UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-17352

In the Matter of

SAVING2RETIRE, LLC, AND MARIAN P. YOUNG,

Respondents.

THE DIVISION OF ENFORCEMENT'S RESPONSE IN OPPOSITION TO RESPONDENTS' BRIEF IN SUPPORT OF THEIR PETITION FOR REVIEW

Dated: December 11, 2019

Respectfully submitted,

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The Division of Enforcement ("Division" or "DOE") respectfully opposes the Petition for Review of the August 26, 2019 Initial Decision and Motion for Stay filed by Respondents Saving2Retire, LLC ("S2R") and Marian P. Young ("Young"). The Commission should affirm the Initial Decision, because the underlying record amply supports the findings and the relief imposed. Respondents' petition for review should be denied for the reasons stated herein.

STANDARD OF REVIEW

Pursuant to Rule 411(a) of the Commission's Rules of Practice, in reviewing an Initial Decision, the Commission may "affirm, reverse, modify, set aside or remand for further proceedings, in whole or part, an Initial Decision" and it "may make any findings or conclusions that in its judgment are proper and on the basis of the record." 17 C.F.R. § 201.411(a). The scope of the Commission's review is limited by "the issues specified in the petition for review" and "the issues, if any, specified in the briefing schedule order" or "any other matters" that the Commission deems material, provided that the parties receive notice from the Commission. 17 C.F.R. § 201.411(d). Respondents were required, pursuant to Rule 410(b), to set forth in their petition for review the specific findings and conclusions of the Initial Decision to which they take exception, with supporting reasons for each exception. Respondents' petition falls far short of this standard; in it, Respondents merely state that they filed the petition to address the sanctions imposed as a result of their conduct, and argue that the Commission should take away all penalties and "dismiss all charges."

PROCEDURAL BACKGROUND

The Commission first instituted this proceeding on July 19, 2016, alleging that investment adviser firm S2R violated, and Young, as its sole owner and managing member, aided and abetted and caused S2R's violations of, Sections 203A and 204 of the Investment Advisers Act of 1940 ("Advisers Act") and Rule 204-2(a) thereunder by improperly registering with the Commission

as an internet investment adviser when S2R did not qualify as such, repeatedly failing to produce documents to the Commission's examination staff during the course of an examination, and by failing to make or keep certain required records. [OIP, Investment Advisers Rel. No. 4457.]

On October 19, 2017, following a contested hearing, the ALJ issued the Initial Decision, finding in the Division's favor on the claims and imposing remedial relief, including a five year industry bar and the imposition of civil penalties against Respondents Young and S2R of $26,000 and $76,000, respectively, for what the Court called "egregious and recurrent" conduct by someone who failed to recognize the wrongful nature of her conduct. [Initial Decision, Initial Decision Rel. No. 1195, at p. 26, 28.] Respondents petitioned the Commission for review, and in light of *Lucia v. SEC,* 138 S. Ct. 2044 (2018), the Commission remanded the proceeding and assigned a new ALJ. The parties agreed that the prior record—including the transcript of the 2017 hearing and all of the admitted exhibits—would remain in evidence. *Saving2Retire,* Admin. Proc. Rulings Rel. No. 6309, 2018 SEC LEXIS 3125, at *1 (ALJ Nov. 7, 2018).

On August 26, 2019, following additional discovery by Young and briefing, Chief ALJ Murray issued an Initial Decision finding that although the violations were "serious," there was no evidence that clients were defrauded (indeed, fraud was never alleged), and thus imposed a two year industry bar against Young, required her to pay a modest civil monetary penalty of $13,000, and ordered Respondents to cease and desist from further violations of the Advisers Act and its rules. *Saving2Retire,* Initial Decision Rel. No 1384. The evidence in the record shows that, at a bare minimum, Chief ALJ Murray's Initial Decision should be affirmed based on Ms. Young's and her investment adviser firm's repeated and flagrant disregard for the Commission's rules and regulations and its examination and enforcement process. However, the record establishes that more severe penalties are warranted.

STATEMENT OF FACTS[1]

A. Respondents Are Fiduciaries and Young is an Experienced Securities Professional.

1. During the relevant period, Saving2Retire was a registered investment adviser[2] (Trans. 67:5-7), and Young, as its sole owner and managing member, was an associated person of an investment adviser. (Trans. 67:2-4.) Young owes fiduciary duties to her clients. (Trans. 68:20-22.)

2. During all relevant periods, S2R operated out of Young's private residence in Sugar Land, Texas, and had no other employees. (Ex. 9 [Young Dep. 18:1-10; 28:25-29:2].) S2R managed client accounts on a non-discretionary basis and Young claims it had approximately $4 million to $4.5 million in assets under management. (Ex. 9 [Young Dep. at 33:21-34:5; 89:5-6].)

3. Young has over 30 years of experience in the securities industry. Before becoming the sole manager, owner, and Chief Compliance Officer of S2R, Young was a registered representative from the mid-1980s to approximately 1996. (Trans. 67:22-68:1.) In 1997, Young formed Young Capital Growth Company, an investment management consulting firm, which she operated until she formed S2R in 2011. (Trans. 68:2-11.)

4. As S2R's Chief Compliance Officer, Young is responsible for ensuring that S2R complies with its regulatory requirements, including Advisers' Act Act requirements. (Trans. 68:12-16.)

5. Young signed the firm's registration and subsequent Forms ADV for the years 2011

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[1] Citations to the transcript of the hearing of this matter are noted as "Trans. Line:Page." Citations to Exhibit numbers correspond to the Trial Exhibits admitted during the hearing.

[2] On November 17, 2017, Saving2Retire, LLC filed a Form ADV-W and is no longer registered with the Commission.

through 2015. (Trans. 68:17-19.)

B. S2R Relied on the Internet Adviser Exemption for SEC Registration, But Never Had A Single Internet Client.

6. From March 2011 through early 2015, S2R claimed that it was eligible for Commission registration, relying on the internet adviser exemption in Rule 203A-2(e) under the Advisers Act. (Trans. 70:1-5)

7. Respondents never consulted an attorney and did not seek legal advice as to whether Rule 203A-2(e) applied to S2R's business. Young did not hire any professionals, lawyers, or consultants to help her analyze whether S2R would qualify as an internet adviser. (Trans. 70:6-13.)

8. From the time Young formed S2R in 2011 through 2016, S2R had never had a single internet client, and never had a single dollar of revenue come in through an internet client. (Trans. 74:10-16.)

9. Young admits that, at least between 2011 and 2013, S2R did not have an interactive website. (Trans. 71:3-5.)

C. S2R Provided Investment Advice to More than 14 Clients.

10. All of Respondents' client accounts were held at Scottrade beginning at the time S2R became registered with the Commission as an investment adviser. (Trans. 69:21-25.)

