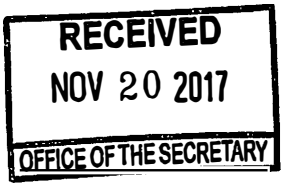
UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-18061



In the Matter of

RETIREMENT SURETY LLC, CRESCENDO FINANCIAL LLC, THOMAS ROSE, DAVID LEEMAN, AND DAVID FEATHERSTONE

Respondents.

DIVISION OF ENFORCEMENT'S MOTION FOR SUMMARY DISPOSITION AGAINST RESPONDENTS THOMAS ROSE, DAVID LEEMAN, AND DAVID FEATHERSTONE

DIVISION OF ENFORCEMENT
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Dated: November 17, 2017

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In the Matter of Clearing Services of America, Inc., et al., Consent Order as to William Schantz et al., New Jersey Bureau of Securities, (Jan. 18, 2006) 14

The Division of Enforcement ("Division") respectfully submits this Motion for Summary Disposition against Respondents Thomas Rose ("Rose"), David Leeman ("Leeman"), and David Featherstone ("Featherstone") (collectively "Respondents").

PRELIMINARY STATEMENT

This case concerns Respondents' repeated violations of Section 5(a) and (c) of the Securities Act of 1933 ("Securities Act") and Section 15(a)(1) of the Securities Exchange Act of 1934 ("Exchange Act"), for acting as unlicensed brokers for numerous unregistered sales of promissory notes issued by Verto Capital Management LLC ("Verto"). On November 14, 2017 the Commission entered an order partially settling this proceeding, and the only issues remaining for this Court to determine are the appropriate measure of disgorgement and civil money penalties against Respondents. The settled order further provides that, for the purpose of adjudicating this motion, this Court is to accept as true the factual allegations set forth in the Order Instituting Proceedings in this case. The Division respectfully seeks disgorgement of Respondents' commissions earned as a result of their violations, plus prejudgment interest. Respondents earned the following commissions: Rose earned $297,360.00, Leeman earned $243,435.00, and Featherstone earned $120,760.00. Also, for the reasons stated below, the Division respectfully seeks the maximum available civil money penalty against each Respondent.

PROCEDURAL AND FACTUAL HISTORY

I. Procedural History

On July 6, 2017, the Securities and Exchange Commission ("Commission") filed an order instituting this proceeding ("OIP") seeking against Respondents certain remedial measures, including a cease-and-desist order, disgorgement plus prejudgment interest, and civil penalties for their willful violations of Securities Act Section 5 and Exchange Act Section 15(a). The OIP alleges that Respondents acted as unregistered brokers in transactions involving unregistered purchases and sales of securities in the form of 7% promissory notes issued by Verto Capital Management LLC (the "Verto Notes").

On November 14, 2017, the Commission, issued a partial settled order ("Order"), pursuant to which Respondents, without admitting or denying the allegations of the OIP, consented to a Commission Order finding and ordering that: (1) Respondents willfully violated Securities Act Sections 5(a) and (c) and Exchange Act Section 15(a); (2) Respondents cease-and-desist from committing or causing any violations and any future violations of the charged provisions; and (3) Respondents Rose and Leeman are subject to nine-month associational and penny stock suspensions, and Respondent Featherstone is subject to the same suspensions for six months. The Order further provides for continuation of these proceedings to determine what, if any, disgorgement, prejudgment interest and/or civil penalties are appropriate in the public interest against Respondents, and that, for the purpose of adjudicating that relief: (a) Respondents are precluded from arguing that they did not violate the federal securities laws described in the settled Order; (b) Respondents may not challenge the validity of the Order or of their settlement Offer; (c) solely for the purposes of such additional proceedings, the fact findings in the Order (*i.e.*, those in the OIP) will be accepted as and deemed true by the hearing officer; and (d) the hearing officer

may, in his discretion, determine the issues raised in the additional proceedings on the basis of the written record, without a hearing.[1]

The Commission now moves the Court for summary disposition as follows: for Rose, disgorgement of 297,360.00, plus $30,059.06 in prejudgment interest, and the maximum available civil money penalty; for Leeman, disgorgement of $243,435.00, plus $24,607.97 in prejudgment interest, and the maximum penalty; and for Featherstone, disgorgement of $120,760.00, plus $12,207.19 in prejudgment interest, and the maximum penalty. In support of this motion, the Division attaches its prejudgment interest calculations for each Respondent (Exhibits 1-3).

