UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-18099

In the Matter of

BLACK DIAMOND ASSET MANAGEMENT LLC

and

ROBERT WILSON,

Respondents.

THE DIVISION OF ENFORCEMENT'S PRE-HEARING BRIEF

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Under Rule of Practice 222(a) and the Court's Order Ratifying Certain Prior Actions, Discharging Order to Show Cause, and Setting Procedural Schedule, the Division of Enforcement respectfully submits this prehearing brief. For the reasons described below, based on the anticipated hearing evidence, the Court should find Respondents Black Diamond Asset Management LLC and Robert Wilson liable for fraud and other violations under the Investment Advisers Act of 1940 ("Advisers Act") and impose the relief described below.

PRELIMINARY STATEMENT

In March 2015, Respondents Wilson and Black Diamond represented in a Commission Form ADV investment adviser application that Black Diamond managed over $583 million worth of assets. Respondents used that representation to register Black Diamond with the Commission as an investment adviser and to solicit potential clients. In reality, Wilson and Black Diamond managed no marketable assets at the time. The $560 million of stock that Wilson claims he managed—shares in a company called HSH Holdings International—never existed because HSH Holdings never issued the stock, as Wilson knew at the time and now concedes. The remaining $23 million of stock that Wilson claims he managed—9.5 million shares in a company called Momentous Entertainment Group, Inc.—held a nominal value of $0.01 per share at the time, as Wilson knew, and could not realistically be sold, even assuming Wilson managed the shares.

A year later, in March 2016, Respondents represented in their next Form ADV that Black Diamond managed over $25 million worth of assets. Respondents similarly used that representation to maintain Black Diamond's Commission registration and to solicit potential clients. Wilson claims that he based that figure on his management of approximately 10.3 million Momentous shares, which by then had begun electronically trading. Yet those shares (again, even assuming Wilson managed them) never reached a market value of even a quarter of the represented $25 million during the relevant ninety days before Respondents filed the Form ADV. Indeed, as Wilson admits, the

owners of those shares could not have sold them for $25 million when Respondents filed the Form ADV: by that time, the shares' total market value had dropped to less than $1.6 million.

The Division's hearing evidence will show that Respondents *admit* the material facts necessary to prove the elements of the Division's fraud, false application, and false registration claims under the Advisers Act. Furthermore, the Forms ADV came with clear instructions about how to determine "regulatory assets under management," and Wilson admits he read the instructions before filling out the Forms ADV. Among other things, the instructions required advisers to calculate the value of "each securities portfolio for which [the advisers] provide continuous and regular supervisory or management services" and to determine "the current market value of the assets as determined within 90 days prior to the date of filing this Form ADV." The instructions also informed Wilson that investment advisers could not register with the Commission (absent certain exemptions) unless they had "regulatory assets under management" of $100 million or more.

Respondents tried to deceive the Commission and prospective clients because Wilson's prior criminal conviction kept him from finding a job at a registered broker-dealer. But his conviction did not stop him from setting up an investment adviser and—with the fraudulently-obtained imprimatur of Commission registration—searching for hapless investment advisory clients who would pay him fees.

To prove these facts and establish these admissions at the hearing, the Division first anticipates calling two Commission employees to testify. The Division intends to call an examiner from the Commission's Office of Inspections and Examinations to testify about certain written and oral admissions Wilson made to the OCIE staff during its examination. The Division also intends to call a staff accountant as a summary witness to testify about Momentous's historical stock prices. Next, the Division intends to play excerpts of Wilson's videotaped deposition testimony, which the

Division anticipates will last about two hours. Finally, in addition to the deposition transcripts of Kurt Neubauer and H. Steve Harrell, which the Court has admitted into evidence, the Division intends to offer emails to and from Wilson, excerpts from Wilson's investigative testimony, Black Diamond's certified Forms ADV, and other exhibits.

Based on these and other facts and admissions the Division will establish at the hearing, the Court should hold Respondents liable for willfully violating Advisers Act Sections 206(1) and 206(2), which prohibit fraud by an adviser on clients or prospective clients, and Section 207, which prohibits materially false statements in Commission applications, including Forms ADV; hold Black Diamond liable for willfully violating Advisers Act Section 203A, which prohibits advisers without at least $100 million worth of assets under management from registering with the Commission (absent certain exemptions); and hold Wilson liable for willfully aiding and abetting and causing Black Diamond's foregoing violations.

To protect investors, the Court should impose a permanent, collateral industry bar against Wilson based on the hearing evidence. He poses a grave danger to investors. Wilson has fraudulently filed Forms ADV, has a prior criminal conviction, has repeatedly claimed that the Commission has no authority to investigate or enforce the securities laws as to him, has verbally threatened both the Court and Division counsel, and yet admits that he seeks to work in the securities industry again. If the Court does not bar Wilson permanently and collaterally, he may succeed next time in persuading innocent investors to invest with him and will likely cause serious harm. For those reasons and because Black Diamond has never qualified for Commission registration, the Court should also revoke Black Diamond's investment adviser registration. Similarly, the Court should order Respondents to cease and desist from future violations of the relevant Advisers Act provisions.

The Court should finally impose a civil penalty against Wilson and Black Diamond for deterrent purposes. The Court could impose a third-tier penalty of up to $160,000 for each of

Wilson's violations relating to the 2015 Form ADV and $181,071 for each of Wilson's violations relating to the 2016 Form ADV, along with similar penalties of $775,000 and $905,353, respectively, for Black Diamond. However, a more modest penalty will serve for deterrence purposes, when combined with a permanent, collateral bar for Wilson and registration revocation for Black Diamond.

STATEMENT OF FACTS

I. Respondents' Background

A. Wilson

Wilson holds a bachelor's degree in sports management, holds a master's degree in finance and financial services, and is working on a Ph.D. in business administration. (DIV 1 (Wilson's résumé); DIV 77A (Wilson) at 19–20.)[1] After serving in the military for several years, Wilson worked in the securities industry, mostly as a registered representative of various broker-dealers, from approximately 1986 to 1990. (DIV 77A (Wilson) at 23–26, 28–29, 31–32.) During that time, Wilson trained for and received a Series 7 securities license. (*Id.* at 177–78.) Wilson then began his own consulting firm and "put" his securities license "for a while with two other" securities firms, but otherwise did not work in the securities industry again until 2014. (*Id.* at 32–35.)

In 2002, a jury sitting in New York state court found Wilson guilty of at least one criminal count which, according to Wilson, stemmed partly from his "passing a bad check." (*Id.* at 36–38.) Wilson served a six-month prison sentence starting in 2002. (*Id.* at 39.)

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[1] This brief references the Division's anticipated hearing exhibits, numbered with the prefix "DIV," by number. For Exhibits DIV 69, DIV 77A, DIV 81, and DIV 82—respectively, excerpts from Wilson's investigative testimony transcript, excerpts from Wilson's deposition transcript, the parties' joint designations from Kurt Neubauer's deposition transcript, and the parties' joint designations from H. Steve Harrell's deposition transcript—the Division provides parentheticals identifying the testifying witness by last name when citing the exhibits. By Order dated May 23, 2018, the Court admitted DIV 81 and DIV 82 into evidence based on the Division's consent motion.

B. Black Diamond

In approximately June 2014, although Wilson had never worked in investment management, he started RJ Advisor LLC ("RJ Advisor") as an investment adviser because he could not get a job at a broker-dealer following his criminal conviction. (*Id.* at 35–36; DIV 48 (certified Form ADV).) Wilson later renamed his firm Black Diamond. (DIV 77A (Wilson) at 49.)

Wilson controlled Black Diamond and served as its managing member. (DIV 69 (Wilson) at 16 ("Q. And who controls [Black Diamond]? A. Me."); DIV 48 (certified Form ADV) at 46.) Black Diamond's fiscal year mirrored the calendar year and ran from January 1 through December 31. (DIV 77A (Wilson) at 99–100.)

II. Wilson Understood the Role of an Investment Adviser.

Wilson understood the difference between a broker-dealer and an investment adviser:

> [T]he broker-dealer is just selling the securities. The investment advisor is putting together a whole portfolio for people based on their portfolio policy.... [I]t doesn't necessarily have to be more than one stock....anything where you're advising them on it and getting paid a fee.

(DIV 77A (Wilson) at 39–40.) Wilson similarly knew that an investment adviser owes a fiduciary duty to his clients, which Wilson understood as a "duty to your clients to look out for their best interest." (*Id.* at 40.)

III. Wilson Tried to Help HSH Holdings Raise Capital But It Never Issued Stock.

A. HSH Holdings: Background

In the 1980s, after serving in the military for nine years, H. Steve Harrell began a successful real estate and car dealership business. (DIV 82 (Harrell) at 10–11.) By approximately 2009, his family trust owned land in the Bahamas and began trying to develop a resort there. (*Id.* at 11–13.) To do so, Harrell's trust needed funds, partly because it owed taxes on the Bahamian land. (*Id.*; DIV 77A (Wilson) at 78–79.) Harrell initially sought to borrow money but, when that failed, Harrell hoped to establish a public company to hold the land and issue stock to the public to raise capital.

(DIV 82 (Harrell) at 13–14.) In approximately 2014, Harrell began trying to establish HSH Holdings—a name Harrell derived from his initials—so that it could issue stock. (*Id.* at 14–15, 20.)

