UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-19617

In the Matter of **RANDALL S. GOULDING,** **Respondent.**	**DIVISION OF ENFORCEMENT'S MOTION FOR SUMMARY DISPOSITION AGAINST RESPONDENT RANDALL S. GOULDING AND SUPPORTING MEMORANDUM OF LAW**

Pursuant to Rule 250(b) of the Securities and Exchange Commission's ("the Commission") Rules of Practice, the Division of Enforcement ("the Division") respectfully moves for summary disposition against Respondent Randall S. Goulding ("Goulding"). This matter is a follow-on proceeding arising from permanent injunctions imposed against Goulding by the United States District Court for the Northern District of Illinois. Because Goulding has been enjoined and the sole determination concerns the appropriate sanction against him under Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act"), summary disposition is appropriate and Goulding should be barred from serving or acting as an investment adviser.

I. The Commission's Claims against Goulding.

Goulding was the owner and managing member of The Nutmeg, Group, LLC ("Nutmeg") an investment adviser which registered with the SEC in 2007. (*See* OIP at ¶ 1; Div. Ex. 1, District Court's Findings of Fact and Conclusions of Law, at page 1, ¶¶ 1, 3) He is also an accountant and an attorney licensed in Illinois. (Div. Ex. 1 at ¶ 29) Goulding previously has been penalized by the Internal Revenue Service ("IRS"), has been convicted of various felonies, including fraud, and his law license was suspended. (*Id.* at page 23, ¶¶ 182, 187)

On March 23, 2009, the Commission filed a complaint against Nutmeg, Randall Goulding and another defendant, alleging that they had improperly commingled and misappropriated around

$4 million in client assets. *See* https://www.sec.gov/litigation/litreleases/2009/lr20972.htm. The Complaint also alleged that the defendants were unable to value the assets of the investment funds managed by Nutmeg ("the Funds"), had failed to maintain the required books and records, and that the incorrect investment values had been reported to the Funds' investors.[1] (*See Id.*) Goulding was charged with violations of Sections 204, 206(1), 206(2), and 206(4) of the Advisers Act and Rules 204-2, 206(4)-2, and 206(4)-8. *Id.*

Following a two week trial, on October 25, 2019 Magistrate Judge Jeffrey T. Gilbert issued findings of fact and conclusions of law finding in favor of the Commission on all outstanding claims against Goulding.[2] *See* https://www.sec.gov/litigation/litreleases/2019/lr24677.htm The Court also permanently enjoined Goulding from violating Sections 206(1), 206(2), and 206(4) of the Advisers Act and Rules 206(4)-8 thereunder. *Id.*

The Court's findings of fact methodically catalogued Goulding's violations of the Advisers Act. Over the course of five years, Goulding intentionally and recklessly:

- Misappropriated client and investor assets from Nutmeg's commingled bank accounts for his own personal benefit and lied to investors as part of that scheme. These payments included buying a car, season tickets to the Chicago White Sox, and an entry fee for Goulding's father to play in the World Series of Poker. (Div. Ex. 1 at page 33, ¶ 277 and page 49, ¶¶ 31-33)

- Misappropriated the Funds' assets to pay undisclosed expenses. (*Id.* at page 34, ¶¶ 268-277)

[1] In June of 2011, the Commission filed an Amended Complaint alleging additional allegations that the defendants improperly valued fund securities and that Goulding misappropriated fund assets for his personal benefit.

[2] On February 18, 2016, the District Court granted the Commission's motion for partial summary judgment, finding that Nutmeg and Goulding violated Sections 204, 206(2), and 206(4) of the Advisers Act, and Rules 204-2, 206(4)-2, and 206(4)-8 thereunder by transferring the Funds' assets to related parties; commingling investor monies; and issuing false account statements about clients' cash balances. *See SEC v. The Nutmeg Group, LLC*, 162 F.Supp.3d 754 (N.D. Ill. 2016).

