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

I. SUMMARY

This proceeding concerns two individuals who played critical roles in brokering unregistered securities while recklessly making fraudulent misstatements and omissions to investors. These securities later turned out to be a part of two Ponzi schemes. Between 2006 and 2010, Respondent David F. Bandimere ("Bandimere") and Respondent John O. Young ("Young") acted as unregistered brokers in selling investments in Universal Consulting Resources LLC ("UCR") – operated by Richard Dalton ("Dalton") – and IV Capital Ltd. ("IV Capital") – operated by Larry Michael Parrish ("Parrish") – two Ponzi schemes against which the Commission brought actions in 2010 and 2011 respectively.

Bandimere acted as an unregistered broker and raised at least $9.3 million from over 60 investors to invest in these unregistered securities, earning at least $735,000 in transaction-based compensation, which was set at a percentage of funds invested. Bandimere knew of numerous discrepancies, risks and failures related to IV Capital and UCR, yet continued to broker the unregistered securities without disclosing these issues to current or new investors. Most critically, Bandimere told investors and potential investors

material positive information, focusing on IV Capital and UCR's consistent rates of returns and established track records of performance, yet hid material facts including that IV Capital and UCR lacked any type of financial statements or accounting records, that Parrish and Dalton refused to provide documents confirming their trading programs, and regularly sent the wrong amounts of money to Bandimere for investor returns. These material omissions rendered Bandimere's material positive representations misleading.

Young also acted as an unregistered broker and raised approximately $2.5 million from at least 20 investors for UCR and IV Capital, earning at least $400,000 in transaction-based compensation, which was set at a percentage of funds invested, by brokering these unregistered securities. Young made numerous misrepresentations to investors, including falsely claiming that he was a partner of Dalton and that he and his family had significantly invested in UCR when they had not.

II. RESPONDENTS AND RELATED PARTIES

A. Respondents

1. **David F. Bandimere**, age 67, is a resident of Golden, Colorado. Bandimere was the managing member of Victoria Capital LLC and Ministry Minded Investors LLC, and co-managing member of Exito Capital LLC, all of which are discussed below. Bandimere is not registered with the Commission as a broker, dealer or investment adviser, and was not at any relevant time, and is not associated with a registered broker, dealer or investment adviser, and was not at any relevant time. Prior to his involvement with the unregistered securities described in this memorandum, he played a role in operating the Bandimere Speedway, a well-known family-owned automobile racetrack

located in Golden, Colorado. Additionally, Bandimere is a self-described minister and family counselor. Bandimere is a long-time friend of Dalton.

2. **John "Jay" O. Young**, age 69, is a resident of Superior, Colorado. Young owned and operated Kay W. Young and Associates, Inc. Young is not registered with the Commission as a broker, dealer or investment adviser, and was not at any relevant time, and is not associated with a registered broker, dealer or investment adviser, and was not at any relevant time. Young is a long-time friend of Dalton.

B. Related Parties

1. **Exito Capital LLC ("Exito")** is a Colorado LLC formed on June 27, 2007 with a business address in Greenwood Village, Colorado. Exito was co-managed by Bandimere. Exito was used by Bandimere to collect investor funds to invest in UCR and IV Capital securities. Exito has never registered with the Commission.

2. **Victoria Investors LLC ("Victoria")** is a Colorado LLC formed on April 3, 2007 with a business address in Golden, Colorado. Bandimere managed Victoria. Victoria was used by Bandimere to collect investor funds to invest in UCR, IV Capital and other securities. Victoria has never registered with the Commission.

3. **Ministry Minded Investors LLC ("MMI")** is a Colorado LLC formed on September 18, 2008 with a business address in Golden, Colorado. Bandimere managed MMI. MMI was used by Bandimere to collect investor funds to invest in UCR and IV Capital securities. MMI has never registered with the Commission.

4. **Kay W. Young & Associates, Inc. ("Kay W. Young")** is a Colorado corporation owned and operated by Jay Young and his wife. Young and his wife operated several businesses through this entity, including Young's work in connection with acting as

an unregistered broker for the UCR and IV Capital investments. Kay W. Young has never registered with the Commission.

6. **Universal Consulting Resources LLC ("UCR")** is a New Mexico limited liability company operated by Dalton. Its principal place of business was Dalton's home in Golden, Colorado. UCR purported to engage in international note and diamond trading. UCR never registered with the Commission. The Commission brought a federal court action against UCR and Dalton on November 16, 2010 alleging that UCR was operating a Ponzi scheme. The Commission obtained a default judgment against UCR and Dalton on December 7, 2011. Dalton was criminally indicted, pleaded guilty to one count of money laundering, and is currently awaiting sentencing.

