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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-15613

In the Matter of

JULIEANN PALMER MARTIN,

Respondent.

DIVISION OF ENFORCEMENT'S POSTTRIAL BRIEF

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I. INTRODUCTION

Respondent, Julieann Palmer Martin ("Respondent" or "Martin"), made material misstatements and omitted to state material facts to investors in connection with the offer and sale of unregistered promissory notes by National Note of Utah, LC ("National Note"). Martin was a key National Note employee in the company for 17 years, during which time it operated as a Ponzi scheme. Martin promised investors a 12% guaranteed return purportedly generated from its real-estate investments. In fact, National Note was a fraudulent scheme in which over 600 investors lost more than $140 million.

Martin was the primary person at the company responsible for investor communications and had stewardship over investor funds. She was closely involved in National Note's operations. She monitored and managed its bank accounts and issued its checks. Martin collected the income from National Note's real estate investments, little as it may have been, and paid the company's operating expenses. Martin entered all of National Note's financial transactions into its NoteSmith bookkeeping system, providing her a window into the company's deteriorating financial condition.

Martin was responsible for dealing with National Note investors, often serving as their primary, or in many cases only, contact at the company. She told investors that National Note was a secured, safe, and profitable investment which guaranteed a 12% rate of return, paid from the company's profits from real-estate investment and lending. Martin made these representations to investors when she knew that the company was operating as a Ponzi scheme, using new investor funds to pay existing investors.

Martin further knew that National Note was insolvent, unable to make payments to any of its investors and struggling to pay basic operational expenses. Even though Martin was aware of

National Note's dire financial condition, she still continued to recruit new investors, withholding this critical information from them.

For her efforts in recruiting investors, Ms. Martin received over $433,000 in commissions between 1996 and 2010. She has never been registered with the Securities and Exchange Commission ("Commission") as a broker-dealer, or held a securities license.

National Note purported to be offering and selling its securities in an exempt offering under Rule 506 of Regulation D under the Securities Act of 1933 ("Securities Act"). Nevertheless, Martin made numerous sales of unregistered National Note securities to unaccredited investors without making any effort to determine whether they were accredited. In fact, the offering did not qualify for this safe harbor from registration.

Through this conduct, Martin willfully violated Section 17(a) of the Securities Act, Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder, which prohibit fraudulent conduct in the offer and sale of securities and in connection with the purchase or sale of securities; Sections 5(a) and 5(c) of the Securities Act, which prohibit the sale of unregistered securities; and Section 15(a) of the Exchange Act, which prohibits acting as an unregistered broker.

Accordingly, this Court should issue an order (1) requiring Martin to cease and desist from violations of Sections 5(a), 5(c) and 17(a) of the Securities Act and Sections 10(b) and 15(a) of the Exchange Act and Rule 10b-5 thereunder; (2) barring Martin from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization; (3) prohibiting her from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of

such investment adviser, depositor, or principal underwriter; (4) barring her from participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock; (5) ordering her to disgorge $433,140.29, together with prejudgment interest thereon; and (6) ordering her to pay a third-tier civil monetary penalty.

II. STATEMENT OF FACTS[1]

A. National Note

1. National Note is a Utah limited liability corporation whose principal place of business was located in West Jordan, Utah. Stipulation of Facts ("Stip") ¶ 1.

2. On June 25, 2012, the Commission filed a complaint against National Note and Wayne Palmer ("Palmer") in Federal District Court for the District of Utah. Stip. ¶ 27. The Commission was granted a temporary restraining order and asset freeze, and Wayne Klein was appointed to act as Receiver ("Klein" or the "Receiver") for National Note and related entities. Stip. ¶ 28.

3. National Note was owned and controlled by Palmer. Stip. ¶ 1.

4. Martin is Palmer's cousin. Ex. 172 p. 12.[2] She was employed at National Note from 1995 until the Receiver took it over in 2012. Stip. ¶ 11. She functioned as a bookkeeper at the company. Stip. ¶ 10.

B. Investors

5. Between 1995 and June 2012, National Note raised more than $140 million from over 600 investors. Ex. 96 p. 129; Klein Testimony ("Klein Test.") p. 48.

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[1] Many of the facts have been stipulated to by the parties, as set forth in the Stipulation of Facts filed on July 30, 2014 ("Stipulation of Facts"). For purposes of efficiency, the Division of Enforcement (the "Division") will not reiterate all of the stipulated facts here, but incorporates them herein by reference.

[2] All references to Exhibits herein are to the Division's exhibits offered and admitted into evidence during the trial.

6. In exchange for their funds, investors received a promissory note from National Note that had a term of two to five years. Stip. ¶ 4; Klein Test. p. 72.

7. The National Note promissory notes were securities. Stip. ¶ 9.

8. Beginning in 2007, National Note promissory notes were offered and sold to investors through a Private Placement Memorandum ("PPM") which included unaudited financial statements for the year ended December 31, 2006 and, subsequently, 2007. Stip. ¶ 7.

9. National Note also used a sales brochure to offer and sell notes. This brochure promised investors a guaranteed 12% rate of return with "complete safety of principal." Ex. 118, cover page. The brochure included a chart that compared National Note's unchanging 12% return with fluctuating historical rates of return on other, more conventional investments such as AAA bonds. Ex. 118 pp. 1- 2. At least through April 2010, Martin supplied the brochure to sales agents to provide to prospective investors. Fite Testimony ("Fite Test.") p. 491; Hicks Testimony ("Hicks Test.") p. 527.

10. Martin represented to investors that their funds would be used in National Note's real estate business. Ex. 192 pp. 17 – 18 (Loring-Meier deposition ("Loring-Meier Depo.")); Fite Test. pp. 496 – 97; Stoddard Testimony ("Stoddard Test.") pp. 369 – 70; Ex. 193 p. 36 (Morrow deposition ("Morrow Depo.")); Hicks Test. p. 525. Martin told investors that National Note lent funds out at rates as high as 18%, in order to pay the promised 12% return, and that National Note's expertise in real estate lending enabled it to do so while still making high-quality loans. Ex. 96 p. 106; Klein Test. pp. 39 - 40. Martin also represented to investors that the return on their investment would come from the profits generated by National Note's real estate business. Ex. 118, pp. 8 – 9; Fite Test. pp. 496 – 98; Hicks Test. p. 525.

11. Martin further represented to investors that their notes were secured by an interest in real estate. The National Note promissory notes contained the language: "this Note is secured by the Maker's interest in certain Notes and Trust Deeds and/or Security Agreements secured by real estate." Ex. 150; Ex. 192 p. 22 (Loring-Meier Depo.); Stoddard Test. p. 371, Ex. 129.

Solicitation of investors

12. Palmer located investors for National Note by attending seminars at which he explained National Note's program and its business. Klein Test. p. 86. Some of these seminars were arranged through real estate brokerages in different parts of the country. They were open to the public. Wallin Testimony ("Wallin Test.") pp. 429 – 30. For instance, at one real estate seminar in Reno, Nevada, 75 – 100 people were present. Wallin Test. p. 436. Palmer also presented the National Note program at Robert Kiyosaki's "Rich Dad, Poor Dad" seminars across the country, and the general public was invited to these as well. House Testimony ("House Test.") pp. 636 – 39.

13. At these public seminars, Palmer distributed the National Note brochure. Wallin Test. p. 429. Palmer made no effort to restrict the solicitation at these seminars to qualified or accredited investors. Klein Test. p. 87.

14. In September 2007 National Note filed a Form D for a Rule 506 Regulation D offering under the Securities Act. Ex. 175. In connection with this offering it prepared and distributed the PPM. Klein Test. p. 89. Nevertheless, National Note accepted investments under Rule 506 from over 200 investors who were not accredited, as reflected in its own records. Klein Test. p. 88.

15. In total, National Note had over 400 unaccredited investors, over 200 of whom invested via the Rule 506 offering. Klein Test. pp. 85, 88.

