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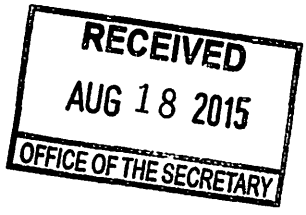
UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-16344

In the Matter of EDGAR LEE GIOVANNETTI, Respondent.	:



DIVISION OF ENFORCEMENT'S REPLY BRIEF

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After years of denying the propriety of the SEC's charges, Giovannetti has finally conceded that he was, in fact, negligent and is, in fact, liable as a primary violator. Giovannetti's remarkable post-trial concessions of liability for violations of Sections 206(2) and 207 of the Advisers Act,[1] however, should not be permitted to obscure the overwhelming evidence at trial demonstrating that Giovannetti: (1) actively concealed his Argonaut debt from CSG for over two years (from April 2009 to August 2011) through multiple oral and written false statements to CSG's compliance personnel; (2) took extraordinary steps to promote Argonaut to CSG's clients without disclosing this conflict of interest, including to MERS who invested an additional $10 million dollars following Giovannetti's promotion of Argonaut to MERS' trustees; and (3) upon being confronted with his past lies, spun new lies to CSG and the SEC, including that he did not receive regular Argonaut reports concerning the value of his investment, that Ed Balsmann had pre-approved his Argonaut loan, and that he somehow believed that the debt had been deducted from his redemption.

The lopsided evidence adduced at trial demonstrates that — far from being straightforward and honest throughout — Giovannetti has lied repeatedly about the

[1] The Division will not address in depth the violations to which Giovannetti now admits, but will instead focus on the disputed 206(1) charge and the Section 207 violations related to the August 2011 and March 2012 ADV filings.

existence and circumstances of his Argonaut debt. Hence, while Giovannetti would likely consider it a huge victory to escape without a finding of scienter, the actual and overwhelming evidence in this case allows no such finding.

I. Giovannetti Concedes Liability for Primary Violations of the Advisers Act and Negligence.

At the outset of the trial, the Court asked counsel whether the parties agreed on the facts and whether, therefore, the trial could focus on the appropriateness of the requested sanctions.[2] Counsel explained that, among other things, Giovannetti was contesting the Division's decision to charge him with primary violations of the Advisers Act, rather than merely with aiding and abetting CSG's violations.

Post-trial, Giovannetti has abandoned that position. At page 13 of Respondent's post-trial brief, Giovannetti now admits that he "meets the broad definition of investment adviser under Section 202(a)(11) of the Advisers Act." Such an admission is not surprising given the evidence establishing that he acted as an investment adviser and controlled CSG. Either will do as a basis for charging Giovannetti as a primary violator. Both are present here.

Additionally, while previously denying the propriety of the negligence claim against him, Giovannetti has now accepted that (at a minimum) he acted

[2] 5/26/15 Tr. 16/21 – 20/4.

negligently in failing to disclose to CSG compliance, CSG's clients and prospective clients and in CSG's pre-August 2011 Forms ADV, the actual facts and circumstances of his Argonaut debt.[3]

II. Giovannetti Has Abandoned His Statute of Limitation Defense.

Giovannetti has also chosen to abandon his pre-trial assertion that some of the Division's charges are barred by the statute of limitations, 28 U.S.C § 2462. Again, such a concession is not surprising given the overwhelming evidence of Giovannetti's fraudulent concealment from CSG compliance of the existence and outstanding nature of his Argonaut debt.

III. Giovannetti Acted with Scienter and Violated Section 206(1) of the Advisers Act.

A person who believes his conduct to be proper does not seek to hide it. Evidence that Giovannetti sought to conceal his debt, therefore, is powerful evidence not only of the nondisclosure of the impermissible conflict, but also that Giovannetti appreciated the wrongfulness of his conduct. What remains to be asked, therefore, is whether Giovannetti tried to conceal the debt. The evidence permits no other conclusion.

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[3] Respondent's Post-Trial Brief, p. 13.

