UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

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ADMINISTRATIVE PROCEEDING
File No. 3-17849

In the Matter of

ANGEL OAK CAPITAL PARTNERS, LLC, PERAZA CAPITAL & INVESTMENT, LLC, SREENIWAS PRABHU, AND DAVID W. WELLS,

Respondents.

DIVISION OF ENFORCEMENT'S MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION FOR SUMMARY DISPOSITION PURSUANT TO RULE 250

Pursuant to Rule 250(a) of the Rules of Practice of the Securities and Exchange Commission ("the Commission"), the Division of Enforcement ("the Division") respectfully submits this Memorandum of Law in support of its Motion for an Order imposing Monetary Sanctions against Peraza Capital & Investment LLC. ("Peraza"). Peraza was a registered broker-dealer operating out of St. Petersburg, Florida. After the investigation leading to this case had commenced, Peraza changed its name to LPE Securities, LLC. It had been a registered broker-dealer since 2002, but it terminated its registration on August 18, 2017.

HISTORICAL OVERVIEW

This motion for monetary sanctions will fully resolve all of the remaining issues arising from the operation of an unregistered, and therefore illegal, broker-dealer by the Atlanta, Georgia based Angel Oak Capital Partners, LLC ("Angel Oak"). Angel Oak is the general partner of Angel Oak

Capital Advisors, LLC, a registered investment advisor. But Angel Oak itself is not registered with the Commission in any capacity.

On February 16, 2017, the Commission issued an Order Instituting Proceedings ("OIP"), where the Commission found that Angel Oak had operated an unregistered broker-dealer from March 2010 through October 2014 in violation of Section 15(a) of the Securities Exchange Act of 1934 (the "Exchange Act"), and that Angel Oak had violated Section 15(a) willfully. The OIP ordered Angel Oak to cease and desist from committing or causing any violations or future violations of Section 15(a), and ordered Angel Oak to pay $3,054,288 in disgorgement, $237,082 in prejudgment interest, and a civil money penalty of $375,000. (A copy of the OIP is attached as Exhibit 1 to the Declaration of John D. Worland, Jr., dated November 16, 2018, (the "Worland Declaration") and submitted along with this Memorandum.)

The Commission also found that the three other respondents caused Angel Oak's violation of Section 15(a): Sreeniwas Prabhu ("Prabhu"), David W. Wells ("Wells"), and Peraza. Prabhu was a principal of Angel Oak, and at one time (2009-2012) a registered representative with Peraza. The Commission ordered Prabhu to cease and desist from committing or causing any violations or future violations of Section 15(a), and ordered him to pay a civil money penalty of $40,000. Wells was a registered representative with Peraza throughout the entire period of Angel Oak's violation (2010-2014), and nominally served as Peraza's branch manager and resident supervisor for the registered representatives who worked out of Angel Oak's Atlanta office. The Commission ordered Wells to cease and desist from committing or causing any violations or future violations of Section 15(a), and to pay a civil money penalty of $40,000.

Finally, the Commission found that Peraza had also caused Angel Oak's violations of Section 15(a), and ordered it to cease and desist from committing or causing any violations or future violations

of Section 15(a). Unlike the other respondents, however, Peraza sought an opportunity to have its monetary sanctions determined through additional administrative proceedings. The OIP, in Section IV, clearly defines the scope of these additional proceedings:

> Pursuant to this Order, Peraza Capital agrees to additional proceedings in this proceeding to determine whether it is appropriate to order disgorgement, prejudgment interest and/or civil penalties pursuant to Sections 21B and 21C of the Exchange Act, and if so, the amount of disgorgement and/or civil penalties. If disgorgement is ordered, Respondent Peraza Capital shall pay prejudgment interest thereon, calculated from October 1, 2014, based on the rate of interest used by the Internal Revenue Service for the underpayment of federal income tax as set forth in 26 U.S.C. § 6621(a)(2). In connection with such additional proceedings, Peraza Capital agrees: (A) it will be precluded from arguing that it did not violate the federal securities laws described in this Order; (b) it may not challenge the validity of its Offer of Settlement and this Order; (c) solely for the purposes of such additional proceedings, the findings made in this Order shall be accepted as and deemed true by the hearing officer; and (d) the hearing officer may determine the issues raised in the additional proceedings on the basis of testimony, affidavits, declarations, excerpts of sworn deposition or investigative testimony, and documentary evidence.

