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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-16801

In the Matter of

BENNETT GROUP FINANCIAL SERVICES, LLC

and

DAWN J. BENNETT,

Respondents.

DIVISION OF ENFORCEMENT'S OPENING POST-HEARING BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES Page(s)

TABLE OF AUTHORITIES (Continued)

Page(s)

TABLE OF AUTHORITIES (Continued)

STATUTES Page(s)

TABLE OF AUTHORITIES (Continued)

I. INTRODUCTION

Dawn Bennett is wholly unfit for any role in the securities industry. In a calculated effort to raise their profile in the industry, she and her firm repeatedly mischaracterized their size and success, hoping to lull existing clients and to attract new ones. Indeed, her own false advertisements attest to the trick being played on investors: that because of Bennett Group's "over $1.5 Billion in assets under management" it is the "gold standard" and "has size, strength and stability."[1]

But Bennett and her firm never had over $1.5 billion in assets under management (or "AUM")—let alone the over $2 billion they were claiming by 2011. Nor did her clients experience the gains she touted on her radio show. To her, important metrics like AUM and client performance were nothing more than marketing ploys, to be made up as she went along.

When called upon by their regulators, they further dissembled. The District of Columbia Department of Insurance, Securities and Banking inquired about their claims in the June 2009 Barron's publication, and, in response, Bennett wrote that "our client's [sic] brokerage accounts had assets in excess of $1 Billion (and still do)."[2]

But that story couldn't be used on the Commission staff, which already had the brokerage records. So, she tried something different: claiming that she and her firm did short-term cash management for Dimension Data, Omega World Travel, and the Mount Vernon Ladies' Association to the tune of almost $2 billion. Except that Dimension Data never had that much cash, and whatever investment decisions there were were made over 8,000 miles away by South Africans who had never heard of her. Nor did Omega have $150 million. And Mount Vernon had fired

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[1] Exs. 102, 168. Throughout this brief, references to hearing exhibits will follow the format "Ex. ___."

[2] Ex. 86.

Bennett. In other words—and as it is alleged in the OIP—Bennett and Bennett Group's claims were "wholly contrived."[3]

But Bennett certainly did not make getting to that conclusion easy. Instead, the staff had to sit through days of testimony with Bennett and her Bennett Group co-owners, interview identified "witnesses" who ended up not substantiating the respondents' story, and wade through false documents, which, among other things, were proffered to substantiate "weekly calls" with a Mount Vernon executive that supposedly occurred months after she was terminated.

This is conduct that beggars description—particularly given the position of trust Bennett has as a registered representative and investment adviser. Having repeatedly breached that trust, she has disqualified herself from any future participation in the securities industry, and she and her firm should be subject to cease-and-desist orders. And a significant monetary award should be entered to deprive them of their ill-gotten gains, to appropriately punish them, and to deter others from similar misconduct.

II. FACTUAL BACKGROUND

A. During the Relevant Period, Bennett and Her Firm Had No More Than Approximately $338 Million in Brokerage Assets, $67 Million in Pension Consulting Assets, and $1 Million in Advisory Assets.

Respondent Dawn J. Bennett ("Bennett") is, and at all relevant times was, the founder, Chief Executive Officer, and majority owner of Bennett Group Financial Services, LLC ("Bennett Group"). (E.g., OIP, 2015 WL 5243888, at *2 (¶ 7); Answer ¶ 7; Ex. 284; Bennett Testimony at

[3] Bennett Grp. Fin. Servs., LLC & Dawn J. Bennett, No. 4191, 2015 WL 5243888, at *4 (Sept. 9, 2015) (OIP ¶ 23) [hereinafter, "OIP"].

176–77.[4]) She holds, and at all relevant times held, the Series 7, 63, and 65 securities licenses. (OIP, 2015 WL 5243888, at *2 (¶ 7); Answer ¶ 7; Ex. 274; Bennett Testimony at 183.) Bennett Group is a financial services firm and was, until it withdrew its registration in October 2013, an investment adviser registered with the Commission. (OIP, 2015 WL 5243888, at *2 (¶ 6); Answer ¶ 6.)

According to records from the Financial Industry Regulatory Authority ("FINRA"), Bennett has previously been found liable in arbitrations involving allegations of fraud, misrepresentations and omissions, churning, and unsuitability, among other things. (Ex. 274.)

Bennett Group largely operated as an outpost for one of two broker-dealers: Royal Alliance Associates, Inc. ("Royal Alliance") (from February 2006 to October 2009) and Western International Securities, Inc. ("Western") (since October 2009). (E.g., Ex. 274.) Bennett Group employees, including Bennett, were registered representatives of the brokerage firms, and the overwhelming majority of the firm's revenues came by way of brokerage commissions, which were paid by the brokerage firms to Bennett individually, who then transferred such monies to Bennett Group. (E.g., OIP, 2015 WL 5243888, at *2 (¶ 6); Answer ¶ 6; Ex. 306; Mascho Testimony at 18–20.)

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[4] By virtue of the respondents' default, the facts set forth in the OIP were found true. See Bennett Grp. Fin. Servs., LLC & Dawn J. Bennett, No. 3453, slip op. at 1 n.1 (ALJ Dec. 31, 2015) [hereinafter "Order Following Prehearing Conference"]. For the convenience of the reader, investigative testimony is cited as "___ Testimony" and page references are to those of the testimony. Prior investigative testimonies of Timothy Augustin ("Augustin"), Bennett, Daniel Celoni ("Celoni"), Wesley John Johnston ("Johnston"), John J. Koorey ("Koorey"), and Bradley Mascho ("Mascho") were admitted into the record and are Exhibits 360 to 365, respectively.

During the relevant period, the respondents had no more than approximately $407 million in assets that they, in any sense, could be said to be managing—of which approximately $338 million was nondiscretionary brokerage assets, $67 million of which was pension consulting assets, and $1.1 million of which was advisory assets. (OIP, 2015 WL 5243888, at *2, *4 (¶¶ 6, 8, 21).) These numbers represent the highest possible levels—throughout the relevant period the figures were often much lower (for instance, in January 2010 total brokerage assets were less than $250 million). (E.g., Ex. 354.) These figures are not only alleged in the OIP, but they are confirmed through Bennett Group's own documents (and those produced by the brokerage firms) and the analyses performed by the Division's summary witness, Brian Higgins, C.P.A., and the Division's expert witness, Professor Russell R. Wermers. (E.g., Exs. 165, 354.[5])

B. Bennett and Her Firm Repeatedly and Falsely Tout Themselves As Big Players in the Financial Services Industry.

Despite handling only about $400 million in customer accounts, Bennett and her firm repeatedly claimed, from 2009 through 2011, that they were managing assets totaling $1.1 billion to over $2 billion. (E.g., OIP, 2015 WL 5243888, at *2 (¶ 8).) Bennett and her firm made these claims in communications and marketing materials directed to clients and prospective clients. They were made through the Barron's "top advisor" listings. And Bennett frequently touted her AUM—as well as her clients' purportedly outsized rates of return—on her "Myth Busting" radio program.

The sheer volume of the evidence—including the number of times Bennett made the false claims and the prominence she gave to AUM and client performance—demonstrates that the

[5] The Division offered, and the Court admitted into evidence, the underlying company and brokerage records, which support Mr. Higgins's testimony and the summary exhibit he prepared, as well as the expert testimony of Professor Wermers reflected in his report. (E.g., Exs. 78–84, 149–61, 163–64, 323–40.)

misstatements were no mere mistake. Rather, they were a deliberate—and fraudulent—attempt to boost a fledgling advisory practice into the highest ranks of the industry.

1. Bennett and Her Firm Make False Submissions to Barron's.

Between 2009 and 2011, Bennett and her firm made three submissions to Barron's, in which they claimed to have between $1.1 billion and $1.8 billion in AUM. (E.g., OIP, 2015 WL 5243888, at *3 (¶ 11); Answer ¶ 11.)

(a) Bennett and Her Firm Land the Number 5 Ranking in Barron's 2009 List of Top Women Financial Advisors.

In 2008, Bennett Group registered with the Commission as an investment adviser. (E.g., OIP, 2015 WL 5243888, at *2 (¶ 6); Answer ¶ 6.) Shortly thereafter, Bennett and her firm made their first submission to the Barron's magazine, for inclusion in its "Top 100 Women Financial Advisors" issue of June 9, 2009. (E.g., Ex. 29; OIP, 2015 WL 5243888, at *3 (¶¶ 11–13); Answer ¶ 11; Bennett Testimony at 66, 193–94.) According to the information provided by the respondents, and relied upon and republished by Barron's, Bennett and her firm had, at the time, $1.1 billion in AUM. (Ex. 29; OIP, 2015 WL 5243888, at *3 (¶ 12).[6])

As a result, Bennett and her firm landed the Number 5 ranking on the list, which situated her among (and above) the top advisors from Smith Barney, Morgan Stanley, Merrill Lynch, UBS Financial Services, Credit Suisse Securities, and Wells Fargo. (Exs. 29, 89, 90; OIP, 2015 WL 5243888, at *3 (¶ 12).) In an accompanying article, Barron's explained that the annual ranking

[6] See also Bennett Testimony at 193–94 (Bennett confirming that the Barron's figures "indicate[] the amount of assets under management that Bennett Group Financial Services had at any particular time").

reflected "a reshuffling of the top five," with "two new members" taking spots, one of whom was "Bennett at No. 5." (Ex. 89.[7])

With the Number 5 ranking came an accompanying profile, in which Bennett and Bennett Group's returns are touted as "significantly higher than the market." (Ex. 89.) It goes on to note that "Bennett insists [her] approach is lower-risk than that of many of her peers." (Ex. 89.) Ironically, Bennett is quoted as saying, "I am competitive, but I'm not going to chase the greed." (Ex. 89.)

(b) By Late 2009, Bennett and Her Firm Were Touting AUM of $1.3 Billion.

Later in 2009, Bennett and her firm made another submission to Barron's, in which they represented having managed assets of $1.3 billion. (OIP, 2015 WL 5243888, at *3 (¶ 12); Bennett Testimony at 191.) This landed her as Number 26 on Barron's August 9, 2009, list of the "Top 100 Independent Financial Advisors." Which earned her a congratulatory e-mail from her public relations advisor, Bill Bongiorno: "26! Congrats!" (Ex. 32.[8]) But Bennett wasn't satisfied: "26? Wish I were in top 10 . . . . Somehow with number 26 it does not mean much." (Ex. 32.) But Mr. Bongiorno reassured her: I had a client no. 23 last year, got calls from people looking to invest

[7] The Barron's article explained that "[t]he ranking . . . reflects the volume of assets overseen by the advisors and their teams, revenue generated for the firms and the quality of the advisors' practices." (Ex. 89; see also Ex. 165, at p. 11 & n.32 (Wermers expert report) ("Financial publications such as Barron's . . . report information on the amount of assets managed when discussing, and, in some cases, ranking investment managers").) Although generally in this brief references to pagination are to the pages of the exhibit, with respect to the expert reports (and for the convenience of the reader) they are to the pages of the underlying reports.

[8] See also Bennett Testimony at 78 ("This guy [Bongiorno] is my PR guy."); Ex. 36 (press release citing $1.3 billion AUM number).

millions. Anywhere on the list is good." (Ex. 32.) Eight minutes later, Bennett responded, "It would be nice to get a few of those calls!!!!!!!!!!!!!!!!!!!!!" (Ex. 32.)