- Commingled his own assets with the assets of clients and misstated the value and performance of fund assets while making withdrawals for his own personal benefit. (*Id.* at page 16 ¶¶ 127-141 and page 34, ¶ 268)

- Inflated and overstated the value of investor assets and collecting management fees based upon those valuations. (*Id.* at page 25, ¶¶ 203-208 and page 33, ¶¶¶ 261-267)

- Commingled and never segregated the Funds' assets in separate bank and brokerage accounts. (*Id.* at page 16, ¶¶ 127-141 and page 49, ¶¶ 31-33)

- Transferred to members of his family and friends legal title to $4 million of the Funds' assets and hid these transfers from investors. (*Id.* at page 12, ¶¶ 89, 95-119 and page 49, ¶¶ 31)

- Made undisclosed payments to the Relief Defendants for acting on his instructions to invest and sell the assets he transferred to them. (*Id.* at page 12, ¶¶ 95-126)

- Misled investors by including a biography in a Fund offering document that "touted his career with the IRS, his legal practice, and his charitable endeavors" but did not "disclose the IRS had imposed penalties on Randall for his negligent preparation of tax returns, or that Randall had later been convicted for various felonies, including fraud, or that Randall's law license had been suspended." (*Id.* at page 23, ¶¶ 181-182)

As to Goulding's overvaluation of the Funds, the Court explicitly rejected the arguments raised in his Answer.[3] (*See e.g.*, Answer at ¶¶ 32-43) Goulding consistently valued the Funds' holdings – which consisted of convertible notes issued by distressed microcap companies – as if they were freely tradable shares of stock. (Div. Ex. 1 at ¶ 262) The notes, however, converted into vast quantities of restricted stock, which could not be publicly traded. (*Id.* at page 31, ¶¶ 249-252 and 261-263) Further, many of these illiquid and restricted securities were issued by companies in poor financial condition. (*Id.* at page 33, ¶ 265) The Court found that Goulding did not follow Financial Accounting Standard 157 ("FAS 157") and other accounting rules which required Nutmeg (and Goulding) to discount the value of the Funds' investments. (*Id.* at page 33, ¶ 261)

[3] Goulding is represented by the same trial counsel in this proceeding. To the extent Goulding's Answer raises new legal arguments or introduces new evidence, counsel waived these arguments and cannot use this proceeding to retry his claims. *See e.g. James E. Franklin*, Exchange Act Rel. No. 56649, 2007 WL 2974200, at *4 (Oct 12, 2007).

Accordingly, Goulding's failure to follow FAS 157 "significantly overstated the valuation" of the Funds and made quarterly investor statements inaccurate, thereby violating the antifraud provisions of the Advisers Act. (*Id.* at page 33, ¶ 267)

On November 12, 2019, the District Court entered a Final Judgement which enjoined Goulding from violating Section 206 of the Advisers Act, and required him to pay more than $1.8 million in disgorgement, prejudgment interest and civil penalties. (*See* Div. Ex. 2, Final Judgment) Goulding filed a motion with the District Court for reconsideration of the financial aspects of the Court's judgment. This motion is pending.

II. Summary Disposition Standard

Rule 250(b) of the Commission's Rules of Practice, provides that after an answer has been filed, and the underlying documents have been made available to the respondent, a party may move for summary disposition of any or all allegations of the OIP.[4] 17 C.F .R. § 201.250(b). A motion for summary disposition may be granted 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. *Id.*

The Commission has repeatedly upheld the use of summary disposition in cases where the respondent has been enjoined and the sole determination concerns the appropriate sanction. *See, e.g.*, *Gary M. Kornman*, Exchange Act Rel. No. 59403, 2009 WL 367635, at * 10 & n. 58 (Feb. 13, 2009), *pet. denied*, 592 F.3d 173 (D.C. Cir. 2010) (collecting cases). Under Commission precedent, the circumstances in which summary disposition in a follow-on proceeding involving fraud is not appropriate "will be rare." *Efim Aksanov*, Initial Dec. Rel. No. 1000, 2016 WL 1444454, at *2 (April 12, 2016) (citing *John S. Brownson*, Exchange Act Rel. No. 46161 (July 3, 2002), 55 S.E.C. 1023, 1028 n.12, *petition for review denied*, 66 F. App'x 687 (9th Cir. 2003)).

