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United States of America

Before the

Securities and Exchange Commission

Administrative Proceeding File No. 3-15446 In the Matter of

J.S. Oliver Capital Management, L.P., Ian O. Mausner, and Douglas F. Drennan

Respondents

J.S OLIVER CAPITAL MANAGEMENT AND IAN MAUSNER's

POST HEARING BRIEF

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A. No cherry picking occurred as proven by performance reports and all soft dollar activity was approved by counsel and Instinet.

B. Gigantic financial and reputational price has already been paid. Both Mausner and J.S. Oliver have had to liquidate remainder of assets to defend this action. Press releases have had huge effect on the business and on our reputations.

C. Never any intent to do any wrongdoing so if any occurred it was inadvertent and due to bad advice from counsel and Instinet

D. J.S. Oliver, Mausner and Drennan unilaterally changed all soft dollar activity to 28E and stopped all separate account trading in 2011.

E. Mausner has had a 28 year career and J.S. Oliver has been operating for 10 years which until the Anderson and SEC issue was characterized by successfully helping hundreds of clients.

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H. The requested ban is excessive and unwarranted. Imposing a life crushing end of Mausner's career and reputation is not justified especially since less punitive safeguards can be implemented to give the Commission comfort that compliance would be adhered to.

I. We always believed we were conducting ourselves appropriately. To the extent we were not whether by mistake or receiving bad counsel, we are deeply regretful and will never do such activity again.

1. INTRODUCTION

At the hearing from January 6-10, 2014 the Division of Enforcement did not provide any evidence of any overall cherry picking activity and offered no performance data to support such a claim since none exists. Quite the contrary, since the performance data that we introduced shows no difference between account groups. Further, the Division offered no evidence that J.S. Oliver (JSO), Mausner and Drennan did not fully rely on counsel and Instinet for all of their soft dollar activity. Though respondents strongly believe that there was no wrongdoing, to the extent that there was any, it was absolutely inadvertent and unintentional and was due to a full and complete reliance on counsel and Instinet as supported by the numerous emails, phone calls and substantial legal bills during the period.

A. Cherry Picking Allegation

If cherry picking had occurred with certain accounts receiving preferential treatment to others then those accounts would have performed better during the period than the others. They unequivocally did not. We present the only way to prove that by showing the actual performance during the period by account. In fact, the overall effect of trading is never discussed by the Division or the expert, they only discuss selected trades, never all of the trades in total. They mention "disproportionate" trading but disproportionate trading if it does not harm an account is perfectly legal. Of course different accounts received different types and sizes of trades and such disproportionate trading is perfectly okay between different accounts with different

mandates and risk tolerance but no accounts were adversely affected because of this.

The Division alleges that cherry picking of trades caused over $10 million of harm which represents approximately 20% of the assets in the various accounts. If this were true, the performance difference between accounts would be huge. In fact, the performance difference between the accounts is minuscule and in 2009 the so called disadvantaged accounts actually did better than the so called advantaged accounts including the JSO Funds. The market was down almost 50% in 2008 and it was this overall market decline that caused the losses in the accounts. The Division does not take into account the market decline and simply attributes losses to trading.

It is extremely telling than nowhere in the Division's writing or Court proceedings nor in the expert's report did they ever discuss how each of the accounts actually did. That is the pure definition of whether any financial harm occurred. Without examining the COMPLETE total picture of how an account did, one cannot reasonably claim that any harm was caused. In an investment account, if cherry picking occurred the performance of the targeted accounts would be significantly compromised. Since the performance of all the accounts in both groups were essentially the same in 2008 and since the so called disadvantaged accounts actually did better than the other accounts in 2009, there is black and white proof that there was absolutely no wrong doing, no harm from day trading of any kind. It is truly

outrageous that such a claim can be made when there is no performance hit to any of the accounts.

The Division alleges that Mausner benefitted because he was invested in one or more of the funds. Three of the JS Oliver Funds, which are part of the so-called advantaged group, did the same or worse than the so-called disadvantaged group so there could not be any benefit there. Additionally, the Concentrated Growth Fund which was created to benefit in a down market appreciated due to high short positions and cash not from trading. Neither the Division nor the expert did any analysis of the holdings of that specific Fund to prove that the appreciation was from anything but it's designed defensive and short orientation.

B. Soft Dollar Allegations

Without exception, every single time that anything related to soft dollar activity and submissions came up, J.S. Oliver and it's employees including Mausner and Drennan sought out and relied on counsel, Howard Rice (HR). The idea to consider non 28E soft dollar submissions came from Instinet and no one at J.S. Oliver had any previous experience with non 28e soft dollars so we relied on the advice from Howard Rice and Instinet.

Whenever something came up in the office relating to soft dollars, as confirmed by testimony from Mausner, Drennan and Kartes, Mausner would always say " check with Howard Rice and with Instinet and if they say it is ok, then I am okay with us doing it".

All of the documents and disclosures were handled by Howard Rice and they assured J.S. Oliver that all necessary disclosures were done properly. Both the required document disclosures and the soft dollar submission process are technical and legal in nature so it was completely normal practice to rely on the lawyers and on Instinet for guidance in these areas since they were the experts in these matters.

There is extensive legal precedent establishing reliance on counsel as a highly mitigating if not entirely exculpatory factor. As proven by the huge legal bills during the period of over $364,000 (see exhibit 29) and the extensive emails and phone calls, counsel was extremely involved in the soft dollar process and their advice and direction was entirely relied upon by J.S. Oliver and its employees.

The four soft dollar submissions that the Division questions were each fully vetted to the best of our ability and knowledge with both Howard Rice and Instinet:

1. Mausner's ex wife, Gina Kloes, was also the former Chief Counsel of J.S. Oliver with a salary commitment of several years. Once the divorce occurred, the firm wanted to buy her out of her employment contract and that is the sole source of the

payment that was made to her. It was solely for her employment obligations. The other personal elements relating to the divorce were handled separately. Howard Rice and Instinet were fully aware that Gina had dual roles of both an officer of the firm and as Mausner's wife. The one agreement between the two of them addressed both her professional role as well as her personal role. Her single payment, which was approved for soft dollar reimbursement, addressed only the aggregate outstanding amount of her salary obligations, which is an allowable expense under non 28E soft dollar policy as stated to J.S. Oliver by Howard Rice and Instinet. Both of them were fully aware of the divorce, fully aware of the Marital Settlement agreement and reviewed this payment in great detail. A specific conference call was held with the Howard Rice attorney in charge, Mark Whatley, solely to discuss this payment to Gina. After reviewing all of the documents, Mr. Whatley approved the payment to Gina.

The original 2005 marital agreement contained in it a specific employment obligation and contract between J.S. Oliver and Gina. It specifically committed the firm to pay her salary over several years. Whether or not Gina did work or not during any period after the second agreement was signed in 2009 is irrelevant as she only committed to being available if necessary. Further, the payment for employment was a replacement of the employment agreement from the original 2005 agreement and fulfilled that obligation not prospective work in the future after 2009.

