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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-15974

In the Matter of

JAMES E. COHEN and
JOSEPH A. CORAZZI,

Respondents.

DIVISION OF ENFORCEMENT'S BRIEF ON REVIEW OF THE INITIAL DECISION

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INTRODUCTION

As the Division's evidence at the February 2015 administrative hearing demonstrated, Respondents James Cohen ("Cohen") and Joseph Corazzi ("Corazzi") willfully violated Sections 17(a)(1) and 17(a)(3) of the Securities Act of 1933 (the "Securities Act"). They engaged in an extensive and protracted fraudulent scheme to create, operate, and profit from a public company while concealing their central roles as its *de facto* officers. And concealing their roles was crucial: Cohen knew that investors might have balked at investing in a company controlled by someone with a past conviction for crimes of fraud, and Corazzi was statutorily barred from serving as an officer or director of a public company. To effectuate this fraud, Cohen and Corazzi co-founded Natural Blue Resources ("Natural Blue"), orchestrated its reverse merger into a public company, and installed nominal leaders, all the while obscuring their actual roles through lucrative "consulting" agreements. From the moment of its inception, therefore, Cohen and Corazzi operated Natural Blue as a vehicle to defraud investors—and to funnel investor funds to themselves through their purported "consulting" arrangements.

None of the Respondents' arguments on appeal has merit. First, Respondent's position that Cohen was not a *de facto* officer is little more than historical revisionism, based on so-called facts that have no basis in the evidentiary record. Moreover, the fact that Natural Blue's nominal CEO or others may have made management-level decisions from time to time does not negate Cohen and Corazzi's day-to-day control over Natural Blue's policy-making functions. Second, Cohen's *Janus* argument is a straw man; it was Cohen and Corazzi's misconduct that violated Section 17(a)(1) and (a)(3), not misrepresentations or omissions by others. Third, Respondents' constitutional rights were not violated by the administrative proceedings, as Commission ALJs are employees, not constitutional officers subject to Article II's requirements, and both the expert witness's testimony and other evidence were properly admitted under the Rules of Practice.

Notably, while Respondent complains vociferously about expert witness Robert Daines, the ALJ's findings are virtually bereft of any reference to Daines' testimony. Nor does the Respondent identify any other evidence admitted in violation of his constitutional rights. Finally, both Respondents should be subject to disgorgement and a third-tier civil penalty, given that the Division provided a reasonable approximation of disgorgement and presented ample evidence that the Respondents' scheme presented acute risk of harm to the investing public.

For the reasons articulated in the Initial Decision and further set forth below by the Division, the Commission should affirm Judge Foelak's Initial Decision as to liability, and further impose disgorgement and a third-tier civil penalty against Cohen and Corazzi.

STATEMENT OF FACTS

Cohen and Corazzi's Relationship and Disciplinary Histories

Respondents James Cohen and Joseph Corazzi have had a professional and personal relationship for many years.[1] See *In the Matter of Natural Blue Resources*, A.P. File No. 3-15974, Initial Dec. No. 863 (August 18, 2015) ("Init. Dec.") at 5; Tr. 51-52; 797-799; 805-806. Both Cohen and Corazzi previously faced allegations of financial fraud, and both had been sanctioned in connection with such conduct. *See* Init. Dec. at 3-4. Most significantly, Cohen had been convicted of a felony in the mid-2000's, and Corazzi had been barred in 2002 as an officer or director of a public company. *Id.*, Div. Ex. 300 at ¶¶41-43, ¶¶46-47. Prior to founding Natural Blue in 2009, Cohen was a registered representative for various broker-dealers from 1987 to 1997 and subsequently was barred by the National Association of Securities Dealers ("NASD"). *See* Init. Dec. at 3; Div. Ex. 300 at ¶ ¶ 39-40. On April 5, 2004, the Supreme Court of the State of New York sentenced Cohen to a prison term of one to three years and ordered him

[1] Citations to the transcript will be noted herein as "Tr. __." Citations to trial exhibits will be noted as Div. Ex. __ or Cohen Ex. ___. Respondent Corazzi did not offer any exhibits in connection with the hearing.

to pay $545,000 in restitution after he pled guilty to attempted enterprise corruption and attempted grand larceny in the first degree. *See* Init. Dec. at 3; Div. Ex. 300 at ¶43.

Cohen Schemed with Corazzi to Conceal Their Disciplinary Histories and Roles as *De Facto* Officers at Natural Blue from the Investing Public

At all times, unbeknownst to Natural Blue investors, Cohen served as a *de facto* officer of Natural Blue, "assum[ing] responsibility for Natural Blue's operations and strategic plans and… exercis[ing] the policy-making functions of public company officers and directors." Init. Dec. at 27. As the ALJ found,

> Cohen and Corazzi guided the direction of the company. … Cohen personally negotiated the reverse merger with Datameg that resulted in Natural Blue becoming a public company, selected Natural Blue's key officers, directors, employees, attorneys and auditors, including Anaya and Perry to serve as CEOs, negotiated and executed key transactions, including the EcoWave acquisition, participated in Board meetings, recruited investors, orchestrated Pelosi's ouster as President, reviewed and commented on public filings, arranged for Natural Blue's financial records to be kept in office space shared with his wife's company in Florida, had formal authority over Natural Blue's brokerage account, and frequently and aggressively berated the CEO … Cohen commenced negotiating the reverse merger with Datameg before informing the Board. Cohen approved invoices before Anaya signed off on them, and Cohen authorized wire transfers on his own. In sum, Cohen took on a role akin to the CEO, in which he performed a policy-making function that even made Natural Blue's own auditors uneasy, ultimately leading to their resignation.

Init. Dec. at 27. These findings are fully supported by the evidentiary record. *See* Tr. 393, 476, 798 (Cohen and Corazzi founded Natural Blue), Tr. 41-45, 56, 132-133, 288-295, 810 (Cohen orchestrated reverse merger with Datameg), Tr. 41-45, 56, 132-133, 218, 222-223, 290, 294, 334, 403, 447, 801-803, 807, 823, 832-833, 842-843, 852-853, 856, 1598-1607, 1615-16; Div. Exs. 43-44, 69, 264 (Cohen and Corazzi managed senior executives, managed day-to-day operations, and controlled strategic decisions), Tr. 346, 349, 352-353, 465, 576, 579-581, 828-830, 824-826, 830-831, 869; Div. Exs. 55, 80, 161, 266; Cohen Exs. 31, 413 (Cohen had substantial responsibility for Natural Blue's financial operations, including custody of records,

approving payment of invoices and making key financial decisions, helping to draft SEC filings). As the ALJ also found, "Cohen was responsible for soliciting investors for Natural Blue … and was the main contact for addressing 'shareholder questions … Cohen … represented to investors that he 'handle[d] communications for the company." Init. Dec. at 15.

The evidence showed that Cohen and Corazzi obtained "consulting" agreements in November 2009 as part of a scheme to mask their roles as *de facto* officers at Natural Blue. By this ruse, theyavoided disclosure of their disciplinary histories, which -- had Cohen and Corazzi been formally identified as officers or directors -- would quickly have become public knowledge. Cohen and Corazzi's scheme to conceal their disciplinary backgrounds and their roles as *de facto* officers enabled them to raise substantial funds. *See* Init. Dec. at 27 ("Cohen and Corazzi … were the face of the company in recruiting investors.")

2008-09: Natural Blue Becomes a Public Company Through a Reverse Merger Structured and Negotiated by James Cohen

As the ALJ found, "Cohen and Corazzi reestablished contact to found Natural Blue Nevada in 2008." Init. Dec. at 5. In late 2008, the CEO of the public company Datameg, James Murphy, received a telephone call from Leonard Tocci, president of Datameg's subsidiary. *See* Init. Dec. at 5. Tocci advised Murphy that he had received a call from Cohen, seeking to discuss a possible business transaction with Datameg's subsidiary "that would allow Natural Blue Nevada to become public." *Id.*; Tr. 39-40; 283-285. Murphy immediately called Cohen, and the two men conferred about a potential corporate transaction involving Datameg. *Id.*; Tr. 40-45.

Cohen and Murphy then met at the Florida offices of the public company Blue Earth Solutions ("Blue Earth"). *See* Tr. 40-42. At the meeting, Cohen got Corazzi on the line to describe a project relating to water extraction in New Mexico by Natural Blue Nevada. Tr. 42-43. At that time, Cohen and Corazzi "proposed a type of merger" between Datameg and Natural

Blue Nevada, to take Natural Blue public. Tr. 43-44. Murphy and Datameg's counsel[2] subsequently negotiated a deal with Cohen, through which Blue Earth would acquire a Datameg subsidiary, and Natural Blue Nevada would reverse merge into Datameg. *See* Tr. 53-54.

Although Cohen had no formal role with either Natural Blue Nevada or Blue Earth,[3] he proposed the Blue Earth/Natural Blue transactions with Datameg and led negotiations with Datameg on behalf of both companies. *See* Tr. 22-24, 53-56. Former CEO Murphy testified:

> Q. [W]ho negotiated the transaction on behalf of Natural Blue with Datameg?
> A. Jim Cohen.
> Q. Anybody else?
> A. Most of my dealings were with [Cohen].
> Q. And what about the transaction [with…] Blue Earth Solutions? Who was negotiating on behalf of Blue Earth?
> A. Jim Cohen.
> Q. Anybody else?
> A. No.
>
> …
>
> Q. [T]he reverse merger between Datameg and Natural Blue Resources, who first proposed that transaction?
> A. Jim Cohen.

Tr. 53-55; *see also* Init. Dec. at 6-7 (Cohen proposed reverse merger to take company public).

Corazzi and Cohen Recruit Pelosi and Anaya to Serve as Officers of Natural Blue, in Furtherance of Their Scheme to Defraud Investors

For his part, Corazzi recruited Toney Anaya to serve as CEO of the prospective public company. *See* Init. Dec. at 6. As of early 2009, Anaya -- a former governor and attorney general

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[2] In April 2009, Paul Vuksich began representing both Natural Blue and Datameg in these corporate negotiations, at Cohen's request. Tr. 289-290; Div. Ex. 20 (April 28, 2009 letter from Vuksich to Datameg and Natural Blue boards stating, *inter alia*: "*As I have discussed with James Cohen, Sr.*, I have been asked to immediately begin providing corporate counsel legal services to Natural Blue Resources, Inc."[.]) (*Emphasis added.*) *See* Init. Dec. at 7.