11. Young refused to provide to the SEC a list of clients by name or account number. Instead, she provided what purported to be a list of every one of S2R's clients, listing only 8 clients and identifying them as "Clients A-H." (Ex. 15; Trans. 76:9-17.) She testified that Scottrade, the custodian, would have the accurate client list. (Ex. 9 [Young Dep. at 90:9-22].)

12. Young does not count her relatives as "clients." (Trans. 76:18-22.)

13. According to the Scottrade records, S2R had 20 clients for the one year time period ending November 30, 2014. (Ex. 44; Trans. 48:13-49:6.)

14. Each of the clients was invested in Dimensional Fund accounts, which are not available to retail clients, and must be purchased through an investment adviser. (Trans. 49:7-19.)

15. Each of the 20 clients and Ms. Young signed an advisory fee contract in which the client states that he or she has entered in to a separate agreement to pay management or advisory fees to S2R. (Ex. 23; Trans. 49:23-51:9.)

16. Each of the clients authorized and appointed Young/S2R to "act on the client's behalf and in the same manner and with the same force and effect" as the client could do, and authorized Scottrade to follow the adviser's instructions with respect to enumerated powers, including buying and selling securities, and receiving information about the client's account (including online account information, account statements, trade confirmations, and tax information). (Ex. 23, *e.g.*, SECFWRO-FW-03993-000592; Trans. 51:22-52:19.)

17. Clients of an investment adviser pay management or advisory fees to an advisor as a way of compensating the advisor for providing investment advice. (Trans. 51:15-21.)

18. The SEC examination concluded, among other things, that S2R was not properly registered with the SEC as an internet adviser because: (1) it was not providing investment advice exclusively through an interactive website; and (2) it surpassed any applicable de minimis exception, if any, because it advised more than 14 clients. (Trans. 56:16-57:3)

D. Respondents Failed to Produce Requested Documents to OCIE Examination Staff As Required By Law.

19. In November 2014, the staff of the Commission's Office of Compliance Examinations and Inspection ("OCIE") conducted a correspondence compliance examination of

S2R. (Trans. 75:11-14.)

20. As the managing member of an investment adviser, Young is aware that all of the records of the investment adviser are, by law, subject to examination by representatives of the Commission. (Trans. 75:19-76:8.)

21. On November 19, 2014, the staff of the Securities and Exchange Commission sent a document request to S2R. In the document request, the firm was notified that the Commission was conducting an examination pursuant to Section 204 of the Advisers Act. (Ex. 9 [Young Dep.] at 55:6-56:1; Ex. 2)

22. On December 5, 2014, the staff received a document production from Young that contained a few pages of documents addressing some of the information requested in the November 19, 2014 letter, but which lacked most of the requested documentation. Young's response stated, among other things, that "[g]athering information in any additional specificity would be burdensome to my business in time and income lost. My clients believe and I share their belief that additional specificity violates the protections our Constitution provides its citizens. Marian Young, managing member." (Ex. 3.)

23. On December 11, 2014, the staff spoke with Young about the lack of production of certain documents from the original document request. During that call, the staff discussed the firm's responsibility to provide documents under the Advisers Act, and indicated that additional documents would be required. (Ex. 4; Trans. 36:18-25; 37:1-5; 37:14-38:8; 39:22-)

24. The staff sent a follow up e-mail to Young on December 11, 2014 memorializing the production of those additional documents requested during the telephone call. Young agreed to produce the documents on a rolling basis and to complete the production no later than December 19, 2014. On December 12, 2014, Young sent an email to the staff indicating that she would not

be able to produce documents until the following week. (Exhibits 4, 5.)

25. On December 19, 2014, the lead examiner, Javier Villarreal, called Young to verify that the documents would be produced as agreed. Young returned that call and indicated that she would not produce any additional documents. She also indicated that she would be withdrawing the firm's registration with the Commission. Mr. Villarreal informed her that regardless of whether she intended to withdraw the firm's registration, she was still required to produce the requested documents. At that point, she abruptly ended the conversation and hung up. (Trans. 42:11-43:19.)

26. On January 5, 2015, the SEC sent a letter to Young setting forth the chronology of requests that had been made to Respondents, and making a final request that S2R produce all documents previously requested by January 12, 2015. (Ex. 6; Ex. 9 [Young Dep.] at 112:14-18 (stating that the letter "seems accurate").)

27. The next day, on January 6, 2015, Young contacted her Congressman to conduct an inquiry into the fact that the SEC had requested client information from S2R. (Ex. 7; Ex. 9 [Young Dep.] at 113:10-115:18.)

28. Respondents failed to produce any of the requested documents. (Ex. 9 [Young Dep.] at 113:6-9.)

29. Young did not produce a balance sheet, trial balance, general ledger, cash receipts and disbursements journal, income statements, and cash flow statements to the SEC, because "those documents were not current at that time." (Ex. 9 at 106:3-107:7; Trans. 40:21-41:17.)

30. Young did not keep current bank statements or cancelled checks of the adviser, and did not keep cash reconciliations. [Trans. 81:6-82:3]

E. Exam Deficiency Letter

31. The SEC examination found the following deficiencies, among others, and reported them to Young as Managing Member of S2R in a letter dated February 4, 2015 ("Deficiency Letter"):

- Section 204 – Failure to Produce Records During the Course of an Examination

  . . .

  Saving2Retire has willfully violated Section 204(a) because it refused to provide records of the adviser to the examination staff in the course of an examination. The examination staff made three separate written requests for substantially the same documents with reasonable time for production, but the firm refused to provide the requested documents. The staff spoke with you on two separate occasions explaining the requirements to provide documents; however you still declined to provide them. [Internal footnote omitted.]

- Rule 204-2(a) – Books and Records

  . . .

  The adviser is not in compliance with Rule 204-2(a) because the adviser is not maintaining the required books and records and/or the records are not current. For example, you are not maintaining the required financial records such as a general ledger, balance sheet trial balance, cash receipts and disbursements journals, income statement and bank statements. Additionally, you stated during the telephone interview that your books and records are not current. While the adviser is planning to withdraw its registration from the SEC, the adviser is still required to maintain these records and to provide them to the examination staff upon request.

- Rule 203A-2(e) – SEC Registration Eligibility

  . . .

  In the Form ADV filings with the Commission, Saving2Retire claimed that it was eligible to register with the Commission because it provided investment advice to all of its clients exclusively through an interactive website, except that the adviser may provide investment advice to fewer than 15 clients through other means during the preceding twelve months. Based on documents obtained from the Saving2Retire's custodian it has provided investment [advice] to more than 15 clients in the prior 12 months. Therefore, Saving2Retire is not qualified for Commission registration under Section 203A.

(Ex. 8.)

32. Respondents did not respond to the Deficiency Letter. (Ex. 9 at 122:8-12].)

F. Young Produced No Documents and Failed to Appear for Testimony During the SEC Investigation.

33. During the Division's investigation of this matter, the SEC sent investigative

subpoenas to Respondents on May 6, 2015 for documents, and for Young's testimony on July 30, 2015, August 25, 2015, and August 31, 2015. (Ex. 9, 11, 13, 14.) Young did not appear for testimony, and Respondents did not produce any documents. (Ex. 9 at 151:18-152:15; 159:2-164:4; 165:8-167:8; 170:2-5).

