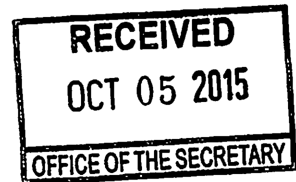
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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-16037

In the Matter of

EDGAR R. PAGE and
PAGEONE FINANCIAL INC.,

Respondents.

DIVISION OF ENFORCEMENT'S MEMORANDUM OF LAW IN OPPOSITION TO RESPONDENTS' APPEAL AND IN SUPPORT OF THE DIVISION'S CROSS-APPEAL FROM INITIAL DECISION NO. 822

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October 2, 2015

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Pursuant to the Securities and Exchange Commission's ("Commission") Order Granting Review and Scheduling Briefs, dated August 5, 2015, the Division of Enforcement ("Division") respectfully submits this memorandum of law (1) in opposition to Respondents Edgar R. Page's ("Page") and PageOne Financial, Inc.'s ("PageOne") appeal of Initial Decision No. 822; and (2) in support of the Division's cross-appeal.

PRELIMINARY STATEMENT

Respondents have admitted—for purposes of this proceeding—that for approximately two-and-a-half years they repeatedly violated Sections 206(1), 206(2), and 207 of the Investment Advisers Act of 1940 ("Advisers Act").[1] They did so by failing to disclose—and by making false disclosures concerning—serious conflicts of interest to their advisory clients in connection with recommending investments in three real estate investment funds managed by The United Group of Companies, Inc. ("UGOC" or the "Fund Manager") and UGOC's owner and operator, Walter Uccellini ("Uccellini").

Specifically, from early 2009 through at least September 2011, Respondents recommended that their clients invest in the DCG/UGOC Equity Fund, LLC ("Equity Fund"), the DCG/UGOC Income Fund, LLC ("Income Fund I"), and the United Group Income Fund II, LLC (collectively, the "UGOC Funds" or the "Private Funds"). However—at the time Respondents were recommending the UGOC Funds—Respondents failed to tell their clients, among other things, that:

- Uccellini and UGOC were in the process of buying at least 49% of PageOne from Page for nearly $3 million;

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[1] As a result of Respondents' fraud, on March 10, 2105, the Commission—acting on consent—censured Respondents and ordered them to cease-and-desist from future violations of Sections 206(1), 206(2), and 207 of the Advisers Act. See Rel. No. IA-4044 (S.E.C. Mar. 10, 2015).

- UGOC would not complete the acquisition unless, and until, Respondents convinced their own clients to invest approximately $20 million into the UGOC Funds; and

- Because UGOC and Uccellini had limited liquidity, PageOne clients' investments in the UGOC Funds were used to make acquisition payments to Respondents.

The acquisition and its specific terms presented Respondents with stark (and obvious) conflicts of interest. Nonetheless, Respondents made the conscious choice to hide those conflicts from their advisory clients in direct contravention of their fiduciary duties. At Respondents' urging—and ignorant of these conflicts—their clients invested approximately $15 million into the UGOC Funds, much of which now appears to have been lost. In return, UGOC and Uccellini paid Respondents over $2.7 million.

After a hearing on relief, the ALJ ordered Respondents to disgorge approximately $2.1 million (plus prejudgment interest). The ALJ also determined that the public interest required the revocation of PageOne's investment adviser registration, and the imposition of collateral associational bars on Page for five years.[2] Respondents now argue that—despite the millions they received in exchange for their conscious decision to hide serious and obvious conflicts from their clients, and their clients' resulting losses—they should receive no sanction save a censure and cease-and-desist order. Respondents' arguments are contradicted by Commission precedent, which holds that bars and disgorgement are necessary in such cases of fraud. This outcome is also mandated by the evidence, which demonstrates that Respondents made a conscious decision to hide the truth because they

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[2] Despite determining that Respondents acted with "extreme recklessness" (Initial Decision at 6), the ALJ refrained from imposing any civil penalty. (Id. at 15.)

were concerned that the knowledge of such conflicts would make their clients "extremely nervous" and then instructed their subordinates to craft disclosure that hid those conflicts.

While Respondents' assertions of error are meritless, the ALJ committed error in imposing collateral bars that automatically expire after five years and in failing to impose any investment company-related prohibitions. Advisers Act Section 203(f) allows an ALJ to impose either (1) a suspension of up to twelve months, or (2) a permanent bar, but not a bar that expires automatically after five years. Allowing such a bar is contrary to the plain language of the statute, as well as decades of court and Commission authority, and would serve to strip the Commission of its ability to allow only those individuals that have proven their willingness to abide by high standards and submit to appropriate supervision to reenter the securities industry. The Commission should, therefore, reverse the ALJ and impose on Page a permanent bar with a right to reapply after five years. In addition—because the ALJ correctly found that barring Page is in the public interest—the Commission should prohibit Page from serving or acting in the investment company-related capacities enumerated in Section 9(b) of the Investment Company Act of 1940 ("Investment Company Act").

PROCEDURAL BACKGROUND

On August 16, 2014, the Commission entered an order instituting administrative and cease-and-desist proceedings against Respondents alleging violations of Advisers Act Sections 206(1), 206(2), and 207.

On January 31, 2015, Respondents agreed to a bifurcated settlement whereby they acknowledged liability for violating the charged Advisers Act provisions and a hearing to determine relief. (See Joint Motion to Stay Proceeding Pending Commission

Consideration of Offer of Settlement, Feb. 2, 2015.) On March 10, 2015, the Commission entered an Order Making Findings, Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Sections 203(e), 203(f) and 203(k) of the Investment Advisers Act of 1940 and Section 9(b) of the Investment Company Act of 1940, and Ordering Continuation of Proceedings ("Consent Order").[3] The Consent Order found that: Page and PageOne violated, and Page aided and abetted violations of, Advisers Act Sections 206(1), 206(2), and 207. (Consent Order, ¶¶ 40-42.) The Commission also entered cease-and-desist orders and censures against Respondents and ordered additional proceedings before the ALJ to determine what, if any, other remedies were appropriate against Respondents in the public interest, pursuant to both Advisers Act Section 203 and Investment Company Act Section 9. (Id., ¶¶ IV-VI.)

The ALJ held a hearing on the limited question of appropriate additional remedies on April 20, 2015 ("Hearing"). (Initial Decision at 2.) On June 25, 2015, the ALJ issued an Initial Decision:

(1) Barring Page from associating with an investment adviser, broker, dealer, municipal securities dealer, municipal adviser, transfer agent, or nationally recognized statistical rating organization "for a period of five (5) years from the date this Initial Decision becomes final," pursuant to Advisers Act Section 203(f) and Investment Company Act Section 9(b);

(2) Revoking PageOne's registration as an investment adviser pursuant to Advisers Act Section 203(e); and

(3) Ordering Page and PageOne jointly-and-severally liable for disgorgement of $2,184,859.30 plus prejudgment interest thereon.

(Id. at 15.) In the Initial Decision, the ALJ found that

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[3] Respondents consented to the entry of the Consent Order and, for purposes of determining additional relief, agreed that the Consent Order "shall be accepted and deemed true." (Consent Order, ¶ IV.)

> (1) Respondents' violations involved fraud caused by recklessness; (2) Respondents' clients are likely to have substantial losses in connection with their investment in the Private Funds; (3) Respondents were unjustly enriched with over $2 million as a result of advising their clients to invest in the Private Funds; and (4) Page was disciplined by a previous employer for transacting business in general securities without a Series 7 license.

(Initial Decision at 14.) Nonetheless, the ALJ did not impose a civil penalty because (1) "[t]he interest of deterrence is sufficiently addressed by a cease-and-desist order and censure"; and (2) Respondents lacked "a meaningful ability to pay." (Initial Decision at 15.)

SUMMARY[4]

PageOne was a registered investment adviser, which Page owned and controlled. (Initial Decision at 4.)

I. The Conflicts of Interest

Respondents hid the following conflicts from their advisory clients, while recommending that their clients invest in the UGOC Funds.

First, the Fund Manager was acquiring at least 49% of PageOne from Page for at least $2.7 million. (Consent Order, ¶ 2(a).) Second, from early 2009 through September 2011, the Fund Manager paid Page—directly or indirectly—approximately $2.7 million in

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[4] References herein to (1) "Div. Ex." mean the Division's exhibits admitted into evidence at the Hearing; (2) "Resp. Br." mean the Memorandum of Law in Support of Petition for Review of Initial Decision of Respondents Edgar R. Page and PageOne Financial, Inc., Sept. 4, 2015; (3) "Resp. Pre-Hearing Br." mean the Pre-Remedies Hearing Brief of Edgar R. Page and PageOne Financial, Inc., Apr. 17, 2015; (4) "Div. Post-Hearing Br." mean the Division's Post-Hearing Brief Seeking Relief Against Respondents, May 18, 2015; (5) "Resp. Remedies Br." mean Post-Remedies Hearing Brief of Edgar R. Page and PageOne Financial, Inc., May 18, 2015; and (6) "Hearing Tr." mean the transcript of the Hearing, Apr. 20, 2015.

acquisition payments. (Consent Order, ¶ 13; Initial Decision at 4.) Third, Page agreed that the Fund Manager would not complete its acquisition until Page convinced his advisory clients to invest approximately $20 million into the Private Funds. (Consent Order, ¶ 10(b); Initial Decision at 4.) Fourth, the Fund Manager did not have sufficient funds to pay the acquisition price to Page without these investments from Page's advisory clients. (Consent Order, ¶ 14; Initial Decision at 4). The Fund Manager was, therefore, using Respondents' clients' investments to make at least some of the acquisition payments to Page. The Fund Manager did not—as Respondents understood—otherwise have sufficient liquidity to complete the acquisition of PageOne. (Consent Order, ¶ 15; Initial Decision at 4). In other words, the Fund Manager needed to receive investments from Respondents' clients to free up cash to make the acquisition down payments. (Consent Order, ¶ 14.) Sixth, the Fund Manager's acquisition payments were memorialized by promissory notes. These notes obligated Page to repay the $2.7 million in the event that the acquisition did not close for any reason, including if Respondents were unable to raise the promised $20 million from their clients for the Private Funds. (See Commission Order, ¶¶ 16; 22-23; 36.)

