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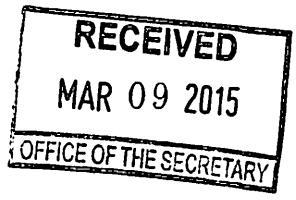

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

Administrative Proceeding
File No. 3-16217

In the Matter of	
THRASOS TOMMY PETROU,	
Respondent.	

THE DIVISION OF ENFORCEMENT'S MEMORANDUM OF LAW IN OPPOSITION TO RESPONDENT'S MOTION FOR SUMMARY DISPOSITION

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CASES

The Division of Enforcement respectfully submits this Memorandum of Law, together with the Declaration of Richard G. Primoff dated March 6, 2015 ("March Primoff Dec."), in opposition to the motion for summary disposition submitted by Respondent Thrasos Tommy Petrou ("Petrou").

PRELIMINARY STATEMENT

Respondent asks to be excused from paying disgorgement, prejudgment interest or civil money penalties against him for the twenty-eight violations of Exchange Act Rule 105 he concedes he committed, and obtained unlawful profits from, over a period of more than two years – or, in the alternative, that such amounts be reduced by an unspecified amount. Petrou's motion is premised on his claim that he was not aware he was violating Rule 105 at the time he violated it, and that he is financially unable to pay either all or some unspecified portion of this monetary relief.

Although Petrou attempts to portray himself as an innocent pawn misled by the erroneous advice of Jeffrey Lynn at Worldwide, there is no dispute that Petrou committed at least sixteen of his twenty-eight violations after he was explicitly placed on notice by Howard Blum of War Chest that the trades he routinely engaged in violated Rule 105. Nor is there any dispute that Petrou, subjectively, grew concerned that Lynn's purported advice was incorrect after this warning. Finally, there is no dispute that despite his admitted awareness of this red flag, Petrou did not halt his misconduct – not even at the very firm that had warned him against it. Division's February 5, 2015 Memorandum of Law ("Div. Mem.") at 7-10. Petrou's financial motivation to continue violating Rule 105 – a strategy he acknowledges was central to his trading from 2008-2011(Respondent's Memorandum ("Resp. Mem.") at 3 – was compelling: During this period, Petrou received a total of $760,000 from Worldwide, a sum that does not include the profits he

obtained from War Chest. *See* October 8, 2013 Testimony Transcript of Thrasos Tommy Petrou ("2013 Petrou Tr.") (March Primoff Dec., Exh. A) at 65:4-13.

Nor has Respondent met his evidentiary burden of demonstrating that he is financially unable to pay disgorgement, interest and a substantial civil money penalty – an issue that, even had Respondent met his burden, would be one factor in the Court's determination of appropriate relief here. On the contrary, Respondent's papers are rife with omissions and inconsistencies that warrant the conclusion that Petrou has the ability to pay disgorgement, interest and significant money penalties, but refuses to acknowledge the same to the Court.

As noted above, Petrou obtained $760,000 from Worldwide alone during the relevant period – a figure that does not include the sums (presently undisclosed to the Court or the Division) that he separately earned from his violative trading at War Chest during the relevant period. Petrou has also acknowledged that he received nearly $300,000 in cash from the sale of his apartment as recently as May 2014. Although Respondent now professes to have a positive net worth of $[redacted] he has not provided bank or other financial account statements from 2008 through the present that would explain or document the whereabouts or disposition of these large sums of cash. This omission is particularly telling here, where Respondent has also declined to produce *any* financial records for his wife, despite their being required by the Statement of Financial Condition, whether before or after the date of their marriage, and suggests that Respondent may be concealing the whereabouts of substantial assets.

Similarly disingenuous are Respondent's inconsistent and conclusory claims about his employment and income situation and prospects, which are directly contradicted by the materials he has submitted on his motion. For all of these reasons, as discussed below, Respondent's

motion should be denied, and the Division requests that the relief it has requested in its own motion for summary disposition be granted.

