UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-16202

In the Matter of

GEORGE N. KRINOS,
KRINOS HOLDINGS, INC.,
and FORDGATE
ACQUISITION CORP.

Respondents.

Chief Administrative Law Judge
Brenda P. Murray

DIVISION OF ENFORCEMENT'S MOTION FOR SUMMARY DISPOSITION

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Amato v. United States, 450 F.3d 46 (1st Cir. 2006)

Basic, Inc. v. Levinson, 485 U.S. 224 (1988)

Baxter v. Palmigiano, 425 U.S. 308 (1976)

Braswell v. United States, 487 U.S. 99 (1988)

Ernst & Ernst v. Hochfelder, 425 U.S. 185 (1976)

In re Anthony Fields, File No. 3-14684, Rel. No. 4028, 2015 WL 728005 (Feb. 20, 2015)

In re David Henry Disraeli, File No. 3-12288, Rel. No. 8880, 2007 WL 4481515 (Dec. 21, 2007)

In re Donald L. Koch and Koch Asset Management, LLC, Advisers Act Rel. No. 3836, 2014 WL 1998524 (May 16, 2014)

In re Gary M. Kornman, File No. 3-12716, Exch. Act. Rel. 59403, 2009 WL 367635 (Feb. 13, 2009)

In re Gateway Int'l Holdings, Inc., File No. 3-16603, Exch. Act Rel. No. 53907 (May 31, 2006)

In re Guy P. Riordan, Sec. Act Rel. No. 9085, Exch. Act Rel. No. 61153, 2009 WL 4731397 (Dec. 11, 2009)

In re John J. Kenny and Nicholson/Kenny Capital Management, Inc., Advisers Act Rel. No. 2128, 2003 SEC LEXIS 1170 (May 14, 2003)

In re John P. Flannery, File No. 3-14081, Exch. Act. Rel. No. 73840, 2014 WL 7145625 (Dec. 15, 2014)

In re KPMG Peat Marwick LLP, File No. 3-15918, Exch. Act Rel. No. 43862, 2001 SEC LEXIS 98 (Jan. 19, 2001), pet. Denied, 289 F.3d 109 (D.C. Cir. 2002)

In re Montford and Company, Inc., File No. 3-14536, Rel. No. 3829, 2014 WL 1744130 (May 2, 2014)

In re Peter Siris, File No. 3-15057, Exch. Rel. 71068, 2013 SEC LEXIS 3924 (Dec. 12, 2013)

In re Russell W. Stein, File No. 3-9309, Advisers Act Rel. No. 2114, 2003 WL 1125746 (March 14, 2003)

In re Stanley Jonathan Fortenberry, File No. 3-15858, Initial Decision Rel. No. 748, 2015 WL 860715 (March 2, 2015)

In re Toby G. Scammell, File No. 3-15271, Rel No. 3961, 2014 SEC LEXIS 4193 (Oct. 29, 2014)

In re Zion Capital Mgmt. LLC, Exch. Act Rel. No. 34-48904A (Dec. 11, 2003)

Janus Capital Group, Inc. v. First Derivative Traders, 131 S. Ct. 2296 (2011)

Miller v. Champion Enter., Inc., 346 F.3d 660 (6th Cir. 2003)

SEC v. Better Life Club of America, Inc., 995 F. Supp 167 (D.D.C. 1998)

SEC v. Black, No. 04 C 7377, 2009 WL 1181480 (N.D. Ill. Apr. 30, 2009)

SEC v. Brown, 658 F.3d 858 (8th Cir. 2011)

SEC v. Capital Gains Research Bureau, Inc., 375 U.S. 180 (1963)

SEC v. Church Extension of the Church of God, Inc., 429 F. Supp. 2d 1045 (S.D. Ind. 2005)

SEC v. Colello, 139 F.3d 674 (9th Cir. 1998)

SEC v. Colonial Inv. Mgmt. LLC, 659 F. Supp. 2d 457 (S.D.N.Y. 2009)

SEC v. Conaway, 697 F. Supp. 2d 733 (E.D. Mich. 2010)

SEC v. Drexel Burnham Lambert, Inc., 837 F. Supp. 587 (S.D.N.Y. 1993)

SEC v. ETS Payphone, Inc., 408 F.3d 727 (11th Cir. 2005)

SEC v. Fife, 311 F.3d 1 (1st Cir. 2002)

SEC v. First City Fin. Corp., 890 F.2d 1215 (D.C. Cir. 1989)

SEC v. First Jersey Sec., 101 F.3d 1450 (2d Cir. 1996)

SEC v. Global Telecom Servs., LLC, 325 F. Supp. 2d 94 (D. Conn. 2004)

SEC v. Lazare Indus., Inc., 294 Fed. Appx. 711 (3d Cir. 2008)

SEC v. Levine, 517 F. Supp. 2d 121 (D.D.C. 2007)

SEC v. Lyttle, 538 F.3d 601 (7th Cir. 2008)

SEC v. J.T. Wallenbrock & Assocs., 440 F.3d 1109 (9th Cir. 2006)

SEC v. Kenton Capital, Ltd., 69 F.Supp. 2d 1 (S.D.N.Y. 1998)

SEC v. Mgmt. Dynamics, Inc., 515 F.2d 801 (2d Cir. 1975)

SEC v. Monarch Funding Corp., 192 F.3d 295 (2d Cir. 1999)

SEC v. Pimco Advisers Fund Mgmt. LLC, 341 F. Supp. 2d 454 (S.D.N.Y. 2004)

SEC v. Pirate Investors LLC, 580 F.3d 233 (4th Cir. 2009)

SEC v. Platforms Wireless Int'l Corp., 617 F.3d 1072 (9th Cir. 2010)

SEC v. Pocketport.com, Civ. Action No. 3:05-cv-1747 (JCH), 2006 WL 2349452 (D. Conn. July 28, 2006)

SEC v. Posner, 16 F.3d 520 (2d Cir. 1994)

SEC v. Prater, 289 F. Supp. 2d 39 (D. Conn. 2003)

SEC v. Suman, 684 F. Supp. 2d 378 (S.D.N.Y. 2010)

SEC v. Tambone, 550 F.3d 106 (1st Cir. 2008), vacated on other grounds, 550 F.3d 106 (1st Cir. 2009)

SEC v. Treadway, 430 F. Supp. 2d 293 (S.D.N.Y. 2006)

SEC v. Whittemore, Civ. Action No. 05-869, 2010 WL 786247 (D.D.C. Mar. 9, 2010)

Steadman v. SEC, 603 F.2d 1126 (5th Cir.1979), aff'd on other grounds, 450 U.S. 91, 101 S.Ct. 999, 67 L.Ed.2d 69 (1981)

Transamerica Mortg. Advisors, Inc. v. Lewis, 444 U.S. 11 (1979)

U.S. ex rel. Bilokumsky v. Tod, 263 U.S. 149 (1923)

Wonsover v. SEC, 205 F.3d 408 (D.C. Cir. 2000)

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15 U.S.C. § 78c(a)(4)

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17 C.F.R. § 201.1004

Administrative Guidance

Investment Advisers Act Rel. No. 1092, 1987 WL 112702 ("Applicability of the Investment Advisers Act to Financial Planners, Pension Consultants, and Other Persons Who Provide Investment Advisory Services as a Component of Other Financial Services"

I. INTRODUCTION

This matter concerns the fraudulent conduct of George N. Krinos ("Krinos"), between January 2012 and November 2013, in connection with the offer and sale of securities of Krinos Holdings, Inc. ("Krinos Holdings"), as well as the promotion of Krinos Financial Group Ltd. ("Krinos Financial"), a subsidiary of Krinos Holdings formerly registered with the Commission as an investment adviser. In written offering documents and discussions with potential investors, Krinos pitched Krinos Holdings as a financial backer of American start-up companies, one that not only created American jobs but earned large returns for Krinos Holdings' investors in the process. By misrepresenting his own delusions of grandeur as fact, Krinos induced investors to provide real money to what was essentially a pretend business. Neither Krinos nor any other employee of Krinos Holdings had any venture capital experience or expertise, and Krinos Holdings had no means of financing the start-up companies said to be among its portfolio of investments. The only "start-up" that Krinos and Krinos Holdings actually raised money for was Krinos Holdings. The over $1 million that investors entrusted to Krinos Holdings went merely to keeping the proverbial lights on, paying its handful of employees, and covering Krinos' personal living expenses.

In holding himself out as an investment adviser, Krinos similarly invented facts about the scope and experience of Krinos Financial. For example, in registering Krinos Financial with the Commission, Krinos falsely claimed to have a reasonable expectation of acquiring $100 million in assets under management. In a subsequent filing with the Commission, he falsely claimed to have $20 million in assets under management. In reality, Krinos Financial had virtually no assets under management.

Additionally, in June 2013, Krinos acquired Fordgate Acquisition Corp., ("Fordgate"), a shell company whose common stock is registered with the Commission pursuant to Section 12(g) of the Exchange Act. Fordgate has failed to file any quarterly or annual reports for any periods since June 2013.

As a result of Krinos' conduct, the Division of Enforcement ("Division") requests that the Administrative Law Judge ("ALJ") issue an Initial Decision make findings that:

- Krinos and Krinos Holdings willfully violated Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder and Sections 17(a)(1), (2), and (3) of the Securities Act of 1933 ("Securities Act");
- Krinos willfully violated Sections 206(1), 206(2), and 207 of the Investment Advisers Act of 1940 ("Advisers Act"), and aided and abetted violations of Section 203A of the Advisers Act; and
- Fordgate failed to comply with Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13 thereunder.