16. National Note also located investors by using sales agents who brought in investors. Klein Test. p. 86 - 87, 141. These sales agents were paid a commission equal to 2% of the amount invested. Hicks Test. p. 535; Ex. 13, 112. Martin herself was a sales agent for National Note and was paid commissions in excess of $433,000. Klein Test. pp. 127 - 152; Ex. 172 pp. 70 – 71; Ex. 186; 187; 185.

17. In soliciting investors, Martin did not inquire as to whether they were accredited. Ex. 192 pp. 28 – 9 (Loring-Meier Depo). She also failed to inform Hicks of the accreditation requirement, and consequently he also failed to determine whether his investors were accredited. Hicks Test. pp. 537 – 38; 571.

Flow of investor funds

18. National Note had two bank accounts that held investor funds. The first was at JP Morgan Chase, account Redacted and was titled "Investor Trust Account." Investor funds were deposited into this account. Klein Test. pp. 47 – 48. Martin had online access to this account, monitored its balance regularly, and she and Palmer were its only signatories. Stip. ¶ 20.

19. The second National Note bank account that held investor funds was maintained at Wells Fargo, Redacted , the "Investor Distribution Account." Payments of principal and/or interest were distributed out to investors from this account. Klein Test. p. 48. As with the Investor Trust Account, Martin had online access to this account, monitored its balance regularly, and she and Palmer were its only signatories. Stip. ¶ 20.

20. Because she monitored the Chase Investor Trust and Wells Fargo Investor Distribution Accounts, at any given time Martin knew whether National Note had adequate funds

in these two bank accounts to meet its obligations, and she frequently updated Palmer on this status. Klein Test. p. 120.

Bookkeeping

21. National Note used a system called NoteSmith to track the business loans made by National Note, as well as the investments brought in by National Note from investors. Martin was the only person who used and updated the NoteSmith system. Klein Test. p. 96.

22. National Note also used Peachtree software to create its accounting entries. Martin had access to Peachtree and it was installed on her computer. Klein Test. pp. 95 - 96. In case of a conflict between NoteSmith and Peachtree, however, it was the practice at National Note that the NoteSmith entry would govern. Klein Test. p. 122.

23. Martin used Peachtree to prepare and generate the distribution checks that were sent to investors. Klein Test. p. 119; Ex. 172 pp. 30 – 31.

C. Martin's duties and compensation

24. Martin made all of the NoteSmith entries for loans to and from National Note, including all loans between National Note and its real estate borrowers; and all investor deposits and amounts owing to investors. Klein Test. pp. 96, 117 – 18; Ex. 172 p. 27.

25. Martin regularly and consistently monitored the Chase Investor Trust account and the Wells Fargo Investor Distribution Account. Klein Test. p. 118.

26. Martin paid National Note's ordinary operating expenses, such as utility payments. Ex. 172 p. 15.

27. Martin was the primary contact person for National Note's investors and prospective investors. Klein Test. pp. 117 - 19. Palmer was frequently out of the office at

seminars or meetings. Madsen Testimony ("Madsen Test."). p. 209. In his absence Martin was the face for all of the investors at National Note. Madsen Test. pp. 209, 213.

28. Martin provided prospective investors with substantive information concerning National Note's business and investment program. Fite Test. pp. 496 – 98; Madsen Test. p. 220. She described the terms of the notes and made personalized recommendations to them on how to structure their investment at National Note. Ex. 19, 56, 60, 188, 189. One investor stated that it was his conversation with Martin that convinced him to invest in National Note. Fite Test. p. 499 – 500. When National Note became unable to pay all investor returns in full, Martin decided which investors would be paid and which would not, based on her detailed knowledge of all of the investors' situations. Ex. 66, 107; Madsen Test. p. 255.

29. Martin acted as point person for National Note's sales agents. She explained the 2% commission structure to them (Ex. 13, 112); generated, sent out and tracked their commission checks (Ex. 14, 110); and even advised them on whether it was necessary to be securities registered in order to act as a sales agent (Ex. 114; Hicks Test. pp. 556 – 57).

30. In total, while employed by National Note, Martin was paid a total of $1,076,146.87 by the company. This included payments of salary, bonus and commissions. Exhibit 187; Klein Test. pp. 130 - 52.

31. Some of these payments were paid to Julieann Enterprises, LLC. This entity was owned and controlled by Martin, and these were payments to her as an unlicensed broker-dealer. Klein Test. p. 130; Stip. ¶ 13.

32. Of this amount, $433,140.29 was paid to Martin in her capacity as a National Note sales agent. These payments were commissions she earned for bringing in investors. Klein Test. p. 152; Ex. 186; 187; 185.

D. National Note's transactions with Affiliates

33. In addition to National Note, Palmer controlled approximately 41 other companies, many of which did business with National Note over the years. Klein Test. p. 77.

34. Of these 41 companies, there were 17 principal affiliates with which National Note had substantial and frequent transactions, loaning them money for real estate and other projects. These 17 affiliates (collectively, the "Affiliates") were also controlled by Palmer. Klein Test. pp. 77, 82.[3]

35. The Affiliates did not have their own employees or operations. They were run out of National Note, and their books and records were maintained by National Note. Klein Test. pp. 175 - 76.

36. National Note functioned as a kind of clearinghouse for the Affiliates. The enterprise was structured to allow Palmer to take in funds from investors and loan them out to the Affiliates and others for business operations. Revenues were then supposed to flow back to National Note from these loans. Upon receiving this revenue, National Note could then make payments back out to its investors. Klein Test. pp. 70 – 71. More often than not, however, the Affiliates did not generate any revenue, let alone in any amount that could provide funds back to National Note. In fact, from 1995 – 2012, the Affiliates and National Note, collectively, had negative net income and/or negative net equity.[4] Ex. 96 p. 312 (graphic no. 113). As a result, Palmer undertook the practice of simply making book entries reflecting loans from National Note to the Affiliate, while the investor funds themselves were used directly to pay returns to earlier investors.

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[3] The Receiver identified these 17 companies based on the extent of financial transactions between them and National Note and on the degree to which Palmer controlled them. Klein Test. p. 82.

[4] "Negative equity" means that a company's liabilities are greater than its assets, and indicates that the company is insolvent. Klein Test. p. 35 - 6.

37. From 2003 through 2012, the percentage of National Note's assets that consisted of notes receivable increased steadily, from almost 54% in 2003 to 93.3% in 2012. Ex. 96 p. 107 (graphic no. 92). Furthermore, by 2006 over 80% of National Note's notes receivable were from Affiliates, and this percentage subsequently increased to 90%. Klein Test. p. 81; Ex. 96 pp. 106 (graphic no. 91); and 125.

38. At the outset, when a project was initiated, National Note oftentimes did make an actual cash loan to the Affiliate that owned the project. In return, the Affiliate signed a note in favor of National Note bearing an interest rate of 18% or more. Klein Test. pp. 98, 102.

39. After that initial transaction, however, most of the transactions reflecting loans from National Note to Affiliates, together with required maintenance payments from the Affiliates on those loans, were only paper transactions recorded by book entry without an actual transfer of funds. Klein Test. p. 98. Because the Affiliates were insolvent and did not have sufficient revenue to service the National Note loans, National Note's practice was to record an interest payment to it by an Affiliate simply as an increase to the principal amount owed it by that Affiliate. By so doing, National Note was able to record the interest payment as income even though no interest payment was actually made, and record the increase in the amount owed to it as an asset. Ex. 96 p. 24; Klein Test. pp.106 - 107.

40. When a paper transaction was carried out, National Note frequently wrote itself a check for the amount of interest the Affiliate had purportedly "paid." National Note wrote these checks from the Chase Investor Trust Account, deposited them into the Wells Fargo Investor Distribution Account, and then paid those funds out as investor distributions. In this way National Note used funds from investor deposits to make payments to other investors. Ex. 96 p. 25; Klein Test. pp. 97 – 99; Madsen Test. pp. 255 - 57. These paper transactions were

memorialized by journal entries indicating that the funds were designated for a project owned by an Affiliate, and that the funds had been paid back to National Note by that Affiliate in the form of interest. Klein Test. p. 99. In reality, the Affiliate transactions were purely fictitious.

