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 REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF ITS MOTION FOR SUMMARY DISPOSITION

DIVISION OF ENFORCEMENT
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The Division of Enforcement (the "Division") respectfully submits this Reply Memorandum of Law in further support of its motion for summary disposition against Respondent pursuant to Commission Rule of Practice 250 and the Court's December 1, 2014 Scheduling Order.

I. RESPONDENT VIOLATED RULE 105 WITH SCIENTER

Respondent now expressly concedes in his opposition papers what his testimonial admissions had already established: "War Chest told Respondent that they did not want him shorting deals and covering them, and Respondent was aware of this policy from around the time he began working there in September 2010." (Respondent's March 6, 2015 Memorandum of Law in Opposition ("Resp. Opp. Mem.") at 7, citing Respondent's October 8, 2013 Testimony Transcript ("2013 Petrou Tr.") [Primoff Dec. Exh. C] at 34.)

Respondent committed twenty-four of his twenty-eight violations of Rule 105 after September 2010, and, in contrast to his self-serving claims of having acted in good faith, committed *nine* of those violations at War Chest, in direct violation of what he now seeks to characterize as merely the firm's "company policy." *See* Appendix to Order Instituting Proceedings, February 5, 2015 Declaration of Richard G. Primoff ("Feb. Primoff Dec."), Exh. A. Respondent also now concedes (as he had testified) that this warning caused him to have "reservations" about the purportedly contrary advice he had been given at Worldwide (Resp. Opp. Mem. at 8), but continued to violate Rule 105 at both firms anyway.

In view of the foregoing and the testimonial admissions discussed in the Division's opening papers, there can be no doubt that Respondent violated Rule 105 knowingly, or at a

minimum with reckless disregard for the law – a conclusion that is confirmed, moreover, by the nonsensical mischaracterizations of the record Respondent offers the Court in his opposition papers.

Thus, Respondent now asks the Court to accept that he did not know if Howard Blum's warning in September 2010 described "company policy" or a "legal requirement," but (paradoxically) also insists he was so concerned about the warning that he sought reassurance several times from Jeffrey Lynn, and "reasonably relied" on Lynn's assurances. (Resp. Opp. Mem. at 8, citing 2013 Petrou Tr. [Feb. Primoff Dec. Exh. C] at 109, 110 and his September 18, 2014 Testimony ("2014 Petrou Tr.") [Feb. Primoff Dec. Exh. C] at 21.)

Even if Petrou had not actually understood Blum's warning to refer to a legal requirement (and he did), that "company policy" quite obviously referred to the restrictions on short-selling covered by Rule 105, a point that was not lost on Petrou, who admits he became concerned about the legality of his conduct in response to Blum's red flag. That Respondent then proceeded to flout that policy at War Chest, right under Blum's nose, and continued his misconduct at Worldwide as well, is inexcusable, and precisely the type of conduct that has consistently been held to be reckless. *See, e.g., Donald J. Anthony*, File No. 3-15514, Initial Decision Release No. 745, 110 SEC ___, 2015 WL 779516, at *98 (Feb. 25, 2015) (ignoring red flags sufficient to conclude conduct was reckless); *John Thomas Capital Mgmt. Group*, File No. 3-15255, Initial Decision Release No. 693, 109 SEC 20, 2014 WL 5304908, at *25 (Oct. 17, 2014), *review granted*, 110 SEC 8, 2014 WL 6985130 (Dec. 11, 2014) (recklessness established where individual "encountered 'red flags,' or 'suspicious events creating reasons for doubt that should

have alerted him to the improper conduct'") (quoting *Howard v. SEC*, 376 F.3d 1136, 1143 (D.C. Cir. 2004)).[1]

Petrou's prior sworn admissions in any event make it clear Respondent understood Blum was referring to Rule 105's legal requirements, his belated mischaracterizations to the contrary notwithstanding. In his February 6, 2015 affidavit to this Court ("Petrou Aff."), for example, Petrou admitted this explicitly:

> [I]t was only after I began working with War Chest that I learned about the *complete prohibition on short-selling immediately in advance of a registered public offering under Rule 105* from Howard Bloom [sic], my boss at War Chest.

