UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-19024

In the Matter of

ASCENSION ASSET MANAGEMENT, LLC

and

GRENVILLE M. GOODER, JR.,

Respondents.

DIVISION OF ENFORCEMENT'S POST-HEARING BRIEF

October 21, 2019

Division of Enforcement
Securities and Exchange Commission
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TABLE OF CONTENTS

TABLE OF AUTHORITIES

I. INTRODUCTION

Pursuant to SEC Rule of Practice 340 and the Commission's May 7, 2019 Scheduling Order, the Division of Enforcement (the "Division") respectfully submits this Post-Hearing Brief. On March 7, 2019, the Commission instituted this case pursuant to the Order Instituting Proceedings ("OIP").[1] The OIP charged Respondent Ascension Asset Management, LLC ("Ascension") with failing to adopt, implement, and review written policies and procedures, comply with the rule governing custody of client assets, and maintain certain books and records. The OIP charged Respondent Grenville M. Gooder, Jr. ("Gooder") with causing Ascension's violations. The OIP further alleged that Respondents made material misrepresentations in numerous SEC forms over a period of years.

On August 29, 2019, after briefing was completed, this Court entered summary disposition against Respondents on all of the Division's claims except one books-and-records charge.[2] The Court's decision conclusively established that for at least a decade—and while managing up to $150 million in client assets—Gooder operated Ascension in disregard of multiple SEC statutes and regulatory requirements that are designed to protect investors. *Id.* at 4-10. In addition to determining that Gooder acted recklessly in causing Ascension's pattern of compliance and other regulatory failures, the Court found that Gooder acted *at least* recklessly when, from 2005 through

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[1] The Commission instituted the case pursuant to Sections 203(e), 203(f), and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act"), 15 U.S.C. §§ 80b-3(e), (f), & (k), and Section 9(b) of the Investment Company Act of 1940 ("Investment Company Act"), 15 U.S.C. § 80a-9(b).

[2] *See Ascension Asset Mgmt, LLC, et al.*, Advisers Act Release No. 6665, 2019 WL 1082154 (Order) (Aug. 29, 2019) ("Summary Disposition Order" or "August 29 Order"), *at* https://www.sec.gov/alj/aljorders/2019/ap-6665.pdf. The Division alerted the Court in its September 5, 2019 Prehearing Brief, that it would not seek to present evidence at the September 9 hearing relating to the sole charge on which the Court declined to grant summary disposition.

2015, he misrepresented material facts in 13 distinct Forms ADV, which he signed under penalty of perjury, and directed to be filed with the SEC. *Id.* at 9-10.

In its September 5, 2019 Prehearing Brief ("Div. Prehr'g Br."), the Division requested that the Court: (1) order Respondents to cease and desist from committing or causing violations of the Investment Advisers Act; (2) order Respondents to retain an independent compliance monitor; (3) censure Respondents; and, (4) order Respondents to pay a civil penalty. Div. Prehr'g Br. at 6-18.

On September 9, 2019, the Court held a hearing for the parties to present evidence on the appropriate remedies for Gooder and Ascension's serial and persistent violations of the securities laws. At the hearing the Division presented additional documentary evidence and the testimony of Patrick Smith. This evidence collectively underscored that the Court's findings of Respondents' egregious misconduct merited the remedies the Division is requesting.

As discussed below, the scope, duration, and egregiousness of the violations this Court has found Respondents committed, exacerbated by the additional evidence at the hearing, warrant entering a cease-and-desist order against Respondents, ordering Ascension to retain an independent compliance monitor, and imposing a civil penalty and a censure upon Respondents. The Division further seeks all other relief that the Court deems appropriate in light of the serious and recurring nature of Respondents' violations.

II. FACTS

A. The Court's Summary Disposition Ruling on the Allegations in the OIP

On August 29, 2019, after briefing was completed, the Court granted summary disposition in favor of the Division on all of the claims in the OIP, except for the books and records charge

pursuant to Rule 204-2(a)(1).[3] *See* Summary Disposition Order at 9-10. The Court made extensive findings of fact and held that Ascension violated Advisers Act Section 206(4) and Rules 206(4)-7 and 206(4)-2 thereunder. *Id.* at 9. The Court further held that Ascension violated Advisers Act Section 204 and Rule 204-2(a)(1) thereunder. *Id.* at 10. And, the Court held that Gooder caused Ascension's compliance, custody, and records violations. *Id.* In its decision, the Court underscored that, "[a]s a fiduciary who had decades of industry experience and who owned and controlled Ascension, Gooder's failure to remain informed about compliance requirements was highly unreasonable—*reckless conduct amounting to scienter*." *Id.* at 9 (emphasis added).