II. The Order's Findings of Fact

The following facts are contained in the settled Order, which the Court is to deem true for the purposes of adjudicating this motion.

Verto is a Delaware Limited Liability Company that issued 7% promissory notes sold by Respondents (the "Verto Notes"). Order at ¶ 6. From at least November 2013 through November 2015, Verto issued approximately $12.5 million in Verto Notes to individual investors. Order at ¶ 6, 12. Respondents acted as brokers for these sales, selling Verto Notes directly to individual investors and receiving commissions from Verto for each Verto Note sale. *Id.* at ¶ 12. The Verto Notes are securities. *Id.* at ¶ 26. None of the Respondents has ever been registered as, or associated with, a registered broker-dealer. *Id.* at ¶ 29.

In brokering the Verto Note sales, Respondents provided investors with Verto offering materials describing its business and the purpose of the Verto Note Sales. *Id.* at ¶ 13. The offering materials stated that " [Verto] is engaged in the business of sourcing, valuing and selecting life insurance policies for resale to investors ('Life Settlements')" and "[t]he Note Amount shall be

[1] In addition, the Order fully settles the OIP's claims against Retirement Surety LLC ("Retirement Surety") and Crescendo Financial LLC ("Crescendo"). Retirement Surety and Crescendo are entities managed by Respondents, but are not currently operating or conducting any business. Order at ¶¶ 1-2.

used by [Verto] for general working capital purposes including but not limited to fund [Verto's] purchase and acquisition of life insurance policies." *Id.* The offering materials also described Verto's "Trading Strategy" as an investment in a common enterprise for profit: "As polices [sic] come to the secondary market, [Verto], together with its affiliate Senior Settlements, LLC, will seek to identify policies that have significant arbitrage opportunities and look to acquire the policy at significant discounts from the potential resale value" and "[Verto's] ability to make scheduled payments on the Promissory Notes outstanding at any particular time depends on [Verto's] financial condition and operating performance, which is subject to the Issuer successfully executing its trading strategy..." *Id.*

Respondents regularly participated in all key points in the chain of sale and distribution of the Verto Notes, including soliciting investors to purchase the Verto Notes, advising investors regarding the Verto Notes, handling all necessary paperwork to effectuate the Verto Notes sales, monitoring and managing repayments to investors, and negotiating and arranging so-called "forbearance agreements" between the Verto Note holders and Verto. *Id.* at ¶ 16. Respondents solicited Verto Note investors through Respondents' own radio broadcasts and internet postings, and directly from their pool of existing insurance product clients. *Id.* at ¶ 17. On radio shows broadcast on at least two Christian radio networks, some of the Respondents, including Rose and Leeman, described the Verto Note program and directed radio listeners to the website for Respondents' entity Retirement Surety.[2] Retirement Surety's website described the Verto Notes as "A Nine Month, Short-Term Investment with significantly higher returns than CDs or other safe money investments," and highlighted that the notes were "200% collateralized" by life settlement

[2] Retirement Surety is a Texas company formed in 2010 that, according to its website, was comprised of a group of "state licensed partners," all from "career[s] outside of the financial services industry" who provided investment advice for retirement planning. Order at ¶ 1. From at least 2013 through 2015, Retirement Surety was managed by Respondents. *Id.*

policies. *Id.* at 18. Similarly, the website for Respondents' entity Crescendo touted the Verto Notes as a "Short Term Investment with Superior Returns and Minimal Risk," explaining, it was a low risk investment and "not a speculative investment influenced by market performance or the economy but rather an investment backed by 200% collateral with a known value."[3] *Id.* at ¶ 19.

