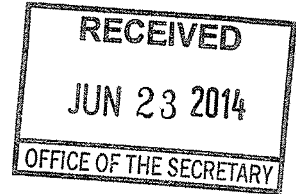
UNITED STATES OF AMERICA
Before The
SECURITIES AND EXCHANGE COMMISSION



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ADMINISTRATIVE PROCEEDING
File No. 3-15617

In the Matter of

LARRY C. GROSSMAN
and GREGORY J. ADAMS,

Respondents.

RESPONDENT LARRY C. GROSSMAN'S
POSTHEARING BRIEF

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I. INTRODUCTION

The Securities and Exchange Commission's mission is to protect investors and the markets by timely investigating potential violations of the federal securities laws. The SEC has an array of legal tools at its disposal to aid in its pursuit of its mission, including surprise field audits, demands that investment advisers turn over their comprehensive books and records at any time, subpoena documents and witnesses without filing suit, and payment of awards to whistleblowers that provide information regarding securities law violations. Despite such resources, the SEC was traditionally permitted to bring action for violation of the securities law s seeking fines, penalties, forfeiture, disgorgement and injunctive relief against potential violators without regard to a statute of limitations or enjoying the tolling of such statute until the SEC knew or should have known about the claims.

Within the last year, the Supreme Court has dramatically altered the landscape for securities violation claims brought by the SEC. Recognizing the SEC's mission and the fact that memories fade, evidence is lost, and potential defendants are entitled to closure, the Supreme Court instituted a bright line test that the five-year statute of limitations under 28 U.S.C. §2462 begins to run when the claim "first accrues" eliminating any tolling of the statute previously enjoyed by the SEC. The Supreme Court left the door open as to whether equitable remedies such as injunctions, permanent bars and disgorgements were subject to the five-year statute of limitations under §2462. Subsequently, a Federal Court ruled that injunctive relief, such as a permanent bar was tantamount to a fine, penalty or forfeiture and applied the five-year statute of limitations under §2462 Within the last forty-five days, the Southern District of Florida, District Court unequivocally held that disgorgement is subject to §2462's five year statute of limitations.

On November 20, 2013, the Division filed its Order Instituting Proceedings ("OIP") against Larry Grossman ("Grossman") for alleged violations that occurred during his ownership of Sovereign International Asset Management ("Sovereign"). In light of the SEC's heightened duty to protect investors, and plethora of resources, it is inexplicable as to why the SEC waited over five years to bring its claims against Grossman. The record establishes that the SEC was on notice of the other potential claims as early as November 2004, conducted another audit in 2008, propounded a subpoena on Grossman in the beginning of 2012, and deposed Grossman three times in 2012. Despite the exercise of its unlimited resources, the SEC did not file the OIP until November 20, 2013, well beyond the expiration of §2462's statute of limitations.

II. PROPOSED FINDINGS OF FACTS

1. Grossman was Sovereign's founder and sole owner until October 1, 2008, when he sold Sovereign and three entities (Sovereign International Asset Management, LLC ("SIAM LLC"), Florida-based Anchor Holdings, LLC ("AH Florida"), and Nevis-based Anchor Holdings, LLC ("AH Nevis") to Gregory Adams. (174:15-175:18; 452:9-453:3; GX 1)[1]. During Grossman's ownership, Sovereign was a registered investment adviser. (170:11-13).

2. AH Florida was established to temporarily hold client's funds that were going to be invested offshore pursuant to the applicable subscription agreements. (755:16-756:2). All money in the AH Florida account was used exclusively for clients' investments. (756:7-10). In fact, Sovereign clients were provided with a form authorizing the wire transfer to AH Florida, that among other things identified the bank to which the funds were to be wired. (756:11-16; 747:14-758:15; GX 95).

[1] The hearing in this matter took place on March 24-26 and April 8, 2014. Grossman's citation to the hearing transcript are denoted as (page:line). DX refers to the Division's Exhibits and GX refers to Grossman's Exhibits.

3. During Grossman's ownership, Sovereign specialized in taking IRA and retirement plans offshore to provide Sovereign clients among other things access to international investments and foreign asset managers. (189:16-189:22; 192:22-193:11). During Grossman's ownership of Sovereign, he employed a sector and style rotation investment strategy. (646:1-4). He communicated this investment strategy and style to Sovereign clients in numerous ways, including written client proposals. (646:19-647: 1-18; 648:4-7; 650:11-24; GX 99).

4. During Grossman's ownership, Sovereign did not directly solicit potential clients. Rather, Grossman would speak at various conferences all over the world on a number of different topics related to international investing and taking retirement plans offshore. (635:5-11). Grossman also authored approximately one hundred articles that have been published in various publications and newsletters and he was a Fox Business News contributor. (643:4-10). Furthermore, Grossman had a network of CPAs, attorneys and other advisors that referred him business. (643:10-12).

5. Upon initial contact from a potential client, Sovereign would begin ascertaining the potential client's investment goals and risk tolerances through information provided by the client in questionnaires, telephone calls and in-person meetings. (635:14-20). After this intake process, Sovereign would develop and recommend an investment strategy to the client. (635:21-25). Grossman would often times verbally have discussions with Sovereign clients regarding the fees charged to such clients and the amount of such fees. (524:19-525:9; 726:16-727:3).

6. At the end of 2002, Grossman met Nikolai Battoo ("Battoo") at a conference in which Grossman was speaking in Panama. (235:2-8; 662:16-20; GX 90). During the conference in Panama, Battoo explained to Grossman that he was managing his own commodity futures fund, that he was registered with the NFA or CFTC, and his funds may be an appropriate fit for Grossman's sector and style rotation investment strategy. (663:1-11; GX 90 p. 9-11).

7. Grossman traveled to Chicago to conduct due diligence into Battoo. (663:13-23; GX 90). During his trip to Chicago, Grossman spent several hours on the floor of the Chicago Board of Trade meeting various floor traders and brokers associated with Battoo's firm. (DX 90).

8. In furtherance of his due diligence into Battoo, Grossman obtained: (1) due diligence questionnaires from Futures One Diversified Fund, Limited ("Futures One"), Anchor Hedge Fund Limited and Private International Wealth Management (GX 90, GX 62); (2) PerTrac reports regarding Anchor Hedge Fund Classes (668:11-669:3; GX 90 at p. 27-31; GX 63); (3) additional background information regarding Battoo and the individuals with whom he associated (GX 90); (4) private placement memoranda ("PPM") for the Anchor and Futures One Funds (GX 25, 27, 28, 29, and 30); and (5) consolidated financial statements for the Anchor and Futures One Funds (GX 33, GX 35, GX 38, GX 41, GX 43, GX 44, GX 46, GX 47, GX 49, GX 50, DX 87, DX 88, DX 89, DX 90, DX 91). Upon Sovereign's receipt of the consolidated financial statements, Grossman would read and study them as a part of his ongoing due diligence. (752:21-753:5).

