their respective traders) that generated profits, rather than any efforts of the members of the LLCs.

Profits generated by IV Capital or UCR were paid to the LLCs in a lump sum. More specifically, Bandimere would calculate what the investors' returns should be and send that

figure to Parrish and Dalton. Once funds were received, Bandimere sent monthly returns from the LLCs to investors. Bandimere (or sometimes his wife) would sign the return checks, which were either mailed to or picked up by investors. Sometimes, if the investor had so indicated, the return would be directed to a CD or money market account. Although Bandimere's wife was involved in doing accounting and tax filings for the LLCs, her role was limited to those functions. Bandimere himself interacted with investors and Parrish and handled investor funds. In short, Bandimere was the investors' principal – if not only – contact with IV Capital and UCR. And as noted above, Bandimere was rewarded handsomely for his work: he received nearly three-quarters of a million dollars in transaction-based compensation.

In addition to accepting funds directly from investors, Bandimere set up a way for investors to invest their IRA funds. Bandimere initially asked Parrish how investors could invest their IRA funds, and was told it could not be done. However, Bandimere then learned about a company called Entrust that could handle self-directed IRA funds. After that, Bandimere would explain to new investors that they could invest their self-directed IRA funds through Entrust.

E. Bandimere Fails to Disclose Numerous Red Flags when Making Statements to Investors.

Bandimere discussed the IV Capital and UCR programs with dozens of investors and potential investors. When discussing those investments, Bandimere misled his investors by presenting only a one-sided, positive view of IV Capital and UCR while failing to disclose numerous red flags and negative facts. For example, investor testimony will prove that Bandimere told several investors that IV Capital and UCR were good, low risk investments, earned good, consistent returns of 2.5% and 4%, respectively, and were run by experienced, well connected, and highly talented professionals. In his conversations with investors, however, Bandimere failed to tell them a multitude of negative facts about the investments, and those

omissions rendered the statements Bandimere did make misleading. Among other things, investor testimony will show that:

- Bandimere failed to disclose that Dalton – a principal in UCR – had no experience managing large, successful investment programs, and in fact had serious financial problems as a result of his numerous unsuccessful investments. Specifically, Bandimere knew that Dalton was involved in two multi-level marketing businesses (one of which Bandimere thought went bankrupt, and the other of which Bandimere thought dismissed Dalton), that Bandimere himself had to pay an initiation fee for Dalton to get involved in another multi-level marketing business because Dalton didn't have the funds to do so, and that Dalton had been involved in a debenture program in which $2 or $3 million of investor funds were lost. Bandimere did not disclose any of this information to investors. Indeed, at least with some investors who knew Dalton, Bandimere did not disclose Dalton's role in UCR, further underscoring that Bandimere realized investors would at least be suspicious of an investment in which Dalton was involved.
- Bandimere failed to disclose to many investors that Parrish – a principal in IV Capital – previously had problems with the SEC. While the Division anticipates that Bandimere will quibble with this allegation and claim only that he knew that Parrish had some regulatory issue that had been resolved, the Division further anticipates that evidence from several investors – Sam Radke, Harley Hunter, and Deborah Pickering – will establish that Bandimere did, in fact, know that Parrish had previous problems with the SEC. While Bandimere told some investors (either contemporaneously or after the fact) about Parrish's SEC issue, he failed to disclose this fact to numerous other investors.

- Bandimere failed to disclose that IV Capital and UCR failed to provide documentation or account statements subsequent to the initial investments. Parrish never provided Bandimere with financial statements of IV Capital. While Bandimere received some sort of account statement from IV Capital while the investments were through his personal accounts, he did not receive further documentation once the investments began going through the LLCs. Similarly, while Bandimere claims that he viewed some accounting records on a computer in Dalton's office, he did not receive financial or account statements from UCR. Bandimere did not disclose this lack of financial or account statements to investors.
- Bandimere failed to disclose that Parrish and Dalton refused to provide Bandimere with any documents confirming their trading or investments. Specifically, while Bandimere asked Parrish for every kind of documentation he could get from him, and while Parrish promised to provide certain documents, the only documents Parrish provided was a web site that Parrish had put together and a series of trading records for a portion of a month that Bandimere did not understand. Bandimere did not disclose this fact to investors.
- Bandimere failed to disclose that Bandimere himself had to calculate the returns the LLCs were owed, and that in some months he received insufficient funds to cover what the LLCs were owed. Indeed, Bandimere himself has admitted that there were some months that the funds he received from Parrish did not balance out, that there was sometimes confusion between which funds were owed to which LLC, and that there were months when IV Capital and UCR did not send enough money to pay both investor returns and management fees. Bandimere did not disclose these facts to investors.