(Petrou Aff. ¶ 10 (emphasis added).) He admitted the same thing in his investigative testimony:

> Q: But did you understand from Mr. Bloom that Warchest did not want you to be selling short a deal in advance of getting the stock?
>
> A: Yes.
>
> Q: And did he explain why?
>
> A: Rule 105.
>
> Q: So he told you that it was Warchest's view that doing so, that selling a deal short before you got the stock in a deal –
>
> A: I would have gotten fired.
>
> Q: It was his view and Warchest's view that that would be a violation of Rule 105?
>
> A: From what I remember, yes.

(2014 Petrou Tr. [Feb. Primoff Dec. Exh. B] at 28:1-13.)

Nor did Petrou seek any reassurance from Lynn after or as a result of his admitted concerns after Blum's warning, as he now asks the Court to accept. (Resp. Opp. Mem. at 8.) On

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[1] Petrou does not and cannot argue that his scienter is mitigated by "reliance on counsel," because among other things he has never sought the advice of counsel, or has even attempted to establish any of the other recognized elements of that theory. *See, e.g., Markowski v. SEC*, 34 F.3d 99, 105 (2d Cir. 1994).

the contrary, Petrou previously insisted under oath to this Court that his conversations with Lynn on this point *preceded* his warning from Blum, and that the only action he took in response to Blum's warning was to "wind down" the frequency of his violations at Worldwide (while of course remaining mute as to his violations at War Chest. (Petrou Aff. ¶¶ 9-11.)

His investigative testimony also contradicts his present assertion that he sought and relied on advice from Lynn after Blum's warning: Petrou testified he could not recall what caused him to ask Lynn a second time about Worldwide's policy – except to suggest that it was prompted by an article he read. 2014 Petrou Tr. [Feb. Primoff Dec. Exh. B] at 21. He testified consistently the year before:

> Q: And when you learned of that policy, did that – did you continue to short in connection with offerings for Worldwide?
>
> A: I don't remember.
>
> Q: Did the fact that War Chest had a more conservation policy give you any concern about whether Worldwide's policy was correct?
>
> A: Yes.
>
> Q: And did you discuss that concern with anyone?
>
> A: No. Usually my business, I just keep to myself. It's my business.

(2013 Petrou Tr. [Feb. Primoff Dec. Exh. C] at 110:7-17.)[2]

There is no dispute, therefore, that Petrou was specifically warned in September 2010 that his trading strategy violated Rule 105, and that War Chest prohibited such conduct. Despite

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[2] Respondent's reference to his purported "mistake" in the investigative testimony (Resp. Opp. Mem. at 5-7) is incoherent, given that Respondent has yet again conceded that his conversation with Blum occurred in September 2010, at the time he started working at War Chest. Resp. Opp. Mem. at 7. As discussed in the Division's opening papers, moreover (Division's February 5, 2015 Memorandum of Law ("Div. Feb. Mem.") at 10n), whatever purported uncertainty Petrou claimed to have as to the exact date of the conversation with Blum, Petrou also acknowledged in that same section of testimony that the conversation occurred early in his tenure at War Chest, and that he continued his unlawful trading afterwards.

his admitted concerns over the lawfulness of his trading strategy, Petrou persisted in violating Rule 105, conduct that was unquestionably knowing or, at a minimum, reckless. (*See* Div. Feb. Mem" at 7-10, 16-17, and cases cited therein.) Respondent's present attempts to distance himself from his prior sworn admissions are unavailing, and serve only to underscore his efforts to evade responsibility for his misconduct, and shift the blame to others.

II. THE COURT SHOULD AWARD DISGORGEMENT, INTEREST AND CIVIL PENALTIES

Apart from misrepresenting the record regarding his scienter, Respondent's papers otherwise argue (1) that Petrou is financially unable to pay all or an unspecified portion of the disgorgement, interest and penalties the Division seeks, and (2) that the Division's request is "excessive" and out of proportion to the amounts ordered in the settled proceeding against Worldwide and Lynn. (Resp. Opp. Mem. at 8-11.)

