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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEEDING
File No. 3-16647

In the Matter of

IREECO, LLC and
IREECO LIMITED,

Respondents.

RESPONDENTS IREECO LLC'S AND IRREECO LIMITED'S RESPONSE IN OPPOSITION TO DIVISION OF ENFORCEMENT'S MOTION FOR SUMMARY DISPOSITION AGAINST RESPONDENTS IREECO, LLC AND IREECO LIMITED AND SUPPORTING EVIDENCE DEMONSTRATING INABILITY TO PAY

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Ireeco, LLC and Ireeco Limited (collectively, the "Respondents" or "Ireeco"), by and through their undersigned counsel, hereby submit their Response in Opposition to The Division of Enforcement's ("Division") Motion for Summary Disposition Against Respondents Ireeco, LLC and Ireeco Limited. The Respondents' Opposition addresses the sole remaining issues in this administrative action, the specific monetary remedies requested by the Division, and demonstrates Respondents' individual and collective inability to pay any disgorgement, interest, or penalties, pursuant to Rule 630, based on the reasons detailed herein and supported by the attached evidence.

I. Introduction

This proceeding is a true outlier, a matter of first impression arising from non-traditional "investments" in the EB-5 Visa Program, which are essentially repayable, low interest $500,000 loans through a Congressionally created and sanctioned immigration program that is overseen by the U.S. Citizenship and Immigration Services ("USCIS") and designed to facilitate job growth through immigrants seeking permanent residency in the U.S. Unlike all prior (and recent) SEC actions involving the EB-5 Visa Program, this matter does not involve any form of alleged violation of the antifraud provisions of the Federal Securities Laws; rather, it involves an alleged violation of the broker-dealer registration requirements of the Exchange Act. Regardless of the context, as explained herein and further supported in extensive detail by the attached Declarations and financial disclosures submitted pursuant to Rule 630, Respondents are completely insolvent and unable to pay any of the monetary remedies requested by the Division. Thus, in accordance with Rule 630, the proffered evidence, and the Hearing Officer's discretion, the Division's requested relief should be denied as unwarranted and contrary to the public interest.

II. Procedural Background

The SEC first contacted Respondents on May 24, 2012, when it sent Ireeco, LLC an informal letter requesting extensive documentation and related information. Months later, the SEC's Staff received authorization to conduct a private investigation styled, "In the Matter of CERTAIN POSSIBLE UNREGISTERED EB-5 BROKERS, FL-3771." While purportedly non-public, the Formal Order of Investigation, dated September 27, 2012, specifically identified four (4) separately owned and operated entities (which could accurately be described as competitors), involved in what appeared to be an industry-wide investigation into the EB-5 industry. One of the identified companies was Ireeco, LLC, doing business as "Which EB-5?". The Staff eventually issued subpoenas for documents and information, dated October 22, 2012 and February 26, 2013.

Respondents, through their duly authorized representatives, fully complied with all of the foregoing informal and formal requests for documentation, information, and testimony, as well as several subsequent informal requests for additional documentation and information in furtherance of the earlier formal requests. In doing so, Respondents fully cooperated and provided testimony in a forthright manner, acting in good faith, attempting to assist the Staff in its investigation and the Staff's understanding of the inner-workings of the EB-5 industry, so that the Staff would understand how the industry worked and why Respondents believed that they had not violated any of the Federal Securities Laws, particularly in light of the rather unique facts and circumstances surrounding their specific business activities in this most unusual, non-traditional industry.

The SEC's investigation lasted three (3) years, from May 24, 2012 until June 23, 2015, and included one period of extensive non-activity from approximately April of 2013 until late

February of 2014, during which time Ireeco was left with the distinct impression that the investigation had been concluded, that the Staff was satisfied, that no further action would be taken, and that Ireeco could continue conducting business in the normal course. However, that was not the case.

In February of 2014, the Staff requested additional financial data from the Respondents. Wells Notice was eventually given to Respondents, telephonically, on August 14, 2014, followed by a formal written letter the next day. Although the Respondents did not submit a formal Wells Statement, the parties engaged in extensive settlement discussions that concluded when the Respondents executed formal Offers of Settlement on March 23, 2015, which resolved all but the financial issues of the disgorgement and penalties requested by the Division. The Commission accepted those Offers on June 23, 2015, when it issued its Order Initiating Proceeding (the "OIP").

Pursuant to the OIP, as well as the Scheduling Order issued on August 3, 2015, the remaining monetary relief issues in this matter were ordered to be resolved by summary disposition, with the Division having the opportunity to present its initial Dispositive Motion (which was filed and served on September 18, 2015), as well as a Reply, and the Respondents will be entitled to present the instant Response in Opposition, as well as a Sur-Reply. Additionally, the parties have the opportunity to jointly request oral argument by videoconference.

III. Statement of Facts

A. Facts Deemed True for Purposes of the Monetary Relief Determination

The Respondents entered into a partial settlement with the SEC in which the Respondents ***neither*** ***admitted*** ***nor*** ***denied*** the findings of the Order Instituting Administrative and Cease-

and-Desist Proceedings Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934, making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order, and Ordering Continuation of the Proceedings (hereinafter referred to as the "OIP"). Thus, ***Respondents are specifically precluded from arguing that they did <u>not</u> violate the federal securities laws described in the OIP and may <u>not</u> challenge the validity of their Offers or the OIP***; rather, the OIP's are to be deemed true by the presiding Administrative Law Judge, who may determine the remaining issues based on affidavits, declarations, sworn testimony, and documentary evidence. (OIP § IV).

