UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-16312

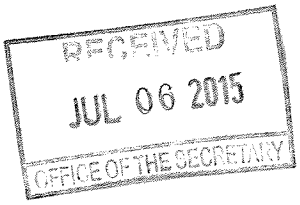
In the Matter of

SCOTT M. STEPHAN,

Respondent.

DIVISION OF ENFORCEMENT'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Dated: July 2, 2015



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Pursuant to Rule 340 of the Securities and Exchange Commission's ("Commission") Rules of Practice and the Court's May 21, 2015 Post-Hearing Order, the Division of Enforcement ("Division") respectfully submits its Proposed Findings of Fact and Conclusions of Law in support of its claims against Respondent Scott M. Stephan ("Stephan" or "Respondent").

PROPOSED FINDINGS OF FACT

I. Procedural Background

1. On November 12, 2014, Stephan submitted a signed Offer of Settlement ("Offer," attached as Appendix A hereto) to the Commission evidencing his consent to the entry of an Order Instituting Administrative and Cease-and-Desist Proceedings pursuant to Section 8A of the Securities Act of 1933 ("Securities Act"), Sections 15(b) and 21C of the Securities Exchange Act of 1934 ("Exchange Act"), Sections 203(f) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act"), and Section 9(b) of the Investment Company Act of 1940 ("Investment Company Act"), Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order and Notice of Hearing (the "OIP").

2. On December 10, 2014, the Commission entered the OIP. In the OIP, the Commission:

a. Found that Stephan willfully violated Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder;

b. Found that Stephan (in addition to his own primary violations) willfully aided and abetted and caused Prestige Wealth Management, LLC's ("Prestige LLC") violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder;

c. Entered a cease-and-desist order against Stephan; and

d. Ordered that Stephan be subject to a collateral and associational bar without any right to re-apply.[1]

3. In the OIP, the Commission also ordered additional proceedings "to determine what, if any, disgorgement and civil penalties are appropriate under the Securities Act, Exchange Act, Advisers Act and Investment Company Act" against Stephan.[2]

4. For purposes of the additional proceedings, the OIP's factual findings "shall be accepted and deemed true by the hearing officer," and Stephan was "precluded from arguing that he did not violate the federal securities laws described in this [OIP]."[3]

5. On December 29, 2014, Stephan filed an answer to the OIP (the "Answer," attached as Appendix B hereto), in which he expressly "admit[ted] the allegations contained" in all of the paragraphs in the OIP but for paragraph six (which focused on Walter F. Grenda Jr.'s ("Grenda") and Timothy S. Dembski's ("Dembski") conduct), which he did not deny.[4]

6. On January 9, 2015, the Court ordered that Administrative Proceeding File Nos. 3-16311 (*In the Matter of Reliance Financial Advisors, LLC, et al.*) and 3-16312 (*In the Matter of Scott M. Stephan*) be consolidated in their entirety.[5]

7. From May 11, 2015 through May 18, 2015, the Court held the consolidated hearing, which included matters concerning the appropriate relief against Stephan (the "Hearing"). (Transcript of May 2015 Hearing ("Tr.").)

8. At the Hearing, Stephan again admitted to all of the allegations contained in the OIP.[6]

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1 OIP ¶¶ III (I) 36-38, V (A)-(B).

2 OIP, page 8 at IV.

3 OIP, page 8 at IV.

4 Answer at 1.

5 Div. Ex. 139.

II. Violations

9. In making and distributing materially false and misleading statements when recommending and selling investments in, and when running, the Prestige Wealth Management Fund, LP (the "Prestige Fund" or "Fund"), Stephan willfully committed primary violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder.[7]

10. In addition, Stephan willfully aided and abetted and caused Prestige LLC's violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder.[8]

III. Significant Individuals and Entities

11. **Stephan**, age 40, resides in Hamburg, New York.[9] Stephan co-founded the Prestige Fund and its General Partner, Prestige LLC, in early 2011 and was the Fund's Chief Investment Officer and sole portfolio manager.[10] Prior to founding the Prestige Fund, Stephan worked for Dembski and Grenda at Reliance Financial Group, Inc. ("Reliance Financial Group").[11] From approximately August 2009 through March 2011, Stephan also was a registered representative associated with a registered broker-dealer.[12]

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6 Tr. 52:5-8 (Stephan) ("Q: And in the answer, did you admit the allegations contained in the order? A: Yes.").

7 OIP ¶¶ III (G) 28-33, (H) (34-35), (I) 36-37.

8 OIP ¶ III (I) 38.

9 OIP ¶ III (B) 11.

10 OIP ¶ III (B) 11.

11 OIP ¶ III (B) 11; Tr. 60:19-21 (Stephan) ("Q: And who did you work for at Reliance Financial Group. A: Tim Dembski and Walter Grenda."; Tr. 61:22-24 (Stephan) ("Q: And who at Reliance oversaw your work?" A: Tim and partly Walter.").

12 OIP ¶ III (B) 11; Div. Ex. 67 at 3 (Stephan FINRA BrokerCheck Report); Tr. 66:10—66:15 ("Q: Looking at page 5, could you tell me what licenses you received and when you received

12. **The Prestige Fund** was a private investment fund under the Investment Company Act and organized as a limited partnership under Delaware law on November 19, 2010.[13] The Prestige Fund was a pooled investment vehicle.[14] Dembski and Stephan created the Prestige Fund.[15]

13. **Prestige LLC** was a limited liability company organized in Delaware on November 12, 2010, and adviser to the Prestige Fund.[16] Dembski and Stephan were the sole members of Prestige LLC, each owning 50%.[17] Prestige LLC charged the Prestige Fund a 2% management fee and a 20% performance fee on an annualized basis.[18] Prestige LLC was not registered with the Commission.[19]

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them? A: Yes. Series 7, August of 2009. Series 63 in August of 2009. And Series 66 in October of 2009.").

13 OIP ¶ III (C) 14.

14 Div. Ex. 90 (final Prestige Fund Private Placement Memorandum ("PPM")) at 54 ("The Fund was formed for the primary purpose of enabling qualified investors to pool their investment resources in order to participate in certain investment opportunities, as described more fully elsewhere herein, that become available to the Fund.").

15 Tr. 67:18-23 (Stephan) ("Q: Are you familiar with something called the Prestige Wealth Management Fund? A: Yes. Q: And what is it? A: It is a hedge fund that Tim and I set up.").

16 OIP ¶ III (C) 15.

17 *Id.*

18 *Id.*

19 *Id.*

IV. Before Founding Prestige LLC and the Prestige Fund, Stephan Had No Experience Investing in or Trading Securities

14. The highest degree that Stephan obtained was graduating from high school, and he attended one semester of college at Erie Community College.[20] After that semester, Stephan was with the United States Air Force for two years as a medic and then was dishonorably discharged.[21]

15. After the United States Air Force, Stephan got a job at GE Capital in 1997 in Buffalo, New York. [22] At GE Capital, Stephan "was a collector for . . . past due auto loans."[23]

16. In 1999, Stephan left GE Capital for a job at First Investors Financial Services ("First Investors") in Atlanta, Georgia.[24] At First Investors, Stephan "managed a call center of collectors that collected on past due loans."[25]

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[20] Tr. 52:9-13 (Stephan) ("Q: Okay. What's the highest degree you obtained from school? A: Graduated from high school, a semester in college. Q: And where did you attend college? A: Erie Community College.").

[21] (Tr. 52:16—53:2 (Stephan) ("Q: And after that semester of college, what did you do? A. Joined the United States Air Force. Q: and what did you do in the Air Force? A: I was a medic. Q: And how long were you in the Air Force? A: For two years? Q: And why did you leave the Air Force? A: I was dishonorably discharged.").

[22] Tr. 53:6-11 (Stephan) ("Q: And what job is that? A: I worked at GE Capital in Buffalo, New York. Q: And around what year did you get that job? A: 1997.").

[23] Tr. 53:12-14 (Stephan) ("Q: And what did you do at GE Capital? A: I was a collector for auto loans, past due auto loans."); *see also* Div. Ex. 141 (November 14, 2013 Stephan SEC Tr. 39:10-24) ("Q. – GE Capital Automotive Group, you listed your title as collections. Could you explain what you did at GE? A: I managed – I'm sorry, I was a collector for an automotive – automotive group which was actually a company called First Investors. So I – GE Capital serviced First Investors auto loans for them, so I collected on the auto loans, technically under GE's roof, for a company called First Investors. Q: Okay. In laymen's terms, that means if someone wasn't paying their auto loan . . . . you would try to get them to pay? A: Absolutely.") ; *see also* OIP ¶ III (G) 31.

[24] Tr. 53:18—54:9 (Stephan) ("Q: And did there ever come a time when you left the Buffalo area? A: Yes, I left Buffalo. I left GE Capital to go to Georgia in 1999. Q: And why did you leave western New York for Atlanta? A: For a job offer to run a collections call center for automobiles in Atlanta, Georgia . . . . I moved to Atlanta, Georgia to work for First Investor and manage auto finance loans, car loans.").

17. Stephan never had "anything to do whatsoever with securitizing any loans or products of First Investors or anywhere else."[26] Stephan stayed at First Investors until 2007.[27]

18. In 2007, Stephan left Atlanta, Georgia to move back to Buffalo, New York to work with Dembski at Reliance Financial Group.[28] Stephan previously met Dembski in 1997 playing baseball together[29] and they became the "[b]est of friends"[30] and "remain[ed] . . . best of friends" when Stephan moved to Atlanta, Georgia.[31] In fact, Dembski agreed to be the godfather to one of Stephan's children.[32]

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[25] Tr. 54:10-20 (Stephan) ("Q: . . . What did you do in your job at First Investors? A: I managed a call center of collectors that collected on past due auto loans."); *see also* Div. Ex. 141 (November 14, 2013 Stephan SEC Tr. at 40:19—41:5) ("Q: When you say managed their [First Investors] auto portfolio, what does that mean? A: . . . I managed the collectors and the staff to bring down delinquency and keep automotive loans current and avoid write-offs for the CEO. Q: So it was still a collections role? A: Yes. Q: There was no investment decisions that had to be made; correct? A: No."); *see also* OIP ¶ III (G) 31.

[26] Tr. 96:13-16 (Stephan) ("Q: And did you ever have anything to do whatsoever with securitizing any loans or products of First Investors or anywhere else? A: No."); *see also* OIP ¶ III (G) 31.

[27] Tr. 54:21-23 (Stephan) ("Q: And how long did you stay at First Investors? A: From 1999 until 2007.").

[28] Tr. 54:24—55:5 (Stephan) ("Q: All right. And what job did you have after that? A: In 2007, I had left Atlanta, Georgia to move back to Buffalo and I worked with Timothy Dembski at Reliance Financial Group.").

[29] Tr. 55:6-8 (Stephan) ("Q: And how did you meet Mr. Dembski? A: Tim and I met in '97 playing baseball together.").

[30] Tr. 55:13-15 (Stephan) ("Q: And how would you describe the relationship between you and Mr. Dembski? A: Best of friends.").

[31] Tr. 56:19-2 (Stephan) ("Q: Did you remain, I think you said, best of friends when you moved to Atlanta? A: Yes."); *see also* Tr. 511:4-14 (Dembski) ("Q: Can you tell us a little bit about how you first met him [Stephan]? A: Scott and I met on a baseball team . . . I'm guessing it was right around '97, '98 . . . . Q: And he became a friend? A: Correct."); *see also* OIP ¶ III (D) 18.

[32] Tr. 57:16-18 (Stephan) ("Q: Did Mr. Dembski agree to be the g-dfather to one of your children? A: Yes."); Tr. 663:19-21 (Dembski) ("Q: You're one of his children's g-dfather, correct? A: Yes.").

19. Stephan reached out to Dembski for a job at Reliance Financial Group because he was "interested in getting into the . . . investment business" and Dembski said he could hire him.[33] Reliance Financial Group was an investment firm.[34]

20. Dembski hired Stephan as a "telemarketer" for Reliance Financial Group. [35] Stephan worked for Dembski and Grenda at Reliance Financial Group and they oversaw his work.[36]

21. As a telemarketer manager at Reliance Financial Group, Stephan would "send out postcards to folks for upcoming events such as investment seminars. Those would come back in the mail. [He] would follow up on them and contact people that checked yes . . . and get them to

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[33] Tr. 58:15-22 (Stephan) ("Q: And why did you reach out to Mr. Dembski? A: At that point I had a third child. It was easier for the family to move back to Buffalo where family was, and I was interested in getting into the business, investment business, and then that's when Tim and I talked and said he could hire me.").

