



UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

Administrative Proceeding
File No.: 3-17849

In the Matter of

ANGEL OAK CAPITAL PARTNERS, LLC,
PERAZA CAPITAL & INVESTMENT, LLC,
SREENIWAS PRABHU, and DAVID
WELLS

**RESPONDENT PERAZA CAPITAL & INVESTMENT, LLC'S RULE 340 REPLY
POST HEARING BRIEF**

Pursuant to Rule 340 of the Rules of Practice of the Securities and Exchange Commission (the "Commission"), Respondent Peraza Capital & Investment, LLC ("Peraza"), by and through its undersigned counsel, respectfully submits this Reply Post Hearing Brief:

INTRODUCTION

The Order Instituting Proceedings ("OIP") in this matter relates to Peraza's facilitation of Angel Oak Capital Partners, LLC's ("Angel Oak") violation of Section 15(a) of the Securities Exchange Act of 1934 (the "Exchange Act"). See Final Hearing Exhibit 1.¹ The OIP found that Angel Oak violated Section 15(a) of the Exchange Act willfully. However, the OIP did not find that Peraza's conduct was willful. See *generally id.* Although Peraza accepted the U.S. Securities and Exchange Commission (the "Commission") Division of Enforcement's (the "Division") findings without admitting or denying liability, it "agree[d] to additional proceedings in this [matter] to determine whether it is appropriate to order disgorgement, prejudgment interest and/or civil penalties

¹ All admitted Final Hearing Exhibits shall be cited to as "Exhibit ___."

distinguish between legally and illegally obtained profits.” *SEC v. First City Financial Corp.*, Ltd., 890 F. 2d 1215 (1989) (citing *CFTC v. British Am. Commodity Options Corp.*, 788 F.2d 92, 93 (2d Cir.), *cert. denied*, 479 U.S. 853, 107 S.Ct. 186, 93 L.Ed.2d 120 (1986).

The conduct attributed to Peraza was that it “facilitated” Angel Oak in operating as an unregistered broker-dealer. *See* Exhibit 1 at ¶37. In exchange for providing certain back-office broker-dealer services, Peraza was entitled to retain 15% of the gross commission revenues generated by the trades entered by Peraza registered representatives at the Atlanta Branch Office. *See generally* OIP. However, as set forth in the record and during the Final Hearing, the 900 trades themselves did not violate any federal securities laws. *See* Order Denying Division’s Motion at 8; *see also generally* Exhibit 1. Neither the OIP nor the Division has put any of Peraza’s other activities as a registered broker-dealer at issue in this matter. Moreover, the OIP contains no findings that Peraza was not a legitimate broker-dealer. Therefore, there are no findings that Peraza was created for a fraudulent or illegal purpose. The record has clearly established that Angel Oak was Peraza’s Atlanta Branch Office, where a significant portion of the activities conducted therein were legal (i.e., trades entered by Peraza registered representatives). *See* Final Hearing Transcript (“Final Hearing Trans.”) at 89:16-21;152:4-13, 153:1-13. As such, the business expenses Peraza incurred to conduct the legitimate business at the Atlanta Branch Office² during the period between 2012-2014 should be offset. *See J.T. Wallenbrock & Assocs.*, 440 F.3d at 1114; *see also Gold Standard Mining Corp.*, 2016 WL 6892101 at *5 (“It is inappropriate to

² During the Final Hearing Xiomara Perez testified that the expenses allocated to the Atlanta Branch Office were expenses directly related to the activities conducted at the Atlanta Branch Office. *See* Final Hearing Trans. at 99:12-25; 100:1-2.

award disgorgement of the \$14,531.18 in reimbursed travel expenses, which were incurred as business expenses in completing auditing work.”)³

The Division has missed the mark in its brief when it suggested that legitimate business expenses “are not proper deductions from disgorgement in Commission cases.” Division of Enforcement’s Post-Hearing Memorandum of Law (“Division’s Post Hearing Brief”) at 17; *see also SEC v. Rosenfeld*, No. 97 CIV 1467, 2001 WL 118612, *2 (S.D.N.Y. Jan. 9, 2001) (A court may in its discretion, deduct from the defendant’s gross profits certain expenses incurred while garnering the illegal profits, including correspondence and related expenses.); *SEC v. Thomas James Assocs., Inc.*, 738 F. Supp. 88, 92 (W.D.N.Y. 1990) (“In determining the proper amount of restitution, a Court may consider as an offset the sums which a defendant paid to effect a fraudulent transaction). In light of the foregoing authorities, a reduction in the Division’s disgorgement number is proper, and should be entered in this proceeding.

II. A MAXIMUM FIRST-TIER PENALTY IS INAPPROPRIATE

In the Division’s Post Hearing Brief, the Division argued that “[a] penalty is appropriate against Peraza.” Division’s Post Hearing Brief at 19. The Division also argued that because Peraza (1) “facilitated [Angel Oak’s violations] over a four-year period,” (2) “made a substantial amount of money by doing so,” and (3) “has a regulatory record,” the Division’s request for a first-tier maximum penalty of \$75,000 is appropriate for Peraza. *Id.* In support of its arguments, the Division sets forth both the statutory public interest factors found in 15 U.S.C. § 78u-2(c)(1-6)⁴

³ These expenses include: (1) legal, professional, and consulting fees; (2) accounting fees; and (3) a proportionate equipment allocation, totaling \$795,256.88. *See* Hearing Trans. at 68-77 (“Q: Right. Now, when you put together this spreadsheet, you also tried to identify expenses, did you not? A: I tried to identify expenses *directly related to the Atlanta branch.*”) (emphasis added); *see also* Exhibit 3.