9. In 2003, SIAM, LLC entered into referral agreements with Anchor Hedge Fund Limited, Futures One, and BC Capital Group from which SIAM, LLC was entitled to receive fees from these entities for placement of Sovereign clients into Anchor Hedge Funds, Futures One Fund, and PIWM ("Referral Agreements"). (695:19-23; DX 71-73). Grossman also entered into an International Consultant Agreement with Anchor Hedge Fund Management Limited, the Investment Manager of the Anchor Hedge Funds, in which Sovereign was paid a fee for providing advice concerning whether an IRA or a qualified plan could invest into the platform of funds. (251:14-252:20; 737:11-24; DX 74).

10. On October 18, 2004, the Staff initiated a surprise audit of Sovereign. (2004 Audit). (697:14-698:3; DX 140). Sovereign complied with all of the Staff's requests for

information and documentation, including providing the Staff with the Referral and International Consultant Agreements. (697:12-21; 739:12-20; DX 71-74).

11. On February 7, 2005, the Staff issued its Deficiency Letter ("Deficiency Letter") to Sovereign outlining Sovereign's deficiencies and/or violations of law. (717:4-15; 969:11-24; DX 141). The Deficiency Letter stated among other things that Sovereign was in violation of: (a) Section 206 of the Advisers Act, because Sovereign's Investment Advisory Agreement failed to disclose the compensation received from the Referral Agreements and International Consultant Agreement; and (b) Rule 204-1 and Rule 204-3 for inaccurate Form ADV disclosures, namely failure to disclose compensation received from the Referral and International Consultant Agreements. (DX 141).

12. After receipt of the Deficiency Letter, Sovereign revised its Investment Advisory Agreements to state that "the advisor may receive performance-based compensation from certain investment companies. (731:1-732:2; 733:17-734:13; GX 3 at ¶10). Sovereign also revised its Form ADV Part II to reflect that: (a) it offers investment advisory services for subscription fees; (b) Sovereign may receive incentive or subscription fees from certain investments; and (c) Sovereign may receive performance based compensation from certain investment companies. (720:9-724:24: GX 110).

13. On August 21, 2006, James Davidson ("Davidson") signed Sovereign's Investment Advisory Agreement becoming a Sovereign client. (DX 50 at ¶7; DX50E). Shortly thereafter, Grossman sent a letter to Davidson outlining Sovereign's recommendations for the investment of Davison's funds, that included Anchor A, Anchor Hedge C, and Futures One C. (DX 50 at ¶17). Davidson signed the letter confirming such recommendations and returned it to Sovereign. (DX 50 at ¶18). Sovereign invested Davidson pursuant to its recommendations before November 20, 2008. (786:2-15; GX 125).

14. On August 14, 2007, Carmen Montes ("Montes") became a Sovereign client after signing Sovereign's Investment Advisory Agreement. (106:3-5; 107:16-109:24; 150:19-21; GX107). Montes was invested in Anchor C before November 20, 2008. (114:14-115:22; GX134).

15. On December 11, 2007, Sovereign presented Stephen D. Richards ("Richards") with its investment recommendations that included investments in Anchor A and C. (DX 152; p. 28:7-29:22; Ex. 5). Richards was also provided with the June 30, 2005, Anchor A PPM, and the May 31, 2005 Anchor C PPM. (DX 152; p. 40:13-20; Ex. 7, 8). In addition, Sovereign provided Richards, via email, with an investment proposal describing Sovereign's investment strategy, the client's stated objectives, variety of investment vehicles, and attached additional information regarding such investment vehicles. (646:19-647: 1-18; 648:4-7; 650:11-24; 651:2-5; GX 99). The proposed investments contained in the proposal were not limited to Anchor Hedge Funds, but also included the DBC Funds. (GX 99). In fact, after receipt of the investment proposal, Richards emailed Grossman commenting on the fact that he was already invested in the DBC Fund, so it was not necessary to include that fund in the investment package. (DX 152-Ex. 18). In the same email, Richards requested an exposure to a greater amount of risk and the recommendations should only avoid the "aggressive category." (DX 152, Ex. 18). Richards was invested in Anchor A and Anchor C before November 20, 2008.

16. On March 11, 2008, Margaret and Thomas Van Dyke (the "Van Dykes") signed Sovereign's Investment Advisory Agreement becoming a Sovereign client. (34:3-25; GX 103). Shortly thereafter, the Van Dykes received a letter from Sovereign containing Sovereign's recommendation to invest in several investment vehicles, including Anchor A. (56:16-57:19; GX 105). They executed the subscription agreement for Anchor A and were invested in the fund before November 20, 2008. (53:5-13; 57:20-58:24; DX 104).

17. By signing the Investment Advisory Agreement, Davidson, the Van Dykes and Montes acknowledged: (a) receipt of Sovereign's Form ADV Part II as required by Rule 204-3 of the Investment Advisors Act and (b) that "the Advisor may receive performance–based compensation from certain investments companies". (GX 3 at ¶10). Although the Investment Advisory Agreement permitted Sovereign to charge a 1% management fee, Sovereign did not charge such fee to its clients for investments in which it received fees under the Referral Agreement. (790:2-21).

18. Pursuant to the June 30, 2005, Anchor A PPM, redemptions of Anchor A are effected quarterly on a calendar quarter month end of the respective Valuation Date upon the (GX 27 at p. 20). Grossman is identified as a member of the fund's Investment Advisory Board appointed by Anchor Hedge Fund Management, Ltd. to assist the Professional Advisory Board. (GX 27 at p. 13-14). Grossman is described as having significant experience in moving IRA's and pension plans offshore for asset protection and greater investment diversification. (GX 27 at p. 14). The Anchor A PPM disclosed that the investment advisers appointed by the board, will be paid fees and expenses as agreed by the Anchor Hedge Fund Management Limited. (GX 27 at p. 16).

19. The May 31, 2005, Anchor C PPM, identifies Grossman as a member of the Investment Advisory Board, appointed by Anchor Hedge Fund Management, Ltd. to assist the Professional Advisory Board. (DX 25 at p. 13-14). Grossman is described as having significant experience in moving IRA's and pension plans offshore for asset protection and greater investment diversification. (GX 27 at p. 14). The Anchor C PPM disclosed that the investment advisors appointed by the Board, will be paid fees and expenses as agreed by the Anchor Hedge Fund Management Limited. (DX 25 at p. 16).