The Division submits that these remaining issues can be addressed by summary disposition.

BACKGOUND ADMITTED FACTS

The OIP itself provides most of the pertinent facts to decide this motion, and these facts are treated as admissions for the purpose of this proceeding (see above). Specifically, the OIP states, *inter alia*:

> 15. In early 2009, Prabhu, along with the firm's other owners, wanted to conduct a securities business through Angel Oak Capital Partners and considered several options on how to set up the business, including by registering a broker-dealer. However, Prabhu was unsure whether a securities business would be profitable and would thus justify the expenses associated with registering a broker-dealer. Accordingly, Prabhu, in coordination with Wells and the firm's other owners, explored alternatives to registering a broker-dealer.
>
> 16. Prabhu, among others, began negotiations with Peraza Capital to establish an arrangement by which Angel Oak Capital Partners would enter into a relationship with Peraza Capital. Prabhu intended that Angel Oak Capital Partners would run its securities business through Peraza Capital in exchange for payment of a percentage share of the commission revenue generated as a result of Angel Oak Capital Partners' trading activities. In October 2009, the discussions culminated in

the signing of the IC Agreement between Angel Oak Capital Partners and Peraza Capital.

17. The IC Agreement provided that Angel Oak Capital Partners would "conduct a securities business" through Peraza Capital. Peraza Capital was to provide "all necessary back office support" with respect to Angel Oak Capital Partners' "sales and trading activities" and also provide a trading platform which allowed Angel Oak Capital Partners "to operate a trading desk to execute trades in bonds and mortgage-backed securities." All trades would be cleared and settled by Peraza Capital's clearing firm.

18. In October 2009, Peraza Capital filed a Form BR with FINRA designating an office in Atlanta established for the securities trading as an "Office of Supervisory Jurisdiction."

19. Wells and other registered representatives in the Atlanta office began executing trades through Peraza Capital's trading platform in March 2010. The employees of Angel Oak Capital Partners involved in securities trading registered with FINRA as registered representatives of Peraza Capital.

But all did not go as intended. To the contrary, Angel Oak began to operate the Atlanta branch office as if it, rather than Peraza, was the registered broker-dealer. As the OIP found:

26. Angel Oak Capital Partners and its owners, who were not registered as broker-dealers or associated with a registered broker-dealer, controlled certain of the operations of the securities business engaged in by its employees, including by hiring new employees to engage in securities trading and who became registered representatives of Peraza Capital, determining compensation (including transaction-based compensation), and participating in relevant discussions as to how to operate the securities business.

27. Angel Oak Capital Partners marketed itself to prospective customers as providing broker-dealer services, without always disclosing its relationship with Peraza Capital. Angel Oak Capital Partners further prepared marketing materials for distribution to prospective customers that described the firm. One such document sent to a potential bank customer described the "Angel Oak Family of Companies" to include a "Full-Service Fixed Income Broker-Dealer." Moreover, trade confirmations provided to customers routinely indicated that it was "Angel Oak" that was involved in the transaction.

28. Angel Oak Capital Partners made all relevant decisions relating to the staffing of the securities business. For instance, when the firm commenced trading activities in March 2010, the firm had approximately six employees who were engaged in trading-related activities, including the regular solicitation of customers. The firm eventually hired additional staff to expand its securities business. These employees received offer letters from Angel Oak Capital Partners. Angel Oak

Capital Partners also determined how much compensation the new hires would receive, including by setting their draws or salary, trading commission percentage and the amount of any performance bonus to which they would be entitled.

29. Angel Oak Capital Partners further held regular internal meetings to discuss the various Angel Oak business lines. These meetings included updates regarding the broker-dealer business, such as the number of trades conducted, new accounts opened, and information regarding prospective customers. In such communications, Angel Oak Capital Partners identified its trading activities as part of the firm's securities business and considered opportunities to expand the business.

* * *

35. For most of the relevant time period, Wells acted as the conduit for paying Angel Oak Capital Partners commission revenue generated by the trading activity of the Angel Oak Capital Partners' employees who were registered representatives of Peraza Capital. After Peraza Capital retained its share of the commission revenue generated by the trading, Peraza Capital paid the balance to a personal bank account in the name of Wells. Wells then paid himself as well as the other Angel Oak Capital Partners' employees who were registered representatives of Peraza Capital and engaged in securities trading. Wells then often paid the remaining balance directly to Angel Oak Capital Partners.

