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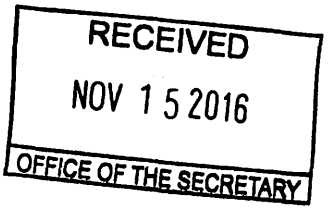

Matter of

A.P. No. 3-16594

EQUITY TRUST COMPANY

RESPONDENT'S REPLY BRIEF

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The Division would lead the Commission into error. To withstand appellate scrutiny, findings must be "supported by substantial evidence," meaning evidence that "a reasonable mind might accept as adequate to support a conclusion," while "tak[ing] into account whatever in the record fairly detracts from its weight." *Flannery v. SEC*, 810 F.3d 1, 8-9 (1st Cir. 2015) (ALJ is "impartial, experienced examiner who has observed the witnesses and lived with the case").

With a 2,000-word limit for this reply, ETC will focus on showing that key arguments in the Division's October 31st Reply ("Div.-Reply") are not supported by substantial evidence. ETC will cite and otherwise rely on its October 17th Opening Brief ("ETC-Br."), which contains the relevant record citations.

(1) No "Actual Knowledge." The Division says that "the ALJ erred by requiring" proof of "actual knowledge of the fraud," when "only evidence of negligent conduct is required." (Div.-Reply-p.2) But the ALJ did apply a negligence standard. The ALJ said: "A negligence standard is applied to determine whether the Respondent 'knew or should have known' that its acts or omissions 'would contribute to [Taylor's or Poulson's] violation.'" (I.D.-p.33)

The Division also says that ETC "does not dispute" it had "actual knowledge" that Taylor and Poulson were violating the securities laws. (Div.-Reply-p.3) To the contrary, in every filing since the OIP, ETC has consistently disputed having such knowledge. (*e.g.* ETC-Br.-pp.8-20)

(2) No "Endorsement" of Taylor. The Division says that ETC's "endorsement, promotion, and recommendation of Taylor and Poulson plainly crossed the line." (Div.-Reply-pp.4-5) As to Taylor, the Division relies on the following events, which do not provide "substantial evidence" that ETC endorsed Taylor:

- ETC gave customer information to Taylor. (Div.-Reply-p.10) The information was for customers who had already determined to invest with Taylor, was given only where Taylor staff already had the customer's PIN number, related to transfer of their funds as

directed, and was consistent with industry practice and ETC's forms and policies. (ETC-Br.-p.11)

- ETC employee Batt provided "in-person training" for Taylor staff. (Div.-Reply-p.10) Batt gave educational training on SDIRAs only, using "generic slides," and without providing any instruction on ETC's forms. This was the only time anybody from ETC ever visited Taylor's offices, and Taylor neither arranged nor was present for this visit. (ETC-Br.-pp.11-12)

- Batt attended a Taylor event at New Birth Church. (Div.-Reply-pp.10-11) This was the only time anybody from ETC ever personally met Taylor or attended any of his hundreds of events. The church's Bishop enthusiastically endorsed Taylor throughout a full week of events at the church. Batt attended only one general session, at which Taylor did not sell investments, where during a 2-1/2 hour oration Taylor spent one minute pointing out Batt in the audience as his "banker" and "financial professional" at ETC. Taylor then confusingly described ETC as a place "where people who move a certain amount of money, you know, kind of have to put their stuff at – for thinking of things." Out in the audience, Batt had no microphone and uttered not a single word during that session. (ETC-Br.-pp.12-14)

- Batt made unspecified "glowing" comments about Taylor to Ronald Jones. (Div.-Reply-pp.10-11) Jones (an MBA, business owner and science teacher) invested based on his own Bishop's endorsement and his own meetings with Taylor and his staff. Jones had never before heard of ETC, spoke with Batt merely about how SDIRAs worked, and understood (whatever Batt said of Taylor) that ETC "wasn't endorsing the investment." Two other New Birth congregants, Turner and Wells, testified only that ETC did not say that it was not endorsing Taylor. (ETC-Br.-pp.24-25)