[3] Although Cohen's wife, Patricia, was technically "CEO, a director, and the largest shareholder of Blue Earth," *see* Div. Ex. 300 ¶21, *Mrs. Cohen had no office at Blue Earth – only Cohen and his son worked there. See* Tr. 1604 (testimony by former Natural Blue CFO Walter Cruickshank). Indeed, Cohen served as the CFO's liaison with Mrs. Cohen. *Id.* ("[M]ost of the things I did, I passed on to Cohen and he would take it to [Mrs. Cohen] if he needed a signature and he would bring it back to me.") As the record reflects, Cohen's control over Blue Earth precisely mirrored his control of Natural Blue – *i.e.*, he ran the public company without a formal title. Cohen's actions at Blue Earth are thus stark evidence of his intent as to Natural Blue, because they demonstrated Cohen's *modus operandi*.

of New Mexico -- was overseeing stimulus funding for New Mexico for then-Governor Bill Richardson, and managing his law practice. *See* Tr. 783-784. Anaya had previously (and unsuccessfully) invested in a "high-yield" investment program with Corazzi and gave Corazzi additional funds for a real estate investment, which he ultimately lost. Tr. 787, 791-795. Prior to soliciting Anaya, Corazzi had convinced Anaya that they knew each other– which Anaya did not specifically recall, although he knew that Corazzi's relative had served in Anaya's administration years ago. *See* Tr. 795-796. Anaya also knew by 2008 that Corazzi was barred as an officer or director of a public company. *See* Init. Dec. at 6; Tr. 786, 790-792; Div. Exs. 8, 286, 295; see also *In the Matter of Toney Anaya*, A.P. File No. 3-15973, Release No. 9613 (July 16, 2014).

In early 2009, Anaya received a phone call from Corazzi about Natural Blue. *See* Init. Dec. at 6; Tr. 797. During the call, Corazzi praised Cohen, and described in detail their plans for Natural Blue. *See* Init. Dec. at 6; Tr. 798. Corazzi got Cohen on the phone, and they revealed that Paul Pelosi, Jr. would be the President of Natural Blue. *See* Init. Dec. at 6; Tr. 800-802. Anaya knew Pelosi's "well-known mother [former speaker of the U.S. House of Representatives Nancy Pelosi] both personally and by reputation" (Tr. 484, 800) and Cohen and Corazzi described Pelosi as being known "nationally [and] internationally as an environmentalist." Tr. 803. Cohen and Corazzi then asked Anaya to serve as CEO of Natural Blue, at a monthly salary of $10,000, along with shares of stock. *See* Init. Dec. at 6, 7; Tr. 800. Anaya, who was employed elsewhere full-time, understood that Pelosi "would be responsible for the day-to-day operations" and that Anaya would be a part-time CEO. Init. Dec. at 6; Tr. 802-803.

As the evidence at the hearing made plain, Anaya and Pelosi's public profiles were central to Cohen and Corazzi's scheme. For example, Cohen sent an e-mail to Murphy shortly after negotiations began that was entitled "water"; the e-mail had no content, simply attaching Anaya and Pelosi's resumes. *See* Div. Ex. 269. Cohen and Corazzi also began soliciting

investors, using the involvement of Anaya and Pelosi as a selling point, and investors reacted with enthusiasm. *See, e.g.*, Tr. 233-234 (investor "most impressed" about Anaya and Pelosi"); Tr. 754 (investor describing Anaya and Pelosi as "important" in her decision to invest).

Neither Anaya nor Pelosi played any role in Natural Blue's reverse merger with Datameg. While board minutes[4] reflect that there was a vote approving the Datameg transaction, the reverse merger had been accomplished well before the board vote. *Compare* Div. Ex. 10 (March 17, 2009 board minutes) *with* Tr. 814 (Anaya testimony that the Datameg transaction was "an accomplished fact, and I accepted it as such."). *See also* Init. Dec. at 27 ("Cohen finalized the acquisition of EcoWave without receiving board approval … [and then] presented the EcoWave acquisition [to the board] as a *fait accompli*.")

Cohen and Corazzi Position Natural Blue to Become Public

Cohen and Corazzi selected Anaya and Pelosi as the company's nominal officers, hand-picked the board and the outside service providers, identified the companies in which to invest (almost all of which were aligned with Cohen), and performed other critical management tasks to take Natural Blue public. *See* Init. Dec. at 8-10. Cohen was also instrumental in Natural Blue's day-to-day financial decision-making. *See, e.g.*, Div. Ex. 23 (Anaya email noting that "our current procedure requires approval by both Jimmy [Cohen] and Paul Pelosi for me to pay invoices."); *see also* Div. Ex. 266 (8/26/09 email from Anaya to Murphy, advising that "the established procedure within NBR (NV) is that both … Pelosi and [Cohen] have to approve invoices before I pay them.") And, Cohen and Corazzi were the primary fundraisers and contacts with the investing public. Cohen was "responsible for soliciting investors for Natural Blue" and Corazzi "[assisted] him." Tr. 823; *see also* Init. Dec. at 15.

[4] From 2009 to 2011, Cohen attended virtually every board meeting and is routinely listed in the formal minutes in the category "others present". *See, e.g.,* Div. Exs. 9 (March 6, 2009 board meeting), 10 (March 17, 2009 board meeting), 13 (April 4, 2009 board meeting); 19 (April 14, 2009 board meeting); 24 (August 1, 2009 board meeting).

Notably, Cohen and Corazzi's plans for Natural Blue as a public company did not include formal roles for themselves – despite the fact that Pelosi, Cohen, Corazzi and Anaya had "founded the company," and despite the fact that Anaya and Pelosi had no prior experience as officers of public companies. Tr. 473, 476, 785. None of the witnesses testified about Corazzi seeking to join the board or serve as an officer at any stage of Natural Blue's existence. Cohen, however, did discreetly inquire with corporate counsel about joining the board of Natural Blue. As Paul Vuksich testified, he received an email from Cohen shortly before traveling to Orlando for the kickoff board meeting of Natural Blue. In a tersely worded email, Cohen asked Vukisch on July 30, 2009: "[A]ny word on my ability to be on the board without public disclosure". Init. Dec. at 10; Div. Ex. 299; Tr. 315-321. Vuksich did not recall obtaining any specific details from Cohen about to the nature of Cohen's "public disclosure" concerns, but Vuksich testified that he had little difficulty locating Cohen's disciplinary and criminal histories on the Internet. Tr. 321. Vuksich reported back to Cohen that his "crimes are known on the message boards. From those clues I could find your state criminal record and your ban from the NASD membership. The SEC never took action against you so no court ever banned you from serving on a public board." Div. Ex. 299; *see also* Init. Dec. at 10. Based on his review of the then-applicable regulation (17 C.F.R. 229.401), which only required disclosure of criminal convictions less than five years old, Vuksich advised that Cohen could serve on the board of Natural Blue without disclosing his criminal conviction, assuming "that [his] state criminal sentence or plea agreement didn't include any kind of a ban from being a director of a public company." Div. Ex. 299.

Notwithstanding Vuksich's advice – which was rendered moot just a few months later, when the SEC revised the regulation to require board members to disclose to the investing public

any prior legal proceedings less than ten years old[5] – Cohen did not, according to witness testimony, make any further attempts to solicit a position on the board of directors. Moreover, Vuksich did not recall communicating with CEO Toney Anaya about Cohen's conviction and/or bar, instead "treat[ing it] as a private communication." Tr. 433; *see also* Init. Dec. at 10.

Instead of taking on formal positions as officers or directors, Cohen and Corazzi concealed the nature and extent of their roles from investors, with the help of sham "consulting" agreements. As Judge Foelak found in her Initial Decision, once the company became public, Cohen and Corazzi continued to do exactly what they had done when Natural Blue was private– which was to dominate and control every aspect of policy-making – while studiously avoiding any public disclosure of their roles and/or disciplinary backgrounds. *See* Init. Dec. at 25-28, 30.

2009-2010: After Natural Blue Becomes Public, Cohen and Corazzi Functioned as *De Facto* Officers of the Company

Natural Blue formally became public in July 2009, and the first board meeting (primarily organized by Cohen) was held in August 2009. *See* Init. Dec. at 10; Div. Ex. 300; Tr. 334-335. Vuksich sent materials to Cohen for distribution to the board prior to the meeting. *See* Tr. 313-314; Div. Ex. 69. Vuksich then flew to Orlando for the meeting, where he was "picked up at the airport by [the Respondents] in … Cohen's white pickup truck." Tr. 326; Init. Dec. at 10.

At the August 2009 meeting, Cohen presented to the board of directors on several topics, including the acquisition of EcoWave, LLC ("EcoWave"). *See* Tr. 65-66. While Anaya testified that Cohen "recommended it to the company as … a good investment opportunity for the … company to pursue[,]" the August 1, 2009 board minutes reflect that EcoWave *had already been acquired.* Init. Dec. at 10-11; Tr. 849; Div. Ex. 24 (noting that "James Cohen, Sr. advised the

[5] On December 16, 2009, the Commission adopted an amendment to Item 401(f) of Regulation S-K that changed the time period for disclosing prior legal proceedings concerning public company officers and directors. *See* Proxy Disclosure Enhancements, §11.E, SEC Release No. 33-9089 (December 16, 2009). The amendment became effective on February 28, 2010, prior to the filing date of Natural Blue's 2009 Form 10-K, and increased the disclosure period from five years to ten years. *See id* C.F.R. 229.401.

board *that the Corporation had acquired EcoWave, LLC* for organizational shares of the Corporation.") *(emphasis added)*. EcoWave was a company tied to Samir Burshan and Daryl Kim, whom Cohen recommended for the board largely because "they were bringing the technology" to Natural Blue. Tr. 850. After the board meeting, Anaya accepted Cohen's proposal that his son, James Cohen Jr., lead the EcoWave division for Natural Blue. *See* Tr. 826.

From the moment Natural Blue was a public company, Cohen and Corazzi had major influence over nearly all management decisions, and asserted control over Natural Blue almost immediately. The Natural Blue office was located in the same Florida offices as Blue Earth, where Cohen worked, and the corporate records were maintained there. The nominal CEO and President were in the western United States, thousands of miles away. Anaya tried early on to move the bookkeeping to New Mexico, but failed. *See* Tr. 831; Div. Ex. 55 (12/11/09 e-mail from Anaya to the board noting that he "wanted … bookkeeping handled here in Santa Fe …: but, Jim [Cohen], Paul [Pelosi], and Joe [Corazzi] didn't respond favorably to my proposal to hire someone here.")