7. **IV Capital, Ltd. ("IV Capital")** is a Nevis corporation owned and managed by Parrish. IV Capital purported to be a proprietary trading company with traders in the U.S. and U.K. IV Capital has never registered with the Commission. The Commission brought a federal court action against Parrish on March 7, 2011 alleging that IV Capital was a Ponzi scheme. The Commission obtained a default judgment against Parrish on October 11, 2012. The U.S. Attorney's Office for the District of Maryland obtained a criminal indictment against Parrish and he is currently out on bond awaiting trial.

III. FACTS

A. Bandimere

Bandimere was the most prolific of any broker in selling IV Capital and UCR securities. Between 2006 and 2010, Bandimere raised at least $9.3 million from over 60 investors to invest in these Ponzi schemes, earning at least $735,000 in transaction-based

compensation during that period. This compensation represented the great majority of his income. He also made at least $475,000 in earnings on his personal investments in UCR and IV Capital securities before the Ponzi schemes collapsed. He initially sold IV Capital directly to investors, but then set up three LLCs to facilitate bringing in investors. He also facilitated the investment of retirement funds by setting up self-directed IRA accounts through a third party provider. Bandimere misled potential investors by presenting only a one-sided, positive view of the IV Capital and UCR investments while failing to disclose numerous red flags and negative facts. Once Bandimere described IV Capital and UCR to potential investors in a materially positive way, he was under a duty to make fair and complete disclosure of these material red flags and negative facts.

1. Background and Initial Sales of IV Capital in 2006

Bandimere first learned of Parrish and IV Capital in 2005 from his long-time friend Dalton. Dalton assisted in arranging a meeting in which Parrish came to Denver and met with Bandimere and his attorney, and explained the IV Capital investment to him. In November 2005, Bandimere invested $100,000 in IV Capital securities, and in 2006 he invested another $100,000. Based on encouraging statements made by Bandimere, several family members and friends also decided to invest in IV Capital securities during 2006. Bandimere pooled the funds from his family and friends, totaling $400,000 and invested it with IV Capital under his name. IV Capital paid the monthly returns of 2.5% to Bandimere who would then make payments to the individual investors consolidated under his name. Parrish agreed to compensate Bandimere for bringing in these investors and for handling the distribution of monthly returns. The compensation was tied to the amount of funds

raised from investors by Bandimere and set at 10 percent of the monthly returns to investors.

2. Formation of LLCs in 2007 and 2008

In late 2006, Bandimere enlisted the assistance of an attorney, Cameron Syke, who was also an investor, to establish several Colorado LLCs in order to facilitate the handling of funds from investors brought in by Bandimere to invest in IV Capital securities. Victoria, designed for non-accredited investors with limited funds to invest, was formed in April 2007. Exito, which was designed for accredited investors, was formed in June 2007. And in September 2008, Bandimere formed a third LLC, MMI, which was designed for investors with religious-based charitable goals. During this time, Bandimere also began assisting investors in setting up self-directed IRAs through an outside company which allowed investors to access their retirement accounts for investment in IV Capital securities through the LLCs. At that point, instead of Bandimere pooling investor funds in his account under his personal name for investment in IV Capital, each of the LLCs collected investor capital to make investments with IV Capital under the name of the LLC. Bandimere maintained the existing compensation agreement (10 percent of returns paid by IV Capital) with the payments now being made to him through each of the LLCs.

3. Bandimere Offered Several Different Securities

In addition to IV Capital securities, Bandimere in 2008 began selling securities in UCR's Trading Program to investors. Bandimere explained the program, and generally told investors Dalton had been a longtime personal friend. Bandimere often did not specifically tell investors Dalton's name, telling investors that the manager of the program wanted his name to be kept confidential. Bandimere also told investors that they would

earn a guaranteed annual return of 48 percent. Bandimere and Dalton agreed that UCR would pay Bandimere 24 percent (2 percent per month) on all investor funds that Bandimere raised. Beginning in 2009, Bandimere offered UCR Diamond Program securities to his investors, promising returns of up to 10% per month, as yet another investment option. Similar to the UCR Trading Program, Bandimere would receive 2% per month on the investor funds he raised that were invested in the UCR Diamond Program.

Bandimere's investors never met or spoke with Dalton, and many never met or spoke with Parrish. Bandimere often found people to invest in IV Capital and UCR by mentioning his investing success at various church, religious, and social club activities, or at general gatherings with friends. Once he sparked a potential new investor's interest in his recent investing success, he would explain the IV Capital or UCR investments to them and explain how they could invest through him in the securities. In addition, on at least one occasion, Bandimere invited a group of potential investors to his home to attend a presentation by Parrish about IV Capital. Bandimere also relied on referrals from other friends and family to build his investor base.