[4] The Division gave Goulding the opportunity to review, inspect, and copy the investigative record. (*See* Div. Ex. 3, Letter dated December 18, 2019)

"Follow-on proceedings are not an appropriate forum to revisit the factual basis ... for, or legal challenges to, an order issued by a federal court, and challenges to such orders do not present genuine issues of material fact in our follow-on proceedings." *John W. Lawton*, Investment Adviser Act Rel. No. 3513, 2012 WL 6208750, at *5 (Dec. 13, 2012). The Commission does not permit a respondent to relitigate issues that were addressed in a previous civil proceeding against the respondent, including a proceeding in which an injunction was entered after trial. *See James E. Franklin*, Exchange Act Rel. No. 56649, 2007 WL 2974200, at *4 (Oct 12, 2007). And even if a respondent appeals the underlying judgment, this does not prevent the Commission from exercising its jurisdiction in a follow-on administrative proceeding. *James E. Franklin*, 2007 WL 2974200, at *4 n.15. Accordingly, the Division of Enforcement respectfully requests that the Commission require Goulding to respond to the Division's motion for summary disposition.

III. Summary Disposition Is Proper in This Follow-on Proceeding

Goulding's Answer to the OIP disputes the Division's summary of the permanent injunction issued against him, as well as the District Court's findings of fact and conclusions of law. In addition, Goulding raises seven affirmative defenses – six of which challenge the District Court's basis for entering the judgment and injunction against him. None of these six issues are properly raised in this proceeding. Only Goulding's seventh affirmative defense, which contends that barring him from the securities industry would be improperly punitive, resembles an argument which the Commission might normally consider in a follow-on proceeding such as this one. However, in reality even this "defense" is a challenge to the District Court's judgment, and cannot be resolved in this proceeding.

This proceeding is a textbook case for summary disposition. Section 203(f) of the Advisers Act allows the Commission to censure or place limitations on individuals who (1) at the time of the alleged misconduct, was associated with an investment adviser; (2) has been enjoined from any

action, conduct, or practice specified in Section 203(e), and (3) the sanction against the entity is in the public interest. 15 U.S.C. § 80b-3(f). The statutory requirements for the imposition of sanctions (the first two elements) have been satisfied. Goulding does not, and cannot, dispute that he was the sole owner and managing member of Nutmeg, a registered investment adviser, and that he provided investment advice to the Funds for compensation. (*See* Answer at ¶ 1; Div. Ex. 1 at page 1, ¶¶ 1, 3, 25-27, 32-41, 64-72, and 268) Nor does Goulding dispute that he has been enjoined from future violations of the antifraud provisions of the securities laws by the District Court. (Answer at ¶ 2; Div. Ex. 2). Accordingly, the only outstanding question is whether it is in the public interest to impose sanctions against Goulding as a consequence of the violations proven by the Commission in the District Court. *See* 15 U.S.C. § 80b-3(f).

IV. Sanctions Against Goulding Are Appropriate Under the Advisers Act

The Commission has "repeatedly held that conduct that violates the antifraud provisions of the securities laws is especially serious and subject to the severest of sanctions under the securities laws." *Peter Siris*, Exchange Act Rel. No. 71068, 2013 WL 6528874, at *6 (Dec. 12, 2013) (internal quotation marks omitted), *pet. denied*, 113 F.3d 89 (D.C. Cir. 2014). *See also Chris G. Gunderson, Esq.*, Exchange Act Rel. No. 61234, 2009 WL 4981617, at *5 (Dec. 23, 2009) ("An antifraud injunction 'ordinarily' warrants barring participation in the securities industry").

The public-interest test includes the following factors, among others:

> [t]he egregiousness of the defendant's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the defendant's assurances against future violations, the defendant's recognition of the wrongful nature of his conduct, and the likelihood that the defendant's occupation will present opportunities for future violations.

Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981). "The Commission's inquiry into the appropriate sanction to protect the public interest is a flexible one, and no one factor is dispositive." *Gary M. Kornman*, 2009 WL 367635, at *6.

Here, the public interest requires that Goulding to be barred from acting as or associating with an investment adviser. All of the *Steadman* factors, as well as the other relevant considerations, strongly favor the imposition of such a sanction. First, Goulding engaged in egregious and recurrent misconduct. The District Court said it succinctly:

> Randall's conduct in this case was egregious. It went on for many years and caused millions of dollars in losses to investors. Randall is an accountant and a lawyer. He was advised on multiple occasions that at least some of what he was doing was wrong. He blatantly misstated the facts to investors in Nutmeg's Funds and to the SEC. Randall's misconduct as Nutmeg's principal was not an isolated instance; he has run afoul of the law before.