34. On September 11, 2015, Young sent a letter to the SEC informing the staff that she would not appear for testimony as noticed and would not be producing documents. She stated, "I believe I am within my legal rights under the Fifth Amendment of the US Constitution to notify you of such; that I have no additional disclosures and do invoke that right." However, Young never memorialized her Fifth Amendment invocation in a sworn statement. (Ex. 9 at 165:6-167:8; Ex. 17.)

35. Young did not know the contours of what the Fifth Amendment invocation means, but indicated that she "did not understand enough to appear for testimony and did not want to prejudice [herself] without having more information." (Ex. 9 at 167:21-169:5.)

G. Current Registration Status

36. As of January 2, 2015, S2R filed an amended Form ADV stating the firm is no longer eligible to be registered with the Commission. (Trans. 86:19-23.)

37. Young testified: "I closed that internet advisory . . . [w]hen it became apparent to me that I was out of my league, that I should not have been registered with the SEC because they were not going to give me consideration as a small firm, which I believed in the beginning, based on what I had read. And when that proved not to be the case, I need attorneys, I need this, I knew I couldn't afford it; so my remedy was to close down the company completely since it had never got off its foot anyway." (Ex. 9 at 154: 9-25.)

38. On November 18, 2015, Saving2Retire filed its Form ADV changing its principal

place of business address back to its original Sugar Land, Texas address, and it filed for state registration in Texas, which is still pending. (Ex. 9 at 175:8-18.)

39. On March 14, 2016, the California Commissioner of Business Oversight denied S2R's investment adviser application and barred Young from any position of employment, management, or control of any investment adviser, broker-dealer, or commodity adviser. (Ex. 10.)

40. On November 17, 2017, Saving2Retire, LLC filed a Form ADV-W and is no longer registered with the Commission.

ARGUMENT AND AUTHORITIES

Rule 410(b) of the Commission's Rules of Practice requires that a petition for review "shall set forth a statement of the issues presented for review under Rule 411(b)." Under Rule of Practice 411(b)(2), which governs discretionary review,[3] the Commission shall consider whether the petition for review makes a reasonable showing that:

(i) A prejudicial error was committed in the conduct of the proceeding; or

(ii) The decision embodies:

(A) A finding or conclusion of material fact that is clearly erroneous; or

(B) A conclusion of law that is erroneous; or

(C) An exercise of discretion or decision of law or policy that is important and that the Commission should review.

The Petition makes no such showing. Instead, Respondents allege—with no support whatsoever—that they are victims of racial and personal bias and that the Commission staff improperly singled them out for examination. They further repeat their refrain that their violations

[3] This proceeding does not fall into any of the categories outlined in Rule of Practice 411(b)(1), which governs mandatory review by the Commission.

are not serious, and they have "suffered enough." Chief ALJ Murray has already considered and rejected the unsupported bias arguments, and two ALJs have detailed the severity of Respondents' violations, including their flagrant disregard for the Commission's examination process. Respondents do not take issue with any finding of fact or law, but make the non-sensical argument that the Commission should not, as a policy matter, examine "start up" companies or target individuals, even when it is aware that they have violated the law. Respondents fail to address or reconcile this logic with the fact that Young chose to register with the Commission as an internet adviser (which itself was improper, given the fact that she advised no internet clients), yet failed to comply with even the most basic of the Adviser Act rules and regulations, including that she cooperate in Commission examinations or maintain basic client and financial records. Respondents incorrectly characterize their flagrant securities law violations as "minor violations." However, the record keeping requirements she admits to violating in Rule 204-2(a) are a "keystone of the [Commission's] investment adviser surveillance" system, which Young, as a fiduciary and a securities professional, was required to know about and comply with. *Hammon Capial Mgmt. Corp.*, Advisers Act Rel. No. 744, 1981 WL 36244, at *2 (Jan. 8, 1981). Instead, as shown below, the record is replete with evidence that Young engaged in a years-long pattern of evading and impeding the Commission's lawful examination of her firm, and she admits that she failed to maintain client records for years and flatly refused to provide requested information to the SEC examiners. Despite these admissions, she continues to argue that she has done nothing to warrant even the minor sanctions imposed by the Initial Decision for her egregious and recurrent behavior. Advisers that are subject to examination should be discouraged from following Young's example. The Commission cannot properly regulate investment advisers and protect the investors they serve

if advisers are permitted to evade Commission examinations after failing to maintain client records without consequence.

A. S2R is Liable for Willfully Violating, and Young is Liable for Willfully Aiding and Abetting and Causing S2R's Violations of, Advisers Act Section 203A.

Section 203A of the Advisers Act generally prohibits an investment adviser regulated by the state where it maintains its principal place of business from registering with the Commission unless it meets certain requirements. Rule 203A-1(a) sets the threshold requirement for SEC registration for most advisers at $100 million of regulatory assets under management ("AUM").[4] Rule 203A-2(e) exempts from the prohibition on Commission registration certain investment advisers that provide advisory services through the Internet. *See* Internet Adviser Exemption Adopting Rel., 2002 WL 31778384, at *1.[5] Rule 203A-2(e) of the Advisers Act allows internet investment advisers to register with the Commission with an AUM less than the minimum $100 million if the adviser "[p]rovides investment advice to all of its clients exclusively through an interactive website, except that the investment adviser may provide investment advice to fewer than 15 clients through other means during the preceding twelve months." Advisers Act Rule 203A-2(e). These "Internet Investment Advisers" provide investment advice to all of their clients through interactive websites.[6] *See* Internet Adviser Exemption Adopting Rel., 2002 WL

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[4] The AUM threshold was "designed to distinguish investment advisers with a national presence from those that are essentially local businesses." *Exemption for Certain Investment Advisers Operating Through the Internet,* SEC Rel. No. IA-2091 (Dec. 12, 2002), 2002 WL 31778384 ("Internet Adviser Exemption Adopting Rel.").

[5] Effective September 19, 2011, rule 203A-2(f) was renumbered as rule 203A-2(e) and the threshold was raised from $25 million to $100 million. *See Rules Implementing Amendments to the Investment Advisers Act of 1940,* SEC Rel. No. IA-3221 (June 22, 2011), 2011 WL 2482892.