As the record reflects, Cohen and Corazzi performed the following functions of officers:

> ***Cohen and Corazzi controlled and managed day-to-day operations at Natural Blue,*** including (1) selecting Natural Blue's officers and directors, including negotiation of compensation; *see* Tr. 222-223, 798-803, 805, 822-824, 852-854, 1602-1609; Div. Ex. 59, 264 (2) hiring service providers, *see* Tr. 289-290; 832-833; Div. Exs. 20, 55 (3) supervising employees in Florida (Cohen), where the books and records were housed; *see* Tr. 852-853, 1607-1608, Div. Exs. 23, 53; (4) fundraising; *see* Div. Exs. 34, 37, 85, 87, 89, 90, 124, 177; Tr. 230-238, 888.
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> ***Cohen and Corazzi controlled strategic decisions at Natural Blue,*** including (1) negotiating a reverse merger; *see* Tr. 41-45, 56, 132-133, 347-348, 476, 801, 810, Div. Ex. 269; (2) changing the corporate mission from water purification to steel recycling; *see* Tr. 12-13, 82; Div. Exs. 43, 81, 82, 83, 118; (3) dictating that the company sign consulting agreements, *see* Tr. 218-220, 857-858, Cohen Ex. 89; (4) Corazzi's negotiation of the Atlantic transaction, assisted by Cohen; *see* Tr. 671-672, 675-676, 683, 686, 691, 702, 730-732, 971, 1329, 1337-41; Div. Exs. 149, 150, 160, 161, and 169; (5) ousting CEO Erik Perry in June 2011 and installing Montalto as CEO, *see* Tr. 1343-1344, 1352-1353, Div. Exs. 218, 219.

Cohen and Corazzi managed senior executives (including Natural Blue's CEO), including (1) directing CEO Toney Anaya, *see* Tr. 65-66, 218, 798-803, 857-858, 842-843, 852-853, 856, 888-889; Div. Ex. 117; (2) organizing a shareholder vote to oust Pelosi from the board, *see* Div. Exs. 59, 264, and, as noted *supra*, (3) hiring and effectively supervising CFO Walter Cruickshank in the Blue Earth office (Cohen).

Cohen and Corazzi had responsibility for books, records and financial statements, including (1) involved in drafting SEC filings, *see* Tr. 346, 352-353, 465, 869, 885, 959-960, Div. Exs. 69, 95, 98, 267, (2) communicating directly with lawyers and auditors; *see* Tr. 869, 1088, 1516; Div. Ex. 95, and (3) choosing Cruickshank as the CFO and McPherson as the bookkeeper (Cohen), *see* Tr. 825-826, 1607-08.

Cohen oversaw the treasury functions and key financial decisions. Among other things, it was company protocol that all invoices be approved by both Pelosi and Cohen, *see* Tr. 828-830, Div. Exs. 23, 266; moreover, Cohen had formal authority over the brokerage account for Natural Blue, *see* Div. Exs. 25 and 27.

Among the many key decisions made unilaterally by Cohen -- the initial hiring of Chief Financial Officer Walter Cruickshank -- is particularly illustrative of Cohen's role as a *de facto* officer of Natural Blue. *See* Init. Dec. at 9. Cruickshank, who testified for the defense, was hired by Cohen as Blue Earth's controller in 2008. *See* Tr. 1602. Shortly after Natural Blue became public, Cruickshank testified that another Blue Earth employee congratulated him "on becoming the CFO of Natural Blue ...[.]" Tr. 1607. Cruickshank then went to Cohen, who assured him that Natural Blue was a "startup" and was "not going to be that much work." Init. Dec. at 9; Tr. 1608-1609. Having spoken with no one but Cohen,[6] Cruickshank commenced his service as CFO of Natural Blue, until his resignation in or about August 2010. *See* Tr. 1598.

Natural Blue's legal bills further highlight the central role Cohen and Corazzi played in the public company, showing frequent interaction on key management decisions. To wit:

> 8/10/09 – 3/4 Filing: Receipt and review of emails from and preparation and transmission of emails to directors and James Cohen re: additional data. [...] Telephone conference with Cohen and Murphy re budget planning.

[6] CEO Toney Anaya learned that Cruickshank was the new CFO from Cohen and Corazzi. *See* Tr. 824.

8/12/09: EcoWave USA: Draft/revise LLC and license purchase agreement. Telephone conference with Cohen Sr. and Burshan. Receipt and review of emails from and preparation and transmission of emails to same and Anaya re: draft agreement. EcoWave USA: Continue preparation of preferred shares designation. Telephone conference with Cohen Sr. re same.

8/17/09: 10Q Filings: Telephone conference with… Cohen. Preparation of Series A1 and A2 certificates of designation.

8/18/09: Telephone conference with … Cohen. Preparation of amendments to Series A1 certificates of designation and plan for merger.

8/19/09: EcoWave USA: Telephone conference with … Cohen and Corazzi re: revisions to plan for merger and certificate of designation. Preparation of revisions to the same.

8/25/09: Preparation of revisions to merger plan. Telephone conference with Cohen re: same.

8/28/09: Telephone conferences with James Cohen and Walter Cruickshank re: tax return filing, AMS 2007 end of year WTB, other accounting matters. Receipt and review of emails from and preparation and transmission of emails to Walter Cruickshank and Jim C[ohen] re: accounting records and sending attachments.

8/31/09: Receipt and review of emails from and preparation and transmission of emails to Anaya, Murphy and Cohen re: PPM shares raised to 1 for 1.

9/3/09: General Legal: Preparation of mail merge to private placement investors re stock conversion. Preparation and transmission of emails to Bill McPherson re: certain investor inquiries and telephone number for letter. You prepared a draft. It was reworked by Anaya, Cohen and Joe [Corazzi].

9/10/09: Accounting Matters: Telephone conference with Anaya and Joe re getting Kim and Heather's cooperation to file amended 10Q. Heated exchanges with Joe re not knowing about debts … Joe [Corazzi] claims correct closing date cannot be either or but that is what the auditors said.[7]

9/11/09: Telephone conference with Anaya, Cohen and Murphy re: bookkeeper settlement. Heated discussion with Cohen who claimed settlement and release was indemnification. … Cohen attacked me saying I had to serve …the company.

Div. Ex. 69. As these excerpts reflect, Cohen and Corazzi were instrumental in making major

[7] Vuksich also testified that at this time, there was a significant dispute at Natural Blue about filing an amended 10-Q with a revised closing date. Tr. 347-350. Vuksich recalled that Cohen told him that "we were going to refile as of July 1." He also recalled that the "heated exchanges" related to Corazzi and Cohen "challeng[ing] what was being represented in the Q … for the second quarter" and that he "acquiesced" to Corazzi and Cohen. Tr. 351-353.

policy decisions at Natural Blue. *Id.*

In fact, by the time Natural Blue became public, Anaya was already sufficiently frustrated with Cohen's involvement that he threatened to resign. *See* Tr. 843. Relatedly, Pelosi began a new full-time position in August 2009, *i.e.*, as soon as the company went public. *See* Tr. 509. Pelosi's new job meant that he was not in a position to run the day-to-day operations of Natural Blue. *See* Tr. 510. Thus, Anaya recalled that he advised Corazzi that he "needed to step down, that [he] simply could not operate as a figurehead and that … Mr. Cohen was just meddling too much in the day-to-day operations." Tr. 843. In Anaya's view, neither he nor "Mr. Pelosi … were really being able to play the roles that [their] titles would otherwise suggest." Tr. 842. Anaya repeatedly described Cohen's control over Natural Blue, and the great difficulties Anaya faced in asserting any authority, notwithstanding his position as the nominal CEO.. Anaya testified, among other things, that:

> [Cohen] founded these companies, the Natural Blue private and … public. He appointed the Board … He identified the staff. And in one or two cases, he actually hired the staff. He was a force to be reckoned with. I couldn't just shove him aside." (Tr. 1029.)
>
> Cohen on a day-to-day basis supervised the employees that we had. In fact, he had selected them. … They worked part-time for his other company, Blue Earth Solutions. That's the CFO, the accountant …. [E]verything had been put into place by Mr. Cohen with some assistance from Mr. Corazzi. (Tr. 1136-1137.)
>
> [Cohen] was acting in the capacity as president, CEO or the combination. He was running the company. [E]verything … that the Board approved … [was being generated by or through Mr. Cohen[.]" (Tr. 1145-1146.)

Moreover, Anaya "never knew what [he] wasn't being told" by Cohen and Corazzi. Tr. 1033; Init. Dec. at 13. This was no accident, as Respondents' contemporaneous emails make clear: "[L]et's not tell Toney know we sent the term sheet already." Div. Ex. 83 (April 29, 2010 email from Cohen to Corazzi); *see also* Init. Dec. at 15 ("When Anaya inquired about investor meetings, he encountered resistance from Cohen and Corazzi, who did not want to discuss any

details."). But it was essential to Respondents' scheme to keep Anaya in place as the nominal CEO. So Cohen ultimately persuaded Anaya not to resign as CEO, by offering (illusory though they proved to be) assurances. *See* Init. Dec. at 13; Tr. 844, 1139.

Cohen and Corazzi Secured Lucrative Consulting Agreements with Natural Blue

In November 2009, Natural Blue entered into an Advisory Agreement with Cohen's family corporation JEC Corp., pursuant to which JEC Corp. purportedly agreed to research and present potential merger and acquisition targets for Natural Blue (even though Cohen and Corazzi had already been proposing investment targets since the first board meeting in August 2009). *See* Div. Ex. 43. Also in November 2009, Natural Blue entered into a separate Management Agreement with JEC Corp. to organize and manage a new subsidiary called Natural Blue Steel ("NBS"). *See* Div. Ex. 44. Both agreements specified that JEC Corp. would provide services through Cohen and Corazzi. *See id*; *see also* Init. Dec. at 11.

As the ALJ found, Cohen and Corazzi placed substantial pressure on the board of directors to approve these consulting agreements. Pelosi received a call from Anaya that a board meeting would need to be held, and described Anaya's related email as "saying this is the most urgent thing in the world[.]" Tr. 501; *see also* Div. Ex. 42 (11/4/09 e-mail from Pelosi complaining about lack of notice and describing the consulting agreement as "one of the most important documents in our company history.") Anaya called an emergency board meeting, during which Murphy and Pelosi voiced objections to the agreements. *See* Init. Dec. at 11. After the contracts were approved, Anaya called Corazzi, who told him that "Cohen wants to see the signed contracts before he boards the plane [for West Virginia]." Tr. 859; *see* Init. Dec. at 11.