(Div. Ex. 1 at page 59, ¶ 70) These findings and others led the District Court to impose a significant civil penalty of $642,422 against Goulding as well as $642,422 in disgorgement.[5] (*Id.*)

Second, Goulding engaged in misconduct with a high degree of *scienter.* The District Court found Goulding liable under Section 206(1) of the Advisers Act, which requires proof that a defendant acted with intent to deceive, manipulate or defraud.[6] (Div. Ex. 1 at page 45, ¶ 7 and page 49, ¶¶ 31-32) *See also SEC v. Nutmeg Group, LLC,* 162 F. Supp. 3d 754, 775 (N.D. Ill 2016); *SEC v. Nutmeg Group, LLC,* 2011 WL 5042094, at *5 (N.D. Ill. 2011).

Third, Goulding has never acknowledged the wrongful nature of his misconduct. To the contrary, in Goulding's Answer and Affirmative Defenses, he continues to dispute the violations of the securities laws found by the District Court, particularly the findings of commingling, improper

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[5] The Court hinted that the $642,422 in Goulding's ill-gotten gains was "quite possibly at the low end of what is reasonable"; in other words, Goulding's fraud may have caused even more harm. (*Id.* at page 57, ¶ 59)

[6] The Court's opinion describes numerous instances of Goulding's *scienter* and extreme recklessness. For example, Goulding knowingly lied to the SEC in a November 25, 2008 letter when he said he had hired an accounting firm to do annual surprise exams or to provide audited financial statements for the Funds. "That statement was untrue because, as of the date of Randall's letter, Nutmeg had not yet hired any accounting firm." (*Id.* at page 18, ¶¶ 142-150)

valuation and misappropriation. Goulding is not only blind to his misconduct, he blames others, going as far as suing Nutmeg's receiver claiming that she harmed Nutmeg's clients.[7]

Fourth, Goulding has provided only empty assurances against future violations. (*See e.g.,* Answer at ¶ 8 (arguing that Goulding is not "actively affiliated" with an investment advisor)) The fact that Goulding is not currently working as an investment adviser is not dispositive.[8] The Court saw through Goulding's hollow pledge and found it "reasonably likely that Randall will engage in future violations of the law … ." (Div. Ex. 1 at page 51, ¶¶ 40-43) This conclusion was based on Goulding's "complete failure to comply with the Advisers Act, his comingling of investor funds with his personal assets, his implementation of flawed internal systems and methods for valuing and reporting the value of assets under management, his inattention to internal controls, his transfers of millions of dollars out of the Funds to the Relief Defendants, and his failure to disclose any of this to investors. (*Id.*) Moreover, Goulding is active as an attorney in the securities industry. He helps small companies prepare securities filings, issues attorney opinion letters regarding securities transactions under Rule 504 of Regulation D, and represents individuals in Commission Enforcement investigations. (*See* Div. Ex. 4)

Finally, in addition to the consideration of the *Steadman* factors, barring Goulding from associating with an investment adviser will deter others from engaging in similar misconduct. *See* Ralph W. LeBlanc, Exchange Act Rel. No. 48254, 2003 WL 21755845, at *7 (July 30, 2003) (explaining that the sanctions will serve as a deterrent to others).

> The proper functioning of the securities industry and markets depends on the integrity of industry participants and their commitment to transparent disclosure.

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[7] Goulding's lawsuit was tossed on summary judgment which was affirmed on appeal. *Alonso v. Weiss*, 932 F.3d 995, 999 (7th Cir. 2019)

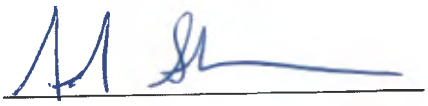
[8] F or example, the absence of a current position in the securities industry does not preclude a Court from imposing injunctive relief. *SEC v. Lipson*, 129 F. Supp. 2d 1148, 1157- 59 (N.D. Ill. 2001), *aff'd*, 278 F.3d 656 (7th Cir. 2002); *SEC v. Koenig*, 532 F. Supp. 2d 987, 993-94 (N.D. Ill. 2007), *aff'd*, 557 F.3d 736 (7th Cir. 2009).