B. An Issue of First Impression

As referenced above, this proceeding is one of first impression, as plainly admitted by the SEC in its June 23, 2015 Press Release (2015-127), which is set forth as follows, in relevant part:

> *Washington D.C., June 23, 2015* – The Securities and Exchange Commission today charged two firms that illegally brokered more than $79 million of investments by foreigners seeking U.S. residency. **<u>The charges are the first against brokers handling investments in the government's EB-5 Immigrant Investor Program</u>** and follow earlier SEC actions against fraudulent EB-5 offerings.[1]
>
> * * *
>
> Without admitting or denying the SEC's findings, Ireeco LLC and Ireeco Limited agreed to be censured and to cease and desist from committing or causing similar violations in the future. They also agreed to administrative proceedings to

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[1] For reasons known only to the Commission, the last line of the first paragraph of the relevant Press Release made reference to "earlier SEC actions against fraudulent EB-5 offerings," having absolutely nothing to do with the Ireeco entities, their principals, or otherwise. Nevertheless, the inclusion of the foregoing, including the specific reference to purported "fraudulent EB-5 offerings," led to a nationwide series of false and defaming articles, blogs, and other posts by respected news services, seasoned attorneys, and otherwise. For example, some of those articles published false and outrageous statements to the public and within the EB-5 industry, misrepresenting that Respondents were involved in fraudulent immigrant schemes and had been charged with criminal violations. The foregoing required extensive efforts by Respondents' principals, as well as their undersigned counsel, to address these trade libels, demand retractions, and attempt to correct the information in the public at large. These efforts are ongoing.

> determine whether they should be ordered to return their allegedly ill-gotten gains, pay penalties, or both based on their violations.

See http://www.sec.gov/news/pressrelease/2015-127.html.

The EB-5 Visa program was created by Congress in 1990 to stimulate the U.S. economy through job creation and capital investment by foreign investors. The USCIS administers the Immigrant Investor Program (see http://www.uscis.gov/working-united-states/permanent-workers/employment-based-immigration-fifth-preference-eb-5/about-eb-5-visa), not the SEC.

It is notable that, despite the existence of the twenty-five (25) year-old Government-created program, the SEC has never implemented any Rules, Regulations, or other laws applicable to the EB-5 Visa Program. Moreover, despite the SEC's knowledge of this longstanding program, it waited until 2013 before implementing any form of enforcement action in the EB-5 industry. Even so, aside from the instant case of first impression, the SEC has solely brought enforcement actions to stop alleged fraudulent activities conducted by bogus or misguided Regional Centers and/or related entities and persons. In fact, prior to the filing of this action, there was no actual, much less clear and unambiguous legal precedent concerning the applicability of the Federal Securities Laws' broker-dealer registration requirements to the EB-5 industry, requiring entities that do not otherwise trade securities, engage in underwriting, administer brokerage accounts, or handle investor funds (as opposed to simply working with prospective immigrants and Regional Centers to facilitate the EB-5 Visa Program, under the auspices of the USCIS), to register as broker-dealers.

Thus, while Respondents are precluded from contesting the facts set forth in the OIP, or the legal requirements of the purported violation of the broker-dealer registration requirements of Section 15(a) of the Securities Exchange Act of 1934, for which they have neither admitted nor denied, the foregoing is highly relevant to the remaining issues concerning the SEC's entitlement

to any requested relief, or the amount of such requested relief, if any. Before addressing the substantive issues concerning the actual amounts of monetary relief sought by the Division, the Respondents wish to conclusively demonstrate their inability to pay any such award.

IV. Respondents' Individual and Collective Inability to Pay

The applicable U.S. Securities and Exchange Commission's Rules of Practice (2006) specifically address a respondent's inability to pay disgorgement, interest or penalties, which is set forth in Rule 630. The general provisions of the Rule, and Respondents burden herein, are set forth, in relevant part, as follows:

> (a) *Generally.* In any proceeding in which an order requiring payment of disgorgement, interest or penalties may be entered, a respondent may present evidence of an inability to pay disgorgement, interest or a penalty. The Commission may, in its discretion, or the hearing officer may, in his or her discretion, consider evidence concerning ability to pay in determining whether disgorgement, interest or a penalty is in the public interest.
>
> (b) *Financial Disclosure Statement.* Any respondent who asserts an inability to pay disgorgement, interest or penalties may be required to file a sworn financial disclosure statement and to keep the statement current. The financial statement shall show the respondent's assets, liabilities, income or other funds received and expenses or other payments, form the date of the first violation alleged against the respondent in the order instituting proceedings, or such later date as specified by the Commission or a hearing officer, to the date of the order requiring the disclosure statement to be filed. By order, the Commission or the hearing officer may prescribe the use of the Disclosure of Assets and Financial Information Form (*see* Form D-A at § 209.1 of this chapter) or any other form, may specify other time periods for which disclosure is required, and may require such other information as deemed necessary to evaluate a claim of inability to pay.

Accordingly, pursuant to Rule 630 and the administrative decisions applying it, both corporate Respondents hereby demonstrate their individual and collective inability to pay any ordered disgorgement, prejudgment interest and/or monetary penalties.