Bennett's communications make clear that she was following her "competitive" instinct to "chase" something bigger.

(c) Bennett and Bennett Group Make Another Submission, for the 2011 Ranking, Claiming $1.8 Billion in Assets.

In the Barron's "2011 Top Advisor Rankings: Washington, D.C.," Bennett and Bennett Group ranked second, with a claimed AUM of $1.8 billion. (OIP, 2015 WL 5243888, at *3 (¶ 12); Exs. 31, 33; Bennett Testimony at 66–70.) As with the other listings, this one was based on information supplied by the respondents (e.g., Ex. 33) and put them among, and above, the top names in the industry, including Morgan Stanley, Wells Fargo, Merrill Lynch, UBS Financial Services, and Deutsch Bank (Ex. 31).

(d) Even Though Bennett Was Questioned by Her Own Staff on the Barron's Claims, She Presses on.

Others at the firm (including firm co-owners Bradley Mascho and Timothy Augustin) had little insight into the basis for the Barron's claims, particularly as it related to the purported short-term cash management for Dimension Data, Omega, and Mount Vernon. Although Mascho and Augustin were able to independently verify, through company records, the firm's approximately $300 million in brokerage assets, they relied exclusively on Bennett's word for the much larger pool of short-term assets. (E.g., Mascho Testimony at 208 (testifying that only Bennett had direct

knowledge of the purported short-term investments that were held away); Augustin Testimony at 179 (testifying that he was unaware of assets that were held away).[9])

Bennett did not even go through the motions of checking in with Augustin, who was Bennett Group's Chief Compliance Officer (Augustin Testimony at 40–41; Ex. 180, at p. 12), before making the claims in Barron's.[10] Rather, Augustin only learned about the claims after the fact. For instance, at his investigative testimony, he testified that that was the first time he had seen the "2011 Top Advisors Rankings" (i.e., at the testimony). (Augustin Testimony at 151.) When asked whether the claimed $1.8 billion in AUM was correct, he answered, "I have no idea." (Augustin Testimony at 150.) Nonetheless, he offered that the $1.8 billion figure was "not representative of the assets that were certainly on the advisor." (Augustin Testimony at 151.) More bluntly, he called the figure "a shocker." (Augustin Testimony at 162.)

Perhaps even more troubling, Augustin's testimony was not the first time he expressed surprise at a Barron's ranking. He testified that when he first saw, in 2009, the firm's Number 26 ranking among independent financial advisors he was "just so surprised that we were 26th." (Augustin Testimony at 165.)

In addition, during his testimony, Augustin recounted a conversation he had with Bennett and Mascho in 2009, after the first Barron's piece was published, in which he questioned Bennett about the claim of $1.1 billion in AUM and expressed that "it was a bit of a surprise." (Augustin Testimony at 213.) Bennett responded that the claim was justified based on "cash on the outside

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[9] See also Augustin Testimony at 155 (testifying that Bennett's purported short-term cash management was the only possible source of assets to substantiate the claims in Barron's).

[10] Augustin testified that he never delegated any supervisory responsibilities. (Augustin Testimony at 110.)

. . . that she advises on." (Augustin Testimony at 213–14.) Nonetheless, when asked whether the $1.1 billion Barron's claim seemed wrong to him, Augustin answered, "I had no—no basis to judge whether it was right or wrong." (Augustin Testimony at 214.[11])

Thus, despite being questioned by her Chief Compliance Officer about the AUM claims, which he admittedly had "no basis to judge," Bennett continued to make submissions to Barron's (including the one in 2011 in which the AUM claim was upped to $1.8 billion) and continued to press her AUM claims through a variety of means, including her weekly radio shows.

2. Bennett Made Repeated Misrepresentations About Her and Her Firm During Her Weekly "Myth Busting" Radio Program.

In addition to the claims in Barron's, Bennett made similar misrepresentations on a radio program she hosted, "Financial Myth Busting with Dawn Bennett." Among other things, she touted AUM of between $1.5 and $2 billion and made reference to her Barron's ranking. Again, Augustin did not even recall that Bennett made such claims on the radio show, becoming aware of them only after "seeing [an AUM claim] in a transcript [of the radio show] that was provided to the SEC [during the examination]." (Augustin Testimony at 157.)

(a) Bennett Frequently Touted Her Purported AUM and Her Correspondingly High Barron's Ranking.

In 2010, Bennett began hosting the weekly radio program, during which she often touted her and her firm's services. Among other things, the firm was identified by name and its toll-free

[11] The evidence is also uncontroverted that Bennett exercised full control over the firm. (E.g., Augustin Testimony at 55–57 (testifying that Bennett exercised control over the firm and noting that "her name is on the door.").)

telephone number and Web site address were provided. (E.g., Ex. 74, at pp. 50–51.[12]) The program was generally an hour in length, and Bennett Group paid between $1,500 and $3,850 weekly for the time. (Augustin Testimony at 65.) A frequent topic was her firm's size and strength, and Bennett made ample references to her AUM and her ranking in Barron's.[13] These misrepresentations include:

- "I built the company with $1.5 billion and for the last fifteen years, my clients have seen consistent returns in the green." (Ex. 74, at p. 2 (5/9/2010 Tr.).)

- Bennett's co-host noting that Bennett was "recognized by Barron's as one of the top five financial advisors in the June 2009 issue." (Ex. 74, at p. 3 (5/9/2010 Tr.).)

- In response to her co-host's question as to whether she manages "over a billion dollars in assets," Bennett responds, "1.5 billion and growing." (Ex. 74, at p. 14 (5/9/2010 Tr.).)

- Bennett stating that her firm has "1.5 billion . . . right now with money under management—and growing." (Ex. 73, at p. 37 (5/16/2010 Tr.).)

- "I am the CEO of Bennett Group Financial Services in Washington D.C. We have 1.5 billion of assets under management . . . ." (Ex. 71, at p. 2 (6/13/2010 Tr.).)

- Bennett's co-host stating, "Since one of the main purposes of the show is to allow the real investor a chance to tap into your expertise as you handle a billion and a half and upwards of assets at Bennett Group Financial Services, would you explain, please, what an SEP-IRA is?" (Ex. 69, at p. 35 (6/27/2010 Tr.).)

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[12] The Web site, in turn, made prominent use of the 2009 Top 5 Barron's ranking (Ex. 254.)

[13] Bennett and Bennett Group also fraudulently claimed that they managed "$1.5 billion of client assets" on the "Facebook" information page they maintained for the "Myth Busting" radio show. (OIP, 2015 WL 5243888, at *4 (¶ 20).)

- Bennett speaking about "the 1.5 billion that we have under management." (Ex. 66, at p. 3 (7/18/2010 Tr.).)

- Bennett speaking about the "1.6 billion under management." (Ex. 65, at p. 2 (8/1/2010 Tr.).)

- "I'm at the helm of 1.6 billion in assets of clients' financial dreams." (Ex. 64, at pp. 2–3 (8/8/2010 Tr.).)

- Bennett's co-host stating, "Dawn is the expert . . . . She manages 1.6 billion in investments. She's ranked in the top one percent worldwide in returns on investments so there's your bonafides for . . . Bennett Group Financial Services." (Ex. 63, at pp. 18–19 (8/22/2010 Tr.).)

- "Just to remind everybody, I actually have a financial advisory firm. I'm the real thing. We manage about 1.6 billion . . . ." (Ex. 61, at p. 2 (9/5/2010 Tr.).)

- "You know what, we have 1.6 billion under management . . . ." (Ex. 60, at pp. 48–49 (9/12/2010 Tr.).)

- Bennett's co-host stating, "She manages 1.6 billion in assets." (Ex. 59, at p. 34 (9/19/2010 Tr.).)

- Bennett and her co-host discussing her purported $1.6 billion in assets managed. (Ex. 57, at pp. 41–42 (10/3/2010 Tr.).)

- "We have 1.6 billion under management." (Ex. 56, at p. 50 (10/10/2010 Tr.).)

- Bennett touting her "1.8 billion" in assets "under management." (Ex. 54, at pp. 24, 35, 46 (10/31/2010 Tr.).)

- "I mean, I don't think we would have two billion in assets if I wasn't [disciplined] and also the people that surround me." (Ex. 48, at p. 14 (12/12/2010 Tr.).)

- "[W]e have 1.6 billion under management . . . ." (Ex. 47, at p. 48 (12/26/2010 Tr.).)

- ". . . I do manage two billion in assets." (Ex. 46, at p. 21 (1/16/2011 Tr.).)

- ". . . I rank in Barron's a lot." (Ex. 46, at p. 31 (1/16/2011 Tr.).)

(b) Bennett Also Fraudulently Touted Her Clients' Performance, Passing Off Model Results As Actual Results.

In addition to the fraudulent AUM claims, Bennett also inflated her clients' performance during the radio show, by passing off the results of a Bennett Group "model portfolio" as those of actual clients. (OIP, 2015 WL 5243888, at *7–8 (¶¶ 42–45).) Thus, for instance, in August 2010, Bennett said that her clients had gains of 17.77%, "versus the negative 5.61 for the S&P 500." (Ex. 65, at p. 6 (8/1/2010 Tr.).[14]) In September of the same year, she compared her clients' "10.2 percent" gain to the S&P 500 that was "only up about 50 basis points." (Ex. 59, at p. 51 (9/19/2010 Tr.).) She also rattled off a set of historic "returns": "But I've got to tell you, last year we were up forty-two percent. Our three-year number was up seventeen percent. Our ten-year number was up twelve." (Ex. 59, at p. 32 (9/19/2010 Tr.).)

But none of these figures represented actual client results. They were merely for a "model portfolio," and the "model" results differed materially from actual results—none of which was disclosed to the show's listeners.

Bennett often coupled misstatements about performance with those about AUM: And we are up to, I think . . . year-to-date thirty percent, and we're managing about 1.3—1.8 billion, actually in the world. So, our returns put us in the top one percent." (Ex. 54, at p. 24 (10/31/2010 Tr.).[15]) Bennett went on to immediately note that these facts made her "relatively qualified to chat

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[14] See also Ex. 65, at p. 14 (8/1/2010 Tr.) (Bennett noting that her clients "exceed[ed] the S&P 500 index for the three-year number by almost twenty percent").

[15] During testimony, Bennett admitted that these references were to the "model portfolio." (Bennett Testimony at 283–84.)

with you," before taking a caller to the show, who wanted to discuss whether to buy precious metals. (Ex. 54, at pp. 24–28 (10/31/2010 Tr.).) And, on her January 16, 2011, show, she claimed "two billion in assets" and then went on to discuss annual performance as high as 42%. (Ex. 46, at pp. 21, 29 (1/16/2011 Tr.); see also Ex. 45, at p. 49 (2/13/2011 Tr.) (claiming annual client performance as high as 42%).)

Before announcing their default, the respondents answered the OIP and admitted that Bennett made performance claims on the radio and "did not discuss the methodology behind returns discussed." (Answer ¶¶ 42–44.[16]) This is a critical admission because, in late 2008, Bennett Group was advised by its accounting firm that model returns had to be specifically disclosed as such. (OIP, 2015 WL 5243888, at *8 (¶ 44); Ex. 269.) In fact, the accounting firm provided Bennett Group with a highlighted printout of the Division of Investment Management's no-action letter in Clover Capital Management, Inc. (Ex. 269.[17])

Thus, as with Chief Compliance Officer Augustin, even her accounting firm was no check on her conduct.