Bandimere was involved throughout the entire investment process with investors, and acted as an unregistered broker and sold unregistered securities by doing the following:

- Meeting with investors and potential investors;
- Explaining IV Capital and UCR's investment programs;
- Answering questions about IV Capital and UCR;
- Setting up the LLCs to facilitate investments in IV Capital and UCR;
- Arranging the signing of relevant documents;
- Accepting and managing investor funds in IV Capital and UCR;

- Working with a self-directed IRA provider to accept investor funds;
- Determining monthly returns due for IV Capital and UCR;
- Providing information about monthly returns due to Parrish and Dalton; and
- Creating and maintaining individual account records for investors.

Investors generally understood that the LLCs had been created as a vehicle to make investments in IV Capital and UCR. The LLCs would pool all of the investor funds designated for each of the approved investments and make a single investment in the name of the LLC in IV Capital and/or UCR (which, in turn, pooled all of their respective investor funds together). The purported earnings from each of these investments (based on the purported efforts of IV Capital and UCR's managers), would be paid to the LLC, and then the LLC would distribute those earnings in accordance with how the individual LLC investor had directed that their capital be allocated among the investment choices. As indicated, Bandimere was paid transaction-based compensation by Parrish and Dalton (i.e. earning 10% of investors' monthly returns for IV Capital securities, and 2% each month of investors' capital in UCR securities). Bandimere also told many investors that the various investments were low risk, had historically strong returns, and that he thought the investments were very good investments.

In total, Bandimere's investors had invested approximately $6.1 million in IV Capital, $1.1 million in the UCR Diamond Program, and $2.8 million in the UCR Trading Program. Bandimere's investors ultimately lost all of the money they had invested in IV Capital and UCR securities when those Ponzi schemes collapsed.

4. Bandimere Ignored Red Flags and Made Misstatements and Omissions to Investors

Throughout, and even before, the five years in which Bandimere offered and brokered the unregistered IV Capital and UCR securities, he knew of numerous discrepancies, risks and failures related to Parrish, Dalton and the investments:

- While Bandimere signed agreements with IV Capital and UCR when the LLCs made their initial investments, there was no subsequent documentation of any kind provided by IV Capital or UCR when additional investments were made.

- Bandimere knew that neither IV Capital nor UCR had any financial statements nor were they audited by any accounting firm. In fact, Parrish and Dalton did not appear to Bandimere to have any accounting records whatsoever. Additionally, there were no third-party service providers: brokerage firms, accountants, etc., which could be verified by Bandimere.

- Parrish and Dalton refused to provide any documents confirming trading, their traders, or any other aspects of the investments. Parrish failed to provide any supporting documents relating to trading and investment despite years of requests from Bandimere and even though in some cases Parrish had promised to do so. Bandimere asked for every kind of documentation possible from Dalton, but Dalton refused to provide it because he claimed the trader would not allow it.

- Neither IV Capital, nor UCR, ever provided any account statements documenting the investments or purported monthly earnings. Each month, Bandimere calculated how much the LLCs were owed based upon the purported guaranteed returns and then directed Parrish and Dalton to wire those amounts.

- Even after receiving notice of the monthly amounts owed, Parrish and Dalton often wired insufficient funds to the LLCs. Bandimere had "harsh and difficult conversations" with them about the inconsistencies and problems.

- Parrish and Dalton regularly violated their agreements to compensate Bandimere.

- Bandimere knew that Dalton had no experience with managing a large, successful investment program; and in fact, had been involved in multiple failed investment schemes. Specifically, Bandimere knew that Dalton was previously involved in a debenture project which suffered $2 to $3 million

in losses, including $50,000 in personal losses by Bandimere. Bandimere also knew that Dalton was involved in another investment in the Philippines, in which Bandimere also lost $50,000.

- Bandimere knew that Dalton had serious financial problems as a result of these unsuccessful investments. Bandimere had loaned Dalton money to participate in a multilevel marketing program after Dalton lost his money in a different multilevel marketing program that had gone bankrupt. Bandimere also found Dalton an inexpensive apartment in a complex he owned which Dalton rented for several years, a living situation which was inconsistent with the high level of income Dalton claimed to be earning from his UCR investments.

- Prior to soliciting any investors, Bandimere knew from Dalton that Parrish was facing regulatory action by the SEC.

- Dalton told Bandimere that he stopped working with IV Capital and Parrish because of problems with getting paid.

Bandimere ignored these red flags while baselessly assuring investors that the investments were "low risk" and "very good investments." Bandimere touted material positive information about these investments to investors, while hiding the material negative information above, which was a highly misleading sales approach. Instead of presenting a balanced picture of the numerous red flags and potential problems he knew were associated with IV Capital and UCR, he presented only a positive, one-sided view of each of these investments.

