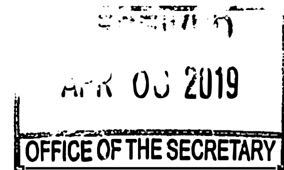

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of

EDWARD M. DASPIN,
a/k/a "EDWARD (ED) MICHAEL,"

Respondent.

THE DIVISION OF ENFORCEMENT'S PREHEARING MEMORANDUM

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PRELIMINARY STATEMENT

Daspin orchestrated a scheme to defraud investors in Worldwide Mixed Martial Arts Sports, Inc. ("WMMA") and an affiliate. Worldwide Distribution. Inc. ("WMMA Distribution"),[1] start-up companies formed to establish an international league of mixed martial arts tournaments.

From December 2010 through approximately June 2012, Daspin fraudulently raised over $2 million from seven investors in the Companies. Daspin told many lies in order to attract those investments and concealed many critical facts about himself and his involvement with the Companies. For example, Daspin's wife held a controlling interest in the Companies through three family trusts. However, the Private Placement Memoranda ("PPMs") Daspin used to sell the Companies' securities made no reference to that controlling interest. Nor did they make any reference to Daspin or his bankruptcy fraud conviction and history of failed ventures, despite his extensive involvement in virtually every important aspect of the Companies.

Daspin caused the Companies to enter into agreements that granted him the power to exert substantial influence and control over virtually all of the Companies' important business activities, including hiring, soliciting investments, drafting the Companies' PPMs, and negotiating every contract with investors, employees, vendors and joint venturers. Yet despite possessing these extensive powers over the Companies' affairs, Daspin used the cover of the consulting agreements to mislead investors that he was "only" a consultant. Daspin also caused the Companies to appoint his wife, Joan Daspin, and his loyal, longtime associate Luigi Agostini, as the sole signatories of the Companies' bank accounts – to ensure that none of his victim-investors could stop him from spending their money as he pleased.

[1] WMMA, WMMA Distribution, and other affiliated companies identified below are hereafter collectively referred to as the "WMMA Companies," or the "Companies."

Through his consulting arrangement. Daspin charged the Companies excessive fees, paid out of investor proceeds, for an array of useless contracts and unneeded services, including $25,000 for every contract entered into; over $237,000 for drafting the Companies' PPMs; fees for soliciting investors and hiring employees and $200 to $350 an hour for largely undocumented services. Daspin also charged WMMA $1,000,000 to "negotiate" an essentially worthless contract with International Marketing Corporation ("IMC"). While most officers and directors received only a pittance in actual salaries, Daspin and his wife extracted large sums of money from the Companies and enjoyed numerous perks that were reimbursed from investor funds.

Daspin lured his victims in with the offer of employment at executive-level positions at the Companies and high salaries. Typically, it was only after prospects arrived for a "job interview" that they learned that instead of being recruited for high-paying executive positions they were being solicited to make a minimum $250,000 investment in the Companies. In fact, there was no actual salary but only the offer of a return of part of the investors' monies as part of a stock repurchase agreement. Daspin told them the more they invested, the greater their "salary" would be. Based on Daspin's representations and advice, a number of investors rolled over their 401(k) funds, or other retirement savings, into the Companies, and then sold some of their interests back to the Companies on a monthly basis in lieu of actual salary. Even those payments were not sustainable, and such "re-purchase" payments stopped in early 2012 as the Companies quickly began to fail.

The concealment in the PPMs of Daspin's name, role and family ownership interests permitted Daspin to delay disclosure of his bankruptcy fraud conviction and history of failed business ventures. When approaching investors, Daspin typically used an alias at first, referring to himself as "Ed Michael." It was only when the person was close to or had decided to invest

that "Ed Michael" revealed his true identity. And when he did disclose his bankruptcy conviction, he would falsely assure the potential investor that he was only a "consultant" to the Company, rather than reveal his domineering and ubiquitous involvement in all aspects of the Companies' operations.

Throughout the fraud, Daspin made numerous oral material misrepresentations and omissions to potential investors. For example, he told investors that the Companies were well-funded when in fact they were only kept afloat by the infusion of cash from new investors, much of which Daspin routed to himself. Daspin also falsely represented to prospects that everyone working at the Companies had "skin in the game" to convince them that everyone already there had invested cash, which was not true. Daspin also caused the Companies to enter into intercompany transactions and transfers in an attempt to make the companies look more valuable than they were.

Daspin also caused the PPMs to contain material misrepresentations and omissions about an email database purportedly owned by IMC that WMMA had contractual access to. The PPMs stated that the IMC database contained 840 million "opt-in" email addresses and Daspin held out the database, both in the PPMs and in his in-person solicitation of investors, as the centerpiece of the Companies' marketing strategy. The July 2011 PPM contained numerous baseless representations about the nature and efficacy of the IMC contract. In order to lure more investors in, Daspin insisted that the January 2012 PPM describe the IMC email list as an asset worth $82 million, a baseless valuation concocted by Daspin, over the objections of people within WMMA.

In addition, the WMMA and WMMA Distribution securities offerings were not registered with the Commission. Daspin also acted as an unregistered broker by, among other

things. actively soliciting investments in those securities, providing prospective investors with advice as to the merits and structure of investments, and receiving compensation based on the sale of those securities.

The WMMA enterprise was an abysmal failure. The July 2011 WMMA PPM contained absurd projections, including over $129 million in gross revenues in 2011; over $629 million in 2012, its first full year; and over $12.6 billion by 2016. Div. Ex. 1 at 15. In fact, WMMA did not generate a penny of revenue in 2011 and the one tournament it put on in March 2012 lost hundreds of thousands of dollars and used up most of the Companies' remaining capital. Daspin could not lure in any more investors and the scheme collapsed shortly thereafter.

As a result of his fraudulent conduct, Daspin violated Section 17(a) of the Securities Act, and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. He also caused violations of Section 10(b) of the Exchange Act and Rule 10b-5 directly or indirectly through or by means of any other person as prohibited by Section 20(b) of the Exchange Act. As a result of his unregistered brokerage activity, Daspin violated Section 15(a) of the Exchange Act and as a result of his participation in the unregistered offerings of securities of WMMA and WMMA Distribution, Daspin violated Sections 5(a) and 5(c) of the Securities Act.

STATEMENT OF FACTS[2]

I. DASPIN'S SCHEME TO DEFRAUD INVESTORS

A. Daspin's Family Owned the Companies

In April 2010, Daspin started a new business focused on creating a world-wide mixed martial arts tournament. The Companies were founded in Daspin's home, where they operated until relocating to commercial office space. Daspin testified that the idea of WMMA came from him, he and his wife contributed the initial working capital, and that he asked Agostini to form the corporate entities that became the Companies. Div. Ex. 481, Daspin Inv. Tr. at 20. When the Companies were first formed, Daspin's company, Consultants to Business & Industry ("CBI") owned warrants for shares representing a controlling interest in Worldwide Holdings (the "holding company", or "WHLD"), which in turn owned a controlling interest in the Companies. Daspin transferred these rights to three family partnerships owned and controlled by Joan Daspin. *Id.* at 21-22. At Daspin's direction, his wife transferred the rights to these shares to Agostini, Douglas Main and Lawrence Lux "as trustees," in return for a warrant entitling her to reclaim the shares at any time. This allowed Daspin to conceal his family's ownership of the Companies in the July 2011 and January 2012 PPMs, while giving him the ability to reclaim the shares when he needed to, which he did in the summer of 2012 after he felt the investors had "conspired" against him.

Daspin and his wife papered this arrangement as follows: in or about January 12, 2011, Joan Daspin, in her capacity as owner of a corporate entity called "Return on Equity Group,

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[2] The Division expects to prove the facts set forth herein at the hearing through witness testimony, exhibits introduced into evidence, and Daspin's admissions. The Division refers herein to witnesses by their last name. The Division refers herein to its exhibits, which bear the prefix "Div." as "Div. ___." Where facts are alleged in a given paragraph of the Order Instituting Proceedings and admitted in the corresponding paragraph of Respondents' Answer, this brief uses the notation "¶ __" to refer to the paragraph number in both documents.

