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 POST-HEARING BRIEF AS TO DAVID F. BANDIMERE

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I. SUMMARY

This proceeding concerns an individual who played a critical role 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") acted as an unregistered broker 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 Parrish had a previous SEC problem, 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. Bandimere also failed to accurately disclose his commissions. These material omissions rendered Bandimere's material positive representations misleading.

II. RESPONDENT AND RELATED PARTIES

A. Respondent

1. **David F. Bandimere**, age 67, is a resident of Golden, Colorado. Answer of Respondent David F. Bandimere ("Answer") ¶ 5. 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. Division of Enforcement and Respondent David F. Bandimere's Submission of Joint Stipulations ("Stipulations") ¶¶ 5-7. 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. Answer ¶ 5; Stipulations ¶¶ 3-4, 8-10.

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. Answer ¶ 12. Exito was co-managed by Bandimere. Stipulations ¶ 7. Exito was used by Bandimere to collect investor funds to invest in UCR and IV Capital securities. Hearing 885:11-886:2, 980:9-981:11.[1] Exito has never registered with the Commission. Stipulations ¶ 10; Exh. 105.

2. **Victoria Investors LLC ("Victoria")** is a Colorado LLC formed on April 3, 2007 with a business address in Golden, Colorado. Answer ¶ 13. Bandimere managed Victoria. Stipulations ¶ 5. Victoria was used by Bandimere to collect investor funds to invest in UCR, IV Capital and other securities. Hearing 885:11-886:2, 980:9-981:11. Victoria has never registered with the Commission. Stipulations ¶ 8; Exh. 108.

[1] In this brief, the administrative hearing transcript is cited to as "Hearing" followed by the relevant page and line numbers. Hearing exhibits are referred to as "Exh." or "Exhs." followed by the relevant exhibit number(s).

3. **Ministry Minded Investors LLC ("MMI")** is a Colorado LLC formed on September 18, 2008 with a business address in Golden, Colorado. Answer ¶ 14. Bandimere managed MMI. Stipulations ¶ 6. MMI was used by Bandimere to collect investor funds to invest in UCR and IV Capital securities. Hearing 885:11-886:2, 980:9-981:11. MMI has never registered with the Commission. Stipulations ¶ 9; Exh. 107.

6. **Universal Consulting Resources LLC ("UCR")** is a New Mexico limited liability company operated by Dalton. Answer ¶¶ 7, 9. Its principal place of business was Dalton's home in Golden, Colorado. Id. UCR purported to engage in international note and diamond trading. Id. UCR never registered with the Commission. Id.; Exh. 109. The Commission brought a federal court action against UCR and Dalton on November 16, 2010 alleging that UCR was operating a Ponzi scheme. Answer ¶¶ 7, 9; Exh. 58. The Commission obtained a default judgment against UCR and Dalton on December 7, 2011. Answer ¶¶ 7, 9; Exhs. 83, 84. Dalton was criminally indicted, pleaded guilty to one count of money laundering, and has been sentenced to ten years imprisonment. Answer ¶¶ 7, 9; Case No. 11-cr-342 (D. Colo.).

7. **IV Capital, Ltd. ("IV Capital")** is a Nevis corporation owned and managed by Parrish. Answer ¶¶ 8, 10. IV Capital purported to be a proprietary trading company with traders in the U.S. and U.K. Id. IV Capital has never registered with the Commission. Answer ¶¶ 8, 10; Exh. 106. The Commission brought a federal court action against Parrish on March 7, 2011 alleging that IV Capital was a Ponzi scheme. Answer ¶¶ 8, 10; Exh. 66. The Commission obtained a default judgment against Parrish on October 11, 2012. Answer ¶¶ 8, 10; Case No. 11-cv-558 (D. Colo.). The U.S. Attorney's Office for the District of Maryland obtained a criminal indictment against Parrish and he pleaded guilty to one count of wire fraud and is awaiting sentencing. Answer ¶¶ 8, 10; Case No. 12-cr-342 (D. Md.).

