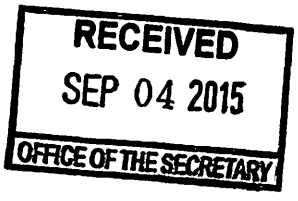
UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION



ADMINISTRATIVE PROCEEDING
File No. 3-16318

In the Matter of

MICHAEL W. CROW,
ALEXANDRE S. CLUG,
AURUM MINING, LLC,
PANAM TERRA, INC., and
THE CORSAIR GROUP, INC.,

Respondents.

DIVISION OF ENFORCEMENT'S POST-HEARING BRIEF

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PRELIMINARY STATEMENT

In October 2012, Michael Crow and Alexandre Clug faced a critical decision: whether to tell investors in their company, Aurum Mining LLC, that an independent geological report they commissioned contained findings that contradicted everything they had been telling investors. Instead of being a rich source of "quick to production" gold that would soon result in "cash flowing" opportunities, the report concluded that Aurum's showcase property in Peru had "low average grade," "small tonnage potential," and was merely a "not ready for production . . . exploration target." FOF 237-239. After Clug predicted that investors would view this report as "rather negative," Crow and Clug agreed to say nothing to investors – to "keep it back," in Crow's words. FOF 239.

Crow and Clug's "keep it back" approach permeated their Aurum Mining and PanAm Terra investment schemes. Time after time, Crow and Clug concealed material information and made affirmative misrepresentations to investors and potential investors. For example, at two other critical moments – when they completely failed to meet any of the stringent "Closing Conditions" in a 2011 Private Placement Memorandum ("PPM"), and when a second independent geological report confirmed that their Peru property contained essentially nothing of value – Crow and Clug hid material information from investors. FOF 186-202, 256. Even worse, they represented the opposite of what they knew to be true. Rather than admit that these Closing Conditions were not met (which meant the investors' money should be returned), Crow and Clug told investors that the Closing Conditions had been satisfied. FOF 196. And Crow and Clug also concealed the findings of this second independent geological report, and instead told investors that "cash flow projections . . . remain strong." FOF 165(g).

To pump more investor money into Aurum – and to line their own pockets – Crow and Clug also entered into a referral deal with Cody Price, who ran a shady fund called ABS. FOF 512. In return for promoting Price's fund to Aurum's investors, Price agreed to pay Crow and Clug a referral fee of 3% and to make available a line of credit to each Aurum investor that would increase Aurum's assets. FOF 518, 522. For their efforts, Crow and Clug received $39,563 in referral fees, even though they knew only registered broker-dealers are entitled to receive such transaction-based compensation. FOF 538, 541. This mutually beneficial arrangement ended when Price and his ABS fund were charged with fraud. FOF 543-544.

Crow's and Clug's deceptions were also an integral part of PanAm Terra, Inc., the public company they created. Ignoring Crow's permanent officer-and-director bar, Crow and Clug simply omitted Crow's name from the list of officers in PanAm's public filings while Crow exercised all of the functions of a PanAm officer. FOF 5, 411-444, 453-455, 504. PanAm's two "independent directors" were kept in the dark and told Crow was merely a "consultant." FOF 445-452.

Crow's domination of PanAm is evidenced most clearly through a brazen scheme involving a convertible note issued to him in 2010. As a material liability, the convertible note was disclosed in PanAm's Form 10-K and 10-Q filings. FOF 487. In September 2012, Crow used his convertible note as a means to generate a quick $75,000 to meet long-overdue child custody obligations. FOF 463-473. Crow's scheme was audacious: with Clug's knowledge, he converted the note, obtained 1.9 million PanAm shares (32% of the company), and had PanAm's Chief Financial Officer sell 300,000 of those shares for $75,000 to three unwitting investors. Those three investors were never told that their $75,000 went into Crow's pocket and not to PanAm. FOF 474-476.

The scheme was concealed from PanAm's outside auditor, with Clug's knowledge. FOF 484, 490. The auditor never knew about the conversion, the issuance of 1.9 million shares to Crow, or the secret $75,000 payment to Crow. FOF 490. At the hearing, one of the auditors testified that, had the truth been disclosed, his firm would have resigned. FOF 490.

The boldness of these schemes should come as no surprise given Crow's history as a defendant in two prior SEC federal court enforcement actions. FOF 1-3. These proceedings had resulted in Crow being subjected to industry bars, a $7.2 million judgment, and the finding of a federal judge who concluded that that Crow "perjured himself." FOF 4-11. And for the past 5 1/2 years, Crow has been mired in a prolonged personal bankruptcy proceeding marked by accusations that Crow fraudulently concealed assets. FOF 12-15. These material facts about Crow's background were not disclosed to the investors in Aurum and in PanAm. FOF 384-397, 504.

After the eight-day hearing in this matter, Crow's and Clug's schemes, along with all of their blatant misrepresentations and omissions to investors, are apparent. Through dozens of their own emails during the period of the fraud, as well as the many investor solicitations they drafted and circulated, the knowing and reckless misconduct of Crow and Clug has been proven. Crow, Clug and the companies they owned and controlled – Aurum, Corsair and PanAm – committed serious violations of the federal securities laws.

First, through their material misrepresentations and omissions to investors and potential investors in Aurum and PanAm, Crow, Clug, Aurum and PanAm willfully violated Section 17(a)(1), (2) and (3) of the Securities Act of 1933 ("Securities Act"); Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5(a), (b) and (c) thereunder;

and Crow and Clug also willfully aided and abetted and caused violations by Aurum and PanAm of these statutes.

Second, by failing to disclose in its filings Crow's major role as a *de facto* officer, PanAm willfully violated Section13(a) of the Exchange Act and Rules 12b-20, 13a-1 and 13a-13 thereunder, Crow and Clug willfully aided and abetted and caused these violations by PanAm. As CEO, Clug signed certifications that were false, willfully violating Rule 13a-14 under the Exchange Act.

Finally, through their agreement with ABS Manager to refer Aurum investors to ABS in exchange for referral fees, Corsair, Crow and Clug acted as unregistered broker-dealers in willful violation of Section 15(a)(1) of the Exchange Act. Crow and Clug willfully aided, abetted and caused Corsair's violations. In addition, Crow willfully violated, and Clug willfully aided and abetted and caused Crow's violation, of Section 15(b)(6)(B) of the Exchange Act for acting as or associating with a broker-dealer while under Commission order pursuant to Section 15(b)(6)(A).

These egregious violations deserve meaningful sanctions. Crow, Clug, Aurum and PanAm should be found jointly and severally liable for disgorgement of ill-gotten gains. In offering fraud cases such as this, disgorgement is measured by the amount raised in the fraudulent offerings in this matter, $4,395,775, plus prejudgment interest. The $39,563 that Crow and Clug received in referral fees from ABS should also be disgorged, with prejudgment interest. All Respondents should be ordered to pay substantial, third-tier civil monetary penalties, and be ordered to cease and desist violations of the securities laws. Crow and Clug should be subject to permanent penny stock bars and collateral industry bars, and Clug should also be permanently barred from being an officer or director of a public company.

STATEMENT OF FACTS

The Division relies on and incorporates herein its Proposed Findings of Fact filed herewith, as its statement of facts supporting its allegations against the Respondents.

ARGUMENT

I. Crow, Clug, Aurum and PanAm Willfully Violated the Anti-Fraud Provisions of the Federal Securities Laws; Crow and Clug Willfully Aided and Abetted and the Caused Aurum's and PanAm's Violations

A. Legal Standards

Section 17(a) of the Securities Act prohibits fraud in the offer or sale of a security, and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder prohibit fraud in connection with the purchase or sale of a security. *Basic, Inc. v. Levinson*, 485 U.S. 224, 235 n.13 (1988) (citing *SEC v. Texas Gulf Sulphur Co.*, 401 F.2d 833, 862 (2d Cir. 1968) (en banc), *cert. denied*, 394 U.S. 976 (1969); *SEC v. Int'l Loan Network, Inc.*, 770 F. Supp. 678, 694 (D.D.C. 1991), *aff'd*, 968 F.2d 1304 (D.C. Cir. 1992).

