UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of **THRASOS TOMMY PETROU,** **Respondent**	**ADMINISTRATIVE PROCEEDING** **File No. 3-16217**

MOTION FOR AN ADJOURNMENT OF HEARING WITH SUPPORTING AFFIRMATION AND MEMORANDUM OF LAW

1. I am a partner in the firm of Davidoff Hutcher & Citron LLP, attorneys for Respondent Thrasos Tommy Petrou ("Respondent"). I respectfully submit this affirmation and memorandum of law in support of Respondent's motion and memorandum of law seeking: (1) an adjournment of the hearing scheduled in this matter for to June 22-23, 2015, or to a date no less than two weeks after June 8-9, 2015 that is convenient for both the Administrative Law Judge and the Division of Enforcement; or (2) in the alternative, bifurcation of the hearing scheduled in this matter, with Respondent's state of mind addressed at the hearing scheduled for June 8-9, 2015, and the issue of Respondent's ability to pay any disgorgement, interest and/or penalties addressed at a second hearing to be held on June 22-23, 2015, or a date no less than two weeks after June 8-9, 2015 that is convenient for both the Administrative Law Judge and the Division of Enforcement.

2. On or about June 2, 2015, Respondent contacted the Division of Enforcement about the immediate motion, and the Division of Enforcement does not consent to this request.

Facts

3. Pursuant to the Order Setting Hearing Date and Prehearing Schedule, dated May 8, 2015 (the "Scheduling Order"), attached hereto as **Exhibit A**, the parties were to have exchanged and filed witness lists and exhibit lists on or by May 22, 2015 (the "Filing Deadline"), with the hearing in this matter to follow on June 8-9, 2015 (the "Hearing" and, together, the "Hearing Schedule").

4. The Hearing is to focus on two issues: (1) Respondent's state of mind, and (2) Respondent's inability to pay any disgorgement, interest and/or penalties levied against him. *See* Order on Motions for Summary Disposition, Granting Protective Order, and Setting Prehearing Conference, dated March 20, 2015 (the "March 20 Order"), attached hereto as **Exhibit B**, and Order, dated April 27, 2015 (the "April 27 Order"), attached hereto as **Exhibit C**.

5. Although the Hearing Schedule was consented to by Respondent, Respondent had made it known to the Commission, on various occasions, including on a phone call with Mr. Richard Primoff, Senior Trial Counsel, Division of Enforcement, on or about May 15, 2015, that it would be difficult, if not nearly impossible for Respondent to collect all of the exhibits necessary by the Hearing, no less the Filing Deadline. Simply put, Respondent felt constrained to accept the dates for the Filing Deadline and Hearing in light of the Court's preference, as expressed in the April 27 Order. (*See* Ex. C.)

6. Consequently, despite Respondent's best efforts, Respondent has not been able to provide the Commission with all exhibits it needs to use at the Hearing. This is precisely the reason why Respondent had previously requested of the Commission, by letter dated May 22, 2015, an extension of time to exchange exhibits lists, attached hereto as **Exhibit D.**

7. Most fundamentally a general ledger (the "General Ledger") being prepared by Respondent's accountant, Peter Vasilakos, CPA ("Mr. Vasilakos"), with supporting documentation, has not yet been supplied to the Commission. The General Ledger is intended to explain the location of profits earned by Respondent for the activity taken in violation of Rule 105, (*see generally* Order Instituting Administrative and Cease-and-Desist Proceedings, dated October 27, 2014, attached hereto as **Exhibit E**), as well as the sources of any other income, assets and liabilities. Mr. Vasilakos has been identified as a witness for Respondent, with the intention that he will testify at the Hearing about the findings included in this General Ledger.

8. Mr. Vasilakos and his team have worked diligently to prepare the General Ledger in time for the Filing Deadline and Hearing. However, despite best efforts, they have not been able to complete the General Ledger in time.

9. The Division of Enforcement has made clear that it believes Respondent has failed to "explain or document the whereabouts or disposition" of the profits earned by Respondent in engaging in the violative conduct. (*See* The Division of Enforcement's Memorandum of Law in Opposition to Respondent's Motion for Summary Disposition, dated March 6, 2015, attached hereto as **Exhibit F**, at p. 2.) Likewise, the Court has made clear that there is an issue of fact as to Respondent's inability to pay sanctions that can only be resolved at the Hearing. (*See* Ex. B., March 20 Order.)