In brokering the Verto Note sales, Respondents also expressly held themselves out as financial advisors providing specialized knowledge on investments, *id.* at ¶ 25, even though none of the Respondents has ever been registered as or associated with a registered broker-dealer, *id.* at 29. In a brochure that they provided to investors, Respondents stated: "Take Control and hit your investment target – Offered through a Crescendo Financial Investment Advisor, www.crescendofinancial.net." *Id.* at ¶ 25. Retirement Surety's website outlined "five principles for your investments," and stated "[o]ur clients have never lost a penny of principal!" *Id.* at 25. In subscriber information forms for the Verto Notes, Respondents frequently listed their relationship to the investor as a "Financial Advisor." *Id.*

Respondents earned transaction-based compensation for each Verto Note sale. *Id.* at ¶ 21. For each Verto Note that they sold, they earned a 7% commission, 5% of which went to the individual Respondent who sold the note, and 2% of which went to Crescendo. *Id.* When Verto was unable to repay investors' amounts due under the original Verto Notes, the Respondents presented the investors with documents entitled "Forbearance Agreements," which extended the terms of the Verto Notes. *Id.* at ¶ 22. For each Forbearance Agreement, Respondents earned an additional 4% commission (on top of their initial 7% sales commission at the time of issuance). *Id.* Some investors were presented with second "Forbearance Agreements" for which the Brokers

[3] Crescendo is a Texas company formed in 2013, whose sole function was to broker Verto Note sales. Order at ¶ 2. According to its website, Crescendo was a "practicing Christian organization" comprised of a group of "licensed partners," all from "career[s] outside of the financial services industry" who sell "investments . . . [that] have placed our clients on a new course to reach their financial goals." *Id.* At all relevant times, Crescendo was managed by Respondents Rose and Leeman. *Id.*

received another 4% commission on the unpaid outstanding balance. *Id.* The following table lists the commissions earned by Respondents Rose, Leeman, and Featherstone from 2013 through 2016 for both the initial Verto Note sales and subsequent forbearance agreements:

Broker	# of Investors	# of Notes Sold	Principal Amount of Notes Sold	Commissions (Issuance)	Commissions (1st Forbearance)	Commissions (2nd Forbearance)	Total Commissions
Rose	37	70	$5,064,391	$217,130	$63,864	$16,366	$297,360
Leeman	24	53	$4,227,540	$212,263	$18,459	$12,713	$243,435
Featherstone	8	25	$2,370,455	$115,414	$5,346	$0	$120,760

Id. at ¶ 24.

No registration statement was filed or in effect for the offering and sales of Verto Notes, and no valid exemption from registration existed for the Verto Notes offering. *Id.* at ¶ 28. At least five of the Verto Note investors were unaccredited, which Respondents knew because investor paperwork submitted at the time of purchase showed that some investors did not have sufficient income or net worth to qualify as accredited, and the investors did not check the box indicating they were accredited. *Id.* In addition, Respondents sold Verto Notes to the unaccredited investors without the investors having received the financial information required by Securities Act Rule 502(b)(2) (such as a Verto financial statement). *Id.* Also, no Form D was filed with the Commission stating that Verto had complied with the exemptions in Rule 506 of the Securities Act. *Id.*

As early as November 2013, when Respondents began selling the Verto Notes, they expressed concerns to William R. Schantz, the owner and sole member of Verto, that the Verto Notes were securities. *Id.* at ¶ 27. In a November 15, 2013 email, Respondent Leeman informed Schantz that he had received a call from another broker who "called to let [Leeman] know that the attorney [whom the broker had] asked to do his due diligence has recommended that [his client, the broker] not participate," and that "[t]he issue appears to be [the attorney's] opinion that our note is

a security." *Id.* The Respondents were also aware of the 2006 consent order that Schantz had entered into with the New Jersey Bureau of Securities, in which he consented to disgorge $7,000 in commissions he had earned selling similar nine-month promissory notes backed by insurance obligations. *Id.* On June 24, 2014, nearly a year into selling the notes, Respondent Leeman wrote to Schantz, copying Respondent Rose, that "In the SEC issue you had for selling Promissory Notes in 2001 as non-securities when the SEC claimed that they were securities, what was the difference between those and what we have? It looks like they were also 9 month notes." *Id.*

ARGUMENT

I. Disgorgement and Prejudgment Interest

For the following reasons, the Division respectfully requests that the Court order Respondents to pay disgorgement and prejudgment interest in the following amounts: for Rose, disgorgement of 297,360.00, plus $30,059.06 in prejudgment interest; for Leeman, disgorgement of $243,435.00, plus $24,607.97 in prejudgment interest; and for Featherstone, disgorgement of $120,760.00, plus $12,207.19 in prejudgment interest.

