UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-17614

In the Matter of:

Laurence I. Balter d/b/a
Oracle Investment Research

Respondent.

ANSWER AND AFFIRMATIVE DEFENSES OF RESPONDENT LAURENCE I. BALTER

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ANSWER

Respondent Balter denies that the Division is entitled to the relief it seeks, answers the specific allegations of the Order Instituting Administrative Proceeding ("OIP") and states his defenses as follows[1]:

PRELIMINARY STATEMENT

Respondent Laurence I. Balter ("Respondent Balter") incorporates by reference the requests and supporting arguments made in his contemporaneously-filed Motion for More Definite Statement. A number of the allegations made by the Division of Enforcement (the "Division") in its Order Instituting Administrative and Cease-and-Desist Proceedings (the "OIP") lack sufficient detail so as to allow Respondent Balter to provide substantive answers and to formulate all applicable affirmative defenses. By answering, or attempting to answer, the allegations below, Respondent Balter does not intend to forfeit or waive his argument that the Division should provide a more definite statement regarding the allegations identified in Respondent Balter's Motion for More Definite Statement, and to amend this Answer to provide such substantive answers and affirmative defenses.

During the period 2011 through 2013, the last three years of an otherwise successful 12 year career as an investment adviser, Respondent Balter picked the wrong stocks at the wrong time. Regrettably, Respondent Balter and his clients lost substantial sums of money. Personally and financially devastated, in January 2014, Respondent Balter voluntarily resigned from the investment advisory business. Still raising two young boys and the sole bread winner of his household, Mr. Balter has survived financially for the last three years by giving flying lessons in his small single

[1] As to any allegation not specifically admitted, Respondent denies the allegation.

engine airplane and driving for Uber in the evenings. He continues to work as a volunteer in his community.

Mr. Balter is a good person who treated his clients more than fairly. Notably absent from the OIP is any allegation that Respondent Balter charged his clients more than his ADV disclosed – up to 2.5% per annum. At all times, Mr. Balter charged less than that amount.

Mr. Balter managed Oracle Mutual Fund two years and seven months, for which he literally took zero adviser fees. Separately, with respect to the client referenced in the OIP as Client A, Brian Barbata and his related accounts, Mr. Balter undercharged him by more than $167,000, according to an independent expert retained by Mr. Balter.

Mr. Balter was the second largest shareholder of the Fund, and had a much larger portion of his net worth invested in the Fund than any other investor. The Oracle Mutual Fund existed for less than 3 years. During its brief existence, Mr. Balter personally reimbursed the Fund over $212,000 to maintain its operation and invested an additional $900,000 in the Fund as a shareholder, constituting more than 70% of his net worth. Thus, Mr. Balter had significant stake in the game and suffered losses right alongside the other investors in the Fund.

Mr. Balter engaged competent mutual fund counsel, Richard Ropka, to form the Fund and ensure compliance with applicable law. Mr. Balter engaged a reputable fund accounting and reporting service, Mutual Shareholder Services ("MSS"), to maintain mutual fund accounting records and other mutual fund compliance services. Using MSS, Mr. Balter prepared and distributed quarterly reports providing a detailed report of the Fund's activities and the status of the Fund's investment and profit and loss performance. He enlisted three competent and experienced lawyers to act as the Fund's independent Board of Trustees, and met quarterly with the Fund's Board and, often, with its counsel. Mr. Balter ensured that an Audit Committee was formed, independent of him,

and that the Audit Committee met quarterly at or around the time of each Board Meeting. As the sole employee of the Fund, Mr. Balter took on the roles of the Fund's only investment adviser, Chief Compliance Officer and sole executive. While he would have loved to share those burdens with experienced professionals, there were insufficient resources at the start-up phase of the Fund to do so. Each of these professionals and Board members worked closely with Mr. Balter in a good faith effort to comply with all applicable laws and regulations. To the extent there were mistakes as a result of the absence of resources, no such mistakes were material to the investors or could be fairly construed as dishonest. Again, the problem was stock picking. The Fund lost money and, because the Fund's investments lost money, its track record made it impossible to grow the Fund to a size that would allow the Fund to operate profitably for Mr. Balter and its shareholders. Accordingly, Mr. Balter and the Board of Trustees liquidated the Fund in August 2013, a short 2 years and 7 months after its formation.

