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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.	

EXPERT REPORT OF ARTHUR B. LABY

United began paying for this acquisition in approximately April 2009, by making a series of down payments on the purchase of PageOne. As part of this transaction, Page committed to raise between $18 and $20 million for the United Funds.[4] In addition, Page understood that United could not afford to make the down payments to Page without his continuing to raise investments for the Funds. Indeed, Uccellini repeatedly told Page that United and the Funds were in desperate need of cash infusions.[5] Page, therefore, had a conflict of interest – he had an incentive to sell the Funds to clients because, when he sold those Funds, it was more likely that he would receive additional down payments toward the purchase of his firm. Moreover, if Page's clients made a sufficient number of investments in the Funds, Page and United would conclude the sale of PageOne to United, thereby benefitting Page. In addition, United memorialized virtually all of the payments to Page with promissory notes, obligating Page to repay these down payments if the acquisition did not close. These conflicts of interest were not disclosed. Although at times Page made certain disclosures to investors about arrangements with United and the Funds, the disclosures he made were insufficient or false.

Part II of this Report summarizes my background, qualifications, and experience. Part III provides the basis for my Report, including material I reviewed. Part IV provides background information on investment advisers and their applicable standards of conduct. Part V contains background information on Page, PageOne, United, and the acquisition agreement between Page and United. Part VI contains my opinions regarding the standards of conduct expected of Page and PageOne. My opinions can be summarized as follows:

- Page and PageOne acted as investment advisers with respect to each of their clients.

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[4] *See* Div. Exs. 53, 62, 128.

[5] *See* Page Testimony at 108-109; *see also* Div. Exs. 35, 40, 41, 64, 67, 77, 129, 130, 133, 134, 145, 149, 158, 160.

discussion of the definition, functions, and duties of investment advisers under the federal securities laws. I also have taught at the George Mason University School of Law in Arlington, Virginia; the George Washington University Law School in Washington, DC; the Friedrich Schiller University Jena, in Germany; and the University of Augsburg, in Germany. My academic research focuses on securities regulation and the fiduciary relationship, including the standard of conduct expected of investment advisers.

I received a B.A., *magna cum laude*, from the University of Pittsburgh, where I was elected to Phi Beta Kappa. I received my J.D., *magna cum laude*, from Boston University School of Law, where I was an editor of the *Law Review*. After law school, I clerked for the Honorable J. Frederick Motz, United States District Court for the District of Maryland. From 1994 to 1996, I was a Fulbright Scholar in Germany, teaching and researching at two German law schools, mentioned above. I am licensed to practice law in Pennsylvania and in the District of Columbia.

B. Academic and Professional Experience

Before joining the Rutgers faculty, I served from 1996 until 2005 on the Securities and Exchange Commission staff in several capacities, most recently as Assistant General Counsel. In that position, I supervised lawyers responsible for advising the Commissioners, the SEC's General Counsel, and senior SEC staff on regulatory and enforcement matters including rule proposals, exemptive applications, and enforcement investigations and recommendations. In my role as Assistant General Counsel, I specialized in investment management. I advised the SEC on enforcement cases against investment advisers and investment companies, and on agency rulemaking related to investment advisers and investment companies. Serving in the Office of General Counsel provided broad and deep exposure to investment advisory practices, and to a variety of regulatory and compliance matters for advisers and investment companies. While

I recently concluded a three-year term on the Investment Management Regulation Committee of the New York City Bar Association. The Committee meets monthly to share information about how courts and regulators apply the law to investment companies and investment advisers. On occasion, the Committee submits comment letters to regulators to explain how a proposed rule would affect the industry. I am a member of the Business Associations and Securities Regulation Sections of the Association of American Law Schools ("AALS"). I am also a member, and past Chair, of the AALS Section on Scholarship. I belong to the SEC Historical Society and serve on its Board of Advisors and Museum Committee.

I have authored a number of publications and given presentations on topics relating to investment advisers, investment companies, and broker-dealers, the Investment Advisers Act of 1940 ("Advisers Act"), the Securities Exchange Act of 1934 ("Exchange Act"), the obligations imposed on advisers and brokers, and SEC rulemaking in the investment adviser and broker-dealer areas. My scholarship has appeared, among other places, as chapters in books published by Oxford University Press, Edward Elgar Publishing, and Sellier European Law Publishers, and as articles in the *Washington Law Review*, the *Boston University Law Review*, the *Villanova Law Review*, the *Review of Banking & Financial Law*, *The Business Lawyer*, the *American University Law Review*, the *Buffalo Law Review*, and the *Brooklyn Journal of Corporate, Financial and Commercial Law*. My work has been cited by the United States Court of Appeals for the Tenth Circuit, the *Restatement (Third) of Agency*, and the SEC, as well as in numerous academic and practitioner-oriented journals. A more complete list of my publications and presentations is included in my *curriculum vitae*, attached as Appendix 1.

