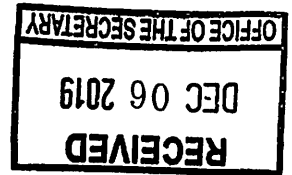


**UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION**



**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 REPLY BRIEF**

December 6, 2019

Division of Enforcement  
Securities and Exchange Commission  
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## 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 Reply Brief.

On November 18, 2019, after the September 9, 2019 remedies hearing, Respondents filed their post-hearing submissions, asking the Court to find that their decade of misconduct merits no court-imposed remedy at all, and that the proper result is for the Court to dismiss the case entirely. Respondents' Post-Hearing Brief ("Resp. Post-hr'g Br.") at 3. Respondents fail to provide the Court with persuasive legal or factual support for their positions. Instead, as they did pre-hearing, Respondents *again* ask the Court to revisit the established findings of fact and conclusions of law in its August 29 Order<sup>1</sup> to find that Gooder acted negligently, at worst, in flouting the requirements of the Investment Advisers Act ("Advisers Act"), and making multiple material misrepresentations in public filings. Resp. Post-hr'g Br. at 4. Respondents also renew the constitutional and statutory arguments—challenging the legality of these proceedings—that the Court has already rejected.

The Court should decline Respondents' request to reconsider the established facts and conclusions of law regarding their liability and, in particular, the findings regarding Respondents' scienter and the legality of these proceedings, because: (1) the Rules of Practice do not provide for reconsideration of the August 29 Order; and (2) the Court's findings and conclusions are binding as law-of-the-case.

This Court should similarly reject Respondents' remedies arguments because they all rest upon their preferred—but inherently flawed—view of the record and an improper interpretation

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<sup>1</sup> 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").

and application of the *Steadman* factors. Moreover, Respondents' renewed contentions regarding the statute of limitations, and which conduct the Court may consider in fashioning appropriate remedies, are also misguided and unavailing. Instead, the Court should find that, as outlined in the Division's Pre- and Post-hearing Briefs, the Division's recommended remedies are appropriate and in the public interest.

Finally, Respondents have submitted proposed findings of fact and conclusions of law; and they have objected to the majority of the Division's proposed supplemental facts. The Court should decline to adopt the majority of the former as they are mostly self-serving, inaccurate, or already-decided. And the Court should also reject their substantive objections to the Division's proposed facts because they are not supported by the record, and they ignore that the Court may weigh evidence and make credibility determinations as part of its factual findings.

## II. ARGUMENT

### A. The Court Should Deny Respondents' Requests for Reconsideration of its August 29 Order

As a preliminary matter, significant portions of Respondents' brief constitute an improper motion for reconsideration of the Court's findings of fact and conclusions of law in its August 29 Order. Respondents *still* contend—even after the Court has already held them liable for fraudulent, scienter-based misconduct—that their conduct “in this matter was negligent at most, and did not rise to the level of recklessness.” Resp. Post-Hr'g Br. at 4. After again making arguments this Court has rejected, they ask the Court to “revisit its finding of recklessness, and consequently its finding of willfulness.” *Id.* at 4-7. Respondents also seek reconsideration of the Court's findings of fact and conclusions of law relating to the constitutionality and legality of these proceedings. *Id.* at 26-33. Respondents acknowledge that “[t]he Court previously denied [their] Motion for

Summary Disposition with regard to Respondents' claims that this proceeding was unconstitutional.” *Id.* at 26.

The Court should decline Respondents’ request to reconsider its August 29 Order. First, although Respondents do not even purport to provide a legal basis for the Court to reconsider its findings of fact and conclusions of law, the SEC’s Rules of Practice do not provide for a motion for reconsideration of the Court’s order. Second, the findings of fact and conclusions of law in the Court’s August 29 Order are binding as law-of-the-case. As fully set forth in the Division’s Prehearing Brief, 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, 757-8 (2d Cir. 1991)); *see, also*, Div. Pre-hr’g Br. at 4-5.

Because Respondents concede that the Court has previously ruled on these issues, and they do not even suggest a legal basis for the Court to revisit its August 29 Order, the Court should decline their request to reconsider its previous rulings.