As set forth in the OIP, Respondent Ireeco, LLC was a Boca Raton-based Florida Limited Liability Company that operated during all relevant time periods from January 2010 through

May 2012 (OIP § III.A.1.). Ireeco LLC ceased its primary business operations in May of 2012, when Respondent Ireeco Limited, a Hong Kong entity, took over its former business operations, from May of 2012 through March of 2015 (the date both Respondents executed Offers of Settlement as part of a negotiated Partial Settlement of the SEC's investigation) (Id. at § III.A.2.). During that time, Ireeco LLC carried out administrative tasks for Ireeco Limited. Although the Commission did not formally accept those Offers and issue the OIP until June of 2015, neither entity had any business operations after March of 2015, if not earlier.

Attached hereto, pursuant to Rule 630, are the following evidentiary support: (a) the Declaration of Stephen Parnell (Composite Exhibit A), one of the Principals of the Respondents; (b) the Declaration of Gary Trugman, CPA/ABV, MCBA, ASA, MVS (Exhibit B); and (c) supporting financial statements and related disclosures (attached to Composite Exhibit A), which show the Respondents' respective assets, liabilities, profits, losses, income or other funds received, and expenses or other payments, from the date of the first violation alleged against them in the OIP, through the filing of this Response. The foregoing evidence conclusively demonstrates that the Respondents are no longer going concerns, do not have a present ability to pay, and do not have any future income stream or business activities that would provide any ability to pay any of requested disgorgement, prejudgment interest or penalties, now, or in the future, as a direct result and consequence of the Commission's Cease and Desist Order and the Respondents' Consent.

As recently as August, Administrative Law Judges have found that a substantiated inability to pay obviates the public interest to impose disgorgement, civil penalties, or prejudgment interest, completely, or to substantially lower the actual amount of monetary relief ordered. The most recent instance is In the Matter of Thrasos Tommy Petrou, Admin. Case No.

3-16217, 2015 WL 4939697 (Aug. 19, 2015). There, the respondent was found to have willfully violated Rule 105 twenty-eight (28) times, in connection with twenty (20) covered offerings. Notably, just like the instant matter involving the Ireeco Respondents, there were no findings of any fraudulent, deceitful, manipulative, or deliberative conduct. Id. at *12. The trading activity in question totaled $451,369.13, out of which Petrou received 50%, or $225,684.66, an amount that the parties stipulated would be disgorged, as well as $45,971.32 in prejudgment interest. Id. at *5. However, Petrou claimed he was unable to pay monetary sanctions, submitted appropriate financial documentation to support his contention, and had a certified public accountant review his finances. The Administrative law Judge reviewed all of the foregoing and found that Petrou did not have the ability to pay the substantial disgorgement, prejudgment interest, or civil monetary penalties requested by the Division, and that it was unlikely that he would have the ability to pay the amounts in the future. Id. at *10. Despite finding that civil penalties of $84,000 would be appropriate and that the parties had stipulated to the disgorgement amount of $254,855.66 and prejudgment interest of $45,971.32, the Administrative Law Judge nevertheless found that Petrou had "**decisively demonstrated a substantial inability to pay**" and that "**it is not in the public interest to impose civil penalties, and that he should only be ordered to disgorge $15,000, with no separate prejudgment interest.**" Id. at *12-*13, citing 15 U.S.C. §§ 78u-2(d), 80b-3(i)(4); 17 C.F.R. § 201.630(a) (Emphasis added). The foregoing result is not at all unique, and it is of course supported by prior SEC Administrative Proceeding precedent.[2]

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[2] See, e.g., In the Matter of Trent L. Tucker, Admin. Case No. 3-12830, 2007 WL 2778641, *3 (Sept. 25, 2007) (despite finding of willful violation of numerous ***antifraud*** provisions, respondent effectively demonstrated his inability to pay disgorgement, prejudgment interest, or civil penalties, which the Commission waived); In the Matter of Charles A. Sacco, Admin. Case No. 3-12625, 2007 WL 1285757, *5 (May 2, 2007) (despite finding of willful violation of numerous ***antifraud*** provisions, respondent effectively demonstrated his inability to pay disgorgement, prejudgment interest, or civil penalties, which the Commission waived, other

Accordingly, as an initial, dispositive, as well as pragmatic matter, the Respondents respectfully request the Administrative Law Judge (1) to find, based on the foregoing legal authorities and evidentiary support, that Respondents have fully satisfied the requirements of Rule 630, by conclusively demonstrating their inability to pay any of the Division's requested remedies; (2) to withhold any award of disgorgement, prejudgment interest and/or penalties based on their inability to pay; and (3) to dismiss this action, based on the resolution of the remaining financial issues in this proceeding.

V. Remedies Sought by the Division

As demonstrated above and supported in great detail by the attached evidence, neither Respondent has the ability to pay the Division's requested Disgorgement, Prejudgment Interest, or Penalties. Nevertheless, the Respondents will now address each component of the Division's requested remedies, including the applicable legal and equitable considerations for each category.

A. Disgorgement

The Division has requested Disgorgement in the amount of $2,146,116.15 against Ireeco LLC and $1,479,633.85 against Ireeco Limited. The Division supports its requests with the Declaration of Brian T. James, the Senior Counsel involved with the investigation that lead to this administrative action, who simply totaled all of the "consultancy fees" paid to the Respondents from January of 2010 through February of 2014. Thus, the Division seeks all fees

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than $15,000 in disgorgement); In the Matter of Tyrone Killebrew, Admin. Case No. 3-10286, 2002 WL 31103495, *2 (Sept. 23, 2002) (despite finding of willful violation of numerous ***antifraud*** and other provisions of the Exchange Act, including Section 15(a)(1) and 15(c), the Commission waived the payment of disgorgement, prejudgment interest, or civil penalties, based on respondent's demonstrated inability to pay). (Emphasis added)

collected by Ireeco, without regard to any business expenses, or the different types of services actually provided by Respondents that resulted in the payments at issue.