2. J.S. Oliver used the house at [redacted] for its offices and as such a rent payment was due. The only issue is whether the rent payments were above

market rates. Counsel brought to our attention that we were undercharging for the rent and could raise or lower it within a range at our discretion. Both Howard Rice and Instinet were fully aware of the changes in the rent and fully vetted and approved it. We relied on their counsel entirely for the changes in the rent and never intended on charging above market rates. Furthermore, the Division offers zero proof of any neighborhood specific research that would show what the appropriate rent would be. In the absence of such proof, their allegation is totally without merit. Additionally, the rent before it was soft dollared was $13,000 and then afterwards was in a range of $5,000-$15,000. The average soft dollar rent payment was lower than when it was not.

3. The St. Regis fractional ownership was purchased to reduce the nightly hotel business expense for Mausner's trips to NY. So instead of paying a higher hotel rate each night, the annual payment to the St. Regis entitled Mausner to stay approximately 50 nights a year, thereby reducing the nightly cost to approximately $400 a night down from a range of $600-$800 a night. The email from the St. Regis entered into evidence proves and supports this assertion as do the much higher per night rates shown on the hotel bills from before the St. Regis purchase. Further, Howard Rice and Instinet were fully aware of this arrangement and both approved it as a legitimate soft dollar expense and were relied on accordingly.

4. Drennan's primary function through Powerhouse Capital was to provide investment research to J.S. Oliver. Though he would be supportive in the office and

do other tasks, the vast majority of his time was spent on research. His function and arrangement was fully vetted by Howard a Rice and Instinet and J.S. Oliver fully relied on their counsel.

C. Response To Sanctions Request

At no time was there ever any intent to do anything wrong and the moment it was pointed out that there might be some issue with our soft dollar activity and trading, we unilaterally changed our procedures. Additionally, we retained NRS consulting to improve all of our compliance. Mausner has had a 28 year career serving clients faithfully and well so these allegations just do not fit with the history and pattern of service and philanthropy that he has created. With the absence of intent and clear actions taken to avoid impropriety, penalties and sanctions are not justified.

To the extent anything was done wrong it was inadvertent and unintentional. Further, a gigantic financial and reputational penalty has already been paid by the firm and by Mr. Mausner. The firm's and Mausner's reserves were completely drained defending this action to the point where legal counsel could no longer be paid to represent J.S. Oliver and Mausner in the proceeding and funds have been borrowed by Mausner to fund the firm, to pay the Sapling settlement and to fund daily expenses. Additionally, press releases and online news have had a huge reputational impact on the firm and on Mausner causing clients to leave and other

significant reputational consequences. With such a large penalty already incurred, no additional fines or sanctions are justified.

It is extremely clear given the lack of any performance difference between accounts that no cherry picking occurred. The alleged activity just did not happen. The $10.9 million number that the Division claims was the trading harm was never explained, was never shown how it was derived and in fact could not possibly be correct given the performance numbers. As such, no sanctions or penalties of any kind is warranted regarding the trading allocations.

As far as the soft dollar issues are concerned, J.S. Oliver, Mausner and Drennan relied on counsel and on Instinet entirely for direction. At the very least, the reliance on counsel is highly mitigating if not entirely exculpatory if in fact any of the soft dollar submissions were inappropriate. The firm now only does 28E compliant submissions and would be very willing to submit to monitoring or other additional compliance requirements to give the Commission comfort that no violations would occur in the future. If your Honor should determine that certain soft dollar expenses were inappropriate, J.S. Oliver would willingly reimburse those funds but the huge punitive requests by the Division are completely excessive and unwarranted. The very large bills from HR and the extensive effort to work with Howard Rice and to comply with the rules shows JSO and its employees' clear intent to comply and bears directly on the scienter issue. As a result, penalties or fines are not justified.

Further, the Division alleges that Mr. Mausner benefitted financially. This is categorically not the case. From the inception of the firm, Mausner lent funds to the firm with that loan amount ranging from $150,000-750,000 and Mr. Mausner and his family suffered losses overall in the JSO Funds. Additionally, no distributions from the firm were made during the 2008-9 period to Mr. Mausner so he was not the beneficiary of any fees or profits. The Division at no time offered any evidence or proof of Mausner's financial benefit and in the absence of such proof, no penalties should be assessed.

The Division requests extremely large civil penalties as well on JSO and on Mausner. The gigantic penalties requested bear no relation to the alleged violations even if they were true and would represent a truly extreme, unwarranted and life crushing burden if levied. The Division states that such large civil penalties are needed to send a message to others but it would be truly unfair for that to be a driver in any assessed penalties. Further, relative to fines and penalties in other similar cases, the requested amounts in this case are many orders of magnitude higher.

The suggestion of an industry ban seems extremely excessive given the facts. Depriving Mausner and Drennan of their livelihood given the facts of this case is unwarranted. The respondents are very willing to submit to oversight, monitoring or other review to give the Commission comfort that compliance is being fully attended to. Also, given that there was never any intent to do anything improper, given the lack of proof of cherry picking, given the clear reliance on counsel and given the

long standing careers of Mausner and Drennan, we respectfully request that a ban not be granted. Less punitive safeguards can be implemented that would concurrently give the Commission comfort but also not deprive Mausner and Drennan of their livelihood.

II. FACTS

A. Cherry Picking Allegation Discussion

1. Performance Reports Prove Conclusively That There Was No Harm To So-Called Dis-Favored Accounts

The Division alleges that favorable trades were allocated to the so-called "favored" accounts that included J.S. Oliver Funds and the so called "disfavored" accounts that included Sapling and Chelsey. If that were true and if real financial harm had been done, there would be a material difference in how those 2 account groups performed in 2008 and 2009. That is categorically not the case. If we examine Exhibits C and Exhibit D which show performance of these accounts in 2008 and 2009 from BNP Paribas, an independent prime broker and custodial bank, we see the following:

Accounts	2008 Performance	2009 Performance
"Favored Accounts"		
J.S. Oliver Funds	(43.09)%	(35.56)%
		(10.2)%
		(8.33)%

"Disfavored Accounts"

Chelsey	(43.03)%	2.45%
Sapling	(46.66)%	11.59%

The graphic above is stunningly stark in its revelation: in 2008 the so-called disfavored accounts did essentially the same as the so-called favored accounts and in 2009 the so-called disfavored accounts did even better than the so-called favored accounts. There could not be any more compelling proof of a total absence of cherry picking.