10. Consequently, the General Ledger and Mr. Vasilakos' testimony regarding the General Ledger is absolutely fundamental to Respondent's defense. To require that the Hearing proceed without the General Ledger and the testimony thereof will substantially prejudice Respondent.

11. Likewise, to allow admission of the General Ledger at this point in time would significantly prejudice the Division of Enforcement, preventing it from fully digesting the content thereof and preparing its cross examination of Mr. Vasilakos.

Analysis

12. Pursuant to Rule 161 of the Commission's Rules of Practice, although there is a strong policy of disfavoring requests for adjournments or extensions, such policy must give way "where the requesting party makes a strong showing that the denial of the request or motion would *substantially prejudice* their case." 17 C.F.R. § 201.161(b)(1) (emphasis added).

13. When considering a request for an adjournment or extension, the hearing officer "shall consider, in addition to any other relevant factors: (i) the length of the proceeding to date; (ii) the number of postponements, adjournments or extensions already granted; (iii) the stage of the proceedings at the time of the request; (iv) the impact of the request on the hearing officer's ability to complete the proceeding in the time specified by the Commission; and (v) any other such matters as justice may require." 17 C.F.R. § 201.161(b)(1).

14. Here, there is little question that Respondent will be substantially prejudiced if the Hearing is not adjourned to allow Respondent time to complete the General Ledger. The Hearing is being held to resolve two outstanding factual issues, one of which is Respondent's ability to pay any disgorgement, interest and/or penalties. Both the Division of Enforcement and the Court have made clear that Respondent must substantiate his claim that he cannot pay any disgorgement, interest and/or penalties. Such substantiation rests largely on the figures reflected in the General Ledger, and Mr. Vasilakos' testimony regarding the General Ledger.

15. The other factors to be considered by the Court in determining whether to grant Respondent's request for an adjournment must yield in light of this substantial prejudice. Taken

in turn: (i) the proceeding is not old, and the parties have worked expeditiously to resolve the matter; (ii) no other adjournments or extensions have been granted by the Court; (iii) the Court ruled on summary disposition only one month ago, (*see* Ex. C); and (iv) a two-week extension will not substantially delay this proceeding. *See generally In re Cloudeeva, Inc.*, Administrative Proceedings Rulings, Release No. 1521 (June 13, 2014) (granting motion for extension of time to answer where, *inter alia*, not much time had passed since last action taken by ALJ and no adjournments had been previously granted).

16. Accordingly, an adjournment is required and warranted here to prevent substantial prejudice to Respondent. Likewise, an adjournment will provide the Division of Enforcement with the time it deserves to review the General Ledger and supporting documentation and prepare for cross examination of Mr. Vasilakos.

CONCLUSION

For the reasons set forth herein, Respondent respectfully requests that the Court grant: (i) Respondent's request for an adjournment of the Hearing to June 22-23, 2015, or to a date no less than two weeks after June 8-9, 2015 that is convenient for both the Administrative Law Judge and the Division of Enforcement; or (ii) in the alternative, bifurcation of the hearing scheduled in this matter, with Respondent's state of mind addressed at the hearing scheduled for June 8-9, 2015, and the issue of Respondent's ability to pay any disgorgement, interest and/or penalties addressed at a second hearing to be held on June 22-23, 2015, or a date no less than two weeks after June 8-9, 2015 that is convenient for both the Administrative Law Judge and the Division

of Enforcement; and (iii) such other and further relief as the Court deems just, equitable and proper.

Dated: New York, New York
June 2, 2015

CHARLES CAPETANAKIS

TO: Mr. Brent J. Fields
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Hon. Cameron Elliot
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EXHIBIT A

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 2650/May 8, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16217

In the Matter of THRASOS TOMMY PETROU	ORDER SETTING HEARING DATE AND PREHEARING SCHEDULE

On October 27, 2014, the Securities and Exchange Commission issued an Order Instituting Administrative and Cease-and-Desist Proceedings against Respondent Thrasos Tommy Petrou (Petrou), pursuant to Section 21C of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940.

On April 27, 2015, I informed the parties that I had availability in late May and June to hold the hearing in this matter, and I directed the parties to confer regarding the hearing date and a prehearing schedule and to file a joint report on their conference. *Thrasos Tommy Petrou*, Admin. Proc. Rulings Release No. 2596, 2015 SEC LEXIS 1597. On May 8, 2015, the parties filed a Joint Pre-hearing Report proposing that the hearing be scheduled for June 8 and 9 in New York City and that witness and exhibit lists be exchanged on or before May 22, 2015.