41. Martin knew that, in these cases, the investor funds never actually went to the Affiliate but were paid directly to other investors. Ex. 172 p. 153; Martin Testimony ("Martin Test.") p. 338. She made all the NoteSmith entries to record these paper transactions, and was therefore aware of their substance. Klein Test. p. 103, Martin Test. p. 348. In her investigative testimony, Martin volunteered an explanation to the staff of how such a fictitious transaction would be coded to various Affiliate projects. Ex. 172 pp. 151 – 53.

E. National Note's insolvency and Ponzi payments

42. By 2012, the Affiliates owed National Note a combined $103.9 million. Ex. 96 p. 127 (graphic no. 108). Yet at that time they also had net losses of $706,697.65 and negative net equity of $55,168,761.37. Ex. 96 pp. 122 – 23 (graphic no. 107). They had no ability whatsoever to pay National Note the $103.9 million they owed it. Ex. 96 p. 123.

43. At least $44 million of Ponzi payments to investors were made from new investor funds by National Note between 1995 and the summer of 2012, when the Receiver was appointed. Klein Test. p. 69. In no year after 1995, however, did National Note, together with the Affiliates, have sufficient net income or net equity to cover the amount of investor distributions actually made. The funds to cover these distributions must have come in large part from new investor funds. Ex. 96 p. 132; Klein Test. p. 67.

44. It is undisputed that National Note was a Ponzi scheme. Klein Test. pp. 115 – 17. In fact, National Note was a Ponzi scheme from at least 1995 forward. Ex. 96 p. 133; Klein Test. p. 58, 110 - 111.

45. The financial statements included in National Note's PPM did not show the extent of National Note's dealings with Affiliates because those financial statements were not consolidated. Ex. 96 pp. 124 – 25. Consequently, the financial statements showed positive net income and net equity. Had they been prepared on a consolidated basis, however, they would have showed negative net income for every year since 1995 and negative net equity for every year since 1998. Ex. 96 p. 127.

National Note's growing financial problems and collapse

46. Beginning in at least March 2010, National Note was unable to return principal to investors whose notes had matured. In February 2010, Martin corresponded by e-mail with Redacted , an investor whose note was to mature in March and who had notified her the previous November that he would be seeking the return of his principal at maturity. In a startling admission of National Note's practice of operating as a Ponzi scheme, Martin told Redacted that National Note was waiting for a new client to wire in $1 million so that National Note could repay Redacted, but that the bank had lost the money. Redacted . Martin knew that, absent these new investor funds, National Note would not be able to pay off Redacted's note when it matured in March. Ex. 140, 141, 142, 143. Ultimately Redacted received his principal in October 2010, nearly a year after he had notified National Note that he would be seeking a payoff and only after prolonged efforts by Redacted to recover the funds. Redacted

47. In October 2010, National Note was also unable to repay Redacted his principal, even though Redacted had notified National Note in August 2010 that he wished to have his principal returned to him at maturity. During the fall of 2010, Redacted called Martin several more times asking for the return of his principal. As National Note's house of cards had

begun to fall by this time, Martin was forced to tell Redacted that National Note did not have the money to pay him. Ex. 193 p. 41. Redacted never received the return of his principal, and his interest payments stopped in October 2011. Ex. 193 pp. 46-47.

48. Also in 2010, in an effort to stave off the inevitable collapse rather than repay investors' principal at maturity, National Note sent them unsolicited renewal notes. The investors complained to Martin about this, without success. Redacted

Redacted

49. Beginning in at least July 2011 and continuing through that summer, National Note was unable to bring in new investor funds sufficient even to pay its operating expenses. Martin began updating Palmer by e-mail almost every day regarding funds needed in the Chase Investor Trust and Wells Fargo Investor Distribution Accounts to pay the promised returns to investors and to cover operating expenses. Ex. 18; 20 – 22; 24 – 34; 36 – 40; 42 – 46. As the weeks went on, Martin's e-mails to Palmer became shorter and shorter, finally containing only a subject line. One such e-mail simply read: "Okay at both banks – please tell me you have a million coming today." Ex. 45.

50. During this time, Martin's e-mails show that National Note was unable to make payroll (Ex. 27, 29, 65; Madsen Test. p. 233); unable to pay its portion of employee health insurance costs (Ex. 29); was past due on its commercial auto policy (Ex. 29); and was overdrawn at its bank (Ex. 33, 35).

51. On September 9, 2011, for instance, National Note's funds shortfall was huge: $125,000. Ex. 43.

52. During this time, Martin's e-mails also clearly show that investor funds were being used to pay existing investors as part of the Ponzi scheme. For example, in July 2011, in

an e-mail, Martin discusses with Palmer whether money from two investors can be used to cover other checks that have already been issued. Ex. 21. In a January 2012 e-mail, she directs Lindsey Madsen, the office receptionist ("Madsen"), to use one investor's funds to pay off others. Ex. 107.

53. Beginning in at least July 2011 and continuing through the fall of 2011, National Note began to be late in making investor interest payments. Madsen Test. pp. 225 – 28; Ex. 15, 16. Martin received numerous e-mails from Madsen describing calls from frantic investors who were no longer receiving their monthly checks. In these e-mails Madsen requests that Martin call these investors back. Some e-mails stated that the investors were afraid of losing their homes, and that others were considering bankruptcy, because of the missed payments. Ex. 41, 55, 64, 67, 68, 70, 71, 72, 77, 82.

54. Normally, investor checks were sent out on the first of the month. Madsen Test. pp. 211-12. September 2011 was the first month that none of the investor checks went out on the first. Madsen Test. p. 232.

55. Following the failure to send out investor checks in September 2011, Madsen created a spreadsheet to track late and missed payments at the request of Martin and Palmer. Ex. 173 p. 52; Ex. 107. Madsen sent this spreadsheet to both Martin and Palmer. Madsen Test. p. 251. The spreadsheet shows that, over the next few months, payments were made later and later, and finally some payments were voided, meaning that the check was never sent. Madsen Test. p. 250.

56. Martin and Palmer referred to people that desperately needed their monthly payments as "hot fires." Madsen Test. p. 254. On January 19, 2012, in an e-mail, Martin indicated to Madsen that **Redacted** was making a new investment. Martin listed for

Madsen which investors she believed should be paid returns from Redacted 's money. Madsen Test. p. 255; Ex. 107.

57. During this timeframe, it was National Note's practice, as soon as investor money would come in, to cover as many "hot fires" – or to pay as many earlier investors -- as possible. Madsen Test. p. 255. As the receptionist, Madsen was well aware of this practice even though she did not have access to the bank records, Peachtree, or NoteSmith, as Martin did. Madsen Test. p. 256.

58. By October 2011, the company was failing, and almost all investor payments were being voided. Ex. 107.

59. Even after National Note developed financial problems, and after it stopped making investor payments, Martin continued to solicit new investments and bring in new investor money. Redacted Redacted

In doing so, Martin never disclosed to new and potential investors the dire condition of the company, its practice of using new investor funds to pay earlier investors, or its recent discontinuance of all regular investor payments. Martin Test. pp. 141 – 42.

F. Martin made material misrepresentations to investors

60. Martin told investors that their funds would be used in National Note's real estate business. Redacted . In fact, investor funds were not deployed to projects, but were used to pay National Note operating expenses and/or were paid directly out as Ponzi payments to other investors. Madsen Test. pp. 255 - 57.

61. Martin told sales agents and investors that notes carried a 12% guaranteed return. Ex. 192 p. 17 (Loring-Meier Depo.); Hicks Test. p. 524. She provided Hicks, the sales agent, with a supply of the National Note brochures which promised a guaranteed 12% return. Hicks. 527; Ex. 118. Martin knew, however, that from at least September 2011 forward, this return was no longer being paid out to investors. Klein Test. p. 164.

62. Martin told investors that their 12% return was derived from profits from National Note's real estate business. Fite Test. pp. 496 - 98. In fact, however, investor returns were paid from new investments in National Note, which was operated as a Ponzi scheme from 1995 forward. Ex. 96 p. 133; Klein Test. pp. 58, 110.