2. Overall Performance Between The Two Groups Of Accounts Was The Same Or Better For The So-Called Disfavored Accounts

To summarize, the Division alleges that significant harm was caused from alleged trading allocations yet in 2008 the accounts did essentially the same and in 2009 the so-called Disfavored accounts actually did better. The Division even went so far as to claim that $10.9 million of harm occurred but they confuse the market going down which brought down with it ALL long accounts with possible cherry picking which did not occur. If there really had been $10.9 million of harm to one group of accounts and not to the other group, there would be a huge difference in performance between the two. $10.9 million represents approximately 20% of the total assets in

all these accounts so if in fact such harm had occurred, the performance impact would have been huge and obvious. This clearly is not the case and by definition there could not have been any harmful cherry picking if the performance of the "Disfavored" group was the same or better than the "Favored" group.

Incredibly, neither the Division nor their expert ever address the issue of performance. That is the ONLY determinant of financial harm. If an account did not do worse due to some alleged activity then there is no consequence, no improper activity, and no issue.

3. Drennan Account Review And Testimony Confirm Day Trading Had No Material Negative Impact On So-Called Disfavored Accounts

To further evaluate the impact of day trades, Mr. Mausner asked Mr. Drennan to calculate the cumulative impact of all of the day trades on some of the so-called Disfavored accounts (Exhibit B). The results confirm the performance reports from BNP by showing that day trading IN TOTAL had a negligible performance and dollar impact on the accounts. The Division's analysis literally cherry picks their own selective trades and highlight some of the losing trades. This is disingenuous, at best, as the only proper measure of an activity is to examine it in total, to examine its entire impact. Only a comprehensive review of all of the trades or an examination of the performance like the above shows if there was anything improper going on. There clearly is none.

Mr. Drennan's review showed that all of the day trades cumulatively over the 2008-2009 period had the following impact on the so-called Disfavored accounts:

Account	**% impact on account of day trades**
Sapling	2%
Chelsey	3%
Coleman	0%

What this clearly reinforces is that if you include ALL of the day trades, the average performance impact per year on these accounts was less than 2% a year! This analysis fits exactly with the performance reports because if, as the Division states, the only material difference between the two groups of accounts was the day trading and that day trading did not have a material impact, then the performance of the two groups would be essentially the same during the big down market year of 2008 which is exactly what happened.

4. Division's Expert Report Never Addresses Whether Differential Trading Impacted Overall Performance Between Accounts

Additionally, the Division and their expert did not address both of two extremely important and critically related issues: the two issues are the existence of specific differential account allocations which we readily admit occurred and second, the question as to whether or not such differential allocations caused any harm. Their entire analysis only examines whether or not different accounts received different allocations. Their analysis concluded that different accounts received different allocations in different securities. We absolutely agree that they did but that activity did not create any harm. This is where the Division's analysis falls apart as they did not evaluate the aggregate impact of ALL of the day trades. They only highlighted some of the losing trades. Of course, there will be losing trades among a large group of transactions but what solely matters is the total impact of all of the day trades.

The Division points to Mr. Anderson's testimony in which he was understandably upset that his account was down 46% in 2008. What the Division and Mr. Anderson fail to acknowledge is that the global market was also down dramatically in 2008 and the so-called favored accounts were also down that order of magnitude as we see in the submitted reports. The unfair confusion here is blaming our trading for the losses when it was the worst market decline since the Great Depression that caused the losses in all long accounts. J.S. Oliver Funds 1 and 2 and the J .S. Oliver

Offshore Fund, all part of the so-called favored group, all also experienced similar losses in 2008. The trading did not contribute in any material way to the losses. Mr. Anderson in his testimony did exactly the same thing as did the Division's expert - he focused on selected losing trades rather than focusing on the overall entire impact of the trading and on the overall impact of a global market meltdown.

5. The Performance Of Mr. Anderson's Account, Sapling, Was In Line With The Market And Was Primarily Due To The Overall Market Decline Not Due To Trading

Finally, and of significant import, both Mr. Anderson and the Division concede that his account, the Sapling Foundation, was down 46% in 2008. The performance report confirms this too. If inappropriate harmful day trading had really been going on, the account would have done significantly worse than this market return. The mandate for this account according to Chris Anderson's email and his testimony in Court was to be at an 8 on a scale of 1-10, so clearly very aggressive with substantial exposure to emerging markets and technology. If the kind of trading that is alleged had actually occurred, the Sapling account would have done materially worse than it did and would have done materially worse than the J.S. Oliver Funds which it did not.

6. The Division And Their Expert Only Examined Selected Trades

Incredibly, the expert report did not aggregate all of the day trades to see what the cumulative total impact of all of the trades were. Rather, they literally cherry picked the worst trades and projected a conclusion about all of the trades solely based on the poor ones. This is clearly not an accurate reflection of the entirety of what occurred and explains why their report is contradicted so strongly by the performance reports and by Mr. Drennan's review of all of the trades. Only a comprehensive review of the effect of all of the trades would reasonably and accurately reflect the impact of this trading.

7. Since No Cherry Picking Occurred There Was No Inappropriate Financial Benefit

Since there was no inappropriate or harmful cherry picking, there was no inappropriate financial benefit that accrued to Mr. Mausner. Furthermore, Mr. Mausner and his family were invested in various of the J.S. Oliver funds which sustained large losses during the period so in fact he and his family suffered losses overall in the funds.

B. SOFT DOLLAR ALLEGATION DISCUSSION

1. Every Soft Dollar Activity and Submission Was Vetted Through Counsel and Instinet

When Instinet approached J.S. Oliver in January of 2009 to expand soft dollar activity beyond that of 28E, the firm and it's employees had no experience in that area nor any knowledge of the legal intricacies of that new area so they sought out advice and counsel from their attorneys at Howard Rice and from their broker, Instinet. Subsequently, every single submission and every single soft dollar related activity was fully and completely submitted to and vetted by Howard Rice and Instinet. Over and over again, Mr. Mausner would repeat in the office that if the attorneys and Instinet approved the soft dollar submission, then it was okay with him. This outlook was affirmed in testimony by Drennan and Kartes as a very regular if not daily statement by Mausner. The firm and its employees were focused on their areas of expertise, managing money, and completely relied on counsel for direction on soft dollars.

2. J.S. Oliver And Its Employees Relied Entirely On Counsel And Instinet For All Soft Dollar Activity

Howard Rice and Instinet both held themselves out as experts in the soft dollar legalities and procedures. As such, J.S. Oliver and its employees fully and completely relied on counsel and on Instinet. The very large bills totally $364,000 (exhibit 29) over the 2008-9 time period confirm this extensive reliance as the only main legal functions needed during that time was soft dollar and document related. The firm was started in 2004 so all of the initial legal expenses had already been incurred.

3. Testimony, Attorney Bills And Phone Calls Prove The Reliance On Counsel

The numerous emails (examples of which were submitted in exhibit 15) and phone calls further support the extremely frequent interaction and reliance on Howard Rice as did the testimony of Mausner, Drennan and Kartes who all adamantly reaffirmed the frequent contact and reliance on counsel for all things related to soft dollars.