Based on such findings, the Division further requests that the ALJ's Initial Decision impose sanctions, pursuant to Section 8A of the Securities Act, Sections 12(j), 21B and 21C of the Exchange Act, Sections 203 of the Advisers Act and Section 9 of the Investment Company Act of 1940, as appropriate:

- requiring Krinos and Krinos Holdings to cease and desist from committing or causing violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Sections 17(a)(1), (2), and (3) of the Securities Act;
- requiring Krinos to cease and desist from committing or causing violations of Sections 203A, 206(1), 206(2), and 207 of the Advisers Act;
- requiring Krinos and Krinos Holdings to disgorge, on a joint and several basis, ill-gotten gains of $1,042,033.93, with prejudgment interest of $55,886.00;
- requiring Krinos to pay an appropriate penalty;
- imposing a permanent collateral bar against Krinos;
- and revoking the registration of each class of registered securities of Fordgate.

This motion is brought pursuant to the order entered in these proceedings on July 20, 2015. The motion is supported by the Declarations of Timothy Tatman ("Tatman Decl.") and Jonathan Katz ("Katz Decl."), including the exhibits submitted therewith, and by the allegations of the OIP, which should be deemed to be true by virtue of the Respondents' default. [1]

II. FACTS

A. The Respondents

Krinos Holdings is a Nevada corporation with its principal place of business in Poland, Ohio. Krinos Holdings was incorporated in February, 2012 to serve as a holding company owning 100% of the interests of operating subsidiaries purportedly engaged in venture capital and various financial services. OIP ¶ 7.[2] Neither Krinos Holdings nor its securities have ever been registered with the Commission. OIP ¶ 5.[3]

Krinos was the founder, CEO, and President of Krinos Holdings and its operating subsidiaries, including, among others, Krinos Financial. OIP ¶ 4.[4] Krinos Financial was registered with the Commission as an investment adviser until October, 2013. OIP ¶ 4.[5]

Fordgate is a Delaware shell corporation whose common stock is registered with the Commission pursuant to Section 12(g) of the Exchange Act. OIP ¶ 6.[6] On June 28, 2013, Krinos announced he had become the majority shareholder and sole director, president, and secretary of Fordgate. *Id.*

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[1] Unless otherwise specified, the exhibits cited in this motion are the exhibits to the Katz Declaration.

[2] Krinos Tr. at 14:21-15:1.

[3] On August 31, 2012, Krinos filed a Form D with the Commission claiming the offering was exempt from registration based on Rule 506. Exh. TT.

[4] Krinos Tr. at 15:8-15:11; 17:22-18:11.

[5] Exh.A; Exh. B.

[6] Krinos Tr. at 18:17-18:25; Exh. C.

B. Krinos Misappropriated and Misrepresented the Use of Investor Funds

Shortly after forming Krinos Holdings, Krinos began raising capital through the unregistered offering of $1 million in common stock at $.10 per share, and $1 million in secured convertible debenture notes at $1,000 per share with a term of 36 months and an annual 7% simple interest rate. OIP ¶ 8. Between at least January 2012 through November 2013, Krinos sold $1,042,033.93 in common stock and debenture notes to 19 investors, most of whom were former clients of Krinos from his past employment. OIP ¶ 9.[7] Krinos personally provided information to the buyers of the Krinos Holdings stock and debenture notes, including a private placement memorandum ("PPM") and business plan ("Business Plan") that described the investments. OIP ¶ 10.[8] Krinos also promoted and solicited investment in Krinos Holdings on the internet, through Krinos Financial's website and Twitter feed. OIP ¶ 11-13.[9] Krinos claimed his "controlled risk investment trust" would "assur[e] investors a larger than usual, highly-risk managed, return," and also claimed that investors could earn an insured rate of return of five percent. OIP ¶ 11-13.[10] In a newspaper ad in November 2012, Krinos advertised an investment product with an annual interest rate of three to eight percent. OIP ¶ 14.[11]

Krinos informed investors that the funds from the sale of the securities would be used for business expenses or to invest in other companies. OIP ¶ 19. Specifically, the common stock and debenture PPMs represented that the proceeds of the offering would be used to pay general overhead expenses, consulting and management fees, the costs required to establish a marketing

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[7] Tatman Decl. at ¶ 9.

[8] Krinos Tr. at 19:5-20:1; Testimony of Kevin Heraghty ("Heraghty Tr.") at 50:3-50:23; 74:7-74:13 (Heraghty was the Krinos Holdings CFO from Summer 2012 until February 2013); Exh. D; Exh. E.

[9] Exh. F; Exh. G; Exh. H.

[10] Exh. G; Exh.H.

[11] Exh. I .

and sales/leasing force to sell products and services, and for working capital. OIP ¶ 16.[12] The PPMs represented that Krinos would receive a $50,000 salary in 2012, and that officers would be reimbursed for, "business, travel, and business entertainment expenses incurred in the performance of their duties on behalf of the Company." OIP ¶ 18.[13] The Business Plan claimed that investor funds would be used as "seed money" to assist Krinos Holdings and position it to become a publicly traded company. OIP ¶ 17.[14]

These and other representations made by Krinos and Krinos Holdings about the use of investor funds were false and misleading when made. None of the funds were provided to start-up companies and a significant portion were used by Krinos for personal expenses. OIP ¶ 20.[15]

Investor Funds Diverted to Krinos in 2012

Of the $344,882.35 raised in 2012 from the sale of Krinos Holdings stock and debenture notes, Krinos received $49,152.25 in salary, and spent $14,265.70 at restaurants and bars, $7,190.86 at casinos, $43,433.45 at strip clubs, $2,047.95 on other personal expenses such as clothing and jewelry, and withdrew $13,906.84 in cash, including via ATMs located at addresses of bars and strip clubs. Krinos also spent $6,847.42 on car service, parts, and gasoline, even though Krinos Holdings did not have a company car. In addition, Krinos spent $2,668.09 and $1,097.39 on car rentals and hotels respectively in the Youngstown, Ohio area near Krinos Holdings' office.[16] In addition, in October 2012, Krinos began using $40,000 of investor funds to conduct foreign currency trading, resulting in more than $11,000 in losses. OIP ¶ 22.[17]

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[12] Exhs. D and E.

[13] Exhs. D and E.

[14] Exh. Q.

[15] Krinos Tr. at 20:2-20:7; 20:18-20:22, 21:9-22:23.

[16] Tatman Decl. ¶10.

[17] Krinos Tr. at 24:25-25:9; Tatman Decl. ¶¶ 15-16.

Krinos' Efforts to Conceal His Looting of Krinos Holdings' Accounts

In July 2012, Krinos hired a CFO and an accountant for Krinos Holdings, who began organizing the company's financials and soon realized that Krinos was spending large sums of company funds on personal expenses, including restaurants, bars, strip clubs, retail stores, and casinos. OIP ¶ 23.[18] At various times during the Summer of 2012, the CFO, accountant, and other Krinos Holdings employees confronted Krinos about these expenditures, sought business justifications, and asked him to stop using company funds for personal purposes.[19] Krinos ignored the employees' protests, failed to provide adequate support for the expenditures, and continued to use company funds for personal purposes. OIP ¶ 24.[20]

The CFO and accountant began to track the company funds that Krinos was using for personal expenses in a "Note to Shareholder" category in the company's general ledger. By December 2012, approximately $92,000 worth of Krinos' unreimbursed personal expenses was captured by this category. OIP ¶ 25.[21] In February 2013, approximately two days before a scheduled Krinos Holdings shareholder meeting, Krinos instructed the CFO and accountant to prepare financial statements to distribute to investors at the meeting, and to assign the "Note to Shareholder" expenses to other business expenses categories.[22] Ultimately the "Note to

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[18] Heraghty Tr. at 58:4-64:22. The CFO did not have a CPA and had not worked as an accountant in 16 years, while the accountant was still in college at the time he was hired. Heraghty Tr. at 254:14-257:20; Testimony of David Schafer ("Schafer Tr.") at 13:14-16:21 (Schafer was an accountant at Krinos Holdings during Summer 2012 until February 2013).

[19] Heraghty Tr. at 174:21-186:8; 187:13-190:5; 194:15-195:14; 323:23-328:5; 331:10-335:4; 353:21-357:2; Testimony of John Perchak ("Perchak Tr.") at 61:19-64:25; 67:23-69:14 (Perchak was the COO and business analyst at Krinos Holdings from Spring 2012 until December 2012).

[20] Heraghty Tr. at 63:6-69:2; 146:11-146:23; Perchak Tr. at 73:24-75:23.

[21] Exh. QQ (Undated Krinos Receivable of more than $92,000); Exh. K (Reflecting Krinos receivable of more than $107,000); Heraghty testified that he believed Krinos' personal expenses totaled $112,000 at the time of the meeting. Heraghty Tr. at 227:21-228:9.

[22] Krinos Tr. at 23:20-24:19.

Shareholder" category was reduced to $22,031. OIP ¶ 26.[23] The CFO and accountant told Krinos that they did not believe the financial statements were accurate because of the changes ordered by Krinos, and they objected to distributing them to shareholders at the meeting. Krinos, however, ignored these concerns and provided them to the meeting attendees. OIP ¶ 27.[24]

The financial statements investors received at the February 2013 meeting were materially misleading because the balance sheet for the year ended December 31, 2012, contained the improperly reduced "Note Receivable from Shareholder," and falsely reflected that all company funds had been used for business purposes.[25] Krinos never disclosed that the "note receivable from shareholder," or any other category of expense in the financial statements, included his unreimbursed personal expenses. OIP ¶ 29.[26] Krinos also never disclosed that instead of providing funds to start-up companies, he had invested in foreign currency and loaned more than $30,000 to a personal friend to buy a home. OIP ¶ 29.[27] Finally, the financial statements reflected that Krinos' annual salary was $50,000 from the inception of Krinos Holdings until the "present," when in fact he had awarded himself a substantial raise for 2013. OIP ¶ 28, 30.[28]

Shortly after the investor meeting, Krinos fired the CFO and the accountant.[29] As a result, between February 2013 and May 2013, Krinos Holdings did not have anyone maintaining

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[23] Heraghty Tr. at 168:16-168:24; 170:10-171:4; 203:24-204:2; 216:20-222:1; 227:21-228:9; Schafer Tr. at 82:19-85:25; 92:15-93:25; 125:19-129:11 (Schafer testified that Krinos instructed him to put personal expenses into the "General and Administrative" category); Exh. J.