63. Martin told investors that their notes were secured against real property. Ex. 192 p. 15 (Loring-Meier Depo.); Stoddard Test. p. 371, Ex. 129, 189; Hicks Test. p. 526. But the reality was that, in the case of 98% of National Note investors, their notes were not secured by real property at all. Klein Test. p. 84.

64. Martin represented to investors that their principal was completely safe and that the investment did not involve any risk. Ex. 192 p. 16 (Loring-Meier Depo.). She provided Hicks with the sales brochure, which stated that National Note had never missed a payment, and Hicks passed this information on to his investors. Hicks Test. pp. 490, 527; Ex. 118. Martin knew, however, that since at least March 2010, investors had not been able to receive repayment of their principal at maturity. Redacted

65. In February 2012, when National Note had not been able to make interest payments to investors for nearly five months, Martin affirmatively told an investor that National Note was "doing really well." Stoddard Test. pp. 367-68. On another occasion that same month,

she told another investor that National Note had never missed a payment. Redacted

G. Martin omitted to disclose material facts to investors

66. Martin never disclosed to any investor that National Note was doing business almost exclusively with related parties controlled by Palmer – a fact that investors testified would have been important to know in making their decision to invest in National Note. Hicks Test. p. 546; Redacted ; Fite Test. p. 504.

67. Over a period of at least two years, from early 2010 until the spring of 2012, Martin omitted to disclose to numerous investors that National Note was in financial trouble and that it was having increasing difficulty paying back principal at maturity; or that National Note was paying investor returns, and paying its own operating expenses, using new investor funds. Ex. 172 pp. 141 – 42. Investors testified that they would never have invested if they had known these facts. Redacted ; Redacted Redacted ; Redacted

68. Martin did not call one witness, or introduce any document or other evidence, to contest or contradict the Division's allegations at trial.

III. ARGUMENT

The evidence demonstrates that Martin knew of National Note's illicit operation and was a central figure in its fraudulent activities. Hundreds of people lost millions of dollars as a result of her misrepresentations and omissions. It is imperative that she now be held to account for her fraudulent conduct.

A. The Division is Entitled to the Adverse Inference Based on Martin's Invocation of the Fifth Amendment at Trial

At trial, Martin invoked her right under the Fifth Amendment to the Constitution and refused to testify. This Court should draw an adverse inference against her based on this assertion.

A Fifth Amendment assertion allows courts to draw an adverse inference against a witness who is a named defendant and who invokes the privilege against self-incrimination. Baxter v. Palmigiano, 425 U.S. 308, 318 (1976). In Baxter, the Supreme Court found that, based on the civil nature of the proceeding and the important interest the government was advancing, the fact finder could draw an adverse interest against the defendant. Id. at 320. The Court pointed out that "'[s]ilence is often evidence of the most persuasive character.'" Id. (quoting United States ex rel. Bilokumsky v. Tod, 263 U.S. 149, 153–54 (1923)). When it would be natural for a witness to object or challenge an opposing counsel's assertion during examination, "failure to contest [that] assertion . . . is considered evidence of acquiescence." United States v. Hale, 422 U.S. 171, 176 (1975). The Court is even further justified in drawing an adverse inference when there is strong evidence against the witness. See SEC v. Smart, Civil No. 2:09cv00224 (DAK), 2011 WL 2297659, at *18 (D. Utah June 8, 2011) (finding that, similar to Baxter, the court "was entitled to an adverse inference against [the defendant] because of the evidence against him and his assertion of the Fifth Amendment privilege").

Based on the strong evidence against Martin, this Court is entitled to draw an adverse inference against Martin based on her invocation of the privilege at trial. Martin's own testimony in the Division's investigation on May 8, 2013 demonstrates that Martin participated in wide-ranging securities fraud by soliciting and accepting investments despite her knowledge that National Note was in dire financial straits and was operating as a Ponzi scheme. Her

subsequent refusal to testify at trial suggests that she was untruthful in her prior testimony. Cf. California v. Green, 399 U.S. 149, 202 (1970) ("[F]ear of self-incrimination at trial suggests that the witness may have shaped prior testimony so as to avoid dangerous consequences for himself.").

Investor testimony, e-mails and other documentary evidence, bank records and testimony from other National Note employees all support a finding that Martin engaged in violative conduct. Allowing Martin to avoid all adverse consequences from her silence would disregard valuable and probative evidence of her involvement in defrauding numerous investors. Thus, even if Martin invokes the privilege, this Court should find her silence to be persuasive evidence of her liability. At trial, the Division made strong assertions that a reasonable person in Martin's position would naturally rebut if she were not culpable. Martin's silence was highly probative "evidence of acquiescence." See Hale, 422 U.S. at 176.

B. Martin Violated the Registration Requirements of Sections 5(a) and 5(c) of the Securities Act

Section 5(a) of the Securities Act provides that, unless a registration statement is in effect as to a security, it shall be unlawful for any person, directly or indirectly, to sell or deliver the security through the use of any means or instrumentality of transportation or communication in interstate commerce or in the mails. Section 5(c) of the Securities Act provides a similar prohibition as to offers to sell a security unless a registration statement has been filed with the Commission. 15 U.S.C. §§ 77e(a) and (c). The purpose of the registration requirement, and the Securities Act as a whole, is to "protect investors by promoting full disclosure of information thought necessary to informed investment decisions." SEC v. Ralston Purina Co., 346 U.S. 119, 124 (1953). Once the Division establishes the *prima facie* elements of a Section 5 violation, the Respondent bears the burden of proving that an exemption from registration applies. Id. at 126.

Here, the *prima facie* elements of a Section 5 violation are present and Martin has presented no evidence to the effect that an exemption was available. Consequently, Martin is liable for this violation.

A *prima facie* case for a violation of Section 5 of the Securities Act is established by showing that: (1) no registration statement was in effect or filed as to the securities; (2) a person, directly or indirectly, sold or offered to sell the securities; and (3) the sale was made through the use of interstate facilities or the mails. SEC v. Continental Tobacco Co. of S.C., Inc., 463 F.2d 137, 155 (5th Cir. 1972). Scienter is not an element of a Section 5 violation. See Aaron v. SEC, 446 U.S. 680, 714 at n.5 (1980). See also, SEC v. Universal Major Indus. Corp., 546 F.2d 1044, 1046-47 (2d Cir. 1976). In fact, Section 5 imposes strict liability on anyone who directly or indirectly violates its plain terms. SEC v. Friendly Power Co. LLC, 49 F. Supp. 2d 1363, 1368 - 69 (S.D. Fla. 1999)(citing SEC v. Tuchinsky, 1992 U.S.Dist. LEXIS 13650, no. 89-6488-civ-1-1 (S.D. Fla. 1992)).

After the presentation of a prima facie case for the violation of Section 5 is established, the burden shifts to Respondent to prove the availability of an exemption. Ralston Purina at 126. Exemptions from registration are affirmative defenses that must be proved by the person claiming the exemptions. Swenson v. Engelstad, 626 F.2d 421, 425 (5th Cir. 1980); Lively v. Hirschfeld, 440 F.2d 631, 632 (10th Cir. 1971). "It is well settled that the burden of establishing the availability of such an exemption rests on the person claiming it." Robert G. Leigh, Exchange Act Release No. 27667, 1990 SEC LEXIS 153, at *7 (Feb. 1, 1990). See also Lorsin, Inc., Initial Decisions Release No. 250, 2004 SEC LEXIS 961, at *16 (May 11, 2004). These exemptions are construed narrowly and to effect the public interest. SEC v. Murphy, 626 F.2d 633, 641 (9th Cir. 1980).

Here, it is undisputed that National Note never filed a registration statement, that Martin and National Note sold unregistered National Note securities for years, and the sales were made through the use of interstate facilities and the mails. Stip. ¶ 6; Ex. 172 p. 32. In fact, the only relevant filing National Note made was a Form D in September 2007, in which the company claimed an exemption from registration under Rule 506 of the Securities Act. Stip. ¶ 6. For the reasons discussed below, National Note's Form D filing did not cure its failure to file a registration statement.

