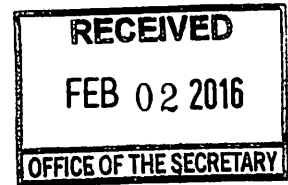


UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION



ADMINISTRATIVE PROCEEDING  
File No. 3-16594

In the Matter of

EQUITY TRUST  
COMPANY,

Respondent.

PROPOSED FINDING OF FACT  
AND CONCLUSIONS OF LAW  
OF THE DIVISION OF ENFORCEMENT

DIVISION OF ENFORCEMENT  
David Stoelting (212.336.0174)  
Andrew Dean (212.336.1314)  
Luke Fitzgerald (212.336.0069)  
Securities and Exchange  
Commission  
200 Vesey Street, Suite 400  
New York, NY 10281-1022  
212.336.1323 (fax)

January 28, 2016  
(as corrected per Division letter dated February 1, 2016)

## TABLE OF CONTENTS

	<b>Page</b>
TABLE OF AUTHORITIES .....	xi
PRELIMINARY STATEMENT .....	1
PROPOSED FINDINGS OF FACT .....	6
I.    EQUITY TRUST COMPANY .....	6
A. Structure and Ownership.....	6
B. The Desiches Owned and Controlled Mid-Ohio Securities, Which Transferred Its IRA Business to Equity Trust in 2003 .....	6
II.   OVERVIEW OF INDIVIDUAL RETIREMENT ACCOUNTS AND CUSTODIAN STANDARDS.....	7
III.  THE STANDARD OF CARE APPLICABLE TO IRA CUSTODIANS .....	9
A. Expert Report of William Ries .....	9
B. The IRA Custodian’s Standard of Care .....	11
1. The Custodian Must Take Possession of the Customer’s Asset, Including All Documentation.....	12
2. The Custodian Must Periodically Review the Customer’s Asset and Weigh Risk .....	16
3. The Custodian Must Not Promote or Endorse Any Issuer or Investment .....	17
4. The Custodian Must Act Consistently with the Written Customer Agreements .....	18
5. The IRA Custodian Must Avoid Conflicts of Interest.....	19
6. The IRA Custodian Should Maintain the Privacy of Customer Account Information .....	20
7. An IRA Custodian Must Adopt Adequate Policies and Procedures.....	21
8. An IRA Custodian Should Act for the Exclusive Benefit of the Customer.....	21

	Page
C. Equity Trust Did Not Act Consistently with the Standard of Care.....	22
IV. EQUITY TRUST KNEW THAT ISSUERS USED IT TO FACILITATE FRAUDULENT SCHEMES .....	23
V. THE NON-TRADITIONAL INVESTMENTS THAT EQUITY TRUST ENCOURAGED INVESTORS TO HOLD IN THEIR RETIREMENT ACCOUNTS WERE INHERENTLY RISKY INVESTMENTS .....	24
VI. VIOLATIONS OF THE SECURITIES LAWS BY EPHREN TAYLOR AND CITY CAPITAL.....	25
A. Equity Trust Customers Invested Retirement Funds with Taylor/City Capital.....	25
B. Taylor’s and City Capital’s Violations .....	25
C. Criminal and Civil Actions Against Taylor and City Capital.....	28
VII. VIOLATIONS OF THE SECURITIES LAWS BY RANDY POULSON .....	30
A. Equity Trust Customers Invested Retirement Funds with Poulson .....	30
B. Poulson’s Violations .....	30
C. The Criminal Case Against Poulson.....	32
VIII. TAYLOR AND POULSON EMPHASIZED EQUITY TRUST AND SELF- DIRECTED IRAs WHEN MARKETING AND PROMOTING THEIR FRAUDULENT SCHEMES .....	33
A. Self-Directed IRAs and Equity Trust Were Central to Taylor’s Scheme.....	33
1. Taylor’s Websites IRACashflow.com and RolloverIRAGuide.com Promoted Investing Through Self-Directed IRAs.....	34
2. City Capital’s Whitepaper, <i>Double Your Return on Investment Tax Free</i> , Emphasized Its Relationship With Equity Trust.....	35
3. Taylor Touted His Relationship With Equity Trust in the Press .....	36

	<b>Page</b>
4. Taylor Used Marketing Materials Provided by Equity Trust To “Close” Skeptical Investors .....	37
5. Taylor Emphasized City Capital’s Presence on Equity Trust’s Website to Promote His Promissory Note Scheme .....	37
6. At New Birth Church, Taylor Made False Statements About Equity Trust to Lend Credibility to His Scheme .....	38
7. Senior Equity Trust Management Were Aware that Taylor Emphasized Self-Directed IRAs to Investors .....	38
B. Poulson Emphasized Equity Trust to Promote His Investment Scheme .....	39
1. Poulson Established a Relationship with Equity Trust Early in His Scheme .....	39
2. Poulson Used Equity Trust to Market His Promissory Notes .....	39
3. Investors Testified that Self-Directed IRAs and Equity Trust were Central to Poulson’s Promissory Note Scheme .....	40
4. Senior Equity Trust Management Were Aware that Poulson Emphasized Self-Directed IRAs and Equity Trust to Investors .....	41
IX. EQUITY TRUST SALES REPRESENTATIVES WERE MOTIVATED TO DEVELOP RELATIONSHIPS WITH INVESTMENT SPONSORS LIKE TAYLOR AND POULSON .....	42
A. Sales Representatives Were Financially Motivated to Open Accounts and Were Evaluated Based on Their Ability to Open Accounts .....	42
B. Equity Trust Senior Management and Marketing Focused on Investment Sponsors to Develop New Accounts .....	44
X. EQUITY TRUST PROMOTED, ENDORSED AND CATERED TO TAYLOR .....	46
A. In 2008, Taylor Chose Equity Trust as a New Custodian Because It Could Process Investments Rapidly .....	46
B. In October 2008, Edwin Kelly Told J. Desich and Dea That Taylor Was “A Crook” .....	47
C. Batt Routinely Disclosed Confidential Account Information to City Capital .....	48



	<b>Page</b>
D. Batt Had a Critical Role in [REDACTED] Dorio’s \$1.3 million in Retirement Funds to Taylor.....	50
E. Batt Understood His Success Was Intertwined with City Capital’s Success .....	50
F. Batt Played an Active Role In City Capital’s Sales Process.....	51
G. Batt Trained City Capital Employees in Self-Directed IRAs .....	53
H. Batt’s October 2009 Appearance at New Birth Church.....	54
I. Equity Trust Created a Landing Page for City Capital on its Website .....	57
J. Equity Trust Disregarded Negative Information Regarding Taylor .....	58
K. In September 2009, Equity Trust Began a Secondary Review.....	60
L. In October 2009, Equity Trust’s Compliance Director Determined that Equity Trust Had “Incorrectly” Labelled the Taylor Notes as Secured and Was “Very Concerned” .....	62
M. Equity Trust Unilaterally Changed the Designations on Customer Statements From “Secured” to “Unsecured” .....	63
N. In January 2010, Equity Trust Stopped Accepting New City Capital Investments But Would Consider Investments with Other Taylor Entities.....	64
O. Equity Trust Allowed Uninvested Funds of Taylor Clients Be Transferred to Other Custodians.....	67
P. Throughout 2010, Equity Trust Issued Replacement Taylor Notes, Even in Light of Additional Adverse Information Concerning Taylor and City Capital .....	68
1. The Replacement Notes Were New Notes that Helped Taylor Extend His Fraud .....	69
2. Taylor Notes Were Renewed Even as Equity Trust Learned Additional Adverse Information Concerning City Capital .....	70

	Page
3. By Processing Replacement Notes, Equity Trust Made an Exception to its Normal Procedures of Not Processing Investments that Were on the Do Not Process List .....	70
Q. Fees Received by Equity Trust from Taylor, City Capital, and Customers .....	71
XI. EQUITY TRUST PROMOTED, ENDORSED AND CATERED POULSON .....	71
A. In Late 2008 and Early 2009, Equity Trust Started Its Partnership With Poulson ...	71
B. Berlovan and Edwin Kelly Attended and Made Presentations at Poulson’s April 2009 Event .....	73
C. Equity Trust Sponsored Poulson’s Dinner Programs, and Poulson Sponsored An Equity Trust Networking Conference .....	76
1. Equity Trust Sponsors Poulson’s Monthly Dinner Events .....	76
2. Poulson Sponsors Equity Trust’s Event.....	78
3. Subsequent Communications Confirm that Poulson and Equity Trust Sponsored Each Other’s Events.....	79
D. In 2010, Equity Trust Solicited Poulson for a Webinar and to Sponsor an Event....	80
E. By June 2010, Three Years After the Document Deficiencies Began, Equity Trust Began a Review of the Poulson Notes.....	81
F. Equity Trust Continued to Open and Solicit Accounts from Poulson During and After the Review .....	83
G. Equity Trust Did Not Put Poulson on the Do Not Process List Until November 2011.....	86
H. Equity Trust’s Fees Received from Poulson.....	86
XII. DESPITE KNOWLEDGE OF SIGNIFICANT DOCUMENT DEFICIENCIES AND OTHER PROBLEMS WITH THE INVESTMENTS, EQUITY TRUST CONTINUED TO PROCESS INVESTMENTS FROM POULSON AND TAYLOR .....	87
A. Taylor.....	87
B. Poulson.....	88

	Page
XIII. INVESTORS TESTIFIED THAT EQUITY TRUST ENDORSED OR GAVE LEGITIMACY TO TAYLOR AND POULSON .....	88
A. Taylor Investors .....	88
1. [REDACTED] Dorio .....	88
2. [REDACTED] Hill.....	92
3. [REDACTED] Jones.....	94
4. [REDACTED] Sims .....	98
5. [REDACTED] Turner.....	103
6. [REDACTED] Wells.....	107
B. Poulson Investors.....	109
1. [REDACTED] Gatto.....	109
2. [REDACTED] Savary.....	114
XIV. EQUITY TRUST HAD INADEQUATE POLICIES AND PROCEDURES AND FAILED TO FOLLOW POLICIES AND PROCEDURES THAT DID EXIST .....	120
A. Relationships with Investment Sponsors .....	120
1. Inadequate Policies, Procedures, Training, and Supervision on What it Meant to Offer Investment Advice or Endorse an Issuer or Investment, and How to Avoid Conflicts of Interest.....	120
2. Inadequate Policies, Procedures, and Training on Sending Sales Representatives to Issuer Events.....	122
3. Inadequate Policies, Procedures, and Training on Reviewing Investment Sponsors Prior to Attending Equity Trust Events.....	124
B. Equity Trust’s Promotional Materials Were Not Consistent with Equity Trust’s Policy that It Act As a Passive Custodian.....	126
1. Equity Trust’s Website (www.trustetc.com) Promoted Self-Directed IRAs As a Way to Get Rich.....	126

	<b>Page</b>
2. The Desiches' Book, <i>Proven Wealth Building Secrets</i> , Was Promoted and Sold by Equity Trust .....	129
3. Marketing Material .....	132
4. Through Conferences and Events Held Around the Country, Equity Trust Promoted its Self-Directed IRAs to Investors .....	133
C. Contrary to its Policies, Equity Trust Failed to Ensure Proper Documentation Before Releasing Customer Funds to Taylor and Poulson .....	135
D. Account Review Policies and Procedures, Which Did Not Exist in Written Form Until 2010, Were Inadequate and Not Followed .....	137
1. Equity Trust Failed to Develop an Adequate Review Policy to Address the Risks Posed by Investment Sponsors.....	137
2. Taylor and City Capital and Poulson.....	140
E. Equity Trust Routinely Violated its Privacy Policy.....	141
XV. THE TESTIMONY OF EQUITY TRUST'S WITNESSES WAS NOT CREDIBLE .....	142
A. Batt's Testimony that He Did Not Promote, Endorse, and Recommend Taylor Is Contradicted By the Testimony of Taylor's Fraud Victims .....	142
1. New Birth Church.....	142
2. Other Witnesses Corroborate that Batt Endorsed Taylor and Steered Investors Towards Him .....	144
3. [REDACTED] Dorio's Testimony and Batt's Own Email Contradict Batt's Testimony .....	145
B. Contrary to Desich's and Dea's Testimony, Equity Trust's Account Review Procedures Were Not Voluntarily and Proactively Adopted by Equity Trust.....	146
C. Contrary to J. Desich's and Dea's Testimony, Equity Trust Did Not Take Steps to Warn its Customers or Sales Representatives of the Risks Inherent in Self-Directed IRAs .....	147

	Page
D. Batt’s Testimony that the City Capital Landing Page Was Never Active Was Not Credible.....	150
E. J. Desich’s testimony that Equity Trust Never Sponsored Poulson’s Monthly Dinner Events is Refuted by Multiple Emails .....	152
XVI. UNDER THE DESICHES, EQUITY TRUST AND MID-OHIO SECURITIES HAVE BEEN REPEATEDLY TARGETED BY INVESTOR LAWSUITS AND SANCTIONED BY REGULATORS .....	153
A. Investor Actions .....	153
B. The 2003 Order Instituting Proceedings .....	154
C. The 2009 Cease-and-Desist Order .....	154
D. Other State Regulatory Proceedings .....	155
E. NASD Charges.....	156
F. Equity Trust Accounts Have Played a Role in State Regulators’ Cases against Fraudulent Promoters.....	156
PROPOSED CONCLUSIONS OF LAW .....	158
I. LIABILITY FOR “CAUSING” UNDER SECTION 8A OF THE SECURITIES ACT.....	158
A. Elements of Causing Liability .....	158
B. The Primary Violations of Taylor and Poulson Do Not Require Scienter; Accordingly, Equity Trust’s Negligence is Sufficient to Prove Causing Liability.....	159
II. TAYLOR, CITY CAPITAL AND POULSON VIOLATED SECTION 17(a)(2) AND (a)(3) OF THE SECURITIES ACT .....	160
A. The Admissions of Taylor and Poulson at their Plea Allocutions Established Their Violations of Sections 17(a)(2) and (a)(3) .....	160
B. Additional Evidence Establishes Taylor’s and City Capital’s Violations of Section 17(a)(2) and (a)(3).....	161

	<b>Page</b>
C. Additional Evidence Establishes Poulson’s Violations of Sections 17(a)(2) and (a)(3) .....	163
<b>III. EQUITY TRUST’S ACTS AND OMISSIONS WERE A CAUSE OF THE VIOLATIONS</b> .....	<b>165</b>
A. Equity Trust Must Only Be Shown to Be “A Cause,” Not the Only Cause or Even the Primary Cause, of the Violations.....	165
B. The Evidence Shows Numerous and Substantial Acts and Omissions by Equity Trust that Were A Cause of the Violations .....	165
1. Taylor and City Capital .....	166
a. As Equity Trust’s Customers Testified, Batt and Equity Trust Endorsed and Recommended Taylor and City Capital .....	166
b. Batt Devoted Months to Helping Taylor Close ██████ Dorio’s \$1.3 Million Investment .....	168
c. Batt’s Attendance and Taylor’s False Statements About Batt at the New Birth Church Even Helped Legitimize Taylor and Helped Taylor Raise Additional Funds .....	168
d. Equity Trust Created a Landing Page on Its Website .....	169
e. Batt Trained City Capital personnel .....	169
f. Equity Trust Processed City Capital Investments as Secured, Even Though It Had No Documentation of Any Secured Interest .....	169
g. Equity Trust Provided Confidential Customer Information to Taylor .....	169
h. Equity Trust Processed Taylor Notes Even In Light of Red Flags and Continued to Extend and Replace Taylor Notes Throughout 2010 .....	170
2. Poulson .....	171
a. As Equity Trust’s Customers Testified, Berlovan and Equity Trust Endorsed and Recommended Poulson .....	171
b. Equity Trust Provided Confidential Customer Information to Poulson....	172

	<b>Page</b>
c. Equity Trust Paid to be a “Sponsor” of Poulson’s Promotional Events and also Repeatedly Solicited Poulson to Sponsor and Participate in Equity Trust Events.....	172
d. Equity Trust Processed Poulson Notes Despite Missing Documentation for 100% of the Investments .....	172
IV. EQUITY TRUST’S NEGLIGENT AND UNREASONABLE CONDUCT CONTRIBUTED TO THE VIOLATIONS .....	173
A. Equity Trust’s Negligence Contributed to the Violations.....	173
B. The Disclaimers in the DOI and Custodial Agreement Do Not Protect Equity Trust from Liability Because It Did Not Act as a Passive Custodian.....	179
V. EQUITY TRUST’S CONDUCT DESERVES SIGNIFICANT SANCTIONS ..	181
A. A Cease-and-Desist Order is Appropriate .....	182
B. Equity Trust Should Be Required to Disgorge Ill-Gotten Gains and Pay Prejudgment Interest .....	183
C. Equity Trust Should Be Required to Pay Substantial Penalties.....	185
D. Respondents Should Be Required to Retain a Compliance Consultant and a Fair Fund Should Be Created.....	188
CONCLUSION.....	189

## TABLE OF AUTHORITIES

	Page
<b>Cases</b>	
<i>Aaron v. SEC</i> , 446 U.S. 680 (1980).....	159
<i>Armand R. Franquelin</i> , S.E.C. Rel. No. 698, 2014 WL 5383925 (Init. Dec. Oct. 22, 2014), <i>final order</i> , S.E.C. Rel. No. 73887, 2014 WL 7212409 (Dec. 19, 2014).....	164
<i>Bentley v. Equity Trust</i> , No. 14 CA 010630, 2015 WL 7254796 (Nov. 16, 2015 Ct. App. Ohio) .....	153, 181
<i>Berko v. SEC</i> , 316 F.2d 137 (2d Cir. 1963).....	165
<i>Blackledge v. Allison</i> , 431 U.S. 63 (1977).....	160
<i>Byron G. Borgardt</i> , 80 SEC Docket 3559 (Aug. 25, 2003).....	173
<i>Christopher A. Lowry</i> , 55 S.E.C. 1133 (2002), <i>aff'd</i> , 340 F.3d 501 (8th Cir. 2003) .....	182
<i>Coastline Financial, Inc.</i> , Release No. 34-41989, 1999 WL 798874 (Comm. Op. Oct. 7, 1999) .....	162
<i>Daniel Bogar</i> , Rel. No. 502, 2013 SEC LEXIS 2235 (Init. Dec. Aug. 2, 2013), <i>final order as to two respondents</i> , Rel. No. 9499, 2013 SEC LEXIS 3986 (Dec. 18, 2013) .....	158, 159, 173
<i>Eric. J. Brown</i> , Rel. No. 9299, 2012 WL 625874 (Feb. 27, 2012).....	186
<i>Erik W. Chan</i> , Rel. No. 45693, 2002 WL 507022 (Apr. 4, 2002) .....	165
<i>Gualario &amp; Co., LLC</i> , S.E.C. Rel. No. 452, 2012 WL 627198 (Feb. 14, 2012) .....	187
<i>Harding Advisory LLC and Wing F. Chau</i> , S.E.C. Release No. 734, 2015 WL 137642 (Jan. 12, 2015) .....	163
<i>Harrison Securities, Inc.</i> , S.E.C. Rel. No. 256, 2004 WL 2109230 (Init. Dec. Sept. 21, 2004).....	165, 173
<i>Howard v. SEC</i> , 376 F.3d 1136 (D.C. Cir. 2004).....	160
<i>Ira Weiss</i> , Rel. No. 52875, 2005 WL 3273381 (Comm. Op. Dec. 2, 2005).....	159



<i>John Thomas Capital Mgmt. Group LLC</i> , S.E.C. Rel. No. 693, 2014 WL 5304908 (Init. Dec. Oct. 17, 2014), <i>review granted</i> , Rel. No. 3978, 2014 WL 6985130 (Dec. 11, 2014).....	183, 188
<i>KPMG, LLP v. SEC</i> , 289 F.3d 109 (D.C. Cir. 2002).....	160
<i>KPMG Peat Marwick LLP</i> , 74 SEC Docket 384, 2001 WL 34138819 (Jan. 19, 2001).....	160
<i>Marbury Mgmt., Inc. v. Kohn</i> , 629 F.2d 705 (2d Cir. 1980) .....	158
<i>Mid-Ohio Securities Corp. v. Estate of Burns</i> , 790 F. Supp.2d 1263 (D. Nev. 2011).....	181
<i>Montford &amp; Co.</i> , Rel. No. 3829, 2014 SEC LEXIS 1529 (May 2, 2014).....	183
<i>Parmalat Sec. Litig.</i> , 474 F. Supp. 2d 547 (S.D.N.Y. 2007) .....	158
<i>Phillip L. Pascale</i> , S.E.C. Rel. No. 251, 2004 WL 1103671 (Init. Dec. May 17, 2004).....	160
<i>R.H. Johnson &amp; Co. v. SEC</i> , 198 F.2d 690 (2d Cir. 1952) .....	165
<i>Reliance Financial Advisors, LLC</i> , S.E.C. Rel. No. 941, 2016 WL 123127 (Init. Dec. Jan. 11, 2016) .....	180
<i>Rita J. McConville</i> , Rel. No. 51950, 2005 WL 1560276 (June 30, 2005), <i>pet. denied</i> , 465 F.3d 780 (7th Cir. 2006).....	165, 182
<i>Robert G. Weeks</i> , S.E.C. Rel. No. 199, 2002 WL 169185 (Feb. 4, 2002) .....	186
<i>Robert M. Fuller</i> , Rel. No. 48406, 2003 WL 22016309 (Aug. 25, 2003), <i>pet. denied</i> , 95 F. App'x 361 (D.C. Cir. 2004) .....	158
<i>Robert W. Armstrong</i> , S.E.C. Rel. No. 248, 2004 WL 737067 (Init. Dec. Apr. 6, 2004) .....	160
<i>Ronald S. Bloomfield</i> , S.E.C. Rel. No. 9553, 2014 WL 768828 (Feb. 27, 2014).....	184, 185, 186
<i>SEC v. Constantin</i> , 939 F. Supp. 2d 288 (S.D.N.Y. 2013) .....	162
<i>SEC v. Daifotis</i> , No. C 11-00137 WHA, 2011 WL 2183314 (N.D.Cal. June 6, 2011), <i>modified on other grounds</i> , 2011 WL 3295139 (N.D.Cal. Aug. 1, 2011).....	159
<i>SEC v. Dain Rauscher</i> , 254 F.3d 852 (9th Cir. 2001) .....	159
<i>SEC v. First City Fin. Corp.</i> , 890 F.2d 1215 (D.C. Cir. 1989).....	183
<i>SEC v. First Jersey Sec., Inc.</i> , 101 F.3d 1450 (2d Cir. 1996).....	183

<i>SEC v. Ginsburg</i> , 362 F.3d 1292 (11th Cir. 2004) .....	161
<i>SEC v. Grossman</i> , No. 87 Civ. 1031, 1997 WL 231167 (S.D.N.Y. May 6, 1997), <i>aff'd in part and vacated in part on other grounds</i> , 173 F.3d 846 (2d Cir. 1999).....	184
<i>SEC v. Happ</i> , 392 F.3d 12 (1st Cir. 2004).....	184
<i>SEC v. Lucent Technologies, Inc.</i> , 610 F.Supp.2d 342 (D.N.J.2009).....	159
<i>SEC v. Morgan Keegan &amp; Co.</i> , 678 F.3d 1233 (11th Cir. 2012).....	158, 180
<i>SEC v. Patel</i> , 61 F.3d 137 (2d Cir. 1995) .....	183
<i>SEC v. Reserve Mgmt. Co., Inc.</i> , Nos. 09 MD. 2011 (PGG) and 09 Civ. 4346 (PGG), 2013 WL 5432334 (S.D.N.Y. Sept. 13, 2013).....	187
<i>SEC v. Young</i> , Civ. Action No. 09-1634, 2011 WL 1376045 (E.D. Pa. April 12, 2011).....	162
<i>Steadman v. SEC</i> , 603 F.2d 1126 (5th Cir. 1979).....	181, 182
<i>Thomas R. Delaney II</i> , S.E.C. Rel. No. 755, 2015 WL 1223971 (Init. Dec. Mar. 18, 2015), <i>final order</i> , S.E.C. Rel. No. 74843, 2015 WL 1939410 (April 29, 2015).....	173, 174
<i>TSC Indus., Inc. v. Northway, Inc.</i> , 426 U.S. 438 (1976) .....	161
<i>United States v. Bambulas</i> , 571 F.2d 525 (10th Cir.1978) .....	160
<i>Vernazza v. S.E.C.</i> , 327 F.3d 851 (9th Cir. 2003).....	174
<i>Warwick Capital Mgmt., Inc.</i> , S.E.C. Rel. No. 327, 2007 WL 505772 (Feb. 15, 2007) .....	186
<b>Statutes</b>	
26 I.R.C. § 6621(a)(2).....	185
Section 8A, Securities Act of 1933, 15 U.S.C. § 77h-1(a) .....	<i>passim</i>
Sections 17(a)(2) and (a)(3), Securities Act of 1933, 15 U.S.C. § 77q(a)(2) and (a)(3) .....	<i>passim</i>
Section 21B(c), Securities Exchange Act of 1933, 15 U.S.C. § 78u-2(c) .....	185
Section 929P, Dodd-Frank Wall Street Reform and Consumer Protection Act.....	185
Securities Enforcement Remedies And Penny Stock Reform Act of 1990, Pub.L. No. 101-429, 104 Stat. 931 (1990) (codified at various sections of the Securities Act and Securities Exchange Act).....	186

The Division of Enforcement respectfully submits its proposed Findings of Fact and Conclusions of Law.

### **PRELIMINARY STATEMENT**

After eight hearing days, two dozen witnesses, and the admission of hundreds of exhibits – consisting almost entirely of Equity Trust’s own documents – the overwhelming evidence of Equity Trust’s shortfalls as an IRA custodian is undeniable. With its focus on promotion, marketing and sales, Equity Trust lost sight of its basic custodial responsibilities. The consequences for Equity Trust’s customers were devastating: many of the retirement accounts that its customers had built up over their lifetimes were wiped out.

The duties expected of Equity Trust as an IRA custodian are, for the most part, not in dispute. The Division’s expert witness, William Ries, described the applicable standard of care. Equity Trust consented to the admission of the Ries report without objection and did not cross-examine Ries. And as the evidence proves, Equity Trust deviated sharply from this standard of care. It behaved unreasonably and even recklessly.

For example, the standard of care prohibited Equity Trust from endorsing or recommending issuers, products or investment strategies. Customers, however, testified that Equity Trust sales representatives, Robert Batt and Irene Berlovan, affirmatively recommended and endorsed Taylor and Poulson. ██████ Jones testified that Batt “did endorse Mr. Taylor and City Corp” at the New Birth Church event in October 2009, and that his discussion with Batt “absolutely” affected his decision to invest with Taylor. ██████ Hill, a ██████ year old truck driver, testified that he was uncertain about investing until Batt told him that City Capital was “a good company and [Taylor was] getting people right now 10 percent on their

investment.” ██████ Turner and ██████ Wells similarly testified that Batt gave them comfort and helped legitimize Taylor.

Batt’s commitment to servicing Taylor caused him to freely divulge confidential account information to Taylor and others at City Capital. Batt also played a key role in Taylor’s receipt of ██████ Dorio’s \$1.3 million in retirement funds. After Dorio’s longstanding investment adviser sent her a letter suggesting that the Taylor-related investments might not be prudent, Batt called Dorio and questioned the investment adviser’s judgment, telling her, “how can this broker comment on real estate when he has never done it.” This conversation was a turning point in Dorio’s decision to invest. Later, in an email to Taylor, Batt belittled the letter as “cheesy,” and bragged : “I am on it . . . I will close it.” The receipt of Dorio’s \$1.3 million, as well as the investments from the New Birth Church event, replenished City Capital’s coffers and extended Taylor’s fraudulent scheme.

Poulson promoted Equity Trust as a key member of his “Power Team of Professionals” and warmly introduced Berlovan at one of his events in April 2009. When addressing the roomful of potential customers, Berlovan described her role as “helping investment sponsors like Randy.” Equity Trust, after Poulson’s solicitation, sponsored Poulson’s monthly dinner events; Poulson returned the favor by agreeing to sponsor one of Equity Trust’s events. In addition, ██████ Gatto testified that Berlovan, in a phone conversation, gave a “ringing endorsement of Mr. Poulson” and that Berlovan’s “glowing recommendation” of Poulson was “a deciding factor.”

The standard of care also required Equity Trust to take possession of the asset, including all documentation. Equity Trust’s handling of its customers’ documents, however, fell far short of the expected standard of care. With regard to the Taylor investments, thirty-five Direction of

Investment forms were received by Equity Trust marked as “secured,” even though no security was referenced in the promissory notes and there were no collateral agreements. Equity Trust nevertheless processed the investment as “secured,” and for nearly two years prepared and sent customers account statements showing the investment as “secured.” In 2010, after belatedly realizing its mistake, Equity Trust simply changed the designation on just a portion of the customers’ account statements from “secured” to “unsecured” without any explanation to the customer. When ██████ Sims, an Equity Trust customer, noticed the unilateral change and became alarmed, she contacted Equity Trust but received no response.

With the Poulson documents, Equity Trust’s conduct rose to the level of incompetence. Several years after processing investments with missing mortgages and signatures, Equity Trust finally commenced an account review in June 2010. This review consisted of Equity Trust politely asking Poulson for the missing documents, which Poulson rebuffed with various excuses, fearing that the review might expose his criminal scheme. After several months, however, Equity Trust stopped asking for the documents. And throughout this “review,” Equity Trust sales staff – oblivious to the longstanding document deficiencies – continued to push Poulson for account opening referrals.

Equity Trust’s mishandling of the Poulson investments came as a shock to its customers. ██████ Gatto testified that he believed the mortgages securing his investment were recorded until “the FBI knocked at my door one morning and informed me that there was absolutely no paperwork available for my investment . . . nothing was recorded.” Gatto then called Equity Trust and was told “that there was absolutely nothing in my file.” And ██████ Savary, another customer, testified that he expected Equity Trust to “perform their custodial duties” and “get the proper paperwork,” and that he viewed its failure to do so as “gross negligence.”

The close partnership that Equity Trust forged with Taylor and Poulson resulted from Equity Trust's business model and culture. The sales and marketing teams operated independently of compliance and with almost no oversight. The marketing team churned out exaggerated, over-the-top promotional materials filled with "success stories," and asserted that self-directed IRAs were "rivers flowing with money." Equity Trust's website contained predictions of great wealth for self-directed IRA customers, and encouraged investors to use self-directed IRAs invested in promissory notes and other alternative investments instead of more "traditional" investments like mutual funds. Equity Trust's promotional websites, marketing materials, books and events did not warn of the risks of self-directed IRAs and the risky investments it was promoting.

Equity Trust and its owners, Richard Desich Sr., Jeffrey Desich, and Richard Desich Jr., knew that self-directed IRAs were utilized by criminals and fraudulent investment promoters. Starting as far back as the 1990s, customers of Equity Trust and its predecessor, Mid-Ohio Securities, were repeatedly victimized by frauds in which criminals duped customers into transferring to them their self-directed IRAs. As a result, Equity Trust and Mid-Ohio Securities drew the attention of various state and federal regulators, which resulted in a series of consent orders signed by the Desiches.

At the hearing, Equity Trust asserted that its conduct was above reproach, that it scrupulously adhered to the standard of care and that, in any event, the disclaimers in its customer-facing agreements shield it from any liability. Equity Trust also predicted that the self-directed IRA business would be decimated by any adverse ruling.

Equity Trust is wrong. The evidence demonstrates that Equity Trust fell far short of the standard of care, and failed to act with reasonable prudence. Equity Trust's negligence was not

an isolated occurrence, but continued over years and was fostered by inadequate policies and procedures. The disclaimers, moreover, do not provide blanket protection under these circumstances. When the custodian deviates from the standard of care or acts without reasonable prudence, the protections in the disclaimers do not apply. Indeed, in recent years, at least two courts have rejected similar arguments from Equity Trust. Finally, Equity Trust's baseless assertions that holding it accountable for its negligence would decimate the self-directed IRS industry should be rejected.

The evidence presented at the hearing more than satisfies the burden of establishing that, under Section 8A of the Securities Act, Equity Trust was a cause of the primary violations. Taylor and Poulson admitted to conduct that established the elements of Sections 17(a)(2) and (a)(3), and their admissions are supported by additional evidence of these non-scienter violations. To establish liability, the evidence need only prove Equity Trust's negligence, which is a failure to exercise reasonable care. The extensive evidentiary record more than satisfies this burden

Equity Trust's conduct merits the most serious sanctions. Given the strong evidence of Equity Trust's negligence, its refusal to admit any wrongdoing, and the clear opportunity for future violations, a cease-and-desist order is appropriate. Equity Trust should also disgorge all fees it received in connection with the Poulson and Taylor accounts, which the Division calculates at \$180,336.18, and pay prejudgment interest.

A substantial civil penalty should also be imposed. Although the underlying violations are established by a negligence standard, Equity Trust's recklessness can be considered for the purposes of imposing a penalty. As a result, second or third tier penalties are justified. On a per violation basis, the evidence shows at least twenty-one violations during the applicable period,

which would result in civil penalties of \$1,575,000 (First Tier), \$7,875,000 (Second Tier) or \$15,225,000 (Third Tier).

### **PROPOSED FINDINGS OF FACT**

#### **I. EQUITY TRUST COMPANY**

##### **A. Structure and Ownership**

1. Equity Trust, a privately held company based in Westlake, Ohio, was incorporated under South Dakota law on February 11, 2003. Answer ¶ 6; DE 615 at 8.

2. On March 1, 2003, Equity Trust received a trust company charter from the State of South Dakota. DE 597 at 5; DE 615 at 8. The state charter permits Equity Trust to act as an IRA custodian under the Internal Revenue Code. 26 U.S.C. §§ 408(a)(2), 408(n).

3. Richard Desich (“Desich Sr.”) and his two sons, Jeffrey Desich (“J. Desich”), and Richard Desich, Jr. (“Desich Jr.”) (collectively, the “Desiches”), founded Equity Trust and have owned and controlled Equity Trust since its inception. DE 597 at 5; DE 598 at 37.

4. Desich Sr. has served as Chairman of Equity Trust’s Board of Directors. J. Desich, currently Chief Executive Officer, and Desich Jr., have both served as senior officers and directors of Equity Trust. *See, e.g.*, DE 61-91 (board minutes). Since August 2008, Michael Dea has been President and, until the end of 2015, Chief Financial Officer. Tr. 649:7-20 (Dea).

5. Equity Trust currently has 130,000 customer accounts and \$12 billion in assets. Answer ¶ 6; Tr. 726:2-3 (Dea).

##### **B. The Desiches Owned and Controlled Mid-Ohio Securities, Which Transferred Its IRA Business to Equity Trust in 2003**

6. Desich Sr. started Mid-Ohio Securities Corp. (“Mid-Ohio Securities”), a registered broker-dealer, in 1973, and served as its President and Chief Executive Officer. DE 598 at 38; DE 655 (FINRA Central Registration Depository) (“CRD”).



7. In 1983, the Internal Revenue Service approved Mid-Ohio Securities' application to operate as a non-bank custodian of individual retirement accounts. DE 598 at 37 (S.D. Charter Application).

8. In March 2000, after graduating from college, J. Desich and Desich, Jr., joined Mid-Ohio Securities as senior officers, directors, and stockholders. DE 655 at 7 (CRD).

9. From 1983 to April 2003, Mid-Ohio Securities' primary business was providing custodial services for IRAs, and it received the "vast majority" of its revenue from administering self-directed IRA accounts. DE 598 at 41.

10. On April 1, 2003, Mid-Ohio Securities transferred its IRA custodial business to Equity Trust. DE 848 at 3 (*Matter of Mid-Ohio Securities Corp.*, Order No. 09-149, 2009 WL 3699086 (Ohio Dept. Comm. 10/27/09) ("Ohio C&D").

11. On September 2, 2008, Desich Sr. retired as a member of Mid-Ohio Securities' Board of Directors, and Desich Jr. became President and Chief Executive Officer. DE 848 at 6 (Ohio C&D).

12. Effective August 1, 2013, Mid-Ohio Securities terminated its registration. DE 655 at 12 (CRD).

## **II. OVERVIEW OF INDIVIDUAL RETIREMENT ACCOUNTS AND CUSTODIAN STANDARDS**

13. Congress created individual retirement accounts in 1974 as part of the Employee Retirement Income Security Act (ERISA). 26 U.S.C. § 408.

14. The primary benefits to an IRA are that contributions may be deductible from the account holder's federal income tax return, and amounts in an IRA, including earnings, are not taxed until they are distributed. 26 U.S.C. § 408(e)(1).

15. Under the Internal Revenue Code, an IRA is “a trust.” 26 U.S.C. § 408(a). The trustee of the trust can either be “a bank . . . or such other person who demonstrates to the satisfaction of the Secretary that the manner in which such other person will administer the trust will be consistent with the requirements of this section.” 26 U.S.C. § 408(a)(2).

16. Equity Trust – as a state-chartered trust company supervised and examined by the South Dakota Division of Banking – qualifies as “a bank” custodian of IRA accounts under the Internal Revenue Code. 26 U.S.C. § 408(n); DE 49 at 5. Accordingly, Equity Trust, unlike Mid-Ohio Securities, was not required to seek or receive IRS approval to act as an IRA custodian.

17. The Internal Revenue Code does not list permissible investments for IRAs; instead, the Code identifies only items that are prohibited. 26 U.S.C. § 408(m) (investments in any “work of art,” “rug or antique,” “metal or gem,” “stamp or coin” or “alcoholic beverage” are “treated as distributions”).

18. As Equity Trust has acknowledged on its website, a “self-directed IRA is technically no different than any other IRA (or 401k).” DE 801 at 12. The distinguishing characteristic of a “self-directed IRA” is the willingness and ability of the IRA custodian to take custody of and administer “non-traditional” assets in addition to stocks, bonds, mutual funds and CDs. *Id.* As Equity Trust has stated, a “truly self directed IRA custodian, such as Equity Trust, allows...real estate, notes, private placements, tax lien certificates and much more.” *Id.*

19. As a public trust company, Equity Trust is examined by the South Dakota Division of Banking every twenty-four months. Tr. 1160:18-25. Since receiving its charter in 2003, Equity Trust has been examined five times. Scott Kelly (“S. Kelly”), the Deputy Director of Trusts at the South Dakota Division of Banking, has been involved in all five exams. Tr. 1162:11-19.

20. The South Dakota Division of Banking examines Equity Trust using standards and procedures established by the Federal Reserve Bank (FRB); the Office of the Comptroller of the Currency (OCC) Regulation 9 (“Fiduciary Activities of National Banks”); and the Federal Deposit Insurance Corporation (FDIC), particularly the FDIC Trust Examination Manual. Tr. 1161:3-1162:10 (S. Kelly: “We follow the FDIC trust examination manual. . . [and W]e rely on the OCC Reg 9 as kind of a basic blueprint of all fiduciary management and then the Federal Reserve Bank. Our Division of Banking works closely with both the FRB and the FDIC.”).

21. The standards and procedures of the FRB, the OCC and the FDIC are typically followed by state banking regulators. DE 39 at 10, ¶ 29 (Ries Report). *See also* DE 105 at 1 (1/19/10 GRC minutes: “the FDIC trusts exam manual is on-line . . . the SD exam follows it verbatim”).

22. As of 2011, U.S. investors were estimated to hold approximately \$94 billion in self-directed IRAs. RE 46 at 2.

### **III. THE STANDARD OF CARE APPLICABLE TO IRA CUSTODIANS**

#### **A. Expert Report of William Ries**

23. The standard of care applicable to IRA custodians is set forth in the Report of William Campbell Ries dated November 2, 2015 (“Ries Report”). DE 39.

24. Ries, a shareholder in the law firm of Tucker Arensberg, P.C. in Pittsburgh, PA, is Chair of the firm’s Investment Management and Fiduciary Institutions Services Practice Group and previously served as Co-Chair of its Financial Institutions Practice Group. Ries’ practice focuses on, among other things, consulting clients on fiduciary matters, including the duties and responsibilities of fiduciaries, agents and custodians; on issues of law arising under trust and banking law; and on custody issues and general investment management issues. Ries regularly

conducts training programs for both bankers and federal and state bank examiners on fiduciary responsibility and fiduciary liability, and assists banks and other financial institutions in establishing general compliance programs and responding to audit and examination issues. *Id.* at 1 (Ries Report).

25. From 1971 through 1990, Ries was employed at Mellon Bank, N.A., in Pittsburgh, PA, and from 1980 to 1990 was Managing Counsel to the Mellon's Trust and Investment Management Department. *Id.* at 3 (Ries Report). As Chair of the Fiduciary Services Subcommittee of the American Bar Association's Banking Law Committee, Ries was involved in the 1996 revisions to OCC Regulation 9. *Id.* at 4 (Ries Report).

26. Ries is the author of *The Regulation of Investment Management and Fiduciary Services*, and is an adjunct professor at the Duquesne University School of Law. *Id.* at 4 (Ries Report). He speaks frequently on issues concerning fiduciary duties and investment management. *Id.* at 2-3 (Ries Report). Ries is a *cum laude* graduate of The Catholic University of America (1970) and received his law degree from Duquesne University School of Law. *Id.* at 2-5 (Ries Report).

27. Prior to the hearing, Equity Trust did not file a motion *in limine* as to the Ries Report.

28. Equity Trust consented to the admission of the Ries Report without objection. Tr. 337:8-338:6.

29. Equity Trust's counsel had an opportunity to cross-examine Ries but declined. Tr. 337:20-21.<sup>1</sup>

---

<sup>1</sup>Rather than cross-examine Ries, or directly challenge any aspect of his qualifications or opinion through a motion *in limine*, Equity Trust submitted a "Rebuttal Expert Report of Terry N. Prendergast." RE 223. This Rebuttal Report, like Prendergast's initial expert report (RE

## **B. The IRA Custodian's Standard of Care**

30. An IRA custodian has a duty of care to act as an ordinarily prudent person would under the circumstances. DE 39 at 8, ¶ 21 (Ries Report).

