**UNITED STATES OF AMERICA**
**Before the**
**SECURITIES AND EXCHANGE COMMISSION**

**ADMINISTRATIVE PROCEEDING**
**File No. 3-16037**

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| **In the Matter of**<br><br>**EDGAR R. PAGE and PAGEONE FINANCIAL, INC.,**<br><br>**Respondents.** | **RESPONDENTS' AMENDED PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW** |

## PROPOSED FINDINGS OF FACT

1. This proceeding was brought by the Division of Enforcement ("Division") of the Securities and Exchange Commission ("Commission") against Edgar R. Page and PageOne Financial, Inc. ("PageOne" and, together with Mr. Page, "Respondents") pursuant to Sections 203(e), 203(f), and 203(k) of the Investment Advisers Act of 1940 (the "Advisers Act") and Section 9(b) of the Investment Company Act of 1940. The Order Instituting Administrative and Cease-and-Desist Proceedings ("OIP") charges Respondents with willfully violating Sections 206(1), 206(2), and 207 of the Advisers Act.

2. On January 31, 2015, Respondents submitted an Offer of Settlement, which was accepted by the Commission. Pursuant to the terms of the Offer of Settlement, Respondents consented to the entry of an Order in which the Commission found that Respondents violated the Advisers Act provisions at issue, but Respondents neither admitted nor denied the findings contained in the Order. Further, Respondents consented to censure by the Commission, to being ordered to cease and desist from committing any future violations of the Advisers Act provisions at issue, and to the bifurcation of the OIP to provide for a hearing to determine what, if any,

disgorgement, prejudgment interest, civil penalties and/or other remedial action beyond Respondents' censure is appropriate and in the public interest pursuant to Section 203 of the Advisers Act and Section 9 of the Investment Company Act. The Order was entered on March 10, 2015 (the "March 10 Order").

3. Consistent with the terms of the Offer of Settlement, the allegations made in the March 10 Order are neither admitted nor denied, but are accepted as and deemed true solely for the purposes of these additional proceedings to determine the appropriate remedy. (Offer of Settlement, ¶ VII(B), at 2-3;[1] ¶ IX, at 3.)[2] Accordingly, the factual allegations made by the Division in the March 10 Order shall be incorporated herein as Proposed Findings of Fact.

**Background**

4. Mr. Page is 63 years old. (Hearing Tr. at 190:8.)[3]

5. Mr. Page is the sole owner of PageOne. (Hearing Tr. at 54:5–6.)[4]

6. Mr. Page's only professional skills and experience are in the area of providing financial advisory services. (Hearing Tr. at 190:14–16.)[5]

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[1] "Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission or in which the Commission is a party, without admitting or denying the findings contained in the Order, except as to the Commission's jurisdiction over them and the subject matter of these proceedings, which are admitted, consents to the entry of an Order..."

[2] "Respondents understand and agree to comply with the terms of 17 C.F.R. § 202.5(e) which provides in part that... "a refusal to admit the allegations is equivalent to a denial, unless the defendant or respondent states that he neither admits nor denies the allegations." As part of Respondents' agreement to comply with the terms of Section 202.5(e), Respondents...(ii) will not make or permit to be made any public statement to the effect that Respondents do not admit the findings of the Order, or that the Offer contains no admission of the findings, without also stating that Respondents do not deny the findings..."

[3] "At 63, I hoped one day to travel and to retire..."

[4] "Q. You were the sole owner of PageOne? A. Yes, sir."

[5] "I guess at this point in time, this is all I've ever known. It's all I've ever done for 35 years."

7. Mr. Page has no meaningful professional employment opportunities outside the financial services industry. (Hearing Tr. at 198:2–10.)[6]

**The Disclosure Infractions**

8. From at least 2004 until December 2010, Sean Burke served as a PageOne compliance professional and was responsible for updating PageOne's Form ADV, as necessary. (Investigative Testimony Transcript of Sean Burke, dated June 17, 2014 ("Burke Tr.") at 42:1.)[7]

9. Mr. Burke worked with experts to ensure that PageOne's Form ADV was materially accurate at all times. (Burke Tr. at 41:21–25, 42:1–11.)[8]

10. In early 2009, Mr. Page informed Mr. Burke that he was negotiating to sell a portion of his ownership interest in PageOne to the United Group of Companies ("United"). (Burke Tr. at 54:15–25, 55:1–13.)[9]

11. Mr. Page and United had at various times considered different options for how Mr. Page and/or PageOne might be compensated for offering investments in the United funds to PageOne clients, including, for example, annual advisory fees, referral fees, and consultancy

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[6] "I would have no way to earn any monies because this is all I know...So I would just be destitute. I would have no way to pay it over a period of time and I wouldn't know what I would do."

[7] "A. 2004, I think."

[8] "Q. Did there come a time when you worked with NRS? A. Yes. Q...And what did you work with them on? A. ADV updates. Q. That was starting in 2003? A. 2004, I think. Q...What specifically did NRS do for you?....A. Sure. Initially was the annual updates to the ADV...Later on when Ed entered into a business arrangement with the United Group and clients started investing into their private placements they helped to draft language that eventually made it into our ADV in 2009."

[9] "Q. Did Mr. Page ever have any business arrangements with UGOC? A. In writing? Q. Of any kind. A. They were supposed to be acquiring PageOne Financial. Q. When you say they, do you mean UGOC?... A. Correct. Q. That was an agreement between UGOC and Edgar Page? A. Yes. Q. And when did you first learn of that? A. I believe in early '09. Q ... Can you narrow down the time frame any more? A. I would say in the first quarter. Q. First quarter of '09 ... How did you learn about that? A. Through multiple conversations with Ed Page. Q. Was there one conversation or more than on conversation? A. More than one."

arrangements. (Div. Ex. 166 at 54:10–57:19,[10] 69:4–13,[11] 70:6–15,[12] 70:25–71:4,[13] 72:11–24,[14] and 83:6–11.)[15]

