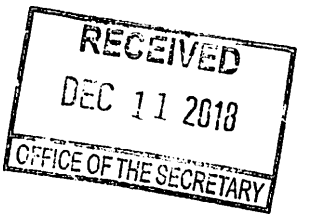
UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549



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 MEMORANDUM IN OPPOSITION TO THE DIVISION OF ENFORCEMENT'S MOTION FOR SUMMARY DISPOSITION PURSUANT TO RULE 250

Date: December 7, 2018

Respectfully submitted,

Hunter Taubman Fischer & Li LLC

/s/ Mark David Hunter
Mark David Hunter, Esquire
Florida Bar No. 12995
Jenny D. Johnson-Sardella, Esquire
Florida Bar No. 67372
Robert C. Harris, Esquire
Florida Bar No. 26205
2 Alhambra Plaza, Suite 650
Coral Gables, Florida 33134
Tel: (305) 629-1180
Fax: (305) 629-8099
Email: mhunter@htflawyers.com
jsardella@htflawyers.com,
rharris@htflawyers.com

Counsel for Respondent Peraza Capital & Investment, LLC

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Pursuant to Rule 250(a) 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, hereby submits this Memorandum in Opposition to the Division of Enforcement's (the "Division") Motion for Summary Disposition Pursuant to Rule 250 ("Division's Motion"):

INTRODUCTION

This matter has arisen from the Division of Enforcement's (the "Division") claim that Peraza facilitated Angel Oak Capital Partners, LLC's ("Angel Oak") violation of Section 15(a) of the Securities Exchange Act of 1934 (the "Exchange Act"). *See* Order Instituting Proceedings ("OIP") at ¶ 40. Peraza accepted the Division's findings without admitting or denying liability, but "agree[d] to additional proceedings in this [matter] to determine whether it is appropriate to order disgorgement, prejudgment interest and/or civil penalties pursuant to Sections 21B and Section 21C of the Exchange Act, and if so, the amount of disgorgement and/or civil penalties." *Id.* at 9.

The only remaining issues from the OIP concern the issue of (a) the appropriateness of penalties and disgorgement and (b) the amount thereon. As set forth in Peraza's Motion for Summary Disposition Pursuant to Rule 250 ("Peraza's Motion") and pursuant to 28 U.S.C. § 2462, the Division's claims for penalties and disgorgement (and, derivatively, prejudgment interest accruing thereon) are time barred and must be denied. *See Gabelli v. SEC*, 568 U.S. 442, 454 (2013); *Kokesh v. SEC*, 198 L. Ed. 2d 86, 95 (2017) ("Disgorgement, as it is applied in SEC enforcement proceedings, operates as a penalty under § 2462. Accordingly, any claim for disgorgement in an SEC enforcement action must be commenced within five years of the date the claim accrued").

According to the Division's Motion, it is seeking disgorgement in the amount of $1,180,487.98, plus prejudgment interest, and a penalty of $75,000 from Peraza based on the conclusions contained in the OIP. *See generally* OIP. As explained below, the Division's disgorgement figure represents an illegally excessive ***penalty***, because it is actually equal to, and based solely upon, the amount of commission revenue that Peraza earned through the lawful institutional trading that took place at its Atlanta branch office. The Division's disgorgement claim is also subject to the same statute of limitations prohibitions outlined in the U.S. Supreme Court's recent decision in *Kokesh v. SEC,* 2017 WL 2407471 (2017), since much, if not all of these commission revenues resulted from lawful trading that took place more than five years before the Division's claim first accrued. Accordingly, the Division's Motion must be denied in its entirety or, in the alternative, the disgorgement amount must be significantly reduced for the reasons set forth below.

STATEMENT OF DISPUTED FACTS

Peraza disputes the following facts that the Division has claimed are undisputed:

First, Peraza denies that Xiomara Perez "specifically identified the ***relevant*** number for the disgorgement calculation required in this proceeding." Division's Memorandum of Law in Support of Motion for Summary Disposition ("Memorandum in Support") at 6 (emphasis added). At best, the Division's purported statement of undisputed fact is argumentative.