The Division spent more than three years of its investigation pursuing an argument that Mr. Balter failed to comply with the "diversification" mandates of Section 5(b)(1) of the Investment Adviser Act. As explained below, the Division was simply mistaken. The Division made two simple mistakes that lead it to its incorrect conclusion. First, it misread the statute. Section 5(b)(1) of the Investment Adviser Act of 1940 requires that the Fund meet a 75% minimum threshold to qualify as a diverse fund. Generally, adding the percentage of total assets that are held in cash, receivables and stocks (but not more than 5% in any one stock), the sum must total at least 75%.

For example, if the Fund had 5 stocks with a 6% weighting, and 70% of the Fund assets in cash, Section 5(b)(1) would be satisfied (5% times 5 stocks, plus 70% in cash, equals 95%, well over 75%). The Division incorrectly would view that as failing because it misreads Section 5(b)(1) to include a 25% diversification test. There is no 25% diversification test in the statute. The Division

would incorrectly conclude, based on the same hypothetical, that the Fund failed the Division's self-serving and unsupported 25% diversification test based on multiplying 5 stocks at 6%, and concluding that the sum, 30%, exceeds 25%. Only by misreading Section 5(b)(1) could the Division come to its self-serving and baseless result.

The second misstep in the Division's diversification analysis is *when* the Division measures diversification. Section 5(b)(1) and 5(c) make clear that the diversification test is made at the time of acquisition, not the day end balances. The Division's analysis is based on day-end results and, thus, its conclusions as to the Fund's compliance are misguided and incorrect.

Among his duties as investment adviser and chief compliance officer of the Fund, Mr. Balter ensured his compliance with the diversification requirements at acquisition. Each and every trade was cleared by Mr. Balter for its compliance with the diversification requirements, monitoring in real time his portfolio weights, sometimes printing out a screen shot of the moment's account balances, at the instant of the trade. By having the Chief Compliance Officer of the Fund approving in real time each and every trade, Mr. Balter could ensure perfect compliance with all Fund diversification requirements.

Similarly, the Division misunderstands the industry concentration test. Mr. Balter properly used the US Board of Labor's Securities Industries Classification ("SIC") codes to determine the appropriate category into which each investment was made. Using such SIC codes, the Fund at all times satisfied the industry concentration requirements set forth in its Prospectus.

The remainder of the Division's contentions are fairly categorized as books and records deficiencies. Undoubtedly, there were some. But, none were material and most of the allegations are simply extensions of the Division's mistaken view of the diversification and industry concentration rules. For example, based on incorrect accusations that the Fund failed the diversification test under

Section 5(b)(1), the Division concludes at paragraph 24 of the OIP that Mr. Balter mislead the Board of Trustees when he certified compliance each quarter. Because Mr. Balter's interpretation of the diversification requirement was the correct one, and his certification was accurate, the Division's complaint aimed at the disclosures by Mr. Balter to the Fund also fail scrutiny.

Separately, the Division focuses on alleged wrongdoing by Mr. Balter in serving his investment clients, including, in particular, Mr. Barbata. Contrary to the OIP's allegations, Mr. Barbata was treated more than fairly by Mr. Balter. Mr. Balter's independent expert, John Duval, found absolutely no wrongdoing by Mr. Balter, and actually concluded that Mr. Barbata is over $120,000 better off as a result of the activity in Mr. Barbata's various accounts than he would have been had Mr. Balter charged all fees he was owed and had Mr. Balter perfectly allocated every trade. Mr. Balter allocated nearly $500,000,000 in trades with nearly perfect precision on a pro-rata or pari passu basis. In short, Mr. Balter did not cheat Mr. Barbata. He treated him fairly and honestly, just as one would expect an adviser to do with his cherished client and friend.