II. It Was Page's Job to Tell Clients About All Conflicts of Interest.

At all relevant times, Page was responsible for ensuring that PageOne's disclosures were accurate, including the company's Forms ADV. (Hearing Tr. at 56:2-20.) He was also the company's chief point of contact for clients' questions concerning disclosures. (Div. Ex. 14, Schedule F at Page 1.) Page understood that PageOne's Form ADV was a disclosure document that, among other things, "is to state any types of conflicts of interest," in order to, in part, allow clients "to be on a fair footing before making an investment." (Hearing Tr. at 61:21-62:7.) Page further understood that PageOne's Forms ADV needed to be accurate. (Hearing Tr. at 62:8-10.)

It was Page's duty—as the Chief Compliance Officer—to make sure that PageOne's clients were aware of any conflicts of interest. (Hearing Tr. at 56:15-20; 60:23-61:5.) That responsibility was explicitly set out in PageOne's Investment Adviser Policies and Procedures, which Page read and understood. (Div. Ex. 154 at SEC-PageOne-E-95025 (noting that PageOne must disclose conflicts and that Page, as CCO, was responsible for administering that policy); Hearing Tr. at 58:7-14, 58:20-59:15.) Page had to approve any changes to PageOne's Forms ADV. (Hearing Tr. at 62:16-63:9; 63:19-23.) Page reviewed the firm's Forms ADV when amendments were made. (Hearing Tr. 63:10-12.) Page understood that he was responsible for ensuring that PageOne's Forms ADV accurately disclosed "any actual and potential conflicts of interest." (Hearing Tr. at 66:2-13, 66:20-24.)

III. Respondents Made a Conscious Decision to Hide the UGOC Conflicts.

Respondents' refusal to tell their clients about these conflicts was no oversight. Page "refused" to disclose the truth because, as he testified, "It's too dangerous. It would cause thousands of clients to get extremely nervous if I was selling my firm." (Consent Order, ¶ 17.) Page determined to hide the truth because he

> was concerned that the true nature of his interest in the Fund Manager—and, in turn, in the Private Funds he was recommending—would be important information for investors.

(Id.) Page also told Sean Burke, his Assistant Compliance Officer, "that he did not want to disclose the true nature of the arrangement with the Fund Manager." (Id., ¶ 25.)

Moreover, Respondents failed to tell clients the truth about their arrangement with the Fund Manager and Private Funds, "presumably because the clients would no longer want to do business with Respondents" if the conflicts were known. (Initial Decision at 5.)

As a result, Respondents either told their clients nothing about their relationship to the Fund Manager and the Private Funds, or made materially false and misleading statements about that relationship. (Consent Order, ¶¶ 18-35.)

A. March to July 31, 2009: No Disclosure

From March through July 2009, Respondents failed to make any disclosure about their relationship to the Fund Manager. (Consent Order, ¶ 18.) During this time: (1) Respondents' clients invested over $4 million in the UGOC Funds; and (2) the Fund Manager paid Respondents approximately $300,000. (Id., ¶ 18.)

B. False Disclosures: July 31, 2009 to September 14, 2010

On July 31, 2009, PageOne revised its Form ADV, Part II to include the following disclosure concerning the Fund Manager and the UGOC Funds:

> *Fee Schedule*: PageOne Financial does not directly charge the client a fee for this service. PageOne Financial is compensated by a referral fee paid by the [Fund] Manager of the Private Fund(s) in which its clients invest. The management and other fees the client pays to the Private Funds are not increased as a result of Registrant's referral of clients to the Private Funds. PageOne Financial will 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 applicable Private Fund(s).

(Consent Order, ¶¶ 20-21.) This disclosure was false and misleading for a number of reasons. First, UGOC's payments to Respondents were simply not referral fees; rather they were acquisition down payments. (Consent Order, ¶ 22.) Second, Respondents did not tell their clients that they had with UGOC to get their clients to invest $20 million in the UGOC Funds as part of the acquisition. Third, Respondents did not tell clients that—unless the acquisition actually closed—Page may be responsible to repay all the down payments UGOC paid him. (Consent Order, ¶¶ 22, 33.) Respondents, thus, had an

undisclosed interest in recommending the UGOC Funds—i.e., to ensure that UGOC was able to complete the acquisition—that went beyond simply determining what investments were in their clients' best interests. (Id., ¶ 23.)

Fourth, it was not true that UGOC's payments to Page were limited to "between 7.0% and 0.75% of the amount invested" on an annual basis. (Consent Order, ¶ 24.) In the approximately one year—from July 31, 2009 to September 14, 2010—that this disclosure existed, UGOC paid Respondents over $1.3 million, an amount in excess of 15% of the nearly $8 million that Respondents' clients invested in the UGOC Funds during that same time. (Id.; see also Div. Ex. 183, Exhibits A-B).)[5]

C. Respondents Knew the July 31, 2009 Form ADV Disclosure Was False.

Respondents knew that their disclosures during this period were false and misleading. As discussed above, (1) Page told his Assistant Compliance Officer that he did not want to disclose the true nature of his relationship with UGOC; and (2) Page did not want to disclose the truth because he was concerned that the truth would make his investors "extremely nervous" and would be "too dangerous." (Consent Order, ¶¶ 17, 25.) In addition, Page knew that the false disclosures were being made. He reviewed and approved the July 31, 2009 Form ADV, Part II and—as PageOne's Chief Compliance Officer, Chairman, and CEO—was responsible for the company's disclosures. (Id., ¶ 25.)

Moreover, Page admitted that the July 31, 2009 Form ADV disclosures concerning "referral fees" were not an attempt to put his clients on notice of the true conflicts.

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[5] In addition, Respondents further revised the Form ADV, Part II to state that Respondents may recommend investments in the UGOC Funds, which it referred to as "unaffiliated private funds." (Consent Order, ¶¶ 20, 29.) This latter statement was misleading because it suggested no relationship between Respondents and the Private Funds. (Id.)

(Hearing Tr. at 158:3-6.) Instead, the UGOC fee disclosures were an attempt to disclose two entirely different fees that he also wanted to charge his clients:

(a) A one-time referral fee of 7% paid by UGOC to Page; and

(b) An annual advisory fee of 0.75% paid to Page by his clients.

(Div. Ex. 166 at 72:18-73:13; see also Hearing Tr. at 158:16-19.) Page dropped the idea of charging a referral fee when he realized that in order to do so he would need to renew his lapsed securities licenses. (Hearing Tr. at 107:12-22, see also Div. Ex. 166 at 80:4-81:4.)

D. National Regulatory Services, Inc.

In July 2009, PageOne hired a compliance consulting firm, National Regulatory Services, Inc. ("NRS") to assist it in completing its Form ADV. (Hearing. Tr. at 167:10-15; see also Div. Ex. 11 at Exhibit A.) The NRS agreement made it clear that NRS was not providing any legal advice to PageOne: "NRS does not render any legal or financial advice relating to incorporation, the securities laws, or any other advice of a legal or financial nature." (Div. Ex. 11 at 1, ¶ 4.) NRS also made it clear that PageOne—not NRS—was solely responsible for ensuring that any information in the Form ADV was accurate: "Client [PageOne] will be solely responsible for the accuracy of the information and representations contained in any application document(s) or any other form(s) prepared and filed by NRS . . . ." (Div. Ex. 11 at 2, ¶ 7(b).) Page understood that he (not NRS) was solely responsible—as the Chief Compliance Officer—for the accuracy of PageOne's Forms ADV. (Hearing Tr. at 172:23-173:5.)

E. NRS' Involvement in Preparing the July 31, 2009 Form ADV

Respondents did not provide NRS with all of the facts about PageOne's relationship to UGOC. For example, on July 28, 2009, Michael Xifaras, the NRS employee working on

the Form ADV, wrote to Burke to ask, among other things, "How exactly will PageOne be compensated for the referral to the private fund?" (Div. Ex. 13 at PGNRS0000574, ¶ 4 under "Part II, Item 1D".) Xifaras would not need to ask this question if he understood the truth: that there were no referral fees, but rather acquisition payments. Burke wrote back "Let me get back to you on this one. Still need to discuss further with Ed Page." (Id.) Later that same day, Burke wrote back to Xifaras that:

> As for #4 regarding the compensation for the private funds. Mr. Page has informed me that PageOne will be paid 7% the first year by United [UGOC] and after the first year we will be paid our ongoing adviser fees as set out in the Adviser Fee Schedule . . . .

(Id. at PGNRS0000573.) Thus, PageOne—through Burke, at Page's direction—told Xifaras that PageOne would be a paid a 7% fee and an annual advisory fee, but said nothing about an acquisition. This is consistent both with (a) Page's testimony that the language that ultimately appeared in the July 31, 2009 Form ADV had nothing to do with the acquisition, but instead described the abandoned referral fee; and (b) Page's instruction to Burke that he did not want the truth disclosed.

In addition—even after the July 31, 2009 Form ADV was published—Xifaras again expressed his (mistaken) belief to Burke that PageOne was really being paid a "referral fee," not acquisition payments. On August 18, 2010—after the July 31, 2009 Form ADV had been issued—Xifaras wrote to Burke asking:

> Has the referral fee arrangement been settled yet with the Fund Manager? If so, please forward the details. Have you further refined the fee arrangement? Do you know the details of when PageOne gets paid after the referral?

(Div. Ex. 17 at PGNRS0000373.) Again, Xifaras would not have needed to refer to a (non-existent) referral fee if he had known the truth. No one at PageOne wrote back to clarify that no referral fees were being paid.

F. False Disclosures: September 14, 2010 to March 1, 2011

On September 14, 2010, PageOne again amended the disclosure in its Form ADV, Part II concerning UGOC and the UGOC Funds. (Consent Order, ¶ 26.) Respondents removed the language concerning referral fees of up to 7%. (Id., ¶ 27.) Instead, PageOne's Form ADV, Part II stated that PageOne would charge its clients a 1% annual management fee on money invested in the UGOC Funds. (Id.)