A. Applicable Law

Sections 21B(e) and 21C(e) of the Exchange Act authorize disgorgement, including reasonable interest, in this proceeding if appropriate. 15 U.S.C. §§ 78u-2(e), 78u-3(e). The underlying purpose of disgorgement "is to make lawbreaking unprofitable for the lawbreaker." *Moshe Marc Cohen*, AP File No. 3-15790, 2016 WL 4727517, *15 (Sep. 9, 2016) (Commission Opinion) (quoting *SEC v. Conterinis*, 743 F.3d 296, 301 (2d Cir. 2014)). The SEC is "entitled to disgorgement upon producing a reasonable approximation of defendant's ill-gotten gain." *SEC v. Calvo,* 378 F.3d 1211, 1217 (11th Cir. 2004). Once the Commission has satisfied its burden of proof, the burden shifts to the respondent, who must then demonstrate that the Commission's

estimate is not a reasonable approximation. *Calvo,* 378 F.3d. at 1217; *see also SEC v. First City Fin. Corp.,* 890 F.2d 1215, 1232 (D.C. Cir. 1989).

Disgorgement is appropriate in cases involving broker registration violations. *See Curtis A. Peterson*, AP File No. 3-17393, 2017 WL 2106270 (Apr. 19, 2017) (Initial Decision) (imposing disgorgement against respondent whose sole violation was Exchange Act Section 15(a)(l)); *Kenneth* C. *Meissner,* AP File No. 3-16175, 2015 WL 4624707, *12-13 (Aug. 4, 2015) (Initial Decision) (imposing disgorgement against respondent whose sole violation was Exchange Act Section 15(a)(l)); *cf SEC v. Rockwell Energy of Texas, LLC,* 2012 WL 360191, *6 (S.D. Tex. Feb. 1, 2012) ("Disgorgement is appropriate not only in cases of fraud ... but also where a defendant violates the securities registration provision of the federal securities laws."). Commissions from unlawful sales can provide the reasonable approximation of respondent's ill-gotten gains. *Ralph Calabro*, AP File No. 3-15015, 2015 WL 3439152, *44-54 (May 29, 2015)(Commission Opinion).

Additionally, the Commission may order prejudgment interest at its discretion to prevent securities law violators from accruing supplemental benefits from the use of the unlawful profits. *SEC v. Warde*, 151 F.3d 42, 50 (2d Cir. 1998); *SEC v. First Jersey Securities, Inc.,* 101 F.3d 1450, 1475 (2d Cir. 1996), *cert. denied*, 522 U.S. 812 (1997) (imposing the IRS underpayment rate); *SEC v. Hughes Capital Corp.*, 917 F. Supp. 1080, 1090 (D.N.J. 1996), *aff'd*, 124 F.3d 449 (3d Cir. 1997) ("It comports with the fundamental notions of fairness to award prejudgment interest.")

B. Amount of Disgorgement and Prejudgment Interest

As alleged in the Order, Respondents Rose, Leeman, and Featherstone received commissions from Verto in the amounts of $297,360.00, $243,435.00, and $120,760.00, respectively, for their participation in the unregistered offers and sales of the Verto Notes, Order at ¶ 24, which are securities, *id.* at ¶ 26. For the purposes of this motion, the Court is to accept as true the findings in Section III of the Order, including the above figures representing the commissions

Respondents earned. Order at ¶ 24. Accordingly, the commissions Respondents earned are the appropriate measure of disgorgement.