The Rule 506 exemption from registration is not available to National Note for its offering. The promissory notes were sold to more than 600 investors, approximately 400 of whom were unaccredited. Stip. ¶ 8; Klein Test. p. 85. Martin herself sold to unaccredited investors on many occasions. Ex. 192 p. 28 – 29 (Loring-Meier Depo.); Stoddard Test. pp. 374 – 75; Gardner Test. pp. 618 – 19. Martin did not even inquire as to the net worth or income of investors. Ex. 192 p. 28 – 29 (Loring-Meier Depo.); Hicks Test. pp. 537 – 38. In working with the other National Note sales agents, Martin did not educate them as to the accreditation requirements, and they therefore sold to unaccredited investors as well. Hicks Test. pp. 527 – 28.

The Rule 506 safe harbor was also unavailable because the National Note offering was conducted by means of general solicitation. Palmer recruited investors at seminars and meetings to which the general public was invited. **Redacted** ; House Test. p. 637 - 39. He brought the sales brochure with him so that it would be available to potential investors. Madsen Test. p. 223. For her part, as discussed above, Martin provided the sales brochure and PPM to National Note sales agents with no accompanying instruction that offerees needed to be

accredited or otherwise qualified in any way, or that the sales agents should not engage in general solicitations. Hicks Test. pp. 527 - 30, 537.

Finally, Rule 506 was unavailable because those investors who were unaccredited were not provided with the kind of information that registration would provide, as required by Rule 502. This information would have included, among other things, audited financial statements, which National Note never obtained. **Redacted** Ex. 192 p. 31 (Loring-Meier Depo.); Hicks Test. p. 534. Western Fed. Corp. v. Erickson, 739 F.2d 1439, 1442 - 43 (9th Cir. 1984); see also Ralston Purina at 125-27 (private placement exemption not available where no access to the kind of information registration would disclose). Martin provided some prospective investors with this PPM, knowing that it did not include audited financial statements. Ex. 172 p. 34. Investors testified that they received no additional financial information at all aside from what was in the PPMs. Hicks Test. p. 534; Ex. 192 p. 31 (Loring-Meier Depo.).

The Section 4(2) private offering exemption under the Securities Act likewise would not have been available to National Note. National Note's potential investors were not knowledgeable and did not have access to the information needed to make an informed investment decision. Ralston Purina at 125 - 27. The testimony of the investors at trial demonstrated that in many cases they were not financially sophisticated and they did not have the kind of access to the records of National that would have enabled them to verify the representations being made. Ex. 193 p. 14 (Morrow Depo.); Ex. 192 p. 12 (Loring-Meier Depo.); Stoddard Test. pp. 363 – 64; Fite Test. pp. 485 - 86; Gardner Test. p. 610.

Because the Division has met its burden of proof as to the Section 5 violation, the burden of proof now shifts to Martin to show that the National Note offering fell within an exemption from registration. Because she has submitted no documentary or testimonial evidence on this

point, and has instead invoked her Fifth Amendment privilege, the Division should prevail on this issue. Martin Test. pp. 323 – 24.

C. Martin Violated Section 17(a) of the Securities Act and Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder

Section 17(a) of the Securities Act prohibits fraudulent conduct in the offer or sale of securities. Section 10(b) of the Exchange Act and Rule 10b-5 thereunder prohibit fraudulent conduct in connection with the purchase or sale of securities. Martin violated these antifraud provisions by making misrepresentations of material fact and omitting to state material information about National Note and its promissory notes to investors.

Section 17(a) of the Securities Act makes it unlawful:

> [F]or any person in the offer or sale of any securities . . . by the use of any means or instruments of . . . communication in interstate commerce or by the use of the mails . . . (1) to employ any device, scheme or artifice to defraud, or (2) to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or (3) to engage in any transaction, practice or course of business which operates or would operate as a fraud or deceit upon the purchaser.

15 U.S.C. § 77q(a).[5]

For purposes of this action, the elements of a Section 10(b) violation are similar. To prove a violation of Section 10(b) and Rule 10b-5 thereunder, the Division must prove four basic elements: (1) a fraudulent act, (2) in connection with the purchase or sale of securities, (3) perpetrated by jurisdictional means such as the mails or telephone lines, and (4) that is done with the specified mental state. Geman v. SEC, 334 F.3d 1183, 1192 (10th Cir. 2003). The Division of Enforcement has met its burden in this case, and the undisputed evidence clearly establishes Martin's violations of the antifraud provisions of the federal securities laws.

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[5] Scienter is an element of a Section 17(a)(1) violation; however, the Division need not show that the respondent acted with scienter to prove a violation of Sections 17(a)(2) and (3). Aaron, 446 U.S. at 696-98.

1. Martin Made Material Misstatements of Fact, and Omitted to State Material Facts, to Investors

Martin made numerous misrepresentations to prospective investors, and also omitted to disclose material facts to them, in connection with the offer and sale of National Note securities. These key misrepresentations and omissions bore directly on the investors' decision to place their money with National Note because they related to the financial condition of National Note, its use of their invested funds, the nature of its business operations, and to the safety of investors' principal and anticipated interest payments.

Martin made the following affirmative misrepresentations to investors:

a. That they would receive a guaranteed 12% return on their investment. Ex. 192 p. 16 - 17 (Loring-Meier Depo.); Hicks Test. p. 524, 545 – 6; Ex. 189. Martin provided Hicks with a supply of the National Note brochures which promised this guaranteed 12% return, with the intention that Hicks provide them to prospective investors. Hicks Test. p. 527; Ex. 118 pp. 1, 7 - 8. At least by the fall of 2011, Martin knew, however, that National Note's business operations were not generating a 12% return, and that this return, far from being guaranteed, could only be paid from new investments. Madsen Test. p. 255; Wallin Test. pp. 452 – 53; Ex. 140; Klein Test. p. 164.

b. That their funds would be used in National Note's real estate business. Stoddard Test. pp. 369-70; Hicks Test. p. 525. In fact, as discussed above, investor funds were not deployed to projects, but were used to pay National Note operating expenses and/or paid directly out as Ponzi payments to other investors. Klein Test. p. 99; Madsen Test. p. 255 – 57; Ex. 107.

c. That the promised 12% return would come from profits generated by National Note's real estate business. Fite Test. p. 496 - 498. In fact, however, that return came from Ponzi payments. Ex. 96 p. 133 - 37; Klein Test. pp. 57 - 58, 110 - 11.

d. That their notes were secured against real property. Ex. 192 p. 15 (Loring-Meier Depo.); Stoddard Test. p. 371, Ex. 129, 189; Hicks Test. p. 526. This representation was a key factor for some investors in making the decision to invest. Ex. 192 p. 21 (Loring-Meier Depo.). Loring-Meier's note, like others, included the misleading language "this Note is secured by the Maker's interest in certain Notes and Trust Deeds and/or Security Agreements secured by real estate." Ex. 154, 156. In fact, however, almost all the notes issued by National Note were not secured at all, and investors had no right to foreclose on real property to recover their investment. Klein Test. pp. 83 – 85. Martin explicitly told Loring-Meier that he would receive an assignment of beneficial interest recorded against a particular property, but he never received such an instrument. Ex. 192 at 22, Ex. 155.

Likewise, Redacted believed that her investment would be secured by a condo in Colorado, but never received a deed of trust. Redacted

For Redacted , Martin's representation that his clients' investments would be secured by real estate was of utmost importance, because most of these clients were elderly and needed that protection. Redacted

e. That their principal was completely safe and that the investment did not involve any risk. Ex. 189; 192 p. 16 (Loring-Meier Depo.). The sales brochure, which Martin provided to Hicks for distribution to investors, explicitly stated that National Note had never missed a payment. Hicks Test. pp. 490, 527; Ex. 118 p. 6. Martin knew, however, that from at least March 2010 forward, investors had not been able to receive repayment of their principal at maturity. Redacted

On several occasions Martin made even more specific and glaring misrepresentations to investors. For example, in a conference call she told Redacted and two other

prospective investors in the spring of 2010 that National Note had liabilities of $75 million and assets of $95 million. Redacted . For 2010, however, the Receiver's report shows that National Note had total assets of just over $103 million, as against liabilities of $102.3 million. The report also shows that in 2010 92.5% of these assets were receivables from Affiliates, and documents the financial insolvency of these Affiliates. Ex. 96 p. 107, graphic no. 92. In other words, these supposed "assets" were without any real value. Not only were Martin's representations regarding National Note's assets and liabilities completely false, but they served to conceal the fact that National Note had nowhere near the income or assets to pay the promised returns to Fite or to any other National Note investor.