- Bandimere failed to disclose that IV Capital and UCR paid him large commissions tied to the amount of funds he brought in for investment. As explained above, IV Capital paid Bandimere 10% of investor returns, and UCR paid Bandimere 2% monthly – or 24% annually – of the total amount invested. Bandimere did not disclose these commissions to investors. While the LLC operating agreements did mention that Bandimere would be compensated, those agreements claimed that compensation would be "reasonable" and "deemed to be the excess of any funds received by the LLC in excess of targeted returns." This did not disclose the actual commission compensation that Bandimere received, nor did it disclose that Bandimere's compensation was tied to the amount invested.

In short, Bandimere painted a generally rosy view of the IV Capital and UCR investments – describing them as good, low-risk ventures with consistent returns run by sophisticated and experienced individuals – even though he knew that IV Capital and UCR were paying him based on the investments he brought in, that both Parrish and Dalton had shady dealings in their past, that IV Capital and UCR lacked basic documentation such as financial statements or records, and that Bandimere himself had to calculate what was owed and was not always paid the full amount. Bandimere failed to disclose these material facts to his investors, and by his omissions told only half-truths about their investments.

F. IV Capital and UCR Collapse.

Beginning in early 2009, both IV Capital and UCR began to collapse. In the spring of 2009, Parrish claimed there was a bank audit of the bank in Nevis where the investors' funds were held and that payments were being held until the audit was complete. Bandimere and Syke attempted to meet with Parrish in New York, but Parrish cancelled. Bandimere and Syke had a

few additional conversations with Parrish, but eventually, Parrish disappeared. Bandimere and Syke went to Maryland to look for Parrish, hired private investigators, and eventually – at the urging of Syke – reported Parrish to the SEC.

In the summer of 2010, both the UCR Trading Program and the UCR Diamond Program had stopped making payments to investors. Dalton gave Bandimere various excuses about the trader, but like IV Capital, ultimately investors' money was lost. Bandimere himself invested more than $1.1 million in IV Capital and UCR, and made returns of more than $475,000 before the schemes collapsed. This does not include the nearly $735,000 that Bandimere was paid in transaction-based compensation for bringing investors in to IV Capital and UCR.

III. LEGAL ANALYSIS

A. Bandimere was an Unregistered Broker in Violation of Section 15(a).

Individuals who act as brokers – who are "engaged in the business of effecting transactions in securities for the account of others," 15 U.S.C. § 78c(a)(4)(A) – are required to register with the Commission. *See* 15 U.S.C. § 78o(a)(1). More specifically, Section 15(a) of the Exchange Act makes it illegal for a broker to affect any transactions in, or to induce or attempt to induce the purchase or sale of, any security unless the broker is registered with the Commission or associated with a registered entity. *See id.* These registration requirements are not mere formalities. As the Commission has explained:

> The broker-dealer registration and associated regulatory requirements of the Act, as well as those of the self-regulatory organizations, provide important safeguards to investors. Investors are assured that registered broker-dealers and their associated persons have the requisite professional training and that they must conduct their business according to regulatory standards. Registered broker-dealers are subject to a comprehensive regulatory scheme designed to ensure that customers are treated fairly, that they receive adequate disclosure and that the broker-dealer is financially capable of transacting business.

Persons Deemed Not to Be Brokers, Exchange Act Release No. 22172, 33 SEC Docket 652, 1985 WL 634795, at *2 (June 27, 1985).