**B. The Division has Established that Sanctions are in the Public Interest and are Warranted Under the *Steadman* Factors**

As stated in the Division’s Prehearing Brief, even before the September 9 hearing in this matter, the evidentiary record in this case militated strongly in favor of all of the remedies the Division has recommended since the Court found as a matter of law that Respondents engaged in a decade-long pattern of securities law violations and that they acted at least recklessly. August 29 Order at 4-10. And, as described in the Division’s Post-hearing Brief, the evidence at the hearing, particularly, the Division’s supplemental exhibits and the compelling and credible testimony of Patrick Smith—which sharply contrasted with certain of Gooder’s self-serving and at-times

incredible testimony—galvanized the Division’s recommendations as fair, reasonable, and in the public interest. Div. Post-hr’g Br. at 8-22.

Although the public interest inquiry is flexible and no one factor is dispositive—the Division has established all of 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). Respondents conduct was egregious, recurrent, and at least reckless. And the Division has established Gooder’s refusal to meaningfully acknowledge that flouting the requirements of the Advisers Act and lying in public filings to obscure his failures is wrong. Gooder also fails to provide sincere assurances that such violations will not occur in the future. And the Respondents’ submissions only confirm this fact. *See*, Resp. Post-hr’g Br. at 7-22.

**i. Respondents’ Conduct was Egregious, Persistent, and at Least Reckless**

In its Post-hearing Brief, the Division underscored that the Court has properly found that “Respondents’ conduct was egregious, and that it persisted over a decade-long period.” Div. Post-hr’g Br. at 10; *See* August 29 Order at 9-10; 9/9/19 Tr. 17:8-10, 17:24-25, 18:1. Indeed, Respondents’ violations were serious—including findings of fraudulent misconduct—and were far from isolated. For instance, as the Court held, Gooder acted at least recklessly when he signed 13 materially false Forms ADV that Ascension filed with the Commission between September 2005 and February 2015. August 29 Order at 5-6, 9-10.

Respondents challenge the Division’s public interest analysis by—remarkably—asserting that “none of [their] actions can be fairly characterized as ‘severe’.” Some examples of Respondents’ contend, among other things, that the longevity of Gooder’s client relationships “strongly suggests that Ascension’s clients are very happy with the service they receive from Mr. Gooder and Ascension.” Resp. Post-hr’g Br. at 8. They add that “Ascension has not lost any

clients . . . as a result of the Division’s investigation or OIP” and suggest that “Ascension’s clients do not view Respondents’ action [*sic*] as ‘severe.’” *Id.* They conclude that client harm “never occurred here.” *Id.*

Respondents fail to provide legal support for the proposition that clients’ views—“happy” or otherwise—of egregiousness somehow mitigate the seriousness of Respondents’ repeated failures to comply with the most basic requirements of an investment advisor, which are in place to protect clients and their investments. Moreover, Respondents’ assertions ignore that—as established during the September 9 hearing—Gooder had not disclosed to his clients that, for example, he was found to have misrepresented on 13 Forms ADV that he had officers he did not have at Ascension. 9/9/19 Tr. at 123-124. During his testimony, when asked if his clients would remain happy with him after they learn of the Court’s merits findings, Mr. Gooder answered, “I don’t know.” *Id.* at 124:4-9. Thus, these uninformed clients’ alleged happiness, is irrelevant.

Of course, that Gooder lied under penalty of perjury in public filings for years, claiming to have officers working at his advisory firm who did not, in fact, perform any services there, undercuts any “happy client” or no-client-harm argument. It is common sense that clients do not tend to remain happy when their investment adviser materially misleads them and the public into believing that other professionals work at the firm as officers, when that fact is simply false. But it also undercuts Respondents’ claims that they “always had as their lodestar the core philosophy of putting the clients’ interest first[,]” and their alleged “uncontroverted evidentiary record of Mr. Gooder’s adherence to a very high standard of conduct in conducting Ascension’s business.” Resp. Post-hr’g Br. at 1, 9. Indeed, as Gooder conceded during his testimony, putting one’s clients first requires always being truthful with them and complying with the applicable laws that the SEC

has in place to protect them. 9/9/19 Tr. at 122:1-14. Yet Respondents failed to comply with these requirements.