Second, Peraza denies that $1,521,705.87 "represents the revenue Peraza Capital received, net of allowable transaction expenses, from the illegal trading done by the Angel Oak office." *Id.* Although it is undisputed that this figure represents the revenues Peraza received from the trading conducted at the Atlanta branch, as discussed herein, Peraza is entitled to an offset for additional expenses, and the Division has failed to provide any basis for which expenses would be considered

allowable. Further, as stated below in Peraza's Statement of Undisputed Facts, the trades that were entered by duly-registered representatives of Peraza at the Atlanta branch were legal trades. As such, Peraza disputes the Division's claim that the trading was illegal and that "this dollar amount is undisputed." *Id.* at 7.

Third, to the extent that the Division has asserted any statements in its "Background Admitted Facts" that are excluded from, or inconsistent with, the OIP, including the statement that "Angel Oak began to operate the Atlanta branch office as if it, rather than Peraza Capital, was the registered broker-dealer," Peraza disputes the same. *Id.* at 4. There is no factual support in either the OIP or the record to conclude that Peraza abdicated all broker-dealer activities in favor of Angel Oak.

COUNTER-STATEMENT OF UNDISPUTED FACTS

The OIP found that Angel Oak Capital violated the registration provisions of the Exchange Act by operating as an unregistered broker-dealer "[f]rom March 2010 to October 2014." OIP at ¶ 2. The Commission also found that Peraza facilitated Angel Oak's violation by providing access to the securities market for registered persons who were in the Atlanta branch office where Angel Oak operated because Peraza knew, or should have known, that the owners of Angel Oak, "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." *Id.* at ¶ 37. The Commission states in the OIP that "during the relevant time period, Angel Oak Capital Partners received approximately ***$3,054,288*** in commissions as a result of its arrangement with Peraza. Peraza, in turn received commissions as a result of the arrangement." *Id.* at ¶ 25 (emphasis added). Simple mathematics reveals that $3,054,288 represents eighty-five percent (85%) of $3,593,280.

According to the Division, the share of the revenues paid to Peraza over the 2010-2014 period from the trading done by Angel Oak in the Atlanta office was $1,180,487.98. *See* Memorandum in Support at 7. However, assuming the findings in the OIP as true,[1] fifteen percent (15%) of $3,593,280, which would have been Peraza's share, was only $538,992—a difference of $641,495.98 compared to the Division's claim in its Motion. *See* Memorandum in Support at 7. The Division has supplied no explanation for this discrepancy, including whether there was any apportionment between supposedly legal and illegal trades or why Angel Oak, the primary violator, should be permitted to retain a portion of its allegedly illegal revenues, while Peraza should be ordered to disgorge its entire revenues. *See* OIP at 10.

The OIP states, in part, that "[b]etween March 2010 and October 2014, [Angel Oak] employees ***who were registered representatives of Peraza Capital*** entered into more than 900 trades" and that "[Angel Oak] received approximately ***$3,054,288*** in commissions as a result of its arrangement with Peraza Capital." OIP at ¶¶ 23, 25 (emphasis added). It is important to note that the Commission makes no allegations or findings in the OIP that any of these 900 trades were illegal. David Wells ("Mr. Wells"), who was the branch office manager in the Atlanta office, testified that only duly-licensed Peraza registered representatives engaged in securities trading, including entering or directing trades. *See* David Wells Deposition Transcript ("Wells Trans. at __") at 31:19-32:12 (a copy of the relevant portions of the Wells Trans. is attached as Exhibit A to the Declaration of Mark David Hunter, Esq. ("Hunter Decl."), attached hereto). Mr. Wells testified that no unregistered persons (a) directed the trading in the Atlanta office; (b) could determine who could or could not be registered with Peraza; (c) could determine the spread or markup or markdown that Peraza would charge; or (d) could select the securities that Peraza would buy or