Being a broker – being "engaged in the business of effecting transactions in securities for the account of others" – means having a "certain regularity of participations in securities transactions at key points in the chain of distribution." *SEC v. Hansen*, 83 CIV. 3692, 1984 WL 2413, at *10 (S.D.N.Y. Apr. 6, 1984) (quoting *Mass. Fin. Services, Inc. v. Sec. Inv'r Prot. Corp.*, 411 F. Supp. 411, 415 (D. Mass. 1976), *aff'd*, 545 F.2d 754 (1st Cir. 1976)). Actions indicating that a person is "effecting" securities transactions include soliciting investors, handling customer funds and securities, negotiating with issuers of securities, and participating in the order-taking or order-routing process. *See, e.g.*, *SEC v. Art Intellect, Inc.*, 2:11-CV-357, 2013 WL 840048, at *20 (D. Utah Mar. 6, 2013) (citing cases); *In the Matter of Daniel J. Touizer*, Exchange Act Release No. 86420, 2019 WL 3251484, at *2 (July 19, 2019). Transaction-based compensation – or being paid commissions – is one of the hallmarks of being a broker. *See, e.g.*, *Touizer*, Exchange Act Release No. 86420, 2019 WL 3251484, at *2 (July 19, 2019). This is because "[c]ompensation based on transactions in securities can induce high pressure sales tactics and other problems of investor protection" that necessitate broker registration under the Exchange Act. Persons Deemed Not to Be Brokers, Exchange Act Release No. 22172, 33 SEC Docket 652, 1985 WL 634795, at *4 (June 27, 1985). Scienter is not an element of a Section 15(a) violation. *See, e.g.*, *Art Intellect, Inc.*, 2:11-CV-357, 2013 WL 840048, at *20.

1. IV Capital and UCR Were Securities.

The threshold issue in determining whether Bandimere violated Section 15(a) is whether IV Capital and UCR were securities. They were. Under the securities laws, a "security" includes an "investment contract." 15 U.S.C. §§ 77b(a)(1), 78c(a)(10). In *SEC v. W.J. Howey*

Co., the Supreme Court set out the now time-honored definition of an investment contract: (1) an investment of money (2) in a common enterprise (3) with a reasonable expectation of profits to be derived solely from the efforts of others. 328 U.S. 293, 298–301 (1946). A "common enterprise" exists when investors' funds are pooled together. *See, e.g.*, *In the Matter of Johnny Clifton*, Securities Act Release No. 69982, 106 SEC Docket 3451, 2013 WL 3487076, at *8 n.55 (July 12, 2013).[1] And the third element requires "profits be generated ... 'predominantly' from the efforts of others, not counting purely ministerial or clerical efforts." *SEC v. Banner Fund, Int'l*, 211 F.3d 602, 615 (D.C. Cir. 2000); *see also SEC v. Int'l Loan Network, Inc.*, 968 F.2d 1304, 1308 (D.C. Cir. 1992) (noting that the efforts of those others than the investors must be the "undeniably significant ones, those essential managerial efforts which affect the failure or success of the enterprise"). The touchstone of an investment contract is the "presence of an investment in a common venture premised on a reasonable expectation of profits to be derived from the entrepreneurial or managerial efforts of others." *United Hous. Found., Inc. v. Forman*, 421 U.S. 837, 852 (1975).

The definition of a security is a "flexible rather than a static principle," *Howey*, 328 U.S. at 299; Congress "painted with a broad brush" in defining a "security" in recognition of the "virtually limitless scope of human ingenuity, especially in the creation of 'countless and variable schemes devised by those who seek the use of the money of others on the promise of profits ....'" *Reves v. Ernst & Young*, 494 U.S. 56, 60–61 (1990) (quoting *Howey*, 328 U.S. at 299); *see also SEC v. Edwards*, 540 U.S. 389, 393–94 (2004).

[1] The Commission has held that a "common enterprise" is not a distinct requirement under *Howey*. *See In the Matter of Johnny Clifton*, 2013 WL 3487076, at *8 n.55.

The investments in IV Capital and UCR were securities.[2] Investors' money was sent to a single IV Capital bank account, and investors expected that money would be used to generate profits as a result of the work of the IV Capital traders. Similarly, investors' money was pooled together and sent to UCR's bank account, and investors expected that money to be used by UCR to generate profits by trading or investments in diamonds. None of Bandimere's investors played any role in the trading or how profits were earned by IV Capital or UCR. Instead, investors' profits were entirely dependent on the efforts and success of IV Capital, UCR, and their principals. These investments fall squarely within *Howey*'s definition of a security.[3]

2. Bandimere Was an Unregistered Broker of These Securities.

Bandimere was unquestionably acting as a broker of the IV Capital and UCR securities. Bandimere was involved at all key points along the chain of distribution. He met with investors and potential investors, described the IV Capital and UCR investments, answered questions from investors and potential investors, handled the paperwork necessary for the investments, accepted

[2] The OIP alternatively alleges that the interests in the LLCs were securities. OIP ¶ 38. At this point, the Division does not anticipate arguing this theory of relief, since Bandimere himself admitted in his Wells submission that the LLC's were merely "pass-through" entities. However, if the evidence at the hearing establishes that Bandimere was offering interests in those LLCs, rather than IV Capital and UCR, then the sale of those interests were also unregistered securities, and Bandimere's conduct advising the LLC's would subject him to liability under the Adviser's Act. *See* OIP ¶¶ 38, 51.