Although their approach is wholly unpersuasive, Respondents appear to take a new tack in their handling of the multiple fraudulent misrepresentations Gooder made in Forms ADV for years. To the extent they confront these serious violations at all, they gloss over the Court's binding findings, and are apparently seeking now to blame Messrs. Platt and Smith for any failings and for the recurrent nature of the violations.

First, Respondents challenge the Court's findings with regard to the Forms ADV and contend that "the disclosures about David Platt and Patrick Smith are, in fact, accurate." Resp. Post-hr'g Br. at 11. Of course, this is among the many assertions in their brief that are foreclosed by the Court's findings that the Forms ADV were false; neither man "was 'responsible for administering the . . . policies and procedures' within the meaning of [the Rule]. Nor did either have any compliance responsibilities." August 29 Order at 9 n. 15.

Second, Respondents now assert, "The evidence that shows that Mr. Platt did not discharge the CCO's duties in accordance with [the Rule] does not render the disclosure of his designation as [*sic*] inaccurate." Resp. Post-hr'g Br. at 11. They continue, "To the extent that a CCO does not fully discharge the required duties, that is properly seen as a violation of Advisers Act Rule 206(4)-7(c) not the designation requirement of Section 207." *Id.*; *see also*, Resp. Post-hr'g Br. at 16 ("As we argue, any deficiency in their performance of the CCO job does not render the ADV misleading.").

This meager attempt to deflect blame is wholly unavailing. Assuming that Messrs. Platt and Smith were supposed to be functioning as CCOs—and they were not—if they failed to meet the requirements of their positions, Respondents were the only ones responsible for accurately representing who was the operating CCO in all 13 of the Forms ADV. Again, the Court found that “Listing Platt and Smith as CCOs in Ascension’s Forms ADV were material misstatements. Neither was a CCO within the meaning of [the Rule] or had any compliance responsibilities. Listing them was at least reckless.” August 29 Order at 10.

Respondents also attempt to minimize their conduct by asking the Court to take notice that examiners find these types of compliance issues on a regular basis, and unless the issues are persistent or cause customer harm, they do not require an enforcement action. First, the Court has already rejected this argument when it held Respondents liable for these violations. Resp. Post-hr’g Br. at 10. Second, Respondents did not present any evidence or legal support for what “examiners find on a regular basis” or how such matters are “routinely resolved.” Therefore, these assertions are not in evidence, are not properly before the Court for consideration, and should be summarily rejected. Further, in contravention of their own argument on this issue, Respondents’ violations of the federal securities laws persisted for 10 years until Commission examiners arrived at the firm. Such conduct clearly warrants an enforcement action, a finding of liability, and appropriate remedies to address the violations, provide deterrence, and protect investors.

Finally, although the Court should not address their backdoor requests for reconsideration as to scienter, it bears noting that Respondents’ argument that Gooder’s misconduct was merely negligent rests on their fanciful—yet often repeated—claim that “Mr. Gooder was unaware of the compliance process requirements at issue, although he had opportunities to become aware that he did not recognize and of which he did not avail himself.” Resp. Post-hr’g Br. at 6, 9-10, 12. The

Court has already, appropriately, found his putative ignorance of the Advisers Act’s compliance requirements to be “highly unreasonable—reckless conduct amounting to scienter.” August 29 Order at 10. As discussed in the Division’s Post-Hearing Brief, Gooder held himself out as a seasoned professional with sterling educational and finance industry credentials, particularly with investment advisory firms. Div. Post-hr’g Br. at 11. 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 filing false Forms ADV with the Commission. Div. Post-hr’g Br. at 11; *see also* August 29 Order at 4-10. Such evidence establishes that his conduct was knowing or, as the Court found, at least reckless.

Accordingly, the Division has established that all of its requested remedies are in the public interest and are fair and reasonable in light of Respondents’ decade long failure to comply with the most basic requirements for investment advisers, and for their repeated material misrepresentations in public filings.