Mr. Balter treated his other individual clients more than fairly. He charged his individual clients approximately 44% less than the 2.5% adviser fees allowed by his ADV, to which his clients agreed.

The Division argues that Mr. Balter, using the plenary discretion over his clients' accounts entrusted to him by those clients, violated that trust by duplicating fees. The Division complains that Mr. Balter charged them a fee for their individual investment account, and another fee because part of that individual investment account was invested within the Fund, from which Mr. Balter purportedly drew more fees. That is simply not true. Mr. Balter did not receive any investment adviser fees from the Fund. While individual clients did suffer a cost to reimburse a proportionate share of the costs incurred to run the Fund, Mr. Balter felt that such cost was justified given the

diversification benefits afforded his clients by pooling their investment with other investors in the Fund and pooling the Fund in one portfolio for convenience purposes; as well as other benefits available to the Fund, but not individual investors (such as the benefits of Securities Lending transactions with Morgan Stanley).

The Division further contends that Mr. Balter was trading ahead of his clients, in violation of his Code of Ethics. However, the Code of Ethics excludes trades in stocks with market capitalization exceeding $500,000,000. Every trade was such a security. Accordingly, Mr. Balter did not violate his Code of Ethics. Moreover, because the trades in question were not remotely sufficient to move the market price in any such stocks, the timing of the trades in Mr. Balter's account and his clients' accounts is completely irrelevant.

The Division also contends that the same investors were defrauded into investing in the Fund due to misrepresentations in the Fund Prospectus. Mr. Balter denies that there were any material misrepresentations or omissions in the Prospectus. In any event, no investor could have relied on any misrepresentation or omission, because it was Mr. Balter, not the investors, who had discretion to decide whether or not to invest in the Fund. Furthermore, clients were fully informed on the progress of the Fund, many attended conference calls, webinars, communicated via email, and in person meetings with Mr. Balter. In order for Mr. Balter to have successfully defrauded the investors with the words in the Prospectus, he would have to have had to have deceived himself. Knowing the statements were false when made, he would have also have to have believed them as true when he read them. Ridiculous! The argument just does not work in the context of an inv

I

Answering the allegations in Section I of the OIP, Respondent Balter responds that such allegations contain legal conclusions to which no answer is required. To the extent an answer is

deemed necessary, Respondent Balter denies that it is appropriate or in the public interest that public administrative and cease-and-desist proceedings be instated against him or Oracle Investment Research under any statute, including those cited in that paragraph. Respondent further denies that the Commission is entitled to institute proceedings pursuant to Sections 15(b) and 21C of the Securities and Exchange Act of 1934 ("Exchange Act"). By filing and serving his answer, Respondent Balter does not intend to waive and is not waiving, his rights to pursue a federal court action, and raises all constitutional objections at this place to preserve them. This Answer is filed without prejudice to and expressly preserves all claims and contentions that may be asserted in a federal court action. Except as otherwise expressly admitted, denied.

II

Summary

1. Responding to paragraph 1, Respondent Balter admits that he was a formerly registered investment adviser the Oracle Mutual Fund, and certain separately managed accounts. To the extent the allegations in Paragraph 1 purport to state legal conclusions, no response is required. Except as admitted above, Respondent Balter denies each and every allegation in Paragraph 1.

2. Responding to paragraph 2, Respondent Balter alleges that such paragraph, in its entirety, contains legal conclusions to which no answer is required. To the extent an answer is deemed necessary, Respondent Balter expressly denies that he willfully, or otherwise, violated or aided and abetted any violations of any of the federal securities laws. Except as admitted above, Respondent Balter denies each and every allegation in Paragraph 2.

