UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 5404

ADMINISTRATIVE PROCEEDING
File No. 3-19590

In the Matter of

THOMAS D. CONRAD, Jr.

Respondent.

MOTION BY DIVISION OF ENFORCEMENT FOR SUMMARY DISPOSITION AND FOR IMPOSITION OF REMEDIAL SANCTIONS

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The Division of Enforcement ("Division"), pursuant to Commission Rules of Practice 154 and 250(b), respectfully moves for an order of summary disposition against Respondent Thomas D. Conrad containing the following relief:

> barring Respondent from association with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization (NRSRO).

The Division seeks this relief on the grounds that there is no genuine issue with regard to any material fact, and that pursuant to Section 203(f) of the Investment Advisers Act of 1940, the Division is entitled to such relief as a matter of law. In support of its motion, the Division submits the below brief.

BRIEF IN SUPPORT OF MOTION FOR SUMMARY DISPOSTION

I. BACKGROUND

On October 22, 2019, this matter was instituted pursuant to Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act"). Respondent Thomas D. Conrad, Jr. ("Respondent" or "Conrad") was served with the Order Instituting Proceedings ("OIP") on October 26, 2019, pursuant to Rule 141(a)(2)(i) of the Commission's Rules of Practice. Conrad filed his answer to the OIP on November 11, 2019, but did not serve the Division with a copy of that answer.

This proceeding arises from a District Court action that the Commission previously filed against Conrad. Specifically, on July 15, 2016, a Complaint for Injunctive and Other Relief was filed against Conrad alleging that he fraudulent operated a $10.7 million fund of funds (the "Fund") in violation of Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder; Section 17(a) of the Securities Act of 1933 ("Securities Act"); and Sections 206(1), 206(2) and 206(4) of the Advisers Act and Rule 206(4)-8 thereunder. *See* Exhibit A (Complaint). The Complaint alleged that, from 2010 through late 2014, Conrad directed preferential redemptions and other disbursements out of the Fund to himself, his son, extended family, and certain favored investors, while representing to other investors that redemptions were suspended. The Complaint further alleged

that Conrad failed to disclose to investors certain fees that he received for his purported management of the Fund and related conflicts of interest, and failed to disclose his disciplinary history, including a broker-dealer industry bar. *Id.*

On January 17, 2019, the District Court entered summary judgment in favor of the Commission on its claims arising under Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, Section 17(a) of the Securities Act and Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder. *See* Exhibit B (Summary Judgment Order). On September 30, 2019, the District Court entered a final judgment against Conrad permanently enjoining him from future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, Section 17(a) of the Securities Act and Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder, as well as imposing a civil penalty of $327,500. *See* Exhibit C (Final Judgment).

II. STANDARD OF REVIEW

Rule 250(b) of the Commission's Rules of Practice provides that a hearing officer may grant a motion for summary disposition if there is no genuine issue with regard to any material fact and the party making the motion is entitled to summary disposition as a matter of law.

III. NO GENUINE ISSUE OF MATERIAL FACT EXISTS IN THIS MATTER AND THE DIVISION IS ENTITLED TO SUMMARY DISPOSITION AS A MATTER OF LAW

This administrative proceeding was instituted pursuant to Section 203(f) of the Advisers Act based on the District Court's order finding that Respondent had willfully violated the securities law. Section 203(f) of the Advisers Act provides, in relevant part, that the Commission may censure, place limitations on, suspend, or bar from association any person that has willfully violated any provision of the Securities Act or the Exchange Act. The District Court found that Conrad had violated both the Securities Act and the Exchange Act by failing to disclose his prior disciplinary history to investors and by engaging in preferential redemptions to himself and certain preferred investors, including members of Conrad's family. *See* Exhibit B. Respondent's Answer does not raise any genuine issue as to any material fact regarding the District Court's summary judgment ruling against him. For the reasons set forth in the District Court's order, the Division is entitled to the relief it seeks as a matter of law.

In its motion for summary judgment, the Commission argued that Conrad's failure to disclose the fact that the Commission had imposed a broker-dealer bar on Conrad arising out of a 1971 disciplinary action was a material omission in violation of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, Section 17(a) of the Securities Act. In concluding that the Commission was entitled to

summary judgment on its claim that Conrad had committed fraud by failing to disclose that he had been barred by the Commission from associating with a broker-dealer, the District Court found that Conrad admitted that he did not disclose his prior disciplinary history and that the nondisclosure "was material as a matter of law because [he] had a duty to disclose it." The Court found the omission material because Conrad had touted his professional experience without disclosing the fact that he had faced "serious discipline from the regulating body." *See* Exhibit B at 11 & 16-18.

The Commission also argued that Conrad had violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, Section 17(a) of the Securities Act, and Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder by making material misrepresentations about the Fund's redemption practices. The District Court found that the Commission was entitled to summary judgment because Conrad had engaged in fraudulent redemption practices for years. Specifically, the Court concluded that "over the course of many years, Defendants repeatedly made material misrepresentations regarding the redemption practices of the funds to actual and potential investors in email communications, investor facts sheets, and other offering memoranda." *Id.* at 46. "Conrad both supported statements regarding redemptions with specific statements of fact that were false and also told potential investors that they would be able to withdraw funds within 60 days or

sooner when it was not reasonable to believe such a projection due to long-outstanding redemptions requests." *Id.* at 38.

Pursuant to Section 203(f) of the Advisers Act, Conrad should be barred from association with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization (NRSRO). Before imposing such a bar, the Commission or the administrative law judge must "review each case on its own facts to make findings regarding the respondent's fitness to participate in the industry in the barred capacities," and the decision "should be grounded in specific findings regarding the protective interests to be served by barring the respondent and the risk of future misconduct." *Ross Mandell*, Exchange Act Release No. 71668, 2014 WL 907416 at *2 (Mar. 7, 2014) (internal quotation marks omitted).

There are several well-recognized factors that are to be considered in determining the appropriate remedy in the public interest. Those factors are: (1) the egregiousness of the Respondent's actions; (2) the isolated or recurrent nature of the infractions; (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 their conduct; and (6) the likelihood that the Respondent's occupation will present opportunities for future violations. *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979); *In the Matter of Bernath*, Initial Decision Release

No. 993 at 4, 2016 WL 1319539, at *4 (April 4, 2016) (applying *Steadman* factors to determine whether a bar was in the public interest, in a case where sanctions were imposed by summary disposition). The Commission also considers the age of the violation, the degree of harm to investors and the marketplace resulting from the violation, and the deterrent effect of administrative sanctions. *Bernath*, 2016 WL 1319539, at *4, *citing In the Matter of Schield Mgmt. Co.*, Exchange Act Release No. 53201, 2006 SEC LEXIS 195, at *35-36 (Jan. 31, 2006) (revoking adviser's registration and barring majority owner from association).

Although no one factor is dispositive in determining the appropriate relief in the public interest, the record in the District Court action establish the presence of each of the six *Steadman* factors, as well as each of the three additional factors considered by the Commission.

Here, there can be little question that the conduct at issue was egregious, repeated and involved a high degree of scienter. As found by the District Court, from 2010 through at least 2014, Conrad directed preferential redemptions and other disbursements out of the Fund to himself, his family members and certain favored investors, while representing to other investors that redemptions were suspended. Conrad also induced numerous individuals to invest in the Fund by failing to disclose his disciplinary history, including a broker-dealer industry bar. *See* Exhibit B at 11, 13-18, 35-46.

Further, Conrad has made no assurance against future violations and has failed to recognize the wrongful nature of his conduct. In fact, he is a recidivist securities violator, and in the District Court litigation, he justified his fraudulent conduct by stating that he was entitled to do whatever he chose to do regarding the Fund. Conrad also continued to solicit investors during the District Court litigation without disclosing his disciplinary history or the fact that redemptions were frozen. Conrad has shown a lack of candor and lack of recognition of his wrongdoing. *See* Exhibit C at 6-8, 15-19.

Finally, the violations are sufficiently recent to merit the requested sanctions. Conrad continued to solicit investors into at least 2018 without disclosing his disciplinary history or the fact that he was engaging in preferential redemptions. *Id.* at 6-8. At the time of those solicitations, Conrad was fully aware of the allegations in the Commission's complaint, which was filed in District Court in July 2016. *See* Exhibit A. The final judgment enjoining Conrad from future violations of the securities laws was entered against him on September 2019 2018. *See also* Exhibit C. The Commission instituted this follow-on action on October 22, 2019.

IV. CONCLUSION

For the reasons set forth herein, the Division respectfully requests that the Court grant its Motion for Summary Disposition and impose the relief requested by the Division.

Dated: December 5, 2019

Respectfully submitted,

Kristin W. Murnahan

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CERTIFICATE OF SERVICE

I certify that on December 5, 2019, I caused the foregoing Division of Enforcement's Motion for Summary Disposition and for Imposition of Remedial Sanctions, to be served on the following person by the method of delivery indicated below:

VIA UPS, Facsimile and email:
Vanessa A. Countryman
Acting Secretary
U.S. Securities and Exchange Commission
100 F Street N.E.
Washington, DC 20549-1090

VIA UPS
Mr. Thomas D. Conrad, Jr.
[redacted]
Sorrento, FL[redacted]

Respectfully submitted,

Kristin W. Murnahan

Kristin W. Murnahan
Senior Trial Counsel

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. THOMAS D. CONRAD, JR., STUART P. CONRAD, FINANCIAL MANAGEMENT CORPORATION, and FINANCIAL MANAGEMENT CORPORATION, S.R.L., Defendants	:	Civil Action No. 1:16-CV-_____-___

COMPLAINT

Plaintiff Securities and Exchange Commission ("SEC" and "Commission"), hereby files this Complaint alleging the following:

Overview

1. This matter concerns the fraudulent operation of a $10.7 million fund of funds by Thomas D. Conrad, Jr. ("Conrad"), a recidivist securities violator, and one of his sons, Stuart P. Conrad ("Stuart Conrad"). During different periods beginning in 1994, two entities controlled by Conrad, Financial Management

Corporation ("FMC") and Financial Management Corporation S.R.L. ("FMC Uruguay"),were the general partners of, and investment advisers to, the World Opportunity Master Fund, L.P. ("WOF Master") and its feeder funds, World Opportunity Fund, L.P. ("WOF"), World Opportunity Fund (BVI) Ltd. ("BVI"), and World Fund II, L.P. ("World Fund II").

2. From 2010 through late 2014, Conrad directed preferential redemptions and other disbursements out of WOF Master and its feeder funds to himself, his son (defendant Stuart Conrad), extended family, and certain favored investors, while representing to other investors that redemptions were suspended. Conrad also failed to disclose to investors certain fees that he received for his purported management of the funds and related conflicts of interest, and failed to disclose his disciplinary history, including a broker-dealer industry bar.

3. Stuart Conrad, an officer of both FMC and FMC Uruguay, aided and abetted Conrad's fraud.

Jurisdiction and Venue

4. The Commission brings this action pursuant to Sections 20 and 22 of the Securities Act of 1933 ("Securities Act") [15 U.S.C. §§ 77t and 77v], Sections 21(d), and 21(e) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78u(d) and 78u(e)], and Section 214(a) the Investment Advisers Act of

1940 ("Advisers Act") [15 U.S.C. § 80b-14(a)] to enjoin Defendants from engaging in the transactions, acts, practices, and courses of business alleged in this Complaint, and transactions, acts, practices, and courses of business of similar purport and object, for civil penalties, and for other equitable relief.

5. This Court has jurisdiction over this action pursuant to Section 22 of the Securities Act [15 U.S.C. § 77v], Sections 21(d), 21(e), and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), and 78aa], and Section 214(a) of the Advisers Act [15 U.S.C. § 80b-14(a)].

6. Defendants, directly and indirectly, made use of the mails, the means and instruments of transportation and communication in interstate commerce, and the means and instrumentalities of interstate commerce in connection with the transactions, acts, practices, and courses of business alleged in the Complaint.

7. Venue is proper because certain of the transactions, acts, practices, and courses of business constituting violations of federal securities laws occurred in the Northern District of Georgia and two of the Defendants reside in the District and resided in this District at the time of the events alleged herein.

8. Defendants, unless restrained and enjoined by this Court, will continue to engage in the transactions, acts, practices, and courses of business

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

SECURITIES AND EXCHANGE COMMISSION,	:	
Plaintiff,	:	Civil Action No.
v.	:	1:16-CV-_____-___
THOMAS D. CONRAD, JR., STUART P. CONRAD, FINANCIAL MANAGEMENT CORPORATION, and FINANCIAL MANAGEMENT CORPORATION, S.R.L.,	:	
Defendants	:	

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6. Defendants, directly and indirectly, made use of the mails, the means and instruments of transportation and communication in interstate commerce, and the means and instrumentalities of interstate commerce in connection with the transactions, acts, practices, and courses of business alleged in the Complaint.

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8. Defendants, unless restrained and enjoined by this Court, will continue to engage in the transactions, acts, practices, and courses of business

alleged in this Complaint, and in transactions, acts, practices, and courses of business of similar purport and object.

The Defendants

9. Thomas D. Conrad, Jr., age 85, is the owner and controlling person of Defendants FMC and FMC Uruguay. During substantially all of the events in questions, he resided in Alpharetta, Georgia. He currently resides in both Alpharetta and Uruguay. In 1971, the Commission barred Conrad from association with any broker or dealer, and revoked the registration of Conrad & Company, Inc., a broker-dealer which Conrad controlled, finding Conrad "unfit for assuming any proprietary or supervisory role with a broker-dealer . . . of engaging in the securities business in any capacity." In the Matter of Thomas D. Conrad, Jr., et al. Admin. Proc. No. 3-2338 (Opinion of the Commission, December 14, 1971).

10. Stuart Paul Conrad, age 55, is a son of Conrad and a resident of Alpharetta, Georgia. He is a vice president and member of the Board of Directors of FMC and FMC Uruguay, and a portfolio manager for WOF Master.

11. Financial Management Corporation ("FMC") is a Maryland corporation organized by Conrad in 1965 that acted as the general partner and unregistered investment adviser for the hedge funds operated by Conrad under the

World Opportunity Fund name, including WOF and its successor, World Fund II, during most of the relevant time period.

12. Financial Management Corporation S.R.L. ("FMC Uruguay") is a Uruguayan entity operated by Conrad. In 2014, FMC Uruguay assumed FMC's role as general partner and investment adviser to the World Opportunity feeder funds.

Related Persons and Entities

13. World Opportunity Master Fund, L.P. ("WOF Master") is the master fund in the WOF master-feeder structure. WOF Master was formed by Conrad under the laws of the British Virgin Islands in 2007, began operations in 2008, and became a Nevada limited partnership in 2012.

14. In a master-feeder structure, investors invest in a feeder fund, which in turn invests its assets in the master fund. The master fund makes all portfolio investments and conducts trading activity, while fees are typically payable at the feeder fund level.

15. World Opportunity Fund, L.P. ("WOF") is a Delaware limited partnership established, under a different name, in 1994 and is one of the feeder funds for WOF Master.

16. World Fund II, L.P. ("World Fund II") is a Delaware limited partnership established in 2011 for all new investors in the World Opportunity Funds other than those holding retirement accounts and is one of the feeder funds for WOF Master.

17. World Opportunity Fund (BVI) Ltd. ("BVI") is a British Virgin Islands entity that was established in 2008 to hold individual retirement accounts and was, until 2014, one of the feeder funds for WOF Master.

Facts

A. Conrad Creates Four Hedge Funds

18. This is Conrad's second appearance in an SEC enforcement action.

19. After being barred from association with any registered broker-dealer in 1971, Conrad has continued in the securities business in an unregistered capacity.

20. During the period described herein, Conrad created at least four hedge funds, WOF, WOF Master, World Fund II, and BVI. Investors in the feeder funds received limited partnership interests in those funds.

21. Conrad created WOF in 1994. Calling it a "fund of funds," he invested mostly in a variety of international private equity and hedge funds. Between 1994 and 2008, WOF was Conrad's only hedge fund.

22. In 2008, Conrad created WOF Master (a British Virgin Islands company) and began using WOF, his first hedge fund, as a feeder fund into the WOF Master fund.

23. Also in 2008, Conrad created BVI as a separate feeder fund to accept investment of retirement assets. As with WOF, all of the money that Conrad raised from investors in BVI was invested in WOF Master.

24. In 2011, Conrad created the third of his feeder funds, World Fund II, after WOF was sued by a court-appointed receiver in connection with WOF's investment in Valhalla Investment Partners, LP ("Valhalla"), a Ponzi scheme.

25. Specifically, between 2001 and 2005, Conrad invested $1.7 million of WOF's assets in Valhalla, and withdrew $4 million, including false profits of approximately $2.3 million.

26. In 2010, WOF was sued by the court-appointed receiver for Valhalla and, in 2013, an arbitrator ordered WOF to repay the $2.3 million. WOF fully paid this debt to the receiver in September 2014.

27. Conrad created World Fund II purportedly to segregate investments from new investors from investments in WOF and BVI, which were impacted by the $2.3 million payment to the Valhalla Receiver.

28. Since satisfying WOF's obligation to the Receiver, Conrad has moved all investors in WOF into World Fund II, and moved all retirement assets of BVI into WOF, leaving no assets in BVI.

29. Currently, therefore, there are two active feeder funds: WOF, which holds retirement assets, and World Fund II, which holds non-retirement assets. Each feeder fund is invested 100 percent in WOF Master.

30. As of November 2012, there were 44 limited partners invested in WOF, which had a purported portfolio value of $5.7 million.

31. As of November 2012, there were 48 limited partners invested in World Fund II, which had a purported portfolio value of $5 million.

32. WOF, WOF Master, World Fund II, and BVI are, and were during all times relevant hereto, "pooled investment vehicles" as that term is defined in the Advisers Act.

33. The interests WOF, WOF Master, World Fund II, and BVI that Conrad offered and sold were securities as defined in the Securities Act, the Exchange Act, and the Advisers Act.

B. Conrad Creates and Controls the Hedge Funds' Advisers

34. Conrad also created and controlled two other entities, FMC and FMC Uruguay, which were the general partner for each fund and acted as an unregistered investment adviser to those funds during the events alleged herein.

35. Before 2014, FMC was the company through which Conrad made investment decisions for the feeder funds and WOF Master. Since 2014, FMC Uruguay has assumed the role previously played by FMC.

36. Through FMC and FMC Uruguay, Conrad made all investment decisions for WOF, WOF Master, World Fund II, and BVI.

37. Conrad's son, Stuart Conrad, serves as vice president and director of FMC and FMC Uruguay and a portfolio manager for WOF Master.

38. In addition to his work for FMC and FMC Uruguay, Stuart Conrad owns and operates Advanced Image Resources, Inc. ("AIR"), a Georgia corporation that produces environmentally friendly printer toner and other products.

39. FMC and FMC Uruguay disclosed to investors that they charged each fund an annual management fee ranging between 1.15 percent and 2.18 percent of the fund's total assets.

40. Each year, FMC and FMC Uruguay were also entitled to receive certain performance allocations if the funds' performances exceeded certain benchmarks.