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[16] During the investigation, the respondents also provided documentation showing that actual client results differed from those of the model (Ex. 163), which Professor Wermers discusses in his report, including his opinion that the misstatements were material (Ex. 165, at pp. 22–25).

[17] This no-action letter addresses the advertisement of actual or model results and discusses conduct that would constitute a fraudulent act under the Advisers Act of 1940 and the rules thereunder. See generally Clover Capital Mgmt. Inc., SEC No-Action Letter, Fed. Sec. L. Rep. (CCH) ¶ 78,378 (Oct. 28, 1986). In Exhibit 269, among the highlighted admonitions are that the following practices violate Rule 206(4)–(1)(a)(5), 17 C.F.R. § 275. 206(4)–(1)(a)(5): an advertisement that "[f]ails to disclose prominently the limitations inherent in model results . . . particularly the fact that such results do not represent actual trading" or that "[f]ails to disclose, if applicable, that the adviser's clients had investment returns materially different from the results portrayed in the model." (Ex. 269, at p. 10.)

3. The Respondents Further Disseminate Their AUM Claims and Their Barron's Ranking.

Despite Augustin being "surprised" about the AUM claims and Barron's ranking as early as 2009, the respondents continued to push these claims in a variety of communications with current or prospective clients (in addition to the aforementioned statements on the radio show). Thus, the record includes dozens of e-mail messages from June 2010 noting that: "Last year, ***Barron's*** ranked Dawn Bennett as #4 in their 'Top 100 Women Financial Advisors.' Our firm has size, strength and stability with assets under management of $1.5 billion." (Exs. 91–92, 94–148 (emphasis in original); see also Ex. 250.[18]) Reprints of the Barron's article were often attached to the e-mails. (E.g., Exs. 94, 103–07, 109–23, 125–26, 129–30, 133–40, 142–45, 147–48, 250, 321, 355.) By September of 2010, over $1.6 billion in AUM was being touted by e-mail. (Ex. 34.) And, in November of that year, Bennett sent an e-mail message to another client noting her "$2 billion in holdings." (Ex. 253.)

In addition, in mid-2010, Bennett Group ordered 1,125 copies of the "Top 100 Women Financial Advisors" article and sent at least 125 copies to existing or prospective clients. (OIP, 2015 WL 5243888, at *4 (¶ 16); Ex. 162; Bennett Testimony at 78–80.[19]) Further, Bennett Group's marketing brochure, distributed to clients or prospective clients, cited the firm's "over $1.5 Billion in assets under management." (Ex. 168, at p. 5; Bennett Testimony at 80–83.) The brochure immediately went on say that Bennett Group was the "'gold standard' for financial advisors in America and the world." (Ex. 168, at p. 5.) It also notes that Bennett "[h]osts a weekly

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[18] Bennett and Bennett Group were actually Number 5, not Number 4.

[19] Although Bennett did not recall precisely whether the Barron's rankings were sent to clients or prospective clients, she testified that that was "probably" the case. (Bennett Testimony at 78.)

one hour radio show on WMAL-630-AM" and that she is "[r]anked in the top 5 in the Barron's Top 100 Women Financial Advisors–2009" and "[r]anked in the top quartile in the Barron's Top 100 Independent Financial Advisors–2009." (Ex. 168, at pp. 7–8.[20])

4. At the Hearing in This Matter, a Sampling of Bennett's Former Clients Testified to Her Use of AUM and the Barron's Rankings.

At the hearing, five of Bennett's former customers testified. Their stories were similar: Bennett and the firm enticed them with stories of outsized AUM or a high Barron's ranking, and they entrusted Bennett with significant sums of money.

(a) Phillips Peter

Among the witnesses who testified was Phillips Peter, an eighty-six year-old former General Electric officer and former Bennett Group client from Potomac, Maryland. (1/27/2016 Tr. at 104–05.) Mr. Peter met Bennett at a reception at Tudor Place, in Washington, D.C., in the spring of 2009. (1/27/2016 Tr. at 106–07.) She told him that she ran a financial advisory firm and "was in the top 1 percent of financial advisors and . . . had a business that was over a billion dollars." (1/27/2016 Tr. at 108.) He then moved about half of his portfolio, amounting to millions of dollars, to Bennett Group, and thereafter engaged in securities trading through Bennett and the firm. (1/27/2016 Tr. at 110–12; Exs. 343–52.) Then, in June 2009, Bennett directed him to the "Top 100 Women Financial Advisors" article, which caused him to transfer the rest of his assets to the respondents, through which he conducted further securities trading. (1/27/2016 Tr. at 109–11; Exs. 29, 319, 343–52.) In addition, Mr. Peter heard Bennett's radio show and remembers "Ms. Bennett

[20] Number 26 is actually in the second quartile.

talking about her investment strategies and, as [he] recall[ed], further mentioning of the assets that she said her firm was handling." (1/27/2016 Tr. at 112.)

Mr. Peter also testified to Exhibit 319, an e-mail message in which Bennett attempts to prompt him to show Bruce Pavoni the "Top 100 Women Financial Advisors" article. (1/27/2016 Tr. at 109.) Mr. Pavoni was the General Electric executive "who put together the list of financial advisors that GE officers who were active or who had retired could avail themselves of." (1/27/2016 Tr. at 109.) According to Mr. Peter, Bennett enlisted his help in getting Mr. Pavoni's attention so that she could be added to that list. (1/27/2016 Tr. at 111). Mr. Peter went on to testify:

> So based on Dawn's representation and what was in Barron's, I did send this to Mr. Pavoni. And if I had known that the rating was not based on financially accurate data, I would never have submitted it to Mr. Pavoni. And in fact, had I known that the Barron's rating was not accurate, I would not have transferred half my assets and later all of them, investment assets, to Dawn Bennett.

(1/27/2016 Tr. at 109.) Mr. Peter added that that he was "[h]eavily" influenced by the Barron's ranking, because he had "looked at Barron's as one of the pillars of reporting on the financial industry." (1/27/2016 Tr. at 115.)

As reflected in Exhibit 352, Mr. Peter lost millions at Bennett Group, showing a decline from $25.9 million to $8.3 million in one year's time. As his portfolio dwindled, Mr. Peter insisted that it should not go below $10 million. (1/27/2016 Tr. at 113.) In response, Bennett made a personal guarantee that she would restore his account to "at least 10 million" if he stayed with her.

(1/27/2016 Tr. at 113–14.[21]) Mr. Peter refused the offer and took with him what was left of his life's savings. (1/27/2016 Tr. at 114.)

(b) Eric Zlatin

Eric Zlatin, a former Bennett Group customer from Fairfield, Connecticut, also testified. Prior to seeing the 2009 "Top 100 Women Financial Advisors" article in Barron's he had never heard of Bennett or her firm. (1/27/2016 Tr. at 118; Ex. 29.) As a result of seeing the article, he became a customer of Bennett's, transferred approximately $500,000 to her, and conducted securities transactions through the respondents. (1/27/2016 Tr. at 118, 121.) Mr. Zlatin testified that, based on his experience, an AUM of "a billion dollars or more" means "you've kind of made it, you've arrived." (1/27/2016 Tr. at 119.) In testifying as to why he selected Bennett as his financial advisor, Mr. Zlatin pointed to the 2009 article and the fact that "Ms. Bennett was so prominently featured" with "a large photograph." (1/27/2016 Tr. at 120.)

(c) James Hammond

James Hammond was born in 1940, is retired from Deloitte & Touche, and is a former Bennett Group customer, having invested about $200,000 with her. (1/27/2016 Tr. at 175–76.) He testified that he heard Bennett or others from her firm using "the number $2 billion on occasion" in reference to the firm's AUM. (1/27/2016 Tr. at 176.) After hearing these representations, he kept his money at the firm and continued to use Bennett and Bennett Group to make securities transactions. (1/27/2016 Tr. at 177.) Mr. Hammond testified that, had he known the AUM was far

[21] But see FINRA Rule 2150(b) ("No member or person associated with a member shall guarantee a customer against loss in connection with any securities transaction or in any securities account of such customer.").

less than $2 billion, he probably would have questioned Bennett about it, owing to his training as an auditor. (1/27/2016 Tr. at 176–77.)

(d) John Crowley

John Crowley is a former Bennett customer who invested over $1 million with the respondents. (1/27/2016 Tr. at 89.) Mr. Crowley testified that Bennett led him to believe that "she had more than a billion or billions under management" and that he was a "small player in it." (1/27/2016 Tr. at 90.[22]) As with Messrs. Peter and Pavoni, Bennett e-mailed Mr. Crowley (and his business partner Mark Fuller) a copy of the Barron's article, in the hopes that it would generate additional business. (1/27/2016 Tr. at 91–92; Ex. 355.) After receiving the Barron's article from the respondents and hearing about their AUM claims, Mr. Crowley continued to purchase and sell securities through them. (1/27/2016 Tr. at 92, 95.) He further testified that Bennett Group's size was important to him because "it meant that . . . our investments were being handled in the same way many other smart investors were going to be handled, that other larger parties had made decisions to go with Bennett and that that afforded us the belief that they're a very credible organization." (1/27/2016 Tr. at 94–95.[23])

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[22] In this regard, each of the Barron's publications shows a typical account size for Bennett and Bennett Group of either $2 million or $3 million. (Exs. 29, 30, and 31.) This theme was repeated on the radio show: "You know what? Everyone who comes to me at this stage is certainly high net worth. We have a very high seven figure or seven digit requirement to walk through our door." (Ex. 72, at p. 4 (5/23/2010 Tr.).) The respondents' claims about their typical or minimum account size were false. (OIP, 2015 WL 5243888, at *3 (¶ 13).) But they did add to the firm's allure, leading small investors like Mr. Crowley to think they were getting in on something big.

[23] In this regard, Professor Wermers discusses the salience of AUM (as well as performance) data, including the perception that firms with larger asset bases are less risky. (Ex. 165, at pp. 10–15.)

Mr. Crowley suffered losses on account of the respondents, which is the subject of a successful FINRA arbitration filed by him and his wife, in which they were awarded damages, interest, and attorneys' fees. (1/27/2016 Tr. at 92–93; Ex. 272.)

(e) Steven Santagati

Steven Santagati initially invested approximately $400,000 with the respondents, transferring approximately $700,000 more after he sold property he owned in Vermont. (1/27/2016 Tr. at 68.) In addition, Mr. Santagati, a television personality and author, would transfer to Bennett any monies he received from his publisher, Random House. (1/27/2016 Tr. at 68.) Bennett sent the Barron's publications to him, and, thereafter, he continued to transfer money to her and continued to engage in securities transactions through her. (1/27/2016 Tr. at 69–70; Exs. 29–31.) Further, Bennett told Mr. Santagati that he "could trust her, that she was one of the best in the business, if not the best and she managed billions of dollars, over a billion dollars in people's money and that . . . [he] was a small fry in her portfolio." (1/27/2016 Tr. at 70; see also id. at 71 (stating that she said she would do him a "favor," that "she manages billions of dollars," and that "she's the expert").[24])

Mr. Santagati, who admittedly was not sophisticated in investment matters, "reposed 100 percent trust" in Bennett, in part because Bennett told him "that there were safeguards in place so I didn't have to worry about her losing my money or doing something that was illicit or illegal." (1/27/2016 Tr. at 71.) Mr. Santagati suffered "over a million dollars in losses" and is currently engaged in a FINRA arbitration with Bennett. (1/27/2016 Tr. at 68–69.)

