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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-15617

In the Matter of
LARRY C. GROSSMAN
And GREGORY J. ADAMS,
Respondents.

LARRY C. GROSSMAN'S INITIAL BRIEF

Zachary D. Messa, Esquire
Florida Bar No. [redacted]
Email: [redacted]

Michael T. Cronin, Esquire
Florida Bar No. [redacted]
Email: [redacted]

JOHNSON POPE BOKOR RUPPEL & BURNS, LLP
[redacted]

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I. INTRODUCTION

The Securities and Exchange Commission's ("SEC") 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, subpoenas for 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 an action for violation of the securities laws 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.

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. A district court in the Southern District of Florida unequivocally held that all of the SEC's remedies are subject to §2462's five year statute of limitations.

On November 20, 2013, the Division filed its Order Instituting Proceedings ("OIP") against Larry C. 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. FACTUAL BACKGROUND

Sovereign was an investment advisory firm that specialized in taking IRA and retirement plans offshore to provide its clients, among other things, access to international investments and foreign asset managers. Tr. 189:16-189:22; 192:22-193:11. From 1998 through October 1, 2008, Grossman was the founder, managing partner, and sole owner of Sovereign. Op. at 3-4. Grossman also founded Sovereign International Asset Management, LLC ("SIAM, LLC"), Anchor Holdings, LLC ("Anchor Nevis"), and Anchor Holdings, LLC ("Anchor Florida") (with Sovereign, collectively, the "Sovereign Entities"). Op. at 4. In addition to the Sovereign Entities, Grossman owned Sovereign International Pension Services, Inc. ("SIPS"), an IRA administrator that assisted in taking retirement plans offshore. Op. 4; Tr. 177, 636.

On October 1, 2008, Grossman sold the Sovereign Entities to Gregory J. Adams ("Adams"). Op. 6. Upon the sale, Adams immediately obtained and maintained full control of the Sovereign Entities. Tr. 495:4-495:23; 495:24-496:3. Consistent with the change in ownership and control, Sovereign revised its ADV and ADV Part II to identify Adams as Sovereign's control person and the sole member of Sovereign's investment committee or group

that determines general investment advice given to Sovereign clients.[1] Div. Ex. 42; Div. Ex. 43; Div. Ex. 86. Sovereign, however, erroneously filed its December 23, 2008, ADV by affixing Grossman's electronic signature to the document without his knowledge, consent, or authorization. Tr. 423.7-424:22; Div. Ex. 84.

After the sale of the Sovereign Entities, the financial markets experienced a meltdown, causing Sovereign to hire Grossman as a consultant to help Adams overcome his concern with the market and the transition of Sovereign to Adams. Tr. 454:6-454:17. Grossman assisted in transitioning the business by helping with operational things, such as steering Adams in certain directions to look at and investigate certain investments. Tr. 496:13-497:22. Grossman also communicated with Sovereign clients regarding the suspension of redemptions in Anchor Hedge Fund Class A ("Anchor A") stemming from Anchor A's exposure to Bernard Madoff ("Madoff") feeder funds, discussed efforts taken by Sovereign to recover the investments in Anchor A, and hired an attorney to assist with Sovereign's filing in the Madoff bankruptcy. Tr. 505; 759:15-760:14; Div. Ex. 50:6-7; Div. Ex. 50 R; Div. Ex. 50U.

As a consultant, Grossman did not give investment advice to any of Sovereign's clients. Op. at 8; Tr. 496:20-497:7; 760:20-761:13. In fact, rendering investment advice was not even a possibility, because the redemptions in Anchor A were already suspended. Tr. 760:23-761:13. Furthermore, Grossman did not possess: (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; (d) receive compensation that was tied in any way to the performance of the investments managed at

[1] On June 28, 2013, Sovereign filed for Chapter 7 bankruptcy in the United States Bankruptcy Court for the Middle District of Florida and was administratively dissolved in September 2012. Op. 6.

Sovereign; and (e) any authority to file an ADV on behalf of Sovereign. Tr. 495:4-495:2; 761:14-762:20.

On November 20, 2013, the Division filed its OIP against Grossman concerning securities violations occurring during his ownership of Sovereign. Op. at 1. The gravamen of the Division's claims against Grossman stemmed from his conduct during his ownership of Sovereign and his recommendation and placement of Sovereign clients into investments managed by Nikolai Battoo ("Battoo"), including Anchor Hedge Fund Limited ("Anchor Hedge Fund"), FuturesOne Diversified Limited ("FuturesOne"), and Private International Wealth Management ("PIWM") (collectively, "Battoo Funds"). Op. at 9. In connection with the placement of Sovereign clients in the Battoo Funds, SIAM, LLC (sold to Adams on October 1, 2008) would receive a fee per written referral agreements with Anchor Hedge Fund, FuturesOne, and PIWM (collectively, "Referral Agreements"). Op. 14; Div. Ex. 71-73. Grossman would also receive a fee from Anchor Hedge Fund Management as an International Consultant ("International Consultant Agreement") specializing in determining when an IRA or qualified plan could make investments into the Anchor Hedge Fund. Op. 15-16; Tr. 251-58; Div. Ex. 74; Resp. Ex. 13, 14.

Interestingly, the Division was keenly aware of the very conduct complained of in the OIP almost nine years earlier when the Commission's Office of Compliance Inspections and Examination ("OCIE") conducted a two week examination of Sovereign's books and records in October 2004, yet the Division did nothing.[2] Op. 18. During the examination, Jesse Alvarez

[2] The purpose of an OCIE investigation is to examine a firm's books and records to get an understanding of the operations, function, and activities to determine if it is in compliance with the securities statutes. Tr. 929:14-20; 962:6-9. It is OCIE's practice and procedure to maintain all documents and notes gathered during the examination in its files. Tr. 970:15-971:2; 972:2-8. Such files were not produced to Grossman. Alvarez and Tullis were unable to recall any

("Alvarez") and Tonya Tullis ("Tullis") from the OCIE were provided with full and unrestricted access to Sovereign, including copies of the Referral Agreements and International Consultant Agreements, Sovereign's ADVs and ADVs Part II, Sovereign's Investment Advisory Agreement ("IAA"), and documentation showing the due diligence performed on the Battoo Funds. Tr. 697:12-21; 739:12-20; Div. Ex. 71-74. During the examination, the OCIE inquired specifically into Sovereign's fee disclosure to which Sovereign responded:

> "Even though our Advisory Fee schedule states there may be additional fees and expenses borne by the investor, Sovereign will modify our web site, marketing materials, presentations and any other items the SEC advises to more accurately reflect Sovereign may from time to time receive commissions and other fees on certain investments."