Accordingly, I adopt the following procedural schedule:

May 22, 2015:	Parties shall exchange and file (and provide this Office with) witness lists and exhibit lists.
June 8-9, 2015:	The hearing shall take place in Room 238, Jacob K. Javits Federal Building, 26 Federal Plaza, New York, New York 10278.

SO ORDERED.

Cameron Elliot
Administrative Law Judge

EXHIBIT B

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 2446/March 20, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16217

In the Matter of THRASOS TOMMY PETROU	ORDER ON MOTIONS FOR SUMMARY DISPOSITION, GRANTING PROTECTIVE ORDER, AND SETTING PREHEARING CONFERENCE

On October 27, 2014, the Securities and Exchange Commission (Commission) issued an Order Instituting Administrative and Cease-and-Desist Proceedings (OIP) against Respondent Thrasos Tommy Petrou (Petrou), pursuant to Section 21C of the Securities Exchange Act of 1934 (Exchange Act) and Section 203(f) of the Investment Advisers Act of 1940 (Advisers Act). The OIP alleges that between 2009 and 2012, Petrou violated Rule 105 of Regulation M under the Exchange Act (Rule 105). OIP at 2. Attached to the OIP is a chart (Appendix) listing twenty-eight trades made by Petrou in violation of Rule 105. Petrou has admitted making these trades in violation of Rule 105, but opposes the sanctions sought by the Division of Enforcement (Division).

On February 6, 2015, the Division filed its Motion for Summary Division (Div. Motion) and a Declaration of Richard G. Primoff, attached to which were an excerpt of Petrou's September 18, 2014, investigative testimony (Primoff Ex. B), and an excerpt of Petrou's October 8, 2013, investigative testimony (Primoff Ex. C). The Division also filed a Declaration of Elzbieta Wraga (Wraga Decl.), attached to which were a chart similar to the Appendix but with three additional columns (Wraga Ex. A), a copy of the Appendix, and a chart documenting prejudgment interest. Petrou timely filed an opposition to the Division's Motion, and the Division timely filed a reply.

Also on February 6, 2015, Petrou filed his Motion for Summary Division (Petrou Motion), to which were attached, among other documents, an Affidavit of Thrasos Tommy Petrou (Petrou Aff.) and a collection of Petrou's financial records (Petrou Ex. A). The Division timely filed an opposition to Petrou's Motion. Petrou timely filed a reply, to which were attached a second Affidavit of Thrasos Tommy Petrou, 2011 state and federal tax returns (Tax Returns), and a collection of documents associated with the 2014 sale of Petrou's home (Sale Documents) (collectively, Reply).

Discussion

A. Summary Disposition Standard

A motion for summary disposition may be granted 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). The facts of the pleadings of the party against whom the motion is made shall be taken as true, except as modified by stipulations or admissions made by him, by uncontested affidavits, or by facts officially noticed pursuant to Rule 323. 17 C.F.R. § 201.250(a). The facts on summary disposition must be viewed in the light most favorable to the non-moving party. *See Jay T. Comeaux*, Exchange Act Release No. 72896, 2014 WL 4160054, at *2 (Aug. 21, 2014). However, once the moving party has carried its burden of establishing that it is entitled to summary disposition on the factual record, the opposing party may not rely on bare allegations or denials, but instead must present specific facts showing a genuine and material dispute for resolution at a hearing. *See id.* Such facts may be established by "affidavits or other specific evidence." *China-Biotics, Inc.*, Exchange Act Release No. 70800, 2013 WL 5883342, at *16 (Nov. 4, 2013).