To prove a Section 10(b) violation, the Commission must show material misrepresentations or omissions, or the existence of a scheme, in connection with the purchase or sale of securities, made with scienter. *SEC v. Merchant Capital, LLC*, 483 F.3d 747, 766 (11th Cir. 2007) (citing *Aaron v. SEC*, 446 U.S. 680, 695-702 (1980)).

To show a violation of section 17(a)(1), the Commission must prove material misrepresentations or materially misleading omissions; in the offer or sale of securities; made with scienter. *Id.* Negligence is sufficient under Sections 17(a)(2) and (3). *Aaron*, 446 U.S. at 697.

Misrepresentations and omissions must be material to be actionable under the antifraud provisions. *See Basic*, 485 U.S. at 231. Information is considered material if there is a

substantial likelihood that a reasonable investor would consider such information important in making an investment decision or if the information would significantly alter the total mix of available information. 485 U.S. at 231-32. However, the information need not be important enough that it would necessarily cause a reasonable investor to change his or her investment decision. *SEC v. Meltzer*, 440 F. Supp. 2d 179, 190 (E.D.N.Y. 2006) (citing *Folger Adam Co. v. PMI Indus., Inc.*, 938 F.2d 1529, 1533 (2d Cir. 1991)).

Section 10(b) of the Exchange Act requires that the alleged actions be "in connection with" the purchase or sale of securities. The phrase "in connection with" "should be construed not technically and restrictively, but flexibly to effectuate [their] remedial purposes." *SEC v. Zandford*, 535 U.S. 813, 819 (2002) (quoting *Affiliated Ute Citizens of Utah v. United States*, 406 U.S. 128, 151(1972)).

Aiding and abetting is shown when there is a primary violation; substantial assistance to the conduct constituting the primary violation; and the requisite scienter. *In re vFinance Investments, Inc.*, Exchange Act Rel. No. 62448, 2010 WL 2674858, at *13 (July 2, 2010) (Commission opinion citing *Graham v. SEC*, 222 F.3d 994, 1000 (D.C. Cir. 2000)); *see also Howard v. SEC*, 376 F.3d 1136, 1147 (D.C. Cir. 2004); *SEC v. Treadway*, 430 F. Supp. 2d 293, 339 (S.D.N.Y. 2006). "A respondent who aids-and-abets a violation also is a cause of the violation." *In re Leaddog Capital Markets, LLC*, 2012 WL 4044882, at *13 (Sept. 14, 2012) (Initial Decision) (citing *Graham* at 1085 n.35).

The scienter element is satisfied if the person aiding, abetting or causing the violation "'knew of, or recklessly disregarded, the wronging and [their] role in furthering it.'" *vFinance*, 2010 WL 2674858, at *13 (citations omitted). Scienter is a mental state embracing intent to deceive, manipulate, or defraud. *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 193 (1976); *Aaron*

v. SEC, 446 U.S. 680, 695-97 (1980). Scienter may be established by a showing of knowing misconduct or severe recklessness. *SEC v. Monterosso*, 756 F.3d 1326, 1335 (11th Cir. 2014) (citing *SEC v. Carriba Air, Inc.*, 681 F.2d 1318, 1324 (11th Cir. 1982). Severe recklessness means "highly unreasonable omissions or misrepresentations that involve not merely simple or even inexcusable negligence, but an extreme departure from the standards of ordinary care, and that present a danger of misleading buyers or sellers which is either known to the defendant or is so obvious that the defendant must have been aware of it." *SEC v. Coplan*, 2014 WL 695393 at *4 (S.D. Fla. Feb. 14, 2014), quoting *McDonald v. Alan Bush Brokerage Co.*, 863 F.2d 809, 814 (11th Cir.1989).

B. Aurum, Crow, Clug and Aurum Willfully Violated Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder in the Offer and Sale of Aurum Securities; Crow and Clug Willfully Aided and Abetted and Caused Aurum's Violations

The testimony and exhibits admitted at the hearing prove overwhelmingly that Crow and Clug made dozens of material misrepresentations and omissions to investors; that their misrepresentations and omissions were highly material; and that they each knew or were reckless in not knowing that their representations and omissions were false and misleading.

Crow's and Clug's material misrepresentations and omissions with respect to Aurum began as soon as they began soliciting investors for their Brazil venture in April 2011. At that time, Aurum had no assets, no money, and not even a bank account. FOF 95. Crow, nevertheless, told a potential investor that Aurum had "reserves of $440 million" in Brazil and that an investor could "double your money" with "little risk." FOF 71-72. A few weeks later, in late May 2011, Clug told a potential investor that there was "over $5 billion worth of gold" in Brazil and that a $100,000 investment would yield $3 million, a "30 to 1" return. FOF 73.

The exaggerated and baseless investor solicitations from Crow and Clug continued over the next three years. They made blatantly false statements about securing land and mining rights in Brazil, baseless representations about large gold reserves, predictions of imminent gold production and "cash flowing" to investors, and repeated claims that Aurum was compliant with international NI 43-101 standards for reporting gold mining resources so that a highly profitable merger or initial public offering could be arranged. FOF 65-165.

This was a two-person scheme: Crow and Clug drafted every false and misleading written communication, including the PPMs and Quarterly Reports, that caused victims to invest nearly $4 million in Aurum. While CFO Angel Lana was a component of the fraud, Lana in the end was just a conduit who repeated to investors the misinformation that Crow and Clug provided. FOF 32-64.

1. Misrepresentations and Omissions in the May 10, 2011 Term Sheet

The Term Sheet dated May 10, 2011, offered "Secured Convertible Notes" issued by Aurum. Drafted by Crow and Clug, the two-page Term Sheet described the notes as "secured." The security, however, was illusory: they were "secured" by "all assets" of Aurum; in fact, Aurum at the time had no assets. FOF 92.

The "use of proceeds" section stated that the funds raised would be used "[t]o complete due diligence including final report from engineers, legal, travel and costs related to the land purchase and startup operations." FOF 98. In fact, no "report from engineers" was considered, there was no "land purchase," and "startup operations" were inconceivable given the state of the Batalha property. FOF 166. Well over half (66%) of the $250,000 raised through the Term Sheet went directly to Crow and Clug. FOF 94.

The Term Sheet also stated that Aurum "will have a 49% interest in the JV [joint venture] that owns the land and rights to the gold property." FOF 99. This representation was false: no "JV" existed at the time, and "land and rights to the gold property" were never obtained. FOF 175, 166-174.

Crow and Clug did make sure that the notes featured a conversion option, which later provided them with a convenient mechanism to avoid paying the noteholders. FOF 97. The Term Sheet provided that "[u]pon the financing and closing of the acquisition on the land and rights for gold deal known as Batalha . . . the principal and all accrued but unpaid interest may be converted, at the election of the Holder, into ... [Aurum Mining] LLC units at the offering price contained herein less a 50% discount." FOF 97.

Aurum generated $250,000 in investments through the convertible note sales in June 2011. FOF 94. The notes, however, also created an obligation to pay the investors' principal plus interest at maturity in early 2012. FOF 96. Given that Crow and Clug had taken most of the $250,000 for themselves, they knew Aurum would have no ability to pay the noteholders. FOF 94. They also knew that the conversion option was unavailable because the "closing of the acquisition on the land and rights for the gold deal known as Batalha" – the indispensable precondition to conversion in the Term Sheet – had not occurred. FOF 106-174. To avoid paying the noteholders, Crow and Clug lied to them, as set forth in the next section, and represented that the "land and rights for the gold deal known as Batalha" had been obtained. FOF 185-201. Their ploy worked: believing that the "land and rights" had been obtained, all the noteholders elected to convert and, instead of receiving their principal and interest at the nine-month maturity, became Class A Members of Aurum. FOF 200.