Inc.," that in turn was the General Partner of three Daspin family partnerships, entered into a Conditional Transfer Agreement and Resolutions of the Board of Directors of WHLD ("Conditional Transfer Agreement"). Div. Ex. 69. Pursuant to the Conditional Transfer Agreement, Joan Daspin transferred, for nominal consideration, the three family partnerships' rights to own WHLD shares to Daspin's three hand-selected board members, Agostini, Main and Lux, respectively; and Agostini, Main and Lux thereupon converted those rights into WHLD shares. In return, Joan Daspin or her assignee had the right to repurchase the shares at any time during the next five years. *Id.* The agreement also contained terms for Joan Daspin to be compensated for human resources consulting services to WHLD.

On or about the same date, Joan Daspin entered into a Declaration of Trust and Supplement to Sales Agreement which stated that the three family partnerships "sold" their right to own WHLD's shares to Agostini, Main and Lux in return for one dollar and a "Five year (sic) Stock Warrant" that entitled each Trust to repurchase one hundred percent of the shares sold to Agostini, Main and Lux at a strike price of $100. The Trust Agreement further provided that: "Each of Lux, Main and Agostini acknowledge that they are holding the [family partnerships'shares of WHLD] respectively, as trustees for the [family partnerships] respectively, and thus each of Lux, Main and Agostini have a fiduciary duty to [the family partnerships] respectively, and also have a fiduciary duty to JB Daspin." Div. Ex. 80.[3] Thus, although the three directors ostensibly held a majority interest in the Companies during the relevant period, Daspin could immediately cause Joan Daspin's partnerships to exercise the warrants and buy back the controlling interests in the Companies. Moreover, the directors owned the stock under

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[3] *See also* WHLD Board Resolution dated January 12, 2011 recounting, among other terms, the provisions that three trusts are to be created to hold the WHLD shares transferred to Lux, Main and Agostini, who will be trustees of those trusts and have a fiduciary duty to the Daspin family partnerships and to Joan Daspin. Div. Ex. 200.

an express fiduciary duty to Joan Daspin and the Daspin family partnerships. Meanwhile. Joan Daspin and Agostini were the sole authorized signatories on the WMMA bank accounts that were opened in December 2010. *See* Div. Ex. 380; *see also* Div. Ex. 200 (appointing Agostini as "only signatory for all of WHLD's bank accounts").

Although Daspin constantly reiterated the mantra that he was only a "consultant." in May 2012, when the prospects of litigation with the Companies' partners and investors increased, Daspin caused himself to be appointed an officer of both WMMA and WMMA USA, with the title "Senior V.P. of Troubleshooting," thereby permitting him to gain access to the Companies' Officer and Director Indemnification Insurance policy. Div. Ex. 21.

Shortly thereafter, Daspin reclaimed direct ownership of the Companies. On June 14, 2012, Daspin wrote his wife a letter stating that: "It is becoming apparent to me from emails I have received that a WMMA conspiracy is underway similar to Chamco [one of Daspin's earlier failed ventures]. ... So, these men [Lux and Main] can no longer be trustees of the warrants that the Family Limited Partnerships own in WMMA holdings (WHLD)." Pursuant to this letter agreement signed by Daspin and his wife, Joan Daspin approved Daspin's request to reclaim the shares in WHLD, which had been held by Lux and Main in trust. Daspin recommended that Agostini (his trusted associate) retain the warrants he was holding, which still gave Daspin sufficient shares to control WHLD and the Companies. Div. Ex. 469.

Shortly thereafter, on July 17, 2012, Daspin caused himself to be appointed to the boards of the Companies, over the objection of one of the two remaining board members, Douglas Main. Div. Ex. 22. Pursuant to company bylaws, Agostini, as Chairman, had the right to cast the deciding vote in cases of a tie. Then, on October 13, 2012, Daspin and Agostini approved a board resolution naming Joan Daspin "a designated officer and Vice President of Litigation

Support of and for WMMA. As such she is indemnified and held harmless by WMMA from any claim(s), cause(s) of action which she directly and/or indirectly incurs as a result of her being associated with WMMA." Div. Ex. 215.

Despite Daspin's repeated claims that he was not an officer or director of WMMA, he and his wife promptly sought coverage under the Companies' Officer and Director Indemnification policy in connection with the Division's investigation of Daspin's actions between 2010 and June 2012.

B. Daspin's Permeating Influence in All Important Decisions of the Companies

To maintain control over the Companies, Daspin carefully selected his "yes-men" to serve as the Companies' executives. First and foremost, Daspin enlisted Agostini, a longtime junior business associate and family friend, to serve as executive chairman of each of the Companies' boards of directors and to control the Companies' checking accounts. Next, Daspin recruited Lawrence Lux, a former partner in one of Daspin's prior ventures who had fallen on hard times, to serve as a director and CEO. Finally, as discussed below, Daspin appointed Douglas Main – his chiropractor and first investor – to be the Companies' President and final board member.

Rather than identify himself as a direct participant in the Companies, with corresponding legal responsibilities and liabilities, Daspin arranged to be retained as a "consultant." Daspin's initial WMMA consulting agreement was entered into in April 2010, between Daspin as CEO of CBI and Agostini, individually and on behalf of WMMA. The agreement provided that CBI would be the "exclusive provider" of the array of services identified in the contract for WMMA and a number of to be formed companies, including WHLD, WMMA USA and AGI (predecessor to WMMA Distribution). Div. Ex. 603. Agostini testified there was no discussion

between him and Daspin about why Daspin was going to be a consultant as opposed to an officer or employee.

> Q: Did you see a benefit from the company's perspective to dealing with Mr. Daspin as a consultant rather than as an officer or employee of the company?
>
> Agostini: I didn't have an opinion on that.
>
> Q: So this was the arrangement basically adopted because that's the way Mr. Daspin wanted it?
>
> Agostini: It was [a] form of arrangements that were done at other companies he worked for and I didn't see an issue with it, that's all I can tell you...

Div. Ex. 480, Agostini Inv. Tr. at 71-72.

On November 30, 2010, Daspin, as CEO of CBI, entered into a follow-on consulting agreement with Agostini and Lux on behalf of WHLD and WMMA (the "Consulting Agreement"). Div. Ex. 13. The Consulting Agreement, addressed from Daspin to Agostini, again provided CBI with the "exclusive right" to provide the Companies with services related to "human resources," "deal-making," "raising equity," "developing strategic business, action and operating plans," and structuring "mergers and acquisitions." The Consulting Agreement also "acknowledge[d]" that CBI had been working and "applying its full-time business efforts on the Mixed Martial Arts project since January 19, 2010," and referred to the hours expended by CBI and its staff "in connection with CBI's architecture of building a business and action plan and on participating in the preparation of Private Placement Memorandums in connection with the [Companies]." *Id.*

This and later iterations of the Consulting Agreement provided for substantial remuneration to Daspin for inducing victims to invest and hiring employees, as discussed below.

As made clear below, in Section III, the payment to Daspin for soliciting employee investors was always higher than for recruiting non-investing employees.

The Consulting Agreement also provided that CBI would be paid $25,000 for any contract or transaction it negotiated, plus two percent of the value of the transaction or contract as such funds became available, payable on a monthly basis for a period of five years from the contract date. For other services, CBI employees and consultants (*i.e.*, Daspin), were to be paid hourly fees ranging from $200 to $350 per hour. Daspin signed this Consulting Agreement as Chairman of CBI.

As with earlier versions of the Consulting Agreement, the December 15, 2010 Consulting Agreement provided that CBI was to provide a broad range of "management advisory services" to the Companies. These services included: (a) "Executive recruiting;" (b) "Financial Advisory services pertaining to raising capital from third party investors" and (c) "Other management advisory services pertaining to their operations."

In January 2011, CBI's Consulting Agreement with the Companies was assigned to MacKenzie Mergers & Acquisitions, Inc. ("MKMA"), a company owned by a close associate of Daspin's, Larry May. Div. Ex. 205. Pursuant to a follow-on agreement dated May 24, 2011, Daspin agreed to become a Senior Vice President of MKMA and continue to act as a consultant to the Companies in return for receiving payments from the Companies through MKMA. Div. Ex. 14. This was yet another step in Daspin's efforts to further obscure his involvement in the Companies from potential investors.