[24] Schafer Tr. at 97:25-98:25; 103:6-103:16; Heraghty Tr. at 163:2-164:5; 231:22-233:7; Exh K; Exh. L.

[25] Krinos Tr. at 23:15-23:19.

[26] Heraghty Tr. at 228:10-231:11.

[27] Krinos Tr. at 25:10-26:1; 26:21-27:6; Heraghty Tr. at 130:5-133:4; Testimony of Robert Carcelli ("Carcelli Tr.") at 106:6-106:19 (Carcelli started at Krinos Holdings in early 2012 and became COO in 2013); Exh. M.

[28] According to Ms. McElfresh, Krinos awarded himself a salary of $100,000 for 2013, but then reduced that to $80,000 because of funding problems. McElfresh Tr. at 75:1-75:23; Schafer Tr. at 100:23-101:21 (Schafer testified that Krinos may have said he was giving himself a raise, but did not disclose that he was doubling his salary).

[29] Heraghty Tr. at 231:22-232:5; Schafer Tr. at 97:21-97:24.

the company's books and records. OIP ¶ 31. In mid-May 2013, Krinos hired a new accountant, but for two months failed to provide her with access to any company financial information.[30] When the accountant finally gained access to this information, she discovered that Krinos had continued spending company funds on personal expenses. OIP ¶ 32. The new accountant asked Krinos to provide business justifications for the expenses, but he ignored her requests and told her he could use the funds for any purpose because he was the CEO. OIP ¶ 33.[31] Moreover, the new accountant testified that there were no financial statements or general ledgers being kept for the company.[32]

Krinos Continued to Raise and Misuse Investor Funds in 2013

During 2013, Krinos sold $697,151.58 worth of Krinos Holdings stock and debenture notes. Most of the purchasers were existing Krinos Holdings investors. Of that amount, Krinos paid himself $92,768.82 in salary and withdrew another $16,012.91 in cash. In addition, Krinos spent: $15,808.02 at bars and restaurants; $12,802.10 at casinos; $22,408.56 at strip clubs; $8,127.53 on sporting goods, clothing, and jewelry; $5,756.50 related to a boat; $1,595.71 on hotels near Krinos Holdings' office; $848.71 on car rentals near Krinos Holdings' office; $2,983.56 in travel expenses including a trip to Atlantic City, New Jersey; $2,500 on a DUI attorney; and $2,643.75 on concert and event tickets.[33]

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[30] McElfresh Tr. at 36:6-37:6. Krinos appointed the accountant as CFO, despite the fact that she told him she was not qualified, was not a CPA, and had no prior experience as a CFO or maintaining a company's books. *Id.* at 55:2-56:2; 8:14-8:18; 26:1-26:23.

[31] McElfresh Tr. at 57:17-58:11; 113:4-113:16; 139:22-145:20;152:8-156:7; 160:6-162:4; 166:4-167:10; 170:18-171:8; 173:7-175:23; 186:25-188:23; 196:15-197:21; 200:25-202:19; 203:18-204:11. In 2013, the COO also confronted Krinos about his personal expenses. Carcelli Tr. at 24:2-29:25; 65:4-69:18; 164:21-166:4; 167:11-169:6; 170:6-174:16; 175:19-175:24.

[32] McElfresh Tr. at 54:15-55:1.

[33] Tatman Decl. ¶ 11.

Between January through May 2013, Krinos also used $150,000 of investor funds for foreign currency trading, incurring losses of $3,601.64.[34] In April 2013, Krinos also paid $5,500 to a restaurant owned by the same friend to whom he had earlier loaned $30,000 using investor funds. OIP ¶ 35.[35] No money was ever provided to any start-up companies and Krinos never disclosed to investors he was using their money for personal expenses, or to invest in foreign currency and loan money to friends. OIP ¶ 36.[36]

C. Krinos and Krinos Holdings Made Material Misrepresentations About the Venture Capital Business

The PPMs provided to investors by Krinos, represented that Krinos Holdings was a venture capital firm committed to helping businesses pursue their goals by offering a wide range of loan services to business owners. OIP ¶ 37.[37] Krinos told investors that Krinos Holdings would invest in American companies to create American jobs. OIP ¶ 40.[38] Krinos also told investors during discussions that he planned to take Krinos Holdings public, which could increase the value of the stock to between $2 and $10 per share. OIP ¶ 39.[39]

The Business Plan provided to investors by Krinos reinforced the impression that Krinos Holdings was a venture capital company by representing that Krinos Holdings and its subsidiaries would create a hedge fund to raise money and loan it to other American-based companies. OIP ¶ 38.[40] The Business Plan also made representations about Krinos Holdings' process for selecting companies to fund, representing that it would "thoroughly examine the

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[34] Tatman Decl. ¶ 17; Heraghty Tr. at 136:1-138:232.

[35] Tatman Decl. ¶¶ 18-19.

[36] Krinos Tr. at 22:24-23:3; Heraghty Tr. at 141:13-142:19; 263:16-264:23; McElfresh Tr. at 50:1-50:4.

[37] Exh. E; Exh. D.

[38] Krinos Tr. at 26:7-26:19.

[39] Schafer Tr. at 94:13-96:22; Exh. N; Exh. O; Exh. P ("We have been authorized for public soliciting nationally at this point, we will be on the Frankfurt exchange in less than a month and also still on track to be Nasdaq by June.").

[40] Exh. E; Exh. D; Exh. Q.

needs and abilities of potential clients with a team of business analysts both within the [Krinos Venture Capital] family as well as other companies…that are in the business of finding financing for funding new ideas." On websites and social media that Krinos controlled, he also represented that companies funded by Krinos Holdings "must meet strenuous funding requirements and rigorous due diligence" and a "team of business analysts" would "thoroughly examine" the needs and abilities of the companies to be funded. OIP ¶ 41.[41]

Between June 2012 and January 2013, Krinos Holdings and Krinos also represented on websites and social media that Krinos Holdings was actually funding a number of start-up companies. For example, on July 13, 2012, the Krinos Group website announced that it was "in the final stages of funding [Company A]."[42] On September 27, 2012, Krinos announced on Twitter that "Krinos Financial Group is funding [Company A]…"[43] Throughout Summer 2012 until at least January 2013, Krinos and Krinos Holdings continued to claim that Krinos Holdings was "in the funding process" for start-up companies. OIP ¶ 42.[44]

Krinos also touted Krinos Holdings, its purported venture capital business, and Krinos' experience, through press conferences and in the print media. For example, on September 5, 2012, Krinos participated in a press conference where he claimed that Krinos Holdings "will fund" a waste-to-fuel plant in Michigan for start-up Company B. OIP ¶ 43.[45] During the press conference, Krinos claimed that he had a "proprietary financing method, very unique in nature" and that in the following few months Krinos Holdings would be working with "a multitude of businesses, start-ups or businesses that are looking to expand and putting out about two to two-

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[41] Krinos Tr. at 41:1-41:6; Exh. R.

[42] Exh. R ("Krinos Venture Capital Moves into Due Diligence with Skystar IP").

[43] Exh. H.

[44] Exh. F (Test. Exh. 43) ("Venture Capital Companies currently in the process of being funded"); Exh. H.

[45] Exh. S.

and-a-half billion in financing" that would create approximately 40,000 American jobs. OIP ¶ 44.[46] On September 7, 2012, Krinos participated in another press conference in Huntington, Ohio, where he claimed that Krinos Holdings would be financing another plan in Indiana for Company B.[47] During this press conference, Krinos also claimed he had a "proprietary" financing method that could not be discussed because of SEC restrictions. Krinos also claimed he was preparing to take Krinos Holdings public, was planning to list the company on NASDAQ by the end of 2012, and had lined up approximately $2.5 billion in investments that would create 40,000 new jobs. OIP ¶ 45.[48] In a November 2012 newspaper article, Krinos was quoted as claiming that "[m]y business experience and knowledge of the industry…and our ability to raise capital is second to none…." OIP ¶ 46.[49]

Krinos and Krinos Holdings' representations about the venture capital business and its prospects were materially false and misleading. OIP ¶ 49.[50] Krinos knew from the beginning, or was reckless in not knowing, that Krinos Holdings could not provide the scope of financial services he claimed the company would provide. OIP ¶ 51. Krinos personally lacked the experience and expertise to provide these services, and hired individuals whom he knew, or was reckless in not knowing, also lacked the experience to perform their job duties or provide the represented services. *Id.*[51] Far from the "rigorous due diligence process" that Krinos represented, reviews of companies were performed by Krinos' brother-in-law, an industrial

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[46] Exh. S.

[47] Exh. T.

[48] Exh. T.

[49] Krinos Tr. at 28:15-28:20; 30:7-31:3; Exh. U.

[50] Krinos Tr. at 20:8-20:17; 28:15-29:13.