[1] The allegations set forth in the OIP "shall be accepted as and deemed true by the hearing officer." OIP at § IV(c).

sell. *Id.* Further, it is undisputed that only Peraza registered representatives were responsible for generating the revenues Peraza received and that the Division has claimed as the amount Peraza must disgorge in this case without offsetting expenses. *Id.* at 47:2-13 ("Q: Your testimony is the registered representatives of Peraza were responsible for those revenues? A: Correct"). Ultimately, all of the trades that are the subject of the Division's claim for disgorgement were approved by Peraza's Chief Compliance Officer, Sam Lewis. *Id.* at 47:14-21.

Co-Respondent Sreeni Prabhu ("Mr. Prabhu") was also found to have caused Angel Oak's violation of Section 15(a) of the Exchange Act because, for a part of the time, he was not duly registered. However, Mr. Prabhu testified that he never (a) directed any trades at Peraza; (b) directed anyone at Peraza as to the frequency in which trades would be made; (c) directed the activities of any Peraza registered representatives; (d) instructed Peraza as to the amount of commissions or markups that Peraza clients should be charged for trades; and (e) suggested what securities to buy or sell. *See* Sreeni Prabhu Deposition Transcript ("Prabhu Trans. at __") at 26:1-27:12 (a copy of the relevant portions of the Prabhu Trans. is attached to the Hunter Decl. as Exhibit B). Mr. Prabhu also never observed anyone who was not registered with Peraza direct Mr. Wells as to what trades should be entered at Peraza. *Id.*

Rather, the underlying, violative conduct cited by the Division arose, not due to any *fraudulent* securities transactions, but because not all of the owners of Angel Oak were registered persons. According to the Division, these unregistered persons were allegedly involved in the "securities business" of Angel Oak. However, the Division has failed to set forth any allegations of involvement with regard to (1) the entry or execution of any transactions or (2) any nexus between the vague involvement of Angel Oak in the securities business and the 900 lawful trades entered.

It is also undisputed that the Commission's Staff (the "Staff") conducted an examination of Angel Oak with an on-site review on December 3, 2010, and January 15 through 23, 2011 (a copy of the Staff's letter to Angel Oak, dated September 12, 2011, is attached to the Hunter Decl. as Exhibit C). The examination identified the deficiencies and weaknesses, which were discussed with Angel Oak on April 28, 2011, including Angel Oak's violation of Section 15(a) of the Exchange Act. *Id.* It is important to note that the Staff continued inspecting and investigating Angel Oak and/or Peraza, including its indirect receipt of transaction-based compensation in violation of Section 15(a) of the Exchange Act, and Peraza's payments of such indirect compensation through 2016, without commencing any action against Angel Oak, Peraza or either of their principals or agents. As set forth in detail in Peraza's Motion, the Staff commenced this action more than five (5) years after the Division's claim first accrued. Therefore, notwithstanding the arguments below in opposition to the Division's Motion, the Division's request for disgorgement and penalties must be denied as untimely or, in the alternative, the Division's claim for disgorgement must be appropriately offset for expenses.

ARGUMENT

I. THE DIVISION'S CLAIMS FOR DISGORGEMENT, PENALTIES AND PRE-JUDGMENT INTEREST ARE TIME BARRED

Based upon the Division's own allegations and the undisputed facts in this case, the Division's claims for penalties and disgorgement are time barred by 28 U.S.C. §2462. Peraza references its arguments set forth in Peraza's Motion as if fully set forth herein. *See* Peraza Memorandum in Support of Motion for Summary Disposition at 3-13.