31. As an agent with specialized skills, an IRA custodian is held to a higher standard of care in carrying out its duties and responsibilities to its customer. *Id.* at 8, ¶ 21 (Ries Report).

32. Equity Trust's internal Trust Company Policy statement, taking from the FDIC's Trust Examination Manual's quotation of Judge Cardozo, described its duty to its customers as follows: "A trustee is held to something stricter than the morals of the market place. Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior. As to this there has developed a tradition that is unbending and inveterate. . . . Only thus has the level of conduct for fiduciaries been kept at a level higher than that trodden by the crowd." DE 49 at 11.

33. As set forth below, the standard of care of an IRA custodian includes the following:

- The custodian must take possession of the customer's asset, including all documentation;
- The custodian must periodically review the customer's asset and weigh risk;
- The custodian must not promote or endorse any issuer or investment;
- The custodian must act consistently with the written customer agreements;

---

222), is premised on a single assumption: that Equity Trust is regulated by South Dakota under the "Directed Trusts" law provided for under Title 55 of the South Dakota Code. This factual predicate, however, was discredited at the hearing by Scott Kelly of the South Dakota Division of Banking, who testified that he never considered Equity Trust a directed trust, and that nobody at Equity Trust ever told him that they consider it to be a directed trust. Tr. 1159:15-1160:17. In addition, the Division submitted the Rebuttal Report of Tom E. Simmons, which Equity Trust also did not oppose, which concludes that "Equity Trust's IRA custodial agreements do not constitute 'directed trust' custodial agreements under [Title 55] and thus whatever protections may be associated with those provisions do not apply." DE 836 at 1 (Rebuttal Report of Tom E. Simmons).

- The custodian must avoid conflicts of interest;
- The custodian must maintain the privacy of customer account information;
- The custodian must adopt adequate policies and procedures; and
- The custodian must act for the exclusive benefit of the customer.

**1. The Custodian Must Take Possession of the Customer’s Asset, Including All Documentation**

34. A self-directed IRA custodian is required to hold and administer the customer’s assets. DE 39 at 9-10, ¶¶ 23, 29 (Ries Report). A custodian, therefore, has a duty to take title to the assets and maintain the indicia of ownership. *Id.* at 9, ¶¶ 23-24 (Ries Report). This requires the custodian to obtain good legal title to the investment, including ensuring that proper documentation is obtained and completed. *Id.* at 9, ¶ 24 (Ries Report).

35. A custodian’s duty to obtain title extends to non-traditional investments such as real estate and promissory notes. *Id.* at 10, ¶ 29 (Ries Report). These assets present unique challenges to the custodian, and their proper administration and operational controls are critical. *Id.* at 10, ¶ 29 n.13 (Ries Report); Office of the Comptroller of the Currency, *Comptroller’s Handbook, Unique and Hard-to-Value Assets* (Jan. 2012). For real estate, a custodian is responsible for ensuring that deeds and mortgages for real estate investments are properly recorded. DE 39 at 9, ¶ 24 (Ries Report).

36. The South Dakota Division of Banking expects a custodian such as Equity Trust to obtain documentation reflecting that the investment was in custody. As S. Kelly testified, “[Equity Trust is] the custodian. They hold the asset so they have to have documentation that the asset exists and it’s in their possession.” Tr. 1191:9-217.

37. The failure of a self-directed IRA custodian to obtain legal title to the entrusted assets represents a breach of the duty of care. DE 39 at 9, ¶ 24 (Ries Report).

38. As legal title holder, a self-directed IRA custodian must also obtain relevant information concerning the entrusted asset, including information concerning the maturity of any investments. *Id.* at 9, ¶ 25 (Ries Report). *See also* DE 823 at 2 (S.D. Div. of Banking, *Account Review Guidance*: “A comprehensive account review includes both an administrative and investment review.” An Administrative Review includes asking: “Are the synoptic records [] reliable and comprehensive [*e.g.*, the] [a]ccount name, account number, grantor, beneficiaries, ... type of trust, date of instrument, purpose of instrument ... and other pertinent account information.”).

39. An IRA custodian has a duty of candor to its principal; it is required to deliver any material information concerning investments in the account to the account holder, and to act on the instruction of the principal. DE 39 at 8-9, ¶¶ 21, 25 (Ries Report). This duty specifically includes responsibility for delivering information known to the custodian concerning potential risks to the entrusted assets. *Id.* at 10, ¶ 28 (Ries Report). Information concerning an asset that has matured or experienced an event of default are examples of material information that a custodian is responsible for remitting to the account holder. *Id.* at 9, 10, ¶¶ 25, 28 (Ries Report).

40. Consistent with this requirement, Equity Trust adopted policies and procedures that required it to “maintain custody and control of the assets under its administration, safeguard the assets in custody” and “maintain adequate records indicating the ownership of the assets.” DE 49 at 14 (Trust Company Policy).

41. Dea testified that taking custody of customer assets was a custodian’s most fundamental responsibility. Tr. 699:25-700:6 (Dea: “Q. And the job of a custodian is to take

custody of the assets, right? A. Yes. Q. Isn't that the most fundamental responsibility of a custodian? A. For the assets that are presented to us, yes." See also Tr. 900:13-15 (Bartlett).

42. Equity Trust's Direction of Investment ("DOI") form states that Equity Trust's role is "to hold Retirement Account assets..." DE 40 at 54.

43. Consistent with OCC and FDIC guidance, Equity Trust adopted policies and procedures that required it to maintain proper account documentation, including to confirm that Equity Trust holds all required documentation and that the documents are properly executed. DE 39 at 11, ¶ 30 (Ries Report).

44. The Investment Review Procedure required Equity Trust to hold and maintain "applicable documents pertaining to the client investment" and "review the documents for completeness." DE 53 at 3.

45. For customer investments in promissory notes secured by real property, Equity Trust was required to obtain "the Original Note and Executed Deed of Trust/Mortgage." *Id.* at 3, 12.

46. For a promissory note secured by collateral other than real property, the required documents included "the Original Note Stating the Associated Collateral and a UCC filing to Evidence Security or Title to the Collateral with Lien Attached." *Id.*

47. Under a "primary review" described in its Investment Review Procedure, Equity Trust was prohibited from processing client investments when it did not have completed investment documents: "The investment review process involves Compliance receiving the applicable documents pertaining to the client investment (SEE Exhibit A) from the Account Support Group. The Compliance analyst will log each investment received . . . review the documents for completeness, and perform the background check on the investments and the



investment sponsor. . . . In the event deficiencies in the paperwork are identified . . . the documents will be returned to the Account Support Group to resolve and subsequently re-submitting to Compliance.” *Id.* at 3. *See also* Tr. 901:22-902:1 (Bartlett Investigative Testimony: “Question: But it’s your understanding that the policies of Equity Trust at least are to get an executed promissory note before the investment is funded? Answer: Correct.”); Tr. 906:22:907:12 (Bartlett Investigative Testimony: if the promissory note does not “reference” any collateral, “we see the discrepancy, and that would have to be cleared before the investment could be funded”).

48. As part of the primary review, compliance was also required to perform a “background check on the investment and the investment sponsor through the appropriate internet database.” DE 53 at 3. If “negative information” is discovered, the analyst should provide the information to a senior Compliance official. “If the negative information is material, the investment will be denied.” *Id.*

49. Equity Trust also conducted a “secondary review” of certain investments, which required it to ensure that it had collected all documents supporting the investment, and if those documents were not obtained, the investment sponsor would be placed on hold. DE 53 at 6 (Investment Review Procedure).

50. Equity Trust’s website and marketing materials also acknowledged its duty to hold and safeguard complete trust documents consistent with the customer’s intent. *See, e.g.*, DE 790 at 2 (marketing document posed the question, “Does Equity Trust Company need to hold all original documents?”, and answered, “Yes, as a custodian, we are required by law to hold all original documents.”); DE 764 at 8 (marketing brochure entitled “Guide to Self-Directed IRA Investing,” states that “[a]ll records pertaining to the investment (such as real estate deeds,

original notes, operating agreements for LLCs) are retained by Equity Trust for safekeeping”); DE 801 at 27 (Equity Trust’s website: “An investment at Equity Trust isn’t final until all records pertaining to the investment (such as real estate deeds, original notes, operating agreements for LLCs, etc.) are sent to Equity Trust for safekeeping.”).

51. A widely circulated marketing document called the “Promissory Note Quickstart Guide,” told investors that they could “Create a Fortune Investing in Promissory Notes with a Self-Directed IRA.” In a part called “How it Works,” the Guide made clear that the investors’ funds were supposed to be sent to the investment sponsor only after the “original promissory note and security document” are sent to Equity Trust. DE 856 at 4; DE 856 at 164-165 (reflecting this Promissory Note Quickstart Guide was emailed to at least 53 customers between June 2009 and April 2011).

## **2. The Custodian Must Periodically Review the Customer’s Asset and Weigh Risk**

52. The custodian is responsible for periodically reviewing the assets held in the custody account to determine whether the assets are properly maintained and not in default, and for safekeeping the assets entrusted to it. DE 39 at 10, ¶ 28 (Ries Report). *See also* FOF ¶ 38 (discussing S.D. Div. of Banking, *Account Review Guidance*). A custodian should advise the principal of any issues of which it becomes aware that may subject an asset to significant risk. DE 39 at 10, ¶ 28 (Ries Report).

53. Consistent with its standard of care and the requirement of its regulator, Equity Trust developed its secondary review policy. DE 53. *See also* DE 595 at 5 (2009 S.D. exam report: “continued account growth through company acquisitions and traditional account openings heightens compliance risk.”); DE 596 at 4 (2011 S.D. exam report: “A high concentration of alternative account holdings further heightens the need for comprehensive audit

and compliance programs.... [T]he current staffing level may not be adequate in relation to the current volume of accounts, the complexities of having two operation centers at two locations, and the risks associated with accounts holding alternative-type investments.”).

54. In conducting the secondary reviews, Equity Trust was required to ensure that “ETC is holding all the required documents, whether they have been properly executed, if necessary, and if expected income is being generated by the investment.” DE 53 at 6. If documentation is missing, the investment or investment sponsor is to be placed on “hold.” *Id.* at 9. The investment or investment sponsor would be placed on a “Do Not Process” list for any number of reasons, including being charged by a regulator or criminal authority. DE 578 (“Do Not Process List”); Tr. 741:8-742:18.

### **3. The Custodian Must Not Promote or Endorse Any Issuer or Investment**

55. Custodians of self-directed IRAs do not customarily provide investment advice to the principal or exercise investment discretion over the entrusted assets under the terms of the custodial contract. DE 39 at 8, ¶ 20 (Ries Report). In addition, IRA custodians do not customarily promote, endorse, or market a particular investment or investment promoter. *Id.* at 39 at 11, ¶ 31 (Ries Report).

56. An IRA custodian that does endorse or recommend an investment or promoter “acts in a fiduciary capacity . . . with respect to providing such advice . . . and would be required to exercise reasonable care, skill and caution in [providing such advice] including investigating the investment being promoted or endorsed. *Id.* at 11, ¶ 33 (Ries Report).

57. The Trust Company Policy specifically precluded Equity Trust from: “Offer[ing] investment advice” or “[e]ndorsing any investment, investment product or investment strategy.” DE 49 at 15. The Trust Company Policy specifically warned employees and officers against

“making any comments regarding the quality of investment decisions made by our customers.”  
*Id.* at 16.

58. The Investment Review Procedure states: “In its role as passive custodian of self-directed individual retirement accounts (IRAs), ETC does not offer investment advice or recommendations to its customers; [and] does not review the suitability of customer investment choices.” DE 53 at 2.

59. The Custodial Account Agreement and the DOI form both state that Equity Trust acts “solely as a passive custodian to hold Retirement Account assets,” and does not “offer any investment advice, nor does it endorse any investment, investment product or investment strategy, [] financial advisor, representative, broker, or other party [] selected by [the customer].” DE 40 at 54 (DOI form); DE 751 at 36-37 (Custodial Account Agreement at § 8.05(b)).

#### **4. The Custodian Must Act Consistently with the Written Customer Agreements**

60. The duties and responsibilities of a self-directed IRA custodian to its customer are typically governed by the terms of agreements entered into between the custodian and its customer. DE 39 at 8, ¶ 20 (Ries Report).

61. A custodian that acts beyond the terms of the custodial contract by, for example, providing investment advice to the account holder, becomes responsible to the account holder in accordance with the fiduciary standard of care applicable to such advisory services. *Id.* at 8, ¶ 22 (Ries Report).

62. Equity Trust required customers to sign and submit an Application agreement to open an IRA account. The Application provided for the customer to acknowledge having reviewed a Custodial Account Agreement and Disclosure Statement. DE 751 at 27-28.

63. Equity Trust also required customers to submit a DOI form to invest the IRA assets. DE 40 at 54. Through a DOI form, a customer, after opening an account at Equity Trust and transferring retirement funds into the account, directs Equity Trust to transfer the retirement funds out of the custodial account and into the “self-directed” investment. Tr. 393:25:394:4 (Batt).

64. The DOI specifically states that Equity Trust was bound by the terms of the agreement and that Equity Trust would be liable to the customer if it breached the terms of the agreement. DE 40 at 54 (DOI form: custodian may have liability “for a breach of this Agreement, the IRA Adoption Agreement, or custodial account agreement of Custodian....”).

65. Dea testified that the DOI form and the Custodial Agreement are drafted by Equity Trust’s lawyers to protect Equity Trust from liability, and that customers have no ability to negotiate the terms of those agreements. Tr. 1611:22-1613:25 (Dea).

##### **5. The IRA Custodian Must Avoid Conflicts of Interest**

66. Equity Trust’s conflicts of interest policy states that a “custodian has a duty to avoid conflicts of interest and self-dealing.” The policy, which incorporates the standard of care set by the FDIC Trust Examination Manual, specifically requires a “fiduciary’s duty of loyalty.” DE 49 at 11.

67. Equity Trust’s Business Ethics Policy, established in 2013, states that a “conflict of interest is any activity, investment, interest, association or relationship, which conflicts with an employee’s independent exercise of judgment in connection with his/her employment with Equity Trust Company.” DE 57 at 1.

68. A sales and marketing relationship between an IRA custodian and a third-party referral source would give rise to a potential conflict of interest. DE 39 at 13, ¶ 39 (Ries Report).

The custodian's new account or sales representative would have an incentive to put the interests of the referral source before customer's interests. *Id.* at 13, ¶ 39 (Ries Report). To guard against this potential conflict, an IRA custodian should appropriately train its sales staff to consider the fiduciary duties owed to custodial customers, including to identify the potential conflicts of interests inherent in a referral relationship. *Id.* at 13, ¶ 39 (Ries Report).

#### **6. The IRA Custodian Should Maintain the Privacy of Customer Account Information**

69. Equity Trust's policies recognized that "[a] custodial relationship is confidential in nature" and that it was prohibited from disclosing any "information related to the custodial accounts" except under limited, enumerated circumstances. DE 49 at 9.

70. All Equity Trust customers were provided a two-page "Privacy Statement" which states that "Equity Trust Company restricts access to your personal and account information to those employees and affiliates who need to know the information.... Equity Trust Company does not disclose nonpublic personal information about you to any unaffiliated third parties, unless required by law." *See, e.g.*, DE 719 at 60-61.

71. Nothing in the Privacy Statement or internal policies permitted Equity Trust to share account information with issuers or promoters. DE 719 at 60-61; DE 49. *See also* Tr. 904:4-7 (Bartlett investigative testimony: "Question: Are Equity Trust salespeople permitted to share customer information with investment sponsors?" Answer: To my knowledge, no.").

72. In a public statement that was recorded and included on Equity Trust's "Accelerated Wealth Building Boot Camp" CD series, Desich Jr. stated that: "No one gets any information – personal information about a client, unless it's the client and they have their personal password. Other than that, no one, ever." DE 861; 861-A.

## **7. An IRA Custodian Must Adopt Adequate Policies and Procedures**

73. An IRA custodian must adopt and adhere to its overall policies and procedures, which should be designed to protect the bank or trust company. DE 39 at 10, ¶ 29 (Ries Report); DE 823 at 30 (S.D. Div. of Banking, *Trust Company Written Policies and Procedures Guidance*: “Each South Dakota chartered trust company is required to develop and implement written policies and procedures specific to company operations and administration. Management must develop and implement a periodic review program to ensure written policies and procedures remain dynamic.” Suggested policies include: “Conflict of Interest/Self-Dealing; Concentration/diversification guidance; [and] Periodic administrative and investment account review procedures”).

74. An IRA custodian has a duty as custodian to adopt policies and procedures designed to ensure that the asset entrusted to it by the principal is properly administered. DE 39 at 10, ¶ 29 (Ries Report). The OCC sets standards for the proper administration of unique and hard-to-value assets and provides guidance to trust companies. *Id.* (Ries Report).

75. The FDIC also sets standards for bank trust departments through its Trust Examination Manual. *Id.* (Ries Report). The FDIC Manual provides guidance and sets standards for trust companies on, among other areas, compliance, controls and account administration, and conflict of interest and self-dealing. *Id.* at 10-11, ¶ 29 n.14 (Ries Report).

76. As stated in the Ries expert report, the IRA custodian’s asset review process should be included in its written policies and procedures. *Id.* at 10, ¶ 27 (Ries Report).

## **8. An IRA Custodian Should Act for the Exclusive Benefit of the Customer**

77. Section 408(a) of the Internal Revenue Code requires that IRA custodians administer the account “for the exclusive benefit of an individual or his beneficiaries.” 26

U.S.C. § 408(a). Equity Trust's policy also requires it to "administer accounts solely in the best interest of [the] beneficiaries." DE 49 at 11.

### **C. Equity Trust Did Not Act Consistently with the Standard of Care**

78. As described in the Ries Report, Equity Trust did not operate as a passive custodian. Through its marketing activities, including by sponsoring promoters and prominently appearing at sponsors' events, Equity Trust promoted and endorsed individual investment promoters, including Taylor and Poulson. DE 39 at 13, ¶¶ 37-38 (Ries Report). By doing so, Equity Trust did not act as a passive custodian, and instead "acted outside the scope of its custodial agreement and its policies and procedures." *Id.* (Ries Report).

79. Equity Trust's sales representative Robert Batt attended Taylor's New Birth Church event in October 2009, at which Taylor spoke of Batt and Equity Trust as his "banker," "financial professional" and "expert"; such endorsement provides legitimacy to the sponsored investments. *Id.* at 14, ¶ 40 (Ries Report).

80. A custodian that chooses to provide investment advice is subject to a fiduciary standard of care with respect to such advice. *Id.* at 8, ¶ 22 (Ries Report). In one example, Equity Trust acting through its employee Batt, convinced an Equity Trust customer to disregard the advice of her broker and buy a Taylor note. *Id.* at 15, ¶ 43 (Ries Report). "Convincing an individual to disregard the advice of a broker – a regulated person who may give investment advice – is a form of advice itself and not consistent with the conduct of a passive custodian." *Id.* at 15, ¶ 43 (Ries Report).

81. By endorsing and recommending individual investment promoters, Equity Trust acted in a "fiduciary capacity and as a result owe[d] fiduciary duties to [its customer] with respect to [] such advice." *Id.* at 11, ¶ 33 (Ries Report).



82. Equity Trust established a reciprocal relationship with Poulson pursuant to which Equity Trust paid to sponsor Poulson's events and in exchange Poulson referred clients to Equity Trust. *Id.* at 16, 45 (Ries Report). This relationship allowed Poulson to implicitly represent to investors that Equity Trust endorsed him and his investments. *Id.* (Ries Report).

83. Prior to releasing fund assets, Equity Trust's policies and procedures required it to obtain an original note clearly stating the associated collateral. *Id.* at 18, ¶ 51 (Ries Report). Equity Trust, however, released trust assets to Taylor based on notes that failed to identify associated collateral. By doing so, Equity Trust acted inconsistently with its duty of care to its customer. *Id.* (Ries Report).

84. These Taylor Note document deficiencies were red flags. *Id.* at 18, ¶ 52 (Ries Report). There is a significant difference between a secured and unsecured investment, and a reasonable custodian would have investigated why the unsecured Taylor Notes were identified as secured on the DOI although there was no evidence of security. *Id.* (Ries Report).

85. For the Poulson Notes, Equity Trust's policies and procedures required it to cease processing new Poulson investments as soon as it learned that it did not have proper documentation. *Id.* at 18-19, ¶ 52 (Ries Report). By failing to investigate the document deficiencies associated with the Poulson investments, and by continuing to process new Poulson investments in spite of the known document deficiencies, Equity Trust failed to satisfy the duty of care required of a custodian. *Id.* (Ries Report).

#### **IV. EQUITY TRUST KNEW THAT ISSUERS USED IT TO FACILITATE FRAUDULENT SCHEMES**

86. Equity Trust maintained a "Do Not Process List" of investments that it would not permit for various reasons, including where the investment or investment sponsor was involved with fraud. For example, the list included a column identifying the reason for refusing future

investments, such as “Ponzi Scheme/Fraud,” “SEC Investigated,” “Pending Litigation,” or “Cease and Desist Found.” DE 578 *passim*. See also Tr. 742:1-5 (Dea: “Q. [The Do Not Process List] was Equity Trust keeping track of times where an investment sponsor was found to have been engaged in a Ponzi scheme or a fraud or SEC investigated or a cease and desist order, right?” A. Yes.”); Tr. 1589:20-1590:25 (Dea).

87. For the period 1993 to 2012, the “Do Not Process” list contains over 800 investments that Equity Trust could not process, and includes names associated with well-known frauds, including BBC Equities, the fraudulent investment fund run by John Bravata (DE 578 at 2; DE 853); Refco (DE 578 at 1); DBSI, Inc. (DE 578 at 4); and Robert Langguth (DE 443 at 11; DE 592).

88. Equity Trust understood that the “Do Not Process” list reflected that Equity Trust was “custodying assets for issuers who turned out to be engaged in a Ponzi scheme or investment fraud.” Tr. 742:14:743:1.

**V. THE NON-TRADITIONAL INVESTMENTS THAT EQUITY TRUST ENCOURAGED INVESTORS TO HOLD IN THEIR RETIREMENT ACCOUNTS WERE INHERENTLY RISKY INVESTMENTS**

89. Equity Trust encouraged investors to invest retirement funds in non-traditional investments such as promissory notes, tax liens, and partnerships. See, e.g., FOF ¶¶ 580-606.

90. A significant portion of Equity Trust’s assets consisted of promissory notes. According to a “Sorted Assets List” dated November 30, 2012, Equity Trust administered approximately \$1.3 billion in notes, including \$583 million in unsecured notes. DE 579 at 1. The \$1.3 billion in notes was the second single largest category of assets; only real estate was slightly larger than the notes. DE 579 at 2.

91. These non-traditional assets are inherently risky. DE 39 at 12, ¶ 19; 34-36 (Ries Report) (“[t]he vast majority of investment advisers and bank trust departments that provide services to IRAs generally limit IRA investment options to registered securities, federally insured bank deposits, and publicly traded mutual funds.”); Office of the Comptroller of the Currency, *Comptrollers Handbook, Unique and Hard-to-Value Assets* (Jan. 2012); DE 597 at 11 (2014 S.D. exam report: “Alternative assets held in self-directed accounts generally tend to ... increase the risk of fraud”); DE 595 at 5 (2009 S.D. exam report: “continued account growth through company acquisitions and traditional account openings heightens compliance risk.”).

92. Equity Trust promoted these alternative investments without disclosing the risks associated with them. *See, e.g.*, FOF ¶¶ 586, 590, 592-593.

## **VI. VIOLATIONS OF THE SECURITIES LAWS BY EPHREN TAYLOR AND CITY CAPITAL**

### **A. Equity Trust Customers Invested Retirement Funds with Taylor/City Capital**

93. From April 2008 through December 2009, a total of 81 Equity Trust customers made 94 investments in the Taylor Notes, for a total of approximately \$5.3 million. DE 40 at 19, 21 (Palen Report).

94. These investments defaulted, resulting in almost a complete loss of every investment. DE 40 at 3 (“Of the total amount raised from Equity Trust customers, a total of \$152,400 of principal was repaid through late 2010”).

### **B. Taylor’s and City Capital’s Violations**

95. From 2008 through December 2009, Ephren Taylor, through City Capital, a public company, and other entities he owned and operated (collectively, “City Capital”), raised funds from investors through the issuance of secured and unsecured promissory notes that paid

interest rates from approximately 10% to 20% for terms of primarily nine months to three years, as well as two equity investments (the “Taylor Notes”). DE 40 at 10-19 (Palen Report).

96. Taylor and City Capital generally represented to investors, including in pitches by Taylor, that the investments in Taylor Notes would be used for community development, housing, real estate, or specific businesses. DE 36 (Taylor Dep. 30:5-16); DE 3 at 45-50 (Taylor plea colloquy).

97. As part of his pitch, Taylor and City Capital sought to convince investors to roll over funds from their retirement accounts into Equity Trust, which was the self-directed IRA that City Capital utilized. DE 36 (Taylor Dep. 39:1-7); DE 3 at 45-50 (Taylor plea colloquy).

98. Taylor and City Capital misappropriated most of the investor funds for Taylor’s personal use, City Capital operating expenses, marketing fees, bank fees, and repayment of earlier investors, none of which was told to investors. DE 40 at 3-4 (Palen Report); DE 36 (Taylor Dep. 28:9-18); DE 3 at 45-50 (Taylor plea colloquy). Most investors were never repaid. DE 40 at 3-4 (Palen Report); DE 3 at 45-50 (Taylor plea colloquy).

99. City Capital’s SEC filings dating to at least June 2007 reflected a “going concern” opinion with respect to City Capital. DE 538 at 7 (June 30, 2007 Form 10-Q); at 43 (September 30, 2007 Form 10-Q); at 64 (March 31, 2008 Form 10-Q); at 79 (June 30, 2008 Form 10-Q); at 106 (September 30, 2008 Form 10-Q); at 150 (March 31, 2009 Form 10-Q); at 211 (June 30, 2009 Form 10-Q); at 275 (September 30, 2009 Form 10-Q); DE 537 at 6 (2007 Form 10-K); RE 2 at 8 (2008 Form 10-K); DE 8 at 10 (2009 Form 10-K).

100. Taylor and City Capital falsely represented to many investors that the Taylor Notes were secured by City Capital or other entities owned by Taylor. Each of the Taylor Notes had a DOI form that purported to describe the terms of the note. Section 10 of Equity Trusts’

DOI form includes the question, “Is this note secured by collateral?” DE 40 at 5. If “yes” is checked, that security is identified in Section 11, which asks “What type of collateral is this note secured by?” DE 40 at 5.

101. City Capital filled out this form on behalf of customers and, on 35 occasions, checked the box in Section 10 that the notes were secured. DE 36 at 24 (Taylor Dep. 90:20-22) (“Q. And typically, would Equity Trust or City Capital fill out the DOI form? A. City Capital.). *See also*, FOF ¶ 440 (Jones that the DOI form was completed by City Capital); FOF ¶ 457 (Sims, same). In fact, these Taylor Notes were unsecured. DE 40 at 30 (yellow bar reflects unsecured investments); DE 36-24 (Taylor Dep. 91:9-12: “Q. So is this false – is the fact that the DOI form is checked yes instead of no, does that indicate a false statement on the DOI form? A. Yes.”).

102. Taylor and Equity Trust understood that the secured notes were safer and more desirable than unsecured notes. DE 36 at 24 (Taylor Dep. 92:9-12: “Q. Did you have any understanding whether investors viewed secured notes as more desirable as opposed to unsecured notes? A. Secured was definitely more desirable.”); DE 808 at 1 (Equity Trust website: an unsecured note “is a higher risk than a secured note”); Tr. 655:1-7.

103. Taylor made false and misleading statements to investors about Equity Trust’s role at the October 2009 New Birth Church event. At the start of his presentation to a church full of potential investors, Taylor introduced Robert Batt, an Equity Trust salesperson who was present, as “my banker” and added that “if you have any questions specifically about what I do, I figured, why not just bring the expert with me?” DE 9 at 3-4.

104. Taylor also told the New Birth Church audience that “you know it’s something when the bank flies out your banker to hang out with you” (DE 9 at 4), and later referred to Batt as his “qualified, educated, and informed financial professional.” DE 800-B; 800-C. Taylor’s

purpose in making these statements was to give himself an air of legitimacy from being associated with an established financial institution. DE 36 (Taylor Dep. 74:19-22: “to have a representative from [Equity Trust] in the audience, it wasn’t going to get any better than that. That was the – all the little endorsement I needed – to make it happen.”). But Taylor’s statements were false – Batt was neither Taylor’s banker nor his investment advisor.

### **C. Criminal and Civil Actions Against Taylor and City Capital**

105. In the District Court action, the SEC charged Taylor and City Capital with violating Section 17(a)(2) and (a)(3) of the Securities Act, among other statutes, and the Complaint against them alleges that they “were negligent.” DE 5 (Complaint in *SEC v. City Capital Corp., et al.*).

106. The Final Judgments entered in *SEC v. City Capital, et al.*, enjoin Taylor and City Capital from violating, among other provisions, Section 17(a)(2) and (a)(3) of the Securities Act. DE 6, 7 at 5-6.

107. Taylor’s Indictment alleges that he “encouraged investors to transfer the money in their retirement accounts to self-directed IRAs and then to purchase promissory notes . . . . Investors would transfer their retirement account funds to a self-directed IRA through a custodian. From in or about March 2008 through in or about February 2010, TAYLOR had clients use Equity Trust Company.” DE 1 at 4 (Indictment).

108. At the allocution, the District Judge told Taylor that “you will have to admit to what you did that gives rise to the crime to which you want to plead guilty.” DE 3 at 46. The District Judge then asked the Assistant United States Attorney (“AUSA”) to describe the evidence against Taylor, and told Taylor that “when he’s done I will ask if you admit that you engaged in the conduct that he described.” *Id.*

109. The AUSA stated that: “Taylor and other co-conspirators executed a scheme to defraud investors around the country.” “That the scheme to defraud offered . . . promissory notes issued by City Capital and various affiliated purportedly bearing annual interest rates of 12 to 20 percent.” “Taylor, directly and through others, encouraged investors to roll over retirement portfolios to self-directed IRA custodial accounts and then to have those funds transferred to City Capital Corporation. From at least mid-2009 through the end of 2010, City Capital did not generate significant revenue from any actual business operations, and it was dependent upon new investor funds to stay open.” DE 3 at 45-46.

110. The AUSA continued: “Promissory note investors were told their money would be put into specific investments. Instead their funds were used to pay unrelated expenses, including purported returns to earlier City Capital investors, salaries and commissions to City Capital executives and employees, payroll, rent, and other basic operating expenses.” DE 3 at 46.

111. The AUSA continued: “Taylor and others at City Capital knew that the investments were not profitable and that the investment returns paid to investors were from their own money or money paid by subsequent investors[.] Taylor and others at City Capital knew the money from the investors was not being invested as promised.” DE 3 at 47.

112. Taylor admitted that these statements of the AUSA accurately described his conduct. DE 3 at 50.

113. In pleading guilty to mail and wire fraud in violation of 18 U.S.C. §§ 1341, 1342, Taylor admitted that he “knowingly devised or participated in a scheme to defraud someone, or obtain money or property using false or fraudulent pretenses, representations or promises,” and

that “the false or fraudulent pretenses, representations or promises were about a material fact.”  
DE 3 at 24-26.

114. On March 17, 2015, the District Judge sentenced Taylor to 235 months imprisonment. DE 64 at 73.

115. On October 29, 2014, the Commission barred Taylor from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, also from participation in any stock offering. *Ephren W. Taylor, II*, Rel. No. 34-73466, 2014 WL 5493263 (Oct. 29, 2014).

## **VII. VIOLATIONS OF THE SECURITIES LAWS BY RANDY POULSON**

### **A. Equity Trust Customers Invested Retirement Funds with Poulson**

116. From January 2007 through May 2011, thirty-four Equity Trust customers invested a total of \$984,998 in 41 Poulson Notes, and of this amount \$643,485 was never repaid. DE 41 at 2 (Daniello Report).

### **B. Poulson’s Violations**

117. Randy Poulson promoted himself as an investor in residential real estate, and conducted seminars on how to invest in real estate. DE 147 at 1.

118. Beginning in at least 2007, Poulson offered investors secured promissory notes that paid interest rates from 12% to 20% for terms ranging from as little as six months to five years (the “Poulson Notes”). DE 41 at 2 (Daniello Report); DE 743 at 39-42 (Savary DOI form).

119. Poulson told investors that the funds invested in Poulson Notes would be used to purchase, maintain, and improve the respective properties, including making payments on the existing mortgages. DE 267 at 32 (Poulson plea colloquy). Instead, Poulson commingled those funds with his other funds and misappropriated a significant amount of the funds for his personal



use. DE 41 at 2-3 (Daniello Report: “The commingled funds were also used to pay what appear to be Mr. Poulson’s personal expenses in connection with personal credit card bills, vacation in a luxury resort in Mexico, child pre-school tuition, and life insurance premiums.”); Tr. 502:9-503:7; 504:1-504:23) (Poulson: corroborating Daniello Report).

120. Poulson failed to tell prospective investors that many properties purportedly securing the Poulson Notes had multiple unrecorded mortgages associated with them that were securing other Poulson Notes:

- 112 Florence Avenue had five unrecorded mortgages purportedly securing Poulson Notes;
- 224 Wesley had six unrecorded mortgages purportedly securing Poulson Notes;
- 235 Jackson had four unrecorded mortgages purportedly securing Poulson Notes;
- 40 Lawrence Lane had five unrecorded mortgages purportedly securing Poulson Notes;
- and
- 633 Southwick had 3 purportedly securing Poulson Notes.

DE 41 at 29; Tr. 503:8-503:25 (Poulson: corroborating Daniello Report).

121. Multiple mortgages on the same properties meant that there was less security for each individual note holder in the event of default (*e.g.*, DE 41 at 29 (column I)).

122. As the mortgages were not recorded, investors could not know of the existence of these other mortgages. Ron Jablonski, a title agent in New Jersey who was called by Equity Trust, testified that a mortgage “has [] to be recorded in the courthouse to give public notice to everyone that there is a lien against the property to secure that lien. If not, the next person that does that title search in my market would find no lien against that property.” DE 41 at 4; Tr. 1766:8-17

123. Poulson failed to disclose prior unrecorded mortgages to prospective investors (Tr. 1098:3-10 (Savary); Tr. 1274:20-25 (Gatto)), and he also failed to record the mortgages of those who invested with him. DE 41 at 29 (Daniello Report). As a result, his noteholders were in a worse lien position in the event of default. As Equity Trust's witness Jablonski testified, an unrecorded mortgage is worth only the "value of the paper. . . . if there is no recorded lien against the property." Tr. 1766:18-24.

### **C. The Criminal Case Against Poulson**

124. Poulson was indicted on June 5, 2014, and charged with seven counts of mail fraud. The seven counts are based on transfers from an Equity Trust Company custodial account to Poulson during 2010 and 2011. DE 269 at 4-5 (Indictment).

125. At Poulson's plea allocution on June 23, 2015, the District Judge asked Poulson a series of question, which established the following as the factual basis to Poulson's plea:

- Poulson owned and operated Equity Capital Investment, LLC and Poulson Russo, LLC in New Jersey during the period from July 2006 through November 2011;
- Through his company Poulson Russo, Poulson gave speeches and seminars, monthly dinners and various private tutorial sessions purporting to teach real estate investing tips to individuals who paid fees to attend such events;
- Poulson also solicited attendees at the seminars and other individuals, including members of the South Jersey Real Estate Investors Association, to invest in your company, Equity Capital Investments;
- During some of Poulson's solicitations, Poulson falsely claimed in oral presentations and in written materials that investors' money would be used to fund the purchase, maintenance and improvement of a specific residential property, including the cost of

acquiring the property, a down payment, rehabilitation costs, and mortgage payments prior to finding a renter for the property;

- Poulson caused investors to provide him with money both by wire transfer and by check which he caused to be deposited into the Equity Capital Investments account; and
- Poulson periodically repaid the investors using other investors' money.

DE 267 at 30-31.

126. On January 22, 2016, the District Court entered a Judgment sentencing Poulson to seventy months imprisonment and ordering him to pay restitution of \$2,580,940.94.

#### **VIII. TAYLOR AND POULSON EMPHASIZED EQUITY TRUST AND SELF-DIRECTED IRAs WHEN MARKETING AND PROMOTING THEIR FRAUDULENT SCHEMES**

##### **A. Self-Directed IRAs and Equity Trust Were Central to Taylor's Scheme**

127. Tapping into investors' retirement savings through self-directed IRAs was a central component of Taylor's fraudulent note scheme. DE 36 (Taylor Dep. 39:1-7) ("Q. Can you describe how you used [self-directed IRAs]? A. We used them as one of our primary fundraising vehicles."). Taylor knew that few potential investors had cash readily available to invest in his promissory note program. DE 36 (Taylor Dep. 39:8-14). Taylor also knew that investors who did not have available cash could open self-directed IRAs and use their retirement savings to purchase his promissory notes, it allowed him to approach significantly more people (DE 36 (Taylor Dep. 39:14-22)) and gave him "access to tremendous amount of capital through the rollover process." DE 36 at (Taylor Dep. 39:1-7).\

**1. Taylor's Websites IRACashFlow.com and RolloverIRAGuide.com Promoted Investing Through Self-Directed IRAs**

128. As early as 2008, Taylor began to market self-directed IRAs through various websites to promote his note scheme. One such website was IRACashFlow.com. RE 248 at 79-97 (2008 web capture); DE 799 at 4-10 (2009 web capture).

129. The IRACashFlow.com website stated “Three Simple Steps Can Double Your Return On Investment!” and promised investors, “[w]hatever your IRA earned in the last calendar year, City Capital will guarantee to Double Your ROI within the next 12 months.” RE 248 at 95.

130. The problem for most IRA investors, according to the website, was that the “[a]verage of all IRA returns on investment nationwide are currently between **4-9% per year.**” RE 248 at 95 (emphasis in original). “The Solution” was “[a] Self-Directed IRA [which] allows you to choose your own investment strategies to earn significantly more for your retirement,” with “Absolutely Hassle-Free, Worry-Free, Hands-Free Investing, With Guaranteed ROI.” RE 248 at 95. Interested investors were urged to “[g]et the market whitepaper, *Three Simple Steps to Double Your Return on Investment Tax Free.*” RE 249 at 95.

131. Another section of IRACashFlow.com exclaimed in bold, oversized letters, “Wake up your IRA! Put it to work and get **DOUBLE** the returns!” DE 799 at 7. And it warned: “If you don’t want to be caught without a sufficient nest egg when it’s time to retire, it’s time you invested in a Self-Directed IRA.” DE 799 at 7.

132. Taylor and City Capital also maintained the website RolloverIRAGuide.com, and promoted it as “Your Quick and Easy Guide to IRA Rollovers.” DE 799 at 11. RolloverIRAGuide was presented to potential investors as “sound IRA advice from financial expert Ephren Taylor and City Capital Corporation” to “help you learn more about your IRA and

401(k) retirement fund options.” DE 799 at 11. It includes detailed explanations of, among related topics, “Types of IRAs” (DE 799 at 17); “Investment choices for your IRA” (DE 799 at 20); and “Your Easy Guide to Understanding IRA Rollovers” (DE 799-13).

**2. City Capital’s Whitepaper, *Double Your Return on Investment Tax Free* Emphasized Its Relationship With Equity Trust**

133. City Capital’s “Market Whitepaper,” *Three Simple Steps to Double Your Return on Investment Tax Free* touted on Taylor’s IRACashFlow.com website (“*Double Your Retirement Income Tax Free*” or “whitepaper”) explicitly promoted and endorsed Equity Trust as City Capital’s IRA custodian of choice. DE 35 at 2.

134. The whitepaper emphasized: “One of the aspects of City Capital’s system is our close working relationship with one of the country’s largest and most reputable third-party custodians, the **Equity Trust Company** (<http://www.trustetc.com>). **Equity Trust** provides independent custodial and administrative services for City Capital clients . . . they understand these unique self-directed investments and the kind of boost they can mean to your retirement plan.” DE 35 at 14 (emphasis in original).

135. *Double Your Retirement Income Tax Free* also assured potential investors that, “**In Our Program, With Equity Trust As Custodian, Your money IS Insured,**” and promised investors, “when you appoint **Equity Trust** as your custodian and direct them to invest in City Capital’s Community Renaissance Initiatives like the ones we’ve been describing, **All Your Fees Are Pre-Paid By City Capital.**” DE 35 at 23, 44 (emphasis in original).

136. Equity Trust had a copy of *Double Your Retirement Income Tax Free* in 2008 and emailed it internally in 2009 and 2011. DE 272 (attachment to email to Edwin Kelly Emerson Brantley); 35 at 1 (10/1/09 email from Arnholt to Batt); 509 (10/18/11 email from Arnholt to Dea).

137. *Double Your Retirement Income Tax Free* was provided to numerous investors (see, e.g., DE 662 - 667 (emails from Taylor to various investors attaching or linking the whitepaper)), including ██████ Sims. DE 728 at 1.

138. In an email to ██████ Sims dated June 17, 2009 with the subject heading, "██████ Have You Read it Yet?", Taylor wrote: "Hi ██████ First, thanks again for visiting our website IRACashFlow.com and downloading our report '3 Simple Steps to Double Your Retirement Income Tax Free Using Federally-Approved Programs.'" DE 728 at 1. Taylor went on to say, "we should all always make time for the important things...and this could be one of the most important things of all – especially when retirement time comes!" and emphasized that "[e]very day you don't take advantage of this program is a day you are not receiving DOUBLE the returns you should be getting." DE 728 at 1. Taylor closed the email with, "Thank you, The City Capital IRA Team." DE 728 at 1.