B. HSH Holdings Tried to Raise $370 Million By Issuing Stock.

In 2014, a mutual acquaintance introduced Harrell and Wilson. (DIV 82 (Harrell) at 15–16.) Wilson said that he could help Harrell "identify a way to raise money through some type of public instrument...public and private." (*Id.* at 17.) Harrell hoped that Wilson would advise Harrell and his chief operating officer, Thomas Boynton, on how to raise capital from investors. (*Id.* at 19–20.) Harrell hoped to first raise $10 million in a private offering and later raise $360 million in a public offering for the Bahamas development. (*Id.* at 17–18, 21–22.)

On July 24, 2014, in an email copied to Wilson and Harrell, Boynton specified the first three steps necessary for HSH Holdings' public offering:

> 1. Stock is placed into an LLC.
>
> 2. HSH [Holdings] becomes the owner of AI Document [S]ervices [a shell public company].
>
> 3. RJ Advisors enters an investment [a]greement with HSH whereby [R]J Advisors through a Broker Dealer network sells the 130 million shares [a]nd the money is invested into HSH under the terms of the [a]greement.

(DIV 3.) Upon receiving Boynton's email, Wilson thought the transaction structure was "ridiculous" because "130 million shares outstanding with a piece of property that was worth about $14 million, you know, it makes it a penny stock." (DIV 77A (Wilson) at 45–46.) Wilson did not believe the deal would transpire in that manner. (*Id.* at 46 ("Q. So you got this email and you thought this sounds crazy, this isn't going to happen? A. Right.").) Ultimately, none of these steps ever occurred. (DIV 82 (Harrell) at 24.) Later that month, Wilson told the potential counterparties that the transaction would not go forward. (DIV 4 ("[W]e are no longer interested in this transaction.").)

In August 2014, Wilson began outlining new transaction terms in emails with Folio Investments, Inc., a registered broker-dealer. (DIV 6.) Wilson described the HSH Holdings

transaction as a private-investment-in-public-equity issuance (known as a "PIPE") with 42 million shares to be sold in the first round, of which 32 million shares would be "set aside for funding the [c]ompany" and 10 million shares would be paid to "nine entities for services." (*Id.*) Wilson proposed that the company "and the other entities would deposit their stock with Folio in accounts established under my RIA [registered investment adviser] account. They will pay my 1.2% management fee." (*Id.*)

By October 2014, Harrell and HSH Holdings had abandoned that transaction structure, too, after deciding that it looked "toxic." (DIV 8.) On October 25, 2014, Wilson told Folio by email:

> HSH and its owner Mr. Steven Harrell have seen the light and have decided to proceed in [a] new direction.... Mr. Harrell and his staff have come to realize[ ] that the structure with the shell look[ed] like it was toxic and did not place he, his staff, his company and myself in a good light with Folio.

(*Id.*) This time, Wilson explained that Harrell planned to form HSH Holdings as a new company, have it acquire the entity that owned the Bahamian land, prepare a private placement memorandum to raise "about $3 million," and, "[a]fter the completion of the [private placement]," "prepare[ ] and submit[ ] for review by the [Securities and Exchange C]ommission" an "S-1 registration to raise about $100 million."[2] (DIV 8.)

In approximately February 2015, the Bahamian government was "thinking about closing [Harrell and his group] down and...taking the land from them" based on their failure to pay taxes. (DIV 77A (Wilson) at 78; DIV 11.) Harrell and Boynton therefore asked Wilson to write a letter to a Bahamian official about the future capital raise. (DIV 77A (Wilson) at 78; DIV 11.)

On February 8, 2015, Wilson emailed Boynton a letter, addressed to the Bahamian prime minister on RJ Advisor's letterhead and signed by Wilson. (DIV 11; DIV 77A (Wilson) at 78–79.) The letter referenced an upcoming "capital raise of the first $165 million USD from private sources

[2] Wilson described the S-1 registration as follows: "S-1 is a registration form for going public that's filed with the SEC, and is used for deciding whether the company should meet the criteria I guess you can say [in order to issue the shares]." (DIV 77A (Wilson) at 62–63.)

that we currently manage or have beneficial access to." (DIV 11.) As Wilson admits, he meant that he and Harrell's group would manage HSH Holdings' future private placement of shares and obtain investors—not manage securities investments on behalf of advisory clients. (DIV 77A (Wilson) at 80–81.)

C. HSH Holdings Never Succeeded in Issuing Any Securities to Raise Capital.

HSH Holdings never ended up issuing any shares of stock, notes, or other securities. (DIV 82 (Harrell) at 21.) Nor did HSH succeed in raising capital through any other means. (*Id.*)

As Wilson admits, he knew by February 2015 that HSH Holdings had not succeeded in issuing stock to—or otherwise raising capital from—anyone other than its founders, except for $250,000 Wilson incorrectly thought HSH had raised from a single investor. (*Compare* DIV 77A (Wilson) at 81 ("Q. ...But just as of February 2015, had they raised any money? A. Yes. Q. How much had they raised? A. I believe it was $250,000, and that came from one investor.") *and id.* at 84 ("Dr. J had gotten Julio Jones to invest $250,000. That's the only investment that I know about because it wasn't that long after all this that I left.") *with* DIV 82 (Harrell) at 51 (cross-examination by Wilson) ("Q. What happened with the investment from Julio Jones? ...Tom [Boynton] had told me that he had got an investment from Julio Jones. A. Yeah. He got a commitment from Julio Jones. Julio never wrote us a check.").)

As Wilson also admits, no HSH Holdings shares ever ended up in Black Diamond's investment advisory accounts at Folio. (DIV 77A (Wilson) at 86 ("Q. ...Again, just to be clear. None of those [HSH Holdings] shares ever made it into accounts at Folio? A. No.").) Nor did Black Diamond ever establish investment advisory accounts at any other firm. (*Id.* ("Q. ...Did you have accounts at any other firm? A. No.").)

D. Wilson and Black Diamond Never Managed Securities Investments for Harrell, HSH Holdings, or Harrell's Car Dealership Employees.

As of April 2018, Harrell did not have a financial or investment adviser who provided him with advice on buying or selling securities. (DIV 82 (Harrell) at 35–36.) Nor does he recall ever having had such an adviser. (*Id.* at 36 ("We believe we could get a better return [ ] ourselves on our money than those folk.").) As Harrell testified, he never spoke to Wilson about even the possibility of Wilson's managing securities investments for Harrell, HSH Holdings, HSH Holdings' employees, or Harrell's car dealerships. (*Id.* at 36, 37, 39–40.) Nor did Wilson provide Harrell or HSH Holdings with any advice about buying or selling securities. (*Id.* at 37–38.)

IV. Wilson Began Trying to Help Momentous Raise Capital While Its Stock Held a Nominal Value of Only $0.01 Per Share.

A. Momentous: Background

After years of being a "serial entrepreneur," Kurt Neubauer founded Momentous in November 2013, alongside John Pepe and another partner. (DIV 81 (Neubauer) at 11–13.) Momentous started as an entertainment company, producing a Christian record album, and then segued to direct marketing and infomercials. (*Id.* at 12–13.) Since its formation, Neubauer has served as Momentous's chief executive officer and president. (*Id.* at 12.)

Upon Momentous's founding, both Neubauer and Pepe received Momentous stock. (*Id.* at 13–14.) Momentous also issued stock to, among others, two consultants in return for their services: David Northcutt and Greg Provost. (*Id.* at 14–16.) Greg Provost in turn divided his Momentous shares equally with his three brothers, James, Robert, and Jeff Provost.[3] (*Id.* at 16–17.)

[3] Wilson appears to contend that he managed Momentous shares owned by at least Pepe, Northcutt, and the four Provost brothers.

B. Wilson Agreed to Help Momentous Raise Capital While Momentous Shares Had a Nominal Value of $0.01 Each.

In approximately June 2014, when Momentous was "looking for...people with access to capital," a mutual acquaintance introduced Neubauer to Wilson. (*Id.* at 18–19; DIV 77A (Wilson) at 122.) Wilson offered to help Momentous obtain financing. (DIV 81 (Neubauer) at 21.)

In September 2014, Momentous's Form S-1 Commission registration statement became effective. (*Id.* at 29; DIV 88.) The statement allowed Momentous to begin offering up to 21.75 million shares of stock at $0.01 per share—for a total maximum offering value of $217,500—on a "delayed or continuous basis." (DIV 88.) The Form S-1 disclosed that Momentous had "no public or established market" for its shares and that Momentous had earned less than $8,000 of revenue in 2013. (*Id.*)

That month, Momentous began searching for a broker-dealer that would agree to make a market for Momentous stock and quote the stock price so that the shares could trade electronically. (DIV 81 (Neubauer) at 29–31, 32–33; DIV 77A (Wilson) at 138–39.) Neubauer optimistically thought the process would take "about five to six months." (DIV 81 (Neubauer) at 29–30.) Although Momentous approached two broker-dealers in succession starting in the fall of 2014, neither attempt succeeded. (*Id.* at 32–34.)

On November 3, 2014, Momentous and RJ Advisor entered into a consulting agreement, signed by Neubauer and Wilson. (DIV 21; DIV 81 (Neubauer) at 23; DIV 77A (Wilson) at 123.) The agreement called for RJ Advisor to provide "financial consulting and investment banking services and advice pertaining to [Momentous]'s business affairs." (DIV 21.)