In support of its request for disgorgement, the Division cites three (3) opinions, primarily relying on Ralph Calabro, AP File No. 3-15015, 2015 WL 3439152, *44 (May 29, 2015), a Commission opinion,[3] as well as a one-month-old Initial Decision in Kenneth C. Meissner, AP File No. 3-16175, 2015 WL 464707, *12-13 (Aug. 4, 2015),[4] and SEC v. Rockwell Energy of Texas, LLC, Case No. H-09-4080, 2012 WL 360191, *6 (S.D. Tex. Feb. 1, 2012).[5] Each of

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[3] The Division's disgorgement section primarily relies on Calabro, a case involving various ***antifraud*** violations by registered professionals associated with a broker-dealer, who illegally and intentionally churned the accounts of their customers, for their own financial benefit. The Division relies on Calabro for the proposition that "[c]ommissions received from unlawful sales can provide the requisite reasonable approximation of a respondent's ill-gotten gain," and that "business expenses incurred in connection with the commissions are not properly offset against the disgorgement amount." Disp. Mot. At p. 8, citing Calabro, 2015 WL 3439152, *44-*45 and n.233. Calabro could not be more distinguishable from the instant case. Respondents did ***not*** sell any products, they did ***not*** engage in any fraudulent activities, and there were ***no*** victims of any kind.

[4] Meissner is cited by the Division for the proposition that "imposing disgorgement against defendant whose sole violation was Exchange Act Section 15(a)(1)." However, the facts in Meissner are quite distinguishable, as explained in the earlier Initial Decision, where ***"every public interest factor except egregiousness weighs in favor of a heavy sanction"*** against Meissner. AP File No. 3-16175, 2015 WL 1534398, at *9-*10 (April 7, 2015). (Emphasis added)

[5] The Division relies on Rockwell for the proposition that, "Disgorgement is appropriate not only in cases of fraud ... but also where a defendant violates the securities registration provision of the federal securities laws." 2012 WL 360191, at *6. There, a District Court found that the defendants had engaged in unregistered and ***fraudulent securities offerings***, by ***defrauding investors*** in oil and gas investment funds, by promising huge annual returns that were never generated, employed ***sham transactions***, and pocketed half of the money that was raised, as commissions. While acknowledging that district courts possess the equitable power to determine whether or not to order disgorgement, the District Judge sitting in Texas nevertheless found that he was unpersuaded by defendants' inability to pay argument, finding it "irrelevant in light of the purposes of disgorgement." Id. at *5. The Rockwell decision failed to identify what, if any, steps the defendants may have taken in attempting to demonstrate their inability to pay, or provide any meaningful analysis regarding the veracity of the fraudster's claim, other to clarify that at least one defendant made an untimely submission. Id. at *6. Thus, this decision is at odds

these opinions is easily distinguishable from the instant case, because each matter involved fraud or other false statements, which are not present in the instant case, as further demonstrated in footnotes 3, 4, and 5.

The Division asserts that, "Disgorgement is intended primarily to prevent unjust enrichment," citing Calabro, 2015 WL 3439152, *44, but then fails to define "unjust enrichment," which is necessary to place the Division's oft-quoted legal standard in proper context, particularly in a case such as this one, involving issues of first impression in a long-standing industry whose focus is on immigration issues and, specifically, job creation as the mark of success, as opposed to the typical return on investment, which is the central theme of the securities industry. Black's Law Dictionary 6th Ed. (1993) defines the "unjust enrichment doctrine," as follows:

> General principal that **one person should not be permitted unjustly to enrich himself at expense of another**, but should be required to make restitution of or for property or benefit is received, retained or appropriated, where it is just and equitable that such restitution be made, and where such action involves no violation or frustration of law or opposition to public policy, either directly or indirectly. **Unjust enrichment of a person occurs when he has and retains money or benefits which in justice and equity belong to another**.

(Citations omitted) (Emphasis added). Here, regardless of whether the broker-dealer registration requirements of Section 15(a) were violated, the Respondents simply did not unduly enrich themselves at the expense of others, or retain monies that belonged to others.

What services did the Respondents offer? As set forth in the OIP, the Respondents "worked with foreign individuals to determine if the EB-5 Visa Program would work for them" and "provided foreign investors with the information and education they would need in choosing the right regional center to invest with." OIP at ¶ 8. The record is equally clear that the

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with SEC Rule of Practice 630, and is also contrary to Tucker, Sacco, and Killebrew, discussed above.

Respondents provided a whole host of other immigration services beyond the applicant's selection of a Regional Center. Stephen Parnell, a Principal of the Respondents, former-immigrant, and U.S. Citizen, explained to the SEC during his prior, sworn investigative testimony that the Respondents assisted applicants with various forms of relocation advice and assistance. The Respondents' clients relied on the Respondents to help them assimilate into American culture, by explaining how to function in American society. For example, Chinese-born immigrants are completely unfamiliar with how American school systems work, how to go about obtaining a driver's licenses, how medical care works in the United States, and a countless other cultural differences. Parnell Tr. At 29-30. These every day functions are routine to us, but not to the Respondents' former clients. The Respondents did not merely assist their clients with a selection of regional centers to choose from, which occurred at the onset, they continued to provide the foregoing services to their clients for, on average, thirteen (13) to twenty-seven (27) months, and even as long as three (3) years, in some cases. (Transcript excerpts are attached hereto as Composite Exhibit C)