[6] An interactive website is "a website in which computer software-based models or applications provide investment advice to clients based on personal information provided by each client

31778384, at *1. As the adopting rule makes clear, the less than 15 non-Internet clients exception to the "all clients requirement" is a "de minimis" allowance. This narrow exception for Internet Investment Advisers is not intended to allow SEC registration by advisers: (1) with less than 15 clients; (2) who do not otherwise meet the threshold AUM requirements for federal registration; and (3) do not advise all—or in this case, *any*—of its clients through an interactive website. *See* Internet Adviser Exemption Adopting Rel., 2002 WL 31778384, at *3-4 (explaining that the Commission did not intend to undermine the National Securities Markets Improvement Act of 1996, which allocated regulatory responsibility over small advisers to state securities authorities); *see also SEC v. Zandford*, 535 U.S. 813, 819 (2002) and *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 195 (1963) (stating that the securities laws should be broadly construed to promote their remedial purposes). The rule also requires the adviser relying on the exemption to maintain records demonstrating that it provides investment advice to its clients exclusively through an interactive website in accordance with the limits of the exemption. *Id.* at *5. This requirement can be met by maintaining records showing which of its clients the firm advised exclusively through its interactive website, and which, if any, of its clients the firm advised through non-Internet means. *Id.*

During all relevant periods, S2R had AUM of less than $5 million—far less than any applicable AUM threshold. [Trans. at 69:3-5.]

Young testified that:

- As the sole owner and managing member and chief compliance officer of the adviser, she owes fiduciary duties to her clients [Trans. 67:2-9; 68:20-22];

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through the website. The rule is thus not available to advisers that merely use websites as marketing tools or that use Internet vehicles . . . in communicating with clients." Internet Adviser Adopting Rel., 2002 WL 31778384, at *3.

- From March 2011 through early 2015, S2R claimed that it was eligible for Commission registration, relying on the internet adviser exemption in Rule 203A-2(e) under the Advisers Act. [Trans. 70:1-5; Ex. 9 (Young Dep.), at 34:22-35:11]);

- Respondents never consulted an attorney and did not seek legal advice as to whether Rule 203A-2(e) applied to S2R's business. [Trans. 70:6-9.] Young did not hire any professionals, lawyers, or consultants to help her analyze whether S2R would qualify as an internet adviser. [Trans. 70:10-13];

- S2R did not even have a website until two years after its effective registration [Trans. 71:3-5];

- S2R never advised a single client through an interactive website, and never had a single dollar of revenue come in through an internet client. [Trans. 74:10-16];

- Young closed "the internet advisory . . . [w]hen it became apparent to me that I was out of my league, that I should not have been registered with the SEC because they were not going to give me consideration as a small firm, which I believed in the beginning, based on what I had read. And when that proved not to be the case, I need attorneys, I need this, I knew I couldn't afford it; so my remedy was to close down the company completely since it had never got off its foot anyway." ([Ex. 9 (Young Dep.). at 154: 9-25; Trans. 74:17-21];

- On March 14, 2016, the California Commissioner of Business Oversight denied S2R's investment adviser application and barred Young from any position of employment, management, or control of any investment adviser, broker-dealer, or commodity adviser. [Ex. 10; Trans. 89:2-7]; and

- Young is aware that the securities laws provide that the investment adviser must produce documents to the SEC when requested to do so. [Trans. 80:13-16.]

The lead SEC examiner, Javier Villareal, testified that he reviewed the client account records from Scottrade, the custodian who held all of S2R's accounts from the time it became SEC-registered, in order to count the clients whom S2R advised. Applying the Advisers Act definition of "client," Mr. Villareal determined that for the 12 month period ending November 2014, S2R had at least 20 clients. (Trans. 48:13-49:6; Exhibit 44.) Advisers Act Rule 202(a)(30)-1; Rule 203A-2(e)(3) (stating that an adviser may rely on the definition of client found in Rule 202(a)(30)).

In addition, Villareal found that S2R advised each of these clients. Specifically, each of the advisory fee contracts are signed by the client and by Young, authorize Scottrade to debit the client's account for advisory fees, and state that the client has entered into an agreement to pay management or advisory fees to S2R, the adviser. [Trans. 49:20-51-14; Ex. 23.] Clients pay advisory fees to compensate the adviser for providing investment advice. [Trans. 51:10-21.] Each contract contains a representation that the account holder authorizes and appoints S2R to manage his or her Scottrade brokerage account. [Trans. 51:22-52:19; Ex. 23.] Each contract provides that the "adviser is authorized to act for me and on my behalf and in the same manner and with the same force and effect as I might or could do . . . ." [*Id.*]

Importantly, each of S2R's clients was invested in Dimensional Fund Advisors, a mutual fund company whose funds can only be purchased through an investment adviser. [Trans. 49:7-19.] Dimensional Funds is not open to retail clients. [Trans. 49:12-19.] Thus, S2R's clients could not invest in those particular funds without S2R's advisory services.

Thus, there is no question that S2R advised more than 14 clients. At a minimum, the clients could not even invest in a Dimensional fund unless it utilized the services of an investment adviser. This fact is determinative. Thus, even if S2R advised its clients through an interactive website, which it admittedly did not, it also could not register with the Commission as an internet adviser by relying on an argument that it advised less than 15 clients through other means and elevating the exception over the rule. Thus, S2R willfully violated Section 203A.

Further, as a fiduciary and the owner of an investment adviser, Young's liability is established as a matter of law. For aiding and abetting liability under the federal securities laws, the Division must establish: (1) that a primary securities law violation was committed by another party; (2) awareness by the aider and abettor that his or her role was part of an overall activity that

was improper; and (3) that the aider and abettor knowingly and substantially assisted the conduct that constitutes the violation. *Bogar*, 2013 WL 3963608, at *20, SEC Rel. No. 502, Admin. Proc. File No. 3-15003 (Aug. 2, 2013); *Graham v. SEC*, 222 F.3d 994, 1000 (D.C. Cir. 2000). "A person cannot escape aiding and abetting liability by claiming ignorance of the securities laws." *Bogar*, 2013 WL 3963608, at *20; *In re Sharon M. Graham, et al.*, SEC Rel. No. 34-40727, 1998 WL 823072, at *7 n.33 (Nov. 30, 1998). The "knowledge" or "awareness" requirement can be satisfied by recklessness when the alleged aider and abettor is a fiduciary or an active participant. *Bogar*, 2013 WL 3963608, at *20.

For "causing" liability, the Division must establish: (1) a primary violation; (2) an act or omission by the respondent that was a cause of the violation; and (3) the defendant knew, or should have known, that his conduct would contribute to the violation. *Id.* A respondent who aids and abets a violation is also a cause of the violations under the federal securities laws. *Id.* Negligence is sufficient to establish liability for causing a primary violation that does not require *scienter*. *Id.*

As the sole actor on behalf of S2R, the only active participant in its business, and its managing member, Young aided and abetted and caused S2R's registration violations. She has been involved in the securities industry since the 1980s; she owns a registered investment adviser; and she provides advisory services in a fiduciary capacity to over 20 clients, managing millions of dollars of assets. As such, Young should have been aware of the registration requirements relating to investment advisers, or should have become aware of them before operating in violation of those requirements for more than four years. Young never even consulted a lawyer or otherwise sought professional advice regarding whether the firm could properly register with the Commission as an internet adviser, even though she knew that the adviser never had a single internet client and did not even have a website for the first two years it was registered with the Commission. Despite her

awareness of these facts, Young signed the firm's registration and subsequent Forms ADV each year stating that it was eligible for Commission registration because it provided investment advice to all of its clients exclusively through an interactive website. For all these reasons, her participation in the violation was, at the very least, reckless. Young is the only person at S2R responsible for insuring that the firm complied with the federal securities laws. The fact that she operated the business in violation of basic registration requirements is reckless as a matter of law.