B. Young

1. Young Sold UCR Securities

Young was a friend of Dalton for over 20 years, and had some previous business relationships with him. Between 2007 and 2010, Young solicited approximately 20 investors to invest over $2.5 million in UCR's Trading Program. Young aggressively sold UCR securities to his investors, and he also encouraged them to find other investors. For example, Young sent an email to an investor in 2008 stating that "as a friend, and in light of

the current turmoil in the financial markets, I hope that you would give me a call sometime at your convenience. We are not in the traditional markets. Our clients' funds are secured in an escrow account at a major bank and do not move. Our returns are exceptional (really exceptional) and distributed monthly....and our clients are grateful they can sleep at night." He later wrote to that investor that if she had "any associates who might enjoy a legitimate and serious ROI, I would appreciate an opportunity to sit down with them."

Young received transaction-based compensation from Dalton for bringing in new investors, of between 1%-2% per month of each investor's capital investment in UCR securities. In addition, a few investors that Young brought in also recruited additional investors, and Young agreed to split his compensation with them. Dalton would generally pay Young, and then Young would send the payment to the downstream sales agent. In total, Young received approximately $400,000 in net payments between 2007 and 2010 (after subtracting payments made to downstream sales agents), representing the vast majority of his income during that period.

When Young discussed the UCR investment with potential investors, he described the escrow account, the guaranteed returns, the trader, and generally how the program worked. He provided the investment agreement to investors, answered their questions, and sometimes sent that signed agreement to UCR. Many of Young's investors never spoke with Dalton before making the investment. The investors generally sent their money directly to UCR and received their profit payments directly from UCR. However, for a few months in 2010, Dalton sent a single payment to Young for all of Young's investors and then Young distributed the profit payments to each investor.

2. Young Made Numerous Misrepresentations When Selling UCR

Young knowingly or recklessly made several representations to investors that were false or misleading when he was selling UCR securities:

- He told some investors that Dalton's UCR program had been in existence 7-9 years, when he knew Dalton did not start UCR until 2007;
- He told some investors that he and his family members had invested in UCR when they did not;
- He told some investors that he was a partner of Dalton when he was not a partner; and
- He told some investors that Dalton's access to the investment program was based upon special access to investments given to former military members without any evidence that such a program existed.

These specific representations influenced potential investors to invest in UCR securities. In particular, the representations that Young was a partner and had invested both his money and his family's money gave investors' confidence that Young truly understood UCR's business and believed strongly in its ability to earn high profits.

3. Young Sold IV Capital Securities

With regard to IV Capital, Dalton introduced Young to Parrish around 2005. Young spoke with Parrish about the investment, and introduced one of his son's best friends, [redacted], to Parrish. Young directly offered IV Capital securities to approximately 5 potential investors, but he only had one who actually invested with IV Capital (a $100,000 investment). With regard to that investor, Young handled all the paperwork, answered questions, handled the monthly payouts to the investor after receiving the money from Parrish, and received transaction-based compensation.

IV. ARGUMENT

A. The Investments Offered and Sold by Respondents were Securities

Section 2(a)(1) of the Securities Act and Section 3(a)(10) of the Exchange Act define a "security" to include an "investment contract." The term "investment contract" means a contract, transaction or scheme involving: (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. SEC v. W.J. Howey Co., 328 U.S. 293, 298-301 (1946). The definition of "investment contract" is a "flexible rather than a static principle, one that is capable of adaptation to meet the countless and variable schemes devised by those who seek the use of the money of others on the promise of profits." Id. at 299.

The Supreme Court has emphasized that 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 Housing Found., Inc. v. Forman, 421 U.S. 837, 852 (1975). In the D.C. Circuit, the second Howey element (a common enterprise) "is ordinarily met by a showing of horizontal commonality...which requires that there be pooling of investment funds, shared profits, and shared losses." SEC v. Banner Fund Int'l, 211 F.3d 602, 614 (D.C. Cir. 2000) (internal citations omitted). The third Howey element requires that "profits be generated . . . predominantly from the efforts of others, not counting purely ministerial or clerical efforts." Id. (internal citations omitted). See also SEC v. Int'l Loan Network, 968 F.2d 1304 (D.C. Cir. 1992) (citing Ninth Circuit case "interpreting third prong of Howey test broadly to require only that the 'efforts made by those other than the investor are the

undeniably significant ones, those essential managerial efforts which affect the failure or success of the enterprise.'").

1. The IV Capital Investments were Securities

Respondents sold investments in IV Capital. These investments satisfied all of the elements under Howey. In making their investments, investors placed money in a single entity, IV Capital, to be pooled in an escrow account to serve as collateral for a "credit facility" which would loan money to IV Capital to fund its trading of securities, thereby satisfying the first two elements of Howey. Under the agreement with IV Capital, investors expected to earn profits derived from IV Capital's trading in securities. Investors' profits were entirely dependent upon the efforts and success of IV Capital in identifying and executing profitable trades, thereby satisfying the third element of Howey.

