ORIGINAL

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-16730

In the Matter of

REID S. JOHNSON

Respondent.

DIVISION OF ENFORCEMENT'S MOTION FOR SUMMARY DISPOSITION AGAINST RESPONDENT REID S. JOHNSON AND MEMORANDUM OF LAW IN SUPPORT

October 16, 2015

Division of Enforcement
Securities and Exchange Commission
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I. INTRODUCTION

The Division of Enforcement ("Division") moves, pursuant to Rule 250 of the SEC's Rules of Practice, for summary disposition of the claims in the Order Instituting Proceedings ("OIP") in this matter, brought under Sections 203(e), 203(f), and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act"), as to the liability of Respondent Reid S. Johnson ("Johnson").

This case concerns The Planning Group of Scottsdale ("TPGS"), a formerly registered adviser owned and controlled by the Respondent. Adviser firms like TPGS must comply with the "Custody Rule" under the Advisers Act, a critical provision designed to prevent fraud by requiring advisers who hold custody of their clients' funds to be subject to surprise audit examinations or disclose audited financials to their clients. 17 C.F.R. § 275.206(4)-2. The undisputed evidence demonstrates that for three years in a row, 2010 through 2012, TPGS violated the Custody Rule by: (1) holding investors' securities not with a qualified custodian, but at TPGS's offices, in TPGS's storage facility, and at Johnson's own house; and (2) disobeying the requirements for surprise annual examinations, including omitting certain securities from the examinations and executing faulty written engagement agreements, two of which even disclosed the date that the "surprise" exams were expected to commence. TPGS also undisputedly violated Advisers Act Rule 206(4)-7 (the "Compliance Rule"), because its sole written compliance manual did not accurately set forth the Custody Rule's requirements. 17 C.F.R. § 275.206(4)-7.

Johnson, the founder, sole owner, and managing director of TPGS, as well as of its affiliated broker-dealer and myriad investment vehicle affiliates, aided and abetted and caused these violations. For the bulk of the period, Johnson himself served as TPGS's chief compliance officer ("CCO"), despite having no formal compliance training and little or no knowledge of the Custody Rule. Lacking any qualifications, Johnson, as TPGS's self-appointed CCO, nevertheless

took on the responsibility to ensure the firm's adherence to the Custody Rule and other regulatory requirements. Unsurprisingly, Johnson failed in this role. Indeed, he openly acknowledges that he had no understanding of the Custody Rule, and, despite being responsible for his firm's compliance with the rule as its CCO, that he never even tried to understand the rule or what his firm had to do to comply with it. And even when he hired an experienced professional to take over as CCO, that individual resigned after just seven months, due to TPGS's compliance deficiencies and Johnson's failure to remedy them. Thus, by failing to take even minimal steps to safeguard client assets that he alone controlled, Johnson engendered several years' worth of paradigmatic violations of the Custody Rule, the very purpose of which is to "prevent fraudulent acts by investment advisers." *SEC v. Juno Mother Earth Asset Mgmt. LLC*, No. 11 Civ. 1778, 2012 WL 685302, at *5-6 (S.D.N.Y. Mar. 2, 2012).

Additionally, Johnson—who, in his dual roles as founder and CCO, was also charged with ensuring the accuracy of TPGS's disclosures under its compliance manual—made material false statements in Forms ADV filed by TPGS in the same three-year period, falsely describing the custody of TPGS clients' funds and securities, and incorrectly depicting the nature of and relationships among TPGS and its affiliates.

In light of the undisputed facts presented herein, summary disposition as to Johnson's liability is appropriate.

II. STATEMENT OF UNDISPUTED FACTS

A. Background

TPGS was a registered SEC investment adviser from July 2006 through its withdrawal in March 2013. (Order Instituting Proceedings issued Aug. 6, 2015 ("OIP ") ¶ 4; Respondent Reid S. Johnson's Answer filed Sept. 8, 2015 ("Answer") ¶ 4). Johnson is TPGS's founder, sole owner,

president, and managing director, and served as its chief compliance officer in 2010, 2011 (excluding seven months) and 2012. (OIP ¶ 3; Answer ¶ 3). It was Johnson who decided to register TPGS as an investment adviser with the SEC—indeed, during the time period at issue, Johnson viewed TPGS as his "alter-ego." (*See* Declaration of Marisa G. Westervelt filed concurrently herewith ("Westervelt Decl."), Exs. 1, 2 [SEC Investigative Testimony of Reid Johnson taken March 6, 2014 and May 21, 2014 ("Johnson") 53:11-20, 182:12-183:20]).[1] This action is not Johnson's first disciplinary proceeding.[2]

In addition to TPGS, Johnson also founded a host of TPGS affiliates that he owns and/or where he serves as an officer, all of which operated, during the relevant time period, out of the same Scottsdale, Arizona address as TPGS (and where TPGS paid the rent). (OIP ¶ 13; Answer ¶ 13). These investment advisers and pooled investment vehicles included:

- Meridian United Capital, LLC ("MUC"): Johnson is the president and, as of 2011, the sole owner of formerly-registered broker-dealer MUC (OIP ¶ 3, 5; Answer ¶ 3, 5; Westervelt Decl., Ex. 1 [Johnson 56:3-18]);
- Insured Private Equity I LLC ("IPE"): Johnson is the founder of IPE, an investment vehicle for microcap and start-up companies and single premium immediate annuities and life insurance policies (OIP ¶ 6; Answer ¶ 6);
- Oak Canyon Capital, Inc. ("Oak Canyon"): Johnson is the sole owner of IPE's managing member, Oak Canyon. From approximately June 2010 to June 2011, units of IPE were sold by MUC in a private placement offering. Fourteen of the fifteen investors in IPE—93%—were TPGS advisory clients (OIP ¶ 6; Answer ¶ 6);

[1] In June 2012, Johnson sold TPGS's investment advisory business with respect to individual clients to an entity named Concert Wealth. (OIP ¶ 4; Answer ¶ 4; Westervelt Decl., Ex. 2 [Johnson 442:17-25]). Johnson however does not rule out the possibility that he may seek to re-register TPGS with the SEC. (Westervelt Decl., Ex. 2 [Johnson 458:9-459:18]).

[2] In 2013, Johnson received a 45-day suspension from FINRA in connection with a private placement offering for which TPGS broker-dealer affiliate Meridian United Capital, LLC acted as the placement agent, where he withdrew $300,000 from escrow before MUC had satisfied the minimum sales contingency for the offering. (OIP ¶ 3; Answer ¶ 3).