[3] The Division anticipates Bandimere may argue that the arrangements with IV Capital and UCR were joint ventures and thus not securities. While the Tenth Circuit applies a presumption that interests in general partnership joint ventures are not securities, the presumption is just that – it can be overcome where, in fact, the general partners are in fact merely passive investors. *See, e.g.*, *SEC v. Shields*, 744 F.3d 633, 643–47 (10th Cir. 2014) (finding presumption rebutted when, in fact, investors had no real control over the joint venture); *see also id.* at 643 (in assessing whether an investment scheme is an investment contract, form should be disregarded for substance). Here, the evidence will show that the investors were, in fact, passive investors: they had no experience in the types of investments that IV Capital and UCR were purporting to make and no power over or role in the management of IV Capital or UCR.

money from investors and sent that money to a specific bank account for either IV Capital or UCR, calculated what the investors' returns should be, and sent monthly returns from the LLCs to investors. He dealt with a massive volume of securities: he raised more than $9 million from at least 60 investors. In addition, Bandimere was paid a substantial amount of transaction-based compensation – one of the hallmarks of a broker. But despite his significant rule in these securities transactions, it is undisputed that Bandimere was not registered with the Commission as a broker or dealer, and was not an associated person of a registered broker dealer. By failing to register as a broker and comply with the requisite regulatory requirements, Bandimere deprived his investors of critical investor protections. Persons Deemed Not to Be Brokers, Exchange Act Release No. 22172, 33 SEC Docket 652, 1985 WL 634795, at *2 (June 27, 1985).

B. Bandimere Sold Unregistered Securities in Violation of Section 5.

In addition to acting as an unregistered broker, Bandimere violated the securities laws by selling unregistered IV Capital and UCR securities. Section 5 of the Securities Act makes it illegal for any person, directly or indirectly, to sell or offer to sell any security unless a registration statement is in effect for that security. 15 U.S.C. §77e(a), (c). To prove a violation of Section 5, the Division must establish three prima facie elements: (1) Bandimere directly or indirectly sold or offered to sell securities; (2) through the use of interstate facilities or the mail; (3) when no registration was in effect. *See, e.g. SEC v. Mantria Corp.*, 09-CV-02676-CMA-MJW, 2011 WL 3439348, at *7 (D. Colo. Aug. 5, 2011). As with a Section 15 claim, proof of scienter is not required. *See, e.g., id.* (citing *Aaron v. SEC*, 446 U.S. 680, 714 n.5 (1980)). Liability extends to people who are "necessary participants" or whose activities were a "substantial factor" in the illicit sale. *See, e.g., SEC v. Universal Exp. Inc.*, 475 F. Supp. 2d 412, 422 (S.D.N.Y. 2007), *aff'd sub nom. SEC v. Altomare*, 300 Fed. Appx. 70 (2d Cir. 2008)

(unpublished); *SEC v. Murphy*, 626 F.2d 633, 649–51 (9th Cir. 1980). Once the Division establishes a prima facie case, the burden shifts to Bandimere to prove that the securities in question were exempt from registration. *See Mantria Corp.*, 09-CV-02676-CMA-MJW, 2011 WL 3439348, at *7.

Bandimere was unquestionably a substantial factor in the sale of unregistered IV Capital and UCR securities. As a threshold matter, as discussed above, IV Capital and UCR were securities. Further, it is undisputed that neither securities offering was registered with the Commission. And the evidence will show that Bandimere sold and offered to sell those securities: he introduced the investments to potential investors, he explained how those investments worked, he answered investors' questions, he handled investor's paperwork, and he accepted investors' funds and sent those funds to IV Capital and UCR. Nor can Bandimere prove that there were any applicable exemptions. Thus, Bandimere has violated Section 5.

C. Bandimere Made Material Misstatements and Omissions in Violation of Section 10(b), Rule 10b-5, and Section 17(a).

Finally, Bandimere violated the anti-fraud provisions of the securities laws by making material omissions and telling half-truths when discussing IV Capital and UCR with investors and potential investors. In order to prove a violation of Section 10(b) of the Exchange Act and related Rule 10b-5, and Section 17(a) of the Securities Act, the Division must show: (1) Bandimere made a misrepresentation or omitted facts that rendered an affirmative statement misleading, (2) the misrepresented or omitted fact was material, (3) Bandimere acted with scienter (in the case of Section 10(b)/Rule 10b-5) or negligence (in the case of Section 17(a)), (4) in the offer, purchase, or sale of a security, and (5) the relevant conduct involved the requisite jurisdictional means. *See, e.g.*, *SEC v. Wolfson*, 539 F.3d 1249, 1256 (10th Cir. 2008); *SEC v.*

Levine, 671 F. Supp. 2d 14, 27 (D.D.C. 2009); *Aaron v. SEC*, 446 U.S. 680, 695–97, 702 (1980) (discussing scienter and negligence).