B. Pertinent Findings

1. Petrou's Knowledge

Rule 105 prohibits buying an equity security that is the subject of a covered public offering from an underwriter or broker or dealer participating in the offering, after having sold short the same security during the restricted period. OIP at 2-3 (citing 17 C.F.R. § 242.105). A careful review of the record evidence that may be considered under Rule 250(a) establishes that there is a genuine issue of material fact as to Petrou's state of mind at all relevant times. In particular, Petrou testified in both 2013 and 2014 that he could not remember exactly when Howard Bloom (Bloom)[1] told him that short selling in advance of an offering was illegal. Primoff Ex. B at 30, 32; Primoff Ex. C at 108; *cf.* Primoff Ex. C at 106, 109 (Bloom told Petrou War Chest Capital Partners LLC had a "policy" against short selling in advance of an offering). This is consistent with Petrou's affidavit, in which he states that he "do[es] not have a clear recollection of when the conversation [with Bloom] actually took place." Petrou Aff. at 2. To be sure, Petrou also testified that the conversation took place earlier, while he was still trading in violation of Rule 105. *E.g.*, Primoff Ex. B at 22-23. But viewing the evidence in the light most favorable to Petrou, as I must when considering the Division's Motion, the latest possible date that Petrou could have known that short selling in advance of an offering was illegal was January 2012, when Petrou left Worldwide Capital, Inc. (Worldwide). *See Jay T. Comeaux*, 2014 WL 4160054, at *2; Primoff Ex. C at 108 ("I had already moved from Worldwide at that time, I think."); OIP at 2 (Petrou traded securities for Worldwide until approximately January 2012). Because his last violative trade occurred on January 12, 2012, it is possible that his conversation with Bloom occurred after his last violative trade, and that Petrou was not previously on notice that his trades had violated Rule 105. OIP at 2, Appendix.

[1] This Order spells Bloom's name as it is spelled in the investigative transcripts.

Accordingly, the Division has not shown the lack of a genuine issue of material fact regarding when, or even whether, Petrou knowingly or recklessly violated Rule 105. The "sham affidavit doctrine" is not clearly applicable here because the inconsistent facts are all found in Petrou's investigative testimony. *See Jiminez v. All Am. Rathskeller, Inc.*, 503 F.3d 247, 253 (3d Cir. 2007). I am therefore prepared to find that first-tier civil penalties are appropriate as to all twenty-eight violative trades, but if the Division continues to seek second-tier (or third-tier) civil penalties, additional proceedings will be necessary. *See* 15 U.S.C. § 78u-2(b) (second- and third-tier civil penalties are warranted where, among other prerequisites, a respondent acted with "deliberate or reckless disregard of a regulatory requirement"); 15 U.S.C. § 80b-3(i)(2) (same). Specifically, it seems likely that a live hearing on this subject will be necessary.

2. Disgorgement and Overage Trades

Respondent argues that "the public interest evaluation heavily weighs in not sanctioning" him beyond the censure and cease-and-desist order imposed in the OIP. Petrou Motion at 5-8. But disgorgement is not subject to any public interest test. *See Jay T. Comeaux*, 2014 WL 4160054, at *3 & n.18, *5. "[I]n essence, disgorgement is always in the public interest." *Ambassador Capital Mgmt., LLC*, Initial Decision Release No. 672, 2014 WL 4656408, at *81 (Sept. 19, 2014), *finality notice*, Advisers Act Release No. 3979, 2014 WL 6985132 (Dec. 11, 2014).

The Division has the initial burden of demonstrating "a reasonable approximation of profits causally connected to the violation." *Jay T. Comeaux*, 2014 WL 4160054, at *3; *SEC v. Halek*, 537 F. App'x 576, 581 (5th Cir. 2013). The Division need only show but-for causation between a defendant's violations and profits. *Jay T. Comeaux*, 2014 WL 4160054, at *3; *SEC v. Teo*, 746 F.3d 90, 105-07 (3d Cir. 2014). The burden then "shifts to the respondent to demonstrate that the Division's estimate is not a reasonable approximation." *Jay T. Comeaux*, 2014 WL 4160054, at *3; *see Halek*, 537 F.3d at 581. The burden of uncertainty as to the amount of unjust enrichment falls on the wrongdoer, and any such uncertainty does not bar disgorgement. *See SEC v. First City Fin. Corp., Ltd.*, 890 F.2d 1215, 1232 (D.C. Cir. 1989); *Jay T. Comeaux*, 2014 WL 4160054, at *3.

Rule 105 is a prophylactic measure designed to prevent manipulative short selling, thereby "foster[ing] secondary and follow-on offering prices that are determined by independent market dynamics and not by potentially manipulative activity." *Short Selling in Connection with a Public Offering*, 72 Fed. Reg. 45094, 45096 (Aug. 10, 2007). Purchasing a quantity of a covered offering that matches the quantity of securities sold short during the restricted period violates Rule 105, and it is entirely reasonable to measure disgorgement as if the purchased securities were used to cover the short sale, even if they were not so used. *See, e.g., SEC v. Colonial Investment Mgmt. LLC*, 659 F. Supp. 2d 467, 486, 491 (S.D.N.Y. 2009) ("Colonial realized a profit of approximately $7,783.23 on the portion of its restricted period short position that it covered with the offered shares."), *aff'd*, 381 F. App'x 81 (2d Cir. 2010).