- Eagle Creek Fund, LLC ("ECF"): Johnson is the founder of ECF, an investment vehicle for Eagle Creek Knowledge Processing Private Ltd. ("ECKP") (OIP ¶ 7, 5; Answer ¶ 7; Westervelt Decl., Ex. 2 [Johnson 316:11-317:6]);

- Strategic Global Partners, LLC ("SGP")/Eagle Creek Management, LLC ("ECM"): Johnson is the 50% co-owner and co-controller of SGP, which solely owns ECM, the managing member of ECF. From approximately July 2008 to January 2010, units of ECF were sold by MUC in a private placement offering; all 97 investors in ECF—100%—were TPGS advisory clients (OIP ¶ 7; Answer ¶ 7; Westervelt Decl., Ex. 2 [Johnson 314:13-315:14]);

- Guaranteed Income Strategy Programs ("GIS3 Programs"): Johnson is the creator of investment vehicles which employed an insurance arbitrage strategy involving the purchase of a single premium immediate annuity ("SPIA") and a life insurance policy. The GIS3 Programs were securitized so that investors (besides the insured) could purchase units in an LLC pooled investment vehicle holding the SPIA and life insurance policy. At least twelve of the GIS3 Programs (referred to hereafter as "GIS3-LLLP Programs") were in turn structured so that the LLC did not purchase the SPIA and life insurance policy directly, but purchased 100% ownership in a family limited liability limited partnership ("LLLP") that held the SPIA and life insurance policy (OIP ¶ 8; Answer ¶ 8);

- Meridian Services, LLC ("Meridian Services"): Johnson is the sole owner of Meridian Services, which served with Oak Canyon as the managing members of the GIS3-LLLP Programs; at least 118 of the 123 investors in the GIS3-LLLP Programs—96%—were TPGS advisory clients (OIP ¶ 8; Answer ¶ 8); and,

- Investor Helen D. Traphagan RWG Trust dated January 6, 2009 (the "Traphagan Trust"): Johnson was, until at least April 4, 2011, the trustee of the Traphagan Trust, a family trust for a TPGS client; the Traphagan Trust invested in ECF and other pooled investment vehicles, and in publicly-traded securities (OIP ¶ 9; Answer ¶ 9).

As affiliated and Johnson-controlled entities, TPGS and managing members Oak Canyon, ECM, and Meridian Services operated as a single investment adviser, with pooled investment vehicles IPE, ECF, the GIS3-LLLP Programs, and the Traphagan Trust as clients. Johnson observed few formalities among his various entities. For example: (1) TPGS employees were co-signatories on Oak Canyon and Meridian Services bank accounts (OIP ¶ 14; Answer ¶ 14); (2) the corporate records for TPGS, MUC, IPE and ECF all resided on servers owned by Johnson (Westervelt Decl., Ex. 1 [Johnson 19:22-20:24]); and (3) the entities shared a single common

bookkeeper. (*Id.* [Johnson 98:21-99:1]; Ex. 3 [SEC Investigative Testimony of Joseph F. Kroleski, III, taken May 27, 2014 ("Kroleski") 93:11-94:2]). Johnson advised TPGS's clients to invest in the pooled investment vehicles he managed through his affiliated managers, and many TPGS clients heeded his advice (OIP ¶ 15; Answer ¶ 15)—as demonstrated by the high concentration of TPGS clients (between 93 to 100%) in each of them.

B. Johnson's Compliance Role at TPGS

Johnson was not only the founder, sole owner, president, and managing director of TPGS, but also made himself the firm's CCO for the majority of the time period at issue, 2010 through 2012. (OIP ¶ 26; Answer ¶ 26). Johnson also served as the CCO for affiliated broker-dealer MUC. (Westervelt Decl., Exs. 1, 2 [Johnson 59:18-60:13, 365:13-366:9]).

When asked to describe his qualifications to be TPGS's CCO, however, Johnson cited only his "limited experience [] running a [registered investment adviser] firm." (*Id.* Ex. 2 [Johnson 365:8-12]).[3] Johnson admits he attended no compliance-related training either before or after becoming TPGS's CCO. (*Id.* [Johnson 366:10-16, 368:8-11]). Despite this lack of training, Johnson, in his dual role as the founder/manager and CCO, bore ultimate responsibility for TPGS's compliance policies and procedures, which he described as "always being changed." (Westervelt Decl., Ex. 2 [Johnson 380:2-17]).

In fact, TPGS's only written compliance manual, dated 2010 (the "Compliance Manual") made it expressly clear that once Johnson made himself CCO, he was accountable and responsible for TPGS's compliance with regulations. As the Compliance Manual stated: "[TPGS] recognizes that it is accountable and must exercise appropriate compliance oversight, the ultimate

[3] Johnson has been in the financial services industry for approximately 40 years, and has Series 24, 7, 63 and 65 licenses that he describes as being in "hibernation." (Westervelt Decl., Ex. 1 [Johnson 45:25-47:15, 48:15-49:9]).

responsibility for risk management rests with the CCO." (*Id.* Ex. 5 [Compliance Manual at Section III ("Compliance Risk Assessment"), p. 2]).

One of those responsibilities was compliance with the Custody Rule. Thus, the Compliance Manual required Johnson, as the CCO, to "ensure" compliance with this rule:

> Responsibility: Where TPG[S] maintains possession or custody of client funds or securities, the CCO shall ensure compliance with the restrictions and requirements of this section. ***The CCO must ensure that a qualified custodian maintains those funds and securities*** - (i) In a separate account for each client under that client's name; or (ii) In accounts that contain only your clients' funds and securities, under your name as agent or trustee for the clients. (*Id.* Ex. 5 [Compliance Manual at Section V ("Custody"), p. 2; emphasis added).

The Compliance Manual also required Johnson, in his self-appointed role as CCO, to:

- with other "key personnel," provide "on-going monitoring and reviews of [TPGS]'s compliance process [... and] work together both to raise concerns about compliance risks and to design and establish effective procedures and controls in an effort to eliminate or mitigate such risks" (*Id.* Ex. 5 [Compliance Manual at Section III ("Compliance Risk Assessment"), p. 1]).

- review the Form ADV on an ongoing basis to ensure that all information is current and accurate (*Id.* Ex. 5 [Compliance Manual at Section II ("Registration and Licensing"), p. 3]); and

- ensur[e] that [TPGS] meets all disclosure requirements required by applicable laws, rules and regulations. (*Id.* Ex. 5 [Compliance Manual at Section VIII ("Disclosure Requirements"), p. 1]).