II. THE DIVISION HAS FAILED TO LINK THE DISGORGEMENT SOUGHT TO THE ILLEGAL CONDUCT IN THE OIP

"Disgorgement merely requires the return of wrongfully obtained profits; it does not result in any actual economic penalty . . ." *See SEC v. Pitters*, No. 09-20957-CIV, 2010 WL 1413194, at *5 (S.D. Fla. Mar. 5, 2010) (quoting *SEC v. Lybrand*, 281 F.Supp.2d 726, 729-30 (S.D.N.Y.2003)). Disgorgement "is only triggered by a defendant's profit or gain or enrichment, and [] it is not a tool for punishing parties who have not profited from their wrongdoing." *See SEC v. Video Without Boundaries, Inc.*, No. 08–61517–cv, 2010 WL 5790684, at *5 (S.D. Fla. Dec. 8, 2010) (emphasis added); *see also Pitters*, 2010 WL 1413194, at *5; *SEC v. Merchant Capital, LLC*, No. 09-14890, 397 Fed. Appx. 593, 595, 2010 WL 3733878 (11th Cir. Sept. 27, 2010) ("[T]he chief purpose of disgorgement is to deprive the violators of their ill-gotten gains. [Disgorgement is tied to] the idea of unjust enrichment: the broad idea is that persons not profit from breaking the securities laws."). Therefore, the "***SEC generally must distinguish between legally and illegally obtained profits.***" *SEC v. First City Financial Corp., Ltd.*, 890 F.2d 1215 (D.C. Cir. 1989) (emphasis added) (citations omitted). Indeed, it is "the SEC's burden to establish ***both*** a reasonable approximation of profits *and* the causal connection between the approximation and the violations." *SEC v. Wyly*, 56 F.Supp.3d 260, 268 (S.D.N.Y. 2014) (emphasis in original); *First City*, at 1231. If the disgorgement extends beyond the amount by which the defendant profited, it constitutes a penalty. *See SEC v. ETS Payphones, Inc.*, 408 F.3d 727, 735 (11th Cir. 2005).

The court's decision in *Wyly* is particularly instructive in this matter. *See Wyly*, 56 F.Supp.3d at 268. In *Wyly,* the Honorable Shira Scheindlin highlighted the necessity of a causal connection between a defendant's violative conduct and the amount of disgorgement sought when the Court essentially held that the "SEC cannot simply satisfy its burden to *reasonably*

approximate a disgorgement amount merely by proving the violations and then calculating the total profits on each of the trades during the existence of the unlawful scheme." *Id.* at 269. The Honorable Judge Scheindlin specifically held that:

> Of course, disgorgement of all profits is not per se punitive. In certain circumstances – as in the cases discussed above – such an order can be appropriate and equitable. But, disgorgement is not a one size fits all remedy. Here, the SEC's proposed disgorgement does not appear to arise from the violations and therefore smacks of punishment, not equity or deterrence.

Id. at 271.

As set forth above, neither the findings in the OIP nor in the Division's moving papers supports a finding that Peraza entered or caused Angel Oak to enter any of the trades that are the basis for the disgorgement amount. As a result, the disgorgement amount the Division seeks is entirely punitive in nature and must be denied. Peraza was clearly paid commissions for lawful securities transactions, on behalf of Peraza clients, conducted by representatives registered with Peraza, and supervised by Mr. Wells—a Peraza registered principal and branch office manager. Peraza remitted the commission monies to Mr. Wells, withholding its portion (10% to 15%) as per the Branch Agreement.[2] OIP at ¶24, n. 4. This was lawful conduct and did not violate the federal securities laws and was reviewed and audited by FINRA. Wells Trans. at 28:2-3.

Simply stated, findings in the OIP that Peraza "caused" Angel Oak's violation of Section 15(a) do not, without more, lead to the conclusion that Angel Oak, directly or indirectly, caused Peraza's trading revenues, which were indisputably generated by duly-registered representatives operating in a Peraza branch office that was registered with FINRA, to be illegal. Forcing Peraza to disgorge its portion of lawfully earned commissions generated by securities transactions

[2] As stated above, the OIP and the Division's Motion for Summary Disposition states that Angel Oak received approximately *$3,054,288* (or 85% of $3,593,280) making Peraza's 15% share *$538,992*. *See* OIP at ¶¶ 23, 25; *see* Memorandum in Opposition at 2.

executed by duly registered representatives (and properly supervised by Mr. Wells, a Peraza principal and branch office manager), on behalf of Peraza clients, would be punitive and not "***causally related to***" the purported wrongdoing by Angel Oak or Prabhu.