4. Legal Precedent Establishes Reliance On Counsel As Fully Exculpatory Or At Least Significantly Mitigating

There have been many cases in the past which establish a strong precedent that reliance on counsel is a very valid defense. Such a reliance is extremely evident given the frequent contact and extensive involvement on the part of Howard Rice in all of the soft dollar issues raised by the Division as well as with all of the document disclosures. There are many emails which have been introduced into evidence which clearly show the high level of involvement on the part of Howard Rice.

5. All Document Content And Disclosures Were Managed By Counsel and J.S. Oliver Relied On Counsel That All Proper Disclosures Were Being Made

Howard Rice (HR) drafted and revised the Form ADV for JSO and the offering memoranda for the funds as HR determined to be necessary, and JSO relied upon HR to decide when it was necessary to revise these documents and what should be included in these documents. As described below, these documents contained extensive soft dollar disclosures drafted, reviewed and revised by counsel. All individual accounts and all investors in the Fund received copies of these documents. When a client is provided these documents which contain soft dollar disclosure JSO is not required to provide any additional disclosure and JSO reasonably expected the clients to review the documents. Mr. Mahler's and Ms. Hall's claim of not having read the disclosure in the documents which might very well be true does not imply any wrongdoing of any kind on the part of JSO. JSO provided the required documents and these two clients apparently just did not read them.

The extensive involvement of HR in drafting and revising these disclosure documents is clear in the record of emails and in the billing records (exhibits 15 and 15A). For example, in July 2008 Ms. Duckor of HR billed over 18 hours in preparing the CGF offering memorandum and related documents.

During the 2008-9 time period, the JSO ADV disclosed in the soft dollar section that the firm " May use clients' soft dollars to acquire services and products that may not qualify as research or brokerage and/or to pay expenses otherwise payable by the firm. These may include but are not limited to expenses of travel...they may include overhead expenses...Using soft dollars for these purposes would not be protected by

Section 28e..." All this is from the ADV dated March 30, 2007. Counsel assured JSO throughout that the disclosure was broad and covered all the expenses that were being submitted. Counsel assured JSO that "overhead" was a broad term that included salary and rent, as well as all of the other soft dollar expenses that weren't explicitly named.

In fact, attorney Ms. Duckor, from Howard Rice and then subsequently at Pillsbury, wrote the following in an April 26, 2011 email to Melanie Kartes, which was submitted as evidence:

"I would like to reiterate that the spirit of the entire soft dollar disclosure and its global message very clearly communicate an aggressive soft dollar policy that uses non 28e type services and products that benefit the investment manager. The disclosures are both broad in scope and detailed in the particulars. The related conflicts between the investment manager and its affiliates on the one hand, and the Funds and investors on the other, are also spelled out in detail".

This email conveys very well the consistent message that JSO was receiving from its counsel throughout the entire period that the firms worked together - that the language and disclosure was more than adequate to justify all of its soft dollar activities. This message was completely relied upon by JSO and its employees.

The Division alleges that JSO only provided the CGF memorandum to Instinet which contained more broad soft dollar language. It was JSO's understanding that counsel had updated all of the offering memoranda and that there was no substantial difference between them. As such, JSO believed that Instinet had all of the relevant language contained in all of the memoranda. Since Howard Rice was handling all of the document language and all of the changes, it was reasonable to assume that any soft dollar language contained in one offering memorandum would be similarly contained in the others.

6. The Instinet Email String Is Critically Important To The Evaluation Of The Gina Mausner Payment And Also To The Assessment Of Reliance On Counsel And The Scienter Issue

As far as Instinet is concerned, emails submitted as evidence clearly show that several departments inside Instinet were intimately involved with the vetting and approval of JSO submitted expenses, including their legal department. In May 2009, when JSO was considering soft dollar treatment of a lump sum compensation payment to Gina Kloes, Instinet's legal counsel weighed in and approved the payment. Instinet's in house counsel, Alice Kenniff, was very involved as evidenced by the email forwarded to JSO by Mr. Renello of Instinet.

This Instinet email which Instinet fought very hard to prevent from being included in the proceeding is one of the most important and truly exculpatory documents of the

entire proceeding. It is so important because it not only shows the level and depth of Instinet's review of the payment but it also is critically relevant to the assessment of the reliance on counsel defense and the scienter issue. The Instinet email was forwarded by Mr. Drennan to Mr. Whatley at HR and this was followed up by an email from Mr. Drennan requesting a call with Mr. Whatley to "discuss the classification of the payment". Thus, the Instinet email provides corroboration of Mr. Mausner's testimony and provides powerful documentary evidence supporting the reliance on counsel defense and negating scienter. It is among the most important documents as it is independent and undisputed evidence.

7. All Soft Dollar Payments Were Fully Vetted With And Disclosed to Counsel And Instinet

A. Salary Payment Made To Gina Mausner Was For Her Employment Not For The Divorce, The Payment Equalled Exactly Her Outstanding Salary Amount

Gina Mausner was integral to forming JSO and she was JSO's general counsel before becoming a consultant to the company. Mr. Mausner and Ms. Mausner divorced in October 2005, reaching a settlement agreement which included a provision that Ms. Mausner would continue to be the CFO and General Counsel of JSO for five years

and would continue to receive a salary and benefits comparable to what she had received before.

In May 2009, Mr. Mausner and Ms. Mausner modified the 2005 agreement which provided for the end to the professional relationship between Ms. Mausner and JSO and provided for the lump sum payment to compensate her for the salary commitment made to her by JSO in the 2005 agreement. The amount exactly equalled the total outstanding salary amount still due to her. The other personal items were intentionally left out as they were not related to Ms. Mausner's salary. There were several phone calls and emails between Mr. Drennan, Mr. Mausner and Mr. Whatley of HR discussing this payment which Mr. Whatley approved. A specific conference call with Mr. Whatley was arranged on May 19, 2009 exclusively to discuss the payment to Gina Mausner. Mr. Whatley advised that since compensation was eligible for soft dollar treatment, the payment to Ms. Mausner was as well. Mr. Whatley said that such payments were included in the document disclosures and so soft dollar treatment was acceptable. Mr. Whatley was intimately familiar with the terms of the 2009 agreement between Mr. And Ms. Mausner as he was involved in the negotiation of the agreement. In other words, he knew exactly the words and terms of the agreement. By way of example, from one of the submitted emails, an email dated May 6, 2009, Mr. Whatley writes to Sharon Kalemkarian, Mr. Mausner's divorce attorney a list of proposed revisions to the agreement.