2. The UCR Investments were Securities

Similarly, the UCR investments satisfied all of the elements under Howey. Investors invested money which was pooled together in UCR bank accounts to allegedly serve as collateral for a "credit facility" which would loan money to trade in notes or diamonds. The investments were a common enterprise because investor money was purportedly pooled together for the purpose of serving as collateral for the credit facility, and investors expected to share in the profits from UCR's trading. Accordingly, the first two elements of the Howey test were met. The last element of the Howey test was met because the investors did not exercise any control over the operations of the investment funds. Rather, investors relied solely on the efforts of UCR and Dalton, UCR's "Director of Finance," who was expected to make all decisions regarding the use of investor funds.

B. Respondents Violated Section 15(a) of the Exchange Act

Section 15(a) of the Exchange Act makes it illegal for a broker to attempt to induce the purchase of a security, or to effect securities transactions, unless the broker is registered with the Commission or is associated with a registered broker or dealer. 15 U.S.C. § 78o(a)(1). Scienter is not required for a violation of this provision. SEC v. Martino, 255 F. Supp. 2d 268, 283 (S.D.N.Y. 2003).

Section 3(a)(4) of the Exchange Act defines a broker as "any person engaged in the business of effecting transactions in securities for the account of others." The phrase "engaged in the business" connotes "a certain regularity of participation in securities transactions at key points in the chain of distribution." Massachusetts Fin. Serv., Inc. v. Sec. Investor Prot. Corp., 411 F. Supp. 411, 415 (D. Mass.), aff'd, 545 F.2d 754 (1st Cir. 1976); see also SEC v. Kramer, 778 F. Supp. 2d 1320, 1334 (M.D. Fla. 2011). It can be evidenced by such things as regular participation in securities transactions, receiving transaction-based compensation or commissions (as opposed to salary), a history of selling the securities of other issuers, involvement in advice to investors and active recruitment of investors. See, e.g., SEC v. George, 426 F.3d 786, 797 (6th Cir. 2005); SEC v. Kenton Capital, Ltd., 69 F. Supp. 2d 1, 12-13 (D.D.C. 1998). Actions indicating that a person is "effecting" securities transactions include soliciting investors; handling customer funds and securities; participating in the order-taking or order-routing process; and extending or arranging for the extension of credit in connection with a securities transaction. See, e.g., SEC v. Benger, 697 F. Supp. 2d 932, 945 (N.D. Ill. 2010) (Section 15(a) claim adequately alleged where defendant received transaction-based compensation, collected and held investor funds, received and processed investment documents, and sent investors their

share certificates); SEC v. Margolin, No. 92 Civ. 6307, 1992 WL 279735, at *5 (S.D.N.Y. Sept. 30, 1992) (SEC demonstrated substantial likelihood of success on the merits where the defendant provided clearing services, received transaction-based compensation, advertised for clients, and possessed client funds and securities."); SEC v. Hansen, 1984 WL 2413 at *10, [1984 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 91,426 (S.D.N.Y. 1984) ("Among the factors listed as relevant to a determination of whether an individual acted as a broker within the meaning of [Section 15(a)] [is] whether that person . . . is involved in negotiations between the issuer and the investor . . . .").

1. Bandimere Violated Section 15(a) of the Exchange Act

Bandimere violated Section 15(a) of the Exchange Act by acting as an unregistered broker in connection with the offer and sale of IV Capital and UCR securities. Bandimere acted as an unregistered broker by holding himself out as a broker; soliciting investors through his social and religious network; explaining the investments to potential investors; answering investor's questions; providing monthly returns to investors; and providing documentation to investors. Importantly, Bandimere was paid transaction-based compensation by Parrish and Dalton (i.e. earning 10% of investors' monthly returns for IV Capital, and 2% each month of investors' capital in UCR). Moreover, Bandimere was involved in the entire chain of distribution from offering the initial investments, setting up entities to handle and make the investments, handling all the money flow to and from investors, and he was responsible for all recordkeeping and tax return statements provided to investors.

Despite his significant role in the securities transactions, Bandimere was not registered as a broker or dealer and he was not an associated person of a registered broker

or dealer at the time the sales. Bandimere raised approximately $9.3 million from at least 60 different investors and received at least $730,000 in transaction-based compensation, which represented the majority of his income between 2007 and 2010. While Bandimere did not use formal marketing materials or cold call to find new investors, he built his investor base instead by frequently discussing his investing success and offerings with his religious and social network of friends. Bandimere also advised on the merits of the investments by indicating to many potential investors that the investment was low risk, had a long track history, and that he thought it was a very good investment.