139. Sims testified that City Capital's promise to pay her Equity Trust fees was one of the reasons she decided to invest. FOF ¶ 451. She also confirmed that Taylor emphasized self-directed IRAs when promoting his investments (Tr. 1398:24-1399-8), and said that the City Capital employee she spoke to directed her to contact Batt at Equity Trust. Tr. 1402:3-17

### **3. Taylor Touted His Relationship With Equity Trust in the Press**

140. Taylor also promoted his relationship with Equity Trust and self-directed IRAs in public statements and in the press. For example, Taylor was interviewed in connection with a 2009 article that appeared on Bankrate.com, *Self-directed IRA a good bet?* DE 13 at 2. The article states:

Ephren Taylor is CEO of Raleigh, N.C.-based Capital City Corp., which has a Web site called "IRACashFlow." The company specializes in helping link self-directed IRA investors to retail and service operations in low-income communities. Taylor's organization uses Equity Trust as a custodial firm and runs

the business for the client. "Our clients are getting returns even in a down market," says Taylor, who brings self-directed IRA investors to established businesses such as gas stations and pizzerias in low-income urban areas.

DE 13 at 5-6.

141. Taylor emailed the article to Batt on January 3, 2009, with the subject heading: "Should I get an Endorsement deal with Equity Trust." DE 13 at 1. Taylor testified that when he sent the article to Batt he was "[j]ust showcasing him some of the -- some of the press that we were getting at the time, and then, also, as I was touting the Equity Trust name in some of the articles." DE 36 (Taylor Dep. 112:9-16).

#### **4. Taylor Used Marketing Materials Provided by Equity Trust To "Close" Skeptical Investors**

142. Taylor testified that when City Capital "started moving [ ] enough volume," Equity Trust began "sending a box of packets or applications for Equity Trust", either to the City Capital office, or directly to Taylor at a promotional event, and that materials made it was easier to raise money from investors. DE 36 (Taylor Dep. 52:3-9; 52:24-53:2). He testified that, "some people would be skeptical of a 20-something kid on stage. By having that blue packet where they could see that, hey, you can be in control of your account – they, necessarily, wouldn't have to partner with City Capital or do anything with us, even though we knew most of the time, they would—but having the packets there for our sales reps, to not have to do any additional follow-up or chase down a potential investor, to get them to sign and commit on spot, that definitely improved the close ratios significantly." DE 36 (Taylor Dep. 53:9-20).

#### **5. Taylor Emphasized City Capital's Presence on Equity Trust's Website to Promote His Promissory Note Scheme**

143. City Capital's presence on Equity Trust's website was also used by Taylor to emphasize self-directed IRAs and Equity Trust to market his scheme. Taylor testified that the

City Capital “landing page” on the Equity Trust website was a “huge credibility booster” and that “we spun and touted that a little bit with our marketing materials and the clients and customers.” DE 36 (Taylor Dep. 70:11-17).

**6. At New Birth Church Taylor Made False Statements About Equity Trust to Lend Credibility to His Scheme**

144. At the New Birth Church event in 2009, Taylor emphasized Equity Trust at every opportunity to promote his investments. *See, e.g.*, FOF ¶¶ 113-104, 225-227, *see also*, ¶ 477 (Turner).

145. Taylor testified that having Batt present – as a representative of Equity Trust – “in the audience, it wasn’t going to get any better than that. That was the – all the little endorsement I needed to – to make it happen.” DE 36 (Taylor Dep. 74:5-22).

**7. Senior Equity Trust Management Were Aware that Taylor Emphasized Self-Directed IRAs to Investors**

146. Senior Equity Trust management was also made aware that Taylor promoted self-directed IRAs to investors. On January 4, 2010, Equity Trust’s Director of Compliance Sandra Sarudis wrote an email to Dea, J. Desich and Desich Jr. that, “Ephren does 60-90 seminars across the country each year on a variety of topics and always includes self-directed retirement accounts in those seminars.” DE 410 (email); DE 649 at 1 (Sarudis personnel file with title).

147. The Equity Trust Secondary Investment Review of City Capital also documented that Taylor was contacted in late-2009, and that Taylor “does 60-90 seminars a year” and “always includes self-directed retirement investing in those seminars.” DE 526 at 2.



## **B. Poulson Emphasized Equity Trust to Promote His Investment Scheme**

### **1. Poulson Established a Relationship with Equity Trust Early in His Scheme**

148. Like Taylor, Poulson learned the importance of self-directed IRAs early in his scheme, and emphasized self-directed IRAs to promote his fraudulent investments. Poulson testified that early on he attended “four or five” Ron LeGrand events (Tr. 497:25-488:2) at which LeGrand talked about Equity Trust. Tr. 498:16-20. Poulson also said that it was at a LeGrand event that he first met Equity Trust sales representative Irene Berlovan (Tr. 499:20-24), and that she explained to him “what an IRA was, how to use an IRA in real estate [and] about the steps involved for opening an IRA” (Tr. 500:2-8).

149. When Poulson later began offering promissory notes to customers in 2006 or 2007 (Tr. 501: 8-10), he established a relationship with Equity Trust and Berlovan “served as [his] point person.” Tr. 501:20-502:3.

### **2. Poulson Used Equity Trust to Market His Promissory Notes**

150. In 2008, when Poulson was the President of South Jersey Investors, he sent Berlovan an email touting his experience with Equity Trust as custodian for investors in his note program. DE 144 at 1-3. Poulson wrote, “I routinely show people how to open up an IRA with Equity Trust Company (Joseph Sharman and Karen Poles as two recent examples) and/or how to transfer money from an existing IRA to a new one opened with Equity Trust [...] I then teach these people how they can buy real estate using their IRA with Equity Trust Company and/or how to become a private lender by creating a promissory note that their IRA is the 100% owner that is secured against a parcel of real estate with an accompanying mortgage at double-digit rates of return.” DE 144 at 2.

151. Poulson claimed that “I have probably worked with 10 or 12 customers of Equity Trust [...] most of whom I referred to [Equity Trust].” DE 144 at 2. He continued that, “I frequently use private money in my real estate investment business to complete and settle transactions” and would “welcome the opportunity” to present at an Equity Trust seminar “on using an IRA for investing in real estate at high rates of return.” DE 144 at 2.

### **3. Investors Testified that Self-Directed IRAs and Equity Trust were Central to Poulson’s Promissory Note Scheme**

152. Poulson emphasized self-directed IRAs and Equity Trust specifically in presentations to the South Jersey Investors. ██████ Gatto testified that he first learned about investing in real estate through a self-directed IRA from a Poulson South Jersey Investors Association presentation. Tr. 1258:8-15. Gatto also said that investing through self-directed IRAs “was a topic that Mr. Poulson had brought to the group and made several presentations on.” Tr. 1258:10-12. According to Gatto, Poulson said that “Equity Trust was his IRA custodian of choice [...] I deal with Equity Trust.” Tr. 1258:16-22. Poulson also told Gatto, “look, if you’re going to go with one of the other [custodians], I don’t even know if we can invest together [...] [b]ut if we go with Equity Trust, it’s never been a problem.” Tr. 1258:23-1259:8.

153. ██████ Savary also testified that Poulson introduced him to Equity Trust. Tr. 1068:25-1069:10. Savary attended a Poulson Russo event in April 2009 called the “Poulson Russo 4 Day Live Interactive Liquidation Extravaganza” (DE 746-1; Tr. 1069:11-1070:1; 1108:11), at which Poulson displayed a PowerPoint slide identifying his “Power Team of Professionals.” DE 746 at 98. Among the other members of his “Power Team,” Poulson listed: “IRA Custodian – Irene Berlovan, Equity Trust (ETC).” DE 746 at 98. And when Savary later

approached Poulson about investing in a Poulson note, Poulson directed him to Equity Trust. Tr. 1074:8-19.

154. Equity Trust also had a vendor table at the event, and Berlovan made a presentation. Tr. 1069:1-10; 1072:4-13.

155. Prior to her presentation, Poulson introduced Berlovan as a member of his “power team,” as the “account representative who I utilize” and one utilized by all but one of his “private lenders.” Poulson also emphasized that Equity Trust was “the best custodian for self-directed [] IRAs, particularly for when it comes to dealing with real estate entrepreneurs.” DE 262-A (Video of Poulson event, 1:37:14 – 1:39:55).

#### **4. Senior Equity Trust Management Were Aware that Poulson Emphasized Self-Directed IRAs and Equity Trust to Investors**

156. In February 2009, shortly after he launched Poulson Russo, Poulson created a PowerPoint presentation entitled “How to Generate Huge Profits in Today’s Unstable and Unpredictable Housing Market Without Using Your Own Cash or Credit!” DE 265 (slides emailed to J. Desich on 3/3/09 at DE 150). The slides emphasize self-directed IRAs:

- A slide called “Building Your ‘Power Team’” lists “IRA Custodian,” DE 265 at 82;
- “Traditional IRA” and “Self-Directed Roth IRA” are listed among the option for “Best Sources of Private Money,” *id.* at 135;
- “Self-Directed Roth IRA – Definition” describes an IRA that “allows you to invest [...] in a variety of long term investment vehicles particularly real estate, promissory notes, mortgages, and tax liens provided your account is with a custodian such as Equity Trust Company,” *id.* at 153;
- A sequence of slides captioned, “Profiting in Your Self-Directed Roth IRA – Example,” *id.* at 154-155;

- A slide stating, “Here’s What You’ll Be Introduced To . . . The Best IRA Custodians in The Country Who Will Teach You How to Use an IRA Properly and Profitably as a Source for Private Lending (Private Money) and for Planning Your Family’s Future,” *id.* at 183.

157. Poulson also provided Equity Trust with marketing material for Poulson Russo events scheduled for February and March 2009. DE 150 at 1-5. The promotional materials stated, “You’re Invited To The Poulson-Russo ‘Coming Out Party’” and stated that Poulson wanted “you at the unveiling of their brand-new venture.” DE 150 at 4. Under the caption, “What you will learn,” the material stated: “Part of being successful in our game is learning the Poulson-Russo way to protect your profits using a Self-Directed IRA.” DE 150 at 4.

158. Poulson testified that he wanted Equity Trust at the initial Poulson Russo event “because I had been referring clients to them and felt that it would be good for people to see them live at one of our events in case they had specific questions, because we were going to be talking about private money and private lending as one of the components of our curriculum.” Tr. 515:16-24.

**IX. EQUITY TRUST SALES REPRESENTATIVES WERE MOTIVATED TO DEVELOP RELATIONSHIPS WITH INVESTMENT SPONSORS LIKE TAYLOR AND POULSON**

**A. Sales Representatives Were Financially Motivated to Open Accounts and Were Evaluated Based on Their Ability to Open Accounts**

159. Equity Trust’s commission-based sales staff earned anywhere between \$15 and \$50 in commission for opening an account, depending on the value of the account. Tr. 207:7-19 (Marsh). If a sales representative met his or her monthly account opening goal of 40 (Tr. 202:10-17), the representative could earn about \$24,000 a year in commissions.

160. The majority of a sales representative's compensation was commission. Tr. 1203:16-17 (Berlovan: "There was a base salary that was small and then the majority was commission.").

161. Batt and Berlovan each received a base salary of about \$23,000. Tr. 294:5-7 (Batt); DE 652 at 11 (Berlovan).

162. Batt testified that his "job was to open up IRAs and get people to put their money into the IRAs." Tr. 423:20-21. Berlovan also understood that her job was "generating account openings," and she hoped that by having Poulson work with Equity Trust's marketing department she would be able to open more accounts for Poulson. Tr. 1203:8-14; Tr. 1213:12-16.

163. Equity Trust's performance evaluations of sales representatives were also based in part on meeting account opening goals. Tr. 389:15-18 (Batt). *See also* Answer ¶ 23 (admitting account opening goals). In Berlovan and Batt's written evaluations, which Equity Trust referred to as "scorecards," the first criterion on which they were rated was "Sales Goal." DE 652 at 1 (Berlovan); DE 653 at 5 (Batt).

164. In Berlovan's 2009 scorecard, she was told, in connection with her sales goal, "Moving forward you need to focus on what matters (opening accounts). Anytime you find yourself 'wandering' from this focus, ask yourself, 'Am I going to open an account if I do this?' find the best way to prioritize your day around that concept." DE 652 at 1. Berlovan's response to her 2009 evaluation included the comment that "the majority of the deals I closed in 2009 were as a result of my skills and interactions with each client / prospect / COI thus generating my own leads by [] referrals." DE 652 at 4.

165. In Batt's 2009 scorecard, he was told, in connection with his sales goal, "You are over goal for the year. Keep up the great work. Make sure you are closing on every call." DE 653 at 5.

166. Keith Marsh was an Equity Trust sales supervisor and managerial level employee. DE 651. As such, Marsh was evaluated in part by the sales department's ability to make sales goals. DE 651 at 15 (Marsh's scorecard with respect to "Company Sales Goal": "Outstanding 2010 year! Over 121.3% of previous year goal. And 110% above current year goal!").

167. Senior management encouraged sales representatives to meet their account opening goals. Tr. 202:18-20; Tr. 664:10-14 (Dea: sales goals "[e]ncouraged them to do what they were taught to do in order to gather new business.").

168. Sales representatives were also encouraged to travel to conferences and events in order to generate new leads. In sales training material, Equity Trust posed the question, "Why does ETC travel" to events and conferences, and answered, "To open new accounts and gain new clients" and "To bring back leads → will generate ongoing business." DE 600 at 2. *See also* DE 602 at 4 ("Equity Trust Company employees travel for various reasons. The most obvious reason would be **to get business and bring in accounts.**") (emphasis in original).

169. Equity Trust had an "Incentive Plan" for sales representatives who traveled and were able to open accounts. DE 604 at 2-3. For example, representatives would get a commission of \$12 per account opened at an event if they opened more than 10 accounts at that event. DE 604 at 3. *See also* DE 177 (Berlovan seeking a 10% "spiff," or commission, for "sponsorships").

**B. Equity Trust Senior Management and Marketing Focused on Investment Sponsors to Develop New Accounts**

170. In order to open new accounts, Equity Trust sought to develop “leads,” meaning individuals who might be interested in opening a self-directed IRA. Tr. 662:24-663:6 (Dea). Once leads were developed, they would be parceled out to sales representatives to pursue. Tr. 672:12-14 (Dea).

171. Equity Trust “puts a lot time and effort into finding leads, tracking leads, seeing where leads come from and seeing which leads might lead to accounts.” Tr. 663:6-10 (Dea). New leads were how Equity Trust was able to generate fees. Tr. 670:22-671:1 (Dea).

172. Investment sponsors like Taylor and Poulson were one source for leads. Tr. 663:11-24 (Dea).

173. Sales representatives were encouraged to pursue referral sources. Sales representatives “were given leads from the marketing department, as well as anybody that was a client,” which could include “issuers of securities.” Tr. 664:16-25 (Dea). Sales representatives were encouraged to develop centers of influence like Taylor and Poulson who could generate leads. *See, e.g.*, Tr. 1242:15-21 (Berlovan).

174. Equity Trust had a marketing manager who “was in charge of working with large referral sources, lead sources, anybody that, through any specific kind of marketing, could refer us leads or larger sums of prospective clients.” Tr. 247:6-9.

175. In one example, an Equity Trust marketing manager emailed Batt asking whether Batt had contacted Taylor about doing a webinar, and that she would like to prepare a webinar for Batt. Tr. 247:10-15; DE 369.

176. On March 3, 2009, the same marketing manager emailed J. Desich that Berlovan has “done a great job with” Poulson and “is very attentive to [Poulson’s] needs.” DE 150 at 1.

Equity Trust also sought to “partner” with Poulson and understood that he generated a number of referrals. FOF ¶¶ at 301-348.

177. Equity Trust senior management regularly tracked new leads. For example, at one point in mid-2009 Equity Trust used what it called a “Marketing Report Card.” Tr. 670:14-21. Senior management regularly received this Marketing Report Card. *See, e.g.*, DE 562-565.

178. Categories of leads that were tracked on the Marketing Report Card included events, paid searches, teleseminars and webinars, and email. *See, e.g.*, DE 563 at 2.

179. Issuer events also generated leads, which were tracked by Equity Trust. DE 563 at 14. For example, Ron LeGrand’s “Quick Turn Real Estate School” generated 23 “qualified leads.” Tr. 672:19-23; DE 563 at 14.

180. Equity Trust sought to attend conferences because “when investors sign up for these conferences, it signifies that they are motivated investors who are looking for something to invest in.” DE 602 at 5.

## **X. EQUITY TRUST PROMOTED, ENDORSED AND CATERED TO TAYLOR**

### **A. In 2008, Taylor Chose Equity Trust as a New Custodian Because It Could Process Investments Rapidly**

181. When City Capital began issuing promissory notes, Taylor began working with several different self-directed IRA custodians, but he was dissatisfied with their “cumbersome” six to eight week processing time. DE 36 (Taylor Tr. (Taylor Dep. 40:11-19; 41:7-15). It took this long in part because those custodians required “getting all the documents” to them and then obtaining approval in order to wire the money. DE 36 (Taylor Dep. Tr. 42:5-14).

182. An online search led Taylor to Equity Trust and Batt. DE 36 (Taylor Dep. 43:7-44:8); DE 513 at 1 (11/8/11 email to Bartlett: reflecting that in 2008 Taylor filled out information on web pages). In their first conversations in about 2008, Taylor told Batt that self-directed



IRAs were a “big moneymaker” and that they were “looking for somebody that could give us that personal service to expedite the process, and most of it kind of focusing on speed.” DE 36 (Taylor Dep. 44:11-45:1). In response, Batt assured Taylor that Equity Trust could address his concerns about speed, emphasizing Equity Trust’s “infrastructure,” “processing teams” and “industry know-how.” DE 36 (Taylor Dep. 45:2-19).

183. City Capital began working with Equity Trust as a custodian and Taylor found that Equity Trust was “[s]ignificantly faster” than the other custodians. DE 36 (Taylor Dep. 46:22-47:1). As the relationship between City Capital and Equity Trust progressed, the processing time “actually got faster,” down to about two weeks and even once in 48 to 72 hours. DE 36 (Taylor Tr. (Taylor Dep. 47:10-17).

184. After Equity Trust processed the initial customers quickly, City Capital “began to send more and more clients to Equity Trust.” DE 36 (Taylor Dep. 51:2-8).

**B. In October 2008, Edwin Kelly Told J. Desich and Dea That Taylor Was “A Crook”**

185. Al Aiello, an accountant, spoke at the Accelerated Wealth Building Boot Camp held on October 30-November 1, 2008. DE 821 at 3-4 (line 4).

186. Equity Trust’s National Speaker, Edwin Kelly attended this event. DE 20 (Batt email identifying Kelly as an Equity Trust “national speaker”); Tr. 600:2-12. While E. Kelly was reading Taylor’s book at the event, Aiello saw the book that E. Kelly was reading and, pointing to the book, said, “that guy’s a crook.” Tr. 601:1-8. E. Kelly was “taken aback” and Aiello told E. Kelly that Aiello had a client that loaned Taylor \$600,000, that Taylor did not pay back the client, and that Taylor would not return the client’s emails or phone calls. Tr. 601:10, 18-21.

187. E. Kelly told Aiello “that’s a problem” because Equity Trust had “clients who are holding assets that Ephren Taylor is investing in.” Tr. 601:21-24.

188. At that same event, E. Kelly told J. Desich, who was also in attendance, about Aiello’s warning about Taylor. Tr. 602:24-603:21. Desich told E. Kelly to “tell Mike Dea” about the conversation. Tr. 603:22-23.

189. Kelly then told Dea about the conversation with Aiello. Tr. 604:5-6.

190. E. Kelly did not recall any follow up from J. Desich or Dea about the Aiello warning that Taylor was “a crook.” Tr. 604:9-11.

191. At some point later, a representative of Taylor contacted E. Kelly to arrange a webinar with Equity Trust and Taylor. Tr. 604:17-20. E. Kelly told the Taylor representative that E. Kelly could not include Taylor in a webinar given the allegation. Tr. 605:1-17.

### **C. Batt Routinely Disclosed Confidential Account Information to City Capital**

192. Starting in at least January 2009, Batt regularly provided confidential customer information to City Capital, including amounts that had been transferred to Equity Trust, the timing of transfers to Equity Trust, Batt’s efforts to expedite transfers, and whether he lost contact with potential investors. *See, e.g.*, DE 275; 277; 282-285; 288-294; 297-301; 304-305; 307-308; 310-311; 318; 321; 327; 329-330; 335-336; 339-340; 343; 349-353; 359; 378-379; 381-387; 391-393; 397-399; 401-407.

193. Updates included lists of customer names with notes next to each one, such as: “105k came in good to go”; “40,300k came in”; “lost contact with her”; “money should be in soon – TSP paperwork went out on 10/21/09 approx 31k – we have left 3 messages requesting status of former employer rollover from fidelity.” DE 275.

194. At the time of these emails, the individuals typically were customers of Equity Trust but had not yet signed a DOI form directing funds to be transferred to City Capital. DE 40 at 35 (DOI form, general requirement that an Equity Trust account has been established and funded prior to submission of DOI). *See, e.g.* DE 385 (email Batt to Dixon dated Nov. 9, 2009, “██████ Jones money ready to go out 60000”); DE 712 at 1 (Dixon letter to Jones dated Nov. 9, 2009 enclosing Taylor note and DOI for Jones signature); and DE 712 at 5-7 (Jones DOI form dated Nov. 10, 2009).

195. Batt testified that he shared the customer information with City Capital because when City Capital called for an update, they “would give me the PIN numbers.” Tr. 310:9-13; 311:17-312:4. However, in all of the written updates that Batt emailed to City Capital, there is no indication that City Capital ever provided PIN numbers to Batt.

196. Taylor testified that, as City Capital “began moving so much volume,” Batt, on his own, “started sending us e-mails with updates, so – either weekly or every other day or sometimes even daily.... We would get an e-mail from Mr. Batt detailing all the customers that we had over there; where they were, as far as his pipeline; and how much money was either pending or if it actually arrived and if it was ready to be moved.” DE 36 (Taylor Dep. 54:10-19; 55:12-15.)

197. Taylor testified that having “that type of data and intelligence...would alert us to any issues. If a client kind of fell off the radar, couldn’t be reached, one of the sales guys could swing back around and try to do a save or recoup.” DE 36 (Taylor Dep. 54:20-55:3).

198. These updates from Batt also allowed City Capital to “cut down the processing time tremendously.” DE 36 (Taylor Dep. 55:10-11). For example, if City Capital “knew that \$400,000 had just cleared or was about to clear, we could have those notes already done and

signed and into Equity Trust; as soon as the money hit, we could have it sent in to us.” DE 36 (Taylor Dep. 55:4-9).

199. Taylor testified that City Capital communicated to Batt “that it was great to have these updates and that they helped us process a lot faster.” DE 36 (Taylor Dep. 55:25-56:4). Taylor “always joked with [Batt] that I could make him more money. But we were just trying to cut down that time. And that was the main reason we came to Equity Trust, was time.” DE 36 (Taylor Dep. 56:9-13).

**D. Batt Had a Critical Role in [REDACTED] Dorio’s \$1.3 million in Retirement Funds to Taylor**

200. [REDACTED] Dorio, on behalf of herself and her mother (Virginia Wallace), invested \$1.3 million with City Capital, making it City Capital’s largest single investment. DE 36 (Taylor Dep. 115:25-116:5).

201. Batt played an active role in getting Dorio to invest with Taylor, including telling her to ignore the advice of her investment advisor. *See* FOF ¶¶ 397-408 (summary of Dorio’s testimony). *See also* DE 36 (Taylor Dep. Tr. 115:8-12) (Taylor first met Dorio at an event and she was “initially very skeptical” and had a lot of questions).

**E. Batt Understood His Success Was Intertwined with City Capital’s Success**

202. On January 3, 2009, Taylor sent Batt an email informing him that Taylor had recently mentioned Equity Trust in an interview that was published in BankRate.com. The subject line of Taylor’s email was “Should I get an Endorsement deal with Equity Trust.” DE 13.

203. On April 6, 2009, Taylor sent an email to Batt updating him on the recent success of City Capital. DE 15 (Taylor: “We are going to be doing some internal re-structuring and improvements to make sure keep sending business your way...Look forward to a prosperous

2009.”). Batt responded, “Awesome Ephren....I am here to make it happen for you guys ...I still remember the thing you said to me way back in Jan of 2008//..... ‘let`s make money together` ....I look at the phrase everyday.” DE 13.

204. Taylor forwarded that email to City Capital COO Wendy Connor and wrote, “Man the banker remembers that from 08. Amazing.” DE 16.

205. On August 11, 2009, Batt sent Taylor an email that only included a message in the subject line: “THANK YOU FOR MAKING ME #1 LAST MONTH—LETS MAKE MONEY TOGATHER !!!” DE 23. Taylor responded back two days later saying “I`m going to be on CNBC in about 5-7 minutes.” DE 16. Batt responded, “The WHOLE COMPANY was watching ...it was awesome.” DE 23.

206. On September 15, 2009, Batt sent Taylor and Dixon an email that stated, “I really appreciate your business.” DE 25.

#### **F. Batt Played an Active Role In City Capital’s Sales Process**

207. Taylor testified that potential customers would sometimes be “hesitant” to invest with City Capital. DE 36 (Taylor Dep. 58:12).

208. Taylor testified that potential customers could be hesitant to invest with City Capital for a number of reasons: “Thinly traded public stock; a young CEO; you know, or just that it sounded too good to be true: Yeah, can I buy a house? I never heard of that. I mean, most people had never heard of a self-directed retirement account, ever; and it was just so radically different from a traditional investment vehicle that occasionally it would require additional convincing. And then you have the traditional financial advisors who are in there, as well, that are conflicting some of the things that we would say from the stage, our sales presentation.” DE 36 (Taylor Dep. 59:8-22).

209. Taylor testified that when a potential customer was “hesitant or maybe getting cold feet or sitting on the fence” about investing with City Capital, Batt “brought a different level of credibility, because he worked for the financial institution that we were working with.” DE 36 (Taylor Dep. 58:12-16). In addition, Batt said “it was kind of a transference of a credibility from Equity Trust establishment to City.” DE 36 (Taylor Dep. 58:16-17).

210. In addition, Batt “did speak highly of us and, you know, sometimes talked about our appearances and stuff; so customers did – would come back around, going, All right, you know checked you guys out, I talked to the bank, you know, and – Robert had great things to say about you guys.. And we’re like, Okay, let’s do business.” DE 36 (Taylor Dep. 58:22-59:3). *See also* FOF ¶¶ 411, 415-420 (Hill testimony).

211. In addition, when City Capital had “problematic financial advisors or stubborn banks or some smaller bank that we’ve never heard of, he would help us get that escalated and moved, too.” DE 36 (Taylor Dep. 59:4-7). *See also* FOF ¶¶ 404-406 (Dorio testimony).

212. Taylor further testified how Batt would help City Capital “close” deals: “we had kind of that dual-sales relationship, so if there was a client that needed – we edified, I would say, Equity Trust from the standpoint of having – being the credible independent source. When we sent our clients over there and that came through, via Robert Batt, it help[ed] the closing process. The same worked with Robert Batt: when we sent people to him to verify us and who we were and the types of things that we were doing, and him -- being him coming from a financial institution, it gave us a boost of credibility. So we had this playful banter of, you know, essentially, our sales process, I backslapped him, he backslapped me, and it enabled us, on our more difficult clients, to be – facilitated those closes.” DE 36 (Taylor Dep. 116:12-117:9).

213. Taylor also said that Batt helped his sales staff “close their clients, whether from a credibility source or being that third-party voucher.” DE 36 (Taylor Dep. 117:13-15).

214. Taylor knew that Batt was providing this assistance. Taylor testified: “We’d talk about it on the phone, either in passing with him, as I’m doing a verbal update or one of my staff members was doing a verbal update with him; customers would let us know after they had talked to Robert Batt; or sometimes we’d even do three-ways, our sales guys would do three-ways with Robert Batt, which was part of our sales process anyway, introducing the client to Equity Trust, Robert, our process, to kind of get that mutual tag-team edification. So became more of, I would – I would say, a dualing process; and we’d always get the feedback from the customers. And then there’s – there’s always the cases of, I guess, either a spouse talking – trying to talk the husband out of it or trying to talk the wife out of it or – or a financial advisor doesn’t want to go along with it. So we were able to work both sides of it.” DE 36 (Taylor Dep. 60:3-20).

#### **G. Batt Trained City Capital Employees in Self-Directed IRAs**

215. In late June 2009, Batt visited City Capital’s headquarters in Raleigh, North Carolina with the purpose being, from Equity Trust’s perspective, “to educate them more about IRAs and how people can save more inside IRAs because they don’t pay taxes.” Tr. 418:6-9 (Marsh). See also Answer ¶ 36 (admitting that “ETC sent a representative to City Capital’s offices in Raleigh to educate City Capital employees regarding SDIRAs”). Taylor testified that the purpose of the visit “was to train the staff to better coordinate the processing, because it had gotten a little voluminous as far as all the sales reps clamoring, calling and bugging Robert all the time.... But he also trained them on how to fill out a direction of investment, new-client

application, properly; what self-directed IRAs are, all the things they can do with them.” DE 36 (Taylor Dep. 67:24-68:13).

216. Marsh testified that Batt’s visit to City Capital was part of a larger effort at Equity Trust. Marsh testified: “There was a push where they would want representatives to go out and do an on-site training, if it was a big enough relationship, which there was really no like -- there was no policy on how big or what determined when we could spend the money. But if they felt that it was a big deal, they could get with marketing and they could basically go out and do an education spend. Sometimes somebody would go with them, like a channel manager or something.” Tr. 231:6-16. In his case, Batt was going “to educate or train” and that City Capital “had staff members that they hired that wanted to know, you know, more about self-directed IRA.” Tr. 264:25-265:5.

217. As part of his training of City Capital personnel, Batt used a PowerPoint presentation. One of the slides read: “How Do I Beat Taxes? 1. Open a Self Directed Retirement Plan. 2. Put Money in. 3. Do a Deal with City Capital.” DE 368; Tr. 419:9-12 (Batt: “Q. Is this the slide that you used? A. This is a slide I used with all companies, correct. So you would just take out whatever company you were there talking to, you would put their name in instead of City Capital.”).

218. Batt and City Capital scheduled an additional training for City Capital personnel for just before Taylor’s and Batt’s appearance at New Birth Church. DE 357.

#### **H. Batt’s October 2009 Appearance at New Birth Church**

219. Taylor was scheduled to appear at New Birth Church in Lithonia, Georgia in October 2009. New Birth Church was a larger, primarily African-American church. Tr. 1353:14-1354:2 (Turner).



220. Marsh approved Batt's trip to New Birth Church, and was aware that "it was a pretty large event." Tr. 235:23-236:2. One factor in approving a sales representative's attendance at a third party event would be attendance. Tr. 236:16-237:2 (Marsh). Batt estimated that 7,000 to 8,000 people attended the night he was introduced. Tr. 406:16-20 (Batt).

221. On October 8, 2009, Batt sent an email to Equity Trust's marketing department stating that City Capital needs "800 packets ASAP." DE 356. Batt testified that he was asking for these packets, which included new account applications, for City Capital's New Birth Church event. Tr. 398:14-16; 390:18-21.

222. On October 13, 2009, a week prior to the New Birth Church event, at a time he was not approved to go on the trip, Batt sent an email to his sales supervisors with the heading, "wtf??"—a good reason to go to Atlanta for CCC." DE 363. The email stated that "I am a more than an order taker I am a proactive sales rep that needs to pitch 4000 people...." DE 363; Tr. 401:16-23 (Batt: confirming that "CCC" meant City Capital and "4000" people referred to the number of people expected to be in attendance); Tr. 401:24-402:9 (Batt: stating that one reason to go to Atlanta was to pitch 4000 people).

223. On October 16, 2009, Batt sent an email to his sales supervisors providing the details of the trip to New Birth Church and stating that he had a "verbal ok from Keith Marsh." DE 367. The email also stated "Mega church in Atlanta," "Tuesday night 5:30 book signing," "4,000 people," "5-10 minutes speaking time," and "Out on Tuesday fly home on Wednesday." DE 367.

224. At the Tuesday event, Taylor spoke for over an hour to thousands in attendance and discussed the problems with mutual funds and the benefits of self-directed IRAs. DE 9 (transcript of New Birth Church event).

225. At the start of his presentation, Taylor introduced Batt as “my banker” and added that “if you have any questions specifically about what I do, I figured. why not just bring the expert with me?” DE 9 at 3-4. Taylor then told the New Birth Church audience that “you know it’s something when the bank flies out your banker to hang out with you.” DE 9 at 4.

226. During this introduction, Batt stood and waved to the audience. DE 800-A (video); 900-H through L (images with time-stamps on exhibit list).

227. Taylor later referred to Batt as his “qualified, educated, and informed financial professional.” DE 9 at 29-30; 800-C. Taylor went on to say, “Now if you don’t have one or if you don’t like the one you have because they’ve been losing all your money, I brought mine with me. He’s right there. Robert, you might get bombarded, they might have the security escort you out right now.” DE 9 at 30.

228. Batt testified that he knew that he was not Taylor’s banker and that “a custodian is much, much different than a personal banker.” Tr. 404:21-405:5. Batt also agreed that Taylor’s statement that Batt was his banker was a “false statement.” Tr. 408:11-13. See also Answer (admitting that “Taylor incorrectly referred to the ETC representative sitting in the audience [] as his ‘banker’”).

229. Batt spoke with Taylor right after the event and at no point did Batt tell Taylor that Taylor had introduced him incorrectly. Tr. 405:13-22.

230. After the service, Batt did not tell anyone with whom he spoke that he was not actually Taylor’s banker “because it never came up.” Tr. 406:23:406:5.

231. Batt also testified that he was not a “qualified financial planner or advisor.” Tr. 408:5-7. Batt agreed that Taylor’s statement that Batt was a qualified financial planner was false. Tr. 408:8-10.

232. After Batt returned from New Birth Church, he told Marsh that Taylor had characterized him as his banker. Tr. 412:16-19. Batt could not “remember if [Marsh] had a response or not.” Tr. Tr. 412:20-23. Batt also told the story of New Birth Church to others in the office and believes he would have included the part where Taylor referred to him as his banker. Tr. 413:11-16.

233. At no point did anyone at Equity Trust tell Batt that he “should have made an effort to correct Mr. Taylor’s characterization.” Tr. 413:22-414:1.

234. Taylor testified that “to have a representative from [Equity Trust] in the audience, it wasn’t going to get any better than that. That was the – all the little endorsement I needed – to make it happen.” DE 36 (Taylor Dep. 74:19-22).

235. Several individuals who were present at New Birth Church that evening testified about their interactions with Batt after the service. FOF ¶¶ 433-438 (Jones); 480-481 (Turner); 496-499 (Wells).

236. Batt was not disciplined for failing to correct Taylor’s misstatements. Tr. 245:17-246:6 (Marsh did not recommend discipline); Tr. 292:6-10 (Batt); Tr. 771:25-772:10 (Dea); DE 518 at 6 (11/11/11 letter from Equity Trust to SEC: “Batt was not disciplined as a result of these events”).

237. Equity Trust also processed investments for customers solicited at the New Birth Church event without telling them Taylor’s statements about Equity Trust’s role were false. *See, e.g.*, DE 712 at 5-8 (Jones DOI form); RE 179 at 20-23 (Turner DOI form); DE 684 at 129-132 (Wells DOI form).

238. On October 22, 2009, Batt emailed Taylor: “you are awesome – i have gotten 4 phone calls about IRA buying pigs and cows – thank you thank you...” DE 26. Taylor

responded, “Ha! We make it rain?” DE 26. Batt responded: “From the National Weather Service: Weather Bulletin: - Category 4 Hurricane named ‘Ephren’ just hit Cleveland OH.” DE 26.

#### **I. Equity Trust Created a Landing Page for City Capital on its Website**

239. Equity Trust launched a landing page for City Capital that went live in August 2009. DE 338 (Batt: “This is the new website that is live and is for only for your clients.”); *see also* DE 322-324; 331-332; 334 (collectively, other references to the landing page before it went “live”).

240. The landing page displayed the Equity Trust logo at the top and, in bold font, the text “City Capital Corporation – Wealth Builder Network.” It then stated, “Welcome to the personalized Equity Trust Company page for members of the Wealth Builder Network.” DE 525 at 2. “We’re pleased to provide you with the support to grow your business and, in turn, help you grow your wealth.” DE 525 at 2. The web page included links to Equity Trust’s self-directed IRA opening application and DOI form, and included Batt’s picture and contact information. DE 525 at 2.

241. Taylor testified that the landing page was “a huge credibility booster.” DE 36 (Taylor Dep. 70:11). He further testified as to his reaction: “Oh, great, we have a – a little section on the Equity Trust Web site and now we’re officially in bed together, so – we spun and touted that a little bit with our marketing materials and the clients and customers with the sales – sales guys on the phone.” DE 36 (Taylor Dep. 70:12-17).

242. City Capital sales staff “screen-captured” the landing page and used it in their marketing materials. Tr. 70:18-71:10).

243. Taylor recalled seeing the landing page live as recently as either 2013 or 2014.

Tr. 71:11-13.

**J. Equity Trust Disregarded Negative Information Regarding Taylor**

244. Equity Trust regularly searched the Internet and other publicly available sources for information on investment sponsors like Taylor. Tr. 707:5-14 (Dea: “Given the policy that we reviewed earlier, according to the policy at that point in time, we would review all publicly available information, including the use of LexisNexis, and the other tools available on the Internet”); *see also*, Tr. 737:1-10 (Dea that a “secondary review [] would include a review of all Internet Information, et cetera”).

245. Dea testified that he reviewed a blog called Ripoff Report. Tr. 728:22-729:4; *see also*, DE 121 (GRC minutes from April 2011 noting discussion of “Ripoff report web-site”).

246. A submission to Ripoff Report dated May 2, 2007, stated that Taylor was “self-centered, manipulative and not to be trusted.” DE 810; DE 811-813 (additional Ripoff Report submissions negative of Taylor). *See also*, FOF ¶ 246 (Discussing a negative article concerning Taylor that ██████ Sims obtained from either the Ripoff Report or Scam.com).

247. The online edition of Forbes Magazine reported on March 3, 2009, that with City Capital, Taylor’s “touch has been less than golden there: For the trailing 12 months ended last September, the company lost \$2.9 million on sales of \$305,000.” DE 814 at 2.

248. A May 21, 2006 article in the Kansas City Business Journal disclosed “a lawsuit filed against Taylor by area investors and a contractor who claim they were swindled in one of his earlier East Side housing ventures . . . [Taylor] faces a default judgment after failing to respond to repeated requests for discovery.” An attorney representing the investors stated that

Taylor “bilked the investors of a combined \$225,000” and that “Taylor is ‘a charlatan, or it’s a house of cards.’” DE 809 at 3.

249. The lawsuit identified in the Kansas City Business Journal was not the only lawsuit filed against Taylor in the period leading up to and during Taylor’s relationship with Equity Trust. For example:

- In *Lake Street Partners Inc. et al v. Amoro Investment Corp., Ephren W. Taylor*, filed in November 2006, Taylor was sued for failing to pay on two promissory notes; plaintiff was awarded judgment in the sum of \$1,300,000. DE 819 at 16.
- In *Granite Companies LLC v. City Capital and Ephren W. Taylor Jr.*, filed in July 2007, Taylor was sued for misrepresenting that City Capital would acquire plaintiff’s business; and that City Capital was in dire financial condition rendering offer false and misleading. (Dismissed in 2012 for lack of prosecution.) DE 818.
- In *Escalada et al v. Taylor et al.*, filed in December 2008, Taylor was alleged to have made false representations to plaintiffs and omitted material facts in connection with a real estate investment; and fraudulently induced them to buy stock in Taylor’s failing company, Amorocorp, Inc. (Dismissed in June 2010.) DE 817.
- In *Premier Capital LLC. v. Taylor*, filed in October, 2009, plaintiffs were granted summary judgment against Taylor, City Capital, and Amorocorp, and Taylor was ordered to pay \$102,519 with interest. DE 820.

**K. In September 2009, Equity Trust Began a Secondary Review**

250. The actual secondary review of City Capital was not started until September 10, 2009, even though City Capital was flagged for a secondary review on December 7, 2008. DE 526; FOF ¶¶ 624-625. The review stated: “Out of 47 investments reviewed 23 had all

documents on file and 24 had document deficiencies due to no mortgage/deed of trust and it appears it might be unsecured.” DE 526 at 1.

251. By the end of September 2009, a total of 15 Taylor Notes that were scheduled to mature by then were unpaid. DE 40 at 33.

252. In a September 15, 2009 email, Dixon states that “Tim with Equity Trust” had contacted her and “wants to speak with someone about what we do here at City Capital.” DE 344 at 3 Taylor forwarded that email to Batt, Batt forwarded the email to Marsh and another sales supervisor, and then Marsh forwarded the email to Brad Hemstreet, another sales supervisor. DE 344 at 1.

253. Marsh wrote: “Per Robert Batt Tim K. is doing a second of Ephran.. (Probably will get shut down) LOL,” which meant “laugh out loud.” DE 344; Tr. 239:14-240:16; 241:4-9 (Marsh). Marsh then asked Hemstreet if City Capital “does not get shutdown what is your thought about” sending City Capital marketing material that had been requested. Marsh included the LOL because Equity Trust would not want to send Equity Trust marketing material to City Capital only to have City Capital get “shut down.” Tr. 241:4-9.

254. Hemstreet responded: “has [Equity Trust Legal Department staff Tim Kuhman] indicated there is an issue with the investment or individuals representing the company” and “I think we keep rolling on sales and marketing until someone tells us or forewarns us of a problem.” Marsh responded, “I agree. Batt called him and he said it was the secondary review...” DE 344; DE 641 (Kuhman/Legal Dept. memorandum to Dea).

**L. In October 2009, Equity Trust's Compliance Director Determined that Equity Trust Had "Incorrectly" Labelled the Taylor Notes as Secured and Was "Very Concerned"**

255. In an email dated October 28, 2009, Sarudis responded to an issue involving a Taylor Notes. She stated: "I believe the problem was that the note does not indicate what the security is...I understand it may have been done in the past but the doesn't mean it should have been...the terms of the note may have been overlooked." DE 374 at 1.

256. Marsh replied, "Robert and I will see if we can navigate this land mind [sic]. (Any thought on pushing the one's we have) since we seem to have changed process midway – They are calling the referral source pissed. I think we would have better success pushing this one and saying ok now moving forward we overlooked the prom notes and now need this." DE 374 at 1.