The Court additionally held that Respondents violated Advisers Act Section 207 by making scienter-based material misstatements in Ascension's Forms ADV. *Id.* The Court found that Respondents violated Section 207 by materially misstating that Ascension did not have custody of client assets, remarking that "Respondents concede that this answer was 'mistaken.' However, Gooder's lack of knowledge concerning this *arose from reckless conduct amounting to scienter*." *Id.* (emphasis added). In determining that Respondents also violated Section 207 by materially misstating that Platt and Smith were Ascension's CCO at different times, the Court commented that "[n]either was a CCO within the meaning of Rule 206(4)-7(c) or had any compliance responsibilities. Listing them *was at least reckless*." *Id.* (emphasis added).

B. Proposed Supplemental Findings of Fact From the September 9, 2019 Hearing

After making extensive findings of fact and conclusions of law as to Respondents' liability in its August 29 Order, the Court held a hearing on September 9, 2019, to consider additional evidence relating to the appropriate remedies the Court should impose for

[3] In its Prehearing Brief, the Division informed the Court that it would not present additional evidence on the sole journal-based books-and-records charge on which the Court did not grant summary disposition. Div. Prehr'g Br. at 3.

Respondents' pattern and practice of violating the securities laws. The Division moved into evidence additional exhibits to aid the Court in making its remedies determination, and also presented the testimony of Patrick Smith. The Respondents also introduced exhibit evidence, and called Gooder to testify. *See* Administrative Proceeding Hearing Transcript, *In the Matter of Ascension Asset Management, LLC and Grenville M. Gooder, Jr.*, File No. 3-19024 ("9/9/19 Tr.").

Pursuant to SEC Rule of Practice 340, the Division proposes that, to assist the Court in determining the appropriate remedies in this matter, the Court make the following findings of fact to supplement its August 29 Summary Disposition Order:[4]

1. Respondent Gooder graduated from Brown University in 1961, and received a Masters in Business Administration ("MBA") from Columbia Business School in 1966. Div. Ex. 32 at SEC-SEC-E-0008572.

2. Gooder has been a Chartered Financial Analyst since 1974. Div. Ex. 32 at SEC-SEC-E-0008572; 9/9/19 Tr. 68:2-4.

3. Gooder, who worked for several SEC-registered investment advisers over approximately forty years, left his previous employment at the investment firm Williams Jones to start Ascension in June 2004. 9/9/19 Tr. 68:14-73:10; 73:8-10.

4. Despite having listed Platt, Smith and others as both Chief Compliance Officer and/or Senior Vice President on numerous Forms ADV for more than a decade, Gooder is a "solo practitioner." 9/9/19 Tr. 84:17-25, 85:1-5.

5. Through Ascension, Gooder and Ascension currently have about $160 million in assets under management; and Gooder's clients at Ascension pay one-half of one percent annually to him manage their assets. 9/9/19 Tr. 79: 8-12; 85:1-4.

[4] Rule 340(a) provides each party with the opportunity to file proposed findings and conclusions "together with, or as a part of, its brief." Where, as here, the briefs are being filed in succession, Rule 340(b) requires the party assigned to file first to set forth proposed findings in serially numbered paragraphs.

6. The Investment Advisers Association—which Gooder has been a continuous member of since 2005—regularly provided its members with detailed and explicit compliance information for investment advisers registered under the Investment Advisers Act. The Investment Advisers Association provides this information to its members through regular newsletters, "IAA Alerts" delivered via email, and through webinars and meetings that are available to its members. Div. Ex. 67-69, 76, 99-102, 106, 107, 109, 114, 115, 117, 118 and 121.

7. Throughout Gooder's tenure as Chairman of Ascension, the SEC had available on its website and elsewhere, the compliance and other requirements for investment advisers such as Gooder. Div. Ex. 104, 105, 111, 119, 120 and 122.

8. Gooder was aware, at least as of 2005, that he was required to understand the rules under the Investment Advisers Act, yet did nothing to educate himself about those requirements. 9/9/19 Tr. 125:20-25.

9. The SEC's Office of Compliance Inspections & Examinations ("OCIE") notified Respondents about an upcoming examination by letter dated November 2, 2015. Resp. Ex. 2.

10. Upon receiving the OCIE notification letter informing him that Ascension would be subject to an examination to assess its compliance with provisions of the Investment Advisers Act, the first thing Gooder did was to call the Investment Advisers Association. Gooder does not remember whether he had ever called the IAA before. 9/9/19 Tr. 126: 20-22; Resp. Ex. 2.

11. On November 10, 2015, after receiving the notification letter from OCIE, and more than a decade after Ascension's formation, Gooder first sought consultation about Ascension's compliance obligations. Resp. Ex. 7; 9/9/19 Tr. 88:14-89:11, 126-127.

12. On November 25, 2015, just three weeks after receiving the notification letter from OCIE, and over a decade after formation, Gooder created Ascension's first compliance manual. Div. Ex. 3; 9/9/19 Tr. 90:1-12, 127:5-9.