Respondents have admitted to violating the law, and have admitted every material fact necessary to prove the registration violation.

B. S2R is Liable for Willfully Violating, and Young is Liable for Willfully Aiding and Abetting and Causing S2R's Violations of, Advisers Act Section 204 and Rule 204-2(a)(4).

Advisers Act Rule 204-2(a)(4) provides that every registered investment adviser "shall make and keep true, accurate and current . . . [a]ll check books, bank statements, cancelled checks and cash reconciliations of the investment adviser."

Young testified that she did not keep current bank statements or cancelled checks of the advisor (pointing instead to Scottrade's custody of the records), and that she did not keep cash reconciliations. [Trans. 81:6-82:3] Specifically, her testimony was:

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Q You did not keep current bank statements of the advisor, correct?

A I did not keep --

Q Yes.

A -- bank statements are available online for most banks.

Q Did you provide those documents to the Commission?

14 A No.

15 **Q Did you keep cancelled checks from -- that**

16 **belonged to the advisor?**

17 A Cancelled checked? Again, most documents are

18 available online if I have a need for them.

19 **Q Did you keep them in your records as the**

20 **advisor?**

21 A Checks that I had written?

22 **Q Cancelled checks.**

23 A Cancelled checks. My registry was a duplicate

24 registry, so they did not return cancelled checks.

25 **Q Did you keep cash reconciliations of the**

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1 **advisor?**

2 A I received one receipt per month, so, no, I

3 don't do cash reconciliations.

Young also told the Commission's exam staff that she was not maintaining the financial records the staff had requested. [Trans. 38:20-22.] Thus, by Young's own admission, S2R willfully violated, and Young aided and abetted and caused S2R's violation of, Advisers Act Rule 204-2(a)(4).

C. The Remedies Imposed by the ALJ are Appropriate and in the Public Interest.

Chief ALJ Murray found that S2R violated, and Young caused its violation of Section 203A by registering as an internet adviser but never advising any internet clients. Further, S2R violated, and Young aided and abetted and caused S2R's violations of, Advisers Act Sections 203A, 204(a) and Rules 204-2(a)(1), 204-2(a)(2), and 204-2(a)(6) thereunder by failing to make S2R's records available to the Commission, by impeding the Commission's examination and investigation, and by failing to keep and maintain true, accurate, and current certain books and

records. For these violations, and for the violations established at the hearing in this matter as discussed herein, remedial relief is proper.

1. The ALJ Properly Barred Young from Association With an Investment Adviser.

Sections 203(e) and 203(f) of the Advisers Act authorize the Court to revoke the registration of any investment adviser, or of an associated person of an investment adviser, if it finds it is in the public interest and that, among other reasons, the adviser has willfully violated any provision of the Advisers Act or rules thereunder. S2R willfully violated, and Young willfully aided and abetted and caused S2R's violations of the Advisers Act, and they did so with deliberate or reckless disregard of the regulatory requirements governing its business. S2R, a one person investment adviser with AUM of less than $5 million and not a single internet client, was not properly registered with the Commission. S2R withdrew its registration during the pendency of this matter, and thus, the Court did not order revocation. However, the record demonstrates that Respondents repeatedly refused to provide documents or to cooperate or participate with either the Commission examination, with the Division's subsequent investigation, and with the enforcement action resulting from Respondents' failure to cooperate. Indeed, to this day, Respondents have refused to even provide the Commission with a list of its clients.

Rather than comply with its legal obligation to provide documents to the Commission upon request, Respondents went so far as to attempt to initiate an investigation by her Congressman of the SEC's request for information and of certain SEC staff.

In determining whether Young should be barred, the Commission considers: the egregiousness of the defendant's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the defendant's assurances against future violations, the defendant's recognition of the wrongful nature of his conduct, and the likelihood that the

defendant's occupation will present opportunities for future violations. *Steadman v. SEC,* 603 F.2d 1126, 1140 (5th Cir. 1979). Additionally, the Commission considers the extent to which the sanction will have a deterrent effect. *In the Matter of Gary M. Kornman,* SEC Rel. No. 335 (Oct. 9, 2007). As the Commission has often emphasized, the public interest determination extends to the public-at-large, the welfare of investors as a class, and standards of conduct in the securities business generally. *Id.*

Young's unlawful conduct was repeated and on-going. She has never acknowledged the wrongful nature of her conduct, even in her refusal to cooperate with the SEC examination. Absent an industry bar, Young's occupation will provide numerous opportunities for future violations. She has over 30 years of experience in the securities industry and, absent a bar, could continue to associate with an investment adviser. Moreover, a strong deterrent against refusing to cooperate in an SEC examination is essential to the Commission's mission. Industry bars are essential to avoid the possibility of future violations. *Id.* at *6. Thus, pursuant to Section 203(f) of the Advisers Act, the Commission should, at a minimum, affirm the ALJ's decision to impose a two year industry bar against Young, barring her from being associated with an investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization. Alternatively, the evidence supports a permanent bar. Young's deliberate attempt to evade her regulatory responsibilities by repeatedly refusing to provide the requested books and records to the Commission demonstrates a fundamental unfitness to advise clients as a fiduciary.

2. The ALJ Properly Issued a Cease-and-Desist Order Against Respondents.

Section 203(k) of the Advisers Act, 15 U.S.C. § 80b-3(k), authorizes the imposition of a cease-and-desist order upon any person who "is violating, has violated, or is about to violate" any

provision of the Advisers Act or the rules and regulations thereunder, as well as any other person that is, was, or would be a cause of the violation. In determining whether a cease-and-desist order is appropriate, the Commission considers numerous factors, including the seriousness of the violation, the isolated or recurrent nature of the violation, the respondent's state of mind, the sincerity of the respondent's assurances against future violations, the respondent's recognition of the wrongful nature of his conduct, the respondent's opportunity to commit future violations, the degree of harm to investors, the extent to which the respondent was unjustly enriched, and the remedial function to be served by the cease-and-desist order in the context of other sanctions being sought. *WHX Corp. v. SEC*, 362 F.3d 854, 859-60 (D.C. Cir. 2004) (appeal of administrative cease-and-desist order); *KPMG v. SEC*, 289 F.3d 109, 124-25 (D.C. Cir. 2002) (same). "The risk of future violations required to support a cease-and-desist order is significantly less than that required for an injunction, and, absent evidence to the contrary, a single past violation ordinarily suffices to raise a sufficient risk of future violations." *In re Rodney R. Schoemann*, 2009 WL 3413043, at *12-13 (Oct. 23, 2009), *aff'd*, 2010 WL 4366036 (D.C. Cir. 2010). The Commission should also "consider the function that a cease-and-desist order will serve in alerting the public that a respondent has violated the securities laws." *In re Fundamental Portfolio Advisers, Inc.*, 2003 WL 21658248, at *18 (July 15, 2003).