C. Initial Investor and Initial Drafts of PPMs

Daspin solicited Douglas Main, his chiropractor, to invest a total of $333,333 in the Companies in December 2010 and April 2011. As mentioned, Main was named a director and given the title of President of WMMA. Apart from managing his chiropractic practice, Main had no prior management experience. He was familiar with the mixed martial arts industry through his sons' participation in the sport.

Daspin also recruited Michael Nwogugu, a non-lawyer associate of Daspin's from prior failed ventures, to assist him with drafting contracts and other legal documents for the Companies, including the PPMs. Although Daspin has admitted that he was the "architect" of the PPM's, Div. Ex. 481, at 29, and participated in preparing them, *id.* at 15-16, he may nonetheless seek to insulate himself from liability for the contents of the PPMs by blaming Nwogugu for preparing them. Numerous witnesses will testify, however, and many emails from Daspin himself will reveal, that Daspin played a major and ongoing role in both drafting and approving the July 2011 and January 2012 PPMs with ultimate authority over their content and distribution to investors.

D. PPMs Fail to Disclose Daspin's Family Ownership of the Companies

The July 2011 WMMA PPM stated that WHLD owned 91.50% of WMMA. Div. Ex. 1 at 44. It also stated that: "The investors denoted with an asterisk own shares of WHLD, the 92% owner of the company and a super-majority owner of WMMA." *Id.* Neither Daspin nor his wife is listed as one of the shareholders of WHLD. Similarly, the January 2012 WMMA PPM states that WHLD owns 91.35% of WMMA. Div. Ex. 3 at 44. It further describes the ownership of WHLD as follows: Agostini "as trustee" 22.54%; Main "as trustee" 22.54%; Lux "as trustee" 22.54%; Agostini 12.38%, and others not relevant herein." *Id.* at 43. The PPM failed to disclose

who they were trustees for or that the Daspin family partnerships were the actual owners of the more than 67% percent of WHLD shares held by Agostini. Lux and Main "as trustees."

E. The PPMs Failed to Disclose Daspin's Substantial Involvement in the Affairs of the Companies or His Connection to CBI and MKMA

The July 2011 WMMA PPM contains an extensive six page section entitled "WMMA's Senior Executive Management Team and Board of Directors" listing eighteen individuals involved in WMMA. The PPM identified the Companies' executives, Agostini as Executive Chairman of the Companies' boards of directors; and Lux and Main as the Companies' two other directors and, respectively, the Companies' CEO and President. Daspin is not named at all, far less is he identified as playing a dominant role in the Companies. Div. Ex. 1 at 54-58. The same PPM contains a discussion of MKMA which states that: "MKMA provides human resources, negotiations, M&A and financial advisory services to WMMA and AGCDS." *Id.* Larry May, another Daspin loyalist who provided minimal services to the Companies, is, however, identified as the Chairman/CEO of MKMA. *Id.* at 58. The PPM contains no reference whatsoever to Daspin's position as Senior V.P. of MKMA or as the primary person responsible for MKMA's substantial role in operating, and receiving monies from, the Companies. The January 2012 WMMA PPM identifies twenty-two individuals involved in WMMA and fails to identify Daspin as one of them. It also contains the same discussion of MKMA's role as in the July 2011 PPM and contains no reference to Daspin, let alone to his dominant role in virtually every aspect of WMMA. Div. Ex. 3 at 56-61. Daspin also exercised control over the Companies' funds. Agostini had signatory authority (along with Daspin's wife) over the Companies' main bank accounts and signed almost all the checks drawn on those accounts. The Division's witnesses will testify that Agostini made significant payments only with Daspin's approval. At one point, the two employee-investors who had been hired to be the Companies' ostensible Treasurers

attempted to obtain signatory authority over the Companies' checking accounts. Various versions of a board resolution were prepared to effect that change (*see, e.g.*, Div. Exs. 219, 223, 537), but Agostini advised employee-investors that Daspin had refused to permit him to share signatory authority over the checking accounts. Various witnesses will also testify that Agostini limited and delayed the finance officers' access to the Companies' bank records.

F. Daspin's Oral Misrepresentations and Omissions in Soliciting Investors

Seven individuals invested a total of $2,470,333 in the Companies. Div. Ex. 493.

Table 1

	Date	WMMA	WDI	WHLD
(Pre-PPMs)				
Doug Main	12/15/10	$250,000		
	3/31/11			$83,333
(July 2011 PPMs)				
Ara Bederjikian	9/13/11	$80,000	$80,000	
	9/27/11		$56,697.80	
	12/27/11	$100,000		
	12/30/11		$43,302.20	
Theresa Puccio	9/20/11	$120,000	$120,000	
	10/28/11	$160,000		
	3/28/12			$50,000
	3/29/12			$50,000
Thomas Sullivan	9/27/11	$175,000	$175,500	
Greg Lange	11/22/11	$125,000	$125,000	
(Jan. 2012 PPMs)				
Darin Heisterkamp	2/1/12	$175,500	$59,717	
	2/27/12		$15,783	
	4/23/12	$100,000		
Donald Lockett	3/12/12	$125,000	$125,000	
	5/4/12	$75,000		

When looking for investors, Daspin targeted job-seeking mid-level finance and technology professionals. Joan Daspin was paid to review resumes posted online and pass them along to Daspin. Daspin's associates would reach out to the prospect under the ruse of offering them a high-paying executive position. *See, e.g.*, email to Ara Bederjikian stating that the firm is

"currently seeking senior executives to fill roles in both its corporate headquarters as well as at 8 regional offices." Div. Ex. 46. After signing a Non-Disclosure Agreement (*see, e.g.*, Div. Ex. 297), interested prospects were then interviewed by telephone or Skype. Typically, during the telephone or Skype interviews. job applicants were still not yet told that they would be required to make an investment, much less a minimum $250,000 investment, in order to be hired and to be paid a "salary," which in fact was merely a (partial) repayment of their investment.

Investor witnesses will testify to the following at the hearing: after being lured to the Companies' offices in suburban New Jersey, expecting to be interviewed for highly paying executive positions, Daspin instead solicited them to make substantial investments ($250,000 or more) in the Companies. To convince them to invest, Daspin falsely told a number of the prospects that they had to invest to get a job because everyone else who worked at the Companies had 'invested" or had "skin in the game." In addition, Daspin pressured the prospects to invest as much as possible, advising them how to draw on their retirement savings for investment funds and telling them that increasing their investment amount was a way to boost their salary and thus increase their draw against salary during the start-up phase, under the Companies' so-called "Stock Repurchase Program."[4]

During these solicitations, Daspin used an alias, Edward (or Ed) Michael, to conceal and delay disclosure of his criminal record and history of failed ventures. It was only after the prospects signed a required non-disclosure agreement and were on the verge of investing that they were even told Daspin's real name.

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[4] Pursuant to their employment and investment agreements, the employee-investors' salaries would accrue, but would not be paid until certain profitability targets were achieved. They could, however, receive a monthly draw before the targets were met pursuant to a "stock repurchase program," under which the Companies would buy back a fixed percentage of the employee-investor's stock each month.

Daspin also falsely presented himself to employee-investors as only a consultant to the Companies, when in reality, as discussed above, he had substantial influence over most important business decisions of the Companies. Indeed, Agostini has admitted in testimony that no one at the Companies was charged with supervising CBI's, and therefore. Daspin's broad ranging powers under the so-called Consulting Agreement. Div. Ex. 480. Agostini Inv. Tr. at 64:24-65:2. In soliciting investors, Daspin also failed to disclose the substantial amounts of monies already owed him, through CBI and MKMA, based on the fees earned to date, approximately $827,000 as of December 2011.

Daspin made false statements to various prospects about the size of investments in, and the financial condition of, the Companies, including, in substance, that a company referred to variously as "Ford" or a car company had committed $20 million to the Companies: that the Companies had over $30 million cash on hand; that the Companies were well-funded and had sufficient cash on hand to cover ongoing expenses; that the Companies' holding company had more than $10 million in assets; that Main had invested $500,000; and that the Companies had run profitable events in the past. When pressed by prospective investors about the amount of cash on hand, Daspin either evaded the question, falsely assured them that the Companies were well-funded, or vaguely referred them to his carefully crafted PPMs that he knew made misleading references to millions of dollars of "current assets."