Given that the Commission's proposed disgorgement adequately reflects a reasonable estimate of the Respondents' ill-gotten gains, the Respondents carry the substantial burden of clearly demonstrating the unreasonableness of the aforementioned consented to amount. *Calvo*, 378 F.3d at 1217; *First City*, 890 F.2d at 1232. In doing so, Respondents may not petition to have the disgorgement amount reduced to reflect any subsequent use of their ill-gotten funds, because any such purposes for which Respondents may have appropriated the funds is immaterial to a disgorgement calculation. *In Re Moshe Marc Cohen*, 2016 WL at * 15 (where entirety of sales commissions earned were ordered disgorged, inability to pay by virtue of having spent the ill-gotten gains or due to financial hardship irrelevant in defense to a motion for order of disgorgement); *SEC v. Universal Express, Inc.*, 2009 WL 2486057, at *7-11 (S.D.N.Y. Aug. 14, 2009) (concluding "it is irrelevant for disgorgement purposes how the defendant chose to dispose of the ill-gotten gains; subsequent investment of these funds, payments to charities, and/or payment to co-conspirators are not deductible from the gross profits subject to disgorgement"); *SEC v. Benson*, 657 F. Supp. 1122, 1134 (S.D.N.Y. 1987) ("The manner in which [the defendant] chose to spend his misappropriations is irrelevant as to his objection to disgorge."). Moreover, neither does a "respondent's claim of financial hardship provide a defense to a motion for an order of disgorgement." *Id.*; *see also SEC v. Warren*, 534 F.3d 1368, 1369 (11th Cir. 2008) ("nothing in the securities laws expressly prohibits a court from imposing penalties or disgorgement liability in excess of a violator's ability to pay").

Peterson is instructive here. In that case, the respondent argued that he should not be required to disgorge the commissions he earned acting as an unregistered broker because at the time he was receiving illegal commissions he was not aware of the fraud underlying the scheme or

that his unregistered broker activity was unlawful. But the Court rejected that argument and found that "neither ignorance of the law nor lack of fraudulent conduct break the causal connection between Respondent's commissions and his violation of Exchange Act Section 15(a)(1), which does not require scienter." *Peterson*, 2017 WL 2106270 at *4-5. The Court went on to also reject arguments that the disgorgement amount be offset by taxes paid and payment he made for "treatments for his special needs son and home repair," finding that how the respondent chooses to spend his money is immaterial to disgorgement. *Id.* at *8. The Court further rejected the argument that respondent had an inability to pay as respondent argued it was a "financial hardship" but did not establish that he would be unable to pay the amount sought. *Id.* at *8-9.

Consistent with the equitable principles of the remedy of disgorgement, Respondents should likewise be ordered to pay pre-judgment interest. *Peterson*, 2017 WL 2106270 (imposing prejudgment interest for violation of Exchange Act Section 15(a)(l)); *Hughes Capital*, 917 F. Supp. at 1090. In the instant case, the Order to which they each consented provides that their conduct was over a three year period from 2013 through 2016, *id.* at 24, and that they first began selling the notes around November 2013, *id.* at ¶ 27. Accordingly, the appropriate period over which to calculate prejudgment interest is from November 1, 2013 through December 31, 2016. Applying the IRS rate over this period of time to the principal amounts results in prejudgment interest of $30,059.06 for Rose (Exhibit 1), $24,607.97 for Leeman (Exhibit 2), and $12,207.19 for Featherstone (Exhibit 3).

II. Civil Money Penalty

For the following reasons, the Division respectfully requests that the court order the maximum available civil money penalties against Respondents for their violations described above.

The federal securities laws authorize the Commission to impose civil penalties for violations of the securities laws. 15 U.S.C. §§ 77h-1(g); 78u-2(a). Civil penalties serve the dual purpose of penalizing the defendant for past violations and deterring him from future misconduct. *SEC v. Razmilovic,* 822 F.Supp.2d 234, 280 (E.D.N.Y. 2011), *aff'd in rel. part,* 783 F.3d 14 (2d Cir. 2013), *and cert den.*, 134 S.Ct. 1564 (U.S. 2014); *SEC v. Ramoil Mgmt., Ltd.,* No. 01 Civ. 9057 (SC), 2007 WL 3146943, at *13 (S.D.N.Y. Oct. 25, 2007) (civil penalties "fulfill a number of other [nonpunitive] purposes such as . . . deterrence, fostering public confidence in the securities system, and promoting stability in the securities market.") The securities laws provide for three tiers of penalties, to be "determined by the court in light of the facts and circumstances." Under each tier, the Court is authorized to impose a penalty that is the greater of the defendant's "pecuniary gain" from the violation or the applicable tiered amount. The penalty tiers for individuals for conduct that occurred from March 6, 2013 through November 2, 2015, are as follows:

> *First Tier:* $7,500 for an individual per violation;
>
> *Second tier:* $80,000 for an individual per violation that "involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement"; or
>
> *Third tier:* $160,000 for an individual per violation that "involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement" and "directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons."