The Division can show scienter – the mental state embracing intent to deceive, manipulate, or defraud – by showing that Bandimere acted with extreme recklessness. *See, e.g.*, *Dolphin & Bradbury, Inc. v. SEC*, 512 F.3d 634, 639 (D.C. Cir. 2008); *Anixter v. Home-Stake Prod. Co.*, 77 F.3d 1215, 1232 (10th Cir. 1996). This means that Bandimere's conduct "presents a danger of misleading buyers or sellers that is either known to [Bandimere] or is so obvious that [he] must have been aware of it." *In the Matter of David Henry Disraeli*, Securities Act Release No. 2686, 92 SEC Docket 754, 2007 WL 4481515, at *5 (Dec. 21, 2007). A statement or omission is material if a "reasonable investor" would view it "as having significantly altered the 'total mix' of information made available." *Basic Inc. v. Levinson*, 485 U.S. 224, 232 (1988) (quoting *TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976)).

As this Court has previously explained:

> Although neither Section 10(b) nor Section 17(a) impose a duty to speak, if one chooses to speak, one must speak truthfully about material issues. And a wholly truthful statement may provide a basis for liability if material omissions related to the content of the statement make it materially misleading. In the case of alleged material omissions, the question is whether a respondent's representations or omissions, considered together and in context, would affect the total mix of information and thereby mislead a reasonable investor.

In the Matter of Bandimere, Admin. Proc. Rulings Rel. No. 6521, Order on Resp.'s Mtn. for Judgment on the Pleadings, at 4 (Mar. 27, 2019) (citing cases) (quotations, citations, alterations omitted). Put another way, "[e]ven when there is no existing independent duty to disclose

information, once a company speaks on an issue or topic, there is a duty to tell the whole truth." *Meyer v. JinkoSolar Holdings Co.*, 761 F.3d 245, 250–51 (2d Cir. 2014).[4]

While certain statements of corporate optimism may be non-actionable puffery, those statements violate the securities laws when the speaker knows that there are a host of negative facts that undermine those generally optimistic statements. *See In the Matter of Bandimere*, Admin. Proc. Rulings Rel. No. 6521, Order on Resp.'s Mtn. for Judgment on the Pleadings, at 8-9 (Mar. 27, 2019) (citing *First Presbyterian Church of Mankato, Minn. v. John G. Kinnard & Co.*, 881 F. Supp. 441, 444 (D. Minn. 1995) ("It is certainly true that statements such as 'performing well' or 'low risk' are plainly expressions of opinion and, standing alone, are not actionable. However, ... the court must view the statements in context to determine whether [the] claims are sufficient.").

Relatedly, knowing but disregarding red flags also establishes scienter. Recklessness may be established by showing that a defendant had knowledge of facts or access to information contradicting his public statements, or where a defendant "ignored obvious signs of fraud."

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[4] *Accord SEC v. Curshen*, 372 Fed. App'x 872, 880 (10th Cir. 2010) (unpublished) "[W]here a party without a duty elects to disclose material facts, he must speak fully and truthfully, and provide complete and non-misleading information with respect to the subjects on which he undertakes to speak."); *Lormand v. US Unwired, Inc.*, 565 F.3d 228, 249 (5th Cir. 2009) (a "duty to speak the full truth arises when a defendant undertakes a duty to say anything. Although such a defendant is under no duty to disclose every fact or assumption underlying a prediction, he must disclose material, firm-specific adverse facts that affect the validity or plausibility of that prediction.") (citation omitted); *Schlifke v. Seafirst Corp.*, 866 F.2d 935, 944 (7th Cir. 1989) (even absent fiduciary duty, "incomplete disclosures, or 'half-truths,' implicate a duty to disclose whatever additional information is necessary to rectify the misleading statements"); *First Virginia Bankshares v. Benson,* 559 F.2d 1307, 1315 (5th Cir. 1977) ("[A] duty to speak the full truth arises when a defendant undertakes to say anything"); *Rowe v. Maremont Corporation,* 650 F. Supp. 1091, 1105 (N.D. Ill. 1986), *aff'd,* 850 F.2d 1226 (7th Cir. 1988) ("Numerous courts have followed *Bankshares* to hold that a party who makes a materially incomplete disclosure thereby triggers a duty under Rule 10b-5 to disclose whatever additional information is necessary to prevent the earlier statement from being misleading.").