[51] For example, Krinos hired two friends to trade foreign currency, even though neither appeared to have foreign currency trading experience, and one was a bridge inspector with no financial industry experience. Perchak Tr. at 54:19-56:14; McElfresh Tr. at 104:1-105:21; Exh. V; Exh. W.

engineer with no business experience, and occasional assistance from the Krinos Holdings COO, whose only prior business experience was managing a health club. OIP ¶ 54.[52]

Yet, in August 2012, Krinos made tentative funding agreements with six start-up companies, and a seventh in September 2012. Those agreements were never finalized, however, as Krinos Holdings never had any means to finance any of the start-up companies. *Id.*[53] In fact, Krinos Holdings was so short of funds, that it routinely failed to pay employees salary or utility bills, resulting in service outages, and it required a loan from one of the start-up companies.[54]

Ultimately, on November 16, 2012, Krinos Holdings sent an e-mail to the start-up companies stating that it did not have the money to meet its funding commitments and did not expect to be able to provide funding until at least mid-2013. OIP ¶ 56.[55] Investors were never told about the funding delay or the likelihood that the start-up companies would seek funding elsewhere. *Id.* By Spring 2013, several companies including Company B, explicitly informed Krinos that they were terminating their relationship with Krinos Holdings.[56] These terminations were not disclosed to shareholders. OIP ¶ 57.[57] Between March 2013 and November 2013, after

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[52] Perchak Tr. at 35:13-37:14; 38:4-38:22; 39:5-39:10; 45:12-46:2; 120:20-123:10; 129:3-129:10; 164:19-168:6; 173:8-174:3; 175:4-176:18; 261:8-262:11; Carcelli Tr. at 19:15-20:19; 77:7-78:12; Heraghty Tr. at 244:18-245:16; 383:10-388:4; Krinos Tr. at 41:7-42:4.

[53] Perchak Tr. at 259:17-260:12; 265:13-265:25; Heraghty Tr. at 388:5-389:2, 393:9-394:16; Exh. Z; Exh. AA. Krinos' brother-in-law testified that he did not understand the business plan, no analysis had been done as to whether Krinos Holdings could satisfy its obligations under the agreements, the companies were never expected to make interest payments, and the start-up companies did not put up any collateral. Perchak Tr. at 132:7-139:2.

[54] Perchak Tr. at 81:3-82:10; 73:17-75:23; Carcelli Tr. at 90:7-90:11; Krinos Tr. at 33:7-34:3; Schafer Tr. at 36:12-38:22; Exh. X.

[55] Exh. BB.

[56] Carcelli Tr. at 125:24-126:23; Krinos Tr. at 44:24-45:16; Exh. CC; Exh. DD; Exh. EE.

[57] Krinos Tr. at 45:17-47:11. Krinos also lied to employees and the start-up companies about funding. For example, Krinos showed Krinos Holdings employees a forged account statement reflecting more than $595 million in an account which actually held $5.00. Krinos Tr. at 29:21-30:6; Exh. FF. In November 2012, Krinos falsely told another company "we have started several of our own hedge funds" and he had "outside whole-sellers...positioned across the US." Exh. GG. In December 2012, Krinos instructed the company's accountant to e-mail a $500,000 check to Company B, when he should have known the company did not have $500,000 at that time and that bank

the start-up companies had terminated their relationship with Krinos Holdings, Krinos raised an additional $584,986 from investors. OIP ¶ 58.[58]

D. Krinos and Krinos Holdings Made Material Misrepresentations About the Scope of the Company's Operations and Staff Qualifications

On company websites and in the press, Krinos also misrepresented the experience of Krinos Holdings employees and the nature and scope of its business operations. OIP ¶ 60. For example, on September 19, 2012, Krinos Holdings represented on Twitter and Facebook that "agents" at Krinos Financial "have extensive investment advisory experience and are licensed to sell a variety of investment and insurance products."[59] In a November 18, 2012, newspaper article about projects with Company B, Krinos said that "Krinos Group is a multifaceted financial firm offering insurance, venture capital and financial consulting services with more than a decade of experience."[60]

These representations were all false. At the time of the representations, Krinos Financial did not have licensed staff with extensive advisory experience. Krinos was the only person at Krinos Holdings with any investment advisory experience, and even that was extremely limited. Although Krinos hired several individuals with investment advisory experience in Summer 2012, they had all left the company by September 15, 2012, and two of the individuals did not have current licenses during that time. OIP ¶ 66.[61]

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account had been closed since August 2012. Heraghty Tr. at 123:21-128:9; Krinos Tr. at 31:4-33:6; Schafer Tr. at 71:2-74:1; Exh. HH.

[58] Tatman Decl. at ¶ 21.

[59] *See* Exh. H, II.

[60] Exh. U (November 18, 2012, The Journal Gazette, "Fear, hope in Huntington").

[61] Krinos Tr. at 39:21-40:24.

E. Krinos and Krinos Financial Filed a False Form ADV and Misled Investors and Clients

Throughout 2012 and 2013, Krinos did business and held himself out as an investment adviser. For example, Krinos provided investment advice to at least several individuals and was identified as an investment adviser on several accounts held at Company D and Company E, during this time. OIP ¶ 74.[62] Krinos also held several investment seminars during this time where he offered to teach attendees about how to "protect yourself and your retirement," "increase your returns," "reduc[e] risk, and navigate today's economy," and solicited one-on-one meetings to discuss these objectives." OIP ¶ 75.[63] During this time Krinos also advertised investment advisory and wealth management services on websites of Krinos Holdings and social media. OIP ¶ 76.[64] On September 28, 2012, Krinos filed a Form ADV with the Commission on behalf of Krinos Financial Group, seeking registration as an investment adviser. OIP ¶ 77.[65] In the Form ADV, Krinos represented that he had a "reasonable expectation" that Krinos Financial would become eligible for registration by acquiring $100 million in assets under management within 120 days. The application was granted and Krinos Financial became registered as an investment adviser on October 15, 2012. OIP ¶ 78.

In fact, Krinos did not have a reasonable expectation that Krinos Financial would obtain $100 million in assets under management. At most during the prior year, Krinos managed less than $200,000 in assets for fewer than a dozen clients, and neither he nor any of the Krinos Holdings companies were ever in a position to accumulate assets sufficient to meet the registration requirements. OIP ¶ 79. In January 2013 and April 2013, Krinos was informed by

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[62] The balances held in these accounts were relatively small; Exh. OO (Trade PMR Statements; April 9, 2013 Provident Trust Agent Authorization Form).

[63] Exh. PP (Undated Krinos Group Seminar Presentation and Literature).

[64] Exhs. G and H.

[65] Krinos Tr. at 49:19-50:8; Exh. A (September 28, 2012 Form ADV); Exh. B (October 5, 2012 Form ADV).

Commission staff that Krinos Financial must withdraw its registration because it did not have sufficient assets under management to be registered with the Commission. Despite this admonition, Krinos Financial failed to withdraw its registration until October 3, 2013. OIP ¶ 80.

F. Krinos Acquired Fordgate, Issued a False Press Release, and Fordgate Failed to Make Required Filings With the Commission

On May 10, 2013, Krinos wired $30,000 from Krinos Holdings to Company C, to purchase the controlling interest in Fordgate, a shell company owned by Company C and registered with the Commission. OIP ¶ 68. On or about June 27, 2013, pursuant to an agreement with Krinos and Krinos Holdings, the principals of Company C resigned their positions as directors of Fordgate and Fordgate issued additional shares of stock making Krinos the company's controlling shareholder and sole officer and director. OIP ¶ 69.[66] On July 1, 2013, using information provided by Krinos, Fordgate filed with the Commission a press release on a Form 8-K announcing the acquisition of Fordgate by Krinos, and the anticipated merger of Fordgate with Krinos Holdings and its subsidiaries.[67] The Form 8-K was signed by Krinos. OIP ¶ 70.[68]

The press release contained multiple material misrepresentations regarding the scope and nature of Krinos Holdings' business. For example, the press release falsely represented that Krinos Financial had approximately $20 million in assets under management. OIP ¶ 71.[69] The

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[66] Krinos Tr. at 47:23-48:2; Exh. C (Fordgate Acquisition Agreement with Krinos).

[67] Exh. JJ (June 11, 2013 e-mail from Shurmer providing information for 8-K).

[68] Krinos Tr. at 48:3-48:9; Exh. KK (Test. Exh. 31) (June 28, 2013 Fordgate Acquisition Corp. 8-K)

[69] Krinos Tr. at 35:13-36:5; 48:3-49:7. Krinos admitted in a letter to the SEC Office of Compliance, Inspections and Exams that "Krinos Financial Group LTD. Inc., is an Advisory firm which has not since its registration, conducted, advised, or solicited any prospects, obtained any clients, opened any new accounts, transferred any accounts in kind or the parent companies investors to conduct business on any basis for financial advice, account management, or received any fees from services it is authorized to provide." Exh. LL (January 15, 2013 Request Letter from SEC to Krinos; Exh. MM (Undated Letter from Krinos to Kartholl and Abdul-Jaleel); *See also* Carcelli Tr. at 116:17-116:20; Heraghty Tr. At 266:11-268:20; McElfresh Tr. at 92:19-99:8.

press release also falsely represented that Krinos Holdings was a "diversified financial services firm designed to provide innovative financial advisory services to individuals, business, and employees in both the private and public sectors" and offered "total financial advisory services in addition to and including insurance services, private equity and hedge fund management, wealth management, IRA administration, and estate coordination, trust and trustee services." OIP ¶ 72. Finally, Fordgate has not made the required annual or quarterly filings with the Commission for any periods after the period ending June 30, 2014. OIP ¶ 73.[70]

III. SUMMARY DISPOSITION IS APPROPRIATE BECAUSE THERE ARE NO GENUINE ISSUES OF MATERIAL FACT

By order dated July 20, 2015, and pursuant to Rule 250 of the Commission's Rule of Practice, the ALJ granted the Division leave to file a motion for summary disposition. Rule 250(b) provides that a hearing officer may grant a motion for summary disposition if there is no genuine issue with regard to any material fact and the party making the motion is entitled to summary disposition as a matter of law. 17 C.F.R. § 201.250(b). While the pleadings of the party against whom the motion is made are to be taken as true, 17 C.F.R. § 201.250(a), there are no such pleadings here as the Respondents are in default. Accordingly, it is the allegations of the OIP that should be deemed to be true. 17 C.F.R. §§ 201.155(a), 201.220(f).