Div. Ex. 85; Tr. 829:25-831:1.

The OCIE examination culminated in the February 7, 2005 deficiency letter ("Deficiency Letter") outlining Sovereign's deficiencies and/or violations of law. Op. 18; Tr. 717:4-15; 969:11-24; Div. Ex. 141. The Deficiency Letter outlined Sovereign's violations and stated:

> "SIAM's advisory agreement may be misleading and in violation of Section 206 because SIAM received performance based compensation from clients' investments in Anchor Hedge Fund Limited ("Anchor") and FuturesOne Diversified Fund, Ltd. SIAM should either comply with the advisory agreement or amend it to reflect that receipt of performance based compensation from clients' investments in Anchor Hedge Fund Limited ("Anchor") and FuturesOne Diversified Fund, Ltd. SIAM should either comply with the advisory agreement or amend it to reflect the receipt of performance based compensation. SIAM may also need to amend its ADV Part II to disclose the receipt of performance based compensation."

Div. Ex. 141.

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conversations they had with Grossman regarding the disclosure of fees, and despite having the examination file in their possession, did not review the file to assist in their testimony. Tr. 970:5-917:2; 972:1-7; 972:9-13.

Sovereign responded to the Deficiency Letter on March 8, 2005. Op. at 19; Div. Ex. 142. Sovereign revised Sections 5F(2), 8B(2), and 8B(3) of its ADV pursuant to such request. Div. Ex. 35. Sovereign also revised its ADV Part II and IAA to reflect that "SIAM may receive incentive or subscription fees from certain investment companies. SIAM may receive performance-based compensation from certain investment companies." Resp. Ex. 7; Tr. 908:16-910:13. Sovereign also revised its IAA to state that "the advisor may receive performance-based compensation from certain investment companies." Tr. 731:1-732:2; 733:17-734:13; Resp. Ex. 3 at ¶10.

On September 6, 2012, the Commission brought an enforcement action against Battoo and his companies ("Battoo Litigation"). Op. at FN 11; *SEC v. Battoo*, No. 1:12-cv-7125 (N.D. Ill). The SEC alleges that in 2000, Battoo lost tens of millions of dollars investing Madoff feeder funds and more than $100 million dollars when an international bank terminated Battoo's access to its credit and platform or funds. The SEC also claims that Battoo falsified track records of his funds to attract new investors. The Law Judge took notice of the entire case pursuant to 17 C.F.R. §201.323, despite the Division only submitting the complaint in the action. The SEC, however, was too late in bringing its action against Battoo, because he had already fled to Switzerland and the SEC was unable to affect personal service upon him. Battoo Litigation at Dkt. 46.

The Division and Grossman proceeded to a final hearing wherein the Sovereign investor witnesses that presented live testimony, Carmen Montes ("Montes"), Margaret Van Dyke ("Van Dyke"), and C.W. Gilluly ("Gilluly"), strained to recall events concerning Grossman's recommendations and placement of them into the Battoo Funds that occurred over five years before the filing of the OIP. Op. 22-29. For instance, Van Dyke and Montes could not recall or

inaccurately recalled whether they received Sovereign's Form ADV Part II, despite signing the IAA acknowledging receipt of such document. Tr. 92:12-94:5; 113:21-25; 150:19-150:21. Van Dyke and Montes were also unable to recall whether they received a private placement memorandum ("PPM") for the Anchor fund that they were invested in. Tr. 75:25-4; 152:16-25. In fact, Van Dyke recalled email communications with Grossman discussing the 4.5% subscription fee for Anchor A, which was ultimately paid to SIAM, LLC under the Referral Agreements, but the emails were not produced. Tr. 61:103. The only consistent testimony emanated from James Davidson's ("Davidson") Declaration, a witness that Grossman did not have the opportunity to examine. Op. at 22. Grossman, however, had an opportunity to examine Stephen Richards ("Richards") via deposition on his declaration ("Richards Declaration"), revealing that the Division drafted multiple versions of the Richards Declaration that were presented to Richards for signature, included documents in such drafts that Richards did not provide to the Division, and that Richards was unable to verify in his deposition that his testimony was true and accurate in light of a surgery he underwent in November 2013.[3] Dp. 12:9-17; 116:14-22; 124:11; 161:8-14; 162:16-163:7; Dp. 163:14-165:7; 221:18-222:4; 230:15-25; Dp. Ex. 16, 18. Despite such testimony, the Law Judge devoted a significant portion of her findings based on the Richards Declaration and deposition testimony.

The inability to recollect certain events was not limited to the Sovereign investor witnesses. Grossman was unable to recollect the composition of the Anchor A or Anchor C funds at the time he recommended such funds to Sovereign clients because the recommendations and investments were made over five years prior to the filing of the OIP. Tr. 315:15-316:6; 317:8-16; 333:21-25; 316:20-317:5. Grossman, also through the passage of time, did not

[3] I will cite the Richards deposition transcript as "Dp. __." and deposition exhibits as "Dp. Ex. __."

recognize the Investment Advisor Public Disclosure ("IARD") document that, despite Sovereign's ADVs, identified Grossman as an investment representative of Sovereign through at least December 31, 2011. Op. 44; Tr. 242:1-244:14; Div. Ex. 2; Div. Ex. 42; Div. Ex. 43.

Despite the uncertainty one thing was clear, all of the Sovereign investor witnesses that presented live testimony or otherwise, were invested in the Battoo Funds well in advance of Grossman's sale of Sovereign to Adams:

- Davidson opened an account with Sovereign in 2006 and, pursuant to Grossman's recommendations, was invested in Anchor A, Anchor C and FuturesOne C in November 2006. Op. at 22.

- Montes signed the Sovereign IAA and, pursuant to Grossman's recommendations, signed the subscription agreement to invest in Anchor C on October 25, 2007, and was invested in Anchor C before November 20, 2008. Op. 23-24; Tr. 114:14-115:22; Resp. Ex. 135.