**ii. Respondents have not Accepted Responsibility**

As the Division has established throughout these proceedings, Gooder has utterly refused to take responsibility for his years of serious misconduct. As demonstrated above, he continues to do so in his Post-hearing brief. Repeatedly asserting that he was not previously in compliance with the law but has now “embraced all those [investment adviser] rules very enthusiastically” is as about as far as he will go in acknowledging the wrongfulness of his decade of misconduct. *See* Resp. Post-hr’g Br. at 1, 9/9/19 Tr. 120:8-11. This is far from compelling in light of Gooder’s repeated attempts to minimize his level of scienter—as discussed above and in the Division’s

previous briefs. Also instructive on this point is Gooder's attempt to shift blame to Messrs. Smith and Platt, rather than to accept responsibility for his false claims about his CCOs.

Another telling example of Gooder's refusal to acknowledge that his behavior was wrongful occurred when, Gooder testified on cross-examination at the September 9 Hearing that he thinks it is appropriate to represent to clients that a person who shares office space has "joined" Ascension. Resp. Post-hr'g Br. at 17; 9/9/19 Tr. 143:18-25; 144:1-4. As the Division has previously noted, this is a troubling indication that Gooder simply does not understand that misleading clients into believing there are others working for his advisory firm—when that is not true—is wrong.

Respondents' attempt to blunt the impact of Gooder's testimony is unavailing. They assert, incorrectly, that the Division is relying on unadmitted evidence and is "now trying to twist Mr. Gooder's definition of the word 'join' against him . . . ." Resp. Post-hr'g Br. at 17. As the transcript demonstrates, however, the testimony upon which the Division relies—which preceded Respondents' renewed objection to Exhibit 38—was not excluded; and Gooder's response speaks for itself. Further, Respondents' *own* "Counter-Proposed Finding of Fact" states, "Mr. Gooder believed it was appropriate to tell clients Mr. Smith 'joined' Ascension when Mr. Smith was sharing office space with Ascension." Respondents' Counter-Proposed Findings of Fact and Conclusions of Law at 11.

### **iii. Respondents are at Risk of Committing Future Violations**

There is a significant likelihood that Respondents will commit future violations. Along with the many compelling facts discussed above, Gooder's repeated insistence that he was merely negligent, unaware of the most basic requirements for investment advisers to maintain a compliance program—and his unwavering position that telling his clients and the investing public

under penalty of perjury that Platt and Smith were *actually* CCOs (and Senior Vice Presidents)—  
certainly present a risk that he will commit future violations of the Advisers Act without  
appropriate remedies and continued oversight.

### **C. Cease and Desist Order is Warranted**

In its Post-hearing Brief, the Division established 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.  
Post-hr'g Br. at 9-13. The Division further established that, although the Court's August 29  
Order was alone sufficient to warrant such an order, the evidence at the September 9 hearing  
further demonstrated the appropriateness of this remedy. *Id.* Respondents have not made any  
arguments, or pointed to any new facts of record that should alter the conclusion that this  
remedial remedy is in the public interest. As the Division observed above, and in its briefs,  
*see, id.*, there is at least a reasonable likelihood that Gooder and Ascension will commit future  
violations of the Advisers Act. This concern is evidenced by the temporal scope and  
egregiousness of his actions, and by the cavalier attitude Gooder demonstrated toward the  
compliance requirements in the Advisers Act, discussed above, and as found by the Court.  
*See, e.g.*, August 29 Order at 10.

Gooder continues to run Ascension as a “solo practitioner” and now manages \$160  
million in client assets. And there is no question that for more than a decade, Gooder failed 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. *Id.* at 9-10.

As the Division has previously explained, and as the Court's findings underscore, that  
Gooder has demonstrated a past willingness to flout the federal securities laws until he was

caught is strong evidence that he may resume committing violations in the absence of preventive measures. Notwithstanding Respondents' claims about the remedial measures they have since taken to comply with the requirements of the Investment Advisers Act, *see* Resp. Post-hr'g Br. at 13-14, in light of the egregious and persistent nature of his violations, his continued operation of Ascension, and his previous approach to compliance, there is reason to believe that Gooder will return to his prior practices without an order from the Court requiring him to cease and desist from failing to comply with the requirements of the Advisers Act. Thus, the Court should order this form of relief.