Here, S2R and Young should be ordered to cease and desist from committing or causing violations of and any future violations of Sections 203A and 204 of the Advisers Act and Rule 204-2(a) thereunder. Respondents' violations involved the failure to provide requested documents during the course of a Commission examination. Despite the staff's repeated requests for documents, Respondents' lack of cooperation continued until this proceeding was filed, and Young has never acknowledged her wrongdoing. "The industry cannot tolerate an investment adviser

that, holding a fiduciary position, would undermine the regulatory system by deliberately thwarting a Commission examination." *Schield Mgmt. Co. et al.*, Rel. No. 2477, at *10. A cease and desist order is in the public interest.

3. The ALJ Properly Ordered Respondent Young to Pay Civil Penalties, but Civil Penalties Against S2R and Further Penalties Against Young are Appropriate.

Section 203(i) of the Advisers Act, 15 U.S.C. § 80b-3(i), authorizes the Commission to impose civil money penalties in cease-and-desist proceedings on any person who has violated any provision of the Advisers Act or "was a cause of the violation." [15 U.S.C. § 80b-3(i)(1)(B).]

In considering whether a proposed penalty is in the public interest, the Commission considers: (1) whether the violation involved fraud, deceit, manipulation, or a reckless disregard of a regulatory requirement; (2) whether any harm to others to others resulted from the violation; (3) the extent of the wrongdoer's unjust enrichment; (4) whether there are any prior violations; (5) whether there is a need to deter the wrongdoer or others from such violations; and (6) such other matters as justice may require. [15 U.S.C. § 80b-3(i)(3)].[7]

Penalties are statutorily authorized in three tiers and differ for "natural persons" and "other persons," or entities. 15 U.S.C. § 80b-9(e)(2). The original statutory penalty amounts have been adjusted over time for inflation. 17 C.F.R. § 201.1004. For acts committed after March 4, 2009, first-tier penalties may be imposed in the amount of $7,500 for individuals and $75,000 for entities

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[7] Other factors that may also be considered are: (1) the egregiousness of the violations at issue; (2) the degree of Respondents' scienter; (3) the repeated nature of their violations; (4) their failure to admit their wrongdoing; (5) whether their conduct created substantial losses or the risk of substantial losses to other persons; (6) their lack of cooperation and honesty with authorities, if any; and (7) whether a penalty that would otherwise be appropriate should be reduced due to respondent's demonstrated current and future financial condition. *SEC v. Lybrand*, 281 F. Supp. 2d 726, 730 (S.D.N.Y. 2003), *aff'd*, 425 F.3d 143 (2d Cir. 2005).

per violation. 15 U.S.C. § 80b-9(e)(2)(A); 17 C.F.R. Pt. 201, Subpt. E, Table IV. Where the violative act involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement, second-tier penalties may be imposed in the amount of $75,000 for individuals and $325,000 for entities per violation. 15 U.S.C. § 80b-9(e)(2)(B); 17 C.F.R. Pt. 201, Subpt. E, Table IV. If the violative act or omission involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement, and directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons or resulted in substantial pecuniary gain to the person who committed the act or omission, a third-tier penalty may be imposed of $150,000 for individuals and $725,000 for entities per violation. 15 U.S.C. § 80b-9(e)(2)(C); 17 C.F.R. Pt. 201, Subpt. E, Table IV.

In this case, Chief ALJ Murray chose not to impose any monetary penalties against S2R, finding that "Respondents' improper registration is not deserving of a monetary penalty." Initial Decision, at p. 22. The Court imposed a $13,000 penalty against Young for her Advisers Act violations and failure to participate in the Commission's examination. At a minimum, this penalty is appropriate. However, the record supports civil penalties against S2R and further penalties against Young. [T]he failure to cooperate with a Commission examination constitutes 'serious misconduct' justifying strong sanctions. *Schield Mgmt. Co. and Marshall L. Schield,* Rel. No. 2477, Admin. Proc. File No. 3-11762, at *9 (Jan. 31, 2006).

Civil penalties are appropriate here due to Respondents' reckless disregard of the regulatory requirements at issue, including the important requirement of an adviser to cooperate with Commission examinations. The ALJ properly found that Respondents did not cooperate in the examination and did not produce the financial records as requested. This is serious misconduct that was repeated over several years, and occurred despite clear warnings from the Commission's

staff about the obligation to cooperate and the penalties for not doing so. Respondents' clear misconduct demonstrates either that they fundamentally misunderstand the regulatory obligations to which they are subject, or that they hold those obligations in contempt. Thus, remedial relief is warranted. *See, e.g., In the Matter of The Barr Financial Group, Inc.*, Admin. Proc. File No. 3-9918, Advisers Act Release No. 2179 (Oct. 3, 2003).

Public deterrence is necessary to inform others, including other registered investment advisers, that investment advisers cannot ignore the requirement that they provide their records to the Commission and cooperate in Commission investigations. Further, Respondents do not acknowledge their wrongdoing, but instead, continue to stonewall, actually blaming the Division at the hearing for "drag[ging] all these people down from Fort Worth to put a trial on in a case where someone doesn't want to play anymore[]." [Trans. 65:2-11.]. Contrary to their assertions, Respondents' conduct involved more than minor mistakes, and was egregious and recurrent. Moreover, Young has neither made assurances, sincere or otherwise, against future violations nor shown that she recognizes the wrongful nature of her conduct.

D. Respondents' Unsupported Bias Arguments And Attempts to Blame Others Must Fail.

Respondents devote most of their Petition for Review to the argument that the Division is biased against them or improperly singled them out for examination, wholly ignoring her admitted and proven securities law violations. There is nothing in the record to support those false arguments, and her brief contains no evidentiary citations. As Chief ALJ Murray found, "There is no indication that [Young] was singled out; [the examiner] testified that the Commission was conducting examinations of other internet advisers as well. Once the examiners approached Saving2Retire and received Young's inadequate document response, the deficiencies in her

recordkeeping and the fact that she had no internet clients raised obvious red flags." Initial Decision, at p. 24. Further, there is no evidence of personal bias against Young. To the contrary, Judge Murray found that "in the one phone call Young put in evidence, Commission staff behaved professionally and were respectful toward Young. If anything, it would appear there were instances where Young was less than respectful toward them, such as when she abruptly ended [the examiner's] call."

In short, Respondents have provided no evidence or justification to support their unfounded claims of bias. Further, their repeated and recurring failure to cooperate with Commission examination and enforcement proceedings, and their failure to maintain and to provide basic business records, has nothing to do with a so-called "Broken Windows" policy. Respondents have steadfastly refused to accept any responsibility for their actions, and have instead blamed the Commission for the consequences of Young's flagrant securities violations, repeated obstruction, and refusal to cooperate.