[34] Tr. 59:6-8 (Stephan) ("Q: And what was Reliance Financial Group? A: It was an investment firm.").

[35] Div. Ex. 1 (March 20, 2007 offer letter to Stephan from Dembski) at 1 ("This letter[ ] serves to offer you employment by Reliance Financial Group as our Telemarketing Manager."); Tr. 59:9-14 (Stephan) ("Q: And what did you talk to Mr. Dembski about about a potential job at Reliance? A: When I spoke to Mr. Dembski, the initial role was to be a telemarketer and after talking, he made me an offer and then I became a telemarketer for Reliance."); Tr. 665:6-14 (Dembski) ("Q: . . . [W]hen [Stephan] was hired to work at Reliance, he was offered as a telemarketing manager, correct? A: Yes. Q: And you personally sent him an offer letter, correct? A: Yes.").

[36] Tr. 60:19-21 (Stephan) ("Q: And who did you work for at Reliance Financial Group. A: Tim Dembski and Walter Grenda."; Tr. 61:22-24 (Stephan) ("Q: And who at Reliance oversaw your work?" A: Tim and partly Walter.").

attend an upcoming seminar."[37] Stephan would track "who's showing up, how many do [they] have for this seminar."[38] Stephan never spoke at any of the seminars.[39]

22. When working at Reliance Financial Group, Stephan had personal financial difficulties and was unable to pay his mortgage and bills.[40] Stephan told Dembski about his personal financial difficulties and Dembski let Stephan know that if he needed to get paid earlier to pay bills that he generally could help him out.[41] Stephan also declared bankruptcy twice before the Prestige Fund began.[42]

23. Before working at Reliance Financial Group, Stephan did not have any securities or trading experience or investing experience.[43] When working at Reliance Financial Group, Stephan did not:

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37 Tr. 61:12-21 (Stephan); *see also* Tr. 511:23—512:3 (Dembski) ("Q: And what was Scott Stephan's duties in 2007, 2008; what did he do? A: Initially he came in as a telemarketer in order to market seminars, to call people and fill up rooms for seminars."); OIP ¶ III (D) 19.

38 Tr. 61:25—62:9 (Stephan) ("Q: How regularly did you interact with Mr. Dembski when you worked at Reliance? A: On a daily basis. Q: And what was the nature and substance of the interactions you had with Mr. Dembski about the work you did? A: Frequently we would talk about who's showing up, how many do I have for this seminar.").

39 Tr. 139:16-18 (Stephan) ("Q: Did you, Scott Stephan, ever speak at any of those seminars? A: No.").

40 Tr. 64:11-22 (Stephan) ("Q: And when working at Reliance, did you have personal financial difficulties? A: Yes. Q: And what do you understand 'personal financial difficulties' to mean? A: Unable to pay the mortgage and upcoming bills. Q: About how often did you have problems paying bills on time? A: My wife had lost her job for about a year-and-a-half. So from '08 to the middle of 2009.").

41 Tr. 64:23—65:5 (Stephan) ("Q: And did you talk to Mr. Dembksi about your personal financial difficulties? A: Yes. Q: And what did you tell him? A: That money was tight and that if I needed to get paid earlier that he generally would help me out.").

42 Tr. 131:2-5 (Stephan) ("Q: Was Tim or any of the investors aware that you had declared bankruptcy twice before the fund began? A: Yes, it's in the PPM.").

43 Tr. 60:6-14 (Stephan) ("Q: And did you have any securities or trading experience or investing experience before being hired at Reliance Financial Group? A: No. Q: Did you ever tell Mr. Dembski that you did have securities trading or investing experience before trading at Reliance? A: No."); *see also* OIP ¶ III (D) 18).

a. Do any trading or investing of securities for Reliance Financial Group or its clients;

b. Make any investment decisions for Reliance Financial Group or its clients;

c. Manage any money or any portfolios of clients at Reliance Financial Group;

d. Manage any portfolios or anyone's money or invest anyone's money at all; or

e. Ever provide investment advice to Dembski's or Grenda's clients.[44]

24. Stephan also never was responsible for portfolio management at Reliance Financial Group and he was never held out to clients at Reliance Financial Group as being responsible for portfolio management.[45] Moreover, Stephan never as part of his job at Reliance Financial Group or any other job bought or sold securities, provided investment advice to clients, or managed money or portfolios.[46]

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[44] Tr. 62:10—63:9 (Stephan) ("Q: And when working at Reliance Financial Group, did you do any trading or investing of securities for Reliance or its clients? A: No. Q: When working at Reliance, did you make any investment decisions for Reliance or its clients? A: No. Q: When working at Reliance, did you manage any money or any portfolio of clients at Reliance? A: No. Q: And when working at Reliance, did you manage any portfolios? A: No. Q: Did you manage anyone's money or invest anyone's money at all while you were working at Reliance? A: No. Q: And when working at Reliance, did you ever provide investment advice to Mr. Dembski's or Mr. Grenda's clients. A: No."); *see also* Div. Ex. 141 (November 14, 2013 Stephan SEC Tr. 49:10-24 ("Q: How long – so during this time, though, when you were in this marketing role, were you ever involved with investment decisions for people? A: No. Q: Or investing people's money? A: No. Q: And around this time, and prior, did you have any actual investment experience? A: . . . It was just something that I always liked to do, so looking at charts, but that would be my experience, was learning from that, all the way through from when I moved there, because I knew that I needed to understand the market in order to – when I got my license, try to sell."); Div. Ex. 141 (November 14, 2013 Stephan SEC Tr. 74:14-16 ("Q: And you didn't manage any investments when you were at Reliance Financial? A: No. No, sorry."); OIP ¶ III (D) 20; OIP ¶ III (G) 32.

[45] Tr. 63:10-17 (Stephan) ("Q: Were you ever responsible for portfolio management at Reliance? A: No. Q: And in your presence or to your knowledge, were you ever held out to clients at Reliance as being responsible for portfolio management? A: No.").

[46] Tr. 63:20—64:10 (Stephan) ("Q: Did you ever tell Mr. Dembski or Mr. Grenda that you were buying or selling securities as part of your job at Reliance or at any other job? A: And did you ever tell Mr. Dembski or Mr. Grenda that you were providing investment advice to client as

25. Though Stephan did not have any formal training or education in securities trading, securities investing or investment management, Stephan obtained his securities licenses in late 2009.[47]

26. After Stephan got his securities licenses, his job responsibilities at Reliance Financial Group primarily remained doing telemarketing work and he never got any clients of his own.[48]

V. Stephan Had the Idea for the Prestige Fund and Had Concerns When He "Backtested" It

27. The Prestige Fund was a hedge fund that Dembski and Stephan set up.[49] Stephan partnered with Dembski in setting up the Prestige Fund because he knew that Dembski had "a significant amount of clients" that may be interested in the Fund.[50] Prestige LLC was the "general partner" of the Prestige Fund.[51]

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part of your job at Reliance or at any other job? A: No. Q: Did you ever tell Mr. Dembski or Mr. Grenda that you were managing money as part of your job at Reliance or at another job? A: No.").

47 Tr. 65:13-19 (Stephan) ("Q: Do you have any formal training or education in securities trading, securities investment or investment experience? A: No. Q: And did you ever obtain securities licenses? A: Yes.").

48 Tr. 67:10-17 (Stephan) ("Q: And after you received your securities licenses, were your job responsibilities at Reliance primarily still doing telemarketing work? A: Yes. Q: After you received your licenses, did you get any clients of your own? A: No.").

49 Tr. 67:18-23 (Stephan) ("Q: Are you familiar with something called the Prestige Wealth Management Fund? A: Yes. Q: And what is it? A: It is a hedge fund that Tim and I set up.").

50 Tr. 73:21—74:8 (Stephan) ("Q: And why did you partner with Tim Dembski? A: Because I knew that he had clients that may be interested in [the Fund].").

51 Tr. 81:11-23 (Stephan) ("Q: And what is Prestige Wealth Management LLC? A: It's the hedge fund. Q: Okay. When you say 'hedge fund,' to you know in relation to the hedge fund what the LLC is? A: The LLC is the operating agreement which is the – for the general partners. Q: Okay. So the LLC was the general partner of the Prestige Fund; is that correct? A: Yes."); *see also* Div. Ex. 90 (final Prestige Fund PPM) at 7 ("The Fund's general partner is Prestige Wealth Management LLC ...").

28. Stephan came up with the idea for the trading strategy and the idea to create the Prestige Fund himself.[52] Stephan came up with the idea by doing "a lot of research on stocks. Looking at charts, running through certain scenarios on the fluctuation of certain stocks on a daily basis and the amount of volume that was used on a daily basis, and that's when [he] came up with the idea of the formula."[53]

29. The formula used specific times during the day to set triggers: if one of the stocks went up one percent, a long position would be entered and if one of the stocks went down one percent, a short position would be entered, and then once the position was entered, if the stock made a three percent return, then the position would be exited, or if it took a one percent loss, then the position would be exited, and positions were not supposed to be carried over night.[54]

30. Stephan chose the stocks that would go into the formula and ultimately invested in five stocks on behalf of the Prestige Fund.[55]

31. Stephan came up with the idea to put the formula into a hedge fund.[56] Stephan did not have any experience with a hedge fund before the Prestige Fund and he never invested or traded real money before.[57]

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52 Tr. 67:24—68:2 (Stephan) ("Q: Who came up with the idea for the trading strategy and the fund itself? A: I did.").

53 Tr. 68:3-11 (Stephan).

54 Tr. 68:12—69:10 (Stephan) ("Q: So when you talk about the formula or trading strategy, could you describe in detail what it was? A: Yes, I took roughly 500 stocks and I used specific times during the day to set a trigger to – my example would be at 9:45, if 'X' stock goes up one percent or down one percent, if it goes I think down one percent to go and short the stock. If it goes up one percent after that 9:45 price point to go long with the stock. Once the position was entered, then it would be – if the stock made a three percent return that day to exit out of it. If it took a one percent loss, if it was down one percent to take a loss at one percent. Q: If that three percent or one percent mark number got hit, did you carry the positions overnight? A: No, there was a formula built in to say that after 3:45, if there is a position, still to go ahead and exit out at the market price."); *see also* OIP ¶ III (E) 21 (explaining the formula's features).

55 Tr. 69:11-23 (Stephan) ("Q: And who picked the stocks that would go into the formula? A: I did. … Q: And how many stocks did you ultimately invest in the Prestige Fund? A: Five.").

32. Stephan "backtested" the formula, which he described as "go[ing] back in the past and says this stock [he] would like to buy at 9:45. As soon as the stock goes up or down, go short or long . . . and that would run that whole formula on any given day in the past."[58]

33. Stephan did not test the formula with real money or real volume levels or fill any actual orders.[59]

34. Stephan also had concerns about the backtesting in that he "was concerned with how the orders would get filled at [the correct] price point . . . . [the] average cost for the overall entry was higher than [he] wanted . . . . [he] may not actually be able to fill an order at the correct price that [he] wanted."[60]

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56 Tr. 69:24—70:3 (Stephan) ("Q: And whose idea was it to put the trading strategy or this formula into a hedge fund? A: Mine.").

57 Tr. 75:7-16 (Stephan) ("Q: And did you ever set up a hedge fund before the Prestige Fund? A: No. Q: And did you have any experience with a hedge fund before the Prestige Fund? A: No. Q: And just before the Prestige Fund started trading, had you ever invested real money before? A: No."); *see also* Div. Ex. 141 (Nov. 14, 2013 Stephan SEC Tr. 72:19-23 ("Q: Okay. We talked about this a bit before, but prior to [Prestige Fund], you didn't have any investment experience with other people's money; correct? A: Correct."); Div. Ex. 141 (Sept. 23, 2014 Stephan Bankruptcy Tr. 159:12-18) ("Q: Before you started making trades for the [Prestige] Fund, had you ever traded any securities for a customer's account or for your own account? A: No. Q: So the first trade you ever made was for the [Prestige] Fund? A: Yes."); OIP ¶ III (E) 23.

58 Tr. 70:11—71:7 (Stephan) ("Q: And did you ever test your formula or trading system to see if it would work? A: Yes. Q: And how did you test the formula or trading strategy? A: I used a software called MultiCharts, and that was a backtesting where I could go back as far as seven years, put I the formula, and then run it through on a daily basis . . . ."); *see also* OIP ¶ III (E) 22.

59 Tr. 71:8-14 (Stephan) ("Q: Does that mean when you backtested, you tested with real money? A: No. Q: And how about trading levels or volume levels or testing to fill orders, did you do that with any real amounts? A: No.").