> Securities industry participation by persons with a history of fraudulent conduct is antithetical to the protection of investors.

John W. Lawton, 2012 WL 6208750, at *11. Here, the District Court's findings of fact and the circumstances of this case demonstrate that Goulding is unfit to act as an investment adviser. After all, investment advisers are fiduciaries and must act in a client's best interests, avoid misleading their clients, and fully disclose all material facts and conflicts of interest. Goulding's prior misconduct and current activities render him unable to comply with this high standard.

For the foregoing reasons, the Division of Enforcement respectfully requests that this Motion for Summary Disposition be granted, and that Goulding be barred from associating with an investment adviser.

Dated: February 28, 2020

By: 

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CERTIFICATE OF SERVICE

In accordance with Rule 150 of the Commission's Rules of Practice, I hereby certify that on February 28, 2020 I caused a copy of the forgoing motion and exhibits to be served upon the following persons by the method indicated:

By UPS:

Office of Secretary
Securities and Exchange Commission
100 F Street, N .E., Mail Stop 1090
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EXHIBIT 1

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

SECURITIES AND EXCHANGE COMMISSION,	)	
Plaintiff,	)	Case No. 09-cv-1775
v.	)	Jeffrey T. Gilbert Magistrate Judge
RANDALL GOULDING; and DAVID GOULDING,	)	
Defendants,	)	
DAVID GOULDING, INC.; DAVID SAMUEL, LLC; FINANCIAL ALCHEMY, LLC; PHILLY FINANCIAL, LLC; ERIC IRRGANG; and SAM WAYNE	)	
Relief Defendants.	)	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I.

Findings of Fact

A. Nutmeg and the Funds

1. Defendant The Nutmeg Group, LLC ("Nutmeg"), was an investment advisory firm founded in 2003 by Michael Montaigne and Defendant Randall Goulding ("Randall"). Stipulations of Fact [ECF No. 1003] at ¶ 1. Nutmeg was founded to make investments and to provide investment advice to unregistered investment pools. Proposed Agreed Findings of Fact and Conclusions of Law ("Agreed Findings and Conclusions") [ECF No. 927] at ¶ 1.

2. Initially, Nutmeg was not required to register as an investment adviser because it was too small. Stipulations of Fact [ECF No. 1003] at ¶ 2.

3. Nutmeg's business grew, however, and it eventually registered as an investment adviser on June 7, 2007. Stipulations of Fact [ECF No. 1003] at ¶ 3.

4. By December 2007, Nutmeg had fifteen advisory clients – which will be referred to collectively as the "Funds" and individually as a "Fund" – and claimed to have about $32 million under management. Stipulations of Fact [ECF No. 1003] at ¶ 4.

5. The Funds, created over several years, all were limited partnerships organized in Illinois or Minnesota. Stipulations of Fact [ECF No. 1003] at ¶ 5.

6. The Funds included: Nutmeg/AdZone, LP ("AdZone"), Nutmeg/Tropical, LP ("Tropical"), Nutmeg/Startech II, LP ("Startech"), Nutmeg/Image Globe, LP ("Image Globe"), Nutmeg/Nanobac, LP ("Nanobac"), Nutmeg/MiniFund LLLP ("MiniFund"), Nutmeg/MiniFund II, LLLP ("MiniFund II"), Nutmeg/Lightning, LLLP ("Lightning"), Nutmeg/October, LLLP ("October") Nutmeg/Michael, LLLP ("Michael"), Nutmeg/Fortuna, LLLP ("Fortuna"), Nutmeg/Patriot, LLLP ("Patriot"), Nutmeg/Mercury, LLLP ("Mercury"), Micro Pipe Fund I, LLC ("Micro Pipe") and The Stealth Fund, LLLP ("Stealth"). Randall's Answer to Amended Complaint ("Answer to Am. Compl.") [ECF No. 328] at ¶¶ 15-28.

7. The investors in the Funds were 328 individuals and entities who invested money with the Funds as limited partners. Agreed Findings and Conclusions [ECF No. 927] at ¶ 7.