C. Conrad Misrepresents and Omits Material Facts

1. Misrepresentations and Omissions Regarding Conrad's Compensation and Conflict of Interest

41. In January 2013, Conrad, without any disclosure to investors or prospective investors, arranged to increase his compensation from WOF Master by appointing himself to be a sub-manager, for a fee, for approximately a third of WOF Master's assets. This fee was in addition to the fees disclosed to investors.

42. In connection with appointing himself a sub-manager, Conrad unilaterally decided to pay himself an undisclosed fee of one percent per year, on top of the one percent yearly management fee and .18 percent administrative fee that investors already paid annually.

43. Conrad's scheme to siphon off approximately $50,000 per year through the undisclosed fee made the statements in the funds' offering memoranda and marketing materials regarding adviser compensation materially false and misleading.

44. In addition, Conrad's failure to disclose that he was taking additional amounts out of investors' pockets was a material omission.

45. Because FMC and FMC Uruguay were the general partners for the feeder funds, and because Conrad controlled FMC and FMC Uruguay, Conrad alone evaluated and selected sub-managers for WOF Master's assets.

47. A conflict of interest existed because Conrad, as head of FMC and FMC Uruguay, represented the interests of the feeder funds and WOF Master, but also had a personal interest in awarding the sub-manager business to himself.

48. That conflict of interest should have been, but was not, disclosed to investors and prospective investors.

2. Failure to Disclose Conrad's Disciplinary History

49. In the "Management" section of offering memoranda for World Fund II, dated January 2011 and January 2013, Conrad represented that he managed the investment portfolio of a non-profit organization since 1965.

50. In another document, a disclosure brochure for the World Fund II dated approximately January 2012, Conrad touted that FMC has been "managing wealth since 1965" and related that he has held a seat on the Philadelphia-Baltimore-Washington Stock Exchange.

51. WOF Master marketing materials from 2014 also provided a history of Conrad's background, including his founding and operation of Conrad and Company, a registered broker-dealer, beginning in 1965.

52. Between at least December 2011 through July 2014, Conrad also distributed a series of "Investor Fact Sheets," mostly in connection with soliciting investors for World Fund II. The Investor Fact Sheets list some of Conrad's career accomplishments going back to the 1960s.

53. Conrad, FMC, and FMC Uruguay prepared and distributed these marketing materials to investors and prospective investors in connection with the offer and sale interests in these funds.

54. On information and belief, in face-to-face and telephonic pitches to prospective investors, Conrad, FMC, and FMC Uruguay described Conrad's experience as they were detailed in the above-mentioned offering memoranda and marketing materials.

55. In 2013, a prospective investor who eventually invested $1 million into World Fund II and BVI, met with Conrad and asked him whether Conrad had any skeletons in his closet.

56. Conrad denied "skeletons in his closet" and did not disclose his bar from association with any broker-dealer or the Commission's finding that he was unfit to engage in the securities industry in any capacity.

57. Neither in the above-referenced offering memoranda and investor fact sheets, nor in meetings with prospective investors did Conrad disclose that the SEC (a) barred him from association with any broker-dealer, (b) revoked the registration of the broker dealer for which Conrad was the majority owner (Conrad &Company, Inc.), and (c) found that Conrad was unfit to engage in the securities

business in any capacity. Nor was it disclosed that the Philadelphia-Baltimore-Washington Exchange suspended Conrad for three months in March 1970.

58. The omission of Conrad's disciplinary history was particularly material given that the Commission, in its order against Conrad, opined that "(t)he record amply demonstrates not only Conrad's unfitness for assuming any proprietary or supervisory role with a broker-dealer, but for engaging in the securities industry in any capacity. The numerous violations and the supervisory failure found with respect to him are compounded by the lack of candor he displayed in these proceedings."

59. Additionally, the Investor Fact Sheets were misleading in that they provided the historical positive performance history of certain investments, such as soybean farms and precious metals, before such investments were actually acquired by World Fund II. Moreover, in a section describing the six year performance history of current fund investments, the fact sheet from July 2014 gives World Fund II's weighted average performance in 2009 and 2010, although the fund was not established until 2011.

60. Finally, the Investor Fact sheets misidentified a third party accountant as an "auditor" when the accountant never actually audited the financials statements of the funds.

61. Subsequently, in 2014, Conrad and FMC Uruguay retained an accountant to actually audit WOF Master's financial statements for the year 2013.

62. That auditor stated that its opinion was subject to possible adjustments for (1) an inability to verify the fair value of certain investments and limited partnerships comprising 17 percent of WOF Master's total assets, (2) the lack of third party confirmation to verify the existence of a "Basket of Metals" purportedly worth $88,515, (3) the status of Conrad as principal of the general partner and custodian in his own name of WOF Master's investments in metal and land, and (4) the lack of an audit of WOF, which comprised 36 percent of the partner's capital.

3. Failure to Disclose Conrad's Transfers to His Family Members

63. Conrad alone decided how to spend the investor assets invested through the feeder funds into WOF Master.

64. On two occasions, Conrad chose to use investor funds to directly benefit members of his family, but did not disclose this to investors or prospective investors.

65. Specifically, in February 2010, Conrad used investor funds to pay approximately $18,000 in credit card bills incurred by his daughter-in-law. Conrad paid the money from the WOF Master account in return for a promise to repay the money with 12 percent interest. In 2012, Conrad arranged for FMC to purchase the loan from WOF Master at face value and to remove it from the latter's books as an undesirable miscellaneous item. This "loan" was not disclosed to investors.

66. In July 2013, Conrad allowed his son, Dale Conrad, who sometimes held the title of "fund administrator" to write himself a $26,500 check from the WOF Master account for the purchase of a truck. Dale repaid the money two months later, but paid no interest on the use of the $26,500. This "loan" was not disclosed to investors.

4. Failure to Disclose Conrad's Titling Fund Assets in his Personal Name

67. During the relevant period, Conrad used investor funds to purchase two soybean farms in Uruguay.

68. Rather than title the soybean farms in the name of WOF Master, Conrad took title to the farms personally.

69. Similarly, Conrad used investor funds to purchase precious metals worth approximately $88,000, buying them in his own name rather than in the name of WOF Master.

70. In none of the offering memoranda or marketing materials does Conrad or FMC disclose that the Conrad will hold title personally to assets purchased with investor funds.

D. Defendants' Fraudulent Redemption Practices

71. In November 2008, Conrad sent a notice to investors that FMC was temporarily suspending "all withdrawals, redemptions and termination of capital accounts in the Fund."

72. Conrad blamed the suspension on the then-current global market crisis as well as a cash and liquidity problem arising from the calling of a $17 million line of credit.

73. By mid-2012 approximately 29 investors were seeking to redeem some or all of their investment in Conrad's funds.

74. In an email communication to investors dated December 2008, Conrad wrote that FMC "cannot disburse any funds to partners unless all are treated equally."

75. Neither in the notice of suspension nor afterwards did Conrad or FMC notify investors that they would or did grant exceptions to the suspension, thereby deviating substantially from the "all are treated equally" representation.

76. Secretly, Conrad excepted himself and FMC from the redemption restriction, redeeming roughly $2 million of FMC's investment in the funds for his personal benefit.

77. Conrad used significant amounts of the cash he received from the FMC redemptions to, among other things, pay his $180,000 per year salary, pay his wife $72,000 per year, and make a $100,000 down payment on an airplane.

78. On a separate occasion in 2012, Conrad redeemed $24,000 from his personal investment in the funds, again for a down payment on an airplane. The funds were returned a few days later when the planned purchase fell through.

79. Like FMC and like his father, Stuart Conrad benefitted from undisclosed redemptions from the funds while other investors' requests for redemption were rejected.

80. Stuart Conrad received $160,000 from the funds in 2010 alone, usually in increments of $15,000.

81. In 2011, Stuart Conrad received another $30,000 in payments from FMC.

82. In 2012, Conrad redeemed $15,000 from his WOF Master account and transferred the cash directly to Stuart Conrad.

83. In April 2012, FMC redeemed $25,000 from its WOF Master account and paid the funds to AIR, a company owned by Stuart Conrad.

84. During 2013 and the first six months of 2014, WOF Master made ten payments totaling $214,000 to both Stuart Conrad and AIR.

85. Cumulatively, between 2009 and 2014, Stuart Conrad received, either directly or indirectly, approximately $444,000 in redemptions from his WOF Master investments or redemptions from the WOF Master investments of Conrad and/or FMC.

86. At the time of each of the redemptions and receipts outlined above, Stuart Conrad was a Director of FMC and the funds.

87. At the time of each of the redemptions and receipts outlined above, Stuart Conrad knew that Conrad had notified all investors that all redemptions requests would be suspended.

88. At the time of each of the redemptions and receipts described above, Stuart Conrad knew that Conrad and FMC had pledged to investors that FMC could "not disburse any funds to partners unless all are treated equally."

89. At the time of each of the redemptions and receipts outlined above, Stuart Conrad knew that the money he received came from redemptions of either his, his father's, or FMC's interest in the funds.

90. At the time of each of the redemptions and receipts outlined above, Stuart Conrad knew that his receipt of funds was a deviation from the policy he had disclosed to investors and which purportedly applied to all investors.

91. At the time of each of the redemptions and receipts outlined above, Stuart Conrad knew that neither FMC, Conrad, nor he were disclosing to investors or prospective investors that Stuart Conrad received money from fund redemptions when other investors were denied such redemptions.

92. Beyond the Conrad family and its associated private business ventures, Conrad also gave favored investors in the funds exceptions to the redemption restrictions.

93. In June 2013, WOF Master loaned $20,000 to Investor A, an investor in WOF Master and the co-owner of Stuart Conrad's business, AIR.

94. Although Conrad claimed that the loan to Investor A was in lieu of a redemption that Gandolfi had requested, when that loan went unpaid, it was resolved through redemption of Gandolfi's investment in the funds.

95. In May 2012, Investor B, an investor in the funds, sued FMC on behalf of a trust for which he was the trustee. FMC settled the lawsuit with a payment of $725,000 in May 2013, redeeming the investor's interest in the funds to make the settlement payment.

96. Another investor in the funds, a Family Limited Partnership, had requested redemption of its investment for many months preceding 2013.

97. Rather than meet those redemption requests as it met the requests of all other investors (with a denial), Conrad entered into an agreement with the Family Partnership whereby Conrad allowed redemption of the Family Partnership's interest in the funds, with the proceeds paid into a separate account that Conrad managed.

COUNT I – FRAUD

Violations of Section 17(a)(1) of the Securities Act [15 U.S.C. § 77q(a)(1)]

(Conrad, FMC, and FMC Uruguay)

98. Paragraphs 1 through 98 are hereby re-alleged and are incorporated herein by reference.

99. Defendants Conrad, FMC, and FMC Uruguay, in the offer and sale of securities described herein, by the use of the means and instruments of transportation and communication in interstate commerce and by use of the mails, directly and indirectly, employed devices, schemes, and artifices to defraud, all as more particularly described above.

100. Defendants Conrad, FMC, and FMC Uruguay knowingly, intentionally, and/or recklessly engaged in the aforementioned devices, schemes and artifices to defraud, made untrue statements of material facts, and omitted to state material facts, and engaged in fraudulent acts, practices and courses of business. In engaging in such conduct, Defendants acted with scienter, that is, with intent to deceive, manipulate or defraud or with severely reckless disregard for the truth.

101. By reason of the foregoing, Defendants Conrad, FMC, and FMC Uruguay, directly and indirectly, have violated and, unless enjoined, will continue to violated Section 17(a)(1) of the Securities Act [15 U.S.C. § 77a(q)].

COUNT II – FRAUD

Violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. §§ 77q(a)(2) and 77q(a)(3)]

(Conrad, FMC, and FMC Uruguay)

102. Paragraphs 1 through 97 are hereby re-alleged and are incorporated herein by reference.

103. Defendants Conrad, FMC, and FMC Uruguay, in the offer and sale of securities described herein, by the use of the means and instruments of transportation and communication in interstate commerce and by use of the mails, directly and indirectly:

a. obtained money and property by means of untrue statements of material fact and omissions to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and

b. engaged in transactions, practices and courses of business which would and did operate as a fraud and deceit upon the purchasers of such securities,

all as more particularly described above.

104. By reason of the foregoing, the Defendants Conrad, FMC, and FMC Uruguay, directly and indirectly, violated Sections 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. §§ 77q(a)(2) and 77q(a)(3)].

COUNT III – AIDING AND ABETTING FRAUD

Aiding and Abetting Violations of Sections 17(a)(1)and (3) of the Securities Act [15 U.S.C. § 77q(a)(1), (3)]

(Stuart Conrad)

105. Paragraphs 1 through 97 are hereby re-alleged and are incorporated herein by reference.

106. Defendant Stuart Conrad aided and abetted the violations of Section Sections 17(a)(1) and (3) of the Exchange Act [15 U.S.C. §§ 77q(a)(1), (3)] by Conrad, FMC, and FMC Uruguay by knowingly or recklessly providing substantial assistance to these three defendants who, in the offer and sale of the securities described herein, by the use of means and instruments of transportation and communication in interstate commerce and by use of the mails, directly and indirectly:

a. employed devices, schemes and artifices to defraud purchasers of such securities; and

b. engaged in transactions, practices and courses of business which would and did operate as a fraud and deceit upon the purchasers of such securities,

all as more particularly described above.

107. By reason of the foregoing, Defendant Stuart Conrad, directly and indirectly, aided and abetted and, unless enjoined, will continue to aid and abet violations of Section 17(a)(1) and (3) of the Securities Act [15 U.S.C. §§ 77q(a)(1),(3)].

COUNT IV – FRAUD

Violations of Section 10(b) of the Exchange Act
[15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5]

(Conrad, FMC, and FMC Uruguay)

108. Paragraphs 1 through 97 are hereby re-alleged and are incorporated herein by reference.

109. Defendants Conrad, FMC, and FMC Uruguay, in connection with the purchase and sale of securities described herein, by the use of the means and instrumentalities of interstate commerce and by use of the mails, directly and indirectly:

a. employed devices, schemes, and artifices to defraud,

b. made untrue statements of materials fact(s) and omitted to state material fact(s) necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

c. engaged in acts, practices, and courses of business which operated and would operate as a fraud or deceit upon persons, all as more particularly described above.

110. Defendants Conrad, FMC, and FMC Uruguay knowingly, intentionally, and/or recklessly engaged in the aforementioned devices, schemes and artifices to defraud, and engaged in fraudulent acts, practices and courses of business. In engaging in such conduct, Defendants acted with scienter, that is, with intent to deceive, manipulate or defraud or with a severely reckless disregard for the truth.

111. By reason of the foregoing, Defendants Conrad, FMC, and FMC Uruguay, directly and indirectly, have violated and, unless enjoined, will continue to violate Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

COUNT V – AIDING AND ABETTING FRAUD

Aiding and Abetting Violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5(a) and (c) thereunder [17 C.F.R. § 240.10b-5(a), (c)]

(Stuart Conrad)

112. Paragraphs 1 through 97 are hereby re-alleged and are incorporated herein by reference.

113. Defendant Stuart Conrad aided and abetted Defendants Conrad's, FMC's, and FMC Uruguay's violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5(a) and (c) thereunder [17 C.F.R. § 240.10b-5(a), (c)] by knowingly or recklessly providing substantial assistance to these defendants, who, in connection with the purchase and sale of securities described herein, by the use of the means and instrumentalities of interstate commerce and by use of the mails, directly and indirectly:

a. employed devices, schemes, and artifices to defraud; and

b. engaged in acts, practices, and courses of business which would and did operate as a fraud and deceit upon the purchasers of such securities, all as more particularly described above.

114. By reason of the foregoing, Defendant Stuart Conrad, directly and indirectly, aided and abetted and, unless enjoined, will continue to aid and abet

violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5(a) and (c) thereunder [17 C.F.R. § 240.10b-5(a),(c)].

COUNT VI – FRAUD

Violations of Section 206(1) of the Advisers Act
[15 U.S.C. § 80b-6(1)]

(Conrad, FMC, and FMC Uruguay)

115. Paragraphs 1 through 97 are hereby re-alleged and are incorporated herein by reference.

116. Defendants Conrad, FMC, and FMC Uruguay, acting as investment advisers, by use of the mails or means or instrumentalities of interstate commerce, directly and indirectly employed devices, schemes, and artifices to defraud clients and prospective clients, all as more particularly described above.

117. Defendants Conrad, FMC, and FMC Uruguay knowingly, intentionally, and/or recklessly engaged in the aforementioned devices, schemes and artifices to defraud. In engaging in such conduct, Defendants acted with scienter, that is, with intent to deceive, manipulate or defraud or with a severely reckless disregard for the truth.

118. By reason thereof, Defendants Conrad, FMC, and FMC Uruguay violated and, unless enjoined, will continue to violate Section 206(1) of the Advisers Act [15 U.S.C. § 80b-6(1)].

COUNT VII – FRAUD

Violations of Section 206(2) of the Advisers Act [15 U.S.C. § 80b-6(2)]

(Conrad, FMC, and FMC Uruguay)

119. Paragraphs 1 through 97 are hereby re-alleged and are incorporated herein by reference.

120. Defendants Conrad, FMC, and FMC Uruguay, acting as investment advisers, by use of the mails or means or instrumentalities of interstate commerce, directly and indirectly engaged in transactions, practices, and courses of business which operated as a fraud and deceit upon clients and prospective clients, all as more particularly described above.

121. By reason thereof, Defendants Conrad, FMC, and FMC Uruguay violated and, unless enjoined, will continue to violate Section 206(2) of the Advisers Act [15 U.S.C. § 80b-6(2)].

COUNT VIII – AIDING AND ABETTING FRAUD

Aiding and Abetting Violations of Sections 206(1) and (2) of the Advisers Act [15 U.S.C. § 80b-6(1),(2)]

(Stuart Conrad)

122. Paragraphs 1 through 97 are hereby re-alleged and are incorporated herein by reference.

123. Defendant Stuart Conrad aided and abetted Defendants Conrad's, FMC's, and FMC Uruguay's violations of Sections 206(1) and (2) of the Advisers Act by knowingly or recklessly providing substantial assistance to these defendants who, by use of the mails or means or instrumentalities of interstate commerce, directly and indirectly,

(a) employed devices, schemes, and artifices to defraud clients and prospective clients; and

(b) engaged in transactions, practices, and courses of business which operated as a fraud and deceit upon clients and prospective clients,

all as more particularly described above.

124. By reason of the foregoing, Defendant Stuart Conrad, directly and indirectly, aided and abetted and, unless enjoined, will continue to aid and abet violations of Sections 206(1) and (2) of the Advisers Act [15 U.S.C. §§ 80b-6(1),(2)].