60 Tr. 71:19—72:15 (Stephan).

35. Stephan told Dembski about the concerns he had with the backtesting: "[He] went over in detail on how the strategy worked. [He] brought up the issue with the volume because it wasn't real money. [He] had always thought it could be a potential issue . . . ."[61]

VI. Stephan Sought Out Third Parties to Help Him Set Up the Prestige Fund

36. HedgeCo. is a company that teaches someone how to start a hedge fund.[62] Stephan found HedgeCo. through an internet search.[63] HedgeCo. did not test the formula and did not make sure the formula would work.[64]

37. Stephan also employed Anthony Cascino, an engineer Stephan "found on the internet," to assist him in translating his idea into a "mathematical equation in computer language."[65] Cascino's "only role was to translate the strategy [Stephan] gave him into some computer code" to allow Stephan to trade in an automated fashion.[66] Cascino did not help Stephan come up with the trading or investment strategy; have input into the stocks Stephan chose; provide

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61 Tr. 72:16—73:14 (Stephan) ("Q: And did you tell anyone about those concerns? A: Yes. Q: And who did you tell? A: I talked to Tim Dembski about that. Q: . . . But could you just tell me what you talked to Mr. Dembski about, about using your trading strategy or formula in the hedge fund? A: Yes, I went over in detail on how the strategy worked. I brought up the issue with the volume because it wasn't real money. I had always thought it could be a potential issue so that's why I was keeping the amount of shares purchased on a daily basis low so the market makers wouldn't see such a large bid for the stock.").

62 Tr. 75:20-25 (Stephan) ("Q: What is HedgeCo? A: HedgeCo is a company that introduces – they teach you how to start a hedge fund. They give you references to go down and find your administrator, your attorney, and to set up a website.").

63 Tr. 76:2-6 (Stephan) ("Q: And how did you find HedgeCo? A: Through the Internet search. Q: And did you tell Mr. Dembski that you found HedgeCo through an Internet search? A: Yes.").

64 Tr. 76:7-16 (Stephan) ("Q: And did HedgeCo test your trading strategy or formula. A: No. Q: Did HedgeCo make sure your trading strategy or formula would work? A: No. Q: Did you ever tell Mr. Dembski or Mr. Grenda that HedgeCo tested your trading strategy or formula? A: No.").

65 Tr. 101:3-6 (Stephan) ("Q: Who is Anthony Cascino? A: He is an engineer that I found on the internet to help me put my formula into a mathematical equation in computer language.").

66 Tr. 101:13-24 (Stephan).

any opinion on whether the formula would make money or was a good idea; or provide any investment advice.[67]

38. Stephan also worked with a law firm, Holland & Knight, LLP ("Holland"), to help him set up the Prestige Fund.[68]

VII. Stephan and Dembski Set Up the Prestige Fund Such that Only Stephan Could Be Involved in Day-to-Day Management

39. Before the Prestige Fund started operating, Stephan and Dembski decided and agreed that "Dembski would not have any decision-making powers over the investment/portfolio management of the fund."[69] Stephan had that responsibility.[70]

40. Stephan and Dembksi set up the Prestige Fund that way—*i.e.*, "Dembski agreed that he wouldn't be involved in the investment decision-making"—so the Prestige Fund could collect performance fees.[71]

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[67] Tr. 101:25—102:25 (Stephan) ("Q: Did [Cascino] help you come up with your trading strategy for the Prestige Fund? A: No. Q: Did he have any input into the stocks you traded in the Prestige Fund? A: No. Q: Did he have any role in coming up with the fund[']s investment strategy? A: No. Q: Did you tell Mr. Dembski otherwise, that he helped you with the strategy? A: No. . . . Q: Did Mr. Cascino provide you with any opinion on whether your trading formula would make money? A: No. Q: Did Mr. Cascino provide you with any opinion on whether it was a good idea or not? A: No. Q: Did he ever provide you with investment advice? A: No.").

[68] Tr. 76:17-21 (Stephan) ("Q: And did you work with a law firm to help you set up the Prestige Fund? A: Yes. Q: And what law firm is that? A: Holland & Knight.").

[69] Tr. 78:15—79:23 (Stephan) ("Q: . . . Did you and Mr. Dembski decide and agree that Mr. Dembski would not have any decision-making powers over the investment/portfolio management of the fund? A: Yes. Q: . . . Did you and Mr. Dembski agree and decide that you would be a sole portfolio manager of the fund? A: That I would be, yes. Q: . . . Did you and Tim agree that he wouldn't have anything to do with the day-to-day management of the fund? A: Yes."); Div. Ex. 10 (email from Fund attorney Amy Rigdon of Holland to Stephan and Dembski) at 1 (". . . . but Tim cannot have anything to do with the day-to-day management of the fund.").

[70] Tr. 79:24—80:3 (Stephan) ("Q: So who was charged with responsibility for the day-to-day investment management of the Fund? A: I was."); Div. Ex. 90 (PPM) at 55 (Stephan "has the exclusive responsibility to make the Fund's investment decisions . . . ."); *see also* Div. Ex. 6 (October 29, 2010 email from Fund attorney Scott MacLeod of Holland to Stephan, " . . . . Tim [Dembski] will own equity in the fund management company but Scott [Stephan] has 100% investment control."); OIP ¶ III (E) 25.

41. Stephan and Dembski decided on this separation before the Fund started offering investments.[72]

42. The Limited Liability Operating Agreement of Prestige Wealth Management LLC "memorialize[d] the understanding between [Stephan] and Dembski about who would be running the investments in the Prestige Fund.[73]

43. The Limited Liability Operating Agreement for the Prestige Fund provided: "The portfolio management of Prestige Wealth Management Fund LP (the fund) a Delaware limited partnership, shall be conducted exclusively by Scott Stephan (the portfolio manager). The portfolio manager solely and exclusively shall be authorized to act on behalf of the LLC, including the completion, execution, and delivery of any and all agreements, deeds, instruments, receipts, certificates, and other documents, and to take all other such action as he deems necessary or advisable in connection with the portfolio management and day-to-day investment decisions of the fund."[74]

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71 Tr. 80:4-21 (Stephan) ("Q: And why did you set up the fund that way? A: When I was speaking to Holland & Knight, in order for a performance fee and a management fee to be charged to the clients, because Tim had a certain dollar amount of assets under management, that the fees, the performance fee could not be assessed to a client. Because I didn't have any assets under management, I met that criteria, so I had to be – per Holland & Knight, I had to be listed as the sole fund manager."); *see also* Div. Ex. 20 (January 27, 2011 email from Rigdon to Stephan, "Scott Stephan is the sole portfolio manager for the Fund and on behalf of the General Partner has the *exclusive* authority and decisionmaking over the investments of the Fund. Consequently, the Fund may charge performance fees to all its investors, including non-accredited investors.") (emphasis in original).

72 Tr. 80:22-23 (Stephan) ("Q: And when was this decided? A: Before the fund started.").

73 Tr. 82:5—83:3 (Stephan) ("Q: This operating agreement, did that memorialize the understanding between you and Mr. Dembski about who would be running the investments in the Prestige Fund? A: Yes.").

74 Div. Ex. 88 (Limited Liability Operating Agreement) at 2.

44. Stephan, "in fact," did keep Dembski "separated from the day-to-day investment management of the Prestige Fund."[75]

45. For example, the Prestige Fund's trading account was at Interactive Brokers and only Stephan had access to that account—Dembski did not have access.[76] Interactive Brokers also provided a way to check on performance of the Fund in real time and only Stephan had access to that—Dembski did not have access.[77]

VIII. Stephan Drafted the "Highly Misleading" Professional Biography Included in the Prestige Fund PPM

46. Holland, who helped Stephan and Dembski prepare the PPM for the Prestige Fund, counted on Stephan and Dembski to provide the factual information needed to complete the PPM and related documents.[78]

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[75] Tr. 83:15-18 (Stephan) ("Q: And did you, in fact, keep Mr. Dembski separated from the day-to-day investment management of the Prestige Fund? A: Yes."); *see also* OIP ¶ III (E) 25.

[76] Tr. 83:19—84:25 (Stephan) ("Q: Did anyone [other than you] have access to the trading account? A: No. Q: And how do you know that? A: Because I was given a – it looks like a calculator, it's a security card that generates a new password every 30 seconds to log in. Q: And to your understanding, you were the only one with a key or the pass card? A: Yes. Q: Did you ever give that pass card or key to Mr. Dembski? A: No. Q: Do you know, did Mr. Dembski – to your knowledge or understanding, did Mr. Dembski have access to that trading account? A: No.").

[77] Tr. 85:2-15 (Stephan) ("Q: Did Interactive Brokers also provide a way to check on the performance of the fund in real time? A: Yes. Q: Who had access to that, the performance results? A: I did. Q: Did anyone else? A: No. Q: And how do you know that? A: Because I had that card. Q: Did you ever give Mr. Dembski access to check? A: No."); *see also* Div. Ex. 141 (November 14, 2013 Stephan SEC Tr. 160:21—161:2 ("Q: Do you know if Tim was getting performance updates any other way? A: No. He wouldn't have access to anything. Q: So Interactive Brokers and you were the only ones who had access? A: Yes, because there was only one log-in."); Div. Ex. 141 (November 14, 2013 Stephan SEC Tr. 163:14-21) ("Q: . . . Were there weekly reports you were sending to them [Dembski and Grenda]? A: It was supposed to, but it never happened. There was not a consistent weekly report.").

[78] Tr. 87:22—88:10 (Stephan) ("Q: . . . What was your understanding at the time on how Holland & Knight got factual information to provide its services? A: Based on the information that Tim and I provided to them."); Tr. 737:11-16 (Amy Rigdon, attorney at Holland) ("Q: What was your understanding at the time in 2010 and 2011 where you would get factual information on the Prestige Fund to render your services? A: I would get any factual information from the client.");

47. The engagement letter with Holland, dated November 3, 2010, was in place before the PPM for the Prestige Fund was finalized, in January/February 2011.[79]

48. Dembski and Stephan provided factual information to Holland so that Holland could help them prepare the PPM for the Prestige Fund.[80] Stephan did not have any expectation at the time that Holland would fact check the information that he and Dembski provided to them to make sure it was correct and truthful.[81]

49. On December 8, 2010, Rigdon asked Stephan and Dembski, by email, to provide information concerning various Prestige Fund-related topics.[82] Rigdon's email called for, among other things, "professional biographies for both [Stephan] and Tim to include in the PPM."[83] After receiving that email from Rigdon, Stephan wrote his "whole" biography and gave it to Dembski.[84]

Div. Ex. 3 (email attaching Holland engagement letter) at PWM0000123 ("TERMS OF ENGAGEMENT . . . . You will provide us with the factual information and materials we require to perform the services identified in the letter, and you will make such business or technical decisions and determinations as are appropriate."); Div. Ex. 4 (executed Holland engagement letter, dated November 3, 2010).

79 Tr. 89:8-24 (Stephan) ("Q: . . . . So was this agreement [engagement letter with Holland] in place with Holland & Knight before the PPM was finalized? A: Yes.").

80 Tr. 90:7-11 (Stephan) ("Q: And for the PPM, did you and Mr. Dembski provide Holland & Knight with factual information so they could help you prepare the PPM? A: Yes.").

81 Tr. 88:11-16 (Stephan) ("Q: And did you have any expectation at the time that Holland & Knight would fact check the information that you and Mr. Dembski provided them to make sure it was correct and truthful? A: No."); *see also* Tr. 738:21—739:11 (Rigdon) ("Q: What expectation did you have on whether or not you could rely on the factual information that was provided to you by the client? A: We believed that any factual information received [from] the client would be accurate and truthful. We also told the client both in legal – in documents and orally that we would rely on them for all factual information.").

82 *See* Div. Ex. 14 (Dec. 8, 2010 Rigdon email to Stephan, copying Dembski).

83 Div. Ex. 14 (Dec. 8, 2010 Rigdon email to Stephan, copying Dembski) at 2.

84 Tr. 92:14-22 (Stephan) ("Q: Did you play a role in drafting your biography? A: Yes. Q: And what role was that? A: I wrote the whole thing."); *see also* Div. Ex. 141 (November 14, 2013 Stephan SEC Tr. 145:6-12, which was read in at the Hearing at Tr. 146:22—147:7 (Stephan) ("Q: Looking at the PPM, what was your role in preparing this document [PPM]? A: I'm hoping I can say that Holland & Knight pretty much did the whole document except for I had to give a

50. Dembski saw Stephan's biography when Stephan sent it over to him and Dembski reviewed it.[85] Then Dembski sent both his and Stephan's professional biographies over to Holland.[86]

51. Holland provided Stephan and Dembski with the final PPM for the Prestige Fund on January 28, 2011.[87]

52. Prestige Fund's final PPM, dated February 1, 2011, contained the following biography for Stephan:

> Scott M. Stephan is co-founder and Chief Investment Officer of the General Partner. He has exclusive responsibility to make the Fund's investment decisions on behalf of the General Partner. Mr. Stephan has worked in the financial services industry for over 14 years. The first half of his career he co-managed a portfolio of over $500 million for First Investors Financial Services. Afterwards, Mr. Stephan took a position as Vice President of Investments for a New York based investment company in which he was responsible for portfolio management and analysis.[88]

53. Regarding Stephan's professional biography in the final PPM:

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biography of myself along with – I did give a description of the fund, but 99 percent of this was just created by Holland & Knight.")).