Id.; See 17 C.F.R §§ 201.1001, Table I.

In weighing the penalty amount, courts consider: (1) the egregiousness of defendant's conduct; (2) the degree of defendant's *scienter;* (3) whether defendant's conduct created substantial losses or the risk of substantial losses to other persons; (4) whether defendant's conduct was isolated or recurrent; and (5) whether the penalty should be reduced due to defendant's

demonstrated current and future financial condition. *SEC v. Haligiannis,* 470 F. Supp. 2d 373, 386 (S.D.N.Y. 2007).[4]

Here, the conduct of the Respondents was egregious, as they sold many unregistered securities to individuals for a large principal value and earned substantial commissions without being registered to sell securities. Respondent Rose sold 70 Verto Notes to 37 investors, for a total principal value of $5,064,391, and he earned $297,260 in commissions. Order at ¶ 24. Leeman sold 53 Verto Notes to 24 investors, for a total principal value of $4,227,540, and earned $243,435 in commissions. *Id.* Featherstone sold 25 Verto Notes to 8 investors, for a principal value of $2,370,455, and earned $120,760 in commissions. *Id.* This was not isolated conduct – it occurred continuously from 2013 through 2016. *Id.* at ¶ 24.

Regarding the degree of *scienter,* Respondents were at least reckless in selling unregistered securities without being registered as brokers. As the Order's findings established, Respondents were aware of the risk that the Verto Notes were securities. As early as November 2013, when Respondents began selling the Verto Notes, they expressed concerns to Schantz that the Verto Notes were securities. Order at ¶ 27. Respondent Leeman stated on November 15, 2013 that he received a call from another broker who "called to let [Leeman] know that the attorney [the broker] asked to do his due diligence has recommended that he not participate" and "[t]he issue appears to be his opinion that our note is a security." *Id.* The Respondents were also aware of the 2006 consent order that Schantz entered into with the New Jersey Bureau of Securities, in which he consented to disgorge $7,000 in commissions he earned selling similar nine-month promissory notes backed by insurance obligations. *Id.* That consent is publicly available on the New Jersey

[4] A penalty is warranted even if a defendant claims that he cannot pay it because "claims of poverty cannot defeat the ... purposes of the securities laws." *SEC v. Inorganic Recycling Corp.*, 99 Civ. 10159, 2002 U.S. Dist. LEXIS 15817 *12 (S.D.N.Y. Aug. 25, 2002); *SEC v. Kane*, 2003 WL 1741293, at *4 (S.D.N.Y. 2003).

Consumer Affairs government website.[5] On June 24, 2014—after Respondents had already been selling the Verto Notes for more than seven months—Respondent Leeman wrote to Schantz, copying Respondent Rose, that "In the SEC issue you had for selling Promissory Notes in 2001 as non-securities when the SEC claimed that they were securities, what was the difference between those and what we have? It looks like they were also 9 month notes." Order at ¶ 27. Although Schantz told Respondents that the Verto Notes were not securities, Respondents were aware of and recklessly ignored the risk that the notes were securities, solely to personally profit by earning substantial commissions brokering their sales. On August 5, 2014—after Respondents already had been selling the notes for nine months—Schantz sent Rose and Leeman a memorandum from Verto's counsel discussing whether the Verto Notes were securities. The memorandum expressly refrains from providing a legal opinion but, instead, states in relevant part: "[T]he law concerning whether notes having a nine-month maturity date are deemed to be securities is complex and can be confusing. . . I think that a regulator or court should find that the notes are exempt but, given the number of elements involved and the complex case rulings, providing a formal legal opinion on this point would not be feasible." The Respondents never engaged their own counsel to receive independent advice on the topic.

Respondents' conduct created a risk of substantial losses to investors who purchased the Verto Notes. As noted above, Respondents aggressively solicited investors to purchase risky securities (which Respondents advertised as low risk), and held themselves out as financial advisors, without satisfying the qualifications of registered securities brokers (which are intended for investor protection). Indeed, the Commission brought a separate, related action against Schantz

[5] *In the Matter of Clearing Services of America, Inc., et al.*, Consent Order as to William Schantz et al., New Jersey Bureau of Securities, (Jan. 18, 2006) *available at* http://www.njconsumeraffairs.gov/Actions/20060117_ClearingServicesofAmericaIncschantz.pdf.

and Verto in federal District Court alleging misrepresentations by them in the sale of the Verto Notes, *SEC v. William R. Schantz III and Verto Capital Management LLC*, Civil Action No. 17-cv-03115 (D.N.J).