13. By failing for at least a decade to implement a compliance program—*e.g.*, engage a compliance firm, draft a compliance manual, hire a bookkeeper, and hire an accounting firm—Gooder avoided spending at least $100,000. 9/9/19 Tr. 127:3-25, 128:1-17.

14. Despite having no prior experience administering or supervising a compliance program of any kind, after receiving the OCIE notification letter, Gooder named himself as Chief Compliance Officer of Ascension. 9/9/19 Tr. 135:16-24.

15. Notwithstanding the Court's findings that Gooder was at least reckless in naming Messrs. Smith and Platt as Ascension's CCO on 13 SEC forms—which he signed under penalty of perjury—Gooder does not believe the findings involve deceit on his part. 9/9/19 Tr. 131:21-23.

16. Even after the Court's August 29 Order, Gooder still believes that he "told the truth" when he held Messrs. Smith and Platt out as his Chief Compliance Officer, and that it was a "factual statement" that these men held the position with his firm. 9/9/19 Tr. 131:18-23, 132:1.

17. Ascension has a contract with Oyster Consulting, LLC to provide Ascension with up to approximately 100 hours per year of compliance services, which includes a Chief Compliance Officer, Mr. Evan Rosser. Oyster charges Ascension $6,000 per quarter for up to 24 hours of service per quarter, with any additional hours billed at $250 per hour. Oyster is located in Virginia, and Mr. Rosser visits Ascension at its New York office twice a year. 9/9/19 Tr. 136-37; Resp. Ex. 11 at AAM021990.

18. Either Ascension or Oyster may cancel the contract with just 30 days written notice. 9/9/19 Tr. 140:15-24; Resp. Ex. 11 at AAM021991.

19. As of September 9, 2019—the date of the hearing in this matter—Gooder was not aware of the specific requirements of Investment Advisers Act Rule 206(4)-7, and did not know that he supervised the Oyster-provided Chief Compliance Officer to Ascension. 9/9/19 Tr. 138.

20. Patrick Smith, who shared office space with Gooder for approximately two years, beginning in 2009, was the principal of an investment advisory firm named Granite Springs Asset Management. 9/9/19 Tr. 38:17-23, 127:5-9.

21. Granite Springs was a wholly independent firm, which had no relationship to Ascension other than sharing office space; Smith never worked in any capacity or provided any services of any kind to Ascension or any of its clients; and Smith did not do anything that would have led Gooder to believe he was willing to work for Ascension. 9/9/19 Tr. 40-41.

22. Smith never agreed to serve as Ascension's Chief Compliance Officer or Senior Vice President ("SVP"), and was never asked to serve in either of those roles. He was shocked and dismayed to learn that Gooder had listed him on SEC Forms ADV. 9/9/19 Tr. 49.

23. Gooder's material misrepresentations caused Smith harm, both personally and professionally. For instance, as an employee of a regulated exchange, Smith was required to disclose the details of Gooder's actions—as they related to him—to the Chief Compliance Officer of his employer; and Gooder's actions put him in an uncomfortable position at work and caused him considerable inconvenience. 9/9/19 Tr. 49-50.

24. Smith's testimony was credible and compelling. And Gooder does not believe Smith lied during his testimony, and could not even think of a motive for Smith to lie. 9/9/19 Tr. 141-142.

25. Gooder does not see anything wrong with telling clients that a person has joined Ascension where the person merely shares office space, yet operates their own firm separate and apart from Ascension. 9/9/19 Tr. 141-142.

26. Gooder has not apologized to his clients for falsely claiming that Smith had joined the firm or that he was the Chief Compliance Officer of Ascension. 9/9/19 Tr. 133:21-24.

27. Notwithstanding that he called Smith as recently as 2019, and specifically mentioned the then-pending SEC investigation into this matter, Gooder has never apologized to Smith. 9/9/19 Tr. 51-52.

III. ARGUMENT

A. Legal Standard Governing Imposition of Remedies in an Administrative Proceeding

As set forth in detail in the Division's Prehearing Brief, to determine whether an administrative remedy serves the public interest, the Commission considers the factors identified in *Steadman v. SEC.* 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981). *See* Div. Br. at 6-18. These factors include: the egregiousness of the respondent's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the respondent's assurances against future violations, the respondent's recognition of the wrongful nature of his or her conduct, and the likelihood that the respondent's occupation will present opportunities for future violations. The Commission's inquiry is flexible, and no one factor is

dispositive. *Gary M. Kornman*, Exchange Act Rel. No. 59403, 2009 WL 367635, at *11 (Feb. 13, 2009), *petition for review denied*, 592 F.3d 173 (D.C. Cir. 2010).

For some remedies, the Commission considers additional factors. For instance, in determining whether to impose a cease-and-desist order, the Commission additionally considers "whether the violation is recent, the degree of harm to investors or the marketplace resulting from the violation, and the remedial function to be served by the cease-and-desist order in the context of any other sanctions." *S.W. Hatfield, CPA*, S.E.C. Release No. 3602, 2014 WL 6850921, at *10 (Commission Opinion) (Dec. 5, 2014) (internal quotations and citations omitted).