III. PERAZA IS ENTITLED TO AN OFFSET FOR EXPENSES

Even if the Administrative Law Judge decides to impose disgorgement against Peraza, the figure claimed by the Division must be offset by the legitimate business expenses Peraza incurred in connection with the revenues generated from the legitimate trading that took place through Peraza. The Division has claimed that the disgorgement amount sought, $1,180,487.98, represents a figure "that comes straight from Peraza Capital's books and records" and that any effort to seek a reduction from that amount "would fall under the category of general business expenses that the law clearly says are not proper deductions from disgorgement in Commission cases." Memorandum in Support at 8. However, this is an incorrect statement of the law. *See Kokesh*, 198 L. Ed. 2d at 95 ("as demonstrated by this case, SEC disgorgement *sometimes* is ordered without consideration of a defendant's expenses that reduced the amount of illegal profit") (emphasis added) (citing Restatement (Third) of Restitution and Unjust Enrichment § 51, Comment h, at 216 ("***As a general rule, the defendant is entitled to a deduction for all marginal costs incurred in producing the revenues that are subject to disgorgement.*** Denial of an otherwise appropriate deduction, by making the defendant liable in excess of net gains, results in a punitive sanction that the law of restitution normally attempts to avoid") (emphasis added).

However, the Honorable Cecilia M. Antonaga recently denied disgorgement against a defendant in its entirety because the Commission sought disgorgement for the full transaction amount instead of the *net* profits. *See SEC v. Hall*, No. 15-cv-234890-CIV, 2017 WL 1504025 (S.D. Fla. April 13, 2017). In *Hall,* the Commission asked the court to disregard the defendant's

request for an offset of the millions in disgorgement because he was found liable for violating the federal securities laws. However, Judge Altonaga strongly disagreed with the Commission's position and found, instead, that:

> [T]he SEC cannot satisfy its burden to reasonably approximate a disgorgement amount merely by proving the violations and then" simply stating the loans Defendant received from the transactions were all profits; "[w]ithout proof, ***a court cannot speculate***... Despite Hall having lied to Penson, the SEC has failed to meet its burden in reasonably approximating Hall's ill-gotten profits — it completely ignores the value Hall provided Penson during each transaction. Where, as here, the SEC has not reasonably calculated Defendant's profits, disgorgement is inappropriate.

Id. (internal citations omitted) (emphasis added). In other words, seeking disgorgement for the total amount of compensation without taking into consideration any other factors, such as any value added or not received, would be tantamount to a punitive or compensatory remedy. *See Kokesh*, 198 L. Ed. 2d at 95. Instead, as indicated by Judge Altonaga, and other federal courts, an appropriate disgorgement calculation must offset any gains by the losses and expenses associated with them. *See Hall*, No. 15-cv-234890-CIV, 2017 WL 1504025.

The Division's argument to the contrary is flawed because all of the cases the Division has cited with regard to disgorgement involve matters where the defendant used fraudulently obtained funds to perpetrate a fraudulent scheme. For example, in *Brown*, the defendant was alleged to have violated the anti-fraud provisions of the Securities Act and Exchange Act by soliciting investment advisory clients to invest in a private fund that the defendant had organized using fraudulent misrepresentations and diverting assets of the private fund. *See SEC v. Brown*, 685 F.3d 858, 859 (8th Cir. 2011). The same is true for *SEC v. United Energy Partners, Inc.*, 88 Fed. Appx. 744, 745 (5th Cir. 2004) (quoting *SEC v. Kenton Capital, Ltd.*, 69 F. Supp. 2d 1, 16 (D.C. Cir. 1998) (holding that "[t]he SEC has provided ample evidence that all the funds collected by