Beginning in April 2009, contemporaneous with his taking on the Argonaut debt, Giovannetti wrote to Argonaut saying, **"I don't want anyone to be aware of this but you and me."**[4] If there were no other evidence, this statement alone would justify a finding that Giovannetti intended to conceal the debt. He says so in a simple declarative sentence. Giovannetti's repeated and multiple lies following this April 2009 statement, however, provide further evidence of his intent to conceal his misconduct.

Asked point blank by his compliance department in August 2009 whether the debt remained in place, Giovannetti chose to lie, stating that he had "paid the loan off."[5] Of course, the evidence at trial established that he never believed any such thing. He knew what his Argonaut investment was worth because he got monthly statements.[6] He knew that if he received $76,284 from Argonaut that his debt remained in place[7] and that if he received $26,000 then the debt had been paid off.[8] He knew in July that he received $76,284.[9] Therefore he knew in July that the debt remained in place.

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[4] DOE 224; 5/29/15 Tr. 1206/1-7; 5/26/15 Tr. 163/3-7 (emphasis added).
[5] DOE 320; 5/26/15 Tr. 217/13 – 218/7.
[6] 5/26/15 Tr. 55/7-14.
[7] 5/26/15 Tr. 177/1 – 178/10.
[8] Id.
[9] 5/26/15 Tr. 183/18 – 21; DOE 311.

Asked by compliance just two weeks later whether the debt remained in place, Giovannetti denied that it did. Yet he continues to claim, despite all the evidence to the contrary, that he had no intent to deceive.

While the Division submits that Giovannetti certainly knew that his loan had not been deducted from his redemption proceeds, even Giovannetti concedes that, as of at least early September 2009, he knew that the loan had not been deducted and remained outstanding.[10] Notwithstanding that admitted knowledge, Giovannetti affirmatively lied to CSG's compliance department over and over again between September 2009 until August 2011 about the continued existence of the loan. Giovannetti attested in multiple "certifications" and "attestations" that he had no outstanding debt to any CSG "customer" (a category in which Argonaut fell) nor any conflict or potential conflict of interest (despite Balsmann having previously and specifically advising him in August 2009 that the debt's continued existence constituted a conflict of interest).[11] In addition to these written lies to CSG compliance, Giovannetti told another whopper to Vicki Lawson in March 2011 when he specifically confirmed to Ms. Lawson that his Argonaut debt had been paid off. Giovannetti denies this lie. Resp. Post Trial Brief, p. 7 ("Mr.

[10] Resp. Post-Trial Brief, p. 5 stating "In September of 2009, Mr. Giovannetti learned that the note was not paid."

[11] 6/27/2015 Tr. 501/19-514/21, 516/1-517/25, 632/9-633/4, 634/10-24, 635/16-637/24.

Giovannetti did not tell Ms. Lawson in February or March that the Argonaut loan had been paid.") Ms. Lawson testified to the contrary:

> Q: So let me ask you the question again. Having read that now, do you believe that you had discussions with Mr. Giovannetti --
>
> A. Yes, I do believe that I had discussions with him concerning the Argonaut loan.
>
> Q. And this was in the February-March 2011time period; is that right?
>
> A. Correct.
>
> Q. Okay. Let me ask you again, do you recall him specifically telling you the Argonaut loan had been paid off?
>
> A. Yes.[12]

The lies also continued in the personal financial statement prepared by Giovannetti for Balsmann in February 2010 wherein Giovannetti failed to disclose the continued existence of his Argonaut debt, notwithstanding his present admission that he knew such debt was outstanding as of September 2009. Giovannetti now devotes substantial effort in his brief attempting to neutralize this damning omission of the Argonaut debt, which he must do given that he told Balsmann just six months earlier that the debt had been paid off. Giovannetti's

[12] 5/27/15 Tr. 638/2 – 639/18. See also, id. at 643/14 – 645/25, 646/3–20.