A few weeks later, on November 24, 2014, Wilson (through a separate holding company he owned) entered into a subscription agreement with Momentous that entitled him to 1.5 million shares of Momentous stock in return for his consulting services. (DIV 22; DIV 77A (Wilson) at

126–27; DIV 81 (Neubauer) at 26–28.) The agreement valued the Momentous stock at $0.01 per share. (DIV 22.)

On February 2, 2015, Momentous filed a Current Report on Form 8-K. (DIV 89.) The report disclosed that Momentous and Wilson's holding company had entered into a share purchase agreement, which would not become effective until the first day that "a trade of [Momentous's common stock] is executed at or above $0.10, if ever," on the OTC Bulletin Board, an interdealer quotation system. (*Id.* at 2); *see OTC Bulletin Board (OTCBB)*, http://www.finra.org/industry/otcbb/otc-bulletin-board-otcbb (2018). As the Form 8-K further disclosed, trades of Momentous shares could not be executed before Momentous received a trading symbol from the Financial Industry Regulatory Authority and FINRA accepted Momentous's application to have its shares quoted by a market-maker. (DIV 89.)

C. Wilson Never Provided Investment Advice to Neubauer.

Neubauer has never had an investment adviser, and Wilson never served as Neubauer's investment adviser. (DIV 81 (Neubauer) at 61–62; *id.* at 63 ("Q. ...[D]id Mr. Wilson ever actually serve as a personal investment advisor to you with respect to your securities investments? A. No.").) Nor did Wilson ever provide Neubauer with advice about his Momentous stock investments or any other securities investments. (*Id.* at 76.) Neubauer also never had any arrangement with Wilson in which Wilson agreed to help Neubauer open a brokerage account to hold his Momentous shares, sell the Momentous stock for Neubauer, and buy other securities Wilson would then manage for Neubauer. (*Id.* at 60.)

In August 2016, during OCIE's examination of Black Diamond, Neubauer signed a letter at Wilson's request—which Wilson had drafted—saying that Wilson and Black Diamond were "managing [Neubauer's] holdings in Momentous" and that the stock was "under Mr. Wilson[']s discretion." (DIV 37; DIV 81 (Neubauer) at 85–89.) As Neubauer understood it, the letter meant:

> [Wilson]'s given me consulting advice, you know, what to do with MMEG [Momentous], how to deal with it, both personally and whatever.... [T]his may have been a bit of a stretch, but it's not within the range of correctness to a point.... There was no ongoing dialogues of...we need to go do this, we need to go do that...or there was no master plan of any kind. It was just day-to-day organizational business, mostly – mostly [sur]rounding around business opportunities...[f]or Momentous.

(DIV 81 (Neubauer) at 88–89.) According to the letter, Wilson had 728,360 "shares under management" for Neubauer. (DIV 37.) Neubauer did not know "where that figure was derived from" because he had about 2.5 million Momentous shares at the time. (DIV 81 (Neubauer) at 92.)

V. Black Diamond Had No Interactive Internet Robo-Adviser.

As Wilson admits, Black Diamond had no interactive Internet robo-adviser capability before June 2016. (DIV 77A (Wilson) at 95–96 ("Q. At the time that you submitted this form [on March 10, 2015] did you have an interactive Robo-Advisor website? A. I think they were building it at this time. Q. Okay. So you didn't have one yet? A. No."); DIV 57 (Wilson's undated written responses to OCIE's initial request for examination information) ("I *am becoming* a hybrid Robo advisor and...*will be conducting* business over the internet." (emphases added)); DIV 56 (Wilson's email to OCIE, dated May 17, 2016, attaching DIV 57); DIV 54 (OCIE notes of call with Wilson) (Wilson statement that his robo-adviser capability "[s]hould start" on June 1, 2016).)

VI. In March 2015 Wilson and Black Diamond Submitted a False Form ADV.

A. Wilson Filled Out the Form ADV Himself After Reading the Instructions.

On March 10, 2015, Wilson submitted a Form ADV investment adviser registration application to the Commission on Black Diamond's behalf. (DIV 48 (certified Form ADV).) Wilson listed himself as Black Diamond's managing member, chief compliance officer, and chief investment officer and listed no other officers or employees. (*Id.* at 25, 31–32, 44.)

As Wilson admits, he filled out the information on the Form ADV himself. (DIV 69 (Wilson) at 16 ("Q. With respect to those filings [Black Diamond's Form ADVs], who was

responsible[?] A. Me. Q. You're responsible for the content of those files? A. Yes."); DIV 77A (Wilson) at 87 ("Q. I believe you testified earlier that you filled out the information on this form [ADV]? A. Yes.").)

As Wilson further admits, he read the Commission instructions that accompanied the blank Form ADV before he filled it out on Black Diamond's behalf. (DIV 77A (Wilson) at 88 ("Q. ...Did you look at the Form ADV general instructions that were available on this site with this Form ADV? A. Yes. Q. Did you look at them before you filled out this form? A. Yes."); *id.* at 89 ("Q. ...Just to be clear. You read whatever instructions were then available -- A. Correct. Q. -- as to filling out the Form ADV? A. Correct."); DIV 45 (business record certification that DIV 44 consists of the Form ADV and instructions in effect from Sept. 19, 2011 through June 30, 2017); DIV 44.)

B. The Form ADV Instructions Listed the Criteria for Commission Registration Eligibility and Told Advisers How to Value Assets under Management.

The Form ADV's General Instructions—which remained the same from 2011 to 2017—directed advisers to "[r]ead these instructions carefully before filing Form ADV." (DIV 44 at 1; DIV 45 (business record certification that DIV 44 consists of the Form ADV and instructions in effect from Sept. 19, 2011 through June 30, 2017).) The instructions then provided detailed guidance for filling out particular portions of the form.[4] (DIV 44.)

The instructions to Part 1A of the Form ADV explained that investment advisers applying for Commission registration had to fall under at least one of the enumerated categories to be eligible for such registration. Those categories included (1) an adviser with "regulatory assets under management" of "$100 million or more"; (2) an adviser with "regulatory assets under management" between $25 million and $100 million that was not required to register with, or was not subject to examination by, the state securities authority in the state with the adviser's principal office or place

[4] The Form ADV instructions italicized defined terms. This brief omits those italics.

of business; and (3) an internet adviser that "provide[s] investment advice to [its] clients through an interactive website."[5] (DIV 44 at 14–17.)

For purposes of the internet adviser category, the instructions explained that an adviser was "eligible...if" it provides investment advice to clients through "a website in which computer software-based models or applications provide investment advice based on personal information each client submits through the website. Other forms of online or Internet investment advice do not qualify." (*Id.* at 17.) The instructions further explained that, to qualify, the adviser must: (1) "provide investment advice to all of [its] clients exclusively through the interactive website, except that [the adviser] may provide investment advice to fewer than 15 clients through other means during the previous 12 months" and (2) the adviser must "maintain a record demonstrating that [it] provide[s] investment advice to [its] clients exclusively through an interactive website in accordance with these limits." (*Id.* at 17.)

The instructions next provided directions for determining whether particular advisory assets qualified for the $100 million minimum amount: "In determining the amount of your regulatory assets under management, include the securities portfolios for which you provide continuous and regular supervisory or management services *as of the date of filing this Form ADV*." (*Id.* at 19–20 (emphasis added).) The instructions continued: "An account is a securities portfolio if at least 50% of the total value of the account consists of securities." (*Id.* at 20 (allowing the treatment of "cash and cash equivalents" as securities).) The instructions then explained which assets to include and exclude in the calculation:

> Include the entire value of each securities portfolio for which you provide continuous and regular supervisory or management services.... Exclude, for example, the portion of an account:
>
> (a) under management by another person; or

[5] The instructions also listed other categories not relevant here.

(b) that consists of real estate or businesses whose operations you 'manage' on behalf of a client but not as an investment.

(*Id.* at 20.)

The instructions supplied further guidance on how to determine whether an adviser provides "continuous and regular supervisory or management services":

> You provide continuous and regular supervisory or management services with respect to an account if:
>
> (a) you have discretionary authority over and provide ongoing supervisory or management services with respect to the account; or
>
> (b) you do not have discretionary authority over the account, but you have ongoing responsibility to select or make recommendations, based upon the needs of the client, as to specific securities or other investments the account may purchase or sell and, if such recommendations are accepted by the client, you are responsible for arranging or effecting the purchase or sale.
>
> . . .
>
> You *do not* provide continuous and regular supervisory or management services for an account if you:
>
> (a) provide market timing recommendations (i.e., to buy or sell), but have no ongoing management responsibilities;
>
> (b) provide only impersonal investment advice (e.g., market newsletters);
>
> (c) make an initial asset allocation, without continuous and regular monitoring and reallocation; or
>
> (d) provide advice on an intermittent or periodic basis (such as upon client request, in response to a market event, or on a specific date (e.g., the account is reviewed and adjusted quarterly)).

(*Id.* at 21–22 (emphasis in original).) The instructions' glossary defined "discretionary authority" as "the authority to decide which securities to purchase and sell for the client...[or] to decide which investment advisers to retain on behalf of the client." (*Id.* at 28.)

Finally, the instructions explained how to calculate the value of assets under management: "Determine your regulatory assets under management based on the current market value of the assets as determined within 90 days prior to the date of filing this Form ADV." (*Id.* at 22.)

C. Wilson Claimed, Among Other Things, that Black Diamond Managed Assets Worth over $583 Million on the Firm's 2015 Form ADV.