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[10] "Q. Were any of these payments made to reimburse you or to pay you a referral fee for introducing customers to UGOC? A. No. We had initially agreed to that. There was a lot of confusion from that day forward, because, he [Uccellini] didn't always communicate with his staff what he was doing, not even his son, who was second in command. We had amended, after consulting our counsel and consulting our compliance officer, our ADV to reflect a seven percent commission that we were going to draw down. And shortly after we had sent it down to, I believe, the SEC, the issue arose with Mr. Uccellini and Mr. Del Giuidice that, since we were an asset management firm with such a great track record, we might be able to be utilized in regard to state pensions because of our track record and the wake of crashes and how we had exited, as well as trade unions. As the conversation developed over a period of time ... we had been made an offer from NEXT Financial Group out of Houston, Texas. Q. Okay. Let me slow you down, because I want to unpack this a little bit. When you first had discussions with Mr. Quinn concerning the possibility that some of your clients might invest in UGOC funds, when was the first time you discussed the possibility of a referral fee? A. Oh, I trust it was in his delivery of the announcement of the product. We explained how we receive our fee, which is a tier – Q. And when you say that, do you mean during your first meeting with Mr. Quinn, which I think you said was in 2008? A. I don't recall if it was in the first, second, third. I just recall it was a conversation with him. Q. To the best of your ability, can you give me a timeframe when that happened? A. Somewhere in 2008, 2009, the best of my ability. Q. Was it before the first of your clients invested in either of the funds? A. Of course. Yes. Q. And what do you remember [was] the substance of that conversation? A. Again, I recall Mr. Quinn coming to my office and talking about the Private Placement Memorandum and he talked about its fee structure inside as we examined it and flipped pages. I don't recall if we got to very specific language until Mr. Walter Uccellini came back with Mr. Quinn. Q. When he referred to fee structure, did you understand that to mean the fees that would be paid to you for introducing customers? A. And all of the fees that the fund would, of course, encounter. Q. So, yes, it did relate to fees paid to you; is that correct? A. It related to fees that could be paid to Page. Q. And did at some point, you come to an understanding that you would receive fees for introducing customers? A. At some point in time it was a discussion of what fees I could receive if I so chose to amend my ADV and disclose it to the investors, and that would be what I would receive...Q. Do you have any notes of these conversations with either Mr. Quinn or Mr. Uccellini or anyone else from UGOC? A. No. All I have is, of course, the documents showing the amended ADV for the seven percent, as was a slated belief."

[11] "A. No the 7 percent was the referral fee we had intended to charge in the inception and the three-quarter point of the amount invested in the client. There were clients at times at PageOne that had a large amount of capital and we might be charging them just three quarters of a point. And I can't tell you if the language here, truthfully, is our annual ongoing years two through six. I don't recall how this was structured at the time."

[12] "Q. And was it your understanding you were going to get seven percent of the amount invested? A. Yes. Q. Now, was that just in the year of the investment or was that annually, over the term of the investment? ... A. That was in the inception of the actual investment."

[13] "A. So, this appears that we're going to get seven percent from UGOC and three quarters of a percent from the client for managing that fund. So, there's a fee structure here that we had, from inception, thought we would do.

[14] "... And the three quarters of a percent is something that we would probably charge for the amount invested by the client. Q. ... I gather DCG slash, UGOC would be the manager? At least that's how it's defined. A. I guess. And the three quarters of a percent is something that we would probably charge for the amount invested by the client. Q. So, why did that sentence say, 'referral fee of between seven percent and three quarters of a percent'? A. Well, I can only look to the language and the intent at the time from Mr. Burke. It appears that we're trying to disclose the seven percent as the intent in the inception of receiving our fee for this particular investment as a brokerage fee, if you will, and it appears that three quarters of a percent of the amount invested by the client in the applicable private funds."

12. Mr. Burke understood that upon closing of the proposed transaction with United, Mr. Page would receive the purchase price and United would be given an ownership interest in PageOne. (Burke Tr. at 56:16–21, 57:9–15.)[16]

13. Mr. Page and Mr. Burke discussed whether to disclose to PageOne's accredited investor clients who might possibly invest in certain private funds administered by United (the "Private Funds") the contemplated financial relationship with United, and that Respondents therefore had a potential conflict of interest if and when they recommended that their clients invest in the Private Funds. (Burke Tr. at 118:3–24.)[17]

14. Mr. Page did not believe it was appropriate to disclose that he was involved in preliminary negotiations regarding the potential transaction with United, or that such disclosure as required until the transaction closed. (Div. Ex. 166 at 117:21–119:1,[18] 121:6–122:6,[19] Burke Tr. at 121:9–21.)[20]

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[15] "Q. So your role as a consultant, as you understand, this refers to the possibility that, after the acquisition, you would continue to operate PageOne and that, since you were no longer a sole owner, you would also be paid a salary? A. Yes."

[16] "Q. What was the total how much of Page One was UGOC purchasing? A. My understanding initially Ed would be 51 percent owner and United would be 49 so he could keep control. Q. And when did you develop that understanding? A. When he first mentioned it to me in early '09."; "Q. Did he tell you anything else during this Q1 '09 period? A. I don't believe he did. Q. Did you learn what the total acquisition price was? A. I believe he mentioned, I think 2-1/2 or 3 million. Q. When did he tell you that? A. I think during this time period."

[17] "A. I had brought it up to Ed when ... the concepts of clients first investing and I approached Ed about ADV disclosures and changing our applications...Q. So let me stop you there for a second. When did you first talk with anyone about that, about possibly disclosing the UGOC acquisition? A. Early 2009. Q...how far in time did that fall after you learned of the UGOC acquisition? A. I would say it was in the February time range. Q. Was it before or after UGOC made any payments to Mr. Page? A. I assume before. I don't I wasn't aware of that time that payments were made. Q. Was it before or after the first Page investor invested in the private funds? A. I believe before...Q. And February of 2009 sounds right to you? A. I believe so."

[18] "A. Well, lets take a look at number 6. 'No disclosures were made to PageOne clients regarding my sale.' They wouldn't be. 'No PageOne shares were transferred or sold.' They weren't. 'As such no change of ownership has occurred.' Therefore I "...wouldn't disclose anything. 'Additionally, Edgar Page, acting as purchasing agent at PageOne Financial, does not publicly disclose why particular investments have been chose.' That is a matter of fact, as well. Q. ...What did you understand the arrangement that the Staff was referring to? A. ...So 3, is talking about my sale, which I wouldn't disclose. Q. And why wouldn't you disclose it? A. That's confidential. I'm not going to tell the public what my civil contract is in negotiating a sale for my firm. I'm an SEC-regulated firm. I'm not going to tell Macy's what Gimbels is doing, nor am I going to announce it. It's too dangerous. It would cause thousands

15. Mr. Page believed that, since only a very small number of PageOne's clients were eligible to invest in the Private Funds, disclosure of preliminary transactional negotiations through PageOne's publicly-available Form ADV would be unsettling to the vast majority of PageOne's clients and business partners for whom any transaction with United would be irrelevant. (Div. Ex. 166 at 122:4–6.)[21]

16. Mr. Page orally advised certain clients who invested in the Private Funds about the preliminary and ongoing negotiations with United. (Div. Ex. 166 at 122:7–23.)[22]

17. Mr. Burke asked Mr. Page's permission to engage National Regulatory Services ("NRS") to provide expert advice on crafting an appropriate Form ADV disclosure. (Burke Tr. at 119:13–17,[23] 122:2–9)[24]

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of clients to get extremely nervous if I was selling my firm. Q. Okay. MR. MARSHALL: Well, in fact, you had doubt it was going to close at some point, didn't you? THE WTINESS: I didn't know if it was ever going to close. No. I didn't want to disclose something that wasn't going to happen. I would disclose it once it did happen."