The fact that the precondition to conversion in the Term Sheet had not occurred was certainly material to the noteholders who converted. They had a right to know that, in fact, "land and rights" were not obtained. Crow and Clug never revealed to this first group of Aurum investors that the fundamental assumption of their conversion of a debt interest in Aurum to an equity interest was a lie.

Misrepresentations and Omissions regarding the "Closing Conditions" in the August 2011 PPM

The August 2011 PPM, written by Crow and Clug, contained supposedly ironclad "closing conditions" which, if not met, required Aurum to return all funds to investors. FOF 104-105. The closing conditions reassured investors that their money would only be used if $1 million was raised, and certain benchmarks were satisfied that demonstrated that the project was viable. FOF 104. These benchmarks required a "geological report" from a licensed geologist attesting to the "total gold content" of the Batalha property and an "opinion of Brazilian legal counsel" stating that the joint venture was duly formed; that the JV had irrevocable land and mining rights; and that all necessary governmental licenses were received. FOF 104.

As Crow and Clug knew, none of the closing conditions were met. FOF 185-201. They also knew the consequences of their failure: the PPM required that "if the Company is unable to satisfy the Closing Conditions . . . all funds received . . . will be promptly refunded to investors[.]" FOF 105. Returning money to investors, however, was not something Crow and Clug ever did.

The total amount raised through the August 2011 PPM, $115,000, was far below the $1 million threshold. FOF 103. If Crow and Clug adhered to the terms of the PPM, as investors expected, those funds would have been "promptly" returned to investors. FOF 105. Doing so, however, would have emptied Aurum's bank account and left Aurum with next to nothing. FOF

200. Compounding the crisis was that, as discussed in the previous section, the $250,000 in maturing notes was due in early 2012. FOF 96.

Crow's and Clug's solution: tell the investors, through the January 2012 Update, that "[w]e have satisfied the conditions of closing on the original Aurum PPM." FOF 147-150, 196. Lying to investors about the Closing Conditions meant that they did not have to return the investors' money, and allowed them to access the $115,000 raised under the August 2011 PPM. FOF 196-200. And since that money was in a checking account over which only Crow and Clug had signing authority – and not the escrow account required by the PPM – their access to the money was unfettered. FOF 194.

As with the Term Sheet, the fact that the Closing Conditions were not satisfied was obviously material. Crow and Clug promised the August 2011 investors that their money would be returned to them unless the Closing Conditions were satisfied. FOF 104-105. Investors therefore believed that those conditions were met and that the Batalha project was viable and on track. FOF 147-150, 196, 200.

Crow and Clug knew that the Closing Conditions were not met. FOF 189-195. At the hearing, neither claimed that any geological report or legal opinion, as described in the August 2011 PPM, had been obtained. FOF 189-192. In addition, numerous emails demonstrate that Crow and Clug knew Arthom never obtained any mining rights or land and, as a consequence, neither rights nor land were ever transferred to the JV. FOF 166-174.

Crow and Clug Lied About Owning Mining and Land Rights in Brazil, and Purchasing Equipment

Although clearly false, Crow and Clug repeatedly told investors in offering the August and December 2011 PPMs that Arthom, Aurum's JV partner, owned land and mining rights in Brazil. FOF 175-178. The August 2011 PPM stated that "Arthom purchased a 3,740 hectare site

. . . along with the associated mining right," that "Arthom purchased the property and mining rights in June 2011," that "Arthom has obtained a mining license." FOF 109-111.

These false statements were repeated in the December 2011 PPM, along with the statements that "Arthom has contributed its 3,742 hectares to Batalha" and that "[t]he rights and land on the [Batalha] Initial Parcel were owned or controlled by Arthom." FOF 120-122. The December 2011 PPM also represented that offering proceeds would be "used to purchase equipment on the first project to extract gold." FOF122 .

These statements were highly material to investors. The acquisition of land and mining rights for a company hoping to engage in mining activities would obviously be significant. By representing to investors that their JV partner, Arthom, had mining rights, a reasonable investor would believe that the Aurum was well positioned to engage in its sole line of business: exploring for and extracting gold.

Crow and Clug know that Arthom never obtained mining rights or land rights. FOF 166-174. Palacio and Thomas Raiss testified that Arthom never obtained mining or land rights, and this was a frequent subject of conversation. FOF 166-171. Crow's and Clug's own emails, as well as communications from their own lawyers, establish beyond doubt that Crow and Clug knew that Arthom never obtained mining rights. FOF 171-174.

Crow and Clug's Misrepresented the Gold Content and Cash Flow Projections of the Brazil and Peru Properties

To ensure the flow of investor funds, Crow and Clug told investors repeatedly that their properties in Brazil and Peru had extensive gold "reserves," and that their "quick to production" approach would ensure the rapid extraction and sale of their gold reserves, resulting in "cash flowing" profits for all. FOF 65-165.

Crow's and Clug's numerous and utterly baseless statements to investors about the gold content at the Brazil and Peru properties were central to the fraud. As the investors were all in the United States, and none of them had geological training, they had no ability to find out on their own whether Crow and Clug were telling the truth. The investors therefore believed and trusted Crow and Clug. FOF 68. Crow and Clug knew this, which left them free to make outlandish projections about their South American properties to Aurum's investors.

As early as May 2011, Clug emailed an investor that the gold in Brazil "equates to over $5 billion dollars worth of gold"; that "projected returns for investors . . . are estimated to be over 30 to 1 in six years." FOF 73. Clug told another investor that a $100,000 investment could return $48 million. FOF 75. At the same time, Crow told an investor that an initial $100,000 investment could return $1.7 million. FOF 79.

The sky-high gold estimates and cash flow projections continued in the PPMs, the Quarterly Reports and the Business Plans. FOF 100-165. The August 2011 PPM reported "21.8 million tons of tailings," that "the results were positive, showing an average of just over 5 grams per ton." FOF 108. The "Cash Flow Projections" in the August 2011 PPM projected that an initial investment of $100,000 would yield $1,706,940, for a projected "Internal Rate of Return" of 165%. FOF 107.

The cash flow projections for the Batalha project increased from 17 times the initial investment in the August 2011 PPM to 40 times in the December 2011 PPM, which stated that: "[t]he projections indicate a return on the Initial Investment of a potential $100,000 Class A capital contribution as 40 times, or $4 million, over 7 years with no value given to the residual value of the assets or property." FOF 114,116. Crow and Clug gave no reason for more than doubling the initial projections from the August to the December PPM.

To the contrary, Crow and Clug knew of the disappointing test results from Batalha, and that the project overall, which never got beyond the exploratory testing phase, was heading toward failure. FOF 179-184. An investor reading the December 2011 PPM, however, would have assumed, based on the astounding projections, that the Balalha project was thriving and well positioned for success. FOF 112-123.

The December 2011 PPM also contained projections for the Peru properties, even though in early 2012, when this PPM was circulated, Crow and Clug were just beginning to secure concessions to Cobre Sur and Molle Huacan (which did not occur till late March 2012). FOF 115. Nevertheless, the December 2011 PPM stated confidently that "the returns on Aurum's Peruvian projects are believed to exceed the returns obtained on its Brazilian Initial Property, because of the quick-to-production nature and high gold concentration on those mines." FOF 115.

The January 2013 PPM represented that Molle Huacan had "10 significant gold veins" that had "tested as high as 24 g/t" and that Aurum's in-house geologist is "convinced that Molle Huacan is a major gold concession and may have more than 1 million ounces of gold." FOF 131. This PPM made other highly optimistic statements regarding Aurum's plans to develop a processing plant and to develop another site, Alta Gold. FOF 129-136.