The Form ADV, Part II went on to state:

> Edgar R. Page . . . is also employed as a consultant to [UGOC]. [UGOC] is a real estate investment and development firm. Mr. Page is compensated for the consulting services he provides to [UGOC]. As disclosed above, PageOne Financial recommends private funds that are managed by [UGOC] to PageOne Financial's advisory clients for which PageOne Financial receives an advisory fee. Advisory clients are under no obligation to participate in such investments.

(Id., ¶ 27.) Page authorized the September 14th amendments and was, thus, aware of their wording. (Id., ¶¶ 6, 19) These disclosures were also false. (Id., ¶ 30.) As Page knew, he was never a consultant to UGOC, provided no consulting services, and was never compensated for such. (Id.)

During the period this disclosure was extant, UGOC paid Page approximately $460,000, equivalent to about 70% of the more-than $650,000 that Respondents' clients invested in the UGOC Funds. (Id., ¶ 28.)

G. NRS' Involvement In Preparing the September 14, 2010 Form ADV

Respondents again hired NRS to assist in preparing the Form ADV.[6] (See Div. Ex. 51.) Respondents did not tell NRS about the acquisition. Burke wrote to Xifaras on September 14, 2010:

> I need your help updating our ADV Part II . . . . In regards to our Alternative Investment Program, we will now be charging 1% annually going forward to new clients . . . . I also need to list that Ed [P]age will be compensated as a consultant to the United Group. Was not sure how to word it. Can you help me with this?

(Div. Ex. 51 at PGNRS0000213-14.) Burke does not mention the down payments (that were happening), but only the consulting fees (that were not). NRS then suggested consulting fee language nearly identical to what ultimately made its way into the September 14, 2010 Form ADV. (Id. at PGNRS0000213.) Xifaras continued to express his confusion about the arrangement with UGOC:

> This is the best I could do without further information re: Ed's arrangement with UGOC. Please let me know if there is any other information that is relevant and I can help you add it into the disclosure.

(Id.) No one wrote back to Xifaras to explain what was really going on.

H. False Disclosures: March 1, 2011 to September 29, 2011

On March 1, 2011, Respondents amended PageOne's Form ADV, Part 2A, this time removing all references to UGOC and the UGOC Funds. (Consent Order, ¶ 31.) However, Respondents' undisclosed conflicts of interest arising from the UGOC Funds did

[6] Xifaras again confirmed to PageOne that NRS was not providing any legal advice, writing "NRS is not a law firm and thus cannot provide legal advice. While I am a lawyer, I am not acting as your firm's lawyer. The recommendations I make are strictly from a regulatory/compliance perspective and should not be interpreted as legal advice." (Div. Ex. 15.)

not disappear. From March 1, 2011 through September 29, 2011, Respondents' clients invested approximately $1.9 million in the UGOC Funds. (Id.; see also Div. Ex. 183, Exhibits A and B.) In return, UGOC paid Respondents $700,000 (equal to more than 35% of client investments) during the same period. (Id.)

Respondents knew that the Form ADV was inaccurate. Page understood that UGOC was continuing to pay him. (See Div. Ex. 183, Exhibit B (payments from UGOC to Page).) Page also understood that his clients continued to invest in the UGOC Funds during this time and that PageOne was not disclosing its true relationship with UGOC to his clients. (Hearing Tr. at 73:19-74:13.) Page has claimed that he authorized removing any references to the UGOC Funds from the March 1, 2011 Form ADV because "he no longer planned to recommend the Private Funds to his clients." (Resp. Br. at 9.) This also was not true. Page continued to recommend the UGOC Funds to clients after that date. As noted, from March 1, 2011 through September 29, 2011, Respondents' clients invested approximately $1.9 million in the UGOC Funds. (Consent Order, ¶ 31, Div. Ex. 183, Exhibits A and B.) Moreover, Respondents recommended that these clients invest in the UGOC Funds. Six of the clients that invested after March 1, 2011 were first-time investors in the UGOC Funds and each listed PageOne as their investment adviser on their UGOC investment paperwork. (Div. Ex. 183, Exhibit A (showing that six investors, who had invested after March 1, 2011 had not previously invested in the UGOC Funds).)[7] In

[7] Each of those clients listed PageOne as their investment adviser on their paperwork making their respective investments into the UGOC Funds and PageOne collected and sent the relevant paperwork to TD Ameritrade to get the investments executed. See Ex. 176(a) at PG062600011938, PG06260011978, PG06260006894, SEC-PageOne-E-0043458, PG06260007096, PG06260007031, PG06260011137,

addition, UGOC copied Respondents on their communications confirming the clients' investments in the UGOC Funds.[8] Page also learned when his clients made investments into the UGOC Funds directly from the custodian. (Hearing Tr. at 73:19-21.) Page asked TD Ameritrade—PageOne's custodian—to hold his clients' investment in the UGOC Funds on its platform so that Page "could monitor and keep control and watch out for the clients." (Id. at 74:2-11.)

IV. Respondents' Clients Invested Nearly $15 Million in the UGOC Funds.

Respondents' clients invested over $15 million in the UGOC Funds. (Div. Ex. 183, ¶¶ 47-48, Exhibit A (showing clients' investments into the three UGOC Funds).)

V. The UGOC Funds Face Collapse.

The Private Funds turned out to be risky investments. (Initial Decision at 5.) One of the Private Funds—containing $3 million of Respondents' clients' investments—collapsed.[9] Another of the Private Funds recently informed investors that it had invested over $6.8 million in bankrupt assets.[10] (Id.)

PG06260006938 (communication from PageOne's files showing new clients investing in the UGOC Funds after March 1, 2011).

[8] See Div. Ex. 176(a) at PG06260011933, PG06260006899, PG06260007088, PG06260011929, PG06260006936.

[9] On December 16, 2014, UGOC informed investors in the Equity Fund that $7.35 million of the Equity Fund's investments had been lost. (Div. Ex. 182 at attached letter from UGOC.) This loss represented approximately 93% of the Equity Fund's total assets under management of approximately $7.9 million. (Id. (percentage of loss versus remaining $460,000 and $133,888 in assets letters say remain).)

[10] UGOC informed the Income Fund I investors that the remaining assets—valued at less than $600,000—either faced foreclosure or had, to date, been unable to sell any real estate. (Div. Ex. 186.)

ARGUMENT

I. Collateral Bars Against Page Pursuant to Advisers Act Section 203(f) Are Appropriate

Advisers Act Section 203(f) authorizes the Commission to bar Page from associating with an investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or national recognized rating organization if:

(1) Page was associated with an investment adviser at the time of the conduct;

(2) Page willfully violated, or aided and abetted any violation of, any provision of the Advisers Act; and

(3) Such bars are in the public interest.

See Advisers Act §§ 203(f), 203(e)(5)-(6).

Respondents do not contest the first two elements, but now argue that the ALJ's imposition of bars and the revocation of PageOne's license are more severe than is warranted. Respondents' arguments fail, however, because (1) the precedents they point to are inapposite; (2) recent Commission precedent confirms the appropriateness of the bars; and (3) the facts of this case warrant the sanctions imposed.

A. The Imposition of Collateral Bars is Supported by Commission Precedent and the Facts of the Case.

In imposing sanctions, the Commission need not follow "some mechanical formula," PAZ Secs., Inc. v. SEC, 566 F.3d 1172, 1175 (D.C.Cir.2009), but should instead "adequately explain its decisions" for the ordered remedies. Id. at 1176. The ALJ provided just such a reasoned explanation for imposing collateral bars against Page and revoking PageOne's registration as an investment adviser. The ALJ considered the factors set out in Steadman v. SEC, 603 F.2d 1126 (5th Cir. 1979), finding that (1) Page's fraud "was, to some degree, egregious" (Initial Decision at 4-5); (2) Page's "pronounced recklessness"

was frequent, spanning a two-and-a-half-year period (id. at 6); (3) Page was extremely reckless in carrying out his fraud (id. at 6); and (4) Page had ample opportunity for future violations (id. at 10). Each of these conclusions is well-supported by the evidence in this case as more fully discussed in Section I.B below.

A finding of fraud should, in most cases, result in associational bars:

> [O]rdinarily, and in the absence of evidence to the contrary, it will be in the public interest to bar from participation in the securities industry a respondent enjoined from violating antifraud provisions

In the Matter of Toby G. Scammell, Rel. No. IA-3961, 2014 WL 5493265, at *5 (S.E.C. Oct. 29, 2014) (citation and quotation marks omitted); see also In the Matter of Jose P. Zollino, Rel. No. IA-2579, 2007 WL 98919, at *5 (S.E.C. Jan. 16, 2007) (violations of the "antifraud provisions of the federal securities laws is especially serious and subject to the severest sanctions."). Indeed, the Commission has upheld permanent bars for frauds that were (1) of a shorter duration; (2) involved reckless conduct; (3) resulted in less gain to a respondent; and (4) involved less loss to investors.[11]

Here, Respondents can point to no "evidence to the contrary" as to why a bar is inappropriate. The cases Respondents cite are entirely inapposite. (Resp. Br. at 5-7.) All but one were settled actions, involving non-scienter violations of the Advisers Act.[12] The

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[11] See, e.g., In the Matter of Francis V. Lorenzo, Rel. No. 33-9762, 2015 WL 1927763 (S.E.C. Apr. 29, 2015) (respondent sent two false and misleading emails within minutes of each other; Lorenzo made $150; and investors lost $15,000); In the Matter of Toby G. Scammell, 2014 WL 5493265, at *6 (fraud lasted for two weeks); In the Matter of V.F. Minton Secs., Inc., Rel. No. 34-32074, 1993 WSL 100204, at * 5 (S.E.C. Mar. 31, 1993) (upholding permanent bar from association with broker dealer and revoking broker dealer's registration for "extremely reckless" violations).