257. Sarudis responded that same day: "We did not change our process midway...this appears to have been overlooked...we SHOULD have asked for it last time...I am very concerned that we did not ask for collateral on the prior note seeing that the client stated it secured." DE 374 at 1.

258. Also on October 28, 2009, Batt informed Taylor of the issue in an email, cc'ing Marsh: "Hey folks. The current direction of investments show the notes are secured. However, looking at the prom notes they do not show by what or mention what is secured. If the notes are unsecured please check unsecured on the DOI's. If the notes [are] secured please list in the prom note a quick paragraph of what the notes are secured by. Keith Marsh and I appreciate your business – let's make money together! PS- when you are coming to Cleveland, I have a nice Brazilian steak house I want to take you and Kinetra too." DE 27.



259. In a January 4, 2010, email to J. Desich and Dea, Sarudis stated: “All the investments we have are unsecured promissory notes [except for one note]. . . .When the initial review was performed audit believed that there were document deficiencies because the DOIs indicated the notes were secured. Upon further review it has been determined that the notes are, in fact, unsecured and were incorrectly labelled [sic] as secured.” DE 410 at 1.

260. Throughout this period, when City Capital presented Equity Trust with a new investment package, it included the representation that no security agreement was required for City Capital investments. DE 661 at 2. Investment packages presented to Equity Trust by City Capital staff between August and October 2009 included a cover letter from Kinetra Dixon addressed to the Equity Trust “Investment Processing Team” stating: “Please reference file number case [...]. There has been no security agreement needed thus far. Robert Batt is our contact at Equity Trust.” DE 661 (collection of fifteen City Capital investment packages presented to Equity Trust over the period August through October, 2009). *See also*, DE 719-130-131 (same for ██████ Sims’ Taylor note investment).

**M. Equity Trust Unilaterally Changed the Designations on Customer Statements From “Secured” to “Unsecured”**

261. In a January 22, 2010 email, an Equity Trust employee reported to Sarudis: “The City Capital notes previously entered as secured have been updated to reflect unsecured promissory note.” DE 434 at 1; *see also* DE 420 (1/18/10 email – reflecting that Equity Trust had “a list of City Capital Corp investments (1/18/10) that require corrections with regard to class change from secured to unsecured (to be completed within 30 days)”).

262. The quarterly account statements that Equity Trust had been sending to customers beginning in early 2008 stated that these unsecured Taylor Notes were “secured” by a particular City Capital entity. DE 40 at 10-14 (column P = Yes; column M = No; and column N = Yes).

263. As a result of Equity Trust's "updates," those account statements would begin stating the Taylor Notes were unsecured. *See, e.g.*, DE 731 at 6 (██████████ Sims' Equity Trust statement showing "unsecured"); FOF ¶ 461 (Sims testimony).

264. Because Equity Trust sent quarterly account statements to customers, the first time that Equity Trust customers would receive an account statement showing the note was unsecured would be an account statement for quarter ended March 31, 2010, which were not received by customers until April 2010 at the earliest.

265. Equity Trust changed the account statements to reflect thirteen Taylor Notes were "unsecured." DE 40 at 10-14 (column P). Other than changing the description of the investment from "secured" to "unsecured" on the account statement, there was no other indication that any changes had been made to the account statement. *See, e.g.*, RE 168 (page 25 of 41).

266. While Equity Trust changed the account statements for these thirteen Taylor Notes, Equity Trust failed to change the account statements for an additional 23 Taylor Notes, meaning that those account statement continued to state the note was secured when it was not. DE 40 at 10-14 (column P = Yes; column M = No; and column N = Yes). *See also* FOF ¶ 409 (Dorio was never told that her investments were unsecured).

**N. In January 2010, Equity Trust Stopped Accepting New City Capital Investments But Would Consider Investments with Other Taylor Entities**

267. On December 29, 2009, Equity Trust placed City Capital on its hold list and shortly thereafter on its "Do Not Process" list. According to Equity Trust, that decision was "supported by phone conversations between Equity Trust (President and Director of Compliance) and City Capital (Ephren Taylor and Chief of Staff). The conversations regarded Equity's concerns with the number of unsecured promissory notes which had already matured and other Ephren Taylor investments." DE 519 at 2. *See also* Answer ¶ 44 (Equity Trust

stopped accepting new business from City Capital due, among other things, “to ETC’s review of recent SEC filings by City Capital revealing an audit letter from City Capital’s independent public accountants filed three months earlier expressing a ‘going concern’ reservation, as well as ETC’s observation that maturing notes were being renewed without payments on the original notes.”); Tr. 1585:4-1589:6 (Dea).

268. In one of these calls involving Taylor and Wendy Connor (City Capital’s COO), and several Equity Trust representatives including Sarudis and possibly Dea (DE 36 (Taylor Dep. 98:3-8), Equity Trust commented on City Capital’s SEC filings, debt, “going concern” opinion, and ability to raise capital. DE 36 (Taylor Dep. 100:1-101:20). *See also* DE 538 at 7 (June 30, 2007 Form 10-Q); at 43 (September 30, 2007 Form 10-Q); at 64 (March 31, 2008 Form 10-Q); at 81 (June 30, 2008 Form 10-Q); at 106 (September 30, 2008 Form 10-Q); at 150 (March 31, 2009 Form 10-Q); at 211 (June 30, 2009 Form 10-Q); at 275 (September 30, 2009 Form 10-Q); DE 537 at 6 (2007 Form 10-K); RE 2 at 8 (2008 Form 10-K); DE 8 at 10 (2009 Form 10-K).

269. On the call, Equity Trust discussed City Capital’s financial health and “insinuated” that City Capital was running a fraud and that Equity Trust would no longer process City Capital investments. DE 36 (Taylor Dep. 99:14-101:16).

270. On January 14, 2010, Sarudis emailed Taylor, copying Dea, to confirm that “we cannot accept any new investments with City Capital regardless of their structure due to the concentration level.” DE 31 at 2.

271. Equity Trust moved City Capital from the hold list to the “Do Not Process” list in either January or February 2010. DE 526 (Secondary Review Report: placed on list on January 13, 2010); DE 517 (2/22/10 email from Sarudis asking that City Capital be placed on the list); DE 519 (reflecting City Capital was placed on the list on January 19, 2010).

272. On January 14, 2010, Sarudis emailed Taylor, copying Dea and Batt, that Equity Trust was “in agreement to accept new clients that are not City Capital note participants.” DE 418.

273. On January 19, 2010, Batt sent an email to Sarudis and others describing a conversation he had with Dixon where City Capital was asking Equity Trust about a “[n]ew investment” in a “secured prom note with the security agreement with a company called Resilient Innovations backing the agreement.” DE 425. Sarudis responded to Batt, “OK, well, we would review it just like any other investment. So, it should be ok.” DE 425.

274. On January 21, 2010, the GRC’s agenda included “Clarification on City Capital – new investments from Ephren Taylor (submitted by Sandy),” and attached documentation associated with City Capital’s new investment. DE 433 at 1; 19; 12-17.

275. The next day, Sarudis emailed Batt: “Again, due the concentration of notes, we cannot accept these notes as administratively feasible. If Ephren registers and provides us with the offering then we may be able to move forward after reviewing the applicable documents.” DE 435. In a separate email that same day, she wrote to Batt concerning the new City Capital investment: “This is not administratively feasible due to a type of gambling.” DE 441.

276. In February 2010, Taylor emailed Dea asking him to reconsider the decision not to accept City Capital’s new investments. DE 445 at 1.

277. In a February 18, 2010 email, Sarudis informed Taylor that she “just spoke with the management team and they have indicated that we cannot consider kiosks to be administratively feasible.” DE 448 at 1. In another email that same day, Sarudis also informed Taylor that other proposed transactions, which were investments in LLCs, “appear to be assets we would consider holding.” DE 449 at 2.

278. In a February 19, 2010 email, Sarudis distributed to senior management the GRC's February 22, 2010 agenda, which included a "compliance review" involving Ephren Taylor that was "submitted by Sandy." DE 450 at 2. That email attached numerous documents associated with the LLC transactions proposed on February 18, 2010.

279. In a GRC meeting dated March 1, 2010, the minutes reflect a discussion of City Capital: "There will be a 2:00pm phone call today day with Ephraim Taylor and his attorney with Jeff D, Mike D, and Sandy S. This has to do with City Capital. We felt we had enough exposure and did not feel it was not administratively feasible for us to do any more. The operating officer was satisfied, but it does not preclude us from doing other business with Ephraim. We believe he is trying to set up a separate LLC for each investment to try to circumvent the process." DE 469 at 4; 1 (file name for GRC minutes reflects a 3/1/10 date).

**O. Equity Trust Allowed Uninvested Funds of Taylor Clients Be Transferred to Other Custodians**

280. After being placed on Equity Trust's "Do Not Process" list, City Capital was concerned that moving funds to another custodian would disrupt operations. DE 29 (1/7/10 Connor email to Taylor: "Worse case scenario and ET holds us up much longer. [] My concern is we have clients who have approved more than 1 million dollars going through ET. It would be a nightmare to try and explain why the need to change from ET. Not to mention the process would take many weeks.")

281. In early March 2010, Equity Trust advised City Capital that Equity Trust "would take all steps to expedite the transfer of client funds from Equity Trust to a new provider." DE 32 (3/21/10 email from Bovarnick to Sarudis and Dea); DE 455 (3/4/10 email from Dixon to Sarudis: "Per the conference call yesterday, I need to know who I will be working with to get the clients we have currently pending at Equity Trust transferred to a new custodian." Sarudis

responded that Dea had confirmed to her that Dixon's contact at Equity Trust would be Brandi Bortner).

282. In a March 5, 2010 email, an Equity Trust supervisor provided guidance to Dixon on how to transfer funds to a new custodian. DE 456. Dixon responded, "This is exactly what I needed! Thanks for everything." DE 456.

283. On March 19, 2010, Dixon and Taylor emailed among themselves and Bortner of Equity Trust and referred to a conference call the prior day. According to Taylor, Equity Trust had "promised expediting and return of our fees" in connection with City Capital's attempts to transfer customer funds to another custodian. DE 465.

284. In April 2010, City Capital coordinated the transfer of hundreds of thousands of uninvested funds from Equity Trust customer accounts to another custodian, Sunwest, at which point those funds were invested with City Capital. DE 839 (Sunwest account statements).

285. Customers were not told that the reason for the transfer of uninvested customer funds was because Equity Trust would no longer process City Capital investments. *See, e.g.*, Tr. 1367:6-22 (Turner).

286. According to an email from Dixon on July 28, 2010, "Neither Sunwest or APS have accepted our Promissory Notes, so we are unable to do a transfer of assets in kind." DE 34 at 1.

**P. Throughout 2010, Equity Trust Issued Replacement Taylor Notes, Even in Light of Additional Adverse Information Concerning Taylor and City Capital**

287. By late January 2010, City Capital was becoming more desperate to know whether Equity Trust would allow it to renew and extend Taylor Notes. DE 431 at 1 (1/20/10 email from Dixon to Batt: asking whether "there has been any determination on renewals/extensions?"); DE 439 at 1 (1/25/10 email from Dixon to Batt: "I desperately need an

answer on these client renewals. If you could please escalate the request to get an answer.” Batt responded that he “had no[t] heard anything back yet.”).

288. From January 2010 through October 2010, Equity Trust processed 21 renewals, extensions, or conversions of Taylor Notes.

289. The last two replacement notes that Equity Trust processed for City Capital were received by Equity Trust on October 20, 2010 (DE 491), and the first time it was reflected on a quarterly statement was the December 31, 2010 statement (RE 176 (page 40 of 40); 177 (page 40 of 40)).

**1. The Replacement Notes Were New Notes that Helped Taylor Extend His Fraud**

290. The act of replacing the Taylor Notes required an Equity Trust form indicating the original Taylor Note was satisfied, a new DOI form stating the new principal and maturity date, and a new promissory note reflecting the new agreement. DE 40 at 6, ¶ 22 (Palen Report).

291. Taylor testified that the extensions were “Critically” important to City Capital, and permitted him to extend his scheme. DE 36 (Taylor Dep. 102:4-6). Taylor stated: “The way that we were doing our extensions, when a note would come due, you’re supposed to pay back the entire principal and the interest. We were able to facilitate the process where we’d only pay a small amount of the interest and just renew the note. So instead of City Capital having to try to scramble and come up with \$60,000, we may only pay 3,000 or 6,000 and be able to bounce around between those. So it conserved a significant amount of cash; and, until we were going to figure out what we were going to do, it kept some of the heat off of us.” DE 36 (Taylor Dep. 102:4-19).

**2. Taylor Notes Were Renewed Even as Equity Trust Learned Additional Adverse Information Concerning City Capital**

292. Throughout 2010, Equity Trust learned additional adverse information concerning Taylor and City Capital. For example, on March 12, 2010, Batt forwarded to Sarudis a lawyer's letter that had been sent to City Capital threatening legal action against City Capital for the unpaid Taylor Notes of two customers in the amounts of \$192,000 and \$24,000. DE 461.

293. On June 9, 2010, Jeff Bartlett, an Equity Trust compliance manager, received a lawyer's letter dated March 26, 2010 stating that an Equity Trust customer had not received her funds from City Capital and demanding the return of those funds from Equity Trust. DE 485; Tr. 896:11-12 (Bartlett: compliance manager).

294. On October 4, 2010, Dea, Desich, and Bartlett learned of a "blog post about a potential Ephren Taylor scam" that mentioned "Equity Trust account supplied funds." DE 487.

**3. By Processing Replacement Notes, Equity Trust Made an Exception to its Normal Procedures of Not Processing Investments that Were on the Do Not Process List**

295. On several occasions, Equity Trust's client service team had issues processing replacement notes because City Capital was on the "Do Not Process" list. *See, e.g.*, DE 475. For example, in May 2010, City Capital attempted to replace one of the expired, unsecured Taylor Notes, but Equity Trust returned the paperwork to the customer. DE 479 at 2; DE 477. Dixon informed Bortner that "Jeff approved transactions for existing notes," and, in response to Dixon's statement, Bortner wrote that "Jeff Bartlett has confirmed that if a promissory note modification or replacement request is received for a City Capital Corporation investment, the request can be processed." DE 479 at 1. *See also* Tr. 893:10-16 (Bartlett).

296. Because City Capital was on the "Do Not Process" list, Bortner and another Equity Trust employee, Kevin Fitzpatrick, were attempting to determine how to "message to the



team” to permit City Capital replacement notes even though it is on the “Do Not Process” list. DE 479 at 1. On May 6, 2010, Fitzpatrick stated: “I would like to see a communication come directly from Jeff Bartlett regarding this decision so everyone is aware that this is from Legal. Secondly, Erica Rivera will need to send an updated DNP list indicating that this type of transaction is acceptable for City Capital.” DE 479 at 1.

297. On May 20, 2010, Bortner acknowledged in an email that City Capital was “on the DNP list and special exceptions have been made.” DE 484.

298. Dixon emailed to Bortner on June 25, 2010 “Prom Note Renewal packages for two of our clients.” DE 535 at 1.

#### **Q. Fees Received by Equity Trust from Taylor, City Capital, and Customers**

299. City Capital frequently paid Equity Trust’s account opening fees and the annual account fee on behalf of customers. DE 36 (Taylor Dep. 154:10-23). City Capital paid customers’ Equity Trust fees “[t]o expedite the process [and because] it was just more beneficial for City Capital to pay it.” DE 36 (Taylor Dep. 154:17-20). From February 26, 2008, through April 26, 2010, City Capital paid Equity Trust \$62,598.81 in connection with City Capital investors.

300. In addition, Equity Trust collected fees and other amounts directly from customers. Equity Trust collected at least \$89,042.74 directly from customers from approximately 2009 to 2014.

### **XI. EQUITY TRUST PROMOTED, ENDORSED AND CATERED TO POULSON**

#### **A. In Late 2008 and Early 2009, Equity Trust Started Its Partnership With Poulson**

301. Irene Berlovan, an Equity Trust sales representative, became Poulson’s Equity Trust contact in approximately 2007. Tr. 505:9-13 (Poulson).

302. In late 2008 and early 2009, Jeanette Arnholt, an Equity Trust “Channel Marketing Manager” (Tr. 247:2-4 (Marsh)) and Berlovan took steps to “partner” with Poulson, which required the approval of J. Desich, among others, as described below.

303. On September 18, 2008, Berlovan, with the approval of Equity Trust, provided Poulson an article written by Equity Trust for Poulson to distribute to his customers, which stated in part, “Harness the power of real estate and alternative asset investing in an IRA to make tax-free or tax deferred profits for the rest of your life!”). DE 143 at 1-2; Tr. 1207:11-19 (Berlovan); Tr. 506:22-507:21 (Poulson). When individuals approached Poulson to discuss self-directed IRAs, he would refer them to Berlovan. Tr. 511:9-12; 512:18-21 (Poulson).

304. Later, in an email dated February 12, 2009, Arnholt wrote to Berlovan:

I’m working with randy to see if he can be approved as a partner . . . I think he talked with you about this about six weeks ago. We try to touch base regularly and I sent him the list of items I will need to submit to the committee to review if we can ‘partner’ with him or not. He is planning a four day meeting in NJ area and we may have a speaking opportunity for Edwin and or you. I have to review with Brad first once I have all the info. I will copy you on the documents that go to Jeff/Tim/Edwin/Brad for sign-off so you don’t have any surprises.

DE 146 at 1. *See also* DE 145 (12/18/08 email from Berlovan to Poulson: “I have forwarded your information to Jeanette Arnholt, she will be the person that you will work to identify ways Equity Trust can support you from a marketing perspective.”).

305. Arnholt emailed Poulson on February 10, 2009, requesting Poulson’s “marketing materials” and other information in order to send “to committee in the next two weeks for review.” Arnholt added: “Good speaking with you today! Sounds like you’re [sic] business is up and rolling!” DE 147 at 2.

306. On February 18, 2009, Poulson emailed to Arnholt and Berlovan the “200 Slide Color Power Point Presentation,” which he referred to as a “Marketing Piece/Flyer for Upcoming

Live Free Event.” DE 147 at 1. Poulson requested that Arnholt and Berlovan “let me know what else you will need from me as we proceed to move forward together.” *Id.*

307. On February 20, 2009, Arnholt emailed Berlovan that she was “submitting this by Monday night for the review committee. And they discuss all the options on the tables at the Executive Staff Meeting on Tuesdays.” DE 149 at 3.

308. Throughout early 2009, Poulson frequently asked Berlovan for updates on the approval process. DE 149 at 1 (3/3/09 email from Berlovan to Arnholt: “[Poulson] keeps firing questions and asking me for updates!! . . . [H]e has talked about a lot of things always brainstorming.”).

309. Arnholt forwarded the Poulson marketing materials to J. Desich, among others, on March 3, 2009, stating: “Randy Poulson is a client and had consistently been referring people to us.” DE 150 at 1. Arnholt went on to say that Berlovan was “very attentive to [Poulson’s] needs” and that she’s “done a great job with him.” DE 150 at 1.

310. In September 2009, Poulson was approved and placed on the Guest Speaker List. DE 581 at 8-9.

**B. Berlovan and Edwin Kelly Attended and Made Presentations at Poulson’s April 2009 Event**

311. In mid-March 2009, Arnholt talked with Bartlett and Brad Hemstreet about having Edwin Kelly speak at an event Poulson had scheduled for April 2009. Arnholt emailed Kelly, Berlovan and others that Bartlett “likes the idea but wants to see what they actually pull together.” DE 152 at 3.

312. Arnholt and Berlovan then conferred “on when and where and details of the event to see if Edwin is available.” DE 152 at 2.

313. On April 1, 2009, Poulson emailed Berlovan to inquire about “Edwin Kelly’s availability to speak at my upcoming 4 day live event in April. . . . Please confirm that this is still possible pursuant to our last correspondence.” DE 142 at 11.

314. In another April 1, 2009 email, Poulson asked Berlovan to “mail me 200 of your business cards ASAP!” DE 153 at 4. Berlovan emailed back within an hour: “I have dropped 200 cards in the mail it will go out tomorrow. Also I believe Edwin [Kelly] will be attending, you will either hear from myself or Jeanette Arnholt when we get specifics. Thanks for your patience.” DE 153 at 3.

315. A “Speaker’s Agreement” between Equity Trust and Poulson governed the terms of E. Kelly’s appearance. DE 142.

316. The Speaker’s Agreement stated that “the event is primarily educational, however, product sales are encouraged and IRAs will be made available,” and that “Self-directed retirement accounts will be made available to the audience during the presentation!” DE 142 at 1, 5.

317. The Speaker’s Agreement provided that Equity Trust product sales at the event “will be split with the Promoter,” so that after the first \$1,000 of sales, which Equity Trust keeps, the sales of CD sets are split 50/50 on the CD sales and 75/25 on the “Bootcamp/CD combinations.” DE 142 at 2. While it was common to split proceeds of a sale in this manner, Poulson testified that he could not say whether “everybody knew.” Tr. 523:19.

318. Equity Trust sold CDs at the event and paid Poulson \$4,819 in connection with its sales. DE 186 at 23 (line 395); Tr. 612:25-613:2 (E. Kelly: the CDs were “typically” sold at events he attended).

319. The Speaker's Agreement also stated that: "Equity Trust Company and its speakers are extremely overjoyed that you have selected to host our organization at your upcoming meeting. We are looking forward to this event being successful not only for our speaker but also for you and your group." DE 142 at 5.

320. At Poulson's April 2009 event, Berlovan gave a presentation and was introduced by Poulson as a member of his "power team." DE 824 (Poulson Event 269:18-21) ("We introduced the majority of our power team yesterday. A couple people couldn't be here, for one reason or another. As for those of you who now know, Equity Trust is in the building."). Poulson also said, "There is no better company that is out there that truly understands exactly what we do, and caters to individuals just like us in this room. With that, I don't want to steal any of her thunder, but here she is from Ohio. Flew all the way in with her team. Irene Berlovan." DE 824 (Poulson Event 270:8-14).

321. Upon being introduced, Berlovan did not dispute that Equity Trust was a member of Poulson's "power team." DE 824 (Poulson Event 270:15-271:16). The term "power team" was used in the industry and meant that companies could "partner up," and they would do so in order to "get business" from the relationship. Tr. 1764:8-1765:12.

322. Instead of disputing Poulson's introduction, Berlovan started, "Thanks so much, Randy. That was a very, very nice introduction there. I'm very excited to be here and that Randy invited Equity Trust Company. It's a very, very neat concept to be able to use [] your IRA money just as you use your money today. To go ahead and build your future income." DE 824 (Poulson Event 270:15-21). Berlovan did not tell Poulson or anyone at the event that she was not part of his "power team." Tr. 1219:21-24; 1221:2-8 (Berlovan); Tr. 518:23-519:12 (Poulson).

323. Berlovan concluded by saying, "I help individuals and I also help investment sponsors like Randy. So if you have clients, if you're a CPA and you need someone to be your primary contact, I can be that for you, as well. Okay? So I'm excited. Thank you." DE 824 (Poulson Event 271:12-16).

324. At Poulson's introduction of Berlovan, Poulson also publicized E. Kelly's presentation the next day, which Poulson referred to as "one of the best presentations that I've seen." DE 824 (Poulson Tr. 269:24-25).

325. At Poulson's event, Berlovan had a booth just outside the main conference room where she had Equity Trust materials. Tr. 1221:9-13.

326. After the event, Equity Trust asked Berlovan to rate the event in terms of success, from 1 through 5 (5 being the highest), and she gave it a 4. DE 264 at 7. Berlovan also wrote that 100 attendees showed up at the event, 5 Equity Trust accounts were opened at the event, and 48 qualified leads were generated. DE 264 at 6 (event questionnaire); Tr. 1241:6-20. *See also* DE 264 at 1-5 (account applications).

**C. Equity Trust Sponsored Poulson's Dinner Programs, and Poulson Sponsored An Equity Trust Networking Conference**

**1. Equity Trust Sponsors Poulson's Monthly Dinner Events**

327. In an August 4, 2009 email to Berlovan entitled "Real Estate Wealth Alliance Business Sponsorship Opportunity," Poulson promoted his "Real Estate Wealth Alliance" and invited Equity Trust to sponsor the "monthly dinner events." DE 160 at 1. According to Poulson's email, the invitation to sponsor the dinner event were "as a result of your continued strategic alliance with us." *Id.* Among the benefits to being a sponsor was "a table at each REWA Dinner Event to set-up a display of your informational pieces and/or products" and "exclusive access" to those in attendance. DE 160 at 11, 1.

328. Berlovan forwarded Poulson's email to a colleague and stated: "This is a great opportunity considering Randy has brought us numerous clients and when we attended his event in April Edwin sold 18 CD sets...how do we review these things and can I be kept in the loop?" DE 160 at 1; Tr. 1223:6-9 (Berlovan: "Q. Do you recall why you thought it was a great opportunity? A. Again, getting the concept out there to other people, again open up more accounts.").

329. On August 13, 2009, Berlovan emailed Arnholt about the sponsorship opportunity, asking her to "correspond with Randy on this opportunity if we can participate or not?" Arnholt responded the next day: "It seems very reasonable for \$600 to sponsor and submit articles for a year." DE 165 at 1.

330. Arnholt emailed Poulson on September 2, 2009: "I think we're going to do the \$600 level sponsorship for your events." DE 168 at 5. Poulson responded: "I greatly appreciate your willingness to sponsor our Real Estate Wealth Alliance. Did I send you the Business Sponsor Registration Form?" DE 168 at 4. *See also* Tr. 527:2-7 (Poulson recalled that Equity Trust was a sponsor for \$600).

331. On September 6, 2009, Poulson emailed Arnholt and Berlovan: "Thank you for agreeing to sponsor our monthly dinner events for the next year in the amount of \$600.00. Please send me 250-300 folders containing information about ETC and IRAs that you want distributed to our audience on September 16." DE 169 at 3. Arnholt then told Poulson that she would "work with our marketing coordinator to get you the packets as requested below. Please let me know where to ship them so its easy for you."). DE 169 at 2.

332. Equity Trust sent materials for Poulson's dinner event that Equity Trust agreed to sponsor and discussed the possibility of sending Berlovan. DE 172-174.

333. Poulson later sent Berlovan complete attendance lists of everyone who attended the monthly dinner event sponsored by Equity Trust, in addition to attendance lists of everyone who attended the April 2009 event that Equity Trust attended, in addition to a June 2009 event. DE 183; 184.

## **2. Poulson Sponsors Equity Trust's Event**

334. Around the same time, in August 2009, Berlovan and Arnholt sought to line up Poulson to sponsor and speak at an Equity Trust "networking" event in Orlando, Florida. DE 163 at 3-4. Poulson responded that "I would like to sponsor this event, can you look into whether or not we may have the opportunity to present/speak in front of the entire audience?" DE 163 at 1. Arnholt suggested that Poulson speak at "an early morning session" or "a lunch." As for the lunch, Arnholt told Poulson: "It's a bit more \$10,000 (but I might be able to take it down a bit for you) or a breakfast sponsor – there's only one sponsorship left for lunch. That guarantees you an audience." DE 163 at 1.

335. Arnholt followed up with Poulson on September 2, 2009: "Have you decided about if you want space in our vendor area and or if you're still interested in breakfast and or a possible break out session. Talk with you soon!" DE 168 at 5.

336. Poulson responded on September 3, 2009, that "a scheduling conflict" prevented him from attending the Equity Trust event. DE 168 at 4. Arnholt replied that she had "talked to Brad [Hemstreet] about reducing the price so you can come . . . and sponsor. How about a break sponsorship for only \$750? I'd love to meet you at the Conference." DE 168 at 4.

337. Poulson then asked: "What does break sponsorship include? How does it work? Please advise?" Arnholt then told Poulson: "Signage and marketing info and logos – and



mentions etc. I'm also seeing if you select a break if we can add you to a panel. But they're so full now, I think it may make it very difficult." DE 168 at 2-3.

338. Poulson responded: "We would love to sponsor one of the breaks for \$750.00. However, being that we cannot be there that weekend, we will not be able to participate on a panel or a breakout session. We would love to participate on a larger scale next year being that we will be in attendance. Therefore, being that you would like to sponsor our event for \$600.00, we will most definitely like to sponsor a break session for \$750.00." DE 168 at 2.

339. After Poulson inquired what marketing materials Equity Trust needed for the event, Arnholt emailed Berlovan: "Paper materials that we can set out during the break he's sponsored. We'll need 500." DE 168 at 1.

340. On September 6, 2009, Poulson emailed Arnholt and Berlovan: "As you both know, we are going to sponsor one of the break sessions during your upcoming event for \$750.00. Please send us the paperwork we need to sign, as well as a list of what you will need from us (i.e., logo, flyers, etc.)." DE 169 at 3.

341. Two days later, Arnholt confirmed to Poulson his status as a "Networking Break Sponsor," and that she "reduced the cost for [Poulson]." DE 169 at 1. Poulson responded: "Great! Thank you. We'll get the completed paperwork back to you shortly." *Id.*

342. In late September 2009, Equity Trust was working to prepare signs for Poulson's sponsorship at the Equity Trust event. DE 181-182.

### **3. Subsequent Communications Confirm that Poulson and Equity Trust Sponsored Each Other's Events**

343. On November 13, 2009, Robbins emailed Poulson: "I believe you had been working with [Arnholt] on a break sponsorship for our Networking Conference that we had in Orlando last month. I was informed that you had made arrangements with her to sponsor a break

for \$750, but I believe she told me that we never received a payment from you for this. Do you recall anything about this?" DE 188 at 4.

344. Poulson responded: "Yes. That is correct. She and Irene Berlovan committed to sponsoring our Poulson Russo Monthly Dinner Events for 1 year at a cost of \$600. Therefore, we owe ETC \$150. Thank you." DE 188 at 3. Robbins replied "OK" and relayed payment instructions. *Id.* at 2-3. Robbins followed up with Poulson on December 2, 2009, "to see if a check was ever issued for \$150 for the conference sponsorship?" DE 188 at 1. Poulson replied that he would "make sure your check for \$150.00 is remitted immediately." *Id.*

**D. In 2010, Equity Trust Solicited Poulson for a Webinar and to Sponsor an Event**

345. In February 2010, Berlovan and Arnholt were trying to develop a webinar with Poulson. DE 191 (2/10/10 email from Berlovan to Cantrell: "I have another COI Randy Poulson that I have been working with Jeanette in trying to get something together a webinar with him.").

346. On March 31, 2010, Arnholt emailed an announcement that "the 2010 Equity University Networking Conference Sponsorships are now available. And we're ready to talk to you! . . . But hurry, we expect this years' conference to sell out and to not have any extra spaces in the resource center." DE 193 at 2. Poulson responded on April 5, 2010, that he would "follow-up with you shortly to let you know what type of sponsorship we would like to secure." *Id.* at 1-2. When Arnholt learned from Robbins that Poulson had not paid the \$150, Arnholt told her that they would "add that to the total that he pays and he can't exhibit if he doesn't pay." *Id.* at 1.

347. On May 21, 2010, Arnholt emailed Poulson about the 2010 Networking Conference that she was "hoping to have all the exhibitor spaces sold by the end of May. Are you still interested?" DE 243 at 1-2. After Poulson expressed an interest, Arnholt re-sent the

information about the Conference to Poulson and reminded him: "All applications should be in by next week and we'll be in touch in June!" *Id.* at 1.

348. The "Sponsor Packet" for the "Equity University Networking Conference" that Arnholt sent Poulson offered several "Sponsorship Opportunities," which offered different incentives, amenities and price levels: Doctorate Lunch Sponsor (\$20,000); Master Sponsor (\$10,000); Student Union Breakfast Sponsor (\$7,500); University Exhibitors (\$3,500);... [there are more...] DE 243 at 7.

**E. By June 2010, Three Years after the Document Deficiencies Began, Equity Trust Began a Review of the Poulson Notes**

349. In June 2010, Equity Trust commenced a secondary review of Poulson. DE 256 at 1. The secondary review report determined that out of twenty-five investments reviewed, twenty-five investments had "Inadequate Documentation on file to support investment," and zero investments had "Adequate Documentation." DE 256 at 3.

350. Mary Juristy, a compliance manager, first contacted Poulson about the review in November 2010. DE 209 (11/30/10 email from Juristy to Poulson); Tr. 539:3-6 (Poulson).

351. On December 8, 2010, Juristy emailed Poulson a two page "Requested Document List," which consisted of two dozen rows listing customers, notes, invested amount, property description. DE 212 at 1-3. The column for "Documents Requested" showed that Equity Trust was missing recorded mortgages for all of the properties and executed notes for some. Investments by █████ Savary and █████ Gatto were included on the list. DE 212 at 2-3.

352. These requests from Juristy gave Poulson "some concern" because he did not have the requested documentation and he was concerned that perhaps his scheme would be uncovered. Tr. 540:13-22 (Poulson).

353. Poulson acknowledged receipt of the Requested Document List, and Juristy responded that Poulson should overnight the documents and that “[i]f they come all at once it might be easier.” DE 213 at 1. Poulson responded: “I should be able to get everything to you within a month or so.” DE 214 at 1.

354. On December 30, 2010, Juristy emailed Poulson “to see how the compiling of documents for the client files are coming along.” Poulson responded that things had been “a little hectic” but that he was “in the process of putting together the paperwork.” DE 217 at 1.

355. On January 3, 2011, Poulson emailed Juristy to ask the mailing address “to mail the requested documents to later this week,” and Juristy provided the address and added: “Hope you have a great new year!!” DE 221.

356. On January 17, 2011, Poulson emailed Juristy with various reasons “for thus unfortunate and unforeseen delay” in providing documentation, assured her that “the envelope containing your documents is mailed tomorrow,” and thanked Juristy “for your patience and understanding.” DE 224.

357. Poulson told Juristy on January 21, 2011 that the “envelope has indeed been mailed to you” and that Juristy should let him know “which additional documents will still be needed [and that] some of these documents are still with either my attorney or my title company.” DE 225.

358. On February 1, 2011, Juristy emailed Poulson that she had “received the package,” that the “documents will be logged into our system and then sent to the auditor,” and that she appreciated Poulson’s “attention to providing the original documents to complete you investor files with Equity Trust Company.” DE 226 at 1.

359. On February 1, 2011, Poulson emailed Juristy to “apologize for the delay in getting these documents to you.” DE 226 at 1. Poulson further explained that he “had to re-create some of these documents from scratch as I had never received certain original signed documents back from ETC with the check remittance. There was a time in the not so recent past that a representative of ETC would send back a signed promissory note with every check that was generated. However, more recently, I have only been receiving a check with no corresponding executed paperwork.” DE 226 at 1. No one at Equity Trust told Poulson he should not or could not “re-create” these documents. Tr. 543:21-24 (Poulson).

360. Poulson did not send Juristy all of the requested documents, and he recalled primarily sending in promissory notes and extensions of promissory notes, but there only “might have been a couple” of recorded mortgages. Tr. 545:17-22 (Poulson); DE 259 (documents in secondary review policy submitted by Poulson); DE 252 (letter from outside counsel reflecting Bates numbers of documents from Poulson’s secondary review file); DE 256 (re-review conducted in July 2011 reflected numerous document deficiencies with 25 of 33 Poulson Notes); DE 245 (10/5/11 email from Juristy: “I did speak with Randy last year and emailed him the list of missing items, he said he would be glad to provide. But it appears we did not receive anything.”).

361. After Poulson sent in these documents, he did not hear from Juristy again. Tr. 544:19-545:4 (Poulson).

**F. Equity Trust Continued to Open and Solicit Accounts from Poulson During and After the Review**

362. Notwithstanding any of the issues raised by the secondary review, Equity Trust continued to process new Poulson Notes and extensions of Poulson Notes throughout this period, including as late as 2012. DE 41 at 11-14.

363. Robert Yurgalewicz, an Equity Trust sales representative, was assigned to Poulson after Berlovan resigned. DE 195 (email from Yurgalewicz's supervisor that he was assigned to Poulson).

364. On May 10, 2010, Poulson emailed Yurgalewicz: "I will be sure to begin referring clients to you that are interested in opening an IRA with ETC." DE 194 at 1.

365. On September 29, 2010, Poulson referred a customer to Yurgalewicz "about opening an IRA with Equity trust." DE 205 at 2. Yurgalewicz responded that he looked forward to speaking with the referral. DE 205 at 1.

366. On November 29, 2010, Poulson emailed Yurgalewicz with contact information for someone who "would like to open an IRA with ETC," and described Yurgalewicz as "the representative for Equity Trust Company that I refer all my students to." DE 208 at 1; *see also* DE 205 (Poulson customer referral to Yurgalewicz on September 30, 2010)

367. In February 2011, Poulson referred several customers, including Brian Spencer, to Yurgalewicz, who thanked Poulson for the referral. DE 231.

368. Yurgalewicz kept Poulson advised on the Spencer's investment, telling Poulson on February 9, 2011, that Spencer "did an app and will be rolling over about 12K from the 401k and also transferring in a small IRA with about 2700.00 in it." DE 231.

369. On February 16, 2011, Yurgalewicz emailed Poulson that Spencer's "IRA opened today and we are beginning the transfer process," that "Ron and Barb's funds have arrived," and that he had "left Elaine Gibbon's [sic] two vm's and have not heard back from her yet." DE 231.

370. On March 1, 2011, Poulson emailed Yurgalewicz: "What is the status of the IRA for Brian Spencer? Has the funds transfer been completed as of yet? Please advise." DE 232 at 2. Yurgalewicz responded by telling Poulson the account number of Spencer's IRA account and

that “the rollover check from his current custodian has not arrived yet.” DE 232 at 1. After Poulson asked “how much longer it will be,” Yurgalewicz informed Poulson that the “Vanguard statement shows they would mail the check to his home address about 10 days after he initiated the rollover, he would then have to mail in the check to ETC to post to his IRA.” DE 232 at 1. Poulson then thanks Yurgalewicz and said: “Keep me posted.” *Id.*

371. After speaking with Spencer, Yurgalewicz reported to Poulson that Spencer “received his rollover check, he is going to mail in that check this week to Equity trust. The funds will be available 5 days after his check arrives.” DE 232 at 1.

372. On March 16, 2011, the day that Spencer faxed his DOI into Equity Trust, Poulson emailed Yurgalewicz to ask “if there is any way that the processing department can expedite the transaction today as requested? Please advise.” DE 236. Yurgalewicz, after he “checked with our service team,” advised Poulson that Spence should call the “investment team . . . so he can address the fees and complete his verbal verification.” DE 236.

373. On April 19, 2011, Yurgalewicz emailed Poulson: “I started an IRA app for Heidi today she will transfer in 7k.” DE 240. *See also*, DE 239 (5/11/14 Yurgalewicz to Poulson email re customer transfers).

374. On July 8, 2011, Poulson responded to a phone call from Yurgalewicz that: “I do not have anyone at this time, but I will continue to refer clients to you as I encounter them.” DE 201.

375. The next month, Yurgalewicz again called Poulson seeking referrals. Poulson responded, “I don’t have anyone new to refer. I will continue to refer people to you as they express an interest in setting-up an IRA.” DE 204.

376. On September 20, 2011, Michael Vavruska, an Equity Trust sales representative, emailed Poulson: "I wanted to reach out to you and introduce myself as your new point of contact, and see if you have any potential investors at this time that are in need of establishing an account." DE 244. Poulson responded: "Thank you for reaching out to me. This week is going to be quite hectic at this point." DE 244.

**G. Equity Trust Did Not Put Poulson on the Do Not Process List Until November 2011**

377. Equity Trust initiated a secondary re-review of Poulson on July 11, 2011. DE 256 at 2. During that re-review, Equity Trust noted that of 33 total investments reviewed, a total of 25 had inadequate documentation on file to support the investment. DE 256 at 2. There were 13 matured and unpaid notes as of the audit date. DE 256 at 2.

378. During that re-review, Juristy admitted that, with respect to Poulson's initial secondary review, "I don't think a background was actually done since I did not see it on the sheet to inquire about during my interview." DE 245 at 1.

379. On November 20, 2011, the GRC voted to put Poulson on the "hold" list. DE 256 at 2.

380. On November 23, 2011, Equity Trust received a grand jury subpoena from the U.S. Attorney's Office for the District of New Jersey, seeking information about Poulson. DE 248.

381. Poulson was placed on the "Do Not Process" list on October 25, 2012. DE 578 at 28.

**H. Equity Trust's Fees Received from Poulson**

382. Through 2014, Equity Trust collected at least \$28,694.68 in fees from Equity Trust customers in connection with Poulson Notes. DE 798 at 1-161.



**XII. DESPITE KNOWLEDGE OF SIGNIFICANT DOCUMENT DEFICIENCIES AND OTHER PROBLEMS WITH THE INVESTMENTS, EQUITY TRUST CONTINUED TO PROCESS INVESTMENTS FROM POULSON AND TAYLOR**

**A. Taylor**

383. From April 2008 through December 2009, Equity Trust processed at least \$5,338,900 in ninety-two Taylor Notes. DE 40 at 33.

384. Equity Trust continually processed Taylor Notes even though City Capital repeatedly submitted DOI forms that indicated the notes were secured when in fact they were unsecured. Of the ninety-two Taylor Notes processed by Equity Trust, a total of 41 DOI forms stated that the notes were secured by collateral. DE 40 at 5 (¶18). However, 35 of these 41 Taylor Notes do not clearly state any associated collateral, as required, and indeed are not secured. DE 40 at 5-6 (¶¶ 18-19). Taylor Notes had falsely been represented as secured as early as February 2009. DE 40 at 33. After Equity Trust processed these Taylor Notes in February 2009, Equity Trust processed an additional \$2,730,400 in Taylor Notes. DE 40 at 33.

385. Equity Trust continually processed Taylor Notes even though City Capital failed to repay almost any of the investors. DE 40 at 33 (blue bar representing mature and unpaid Taylor Notes). For example, by December 29, 2009 a total of 30 of 92 Taylor Notes were scheduled to mature. Of these 30, a total of 27 were not paid at maturity. DE 40 at 6 (¶ 21). Of these 30, a total of 23 were ultimately deemed satisfied and replaced with new promissory notes and one was extended. DE 40 at 6 (¶ 21).