explanation, however — that the "financial statement"[13] was prepared "to compare his assets with commercial/bank debt owed by him" — is non-sensical and contrary to what Giovannetti believed and said at the time. [14]

The entire purpose of providing his financial information to Balsmann — so that Balsmann and CSG could try to assist Giovannetti's with his personal finances — necessarily required disclosure of all Giovannetti's personal obligations. Hence, as Balsmann testified, he certainly understood that the personal financial statement did not relate just to Giovannetti's commercial debt but to "[a]ll of his financial liabilities."[15]

Giovannetti's own words in contemporaneous documents show exactly his understanding of the information being presented to Balsmann. First, as he stated in his February 11, 2010 email to Mike Robinson and Bob Orians, forwarding the personal financial statement:

> I had a long meeting this afternoon with Ed Balsmann, and **I shared with him my personal financial statement as well as** all my commercial debt so he could have a very clear view of my financial situation.[16]

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[13] Resp. Post Trial Brief pp. 5-6.
[14] Resp. Post Trial Brief pp. 5-6.
[15] 5/27/2015 Tr. 521/2-9.
[16] DOE 19 (emphasis added).

Second, the document itself is entitled "PERSONAL FINANCIAL STATEMENT", not "Giovannetti's Commercial Debt and Bank Obligations."[17]

Notwithstanding Giovannetti's own contemporaneous description of what he had given Balsmann, on cross-examination (and in his post-trial brief), Giovannetti attempted to explain away the absence of the Argonaut debt by saying "this was meant solely to show Ed my commercial loans and my assets that need to be dealt with . . . ."[18] But Giovannetti quickly had to abandon that spur-of-the-moment explanation when he admitted that his home mortgage (not a commercial loan) appeared as a liability on the document.[19] Giovannetti also admitted that the purpose of providing Balsmann with the personal financial statement was to "keep [Giovannetti] out of bankruptcy."[20] Of course, omitting a $50,000 liability from the personal financial statement would only have frustrated that purpose. [21]

As with all of Giovannetti's tortured efforts to explain away his prior attempts to conceal his debt, a much simpler explanation is available. As Giovannetti had to admit on cross-examination:

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[17] DOE 19.
[18] 5/26/15 Tr. 254/25 – 255/2.
[19] 5/26/15 Tr. 257/15–16.
[20] 5/26/15 Tr. 260/20-24.
[21] Further, as the CEO of CSG and Chair of the Executive Management Committee, Giovannetti was also sent a draft of every single Form ADV filed with the SEC, each of which specifically included a section relating to any CSG conflicts or potential of conflicts. Yet, over and over again, Giovannetti chose not to disclose the existence of his known conflict of interest. 5/27/15 Tr. 529/9-15.

> Q: If you had included the $50,000 to Argonaut on this [financial statement] Mr. Balsmann would have known at that point that your representation earlier [regarding the supposed repayment of the loan] was untrue, yes?
>
> A: Yes, he would have seen that. . . .[22]

Finally, confronted in August 2011 and during his SEC testimony in June 2013 about his August 2009 lie to compliance, Giovannetti simply lied again, this time to the SEC (under penalty of perjury) and to CSG, telling them that his Argonaut investment had "no reporting,"[23] that he did not know what his investment was worth,[24] and that when he received his redemption in July, therefore, he believed the debt had been deducted from it.[25] Of course, Giovannetti's investment *did* have "reporting" in the form of monthly statements.[26] He knew exactly what his investment was worth, as demonstrated by his multiple, earlier emails drilling down on exactly why his account's value had declined (money which he repeatedly described as a substantial part of his liquid net

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[22] 5/26/2015 Tr. 263/6 – 13.
[23] 5/29/15 Tr. 1092/23–1093/10.
[24] 5/29/15 Tr. 1092/2 –1093/10; 1094/16 – 4.
[25] 5/29/15 Tr. 1091/2 –1092/9; 1197/3 - 5.
[26] 5/26/15 Tr. 55/7 -14.

worth).[27] And he knew in July 2009 exactly how much money he had received from his Argonaut redemption.[28]