III. FACTS

A. Background

Between 2006 and 2010, Bandimere raised at least $9.3 million from over 60 investors to invest in IV Capital and UCR securities, earning at least $735,000 in transaction-based compensation during that period. Hearing 861:9-14; Exhs. 93, 113. He also made at least $475,000 in earnings on his personal investments in UCR and IV Capital securities before the Ponzi schemes collapsed. Exh. 93. Bandimere initially sold IV Capital directly to investors, but then set up three LLCs to facilitate bringing in investors. Hearing 884:25-886:2. He also facilitated the investment of retirement funds by setting up self-directed IRA accounts through a third party provider. Hearing 848:15-25, Answer ¶ 26. 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, as detailed below. Bandimere also failed to accurately disclose his commissions.

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. Hearing 873:22-874:11. Dalton assisted in arranging a meeting in which Parrish came to Denver and met with Bandimere, and explained the IV Capital investment to him. Hearing 880:18-883:25. In November 2005, Bandimere invested $100,000 in IV Capital securities, and in 2006 he invested another $100,000. Hearing 884:1-24; Exh. 2, 201; Answer ¶ 19. Bandimere then began telling others about IV Capital securities during 2006; he pooled their funds funds and invested it with IV Capital under his name, prior to the formation of the LLCs. Hearing 885:11-886:2. IV Capital paid the monthly returns of 2.5% to Bandimere who would then make payments to the individual investors consolidated under his name. Answer ¶ 20. 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. Hearing 870:4-23.

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. Hearing 721:4-723:17, 730:2-8, 885:11-886:2. 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. Hearing 980:9-981:11. 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. Hearing 870:4-23.

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. Hearing 845:18-847:15, 1249:25-1250:10. Bandimere explained the program, and generally told investors Dalton had been a longtime personal friend, though 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. Hearing 295:17-22, 590:13-591:18, 677:5-10, 845:18-847:15; Answer ¶ 24. Bandimere also told investors that they would earn a return of four percent monthly or 48 percent annually. Hearing 957:12-958:4, 1207:1-12. Bandimere and Dalton agreed that UCR would pay Bandimere 24 percent (2 percent per month) on all investor funds that Bandimere raised. Hearing 870:8-13, 957:12-958:4, 1207:1-12. 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. Hearing 1120:13-1121:11; Answer ¶ 28. 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. Hearing 870:8-13, 1207:1-12. Bandimere also offered investors an investment by the name of Blue Rose. Hearing 349:1-20, 448:12-19, 503:20-504:14, 847:24-848:1.

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;
- Handling investor paperwork for IV Capital and UCR;
- Obtaining signatures from investors for IV Capital and UCR;
- Managing the LLCs to facilitate investments in IV Capital and UCR;
- Accepting and managing investor funds in IV Capital and UCR;
- Working with a self-directed IRA provider to accept investor funds;
- Providing a money-market option to investors;
- Determining monthly returns due for IV Capital and UCR;
- Mailing "return" checks to investors for IV Capital and UCR;
- Providing information about monthly returns due to Parrish and Dalton; and
- Creating and maintaining individual account records for investors.

Hearing 844:12-848:25. From beginning to end, Bandimere was involved in the process of handling investments for his investors in IV Capital and UCR through the LLCs. Hearing 849:1-5.

Bandimere's LLCs were created as a vehicle to make investments in IV Capital and UCR. Hearing 885:11-886:2, 980:9-981:11. 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). Hearing 885:11-886:2, 980:9-981:11, 849:8-850:15. 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 Bandimere would distribute those earnings in accordance with how the individual LLC investors had directed that their capital be allocated among the investment choices. Hearing 850:24-851:19. In total, Bandimere's investors (including his own investments) 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. Exh. 113.