2. Young Violated Section 15(a) of the Exchange Act

Young violated Section 15(a) by acting as an unregistered broker in connection with the offer and sale of UCR and IV Capital securities. Young raised at least $2.5 million in investor capital from at least 20 investors, and received at least $400,000 in transaction-based compensation for selling the UCR and IV Capital investments, which represented the majority of his income between 2007 and 2010. He was significantly involved in the chain of distribution by introducing and explaining the investment to investors, handling paperwork, and on certain occasions handling customer funds coming back from the investments. In many cases, Young's investors never met Dalton. Moreover, Young actively solicited numerous investors, including encouraging those investors to find other investors to invest and then offering to pay those downstream sales agents. At the time of his sales, Young was not registered as a broker or dealer, or associated with a registered broker or dealer.

C. Respondents Violated Sections 5(a) and 5(c) of the Securities Act

Section 5 of the Securities Act of 1933, 15 U.S.C. § 77e, prohibits any person from offering or selling a security in interstate commerce unless it is registered. To prove a violation of Section 5 requires establishing three prima facie elements: (1) that the respondent directly or indirectly sold or offered to sell securities; (2) that no registration statement was in effect for the subject securities; and (3) that interstate means were used in connection with the offer or sale. SEC v. Universal Exp., Inc., 475 F. Supp. 2d 412, 422 (S.D.N.Y. 2007). Registration of a security is "transaction-specific," in that the requirement of registration applies to each act of offering or sale; proper registration of a security at one stage does not necessarily suffice to register subsequent offers or sales of that security. SEC v. Cavanagh, 155 F.3d 129, 133 (2d Cir. 1998). Liability for violations of Section 5 extends to those who have engaged in steps necessary to the distribution of unregistered security issues. Universal Exp., Inc., 475 F. Supp. 2d at 422 (quotation omitted). "[P]articipant liability has been laid in SEC enforcement actions brought to obtain injunctions for violations of Section 5. In these cases, those who had a necessary role in the transaction are held liable as participants." SEC v. Murphy, 626 F.2d 633, 649-51 (9th Cir. 1980) (citations omitted). The Division need not also show scienter to prove a Section 5 violation. Aaron v. SEC, 446 U.S. 680, 714 n. 5 (1980). A respondent may rebut a prima facie case by showing that the securities involved were not required to be registered. SEC v. Ralston Purina Co., 346 U.S. 119, 126 (1953).

Respondents violated Sections 5(a) and 5(c) of the Securities Act. No registration statement was in effect or had been filed for IV Capital or UCR securities. Respondents directly or indirectly sold and offered these securities by engaging in steps necessary to the

distribution of unregistered IV Capital and UCR securities. Respondents introduced the unregistered securities to investors, offered the unregistered securities to investors, arranged the sales of the unregistered securities to investors, and received transaction-based compensation. The sales were made through the use of interstate facilities with sales to investors in different states. No exemption from registration applies here.

D. Violations of the Antifraud Provisions of the Securities Act and the Exchange Act by the Respondents

The Division alleges misstatement liability against Respondents.[1] To prove a misstatement or omission under Exchange Act Section 10(b) and Rule 10b-5(b), the SEC must demonstrate that Respondents directly or indirectly: (1) each made an untrue statement of material fact or omitted to state a material fact; (2) with scienter; (3) in connection with the purchase or sale of a security; and (4) using any means of interstate commerce or of the mails. 17 C.F.R. § 240.10b-5(b); SEC v. Smart, 678 F.3d 850, 856-57 (10th Cir. 2012); SEC v. Morgan Keegan & Co., Inc., 678 F.3d 1233, 1244 (11th Cir. 2012); Gebhart v. SEC, 595 F.3d 1034, 1040 (9th Cir. 2010); SEC v. Pirate Investor LLC, 580 F.3d 233, 239 (4th Cir. 2009); SEC v. Wolfson, 539 F.3d 1249, 1256 (10th Cir. 2008). Under Rule 10b-5(b), "the maker of the statement is the person or entity with ultimate authority over the statement, including its content and whether and how to communicate it." Janus Capital Group, Inc. v. First Derivative Traders, 131 S.Ct. 2296, 2302 (2011). A respondent is liable for his or her own oral misstatements and omissions. See In re Textron, Inc., 2011 WL 4079085, at *6 (D.R.I. Sept. 13, 2011) (defendant CEO of company was make under Janus of oral statements he made during investor conference calls); SEC v. Dafoitis, 2011 WL 3295139, at *3 (N.D. Cal. Aug. 1,

[1] At the hearing, the Division will not be pursuing scheme liability.

2011) (defendant concedes he was maker under Janus of oral statement he made during conference call).