[19] "'No disclosures were made to PageOne clients.' Fact. 'No PageOne shares were transferred or sold.' Fact. 'As such, no change of ownership has occurred.' Fact. 'Additionally, Edgar Page, acting as purchasing agent for PageOne Financial, Inc., does not publicly disclose why particular investments have been chose.' I think it's because you put the word 'all,' and I'm trying to be all including. You said 'provide all disclosures.' I'm thinking you want my information, my proprietary information, and I don't provide all information to clients, proprietary information. Q. Okay. Did you ever consider disclosing your receipt of over 1.3 million from UGOC to customers who were considering investing in UGOC funds after having been introduced by you? A. I never felt that was a necessity. If I had closed or sold my firm, I certainly would have disclosed that I had sold to Millennium-Page a partnership, and the partnership was certainly, I felt, always in the best interest of clients. There were a handful of clients in United's products. I wouldn't disclose to thousands of people that I am about to convey my firm."

[20] "A. He [Mr. Page] said we did not need to disclose the sale of the firm. He had attorneys that were guiding him and he just did not feel he needed to disclose it. Q. Did he tell you what attorneys? A. He did not tell me the attorneys. Q. Were any attorneys ever involved in drafting the ADV as far as you know? A. No. Q. Did he tell you why he didn't feel that he needed to disclose it? A. He would say that it's his firm and he doesn't need to tell anybody that he could sell his firm to anybody and it's you know, nobody's business."

[21] "There were a handful of clients in United's products. I wouldn't disclose to thousands of people that I am about to convey my firm."

[22] "Q. Do you know if any of your clients knew about these negotiations you were having considering the possible sale of Page One? A. I do believe some did. Q. How did they know that? A. I don't recall. Q. Did you inform any of them? A. I don't recall how they knew. Q. Do you have any recollection of informing anybody? A. I recall a personal friend by the name of Peter Crowley, Saratoga Springs, New York, and Peter was a very close friend. We may have discussed the fact that I was going to do a partnership with UGOC. Q. Was he an investor in one of the UGOC funds? A. Yes, he was."

18. Mr. Page agreed to the NRS engagement, and understood that Mr. Burke would work closely with NRS to draft the Form ADV disclosures. (Id.)

19. On July 15, 2009, NRS sent Mr. Burke a proposed consulting services agreement, which PageOne executed, formally engaging NRS to draft the amended Form ADV. (Resp. Exs. 94, 96.)

20. NRS assigned Michael Xifaras to work on PageOne's Form ADV disclosure engagement. (Burke Tr. at 122:12–123:2; Resp. Ex. 103.)[25]

21. Through a series of telephone calls, Mr. Burke informed Mr. Xifaras that Respondents intended to recommend investments in the Private Funds to some of their accredited investor clients, and that Mr. Page was in the process of negotiating a sale of PageOne stock to United. (Burke Tr. at 122:12–123:2,[26] 128:18–23,[27] 130:1–22.)[28]

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[23] "A. I don't recall it being a very long meeting, I think it was just something I knew he [Mr. Page] was getting serious about starting to have clients invest and I became adamant that you go to get some ADV disclosure going here and I'm not the guy to do it, we should reach out to NRS."

[24] "A. I told him [Mr. Page] we need to have a description of what these clients are invested in. We need to have some sort of disclosure as to the monetary portion of what you're receiving and I don't know who to characterize that, and that I wanted to reach out to NRS. Q. What did he say, anything? A. He said you could reach out to NRS and, you know, get this language, whatever we need to do."

[25] "Sean: Here is my contact information. Please let me know if you have any questions or concerns. It was a pleasure to speak to you today and I look forward to our working together going forward."

[26] "A. ...I had brought that up on the initial conversation with NRS when I gave them a general overview of what we were doing that Ed was receiving payments, down payments for the firm for the sale, the sale had not gone through, and that and they had asked if the sale had gone through, and I reiterated that it had not ..."

[27] "Q. So you receiving the draft language and then you speak to NRS again? A. Yes. Q. Who was on that call? A. The person who drafted the initial, I'm assuming Mike [Xiafaras]

[28] "Q. Did you talk with ... the NRS people about why it didn't include language about the acquisition? A. ... I don't know if I questioned it after that was something I brought up on the initial conversations. Q. The initial conversation with NRS? A. With NRS, and I remember them saying that they since the sale did not go through they did not necessarily think it needed to be disclosed either. Q. Who told you that? A. I'm assuming it was Mike [Xiafaras], the person I was working with at NRS. Q. So what specifically did they tell you about that, what's your best recollection? A. That from a general statement not knowing the full details, that if the sale of the firm did not go through that he may not have to disclose it. Q. They said that he may not have to disclose it? A. May not have to disclose it. I don't recall them ever specifically saying it, and they never pushed with more questions asking about it."