Gina Mausner had dual roles, one was in her professional role at JSO, the other a personal one as the ex-wife of Mr. Mausner. The two agreements between Mr. Mausner and Ms. Mausner addressed both roles. The lump sum payment was explicitly directed solely at revolving the obligations related to her professional role at JSO. She had been the General Counsel and CFO of the firm and had an agreement to receive salary for a set period of time for that role. This employment commitment is by definition an employment contract that was contained within the overall settlement agreement. Mr. Whatley and HR knew this, Instinet and all those involved in the approval of this payment also knew this. It was no secret whatsoever that Ms. Mausner had dual roles and that both her professional and personal roles were addressed in the agreements.

It has been alleged by the Division that Ms. Mausner did not do any work for JSO after 2005. Firstly, Ms. Mausner herself in her testimony, as well as Lindsay Back in her deposition, admitted that work was done up to the 2007-2008 but that issue is really not relevant. The relevant issue is that a legal employment and salary commitment was made in the 2005 agreement between Ms. Mausner and JSO and a buyout of that salary commitment, in the form of a lump sum payment, was made in the 2009 agreement. If defining her as an employee was relevant the fact that she received salary from the firm, was subject to the employee trading restrictions and participated in the employee 401k program would surely argue that she was an employee. Regardless of that definition, the contractual commitment of the firm to

pay Ms. Mausner a salary for a certain period of time and then the buyout of that commitment is a legitimate professional and contractual obligation of JSO.

The bottom line regarding this payment is that it was a payment solely for her salary relating to the employment commitment made by the firm and Mark Whatley was completely familiar with all the verbiage in all of the relevant documents pertaining to this payment and approved the soft dollar submission. JSO and its employees completely relied upon his expertise and knowledge of this situation as well as his directives on what and how to submit information to Instinet. All of this was further corroborated by three different witness testimonies - Kartes, Mausner and Drennan.

As an aside, various references were made during Ms. Mausner's testimony and in the Division's brief to various disputes, a restraining order, etc. with Mr. Mausner. Suffice it to say that these references were full of misrepresentations and lies and that the Judge involved in that case strongly rebuked Ms. Mausner for abusing the system with her false accusations. This would not be the first time that an ex-wife has stated lies and aspersions upon her ex-husband. Regardless, such baseless references are not relevant to the issues in this case and reflect a decision made in poor taste, bringing up such accusations without the proper venue for defense.

B. Payments Made For Rent Were Fully Vetted By Counsel And By Instinet

Everything relating to submitting rent payments as a soft dollar expense was vetted and reviewed by Howard Rice. HR advised that soft dollars could be used for rent

payments and that JSO had the right to raise and lower the rent within a general range of market rents. The Division does not mention that the rent amount was both increased and decreased and was always within a range of market rents. Given the size and quality of the home and the unusual amenities contained in the house, the rent payments were not excessive. Many homes in the neighborhood were being rented out for comparable rent and the average rent paid by JSO over the period was in fact lower than several other comparable properties in the neighborhood. But the Division never conducted a survey of the specific neighborhood or established what the rents were.

Most importantly, the Division offered no proof whatsoever about what the proper rent should have been nor what prevailing rental rates were in that neighborhood during the time period. No market research was done, no review of rental rates were conducted so there is absolutely no evidence that the rent was not perfectly in line. The expert report refers vaguely to office rents in the city of San Diego but there are huge differences from neighborhood to neighborhood and the area that the JSO office was in was in the Rancho Santa Fe area, the highest property value area in San Diego. In the absence of such direct comparisons, the claim that the rent was excessive is completely without any proof. Furthermore, the rent of $13,000 paid before it was soft dollared was at the high end of the range from when it was soft dollared, proving there was no precipitous change when soft dollar submission began.

Furthermore, Mr. Whatley and HR explicitly gave JSO the approval to raise the rent payment and both Mr. Kellner and Ms. Kartes also testified that Instinet and Howard Rice knew and approved of the rent payment and that the excess amount above the mortgage payment and other expenses was going to Mr. Mausner.

C. Annual Payments To The St. Regis Reduced The Annual Hotel Cost to JSO

Prior to the St. Regis fractional ownership purchase, which Mausner purchased with his own funds, JSO regularly reimbursed Mausner for his business related hotel stays in NY which ranged from $600-$800 per night (see exhibit 19). After the St. Regis purchase, the only hotel related expense for those NY trips was the one time annual payment (of approximately $20,000) which entitled Mausner to approximately 50 nights a year or $400 per night (see exhibit 18 of the St. Regis personnel confirming this). This is a simple example of significantly reducing the hotel cost to the firm.

Additionally, Howard Rice and Instinet were completely familiar with the details of the St. Regis arrangement and both approved it unhesitatingly. As such, JSO and its employees fully relied on counsel and on Instinet when they approved the St. Regis expense as a proper soft dollar expense and one that was clearly covered in the documents' soft dollar travel related verbiage.

D. Payments Made To Powerhouse Were For Research Services Performed

The vast majority of all of the work that Drennan did for JSO was research related. Though he did assist with other functions, Drennan was retained to provide research and he did so every day and for the bulk of each day. Testimony from Melanie Kartes, Mr. Drennan and Mr. Mausner all confirm that this was Mr. Drennan's primary function. Mr. Drennan's brief will address this issue in greater detail but it was always the full belief of JSO and Mausner that Powerhouse was solely dedicated to research and analysis. Additionally, the entire arrangement between JSO and Powerhouse was fully vetted by Howard Rice and approved by them for soft dollar submission. In analyzing the issue, HR considered the question as to whether Powerhouse was truly independent as Powerhouse had only JSO as a client and worked out of the JSO office. Mr. Whatley advised that the critical factor for determining independence was that it sought in good faith to find other clients, even if unsuccessful at doing so. Mr. Drennan informed Mr. Mausner that he was seeking out other clients. Since this was during the financial crisis it was a very difficult time to find new clients.

HR also considered the question of whether Mr. Drennan could provide incidental administrative services to JSO while he was at the JSO office. Counsel advised JSO that Mr. Drennan could perform such duties as long as they were less than 10% of the total time and that Mr. Drennan not be compensated for such services. Mr. Drennan spent well over 90% of his time doing research and was not compensated for the incidental administrative services, so HR approved the soft dollar treatment. Mr. Drennan was not an employee of JSO during the period, he had no JSO business

cards, he did not answer the phone for JSO and did not hold himself out as representing JSO.

8. The Division's Expert Report On Soft Dollars Is Filled With Errors and Inaccuracies

For example, in #31 the report claims that "frequent trading would be inconsistent with the long term investment strategy". This is completely false as during difficult market environments, short term trading is an integral part of the JSO strategy to try to protect the long term holdings. This statement among many others shows a complete lack of understanding of investment strategy. In the same section, the report states that all 4 Funds had the same strategy which is false. The first three funds all did have the same strategy but the CGF had a defensive and short strategy.