I have spoken to many audiences in the United States on business law topics, including conferences and symposia sponsored by The Wharton School, Boston University School of Law, Brooklyn Law School, University of Pennsylvania Law School, Villanova University School of

D. Terms of Engagement

I have been engaged by the Division to provide expert services in *In the Matter of Edgar R. Page and PageOne Financial, Inc.*, File No. 3-16037. I am being compensated at the rate of $600 per hour. My compensation is not dependent on the outcome of this proceeding.

III. Basis for Statement of Opinions

I base this Report on my review of certain documents, records, filings, and other information related to this proceeding that were provided to me by counsel for the Division or publicly available. The documents on which I primarily rely include testimony transcripts and exhibits thereto, and certain of the Division's hearing exhibits ("Div. Ex."), such as the Amended Order Instituting Proceedings ("OIP"), the Answer to the Amended Order Instituting Proceedings ("Answer"), the Respondents' Wells Submission, and the Respondents' Supplemental Wells Submission. A list of these documents is set forth in Appendix 3. I also base this Report on my education, training, and experience in the financial services industry, and my background in the field of securities regulation and the regulation of investment advisers and broker-dealers.

IV. Background on Investment Advisers

A. Description of Investment Advisers

An investment adviser is a person or firm in the business of providing advice for compensation about investing in financial assets, such as stocks, bonds, mutual funds, private funds, or other assets. An adviser's activities can include recommending particular investments, monitoring the investments, discussing a client's financial objectives, assessing a client's financial situation, and providing financial planning services. Advisers are regulated on the federal level under the Investment Advisers Act of 1940 and on the state level by state statutes that vary across states.

from and influence the law. There is a symbiotic relationship between legal standards and industry standards of conduct. Best practices and guidelines followed by responsible investment advisers inform courts and regulatory authorities. They also inform industry participants on how to comply with the law and satisfy obligations to clients and potential clients.[8]

Under both the law and recognized standards of conduct, investment advisers must operate under a fiduciary standard toward clients.[9] In practice, this means that advisers must act with a high degree of honesty and loyalty toward clients. The fiduciary obligation is often described as a "best interest" standard, meaning that an adviser must act in good faith toward the client and in the client's best interest. Acting in the client's best interest means subordinating the adviser's own interests to the client's interests.

The fiduciary standard of conduct requires advisers to provide disinterested advice. An adviser must make complete, full, and honest disclosure of all material facts. This disclosure includes a duty to disclose all material information to eliminate or disclose conflicts of interest.[10] The test of materiality is objective – the test is whether the information would "significantly alter the 'total mix' of information available" to a reasonable investor.[11] An adviser, however, must

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[8] In this Report, references to the obligations an adviser owes to clients should be read to include obligations owed to potential clients as well. *See* Investment Advisers Act §§ 206(1) and 206(2).

[9] SEC v. Capital Gains Research Bur., Inc., 375 U.S. 180, 191 (1963); TAMAR FRANKEL & ANN TAYLOR SCHWING, THE REGULATION OF MONEY MANAGERS: MUTUAL FUNDS AND ADVISERS 13-3 (2d ed. 2001 & Supp. 2013); Investment Adviser Association, Standards of Practice, "Fiduciary Duty and Other Responsibility," available at https://www.investmentadviser.org/eweb/dynamicpage.aspx?webcode=StandardsPractice.

[10] *Capital Gains*, 375 U.S. at 191-92, 194.

[11] *See* In the Matter of Montford and Co., Inc., Investment Advisers Act Release No. 3829, 2014 WL 1744130 at *14 (May 2, 2014), quoting Basic Inc. v. Levinson, 485 U.S. 224, 231-32 (1988).

Under the prudent person standard, an adviser must act with the care, competence, and diligence normally exercised by agents in similar circumstances.[20]

2. Form ADV

Form ADV is the uniform form investment advisers use to register with the SEC and the state securities authorities. The form has two parts, Part 1 and Part 2. Part 1 requires an adviser to complete information about, among other things, its business, ownership, clients, employees, business practices, affiliations, and any disciplinary problems of the adviser or its employees. Part 1 is organized as a check-the-box or fill-in-the-blank format. Although Part 1 is designed primarily for use by the SEC, it is available to the public on the SEC's website.[21] Form ADV Part 2 requires an adviser to prepare a brochure that contains information, such as the variety of advisory services offered, the adviser's fee schedule, disciplinary information, conflicts of interest, and educational and business background of key employees. Part 2 is designed for clients and must be delivered to them.[22] Before 2011, advisers had a choice when completing Part 2. They could either complete a check-the-box and fill-in-the-blank form provided by the SEC or they could prepare a narrative brochure containing the required information. After 2011, advisers no longer have a choice. After 2011, every adviser must complete a narrative brochure in plain English.