[24] See supra note 22. Also like Messrs. Peter and Crowley, Bennett attempted to get Mr. Santagati to use his connections to solicit additional clients. (1/27/2016 Tr. at 71–72.)

After ceasing being a Bennett customer, Mr. Santagati contacted John Koorey, then the former Operations Manager at Bennett Group. (1/27/2016 Tr. at 73–74; Koorey Testimony at 44.[25]) Mr. Santagati expressed confusion about his experience with Bennett, given that "[s]he's managing billions of dollars." (1/27/2016 Tr. at 73.) Mr. Koorey "laughed" at Mr. Santagati, telling him: "Dawn does not manage billions of dollars. She says that, but she doesn't. She maybe, maybe manages high 300 million or $400 million in assets, but nothing close to what she claimed." (1/27/2016 Tr. at 73–74.)

C. Bennett and Bennett Group Obstructed the Staff's Examination and Investigation.

What Mr. Koorey so succinctly disclosed to Mr. Santagati (albeit after the fact) was not nearly as easily extracted from Bennett and her firm during the examination and subsequent investigation. As alleged in the OIP, the respondents engaged in a number of deliberate acts to obstruct and to impede the staff's examination and investigation and to otherwise conceal their fraud. (OIP, 2015 WL 5243888, at *5–7 (¶¶ 24–41).)

1. During the Staff's Examination, Bennett Attempts to "Substantiate" Her AUM Claims by Pointing to Short-Term Cash Management She Was Purportedly Doing for Three Corporate Clients.

In early 2011, an examination was conducted of Bennett Group, by examination staff from the Commission's Philadelphia Regional Office, including examination manager Robert Thomas and examiner Darren Goins. (1/27/2016 Tr. at 32.) Among the subjects of the examination were the claims made in the 2009 Barron's publications, the "Top 100 Women Financial Advisors" and

[25] During the investigation, Mr. Koorey was rehired as Operations Manager. (Koorey Testimony at 44.)

the "Top 100 Independent Financial Advisors," as well as similar claims made on the "Myth Busting" radio show and the firm's Web site. (1/27/2016 Tr. at 32–35.)

As a result of the examination, the Commission staff uncovered a discrepancy between the verifiable brokerage assets and claimed pension assets (which together totaled about $400 million) and what was being touted publicly (for instance, between $1.1 billion and $1.3 billion in Barron's). (1/27/2016 Tr. at 41–42.) According to Mr. Thomas, when Bennett was confronted about this, she told the examination staff that the difference was made up when one counted "short-term assets" for which Bennett Group "provided informal investment advice." (1/27/2016 Tr. at 42.) Bennett and the firm even provided two letters (Exs. 35, 151) in which they laid out the (demonstrably false) story (1/27/2016 Tr. at 42–45).[26]

For instance, as explained in Exhibit 151, which was provided by Bennett, although on December 31, 2010, brokerage and pension assets only totaled approximately $406 million, in order to arrive at the full amount of assets one needed to count advice provided to three corporate clients:

- Dimension Data: $706,000,000
- Omega World Travel: $150,000,000
- Mount Vernon Ladies' Association: $100,000,000

(Ex. 151.) As it happens, the sum of these figures is just north of $1.3 billion, the figure provided to Barron's for its "Top 100 Independent Financial Advisors" ranking. At all times, Bennett was the

[26] The staff requested contracts, correspondence, investment recommendations, and other source documentation to substantiate the claims regarding short-term cash management, but the firm was unable to provide these, with Bennett claiming that all dealings were verbal. (1/27/2016 Tr. at 44–45.)

sole source of information regarding the purported short-term cash management for Dimension Data, Omega, and Mount Vernon. (1/27/2016 Tr. at 45.)

Just after the examination concluded, the staff discovered the 2011 Barron's ranking, in which $1.8 billion of AUM was claimed. Although the submission for this ranking had been completed before the examination began (1/27/2016 Tr. at 36; Ex. 33), Bennett and the firm failed to provide it to the examination staff, despite a request for questionnaires and related documents (1/27/2016 Tr. at 35–36). When confronted with the fact that neither the questionnaire (Ex. 33) nor the resulting ranking (Ex. 31) had been provided to the staff, Bennett told the staff that "it wasn't considered advertisement" because it "wasn't distributed to clients yet" (1/27/2016 Tr. at 35–36).

2. During the Subsequent Investigation, Bennett Upped the Amount of Assets Being Managed for Dimension Data to $1.575 Billion.

During the investigation, some aspects of the story stayed the same. Bennett was still the ultimate and sole source of information on the short-term cash management. (Bennett Testimony at 243, 254.) She still contended that that cash management was done for Dimension Data, Omega, and Mount Vernon. (Bennett Testimony at 198.) And she took the position that the short-term cash management figure needed to be added to the brokerage figure to arrive at total AUM. (E.g., Bennett Testimony at 97–100, 191–94, 197–98, 203–205.[27])

But Bennett's story also changed in important ways. For one thing, the amount of assets attributable to Dimension Data more than doubled, from $706 million to $1.575 billion. (E.g.,

[27] See generally Ex. 165, at pp. 5–7, 15–22 (Wermers expert report) (discussing the various categories of assets claimed by the respondents).

Bennett Testimony at 262.) The very least that can be said about this increase is that it is coincident with the discovery of the 2011 Barron's ranking and its $1.8 billion AUM figure.[28]

Further, between her first investigative testimony (in December 2013) and her second (in January 2015), she "found" documents that she said substantiated her claims—three "Project Request Forms" (Exs. 75–77) and three sets of annotated outlines for weekly pension calls with Dimension Data, Omega, and Mount Vernon (Exs. 177–79). She also identified "witnesses" who could substantiate her story: Daniel Celoni and Wesley John Johnston from Dimension Data; Daniel Bohan from Omega; and Barton Groh from Mount Vernon. The Division will address each of these points in the subsections that follow.

(a) Dimension Data

(i) Daniel Celoni Does Not Corroborate Bennett's Story.

In order to substantiate her over $1.5 billion in short-term cash management for this client, Bennett identified Daniel Celoni, the former Chief Financial Officer for the Americas at Dimension Data:

> [MR. RINALDI:] You mentioned Dan Celoni earlier on.
>
> [MS. BENNETT:] Yes.
>
> Q He was one of the individuals to whom you provided the short-term cash management advice for Dimension Data, correct?
>
> A Correct.
>
> Q And you said that you met him in Virginia?

[28] Importantly, Bennett conceded at testimony that, if the Dimension Data figure alone were removed from the equation, the claims made in each of the Barron's publications (Exs. 29–31) would be false (Bennett Testimony at 209).

A Yes.

(Bennett Testimony at 255.)

But Mr. Celoni testified that, to the best of his knowledge, he had never met Bennett. (Celoni Testimony at 23–24.) More critically, he had no knowledge of Bennett ever being asked to advise on more than $1.5 billion in company funds. (Celoni Testimony at 95–96.) Further, Mr. Celoni testified that he was not aware of anyone at Dimension Data Americas who would have the authority to discuss the investment of more than $1.5 billion: "I don't believe anyone had that type of authority. I'm not aware of any individual that would have that kind of discussion." (Celoni Testimony at 96.)

Mr. Celoni also testified that he doubted that he (or anyone else in the Americas) had authority to execute any securities transactions for the company, and, in any event, he was unaware of any Americas-based Dimension Data employee ever doing so. (Celoni Testimony at 81–82.) Rather, according to Mr. Celoni, any investment decisions, including with respect to short-term cash, were made at company headquarters in South Africa. (Celoni Testimony at 43.) Mr. Celoni further testified that the only services Bennett provided were with respect to the 401(k) plan for the company's U.S.-based employees. (Celoni Testimony at 58–59.[29])

(ii) Wesley Johnston Has No Knowledge of the Purported Short-Term Cash Management, and Even Backs Away from Hearsay in His Affidavit.

Bennett also identified former Dimension Data employee Wesley Johnston, from whom she obtained an affidavit. (Bennett Testimony at 355; Johnston Testimony at 24; Ex. 85.) In the affidavit, which was proffered by Bennett during the investigation, Mr. Johnston did not purport to

[29] Bennett was terminated from her 401(k) role in early 2011. (Ex. 174.)

have first-hand knowledge of Bennett's services. Rather, he claimed to have heard from Mr. Celoni and Adrian Liddiard (Mr. Celoni's predecessor) about these services: "Although I did not speak with Ms. Bennett directly, I received regular briefings from Mr. Liddiard and Mr. Celoni during Dimension Data's Executive Board meetings regarding Ms. Bennett's advice on our overnight and short-term cash investments." (Ex. 85 ¶ 8.) But, at subsequent testimony, Mr. Johnston walked away from even that hearsay:

> [MR. RINALDI:] Isn't it true, sir, that you never received any such briefings, quote: "Regarding Ms. Bennett's advice on our overnight and short-term cash investments"?
>
> [MR. JOHNSTON:] That's correct. That's a poorly worded statement. I agree.

(Johnston Testimony at 96.)

Similarly, in paragraph 13 of the affidavit, he had claimed that he found Bennett "extremely diligent and very responsive" with respect to "investment recommendations to Dimension Data." The affidavit was purportedly based on his "personal knowledge" (Ex. 85 ¶ 1). But, at testimony, he conceded that he had no personal knowledge of that subject; rather, he testified, he was referring to his interactions with Bennett as his own, personal financial advisor. (Johnston Testimony 75–77.) In short, Mr. Johnston was not responsible for short-term cash investments and had no knowledge of Bennett or Bennett Group ever providing advice to Dimension Data about such investments. (Johnston Testimony at 45–50.)

At his testimony, Mr. Johnston did, however, acknowledge a relationship with Bennett (he termed her an "acquaintance") and testified that he had previously received advice from her regarding "swim techniques" (Bennett was formerly a competitive swimmer). (Johnston Testimony

at 20–24; Bennett Testimony at 344). During her testimony, Bennett said that she and Mr. Johnston were "friends," that she helped him with his swim training for a triathlon, that she previously assisted him with his ride in the Sturgis Motorcycle Rally in South Dakota, and that she has socialized with him and his wife. (Bennett Testimony at 344–45, 347–49.)

(iii) Brian Howard Testifies That Dimension Data Did Not Even Have the Amount of Cash Assets Reflected in Bennett's "Project Request Forms."

In addition, Bennett produced three "Project Request Forms" (Exs. 75–77), which she said indicated the amounts of Dimension Data (and Omega) short-term cash for which she was providing advice at three points in time (Bennett Testimony at 214–15, 261–62). At its height (in December 2010), one of the documents purports to show "$1,575,000,000" being managed for Dimension Data alone.

But there are at least three problems with these documents. First, they conflict with the unambiguous testimony of Brian Howard, the Group Treasurer for Dimension Data in Johannesburg, South Africa. (1/27/2016 Tr. at 49.[30]) He testified that, from the time after it was initially listed on the London Stock Exchange in 2000, Dimension Data never had close to $1.575 billion in cash assets. (1/27/2016 Tr. at 52.) Mr. Howard—who oversaw Dimension Data's finances and investments—further testified that he had never communicated with Bennett or anyone else at Bennett Group, that to the best of his knowledge no investment recommendations were ever sought or received from them, and that all investment decisions for the company were made in

[30] Dimension Data is a multinational information technology company. (1/27/2016 Tr. at 49.)