ARGUMENT

I. THE COURT SHOULD ORDER DISGORGEMENT, PREJUDGMENT INTEREST AND SUBSTANTIAL CIVIL MONEY PENALTIES AGAINST RESPONDENT

In addition to disgorgement and prejudgment interest, the Division seeks the imposition of maximum second-tier civil penalties for the sixteen violations Petrou committed after he admittedly was warned and became concerned his conduct was unlawful, and maximum first-tier penalties on the violations that occurred beforehand. Div. Mem. at 2. Respondent seeks to sidestep the dispositive evidence of his knowing or reckless misconduct by concocting the fiction that at all times he acted "entirely unaware" that he was violating the federal securities laws (Resp. Mem. at 6), and based on that assertion, asks the Court to conclude under *Steadman v. SEC*, 603 F.2d 1126 (5th Cir. 1979), *aff'd*, 450 U.S. 91 (1981) Petrou should be spared entirely from monetary sanctions, or be ordered to pay only first-tier penalties. Resp. Mem. at 5-9.

However, Respondent does not and cannot dispute that after he began working at War Chest in September 2010, Howard Blum told him that there was a "complete prohibition on short selling immediately in advance of a registered public offering." February 6, 2015 Affidavit of Thrasos Tommy Petrou ("Petrou Aff.") at 10; Div. Mem. at 7-10. Nor does Petrou dispute, as he cannot, that after this warning he grew concerned (understandably) that his conduct was illegal, but kept those concerns to himself, and nevertheless *continued* to violate Rule 105 at least sixteen times, not only at Worldwide, but at War Chest as well. Div. Mem. at 9-10.[1]

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[1] For reasons that are unclear, Petrou has attached a November 25, 2014 letter the Division staff sent counsel under its obligations under *Brady v. Maryland*, 373 U.S. 83 (1963) (February 6, 2015 Declaration of Elliot Lutzker Exh. B), and argues that other Worldwide traders were

Instead, Petrou conveniently professes not to remember exactly when his conversation with Howard Blum occurred (Petrou Aff. ¶ 10), despite having repeatedly testified the conversation occurred no later than February 2011 (and as early as September 2010 when he started at War Chest), and, furthermore, that whatever his purported uncertainty as to his recollection of the timing of the conversation with Blum, it was "early" in his tenure at War Chest, a point in time that preceded his multiple violations of Rule 105 at *both* firms. Div. Mem. at 7-10.

Petrou's attempt to forget what he previously remembered is unavailing. Indeed, even in his summary disposition motion papers, Petrou does not suggest that he ceased violating Rule 105 after he was placed on notice by Blum of the illegality of his trading strategy. On the contrary, Respondent ignores his conduct at War Chest entirely and asserts only that he began to "wind down" the frequency of his trading at Worldwide after Blum's warning. Petrou Aff. ¶ 11. Even had Petrou chosen merely to decrease the frequency of his violative trading after he received Blum's warning (the frequency actually increased), this is no defense. On the contrary, it is an admission of Petrou's knowing or reckless misconduct.

Finally, Petrou asks the Court to accept as fact that at no time after Blum's warning did he "believe" he was violating Rule 105. Petrou Aff. ¶ 11. Petrou's conclusory assertion of his purported "belief" is directly contradicted by his own admission that he was explicitly warned his conduct violated the law, that he subjectively was concerned about that risk, but nonetheless proceeded full steam ahead to violate Rule 105. In this contest, his bald assertion is unavailing to prevent the conclusion that he acted at a minimum with reckless disregard of Rule 105. *See,*

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unaware of Rule 105's prohibitions until May 2012. Resp. Mem. at 4. The letter and its contents are inadmissible hearsay, but it is also irrelevant, in view of the fact that Petrou has admitted he was explicitly warned his conduct violated Rule 105 between September 2010 and February 2011.

e.g., S.W. Hatfield, CPA, File No. 3-15012, Exchange Act Release No. 34-73763, 110 SEC Docket 7, 2014 SEC LEXIS 4691 (Dec. 5, 2014) (Commission Opinion) at *29-30 (When the defendant is "aware of the facts," he cannot ignore them and plead "ignorance of the risk") (quoting *SEC v. Platforms Wireless Intern. Corp.*, 617 F.3d 1072, 1094 (9th Cir. 2010)); *Makor Issues & Rights, Ltd. v. Tellabs Inc.*, 513 F.3d 702, 704 (7th Cir. 2008).