The Respondents earned their fees from Regional Centers only when their client's immigration application, their I-526 Petition (conditional green card), was approved by the USCIS, not when their clients made their investment. The Respondents' clients understood that, and how the payments worked. During that extensive process, the Respondents assisted the applicants with all of their immigration questions, as well as questions about the status of their immigration applications, however long the application process may take, which would typically be upwards of two years. As Mr. Parnell previously testified:

> We've made that very transparent on the website that the regional centers pay us a portion of the administration fee that they charge the client for providing these services to the client, because if we were not doing it, the clients would be relying on the regional centers to do this, leaning on them. They don't have the

> knowledge, the manpower, the desire to provide all this backup information. So that's where we fit into the process.

Parnell Tr. At pps. 48-49.

In addition to the Respondents' inability to pay any award, all of the foregoing demonstrates that Respondents have not been unjustly enriched, to the detriment of anyone. Their clients were never harmed. To the contrary, Respondents provided extensive services -- totally unrelated to the broker-dealer services at issue -- for which they were compensated, which should further mitigate against the total amount of Disgorgement requested by the Division.

B. Prejudgment Interest

The Division has requested an additional award of Prejudgment Interest in the amount of $76,211.73 for Ireeco LLC and $52,543.97 for Ireeco Limited, in addition to its requested disgorgement amount. Respondents do not take issue with the Division's mathematical calculations or reliance on 26 U.S.C. § 6621(a)(2), but with the appropriateness of any such award, particularly in light of the singular, purported "authority" cited in support of the Division's request.

However, as an initial matter, the SEC's very own Dispositive Motion expressly admits that, "Prejudgment interest should ordinarily be awarded on the disgorgement amount, 'except in the most unique and compelling circumstances . . . in order to deny a wrongdoer the equivalent of an interest free loan from the wrongdoer's victims.'" See Page 9, Section B., citing Terence Michael Coxon, AP File No. 3-9218, 2003 WL 21991359, at *14 (Aug. 21, 2003) (Commission Opinion), aff'd, 137 F. App'x 975 (9th Cir. 2005). Based on the foregoing statement, alone, the Division seems to be suggesting that this is such an exceptional case. Further, the Division's singular reliance on the Coxon opinion is quite curious, for a number of reasons.

First, the Coxon opinion, like nearly every single authority cited by the Division, involves claims of securities ***fraud*** -- while the instant matter plainly does not. Second, the violative conduct in Coxon was extensive, including violations of the antifraud provisions of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act, as well as Rule 10b-5, and numerous other violations of the Investment Advisers Act of 1940 and the Investment Company act of 1940, including the various Rules promulgated thereunder. Third, the Coxon respondents also failed to convey auditor's warnings to the independent directors of the fund at issue, or to include such warnings in prospectuses provided to their investors. Thus, the foregoing, extensive wrongful conduct is simply incomparable to the singular act at issue herein, involving the alleged technical violation of failing to register as a Broker-Dealer under the provisions of Section 15(a) of the Exchange Act. And finally, and most importantly -- despite the gross violations in Coxon, on appeal, the Commission nonetheless exercised its "equitable judgment" in analyzing the circumstances of that case and ultimately decided that the respondents should only have to pay half of the amount of prejudgment interest otherwise due under the statute, despite the pervasive wrongful conduct, including but not limited to securities ***fraud***.

Here, the violation is singular and technical, and actually presents a rare and compelling circumstance for the absence of an award of prejudgment interest. As explained earlier in this Response, the instant case is truly "most unique," because it is the first of its kind, as plainly admitted by the SEC, involving a rare matter of first impression. The Division argues that prejudgment interest is appropriate here, "in order to deny a wrongdoer the equivalent of an interest free loan from the wrongdoer's victims." However, Respondents strongly disagree with the foregoing, which simply does not apply to the instant matter, because there were simply no victims here, none whatsoever. To the contrary, the singular violation at issue is a technical one,

only, involving the failure by two entities to register as a broker-dealer in an industry that was never previously regulated by the SEC during the vast majority of the past 25 years, other than a handful of actions seeking to stop rank securities ***fraud***. Now, the SEC is using this case to send a message to the EB-5 Visa industry, making the Ireeco entities the posterchildren for broker-dealer registration, despite the fact that they never actually bought or sold any securities, place trades, analyzed the financial needs of issuers, or handled investor funds of any kind.[6]

The Respondents did not receive any loans of any kind, nor did they ever accept money directly from any purported investors. The only money these Respondents received were payments from Regional Centers, which Regional Centers are not the subject of this action or, upon information and belief, any other SEC enforcement actions.

Thus, in addition to the Respondents' inability to pay any award, all of the foregoing demonstrates that this is truly a "most unique and compelling circumstance" that supports the denial of any award of prejudgment interest against the Ireeco entities.

C. Civil Penalties

The Division is seeking a first-tier penalty against the Respondents, pursuant to 17 C.F.R. § 201.1005, as opposed to the second- or third-tier penalties available in matters involving fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement. The Division seeks to "punish" the Respondents and label them as "wrongdoers." In doing so, the Division relies on Gabelli v. SEC, 133 S. Ct. 1216, 1223 (2013) as its lead, another distinguishable matter involving ***fraud***.[7] The Division also attempts to rely on John P. Flannery,

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6 See SEC v. Kramer, 778 F. Supp. 2d 1320, 1334-40 (M.D. Fla. 2011) (providing exhaustive analysis of the various relevant factors considered by factfinders in determining whether a person/entity qualifies as a broker under Section 15(a) of the Exchange Act).