Cohen and Corazzi subsequently garnered sufficient shareholder votes to force Pelosi off of the board by January 2010. See Tr. at 501-502, 505; *see also* Div. Ex. 59 (December 29, 2009 e-mail from Corazzi to investor attaching consent to remove Pelosi and directing her to sign);

Div. Ex. 264. Pelosi learned about the alleged dissatisfaction of "shareholders" in a call with Cohen, who informed him that they "[we]ren't happy with [Pelosi's] performance." Tr. 508. Rather than be fired, Pelosi resigned as President and from the board. *See* Init. Dec. at 14.

While the "consulting" agreements with JEC Corp. may have caused upheaval on the board, the agreements did nothing to diminish Cohen and Corazzi's control over Natural Blue. Indeed, with the ouster of Pelosi, the net effect was to consolidate Cohen and Corazzi's de facto control. Just days after the agreements were signed, Murphy e-mailed Cruickshank to express his concern about correspondence from the SEC, and warned that Natural Blue needed to respond to a comment letter. *See* Div. Ex. 54 (11/30/09 e-mail from Murphy). Cohen (who had not been copied on Murphy's email, but evidently got wind of it) e-mailed the board that day, complaining about the "old guard throwing stones." Div. Ex. 53. Murphy e-mailed back:

> Jim C, I'm sorry you take this so personal but it seems this is more of your camouflaging and bully tactics[.] … I was trying to make sure [Cruickshank] knew the seriousness of responding to the SEC in a timely fashion and if no one was paying attention to the mail then someone in new management would be called on the carpet for not responding … you sit and throw accusations and you won't even sit on the board,[8] you shouldn't even be addressing these issues as you are not an officer or director of NTUR[.]

Div. Ex. 53.

From the time Natural Blue became public, the corporate records were maintained "in Florida, under the supervision of [Cruickshank], the CFO, … in the same building, the same offices as Blue Earth Solutions[.]" Tr. 931. Despite repeated requests, Anaya was never able to obtain accounting records for Natural Blue. Tr. 934, 948, 1034, 1035. Indeed, as early as August of 2009, Vuksich discussed Natural Blue's financial condition with Anaya and "was surprised that Anaya did not know about the [balance sheet] liabilities … that had been taken on [by Natural Blue] in the reverse merger." Init. Dec. at 16; Tr. 338. Evidently, Vuksich was

[8] Murphy testified that he recalled some "talk on the board" about Cohen taking a formal position with Natural Blue, and that Anaya asked Cohen to serve as a director. Tr. 99-100. Cohen advised that "he would check with his attorney." Tr. 100. None of the witnesses testified about any further discussions by the board about this issue.

aware that Murphy and Cohen had discussed those liabilities in negotiating the reverse merger, and was surprised that Anaya had not been made privy to those matters. *See* Init. Dec. at 16.

In Anaya's view, he "never knew what [he] wasn't being told, primarily by Mr. Cohen and Mr. Corazzi" and that Cohen in particular was very "cryptic" in his e-mails. Tr. 1033, 1112. For example, Cohen and Corazzi routinely dealt directly with Natural Blue's counsel, without consulting Anaya, and their directives to counsel generated enormous bills. *See* Div. Ex. 78 (4/12/10 e-mail from Anaya to Corazzi and Cohen, warning them to be "judicious in how we utilize Jeff Decker and his firm[.]") Another example was an incident in April 2010, when -- having invited him to attend an investor meeting at which Cohen's criminal background was evidently known to those present -- Cohen belatedly disclosed to Anaya that he had been incarcerated. Cohen provided no other relevant details (nor did Anaya press him further or raise the issue with other officers and directors of Natural Blue). *See* Tr. 895-896; Init. Dec. at 16.

Cohen and Corazzi's outsized influence over the company, which belied the facial scope of the "consulting" agreements, continued throughout 2010. Indeed, Natural Blue's former auditing firm resigned in April 2010 because the firm was concerned about the high level of control that Cohen exercised over the company, and had learned that Cohen had been barred by FINRA. *See* Init. Dec. at 18-19; Tr. 564-630. Former audit partner Paul Horowitz called Cohen directly after learning from public records about the FINRA bar, and found Cohen's answers to his questions not credible. *See* Init. Dec. at 19; Tr. 590-591. In the call, Cohen denied that the public records referred to him and asserted that his middle initial was not "E". *Id.* Cohen then tried to persuade Horowitz that even if "this person" were barred by FINRA from dealing with broker-dealers, "[t]his person is not barred from being involved with public companies." *Id.* As the ALJ's Initial Decision noted, "Horowitz discussed both administrative and substantive matters with Cohen that Horowitz did not discuss with others, such as financial statement

disclosure issues related to JEC Corp." Init. Dec. at 18; Tr. 576-77, 580-81.

In September of 2010, Anaya again clashed with Cohen and Corazzi after, among other things, Cohen demanded that Anaya provide him with a budget. *See* Tr. 944. As Anaya explained in an email to Cohen, his principal issue with Cohen was "not the 20% fee [under the JEC Corp. contracts]... it is the management of NTUR (*i.e.*, what authority you think you should have over me and the Board as to management decisions[.])" Init. Dec. at 13; Div. Ex. 115. Anaya reiterated his acute concerns about his inability to manage the company to Corazzi, saying

> [Y]our email suggests that the three of you (Hunt, Cohen, Corazzi) run the company (i.e., he is an "equal" and not "President"). ... It is the same story: consultants get taken care of; the company doesn't.... *[I] don't want to give up legal authority of NTUR to someone who claims to "only" be a "consultant" when it suits him; and, to be the "founder" when convenient to him.*

Div. Ex. 116 (*emphasis added*). Just a few days later, Anaya complained to Corazzi that

> It is sheer lunacy to have a consulting firm dictate, through me, to the parent company that owns 100% of the subsidiary what it can and cannot do with revenues flowing in. That is neither smart and probably not legal for me to do that in that I would be trying to usurp power that is left to the Board (and, maybe power no one in the company has, including shareholders). ... Honestly, Joe, this reminds me of the negotiations on all contracts with JEC; namely, I either bend over and take one for JEC or JEC takes a walk.

Div. Ex. 119; Init. Dec. at 14.

As Anaya grew increasingly frustrated with his inability to manage Natural Blue and/or Cohen and Corazzi -- and as the company was running out of money -- in late 2010, Corazzi and Cohen began discussions with Massachusetts-based Atlantic Dismantling. *See* Tr. 1337. From there, Corazzi, assisted by Cohen, negotiated a business transaction between Atlantic and Natural Blue that resulted in a complete change in management. *See* Tr. 702, 1339.

2011: Corazzi and Cohen Orchestrated Changes of Management for Natural Blue

In January 2011, Natural Blue announced that it had entered into an agreement with Massachusetts-based Atlantic Acquisitions and its wholly-owned subsidiary, Atlantic

Dismantling (collectively, "Atlantic"). *See* Div. Ex. 300 ¶31; *see also* Div. Ex. 168 (agreement between Natural Blue and Atlantic, signed January 23, 2011). According to press releases issued by Natural Blue in January and February 2011, the agreement resulted in a dramatic change in Natural Blue's business prospects. *See* Div. Ex. 300 ¶32, *see also* Initial Decision Release No. 710 (File No. 3-15974) (Nov. 26, 2014) at 2. In fact, the Atlantic transaction was orchestrated primarily by Corazzi, assisted by Cohen, with only belated and limited input from Anaya.

In October or November of 2010, Eric Ross, the principal of Watch Harbor Asset Management ("Watch Harbor"), met Atlantic Dismantling principals Sal Tecce and Joseph Montalto in New York, regarding a potential business venture between Watch Harbor and Atlantic. *See* Init. Dec. at 19; Tr. 648-650. Ross mentioned that he had an investor (Bob Christoff) with "some interest in" dismantling work, and as a result, Tecce directed Ross to Erik Perry, who Ross understood "was the president … of Atlantic Acquisitions." Tr. 650, 671.

In November 2010 and December 2010, Ross and Perry spoke multiple times. Tr. 657. During one of those calls, Perry referenced a company called Natural Blue, which Ross learned was "a small public company" and with "a scrap steel business that Joe Corazzi was building." Tr. 657, 680. By November of 2010, Perry had already touted to Atlantic a business transaction with Natural Blue, which he claimed "could help … raise money to acquire [] plants and help … with … cash flow problems." Tr. 1336. In November 2009, Montalto was introduced to Cohen and Corazzi on a conference call, and then had several conference calls with Cohen and Corazzi. See Tr. 1337-38; Init. Dec. at 19. Montalto understood that Cohen and Corazzi "had originally formed the company. It was their baby. They got it started. Toney was the CEO, but [the Respondents] were the ones trying to … keep it going." Tr. 1338-1339; Init. Dec. at 19-20.

In January 2011, Montalto, Tecce and Perry met with Corazzi and Cohen in Miami. *See* Tr. 1339. At some point, Cohen and Corazzi expressed their desire for Perry to serve as

president and CEO of the new entity, and Tecce discouraged it, calling Perry a "loose cannon" and "irrational." Init. Dec. at 20; Tr. 1341. Cohen and Corazzi[9] replied that they thought Perry would be "a good person to use as a ..."puppet" to be [at] the forefront of the company." *Id.*

Also in early January 2011, Perry told Ross that he was again talking with Natural Blue "and that they had some interesting things to say." Tr. 667. Shortly thereafter, Ross received a phone call from Erik Perry, who indicated that he was in a car with Bob Christoff (Ross' investor), Joe Corazzi, and possibly Jim Cohen as well (although Ross did not recall with certainty if Cohen was present.) *See* Tr. 671. Subsequent to this phone call, Ross began communicating with Corazzi via email about the potential terms of an agreement between Atlantic and Natural Blue, including a consulting agreement with Watch Harbor. *See* Tr. 675-676. Ross understood that Perry would be the CEO of the new entity. *See* Tr. 722.