IV Capital and UCR pooled investor funds, and claimed to engage in profitable trades. Hearing 849:8-850:15, 851:6-19. The IV Capital and UCR agreements placed no management responsibilities on investors, and investors did not even sign agreements directly with IV Capital and UCR, only with the LLCs. Exhs. 2, 114, 115, 118, 120, 121, 122, 126, 130. It was the efforts of IV Capital and UCR that would result in "profit" payments, not any efforts by investors. Hearing 168:5-13, 227:13-228:6, 293:23-295:7, 455:2-14, 505:19-506:6, 548:7-16, 682:16-24, 850:16-23, 851:20-852:20. Investors understood that their money was invested with IV Capital or UCR, not the LLCs. Hearing 294:17-22, 499:2-17, 548:7-10. Some investors had little to no investment experience prior to investing through Bandimere. Hearing 154:7-9, 286:3-5, 491:6-15, 579:17-24. Some investors had no relationship with Bandimere prior to investing. Hearing 286:19-287:24, 437:21-438:23, 491:19-495:16.

Bandimere handled all aspects of making the investments and paying returns. Hearing 168:20-169:8, 170:24-171:8, 228:7-25, 295:23-297:1, 458:11-459:17, 506:7-24, 552:22-553:3, 593:14-17, 684:17-25. Bandimere created and maintained investor files and all documents required to handle investments in IV Capital and UCR. Exhs. 114, 115, 120, 121, 122, 126, 130. Bandimere also offered an IRA investment option. Hearing 220:6-222:4. 503:20-504:7. Prior to the formation of the LLCs, Bandimere had no experience offering investments. Hearing 873:22-25. He performed little due diligence regarding IV Capital and UCR. Hearing 1246:17-1249:1.

4. <u>Bandimere Ignored Red Flags and Made Misstatements and Omissions to Investors</u>

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, which he did not disclose to investors:

- Bandimere did not accurately disclose the commissions he received from IV Capital and UCR. Hearing 165:22-166:1, 166:13-17, 293:25-294:7, 432:14-22, 465:5-9, 466:14-19, 507:5-10, 591:19-23, 592:15-19, 681:20-682:4, 926:3-928:8, 928:23-929:6, 929:18-931:8. Bandimere falsely told one investor that he would donate any funds in excess of investor returns to charity. Hearing 294:8-16.

- Parrish and Dalton regularly violated their agreements to compensate Bandimere. 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. Hearing 166:7-12, 167:3-7, 466:10-13, 467:12-15, 591:24-592:2, 593:11-13, 681:16-19, 889:24-890:11, 894:4-895:3, 906:2-908:19, 931:16-933:9, 940:16-22, 941:8-942:8, 956:17-957:1, 1259:1-1262:20; Exhs. 11, 130.

- Prior to soliciting any investors, Bandimere knew from Dalton that Parrish was facing regulatory action by the SEC. Exh. 71, 143; Hearing 165:16-21, 232:16-238:10, 430:3-431:23, 465:12-21, 553:4-557:13, 592:11-14, 909:9-910:13, 911:5-9.

- 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. Hearing 297:23-298:7, 507:20-508:2, 903:9-11, 903:18-905:6.

- 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. Hearing 166:2-6, 166:23-167:2, 457:10-458:10, 592:3-7, 593:7-10, 680:15-681:9, 886:13-888:11, 897:24-899:11.

- 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. Hearing 230:21-231:4, 297:12-22, 507:15-19, 890:20-891:18, 952:10-954:11; Exhs. 111, 112, 125, 130.

- 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. Hearing 245:3-5, 298:8-15, 508:3-6, 875:24-876:21, 877:14-878:4, 1243:18-1244:12, 1245:5-1246:14.

- 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. Hearing 166:18-20, 467:16-20, 874:12-875:6, 878:5-879:10.

- Dalton told Bandimere that he stopped working with IV Capital and Parrish because of problems with getting paid. Exhs. 71; Hearing 232:16-238:10, 430:3-431:23, 912:2-913:3, 913:6-16.

Bandimere ignored these red flags while baselessly assuring investors that the investments were low risk and very good investments, while not disclosing any negative information. Hearing

161:4-8, 164:4-11, 442:8-10, 587:15-20, 670:24-671:8, 223:5-8, 244:25-245:2, 297:2-4, 304:7-305:13.