Moreover, to obtain a cease-and-desist order, the Division must show that there is some likelihood of future violations; but "a single past violation ordinarily suffices to establish a risk of future violations." *optionsXpress, Inc.*, S.E.C. Release No. 10125, 2016 WL 4413227, at *34 (Commission Opinion) (Aug. 18, 2016) (citation omitted), *order corrected on other grounds*, S.E.C. Rel. No. 10206, 2016 WL 4761083 (Sept. 13, 2016).

B. The Evidence at the September 9, 2019 Hearing Established that the Division's Requested Remedies are Reasonable and in the Public Interest

Based on the Court's August 29 findings of fact and conclusions that Respondents engaged in a pattern of securities laws violations for at least a decade, the Division requested in its September 5, 2019 Prehearing Brief that the Court:

> 1) order Respondents to cease-and-desist from committing or causing violations of the Advisers Act;
> 2) order Ascension to retain an independent compliance monitor as described below;
> 3) censure Respondents; and,
> 4) order Respondents to pay a second tier civil penalty.
>
> Div. Prehr'g Br. at 6-18.

The evidence at the September 9, 2019 hearing did nothing to mitigate the severity and seriousness of Respondents' violations; instead, as discussed below, the evidence highlighted several of the *Steadman* and public interest factors that weigh in favor of the remedies the Division has already requested based on the Court's August 29 Order.

i. The Court Should Order Respondents to Cease and Desist From Committing Or Causing Violations of the Advisers Act

In its Prehearing Brief, the Division argued that a cease-and-desist order is appropriate pursuant to Section 203(k)(1) of the Advisers Act, 15 U.S.C. § 80b-3(k)(1). Div. Prehr'g Br. at 6-10. Although the Court's August 29 Order is alone sufficient to warrant such an order, the evidence at the September 9 hearing further established the appropriateness of this remedy.

In determining whether a cease-and-desist order is appropriate, the Commission considers whether there is a reasonable likelihood of violations in the future, the seriousness of the violation, the isolated or recurrent nature of the violation, the respondent's state of mind in committing violations, the respondent's recognition of the wrongful nature of his or her conduct, and how recent the violations are. *optionsXpress, Inc.*, S.E.C. Release No. 10125, 2016 WL 4413227, at *34 (Commission Opinion) (Aug. 18, 2016) (citation omitted), *order corrected on other grounds*, S.E.C. Rel. No. 10206, 2016 WL 4761083 (Sept. 13, 2016). The Commission additionally considers "whether the violation is recent, the degree of harm to investors or the marketplace resulting from the violation, and the remedial function to be served by the cease-and-desist order in the context of any other sanctions." *S.W. Hatfield, CPA*, S.E.C. Release No. 3602, 2014 WL 6850921, at *10 (Commission Opinion) (Dec. 5, 2014) (internal quotations and citations omitted). No one factor is dispositive. *See optionsXpress, Inc.*, 2016 WL 4413227, at *35.

First, there is at least a reasonable likelihood that Gooder and Ascension will commit future violations of the Advisers Act. Gooder runs Ascension as a "solo practitioner" and now manages $160 million in client assets, for which he charges .5% per year. For more than a decade, Gooder refused to educate himself on the requirements of the Advisers Act—let alone seek to comply with its requirements—until OCIE notified him of the plan to conduct an examination of his (then-nonexistent) compliance program. Gooder's past willingness to flout the securities laws until he was caught is strong evidence that he may resume committing violations in the absence of preventive measures. Moreover, in light of the egregious and persistent nature of his violations, there is reason to believe that Gooder may exercise his 30-day contractual right to fire Mr. Rosser and name himself or another figurehead as CCO, without an order from this Court requiring him to cease and desist from failing to comply with the requirements of the Advisers Act.[5]

Second, as to the seriousness of the violations and the recurrent or isolated nature thereof, this Court has already determined that Respondents' conduct was egregious, and that it persisted over a decade-long period. *See* August 29 Order at 9-10; 9/9/19 Tr. 17:8-10, 17:24-25, 18:1. Indeed, Respondents' compliance, custody, books-and-records, and Section 207 violations were not isolated but recurred over an extended period of time, in some cases approximately a decade. Indeed, Gooder signed 13 materially false Forms ADV that Ascension filed with the Commission between September 2005 and February 2015.

[5]Gooder supervises Ascension's CCO, which is currently Mr. Rosser. *See* Rule 206(4)-7(c) (stating that an investment adviser's designated CCO must be a "supervised person"). Gooder thus holds ultimate control over Ascension's CCO and its compliance program, underscoring the potential for future violations.