Crow and Clug continued to make baseless statements regarding the gold content of their properties and the financial projections even in the face of red flags and contradictory evidence. For example, Clug sent investors solicitations touting the Cobre Sur property even after deciding the property would have to be abandoned due to its low gold content. FOF 216-224.

At the hearing, the evidence showed that Crow's and Clug's fantastical statements of gold content and projections had no basis in fact. FOF . In a striking uniformity of opinion, all

three geologists – including Respondents' own expert witness – agreed that Molle Huacan was a mere exploration site with no proven gold resources; that Aurum's ever-increasing statements of gold content – which inexplicably rocketed up from 1.2 million ounces in late 2012 to 2.7 million ounces in early 2013 – had no basis in any observable or measurable data; and that the "quick to production" approach that Crow and Clug repeatedly touted to investors had no foundation in geological principles. FOF 213-310.

The PPMs, Quarterly Reports and Business Plan attributed their statements regarding gold content – and the cash flow projections that arise from the gold content – to their in-house geologist Elias Garate. FOF 131. Crow and Clug knew, however, that there was reason not to trust Garate's findings. FOF. After Garate misread the Cobre Sur testing, Clug emailed Crow that Cobre Sur "[l]ooks like a write off" and that he "[h]ope[d] Elias [Garate] also understands that we can't make this kind of mistake again." FOF 223.

Both Park and Daubeny made geological findings that contradicted Garate's. FOF 226-235, 268. In every case, Garate found much higher levels of gold than Park and Daubeny. Daubeny testified that he belied that Garate had fabricated his sampling results. FOF 268. Neither Park nor Daubeny found anything to support the estimates of gold resources attributed to Garate in the PPMs, Quarterly Reports and Business Plan. FOF 230-233, 266.

Park and Daubeny were independent geologists. FOF 213, 241.. Daubeny, moreover, reached his conclusions about Garate's work independently of Park, since Crow and Clug concealed Park's report from Daubeny. FOF 247. Garate, on the other hand, was a shareholder in Aurum Mining Peru who was told by Crow and Clug that he would only be paid a salary if there was gold production. FOF 234-235.

The Park and Daubeny reports offered findings that contrasted starkly with the statements Crow and Clug made to investors. FOF 236, 266, 261. Given that these reports were paid for by Crow and Clug, their contents and conclusions were highly material to investors' determinations. Yet, Crow and Clug deliberately concealed these reports from investors. FOF 239. And although at the hearing Crow and Clug testified that all available information was in the "data room," the inaccessible and hard-to-navigate data room, with its frequently changing or missing Internet addresses and passwords, was not a substitute for a full and frank disclosure. FOF 375-383.

Projections should have a good faith basis, and prior statements should be corrected when contradictory information comes to light. *Merchant Capital,* 483 F.3d at 769 (what may once have been a good faith projection became, with experience, a materially misleading omission of material fact; a materially misleading omission of past performance information occurs when a promoter makes optimistic statements about the prospects of the business but fails to include past performance information that would be useful to a reasonable investor in assessing those statements). *See also Meltzer*, 440 F. Supp.2d at 189 (quoting *Chill v. General Elec. Co.*, 101 F.3d 263, 269 (2d Cir.1996)) (stating that an egregious refusal to see the obvious, or to investigate the doubtful, may give rise to an inference of recklessness).

Crow and Clug never levelled with Aurum's investors about the most fundamental aspect of Aurum's investor solicitations: the statements of gold content and the financial projections supposedly based on the gold data. FOF 208-314. They knew or were reckless in not knowing that their statements and omissions were false and misleading. FOF.

Crow and Clug Misrepresented and Concealed Crow's Background

The PPMs, Quarterly Reports and Business Plan failed to disclose material aspects of Crow's background regarding his prior SEC cases, his industry bars, and his prolonged

bankruptcy proceedings. FOF 384-397. These deliberate misrepresentations were material. *See, e.g., Merchant Capital,* 483 F.3d at 770–71 (failure to disclose management's personal bankruptcy and a previous cease-and-desist order, which prohibited the sale of unregistered securities, were material omissions); *SEC v. Carriba Air*, 681 F.2d 1318, 1323 (11th Cir. 1982) (finding that failure to disclose a company's bankruptcy was a material omission); *SEC v. Kirkland*, 521 F.Supp.2d 1281, 1303 (M.D.Fla. 2007) (noting that failure to disclose "[d]esist and [r]efrain" orders entered against management was a material omission); *Siemers v. Wells Fargo & Co.*, 2007 WL 1140660, at *8 (N.D.Cal. Apr.17, 2007) (stressing the materiality of information indicating management's lack of integrity); *SEC v. Weintraub*, 2011 WL 6935280 at * 4-5 (S.D. Fla. Dec. 30, 2011) (finding recidivist defendant's tender offer documents materially misleading for failing to disclose his criminal record, O&D bar, personal bankruptcy, and unpaid Commission judgment).

Crow and Clug Misrepresented re How Investor Funds Would be Spent

The investor materials written by Crow and Clug misrepresented how investor funds would be used. The PPMs and other investor solicitations frequently discussed equipment purchases and other business expenses. FOF 111. The PPMs did disclose that Aurum's managers "shall be paid a reasonable compensation, " but this disclosure was not in the Use of Proceeds section but in another section describing the LLC Agreement. Other disclosures, such as the Quarterly Reports and the Business Plan, did not disclose that most of the investor funds went to Crow and Clug and not to business operations. For example, 66% of the initial $250,000 raised from the Convertible Noteholders went to Crow and Clug. FOF 94. In addition, of the $1,271,775 in Aurum investor funds that was not transferred out of the U.S, $1,034,271 – or 81%

– was transferred to the U.S. accounts of Crow, Clug, and their U.S. entities (Corsair or Dolphin). FOF 548.

Investors were also told that Crow and Clug received Aurum's Class B Units "in consideration of the efforts of the Corsair Group Inc. in organizing Aurum Mining, advancing all the costs and time, formulating its business plan, contributing the . . . rights attached to Aurum Mining LLC." FOF 123. Of course, Crow and Clug did not "advance[] all the costs and time" associated with Aurum; they advanced nothing and used investors' money primarily for themselves. FOF 94, 548. These facts should have been disclosed. *See SEC v. Research Automation Corp.*, 585 F.2d 31, 35-36 (2d Cir. 1978) (finding that misleading statements and omissions about the use of investor proceeds are material).

The Generic Risk Disclosures in the PPMs Were Inadequate

The PPMs contained risk disclosures that focused on the well-known risks of gold mining generally and, in particular, in South America. FOF 398. None of these disclosures, however, disclosed the actual risk that investors faced: that Crow and Clug would conceal material information from them about the Brazil and Peru properties and manufacture estimates and projections. FOF 399-400. *See SEC v. Pittsford Capital Income Partners, L.L.C.*, No. 06 Civ. 6353, 2007 WL 2455124 *11 (W.D.N.Y. Aug. 23, 2007), *aff'd in part and app. dismissed in part*, 305 Fed. Appx. 694 (2d Cir. 2008) ("the cautionary language does not shield the principals from liability because the risks that were disclosed in the PPMs were not the risks that harmed investors").

In addition, the bespeaks caution doctrine does not protect "statements of known, historical, or existing fact." *SEC v. Bankatlantic Bancorp, Inc.*, 2012 WL 1936112 (S.D. Fla. May 29, 2012) (finding that statements of allegedly known or existing facts were not based on

forward-looking projections because they addressed "existing occurrences, not future projections"). Crow and Clug, for example, stated as existing facts that Arthom owned the land and mining rights when it did not. FOF 166-174.