Giovannetti's fabrications might give rise to some pause if there were any actual evidence supporting them, i.e., (1) if there were a single shred of evidence showing that he had any "agreement" with or ever advised Argonaut to deduct the debt from his redemption proceeds, or (2) if there were a single piece of paper showing Giovannetti ever suggested to Argonaut that the reason he could not pay his debt was because of a misunderstanding — based on either his lack of knowledge of the actual value of his account or his mistaken belief that Argonaut would deduct the debt from his redemption.[29] But despite multiple emails with Argonaut before and after his obtaining the loan and the redemption, Giovannetti never told Argonaut that he did not know the value of his investment.[30] Argonaut knew otherwise because they were sending him monthly statements and because they had listened to his persistent complaining about the reduced value of the investment.[31]

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[27] DOE 115; 5/26/15 Tr. 56/6 – 57/17; 60/8 – 20; DOE 264; 67/16 – 68/14; DOE 207; 81/23 – 82/20; DOE 266; 88/2 – 22; 268; 94/22 – 95/18; DOE 270; 95/25 – 97/12; DOE 305; 101/24 – 103/1.
[28] DOE 311; 5/26/15 Tr. 177/1 - 178/10; 5/26/15 Tr. 183/18 – 21; DOE 311; 5/26/15 Tr. 193/21 – 194/16.
[29] 5/29/15 Tr. 1199/15 – 1200/25.
[30] 5/29/15 Tr. 1200/21 - 25.
[31] DOE 115; 5/26/15 Tr. 61/6 – 18.

And, Giovannetti never told Argonaut that he believed that they had failed to deduct the debt from his redemption proceeds.[32] Argonaut would know that Giovannetti could not have believed such a thing, given his knowledge of the value of his investment. That Giovannetti gave these bogus explanations both to his compliance department and the SEC under oath — when he never offered them to Argonaut — exposes them for what they are: after-the-fact fabrications designed to conceal his misconduct.

With the collapse of his earlier explanations under the weight of the evidence at trial, Giovannetti's final retreat is to seek protection by claiming that he was so "absorbed" by the New York State Investigation that he somehow forgot about the loan.[33] But the actual evidence in the record demonstrates otherwise. As shown by Giovannetti's own contemporaneous emails, the Argonaut loan was of huge significance to him: his Argonaut account constituted a substantial part of his liquid net assets;[34] he desperately needed money from Argonaut as he had already written a check to the IRS which was going to bounce if he did not get some money;[35] in response to Argonaut offering to give him money, he stated in April 2009 that, "I really appreciate this effort and it confirms the relationship we

[32] 5/29/15 Tr. 1200/21 - 25.
[33] 5/27/2015 Tr. 456/12 – 457/8
[34] DOE 206, 208
[35] DOE 220.

have[,]"[36] and "I love you[;]"[37] and, with respect to Argonaut's willingness in October 2009 to postpone repayment of the loan, he stated, "I appreciate it and will not forget it."[38]

Stated simply, it is not credible that Giovannetti somehow "forgot" a debt when he himself had noted how incredibly important it was to him, when Balsmann had told him that having such a debt would be a conflict of interest (especially in light of the charged atmosphere at CSG at the time concerning conflicts of interest in the New York State Investigation) and when the lack of repayment of the debt was brought up repeatedly by Argonaut throughout 2009 and 2010.[39]

The actual evidence shows that — far from being overwhelmed and consumed by the New York State Investigation — Giovannetti was undertaking extraordinary efforts to promote Argonaut to CSG clients,[40] while simultaneously sharing with Argonaut his private conversations with such clients.[41] By way of example, Giovannetti promoted Argonaut to CSG's public pension clients, including MERS, and sought "credit" from Argonaut for its landing an additional

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[36] DOE 221.
[37] DOE 222.
[38] DOE 329
[39] See, e.g., DOE 329, 339, 409.
[40] See, e.g., DOE 233, 242, 244, 248, 249, 318, 323, 324, 334, 416.
[41] See, e.g., 5/27/15 Tr. 344/3 – 13; DOE 318; 5/26/15 Tr. 438/17 – 441/3; DOE 406.