Under Section 17(a)(2), the SEC must prove that respondents directly or indirectly: (1) obtained money or property by means of an untrue statement of material fact or an omission to state a material fact; (2) with negligence; (3) in the offer or sale of securities; and (4) using any means of interstate commerce or of the mails. 15 U.S.C. § 77q(a)(2); Smart, 678 F.3d at 856-57; SEC v. Shanahan, 646 F.3d 536, 545 (8th Cir. 2011).[2]

Information is considered material when there is a substantial likelihood that a reasonable investor would consider it important in determining whether to buy or sell securities. Basic v. Levinson, 485 U.S. 224, 231-32 (1988); TSC Indus. v. Northway, 426 U.S. 438, 449 (1976). For omissions, "there must be a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information made available." TSC Indus., 426 U.S. at 439.

In this case, Bandimere knowingly or recklessly made materially incomplete and misleading disclosures relating to IV Capital and UCR when selling those securities. When describing IV Capital and UCR, he presented a one-sided view to potential investors and highlighted only positive facts: a) the consistent rate of returns, b) the established track record of performance, c) the experienced and successful traders, d) his personal dealings

[2] The Janus decision does not apply to Securities Act Section 17(a)(2) because of the absence of the "to make" language in the statute and due to the unavailability of a private right of action under Section 17(a). See SEC v. Stoker, -- F. Supp. 2d --, 2012 WL 2017736, at *8 (S.D.N.Y. June 6, 2012); SEC v. Sentinel Management Group, Inc., No. 07 C 4684, 2012 WL 1079961, at *14-15 (N.D. Ill. Mar. 30, 2012); SEC v. Pentagon Capital Mgmt. PLC, -- F. sup. 2d --, 2012 WL 479576, at *42 (S.D.N.Y. Feb. 14, 2012); SEC v. Mercury Interactive, LLC, No. 5:07–cv–02822, 2011 WL 5871020, at *3 (N.D. Cal. Nov. 22, 2011); SEC v. Geswein, No. 5:10CV1235, 2011 WL 4565861, at *2 (N.D. Ohio Sept. 29, 2011); SEC v. Dafoitis, No. C 11–00137, 2011 WL 3295139, at *5-6 (N.D. Cal. Aug. 1, 2011).

with Parrish and Dalton which gave him confidence in their abilities, and e) with regard to Dalton, his long-standing personal relationship. Bandimere further represented to many investors that he thought IV Capital and UCR were low risk and very good investments. Yet, Bandimere knew about numerous red flags associated with the investments which he never disclosed to investors, which were material because investors would have considered them important in making their investment decisions. Specifically, these red flags suggested a far different picture than the generally rosy view presented by Bandimere, and together suggested that, at a minimum, the investments had very significant risks. Specifically, Bandimere failed to disclose: 1) the lack of any monthly or yearly statements from Parrish or Dalton documenting their investments which would, at best, be highly unusual for purportedly sophisticated trading operations, 2) that IV Capital and UCR lacked any accounting records, 3) the fact that Bandimere had to tell Parrish and Dalton the monthly returns which were owed, and he was often sent the wrong amounts of money for investor returns even after providing those amounts, 4) that Parrish and Dalton consistently shorted Bandimere on the amount of his monthly payments, 5) Parrish's and Dalton's refusal to provide any documents confirming any aspect of their business despite numerous requests, 6) the lack of financial statements or audits of IV Capital or UCR, and 7) Parrish's and Dalton's problematic financial history which included investment losses by Dalton and a prior SEC action against Parrish.

Once Bandimere described IV Capital and UCR to potential investors in a very positive way, he was under a duty to make fair and complete disclosure rather than presenting only a one-sided view of the investment. See, e.g., Rule 10b-5 ("It shall be unlawful…to omit to state a material fact necessary in order to make the statements made,

in the light of the circumstances under which they were made, not misleading"); SEC v. Curshen, 372 Fed. App'x 872, 880 (10th Cir. 2010) ("where 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.") (citation omitted); 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. Il. 1986) ("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."). Thus, the Division's case is not based on any assertion that Bandimere is liable because he should have known that IV Capital and UCR were Ponzi schemes. Rather, Bandimere did not speak the full, material truth about what he knew about the investments – regardless of whether he should have known they were Ponzi schemes – and thus violated the antifraud provisions by failing to make fair and complete disclosures.