II. RESPONDENT HAS NOT MET HIS BURDEN OF DEMONSTRATING FINANCIAL INABILITY TO PAY DISGORGEMENT, INTEREST OR PENALTIES

The purported ability to pay disgorgement, interest or penalties is "only one factor that informs [the Court's] determination and is not dispositive." *Robert L. Burns*, File No. 3-12978, Investment Advisors Act Release No. IA-3260, Investment Company Act Release No. IC-29746, 101 SEC Docket 3152, 2011 SEC LEXIS 2722 at *38 (Aug. 5, 2011) (Commission Opinion). Moreover, as Respondent concedes (Resp. Mem. at 11), he bears the evidentiary burden under SEC Rule of Practice 630 of proving his inability to pay monetary relief. *See Philip A. Lehman*, File No. 3-11972, Exchange Act Release No. 34-54660, 89 SEC Docket 536, 2006 SEC LEXIS 2498, at *16 (Oct. 27, 2006) (Commission Opinion). Respondent's submissions – which acknowledge a positive net worth of $[redacted] most of it liquid – do not come close to meeting his burden, as they are materially incomplete, internally inconsistent, and contradict the conclusion Respondent wishes the Court to draw.

First, Respondent's papers omit any discussion of the substantial sums he received from his lucrative (and largely unlawful) trading with Worldwide and War Chest. The Division at present has no information on the monies Petrou earned from War Chest, as Petrou has provided

no tax returns for any period earlier than 2012.[2] But Petrou testified that he earned approximately $760,000 from Worldwide alone from 2008 through 2011. *See* 2013 Petrou Tr. (March Primoff Dec. Exh. A) at 65:4-13, and has also acknowledged receiving nearly $[redacted] in cash within the last year from the sale of his apartment. Petrou Aff. ¶ 19.

Petrou has provided no information, documents or explanation to the Court or the Division as to the whereabouts or disposition of those large sums. At the same time, he has also refused to provide any financial information regarding his wife, as to whom he claims ignorance of the location or value of her assets. Petrou Aff. ¶ 20. Respondent contends he did not provide this information because he "has no dominion or control" over her property or assets. *Id.* Yet whether or not the Division would be able to enforce a monetary order or judgment against assets held in Petrou's wife's name is not relevant – and in any event cannot be answered absent disclosure of financial information from both Petrou and his wife, particularly with regard to information regarding money transfers between them.

Moreover, Petrou's refusal to provide this information while at the same time providing no information on the whereabouts of a substantial amount of cash undermines the credibility of his unsupported assertion that he cannot pay disgorgement, interest or penalties. *See Lehman, supra,* 2006 SEC LEXIS at *30-31 (rejecting Respondent's claim of inability to pay a civil money penalty, in part where he failed and refused to provide information regarding his wife's assets).

Second, Petrou's conclusory descriptions of his current and future employment situation and prospects are both internally inconsistent and unsupported by the evidence. Petrou variously

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[2] Petrou offers no valid excuse for his failure and refusal to provide tax returns prior to 2012. His counsel previously advised the Division that Petrou lost these materials in an office fire. However, this proceeding was instituted on October 27, 2014, leaving sufficient time for Petrou to have obtained replacement copies of his tax returns for this earlier period.

claims not to be employed at all (Resp. Mem. at 10), or to have "not had full time employment since February 2013" when he left War Chest (Petrou Aff. ¶ 4), and otherwise offers the conjecture of his counsel that Petrou, at 41 years of age, has "virtually no prospects of gainful employment as a result of these proceedings." Resp. Mem. at 1. Further, Petrou asks the Court to accept that he has been unable to find a suitable position despite a diligent search, that his efforts have been impeded by this proceeding, and that most of his brokerage accounts have been shut down as a result of the Order Instituting Proceedings. Petrou Aff. ¶ 12.