Notwithstanding his obligations as TPGS's CCO, Johnson had little familiarity with the Custody Rule. When asked about it in testimony, Johnson testified as follows:

> Q: Are you familiar with Rule 206(4)-2 of the Investment Advisers Act of 1940, also known as the "custody rule"?
> A: Not off the top of my head...
> Q: Have you heard of the custody rule before today?
> A: I'm sure I have, but there's lots of custody rules that are out there, so...
> Q: Have you ever read the custody rule?

A: I don't know which one you're specifically talking about.

(Westervelt Decl., Ex. 2 [Johnson 403:2-16]). Asked if he knew what the Custody Rule required and if he was aware of the Rule's 2009 amendments, Johnson stated:

> Q: Are you familiar with what this custody rule requires?
> A: I'd be happy to read it if you want to give it to me.
> Q: Are you aware that the custody rule was amended in 2009?
> A: There's been lots of amendments on the—to my knowledge, relative to the custody, so I don't remember that specifically.

(*Id.* [Johnson 404:1-9]).

Prior to and through early 2010, TPGS employee Jessica Dellinger assisted Johnson in compliance. (*Id.* Ex. 2 [Johnson 371:11-25, 373:15-18]). On multiple instances before the Custody Rule amendments took effect in March 2010, Dellinger and Johnson exchanged emails regarding the Custody Rule. (*Id.* Exs. 6-9 [SEC-NX-TPG-E-000390283, 000403229, 000411777, 000414537]).

In late 2010, Johnson hired a new employee, Joseph Kroleski, to assist in compliance for TPGS and MUC. (Westervelt Decl., Ex. 3 [Kroleski 17:14-18:12]). As of April 2011, Kroleski assumed the role of CCO, until he resigned in November 2011. (*Id.* [Kroleski 29:4-30:5]). Kroleski identified compliance deficiencies to Johnson on numerous occasions, and soon thereafter resigned—after just seven months—because of his discomfort with TPGS's compliance efforts. (*Id.* [Kroleski 27:14-29:3, 42:8-18, 118:4-24, Ex. 29 [8/6/13 Kroleski email]).

C. TPGS's Custody of Client Funds and Securities

During the relevant time period, TPGS understood that it had custody of client funds and securities, including those held by IPE, ECF, the GIS3-LLLP Programs, and the Traphagan Trust. (OIP ¶ 27; Answer ¶ 27). In March 2011, Johnson even wrote to investors in the GIS3-LLLP Programs advising that a fee increase would be necessary to cover the costs of compliance with the

new "audit" requirement of the Custody Rule. (Westervelt Decl., Ex. 13 [3/28/11 Johnson letter]; *see also id.* Ex. 17 [4/29/11 Johnson letter]; Ex. 1 [Johnson 156:4-157:14, 177:21-178:14, 226:2-17]). Nonetheless, under Johnson's supervision and control, TPGS failed to meet the Rule's requirements, in several respects.

1. Use of a Qualified Custodian

It is undisputed that securities of IPE and ECF were not maintained with a qualified custodian. Paper stock certificates for certain of the IPE-invested funds were kept not with a qualified custodian, but in a lockbox held for some period of time in a locked cabinet at TPGS's offices, and then moved by Johnson in August 2012, to his house. (OIP ¶¶ 22; Answer ¶¶ 22).[4] Johnson, who personally directed the investment of the IPE funds, decided where to keep the stock certificates and was the only one with the key to the lockbox. (OIP ¶ 20, 22; Answer ¶ 20, 22; Westervelt Decl., Ex. 2 [Johnson 295:12-297:23]).[5]

It is also undisputed that paper stock certificates for ECF's investment in ECKP (*see Id.* Ex. 2 [Johnson 319:1-320:23]; Ex. 31 [stock certificate receipts]) were kept in a locked storage facility in Scottsdale, along with other TPGS records. (OIP ¶ 23; Answer ¶ 23). Johnson, who, with his equal co-owner, directed the investment of ECF funds (Westervelt Decl., Ex. 2 [Johnson 315:13-22]), kept the only key to this facility as well. (OIP ¶ 23; Answer ¶ 23). During his testimony, Johnson confessed to not knowing where the ECKP certificates were stored, who had access to them, or how long they had been there (Westervelt Decl., Ex. 2 [Johnson 320:5-23, 330:11-23]),

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[4] Indeed, during the staff's investigation, Johnson produced copies of the certificates from the lockbox at his house. (Westervelt Decl., Ex. 30 [stock certificates and other documents]; Ex. 2 [Johnson 297:13-22]).

[5] By contrast, other IPE invested funds were held in a brokerage account at a third party registered broker-dealer, though Johnson, as the owner and manager of Oak Canyon, had authority to obtain possession of the funds and securities in that account. (OIP ¶ 21; Answer ¶ 21).

though following his attorney's questioning, he recalled that the certificates were kept offsite at the storage facility "where [TPGS has] all our office documents." (*Id.* [Johnson 482:15-483:6]).

2. The 2010-2012 annual surprise exams

TPGS did not satisfy the Custody Rule's surprise examination requirements for 2010 through 2012 as to the funds and securities of IPE, ECF, the GIS3-LLLP Programs, or the Traphagan Trust. Although TPGS retained public accounting firm StarkSchenkein LLP ("StarkSchenkein") to conduct surprise exams in each of these years, those exams were deficient.[6]

Failure to properly engage accounting firm. As a threshold matter, it is undisputed that TPGS did not even retain StarkSchenkein for the 2010 surprise examination until 2011, and that all of the work for the 2010 exam was actually conducted in 2011. (OIP ¶ 28, 34; Answer ¶ 28, 34; Westervelt Decl., Ex. 3 [Kroleski 72:3-22]).[7]

It is also undisputed that the engagement letters by which TPGS retained StarkSchenkein for the 2010, 2011 and 2012 exams were deficient. (OIP ¶ 33; Answer ¶ 33). The engagement letters did not satisfy the Custody Rule's explicit requirements for the written agreements between an investment adviser and accounting firm because:

- the engagement letters for 2010 and 2011 each disclosed the anticipated start date for each exam;
- none of the letters referenced StarkSchenkein's obligation to file a Form ADV-E within 120 days of the exam's commencement;

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[6] On August 6, 2015, StarkSchenkein and its principal Wesley Stark agreed to a settled cease and desist order issued by the Commission in connection with the 2010-2012 surprise examinations of TPGS, including penalties, disgorgement and Rule 102(e) bars. *See In re: Wesley N. Stark, CPA et al.*, Rel. No. 34-75627, Order Instituting Administrative Cease and Desist Proceedings, Making Findings and Imposing Remedial Sanctions and a Cease and Desist Order, Aug. 6, 2015.

[7] The StarkSchenkein engagement letter for the 2010 exam bore the date December 30, 2010, but was admittedly executed by Johnson on February 1, 2011. (Westervelt Decl., Ex. 2 [Johnson 410:7-24]; Ex. 11).