As described above, each violation warrants an independent penalty. Courts, however, have used several different means to calculate the penalty based on *each* securities law violation. Some courts have calculated the penalty by multiplying the statutory amount by the number of violative actions. *See, e.g., SEC v. Pentagon Capital Mgmt., PLC,* 725 F.3d 279, 288 n. 7 (2d Cir. 2013) ("we find no error in the district court's methodology for calculating the maximum penalty be counting each trade as a separate violation"); *SEC v. Coates,* 137 F. Supp. 2d 413,430 (S.D.N.Y. 2001) (multiplying the penalty by the number of violations). Here, Rose sold 70 Verto Notes, Leeman sold 53 Verto Notes, and Featherstone sold 25 Verto Notes, and each note sale violated both Securities Act Section 5 as it was an unregistered security and Exchange Act Section 15(a)(1) as it was a sale of a security by an unregistered broker.

Another methodology for calculating the penalty would be to multiply the statutory penalty by the number of securities laws the Respondents violated. *See, e.g., SEC v. Shehyn,* No. 04-cv-2003(LAP), 2010 WL 3290977, at *8 (Aug. 9, 2010) (multiplying the third-tier penalty by five to reflect defendant's violation of five securities laws). Other courts have multiplied the statutory penalty by the number of victims. *See, e.g., SEC v. Glantz,* No. 94-cv-5737, 2009 WL 3335340, at *6 (S.D.N.Y. Oct. 13, 2009); *SEC v. Milan Capital Group, Inc.,* No. 00-cv-0108, 2001 WL 921169, at *3 (S.D.N.Y. 2001) (similar, resulting in a $10 million penalty); *SEC v. Kenton Capital Ltd.,* 69 F. Supp. 2d 1, 17 & n.15 (D.D.C. 1998) ($1.2 million penalty calculated by "multiplying the maximum third tier penalty ... by the number of investors who actually sent money to [defendant]"). Alternatively, courts penalize defendants based on the amount of their unlawful

gain. Whatever methodology the Court utilizes, the conduct of Rose, Leeman, and Featherstone warrants the imposition of maximum civil money penalties.

CONCLUSION

The Division respectfully requests that the Court grant its Motion for Summary Disposition and that Thomas Rose be held liable for disgorgement of $297,360.00, prejudgment interest of $30,059.06 and the maximum civil money penalty; David Leeman be held liable for disgorgement of $243,435.00, prejudgment interest of $24,609.97 and the maximum penalty; and that David Featherstone be held liable for disgorgement of $120,760.00, prejudgment interest of $12,207.19 and the maximum penalty.

Respectfully submitted,

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November 17, 2017

CERTIFICATE OF SERVICE

Pursuant to Rule 150 of the Commission's Rules of Practice, I hereby certify that on November 17, 2017, a true and correct copy of the foregoing was sent in the manner indicated below upon the following:

VIA ELECTRONIC MAIL
Honorable Cameron Elliot
Administrative Law Judge
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-2557
Via email to alj@sec.gov (courtesy copy)

VIA UPS
Office of the Secretary
Securities and Exchange Commission
100 F Street, NE
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Jennifer K. Vakiener