20. Pursuant to the May 31, 2005 Anchor C PPM, redemptions of Anchor C are triggered upon submission of a redemption request forty-five days prior to the calendar month end Valuation Date on which the share are to be redeemed and the participating share are redeemed within thirty days after finalization of the Net Asset Value. (DX 25 at p. 20). Included with the Anchor C Private Placement Memorandum is an acknowledgement that the redemption procedures under the Anchor C Private Placement Memorandum are amended to reflect that redemption requests shall only be accepted as of the next Calendar Quarter Valuation Date following receipt of the request and that the request must be received at least forty-five days prior to the end of the Calendar Quarter to be processed for the current quarter. (DX 25; DX 50L at p.2; DX 100). Furthermore, the redemption may be delayed by as much as ten weeks to enable the fund to obtain the Net Asset Values from the underlying investments. (DX 25; DX 50L at p. 2; DX 108 at p. 3).

21. Although listed as an advisor in the PPMs, Grossman obtained clarification from the fund that he acted as an International Consultant. (799:15-18; GX 13). In fact, Grossman sought additional clarification from Anchor Hedge Fund Limited, that as an International Consultant, he had not given any direct investment advice or analysis that to the Fund. (GX 14).

22. Battoo provided Grossman with information identifying the name of the fund and the funds objective that comprised Anchor A, but due to its proprietary nature there came a point in time when Battoo stopped sharing such information with Grossman. (673:7-17; 675:19-25). Grossman did not learn that the funds that comprised Anchor A were invested in Madoff until December 2008. (693:18-23; GX 23)

23. Grossman, however, continued to do due diligence on Anchor A, through a number of different hedge fund databases and the PerTracs for Anchor A. (678:12-679:1). For instance, he used the statistics reported in the PerTracs for Anchor A and compare them to

Anchor A's investment objective as stated in its Private Placement Memorandum (GX 27) to determine whether the correlation to the S&P 500 and Russel 2000, and standard deviation as reported in the PerTracs were consistent with Anchor A's stated objective and fell within Grossman's sector and style rotation investment strategy. (682:20-689:4; 691:25-693:14; GX 63 at p. 11). In fact, Grossman never had a problem with Sovereign clients redeeming their shares in Anchor A during his ownership of Sovereign. (694:16-25; 771:16-772:17; DX 99).

24. On October 1, 2008, Grossman sold Sovereign, SIAM, LLC, AH Florida and AH Nevis to Adams. (174:15-175:18; 452:9-453:3; GX 1). Adams immediately obtained and maintained full control of Sovereign upon the sale on October 1, 2008. (495:4-495:23; 495:24-496:3).

25. Shortly thereafter, on October 14, 2008, Adams sent an email to Sovereign clients, authored by Grossman, informing them that Adams has been named President and Chief Investment Officer of Sovereign and has assumed full responsibility for the asset management side of the business. Grossman, however, was to remain the Managing Director of Sovereign International Pension Services, Inc. ("SIPS"), responsible for the pension side of the business. (DX 64).

26. Immediately after the sale of Sovereign, the financial markets experienced a meltdown and Grossman was hired as a consultant to help Adams to overcome his concern with the market and the transition of Sovereign to Adams. (454:6-454:17). As a consultant, Grossman communicated with Sovereign clients who were invested in Anchor A, gave Sovereign clients status updates as to the Anchor Fund, and discussed the steps Sovereign was taking to try to recover Sovereign's client's investments. (DX50U; 759:15-760:14). During this time, Grossman was not giving any investment advice to any Sovereign clients. (496:20-497:7; 760:20-761:13).

27. As a consultant at Sovereign, Grossman did not have: (a) any decision making authority; (b) the ability to sign checks on behalf of Sovereign; (c) the ability to enter into contracts on behalf of Sovereign; and (d) any authority to file an ADV on behalf of Sovereign. (495:4-495:23) In fact, Grossman did not file an ADV on behalf of Sovereign after October 1, 2008. (495:25-496:3). Furthermore, his compensation as a consultant was not tied in any way to the performance of the investments managed at Sovereign. (761:14-762:20).

28. After October 1, 2008, the Van Dykes stopped dealing with Grossman and Adams took over selling off positions within the Van Dykes' account. (53:5-13; 91:4-8). After November 1, 2008, Grossman rendered no investment advice to the Van Dykes. (90:25-91:3). In fact, the Van Dykes learned that Grossman sold Sovereign to Adams before November 20, 2008. (89:25-90:10).

29. On November 18, 2008, Sovereign updated its clients as to the statue of Anchor C redemptions and communicated an offer from Anchor C's fund manager to allow the clients to exchange Anchor Class C shares for shares in Private International Wealth Management ("Share Exchange"). (DX 152: Ex. 15). Grossman had no involvement with the Share Exchange. (498:21-498:24).

30. After October 1, 2008, Montes never spoke with Grossman for investment advice. (154:15-155:1). In November 2008, Montes spoke with Rich Luchsinger ("Luchsinger"), a Sovereign employee, regarding the Share Exchange. (144:23-146:2; DX 113 at p. 1). In response to the November 2008 conversation, Luchsinger asked Jessina Paturzo ("Paturzo") to send the paperwork for the Share Exchange to Montes, but Paturzo sent the November 21, 2008 Letter bearing Grossman's electronic signature in error. (575:20-576:6; 593:22-594:3; 597:12-597:22; DX 113). The same incident occurred on the very same day with respect to the Carlton King November 21, 2008, Letter. (578:13-578:24). Paturzo knew that the November 21, 2008,

letters were sent in error, because they were not the correct forms for the Share Exchange. (597:12-597:22; 599:24-600:13). In fact, Adams, Sovereign's owner, verified that the November 21, 2008 Letters were not the correct documents for the Anchor C to PIWM Share Exchange. (509:6-510:8).

31. The correct documents for the Share Exchange are located at GX 133. (499:17-500:16; 504:12-505:19; 511:14-512:7; 512:19-513:10; GX 133). In fact, after speaking with Adams on November 24, 2008, Davidson was provided with the correct Share Exchange documents from, signed and returned them to Adams. (DX 50 at ¶¶28-31; ¶DX 50U). As a result, the only explanation for the sending of the November 21, 2008 Letters to Montes and King was that they were sent in error. (507:5-508:7). Grossman did not sign, affix his electronic signature, or authorize his electronic signature to be affixed to the November 21, 2008 Letters. (762:21-764:15).