"[O]mission of past performance information occurs when a promoter makes optimistic statements about the prospects of the business but fails to include past performance information that would be useful to a reasonable investor in assessing those statements." *SEC v. Merchant Capital, LLC*, 483 F.3d 747 (11th Cir. 2007). *See also Joint Council Pension Trust Fund v. Am. West Holding Corp.*, 320 F.3d 920, 935 (9th Cir.2003) (material omission where optimistic disclosures of airline's financial prospects, while knowing of undisclosed specific problems); *Rubinstein v. Collins*, 20 F.3d 160, 170 (5th Cir. 1994) (optimistic statements that omit known substantial adverse facts are actionable under antifraud provisions).

Additionally, "general cautionary language does not render omission of specific adverse historical facts immaterial. *See, e.g., In re Westinghouse Sec. Litig.*, 90 F.3d 696, 710 (3d Cir.1996) (general cautionary language did not render misrepresentations immaterial where management knew about specific negative events that had already occurred); *Rubinstein*, 20 F.3d at 171. [T]he inclusion of general cautionary language regarding a prediction would not excuse the alleged failure to reveal known material, adverse facts." *Merchant Capital*, 483 F.3d at 768.

Crow and Clug's misleading projections are false and misleading notwithstanding the risk disclosures in the PPMs. Their omission of negative history, such as the Daubeny and Park reports, are not rendered immaterial by the generic cautionary statements. "What may once have been a good faith projection became, with experience, a materially misleading omission of material fact." *Merchant Capital*, 483 F.3d at 769.

Crow and Clug's Scienter is Imputed to Aurum

Aurum was controlled in every respect by Crow and Clug. They owned all of the Class B voting Units of Aurum and were Aurum's Managing Members. FOF 28. Crow and Clug each also participated in the drafting and approval of all offering documents, including Aurum's PPMs, update letters and update reports. FOF 93, 100, 112, 137, 147, 151. *See SEC v. Levin*, 2013 WL 5588224, at *14 & n.5 (S.D. Fla. Oct. 10, 2013) (defendant was maker under *Janus* of statements, contained in PowerPoint and other offering materials for potential investors, issued by LLC, on which defendant was managing member and owner, and by LP, of which the LLC was general partner). The scienter of Crow and Clug, accordingly, is imputed to Aurum. *SEC v. Management Dynamics, Inc.*, 515 F.2d 801, 812 (2d Cir. 1975); *SEC v. Manor Nursing Ctrs.*, 458 F.2d 1082, 1096 n.16 (2d Cir. 1971) (scienter of an individual who controls a business entity may be imputed to that entity).

C. Crow, Clug and PanAm Willfully Violated Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder in the Offer and Sale of PanAm Securities; Crow and Clug Willfully Aided and Abetted and Caused PanAm's Violations

Crow, Clug and PanAm violated Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. PanAm failed to disclose in any periodic filing that Crow, a person with a pending bankruptcy proceeding, history as a recidivist and securities industry bars, was acting as a *de facto* officer of PanAm. PanAm's 10-Q, filed January 22, 2013, also was materially false because it reported that the maturity date of Crow's convertible note had been extended. In fact, Crow had converted the notes, received 1.9 million shares, and sold 300,000 shares for $75,000 in an undisclosed transaction. FOF 456-493. PanAm solicited investors with an Executive Brief that falsely stated that PanAm had registered with the

OTCBB, which it had not. FOF . PanAm also stated in its Executive Brief and periodic filings that investor funds would be used, in part, to acquire farmland in South America. FOF 497-503.

In order to determine whether one is serving as an officer of a public company, courts look beyond the corporate title to the individual's functional role with the company, including the person's duties, responsibilities, and level of influence over company policy and affairs. *See SEC v. Prince*, 942 F. Supp. 2d 108, 133 (D.C. 2013) ("functional, fact-intensive analysis of an alleged officer's duties and responsibilities, adopted by the Second, Fourth, Sixth, and Ninth Circuits, is a fair and reasonable approach" in determining whether one is a *de facto* officer); *SEC v. Solucorp Industries, Ltd.*, 274 F. Supp. 2d 379, 382-87 (S.D.N.Y. 2003) (individual "consultant" was an officer because he performed a policymaking function and duties analogous to those of an officer); *SEC v. Enterprises Solutions*, 142 F. Supp. 2d 561, 574 (S.D.N.Y. 2001) (executive officers include "not only those formally designated as such, but also any person who performs a similar role for the company"); *CRA Realty Corp. v. Crotty*, 878 F.2d 562, 563 (2d Cir. 1989) (employee's functions, rather than title, determine whether he is an officer). Companies are not permitted to "hide a significant figure in the management of a company" behind a vague title, such as "consultant." *Enterprises Solutions*, 142 F. Supp. 2d at 574.

Regulations promulgated under the Exchange Act define the "officer" title and are instructive. *See Prince*, 942 F. Supp. 2d at 133. Exchange Act Rule 3b-7 defines an "executive officer" as a company's "president, any vice president . . . in charge of a principal business unit, division or function . . ., any other officer who performs a policy making function or any other person who performs similar policy making functions for the registrant." 17 C.F.R. § 240.3b-7. Similarly, Exchange Act Rule 16a-1 defines an "officer" to include "any . . . person who

performs similar policy-making functions of the issuer [as the company's named officers]." 17 C.F.R. § 240.16a-1(f).

Crow performed policy-making functions similar to corporate presidents, chief executive officers, and other personnel typically tasked with policy-making functions.[1] Crow selected Steven Ross as CEO and Chad Mooney as director. FOF 411-413, 428-437. Crow conducted lengthy negotiations on behalf of PanAm with Mickelson Capital, which resulted in a press release announcing the deal – the only such deal ever announced by PanAm. FOF 415-417. Crow also closely monitored PanAm's public filings and threatened to discipline CFO Lana for Lana's perpetual tardiness with the filings. FOF 423-427. Crow was compensated for his work, both through reimbursement of expenses and through the Advisory Agreement with Corsair. FOF 438-440, 453-455. Accordingly, Crow acted as a *de facto* officer.

A reasonable investor would have wanted to know that PanAm was effectively being run by Crow, a bankrupt individual who was barred from serving or acting as an officer or director of a public company and from associating with a broker-dealer. *See SEC v. Huff*, 758 F.Supp.2d 1288 (S.D. Fla. 2010) (imposing O&D bar on behind-the-scenes person of public company for failing to disclose his involvement, bankruptcy and negative background).

PanAm, Crow and Clug also violated the antifraud provisions by misleading investors that PanAm would use their proceeds to acquire agricultural farmland in Latin America. Instead, it used a substantial amount of the proceeds to benefit Crow and Clug. *See SEC v. Research*

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[1]The Court in *Prince* concluded that the defendant did not have sufficient control over the subject company to be deemed to have exercised the policy-making function of a typical public company president. *See Prince*, 942 F. Supp. 2d at 134-35. *Prince* is distinguishable from this case because Crow exercised significantly more authority and control over PanAm than did the defendant in *Prince* over his company. The company in *Prince* was relatively large, with numerous departments and chains of authority. In contrast, PanAm's day-to-day affairs and policy making were handled by just two people, the CEO (whether Clug or Ross) and Crow. In addition, Crow conceived and created PanAm, provided its initial funding, was a large shareholder, and after July 2012 had formal authority to act as a "consultant" to PanAm.

Automation Corp., 585 F.2d 31, 35-36 (2d Cir. 1978) (finding that misleading statements and omissions about the use of investor proceeds are material). In addition, PanAm falsely represented to investors that it had filed an application to be listed on the OTCBB as of April 2011. FOF 501.

Crow and Clug acted with scienter. Clug knew that Crow was acting behind the scenes controlling PanAm, and he knew about Crow's bankruptcy and industry bars. *See Huff*, 758 F.Supp.2d at 1347-48 (defendant took undisclosed position with company to avoid disclosing his prior criminal insurance dealings and debarment).