- none of the letters referenced StarkSchenkein's obligation to notify the SEC of any material discrepancies; and

- none of the letters referenced StarkSchenkein's obligation to file a Form ADV-E upon termination or resignation of the exam, and in fact one was not filed upon Stark Schenkein's termination of the 2012 exam.

(Westervelt Decl., Exs. 11, 20, 27 [2010-2012 engagement letters]; Ex. 32 [TPGS Form ADV-E filing history], Ex. 2 [Johnson 413:4-414:15, 420:20-423:13]; Ex. 3 [Kroleski 153:20-154:17, 177:21-178:10]).

Failure to identify securities subject to examination. For the 2010 and 2011 exams, TPGS provided StarkSchenkein a chart listing the funds and securities to be examined. (*See* Westervelt Decl., Ex. 4 [SEC Investigative Testimony of David Smith taken May 15, 2014 ("Smith") 104:4-18, 145:10-146:3]; Ex. 12 [2010 chart]; Ex. 21 [2011 chart]). Neither list however included the IPE or ECF securities custodied under Johnson's exclusive domain at his house, at TPGS's offices and/or at TPGS's storage unit. (*Id.* Exs. 12, 21).

Johnson's certifications. Notwithstanding the surprise exams' many failings, Johnson signed the Management Statement Regarding Compliance with the Custody Rule that TPGS filed with the SEC for each of the 2010 and 2011 exams. (*Id.* Exs. 18, 23 [management statements]; Ex. 2 [Johnson 416:12-418:15, 426:15-427:24]). In these certifications, Johnson stated that:

> We, as members of management of The Planning Group, LLC (the "Company" are responsible for complying with the requirements of Rule 204-2(b), "Books and Records: to be Maintained by Investment Advisers" and Rule 206(4)-2, "Custody of Funds or Securities of Clients by Investment Advisers," of the Investment Advisers Act of 1940 (the "Act"). We are also responsible for establishing and maintaining effective internal controls over compliance with the Rule 204-2(b) and Rule 206(4)-2 requirements. We have performed an evaluation of the Company's compliance with paragraph (a)(1) Rule 204-2(b) and pertain provisions of Rule 206(4)-2 as of September 30, 2011 and complied with Rule 204-2(b) of the Act during the period from January 1, 2011 to October 30,

> 2011. Based on this evaluation, we assert that the Company was in compliance with the Act as described below... (*Id.* Ex. 23).

That these certifications proved wrong may be understood in part by Johnson's superficial understanding of what the exams involved. Asked during his investigative testimony what work StarkSchenkein performed on the 2010 exam—which took place during Johnson's tenure as CCO—Johnson responded simply: "What they were supposed to do" (*Id.* [Johnson 414:23-24]), and, as to what documents they reviewed "Whatever they needed." (*Id.* [Johnson 415:3-4]). Similarly, for the 2011 exam, Johnson, when asked what work StarkSchenkein performed, testified, "I would assume they did everything they were supposed to do." (*Id.* [Johnson 423:23-424:3]).

D. TPGS's Compliance Policies and Procedures

TPGS's Compliance Manual—its sole written compliance policy—was titled "2010 Compliance Supervisory Guidelines Manual." (*Id.* Ex. 5 [Compliance Manual]; Ex. 2 [Johnson 383:9-25]). Though other versions were "on the cusp of executing," this was the only official policy and procedures manual in place at TPGS. (*Id.* [Johnson 385:19-386:12]; Ex. 3 [Kroleski 57:1-20]). Kroleski, during his time with TPGS, worked on the proposed revisions and submitted changes to Johnson; ultimately, Johnson was responsible for approving the Compliance Manual. (*Id.* Ex. 2 [Johnson 384:1-11]; Ex. 3 [Kroleski 57:1-20]).

It is undisputed that TPGS's Compliance Manual did not address the 2009 amendments to the Custody Rule. (OIP ¶ 37; Answer ¶ 37). Instead, the Manual discussed the requirements of the Custody Rule prior to the 2009 amendments (including its more limited applicability of the surprise exam requirement and narrower definition of custody), notwithstanding that the Manual was dated 2010. (*Compare* Westervelt Decl., Ex. 5 [Compliance Manual at Section V ("Custody")] *with* 17 C.F.R. § 275.206(4)-2).

E. TPGS's Forms ADV in 2010 through 2012

TPGS's Forms ADV issued in 2010 through 2012 contained several false statements. First, all of the Forms ADV erroneously stated that TPGS did ***not*** have custody of any of its advisory clients' funds or securities. (Westervelt Decl., Ex. 10 [TPGS Form ADV dated March 30, 2010 ("2010 Form ADV") at p. 12, Item 9.A]; Ex. 14 [TPGS Form ADV dated March 30, 2011 ("03/30/11 Form ADV") at p. 12, Item 9.A]; Ex. 15 [TPGS Form ADV dated March 31, 2011 ("03/31/11 Form ADV") at p. 12, Item 9.A]; Ex 25 [TPGS Form ADV dated March 31, 2012 ("2012 Form ADV") at p. 45, Item 9.A]). This disclosure was contrary to TPGS's admitted understanding that it did have custody of clients' funds and securities. (OIP ¶ 27; Answer ¶ 27).

Second, in the Forms ADV filed in 2011, TPGS stated that an independent public accountant had prepared an internal control report with respect to custodial services (Westervelt Decl., Ex. 14 [03/30/11 Form ADV at p. 12, Item 9.C.4]; Ex. 15 [03/31/11 Form ADV at p. 12, Item 9.C.4]). It is undisputed that this had not occurred. (*Id.* Ex. 2 [Johnson [302:3-8, 332:13-17, 363:5-16]).

Third, the Disclosure Brochures filed as Part 2 to Forms ADV filed in 2011 and 2012 falsely represented that Oak Canyon and Meridian Services were mere "administrative services" firms. (*Id.* Ex. 16 [Form ADV, Part 2, dated 03/31/2011, at p. 12]; Ex. 26 [Form ADV, Part 2, dated 03/31/2012, at p. 12]). To the contrary, these firms provided advisory services to IPE and the GIS3-LLLP Programs. (OIP ¶ 15; Answer ¶ 15).

Finally, in its Form ADV filed in 2012, TPGS falsely represented that Oak Canyon and Meridian Services were not managing members of pooled investment vehicles; falsely represented that ECF was a sponsor or syndicator, rather than a pooled investment vehicle, and failed to mention ECF's managing member, ECM; and falsely described Oak Canyon, Meridian Services,

and ECF as "qualified custodians" under the Custody Rule. (Westervelt Decl., Ex. 25 [2012 Form ADV at pp. 24-28, Schedule D, Section 7.A]).