At the top of the first page, the Form ADV cautioned advisers: "**WARNING**: Complete this form truthfully. False statements or omissions may result in denial of your application, revocation of your registration, or criminal prosecution." (DIV 48 at 2 (emphasis in original).)

In the section entitled "SEC Registration/Reporting," the Form ADV then explained: "To register (or remain registered) with the SEC, you must check **at least one** of the items...below.... Part 1A Instruction 2 provides information to help you determine whether you may affirmatively respond to each of these items." (*Id.* at 6 (emphasis in original).) The form then listed the categories of advisers eligible for Commission registration pursuant to the form's instructions, with a blank box next to each category. (*Id.* at 6–7; DIV 44 at 14–17.) On Black Diamond's behalf, Wilson checked off the boxes corresponding to two categories: (1) "a **large advisory firm** that either (a) has regulatory assets under management of $100 million (in U.S. dollars) or more, or (b) has regulatory assets under management of $90 million (in U.S. dollars) or more at the time of filing its most recent annual updating amendment and is registered with the SEC"; and (2) "an **Internet adviser** relying on rule 203A-2(e)." (DIV 48 at 6–7 (emphases in original).)

The Form ADV later posed the question: "To approximately how many clients did you provide investment advisory services *during your most recently completed fiscal year*?" (*Id.* at 12 (emphasis added).) The form offered four options: "0," "1–10," "11–25," or "26–100." (*Id.*) Wilson chose "26–100." (*Id.*)

The Form ADV finally asked about "[r]egulatory [a]ssets [u]nder [m]anagement." (*Id.* at 14.) First, the Form ADV asked advisers: "Do you provide continuous and regular supervisory or

management services to securities portfolios?" (*Id.*) Wilson answered: "Yes." (*Id.*) Next, the form asked: "If yes, what is the amount of your regulatory assets under management and total number of accounts?" (*Id.*) To the first part of the question, Wilson answered: "Discretionary: $583,750,000." (*Id.*) To the second part, he answered: "26" "[t]otal [n]umber of [a]ccounts." (*Id.*) The form then asked: "What type(s) of advisory services do you provide? Check all that apply." (*Id.* at 15.) Wilson checked off the boxes for "[p]ortfolio management for individuals and/or small businesses" and "[p]ortfolio management for businesses (other than small businesses) or institutional clients (other than registered investment companies and other pooled investment vehicles)." (*Id.*)

On March 9, 2015, on Black Diamond's behalf, Wilson electronically signed the Form ADV as Black Diamond's managing member. (*Id.* at 44.) By doing so, Wilson certified:

> The investment adviser and I both certify, under penalty of perjury under the laws of the United States of America, that the information and statements made in this ADV, including exhibits and any other information submitted, are true and correct.

(*Id.*)

VII. Wilson Terminated His Relationship with HSH Holdings in July 2015.

On March 22, 2015—twelve days after filing Black Diamond's Form ADV—Wilson signed a revised version of his letter to the Bahamian prime minister. (DIV 15; DIV 48.) As Wilson's letter made clear, HSH Holdings had not begun issuing any shares: "We are advising the firm on and administering the capital raise of the first $10 million USD from private sources.... We expect the private placement to commence on or about April 1, 2015 and be completed by June 1, 2015." (DIV 15.) The letter explained that the private placement "will be followed by a registered placement to raise $160 million." (*Id.*)

On May 4, 2015—almost two months after filing its Form ADV—Black Diamond, under the name RJ Advisor and on its letterhead, entered into a consulting agreement with HSH Holdings. (DIV 17; DIV 48.) Wilson signed the agreement on RJ Advisor's behalf. (DIV 17.) In the

agreement, RJ Advisor promised to provide "financial consulting and investment banking services and advice pertaining to [HSH Holdings'] business affairs." (DIV 17.) In return, HSH Holdings agreed to pay RJ Advisor in stages based on HSH Holdings' success in raising capital through stock issuances. (*Id.*)

As Wilson admits, the consulting agreement said nothing about RJ Advisor or Black Diamond serving as an investment adviser. (DIV 77A (Wilson) at 111 ("Q. So does this agreement, Exhibit 17, say anything about RJ Advisor or Black Diamond serving as an investment advisor? A. I could have sworn it did, but I don't see anything.").) Nor did RJ Advisor ever receive any compensation from the agreement, because HSH Holdings never succeeded in raising any capital. (DIV 77A (Wilson) at 109; DIV 82 (Harrell) at 32–33.)

In mid-2015, Wilson tried to persuade Folio to sell shares of HSH Holdings' future stock issuances to investors in a private placement. (DIV 19.) Wilson explained his hope that HSH Holdings' investors would become RJ Advisor's investment advisory clients and Folio would then hold the HSH Holdings shares in its custodial accounts for RJ Advisor's clients. (*Id.*) On June 2, 2015, in an email to Wilson, Folio declined to help sell such shares of a "minority stake private equity in a non-US land development offering" through its network of investment advisers. (*Id.*)

On July 29, 2015, after an altercation with Boynton, Wilson emailed Boynton and Harrell to tell them he would no longer work on the transaction: "[N]or will the stock ever be worth a dime as this deal is never going to move forward.... I am no longer interested in this deal and am withdrawing." (DIV 20; DIV 77A (Wilson) at 117–20.)

VIII. Momentous Shares Began Publicly Trading But Rapidly Dropped to $0.25 Per Share.

A. Wilson Sought to Have Momentous Shares Quoted at a Price of $2.00 to $2.25 Per Share But FINRA Rejected the Price Request as Too High.

In approximately May 2015, after Momentous's prior attempts to obtain a market-maker for the company's stock had failed, Wilson approached BMA Securities, a broker-dealer and market-

maker, to obtain a price quotation for Momentous. (DIV 23; DIV 81 (Neubauer) at 32–34; DIV 77A (Wilson) at 128–29.) Before it could do so, BMA had to obtain approval from FINRA for the price quotation. (DIV 81 (Neubauer) at 34–35; DIV 77A (Wilson) at 138–39.)

On June 26, 2015, a BMA representative told Wilson and Neubauer that BMA's compliance department required Momentous to submit a letter justifying the bid and ask prices for BMA's price quotations of Momentous's stock. (DIV 24.) On July 1, 2015, Neubauer emailed BMA the required letter and copied Wilson. (DIV 25.) The letter requested a starting bid and ask price quotation of $2.00 and $2.25, respectively, and relied on "[t]he valuation conducted by [Momentous's] financial advisor RJ Advisor." (*Id.*) To support a valuation leading to those prices, Wilson claimed that Momentous was worth $156,730,005, or $2.23 per share, based on his projection that Momentous would have revenue of over $95 million in the first year, over $121 million in the second year, and over $153 million in the third year. (*Id.*; DIV 77A (Wilson) at 135; DIV 81 (Neubauer) at 35–36.)

On July 21, 2015, BMA forwarded FINRA's response letter—which rejected the $2.00 to $2.25 quotation request as "deficient"—to Wilson and Neubauer. (DIV 26.) FINRA's letter explained:

> According to [Momentous's] Form 10-Q filed on or about May 15, 2015, for the period ending March 31, 2015, [Momentous] has $612,761 in assets, $539,529 of which consists of deferred production costs, and $20 in revenues. Additionally, [Momentous's] 2014 initial public offering closed with a price of $0.01.

(*Id.*) FINRA requested additional information, including "verifiable research showing a reasonable basis for these future income projections," to continue its review process. (*Id.*) After reading FINRA's letter, Wilson drafted a response letter to FINRA and sent his letter to BMA. (DIV 77A (Wilson) at 136, 142.) As Wilson admits, BMA did not forward his letter to FINRA because BMA "disagreed with [Wilson's] conclusions" that Momentous's share price should be quoted at $2.00 to $2.25. (*Id.* at 142–43.)

B. No Broker Would Agree to Sell the Momentous Shares to Investors.

In approximately May 2015, Wilson tried to open RJ Advisor investment advisory accounts at BMA for Pepe, Northcutt, and the four Provost brothers to hold their respective Momentous stock share certificates and then "liquidate" the shares. (DIV 77A (Wilson) at 162; DIV 81 (Neubauer) at 66–69; DIV 29; DIV 32; DIV 41; DIV 42; DIV 43.) As Wilson admits, BMA ultimately accepted custody of Momentous stock for only one of the six shareholders and then declined to accept custody of any more Momentous stock. (DIV 77A (Wilson) at 146–47 ("I don't remember who it was."); *id.* at 153 ("Q. Did [BMA] accept any MMEG stock on behalf of any clients or potential clients of yours? A. Just the one that I told you about."); DIV 81 (Neubauer) at 73–74.)

In July 2015, after a dispute between Wilson and BMA, BMA terminated its relationship with Wilson after noting "red flags" in its dealings with Wilson. (DIV 77A (Wilson) at 145–47, 149, 151; DIV 29; DIV 30; DIV 31 (email from BMA's president to Wilson dated July 28, 2015) ("You, as an SEC registered investment advisor of all people should know your activity is unethical and most likely in violation of SEC rules.... [T]he red flags which you have divulged in our conversation has precluded BMA from ever doing business with you.").)

In approximately December 2015, Wilson next tried to persuade Folio to accept custody of Momentous stock in RJ Advisor investment advisory accounts on behalf of Momentous shareholders and to sell the stock. (DIV 77A (Wilson) at 162–63; DIV 32; DIV 33.) On December 10, 2015, Folio declined to do so and explained to Wilson:

> From what I see here, I don't think we would be interested in this opportunity. The company is a public reporting company, but it is very small and losing money, and its materials make very aggressive claims about its likely success going forward. We certainly couldn't find investors for the offering.