- Richards, a retired attorney and accredited investor, pursuant to Grossman's recommendation on December 11, 2007, elected to invest in Anchor A and Anchor C. Op. at 25.

- Van Dyke became a Sovereign client on March 11, 2008. Op. at 27. Pursuant to Grossman's recommendations, Van Dyke executed the subscription agreement for Anchor A and was invested in Anchor A before November 20, 2008. Op. at 28; Tr. 53:5-13; 57:20-58:24; Div. Ex. 104.

- Gilluly, a sophisticated and aggressive investor, became a Sovereign client in 2003 and, pursuant to Grossman's recommendations, was invested in Anchor A and PIWM. Op. at 29; Tr. 524:12-524:18.

On December 23, 2014, the Law Judge issued her Initial Decision ("Initial Decision") finding that Grossman, during his ownership of Sovereign, made several materially false and misleading statements and omissions and failed to conduct adequate due diligence and investigate red flags attributable to the Battoo Funds that he recommended to Sovereign clients. Op. 32-42. More specifically, the Law Judge found that Grossman fell within the provisions of Section 17(a)(2) of the Securities Act and Sections 206(1) and 206(2) of the Investment

Adviser's Act because Grossman, as Sovereign's founder, managing partner, and sole owner until he sold the business in October 2008, received compensation in connection with giving investment advice. Op. 33. Proceeding under this finding, the Law Judge found that Grossman violated these provisions by making materially false and misleading statement and omissions to Sovereign clients regarding: (1) undisclosed referral compensation in Investment Advisory Agreements and Form ADVs regarding receipt of referral fees and consultant fees; (2) documentation provided to Sovereign clients containing patently false and misleading statements such as Grossman's statement that he offered highly personalized investment advice; (3) that the Battoo Funds were "moderately conservative" or low risk; (4) depositing Sovereign clients' funds into a pooled account; (5) that the Battoo Funds were "highly diversified"; and (6) the IAA's and Forms ADV from 2003-2008 did not disclose that Sovereign took custody of its clients' assets. Op. 34-36.

In addition to the material misstatements, the Law Judge found that Grossman failed to conduct adequate due diligence into the Battoo Funds and failed to investigate red flags regarding such funds. Op. 36-38. In support of such finding, the Law Judge found that Grossman: (1) did not perform reasonable due diligence before recommending the Anchor A and other Battoo Funds to Sovereign's clients; (2) violated his duty of care he owed to his customers by relying on PerTrac reports, one-page fund summaries, without knowing the source of the information; (3) relied on the unreliable PerTrac reports; and (4) failed to show that he performed anything approaching adequate due diligence as to the investments in which he recommended that Sovereign customers invest funds. *Id.*

The Law Judge also found that Grossman: (1) willfully violated Section 207 of the Adviser's Act by making misleading statements on Sovereign's Form ADVs; (2) willfully

violated Exchange Act Section 15(a) by acting as a broker when he recommended the Battoo Funds to Sovereign clients and receiving referral fees and a portion of the investment management for making such recommendations; (3) willfully violated Section 206(3) of the Advisers Act by acting as a broker by selling shares of the Battoo Funds and receiving compensation for the sale to Sovereign clients while failing to provide written notice to Sovereign clients and obtain their consent before selling them the shares of the Battoo Funds; (4) willfully aided and abetted and caused violations of Section 206(4) and Rule 206(4)-2 of the Advisers Act by pooling Sovereign clients' funds for the Battoo Funds; and (5) aided and abetted and caused violations of Rule 204-3 of the Adviser's Act because Grossman, as Sovereign's owner, sole control person, and firm spokesperson from 2003 through October 1, 2008, failed to deliver an investment adviser brochure and supplements to each client or prospective client that contained the correct information required by Part II of Form ADV. Op. 38-42.

All of Grossman's conduct found to be violative by the Law Judge occurred exclusively during his ownership of Sovereign that ceased over five years before the Division filed the OIP. Despite such findings, the Law Judge ordered the following relief against Grossman: (a) industry bars; (b) $1,550,000 civil penalty; and (c) $3,407,765.66 disgorgement amounting to the fees he received from the Referral Agreements and International Consultant Agreements for the investment of all Sovereign clients into the Battoo Funds between 2004 and October 10, 2008. Op. 16, 47, 49.

III. THIRD TIER PENALTIES AGAINST GROSSMAN ARE BARRED BECAUSE THE CLAIMS FIRST ACCRUED DURING GROSSMAN'S OWNERSHIP OF SOVEREIGN WHICH IS BEYOND §2462'S FIVE YEAR STATUTE OF LIMITATIONS

The Law Judge awarded a $1,550,000 civil penalty against Grossman for violations of the securities laws that first accrued during Grossman's ownership of the Sovereign Entities that ceased over five years before the filing of the OIP on November 20, 2013. The Supreme Court in *Gabelli* was clear that it would not tolerate the SEC's delay or inaction in bringing enforcement claims for penalties and imposed a bright-line test as to when claims first accrued under 28 U.S.C. §2462's statute of limitation, which is the date when the Division has a complete and present cause of action against Grossman. *Gabelli v. SEC,* 133 S. Ct. 1216, 1120-21 (2013); *SEC v. Graham*, 2014 WL 1891418 (S.D. Fla. May 12, 2014). As further explained below, each of the claims against Grossman first accrued well beyond §2462's limitation period barring the award of penalties.

A. Express Findings Barring Relief

The Law Judge expressly found that Grossman violated Advisers Act 206, 206(4), and Advisers Act Rule 206(4)-3 during his ownership of Sovereign. Op. 33 ("Grossman is a primary violator under Advisers Act Section 206, because as Sovereign's founder, managing partner, and sole owner until he sold the business in October 2008, he received compensation in connection with giving investment advice"); Op. 42 ("at a minimum as the owner of a registered investment adviser, Grossman should have known the custody rules imposed by the Advisers Act"); Op. 42 ("Grossman aided and abetted and causes all these violations because he was Sovereign's owner, sole control person, and firm spokesperson, from 2003 through October 1, 2008, and was thus responsible for Sovereign's compliance with this rule."). Based on these express findings, all of

these claims first accrued beyond §2462's limitation period, thereby prohibiting the Law Judge from assessing a penalty for such claims.