Respondent

3. Responding to paragraph 3, Respondent Balter admits that Laurence Isaac Balter conducted business as Oracle Investment Research; that he is 46 years old; is a resident of Kihei,

Hawaii; that he was the founder, principal, chief compliance officer, and sole owner of Oracle Investment Research ("Oracle"), which was a sole proprietorship for most of its existence; that at certain times Oracle had its principal place of business in Fox Island, Washington and was registered with the Commission as an investment adviser from June 2, 2010 until August 26, 2013, when it withdrew its investment adviser registration; that at its peak, in February 2013, Oracle had $47 million in regulatory assets under management, including the assets of the Fund; that Respondent Balter held securities license series 7, 24, 63 and 66, and from 2000 to until September 16, 2010, he was a registered representative with two dual registrants; that he also was registered as an investment adviser with the state of Washington from September 26, 2013 through December 20, 2013, when he withdrew the registration; that he attempted to register Oracle Investment Research, LLC as an investment adviser in Hawaii beginning in late September 2013, and that neither Balter nor Oracle is currently registered with the Commission or any other securities authority. Except as expressly admitted, denied.

Other Relevant Entity

4. Responding to paragraph 4, Respondent Balter admits that Oracle Mutual Fund (ticker symbol "ORGAX") (the "Fund") was a series of the Oracle Family of Funds, an Ohio statutory business trust registered as an investment company under the Investment Company Act with the Commission from June 8, 2010 until March 6, 2014; that Respondent Balter served as the President, a Trustee, and the sole employee of the Oracle Family of Funds and as the portfolio manager, chief compliance officer, administrator for and adviser to the Fund; and that the Fund ceased operations on or around August 31, 2013 and withdrew its registration on or around November 21, 2013. Except as expressly admitted, denied.

Background

5. Responding to paragraph 5, Respondent Balter admits that the majority of Balter's advisory clients were individual investors. Respondent Balter lacks sufficient information to admit or deny the remaining allegations in paragraph 5 of the OIP, and on that basis, denies such allegations. Except as expressly admitted, denied.

6. Responding to paragraph 6, Respondent Balter admits that he managed the Oracle Mutual Fund, in which he invested some of his SMA clients; that the Fund's stated investment objective, as set forth in its Prospectus, was "long-term capital appreciation while secondarily striving for income"; that the Fund held the securities reported to its shareholders, the number of which varied, and that the Fund's prospectus accurately disclosed the details of the amount of fees to which Mr. Balter was entitled, and the circumstances under which such fees would be earned and paid; and that, under certain circumstances, which never occurred, Mr. Balter would have been entitled to receive, as adviser to the Fund, management fees of 0.70 percent of average daily net assets and, as administrator to the Fund, fees of 0.20 percent of average net assets. Mr. Balter further admits that because the Fund's operating expenses, excluding Mr. Balter's management and administrator fees, exceeded 1.00 percent (1.50 percent after January 1, 2013) of the Fund's average net assets, Mr. Balter was not entitled to a management or administrator fee, and thus took no such fee. Except as expressly admitted, denied.

7. Responding to Paragraph 7, Respondent Balter admits that in or around May 2012, Respondent Balter and a single client, Brian Barbata (and his related entities and accounts), a Harvard MBA educated sophisticated wealthy investor, agreed that Respondent Balter would trade alongside Mr. Barbata's accounts and his related accounts. Mr. Barbata preferred that Mr. Balter have "skin in the game." Respondent Balter further admits he executed certain securities trades

through a block account at two different registered broker-dealers during the period of May 2012 through at least December 2013. Respondent Balter further admits that the broker-dealer that executed the block trades also acted as custodian for Respondent Balter's separately managed accounts. Respondent Balter further admits that a few other investment advisory clients placed fewer than five exploratory trades in the block account before discontinuing the activity within one-month Respondent Balter further admits that in or around June 2013, one of the brokers with which Mr. Balter executed block trades unilaterally terminated its relationship with Respondent Balter without providing any notice of any wrongdoing by Respondent Balter, instead explaining only that the termination was for business reasons. Except as admitted above, Respondent Balter otherwise denies each and every allegation in Paragraph 7.

8. Responding to Paragraph 8, Respondent Balter admits that Balter's Forms ADV Part 2A, Item 11 filed on March 23, 2011, January 5, 2012 and July 22, 2013 state that "client trades are placed prior to any advisor personal transactions" and that Respondent Balter's Compliance Manual, provides for "an equitable allocation of the securities to the client" before "contemporaneously purchasing the same securities as a client.". Respondent Balter's Code of Ethics, while prohibiting trades ahead of clients, generally, specifically excludes from such prohibition trades in stocks with market capitalization exceeding $500,000,000, because such trades have virtually no possibility of affecting the trading prices available to Mr. Balter's clients. Except as expressly admitted, denied.