#### **D. An Independent Compliance Monitor is Warranted**

The Division maintains that Respondents' persistent pattern of misconduct and—as the Court has found—his “cavalier attitude toward the importance of compliance,” August 29 Order at 10, merit all of the recommended remedies, including the prophylactic measure of an independent compliance monitor. Specifically, Respondents argue that “a compliance monitor [] would serve no remedial purpose and would be purely punitive.” Resp. Post-hr's Br. at 20. They also go to great lengths to explain how they have been in compliance since Gooder was found to have engaged in violative conduct. *Id.* Respondents' arguments against this prophylactic remedy are, in essence, that: (1) the Division has “never alleged that [Ascension's policies and procedures] were inadequate” and (2) the Division has “never alleged that [Ascension's CCO] is anything other than competent” or “empowered with full responsibility and authority.” Resp. Post-hr'g Br. at 20-21.

A compliance monitor is warranted here as Respondents—for 10 years—failed to comply with the most basic requirements of an investment advisor, including but not limited to custody of client funds and making truthful disclosures. Even now, 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. In such circumstances, a compliance monitor to ensure that Respondents are aware of, comply with, and implement all applicable rules and regulations is appropriate to protect investors and prevent future harm.

Moreover, the question of Mr. Rosser’s competence—or lack thereof—misses a larger point, which is more germane to this analysis: The evidence strongly indicates that, without a mandatory independent compliance monitor to ensure that Gooder maintains a CCO and an appropriate compliance program, Gooder is likely to seek shortcuts, or he may abandon his CCO and compliance program altogether. Moreover, if Respondents’ compliance program is as solid as they contend, it should not be difficult or overly burdensome for them satisfy an independent compliance monitor. But his current clients and the investing public—whom the Court’s findings confirm were subjected to material misrepresentations that were “at least reckless”—deserve this measure, which will provide assurances against future misconduct by Respondents. August 29 Order at 10.

#### **E. A Censure is Warranted**

As the Division has previously argued, a censure is also appropriate in this case.<sup>2</sup> Because the Court has found that Respondents made willful misrepresentations on multiple Forms ADV, the Court may censure Respondents. August 29 Order at 5-6, 9-10. Additionally, the Division has

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<sup>2</sup> Pursuant to Advisers Act Sections 203(f) and 203(e), the Court may censure an investment adviser 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).

established that a censure is in the public interest. In assessing the public interest, the Commission considers the same *Steadman* factors discussed above. Thus, for many of the same reasons discussed above, the Court should enter an order censuring Respondents.

The Division notes that although, as discussed below, the Court may consider Respondents' misconduct outside the statute of limitations, it respectfully requests a censure based solely on Respondents' established misconduct on and after March 7, 2014.

#### **F. Civil Penalties are Appropriate**

Contrary to Respondents' contentions, the Division's request for a \$50,000 second-tier civil penalty is more than appropriate and reasonable in light of Respondents' egregious misconduct.<sup>3</sup> See Resp. Post-hr'g Br. at 22-23. For example, as discussed above, 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 Mr. Platt as Ascension's CCO in the firm's Forms ADV dated March 11, 2014 and February 26, 2015 unquestionably involved fraud and deceit. This is also true for Respondents' false statements that Ascension did not have custody over client assets in these Forms ADV. Ascension's other violations since March 7, 2014 involved at least the reckless disregard of basic regulatory requirements.

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<sup>3</sup> 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' primary response is that the Division is requesting the penalty as unjust "enrichment." Rather, the Division has established that pursuant to the Advisers Act, where, as here, Gooder has been found liable for multiple counts of fraudulent misconduct, some of which were within the statute of limitations, civil penalties are appropriate. Nor, in light of Gooder's pattern of egregious misconduct over a decade, can Respondents meaningfully contest that there is a need to deter "the respondent and other persons" from future violations of the Advisers Act. Finally, the Division submits that, at the very least Gooder's practice of misrepresenting officers in his firm to clients caused them harm, whether they are yet aware of the violations or not. Accordingly, the Court should order a \$50,000 civil penalty.