B. Implicit Findings Barring Relief

The Law Judge's findings with respect to the following violations by their very nature first accrued during Grossman's ownership of Sovereign and are barred by §2462's five year statute of limitations.

(a) Violation of Section 17(a)(2)

Securities Act Section 17(a)(2) makes it unlawful for any person in the offer or sale of any securities to obtain money or property by means of any untrue statement of a material fact or any material omission. Op. 33. Grossman's exposure to Section 17(a)(2) liability ended the moment that he sold Sovereign to Adams on October 1, 2008, because he was no longer offering or selling any securities to obtain money or property by means of any untrue statement of material fact or any material omission.

The Law Judge's findings regarding Grossman's materially false and misleading statements and omissions were limited to Grossman making "materially false and misleading statements and omissions to prospective and current Sovereign clients, inducing Sovereign clients to make certain investments for which Grossman received undisclosed referral compensation." Op. 34. In support of this finding, the Law Judge cited to the testimony of Davidson, Montes, Richards, Van Dyke, and Gilluly, all Sovereign clients whose transactions giving rise to such claims occurred during Grossman's ownership of Sovereign. *Id.*

Furthermore, the Law Judge specifically found that Sovereign's "IAAs and Forms ADV filed and used by Sovereign both before and after the 2005 [OCIE] examination were misleading because they did not contain full and accurate disclosures to fully inform Sovereign clients that

Grossman and Sovereign were receiving additional compensation due to Grossman's and Sovereign's investment recommendations." Op. 35. Grossman's compensation under the Referral and Consulting Agreement ceased upon the sale of Sovereign, or at a minimum before November 20, 2008. This is supported by the Law Judge's finding that "until he [Grossman] sold the business in October 2008, he received compensation in connection with giving investment advice." Op. 33. The Division also acknowledges that Grossman's receipt of fees under the Referral Agreement and International Consultant Agreement ceased before November 1, 2008 because the Division only sought to disgorge such fees through October 10, 2008. Op. 16. As a result, pursuant to the Law Judge's findings and the Divisions concessions, all of Grossman's conduct regarding these omissions and misrepresentations occurred during Grossman's ownership of Sovereign which was beyond §2462's five year statute of limitations.

The Law Judge's findings as to Grossman's inadequate due diligence and failure to detect red flags also relate exclusively to Grossman's conduct during his ownership of Sovereign. For instance, the Law Judge found that Grossman did not perform reasonable due diligence before recommending Anchor A and the other Battoo Funds to Sovereign's clients. Op. 37. There is no record evidence to support that Grossman made such recommendations after he sold Sovereign, and therefore such findings relates exclusively to his conduct during his ownership of Sovereign.

(b) Violation of Adviser's Act Section 207

Adviser's Act Section 207 is limited to making untrue statements of material fact or willfully omitting to state a material fact in any registration application or report filed with the Commission. Op. 38. In support of the finding that Grossman violated Section 207, the Law Judge relies exclusively on Sovereign's ADVs filed during Grossman's ownership of Sovereign. Op. 39. Grossman did not file any ADVs on behalf of Sovereign after he sold Sovereign to

Adams. The issue arose as to whether Grossman affixed his electronic signature to Sovereign's December 23, 2008, ADV, to which he responded he did not and that it was affixed without his permission. Tr. 423:7-424:22; Div. Ex. 84. The Law Judge accepted Grossman's testimony finding that she could not rely upon Sovereign's December 23, 2008, ADV bearing Grossman's name because it was intended to be signed by Adams and did not include such filing in the calculation of penalties assessed against Grossman. Op. 47; FN. 49. Therefore, Grossman's violation of Adviser's Act Section 207 first accrued during his ownership of Sovereign, beyond §2462's five year statute of limitations.

(c) Violation of Exchange Act Section 15(a) and Advisers Act Section 206(3)

The Law Judge found that Grossman's violation of Exchange Act Section 15(a) occurred when he "knowingly acted as a broker when he recommended the Battoo Fund to Sovereign clients and received referral fees and a portion of the investment management fee for making those recommendations." Op. 40. Likewise, the Law Judge found that Grossman violated Section 206(3) "when he recommended the Battoo Funds to Sovereign clients and received referral fees and a portion of the investment management fee for making those recommendations." Each of these violations accrued during Grossman's ownership of Sovereign because, as conceded by the Law Judge and the Division, Grossman only received such fees during his ownership of Sovereign, or at the latest October 10, 2008. Furthermore, there is no record evidence that Grossman recommended any of the Battoo Funds or received a fee for the recommendation of such funds after the sale of Sovereign.

The Law Judge's findings and record evidence show that all claims against Grossman first accrued during his ownership of Sovereign that ceased on October 1, 2008, or at a minimum, accrued before November 20, 2008 (five years before the Division filed the OIP). As

a result, all penalties entered against Grossman are barred by §2462's five year statute of limitations.

IV. DISGORGEMENT AND INDUSTRY BARS ENTERED AGAINST GROSSMAN ARE PUNITIVE AND BARRED BY §2462'S FIVE YEAR STATUTE OF LIMITATIONS.

The Law Judge's award of industry bars and disgorgement against Grossman for claims that first accrued beyond §2462's statute of limitations are punitive and upsets the security and stability to human affairs by allowing recovery for stale claims and promoting uncertainty as to when Grossman's liabilities for claims first accruing beyond the limitation period ends. The Law Judge's findings violate the underpinnings of the Supreme Court's unanimous decision in *Gabelli* regarding the importance of bringing claims within §2462's five year statute of limitations to "promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded and witnesses have disappeared. *Gabelli v. SEC,* 133 S. Ct. 1216, 1221 (2013).

A. §2462 Bars All of Division's Remedies Against Grossman

The Supreme Court in *Gabelli* determined that the SEC's mission was to investigate potential securities violations and that it had an arsenal of legal tools to accomplish such mission. *Id.* at 1221. In exercising such power, the SEC seeks a different kind of relief, namely penalties that are a form of relief that goes beyond mere compensation and are intended to punish and label defendants as wrongdoers. *Id.* at 1223. In an effort to provide defendants with a definitive date as to when their exposure to an SEC enforcement action ends and to require the SEC to pursue it mission in a timely and diligent manner, the Supreme Court established a bright-line test as to when claims first accrued under §2462's five year statute of limitations because

exposure to an enforcement action for an uncertain period into the future would be utterly repugnant. *Id.* at 1221-23.