[12] In the Matter of Shelton Financial Group, Inc., Rel. No. 34-3993, 2015 WL 153641 (Jan. 13, 2015) (violations of Advisers Act Section 206(2) and 206(4)); In the

one litigated case Respondents point to—In the Matter of IMS/CPAS, Rel. No. 33-8031, 2001 WL 1359521 (S.E.C. Nov. 5, 2001), aff'd Vernazza v. SEC, 327 F.3d 851 (9th Cir. 2003)—involved fraud of a much less severe character: netting all three respondents only $75,000. This stands in sharp contrast with Respondents' fraud, which netted them $2.7 million, and will likely cost their victims millions.

B. Collateral Bars Are Consistent with the Steadman Factors.

Respondents next argue that the associational bars are inconsistent with the factors set out in Steadman v. SEC, 603 F.2d 1126 (5th Cir. 1979). (Resp. Br. at 7-13.) However, there is ample evidence in the record to demonstrate that Respondents' conduct was egregious, long-lasting, carried out with a high degree of scienter; and that Respondents neither recognize the wrongful nature of their actions, nor, as a result, can make meaningful assurances against future violations.

1. Respondents' Fraud was Egregious and Carried Out With a High Degree of Scienter.

Respondents argue that their conduct was neither egregious, not undertaken with a high degree of scienter because they (1) did not intend to harm their clients; (2) relied on others to prepare the Forms ADV; and (3) disclosed other—albeit non-existent—conflicts of interest. (Resp. Br. at 8-12.) These arguments are irrelevant under the law and unsupported by the facts.

Matter of Paradigm Capital Management, Inc., Rel. No. IA-3857, 2014 WL 2704311 (June 16, 2014) (violations of Advisers Act Sections 206(3) and 207); In the Matter of Focus Point Solutions, Inc., Rel. No. IA-3458, 2012 WL 3863221 (Sept. 6, 2012) (violations of Advisers Act Section 206(2) and 206(4)).

a. *Respondents Intended to Hide the Conflicts.*

The ALJ found that Respondents' fraud—while not the result of an intent to deceive their clients—was "to some degree egregious" and constituted "extreme recklessness." (Initial Decision at 4, 6.) The ALJ's finding is sufficient, without more, to support the imposition of a bar. "Extreme recklessness" is sufficient to demonstrate scienter, the necessary mental state for a fraud finding. See In the Matter of John P. Flannery, Rel. No. IA-3981, 2014 WL 7145625, at *22 (S.E.C. Dec. 15, 2014). As discussed above, it is ordinarily in the public interest to bar from participation in the securities industry a respondent who has committed fraud.

Moreover, the weight of the evidence shows that—rather than a "reckless inattention to corporate compliance functions" (Initial Decision at 8)—Respondents actually intended to deceive their clients about the UGOC-related conflicts. In the Commission's civil enforcement actions, intent to deceive can be demonstrated by showing that a respondent knew of the truth and chose to hide that truth from his client.[13] Here, Respondents considered whether to tell the truth about the conflicts and, instead, chose to hide those conflicts from their clients because of their concern about how their clients would react. (Consent Order, ¶ 17.) And, to make sure that PageOne did not tell its clients

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13 See, e.g., In the Matter of Francis V. Lorenzo, 2015 WL 1927763, at *13 (finding that respondent "acted with a high degree of scienter" because he "knew, when he sent his emails to customers, that he was misstating critical facts . . . ."); In the Matter of Johnny Clifton, Rel. No. 33-9417, 2013 WL 3487076, at *10 (S.E.C. July 12, 2013) (finding that respondent acted with a "a high degree of scienter" because "[h]e made statements to prospective investors that he knew were false" and he "knowingly omitted information about the Osage project that made his statements about the project materially misleading"); In the Matter of Jeffrey L. Gibson, Rel. No. IA-2700, 2008 WL 294717, at *3 (S.E.C. Feb. 4, 2008) (respondent's conduct "evince[d] a high degree of scienter" because "he knew [the private placement memorandum]'s representations with respect to the use of proceeds were misleading").

about these manifest conflicts, Page "told his Assistant Compliance Officer [Burke] that he did not want to disclose the true nature of the arrangement" with the UGOC and the UGOC Funds. (Id., ¶ 25.) In addition, Page knew that he was not a "consultant" as the September 14, 2010 Form ADV said. (See Summary, Section III.F supra.) In addition—despite arguing that he removed all the (albeit false) disclosures about UGOC from the March 1, 2011 Form ADV because he was no longer intending to recommend the UGOC Funds—Page also knew that he continued to recommend those investments after that date, bringing in at least six new clients to the UGOC Funds as well as $1. 9 million. (See Summary, Section III.H supra.) Thus, Page knew for a fact that PageOne's disclosures—as well as his stated justifications for making those disclosures—were false.

b. Respondents' Scienter is Not Mitigated by Other False Disclosures in PageOne's Forms ADV Concerning UGOC.

Respondents now argue that—despite knowing that they were hiding the true conflicts—they could not have intended to deceive because Respondents attempted to disclose other conflicts that did not exist (and, thus, tried to put their clients on notice of some type of conflict). (Resp. Br. at 8-10.) Specifically, Respondents argue that by disclosing that UGOC may pay PageOne "on an annual basis, a referral fee of between 7.0% and 0.75% of the amount invested by the client" (Div. Ex. 14 at 10), Respondents "put their clients on notice of Respondents' relationship with [UGOC] and actually disclosed a significant conflict scenario." (Resp. Br. at 10.) This argument fails for a number of reasons.

There is no authority for the proposition that an investment adviser can satisfy its obligation to disclose all conflicts fully and accurately by disclosing other (false) conflicts. To the contrary, investment advisers must disclose all actual and potential conflicts of

interest. See SEC v. Capital Gains Research Bureau, Inc., 375 U.S. 180, 191-92 (1963) (investment advisers must "at least . . . expose . . . all conflicts of interest which might incline an investment adviser—consciously or unconsciously—to render advice which was not disinterested."). Moreover, Page was well aware of his own obligation to disclose all conflicts fully and accurately. (See Summary, Section II. supra.)

In addition, Page himself testified that disclosure concerning the "7.0%" "referral fee," and the "0.75%" fee were not (as he now claims) an attempt to put clients on notice of the true conflict, but rather referred to two entirely separate and additional fees—a referral fee and an annual 0.75% advisory fee—that Page was considering charging his clients in addition to the UGOC acquisition payments. (See Summary, Section III.C supra.) Rather than an attempt to notify his clients of the true conflict, the July 31, 2009 Form ADV disclosures merely reflected a failed effort to charge additional, unrelated fees. In any event—as Page also knew—UGOC's payments to Page exceeded 15% of the amount his clients invested during the time the July 31, 2009 Form ADV was extant, more than twice the 7% maximum fee that was disclosed. (Id.) Yet, Page did nothing to tell his clients about the true size of the conflict.[14]

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[14] Respondents now also argue that the disclosure concerning the non-existent referral fees "on an annual basis . . . of between 7.0% and 0.75% of the amount invested by the client" (Div. Ex. 14 at 10) meant that their clients were aware that Respondents may receive upward of 49% of the amounts their clients invested in the UGOC Funds. (Resp. Br. at 14.) Respondents achieve this number by assuming that investments were locked in for seven years (and, thus, clients may be charged 7% for 7 years). Again, this argument is foreclosed by Page's own testimony. Page testified that he only ever considered charging the 7% referral fee once (not annually). (See Div. Ex. 183, ¶ 44 (stipulations of fact); see also Div. Ex. 166 at 70:6-13.) Moreover, Page knew that he was actually receiving 15%—more than twice the "annual" 7% payment he now claims he was entitled to—in the only year that the disclosure actually existed.

c. *Respondents Cannot Demonstrate Good-faith Reliance on Compliance Professionals.*

The ALJ found—and Respondents reiterate here—that NRS' and Burke's involvement in preparing the Forms ADV mitigated Respondents' scienter. (Initial Decision at 7-8; Resp. Br. at 8-10, 12.) However, to the extent such a reliance-on-professionals defense even exists, Respondents would have the burden of showing that: (1) they made complete disclosure; (2) they sought advice on the legality of the intended conduct; (3) they received advice that the intended conduct was legal; (4) they relied in good faith on such advice; and (5) the provider of the advice was independent. See In the Matter of Natural Blue Resources, Inc., Rel. No. ID-863, 2015 WL 4929878, at *30 (Aug. 18, 2015) (setting out elements for advice of counsel defense). Respondents cannot satisfy these elements.

First, it was Page himself who decided not to disclose the truth. Company officers cannot lessen their own scienter by claiming that they relied on others when they knew that the statements at issue were untrue. See Pittsburgh Terminal Corp. v. Baltimore & Ohio R.R. Co., 680 F.2d 933, 942 (3d Cir. 1982) (rejecting reliance on counsel defense where defendants "know the materiality of the concealed information and intend the consequences of concealment"); United States v. King, 560 F.2d 122, 132 (2d Cir. 1977) ("[S]ignificant representations were made as to specific facts … [and] we cannot understand how a businessman who knows that such factual representations are untrue can screen himself by trying to rely on advice of counsel."); SEC v. Goldfield Deep Mines Co. of Nevada, 758 F.2d 459, 467 (9th Cir. 1985) (reliance-on-professional defense not available where defendants "knew" that statements made in public filings "were false or misleading"); see also In the Matter of City of Miami, Florida, Rel. No. 33-8213, 2003 WL 1412636 at *10

(S.E.C. Mar. 21, 2003) ("If a company officer knows that 'financial statements are false or misleading and yet proceeds to file them, the willingness of an accountant to give an unqualified opinion with respect to them does not negat[e] the existence of the requisite intent or establish good faith reliance.'") (citations omitted).