COUNT IX – FRAUD

Violations of Section 206(4) of the Advisers Act and Rule 206(4)-8 Thereunder [15 U.S.C. § 80b-6(1) and 17 C.F.R. § 275.206(4)-8]

(Conrad, FMC, and FMC Uruguay)

125. Paragraphs 1 through 97 are hereby re-alleged and are incorporated herein by reference.

126. By engaging in the conduct described above, Defendants Conrad, FMC, and FMC Uruguay, while acting as an investment adviser to a pooled investment vehicle, by use of the means and instrumentalities of interstate commerce and of the mails,

a. made untrue statements of material fact and omitted to state material facts necessary to make statements made, in the light of the circumstances under which they were made, not misleading, to investors and prospective investors in the pooled investment vehicles; and

b. engaged in acts, practices, and courses of business that were fraudulent, deceptive, and manipulative with respect to investors and prospective investors in pooled investment vehicles,

as more particularly described above.

127. By reason thereof, Defendants Conrad, FMC, and FMC Uruguay violated and, unless enjoined, will continue to violate Section 206(4) of the Advisers Act [15 U.S.C. § 80b-6(1)] and Rule 206(4)-8 [17 C.F.R. § 275.206(4)-8] thereunder.

COUNT X – AIDING AND ABETTING FRAUD

Aiding and Abetting Violations of Section 206(4) of the Advisers Act and Rule 206(4)-8 Thereunder [15 U.S.C. § 80b-6(1) and 17 C.F.R. § 275.206(4)-8]

(Stuart Conrad)

128. Paragraphs 1 through 97 are hereby re-alleged and are incorporated herein by reference.

129. Defendant Stuart Conrad aided and abetted Defendants Conrad's, FMC's, and FMC Uruguay's violations of Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder by knowingly or recklessly providing substantial assistance to these defendants who, while acting as an investment adviser to a pooled investment vehicle, by use of the means and instrumentalities of interstate commerce and of the mails,

a. made untrue statements of material fact and omitted to state material facts necessary to make statements made, in the light of the circumstances

under which they were made, not misleading, to investors and prospective investors in the pooled investment vehicles; and

b. engaged in acts, practices, and courses of business that were fraudulent, deceptive, and manipulative with respect to investors and prospective investors in pooled investment vehicles,

as more particularly described above.

130. By reason thereof, Defendants Stuart Conrad has aided and abetted and, unless enjoined, will continue to aid and abet violations of Section 206(4) of the Advisers Act [15 U.S.C. § 80b-6(4)] and Rule 206(4)-8 [17 C.F.R. § 275.206(4)-8] thereunder.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff SEC respectfully prays for:

I.

Findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure, finding that Defendants committed the violations alleged.

II.

A permanent injunction enjoining Defendants, their agents, servants, employees, and attorneys from violating, directly or indirectly, Section 17(a) of the

Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Sections 206(1), (2) and (4) of the Advisers Act and Rule 206(4)-8 thereunder.

III.

An order requiring the disgorgement by Defendants of all ill-gotten gains, with prejudgment interest, to affect the remedial purposes of the federal securities laws.

IV.

An order pursuant to Section 20(d) of the Securities Act [15 U.S.C. §77t(d)], Section 21(d)(3) of the Exchange Act [15 U.S.C. §78u(d)(3)] and Section 209(e) of the Advisers Act [15 U.S.C. §80b-9(e)] imposing civil penalties against defendants.

V.

Such other and further relief as this Court may deem just, equitable, and appropriate in connection with the enforcement of the federal securities laws and for the protection of investors.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, the Commission demands trial by jury in this action of all issues so triable.

Dated: July 15, 2016.

Respectfully submitted,

/s/ M. Graham Loomis
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EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. THOMAS CONRAD, FINANCIAL MANAGEMENT CORPORATION, and FINANCIAL MANAGEMENT CORPORATION, S.R.L., Defendants.	:	CIVIL ACTION NO. 1:16-CV-2572-LMM

ORDER

This case is before the Court on Plaintiff's Partial Motion for Summary Judgment [64] and Defendants' Motion for Summary Judgment [68]. After due consideration, the Court enters the following Order.

I. BACKGROUND

The Court provided a detailed general background on the facts of this case in its Order on Defendants' Motions to Dismiss, which is incorporated by reference as though fully set forth herein. Dkt. No. [22] at 2-4. Pertinent to this Order, this matter arises from the allegedly fraudulent operation of a $10.7 million "fund of funds" operated by Defendant Thomas Conrad ("Conrad" or "Dr. Conrad"). Dkt. No. [1] ¶ 1. Conrad is the owner and controlling officer of Defendants Financial Management Corporation ("FMC") and Financial

Management Corporation, S.R.L. ("SRL"). Id. ¶ 9.

Plaintiff Securities and Exchange Commission ("the SEC") brought this action on July 15, 2016, charging six separate counts of fraud against Defendants and four counts of aiding and abetting fraud against former Defendant Stuart Conrad pursuant to various provisions of the Securities Act, the Securities Exchange Act, and the Investment Advisers Act. Id. The Complaint alleges that Defendant Conrad controls Defendant entities FMC and SRL, and together these Defendants fraudulently sold and redeemed interests in hedge funds they operate, including World Opportunity Fund, L.P. ("WOF")[1], World Opportunity Master Fund, L.P. ("WOF Master"), World Fund II, L.P. ("World Fund II") and World Opportunity Fund (BVI) Ltd. ("BVI") (collectively, "the funds"). Id. ¶ 1. WOF, World Fund II, and BVI are the feeder funds into WOF Master, although only WOF and World Fund II are currently active feeder funds since all BVI investors were moved into WOF. Dkt. No. [67] ¶ 21. In a master-feeder structure, investors buy limited partnership interests in a feeder fund, and the feeder funds in turn invest their assets in the master fund. Dkt. Nos. [64-2] ¶ 11; [67] ¶ 11. The SEC seeks civil penalties in addition to permanent injunctive relief. Dkt. No. [1] at 33-34.

The Court dismissed all counts against Stuart Conrad on February 22,

[1] WOF was previously named GEA and CCP. Dkt. No. [67] ¶ 26. For the sake of clarity, the Court will refer to the relevant fund only as "WOF" even when discussing facts from a time when it had a different name.

2017, leaving only fraud Counts I, II, IV, VI, VII, and IX against Defendants Conrad, FMC, and SRL. Dkt. Nos. [1, 22]. Further, the Court partially dismissed certain counts insofar as they relied on allegedly fraudulent activities that either could not meet the elements of those counts or could not be attributed to Defendant SRL because they predated SRL's existence. Dkt. No. [22] at 17-18, 23-25.

As to all Defendants, Count I alleges violations of Section 17(a)(1) of the Securities Act, 15 U.S.C. § 77q(a)(1); Count II alleges violations of Sections 17(a)(2) and (3) of the Securities Act, 15 U.S.C. § 77q(a)(2), (3); Count IV alleges violations of Section 10(b) of the Securities Exchange Act, 15 U.S.C. § 78j(2)(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5; Count VI alleges violations of Section 206(1) of the Investment Advisers Act, 15 U.S.C. § 80b-6(1); Count VII alleges violations of Section 206(2) of the Investment Advisers Act, 15 U.S.C. § 80b-6(2); and Count IX alleges violations of Sections 206(4) and 206(4)-8 of the Investment Advisers Act, 17 C.F.R. § 275.206(4)-8.

All remaining counts are based on five categories of allegedly fraudulent activities underlying the counts in different configurations, and they are extant against all Defendants except where otherwise noted below. Dkt. No. [1]. These categories include: (1) failure to disclose a potential conflict of interest and

related compensation (Counts I, II, IV, VI, VII, and IX)[2]; (2) failure to disclose disciplinary history (Counts I, II, IV, and IX); (3) failure to disclose loans to family members (Counts VI, VII, and IX)[3] (4) fraudulent purchases (Counts VI, VII, and IX)[4]; and (5) fraudulent redemption practices (Counts I, II, IV, and IX).

Each of these five categories, in turn, encompasses multiple separate acts. First, the "failure to disclose conflicts and compensation" category includes allegations of Conrad's nondisclosure of his appointment as sub-manager of WOF Master in January 2013, nondisclosure of his compensation arrangement in that role, and nondisclosure of the fact that he had unilateral authority to appoint himself to the position. See Dkt. No. [1] ¶¶ 41-48. Plaintiff contends these are material conflicts of interest requiring disclosure. Id.

Second, the "failure to disclose disciplinary history" category encompasses allegations regarding World Fund II offering memoranda from January 2011 and January 2013, a World Fund II disclosure brochure from January 2012, WOF Master marketing materials from 2014, World Fund II investor fact sheets distributed between December 2011 and January 2014, and various face-to-face

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[2] All claims against Defendant SRL arising from the nondisclosure of Defendant Conrad's self-appointment as sub-manager of WOF Master and taking of additional compensation were dismissed. Dkt. No. [22] at 17-18.

[3] All claims against Defendant SRL arising from the nondisclosure of loans to family members were dismissed. Dkt. No. [22] at 17-18.

[4] All claims against Defendant SRL arising from the alleged fraudulent purchases were dismissed. Dkt. No. [22] at 17-18.

and telephonic pitches to prospective investors. Id. ¶¶ 49-58. Plaintiff alleges it was fraudulent for Defendants to tout Conrad's wealth management experience and career accomplishments going back to 1965 in these documents and conversations, while omitting a 1971 SEC opinion against Defendant Conrad barring him from associating with any securities broker or dealer.[5] This category also encompasses allegations that Defendants included certain false and misleading information in investor fact sheets regarding the historical performance of fund investments and whether the funds were audited. Id. ¶¶ 59-62.

Third, the "failure to disclose loans to family members" category includes an alleged February 2010 loan to Conrad's daughter-in-law and a July 2013 loan to Conrad's son from WOF Master fund assets. Id. ¶¶ 63-66.

Fourth, the "fraudulent purchases" category includes Defendant Conrad's alleged purchases in his own name, using fund assets, of two soybean farms in Uruguay and $88,000 worth of precious metals, neither of which was disclosed to investors. Id. ¶¶ 67-70.

Fifth, the "fraudulent redemption practices" category encompasses several

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[5] See In the Matter of Thomas D. Conrad, Jr. Margaret J. Conrad Roland L. Gonzales, Jr. Conrad & Co., Inc., File No. 3-2338, 44 S.E.C. 725, 1971 WL 120507 (Dec. 14, 1971). Defendant Conrad was the president of registered broker-dealer Conrad & Company, Inc. The Commission's decision was based on findings that Conrad willfully aided and abetted certain willful violations of securities laws committed by an assistant branch manager of Conrad & Company, Inc. and attributed to the broker-dealer itself. See id., at *1-*5.

acts between 2008 and 2013 forming part of an alleged scheme to allow redemptions and withdrawals of asset funds by friends, family members, and favored investors, while denying the redemption requests of at least 29 other investors and justifying the denials by misrepresenting that all redemptions had been suspended. Id. ¶¶ 71-97.

Plaintiff has moved for summary judgment on the following claims against the following Defendants, based on the specified underlying categories:

(1) Counts I,[6] II,[7] and IV[8]

(a) nondisclosure of conflicts and compensation (Defendants Conrad and FMC only)

(b) nondisclosure of disciplinary history (all Defendants), and

(c) fraudulent redemption practices (all Defendants);

(2) Counts VI,[9] VII,[10] and IX[11]

(a) nondisclosure of conflicts and compensation (Defendants Conrad and FMC only)

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[6] Section 17(a)(1) of the Securities Act, 15 U.S.C. § 77q(a)(1).

[7] Section 17(a)(2) and (3) of Securities Act, 15 U.S.C. § 77q(a)(2), (3).

[8] Section 10(b) of the Securities Exchange Act, 15 U.S.C. § 78j(2)(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5.

[9] Section 206(1) of the Investment Advisers Act, 15 U.S.C. § 80b-6(1).

[10] Section 206(2) of the Investment Advisers Act, 15 U.S.C. § 80b-6(2).

[11] Sections 206(4) and 206(4)-8 of the Investment Advisers Act, 17 C.F.R. § 275.206(4)-8.

(b) nondisclosure of loans to family members (Defendants Conrad and FMC only), and

(c) fraudulent redemption practices (all Defendants).

Dkt. No. [64]. The "fraudulent purchases" category is the only category of allegations not subject to Plaintiff's summary judgment motion. See id.[12] In the event the Court concludes that summary judgment is not warranted on any given count, Plaintiff asks the Court to grant partial summary judgment on specific elements of that count if the Court concludes the record supports such a finding. Id. at 20 n.8 (citing SEC v. Norstra Energy, Inc., 202 F. Supp. 3d 391, 398-99 (S.D.N.Y. 2016)).

Defendants filed a cross-motion for summary judgment on all counts. Dkt. No. [68].

II. LEGAL STANDARDS

Federal Rule of Civil Procedure 56 provides "[t]he court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a).

A factual dispute is genuine if the evidence would allow a reasonable jury to find for the nonmoving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A fact is "material" if it is "a legal element of the claim under the

[12] Plaintiff also did not move for summary judgment on Count IX as it relates to the nondisclosure of disciplinary history category. See Dkt. No. [64-1] at 22-25.

applicable substantive law which might affect the outcome of the case." Allen v. Tyson Foods, Inc., 121 F.3d 642, 646 (11th Cir. 1997).

The moving party bears the initial burden of showing the Court, by reference to materials in the record, that there is no genuine dispute as to any material fact that should be decided at trial. Hickson Corp. v. N. Crossarm Co., 357 F.3d 1256, 1260 (11th Cir. 2004) (citing Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986)). The moving party's burden is discharged merely by "'showing'—that is, pointing out to the district court—that there is an absence of evidence to support [an essential element of] the nonmoving party's case." Celotex Corp., 477 U.S. at 325. In determining whether the moving party has met this burden, the district court must view the evidence and all factual inferences in the light most favorable to the party opposing the motion. Johnson v. Clifton, 74 F.3d 1087, 1090 (11th Cir. 1996).

Once the moving party has adequately supported its motion, the non-movant then has the burden of showing that summary judgment is improper by coming forward with specific facts showing a genuine dispute. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986). There is no "genuine [dispute] for trial" when the record as a whole could not lead a rational trier of fact to find for the nonmoving party. Id. (citations omitted). All reasonable doubts, however, are resolved in the favor of the non-movant. Fitzpatrick v. City of Atlanta, 2 F.3d 1112, 1115 (11th Cir. 1993).

The same standard of review applies to cross-motions for summary judgment, but the Court must determine whether either of the parties deserves judgment as a matter of law on the undisputed facts. S. Pilot Ins. Co. v. CECS, Inc., 52 F. Supp. 3d 1240, 1242-43 (N.D. Ga. 2014) (citing Am. Bankers Ins. Grp. v. United States, 408 F.3d 1328, 1331 (11th Cir. 2005)). Each motion must be considered "on its own merits, [with] all reasonable inferences [resolved] against the party whose motion is under consideration." Id. at 1243.

III. DISCUSSION

In order to more closely track the parties' briefing and to avoid unnecessary repetition, the Court will evaluate each category of alleged fraudulent conduct rather than discussing the counts in turn. For each conduct category, the Court will review all related counts to determine whether either party is entitled to summary judgment on any count for that particular category. Further, the Court will determine whether Plaintiff is entitled to partial summary judgment on any elements of any count, even if not entitled to summary judgment on the count as a whole. See Fed. R. Civ. P. 56(a).

A. Nondisclosure of Disciplinary History and Statements Regarding Historical Performance and Auditing

Counts I, II, IV, IX against Defendants Conrad and FMC

Count I of the Complaint arises under Section 17(a)(1) of the Securities Act, making it unlawful to use interstate commerce or the mails in connection with the offer or sale of securities "to employ any device, scheme or artifice to defraud." 15 U.S.C. § 77q(a)(1). To show a violation of 17(a)(1), Plaintiff must

prove "(1) material misrepresentations or materially misleading omissions, (2) in the offer or sale of securities, (3) made with scienter." SEC v. Merch. Capital, LLC, 483 F.3d 747, 766 (11th Cir. 2007). Count II of the Complaint arises under Sections 17(a)(2) and (3) of the Securities Act, the former of which makes it unlawful to use interstate commerce or the mails in the offer or sale of any securities "to obtain money or property by means of . . . any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading[.]" 15 U.S.C. § 77q(a)(2). Section 17(a)(3) prohibits such use of interstate commerce or the mails "to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser." 15 U.S.C. § 77q(a)(3). To show a violation of either of these sections under Count II, Plaintiff must also prove Defendants made material misrepresentations or materially misleading omissions in the offer or sale of securities, but scienter is not required. Count II can be met with a showing of negligence only. Merch. Capital, 483 F.3d at 766.

Count IV of the Complaint arises under Section 10(b) of the Securities Exchange Act and Rule 10b-5 thereunder. Like Count I, Count IV requires a showing of scienter. The three subparts of Rule 10b-5 closely track the language of the three methods of mail fraud set forth in Section 17(a) of the Securities Act. For instance, like Section 17(a)(2) of the Securities Act, "Rule 10b–5[(b)] prohibits not only literally false statements, but also any omissions of material fact 'necessary in order to make the statements made, in light of the

circumstances under which they were made, not misleading.'" FindWhat Inv'r Grp. v. FindWhat.com, 658 F.3d 1282, 1305 (11th Cir. 2011) (quoting 17 C.F.R. § 240.10b–5(b)).

Notably, Rule 10b-5 "is not read literally. Instead, a defendant's omission to state a material fact is proscribed only when the defendant has a duty to disclose." Rudolph v. Arthur Andersen & Co., 800 F.2d 1040, 1043 (11th Cir. 1986). "By voluntarily revealing one fact about its operations, a duty arises for the corporation to disclose such other facts, if any, as are necessary to ensure that what was revealed is not so incomplete as to mislead." FindWhat Inv'r Grp., 658 F.3d at 1305 (internal quotations and citation omitted). A statement is misleading if "in the light of the facts existing at the time of the [statement] . . . [a] reasonable investor, in exercise of due care, would have been misled by it." Id. (citing SEC v. Tex. Gulf Sulphur Co., 401 F.2d 833, 863 (2d Cir. 1968)).

i. Disciplinary History

Defendants admit they did not disclose the prior SEC enforcement action against Defendant Conrad. Dkt. No. [68-1] at 18. However, Defendants argue the omission was not material. Id. at 18-23. A misrepresentation or omission is material under if "a reasonable [investor] would attach importance to the fact misrepresented or omitted" in making an investment decision. SEC v. Goble, 682 F.3d 934, 943 (11th Cir. 2012) (quotations and citations omitted). There must be 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." Id. at 944 n.5 (quotations and citations omitted). "[T]he relevant 'mix' of information is those facts an investor would consider when making an investment decision." Id.