$10 million from MERS in late July 2009, noting that he was "constantly talking to my colleagues about Argonaut and in many cases their clients as well[,]" and that, "In the case of MERS, I had direct conversations with two of the trustees."

The actual evidence shows that, when Giovannetti gave his testimony to the SEC in June 2013 — over one year after the end of the New York State Investigation — Giovannetti was willing to risk hurting the reputation of others to protect himself. Specifically, in his June 2013 SEC testimony, Giovannetti testified:

> Q: No. On or about the time that you entered into the note, did you tell [Ed Balsmann] what you were going to do and get his approval?
>
> A: Yes.[42]

Mr. Balsmann makes his living as a compliance officer.[43] Yet, Giovannetti swore before the nation's top securities regulator that Balsmann gave **approval** for a debt that created a conflict of interest that went undisclosed for more than two years. Under cross-examination at trial, Giovannetti was forced to admit that he did **not** tell Mr. Balsmann about the debt in April 2009.[44] At the very least, the

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[42] 5/26/15 Tr. 311/6 – 312/15.
[43] 5/27/2015 Tr. 472/6-10.
[44] 5/26/2015 Tr. 310/21-23; 5/27/2015 Tr. 465/15-19.

false testimony makes clear that Mr. Giovannetti will lie to protect himself, even if such lie puts the professional reputation of others at risk.

And, finally, the actual evidence shows that — over two years after the conclusion of the New York State Investigation — Giovannetti was willing to lie to the SEC again when, in July 21, 2014, he submitted his Wells submission claiming that when he "received the redemption proceeds in late July or early August 2009, [he] believed that the proceeds were net of the loan payoff."[45]

The Court itself witnessed first-hand the insufficiency of his various efforts, including the implosion of his excuse that he somehow thought that the debt had been netted out from his loan proceeds.[46] Having lied to compliance, having lied to the SEC, Giovannetti swore to tell the truth to this Court. At trial, however, Giovannetti proceeded to repeat his premeditated and unsupportable stories

Despite his extraordinary, intentional misconduct spanning many years, Giovannetti asks this Court to trust him to handle other people's money as a fiduciary after just 12 months. The Division respectfully submits that the evidence at trial does not permit granting Giovannetti such authority and privileges.

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[45] DOE 619.

[46] Tellingly, Giovannetti blurted out at trial that he had not seen the emails he had sent to Argonaut concerning the decline in the value of his Argonaut investment in preparing for trial stating: "You know, I haven't seen this email, you know — I haven't seen this in preparing for what we're doing today." (5/26/15 Tr. 63/3-7).

IV. Giovannetti Is Liable for Aiding and Abetting and Causing CSG's Violations of Section 207, Including Violations Relating to Misleading Disclosures in CSG's Filings on August 24, 2011 and March 31, 2012.

Giovannetti has conceded liability for violations of Section 207 as to CSG's filings before August 24, 2011. The Division, therefore, will address only CSG's filings of August 24, 2011 and March 31, 2012, for which Giovannetti continues to contest liability. Those filings contained the following language:

> Loan from Argonaut Management, LP, to Lee Giovannetti, CEO of CSG Holdings, LLC. In 2009, Mr. Giovannetti borrowed $50,000 **at 3.10 percent interest as an advance of a redemption related to his investment in Argonaut's long-short hedge fund.** Repayment has not been made and is pending. This presents a potential conflict in that CSG may recommend Argonaut over other money managers as a result of the loan.[47]

At the outset, it is important to recognize Giovannetti's not-so-subtle attempt to change the legal standard for aiding and abetting liability. He argues that he cannot be found liable for aiding and abetting CSG's violations as to the August 24, 2011 and March 31, 2012 filings because someone else was responsible for the misleading filings. But that is an attempt at misdirection. In theory, many other people might be responsible for the misleading filing. But even if that were true it

[47] August 24, 2011 filing (official notice taken); 5/27/15 Tr. 765/13 – 23 (emphasis added).

would not absolve Giovannetti. Aiding and abetting liability is not a competition with only the most culpable individual being adjudicated liable.