Johnson, on behalf of TPGS, signed three of the four Forms ADV and caused all of the Forms ADV to be filed. Johnson signed the Form ADV filed in 2010 as managing director and chief compliance officer of TPGS. (Westervelt Decl., Ex 10 [2010 Form ADV at p. 42].) Johnson signed the Form ADV filed on March 30, 2011 using the title of president, and signed the Form ADV filed in 2012 using the titles of president and chief compliance officer. (*Id.* Ex. 14 [03/30/11 Form ADV at p. 44]; Ex. 25 [2012 Form ADV at p. 59]).

III. SUMMARY DISPOSITION IS APPROPRIATE PURSUANT TO RULE 250

A. Standards Applicable to the Division's Summary Disposition Motion.

Rule 250 (a) of the Commission's Rules of Practice permits a party to move "for summary disposition of any or all allegations of the order instituting proceedings" before hearing with leave of the hearing officer. 17 C.F.R. § 201.250(a).[8] Rule 250(b) provides that a hearing officer may grant a motion for summary disposition if there is no genuine issue with regard to any material fact and the party making the motion is entitled to summary disposition as a matter of law. 17 C.F.R. § 201.250(b). "[S]ummary disposition may be appropriate in non-follow-on proceedings." *In re Sands Bros. Asset Mgmt. LLC et al.*, 2015 SEC LEXIS 3556, at *4 (Order on Motions for Summary Disposition Aug. 31, 2015) (citations omitted), *pet. for review denied,* Rel. No. 76119 (Oct. 8, 2015).

Hearing officers routinely grant summary disposition where, as with the Division's claims that Johnson caused TPGS's Custody Rule and Compliance Rule violations and directly violated Advisers Act Section 207, scienter is not required. But even as to violations requiring

[8] The Hearing Officer granted the parties leave to file summary disposition motions in its September 11, 2015 Scheduling Order.

scienter, such as the Division's claims that Johnson aided and abetted TPGS's Custody Rule and Compliance Rule violations, summary disposition is appropriate where the material facts, as here, are undisputed. *See, e.g., In re: S.W. Hatfield,* 2014 WL 6850921 (Commission Opin. Dec. 5, 2014) (reversing denial of summary disposition and finding respondent liable for intentional and reckless violation of Exchange Act Rule l0b-5); *Matter of Executive Registrar & Transfer, Inc.*, 2008 WL 5262371, at *29-31 (Initial Decision Dec. 18, 2008) (finding on summary disposition that transfer agent's president and control person aided and abetted entity's violations of Exchange Act rules).

B. Johnson Aided and Abetted and Caused TPGS's Custody Rule Violations

Investment advisers that have custody of advisory client funds or securities must comply with the requirements of Section 206(4) of the Advisers Act and the Custody Rule, Rule 206(4)-2, thereunder. Section 206(4) prohibits investment advisers from engaging in "any act, practice, or course of business which is fraudulent, deceptive, or manipulative," as defined by the Commission by rule. The Custody Rule makes it a fraudulent, deceptive, or manipulative act for a registered investment adviser to have custody of clients' funds or securities, unless a qualified custodian maintains the funds and securities. Rule 206(4)-2(a)(1).

The Custody Rule, which is one of the antifraud provisions of the Advisers Act, is an important part of the regulatory scheme for investment advisers. Its purpose is to "prevent fraudulent acts by investment advisers...To that end, the [custody rule] specifies that an investment adviser with custody of client funds must either provide for a surprise annual examination of its accounts by an independent accountant or release its audited financial statements to investors." *SEC v. Juno Mother Earth Asset Mgmt.*, 2012 WL 685302, at *6 (denying motion to dismiss claim under custody rule, finding that complaint plausibly alleged

that adviser "fail[ed] to either provide for a financial examination by an independent accountant or [under one of the custody rule's exceptions] turn over its financial statements to investors").

The Custody Rule defines custody to mean "holding, directly or indirectly, client funds or securities, or having any authority to obtain possession of them." 17 C.F.R. § 275.206(4)-2(d)(2). This includes physical possession of client funds or securities (*see* Rule 206(4)-2(d)(2)(i)) as well as a managing member's access to client funds or securities. *See* Rule 206(4)-2(d)(2)(iii). The Custody Rule also defines custody to include any capacity, such as trustee of a trust, which gives the investment adviser legal ownership of or access to client funds or securities. *See id.*

Under the Custody Rule, an investment adviser with custody of client funds or securities must, among other things, maintain client funds and securities with a qualified custodian, and obtain an annual surprise exam. Rule 206(4)-2 (a).[9] The Rule defines qualified custodians to include banks and registered broker dealers, and certain foreign financial institutions. Rule 206(4)-2(d)(6). The Rule also sets forth specific requirements for the annual surprise exam, including: (1) that it take place within the calendar year; (2) that the written engagement agreement between the investment adviser and the accounting firm not disclose the exam date; and (3) that certain descriptions of the reports the accounting firm may or will file with the SEC relating to the exam appear in the written engagement agreement. *See* Rule 206(4)-2(a)(4).

Although the Custody Rule is an antifraud provision, scienter is not required for violations of Rule 206(4)-2. *See SEC v. Slocum, Gordon & Co.*, 334 F. Supp. 2d 144, 177-78 (D.R.I. 2004) (noting that scienter is not required for a violation of Rule 206(4)-2, citing *Steadman*, 967 F.2d at 647); *Alonso v. Weiss*, 958 F. Supp. 2d 922, 926 (N.D. Ill. 2013) (noting,

[9] Certain exceptions to the Custody Rule can relieve an investment adviser of various Custody Rule requirements; however, none are at issue here. *See* Rule 206(4)-2 (b).

regarding claim under Rule 206(4)-2, that "Section 206(4), the only section of the IAA at issue here, does not require a finding of fraudulent intent."); *In re Warwick Capital Mgmt., Inc.*, 2008 WL 149127, at *8 (Commission Opin. Jan. 16, 2008) (scienter not required for violations of Advisers Act Section 206(4)); *In re Sands Bros. Asset Mgmt. LLC et al.*, 2015 SEC LEXIS 3556, at *15.

1. TPGS Violated the Custody Rule in Three Successive Years

Because TPGS had custody over the funds and securities of IPE, ECF, the GIS3-LLLP Programs, and the Traphagan Trust (*see* OIP ¶ 27; Answer ¶ 27), TPGS was required to comply with the Custody Rule. (*See also* Westervelt Decl. Exs. Ex. 12 [2010 chart]; Ex. 21 [2011 chart].)