Crow and Clug concealed his role from PanAm's two independent directors. Gewanter testified that he was not aware of Crow's role in hiring Ross, of Crow's role in negotiating the Mickelson deal, that Crow billed expenses to PanAm, or even that Crow had been barred from being an office or director of a public company. FOF 445-452. In addition, Crow and Clug knew or were reckless in not knowing that PanAm had not filed any application to be listed on the OTCBB. *See SEC v. McNulty*, 137 F.3d 732, 741 (2d Cir. 1998) (scienter "may be established through a showing of a reckless disregard for the truth"). The scienter of Crow and Clug is imputed to PanAm. *SEC v. Management Dynamics, Inc.*, 515 F.2d 801, 812 (2d Cir. 1975); *Manor Nursing*, 458 F.2d at 1096 n.16 (scienter of an individual who controls a business entity may be imputed to that entity).

Alternatively, Crow, Clug and PanAm acted at least negligently. *SEC v. Morgan Keegan & Co.*, 678 F.3d 1233, 1244 (11th Cir. 2012); *SEC v. U.S. Pension Trust Corp.*, No. 07-22570-CIV, 2010 WL 3894082, at *19 (S. D. Fla. Sept. 30, 2010) (to show violations Section 17(a)(2) or 17(a)(3), the Division need only show (1) material misrepresentations or materially misleading omissions, (2) in the offer or sale of securities, (3) made with negligence).

D. PanAm Willfully Violated Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1 and 13a-13 thereunder; Crow and Clug Willfully Aided and Abetted and Caused PanAm's Violations; Clug Willfully Violated Rule 13a-14 Under the Exchange Act

Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, and 13a-13 thereunder require issuers with classes of securities registered with the Commission pursuant to Section 12 of the Exchange Act to file complete and accurate periodic reports with the Commission. Rule 13a-1 requires an annual report (Form 10-K) and Rule 13a-13 requires a quarterly report (Form 10-Q). Rule 13a-14 requires each report to include certifications as to the information in the report. No proof of scienter is necessary. *SEC v. McNulty*, 137 F.3d 732, 740-41 (2d Cir. 1998).

PanAm failed to identify Crow as an officer in its Form 10-K and 10-Q filings. As CEO, Clug was primarily responsible for ensuring that PanAm's periodic filings with the Commissions were complete and accurate, and Clug kept Crow informed about the status of PanAm's filings. FOF 423-427. Crow and Clug knew that PanAm's filings with the Commission did not disclose Crow's background and his role with PanAm. Clug signed certifications under Rule 13a-14 that PanAm's reports did not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made not misleading. FOF 493.

Accordingly, PanAm willfully violated Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1 and 13a-13 thereunder; and Crow and Clug willfully aided and abetted and caused PanAm's violation. Clug further willfully violated Rule 13a-14 under the Exchange Act.

E. Crow, Clug and Corsair Violated Section 15(a)(1) of the Exchange Act; Crow and Clug Willfully Aided and Abetted and Caused Corsair's Violation; Crow Willfully Violated Section 15(b)(6)(B) of the Exchange Act; Clug Willfully Aided and Abetted and Caused Crow's Violation

Unless an exception or exemption applies, Section 15(a)(1) of the Exchange Act makes it "unlawful for any broker or dealer ... to make use of the mails or any means or instrumentality

of interstate commerce to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security ... unless such broker or dealer is registered" with the Commission in accordance with Section 15(b) of the Exchange Act. Scienter is not an element of a violation of Section 15(a)(1). *See, e.g., SEC v. Martino*, 255 F. Supp.2d 268, 283 (S.D.N.Y. 2003).

Section 3(a)(4) of the Exchange Act defines a broker as "any person engaged in the business of effecting transactions in securities for the account of others." The definition connotes "a certain regularity of participation in securities transactions at key points in the chain of distribution." *Mass. Fin'l Services, Inc. v. Securities Investor Prot. Corp.*, 411 F.Supp.411, 415 (D.Mass. 1976), *aff'd*, 545 F.2d 754 (1st Cir. 1976). Regularity of participation in securities transactions is also the "primary indication" that a person is "engaged in the business." *See Martino*, 255 F. Supp. 2d at 283.

In addition to regularly participating in securities transactions, activities indicating that a person is "engaged in the business" include actively soliciting investors, participating in the negotiation or structuring of securities transactions, and receiving commissions or other compensation related to securities transactions, and giving advice as to the merits of investments. *See, e.g., Martino*, 255 F. Supp. 2d at 283; *Kenton Capital*, 69 F. Supp. 2d at 12-13; *National Executive Planners*, 503 F. Supp. at 1073. A person need not engage in all or any particular number of these activities to be "engaged in the business." In *SEC v. George*, 426 F.3d 786, 793-97 (6th Cir. 2004), an unregistered individual violated Exchange Act Section 15(a) by soliciting "numerous investors to purchase securities" in fraudulent offerings, holding himself out as an intermediary, and receiving "transaction-related compensation in the form of investors'

money," and another unregistered individual violated Section 15(a) by being "regularly involved in communications with and recruitment of investors for the purchase of securities."

Crow and Clug, as the principals of Corsair, entered into a "Referral Agreement" with the ABS Fund that required Corsair "to introduce potential investors" to ABS in return for ABS's agreement to compensate Corsair "if an investment is made in one or more [ABS] funds." FOF 518. The agreement was mutually lucrative because it allowed the investors that Corsair referred to ABS to borrow additional funds to invest into Aurum. FOF 514.

Crow and Clug were involved in every stage of the ABS deal. FOF 514-527. Crow and Clug drafted the initial Term Sheet, they conducted due diligence on ABS, and they attended an investor meeting in Florida. FOF 514-517. Crow saw the arrangement as a potentially significant source of funds, and emailed Price that "[w]e believe we can do a lot more if you want to scale into it and might be able to get as much as $25 million to you this year." FOF 521. Crow and Clug congratulated Lana for his efforts in introducing Aurum investors to ABS, and for the uptick in Aurum investments this caused. FOF 523-525. Lana also identified himself as affiliated with Corsair for the purposes of his communications with ABS. FOF 526.

Aurum received $39,563 from ABS in regular fee payments from April to November 2012. FOF 538. The evidence plainly shows these payments were for the referral of customers from Aurum to ABS. The first three invoices, which Clug and Crow either drafted or at least saw before they were issued, identified each customer referral, and the payments adhere to the 3% formula set forth in the Referral Agreement, with "1/3 due every 30 days." FOF 532-535.

After three invoices, the format of the invoices changed to a flat fee structure, apparently because a lawyer told Crow and Clug to "cancel anything to do with success fee." FOF 536, 540-541. Changing the structure of the invoice, however, and the timing of the payments, does

not change the fact that the ABS payments were fee-based compensation. Crow's and Clug's testimony during the hearing that the payments were for some vague consulting services is not credible. FOF 543. No evidence exists of any such services provided to ABS. On the contrary, all of the extensive email communications between Crow and Clug during 2012 focuses on the customers that Crow and Clug referred to ABS and, in essentially a *quid pro quo*, Price's sizable investment in Aurum.

Accordingly, Crow, Clug and Corsair willfully violated Section 15(a)(1) of the Exchange Act; Crow and Clug willfully aided and abetted and caused Corsair's violation. *George*, 426 F.3d at 793 (finding that defendant's involvement in communications with and recruitment of investors for the purchase of securities was strongly indicative of broker conduct).

Finally, Section 15(b)(6)(B) states that it is unlawful for any person as to whom an order under 15(b)(6)(A) is in effect willfully to become or to be associated with a broker or dealer in contravention of that order. Crow willfully acted or was associated with a broker or dealer in contravention of his broker-dealer bar in violation of Section 15(b)(6)(B) of the Exchange Act; Clug willfully aided and abetted and caused Crow's violations.