Although the Supreme Court in *Gabelli* declined to reach the question whether injunctive relief and disgorgement are also covered by §2462, as the question was not properly before it, the long-held policies and practices that underpin the Supreme Court's unanimous decision, as well as §2462's bright-line accrual test, require that §2462's statute of limitations reaches all forms of relief sought by the SEC. *SEC v. Graham*, 21 F. Supp. 3d 1300 (S.D. Fla. 2014). For instance, the Supreme Court in *Gabelli* defined penalties as a form of relief that goes beyond mere compensation intended to punish and label defendants as wrongdoers. *Id.* at 1223. Disgorgement fits squarely within the Supreme Court's definition of penalty because its primary purpose is not to compensate investors for their losses. *SEC v. Wyly*, 2014 WL 7238271 (S.D.N.Y. Dec. 19, 2014); *SEC v. AIC, Inc.*, 2014 WL 3810667 at *5 (E.D. Tenn, Aug. 1, 2014) citing *SEC v. Blavin*, 760 F.2d 706, 713 (6th Cir. 1985)(disgorgement is to prevent unjust enrichment rather than to compensate victims of fraud); *SEC v. Monterosso*, 756 F.3d 1326, 1337 (11th Cir. 2014)(disgorgement is an equitable remedy to prevent unjust enrichment).

The Court in *Graham v. SEC* is the first Court to apply the underpinnings of the Supreme Court's unanimous decision in *Gabelli* to bar all forms of relief sought by the SEC beyond §2462's five year statute of limitations and is located in the same state where Sovereign's and Grossman's violations occurred. *SEC v. Graham*, 21 F. Supp. 3d 1300(S.D. Fla. 2014). The Court in *Graham* applied the same careful and detailed analysis as employed by the Supreme Court in *Gabelli* and simply could not accept the SEC's argument that simply because the words "injunction" or "disgorgement" do not appear in §2462, then no statute of limitations applies. *Id.* at 1310. In arriving at its decision, the court dismantled the legal fiction that disgorgement and

industry bars are equitable remedies and distinguished the cases within its own circuit advancing such proposition because the root of such cases was to enjoin a continuing harm under the Clean Water Act, not to punish or penalize defendants for the actual misconduct giving rise to the government's claims. *Id.* at 1310 citing *United States v. Banks*, 115 F. 3d 916, 919 (11th Cir. 1997) and *United States v. Hobbs,* 736, F. Supp. 1406, 1410 (E.D. Va. 1990). Similar to the defendants in *Graham*, Grossman poses no threat of continuing harm, because he sold all of the Sovereign Entities on October 1, 2008, no longer acts as an investment adviser, and Sovereign is no longer in existence.

(a) Disgorgement is Punitive

A disgorgement order by its very nature is punitive because defendants are unable to claim the payment of taxes on their ill-gotten gains as a set-off against the sums ordered to be disgorged. *SEC v. Orr*, 2012 WL 1327786 (D. Kan. Apr. 17, 2012). In the instant case, Grossman paid $1,373,289.47 to the IRS relating exclusively to the repatriation of fees in the Jyske account (the account that received all of the fees from the Referral and International Consulting Agreement that the Law Judge relied upon in reaching the disgorgement figure) to the United States yet he was prohibited from deducting such expense from the disgorgement amount. Tr. 780:22-781:3; Resp. Ex. 91; Op. 16. The disgorgement order is punitive because Grossman already disgorged his ill-gotten gains to another governmental agency without the ability to receive an off-set for such payment.

Disgorgement is also punitive if the amount of disgorgement lacks a causal relationship between the alleged violations and the amount sought to be disgorged. In *SEC v. First City Fin. Corp.*, 890 F.2d 1215, 1231 (D.C. Cir. 1989), the District of Columbia Court of Appeals held:

> "Since disgorgement primarily serves to prevent unjust enrichment, the court may exercise its equitable power only over property causally related to the

> wrongdoing. The remedy may well be a key to the SEC's efforts to deter others from violating the securities laws, but disgorgement may not be used punitively."

SEC v. First City Fin. Corp., 890 F.2d 1215, 1231 (D.C. Cir. 1989); *CFTC v. Sidoti*, 178 F.3d 1132 (11th Cir. 1998); *SEC v. Happ*, 392 F.3d 12, 1 (1st Cir. 2004); *SEC v. Pentagon Capital Mgmt. PLC,* 725 F.3d 279, 288 (2nd Cir. 2013); *SEC v. CMKM Diamonds, Inc.* 729 F. 3d 1248, 1260-61 (9th Cir. 2013); *SEC v. Maxxon, Inc.* 465 F.3d 1174, 1179 (10th Cir. 2006); *Zacharias v. SEC*, 569 F. 3d 458, 471073 (D.C. Cir. 2009), *aff'd*, 444 Fed. Appx. 435 (11th Cir. 2011); *SEC v. K.W. Brown & Co.,* 555 F. Supp. 2d 1275, 1312 (S.D. Fla. 2007); *SEC v. Omnigene, Inc.*, 105 F. Supp. 2d 1316, 1321-22 (S.D. Fla. 2000), *aff'd* 240 F.3d 1079 (11th Cir. 2000); *SEC v. Friendly Power Co.*, 49 F. Supp. 2d 1363, 1372-73 (S.D. Fla. 1999). The Law Judge ordered Grossman to disgorge all of the Referral Agreement and International Consultant Agreement fees received from 2004 through October 2008, $3,407,765.66 plus pre-judgment interest, attributable to the placement of all of Sovereign clients in the Battoo Funds. The nature of Grossman's violations giving rise to disgorgement, however, is either specific to each of Sovereign's clients or on its face are not causally related to the receipt of such fees. *See In the Matter of Joseph J. Barbato*, 1999 WL 58922 (SEC Release No.)(reducing disgorgement award to the commissions received from the seven witnesses who testified, because the nature of the misconduct requires specific and particular facts about each customer).