8. The investors invested money with the Funds, which would then purchase securities issued by small companies (meaning those with market capitalizations below $50 million). Stipulations of Fact [ECF No. 1003] at ¶ 6.

9. At first, Nutmeg directed Fund assets towards investments in a single company. Answer to Am. Compl. [ECF No. 328] at ¶ 34.

10. During 2004, Adzone was formed to invest in Adzone Research; Tropical was

formed to invest in Tropical Beverage, Inc.; Startech was formed to invest in Startech Environmental Corporation; Image Globe was formed to invest in Image Globe Solutions; and Nanobac was formed to invest in Nanobac Pharmaceuticals. Answer to Am. Compl. [ECF No. 328] at ¶¶ 15-19.

11. Beginning in 2005, Nutmeg opened funds to make investments in a number of different companies. Answer to Am. Compl. [ECF No. 328] at ¶ 35.

12. During 2005, MiniFund was organized to invest in five companies; MiniFund II was organized to invest in different companies; and Lightning and October were formed to invest in in numerous companies. Answer to Am. Compl. [ECF No. 328] at ¶¶ 20-23.

13. During 2006, Nutmeg formed Michael, Fortuna, and Patriot to invest in the securities of numerous companies. Answer to Am. Compl. [ECF No. 328] at ¶¶ 24-26.

14. During 2007, Nutmeg formed Mercury, Micro Pipe, and Stealth to invest in the securities of numerous companies. Answer to Am. Compl. [ECF No. 328] at ¶¶ 27-29.

15. The Funds would acquire these securities through private investments in public equity ("PIPE") transactions. Stipulations of Fact [ECF No. 1003] at ¶ 7.

16. In a PIPE transaction, a public company sells a security directly to a private investor rather than through a public offering. Agreed Findings and Conclusions [ECF No. 927] at ¶ 9.

17. Generally, a company selling shares through a PIPE transaction offers a fixed number of shares at a discount to the current market price, and the shares sold are restricted for a period of time (such as six to nine months) before they can be resold. (Trial Transcript ("Tr.") 360:12-18).

18. In this context, a restriction means there is a restriction printed on the certificate and the shares cannot be sold until the restriction is lifted. (Tr. 360:19-22).

19. To the extent a PIPE transaction increases the number of shares of a company's stock in the market, a PIPE offering, like any offering of additional shares by an issuer, dilutes the value of existing shares held by investors. (Tr. 73:13-19).

20. In this case, the Funds mostly used the PIPE investments to acquire rights to convertible equity, convertible debt, and warrants. Stipulations of Fact [ECF No. 1003] at ¶ 8.

21. In other words, Nutmeg used mostly nontraditional or "structured" PIPEs, which allowed the Funds to convert their investments into restricted securities of the company that issued the instrument held by a Fund. (Tr. 75-77).

22. A convertible note is a debt instrument with certain equity features because under certain circumstances it can convert to equity shares. (Tr. 365:15-18).

23. The share equivalency for a convertible note is the number of shares derived from a formula based on the price of the issuing company's stock at the time of conversion, the amount of the conversion, and the discount percentage. (Tr. 1460:22-1461:1).

24. In most of the Funds, the investors were locked in – meaning they could not receive a distribution or withdraw capital – until the securities held by the relevant Funds were sold. Stipulations of Fact [ECF No. 1003] at ¶ 9.

25. In its work with the Funds, Nutmeg wore two hats. Nutmeg was an investment adviser for all fifteen funds. It also was a general partner in thirteen funds. Stipulations of Fact [ECF No. 1003] at ¶ 10.

26. In fulfilling its duties as an investment adviser, Nutmeg directed the Funds' strategy and monitored their investments. Stipulations of Fact [ECF No. 1003] at ¶ 11; Answer to Am. Compl. [ECF No. 328] at ¶ 30.

27. As a general partner, Nutmeg was responsible for providing potential investors with

offering documents (such as Private Placement Memoranda), sending investors their quarterly account statements, maintaining "full and accurate records and books of account" for all transactions, and executing portfolio transactions on behalf of the Funds. Answer to Am. Compl. [ECF No. 328] at ¶ 30; Stipulations of Fact [ECF No. 1003] at ¶ 12.