22. Mr. Burke told Mr. Xifaras that Mr. Page anticipated receiving deposits from United towards the contemplated sale price. (Burke Tr. at 122:12–123:2.)[29]

23. On July 17, 2009, Mr. Burke sent the private placement memoranda ("PPMs") for the Private Funds to Mr. Xifaras. (Resp. Exs 101, 102.)[30]

24. Mr. Xifaras emailed Mr. Burke on July 24, 2009, indicating that he was in the process of drafting the amended Form ADV and requesting detailed information regarding PageOne's existing Form ADV disclosures. (Resp. Ex. 101.)[31]

25. Based upon information supplied by Mr. Burke, NRS drafted a proposed amended Form ADV and sent a copy to Mr. Burke for review. (Resp. Ex. 106.)[32]

26. Mr. Burke reviewed the proposed amended Form ADV and called Mr. Xifaras to discuss. (Burke Tr. at 128:18–23.)[33]

27. During their discussion, Mr. Xifaras told Mr. Burke that the transactional negotiations did not need to be disclosed because the deal had not been completed. (Burke Tr. at 130:8–22.)[34]

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[29] "A. ...I had brought that up on the initial conversation with NRS when I gave them a general overview of what we were doing that Ed was receiving payments, down payments for the firm for the sale, the sale had not gone through, and that and they had asked if the sale had gone through, and I reiterated that it had not, but the payments he was receiving were 7 percent of what the client put in, and that, that was Ed characterized that as a down payment of the firm and that he felt he did not need to disclose it. Q. You told that to NRS? A. Yes. Q. So was this your first conversation with NRS about disclosure? A. Yes. "Q. When was that conversation? A. That was in some time early '09."

[30] "Mike, I just sent [an] overnight with United Fund info."

[31] "Sean: I am in the process of working on your ADV and have a few questions/comments:"; "Sean: I have attached a draft of your firm's Form ADV Part II for your review and comment. The following are some follow-up questions...How exactly will PageOne be compensated for the referral to the private funds? Will it be a flat fee, an ongoing percentage of the management fee based on the amount of money invested by the client, etc? We need to provide some description."

[32] "...PageOne will be paid 7% the first year by United and after the first year we will be paid our ongoing advisor fee as set in ou[r] Advisor Fee Schedule..."

[33] "Q. So you received the draft language and then you speak to NRS again? A. Yes. Q. Who was on that call? A. The person who drafted the initial, I'm assuming Mike [Xiafaras]."

28. When Mr. Burke asked how the "between 7.0% and 0.75%" annual referral fee language had been developed, Mr. Xifaras told Mr. Burke that the language came directly from the United fund PPMs. (Burke Tr. at 128:3–129:17.)[35]

29. Mr. Xifaras told Mr. Burke that a Form ADV amendment including this language—which disclosed an annual 7% fee—was broad enough to cover all possible compensation scenarios. (Burke Tr. at 154:2–5,[36] 159:8–11.)[37]

30. Following his discussion with Mr. Xifaras, Mr. Burke met with Mr. Page to discuss NRS's proposed Form ADV amendment. (Burke Tr. at 134:19–135:9.)[38]

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[34] "A. With NRS, and I remember them saying that they since the sale did not go through they did not necessarily think it needed to be disclosed either. Q. Who told you that? A. I'm assuming it was Mike [Xiafaras], the person I was working with at NRS. Q. So what specifically did they tell you about that, what's your best recollection? A. That from a general statement not knowing the full details, that if the sale of the firm did not go through that he may not have to disclose it. Q. They said that he may not have to disclose it? A. May not have to disclose it. I don't recall them ever specifically saying it, and they never pushed with more questions asking about it."

[35] "A. I would have gone over them [ADVs] I would have given Ed a copy and asked him to review them. I specifically remember certain sections jumping out to me, the 7 percent, to 75 basis point fee schedule and they had put in descriptions of the United Funds with certain returns and I believe I had a conversation with someone at NRS where that language came from and how they came to that fee schedule. Q. Did you talk about that draft with Mr. Page? A. I did. Q. What did you say to him, what did he say to you? A. I explained after I talked to NRS and they explained that they took the wording from the PPMs and then. Q. ... So you had another conversation with NRS? A. Yes. Q. So you receive the draft language and then you speak to NRS again? A. Yes. Q. Who was on the call? A. The person who drafted the initial, I'm assuming Mike [Xiafaras]. Q. Anyone else? A. I don't recall. Q. Anyone else from Page One side? A. I don't believe so. Q. What did you guys talk about in that conversation? A. I had asked them ... how they drafted the language because it seemed to be very specific. They said it came from the private placement, it was almost verbatim ... I had asked how they came up with the fee schedule because it was very broad in my mind and they said because Ed was receiving 7 percent, there was discussion about him possibly charging and advisory fee, that the 75 basis points was the lower end of our fee schedule and the 7 percent was the payment, I believe written into the PPM ... that was the percentage that I had said Ed was receiving."

[36] "A. When I questioned that with the NRS because Ed was not sure if he was going to charge the advisory fee and/or the 7 percent, NRS put that 7 percent in .75 to cover all the possibilities."

[37] "A. Well, I questioned NRS why they put that range in there and they said because...their understanding was the firm did not know if they were going to do one, both, or the later of just the advisory fee."

[38] "A. I would have gone to Ed and said this is their draft language. Q. When you say you would have, do you remember doing that? A. I did go to Ed and explained that this was their draft language. I pointed out to them the large range in the payments that he was receiving and the reason for that...He was fine with that. Q. What did he say to you? A. He just said that...we're disclosing that the firm or he was receiving money, and I don't think he really dived much into it as whether he thought it should have been tightened, or he just knew the 7 percent was in there, in the advisory fee part if he went that route and he was comfortable with that language."

31. Mr. Page agreed with Mr. Burke that NRS's language was acceptable. (Burke Tr. at 135:1–12.)[39]

32. Prior to finalizing the Form ADV amendment, Mr. Page, Mr. Burke, and Mr. Xifaras participated in a conference call to discuss NRS's proposed disclosures. (Burke Tr. at 141:2–22.)[40]

33. During this telephone call, Mr. Page discussed the details of the proposed transaction, including the possibility of Mr. Page working as an employee or consultant to United following the closing of the proposed transaction. (Burke Tr. at 143:18–144:19.)[41]

34. Mr. Burke also confirmed his and Mr. Page's understanding that NRS's "between 7.0% and 0.75%" annual referral fee language was designed to disclose all possible

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[39] "Q. Okay. A. He was fine with that. Q. What did he say to you? A. He just said that...we're disclosing that the firm or he was receiving money, and I don't think he really dived much into it as whether he thought it should have been tightened, or he just knew the 7 percent was in there, in the advisory fee part if he went that route and he was comfortable with that language. Q. How do you know he was comfortable with that language? A. He did not tell me he was comfortable."