[85] Tr. 125:17-21 (Stephan) ("Q: And did I hear you testify that Tim and Walter had reviewed your biography before it was submitted? A: Tim saw it when I sent it over to him."); *see also* Div. Ex. 141 (November 14, 2013 Stephan SEC Tr. 148:4-25) ("Q: And then you mentioned drafting a bio . . . . Did Walter and Time review it? A: I am sure I showed it to Tim . . . . I am sure I showed it to Tim. It took me a little while on the verbiage to make it look professional . . . . Q: Did you draft your biography here that was included in page 55 [of the PPM]? A: Yes. Q: Did Tim and Walter review this? A: Tim.").

[86] Tr. 92:6-11 (Stephan) ("Q: And did anyone send your professional biography to Holland & Knight to include in the PPM? A: Yes. Q: And who did? A: Tim Dembski."); Div. Ex. 16 (December 13, 2010 email from Stephan to Rigdon) at 1 ("Now that Tim sent over the bio's today, I believe that was the last item on our to-do list.").

[87] Div. Ex. 21 (January 28, 2011 email from Rigdon to Stephan and Dembski attaching "final fund documents," including the final Prestige Fund PPM).

[88] Div. Ex. 90 (final Prestige Fund PPM) at 55; *see also* OIP ¶ III (G) 30.

a. Stephan never "managed a portfolio that . . . measured $500,000,000 of securities.[89] Before the Prestige Fund, Stephan never managed any securities portfolios at all and the only thing he ever managed was the call center at First Investors.[90]

b. Stephan "wasn't introduced to clients [of Reliance Financial Group] as the vice-president – [he] wasn't introduced to clients as the vice-president of investments from Walter Grenda" and Stephan was "never held out as a VP of investments for any company."[91] Stephan's business card for Reliance Financial Group did not describe him as a vice-president.[92] "Stephan never was a vice-president of investments for a New York-based investment company."[93]

c. Dembski and Grenda—not Stephan—were responsible for "portfolio management" at Reliance Financial Group.[94]

54. For these reasons, Stephan admitted that his professional biography in the final Prestige Fund PPM was "highly misleading."[95]

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89 Tr. 95:16-22 (Stephan) ("Q: . . . Did you ever manage a portfolio that was measured 500,000,000 of securities? A: No.").

90 Tr. 95:23—96:6 (Stephan) ("Q: And before the Prestige Fund started trading, did you ever manage any securities portfolios at all? A: No. Q: And before the Prestige Fund, did you managed anything other than the call center at First Investors? No.").

91 Tr. 97:14-20 (Stephan) ("Q: And were you ever VP of investments for a New York-based investment company? A: I was given the title by Walter Grenda, but I wasn't introduced to clients as the vice-president – I wasn't introduced to clients as the vice-president of investments from Walter Grenda."; Tr. 97:24—98:4 (Stephan) ("Q: And just so I'm understanding you correctly, to the best of your knowledge or what you know, you were never held out as a VP of investments for any company. A: Not that I know of.").

92 Tr. 138:17—139:4 (Stephan) ("Q: When you worked for Reliance, did you have a business card? A: Yes. Q: . . . . And it described you as vice-president; is that correct? A: No.").

93 Div. Ex. 139 (Division of Enforcement's and Respondent Scott M. Stephan's Stipulations of Facts) at ¶ 16.

94 Tr. 97:10-13 (Stephan) ("Q: And just focusing on the last half of that sentence, at Reliance who was responsible for portfolio management? A: Tim Dembski and Walter Grenda.").

95 Tr. 100:5-11 (Stephan) (". . . Q: And just looking at your professional biography there, is it highly misleading? A: Yes."); *see also* OIP ¶ III (G) 29 (Stephan made or disseminated a number of materially false and misleading statements); OIP ¶ III (G) 33 (Stephan knew or recklessly disregarded that the biography was false or misleading).

55. The false description of Stephan, the person with exclusive authority to make investment decisions for the Fund, was highly material: "When investors pay a fee to invest, they are effectively paying for the expertise of a particular manager or managers with control over the investors' funds. Thus, information in a PPM about those individuals is of utmost importance."[96] And investors in the Prestige Fund testified that they would have wanted to know about Stephan's involvement in the Prestige Fund and his real work experience when they were making their decision to invest.[97]

IX. Holland Did Not Provide Any Legal Advice on the Contents of Stephan's Biography in the PPM

56. At the time in 2010 and 2011 when the PPM was created and used with Prestige Fund investors, Stephan does not recall:

a. Ever having conversations about the contents of his professional biography with anyone at Holland or ever telling Dembski that he spoke with anyone at Holland about the contents of his professional biography;[98]

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[96] Div. Ex. 144 (Prof. Laby Report) at 16; *see also* Tr. 242:17—243:7 (Laby) ("A: . . . In my opinion, the biography of individuals who are responsible for running the fund is one of the most – the most important part of a PPM. The reason I say that is because when investors decide to invest in a fund and they are obviously paying a fee to invest in that fund, what they are really doing is they are essentially buying the expertise of a particular investment advisor. So who that investment advisor is, what their background is, their biography, that, of course, is the utmost importance to that investor because that is why they are paying a fee to an investment fund.").

[97] *See, e.g.*, Tr. 209:7—210:2 ([redacted] ("Q: Did you know anything about Mr. Stephan during the time that you were discussing the Prestige Wealth Management Fund with Mr. Dembski? A: Yes. I was told that he had many years in the financial industry, and that he was a manager of a half a million dollar – excuse me, half a billion dollar portfolio at some time . . . . Q: Who told you that? . . . . A: Mr. Dembski."); Tr. 210:23—211:12 ([redacted] ("Q: . . . would you have wanted to know if Mr. Stephan really didn't have experience managing a portfolio of a million dollars? . . . . A: Yes, I would. Q: Why is that? A: It is a quarter of a million dollars of my hard earned money, and I'm going to leave it for a stranger to have complete control over it.").

[98] Tr. 93:12-21 (Stephan) ("Q: At that time in 2010 and 2011, do you recall ever having conversations about the contents of your professional biography with anyone at Holland & Knight. A: I do not recall. Q: At that time in 2010 and 2011, do you recall ever telling Mr. Dembski that you spoke with anyone at Holland & Knight about the contents of your professional biography? A: I don't recall.").

b. Ever asking anyone at Holland to provide him with legal advice or opinion concerning the language to be used in his professional biography in the PPM;[99]

c. Anyone at Holland ever providing him with legal advice or opinion concerning the language used in his professional biography in the PPM;[100] or

d. Ever telling Dembski that someone at Holland communicated legal advice or opinion to him on the language to be used in his professional biography in the PPM.[101]

57. In addition, at no point did Holland urge Stephan to use the specific language that was included in his professional biography and Stephan does not recall ever telling Dembski that Holland urged him to use the specific language that was included in his professional biography.[102]

X. Stephan Employed the Materially False and Misleading PPM in Offering and Selling Prestige Fund Investments and He Profited Greatly from the Prestige Fund

58. Stephan, Dembski and Grenda planned to find—and actually did find—investors for the Prestige Fund by soliciting Dembski's and Grenda's clients at Reliance Financial Advisors, LLC ("Reliance Financial Advisors," to which Reliance Financial Group was the predecessor

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99 Tr. 99:10-15 (Stephan) ("Q: And at the time in 2010 and 2011, do you recall ever asking anyone at Holland & Knight to provide you with legal advice or opinion concerning the language to be used in your professional biography in the PPM? A: I do not recall.").

100 Tr. 99:16-21 (Stephan) ("Q: And at the time in 2010 and 2011, do you recall anyone at Holland & Knight ever providing you with legal advice or opinion concerning the language to be used in your professional biography in the PPM? A: I do not recall.").

101 Tr. 99:22—100:4 (Stephan) ("Q: And at that time in 2010 or 2011, do you recall ever telling Mr. Dembski that someone at Holland and Knight communicated legal advice or opinion to you on the language to be used in your professional biography in the PPM? A: I do not recall.").

102 Tr. 93:22—94:6 (Stephan) ("Q: At any point, did Holland & Knight urge you to use the specific language that was included in your professional biography? A: They did not. Q: Did you ever tell Mr. Dembski that Holland & Knight urged you to use the specific language that was included in your professional biography? A: I do not recall.").

entity).[103] Stephan knew that Dembski had worked with some of his clients for over 10, possibly 15, years and that Dembski's clients "trusted him," and that factored into coming up with the idea to solicit Dembski's clients at Reliance Financial Advisors.[104] Stephan did not go outside of Reliance Financial Advisors to try to bring anyone into the Fund.[105]

59. Dembski met with his clients about a potential investment in the Prestige Fund,[106] and "then there would generally be a second or a third meeting that if they were interested in the fund [then Stephan] would gather the documents to give to Tim to give to his clients."[107] Stephan would get the documents—"the private placement memorandum and then the additional paperwork"—ready for a particular client.[108]

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103 Tr. 105:7-17 (Stephan) ("Q: How did you plan to find investors for the Prestige Fund? A: Through Tim Dembski and Walter Grenda. Q: Is that how you actually found investors for the Prestige Fund? A: Yes.").

104 Tr. 105:18—106:9 (Stephan) ("Q: Why did you have that idea? A: I knew Tim and Walter had a lot of clients that may be interested in the strategy. Q: Do you know how long Mr. Dembski worked with clients at Reliance? A: I know he had some over 10 years, possibly 15 years. Q: Is it your understanding that Mr. Dembski's clients trusted him? A: Yes. Q: Did that factor into coming up with the idea to solicit Mr. Dembski's clients at Reliance? A: It was the formula, and then the trust of Tim.").

105 Tr. 121:20—122:2 (Stephan) ("Q: Did you personally solicit any clients for the fund? A: No. Q: Did you go outside of Reliance Financial and try to bring anyone into the fund? A: No.").

106 Tr. 107:21-24 (Stephan) ("Q: And how are clients at Reliance told about a potential investment in the Prestige Fund? A: Through Tim.").

107 Tr. 109:2-5 (Stephan).

108 Tr. 109:19—120:6 (Stephan) ("Q: You mentioned paperwork. Could you just describe generally or typically what you did with the paperwork? A: Yes. I would print out the private placement memorandum and then the additional paperwork that was needed, that would have the clients name, address on there, and then I would have, I would have that all prepared so that I would give it to Tim and he would go through to gather photo ID, go through the document, get the signatures for me, then grab that and make photocopies.").

60. There were 43 total investors in the Prestige Fund with collective total initial investments of $12,528,145.[109]

61. The offers and sales of Prestige Fund investments to Dembski's and Grenda's clients involved the use of means and instrumentalities of interstate commerce and the mails.[110] Unless Stephan authorized otherwise, the minimum investment in the Prestige Fund was $250,000.[111]

62. Stephan received $123,505.91 in total management and performance fees from the Prestige Fund.[112] Stephan received fees from the Prestige Fund from July 7, 2011 through December 3, 2012.[113]

63. Stephan and Dembski did not split fees equally from the Prestige Fund; the agreement Stephan and Dembski had was for Dembski to receive 66 percent of the fees and for Stephan to receive 33 percent of the fees because it was Dembski who got the clients into the Prestige Fund and Dembski paid the starting costs.[114]

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[109] Div. Ex. 87 (list of Prestige Fund investors); Tr. 111:4-14 (Stephan) ("Q: Mr. Stephan, just looking at Division Exhibit 87, what do you understand this to be? A: This is a list of the clients through occupation and identifying if they are accredited, the amount invested, and then the source of funds."); *see also* OIP ¶ III (F) 27 (Dembski's clients invested approximately $4 million in the Prestige Fund and Grenda's clients invested approximately $8 million in the Prestige Fund).

[110] *See, e.g.*, Div. Ex. 99 at iv ([redacted] subscription agreement with instructions to wire money to Florida); Div. Ex. 72 ([redacted] TD Ameritrade confirmation sent from Pennsylvania to New York).