Thus, disgorgement of at least $225,684.66, representing the trading profits from the matched portions of all twenty-eight trades, plus prejudgment interest, is warranted. *See* Wraga Ex. A; 17 C.F.R. § 201.600(a) ("Prejudgment interest shall be due on any sum required to be

paid pursuant to an order of disgorgement."). But the Division also seeks disgorgement of trading profits from the "overage" portions of violative trades, that is, the portions of offerings that Petrou purchased that exceeded the quantity of securities sold short during the restricted period. Div. Motion at 13-14; Wraga Decl. at 3. There are two problems with the Division's position. First, Petrou has not conceded the accuracy of his trading profits on overage shares; he has only conceded the accuracy of the volume weighted average price (VWAP) corresponding to each offering. *See* Appendix; *cf.* Div. Motion at 14.

Second, the most natural measure of disgorgement for profits on unlawful trading is the difference between actual sale price and actual purchase price. *See, e.g.*, *Colonial Investment Mgmt.*, 659 F. Supp. 2d at 491 (after covering short sales, "Colonial had a long position of 24,500, which it sold [16 days after it purchased the offering] to flatten its position," resulting in a total gain of approximately $137,000). The VWAPs listed in the Appendix, although undisputed, do not appear to be the actual sale prices of any overage securities. Wraga Decl. at 3 (Wraga obtained the VWAP "for each issuer by consulting Bloomberg price information"). Instead, they appear to be the securities' market prices. *Id.* ("the price at which Petrou purchased those offering shares [are] typically at a discount to the [VWAP]"). That Petrou may have had arbitrage opportunities arising from the differences between offering and market prices does not mean that he took advantage of those opportunities. It may be that every overage sale actually produced a loss, in which case Petrou had no ill-gotten gains at all from his overage trades.

In short, although there is no genuine issue of material fact about the appropriate disgorgement and prejudgment interest arising from the matched portions of all twenty-eight trades, I am not satisfied that the Division has carried its initial burden of showing a reasonable approximation of profits causally connected to the violative purchases of overage securities. If the Division seeks disgorgement for the overage trades, additional proceedings will be necessary, although a live hearing on this subject may not be needed.

3. Petrou's Inability to Pay

Petrou contends that he has "little to no ability to pay sanctions." Petrou Motion at 10. Petrou bears the burden of proving inability to pay. *See Philip A. Lehman*, Advisers Act Release No. 2565, 2006 WL 3054584, at *4 (Oct. 27, 2006). In support of his contention, Petrou has submitted extensive financial information. *See generally* Petrou Ex. A; Reply.

Nevertheless, there exists a genuine issue of material fact on this issue. Among other issues, Petrou currently lacks full time employment, but earned a substantial gross income in 2014 by trading securities under an arrangement similar to the one he had with Worldwide. *See* Petrou Aff. at 2-3. Not only is this evidence inconsistent with Petrou's statement that his "ability to trade securities has been severely limited as a result of the Commission's proceedings," it seemingly refutes it. *Id.* at 3. Accordingly, if Petrou continues to seek to prove an inability to pay monetary sanctions, additional proceedings will be necessary, although a live hearing on this subject may not be needed.

4. Protective Order

Petrou requests that the two documents attached to the second Affidavit of Thrasos Tommy Petrou be sealed. These documents contain sensitive financial and personally identifiable information, and the harm resulting from their disclosure would outweigh the benefits of their disclosure. *See* 17 C.F.R. § 201.322(b). Accordingly, they shall be sealed.

Order

It is ORDERED that the Division's Motion and Petrou's Motion are GRANTED IN PART and DENIED IN PART as outlined above.

It is further ORDERED that a telephonic prehearing conference will be held on Friday, March 27, 2015, at 10:00 a.m. EDT, to discuss what additional proceedings may be necessary. If the parties desire a different time for the prehearing conference, they should confer and file a joint motion to change the prehearing conference date or time.

It is further ORDERED that the Tax Returns and Sales Documents attached to the second Affidavit of Thrasos Tommy Petrou shall be disclosed only to Commissioners, employees, and agents of the Commission.