(DIV 33; DIV 77A (Wilson) at 163.) As a result, Folio never held any assets in any investment advisory accounts it established for Wilson or RJ Advisor. (DIV 47 (Folio transaction history); DIV 85 (Folio business record certification for DIV 47).)

As Wilson admits, he later tried to find another custodial firm to hold Momentous shares, but that firm also declined to accept the securities. (DIV 77A (Wilson) at 168–69.)

C. The Market Value of 10,276,360 Momentous Shares Was Less Than $1.5 Million When Wilson Filed the March 2016 Form ADV.

In October 2015, Momentous's shares began trading electronically. (DIV 81 (Neubauer) at 47–48 (not sure how Momentous stock began trading).) In its first seven days of trading—stretching from October 6 through November 3, 2015—Momentous stock's high price ranged from $1.05 to $2.25 per share. (DIV 78 (summary chart of historical price-volume data).) The price then rapidly sank and, after December 1, 2015, never again exceeded $1.05 per share, or a total of approximately $10.79 million for 10,276,360 shares. (*Id.*) From December 31, 2015 through March 30, 2016—the 90-day period before Wilson filed Black Diamond's March 2016 Form ADV—Momentous's stock price never traded above $0.52 per share, leaving 10,276,360 shares with a market value of less than $5.4 million. (DIV 78; DIV 49.) On March 18, 2016—the last day Momentous' shares traded before Wilson filed Black Diamond's Form ADV on March 30, 2016—the stock's high price was $0.15 per share, for a market value of approximately $1.54 million for 10,276,360 shares. (*Id.*) From March 30, 2016 through at least April 26, 2018, Momentous shares never traded for more than $0.25 per share. (*Id.*)

As Wilson admits, when he filed Black Diamond's March 2016 Form ADV, he knew that Momentous shareholders could not have sold their stock for $2.50 per share. (DIV 77A (Wilson) at 175 ("Q. ...In other words, did you believe that if...the people to whom you were consulting about their shares went out into the market and sold them, they could obtain $25.6 million for them? A. Not at that time because the stock was valued by the market at a below value rate, but I believe

that if Momentous was liquidated and it sold those contracts with the Earnhardts and the quarterback, and some of the other contracts that they had, that that's what the value would be, what the clients would receive. Q. Okay. In other words, in the future? A. Yes.").)

IX. In January 2016, Wilson Entered Into another Agreement with Momentous But Never Managed Its Officers' and Insiders' Shares.

On January 15, 2016, Momentous and Wilson entered into another consulting agreement, by which Wilson would find business opportunities for Momentous in return for compensation. (DIV 34; DIV 81 (Neubauer) at 77–78.) The agreement included a provision by which Momentous officers and insiders would retain RJ Advisor as an "asset and portfolio manager for all of their individual investment[s]." (DIV 34.) As Wilson admits, that never ended up occurring. (DIV 77A (Wilson) at 166–67 ("Q. Did that actually happen? A. Well, again, they were gone but we couldn't get the stuff to deposit it anywhere.... Q. ...But, in other words, that did not actually end up happening? A. No, but I did advise them on the stock."); DIV 81 (Neubauer) at 79–80.)

X. Wilson Falsely Told Folio That Black Diamond Had $1.9 Billion under Management.

On December 10, 2015, after Folio declined to sell Momentous shares to investors, Wilson claimed in an email to Folio: "My firm currently has $1.9 billion under management. The reason I have none with Folio is Folio's unwillingness to work with me." (DIV 33.) As Wilson admits, his statement about assets under management "wasn't true." (DIV 77A (Wilson) at 163.)

XI. Black Diamond Claimed to Manage over $25 Million in Its March 2016 Form ADV.

On March 30, 2016, Wilson once again submitted a Form ADV to the Commission on Black Diamond's behalf and signed the form under penalty of perjury as Black Diamond's managing member. (DIV 49 (certified Form ADV).) This time, Black Diamond claimed only a single basis for Commission registration eligibility: that Black Diamond was "a **mid-sized advisory firm** that has regulatory assets under management of $25 million (in U.S. dollars) or more but less than $100 million (in U.S. dollars)" and was not required to be registered with the New York state securities

authority or not subject to examination by the New York state securities authority. (*Id.* at 3, 7 (emphasis in original).) The Form ADV claimed that Black Diamond had $25,690,900 in discretionary "regulatory assets under management," "26–100" clients, and 26 total accounts. (*Id.* at 13, 15.)

XII. Black Diamond Posted Its Forms ADV on Its Website to Attract Prospective Clients.

Black Diamond's website publicly posted portions of its then-current Form ADV. (DIV 77A (Wilson) at 181, 183; DIV 36 (Black Diamond website excerpts).) In 2016, the website included Black Diamond's March 2016 Form ADV Part 2A, which represented: "We have the following assets under management as of 3/30/3016: Discretionary Accounts [—] $25,690,900." (DIV 36 at 17.) In 2015, the website included similar portions of Black Diamond's March 2015 Form ADV Part 2A. (DIV 77A (Wilson) at 183.) As Wilson admits, Black Diamond included the Form ADV on its website so that potential clients could read it. (*Id.*)

XIII. Wilson's Claims and Admissions during OCIE's Examination

In approximately May 2016, OCIE began examining Black Diamond. (DIV 54.) On May 10, 2016, in OCIE's initial telephone call with Wilson, he claimed that Black Diamond had $26 million in assets under management based on 26 advisory clients who owned Momentous shares, though he conceded the shares might have declined in value below $25 million. (*Id.*) Wilson admitted, however, that he had no written agreements with the clients and that his robo-adviser capability "[s]hould start" on June 1, 2016. (*Id.*)

In June 2016, Wilson responded in writing to an OCIE request for information. (DIV 58; DIV 59.) Wilson claimed that he based Black Diamond's March 2015 Form ADV assets-under-management figure of over $585 million "on HSH International real-estate appraisal and P[rivate] P[lacement] M[emorandum] sales price" and Momentous shares "based on the contracts held and trading price of $2.50 (x9,500,000) per share or $23,750,000"—that is, 9,500,000 shares purportedly

worth $2.50 each. (DIV 59.) Wilson further claimed that he based Black Diamond's March 2016 Form ADV assets-under-management figure of over $25 million "on the contracts held by Momentous Entertainment Group which was $2.50 (x10,276,360) per share or $25,690,900"—that is, 10,276,360 Momentous shares purportedly worth $2.50 each. (*Id.*)

On July 21, 2016, OCIE held an examination exit call with Wilson. (DIV 65.) OCIE told Wilson that Black Diamond would have to deregister as an investment adviser. (*Id.*) Six days later, Wilson sent OCIE a letter accusing the Commission of "treason," refusing to withdraw Black Diamond's investment adviser registration, and threatening to have the OCIE supervisor "arrested by the people." (DIV 66.)

XIV. Wilson Threatened Division Counsel and the Court.

On August 4, 2017, the Commission instituted these proceedings. A week later, Wilson left a voicemail for Division counsel. (DIV 70A (voicemail recording); DIV 72B (transcription).) Wilson contended that Division counsel had "no authority" to conduct the investigation and that the investigation and/or administrative proceedings violated Wilson's rights under the Ninth Amendment of the United States Constitution. (DIV 70A; DIV 72B.) Wilson threatened: "[I]f I am contacted [ ] by any of you or you interfere with me in any fashion, I will take that as an attack on the government of the United States...and see to it that you are tried...and then hung when you are convicted." (DIV 70A; DIV 72B.)

On August 28, 2017, Wilson sent Division counsel a one-sentence email: "You need to learn how to read you have no authority and you do not belong in this country treasonest." (DIV 71.) The next day, Wilson left Division counsel an expletive-filled voicemail. (DIV 72A (voicemail recording); DIV 72B (transcription).) Wilson threatened:

> You have no authority because when a citizen invokes the Ninth Amendment, you have no authority.... It is the inalienable rights clause of the Declaration of Independence...that has this little statement in there that when the citizens are tired of trash like you they get to adjust and abolish as

> they see fit, or the adjustment is going to be your abolishment.... [A] citizen has a right to execute you anytime they wish.

(DIV 72A (voicemail recording); DIV 72B (transcription).) In September 2017, Wilson sent three more expletive-filled emails to the Division and the Court, including one email he sent after the Court had ordered him to "stop sending unprofessional e-mails." (DIV 73; DIV 74; DIV 75; Scheduling Order dated Sept. 7, 2017.) In its Order dated September 15, 2017, the Court characterized Wilson's emails as "abusive and profane."

On January 23, 2018, the Court held a telephonic pre-hearing conference. (DIV 76 (conference transcript).) At the hearing, Wilson threatened the Court: "If you do that, I'm going to come to Washington and I'm going to kick your lying [expletive]." (*Id.* at 14.)

XV. Wilson's and Black Diamond's Current and Future Plans

Wilson currently owns a small construction company that renovates homes, but he hopes to find a job that would require him to hold a securities license and be registered. (DIV 77A (Wilson) at 197–98.) Black Diamond, although apparently defunct, has not withdrawn its Commission registration as an investment adviser and continues to be registered. (*Id.*; DIV 83 (Black Diamond's regulatory filing history); DIV 84 (corresponding business record certification).)