For example, in their brief in support of the petition for review, Respondents attempt to blame the Commission for the fact that the State of California barred Young and Saving2Retire from doing business in California. As set forth in the State of California Department of Business Oversight's ("Department") Statement of Issues and Accusation in Support of Notice of Intention to Issue Orders, a public document attached hereto as Exhibit A, and available at https://dbo.ca.gov/wp-content/uploads/sites/296/2013/09/Saving2Retire-LLC-Statement-of-Issues-Denying-Barring.pdf, the Department found that Young and Saving2Retire failed to provide complete and accurate responses to deficiency letters, made material misrepresentations on its Form ADV filings (including the fact that Young falsely claimed in filings to be a Certified Financial Planner and a Certified Investment Manager Consultant), and violated California law in various

ways, including by failing to keep and maintain accurate books and records. The Department found that "Young's lack of timely cooperation, recalcitrance to provide relevant information, omission of material facts, and outright misrepresentations to both the Department and to the SEC reflect poorly on her honesty and integrity in an industry that demands both from its participants" and found it "in the public interest to bar Young from any position of employment, management, or control of any investment adviser, broker dealer, or commodity adviser pursuant to Corporations Code section 25232.1." *See* Exhibit A.

The Commission should not reward Young's bad behavior and flagrant disregard for the laws, rules, and regulations that govern her business by further reduction of the already low penalties imposed by Judge Murray. To the contrary, greater sanctions and a permanent bar are warranted here.

CONCLUSION

For all the reasons stated above, the Division requests that the Commission: (1) affirm the Initial Decision; or (2) in the alternative, impose civil penalties against S2R, additional civil penalties against Young, and a permanent industry bar against Young; and (3) award the Division such further relief as to which it is entitled.

CERTIFICATE OF SERVICE

In accordance with Rule 150 of the Commission's Rules of Practice, I hereby certify that true and correct copy of the foregoing document was served on the following persons on December 11, 2019, by the method indicated:

By UPS and email:
Office of Administrative Law Judges
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-2557

By UPS and email ([redacted]*@comcast.net*):
Saving2Retire, LLC
Marian P. Young
[redacted]

/s/Jennifer D. Reece
Jennifer D. Reece

EXHIBIT A

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BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT

OF THE STATE OF CALIFORNIA

In the Matter of: THE COMMISSIONER OF BUSINESS OVERSIGHT, Complainant, v. SAVING2RETIRE, LLC and MARIAN P. YOUNG, an individual, Respondents.	CRD NO.s: 156868 & 1206887 STATEMENT OF ISSUES AND ACCUSATION IN SUPPORT OF NOTICE OF INTENTION TO ISSUE ORDERS: 1. DENYING THE INVESTMENT ADVISER CERTIFICATE APPLICATION OF SAVING2RETIRE, LLC 2. BARRING MARIAN P. YOUNG FROM ANY POSITION OF EMPLOYMENT, MANAGMENENT OR CONTROL OF ANY INVESTMENT ADVISER, BROKER-DEALER OR COMMODITY ADVISER (Corporations Code §§ 25232 & 25232.1)

Jan Lynn Owen in her capacity as the Commissioner ("Commissioner") of the Department of Business Oversight ("Department"), alleges and charges as follows:

I. INTRODUCTION

1. This action is brought to deny the investment adviser application of respondent Saving2Retire, LLC ("Saving"), CRD#156868, pursuant to Corporations Code section 25232 and to bar respondent Marian P. Young ("Young"), CRD#1206887, from any position of employment, management, or control of any investment adviser, broker-dealer, or commodity adviser pursuant to

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Corporations Code section 25232.1.[1]

2. Corporations Code section 25600 authorizes the Commissioner to administer and enforce the provisions of the Corporate Securities Law of 1968 (Corp. Code § 25000 *et seq.*) and the regulations promulgated thereunder (Cal. Code Regs., tit. 10, § 260.000 *et seq.*).

II. STATEMENT OF FACTS

3. On or about January 2, 2015, respondent Saving electronically filed an application on the Form ADV for investment adviser registration in the State of California.[2] According to the application, respondent Young is the sole owner of respondent Saving. (Young and Saving may be referred to collectively as "respondents".)

4. An initial review of the Investment Adviser Registration Depository ("IARD") system indicated Young previously owned a California registered investment adviser, Young Capital Growth Company, LLC ,(CRD#135080), from January 1, 2003 to December 31, 2012. That firm's registration was revoked for failure to pay its renewal fee for 2013.

5. Young registered Saving with the Securities Exchange Commission ("SEC") from April 8, 2011 to the present, overlapping to some extent, with Young Capital Growth's state registration. The respondents' January 2, 2015, application on Form ADV is an attempt by Young and Saving to transition from SEC registration to state registration.

6. Further review of respondents' January 2, 2015, application revealed deficiency items. On January 17, 2015, the Commissioner sent a deficiency email to respondents outlining over 30 areas needing clarification and requiring respondents to provide adequate responses.

7. On January 27, 2015, respondents emailed the Commissioner requesting an extension of time within which to respond. Young represented that Saving had only eight clients and asked whether any exemptions to registration were available to advisers with such a small client base.

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[1] All code references are to the California Corporations Code unless otherwise indicated.

[2] The investment adviser application in issue is a "Form ADV (Paper Version) Uniform Application for Investment Adviser Registration" promulgated by the Securities Exchange Commission ("SEC") pursuant to 17 Code of Federal Regulations 279.1 as amended by the SEC Release No. IA-1916, 34-43758 (*see* Cal. Code Regs., tit. 10, § 260.231.2).

8. In the latter half of January, 2015, the Commissioner learned that the Securities and Exchange Commission ("SEC") was in the process of conducting a limited scope examination of Saving under section 204 of the Investment Advisors Act of 1940. However, Young failed to cooperate with the SEC. She refused to provide documents requested by the SEC as part of their examination. In a January 12, 2015 letter, Young responded to a January 5, 2015 letter from the SEC to Young in which the SEC noted Young's continued refusal to provide the requested documents could result in a referral to the SEC's enforcement division and a request to the Commission authorizing an action for violations of the federal securities laws. In her response letter, Young told the SEC that she wanted to withdraw from SEC registration and asked to do so without penalty. The Commissioner is informed and believes that Young never produced the requested documents to the SEC.

9. On March 25, 2015, the Commissioner sent Young and Saving a deficiency follow-up email. The Commissioner noted that she was aware of the SEC examination and, again, requested clarification on at least 20 remaining areas, still pending from the initial January 17, 2015, deficiency email. This follow-up email noted that if responses were not forthcoming by April 4, 2015, respondents' application would be abandoned.

10. Young and Saving failed to respond to the follow-up email and the Commissioner sent a Notice of Abandon email to respondents on April 7, 2015.