The materiality requirement does not set an especially high bar, as its role in the analysis is "to filter out *essentially useless* information that a reasonable investor would not consider significant, even as part of a larger 'mix' of factors to consider in making his investment decision." Basic Inc. v. Levinson, 485 U.S. 224, 234 (1988) (emphasis added). Nonetheless, the materiality determination "requires delicate assessments of the inferences a 'reasonable shareholder' would draw from a given set of facts and the significance of those inferences to him, and these assessments are peculiarly ones for the trier of fact." TSC Indus., Inc. v. Northway, Inc., 426 U.S. 438, 450 (1976). The materiality standard is thus an objective one, based on a hypothetical reasonable investor. See Amgen, Inc. v. Conn. Retirement Plans & Tr. Funds, 568 U.S. 455, 459 (2013); SEC v. Morgan Keegan & Co., Inc., 678 F.3d 1233, 1248 (11th Cir. 2012). See also United States v. Litvak, 889 F.3d 56, 68-69 (2d Cir. 2018) (finding the testimony of an individual investor whose perception was "confused" and "incorrect" irrelevant to the objective materiality determination). Therefore, for a court to resolve the issue of materiality "as a matter of law" by summary judgment, it must find "the established omissions . . . 'so obviously important to an investor, that reasonable minds cannot differ on the question of materiality[.]'" TSC Indus., Inc., 426 U.S. at 450 (quoting Johns Hopkins Univ. v. Hutton, 422 F.2d 1124, 1129 (4th Cir.

1970)). See also Lucas v. Fla. Power & Light Co., 765 F.2d 1039, 1040 (11th Cir. 1985) ("Mixed questions of law and fact, such as questions of materiality, scienter, and reliance, involve assessments peculiarly within the province of the trier of fact").

Defendants do not dispute any of the other elements of the counts arising from this category. Dkt. Nos. [68-1] at 18-23; [66] at 19-23. Therefore, the Court will address only the parties' arguments on materiality.

a. Whether Defendants have established immateriality as a matter of law

Defendants assert this nondisclosure is not material because (1) the 1971 enforcement action did not involve fraud and stemmed from a supervisory claim about the misconduct of Defendant Conrad's supervisee; (2) the age of the decision and Defendant Conrad's subsequent accomplished career diminish the weight of the decision overall; (3) the efficacy of the 1971 decision is questionable because the SEC's ALJ proceedings are not necessarily reliable; (4) the investor testimony on which Plaintiff relies to establish the materiality of the prior enforcement action is inadmissible as self-serving and speculative; and (5) a private litigant's fraud claim advanced on the same basis was dismissed on summary judgment by another judge in this Court and Plaintiff should not be permitted to maintain a similar claim on the same facts. Dkt. No. [68-1] at 18-23.

None of these proposed premises for finding the nondisclosure immaterial meets the summary judgment standard. First, a jury could find the nondisclosure

of Defendant Conrad's disciplinary history material notwithstanding the age of the decision, the substantive differences between the wrongdoing at issue in that case and the fraud alleged here, or the reliability of an SEC ALJ proceeding generally. The undisputed facts remain that the SEC prohibited Defendant Conrad from ever again associating with a registered broker-dealer and revoked the registration of Conrad & Company, the broker-dealer Defendant Conrad controlled. Also undisputed is that these substantive disciplinary measures resulted from a finding that Conrad "willfully violated the registration provisions of the Securities Act and willfully aided and abetted [Conrad & Company's] violations of certain provisions of the Exchange Act and rules thereunder[.]" In the Matter of Thomas D. Conrad, Jr., et al., 1971 WL 120507, at *2. See also id. at *4 (explaining in greater detail the finding that Conrad willfully violated and willfully aided and abetted his broker-dealer's violations of securities laws).

Moreover, the 1971 opinion casts aspersions on Defendant Conrad's character for truthfulness and fitness to engage in the securities business generally. See id. at *5 ("The record amply demonstrates not only Conrad's unfitness for assuming any proprietary or supervisory role with a broker-dealer, but for engaging in the securities business in any capacity. The numerous violations and the supervisory failures found with respect to him are compounded by the lack of candor he displayed in these proceedings."). These findings could certainly be important or even determinative to an investor's

decision whether to invest in funds controlled and operated by Defendant Conrad.

Second, the Court must also firmly reject Defendants' argument that the decision in Savage v. Conrad, Case No. 1:14-cv-04103-ODE (N.D. Ga. Jan. 9, 2017), forecloses a finding of materiality here. That opinion turned entirely on the "reasonable reliance" element of a private litigant's fraud claim. Specifically, the Court granted summary judgment to Defendant Conrad because the plaintiff failed to show that he reasonably relied on Defendant Conrad's omission of the 1971 enforcement action in deciding whether to invest, given that an investor exercising due diligence would have discovered the disciplinary history on his own. The Court gave no other reason why summary judgment was warranted on the fraud claim related to that nondisclosure. But reasonable reliance "is not an element of an SEC enforcement action because Congress designated the SEC as the primary enforcer of the securities laws, and a private plaintiff's 'reliance' does not bear on the determination of whether the securities laws were violated, only whether that private plaintiff may recover damages." Morgan Keegan & Co., 678 F.3d at 1244. Defendants' assertion that "[t]his issue . . . has been litigated and decided in the Northern District of Georgia" is thus unpersuasive. Not one of the elements of the claims brought by Plaintiff here was litigated or decided there.

Third, Plaintiff has presented deposition and affidavit evidence from investors in the funds who state they would not have invested in the funds had the disciplinary action been disclosed—i.e., that the nondisclosure was material

to their investment decision. Dkt. No. [64-1] at 21-22 (citing Gerzanics Decl. ¶ 10, Dkt. No. [64-9] at 181-82; Scheller Decl. ¶ 6, Dkt. No. [64-9] at 210; Turner Decl. ¶ 6, Dkt. No. [64-9] at 240; Leber Decl. ¶¶ 3-5, Dkt. No. [64-10] at 104-06; Clay Dep. 25:3-14, 26:5-12, Dkt. No. [64-3] at 174-75; Burdeau Decl. ¶ 8, Dkt. No. [64-10] at 152). As noted above, Defendants contend that this testimony is inadmissible as self-serving and speculative. Even assuming for the sake of argument that Defendants are correct,[13] the content of the disciplinary opinion alone is sufficient for a jury to find the element of materiality met on the basis that any reasonable investor would have found the nondisclosure material to her decision to invest. Thus, Defendants' Motion for Summary Judgment is **DENIED** on these counts.

In response to Plaintiff's argument that materiality has been established, however, the Court finds the nondisclosure of Defendant Conrad's disciplinary history was material as a matter of law because Defendants had a duty to disclose it. It is undisputed that in written and oral pitches, prospectuses, and offering memoranda to investors in WOF, World Fund II, and BVI—all three feeder funds into WOF Master—Defendants FMC and Conrad touted Defendant Conrad's "seat on the Philadelphia-Baltimore-Washington Stock Exchange" and other wealth

[13] The Court need not and does not decide the admissibility of this testimony at this time. However, the Court notes that such testimony has been considered by other courts in determining materiality. See, e.g., Bell v. Cameron Meadows Lane Co., 669 F.2d 1278, 1282 (9th Cir. 1982).

management experience going back to 1965, while omitting that Defendant Conrad was suspended by and expelled from that very same Stock Exchange in connection with the disciplinary action by the SEC. Pl.'s Statement of Undisputed Facts ("SEC UMF"), Dkt. No. [64-2] ¶¶ 40-41, 44-47, 50-55, 57-59, 61-65, 67-73, 75-77;[14] Dkt. No. [64-5] at 219-220. See also, e.g., Dkt. Nos. [64-6] at 2-3, 17, 24; [64-8] at 45-46; [64-10] at 37-38, 186. "A duty to disclose may . . . be created by a defendant's previous decision to speak voluntarily. Where a defendant's failure to speak would render the defendant's *own* prior speech misleading or deceptive, a duty to disclose arises." Rudolph, 800 F.2d at 1043.

As already noted, materiality is a question involving assessments "peculiarly within the province of the trier of fact." Lucas, 765 F.2d at 1040. However, in light of Defendants' repeated invocations of Defendant Conrad's experience and Stock Exchange seat in their offering materials, the Court finds that reasonable minds cannot differ on the question of the materiality of the nondisclosure of Defendant Conrad's disciplinary history. See TSC Indus., Inc., 426 U.S. at 450. Those statements were material because a General Partner's wealth management experience and serious discipline from the regulating body cannot be reasonably characterized as "essentially useless" information that a reasonable investor would not consider significant. Levinson, 485 U.S. at 234. There is a substantial likelihood that a reasonable investor would attach

[14] Defendants admitted to each of these facts in whole or in substance. See Dkt. No. [67] ¶¶ 40-41, 44-47, 50-55, 57-59, 61-65, 67-73, 75-77.

importance to Dr. Conrad's experience, including his prestigious seat on the Stock Exchange, as part of the "total mix" of information considered in deciding whether to invest in the funds Dr. Conrad controlled. This is particularly true given that Dr. Conrad was the President, General Partner, and only person authorized to act on behalf of Defendant FMC, which in turn was the General Partner of WOF Master and World Fund II and the Manager of BVI. Conrad Decl., [68-2] ¶¶ 17. In other words, the statements regarding his wealth management experience and seat on the Stock Exchange were material. Goble, 682 F.3d at 943, 944 n.5. And by voluntarily using this information to persuade people to invest in the funds, Defendants created a duty to disclose Defendant Conrad's disciplinary history. Rudolph, 800 F.2d at 1043; FindWhat, 658 F.3d at 1305. See also Merch. Capital, 483 F.3d at 770-71 (finding the defendant's nondisclosure of his previous personal bankruptcy materially misleading where it "resulted from the failure of this business of which he was CEO, and which he touted in the offering materials as related and as relevant experience" in selling partnerships in his debt purchasing business). The omission of the related facts that Dr. Conrad was found to have willfully aided and abetted in an employee's fraud, barred from ever again associating with a registered broker-dealer, and ultimately expelled from the Stock Exchange in relation to the 1971 Order thus makes those statements touting Defendant Conrad's experience materially misleading as a matter of law.

Finally, it is not disputed that these statements were made using the means and instrumentalities of interstate commerce in connection with the purchase or sale of securities, and Defendants also do not refute that Plaintiff has established the scienter element of Counts I and IV or the negligence element of Count II. See Dkt. No. [67] ¶ 493; see also Dkt. Nos. [68-1] at 18-23; [66] at 19-23 (disputing only materiality). Additionally, the Court has conducted its own review of the record evidence on which Plaintiff relies to prove the remaining elements and finds that it has done so, even viewing the evidence in the light most favorable to Defendants. As such, Plaintiff is entitled to summary judgment on Counts I, II and IV insofar as those counts arise from this nondisclosure.

Plaintiff did not move for summary judgment on Count IX with respect to this nondisclosure. See Dkt. No. [64-1] at 22-25. As to all counts, Defendants sought summary judgment on the basis of the rejected argument that the nondisclosure was immaterial. Therefore, summary judgment as to Counts I, II and IV arising from Defendants' nondisclosure of Defendant Conrad's disciplinary history is **GRANTED** to Plaintiff and **DENIED** to Defendants. Further, Defendants' motion for summary judgment on Count IX as it relates to this nondisclosure is **DENIED.**

ii. Statements Regarding Historical Performance and Auditors

As noted above, this category of fraud allegations also includes Plaintiff's claims that Defendants provided misleading information and false statements in investor fact sheets. Dkt. No. [1] ¶¶ 59-62. Plaintiff does not seek summary

judgment as to the counts arising from these allegations, but Defendants do. The relevant allegations include that certain investor fact sheets (1) described the positive performance history of soybean farm and precious metal investments from years before the funds acquired those investments, (2) provided World Fund II's weighted average performance in 2009 and 2010 although that fund did not exist until 2011, and (3) identified a third-party accountant who did not actually audit the financial statements of the funds as an "auditor." Id. ¶¶ 59-60.

Defendants argue they are entitled to summary judgment on the fraud claims arising from these allegations for several reasons. First, as to the auditor claims, they argue the third-party accountant in question, Earl W. Morrow, has confirmed under oath that he was hired to be an auditor for the funds and whether or not he completed an audit "is not germane to whether he [] himself is properly identified as an auditor." Dkt. No. [68-1] at 12-13. Moreover, Defendants contend that Dr. Conrad told the limited partners that "lesser levels of audit services" were being completed, and that the Limited Partnership Agreement ("LPA") indicates that the funds' books and records "shall be reviewed, compiled, and/or audited as of the end of each fiscal year by independent Certified Public Accountants selected by the General Partner." Id. at 13. Finally, while the LPA does require the General Partner to retain someone capable of performing audits, it does not require that the person so retained actually conduct an audit as opposed to a compilation or review. Id. at 13-14. Therefore, Defendants argue Plaintiff has failed to allege a fraudulent misrepresentation or omission based on

these facts.

As for the statements in investor fact sheets about the historical performance of certain fund investments, Defendants contend that all investor fact sheets "are clear on their face that they reflect the performance of the managers presently in the Funds, and a strained reading by Plaintiff and dissatisfied investors cannot turn that into the predicate for a fraud claim." Id. at 14 (citation omitted). Defendants also note that these documents have different titles in their different iterations, but that the titles clearly refer to the performance of fund managers. Id. Therefore, Defendants argue they should be granted summary judgment on fraud Counts I, II, IV, and IX arising from the auditor and historical performance allegations.

Although Plaintiff does not seek summary judgment on these allegations, Plaintiff challenges Defendants' arguments by listing specific representations to investors that the funds' financial statements would be or had been audited, even though it is undisputed that Mr. Morrow told Dr. Conrad in the fall of 2009 that he would not be able to complete a full audit. See Dkt. Nos. [73] at 8-9; [77] ¶ 37. Among other examples, Plaintiff points to offering memoranda for WOF from July 2010 and World Fund II from January 2011 identifying Mr. Morrow as the auditor and representing that "[e]ach partner receives annual audited financial statements." Dkt. No. [73] at 9 (citing to Dkt. Nos. [64-7] at 156; [64-9] at 97). See also, e.g., Dkt. Nos. [64-4] at 54, 56; [64-6] at 24, 26 (identifying Mr. Morrow as "Auditor" underneath the "Fund Structure" heading in investor fact sheets for

WOF Master); [75-4] at 91, 92 (February and March 2010 emails from Dr. Conrad to the limited partners stating that the WOF Master "December 31 Balance Sheet is currently being audited" and "[a] 12/31/2009 Balance Sheet Audit of [WOF Master] is estimated to be distributed by our newly contracted Auditors in May 2009 [sic].").[15]

Additionally, Plaintiff argues that several aspects of the fact sheets indicate they were "designed to create the appearance of a successful seven[-]year performance history." Dkt. No. [73] at 10. For instance, a July 2013 investor fact sheet for World Fund II included a section titled the "Current Portfolio 7-year Manager's History" purportedly summarizing the returns for various investments going back to 2007, although World Fund II did not exist in 2007 and the funds did not own some of the listed investments during that period. Moreover, Plaintiff asserts it is undisputed that the fact sheet did not list the funds' underperforming or unprofitable investments. Id. (citing Pl.'s Ex. 45, Dkt. No. [64-4] at 53, and D. Conrad Dep., Dkt. No. [61] at 64:1-24).

The Court finds that, viewing the evidence in the light most favorable to Plaintiff, there is sufficient record evidence to at least create a genuine issue of

[15] It is undisputed that WOF Master was indeed audited by Baker Tilly in 2014 for the fiscal year ended December 31, 2013. Dkt. No. [74] ¶ 78. Plaintiff's "auditor" fraud claims are confined to alleged misrepresentations made between 2010 and 2012 indicating the funds were being or had been audited even though only reviews and compilations were performed between 2009 and 2012. See id. ¶¶ 76-77.

material fact as to whether (1) Defendants misrepresented to investors that the funds were being audited when they were not; (2) Defendants misrepresented the historical past performance of the funds' investments to potential investors in offering memoranda; (3) these misrepresentations were material; and (4) these misrepresentations were made with scienter.[16]

a. Defendants are not entitled to summary judgment on Plaintiff's claims related to the "auditor" representations.

Beginning with the auditor-related allegations, Defendants admit that Mr. Morrow told Dr. Conrad in the fall of 2009 that his firm could not perform an audit, and that Dr. Conrad understands the distinction between an audit, review, and compilation. Dkt. No. [77] ¶¶ 37, 39. It is also undisputed that Mr. Morrow's firm performed a review—not an audit—of WOF Master's financial statements for the fiscal year ending December 31, 2009. Id. ¶ 38. Yet Defendants admit Defendant Conrad sent emails to investors in February and March of 2010 indicating that the December 31, 2009 WOF Master balance sheet had been audited. Id. ¶¶ 41, 42. Moreover, identifying Mr. Morrow as an "Auditor" in investor fact sheets for WOF Master could mislead a reasonable investor into thinking the funds were subject to audits by Mr. Morrow. See FindWhat Inv'r Grp., 658 F.3d at 1305 (a statement is misleading if in light of the facts known at the time, a reasonable investor exercising due care would have been misled by it).

[16] It is not disputed that statements contained in the offering memoranda and investor fact sheets are made in connection with the purchase and sale of securities.

Defendants' position hinges on the fact that identifying Mr. Morrow as an "auditor" was not literally false, but it provides no answer to whether it was materially misleading. The same is true of the representations in the July 2010 and January 2011 offering memoranda that "[e]ach partner receives annual audited financial statements[,]" notwithstanding Defendants' position that the January 2013 LPA indicated such financial statements "shall be reviewed, compiled, *and/or* audited as of the end of each fiscal year . . . ." Dkt. Nos. [64-7] at 156; [64-9] at 97; [68-16] ¶ 79 (emphasis added). A reasonable juror could find these to be material misrepresentations made with scienter—that is, that Defendant Conrad must have known that making these statements presented a danger of misleading the partners into thinking that WOF Master had been audited when it had not. See SEC v. Carriba Air, Inc., 681 F.2d 1318, 1324 (11th Cir. 1982); SEC v. Southwest Coal & Energy Co., 624 F.2d 1312, 1321 n.17 (5th Cir. 1980).

b. Defendants are not entitled to summary judgment on the claims related to past performance representations.

Defendants are also not entitled to summary judgment on Plaintiff's fraud claims arising from statements in the investor fact sheets concerning past performance. Defendants admit they provided investor fact sheets to actual and prospective investors as part of their marketing materials. Dkt. No. [77] ¶ 47. The record contains World Fund II fact sheets dated December 2011, March 2013, and July 2013 including charts purporting to show the "Current Portfolio 7-Year

Manager's History." Dkt. No. [64-4] at 53, [64-6] at 23, 25. On both 2013 charts, the far-left column has a list of different entities under the header "Manager." Each entity in the list of "Managers" was a fund manager in World Fund II's current investment portfolio. The horizontal rows corresponding to each Manager date from 2007 to 2013, showing that manager's return for each year. The two columns at the far right of the chart purport to calculate the "Compounded Return" and "Annualized Return" for each manager. At the bottom of the chart on the far left, the chart provides four rows synthesizing the data from the chart entries above in different ways, including one row titled "World Fund II Weighted Average." While there is no data given for the "World Fund II Weighted Average" for 2007 or 2008, the boxes from 2009 to 2013 show a percentage for each of those years (e.g., 24% in 2009, 13.8% in 2010, -3% in 2011, and so on). Then, at the far right, the "World Fund II Weighted Average" shows a "Compounded Return" of 76% and an "Annualized Return" of 14.2% overall.