G. Daspin's Misrepresentations About the IMC Contract

According to the PPMs, the Companies would use the IMC database to market and sell tickets to sponsored events and market and possibly distribute their digital content and related products. The IMC contract, Div. Ex. 12, was the core of the Companies' business plan and their marketing plan to investors.

a. The Misleading Description of the IMC Contract

In describing the IMC contract, the July 2011 PPMs stated:

> WMMA has signed a long-term strategic alliance agreement with [IMC]. . . . IMC is one of the foremost multi-level marketing and database marketing companies in the world and, in connection therewith, provides joint ventures with hotels, timeshares and has thousands of dollars of free product and services discounts as part of its marketing programs to provide MMA spectators with value-added benefits that they are not now enjoying by watching other competitor's shows.
>
> . . . .
>
> IMC has over One Hundred and Thirty Million (130,000,000) U.S. mobile phone numbers for text messaging and invitations; as well as access to Four Million (4,000,000) websites of prospective spectators. In addition, IMC has over Eight Hundred and Forty Million (840,000,000) opt-in e-mail addresses and One Hundred Million (100,000,000) press release outlets.

Div. Ex. 1 at 29; *see also*, Div. Ex. 3, WMMA January 2012 PPM at 28.

The PPMs further stated that out of a two-billion person potential market in the sixteen countries where the Companies planned to operate, "IMC is estimated to have about Twenty Five Percent of the worldwide MMA spectator market in its proprietary database." *See* Div. Ex. 1, WMMA July 2011 PPM at 14; Div. Ex. 3, WMMA January 2012 PPM at 14.

However, the PPMs failed to disclose that the Companies had never used the database, never verified or tested the database and had no idea how many email addresses or mobile telephone numbers the database actually had, how many were duplicates, how many were still valid, how many were in the U.S. or in other countries the Companies were targeting, how many were for people within the target audience for mixed martial arts, and to the extent the contacts had opted-in, what products or services they had opted in for. There was also no reasonable basis for the claim that IMC database was estimated to have email addresses for 25% of the mixed martial arts spectator market. The PPMs also failed to disclose that the effectiveness of

the database depended in significant part on the Companies having a working website for its email marketing, which the Companies did not have at the time they solicited investments.

b. Baseless Valuations of the IMC Contract

The WMMA July 31, 2011 PPM contained a reference in the Related Party Transactions section to MKMA's valuation of the IMC contract at $5 million. Div. Ex. 1 at 31, ¶ 6. However, in the fall and winter of 2011, as he was attempting to raise more money from investors, Daspin began to push for the inclusion of a significantly higher valuation of the IMC contract in the PPMs and to give it more prominence. An early PPM draft of the January 2012 PPM still contained a reference to only a $5 million valuation of the IMC email database. Div. Ex. 376 at 30. According to witnesses, Daspin ultimately insisted on the inclusion of an $82 million valuation of the IMC email database in the January 2012 PPMs and that the valuation be listed as an asset on WMMA's balance sheet.

Specifically, the narrative portion of the January 2012 PPMs included a representation that MKMA had valued the IMC contract at $82 million. *See* Div. Ex. 3, WMMA January 2012 PPM at 28. That PPM also included a two-page, unaudited "Consolidated Balance Sheet" which listed the IMC email database as an intangible asset valued at $82 million. A footnote to the $82 million entry on the balance sheet stated: "Appraised value by M&A of 840 million double opt-in customer database (20 year exclusive contract)." Beneath a second footnote was the phrase "Unaudited compiled Non-GAAP." *Id.* at 45-46.

Daspin admitted in testimony that he was responsible for the $82 million valuation for the database that was included in the PPMs. Div. Ex. 481, Daspin Inv. Tr. at 69-122. Daspin testified that he: (1) assumed it cost one tenth of a cent to obtain an email address; (2) he then took the cost of one tenth of a cent to acquire an address and attributed a value of one tenth of a

cent to each time an email was sent to that address (confusing cost with value and not taking into account that once one acquires an email list one does not typically have to pay an additional fee each time it is used); (3) he then assumed WMMA would send emails to 830 million email addresses ten times a year. which he valued at $8.3 million (830,000,000 times $.001 = $830,000 times 10 times a year = $8,300,000); (4) which he then multiplied by ten years of the contract's 20 year term, to arrive at a valuation of $83 million.

Daspin had no reasonable basis for this valuation. Daspin said he believed that IMC had 60 servers throughout the world but "I didn't know whether he [IMC's owner Beryl Wolk] owned them directly or through joint ventures, I had no idea." *Id.* at 82. He admitted that neither he nor anyone else at the Companies tested the database (id. at 100-101); that he was not aware of any instance where the IMC database was actually used to send 840 million emails (*id.* at 93); that Wolk declined to guarantee a response rate (*id.* at 101-102) and that he merely relied upon Wolk's alleged oral representation to him that there were 220 million U.S email addresses in the database (*id.* at 94), even though Wolk specifically refused to indicate how many U.S. email addresses were in the database in the written IMC contract (Div. Ex 12A). Wolk also struck out a proposed provision in the IMC contract whereby IMC would have guaranteed a minimum response rate of two percent. *Id.* At a minimum, Wolk's reluctance to be specific about the database should have raised red flags regarding the content and effectiveness of the IMC database.

In sum, Daspin did nothing to test the database or Wolk's representations. Daspin also admitted that Wolk told him "a lot of people have more the one e-mail site" (*id.* at 94) but Daspin never accounted for duplicates in arriving at his $82 million valuation and he admitted

that he did not know how many emails in the database belonged to sporting event customers (*id.* at 104-105).

Witnesses will testify that they learned that IMC only had access to a much smaller database of email addresses and that there was not one unified IMC database. Instead, IMC at most had some unknown network of hundreds of other database owners who it was dependent upon to forward emails. Even the most cursory due diligence should have uncovered this fact. A number of witnesses will also testify that they tried to get specific information from Wolk about the database to no avail and they had serious objections to Daspin's $82 million valuation, which he overrode.[5]

The Division will call a valuation expert, Carl Sheeler, who will testify to all of the steps that should have been taken to ascertain the contents and capabilities of the IMC database before any valuation was conducted, none of which were done by Daspin or anyone else at WMMA. He will also testify that just as a matter of simple logic and common sense, Daspin's $82 million valuation makes no sense, even if one were to assume, for sake of argument, that IMC had access to 840 million email addresses. Mr. Sheeler will testify that an email database or list actually containing 840 million email addresses of targeted customers would have a value of no more than $2.2 million, and more likely closer to $1.2 million; and that a less targeted 840 million email list (such as IMC's untargeted list) could be reproduced for as little as $420,000. Div. Ex. 487, Expert Report of Carl Sheeler.

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[5] Moreover, Daspin knew that the effectiveness and value of the database was entirely dependent on the Companies' having a functioning website through which individuals who received marketing emails or text messages could purchase tickets to sponsored events and related products, and to download or stream digital content, and he knew that the Companies' staff was still unable to create an operational website when the PPMs were provided to prospective investors.

Thus, even assuming the IMC database contained 840 million emails. which it did not. Daspin's $82 million valuation was, intentionally, a gross and entirely unfounded misrepresentation.

H. Misrepresentations About Cash on Hand

The January 5, 2012 PPM contained a two page "Forecasted Consolidated Balance Sheet" for Worldwide that contained an entry of $33,085,850 in both cash and "current assets" for "Stub-Period 2011 (Charitable Event)." Div. Ex. 3 at 78. The term "stub-period" was not defined; the balance sheet bore a date of September 30, 2011, but it appeared at the bottom of the page and was not otherwise referenced. At no time, however, did WMMA have $33 million in cash, and there was no reasonable basis to believe that a charitable event planned for the fall of 2011 would generate $33,085,850 in cash. Daspin referred a number of the prospective employee-investors who asked him how much cash was on hand to the PPM, and employee-investors who invested after both talking to Daspin and reviewing the January 5, 2012 PPM, believed that the company had more than $30 million in cash on hand, or "current assets," and invested based in part on that understanding.