Novak v. Kasaks, 216 F.3d 300, 308 (2d Cir. 2000); *see also id.* ("[A]n egregious refusal to see the obvious, or to investigate the doubtful, may in some cases give rise to an inference of recklessness."); *SEC v. McNulty*, 137 F.3d 732, 737 (2d Cir. 1998) (party cannot "escape liability for fraud by closing his eyes to what he saw and could readily understand"); *United States v. Ferguson*, 676 F.3d 260, 278 (2d Cir. 2011) ("Red flags about the legitimacy of a transaction can be used to show both actual knowledge and conscious avoidance.") (citing *United States v. Nektalov*, 461 F.3d 309, 312, 317 (2d Cir. 2006)).

Bandimere violated these anti-fraud provisions. Bandimere unquestionably chose to speak about the IV Capital and UCR investments – he caused dozens of investors to invest, in some cases, their entire life savings. In so doing, accepted the duty to speak the full truth. *See, e.g.*, *Meyer*, 761 F.3d at 250–51. But despite describing the investments, risks, and returns, he failed to disclose critical facts such as:

- Dalton – the principal of UCR – had a history of financial problems and failed financial dealings;
- Parrish – the principal of IV Capital – had previous problems with the SEC;
- IV Capital and UCR did not have or failed to provide account records or financial statements;
- Bandimere himself had to calculate the returns the LLCs were owed, and that in some months he received insufficient funds to cover what the LLCs were owed; and
- Bandimere was paid substantial commissions – 10% of investor returns for IV Capital, and 24% annually on the total amount invested for UCR.

Put simply, having undertaken to discuss IV Capital and UCR with potential investors, Bandimere was obligated to tell them the whole truth. He failed to do so.

Indeed, even if the Court looks to specific statements made by Bandimere, those statements were rendered misleading by his omission of these critical facts. For example, Bandimere described a history of steady, consistent returns from IV Capital and UCR to a number of investors. But these statements were rendered misleading by Bandimere's failure to disclose, among other things: that Bandimere did not always receive sufficient funds from IV Capital and UCR; that IV Capital and UCR did not have or failed to provide basic financial and account information; and that Bandimer was promised substantial commissions, which could call the ability of IV Capital and UCR to continue to make these return and commission payments into question. Bandimere touted his relationship with the principals of IV Capital and UCR and their investment acumen to other investors. These statements were rendered misleading by Bandimere's failure to disclose, among other things: that Dalton had a history of failed financial dealings; that Parrish had run into problems with the SEC; and that IV Capital and UCR did not have or failed to provide basic financial and account information. As another example, Bandimere claimed that the IV Capital and UCR investments were low risk, safe investments. These statements were also rendered misleading by Bandimere's failure to disclose a host of negative facts about the investments, including: that Bandimere was being paid substantial commissions tied to the amounts of investor funds he put in; that Bandimere did not always receive sufficient funds from IV Capital and UCR; and that both Parrish and Dalton had shady dealings in their past. In short, even looking to the specific statements Bandimere made, the evidence will show that those statements were rendered misleading by Bandimere's numerous omissions.

Further, these omissions were material – they would have altered the "total mix of information" available to Bandimere's investors. *Basic*, 485 U.S. at 232 (quotations and citations

omitted); *see also In the Matter of Bandimere*, Admin. Proc. Rulings Rel. No. 6521, Order on Resp.'s Mtn. for Judgment on the Pleadings, at 4 (Mar. 27, 2019) ("In the case of alleged material omissions, the question is whether a respondent's representations or omissions, considered together and in context, would affect the total mix of information and thereby mislead a reasonable investor.") (quotations and citation omitted). For example, as this Court has already held, "[t]he fact that the person promoting an investment will receive compensation if an investor invests is the sort of information that any reasonable investor would find material." *In the Matter of Bandimere*, Admin. Proc. Rulings Rel. No. 6521, Order on Resp.'s Mtn. for Judgment on the Pleadings, at 4 (Mar. 27, 2019) (citing *SEC v. Thompson*, 238 F. Supp. 3d 575, 598 (S.D.N.Y. 2017)). Similarly, Parrish and Dalton's prior history of regulatory problems (in the case of Parrish) and failed financial dealings (in the case of Dalton) would be material to a reasonable investor. *See, e.g.*, *Wilson v. Great Am. Indus., Inc.*, 855 F. 2d 987, 991–92 (2d Cir. 1988) (failure to disclose adverse civil judgment was material under Exchange Act Rule 14a-9); *In the Matter of Erik W. Chan*, 55 S.E.C. 715, 723–25 (2002) (failure to disclose prior bankruptcy was material). And, importantly, these omissions are not to be considered in isolation, but rather "together and in context." The numerous red flags and negative facts that Bandimere omitted to disclose would unquestionably alter the total mix of information available to a reasonable investor.