Form ADV, especially Part 2, is the primary disclosure document advisers provide to clients. When filed with the SEC, the disclosures are available to the public on the SEC's

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[20] RESTATEMENT (THIRD) OF AGENCY § 8.08.

[21] SEC, Form ADV, available at http://www.sec.gov/answers/formadv.htm.

[22] SEC, Form ADV, available at http://www.sec.gov/answers/formadv.htm.

clients." The guidelines also state that an adviser has "an affirmative duty of care, loyalty, honesty, and good faith to act in the best interests of its clients."[25]

Similarly, the North American Securities Administrators Association, the umbrella organization for state securities regulators, has publicized information about investment advisers' fiduciary obligation. NASAA explained that the Advisers Act, NASAA's model rules, and most state laws impose an obligation on advisers to act as fiduciaries. According to NASAA, this requires an adviser to hold the client's interest above the adviser's own interest and to avoid conflicts of interest. If conflicts cannot be avoided, an adviser must clearly describe the conflict and how the adviser will address it.[26]

It was known at PageOne that these standards are well understood in the industry. Sean Burke, who worked for Page, was asked during his testimony why he believed that the acquisition arrangement between Page and United, discussed below, should be disclosed to clients. Burke stated that if an adviser is receiving money for an investment, the conflict must be disclosed. When pressed on why he believed that, Burke responded by saying, "It's common knowledge in our industry . . . ."[27] In addition, PageOne's Policies and Procedures, dated March 12, 2010, stated that "[o]ur firm's Disclosure Document provides information about . . . any actual and potential conflicts of interest, among other things."[28]

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[25] *See* IAA Standards of Practice, available at http://www.investmentadviser.org/eweb/dynamicpage.aspx?webcode=StandardsPractice.

[26] *See* NASAA, Investment Adviser Guide, available at http://www.nasaa.org/industry-resources/investment-advisers/investment-adviser-guide.

[27] Burke Testimony at 120.

[28] Div. Ex. 154 at SEC-PageOne-E-0095042.

V. Background on Edgar Page, PageOne Financial, United Group of Companies, and the Acquisition Agreement

In this section of the Report, I provide background information on Page, PageOne, United, and the acquisition agreement whereby United agreed to acquire at least a portion of PageOne. Unless otherwise clear from the context, references in this Report to Page or PageOne should be read to include Both Page and PageOne.

A. Edgar Page

Page has significant experience in the securities industry. He began his career in 1982 with First Investors Corporation as a broker-dealer registered representative and moved to American General, also as a registered representative. From 1982 to 1991, he managed client funds on a discretionary basis. In the mid-1980s, Page registered with New York State as an investment adviser.[29] Page has a history of disciplinary actions brought against him by regulators. FINRA materials I reviewed indicate eight disciplinary matters brought against Page from 1987 to 2008.[30]

B. PageOne Financial

PageOne Financial is a New York corporation headquartered in Malta, NY.[31] PageOne is an SEC-registered investment adviser; its predecessor has been registered since 1986.[32] Formerly, PageOne was called North American Capital Timing ("NACT").[33] In September 2002, Page purchased NACT from Gordon D'Angelo for approximately $2 million. In 2003, Page changed

[29] Page Testimony at 10-12.

[30] Div. Ex. 115.

[31] OIP ¶7, Answer ¶7.

[32] OIP ¶1, ¶7, Answer ¶1, ¶7.

[33] Burke Testimony at 9.

In 2010, PageOne revised its Form ADV disclosure and eliminated the reference to receiving a 7 percent referral fee.[43] The Form ADV continued to state that "Registrant is compensated in the Alternative Investment Program by a referral fee paid by the private investment fund in which the client is invested."[44] The revised disclosure stated that the annual fee charged to clients investing in the Funds would be a 1 percent annual fee. Also in 2010, PageOne's Form ADV contained a disclosure stating, "PageOne Financial will act as a solicitor for certain private investment funds, and for doing so will receive a referral fee."[45] PageOne's September 2010 Form ADV also stated that Page was a paid consultant to United.[46]

C. United Group of Companies

United Group of Companies is a real estate firm founded in 1972. United is involved in several phases of the real estate business, such as development, finance, acquisition, and management. Its properties include senior living facilities, student housing, commercial properties, and others. Among its finance-related activities, United manages private funds.[47] A private fund is an entity that holds a pool of securities or other assets but that neither registers its offerings of securities with the SEC nor registers as an investment company with the SEC.[48] Private funds can be contrasted with public funds, such as mutual funds, which register with the SEC as investment companies and sell shares to the public.