STANDARD OF PROOF

To prove Respondents' liability, the Division need do so only by a preponderance of the evidence. *See, e.g., Steadman v. SEC*, 450 U.S. 91, 102–03 (1981).

ARGUMENT

The hearing evidence will show that Respondents do not—and cannot—genuinely dispute the material facts necessary to prove they willfully violated Advisers Act Sections 206(1), 206(2), and 207, that Black Diamond violated Advisers Act Section 203A, and that Wilson willfully aided and

abetted and caused Black Diamond's foregoing violations.[6] To protect investors and deter future violations, the Court should therefore order Respondents to cease and desist from future violations, impose a permanent, collateral bar on Wilson, revoke Black Diamond's registration, and order Respondents to each pay modest civil penalties.

I. Respondents Willfully Violated Advisers Act Sections 206(1) and 206(2).

Advisers Act Section 206 provides:

> It shall be unlawful for any investment adviser, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly — (1) to employ any device, scheme, or artifice to defraud any client or prospective client; (2) to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client.

15 U.S.C. § 80b-6. This provision "establishes a statutory fiduciary duty for investment advisers to act for the benefit of their clients, requiring advisers to exercise the utmost good faith in dealing with clients, to disclose all material facts, and to employ reasonable care to avoid misleading clients." *SEC v. Moran*, 922 F. Supp. 867, 895–96 (S.D.N.Y. 1996). To establish a violation of the provision, the Division must prove that Respondents: (1) were investment advisers; (2) used the mails or instrumentalities of interstate commerce to engage in fraudulent activity; (3) made false or misleading statements (or omissions) of material fact to clients or prospective clients; and (4) acted with scienter (for Section 206(1)) or with negligence or scienter (for Section 206(2)). *See* 15 U.S.C. § 80b-6; *SEC v. Gotchey*, 981 F.2d 1251, 1992 WL 385284, at *1, 2 (4th Cir. Dec. 28, 1992) (unpublished decision) (elements); *SEC v. Merrill Scott & Assocs., Ltd.*, 505 F. Supp. 2d 1193, 1215 (D. Utah 2007) (elements); *SEC v. Steadman*, 967 F.2d 636, 641 n.3 (D.C. Cir. 1992) (scienter required under Section 206(1)); *SEC v. Mannion*, 789 F. Supp. 2d 1321 (N.D. Ga. 2011) (scienter will

[6] The term "willfully" requires only "the intentional doing of the wrongful acts—no knowledge of the rule or regulation is required." *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (citation omitted).

support a Section 206(2) violation although only negligence is required). The hearing evidence will establish each of these elements.

A. Respondents Were Investment Advisers.

Advisers Act Section 202(a)(11) defines an "investment adviser" as "any person who, for compensation, engages in the business of advising others...as to the value of securities or as to the advisability of investing in, purchasing, or selling securities." 15 U.S.C. § 80b-2(a)(11). A Commission-registered investment adviser who makes misrepresentations to solicit clients is an investment adviser even if it is "not successful in [its] efforts to obtain clients." *Ralph Harold Seipel*, 38 S.E.C. Rel. No. 256, 1958 WL 55527, at *2 (Mar. 31, 1958) (Commission opinion). Black Diamond was therefore an investment adviser: it registered with the Commission and solicited prospective clients through its website using its false Forms ADV. (DIV 48; DIV 49; DIV 36.)

"An associated person [of an investment adviser] may be charged as a primary violator under Section 206 where the activities of the associated person cause him or her to meet the broad definition of 'investment advisor.'" *John J. Kenny*, SEC Rel. No. 8234, 2003 WL 21078085, at *17 n.54 (May 14, 2003) (Commission opinion) (citing *Berger* and *Gotchy*, *infra*); *SEC v. Berger*, 244 F. Supp. 2d 180, 193 (S.D.N.Y. 2001) ("Because Berger [the defendant] effectively controlled [the investment adviser firm] and its decision making, Berger is also properly labeled an investment adviser within the meaning of the Advisers Act."); *Gotchey*, 1992 WL 385284, at *1, 2 (affirming decision finding president and half-owner of investment adviser firm liable under Advisers Act Section 206). As Black Diamond's sole control person, Wilson was therefore also an investment adviser. (DIV 48; DIV 49; DIV 69 (Wilson) at 16.)

B. Respondents Used Instrumentalities of Interstate Commerce.

"Inherently interstate methods of communication, such as the Internet or e-mail, constitute 'instrumentalities' of interstate commerce." *SEC v. Norstra Energy, Inc.*, 202 F. Supp. 3d 391, 398–99

(S.D.N.Y. 2016) (citing cases). Among other things, Black Diamond and Wilson used the Internet by posting false portions of their Forms ADV on Black Diamond's website to solicit potential clients. (DIV 36; DIV 77A (Wilson) at 181, 183.)

C. Respondents Made Materially False Statements to Prospective Clients.

1. Respondents Filed False Forms ADV.

Black Diamond's 2015 and 2016 Forms ADV—which Wilson signed and certified on Black Diamond's behalf—falsely claimed that Black Diamond had "regulatory assets under management" of over $583 million and $25 million, respectively. (DIV 48; DIV 49.) In fact, Black Diamond had no marketable assets under management at all the first time, as the Statement of Facts describes in Sections III, IV, and VI. The second time, even assuming Black Diamond managed any assets, their value totaled between $1.5 million and $6 million, as Fact Sections VIII and XI describe. The Forms ADV also contained other false statements, such as Black Diamond's large number of clients and Wilson's discretionary authority over client accounts, as the same Facts sections describe.

Respondents made these false statements to prospective clients. Black Diamond incorporated portions of the Forms ADV, which recited the firm's purported assets under management figures, on its website for potential clients, as Wilson admits. (DIV 36; DIV 77A (Wilson) at 181, 183.) Indeed, the Commission designed the Form ADV partly to provide important information to prospective clients of investment advisers. *See, e.g., Amendments to Form ADV and Investment Advisers Act Rules*, SEC Rel. No. 4091, 2015 WL 2408959, at *28 (May 20, 2015) (Commission proposing release) ("When determining the specific proposed amendments to Form ADV..., we considered what information would be important for our oversight activities and for advisory clients and prospective clients.").

2. Respondents' False Statements Were Material.

Information is material when there is "a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the total mix of information made available"—in other words, when "a substantial likelihood exists that a reasonable investor would consider the information important in making an investment decision." *Basic Inc. v. Levinson*, 485 U.S. 224, 231–32 (1988) (internal quotation marks omitted).

A reasonable prospective client would have found Respondents' false statements about Black Diamond's $585 million or $25 million of assets under management, its large number of clients, and its discretionary accounts extremely important. These false statements bore directly on Wilson's and Black Diamond's experience, skill, and success—particularly given that Wilson had no prior experience as an investment manager (DIV 77A (Wilson) at 35)—and gave the false impression that Wilson ran a large, thriving investment advisory firm. *See SEC v. Locke Capital Mgmt., Inc.*, 794 F. Supp. 2d 355, 367 (D.R.I. 2011) (concluding, in granting summary judgment to the Commission, that an investment adviser's false representation that she managed over $1 billion of assets on two Forms ADV was material given that "investors rely on assets under management in deciding to which investment advisor to entrust their funds"); *Warwick Capital Mgmt., Inc.*, SEC Rel. No. 2694, 2008 WL 149127, at *8 (Jan. 16, 2008) (Commission opinion) ("Respondents' false statements [about assets under management] were material because they gave an erroneous impression of [the adviser]'s size and asset base, qualities that would be important to clients and prospective clients in selecting an investment adviser."); *Barr Fin. Grp., Inc.*, SEC Rel. No 2179, 2003 WL 22258489, at *5 (Oct. 2, 2003) (Commission opinion) (same).

D. Respondents Acted with Scienter.

Scienter is a "mental state embracing the intent to deceive, manipulate or defraud." *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 193, n. 12 (1976). Knowledge or recklessness satisfies the scienter

requirement. *Novak v. Kasaks*, 216 F.3d 300, 308–12 (2d Cir. 2000). Recklessness is "at the least, conduct which is highly unreasonable and which represents an extreme departure from the standards of ordinary care...to the extent that the danger was either known to the [respondent] or so obvious that [he] must have been aware of it." *Id.* at 308 (quoting *Rolf v. Blyth, Eastman Dillon & Co.*, 570 F.2d 38, 47 (2d Cir. 1978)) (internal quotation marks omitted). To prove scienter, the Division must demonstrate that Respondents "had actual knowledge of material facts that were omitted or distorted or failed or refused to ascertain and thereafter accurately disclose such facts after having been put on notice as to their possible existence." *SEC v. Wellshire Secs., Inc.*, 773 F. Supp. 569, 575 (S.D.N.Y. 1991).