To prove that Giovannetti aided and abetted Section 207 violations as to the August 2011 and March 2012 filings the Division must establish: (1) that CSG violated Section 207 with regard to those filings, (2) that Giovannetti substantially assisted in the primary violation, and (3) that Giovannetti had a general awareness or reckless disregard of the wrongdoing and of his role in furthering it. See In re Clarke T. Blizzard, Advisers Act Rel. No. 2253, 2004 SEC LEXIS 1298 (June 24, 2004) (Commission Opinion). A finding that a respondent willfully aided and abetted violations of the securities laws necessarily makes that respondent a "cause" of the violations. Id. at *16 and n. 10.

CSG's August 24, 2011 and March 31, 2012 Forms ADV filings violated Section 207 by, among other things, inaccurately stating that Giovannetti's loan was in advance of a redemption and noting an interest rate of 3.10%, rather than the default interest rate of 8% that was applied. Given the limited documentation that was "in the file" at the time CSG made its disclosure, CSG necessarily relied on Giovannetti in drafting and finalizing the language in those Forms ADV.[48]

[48] 5/26/2015 Tr. 332/12-19 ("They got that from me. That's what I told them from the beginning.").

Moreover, Giovannetti admitted that the information contained in those Forms ADV was from him.[49]

The evidence at trial, however, showed that Giovannetti knew that his request for an advance **had been specifically rejected** by Argonaut, and that he received **both** the $50,000 loan **and** an unreduced full redemption of his Argonaut investment.[50] He knew those things no later than July 2009 when he received his full redemption.[51] And he certainly knew them when CSG made those filings in 2011 and 2012.[52] Further, Giovannetti and only Giovannetti knew that the interest rate being charged was at the higher 8% default rate, rather than the 3.10% non-default interest rate set forth in the Forms ADVs[53] Yet, he told compliance (and the SEC) that the loan was an advance against a redemption of his investment and provided them with the other inaccurate information they inserted into the ADVs.[54]

Given Giovannetti knowledge of the true circumstances of the loan and its status, he is responsible for the firm's misleading disclosures on August 24, 2011 and March 31, 2012. He cannot avoid liability by pointing to CSG's violation.

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[49] Id.
[50] 5/26/2015 Tr. 125/18 – 126/1.
[51] DOE 311; 5/26/2015 Tr. 181/16 – 182/17.
[52] 5/26/2015 Tr. 332/6-11.
[53] 5/28/2015 Tr. 1001/7 – 1002/25.
[54] 5/26/2015 Tr. 332/12-19.

They merely reported the lies that Giovannetti told them, the SEC, and this Court.[55] Given that he alone was the source of the inaccurate information in the filings, he substantially assisted in CSG's Section 207 violations in August 2011 and March 2012. And, because he has known all along that the story he fed compliance was untrue, he had the requisite general awareness of his role in the misleading disclosures.

V. Sanctions

Giovannetti cites to In the Matter of Seaboard Investment Advisers, Inc. and Eugene W. Hansen, 1999 WL 73523, Admin. Proceeding File No. 3-9725 (September 21, 1999) ("Seaboard") in support of his claim that an industry bar would amount to inappropriate "piling on." But, aside from the demise of the investment advisory firm at issue, the Seaboard case bears little meaningful resemblance to this one for several reasons. First, the underlying facts in Seaboard involved misrepresentations in client letters forwarding performance data. The Court there found that, although the letters contained misrepresentations, the letters were accompanied by documents that contradicted those misrepresentations. Id. at *10. In contrast, no client or prospective client of CSG was ever provided with

[55] 5/26/2015 Tr. 332/12-19.

evidence from which it could have possibly deduced that Giovannetti was indebted to an investment manager that he was recommending to clients.