III. DISCUSSION

A. THE REMEDIES ARISING FROM THE DIVISION'S CLAIMS AGAINST GROSSMAN ARE BARRED BY §2462's FIVE YEAR STATUTE OF LIMITATIONS.

The five year statute of limitations under 28 U.S.C. §2462 begins to run when the claim first accrues meaning the date when the Division has a complete and present cause of action against Grossman. *Gabelli v. S.E.C.,* 133 S. Ct. 1216, 1120-21 (2013) *see also, In the Matter of Raymond J. Lucia Companies, Inc. and Raymond J. Lucia, Sr.*, SEC Release No. 540 (Dec. 6, 2013)(statute of limitations clock begins running at time of accrual, that is, when the cause of action becomes enforceable). The primary purpose of a statute of limitations is to prevent the Division from reviving claims that have been allowed to slumber until evidence has been lost, memories have faded and witnesses have disappeared. *Id.*

The Divisions claims against Grossman are based upon events that occurred during Grossman's ownership of Sovereign that ended over five years before the Division filed the OIP. During the final hearing many witnesses' memories faded as to particular facts critical to Grossman's defense. For instance, the Division claims that Grossmann violated Rule 204-3 of the Adviser's Act by failing to deliver a form "to each client or prospective client that contains all information required by Part II of Form ADV." Initial Brief at p. 45. The Van Dykes and Montes, however, could not recall or inaccurately recalled whether they received Sovereign's Form ADV Part II, despite signing the Investment Advisory Agreement acknowledging receipt of such document. (92:12-94:5; 150:19-150:21). In addition, the Law Judge scolded Grossman for his inability to remember facts from over six years ago as follow:

> Well, could I just ask, I know you have-you don't recall a lot, but my goodness you were - you put people into these investment… I just don't understand your answers that you don't remember…I mean, I can see not remembering whether it rained, you know, -- three months ago. But my God, you were running a business….

(337:13-338:10). The purpose of a statute of limitations is to guard against this very event where the witnesses are unable to recall certain events that occurred over six years ago.[2] Furthermore, key witnesses, such as Battoo, have disappeared.

Another fundamental purpose in establishing the bright-line test as to when a claim first accrues under §2462 is to provide a "fixed date when exposure to the specified Government enforcement efforts ends."[3] *Id.* 1220-21. The Division is held to a higher standard

[2] The Division also questioned Grossman regarding the contents of a January 17, 2003, email to which Grossman responded that he could not remember the email, because it was over 11 years old. (236:14-236:19; 237:6-237:23).

[3] The bright-line test of "first accrual" comports with the overall purpose of statute of limitations, because it fixes a date when exposure to the Commission's enforcement efforts end, and advances the basic policies of all limitation provisions, namely repose, elimination of stale claims and certainty about a plaintiff's opportunity for recovery and a defendant's potential liability. *Id.* Statutes of limitations are

than private litigants for statute of limitations purposes, because its missions it to "protect investors and the markets by investigating potential violations of the federal securities laws." *Id.* at 1222-1224. The SEC has a plethora of "legal tools at hand to aid in [its] pursuit" including: demanding that investment advisers turn over their comprehensive books and records at any time, subpoena documents and witnesses without filing suit, and pay awards to whistleblowers, who provide information regarding securities law violation." *Id.* at 1222. Therefore, the SEC as an enforcer of the federal securities laws is a "far cry from a defrauded victim" who may enjoy equitable tolling of the statute of limitations. *Id.*

The Division has argued and will continue to argue that §2462's statute of limitations only applies to fines, penalties and forfeitures and the holding in *Gabelli* should be interpreted with the narrowest construction completely ignoring the reasoning set forth by the Supreme Court for the imposition of the bright-line test. The Supreme Court in *Gabelli*, however, never held that its opinion was limited to fines, penalties and forfeitures. In fact, the Supreme Court specifically held that it was not addressing the issue as to whether §2462's statute of limitations was applicable to disgorgement, because such remedy was not before the Court. Therefore, the door was left wide open as to whether §2462's statute of limitation is applicable to the Division's claims for disgorgement and a injunctive relief. According to the well-reasoned opinion set forth by the Supreme Court in *Gabelli* regarding the purpose of the statute of limitations and the heightened duty of the Division as the protector of investors, there is simply no plausible reason as to why disgorgement and the injunctive relief would not be subsumed into §2462's statute of limitations.

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vital to the welfare of society and even wrongdoers are entitled to assume that their sins may be forgotten. *Id.*

Indeed, courts before the Supreme Court's opinion in *Gabelli*, recognized the harsh penal effects of equitable remedies, such as officer-and-director bars, in determining that such remedies are barred by §2462's statute of limitations. *See S.E.C. v. Microtune*, 783 F. Supp. 2d 867, 884 (N.D. TX 2011) *aff'd S.E.C. v. Bartek*, 484 Fed. Appx. 949 (5th Cir. 2012)(officer-and-director bar was tantamount to a penalty due to the low likelihood that the defendant would engage in similar harm in the future) *see also Johnson v. S.E.C.* 87 F. 3d 484 (C.A.D.C. 1996). Recognizing that there is a long litany of authority (such as the authority relied upon by the Division) which automatically presumes injunctive relief is an equitable remedy, the courts in *Bartek* and *Johnson* held that the injunctive relief rose to a level of penalty thereby falling under §2462's five-year statue of limitations.[4]

Until May 12, 2014, courts have been silent on the issue of whether disgorgement falls under §2462's statute of limitation. A South Florida District Court, however, broke the silence and stepped through the door left open by the Supreme Court in *Gabelli*, holding that disgorgement is akin to a forfeiture and is barred by §2462's five-year statute of limitations. *SEC v. Graham*, 2014 WL 1891418 (S.D. Fla. May 12, 2014)[5]. As a result, §2462's five-year statute of limitations bars all remedies that the Division seeks against Grossman.

(a) All Claims Asserted Against Grossman First Accrued Before November 20, 2008.

All the claims asserted by the Division first accrued during Grossman's ownership of Sovereign, before November 20, 2008, as a result the remedies associated with such claims are barred by §2462's five year statute of limitations.

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[4] The industry bar sought against Grossman rises to the level of a penalty and is barred by §2462's five-year statute of limitation.

[5] Conceptually forfeiture and disgorgements are largely the same. *S.E.C. v. Contorinis*, 743 F. 3d 296, 310 (2nd Cir. 2014)(holding "both forfeiture and disgorgement seek to force a defendant to give up-this is, to forfeit or to disgorge-what he has wrongfully gained").