36. Wells engaged in the foregoing conduct even though he knew Angel Oak Capital Partners was not registered as a broker-dealer and knew or should have known that the owners of Angel Oak Capital Partners, who were not registered as broker-dealers or associated with a registered broker-dealer, were controlling the operation of the firm's securities business.

37. Peraza Capital provided Angel Oak Capital Partners employees who were registered representatives of Peraza Capital access to its trading platform, through which trades were submitted for execution. Peraza Capital also provided access to its clearing firm arrangement as well as trade support services. Peraza Capital employees interacted with the clearing firm on behalf of Angel Oak Capital Partners. Peraza Capital also allowed employees of Angel Oak Capital Partners to register with Peraza as licensed securities representatives. Peraza Capital facilitated Angel Oak Capital Partners' ability to operate as an unregistered broker-dealer by providing these services when it knew or should have known that the owners of AOCP, who were not all registered as broker-dealers or associated with a registered broker-dealer, were controlling the securities activities of the employees involved in the securities business.

38. Peraza Capital also facilitated the payment arrangement by which Angel Oak Capital Partners indirectly received transaction-based compensation through Wells. As discussed above, Wells, as a licensed supervisor for Peraza Capital, received from Peraza Capital transaction-based compensation, which he then

transmitted to Angel Oak Capital Partners periodically, typically on a monthly basis.

Although the legal issues of liability are already resolved as to Peraza, it is important to stress that Angel Oak's violations involved holding itself out as a broker-dealer, and receiving transaction-based compensation, both of which are inappropriate for unregistered entities. Given Peraza's role, and especially the role of its branch manager, David Wells, who facilitated the payment arrangement by which Angel Oak indirectly received transaction-based compensation from Peraza, it is not surprising that the Commission found that Peraza caused Angel Oak's violation of Section 15(a) of the Exchange Act.

ADDITIONAL UNDISPUTED FACTS

Xiomara Perez is the Chief Financial Officer and Financial and Operations Principal ("FINOP") for Peraza. (*See* ¶ 5 of the Worland Declaration.) In her deposition testimony taken for this case, Ms. Perez described Peraza's accounting procedures for the Angel Oak operation in detail. (*See id.* at Exhibit 2.)

Ms. Perez testified about a spreadsheet that she had created with respect to the office's finances. The spreadsheet was marked as an exhibit at her deposition, and is included with this submission as Exhibit 3 to the Worland Declaration. (*See id.* at ¶¶ 3-6.) Ms. Perez affirmed that the spreadsheet was derived from the books and records of Peraza, and then specifically identified the relevant number for the disgorgement calculation required in this proceeding. (*See id.* at Exhibit 3 (highlighted portion) and ¶¶ 3-6.) She also affirmed that the amount of revenue that Peraza received from the Atlanta operation was $1,521,705.87. (*Id.*) This dollar amount represents the revenue Peraza received, net of allowable transaction expenses, from the illegal trading done by Angel Oak's Atlanta office. (*See* Worland Declaration, Exhibit 2, Perez

Deposition at 30-34; 39-40; 40-47; and 53-55.) This dollar amount is undisputed, as it comes from Peraza itself.

Originally, the Division had sought the full amount that Peraza had received from the illegal Angel Oak operation -- $1,521,705.87. But in the aftermath of *Kokesh v.SEC*, 198 L. Ed. 2d 86 (2017), the Division recalculated the amount that Peraza had received within the appropriate statute of limitations period. In accordance with the law described below, Ms. Perez's testimony and Exhibit 3 of the Worland Declaration establish that the total disgorgement amount that Peraza should pay is $1,180,487.98.

LEGAL ANALYSIS[1]

The relevant law on the Division's burden of proof for disgorgement is settled:

> In order to be entitled to disgorgement, the SEC needs to produce only a reasonable approximation of the defendant's ill-gotten gains, and "[e]xactitude is not a requirement." *SEC v. ETS Payphones, Inc.*, 408 F.3d 727, 735 (11th Cir. 2005) (per curiam) (citation and internal quotation marks omitted). Once the SEC has produced a reasonable approximation of the defendant's unlawfully acquired assets, the burden shifts to the defendant to demonstrate the SEC's estimate is not reasonable. *SEC v. Calvo*, 378 F.3d 1211, 1217 (11th Cir. 2004) (per curiam).