7 Unlike the instant matter, in Gabelli, the Supreme Court was confronted with the SEC's assessment of penalties against purported "aiders and abettors of fraud," and was required to

AP File No. 3-14081, 2014 WL 7145625, *41 (Dec. 15, 2014) (Commission Opinion), petitions for review filed, No. 15-1080 (1st Cir. Jan. 14, 2015), which is a non-final opinion that is currently on appeal, involving an alleged ***fraud*** on investors in an unregistered fixed income fund.[8] Again, the instant matter does not involve any form of fraudulent conduct, whatsoever, or any victims, only the alleged application of the technical registration requirements of the broker-dealer laws, nothing more.[9]

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analyze the application of the five-year statute of limitations period for the SEC to commence an action for civil penalties in the context of an alleged securities ***fraud***. In addition, the applicable five-year statute of limitations issue is highly relevant to this matter, where the Division appears to be seeking remedies against Respondents for conduct that occurred as long ago as January of 2010, more than five years before the filing of this administrative action. See Paragraphs 3 and 4 of the Declaration of Brian T. James in Support of the Division of Enforcement's Motion for Summary Disposition. Thus, the Division is seeking remedies, including penalties, for conduct outside of the five-year statute of limitations found in 28 U.S.C. § 2462. "A 'penalty,' as the term is used in §2462, is a form of punishment imposed by the government for unlawful or proscribed conduct, which goes beyond remedying the damage caused to the harmed parties by the defendant's action." Coughlan v. Nat'l Transp. Safety Bd, 470 F.3d 1300, 1305 (11th Cir. 2006) (quoting Johnson v. SEC, 87 F.3d 484, 488 (D.C Cir. 1996). It bears repeating that there has been ***no damage caused to anyone resulting from the alleged technical violation at issue herein***. Thus, any penalty award against Respondents in this matter would also be inequitable, based on the total absence of any victims.

[8] In Flannery, unlike the instant matter, the Commission found the respondents had made misrepresentations, acted with scienter, and created a substantial risk of harm to investors, many of whose investments plummeted. No such facts or events are present here. Id. at *41.

[9] The Division's Dispositive Motion also attempts to rely on other, equally distinguishable decisions involving rank ***fraud***, unlike the instant case, as illustrated by the following parentheticals. See Eric J. Brown, AP File No. 3-13532, 2012 WL 625874, *17 & n.59 (Feb. 27, 2012) (Commission Opinion) (applying second-tier penalty where, among various findings, elderly, unsophisticated customers were ***defrauded*** through omissions and the falsification of customer account forms, involving a general pattern of unlawful activity); SEC v. Pentagon Capital Mgmt., 725 F.3d 279, 288 n.7 (2d Cir. 2013) (applying maximum penalty for each instance of ***fraudulent***, late trading of mutual funds, after the price was fixed for the day, as if the orders had been placed before the price was determined); SEC v. Lazare Indus., Inc., 294 Fed. App'x 711, 713-715 (3d Cir. 2008) (unpublished) (sale of unregistered shares of a purported treatment that was "clinically-tested" and "patented," which purportedly neutralized the virus that causes HIV/AIDS, in which defendants were also ***indicted for mail and wire fraud, as well as violations of the Federal Food, Drug and Cosmetic Act*** – where the U.S. Court of Appeals

As explained by the Division, an appropriate penalty is determined by "whether there was fraudulent misconduct; harm to others or unjust enrichment, taking into account any restitution; whether the respondents had previous violations; the need for deterrence of such persons; and such other matters as justice may require."[10] Here, there was ***no*** fraudulent misconduct, ***no*** harm to others, ***no*** victims, ***no*** restitution, and ***no*** claim of wrongdoing by any EB-5 Applicant or Regional Center. Furthermore, Respondents have not been subject to any prior violations, and never had any intention of participating in the securities industry.[11]

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reiterated, "As for penalties, the statutes provide that the court shall determine the amount of penalties 'in light of the facts and circumstances,'" noting the egregiousness of that matter); CFTC v. Levy, 541 F.3d 1102, 1105-06, 1111 (11th Cir. 2008) (trial court found "[defendant's] testimony 'incredible,' describing his memory as 'selective' and lamenting his professed inability to recall 'any specifics ...," where his testimony was "rife with internal inconsistencies tripped by his self serving memorializations of material events."). Thus, the foregoing authorities relied upon by the Division are exemplars of the very worst kind of conduct giving rise to violations of the ***antifraud*** provisions of the Federal Securities Laws; and, in the context of Levy, equally egregious conduct during the enforcement proceedings. None of these decisions have any similarity to the conduct at issue herein, involving a matter of first impression in the context of an alleged technical violation in an industry that had been left alone by the SEC for nearly twenty-five years – a specific Immigration Program designed to fast-track wealthy immigrants who can loan $500,000 to a new domestic U.S.-based EB-5 Project, and to create domestic U.S.-based jobs, in return for a "Green Card".

Two of the foregoing opinions relied upon by the Division actually support the statute of limitations issue raised by Respondents in footnote 7, above. See Brown, 2012 WL 625874, at *18 ("We do not believe, however, that imposing civil penalties for customers to whom Brown sold variable annuities outside the statute of limitations is appropriate."); and Pentagon, 725 F.3d at 287 ("any profit earned through late trading earlier than five years before the SEC instituted its suit against the defendants may not be included as part of the civil penalty").