Second, the evidence shows that Respondents did not expect to rely in good-faith on NRS's or Burke's advice. Respondents' agreement with NRS explicitly stated that (1) NRS was not rendering legal advice; and (2) PageOne (and not NRS) was solely responsible for the accuracy of the Forms ADV disclosures. (See Summary, Section III.D supra.) Page also testified that he understood that it was his—not NRS'—sole responsibility to ensure that the Forms ADV accurately disclosed all conflicts. (Id.) Moreover, Page instructed Burke, his subordinate, that he did not want to disclose the truth about the UGOC conflicts. Page should not now, therefore, be allowed to say that he did not act with a high degree of scienter merely because his employee—whose salary Page paid—did not disclose information he had been instructed not to disclose (in a Form ADV for which Page bore responsibility, read, and signed off on).

Third, Respondents did not demonstrate that they disclosed all requisite facts to NRS. Respondents did not call any NRS employees or Burke as witnesses at the Hearing. Moreover, the documentary evidence shows that PageOne did not tell NRS the full truth about its relationship with UGOC. As discussed in Summary, Section III.E supra, Michael Xifaras (the NRS employee who assisted PageOne in drafting its Forms ADV) repeatedly asked for clarification about Respondents' relationship with UGOC. The record evidence shows that Burke continued to provide Xifaras with the same misleading information about the 7% referral fee that ultimately made its way into

PageOne's July 31, 2009 Form ADV. (See Summary, Section III.E supra.) Indeed, even when Xifaras explicitly stated that he did not fully understand the relationship between Respondents and NRS, PageOne failed to disclose the truth. (Id.)

Fourth, Respondents claim that the ALJ erred in not considering Burke's investigative testimony. (Resp. Br. at 10-11.) The ALJ was correct to reject this argument. (Initial Decision at 3.) Respondents chose not to call Burke to testify at the Hearing (the Division also did not do so). This presumably reflected their own assessment of Burke's credibility as a witness. Moreover—despite multiple opportunities extended to them by the Court to do so—Respondents never attempted to move Burke's investigative testimony transcript into evidence. (See Post-Hearing Order, May 5, 2015, ¶¶ 1, 3, 4 (allowing the parties an opportunity to seek admission of exhibits); see also Initial Decision at 3.) Respondents now argue that they did not have to seek the admission of Burke's testimony because it was already "part of the record on the date of the settlement." (Resp. Br. at 11.) However, no documents had been admitted into evidence (and no hearing had taken place) when the Commission issued the Consent Order in March 2015. Moreover, that Respondents did not believe that their proposed exhibits were automatically part of the record is demonstrated by the fact that they sought (and obtained) the admission into evidence of 217 exhibits both during and after the Hearing. (See Order Closing Hearing Record, May 12, 2015.) In any event, Burke's testimony transcript does nothing to lessen Page's own scienter, at most, showing that both Burke and Page understood that PageOne's disclosures were untruthful. Respondents also do not point to any evidence that they sought, obtained, or relied (or were entitled to rely) on any advice from attorneys

representing Millennium LLC, a broker-dealer affiliated with UGOC. (See Resp. Br. at 4, 11.)

2. *Respondents Have Not Accepted Responsibility for Their Fraud.*

Respondents argue that "[w]ith the benefit of hindsight" they have accepted responsibility. (Resp. Br. at 12.) The ALJ credited Page's protestations of remorse. (Initial Decision at 9.) However, such an acceptance—even if genuine—does not negate the appropriateness of a bar for fraud violations. See, e.g., In the Matter of Jose P. Zollino, 2007 WL 98919, at *5. Moreover, there is evidence in this case that Respondents have not accepted responsibility for their fraud. First, Respondents continue to shift the blame for the disclosure violations onto Burke and NRS. In briefing submitted after the Commission issued the Consent Order, Respondents contended that the entirety of the blame for this fraud rested—not on Page's conscious decision to hide the UGOC-related conflicts—but merely on his "unfortunate decision to rely upon Mr. Burke and NRS." (Id. at 19.) Second, despite the Commission's repeated findings that Page acted with scienter, Page has continued to contend that his actions were "reasonable," made in "good faith," and that he believed that PageOne's disclosures "appeared to be reasonable." (See Resp. Remedies Br. at 19-21.) However, it is well established that reckless conduct is inconsistent with good faith. See, e.g., Rolf v. Blyth, Eastman Dillon & Co., Inc., 570 F.2d 38, 46 n.15 (2d Cir. 1978) ("Reckless behavior hardly constitutes good faith."). Likewise, Page could not possibly have believed the disclosures were "reasonable," given that he understood them to be false. Finally—despite the Consent Order—Page, at the Hearing, denied that he agreed not to "take any action or make or permit to be made any public statement denying, directly or indirectly, any finding in the Order or creating the impression that the Order is

without factual basis." (Compare Offer of Settlement, ¶ IX(i) with Hearing Tr. at 44:8-22.)

3. All Other Factors Support a Bar.

First, Respondents' fraud was widespread, lasting more than two-and-a-half years Second, Respondents' clients are likely to lose much (if not all) of their investment. (See Summary, Section V. supra; see also Initial Decision at 5.) As the ALJ noted,

> While Respondents are correct that the poor performance of the Private Funds is not at least exclusively their fault, it is certainly their fault that their clients were recruited to invest in the Private Funds under false pretenses and without upfront disclosure of a significant conflict of interest.

(Initial Decision at 5.)

Third, Page's occupation, as an investment adviser, presents continual opportunities for dishonesty and abuse. Fourth, Page was enriched by his fraud, making over $2.7 million from UGOC. (See Summary, Section I. supra.) Fifth, a bar will serve a salutary deterrent effect, making it clear to investment advisers not to ignore their fundamental fiduciary obligation to disclose all conflicts. Sixth, more limited corrective measures would be insufficient here. Respondents' fraud stemmed from violating an investment adviser's core obligations: to be honest with their clients about conflicts and to always put their clients' interests first. See In the Matter of Peter Siris, Rel. No. IA-3736, 2013 WL 6528874, at *7 (S.E.C. Dec. 12, 2013) ("we agree with the Division that Siris's agreeing not to serve in those capacities 'does not ensure the protection of investors,' because the allegations supporting the injunction involve a broad array of misconduct not unique to service as a portfolio manager or investment adviser".)

Finally, Respondents' argument that the bars and revocations violate the Commission's Statement Concerning Financial Penalties is a red herring. (See Resp. Br. at

13-14.) That non-binding statement was concerned with ensuring that penalties (not bars) be levied against the appropriate parties—corporate officers—and not innocent shareholders of public companies. Indeed, the statement's concern with penalizing culpable individuals and encouraging strong corporate compliance programs is consistent with imposing strong remedial measures in this case.[15]

II. PageOne's Investment Adviser Registration Should Be Revoked.

For the reasons discussed above, the Commission should also confirm the ALJ's decision to revoke PageOne's registration as an investment adviser pursuant to Advisers Act Section 203(e).[16]

III. The ALJ's Imposition of Disgorgement Was Appropriate.

The ALJ ordered Respondents, jointly and severally, to disgorge $2,184,859.30 plus prejudgment interest.[17] (Initial Decision at 15.) Because Respondents' fraud was causally connected to—indeed, was the direct cause of—UGOC's payments to Respondents, disgorgement is appropriate.

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[15] Statement of the Securities and Exchange Commission Concerning Financial Penalties, Jan. 4, 2006, available at https://www.sec.gov/news/press/2006-4.htm.

[16] Advisers Act Section 203(e) authorizes the Commission to revoke an investment adviser's registration where (1) revocation is in the public interest; and (2) an associated person has willfully violated the securities laws. In the Matter of Anthony Fields, Rel. No. IA-4028, 2015 WL 728005, at *23 (S.E.C. Feb. 20, 2015).

[17] The Division sought disgorgement of the full $2,751,345 paid by UGOC to Respondents and prejudgment interest on that amount. (Initial Decision at 13.) The ALJ reduced that disgorgement figure to $2,184,859.30, primarily because PageOne's Form ADV stated that PageOne would receive a referral fee of up to 7% for investments in UGOC Funds by PageOne clients. The ALJ reasoned that this statement, although untrue, for a period of time provided notice to investors that Respondents could receive 7% of the amount invested by PageOne clients. (Id. at 14.)

A. The ALJ Correctly Ruled that Respondents Were Unjustly Enriched.

UGOC paid Respondents $2.75 million because Page recommended that PageOne's clients invest approximately $15 million in the UGOC Funds. In recommending the UGOC Funds, Page chose not to tell his clients that their investments into the UGOC Funds were critical to UGOC paying Page for a portion of PageOne. Respondents now seek to avoid disgorgement by hypothesizing that they would not have been unjustly enriched (1) if they had repaid the money they received from UGOC; or (2) if Page had transferred a 49% interest in PageOne to Uccellini or UGOC. (Resp. Br. at 16.) These arguments fail for a number of reasons.

First, neither of these hypothetical situations actually occurred. What actually occurred was that Respondents took the $2.75 million received as a result of improperly concealing conflicts of interest from their clients and spent it.[18] Clearly, Respondents were enriched. Moreover, their fraud—hiding the conflicts of interest—was causally connected to their enrichment. Indeed, UGOC's acquisition payments to Page were explicitly conditioned on Page's ability to convince his clients to invest in the UGOC Funds. (See Summary, Section I. supra.) As the Commission held in In the Matter of IMS/CPAS & Assoc., "[t]hese recommendations were made despite Respondents' conflict of interest, conflict[s] of which Respondents failed to disclose to their clients. All enrichment received as a result of this undisclosed conflict was unjust." 2001 WL 1359521, at *12.

Second, Respondents have never repaid any money to UGOC. Rather, Page disputes his obligation to repay (Hearing Tr. at 141:7-15) and has asserted that he is entitled

[18] Respondents admit that they have "spent essentially all of the $2.7 million that [Page] had received in earnest money deposits from [UGOC]." (Resp. Br. at 20.)

to keep the money. (See Div. Ex. 94 at 8.) Respondents are trying to have their cake and eat it too—refusing to repay UGOC, while using UGOC's demand as a shield against disgorgement.[19]

Respondents also claim that they were not unjustly enriched by the payments because the payments were supposedly meant to compensate Page for "time and trouble" and lost "business opportunity." (Resp. Br. at 16.) Again, however, whatever private disputes Respondents may have had with UGOC, the facts remain that UGOC paid Respondents $2.7 million as part of an arrangement that created a huge undisclosed conflict of interest. As the ALJ correctly noted:

> Disgorgement of the funds Respondents received is justified here because Respondents fraudulently failed to disclose the truth about Page's relationship with the Fund Manager. Whatever legal disputes might remain between Respondents and the Fund Manager, or a related third party, they do not negate that Respondents were unjustly enriched.