The Division has nonetheless supplemented the record with evidence confirming that the summary disposition criteria are satisfied. This evidence includes, among other things, the investigative testimony of Krinos. The ALJ should draw adverse inferences against Krinos on the basis of his invocation of the Fifth Amendment privilege against self-incrimination in response to questions put to him under oath during the pre-suit investigation. Respondents' failure to respond to the OIP and Krinos' invocation of the Fifth Amendment—bolstered by

[70] Exh. NN (Fordgate SEC Filing History from EDGAR).

evidence of Respondents' own admissions, bank records and the sworn testimony of their own employees—demonstrates that there are no genuine issues of material fact and that the relief requested by the Division is in the public interest.

A. Respondents Are in Default and the Allegations of the OIP Should Be Deemed True.

Under Rule of Practice 155(a), a party to a Commission administrative proceeding may be deemed to be in default, and the allegations of the OIP against that party may be deemed to be true, if, among other things, the party fails to answer. 17 C.F.R. § 201.155(a); *see also* 17 C.F.R. 201.220(f). A party's failure to "otherwise defend the proceeding" also supports a finding of default. 17 C.F.R. § 201.155(a).

The Respondents are in default because they have not filed the required Answers to the OIP, despite multiple chances to do so. The OIP was served on Respondents on March 20, 2015, making their Answers due on April 9, 2015 (twenty days after service). OIP at 20; 17 C.F.R. § 201.220(b). After missing this deadline, Respondents were subsequently ordered to answer the OIP by May 22, 2015. *See* AP Release No. 2657 (May 11, 2015). On that date, Krinos submitted (via email) a one-sentence document seeking to invoke his Fifth Amendment right against self-incrimination "[o]n all questions and allegations" in this matter "for all parties." This blanket Fifth Amendment assertion was found to be "deficient as a pleading" and the Respondents were ordered to file an amended Answer by June 17, 2015. *See* AP Release No. 2762 at 2 (June 3, 2015).[71] Respondents were informed that "failure to do so *will* result in default and the

[71] As corporate entities, Krinos Holdings and Fordgate have no Fifth Amendment rights and cannot invoke the privilege against self-incrimination. *See Braswell v. United States*, 487 U.S. 99, 102 (1988) (acknowledging that "it is well-established that such artificial entities [as corporations] are not protected by the Fifth Amendment"); *see also, e.g., Amato v. United States*, 450 F.3d 46, 49 (1st Cir. 2006) ("A corporation does not enjoy the privilege against self-incrimination guaranteed by the Fifth Amendment, as the privilege is a personal privilege enjoyed by natural individuals."). Thus, as the ALJ found, the apparent Answer submitted on their behalf was effectively no answer at all.

proceeding being determined against them." *Id.* (emphasis added). Respondents ignored this deadline, like the ones before it, and the allegations of the OIP have gone unanswered.

Furthermore, Krinos has sought merely to delay disposition of this proceeding; he has not sought to actually defend it. Indeed, as noted by the ALJ, "Krinos informed the Division that he had no materials to present and no time to prepare a witness list or obtain expert information." AP Release No. 2948 at 2 (July 20, 2015).

Pursuant to the ALJ's June 3, 2015 order, and consistent with the Commission's Rules of Practice, the Respondents should be found in default and the ALJ should take the allegations of the OIP as true in ruling on the Division's motion.

B. An Adverse Inference Should Be Drawn from Krinos' Invocation of the Fifth Amendment.

During its investigation, the Division sought to take Krinos' testimony (on December 13, 2013) about the facts at the heart of this case. Among other things, Krinos was asked, under oath, about the offer and sale of Krinos Holdings' stock and debenture notes; representations he made, and information he omitted, when soliciting such investments; the operations of Krinos Holdings, including whether it ever funded any start-up companies; whether Krinos spent funds raised from investors on his own personal expenses (including expenses at casinos and strip clubs); his use of investor money for foreign currency trading and whether such activity was disclosed to investors; his purported investment advisory business; and his acquisition of Fordgate. Krinos refused to answer any of the Division's questions and instead invoked his Fifth Amendment privilege against self-incrimination. Krinos was represented at the examination by experienced counsel and stated that he was invoking the Fifth Amendment on the advice of counsel. Further, at the outset of the examination, Krinos was warned of the possible consequences of his invocation of the Fifth Amendment in the civil context.

In a civil matter, a party's invocation of the Fifth Amendment is admissible and competent evidence. *See, e.g., Baxter v. Palmigiano*, 425 U.S. 308, 318-20 (1976). As the Supreme Court has stated, "silence in the face of accusation is a relevant fact . . . [and] 'is often evidence of the most persuasive character.'" *Id.* at 319 (quoting *United States ex rel. Bilokumsky v. Tod*, 263 U.S. 149, 153-54 (1923)). Here, Krinos' refusal to admit or deny the allegations of the OIP and his refusal to answer any questions about the issues in this case, as to which he has knowledge, constitute probative evidence of his violations of the antifraud provisions of the federal securities laws.

When an individual in a civil matter invokes the Fifth Amendment in response to questioning, an inference may be drawn that the answers would have been adverse to his or her interests. *See, e.g., Baxter*, 425 U.S. at 318-20. "[SEC administrative] proceedings are civil in nature, and [thus] an adverse inference may be drawn in such proceedings from a respondent's invocation of his Fifth Amendment privilege against self incrimination." *Guy P. Riordan*, Securities Act Release No. 9085, Exchange Act Release No. 61153, 2009 WL 4731397, at *16 (Dec. 11, 2009).[72] The adverse inference serves, in part, to offset the harm caused to the party, here the Division, who does not get answers to its questions when asked and is forced to expend time and resources seeking the truth elsewhere. *See, e.g., SEC v. Suman*, 684 F. Supp. 2d 378, 386 (S.D.N.Y. 2010) (drawing adverse inference is appropriate "because the invocation of the privilege [against self-incrimination] results in a disadvantage to opposing parties by keeping them from obtaining information they could otherwise get").

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[72] Similarly, federal courts "have allowed fact finders to draw adverse inferences when the target of an SEC investigation invokes the right to silence." *SEC v. PocketPort.com*, Civil Action No. 3:05-cv-1747 (JCH), 2006 WL 2349452, at *6 (D. Conn. July 28, 2006) (citing *SEC v. Prater*, 289 F. Supp. 2d 39, 50 (D. Conn. 2003); *SEC v. Global Telecom Servs.*, LLC, 325 F. Supp. 2d 94, 109 (D. Conn. 2004)); *see also SEC v. Colello*, 139 F.3d 674, 677 (9th Cir. 1998) ("Parties are free to invoke the Fifth Amendment in civil cases, but the court is equally free to draw adverse inferences from their failure of proof."); *SEC v. Whittemore*, Civ. Action No. 05-869, 2010 WL 786247, at *6 (D.D.C. Mar. 9, 2010) ("The Court may make an adverse inference because this is a civil case and these Defendants control the evidence.").

Therefore, in considering the record in this case, the ALJ should draw adverse inferences against Krinos. Not only is his silence telling, but Krinos' assertion of the Fifth Amendment also rendered impossible a full exploration of his position regarding any defense to the Division's motion. While the allegations of the OIP alone, and certainly together with the evidence submitted by the Division, compel the grant of summary disposition, Krinos' across-the-board invocation of the Fifth Amendment acts "as a thumb on the scales, tipping them decidedly in the SEC's favor." *Prater*, 289 F. Supp. 2d at 50.

IV. VIOLATIONS

As a result of the conduct described above, Krinos and Krinos Holdings violated Sections 10(b) of the Exchange Act and Rule 10b-5 thereunder, Section 17(a) of the Securities Act, and Krinos violated Sections 206(1), (2) and 207, and aided and abetted Krinos Financial's violations of Section 203A, of the Advisers Act. Fordgate violated Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13 thereunder.

A. Krinos and Krinos Holdings Violated Section 10(b) of the Exchange Act and Section 17(a) of the Securities Act.

Exchange Act Section 10(b) and Rule 10b-5 thereunder and Securities Act Section 17(a) are "to be construed 'not technically and restrictively' but flexibly to effectuate their remedial purposes." *Affiliated Ute Citizens v. United States,* 406 U.S. 128, 151 (1972). To prove fraud under Exchange Act Section 10(b) and Rule 10b-5 thereunder, the Division must establish that a respondent "(1) made a material misrepresentation or a material omission as to which he had a duty to speak, or used a fraudulent device; (2) with scienter; (3) in connection with the purchase or sale of securities." *SEC v. Monarch Funding Corp.*, 192 F.3d 295, 308 (2d Cir. 1999). The Supreme Court has previously defined scienter as "a mental state embracing intent to deceive, manipulate or defraud." *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 193 n.12 (1976).

Recklessness is sufficient to establish scienter under Section 10(b). *Miller v. Champion Enter., Inc.*, 346 F.3d 660, 672 (6th Cir. 2003).