Defendants admit that World Fund II was not established until 2011. Dkt. No. [67] ¶ 16. Further, Defendants do not dispute that the funds did not own at least some of the listed investments during the seven-year period shown on the charts and that the charts omitted some of the funds' investments from that period. Dkt. No. [77] ¶ 49. Additionally, one point of dispute in this litigation is whether these charts appear to show the performance of specific fund investments rather than the performance of individual managers over the course

of those seven years. Viewing the facts in the light most favorable to Plaintiff, the Court finds a reasonable juror could find the charts materially and intentionally or recklessly misleading in this regard. For example, the 2013 charts list "FMC Managed Portfolio (Morgan Stanley)" as a "Manager." A jury could find that a reasonable investor would be misled by that notation into believing that the chart reflected the performance of World Fund II's *actual investments* in various funds and portfolios from 2007-2013, rather than the past performances of the fund's current managers only. Similarly, viewed in the light most favorable to Plaintiff, the facts could reasonably support a finding that the charts materially misrepresented the overall performance of the funds' investments by showing how the managers in the current portfolio had performed in years before they were in the World Fund II portfolio or before World Fund II even existed.

Accordingly, Defendants' motion for summary judgment as to Plaintiff's claims arising from the alleged "auditor" and historical performance misrepresentations is **DENIED.**

B. Nondisclosure of Conflicts and Compensation
Counts I, II, IV, VI, VII, IX against Defendants Conrad and FMC

Both parties seek summary judgment on the counts arising from this category.

i. Applicable law on Counts I, II, & IV

Counts I and II arise under Section 17(a) of the Securities Act, codified at 15 U.S.C. § 77q(a). Count IV arises under Section 10(b) of the Securities Exchange

Act and Rule 10b-5 thereunder, codified at 15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5, respectively.

To prevail on the Section 10(b) and 10b-5 claims set forth in Count IV, Plaintiff must show (1) a material misrepresentation or materially misleading omission, (2) made with scienter, (3) in connection with the purchase or sale of securities. Merch. Capital, 483 F.3d at 766. Counts I and II similarly require a showing of a material misrepresentation or materially misleading omission made in the offer or sale of securities. Id. Count I, arising under Section 17(a)(1) of the Securities Act, also requires a showing of scienter, but the 17(a)(2) and 17(a)(3) claims set forth in Count II require only negligence.

"Scienter may be established by a showing of knowing misconduct or severe recklessness." Carriba Air, 681 F.2d at 1324. Recklessness can be established by "a showing that the defendant's conduct was an extreme departure of the standards of ordinary care, . . . which presents a danger of misleading buyers or sellers that is either known to the defendant or is so obvious that the actor must have been aware of it." Id. (quoting Southwest Coal, 624 F.2d at 1321). "While scienter is an issue ordinarily left to a trier of fact, there are cases in which summary judgment may be appropriate." SEC v. Monterosso, 756 F.3d 1326, 1335 (11th Cir. 2014). Scienter can be established through either direct or circumstantial evidence. Id. (citing SEC v. Ginsburg, 362 F.3d 1292, 1298 (11th Cir. 2004)). For purposes of determining whether a corporate entity such as Defendant FMC acted with scienter, courts "look to the state of mind of the

individual corporate official or officials who make or issue the [fraudulent] statement (or order or approve it or its making or issuance . . .) rather than generally to the collective knowledge of all the corporation's officers and employees[.]" Southland Sec. Corp. v. INSpire Ins. Sols., Inc., 365 F.3d 353, 366 (5th Cir. 2004). See also McGee v. Sentinel Offender Servs., LLC, 719 F.3d 1236, 1245 n.9 (11th Cir. 2013) (favorably quoting the same language from Southland).

ii. Applicable law on Counts VI, VII, & IX

Counts VI, VII, and IX all arise under Section 206 of the Investment Advisers Act, dealing with fraud committed by investment advisers by use of the mails or by any means or instrumentality of interstate commerce. 15 U.S.C. § 80b-6. Section 206 "establishes federal fiduciary standards to govern the conduct of investment advisers." Transamerica Mortg. Advisors, Inc. v. Lewis, 444 U.S. 11, 17 (1979) (internal quotations and citation omitted). Because an investment adviser acts as a fiduciary to clients, the adviser has "an affirmative duty of utmost good faith, and full and fair disclosure of all material facts, as well as an affirmative obligation to employ reasonable care to avoid misleading his clients." SEC v. Capital Gains Research Bureau, Inc., 375 U.S. 180, 194 (1963) (internal quotations omitted). The Investment Advisers Act thus "reflects . . . a congressional intent to eliminate, or at least to expose, all conflicts of interest which might incline [an] investment adviser . . . to render advice which was not disinterested." Id. at 191-92.

Counts VI and VII arise, respectively, under Sections 206(1) and 206(2) of the Investment Advisers Act. Section 206(1) makes it unlawful to employ any device, scheme, or artifice to defraud, while 206(2) prohibits engaging in any transaction, practice, or course of business that operates as a fraud or deceit upon a client or prospective client. Section 206(1) requires proof of scienter, but 206(2) only requires showing of negligence. Steadman v. SEC, 603 F.2d 1126, 1134 (5th Cir. 1979). Because individual investors were not Defendants' "clients" within the meaning of this statute, these Counts apply only to Plaintiff's allegations that Defendants committed fraud on the funds, not on investors.[17] See Dkt. No. [22] at 24-25. Specifically, Counts VI and VII can be met with a showing that Defendant Conrad's self-appointment as sub-manager and extraction of an additional 1% fee from fund assets to pay himself for that position constituted a conflict of interest insofar as the appointment was not necessarily in the best interest of the funds. Id. at 25.

Count IX arises under Section 206(4) of the Investment Advisers Act, 15 U.S.C. § 80b-6(4), as well as Rule 206(4)-8 thereunder. 17 C.F.R. § 275.206(4)-8. These statutes prohibit advisers to pooled investment vehicles such as the funds from making false or misleading statements, omitting material facts, or otherwise

[17] Nonetheless, the materiality standard governing Section 206(1) fraud claims is the same as that applied to claims of fraud on individual investors—i.e., whether there is a substantial likelihood that a reasonable investor would consider the misrepresented or omitted fact important. See, e.g., ZPR Inv. Mgmt. Inc. v. SEC, 861 F.3d 1239, 1248-51 (11th Cir. 2017), cert. denied sub nom. ZPR Inv. Mgmt., Inc. v. SEC, 138 S. Ct. 756 (2018).

engaging in any act, practice, or course of business that is fraudulent, deceptive, or manipulative with regard to investors or prospective investors. Thus, this Count applies to Plaintiff's allegation that this nondisclosure operated as a fraud on individual investors. Like Section 206(2), Section 206(4) does not require scienter and can be met with a showing of negligence only.

iii. Parties' positions

Plaintiff asserts that Defendant Conrad, acting through Defendant FMC, committed violations of the Securities Exchange Act, Securities Act, and Investment Advisers Act by (1) failing to disclose that Defendant Conrad appointed himself a sub-manager of certain fund assets in January 2013, (2) failing to disclose that he had unilateral authority to appoint himself to that role, and (3) failing to disclose that he received a yearly fee of 1% of the assets under his management in connection with that role. Dkt. Nos. [1] ¶¶ 41-48; [64-1] at 17-18, 23-24. Specifically, Defendant Conrad appointed himself as sub-manager for approximately one-third of WOF Master's assets, including an account at Fidelity, precious metals, and WOF Master's investment in AIR, a company managed by Defendant Conrad's son. See Conrad Interview, Dkt. No. [65-3] at 10:21-13:7, 15:25-17:7, 20:6-9, 22:6-24:9, 28:22-29:12; see also Dkt. No. [67] ¶¶ 482-84.[18]

Plaintiff contends that the appointment and fee constitute conflicts of

[18] Defendants objected to SEC UMF No. 482 on the basis that Defendant Conrad's statements in his unsworn interview transcript are inadmissible

interest that are presumptively material and should have been disclosed, and that Defendant Conrad and FMC's nondisclosure thus operated as a fraud on investors and the funds themselves. Dkt. No. [72] at 13-15. To establish the materiality of this nondisclosure, Plaintiff relies on record testimony from four investors indicating that these nondisclosures were material to their decisions to invest and that they would have considered Conrad's sub-manager role and accompanying fee a conflict of interest. Dkt. No. [64-1] at 24.

Defendants argue they are entitled to summary judgment on all counts arising from these alleged nondisclosures because Plaintiff has failed to establish any nondisclosure in the first instance or that any nondisclosure was material. First, Defendants assert that Conrad's role as a sub-manager was disclosed by identifying the assets he managed as "TDC managed assets"[19] in documents provided to investors. Dkt. No. [68-1] at 6, 17. Second, Defendants argue that the offering documents specifically disclosed to investors that sub-managers receive annual fees measured by a percentage of the value of the assets they manage. Id. at 4, 17. In support, Defendants rely on a January 2013 Offering Memorandum for World Fund II, which provides in pertinent part: "The sub-managers generally charge annual fees that are measured by a percentage of the value of the assets they manage." Conrad Decl., Ex. 1, [66-2] at 18. Third, beyond the offering

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hearsay. Dkt. No. [67] ¶ 482. The Court overrules this objection because admissions by a party opponent are not hearsay. Fed. R. Ev. 801(d)(2).

[19] Defendant Conrad's initials are "TDC."

documents, Defendants also aver that a reasonable investor would assume that sub-managers were being paid in connection with that role and that Plaintiff conceded as much through its 30(b)(6) representative. Dkt. No. [68-1] at 6; see also Mashburn Dep., Dkt. No. [69-1] at 93:3-13, 96:18-22. Defendants contend these facts cannot establish a nondisclosure. Additionally, Defendants argue there is no record evidence that Defendant Conrad did not provide sub-manager services, charged higher rates than what another sub-manager would have charged, or that there was any loss to any investor, and that such evidence is necessary to show a conflict of interest to establish any nondisclosure as material. Dkt. No. [76] at 5-6.

Defendants do not dispute that they used the mails within the definition of Section 206. Thus, at issue here is whether Defendant Conrad's sub-manager position and related management fee were not disclosed—that is, whether there was any nondisclosure, misrepresentation, or fraudulent course of conduct in the first instance, and, if so, whether it was material.

a. Whether there was a nondisclosure in the first instance

The Court finds there is a genuine issue of material fact as to whether Defendant Conrad's position as sub-manager and related fee were disclosed to investors. On the one hand, Plaintiff points to evidence showing that certain fund investments were listed as "TDC managed assets" even before Defendant Conrad began receiving a fee for his sub-manager position and argues that Defendants' disclosures of FMC and SRL's annual management fees as well as other conflicts

of interest gave rise to a duty to disclose the additional annual fee he received as sub-manager. See Dkt. Nos. [72] at 13-14, [73] at 15-16; see also Dkt. Nos. [67] ¶¶ 479-81 (Defendants admitting the offering memoranda and other partnership documents disclosed annual management fees and conflicts of interest); [75-6] at 4 (WOF Master Partners Portfolio document showing TDC Managed assets in November 2012). On the other hand, however, Defendants point to record evidence showing that it is an industry norm for sub-managers of hedge funds to take a fee measured by a percentage of the annual return of the funds they manage (commonly 2%), that Plaintiff—through its 30(b)(6) representative—agrees that reasonable investors would expect sub-managers to receive such fees, and that it was disclosed to investors both that Defendant Conrad acted as a sub-manager of some fund investments and also that sub-managers generally charge fees measured by a percentage of the value of the assets they manage. See Mashburn Dep., Dkt. No. [69-1] at 89:20-92:15, 93:3-13, 96:18-22; Conrad Decl., Ex. 1, [66-2] at 18. Therefore, there is sufficient record evidence supporting both parties' positions as to whether Defendant Conrad's sub-manager role and accompanying fee were disclosed to investors to preclude summary judgment on the omission element of each count arising from this category.

b. Whether any potential nondisclosure was material

The dispute of fact as to whether the sub-manager position and fee were disclosed also creates a genuine dispute as to materiality. That is, the materiality determination "requires delicate assessments of the inferences a 'reasonable

shareholder' would draw from a given set of facts and the significance of those inferences to him, and these assessments are peculiarly ones for the trier of fact." TSC Indus., Inc., 426 U.S. at 450. Whether a reasonable investor should have inferred from notations of "TDC managed assets" that Defendant Conrad had appointed himself a sub-manager and taken an additional fee on top of the fees he already received in connection with that role is best left to the jury to determine. And even if it were established that Defendants Conrad and FMC omitted the sub-manager appointment and related fee, the Court cannot say that such omissions are "so obviously important to an investor, that reasonable minds cannot differ on the question of materiality[.]" Id.

Further, the Court rejects Defendants' argument that even if the appointment and fee were not disclosed, no conflict of interest can be established absent evidence of investor loss. By acting as both the president of General Partner FMC and as a sub-manager, Defendant Conrad was responsible for valuing at least a portion of the assets that he managed and was competing with other sub-managers of the funds. See Dkt. No. [67] ¶¶ 483-84; see also Capital Gains, 375 U.S. at 185-195 (explaining that actual injury to a client need not be shown under Section 206(1)). The purpose of the Investment Advisers Act is to permit an investor to evaluate potential "overlapping motivations, through appropriate disclosure, in deciding whether an adviser is serving 'two masters' or only one, 'especially if one of the masters happens to be economic self-interest.'" Id. at 196 (quoting United States v. Miss. Valley Generating Co., 364 U.S. 520,

549 (1961)). And as to Counts I, II, and IV under the Securities Act and Securities Exchange Act, evidence of actual investor loss is not necessary to establish materiality—i.e., that the disclosure of such potential conflict of interest would have been important to a reasonable investor's decision whether to invest in the funds.[20] "Materiality is determined in light of the circumstances existing *at the time* the alleged misstatement [or omission] occurred." ZPR Inv. Mgmt., 861 F.3d at 1250 (internal quotations and citation omitted). Thus, even if the record is devoid of evidence of investor loss as a result of Defendant Conrad's sub-manager self-appointment, a reasonable juror could still find the nondisclosure of the appointment and fee was material at the time investors first reviewed the offering materials and LPA. Therefore, taken together, the record evidence does not justify summary judgment for either party on any count arising from this alleged nondisclosure.

Accordingly, the Court **DENIES** both Plaintiff's and Defendants' motions for summary judgment with regard to all counts arising from this alleged nondisclosure by Defendants Conrad and FMC.

C. Redemption Practices

Counts I, II, IV, IX

Defendants' alleged preferential redemption scheme forms an additional

[20] To prevail in a *private cause of action* under § 10(b), a plaintiff must show a "causal connection between a defendant's misrepresentation and a plaintiff's injury" as part of the reliance requirement. See Stoneridge Inv. Partners, LLC v. Sci.-Atlanta, 552 U.S. 148, 159 (2008). As already explained, however, an SEC enforcement action has no such reliance requirement.

and important part of this litigation. The SEC accuses Defendants of convincing investors to entrust the funds with millions of dollars only to institute a "freeze" of investors' redemption requests in February 2009 that was never formally lifted, while continuing to take redemptions for Defendants' own use and allowing Conrad family members and certain favored investors to do the same. See Dkt. Nos. [12] at 3-4; [67] ¶¶ 93, 96, 474.

As to all counts arising from this category, Defendants argue that because the LPA permits Defendant Conrad broad discretion to limit redemptions, and this permission was disclosed to all investors, any oral representations Defendant Conrad made to the contrary cannot form the basis for a fraud claim. Dkt. No. [68-1] at 23-24. Similarly, Defendants contend any oral misrepresentations Defendant Conrad made to potential investors that they would be able to easily withdraw invested funds cannot support a fraud claim given the merger clause in the LPA, as well as the forward-looking, "hopeful" nature of the statements at issue. Id. In support, Defendants cite to various cases standing for the propositions that (1) a fraud claim cannot be based on mere statements of opinion or expectation, unfilled predictions, or erroneous conjecture, see, e.g., Next Century Comm'ns Corp. v. Ellis, 318 F.3d 1023, 1028 n.3 (11th Cir. 2003); Roca Properties, LLC v. Dance Hotlanta, Inc., 761 S.E.2d 105, 114 (Ga. Ct. App. 2014); and (2) that when an investor has signed a written agreement containing a merger clause, that investor cannot bring a fraud claim based on prior or contemporaneous representations that contradict the written agreement. See,

e.g., First Data POS, Inc. v. Willis, 546 S.E.2d 781, 784-85 (Ga. 2001). Defendants do not address any of the other elements of the counts at issue in their briefing on either motion. See Dkt. Nos. [68-1] at 28-30; [66] at 28-30.

i. Whether Plaintiff has stated a claim for fraud arising from Defendants' redemption practices

As already discussed, reasonable reliance is not an element of any of Plaintiff's claims, and thus Defendants' citations to opinions that hinge on the failure of private litigants to show reasonable reliance are not dispositive here. Moreover, the Eleventh Circuit has made clear that in SEC enforcement actions, a "broker's statements [to the hypothetical reasonable investor] about the relative merit (and lack of risk) of certain investments in deciding among different investment options" can be held material without considering "whether the individual investor's *reliance* on his broker's statements is reasonable." Morgan Keegan & Co., 678 F.3d at 1249 n.19. The Eleventh Circuit has "never held that, 'regardless of the circumstances, an investor is always precluded from recovering under Rule 10b–5 if the misrepresentations upon which the investor relied were oral and conflict in some way with contemporaneous written representations available to the investor.'" Id. at 1250 (quoting Bruschi v. Brown, 876 F.2d 1526, 1529 (11th Cir. 1989)). In other words, a finding of materiality in an SEC enforcement action is not precluded even where a private action on the same facts could not succeed due to a lack of reasonable reliance.

Nonetheless, some of the same considerations applicable to a reasonable reliance analysis also apply to the materiality of forward-looking statements under the "bespeaks caution" doctrine. Merch. Capital, 483 F.3d at 767. That is, "[w]hen an offering document's projections are accompanied by meaningful cautionary statements and specific warnings of the risks involved, that language may be sufficient to render the alleged omissions or misrepresentations immaterial as a matter of law." Saltzberg v. TM Sterling/Austin Assocs., 45 F.3d 399, 400 (11th Cir. 1995). See also Merch. Capital, 483 F.3d at 767-68. However, "'[s]tatements regarding projections of future performance may be actionable under Section 10(b) or Rule 10b-5 if they are worded as guarantees or are supported by specific statements of fact . . . or if the speaker does not genuinely or reasonably believe them.'" Id. at 766-67 (quoting Kowal v. IBM Corp. (In re IBM Corp. Sec. Litig.), 163 F.3d 102, 107 (2d Cir. 1998)).