Moreover, Bandimere's complete disregard of these red flags establishes his scienter. Courts, including the D.C. Circuit, have long held that scienter may be established by evidence showing either an intent to defraud or extreme recklessness. SEC v. Steadman, 967 F.2d 636, 641 (D.C. Cir. 1992). The D.C. Circuit has defined extreme recklessness as conduct "which represents an extreme departure from the standards of ordinary care, [and] which presents a danger of misleading buyers or sellers that is either known to the defendant or is so obvious that the actor must have been aware of it." Id. (Internal quotation marks omitted.) "[A]n egregious refusal to see the obvious, or to investigate the doubtful, may in some cases give rise to an inference of recklessness." Novak v. Kasaks, 216 F.3d 300, 308 (2d Cir. 2000). 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." Id. A party cannot "escape liability for fraud by closing his eyes to what he saw and could readily understand." SEC v. McNulty, 137 F.3d 732,737 (2d Cir. 1998). "Red flags about the legitimacy of a transaction can be used to show both actual knowledge and conscious avoidance." U.S. v. Ferguson, 676 F.3d 260, 279 (2d Cir. 2011) (citing U.S. v. Nektalov, 461 F.3d 309, 312, 317 (2d Cir. 2006)); accord SEC v. Forte, Nos. 09–63, 09–64, 2012 WL 1719145, at *6 (E.D. Pa. May 16, 2012) ("Under abundant authority, an Investor may evince 'actual fraudulent intent' by willful or reckless blindness—i.e., by willfully or recklessly ignoring red flags that suggest a fraudulent scheme without investigating or taking other appropriate action.") (citing Stephenson v. PricewaterhouseCoopers, LLP, 768 F. Supp. 2d 562, 574–75 (S.D.N.Y. 2011) (allegations of accounting violations and reckless ignorance of red flags sufficient to plead "fraudulent intent")).

Here, Bandimere recklessly ignored a large collection of red flags which together suggested the IV Capital and UCR investments were not legitimate. Specifically, Bandimere appears to have closed his eyes to all of the red flags described above when making representations to investors about the general structure, returns, and history of IV Capital and UCR. Given that IV Capital and UCR had unusually high rates of return, high commission payments, unusual consistency, and lacked account statements, trading confirmations, and accounting records, these red flags should have made obvious to Bandimere that additional material facts needed to be disclosed to investors.

With regard to Young, the evidence shows that he knowingly made false statements to UCR investors, including telling certain investors that: a) the UCR program had been in existence for 7-9 years (when he knew Dalton was only working with IV Capital through 2007), b) he and his family members had invested in UCR (when he knew that was not true), and c) that he was a partner of Dalton (when he knew he was not a partner). Young was also reckless with regard to telling investors that Dalton's UCR investment program resulted from his connections to a special program offered to retired military officers when there was not any evidence that such a program existed. These specific representations were material because they influenced potential investors to invest in UCR. In particular, the representations that Young was a partner and had invested both his money and his family's money gave investors' confidence that Young truly understood UCR's business and believed strongly in its ability to earn high profits.

E. Alternate Theory of Relief

If the evidence at the hearing establishes that Bandimere offered interests in his three LLCs, rather than IV Capital and UCR, then the Division will argue alternatively that

Bandimere offered and sold securities in the LLCs (Exito, Victoria, and MMI), resulting in violations of provisions of the Advisers Act. However, given that Bandimere admitted in his Wells submission that the LLCs were merely "pass through" entities; the Division does not anticipate arguing this alternative theory of relief.

V. RELIEF REQUESTED AGAINST BANDIMERE AND YOUNG

A. Cease and Desist Orders and Collateral Bars

The Division requests findings of liability for the violations alleged. Based on these violations and conduct set forth above, Respondents should be ordered to cease and desist from committing or causing violations of and any future violations of Sections 5 and 17(a) of the Securities Act and Sections 10(b) and 15(a) of the Exchange Act and Rule 10b-5 thereunder. Industry bars should also be imposed against Respondents for willful violations pursuant to Section 15(b) of the Exchange Act, Section 203(f) of the Advisers Act, and/or Section 9(b) of the Investment Company Act.

B. Disgorgement, Prejudgment Interest and an Accounting

Based on the violations and conduct set forth above, Respondents should be ordered to provide accountings and disgorgement plus prejudgment interest pursuant to Section 8A of the Securities Act, Section 21C of the Exchange Act, Section 203(k) of the Advisers Act, and/or Section 9(e) of the Investment Company Act.

C. Civil Penalties

Based on the willful violations and conduct set forth above, Respondents should be ordered to pay civil penalties pursuant to Section 8A of the Securities Act, Section 21B of the Exchange Act, Section 203(i) of the Advisers Act, and/or Section 9(d) of the Investment Company Act.

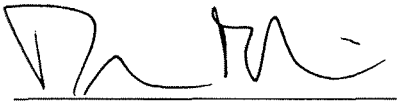
D. Fair Fund

Finally, the law judge should order the creation of a Fair Fund for the benefit of defrauded investors pursuant to Section 308 of the Sarbanes-Oxley Act to distribute to affected investors all disgorgement, prejudgment interest, and civil penalty payments.

V. CONCLUSION

For the foregoing reasons, the Division respectfully requests that the law judge: (a) conclude that the allegations set forth in the Order Instituting Proceedings are true; (b) order the relief requested above.

Respectfully submitted this 11th day of April, 2013.



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