Second, the Seaboard case was a follow-on administrative proceeding, following an injunction entered against the respondent by a federal district court. Id. at *3. There is no injunctive action in this case. The sanctions imposed by this Court, therefore, cannot be "piled on" to sanctions already ordered against Mr. Giovannetti, because none have been ordered.

Finally, in Seaboard the Court found that the CEO, Mr. Hansen, acted with scienter, but that the Division "[had] failed to show that he acted with a *high* degree of scienter." Id. at *10. In contrast, Mr. Giovannetti has acted, and continues to act, with a high degree of scienter, asking this Court to be lenient when he is unwilling to be honest.

Remarkably, Giovannetti also seeks to distinguish the Kornman case on the basis that it involved a criminal conviction for lying to SEC investigators during a telephone conference call. Other than an ultimate criminal conviction in Kornman, however, the facts are practically indistinguishable from the case, sub judice. Here, Giovannetti intentionally lied and sought to mislead the SEC during his June 2013 testimony claiming, among other things, that he did not receive regular account reports from Argonaut, that he had obtained pre-approval from Balsmann

for the Argonaut loan, and that he believed that the loan had been netted out of his redemption proceeds received. Indeed, it may be argued that the facts here are more egregious than those presented in Kornman, given Giovannetti's lying occurred under oath and during testimony to the SEC, rather than simply one telephone conference call.

Giovannetti seeks to distinguish the Montford case, but the facts of that case are also highly similar to the instant matter. As in Montford:

- Just as in Montford, CSG and Giovannetti promised integrity and independence to their clients;[56] as stated by Giovannetti himself in a newspaper article "**We provide independent, unbiased advice to our clients**, ... We don't have any products to sell. All we have is knowledge and expertise[;]"[57]
- Giovannetti, just like in Montford, pushed CSG's clients to invest in Argonaut, including pushing MERS to invest an additional $10 million with Argonaut, all the while failing to disclose his Argonaut debt to MERS and other CSG clients;

[56] See, e.g., 5/28/15 Tr. 868/15-25.
[57] DOE 1, p. 2 (emphasis added).

- Giovannetti benefitted personally from his misconduct; at a time when he was in desperate financial need, he obtained both a $50,000 loan, and his $76,000 redemption, and Argonaut delayed for more than two years the time for repayment; and
- While perhaps not suffering financial damage, both FRS and MERS suffered substantial non-financial harm by investing in conflicted investments, thereby putting themselves in jeopardy of violation of Louisiana state law and incurring substantial public relations damage.[58]

VI. Conclusion

The Division submits that the trial established that Giovannetti acted with scienter and that his misstatements to CSG personnel caused CSG's misleading disclosures in its August 24, 2011 and March 28, 2012 ADV filings. And while Giovannetti seeks to avoid appropriate and just sanctions for his misconduct, his conduct throughout the course of this matter belies any true admission of wrongdoing or contrition. Accordingly, the Division respectfully submits that a

[58] 5/28/15 Tr. 801/7 – 802/3, 805/6 -20, 863/17 – 865/2, 860/25-861/11. Further, Giovannetti's lies also harmed CSG itself. While FRS and MERS stayed with CSG as its investment adviser throughout numerous CSG challenges and the New York State Investigation, as both FRS and MERS' witnesses testified, Giovannetti's failure to disclose his Argonaut debt was a significant factor in their decision to terminate CSG. (5/28/15 Tr. 822/8-20, 836/11-15).

cease-and-desist order, industry and collateral bar, and civil penalties against Giovannetti are necessary and appropriate in this case.

Respectfully submitted this 17th day of August 2015,

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CERTIFICATE OF SERVICE

Undersigned Counsel for the Division of Enforcement hereby certifies that, on the date set forth below, he served the Division of Enforcement's Reply Brief:

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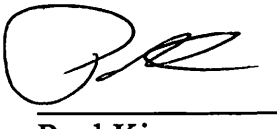
This 17 day of August, 2015



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