Essentially the same elements are required under Securities Act Section 17(a)(1)-(3), "though no showing of scienter is required for the SEC to obtain an injunction under subsections (a)(2) or (a)(3)." *Monarch Funding*, 192 F.3d at 308; *see also SEC v. Better Life Club of America, Inc.*, 995 F. Supp. 167, 175 (D.D.C. 1998) (citing *Aaron v. SEC*, 446 U.S. 680, 691,701 (1980)). In addition, while both Rule 10b-5(b) and Section 17(a)(2) address liability for false statements, primary liability may attach under Section 17(a)(2) if a respondent has, in connection with the offer or sale of a security, *used* a misstatement to obtain money or property, even he was not the "maker" of the misstatement. *In the Matter of John P. Flannery*, File No. 3-14081, Exch. Act. Rel. No. 73840, 2014 WL 7145625, at *10-11 (Dec. 15, 2014); *see also SEC v. Tambone*, 550 F.3d 106, 128 (1st Cir. 2008), *vacated on other grounds*, 550 F.3d 106 (1st Cir. 2009).[73]

Krinos and Krinos Holdings violated Section 10(b) of the Exchange Act and Rule 10b-5(b) thereunder by making multiple materially false and misleading representations to prospective investors about Krinos Holdings' business, operations, prospects, and the use of investor funds.[74] This same conduct violated Section 17(a)(2) of the Securities Act, as Krinos and Krinos Holdings obtained in excess of $1 million through the use of these false statements. As discussed in more detail above, Krinos represented, in PPMs, Business Plans, and conversations with investors that Krinos Holdings would use investor funds for business

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[73] In *Janus Capital Group, Inc. v. First Derivative Traders*, 131 S. Ct. 2296 (2011), the Supreme Court held that liability under Rule10b-5(b) for making a false statement could extend only to those with "ultimate authority" over the false statement." *Id.* at 2302. The Commission, like many lower federal courts, has concluded that "because the word 'make,' is 'absent from the operative language' of Section 17(a)(2), *Janus's* limitation on primary liability under Rule 10b-5(b) does not apply to claims arising under Section 17(a)(2)." *Flannery*, 2014 WL 7145625, at *10-11.

[74] A fact is material if there is a substantial likelihood that a reasonable investor would consider it important in making an investment decision. *See Basic Inc. v. Levinson*, 485 U.S. 224, 231 (1988).

purposes and failed to disclose that investor funds would be used to pay his personal expenses.[75] Krinos also presented financial statements that mischaracterized his personal use of investor funds as business expenses at the February 2013 investor meeting—tacitly recognizing that those in attendance, like any reasonable investor, would want to know that the capital they committed had not been used for operations but rather diverted to fund Krinos' lifestyle.

Among other misrepresentations, Krinos also falsely stated that Krinos Holdings could and would offer a variety of financial services to individuals and provide loans to American start-up companies, which companies would be vetted by a rigorous due diligence process conducted by an experienced team of analysts. Krinos further lured investors by claiming that he would take the company public and greatly increase the value of its stock. From the outset, Krinos knew, or was reckless in not knowing, that Krinos Holdings could not provide these services or fulfill such promises. Neither Krinos nor any other employee of Krinos Holdings had any venture capital or other relevant business experience or expertise. Moreover, at no time did Krinos Holdings have the funds, or a reasonable expectation of obtaining the funds, necessary to finance any of the start-up companies with whom Krinos had preliminary discussions. Further, from Summer 2012 through at least January 2013, Krinos issued misleading press releases and website posts suggesting that Krinos Holdings was actually funding various start-up companies.[76] Ultimately, the only business conducted by Krinos Holdings was foreign currency

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[75] *See In the Matter of Fortenberry*, File No. 3-15858, Initial Decision Release No. 748, 2015 WL 860715, at *25-27 (March 2, 2015) (Even where subscription agreements allowed for a "reasonable salary…Almost by definition, however, [respondent's] payments to himself were not reasonable" where respondent "used money from [investment fund's] account as if it were his own personal account…"); *In the Matter of David Henry Disraeli*, File No. 3-12288; Rel. No. 8880, 2007 WL 4481515, at *7 (Dec. 21, 2007) (noting that "[t]he disposition of the proceeds of a securities offering is material information, and issuers must adhere strictly to the uses for the proceeds described in [a private placement memorandum]" and finding "that a reasonable investor would want to know that [respondent] was diverting the proceeds of the offering to his own use").

[76] *Fortenberry*, 2015 WL 860715, at* 29 (Respondent's misrepresentations regarding the "depth and breadth" of company's investments was materially false); *see also In the Matter of Anthony Fields*, File No. 3-14684, Rel. No.

trading and risky real estate loans; but Krinos and Krinos Holdings did not disclose that the company would engage in these activities as a primary business strategy.

Krinos (and thus Krinos Holdings) acted with scienter.[77] Krinos' myriad misrepresentations were intentional or "so hopelessly reckless as to amount to the same thing." *Fortenberry*, 2015 WL 860715, at *30. Any notion that Krinos was simply overly optimistic about Krinos Holdings' prospects is belied by the host of false statements Krinos made touting Krinos Holdings' purported success in actually funding various start-up companies. Moreover, Krinos unapologetically spent hundreds of thousands of dollars of investor money on himself. *See SEC v. Brown*, 658 F.3d 858, 863 (8th Cir. 2011) (diversion of funds for defendant's "personal expenses" necessarily done with scienter); *SEC v. Lyttle*, 538 F.3d 601, 604 (7th Cir. 2008) (defendants' "pocket[ing of] several million dollars of the invested money for their personal use" necessarily done with scienter). When Krinos needed more money for his living and entertainment expenses, he raised more money from investors. When employees of Krinos Holdings sought to curtail, or attempt to properly account for, his personal spending, Krinos fired them or ignored their concerns.

For these and other reasons, Krinos and Krinos Holdings also orchestrated a fraudulent scheme in violation of Exchange Act Rules 10b-5(a) and 10b-5(c), and Sections 17(a)(1) and (a)(3) of the Securities Act. By their very terms, these provisions "provide a broad linguistic frame within which a large number of practices may fit." *Flannery*, 2014 WL 7145625, at *12

4028, 2015 WL 728005, at *15-16 (Misrepresentations about experience of investment team and impossibility of business plan conveyed a materially misleading impression of the size and professional qualifications of firm).

[77] The actions and scienter of corporate directors, officers, and employees may be imputed to the entity for purposes of establishing the entity's primary fraud liability. *E.g.*, *SEC v. Pirate Investors LLC*, 580 F.3d 233, 241 (4th Cir. 2009) (affirming district court's decision to impute liability of officer to a corporation); *SEC v. Mgmt. Dynamics, Inc.*, 515 F.2d 801, 812-13 (2d Cir. 1975) (broker-dealer held liable for fraud violations committed by vice-president in charge of trading who had apparent authority to act on behalf of firm); *SEC v. Treadway*, 430 F. Supp. 2d 293, 337-38 (S.D.N.Y. 2006) (scienter of corporate executives can be imputed to corporate entities for purposes of Section 10(b) and Rule 10b-5).

(internal quotations omitted). For example, they undoubtedly "encompass the falsification of financial records to misstate a company's performance, as well as the orchestration of sham transactions designed to give the false appearance of business operations." *Id.* at 12. Rule 10b-5(a) and (c), like Section 17(a)(1), "encompass all scienter-based, misstatement related misconduct." *Flannery*, 2014 WL 7145625, at *17.

Krinos engaged in a scheme to fraudulently obtain money (through misrepresentations and omissions) and use that money to support himself and prop up his struggling businesses. Krinos lied to investors, lied to his employees, lied in filings with the Commission, and falsified financial records. He further purposefully disseminated misinformation to the investing public through newspapers and social media. In so doing, he employed manipulative and deceptive devices, and engaged in manipulative and deceptive acts or practices, in violation of Rule 10b-5(a) and (c), and Sections 17(a)(1) and (3).

B. Krinos Violated Sections 206(1), (2), and 207, and Aided and Abetted Krinos Financial's Violations of Section 203A, of the Advisers Act

Section 202(a)(11) of the Advisers Act defines an "investment adviser" as a "person who, for compensation, engages in the business of advising others . . . as to the value of securities or as to the advisability of investing in, purchasing, or selling securities . . . ." Krinos Financial meets the definition of an investment adviser because it held itself out as an investment adviser by registering as one with the Commission. *See SEC v. Fife*, 311 F.3d 1, 10 (1st Cir. 2002); Investment Advisers Act Release No. 1092 (October 8, 1987) (person who "holds himself out" as an investment adviser considered to be "in the business" of providing advice). Krinos was Krinos Financial's control person, president, and owner and was solely responsible for the management of Krinos Financial's business, including its provision of investment advisory services to clients and signing and filing its Form ADV. As noted above, Krinos advertised

investment advisory services on websites, and also held seminars purporting to provide investment advice and solicit clients.[78] Thus, Krinos himself meets the definition of an investment adviser under the Advisers Act and can be held directly liable for violations of the Act's provisions. *See In the Matter of Koch and Koch Asset Management, LLC*, Advisers Act Release No. 3836 (May 16, 2014); *In the Matter of John J. Kenny and Nicholson/Kenny Capital Management, Inc.*, Advisers Act Release No. 2128 (May 14, 2003).[79]

During the relevant period, Section 203A of the Advisers Act generally prohibited an investment adviser, regulated or required to be regulated in the state in which it has its principal office and place of business, from registering with the Commission, unless it had assets under management in excess of $100 million or advised a registered investment company. As described above, Krinos Financial never provided advisory services to a registered investment company nor did it have assets under management in excess of $100 million, and Krinos had no reasonable expectation of providing such services, or managing that amount of assets, within 120 days of filing Krinos Financial's Form ADV. Further, although Krinos had been told by the exam staff on at least two occasions in January and April of 2013 that he needed to withdraw Krinos Financial's registration, and although Krinos represented in Form ADVs filed in March and April of 2013 that he had no clients and no assets under management, he failed to withdraw Krinos Financial's registration until October, 2013.[80] Thus, Krinos Financial violated, and Krinos aided and abetted Krinos Financial's violation of, Section 203A of the Advisers Act. *See In the Matter of Warwick Capital Management, Inc.*, File No. 3-12357, 2008 WL 149127 (Jan.

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[78] Exh. PP (Undated Krinos Group Seminar Presentation and Literature).