9. Responding to Paragraph 9, Respondent Balter admits that his Compliance Manual provided: "[c]lients must always receive the best price, in relation to employees, on same day transactions"; that he "first give priority on all purchases and sales of securities to [his] clients, prior to the execution of transactions for [his] proprietary accounts"; and "personal trading must be conducted so as not to conflict with the interests of a client." Respondent Balter further avers that his

Code of Ethics expressly exempted certain transactions, including those with a market capitalization in excess of $500 million. See Oracle Investment Research Code of Ethics at II. G. Respondent denies that his personal trades ever conflicted with clients or Oracle Mutual Fund. Except as admitted above, Respondent Balter otherwise denies each and every allegation in Paragraph 9.

10. Responding to paragraph 10, Respondent Balter admits that he executed trades in a block account without pre-allocating the trades. Respondent Balter avers that his brokerage firm would not allow pre-allocation of trades, and that, pursuant to his agreement with his client, Mr. Balter allocated trades fairly between himself and his client whose trades were executed in a block account in order to ensure a pari passu or pro rata distribution of profits and losses as between Respondent Balter's investment and those of his client. Except as admitted above, Respondent Balter denies each and every allegation in Paragraph 10.

11. Responding to paragraph 11, Respondent Balter lacks sufficient information to admit or deny the allegations, and on that basis, denies such allegations. Respondent Balter further avers that the timing of trades between him and his clients in companies with market capitalization over $500 million is purely happenstance, as the amount of any relevant trade would be too miniscule to move the market price, one way or the other. Except as expressly admitted, denied.

12. Responding to paragraph 12, Respondent denies that he was cherry picking the profitable trades from any of his clients' accounts; and that he regularly or intentionally underreported losses that any client, including Mr. Barbata, sustained, although he admits that it is possible that a mistake in terms of reporting losses on a daily basis may have occurred, either underreporting or over reporting gains and/or losses in an email or emails sent to any client. Respondent lacks sufficient information to admit or deny allegations as to any particular email not identified in the OIP. Except as expressly admitted, denied.

13. Responding to paragraph 13, Respondent denies each and every allegation contained there.

14. Responding to paragraph 14, Respondent Balter lacks sufficient information to admit or deny the data alleged therein, and on that basis, denies such allegations. Mr. Balter denies that the isolated periods referenced in the allegation depict a relevant or fair result, and alleges that the Division has cherry picked periods of time and isolated accounts to distort the true allocations, which, overall, were fair and reasonable when viewed in the relevant period, which would include all time periods and all client accounts. Except as expressly admitted, denied.

15. Responding to paragraph 15, Respondent Balter lacks sufficient information to admit or deny the alleged basis for Broker 2's actions, and further denies that he owed any duty to disclose anything said to him by Broker 2 that he then failed to report to his clients. Except as expressly admitted herein, denied.

16. Responding to paragraph 16, Respondent Balter lacks sufficient information about the emails and other communications with his clients to admit or deny such allegations and on that basis, denies such allegations. Respondent Balter admits that his Form ADV stated that there would not be "double dipping" on the fee and stating that there would be a "proration of the fund management fee credited to the account." Except as expressly admitted herein, denied.

17. Responding to paragraph 17, Respondent Balter denies each and every allegation and avers that because Mr. Balter took no advisory fees from the Fund, no double dipping of advisory fees was done and no credit against client's advisory fees was made. Except as expressly admitted, denied.

18. Responding to paragraph 18, Respondent Balter admits that Section 8(b) and Section 143(a)(1) and (3) of the Investment Company Act contain the language in such provisions, and admit

the same to the extent accurately characterized by the OIP. Except to the extent accurately characterized, such allegations are denied. Except as expressly admitted, denied.