B. Defendant Randall Goulding and His Sons

28. Randall was one of Nutmeg's two founders. Stipulations of Fact [ECF No. 1003] at ¶ 13.

29. Randall is an accountant and an attorney licensed in Illinois. Agreed Findings and Conclusions [ECF No. 927] at ¶ 25.

30. Randall and his partner, Carl Duncan ("Duncan"), currently are the owners of a law firm that focuses on securities related matters. (Tr. 790:11-791:4, 833:18-834:3).

31. Randall's law firm, The Law Offices of Randall S. Goulding & Associates, P.C., shared office space with Nutmeg and provided legal services to Nutmeg and the Funds. Answer to Am. Compl. [ECF No. 328] at ¶ 14.

32. In 2006, a few years after Nutmeg's formation, Randall became its sole owner and managing member. He remained so until 2009. Stipulations of Fact [ECF No. 1003] at ¶ 14.

33. In these roles, Randall oversaw all of Nutmeg's operations. Agreed Findings and Conclusions [ECF No. 927] at ¶ 28; Stipulations of Fact [ECF No. 1003] at ¶ 15.

34. Randall decided whom to hire. Stipulations of Fact [ECF No. 1003] at ¶ 16.

35. Randall oversaw Nutmeg's employees. Agreed Findings and Conclusions [ECF No. 927] at ¶ 29; Stipulations of Fact [ECF No. 1003] at ¶ 17.

36. Randall prepared the Funds' offering documents. Agreed Findings and Conclusions [ECF No. 927] at ¶ 30; Stipulations of Fact [ECF No. 1003] at ¶ 18.

37. Sometimes Randall opened the brokerage and bank accounts. Stipulations of Fact [ECF No. 1003] at ¶ 19.

38. Randall identified investment opportunities, negotiated investment terms, and made investment decisions for the Funds. Stipulations of Fact [ECF No. 1003] at ¶ 20.

39. Randall approved the transfer of funds and payment of expenses for both Nutmeg and the Funds. Stipulations of Fact [ECF No. 1003] at ¶ 21.

40. Randall valued the Funds. Stipulations of Fact [ECF No. 1003] at ¶ 22.

41. Randall was responsible for the books and records of both Nutmeg and the Funds. Stipulations of Fact [ECF No. 1003] at ¶ 23.

42. All of Nutmeg's Uniform Application for Investment Adviser Registration ("Form ADV") filings refer to the Investment Advisers Act of 1940 ("Advisers Act") and its provisions. (PX 1 at 3, 28, 38-39; PX 2 at 3, 26, 39; PX 3 at 3, 26, 39).

43. In Nutmeg's initial Form ADV filed with the SEC, Randall was designated as the firm's Chief Compliance Officer ("CCO"). Agreed Findings and Conclusions [ECF No. 927] at ¶ 31; (PX 1 at 22-23; PX 2 at 22-23).

44. As Nutmeg's CCO, it was Randall's responsibility to ensure that Nutmeg complied with the federal securities laws, including the Advisers Act. (Tr. 803:13-19).

45. Randall oversaw all of Nutmeg's operations, and ultimately was responsible for everything that went on at Nutmeg. (Tr. 777:23-778:6).

46. Randall was responsible for approving the expenses incurred by Nutmeg, including approving payments made to Randall or for his benefit. (Tr. 778:7-12).

47. According to Randall, the "buck stopped" with him. (Tr. 789:11-12).

48. Randall hired his son Ryan Goulding ("Ryan") to be Nutmeg's outside accountant,

even though Randall could have chosen someone more experienced and independent. (Tr. 779:1-20).

49. Randall hired his son Defendant David Goulding ("David") to replace Randall as CCO, even though David had never been a CCO before and had not done compliance work before working for Nutmeg. (Tr. 781:12-21, 922:3-923:9).

50. Randall could have hired a CCO who was independent and had previous compliance experience. (Tr. 781:22-782:17).

51. Randall also assigned David responsibilities for valuing the Funds' investments even though Randall knew David had little, if any, experience with valuation principles contained in FAS 157. (Tr. 923:19-924:6).

52. Randall assigned his son Brandon Goulding ("Brandon") to do valuation work, even though Randall knew Brandon had never before worked for an investment adviser, had no experience with FAS 157 or the Advisers Act, and had no prior experience valuing investments, illiquid investments, or restricted stock. (Tr. 782:22-784:1).