Cameron Elliot
Administrative Law Judge

EXHIBIT C

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 2596/April 27, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16217

In the Matter of THRASOS TOMMY PETROU	ORDER

On October 27, 2014, the Securities and Exchange Commission issued an Order Instituting Administrative and Cease-and-Desist Proceedings against Respondent Thrasos Tommy Petrou (Petrou), pursuant to Section 21C of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940.

On March 20, 2015, I granted in part and denied in part the motions for summary disposition filed by Petrou and the Division of Enforcement (Division), finding three issues regarding which there continues to exist a genuine issue of material fact. *Thrasos Tommy Petrou*, Admin. Proc. Rulings Release No. 2446, 2015 SEC LEXIS 1027. On March 31, 2015, I ordered the filing of briefs supplementing the parties' motions for summary disposition. *Thrasos Tommy Petrou*, Admin. Proc. Rulings Release No. 2478, 2015 SEC LEXIS 1159.

Although that briefing is not yet complete, based on the parties' opening briefs it is clear that this proceeding cannot be resolved by summary disposition. Specifically, although it appears that one of the three genuine issues of material fact – the amount of disgorgement – may be resolvable by way of summary disposition, the other two issues of material fact – Petrou's state of mind and inability to pay – remain genuine.

One of my hearings was recently canceled and I am now available to try this case before the end of June 2015. Accordingly, and in view of the imminence of the deadline for issuing an initial decision, a hearing will be set for either May 26-29, 2015, or June 8-19, 2015. The parties need not file oppositions to the supplemental briefs, and are instead directed to confer regarding the hearing date and a prehearing schedule and file a joint report on their conference no later than Friday, May 8, 2015.

SO ORDERED.

Cameron Elliot
Administrative Law Judge

EXHIBIT D

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May 22, 2015

Via U.S. Mail First Class (Certified, RRR)

Mr. Brent J. Fields, Secretary
Office of the Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: In the Matter of Thrasos Tommy Petrou
Admin Proc. File 3-16217

Dear Mr. Fields:

This office represents Thrasos Tommy Petrou in the above-captioned proceeding. Enclosed herein please find for filing in the referenced proceeding the original and three copies of the following documents:

1. Witness List of Respondent Thrasos Tommy Petrou, dated May 22, 2015 ("Witness List");
2. Exhibit List of Respondent Thrasos Tommy Petrou, dated May 22, 2015 ("Exhibit List"); and
3. Certificate of Service, sworn to May 22, 2015.

Pursuant to the Order Setting Hearing Date and Prehearing Schedule, dated May 8, 2015, the witness list and exhibit list were to be exchanged by the parties by today, May 22, 2015. However, the documents identified in the Exhibit List as Exhibits R-W require additional clarification, subject to receipt of those identified documents from Respondent's accountant. Consequently, Respondent respectfully requests an extension of the time to exchange exhibit

lists to Friday, May 29, 2015, to allow Respondent to clarify for the Commission Exhibits R through W, and provide copies of said documents to the Commission.

Respectfully yours,

Andrew K. Rafalaf

Enclosures

cc: The Hon. Cameron Elliot (via email: ALJ@sec.gov and FedEx)
Richard G. Primoff (via email: primoffr@sec.gov and messenger)

EXHIBIT E

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73442 / October 27, 2014

INVESTMENT ADVISERS ACT OF 1940
Release No. 3958 / October 27, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16217

In the Matter of THRASOS TOMMY PETROU, Respondent.	:	ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934 AND SECTION 203(f) OF THE INVESTMENT ADVISERS ACT OF 1940, MAKING FINDINGS, IMPOSING A CEASE-AND DESIST ORDER AND REMEDIAL SANCTIONS, AND NOTICE OF HEARING

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act") and Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") against Thrasos Tommy Petrou ("Respondent" or "Petrou").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement ("Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, and

Section 203(f) of the Investment Advisers Act of 1940, Making Findings and Imposing a Cease-and Desist Order and Remedial Sanctions, and Notice of Hearing, as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds[1] that:

Summary

1. These proceedings arise out of multiple violations of Rule 105 of Regulation M of the Exchange Act ("Rule 105") by Petrou. Rule 105 prohibits buying any equity security that is the subject of a covered public offering from an underwriter or broker or dealer participating in the offering after having sold short the same security during the restricted period as defined therein. From December 16, 2009 through January 12, 2012 ("Relevant Period"), while trading for himself and two unregistered entities, in connection with twenty covered public offerings, Petrou bought offering shares from an underwriter or broker or dealer participating in a follow-on or secondary public offering after having sold short the same security during the restricted period.