Respondent's opposition papers add nothing regarding Petrou's purported financial condition that was not previously addressed in his opening papers, and the Division's opposition papers. The Division notes, however, that by emphasizing his 2013 income and omitting any reference to his substantially higher 2014 income, Respondent has merely highlighted the glaring omissions and insufficiency of Respondent's submission on his financial condition.

Respondent's complaint about the purportedly excessive and disproportional relief the Division seeks is also without merit. As discussed above, Respondent violated Rule 105 with a high degree of scienter, from at least September 2010. In the Division's motion, it has sought maximum second-tier penalties for the sixteen violations that occurred after February 2011, though it is well justified in seeking maximum second-tier penalties for the twenty-four violations that Petrou committed after September 2010, the date by which Petrou has now confirmed he was warned against such misconduct by Blum.

The factors enunciated in *Steadman v. SEC*, 603 F.2d 1126 (5th Cir. 1979), *aff'd*, 450 U.S. 91 (1981) and the relevant case law (ignored by Respondent) support the relief the Division has sought. Petrou violated Rule 105 on twenty-eight separate occasions over an extended period of time, and did so with a high degree of scienter for the vast majority of them. The sincerity of Respondent's assurances against future violations and his "recognition of the wrongful nature of his conduct" should, furthermore, be measured against the disingenuous manner in which he has now tried to shift responsibility for his own knowing or reckless misconduct on others.

The Division's request is also supported by *SEC v. Colonial Inv. Mgmt. LLC*, 659 F. Supp. 2d 467, 498 (S.D.N.Y. 2009) *aff'd*, 09 Civ. 3503, 381 Fed. Appx. 27, 2010 U.S. App'x LEXIS 12394 (2d Cir. June 17, 2010) (Feb. Div. Mem. at 13), which Respondent conspicuously fails to address in his papers. In that case, the court found (as the Court should here) that the defendants violated Rule 105 with scienter, even where (unlike the instant case) the defendants had not been specifically advised their conduct was unlawful. The court imposed second-tier civil penalties in the amount of $25,000 per violation, which represented approximately 42% of the $60,000 statutory maximum in place at that time. As Petrou's mental state was more egregious than that of the defendants in *Colonial Investments*, the Division's request is fully warranted and appropriate here. *See also* Feb. Div. Mem. at 18-19, and cases cited therein.

Respondent's attempt, finally, to compare the relief the Division seeks in this litigated proceeding, against the relief obtained against Worldwide and Lynn (Resp. Opp. Mem. at 10), is also unavailing. The proceeding against Worldwide and Lynn was instituted on a settled basis, whereas Petrou has insisted on litigating the relief to be awarded against him. For that reason alone, Respondent's reliance on it is misplaced. *See Philip A. Lehman*, File No. 3-11972,

Exchange Act Release No. 34-54660, Investment Advisers Act Release No. IA-2565, 89 SEC 529, 2006 WL 3054584, at *9 (Oct. 27, 2006) (Commission Opinion) (rejecting Respondent's citation to other, settled disciplinary actions that were purportedly more egregious: "Settled sanctions reflect pragmatic considerations such as the avoidance of time-and-manpower-consuming adversarial litigation") (citing *Anthony A. Adonnino*, File No. 3-10916, Exchange Act Release No. 34-48618, 81 SEC 981, 999, 2003 WL 22321935 (Oct. 9, 2003) (Commission Opinion), *aff'd*, 111 Fed. Appx. 46 (2d Cir. 2004) (unpublished) (settled cases may result in lesser sanctions); *Richard J. Puccio*, File No. 3-8438, Exchange Act Release No. 34-37849, 52 SEC 1041, 1045, 1996 WL 603681, at *4 (Oct. 22, 1996) (Commission Opinion).

CONCLUSION

For the foregoing reasons, as well as those set forth in the Division's papers filed on February 5, 2015 and March 6, 2015, the Division requests that the relief requested in its motion for summary disposition be granted in its entirety.

Dated: March 16, 2015
New York, New York

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