[40] "A. There was a call where I had Ed get on the line with NRS. Q. When was that? A. That was April/May of 2009. It was between ... the initial call, I called them back just kind of questioning that certain parts of the language and then I had met with Ed after he ... received a copy and then said I would like to have one final call with them. Q. You said that to Mr. Page? A. o Ed and to have him on the line if NRS had any further questions or Ed wanted to talk about anything. Q. Was that conversation where ... you told Mr. Page you wanted to have him on a call with NRS... A. Yes. Q. Did you tell him why you wanted him on the call? A. I told him I wanted him on the call just so they could ask questions of him if I wasn't able to answer them on previous calls if they were asking me questions."

[41] "A. And that you know if there was any question that Ed either had or NRS that they wanted to talk, if NRS wanted further clarification on anything that I did not provide to them because all along I would tell them that this is my understanding, you know, and Ed had talked about being a consultant down the line at some point after the sale of the firm, you know, at what point does that language need to go in, what exactly does that mean for us as disclosure, so Ed would have explained kind of what his thought process was. Q. What did Ed say? A. I don't specifically recall what he said. I know it was talked about after the sale of the firm of him becoming a consultant. Q. When did you first learn of that? A. He had mentioned that in just some general previous conversations. Q. Earlier in 2009? A. 2009 ... yes. MS DIBELLO: So when you say it was generally talked about, are you talking about on the telephone call? THE WITNESS: Generally conversations between him and I and maybe with Joe Arena in the room at certain points, but then on the NRS call he had said in the future after the acquisition is done that he would stay on as a consultant maybe in future years, I'm assuming he was referring when he wasn't 51 percent owner as long as he was able to still be a consultant."

compensation scenarios, including the earnest money deposits that Mr. Page anticipated receiving from United. (Burke Tr. at 145:10–20.)[42]

35. Guided by NRS's confirmation that the amended Form ADV appropriately disclosed the contemplated financial relationship between Respondents and United, both Mr. Page and Mr. Burke expressed their acceptance of the proposed ADV language. (Burke Tr. at 136:10–16,[43] 138:7–25,[44] 146:15–24.)[45]

36. Mr. Burke signed and filed the Form ADV prepared by NRS, dated July 31, 2009. (Resp. Ex. 112; Burke Tr. at 30:1–31:5.)[46]

37. Respondents disclosed that, when a PageOne client invested in one of the United funds, PageOne would "typically receive, on an annual basis, a referral fee of between 7.0% and 0.75% of the amount invested by the client" in the funds. (Resp. Ex. 112.)

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[42] "A. I don't know if he [Mr. Page] specifically did, but I reiterated the statement on the call. Q. What did you say? A. That when I was going over the fee schedule that the 7 percent was representative of the down payments of the firm ... I said that in a general statement summarizing what we were talking about. Q. You remember saying that on that call? A. Yes."

[43] "A. And then, I don't know how the meeting was setup, but he [Mr. Page] came into the office, we had a conversation, knowing he was going to see Dr. Stier, I said this is the language they came up with, we went over the fee schedule, I told him the descriptions came directly from the PPMs and he said that he was comfortable if NRS came up with this language that he was fine to go ahead."

[44] "A. I called NRS and said that the language looked good and that we would make it an active part of our new ADV. Q. ...When was that conversation? A. May of 2009. Q. And who was on the phone call? A. Probably just me. Ed wouldn't have been on that call. Q. Who did you speak with? A. Assuming Mike [Xiafaras]. Q. How long was that call? A. I can't imagine it was a very long phone call...Less than 10 minutes. Q. What did you say to the NRS person and what did that person say to you? A. I said that from our end the language looked okay, if anything changed we would contact, but it seemed to be as good as a description as at that point would be put into it..."

[45] "A. I think just agreeing that the language that they [NRS] had come up with was sufficient and that I think what they had done was, you know, the final version that we were going to use. Q. Did you say that or did Mr. Page say that? A. I probably said we're all in agreement here, this is the language that everybody's comfortable with. Q. Did Mr. Page express any disagreement with the language? A. Not that I recall, no."

[46] "Q. You said Mr. Page wasn't physically signing the ADV, why not? A. It's just not something that he would even know how to do... Q. ...When did you starting signing the ADVs electronically? A. I would assume it had to have been in 2004. Q. What's the basis for that assumption? ... A. Because that's when Jim Reale and Warren Duff had left the firm and they were the ones that were doing it up until that point. Q. So how did you know that going forward it would be your job to electronically sign the ADV? A. ... I remember having a meeting in Jim Reale's office and Warren had indicated that the firm was using NRS as an outside consulting firm for compliance and that because nobody else was left they just assumed that I would be the person to take that part over."

38. PageOne clients who invested in the Private Funds—an investment which by the terms of the PPMs had a mandatory lock-up period of 7 years—made that investment on actual notice that Mr. Page could receive outright cash payments from United of up to 49% of the amount the client invested. (Resp. Exs. 112, 119, 207, 208.)

39. PageOne's Form ADV was again revised in April 2010 and June 2010, without making any changes to the disclosures regarding the Private Funds. (Resp. Exs. 159, 160.)

40. In the summer of 2010, Mr. Page told Mr. Burke that he was considering charging advisory fees with respect to the United funds and authorized Mr. Burke to engage NRS to draft an appropriate amendment to PageOne's Form ADV. (Div. Ex. 166 at 79:25–80:3,[47] Burke Tr. at 196:11–197:4.)[48]

41. Mr. Page understood that Mr. Burke would work with NRS to amend PageOne's Form ADV. (Burke Tr. at 196:20–24.)[49]

42. On September 14, 2010, Mr. Burke reached out to Mr. Xifaras requesting advice with respect to the contemplated Form ADV amendment, saying "[w]e will now be charging 1% annually going forward to new clients . . . I also need to list that Ed page will be compensated as a consultant to the United Group. Was not sure how to word it. Can you help me with this?" (Resp. Ex. at 97.)

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[47] "So, we had redacted seven percent and instead we are moving toward our usual and customary, which would have been normally two percent, but, we herein outlined it as one percent."

[48] "A. I contacted NRS that Ed was seriously considering charging clients directly and advisory fee. Q. ...When was that?... A. Summer of 2010. Q. Why did you contact NRS? A. Because I was again concerned that Ed was moving in the direction of charging the client an advisory fee. Q. Did you tell Mr. Page that you were going to reach out to NRS? A. Yes. Q. What did he say? A. He said that's fine ... I contacted NRS and explained that the firm was going to start charging advisory fees and again, is that something that from an ethical standpoint or legal standpoint are we able to do that."

[49] "Q. Did you tell Mr. Page that you were going to reach out to NRS? A. Yes. Q. What did he say? A. He said that's fine."