Bandimere also acted with scienter (for purposes of Section 10(b) and Section 17(a)(1)), and negligently (for purposes of Section 17(a)(2) and (3)). For example, the fact that Bandimere failed to disclose his extremely generous compensation – compensation based on the amount of investor funds he brought in – demonstrates that he acted with extreme recklessness. *See Curshen*, 372 F. App'x at 882 (finding scienter based on the "logical conclusion" that one who

knew he was being compensated for promoting a stock also knew that the failure to disclose this compensation would mislead those reading his internet postings by making his opinions seem objective). Similarly, the fact that Bandimere knew – but failed to disclose – numerous facts demonstrating that, in fact, IV Capital and UCR were highly risky investments run by principals with shady pasts presents a danger of misleading investors that was either known to Bandimere or so obvious that he must have been aware of it. *See, e.g.*, *In the Matter of David Henry Disraeli*, Advisers Act Rel. No. 2686, 2007 WL 4481515, at *5 (Dec. 21, 2007); *see also United States v. Ferguson*, 676 F.3d 260, 278 (2d Cir. 2011) ("Red flags about the legitimacy of a transaction can be used to show both actual knowledge and conscious avoidance."). More generally, Bandimere's knowledge of – and failure to disclose – numerous red flags when discussing the investments demonstrates that he acted extremely recklessly – or at least negligently – when peddling these investments.

The Division anticipates Bandimere will argue that he could not have committee fraud because he himself invested significant money into IV Capital and UCR, and that he was a victim, too. This argument is a red herring. To be clear, the Division is not alleging that Bandimere knew that IV Capital or UCR were Ponzi schemes, or that he was acting in concert with Parrish or Dalton. Nor does the Division dispute that Bandimere invested his own money in IV Capital and UCR. Rather, the Division's theory is that Bandimere knew of various facts that should have given him concern about the safety, security, and propriety of the IV Capital and UCR investments, but failed to disclose those facts to his investors. Regardless of whether Bandimere personally got comfortable with these negative facts when he decided to put his own money into IV Capital and UCR, investors were entitled to know those facts as well so that they could make their own informed investment decisions. In short, the evidence will show that

Bandimere's conduct – repeatedly painting a rosy picture of IV Capital and UCR while failing to disclose numerous red flags and negative facts – violated the anti-fraud provisions of the securities laws.[5]

IV. RELIEF REQUESTED

Bandimere's conduct makes him liable for the violations alleged in the OIP. Bandimere acted willfully – meaning he intended to do the acts that constituted the violations of the law, *see Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) – and significant sanctions are in the public interest. The Division is requesting (and will renew its request following the hearing) the following remedies:[6]

A. Cease and Desist Order

Cease and desist orders are appropriate when a respondent has violated a provision of the Securities Act or the Exchange Act. *See* Securities Act Section 8A [15 U.S.C. § 77h-1]; Exchange Act Section 21C [15 U.S.C. § 78u-3(a)]. In assessing whether to issue a cease-and-desist order, the Court considers the *Steadman* factors, along with how recent the violations were, the degree of harm to investors or the marketplace, and the remedial function served. *See KPMG Peat Marwick LLP*, Exchange Act Release No. 43862, 74 SEC Docket 357, 2001 WL 47245, at *23, *26 (Jan. 19, 2001), *pet. denied*, 289 F.3d 109 (D.C. Cir. 2002). The *Steadman* factors look to: the egregiousness of the defendant's actions, the isolated or recurrent nature of

[5] The OIP alternatively alleges that Bandimere violated the anti-fraud provisions of the Advisers Act. *See* OIP ¶¶ 38, 51. This alternative claim turns on whether Bandimere was in fact selling interest in the LLCs rather than IV Capital and UCR securities. As noted above, the Division does not presently expect the evidence to show that Bandimere was selling interests in the LLCs, since Bandimere himself argues they were merely pass-through entities. *See supra* at n. 2.