(b) §17(a)(2) Claim

Section 17(a)(2) of the Securities Act makes it unlawful to use the means or instrumentalities of interstate commerce to make any untrue statement of material fact or omit to state material facts in the offer or sale of securities. *Superintendent of Ins. v. Bankers Life and Cas. Co.*, 404 U.S. 6, 10 (1971). More specifically, the Division claims that from late 2003 through late 2008, Grossman violated §17(a)(2) by failing to disclose to Sovereign clients receipt of fees and compensation under the Referral and Consulting Agreements each time a Sovereign client invested in Anchor, Futures One or PIWM and failing to disclose conflicts of interest among the administrator and manager of the Anchor Hedge Funds while offering or selling securities in the Battoo Funds and PIWM.[6] Initial Brief at 35.

The Division's §17(a)(2) claims against Grossman first accrued when Grossman offered to sell or sold a Battoo Fund or PIWM to a Sovereign client. All of Grossman's alleged violative conduct occurred during Grossman's ownership of Sovereign, thereby causing the Division's §17(a)(2) claim to first accrue before November 20, 2008-outside §2462's five-year statue of limitations.

The record evidence from Sovereign clients, namely Richards, Davidson, the Van Dykes and Montes each support the fact that the Division's §17(a)(2) claims first accrued before November 20, 2008. For instance, Davidson, Montes and the Van Dykes each signed Sovereign's Investment Advisory Agreement before October 1, 2008. (DX 50 at ¶7; DX 50E; (34:3-25,106:3-5; 107:16-109:24; 150:19-21; GX 103, GX 107). In addition, Davidson, Montes, the Van Dykes and Richards each purchased Anchor A or Anchor C during Grossman's

[6] The Division's citation to their Proposed Findings of Fact in support of its §17(a)(2) claim is limited to conduct occurring "during Grossman's ownership of Sovereign" conceding that is claims arose on or before the sale of Sovereign on October 1, 2008.

ownership of Sovereign before November 20, 2008. (53:5-13; 57:20-58:24; 114:14-115:22; GX 122-126; GX134; DX 104; (DX 152; p. 40:13-20; Ex. 7, 8).

(c) Violation of Section 206(1) and 206(2) of the Advisers Act

The Division claims that Grossman breached his fiduciary duties under §206(1) and §206(2) of the Advisers Act arising from his: (1) recommendation of the Battoo Funds and PIWM to Sovereign clients without disclosing the fees and compensation received from the Referral and International Consultant Agreements; (2) omissions and misstatements regarding Anchor Hedge Funds; and (3) failure to perform due diligence and investigate red flags. Initial Brief at 38-41. Each of the Division's claims under Section 206(1) and 206(2) first accrued before November 20, 2008.

(d) Failure to Disclose Compensation

The earliest date upon which the Division's claims "first accrued" would be February 7, 2005, the day that the Staff issued its Deficiency Letter to Sovereign outlining Sovereign's deficiencies and/or violations of law." (717:4-15; 969:11-24; DX 141). The Deficiency Letter stated among other things that Sovereign was in violation of: (a) Section 206 of the Advisors Act, because Sovereign's investment advisory agreement failed to disclose the compensation received from the Referral Agreements and International Consultant Agreement; and (b) Rule 204-1 and Rule 204-3 for inaccurate Form ADV disclosures, namely failure to disclose compensation received from the Referral Agreements and International Consultant Agreement. (DX 141). As of February 7, 2005, the Division had a complete and present cause for the Compensation Claims, but did not take any action until over 8 ½ years later.

Furthermore, to the extent that the Division bases its claims on Grossman's breach of fiduciary duty under Section 206(1) arising from the recommendation of the Battoo Funds and PIWM to Sovereign clients' without disclosing compensation received from such funds, and then

the Division would have a complete and present cause of action against Grossman at the moment of such recommendation that occurred before November 20, 2008.

On October 25, 2006, Grossman recommended to Davidson that he invest in a variety of funds, including Anchor A, Anchor C and Futures One C, that Davidson signed and returned to Sovereign. (DX 50 at ¶17, 18; DX50-J). On December 11, 2007, Grossman recommended to Richards that he invest in a variety of funds, including Anchor A and Anchor C. (DX 152 at Ex. 5). Before November 20, 2008, Grossman recommended that Montes invest Anchor C. On April 17, 2008, Grossman recommended that Van Dyke invest in Anchor A and C. (56:16-57:19; GX 105). Therefore, the Division's claims that Grossman breached his fiduciary duty by recommending that Sovereign clients invest in the Battoo Funds or PIWM without disclosing the compensation received from the Referral and Compensation Agreement first accrued before November 20, 2008.

(e) Omissions and Misrepresentations Regarding Anchor Hedge Funds

The Division alleges that Grossman's failure to assess and inform Sovereign clients of the risks associated with the cross portfolio liability between Anchor A, Anchor B and Anchor C combined with his failure to advise such clients that Anchor C was not timely honoring redemption requests was in violation of §206(1) and §206(2) of the Investment Advisers Act. Initial Brief at p. 39. The violations of each of the provisions of the Investment Advisers Act occurred before November 20, 2008, and all remedies associated such violations are barred by §2642's five year statute of limitations.

Many of the proposed findings of fact that the division relies upon in support of its claims occurred "during Grossman's ownership of Sovereign" over five years before the Division filed

the OIP. Initial Brief PPF at ¶¶ 51, 53, 61, 62 and 63.[7] For instance, any violation of §206(1) and §206)(2) of the Advisers Act arising from Grossman's failure to detect and advise Sovereign clients of the alleged risks associated with Anchor A, B and C due to the cross-portfolio liability would have first accrued upon Grossman's receipt and review of the Anchor A, B and C private placement memoranda and financial statements evidencing the alleged risk all of which predate November 20, 2008.[8]

The second prong of the Division's argument is that Grossman knew that Anchor C redemptions were not being honored yet continued to advise Sovereign clients to invest in and hold Anchor C. Initial Brief at 39. The evidence the Division relies upon in support of such claim predates November 20, 2008. Initial Brief at PPF ¶64. The Division, however, cites to the November 21, 2008, Share Exchange letters to Montes and King as evidence that Grossman provided investment advice within the statutory period. This argument is quickly dispelled by the uncontroverted testimony of Grossman, Adams and Paturzo, indicating that the letters were sent in error, Grossman's electronic signature was erroneously affixed to the letters, and the letters were the incorrect documents to complete the Share Exchange.[9] (509:6-510:8; 575:20-576:6; 578:13-578:24; 593:22-594:3; 597:12-597:22; DX 113). In fact, Davidson provided

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[7] In support of its claim that Grossman misrepresented the risks with the Anchor funds, the Division relies upon a January 17, 2003 email authored by Michael Seaboldt. (DX 23). Notably the 11 ½ year old email did not mention the Anchor Funds. (DX 23). In addition, due to the passage of time, Grossman had no idea of whether the email was sent to Sovereign clients, whether he reviewed the email, and could not testify as to what Seaboldt was referring to in the email. (237:6- 239:21). This is the exact situation that the Supreme Court in *Gabelli* wanted to prevent by instituting the bright-line "first accrued" test for determining when the statute of limitations under §2462 begins to run.