Investors would have found the information not disclosed by Bandimere to be important to their investment decisions. Hearing 298:16-300:7, 457:10-458:10, 465:12-466:4, 466:20-467:11, 508:7-509:1. Investors were devastated by their losses. Hearing 178:1-15, 247:7-250:17, 300:8-12, 510:9-11. Investors would not invest through Bandimere again. Hearing 178:17-19, 250:13-17, 300:13-15, 468:12-14, 510:12-14, 601:20-22.

Investor [redacted] felt particularly aggrieved by Bandimere for Bandimere's failure to disclose Dalton as being affiliated with UCR and the Diamond Program. So much so, that he wrote Bandimere a letter, asking him to repay [redacted] losses. Exh. 144. Although Bandimere made preferential payments to some investors, he refused to repay [redacted]. Exh. 200; Hearing 600:24-601:8. [redacted] never would have invested in UCR or the Diamond program if he had known Dalton was involved since he knew of Dalton's financial issues, as did Bandimere. Hearing 590:13-591:18. Despite the fact that Bandimere knew that [redacted] knew Dalton, he withheld Bandimere's identity from him. Id.

Bandimere profited in the amount of approximately $735,000 in commissions. Exh. 200. Bandimere routinely referred to his transaction-based compensation as a "commission" or "broker fee." Exhs. 6, 14, 16, 110. Bandimere did not receive a salary from IV Capital or UCR, but rather received transaction-based compensation that increased with the amount of investor money he brought to the schemes. Hearing 869:25-870:23.

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

Bandimere 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 and purportedly invested, thereby satisfying the first two elements of Howey. 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 trade in notes or diamonds. 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, Dalton, and Dalton's "traders," who were expected to make all decisions regarding the use of investor funds.

B. Bandimere 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 . . . .").

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), which increased with the amount of investor funds he brought in, and he was not paid a salary. 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, arranging IRA investments, and he was responsible for all recordkeeping for 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 approximately $735,000 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]

[2] Although Bandimere provided limited advice to investors, it was incidental to his role in brokering transactions and there is no evidence that he earned compensation for investment advice. See Section 202(a)(11) of the Investment Advisers Act of 1940.

C. Bandimere 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).

Bandimere 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. Bandimere directly or indirectly sold and offered these securities by engaging in steps necessary to the distribution of unregistered IV Capital and UCR securities. Bandimere 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 Bandimere

The Division alleges misstatement and omission liability against Bandimere.[3] To prove a misstatement or omission under Exchange Act Section 10(b) and Rule 10b-5(b), the SEC must demonstrate that a respondent 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, 2011) (defendant concedes he was maker under Janus of oral statement he made during conference call).

[3] The Division is not pursuing scheme liability. In addition, given the evidence admitted during the hearing, the Division is not pursuing its alternative theory of liability under the Investment Advisers Act of 1940 at this time. See OIP ¶ 51.

Under Section 17(a)(2), the SEC must prove that a respondent 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).[4]

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; see also SEC v. TLC Inv. and Trade Co., 179 F. Supp. 2d 1149, 1153 (C.D. Cal. 2001) (paying securities sales commissions material).

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 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

[4] 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, 865 F. Supp. 2d 457, 459 (S.D.N.Y. 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, -844 F. Supp. 2d 377, 382 (S.D.N.Y. 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).

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) his commissions from IV Capital and UCR; 5) that Parrish and Dalton consistently shorted Bandimere on the amount of his monthly payments, 6) Parrish's and Dalton's refusal to provide any documents confirming any aspect of their business despite numerous requests, 7) the lack of financial statements or audits of IV Capital or UCR, and 8) 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 (including Parrish's "SEC problem") of IV Capital and UCR. Given that IV Capital and UCR had unusually high rates of return, high commission payments, unusual consistency, lacked account statements, trading confirmations, and accounting records, and shorted Bandimere's commissions and routinely sent him the wrong amounts of funds -- these red flags should have made obvious to Bandimere that additional material facts needed to be disclosed to investors.