Martin also omitted to disclose material facts to prospective investors:

a. that National Note was doing business almost exclusively with related parties controlled by Palmer. Redacted Martin knew which entities National Note dealt with because she made the NoteSmith entries that reflected these transactions, viewed the accounting records for these transactions, and saw the funds flow, if any, in National Note's bank accounts. The Affiliates were all run out of National Note's offices, and Martin knew that they were not generating profits. She was very familiar with the extent and substance of these related party transactions. Ex. 172 p. 27; Klein Test. pp. 118, 191 - 92; Martin Test. pp. 335 – 36.

b. That National Note was in dire financial trouble. Specifically, that beginning in approximately March 2010, National Note had not been able to return principal to investors whose notes had matured; beginning in at least July 2011, National Note had become unable to meet operating expenses; and beginning in September 2011, National Note was no longer able to

make interest payments on time, or at all. Madsen pp. 225 – 28; 232 – 33; Klein Test. p. 164; Ex. 18, 20 – 22, 24 – 34, 36 – 40, 42 – 46.

c. That National Note was using new investor funds to pay returns to earlier investors, and was, as a result, simply operating as a Ponzi scheme. Redacted

Madsen Test. p. 255.

These misrepresentations and omissions were material. A misrepresentation is deemed to be material if there is a substantial likelihood that the misrepresentation would be viewed by the "reasonable investor as having altered the 'total mix' of information made available" about the issuer. Basic, Inc. v. Levinson, 485 U.S. 224, 232 (1988) (quoting TSC Indus., Inc. v. Northway, Inc., 426 U.S. 438, 449 (1976)). Information is material if a substantial likelihood exists that the facts would have assumed actual significance in the investment deliberations of a reasonable investor. Basic at 240.

Investor testimony at trial bore this out. As to each of these misrepresentations and omissions listed above, investors testified that, had they known the truth, they would not have invested. Redacted

2. Martin's Misstatements and Omissions Were In Connection with the Purchase or Sale of National Note Securities

Martin's communications with investors related to the offer, purchase or sale of National Note securities. The antifraud provisions of the federal securities laws require that fraudulent conduct occur "in connection with" the purchase or sale of a security. "Any statement that is reasonably calculated to influence the average investor satisfies the 'in connection with'

requirement." SEC v. Hasho, 784 F. Supp. 1059, 1106 (S.D. N. Y. 1992)(citations omitted); see also SEC v. Zandford, 535 U.S. 813, 821-22 (2002).

In this case, there is no question that Martin's statements to investors influenced them in their decision to invest in National Note. Investors testified that Martin was their primary point of contact with National Note, both before and after investing. Martin solicited investments directly in conversations with prospective investors, and also indirectly by providing marketing materials to sales agents and investors. Indeed, investors confirmed that it was their conversations with Martin that convinced them to invest. Redacted

Moreover, Martin earned hundreds of thousands of dollars for her investor recruiting efforts, amounts tied directly to her efforts at bringing new investors into National note. Martin earned over $433,000 in transaction-based compensation over the years by selling National Note promissory notes – funds paid to her because she brought new investors into National Note. Klein Test. pp. 124 – 52. Beginning in at least the summer of 2011, Martin knew that National Note was insolvent and unable to pay returns through legitimate business efforts. Ex. 18; 20 – 22; 24 – 34; 36 – 40; 42 – 46. This did not deter her from bringing in new investors. Because she directly solicited and brought new investor funds into National Note, her conduct was "in connection with" the purchase and sale of National Note securities.

3. Martin Acted With Scienter

Martin acted with scienter. To establish a violation of Section 17(a)(1) of the Securities Act and Section 10(b) of the Exchange Act, and Rule 10b-5 thereunder, the Division must prove that a violator acted with scienter.[6] The Supreme Court defines scienter as a "mental state

[6] The Supreme Court has held that a Section 17(a)(1) claim requires a showing of scienter, while claims under Section 17(a)(2) or (3) do not. Aaron, 446 U.S. at 697.

embracing intent to deceive, manipulate, or defraud." Ernst & Ernst v. Hochfelder, 425 U.S. 185, 193 n.12 (1976).

In this case, National Note e-mails show conclusively that Martin solicited many new investments, over a period of at least two years, from March 2010 to June 2012, at a time when she knew that National Note was in serious financial trouble and was unable to make its promised investor payments. Madsen Test. pp. 252, 260; Ex. 107; Ex. 53, 69, Ex. 172 p. 114; Ex. 63, 56,75. With full knowledge of these facts, Martin continued to solicit and bring in new investors. This knowledge is sufficient to establish scienter.

At the same time that Martin was soliciting new investors, she was sending almost daily e-mails to Palmer and Madsen regarding National Note's inability to meet its financial obligations. From Madsen, Martin received numerous e-mails asking her to call back frantic investors who were not receiving their monthly checks. Ex. 25, 64, 68, 77, 80. Martin herself sent numerous e-mails to Palmer, letting him know that National Note was short of funds to cover investor distribution checks and to meet operating expenses such as payroll, utilities and employee health insurance. Ex. 18; 20 – 22; 24 – 34; 36 – 40; 42 – 46. In one stark example, after noting National Note's woeful financial position, she e-mailed Palmer to say, "please tell me you have a million coming today." Ex. 45.

Martin readily solicited and accepted these new investments even though she knew that National Note was unable to return investors' principal; was late on payroll and employee health payments; and was unable to make any investor distributions. Redacted Ex. 27, 29, 65, 33, 35; Madsen Test. p. 233. Martin made no mention of the impending financial collapse to Redacted who invested Redacted IRA with National Note in February 2012; or to Redacted , who in March 2012 invested his aunt's

savings with National Note in order to pay for her long-term care. Redacted

In fact, Martin did not disclose the troubles at National Note to any prospective investor. To do so would have further jeopardized the company's survival, and her own job, since National Note was relying on new investor funds to pay returns to existing investors.

Martin submitted no evidence to refute the Division's position that she acted with scienter and violated the antifraud provisions of the federal securities laws. Instead, when asked about her knowledge of National Note's extensive financial problems at the same time as she was arranging for new investors to make their investments, Martin asserted her Fifth Amendment privilege, as to which the Court is able to draw a negative inference. Martin Test. p. 407 – 20. In her prior investigative testimony, however, Martin had already admitted that she never told any new investors in late 2011 or early 2012 that National Note was in financial trouble, no longer making payments to investors, and was operating as a Ponzi scheme. Ex. 172 p. 141 - 142.

Martin knew her statements to investors were false and misleading. She knew that National Note was operating as a Ponzi scheme. And yet, with this knowledge, she continued to directly solicit new investors to place their funds with the company.

Even prior to 2010, as far back as 1995, Martin had reason to know that National Note was operating as a Ponzi scheme. She monitored the Chase Investor Trust and Wells Fargo Investor Distribution Accounts, which held investor funds. She used NoteSmith to track National Note's business loans, as well as the funds brought in by National Note from investors. She also viewed the company's accounting entries on Peachtree.

Martin knew, or was reckless in not knowing, that National Note was insolvent and therefore paying investor distributions from new investor funds. Recklessness also satisfies the scienter requirement. See, e.g., Filloramo v. Johnston, Lemon & Co., 697 F. Supp. 517, 520 (D.D.C. 1988). "The scienter requirement is satisfied by showing that a respondent acted recklessly, defined as '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 [respondent] or is so obvious that the actor must have been aware of it.'" James F. Glaza, 2003 SEC LEXIS 2135, at *22. See also Sundstrand Corp. v. Sun Chem. Corp., 553 F.2d 1033, 1045 (7th Cir. 1977); Hollinger v. Titan Capital Corp., 914 F.2d 1564, 1569 (9th Cir. 1990).