[8] The Division relies upon: the Anchor C PPM dated June 30, 2005 (DX28) the Anchor B PPM dated June 30, 2005 (DX29); the December 31, 2006 Anchor A Consolidated Financial Statements and Independent Auditor's Report (DX87); the December 31, 2006 Anchor B Consolidated Financial Statements and Independent Auditor's Report (DX88); and the December 31, 2007, Anchor A Consolidated Financial Statements and Independent Auditor's Report (DX90).

[9] The Division also cites to a February 11, 2009 email between Grossman, Randy J. Keiser and Adams, but the email makes no mention of any of the Anchor Funds or PIWM. (DX 120 at 1).

testimony that he executed the correct Share Exchange document that was sent to him after speaking with Adams on November 24, 2008. (DX 50 at ¶¶28-31; DX 50U). As a result, the Division's remedies are barred by §2462's statute of limitations.

(f) Failure to Perform Due Diligence and Detect Red Flags

The Division's claim arising from Grossman's failure to perform due diligence and detect red flags concerning the Anchor funds is based exclusively on Grossman's alleged continued recommendations of Anchor Hedge Fund to clients despite knowing that Anchor C had not honored redemption request for Class C shares, and knowing that Battoo had ceased providing independently-audited financial statement regarding the Battoo Funds. Initial Brief at 40. For the reasons discussed in Subsection 2 above, Grossman did not make any recommendations after November 20, 2008, to any Sovereign client for the purchase, sale or holding any of the Anchor Hedge Funds and the Division's remedies for such claims are barred by §2462's statute of limitations.

(g) Violation of Section 206(3) of the Advisers Act

The Division claims that Grossman violated Section 206(3) of the Advisers Act when he effected the sale of the Battoo Funds and PIWM to Sovereign clients without providing adequate written disclosures that he was acting as a broker for the Battoo Funds and PIWM and obtaining the requisite client consent. Initial Brief at 41. The Division's claims are premised upon Grossman effecting the sale of the Battoo Funds and PIWM to Sovereign clients, that by necessity occurred before the sale of Sovereign on October 1, 2008. In any event, the record is silent as to Grossman effecting the sale of the Battoo Funds or PIWM to Sovereign clients after November 20, 2008, and the Division's remedy for this claim are barred by §2462's statute of limitation.

(h) Violations of Section 206(4) of the Advisers Act and Advisers Act Rule 206(4)-2

The Division claims that from 2005 until 2008, Sovereign violated the custody rule and impermissibly pooled client funds in AH Florida Bank account. Initial Brief at 43. The Division further claims that Grossman is liable for the violations as Sovereign's sole control person. *Id.* The Division concedes that this claim first accrued before November 20, 2008, and remedies for such violation are barred by §2462's statute of limitation.

(i) Violation of Section 207 of the Advisers Act and Rule 204-3

The Division concedes that is claims arising against Grossman under §207 of the Advisers Act first accrued during Grossman's ownership of Sovereign. Initial Brief at p. 41-45; PPF at ¶36-41. As a result, all remedies for these alleged violations are barred by §2462's statute of limitation.

(j) Violation of Section 15(a) of the Exchange Act

The Division claims that Grossman violated Section 15(a) by selling the Battoo Funds and PIWM to Sovereign clients without being a registered broker. The Division's claims first accrued during Grossman ownership of Sovereign and predate November 20, 2008. As a result, the remedies with respect to these claims are barred by §2462's statute of limitations.

B. <u>THE DIVISIONS CLAIMS AGAINST GROSSMAN ARE NOT TOLLED BY THE CONTINUING VIOLATION DOCTRINE</u>

It is undisputed that Grossman sold Sovereign to Adams on October 1, 2008. It is also undisputed that the Division filed the OIP against Grossman on November 20, 2013, over five years after Grossman's sale of Sovereign. In an attempt cure its statute of limitation problem, the Division relies exclusively on the continuing violation doctrine to obtain remedies against

Grossman dating back to 2003. The Division's reliance on the continuing violation doctrine is misplaced and the doctrine cannot be reconciled with the Supreme Court's holding in *Gabelli.*

The continuing violation doctrine does not make timely claims based on discretely actionable acts occurring outside the limitations period, even if those acts are related to or part of a series of acts committed within the limitations period. *S.E.C. v. Kovzan*, 2013 WL 5651401 *2 (D. Kan Oct. 15, 2013) *citing National Railroad Passenger Corp. v. Morgan*, 536 U.S. 101, 113-15 (2002) *SEC v. Kovzan*, 2013 WL 5651401* 3 (D.Kan Oct. 15, 2013)(rejecting SEC's continuing violation argument on claims based on particular misrepresentations and omissions occurring outside §2462's statute).

Essentially, "when a defendant's conduct is part of a continuing practice, an action is timely so long as the last act evidencing the continuing practice falls within the limitations period". *S.E.C. v. Leslie*, 2010 WL 2991038 *35 (N.D.Cal July 29, 2010). To the extent that the doctrine applies, "it may not be predicated on the continuing ill-effects of the original violation; rather, it requires continued unlawful acts." *Id.* at *9.

In *S.E.C. v. Leslie*, 2010 WL 2991038 *3 (N.D.Cal July 29, 2010) the SEC brought claims against the defendants for overstatement of the value of a licensing agreement between defendants and AOL in its 2001 Form 10-K causing defendants' stock price to artificially inflate. Id at *3. Defendants moved for summary judgment requesting as a matter of law that the remedies sought by the SEC are time barred under §2462. *Id.* at *35. The SEC argued that defendants engaged in a fraudulent scheme to inflate the share price of Veritas and the last violation, namely the sale of the stock with artificially increased price occurred within the statute of limitations period thereby tolling the statute of limitations under the continuing violation doctrine. *Id.* The Court rejected such argument holding that the continuing violation doctrine cannot be "predicated on the continuing ill-effect of the original violation; rather, it requires

continued unlawful acts." *Id.* at *35. As a result, the Court that "the sale of stock at an artificially inflated price adds to any preexisting ill-effect and that the sale of stock within the limitations period is "nothing more than the continuing ill-effect of the original violations."