386. On or before December 31, 2010, a total of 89 of the 92 Taylor Notes were scheduled to mature. Of these 89, a total of 88 were in default or were extended to equity or replaced or extended with a new note. DE 40 at 6-7 (¶ 24).

## **B. Poulson**

387. From January 2007 through May 2011, Equity Trust processed at least \$984,998 in 41 Poulson Notes. DE 41 at 2 (¶ 5).

388. Equity Trust continually processed Poulson Notes even though Poulson repeatedly failed to submit proper documentation in connection with the investments, including a lack of signatures on promissory notes. DE 41 at 3 (¶10).

389. Equity Trust continually processed Poulson Notes even though numerous investments with Poulson – numbering as high as 38 investments – did not have the required recorded mortgages. DE 41 at 3 (¶11).

390. Equity Trust continually processed Poulson Notes even though Poulson Notes were regularly defaulted. DE 41 at 3 (¶¶ 12-13).

391. Equity Trust continually processed Poulson Notes even though there were numerous mortgages associated with the same properties. DE 41 at 4 (¶¶15-17).

392. Equity Trust continually processed Poulson Notes even though the value of the Poulson Notes far exceeded the properties securing those notes. DE 41 at 4-5 (¶¶ 17-18); DE 41 at 29.

## **XIII. INVESTORS TESTIFIED THAT EQUITY TRUST ENDORSED OR GAVE LEGITIMACY TO TAYLOR AND POULSON**

### **A. Taylor Investors**

#### **1. [REDACTED] Dorio**

393. [REDACTED] Dorio, who is married and lives in Texas, invested, on behalf of herself and her mother, approximately \$1.3 million with City Capital through Equity Trust accounts. Tr. 794:7-9. All of those funds were lost in connection with City Capital's fraud. Tr. 824:20-21.

The money she used to invest with City Capital came from money that her father saved from his thirty-six years working at Texaco. Tr. 794:10-17.

394. Dorio first saw Taylor when he came to a seminar at Lakewood Church in Lakewood, Texas. Tr. 794:18-21. Prior to that, she had never heard of Taylor. Tr. 794:22-795:5.

395. At the seminar, Taylor discussed how traditional investment vehicles may be invested in "all kinds of businesses, including Rick's Cabaret, a gentleman's club." Tr. 797:10-17.

396. Dorio met with Taylor and others from City Capital about three weeks later. Tr. 798:3-21.

397. Dorio first learned of Equity Trust in connection with an introductory conference call that Taylor set up among Dorio, Taylor, and Batt. Tr. 799:15-800-3. Dorio testified that on that call, Batt said "yes, I work with Ephren on all his deals" and she felt that Batt and Taylor had a "relationship." Tr. 800:1-3; 824:6-12.

398. This introductory call and Equity Trust's role gave her comfort in deciding to invest with Taylor. Tr. 800:20-801:4 ("Q. And did Equity Trust's role in this transaction and Mr. Batt's statements on the call give you any comfort in deciding to invest with Mr. Taylor? A. Sure. I mean, you know, we liked what Ephren said, we believed in Ephren, he worked with Robert Batt, Robert Batt, you know, did all the deals, you know, so I felt very comfortable working with Equity Trust. Plus Equity Trust is a large corporation.").

399. Shortly after this call, Dorio opened an account with Equity Trust. Tr. 801:5-15; DE 833 at 1-2 (application).

400. After opening her account with Equity Trust but before transferring funds out of her account at AIG, Dorio needed to liquidate the investments at AIG. In a January 7, 2009 email, Batt informed Taylor that “FYI....1.2 mill on Monday or Tuesday....I was on the line when the AIG broker put the sell (Wallace/Dorio) orders in ....it was beautiful... I had a tear in my eye”. DE 278 at 1.

401. The next day, January 8, 2009, Dorio’s investment advisor, Rich Wheeler, sent her a letter concerning the transfer of her funds out of AIG, which had not yet occurred. Tr. 817:8-11, 22-25; DE 830.

402. Wheeler’s letter warned her about moving her money out of AIG and into private placements. DE 830. Wheeler warned her that the “income stream is NOT guaranteed” and that she may not be able “to get out of the investment program.” DE 830 (emphasis in original). The letter also stated that Wheeler would be happy to discuss with her if she wanted a second opinion. DE 830.

403. Dorio thought highly of Wheeler and believed that he was a good person and good investment advisor and was looking out for her and her mother. Tr. 817:3-7; 820:17-22. Dorio testified that she would not have said anything negative about this letter. Tr. 820:23-25.

404. After receiving the letter, Dorio conveyed the information in the letter to Batt. Tr. 821:1-2, 822:6-8. Dorio recalled an exchange where Batt addressed Wheeler’s letter, with Batt telling her, “How can this broker comment on real estate when he has never done it.” DE 14. Dorio was convinced and said “Great point, let’s do it.” Tr. 822:15-21; DE 14 (1/14/09 email from Batt to Taylor: subject line: “Virginia Wallace.. AIG and pershing [REDACTED] Dorio and ME ..the story comes to an end”; message: “I did a conference call with [REDACTED] today and it was a good call. The broker at AIG blocked the transfer and sent [REDACTED] Dorio a letter. The letter

basically trashed commercial real estate and said don't transfer out... 'you will regret it.' It was so cheesy it sounded like a 1<sup>st</sup> grader wrote it. I said, [REDACTED]...how can you comment on something you know nothing about...how can this broker comment on real estate when he has never done it'. She said 'great point' lets do it....we called the brokers PA/trading assistant...they sold one bond [ ] and the wire to us will go out Monday or Tuesday of next week....I am on it...I will close it....").

405. At no point did Batt ever tell Dorio that Equity Trust did not endorse or recommend Taylor. Tr. 823:23-824:5.

406. Later that same day, Dorio sent an email to City Capital and Batt saying that she wanted to go ahead and transfer her funds from AIG to Equity Trust and proceed with investing with City Capital. RE 232; Tr. 823:3-22.

407. Taylor testified as to his understanding of how Dorio's advisor almost disrupted the investment: "The financial advisor, when he got wind of the actual plan, with the apartment building and real estate, et cetera -- gets sent this letter, and she called up to Robert directly. She was very independent, wanted to do her own stuff, which is understandable. So Robert was able to dismantle the financial advisor on the call, get the Dorios settled, calmed down, and get their confidence in the deal that was on the table. He got that sold and he got on the phone and got the money transferred over." DE 36 (Taylor Dep. 115:14-24).

408. Taylor's understood Batt's statement in the email that "I am on it...I will close it," to mean that "it was a done deal, that he was going to keep the Dorios on the hook and -- and get the money wired over." DE 36 (Taylor Dep. 116:6-11).

409. Dorio understood that several of her investments were in secured notes. Tr. 805:25-806:2; 810:17-811:4; 813:6-16; 813:24-814:23. She understood that a secured note is

“an investment that’s backed up by something tangible. And in this case, the secured note was backed up by a business.” Tr. 806:3-7. Investing in a secured note, as opposed to an unsecured note, was important to Dorio. Tr. 814:13-15. Dorio was never told that her investments were in fact unsecured. Tr. 805:25-806:2; 810:17-811:4; 813:6-16; 813:24-814:23; DE 40 at 11, 16 (Palen Report).

410. The loss of those retirement funds was “devastating” to Dorio’s family. Tr. 825:20. Her mother “did not have a very good burial” and she is concerned that she will be unable to help her brother who was [REDACTED]. Tr. 825:20-826:11. *See also* DE 852 ([REDACTED] Dario’s victim impact statement submitted in *United States v. Taylor*).

## 2. [REDACTED] Hill

411. [REDACTED] Hill is a [REDACTED]-year-old high school graduate from Jacksonville, Florida who has been driving trucks for 36 years. Tr. 165:17-166:6. Hill invested and lost approximately \$180,000 in connection with investments in City Capital through Equity Trust accounts. Tr. 166:25-167:2; 176:11-18. That \$180,000 came from Hill’s 401(k) from a previous job driving trucks, which took him approximately 18 years to save at a time he was earning about \$30,000 per year. Tr. 167:3-16. Before his investment with Taylor, Hill had no experience buying and selling stocks, promissory notes, or real estate. Tr. 167:17-23.

412. The first time Hill heard of Taylor was in 2008 when Taylor was invited to his church in Jacksonville, Florida. Tr. 167:24-168:24. The purpose of Taylor visiting the church was to help the church organize its finances. Tr. 168:1-5.

413. While Taylor was visiting the church, Hill met with Taylor individually because Hill could not attend a seminar at the church featuring Taylor. Tr. 170:1-10. Hill was told to

bring to the meeting with Taylor information about his investments, which he did. Tr. 170:17-22.

414. At their meeting, Taylor told Hill that he had a program that could get Hill a 10% interest rate, whereas Hill at the time was only making about 4%. Tr. 170:23-171:3. Hill testified that he told Taylor that "I'm pretty happy where I am." Tr. 171:22-23. Taylor tried to convince Hill to invest, but Hill "still wasn't too sure." Tr. 171:25-172:1.

415. At that point, Hill testified that Taylor told Hill that "what you need to do, I'm going to give you the number of a company called Equity Trust, and ask for Robert Batt." Tr. 171:9-15. Hill said that was "when I first contacted Equity Trust." *Id.*

416. The day after Hill's meeting with Taylor, Hill called Batt. Tr. 172:3-5. Hill testified: "I called and told Mr. Batt that my name is [REDACTED] Hill, and I talked with Mr. Taylor from City Capital, and I was just checking to see how was the company. And he said, well, Mr. Hill, it's a good company and he's getting people right now 10 percent on their investment." Tr. 172:9-15.

417. After the call, Hill testified that he "got kind of excited" because "10 percent sounded a little better" and his "dream was to retire at an early age, [REDACTED] at the time, and I figured with 10 percent, that would help my fund grow a little quicker." Tr. 173:2-7.

418. According to Hill, the conversation with Batt made Hill comfortable that Taylor was telling him the truth. Tr. 173:8-18.

419. Batt never told Hill that Equity Trust did not recommend or endorse City Capital or Taylor. Tr. 173:22-174:4.

420. Hill testified that he then called Taylor back and told Taylor about the conversation with Batt. Tr. 174:5-19. At that point, Hill took steps to open an account with Equity Trust. Tr. 174:7-12.

421. At no point did Hill ever give Equity Trust permission to give City Capital his account balances or information about the status of the transfers. Tr. 175:10-18.

422. Hill tearfully testified that, as a result of losing his retirement funds, he was still working and had to borrow money to do work on his house. Tr. 176:22-177:4.

### 3. █████ Jones

423. █████ Jones is a high-school chemistry teacher in DeKalb County, Georgia (Tr. 125:1-5), and the founder of a small healthcare company that specializes in medical devices. Tr. 122:13-23. Jones also teaches Sunday school at New Birth Missionary Church in Lithonia, Georgia (Tr. 128:13-20), where Jones lives with his family. DE 700 at 3; Tr. 98:3-6.

424. Jones earned bachelor degree from the University of Georgia with a double major in Biology and Child and Family Development (Tr. 125:19-126:5), and an MBA from Terry College of Business at the University of Georgia. Tr. 126:22-127:1. He █████ years old. DE 700 at 1.

425. Jones opened an Equity Trust IRA account on October 19, 2009, and transferred his retirement savings of \$60,000 into the Equity Trust account shortly thereafter. DE 700 at 4, 17. In November 2009, Jones used his Equity Trust IRA account to purchase a \$59,500 promissory note issued by Resilient Innovations, LLC (DE 712 at 5-8 (Jones DOI form), a company controlled by Taylor. DE 36 (Taylor Dep. 26:22-27:17) (listing Resilient as among companies used in his scheme).



426. Jones attended Taylor's presentation at New Birth on Sunday, October 17, 2009. Tr. 99:14-25. Prior to that point, Jones had never heard of Taylor nor seen him on television. Tr. 100:1-5. Jones attended church that Sunday morning to participate in the worship service, not specifically to see Taylor. Tr. 99:23-25.

427. Jones first learned about Equity Trust and investing at self-directed IRAs from Taylor at the Sunday service. In his presentation to the congregation, Taylor explained that Equity Trust was "a financial company that worked with him in terms of the investments." Tr. 100:21-101:2.

428. City Capital employees were also handing out Equity Trust "promotional materials regarding self-directed IRAs [and a] folder or packet with the Equity Trust application and other documents" at the Sunday service. Tr. 103:7-15. One of the City Capital representatives, Stacey Harvin, initially explained the Equity Trust material to Jones, "in terms of what we had to fill out." Tr. 103:16-19. He was also told that if he wanted to move forward with the Equity Trust application that he needed to complete the application (Tr. 103:7-15), and obtain a "medallion certification" for his current account at T. Rowe Price to "verify the funds and the account value." Tr. 103:21-24.

429. Later that Sunday, Kinetra Dixon "gave [Jones] specific instructions on how to fill [the Equity Trust application] out, making sure that it was filled out correctly and [told him] to bring it back to the church and that she would make sure everything was turned back over to Equity Trust." Tr. 104:3-21. Jones was also told that for investments with Taylor and City Capital, Equity Trust's fees would be paid by City Capital. Tr. 100:21-101:2.

430. Jones was also told "if [he] was interested in moving forward" (Tr. 107:8-20), he should come back Tuesday night and meet with Batt "so [Batt] could go over in greater detail

about the self-directed IRA.” Tr. 107:25-108:8. Jones agreed he would try, and to bring back the completed Equity Trust materials. Tr. 106:19-107:3.

431. Based on his interaction with the City Capital representatives, Jones understood that the relationship between Equity Trust and City Capital was that “City Capital was doing some sort of administrative task on behalf of Equity Trust” (Tr. 104:19-21), that they had “a partner type of situation.” Tr. 108:1-6.

432. Jones accordingly returned to the church the following Tuesday evening, and met with Batt in a small conference room in the church’s offices. Tr. 109:19-110:17.

433. Jones testified that, while in the small conference room at New Birth, Batt “was just very glowing in the remarks about Mr. Taylor . . . . He was . . . [a] child prodigy. He’s done well on Wall Street. You know, he has a very good reputation.” Tr. 111:5-11. Jones understood Batt’s praise for Taylor because “most people would be very complimentary of anyone they had some sort of mutual relationship with.” Tr. 111:8-14.

434. Jones also testified that Batt “did go over the specifics of the details of how the self-directed IRA actually worked, in terms of the promissory note, transfer of funds. And even on the back end with how those funds were to come back to you from the company we were matched with. And, of course, he did reiterate or confirm that City Capital Corp. would be paying the first year of the administrative fees.” Tr. 111:16-112:1.

435. Jones also recalled that Batt told him about “Ephren's reputation, the type of work he was doing in the community being good work, you know, in terms of finding investors to go with these companies that go out and do urban revitalization.” Tr. 145:12-19.

436. Jones testified that Batt’s presence “absolutely” had an effect on Jones decision to make the investment. Tr. 113:5-8.

437. Based on his meeting with Batt, Jones testified: “He seemed very knowledgeable of his products. He represented the company extremely well. I felt that -- obviously, that he had some sort of preexisting relationship with Ephren Taylor and that that was somewhat of a good relationship because he was complimentary of him. Tr. 112:17-22.

438. On cross-examination, Jones said that he understood the statement in Equity Trust’s disclaimers that it did not offer investment advice and did not endorse. Jones, however, continued that: “[C]learly, Equity Trust did the opposite of Mr. Batt, a representative or agent for Equity Trust did endorse Mr. Taylor and City Capital Corp.” Tr. 159:2-15. *See also* Tr. 156:12-16 (Jones: “Q. You understood what [the disclosure “Equity Trust Company does not endorse this investment”] meant? A. No. The reason why it was unclear is because Equity Trust wasn’t endorsing the investment [Resilient Innovations]. They were endorsing City Capital Corp. and Ephren Taylor.”).

439. Prior to deciding to invest, Jones reviewed Equity Trust’s website and “verif[ied] that they were who they said they were.” Tr. 106:3-12. Equity Trust appeared to be “a very reputable company.” Tr. 106:13-18.

440. On November 9, 2009, Jones received an investment package from Kinetra Dixon at City Capital with an Equity Trust DOI form that was already filled in. DE 712; Tr. 116:4-9. The DOI directed Jones’ IRA to invest in an unsecured promissory note issued by Resilient Innovations, LLC. DE 712 at 5-8. The attached ten-month note was in the amount of \$59,500, and it paid a twenty-percent interest rate. DE 712 at 2-4. Jones signed the Equity Trust form and attached promissory note, and returned documents to City Capital, as instructed by Dixon. DE 712 at 1; Tr. 114:21-115:14.

441. No one from Equity Trust explained the DOI form's disclaimers to Jones. Tr. 153:21-154:5. Jones was "under the impression, based on what Equity Trust presented to us, through their paperwork and the presentation and the conversation we had with Mr. Batt, that this was a [ ] legitimate transaction. We had no idea at the time that it was illegitimate." Tr. 158:14-159:1.

442. Jones' Resilient note matured on August 11, 2010. DE 712-2. Jones repeatedly attempted to reach Batt at Equity Trust to determine the status of his IRA, but was told Batt was not available. Tr.119:24-120:4. And the Equity Trust representative he did speak with just told him his funds were not available. Tr.119:24-120:4.

443. Jones funds were never returned. Tr. 120:5-11. Jones has [REDACTED]. Tr. 98:5-8. The loss of Jones entire retirement has had a devastating impact on him, both in terms of short term and long term financial losses, and emotionally. Tr. 120:12-121:25.

#### 4. [REDACTED] Sims

444. [REDACTED] Sims is retired and lives in Wichita Kansas. Tr. 1398:8-12. Before she retired, Sims worked as an analyst at Boeing Company for [REDACTED] years, then at Spirit AeroSystems for another [REDACTED] years. Tr. 1398:13-16. She has a bachelor of science degree in business management. Tr. 1398:20-23. She is [REDACTED] years old. DE 719 at 156.

445. Sims opened an Equity Trust account in August 2009, and transferred \$150,000 into the account from her Boeing employee pension plan. DE 719 at 151-152; Tr. 1405:1-21. This amount reflected her entire retirement savings from [REDACTED] years at Boeing. DE 719 at 158-161 (statement showing assets of \$155,587.64 prior to distribution to Equity Trust).

446. On August 20, Sims used her Equity Trust IRA assets to invest in a \$50,000 note issued by City Capital. DE 719 at 130-138.

447. Sims first learned of self-directed IRAs from Taylor. Tr. 1398:24-1399-8. Sims saw Taylor “on a Christian channel and he was talking about the socially conscious investment programs and self-directed IRAs. And if you had a 401(k) with a previous employer, to roll it to a self-directed IRA account.” Tr. 1398:24-1399-8.

448. Sims also purchased a publication produced by Taylor named *Special Market Report: 3 Simple Steps to Doubling Your Retirement Income Tax Free Using Federally-Approved Programs (“Doubling Your Retirement Income Tax Free”)*. DE 35; Tr. 1398:24-1399-8.

449. *Doubling Your Retirement Income Tax Free* promoted Equity Trust as the third-party custodian to invest with. DE 35 at 14. The “Myth Buster” section describes for example the “FOUR Myths” holding people back from using self-directed IRAs. DE 35 at 14-26. In rebutting myth number three, “Lack of Security,” *Doubling Your Retirement Income Tax Free* assures potential investors that, “**In Our Program, With Equity Trust As Custodian, Your money IS Insured.**” DE 35 at 23 (emphasis in original).

450. *Doubling Your Retirement Income Tax Free* also stated that Equity Trust was “the most attentive” to clients’ needs, and promised, “when you appoint **Equity Trust** as your custodian and direct them to invest in City Capital[] . . . **All Your Fees Are Pre-Paid by City Capital.**” DE 35 at 44 (emphasis in original).

451. Based on *Doubling Your Retirement Income Tax Free* and its offer to pay all the fees for investors who opened self-directed IRA account with Equity Trust, Sims decided to contact City Capital about investing. Tr. 1401:17-24. Sims called City Capital and spoke to

Shelton Jones, who told her that City Capital “clients set up their accounts with Equity Trust and [that] Robert Batt was the contact person.” Tr. 1402:3-17.

452. Sims then called Batt, and he asked how much she wanted to “roll over” into an Equity Trust account. Tr. 1402:3-17. Sims told him \$150,000, and Batt emailed her an application. DE 729; Tr. 1402:3-17.

453. Sims had a second call with Batt prior to investing. Tr. 1404:6-9. Batt called Sims at work and asked her “when [she] was going to put the funds into the account.” Tr. 1404:10-17. When Sims told Batt that she had not “gotten around to doing it”, Batt “said, well, have them wire the money to the account.” Tr. 1404:10-17. Batt also asked Sims, “do you have the money?” Tr. 1405:1-16.

454. The next day Sims called Boeing and arranged for it to issue a check to Equity Trust. Tr. 1405:1-16. Sims then “sent the money to Equity Trust, attention Robert Batt.” Tr. 1405:18-21.

455. After sending her money to Equity Trust and Batt, Sims “received [a] promissory note and direction of investment form from City Capital that was already filled out.” DE 719 at 132-138; Tr. 1405:22-1406:1.

456. The DOI form clearly stated, “**YES**, this note is a secured note”, and listed City Capital Company as the collateral securing the note. DE 719 at 137 (emphasis in original). At the time City Capital provided the Equity Trust form to her, Sims noted that her investment was secured. Tr. 1407:13-15. Having a secured investment was important to Sims because she understood that a secured note “protects you against risk.” Tr. 1407:20-1408:3. With a secured note, Sims “didn’t feel there would be any problem in investing and [she] thought [she] would get the money back.” Tr. 1407:24-1408:3.

457. On August 19, 2009, Kinetra Dixon at City Capital sent Sims' completed promissory note and Equity Trust DOI form to Equity Trust. DE 719 at 130-138. Dixon's cover letter to Equity Trust referenced Sims file number and stated, "There has been no security agreement needed thus far . . . Robert Batt is our contact at Equity Trust." DE 719 at 131.

458. After investing in the Taylor Note, Sims received a quarterly statement from Equity Trust for the period July 1, 2009 to September 30, 2009. DE 731 at 1. Equity Trust listed Sims' asset as a "note secured by other collateral[,] company: City Capital Corporation." DE 731 at 2.

459. Sims reviewed the Equity Trust account statement at the time she received it, and noted that it reflected her investment was a secured investment. She also placed a check mark on the accounts statement where it stated "secured" to document her review. DE 731 at 2; Tr. 1409:11-25.

460. Sims reviewed her next Equity Trust quarterly statement in the same manner. The statement confirmed that her investment was a secured note. DE 731 at 4. Sims again checked the statement next to the word "secured" to indicate "[t]hat it was a secured note." DE 731 at 4, Tr. 1410:7-12.

461. Approximately seven months after her investment, Sims received her quarterly statement for the period January 1, 2009 to March 31, 2010. DE 731 at 5-6. Upon receipt, Sims noticed that Equity Trust had changed the Asset Description of her investment from a "note secured by other collateral" to simply, "unsecured note." DE 731 at 6; Tr. 1410:20-1411:1.

462. Sims was upset by the change. Tr. 1411:20-1412:5. Initially, she called Batt "to find out why it was changed from a secure note to an unsecured note." Tr. 1411:2-8. Sims tried

to reach Batt several times, but was told that he was not in the office. Tr. 1411:2-13. Eventually, Sims was told that Batt was no longer with the company. Tr. 1411:14-19.

463. Sims did reach another Equity Trust representative, and asked about the change. Tr. 1411:20-1412:5. But the representative would only tell Sims that she needed to check with City Capital. *Id.*

464. Sims' Taylor Note matured on May 20, 2010. DE 719 at 132-134; Tr. 1414:23-25. Sims contacted both Equity Trust and City Capital about the investment, but the money was never returned to her account. Tr. 1415:1-1416:2.

465. In September 2011, Sims submitted an Equity Trust form called "Uncollectible Unsecured Note Form," to close her account. DE 719 at 191-192; Tr. 1416:3-8. As required by Equity Trust, Sims included a detailed explanation of her efforts to collect the debt, and had the form notarized. DE 719 at 191-192; Tr. 1416:21-1417:1.

466. Sims included with the form "a copy of City Capital stock report and stories of other investors who invested with City Capital and have not received their funds." DE 719 at 192; Tr. 1417:5-14. The attached stock report showed City Capital stock last traded at \$0.0032 per share on zero volume. DE 719 at 185-186.

467. Sims also attached a document titled, "Ephren Taylor Scam – Story of how one investor was scammed and duped by ephren." DE 719 at 187-190. The story included that "[t]he investments were conducted by a third party, Equity Trust Company, who holds self-directed IRA's and these types of investments above within it." DE 719 at 187. Sims located the story by searching online. Tr. 1418:6-12. She believes she found the story on Scam.com or RipOffReport.com. Tr. 1418:15-19. It was not hard to locate. Tr. 1418:13-14.





475. Turner first saw Taylor in October 2009 at a Sunday service at New Birth Church. Tr. 1349:7-17. Turner saw Taylor again the next Tuesday evening. Tr. 1350:5-7.

476. On the Tuesday evening, the church was packed and Turner testified that Taylor gave a slide show presentation showing how mutual funds were invested in brothels and other non-Christian establishments. Tr. 1350:8-1351:8; 1352:18-20.

477. During his speech, Taylor said that his banker Robert Batt was in the audience. Tr. 1351:24-1352:3. She further testified “that the bank actually flew [Batt] to Atlanta to be here for the presentation” and Taylor “asked him to stand up.” Tr. 1352:3-6. Batt then “stood up and everybody was clapping for him. And he waved and he sat down.” Tr. 1352:6-7.

478. Turner was sitting about two sections away from Batt and was able to see him clearly. Tr. 1352:8-23. When he was introduced, Batt “was smiling...like thank you for the claps.” Tr. 1353:1-2. Batt did not appear to be uncomfortable. Tr. 1353:3-5.

479. Turner testified to her reaction to seeing Batt: “Well, I was kind of feeling – I don’t know how to say this, but I kind of felt good that – because it’s not often – it’s really difficult for me to say this, but you know I have to say it. I just felt good about it because, you know, he was a white guy and he was sent by the bank. Ephren is a black guy coming to a predominantly black church and so I’m thinking this is legit because you don’t often get big established banks sending their people to do business with a black guy in a predominantly black church. So it kind of made feel like this is really – this is probably really good.” Tr. 1353:14-1354:2.

480. After Taylor’s talk was over, Turner went to speak with Batt on the floor of the church. Tr. 1354:3-10. Batt told her that “he had been to several different places with Ephren.” Tr. 1354:13-14. Batt told her to look up Equity Trust and that Equity Trust was established and

insured. Tr. 1354:16-17. She could not recall exactly what Batt said about Taylor, but “it made me comforted – I was comforted to know that he had been doing several tours with him, had been to different places with him.” Tr. 1354:18-23.

481. At no point during their conversation did Batt appear uncomfortable. Tr. 1355:15-18. At no point did Batt tell her that he was not Taylor’s banker; that Equity Trust was not Taylor’s investment advisor; or that Equity Trust did not endorse or recommend Taylor. Tr. 135:23-1356:9. In response to the question, “Did Mr. Batt ever tell you at any time, in words or substance, that he did not endorse Mr. Taylor?”, Turner replied, “No. He gave me the opposite feeling.” Tr. 1356:2-5.

482. Turner then spoke with Taylor and others about how the “stock market was kind of crashing” and how Taylor could help her obtain a “secured return.” Tr. 1356:16-22.

483. Turner and her husband came back the next day with her retirement account statements for Taylor’s people to review. Tr. 1356:23-1357:6. They met with a woman Ebony Rowland who helped them fill out an Equity Trust application. Tr. 1357:21-1359-7.

484. At some point during that meeting, Turner and her husband had decided to invest with City Capital. Turner referred to a “trifecta” of reasons for her investment: “Bishop Long endorsing Ephren, Ephren, his past, what they were saying, he was publicly traded and then you have a banker there to support Ephren. It was like that was a slam dunk. It was – I felt good about the investment.” Tr. 1395:16-1396:5.

485. During the meeting with Rowland, Turner was “confused” about who Rowland worked for because Rowland “would call at Equity Trust to ask questions.” Tr. 1360:9-12. Turner questioned Rowland about who she worked for and Rowland said that “I understand the product, I was trained on the product, so I can help you.” Tr. 1360:13-16.

486. Turner and her husband invested about \$230,000 in City Capital in 2009 and 2010. RE 179 at 20-23; Tr. 1348:7-9. The Turners used their retirement savings to make the investment. Tr. 1348:10. On April 20, 2010, Turner transferred an additional \$162,000 to Equity Trust with the intention of investing with Taylor. Tr. 1365:24-1366:8. Before the funds were transferred to City Capital, they were transferred to another custodian, Sunwest, but Turner had no understanding why those funds were transferred to Sunwest other than it was at Taylor's request. Tr. 1365:24-1367:5.

487. Before the funds were transferred to Sunwest, neither Equity Trust nor City Capital informed the Turners that Equity Trust would no longer process new investments for Taylor, which would have mattered to Turner in deciding to further invest with City Capital. Tr. 1367:6-22.

488. After Turner realized that she had lost her investment, she tried 20-30 times to reach Batt but could not. Tr. 1394:20-22. The only way she was ultimately able to reach Batt was to provide Equity Trust with a fictitious name and act like a new investor. Tr. 1394:2-15. For Turner, the loss of those retirement funds resulted in "one of the worse years of our lives." Tr. 1368:18-22. She further testified: "And just to have everything that you've ever worked for, you realize you've lost everything you worked for and saved your whole life. It was devastating. It was especially hard for us because at that time, my husband had lost his of [REDACTED] years in 2009 as well.... I don't know if any of you can imagine having everything you've ever earned in your life and saved gone. It is a feeling that I wouldn't wish on my worst enemy. It was a lot of sleepless nights, a lot of crying all night. And I ended up taking three jobs at one time. I worked 40 hours the weekend, 40 straight hours." Tr. 1368:18-1370:5. Turner also had [REDACTED]

█████ as the result of the loss, and she could not pay her mortgage and lost her house. Tr. 1370:6-23.

6. █████ Wells

489. █████ Wells is a part-time real estate agent from Covington, Georgia. Tr. 14:7-15:7.

490. Wells invested \$122,000 with Taylor. Tr. 16:1-2. Wells saved those funds for retirement as part of her 401(k) account during her █████ years working at AT&T. Tr. 16:7-11.

491. Wells attended the Taylor event at New Birth Missionary Baptist Church. Tr. 16:2-6.

492. Wells first heard of Taylor from brochures distributed at the Church. Wells had never seen nor heard of Taylor from television. Tr. 17:5-21.

493. Wells heard Taylor speak at the Sunday morning service for about ten minutes, and also at the Tuesday evening service. Tr. 17:22-18:5; 19:12-16.

494. At the Tuesday evening service, Wells sat “maybe 10 to 20 feet” away from Batt. Tr. 22:2-6.

495. Batt did not seem uncomfortable when introduced. Tr. 23:4-6. After his introduction Batt “stood up and waved and everybody kind of acknowledged him . . . because Mr. Taylor seemed to kind of build [Batt] up some as a person that was with him that knew what he was doing.” Tr. 22:15-23:3.

496. On Tuesday evening, Taylor told the congregation about self-directed IRAs. Tr. 23:9-15. After his talk, Wells went into the church vestibule and saw Batt. Tr. 24:1-8. She approached him in order to discuss “some information about self-directing IRA and how I could possibly move my account to be able to set up to do self-directing IRAs.” Tr. 24:11-14.

497. Even though Wells did not express an interest to invest with Taylor, Batt said “what I’ll need to do is to get you with an appointment set up and everything” and then walked her over to Taylor. Tr. 24:16-19; 25:22-25 (“Q: Did you tell Mr. Batt that you were interested in investing with Mr. Taylor? A. No. No I didn’t. I said I wanted to do a self-directing IRA.”).

498. Batt then motioned to Taylor, who stopped his book signing to come over and speak with Wells and Batt. Tr. 24:20-24. Batt told Taylor that Wells “was interested in setting up an account or whatever to do self-directing IRA;” Taylor responded that he would get her set up with an appointment. Tr. 24:25-25:6. Taylor then had someone come over and schedule an appointment for Wells to meet with City Capital. Tr. 25:6-12.

499. At no point did Batt tell Wells that he was not Taylor’s banker or investment advisor. Tr. 26:1-7. At no point did Batt tell Wells that Equity Trust did not recommend or endorse Taylor. Tr. 26:8-17.

500. Wells then came back to meet with City Capital personnel, who helped her open an account at Equity Trust. Tr. 27:6-20; DE 684 at 168-169. Later, Wells received a DOI form from City Capital that already had much of the information filled out. Tr. 31:21-32:15; DE 684 at 129-132.

501. Wells invested \$122,000 with City Capital in the form of a 9 month promissory note with a 20% interest rate. Tr. 32:25-33:18; DE 684 at 126-128.

502. At no point did Wells ever give Equity Trust permission to give City Capital her account balances or information about the status of her transfers. Tr. 33:20-24:3

503. Even though the only investment that Wells had through Equity Trust was with City Capital, Equity Trust sent her a bill as recently as January 2014. Tr. 36:23-37:1.

504. The loss of those retirement funds caused her to fall behind on her mortgage payments, resulting in her cashing in a life insurance policy just to avoid foreclosure. Tr. 38:8-25.

## **B. Poulson Investors**

### **1. █████ Gatto**

505. █████ Gatto has a bachelor's degree in aerospace engineering from Penn State University, and a master's degree in physics from New Mexico Tech. Tr. 1256:15-18. Gatto worked in the federal government for █████ years, most recently in the Department of Homeland Security. Tr. 1256:12-1257:2. Gatto left government service in 2007, but has continued to work for the government at various times on a contract basis. Tr. 1256:12-1257:2.

506. Gatto has "dabbled" in real estate investing since the 1980s (Tr. 1280:10-21) by buying a residential property, renovating it, and then either selling the property or putting it on the rental market. Tr. 1255:13-23. Gatto also earns income as a notary for real estate closings, and as a New Jersey licensed real estate broker. Tr. 1255:13-23. He is █████-████ years old. Tr. 1277:18-19.

507. Gatto purchased three Poulson notes through his Equity Trust IRA, for a total investment of \$115,000. DE 753 at 8-11 (statement). Each note was secured by real property. DE 751 at 59-61 (Equity Trust DOI form for \$60,000 Poulson note investment secured by property at 128 Quiet Rd., Sicklerville NJ); DE 751 at 72-74 (DOI for \$25,000 Poulson note investment secured by property at 235 So. Jackson Street, Woodbury NJ); DE 751 at 126-128 (DOI for \$30,000 Poulson note investment secured by property located at 5 Friendship Court, Sicklerville NJ); Tr. 1260:18-25.

508. Gatto met Poulson in 2008 when he started attending meetings held by the South Jersey Investors Group. Tr. 1256:1-4; 1257:3-6. The Group is a nonprofit, volunteer organization that provides educational and networking opportunities for real estate investors in southern New Jersey. Tr. 1280:22-1281:3; 1284:12-17 (Gatto: "volunteer"); 1328:8-15 (Gatto: "nonprofit"). At this time, Poulson was president of the group (Tr. 1282:4-5), and he ran the meetings. Tr. 1282:18-1283:2.

509. Gatto testified that "it wasn't a secret" that Poulson was offering investments. Tr. 1259:20-23. Poulson "would explain the investments that he made . . . how much return he was getting on them . . . [and] how much other people [who had invested with him] were making." Tr. 1259:20-1260:2.

510. At the end of 2009, Poulson left South Jersey Investors and formed Poulson Russo, LLC, and started holding seminars and monthly dinners purportedly to teach real estate investing tips. Tr. 1275:20-24; Tr. 493:5-11 (Poulson guilty plea).

511. Poulson also solicited investments in the context of the Poulson Russo events. Tr. 1275:25-1276:8. It became clear to Gatto after he attended a couple of Poulson's events that Poulson was soliciting investments, and that the seminar was "just a sales pitch" (Tr. 1276:13-17), "a marketing scheme to get more investors" (Tr. 1343:12-22), and "really just a guise for getting more loans for himself." Tr. 1336:1-5.

512. Gatto learned of investing in real estate through a self-directed IRA from Poulson. Tr. 1258:5-15. "It was a topic that Mr. Poulson had brought to the group and made several presentations on." Tr. 1258:10-12.

513. Gatto testified that Poulson recommended that investors use Equity Trust, it "was his IRA custodian of choice." Tr. 1258:16-22. Poulson "said that he had a relationship with



[Equity Trust] and it was easier to get through” and that if the investor chose to use a different custodian that he did not “even know if we can invest together.” Tr. 1258:23-1259:8.

514. Based on Poulson’s recommendation, Gatto called Irene Berlovan. Tr. 1262:4-8. Gatto told Berlovan, “look, this is my career savings, 20 years in the government. This is all I have.” Tr. 1261:17-18. Berlovan made “glowing remarks about Randy” (Tr. 1261:16), and assured Gatto that she “has many clients with Randy, never had a problem, he’s a great guy, she knows him, she works with him” (Tr. 1261:19-23), and that Poulson “knew what he was doing, he was knowledgeable.” Tr. 1262:20-24.

515. Gatto testified about his phone call with Berlovan: “The conversation I had [with Berlovan] was a ringing endorsement of Mr. Poulson.” Tr. 1341:12-15.

516. Gatto’s interaction with Berlovan and her “glowing recommendation” of Poulson was “pretty much a deciding factor” in Gatto’s decision to invest with Poulson using Equity Trust as custodian. Tr. 1262:9-24 (Gatto: “Q. And how did this interaction with Ms. Berlovan, Irene Berlovan, affect your decision to invest? A. That was pretty much a deciding factor. I was initially hesitate -- I initially wanted [a different custodian . . . .] However, the glowing recommendation that [] she had plenty of investors that were investing with Randy and, [] he was a good guy, knew what he was doing, he was knowledgeable, sort of sent me over to Equity Trust.”).

517. When Gatto was ready to make his initial two Poulson note investments, he sent Equity Trust a DOI form, a promissory note, and mortgage for each of the two investments. DE 751 at 50-75. Gatto reiterated in his cover email to Berlovan that each investment was secured against real property, and identified the property. DE 751 at 50.

518. Gatto also requested that, “since this is my first time through the process, let me know if I need to correct anything.” DE 751 at 50. Gatto never heard from Berlovan or Equity Trust that his documents were not in order or that the mortgages had not been recorded. Tr. 1272:9-20.

519. Gatto understood that the rules related to investing with a self-directed IRA required the custodian – and not the beneficiary – to sign the documentation. Tr. 1267:20-1268:4. As such, Gatto’s expectation when he sent the investment packages into Equity Trust was that as “custodian of the account [ ] they would execute the transaction for the investment”, and sign the documentation. Tr. 1267:9-14. He expected that Equity Trust would sign on behalf of the IRA, and “Mr. Poulson signs on his own behalf. Those documents are executed and the mortgage itself would be recorded.” Tr. 1267:15-18.

520. In completing Equity Trust’s DOI form for each of his investments, Gatto also marked that each Poulson note was secured by collateral, and listed the name of the correlating property that secured each note. FOF ¶ 507.

521. Gatto also marked on his DOI form that each Poulson note was collateralized by a second position mortgage. DE 751 at 59-61, 72-74, 126-128. The second mortgage position indicates “where you are in line to get paid back.” Tr. 1269:9-19. Gatto understood that if anything happened and the property had to be sold, that the second position mortgage holder is paid after the first mortgage holder. Tr. 1269:9-19. He also understood that to take a second position mortgage, the mortgage needs to be recorded. Tr. 1269:20-1270:3.

522. Indeed, at this time Gatto believed that “one of the biggest benefits [of investing with Poulson] is that the investment is secured by real estate. You have a physical asset that was supposed to secure your money.” Tr. 1260:3-14. Gatto accordingly expected that the mortgage

would be recorded. Tr. 1262:25-1263:8. Gatto understood that mortgages are “pretty much worthless if they’re not” recorded (Tr. 1263:9-15), and that Equity Trust would record the mortgages “[b]ecause that’s what I told them to do. I mean, that was the agreement. It was a – I was investing in a mortgage on a property. Mortgages are recorded.” Tr. 1262:25-1263:8.

523. After his investment Gatto began accessing his Equity Trust IRA account statement online. Tr. 1272:25-1273:9. At some point his account statement indicated that certain documents were not in his file. Tr. 1273:23-1274:15. Because Gatto knew – and had the email to show – that he had sent in all required documents, he called Equity Trust and asked about the document issue. In the call with Equity Trust, he “was simply told that it takes time to go through the recording process for the documents had to go over to the county clerk, they have to get signed, stamped, then they get sent back, that that was just an informational statement that said, you know, these documents had not been received back yet.” Tr. 1273:23-1274:15.

524. Based on this conversation Gatto understood that Equity Trust was in the process of recording the mortgage. Tr. 1272:16-19. He did not learn that in fact his mortgages were never recorded until “[t]he FBI knocked on [his] door one morning and informed [him] that there was absolutely no paperwork available for my investments . . . nothing was recorded.” Tr. 1275:11-19.

525. After he was contacted by the FBI, Gatto called Equity Trust and asked for copies of his documents, but he “was told that there was absolutely nothing in [his] file. There was nothing [Equity Trust] could give [him]. It was empty.” Tr. 1277:2-13.

526. Gatto is [REDACTED] years old, and his [REDACTED]. Tr. 1277:14-19. Gatto testified that the loss of his retirement savings “has forced [him] to

readjust [his] finances,” and that it’s “hard to put enough away for, you know, a good education for my children when I have to now refinance my retirement account.” Tr. 1277:20-1278:2.

527. Gatto subsequently moved his account from Equity Trust to another self-directed IRA custodian, Entrust. Asked how the two compared, Gatto testified that he believed Entrust would have made sure the paperwork was in order. Tr. 1338:23-1339:14 (“It’s been suggested that – or at least implied that by sending a document without Mr. Poulson’s signature to Equity Trust with those documents was somehow my mistake. And if it was, that’s fine. Entrust would have sent the document back and said, no, we can’t proceed further. So if that was actually a mistake, the document would have come back to me and said, no, we need Mr. Poulson’s signature first before we can go forward. So they were a little bit more hands-on. I know they’re a smaller company. So that’s how they compare.”).