⁴ In considering under this section whether a penalty is in the public interest, the Commission or the appropriate regulatory agency may consider: (1) whether the act or omission for which such penalty is assessed involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; (2) the harm to other persons resulting either directly or indirectly

and those set forth in *Steadman v. SEC*, 603 F.2d 1126, 1140(5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981).⁵ However, when evaluating these factors in light of Peraza's conduct, the Division argued that three factors, including (1) the isolated or repeated nature of the violations, (2) the amount of unjust enrichment, and (3) that Peraza has previously been found to have violated rules of a self-regulatory organization, support assessing a first-tier penalty against Peraza. *See* Division's Post Hearing Brief at 20. Notwithstanding, Peraza's conduct evaluated in connection with such factors does not support the Division's request that the maximum first-tier penalty be assessed against Peraza.

A. Isolated or Repeated Nature of the Violations

As stated in Peraza's Post Hearing Brief, although the conduct at issue occurred for multiple years, it was isolated in that it related to a single branch of Peraza and single arrangement. There is no finding in the OIP or in the record that Peraza engaged in any violative conduct at any other branch or at its headquarters. *See generally* OIP. Accordingly, the violative conduct was isolated to the Atlanta Branch Office and impossible to repeat due to Peraza being out of business for several years. *See* Final Hearing Trans. at 125:8-25; 126:1-12. The isolated nature of the violative conduct does not support the Division's requested civil penalty.

from such act or omission; (3) the extent to which any person was unjustly enriched, taking into account any restitution made to persons injured by such behavior; (4) whether such person previously has been found by the Commission, another appropriate regulatory agency, or a self-regulatory organization to have violated the Federal securities laws, State securities laws, or the rules of a self-regulatory organization, has been enjoined by a court of competent jurisdiction from violations of such laws or rules, or has been convicted by a court of competent jurisdiction of violations of such laws or of any felony or misdemeanor described in section 78o(b)(4)(B) of this title; (5) the need to deter such person and other persons from committing such acts or omissions; and (6) such other matters as justice may require. 15 U.S.C. § 78u-2(c)(1-6).

⁵ (1) "the egregiousness of the defendant's actions," (2) "the isolated or recurrent nature of the infraction," (3) "the degree of scienter involved," (4) "the sincerity of the defendant's assurances against future violations," (5) the defendant's recognition of the wrongful nature of his conduct, and (6) "the likelihood that the defendant's occupation will present opportunities for future violations." *Steadman*, 603 F.2d at 1140.

B. The Amount of Unjust Enrichment

“Civil penalties are intended to punish the individual wrongdoer and to deter him and others from future securities violations.” *SEC v. Radius Capital Corp.*, No. 2:11-CV-116-FTM, 2015 WL 1781567, at *7 (M.D. Fla. Apr. 20, 2015) (citing *SEC v. Monterosso*, 756 F.3d 1326, 1338 (11th Cir. 2014)). Peraza has been administratively dissolved and has not been an active broker-dealer or active limited liability company since 2017. *See* Hearing Trans. at 126:4-12. Accordingly, no civil penalty will have a deterrent effect on Peraza and this factor does not support the Division’s requested civil penalty. In addition, “[t]he amount of the civil penalty is determined by the district judge “in light of the facts and circumstances” of each matter. *Id.* at *7. In the instant case, as noted herein and in the record, the 900 trades were legally entered by registered representatives of Peraza, and the commissions earned by Peraza were the same as it would have earned at any other registered branch office entering the same trades. *See* Final Hearing Trans. at 153:1-13. Neither the record nor the Division has established customer harm in this matter, which also undermines the Division’s requested civil penalty.

C. Peraza’s Status as a Recidivist

Each Financial Industry Regulatory Authority’s (“FINRA”) Letters of Acceptance, Waiver and Consent (“AWC(s)”) that the Division submitted in this matter represented technical violations by Peraza based upon conduct that took place a significant time ago. In each instance FINRA assessed low fines. *See* Exhibits 13-15. Based upon the application of the foregoing factors to the facts in this matter, the Administrative Law Judge should deny the Division’s request for a maximum first-tier civil penalty and should order a civil penalty in a decreased amount that reflects the application of the foregoing factors.

CONCLUSION

For the reasons stated herein and in Peraza's Post Hearing Brief, Peraza Capital & Investment, LLC respectfully requests that the Administrative Law Judge limit the Division's claim for disgorgement to an amount less the expenses stated herein, and as reflected in Peraza Capital & Investment, LLC's books and records. Additionally, Peraza Capital & Investment, LLC respectfully requests that the Administrative Law Judge enter a civil penalty in an amount lower than the maximum first-tier penalty as articulated herein.

Dated: July 15, 2019
Coral Gables, Florida

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 15, 2019, I filed the original and three copies of the foregoing with the Office of the Secretary, and served true copies by e-mail on the following:

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