E. Response to Request for Briefing Regarding Selective Prosecution

As the law judge noted in his request for briefing, the Supreme Court has recognized that in the context of a selective prosecution defense, "We have never determined whether dismissal of the indictment, or some other sanction, is the proper remedy if a court determines that a defendant has been the victim of prosecution [on an improper basis]." U.S. v. Armstrong, 517 U.S. 456, 461 n.2 (1996). Courts since Armstrong have noted that the victim of selective prosecution is entitled to some remedy, but "[t]he precise nature and scope of that remedy, however, has not yet been delineated." U.S. v. Hedaithy, 392 F.3d 580, 606 n.23 (3d Cir. 2004) (citing Armstrong).

The Commission's Rules of Practice do not provide for a remedy for selective prosecution, though they do allow for the assertion of affirmative defenses. See Rule of Practice 220(c). The Commission, however, has previously ruled on (and rejected for lack of evidence) selective prosecution assertions. See, e.g., Demitrios Julius Shiva, Release No. 38389, 64 S.E.C. Docket 143 (March 12, 1997); C.E. Carlson, Inc., Release No. 23610, 48 S.E.C. 564 (Sept. 11, 1986) (aff'd C.E. Carlson, Inc. v. SEC, 859 F.2d 1429, 1437 (10th Cir. 1988)); see also In re Indigenous Global Dev. Corp., Release No. 325, 89 S.E.C. Docket 2452 (January 12, 2007) (Kelly, law judge).

While there is ambiguity as to the available or appropriate relief for a selective prosecution defense in an administrative proceeding, that is irrelevant here because there is no evidence of selective prosecution in this case. "To prevail on a claim of improper selective prosecution, a respondent must establish that it was singled out for enforcement action while others similarly situated were not, and that its prosecution was motivated by arbitrary and unjust considerations, such as race, religion, or a desire to prevent the exercise of a constitutionally-protected right." Indigenous Global, supra. Bandimere was not singled out; the Division filed administrative actions against two other respondents resulting from the same investigation: John O. Young (in this action)

and David R. Smith (in a settled action, Release No. 9373). Furthermore, there was no improper motive in bringing the case, as the law judge recognized after his in camera review of the action memorandum. Hearing 1106:10-1107:1. Thus, Bandimere's selective prosecution defense fails.

V. RELIEF REQUESTED AGAINST BANDIMERE

Based on the evidence introduced during the administrative proceeding, the Division requests that the law judge find that Bandimere violated 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, and order the following relief:

A. Cease and Desist Order

Bandimere should be ordered to cease and desist from committing or causing violations of the above-listed provisions. Negligence suffices to support a cease and desist order. Securities Act Section 8A; Exchange Act Section 21C. In evaluating the propriety of a cease-and-desist order, the law judge should consider the Steadman factors, as well as the recency of the violation, the resulting degree of harm to investors or the marketplace, and the effect of other sanctions. KPMG Peat Marwick LLP, Exchange Act Release No. 43862 (Jan. 19, 2001), 54 S.E.C. 1135, 1192 (2001), recon. denied, 55 S.E.C. 1, aff'd, 289 F.3d 109 (D.C. Cir. 2002). The Steadman factors include: (1) the egregiousness of the respondent's actions; (2) the isolated or recurrent nature of the infraction; (3) the degree of scienter involved; (4) the sincerity of the respondent's assurances against future violations; (5) the respondent's recognition of the wrongful nature of his conduct; and (6) the likelihood of future violations. Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979). While some showing of a likelihood of violation is required, it is "significantly less than that required for an injunction." KPMG Peat Marwick, 54 S.E.C. at 1183-91.