I. Agostini, Lux and Main's Role

Agostini and Lux were charged by the Commission with securities fraud and subsequently entered into settlement agreements in which they neither admitted nor denied the charges but agreed to all injunctive relief sought as well as other relief. They, along with the third director, Douglas Main, enabled Daspin to control the Companies while maintaining the illusion that he was only a consultant. Although they were ostensibly the Companies' directors and senior officers, they either deferred to, relented to or were overruled by Daspin on virtually all important matters. As directors, they rubber-stamped the Consulting Agreement Daspin presented to them, which delegated virtually all of the Companies' important business decisions

to Daspin. Agostini admitted in testimony that no one at the Companies was responsible for supervising CBI's, and therefore Daspin's, actions under the Consulting Agreement. Div. Ex. 480, Agostini Inv. Tr. at 64-65. The evidence will show that both Agostini and Lux were beholden to Daspin for financial support. Moreover, even though Lux was the ostensible CEO of WMMA, his contract required him to defer virtually all major decisions to Daspin's consulting companies. Further, as trustees for the majority of the Companies' stock, which was held by the Daspin family partnerships, the three board members were explicitly obligated by contract to act as fiduciaries for Joan Daspin.

In addition, Daspin arranged that only Agostini and Daspin's wife had signatory authority over the Companies checks, which insured that Daspin had control over how the money was spent. Not surprisingly, a large portion of the investors' monies were either paid to Daspin and his wife (directly or through MKMA and CBI) or made at the direction of Daspin.

As a condition of their employment, Daspin required Agostini and Lux to agree that the Companies' investment fundraising would be delegated to Daspin, pursuant to the Consulting Agreement. Agostini and Lux both deferred to Daspin regarding the final content of the Companies' offering memoranda and PPM. Agostini testified that he viewed himself as having no responsibility for reviewing these crucial documents, and claimed, improbably, that the responsibility for them rested with Nwogugu, a non-lawyer and a temporary, contract employee of the Companies. Div. Ex. 480, Agostini Inv. Tr. at 113-17. When asked if the board had to approve the PPMs before they were distributed to prospective investors, Agostini responded, "not to my recollection, I don't know if there was a board approval in place or not, I don't remember, I don't remember." Div. 480, Agostini Inv. Tr. at 117.

Lux testified, in substance, that at most he "skimmed" the PPMs, despite knowing that they contained unreasonable financial figures, and that he did not seek to correct those documents so that they would not be misleading to potential investors. Div. Ex. 483, Lux Inv. Tr. at 84-89. He understood the authority over the PPM's to be the responsibility of Daspin's consulting company. It is anticipated that Main will testify that he objected to the $82 million valuation but could not stop its inclusion in the January 2012 PPM; as he could not stop or affect many of Daspin's actions. Daspin also directly admonished Main that the PPM's were his responsibility, not Main's, when Main objected to certain content Daspin was inserting.

II. DASPIN SOLD UNREGISTERED SECURITIES

The evidence will show that Daspin offered and sold WMMA and WDI securities – common stock and convertible preferred stock of WMMA and WDI – to residents of the United States when there was no registration statement on file or in effect and without a valid claim to an exemption, and that he did so using the means of interstate commerce including email, *see, e.g.*, Div. Ex. 370 (email solicitation), wire transfers *see, e.g.*, Div. Ex. 173 (wire transfer of investment) and Skype in connection with the offer or sales of securities.

As set forth in Table 1, above, Daspin solicited multiple investments from each investor. He sold Main 1.3 units of WHLD, Div. Ex. 150; and sold the other six investors between .48 and 1.1 units of WMMA, *see* Div. Exs. 26, 27, 67, 67A, 331, 366, and 367, and between 1.2 and 1.755 units of WDI. *See* Div. Exs. 25, 28, 67B, 332, 367, and 386.[6]

It is undisputed that the WMMA and WDI offerings were securities offerings and that they were not registered with the Commission. Daspin already concedes "that the offerings of

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[6] Each WHLD and WMMA unit was valued at $250,000; each WDI unit was valued at $100,000. The evidence will show that based on Daspin's recommendation that they diversify their holdings, the employee-investors divided their investment between WMMA and WDI.

WMMA and WMMA Distribution securities were not registered with the Commission." Daspin Answer ¶¶ 6, 59; *see also* Div. Exs. 6-10 (Attestations by the Commission's Office of the Secretary of the non-registration of the Companies). The Companies claimed they were exempt from registration by filing several Notices of Exempt Offering of Securities ("Form D") with the Commission, claiming exemption under Rule 506 of Regulation D. *See* Div. Exs. 16, 19, 263 (WMMA); 15, 18, 264 (WDI); and 17 (WMMA USA). However, the evidence will show that the offerings did not qualify for an exemption under Rule 506 because the offers and sales were made through general solicitation.

Other than the initial investor, Douglas Main, who was Daspin's chiropractor, the remaining investors were cold-contacted, usually by email, and lured into communicating with the Companies under the false guise of an invitation to interview for an employment opportunity. Daspin collected resumes of individuals who had posted their resumes on employment websites such as **www.sixfigurejobs.com.** Joan Daspin reviewed the resumes, and provided Daspin with the candidates. Through his assistant Andrew Young, Daspin contacted the prospective employee-investors, asking such job-seekers if they would be interested in interviewing for executive-level positions (or, jobs with substantial-seeming titles and responsibilities) that carried with them annual salaries between $150,000 and $300,000, plus additional bonus potential. Prospective employee-investors interested in such positions were interviewed by Daspin by telephone or Skype.

Prospective investors typically did not learn that the advertised job opportunities were conditioned on the applicant's financial investment in the Companies until they were already sitting with Daspin for what they expected would be an in-person job interview. Upon initial contact with the prospective investors, neither Daspin nor the Companies had any relationship

with the investors. Similarly, neither Daspin nor the Companies knew about the potential investors' prior financial histories or investor profiles. Indeed, the evidence will show that none of the victims in this case had invested in any kind of private securities offerings prior to investing with WMMA. The evidence will also show that neither Daspin nor the Companies took any steps to equip the first-time private-offering investors with typical or basic financial information about the Companies, such as audited financial statements or balance sheets. And further, the evidence will show that neither Daspin, nor anybody else affiliated with the Companies, took sufficient steps to determine if they had a reasonable basis to believe the investors were accredited.

A number of victims are expected to testify that they were never informed during initial telephone calls that they would be required to make an investment, much less that a minimum $250,000 investment (the minimum investment unit set forth in the PPMs) was required in order for an applicant to be hired. After the unsuspecting job applicants were lured to the Companies' offices in suburban New Jersey for a "job interview," Daspin led the negotiations and solicited them to make these $250,000 investments in the Companies. Daspin advised investors how to draw on their retirement savings to fund their investments and would sometimes encourage the victims to invest larger amounts by tying their "salary" to the amount of money they invested. [7]

III. DASPIN RECEIVED TRANSACTION-BASED COMPENSATION FOR THE SALE OF SECURITIES

The evidence will show that Daspin received a transaction based fee for selling shares of the Companies to investors. The Nov. 2010 CBI Agreement (Div. Ex. 13), stated that CBI would receive a fee for "assisting WMMA and its Country Corporation affiliates in *targeting and*

[7] As noted above, the only "salary" the investors earned was through the buy-back of part investment through the "stock repurchase program."

negotiating with investor(s)." *Id.* at Exhibit A, Item (e) (emphasis added). A subsequent consulting agreement between CBI, WWH, WWMA, and AGCD, dated December 15, 2010, provided that CBI would give the Companies "[f]inancial advisory services pertaining to raising capital from third party investors" (the "Dec. 2010 CBI Agreement"). Div. Ex. 204.

The Dec. 2010 CBI Agreement, subsequently assigned to MKMA in January 2011 (Div. Ex. 205), entitled CBI to a commission that worked out to $37,500 for each employee investor it recruited, a minimum of $12,500 more than it earned for recruiting non-investing employees. Div. Ex. 13 at 1; Div. Ex. 204 at 1-2; Div. Ex. 205.