As argued in Section I, the remedies for each of the claims alleged against Grossman first accrued over five years before the filing of the OIP and are barred by §2462's five-year statute of limitations. After the sale of Sovereign, Grossman returned as a consultant and was not giving any investment advice to any Sovereign clients. (496:20-497:7; 760:20-761:13). Instead, Grossman was assisting Sovereign with the operational transition of Sovereign to Adams. (497:9-22). As a consultant at Sovereign, Grossman did not have: (a) any decision making authority, (b) the ability to sign checks on behalf of Sovereign; (c) the ability to enter into contracts on behalf of Sovereign; or (d) any authority to file an ADV on behalf of Sovereign. (495:4-495:23). Grossman did not file an ADV on behalf of Sovereign after October 1, 2008. (495:25-496:3). In addition, Grossman's compensation as a consultant was not tied in any way to the performance of the investments managed at Sovereign. (761:14-762:20). There has been no reliable record evidence to accept the Division's argument that Grossman continued to perpetrate any fraud into the statute of limitations period.[10] In fact, the record evidence establishes that Grossman's alleged original violations occurred when he recommended and ultimately sold the Anchor Hedge Funds to Sovereign clients, which occurred before November 20, 2008. As a result, the continuing violation doctrine does not toll §2462's statute of limitations.

[10] Grossman did not render any investment advice to any of Sovereigns' clients after he sold Sovereign on October 1, 2008. Furthermore, the Share Exchange Letters to Montes and King that the Division relies upon to show otherwise were sent in error and were the incorrect documents to affect such exchange. (509:6-510:8; 575:20-576:6; 578:13-578:24; 593:22-594:3; 597:12-597:22; DX 50 at ¶¶28-31; ¶DX 50U; GX 113).

C. SOVEREIGN'S COMPENSATION DISCLOSURES WERE NOT MISLEADING

The Division asserts several claims against Grossman all arising from Sovereign's failure to adequately disclose compensation received from the Referral and International Consultant Agreements to its clients. The record, however, shows that there were a number of disclosures made by Sovereign to place its client's on notice regarding the receipt of such compensation.

After receipt of the February 7, 2005, Deficiency Letter, Sovereign revised its Investment Advisory Agreements to state that "the advisor may receive performance-based compensation from certain investment companies. (731:1-732:2; 733:17-734:13; GX 3 at ¶10; GX 103; GX 107; DX 50 E). Sovereign also revised its Form ADV Part II to reflect that: (a) it offers investment advisory services for subscription fees; (b) Sovereign may receive incentive or subscription fees from certain investments; and (c) Sovereign may receive performance based compensation from certain investment companies. (720:9-724:24: GX 110).

In addition to the Investment Advisory Agreement and ADV, compensation payable to Grossman was disclosed in the Anchor Hedge Fund Private Placement Memoranda that was provided to Sovereign's clients. For instance, Sovereign clients who were invested in Anchor Class A received the June 30, 2005, Anchor A PPM. (GX 27; DX 152 at Ex. 7, 21). The Anchor A PPM identifies Grossman as a member of the Investment Advisory Board appointed by Anchor Hedge Fund Limited to assist the Professional Board with the criteria outlined in Grossman's biography, namely moving IRA's and pension plans offshore for asset protection and greater investment diversification. (GX 27 at pp. 13-14). In addition, the Anchor A Private Placement Memorandum states the appointed investment advisers, will be paid fees and expenses as agreed by the Anchor Hedge Fund Management Limited. (GX 27 at p. 16). The May 31, 2005, Anchor C Private Placement Memorandum was also provided to Sovereign

clients and contained identical language as stated in the Anchor A Private Placement Memorandum. (DX 25; DX 152 at Ex. 8, 21). In fact, all of the Anchor Private Placement Memoranda for the various classes contained the same language as the Anchor A and Anchor C Private Placement Memoranda. (GX 28, GX 29, GX 30).

Grossman had provided evidence of at least three written disclosures to Sovereign client's regarding compensation received from third parties. The disclosure of compensation, however, was not done only by written communications, Grossman would often times verbally have discussions with Sovereign clients, such as Gilluly, regard the fees charged and the amount of such fees. (524:19-525:9; 726:16-727:3).

As a result, Sovereign adequately disclosed compensation that it may receive from investments, such as the compensation from the Referral and International Consultant Agreements. Furthermore, the verbal discussion, such as the discussion with Gilluly, can cure any omissions in the Investment Advisory Agreement arising from the use of the term "may." The Division, however, only presented evidence from four Sovereign clients that such discussions did not occur, and attempts to use such evidence as a broad sweeping basis that no oral discussions occurred with Sovereign clients regarding Sovereign's compensation under the Referral and International Consulting Agreements is not supported by the record.

D. GROSSMAN DID NOT MAKE MATERIAL OMISSIONS & MISSTATEMENTS REGARDING ANCHOR HEDGE FUNDS NOR DID HE FAIL TO CONDUCT ADEQUATE DUE DILIGENCE OR INVESTIGATE RED FLAGS

The Division claims that during his ownership of Sovereign, Grossman violated Sections 206(1), 206(2), 206(3) and 207 of the Advisers Act for his: (a) material omissions and misstatements regarding Anchor Hedge Funds; (b) failure to perform due diligence and

investigate red flags. Initial Brief at p. 39-40. The Division's claims must fails for the reasons set forth below.

(a) Material Omissions & Misstatements Regarding Anchor Hedge Funds

The Division argues that the cross portfolio liability between the different Anchor Hedge Fund share classes creates risk significantly greater than that disclosed in each of the funds Private Placement Memoranda and that Grossman failed to apprise Sovereign clients of the additional risk. The Division's entire argument is based on mere speculation. There is no evidence in the record indicating that the cross-portfolio liability increased the risk associated with any of the Anchor Hedge Fund share classes. Furthermore, the risk disclosures in each of the Anchor Hedge Fund Private Placement Memoranda may have already taken into account the cross-portfolio liability between the Anchor Hedge Fund share classes. Finally, there was no testimony or evidence presented by any expert witness analyzing and rendering an opinion as to any of the statements contained in any of the Anchor Hedge Funds Consolidated Financial Statements. As a result, the Division's claims based upon Grossman's failure to advise Sovereign client's of any increased risk in the Anchor Hedge Fund share classes must fail.