11. On April 8, 2015, Young called the Department and spoke with a Supervisor in the Department's Broker Dealer/Investment Adviser Division. Subsequently, the Department made multiple attempts to follow-up with Young: April 10, April 14, and April 20, 2015. Eventually, respondents were granted a further extension to May 17, 2015, to respond to the deficiency e-mail(s) in full.

12. On May 20, 2015, after the expiration of the extension, Mr. David Millar, a consultant with Integrity Compliance Consulting, Inc., contacted the Department asking for a further extension until May 26, 2015, to submit respondents' response.

13. Although partial responses were provided on May 26, 2015, Young and Saving have, to date, still failed to provide complete and accurate responses to the deficiency emails.

14. In addition, Saving made material misrepresentations in its form ADV filings. On January 27, 2015, as noted above, in its request for an extension, Saving claimed to have eight clients, however, the initial January 2, 2015, Form ADV filing indicated 10 clients with $4.2 million in assets under management. Later, after being asked for a detailed list of its clients, Saving represented that it had 10 clients with $2.4 million in assets.

15. Young made further misrepresentations on the Form ADV. She represented herself to be both a Certified Financial Planner (CFPC) and a Certified Investment Manager Consultant ("CIMC"). However, her certification status on the CFP Board shows "Not Certified" and her name was not searchable on the CIMC website. When pressed for further clarification, she removed all references to her professional designations. Material misrepresentations in Form ADV filings violate California law. (See, Corp. Code sec. 25232, subd. (a); Cal. Code Regs., tit. 10, sec. 260.238, subd. (h).)

16. Savings and Young also violated California law by failing to make and keep true, accurate and current copies of books and records. Savings has variously represented that it has 8, 10, or 13 clients with amounts under management varying from $4-5 million to $2.4 million. Moreover, when asked for a detailed list of these clients, respondents provided a list identifying them only as Clients A through H. This failure to provide necessary information not only indicates a lack of honesty and forthrightness, but also inadequate recordkeeping in violation of California Code of Regulations, Title 10, section 260.241.3.

17. Savings and Young also violated California law by having testimonials on Savings' website and available on YouTube. (See, e.g., Corporations Code section 25235; and, Cal. Code Regs, tit. 10, sec. 260.235.)

18. Finally, the Commissioner is informed and believes that Young has represented to the SEC that Saving is now registered with the Department and, consequently, respondents have refused to comply with further requests by the SEC in its ongoing exam of Saving. However, at this point in time, Saving is currently registered with the SEC and the Department intends to deny Saving's pending application.

III. FIRST CAUSE FOR DENIAL OF APPLICATION: RESPONDENTS MADE MATERIAL MISREPRESENTATIONS IN THEIR FORM ADV APPLICATION WITHIN THE MEANING OF CORPORATIONS CODE SECTION 25232, SUBDIVISION (a)

19. Corporations Code section 25232, subdivision (a) authorizes the Commissioner to deny an application for investment adviser registration when it is in the public interest and where the applicant:

> . . . (a) Has willfully made or caused to be made in any application for a certificate . . . any statement which was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, or has willfully omitted to state in the application or report any material fact which is required to be stated therein.

20. In respondents' January 2, 2015, Form ADV application for registration as an Investment Adviser, respondents represented that Saving had 10 clients with $4.2 million dollars under management.

21. However, at various times during the process, Young has represented that Saving had anywhere from 8 to 13 clients.

22. On May 26, 2015, after being pressed by the Department for a detailed list of clients, respondent claimed 10 clients, but only $2.4 million under management.

23. Young made further misrepresentations on the Form ADV. She represented herself to be both a Certified Financial Planner (CFPC) and a Certified Investment Manager Consultant ("CIMC"). However, her certification status on the CFP Board shows "Not Certified" and her name was not searchable on the CIMC website. When pressed for further clarification, she removed all references to her professional designations. These misrepresentations also constitute violations of the aforementioned federal and State laws.

24. Additionally, when asked for a detailed list of clients, Respondent simply provided a list detailing 10 clients identified only as Clients A through H. Respondent failed to identify the clients by name, address, phone number or provide any relevant identifying information.

25. Based on the foregoing, the Commissioner finds that respondents Saving and Young made material misrepresentations and/or failed to disclose required material facts in an application filed

with the Commissioner within the meaning of Corporations Code section 25232, subdivision (a), and it is in the public interest to deny respondent Saving's application for an investment adviser certificate.

IV. RESPONDENT YOUNG SHOULD BE BARRED FROM ANY POSITION OF EMPLOYMENT, MANAGEMENT, OR CONTROL OF ANY INVESTMENT ADVISER, BROKER-DEALER, OR COMMODITY ADVISER PURSUANT TO CORPORATIONS CODE SECTION 25232.1.

26. Corporations Code Section 25232.1 provides in relevant part:

> The commissioner may, after appropriate notice and opportunity for hearing, by order censure, or suspend for a period not exceeding 12 months, or bar from any position of employment, management or control of any investment adviser, broker-dealer or commodity adviser, any officer, director, partner, employee of, or person performing similar functions for, an investment adviser, or any other person, if he or she finds that the censure, suspension or bar is in the public interest and that the person has committed any act or omission enumerated in subdivision (a), (e), (f), or (g) of Section 25232 . . .

27. The Commissioner finds that respondent Young "committed an act or omission enumerated in subdivision (a) . . . of [s]ection 25232" (see, *infra*) when she willfully made false and misleading statements and/or omitted to state material facts. These violations of section 25232, subdivision (a) are set out in the preceding section and include failing to identify the number and identity of her clients, failing to disclose or being unaware of the amount of assets under management, and misrepresenting herself as a Certified Financial Planner and a Certified Investment Manager Consultant.

28. Further, the Commissioner finds that respondent Young "committed an act . . . enumerated in subdivision . . . (e) . . . of [s]ection 25232" (see, infra) by failing to keep true, accurate and current copies of her records and by including testimonials in her advertising both on her website and on YouTube.

29. Finally, Young's lack of timely cooperation, recalcitrance to provide relevant information, omission of material facts, and outright misrepresentations to both the Department and to the SEC reflect poorly on her honesty and integrity in an industry that demands both from its participants.

30. Based on the foregoing, the Commissioner finds it is in the public interest to bar respondent Young from any position of employment, management, or control of any investment adviser, broker-dealer, or commodity adviser pursuant to Corporations Code section 25232.1.

VII. RELIEF REQUESTED

WHEREFORE, IT IS PRAYED that: (1) the investment adviser application of respondent Saving2Retire, LLC be denied pursuant to Corporations Code section 25232, subdivisions (a) and (d)(2); and, (2) respondent Young be barred from any position of employment, management, or control of any investment adviser, broker-dealer, or commodity adviser pursuant to Corporations Code section 25232.1.

Dated: November 23, 2015

JAN LYNN OWEN
Commissioner OF Business Oversight

By: _____
ERIK BRUNKAL
Senior Counsel
Enforcement Division

State of California - Department of Business Oversight