As set forth above, TPGS did not comply with the Rule in 2010, 2011 or 2012. It is undisputed that TPGS maintained securities held by IPE and ECF at Johnson's house, TPGS's offices, and TPGS's storage facility, rather than with a qualified custodian. It is also beyond dispute that the firm failed the surprise examination requirement as to the funds and securities of IPE, ECF, GIS3-LLLP and the Traphagan Trust since (a) the 2010 exam was not commenced until 2011; (b) the letters engaging StarkSchenkein for the 2010 and 2011 exams disclosed the exams' anticipated start dates; (c) all of the engagement letters omitted reference to the required exam-related filings with the SEC, which include notifying the SEC of the commencement of the exam; reporting any material discrepancies observed during the exam; and reporting to the SEC if any exam is terminated; and (d) TPGS did not identify for examination the IPE and ECF securities held by Johnson, instead of by a qualified custodian.

2. Johnson Is Liable for Aiding and Abetting TPGS's Violations

To establish aiding and abetting liability, the Division must show: (1) the existence of an independent primary violation; (2) actual knowledge or reckless disregard by the alleged aider and

abettor of the wrong and of his/her role in furthering it; and (3) that the aider and abettor substantially assisted in the accomplishment of the primary violation. *See, e.g., In re vFinance Investments, Inc.*, 2010 WL 2674858, at *13 (Commission Opin. July 2, 2010).

As discussed above, the undisputed record establishes a primary violation of the Custody Rule by TPGS. Johnson's conduct with respect to these primary violations also demonstrates both his recklessness and his substantial assistance.

Recklessness is defined as conduct that is "an extreme departure from the standards of ordinary care," (*Hatfield,* 2014 WL 6850921, at *7), and is present when "the danger was either known to the defendant or so obvious that the defendant must have been aware of it." *In re ZPR Investment Mgmt., Inc.*, 2014 WL 2191006, at *44 (Initial Decision May 27, 2014) (quotations omitted). Proof of recklessness may be inferred from circumstantial evidence. *SEC v. Burns*, 816 F.2d 471, 474 (9th Cir. 1987). "The substantial assistance prong is satisfied by a respondent's failure to act where he 'has a clear duty to act and the failure to act itself constitutes the underlying primary violation.'" *In re Sands Bros. Asset Mgmt. LLC et al.*, 2015 SEC LEXIS 3556, at *16 (Order on Motions for Summary Disposition Aug. 31, 2015), citing *vFinance Invs., Inc.*, 2010 SEC LEXIS 2216, at *44-45.

For fiduciaries, liability for aiding and abetting can be based on a failure to act. *See Geman v. SEC*, 334 F.3d 1183, 1195-96 (10th Cir. 2003).; *In re vFinance*, 2010 WL 2674858, at *13 ("[W]e have frequently found aiding and abetting liability for a failure to act where, as here, the respondent has a clear duty to act and the failure to act itself constitutes the underlying primary violation").[10] Thus, where the respondent controls the primary violator and is engaged in the

[10] As TPGS's and its affiliates' manager, Johnson was a fiduciary to advisory clients. *See* 15 U.S.C. § 80b-2(a)(17) (definition of associated persons).

conduct that results in the violation, or fails to ensure the violator's compliance with the law, he is liable as an aider and abettor. *See, e.g., ZPR Investment Mgmt.*, 2014 WL 2191006, at *54 (finding controlling shareholder and creator of violating advertisements liable as aider and abettor of adviser's violations); *In re J.S. Oliver Capital Mgmt.*, 2014 WL 3834038, at *45 (Initial Decision Aug. 5, 2014) (finding adviser's control person aided and abetted record-keeping violations by taking no "steps to ensure" emails were maintained); *Executive Registrar & Transfer, Inc.*, 2008 WL 5262371, at *30 (holding president/control person liable as aider and abettor for transfer agents' reporting violations, including untimely reporting); *In re Zion Capital Mgmt. LLC,* No. 3-10659, 2003 WL 193535, at *12 (Initial Decision Jan. 29, 2003) (holding adviser's control person liable as aider and abettor where he "failed to ensure that" records were maintained).

Under this standard, Johnson recklessly and substantially assisted TPGS's violation of the Custody Rule. He was TPGS's founder, sole owner, and manager, and he managed each of the managers and pooled investment vehicles within TPGS's auspices. Having personal control over TPGS's clients' assets, Johnson took on the added responsibility of serving as TPGS's CCO, despite having no training in compliance, and obtaining no training during his years of service in this role.

Under TPGS's Compliance Manual, Johnson, in his dual position as founder and CCO, bore the ultimate responsibility for TPGS's compliance with the Custody Rule. Johnson was notified of the Custody Rule' impending amendments before they took effect in March 2010. Yet his familiarity with the Rule was so limited that he could not even bring it to mind when asked about it in testimony. Johnson personally held custody of TPGS' advisees' securities—investments that he controlled—in a lockbox under his exclusive dominion at TPGS and at its storage facility, and even at his own house. Finally, lacking any understanding of the work

StarkSchenkein performed on the exams, Johnson certified TPGS's compliance with the Custody Rule: (1) having not identified all of the securities for StarkSchenkein; (2) having not obtained the 2010 exam in the calendar year; and (3) having not retained StarkSchenkein pursuant to an engagement letter that complied with the Rule.

Thus, Johnson singlehandedly failed to ensure TPGS's compliance with Custody Rule requirements, and each of these failures substantially assisted TPGS's Custody Rule violations. *See, e.g., In re Total Wealth Management, Inc., et al.*, 2015 WL 4881991, at *37 (Initial Decision, Aug. 17, 2015) (finding that RIA's owner and CEO aided and abetted firm's custody rule violations, where, among other things, "he was responsible for engaging [the surprise exam firm], served as one of [its] contacts [] during the audit, [and] signed the management representation letter"); *In re Larry C. Grossman et al.*, 2014 WL 7330327, at *37 (Initial Decision, Dec. 23, 2014), (finding RIA's founder, owner and managing partner liable for aiding and abetting and causing custody rule violations, notwithstanding his assertion of ignorance of violations, noting, "[a]lthough Grossman testified that he did not know he was required to provide [] copies of the [] account statements ... a person cannot escape aiding and abetting violations by claiming ignorance of his obligations under the securities laws... at a minimum, as the owner of a registered investment adviser, Grossman should have known the custody rules imposed by the Advisers Act.") (internal citations omitted), *review granted*, 2015 WL 351409 (Jan. 28, 2015); *SEC v. Nutmeg Grp., LLC*, No. 09-civ-1775, 2011 WL 5042094, at *3 (N.D. Ill. Oct. 19, 2011) (refusing to dismiss aiding and abetting Custody Rule claim against CCO, noting that "[i]t can be inferred both from [principal/ CCO's] responsibility to maintain [investment adviser's] records and from his control over companies that allegedly improperly held the Funds' assets that [principal/CCO] was aware of and aided [investment adviser's] violations of Rule 206(4)–2").