Because of this, Martin acted with scienter under Section 17(a)(1) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and should be held accountable for her fraudulent conduct.

4. Martin Used the Means and Instrumentalities of Interstate Commerce

Finally, Martin used the means and instrumentalities of interstate commerce in committing these securities law violations.

The jurisdictional clauses can be met by the placement of interstate telephone calls, use of the mails or the Internet. The fraud or misrepresentation itself need not have been communicated over the telephone or through the mails, as long as the Respondent's use of the telephone or mails "furthered the fraudulent scheme." Aquionics Acceptance Corp. v. Kollar, 503 F.2d 1225, 1228 (6th Cir. 1974); United States v. Ashdown, 509 F.2d 793, 796, 799 (5th Cir. 1975); Harrison v. Equitable Life Assurance Soc'y of U.S., 435 F. Supp. 281, 284 (W.D. Mich. 1977). Further, courts consider the Internet to be a means and instrumentality of interstate commerce. SEC v. Solucorp Indus. Ltd., 274 F. Supp. 2d 379, 419 (S.D.N.Y. 2003).

The Division's evidence includes numerous e-mails and phone calls through which Ms. Martin communicated with investors and prospective investors. For example, she used e-mail to communicate with investors regarding the paperwork and funds transfers they would need to make to complete their National Note investment. Ex. 53, 69, 63, 56. She used the mails to transmit account statements (which themselves contained false statements because they reflected interest accruing in the account) and distribution checks to investors. Ex. 172 p. 32; Madsen Test. p. 211 (account statements); 211 – 212 (investor interest checks); 219 (investor calls).

All of Martin's actions were undertaken through the means and instrumentalities of interstate commerce. Martin has offered no evidence to contradict these facts. As such, this jurisdictional element has clearly been satisfied.

D. Martin Violated Section 15(a) of the Exchange Act

Martin acted as an unregistered broker by selling National Note securities as a regular course of business. Section 15(a) of the Exchange Act prohibits an individual from using interstate commerce to effect or attempt to induce transactions in securities unless registered with the Commission in accordance with Section 15(b). SEC v. United Monetary Servs., Inc., 1990 U.S. Dist. LEXIS 11334, no. 83-8540-civ-Paine, at *22 (S.D. Fla. May 18, 1990). Scienter is not required in order to prove a violation of Section 15(a). SEC v. Nat'l Executive Planners, Ltd., 503 F. Supp. 1066, 1073 (M.D.N.C. 1980).

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." 15 U.S.C. § 78c(9)(4)(A). The phrase "engaged in the business" connotes regular participation in securities transactions at key points in the chain. Nat'l Executive Planners, 503 F. Supp. at 1073. Among the activities that indicate a person may be acting as a broker are: solicitation of investors to

purchase securities; involvement in negotiations between the issuer and the investor; and receipt of transaction-related compensation. See, e.g., SEC v. Hansen, [1984 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 91,426 at 98,120 (S.D.N.Y. Apr. 16, 1984).

It is uncontested that Martin was never licensed to act as a broker-dealer. Notwithstanding this fact, from at least 2005, Martin was the primary contact at National Note for new investors. Madsen Test. p. 209, 219; Klein Test. p. 119. She explained the National Note investment program to them and encouraged them to invest. She described all the aspects of the National Note investment to prospective investors, and also answered a variety of questions on how they should structure their investment. Ex. 19, 188, 189. She dealt with these questions by e-mail, telephone and in meetings. Madsen Test. p. 219, 221; Ex. 104 – 106;

Redacted

Martin also took in and deposited the checks representing new investments. Madsen Test. p. 210. Her interactions with prospective investors was regular, consistent and absolutely critical to National Note's recruitment of investors.

Martin received numerous checks from National Note that carried the notation "commission" on the memo line. She herself signed these commission checks on behalf of the company. Ex. 177. These payments to her were recorded in Peachtree as commissions. Klein Test. p. 149; Ex. 186. Martin had access to Peachtree and was aware that these payments were recorded as commissions. Klein Test. p. 95 - 96.

For her efforts in soliciting new National Note investors, Martin received $433,140.29 in transaction-based compensation between 1996 and the spring of 2012. Klein Test. pp. 127 - 52; Ex. 185, 186, 187. The Division's evidence that Martin acted as an unregistered broker-dealer is uncontested in this proceeding. Martin offered no documentary or testimonial evidence to refute the Division's evidence in this regard, instead asserting her Fifth Amendment privilege as to all

questions on the topic of her status as a National Note sales agent. Martin Test. p. 333. Martin should be held responsible for her unlawful activities.

IV. SANCTIONS

A. Martin Should Be Ordered To Cease and Desist from Violating the Securities Laws

Section 8A of the Securities Act and Section 21C of the Exchange Act permit the Commission to enter an order requiring a person who is violating or has violated, or who is about to violate any provision of, rule or regulation of the Securities Act or the Exchange Act to cease and desist from committing or causing such violations and any future violation of those provisions.

To institute cease-and-desist proceedings, there must be a risk of future harm. The risk, however, need not be great and, absent evidence to the contrary, violations, by themselves, raise a sufficient risk of future violations. See In re KPMG Peat Marwick, L.L.P., Exchange Act Release No. 43862, 2001 SEC LEXIS 98, at *102 (Jan. 19, 2001), aff'd, KPMG, LLP v. SEC, 289 F.3d 109 (D.C. Cir. 2002). The Commission may institute cease-and-desist proceedings against any person held to be a cause of violations of the federal securities laws due to acts or omissions such persons knew or should have known would contribute to the violation. See Valicenti Advisory Servs., Inc., Investment Advisors Act Release No. 1774, 1998 SEC LEXIS 2497, at *16 n.11 (Nov. 18, 1998), aff'd, Valicenti Advisory Servs. v. SEC, 198 F.3d 62 (2d Cir. 1999). In determining whether to impose a cease and desist order, the Commission considers the following factors:

> The seriousness of the violation, the isolated or recurrent nature of the violation, the respondent's state of mind, the sincerity of the respondent's assurances against future violations, the respondent's recognition of the wrongful nature of his or her conduct, and the respondent's opportunity to commit future violations. In addition we consider whether the violation is

> recent, the degree of harm to investors or the marketplace resulting from the violation, and the remedial function to be served by the cease-and-desist order in the context of any other sanctions being sought in the same proceedings.

Lorsin at *33-34, citing KPMG, 2001 SEC LEXIS at *102. See also Steadman, 603 F.2d at 1140. Courts recognize that the inquiry is flexible and that no single factor is dispositive. WHX Corp. v. SEC, 362 F.3d 854, 861 (D.C. Cir. 2004).

The Court should order Martin to cease and desist from violating the securities registration, broker-dealer registration and antifraud provisions of the federal securities laws. Martin solicited investments for National Note and was paid transaction-based compensation over a period of 16 years without being registered as a broker-dealer. From at least March 2010 forward, she knew that National Note was in increasingly serious financial trouble, but continued to solicit and accept new investments on behalf of the company without disclosing this fact to prospective investors. Redacted

Martin deliberately failed to inform new investors in 2011 and 2012 that National Note was on the brink of financial disaster, knowing that their new funds were needed to pay existing investor returns in a classic Ponzi scheme. Ex. 172 pp. 141 – 42.

Martin's conduct was particularly egregious given her knowledge that many of these investors were financially unsophisticated and were investing their retirement savings with National Note. Stoddard Test. p. 376; Ex. 129, 130; Gardner Test. p. 623. At one point, she even told an investor in February 2012 that National Note had never missed a payment, when in fact it had not made an interest payment for almost five months. Redacted

She committed these violations willfully and with actual knowledge.