Grossman testified that in addition to the PPM and the IAA, Grossman would discuss with Sovereign clients that Sovereign would receive fees directly from the funds in which he was placing their investments. Op. 15. Gilluly corroborated Grossman's testimony, testifying that during a face-to-face meeting with Grossman in 2003, Grossman informed him that an investor would pay Sovereign both an annual management fee of 1% and from 1% to 4.5% front-load fees on certain funds. Op. 29. Therefore the Law Judge cannot categorically find that Grossman

failed to disclose such fees to all Sovereign clients and must limit the disgorgement amount to the fees Grossman received under the Referral Agreement and International Consultant Agreement to the Sovereign witnesses that testified during the final hearing. Likewise, the failure to conduct due diligence into Anchor A would only be limited to 2008, the date when, according to the SEC, Battoo invested tens of millions of dollars into the Madoff feeder funds. Finally, the remaining violations have no causal connection with the fees received under the Referral Agreements and International Consultant Agreements.

(b) Industry Bar is Punitive

The court in *Graham* and the Supreme Court in *Gabelli*, however, were not the first courts to touch upon instances where the SEC's "equitable relief" is removed from equity due to its penal effects. For instance, 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 SEC v. Microtune*, 783 F. Supp. 2d 867, 884 (N.D. TX 2011) *aff'd SEC 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. SEC* 87 F. 3d 484 (C.A.D.C. 1996). There is a low likelihood that Grossman would engaged in similar harm in the future because he is no longer an investment adviser, is not associated with Sovereign or the Sovereign Entities and Sovereign has since been dissolved and is no longer in existence. As a result, the industry bars entered against Grossman are punitive and barred by §2462's five year statute of limitations.

B. Repugnant to Exclude Disgorgement from §2462's Statute of Limitations

The Supreme Court in *Gabelli* was adamant in imposing a bright-line test for accrual of claims under §2462 to prevent the SEC from presenting stale claims that were allowed to slumber until evidence has been lost, memories have faded, and witnesses disappeared. The Division's inexplicable delay in bringing its action against Grossman resulted in witnesses' inability to recall facts and the disappearance of a primary witness, namely Battoo. Failure to apply §2462's statute of limitations to disgorgement and industry bars would be repugnant to the underpinning of the Supreme Court's decision in *Gabelli* because it deprives defendants of the certainty of a definitive date as to when their exposure to an SEC enforcement acts ends.

(a) Grossman's Inability to Recall

Due to the passage of time, Grossman was simply unable to recall the specifics regarding the composition of the underlying funds in Anchor A or C because it sought information related to a specific investment over six years ago. Tr. 315:15-316:6; 317:8-16; 333:21-25; 316:20-317:5. While the other investor witnesses' inability to recall due to the passage of time was met with understanding, Grossman's inability to recall prompted the Law Judge to scold Grossman:

> "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...."

Tr. 337:13-338:10. Grossman's inability to recall due to the passage of time also prohibited Grossman from disputing the IARD that showing that he remained a registered investment adviser with Sovereign through at least December 31, 2011. Tr. 242:1-244:14; Op. at 44; Div. Ex. 2. Grossman, however, due to the passage of time, did not recognize the IARD. The Law Judge found that the IARD established that after the sale of Sovereign, Grossman was something

more than a mere consultant to Sovereign despite Sovereign's ADV's identifying Adams as Sovereign's control person and sole member of Sovereign's investment committee or group that determines general investment advice given to client. Div. Ex. 42, Div. Ex. 43, Div. Ex. 86.

Grossman's inability to recall specific events was prevalent during the final hearing. For instance, Grossman could not recall: (a) if the December 31, 2006, Anchor Class C financial statements were the last set of financial statements received by Sovereign (Tr. 302:12-21, Div. Ex. 88); (b) the date when he received the Anchor A or Anchor C financial statements (Tr. 305:10-12; 307:25-308:8); or (c) review or receipt of a September 5, 2008, email sent to a Sovereign client comparing the Anchor Hedge Funds to carious indexes (Tr. 180:18-181:13; Div. Ex. 93).

(b) Sovereign Witnesses' Inability to Recall

The lack of recollection, however, was not limited to Grossman. Many of the investor witnesses who provided testimony also could not recall pertinent facts. For instance, Van Dyke and Montes could not recall or inaccurately recalled whether they received Sovereign's Form ADV Part II, despite signing the IAA acknowledging receipt of such document. Tr. 92:12-94:5; 150:19-150:21. Montes testified that she doesn't know if she received a Form ADV Part II. Tr. 113:21-25. The Law Judge, however, discounted this testimony in her finding that the ADV Forms Part II were not presented to all Sovereign clients. Op. 36 ("Sovereign did not timely provide its Form ADV Part II to all its clients."). In fact, Davidson definitively testified that he received Sovereign's Form ADV Part II before executing Sovereign's IAA. Div. Ex. 50 at 1 ("prior to my execution of the Investment Advisory Agreement, I received a copy of the Form ADV Part II dated March 28, 2006"). Similar to the issue regarding the receipt of the ADV's, neither Montes nor Van Dyke recalled receiving a PPM for the Anchor funds that they were

invested in. Tr. 75:25-4; 152:16-25. Even more important, however, was Van Dyke's recollection that there were emails between Van Dyke and Grossman discussing the 4.5% subscription fee for Anchor A, but the emails were not produced. Tr. 61:1-3. Finally, Van Dyke and Montes each testified that they received an email similar to the email sent to Robert Magyar (Div. Ex.64), but Montes could not provide such document and Van Dyke couldn't say that Division's Exhibit 64 was the same document or "that it's word for word." Tr. 80:4-7.

(c) Law Judge Reliance on Declarations and Deposition Testimony

It is not surprising that the Law Judge focused on the declaration of Davidson and the deposition of Richards in making many of her findings in light of the vague testimony presented during the final hearing. Op. 22-23, 25-27. Grossman, however, never had an opportunity to question Davidson because Davidson has resided in Ecuador since June 2007. Op. 22.

Grossman, however, was able to depose Richards regarding his declaration. In late 2013, Richards underwent a brain operation which severely affected his memory. Dp. 12:9-17; 116:14-22. As a result, Richards was unable to remember even the most basic facts regarding his zip code. Dp. 124:11. Compounding the unreliability of Richards' testimony was his inability to recognize whether he testified accurately as evidenced by the following exchange between the Division and Richards:

> Question: And you answered my questions yesterday and Mr. Messa's questions today as accurately as you could?
>
> Answer: As accurately as I could; however, I have to qualify one things, and I hope it hasn't happened, but I can—because of the memory problem, I might make a statement that just isn't true because my mind doesn't realize that I didn't—didn't give the correct answer. Okay. That's happened to me before where I say one thing and then Kerry tells me something different.