In #36 and #38, the report attempts to claim that an increase in commissions from 2008 to 2009 implied some wrongdoing. It is common knowledge that during extreme crisis times, the natural trading activity usually expands significantly as mangers try to offset the declining market with trading and other strategies. The growth in trading volume was a natural consequence of the overall market environment. In #38, the report claims that Mr. Mausner was the personal beneficiary of the higher commissions which is false. There were no distributions from the firm in 2008-9 so Mr. Mausner received no benefit from higher commissions or anything else for that matter.

In #39, the report writer states that he "has seen nothing to demonstrate that the CCO did anything to maintain compliance". Just because the writer did not see it does not mean it did not happen. JSO made a strong effort to comply with all rules and immediately made changes and retained a consultant when issues were pointed out that needed to be improved.

In #53, the report alleges that Mr. Mausner was out of the office due to Mr. Drennan taking over some of his responsibilities. This could not be further from the truth. Rather, Mr. Mausner was still performing all of his duties but was working from out of the office or from his home more given the technology to do so. In #57, the report questions whether Powerhouse was attempting to find other clients and it definitely was. There were several meetings and discussions held and the effort to find other clients was definitely there. In #59, the report alleges that the payments to Powerhouse were excessive when in fact a $160,000 annual compensation was well below the average annual salary of a research analyst with the experience level of Mr. Drennan so the arrangement actually saved JSO a considerable amount of money versus having a research employee in house.

In #63-#72, the report claims that the rent was excessive but in its own example in #72, the report states that "the $150,000 paid to J.O. Samantha in 2009 would have allowed J.S. Oliver to lease approximately 5,000 square feet of San Diego office space". The house, which was entirely used by JSO, except for one room, was approximately 5,000 square feet, so the Division's own expert report actually

validates the rent payment as being in line with market rents! And that doesn't even take into account that the expert report looked at San Diego rent levels and not the much higher rent levels in the Rancho Santa Fe area where the house JSO used was located.

In #83, the report claims that the agreement between Mr. Mausner and Ms. Mausner was exclusively personal but this is just purely untrue. The agreements contain explicit language relating to both personal and professional issues since Ms. Mausner had a dual role. The intent by the lawyers was to address both of those roles and handle them separately within one agreement. A reading of the agreements (both agreements between the Mausners were submitted as evidence) clearly shows that these separate roles were each addressed with different financial commitments for each role.

In #86, the report claims that the $125,000 per year salary to Ms. Mausner was excessive. The average salary for a General Counsel and CCO was significantly higher than this annual amount so it was nowhere near excessive. That is the salary that Ms. Mausner was receiving before the 2005 agreement and that agreement just assured her of receiving that salary for the next 5 years. The 2009 agreement was merely a buyout of that salary commitment. In #88, the report compares the compensation between Ms. Back and Ms. Mausner and claims that Ms. Mausner was overpaid. The report ignores the fact that Ms. Mausner has more than 20 years more work experience than that of Ms. Back and had 10 years experience as a corporate lawyer, more than justifying her higher salary.

In #91, the report claims that the expert has seen no evidence that research was done or conferences attended by Mr. Mausner in NY. The expert never asked Mr. Mausner as that was the primary purpose of all of his trips and he did extensive research, attended conferences and met with clients. The report further asserts that the cost of the St. Regis lodging was excessive which could not be further from the truth. As we showed in our exhibits, the cost to JSO was significantly reduced with the St. Regis as compared to before the St. Regis option was available. In #96, the report asserts that meeting with clients did not occur in NY and that it was not part of the disclosure. The expert obviously did not review Mr. Mausner's calendar as he had numerous meetings with clients on every trip and further, these meetings with clients always included a research component since most of the clients are CEO's of major companies or venture capitalists and have always been an important source of research information.

In #96, the expert report incredibly says that "few of Mr. Mausner's clients reside in the New York City area". Not only did the Division or the expert never ask for a list of NY based clients but in fact Mr. Mausner had and has MANY clients in the NY area including the Raho, Feldman, Hayne, Goldfield, Veloric, Wolk, Kohlberg, Devivo, Mattana, Harrison, and Allinson families.

With so many of these errors and inaccuracies in the report, they completely eliminate all credibility of the expert. The report is filled with unsubstantiated and ill

informed accusations many of which are based on incomplete or inaccurate information.

III. LEGAL ARGUMENT

"Soft dollar arrangements are permissible under the securities laws if there is appropriate disclosure to the client about the products and services for which the soft dollars will be used, as well as disclosure that the client may pay a higher commission rate as the result of the soft dollar arrangement." SEC v. Rollert, SEC Litigation Release No. 18687 (D. Mass. Apr. 29, 2004.

As discussed above, all of the soft dollar activity in which JSO was engaged in was fully disclosed according to JSO's counsel Howard Rice and all such disclosure and language contained therein was handled by Howard Rice. HR gave repeated reaffirmation that all appropriate disclosures were being made in all of the relevant documents. Further, Mr. Mausner received no personal benefit from use of soft dollars since no distributions were made to him from the firm during the period. The Division offers no proof of any financial benefit accruing to Mr. Mausner.

To be held liable under the anti-fraud provisions of the federal securities laws, JSO and Mr. Mausner must be found to have acted with scienter. See Aaron v. SEC, 446 U.S. 680, 695, 697 (1980); Ernst & Ernst v. Hochfelder, 425 U.S. 185 (1976). The Supreme Court has made clear that to establish a violation of section 10(b) of the Exchange Act, Rule 10(b)-5, section 17(a)(1) of the Securities Act, and section 206 (1) of the Advisers Act, the SEC must prove that the appellants acted with an "intent to deceive, manipulate, or defraud." Hochfelder, 425 U.S. At 194 n. 12; Aaron, 446 U.S. at 686 n. 5 Section 207 of the Advisers Act, concerning false statements in

forms filed with the Commission, also has a scienter requirement of "willfulness". SEC v. Slocum, Gordon& Co., 334 F. Supp 2d 144, 182 (D.R.I. 2004); 15 U.S.C. 80b-7. Within the Ninth Circuit, the scienter element encompasses "deliberate recklessness". S.E.C. v. Platforms Wireless Intern. Corp., 617 F.3d 1072, 1083 (9th Cir. 2010).

A company's scienter may be imputed from that of the individuals who control it. In the Matter of Clarke T. Blizzard and Rudolph Abel, Investment Advisers Act of 1940 Release No. 2253 (S.E.C. June 23, 2004), 458 F.2d 1082, 1096-97 nn. 16-18 (2d Cir. 1992); Kirk A. Knapp, 50 S.E.C.858, 860 n.7 (1992). Thus, the question of scienter is the same for Mr. Mausner and JSO.