Wilson knew that his statements on Forms ADV about assets under management, clients, and discretionary accounts were false when he filed the forms on Black Diamond's behalf. For the 2015 Form ADV, Wilson knew Black Diamond did not have $585 million in "regulatory assets under management" at the time for several reasons. First, as Wilson admits, he read the Form ADV instructions requiring him to list only securities portfolios that Black Diamond managed as of the date he filed the Form ADV and to calculate the resulting assets' current market value during the 90 days before filing the Form ADV. (DIV 77A (Wilson) at 88; DIV 44.) Second, Wilson knew that HSH Holdings never intended to raise more than $370 million by issuing stock, as explained in Facts Section III.B. Third, Wilson admits that, at the time, he thought that at most HSH Holdings had obtained one $250,000 investment. (DIV 77A (Wilson) at 81, 84; DIV 82 (Harrell) at 51). Fourth, Wilson in fact knew that HSH Holdings had failed to issue any shares and confirmed that in a letter he signed and addressed to the Bahamian prime minister twelve days after filing the Form ADV. (DIV 15.) Fifth, Wilson knew that 9.5 million Momentous shares, even assuming he managed them, could not have been sold at the time and in any event could not have been sold for more than $95,000 in total, because Momentous itself was offering its shares for only $0.01 per share, as

explained in Facts Section IV.B. Finally, Wilson made a similar misrepresentation in December 2015 when he falsely told Folio, as he admits, that he had $1.9 billion under management. (DIV 33; DIV 77A (Wilson) at 163.)

With respect to the 2016 Form ADV, Wilson admits that he knew he could not sell 10,276,360 Momentous shares for $25 million in March 2016 and at best based the figure on an aspirational future valuation. (DIV 77A (Wilson) at 175.) Indeed, that number of Momentous shares, even assuming Wilson managed them, had a market value between $1.5 and $6 million in the 90 days before Wilson filed the Form ADV (DIV 78), which Wilson knew or recklessly disregarded.

Finally, Wilson's scienter should be imputed to Black Diamond, since Wilson served as Black Diamond's sole officer and control person. (DIV 48; DIV 49); *see, e.g., Warwick Capital*, 2008 WL 149127, at *9 & n.33 (imputing scienter of investment advisory firm's president to the firm for Advisers Act violations).

II. Respondents Willfully Violated Advisers Act Section 207.

Advisers Act Section 207 "makes it unlawful for any person willfully to make an untrue statement of material fact or to omit to state a material fact required to be stated in applications or reports to the Commission" and does not require scienter. *Warwick Capital*, 2008 WL 149127, at *8. Because Respondents made their false statements on Form ADV applications for Commission registration, as described above, they violated Section 207. *Id.* (false statements about assets under management on Forms ADV violated Section 207).

III. Black Diamond Willfully Violated Advisers Act Section 203A.

Advisers Act Section 203A limits "Commission registration to those advisers with assets under management in excess of $25 million 'or such higher amount as the Commission may, by rule, deem appropriate.'" *Saving2Retire, LLC*, SEC Rel. No. 1195, 2017 WL 4728747, at *7 (Oct. 19, 2017) (Grimes, A.L.J.) (initial decision) (Commission petition for review granted) (citing 15 U.S.C. § 80b-

3a). In 2011, the Commission raised the required assets-under-management threshold to $100 million under Rule 203A-1. 17 C.F.R. § 275.203A-1. Although certain exceptions apply to the registration threshold—including the exception for internet advisers, popularly known as robo-advisers—Black Diamond bears the burden of proving that an exemption applies. *See Saving2Retire*, 2017 WL 4728747, at *8 (citing authorities).

Black Diamond violated Section 203A because it registered with the Commission as an investment adviser without meeting the $100 million threshold. As described above in Fact Sections III, IV, and VI, Black Diamond had no marketable assets under management in March 2015, despite its claim that it had over $585 million in assets under management. Even assuming Black Diamond managed 9.5 million Momentous shares and even assuming they had any market value whatsoever, the shares could not have been worth more than $95,000 in total, given the $0.01 per share price at which Momentous itself was issuing its shares. Similarly, when Black Diamond claimed to have over $25 million of assets under management in March 2016, Black Diamond could not have had more than $6 million in assets under management, assuming it had any, as described in Facts Sections VIII and XI. Furthermore, Black Diamond did not qualify for the interactive website exemption allowing robo-advisers below the $100 million asset threshold to register with the Commission, because, as Wilson admits, Black Diamond had no interactive internet site at all in March 2015 or March 2016. (DIV 77A (Wilson) at 95–96; DIV 56; DIV 57; DIV 54.)

IV. Wilson Willfully Aided and Abetted and Caused Black Diamond's Violations.

"To demonstrate aiding and abetting liability, the Division must show: (1) a primary violation; (2) knowledge by [Wilson] of the primary violation; and (3) [Wilson]'s substantial assistance in the commission of the primary violation." *Saving2Retire*, 2017 WL 4728747, at *11 (citing authority). Similarly, "[t]o establish liability for causing a violation, the Division must...show: (1) a primary violation; (2) an act or omission by [Wilson] that caused the violation; and (3) that

[Wilson] knew, or should have known, that [his] conduct would contribute to the violation." *Id.* (citing authority). "[O]ne who aids and abets a primary violation is necessarily 'a cause of' that violation." *Eric J. Brown*, SEC Rel. No. 3376, 2012 WL 625874, at *11 (Feb. 27, 2012) (Commission opinion).

For the reasons described above in Sections I through III, Black Diamond violated Advisers Act Sections 206(1) and (2), 207, and 203A. Similarly, for the reasons described above in Section I.D and because Wilson admits he read the detailed Form ADV instructions before filing Black Diamond's first Form ADV in March 2015 (DIV 77A (Wilson) at 88–89; DIV 44; DIV 45), Wilson knew Black Diamond violated those provisions. Finally, Wilson substantially assisted Black Diamond's violations: he served as Black Diamond's sole control person and admits he filled out and signed the Forms ADV on Black Diamond's behalf. (DIV 48; DIV 49; DIV 69 (Wilson) at 16; DIV 77A (Wilson) at 87.)

V. The Court Should Impose Meaningful Sanctions and Relief.

A. The Court Should Order Respondents to Cease and Desist.

"Under the Advisers Act, the Commission may issue a cease and desist order against any person it found to have violated the Act." *ZPR Inv. Mgmt. Inc. v. SEC*, 861 F.3d 1239, 1255 (11th Cir. 2017) (citing 15 U.S.C. § 80b–3(k)(1)). To determine whether the public interest supports imposing a cease-and-desist order, the Commission considers the public-interest factors described in *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981), as this Court has noted. *See Aegis Capital, LLC*, SEC Release No. 1053, 2016 WL 4662346, at *5 (Sept. 7, 2016) (Grimes, A.L.J.) (initial default decision). These "*Steadman* factors" are:

> (1) the egregiousness of the respondent's actions, (2) the isolated or recurrent nature of the infraction, (3) the degree of scienter involved, (4) the sincerity of the respondent's assurances against future violations, (5) the respondent's recognition of the wrongful nature of his conduct, and (6) the likelihood that the respondent's occupation will present opportunities for future violations.

Id. (internal quotation marks and citation omitted).

The Commission also considers the following factors in determining whether to impose a cease-and-desist order:

> whether the violation [at issue] is recent, the degree of harm to investors or the marketplace resulting from the violation, ... the remedial function to be served by the cease-and-desist order in the context of any other sanctions being sought in the same proceedings[, and] ... the risk of future violations.

Id. (internal quotation marks and citation omitted). "Although some risk [of future violations] is necessary, it need not be very great to warrant issuing a cease-and-desist order. Absent evidence to the contrary, a finding of violation raises a sufficient risk of future violation." *Thomas C. Gonnella*, SEC Rel. No. 4476, 2016 WL 4233837, at *14 (Aug. 10, 2016) (Commission opinion) (internal quotation marks and citations omitted). The Court may impose cease-and-desist orders against Respondents because, as described above in Sections I through IV, the hearing evidence will show that Black Diamond and Wilson willfully violated, and Wilson willfully aided and abetted and caused violations of, the Advisers Act. The public interest factors and risk of future violations warrant cease-and-desist orders against Respondents.

First, as the hearing evidence will show, Respondents' conduct was egregious and involved a high degree of scienter. Respondents claimed that Black Diamond managed assets worth over $585 million and later $25 million and claimed that Black Diamond was eligible for Commission registration, when Respondents knew that—at best—Black Diamond had $95,000 and later less than $6 million under management.

Second, Respondents' conduct was not isolated. They misled prospective clients in Black Diamond's 2015 and 2016 Forms ADV and on Black Diamond's website. Furthermore, Wilson has a prior criminal conviction.

Third, Respondents have so far neither made assurances against future violations nor recognized their wrongful conduct. Indeed, Wilson demonstrated his failure to accept any

responsibility for his conduct through his "abusive and profane" communications with the Division and the Court.

Fourth, Respondents' violations are recent. They occurred within approximately the last three years, in March 2015 and 2016.

Fifth, Respondents' violations posed a significant risk of harm to investors. Respondents falsely conveyed to potential clients that Black Diamond was a large adviser with significant skill and industry stature. Had Black Diamond succeeded in persuading clients to invest based on these misrepresentations, clients would likely have sustained significant losses given Wilson's and Black Diamond's lack of experience managing client portfolios.

Finally, cease-and-desist orders are warranted—even when combined with a bar against Wilson and the revocation of Black Diamond's investment adviser registration, which are similarly warranted as described below—because "[a]lthough the likelihood that the respondent's occupation will present opportunities for future violations is a factor to consider when determining the public interest, it is not the exclusive factor." *Piper Capital Mgmt., Inc.*, SEC Rel. No. 2163, 2003 WL 22016298, at *22 (Aug. 26, 2003) (Commission opinion) (imposing a cease-and-desist order and a monetary penalty against an investment adviser that no longer existed and whose registration had been revoked in the same proceeding).