From 2008, United co-managed two private Funds, which provided funding for the building of college housing and senior housing facilities. One fund was the DCG/UGOC Income

[43] Div. Ex. 48, Schedule F at 11.

[44] Div. Ex. 48, Schedule F at 3.

[45] Div. Ex. 48, Schedule F at 17.

[46] Div. Ex. 48, Schedule F at 13.

[47] Div. Exs. 1, 2, 57; *see* Peterson Testimony at 12-13.

[48] SEC STAFF, STUDY ON IMPLICATIONS OF THE GROWTH OF HEDGE FUNDS ("HEDGE FUND STUDY") 3 (Sept. 2003).

In addition, United agreed to pay make down payments for United's acquisition of PageOne.[61] These payments often, but not always, were 7 percent of the amount PageOne clients invested into the Funds.[62] As part of the acquisition, Page further committed to raise approximately $18 million for the Funds.[63] Once he completed raising $18 million for the Funds, United would complete its purchase of 49 percent of PageOne.[64] The parties later increased the amount that Page agreed to raise to $20 million.[65]

United and Page documented United's down payments for the 49 percent interest in PageOne through a series of promissory notes.[66] The payments, therefore, appeared to be loans from United to Page. This arrangement was intended to protect United. If Page and United did not complete their transaction, Page would repay the notes.[67] If the parties completed the transaction, United would cancel the notes, Page would keep the funds, and United would acquire 49 percent of PageOne.[68] In the end, the acquisition never occurred and, as expected, United has sought repayment of the promissory notes in the amount of $2,751,345 in principal and $933,486 in interest.[69]

VI. Expert opinions

This Part of the Report discusses ways in which the conduct of Page and PageOne departed from generally acceptable conduct of investment advisers. The conduct departed from

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[61] Burke Testimony at 56, 156.

[62] *See, e.g.*, Div. Ex. 21.

[63] Div. Exs. 53, 62, 128.

[64] Burke Testimony at 57-58; Div. Ex. 128.

[65] Div. Exs. 53, 62.

[66] Div. Ex. 102; OIP ¶2, ¶16, Answer ¶2, ¶16; Burke Testimony at 114-15.

[67] *See* Div. Ex. 94 at 5; Page Testimony at 140-41; Burke Testimony at 115.

[68] *See* Page Testimony at 140-41, 142-43; OIP ¶16, Answer ¶16.

[69] Div. Ex. 91; OIP ¶38, ¶39, Answer ¶38, ¶39.

This situation presented a classic conflict of interest for Page. Page had a duty to recommend securities in his clients' best interest. At the same time, he was trying to sell 49 percent of his firm to United and he knew that the sale would only occur if a sufficient number of his clients invested a sufficient amount in the Funds. Consequently, Page was or might have been tempted to recommend the Funds not because the Funds were the best investment for clients, but rather because investing in the Funds increased the likelihood that Page would complete the sale of 49 percent of his firm to United, which would result in a personal benefit for Page.

Page did not disclose this conflict. In fact, Page insisted that he need not disclose the impending sale of his firm.[70] Page testified that he believed information about the transaction was confidential; he refused to tell clients about what he said was a private contractual arrangement to sell the firm.[71] A careful look at Page's disclosures shows that Page either made no disclosure with regard to United's impending acquisition of PageOne, or Page disclosed that he received referral fees from United, or he disclosed that he was a consultant to United. He did not disclose – in the Form ADV or elsewhere – that he recommended that clients invest in the Funds while United was attempting to purchase 49 percent of PageOne.

In 2009 and in the first half of 2010, Page disclosed that PageOne will receive "a referral fee" of between 7.0% and 0.75% of the amount invested in the applicable private Fund.[72] This same disclosure appeared in PageOne's investment advisory agreements with clients.[73] According to Page, however, the payments he received were not fees for referring clients to the Funds; they

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[70] Burke Testimony at 121.

[71] Page Testimony at 118; *see also* Div. Ex. 87 (Response to Item 6).

[72] *See* Div. Exs. 14, 39, and 47.

[73] Div. Ex. 107 at § 15.

participated on phone calls with NRS when the language was finalized.[81] Page testified that it was standard practice for him to review the language in the Form ADV.[82]

Page did not disclose the conflict of interest that arose from recommending investments in the Funds while United was attempting to purchase 49 percent of PageOne. The disclosures that Page made with regard to his relationship with United were untrue and did not inform investors of Page's actual conflict. As the leader of an investment advisory firm, Page is responsible for the statements in the Form ADV. Thus, even if Burke disclosed the relevant facts to NRS, and NRS suggested or provided disclosure language, if the Form ADV disclosures were false, Page, like any prudent adviser, had a responsibility to revise the disclosure so that it was honest and correct.