3. Johnson Is Liable for Causing TPGS's Violations

The undisputed evidence also shows that Johnson caused TPGS's violations under Section 203(k) of the Advisers Act, which only requires a showing of negligence, rather than recklessness or knowledge. Causing liability may be imposed on any person that "is, was, or would be a cause of the violation, due to an act or omission the person knew or should have known would contribute to such violation." 15 U.S.C. § 80b-3(k). To establish a respondent's liability for causing a violation, the Division must show: (1) a primary violation; (2) an act or omission by the respondent that was a cause of the violation; and (3) that the respondent knew, or should have known, that his conduct would contribute to the violation. *See In re Robert M. Fuller*, 2003 WL 22016309, at *4 (Aug. 25, 2003), *pet. for review denied*, 95 F. Appx. 361 (D.C. Cir. 2004) (per curiam)); *In re John Thomas Capital Mgmt. Grp. LLC,* 2014 WL 5304908, at *26 (Initial Decision Oct. 17, 2014), *review granted,* 2014 WL 6985130 (Dec. 11, 2014).

Because scienter is not required for proving a primary violation of the Custody Rule, negligence suffices for establishing liability for "causing" a violation of the rule. *See, e.g., In re Ambassador Capital Mgmt., LLC*, 2014 WL 4656408, at *42 (Initial Decision Sept. 19, 2014) (citation omitted); *In re KPMG Peat Marwick LLP*, 54 S.E.C. 1135, 1175 & n.100 (2001), *pet. denied*, 289 F.3d 109 (D.C. Cir. 2002); *In re Sands Bros. Asset Mgmt. LLC et al.*, 2015 SEC LEXIS 3556, at *17. Additionally, "[a] finding that a respondent willfully aided and abetted violations of the securities laws necessarily makes that respondent a 'cause' of those violations." *In re Clarke T. Blizzard*, Advisers Act Rel. No. 2253, 2004 WL 1416184, at *5 n.10 (Commission Opin. June 23, 2004); *In re Ronald S. Bloomfield*, 2014 SEC LEXIS 698, at *63 (Feb. 27, 2014).

There can be no dispute that Johnson negligently caused TPGS's Custody Rule violations. By taking on responsibility for compliance despite his lack of qualifications; by engaging StarkSchenkein without understanding what the surprise exam was to entail; and by certifying TPGS's compliance with the Custody Rule with no reasonable basis to do so, Johnson was responsible for TPGS's resulting violations from 2010 through 2012. Johnson's apparent "ignorance or confusion about custody rule obligations cannot insulate [him] from liability." *In re Sands Bros. Asset Mgmt. LLC et al.*, 2015 SEC LEXIS 3556, at *34 (Order on Motions for Summary Disposition Aug. 31, 2015), citing *In re Robert L. Burns*, 2011 SEC LEXIS 2722, at *41 n.60 ("[W]e have repeatedly held that ignorance of the securities laws is not a defense to liability thereunder.").

Moreover, Johnson retained responsibility for causing TPGS's violations even during the brief time period when Kroleski served as CCO under Johnson's supervision, particularly since Kroleski notified him repeatedly of compliance concerns and ultimately resigned over them. *See, e.g., In re Sands Bros. Asset Mgmt. LLC et al.*, 2015 SEC LEXIS 3556, at *22-23 (fiduciaries could not "simply wash [their] hands of the matter until a problem [was] brought to [their] attention", because "in delegating such responsibility, "[i]mplicit is the additional duty to follow-up and review that delegated authority to ensure that it is being properly exercised."), citing *Rita H. Malm,* 52 S.E.C. 64, 73 (1994); *In re Clifton,* 2013 SEC LEXIS 2022, at *49 (July 12, 2013).

Given the undisputed facts establishing TPGS's Custody Rule violations and Johnson's aiding and abetting and causing thereof, the Division's motion for summary disposition of Johnson's liability for these claims should be granted.

C. Johnson Aided and Abetted and Caused TPGS's Compliance Rule Violations

The undisputed record also shows that TPGS violated the Compliance Rule—Rule 206(4)-7 of the Advisers Act—and that Johnson both aided and abetted that violation, and caused it.

1. TPGS Violated the Compliance Rule

TPGS's violation of the Compliance Rule cannot be disputed. The Compliance Rule makes it a fraudulent, deceptive, or manipulative act for a registered investment adviser to give investment advice to clients unless it: (a) adopts and implements written policies and procedures reasonably designed to prevent violation, by the adviser and supervised persons, of the Advisers Act and the rules thereunder; (b) reviews, no less frequently than annually, the adequacy of the policies and the effectiveness of their implementation; and (c) designates a CCO responsible for administering the policies and procedures. 17 C.F.R. § 275.206(4)-7. The Commission's release adopting the rule recommends that an adviser identify conflicts and interest and risks in light of the adviser's particular operations, and then design policies and procedures that address those risks. *See Compliance Programs of Investment Companies and Investment Advisers*, Advisers Act Rel. No. 2204, 2003 SEC LEXIS 2980 (Dec. 17, 2003).

To establish a violation of Rule 206(4)-7, the Division must prove that: (1) the respondent is a registered investment adviser; (2) its compliance policy was not reasonably designed to prevent violations of the Advisers Act; and (3) the adviser was negligent. As with other rules issued under Section 206(4), no showing of scienter is required. *In the Matter of Tri-Star Advisors, Inc.*, 2014 SEC LEXIS 1872, at *23 (June 2, 2014) (denying motion for summary disposition as to claim under Rule 206(4)-7, noting that "[a] showing of negligence is all that is required to support a violation of Section 206(4)").

It is beyond dispute that TPGS violated the Compliance Rule because its written policies and procedures were not reasonably designed to prevent violations of the Custody Rule. TPGS's 2010 Compliance Manual, the only one it ever finalized and adopted, failed to address, at all, the 2009 amendments to the Custody Rule—including the expanded applicability of mandatory surprise exams, and the broadened definition of custody. TPGS's violations of the Custody Rule in 2010 through 2012 aptly punctuate the deficiencies of its Compliance Manual.