[111] Tr. 104:8-11 (Stephan) ("Q: Unless you [ ] authorized otherwise, what was the minimum investment in the Prestige Fund? A: $250,000.").

[112] Div. Ex. 139 (Stipulations of Facts) at ¶ 24; Tr. 106:21—107:4 (Stephan) (testifying to same).

[113] Div. Ex. 139 (Stipulations of Facts) at ¶ 24.

[114] Tr. 107:5-17 (Stephan) ("Q: Did you and Mr. Dembski split the fees equally from the Prestige Fund? A: No. Q: Why not? A: Because the agreement that I had with Mr. Dembski was because they were his clients and because he paid all the starting costs, that he would get 66 percent and I would get 33 percent."); Tr. 697:11—698:10 (Dembski) ("Q: And no matter who brought somebody into the fund, whether it was you or Mr. Grenda, that was just one big pool for

XI. Contrary to What Investors in the Prestige Fund Were Told About Automated Trading, Stephan Began Trading "Manually" and Then Lost Over $3,000,000 of Investor Funds

64. The Prestige Fund started trading in March 2011.[115] When the Prestige Fund started trading, Stephan used the trading formula algorithm.[116] From the outset, the trading formula algorithm did not work as well as Stephan hoped.[117] The "problem [Stephan was] having with the trading formula algorithm when [he] started trading was the concern [he] had when [he] back tested at filling orders at the correct prices."[118]

65. Stephan shared the problems he was having with Dembski, letting him know that he had to "make some tweaks to the fund because of the prices that were going in and out."[119] Stephan also told Dembski in July and August 2011 that he wasn't "able to fill orders when [he] wanted pursuant to the algorithm and trading formula."[120]

66. While Stephan was trying to fix or tweak the algorithm, Stephan was trading "manually."[121] Stephan told Dembski that he was trading manually.[122]

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the 2 and 20, that is, you collected and Mr. Stephan collected fees on the total of investments regardless of who brought in that investment, correct? A: Correct . . . . "); *see also* OIP ¶ III (E) 26.

115 Tr. 111:15-17 (Stephan) ("Q: And when did the Prestige Fund start trading? A: In March of 2011.").

116 Tr. 111:18-21 (Stephan) ("Q: When the Prestige Fund started trading, did you use your trading formula and algorithm? A: Yes.").

117 Tr. 112:2-5 (Stephan) ("Q: When the Prestige Fund started trading in April . . . did the trading formula algorithm work? A: Not as well as I had hoped.").

118 Tr. 112:6—113:7 (Stephan).

119 Tr. 113:8-17 (Stephan); *see also* Tr. 705:3-6 (Dembski) ("Q: At some point, you learned that there needed to be some tweaks to the algorithm. A: Yes.").

120 Tr. 113:18-23 (Stephan).

121 Tr. 114:12-15 (Stephan) ("Q: When you were trying to fix or tweak the algorithm, how were you trading? A: While the tweaks were being made, I was trading the trading strategy manually."); Div. Ex. 141 (Nov. 14, 2013 Stephan SEC Tr. at 120:13-25) ("Q: Just to get the

67. Stephan's attempts to fix the algorithm did not work and he continued to trade manually.[123]

68. Stephan "knew, or recklessly disregarded, that Prestige Fund investors had been told that the Fund's trading strategy would be fully automated and undertaking entirely by the Algorithm. He also knew or recklessly disregarded that his manual trading was entirely inconsistent with this stated strategy."[124]

69. Stephan "[d]eceptively failed to inform investors that he turned off the Algorithm in the Prestige Fund and instead began to make investment decisions himself and manually placing trades in contravention to representations made about the Prestige Fund's automated trading strategy."[125]

70. Grenda redeemed his clients' investments from the Prestige Fund in October 2012.[126] By December 2012, Grenda believed the Prestige Fund needed to be shut down because, for among other reasons, its performance was poor compared to other available investment

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timing correct, when was all mechanical processes removed, meaning when did you take the formula off; was it September 2011, from that point forward you did everything manually? A: Yeah. I could even – I could possibly even say July, August . . . ."); *see also* OIP ¶ III (H) 34.

122 Tr. 114:16-22 (Stephan) ("Q: Did you tell anyone that you were trading manually? A: For a short period of time while the tweaks were being made. Q: Who did you tell you were trading manually? A: Tim Dembski."); *see also* Div. Ex. 141 (November 14, 2013 Stephan SEC Tr. 121:1-8) ("Q: Did you ever – April 2011 to September 2011, did you ever tell Mr. Dembski or Mr. Grenda about the problems with that algorithm? A: Yeah. I mean, I told them that I had to make some tweaks because it wasn't working and that I made the tweaks and it still wasn't working, but then I went manual and losses were being made up. I said all right, I can do this."); Tr. 705:7—706:10 (Dembski) (Dembski cannot remember if Stephan told him he was trading manually).

123 Tr. 114:23—115:4 (Stephan) ("Q: Did the attempts to fix the algorithm work? A: No. Q: Does that mean you continued to trade manually? A: Yes.").

124 OIP ¶ III (H) 34.

125 OIP ¶ III (A) 8.b.

126 Tr. 116:10-15 (Stephan) ("Q: Did there ever come a point in time when Mr. Grenda sought to redeem his clients' investments from the Prestige Fund? A: Yes. Q: When was that? A: October of 2012.").

options.[127] In fact, Grenda told the Commission in a letter dated December 21, 2012 that the Fund would close by year's end.[128] And Grenda told Stephan about his letter to the Commission.[129]

71. With only Dembski's clients' money in the Prestige Fund, Stephan traded stocks and options.[130] In December 2012, Stephan lost 85 percent of Dembski's clients' investments on options trading, which amounted to losing over $3 million of investor funds.[131]

XII. Stephan's Financial Condition

72. On May 8, 2015, Stephan offered a Statement of Financial Condition (Form D-A with supporting materials) in an attempt to establish that he is unable to pay the monetary sanctions—both disgorgement and civil penalties—sought by the Division.[132] Stephan's Statement of Financial Condition shows that he currently is employed and earning "salary/wages."[133]

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127 Tr. 494:24—496:4 (Grenda's prior testimony) ("Q: . . . But there was a plan to close the fund? A: . . . And so, you know, we were kind of going back and forth and I was a proponent of closing the fund. Q: Why? A: I didn't think we should. I thought the SWAN system was producing better numbers. As a matter of fact, I knew it was, okay. You know, I didn't think Tim should spend any more money on it. I think it was – you know, it was not producing.").

128 Tr. 493:5—494:2 (Grenda) ("Q: At some point, you did on behalf of the fund write a letter to the SEC saying the fund would shut down, correct? A: Yes. Q: And you did that near the end of 2012? . . . . A: Yes.); *see also* Div. Ex. 33 (December 20, 2012 letter from Grenda to SEC) at 1 ("we have decided to close and cease operations of the Fund, as of 12/31/2012.").

129 Div. Ex. 34 (December 27, 2012 Grenda email to Stephan, copying Dembski: "I notified the SEC that . . . the Fund would be closed, as of 12/31/2012").

130 Tr. 116:21-24 (Stephan) ("Q: With only Mr. Dembski's clients' money in the Prestige Fund, what did you trade? A: Stocks and options.").

131 Tr. 116:25—117:6 (Stephan) ("Q: And what happened? A: In December of 2012, I lost 85 percent of the clients' money. Q: How did you lose the 85 percent; was it mostly on stocks or mostly on options? A: Mostly on options."); *see also* OIP ¶ III (F) 27 (Dembski's clients invested approximately $4 million in the Prestige Fund); OIP ¶ III (H) 35.

132 Stephan Ex. 1 (Stephan Form D-A with supporting materials).

133 Stephan Ex. 1, at Part II, Section E.

73. [redacted]

74. Stephan says that he spent the $123,505.91 in fees he received from the Prestige Fund on personal expenses.[136]

PROPOSED CONCLUSIONS OF LAW

I. Stephan Admitted to All of the Allegations Contained in the OIP

1. The only question before the Court is what disgorgement, prejudgment interest on that disgorgement, and civil penalties are appropriate against Stephan.[137] Stephan already has agreed to a collateral and associational bar without any right to re-apply.[138] in which he expressly "admit[ted] the allegations contained" in all of the paragraphs in the OIP but for paragraph six (which focused on Walter F. Grenda Jr.'s ("Grenda") and Timothy S. Dembski's ("Dembski") conduct), which he did not deny

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134 Stephan Ex. 1 (Stephan Form D-A with supporting materials) at Appendix D (Stephan bankruptcy filing).

135 Tr. 131:10-19 (Stephan) ("Q: Why did you have to file for bankruptcy in 2013? A: Because after not having a job, both Prestige started falling behind on bills, my wife's credit cards started to go past due, and they started filing judgments against my wife's income, so large sums of money were coming out every two weeks and I was having issues paying the rent along with the electricity.").

136 Tr. 130:8-20 (Stephan) ("Q: Scott, this $123,000, where is the money? [redacted]").

137 OIP ¶ IV.

138 OIP ¶ V (B); Offer ¶ VI (B)(4), attached as Appendix A hereto.

2. In determining the appropriate remedies, the Court is bound to accept the Commission's findings set out in the OIP as true.[139] In his Answer, Stephan also expressly "admit[ted] the allegations contained" in all of the paragraphs in the OIP but for paragraph six (which focused on Grenda's and Dembski's conduct), which he did not deny.[140] At the Hearing, Stephan again admitted all of the allegations contained in the OIP.[141]

3. In the OIP, the Commission found that Stephan willfully:

a. Violated Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder; and

b. Aided and abetted and caused Prestige LLC's violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder.[142]

II. Stephan Committed Scienter-Based Fraud

4. Section 10(b) of the Exchange Act and Rule 10b-5 thereunder require a showing that the respondent acted with "scienter." *See, e.g., SEC v. Monarch Funding Corp.*, 192 F.3d 295, 308 (2d Cir. 1999).

5. Unlike Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, scienter is not an element of Sections 17(a)(2) or (3) of the Securities Act; that is, a showing of negligence is sufficient to establish a violation of those sections. *See, e.g., SEC v. Kelly*, 765 F. Supp. 2d 301, 319 (S.D.N.Y. 2011). Violations of Section 206(4) of the Advisers Act and the rules thereunder

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139 OIP ¶ IV.

140 Answer at 1, attached as Appendix B hereto.

141 Tr. 52:5-8 (Stephan) ("Q: And in the answer, did you admit the allegations contained in the order? A: Yes.").

142 OIP ¶¶ III (I) 36-38.

also do not require scienter; conduct that is negligently deceptive is sufficient. *See SEC v. Steadman*, 967 F.2d 636, 647 (D.C. Cir. 1992).

6. Scienter is "a mental state embracing intent to deceive, manipulate, or defraud." *In the Matter of Francis V. Lorenzo*, Securities Act Rel. No. 9762, 2015 WL 1927763, at *6 (Apr. 29, 2015), *quoting Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 193 n.12 (1976).

7. A respondent acts with a high degree of scienter when he knows he is misstating or omitting facts in a communication to clients. *Lorenzo*, 2015 WL 1927763, at *13 (finding that respondent "acted with a high degree of scienter" because he "knew, when he sent his emails to customers, that he was misstating critical facts . . . ."); *see also In the Matter of Johnny Clifton*, Securities Act Rel. No. 9417, 2013 WL 3487076, at *10 (July 12, 2013) (finding that respondent acted with a "a high degree of scienter" because "[h]e made statement to prospective investors that he knew were false" and he "knowingly omitted information . . . that made his statements about the project materially misleading"); *In the Matter of Jeffrey L. Gibson*, IA Rel. No. 57266, 2008 WL 294717, at *3 (Feb. 4, 2008) (respondent's conduct evinced a high degree of scienter because he knew the PPM's representations were misleading); *see generally In the Matter of Gualario & Co., LLC and Ronald Gualario*, ID Rel. No. 452, 2012 WL 627198 (Feb. 14, 2012) (investment adviser's failure to disclose change from conservative to high-risk trading strategy violated antifraud provisions).

8. A high degree of scienter "exacerbates the egregiousness of" a respondent's misconduct. *In the Matter of Daniel Imperato*, Exchange Act Rel. No. 74596, 2015 WL 1389046, at *5 (Mar. 27, 2015) (respondents "acted with a high degree of scienter, which exacerbates the egregiousness of his misconduct"), *quoting In the Matter of James C. Dawson*, IA Rel. No. 3057, 2010 WL 2886183, at *5 (July 23, 2010).