There is no evidence that Martin recognizes her wrongdoing. She was uncooperative in the investigation, asserting, for example, that she did not know how National Note generated revenue after she had been employed there for 17 years. Ex. 172 p. 13. She has invoked her Fifth Amendment right and refused to testify in this proceeding. Ms. Martin is relatively young, and there is nothing to prevent her from repeating her conduct. She is fully capable of resuming fraudulent investment activity with Palmer, her cousin, who was also sued by the Commission but whose case has not yet gone to trial. A cease and desist order would be an appropriate response to her conduct.

B. Martin Should be Subject to an Industry Bar

Section 15(b)(6) of the Exchange Act authorizes the Commission to censure, suspend or bar a person who has willfully violated any provision of the federal securities laws and such bar is in the public interest. Under this provision the Commission may bar Martin from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization; or from participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock. As discussed above, over a period of years, Martin has violated the securities registration, broker-dealer registration and antifraud provisions of the Securities Act and Exchange Act. An industry bar is appropriate and in the public interest.

Similarly, under Section 9(b) of the Investment Company Act of 1940 ("Investment Company Act"), the Commission may bar any person from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser,

depositor, or principal underwriter; based on violations of any provision of the federal securities laws. As set forth above, Martin has willfully violated multiple provisions of those statutes by making material misstatements and omissions, by violating the registration provisions, and by acting as an unregistered broker. She should also be barred under Section 9(b) of the Investment Company Act.

These bars are necessary to protect the public interest. Courts have long recognized that because the securities industry presents many opportunities for abuse, it is in the public interest to bar from participation individuals whose honesty and integrity have been impugned is in the public interest. Richard C. Spangler, Exchange Act Release No. 12104, 1976 SEC LEXIS 2418, at *34-38 (Feb. 12, 1976); Bruce Paul, Exchange Act Release No. 21789, 1985 SEC LEXIS 2094, at *4-7 (Feb. 26, 1985). Because of the ready possibility for fraud and overreaching in the industry, investors must be protected from a recurrence of dishonesty and harm. Philip S. Wilson, Exchange Act Release No. 23348, 1986 SEC LEXIS 1332, at *14 (June 19, 1986); see Leo Glassman, Exchange Act Release No. 11929, 1975 SEC LEXIS 111, at *4-7 (Dec. 16, 1975). Severe sanctions also serve the public interest by acting as a deterrent to other persons from engaging in violative conduct. Steadman, 603 F.2d at 1142; Richard C. Spangler, 1976 SEC LEXIS 2418, at *39 n.67. The same factors that are used to evaluate whether a cease and desist order should issue are also used to measure whether a respondent should be barred from associating with a broker dealer or with an investment company.

1. Martin's Violations Were Egregious

Martin's actions were egregious. As described above, over a period of at least two years, she solicited and accepted numerous new investments in National Note at a time when she knew that the company was collapsing financially. Redacted

Redacted –

– . Most of those who invested through her were financially unsophisticated, and were entrusting their retirement savings to her and to National Note. The loss of those savings has changed their lives forever. Martin accepted these new investments at the same time as she was receiving desperate e-mails from other investors facing bankruptcy or the loss of their homes because of missed National Note payments. Ex. 16, 41, 55, 64, 77, 79.

2. Martin's Actions Were Recurrent

Martin received transaction-based compensation for soliciting investments in National Note for 16 years without ever being registered as a broker-dealer. As stated above, she accepted new investments in the company from the spring of 2010 through early 2012 when its financial situation was deteriorating ever more rapidly. Martin unquestionably knew that, without these new investments, the National Note Ponzi scheme could no longer make payments to existing investors. She did not jeopardize these new investments by disclosing what she knew about the company.

3. Martin Knowingly Made Material Misrepresentations to Investors

Martin's misrepresentations to investors were knowing. As discussed above, the evidence shows that Martin had access to the financial records of National Note and was in constant communication with Palmer about the rapidly deteriorating state of the company. Ex. 18; 20 – 22; 24 – 34; 36 – 40; 42 – 46. Still, as late as February 2012 she continued to tell investors like Redacted that National Note had never missed an interest payment. Redacted

4. Martin Has Made No Assurances Against Future Violations

Martin has given no assurances against future violations of the federal securities laws. She is relatively young, she has refused to acknowledge the nature of her wrongdoing, and nothing would prevent her from repeating her conduct if given the opportunity.

When given the chance to explain her involvement in National Note, she first provided testimony in the Division's investigation that lacked credibility, and then subsequently invoked her Fifth Amendment privilege and refused to answer further. She was asked to describe the business of National Note, where she had worked for 17 years. In response, Martin stated that she had no knowledge of National Note's business operations, a statement directly contradicted by a raft of evidence confirming her centrality to National Notes financial transactions. Ex. 172 p. 13. She also testified that she did not know how it generated revenue and that she did not know whether National Note had sales agents. Ex. 172 pp. 40 - 41. Yet she herself was a sales agent, compensated by commissions for 16 years, and was the key employee who entered the revenue into National Note's accounting database, including principal and interest payments supposedly made by National Note's Affiliates. Klein Test. p. 152.

Martin's testimony before the Division was uncooperative and untruthful, and she showed no regret for the losses National Note investors have suffered. Far from giving assurances against future violations, Martin has refused to acknowledge any wrongdoing whatsoever.

5. Martin is Likely to Commit Future Violations

Martin's cousin Palmer, who controlled National Note and orchestrated its Ponzi scheme, is still free to operate another potentially fraudulent venture, and nothing would prevent her from again joining him as an employee.

C. Martin Should Disgorge Her Ill-Gotten Gains

Martin should disgorge the $433,140.29 in commissions she obtained through the sale of National Note promissory notes in connection with her actions as an unlicensed broker. Section 8A(e) of the Securities Act and Sections 21B(e) and 21C(e) of the Exchange Act authorize disgorgement, including reasonable interest, in any administrative proceeding in which a cease-and-desist order is sought or a civil monetary penalty could be imposed. Disgorgement is necessary to ensure that Martin does not profit from her violations and to deter others from violating the securities laws. SEC v. First Pac. Bancorp, 142 F.3d 1186, 1191 (9th Cir. 1998).

D. The Court Should Impose a Third-Tier Civil Penalty

The Court should impose a third-tier penalty against Martin under Section 21B of the Exchange Act and Section 9(b) of the Investment Company Act. Those provisions authorize the Commission to impose civil penalties in an administrative proceeding where the conduct, as here, involved fraud, and directly or indirectly resulted in substantial losses to investors. In considering whether a civil penalty is in the public interest, the Commission may consider six factors: (a) fraud or deliberate or reckless disregard of a regulatory requirement; (b) harm to others; (c) unjust enrichment; (d) previous violations; (e) deterrence; and (f) such other matters as justice may require. See New Allied Dev. Corp., Exchange Act Release No. 37990, 52 S.E.C. 1119, 1130 n.33 (Nov. 26, 1996); First Sec. Transfer Sys., Inc., Exchange Act Release No. 36183, 52 S.E.C. 392, 395-96 (Sept. 1, 1995); Jay Houston Meadows, Exchange Act Release No. 37156, 52 S.E.C. 778, 787-88 (May 1, 1996); Consolidated Inv. Servs., Inc., Exchange Act Release No. 36687, 52 S.E.C. 582, 590-91 (Jan. 5, 1996).

As described in detail above, Martin committed fraud with a high degree of scienter. Her actions caused numerous investors, especially those who invested after 2010, to lose their

savings and retirement. Some feared bankruptcy and the loss of their homes. Ex. 77. For these actions Martin was paid over $433,000 in commissions, even though she was never registered as a broker-dealer. The six factors mitigate in favor of the Court imposing a third-tier civil penalty against Martin.

V. CONCLUSION

The Division requests that this Court issue an order (1) requiring Martin to cease and desist from violations of Sections 5(a), 5(c) and 17(a) of the Securities Act and Sections 10(b) and 15(a) of the Exchange Act and Rule 10b-5 thereunder; (2) barring Martin from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization; (3) prohibiting her from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter; (4) barring her from participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock; and (5) ordering her to disgorge $433,140.29, together with prejudgment interest thereon; and (6) pay a third-tier civil monetary penalty.

Respectfully submitted,

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