[10] Response at 10, citing Montford & Co., Inc., AP File No. 3-14536, 2014 WL 1744130, *24 (May 2, 2014) (Commission Opinion); and 15 U.S.C. § 78u-2(c) (statutory factors).

[11] To the contrary, it was common for the Respondents to provide relocation advice on how to assimilate into life in the USA for, on average, 13-27 months (extending to over 3 years, in some cases) from when an EB-5 applicant first contacted respondent until such time as the Respondents received their consultancy fee, following Green Card approval. Moreover, the consultancy fee was received by Respondents between 6 and 16 months *after* the alleged investments at issue were even made by the applicant in the approved EB-5 project.

The Division suggests that the Respondents' business activities are "relatively recent," despite the fact that they actually began in 2010 and included 20% of the EB-5 industry's 25-year history. Regardless, a penalty is not necessary to deter any future violations by the Respondents. As previously explained, the Respondents Consented to Cease and Desist from conducting their prior business activities in March of 2015, more than six months ago. Furthermore, the Division's suggestion that "Respondents' conduct ... resulted in tens of millions being invested" and that higher penalties that could have been sought had the penalties been calculated on a "per-sale basis" is disingenuous, ***since the Respondents were not accused of actually selling any investments***, as opposed to conduct "in connection with the sale of securities involving the EB-5 Visa Program." Notably, all of the referenced sales were conducted by duly approved and lawful Regional Centers, which sold the Congressionally-mandated $500,000 investments in a USCIS-approved U.S. commercial enterprise (as part of the immigrant investor's I-526 Petition, in the hopes of creating and sustaining at least 10 full-time jobs during a two-year period, in order to convert their conditional green card into an unfettered green card, to permit the immigrant to live and work in the U.S. permanently) and it was the Regional Center that handled all investment funds, not the Respondents.[12]

Respondents rely on the holdings in Gabelli, Brown, and Lazare to the extent that the Division is seeking any penalties covering the time period from January 1, 2010 through June 23, 2010, prior to the applicable statute of limitations, as well as Rule 630 and the holdings in Petrou, Tucker, Sacco, and Killebrew, to demonstrate their individual and collective inability to

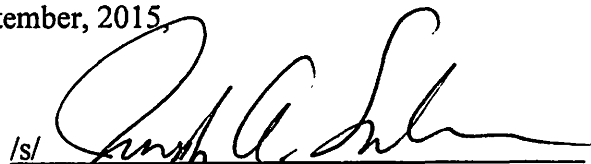
[12] Thus, the Division's reliance on Meissner in support of its requested penalties is, again, misplaced. In Meissner, the respondents made multiple misrepresentations to induce investors to give them millions of dollars that were to be invested in Ginnie Mae bonds, which were never purchased, and their money was never returned. Moreover, the ALJ expressly found that "every public interest factor except egregiousness weighs in favor of a heavy sanction." Id. at *10.

pay any award, and to support the waiving of any form of monetary penalty. Based on all of the foregoing, including the unique facts and circumstances presented in this case of first impression, monetary sanction against the Ireeco entities are completely unwarranted and should be waived, or otherwise denied.

VI. Conclusion

For all of the reasons set forth above, Respondents respectfully request that the Division's Motion for Summary Disposition be denied in this matter of first impression. Alternatively, based on their proven inability to pay, conclusively established by the sworn Declarations of Stephen Parnell (Composite Exhibit A) and Gary Trugman, CPA/ABV, MCBA, ASA, MVS (Exhibit B), and the extensive financial statements and related disclosures supplied by Respondents and analyzed by Mr. Trugman (attached to Composite Exhibit A), submitted in accordance with Rule 630, Respondents respectfully request that the Administrative Law Judge exercise appropriate discretion and find that all of the Division's requested relief, including disgorgement, prejudgment interest, and civil penalties, are unwarranted and should be waived, as contrary to the public interest.

Respectfully submitted this 28th day of September, 2015.



/s/

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CERTIFICATE OF SERVICE

I hereby certify that this Response was timely submitted to the Office of the Secretary by Facsimile (202) 772-9324 and that an original and three true and correct copies of this filing (including voluminous Declaration) were simultaneously submitted by overnight courier (FedEx), as directed by LaQuita Barnett in the Office of the Secretary, to the U.S. Securities and Exchange Commission, Office of the Secretary, Attn: Brent J. Fields, 100 F Street, N.E., mail stop 10900, Washington, D.C. 20549-2557, this 28th day of September, 2015.

Additionally, courtesy copies were served via email on the following persons, this 28th day of September, 2015:

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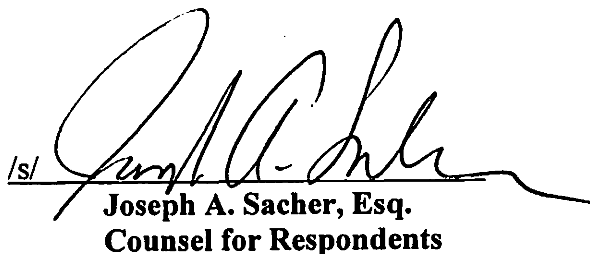

/s/
Joseph A. Sacher, Esq.
Counsel for Respondents

EXHIBIT C

EXCERPTS
FROM
SWORN INVESTIGATIVE
TESTIMONY
OF
STEPHEN PARNELL

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

COPY

In the Matter of:	)	
	)	File No. FL-03771-A
CERTAIN UNREGISTERED	)	
UB-5 BROKERS	)	

WITNESS: Stephen Parnell

PAGES: 1 through 160

PLACE: Securities and Exchange Commission
801 Brickell Avenue, Suite 1800
Miami, Florida 33131

DATE: Thursday, January 24, 2013

The above-entitled matter came on for hearing, pursuant to notice, at 10:03 a.m.