2. Page failed to disclose that he committed to invest a specific amount of his clients' assets in the Funds while United was acquiring 49 percent of PageOne, thereby exacerbating the conflict of interest

As discussed, Page faced a conflict because he advised clients to invest in the Funds while United was in the process of acquiring 49 percent of PageOne. Moreover, the conflict was exacerbated because Page committed to invest a specific amount of assets, $18-20 million, in the Funds. This commitment worsened the conflict because Page had an undisclosed incentive to invest his clients' assets in the Funds so that Page could reach his specific goal of raising $18 million for the Funds. Once Page satisfied his commitment, United would complete the purchase of 49 percent of PageOne.

The commitment to raise $18-20 million exacerbated the conflict. The concern is that Page was investing his clients' assets in the Funds because Page had to meet his commitment to raise money for the Funds, not because the investment was in his clients' best interest. Page did

[81] Burke Testimony at 42-43.

[82] Page Testimony at 63.

to Page, confirms that Uccellini would not complete the acquisition of 49 percent of PageOne until Page raised additional funds for United.[87] Uccellini wrote, "I would like to complete the acquisition of the entity as soon as Ed is able to raise the necessary funds to finalize it . . . ."[88] Moreover, Burke testified that money Page raised for the Funds was tied directly to payments United made to Page as down payments on the purchase of 49 percent of PageOne.[89]

In addition, Page understood that United was having a liquidity crises. Page testified to this. Moreover, from 2009 through 2011, Uccellini repeatedly emailed Page explicitly about his desperation to raise money.[90] Thus, Page understood – but failed to tell his clients – that unless his clients invested in the Funds, United was unlikely to have the cash on hand to make the acquisition down payments to Page.

4. The structure of United's payments as loans evidenced by promissory notes exacerbated Page's conflict

As discussed, United's payments to Page were documented by a series of promissory notes Page gave to United. Accordingly, if the acquisition did not close, Page would be personally liable to repay the funds to United. Page, therefore, had a significant incentive to raise the full $18 million, later $20 million, for United; if he failed to raise this full amount, the acquisition may not close and Page would be faced with a significant outstanding debt owed to United. The fact that Page would have to repay the significant sums set forth in the promissory notes gave him additional incentive to ensure that his clients invested in the Funds. Yet none of these incentives was disclosed to clients. Perhaps this conflict would have been less severe if

[87] Div. Ex. 53.

[88] Div. Ex. 53.

[89] Burke Testimony at 73.

[90] *See* Page Testimony at 108-109; *see also* Div. Exs. 35, 40, 41, 64, 67, 77, 129, 130, 133, 134, 145, 149, 158, 160.

In addition, Page's own testimony contradicts the claim that he "over disclosed" his conflict of interest. Page testified that the statement in the Form ADV that he was a consultant was an error and the statement was removed from the disclosure. The Form ADV, dated September 14, 2010, stated that Page was employed as a consultant to United.[96] Page, however, testified that he was "never" a consultant to United.[97] He testified that this disclosure was an oversight and inaccurate, and that Burke failed to remove the language. He stated that he was questioned by the SEC staff and was "surprised to find it in there."[98] Page also testified that "referral fee" was a business term he and United had discussed but ultimately avoided because receiving referral fees would require Page to renew his securities license and associate with a broker-dealer.[99] This account was confirmed by United. United told the SEC by letter, dated November 3, 2011, that United "does not have and has not had any consulting arrangement with Edgar R. Page and has not paid any consulting fees to Mr. Page in connection with any consulting services."[100] Furthermore, in my opinion, it is not generally accepted industry practice for an investment adviser to "over disclose" a conflict by disclosing a different conflict that the adviser does not actually face.[101]

Thus, although Page disclosed at one point that he was receiving referral fees from United, and at another point that he was a consultant to United, both of these statements were false. Page did not disclose his actual conflict, namely that he was recommending the Funds at the same time that United was attempting to purchase PageOne. Moreover, Page had an ongoing

[96] Div. Ex. 48 at 13.

[97] Page Testimony at 82.

[98] Page Testimony at 82-83.

[99] Page Testimony at 56-57, 68-70, 80-81.

[100] Div. Ex. 86.

[101] Such a practice would be contrary to the requirement that an adviser disclose all actual and potential conflicts.

faced additional pressure, not just to gain additional future payments, but also to avoid having to repay the monies he had already received.