II. The Court Should Impose Meaningful Sanctions And Other Remedies Against Respondents

A. Crow and Clug Should Be Subject to Penny-Stock and Collateral Industry Bars

Section 15(b)(6)(A) of the Exchange Act authorizes the Commission to impose penny stock bars in administrative proceedings on "any person participating, or, at the time of the alleged misconduct, who was participating, in an offering of any penny stock." *Id.* The Commission may do so if it finds that the bar is in the "public interest" and the person has violated, or has aided and abetted the violation of, the federal securities laws. A penny stock bar may also be imposed if the person has filed a false or misleading statement with the

Commission, or was enjoined from acting as a broker, dealer, investment adviser or underwriter. Crow and Clug should also be subject to the collateral bars authorized by Section 925 of the Dodd-Frank Act.

The public interest analysis requires consideration of the following factors: (1) the egregiousness of the respondent's actions; (2) the isolated or recurrent nature of the infractions; (3) the degree of scienter involved; (4) the sincerity of the respondent's assurances against future violations; (5) the respondent's recognition of the wrongful nature of their conduct; and (6) the likelihood that their occupation will present opportunities for future violations. *See, e.g.*, *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979).

Crow and Clug each willfully committed fraud. The violations extended over a three-year period. And despite the egregious nature of their violations, Crow and Clug have not taken responsibility for the wrongful nature of their conduct. Furthermore, they are threats to repeat their violations if not prevented from so doing. Thus, permanent bars are in the public interest and warranted in this case in light of the egregious conduct. Crow's history as a recidivist also factors in favor of these bars.

The Dodd-Frank Wall Street Reform and Consumer Protection Act, effective as of July 22, 2010, amended Exchange Act Section 15(b)(6)(A) to empower the Commission to suspend or bar a person from association with an investment adviser, municipal securities dealer, municipal advisor, transfer agent, or Nationally Recognized Statistical Ratings Organization, in addition to its previously conferred powers to bar a person from association with a broker or dealer and from participating in an offering of penny stock. Because these additional "collateral bars" constitute prospective relief only, and are clearly in the public interest, they should be granted here.

In considering whether it is in the public interest to impose an associational bar, the Commission considers the egregiousness of the conduct; the isolated or recurrent nature of the infraction; the degree of scienter; the sincerity of the respondent's assurances against future violations; the respondent's recognition of the wrongful nature of his conduct; and the likelihood that the respondent's occupation will present opportunities for future violations. *Eric Butler*, Exchange Act Rel. No. 65204, 2011 SEC LEXIS 3002 (Aug. 26, 2011) at *13-14 & n. 21 (citing *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981)). The inquiry is a "'flexible one, and no one factor is dispositive.'" *Id.* at *14 & n. 22.

The public interest determination extends beyond consideration of the particular investors affected by a respondent's conduct to the public-at-large, the welfare of investors as a class, and standards of conduct in the securities business generally. See, e.g. *Adam Harrington*, Initial Decision Rel. No. 484, 2013 WL 1655690 at 4 (Apr. 17, 2013).

The *Steadman* factors weigh in favor of barring Crow and Clug from association with all of the industry groups specified under Exchange Act Section 15(b)(6) and Advisors Act Section 203(f) and from participating in an offering of penny stock.

The Commission has authority to impose officer and director bars in cease-and-desist proceedings. Section 8A(f) of the Securities Act and Section 21C(f) of the Exchange Act allow the Commission, in an administrative cease-and-desist proceeding, to prohibit "conditionally or unconditionally, and permanently or for such period of time as it shall determine" any person who violated Section 17(a)(1) of the Securities Act or Section 10(b) of the Exchange Act from acting as an officer or director of an issuer if the person's conduct demonstrates "unfitness to serve as an officer or director" of an issuer.

In the leading case of *SEC v. Patel*, 61 F.3d 137, 140-41 (2d Cir. 1995), the Second Circuit identified a number of factors that are relevant to determining whether a defendant is "unfit" to serve. Consideration of the *Patel* factors supports an officer and director bar as to Clug. Clug was CEO or Chairman of the Board during the entire period of PanAm's registration. His conduct as CEO and Chairman was egregious, especially in knowingly permitting Crow to act as an officer of PanAm, and in permitting Crow's undisclosed convertible note scheme. Although the repeat offender status could be in favor of Clug, Clug committed the violations relating to Aurum and ABS simultaneously with the PanAm violations. Lastly, in terms of his economic stake, Corsair received $40,000 from PanAm and, as PanAm's largest shareholder, Clug stood to gain if PanAm succeeded. For these reasons, Clug should be barred from serving as an officer or director of a public company.[2]

B. **Cease and Desist Orders Are Warranted Against Crow and Clug**

The Commission is authorized to issue cease-and-desist orders where a person has, among other things, been found to have violated any provision of the Securities Act or Exchange Act, or the rules and regulations thereunder. Section 21C of the Exchange Act, 15 U.S.C. § 78u-3; Section 8A of the Securities Act, 15 U.S.C. § 77h-1. As described above, Crow and Clug each violated the antifraud provisions of the federal securities laws. Their actions demonstrate a conscious disregard of the federal securities laws. Accordingly, cease-and-desist orders against

[2] The Division acknowledges that its Pre-Hearing Brief did not state that an officer-and-director bar would be sought as to Clug. This was an unintentional oversight. There was never any implied waiver of the Division's right to seek, and the Commission's authority to impose, an officer-and-director bar. The OIP in this matter, as in all Commission administrative proceedings, does not set forth the specific relief being sought. The OIP's allegations, moreover, focused in part on Clug's conduct as an officer and director of PanAm, and his ability to defend himself was not prejudiced (Clug's Well's letter dated May 13, 2014, stated that the proposed charges include "a bar from service as an officer or director"). As a result, Clug has not been prejudiced. See *Horning v. SEC*, 570 F.3d 337 (D.C. Cir. 2009) (respondent not deprived of procedural due process rights, or of appropriate notice and opportunity for a hearing, where the Division, after completing its case in chief, "changed the relief it requested to a bar from all supervisory positions"; respondent "had notice from the outset of the nature of the charges against him" and was not prejudiced by the Division's change in the relief it requested).

Crow and Clug are appropriate.

C. Respondents Should Be Ordered to Disgorge Their Ill-Gotten Gains and Pay Prejudgment Interest

"Securities Act Section 8A(e) and Exchange Act Sections 21B(e) and 21C(e) authorize disgorgement, including reasonable prejudgment interest, in a cease-and-desist proceeding and a proceeding in which a civil money penalty may be imposed." *Matter of Bloomfield,* No. 3-13871, 2014 WL 768828, at *20 (S.E.C. Feb. 27, 2014). Disgorgement is designed to deprive wrongdoers of their unjust enrichment and deter others from similar misconduct. *Id.*; *see also SEC v. Teo*, 746 F.3d 90, 104 (3d Cir. 2014), *cert denied*, 135 S. Ct. 675 (2014) (affirming disgorgement award, explaining "the SEC's use of the disgorgement remedy has been constructed around two objectives: to deprive a wrongdoer of his unjust enrichment and to deter others from violating securities laws.") (citations omitted)); *SEC v. First Jersey Sec., Inc.*, 101 F.3d 1450, 1474 (2d Cir. 1996) ("effective enforcement of the federal securities laws requires that the SEC be able to make violations unprofitable") (citation omitted).