Kenton were obtained fraudulently, and Defendants may not escape disgorgement by asserting that expenses associated with this fraud were legitimate")); *SEC v. Aerokinetic Energy Corp.*, 444 Fed. App. 382, 384 (11th Cir. 2011) (sales of securities "by falsely claiming that [the company] had successfully developed, patented and marketed an alternative energy technology that could generate electricity from static air without pollution and at a lower cost than conventional means"); and *SEC v. Hughes Capital Corp.*, 917 F. Supp. 1080 (D.N.J. 1996) ("Category (5) consists of Mascolo and victor's deposition testimony that Reifler paid them in connection with legitimate business activities. Mascolo and Victor have not disputed, however, that Reifler paid them with proceeds obtained from the fraud. Mascolo and Victor were participants in the fraud, and thus are liable to disgorge any proceeds of the scheme that they received").

Similarly, in *Bernath*, the Court denied an offset of expenses where the defendant had "made self-interested, undisclosed investments with client funds for the purpose of benefitting his other personal investments. Just because these investments ended up being unprofitable does not negate the benefit he received, that is, his own personal investments had a better chance of making him money than they otherwise would have." *SEC v. Bernath*, 2017 U.S. Dist. LEXIS 17916, *7 (W.D.N.C. Feb. 8, 2017). Further, the issue of offsetting legitimate business expenses was conspicuously absent from the *Warren* case (which dealt with the fraudulent sales of securities). *See SEC v. Warren*, 534 F.3d 1368, 1369 (11th Cir. 2008). Nevertheless, although a refusal to apply offsets for legitimate business expenses has only been applied in the context of cases involving fraud and nondisclosure, the Division has asserted that "[w]hile 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." OIP at 8 (emphasis added). However, it is important to note that in *SEC v. Global*

Express Capital Real Estate Investment Fund I, LLC, the Court remanded a disgorgement order where the district court had "given no credit for amounts that were expended to satisfy legitimate Global Capital debts . . . ." *SEC v. Global Express Cap. Real Estate Inv. Fund*, 289 Fed. Appx. 183, 190 (9th Cir. 2008).

Unlike the cases relied on by the Division, the unlawful conduct attributed to Peraza in this matter was not directly related to any trading activity resulting in the disgorgement sought. Instead, the conduct attributed to Peraza was that it "facilitated" Angel Oak in operating as an unregistered broker-dealer by:

> 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.

OIP at ¶37. In exchange for providing these services, Peraza was entitled to 15% of the gross commission revenues. *See generally* OIP. As explained herein, because the Division has not claimed that the trades themselves violated any federal securities laws, it cannot categorize Peraza's expenses in facilitating these trades as the type of "business expenses" which are not typically offset. Instead, any services Peraza provided Angel Oak was value added to conduct legal trading activities and, therefore, entitles Peraza to an offset for the associated costs. *See Hall,* 2017 WL 1504025. Accordingly, Peraza is entitled to an offset for its expenses in facilitating the lawful trades at its Atlanta branch office during the period between 2012-2014, including the following: (1) legal, professional, and consulting fees; (2) accounting fees; and (3) equipment allocations, totaling $795,256.88 (Xiomara Perez's, Chief Financial Officer and Financial and

Operations Principal ("FINOP") for Peraza, deposition spreadsheet is attached to the Hunter Decl. at Exhibit D). *See* Hunter Decl. at Exhibit D.[3]

IV. A MAXIMUM FIRST-TIER PENALTY IS INAPPROPRIATE

A Court typically imposes civil penalties as a means to punish the wrongdoer and deter the same from committing future securities law violations. *See Kenton Capital, Ltd.*, 69 F. Supp. 2d at 17; *see also SEC v. Friendly Power Co.*, 49 F. Supp. 2d 1363, 1373 (S.D. Fla. 1999). The Court determines any civil penalties "in light of the facts and circumstances" of the particular case. 15 U.S.C. § 77t(d)(2)(A); 15 U.S.C. § 78u(d)(3)(B)(I); *SEC v. Solow*, 554 F. Supp. 2d 1356, 1365-1366 (S.D. Fla. 2008). Further, this Court has full discretion in imposing civil penalties in this matter. *See SEC v. Gane*, 2005 WL 90154, *55 (S.D. Fla. Jan. 4, 2005). In Division's Motion, the Commission has requested that this Court impose a first-tier penalty against Peraza for $75,000.00 (the maximum amount for a first-tier penalty). *See* Memorandum in Support at 14. For the reasons stated herein, the Administrative Law Judge should refrain from imposing a $75,000.00 civil penalty against Peraza, and instead impose a lower civil penalty.