The same is true with respect to the disclosure that Page was a consultant. Although acting as a consultant can lead to a conflict of interest, the conflict is qualitatively different than the conflict in Page's case. If a client is told that an adviser acts as a consultant to a fund manager, the client may be on notice that the adviser has a relationship with the fund manager, and perhaps would be predisposed to recommend the fund manager's funds over other investments. The conflict in Page's case, however, is more tangible and more severe because Page would receive a large economic benefit (the sale of 49 percent of this firm) as long as a sufficient number of Page's clients invested in the Funds. Page's disclosure, therefore, was inconsistent with the standard of full and honest disclosure that is accepted in the advisory profession.

6. Page's conflict of interest when recommending that clients invest in the Funds while selling 49 percent of his firm to United was a conflict that most industry investors would consider significant

Page's conflict of interest is the kind of conflict investors would want to know and, therefore, industry professionals would consider it important. Investment advisers know that, as fiduciaries, they must disclose conflicts to clients. Advisers understand that advisory clients expect honest, unbiased advice. If an adviser has a secret motive or the appearance of a secret motive – a reason for a recommendation other than the client's best interest – the adviser must be forthright and disclose it. Without disclosure, advisers know that clients will assume the adviser is acting in the client's best interest.

In Page's case, there was a clear motivation for recommending the Funds that went beyond the clients' best interest. If a sufficient number of clients invested a sufficient amount of assets in the Funds, Page would receive a personal benefit; he could sell 49 percent of his

I have seen Page's argument that he was not required to disclose the sale of 49 percent of his firm because preliminary merger negotiations need not be disclosed.[104] The point about disclosure of preliminary merger negotiations, however, is not relevant to Page's situation. The general point about merger negotiations is that an operating company is not necessarily required to disclose preliminary merger negotiations to investors, who are investing in the securities of a company that is the subject of a merger. Page's situation, however, is different. In the preliminary merger context, the potential merger is speculative. The need to disclose a speculative event turns on balancing the probability that the event will occur and the magnitude of the event in the context of the size of the overall company.[105] Thus, although a merger might be an event of great magnitude for a company, if the probability that the merger will occur is slim, a "probability times magnitude" approach could suggest that disclosure is not required.

In Page's case, however, the conflict of interest to be disclosed was not speculative. The conflict already existed and it was palpable and tangible for Page. Page recommended that his clients invest in the Funds at the same time that Page was motivated to make this recommendation for his own personal reasons rather than the clients' best interest. In addition, Page owed a duty of total candor to his advisory clients. He could have eliminated the conflict simply by not recommending the Funds to his clients.

As explained above, the question for Page was not simply whether to disclose that 49 percent of PageOne would be purchased by a buyer. The key point is that Page was recommending that his clients invest in private Funds managed by the very same people, who were planning to purchase 49 percent of PageOne and were in the process of paying Page for

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[104] *See* Div. Ex. 94 at 11-12; Div. Ex. 97 at 2.

[105] *See* Basic, Inc. v. Levenson, 485 U.S. 224, 238 (1988).

process of purchasing PageOne or that United's down payments to Page on the purchase price for the acquisition of PageOne were timed to the investments Page's clients were making in the Funds. United's payments to Page were structured as loans evidenced by promissory notes, which made Page's conflict more severe; if the acquisition did not close, United would require Page to repay the amounts given to Page as down payments. Page's claim that he made sufficient disclosure to put his investors on notice of a conflict of interest is not consistent with the way the advisory profession operates. Disclosures must be honest and accurate. Disclosure of one conflict, which does not exist, does not exonerate an adviser from making disclosure of another conflict, which does exist.

Arthur B. Laby
January 5, 2015

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The Fiduciary Obligation as the Adoption of Ends, 56 Buffalo Law Review 99 (2008)

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Resolving Conflicts of Duty in Fiduciary Relationships, 54 American University Law Review 75 (2004)

"The Best of NERA 2012," SEC Historical Society Program audio program on high-frequency trading, bias in hedge fund reporting, and SEC settlements, Washington, DC, July 2012, available at http://www.sechistorical.org/museum/programs/2012 (moderator)

Testimony on bond covenants affected by Senate Bill No. 2063, before New Jersey Senate Committee on Higher Education, June 14, 2012

"Harmonizing the Regulation of Financial Advisors," The Wharton School of the University of Pennsylvania Pension Research Council Conference, The Market for Retirement Financial Advice, Philadelphia, PA, May 2012

"Fiduciary Responsibility and Conflicts of Interest," Address to the Pennsylvania Public School Employees' Retirement System Board of Trustees, Harrisburg, PA, January 2012