43. On September 19, 2010, Mr. Xifaras responded with specific Form ADV language related to the Private Funds and Mr. Page's role as a "consultant" to United. (Resp. Ex. 97.)

44. Mr. Burke reviewed, signed, and filed the amended Form ADV, dated September 14, 2010, adopting the language proposed by NRS. (Resp. Ex. 34; Burke Tr. at 30:1–31:5.)

45. Although this amended Form ADV deleted the 7.0% annual "referral fee" disclosure, it continued to state in the "Additional Compensation" section that "PageOne Financial will act as a solicitor for certain private investment funds, and for doing so will receive a referral fee." (Resp. Ex. 34.)

46. On March 1, 2011, PageOne amended its Form ADV to remove all references to United and the Private Funds. (Resp. Ex. 28.)

47. The Investment Management Agreement distributed to clients after the Form ADV was amended continued to state "Edgar R. Page, Chairman and Chief Financial Officer of PageOne Financial, is also employed as a consultant to The United Group of Companies, Inc. ('UGOC'). UGOC is a real estate investment and development firm. Mr. Page is compensated for the consulting services he provides to UGOC." (Resp. Ex. 199.)

48. Respondents ceased negotiating with United and recommending investments in the Private Funds in advance of any enforcement action by the Division. (March 10 Order ¶¶ 5, 12; Div. Ex. 166 at 132:12–134:9.)[50]

[50] "Q. ...You said Page One raised concerns aforementioned, not UGOC. So, that means that this was your issue, not theirs. A. Correct. Q. ...at some point you made a decision you weren't going to proceed with the sale of stock in PageOne? A. There were a number of reasons. It had taken too long to close ... We're probably talking five years now. I have sent Walter some e-mails that I'm very disappointed with the timeframe. The firm has grown from 90 to 240-plus million, the REIT is on the table ... Mr. DelGiudice...does not any longer want to be any part of Millennium broker-dealer. So, he backs out on ever referring PageOne to anyone. He wants to sever his relationship with Walter because he doesn't want to, in any way, be brought into anything that he feels he can't control...And Mr. Uccellini comes up with a REIT and the REIT seemed to be a viable idea. We never launched

49. The disclosure infractions alleged in the OIP were not the result of any conduct intended to harm or injure anyone, but rather Mr. Page's improper reliance on others to carry out his compliance duties and Mr. Page's personal inattention to corporate compliance functions for which he bears responsibility. (Hearing Tr. at 172:16–21;[51] 191:6–24.)[52]

50. Mr. Page accepts full responsibility for the disclosure violations alleged in the OIP. (Id.)[53]

51. Mr. Page has expressed his deep remorse and regret for the disclosure infractions. (Hearing Tr. at 190:22–191:4.)[54]

**No Harm to PageOne Clients**

52. The United Income Fund—in which the vast majority of Respondents' clients invested—has returned to investors the dividends described in the Income Fund PPM and, in

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it...We had numerous board meetings about looking at every other type of REIT and how we would guide ours and govern ours and how we would fold things into it and that would be the end of it. I would keep my business – I didn't want any part of Mr. Uccellini in it at that point. What for?"

[51] "A. I accept full responsibility as a chief compliance officer for not having had a greater hand in this and understanding it greater, and, yes, I take full responsibility for not having had whatever language I should have had in here better."

[52] "...I suspect if I have made a great error here, and I have, I've made an error in wanting people to think so much for me for what I did. I delegated responsibility and that was a mistake. I believe you should let people who work for you be all they can be and not try to exalt them, but unfortunately I should have paid more attention to the compliance end and I should have had a greater role in the chief compliance officer's role. I just assumed that as many times as it was entered into and redacted, it was accurate, but I was wrong. I never – I can just assure the Commission I will never look at another PPM as long as I live, and I will never step into the shoes of a compliance officer, just not what I do. I tried de fact to do it and I felt I had the right stuff."

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[54] "So the love of my life is not to gather assets, it is to protect them, and the advisors have made me feel so remorseful, if I can be honest with you, because they have made it a point to tell me how important I was to them and what it is going to be like if nobody is out there watching the clients."

2014, returned ten percent of principal invested to investors. (Resp. Ex. 207 at 16;[55] Hearing Tr. at 174:15–21.)[56]

53. The United Equity Fund—in which only a very small minority of Respondents' clients invested, and only at their own insistence—is a long-term investment that was designed to return funds to investors at maturity, which it has yet to reach. (Resp. Ex. 118 at 19;[57] Hearing Tr. at 175:5–176:3.)[58]

**Respondents' Financial Condition**

54. The monies received by Mr. Page from United were deposits against the proposed transaction, which were secured by promissory notes with commercially reasonable terms and market rates of interest. (Resp. Exs. 121–141.)

55. The earnest money deposits received by Mr. Page from United are subject to repayment, together with accrued interest, at a rate that exceeds the IRS penalty rate. (Resp. Ex. 156.)[59]

56. Prior to the April 20, 2015 hearing, Mr. Page engaged forensic accountants to review his and PageOne's financials, and also fill in Statements of Financial Condition provided

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[55] "one hundred percent (100%) to such Member until such Member has receive (or been deemed to receive) a return of such Member's capital contribution (net of amounts previously returned) plus a return sufficient to cause such Member to have realized a 9% internal rate of return ("IRR")

[56] "Q. ...Now, the equity fund and the income fund, they haven't performed well, have they? A. The income fund, sir, for the matter of record from its inception on the day I gave it has made a 9 percent annual dividend quarterly paid, never missed, and in 2014 has paid 10 percent of its principal back."

[57] "The investment period for the Fund (the "Investment Period) will commence on the Initial Closing Date and end on the fifth anniversary of the Initial Closing Date or, if earlier, the dissolution of the Fund."

[58] "Q. ...Now, the equity fund, that hasn't returned equity to investors? A. The equity fund was never to return dividend. It was to construct the project ... Mr. Uccellini in the wake of the equity fund not delivering a dividend had given Mr. Ira St[i]er a personal promissory note and guarantee that he would pay him the greater of the 9 percent or the greater of the rate of return the equity fund gave...I very rarely would ever recommend the equity fund. I wanted the income fund for the people who needed the income during the crash. Q. But a number of your clients invested in the equity fund, correct? A. At their insistence, yes."