By January 21, 2011, the proposed transaction between Natural Blue and Atlantic was close to completion, and the agreement with Watch Harbor was close to being finalized, along with a non-compete, non-disclosure agreement with Ross. *See* Tr. 686; Div. Ex. 165. Even at this penultimate stage in the negotiations, Ross still had not spoken to the nominal CEO, Toney Anaya, or "to anyone at Natural Blue, other than Joe Corazzi, and ... once with Jim Cohen, maybe twice." Tr. 686; *see also* Init. Dec. at 20. In his e-mails to Ross, Corazzi represented that he was in communication with Anaya about the agreement with Watch Harbor, and that Anaya "was more than pleased to hear the changes ... he will be back in his office later today and will get the copy sent to the board and executed once he quickly reviews the language. There are no further issues[.]" Div. Ex. 160. (1/21/11 e-mail from Corazzi at 5:19PM to Ross, cc to Cohen and Perry titled "all ok").

[9] Montalto testified that he did not recall specifically whether the description of Perry as a potential "puppet" came from Cohen or from Corazzi, but was certain that one of the two men said it during the meeting in Miami. Tr. 1359.

In reality, Anaya was not "more than pleased" with the proposed Watch Harbor agreement at that time, as reflected in his comments to Cohen and Corazzi in an e-mail sent earlier that day. Having raised concerns via e-mail about the Watch Harbor agreement, Anaya immediately received a response from Cohen that "the window time wise is by 9:30 am est Friday on this agreement" (i.e., that day) and Cohen both cautioned that "we cannot build up the payable or this deal will go elsewhere" and complained of Anaya's proposed changes that "much more this deal cannot stand." Div. Ex. 159. Anaya responded at 1:54 AM:

> "Guys, I want this deal to go through as I can't take any more of what the last several months have been. … I just raised points that seemed pretty obvious to be raised. Negotiate whatever you think is the best deal that can be negotiated and I will go along with it for the reasons you have stated in your email below; namely that we have nothing to offer anyone. … Also, please recognize that it is typical to ask me to sign something immediately, under the gun or the world is going to cave in. A little more advance notice to me or involvement would certainly be beneficial. … I want to close this deal or close my involvement with the company."

Init. Dec. at 20; Div. Ex. 159. As Anaya testified, "Joe [Corazzi…] presented the [Atlantic/Natural Blue] contract to me that had already been negotiated." Tr. 971. Anaya harbored no illusions that he was getting full information about the transaction, as he explained to director Paul Whitford:

> It would be so great – and, the normal way of doing business – to have full facts in front of us before we make any decisions regarding the future of NTUR. The reality, however, is that I/we will be at the mercy of whatever Joe chooses to tell us about this negotiations (*sic*) with Atlantic which, I suspect, will only be part of the truth and by no means the full facts. He will not disclose what he and Jim are getting from Atlantic, though I will press for this. … The relationship – or, lack of – with Jim & Joe is [not] one I can sustain.

Init. Dec. at 20-21; Div. Ex. 260.

On January 27, 2011, Atlantic and Natural Blue consummated the transaction that assigned all of Atlantic's contracts to Natural Blue, as well as approving the consulting agreement with Watch Harbor. *See* Div. Ex. 168 (agreement between Atlantic and Natural Blue Resources); Div. Ex. 166 (Watch Harbor agreement); Div. Ex. 194 (unanimous consent of

Natural Blue board of directors Anaya and Whitford). However, the Atlantic transaction did not result in improved financial prospects for the company. See Tr. 1342-1343. Instead, the re-configured Natural Blue (under Perry's direction) made misrepresentations to investors beginning in January 2011 about its financial condition, including the value and existence of contracts purportedly entered into by Atlantic/Natural Blue. [10]

Natural Blue continued to founder, and in June 2011, Perry was abruptly dismissed as the CEO of Natural Blue. *See* Tr. 1342-1353. Cohen secretly attended the telephonic board meeting during which Perry was ousted and replaced with Joseph Montalto, the founder of Atlantic. See Init. Dec. at 22; Tr. 1343-1344; Div Ex. 218. As the recording of the meeting revealed, Cohen directed Perry's ouster because a plan Perry proposed would have significantly decreased Cohen's and Corazzi's influence over Natural Blue and their stock ownership. *See* Div Ex. 218. Cohen commented after the board meeting that by ousting Perry "we keep this company and, you know what, [Perry] can't turn around and arbitrarily say that the guys who created [Natural Blue] . . . we're going to zero you out . . . like Erik Perry has threatened multiple times . . .[ ]." Init. Dec. at 22; Div. Ex. 218 at 28. Montalto confirmed Cohen's motivation: "The contract that was in question, and one of the main reasons why we got rid of Erik Perry was the contract with Eric Ross. If that had gone through, it would have been . . . Erik Perry, Eric Ross, and Christoff running the company, and everybody else would have been out." Init. Dec. at 22; Tr. 1352-53.

Cohen and Corazzi Extract Money From Natural Blue Even though the Company Was Barely a Going Concern.

Cohen and Corazzi profited financially from Natural Blue through money and shares of

[10] *See In the Matter of Erik Perry*, A.P. File No. 3-15975, Sec. Act. Rel. 9615 (July 16, 2014) (order accepting settlement offer of former Natural Blue CEO Perry); *see also* Initial Decision Release No. 710 (File No. 3-15974) (Nov. 26, 2014) (defaulting Natural Blue Resources, Inc., and issuing findings of fact and law) ("Initial Decision") *and* Release No. 9696 (File No. 3-15974) (Jan. 7, 2015) (initial decision is the final decision of the Commission).

stock.[11] From May 2009 through March 2011, Cohen and his affiliate (JEC Corp.) received $189,188 from Natural Blue. *See* Tr. 1388-91; Div. Ex. 253. During the same period, Corazzi and his affiliates (Izzaroc LLC and CA Capital Associates) received $251,720 from Natural Blue. *See* Tr. 1388-91; Div. Ex. 253. As calculated by the Division, between August 14, 2009 and June 11, 2011, Cohen's family members and affiliates[12] owned between 8% and 18% of the outstanding shares of Natural Blue stock, while Corazzi and his affiliates owned between 2% and 7%. *See* Div. Ex. 259. Corazzi sold many of his shares and realized profits of approximately $77,500. *See* Div. Ex. 253 at 3 (illustrative chart); *see also* Corazzi Answer at 33.

Natural Blue was barely a going concern through its entire existence as a public company, and routinely defaulted on its financial obligations to both employees and outside providers. *See* Div. Ex. 75 (2009 10K for Natural Blue Resources, noting that the company's financial situation "raise[s] substantial doubt about [its] ability to continue as a going concern"); Tr. at 1558, 1563 (former counsel's testimony that Natural Blue had no revenue, and that his firm ultimately wrote off approximately $100,000 in legal fees); Tr. at 1600 (former CFO testimony that Natural Blue failed to pay him his salary); Tr. at 617 (former auditor's testimony that Natural Blue owed his firm thousands of dollars). Cohen and Corazzi obtained hundreds of thousands in investor funds (which accounted for more than 90% of Natural Blue's total liquid assets) from a company that never generated any revenue. *Id.* at 1; *see also* Tr. at 1386-87 (Hussain testimony that 0.3%, or approximately $10,000, of total Natural Blue inflows constituted actual revenue).

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[11] Ms. Hussain testified that, given the limited documentation, certain payments to Cohen and Corazzi could have been expense reimbursements, *see id* at 1388, 1391, but that bank records revealed that Natural Blue had itself paid directly "a large amount of travel-related expenses." *Id.* at 1418-19. Accordingly, the record reflects that certain of Cohen and Corazzi's travel expenses were paid by Natural Blue. *See also* Div. Ex. 119 (9/21/10 email from Anaya to Corazzi stating that a "number of 'expenses' (e.g., some travel) w[ere] paid for separately by NTUR[.]").

[12] Cohen did not own a single share of Natural Blue stock in his own name. *See* Tr. 1399-1400; Div. Ex. 254 at 2.

LEGAL ANALYSIS

I. Cohen and Corazzi Are Liable For Their Fraudulent Scheme Under Sections 17(a)(1) and (a)(3) of the Securities Act

Section 17(a)(1) prohibits a person from "employ[ing] any device, scheme, or artifice to defraud," and Section 17(a)(3) prohibits "engag[ing] in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser." 15 U.S.C. § 77q(a)(1), (a)(3).[13] Establishing scheme liability under Section 17(a)(1) of the Securities Act requires a showing of scienter, which is defined as a state of mind embracing intent to deceive, manipulate, or defraud. *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 193 n.12 (1976). Scienter "includes recklessness, defined in this context as 'an extreme departure from the standards of ordinary care . . . to the extent that the danger was either known to the [respondent] or so obvious that the [respondent] must have been aware of it.'" *Gregory O. Trautman*, Exchange Act Release No. 61167A, 2009 SEC LEXIS 4173, at *61 (quoting *Makor Issues & Rights, Ltd. v. Tellabs Inc.*, 513 F.3d 702, 704 (7th Cir. 2008)). "Scienter may be inferred from circumstantial evidence." *Brian A. Schmidt*, Exchange Act Release No. 45330, 2002 SEC LEXIS 3424, at *31 (Jan. 24, 2002) (relying on *Herman & MacLean v. Huddleston*, 459 U.S. 375, 390 n.30 (1983)).

Cohen and Corazzi engaged in an extensive and protracted fraudulent scheme to create, operate and profit from a public company while concealing their central roles as its *de facto* officers. Cohen understood that investors would have been disinclined to invest in a company controlled by someone with a past conviction for crimes of fraud. *See* Div. Ex. 24; Div. Ex. 299 at 2; Tr. 315-21. Corazzi was statutorily barred from serving as an officer or director of a public company. To overcome these obstacles -- and create a vehicle through which they could solicit investor funds -- Cohen and Corazzi co-founded Natural Blue and installed nominal leaders

[13] Both Cohen and Corazzi engaged in the offer or sale of securities by, among other things, directly soliciting investors in and exercising controlling over Natural Blue, the ultimate purpose of which was to issue and induce or attempt to induce the purchase or sale of Natural Blue securities. *See* Init. Dec. at 29.

while concealing their true roles from investors. From the moment of its inception, therefore, *the company itself* operated as a device to defraud investors. And – for Cohen and Corazzi – it was a profitable fraud. Through their purported "consulting" agreements, Cohen and his affiliate (JEC Corp.) received a total of $189,188, and Corazzi and his affiliates received $251,720. *See* Tr. 1388-91; Div. Ex. 253. These sums are striking in that the company itself hardly generated any revenue, was barely a going concern through its entire existence as a public company, and routinely defaulted on its financial obligations. *See* Div. Ex. 75 (2009 10-K, noting that the company's financial situation "raise[s] substantial doubt about [its] ability to continue as a going concern"); Tr. 1386-87 (testimony that 0.3%, or approximately $10,000 of Natural Blue's inflows constituted actual revenue); *see also* Div. Ex. 253 at 1; Tr. 617, 1558, 1563, 1600.