With regard to Mr. Mausner's scienter as an alleged aider and abettor of JSO's alleged violations of the Advisers Act, there is also a strict scienter requirement. In order to establish aiding and abetting liability, the Commission must demonstrate: 1. A primary or independent securities law violation by an independent violator; 2. The aider and abettor's knowing and substantial assistance to the primary securities law violator; and 3. Awareness or knowledge by the aider and abettor that his role was part of an activity that was improper. See S.E.C. v. Fehn, 97 F.3d 1276, 1288 (9th Cir. 1996). While it is unnecessary to show that an aider and abettor knew that he was participating in or contributing to a securities law violation, there must be sufficient evidence to establish "conscious involvement in impropriety." Monsen v. Consolidated Dressed Beef Co., 579 F.2d 793, 799 (3rd Cir. 1978). This involvement may be demonstrated by proof that the aider or abettor "had general

awareness that his role was part of an overall activity that was improper." S.E.C. v. Coffey, 493 F.2d 1304, 1316 (6th Cir. 1974).

Neither Mr. Mausner nor, by extension, JSO could have acted with the requisite scienter with regard to soft dollars. JSO and Mr. Mausner received extensive advice from counsel and have proved the existence of such advice and activity and followed that advice. It is clear from the evidence that there was a strong reliance on counsel.

In Borgardt and Banhazi, Initial Decision Release No. 167, Administrative Proceeding File No. 3-9730. (2000), the four part test for evaluating a reliance on counsel defense was stated. "Its essential elements are that a person: 1. Made a complete disclosure to counsel of the intended action; 2. Requested counsel's advice as to the legality of the intended action; 3. Received counsel's advice that the conduct was legal; and 4. Relied in good faith on that advice." Id. (citing cases from various circuits, including S.E.C. v. Goldfield Deep Mines Co., 758 F.2d 459, 467. (9th Cir. 1985)). All of these elements are present in this case. The soft dollar activity in which JSO engaged was approved by its counsel after such counsel was fully informed of the nature of the activity and were provided with any and all information they requested. The disclosures regarding soft dollar activities, in the ADV and Offering Memoranda, were drafted, reviewed and revised by counsel and as directed by counsel. Since its inception, JSO has paid many hundreds of thousands of dollars to legal counsel. The counsel that was consulted specialized in securities regulatory issues. JSO, including Mr. Mausner, sought and received advice that the activities

that were contemplated were lawful. JSO and Mr. Mausner relied in good faith on such advice. JSO took all the reasonable steps to ensure regulatory compliance.

Accordingly, Mr. Mausner and JSO cannot be held liable under the anti fraud provisions requiring scienter as Mr. Mausner reasonably relied in good faith on the advice of counsel.

Regarding the trading allocation issue, the expert report, which is the only purported evidence submitted by the Division regarding this issue, contains several glaring problems and errors: first, it raises the possibility of potential problems which we show below from previous cases is not sufficient grounds, it does not examine all of the day trades, merely a subsection of them thereby rendering it completely meaningless. Only a comprehensive review of all of the transactions in all of the accounts would yield an accurate picture of what happened. That is a performance report, which we submitted, and shows no difference between accounts. Finally, the report spends a great deal of time discussing disproportionate allocations which the case we discuss below addresses. Disproportionate allocations in and of themselves should exist between accounts of different size and different orientation. It is only an issue if such disproportionate allocations were done after the fact and caused harm. Neither the Division nor the expert report offer any proof that these occurred. All they point out is the possibility of allocations after the fact which does not prove that any allocations were done after the fact. Regardless, no OVERALL harm occurred. Individual trades had losses which the Division highlights but they do not discuss all of the profitable trades nor the overall effect of all of the day trades which the

performance report and Drennan's report prove did not harm the so called Disfavored accounts versus the so-called favored accounts.

In S.E.C. v. Slocum, Gordon & Co., 334 F.Supp.2d 144 (DRI 2004), the Commission alleged that a registered investment advisory firm and its partners defrauded both their clients and the SEC through the practice of "cherry picking" whereby certain stocks were initially purchased for clients and later re-allocated to the firm account if the stocks went up in value prior to the settlement date. Id at 148. Following a bench trial, the district court held that the Commission failed to prove the alleged cherry picking scheme by a preponderance of the evidence. Id. at 176. The Commission argued that the firm's method of operations, including the unlawful commingling of client and firm funds, the use of handwritten forms and the reliance upon manual controls created an environment in which fraud could have occurred. Id. at 171. The commission further argued that the two-day window between the execution of trades and settlement of trades, at which time blocks of securities could be allocated among firm and client accounts, provided an opportunity to allocate on the basis of the performance of the securities in the interim period, i.e. To cherry pick. Id. at 161-162. Moreover, the firm had not retained what it claimed were handwritten "scratch sheets" describing the proposed pre-trade allocation of block trades among clients and firm. Id. at 153-154. The district court rejected these arguments, holding that a "mere opportunity for possible fraud does not translate into actual wrongdoing."

The Commission also presented what the Court referred to as "circumstantial evidence" in the firm of trading pattern analysis, which the Commission argued established cherry picking. Id. at 172. The Commission presented evidence showing that the firm realized a profit on securities purchased for its firm account 98% of the time and that this profit was always realized within the two day window before settlement. Id. at 173. The securities purchased for the clients' accounts, on the other hand, decreased in value during the two day period approximately 49% of the time. The Commission argued that the disparity was evidence that the firm was allocating profitable trades to the firm and leaving the "pits" for the client accounts. The Court rejected this argument. The circumstantial evidence in our case is even less compelling especially when one considers the extreme market environment at the time, the lack of any difference in performance and the total lack of proof of any late allocations.

IV. REQUESTED SANCTIONS ARE UNWARRANTED, HUGELY EXCESSIVE AND OVERLY PUNITIVE

A. No cherry picking occurred as proven by the performance reports and by the review of the impact of all of the day trades. As such, no penalty or sanction should be rendered on this issue. Accordingly, there was never any intent or knowledge of any wrongdoing whatsoever so any punitive actions would be completely unwarranted. No proof or illustration was offered by the expert or the division showing the overall alleged harm. As such, no penalty can be assessed. Further, the Division has offered no proof of any kind that any action by Mr. Mausner or JSO were done with intent or knowledge.

B. A gigantic financial and reputational price has already been paid by Mr. Mausner and JSO. Both Mr. Mausner and JSO had to liquidate the remainder of their assets and had to borrow funds to defend this action over the past few years and the press releases and other accusatory information have had a huge negative effect on JSO's business and on Mr. Mausner's and JSO's reputation. So even before a decision has been rendered, Mr. Mausner and JSO have already paid and suffered far more than would be warranted even if the allegations were true. All the liquid assets have been already expended and the reputations have already been destroyed. Adding further to these very serious consequences would be unwarranted and would be excessively punitive.

C. Neither Mr. Mausner nor JSO ever had any intent to commit any wrongdoing and strongly believe that none was done. However, if your Honor should find that some wrongdoing did occur, it was wholly inadvertent and fully attributable to bad advice from counsel and a complete reliance on counsel. Accordingly, Mr. Mausner and JSO cannot be held liable under the anti fraud provisions requiring scienter as Mr. Mausner consistently and throughout reasonably relied in good faith on the advice of counsel in both the soft dollar and trading related issues.