South Africa, without involvement from Dimension Data's U.S.-based employees. (1/27/2016 Tr. at 50–53.)

Second, the documents were never produced to the examination staff despite its requests for such records. (1/27/2016 Tr. at 44–45.) Further, copies of the documents were not produced in response to the investigative staff's initial subpoenas (Exs. 13, 16, 20); rather, they were only produced after Bennett's first testimony and before her second. (OIP, 2015 WL 5243888, at *6 (¶ 36).) And, when the staff asked to inspect the originals, it was told that they were subsequently lost in an "office move." (OIP, 2015 WL 5243888, at *6 (¶ 36).)

Third, the December 2010 Project Request Form purportedly shows $1.575 billion in cash assets, but, during the examination in early 2011, Bennett claimed a lower number, $706 million. It simply strains credulity that Bennett "forgot" about almost $900 million in cash assets. The better explanation is that the $706 million figure fit the story that needed to be substantiated then (the $1.3 billion AUM claimed in Barron's) and that the figure, thereafter, grew as necessary.

(b) Omega

Similarly, Bennett testified that she had "weekly" calls, as well as in-person meetings, with Daniel Bohan about Omega's short-term cash management. (Bennett Testimony at 49–51.) Again, according to the figures provided to the examiners, this was with respect to $150 million in cash. (Ex. 151.) But Gloria Bohan, the Chief Executive Officer of Omega and Mr. Bohan's wife, testified that her husband passed away in 2010 and had been incapacitated by illness (such that he was unable to work at Omega) since 2004. (1/27/2016 Tr. at 99.) Further, Mrs. Bohan testified that she was not aware of any services being provided by Bennett or Bennett Group, other than for the employee 401(k) plan, and that she has never communicated with Bennett or Bennett Group

regarding the investment of any Omega corporate assets. (1/27/2016 Tr. at 100–01.[31]) She went on to testify that Omega did not have $25 million available for investment[32] and that, in fact, Omega, a local travel agency, depended on lines of credit. (1/27/2016 Tr. at 101–02; OIP, 2015 WL 5243888, at *7 (¶¶ 36–38).)

(c) Mount Vernon

Barton Groh, Mount Vernon's former Chief Financial Officer and former Chief Operating Officer, also testified. (1/27/2016 Tr. at 79.) Mount Vernon is a local nonprofit that is responsible for George Washington's home in Virginia. (1/27/2016 Tr. at 79.)

Mr. Groh's testimony is remarkable for several reasons. First, at the time when Bennett is telling the examiners that she manages $100 million for Mount Vernon (i.e., in February 2011) (Ex. 151), she had actually been terminated over a year earlier (in October 2009). (1/27/2016 Tr. at 83–84; Ex. 175.) Mr. Groh's testimony also undercuts what Bennett told the staff during her first investigative testimony, specifically, that her relationship with Mount Vernon did not end until 2011. (Bennett Testimony at 56.)

Second, Mr. Groh testified unambiguously that the portion of Mount Vernon's endowment for which Bennett provided services (prior to her 2009 termination) was limited to no more than $35 million and nowhere near the $100 million claimed. (1/27/2016 Tr. at 80–82.)

Third, during the examination and investigation, Bennett claimed to have performed pension consulting services for Mount Vernon, to the tune of approximately $6.5 million. (E.g., Exs. 80–

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[31] Bennett and Bennett Group were terminated from the 401(k) role in 2012. (1/27/2016 Tr. at 100.)

[32] The Project Request Forms (Exs. 75–77) indicated $20 million to $25 million, purportedly attributable to Omega.

84; Bennett Testimony at 203. See generally Ex. 165, at p. 7 n.18 (Wermers expert report).) But Mr. Groh testified that Mount Vernon's pension work was given to the Principal Financial Group, and not Bennett Group, despite the latter's pitch for the work. (1/27/2016 Tr. at 82–83.)

Finally, and with respect to the "weekly call" documents (Ex. 179), Mr. Groh testified that he was not having weekly or other periodic calls with Bennett in 2010 as indicated on the documents, and, in fact, Bennett was not providing any service to Mount Vernon at the time (1/27/2016 Tr. at 85–86). Indeed, the entire premise behind Exhibit 179 appears to be false: At testimony, Bennett testified the records substantiate weekly calls about Mount Vernon's pension plan, which then morphed into discussions about short-term cash. (Bennett Testimony at 409.[33]) But, according to Mr. Groh, Bennett Group never even served as pension consultant.[34]

D. Bennett Also Made False Statements to the District of Columbia's Securities Regulator.

In October 2013, Senayet Meaza, Director of Market Examination for the District of Columbia Department of Insurance, Securities and Banking ("DISB") wrote Bennett regarding the claims in the June 2009 "Top 100 Women Financial Advisors" Barron's article, including the claim of "assets under management of more than a billion dollars." (Ex. 87 (emphasis in original).) Bennett responded on December 31, 2013 (Ex. 86), just a couple weeks after her first investigative testimony before the Commission staff. Bennett's letter to the DISB is extraordinary in several respects.

[33] Bennett testified similarly with respect to the "weekly call" documents for Dimension Data and Omega. (Exs. 177–78; Bennett Testimony at 393–94, 396–97, 404.)

[34] The originals of the "weekly call" sheets (Exs. 177–79) were also purportedly lost in the office move.

As an initial matter, she claims that, in 2009, Bennett Group had "asset [sic] under management of over $1 Billion." (Ex. 86.) She went on to say that her "client's [sic] brokerage accounts had assets in excess of $1 Billion (and still do)." (Ex. 86.) Not only are these statements demonstratively false (based on the brokerage records), but they amount to a different falsehood than that told the Commission examination and investigative staff (i.e., that the AUM mostly consisted of short-term cash that was held away). Further, in response to the DISB's question as to whether the Barron's listing was ever "used, mentioned, quoted or referred to . . . in any advertising or promotional material . . . or in any correspondence with clients or prospective clients," Bennett responds, "Yes, but the use was infrequent." (Ex. 86.[35]) Finally, Bennett, in response to another question, wrote, "We are not aware of any other publications where we were listed as a top manager/advisor." (Ex. 86.) But here she neglects to tell the DISB about at least two other publications, the later 2009 Barron's listing (AUM of $1.3 billion) and the 2011 listing (AUM of $1.8 billion).

III. LEGAL STANDARD

Pursuant to the Court's Order Following Prehearing Conference, "Respondents' counsel represented that issuing a show cause order would be unnecessary if Respondents failed to appear at the hearing." Order Following Prehearing Conference, slip op. at 1 n.1. The respondents failed to appear at the hearing and were found in default. (1/27/2016 Tr. at 9–10.) Accordingly, the facts of the OIP "would be found true, and the proceeding would be decided against [the respondents]." Order Following Prehearing Conference, slip op. at 1 n.1.

[35] Suffice it to say, based on the record evidence, use of the listing was anything but "infrequent."

In this Post-Hearing Brief, the Division sets forth "why the factual allegations laid out in the [OIP] demonstrate the violations alleged," as well as its position regarding remedies. Order Following Prehearing Conference, slip op. at 1 n.1. As to remedies, the applicable standard is preponderance of the evidence. See Lawrence Foster, No. 867, 2015 WL 4939695, at *2 (ALJ Aug. 19, 2015), notice of finality, No. 76,236, 2015 WL 6352087 (Oct. 22, 2015).

IV. ARGUMENT

A. The Factual Allegations of the OIP, Which Are Deemed to Be True, Demonstrate the Charged Violations of the Federal Securities Laws.

The Division charged that:

- Bennett and Bennett Group violated of Section 17(a) of the Securities Act of 1933 ("Securities Act"), Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b–5 thereunder, and Sections 206(1) and 206(2) of the Investment Advisers Act of 1940 ("Advisers Act"). 15 U.S.C. §§ 77q(a), 78j(b), 80b–6(1), 80b–6(2); 17 C.F.R. § 240.10b–5.

- Bennett Group violated, and Bennett aided and abetted and caused the violations of, Section 206(4) of the Advisers Act and Rule 206(4)–1(a)(5) thereunder. 15 U.S.C. § 80b–6(4); 17 C.F.R. § 275.206(4)–1(a)(5).

- Bennett Group violated, and Bennett aided and abetted and caused the violations of, Section 206(4) of the Advisers Act and Rule 206(4)–7 thereunder. 15 U.S.C. § 80b–6(4); 17 C.F.R. § 275.206(4)–7.

The Division will address each of these charges in turn.

1. Bennett and Bennett Group Violated the Antifraud Provisions of the Securities, Exchange, and Advisers Acts.

Section 17(a) of the Securities Act, which proscribes fraudulent conduct in the offer or sale of securities, and Section 10(b) of the Exchange Act and Rule 10b–5, which proscribe fraudulent

conduct in connection with the purchase or sale of securities, prohibit essentially the same kind of conduct. See United States v. Naftalin, 441 U.S. 768, 777–78 (1979). Likewise, Sections 206(1) and 206(2) of the Advisers Act prohibit an investment adviser from employing "any device, scheme, or artifice to defraud any client or prospective client" or engaging "in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client." 15 U.S.C. § 80b–6(1), (2). In addition, under the charged Advisers Act provisions, an investment adviser is a fiduciary who owes "an affirmative duty of 'utmost good faith, and full and fair disclosure of all material facts,' as well as an affirmative obligation 'to employ reasonable care to avoid misleading' his clients." SEC v. Capital Gains Reseach Bureau, Inc., 375 U.S. 180, 194 (1963) (footnotes omitted).[36]

(a) The Allegations of the OIP Demonstrate Violations of Securities Act Section 17(a) and Exchange Act Section 10(b) and Rule 10b–5.

In order to make out an Exchange Act Section 10(b) and Rule 10–5 claim, the OIP must allege that the respondents "(1) made a false statement or omission (2) of material fact (3) with scienter (4) in connection with the purchase or sale of securities." SEC v. Pirate Investor LLC, 580 F.3d 233, 239 (4th Cir. 2009) (citation omitted). The elements of a Section 17(a) claim are "essentially the same." SEC v. C. Jones & Co., 312 F. Supp. 2d 1375, 1379 (D. Colo. 2004). Here, the OIP plainly makes out such claims.

First, the OIP is replete with allegations that the respondents made false statements or omissions concerning their AUM and client performance. Second, the OIP specifically alleges that

[36] The federal securities laws contain interstate commerce elements, which are clearly met here in light of the interstate nature of the respondents' fraud, including the use of telephones, the Internet, and other instrumentalities of commerce.

the misstatements and omissions were material. (OIP, 2015 WL 5243888, at *4, *8 (¶¶ 22, 45).) Moreover, the Division submitted the expert report of Professors Wermers, in which he performs an extensive analysis and concludes that the charged misstatements and omissions were material. (Ex. 165.[37]) Third, the Division alleges that the respondents acted with scienter. (OIP, 2015 WL 5243888, at *4, *8 (¶¶ 23, 45).) The record evidence, including the respondents' efforts to impede the examination and investigation, further confirm that charged acts were taken with scienter. See, e.g., SEC v. Weintraub, No. 11-21549-CIV, 2011 WL 6935280, at *8 (S.D. Fla. Dec. 30, 2011) ("The presence of scienter is further confirmed by the fact that [defendant] repeated many of these materially false and misleading statements and omissions to the SEC staff during its investigation in an apparent effort to cover up his wrongdoing.").