[59] "...the total sum of which remains due and owing to United in the amount of $3,684,831.32, comprising principal in the amount of $2,751,345 and interest in the amount of $933,486.32."

by the Division with respect to both Respondents that were later admitted at the hearing. (Resp. Exs. 214, 215; Hearing Tr. at 194:13–20.)[60]

57. Mr. Page's accountants determined that as of March 31, 2015, he had total assets of [redacted] and total liabilities of [redacted], giving Mr. Page a net liability of [redacted]. (Resp. Ex. 214.)

58. Mr. Page's Statement of Financial Condition shows that his expenses currently exceed his income. (Resp. Ex. 214.)

59. Mr. Page testified that he spent essentially all of the $2.7 million that he had received in earnest money deposits from United towards, among other things, supporting his ex-wife, putting his children through college, and helping his daughter raise his two grandchildren. (Hearing Tr. at 195:9–196:16.)[61]

60. Mr. Page would be rendered destitute if he were barred from the industry and not permitted to continue his profession as an investment advisor. (Hearing Tr. at 198:2–10.)[62]

61. It would be impossible for Mr. Page to ever satisfy financial penalties in the realm of $6 million. (Hearing Tr. at 198:11–19.)[63]

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[60] Q. Mr. Page, you have prepared financial statements for both yourself and PageOne. Did anyone assist you in preparing those documents? A. At the cost of about $40,000, I hired and contracted SaxBST, which is a nationwide firm with hundreds of employees, forensic accountants . . ."

[61] "A. ...I spent my entire life paying for the firm and bringing it up...I also had to pay the [redacted] lawyers, [redacted]. I raised additional salaries of different personnel and I paid my [redacted] as well and bought [redacted]. Q. When you were just speaking about the money you received from United, we heard about the 2.7 million. Is that what you were speaking about? A. Yes...So I would have taken the money from that and paid my normal operating, all of the aforementioned expenses..."

[62] "A. On my life, I would be destitute. I have no money saved. I'm 63 years of age. I still try to help my [redacted] as I can. I would have no way to earn any monies because this is all I know. This was my gift I felt, since I was – I felt called to it. So I would just be destitute. I would have now ay to pay it over a period of time and I wouldn't know what I would do."

[63] "Q. The Division has also asked for disgorgement prejudgment interest and fines for a little less than 6 million dollars. I can give you the exact amount, but it is pretty close to 6 million. What would be the impact of an order like that on your life? A. It would be impossible to ever see it in my lifetime."

62. A fine of $100,000 would be a significant monetary penalty for Mr. Page. (Hearing Tr. at 199:21–200:4.)[64]

## PROPOSED CONCLUSIONS OF LAW

1. The Commission has the authority to impose civil monetary penalties in cease-and-desist proceedings. Advisers Act Section 203(i).

2. Civil monetary penalties are assessed following a three-tiered approach, with the third tier being the highest penalty level. 15 U.S.C. § 80b-3(i).

3. A first-tier penalty may be imposed against any person who has willfully (1) violated, or aided and abetted violations of, certain provisions of the securities laws or rules or regulations; or (2) made or caused to be made a materially false or misleading statement, or omitted any material fact, in a report required to be filed with the Commission, but only to the extent that such penalties are in the public interest. 15 U.S.C. § 80b-3(i)(1).

4. To determine whether a penalty is in the public interest, this Court must consider: (1) whether the violation involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; (2) the harm caused to others; (3) any unjust enrichment, taking into account restitution made; (4) prior violations; (5) deterrence; and (6) such other matters as justice may require. 15 U.S.C. § 80b-3(i)(3).

5. A second-tier penalty is permitted only if the violations involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement. 15 U.S.C. § 80b-3(i)(2)(B).

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[64] "Would that [$100,000] be a meaningful monetary sanction to you? A. It would be something that I would definitely pay over a period of time if given the time to pay and I would absolutely struggle with it as my financials display. I've never in my life had $100,000 in my name in my savings account ever."

6. A maximum third-tier penalty is permitted only if (1) the violations involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement and (2) such act or omission directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons or resulted in substantial pecuniary gain to the person who committed the act or omission. 15 U.S.C. § 80b-3(i)(2)(C).

7. Scienter is required to establish a violation of Section 206(1) of the Advisers Act; a showing of recklessness is adequate. *SEC v. Steadman*, 967 F.2d 636, 641 & n.5 (D.C. Cir. 1992).

8. Scienter is not required to establish a violation of Section 206(2) of the Advisers Act; a showing of negligence is adequate. *See SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 195 (1963); *see also SEC v. Steadman*, 967 F.2d at 641 & n.5; *Steadman v. SEC*, 603 F.2d 1126, 1132–34 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981).

9. Scienter is not required to establish a violation of Section 207 of the Advisers Act; a showing of negligence is adequate. *Vernazza v. SEC*, 327 F.3d 851, 860 (9th Cir. 2003); *In the Matter of David Henry Disraeli & Lifeplan Associates, Inc.*, Admin. Proc. File No. 3-12288, Opinion of the Commission (Dec. 21, 2007).

10. Scienter of a legal entity is imputed from the scienter of its employees or agents. *In Re S.W. Hatfield, CPA*, Admin. Pro. No. 3-15012 (Dec. 5, 2014); *Disraeli*, 2007 WL 4481515, at *5 n.25 ("The scienter of a corporation's officers and directors establishes the scienter of the corporation for purposes of the antifraud provisions." (internal quotation marks and citation omitted)).

11. The scienter required for aiding and abetting liability is based upon the scienter required to commit the underlying primary violation. *See IIT v. Cornfeld*, 619 F.2d 909, 923–925 (2d Cir. 1980); *Ross v. Bolton*, 904 F.2d 819, 824 (2d Cir. 1990).

12. "A willful violation of the securities laws means merely that the person charged with the duty knows what he is doing. . . . There is no requirement that the actor also be aware that he is violating one of the Rules or Acts." *In re Blackrock Advisors, LLC, et al.*, Admin Pro. No. 3-16501 (Apr. 20, 2015) (internal quotations marks and citations omitted). "[U]se of the word willful does not reflect a finding that [a respondent] acted with the intention to violate the law or knowledge that he was doing so. As used in the governing provisions of law, willfully means only that the actor intentionally committed the act which constitutes the violation. . . ." *In re Fifth Third Bancorp, et al.*, Admin Pro. No. 3-15635 (Dec. 4, 2013) (internal quotation marks and citations omitted).