19. Responding to Paragraph 19, Respondent Balter admits that the Fund's Statement of Additional Information (the "SAI") and Registration Statement contain the statements that they contain and, to the extent accurately quoted, admits such statements. To the extent the allegations in Paragraph 19 constitute mischaracterizations or inaccurate summations of the text in the SAI and Registration Statement, such allegations are denied. Except as expressly admitted, denied.

20. Responding to Paragraph 20, Respondent Balter admits that the Fund's Statement of Additional Information (the "SAI") contains the statements that it contains and, to the extent accurately quoted, admits such statements. To the extent the allegations in Paragraph 20 constitute mischaracterizations or inaccurate summations of the text in the SAI, such allegations are denied. Except as expressly admitted, denied.

21. Responding to Paragraph 21, Respondent Balter admits that he was the President and sole employee of the Fund, and that he bears the responsibility that the law imposes on such positions. Mr. Balter also admits that he approved the SAI disclosures as a member of the Fund's Board of Trustees. Except as expressly admitted, denied.

22. Responding to Paragraph 22, Respondent Balter admits that he was the investment adviser to the Fund, and that he bore the responsibilities and limitations of such role imposed by law and contract. Except as expressly admitted, denied.

23. Responding to Paragraph 23, Respondent Balter denies each and every allegation contained therein.

24. Responding to Paragraph 24, Respondent Balter denies each and every allegation contained therein.

25. Responding to Paragraph 25, Respondent Balter denies each and every allegation contained therein.

ALLEGED VIOLATIONS

26. Responding to Paragraph 26, Respondent Balter denies each and every allegation contained therein.

27. Responding to Paragraph 27, Respondent Balter denies each and every allegation contained therein.

28. Responding to Paragraph 28, Respondent Balter denies each and every allegation contained therein.

29. Responding to Paragraph 29, Respondent Balter denies each and every allegation contained therein.

30. Responding to Paragraph 30, Respondent Balter denies each and every allegation contained therein.

31. Responding to Paragraph 31, Respondent Balter denies each and every allegation contained therein.

32. Responding to Paragraph 32, Respondent Balter denies each and every allegation contained therein.

33. Respondent Balter denies each and every allegation of the Division of Enforcement not herein admitted, qualified, or denied. Respondent Balter expressly reserves the right to seek to amend and/or supplement his Answer as may be appropriate or necessary.

AFFIRMATIVE DEFENSES

Without admitting any wrongful conduct on the part of Respondent and without conceding that he carries the burden of proof on any of the following affirmative defenses, Respondent alleges the following affirmative defenses to the claims alleged in the OIP

First Affirmative Defense

The allegations of the Division of Enforcement fail to state a claim upon which relief may be granted by the Commission against Respondent Balter.

Second Affirmative Defense

The Division's claims against Respondent fail, in whole or in part, because the Respondent acted reasonably and in good faith at all relevant times.

Third Affirmative Defense

The claims set forth in the OIP are barred in whole or part because Respondent Balter relied in good faith upon information, opinions, reports, and/or statements prepared by one or more agents or Respondent or Oracle Mutual Fund whom Respondent Balter, reasonably believed to be reliable and competent in the matters presented.

Fourth Affirmative Defense

The Commission and the Commission's Administrative Law Judges lack authority to conduct the proceedings herein, including, but not limited to, the fact that the presiding Administrative Law Judge is an "inferior officer" for purposes of Article II of the United States Constitution who was not appointed by the Commissioners, the President, or the courts and is impermissibly shielded from the President's removal powers.