Respondent

2. Petrou, age 40, is a resident of Brooklyn, New York. From approximately April 2008 to January 2012, Petrou traded securities for Worldwide Capital, Inc., and from approximately September 2010 to February 2013, he traded securities for an unregistered investment fund managed by War Chest Capital Partners LLC. Since March 2013, Petrou has been trading securities for another unregistered entity that is controlled by another individual who previously traded for Worldwide and War Chest. Petrou has never been associated with a registered broker-dealer or registered investment adviser.

Other Relevant Persons

3. At all relevant times, Worldwide was a Delaware corporation with its principal place of business in Nassau County, New York, and the *alter ego* of Jeffrey W. Lynn, who formed it for the purpose of trading his own capital. Worldwide and Lynn were the subjects of a recent Commission action against them for their violations of Rule 105. *Worldwide Capital, Inc., and Jeffrey W. Lynn*, Exchange Act Release No. 71653 (Mar. 5, 2014). (Worldwide and Lynn are collectively referred to hereafter as Worldwide.) Worldwide has never been registered with the Commission in any capacity.

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[1] The findings herein are made pursuant to Respondent's Offer of Settlement. These findings are solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party. The findings herein are not binding on any other person or entity in this or any other proceeding.

4. At all relevant times, War Chest was a Delaware limited liability company with its principal place of business in New York, New York. At all relevant times, War Chest provided investment advisory services to one unregistered domestic investment fund with total assets under management of approximately $8 million ('the War Chest fund"). War Chest was the subject of a Commission enforcement action for its violations of Rule 105, *War Chest Capital Partners LLC*, Exchange Act Release No. 70411 (Sept. 16, 2013). War Chest has never been registered with the Commission in any capacity.

Legal Framework

5. Rule 105 makes it unlawful for a person to purchase equity securities in a covered public offering from an underwriter or broker or dealer participating in the offering if that person sold short the security that is the subject of the offering during the restricted period defined in the rule, absent an exception. 17 C.F.R. § 242.105; *see Short Selling in Connection with a Public Offering*, Exchange Act Release No. 56206, 72 Fed. Reg. 45094 (Aug. 10, 2007). The Rule 105 restricted period is the shorter of the period: (1) beginning five business days before the pricing of the offered securities and ending with such pricing; or (2) beginning with the initial filing of a registration statement or notification on Exchange Act Form 1-A or Form 1-E and ending with pricing.

6. Rule 105 applies irrespective of the short seller's intent in effecting the short sale. "The prohibition on purchasing offered securities . . . provides a bright line demarcation of prohibited conduct consistent with the prophylactic nature of Regulation M." *Short Selling in Connection with a Public Offering,* 72 Fed. Reg. at 45096. The Commission adopted Rule 105 in an effort to prevent manipulative short selling prior to a public offering and, therefore, "to foster secondary and follow-on offering prices that are determined by independent market dynamics and not by potentially manipulative activity." *Id.* at 45094.

Petrou Violated Rule 105

7. From approximately April 2008 to January 2012, Petrou was one of a number of individuals who traded for Worldwide.[2] Under the terms of his arrangement with Worldwide, Worldwide funded Petrou's trading and the two shared equally in the profits and were equally liable for the losses generated by that trading.

8. At all relevant times, Petrou's and Worldwide's principal investment strategy was to obtain the maximum allocations possible for short-term trading in initial public offerings, as well as follow-on and secondary offerings. Accordingly, Petrou opened numerous accounts at large broker-dealers in the name of a corporate entity he created, owned and controlled, and used those accounts to purchase offered shares. By contrast, many of Petrou's sales of equity securities, including short sales, were executed through an account in Worldwide's name at one of several smaller broker-dealers that catered to small institutional customers and professional

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[2] Five of those individuals were the subjects of recent Commission enforcement actions for violations of Rule 105 committed while trading for Worldwide. Exchange Act Release Nos. 72517 through 72521 (July 2, 2014).

traders. Regardless of the account in which the purchase or sale was executed, all of Petrou's trades for Worldwide were funded by Lynn, and executed, cleared and settled in a Worldwide master account at Worldwide's prime broker.

9. From September 2010 to February 2013, Petrou was one of a number of individuals who traded for the War Chest fund. He did so through War Chest, which managed the War Chest fund's portfolio, and retained him as a trader through a pass-through entity created, owned, and controlled by another War Chest (and Worldwide) trader. The War Chest fund financed Petrou's trading and the two shared equally in the profits and were equally liable for the losses generated by that trading.