Third, the Court has also already determined that Gooder's state of mind constituted reckless behavior "amounting to scienter", and that he was "at least reckless" in listing Smith and Platt as Ascension's Chief Compliance Officer on 13 separate Forms ADV.[6] Summary Disposition Order at 9-10. At the hearing, Respondents presented Gooder as their only remedies witness. But rather than provide evidence that would mitigate his misconduct, Respondents did the opposite. Gooder held himself out as a seasoned professional with sterling educational and finance industry credentials, particularly with investment advisory firms. In so doing Gooder highlighted that he almost surely knew of his obligations, and simply ignored them until he was forced, by the notification of the OCIE examination, to finally reckon with the requirements of the Advisers Act and to establish a compliance program for Ascension—and more importantly, to stop lying under penalty of perjury on his Forms ADV. Indeed, it is telling that, within just a few weeks of receiving the OCIE letter notifying him that Ascension would be examined for compliance with the Advisers Act, Gooder managed to adopt and implement written policies and procedures—which he concedes he was required to have done from Ascension's inception.[7]

[6] As the Division observed in its Prehearing Brief and at the September 9 hearing, Respondents are bound by the Court's findings and conclusions, as they constitute law-of-the-case. Div. Prehr'g Br. at 4-5. Pursuant to the law-of-the-case doctrine, "'when a court has ruled on an issue, that decision should generally be adhered to by that court in subsequent stages of the same case.'" *SEC v. Bronson*, 246 F. Supp. 3d 956, 970-71 (S.D.N.Y. 2017) (quoting *U.S. v. Uccio*, 940 F.2d 753, 757 (2d Cir. 1991)). Because the Court found that Gooder was "at *least* reckless" (emphasis added) in making material misrepresentations on Ascension's Forms ADV, the Court may determine—for purposes of remedies—that the evidence established that Gooder's material misrepresentations were knowing and intentional. Whether considered as additional scienter evidence or to inform the egregiousness determination, Gooder's state of mind is troubling and further highlights the need for strong remedies.

[7] At the September 9 hearing, Respondents' exhibit evidence centered on the efforts Gooder took to establish—for the very first time in Ascension's existence—written policies and procedures for his advisory firm.

It also bears noting that, as to each of the Forms ADV on which Gooder misrepresented either Smith or Platt as a Chief Compliance Officer (of non-existent written policies and procedures) or Senior Vice President of Ascension, Gooder had to make a choice about whether to be truthful. And each time, over a decade long period, he chose to misrepresent this fact. And in lying on his Forms ADV for a decade, a reasonable inference can be drawn that he was intentionally seeking to mislead his clients, potential investors, and regulators into believing he had a Chief Compliance Officer to administer his firm's non-existent written policies and procedures. Gooder's testimony that he believed he was being truthful on the forms was simply not credible; and—even if one were to credit him as being truthful for the sake of argument—Gooder at best galvanized this Court's finding that he was "at least reckless" in his belief.

In stark contrast to Gooder, Patrick Smith's testimony was credible and compelling. He testified about the harm Gooder's misrepresentations caused him; and he further highlighted that Gooder knew exactly what he was doing in falsely representing that Smith was a Senior Vice President and the Chief Compliance Officer of Ascension. Indeed, during cross-examination, Gooder was unable to conceive of any reason for Smith to fabricate his testimony.

Fourth, it is troubling that Gooder has not meaningfully acknowledged the wrongfulness of his actions. Even during his direct testimony at the hearing, Gooder was only willing to concede that he should have implemented a compliance program and that he only began to take SEC regulation of investment advisers seriously "right from the time [he] got the notice in November 2015." 9/9/19 Tr. 120:4-7. Moreover, Gooder appears to miss the relevance of testifying that he was a "solo practitioner" at Ascension, despite having filed numerous Forms ADV that publicly assert that Ascension has had both Chief Compliance Officers and Senior Vice Presidents. It is also troubling that Gooder denied that the Court's findings in any way involved deceit on his part.

His insistence that he was being truthful on his Forms ADV suggests that he is unwilling to take responsibility for (or even acknowledge) the serious nature of the Court's findings. Perhaps more troubling still is that Gooder believes that it is acceptable to hold out to his clients as having joined Ascension any person who shares office space with his firm.

As to additional factors the Court may consider, Respondents' violations are relatively recent, occurring as recently as 2016, and Respondents' violations have caused harm.[8] Moreover, in considering the degree of harm to investors or the marketplace resulting from the violation, the public interest analysis focuses on the welfare of investors generally. *See id.* Investors and the marketplace are harmed when a registered investment adviser ignores its compliance, custody, and books-and-records requirements and materially misrepresents its CCO and its custody status in certified Commission filings. These items are material to investors and serve to protect them from fraud and deceit. But Gooder's actions were not limited to general harm: Indeed, lying in Forms ADV can mislead both current and prospective clients about significant information upon which they make decisions. Finally, a cease-and-desist order would serve the remedial purposes of encouraging Respondents to understand and obey their obligations under the federal securities laws in the future. *Id.* at 11.