"Extraterritorial Securities Regulation After *Morrison v. National Australia Bank* and the Dodd-Frank Act," University of Pennsylvania Journal of Business Law Symposium on Ongoing Implementation of the Dodd-Frank Act: Consumer Protection and Other Goals, Philadelphia, PA, November 2011

"Conflicts of Ethics in Transnational Engagements," German-American Lawyers Association, New York, NY, October 2011 (moderator)

"Common Law Antecedents of Fiduciary Disclosure," The Institute for the Fiduciary Standard, Fiduciary Forum 2011: Crafting Effective Disclosure – Is it Possible?, Washington, DC, September 2011

Invited Commentator, Wharton International Financial Regulation Conference, University of Pennsylvania, Philadelphia, PA, July 2011

"Fiduciary Duty," ALI-ABA Securities Law Conference on Investment Adviser Regulation, New York, NY, March 2011

"Ethical Considerations in the New Era of Whistleblower Claims Under Dodd-Frank and Other Statutes," Institutional Investor Educational Foundation Conference on Ethical Considerations for Whistleblowers, New York, NY, December 2010 (moderator)

"Advisers' Federal Fiduciary Obligations: Misreading *SEC v. Capital Gains Research Bureau*," Temple University School of Law, Faculty Colloquium, Philadelphia, PA, November 2010

"Revisiting Advisers' Federal Fiduciary Duty Under *SEC v. Capital Gains Research Bureau*," Boston University School of Law Symposium, The Role of Fiduciary Law and Trust in the Twenty-First Century: A Conference Inspired by the Work of Tamar Frankel, Boston, MA, October 2010

"Liability of Asset Managers in the United States," Presentation to the International Working Group on the Liability of Asset Managers, Radboud University, Nijmegen, The Netherlands, October 2010

"Insider Trading Law in the United States," University of Regensburg, Regensburg, Germany, October 2010

"Negotiating With Management Regarding Board Decisions," Mutual Fund Directors Forum, Second Annual Directors' Institute, Fort Myers, FL, January 2008

"Why Non-US Companies Delist from US Exchanges," Düsseldorf Symposium on Economic Law as an Economic Good, Düsseldorf, Germany, November 2007

"The Fiduciary Obligation as a Duty of Ethics," XXIII World Congress of Philosophy of Law and Social Philosophy, Krakow, Poland, August 2007

"Gatekeepers and Corporate Governance," Center for International Legal Studies, Conference on Mergers, Acquisitions and Securities, Cape Town, South Africa, November 2006

"The Fiduciary Obligation as the Appropriation of Ends," Seton Hall Faculty Colloquium, Newark, NJ, October 2006

"The Asset Management Industry: A New Wave of Acquisitions and Mergers," Practising Law Institute Panel, New York, NY, April 2006

"Differentiating Gatekeepers," Symposium on New Models for Securities Law Enforcement: Outsourcing, Compelled Cooperation and Gatekeepers, Brooklyn Law School, Brooklyn, NY, March 2006

"Pending Litigation Regarding SEC Rulemaking," Federal Bar Association, Executive Council of the Securities Law Committee, Washington, DC, February 2006

"Registration Issues and Disclosure to Clients," Center for Financial Market Integrity, Investment Adviser Association, Hedge Fund Advisers Compliance Conference, Washington, DC, November 2005

"Managing a Securities Commission," Securities and Exchange Commission, Annual International Institute for Securities Market Development, Washington, DC, April 2004

"Transatlantic Regulatory Structures," Center for European Policy Studies, Conference on Global Markets, National Regulation: How to Bridge the Gap, Brussels, Belgium, June 2003

"International Securities Markets: Emerging Best Practices for a Rapidly Evolving Regulatory Scheme," Speaker on Practicing Law Institute Panel, New York, NY, May 2003

"Market Discipline and Disclosure," Center for European Policy Studies, Roundtable on Securities Market Regulatory Processes in the E.U. and U. S. Compared, Brussels, Belgium, May 2002

"The Reform of European Capital Markets – An American Perspective," European Central Bank Legal Colloquium, Frankfurt, Germany, July 2001

"The Information Disclosure Process and the Relationship Between Companies and Investors," IBRI, The Brazilian Institute of Investor Relations, Sao Paulo, Brazil, March 2001

American Law Institute (elected)
American Council on Germany
German-American Lawyers Association
Fulbright Association
American Bar Association
DC Bar Association
Philadelphia Compliance Roundtable

HONORS AND AWARDS

Richard J. Davis Legal/Regulatory/Ethics Award, 2013
Center for International Legal Studies Bisone Foundation Grant, 2006
SEC Capital Markets Award, 2001
SEC Chairman's Award for Excellence, 2000
Fulbright Senior Scholar in Law, 1994-95 and 1995-96
Phi Beta Kappa