### **G. Supplemental Proposed Findings of Fact**

#### **i. Respondents' Objections to the Division's Proposed Supplemental Facts Are Not Well Founded**

In their Counter-Proposed Findings of Fact and Conclusions of Law ("Resp. Prop. Facts"), Respondents accept only a handful of the Division's proposed supplemental facts, and they have provided written objections to the vast majority of the rest.<sup>4</sup> Respondents' substantive challenges to the Division's proposed facts wholly lack merit. Respondents appear to believe that accurately stated facts are inherently "misleading" or "argumentative" if they do not reflect well on them. And Respondents' objections also ignore that the Court has authority to weigh evidence and to make credibility determinations, as part of its findings of fact, and to credit or disbelieve witness

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<sup>4</sup> Respondents do not contest Division's proposed supplemental fact numbers 1, 2, 3, 5, 9, 17, and 20. Respondents observe, however, that the Division did not propose conclusions of law and assert that the Division should be foreclosed from now doing so. Resp. Prop. Facts at 13. Respondents' are wrong. The Division notes that, as established above, and in its Pre- and Post-hearing Briefs, the conclusions of law the Court found in its August 29 Order govern as to Respondents' liability. And the Divisions' briefs have all explained and established in detail the conclusions of law the Court should reach as to remedies.

testimony. To that end, they appear to assert that a proposed fact is objectionable as “inconsistent” whenever there is testimony that disagrees with it. They lodge these objections to several of the Division’s accurately-stated facts.<sup>5</sup>

As one example, and as discussed above, Respondents contend that the Divisions’ Proposed Finding of Fact 15 “entirely misrepresents the line of questioning from the September 9, 2019 hearing.” Respondents also assert, “Nowhere in the Court’s Order was the word deceit used, and thus Mr. Gooder’s response is consistent with the language of the Court.” But the transcript and the Court’s August 29 Order demonstrate that Respondents are mistaken.

The objected-to Proposed Fact states: “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.” Despite that Respondents do not like this proposed fact, the transcript bears out that—like the other proposed facts against which Respondents lodge similar objections—it is accurate, and is thus a long way from “entirely misrepresent[ing] the line of questioning.”<sup>6</sup> Respondents are also misguided in their assertion that “[n]owhere is the word deceit used” in the Court’s August 29

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<sup>5</sup> Respondents also assert some formulation of these objections to the Division’s Proposed Facts 4, 11, 12, 13, 14, 15, 19, 21, 22, and 24.

<sup>6</sup> The line of questions, after Respondents objected, was as follows:

Q: We’re not asking for his legal conclusions.

Q: You know what it is to be deceitful, right, Mr. Gooder?

A: I know what it -- yes, to be deceitful, yes.

Q: All right. Do you agree that the Court’s findings involve deceit on your part?

A: No.

Q: You don’t agree that they involved that, that the Court’s findings in the August 29 order –

A: No, I don’t believe so.

9/9/19 Tr. 131: 15-25; 132:1.

Order. In fact, the Court's Order states, "Scienter is 'a mental state embracing intent to *deceive*, manipulate, or defraud."<sup>7</sup> August 29 Order at 8 (emphasis added).

As other examples, Respondents object to the Division's Proposed Finding of Facts 21 and 22—both of which related to Patrick Smith's testimony about sharing office space with Ascension, and how he never agreed to act as CCO of Ascension or work in any capacity for Gooder—as being "inconsistent with testimony given at the hearing" and on other related grounds. As to both of these proposed facts, Respondents' objections ignore the Court's inherent role as the arbiter of the facts, and its authority to weigh evidence and make credibility determinations. Moreover, as to the Division's Proposed Fact number 21, Respondents are incorrect that the asserted fact is inconsistent with Smith's prior testimony, as he made clear both at the time of the prior testimony, and again during the hearing. *See* 9/9/19 Tr. 46-48; 58-61. Moreover, Smith's testimony was credible and compelling, whereas, on this point, Gooder's was not.

The rest of Respondents' substantive objections to the Division's proposed supplemental findings of fact are equally without merit.<sup>8</sup> Accordingly, the Court should reject their misguided objections and accept the Division's facts as asserted.<sup>9</sup>

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<sup>7</sup> Merriam-Webster defines "deceit" as "the act or practice of deceiving." <https://www.merriam-webster.com/dictionary/deceit>.

<sup>8</sup> The Division's remaining proposed supplemental findings of fact objected-to by the Respondents are numbers 6, 7, 18, 23, 26, and 27.

<sup>9</sup> Respondents correctly note that some record citations are either incomplete or inaccurate. To that end the Division regrets the administrative errors and updates them as follows: Division proposed facts: 8 (9/9/19 Tr. 125:15 to 126:4), 10 (9/19/19 Tr. 126:17-24); 16 (9/9/19 Tr. 133:2-10); and 25 (9/9/19 Tr. 143:12 to 144:4).