[79] *But see In the Matter of Russell W. Stein, et al.*, File No. 3-9309, Advisers Act Release No. 2114, 2003 WL 1125746 (March 14, 2003) (Commission opinion holding that an associated person of dually registered Merrill Lynch was not an investment adviser).

[80] Exh. SS (January 29, 2013 deficiency letter from Kartholl to Krinos; April 8, 2013 deficiency letter from Kartholl to Krinos).

16, 2008) (ALJ decision finding adviser violated and principal aided, abetted and caused violations of Section 203A where registered adviser was ineligible for Commission registration).

Section 207 of the Advisers Act makes it unlawful "for any person willfully to make any untrue statements of material fact in any registration application or report filed with the Commission under Section 203 or 204 . . . ." A finding of willfulness does not require an intent to violate, but merely an intent to do the act which constitutes a violation. *Wonsover v. SEC*, 205 F.3d 408, 413-15 (D.C. Cir. 2000); *In the Matter of Zion Capital Management*, Administrative Proceeding No. 3-10659 (Jan. 29, 2003). Krinos violated Section 207 by making untrue statements of material fact in the September 28, 2012 Form ADV filed with the Commission. At the time Krinos filed the Form ADV he knew, or was reckless in not knowing, that Krinos Financial had no reasonable expectation of becoming eligible for registration with the Commission within 120 days. Krinos further certified that he would "undertake to withdraw from SEC registration if, on the 120th day after my registration with the SEC becomes effective, I would be prohibited by Section 203A(a) of the Advisers Act from registering with the SEC." Krinos' registration became effective on October 15, 2012 and yet he did not withdraw the company's registration until October 2013, despite numerous requests to do so by Commission exam staff. *See In the Matter of Montford and Company, Inc., et al.*, File No. 3-14536, Release No. 3829, 2014 WL 1744130 (May 2, 2014) (Commission found adviser and principal violated Section 207 by filing inaccurate Form ADV).

Congress created Section 206 of the Advisers Act to prevent fraudulent practices by investment advisers. *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 195 (1963). To accomplish this goal, the "extent of conduct subject to liability under the Advisers Act is broad." *SEC v. Treadway*, 430 F. Supp. 2d 293, 338 (S.D.N.Y. 2006). Among other things,

Section 206 makes it unlawful for an investment adviser, by use of the mails or any means of interstate commerce, to (1) employ any device, scheme or artifice to defraud, or (2) engage in any act, transaction, practice or course of business which operates as a fraud or deceit upon any client or prospective client. *See* 15 U.S.C. §§ 80b-6 (1) & (2); *Aaron v. SEC*, 445 U.S. 680, 691-93, 697 (1980). These antifraud provisions apply to "any investment adviser" whether registered with the SEC or not. *See* 15 U.S.C. § 80b-2(11) (defining investment adviser). Scienter is required for a claim under Section 206(1) but not Section 206(2). *See SEC v. Pimco Advisors Fund Mgmt. LLC*, 341 F. Supp. 2d 454, 470 (S.D.N.Y. 2004); *see also Capital Gains*, 375 U.S. at 184 & 191-92. Section 206 "establishes a statutory fiduciary duty for investment advisers to act for the benefit of their clients, requiring advisers to exercise the utmost good faith in dealing with clients, to disclose all material facts, and to employ reasonable care to avoid misleading clients." *Transamerica Mortg. Advisors, Inc. v. Lewis*, 444 U.S. 11, 17 (1979)

Krinos violated Section 206 by providing false and misleading information to clients and/or prospective clients about Krinos Financial's business, including its assets under management. Among other things, Krinos caused an 8-K and press release to be filed with the Commission falsely claiming that Krinos Financial had "approximately $20 [m]illion in assets under management." Krinos knew, and intended, that prospective clients would rely on Krinos Financial's false representations about its assets under management in considering whether to select Krinos Financial as their investment adviser.

C. Fordgate Violated Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13

Fordgate is required, pursuant to Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13 thereunder, to file timely and accurate annual and quarterly reports with the Commission. Fordgate has not made any periodic filings with the Commission since its Form 10-Q for the period ended March 31, 2013. Fordgate has failed to file its Forms 10-Q for the quarters ending

June 30, 2013, September 30, 2013, March 31, 2014, and June 30, 2014, and its Form 10-K for the year ending December 31, 2013. Thus, Fordgate is currently violating Section 13(a) and Rules 13a-1 and 13a-13 thereunder.

V. SANCTIONS

In light of the foregoing willful violations of the federal securities laws, the following sanctions are appropriate and should be ordered by the ALJ: disgorgement of $1,042,033.93, for which Krinos Holdings and Krinos should be jointly and severally liable; an appropriate civil penalty against Krinos; a cease-and-desist order as to all Respondents; a permanent collateral bar against Krinos; and revocation of each class of registered securities of Fordgate.

In determining whether a sanction serves the public interest, the Commission considers the following factors: the egregiousness of the respondent's actions; the isolated or recurrent nature of the violation; the degree of scienter involved; the sincerity of the respondent's assurances, if any, against future violations; the respondent's recognition of the wrongful nature of his conduct; and the likelihood that the respondent's occupation will present opportunities for future violations. *John P. Flannery*, Securities Act Release No. 9689, 2014 WL 7145625, at *37 (Dec. 15, 2014); *Gary M. Kornman*, File No. 3-12716, Exchange Act Release No. 59403, 2009 WL 367635, at *6 (Feb. 13, 2009); *see also Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979). The Commission's "inquiry is flexible, and no one factor is dispositive." *Flannery*, 2014 WL 7145625, at *37. Here, these factors all weigh heavily in favor of the sanctions requested by the Division.

This case involves repeated fraudulent conduct by Krinos and Krinos Holdings, and Krinos acted with a high degree of scienter. Far from a one-time lapse in judgment, his empty promises, false disclosures and misuse of Krinos Holdings' corporate bank account (funded

almost exclusively with investor money) reflect intentional and recurring conduct, the wrongful nature of which Krinos has refused to recognize, even blaming his company's failures on former employees and the staff's investigation.[81] Under these circumstances, there is a significant risk of future violations. *Fortenberry*, 2015 WL 860715, at *33 (a single past violation ordinarily suffices to establish a risk of future violations). And there is a compelling need for the sanctions discussed below. *Toby G. Scammell*, File No. 3-15271, Advisers Act Release No. 3961, 2014 SEC LEXIS 4193, at *25 (Oct. 29, 2014) ("Fidelity to the public interest requires a severe sanction when a respondent's misconduct involves fraud because the securities business is one in which opportunities for dishonesty recur constantly." (internal quotation marks omitted)); *In the Matter of Peter Siris*, File No. 3-15057, Exchange Act Release No. 71068, 2013 SEC LEXIS 3924, at *23 (Dec. 12, 2013) (violations of the antifraud provisions warrant "the severest of sanctions under the securities laws").

A. Krinos and Krinos Holdings Should Be Ordered to Disgorge Their Ill-Gotten Gains.

Section 8A(e) of the Securities Act and Section 21C(e) of the Exchange Act, and Section 203(j) of the Advisers Act, authorize the Commission to order disgorgement, including reasonable interest, in this proceeding. 15 U.S.C. §§ 77h-1(e), 78u-3(e), 80b-3(j). Disgorgement is an equitable remedy "designed to deprive a wrongdoer of his unjust enrichment and to deter others from violating the securities laws." *SEC v. First City Fin. Corp.*, 890 F.2d 1215, 1230 (D.C. Cir. 1989). The Division's burden to establish the amount of disgorgement is "light" and does not require "exactitude." *SEC v. ETS Payphone, Inc.*, 408 F.3d 727, 735 (11th Cir. 2005). "The amount of disgorgement ordered need only be a reasonable approximation of profits causally connected to the violation; any risk of uncertainty [in calculating disgorgement] should

[81] Exh. RR (September 9, 2013 e-mail from Krinos to John Osland at Gravity Investments).

fall on the wrongdoer whose illegal conduct created that uncertainty." *SEC v. First Jersey Sec., Inc.*, 101 F.3d 1450, 1475 (2d Cir. 1996). Moreover, "the overwhelming weight of authority hold[s] that securities law violators may not offset their disgorgement liability with business expenses." *SEC v. Brown*, 658 F.3d 858, 861 (8th Cir. 2011).

Here, the basis for an order of disgorgement is apparent. Krinos Holdings, under the sole direction and control of Krinos, was unjustly enriched by at least $1,042,033.93 in investor funds, raised through the fraudulent offer and sale of Krinos Holdings' securities.[82] Krinos Holdings and Krinos should be jointly and severally liable for paying this amount. "Where two or more individuals or entities collaborate or have a close relationship in engaging in the violation of the securities laws, they may be held jointly and severally liable for the disgorgement of the illegally obtained proceeds." *SEC v. J.T. Wallenbrock & Assocs.*, 440 F.3d 1109, 1117 (9th Cir. 2006); *see also, e.g., First Jersey Sec.*, 101 F.3d at 1475 (awarding disgorgement on joint and several basis where owner and chief executive collaborated in unlawful conduct with entity and profited from violations).

This is so even if Krinos did not personally benefit from the entire amount raised from investors, though he arguably did. *See SEC v. Platforms Wireless Int'l Corp.*, 617 F.3d 1072, 1098 (9th Cir. 2010) ("We have never held that a personal financial benefit is a perquisite for joint and several liability. Rather, we have held defendants jointly and severally liable in cases where, for example, the defendants 'used all of the investors' funds to operate their … scheme and invest in speculative business ventures, all to the defendants' benefit.'" (quoting *J.T. Wallenbrock*, 440 F.3d at 1117)). Because Krinos orchestrated the unlawful transactions and had control of the proceeds through his control of Krinos Holdings, he should be held jointly and severally liable for the total amount of $1,042,033.93. *Platforms Wireless Int'l Corp.*, 617 F.3d

[82] Tatman Decl. at ¶ 12.

at 1098 ("It is not inequitable to require [CEO] jointly to share the burden of restoring the illegally obtained monies, even if he did not allocate them to himself.").