Among other conduct, the creation of Natural Blue, the orchestration of its reverse merger, the recruitment and installation of nominal officers, and the securing of lucrative "consulting" agreements from the management group that Cohen and Corazzi hand-picked were part of Respondents' carefully orchestrated plan to mislead investors about the company's actual leadership.

The record before the Commission is replete with uncontroverted evidence of Cohen and Corazzi's fraudulent scheme:

- Even before they formally founded Natural Blue, Cohen and Corazzi understood that had they disclosed their roles in the company, it would have harmed their ability to recruit investors. Accordingly, when proposing their reverse merger plan to Murphy, Cohen and Corazzi touted Anaya's and Pelosi's involvement. *See* Div. Ex. 269. Murphy confirmed that Anaya's and Pelosi's commitments were significant to his agreeing to the deal, as their reputations "lent credibility" to the plan. Tr. 46-47, 51. From the very start, when soliciting investors, Cohen and Corazzi similarly relied heavily on Anaya and Pelosi's involvement as a selling point—to which the investors, like Murphy, reacted favorably. *E.g.*, Tr. 233-34, 754.

- Once the reverse merger was approved, Cohen and Corazzi hand-picked board members for the company—primarily individuals with whom they had personal relationships. *See* Tr. 490, 805, 822-23, 960-61, 1119-21; Cohen Ex. 55. Cohen also

personally selected Natural Blue's officers. Tr. 961, 1020, 1119-21, 1136; Div. Ex. 34. Anaya, the nominal CEO, knew little about many of these people and simply accepted them. Tr. 824-25, 1121; Cohen Ex. 186.

- Before the first Natural Blue board meeting in August 2009, Cohen emailed the company's attorney, Vuksich, asking whether he would be able "to be on the Board without public disclosure." Div. Ex. 24; Div. Ex. 299 at 2; Tr. 315-21. In response, Vuksich noted that while Cohen's criminal history did not necessarily preclude his serving on the board (and, at the time, he also would not have been required to disclose his conviction in public filings), Cohen's criminal record was easily discoverable on the internet. Div. Ex. 299 at 2. There is no evidence that Cohen ever again sought a directorship or to manage the company as a named officer.

- From the company's earliest days, Cohen and Corazzi asserted control over Natural Blue. They directed Anaya's decisions as CEO and demanded that Anaya defer to them on management decisions. Tr. 218, 560-61, 885-87, 959, Div. Ex. 65; Div. Ex. 124; Cohen Ex. 230. As Anaya testified, Cohen did the same to Board members. Tr. 1144. In Anaya's view, Cohen "was trying to run the company as the founder of the company, the person who selected the Board members, [and] the person who selected the staff." Tr. 1144-45. Anaya believed that Cohen's decisions were brought to the Board only for "ratification." Tr. 1144-45.[14]

- By August 2009—just one month after the company had been formed—Anaya felt unable to effectively serve as CEO and advised Corazzi that he intended to resign. Anaya told Corazzi that he could not be "CEO in name only," Tr. 1137, and, in his view, neither he nor Pelosi "were really being able to play the roles that [their] titles would otherwise suggest," Tr. 842. As Anaya recalled, he advised Corazzi that he "needed to step down, that [he] simply could not operate as a figurehead and that . . . Cohen was just meddling too much in the day-to-day operations." Tr. 843, 1133-39. Cohen ultimately persuaded Anaya to remain as CEO, however. Tr. 844-846.

- Pelosi similarly came to the quick realization that his expertise was not needed at Natural Blue; in August 2009, he began a full-time job elsewhere. Tr. 509-10. Pelosi acknowledged that this meant that he was not in a position to run the day-to-day operations of Natural Blue, as he was (nominally) hired to do. Tr. 507, 510.

- In November 2009, Natural Blue entered into "consulting" agreements with Cohen and Corazzi. Tr. 859; Div. Ex. 43 at 2; Div. Ex. 300 ¶¶ 20, 24. It did so after Cohen threatened to refuse to attend a scheduled investor meeting unless the company agreed to the arrangement. Tr. 858-89. The Board therefore held an emergency meeting to discuss the proposed agreements, during which both Murphy and Pelosi objected that the agreements favored Cohen and Corazzi at the company's expense.

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[14] As the law judge correctly found—and as discussed *infra*, Statement of Facts Section—Cohen and Corazzi's actions in controlling the company on both a day-to-day and strategic level from its inception confirm that they were *de facto* officers of Natural Blue.

Tr. 85-88, 195-96, 201, 503-05, 859; Div. Ex. 50; Cohen Ex. 85. Nevertheless, the Board ultimately voted to approve the agreements. Tr. 866-67; Div. Ex. 50.

- In the following weeks, Pelosi continued to object to the consulting agreements, arguing that they were "excessive." Tr. at 501-502. In response, Cohen and Corazzi garnered sufficient shareholder support to force Pelosi off the Board of Directors. *See* Tr. at 501-502, 505; *see also* Div. Exs. 59, 264. It was Cohen who informed Pelosi of this development, telling him that "the shareholders [we]ren't happy with [Pelosi's] performance." Tr. 223, 508.

- Throughout the company's existence, Cohen was primarily responsible for soliciting investors. Tr. 76, 823, 888, 1240; Div. Ex. 37. In November 2009, he and Corazzi gave a presentation in Virginia to a group of fifteen investors at which they once again touted Anaya's and Pelosi's management, even though, by that time, Pelosi was employed full-time elsewhere. Tr. 233-34, 507-10. Cohen and Corazzi also told the audience—falsely, and without any basis in fact—that "the value of the [Natural Blue] stock could be in the range of 15 to 20 dollars" and that "anticipated revenues in 2010 would be somewhere between 200 million and 400 million dollars." Tr. 231-32. Further, they falsely represented that one of Natural Blue's subsidiaries had procured contracts in the range of $60 million in value. Tr. 231.

- Cohen's efforts to deceive Natural Blue investors extended to his interactions with the company's auditors. Less than a year after Natural Blue began publicly trading, the auditors became concerned that Cohen played an outsized role in management when he was "not a named officer or principal of the company." Tr. 583-84. The auditors also questioned the "integrity of management" when they learned about Cohen's disciplinary history. Tr. 589. When the audit partner confronted Cohen about that history, Cohen lied—he denied that the disciplinary records referred to him and claimed (falsely) that his middle initial was not "E." Tr. 590. Cohen then tried to persuade the auditors that even if the records did refer to him, he was barred only from dealing with broker-dealers and not "from being involved with public companies." Tr. 590-91. That too was untrue—his bar extended to involvement with public companies. The audit firm ultimately resigned the engagement in April 2010 because it felt uncomfortable being associated with Cohen. Tr. 573, 589-90; Cohen Exs. 425, 426.[15]

In sum, through these and other acts, Cohen and Corazzi masterminded and executed an elaborate scheme to mislead investors about Natural Blue's leadership, while extracting as much profit for themselves as possible. This conduct violated Section 17(a)(1) and Section 17(a)(3).

[15] In testimony, the audit partner noted that Cohen himself negotiated with the auditors over the language for the Natural Blue 2009 10-K regarding the related party transaction with JEC Corp. *See* Tr. 625-27. Cohen also attempted to convince the audit partner to revise the related party transaction language so that it did not specifically identify Cohen's company. *See id.*

See, e.g., *SEC v. Monterosso*, 756 F.3d 1326, 1334 (11th Cir. 2014) (defendants liable under Section 17(a)(1) for "their commission of deceptive acts as part of a scheme" to mislead investors); *SEC v. Pentagon Capital Mgmt. PLC*, 725 F.3d 279, 286 (2d Cir. 2013) (defendants liable as the "architects" of a "scheme" to defraud investors); *accord SEC v. Ficken*, 546 F.3d 45, 48 (1st Cir. 2008).

II. The Court Correctly Found that Cohen and Corazzi Were *De Facto* Officers of Natural Blue.

That Cohen and Corazzi engaged in a scheme to defraud Natural Blue's investors by concealing their true roles in the company is confirmed by Judge Foelak's well-supported finding that they acted as *de facto* officers of the company. In coming to this conclusion, Judge Foelak appropriately relied on case law and Commission rules noting that the "key officer function is policy making, which includes such areas as mergers and acquisitions, compensation, and contracts." Init. Dec. at 26. Following the reasoning set forth in *SEC v. Prince*, 942 F. Supp. 2d 108 (D.D.C. 2013) and several cases cited therein, Judge Foelak looked beyond Cohen and Corazzi's avoidance of formal corporate titles to their functional role with Natural Blue, including their duties, responsibilities, and level of influence over company policy and affairs. *See* Init. Dec. at 25-28. *See also SEC v. Prince*, 942 F. Supp. 2d 108, 133 (D.D.C. 2013) ("functional, fact-intensive analysis of an alleged officer's duties and responsibilities, adopted by the Second, Fourth, Sixth, and Ninth Circuits, is a fair and reasonable approach" in determining whether one is a *de facto* officer); *SEC v. Solucorp Industries, Ltd.*, 274 F. Supp. 2d 379, 382-87 (S.D.N.Y. 2003) (individual "consultant" was an officer because he performed a policymaking function and duties analogous to those of an officer); *SEC v. Enterprises Solutions*, 142 F. Supp. 2d 561, 574 (S.D.N.Y. 2001) (executive officers include "not only those formally designated as such, but also any person who performs a similar role for the company"; companies are not

permitted to "hide a significant figure in the management of a company" behind a vague title, such as "consultant"); *CRA Realty Corp. v. Crotty*, 878 F.2d 562, 563 (2d Cir. 1989) (employee's functions, rather than title, determine whether he is an officer); *Wolf v. Weinstein*, 372 U.S. 633 n.19 (1963) (observing that in the context of Section 16(b), "it is clear that a determination of who is a corporate 'officer' within the meaning of the statute requires a flexible assessment of particular powers and responsibilities rather than a rigid rule of thumb.").[16]