**ii. The Court Should Decline to Adopt Respondents' Supplemental Proposed Facts**

The Court should reject all of Respondents' proposed facts, as they are either wholly self-serving; inapposite; or, inaccurate. As just one example, even their very first proposed fact is wholly self-serving, and contrary to the evidence of record and this Court's August 29 Order. To that end, they ask the Court to adopt the following as fact: "Mr. Gooder takes the SEC's regulation of investment advisers seriously." Resp. Prop. Facts at 12. The Division agrees that Gooder testified to this fact; however, the record—and the Court's August 29 Order—render this assertion far from factual. The rest of Respondents' proposed facts are no more meritorious, and the Court should decline to adopt them as filed.

**H. Respondents' Statute of Limitations Arguments Lack Merit**

Finally, Respondents claims that the Court may not consider any of their misconduct outside of the five-year statute of limitations period in fashioning its remedies are not correct. Resp. Post-hr'g Br. at 24-26. As the Division has set forth in both its Pre- and Post-Hearing Briefs, based solely on the basis of Respondents' established misconduct on and after March 7, 2014, the Court should order all of the recommended remedies. Div. Pre-hr'g Br. at 14-17; Div. Post-hr'g Br. at 18-21.

Further, as the Division has established, Respondents are mistaken that the Court may not consider their misconduct outside of the limitations period, whether a remedy is deemed a penalty or not.<sup>10</sup> *Id.* To the contrary, the Court may consider evidence outside the limitations period in fashioning an appropriate remedy. Indeed, all of Respondents' misconduct is relevant in, for

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<sup>10</sup> A civil penalty is subject to the five-year statute-of-limitations pursuant to 28 U.S.C. § 2462. *See Kokesh v. SEC*, 137 S. Ct. 1635 (2017).

instance, deciding whether to issue a cease-and-desist order. *See Larry C. Grossman*, S.E.C. Release No. 4543, 2016 WL 5571616, at \*15 (Commission Opinion) (Sept. 30, 2016)<sup>11</sup>; *Timbervest, LLC*, S.E.C. Release No. 4197, 2015 WL 5472520, at \*15, \*17 (Commission Opinion) (Sept. 17, 2015).<sup>12</sup> Moreover, in *Birkelback v. SEC*, 751 F.3d 472, 482 (7th Cir. 2014), the Seventh Circuit upheld a sanctions ruling that considered conduct outside of the five-year limitations period, and explained, “even assuming the five-year period applies, there was no error in the SEC considering events outside that period in crafting its sanction.” *See, also, In the Matter of Bernerd E. Young*, S.E.C. Release No. 4358 at 21 (March 24, 2016) (Commission Opinion) (“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.”). Accordingly, Respondents’ arguments should be rejected.

### III. 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.

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<sup>11</sup> *Vacated in part on other grounds*, S.E.C. Release No. 4871, 2018 WL 1532792 (Commission Order) (March 29, 2018), *vacated in part on other grounds*, S.E.C. Release No. 5281, 2019 WL 2870969 (Commission Order) (July 3, 2019).

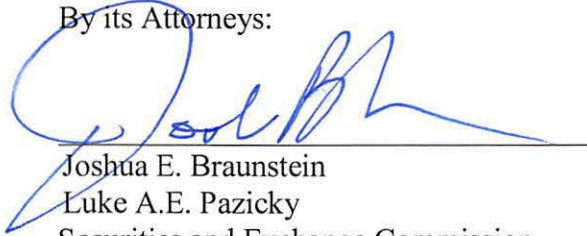
<sup>12</sup> *Subsequent settled order and recitation of procedural history*, *Timbervest, LLC*, S.E.C. Release No. 5093, 2018 WL 6722760, at \*1-3 (Dec. 21, 2018).

DATED: December 6, 2019

Respectfully submitted,

DIVISION OF ENFORCEMENT

By its Attorneys:

A handwritten signature in blue ink, appearing to read "Joshua E. Braunstein", is written over a horizontal line.

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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 Reply Brief** was served on December 6, 2019 upon the following parties as follows:

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