Finally, the OIP alleges that the respondents (a financial services firm and investment adviser registered with the Commission, and its Chief Executive Officer and registered representative) made the material misrepresentations and omissions to existing or prospective customers and clients. (OIP, 2015 WL 5243888, at *1, *4, *7–8 (¶¶ 1, 23, 42–45).) In this regard, the district court's decision in SEC v. Locke Capital Management, Inc., 794 F. Supp. 2d 355 (D.R.I. 2011), is instructive. In Locke Capital Management, the defendants (an investment advisory firm and its owner and Chief Executive Officer) inflated their AUM by falsely "represent[ing] to several commercial services that the firm was managing more than $1 billion in assets" and making "similar claims . . . in brochures sent to potential clients." Id. at 359. The

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[37] See also, e.g., Warwick Capital Mgmt., Inc., No. 2694, 2008 WL 149127, at *8 (S.E.C. Jan. 16, 2008) (claims about assets under management material "because they gave an erroneous impression of Warwick's size and asset base, qualities that would be important to clients and prospective clients in selecting an investment adviser"); SEC v. Haligiannis, 470 F. Supp. 2d 373, 377 (S.D.N.Y. 2007) (claims about performance material).

court held that "[t]he only reasonable inference that can be drawn from the facts of this case is that the misrepresentations were made to induce real customers to place their assets under Locke's management for security trading, which sufficiently connects [defendant] Jenkins's conduct to the sale of securities." Id. at 367 (citing SEC v. Zandford, 535 U.S. 813, 813–14 (2002), and Pinter v. Dahl, 486 U.S. 622, 643 (1988)).[38]

Accordingly, the Locke Capital Management court entered summary judgment in favor of the Commission on its Section 17(a) and Section 10(b) and Rule 10b–5 claims. See Locke Capital Mgmt., 794 F. Supp. 2d at 368; see also SEC v. Nadel, 97 F. Supp. 3d 117, 119 (E.D.N.Y. 2015) (granting summary judgment for the Commission on Section 17(a) and Section 10(b) and Rule 10b–5 claims based on misrepresentations by an investment adviser and its principal regarding "the amount of assets Defendants had under management").[39]

Here, the same result is warranted. The respondents made misstatements and omissions about highly material matters (AUM and client performance). These misstatements and omissions were made with a high degree of scienter—indeed, they were made for the express purpose of

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[38] Indeed, here, the respondents actually kept records (Ex. 176) indicating the source of their "new clients," including Barron's and the radio show.

[39] Although the test is largely the same under either Section 17(a) or Section 10(b), there are certain differences, none of which changes the result here. For instance, under Section 17(a)(2) and (3), scienter is not required, with the standard being negligence. See SEC v. Ficken, 546 F.3d 45, 47 (1st Cir. 2008). Here, the allegations of the OIP and the record evidence confirm that the respondents, at a minimum, acted unreasonably. See id. at 51–52. Further, the "obtain money or property" requirement of Section 17(a)(2), 15 U.S.C. § 77q(a)(2), is met because Bennett received the commissions at issue and subsequently transferred them to Bennett Group (e.g., OIP, 2015 WL 5243888, at *2 (¶ 6); Answer ¶ 6; Ex. 306; Mascho Testimony at 18–20).

bringing in new clients and customers, as well as retaining existing ones (who would continue to make securities transactions through the respondents).[40]

(b) The Allegations in the OIP Make Out Claims Under Advisers Act Sections 206(1) and 206(2).

Sections 206(1) and 206(2) of the Advisers Act, 15 U.S.C. § 80b–6(1), (2), "make it unlawful for an investment adviser to operate a fraud upon a client or prospective client." Locke Capital Mgmt., 794 F. Supp. 2d at 368 (footnote omitted). The facts that establish the violations of Securities Act Section 17(a) and Exchange Act Section 10(b) can "also support a violation of Sections 206(1) and 206(2)." Id.; see Haligiannis, 470 F. Supp. 2d at 383; David Henry Disraeli, No. 8880, 2007 WL 4481515, at *8 (S.E.C. Dec. 21, 2007), petition denied, 334 F. App'x 334 (D.C. Cir. 2009).

Both Bennett Group and Bennett are "investment advisers" for purposes of the Act. Indeed, it is admitted that Bennett Group was a registered investment adviser at the relevant time and that Bennett was its Chief Executive Officer (OIP, 2015 WL 5243888, at *2 (¶¶ 6–7); Answer ¶¶ 6–7).

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[40] For this same conduct, the respondents may be held liable under Rule 10b–5(a) and (c) and Section 17(a)(1) and (a)(3). Respondents' use of their misstatements and omissions to deceive and to obtain money from investors—as well as their long-running scheme to tout inflated AUM and outsized performance numbers as a central part of their business plan—constitutes the employment of a deceptive "device scheme or artifice to defraud," in violation of Rule 10b–5(a) and Section 17(a)(1), a deceptive "act, practice, or course of business" in violation of Rule 10b-5(c), and a "practice, or course of business" that "would operate as a fraud" on investors, in violation of Section 17(a)(3). 15 U.S.C. § 77q(a)(1), (3); 17 C.F.R. § 10b–5(a), (c); see, e.g., SEC v. Monterosso, 756 F.3d 1326, 1334 (11th Cir. 2014) (orchestrating and executing scheme to defraud investors violated Rule 10b–5(a) and Section 17(a)(1)); Weiss v. SEC, 468 F.3d 849, 856 (D.C. Cir. 2006) (issuing a series of false misrepresentations and omissions violated Section 17(a)(3)); SEC v. Strebinger, 114 F. Supp. 3d 1321, 1331 (N.D. Ga. 2015) (orchestration of a deceptive misstatement–related scheme may be charged under Rule 10b–5(a) and (c)); IBEW Local 90 Pension Fund v. Deutsche Bank AG, No. 11-4209, 2013 WL 1223844, at *1 (S.D.N.Y. Mar. 27, 2013) (misstatements that would be "separately actionable" under Rule 10b–5(b) may be charged as a fraudulent "scheme" and "course of conduct" under Rule 10b–5(a) and (c)).

See 15 U.S.C. § 80b–2(a)(11); see also Teicher v. SEC, 177 F.3d 1016, 1017 (D.C. Cir. 1999) (the term "investment adviser" includes registered investment advisers); Locke Capital Mgmt., 794 F. Supp. 2d at 368 n.7 ("Jenkins, as the President and CEO of Locke, is an investment adviser within the meaning of section 202(a)(11) of the Advisers Act."). It follows that the Division has made out its claims against the respondents under Sections 206(1) and 206(2).[41]

2. The Division Has Made Out Its Claims Under Advisers Act Section 206(4) and Rule 206(4)–1(a)(5).

Advisers Act Section 206(4), 15 U.S.C. § 80b–6(4), proscribes acts, practices, or courses of business by investment advisers that are "fraudulent, deceptive, or manipulative" and further provides that the Commission, through rulemaking, shall define such acts. Rule 206(4)–1(a)(5) prohibits the direct or indirect distribution of any advertisement "[w]hich contains any untrue statement of a material fact, or which is otherwise false or misleading." 17 C.F.R. § 275.206(4)–1(a)(5).[42] The Division charged Bennett Group with a primary violation and Bennett with aiding and abetting that violation.

The facts as set forth above, and as alleged in the OIP, demonstrate that Bennett Group circulated and distributed advertisements, in particular those related to AUM and performance, that contained untrue statements of fact or were otherwise false and misleading. Cf. SEC v. Rana

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[41] "Scienter is required for a Section 206(1) violation but need not be found for a violation of Section 206(2)." David Henry Disraeli, 2007 WL 4481515, at *8; see also ZPR Inv. Mgmt., Inc., No. 4249, 2015 WL 6575683, at *10 (S.E.C. Oct. 30, 2015) (negligence is the standard under Section 206(2)). Here, the allegations of the OIP, at a minimum, establish that the respondents acted unreasonably. Similarly, the Advisers Act imposes fiduciary duties upon investment advisers. See Capital Gains Research Bureau, 375 U.S. at 194. Given the fraud here, it may also be fairly said that the respondents did not discharge their duties to act in "good faith" and to take "reasonable care to avoid misleading" their clients and prospective clients. Id.

[42] Scienter is not required for violations of Section 206(4). See Anthony Fields, No. 4028, 2015 WL 728005, at *14 (S.E.C. Feb. 20, 2015).

Research, Inc., 8 F.3d 1358, 1363 n.4 (9th Cir. 1993) (noting the parallels between Rules 206(4)–1(a)(5) and 10b–5).[43]

As to Bennett, "[a]iding and abetting liability requires the Commission to show that (1) a primary securities law violation occurred by an independent violator; (2) the aider and abetter knowingly and substantially assisted the primary violator; and (3) the aider and abettor knew or was aware that her role was part of the improper activity." Locke Capital Mgmt., 794 F. Supp. 2d at 368 n.8. As set forth above, the OIP establishes a primary violation by Bennett Group. In addition, Bennett at a minimum "knowingly and substantially assisted" in the violation—indeed, both the OIP's allegations and the record evidence show that she orchestrated the fraud. Likewise, those allegations (as well as the record evidence) show that Bennett was aware that her role was part of the improper conduct. In fact, given the control she exercised over Bennett Group, it is hard to fathom her not having such an awareness. See, e.g., id. at 368 (holding Chief Executive Officer liable for aiding and abetting based on distribution of marketing materials).

3. Bennett Group's Compliance Procedures Were Deficient Under Rule 206(4)–7.

Pursuant to Section 206(4), the Commission promulgated Rule 206(4)–7, which provides:

> If you are an investment adviser registered or required to be registered under section 203 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3), it shall be unlawful within the meaning of section 206 of the Act (15 U.S.C. 80b–6) for you to provide investment advice to clients unless you:

[43] As to the performance advertising, it is alleged in the OIP that the respondents ignored the admonitions of their accounting firm as to how model returns should be advertised. (OIP, 2015 WL 5243888, at *8 (¶ 44); see also Ex. 269.) See generally Clover Capital Mgmt. Inc., SEC No-Action Letter, Fed. Sec. L. Rep. (CCH) ¶ 78,378.

> (a) Policies and procedures. Adopt and implement written policies and procedures reasonably designed to prevent violation, by you and your supervised persons, of the Act and the rules that the Commission has adopted under the Act;
>
> (b) Annual review. Review, no less frequently than annually, the adequacy of the policies and procedures established pursuant to this section and the effectiveness of their implementation; and
>
> (c) Chief compliance officer. Designate an individual (who is a supervised person) responsible for administering the policies and procedures that you adopt under paragraph (a) of this section.

17 C.F.R. § 275.206(4)–7. No finding of scienter is required. See Anthony Fields, 2015 WL 728005, at *14.

Here, the allegations of the OIP establish that Bennett Group's "Written Supervisory Policies and Procedures Manual" (Ex. 180), which was identified as the pertinent policies and procedures manual (Augustin Testimony at 106–07), was inadequate and, in any event, was not properly implemented (OIP, 2015 WL 5243888, at *8 (¶¶ 46–48)). Further, the Division's expert witness, Howard Schneider, submitted an expert report, in which he details how Bennett Group deviated from the Rule and industry practice by, among other things, (i) not adopting policies and procedures that addressed the calculation and advertisement of AUM and client performance, (ii) not conducting any annual reviews, and (iii) not appointing a knowledgeable and competent Chief Compliance Officer. (Ex. 181.)