A cease and desist order is warranted here. The recency of Bandimere's violations as well as the resulting harm to investors, which was significant, support ordering a cease and desist order. In addition, the Steadman factors support such an order. Bandimere's violations were egregious. He misled numerous investors causing significant losses. His violations were recurrent in nature, occurring over a lengthy period of time and involving numerous transactions and unregistered sales. As explained above, Bandimere acted with a high degree of recklessness, exhibited by his repeated and continued sale of IV Capital and UCR securities despite the red flags that he encountered. Bandimere has not acknowledged any wrongdoing, so any assurance that he will not commit violations in the future cannot be considered sincere. Finally, there does exist a likelihood of future violations. Given Bandimere's past investment history, his willingness to act as an unregistered broker, and his proclivity for recruiting and involving others in his investments, there exists a significant probability that he will commit securities violations again in the future. For these reasons, a cease and desist order for any violations found by the law judge is appropriate.

B. Disgorgement and Prejudgment Interest

Based on the violations and conduct set forth above, Bandimere should be ordered to pay disgorgement plus prejudgment interest pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act. Disgorgement of illegally obtained profits is an appropriate remedy for violations of the federal securities laws. New Allied Development, Exchange Act Release 37990 (November 26, 1996), 63 SEC Docket 650. See also, SEC v. Manor Nursing Centers, Inc., 458 F.2d 1082, 1113-14 (2d Cir. 1972) ("The effective enforcement of the federal securities laws requires that the SEC be able to make violations unprofitable."); SEC v. Materia, 745 F.2d 197, 200-201 (2d Cir. 1984), cert. denied, 471 U.S. 1053 (1985); SEC v. First City Financial

Corp., Ltd., 890 F.2d 1215, 1230 (D.C. Cir. 1989) (disgorgement is designed to deprive a wrongdoer of his unjust enrichment and to deter others from violating the securities laws).

Where the Division has produced a reasonable approximation of the disgorgement amount, the burden shifts to the defendant "clearly to demonstrate that the disgorgement figure was not a reasonable approximation." SEC v. First City Financial Corp., 890 F.2d at 1232. The wrongdoer, who has created the uncertainty by his violation, bears the risk of that uncertainty. SEC v. Lorin, 76 F.3d 458, 462 (2d Cir. 1996); SEC v. Patel, 61 F.3d 137, 140 (2d Cir. 1995); SEC v. Bilzerian, 29 F.3d 689, 697 (D.C. Cir. 1994).

Bandimere's own records that he produced to the Division and that were admitted into evidence during the hearing establish that he earned $734,996.33 in commissions or so-called "management fees" during the relevant period. Exh. 93. Bandimere admitted during the hearing that he earned this amount. Hearing 889:1-9. The Division requests that the law judge order this amount of disgorgement against Bandimere with prejudgment interest.

During the hearing, Bandimere offered an exhibit that references what he views as potential offsets to his disgorgement amount. See Exh. 200. In this document, Bandimere adds his investment returns to his "management fees" to reach a total for his "gross returns." He then deducts amounts for various expenses, such as repayments to investors for guarantees or losses and fees for a trip to meet Parrish, to reach his "net returns." Then, although not stated explicitly on the document, he deducts his investment losses from his "net returns" to demonstrate that he did not profit as a whole. Bandimere's analysis is flawed. First, the fact that Bandimere invested his own money in IV Capital and UCR has nothing to do with the commissions or "management fees" he earned by selling IV Capital and UCR securities to other investors. Thus, his net investment position is not a proper deduction from his total commissions or fees. Second, his

repayments to other investors for their losses are not proper offsets. Bandimere made the choice to make those preferential payments to investors, and it is not clear that the payments were made out of his commissions. Accordingly, they are not proper offsets to disgorgement.[5]

C. Civil Penalties

Civil penalties may be imposed against Bandimere for willful violations of the provisions alleged against him and if the penalties are determined to be in the public interest. Securities Act Section 8A(g); Exchange Act Section 21B. For willful violations, the Division need not prove an intent to violate the law, but merely an intent to do the acts which constitute a violation of the law. Wonsover v. SEC, 205 F.3d 408, 414 (D.C. Cir. 2000). To determine whether the penalty is in the public interest, the law judge should apply the Steadman factors.