## 2. █████ Savary

528. █████ Savary has a bachelor’s degree in chemistry, and is currently employed as an IT project manager for New Jersey Department of Environmental Protection. Tr. 1100:6-13. He is █████ years old. RE 214 at 1.

529. In January 2010, Savary and his wife, █████ Savary, opened a self-directed IRA account at Equity Trust, and funded it with \$40,000 from █████ Savary’s retirement savings. DE 743 at 13 (application); Tr. 1073:16-1074:4; *see also*, Tr. 1075:23-1076:8 (Savary explaining that the IRA account was in █████ Savary’s name and was funded with her retirement savings, but that Savary was more responsible for decisions concerning the account). In May 2010, the Savarys used the Equity Trust IRA assets to purchase a \$40,000 short-term Poulson note paying 15% over a term of six months. DE 743 at 39-42 (DOI form).

530. Savary met Poulson through the South Jersey Investors Association in approximately 2007. Tr. 1066:16-1067:1; 1067:8-20. Later, Poulson “broke away and dissociated himself from the club and basically formed a rival network” called Poulson Russo. Tr. 1066:16-1067:7. Savary attended several Poulson Russo events and “bootcamps”. Tr. 1067:21-1068:5; 1068:15-21.

531. Savary was introduced to Equity Trust at a Poulson Russo event he attended in April 2009. Tr. 1068:25-1069:10; 1108:9-11. The event was called the *Poulson Russo 4 Day Live Interactive Liquidation Extravaganza*. DE 746 at 1; 1069:11-1070:1. At the event, Poulson talked about the benefits of using a self-directed IRA, and said that the company “he’s been working with was Equity Trust.” Tr. 1070:23-1071:10; 1071:14-17.

532. At the April 2009 event Poulson displayed a slide identifying his “Power Team of Professionals.” DE 746 at 98. Among the other members of his “Power Team”, Poulson listed: “IRA Custodian – Irene Berlovan, Equity Trust (ETC)”. DE 746 at 98. Equity Trust was also vendor at this April 2009 event (Tr. 1069:2-10), and Berlovan made a presentation. DE 262 at A-B (clips of Berlovan presentation at Poulson Event); *see also*, DE 262 at C-D (images with time stamps on exhibit list).

533. In approximately November 2009 the Savarys were considering using [REDACTED] Savary’s retirement savings to invest in a Poulson note. Tr. 1073:13-1074:4. Savary approached Poulson and asked him what the process was to invest through an IRA account. Tr. 1074:8-19. Poulson told Savary that he worked with Equity Trust (Tr. 1074:20-1075:7), and “directed [him] towards Equity Trust and Irene Berlovan in particular.” Tr. 1074:8-19.

534. The Savarys opened an IRA at Equity Trust in January 2010 (DE 743 at 13), and submitted DOI form to Equity Trust in May 2010 to invest with Poulson. DE 743 at 39.

535. When completing the Equity Trust DOI form to effect the transaction, Savary checked the box stating: "Yes, this note is a secured note." DE 743 at 41; Tr. 1077:17-21. He also marked in the form that the collateral securing the investment was real property located at 112 Florence Ave. in Westville, NJ. and that the IRA held a second mortgage position. DE 743 at 41; 1077:22-1078:8. The DOI form was completed and signed on May 6, 2009, but was not successfully faxed to Equity Trust until May 12. DE 743 at 59-62; Tr. 1137:16-1138:7 (Savary describing difficulties faxing the form).

536. Shortly thereafter, Savary received a letter addressed to ██████ Savary from Equity Trust, also dated May 12, 2009. DE 743 at 67. The letter requested that ██████ Savary remit an original promissory note and recorded mortgage to Equity Trust. DE 743 at 67.

537. At the time Savary reviewed the letter and request for documents, he thought "it was just a formality that the appropriate paperwork didn't reach Equity Trust." 1081:2-10. Savary "thought the promissory note and mortgage would be signed by the appropriate parties, Randy Poulson and Equity Trust." Tr. 1128:3-9. Equity Trust never asked Savary to sign the promissory note or mortgage (Tr. 1089:21-1090:3), and he was not given a copy of the documents. Tr. 1095:25-1096:6. He assumed that the paperwork was completed but just had not been forwarded, and this is how it was done. Tr. 1083:20-1084:5.

538. Looking back, Savary found it odd that the date of Equity Trust's letter requesting documents was the same date that ██████ Savary successfully faxed the DOI form to Equity Trust. Tr. 1084:16-25 (Savary: "Q. And, sir, by the same day, you're referring to the May 12, 2010 on this letter and then the fax stamp on your DOI form, is that right? A. Yeah. I mean, at the time, I didn't even realize that. I mean, I don't know exactly when we got that letter but it just seems very odd. The timing is all in the same day. I don't know how anybody can get

anything done banking-wise in the same day, especially something large like this. It's amazing.").

539. But Savary never thought that Equity Trust would release the money to Poulson before the promissory note and mortgage were in place. Tr. 1084:6-15. Savary testified, "I mean, Equity Trust, a huge financial institution, has these checks and balances and certain procedures they follow and it seems like – it just seems a little odd now. I thought it was just a formality but looking back, it's like gross negligence. They allowed \$40,000 of money going out, site unseen basically." Tr. 1081:14-21.

540. Instead, at the time Savary believed they were still just setting up the account, and this was one of the steps. Tr. 1083:6-19. Savary said, "we had never done this before and Equity Trust was supposedly walking us through the process to get this done properly, that this was part of it and all the other things will be gathered by Equity Trust since they are the custodian." Tr. 1083:14-19.

541. Still, Savary contacted Poulson in connection with Equity Trust's May 12 letter later on and asked Randy "to get the information to Equity Trust[,] and we assumed that it was done because we didn't receive any subsequent letters regarding this." Tr. 1140:14-19.

542. In approximately July 2010, the Savarys received a statement from Equity Trust for the period April 1, 2010 through June 30, 2010. RE 214 at 15-18. The statement listed the value of the IRA account as \$41,671.58. RE 214 at 15. The asset description section stated that Equity Trust was holding a "Randy Poulson note secured by real property[,] 112 Florence Ave" and listed the terms of the note. RE 214 at 17. Below this information the asset description included the statement, "awaiting receipt: promissory note." RE 214 at 17.

543. Nothing in the statement indicated that Equity Trust was not holding the recorded mortgage for the IRA investment. Indeed, because the statement listed only the promissory note, Savary “assumed that the recorded mortgage [was] in hand.” Tr. 1146:14-17. And because the “statements did not say anything that a recorded mortgage was not present” Savary “was not concerned.” Tr. 1141:14-1142:2.

544. In approximately December 2010, the Savarys agreed with Poulson to extend the term of the promissory note from November 2010 to May 2011. DE 743 at 70. The addendum and revised promissory note effecting this extension also increased the principal of the loan to \$43,600, and the promised interest payments of 18%. DE 743 at 70-74.

545. Both the addendum and promissory note include signature blocks for Poulson and “Equity Trust Company Custodian FBO [REDACTED] C. Savary IRA.” DE 743 at 70, 74. The documents were signed by Poulson, but Equity Trust never signed them. DE 743 at 70, 74.

546. Equity Trust never asked Savary to sign the original note (Tr. 1089:21-1090:3), the revised note (1093:14-16), or the addendum to the revised note (1092:2-3). Nor was he provided with fully executed copies of the documents. Tr. 1095:25-1096:6.

547. Savary received a statement from Equity Trust for the period January 1, 2011 to March 31, 2011. DE 744 at 9-11. The statement continued to list the IRA investment as “secured,” and reflected that the Savarys agreed to a revised promissory note with Poulson, including extending the term of the note to May 6, 2011. DE 744 at 11. The statement also indicated that Equity Trust held the original promissory note and addendum associated with the investment. DE 744 at 11. Below this information, the asset description included the statement, “awaiting receipt: recorded mortgage.” DE 744 -11.



548. Prior to receiving this, Savary had no indication that Equity Trust did not have a recorded mortgage securing his investment. Tr. 1097:2-4. He understood that the issue raised in Equity Trust's one letter dated May 12, 2009 – more than nine months earlier – was a formality and had been resolved. Tr. 1097:2-10. He believed the mortgage was recorded. Tr. 1146:14-17. Savary had “asked Randy to get it and he thought it was all a formality.” Tr. 1143:10-20. He never thought that Equity Trust's process was to first disburse the IRA asset, and ask for the documentation later. Tr. 1097:10-14.

549. Instead, as a custodian, Savary expected that Equity Trust would “perform their custodial duties,” including making sure all the documentation was in place, and that the custodied asset is “real, exists and is legitimate.” Tr. 1094:3-8. If there were any questions, Equity Trust “should have alerted us that certain things [did not] look right,” and should have told them to “get the mortgage recorded.” Tr. 1094:8-12. Equity Trust was the expert and should have known that the basic documentation was not in place. Tr. 1094:13-17.

550. Referring to Equity Trust's custodial duties, Savary said: “You guys [i.e., Equity Trust] are the custodian and you failed there.... We're putting this trust in you to do the right thing, go through the proper procedure . . . get the proper paperwork, get it recorded and get it done, which we thought would happen.” Tr. 1131:23-1132:6. “I'm a chemist. I'm not a financial person. That's why I trusted Equity Trust to hold my hand through the process, hold our hands through the process, which they did not. Why would they leave it up to me to determine what needed to be signed? I don't know. We don't know. That is Equity Trust's responsibility, not mine. I don't know how – I'm not an IRA custodian. I don't know how to do that.” Tr. 1128:10-22. Savary characterized Equity Trust's failures as “aiding and abetting” (Tr. 1094: 21-23) and “like gross negligence.” Tr. 1081:18-19.

551. Savary testified that the loss of ██████ Savary's \$40,000 retirement savings was "really disturbing[,] and really disturbing to my wife to this day. It's all bad." Tr. 1081:21-23.

#### **XIV. EQUITY TRUST HAD INADEQUATE POLICIES AND PROCEDURES AND FAILED TO FOLLOW POLICIES AND PROCEDURES THAT DID EXIST**

##### **A. Relationships with Investment Sponsors**

###### **1. Inadequate Policies, Procedures, Training, and Supervision on What it Meant to Offer Investment Advice or Endorse an Issuer or Investment, and How to Avoid Conflicts of Interest**

552. From 2008 through most of 2011, Equity Trust's policies and procedures addressed investment sponsors in two primary ways: investment sponsors were not to be endorsed, and conflicts of interest were to be avoided. DE 49 (Trust Company Policy). *See also* DE 518 at 2-4.

553. The Trust Company Policy provided that "ETC and its employees do not: Offer investment advice; Endorse any investment, investment product or investment strategy; Endorse any investment advisor, representative, broker, or other party or agent". DE 49 at 15. No policies elaborated on the type of conduct that could constitute providing advice or endorsing an issuer. DE 43-59.

554. The Trust Company Policy also provided that conflicts of interest were to be avoided. DE 49 at 12-13 ("No interest or connection should exist between ETC and [agents, dealers, brokers, advisers, and their related organizations] that might affect exercise of the best judgment of ETC in effecting dealings with agents, dealers, brokers, advisers and their related organizations with respect to the acquisition and disposition of custodial property."). This policy does not address the types of conflicts could arise when a sales representative is working with both an investment sponsor and a customer who may invest with that sponsor. *Id.*

555. Equity Trust's Business Ethics Policy, which is dated 2013, states that employees must avoid conflicts of interest and lists some "common" conflicts of interest that may arise. DE 57 at 1-2. While it is not clear when this policy was in effect, none of the examples in the policy address the potential conflict that arises when a sales representative is working with both an investment sponsor and a customer who may invest with that sponsor. *Id.* at 2.

556. From 2008 through 2011, Equity Trust did not provide any training on these policies other than the bare mandate to act as a passive custodian and avoid conflicts of interest. For example, Marsh did not recall any specific training provided to sales representatives on what it meant to be a passive custodian and what might constitute investment advice. Tr. 196:13-197:6. *See also* Tr. 210:5-13 (Marsh: "Q. [D]o you remember any discussion being given to the sales reps about what kind of conduct might be viewed as crossing the line between endorsement or not endorsement or exceeding the bounds of what a passive custodian is supposed to do? A. Not specifically. Q. Do you generally recall that topic? A. No."); Tr. 1205:19-25 (Berlovan: "Q: Do you remember getting any training that told you don't endorse any investment, any center of influence or referral source? A: Any specific training on that? Q. Yes. A. No, I don't recall getting any specific training on that.").

557. One PowerPoint presentation for new hires stated, without elaboration or specifics, that "ETC is a passive custodian" and "A passive custodian is one that does not offer investment advice." DE 615 at 48 (new hire presentation); DE 617 at 1 (reflecting DE 615 was last modified on July 24, 2007). It also stated that "When utilizing a passive custodian, you will never have to worry about conflicts of interest with regards to investments; nor will you have to worry about solicitations." *Id.*

558. In addition, the written tests given to Batt and Berlovan at the conclusion of their initial training at Equity Trust did not address relationships with investment sponsors; attendance at sponsor events; inviting sponsors to Equity Trust events; discussions with customers about sponsors; or the need for disclaimers when speaking with customers about issuers. DE 615; DE 617 at 1.

559. Marsh's ability to supervise sales representatives was limited. He had no ability to review sales representatives' emails, and there was no Equity Trust policy requiring him to do so. Tr. 224:22-25; 2259-13. If Marsh overheard a sales representative tell a customer that a particular issuer was "great" or "sends us a ton of business," Marsh would "usually" try to address it with the sales representative. Tr. 213:2-20.

## **2. Inadequate Policies, Procedures, and Training on Sending Sales Representatives to Issuer Events**

560. Equity Trust, as part of its "ordinary course of business," sent sales representatives to the events of investment sponsors. DE 518 at 1.

561. Equity Trust's Guest Speaker Review Policy, adopted in May 2008, did not apply to Equity Trust's attendance at third party events, like the event of an investment sponsor, until November 2011 – more than two years after the New Birth Church event. DE 51 at 3-4 (reflecting that the policy was amended in November 2011 to address attendance at sponsor related events).

562. As a result, it was only after November 2011 that the policy provided for compliance to "discuss and deliver guidelines with employee's attending unrelated third party events what is expected of them as far as performing their assigned duties, and to not engage in any activity that is, or appears to be a conflict of interest." DE 51 at 2. *See also* DE 518 at 6 (11/11/11 letter from ETC to SEC: "ETC is currently in the process of creating a 'dos and

don'ts' form that will be reviewed with the employee/s who will be representing the Company. This form will address guidelines and boundaries of an ETC representative at external events.”)

563. Apart from the general instruction not to recommend or endorse, Equity Trust gave sales representatives no training on their attendance at issuer events and whether or how that might constitute endorsement. Tr. 196:8-197:6 (Marsh).

564. Marsh could not recall any training provided to sales staff prior to attending an investment sponsor's event relating to the duties and limitations of a passive custodian. Tr. 211:11-22 (“Q. Do you remember there being any policy at Equity Trust that a sales representative needed to have some additional training or discussion by the supervisor before going to an investment sponsor's event? A. I don't recall. In our role, we didn't do that. Q. Do you ever remember even once talking to a sales rep prior to the sales rep leaving for an investment sponsor event to remind the sales rep of the duties and limitations of the passive custodian? A. I don't recall specific conversation, no.”).

565. Batt testified that no supervisor provided him any kind of training on the “expectations of a passive custodian” prior to attending the events of issuers. Tr. 304:12-16 (Batt: “Q. And prior to going to those events, did any of your supervisors, anyone from management sit you down and remind you about the expectations of what being a passive custodian meant? A. No.”).

566. Berlovan testified that she was not trained on attending issuer events “so that people don't think that you're somehow endorsing the organizer of the conference.” Tr. 1215:20-1216:1; 1219:3-9. *See also* Tr. 1206:14-22 (“Q. And do you remember any of the training ever addressing the issue of – in the course of going to events or inviting people like

Poulson to Equity Trust events, what the line was between – you know, whether that could cross the line into endorsement? A. Any specific training on that? Q. Yes. A. No.”).

567. Instead, Equity Trust sales training materials focused exclusively on sales techniques that would lead to more account openings. *See, e.g.*, DE 600 at 6 (training material providing example of “elevator speech”); 602 at 11 (“Event Traveling Manual”: manual provides information on how to master an elevator speech); 605 at 2 (“Helpful Hints to Live by When on the Road”: manual describes how to dress at an event); 606 at 2 (“Travel Training 101”: PowerPoint discusses how to master the elevator speech); 610 at 5 (“Dress for Success!” PowerPoint describes appropriate dress for sales representatives at events); 610 at 7 (advising female sales representatives not to “go completely without make-up and leave hair unstyled”); 611 at 4 (“Event Selling Basics” PowerPoint states that there were repercussions for not meeting account goals and qualified lead goals at the event).

568. Prior to attending third party events, sales representatives were told “[h]ow to dress, how to act, you know, really from like not sitting behind the booth, how to be approachable, you know, with the prospective clients that would come up, a kind of look and feel.” Tr. 226:20-227:3 (Marsh).

### **3. Inadequate Policies, Procedures, and Training on Reviewing Investment Sponsors Prior to Attending Equity Trust Events**

569. Prior to November 2011, Equity Trust had no policy providing for formal reviews of investments sponsors prior to attending their events.

570. In deciding whether to attend an investment sponsor’s event, Equity Trust did nothing to review the investments that investment sponsor had with Equity Trust.

571. For example, Dea testified that Equity Trust never had a policy of determining whether there were documentation issues with a particular investment sponsor prior to attending

the event of that sponsor. Tr. 607:19-24 (“Q. [W]ere you aware of any policy that required compliance to weigh in on documentation or compliance issues with sponsors or people who might be attending an Equity Trust event or whose event Equity Trust might be attending? A. I don’t remember one specifically.”); Tr. 680:12-17 (Dea: “Q. [W]as there was no specific policy in place in April 2009 that sales reps had to check with compliance to see whether there were any document deficiencies or compliance issues with an issuer’s investments, was there? A. No, there was not.”). *See also* DE 519 at 2 (11/14/11 email including Dea and Bartlett discussion how to respond to questions from the SEC: “Requests for account representatives to attend events such as took place at New Birth simply required the approval of the account representative’s supervisor.”).

572. If Equity Trust had conducted reviews of Taylor Notes and Poulson Notes prior to attending those events, it would have identified numerous documentation deficiencies. DE 40 at 33 (Palen Report: For City Capital through October 2009, 35 notes falsely marked secured; 21 notes matured and unpaid); DE 41 at 19 (Daniello Report: For Poulson through April 2009, 4 mature and unpaid notes; 13 investments with unrecorded mortgages; 15 notes not signed by Poulson and customer).

573. To the extent there were any reviews of investment sponsors prior to 2011, they were insufficient and failed to identify public information that sponsors had been violating the law. For example, Equity Trust attended numerous events of Ronald LeGrand from 2007 through at least 2010. DE 582 at 1 (“Ron LeGrand RE and Success Expo” held January 12-14, 2007); DE 582 at 9 (“Ron LeGrand RE and Success Expo” held May 11-13, 2007); DE 582 at 12 (“Fast Track to Wealth (Ron LeGrand event)” held on July 7-8, 2007); DE 582 at 14 (“Ron LeGrand’s Customer Appreciation Tradeshow” held September 13-16, 2007; DE 582 at 18

(“Ron LeGrand Massive Income Strategies event” held December 10-13, 2007); DE 583 (Equity Trust’s attendance at multiple LeGrand events in 2008); DE 584 (Equity Trust’s attendance at multiple LeGrand events in 2009).

574. LeGrand was a good friend of Desich Sr. Tr. 672:24-673:1 (Dea). At an Equity Trust event, Desich Sr. stated that he had the “great honor of introducing Ronald LeGrand,” and that “Ron is really responsible for making this happen and putting it all together.” DE 838A at 2 (transcripts 3:17-20).

575. LeGrand had been subject to final orders against him by the Florida Department of Banking in 1995, 1996, and 2002. DE 845-847.

576. Despite these final orders, Equity Trust had approved LeGrand as a speaker. DE 581 at 8. In 2011, LeGrand was charged by the SEC in connection with a fraudulent offering. DE 591.

**B. Equity Trust’s Promotional Materials Were Not Consistent with Equity Trust’s Policy that It Act As a Passive Custodian**

577. Equity Trust failed to have any policies and procedures in place to ensure that Equity Trust’s promotional materials were consistent with the conduct of a passive custodian and otherwise complied with Equity Trust’s policies and procedures.

578. There are no written policies or procedures requiring that promotional materials be reviewed by compliance prior to distribution to the public. DE 43-57.

**1. Equity Trust’s Website (www.trustetc.com) Promoted Self-Directed IRAs As a Way to Get Rich**

579. Equity Trust’s website sought out speaking invitations, including from issuers of promissory notes: “Request an Equity Trust Company Speaker for Your Next Event! Would you like to have a representative of Equity Trust Company at your event to describe the benefits of



self-directed IRAs and tax-free retirement investing? New Educational Service Perfect for: . . . Private Placement Sponsors (LLCs, LPs, etc.). DE 801 at 39.

580. Equity Trust listed numerous “Success Stories” on its website: “Everyday people, just like you, are realizing tremendous success with Equity Trust’s self-directed IRAs.” DE 801 at 71.

581. One of the “Success Stories” describes an investor who started with \$5,500 and increased it to “over \$900,000” through his Equity Trust IRA. DE 801 at 90. Taylor referred to this “Success Story” during his presentation at New Birth Church: “If you don’t believe me go to the bank’s website and look at some of it. . . . There’s a lawyer that made \$900,000 off a \$5,000 account, flipping apartment buildings.” DE 9 at 75-76 (transcript of New Birth Church event).

582. Other “Investor Success Stories” relate similar accounts of “unlimited” riches through Equity Trust IRAs, including descriptions of customers who supposedly:

- Grew an “IRA from \$20,000 to \$1.2 Million in just Three Years.” DE 802 at 113.
- “[A]veraged 15-20% returns on his tax lien investments.” DE 802 at 121.
- Grew a self-directed IRA from \$300,000 to over \$1 million. DE 802 at 125.
- “Once he started, Robert knew the benefits of a self-directed IRA were unlimited. The only limit was his own creativity and he believes others can take advantage of self-directed IRA opportunities as well.” DE 802 at 125.

583. The website includes an article, “Double Your Nest Egg,” from SmartMoney Magazine excerpting a quote from J. Desich: “*“As more people get burned by the stock market, this becomes a way for them to take control,” explains Jeff Desich, a vice president of Equity Trust.... And although official statistics on the success of such investments are not available,*

*Desich claims it's not uncommon for his investors to see double-digit returns...*" DE 802 at 138 (emphasis in original).

584. The website promotes self-directed IRAs:

- Equity Trust's public website stated that "What Dick [Desich] discovered was not only a fountain flowing with money, but how to create the most favorable and flexible terms so that investors were begging him to use their money." DE 801 at 55. *See also* Tr. 951:6-952:5 (J. Desich: with respect to "fountain flowing with money, testified that it "sounds like maybe one of our marketing folks tried to put a little polish on this. I don't think I would use those terms."
- "Celebrate Self-Directed IRA Investing." DE 802 at 68.
- "Discover the Innovative Investment Strategy That Only 2% of Americans Use (mostly the rich ones!)." DE 802 at 68.
- "Does Donald Trump Invest in Self-Directed IRAs? . . . Tough to say exactly, but if a recent blog entry on his Trump University web site is any indication, he is a supporter of a people using self-directed IRAs to generate wealth. And why shouldn't he? Self-directed IRAs are an exceptional tool for investors looking to generate wealth – they allow you to invest in assets you know and understand best." DE 802 at 93.

585. The website promoted Equity Trust's Tax-Free Wealth Seminars as a way to create "lasting wealth." Some examples:

- "With a down economy and continued market volatility, Americans are looking to break out of the 'traditional investment' box and experience a new way to build wealth. Equity

Trust's Tax-Free Wealth Seminars can help you expand your investment horizons by revealing innovative and proven strategies to create lasting wealth." DE 802 at 61.

- "The recent tumultuous economy has investors looking for alternatives to traditional stocks and bonds as they seek a safe-haven from the volatility of the market. However, the increase in the popularity of self-directed IRAs can be attributed to more than current market conditions. An additional factor to this additional trend is the ability of people to have more control of their investments with self-directed IRAs." DE 802 at 66.

586. Alternative investments were presented as better choices than more traditional investments, and the risks of such alternatives were not mentioned:

- "Despite the Great Recession being 'officially' over, our economy continues to struggle. But, the savvy investor can find opportunity in many areas, including: [] Promissory notes – Lending from your IRA (on your own or with a group of investors) can bring an attractive return on investment. With banks still reluctant to lend money to small business and individuals, opportunities abound." DE 802 at 96.

587. The investor stories also suggested that investing in self-directed IRAs through Equity Trust were safe while traditional investments were not:

- "In the past, Social Security, pensions and the stock market were secure investment options. Not anymore. That's why smart investors like Neil are taking advantage of alternative investment options including self-directed IRAs." DE 802 at 117.
- "We feel totally safe with our money 2,000 miles away." DE 802 at 129 (customer statement from the "Success Stories").

Equity Trust emphasized its expertise and competence:

- “[Equity Trust] is a highly regulated financial institution is made up of a staff of experienced professionals who truly care about serving our clients.” DE 802 at 33.
- “Any institution dealing with your retirement funds should be properly regulated through state and federal agencies. In most cases, custodians are subject to regulation similar to banking institutions. Important: You should know whether the provider is a custodian a highly regulated institution) or just an administrator (a less regulated institution). DE 802 at 40.

## **2. The Desiches’ Book, *Proven Wealth Building Secrets*, Was Promoted and Sold by Equity Trust**

588. A critical part of Equity Trust’s marketing was *Proven Wealth Building Secrets for You and Your Children* by Desich Sr., J. Desich and Desich Jr. and published by Equity Trust and Equity University. DE 548. *Proven Wealth Building Secrets* purports to be: “An Inside Look at How You Can Benefit From the Creative Wealth Building Strategies of the Very Rich.” DE 548 at 3.

589. First published in 1997, *Proven Wealth Building Secrets* went through seven printings and was promoted on Equity Trust’s website, seminars and included in the CD packages. DE 801 at 52 (*Wealth Building Secrets* will be given “as an added bonus” to Fall 2008 seminar participants).

590. *Proven Wealth Building Secrets*, which contains no warnings on the risks of self-directed IRAs, forcefully promoted self-directed IRAs as avenues to “wealth you can’t imagine”:

- “Will you have the money to live your dreams?” “If you’re not sure, read a little further and see how the wealth-building strategies of Compound Interest, Tax-Deferred or Tax-Free Growth and Real Estate Investments can lead to wealth you can’t imagine.” DE 548 at 7. *See also* Tr. 1012:10-13 (J. Desich sought to distance himself from these

statements, testifying that the “wealth you can’t imagine” pitch was likely written by “an individual on our marketing team [ ] to kind of spice it up to try to get people to come on to a teleseminar.”).

- The “potential for gain with a self-directed IRA is higher than most IRAs because you make investments in things that are familiar and comfortable.” DE 548 at 21.
- “Many investors are successfully earning 15-20%, even 25% or more, inside their Equity Trust self-directed IRAs.” DE 548 at 6.
- “Many of our clients” are making “20% or more.” DE 548 at 10.
- “Who Needs an Equity Trust Company Self-Directed IRA? Everyone! This includes people who don’t have an IRA because they believe they already have enough money or think that they’re too old; young people fearful of tying up their money for a long period of time; self-employed people who don’t pay themselves a salary to avoid paying Social Security taxes; people who have an IRA, but not one that is self-directed; and your children, grandchildren or other young loved ones.” DE 548 at 15 (emphasis in original).

591. *Proven Wealth Building Secrets* provides “client success” stories and, in one such story, an investor is described as having achieved “an infinite rate of return” from his Equity Trust self-directed IRA. DE 548 at 11.

592. The book encourages investment in alternative investments without identifying risks. For example, *Proven Wealth Building Secrets* states: “Many IRA custodians and trustees will not permit IRAs to own interest in the kinds of investments that most of their clients now utilize. **But at Equity Trust Company, they actually encourage you to invest in the very areas that other custodians won’t allow!**” DE 548 at 22 (emphasis in original).

593. *Proven Wealth Building Secrets* also has a section called “Why an Equity Trust IRA is a Great Investment,” which lists nine bullet points but no mention of any risk factors. DE 548 at 24

### 3. Marketing Material

594. In addition to its website and *Proven Wealth Building Secrets*, Equity Trust distributed marketing material that, among other things, described a self-directed IRA as a solution to the volatile stock market, thus taking advantage of the recession.

595. One marketing document distributed to investors stated: “In the past, you could rely on Social Security and pensions as a solid base for retirement. Not anymore.... Social Security will begin to run a negative cash flow by the year 2017 and by the year 2040 it will not be able to pay full benefits.” DE 764 at 2. That same document also stated that “You can make your dream of truly lasting wealth a reality with a self-directed IRA.” DE 764 at 2.

596. In a July 1, 2009 email to more than 200 potential customers, Batt promoted Equity Trust self-directed IRA accounts as a safer, more profitable alternative to traditional retirement accounts:

“As we cross the half-way point of 2009, I get to thinking about what has happened to the economy in the past six months. Banks failing, corporations declaring bankruptcy and unemployment troubles continue. Corporate America has been hit hard by the recent recession . . . One of the first things to be left behind or reduced is the employee benefits package, e.g. health insurance and 401(k) matching contributions. But there is a silver lining in all of this. As a result, more and more Americans are exploring their options for taking control of their own financial future.... We have seen a record number of investors moving away from employer sponsored plans and using their own knowledge and expertise to generate tax-free profits with a self-directed IRA. If you haven’t taken the first step to putting yourself on the path to a future that you can control, I’d like to make you a **special offer**.” DE 545 at 2-3 (emphasis in original).

597. Batt also used a PowerPoint presentation for his webinars that included the heading: “Accelerate Your Wealth with Self Directed IRA’s!” DE 553 at 3.

598. A promotional letter signed by Edwin Kelly, Equity Trust's national speaker, to investors in early 2010 stated: "I am revealing a sure-fire way to take back control of your financial future and create truly lasting wealth. *It's a little-known investment strategy that is growing in popularity – self-directed IRA investing.*" DE 543 at 3 (emphasis in original); DE 20.

599. Equity Trust's marketing material also promoted the safety of Equity Trust. One brochure had a section called "Safety and Security of Equity Trust Accounts," which states that Equity Trust has "several procedures to ensure the protection of your funds." DE 764 at 12.

600. Another marketing document included a heading "Strength...Security...Integrity" and stated "Equity Trust clients can be confident in trusting their investments to us because we are a highly regulated *trust company.*" DE 790 at 1 (emphasis in original). Another section is called "Protection of Your Assets" and again emphasizes that Equity Trust has "procedures to ensure the protection of your funds." DE 790 at 2.

#### **4. Through Conferences and Events Held Around the Country, Equity Trust Promoted its Self-Directed IRAs to Investors**

601. Equity Trust invited the public and others on its mailing lists to attend events organized throughout the country, such as its "tax-free wealth seminars," and to participate in similar-themed online webinars. *See, e.g.,* DE 586 at 2-3 (referring to upcoming Tax-Free Wealth Seminars in San Francisco, CA; Irvine, CA; Austin, TX; Dallas, TX; Phoenix, AZ; Seattle, WA; Denver, CO; Atlanta, GA; Indianapolis, IN; Chicago, IL; Newark, NJ; and Columbus, OH.).

602. Equity Trust promotional materials for a January 2010 tax-free wealth seminar stated: "Last Chance: Discover how to duplicate what only 2% of Americans (the rich ones!)

know about creating a fortune.” DE 544 at 2. It went on to say “Discover innovative investment strategies (just wait until you hear some of the success stories!).” DE 544 at 3.

603. In 2011, Batt sent a marketing email advertising a free online webinar that would help investors discover “the many benefits of self-directed IRAs and how easy it is to get started – so you can immediately begin building lasting wealth.” DE 540. It also stated: “Discover How You Can Build Tax-Free Wealth Investing in Alternatives to the Market,” “Tired of seeing your projected retirement date fade into the distance with every bad turn of the stock market?”, and “I will show you how you can: Reap tax-free earnings investing in alternatives to the market, such as real estate, private placements, tax liens, oil & gas, and much more.” DE 540.

604. Batt sent this email to a victim of the City Capital fraud, even after Taylor had absconded with the victim’s money. DE 540. The victim responded, “I am surprised to hear from you. We [] were advised that you were no longer with the company since [] Taylor has liquidated our funds.” DE 540.

605. Berlovan sent the article that she provided to Poulson for him to distribute to investors to Equity Trust’s marketing department for review, but not the compliance department. Tr. 1208:12-19 (“Q. And you mentioned that you would run something like the article that you attached to the email by the marketing department to make sure they were okay with it? A. Uh-huh. Q. Do you remember ever running your materials by the compliance department? A. No.”).

606. Equity Trust’s compliance department was not in the same building as the sales department. Tr. 395:5-9 (Batt).



**C. Contrary to its Policies, Equity Trust Failed to Ensure Proper Documentation Before Releasing Customer Funds to Taylor and Poulson**

607. Equity Trust's policies required that it obtain certain account documentation prior to sending customer funds to an issuer. DE 53.

608. For the secured Taylor Notes, Equity Trust should have obtained a note clearly stating the collateral and the collateral agreement. DE 40 at 35 (DOI form: requires a "copy of the *Original Note* clearly stating the associated collateral); DE 53 at 11-12 (Investment Review Procedure: "Required Document List" for "Promissory Note – Secured by Collateral other than Real Property" includes "Original Note Stating the Associated Collateral and a UCC filing to Evidence Security or Title to the Collateral with Lien Attached)

609. Equity Trust failed to obtain the appropriate documentation prior to releasing funds to City Capital. "Obtaining good legal title and maintaining the indicia of ownership of the assets is one of the primary duties ... of a custodian [including] ensuring that proper documentation is obtained and completed." DE 39 at 9, ¶ 24 (Ries Report). Equity Trust processed 35 of 41 investments that were marked secured on the DOI form but for which no security was identified in the promissory note. DE 40 at 5 (¶19). In addition, there were no security agreements for these 35 investments. *Id.*

610. Indeed, Equity Trust created a "special procedure" for Taylor – which was undisclosed to customers – allowing Equity Trust to circumvent its own policies, and process investments with Taylor without being provided a security agreement for that customer. DE 444 ("Special Procedures"). For City Capital, that special procedure was "We accept notes secured by company with the promissory note only. No security agreement is necessary." DE 444 at 5 (line 15).

611. Despite not collecting the security agreements and despite not identifying the collateral described in the promissory notes, Equity Trust processed investments to Taylor. DE 40. By failing “to take the proper steps to obtain proper title to the assets held in the custodian account and to obtain all required documents”, Equity Trust breached its duty to its customers. DE 39 at 9, ¶ 24 (Ries Report).

612. When seeking to have Equity Trust process supposedly secured notes that were not accompanied with a security agreement, City Capital regularly included a note to Equity Trust stating that “There has been no security agreement needed thus far.” DE 661 (including numerous such letters City Capital sent to Equity Trust).

613. For Poulson Notes, Equity Trust released funds from custodial accounts even though it did not have executed promissory notes and recorded mortgages. DE 256 at 3 (secondary review of Poulson reflecting unrecorded mortgages mean there is “Inadequate Documentation on file to support investment”); DE 53 at 11-12 (Investment Review Procedure: “Required Document List” for “Promissory Note – Secured by Real Property” includes “Original Note and Executed Deed of Trust/Mortgage”); DE 40 at 35 (DOI form: requires a “copy of the *Original Note* and a copy of the *Proposed Deed of Trust/Mortgage*).

614. Equity Trust failed to obtain the appropriate documentation prior to releasing funds to Poulson. A total of 39 Poulson Notes were unsigned by both the customer and Poulson. DE 41 at 3 (Palen Report).

**D. Account Review Policies and Procedures, Which Did Not Exist in Written Form Until 2010, Were Inadequate and Not Followed**

**1. Equity Trust Failed to Develop an Adequate Review Policy To Address the Risks Posed by Investment Sponsors**

615. The Division of Banking recommended that Equity Trust improve its account reviews, which are required by charter to operate in South Dakota. DE 598 (Equity Trust’s trust committee “should” “[r]eview the assets of each trust account at least once during each period of twelve months.”).

616. In its 2007 examination report, the Division of Banking pointed to problems associated with Equity Trust’s ability to rate risk and recommended that Equity Trust “develop and implement a risk rating assessment to assist in the internal audit function. A comprehensive assessment applies a risk weight to targeted audit areas to determine review frequency and scope.” DE 594 at 5.

617. In response to that recommendation, the then-president of Equity Trust informed the Division of Banking that Equity Trust “committed to the development of a risk rating matrix to enhance its internal audit function.” *Id.*

618. S. Kelly testified that he believed that these recommendations in the 2007 examination report “led to the improvement in [Equity Trust’s] internal account review program.” Tr. 1168:4-6. In particular, S. Kelly believed that the Division of Banking’s recommendations helped “push” Equity Trust to develop its secondary review procedures. Tr. 1168:14-22.

619. Equity Trust understood that, more generally, custodians were required to have policies and procedures in place to “risk rate third party IRA accounts.” DE 105 (stating that “Are You Ready” article includes “important information” and that South Dakota follows FDIC

examination manual); DE 642 at 1 (“Are You Ready?” article stating the types of deficiencies found by FDIC examiners, including the failure to have risk rating policies). DE 105 (1/19/10 GRC minutes: Desich Jr. distributing “Are You Ready?” article).

620. Equity Trust, as a state-chartered trust company, was bound to follow the recommendations of the South Dakota Division of Banking. According to S. Kelly, the Division of Banking, through its recommendations in exam reports, establishes “standards of how trust companies should operate.” Tr. 1165:7-15. S. Kelly also said that the Division of Banking expects that its recommendations are taken “seriously” (Tr. 1197:13) and that if a trust company was not going to follow a recommendation, then it needed to “provide documentation that strongly supports your decision not to.” Tr. 1194:14-15.

621. S. Kelly testified that Equity Trust’s compliance culture was “reactionary as opposed to proactive,” and that the Division of Banking’s recommendations prompted change. Tr. 1193:13-23.

622. Equity Trust understood that investment sponsors created a risk, and in light of the Division of Banking’s recommendations, began to develop the secondary review policy. For example, Dea testified that one reason for the reviews was “to get our arms around some of the bigger relationships to make sure that everything appears to be in order.” Tr. 1629:17-20. FOF ¶¶ 86-88.

623. The secondary review policy makes clear that it was intended to apply to situations involving larger investment sponsors. DE 53 at 5 (after a certain threshold is met, the “salesperson will initiate contact with the investment sponsor to confirm that the contact information is correct and to inform the investment sponsor that the Secondary Review process will be taking place in the event he/she reaches the established threshold.”); DE 53 at 5-6 (“the

salesperson will also have a conversation with the investment sponsor explaining what the Secondary Review process will involve and what documents, depending on the type of investment may be necessary... In addition, the salesperson will explain that if the information is not available, a hold will be placed on the investment until the applicable documentation can be obtained.”); DE 53 at 6 (“Compliance analyst will perform a background check on the investment and investment sponsor through an internet database and communicate any negative information to the Director of Compliance.”); DE 53 at 6 (“Once all documents have been gathered and the audit of the client files is complete, the Director of Compliance will review all the information and place a call to the Investment Sponsor” in order to “gain a better understanding of the investment by asking questions related to the types of investment offered [] and address any deficiencies.” DE 53 at 8 (the Director of Compliance provides a summary of the call with the investment sponsor to the GRC. The summary of the review is presented to the GRC in order to “determine if ETC is comfortable with the investment and investment sponsor.” DE 53 at 8.

624. By December 2008, though, Equity Trust began flagging companies that would need a secondary review. DE 566 at 5 (showing backlog of issuers needing secondary reviews in alphabetical order starting with the December 7, 2008 report date); DE 526 (“Investment Report Date” of December 7, 2008); DE 566 at 2 (reflecting 53 investments total that triggered a secondary review in 2008).

625. Equity Trust did not actually start its secondary reviews until the latter half of 2009, including the City Capital review. DE 526. Dea explained that there was a significant backlog of reviews in 2009 because of Equity Trust’s acquisition of Sterling Trust. Tr. 1579:20-1580:9; Tr. 1577 at 12-15; Tr. 1576:16-20 (“In the 2009 time frame, again, we were just coming

out of the gate, so we didn't really have the support staff to do 100 of these [secondary reviews] all at once and so we basically started alphabetically.”). There was a backlog of reviews because Equity Trust did not have sufficient audit staff to work on those reviews, which was a consistent concern of the Division of Banking that led to recommendations to Equity Trust regarding staff levels. DE 594 at 5 (2007 S.D. exam report: “management should thoroughly evaluate the need for additional staffing within the internal audit program”); 595 at 7 (2009 S.D. exam report: “the current staffing level may not be adequate in relation to current volume of accounts and risks associated with alternative account holdings”); 596 at 4 (2011 S.D. exam report: “the current staffing level may not be adequate in relation to the current volume of accounts”).

626. Equity Trust did not have a written review policy until May 27, 2010. DE 53.

## **2. Taylor and City Capital and Poulson**

627. Even after Equity Trust developed its secondary review policy, it was either inadequate or not followed.

628. For example, after Equity Trust identified City Capital’s “going concern” opinions, a failure to pay on Taylor Notes, missing documentation, and notes falsely marked secured, Equity Trust placed City Capital on the “Do Not Process” list in either January or February 2010. FOF ¶ 271. *See also* Tr. 908:1-10 (Bartlett investigative testimony: “Question: Again, why is it important? Why is missing documentation an issue? Why is that something that Equity Trust seeks to obtain? Answer: “Well, we consider that a red flag that, you know, there may be some problems with that investment because they are not providing the documents that are required. So from that point, you know, that’s when we try to get them all in, and otherwise we cease doing business with them.”). Nonetheless, Equity Trust continued to process investments for City Capital. FOF ¶¶ 287-289.