Accordingly, the Court should order Respondents to cease and desist from committing or causing violations and future violations of Advisers Act Section 206(4) and Rules 206(4)-7 and 206(4)-2 thereunder; Section 204 and Rule 204-2 thereunder; and Section 207.

[8] *See Hatfield*, 2014 WL 6850921, at *11 (December 5, 2014 Commission opinion stating "[t]he violations are recent, having occurred from 2010 to 2011.").

ii. The Court Should Order that Ascension Retain An Independent Compliance Monitor

Section 203(e) of the Advisers Act authorizes the Commission to place limitations on the activities, functions, or operations of an investment adviser if: (i) the adviser willfully made or caused to be made in any registration application or report required to be filed with the Commission, a false or misleading statement with respect to any material fact, or has omitted to state in any such application or report any material fact which is required to be stated therein; or the adviser willfully violated any provision of the Advisers Act or rules thereunder; and (ii) the remedy is in the public interest. *See* 15 U.S.C. § 80b-3(e)(1) and (5). Advisers Act Section 203(k)(1) also authorizes the Commission, in addition to imposing a cease-and-desist order, to require an investment adviser's future compliance with the Advisers Act or steps to affect future compliance, either permanently or for such period of time as the Commission may specify. *See* 15 U.S.C. § 80b-3(k)(1).

The Court has already determined that Ascension and Gooder willfully made materially false statements in Ascension's Forms ADVs for nearly a decade by finding them liable pursuant to Section 207. *See* Summary Disposition Order at 8, 10; *see also, Robare Group, Ltd. v. SEC*, 922 F.3d 468, 479-80 (D.C. Cir. 2019). On August 29, 2019, the Court found that Ascension and Gooder made material misstatements in Ascension's Forms ADV regarding custody of client assets and its CCOs, and held that Ascension and Gooder violated Advisers Act Section 207. *See* Summary Disposition Order at 10. Regarding the material misstatements on custody, the Court found that Gooder's lack of knowledge regarding whether Ascension had custody of client assets arose from Gooder's reckless conduct that amounted to scienter. *Id.* The Court further concluded that a reasonable investor would consider these custody misstatements important as they were "the culmination of a cursory process of bookkeeping and accounting" that also "omitted the role of an

independent accountant." *Id.* As for the material misstatements regarding Ascension's CCOs, the Court found neither Platt nor Smith was a CCO within the meaning of Advisers Act Rule 206(4)-7(c) or had any compliance responsibilities, and that listing them was at least reckless. *Id.* The Court further concluded that a reasonable investor would consider these CCO misstatements important because they "showed a cavalier attitude toward the importance of compliance." *Id.*

For the reasons that also support ordering a cease-and-desist order and as discussed further below, Respondents' willful violations and the public interest amply support an order requiring Ascension to retain an independent compliance monitor, for a period of three years, pursuant to Advisers Act Section 203(e) as well as Advisers Act Section 203(k)(1).

1. An Independent Compliance Monitor Would Serve the Public Interest

As discussed above, whether an administrative remedy serves the public interest, the Commission considers the factors identified in *Steadman,* 603 F.2d at 1140, applying a flexible inquiry, with no one factor being dispositive. *See Gary M. Kornman*, Exchange Act Rel. No. 59403, 2009 WL 367635, at *11.

The *Steadman* factors discussed above for a cease-and-desist order also militate strongly for an independent compliance monitor. See, *supra*, at 9-13. Respondents' unlawful conduct was widespread and long-standing, with violations lasting for more than a decade. Respondents' violations not only involved the misrepresentation of material facts in certified filings with the Commission, but also included ones that reflected Respondents' continuous and blatant disregard for the compliance, custody, and books and records requirements of a registered investment adviser. Despite being entrusted with over $150 million in client assets and his four decades of experience as a securities professional, Gooder failed to take any steps to educate himself about the

compliance obligations of an investment adviser.[9] As discussed above, Gooder has not meaningfully acknowledged the wrongful nature of his conduct; nor has Gooder assured the Court against any future violations apart from his bald assertions that he started to embrace the SEC's regulatory role since he was caught in late-2015. The Division understands that Gooder intends to continue running his investment advisory business and serving Ascension's clients into the foreseeable future. In these circumstances, arguably the most appropriate remedy and the one that best serves the public interest is to order Gooder to obtain an independence compliance monitor to keep him in compliance with the requirements of the Advisers Act.