SEC v. Monterosso, 756 F.3d 1326, 1337 (11th Cir. 2014).

There can be no question that the Division satisfies this burden here. The disgorgement amount proposed by the Division is not just a reasonable approximation -- it is an exact number that comes straight from Peraza's books and records. Nor is there any issue with respect to whether the violation caused the disgorgement amount. Angel Oak's violation of Section 15(a)

[1] The Division relies primarily on Eleventh Circuit law, as both the Atlanta office of Angel Oak and the St. Petersburg office of Peraza are in the Eleventh Circuit.

of the Exchange Act, which Peraza caused, created ill-gotten gains from which Peraza took a share.[2]

The burden is thus on Peraza to show that there is something wrong with the use of $1,180,487.98 as the disgorgement amount. Any such effort must fail. Further deductions from the net revenue figure would fall under the category of general business expenses that the law clearly says are not proper deductions from disgorgement in Commission cases.

"[T]he overwhelming weight of authority holds that securities law violators may not offset their disgorgement liability with business expenses." *SEC v. Brown*, 658 F.3d 858, 861 (8th Cir. 2011) (holding that a disgorgement award should not be reduced for expenses) (quoting *SEC v. United Energy Partners, Inc.*, 88 Fed. Appx. 744, 746 (5th Cir.2004). *Accord SEC v. Merchant Capital LLC et al.*, 486 Fed. Appx. 93, **3 (11th Cir. 2012) (quoting *Brown*); *SEC v. Aerokinetic Energy Corp.*, 444 Fed. Appx. 382 (11th Cir. 2011); *SEC v. Warren*, 534, F. 3d 1368, 1370 (11th Cir. 2008); *SEC v. Bernath*, 2017 WL 527662, *2, 3:15CV485, (W.D.N.C. Feb. 8, 2017); *SEC v. Schooler et al.*, 106 F. Supp. 3d 1157, (S.D. Cal 2015); *SEC v. Hughes Capital Corp.*, 917 F. Supp. 1080, 1087 (D.N.J. 1996) ("the overwhelming weight of authority holds that securities law violators may not offset their disgorgement liability with business expenses."), *aff'd* 124 F.3d 449 (3d Cir. 1997). While some courts have allowed the deduction of costs related to specific transactions, which the Division accepts in this case, the attempt to offset illegal gains by allocating general overhead and business expenses is never allowed.

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[2] *See e.g. SEC v. Patel*, 61 F.3d 137, 139 (2d Cir. 1995); *SEC v. Bilzerian*, 29 F.3d 689, 697 (D.C.Cir.1994); *SEC v. First City Fin. Corp.*, 890 F.2d 1215, 1231 (D.C. Cir. 1989) ("the court may exercise its equitable power only over property causally related to the wrongdoing.'); *SEC v. Blatt*, 583 F.2d 1325, 1335 (5th Cir.1978).

Thus, the correct disgorgement amount is the number that Peraza itself calculated: $1,180,487.98.

PREJUDGMENT INTEREST

Prejudgment interest represents the amount of money the wrongdoer made or could have made by investing monies wrongfully obtained. *SEC v. Koenig*, 557 F.3d 736, 745 (7th Cir. 2009). An award of prejudgment interest is not a punitive award but rather is compensatory in nature. *SEC v. Lauer*, 478 Fed. Appx. 550, 557 (11th Cir. 2012).

The OIP provides a precise approach to calculating prejudgment interest in this case. It states:

> If disgorgement is ordered, Respondent Peraza Capital shall pay prejudgment interest thereon, calculated from October 1, 2014, based on the rate of interest used by the Internal Revenue Service for the underpayment of federal income tax as set forth in 26 U.S.C. § 6621(a)(2).

The rate identified in the OIP is the same one used in the interest rate calculator maintained on the EnforceNet web site. A printout of the calculation from that site is attached to the Worland Declaration as Exhibit 4. The total prejudgment interest from October 10, 2014 to December 31, 2018 is $209,633.54.

PENALTY

In any administrative action brought under Section 21B of the Exchange Act for Civil Remedies in Administrative Proceedings, the Commission may impose a civil penalty against any person that "was a cause of the violation of any provision of this title, or any rule or regulation issued under this title." (*See* Exchange Act Section 21B(a)(2)(b).) The Commission has already found that Peraza caused a violation of the Exchange Act.