9. Scienter may also be shown through "a heightened showing of recklessness." *Lorenzo*, 2015 WL 1927763, at *6 n.17; *see also In the Matter of John P. Flannery*, IA Rel. No. 3981, 2014 WL 7145625, at *10 n.24 (Dec. 15, 2014) (same). That is, one "need not have had actual knowledge that his misrepresentations would mislead investors." *Flannery*, 2014 WL 7145625, at *22.

10. "Extreme recklessness is an 'extreme departure from the standards of ordinary care, . . . which presents a danger of misleading buyers or sellers that is either known to the defendant or is so obvious that the actor must have been aware of it.'" *Id.*, at *10 n.24 (citations omitted). Under this recklessness standard, "securities fraud claims typically have sufficed to state a claim based on recklessness when they have specifically alleged defendants' knowledge of facts or access to information contradicting their public statements." *Novak v. Kasaks*, 216 F.3d 300, 308 (2d Cir. 2000). Reckless behavior does not constitute good faith. *See Rolf v. Blyth, Eastman Dillon & Co., Inc.*, 570 F.2d 38, 46 n.15 (2d Cir. 1978) ("Reckless behavior hardly constitutes good faith."); *see also SEC v. Shanahan*, 646 F.3d 536, 543-44 (8th Cir. 2011) (recklessness is the functional equivalent of intent) (internal quotation marks and citation omitted).

11. "For the purpose of rule 10(b)-5, an investment adviser is a fiduciary and therefore has an affirmative duty of utmost good faith to avoid misleading clients. This duty includes disclosure of all material facts and all possible conflicts of interest." *Laird v. Integrated Resources, Inc.*, 897 F.2d 826, 835 (5th Cir. 1990) (*citing SEC v. Blavin*, 760 F.2d 706 (6th Cir. 1985)).

12. That is, investment advisers have a duty to deal with their clients in "utmost good faith, and full and fair disclosure of all material facts, as well as an affirmative obligation to employ reasonable care to avoid misleading [their] clients." *SEC v. Capital Gains Research*

Bureau, Inc., 375 U.S. 180, 194 (1963) (quotation omitted). The Supreme Court has recognized "time and again" that "'a fundamental purpose'" of the federal securities laws, including Section 10(b) of the Securities Exchange Act of 1934, "'was to substitute a philosophy of full disclosure for the philosophy of caveat emptor and thus to achieve a high standard of business ethics in the securities industry.'" *Basic, Inc. v. Levinson*, 485 U.S. 224, 234 (1988), *quoting Capital Gains Research Bureau, Inc.*, 375 U. S. at 186; *accord SEC v. Zandford*, 535 U.S. 813, 819 (2002); *Affiliated Ute Citizens v. U.S.*, 406 U. S. 128, 151 (1972).

13. Aiding and abetting liability requires "knowledge" of the violation by the respondent, *Armstrong v. McAlpin*, 699 F.2d 79, 91 (2d Cir. 1983), and "recklessness" is sufficient to establish the knowledge prong for aiding and abetting liability. *SEC v. Apuzzo*, 689 F.3d 204, 211, n.6 (2d Cir. 2012) (citation omitted). For causing liability, it is sufficient that the respondent "should have known" that his conduct would contribute to the violation. *In re Robert M. Fuller*, 56 S.E.C. 976, 984 (2003), *pet. denied*, No. 03-1334 (D.C. Cir. 2004).

III. Stephan Should Disgorge His Profits and Pay Prejudgment Interest

14. "The effective enforcement of the federal securities laws requires that the SEC be able to make violations unprofitable. The deterrent effect of an SEC enforcement action would be greatly undermined if securities law violators were not required to disgorge illicit profits." *SEC v. First Jersey Sec., Inc.*, 101 F.3d 1450, 1474 (2d Cir. 1996) (citations omitted). Unlike civil monetary penalties, disgorgement is not a "punitive sanction[ ]," that is, it "is imposed not to punish, but to ensure illegal actions do not yield unwarranted enrichment . . . ." *In the Matter of Jay T. Comeaux*, S.E.C. Release No. 3902, 2014 WL 4160054, at *4-5, nn. 32 & 36 (Aug. 21, 2014) (remanding for further proceedings and instructing that disgorgement need not be limited to payments respondent received based solely on his own personal sale of securities because he also

was found to have aided and abetted and caused others' violations) (quotations and citations omitted). "Civil penalties, on the other hand, serve the dual goals of punishment of the individual violator and deterrence of future violations." *Id.* at *4, n. 32 ("Like disgorgement, penalties serve as a deterrent, but unlike disgorgement, penalties punish individual violators for their wrongdoing.") (quotations and citations omitted).

15. "The amount of disgorgement ordered need only be a reasonable approximation of profits causally connected to the violation." *First Jersey Sec., Inc.*, 101 F.3d at 1475 (internal quotation marks omitted).

16. "While ability to pay may be considered . . . in determining disgorgement . . . it should be less relevant to disgorgement compared to civil penalties, because disgorgement is designed to reverse unjust enrichment, and giving ability to pay significant weight in the disgorgement context would create a perverse incentive for securities laws violators to spend ill-gotten gains quickly and without restraint." *In the Matter of Edgar R. Page and PageOne Financial Inc.*, ID Rel. No. 822, 2015 WL 3898161, at *12-14 (June 25, 2015) (ordering respondents to pay over $2 million in disgorgement despite fact respondents had total liabilities outweighing total assets and had expenses exceeding current income, even when respondents already spent all of the money they reaped from their actionable conduct and they likely would be swallowed by more debt in the future), *citing First Jersey Sec., Inc.*, 101 F.3d at 1474.

17. "Prejudgment interest serves the important purpose of deterrence, which is central to securities law." *SEC v. Shehyn*, 04 Civ. 2003 (LAP), 2010 WL 3290977, at *7 (S.D.N.Y. Aug. 9, 2010). "[E]xcept in the most unique and compelling circumstances, prejudgment interest should be awarded on disgorgement, among other things, in order to deny a wrongdoer the equivalent of an interest free loan from the wrongdoer's victims." *In the Matter of Ronald S. Bloomfield,*

Securities Act Rel. No. 9553, 2014 WL 768828, at *21 n.118 (Feb. 27, 2014) (quotation marks and citation omitted), *vacated in part on other grounds by In the Matter of Robert Gorgia*, Securities Act Rel. No. 9743, 2015 WL 1546302 (Apr. 8, 2015).

18. The Internal Revenue Service underpayment rate is the appropriate and usual rate to determine prejudgment interest in Commission enforcement actions. *See, e.g.*, *Bloomfield*, 2014 WL 768829, at *21 n.117 (applying IRS underpayment rate); *Shehyn*, 2010 WL 3290977, at *7 ("The interest rate generally used to calculate disgorgement interest is the IRS's underpayment rate.").

IV. Stephan Should Pay Substantial Third-Tier Civil Penalties

19. Section 8A of the Securities Act, Section 21B of the Exchange Act, Section 203(i) of the Advisers Act and Section 9(d) of the Investment Company Act authorize the Commission to impose civil money penalties for willful violations. *In the Matter of Dennis J. Malouf*, ID Rel. No. 766, 2015 WL 1534396, at *41-42 (Apr. 7, 2015) (respondents who willfully violate the federal securities laws should be ordered to pay civil penalties "in any cease-and-desist proceeding . . . after notice and opportunity for hearing where penalties are in the public interest and the person has violated or caused the violation of any provision").

20. "A finding of willfulness does not require intent to violate (or scienter), but merely intent to do the act which constitutes a violation." *SEC v. K.W. Brown and Co.*, 555 F. Supp. 2d 1275, 1309 (S.D. Fla. 2007), *citing Wonsover v. SEC*, 205 F.3d 408, 413-15 (D.C. Cir. 2000).

21. To determine whether a civil penalty is in the public interest, the Court should consider six factors: (1) whether the conduct involved fraud, deceit, manipulation or deliberate or reckless disregard of a regulatory requirement; (2) harm to others; (3) unjust enrichment; (4) prior violations; (5) deterrence; and (6) such other matters as justice may require. *Malouf*, 2015 WL

1534396, at *42; *see also In the Matter of John P. Flannery*, IA Rel. No. 3981, 2014 WL 7145625, at *40 (Dec. 15, 2014) ("To determine whether imposing penalties would be in the public interest, we consider (i) whether the act or omission involved fraud, (ii) whether the act or omission resulted in harm to others, (iii) the extent to which any person was unjustly enriched, (iv) whether the individual has committed previous violations, (v) the need to deter such person and others from committing violations, and (vi) such other matters as justice may require.").

22. A three-tier system identifies the maximum amount of civil penalties, depending on the severity of the conduct. *See* 15 U.S.C. §§ 77h-1(g) & 78u-2(b). First-tier penalties are imposed for each statutory violation. *Id.* Second-tier penalties are imposed in cases involving fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement. *Id.* Third-tier penalties are imposed in cases where such a state of mind is present and where the conduct directly or indirectly (i) resulted in substantial losses, (ii) created a significant risk of substantial losses to other persons, or (iii) resulted in substantial pecuniary gain to the person who committed the act. *Id.*

23. For natural persons, $150,000 is the maximum third-tier penalty (the highest penalty range) "for each" violative "act or omission." *See* 17 C.F.R. 201.1004 (2009 inflation adjustment); Advisers Act, § 203(i)(2)(C).

24. Courts have discretion to determine what constitutes "each" violative act or omission. *In the Matter of John A Carley*, ID Rel. No. 292, 2005 WL 1750288, at *68 (July 18, 2005) ("The adjusted statutory maximum amount is not an overall limitation, but a limitation per violation.")

25. Courts may impose up to the maximum penalty ($150,000 for a natural person) for "each" false and misleading statement or omission to each advisory client. *See SEC v. Pentagon*

Capital Management PLC, 725 F.3d 279, 288 n.7 (2d Cir. 2013) (affirming district court's imposition of third-tier penalties by counting each late trade as a separate violation); *see also SEC v. Coates*, 137 F. Supp. 2d 413, 428, 430 (S.D.N.Y. 2001) (counting each category of misrepresentations as a separate violation); *SEC v. Kenton Capital, Ltd.*, 69 F. Supp. 2d 1, 17 n.15 (D.D.C. 1998) ("multiplying the maximum third tier penalty for natural persons . . . by the number of investors who actually sent money to [defendant]").

26. Thus, courts can calculate the appropriate overall civil penalty number by multiplying the appropriate tier penalty amount by the number of misstatements or clients, or by violations. *See, e.g.*, *Shehyn*, 2010 WL 3290977, at *2, *8 (although defendant made fraudulent representations to a "minimum [of] 700 investors," court found that the defendant "committed 5 [statutory] violations" and awarded "$120,000 for each violation: Section 10(b), Rule 10b–5, Section 17(a), Section 20(a) and Section 15(a)"); *SEC v. Johnson*, 03 Civ. 177 (JFK), 2006 WL 2053379, at *10 (S.D.N.Y. July 24, 2006) ("Because the jury found Johnson liable for four violations of securities fraud, civil penalties will be ordered for these four violations.").

V. Stephan's Claimed Inability to Pay Should Not Preclude Monetary Sanctions

27. Commission Rule of Practice 630(a) allows a respondent to "present evidence of inability to pay disgorgement, interest or penalty." 17 C.F.R. § 201.630(a). Commission Rule of Practice 630(b) provides, in part, that:

> The financial statement shall show the respondent's assets; liabilities; income or other funds received and expenses or other payments, from the date of the first violation alleged against that respondent . . . .

17 C.F.R. § 201.630(b).

28. Respondents have the burden of demonstrating inability to pay. *In the Matter of David Henry Disraeli*, Securities Act Rel. No. 8880, 2007 WL 4481515, at *19, n. 118 (Dec. 21, 2007) (citation omitted).

29. Even if satisfactorily made, such a showing does not present an automatic waiver to pay disgorgement, prejudgment interest on that disgorgement, or civil penalties because "ability to pay may be considered, but it is only one factor." *In the Matter of the Application of Re. Bassie & Co.*, AE Rel. No. 3354, 2012 WL 90269, at *14 n.53 (Jan. 10, 2012) (citation omitted). This is particularly true with respect to disgorgement. *See Edgar R. Page and PageOne Financial*, ID Rel. No. 822, 2015 WL 3898161, at *13 (discussed in Proposed Conclusions of Law ¶ 15, *supra*, and "convinced by the Division's argument that [the Court] should not consider [respondents'] inability to pay as to disgorgement").