629. For Poulson, the secondary review was initiated in June 2010. As a result of that review, Equity Trust identified numerous document deficiencies and mature and unpaid notes and should have thus placed Poulson on hold. DE 53 at 9 (Investment Review Policy: “If ETC needs additional information about an investment it will be placed on the hold list.”). However, Poulson was not placed on the hold list and instead processed numerous investments for Poulson until he was finally put on hold in October 2011. DE 256 at 3.

**E. Equity Trust Routinely Violated its Privacy Policy**

630. Equity Trust failed to comply with the privacy disclosures that it provided to customers. Customers were told that their information – including “Information about your transactions with us and others” (DE 46 at 20) – would only be provided in certain enumerated situations, including (a) the request by federal, state or local law enforcement agencies; (b) the request by the IRS for tax reporting purposes; and (c) upon other organizations that protect your privacy (DE 46 at 21).

631. Despite these limitations on sharing account information, Equity Trust sales representatives believed that they could share the transaction information of customers and prospective customers with investment sponsors.

632. Batt regularly provided customers’ transfer information with City Capital without explicit authorization from the customer. FOF ¶¶ 192-199.

633. Yurgalewicz regularly provided customers’ transfer information with City Capital without explicit authorization from the customer. FOF ¶¶ 367-372.

634. Dea and Batt stated that they believed it was appropriate to share this information so long as City Capital and Poulson provided Equity Trust with the PIN number of the customer. Tr. 690:12-18 (Dea); 306:9-22 (Batt).

635. There is no policy stating that Equity Trust could provide account information if a non-customer called in with the PIN number. Indeed, this is contrary to a statement made by R. Desich in Equity Trust's materials that "No one gets any information – personal information about a client, unless it's the client and they have their personal password. Other than that, no one ever." DE 861.

636. No evidence exists that PIN information was ever provided by City Capital or Poulson to Equity Trust for the account information.

## **XV. THE TESTIMONY OF EQUITY TRUST'S WITNESSES WAS NOT CREDIBLE**

### **A. Batt's Testimony that He Did Not Promote, Endorse, and Recommend Taylor Is Contradicted By the Testimony of Taylor's Fraud Victims**

#### **1. New Birth Church**

637. In his testimony concerning the events at New Birth Church, Batt testified that he never "[e]ndorsed an investment sponsor," "acted in any way improperly," or otherwise felt that he had "stepped over the line at all when [he was] at New Birth." Tr. 464:8-15; 464:25-465:2.

638. Batt testified that when potential customers approached him following Taylor's presentation, Batt said that he "just went into [his] automatic mode about telling people about self-directed IRAs," which he repeated several times. Tr. 455:1-13; 456:9-24.

639. Batt's testimony is contradicted by several witnesses from New Birth Church.

640. First, [REDACTED] Wells, testified that she approached Batt in the church vestibule following the event, and asked him about self-directed IRAs. FOF ¶ 496. Despite that Wells expressed no interest in investing with City Capital or Taylor, and instead just asked Batt about self-directed IRAs, Batt walked her over to Taylor who promptly made an appointment for her to speak with his staff. FOF ¶¶ 497-498. Batt testified that he did not remember Wells. Tr. 407:8-



12. Batt, when asked whether he brought Wells over to Taylor in order to set up an appointment, testified “that did not happen.” Tr. 407:8-25.

641. Second, [REDACTED] Jones also testified at length and in specific detail concerning his interaction with Batt at New Birth. FOF ¶¶ 432-438. Jones explained that after Sunday service that he was specifically told by the City Capital staff that he should return to the Church the following Tuesday when Batt was there, so he could meet Batt. FOF ¶ 432. Jones also described that he did return and met with Batt in a small church conference room. FOF ¶¶ 432-433. In the meeting, Batt “was very glowing in the remarks about Mr. Taylor,” and talked about Taylor’s background and reputation. FOF ¶ 433. Batt also explained to Jones how self-directed IRA actually worked, and that City Capital would pay Equity Trust’s fees, which it did. FOF ¶ 434. Jones testified explicitly that Batt endorsed Taylor and City Capital. FOF ¶ 438.

642. Batt claimed in testimony that he does not remember his meeting with Jones (Tr. 340:5-9), and that he never went to any “meetings in conference rooms within the church building.” Tr. 463:10-14. When confronted with Jones specific testimony, Batt testified only that Jones’ testimony describing the meeting did not refresh his recollection. Tr. 340:10-341:14.

643. Third, [REDACTED] Turner, who sat near Batt during Taylor’s presentation, described approaching Batt on the floor of the church immediately following the presentation. FOF ¶ 480. Batt told her that “he had been to several different places with Ephren.” FOF ¶ 480. Turner could not recall exactly what else Batt said about Taylor, but “it made me comforted – I was comforted to know that he had been doing several tours with him, had been to different places with him.” FOF ¶ 480.

## **2. Other Witnesses Corroborate that Batt Endorsed Taylor and Steered Investors Towards Him**

644. Batt also testified that he understood that it was improper for him to “endorse” anyone, which meant that “I couldn’t say this person is the best, you know, invest with this person. That means you couldn’t do that. That’s what it meant to me.” Tr. 301:20-302:7. Batt claimed he that he did not treat Taylor as a customer, and instead “treated him like any other center of influence.” Tr. 308:2-4.

645. In addition to Wells, Turner, and Jones, other witnesses and evidence contradict Batt’s assertion that he did not endorse Taylor and City Capital.

646. ██████ Hill testified when he called Batt to ask about Taylor and Taylor’s company, that Batt said, “well, Mr. Hill, it’s a good company and he’s getting people right now 10 percent on their investment.” FOF ¶ 416. Hill told Taylor about this discussion he had with Batt. Batt did not recall the discussion with Hill. Tr. 341:15-342:19. Hill’s experience with Batt is corroborated by Taylor’s testimony. DE 36 (Taylor Dep. 58:22-59:3) (Batt “did speak highly of us and, you know, sometimes talked about our appearances and stuff; so customers did – would come back around, going, all right, you know we checked you guys out, I talked to the bank, you know, and – you know Robert had great things to say about you guys. And we’re like, Okay, let’s do business.”).

647. ██████ Sims testified that when she did not immediately move her retirement funds from her Boeing retirement account to Equity Trust for investment in City Capital, Batt called her at work and asked her, “do you have the money,” and told her to “have them wire the money to the [Equity Trust] account.” FOF ¶ 453.

648. Batt's email to Taylor regarding █████ Dorio, where Batt admits that he told Dorio to disregard the advice of her investment advisor, also shows how Batt tried to assist Taylor and City Capital. DE 14; FOF ¶ 404.

649. Taylor also testified on the numerous ways that Batt assisted City Capital. DE 36 (Taylor Dep. 58:5-21) ("not only did [Batt] keep us abreast of our particular customers, when we did find somebody who was, I would say, hesitant or maybe getting cold feet or sitting on the fence, he brought a different level of credibility, because he worked for the financial institution that we were working with; so it -- it was kind of a transference of a credibility from Equity Trust establishment to City. But if somebody was hesitant or had questions or was circumventing our sales guys, he would address those questions and concerns that they would have.").

### 3. █████ Dorio's Testimony and Batt's Own Email Contradict Batt's Testimony

650. In Batt's January 14, 2009 email, Batt wrote to Taylor: "I did a conference call with █████ today and it was a good call. The broker at AIG blocked the transfer and sent █████ Dorio a letter. The letter basically trashed commercial real estate and said don't transfer out... 'you will regret it.' It was so cheesy it sounded like a 1<sup>st</sup> grader wrote it." DE 14.

651. Batt testified that the statement in his email that the broker's letter was "cheesy" was a matter of a "punctuation error," and that it was Dorio – and not Batt – who "[s]aid it sounded cheesy like a first grader wrote it." Tr. 352:12-21; *see also*, Tr. 475:10-16. (Batt: "Q. Now, did █████ Dorio talk to you about this letter? A. That's the purpose of the phone call was, again, we did the conference call together. And so when she's like, yeah, Robert, he even sent me this cheesy letter, too. So she referred it as a cheesy letter. Q. She said that? A. Yes, she certainly did.")

652. Dorio's testimony concerning her relationship with her broker, Rick Wheeler, pointedly contradicts Batt's testimony that Dorio mocked Wheeler's letter to her. Dorio testified that she would not have said anything negative about this letter, and that instead she thought highly of Wheeler, believed that he was a good person and good investment advisor, and that Wheeler was looking out for her and her mother. FOF ¶ 403.

**B. Contrary to Desich's and Dea's Testimony, Equity Trust's Account Review Procedures Were Not Voluntarily and Proactively Adopted by Equity Trust**

653. Dea and Desich testified that Equity Trust's secondary review procedures were voluntarily adopted by Equity Trust, making it a pioneer in the industry. These statements are not credible in light of other testimony and evidence.

654. Dea testified that the account reviews, including secondary reviews, were put into place "voluntary" (Tr. 726:10) and that they were "proactively" developed by Equity Trust. Tr. 719:12.

655. Desich testified that "we do a number of different reviews and we're very unique in our industry. I'm not aware of another firm in our industry that has taken the approach we have." Tr. 968:24-969:2. And he agreed Equity Trust was a "pioneer" in doing reviews (Tr. 972:15), and that "no regulator, no industry trade association, no government body" provided any direction on doing these reviews. Tr. 973:0-5. Desich went on to state that secondary reviews were "something we did voluntarily." Tr. 1008:18-19.

656. Contrary to this testimony, the secondary reviews were consistent with the standard of care of a custodian (FOF ¶¶ 30-77), a requirement of acting as a custodian in South Dakota (FOF ¶¶ 36, 73, 620), and driven by the Division of Banking (FOF ¶¶ 615-626).

657. Moreover, there is an undated video of Desich, Sr. speaking at an Equity Trust event to investors, and in his remarks Desich Sr. does not make any warnings at all about the

risks of self-directed IRAs. Instead, Desich Sr. praises customers who have done “four or five deals or ten deals, you’re very successful and you’re making money.” DE 838A at 2 (transcript 2:13-19); DE 838 (video). Desich Sr. tells the investors that it is a “great honor” to introduce LeGrand, “because Ron is really responsible for making this happen and putting it all together.” Id. at 2 (transcript 3:17-20). Desich Sr. then described how LeGrand inspired him to write a book, develop videos and speak at seminars about self-directed IRAs. Id. Desich Sr. did not mention the fact that the Florida Department of Banking sanctioned LeGrand three times (DE 845-847), and that the SEC charged LeGrand with fraud in 2011. DE 591.

**C. Contrary to J. Desich’s and Dea’s Testimony, Equity Trust Did Not Take Steps to Warn its Customers or Sales Representatives of the Risks Inherent in Self-Directed IRAs**

658. J. Desich testified that “fraud prevention is something that we feel is very important” (Tr. 977:7-9) and then proceeded to list a number of steps purportedly taken to address fraud on its accounts, and suggested that Equity Trust took these proactive steps during the time of the Taylor and Poulson frauds. Tr. 1011:6-1011:10 (Desich: “Q. You just said that you’ve always taken fraud protection seriously? A. Myself personally? Yes. Q. [...] That wasn’t really the case from 2008 to 2011, was it? A. I’m not sure how you could say that.”).

659. Prior to 2012, however, there is no evidence that Equity Trust took any steps to alert its customers to the possibility of fraud. And even after 2012, Equity Trust’s actions were either not supported by evidence or modest and taken only after lawsuits had been filed against equity Trust by victims of Taylor’s fraud.

660. As examples of Equity Trust being “proactive,” J. Desich testified that Equity Trust placed “the largest order from FINRA” of DVDs that supposedly related to fraud prevention. Tr. 977:10-25. These DVDs, however, are not in evidence. And assuming J. Desich

was referring to a FINRA DVD called "Tricks of the Trade," Equity Trust Board minutes show that this particular DVD was only discussed at an April 2012 meeting and no evidence exists as to the contents of the DVDs or if it was ever provided or shown to anyone. DE 132 at 3 (ETC's board minutes).

661. Second, Desich stated that the Equity Trust website had a number of links relating to fraud prevention. Tr. 977:25-978:4. However, the discussion of adding those links to Equity Trust's website did not occur until 2012. According to an internal Equity Trust email dated May 11, 2012, those new links on its website were the "first step" to provide education on preventing frauds and scams. DE 522 at 1. That email does not reflect any prior steps that had been taken to warn investors of fraud, including any prior information on its website, and comes approximately one month after a Wall Street Journal article about fraud being perpetrated on self-directed IRAs, which was an article that concerned Equity Trust from a public relations standpoint. DE 521 (4/19/12 email including J. Desich, Desich Jr., and Dea). *See also* DE 520.

662. The voluminous record of Equity Trust's historical website similarly does not reflect any warnings of fraud from October 2008 through January 2011. DE 801-804 (Internet Archive versions of Equity Trust's website on October 6, 2008; August 6, 2009; June 18, 2010; and January 31, 2011, which include the sitemap, or indices, of the website on those dates as follows: 801 at 3-10; 802 at 1-7; 803 at 1-7; 804 at 1-7).

663. J. Desich also stated that Equity Trust has worked with RITA to address fraud in the self-directed IRA industry through RITA communicating with the SEC and state regulators. Tr. 978:21-979:11. But the only record evidence of RITA addressing fraud is in connection with a webinar in mid-2012 that RITA and NASAA were hosting and previously referenced new fraud prevention section on Equity Trust's website. RE 264; DE 522.

664. Finally, Desich testified that Desich Sr., at Equity Trust events, “spoke about fraud multiple times throughout the three days.” Tr. 979:19-22. The only specifics provided by J. Desich was a recollection that Desich Sr. had read from “a suicide note from a gentleman who had borrowed money who had . . . stole money and he committed suicide.” Tr. 980:13-18.

665. Apart from the unsupported testimony of J. Desich, no evidence exists of Desich Sr. ever giving any fraud warnings. Even Dea, the president of Equity Trust, had never actually heard of audio warning described by Desich. Tr. 1596:17-1597:13. This was the only “proactive” step listed by Desich that occurred prior to 2012.

666. There is no record that any of the victims of the Poulson and Taylor frauds ever received any warnings from Equity Trust about potential fraud in self-directed IRAs.

667. Similarly, Dea was asked about any steps that Equity Trust took to warn investors about the risk of fraud. Tr. 743:2-3. In response, Dea described only two steps that, it turns out, occurred only after the Taylor and Poulson frauds. First, Dea responded that Equity Trust was “the biggest order” of the SEC’s investor alert concerning fraud. Tr. 743:4-7; 743:20-744:3. While Dea could not recall the timing of that investor alert, the alert was not issued until September 2011. RE 46. Second, Dea stated that Equity Trust included information on its website, which as previously discussed, did not occur until 2012. Tr. 743:11-19.

668. Equity Trust sales personnel were not warned or trained about frauds that could be perpetrated by investment sponsors. During Batt’s entire tenure at Equity Trust, management never made him “aware of investor alerts being issued by the Securities & Exchange Commission about self-directed IRAs being vehicles for fraud by fraudulent investment promoters.” Tr. 298:7-13.

669. Batt was never made aware of “investor alerts by state regulators or associations of state regulators about the risks of self-directed IRAs.” Tr. 298:14-18.

670. In addition, Batt never spoke to customers about the risks of self-directed IRAs. Tr. 365:4-12.

671. Management never informed Batt of “a particular instance that had occurred there where an investment sponsor had turned out to be a perpetrator of a fraud or financial crime.” Tr. 298:19-24.

672. Equity Trust’s “Do Not Process” list failed to inform sales representatives of the reasons that a sponsor or investment was placed on the list. Tr. 299:13-17 (Batt).

**D. Batt’s Testimony that the City Capital Landing Page Was Never Active Was Not Credible**

673. The only evidence that the City Capital landing page was not active was the testimony of Batt, who stated that the landing page was only ever “a beta test page.” Tr. 379:8-10. His primary basis for that statement was that he did not open any accounts through the City Capital landing page (Tr. 391:18-25; 399:23-400:2; 486:8-15). This hearing testimony was not new – during his investigative testimony in January 2014, Batt stated that the City Capital landing page never went live and was only in a beta stage. Tr. 1855:9-1856:8.

674. Even in light of Batt’s investigative testimony, Equity Trust formally took the position throughout the investigation and in this administrative proceeding through its answer and pre-hearing brief that the City Capital landing page was active from approximately August 2009 through 2013. DE 575 (Equity Trust’s outside counsel’s letter producing “hard copies of ‘landing pages’ that, at one time or the other, were active on the ETC website” and including the City Capital landing page); Answer ¶ 37 (“...there were a total of approximately 50 visits to this landing page prior to the time ETC stopped doing business with Taylor”); Pre-Hearing Brief at 7



(“In mid-August 2009 (possibly later), ETC added a public ‘landing page’ with the heading ‘City Capital Corporation – Wealth Builder Network’ as a subpage on ETC’s own website.”); Pre-Hearing Brief at 31 (stating that the landing page went live in 2009).

675. Equity Trust’s position on the landing page changed during the hearing on December 2, 2015 when Equity Trust made an oral motion to amend its answer in light of Batt’s hearing testimony (which was no different from his investigative testimony). Tr. 484:9-485:3. Desich testified that, after hearing Batt’s testimony that no accounts were opened as a result of the City Capital landing page, he could not be sure whether the landing page was active. Tr. 1042:4-23.

676. Batt’s testimony that the landing page was not active was simply not credible. Most significantly, Batt’s testimony is contradicted by his own emails. On August 14, 2009, Batt sent City Capital an email with a link to the website and a statement that the website was “live.” DE 338 (Batt: “This is the new website that is live and is for only for your clients.”). Later, in a September 2009 email exchange between Batt and Dixon, they discuss how the City Capital landing page can be used at the New Birth Church event. DE 346. Confronted with this email, Batt testified that the September 2009 email exchange only made sense if the website was in fact live. Tr. 392:1-11 (Batt: testifying that the September 2009 email “may not make sense” if the website was not in fact live at the time).

677. Batt ultimately admitted that he never actually checked Equity Trust’s website to confirm whether the landing page was live. Tr. 381:23-25; 386:11-14. Batt also stated a number of times that he was not a technical person, and as a result had no idea whether the landing page was actually live. Tr. 417:1; 481:19; 486:5; 486:19-22 (Batt: “Q. And didn’t what I just read you

say the website went live in 2009? A. Again, I'm not a technical person. How would I know that, if it went live?").

678. Taylor, on the other hand, testified that he had seen the live version of the landing page as late as 2013 or 2014 and that he was personally aware of two or three investors who viewed the live landing page. DE 36 (Taylor Dep. 71:11-13, 312:23-313:20). Taylor's viewing of the landing page in 2013 or 2014 is consistent with an internal Equity Trust email showing that City Capital landing page, along with other landing pages, were being reviewed by an Equity Trust compliance analyst in April 2013. DE 525 at 1-2.

**E. J. Desich's Testimony that Equity Trust Never Sponsored Poulson's Monthly Dinner Events Is Refuted By Multiple Emails**

679. Desich testified that Equity Trust did not "have a single record" of Equity Trust "ever sponsoring any of Randy Poulson's dinners." Tr. 1017:4-6; *see also* Amended Answer ¶ 56 ("...ETC has no record of ever actually sponsoring any event associated with Poulson). Desich's testimony should not be credited.

680. Numerous emails reflect that Equity Trust agreed to pay Poulson \$600 to sponsor his monthly dinner events for one year and that Equity Trust netted this amount against \$750 that Poulson owed to Equity Trust. FOF ¶¶ 327-342. Equity Trust reminded Poulson that he needed to pay the \$150 difference and Poulson took steps to make such payment. FOF ¶¶ 343-344. When confronted with this evidence, Desich stated that it "could be" that Equity Trust did not see a ledger entry showing a payment to Poulson because of the netting of these payments. Tr. 1026:17-20 ("Q. ...So does that explain to you why you wouldn't have seen a \$600 entry on Equity Trust's ledger. A. It could be, but I don't know where the 150 – I'm not – could be.").

**XVI. UNDER THE DESICHES, EQUITY TRUST AND MID-OHIO SECURITIES HAVE BEEN REPEATEDLY TARGETED BY INVESTOR LAWSUITS AND SANCTIONED BY REGULATORS**

**A. Investor Actions**

681. *Bentley v. Equity Trust Company* is a class action against Equity Trust by victims of a Ponzi scheme devised by Robert Langguth, who is serving four years in prison for this scheme. The victims invested with Langguth using funds from their Equity Trust self-directed IRA accounts. 2015 Ohio 4735, 2015 WL 7254796 \*1 (Ohio Ct. App. Nov. 16, 2015).

682. In *Bentley*, Equity Trust argued that the victims' tort claims were precluded by the disclaimers in the Account Agreement and Direction of Investment form. The Ohio Court of Appeals – in reversing the trial court – rejected Equity Trust's argument and held that "the Custodial Account Agreements do not preclude [the victims] from bringing their tort claims against Equity Trust." 2015 WL 7254796 \*1.

683. In *Mid-Ohio Securities Corp. v. Burns*, a Mid-Ohio Securities IRA client alleged that Mid-Ohio was required to and failed to perform basic due diligence on IRA accounts; and that Mid-Ohio should have realized the IRA investment was a fraud based on several red flags. The customer asserted claims for negligence and breach of contract, and sought \$290,000 in damages. 790 F. Supp.2d 1263, 1272 (D. Nev. 2011). A FINRA Arbitration Panel ruled that Mid-Ohio Securities was liable to the customer and ordered Mid-Ohio to pay the customer \$280,683.50. DE 843 at 2 (Award). In 2011, the US District Court for the District of Nevada denied Mid-Ohio's motion to vacate the arbitral award. 790 F. Supp.2d at 1272.

684. In *Tarquinio v. Equity Trust Company*, Mid-Ohio Securities transferred a customer's funds out of a custodial account before receiving all documents evidencing the investment. Despite affirming the dismissal of the case based on waiver, the Ohio Court of

Appeals found that “Mid-Ohio’s failure to obtain proper documentation prior to transferring funds” could subject it to liability, notwithstanding the disclaimers. 2007 WL 1874241.

685. In *Harralson v. Mid-Ohio Securities Corp.*, an investment promoter allegedly told an investor that he “would need to open an IRA account with Mid-Ohio Securities” in order to make the investment. 2005 WL 2649910 (N.D. Ohio Oct. 14, 2005) (denying plaintiff’s motion for summary judgment on Mid-Ohio’s counterclaim).

#### **B. The 2003 Order Instituting Proceedings**

686. In an *Order Instituting Proceedings* dated October 15, 2003, the Commission found that, in connection with \$70 to \$82 million funds held for IRA customers, Mid-Ohio Securities had failed to comply with the Customer Protection Rule, the Net Capital Rule, had failed to maintain accurate books and records and comply with the broker-dealer reporting provisions. DE 829 at 4 (*Matter of Mid-Ohio Securities Corp.*, Rel. No. 48635, 2003 WL 22357740 (S.E.C. Oct. 15, 2003)).

687. The Commission ordered that Mid-Ohio Securities be censured; cease and desist from committing or causing any violations and any future violations of Sections 15(c) (3) and 17(a) of the Exchange Act and Rules 15c3-1, 15c3-3, 17a-3, and 17a-5 thereunder; and pay a civil money penalty in the amount of \$25,000. DE 829 at 4.

#### **C. The 2009 Cease-and-Desist Order**

688. The Ohio Division of Securities found that from 1996 through March 2003, self-directed IRA customers of Mid-Ohio Securities invested in “thirteen particular investment programs . . . offered by six different investment sponsors” that “turned out to be fraudulent or substantially worthless, because the principal(s) at each Investment Sponsor had received criminal indictments, convictions or civil injunctions for securities fraud-type offenses related to

the Investment Programs.” DE 848 at 3-4 (*Matter of Mid-Ohio Securities Corp.*, Order No. 09-149, 2009 WL 3699086 (Ohio Dept. Comm. 10/27/09)).

689. Mid-Ohio Securities was ordered “to Cease and Desist from the acts and practices as described above . . . which the Division finds constitute violations of Ohio Revised Code Chapter 1707 [the Ohio Securities Act] and the rules promulgated thereunder.” DE 848 at 5.

690. Desich Sr. and Desich Jr. signed the Consent Agreement, and Desich Sr. agreed to “withdraw from licensure in Ohio as a securities salesperson and investment adviser representative” and to “not seek licensure in Ohio as a securities salesperson or investment adviser representative.” DE 848 at 6-8.

#### **D. Other State Regulatory Proceedings**

691. From 2001 to 2003, four state securities regulators brought charges against Mid-Ohio Securities for acting as an unregistered broker-dealer. In each matter, Mid-Ohio Securities, through Desich Sr., consented to monetary payments. DE 841 (Hawaii Commissioner of Securities: civil penalty of \$20,000); DE 655 at 21 (Pennsylvania Securities Commission: \$1,500 for “investigative and legal costs” and \$17,500 “administrative assessment.”); DE 655 at 27-29 (Vermont Securities Division: the “maximum administrative penalty for each violation” totaling \$38,065, and \$1,490, which was “all sums obtained in violation of the Securities Act”). DE 848 at 2-3 (Maine Office of Securities: pay a Maine resident \$16,000).

692. Two of the state regulators found that Mid-Ohio Securities had made false statements. DE 841 at 2-3 (Hawaii Commissioner of Securities: “Respondent Mid-Ohio made an untrue statement of material facts or omitted to state material facts necessary in order to make the statements made, in light of the circumstances in which they were made, not misleading”); DE 655 at 27 (Vermont Securities Commissioner: “Mid-Ohio made, in a document filed with the

Commissioner, a statement that was, at the time and in light of the circumstances under which it was made, false in a material respect”).

#### **E. NASD Charges**

693. On May 3, 2005, the National Association of Securities Dealers (NASD) issued a Letter of Acceptance, Waiver and Consent (AWC), signed by Desich Sr., in which the NASD found that Mid-Ohio Securities failed to maintain an adequate anti-money laundering program. The NASD imposed a censure and a fine of \$10,000. DE 655 at 19-21. Desich Sr. signed the AWC on behalf of Mid-Ohio Securities.

694. In a Consent entered May 14, 1991, the NASD censured Desich Sr. and ordered him to pay a fine of \$2,500. DE 655 at 31-32.

#### **F. Equity Trust Accounts Have Played a Role in State Regulators’ Cases against Fraudulent Promoters**

695. In *Matter of Casey Charles*, a promoter persuaded five investors to allow him to act as their investment adviser regarding their IRAs and told the investors that Equity Trust “was a reputable IRA custodial company.” As a result, the investors opened IRA accounts at Equity Trust, and numerous withdrawals were made from customers’ Equity Trust accounts without their authorization or consent. The promoter also forged customers’ signature of Equity Trust documents to access the IRA funds, purported to use the withdrawals to purchase promissory notes, and then misappropriated the funds. 2011 WL 6094422 (Md. Sec. Div. Nov. 28, 2011) (Final Order to Cease and Desist Order of Bar).

696. In *Matter of Richard A. Daniels*, an investment adviser in Ohio opened Equity Trust IRAs by forging the signatures of the account holders, and then transferring the funds to himself without the account holder’s knowledge. Some of the transfers from the Equity Trust account was purportedly to purchase promissory notes; however, the investment adviser used

these funds to pay earlier investors and for his own purposes. DE 658 at 2 (10/22/06 Ohio Division of Securities: Revocation of Ohio Securities Salesperson License).

697. In *Rome v. Roop*, the defendant bought and sold real estate by obtaining funds from private investors and offering the investors a return of eight to ten percent. According to the Colorado Division of Securities' Complaint, the defendant encouraged investors "to invest using self-directed IRA accounts through Equity Trust Company, rather than cash investments." The defendant was charged with operating "the classic Ponzi scheme strategy of paying returns to older investors with newer investor funds." 2014 WL 1491480 (Col. Div. Sec. Apr. 3, 2014).

698. In *Matter of Joseph Troiano*, two investors paid to attend "real estate education classes" presented by a company named Wealth Intelligence Academy. While attending the classes, the investors wired \$155,000 into an Equity Trust Account purportedly to invest in Costa Rican real estate. The funds were then wired to an attorney. In 2011, the attorney pleaded guilty to mail and wire fraud. DE 840 (Alaska Division of Banking and Securities: Final Cease and Desist Order Imposing a Civil Penalty).

## PROPOSED CONCLUSIONS OF LAW

### I. LIABILITY FOR “CAUSING” UNDER SECTION 8A OF THE SECURITIES ACT

#### A. Elements of Causing Liability

1. Section 8A of the Securities Act of 1933 authorizes the Commission to order “any person” to cease and desist from being “a cause” of another’s violation if it finds, after a hearing, that the person committed “an act or omission the person knew or should have known would contribute to such violation.” 15 U.S.C. § 77h-1(a). Such a cease-and-desist order may also require the person “to take steps to effect compliance” and to “require future compliance or steps to effect future compliance.” *Id.*

2. Causing liability requires three elements: (1) a primary violation; (2) an act or omission by the respondent was a cause of the violation; and (3) evidence that the respondent knew – or should have known – that its conduct would contribute to the violations. *Robert M. Fuller*, Rel. No. 8273, 2003 WL 22016309, \*4 (Aug. 25, 2003), *pet. denied*, 95 F. App’x 361 (D.C. Cir. 2004); *Daniel Bogar*, Rel. No. 502, 2013 WL 3963608, \*20 (Init. Dec. Aug. 2, 2013); Rel. No. 9499 (Finality Order as to Two Respondents Dec. 18, 2013).

3. Equity Trust can be held liable for the conduct of its owners, officers, and employees. *See, e.g., In re Parmalat Sec. Litig.*, 474 F. Supp. 2d 547, 550 n.12 (S.D.N.Y. 2007) (citing *Marbury Mgmt., Inc. v. Kohn*, 629 F.2d 705, 712-16 (2d Cir. 1980) (holding that *respondeat superior* applies in federal securities cases). *See also SEC v. Morgan Keegan & Co.*, 678 F.3d 1233, 1249 (11<sup>th</sup> Cir. 2012) (“Under principles of *respondeat superior*, Morgan Keegan is liable for the acts of these brokers so long as they acted within the scope of their authority.”).



**B. The Primary Violations of Taylor and Poulson Do Not Require Scierter; Accordingly, Equity Trust's Negligence is Sufficient to Prove Causing Liability**

4. Equity Trust is alleged to have been "a cause of Taylor's and Poulson's violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act." OIP ¶ 62.

5. Section 17(a)(2) makes it unlawful "to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading." 15 U.S.C. § 77q(a)(2).

6. Section 17(a)(3) makes it unlawful "to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser." 15 U.S.C. § 77q(a)(3). Scheme liability under Section 17(a)(3) requires proof of participation in an illegitimate, sham, or inherently deceptive transaction that had the purpose and effect of creating a false appearance. *SEC v. Daifotis*, 2011 WL 2183314 at \*9 (N.D.Cal. June 6, 2011), *modified on other grounds*, 2011 WL 3295139 (N.D.Cal. Aug. 1, 2011); *SEC v. Lucent Technologies, Inc.*, 610 F.Supp.2d 342, 360 (D.N.J.2009).

7. Neither Section 17(a)(2) nor 17(a)(3) require proof of scierter; a showing of negligence suffices. *Aaron v. SEC*, 446 U.S. 680, 697 (1980).

8. "Negligence is the failure to exercise reasonable care." *Daniel Bogar*, 2013 WL 3963608 at \*20. *See also Ira Weiss*, Rel. No. 8641, 2005 WL 3273381, \*14 (Comm. Dec. 2, 2005) (in finding an attorney violated Sections 17(a)(2) and (a)(3), stating that the attorney's "conduct departed from the standard of reasonable prudence and was at least negligent.")).

9. The reasonable prudence standard applies to Section 17(a)(2) and (a)(3). *SEC v. Dain Rauscher*, 254 F.3d 852, 857 (9th Cir. 2001) ("The industry standard is a relevant factor, but the controlling standard remains one of reasonable prudence.")).

10. Evidence of Equity Trust’s negligence is sufficient to establish causing liability under Section 8A because the primary violations – Sections 17(a)(2) and (a)(3) of the Securities Act – do not require proof of scienter. “[N]egligence is sufficient to establish ‘causing’ liability . . . in cases in which a person is alleged to ‘cause’ a primary violation that does not require scienter.” *Howard v. SEC*, 376 F.3d 1136, 1141 (D.C. Cir. 2004) (citation omitted); *Robert W. Armstrong*, Rel. No. 248, 2004 WL 737067, \*12 (Init. Dec. Apr. 6, 2004) (“Negligence is sufficient to establish liability for causing a primary violation that does not require scienter.”).

11. In addition, the phrase “knew or should have known” in Section 8A is “‘classic negligence language.’” *KPMG, LLP v. SEC*, 289 F.3d 109, 120 (D.C. Cir. 2002). *See also Phillip L. Pascale*, Rel. No. 251, 2004 WL 1103671, \*15 (Init. Dec. May 17, 2004) (“The ‘should have known’ language is akin to negligence.”) (quoting *KPMG Peat Marwick LLP*, 74 SEC Docket 384, 421, 2001 WL 34138819 (Jan. 19, 2001)).

## **II. TAYLOR, CITY CAPITAL AND POULSON VIOLATED SECTIONS 17(a)(2) AND (a)(3) OF THE SECURITIES ACT**

### **A. The Admissions of Taylor and Poulson at their Plea Allocutions Established Their Violations of Sections 17(a)(2) and (a)(3)**

12. At their plea allocutions, Taylor and Poulson admitted that they obtained money or property by means of material misstatements and omissions. FOF ¶¶ 105-115 (Taylor); FOF ¶¶ 124-126 (Poulson).

13. Poulson and Taylor also admitted that they engaged in a transaction, practice, or course of business that were fraudulent and deceived purchasers of their notes. *Id.*

14. The admissions of Taylor and Poulson at their plea allocutions should be accepted as truthful. *See Blackledge v. Allison*, 431 U.S. 63, 74 (1977) (statements at plea allocation “carry a strong presumption of verity”); *United States v. Bambulas*, 571 F.2d 525, 526 (10th

Cir.1978) (statements at plea allocution are conclusive absent credible reason “justifying departure from their apparent truth”).

15. The conduct that Taylor and Poulson admitted to constitutes evidence of material misrepresentations and omissions, and a scheme, that are clearly material to any investor. Materiality is proved by showing a “substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the ‘total mix’ of information made available.” *SEC v. Ginsburg*, 362 F.3d 1292, 1302 (11th Cir. 2004) (quoting *TSC Indus. Inc. v. Northway, Inc.*, 426 U.S. 438 at 449 (1976)). Materiality does not require proof that accurate disclosure would have caused the reasonable investor to change her decision, but only that the omitted fact would have assumed actual significance in the deliberations of the reasonable investor. *TSC Indus.*, 426 U.S. at 449.

16. As a result, Taylor’s and Poulson’s admissions establish the primary violations.

**B. Additional Evidence Establishes Taylor’s and City Capital’s Violations of Sections 17(a)(2) and (a)(3)**

17. In addition to Taylor’s admissions, other evidence shows that Taylor’s and City Capital’s conduct violated Sections 17(a)(2) and (a)(3).

18. This conduct was the basis for the allegations of Sections 17(a)(2) and (a)(3) violations in the SEC action. *See, e.g.*, DE 5 (SEC complaint charging Taylor and City Capital with violating Section 17(a)(2) and (a)(3) of the Securities Act, among other statutes, and the Complaint against them alleges that they “were negligent”); DE 6, 7 at 5-6 (Final Judgments in SEC action enjoining Taylor and City Capital from violating Sections 17(a)(2) and (a)(3)).

19. Taylor and City Capital sought to convince investors to roll over funds from their retirement accounts into Equity Trust. FOF ¶ 97. *See also* FOF ¶¶ 128-139 (Taylor websites and whitepaper promoting investing through self-directed IRAs). Taylor and City Capital

represented to investors that the investments in Taylor Notes would be used for community development, housing, real estate, or specific businesses. FOF ¶¶ 96, 135.

20. From April 2008 through December 2009, eighty-one Equity Trust customers invested a total of \$5,338,900 in Taylor Entities. FOF ¶¶ 93, 383.

21. Investors in Taylor Notes were not told that Taylor and City Capital used investor funds for City Capital's operating expenses, marketing fees, bank fees, and investor interest and principal payments. DE 36 (Taylor Dep. 28:9-18); FOF ¶ 98. These misrepresentations about the use of investor funds were material. *See, e.g., SEC v. Constantin*, 939 F. Supp. 2d 288, 307 (S.D.N.Y. 2013) (material misrepresentation to divert client funds to pay defendant's personal and business expenses); *SEC v. Young*, 2011 WL 1376045, at \*6 (E.D. Pa. April 12, 2011) ("There can be no question that the omission of information regarding [defendant's] misappropriation of investor funds for personal use was an omission of 'material' information.").

22. The vast majority of Taylor's investors were never repaid. FOF ¶ 98. Only \$152,400 in principal was returned to investors by City Capital. FOF ¶ 94.

23. Taylor also replaced the maturing Taylor Notes with replacement notes that extended the Taylor Notes with new notes and new maturity dates, which extended Taylor's and City Capital's scheme because they did not have the funds to repay those notes. FOF ¶¶ 287-291.

24. In addition, Taylor and City Capital falsely represented to investors that thirty-five of the Taylor Notes were secured when in fact they were unsecured. FOF ¶ 84; 101-102; 384. Taylor admitted that marking the Equity Trust DOI form as secured, when in fact there was no security, was false. FOF ¶ 101. These misrepresentations were material. *Application of Coastline Financial, Inc.*, Rel. No. 34-41989, 1999 WL 798874, at \*3 (Comm. Op. Oct. 7, 1999)

(finding that the difference between a secured and unsecured note is “highly material” and that “for a noteholder the difference between a secured and unsecured note can easily be the difference between being repaid and not”).

25. Taylor also referred investors and potential investors to Batt for assurances that Taylor and City Capital were legitimate. FOF ¶¶ 209-210; 411-422; 646. Taylor knew or should have known that Equity Trust purported to be a passive custodian that did not endorse or promote issuers.

26. Taylor also made false and misleading statements before an audience of thousands of investors at New Birth Church, many of whom invested in Taylor Notes through Equity Trust accounts. FOF ¶¶ 79; 103-104; 144-145; 219-238; 423-443; 472-504. A false statement about the role of a financial institution involved in the transaction, such as Equity Trust, is a material fact. *See, e.g., Harding Advisory LLC*, Rel. No. 734, 2015 WL 137642, \*60 (Init. Dec. Jan. 12, 2015) (“As a general matter, misrepresentations and omissions are material when they pertain to an independent professional on whose expertise investors rely.”) (pet. for review granted on Feb. 23, 2015).

27. The foregoing conduct was at least negligent and violated Sections 17(a)(2) and (a)(3) of the Securities Act.

**C. Additional Evidence Establishes Poulson’s Violations of Sections 17(a)(2) and (a)(3)**

28. In addition to his admissions, other evidence shows that Poulson’s conduct violated Sections 17(a)(2) and (a)(3).

29. Beginning in at least 2007, Poulson offered investors secured promissory notes that paid interest rates from 12% to 20% for terms ranging between six-months and five years (the “Poulson Notes”). FOF ¶ 118. From January 2007 through May 2011, thirty-four Equity

Trust customers invested a total of \$984,998 in 41 Poulson Notes, and of this amount \$643,485 was never repaid. FOF ¶¶ 116, 387.

30. Poulson told investors that the funds invested in Poulson Notes would be used to purchase, maintain, and improve the respective properties, including making payments on the existing mortgages. FOF ¶¶ 119, 125. Instead, Poulson misappropriated a significant amount of the funds for his personal use, which was a material fact not disclosed to investors. FOF ¶ 119.

31. Investors in Poulson Notes understood that real property would be securing the note, and the investors were provided a mortgage to that effect. FOF ¶¶ 120-123; 517-524 (Gatto); 535, 537, 539-543, 547-550 (Savary). However, Poulson did not inform investors that the respective properties securing the Poulson Notes had numerous unrecorded mortgages associated with them. FOF ¶¶ 120-123. Because those mortgages were unrecorded, investors would have no way to learn of their existence through a public search, and the result was that the Poulson Notes were severely under-secured by the properties, which was material. FOF ¶¶ 120-123. *See also Armand R. Franquelin*, Rel. No. 698, 2014 WL 5383925, at \*3-4 (Init. Dec. Oct. 22, 2014) (finding materiality where investors were not told encumbrances were placed on investment properties); Rel. No. 73887 (Finality Order Dec. 19, 2014).

32. Investors in Poulson Notes also understood that the mortgage securing their own Poulson Note would be recorded. FOF ¶¶ 120-123; 517-524 (Gatto); 535, 537, 539-543, 547-550 (Savary). However, Poulson failed to record that mortgage (FOF ¶¶ 120-123), which resulted in that investor having a reduced security interest in the property, and also preventing other investors from learning of the interest. *Armand R. Franquelin*, 2014 WL 5383925 at \*3.

33. The foregoing conduct was at least negligent and violated Sections 17(a)(2) and (a)(3) of the Securities Act.

### III. EQUITY TRUSTS' ACTS AND OMISSIONS WERE A CAUSE OF THE VIOLATIONS

#### A. Equity Trust Must Only Be Shown to Be "A Cause," Not the Only Cause or Even the Primary Cause, of the Violations

34. The Division need not show that Equity Trust's conduct was a proximate cause of the primary violations. *Rita J. McConville*, Rel. No. 2271, 2005 WL 1560276, \*12 n.45 (June 30, 2005), *pet. denied*, 465 F.3d 780 (7th Cir. 2006); *Erik W. Chan*, Rel. No. 8078, 2002 WL 507022, \*8 (Comm. Op. Apr. 4, 2002) ("[T]he mere fact that others also may have caused [a primary violation of] the securities laws does not insulate [respondent] from liability for his own acts and omissions."). *Cf. Berko v. SEC*, 316 F.2d 137, 140-41 (2d Cir. 1963) (holding that conduct which is the "cause" of a violation must consist of more than merely conduct which is "to some degree a factor" in the violation); *R.H. Johnson & Co. v. SEC*, 198 F.2d 690, 696 (2d Cir. 1952) (rejecting the contention that "cause" must always be interpreted to mean "an immediate or inducing cause").