[6] Certain remedies are also authorized under the Advisers Act and Investment Company Act. Should the evidence at the hearing demonstrate that the Division's alternative theories under those Acts are more appropriate, the Division will seek appropriate remedies post-hearing.

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 his occupation will present opportunities for future violations. *Id.* at *23 (citing *SEC v. Steadman*, 967 F.2d 636, 647–48 (D.C. Cir. 1992)). Although there must be some likelihood of future violations, the required showing is significantly less than that required for an injunction. *Id.* Indeed, absent evidence to the contrary, a single past violation ordinarily suffices to establish risk of future violations. *Id.* The evidence at the hearing will show that a cease and desist order is warranted for Bandimere's repeated violations of the securities laws that resulted in significant investor harm.

B. Associational Bar

Section 15(b)(6) of the Exchange Act authorizes associational bars where a person has willfully violated any provision of the Securities or Exchange Acts. *See* 15 U.S.C. § 78o(b)(6)(A)(i). As with any administrative sanction, the Court should consider the *Steadman* public interest factors. *See, e.g.*, *In the Matter of Christopher A. Lowry*, SEC Release No. 2052, 78 SEC Docket 1116, 2002 WL 1997959, at *4 (Aug. 30, 2002). The evidence at the hearing will show that, given his repeated violations of the federal securities laws, Bandimere should be barred from associating with the securities industry in any capacity.

C. Disgorgement

Disgorgement, which is authorized in administrative proceedings pursuant to Securities Act Section 8A and Exchange Action Sections 21B and 21C, requires a violator to give up wrongfully-obtained profits causally connected to the violations. *See, e.g.*, *Kokesh v. SEC*, 137 S. Ct. 1635, 1640 (2017). Here, Bandimere wrongfully obtained hundreds of thousands of dollars in commissions while illegally acting as an unregistered broker, selling unregistered securities, and

violating the anti-fraud provisions of the securities laws. Bandimere should be ordered to disgorge his ill-gotten gains, with prejudgment interest.

D. Civil Penalties

Civil penalties may be imposed whether there are willful violations of the securities laws and such penalties are in the public interest. *See* Exchange Act Section 21B(a)(1)(A); *see also* Securities Act Section 8A(g). The statutes provide for a three-tier system for penalty amounts, which are periodically adjusted for inflation. *See, e.g.*, Exchange Act Section 21B(b); 17 C.F.R. § 1003, Table III; 17 C.F.R. § 1004, Table IV. For violations occurring between February 2005 through March 2009, the maximum penalty per violation for a natural person is $6,500 for a first tier penalty, $65,000 for a second tier penalty, and $130,000 for a third tier penalty. 17 C.F.R. § 1003, Table III. Second tier penalties may be imposed for violations involving "fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement." Exchange Act Section 21B(b). Third tier penalties may be imposed if the requirements for a second tier penalty are met and the respondent's conduct resulted in substantial losses, created the risk of substantial losses, or resulted in substantial pecuniary gain to the respondent. *Id.* The evidence at the hearing will establish that Bandimere acted fraudulently and in deliberate – or at least reckless – disregard of regulatory requirements, and that there was both substantial loss to his investors and substantial pecuniary gain to himself. Thus, third tier penalties are warranted.

E. Fair Fund

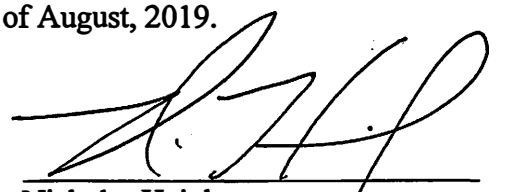
Finally, for monetary amounts ordered against Bandimere, the Court should order the creation of a Fair Fund for the benefit of defrauded investors pursuant to Section 308 of the

Sarbanes-Oxley Act and Rule 1100 to distribute any disgorgement, prejudgment interest, and civil penalty payments made.

V. CONCLUSION

David Bandimere acted as an unregistered broker and sold unregistered securities by making misleading statements and omissions to investors. His conduct significantly harmed investors. The Court should find Bandimere liable for the violations charged in the OIP and order the relief requested above.

Respectfully submitted this 26th day of August, 2019.



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On August 26, 2019 the foregoing was sent to the following parties and other persons entitled to notice as follows:

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