2. Independent Oversight Is Needed to Ensure that Ascension Complies with the Advisers Act and the Rules Thereunder

An independent compliance monitor is a necessary and appropriate remedy in this case because Gooder is Ascension's sole owner and operator, and holds complete control over Ascension's compliance program and its CCO. Without any independent, external oversight, Gooder could reject any recommendation of Ascension's current CCO, and even terminate him for any reason at any time. Without a monitor in place, Gooder also could replace the CCO with yet another figurehead—as he did for more than a decade—or even name himself as CCO, which he did as recently as 2017. This remedy would best protect Gooder's current and future advisory clients. The Court's findings of fact and conclusions of law in this case support the need for an independent compliance monitor. *See Ernst & Young LLP*, Initial Decision Rel. No. 249, 2004 WL 824099, at *57-59 (Apr. 16, 2004) (ordering an independent consultant as a remedy), *made final*, Exchange Act Rel. No. 49615, 2004 WL 885243 (Apr. 26, 2004).

[9] According to Ascension's most recent Form ADV brochure filed with the Commission, Ascension had approximately $150 million in assets under management as of February 11, 2019.

Accordingly, the Division requests that the Court order that Ascension retain an independent compliance monitor not unacceptable to the Commission staff for a period of three years. The independent compliance monitor would conduct reviews to determine whether Ascension's written policies and procedures are reasonably designed to prevent future violations, by Ascension and Gooder, of the Advisers Act and the rules thereunder, and whether Ascension's CCO is competent and knowledgeable regarding the Advisers Act, and empowered with full responsibility and authority to develop and enforce appropriate policies and procedures. *See Compliance Programs of Investment Companies and Investment Advisers,* Advisers Act Rel. No. 2204, 68 F.R. 74714, 74720 (Dec. 24, 2003). The Division requests that the Court order that, within three months of the date of the Initial Decision, the independent compliance monitor submit a report to Ascension and the Commission staff documenting: the findings of its review, Ascension's efforts to correct any issues identified by the independent compliance monitor, and any recommendations for addressing any such issues. Further reports would be submitted at least annually, or on an as-needed basis. Ascension would bear the cost of the independent compliance monitor, and would not terminate the engagement without prior written approval by the Commission staff.

iii. The Court Should Censure Respondents

The Court should also censure Gooder and Ascension pursuant to Advisers Act Sections 203(f) and 203(e), respectively, which authorize the Commission to censure an investment adviser or an associated person thereof if the remedy is in the public interest and the adviser or associated person either: (1) willfully made or caused to be made in any application for registration or report required to be filed with the Commission under the [Advisers Act] . . , any statement which was at the time and in light of the circumstances under which it was made false

or misleading with respect to any material fact, or has omitted to state in any such application or report any material fact which is required to be stated therein, 15 U.S.C. § 80b-3(f), (e)(1); or (2) willfully violated any provision of the Advisers Act, 15 U.S.C. § 80b-3(f), (e)(5). Because this Court has found that Respondents made willful misrepresentations on multiple Forms ADV, the Court may censure Respondents under either of these statutory requirements.

In anticipation of any putative arguments by Respondents that a censure is subject to the five-year statute of limitations pursuant to 28 U.S.C. § 2462, *see Johnson v. SEC*, 87 F.3d 484, 486-90 (D.C. Cir. 1996), the Division observes that based solely on the basis of Respondents' established misconduct on and after March 7, 2014, censuring Respondents is in the public interest. However, as noted, the Court may consider evidence outside the limitations period in fashioning an appropriate remedy. *See Birkelback v. SEC*, 751 F.3d 472, 482 (7th Cir. 2014) (upholding sanctions ruling that considered conduct outside of the five-year limitations period: "even assuming the five-year period applies, there was no error in the SEC considering events outside that period in crafting its sanction."); *In the Matter of Bernerd E. Young* S.E.C. Release No. 4358 at 21 (2016) ("Even where a sanction is deemed punitive . . . we may consider evidence outside the limitations period showing that the respondent's misconduct during the limitations period reflected ongoing courses of fraudulent conduct.").

Additionally, the Division has established that a censure is in the public interest. In assessing the public interest, the Commission considers the same *Steadman* factors discussed above. *See supra* at 9-13. And for many of the same reasons discussed above, this Court should enter an order censuring Respondents.

iv. The Court Should Order Respondents To Pay A Civil Penalty

The Division respectfully requests that the Court impose a second-tier penalty upon Respondents. Pursuant to the Advisers Act's three-tier system, the second tier is reserved for conduct involving fraud, deceit, manipulation, or the deliberate or reckless regard of a regulatory requirement. *See* Section 203(i)(2)(B); 15 U.S.C. § 80b-3(i)(2)(B).[10] In light of the Court's order on summary disposition, second-tier penalties are appropriate.

As an initial matter, the Division has proven violations within the five-year limitations period that involved fraud and deceit as well as at least the reckless disregard of regulatory requirements.[11] Thus, as a starting point, penalties should appropriately be awarded at the second tier.