Here, the undisputed evidence shows that Defendant Conrad both supported statements regarding redemptions with specific statements of fact that were false and also told potential investors that they would be able to withdraw funds within 60 days or sooner when it was not reasonable to believe such a projection due to long-outstanding redemption requests. Dkt. Nos. [64-2; 67] ¶¶ 85-88,[21] 90, 99-100, 130-31, 154-55, 158,171; [64-7] at 35; [64-10] at 61. When

[21] These citations correspond to Defendant Conrad's representations to specific investors that they would be able to redeem their investments "at any time," within "a little time," "within 24 hours," or "within 60 days," or that an investor "would have no difficulty getting his investment back if he needed it." Defendants

Defendant Conrad made these representations, he was aware that other investors in the funds had been waiting several years for outstanding redemptions. For example, Defendants do not dispute that on May 8, 2014, Billy Clay invested $350,000 in World Fund II after Dr. Conrad told him he could withdraw his funds with one month's notice. Id. ¶ 437. At the time of Mr. Clay's investment, investor Jan Duncan's request to redeem the entirety of her account had been outstanding for over five years, since February 3, 2009, despite her repeated requests for redemption.[22] Id. ¶ 95; see also id. ¶¶ 102, 107, 139, 293, 302 (admitting Ms. Duncan again requested complete redemption on April 10, 2009, September 18, 2009, June 1, 2010, June 9, 2010, October 4, 2012, and October 14, 2012). When Mr. Clay himself later requested redemption in January 2017 and Dr. Conrad told him that redemption would not be possible at that time, Mr. Clay reminded Dr. Conrad of the earlier representation that he could redeem with

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objected to these statements of fact as irrelevant due to the merger clause in the LPA. See Dkt. No. [67] ¶¶ 85-88. However, Defendants do not deny the substance of these statements. See id. The Court overrules the relevance objection because reasonable reliance is not an element of the claims before the Court. And even if the merger clause may bear on the materiality of the statements, they are nonetheless relevant to the determination of whether Defendants made misrepresentations in the first instance, and the timing of the misrepresentations is relevant to the determination of whether they were made with scienter. Therefore, the Court treats these facts as undisputed.

[22] It is undisputed that Ms. Duncan was permitted one redemption of $85,000 in January 2010 and another redemption of $2,000 in September 2011 from WOF Master, but her February 2009 request to redeem the entirety of her account, initially valued at $303,821.90, was not fulfilled until February 2016. Dkt. No. [67] ¶¶ 95, 112, 222, 460.

a month's notice. Id. ¶¶ 468-69. Dr. Conrad responded, "that was then and this is now." Id. ¶ 470. Yet the undisputed evidence shows that the representation that investors could redeem with a month's notice was not true either "then" or "now."

Similarly, Defendants admit Dr. Conrad told investor Paul Leber on June 26, 2013 that he would be able to easily withdraw his funds, even though there were several outstanding redemption requests from other partners at the time. Dkt. Nos. [64-2, 67] ¶¶ 367-68. Indeed, Defendants admit that despite the purported freeze on redemptions since 2009, all Investor Fact Sheets dated after 2009 state that the funds' redemption policy is monthly. Dkt. No. [67] ¶ 474. Therefore, the merger clause does not save Defendants from a finding that they made material misrepresentations about liquidity risk to investors in both direct communications between potential investors and Defendant Conrad and in investor fact sheets.

It is also undisputed that Defendant Conrad sent an email to WOF partners on February 9, 2009 stating that "[b]ecause of a lack of availability of cash for the next few months, we have had to postpone partner redemption distributions until this July[.]" Dkt. Nos. [67] ¶ 96; [64-6] at 34. Yet Defendant FMC withdrew $300,000 from WOF that very same month. Dkt. No. [64-6] at 37; see also Conrad Dep., Dkt. No. [60] at 228:17-230:12. Further, Defendants do not dispute that Dr. Conrad sent an email to investors on July 25, 2010 with the subject line "WOF Liquidity," stating that there would be no redemptions for the remainder of the year, and that there may be redemptions in 2011, "but don't plan on it."

Dkt. Nos. [67] ¶ 154; [64-5] at 88. That was untrue. Redemptions were permitted to some investors throughout the rest of 2010 and into 2011, and Defendant Conrad never corrected the misrepresentation. See Dkt. No. [67] ¶¶ 158-163, 165-170 (admitting to ten redemptions by Stuart Conrad, FMC, the Conrad Family Foundation, and two other investors between August and November 2010); Conrad Dep., Dkt. No. [60] at 223:4-22 (admitting Stuart Conrad was permitted monthly redemptions in 2010 because "redemptions weren't really frozen"); Dkt. No. [64-5] at 158-65 (showing Stuart Conrad redemptions every month between March and November 2010); Conrad Dep., Dkt. No. [60] at 218:6-10 (explaining that "maybe [he] never notified anybody" that there were exceptions to the July 2010 redemption suspension, "but [he] did make exceptions."); Dkt. No. [67] ¶ 169 (admitting in substance that Defendant Conrad sent an email on December 14, 2010 addressed to WOF investors stating that the funds would be able to "begin to honor all redemption requests" at least partially during the summer of 2011); ¶¶ 172-178, 180-186 (admitting redemptions permitted between January and March 2011); ¶¶ 190-194 (admitting 5 redemptions on April 4, 2011); ¶¶ 197-203 (admitting 7 redemptions by different investors on April 27, 2011).

Dr. Conrad compounded the July 25, 2010 misrepresentation by telling investors Douglas Scheller and Michael Gerzanics that Conrad's family remained fully invested in the funds when in fact his family members had been permitted to redeem. Dkt. No. [67] ¶ 131; Scheller Decl. ¶ 11, Dkt. No. [64-9] at 212; Gerzanics Decl. ¶ 7, Dkt. No. [64-9] at 180-81. Defendant Conrad also misled

investor Jan Duncan—who had been seeking redemption since February 2009—by telling her in a June 17, 2010 email that he could not honor her continuing redemption requests because, "legally, we cannot favor a partner regardless of the circumstances." Dkt. No. [64-7] at 35; [67] ¶ 143. Dr. Conrad admitted during his deposition that this representation was "not correct" and, in response to two separate questions asking whether he did in fact favor some partners over others, he answered, "Yes." Conrad Dep., Dkt. No. [60] at 247:15-18; 275:19-276:16. Defendant Conrad also misrepresented to Jan Duncan in an April 1, 2011 email that "[n]o partners have cashed in since June 2009." Dkt. No. [64-10] at 61. See also Dkt. No. [67] ¶ 391.

As another salient example, Defendants do not dispute that Dr. Conrad sent a notice to investors on March 23, 2014 stating that the government had frozen the funds' disbursements in relation to a Ponzi scheme in which the funds had invested years earlier. Dkt. No. [67] ¶ 422. Consistent with this representation, Dr. Conrad sent an email to Mr. Scheller on April 13, 2014 stating "[w]e are legally restricted by government appointed lawyers from disbursing your funds to you. Period, period." Id. ¶ 433. Dr. Conrad explains in his Declaration that WOF was sued in 2010 by an SEC Receiver to recover the funds WOF earned through its investments in the Ponzi scheme, and a judgment against WOF was entered in December 2013 requiring it to repay those amounts. Dkt. No. [68-2] ¶¶ 26-33. Therefore, according to Dr. Conrad, he stopped permitting redemptions in reliance on representations by counsel for the

Receiver that allowing investors to redeem prior to paying the judgment would result in an additional lawsuit for fraudulent transfer. Id. ¶¶ 37-38. Yet Defendants do not dispute that between the March 23, 2014 notice and the April 13, 2014 email to Mr. Scheller, various investors were permitted a total of ten redemptions, and Dr. Conrad continued to allow redemptions to some investors even after sending the Scheller email, including allowing Defendant FMC a $59,513.38 redemption on May 13, 2014. Dkt. No. [67] ¶¶ 423-32, 434, 438. During the same period, on both December 26, 2013 and June 19, 2014, Dr. Conrad's son and World Fund II Administrator Dale Conrad told an investor there was no liquidity available to honor his redemption request. Id. ¶¶ 398, 438. Defendants also do not dispute that a BVI offering memorandum dated July 1, 2014 provided that shareholders could redeem upon written notice to the General Partner or Administrator as of the last business day of the calendar month in which the redemption request is received. Id. ¶ 456.

Throughout their Response to Plaintiff's Statement of Material Facts, in order to support denials of certain facts or to assert the irrelevance of certain false statements Defendant Conrad made to investors, Defendants repeatedly rely on the disclosures in their LPA and Offering Documents that the General Partner had discretion to limit redemptions and to make exceptions to suspensions. See Dkt. No. [67] ¶¶ 99-100, 130, 144, 155, 157, 337, 367, 472. For example, Defendants do not dispute that Defendant Conrad sent the February 9, 2009 email discussed above stating that partner redemptions would be suspended until

July 2009. Id. ¶ 96. However, Defendants purport to dispute the related facts that "Conrad never told investors that he made exceptions to the [February 2009] suspension on redemptions" and "Conrad never made it clear to investors generally that some investors, including [his son, Stuart] Conrad, were able to redeem their investments." Id. ¶¶ 99, 100. In support of these denials, Defendants cite to the January 2013 World Fund II LPA, which set forth Defendant Conrad's powers as the General Partner. In particular, the LPA disclosed to investors that the General Partner retained "sole discretion" to make or withhold distributions from the Partnership to the limited partners, as well as to suspend redemptions on a temporary basis and to make exceptions to any such suspensions "due to any hardships of a Limited Partner or the contractual requirements of a Limited Partner[.]" Dkt. No. [66-3] at 3, 4, 9, 11. Similarly, Defendants' briefing relies solely on these disclosures to establish that no fraud liability can attach to this category of conduct. See Dkt. Nos. [68-1] at 28-30; [66] at 28-30.

However, disclosure of a discretionary power is not the same as disclosure of having exercised that power. While Defendant Conrad may have disclosed that he had the power to allow exceptions to the suspension, citation to such disclosure does not create a genuine dispute as to the allegation that he never disclosed that he *did* make exceptions for some partners. More importantly, it does not transform any of Defendant Conrad's affirmative misrepresentations to investors about what was happening in real time—described above—into accurate

statements, because none of the documents on which Defendants rely discloses the truth of those specific matters. Therefore, Defendants' denials premised on disclosures in the LPA are ineffective to raise a genuine dispute as to SEC UMF Nos. 99-100, 130, 144, 155, 157, 337, and 472, all of which deal with omissions of what Defendants *were in fact doing or would in fact do*, rather than omissions of what Defendants *had the power to do*.[23] These disclosures thus do not render immaterial Defendant Conrad's numerous misrepresentations regarding redemptions.

ii. Whether the misrepresentations were material

While materiality is ordinarily left to the trier of fact, repeated misrepresentations to investors that redemption would be possible with a month's notice despite having told other investors during the same time period that redemptions were frozen or impossible due to lack of liquidity are material as a matter of law. "To warn that the untoward may occur when the event is contingent is prudent, to caution that it is only possible for the unfavorable events to happen when they have already occurred is deceit." Merch. Capital, 483 F.3d at 747. Any reasonable investor would attach importance to these representations, particularly given that the truth of the matter was that redemption requests of many investors took years to fulfill. See, e.g., Dkt. No.

[23] Moreover, Defendants' relevance objection to SEC UMF No. 367 is overruled for the reasons explained supra note 21.

[67] ¶ 460 (admitting Ms. Duncan's redemption request was made in February 2009 and fulfilled in February 2016); ¶ 461 (admitting Mr. Scheller's redemption request was made in April 2011 and still largely unfulfilled as of March 2018); ¶ 462 (admitting Mr. Turner's September 2011 redemption request took two years to fulfill); ¶ 464 (admitting Mr. Stackhouse was still owed $156,208.92 from his World Fund II account as of March 2018 despite making full redemption request in February 2015).

Based on the foregoing, the Court finds that Plaintiff has established as a matter of law that, over the course of many years, Defendants repeatedly made material misrepresentations regarding the redemption practices of the funds to actual and potential investors in email communications, investor fact sheets, and other offering memoranda. That conduct is prohibited under Sections 17(a)(1) and (a)(2) of the Securities Act, as set forth in Counts I and II, Section 10(b) of the Securities Exchange Act and Rule 10b-5 thereunder, as set forth in Count IV, and Rule 206(4)-8(a)(1) of the Investment Advisers Act, as set forth in Count IX.

As stated above, Defendants have offered no arguments in their briefing on either motion to rebut Plaintiff's arguments and supporting evidence on the other elements of these counts, including use of instrumentalities of interstate commerce or the mails (Counts I, II, and IV), negligence (Counts II and IX), and scienter (Counts I and IV). See Dkt. Nos. [68-1] at 28-30; [66] at 28-30. Accordingly, Plaintiff's motion for summary judgment on Counts I, II, IV and IX arising from Defendants' fraudulent redemption practices is **GRANTED**.

Defendants' motion for summary judgment on the same Counts is **DENIED.**

D. Nondisclosure of Family Loans

Counts VI, VII, IX against Defendants Conrad and FMC

Defendants admit that in February 2010, Defendant Conrad used WOF Master funds to pay approximately $18,000 in credit card bills incurred by his daughter-in-law, the wife of his son Dale Conrad. Dr. Conrad paid the money from the WOF Master account in return for a promise by his daughter-in-law to repay the money with 12 percent interest. Dkt. No. [67] ¶ 487. Defendant FMC later purchased the loan from WOF Master. Id. ¶ 488; see also D. Conrad Testimony at 106:12-107:14, Dkt. No. [64-3] at 201-02. Defendants further admit that on July 1, 2013, Dr. Conrad caused WOF Master to make an interest-free loan of $26,499 to a car dealership to allow Dale Conrad to purchase a truck. Dkt. No. [67] ¶ 490; see also Dkt. No. [64-5] at 99. The parties dispute whether the truck was purchased for a business purpose or for Dale Conrad to use on vacation. Dkt. Nos. [68-16] ¶ 9; [64-2] ¶ 491. The truck loan was repaid in under two months. Dkt. No. [74] ¶ 8. Defendants admit neither loan was disclosed to investors. Dkt. No. [67] ¶¶ 489, 492. Plaintiff alleges these loans constituted a breach of Defendant Conrad's and FMC's fiduciary duty to the funds through the misuse of fund assets to benefit members of the Conrad family over the funds' actual and prospective investors, thus violating Sections 206(1), 206(2), and 206(4) of the Investment Advisers Act. Dkt. No. [64-1] at 23-24. "The provisions of Sections 206(1) and 206(2) have been interpreted as substantively indistinguishable from Section 17(a) of the Securities Act, except that Section

206(1) requires proof of fraudulent intent, while Section 206(2) simply requires proof of negligence by the primary wrongdoer." SEC v. Pimco Advisors Fund Mgmt. LLC, 341 F. Supp. 2d 454, 470 (S.D.N.Y. 2004).

Both parties seek summary judgment on Counts VI, VII, and IX arising from these loans. Defendants contend that the offering documents "disclose that the Funds may make loans (including on an unsecured basis), that the General Partner has broad discretion to make all investment decisions, and that the individual assets held by the Funds are not disclosed to the partners." Dkt. No. [68-1] at 16. Further, Defendants argue that Plaintiff, through its 30(b)(6) representative, conceded that the LPA permitted such loans and that there are no restrictions against making loans to family members. Id. Finally, Defendants note the loans were repaid in full and there is no record evidence that any investor suffered loss related to the loans. Id. at 16-17. Therefore, Defendants aver the nondisclosure of these specific loans is neither a fraudulent omission nor material. Id. at 17.

Plaintiff argues, first, that there is at least a genuine issue of material fact as to whether the LPA permits the loans in question given the LPA provision requiring full disclosure of loans that personally benefit the General Partner and requiring such loans to be at least as favorable to the partnership as an arm's-length commercial transaction would be. Dkt. No. [73] at 14 (citing to Pl's Ex. 124 at 23, Dkt. No. [64-7] at 140). Plaintiff contends it is "indisputabl[e]" that the interest-free loan to Dale Conrad does not meet that standard. Dkt. No. [73] at 14.

Defendants reply that Plaintiff misreads the relevant provision, which concerns "use of the Partnership's assets for the General Partner's personal benefit[,]" because Dale Conrad is not a General Partner or an affiliate of the General Partner. Dkt. No. [76] at 3.

Second, Plaintiff argues that even if the LPA does permit such loans, the failure to disclose them constitutes fraud because both loans were undisclosed conflicts of interest and the nondisclosure of a conflict of interest is material as a matter of law. Dkt. No. [73] at 15 (citing Steadman, 603 F.2d at 1130). In particular, Plaintiff argues that "diverting funds away from the Fund, even for a short period of time, always carries with it the risk that some or all of the money will be lost or at least unavailable for some period of time." Dkt. No. [64-1] at 24 (quoting SEC v. Mannion, 789 F. Supp. 2d 1321, 1341 (N.D. Ga. 2011)).

For the same reasons explained above concerning the Investment Advisers Act claims arising from the nondisclosure of Conrad's sub-manager appointment and related fee, neither party is entitled to summary judgment on these claims. In short, the materiality of these nondisclosures is a matter for the jury.

First, Defendants have admitted the specific loans were not disclosed. Therefore, the Court rejects their argument that a provision in the partnership documents permitting the General Partner to enter into any "contracts[,] agreements, undertakings, and transactions with . . . any other Partner or any shareholder . . . or with any person . . . having any business[,] financial[,] or other relationship with the General Partner" somehow transforms the loans into

"*disclosed*, permitted act[s.]" Dkt. No. [76] at 4 (quoting Dkt. No. [68-4] at 6) (emphasis added). Moreover, whether or not *the LPA* permitted such loans does not answer the question of whether *the Investment Advisers Act* requires the disclosure of such loans. A reasonable juror could find that Defendants FMC and Conrad breached their fiduciary duty to both the funds and to the investors by using fund assets to pay personal debts and expenses of Dr. Conrad's family members without disclosing such use.

However, Plaintiff's citations to Steadman and Mannion do not support granting summary judgment in its favor either. In Steadman, the court in fact distinguished TSC from the case at bar specifically because TSC arose on the plaintiff's motion for summary judgment, "i.e., whether the omission was material as a matter of law." 603 F.2d at 1130. The court went on to emphasize that in TSC, the Supreme Court "reaffirmed . . . that the issue of materiality is a mixed question of law and fact and that divining the significance of the inferences a reasonable investor would draw from a given set of facts is peculiarly within the competence of the trier of fact." Id. Similarly, Mannion was before the court on a motion to dismiss, and the court merely held that "a reasonable factfinder *could conclude* that it is material that the advisors of the Fund used Fund assets for purposes other than for the benefit of the Fund." 789 F. Supp. 2d. at 1341 (emphasis added). That conclusion does not compel summary judgment in Plaintiff's favor.

The Court finds a reasonable juror could conclude there is insufficient

evidence to establish materiality where a reasonable investor would arguably anticipate such loans based on the information in the offering materials, the loans were repaid quickly and one was repaid with interest, and nothing in the record shows the loans substantially affected liquidity. Accordingly, it is possible a reasonable investor, in making his investment decision, would consider such relatively small loans "essentially useless" information. It is also possible an investor would find such conduct inappropriate by an investment advisor and indicative of a larger privileging of Defendants' own self-interest over their fiduciary duty, thereby greatly affecting an investor's investment decision and making the nondisclosure material. In other words, the Court cannot determine the materiality of the nondisclosure as a matter of law. Thus, both parties' motions seeking summary judgment on Counts VI, VII, and IX arising from the nondisclosure of the loans to family members are **DENIED**.