(Initial Decision at 13.)

B. Respondents' Level of Scienter Justifies the Disgorgement Ordered Here.

Respondents claim that "[g]enerally, disgorgement has been applied only where there is also a finding of a high degree of scienter." (Resp. Br. at 17.) That is not the law. Disgorgement is routinely awarded in connection with non-scienter violations. See, e.g., SEC v. Merchant Capital, LLC, 397 Fed. Appx. 593, 2010 WL 3733878, at *1 (11th Cir. Sept. 27, 2010) (In awarding disgorgement for negligent conduct, the Court noted that

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[19] FTC v. Loanpointe, LLC, 525 Fed. Appx. 696 (10th Cir. 2013) does not support Respondents' assertion that "[l]oan payments to a party are not a gain for purposes of disgorgement." (See Resp. Br. at 14). Indeed, in the Loanpointe case, the Circuit Court upheld an order requiring a payday lender to disgorge interest it had collected in violation of the Fair Debt Collection Practices Act.

"[d]isgorgement is not dependent on scienter, but is tied instead to the idea of unjust enrichment: the broad idea is that persons not profit from breaking the securities laws."); SEC v. Elliot, 09 Civ. 7594 (RJH), 2011 WL 3586454, at *12 (S.D.N.Y. 2011) ("As such, disgorgement and prejudgment interest flow from the principle that, as between one who has broken the law and the authorities charged with enforcing it, the lawbreaker should not be able to retain the fruits of the violation. That is no less true where the defendant has violated a law that does not require knowledge of wrongdoing.").[20] In any event, in this case, Respondents committed fraud and, therefore, did act with scienter. Respondents do not—because they cannot—offer any authority that adjudged fraudsters should be allowed to keep their ill-gotten gains.

C. Respondents Are Not Entitled to Deduct Purported, but Undefined, "Business Expenses" From Their Disgorgement.

Respondents, without citing any authority, assert that unspecified "business expenses" should be deducted from the amount disgorged. (Resp. Br. at 17-18.) This argument is untimely as Respondents made no attempt to evidence any such business expenses at the Hearing. Moreover, Respondents are not entitled to deduct general business expenses from a disgorgement award. "The manner in which defendants . . . chose to spend their misappropriation is irrelevant as to their objection to disgorgement." SEC v. Great Lakes Equities Co., 775 F. Supp. 211, 214 (E.D. Mich. 1991); see also SEC v.

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[20] Indeed, in SEC v. Martino, one of the cases cited by Respondents, the Court ordered disgorgement from relief defendants who had not been charged with any violation of the law, much less one that involved a high degree of scienter. SEC v. Martino, 255 F. Supp. 2d 268, 288 (S.D.N.Y. 2003) ("equitable powers [of disgorgement] extends to a person who, although not accused of wrongdoing, received ill-gotten gains . . . ."). The other case cited by Respondents is inapposite. SEC v. Thorn, 01 Civ. 290 (EAS), 2002 WL 31412439 (S.D. Ohio Sept. 30, 2002) (granting SEC's disgorgement request).

Merchant Capital, LLC, 486 Fed. Appx. 93, 2012 WL 3205543 at *2-3 (11th Cir. Aug. 7, 2012) (holding that the district court was not required to take into account the amount of taxes defendants paid on the amounts to be disgorged); SEC v. Hughes Cap. Corp., 917 F. Supp. 1080, 1086-87 (D.N.J. 1996) (refusing to offset disgorgement by certain "legitimate" business expenses and noting that the overwhelming weight of authority holds that securities law violators may not offset their disgorgement liability with business expenses), aff'd 124 F.3d 449 (3d Cir. 1997).[21]

Respondents next argue that they should be allowed to offset the value of the 2% annual management fees they claim they would have been entitled to charge on the money their clients invested had their clients not followed Respondents' advice to invest in the UGOC Funds (and instead left that money under Respondents' direct management). (Resp. Br. at 17-18.) In essence, Respondents ask to be paid a management fee for money they never managed. This argument is also without merit. First, Respondents cite no authority for the proposition that they should be compensated for lost opportunity costs associated with their fraud. Second, Respondent Page testified that he did charge clients a management fee on the UGOC Fund investments. (Hearing Tr. at 196:21-197:2.) Third, Respondents' assertion ignores that the ALJ already reduced

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[21] While "a court may, in its discretion, deduct from the disgorgement amount any direct transaction costs, such as brokerage commissions, that plainly reduce the wrongdoer's actual profit," courts have taken care to distinguish such costs from "general business expenses, such as overhead expenses, which should not reduce the disgorgement amount." SEC v. Universal Express, Inc., 646 F. Supp. 2d 552, 564 (S.D.N.Y. 2009) (citing cases). Respondents have offered no evidence of direct transaction costs (indeed, have not put forward any evidence of any of the business costs they claim should be deducted).

the disgorgement by over $560,000 (to take into account the non-existent 7% "referral fee" Respondents disclosed for approximately one year).

D. Respondents Are Jointly and Severally Liable for Disgorgement.

The ALJ correctly held that Page and PageOne were jointly and severally liable for disgorgement. "It is a well settled principle that joint and several liability is appropriate in securities law cases where two or more individuals or entities have close relationships in engaging in illegal conduct." SEC v. Calvo, 378 F.3d 1211, 1215 (11th Cir. 2004) (citing cases); see also Great Lakes Equities Co., 775 F. Supp. at 214 (finding that joint-and-several liability is appropriate where the individual defendant's "action are inextricably interwoven with those of" the corporate defendant.). Page was the CEO, Chief Compliance Officer and sole shareholder of PageOne. In that capacity, he recommended investments in the UGOC Funds to PageOne clients. He also decided that PageOne would not disclose the true conflicts to its clients and that its Forms ADV would, thus, be materially false and misleading. In addition, Page directed that almost $940,000 of the UGOC payments be paid directly to PageOne. (See Div. Ex. 178). Page and PageOne had a sufficiently close relationship in engaging in illegal conduct to support the imposition of joint and several liability.[22]

[22] Wm. Passalacqua Builders, Inc. v. Resnick Developers South, Inc., 933 F.2d 131 (2d Cir. 1991), cited by Respondents (Resp. Br. at 18), is not to the contrary. The issue in that case was whether creditors of a corporation could pierce the corporate veil and hold corporate shareholders liable for a subsidiary corporation's debts, not whether an investment adviser and its CEO and sole shareholder can be held jointly and severally liable for disgorgement of ill-gotten gains.

E. Respondents' Claimed Inability to Pay Does Not Bar Disgorgement.

Respondents argue that the ALJ did not adequately take their claimed inability to pay into account in determining the remedies in this case. (Resp. Br. at 18-21.) To the contrary, the ALJ overlooked defects in the Respondents' financial submissions and determined not to award civil penalties due to Respondents' claimed inability. (Initial Decision at 15.) In reaching that decision, the ALJ rejected the Division's objection that Respondents had not met their burden of proving inability to pay.[23] (Initial Decision 12-13) With respect to disgorgement, however, the ALJ determined that an order of disgorgement was in the public interest

> because disgorgement is designed to reverse unjust enrichment, and giving ability to pay significant weight in the disgorgement context would create a perverse incentive for securities law violators to spend ill-gotten gains quickly and without restraint.

(Initial Decision at 12.) It was quite proper for the ALJ to order disgorgement notwithstanding his conclusion regarding Respondents' ability to pay. A showing of

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[23] The Division pointed out that Respondents' had the burden of proving inability to pay. See In the Matter of David Henry Disraeli, Rel. No. 33-8880, 2007 WL 4481515, at *19, n. 118 (S.E.C. Dec. 21, 2007) (rejecting argument that, under Commission Rule of Practice 630, respondents had discretion whether to provide a financial statement before the ALJ because "[g]iven the respondent's burden of demonstrating inability to pay, financial information supporting that argument must be presented before the law judge") (citation omitted). Notwithstanding having been given an opportunity by the ALJ to subpoena additional bank records and supplement their financial submissions following the relief hearing, Respondents had failed to meet that burden. (Div. Post-Hearing Br. at 23-24.) For example, Respondents' financial statements did not disclose how Respondents spent the $2.75 million they had been paid by UGOC, nor did Respondents provide tax returns going back to 2009 (the year of the first violation alleged against Respondents). (Div. Post-Hearing Br. at 23.) The Division also showed that Respondents' financial statements were internally inconsistent and that even though they were incomplete, Respondents' financial statements reflected lavish expenditures that undercut Respondents' plea that they receive no monetary sanctions. (Div. Post-Hearing Br. at 24- 25.)

inability to pay does not present an automatic right to waiver. "[T]he ability to pay may be considered, but it is only one factor, it is discretionary, and where, as here, the conduct is egregious, inability to pay may be disregarded." In the Matter of the Application of Re. Bassie & Co., Rel. No. AE-3354, 2012 WL 90269, at *14 n.53 (S.E.C. Jan. 10, 2012) (citation omitted).

Here, the ALJ properly considered the importance of depriving wrongdoers of the benefits of their violative conduct and the fact that Page had engaged in "unwise and extravagant spending," including "shockingly high" monthly expenditures, in concluding that disgorgement was in the public interest. (Initial Decision at 13.) Respondents complain that the cited examples of extravagant spending add up to less than the disgorgement ordered by the ALJ. (Resp. Br. at 20.) But Respondents failed to provide a full accounting of how Page spent the money received from UGOC, so the examples cited are just those culled from incomplete data. SEC v. First Jersey Secs. Litig., 101 F.3d 1450, 1475 (2d Cir. 1996) ("any risk of uncertainty [in calculating disgorgement] should fall on the wrongdoer whose illegal conduct created the uncertainty."). In any event, one need not show specific examples to demonstrate that spending over $400,000 per year is extravagant.