35. The Division has not failed to meet its burden merely because Taylor and Poulson may have been an equal cause – or even a greater cause – of the primary violations. *Harrison Securities, Inc.*, Rel. No. 256, 2004 WL 2109230, at \*47 (Init. Dec. Sept. 21, 2004) (Finality Order Oct. 29, 2004).

#### B. The Evidence Shows Numerous and Substantial Acts and Omissions by Equity Trust that Were a Cause of the Violations

36. The overwhelming evidence demonstrates a strong connection between Equity Trust's acts and omissions and the violations.

37. Far from acting as a passive custodian, Equity Trust openly endorsed Taylor and Poulson, and treated them as partners with a shared goal of opening IRA accounts. Over several years, Equity Trust catered to Taylor and Poulson, and took multiple steps to solidify the

relationship between them, and promoted and endorsed Taylor and Poulson. FOF ¶¶ 181-300 (Taylor); 301-382 (Poulson).

38. Equity Trust conducted its business more like a broker-dealer than a staid and passive custodian of retirement funds. Equity Trust relentlessly promoted self-directed IRAs as risk-free ways to avoid taxes and get rich (FOF ¶¶ 579-606) without disclosing any of the risk (FOF ¶¶ 89-92); sales representatives were encouraged to open accounts and foster close relationships with investment sponsors (FOF ¶¶ 159-169); and management encouraged the marketing and sales departments to develop relationships with promoters like Taylor and Poulson. FOF ¶¶ 170-184; 192-207.

39. The consequence of Equity Trust's conduct was that criminals and fraudulent promoters frequently utilized Equity Trust IRAs and used Equity Trust to market their risky products. FOF ¶¶ 127-158. Poulson, in fact, described Equity Trust as his "custodian of choice," (FOF ¶¶ 152, 513), and Taylor said that he and Equity Trust were "officially in bed together" given Equity Trust's efforts to promote him. FOF ¶¶ 241.

40. Each of the following acts and omissions demonstrates the strong link between Equity Trust's conduct and the primary violations and, when considered collectively, prove beyond doubt that Equity Trust was a cause of the primary violations.

#### **1. Taylor and City Capital**

##### **a. As Equity Trust's Customers Testified, Batt and Equity Trust Endorsed and Recommended Taylor and City Capital**

41. Equity Trust customers testified that Batt endorsed and recommended Taylor and City Capital. FOF ¶¶ 411-422 (Hill); 423-443 (Jones); 444-471 (Sims); 472-488 (Turner); 489-504 (Wells).



42. When ██████ Hill, a sixty-four year old truck driver, hesitated to invest in Taylor Notes, Taylor gave him Equity Trust's number and told him to "ask for Robert Batt." FOF ¶¶ 414-415. Hill made the call, and Batt told him that City Capital was "a good company" and that Taylor was "getting people right now 10 percent on their investment." FOF ¶ 416. Hill testified that his conversation with Batt made him comfortable with the investment and with Taylor. FOF ¶¶ 417-419.

43. ██████ Jones, a high school teacher, met City Capital personnel at New Birth Church, and concluded that Equity Trust and City Capital had "a partner type of situation" and that City Capital was doing administrative tasks "on behalf of Equity Trust." FOF ¶¶ 426-431. At New Birth Church, Batt "was just very glowing in his remarks about Mr. Taylor" and told Jones that Taylor had "a very good reputation," that Taylor was doing "good work." FOF ¶ 433. Jones testified that Batt "absolutely" affected his decision to invest, and that "Equity Trust did endorse Mr. Taylor and City Capital Corp." FOF ¶¶ 436, 438.

44. ██████ Turner testified that Batt's presence at New Birth caused her to think that "this is legit." FOF ¶ 479. Turner spoke with Batt, who said that he "had been to several different places with Ephren," and that her conversation with Batt "made me comforted" about the investment. FOF ¶ 480. Turner testified that having "a banker there to support Ephren" at New Birth was a factor in her decision to invest with Taylor. FOF ¶ 484.

45. ██████ Wells testified that when she approached Batt to ask a question not about Taylor but about how "to set up to do self-directing IRAs," that Batt "walked her over to Taylor" to set up an appointment. FOF ¶¶ 496-498.

46. Taylor corroborated the testimony of these witnesses that Batt would often help City Capital "close" deals. FOF ¶¶ 213, 408; 637-643 (Batt was not credible on what happened

at New Birth Church). And Batt sent emails to Taylor confirming the relationship, stating, for example, “let’s make money together.” FOF ¶¶ 203, 205, 258.

**b. Batt Devoted Months to Helping Taylor Close █████ Dorio’s \$1.3 Million Investment**

47. By late 2008, City Capital was running low on funds. After Taylor met █████ Dorio at a church service in Texas, he became focused on obtaining her \$1.3 million in retirement funds. FOF ¶ 394.

48. Knowing how important the Dorio funds were to Taylor, Batt provided Taylor with numerous status updates. *See, e.g.*, DE 273; 274; 275.

49. When Dorio received a heartfelt letter from her investment adviser that raised concerns about the riskiness of the Taylor investment, Batt had a conference call with Dorio and challenged the adviser’s knowledge of real estate. FOF ¶ 404. After this conversation, Dorio told Batt “great point, let’s do it.” FOF ¶ 404. Batt later told Taylor that the letter was “so cheesy it sounded like a 1st grader wrote it.” FOF ¶¶ 404, 650.

50. Batt emailed Taylor and took credit for finalizing the transfer of Dorio’s \$1.3 million retirement fund to Taylor, emailing Taylor: “I am on it...I will close it.” FOF ¶ 404. Batt’s efforts ensured that Dorio would invest her \$1.3 million with Taylor and City Capital.

**c. Batt’s Attendance and Taylor’s False Statements About Batt at the New Birth Church Event Helped Legitimize Taylor and Helped Taylor Raise Additional Funds**

51. When Batt attended the New Birth Church event in October 2009, he knew that Taylor made false statements about his and Equity Trust’s role, which in itself was a violation of the securities laws by Taylor. FOF ¶¶ 228, 231. Equity Trust did not inform customers of the misstatements before they opened accounts at Equity Trust and invested in Taylor Notes, and Equity Trust did not discontinue processing investments for City Capital. FOF ¶ 237.

**d. Equity Trust Created a Landing Page on Its Website**

52. Equity Trust also hosted a “landing page” on its website for Taylor investors that promoted Taylor and reflected the close marketing relationship between City Capital and Equity Trust. FOF ¶¶ 143; 239-243; 673 (Batt’s testimony on the landing page was not credible).

**e. Batt Trained City Capital Personnel**

53. On at least two occasions, Batt trained City Capital sales representatives how to promote Equity Trust’s role as a self-directed IRA custodian in its sales pitches. FOF ¶¶ 215-218.

**f. Equity Trust Processed City Capital Investments as Secured, Even Though It Had No Documentation of Any Secured Interest**

54. Equity Trust processed 35 unsecured investments for customers who invested with Taylor where the DOI forms incorrectly stated that the notes were secured. FOF ¶ 609. Equity Trust even had a special procedure stating that City Capital did not have to provide a collateral agreement in connection with the Taylor Notes, thus facilitating the scheme. FOF ¶ 610.

55. When Equity Trust’s director of compliance finally became aware of this problem in October 2009, which made her “very concerned,” Equity Trust changed only a portion of account statements to reflect the notes were unsecured, and even then these changes occurred five months after the director learned of the issue. And despite this issue, Equity Trust continued processing new investments in Taylor Notes. FOF ¶¶ 255-260.

**g. Equity Trust Provided Confidential Customer Information to Taylor**

56. For nearly two years, Batt routinely provided confidential customer information to City Capital, including the timing of account openings, the transfer of funds, when account opening documents were signed, and the timing of transfers to City Capital. FOF ¶ 192.

57. In their many emails disclosing confidential customer information, Batt never asked for, and Equity Trust never received, a PIN number. FOF ¶ 195.

**h. Equity Trust Processed Taylor Notes Even In Light of Red Flags and Continued to Extend and Replace Taylor Notes Throughout 2010**

58. Equity Trust processed Taylor Notes through the end of 2009, even in light of numerous red flags, including a warning in late 2008 that Taylor was a crook, Taylor's false statements at New Birth Church, the notes falsely marked secured, and the failure of City Capital to pay off Taylor Notes when they matured. DE 40 at 33 (Palen Report); FOF ¶¶ 185-191; 219-238; 244-249; 383-386.

59. Finally, by September 2009, Equity Trust's "secondary review" of City Capital uncovered a number of red flags (e.g., missing documentation, unsecured notes falsely marked secured, mature and unpaid notes, SEC filings with "going concern" opinions that also reflected City Capital would be insolvent if it could not borrow more money) that resulted in Equity Trust placing City Capital on its "Do Not Process" list at the start of 2010. FOF ¶¶ 250-260.

60. After Equity Trust was placed on that list, Equity Trust continued to process replacement notes even after receiving letters from two lawyers representing separate Equity Trust customers who invested in Taylor Notes stating that their clients had not been repaid, and after learning of a blog post on Taylor's fraud. FOF ¶¶ 280-289. The last replacement notes to be processed were in October 2010. FOF ¶ 289.

61. These replacement notes were new notes – the original Taylor Notes were deemed satisfied and replaced with new notes pursuant to a new DOI form. The new Taylor Notes had a higher principal and longer maturity date and were critical to Taylor's and City Capital's scheme. FOF ¶¶ 290-291.

62. Equity Trust also permitted Taylor and City Capital to transfer customer accounts to another custodian where those funds would be invested with City Capital. Equity Trust did not warn these investors of problems with City Capital or Taylor. FOF ¶¶ 284-286; 486-487.

## 2. Poulson

### a. As Equity Trust's Customers Testified, Berlovan and Equity Trust Endorsed and Recommended Poulson

63. Equity Trust customers testified that Berlovan and Equity Trust endorsed and recommended Poulson. FOF ¶¶ 505-527 (Gatto); 528-551 (Savary).

64. ██████ Gatto testified that Poulson told him that he "had a relationship" with Equity Trust, that the investment was "easier to get through" with Equity Trust, and that Gatto likely could not invest with him if he chose another custodian. FOF ¶ 513.

65. Gatto then had a telephone conversation with Berlovan. FOF ¶ 514. Berlovan made "glowing remarks about Randy," told Gatto that she has "many clients with Randy, never had a problem, he's a great guy," and that Poulson "knew what he was doing, he was knowledgeable." *Id.*

66. Gatto testified that his phone call with Berlovan "was a ringing endorsement of M. Poulson," and was "pretty much the deciding factor" in his decision to invest with Poulson. FOF ¶¶ 515-516.

67. ██████ Savary attended Poulson's April 2009 "Interactive Liquidation Extravaganza." FOF ¶ 531. At this event, Savary heard Poulson talk about the benefits to using self-directed IRAs and that the company "he's been working with was Equity Trust." *Id.* At this event, Poulson displayed a slide listing Berlovan as one of his "Power Team of Professionals." FOF ¶ 532. Also, Poulson gave Berlovan a warm introduction, stating that she was a member of

his “power team,” which she never corrected. Berlovan then told the conference attendees that part of her job is to “help investment sponsors like Randy.” FOF ¶¶ 155; 320-322.

**b. Equity Trust Provided Confidential Customer Information to Poulson**

68. Yurgalewicz emailed confidential customer account information to Poulson. FOF ¶¶ 369-373. In their many emails disclosing confidential customer information, such as the status of a fund transfer, Yurgalewicz never asked for, and Equity Trust never received, a PIN number. *Id.*

**c. Equity Trust Paid to Be a “Sponsor” of Poulson’s Promotional Events and also Repeatedly Solicited Poulson to Sponsor and Participate in Equity Trust Events**

69. Poulson entered into a sales and marketing partnership with Poulson. FOF ¶¶ 301-348.

70. Equity Trust attended at least one Poulson event, where Poulson introduced Equity Trust as part of his “Power Team of Professionals.” FOF ¶¶ 153; 156. At this event, Equity Trust opened accounts for customers who then invested with Poulson. FOF ¶ 326.

71. Beginning in August 2009, Equity Trust sponsored Poulson’s dinner events for approximately one year, which resulted in Poulson exclusively referring those attendees to Equity Trust. FOF ¶¶ 327-333; 343-344; 679-680 (emails refute J. Desich’s testimony).

72. Poulson sponsored one of Equity Trust’s events, where he received promotion in the form of “signage” and “mentions.” FOF ¶ 337.

**d. Equity Trust Processed Poulson Notes Despite Missing Documentation for 100% of the Investments**

73. At various times from 2009 to 2011, Equity Trust processed for its customers over 30 investments in Poulson Notes, even though for nearly all of them the documentation was

insufficient according to Equity Trust's policies and procedures. FOF ¶¶ 387-392. In particular, Equity Trust was missing recorded mortgages for all of the investments.

74. Finally, in connection with a "secondary review" of Poulson that started in June 2010, Equity Trust knew that documentation was missing for all of its customers who had invested in Poulson Notes (25 of 25 investments). FOF ¶¶ 349-351. Despite the lack of documentation, Equity Trust continued to process investments for Poulson. FOF ¶¶ 362-381.

#### **IV. EQUITY TRUST'S NEGLIGENT AND UNREASONABLE CONDUCT CONTRIBUTED TO THE VIOLATIONS**

##### **A. Equity Trust's Negligence Contributed to the Violations**

75. "Negligence is the failure to exercise reasonable care or competence." *Harrison Securities, Inc.*, 2004 WL 2109230, at \*46 (citing *Byron G. Borgardt*, Rel. No. 8274, 2003 WL 22016313, at \*10 & n.35 (Comm. Op. Aug. 25, 2003)). *See also Thomas R. Delaney II*, Rel. No. 755, 2015 WL 1223971, at \*44 (Init. Dec. Mar. 18, 2015) ("[n]egligence is defined as: [t]he failure to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation; any conduct that falls below the legal standard established to protect others against unreasonable risk of harm, except for conduct that is intentionally, wantonly, or willfully disregardful of others' rights. The term connotes culpable carelessness.") (Finality Order Apr. 29, 2015).

76. A respondent's "failure to exercise reasonable care" is sufficient to prove a causing violation. *Daniel Bogar*, 2013 WL 3963608 at \*24 (finding that "each Respondent was at least negligent").

77. In addition to failing to act reasonably and to comply with the standard of care of a reasonable custodian, Equity Trust contributed to the circumstances where Taylor and Poulson could engage in a fraud through Equity Trust accounts, which constitutes negligence. *See, e.g.*,

*Thomas R. Delaney II*, 2015 WL 1223971, at \*48 (Respondent “should have known that, by not acting with reasonable care to understand, report, and remedy Pension’s Rule 204T/204 violations, he contributed to the circumstances where particular personnel could commit such violations.”).

78. The Report of William Ries, which summarizes nine aspects of an IRA custodian’s standard of care, constitutes the primary evidence of the standard of care of an IRA custodian. DE 39; FOF ¶¶ 23-33. “In general, expert testimony as to industry practice is relevant in a securities case to show the standard of care.... Nonetheless, that standard is ultimately one of ‘reasonable prudence,’ whether it usually is complied with or not.” *Vernazza v. SEC*, 327 F.3d 851, 861-62 (9th Cir. 2003) (deferring the Commission’s conclusions as to the applicable standard of care).

79. Ries opined that Equity Trust’s conduct was inconsistent with the standard of care of an IRA custodian, and his report identifies nine critical measures of this standard of care. FOF ¶¶ 23-33. As summarized below, Equity Trust failed to meet each element of its standard of care, which also constitutes failure to act with reasonable prudence.

80. **First**, Equity Trust failed in one of a custodian’s most fundamental duties: to take possession of the customer’s asset, including all documentation. FOF ¶¶ 34-51; 83.

81. The lack of documentation, which constituted an important part of the City Capital and Poulson frauds, are shown in charts that summarize the growth of City Capital and Poulson investments at the same time as the glaring document deficiencies. DE 40 at 31 (Summary of Equity Trust Customers’ Investments in Taylor Notes); DE 41 at 19 (Summary of Equity Trust Customers’ Investments in Poulson Notes).



82. Only Equity Trust knew of the scope of these deficiencies; the customers and the general public did not and could not know. DE 526 (Secondary Review Report for Taylor); DE 256 (Secondary Review Report for Poulson).

83. Equity Trust understood that missing documentation was a “red flag” that “there may be a problem with that investment because they are obviously not providing the documents that are required.” FOF ¶¶ 628; 84 (Ries Report: document deficiencies were a red flag).

84. Equity Trust’s personnel were either not sufficiently trained by Equity Trust to review account documentation for discrepancies or did not have the appropriate resources (an issue raised repeatedly by the Division of Banking) to conduct an effective review. FOF ¶¶ 607-614; 625. Indeed, Equity Trust’s examiner testified that Equity Trust’s compliance culture was “reactionary as opposed to proactive.” FOF ¶ 621.

85. **Second**, Equity Trust failed to periodically review the customer’s assets and weigh risk. FOF ¶¶ 52-54. Even though Equity Trust had a duty to conduct reviews of customer accounts, particularly in light of the risks posed by large investment sponsors, these reviews did not begin until late 2009. FOF ¶¶ 615-629; 86-88; 681-685; 688-690; 695-698; 653-657 (J. Desich and Dea not credible on secondary reviews).

86. Even after Equity Trust implemented its secondary review of accounts involving large investment sponsors, the reviews of City Capital and Poulson did not work as they should have. After their respective reviews, which identified significant document deficiencies and other red flags, Poulson Notes and replacement Taylor Notes continued to be processed. This was contrary to Equity Trust’s policies and procedures which prohibited the processing of these transactions. FOF ¶¶ 84-85; 349-381 (Poulson); 292-298 (Taylor).

87. Also, in connection with the Taylor review, Equity Trust's director of compliance learned by October 2009 at the latest that certain Taylor Notes were improperly marked as secured. There is no evidence that she or other Equity Trust personnel questioned Taylor about the issue or otherwise responded reasonably. Instead, Equity Trust merely reflected the change on certain customers' account statements – and even then not until a statement was sent to the these customers in April 2010, more than five months after Equity Trust knew that the notes were unsecured. FOF ¶¶ 255-266. The majority of the account statements continued to incorrectly reflect that the customers held secured Taylor Notes. FOF ¶ 266.

88. *Third*, Equity Trust promoted and endorsed issuers and investments. Batt and Berlovan affirmatively endorsed Taylor and Poulson, in violation of a custodian's most fundamental duty. FOF ¶¶ 55-59.

89. Batt actively promoted Taylor and City Capital and helped them “close” deals. FOF ¶¶ 207-214; 200-201 (Dorio). In addition, Equity Trust's marketing department sought out Taylor for webinars and it created a landing page on Equity Trust's website. FOF ¶¶ 78-82; 175 (webinar); 239-243 (landing page).

90. Batt had no relevant training prior to attending the New Birth Church event. FOF ¶¶ 552-568. Neither he nor his supervisors took any action in response to Taylor's false statements about Equity Trust to investors. FOF ¶¶ 219-238.

91. Berlovan also had no relevant training prior to attending the Poulson event. FOF ¶¶ 552-568. She did not correct Poulson when she was introduced as a member of his “power team,” and she did not give any disclaimer about not recommending Poulson while she was standing next to him. FOF ¶¶ 320-324; 155.

92. Equity Trust also sponsored Poulson's monthly dinner events, which is explicitly contrary to the standard of care not to endorse. FOF ¶¶ 327-333; 343-344; 679-680 (emails refutes J. Desich's testimony).

93. In exchange for this sponsorship, Poulson exclusively referred investors to Equity Trust and provided Equity Trust with the contact information of attendees. FOF ¶¶ 327; 176; 303.

94. *Fourth*, Equity Trust failed to act consistently with the written customer agreements. FOF ¶¶ 60-65. These agreements stated that Equity Trust would custody the customer's assets and would not endorse any investment or issuer. FOF ¶¶ 42 (hold assets); 59 (endorse). As the evidence shows, Equity Trust failed to take custody of the asset documentation and repeatedly endorsed Taylor and Poulson.

95. *Fifth*, Equity Trust failed to avoid conflicts of interest. FOF ¶¶ 66-68. By encouraging sales representatives to cultivate relationships with investment sponsors, sending them to investment sponsor events, and by engaging in active marketing and promotion of issuers and investment sponsors, Equity Trust created an insurmountable conflict of interest. FOF ¶¶ 159-180; 552-559. In addition, Equity Trust split proceeds of product sales with investment sponsors like Poulson who allowed Equity Trust to appear and speak at their events. FOF ¶ 315-318. *See also* Tr.910:12-911:17 (Bartlett investigative testimony).

96. Although Equity Trust's primary duty was to its customers, not issuers or investment sponsors, Equity Trust treated the investment sponsors as the client and did everything it could to strengthen the relationship with them. FOF Sections X (Taylor) and XI (Poulson).

97. *Sixth*, Equity Trust failed to maintain the privacy of customer account information. FOF ¶¶ 69-72. Batt and Yurgalewicz freely shared customer account information with Taylor and Poulson, which violated the terms of the privacy statement given to customers. FOF ¶¶ 192-199 (Batt); 367-373 (Yurgalewicz).

98. *Seventh*, Equity Trust failed to adopt adequate policies and procedures. FOF ¶¶ 73-76. In virtually every aspect of its operations, Equity Trust had only vague, generalized policies, where they existed at all.

99. Despite its close relationship with issuers and the pressure on its salespeople to develop relationships with issuers, Equity Trust did not have appropriate policies and training in place. Apart from being told not to endorse issuers, Batt and Berlvoan had no training on speaking to issuers, attending issuer events, and conducting themselves so as not to appear to be endorsing issuers. FOF ¶¶ 552-568. As a result, Equity Trust maintained a “landing page” for customers interested in investing with Taylor, Batt emailed Taylor about “closing” deals, and Taylor made false statements about Equity Trust’s role at the New Birth Church event.

100. Equity Trust also did not have adequate procedures in place to review issuers before attending their events, which resulted in Equity Trust attending Taylor and Poulson events while there were significant document deficiencies and other red flags associated with the Taylor Notes and Poulson Notes. FOF ¶¶ 569-576; 244-249 (adverse information regarding Taylor).

101. Equity Trust also failed to have appropriate policies and procedures in place to ensure that its sales and marketing efforts were not contrary to those of a passive custodian, resulting in marketing material that encouraged investors to invest their retirement funds in alternative, risky assets, without disclosing any of the risks. FOF ¶¶ 577-606.

102. Equity Trust also failed to ensure, as required by its policies and statements to investors, that it had proper documentation prior to releasing customer funds. FOF ¶¶ 607-614.

103. *Finally*, Equity Trust failed to act for the exclusive benefit of the customer. FOF ¶ 77. As the prior paragraphs show, Equity Trust prioritized opening accounts in order to generate fees. This meant emphasizing the relationships with issuers and investment sponsors over the duties to customers.

104. Equity Trust's careless attitude toward customers is apparent in how it treated Taylor's customers after 2010. Investors testified at the hearing that they could not even find anyone at Equity Trust to answer the phone. FOF ¶¶ 442 (Jones); 448 (Turner). For example, after numerous failed efforts to reach Batt, ██████ Turner had to pretend to be a new customer just to get him on the phone. FOF ¶ 448. And Equity Trust continued to charge fees to its customer long after it knew Taylor was a fraud and the investments were worthless. DE 797-798; Attachment A; FOF ¶¶ 469 (Sims); 503 (Wells).

**B. The Disclaimers in the DOI and Custodial Agreement Do Not Protect Equity Trust from Liability Because It Did Not Act as a Passive Custodian**

105. Throughout the hearing, Equity Trust repeatedly emphasized the supposed protections in certain disclosures in the DOI form and the custodial agreement. J. Desich testified that he believed that these disclosures were "a fail-safe." In his view, "Our fail-safe is our documents, our contract with our customer. And we make it clear there. Make no mistake, we do not endorse, we do not sell, we do not recommend." Tr. 1027:15-19.

106. The "fail-safe" theory is inapplicable here. A custodian that acts beyond the terms of the custodial agreement is not then protected by the terms of that agreement. So, for example, a custodian that provides investment advice to the account holder becomes responsible

to the account holder in accordance with the fiduciary standard of care applicable to such advisory services. FOF ¶ 61.

107. Second, as J. Desich and Dea recognized, the DOI and the Custodial Agreement are contracts, and the DOI form itself recognized that the “Custodian shall have no liability . . . except for a breach of the terms of this [DOI] Agreement, the IRA Adoption Agreement, or custodial account agreement.” DE 40 at 39; FOF ¶ 64. Equity Trust repeatedly breached the basic promises it made to its customers in these agreements. These disclaimers, however, do not provide any protection given the extensive record of Equity Trust’s numerous violations of the standard of care and unreasonable conduct.

108. The DOI form states, for example, that Equity Trust “does not offer investment advice, nor does it endorse any investment, investment product or investment strategy; and Custodian does not endorse any financial advisor, representative, broker, or other party involved with an investment.” DE 40 at 39; FOF ¶ 59. As numerous investors testified, however, Equity Trust did endorse Taylor and Poulson in numerous ways, such as oral statements of endorsement and attendance and sponsorship at event.

109. The oral representations by Batt and Berlovan endorsing Taylor and Poulson, moreover, are material. *See SEC v. Morgan Keegan & Co.*, 678 F.3d 1233, 1248-50 (11th Cir. 2012) (holding that “in an SEC enforcement action, a misstatement or omission by an individual broker to an individual investor may be included in the analysis of the ‘total mix’ of information available to the hypothetical reasonable investor”). *See also Reliance Financial Advisors, LLC*, Rel. No. 941, 2016 WL 123127, \*18 (Init. Dec. Jan. 11, 2016) (“The materiality of [the respondent’s] oral misrepresentations is similarly plain and evidenced by testimony of the

investors at the hearing, who confirmed that those representations were the reason why they were willing to invest in the Fund.”).

110. At least two courts have rejected Equity Trust’s “fail-safe” theory. In November 2015, the Ohio Court of Appeals ruled against Equity Trust in a fraud case brought by a customer who had invested in a fraudulent scheme using funds from an Equity Trust self-directed IRA. Equity Trust argued that because it was a mere “passive custodian,” the fraud claims against it “are barred by the express terms of the Custodial Agreement.” The Court of Appeals rejected Equity Trust’s argument. *Bentley v. Equity Trust Co.*, 2015 WL 7254796, at \*1 (Nov. 16, 2015 Ct. App. Ohio) (in reversing trial court’s dismissal, stating “we conclude that the Custodial Account Agreements do not preclude Appellants from bringing their tort claims against Equity Trust”). FOF ¶¶ 681-682.

111. In 2011, Mid-Ohio Securities was ordered to pay a customer \$280,683 following an arbitration in which the customer charged that “Mid-Ohio was required to perform basic due diligence with regard to its customers’ holdings, and that it failed to do so . . . [and] Mid-Ohio should have realized that [an investment sponsor] was a fraud based on several red flags.” *Mid-Ohio Securities Corp. v. Estate of Burns*, 790 F. Supp.2d 1263, 1265 (D. Nev. 2011) (confirming FINRA arbitration award). FOF ¶¶ 683.

## **V. EQUITY TRUST’S CONDUCT DESERVES SIGNIFICANT SANCTIONS**

112. “In considering whether an administrative sanction serves the public interest, we consider the factors identified in *Steadman v. SEC* [603 F.2d 1126 (5<sup>th</sup> Cir. 1979)]: the egregiousness of a respondent’s conduct, the isolated or recurrent nature of the violation, the degree of scienter, the sincerity of the respondent’s assurances against future violations, the respondent’s recognition that the conduct was wrongful, and the likelihood of recurring

violations.” *Christopher A. Lowry*, Rel. No. 2052, 2002 WL 1997959, \*4 (Comm. Op. Aug. 30, 2002), *aff’d*, 340 F.3d 501 (8th Cir. 2003). Not all of these factors need to be considered, and none of them, standing alone, is determinative. *Rita J. McConville*, 2005 WL 1560276, \*15.

#### **A. A Cease-and-Desist Order is Appropriate**

113. Equity Trust’s violations spanned more than three years and two separate investment schemes. Equity Trust’s owners and senior managers are recidivists. The Desiches were already the subject of a Cease-and-Desist Order issued by the State of Ohio in 2009 that described similar conduct. FOF ¶¶ 688-690. *See also* FOF ¶¶ 681-687; 693-694.

114. Equity Trust also has not demonstrated any recognition of its wrongful conduct and has made no assurances that such conduct will not be repeated. On the contrary, despite the extensive record in this case, J. Desich and Dea, at the hearing, insisted that Equity Trust did nothing wrong, that Batt and Berlovan at all times acted within the scope of their authority, and that if there were any adverse “decision in a case...the industry would be turned upside down and decimated overnight.” Tr. 996:4-10 (Desich); Tr. 1595:3-17 (Dea).

115. J. Desich and Dea offered no evidence to support that rhetoric about the industry being “decimated overnight.” And Equity Trust runs an extremely profitable company. DE 643 (Equity Trust’s audited financials reflect cash flows from operations of over \$8 million in 2012 and \$6.5 million in 2014). Given the record in this case of Equity Trust’s severe departures from the standard of care, it is safe to conclude that the industry would be unaffected by a finding that Equity Trust, based on the evidence of egregious conduct in this case, departed from the standard of care that binds every other IRA custodian. Based on the *Steadman* factors, therefore, a cease-and-desist order is appropriate.



116. Equity Trust also continues to function as an IRA custodian, with the same senior officers – the Desiches and Dea – who were in control during the period of wrongdoing. Given that they not only refuse to concede any wrongdoing or any intent to take corrective actions, the need for a cease and desist order is even more compelling.

**B. Equity Trust Should Be Required to Disgorge Ill-Gotten Gains and Pay Prejudgment Interest**

117. “The primary purpose of disgorgement as a remedy for violation of the securities laws is to deprive violators of their ill-gotten gains, thereby effectuating the deterrence objectives of those laws.” *SEC v. First Jersey Sec., Inc.*, 101 F.3d 1450, 1474 (2d Cir. 1996). Moreover, “effective enforcement of the federal securities laws requires that the SEC be able to make violations unprofitable.” *Id.* Accordingly, Equity Trust should be ordered to disgorge amounts collected from the relationships with Taylor / City Capital and Poulson, including all account-related fees. *See John Thomas Capital Mgmt. Group LLC*, Rel. No. 693, 2014 WL 5304908, at \*30 (Init. Dec. Oct. 17, 2014) (“Management fees and incentive fees are appropriately disgorged where they constitute ill-gotten gains earned during the course of violative activities”) (collecting cases) (review granted, Rel. No. 3978), 2014 WL 6985130 (Dec. 11, 2014).

118. Disgorgement of ill-gotten gains “is an equitable remedy designed to deprive a wrongdoer of his unjust enrichment and to deter others from violating the securities laws.” *Montford & Co.*, Rel. No. 3829, 2014 WL 1744130, at \*22 (Comm. Op. May 2, 2014) (quoting *SEC v. First City Fin. Corp.*, 890 F.2d 1215, 1230 (D.C. Cir. 1989)). “When calculating disgorgement, ‘separating legal from illegal profits exactly may at times be a near-impossible task.’” *Id.* “As a result, disgorgement ‘need only be a reasonable approximation of profits causally connected to the violation.’” *Id.* (quoting *SEC v. Patel*, 61 F.3d 137, 139 (2d Cir. 1995)). “Once the Division shows that the disgorgement is a reasonable approximation, the

burden shifts to the respondent to show that the amount of disgorgement is not a reasonable approximation.” *Id.* (citing *SEC v. Happ*, 392 F.3d 12, 32 (1st Cir. 2004)). “The risk of uncertainty in calculating disgorgement should fall on the wrongdoer whose illegal conduct created that uncertainty.” *Id.* (quoting *Happ*, 392 F.3d at 31).

119. Disgorgement should include the amounts that Equity Trust collected in connection with the Taylor and Poulson accounts, and amounts that City Capital sent to Equity Trust directly in connection with those accounts. The Division has calculated disgorgement in the form of account fees and other fees paid to Equity Trust at \$180,336.18, which is broken down as follows: \$89,042.74 paid directly by Equity Trust customers who invested in Taylor Notes (DE 797 at 1-63; 798 at 162-357); \$62,598.81 paid directly by City Capital directly (DE 40 at 7); and \$28,694.63 paid directly by Equity Trust customers who invested in Poulson Notes (DE 798 at 1-161). These calculations for the amounts paid by directly by Equity Trust customers are summarized on Attachment A.

120. “Prejudgment interest shall be due on any sum required to be paid pursuant to an order of disgorgement.” Rule of Practice 600(a). Prejudgment interest deprives a defendant of an interest-free loan in the amount of his ill-gotten gains, thereby preventing unjust enrichment. *SEC v. Grossman*, 1997 WL 231167, at \*11 (S.D.N.Y. May 6, 1997), *aff’d in part and vacated in part on other grounds*, 173 F.3d 846 (2d Cir. 1999). *See also Ronald S. Bloomfield*, Rel. No. 9553, 2014 WL 768828, at \*21 (Comm. Op. Feb. 27, 2014) (awarding prejudgment interest “to make violations unprofitable.”).<sup>2</sup> Accordingly, Equity Trust should pay prejudgment interest on all disgorged amounts.

---

<sup>2</sup> Interest “shall be due from the first day of the month following each such violation through the last day of the month preceding the month in which payment of disgorgement is made.” Rule of Practice 600(a). The Commission ordinarily calculates prejudgment interest quarterly based

121. The prejudgment interest should be calculated yearly from January 1, 2008, the first day of the month following the date on which Equity Trust last received account fees, to the last day of the month preceding the month in which payment of disgorgement is made, consistent with 17 C.F.R. § 201.600.

### **C. Equity Trust Should Be Required to Pay Substantial Penalties**

122. Section 929P of the Dodd-Frank Wall Street Reform and Consumer Protection Act amended Section 8A of the Securities Act of 1933 to allow the Commission to impose civil monetary penalties for any person who was a cause of a violation of any provision of the Securities Act or Exchange Act if such penalties are in the public interest. Securities Act § 8A(g) [15 U.S.C. § 77h-1(g)]. That provision became effective on July 22, 2010.

123. Section 8A(g) of the Securities Act specifies a three-tier system identifying the maximum amount of civil penalties, depending on the severity of the conduct. Second tier penalties are imposed in cases involving fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement. Third-tier penalties are awarded in cases where such state of mind is present, and, in addition, where, as here, the conduct in question directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons, or resulted in substantial pecuniary gain to the person who committed the act or omission.

124. The following factors are relevant to determining whether civil monetary penalties are in the public interest: (1) deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; (2) harm to others; (3) unjust enrichment; (4) prior violations; (5) deterrence; and (6) such other matters as justice may require. *See* Exchange Act § 21B(c). “Not

---

on Section 6621(a)(2) of the Internal Revenue Code. *See, e.g., Bloomfield*, 2014 WL 768828, at \*21.

all factors may be relevant in a given case, and the factors need not all carry equal weight.” *Robert G. Weeks*, Rel. No. 199, 2002 WL 169185, at \*58 (Init. Dec. Feb. 4, 2002); 2004 WL 828 (Comm.Op. Making Final Oct. 23, 2003).

125. These factors demonstrate the need for the maximum penalty. Equity Trust’s conduct caused great harm to investors, and Equity Trust was compensated through fees that it received. At the hearing, Equity Trust denied all wrongdoing and refused to accept any responsibility.

126. Equity Trust’s misconduct after July 22, 2010 is subject to penalties under Section 8A(g). While the only penalties the Division seeks are to address post-July 22, 2010 securities law violations, Equity Trust’s conduct prior to July 22, 2010 is relevant to the Court’s determination of what penalty is appropriate here. Courts may “consider conduct that occurred outside the statute of limitations to establish Respondents’ motive, intent, or knowledge in committing violations that occurred within the statute of limitations.” *See Eric J. Brown*, Rel. No. 3376, 2012 WL 625874, at \*14 (Comm. Op. Feb. 27, 2012). Past misconduct may also be considered in determining the appropriate sanction for Respondents’ more recent violations. *Warwick Capital Mgmt., Inc.*, Rel. No. 327, 2007 WL 505772, at \*2 (Init. Dec. Feb. 15, 2007). Thus, Equity Trust’s record of promoting and endorsing Taylor and Poulson, of ignoring red flags, and of failing to implement adequate policies and procedures, can be considered.

127. Finally, only significant penalties can have a proper deterrence effect. *See Bloomfield*, 2014 WL 768828, at \*23 (finding penalties in excess of disgorgement award to be necessary to “serve the public interest and the need for deterrence”), citing Securities Law Enforcement Remedies Act of 1990, H.R. Rep. No. 101-616 (1990), 1990 WL 256464, at \*1383 (stating that civil penalties “provide a financial disincentive to violations that reflect an

unwillingness to incur the cost of full compliance with the securities laws, as opposed to engaging in affirmative conduct to defraud investors”); *Gualario & Co.*, Rel. No. 452, 2012 WL 627198, at \*18 (Init. Dec. Feb. 14, 2012) (Finality Order April 5, 2012).

128. In imposing a penalty, the Court should also consider Equity Trust’s high degree of recklessness in promoting and endorsing Taylor and Poulson. Although only proof of negligence is required to prove the underlying violations, “courts frequently consider a defendant’s level of scienter in determining an appropriate penalty, without regard to the elements of the underlying claim.” *SEC v. Reserve Management Co.*, 2013 WL 5432334, \*19 (S.D.N.Y. Sept. 13, 2013) (noting that “the Second Circuit and district courts in this circuit have imposed second and third tier penalties for violations of Section 5 of the Securities Act, even though scienter is not an element of a violation of that statute”).

129. In view of Equity Trust’s egregious conduct, the maximum penalties allowable should be imposed. Equity Trust deliberately disregarded a regulatory requirement, and committed approximately twenty-one causing violations within the applicable period, including processing investments in the Taylor and Poulson Notes. In particular, Equity Trust processed nine new investments in Poulson Notes (DE 41 at 9-10, lines 35-43); extended ten Poulson Notes (DE 41 at 11-14, lines 3, 9-11, 14, 22-23, 30); and replaced two Taylor Notes (DE 40 at 18, lines 72-73; DE 807 (account statements reflecting replacements for first time on 12/31/10 statement); DE 491 (email shows replacement processed at Equity Trust after October 20, 2010). FOF ¶ 289.

130. This evidence satisfies the criteria for First Tier, Second Tier and Third Tier penalties (\$75,000; \$375,000; and \$725,000, respectively, for each act or omission).

131. As a result, and considering twenty-one acts or omissions, civil penalties of \$1,575,000 (First Tier), \$7,875,000 (Second Tier) or \$15,225,000 (Third Tier) are appropriate.

132. Alternatively, the civil penalty can be determined through the course of conduct standard, in which related acts are combined into one or more units of violations. *John Thomas Capital Management Group*, 2014 WL 5304908, at \*31. A course of conduct approach should result in a civil penalty commensurate with the per violation approach.

**D. Respondents Should Be Required to Retain a Compliance Consultant and a Fair Fund Should Be Created**

133. Section 8A(a) of the Securities Act, authorizes the Commission to seek an order requiring a person to take steps to effect compliance or future compliance with the securities laws. 15 U.S.C. § 77h-1(a).

134. As Equity Trust continues the same business model that resulted in the harm to nearly 200 investors, Equity Trust should be required to retain an independent compliance consultant for a period of three years. The compliance consultant, who would be retained and compensated by Equity Trust, and whose appointment and terms of engagement should be acceptable to the Division, would review Equity Trust's policies and procedures and they relate to the standard of care.

135. For the benefit of their customers who were victims of the Taylor and Poulson frauds, the Court should order the establishment of a Fair Fund.

## CONCLUSION

The Division of Enforcement respectfully requests that this Court make findings of fact and conclusions of law consistent with the evidence showing Respondent Equity Trust Company's illegal conduct, and that the requested sanctions be imposed.

Dated: New York, NY  
January 28, 2016

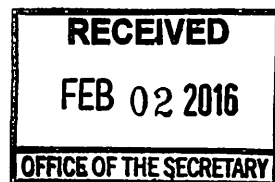
Respectfully submitted,

DIVISION OF ENFORCEMENT

*/s David Stoelting*

---

David Stoelting (212.336.0174)  
Andrew Dean (212.336.1314)  
Luke Fitzgerald (212.336.0069)  
Securities and Exchange Commission  
Brookfield Place  
200 Vesey Street, Suite 400  
New York, NY 10281-1022  
212.336.1323 (fax)



CERTIFICATE OF SERVICE

I hereby certify that I served true copies by overnight courier and electronic mail of the foregoing documents on the following on the 1<sup>st</sup> day of February, 2016: (1) Letter to ALJ Carol Fox Foelak; and (2) Division of Enforcement's Proposed Findings of Fact and Conclusions of Law (as corrected).

Brent J. Fields, Secretary (3 copies plus original)  
Office of the Secretary  
Securities and Exchange Commission  
100 F Street N.E., Mail Stop 3628  
Washington, DC 20549  
Facsimile: (202) 772-9324

The Honorable Carol Fox Foelak (email only to [alj@sec.gov](mailto:alj@sec.gov))  
Administrative Law Judge  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Mail Stop 1090  
Washington, DC 20549

Stephen J. Crimmins, Esq. (email to [Stephen.Crimmins@mmlawus.com](mailto:Stephen.Crimmins@mmlawus.com) and US Mail)  
Murphy & McGonigle PC  
555 13th Street NW  
Washington DC 20004  
(Counsel for Respondent)

Howard Groedel, Esq. (email to [hgroedel@ulmer.com](mailto:hgroedel@ulmer.com))  
Ulmer & Berne LLP  
Skylight Office Tower  
1660 West 2nd Street, Suite 1100  
Cleveland, OH 44113  
(Counsel for Respondent)

Dated: February 1, 2016

  
\_\_\_\_\_  
Andrew Dean