1 APPEARANCES:
2
3 On behalf of the Securities and Exchange Commission:
4 BRIAN JAMES, ESQ.
5 CHED DUMORNAY, ESQ.
6 Division of Enforcement
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9 Suite 1800
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11
12
13 On behalf of the Witness:
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15 Sacher, Zelman, Hartman, Paul,
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25

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2

3 WITNESS EXAMINATION

4 Stephen Parnell

5

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1 P R O C E E D I N G S
2 (Whereupon, a document was marked as Exhibit
3 No. 1 for identification, after which the
4 following was had:)
5 MR. JAMES: Okay. We're on the record
6 at 10:03 a.m. on January 24th, 2013. We're
7 here in Miami, Florida at the offices of the
8 Commission to take the testimony of
9 Mr. Stephen Parnell.
10 Mr. Parnell, please, raise your right
11 hand.
12 Do you swear or affirm to tell the
13 truth, the whole truth and nothing but the
14 truth?
15 MR. PARNELL: I do.
16 Whereupon,
17 STEPHEN PARNELL
18 appeared as a witness herein and, having been
19 first duly sworn, was examined and testified as
20 follows:
21 EXAMINATION
22 BY MR. JAMES:
23 Q Please, state and spell your full name
24 for the record, please.
25 A Stephen Parnell, S-T-E-P-H-E-N

1 enormous number of channels to get EB-5
2 information in the country. In other countries,
3 that's probably not so true.
4 Q Like I said, so going back to the actual
5 initial process. So you get the inquiry from the
6 potential client. You make that initial call,
7 confirm that they are a genuine applicant, and
8 then you engage in discussions about the EB-5
9 program to the extent of which depends on the
10 knowledge that the client comes with. What
11 happens next?
12 A In the first contact, I'm ascertaining
13 their interest in the program and their level of
14 knowledge. I would typically -- if I feel that
15 they are a potential applicant, then I would set
16 up a follow-up call with them. Because in the
17 original call, I have initiated that contact and
18 sometimes that's inconvenient for the client. So
19 they will make a second appointment for an
20 agreed-upon time to talk further.
21 Q Okay. And what's the purpose of the
22 follow-up call?
23 A It's to find out what they -- where they
24 are in the EB-5 process, what do they know, what
25 have they seen, what is their level of knowledge,

1 what is their understanding of American business,
2 what do they know about actually coming to the US
3 as far as logistics, schools, driver's licenses,
4 medical care, just to see their level of
5 understanding to see where I can help them.
6 Q Okay. And then at the same time, are
7 you doing any other secondary type of diligence,
8 if you will, while you're speaking to them? Are
9 you, for example, you know, Googling or doing
10 other things to just confirm some of the
11 information that's being provided to you from the
12 potential client?
13 A Yeah. Absolutely. In part of doing the
14 original checking if they are genuine, I'll look
15 at their -- see if their Email address matches
16 their IP in the country they say they live just to
17 make sure that they're genuine.
18 Q Okay. So you have the follow-up call
19 where you go into further detail. What else
20 happens as far as your interaction with the
21 client?
22 A So in that follow-up call or even in a
23 subsequent follow-up call, I like to ask the
24 potential applicant what they know about American
25 business, what business they are in in their home

1 So use me as the hub of information. If
2 you want to know about something, I'll
3 either -- if I know it, I'll tell you. If I
4 can research it easily, I'll do that for you,
5 but we are your hub.
6 BY MR. JAMES:
7 Q And is Ireeco being compensated by any
8 of these potential applicants?
9 A No.
10 Q Okay. So there's no registration fee?
11 There's no --
12 A No, there's no registration fee.
13 Q And what are the applicant's
14 understanding as far as how Ireeco is being
15 compensated for whether assistance to the
16 applicant or some other aspect of the process?
17 A We've made that very transparent on the
18 website that the regional centers pay us a portion
19 of the administration fee that they charge the
20 client for providing these services to the client,
21 because if we were not doing it, the clients would
22 be relying on the regional centers to do this,
23 leaning on them. They don't have the knowledge,
24 the manpower, the desire to provide all this
25 backup information. So that's where we fit into

1 the process.
2 Q Okay. Has any applicant ever raised a
3 concern about that aspect of the process, that
4 you're being paid by the regional center who,
5 ultimately, you're referring the applicant to?
6 A Yes, they have.
7 Q And tell us about some of those
8 concerns.
9 A Well, they've said, how do we know
10 you're independent? And we say, well, you don't,
11 and we're not here to sell you in any way. We're
12 here to provide information. We will put you in
13 contact with regional centers, whether that's
14 five, ten or however many, based on what you told
15 us. What you do with that information, if
16 anything, is entirely up to you.
17 This is how we work. It's worked for a
18 number of people. And they seem pretty happy.
19 It's for you to decide. You, Mr. Applicant, you
20 don't have any obligation to us. You don't have
21 any contract with us. You're not paying us. It's
22 up to you to decide if this information is useful
23 to you and what you do with it.
24 MR. DUMORNAY: I'm just a little
25 confused, though, because you said that -- I