IV. Respondents' Appointments Clause Challenge Lacks Merit

Respondents contend that this proceeding violates the Appointments Clause of Article II because ALJ Patil, who presided over the hearing below, was not properly appointed. (Resp. Br. at 21-23.) That claim fails because, as the Commission recently held, the Commission ALJs are employees, not constitutional officers, and thus they are not subject to the requirements of Article II. In the Matter of Raymond J. Lucia Cos., Inc., Rel. No. IA-4190, 2015 WL 5172953, at **21-23 (S.E.C. Sept. 3, 2015); In the Matter of

Timbervest, LLC, Rel. No. IA-4197, 2015 WL 5472520, at **23-26 (S.E.C. Sept. 17, 2015).

V. The Initial Decision Erred in Imposing a Time-Limited Collateral Bar and Failing to Impose an Investment Company Prohibition.

The ALJ ordered that:

> [P]ursuant to Section 203(f) of the Investment Advisers Act of 1940, and Section 9(b) of the Investment Company Act of 1940, Respondent Edgar R. Page is BARRED from associating with an investment adviser, broker, dealer, municipal securities dealer, municipal adviser, transfer agent, or nationally recognized statistical rating organization, for a period of five (5) years from the date that this Initial Decision becomes final.

(Initial Decision at 15 (emphasis added).) This was error for two reasons.

First, the time-limited collateral bar imposed by the Initial Decision is not permitted under either Advisers Act Section 203(f) or Section 9(b) of the Investment Company Act. Section 203(f) provides the Commission with authority to impose either a time-limited suspension of up to 12 months or a bar that is permanent—it does not provide for time-limited sanctions of greater than 12 months. Section 9(b) authorizes the Commission to prohibit a person from engaging in certain investment-company related activities "for such period of time" as the Commission deems appropriate, but does not authorize imposition of collateral bars—bars from associating with those entities enumerated in Advisers Act Section 203(f)—of any length. As described in detail below, the five-year collateral bar imposed by the Initial Decision is contrary to the language of the Investment Advisers Act and the Commission's longstanding view—accepted by the courts—that a bar is a permanent sanction that prevents future association with a regulated entity absent prior Commission consent. The Commission should, therefore, impose on Page a permanent collateral bar with the right to reapply after five years.

Second, the ALJ, without explanation, did not impose the investment company prohibitions provided for in Section 9(b) of the Investment Company Act, despite the fact that this remedy was supported by the ALJ's findings that Page's fraud was willful and that a bar was in the public interest.

A. The Initial Decision Improperly Conflated the Commission's Statutory Authority under Investment Advisers Act § 203(f) and Investment Company Act § 9(b).

While Advisers Act Section 203(f) authorizes the Commission to impose collateral bars, the collateral bar as articulated in the ALJ's order impermissibly disregards the differences in the Commission's authority under Advisers Act Section 203(f) and Investment Company Act Section 9(b). Section 203(f) provides in relevant part:

> The Commission, by order, shall censure or place limitations on the activities of any person associated, seeking to become associated, or, at the time of the alleged misconduct, associated or seeking to become associated with an investment adviser, or suspend for a period not exceeding 12 months or bar any such person from being associated with an investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, if the Commission finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person has committed or omitted any act or omission enumerated in paragraph (1), (5), (6), (8), or (9) of subsection (e) . . . .

Investment Advisers Act § 203(f), 15 U.S.C. § 80b-3(f) (emphasis added).

This provision authorizes the Commission to impose four distinct sanctions, ranging in increasing severity from (1) a censure or (2) a placing of limitations, neither of which prevents a person from being associated with a regulated entity, to (3) a suspension from associating with such entities for a period of up to twelve months or (4) a bar from association. As reflected by the plain language of the statute, in the case of a suspension,

the Commission has authority to specify the duration of the suspension for any period of time up to 12 months. A bar, by contrast, is not similarly adjustable. If the Commission determines that a respondent's misconduct warrants a prohibition on association of more than twelve months, then imposing a bar is the only option provided by the statute.

In contrast, Investment Company Act Section 9(b) grants the Commission greater flexibility, providing in relevant part:

> The Commission may, after notice and opportunity for hearing, by order prohibit, conditionally or unconditionally, either permanently or for such period of time as it in its discretion shall deem appropriate in the public interest, any person from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter, if such person... has willfully violated any provision [of the federal securities laws] or of any rule or regulation under any such statutes; [or] has willfully aided [or] abetted . . . the violation by any other person [of the federal securities laws] or any rule or regulation under any of such statutes . . . .

Investment Company Act § 9(b)(2) & (3), 15 U.S.C. § 80a-9(b)(2) & (3) (emphasis added).

Rather than providing the alternatives of either a suspension of up to 12 months or a bar, Section 9(b) empowers the Commission to tailor the duration of a sanction by prohibiting a person from serving or acting in the specified investment company-related capacities for "such period of time as in its discretion" the Commission determines is warranted under the circumstances. The Initial Decision erred in treating the Commission's authority to impose a collateral bar under Advisers Act Section 203(f) with the same flexibility available under Investment Company Act Section 9(b).

B. The Commission and the Courts Have Long Regarded Associational Bars as Permanent.

Associational bars under the Advisers Act and the Exchange Act[24] long have been viewed by the Commission as permanent sanctions that do not expire with the passage of time.[25] This view has been accepted by courts[26] and is re-enforced by statute.[27] Indeed,

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24 Exchange Act section 15(b)(6) authorizes an almost identical range of sanctions to those under Advisers Act section 203(f), including censures, placing of limitations on activities, and suspension from association for up to twelve months or bar from association with an investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization. In addition, Section 15(b)(6) also authorizes a suspension for up to twelve months or bar from participation in an offering of penny stock.

25 See, e.g., In the Matter of John R. Brick, Rel. No. IA-483, 1975 WL 160409, at *9 n.38 (S.E.C. Oct. 24, 1975) (referring to a bar from association with any broker or dealer as a "lifetime bar," and explaining that "a lifetime bar need not be for life" because the Commission may consent to an application for re-entry into the securities business, rendering "so called lifetime bars . . . actually bars of indefinite duration."); Final Rule Release, Applications by Barred Individuals for Consent to Associate With a Registered Broker, Dealer, Municipal Securities Dealer, Investment Adviser or Investment Company, Rel. No. IA-903, 1984 WL 547096, *2 (Mar. 16, 1984) ("Once an individual is barred by a Commission order from the securities business or some aspect thereof, it is unlawful for him or her to become associated with a registered entity without the consent of the Commission.") (footnote omitted); See also Richard M. Phillips and Morgan Shipman, An Analysis of the Securities Acts Amendments of 1964, 1964 Duke L.J. 706, 812 (1964) ("Once a bar, as opposed to a suspension, is entered, it apparently has perpetual life and effect."); Hugh F. Owens, Comm'r, Sec. Exch. Comm'n, Address before The Bond Club of Chicago: The Securities Acts Amendments and the Broker-Dealer Community, at 5 (April 22, 1965) (available at: http://www.sec.gov/news/speech/1965/042265owens.pdf) ("As to individuals against whom proceedings are instituted, we may censure, suspend the individual from association with a broker-dealer for not more than 12 months, or indefinitely bar him from such association.").

26 See, e.g., Kornman v. SEC, 592 F.3d 173, 180 (D.C. Cir. 2010) (in opinion denying a petition for review of the Commission order, characterizing the imposition of a "bar" from association with an investment adviser as "permanently" barring Kornman); Gibson v. SEC, 561 F.3d 548, 555 (6th Cir. 2009) (in opinion denying a petition for review of Commission's order barring respondent Gibson from association with any broker or dealer or investment adviser, the Court characterized the Commission's "bar" as a "lifetime bar"); Hanly v. SEC, 415 F.2d 589, 598 (2d Cir. 1969) (in opinion affirming Commission order barring respondents from association with any broker or dealer, explaining that "even the permanent bar order which the Commission in its discretion has imposed as to four of the

under both the Advisers Act and the Exchange Act, it is unlawful for a barred individual to

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petitioners is not necessarily an irrevocable sanction" because "upon application, the Commission, if it finds that the public interest no longer requires the applicant's exclusion from the securities business, may permit his return—usually subject to appropriate safeguards") (footnotes omitted).

[27] The legislative history of the Securities Acts Amendments of 1964, which for the first time provided the Commission authority to bar an individual from association with a regulated entity, also suggests that Congress viewed a bar as a permanent sanction, comparable to revoking the registration of a broker or dealer entity. Prior to 1964, the Commission could file an administrative proceeding against a broker-dealer to deny or revoke its registration, but could not compel a controlled person to become a party to such proceedings. See Wallach v. SEC, 202 F.2d 462, 462-64 & n.1 (D.C. Cir. 1953). The 1964 Amendments expanded the Commission's authority with respect to broker-dealers by, among other things, adding the "intermediate sanctions" of censure and suspension of registration for up to twelve months. SEC Legis., 1963: Hearings on S. 1642 Before the Subcomm. on Secs. of the S. Comm. on Banking and Currency, 88th Cong. 47 (1963) (statement of William L. Cary, SEC Chairman) ("The report of the special study pointed out the rigidity and artificiality of the present statutory scheme for disciplining violators, in neither providing for direct action against individual wrongdoers, nor expressly authorizing useful intermediate sanctions against a firm short of revoking registration. Section 6(b) of the bill would add needed flexibility to the Commission's disciplinary powers to overcome these limitations."); see also S. Rep. No. 88-379, at 45 (1963) ("In order to avoid the all-or-none choice between revocation or no sanction, it is proposed to permit the Commission to suspend registration for an appropriate period not to exceed 12 months or to issue a formal censure.").