10. At all relevant times, one of the trading strategies employed by War Chest and Petrou was to buy and sell short publicly traded equity and debt securities. Petrou opened multiple accounts at large broker-dealers in the names of multiple corporate entities he created, owned and controlled, and in the names of several of his relatives. It was through those accounts that Petrou purchased shares in covered offerings, after having sold short the offered securities during the restricted period through one master account in the name of the War Chest fund at one of several smaller broker-dealers.

11. As reflected in the Appendix, from December 2009 to January 2012, in connection with twenty offerings, Petrou committed twenty-eight violations of Rule 105 by purchasing offering shares from an underwriter or broker or dealer participating in a covered offering after having sold short the same security during the restricted period. With respect to eight of the offerings, the violations occurred in connection with his trading for both Worldwide and the War Chest fund, with respect to eleven of the offerings, the violations occurred solely in connection with his trading for Worldwide, and with respect to one offering, the violations occurred solely in connection with his trading for the War Chest fund.

12. As a result of these violations, Petrou received ill-gotten gains produced by the violative trades.

Petrou Acted as an Investment Adviser and was An Associated Person of an Investment Adviser

13. With certain exceptions, an investment adviser is defined under the Advisers Act as "any person who, for compensation, engages in the business of advising others, directly or through publications or other writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities. . . ." Advisers Act Section 202(a)(11). By virtue of his trading for Worldwide, Petrou acted as an investment adviser to Worldwide and Lynn. By virtue of his trading for the War Chest fund, Petrou acted as an investment adviser to the fund and was an associated person of War Chest, which was also an investment adviser to the War Chest fund.

Violations

14. As a result of the conduct described above, Petrou willfully violated Rule 105 of Regulation M under the Exchange Act.

IV.

Pursuant to this Order, Respondent agrees to additional proceedings in this proceeding to determine what, if any, disgorgement, prejudgment interest and civil penalties pursuant to Sections 21B and 21C of the Exchange Act and Section 203 of the Advisers Act are in the public interest. In connection with such additional proceedings: (a) Respondent agrees that he will be precluded from arguing that he did not violate the federal securities laws described in this Order; (b) Respondent agrees that he may not challenge the validity of this Order; (c) solely for the purposes of such additional proceedings, the allegations of the Order shall be accepted as and deemed true by the hearing officer; and (d) the hearing officer may determine the issues raised in the additional proceedings on the basis of affidavits, declarations, excerpts of sworn deposition or investigative testimony, and documentary evidence.

V.

In view of the foregoing, the Commission deems it appropriate in the public interest and for the protection of investors to impose the sanctions agreed to in the Offer, and to institute proceedings to determine what, if any, disgorgement and civil penalties are appropriate.

Accordingly, pursuant to Section 21C of the Exchange Act and Sections 203(f) of the Advisers Act, it is hereby ORDERED that:

A. Respondent Petrou shall cease and desist from committing or causing any violations and any future violations of Rule 105 of Regulation M of the Exchange Act; and

B. Respondent Petrou is censured.

VI.

IT IS FURTHER ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section IV hereof shall be convened not earlier than thirty (30) days and not later than sixty (60) days from service of this Order at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

VII.

If Petrou fails to appear at a hearing after being duly notified, Petrou may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Petrou personally or by certified mail.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 300 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Brent J. Fields
Secretary

Kevin M. O'Neill

By: Kevin M. O'Neill
Deputy Secretary

Service List

Rule 141 of the Commission's Rules of Practice provides that the Secretary, or another duly authorized officer of the Commission, shall serve a copy of the Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to 21C of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940, Making Findings, Imposing a Cease-and-Desist Order and Remedial Sanctions, and Notice of Hearing ("Order"), on the Respondents and their legal agents.

The attached Order has been sent to the following parties and other persons entitled to notice:

Honorable Brenda P. Murray
Chief Administrative Law Judge
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-2557

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Securities and Exchange Commission
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650 Third Avenue, 34th floor
New York, NY 10158
(Counsel for Thrasos Tommy Petrou)

EXHIBIT F

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

DIVISION OF ENFORCEMENT
United States Securities and Exchange Commission
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Karen M. Lee
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TABLE OF AUTHORITIES

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 $83,000, 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 $83,000, 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 $300,000 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 $86,400 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
New York, New York

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