Further, not only did Bennett aid and abet this violation, she outright fostered it. She created the circumstances in which her word alone was enough for the firm to calculate AUM and performance and to advertise these, including in national ratings publications (Barron's), on the radio, in marketing materials, and elsewhere. (OIP, 2015 WL 5243888, at *8 (¶ 48).) Chief

Compliance Officer Augustin was powerless to stop her and at times appeared wholly unaware of what she was doing, expressing "shock" and "surprise" at outlandish AUM claims, of which he only became aware long after the fact.

B. Because of the Severity of the Misconduct, Significant Relief Is Warranted.

As discussed at the hearing, the Division is seeking relief in the form of cease-and-desist orders, a securities industry bar, disgorgement and prejudgment interest, and civil penalties. Given the conduct here, significant relief is appropriate and in the public interest.

1. Cease-and-Desist Orders Are Appropriate.

Section 8A(a) of the Securities Act, Section 21C(a) of the Exchange Act, and Section 203(k) of the Advisers Act authorize the Commission to impose a cease-and-desist order on any person who "is violating, has violated, or is about to violate" any provision of the Acts or rules thereunder. 15 U.S.C. §§ 77h–1(a), 78u–3(a), 80b–3(k). "While some likelihood of future violation must be present, the required showing is 'significantly less than that required for an injunction.'" Richard P. Sandru, No. 3646, 2013 WL 4049928, at *7 (ALJ Aug. 12, 2013) (quoting KPMG Peat Marwick LLP, 54 S.E.C. 1135, 1183–91 (2001)). "Indeed, absent evidence to the contrary, a single past violation ordinarily suffices to establish a risk of future violations." Richard P. Sandru, 2013 WL 4049928, at *7.

In deciding whether to impose a cease-and-desist order, the Commission looks to the public interest factors set forth in Steadman v. SEC, 603 F.2d 1126 (5th Cir. 1979), as well as "the recency of the violation, the resulting degree of harm to investors or the marketplace, and the effect of other sanctions." Richard P. Sandru, 2013 WL 4049928, at *7. The Steadman factors are:

> [1] the egregiousness of the respondent's actions, [2] the isolated or recurrent nature of the infraction, [3] the degree of scienter involved, [4] the sincerity of the respondent's assurances against future violations, [5] the respondent's recognition of the wrongful nature of his or her conduct, and [6] the likelihood that the respondent's occupation will present opportunities for future violations.

Richard P. Sandru, 2013 WL 4049928, at *7. The public interest inquiry is a flexible one, and no one factor is dispositive.

(a) The Respondents' Conduct Was Egregious.

Over the course of years, the respondents repeatedly advertised false performance and AUM claims, including a staggering misstatement of AUM of over $1.5 billion. As set forth in the Wermers report, AUM and performance are tremendously important to investors, providing an assurance that Bennett Group "was a highly successful investment adviser." (Ex. 165, at p. 26.) Bennett's own words on the radio show further demonstrate the importance of these metrics—that, because others have trusted her with so much and because she has performed so well for them, she has expertise and can be trusted. Indeed, that was precisely the pitch made to Mr. Santigati, and Mr. Zlatin testified to his impression that AUM of over $1 billion means "you've kind of made it, you've arrived." (1/27/2016 Tr. at 119.)

The respondents' whole modus operandi was to use the Barron's listing and related metrics to inflate their profile and prestige in the industry, and to give their clients and prospective ones the impression that they would be dealing with financial professions of a stature that they weren't. And, because investors have so little insight into the internal workings of financial firms, they depend heavily on these metrics (including as reported in financial publications such as Barron's)

in retaining a new financial advisor or deciding whether to keep the one they have. (See generally Ex. 165.[44])

(b) The Violations Were Repeated Over and Over.

Far from isolated, the misstatements and omissions were recurrent: three Barron's publications, dozens of e-mail messages, repeated references during the radio show, the firm's Web site, personal contacts with investors and prospective investors, and so forth. Even when the firm's Chief Compliance Officer raised questions about the first Barron's listing, Bennett pressed on. Thus, this is not a circumstance where a single misstatement happens to be repeated, it is a case where there were conscious decisions to keep making the misstatements—and to invent new and larger ones.

Most astonishingly, Bennett continued this course of conduct even in the face of inquiries by her regulators. Thus, she allowed the 2011 Barron's ranking (AUM of $1.8 billion) to be published even after the arrival of the Commission's examiners, and concealed its existence from them. And, even after the Division commenced its investigation (indeed, just weeks after her testimony), she wholly invented, in a letter to the DISB, over $1 billion in brokerage assets.

(c) The Respondents Acted with a High Degree of Scienter.

Although the OIP establishes that the respondents' acted with scienter, the record evidence also demonstrates the willfulness of their conduct. In short, the respondents made up out of whole cloth over $1.5 billion in AUM, in the process inventing relationships that not only did not exist, but could not have existed. Thus, Bennett claimed to be dealing with Dimension Data Americas

[44] In this regard Mr. Peter testified that he "looked at Barron's as one of the pillars of reporting on the financial industry." (1/27/2016 Tr. at 115.)

employees in managing over $1.5 billion in cash, when the whole of Dimension Data never had so much cash, and such investment decisions were made elsewhere. She invented "weekly calls" and in-person meetings with a deceased travel agency executive, forcing his widow to testify about his longstanding illness and death. And, even after she was fired by Mount Vernon, she claimed to be having "weekly calls" about pension consulting work that she never, at any time, did.

Her attitude toward her regulators also demonstrates the willfulness of the violations. At best this can be described as concealment and a lack of candor, at worse (and more accurately) outright falsehoods and obstruction. The conversation between Messrs. Santagati and Koorey shows how simple the truth was. But, by creating an elaborate story about Dimension Data and other short-term cash that didn't exist, she forced the staff to expend time and effort interviewing witnesses and taking testimony—and caused those third parties to retain counsel and to otherwise expend time and effort testifying about things about which there shouldn't have been any dispute.

(d) Bennett Has Not Accepted Responsibility and Remains a Threat to the Investing Public.

Far from accepting responsibility and making assurances against future misconduct, the respondents claim they did nothing wrong. Indeed, in her response to the Division's charges in the FINRA BrokerCheck system, she said the charges were "without merit" and that "[w]hen all the facts come to light . . . she will be completely vindicated." (Ex. 274, at p. 12.) The Commission has recognized that the failure to acknowledge wrongdoing or to show remorse "indicates that there is a significant risk that, given the opportunity, [the respondent] would commit further misconduct in the future." Justin F. Ficken, No. 2803, 2008 WL 4610345, at *4 (S.E.C. Oct. 17,

2008). Because she remains the Chief Executive Officer and an owner of Bennett Group, both she and the firm will have such opportunities.

(e) The Balance of the Factors Suggests That Cease-and-Desist Orders Are Warranted.

Not only do the Steadman factors heavily weigh in favor of relief, but so do the other considerations. The conduct at issue is relatively recent, particularly when one considers the time and effort required to investigate the respondents' various stories. The harm caused by the misconduct was significant. In addition to individuals who lost money (e.g., Messrs. Crowley, Peter, and Santagati), the respondents put a significant amount of investor money at risk. Even though it was nowhere near the $2 billion advertised, the respondents still had custody over millions of dollars of brokerage assets. Moreover, the misreporting of key financial metrics undermines the market's confidence in financial professionals, as well as rating services such as Barron's.

Finally, as discussed at the hearing, the Division is attempting to be conservative with respect to monetary relief, by requesting disgorgement and penalty amounts short of the maximum permitted. The overall effect, then, will be a combination of monetary and non-monetary relief that is both fair and reflective of the severity of the misconduct.

2. Bennett Should Be Subject to a Permanent and Collateral Bar.

The Division will not rehash the discussion of the Steadman factors, which also govern whether an industry bar is warranted. See Richard P. Sandru, 2013 WL 4049928, at *7.[45] Because Bennett has willfully violated the Securities, Exchange, and Advisers Acts and the rules thereunder, and because it is in the public interest that she be barred, she should be subject to a full and permanent collateral bar.[46] The record evidence amply demonstrates Bennett's unfitness for any future role in the securities industry, and why it is in the public interest that she not be in a position where she can reoffend.[47]

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[45] The Exchange Act, the Advisers Act, and the Investment Company Act of 1940 authorize the imposition of this relief. 15 U.S.C. § 78o(b)(4)(D), (6)(A)(i); § 80b–3(e)(5), (f); § 80a–9(b)(2). In short, Advisers Act Section 203(f) "authorizes the Commission to bar a person from association with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or [nationally recognized statistical rating organization] if that person has willfully violated any provision of the Exchange Act or the Advisers Act, and the bar is in the public interest." Richard P. Sandru, 2013 WL 4049928, at *7. "On the same terms, Section 15(b)(6) of the Exchange Act authorized the same associational bars, and also authorizes a bar on participating in an offering of a penny stock." Id. "Also on the same terms, Section 9(b) of the Investment Company Act authorizes a bar on association with an investment company." Id.

[46] Specifically, she should be permanently barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, be permanently barred from participating in any offering of a penny stock, including acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer, or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock, and be permanently barred from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter.

[47] Other cases involving inflated AUM and false performance advertising have resulted in permanent industry bars. See, e.g., ZPR Inv. Mgmt., Inc., 2015 WL 6575683, at *27–30 (false performance advertising in magazine pieces); Leila C. Jenkins, No. 451, 2012 WL 681585, at *5–6 (ALJ Feb. 10, 2012) (claim of AUM of over $1 billion).

3. The Respondents Should Be Subject to Disgorgement.

The federal securities statutes authorize the Commission to order disgorgement of ill-gotten gains, along with prejudgment interest. See15 U.S.C. § 77h–1(e); § 78u–3(e); § 80b–3(k)(5); § 80a–9(d)(1)(A)(i), (e). Disgorgement is an equitable remedy, designed to deprive a wrongdoer of unjust enrichment and to deter others from violating the securities laws. See Richard P. Sandru, 2013 WL 4049928, at *8. There is no requirement that the Division calculate disgorgement with exactitude; rather, only a "reasonable approximation" of the ill-gotten gains is required. E.g., SEC v. Sierra Brokerage Servs., Inc., 608 F. Supp. 2d 923, 968 (S.D. Ohio 2009), aff'd, 712 F.3d 321 (6th Cir. 2013); see also Richard P. Sandru, 2013 WL 4049928, at *8 ("reasonable estimate").

Once the Division puts forth a reasonable approximation, "the burden shifts to the respondent to demonstrate clearly that the Division's disgorgement figure is not a reasonable approximation." Gordon Brent Pierce, No. 9205, 2011 WL 1790467, at *5 (ALJ May 11, 2011) (citing SEC v. Lorin, 76 F.3d 458, 462 (2d Cir. 1996), and SEC v. Patel, 61 F.3d 137, 140 (2d Cir. 1995)). "All doubts concerning the amount of disgorgement must be resolved against the violator." Sierra Brokerage Servs., Inc., 608 F. Supp. 2d at 968; Gordon Brent Pierce, 2011 WL 1790467, at *5.