The Division also claims that Grossman falsely promoted Anchor A to clients and prospective clients as diversified fund with a portfolio of well-established, independently administered and audited hedge funds. Initial Brief at p.39. The Division has not presented any reliable evidence proving that Anchor A was not independently administered and audited. In fact, Grossman produced the Consolidated Financial Statements for Anchor A conclusively proving that Anchor A was in fact an independently audited. (GX 35; DX 87).[11] Furthermore,

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[11] An investment advisor is entitled to rely on the accuracy of these documents for purposes of recommending an investment and is not required to assume the role of accountant or private investigator to determine the documents accuracy. *Gabriel Capital, L.P. v. Natwest Finance, Inc.*, 137 F. Supp. 2d 251, 263(S.D.N.Y. 2000).

Grossman provided ample testimony as to how he continued to conduct due diligence on Anchor A to ensure that the fund was staying true to its investment objectives after Battoo stopped providing him information regarding Anchor A's underlying funds. (678:12-679:1; 682:20-689:4; 691:25-693:14; GX 27; GX 63 at p. 11). As a result, Grossman was not reckless in continuing to promote Anchor A during his ownership of Sovereign.

(b) Failure to Perform Due Diligence and Investigate Red Flags

Finally, the Division claims that Grossman knew that Anchor C was not timely honoring redemptions yet continued to recklessly recommend that clients keep Anchor C and promoted its safety. Initial Brief at p. 39. The Division's entire argument is premised upon a September 18, 2008 email discussing Urs Buehler's ("Buehler") request to redeem his shares in Anchor C wherein he submitted his request for redemption on May 16, 2008. (DX 99). Pursuant to Anchor C acknowledgement signed by Sovereign clients, Anchor C's redemption requests shall only be accepted as of the next Calendar Quarter Valuation Date following receipt of the request and that the request must be received at least forty-five days prior to the end of the Calendar Quarter to be processed for the current quarter. (DX 25; DX 50L at p. 2; DX 108 p. 3)[12]. Furthermore, the redemption may be delayed by as much as ten weeks to enable the fund to obtain the Net Asset Values from the underlying investments. *Id.* Since, Buehler submitted his redemption request on May 16, 2008 (second calendar quarter) then his redemption request would be processed at the end of the next calendar quarter, namely September 30, 2008 the day before Grossman sold Sovereign. This does not even take into consideration of whether there was any delays due to the fund obtaining the Net Asset Values from the underlying investments that can amount to an additional ten weeks in processing resulting in a redemption date of December 9, 2008. As a

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[12] There is no record evidence of Buehler's subscription agreement for Anchor C.

result, there were no delays in the redemption of Anchor C shares and the Division's claims must fail.

E. NO CAUSAL CONNECTION BETWEEN GROSSMAN'S ALLEGED VIOLATION AND THE AMOUNT TO BE DISGORGED.

It is the Commission's burden to distinguish between gains that were legally and illegally obtained. *See SEC v. Seghers*, 404 Fed. Appx. 863, 864 (5th Cir. 2010). The Division cannot sustain its burden to show a causal connection between the amount to be disgorged, namely all of the fees received from 2003 through October 1, 2008, and the alleged violations absent presenting testimony from each of the Sovereign clients to determine whether Grossman had any oral discussion of fees with them. *See SEC v. Blatt,* 583 F.2d 1325, 1335 (5th Cir.1978); *SEC v. Manor Nursing Centers, Inc.,* 458 F.2d 1082, 1104 (2d Cir.1972)(the court can exercise its equitable power only over property causally related to the wrongdoing) S*ee also In re Joseph J. Barbato*, 1999 WL 58933 (S.E.C. Release Feb. 10, 1999)(rejecting the Commission's claims for disgorgement of all fees received by broker-dealer received from all clients over the course of several years holding that the commission could only seek disgorgement with respect to the customers who testified at trial). The Division presented testimony from Richards, Davidson, Montes and the Van Dykes. As a result, any award of disgorgement must be limited to the fees attributable to these four Sovereign clients.

The Division also seeks disgorgement from Grossman arising from Sovereign's use of AH Florida to temporarily hold Sovereign clients' funds before being invested in an Anchor Hedge Fund, Futures One fund or PIWM in violation Rule 206(4)-2, the custody rule. There is no causal connection between the violation of the custody rule and the fees received by Sovereign from the Referral and Consulting Agreements. As a result, the Division's claims for disgorgement with respect to the violation of Rule 206(4)(-2) must fail.

F. ANY DISGORGEMENT AWARD SHOULD BE REDUCED BY SETTLEMENT PAYMENTS TO SOVEREIGN CLIENTS AND PENALTIES IMPOSED BY THE IRS.

Contrary to the Divisions' argument, Grossman is not required to plead "set-off" in response to the Divisions' claims for disgorgement. Grossman has presented evidence of deductible expenses from the Divisions disgorgement calculation, namely payments made to private litigants and the IRS. These payments prevented Grossman's use of any ill gotten gains and have already been used to compensate Sovereign clients and the federal government.

G. CIVIL PENALTY

The remedy of a civil penalty for any of the claims brought against Grossman is barred by §2462's five year statute of limitation. To the extent that the Court would even consider assessing a civil penalty against Grossman, the record evidence demonstrates that Grossman did not attempt to conceal the compensation received under the Referral or International Consultant Agreements. To the contrary, he took steps to revise Sovereign's Investment Advisory Agreement and ADVs to disclose that Sovereign may receive compensation. Furthermore, upon the suspension of redemptions of Anchor A shares, Grossman, as a consultant, took steps to assist Sovereign clients by keeping them apprised of the Bernard L. Madoff liquidation proceedings. As a result, any civil penalty assessed against Grossman should be a first tier penalty.

CONCLUSION

For the foregoing reasons, the Law Judge should refuse to find that Grossman violated Section 17(a) of the Securities Act; Section 15(a) of the Exchange Act; and Section 206(2), 206(3) and 207 of the Advisers Act or that Grossman willfully aided and abetted and caused violation of Section 15(a) of the Exchange Act, Section 206(4) of the Advisers Act, and Advisers Act Rules 204-3 and 206(4)-2. Grossman also requests that the Law Judge find that all of the remedies under such claims are barred by §2465's five-year statute of limitations.

s/Zachary D. Messa
Zachary D. Messa, Esquire