The evidence will also show that CBI and MKMA received commission payments tied to the investments made by the victims in this case consistent with the terms outlined above. *See, e.g.* a December 8, 2011 letter Daspin sent the WMMA Board of Directors, attaching an invoice laying out the commissions and fees paid and owed. Div. Ex. 206. In that invoice, Daspin identifies $37,500 in fees that were owed to MKMA as a result of the recruitment of certain cash investors and identifies the lower $25,000 fees that were owed to MKMA as a result of Daspin's hiring "sweat equity" employees. The Division will also introduce evidence showing that the majority of fees paid by the Companies to CBI and MKMA went directly to the Daspins. The Companies paid CBI at least $135,859.85, and Daspin was paid or directly withdrew that amount and more from CBI, which he and/or his wife owned. Div. Ex.495, Div. Ex. 498. Out of $253,201.63 paid by the Companies to MKMA, $235,522.10 – 93% of those funds – was paid either directly to Daspin (or his wife) or to CBI.[8] Div. Ex. 497. The Division will also present testimony further establishing that Daspin's commissions were related to negotiating the terms of

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[8] The evidence will show that $176,906.50 of MKMA's funds was paid directly to members of the Daspin family (Daspin or his wife) and $58,615.60 was paid to CBI. Div. Ex. 497.

victims' investments. The investor victims are expected to testify that Daspin took the leading role in negotiating their investments with the Companies, including instances when Daspin advised them to "diversify" their investments, putting half into WDI and half into WMMA (even though the he fate of two companies were inextricably linked). Documentary evidence will corroborate this testimony. For example, in one email from Daspin to a potential investor, Daspin writes: "Before I put together two scenarios I need to know the maximum amount of money you would invest ... the only way I can give you a comparison is if I know the amount of money you are willing to invest if the deal is structured right." Div. Ex. 34. Thus, the evidence will show that Daspin's Consulting Agreements explicitly contemplated that he would be compensated at the higher rate of $37,500 when he negotiated cash investments, that he was actually paid that rate, and that these payments were in return for soliciting and negotiating tailored cash investments in securities offered by the Companies. Finally, the evidence will show that neither MKMA nor CBI was registered with the Commission as a broker-dealer, and Daspin admits he was not associated with any other registered broker-dealer during the relevant time period. Daspin Answer, ¶ 62.

LEGAL ANALYSIS

I. STANDARD OF PROOF

To prove liability, the Division need do so only by a preponderance of the evidence. *See, e.g.*, *Steadman v. SEC*, 450 U.S. 91, 102–03 (1981). As explained below, the facts set forth above are more than sufficient to meet this standard.

II. DASPIN VIOLATED VARIOUS ANTIFRAUD PROVISIONS

A. Daspin Engaged in a Scheme to Defraud Investors in Violation of Sections 17(a)(1) and (a)(3) of the Securities Act and Section 10(b)and Rule 10b-5(a) and (c) of the Exchange Act

Section 17(a)(1) of the Securities Act makes it unlawful to employ any device, scheme, or artifice to defraud. Section 17(a)(3) of the Securities Act prohibits "engag[ing] in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser." A showing of scienter is required to establish a violation of Section 17(a)(1); negligence is sufficient under Sections 17(a)(3). *Aaron v. SEC,* 446 U.S. 680, 695-97 (1980).[9]

Section 10(b) of the Exchange Act and Rules 10b-5(a) and (c) thereunder similarly make it unlawful for any person, in connection with the purchase or sale of any securities, "to employ any device, scheme or artifice to defraud" or to "engage in any act, practice or course of business which operates or would operate as a fraud or deceit on any person." Moreover, as the Supreme Court recently held in *Lorenzo v. SEC*, No. 17-1077, slip op., 2019 WL 1369839 at * 6 (Mar. 27, 2019), a person can be held liable for violating Exchange Act Section 10b and Section 17(a)(1) of the Securities Act for disseminating false statements, even if he is not the maker of those statements.

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[9] Scienter is an "intent to deceive, manipulate, or defraud." *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 193 n. 12 (1976). It may be established through a showing of "extreme recklessness." *Rockies Fund, Inc. v. SEC*, 428 F.3d 1088, 1093 (D.C. Cir. 2005). The Courts of Appeals for the D.C. Circuit and the Third Circuit have held that the heightened showing of recklessness is satisfied by proof of an "extreme departure from the standards of ordinary care, . . . which presents a danger of misleading buyers or sellers that is either known to the defendant or is so obvious that the actor must have been aware of it.'" *Rockies Fund*, 428 F.3d at 1093 (quoting *SEC v. Steadman*, 967 F.2d 636, 641 (D.C. Cir. 1992)); *SEC v. Infinity Group Co.*, 212 F.3d 180, 192 (3d Cir. 2000).

As described above and as the evidence will show. Daspin devised a scheme to defraud investors by creating misleading stock ownership and consulting arrangements, to hide his family's ownership and control of the Companies and falsely suggest he was a mere consultant when in fact he exercised ownership and control over the Companies through a variety of means. He also devised the scheme to lure potential investors in through the false promises of high paying jobs, and was responsible for not only creating but disseminating the content of the materially false and misleading statements in the PPMs and other marketing materials that he used to solicit prospective investors to defraud them, and he did so knowingly or recklessly.

He devised, used and disseminated the following materially false and misleading representations and omissions in the PPMs, among others: (1) that Agostini, Lux, and Main were the Companies' directors and senior officers when in fact Daspin had substantial influence and control over all important decisions and actions; (2) that approximately 67% of the Companies' stock was held, collectively, by the directors "in trust," when the beneficiary of the trust was Joan Daspin and the trust was revocable at the Daspins' discretion; (3) omitted the fact that the Daspins effectively owned the overwhelming controlling interest in the Companies and that Daspin controlled virtually all major business functions of the Companies through the Consulting Agreements as well as his family's ownership interest; (4) that the IMC contract would enable the Companies to reach 25% of the allegedly two billion person potential worldwide mixed martial arts spectator market, when (i) no due diligence had been done and no testing conducted to assess the current validity of the contact information the database purportedly contained, or even to verify the existence of the database and (ii) the database's effectiveness was dependent on the Companies having an operational website which did not exist; (5) that the IMC email database was worth $82 million to the Company when Daspin fabricated that valuation using an

entirely unreasonable methodology based on untested assumptions; and (6) in the January 2012 PPM, that the Companies had over $33 million cash on hand, as "current assets," when in fact they never had anywhere near that amount.

Daspin also made oral misrepresentations to investors including that he served only as a "consultant" to the Companies; that the Companies were well-funded; that everyone working at the Companies was an investor and had financial "skin in the game;" that the Companies had run profitable events in the past; and that a car company sometimes falsely referred to as "Ford" had committed $20 million to the Companies. In addition, he devised and used an alias to lure investors in and prevent them from learning about his bankruptcy fraud conviction and history of failed ventures until they were ready to invest.

These misrepresentations were material because there is a substantial likelihood that a reasonable investor would consider the true facts about the Companies' financial condition, the IMC contract that was central to the Companies' business plan, and Daspin's de facto ownership and control and substantial influence at the Companies and his checkered past important in deciding how to invest. *See e.g., In the Matter of Natural Blue Resources, Inc.*, A.P. File No. 3-15974, S.E.C. Release No. 10598 (December 21, 2018), 2018 WL 6722727 (Respondents violated Sections 17(a)(1) and (a)(3) of the Securities Act by posing as consultants and concealing their true roles as de facto officers of a company). There is also ample evidence as discussed above that Daspin acted intentionally in devising this scheme to defraud and creating and disseminating these misrepresentations and omissions of material fact in furtherance of his scheme to defraud.