Fifth Affirmative Defense

The claims alleged in the OIP are barred, in whole or in part, because this administrative proceeding violates Respondent's United States Constitutional rights, including, but not limited to, Respondents' rights to due process and equal protection. Among other things, (1) the Fifth Amendment Due Process Clause was violated based on the Commission's prejudgment of the charges; (2) the Commission's decision to place its claims against Respondent in an administrative proceeding violated Respondent's rights under the Equal Protection Clause by denying Respondent the fundamental right to a jury trial. The SEC chooses whether to bring cases in administrative proceedings or in federal court on a case-by-case basis, subject to no standard, thereby unilaterally deciding whether or not to deprive the Respondent of a jury trial based on its arbitrary, capricious or malicious decision; (3) the Equal Protection Clause is also violated under a "class-of-one" theory, in that the Commission had taken similarly situated persons to court, while deciding to pursue Respondent in an agency proceeding; (4) the Due Process Clause and Equal Protection Clause is violated because the Respondent had no advance notice that his actions, which appeared lawful and in compliance with his duties, could expose the Respondent to devastating liability to the Commission. The claims should be litigated in the United States District Court for the District of Hawaii, where Respondent would enjoy all his Constitutional rights of Due Process and Equal Protection under the laws.

Sixth Affirmative Defense

The claims alleged in the OIP are barred in whole or in part, because the administrative proceeding violates the doctrine of separation of powers.

Seventh Affirmative Defense

The civil penalties sought by the Commission should be denied or substantially reduced because any such award would be unjust, arbitrary and oppressive, or confiscatory.

Eighth Affirmative Defense

The relief of disgorgement and other monetary relief is barred in whole or in part to the extent of applicable claims of Respondent for setoff, offset, recoupment and subsequent or concurrent new value exchanged for any moneys received by Respondent for which disgorgement or other legal or equitable monetary relief is sought. Here, among other things, the fact that Mr. Balter undercharged Mr. Barbata fees to which he was entitled, should result in an offset of such fees against any disgorgement order arising from Mr. Balter's alleged allocation errors in connection with Mr. Barbata's accounts.

Ninth Affirmative Defense

The OIP, and each alleged cause of action contained therein, and remedy sought is barred in whole or in part by the applicable statute of limitations.

Tenth Affirmative Defense

The OIP, and each alleged cause of action contained therein, is barred by the doctrine of laches because the Division of Enforcement delayed unreasonably and inexcusably in commencing this action and the Respondent suffered prejudice as a result.

Eleventh Affirmative Defense

The civil penalties sought by the Commission should be denied or substantially reduced because any such award would be unjust, arbitrary and oppressive, or confiscatory.

Twelfth Affirmative Defense

This action should be barred because of the Division of Enforcement's failure to comply with the requirements of the Dodd-Frank Act (codified at Securities and Exchange Act Section 4E(a)) to bring an enforcement action within 180 days of the Wells notice to the Respondent. The Division of Enforcement did not file this OIP within the 180 days of the Wells notice issued in December 2015 and has not carried its burden to show an exception from the requirement.

Thirteenth Affirmative Defense

Without conceding that any third party is entitled to damages based on any acts of Respondent, any amount of disgorgement awarded, if any, should be reduced or offset by any credits or discounts that the relevant third party has received.

Fourteenth Affirmative Defense

The claims alleged in the OIP are barred, in whole or in part, because the market participants have a right to rely on what the SEC says about the way the law is to be applied, and the SEC violates due process and sound policy when it attempts to regulate by surprise and announce a new view of the law through an enforcement action that could not have been anticipated from, and is instead contrary to, its past statements about what the law means.

Fifteenth Affirmative Defense

Respondent reserves the right to amend this Answer to assert any additional affirmative defense once the Division provides it with a More Definitive Statement, discovery proceeds, and more information becomes available.

WHEREFORE, Respondent prays for judgment as follows:

1. Dismissing the OIP in its entirety with prejudice on the merits;
2. Awarding judgment in Respondent's favor against the Division;

3. Granting Respondent's costs and fees, including reasonable attorneys' fees; and

4. Granting such further and other relief as the Court deems just and proper.

Respectfully submitted,

November 9, 2016

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Counsel for Respondent

PROOF OF SERVICE

I hereby certify that I served a true and correct copy of the following documents on the date and in the manner indicated below.

1. Answer of Respondent Laurence I. Balter;
2. Respondent's Motion for A More Definitive Statement;
3. Respondent's Memorandum of Points and Authorities in Support of Motion For A More Definitive Statement

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Securities and Exchange Commission
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