Prejudgment interest, like disgorgement, prevents a defendant from being unjustly enriched through the time-value of the money he fraudulently obtained. *See, e.g., SEC v. Levine*, 517 F. Supp. 2d 121, 141 (D.D.C. 2007). The rate established by the Internal Revenue Service for tax underpayment is an appropriate rate for prejudgment interest because it reasonably approximates the unjust benefit of the use of the money. *See Platforms Wireless Int'l*, 617 F.3d at 1099; *First Jersey Sec.*, 101 F.3d at 1474. Applying that method, the pre-judgment interest on Krinos Holdings' disgorgement obligation of $1,042,033.93 has been calculated to be $55,886.00 up through the filing of this motion, for a total disgorgement obligation of $1,097,919.93, for which Krinos should be jointly and severally liable.[83]

At a minimum, Krinos should be liable for the amount of investor funds that he diverted to himself in the form of salary and payments for frivolous personal expenses. In cases brought by the Commission, courts have ordered defendants to disgorge salary and other self-styled "compensation" where, as here, it was causally connected to illegal activity. *See, e.g., SEC v. Conaway*, 697 F. Supp. 2d 733 (E.D. Mich. 2010) (ordering disgorgement of former CEO's $5 million retention loan, which had been forgiven by the company upon his separation, as "[i]t was not money to which the defendant would have been entitled" if the fraud had been disclosed); *SEC v. Black*, No. 04 C 7377, 2009 WL 1181480, at *2-3 (N.D. Ill. Apr. 30, 2009) (stating that "[d]isgorgement of salaries and other forms of compensation may be an appropriate remedy," and ordering disgorgement of certain compensation that defendant likely would not have received if the fraud had been disclosed); *SEC v. Church Extension of the Church of God, Inc.*, 429 F. Supp. 2d 1045, 1050 (S.D. Ind. 2005) (ordering disgorgement of one half of each

[83] Tatman Decl. at ¶ 14.

defendant's base salary because the securities violations enabled defendants to continue their employment longer than they otherwise would have); *SEC v. Drexel Burnham Lambert, Inc.*, 837 F. Supp. 587, 611 (S.D.N.Y. 1993), *aff'd sub nom.*, *SEC v. Posner*, 16 F.3d 520, 522 (2d Cir. 1994) (ordering disgorgement of "money paid to [defendants] ostensibly as compensation for their services as officers and directors" because had it not been for their fraudulent conduct, defendants would not have been able to place themselves in high-paid positions at the company).

As in the above cited cases, Krinos' violations of the securities laws placed him in position to receive $281,622.39 in salary, cash and personal expense reimbursement from Krinos Holdings; the underlying source of these payments being investor funds raised in the fraudulent offerings. Allowing Krinos to retain the benefit of these payments would leave him unjustly enriched and thus, at a minimum, ordering disgorgement of $281,622.39, plus prejudgment interest, is an appropriate remedial measure.[84]

B. Krinos Should Be Ordered to Pay a Civil Penalty.

Section 8A(g) of the Securities Act, Section 21B(b) of the Exchange Act, and Section 203(i) of the Advisers Act, authorize the Commission to seek civil penalties in cease-and-desist proceedings against any person who has violated, or was the cause of a violation, of any provision of, or rule promulgated under, the respective statutes. The statutes set out a three-tiered system for determining the maximum civil penalty for each act or omission. The statutory requirements for imposition of third-tier penalties are met in this case because Krinos' conduct (1) involved fraud, deceit, manipulation and deliberate or reckless disregard of a regulatory requirement, and (2) resulted in substantial losses or created a significant risk of substantial losses to investors and resulted in substantial pecuniary gain to Krinos. Accordingly, the ALJ

[84] Tatman Decl. at ¶ 13.

may impose penalty of $150,000 for *each* act or omission occurring after March 3, 2009 and on or before March 5, 2013. *See* 17 C.F.R. § 201.1001-.1005.

Here, the Division submits that Krinos violated the Securities Act and the Exchange Act at least 19 times through the fraudulent offer and sale of Krinos Holdings' securities to at least 19 different investors. *See, e.g., SEC v. Lazare Indus., Inc.*, 294 Fed. Appx. 711, 715 (3d Cir. 2008) (each sale of unregistered stock was a separate violation); *SEC v. Colonial Inv. Mgmt. LLC*, 659 F. Supp. 2d 457, 503 (S.D.N.Y. 2009) (court found 18 violations of same regulation and imposed penalty of 18 times the statutory penalty amount); *SEC v. Kenton Capital, Ltd.*, 69 F. Supp. 2d 1, 17 n.15 (D.D.C. 1998) (court assessed third-tier penalty of $1.2 million by multiplying maximum statutory penalty amount ($100,000 at the time) by number of defrauded investors (twelve)). Krinos also separately violated the Advisers Act by filing a false Form ADV, suggesting Krinos Financial would soon acquire $100 million in assets under management, and by subsequently issuing a false press release stating that Krinos Financial had approximately $20 million in assets under management.[85] Krinos' fraudulent conduct warrants "a severe sanction." *Scammell*, 2014 SEC LEXIS 4193, at *25. Consequently, the ALJ may impose a penalty of $150,000 for each of the 19 violations. The Division submits that a penalty of $1,042,033.93, equal to the total amount of the fraudulent offerings but less than the maximum allowed, would meaningful punish Krinos and serve the public interest.

C. Krinos and Krinos Holdings Should Be Ordered to Cease and Desist.

Securities Act Section 8A, Exchange Act Section 21C, and Advisers Act Section 203(k) empower the Commission to order a person who has been found to have violated or caused any violation of those Acts, to cease and desist from committing or causing such violations and any

[85] While the separate violations of the Advisers Act may not have resulted in substantial losses to others (or substantial gain to Krinos), they created a significant risk of substantial losses because investors could have entrusted substantial funds to Krinos believing he was managing $20-$100 million in assets.

future violations. The factors in considering whether a cease-and-desist order is warranted are similar to the *Steadman* factors the Commission generally considers for whether any remedial sanction serves the public interest, albeit with added emphasis on the possibility of future violations. *KPMG Peat Marwick LLP*, File No. 3-15918, Exchange Act Release No. 43862, 2001 SEC LEXIS 98 (Jan. 19, 2001), *pet. denied*, 289 F.3d 109 (D.C.Cir. 2002). As set forth above, all of these factors weigh heavily in favor of sanctions, including a cease-and-desist order against Krinos and Krinos Holdings.

D. A Permanent Collateral Bar is Appropriate Against Krinos.

Advisers Act Section 203(f) authorizes the Commission to bar or suspend a person from association with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization ("NRSRO") for willful violations of the Securities Act, Exchange Act, or Advisers Act. At the time Krinos made material misstatements and omissions, he was acting as an investment adviser. Section 9(b) also authorizes the Commission to bar or suspend a person from serving in a variety of positions with a registered investment company as a sanction for willful violations of the Securities Act, Exchange Act, or Advisers Act. Given Krinos' willful violation of each of these Acts and the egregious nature of the violations, the ALJ should permanently bar Krinos from association with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or NRSRO and from serving or acting in any position listed in Investment Company Act Section 9(b).

E. Revocation is the Appropriate Remedy for Fordgate's Section 13(a) Violations.

Exchange Act Section 12(j) provides that the Commission may revoke or suspend the registration of an issuer's securities where it is "necessary or appropriate for the protection of

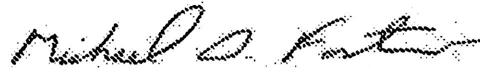
investors." Failure to make periodic filings as required by Section 13(a) is sufficient grounds for revocation under Section 12(j). *See*, *In the Matter of Gateway Int'l Holdings, Inc.*, File No. 3-16603, Exchange Act Rel. No. 53907, at 9, 12 (May 31, 2006). As discussed above, Fordgate has not made any quarterly filings since being acquired by Krinos Holdings. Fordgate's common stock is registered under Section 12(g) of the Exchange Act. Thus, the Division requests that the ALJ revoke the registration of each class of registered securities of Fordgate.

VI. CONCLUSION

For all the reasons set forth above, the Division respectfully requests that the Administrative Law Judge grant the Division's Motion for Summary Disposition and issue an Initial Decision making the findings and ordering the sanctions requested herein.

Dated: August 7, 2015

Respectfully submitted,



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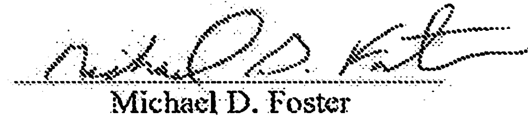
COUNSEL FOR
DIVISION OF ENFORCEMENT

CERTIFICATE OF SERVICE

I hereby certify that true copies of the foregoing document were sent by overnight mail and email to the following on this 7th day of August, 2015:

George N. Krinos
[redacted]
Campbell, Ohio [redacted]
([redacted])

Krinos Holdings, Inc. *and*
Fordgate Acquisition Corp.
c/o
George N. Krinos
[redacted]e
Campbell, Ohio [redacted]



Michael D. Foster

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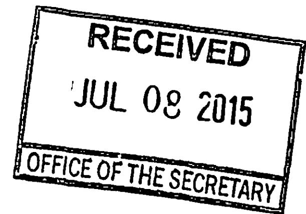

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Dear Mr. Fields,

Enclosed for filing in the above referenced administrative proceeding is the Division of Enforcement's Motion for Summary Disposition, together with the supporting Declarations of Timothy Tatman and Jonathan Katz.

Sincerely,

Michael D. Foster
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