D. As further illustration of the positive intent of Mr. Mausner and JSO, all non 28e soft dollar activity and all single account trading were unilaterally ended in 2010-2011 once the possibility was raised that such activity might not be proper. There is no possibility that non 28e soft dollar activity or single account trading will occur again and we commit to that and willingly would submit to regular monitoring or other review to assure the Commission that all activities are fully compliant.

E. Mr. Mausner's 28 year career and the 10 years at JSO, up until this situation, have been characterized by strong positive relationships with hundreds of clients and a pattern of compliance, care and philanthropy has been established. It does not fit the historical pattern at all that Mr. Mausner would suddenly abandon his long term practices. Preventing Mr. Mausner from continuing to serve his clients and depriving them of that service is unwarranted especially because less punitive safeguards can be put in place to assure full compliance while at the same time allowing the strong client relationships to continue and not creating a life crushing elimination of Mr. Mausner's livelihood.

F. The calculation and derivation of the alleged $10.9 million loss was never explained or detailed. No proof of any kind was offered and the performance reports prove conclusively that such a loss could not possibly have happened. Accordingly, any requested fine or sanction related to this loss or related in any way to the alleged trading activity should not be granted. The losses in the accounts were real but they occurred in ALL of the long equity accounts including the 3 JSO Funds due to the tremendous market decline at the time. No fine or blame should be brought against Mr. Mausner or JSO because of the market decline. The division never shows any analysis separating the impact of the market decline from any alleged improper trading. Without this, there is zero proof of any impropriety.

G. Separate from relying on counsel and disagreeing with each of the 4 allegations in the soft dollar area, even if they were true, the calculations are egregiously overstated: the Division claims that 100% of ALL of the payments were excessive when clearly Ms. Mausner, as an officer of the firm, was entitled to some if not all of her salary. A major portion, if not all, of the rent was undeniably a legitimate expense. The Division never offers a calculation of the difference between the allegedly legitimate rent payment and the allegedly inflated rent payment. We argue there was none but if there was, in order to make a legitimate claim, that calculation has to be made by the Division and it never was. Further, a major portion, if not all, of the St. Regis expense was a legitimate hotel expense and Mr. Drennan would have been entitled to his salary even if he was an employee and as a

salary it would have been an acceptable soft dollar expense. In the absence of all these calculations, the Division's request is not properly derived or justified.

Further, incredibly, the Division requests that Drennan's total salary over the period of $482,381 be paid back by BOTH JSO and Mr. Mausner AND by Mr. Drennan. There was only a total of $482,381 involved that flowed from one party to the next not double that amount. One payment surely should not be paid back twice. If in fact this payment or some portion of it is deemed improper, then that portion would be returned by Drennan to JSO who in turn would return it to Instinet and then to the investors. This DOUBLECOUNTING inflates this particular request by a full $482,381.

Additionally, the $224,600 request for disgorgement related to CGF performance fees is also grossly inaccurate and inflated. The Division never offers a calculation separating out the gains from alleged improper trading from legitimate gains. Are we to automatically assume that 100% of the gains were improper and 0% were proper. We argue that all of the gains are legitimate but in the absence of any proof of the derivation of the gains, no disgorgement is appropriate.

At the very least, the reliance on counsel is highly mitigating if not entirely exculpatory if in fact any of the soft dollar submissions were inappropriate. This consideration alone should dramatically reduce if not entirely eliminate any penalty related to soft dollars. The guilty parties here are Howard Rice and Instinet not JSO.

The requested third tier penalties are unjustified and unwarranted. As previously mentioned, none of the activities, if improper, were done with intent or knowledge and no proof shows such intent, no losses were caused by these alleged activities but rather by market forces and never in any of the reports or testimony was any calculation made to establish how much of the losses were attributable to the collapsing market during the period rather than to alleged inappropriate trading. Are we to assume that during the worst market since the 1930's that none of the losses were due to the market. In the absence of a calculation establishing the losses from the market, no accurate calculation of losses can be made from any other alleged activity and therefore no third tier penalty can be fairly calculated.

Further, the Division alleges that Mr. Mausner benefitted personally from various activities. This is categorically not true. There were no distributions of any kind during this entire period so by definition Mr. Mausner could not have benefitted personally even if the allegations were true. The Division at no time offers any proof or evidence of personal financial gain by Mr. Mausner; no report, bank statement or anything of that kind. The reason for this is that it does not exist. Such a request of disgorgement should not be granted if no proof of any financial gain is offered and if specific illustrative numbers are not submitted into evidence.

The Division's total civil penalty requests are gigantic relative to the allegations and are requested without any rational calculation or explanation as to how they were derived. Requesting a total of over $20 million from the 3 parties is completely disproportionate to the alleged activities. Even if the alleged activities were true,

which we strongly argue that they are not, these requested penalties would be shockingly high and unwarranted. The alleged activities were surely not done with intent and involved absolutely no scienter.

H. The requested ban on Mr. Mausner and JSO is totally unwarranted and excessive. Completely destroying and ending such a long standing and positive career and reputation that until this situation was unblemished would be wrong and excessively punitive especially given the complete reliance on counsel in both the soft dollar and trading matters and clear exonerating proof in the trading issue. Depriving Mausner of his livelihood given the facts of this case is unwarranted. The respondents are very willing to submit to oversight, monitoring or other review to give the Commission comfort that compliance is being fully attended to. Given that there was never any intent to do anything improper, given the lack of proof of cherry picking, given the clear reliance on counsel and given the long standing career of Mausner, we respectfully request that a ban not be granted. Less punitive safeguards can be implemented that would concurrently give the Commission comfort but also not deprive Mausner of his livelihood.

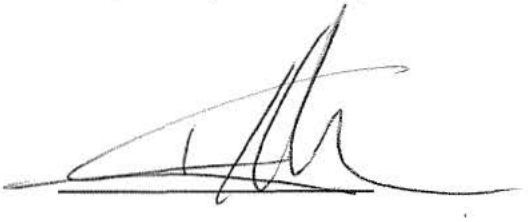
I. Mr. Mausner and JSO always believed that they were conducting themselves properly and made great efforts to do so. To the extent that we were not it was either inadvertent or from receiving bad counsel but from whichever of these it was, we are deeply regretful of such actions and profoundly commit to never doing such activity again.

V. Conclusion

Much has been submitted, written and spoken on the issues at hand in this case. The most salient issues are that there was never any improper intent on the part of the respondents, there was a tremendous and complete reliance on counsel, and many of the allegations and penalty requests lacked sufficient proof. Further, the respondents are committed to a future of full compliance and cooperation and deeply regret any oversight or mistakes that occurred.

Dated: March 21, 2014

Respectfully submitted,



Ian O. Mausner

J.S. Oliver Capital Management

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