Petrou offers no evidence in support of these assertions, and they do not bear scrutiny. Nothing in the Order Instituting Proceedings prevented or prevents Petrou from continuing to engage in securities trading as his livelihood (other than to preclude him from doing so in violation of the law) and as he acknowledges, he has been and continues to be employed, as he has since 2008, in trading with capital supplied by others, for a 50% share of profits – presently, with Lighthouse Capital. Petrou Aff. ¶ 13. Contrary to the insistence of counsel, Petrou, far from facing a "severely reduced income," earned at least $[redacted] in 2014 – a substantial *increase* from the year before. Petrou Aff. ¶ 18.

Although Petrou claims that as a result of the Order Instituting Proceedings, "most" of his brokerage accounts were shut down, this assertion is also unsupported – and contradicted by his own papers. Petrou has submitted only a November 25, 2014 letter from Merrill Lynch, advising him that his cash management account has been terminated. The letter does not attribute the termination to the institution of this proceeding (nor does it identify any reason). It also assured Petrou that his securities margin account is unaffected by the termination of the cash management account. Petrou implicitly concedes he has other brokerage accounts that remain

open, and he provides no explanation as to why he cannot continue his trading activities in these other brokerage accounts, or why he cannot open new accounts to engage in securities trading.[3]

In view of the foregoing, Respondent has not come close to meeting his evidentiary burden, and the Court should reject his request for a finding that he is financially unable to pay a civil money penalty. *See Burns, supra*, 2011 SEC LEXIS at *34-37 (rejecting claim of inability to pay under Rule 630, where respondent failed to support representations with record evidence, and where possibility of future income stream in same occupation could improve his financial condition); *Kevin H. Goldstein,* File No. 3-11010, Initial Decision Release No. 243, 2004 SEC LEXIS 87, at *63 (Jan. 16, 2004) (rejecting claim of inability to pay where respondent's financial disclosure statement was incomplete and where, despite the fact that he lacked steady work and faced substantial liabilities, he was young and in good health); *Lehman, supra* (affirming rejection of claim of inability to pay based on vague, unsubstantiated, and inconsistent assertions contracted by evidence).[4]

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[3] The extent of brokerage accounts previously and currently maintained by Petrou is unknown, in part because he did not identify either the Merrill Lynch account or any others in the Statement of Financial Condition appended to his affidavit.

[4] Respondent's citation to several decisions addressing a claim of inability to pay is unavailing. *Nob Hill Capital Management*, File No. 3-16112. Exchange Act Release No. 34-73108, 2014 SEC LEXIS 3423 (Sept. 16, 2014) and *Suttonbrook Capital Management*, File No. 3-16114, Exchange Act Release No. 34-73110, 2014 SEC LEXIS 3425 (Sept. 16, 2014) (Resp. Mem. at 13-14) were settled Commission orders, and thus have no bearing on this litigated proceeding. In *Angelica Aguilera* , File No. 3-14999, Initial Decision Release No. 501, 2013 SEC LEXIS 2195 (July 31, 2013) (Initial Decision) (Resp. Mem. at 12-13), the respondent established that she had a substantial negative net worth, faced substantial tax liens by the Internal Revenue Service, and provided evidence on the dissipation of her illicit gains on medical expenses of family members. *Thomas J. Dudchik*, File No. 3-12943, Initial Decision Release No. 363, 2008 SEC LEXIS 2856 (Dec. 5, 2008) (Resp. Mem. at 13), *G. Bradley Taylor*, File No. 3-9955, Securities Act Release No. 33-7713. Exchange Act Release No. 34-41691, 1999 SEC LEXIS 1516 (Aug. 2, 1999), and *Stephen J. Horning,* File No. 3-12156, Initial Decision Release No. 318, 2006 SEC LEXIS 2082 (Sept. 19, 2006) (Resp. Mem. at 13) are similarly factually inapposite.

CONCLUSION

For the foregoing reasons, and those set forth in the Division's February 5, 2015 motion papers, the Division respectfully requests that the Court deny Respondent's motion, and grant the relief requested in the Division's summary disposition motion.

Dated: March 6, 2015
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