E. Fraudulent Purchases

Counts VI, VII, and IX against Defendants Conrad and FMC

Finally, Plaintiff has brought claims under Sections 206(1), (2), and (4) of the Investment Advisers Act based on Defendant Conrad's titling of certain fund assets in his own name. These assets include two soybean farms in Uruguay and approximately $88,000 worth of precious metals. Dkt. No. [1] at ¶¶ 67-69. In its Complaint, Plaintiff contends Defendants Conrad and FMC violated the Investment Advisers Act by failing to disclose that Conrad held title personally to assets purchased with investor funds. Id. ¶ 70.

Defendants argue that the LPA "permits the General Partner to possess partnership property, including through a nominee, unless it is 'for other than a Partnership purpose.'" Dkt. No. [76] at 9; see also [66-3] at 5, 6. Defendants contend "the exercise of disclosed contractual powers is not fraudulent, is not an omission, does not form the predicate for any assertion of scienter and is certainly not material." Dkt. No. [76] at 8. Therefore, because there is no record evidence that any of the assets Dr. Conrad held in his own name were used for anything other than a "Partnership purpose," Defendants argue summary judgment in their favor is proper on all fraud counts arising from these purchases. Plaintiff does not seek summary judgment on these counts.

While Defendants refer to the absence of a showing of materiality or scienter in a conclusory fashion, their briefing advances substantive argument solely on the question of whether the record evidence shows an omission in the first instance. The Court finds Defendants are not entitled to summary judgment on these grounds. As discussed above, the purpose of the Investment Advisers Act is to require disclosure of all possible conflicts of interest to allow clients and investors to make informed investment decisions. And again, disclosure of a power is not the same as the disclosure of having exercised that power. While the record shows that the World Fund II LPA disclosed that assets owned by the Partnership "may be registered in the name of the Partnership or in the name of a nominee," a reasonable juror could nonetheless find that Defendants Conrad and FMC were specifically required by their fiduciary duty to investors to disclose that

Dr. Conrad himself possessed certain valuable assets, purchased with money from the funds, in his own name. Moreover, a reasonable juror could find from the record evidence that even if the LPA did permit Defendant Conrad to possess Partnership property for "a Partnership purpose," he did not possess those assets for such a purpose. For example, Defendants admit that Defendant Conrad held at least some of the precious metals at his home address, and that in an email discussing the purchase of one of the soybean farms, Dr. Conrad stated that he expects "the house will be at my disposal" within 60 days of closing. Dkt. No. [77] ¶¶ 54, 58. For that reason, Defendants' motion for summary judgment on the counts arising from this category is **DENIED.**

IV. CONCLUSION

Based on the foregoing, Plaintiff's Motion for Partial Summary Judgment [64] is **GRANTED IN PART** and **DENIED IN PART**, and Defendants' Motion for Summary Judgment [68] is **DENIED.**

Specifically, Plaintiff's motion for summary judgment as to Counts I, II, and IV against Defendants Conrad and FMC arising from the nondisclosure of Defendant Conrad's disciplinary history is **GRANTED** to Plaintiff and **DENIED** to Defendants Conrad and FMC. Further, Defendant Conrad and FMC's motion for summary judgment as to Counts I, II, IV, and IX arising from the alleged "auditor" and historical performance misrepresentations and as to Count IX arising from the disciplinary history nondisclosure is **DENIED.**

Both parties' motions for summary judgment on Counts I, II, IV, VI, VII,

and IX against Defendants Conrad and FMC arising from the alleged nondisclosure of Defendant Conrad's sub-manager appointment and related compensation are **DENIED.**

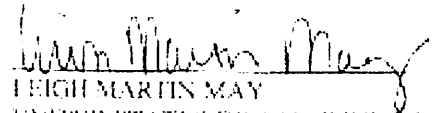
Plaintiff's motion for summary judgment on Counts I, II, IV, and IX arising from Defendants' fraudulent redemption practices is **GRANTED.** Defendants' motion for summary judgment on the same Counts is **DENIED.**

Summary judgment on Counts VI, VII, and IX arising from the nondisclosure of family loans is **DENIED** to both parties.

Finally, Defendants Conrad and FMC's motion for summary judgment on Counts VI, VII, and IX arising from the allegedly fraudulent purchases of fund assets in Defendant Conrad's name is **DENIED.**

The issuance of this Order does not impact the stay that is currently in place relating to the government shutdown. In other words, all deadlines relating to this case and this Order are still subject to the current stay.

It is so ordered this 17th day of January, 2019.



LEIGH MARTIN MAY
UNITED STATES DISTRICT JUDGE

EXHIBIT C

EXHIBIT C

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

SECURITIES AND EXCHANGE COMMISSION,	:	
Plaintiff,	:	CIVIL ACTION NO. 1:16-CV-2572-LMM
v.	:	
THOMAS CONRAD, FINANCIAL MANAGEMENT CORPORATION, and FINANCIAL MANAGEMENT CORPORATION, S.R.L.,	:	
Defendants.	:	

ORDER AND FINAL JUDGMENT

This case comes before the Court on Plaintiff's Motion for Remedies [92-1]. After due consideration, the Court enters the following Order:

I. BACKGROUND

This matter arises from the fraudulent operation of a $10.7 million "fund of funds" by Defendant Thomas Conrad ("Conrad" or "Dr. Conrad"). Dkt. No. [1] ¶ 1. Conrad is the owner and controlling officer of Defendants Financial Management Corporation ("FMC") and Financial Management Corporation, S.R.L. ("SRL"). Id. ¶ 9.

Plaintiff Securities and Exchange Commission ("the SEC") brought this action on July 15, 2016, charging six separate counts of fraud against Defendants and four counts of aiding and abetting fraud against former Defendant Stuart

Conrad pursuant to various provisions of the Securities Act, the Securities Exchange Act, and the Investment Advisers Act. Id. The Complaint alleges that Defendant Conrad controls Defendant entities FMC and SRL, and together these Defendants fraudulently sold and redeemed interests in hedge funds they operate, including World Opportunity Fund, L.P. ("WOF")[1], World Opportunity Master Fund, L.P. ("WOF Master"), World Fund II, L.P. ("World Fund II") and World Opportunity Fund (BVI) Ltd. ("BVI") (collectively, "the funds"). Id. ¶ 1. WOF, World Fund II, and BVI are the feeder funds into WOF Master, although only WOF and World Fund II are currently active feeder funds since all BVI investors were moved into WOF. Dkt. No. [67] ¶ 21. In a master-feeder structure, investors buy limited partnership interests in a feeder fund, and the feeder funds in turn invest their assets in the master fund. Dkt. Nos. [64-2] ¶ 11; [67] ¶ 11.

The Court dismissed all counts against Stuart Conrad on February 22, 2017, leaving only fraud Counts I, II, IV, VI, VII, and IX against Defendants Conrad, FMC, and SRL. Dkt. Nos. [1]; [22]. Further, the Court partially dismissed certain counts that relied on allegedly fraudulent activities that either could not meet the elements of those counts or could not be attributed to Defendant SRL because they predated SRL's existence. Dkt. No. [22] at 17–18, 23–25.

On May 11, 2018 and June 25, 2018 the parties filed cross-motions for

[1] WOF was previously named GEA and CCP. Dkt. No. [67] ¶ 26. For the sake of clarity, the Court will refer to the relevant fund only as "WOF" even when discussing facts from a time when it had a different name.

summary judgment. Dkt. Nos. [64]; [68]. The Court granted Plaintiff's Motion as to Counts I, II, and IV against Conrad and FMC arising from the nondisclosure of Conrad's disciplinary history, and also granted Plaintiff's Motion as to Counts I, II, IV, and IX, arising from Defendants' fraudulent redemption practices. See Dkt. No. [83] at 53–54. The Court denied summary judgment on Plaintiff's remaining claims, finding material issues of fact, and the Court denied Defendants' Summary Judgment Motion in its entirety. Id.

The Court granted summary judgment to Plaintiff on counts relating to two categories of claims. First, the "failure to disclose disciplinary history" category encompassed allegations regarding World Fund II offering memoranda from January 2011 and January 2013, a World Fund II disclosure brochure from January 2012, WOF Master marketing materials from 2014, World Fund II investor fact sheets distributed between December 2011 and January 2014, and various face-to-face and telephonic pitches to prospective investors. See Dkt. No. [1] ¶¶ 49–58. Plaintiff alleged that Defendants fraudulently touted Conrad's wealth management experience and career accomplishments going back to 1965, while omitting a 1971 SEC opinion against Defendant Conrad that barred him from associating with any securities broker or dealer.[2] This category also

[2] See In the Matter of Thomas D. Conrad, Jr. Margaret J. Conrad Roland L. Gonzales, Jr. Conrad & Co., Inc., File No. 3-2338, 44 S.E.C. 725, 1971 WL 120507 (Dec. 14, 1971). Defendant Conrad was the president of registered broker-dealer Conrad & Company, Inc. The Commission's decision was based on findings that Conrad willfully aided and abetted certain willful violations of securities laws

encompassed allegations that Defendants included certain false and misleading information in investor fact sheets regarding the historical performance of fund investments and whether the funds were audited. Id. ¶¶ 59–62. The Court ultimately granted summary judgment to Plaintiff on Counts I, II, and IV based on Defendants' material nondisclosure of Defendant Conrad's disciplinary history. See Dkt. No. [83] at 19.

Second, the "fraudulent redemption practices" category encompasses several acts between 2008 and 2013 forming part of an alleged scheme to allow redemptions and withdrawals of asset funds by friends, family members, and favored investors, while denying the redemption requests of at least 29 other investors and justifying the denials by misrepresenting that all redemptions had been suspended. See Dkt. No. [1] ¶¶ 71–97. The Court granted summary judgment to Plaintiff on Counts I, II, IV, and IX based on Defendants' repeated material misrepresentations regarding the redemption practices of the funds to actual and potential investors in various communications. See Dkt. No. [83] at 46.

The SEC moved to dismiss its remaining claims with prejudice on July 24, 2019. Dkt. No. [90]. The Court granted that Motion on July 26, 2019, dismissing with prejudice Counts VI and VII against Defendants Conrad and FMC. Dkt. No.

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committed by an assistant branch manager of Conrad & Company, Inc. and attributed to the broker-dealer itself. See id., at *1–*5.

[91]. The SEC then moved to impose remedies against Defendant Conrad on August 16, 2019. Dkt. No. [92].[3]

II. DISCUSSION

The SEC asks the Court to enter final judgment against Conrad in the form of three remedies: (1) a permanent injunction preventing further violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder; (2) disgorgement totaling $590,305.75 plus prejudgment interest of $122,674.15; and (3) a civil penalty of $480,000.

A. Injunction against Future Violations

The SEC requests an injunction against Conrad permanently restraining him from further violations of securities laws. See Dkt. No. [92-1] at 3. The Securities Act, Exchange Act, and Advisers Act authorize the Court to issue an injunction to prevent future violations. See 15 U.S.C. §§ 77t(b), 78u(d), 80b-9(d). The Court will award injunctive relief if it finds (1) a *prima facie* case of previous violations of federal securities laws, and (2) a reasonable likelihood that the wrong will be repeated. See Dkt. Nos. [92-1] (citing SEC v. Calvo, 378 F.3d 1211, 1216 (11th Cir. 2004)); [93] at 2 (also citing Calvo). The Court has already found previous violations. See Dkt. No. [83].

As to the second prong, courts consider a list of factors to determine

[3] The SEC has not sought remedies against FMC or SRL because Defendants' counsel has represented that those entities are defunct.

whether the wrong will be repeated, including the egregiousness of the violations, the isolated or repeated nature of the violations, the degree of scienter involved, the sincerity of the defendant's assurances against future violations, the defendant's recognition of the wrongful nature of the conduct, the likelihood that the defendant's occupation will present opportunities for future violations, and the defendant's age and health. Calvo, 378 F.3d at 1216; SEC v. Miller, 744 F. Supp. 2d 1325, 1335 (N.D. Ga. 2010). The Eleventh Circuit has approved injunctions of future violations of the Securities and Exchange Acts where defendants were recidivist securities violators. See, e.g., SEC v. North Am. Clearing, Inc., 656 F. App'x 969, 972 (11th Cir. 2016) (finding "an ample" demonstration of previous violations); Calvo, 378 F.3d at 1216 (holding that a defendant's status as "a recidivist" supported the district court's finding of a reasonable likelihood of future violations).

Of the factors listed in Calvo, the SEC emphasizes "the egregious nature of Conrad's violations, the repeated nature of those violations, and the high degree of scienter." Dkt. No. [92-1] at 9. The SEC points to Conrad's numerous false representations made to investors over a multi-year period; his preferential disbursements to himself, his family members, and certain favored investors while telling other investors that redemptions were suspended; and his inducing numerous investors to invest without disclosing his disciplinary history, including his broker-dealer industry bar. Id. The SEC adds that Conrad is a recidivist securities violator who has never recognized the wrongfulness of his

conduct, but has in fact justified his fraud by stating that he was entitled to do whatever he chose to do regarding the Fund. Id. Even during this litigation, the SEC argues, Conrad continued to solicit investors without disclosing his disciplinary history or the fact that redemptions were frozen. Id. at 9–10.

Conrad responds that several factors counsel against an injunction. See Dkt. No. [93] at 3–4. He argues that his broker-dealer bar and his more recent violations were isolated incidences, not repeated wrongs. Id. at 3. He also argues that his age (88-years-old), health, and employment status (retired) make future violations less likely. Id. at 3–4. Conrad also claims he has neither ownership nor control of the Funds. Id. at 4. He reasons that all of these factors lower the risk of repeated violations, though he admits that a permanent injunction and bar "could be understood to reflect the Court's finding of multiple distinct violations within the facts found by the Court in its January 17, 2019 Order." Id. at 4 n.1.

The Court finds that the factors cited in Calvo support the SEC's request for a permanent injunction. The acts for which Defendant Conrad was held liable in the Court's summary judgment order were clear violations of securities statutes committed with a high degree of scienter over a period of years. Since his commission of those acts, and even during the pendency of this litigation, Conrad has not shown remorse or promised that he will cease his violations. Compare Dkt. No. [64-2] at ¶ 97 (Conrad claiming he could do "anything [he] chose to do") with Calvo, 378 F.3d at 1216 ("Calvo . . . has repeatedly failed to acknowledge the wrongful nature of his conduct."). Conrad's past disciplinary history and the

violations at issue here were not isolated or disconnected; his disciplinary history was the critical fact the omission of which made Conrad's solicitations materially misleading. See Dkt. No. [83] at 9–19. As to Conrad's age, the SEC rightly points out that "Conrad engaged in the fraudulent conduct at issue in this litigation throughout his eighties and continued to solicit investors into at least 2018." Dkt. No. [94] at 3. The factors in the Eleventh Circuit's test to determine whether the wrong will be repeated counsel in favor of an injunction: the egregiousness of Conrad's fraud, the multiple violations lasting over a period of years, the willfulness of the violations, and his refusal to acknowledge his wrongs. The SEC is entitled to an injunction against future violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder.

B. Disgorgement and Prejudgment Interest

The SEC also asks the Court to order Conrad to disgorge ill-gotten gains connected to the Valhalla litigation. Valhalla was a Ponzi scheme in which WOF invested and profited. See Dkt. No. [64-2] ¶¶ 17–18. A court-appointed receiver sued WOF based on WOF's Valhalla investment to recover the "fictitious profits withdrawn by WOF and [to return] the principal withdrawn by WOF" in a separate federal case in Florida. Id. at ¶ 19 (citing Wiand v. World Opportunity Fund, L.P., 8:10-cv-00203-EAK (M.D. Fla. 2010)). WOF's liability in that Florida litigation totaled $2.3 million. Dkt. No. [64-2] ¶ 19. WOF fully paid that liability in September 2014. Id. The fund also incurred $500,000 in attorneys' fees while

litigating against the Valhalla receiver. See Dkt. No. [92-1] at 6–7. Dale Conrad then apportioned WOF's Valhalla-scheme liability among investors who were invested in the fund when WOF recorded its Valhalla profits, among them FMC and FMC's retirement plan, both controlled by Conrad. Id. at 7.

A defendant who violates securities laws is generally liable for disgorgement of "ill-gotten gains." Calvo, 378 F.3d at 1217. The SEC is entitled to disgorgement upon producing a reasonable approximation of a defendant's ill-gotten gains. Id. (citing SEC v. First City Fin. Corp., 890 F.2d 1215, 1231–32 (D.C. Cir. 1989)). Once the SEC produces a reasonable approximation, the "burden then shifts to the defendant to demonstrate that the SEC's estimate is not a reasonable approximation." Id. The approximation need not be exact, and "'any risk of uncertainty should fall on the wrongdoer whose illegal conduct created that uncertainty.'" Id. (citing SEC v. Warde, 151 F.3d 42, 50 (2d Cir. 1998)). Even so, "a court's power to order disgorgement is not unlimited." United States v. Stinson, 729 F. App'x 891, 899 (11th Cir. 2018). Disgorgement "extends only to the amount the defendant profited from his wrongdoing." Id. (citing SEC v. ETS Payphones, Inc., 408 F.3d 727, 735 (11th Cir. 2005)). And disgorgement should be "causally connected to the violation." First City Fin. Corp., 890 F.2d at 131.

According to the SEC, FMC and FMC's retirement plan never paid their share of the Valhalla liability, a $590,305.75 obligation. See id. (citing Dkt. No. [92-3] at 6). Instead, the SEC argues, Conrad directed Dale Conrad "to treat the amount as uncollectible and to reallocate the entities' share of liability among the

remaining investors." Id. Conrad used the Valhalla litigation as a pretense to freeze redemptions, telling investors that the Valhalla receiver had warned him that redemptions prior to its collection on the final judgment would amount to a fraudulent transfer. See Dkt. No. [83] 42–43. The SEC emphasizes that Conrad had absolute control over FMC; it contends that "FMC was his alter ego" and points to Conrad's admission that "FMC and me are the same people." Dkt. No. [92-1] at 8 (citing Dkt. No. [60] at 179, 283).[4]

Conrad responds that the SEC's request for disgorgement is disconnected from his wrongdoing and is excessive. Dkt. No. [93] at 4. Conrad argues that the Court's award of summary judgment to the SEC rested on the material misrepresentations made in connection with fraudulent redemptions, not on Conrad's wrongfully taking money for his own use: "The Court did not find that Dr. Conrad made any misrepresentations or received any funds in connection with the accounting for the Valhalla expenses." Id. at 6. Conrad also argues that his fraudulent misrepresentations about the fund's redemptions during the pendency of the Valhalla litigation were causally remote from the reallocation of Valhalla liability to other investors and the preferential redemptions from FMC. Conrad adds that he and FMC are distinct, and that disgorgement from the FMC retirement fund is inappropriate because the FMC retirement fund is not a party to this litigation. See Id. at 7–8.

[4] Conrad has always been president of FMC, and FMC has no employees. Dkt. No. [92-1] at 8.