Dp. 221:18-222:4. Richards' inability to recall went to several key issues of the Division's claims against Grossman. For instance, when confronted with email evidence where he directed Sovereign to simply avoid the "aggressive category" in the investment of his funds, Richards could not recall whether he authored the email or whether he was even using the email address stephen.richards1@comcast.net at that time. Dp. 230:15-25; Dp. Ex. 18. The Richards Declaration, however, made no mention of this email, prompting the question as to whether any exculpatory evidence was not included in the Davidson Declaration.

Furthermore, the Law Judge's reliance on the Richards Declaration is equally flawed because the declaration was prepared by the SEC based upon the complaint and documents submitted by Richards and included documents received from third parties, namely other Sovereign investors. Dp. 161:8-14; Dp. Ex. 16. The initial draft of the Richards Declaration, however, was not based on such documents because it contained a December 18, 2008 Galaxy Fund Notice that Richards did not provide to the SEC. Dp. 162:16-163:7. Furthermore, Richards could not explain why he continued to communicate with the SEC on March 1, 2012 regarding additional suggested revisions to his Declaration, after the execution of the declaration on February 29, 2012. Dp. 163:14-165:7; Dp. Ex. 16.

(d) Battoo Disappeared

On September 6, 2012, the Commission brought an enforcement action against Battoo and his companies arising from the concealment of losses attributable to the 2008 investments in Madoff feeder funds, international bank termination of access to its credit and platform of funds, and his falsified track record of benchmark-beating returns. Op. at Fn. 11; *SEC v. Battoo*, No. 1:12-cv-7125 (N.D. Ill). The Law Judge took notice of the entire case pursuant to 17 C.F.R. §201.323, despite the Division only submitting the complaint in the action. The SEC, however,

was too late in bringing its action against Battoo because he already fled to Switzerland and the SEC was unable to affect personal service upon him. Battoo Action at Dkt. 46. As a result, the person with the most knowledge regarding the Battoo Funds could not be questioned.

The Division's delay in filing the OIP until over five years after Grossman sold the Sovereign Entities is inexcusable and any remedies awarded against Grossman arising from claims that first accrued before November 20, 2008 violate the underpinning of the Supreme Court's decision in *Gabelli* and are barred.

V. THE DIVISION'S CLAIMS AGAINST GROSSMAN ARE NOT TOLLED BY THE CONTINUING VIOLATION DOCTRINE

Despite the Law Judge's findings of Grossman's violative conduct relating exclusively to conduct that arose during Grossman's ownership of Sovereign, the Law Judge inexplicably found that timely violations were established after November 20, 2008, within §2462's limitation period, and applied the doctrine of continuing violations to reach beyond such limitation period to assess penalties, disgorgement, and industry bars. Op. 45. The evidence that Law Judge relies upon in support of such findings do not violate any securities law or provide any investment advice. Furthermore, the use of the continuing violation doctrine to assess penalties, disgorgement, and industry bars against Grossman violates the underpinning of the Supreme Court's decision in *Gabelli*.

The continuing violation doctrine is generally applied only in discrimination cases, and does not operate to cure the Division's statute of limitation problems with respect to the claims asserted against Grossman. See e.g., *Figuera v. City of New York*, 198 F. Suppl. 2d 555, 564 (S.D.N.Y. 2002), *aff'd,* 118 F. App'x 524 (2nd Cir. 2004)(continuing violation doctrine is usually

associated with discriminatory policy cases), *de la Fuente v. DCI Telecommunications, Inc.*, 206 F.R.D. 369, 385 (S.D.N.Y. 2002)("It is not at all clear that the continuing fraud doctrine applied in securities fraud cases."). 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. *SEC v. Kovzan*, 2013 WL 5651401 at *2 (D. Kan Oct. 15, 2013) (citing *Nat'l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 113-15 (2002)); *SEC v. Kovzan*, 2013 WL 5651401 at *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). Furthermore, the continuing violations doctrine only serves to allow recovery for stale claims when a related violation by Grossman falls within the limitations period. *See, e.g., Pratts v. Coombe*, 59 App'x 392, 395 (2nd Cir. 2003). 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." *SEC v. Leslie*, 2010 WL 2991038 at *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 *SEC v. Leslie*, 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 ruled 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."

There has been no reliable record evidence to accept the Law Judge's finding that Grossman continued to perpetrate any fraud into the statute of limitations period. 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 well before November 20, 2008. As a result, the continuing violation doctrine does not toll §2462's statute of limitations.

The Law Judge found that the following inactionable conduct was sufficient to toll §2462's statute of limitations under the continuing violation doctrine: (1) Grossman's failure to advise Sovereign client that he sold Sovereign to Adams and would no longer be the investment adviser representative; (2) Grossman's consultancy position at Sovereign for which he was paid and rejoining Sovereign in January 2009; (3) Grossman's IARD showing that he was a registered with Sovereign until December 31, 2011; (4) Grossman's role in trying to resolve the issues with Sovereign clients' Anchor A investments, namely helping to notify clients about the issues with Anchor A including informing Davidson in early February 2009 that Anchor A had suspended redemptions and the calculation of NAV, assisting them in trying to recover their money, and hiring an attorney to assist in with filing claims with the Madoff receivers. Op. 43-44. None of these findings amount to an unlawful act.

For instance, the Law Judge finds that Grossman's failure to notify Sovereign clients that he sold the business to Adams and that he would no longer be their investment advisor is a breach of his fiduciary duties that occurred within the statutory period. The Law Judge, however, cites no specific authority in support of the proposition that an investment advisor has a fiduciary duty to notify its clients upon the sale of the entire investment advisory firm. Instead, the Law Judge applies the broad sweeping language in *Capital Gains Research Bureau*, 375 U.S. at 194 in support of such findings. Sovereign clients, however, were provided with new IAA's and schedules thereto, including the October 30, 2008 ADV Part II, that identified Adams as the registered agent and the person providing investment advice. Dp. Ex. 13. Grossman's name does not appear in the documents. Even if Grossman's failure to specifically advise Sovereign clients of the sale of Sovereign to Adams, such violation first accrued the moment that the sale took place, namely October 1, 2008 or at a minimum before November 20, 2008, which is beyond §2462's limitation period.[4] Furthermore, Van Dyke testified that she became aware of the sale of Sovereign before November 20, 2008. Tr. 89:25-90:10.