In offering fraud cases like Aurum and PanAm, disgorgement should be the full amount raised minus the amount returned, or $4,395,775. *SEC v. Manor Nursing Ctrs., Inc.*, 458 F.2d 1082, 1104 (2d Cir.1972) ("We hold that it was appropriate for the district court to order [defendants] to disgorge the proceeds received in connection with the [securities] offering."); *SEC v. McGinn Smith & Co.*, __ F. Supp. 3d __, 2015 WL 1446018 at *9-10 (N.D.N.Y. 2015) (holding defendants liable for $87 million in disgorgement, calculated by "[t]he total amount raised through the fraudulent offerings . . . [minus] the amount returned to investors"); *SEC v. Interlink Data Network of Los Angeles, Inc.*, 1993 U.S. Dist. LEXIS 20163 at *53–54 (C.D.Cal. Nov. 15, 1993) (ordering disgorgement of gross amount received from fraudulent securities offering); *see also SEC v. Sahley*, 1994 WL 9682 (S.D.N.Y. 1994) ("The investors who lost their

entire investment are entitled to an order of disgorgement of the full amount raised through those fraudulent statements.").

As to the Corsair/ABS violations, a proper measure of disgorgement is the full amount of the transaction-based fees of $39,563 obtained by Corsair from ABS. *See VanCook v. SEC*, 653 F.3d 130, 142 (2d Cir. 2011) (affirming Commission disgorgement award of all commissions earned on unlawful sales); *Matter of Ward*, No. 3-9237, 2003 WL 1447865, at *14 (S.E.C. Mar. 19, 2003) (ordering disgorgement of commissions).

"Prejudgment interest shall be due on any sum required to be paid pursuant to an order of disgorgement." Rule of Practice 600(a). Prejudgment interest deprives a defendant of an interest-free loan in the amount of his ill-gotten gains, thereby preventing unjust enrichment. *SEC v. Grossman*, No. 87 Civ. 1031, 1997 WL 231167, at *11 (S.D.N.Y. May 6, 1997), *aff'd in part and vacated in part on other grounds*, 173 F.3d 846 (2d Cir. 1999); *see also Bloomfield*, 2014 WL 768828, at *21 (awarding prejudgment interest "to make violations unprofitable.").[3] Accordingly, Respondents should pay prejudgment interest on all disgorged gains.

D. Respondents Should Be Required to Pay Substantial Penalties

Section 21B(b) of the Exchange Act specifies a three-tier system identifying the maximum amount of civil penalties, depending on the severity of the Respondent's conduct. Second tier penalties are awarded in cases involving fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement. Third-tier penalties are awarded in cases where Respondents' conduct reflects such a state of mind *and* the conduct in question directly or

[3] Interest "shall be due from the first day of the month following each such violation through the last day of the month preceding the month in which payment of disgorgement is made." Rule of Practice 600(a). The Commission ordinarily calculates prejudgment interest quarterly based on Section 6621(a)(2) of the Internal Revenue Code. *See, e.g., Bloomfield*, 2014 WL 768828, at *21.

indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons, or resulted in substantial pecuniary gain to the person who committed the act or omission. 15 U.S.C. § 78u-2(c).

The maximum amount of civil penalty for a violation after March 3, 2009, at the first tier is $7,500, at the second tier is $75,000, and at the third tier is $150,000. 17 C.F.R. § 201.1004, Subpt. E, Table IV. For violations occurring after March 5, 2013, the maximum third tier penalty for each violation is $160,000 (for natural person) and $775,000 (for entities). *See* 17 C.F.R. 201.1005 (2013 inflation adjustment). Those figures are for "each such act or omission" warranting a third-tier penalty, not a maximum penalty for a Respondent's total conduct. 15 U.S.C. § 78u-2(b)(3).

By statute, courts should look at six factors to determine whether civil monetary penalties are in the public interest: (1) 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. 15 U.S.C. § 78u-2(c); *see also Matter of Gualario & Co., LLC*, No. 3-14340, 2012 WL 627198, at *17 (Feb. 14, 2012).

Violations of the antifraud provisions of the securities laws, such as are found here, are presumed to be the kind of misconduct that satisfies the "deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement" prong of the public interest test. *See Matter of Gerasimowicz*, No. 3-15024, 2013 WL 3487073, at *6 (July 12, 2013) (respondents "violated the antifraud provisions, so their violative actions 'involved fraud [and] reckless disregard of a regulatory requirement' within the meaning of Sections 21B(b)(3) of the Exchange Act, 203(i)(2) of the Advisers Act, and 9(d)(2) of the Investment Company Act.").

In addition, Respondents' conduct caused great harm to investors, who lost every penny of the amounts raised through Aurum and Pan Am, approximately $4.5 million. And only significant penalties can have a proper deterrence effect here. *See Bloomfield,* 2014 WL 768828, at *23 (finding penalties in excess of disgorgement award to be necessary to "serve the public interest and the need for deterrence").

Once the Court determines the tier of penalty that is appropriate for Respondents' misconduct, the next inquiry is how many bad acts should be penalized. The statutes' use of the phrase "each act or omission" has led courts to impose penalties per sale, per victim, and per investment product, among other multipliers. For example, in *Bloomfield,* the Commission held that a broker whose conduct warranted a second-tier penalty should pay the maximum $65,000 penalty "for each of the nine securities underlying [Respondents'] primary violations," which, along with an additional penalty for aiding and abetting other unlawful conduct, resulted in a total penalty of $650,000 for each of the two brokers. 2014 WL 768828, at *23; *see also Gerasimowicz,* 2013 WL 3487073, at *7 (imposing a maximum third tier penalty of $150,000 for each of 13 harmed investors for a total penalty of $1,950,000); *Pinkerton,* 1996 WL 602648 at *6-7 (penalizing fraudulent acts to each customer). Courts have also opted to impose a penalty equal to the amount of disgorgement awarded against particular respondents. *See, e.g., Matter of Sandru,* No. 3-15268, 2013 WL 4049928, at *10 (Aug. 12. 2013). Either approach would be appropriate here.

Finally, neither Crow nor Clug has demonstrated any justification for inability-to-pay reductions. Their conduct was sufficiently egregious to negate any such consideration. Crow also has failed to provide all information needed to justify a reduction. In any event, he is earning $12,000 per month and has received more than $2 million into his Peruvian accounts,

and Crow offered vague and incomplete answers to many of the Division's questions surrounding these transfers. And rather than finding another means of support, Clug remains connected to Aurum Mining. He has spent his own resources on maintaining an office and apartment in Peru, and he continues to promote Alta Gold to investors. Given these choices, Clug does not merit an ability-to-pay reduction.

CONCLUSION

The Division of Enforcement respectfully requests that the Court enter the Division's proposed findings of fact and conclusions of law and impose on the Respondents the requested sanctions.

Dated: Sept. 3, 2015
[as corrected from August 31, 2015 submission, per Division's letter dated September 3, 2015]

Respectfully submitted,

DIVISION OF ENFORCEMENT

s/David Stoelting
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CERTIFICATE OF SERVICE

Pursuant to Rule 151(d) of the Commission's Rules of Practice, I, Ibrahim Bah, hereby certify that on September 3, 2015, I caused the following documents:

- *Letter from David Stoelting to Judge Patil, attaching List of Corrections to Division's Proposed Findings of Fact and Post-Hearing Brief dated September 3, 2015*
- *Division of Enforcement's Proposed Findings of Fact and Conclusions of Law dated September 3, 2015;*
- *Division of Enforcement's Post-Hearing Brief dated September 3, 2015;*
- *List of Corrections to Division's Proposed Findings of Fact and Post-Hearing Brief dated September 3, 2015*

To be sent by UPS Next Day Air to:

Office of the Secretary (original plus three copies)
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

And by email to:

The Honorable Jason S. Patil (copy) at alj@sec.gov;

Mark C. Perry, Esquire (copy) at mark@markperrylaw.com;
Counsel for Alexandre S. Clug, Aurum Mining, LLC, PanAm Terra, Inc., and The Corsair Group, Inc.

Michael W. Crow, Pro Se (copy) at [redacted]

Dated: September 3, 2015
New York, New York

Respectfully submitted,

DIVISION OF ENFORCEMENT

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