B. Daspin Violated Section 17(a)(2) of the Securities Act

Section 17(a)(2) of the Securities Act prohibits "obtain[ing] money or property by means of any untrue statement of a material fact or any material omission." A showing of scienter is

not required under this provision; a showing of negligence will suffice. *Aaron v. SEC*, 446 U.S. 680, 697 (1980). Unlike Rule 10b-5, liability under Section 17(a)(2) is not contingent on whether one has "made" a false statement. Instead, liability turns on whether one has obtained money or property "by means of" an untrue statement. *See, SEC v. Tambone*, 597 F.3d 436, 444 (1st Cir. 2010) (en banc) ("[S]ection 17(a)(2) may be fairly read to cover the 'use' of an untrue statement to obtain money or property....") (citation omitted); *SEC v. Farmer*, 2015 WL 5838867, *7 (S.D. Tex. Oct. 7, 2015)("A defendant 'may be held liable under 17(a)(2), though not under 10b-5, if he obtains money or property *by use* of a false statement, whether prepared by himself or by another.'") (quoting *SEC v. Stoker*, 865 F. Supp. 2d 457, 465 (S.D.N.Y. 2012) (and collecting cases).

From December 2010 through approximately June 2012, Daspin raised a total of $2.47 million from seven investors in WMMA and WMMA Distribution through the use of the false and misleading PPMs and other oral misrepresentations he made directly to investors. Daspin was paid commissions and consulting fees funded by the investments he solicited by means of the materially misleading statements and omissions of material facts he made orally to prospective investors and by means of materially misleading statements and omissions of material facts in the PPMs and other written materials that he provided, and caused to be provided, to prospective investors. As discussed above, he did so knowingly or at least recklessly. Accordingly, Daspin violated Section 17(a)(2).

C. Daspin Violated Rule 10b and Section 10b-5(b) of the Exchange Act

A violation of Exchange Act Section 10b and Rule 10b-5(b) occurs when a person, directly or indirectly, (1) makes a material misstatement or omission of material fact (2) with scienter (3) in connection with the purchase or sale of securities (4) by means of interstate commerce or the mails. In *Janus Capital Group, Inc. v. First Derivative Traders*, 131 S. Ct.

2296 (2011), the Supreme Court held that an individual must be the "maker" of the statement to be held liable under this provision and explained that "the maker of a statement is the person or entity with ultimate authority over the statement, including its content and whether and how to communicate it." *Id.* at 2302. Here, Daspin was obviously the maker of the oral misrepresentations and omissions of materials fact he made directly to various investors. Moreover, the evidence will show that Daspin was the maker of false statements and omissions of materials fact contained in the PPMS and other marketing materials. Daspin was, in his own words, the "architect" of the PPMS and had ultimate control over their content and whether and how to communicate them. For example, he was primarily responsible for raising money through the PPMS. He was heavily involved in overseeing and drafting their contents, finalizing them and distributing them. Through his family ownership of the Companies, his dominance over the day-to-day operations of the Companies, the board of directors contractual obligations to act as fiduciaries for Daspin's wife, and their inexperience and inability to oversee and control Daspin's actions, Daspin had the ultimate control over the content and dissemination of the PPMs and other marketing materials and is liable under Section 10b and Rule 10b-5(b) as a result of the material misrepresentations and omissions he caused to be contained therein, including, for example, his $82 million valuation of the IMC contract specifically attributed to MKMA in the PPM.

III. DASPIN VIOLATED SECTION 20(b) OF THE EXCHANGE ACT

Section 20(b) is directed at persons who use another individual or entity – in effect, a surrogate – to violate the law. Unlike the controlling person and aiding and abetting provisions of the Exchange Act, Section 20(b) does not premise liability on the existence of an underlying violation by someone else. Accordingly, to establish a violation of Section 20(b), the Division will show that Daspin (i) acted through or used another person (in this case, the Companies and

their officers, directors and employees) to execute at least some of the actions forming the basis of the substantive violation, and (ii) acted with the state of mind necessary to establish the substantive violation. The plain language of the statute requires nothing more.

Here the evidence will show that, in violation of Section 20(b), Daspin knowingly or recklessly, acting through the Companies and their officers, directors and employees, violated Exchange Act Section 10(b) and Rule 10b-5(b). Daspin acted through or by means of the Companies and their directors to make material misstatements and omissions of material fact in connection with the purchase or sale of securities as described above

IV. DASPIN VIOLATED SECTION 5 OF THE SECURITIES ACT

A. Division Makes Prima Facie Showing of Section 5 Violation

Section 5(a) of the Securities Act prohibits the sale of securities in interstate commerce unless a registration statement is in effect or an exemption from the registration requirements applies. Section 5(c) of the Securities Act makes it unlawful to offer to sell securities, through the use or medium of a prospectus or otherwise, unless a registration statement is on file or an exemption applies. A *prima facie* Section 5 violation requires proof of three elements: first, that no registration statement was filed or in effect for the securities; second, that the respondent sold or offered to sell the securities; and third, that there was a use of interstate means in connection with the offer or sale. *See SEC v. Cavanagh*, 1 F. Supp. 2d 337, 361 (S.D.N.Y. 1998), *aff'd*, 155 F.3d 129 (2d Cir. 1998). Once the Division establishes a *prima facie* violation, a respondent bears the burden of proving that an exemption applies. *See SEC v. Ralston Purina*, 346 U.S. 119, 126 (1953). A Section 5 violation does not require a showing of scienter. *See SEC v. Universal Major Indus.*, 546 F.2d 1044, 1047 (2d Cir. 1976).

As detailed above, there is no dispute that Daspin engaged in the offer and sale of securities for which no registration statement was filed. Additionally the extensive telephone

calls, electronic communications and wire transfers with out-of-state investors satisfies the requirement for the use of interstate means of commerce in connection with the offer or sale of securities.

Therefore, Daspin bears the burden of proving that an exemption to Section 5 applies to the WMMA offerings. He cannot meet that burden.

B. No Section 5 Exemption Applies

According to the PPMs, both of the offerings were allegedly exempt from registration under Section 5 pursuant to Rule 506 of Regulation D ("Rule 506") and Section 4(2) of the Securities Act. Rule 506 provides a safe harbor exemption for certain limited offerings of securities. *See* Rule 506(a) (offerings that satisfy the conditions of either Rule 506(b) or (c) "shall be deemed to be transactions not involving any public offering within the meaning of Section 4(a)(2) of the Act.").

Daspin cannot invoke Rule 506(b) for either offering because the securities were offered and sold through prohibited general solicitations. *See* Rule 506(b)(1) (limiting Rule 506(b) to offers and sales of securities that comply with Rules 501 and 502, including the Rule 502(c) requirement that "*neither the issuer, nor any person acting on its behalf shall offer or sell the securities by any form of general solicitation*") (emphasis added).

As described above, the evidence will show that Daspin used cold-call job solicitations as a ruse to make his investment pitch. Daspin did not hire a single person to an executive level job that paid a salary of $150,000 or $300,000. Instead, Daspin solicited substantial investments from job-seeking professionals, advised them to access their retirement savings to fund such investments, and then persuaded them to accept minimal re-payments of their own investments as part of a so-called "stock repurchase program." In other words, no investment, no "salary." Indeed, Daspin knew, based on the financial condition of the Companies, that he was not in a

position to offer $150,000 to $300,000 salaries to those he solicited. In addition, the evidence will show that there was no compelling need to hire any of the investors for the specific job titles that Daspin gave to them. Rather, Daspin merely tailored titles to the apparent professional backgrounds presented to them, as Daspin was recruiting them solely for their financial investments. *See SEC v. Credit First Fund, LP*, 05-cv-8741, 2006 WL 4729240, at *3 (C.D.Cal. Feb. 13, 2006) ("investors were initially cold-called ... [and issuer] obtained general information about the investor in order to establish a relationship.").

It is anticipated that a number of investors will testify that they only invested because Daspin told them it was required in order to obtain a position there. *See SEC v. Freeman*, 77-cv-2319, 1978 WL 1068 (N.D. Ill. Mar. 3, 1978) (just like Daspin, defendants engaged in general solicitation by contacting investors for employment opportunity, and later requiring investments); *see also Credit First Fund*, 2006 WL 4729240, at *12 (finding cold calls before an investment to be general solicitations because "it is important that there be sufficient time between establishment of the relationship and an offer").[10]

C. Section 4(a)(2) of the Securities Act Does Not Apply

Daspin also cannot defend his general solicitation based on the provisions of Section 4(a)(2) of the Securities Act, which permit registered offerings involving "transactions by an issuer ***not*** *involving any public offering*" (emphasis added). Courts have cited the following factors to determine whether an offering is public: (1) the number of offerees; (2) the sophistication of the offerees; (3) the size and manner of the offering; and (4) the relationship of the offerees to the issuer. *SEC v. Murphy*, 626 F.2d 633, 644 (9th Cir. 1980); *Doran v.*

[10] Finally, even assuming, *arguendo*, that Daspin did not engage in a general solicitation of the investors, which he clearly did, he will still not be able to invoke the Rule 506 exemption because none of the investors, including unaccredited investors, were provided audited financials or audited balance sheets as required by Rule 502(b)(3) to invoke the Rule 506(b)(2)(ii) exemption that allows up to 35 unaccredited investors.