13. Reckless conduct is conduct which is "'highly unreasonable' and . . . represents 'an extreme departure from the standards of ordinary care.'" *Rolf v. Blyth, Eastman Dillon & Co.*, 570 F.2d 38, 47 (2d Cir. 1978) (quoting *Sanders v. John Nuveen & Co.*, 554 F.2d 790, 793 (7th Cir. 1977)).

14. Negligence has been defined as follows: "The omission to do something which a reasonable man, guided by those ordinary considerations which ordinarily regulate human affairs, would do, or the doing of something which a reasonable and prudent man would not do. . . . The term refers only to that legal delinquency which results whenever a man fails to exhibit the care which he ought to exhibit, whether it be slight, ordinary, or great. It is characterized chiefly by inadvertence, thoughtlessness, inattention, and the like." *In re Edward T. Jones & Co.*, Admin. Pro. No. 3-9181 (April 15, 1998).

15. The risk of client confusion is a legitimate factor courts have recognized in adjudging disclosure violations. *See Flamm v. Eberstadt*, 814 F.2d 1169, 1176 (7th Cir. 1987) ("silence during negotiations may be beneficial for investors").

16. Disgorgement of ill-gotten gains pursuant to Advisers Act Sections 203(k)(5) and (j) "is an equitable remedy designed to deprive a wrongdoer of his unjust enrichment and to deter others from violating the securities laws." *In re Montford & Co.*, Advisers Act Release No. 3829, 2014 SEC LEXIS 1529, *94 (May 2, 2014) (quoting *SEC v. First City Fin. Corp.*, 890 F.2d 1215, 1230 (D.C. Cir. 1989)); *SEC v. Whittemore*, 659 F.3d 1, 7 (D.C. Cir. 2011).

17. The Division bears the burden of showing that Respondents profited from ill-gotten gains, and that there exists a "causal nexus" between the amount to be disgorged and the alleged violation. *SEC v. Todd*, No. 03 CV2230, 2007 WL 1574756, at *18 (S.D. Cal. May 30, 2007).

18. Because the purpose of disgorgement is to prevent unjust enrichment, the amount of disgorgement must be "approximately equal to the unjust enrichment." *Hateley v. SEC*, 8 F.3d 653, 656 (9th Cir. 1993) (holding that only commissions that were kept by defendant were subject to disgorgement); *Todd*, 2007 WL 1574756, at *18 (holding that "[d]isgorgement is intended to force a defendant to surrender his unjust enrichment" and that the "SEC therefore must be able to show unjust enrichment"); *SEC v. Unioil*, 951 F.2d 1304, 1306 (D.C. Cir. 1992) (noting that "disgorgement primarily serves to prevent unjust enrichment . . . and may not be used punitively.").

19. Principles of equity guide the determination of the proper amount to be disgorged. *SEC v. Church Extension of the Church of God, Inc.*, 429 F. Supp. 2d 1045, 1049–50 (S.D. Ind.

2005) (noting that disgorgement is an equitable remedy and applying principles of equity to reduce the amount to be disgorged).

20. "The purpose of disgorgement is to deprive a person of 'ill-gotten gains' and prevent unjust enrichment." *Hateley*, 8 F.3d at 655; *SEC v. Breed*, No. 01 Civ. 7798, 2004 WL 909170 (S.D.N.Y. April 29, 2004) (noting that the "primary purpose of disgorgement [to the SEC] is to force 'a defendant to give up the amount by which he was unjustly enriched'"); *SEC v. McCaskey*, No. 98 Civ. 6153, 2001 WL 1029053, at *7 (Sept. 6, 2001) (holding that "[t]he proper measure of disgorgement is the amount of the wrongdoer's unjust enrichment").

21. A proper motive has been held to be a "mitigating factor" in reducing the amount to be disgorged. *See SEC v. Church Extension of the Church of God, Inc.*, 429 F. Supp. 2d 1045, 1050 (S.D. Ind. 2005).

22. Generally, disgorgement has been applied only where there is also a finding of intent to defraud. *See, e.g., SEC v. Martino*, 255 F. Supp. 2d 268, 288-89 (S.D.N.Y. 2003) (requiring an unregistered broker-dealer, described as a "recidivist securities law violator," to disgorge profits obtained through a fraudulent scheme to manipulate stock price); *SEC v. Thorn*, 2:01 CV 290, 2002 WL 31412439 (S.D. Ohio Sept. 30, 2002) (requiring disgorgement of ill-gotten gains where a broker-dealer failed to register and engaged in a series of fraudulent investment schemes).

23. Any amount to be disgorged should be reduced by a sum equal to the legitimate business expenses Respondents paid using such funds. *See SEC v. Thomas James Assocs. Inc.*, 738 F. Supp. 88, 92 (W.D.N.Y. 1990) (offsetting gross profits with business expenses, including, for example, "commissions, telephone charges, underwriting expenses, and a proportionate share of overhead"); *Litton Indus., Inc. v. Lehman Bros. Kuhn Loeb Inc.*, 734 F. Supp. 1071, 1077

(S.D.N.Y. 1990) (holding that to "require disgorgement of all fees and commissions without permitting a reduction for associate expenses and costs constitutes a penalty assessment and goes beyond the restitutionary purpose of the disgorgement.").

24. An industry bar may be imposed only if the respondent was associated with an investment adviser at the time of the alleged misconduct; such sanction is in the public interest; and the respondent (1) has willfully made or caused to be made a materially false or misleading statement, or omitted any material fact, in a report required to be filed with the Commission; or (2) has willfully violated, or willfully aided and abetted violations of, certain provisions of the securities laws. Advisers Act Section 203(f); *In re John W. Lawton*, Advisers Act Release No. 3513, 2012 SEC LEXIS 3855, at *25 n.30, *38 (Dec. 13, 2012).

25. In determining whether a bar is in the public interest, the six factors outlined in *Steadman v. SEC* must be considered: (i) the egregiousness of Respondents' actions; (ii) the isolated or recurrent nature of the infraction; (iii) the degree of scienter involved; (iv) the sincerity of Respondents' assurances against future violations; (v) Respondents' recognition of the wrongful nature of their conduct; and (vi) the likelihood that Respondents' occupation will present opportunities for future violations. 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981).

26. "[T]he Commission may, in its discretion, or the hearing Officer may, in his or her discretion, consider evidence concerning ability to pay in determining whether disgorgement, interest or a penalty is in the public interest." SEC Rule of Practice 630.