In determining the appropriate amount of a civil penalty, courts in the Eleventh Circuit will consider, among other things, (1) the egregiousness of the defendant's violations, (2) the isolated or repeated nature of the violations, (3) the degree of scienter involved, (4) the deterrent effect of a particular penalty amount, taking into consideration the defendant's financial worth, (5) any other penalties arising from the conduct, and (6) the amount of unjust enrichment. *See SEC v. U.S. Pension Trust Corp.*, 2010 WL 3894082 at *25 (S.D. Fla. Sept. 30, 2010), aff'd, 444 F. App'x 435 (11th Cir. 2011)). As set forth above, the Commission was aware of this issue as

[3] Xiomara Perez's deposition transcript and spreadsheet are also attached to the Division's Motion.

early as 2010 or 2011, and continued to investigate Angel Oak and/or Peraza without commencing an action for more than five years from the date when the claim first accrued. If the Commission, while being fully aware of the conduct at issue since 2010 or 2011, waited more than five years to initiate an action relating to that conduct, the Commission cannot now credibly assert that the conduct was egregious.[4] Moreover, the alleged violations of the federal securities laws at issue in this matter are not scienter-based, so no degree of scienter of involved in this matter. The Division has conveniently failed to acknowledge these factors and, in doing so, has failed to provide an adequate explanation for imposing sanctions. *See* 15 U.S.C. § 78u-2(c); *see also Rapport v. SEC*, 682 F.3d 98, 108 (D.C. Cir. 2012) ("[T]he SEC must provide some meaningful explanation for imposing sanctions."). Therefore, the Division's request for the maximum first-tier penalty must be denied.

CONCLUSION

For the reasons stated herein, Peraza Capital & Investment, LLC hereby respectfully requests that the Administrative Law Judge deny the Division's request for disgorgement and pre-judgment interest as untimely. Peraza Capital & Investment, LLC also requests that the Administrative Law Judge deny the Division's request for civil penalties as inappropriate. In the alternative, if the Administrative Law Judge is inclined to order disgorgement and a civil penalty, Peraza Capital & Investment, LLC requests that the disgorgement be limited to an amount less the expenses stated herein, as reflected in Peraza Capital & Investment, LLC's books and records, and that any first-tier penalty be reduced from the maximum amount to a more appropriate amount.

[4] Irrespective of any prior unrelated FINRA violations (which were also all non-scienter based), the Division's claim that the instant violation is so egregious as to warrant a maximum penalty under the first tier is without merit.

CERTIFICATE OF WORD COUNT

I hereby certify that the foregoing brief is composed of fewer than 9,800 words in accordance with 17 C.F.R. 201.250.

/s/ Mark David Hunter
Mark David Hunter

CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing to be served on John D. Worland, Jr., Esq., Fuad Rana, Esq., and Christina Adams, Esq., counsel for the Division of Enforcement, Securities and Exchange Commission, 100 F Street, N.E., Washington, DC 20549, Email: worlandj@sec.gov, adamscm@sec.gov, ranaf@sec.gov, together with exhibits, by email, and have filed the original and three (3) copies with the Secretary's Office, the Honorable Jason S. Patil, Administrative Law Judge, Securities and Exchange Commission, 100 F Street, N.E., Washington, DC 20549-2557, Email: alj@sec.gov, via U.S. mail and email, all this on the 21st day of June 2017.

/s/ Mark David Hunter
Mark David Hunter