Exhibit 1

Prejudgment Interest Calculation for Thomas Rose

U.S. Securities and Exchange Commission

Division of Enforcement

Prejudgment Interest Report

Rose Prejudgment Interest

Quarter Range	Annual Rate	Period Rate	Quarter Interest	Principal+Interest
Violation Amount				$297,360.00
12/01/2013-12/31/2013	3%	0.25%	$757.66	$298,117.66
01/01/2014-03/31/2014	3%	0.74%	$2,205.25	$300,322.91
04/01/2014-06/30/2014	3%	0.75%	$2,246.25	$302,569.16
07/01/2014-09/30/2014	3%	0.76%	$2,287.92	$304,857.08
10/01/2014-12/31/2014	3%	0.76%	$2,305.22	$307,162.30
01/01/2015-03/31/2015	3%	0.74%	$2,272.16	$309,434.46
04/01/2015-06/30/2015	3%	0.75%	$2,314.40	$311,748.86
07/01/2015-09/30/2015	3%	0.76%	$2,357.33	$314,106.19
10/01/2015-12/31/2015	3%	0.76%	$2,375.16	$316,481.35
01/01/2016-03/31/2016	3%	0.75%	$2,360.64	$318,841.99
04/01/2016-06/30/2016	4%	0.99%	$3,171.00	$322,012.99
07/01/2016-09/30/2016	4%	1.01%	$3,237.73	$325,250.72
10/01/2016-11/30/2016	4%	0.67%	$2,168.34	$327,419.06

Prejudgment Violation Range	Quarter Interest Total	Prejudgment Total
12/01/2013-11/30/2016	**$30,059.06**	**$327,419.06**

Exhibit 2

Prejudgment Interest Calculation for David Leeman

U.S. Securities and Exchange Commission

Division of Enforcement

Prejudgment Interest Report

Leeman Prejudgment Interest

Quarter Range	Annual Rate	Period Rate	Quarter Interest	Principal+Interest
Violation Amount				$243,435.00
12/01/2013-12/31/2013	3%	0.25%	$620.26	$244,055.26
01/01/2014-03/31/2014	3%	0.74%	$1,805.34	$245,860.60
04/01/2014-06/30/2014	3%	0.75%	$1,838.90	$247,699.50
07/01/2014-09/30/2014	3%	0.76%	$1,873.02	$249,572.52
10/01/2014-12/31/2014	3%	0.76%	$1,887.18	$251,459.70
01/01/2015-03/31/2015	3%	0.74%	$1,860.11	$253,319.81
04/01/2015-06/30/2015	3%	0.75%	$1,894.69	$255,214.50
07/01/2015-09/30/2015	3%	0.76%	$1,929.84	$257,144.34
10/01/2015-12/31/2015	3%	0.76%	$1,944.43	$259,088.77
01/01/2016-03/31/2016	3%	0.75%	$1,932.55	$261,021.32
04/01/2016-06/30/2016	4%	0.99%	$2,595.95	$263,617.27
07/01/2016-09/30/2016	4%	1.01%	$2,650.58	$266,267.85
10/01/2016-11/30/2016	4%	0.67%	$1,775.12	$268,042.97

Prejudgment Violation Range	Quarter Interest Total	Prejudgment Total
12/01/2013-11/30/2016	**$24,607.97**	**$268,042.97**

Exhibit 3

Prejudgment Interest Calculation for David Featherstone

U.S. Securities and Exchange Commission

Division of Enforcement

Prejudgment Interest Report

Featherstone Prejudgment Interest

Quarter Range	Annual Rate	Period Rate	Quarter Interest	Principal+Interest
Violation Amount				$120,760.00
12/01/2013-12/31/2013	3%	0.25%	$307.69	$121,067.69
01/01/2014-03/31/2014	3%	0.74%	$895.57	$121,963.26
04/01/2014-06/30/2014	3%	0.75%	$912.22	$122,875.48
07/01/2014-09/30/2014	3%	0.76%	$929.14	$123,804.62
10/01/2014-12/31/2014	3%	0.76%	$936.17	$124,740.79
01/01/2015-03/31/2015	3%	0.74%	$922.74	$125,663.53
04/01/2015-06/30/2015	3%	0.75%	$939.89	$126,603.42
07/01/2015-09/30/2015	3%	0.76%	$957.33	$127,560.75
10/01/2015-12/31/2015	3%	0.76%	$964.57	$128,525.32
01/01/2016-03/31/2016	3%	0.75%	$958.67	$129,483.99
04/01/2016-06/30/2016	4%	0.99%	$1,287.76	$130,771.75
07/01/2016-09/30/2016	4%	1.01%	$1,314.86	$132,086.61
10/01/2016-11/30/2016	4%	0.67%	$880.58	$132,967.19

Prejudgment Violation Range	Quarter Interest Total	Prejudgment Total
12/01/2013-11/30/2016	**$12,207.19**	**$132,967.19**