Here, based on the respondents' violations and the willfulness with which they were committed, disgorgement and prejudgment interest are warranted. See, e.g., Richard P. Sandru, 2013 WL 4049928, at *8 (Steadman analysis also applies to disgorgement and prejudgment

interest). In particular, the Division requests disgorgement of $556,102, plus prejudgment interest of $88,087, for a total of $644,189.[48]

The Division's summary witness, Mr. Higgins, calculated the amount of commissions received by the respondents: $10,648,966. (Ex. 354.) This calculation focuses on the latter part of the relevant period and excludes commissions received through the respondents' prior brokerage firm, Royal Alliance. Mr. Higgins further reduced the figure to concentrate only on new accounts, i.e. those opened after November 2009, arriving at the amount of $556,102. (1/27/2016 Tr. at 131–32; Ex. 354.) The rationale behind this approach is that it focuses on accounts opened during the time the respondents were circulating their false AUM and performance advertising.

The approach of focusing on compensation earned has been accepted in other cases. For instance, in Locke Capital Management—in which, as in this case, the defendants inflated their AUM by over $1 billion—the district court ordered disgorgement and prejudgment interest of $1,892,476, based on all of the fees obtained during the relevant time period. Locke Capital Mgmt., 794 F. Supp. 2d at 369.

Likewise, in SEC v. Bard, No. 1:09-CV-1473, 2011 WL 5509500 (M.D. Pa. Nov. 10, 2011), the court ordered $450,000 of disgorgement, plus prejudgment interest, based on misrepresentations regarding clients' account values. See id. at *3. In Bard, the court noted that "the evidence does not indicate that Bard would have lost all of his clients, or lost the ability to earn fees completely," but nonetheless ordered disgorgement of a little more than half of the fees.

[48] Prejudgment interest is required to be paid on an order of disgorgement and is computed at the underpayment rate established under Section 6621(a)(2) of the Internal Revenue Code. 17 C.F.R. § 201.600.

Id. (emphasis in original). As such, the court applied a measure of "rough justice"—or, put another way, "reasonable approximation"—to arrive at a fair estimate of disgorgement.

Here, the Division has requested a reasonable amount of disgorgement that balances fairness to the respondents with the need to deprive them of their ill-gotten gains and to deter others. Moreover, once the Division has established that the respondents have violated the securities laws, disgorgement may be granted "without inquiring whether, or to what extent, identifiable private parties have been damaged." SEC v. Blavin, 760 F.2d 706, 713 (6th Cir. 1985); see also SEC v. Rind, 991 F.2d 1486, 1490 (9th Cir. 1993) ("[A] district court may grant the Commission's request for disgorgement even where no injured investors can be identified.").

Further, where, as here, the respondents have defaulted, they cannot meet their burden of showing that the requested disgorgement is not a reasonable approximation. See Gordon Brent Pierce, 2011 WL 1790467, at *5–6 (noting the defaulting respondents did not contest the disgorgement requested by the Division and granting the amounts requests). It follows that disgorgement and prejudgment interest should be entered in the amount requested.[49]

4. In Light of the Severity and Repeated Nature of the Violations, Significant Civil Penalties Should Be Imposed.

As discussed at the hearing in this matter, the Division seeks a civil penalty of $600,000 for Bennett and $2.9 million for Bennett Group.

The federal securities statutes authorize the imposition of civil monetary penalties. 15 U.S.C. § 77h–1(g); § 78u–2(a); § 80b–3(i); § 80a-9(d). The amount of the civil penalty is based on

[49] As noted in the above factual recitation, both respondents received the commissions. In any event, given the closeness of the respondents and the intertwined nature of their violations, imposition of disgorgement on a joint and several basis is warranted. See Locke Capital Mgmt., 794 F. Supp. 2d at 369.

a three-tier system, with the third (and highest) tier representing those violations involving (i) "fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement" and (ii) an "act or omission [that] resulted in substantial losses or created a significant risk of substantial losses to other persons or resulted in substantial pecuniary gain to the person who committed the act or omission." 15 U.S.C. § 78u–2(b)(3)(A); accord § 77h–1(g)(2)(C); § 80b–3(l)(2)(C); § 80a-9(d)(2)(C). Because violations occurred after March 3, 2009, and before March 5, 2013, the maximum third tier civil penalty is $150,000 per violation for a natural person and $725,000 per violation for any other person (i.e., an entity). 17 C.F.R. § 201.1004; Adjustments to Civil Monetary Penalty Amounts, 74 Fed. Reg. 9159, 9160 (Mar. 3, 2009).

Within these maximums, the Commission considers six statutory factors in setting a penalty:

> (1) whether the violation involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement, (2) the resulting harm to other persons, (3) any unjust enrichment and prior restitution, (4) the respondent's prior regulatory record, (5) the need to deter the respondent and other persons, and (6) such other matters as justice may require.

Richard P. Sandru, 2013 WL 4049928, at *9 (citing 15 U.S.C. § 78u–2(c); § 80a–9(d)(3); § 80b–3(i)(3)). In addition to the statutory factors, courts have considered the following factors:

> (1) the egregiousness of the violations at issue, (2) defendants' scienter, (3) the repeated nature of the violations, (4) defendants' failure to admit to their wrongdoing; (5) whether defendants' conduct created substantial losses or the risk of substantial losses to other persons; (6) defendants' lack of cooperation and honesty with authorities, if any; and (7) whether the penalty that would otherwise be appropriate should be reduced due to defendants' demonstrated current and future financial condition.

Richard P. Sandru, 2013 WL 4049928, at *9 (quoting SEC v. Lybrand, 281 F. Supp. 2d 726, 730 (S.D.N.Y. 2003), aff'd on other grounds, 425 F.3d 143 (2d Cir. 2005)). Not all of the factors may be relevant, nor do they necessarily carry equal weight. See Richard P. Sandru, 2013 WL 4049928, at *9.

As an initial matter, third tier civil penalties are appropriate. Based on both the allegations of the OIP (including that the respondents acted with scienter and willfully), as well as the evidence presented at the hearing, the Court should conclude that the violations involved fraud, deceit, manipulation, or deliberate or reckless wrongdoing. In addition, by taking in large sums of investor money (and in at least some cases losing it), the respondents at a minimum created a "significant risk of substantial losses." E.g., 15 U.S.C. § 78u–2(b)(3)(B). And, as discussed previously, there was a "substantial pecuniary gain" to the respondents, owing to their receipt of significant commissions. Id.

In terms of the number of violations, there were literally dozens—at least eighteen radio shows, three Barron's publications (and the redistribution thereof), numerous e-mail messages, marketing brochures, the firm's Web site, and in-person and telephonic contacts. In an effort to be conservative, the Division has assumed four violations for purposes of this analysis: (i) the Barron's articles, (ii) radio show claims regarding AUM, (iii) radio show claims regarding performance, and (iv) all other communications with current or prospective clients and customers.[50]

[50] Regardless of how penalties are calculated, it is the Division's position that the penalties should be in the amounts requested.

Further, given the severity of the misconduct (and within the framework of four third tier violations), the maximum penalties should be assessed. Because of the significant overlap between the statutory and other civil penalty factors and the Steadman factors, the Division will not repeat the entire analysis here. Cf., e.g., Richard P. Sandru, 2013 WL 4049928, at *10 (noting the relevance of the Steadman factors to the penalty analysis). Suffice it to say that the conduct at issue was egregious and long-running, and involved a high amount of scienter and significant deceit (including with regulators). It is also the case that Bennett has a prior record of misconduct. (E.g., Ex. 274.)

Further, the need to deter others cannot be overstated. It simply cannot be the case that registrants are permitted to commit acts of fraud and then to obstruct and to impede their regulators' investigation. The regulatory regime relies upon the trustworthiness and honesty of its participants, a standard Bennett and her firm fell far below. Under the circumstances, the civil penalties proposed by the Division are reasonable, fair, and well calculated to serve the public interest and the purposes delineated in the statutes.

C. In the Initial Decision, the Court Should Address Respondents' Constitutional Claims.

The respondents previously moved to dismiss or to stay this administrative proceeding, arguing that the Commission's appointments of administrative law judges violate the Appointments Clause and that the Commission's administrative law judges enjoy two layers of tenure protection. The Court previously denied this motion. Bennett Grp. Fin. Servs., LLC & Dawn J. Bennett, No. 3493, slip op. at 1 (ALJ Jan. 12, 2016).

Notwithstanding the respondents' default on the merits of this case, the Division believes that, by moving the Court to declare the proceeding unconstitutional, the respondents have preserved their claim that the proceeding violates Article II of the Constitution. The Division therefore respectfully requests that, in its Initial Decision addressing the respondents' default and the merits of the claims against them, the Court also address respondents' constitutional claims. This will help ensure that the Court's decision on the constitutional claims may be appealed to the Commission.

V. CONCLUSION

For all of the foregoing reasons, the relief requested by the Division should be granted.

Respectfully submitted,

Dated: March 2, 2016.

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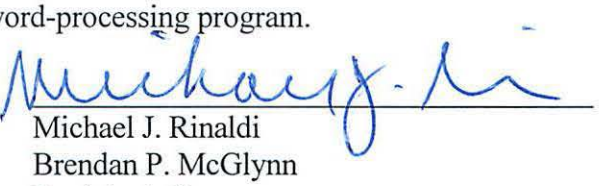
CERTIFICATE OF COMPLIANCE

I hereby certify, this second day of March, 2016, and pursuant to SEC Rule of Practice 154(c), 17 C.F.R. § 201.154(c), and the Court's Post-Hearing Order of February 1, 2016, that the foregoing Opening Post-Hearing Brief complies with the length limitation set forth in the Court's Post-Hearing Order, in that it consists of 13,008 words, exclusive of pages containing the table of contents, table of authorities, or any addenda. In preparing this certificate, the undersigned relied on the word count feature of the Microsoft Word word-processing program.



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STATEMENT OF FILING BY FACSIMILE

I hereby certify that, on this second day of March, 2016, with respect to In the Matter of Bennett Group Financial Services, LLC and Dawn J. Bennett, Administrative Proceeding File No. 3-16801, I caused a true and correct copy of the Division of Enforcement's Opening Post-Hearing Brief to be filed via facsimile with the Office of the Secretary of the U.S. Securities and Exchange Commission pursuant to SEC Rule of Practice 151, 17 C.F.R. § 201.151. The facsimile was transmitted to (703) 813-9793.

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CERTIFICATE OF SERVICE

I hereby certify that, on this second day of March, 2016, with respect to In the Matter of Bennett Group Financial Services, LLC and Dawn J. Bennett, Administrative Proceeding File No. 3-16801, I caused a true and correct copy of the Division of Enforcement's Opening Post-Hearing Brief (together with the accompanying Statement of Filing by Facsimile and Certificate of Compliance) to be served upon the following by first class mail and electronic mail:

Honorable James E. Grimes
Administrative Law Judge
Securities and Exchange Commission
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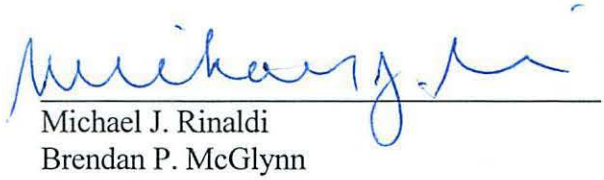

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