The penalty against Angel Oak was $375,000. This amount, which was the result of a negotiated settlement, represents the maximum statutory second-tier penalty for an entity during

the relevant time period. That penalty was appropriate because Angel Oak's actions "involved ... deliberate or reckless disregard of a regulatory requirement." (*See* Exchange Act Section 21B(b)(2).) In fact, the Commission found in the OIP that Angel Oak acted "**willfully**." (Worland Declaration, Exhibit 1, OIP, at 8.)

The Division submits that a penalty is appropriate against Peraza. Peraza facilitated the securities trading by Angel Oak, including providing access to its trading platform to Angel Oak employees who were registered representatives of Peraza, as well as providing access to its clearing firm arrangement and trade support services. Peraza also facilitated the payment arrangement by which Angel Oak indirectly received transaction-based compensation.

More importantly, Peraza is a recidivist. The statute identifies this factor as an independent basis for public interest consideration in assessing the correct penalty.[3] In addition to this case, Peraza has been sanctioned three times by FINRA. (*See* Worland Declaration, Exhibit 5, Peraza's CRD Report.)

In 2005, FINRA charged Peraza with violating NASD Rules 2110, 3011(B), and 3011(C). The offense was described as follows:

> Member firm failed to establish and implement policies, procedures, and internal controls reasonably designed to achieve compliance with the Bank Secrecy Act and implementing regulations thereunder as required, and provide for independent testing for compliance to be conducted by a qualified outside party.

FINRA ordered a Censure, upon consent, and fined Peraza $10,000. (*Id.*, at 23.)

In 2010, FINRA charged Peraza with violations of the Exchange Act, and the SEC rules thereunder, and NASD Rules. Specifically, FINRA charged Peraza with violating Section 15(c) of

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[3] Section 21B(b)(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, ..."

the Exchange Act, SEC Rule 15C3-1, Section 17(a) of the Exchange Act, SEC Rules 17A-3, 17A-5, and 17A-11, NASD Rules 2110 and 3110. The offense was described as follows:

> The firm failed to maintain its minimum capital requirement while it conducted a securities business. [The offense] resulted from the firm's failure to record expenses on its books and records, its failure to accrue commissions payable, its failure to classify securities and cash in a brokerage account maintained by the firm as non-allowable assets, its failure to classify a debit balance in the brokerage account maintained as non-allowable assets, as a liability, and/or its miscalculation of haircuts. The firm placed more than ten proprietary trades in 2008, which raised its minimum net capital requirement. The firm, in separate instances, did not file and did not file timely the requisite notification of its net capital deficiencies and the firm maintained inaccurate books and records. The firm filed two inaccurate FOCUS reports for the period ending June 20, 2008.

FINRA ordered a Censure, upon consent. In spite of the significance of the charges, FINRA only fined Peraza $12,500. (*Id.*, at 21.)

In 2014, FINRA again ordered a Censure, upon consent, against Peraza for failing to report to the Trade Reporting and Compliance Engine (TRACE) transactions in TRACE-eligible securitized products in a timely fashion. The fine was $10,000. (*Id.*, at 20.)

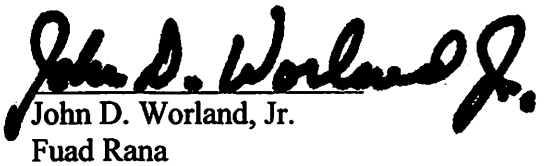
The Division believes that a First Tier maximum penalty of $75,000 is appropriate for Peraza on these facts. (*See* Exchange Act Section 21B(b)(1).) While there is no finding that Peraza acted willfully, Peraza's behavior was nonetheless a very serious infraction. It turned its back on what was going on in Angel Oak's Atlanta office, while achieving a substantial pecuniary gain from its behavior over a period that lasted more than four years. It also appears to have been operating as a bad actor for more than a decade.

CONCLUSION

For all of the above reasons, the Division requests that the Commission impose monetary sanctions of $1,180,487.98 in disgorgement, $209,633.54 in prejudgment interest, and a penalty of $75,000, for a total of $1,465,121.52.

Dated: November 16, 2018

Respectfully submitted,



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