Respondents strain to align themselves with the defendant in *SEC v. Prince*, 942 F. Supp. 2d 108 (D.D.C. 2013). There, the court found that Prince, an influential consultant with the subject company, did not function as a *de facto* officer. The dispositive facts in *Prince*, however, are readily distinguishable from this case. In *Prince*, the CEO (Chamberlain), CFO (Brown), and other officers functioned with authority commensurate with their titles. Brown "was firmly in control of the accounting department and the financial statements [which] was also acknowledged by outside auditors . . . ." *SEC v. Prince*, 942 F. Supp. 2d 108, 120 (D.C. 2013). Chamberlain was uniformly regarded as a strong leader and deliberately set out to create a valuable role for Prince that would not rise to the level of executive -- for the very purpose of avoiding disclosure of Prince's felony conviction. *Id.* at 114, 120-22. To that end, Chamberlain and his other officers obtained legal advice about the ways in which to limit Prince's role so that he would not function as an officer; they also repeatedly obtained legal clearance for not disclosing Prince as an officer or his criminal history. *Id.* at 122, 126, 129-30, 139-41. After

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[16] Regulations promulgated under the Exchange Act define the "officer" title and are, thus, instructive in identifying the various functions of corporate officers for purposes of determining *de facto* officer status. *See Prince*, 942 F. Supp. 2d at 133. Exchange Act Rule 3b-7 defines an "executive officer" as a company's "president, any vice president . . . in charge of a principal business unit, division or function . . ., any other officer who performs a policy making function or any other person who performs similar policy making functions for the registrant." 17 C.F.R. § 240.3b-7. Similarly, Exchange Act Rule 16a-1 defines an "officer" to include a company's "president, principal financial officer, principal accounting officer . . ., any vice-president of the issuer in charge of a principal business unit, division or function . . ., any other officer who performs a policy-making function, or any other person who performs similar policy-making functions of the issuer." 17 C.F.R. § 240.16a-1(f).

receiving this explicit legal advice, Chamberlain created a "series of 'carveouts' . . . to 'fence in' Prince's roles and duties." *Id.* at 115; see also *id.* at 122, 140-41. Among other things,

> Prince was not allowed to participate in accounting staff meetings and was not allowed to work on preparation of [the company's] financial statements. In general, he was also denied 'write' privileges to the network drives where the accounting numbers were stored, and at times he was denied 'read' access to the interim numbers.

Id.

Here, Respondents were not mere advisors whose ideas were freely rejected or accepted by Natural Blue's named officers. Natural Blue's nominal CEO struggled even to obtain basic information from Cohen about the company and frequently was bullied into acquiescing to Cohen and Corazzi's plans. He was in no position to *limit* Cohen's role so as to avoid having it cross over into that of an officer. Any notion that Cohen's access to Natural Blue's computer systems, financial information or any other aspect of the company would or could have been constrained is fantastical. Despite having been hired as Natural Blue's President (Cohen's decision), Pelosi admits never being in a position to fulfill his responsibilities for the day-to-day management of the public company. And Respondent elides the fact that Walter Cruickshank, hired by Cohen himself as Natural Blue's CFO, was completely overwhelmed by his responsibilities. As many witnesses acknowledged, including Cruickshank himself, he needed substantial assistance to do his job, and communicated and took direction primarily from Cohen. In stark contrast to *Prince*, where the auditors affirmed Brown's competence and control as CFO, here Natural Blue's auditors actually resigned because of their discomfort with the degree of control that Cohen exhibited over the company and its accounting functions.

As Judge Foelak found, Cohen and Corazzi were Natural Blue's policy makers and otherwise functioned as its corporate officers from the inception of the company:

> The record shows that Cohen and Corazzi assumed responsibility for Natural Blue's operations and strategic plans and thereby exercised the policy-making functions of

> public company officers and directors . . . . Cohen took on a role akin to the CEO, in which he performed a policy-making function that even made Natural Blue's own auditors uneasy, ultimately leading to their resignation . . . . Corazzi's role, while not as prominent as Cohen's, still rose to the level of an officer, akin to that of a COO responsible for the day to day internal operations of the company, or at the very least that of a "vice-president . . . in charge of a principal business unit, division or function" within the meaning of Exchange Act Rule 3b-7 . . . .

See Init. Dec. at 27-28.

III. Respondents' Arguments That They Are Not Liable Under Sections 17(a)(1) and (a)(3) and That the ALJ Proceedings Were Unconstitutional Are Without Merit

A. Respondents' challenges to liability under Sections 17(a)(1) and (a)(3) are based on an incorrect view of the law and factual record

Respondents raise three primary challenges to the finding that they are liable under Sections 17(a)(1) and (a)(3).

First, Respondents assert that the Division's claims are predicated on the notion that they are "liable for a false filing." On this premise they contend that they cannot be held liable on such a theory following the Supreme Court's decision in *Janus Capital Group v. First Derivative Traders*, 131 S. Ct. 2296 (2011). *See* Br. 34-37. In *Janus*, the Court considered the scope of Exchange Act Rule 10b-5(b), which proscribes "mak[ing]" a material misstatement or omission, and held that the term "make," as used in this context, applies only to those who have "ultimate authority" over the alleged misstatement. 131 S.Ct. at 2302.

Here, however, the Division does not allege that Respondents "made" any misstatements or that their conduct otherwise violated Rule 10b-5(b). *See Natural Blue Resources, Inc., et al.*, Securities Act Release No. 9614, at 6-7 (July 16, 2014) (Order Instituting Proceedings). Rather, Cohen is liable for having employed a device, scheme or artifice to defraud, in violation of Section 17(a)(1), and is liable for having engaged in a course of business that operated as a fraud on investors, in violation of Section 17(a)(3). *See* 15 U.S.C. § 77q(a). As the vast majority of courts to have considered the issue have concluded, *Janus* does not apply to claims arising under

Section 17(a). *See, e.g.*, *SEC v. Big Apple Consulting USA, et al.*, 783 F.3d 786, 796 (11th Cir. 2015); *SEC v. Monterosso*, 756 F.3d 1326, 1334 (11th Cir. 2014); *SEC v. Garber*, 959 F. Supp. 2d 374, 380 (S.D.N.Y. Apr. 22, 2013); *SEC v. Stoker*, 865 F. Supp. 2d 457, 464-66 & n.8 (S.D.N.Y. 2012) (collecting cases). The Supreme Court also has given no indication that *Janus*'s holding should be exported to statutes that do not proscribe the making of misstatements. Indeed, *Janus*'s emphasis on the text of Rule 10b-5(b) "serves, if anything, to highlight the importance of the difference in the language between" Rule 10b-5(b) and Section 17(a). *Stoker*, 865 F. Supp. 2d at 465.

Second, Respondents suggest that under Section 17(a)(1) and (a)(3), if a fraud is effected in part through misstatements, but the Respondent did not himself "make" those misstatements, then the Division must show deceptive conduct distinct from, or "beyond," such misstatements. Without support of either precedent or logic, Respondents posit that a showing that they have merely contributed to the misstatements is legally insufficient. Further, Respondents claim, the Division failed to prove that there was any evidence of deception "beyond" the company's misstatements. Br. 36-37. These arguments fundamentally misunderstand both the evidence in this case and the applicable legal standard.

Even if Respondents were correct as to the law—which they are not—their contentions fail as a factual matter. The Division's proof at the hearing showed not simply that they contributed to the company's misstatements, although they did so. Rather, the Division's evidence detailed a long-running and wide-ranging course of conduct through which Respondents repeatedly endeavored to conceal their true roles -- and their disciplinary histories -- from investors. Thus, while various misstatements in Natural Blue's public filings -- such as the company's concealment in its 2009 10-K of the identity of its real officers and directors, *see* Init. Dec. at 17; Div. Ex. 75 at 32; *see also* 17 C.F.R. § 229.401(e), (f) -- certainly helped to keep

investors in the dark, Respondents' deceit both predated and extended well beyond those misstatements.

Respondents' claims also fail as a legal matter. As noted, Section 17(a)(1) prohibits employing a "device, scheme, or artifice to defraud," while Section 17(a)(3) prohibits all "transaction[s], practice[s], [and] course[s] of business" that operate as a fraud. 15 U.S.C. § 77q(a)(1), (a)(3). Those provisions are broad and, on their face, encompass a wide range of fraudulent activity. *See Affiliated Ute Citizens of the State of Utah v. United States*, 406 U.S. 128, 151 (1972) (discussing "broad" and "inclusive" nature of equivalent terms in Rule 10b-5); *SEC v. Clark*, 915 F.2d 439, 448 (9th Cir. 1990) (noting the breadth of the terms "'fraud,' 'deceit,' and 'device, scheme, or artifice'"). Respondents engaged in an extensive scheme to establish and operate a public company as *de facto* officers while concealing their central roles through spurious "consulting" agreements. This fraudulent conduct violates Sections 17(a)(1) and (a)(3), independent of the presence of any particular misstatement.[17]

Third, Respondents suggest that Section 17(a)(1) and (a)(3) can be violated only through conduct that is itself inherently "deceptive or fraudulent," which, they insist, theirs is not. *See*

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[17] It would require an arbitrary reading of the statutory language to conclude that misstatement-related conduct cannot violate Sections 17(a)(1) and (a)(3). The Supreme Court's decisions in *Aaron v. SEC*, 446 U.S. 680, 697 (1980), and *United States v. Naftalin*, 441 U.S. 768, 774 (1979), counsel against such a strained reading of the text. In *Aaron*, which involved a series of misstatements to investors, the Court clarified the scope of liability under the three subsections of Section 17(a). Had the Supreme Court read the statute to preclude liability under Sections 17(a)(1) and (a)(3) for misstatement-related conduct, the Court would have needed only to address Section 17(a)(2) because that is the only subsection that directly addresses misstatements, rendering the subsequent discussion of Sections 17(a)(1) and (a)(3) unnecessary. Likewise, in *Naftalin*, the Court affirmed liability under Section 17(a)(1) for a series of false representations, indicating that it did not read the statute to preclude charging misstatement-related conduct under that subsection. 441 U.S. at 770, 779. Commission precedent also supports reading Section 17(a)(1) and (a)(3) to encompass misstatement-related activity. *E.g.*, *Johnny Clifton*, Securities Act Release No. 9417, 2013 WL 3487076, at *10 (July 12, 2013) (misleading "misrepresentations and omissions" in investor communications); *Ira Weiss*, Securities Act Release No. 8641, 2005 WL 3273381, at *13-14 (misrepresentations in documents sent to prospective investors), *aff'd* 468 F.3d 849, 855 (D.C. Cir. 2006). It would contravene the Commission's explicit guidance that the subsections of Section 17(a) are "mutually supporting rather than mutually exclusive" (*Cady, Roberts & Co.*, Exchange Act Release No. 6668, 40 SEC 907, 1961 WL 60638, at *4 (Nov. 8, 1961)) to hold that conduct which violates one subsection —*e.g.*, misstatements within subsection (a)(2)—cannot also violate another. Indeed, Respondents' proposed reading of the law would create a perverse safe-harbor; anyone whose fraud scheme encompassed some misstatements would be immune from liability for effecting such a scheme.