The 1964 Amendments also for the first time explicitly authorized the Commission to bring administrative proceedings against individuals, and provided a similar range of possible sanctions, including censure, suspension from association for up to twelve months, and bar from association. See Securities Acts Amendments of 1964, Pub. Law No. 88-467, § 6(b), 78 Stat. 565, 572 (Aug. 20, 1964); Richard M. Phillips and Morgan Shipman, An Analysis of the Securities Acts Amendments of 1964, 1964 Duke L.J. 706, 813-14 (1964) (discussing changes to Exchange Act § 15(b)(7)). The Commission received similar authority to discipline investment advisers in the Investment Company Amendments Act of 1970. See Investment Company Amendments Act of 1970, Pub. Law No. 91-547, § 24(d) and (e), 84 Stat. 1413, 1431-32 (Dec. 14, 1970); S. Rep. No. 91-184, at 44 (1969) (explaining that one of the purposes of the proposed amendments was to "strengthen existing disciplinary controls over registered investment advisers by making them more comparable to the provisions of section 15(b) of the Exchange Act relating to broker-dealers in securities"); H. Rep. No. 91-1382, at 13 (1970) (same). The Investment Company Amendments Act of 1970 also added Section 9(b) to the Investment Company Act. See Investment Company Amendments Act of 1970, Pub. Law No. 91-547, § 4(b), 84 Stat. 1413, 1415-16 (Dec. 14, 1970).

be or become associated with a regulated entity without Commission consent, no matter how long ago a bar was imposed.[28] Moreover, the Commission has explained that the nature of a bar is such that even when the Commission provides its consent by granting an application to associate with a regulated entity, the bar remains in effect.[29] Consequently, if the terms and conditions of the applicant's association change—for instance, because the applicant wishes to change employers or simply take on new responsibilities at the same employer—Commission consent must be sought once again.[30]

When the Commission bars a respondent from association, it may also grant the respondent an explicit right to reapply for association after a specified period of time—for

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28 See Investment Advisers Act § 203(f), 15 U.S.C. § 80b-3(f), and Exchange Act § 15(b)(6)(B), 15 U.S.C. § 78o(b)(6)(B).

29 Final Rule Release, Applications by Barred Individuals for Consent to Associate with a Registered Broker, Dealer, Municipal Securities Dealer, Investment Adviser or Investment Company, Rel. No. 34-20783, 1984 WL 547096, *2 (Mar. 16, 1984) ("Commission approval of an application for consent to associate, however, does not modify or vacate the Commission order nor does it remove or lift the bar; the order and bar remain in effect.") (footnote omitted).

30 Id. at n.21 ("Commission approval of an application is limited to association in a specified capacity with a particular registered entity and is subject to specific terms and conditions. If any of the individual's duties or responsibilities vary materially from the terms and conditions under which the application was approved, or if he or she seeks to become associated with another registered entity, a new application must be submitted."); Applications for Relief from Disqualification, Rel. No. IA-438, 1975 WL 160468, n.2 (Feb. 26, 1975) ("[I]n the case of a disqualified individual seeking to become employed by a broker or dealer, once such relief from disqualification has been granted by the Commission the bar is removed only so long as the individual applicant remains in the employ of the firm in the capacity and under the supervision specified in the application. In the event the firm thereafter seeks to change either the nature of such employment or the degree of supervision the firm must obtain further Commission approval. Moreover, if the individual seeks employment with another broker or dealer, both the individual and the new firm employer must submit a new application and again obtain Commission approval of such new employment prior to the individual assuming any responsibilities."). See also Phillip D. Parker, Administrative Orders Barring Individuals from Associating with Entities in the Securities Industry, 561 PLI/Corp 1009, 1016 (June 1, 1987).

example, a bar with a right to reapply for association after five years.[31] Consistent with this practice, the Commission has had in place for more than 40 years processes for submission and evaluation of such applications by the Commission and/or the relevant self-regulatory organization.[32] This practice reflects the Commission's recognition that at some point in the future, with proper safeguards in place, it may be consistent with the public interest to allow a barred individual to resume work in the securities industry.[33] Although such "qualified" bars are sometimes informally (and inaccurately) referred to as if they are time-limited—for example, a "five-year bar"—these bars do not expire at the end of the specified time period. Rather, the requirement that the respondent submit a detailed

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[31] For example, in these litigated proceedings, the Commission issued opinions imposing associational bars with a right to reapply after five years: In the Matter of Thomas C. Bridge, Rel. No. 33-9068, 2009 WL 3100582 (S.E.C. Sept. 29, 2009), In the Matter of Robert Radano, Rel. No. IA-2750, 2008 WL 5598441 (S.E.C. June 30, 2008), and In the Matter of Richard J. Puccio, Rel. No. 34-37849, 1996 WL 669963 (S.E.C. Oct. 22, 1996).

[32] See, e.g., Final Rules Release, Rules of Practice, Rel. No. 34-35833, 1995 WL 368865, *39 (June 9, 1995); Final Rule Release, Applications by Barred Individuals for Consent to Associate with a Registered Broker, Dealer, Municipal Securities Dealer, Investment Adviser or Investment Company, Rel. No. 34-20783, 1984 WL 547096 (Mar. 16, 1984); Applications for Relief from Disqualification, Rel. No. 34-11267, 1975 WL 160468 (Feb. 26, 1975). See also Final Rule Release, Notice by Self-Regulatory Organizations of Proposed Admission to, or Continuance In, Membership or Participation of Certain Persons Subject to Statutory Disqualifications, Rel. No. 34-18278, 1981 WL 375804 (Nov. 20, 1981); Final Rule Release, Provision for Notices by Self-Regulatory Organizations of Disciplinary Sanctions; Stays of Such Actions; Appeals; and Admissions to Membership or Association of Disqualified Persons, Rel. No. 34-13726, 1977 WL 176035 (July 8, 1977).

[33] See Applications for Relief from Disqualification, Rel. No. 34-11267, 1975 WL 160468, *1 (Feb. 26, 1975) ("The Commission recognizes that situations may exist where, in light of changed circumstances and after the passage of a period of time, it may appear appropriate to the Commission, in its discretion, to permit a disqualified individual or firm to have the disqualification lifted if, in general, the applicant can make a showing satisfactory to the Commission that re-entry into the securities business would be consistent with the public interest.") (footnote omitted).

application for association addressing a range of mandatory questions enables the Commission to retain strict control over whether, and the circumstances in which, a barred individual may return to the securities industry, even long after the specified time period has passed.

The five-year collateral bar the Initial Decision imposed on Page stands in stark contrast to the qualified bars often imposed by the Commission. If the Commission affirms this sanction, by its terms, the bar—like a suspension—will expire in five years, leaving the Commission with no ability to assess or shape the terms of Page's return to the securities industry or to evaluate its impact on the public interest.[34] Such an outcome would be unsupported by the applicable statutory language, which makes no mention of bars of varying durations, and is entirely inconsistent with the Commission's and the courts' fundamental conception of a bar as a lifetime sanction. Accordingly, it should not be permitted.

As discussed above, a permanent bar with a right to reapply after five years is appropriate in this case because: (1) Page was associated with PageOne, a registered investment adviser; and (2) his violations of Advisers Act Sections 206(1), 206(2) and 207 were willful; and (3) each of the Steadman factors demonstrates that such a bar is in the public interest.

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[34] Cf. In the Matter of Victor Teicher, Rel. No. IA-2799, 2008 WL 4587535, at *2 (Oct. 15, 2008) (Order Denying Motion to Modify Bar Order) ("This exercise of caution before modifying or lifting administrative bars 'ensures that the Commission, in furtherance of the public interest and investor protection, retains its continuing control over such barred individuals' activities.'") (footnote omitted).

C. The Commission Should Prohibit Page From Serving or Acting in Investment Company-Related Capacities Pursuant to Investment Company Act Section 9(b).

In the Consent Order, the Commission ordered the ALJ to consider whether remedial measures were appropriate under Investment Company Act Section 9. (Consent Order, ¶ IV.) In the Initial Decision, the ALJ both acknowledged the availability of Section 9(b)'s prohibitions and held that both requirements for imposing those prohibitions—willful violations and that doing so was in the public interest—had been met. (See Initial Decision at 3-4 (noting the availability of Section 9(b) prohibition and finding that Page's violations of the Advisers Act were willful); and 10 (finding that a five-year associational bar is in the public interest).) However, the ALJ, without explanation, did not impose the investment company prohibitions provided for under Section 9(b). In light of the fact that the ALJ correctly found it appropriate in the public interest to bar Page under Advisers Act Section 203(f), the Commission also should prohibit Page from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter under Investment Company Act Section 9(b). See In the Matter of Anthony Fields, 2015 WL 728005, at *22 (after concluding that a collateral bar under Section 203(f) is warranted, explaining that "[f]or essentially the same reasons, permitting [the Respondent] to associate with or provide services to investment companies also would present an unacceptably high risk of future violations," and imposing an investment company prohibition under Section 9(b)).

CONCLUSION

Based on the foregoing, the Division respectfully requests that the Commission: (1) modify the Initial Decision to permanently bar Page from associating with the entities set out in Advisers Act Section 203(f) with a right to reapply after five years and to prohibit Page from serving or acting in the investment company-related capacities set out in Investment Company Act Section 9(b); and (2) reject Respondents' appeal in its entirety.

Dated: October 2, 2015
New York, New York

Respectfully submitted,

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DIVISION OF ENFORCEMENT

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-16037

In the Matter of

EDGAR R. PAGE and
PAGEONE FINANCIAL INC.,

Respondents.

Certificate of Service

I hereby certify that I served the Division of Enforcement's Memorandum of Law In Opposition to Respondents' Appeal and in Support of the Division's Cross-Appeal From Initial Decision No. 822 on this 2nd day of October, 2015, on the below parties by UPS:

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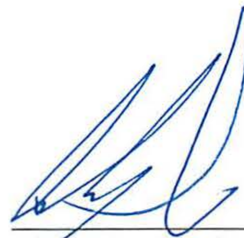

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