B. The Court Should Bar Wilson Permanently and Collaterally from the Industry.

Advisers Act Section 203(f) authorizes the Commission to:

> bar any person who, at the time of the misconduct, was associated with an investment adviser, from 'being associated with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization' if [the Commission] find[s] 'on the record after notice and opportunity for a hearing' that the person willfully violated the securities laws and the sanction is in the public interest.

Dennis J. Malouf, SEC Rel. No. 4463, 2016 WL 4035575, at *23 (July 27, 2016) (Commission opinion) (quoting 15 U.S.C. § 80b-3(f) and, on review of initial decision imposing a 7.5-year industry bar, finding that a bar without time limitation or a right to reapply was in the public interest). Section 9(b) of the Investment Company Act of 1940 "similarly authorizes a bar from certain associations with an investment company based on the public interest." *Timothy S. Dembski*, SEC Rel. No. 4671, 2017 WL 1103685, at *13 (Mar. 24, 2017) (Commission opinion) (citing 15 U.S.C. § 80a-9(b)).

The Court should bar Wilson collaterally—from association with all these aspects of the securities industry—without a time limitation or a right to reapply. The hearing evidence will show that the public interest necessitates a permanent, collateral industry bar to protect investors from further fraud by Wilson, particularly given Wilson's conduct in this proceeding.

As an initial matter, Wilson's conduct meets the prerequisites for a bar. At the time of his misconduct, he was associated with Black Diamond, a registered investment adviser, and was an investment adviser under the Advisers Act definition, as discussed in Section I.A above. Wilson also willfully violated the Advisers Act and aided and abetted and caused Advisers Act violations, for the reasons described above in Sections I through IV.

Next, the public interest weighs heavily in favor of a permanent, collateral bar. Wilson admits that he seeks to work in the securities industry again (DIV 77A at 197–98), which will present more opportunities for him to defraud investors. The other *Steadman* factors also heavily weigh in favor of a bar, as discussed in Section V.A above. *See, e.g.*, *Warwick Capital*, 2008 WL 149127, at *10–11 (imposing a permanent bar on investment adviser's president where he overstated adviser's assets under management in Forms ADV and thereby "maintained [adviser's] Commission registration when it was not eligible to do so," among other things, even where "the law judge found no evidence of harm to [the adviser's] clients").

Furthermore, Wilson's verbal threats during this proceeding and claims that the Commission has no authority over Black Diamond and him, despite Black Diamond's registration as an investment adviser, further weigh heavily in favor of a permanent, collateral bar to protect the investing public. *See Gary A. Smith*, SEC Rel. No. 84, 1996 WL 4888, at *3 (Jan. 4, 1996) (Murray, C.A.L.J.) (initial decision) ("It is in the public interest to bar [respondent] from participating in the securities industry because he does not accept federal jurisdiction over activities which Congress and the courts have described as those of an investment adviser.... In addition, [respondent's] irrational death threats against federal government employees indicate that [he] does not have the temperament and judgment required of a person who acts as a fiduciary in a position of trust and responsibility."), *Commission finality notice issued*, 1996 WL 88547 (Feb. 29, 1996).

In this proceeding, Wilson has threatened Division counsel and the Court with violence. (DIV 72B ("A citizen has a right to execute you any time they wish."); DIV 76 at 14 ("If you do that, I'm going to come to Washington and I'm going to kick your lying [expletive]."). He has sent emails, which the Court characterized as "abusive and profane," to the Division and the Court. (DIV 73; DIV 74; DIV 75.) And he has repeatedly claimed that the Commission has "no authority" over him, despite his registration of Black Diamond with the Commission as an investment adviser. (DIV 71; DIV 72B; DIV 48; DIV 49.) He therefore fails to accept that the federal securities laws apply to Commission-registered firms and their associated personnel—and therefore fails to recognize his wrongful conduct—and his behavior shows his unfitness for employment in the securities industry. Absent a permanent, collateral bar, Wilson poses grave danger to the investing public.

C. The Court Should Revoke Black Diamond's Investment Adviser Registration.

Advisers Act Section 203(e) authorizes the Commission "to revoke an adviser's registration if it is in the public interest and the adviser, or any person associated with it, has willfully violated

the securities laws." *J.S. Oliver Capital Mgmt., LP*, SEC Rel. No. 4431, 2016 WL 3361166, at *11 (June 17, 2016) (Commission opinion) (citing 15 U.S.C § 80b-3(e)(5)).

Just as the *Steadman* factors warrant a permanent, collateral bar against Wilson, they warrant revocation of Black Diamond's adviser registration. As a practical matter, Black Diamond *is* Wilson. Wilson served as Black Diamond's sole managing member, chief compliance officer, and chief investment officer and filled out and signed Black Diamond's Forms ADV. (DIV 48; DIV 49; DIV 69 (Wilson) at 16; DIV 77A (Wilson) at 87.) For the reasons described above in Section V.A and V.B, the *Steadman* factors—including Wilson's egregious conduct and failure to accept responsibility in this proceeding—warrant revocation of Black Diamond's adviser registration. *See J.S. Oliver*, 2016 WL 3361166, at *11 (revoking an investment adviser's registration for the same reasons the Commission imposed an industry bar on the individual respondent).

Revocation is also necessary because Black Diamond was never eligible for Commission registration as an investment adviser and succeeded in registering with the Commission only based on its misrepresentations. *See, e.g., Arete Ltd.*, SEC Rel. No. 780, 2015 WL 1885467, at *6 (Apr. 27, 2015) (Murray, C.A.L.J.) (initial decision) ("[Respondent's] investment adviser registration should be revoked because it was never eligible to be registered with the Commission and is registered only because of material misrepresentations in its filings with the Commission."), *Commission finality notice issued*, 2015 WL 3562618 (June 9, 2015).

D. The Court Should Order Respondents to Pay Civil Penalties.

Advisers Act Section 203(i) authorizes the Commission "to impose penalties for violations of the Act[ ] if it is in the public interest to do so" whenever a respondent has willfully violated, willfully aided and abetted violations of, or willfully caused violations of the Advisers Act. *Malouf*, 2016 WL 4035575, at *26; 15 U.S.C. § 80b-3(i). In determining whether a penalty is in the public interest, the Commission 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 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) "specified prior findings of misconduct"; and (5) "the need to deter such person and other persons from committing such acts or omissions." *Malouf*, 2016 WL 4035575, at *26. As Congress has specified, the Commission may also consider "such other matters as justice may require." *Id.*

The Advisers Act "specifies that penalties can be imposed 'for each act or omission' in violation of the federal securities laws." *Id.* at *27 (quoting 15 U.S.C. § 80b-3(i)(2)). For each such violation, the Commission:

> may impose a penalty under one of three tiers, depending on the nature of the violation: first-tier penalties for violations of the securities laws; second-tier penalties for violations of the securities laws that 'involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement;' or third-tier penalties for violations that satisfy the requirement for a second-tier penalty and 'resulted in substantial losses or created significant risk of substantial losses to other persons or resulted in substantial pecuniary gain.'

Id. (quoting 15 U.S.C. § 80b-3(i)(2)). For Wilson, an individual, the maximum third-tier penalty for each violation was $160,000 when he filed the 2015 Form ADV and $181,071 when he filed the 2016 Form ADV. *See https://www.sec.gov/enforce/civil-penalties-inflation-adjustments.htm* (citing statute and regulations). For Black Diamond, the maximum third-tier penalty for each violation was $775,000 when it filed the 2015 Form ADV and $905,353 when it filed the 2016 Form ADV. *See id.*

Although the Court can impose significant third-tier penalties against Wilson and Black Diamond given the serious risk of substantial losses to investors, modest penalties will suffice for deterrence when such penalties are combined with a permanent, collateral industry bar for Wilson and registration revocation for Black Diamond. *Cf., e.g., SEC v. Metcalf*, No. 11 Civ. 493 (CM), 2012 WL 5519358, at *8 (S.D.N.Y. Nov. 13, 2012) ("[T]hird tier penalties have been imposed without regard

to a defendant's ability to pay and even when the defendant did not gain financially from his illegal activities.") (imposing a third-tier civil penalty of $50,000 on defendant who had engaged in a fraudulent market manipulation scheme); *SEC v. Petros*, No. 3:10-CV-1178-M, 2013 WL 1091236, at *7 (N.D. Tex. Mar. 1, 2013) (granting Commission's motion for summary judgment on its fraud claim and imposing a third-tier penalty of $25,000 where the defendant's conduct resulted in no investor losses); *David J. Montanino*, SEC Rel. No. 773, 2015 WL 1732106, at *41 (Apr. 16, 2015) (Grimes, A.L.J.) (initial decision) (imposing a $25,000 second-tier penalty on adviser who violated Section 206(1) and (2) but did not profit from his violation), *Commission finality notice issued*, 2015 WL 3439132 (May 28, 2015).

CONCLUSION

For the reasons described above and based on the hearing evidence, the Division respectfully requests that the Court find Respondents liable for the violations described above and impose the requested relief following the hearing.

Dated: May 30, 2018
New York, New York

DIVISION OF ENFORCEMENT

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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-18099

In the Matter of

BLACK DIAMOND ASSET MANAGEMENT LLC

and

ROBERT WILSON,

Respondents.

CERTIFICATE OF SERVICE

I hereby certify that I caused to be served the Division of Enforcement's Pre-Hearing Brief, dated May 30, 2018, on this 30th day of May, 2018, on the following by the means indicated:

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