Turning to penalty amount, for violative conduct during the date range March 7, 2014 to 2016, the maximum second-tier penalty per violation for a natural person is $80,000 and for any other person is $400,000 (the maximum first-tier penalty for a natural person was $7,500 and $80,000 for any other person). *See* 17 C.F.R. § 201.1001. In accordance with the Court's instructions at the scheduling conference, to enable Respondents to determine whether to introduce evidence of alleged inability to pay, the Division communicated to Respondents' counsel on July 29, 2019 that, based on the development of the record to date, and not including any further factual developments before the conclusion of the hearing, the maximum dollar amount of the civil penalty the Division envisioned seeking was $50,000 against Respondents. *See* 5/21/19 Scheduling Conf. Tr. at 4:18-5:6.

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[10] The Court has considerable discretion in deciding whether to assess civil penalties, and, if so, to determine the appropriate amount. *J.S. Oliver Capital Mgmt*, S.E.C. Release No. 4431, 2016 WL 3361166, at *14 (Commission Opinion) (June 17, 2016).

[11] A civil penalty is subject to the five-year statute-of-limitations in 28 U.S.C. § 2462. *See Kokesh v. SEC*, 137 S. Ct. 1635 (2017).

In a cease-and-desist proceeding instituted pursuant to Advisers Act Section 203(k)(1), a civil penalty may be imposed if the Commission finds that: (i) the respondent is violating or has violated any provision of the Advisers Act or its rules and regulations thereunder or is or was a cause of such violation; and (ii) the penalty is in the public interest. *See* Section 203(k)(1)(B), 15 U.S.C. §§ 80b-3(i)(1)(B) & (i)(3). Six factors are considered when determining whether an award of penalties will serve the public interest: (1) whether the violation involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement, (2) the resulting harm to other persons, (3) any unjust enrichment and prior restitution, (4) the respondent's prior regulatory record, (5) the need to deter the respondent and other persons, and (6) such other matters as justice may require. *See* Section 203(k)(1); 15 U.S.C. § 80b-3(i)(3).

Respondents' misconduct, considered in light of these factors, weighs heavily in favor of a second-tier penalty. For example, although the Court may consider misconduct outside of the statute of limitations, even considering only Respondents' misconduct within the statutory period, their false portrayal of Platt as Ascension's CCO in the firm's Forms ADV dated March 11, 2014 and February 26, 2015 unquestionably involved fraud and deceit. Respondents' false statements that Ascension did not have custody over client assets in these Forms ADV also involved fraud and deceit. Ascension's other violations since March 7, 2014 involved at least the reckless disregard of a regulatory requirement.

And there is no question that Respondents were unjustly enriched by flouting compliance requirements and lying on Forms ADV. At the hearing Gooder conceded that by

failing to comply with the requirements of the Advisers Act from the start, he saved a considerable amount of money.[12]

Thus, there is no doubt that Respondents benefitted financially by avoiding costs that they would have had to pay to comply with the Advisers Act. And even considering unjust enrichment during the limitations period, Respondents still avoided considerable expenses. Finally, the need to deter Respondents and to provide general deterrence in this case are strong, both to prevent future violations by Respondents and to send a message to the industry that registered investment advisers cannot ignore their regulatory requirements while hoping to never be subject to an examination by OCIE. Accordingly, the Court should order second-tier penalties against Respondents.

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[12] Gooder's testimony on this point was unambiguous:

6 And so that $100,000 you say you've spent, that's
7 money you would have had to spend anyway for the ten years
8 that you didn't comply, right?
9 A Perhaps part of it.
10 Q Well, you would have to have paid all those people
11 if you had engaged them on the front-end in 2004 when you
12 started Ascension, right?
13 A Yes. Yes. Yes.
14 Q All right. So you avoided those costs the entire
15 time you failed to comply in any meaningful way with the
16 Investment Advisers Act requirements?
17 A Yes. Yes.
9/9/19 Tr. 128:6-17

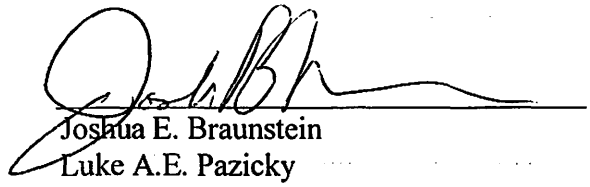
CONCLUSION

Based on the foregoing, the Division respectfully requests that the Court impose the remedies requested in this brief, and any other relief the Court deems appropriate.

DATED: October 21, 2019

Respectfully submitted,

DIVISION OF ENFORCEMENT
By its Attorneys:



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CERTIFICATE OF SERVICE

In the Matter of Ascension Asset Management, LLC and Grenville M. Gooder, Jr.
Administrative Proceeding File. No. 3-19024

Service List

Pursuant to Commission Rule of Practice 151 (17 C.F.R. § 201.151), I certify that the foregoing **Division of Enforcement's Post-Hearing Brief** was served on October 21, 2019 upon the following parties as follows:

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