2. Johnson is Liable for Aiding and Abetting and Causing TPGS's Compliance Rule Violations

Johnson knew, or was reckless or negligent in not knowing, that TPGS's compliance procedures were deficient. The Compliance Rule expressly imposed upon Johnson, as TPGS's CCO, the obligation to monitor the firm's compliance. Moreover, as TPGS's founder, owner and manager, Johnson admitted in testimony that he was responsible for TPGS's written compliance policies. Further, TPGS's 2010 Compliance Manual expressly assigned responsibility to Johnson, as the CCO, to ensure adequate policies and procedures; yet Johnson had no compliance training that would have enabled him to satisfy this obligation. Johnson was advised by TPGS compliance employee Kroleski of deficiencies in compliance during the relevant time period; was advised of the amendments to the Custody Rule before they took effect; and was aware that the Compliance Manual was outdated.

Johnson therefore knew or was reckless in not knowing, and should have known, that TPGS's written policies and procedures violated the Compliance Rule. *See, e.g., In re J.S. Oliver Capital Mgmt, LP, et al.*, 2014 WL 3834048, at *45 (Commission Opin. Aug. 5, 2014) (affirming aiding and abetting and causing compliance rule violation against founder and CEO of RIA where firm "essentially ignored its written policies and procedures[], never implemented such policies, and had no review procedures in place"; founder "simply claimed to be the chief compliance

officer for a period of time;" while exercising "complete control over [the RIA] and the firm's course of conduct" the principal "was responsible for overseeing [the RIA's] compliance procedures, but recklessly, if not intentionally, failed to implement or follow them"); *In re Angelica Aguilera,* 2013 WL 3936214, at *24 (Initial Decision July 31, 2013) (holding president liable for supervisory failures despite her claim that she was a "figurehead," noting that once a respondent accepts the title, she is "required to fulfill the obligations attached to [her] office") (quotations omitted).

Given the undisputed facts establishing TPGS's Compliance Rule violations and Johnson's aiding and abetting and causing thereof, the Division's motion for summary disposition of Johnson's liability for these claims should be granted.

D. Johnson Made Materially False Representations on TPGS's Forms ADV

Section 207 of the Advisers Act makes it "unlawful for any person willfully to make any untrue statement of a material fact in any registration application or report filed with the Commission under section 203, or 204, or willfully to omit to state in any such application or report any material fact which is required to be stated therein." The Form ADV and its amendments "embody a basic and vital part in our administration of the Advisers Act, and it is essential in the public interest that the information required by the application form be supplied completely and accurately." *In re Montford and Co., Inc.*, 2014 SEC LEXIS 1529, at *68 (Commission Opin., May 2, 2014) (internal citations omitted).

An individual who makes an untrue statement on behalf of a registered investment adviser may be held primarily liable for violating Section 207. *See In re Oakwood Counselors, Inc.*, Advisers Act Rel. No. 1614, 1997 WL 54805, at *4 (Feb. 10, 1997) (settled order) (finding adviser and adviser's president, who signed false Forms ADV, violated Section 207). Proof of a willful

violation of Section 207 does not require proof of scienter. *See Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (a finding of willfulness does not require intent to violate, but merely intent to do the act which constitutes a violation); *SEC v. Locke Capital Management, Inc.* 794 F. Supp. 2d 355 (D.R.I. 2011) (granting SEC's motion for summary judgment, holding that "[u]nder Section 207, it is unlawful to willfully make a material misrepresentation or to omit a material fact in a registration application or report filed with the SEC under Section 203"); *SEC v. K.W. Brown and Co.*, 555 F. Supp. 2d 1275 (S.D. Fla. 2007) (finding violation of Section 207, noting that investment adviser "had a duty to file Forms ADV that were not false or misleading and that did not omit to state material facts" and that"[a] finding of willfulness does not require intent to violate (or scienter), but merely intent to do the act which constitutes a violation."). "The fact that the ADV form requires information...indicates that the information is material." *In re J. Baker Tuttle Corp.*, 1990 SEC LEXIS 3954, at *10 (Dec. 21, 1990), *aff'd*, 1991 SEC LEXIS 253 (Commission Opin., Feb. 13, 1991).

Johnson willfully violated Section 207 of the Advisers Act by causing TPGS's false Forms ADV to be filed during the relevant time period. As discussed above, the 2010, 2011 and 2012 Forms ADV contained multiple false representations, including: (1) that TPGS did not have custody of any of its advisory clients' funds or securities; (2) that internal control reports were prepared for the managed entities; and (3) that no advisory services were provided by Oak Canyon or Meridian Services, and other incorrect descriptions of the affiliates' relationships. These representations were material because each pertained to a necessary Form ADV disclosure that was germane to the security of clients' assets. "The [Custody R]ule requires advisers that have custody of client securities or funds to implement a set of controls ***designed to protect those client assets from being lost, misused, misappropriated or subject to the advisers' financial reverses***." SEC

Release No. IA-2176; File No. S7-28-02, RIN 3235-AH 26, Custody of Funds or Securities of Clients by Investment Advisers (2003). TPGS's Forms ADV lulled investors to believe, for example, that their assets were safely custodied someplace other than at Johnson's offices or house.

Johnson, on behalf of TPGS, signed and caused the ADVs to be filed, and as the CCO, he had explicit responsibility for the firm's disclosures. *See, e.g., In re Total Wealth Management, Inc., et al.*, 2015 WL 4881991, at *38 (Initial Decision, Aug. 17, 2015) (finding that owner and CEO's "control and authority over [IA] are more than sufficient to hold him as a primary violator of Section 207"); *In re Larry C. Grossman et al.*, 2014 WL 7330327, at *34 (Initial Decision, Dec. 23, 2014) (founder liable for materially false Form ADV violations including that "it did not sell products or provide services other than investment advice to its advisory clients [and] did not have custody of its advisory clients' cash or securities").

Given the undisputed facts pertaining to Johnson's violations of Section 207, the Division's motion for summary disposition should be granted as to Johnson's liability for these claims.

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IV. CONCLUSION

For the foregoing reasons, the Division respectfully requests that its motion for summary disposition be granted.

DATED: October 16, 2015

Respectfully submitted,

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By its Attorneys:

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DIVISION OF ENFORCEMENT

In the Matter of Reid S. Johnson
Administrative Proceeding File No. [3-16730]

Service List

Pursuant to Commission Rule of Practice 151 (17 C.F.R. § 201.151), I certify that the attached:

DIVISION OF ENFORCEMENT'S MOTION FOR SUMMARY DISPOSITION AGAINST RESPONDENT REID S. JOHNSON AND MEMORANDUM OF LAW IN SUPPORT

was served on October 16, 2015 upon the following parties as follows:

By Facsimile and Overnight Mail
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