Br. 37-40. Again, Respondents are wrong both factually and legally.

As discussed, Respondents engaged in a series of actions to found, organize, and run Natural Blue while concealing from investors that the company was really being run by a convicted felon and someone who was statutorily barred from such a role. This endeavor, when considered as a whole, unquestionably operated as a device or artifice to defraud investors.[18]

B. **Respondents' Constitutional arguments are without merit.**

In addition to challenging the merits of the ALJ's ruling, Respondents assert that the proceeding itself did not comport with constitutional requirements.

Respondents first assert that the presiding "ALJ's appointment appears to have violated the Appointments Clause of Article II" of the Constitution. Br. 41. But as the Commission found in *Raymond J. Lucia Cos.,* Exchange Act Release No. 75837, 2015 WL 5172953, at *21 (Sept. 3, 2015), *Timbervest, LLC,* Investment Advisers Act Release No. 4197, 2015 WL 5472520, at *23-26 (Sept. 17, 2015), and *David F. Bandimere*, Exchange Act Release No. 76308, 2015 WL 6575665, at *19-21 (Oct. 29, 2015), Commission ALJs are employees, not constitutional officers, and thus they are not subject to Article II's requirements.

Respondents next contend that the ALJ violated their due process rights by admitting into evidence the expert testimony of Professor Robert M. Daines, which --according to respondents -- would have been inadmissible under the Federal Rules of Evidence. Br. 42. Respondents do

[18] Moreover, even if Respondents' many actions in support of their fraud are considered in isolation, that analysis would not preclude finding them liable under Section 17(a). Section 17(a) does not require -- as does Exchange Act Section 10(b) -- that each instance of misconduct at issue be inherently manipulative or deceptive. *Compare* 15 U.S.C. § 78j(b) (requiring that the proscribed conduct be "manipulative or deceptive") *with* 15 U.S.C. §77q(a) (lacking equivalent text); *see also Central Bank of Denver, N.A. v. First Interstate Bank of Denver*, 511 U.S. 164, 191 (1994) (focusing on the terms "manipulative or deceptive" in Section 10(b) to hold that only defendants who themselves employ a manipulative or deceptive device or make a material misstatement may be primarily liable under Rule 10b-5). To establish liability under Section 17(a)(1) and (a)(3), therefore, the Division need only demonstrate that Respondents engaged in conduct that had the effect of actually or potentially deceiving investors (and that he did so with scienter, for purposes of Section 17(a)(1), or negligence, for purposes of Section 17(a)(3)). As previously discussed, the record amply demonstrates that Respondents did just that.

not claim that, in admitting Professor Daines's testimony into evidence, the ALJ misapplied the applicable Commission rules. Nor do respondents cite any authority for their conclusory argument that Professor Daines's testimony would have been barred under the federal rules. To the contrary, expert testimony on corporate governance is routinely admitted in evidence in federal courts. *See, e.g.*, *CDX Liquidating Trust v. Venrock Associates*, 411 B.R. 571, 586 (N.D. Ill. 2009) (denying *in limine* motion seeking to exclude expert on corporate governance); *Floyd v. Hefner*, 556 F. Supp. 2d 617, 640-41 (S.D. Tex. 2008) (ruling that expert opinion regarding violations of public disclosure obligations satisfies *Daubert* standards) ; *Cary Oil Co., Inc. v. MG Refining & Marketing, Inc.*, No. 99 Civ. 1725, 2003 WL 1878246, at **6-7 (Apr. 3, 2011) (admitting testimony of corporate governance expert). In any event, it is well settled that the Federal Rules of Evidence do not apply in the Commission's administrative proceedings. *Ralph Calabro*, Securities Act Release No. 9798, 2015 WL 3439152, at *10 & n.66 (May 29, 2015) (explaining that the federal evidentiary doctrines governing the admission of expert evidence are "'designed to protect juries'" and are, therefore, "'largely irrelevant in the context of a bench trial'") (*quoting Deal v. Hamilton Cty. Bd. of Ed.*, 392 F.3d 840, 852 (6th Cir. 2004)). Respondents' suggestion that this renders an administrative proceeding inconsistent with due process has been consistently rejected by the courts. *See, e.g.*, *Cunanan v. INS*, 856 F.2d 1373, 1374 (2d Cir. 1988).[19]

Moreover, any error in admitting Professor Daines's testimony was harmless. The Commission "has substantial expertise with respect to the workings of the securities markets," *Pagel, Inc.*, Exchange Act Release No. 22280, 1985 WL 548387 (Aug. 1, 1985), *aff'd*, 803 F.2d 942 (8th Cir. 1986), and does not need to rely on expert evidence in adjudicating respondents'

[19] Although Respondents focus on Professor Daines's testimony, they also intimate that the ALJ admitted other evidence that was, in respondents' view, unreliable. Br. 42. But Respondents have not identified any such evidence, or allegedly erroneous evidentiary rulings, in their brief.

liability. There is ample evidence in the record from which the Commission, exercising its *de novo* review, can find that Respondents committed the alleged violations, independent of Daines' testimony. Indeed, Judge Foelak herself did not cite to a single statement by Daines in support of her ruling that Respondents served as *de facto* officers of Natural Blue.[20]

IV. The Commission Should Impose Disgorgement and a Third-Tier Penalty Against Cohen and Corazzi

Cohen and Corazzi held large amounts of Natural Blue stock and profited from their fraudulent scheme. Indeed, they made much more money than any other Natural Blue employee and multiple times of the amounts garnered by Anaya and Pelosi. From predominantly investor funds, Natural Blue paid Cohen and Corazzi $189,188 and $251,720, respectively. At all points, Natural Blue was barely a going concern and was largely unable to pay its own bills.

As an initial matter, the Division's presentation of the payments made to Cohen and Corazzi by Natural Blue was entirely appropriate. Respondents attempt to make much of the Division's characterization of the payments as "compensation" as opposed to payments "for professional business services." Res. Br. 43. Notwithstanding Respondents' insinuations, there was nothing deceptive about the Division's presentation or the testimony of its forensic accountant. Judge Foelak ultimately ruled that Respondents were acting as officers of Natural Blue, not as mere consultants. Any payments to them for their work on behalf of the company, thus, should be considered executive compensation, not fees for distinct professional services.

In addition, the Division has offered, at a minimum, a reasonable approximation of Cohen and Corazzi's ill-gotten gains. Natural Blue's payments to Cohen and Corazzi were

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[20] Judge Foelak cites to Daines in an early footnote, relying on his testimony for the definition of "reverse merger." *See* Init. Dec. at 3 n.5. The ALJ also summarizes Daines' expert testimony in Section II.N. of her decision, but expressly qualifies the summary by stating that "to the extent that the expert's evidence does not lead to findings of fact, it will be summarized here and referred to as appropriate in the Conclusions of Law section of this Initial Decision." *See* Init. Dec. at 22 n.10.

calculated by Sofia Hussain, an accountant with the Division. *See* Tr. 1384; Div. Ex. 258. She reviewed every transaction reflected in the Natural Blue bank accounts and calculated the total payments to Cohen, Corazzi, and related entities. *See id.* at 1385-88. Ms. Hussain acknowledged that certain payments may have been expense reimbursements, *see id.* at 1388; 1391, but also noted that Natural Blue paid directly "a large amount of travel-related expenses." *Id.* at 1418-19. The unequivocal evidence that Natural Blue directly covered Cohen and Corazzi's travel expenses leaves little doubt that payments to Cohen and Corazzi themselves were compensation. Although it was their burden to rebut the Division's evidence, Cohen and Corazzi offered no evidence to suggest that Natural Blue's payments were expense reimbursements – no testimony and not a single expense report, receipt, or itinerary.

As for the argument that some compensation paid to Respondents was for legitimate services provided, the Division contends that Respondents' conception and operation of Natural Blue was thoroughly fraudulent. They acted as Natural Blue's *de facto* officers at all times. Thus, all payments made to Respondents for work allegedly performed on behalf of Natural Blue should be considered executive compensation and completely subject to disgorgement.

In addition to disgorgement, the Division submits that a third-tier penalty should be imposed, given that the violations involved fraud and deceit, and that their conduct created a significant risk of substantial losses to investors. 15 U.S.C. § 77h-1(g)(2)(C).

CONCLUSION

Cohen and Corazzi willfully violated Section 17(a)(1) and 17(a)(3) of the Securities Act. They engaged in a device, scheme and/or artifice to defraud and/or engaged in a transaction, practice and/or course of business which operated or would have operated as a fraud or deceit upon the purchaser. Cohen and Corazzi violated these laws by creating and operating Natural Blue as a vehicle for Cohen and Corazzi to control and profit from the company, while failing to disclose their roles as *de facto* officers or their past criminal and regulatory violations to potential investors. Both Cohen and Corazzi knew or were reckless in not knowing that they committed deceptive acts in furtherance of this fraudulent scheme.

For the reasons stated herein, the Commission should uphold the ALJ's Initial Decision as to liability, and impose disgorgement and a third-tier penalty.

Respectfully submitted,

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Dated: January 11, 2016

Certificate of Service

I certify that on January 11, 2016, in addition to filing the same with the Secretary of the Commission, I caused true and correct copies of the foregoing **Division of Enforcement's Opposition Brief** to be served on the following parties and other persons entitled to notice by overnight mail and electronic delivery to the following addresses:

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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-15974

In the Matter of

JAMES E. COHEN and
JOSEPH A. CORAZZI,

Respondents.

DIVISION OF ENFORCEMENT'S RULE 450(d) CERTIFICATE OF COMPLIANCE

Pursuant to Commission Rule of Practice 450(d), I certify that the Division of Enforcement's Brief on Review of Initial Decision is 13,994 words exclusive of cover page, table of contents, table of authorities, and certificate of service using Microsoft Word 2010's word count function.

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