The Law Judge's finding that Grossman's consultancy position at Sovereign resulted in violative conduct within the limitation period is also erroneous. As a consultant, Grossman did not give investment advice to any of Sovereign clients. Op. at 8; Tr. 496:20-497:7; 760:20-761:13. In fact, rendering investment advice was not even a possibility because the redemptions

[4] The Law Judge found that the October 14, 2008 email sent by Adams containing a letter from Grossman purportedly announcing the sale of Sovereign was vague and did not clearly announce the sale, despite the letter announcing Adam's assumption of full responsibility for the asset management side of the business [Sovereign], Grossman's limited role of remaining on the Board of Advisors for Sovereign to advise Adam's on his worldview as it relates to investments, and the latest in asset protection strategies, and that Grossman will remain the Managing Direct of Sovereign International Pension Services, Inc., responsible for the Pension side of the business. Div. Ex. 64. To the extent that the Law Judge's findings may be construed to include this letter as a violative conduct, this conduct first accrued before November 20, 2008, and is beyond §2462's limitation period.

in Anchor A were already suspended. Tr. 760:23-761:13. Grossman did not possess: (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; (d) receive compensation that was tied in any way to the performance of the investments managed at Sovereign; and (e) any authority to file an ADV on behalf of Sovereign. Tr. 495:4-495:2; 761:14-762:20. In fact, Montes and Van Dyke confirmed that Grossman rendered no investment advice to them within the limitations period. Tr. 90:25-91:3; 154:21-155:1.

To the extent that the Law Judge relied upon Grossman's IARD as evidence that he was registered with Sovereign, a document that Grossman was unable to identify due to the passage of time, such evidence is expressly contradicted by the ADVs filed by Sovereign during Adams' ownership. *See* Section III(b)(iii) *supra.* In fact, Sovereign's October 30, 2008 ADV Part II, the document actually sent to Sovereign clients, makes no mention of Grossman. Div. Ex. 42 at Tr. 10. The Law Judge's reliance on Sovereign's December 23, 2008 ADV, to which Grossman's name was affixed without his knowledge or authorization, is expressly contradicted by the Law Judge's finding that she did not include the December 23, 2008 ADV in the calculation of penalties because "evidence suggests it was intended to be signed by Adams." Op. 49 Fn 49; Tr. 423:7-424:22; Div. Ex. 84. Adams corroborated this fact, testifying that there was no intention to affix Grossman's name to the December 23, 2008 ADV, but due to the passage of time couldn't recall if it was attributable to some glitch in the electronic filing system. Tr. 465:20-466:19. As a result, Sovereign's December 23, 2008 ADV, cannot be considered violative conduct giving rise to the continuing violation doctrine.

The Law Judge's findings that Grossman's assistance to Sovereign clients in providing them information regarding the suspension of Anchor A and the efforts taken to attempt to

recover the funds from the Madoff receiver and hiring an attorney to pursue such claims. Tr. 505, 759:15-760:14; Div. Ex. 50:6-7; Div. Ex. 50 R; Div. Ex. 50U. Providing this information to Sovereign's clients does not amount to any violative conduct, and the Law Judge conceded such point by not including such conduct in her findings of violations against Grossman. Op. 32-42. As a result, Grossman did not commit any violative conduct within §2462's limitation period. Furthermore, to the extent such conduct could be considered violative, then such conduct is excluded from the continuing violations doctrine because the continuing ill-effect of the original violation, namely recommending and placing the client in Anchor A and received referral fees on such transaction, first accrued outside §2462's limitation period.

The Law Judge's reliance on the July 15, 2009, letter to Davidson and Gilluly's testimony in support of her finding that Grossman's violative conduct occurred within §2462's limitation period and that the continuing violation doctrine allows her to reach back to violations occurring outside of the limitations period is also erroneous. The July 15, 2009, letter to Davidson simply described Sovereign's efforts to recover funds relating to Anchor A's feeder funds exposure to Madoff. (Div. Ex. 50S). Likewise, Gilluly's testimony was related exclusively to Grossman information relating to the Madoff fund and some other things that they could try to do to recoup their fund that had been invested and frozen at that point in time. Tr. 559:14-21.

Furthermore, the December 16, 2010, email between Adams and Grossman's regarding Grossman offering assistance to Adams to help get Sovereign's business running in a better way was nothing more than an offer to help Adams. Tr. 183:1-10; Div. Ex. 119. The Law Judge, however, used the December 16, 2010 email communication as evidence that Grossman was attempting to salvage Sovereign's business by referring prospective customers to Sovereign. Op.

45. The evidence that the Law Judge presented in support her conclusion are emails that predate the December 16, 2010 email by as much as two years precluding such finding. Div. Ex. 120, Div. Ex. 123. Furthermore, Grossman does not render investment advice in either of the communications. In the February 11, 2009 email, Grossman acting as the Managing Director of SIPS simply forwarded information to Adams so that Adams could pursue additional communications with Mr. Keiser. Div. Ex. 120; Tr. 186:23-187:3. Likewise, the February 19, 2010, email was regarding an offshore IRA owning property in Panama City, Panama. Div. Ex. 123. Adams responded to Barry Winston's email, not Grossman. Div. Ex. 123. In fact, there was no record evidence suggesting that Barry Winston was anything other than a prospective client. Tr. 188:10-14; Div. Ex. 123. The email between Grossman and Adams as well as the February 11, 2009 and February 19, 2010 emails that occur over a two year period do not amount to any violative conduct and cannot be representative of a continuous scheme to defraud investors.

Grossman did not commit any violative conduct with in the limitation period and the Law Judge erred by finding the contrary and erroneously applying the doctrine of continuing violations to impermissibly revive claims falling outside §2462's limitation period.

VI. CONCLUSION

All of the remedies levied against Grossman are barred because the claims first accrued outside §2462's limitation period.

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