As demonstrated above, Bandimere's violations were willful. The hearing record indicates that he in fact intended to do the acts that resulted in the alleged violations – such as interacting directly with Parrish and Dalton about the IV Capital and UCR securities, brokering and selling those unregistered securities, and communicating directly with investors about their investments. Moreover, as previously discussed, the Steadman factors weigh in favor of the Division. In particular, Bandimere's violations caused significant harm to investors. For example, investor [redacted] testified during the hearing that the impact of his investment losses on his life had been "unbearable," that he currently lived in a 600-square foot cabin that just had plumbing

[5] See e.g., SEC v. Dimensional Entertainment Corp., 493 F. Supp. 1270, 1283 (S.D.N.Y. 1980); SEC v. Kenton Capital Ltd., 69 F. Supp. 2d 1 (D.D.C. 1998) ("overwhelming weight of authority hold[s] that securities law violators may not offset their disgorgement liability with business expenses"); SEC v. Hughes Capital Corp., 917 F. Supp. 1080 (D.N.J. 1996) (same), aff'd, 124 F.3d 449 (3d Cir. 1997); SEC v. Great Lakes Equities Co., 775 F. Supp. 211 (E.D. Mich. 1991) ("deductions for overhead, commissions and other expenses are not warranted. The manner in which defendants . . . chose to spend their misappropriation is irrelevant as to their objection to disgorgement"); SEC v. United Monetary Services, Inc., 1990 U.S. Dist. LEXIS 11334 (S.D. Fla. May 13 1990); SEC v. Benson, 657 F. Supp. 1122 (S.D.N.Y. 1987) ("The manner in which [the defendant] chose to spend his misappropriations is irrelevant as to his objection to disgorge. Whether he chose to use this money to enhance his social standing through charitable contributions, to travel around the world, or to keep his co-conspirators happy is his own business."); SEC v. World Gambling Corp., 555 F. Supp. 930 (S.D.N.Y. 1983); SEC v. Dimensional Entertainment Corp., 493 F. Supp. 1270 (S.D.N.Y. 1980) (defendant's "expenses in carrying out his scheme and in defending himself are hardly appropriate or legitimate deductions from the amount he received for his own benefit").

installed, and that his life had been totally devastated. Hearing 178:1-15. Investor [redacted] due to her investment losses her "immune system basically collapsed," leading to several surgeries. In addition, she has had to move in with her brother. Hearing 248:19-250:12. On balance, the Steadman factors support a significant penalty against Bandimere.

The civil penalty statutes provide for a three-tier system for penalty amounts that are periodically adjusted for inflation. 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. Third tier penalties are warranted here. As explained above, Bandimere's violations involved fraudulent conduct and reckless disregard of regulatory requirements. In addition, his conduct resulted in both substantial losses to investors and substantial pecuniary gain to himself. The Division requests that the law judge impose three third tier penalties against Bandimere for a total of $390,000. This amount is clearly supported by the record and the Steadman public interest factors, as Bandimere committed multiple fraud violations. Bandimere raised funds from about 60 investors and the Division called eight of those investors as witnesses during the hearing.

D. Associational Bar

An associational bar may be imposed against Bandimere for willful violations pursuant to Section 15(b)(6) of the Exchange Act. Exchange Act Section 15(b)(6). In determining whether to order an associational bar, the law judge should apply the Steadman factors. The Commission has held that collateral bars ordered under the Dodd-Frank Act are not impermissibly retroactive. John W. Lawton, Advisers Act Release No. 3513 (Dec. 13, 2012), 105 SEC Docket 61722, 61737. As discussed above, Bandimere's violations were willful. In addition, the Steadman public interest factors weigh in favor of the Division. Accordingly, the law judge should enter a full collateral bar against Bandimere.

E. Fair Fund

Finally, for monetary amounts ordered against Bandimere, 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 and Rule 1100 to distribute any disgorgement, prejudgment interest, and civil penalty payments made by Bandimere and/or Respondent Young.

VI. CONCLUSION

For the foregoing reasons, the Division respectfully requests that the law judge find that

Bandimere violated the relevant provisions alleged and order the relief requested.

Respectfully submitted this 14th day of June, 2013.

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