Petroleum Mgmt. Corp., 545 F.2d 893, 900 (5th Cir. 1977). The "critical question in determining whether an offering is public is ... whether the persons to whom the offering is made are in such a position with respect to the issuer that they either actually have such information as a registration would have disclosed, or have access to such information." *SEC v. Empire Dev. Group*, 07 civ. 3896, 2008 WL 2276629. at *9 (S.D.N.Y. May 30, 2008) (quoting *Gilligan, Will & Co. v. SEC*, 267 F.2d 461 (2d Cir. 1959)).

Applying the first factor, the number of offerees, the WMMA offering clearly was public. By Daspin's own admission, he solicited "over 250 Human Resources applicant(s) ... [of which] approximately 40 became Joint Venture Operating Partner(s) ... [and] approximately 8 invested." Div. Ex. 194. As described above, none of the WMMA investors had experience investing in private stock offerings, and three were unaccredited investors. Daspin's general solicitation of investors gave him no basis to assess the offerees' sophistication, but even if Daspin chanced upon a pool of the most sophisticated investors, "[s]ophistication is not a substitute for access to the information that registration would disclose." *SEC v. Kenton Capital Ltd.*, 69 F. Supp. 2d 1, 11 (D.D.C. 1998) (quoting *Doran*, 545 F2d at 902-03). None of Daspin's investors had access to the kind of information that a registration statement would have provided. The size of the offerings, which were conducted in a general solicitation, and the fact that all but one of the investors had no relationship to Daspin before investing, further establish that the Section 4(a)(2) exemption to registration is not available. As the evidence will show, this was exactly the kind of offering that registration requirements exist to prevent.

V. DASPIN VIOLATED SECTION 15(a) OF THE EXCHANGE ACT

Section 15(a)(1) of the Exchange Act prohibits a broker or dealer from effecting any transaction in, or inducing or attempting to induce the purchase or sale of, any security by making use of the mails or any means or instrumentality of interstate commerce, unless such

broker-dealer: (1) is registered with the Commission in accordance with Section 15(b) of the Exchange Act; (2) in the case of a natural person, is associated with a registered broker-dealer; or (3) satisfies the conditions of an exemption or safe harbor. Section 3(a)(4)(A) of the Exchange Act defines a broker as any person "engaged in the business of effecting transactions in securities for the account of others." In determining whether a defendant falls within the Exchange Act definition of a broker, courts consider whether the defendant's conduct "may be characterized by a 'certain regularity of participation in securities transactions at key points in the chain of distribution.'" *SEC v. Benger*, 697 F. Supp. 2d 932, 944-45 (N.D. Ill. 2010) (citing *SEC v. Martino*, 255 F. Supp. 2d 268, 283 (S.D.N.Y. 2003)). Factors indicating a person is acting as a broker include whether that person: (1) receives commissions as opposed to salary; (2) is involved in negotiations between the issuer and the investor; (3) makes valuations as to the merits of the investment or gives advice; and (4) is an active rather than passive finder of investors. *Benger*, 697 F. Supp. 2d at 944-45 (citing *SEC v. Hansen*, 83-cv-3692, 1984 WL 2413, at *10 (S.D.N.Y. Apr. 6, 1984)). Scienter is not required to prove a violation of Section 15(a). *SEC v. Nat'l Exec. Planners, Ltd.*, 503 F. Supp. 1066, 1073 (M.D.N.C. 1980).

The evidence will show that Daspin meets the hallmark requirements: Daspin received commissions, negotiated all investments, and actively found the investors. *See SEC v. Gagnon*, No. 10 Civ. 11891, 2012 WL 994892, at *11 (E.D. Mich. Mar. 22, 2012) (defendant who "act[ed] as the link between the issuer and the investor" was a broker); *SEC v. George*, 426 F.3d 786, 797 (6th Cir. 2005) (defendant was a broker because he "was regularly involved in communications with and recruitment of investors for the purchase of securities"). Daspin does not qualify for any exemptions or safe harbors from the broker-dealer registration requirements. The securities sales were not exclusively intrastate or restricted to "exempted securities" as

defined in Section 3(a)(12)(A) of the Exchange Act. Also, the safe harbor provided by Rule 3a4-1 of the Exchange Act for associated persons of an issuer is not available, as the [Respondent(s)] were compensated in connection with their participation in the relevant securities transactions "by the payment of commissions or other remuneration based either directly or indirectly on transactions in securities." 17 C.F.R. § 240.3a4-1(a).

VI. THE COURT SHOULD IMPOSE MEANINGFUL REMEDIES

A. The Court Should Order Daspin to Cease and Desist

Section 8(A) of the Securities Act and Section 21C of the Exchange Act authorize the imposition of a cease-and-desist order on any person who has violated any provision of the Securities Act, Exchange Act, or the rules and regulations thereunder. 15 U.S.C. §§ 77h-1, 78u-3. In determining whether a cease-and-desist order is appropriate in the public interest, the Commission considers the following factors, often called the "*Steadman factors*": (1) the egregiousness of the violator's actions, (2) the isolated or recurrent nature of the violations, (3) the degree of scienter, (4) the sincerity of the violator's assurances against future conduct, (5) the violator's recognition of his wrongful conduct, and (6) the likelihood that the violator's occupation will present opportunities to commit future violations. *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979).

The Division's evidence will show that these factors warrant a cease-and-desist order. Daspin's actions were egregious and committed with a high degree of scienter. Daspin has failed to recognize his unlawful conduct; and the harm to investors – who collectively lost hundreds of thousands of dollars from Daspin's fraud – was significant. A cease-and-desist order is therefore necessary, appropriate, and in the public interest to prevent Daspin from future violations of the securities laws.

B. The Court Should Order Daspin To Disgorge All Ill-Gotten Gains and Pay Civil Penalties.

The Division will ask the Court to order Daspin to disgorge his ill-gotten gains, plus prejudgment interest pursuant to Section 8A(e) of the Securities Act and Section 21C(e) of the Exchange Act. It will also ask the Court to impose third-tier civil penalties on Daspin pursuant to Section 8A of the Securities Act and Section 21B of the Exchange Act, 15 U.S.C.S. § 78u(b), which authorize civil monetary penalties, based on the severity of Daspin's fraudulent, willful conduct and the substantial losses he caused investors to incur, as described above.

C. The Court Should Grant an Industry Bar Against Daspin

Finally, for all the foregoing reasons, after applying the *Steadman* factors, the record here will establish that it is in the public interest to impose an industry-wide bar on Daspin that encompasses a bar from association with any investment adviser and all collateral bars from association with a broker, dealer, municipal securities dealer, municipal advisor, transfer agent or NRSRO. 15 U.S.C. § 78o(b)(6).[11]

CONCLUSION

For all the foregoing reasons, the Division will ask the Court to find Daspin liable for all of the violations set forth in the OIP and impose the sanctions set forth above, as well as such other and further relief as the Court deems appropriate.

Dated: April 5, 2019
New York, New York

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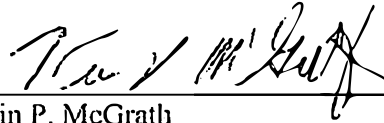
[11] A collateral bar under the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") would not be retroactive. *See* 15 U.S.C. § 78o(b)(6)(A); Pub. L. No. 111-203, 124 Stat. 1376 (2010). Daspin's fraud continued into 2012, well after the effective date of the relevant Dodd-Frank Act provisions.

Respectfully submitted,



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