30. In addition, "even when a respondent demonstrates an inability to pay, we [the Commission] have discretion not to waive the penalty, particularly when the misconduct is sufficiently egregious." *Disraeli*, 2007 WL 4481515, at *19, nn. 124-125 (collecting cases); *see also In the Matter of Gregory O. Trautman*, Rel. No. 9088A, at 2009 WL 6761741, at *24 (Dec. 15, 2009) ("Even accepting those statements at face value, we find that the egregiousness of [respondent]'s conduct outweighs any discretionary waiver of disgorgement, prejudgment interest, and/or penalties"); *see also In the Matter of Joseph John VanCook*, Exchange Act Rel. No. 61039, 2009 WL 4005083, at *19 (Nov. 20, 2009) (finding that late trading constitutes sufficiently egregious conduct "to outweigh any consideration of [respondent's] inability to pay").

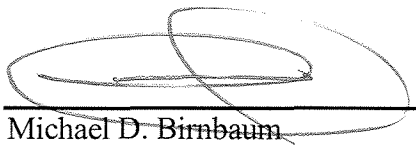
31. Lastly, entries of judgments to pay monetary sanctions are nonetheless appropriate "despite a defendant's inability to pay, [when] that defendant may subsequently acquire the means to satisfy the judgment." *SEC v. Robinson & Cellular Video Car Alarms, Inc.*, 00 Civ. 7452, 2002

WL 1552049, at *8-9 (S.D.N.Y. July 16, 2002) (rejecting defendant's inability to pay argument and ordering defendant to pay disgorgement, prejudgment interest and third-tier civil penalties); *SEC v. Grossman*, No. 87 Civ. 1031, 1997 WL 231167, at *10 (S.D.N.Y. May 6, 1997), *aff'd in part, vacated in part on other grounds sub nom. SEC v. Hirshberg*, Nos. 97-6171, 97-6171, 97-6259, 1999 WL 163992 (2d Cir. Mar. 18, 1999) (explaining that "the disgorgement obligation is a continuing one" and despite inability to pay arguments, ordering defendant to pay disgorgement and prejudgment interest).

Dated: New York, New York
July 2, 2015

Respectfully submitted,

DIVISION OF ENFORCEMENT



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APPENDIX A

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No.

In the Matter of SCOTT M. STEPHAN, Respondent.	OFFER OF SETTLEMENT OF SCOTT M. STEPHAN

I.

Scott M. Stephan ("Stephan" or "Respondent"), pursuant to Rule 240(a) of the Rules of Practice of the Securities and Exchange Commission ("Commission") [17 C.F.R. § 201.240(a)] submits this Offer of Settlement ("Offer") in anticipation of public administrative and cease-and-desist proceedings to be instituted against him by the Commission, pursuant to Section 8A of the Securities Act of 1933 ("Securities Act"), Sections 15(b) and 21C of the Securities Exchange Act of 1934 ("Exchange Act"), Sections 203(f) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act"), and Section 9(b) of the Investment Company Act of 1940 ("Company Act").

II.

This Offer is submitted solely for the purpose of settling these proceedings, with the express understanding that it will not be used in any way in these or any other proceedings, unless the Offer is accepted by the Commission. If the Offer is not accepted by the Commission, the Offer is withdrawn without prejudice to Respondent and shall not become a part of the record in these or any other proceedings, except for the waiver expressed in Section V with respect to Rule 240(c)(5) of the Commission's Rules of Practice [17 C.F.R. § 201.240(c)(5)].

III.

Consistent with the provisions of 17 C.F.R. § 202.5(f), Respondent waives any claim of Double Jeopardy based upon the settlement of this proceeding, including the imposition of any remedy or civil penalty herein.

IV.

Respondent hereby waives any rights under the Equal Access to Justice Act, the Small Business Regulatory Enforcement Fairness Act of 1996, or any other provision of law to seek from the United States, or any agency, or any official of the United States acting in his or her official capacity, directly or indirectly, reimbursement of attorney's fees or other fees, expenses, or costs expended by Respondent to defend against this action. For these purposes, Respondent agrees that Respondent is not the prevailing party in this action since the parties have reached a good faith settlement.

V.

By submitting this Offer, Respondent hereby acknowledges his waiver of those rights specified in Rules 240(c)(4) and (5) [17 C.F.R. §201.240(c)(4) and (5)] of the Commission's Rules of Practice. Respondent also hereby waives service of the Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Sections 15(b) and 21C of the Securities Exchange Act of 1934, Sections 203(f) and 203(k) of the Investment Advisers Act of 1940, and Section 9(b) of the Investment Company Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (the "Order"), attached hereto as Exhibit A.

VI.

The Respondent hereby:

A. Admits the jurisdiction of the Commission over him and over the matters set forth in the Order;

B. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission or in which the Commission is a party, and without admitting or denying the findings contained in the Order, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, which are admitted, consents to the entry of the Order in which the Commission:

1. finds that Stephan willfully violated Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Section 206(4) of the Advisers Act and Rule 206-4(8) thereunder;

2. finds that Stephan willfully aided and abetted and caused Prestige Wealth Management, LLC's violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Section 206(4) of the Advisers Act and Rule 206-4(8) thereunder;

3. orders that Stephan cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Section 206(4) of the Advisers Act and Rule 206-4(8) thereunder;

4. orders that Stephan be, and hereby is:

a. barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization;

b. prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter; and

c. barred from participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

VII.

Pursuant to this Offer, Respondent agrees to additional proceedings in this proceeding to determine what, if any, disgorgement and civil penalties pursuant to Section 8A(e) of the Securities Act, Sections 15(b) and 21C of the Exchange Act, Section 203(i) and (j) of the Advisers Act, and Section 9(d) of the Company Act against Respondent is 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 the attached Order; (b) Respondent agrees that he may not challenge the validity of this Offer; (c) solely for the purposes of such additional proceedings, the allegations of the Offer 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.

VIII.

Respondent undertakes the following: In connection with this action and any related judicial or administrative proceeding or investigation commenced by the Commission or to which the Commission is a party, Respondent (i) agrees to appear and be interviewed by Commission staff at such times and places as the staff requests upon reasonable notice, (ii) will accept service by mail, e-mail or facsimile transmission of notices or subpoenas issued by the Commission for documents or testimony at depositions, hearings, or trials, or in connection with any related investigation by Commission staff, (iii) appoints Respondent's attorney (Andrew J. Pace, Esq., Pace & Pace Law, LLC, 4513 S. Buffalo Street, Orchard Park, NY, 14127, andrew@paceandpace.com) as agent to receive service of such notices and subpoenas, and (iv) consents to personal jurisdiction over Respondent in any United States District Court for the purposes of enforcing any such subpoena.

IX.

Respondent understands and agrees to comply with the terms of 17 C.F.R § 202.5(e), which provides in part that it is the Commission's policy "not to permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the allegations in the complaint or order for proceedings," and "a refusal to admit the allegations is equivalent to a denial, unless the defendant or respondent states that he neither admits nor denies the allegations." As part of Respondent's agreement to comply with the terms of Section 202.5(e), Respondent: (i) will not take any action or make or permit to be made any public statement denying, directly or indirectly, any finding in the Order or creating the impression that the Order is without factual basis; (ii) will not make or permit to be made any public statement to the effect that Respondent does not admit the findings of the Order, or that the Offer contains no admission of the findings, without also stating that the Respondent does not deny the findings; and (iii) upon the filing of this Offer of Settlement, Respondent hereby withdraws any papers previously filed in this proceeding to the extent that they deny, directly or indirectly, any finding in the Order. If Respondent breaches this agreement, the Division of Enforcement may petition the Commission to vacate the Order and restore this proceeding to its active docket. Nothing in this provision affects Respondent's: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which the Commission is not a party.

X.

Respondent states that he has read and understands the foregoing Offer, that this Offer is made voluntarily, and that no promises, offers, threats, or inducements of any kind or nature whatsoever have been made by the Commission or any member, officer, employee, agent, or representative of the Commission in consideration of this Offer or otherwise to induce him to submit to this Offer.

12 day of NOV

Scott M. Stephan

STATE OF NEW YORK }
}
COUNTY OF ERIE }

SS:

The foregoing instrument was acknowledged before me this 12 day of November, 2014 by SCOTT M. STEPHAN, who ✓ is personally known to me or ___ who has produced a New York driver's license as identification and who did take an oath.

Notary Public
State of New York
Commission Number :
Commission Expiration :

Andrew J Pace
Notary Public State of New York
Qualified in Erie County
02PA6278679
My Commission Expires 03/25/2017

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No.

SECURITIES EXCHANGE ACT OF 1934
Release No.

INVESTMENT ADVISERS ACT OF 1940
Release No.

INVESTMENT COMPANY ACT OF 1940
Release No.

ADMINISTRATIVE PROCEEDING
File No.

In the Matter of SCOTT M. STEPHAN, Respondent.	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933, SECTIONS 15(b) AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934, SECTIONS 203(f) AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940, AND SECTION 9(b) OF THE INVESTMENT COMPANY ACT OF 1940, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER AND NOTICE OF HEARING**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 ("Securities Act"), Sections 15(b) and 21C of the Securities Exchange Act of 1934 ("Exchange Act"), Sections 203(f) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act"), and Section 9(b) of the Investment Company Act of 1940 ("Investment Company Act") against Scott M. Stephan ("Respondent" or "Stephan").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "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 8A of the Securities Act of 1933, Sections 15(b) and 21C of the Securities Exchange Act of 1934, Sections 203(f) and 203(k) of the Investment Advisers Act of 1940, and Section 9(b) of the Investment Company Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order and Notice of Hearing ("Order"), as set forth below.

III.

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

A. SUMMARY

1. This case involves misconduct by Scott M. Stephan, joint owner of Prestige Wealth Management, LLC ("Prestige" or "General Partner"), an unregistered investment adviser to a hedge fund called Prestige Wealth Management Fund, LP ("Prestige Fund" or the "Fund"). Stephan made false and misleading statements in connection with the Prestige Fund, for which Stephan was the portfolio manager.

2. In 2007, Stephan began working for his longtime friend, Timothy S. Dembski ("Dembski"), and Dembski's business partner, Walter F. Grenda, Jr. ("Grenda"). At the time, Dembski and Grenda jointly owned Reliance Financial Group ("Reliance Group"), which was a then-Buffalo, New York based unregistered investment adviser. As joint owners of Reliance Group, Dembski and Grenda made investment recommendations to clients they had in the Buffalo area.

3. Prior to working for Dembski and Grenda, Stephan had no professional experience trading securities, making investment decisions, or managing investment portfolios. Dembski and Grenda initially hired Stephan primarily to help the two market Reliance Group's investment advisory services to prospective clients.

4. Starting in late 2010, Dembski and Grenda undertook efforts to form a registered investment adviser entity. On January 21, 2011, Reliance Financial Advisors, LLC ("Reliance Financial") became registered with the Commission as an investment adviser. At all relevant times, Dembski and Grenda jointly owned Reliance Financial.

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[1] The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

5. Around the same time in 2010 and 2011, Stephan, along with Dembski, founded Prestige and the Prestige Fund. The Prestige Fund's trading strategy was described to prospective investors as being fully-automated with all trades being made according to, and by, a computer algorithm (the "Algorithm"). Stephan created the Algorithm.

6. Dembski and Grenda, often with Stephan's assistance, marketed the Prestige Fund to potential investors. Dembski and Grenda sold interests in the Prestige Fund exclusively to long-standing clients of their investment advisory services at Reliance Group and Reliance Financial—and with respect to Dembski, also to clients of his for whom he prepared their tax returns and filings. As Dembski and Grenda understood from advising these advisory and tax clients over the years, most of them were retired or near retirement, on fixed incomes, and lacked investment acumen.

7. As Stephan knew or recklessly disregarded, the Prestige Fund was a highly speculative, risky investment. Also, neither Stephan nor Dembski had any experience in managing a hedge fund and, Stephan had virtually no investing experience at all.

8. Nonetheless, Stephan knowingly or recklessly made false and misleading statements to Dembski's and Grenda's advisory clients (and others) in order to create the false appearance that an investment in the Prestige Fund was less risky than it was. Stephan:

a. Drafted a biography for the Prestige Fund's private placement memorandum ("PPM") that misrepresented his experience in the securities industry; and

b. Deceptively failed to inform investors that he turned off the Algorithm in the Prestige Fund and instead began to make investment decisions himself and manually placing trades in contravention to representations made about the Prestige Fund's automated trading strategy.

9. Ultimately Dembski's clients (19 of them) invested approximately $4 million collectively in the Prestige Fund and Grenda's clients (23 of them) invested approximately $8 million collectively in the Prestige Fund. The Prestige Fund started trading in April 2011.

10. In December 2012, the Prestige Fund collapsed, losing approximately 80% of its value. The Prestige Fund collapsed as a direct result of Stephan placing manual trades in direct contravention to the automated trading strategy sold to investors.