SELECT EXPERT WITNESS AND LEGAL CONSULTING

United States v. Tagliaferri, U.S. District Court for the Southern District of New York, No. 1:13-cr-00115-UA, 2014. Expert for United States regarding structure of investment funds and conflict of interest transactions. Trial testimony

Securities and Exchange Commission v. Rooney, U.S. District Court for the Northern District of Illinois, Civil Action No. 11-cv-8264, 2013. Expert for Securities and Exchange Commission regarding fiduciary obligations and other responsibilities of investment adviser. Expert report

In re **[Confidential Matter]**, 2013. Retained to offer expert opinions for respondent investment adviser and broker-dealer in FINRA arbitration regarding required conduct

United States v. Sutton, U.S. District Court for the Eastern District of Missouri, No. 52-4:09CR00509 JCH (HTM), 2013. Expert for United States regarding roles and responsibilities of investment adviser. Trial testimony

Securities and Exchange Commission v. Welliver, U.S. District Court for the District of Minnesota, Civil Action No. 11-cv-3076-RHK-SER, 2012. Expert for Securities and Exchange Commission regarding roles and responsibilities of investment adviser. Expert report and deposition

In re **Electronic Transaction Clearing, Inc.,** Chicago Board Options Exchange, Inc., 2012. Expert for respondents in CBOE disciplinary proceeding regarding broker-dealer industry practices. Expert testimony

In re **[Confidential Matter]**, 2011 to present. Retained to offer expert opinions for respondents in FINRA arbitration regarding fiduciary duty, suitability, registration, and other matters

Jacobson Family Investments, Inc. v. National Union Fire Ins. Co. of Pittsburgh, New York Supreme Court, Index No. 601325/2010, 2011 to present. Expert for plaintiffs in breach of contract litigation regarding roles and responsibilities of broker-dealers and investment advisers. Expert report and deposition

BAR AND COURT ADMISSIONS

Pennsylvania	United States Supreme Court
District of Columbia	United States Court of Appeals for the Fourth Circuit

Appendix 3

List of Materials Considered

Cases

- SEC v. Capital Gains Research Bureau, Inc., 375 U.S. 180 (1963)
- Basic, Inc. v. Levenson, 485 U.S. 224, 238 (1988)
- SEC v. Koenig, 557 F.3d 736 (7th Cir. 2009)
- Evans v. Union Bank of Switzerland, 2003 WL 23109774 (E.D. La. Dec. 29, 2003)
- Jones v. Dana, 2006 WL 1153358 (S.D.N.Y. May 2, 2006)
- Monetta Financial Services, Inc. v. SEC, 390 F.3d 952 (7th Cir. 2004)
- Vernazza v. SEC, 327 F.3d 851 (9th Cir. 2003)

Laws, rules, Restatements, administrative materials, and codes of conduct

- Investment Advisers Act of 1940
- SEC, Form ADV, available at http://www.sec.gov/answers/formadv.htm
- Compliance Programs of Investment Companies and Investment Advisers, Investment Advisers Act Release No. 2204 (Dec. 17, 2003)
- Amended Order Instituting Proceedings, In the Matter of Edgar R. Page and PageOne Financial, Inc.
- Answer to Amended Order Instituting Proceedings, In the Matter of Edgar R. Page and PageOne Financial, Inc.
- In the Matter of Montford and Co., Inc., Investment Advisers Act Release No. 3829, 2014 WL 1744130 (May 2, 2014)
- In the Matter of Freeley & Wilcox Asset Mgt. Corp., Investment Advisers Act Release No. 2143, 80 SEC Docket 1730, 2003 WL 22680907 (July 10, 2003)
- SEC STAFF, STUDY ON IMPLICATIONS OF THE GROWTH OF HEDGE FUNDS (Sept. 2003)
- RESTATEMENT (THIRD) OF AGENCY (2006)

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January 5, 2015

By UPS and Email

The Honorable Jason S. Patil
Administrative Law Judge
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-2557

Re: In the Matter of Edgar R. Page, et al., Admin. Proc. File No. 3-16037

Dear Judge Patil:

I represent the Division of Enforcement in this matter. Pursuant to the Court's September 29, 2014 Order, please find enclosed a copy of a report of Professor Arthur B. Laby, the Division's expert in this matter.

Respectfully submitted,

Alexander Janghorbani
Senior Trial Counsel

Enclosures

cc: Richard D. Marshall, Esq., *Respondent's counsel* (by email and UPS)
Robert Iseman, Esq., *Respondent's counsel* (by email and UPS)
Brent Fields, *Secretary* (three copies by facsimile and UPS)