The Court agrees with Defendant Conrad that SEC's requested disgorgement is not sufficiently related to his wrongdoing in this case. See Allstate Ins. Co. v. Receivable Finance Co., LLC, 501 F.3d 398, 413 (5th Cir. 2007) ("Because disgorgement is meant to be remedial and not punitive, it is limited to 'property causally related to the wrongdoing' at issue." (citing SEC v. First City Fin. Corp., 890 F.2d 1215, 1231 (D.C. Cir. 1989))). The Court did not hold Dr. Conrad or Dale Conrad liable for fraudulent accounting practices based on how they apportioned the Valhalla liability among the investors in WOF. Instead, the Court held Defendants liable for "material misrepresentations regarding the redemption practices of the funds." Dkt. No. [83] at 46.

The SEC has not approximated disgorgement based on how much Conrad withdrew from WOF while freezing investor redemptions, or how much he took from investors directly. Rather, the SEC charges Dr. Conrad and Dale Conrad with allegedly writing off their Valhalla liability. The Court did not rely on that charge in its Order granting summary judgment. The Court only once discussed the Valhalla litigation, referring to "a Ponzi scheme" as a "salient example" of a pretense that Conrad used to block investor redemptions. See Dkt. No. [83] at 42. The alleged reapportionment of liability that the SEC now invokes to justify disgorgement is too far removed from the material misrepresentations for which the Court granted summary judgment.[5]

[5] The SEC also asks for an award of prejudgment interest in the amount of $122,674.15. Dkt. No. [92-1] at 3, 12; see also Dkt No. [92-4] (calculating

C. Civil Penalties

The SEC also asks this Court to award civil monetary penalties against Defendants. Section 20(d) of the Securities Act, Section 21(d)(3) of the Exchange Act, and Section 209(e) of the Advisers Act—with nearly identical language—allow the SEC to seek civil penalties imposed by the Court. The Exchange Act provides,

> Whenever it shall appear to the Commission that any person has violated any provision of this chapter, [or] the rules or regulations thereunder, . . . the Commission may bring an action in a United States district court to seek, and the court shall have jurisdiction to impose, upon a proper showing, a civil penalty to be paid by the person who committed such violation.

15 U.S.C. § 78u(d)(3)(A).[6] To determine the amount of the penalty, the Act outlines three tiers based on the nature of the violation. Under the first tier, "[f]or *each violation*, the amount of the penalty shall not exceed the greater of (I) $7,500 for a natural person or $80,000 for any other person." 15 U.S.C. § 78u(d)(3)(B)(i) (emphasis added).[7] The second tier goes further:

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prejudgment interest). This amount represents "the amount of money Conrad made or could have made by investing monies wrongfully obtained." Dkt. No. [94] at 7 (citing SEC v. Koenig, 557 F.3d 736, 745 (7th Cir. 2009)). Because the Court rejects the SEC's request for disgorgement, the Court declines to award prejudgment interest.

[6] The Court quotes only the Exchange Act to avoid redundancy.

[7] Each of the penalty caps have been updated for inflation per 17 C.F.R. § 201.1001. The penalty caps are identical for each of the statutory violations that the SEC invokes in this case. See 15 U.S.C. §§ 77t(d), 78u(d)(3), 80b-9(e). The SEC argues that the Court should assess civil penalties based on the March 6,

"Notwithstanding clause (i), the amount of penalty for *each such violation* shall not exceed the greater of (I) $80,000 for a natural person or $400,000 for any other person . . . if the violation described in subparagraph (A) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement." 15 U.S.C. § 78u(d)(3)(B)(ii) (emphasis added). For the third tier, the Act states:

> Notwithstanding clauses (i) and (ii), the amount of penalty for *each such violation* shall not exceed the greater of (I) $160,000 for a natural person or $775,000 for any other person . . . if—
>
> > (aa) the violation described in subparagraph (A) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and
> >
> > (bb) such violation directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons.

§ 78u(d)(3)(B)(iii) (emphasis added).

"Civil penalties are intended to punish the individual wrongdoer and to deter him and others from future securities violations." Monterosso, 756 F.3d at 1338. The "Commission need only make 'a proper showing' that a violation has occurred and a penalty is warranted." SEC v. Warren, 534 F.3d 1368, 1370 (11th Cir. 2008). Although the statute leaves the amount to be imposed to the discretion of the district judge, "courts consider numerous factors, including the egregiousness of the violation, the isolated or repeated nature of the violations,

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2013 to November 2, 2015 adjustment, since Conrad's fraud continued into 2013 and 2014. Dkt. No. [92-1] at 13. The Court agrees.

the degree of scienter involved, whether the defendant concealed his trading, and the deterrent effect given the defendant's financial worth." Miller, 744 F. Supp. 2d at 1344 (citing SEC v. Sargent, 329 F.3d 34, 42 (1st Cir. 2003)). The Act also authorizes penalties for "each violation," so "courts are empowered to multiply the statutory penalty amount by the number of statutes the defendant violated, and many do." Miller, 744 F. Supp. 2d at 1345.

The SEC argues that Conrad should receive third-tier civil monetary penalties for several reasons. See Dkt. No. [92-1] at 14–15. The SEC reasons that many investors would never have joined the Fund if Conrad had disclosed his prior disciplinary history. Id. at 14. Conrad admitted that he never disclosed his disciplinary history and, the SEC says, he continued to solicit investors into 2018. Id. The SEC also argues that Conrad's fraudulent misrepresentations blocked investors from accessing their money for many years and that several suffered investment losses as a result of Conrad's misrepresentations. Id. The SEC also argues that the "preferential redemption scheme began as early as 2009 and continued throughout the litigation." Id. All of this Conrad did "with a high degree of scienter by continually lying to investors about redemptions and touting his credentials while purposefully hiding his disciplinary history." Id. at 14–15. Last, the SEC argues that Conrad's failure to accept any responsibility justifies the maximum penalty. Id. at 15.

Conrad disagrees. He argues that the SEC makes self-serving statements when it claims that investors would not have invested had they known about

Conrad's disciplinary history. Dkt. No. [93] at 10. He also contests the SEC's argument that Conrad's misrepresentations caused investors to suffer investment losses. Id. at 10–11. Conrad argues that the investors could have mitigated their losses because they had the option to "fix the value of their interest and become a creditor of the Fund in that fixed amount." Id. at 10. Evidently, the partners' losses were "entirely preventable by the redeeming partner—they simply had to take their money out of the market and give up any upside during that time period." Id. at 11. Conrad adds also that every investor has been redeemed who was named in the SEC's complaint, its motion for summary judgment, or who offered affidavits or deposition testimony. Id. Conrad also asks the Court to "consider a balance of the equities," including a list of grievances against the SEC and its method of prosecution. Id. at 12.

The applicable penalty tier depends on whether the Court, in its Summary Judgment Order, found that Conrad committed each violation with "fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement," and whether Conrad's acts "directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons." See, e.g., 15 U.S.C. § 78u(d)(3)(B)(iii). If Conrad acted with "fraud, deceit, manipulation, or deliberate or reckless disregard" in any of his violations, that state of mind would call for a second-tier penalty. If, with the necessary state of mind, Conrad directly or indirectly caused "substantial losses or created a

significant risk of substantial losses to other persons," that result would demand a third-tier penalty.

The Court granted summary judgment to the SEC on Counts I, II, IV and IX arising from Defendants' fraudulent redemption practices. See Dkt. No. [83] at 46.[8] Count I of the Complaint arose under Section 17(a)(1) of the Securities Act, making it unlawful to use interstate commerce or the mails in connection with the offer or sale of securities "to employ any device, scheme or artifice to defraud." 15 U.S.C. § 77q(a)(1). To show a violation of 17(a)(1), Plaintiff proved "(1) material misrepresentations or materially misleading omissions, (2) in the offer or sale of securities, (3) made with scienter." SEC v. Merch. Capital, LLC, 483 F.3d 747, 766 (11th Cir. 2007).

Count II of the Complaint arose under Sections 17(a)(2) and (3) of the Securities Act, the former of which makes it unlawful to use interstate commerce or the mails in the offer or sale of any securities "to obtain money or property by means of . . . any omission to state a material fact necessary in order to make the

[8] The Court also granted summary judgment to the SEC on Counts I, II, and IV arising from Defendants' nondisclosure of Defendant Conrad's disciplinary history. Dkt. No. [83] at 19. However, the SEC has only asked the Court to impose three civil penalties: one penalty each under 15 U.S.C. §§ 77t(d), 78u(d)(3), and 80b-9(e). Counts I and II, the bases for the SEC's requested penalties under 15 U.S.C. §§ 77t(d) and 78u(d)(3), involved both the disciplinary history claim and the fraudulent redemption claim. Because the Court finds sufficient bases to impose the maximum penalties based on Defendants' fraudulent redemption practices, the Court does not address penalties for Defendants' failure to disclose Conrad's disciplinary history. Count IX, the basis for the SEC's requested penalties under 15 U.S.C. § 78u(d)(3), only involves Defendants' fraudulent redemption practices.

statements made, in light of the circumstances under which they were made, not misleading[.]" 15 U.S.C. § 77q(a)(2). Section 17(a)(3) prohibits such use of interstate commerce or the mails "to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser." 15 U.S.C. § 77q(a)(3). To show a violation of either of these sections under Count II, Plaintiff proved that Defendants made material misrepresentations or materially misleading omissions in the offer or sale of securities, but scienter was not required. Count II could be met with a showing of negligence only. Merch. Capital, 483 F.3d at 766.

Count IV of the Complaint arose under Section 10(b) of the Securities Exchange Act and Rule 10b-5 thereunder. Like Count I, Count IV required a showing of scienter. The three subparts of Rule 10b-5 closely track the language of the three methods of mail fraud set forth in Section 17(a) of the Securities Act. For instance, like Section 17(a)(2) of the Securities Act, "Rule 10b–5[(b)] prohibits not only literally false statements, but also any omissions of material fact 'necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.'" FindWhat Inv'r Grp. v. FindWhat.com, 658 F.3d 1282, 1305 (11th Cir. 2011) (quoting 17 C.F.R. § 240.10b–5(b)).

Notably, Rule 10b-5 "is not read literally. Instead, a defendant's omission to state a material fact is proscribed only when the defendant has a duty to disclose." Rudolph v. Arthur Andersen & Co., 800 F.2d 1040, 1043 (11th Cir.

1986). "By voluntarily revealing one fact about its operations, a duty arises for the corporation to disclose such other facts, if any, as are necessary to ensure that what was revealed is not so incomplete as to mislead." FindWhat Inv'r Grp., 658 F.3d at 1305 (internal quotations and citation omitted). A statement is misleading if "in the light of the facts existing at the time of the [statement] . . . [a] reasonable investor, in exercise of due care, would have been misled by it." Id. (citing SEC v. Tex. Gulf Sulphur Co., 401 F.2d 833, 863 (2d Cir. 1968)).

Count IX arose under Section 206(4) of the Investment Advisers Act, 15 U.S.C. § 80b-6(4), as well as Rule 206(4)-8 thereunder. 17 C.F.R. § 275.206(4)-8. These statutes prohibit advisers to pooled investment vehicles like WOF from making false or misleading statements, omitting material facts, or otherwise engaging in any act, practice, or course of business that is fraudulent, deceptive, or manipulative with regard to investors or prospective investors. Section 206(4) does not require scienter and can be met with a showing of negligence only.

The Court awarded summary judgment on each of these counts. "Scienter" is an element of Section 17(a)(1) of the Securities Act (the statutory basis of Count I). See 15 U.S.C. § 77q(a)(1). And "Section 10(b) of the Securities Exchange Act . . . requires a showing of scienter" (the statutory basis of Count IV). See Dkt. No. [83] at 10. Defendants did not refute the scienter elements of either of these counts, and the Court conducted its own review of the record evidence and found that Plaintiff adequately proved scienter, "even viewing the evidence in the light most favorable to Defendants." Dkt. No. [83] at 19; see also Dkt. No. [83] at 46

("Defendants have offered no arguments in their briefing on either motion to rebut Plaintiff's arguments and supporting evidence on . . . scienter (Counts I and IV).").[9] The Court finds that Conrad committed violations of 15 U.S.C. § 77q(a)(1) and 15 U.S.C. § 78j(2)(b) with the state of mind necessary for a second-tier penalty under Section 20(d) of the Securities Act and Section 21(d)(3) of the Exchange Act. See 15 U.S.C. § 77t(d); 15 U.S.C. § 78u(d)(3).

However, the Court does not find that the SEC has met its burden to show "fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement" based on Conrad's violation of Section 206(4) of the Investment Advisers Act, 15 U.S.C. § 80b-6(4) and Rule 206(4)-8 thereunder (the basis for Count IX). The Court did find that Defendants failed to offer arguments about alleged "negligence" under Section 206(4). See Dkt. No. [83] at 46. But the Court did not find, as a matter of law, that Conrad's commission of Count IX involved a state of mind more deliberate than negligence. Id. Notably, the SEC argues that this Court may find the requisite mental state necessary for the imposition of a higher penalty even where it did not find that the SEC proved scienter as a matter of law. See Dkt. No. [92-1] at 13 (citing SEC v. Rosen, No. 01-0368-CIV, 2002 WL 34414715, at *13 (S.D. Fla. Apr. 2002), *aff'd in part sub. nom.*, Calvo, 378 F.3d at

[9] The Court does not address the question whether the SEC has shown the scienter necessary for a second-tier penalty based on Conrad's Count II violation of 15 U.S.C. §§ 77q(a)(2)–(3). By proving a violation of 15 U.S.C. § 77q(a)(1), the SEC has already proved the scienter necessary for a second-tier penalty (at least) under 15 U.S.C. § 77t(d), and the SEC only asks for one imposition of civil penalties under that statute. See Dkt. No. [92-1] at 12–13.

1215. However, the Eleventh Circuit did not directly address whether a court may find scienter for purposes of civil penalties even though the court did not find scienter for purposes of statutory liability.

As to the issue of harm, the Court does find that Conrad's material misrepresentations and fraudulent redemption practices directly or indirectly caused "substantial losses or created a significant risk of substantial losses to other persons." See, e.g., 15 U.S.C. § 78u(d)(3)(B)(iii). As the SEC points out, Conrad's fraudulent statements blocked investors from accessing their funds for years, and several suffered investment losses when their account values fell while their funds were frozen. See Dkt. No. [92-1] at 14. Conrad also redeemed millions from his own fund while keeping them at bay by telling them (falsely) that redemptions were frozen. See Dkt. No. [93] at 9. That Conrad redeemed some investors after the SEC specifically identified those investors does not exonerate him from the fraud he has committed. See id. at 9.

The Court will impose $327,500 in civil penalties: $160,000 (third tier) for each of Conrad's violations under Counts I and IV, arising under Section 17(a)(1) of the Securities Act and Section 10(b) of the Securities Exchange Act. 15 U.S.C. §§ 77t(d), 78u(d)(3). Those violations merit third-tier penalties because Conrad committed them with the necessary state of mind, and his acts caused substantial harm to investors. The Court will also impose a first-tier penalty in the amount of $7,500 for Conrad's commission of Count IX, arising under Section 209(e) of the Investment Advisers Act. 15 U.S.C. § 80b-9(e).

CONCLUSION

I.

It is hereby **ORDERED** that Defendant Conrad is permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder, by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

(a) to employ any device, scheme, or artifice to defraud;

(b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or

(c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, by, directly or indirectly, (i) creating a false appearance or otherwise deceiving any person, or (ii) disseminating false or misleading documents, materials, or information or making, either orally or in writing, any false or misleading statement in any communication with any investor or prospective investor, about:

(1) any investment in or offering of securities,

(2) Defendant's qualifications to advise investors,

(3) the prospects for success of any product or company,

(4) the use of investor funds,

(5) the redemption policies of any investment fund, or

(6) the misappropriation of investor funds or investment proceeds.

IT IS FURTHER ORDERED that as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) Defendant's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant Conrad or with anyone described in (a).

II.

It is **ORDERED** that Defendant Conrad is permanently restrained and enjoined from violating Sections 17(a) of the Securities Act in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly:

(a) to employ any device, scheme, or artifice to defraud;

(b) to obtain money or property by means of any untrue statement of a material fact or any omission of a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

(c) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser by, directly or indirectly, (i) creating a false appearance or otherwise deceiving any person, or (ii) disseminating false or misleading documents, materials, or information or making, either orally or in writing, any false or misleading statement in any communication with any investor or prospective investor, about:

(1) any investment in or offering of securities,

(2) Defendant's qualifications to advise investors,

(3) the prospects for success of any product or company,

(4) the use of investor funds,

(5) the redemption policies of any investment fund, or

(6) the misappropriation of investor funds or investment proceeds.

IT IS FURTHER ORDERED as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) Defendant's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant or with anyone described in (a).

III.

It is **ORDERED** that Defendant Conrad is permanently restrained and enjoined from violation Section 206(4) of the Investment Advisers Act and Rule

206(4)-8 thereunder, while acting as an investment adviser to a pooled investment vehicle, by use of the means and instrumentalities of interstate commerce and of the mails from

(a) making untrue statements of material fact or omitting to state material facts necessary to make statements made, in the light of circumstances under which they were made, not misleading, to investors and prospective investors in pooled investment vehicles; and

(b) engaging in acts, practices, and courses of business that are fraudulent, deceptive, and manipulative with respect to investors and prospective investors in pooled investment vehicles.

IT IS FURTHER ORDERED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) Defendant's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant or with anyone described in (a).

IV.

IT IS FURTHER ORDERED that Defendant Conrad is liable for civil penalties in the amount of $327,500 pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)], Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)], and Section 209(e) of the Investment Advisers Act [15 U.S.C. § 80b-9(e)]. Defendant Conrad shall satisfy this obligation by paying $327,500 to the

Securities and Exchange Commission within 45 days after entry of this Final Judgment.

Defendant Conrad may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request. Payment may also be made directly from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm. Defendant Conrad may also pay by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission, which shall be delivered or mailed to

Enterprise Services Center
Accounts Receivable Branch
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

and shall be accompanied by a letter identifying the case title, civil action number, and name of this Court; Thomas D. Conrad as a defendant in this action; and specifying that payment is made pursuant to this Final Judgment.

Defendant Conrad shall simultaneously transmit photocopies of evidence of payment and case identifying information to the Commission's counsel in this action. By making this payment, Defendant Conrad relinquishes all legal and equitable right, title, and interest in such funds and no part of the funds shall be returned to Defendant Conrad. The Commission shall send the funds paid pursuant to this Final Judgment to the United States Treasury.

V.

IT IS FURTHER ORDERED that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, the allegations in the complaint are true and admitted by Defendants, and further, any debt for civil penalty or other amounts due by Defendants under this Judgment or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Defendants of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. § 523(a)(19).

VI.

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment. The Clerk is **DIRECTED** to **CLOSE** this case.

It is so ordered this 30th day of September, 2019.

LEIGH MARTIN MAY
UNITED STATES DISTRICT JUDGE