B. RESPONDENT

11. **Scott M. Stephan**, age 40, resides in Hamburg, New York. Stephan co-founded the Prestige Fund and its General Partner, Prestige, in early 2011 and was the Fund's Chief Investment Officer and sole portfolio manager. Prior to founding the Prestige Fund, Stephan worked at the Reliance Group. In addition, from approximately June 2009 through March 2011, Stephan was a registered representative associated with a registered broker-dealer ("BD1").

C. OTHER RELEVANT PEOPLE AND ENTITIES

12. **Timothy S. Dembski**, age 42, resides in Lancaster, New York. In January 2011, Dembski co-founded and was Managing Partner at Reliance Financial, an investment adviser registered with the Commission. Also in early 2011, Dembski co-founded the Prestige Fund and its General Partner, Prestige. Prior to founding Reliance Financial and the Prestige Fund, Dembski provided investment advisory services to individual clients in his role at Reliance Group. In addition, from approximately October 2006 through March 2011, Dembski was a registered representative associated with BD1. From approximately September 2011 to July 2013, Dembski was a registered representative with another registered broker-dealer ("BD2").

13. **Walter F. Grenda, Jr.**, age 57, resides in Buffalo, New York. In January 2011, Grenda co-founded and was Managing Partner at Reliance Financial, an investment adviser registered with the Commission. Prior to founding Reliance Financial, Grenda provided investment advisory services to individual clients in his role at Reliance Group. In addition, Grenda was a registered representative with BD1 from approximately October 2006 through March 2011 and with BD2 from approximately September 2011 through July 2013.

14. **Prestige Wealth Management Fund, LP**, was a private investment fund under the Investment Company Act and organized as a limited partnership under Delaware law on November 19, 2010.

15. **Prestige Wealth Management, LLC**, was a limited liability company organized in Delaware on November 12, 2010, and adviser to the Prestige Fund. Dembski and Stephan were the sole members of Prestige (which served as the General Partner to the Prestige Fund), each owning 50%. Prestige charged the Prestige Fund a 2% management fee and a 20% performance fee on an annualized basis. Prestige was not registered with the Commission.

16. **Reliance Financial Advisors, LLC** is was a Buffalo-based investment adviser that registered with the Commission in January 2011. Dembski and Grenda founded and, at all relevant times, jointly owned Reliance Financial.

17. **Reliance Financial Group**, was a Buffalo-based investment adviser founded and jointly owned by Dembski and Grenda from 1998 to 2011. Reliance Group was not registered with the Commission. Dembski and Grenda transferred their advisory clients from Reliance Group to Reliance Financial starting in approximately February 2011.

FACTS

D. DEMBSKI HIRES STEPHAN TO WORK AT RELIANCE GROUP

18. Dembski and Stephan were long-time friends, having known each other since approximately the late 1990s. In approximately April 2007, Dembski hired Stephan to work for him and Grenda at Reliance Group. When Stephan first started working for Dembski and Grenda, he had no professional experience in the securities industry, trading securities, investing, or

providing investment advice to others. Virtually all of Stephan's professional experience to that point had been collecting on—and managing others who collected on—past-due car loans.

19. Dembski and Grenda hired Stephan to assist them with telemarketing efforts for the services they offered at Reliance Group. In that role, Stephan tried to locate new investment advisory clients for Dembski and Grenda through, among other things, placing cold calls and arranging sales seminars.

20. At no point, however, did Stephan provide Reliance Group's clients with investment advice, trade any securities, or make any investment decisions. At most, Stephan—from time to time—discussed investment ideas with Reliance Group's college interns and assisted Grenda with various research tasks.

E. DEMBSKI AND STEPHAN SET UP THE PRESTIGE FUND

21. In Summer 2010, Stephan approached Dembski about establishing a hedge fund to undertake an automated trading strategy of Stephan's own design, the Algorithm. The Algorithm purportedly had the following features:

a. It operated as a day-trading strategy that would hold no securities overnight;

b. It was designed to automatically buy or sell stocks and interests in Exchange Traded Funds ("ETFs") at pre-programmed times of the day and according to pre-programmed market signals; and

c. It was supposed to automatically enter a long position on a chosen stock or ETF should it go up approximately 1 to 1.5 percent and it would automatically enter a short position on a chosen stock or ETF should it go down approximately 1 to 1.5 percent. Once in a position, the Algorithm automatically would exit it after a 3 percent gain or a 1 percent loss, respectively.

22. Stephan and Dembski did not undertake any real-time testing of the Algorithm, for example, by investing funds using its formula to see how it performed under actual market conditions. At most, they "back tested" the Algorithm, *i.e.*, looked at certain securities trading in the past to see how the Algorithm would have performed had it actually placed trades in those securities over those periods.

23. Neither Stephan nor Dembski had any experience establishing or running a hedge fund or in algorithmic or other automated trading strategies. Indeed, as discussed, Stephan had no experience managing client funds. Nonetheless, Stephan and Dembski decided to set up the Prestige Fund to trade based on the Algorithm.

24. Stephan and Dembski retained a law firm (the "Law Firm") to advise them on the process of setting up a hedge fund and to assist in preparing the necessary fund documents, including the PPM, limited partner agreements, and subscription agreements.

25. The Law Firm advised Dembski that—because of his role with Reliance Financial, a registered investment adviser—they would need to register Prestige with the Commission unless Dembski avoided having anything to do with the day-to-day management of the Prestige Fund. Dembski and Stephan agreed that Dembski would have no day-to-day involvement in the Fund.

26. In or about November 2010, Stephan and Dembski established Prestige and the Prestige Fund (the former of which served as General Partner and adviser to the Fund). While Dembski and Stephan were each 50 percent owners of the General Partner, they agreed that Dembski would receive a greater portion (two-thirds) of the performance and management fees, at least initially.

F. STEPHAN HELPS RECOMMEND AND SELL INVESTMENTS IN THE PRESTIGE FUND

27. From about February 2011 to September 2012, Dembski, and Grenda, with Stephan's assistance, raised approximately $12 million selling interests in the Prestige Fund. The Prestige Fund's investors were comprised of Dembski's and Grenda's advisory clients at Reliance Financial and its predecessor entity (Reliance Group), as well as Dembski's tax preparation clients. Ultimately, Dembski procured approximately $4 million in investments for the Prestige Fund from approximately 19 of his advisory or tax clients, while Grenda procured approximately $8 million in investments from approximately 23 of his advisory clients.

G. STEPHAN MAKES AND DISTRIBUTES MATERIALLY FALSE AND MISLEADING STATEMENTS IN RECOMMENDING AND SELLING INVESTMENTS IN THE PRESTIGE FUND

28. In establishing the Prestige Fund, Stephan understood: (a) that the Fund was a speculative investment; and (b) that he, the Algorithm's creator, had no prior experience running an algorithmic trading platform or hedge fund and, indeed, had virtually no experience trading or investing at all. Indeed, Stephan's only trading experience was investing approximately $1,000 that his father loaned to him in or around 2006 or 2007, which Stephan lost.

29. Stephan made, or disseminated, to investors in the Prestige Fund, a number of materially false and misleading statements in order to create the appearance that the Prestige Fund was a relatively safe, in-demand investment, overseen by professional money managers, including by himself and Dembski (the investment advisor or tax preparer who many of the potential investors had known and trusted for years).

Stephan's Biography

30. Prestige's PPM, dated February 1, 2011, contained the following biography for Stephan:

> Scott M. Stephan is co-founder and Chief Investment Officer of the General Partner. He has exclusive responsibility to make the Fund's investment decisions on behalf of the General Partner. Mr. Stephan has worked in the financial services industry for over 14 years. The first half of his career he co-managed a portfolio of over $500 million for First Investors Financial Services. Afterwards, Mr. Stephan took a position as Vice President of Investments for a New York based investment company in which he was responsible for portfolio management and analysis.

31. The PPM's description of Stephan's professional experiences prior to joining Reliance Group as well as his being "responsible for portfolio management and analysis" at Reliance Group were highly misleading, if not outright false. *First*, as discussed above, Stephan had no experience in the securities industry prior to joining Reliance Group in 2007. From 1999 to 2007, Stephan was responsible for collecting, or managing a group that collected, on past due car loans. This involved managing a group within a debt-collection call center, reaching out to debtors to obtain payment, and recommending cars to be repossessed in the event of non-payment. In that position, Stephan undertook no trading, managed no securities portfolios, provided no investment advice, and made no decisions concerning securities investments. Moreover, Stephan had no responsibility for determining what car loans to purchase and the value of the loans he was responsible for collecting was far less than $500 million.

32. *Second*, upon joining Reliance Group, Stephan had little-to-no experience selecting or making investments. Indeed, Dembski and Grenda hired him to undertake telemarketing efforts. Stephan received his securities Series 7, 63 and 66 licenses only in 2009 and, even then, advised no clients of his own, undertook no trading, and had no say over the portfolios of the Reliance Group's clients.

33. Stephan drafted his own professional biography and knew or recklessly disregarded that the biography was false or misleading. Stephan knew that he had no prior experience in the securities industry, that he received his securities licenses only in 2009, and that, even at Reliance Group, he had minimal (if any) involvement managing assets, trading securities, or providing investment advice to clients.

H. THE PRESTIGE FUND COLLAPSES

34. The Prestige Fund traded using the Algorithm approximately from April 2011 to in or around September 2011. From that point on—because the Algorithm never worked as intended—Stephan stopped using it altogether. Instead, contrary to what investors were told the Prestige Fund's trading strategy would be, Stephan manually placed trades. Stephan knew, or recklessly disregarded, that Prestige Fund investors had been told that the Fund's trading strategy

would be fully automated and undertaken entirely by the Algorithm. He also knew or recklessly disregarded that his manual trading was entirely inconsistent with this stated strategy.

35. In December 2012, the Prestige Fund lost approximately 80% of its value as a result of Stephan manually investing and trading in stock options.

I. VIOLATIONS

36. As a result of the conduct described above, Respondent Stephan willfully violated Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit, respectively, fraudulent conduct in the offer or sale of securities and in connection with the purchase or sale of securities.

37. As a result of the conduct described above, Respondent Stephan willfully violated Section 206(4) of the Advisers Act, which prohibits an investment adviser from "engag[ing] in any act, practice, or course of business which is fraudulent, deceptive, or manipulative," and Rule 206(4)-8 thereunder, which prohibits any investment adviser to a pooled investment vehicle from "mak[ing] any untrue statement of a material fact or omitting to state a material fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading, to any investor or prospective investor in the pooled investment vehicle," or "otherwise engag[ing] in any act, practice or course of business that is fraudulent, deceptive, or manipulative with respect to any investor or prospective investor in the pooled investment vehicle."

38. As a result of the conduct described above, Respondent Stephan willfully aided and abetted and caused Prestige's violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder.

IV.

Pursuant to this Order, Respondent agrees to additional proceedings in this proceeding to determine what, if any, disgorgement and civil penalties are appropriate under the Securities Act, Exchange Act, Advisers Act and Investment Company Act. 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 this 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 under the Securities Act, Exchange Act, Advisers Act and Investment Company Act.

Accordingly, pursuant to Section 8A of the Securities Act, Sections 15(b) and 21C of the Exchange Act, Sections 203(f) and 203(k) of the Advisers Act, and Section 9(b) of the Investment Company Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Section 206(4) of the Advisers Act and Rule 206(4)-8 promulgated thereunder.

B. Respondent be, and hereby is:

barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization;

prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter; and

barred from participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

C. Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

VI.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section V hereof shall be convened 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.

If Respondent fails to appear at a hearing after being duly notified, Respondent 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 Commissions' 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 Respondent 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, 17 C.F.R. § 201.360(a)(2).

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

APPENDIX B

U.S. SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-16312

In the Matter of

SCOTT M. STEPHAN,

Respondent.

ANSWER TO ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDING, ETC.

Respondent, by and through his attorney, ANDREW J. PACE, ESQ., answers the allegations in the above captioned Order as follows:

In accordance with Section IV of said Order, Respondent agrees that he will be precluded from arguing that he did not violate the federal securities laws described in the Order and, solely for the purposes of such additional proceedings, the allegations of the Order shall be accepted as and deemed true by the hearing officer.

FIRST: Respondent admits the allegations contained in paragraphs 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37 and 38.

SECOND: Respondent denies the allegations contained in paragraphs NONE

THIRD: Respondent does not have, and is unable to obtain, sufficient information to admit or deny the allegations contained in paragraphs NONE.

Respondent looks forward to additional proceedings to determine what, if any,

disgorgement and civil penalties are appropriate.

Dated: Orchard Park, New York
December 29, 2014

Yours, etc.

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