- Batt participated in a conference call with Anita Dorio. (Div.-Reply-p.12) This call occurred only after Dorio had already (i) had months of meetings and calls with Taylor's staff (without any participation by ETC), (ii) placed a sell order with her financial advisor (AIG) to transfer her funds to Taylor, (iii) emailed Taylor's deputy that "nothing else will hinder or delay" her Taylor investment, and (iv) given Taylor's deputy her AIG username and password to speed transfer of her funds. At this point, Taylor testified, Dorio's investment was already "a done deal." Like Turner and Wells above, all Dorio would say about ETC was that ETC did not say that it was not recommending Taylor. Dorio previously dealt with three other SDIRA custodians and understood their limited role. (ETC-Br.-pp.21-23)

- Batt told Lawrence Hill that Taylor had a "good company" that was then offering 10% returns. (Div.-Reply-p.12) Hill invested in 2008, after Taylor spent a week at Hill's church, where the pastor endorsed Taylor. Hill's only conversation with ETC was his

one minute phone call to Batt. Hill testified ETC "wasn't endorsing the investment," and would not say ETC gave "an okay" on Taylor. (ETC-Br.-p.23)

(3) No "Endorsement" of Poulson. As to Poulson, the Division relies on the following events, which likewise do not provide "substantial evidence" that ETC endorsed Poulson:

- Two ETC employees attended a Poulson event. (Div.-Reply-p.13) This was an educational seminar – with attendees paying $2,000 tuition for training – and it was the only time anybody from ETC ever personally met Poulson or attended any of his many events. One ETC employee spoke for a couple of minutes about how "neat" it was to use IRAs for investments, and then joined the row of other vendors with tables in the lobby. The other ETC employee gave his stock educational presentation and sold his educational CDs on SDIRAs. (ETC-Br.-pp.18-19)

- Glenn Savary invested "after he attended" this Poulson event. (Div.-Reply-p.13) Savary, a chemical engineer, attended the event but testified he "wasn't paying attention" during ETC's "mini-presentation" because he didn't then want an SDIRA. Savary then loaned money to Poulson without using an SDIRA. When Poulson's repayment check then bounced, Savary simply extended the loan. It was only for a second loan to Poulson the following year that Savary used his spouse's SDIRA. (ETC-Br.-pp.27-28)

- Joseph Gatto supposedly invested only after hearing one of the ETC employees at this Poulson event give a "glowing recommendation" of Poulson. (Div.-Reply-p.13) Gatto, an aerospace engineer, had already loaned money to Poulson without an SDIRA more than a year before the Poulson event, and then made additional SDIRA loans to Poulson also before the event. Gatto's phone call to ETC before the event simply led him to prefer ETC over a competing SDIRA provider. In subsequently attending a portion of the Poulson event, Gatto actually missed ETC's presentation. (ETC-Br.pp.26-27)

- ETC and Poulson agreed "to sponsor each other's events." (Div.-Reply-p.12) Poulson asked a list of vendors of real estate-related services, including ETC, to pay $600 to sponsor (advertise at) Poulson educational events with "absolutely NO sales agenda." ETC agreed if Poulson would sponsor an ETC event, but neither ultimately did sponsor the other's events. (ETC-Br.-p.19)

(4) No "Endorsements" of Anybody. The ALJ recognized that ETC's DOI (direction of investment) form that accompanied every investment "emphasized with a bold face warning immediately preceding" the customer's signature line that ETC "does not offer any investment advice, nor does it endorse any investment"; that ETC has not "recommended any investment"; that the customer "alone" is "responsible for the selection, due diligence, management, review and retention of" investments; and that ETC "is not a 'fiduciary' for [the customer's] account." (I.D.-p.6)

(5) No Red Flags That Taylor Was a "Crook." The Division says that ETC "failed to respond to red flags" when one ETC employee heard one person call Taylor a "crook." (Div.-Reply-p.9) The ALJ found that this was "sketchy second-hand information" and "not memorable so as to constitute red flags." (I.D.-p.10) And what ETC observed gave it strong indications that Taylor was certainly not a "crook":

- The Democratic Party promoted Taylor as a speaker on "socially conscious investment" at its 2008 presidential convention. Major television and print media outlets repeatedly lionized Taylor to national audiences. Taylor's book was listed on the WSJ best-seller list twice. Dozens of church leaders endorsed Taylor and offered their pulpits for him to preach his self-styled "Let's Make Money Together!" gospel. The National Conference on Volunteering, headlined by the First Lady in 2009, featured Taylor with the eBay and KPMG CEOs on "Business Leaders for Change." (ETC-Br.-pp.8-9)

- Independent professionals closest to Taylor continued to vouch for him: (i) PCAOB-registered accountant Linda Keeton-Cardno, who prepared his EDGAR filings. (ii) CPA firm Spector Wong that independently audited him. (iii) Attorney Robert Bovarnick, who was his "outside general counsel." (iv) His longtime outside publicist Raoul Davis, whose new spouse invested, using a different SDIRA custodian well after ETC was out of the picture. (ETC-Br.-pp.10-11, 16-17)

(6) Taylor's "Secured by Company" Notes. The Division says that ETC "failed to respond to red flags" when some Taylor notes said they were "secured by company." (Div.-Reply-p.9) Customers testified that they understood this to mean that Taylor's company would stand behind the notes, which Taylor did not dispute. ETC initially recorded these notes as "secured," as indicated in the notes, but in a later review changed their notation to "unsecured" because only the company was securing the notes. ETC advised customers of the changed notation in their quarterly statements. (ETC-Br.-p.15)

(7) Missing Customer Documentation. The Division says that ETC "failed to respond to red flags" when it lacked full documentation of customers' investments. (Div.-Reply-p.9) SDIRA industry practice, confirmed in ETC's agreements, is that the customer obtains investment documentation and sends it to the custodian. With 130,000 customers in 50 states with a wide variety of asset types, ETC has to conform to industry practice in relying on customers to obtain documentation (*e.g.* DOI form, §12, where customer agrees to be responsible to assure documentation provided). Where documentation was missing, ETC gave conspicuous reminders to customers in their quarterly statements. Where a review of a particular investment held by a number of customers showed a pattern of missing documentation, ETC pressed to get it and, if not forthcoming, could cease taking on new investments with that issuer, as it did with Poulson. (ETC-Br.-pp.5-7, 19-20)

(8) Duties of SDIRA Custodians. "Substantial evidence" supports a conclusion that ETC satisfied its duties as an SDIRA custodian. The ALJ correctly rejected as "made up of

whole cloth" (I.D.-p.34) the Division's proposed standard, which was based only on a report by a Pennsylvania lawyer whose accompanying credentials show on their face no experience at all with SDIRAs. (ETC-Br.-pp.1-2) The ALJ correctly observed that ETC disputed the Division's proposed standard in ETC's expert report and rebuttal report. (I.D.-p.28 & n.32; ETC-Br.-pp.2-3) The ALJ agreed with ETC that the "most convincing statement" of SDIRA custodians' duties was to be found in SEC, NASAA and judicial pronouncements that consistently recognize their limited role. (I.D.-pp.33-35; ETC-Br.-pp.3-5) And even the Division's expert agreed that such duties can be modified by agreement, as ETC did here. (ETC-Br.-pp.5-8)

(9) Not a Cause of Misconduct or Violation. The Division says that causing "misconduct" differs from causing "violations." (Div.-Reply-p.18) ETC caused neither. (ETC-Br.-pp.20-29) If anyone was a "cause" of the misconduct or violations here, it was not ETC. ETC was a single SDIRA custodian for a few dozen accounts, among other SDIRA custodians used by Taylor and Poulson during the relevant period. ETC's limited SDIRA-provider role contrasted sharply with the substantial support provided by accountants, lawyers, publicists, hosting clergy and universities, national television and print media, and real estate groups that actively promoted Taylor and Poulson to scores of investors, including many not using SDIRAs, as fully discussed in our Opening Brief.

CONCLUSION

The ALJ's decision should be affirmed. This proceeding should be dismissed.

Dated: November 14, 2016

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Certificate of Compliance

The undersigned certifies that this brief contains 2,000 words, based on the word-count function of the Microsoft Word software used to prepare the brief.

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CERTIFICATE OF SERVICE AND FILING

I certify that on November 14, 2016, I caused the foregoing Respondent's Reply Brief to be filed with the Office of the Secretary of the Commission via facsimile at (202) 772-9324, and to alj@sec.gov via email, and served copies on the following persons:

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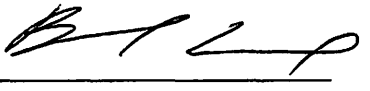

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