53. Randall could have hired someone who was more independent than Brandon and who had prior experience valuing restricted stock and other illiquid investments. (Tr. 784:2-15).

54. Randall paid his sons less than what Nutmeg would have had to pay employees who were not Randall's children. (Tr. 784:22-786:1).

55. Randall had the authority to overrule his sons' decisions at Nutmeg. (Tr. 789:13-22)

56. Randall made the decision to hire his own law firm to provide legal services for Nutmeg and the Funds. (Tr. 789:23-3).

57. Nutmeg was Randall's law firm's only client and Nutmeg was the firm's sole

source of income. (Tr. 791:5-17).

58. Rather than hiring his firm to be Nutmeg's attorney, Randall could have hired a lawyer who was independent, had expertise with the Advisers Act, did not have a financial stake in Nutmeg, and who could have provided Nutmeg with more objective legal advice than Randall would provide as principal of Nutmeg. (Tr. 791:16-792:8).

59. But hiring an independent attorney would have meant that Randall received less money from Nutmeg because Nutmeg would have had to pay legal fees to an outside attorney. (Tr. 792:9-18).

60. Randall understood that he owed fiduciary duties to the Funds and he also understood he owed duties of care to the Investors in the Funds including duties to disclose all material facts and material conflicts of interest. (Tr. 846:17-847:22).

61. Randall understood that he had a duty to act in the best interests of the Funds and their investors. (Tr. 847:6-13).

62. Even though Randall's law firm provided legal services to both Nutmeg and the Funds, and Randall recognized a potential conflict existed between himself and the Funds' investors, Randall does not recall ever having disclosed any potential conflict to the Funds' investors. (Tr. 864:14-865:17, 868:3-869:19).

63. Randall's law firm also provided legal services to both the Relief Defendants and certain companies in which Nutmeg and the Funds invested. (Tr. 870:2-874:7).

C. Nutmeg Collected Fees and Distributed Statements to Investors

64. Nutmeg received administrative fees and performance fees from the Funds. Agreed Findings and Conclusions [ECF No. 927] at ¶ 13.

65. The fee structure varied by fund. Nutmeg received a one-time four percent (4%)

administrative fee, which was deducted from an investor's original investment, in Adzone, Tropical, Startech, Image Globe, Nanobac, MiniFund, MiniFund II, Lightning, October, Michael, Fortuna, and Patriot. Agreed Findings and Conclusions [ECF No. 927] at ¶ 14.

66. These same Funds also paid Nutmeg a performance fee, which ranged from 15% to 20% of the Funds' profits. Agreed Findings and Conclusions [ECF No. 927] at ¶ 15; Answer to Am. Compl. [ECF No. 328] at ¶ 38.

67. Randall decided the amount of management fees Nutmeg would charge the Funds. (Tr. 881:22-882:1).

68. Mercury and Stealth paid Nutmeg a monthly management fee of 2.5%, based on the value of the Funds' assets under management, and a performance fee based on the increase in the net asset value of the Funds' investments. Agreed Findings and Conclusions [ECF No. 927] at ¶ 16; Answer to Am. Compl. [ECF No. 328] at ¶¶ 39-40.

69. Nutmeg's performance fee for Mercury was between 25% and 30% of profits. Agreed Findings and Conclusions [ECF No. 927] at ¶ 17; Answer to Am. Compl. [ECF No. 328] at ¶ 39.

70. Nutmeg's performance fee for Stealth was 15% and could be higher based on the performance of the Fund's investments. Agreed Findings and Conclusions [ECF No. 927] at ¶ 18; Answer to Am. Compl. [ECF No. 328] at ¶ 40.

71. The amount of fees Nutmeg charged Mercury Fund were based, in part, on the value Nutmeg assigned to the Mercury Fund's investments. (Tr. 883:7-887:6).

72. As the value of the securities held by Mercury Fund rose, Nutmeg's fees would increase. (Tr. 883:10-13).

73. Nutmeg sent the Funds' investors quarterly account statements by U.S. Mail or

email. Agreed Findings and Conclusions [ECF No. 927] at ¶ 19; Answer to Am. Compl. [ECF No. 328] at ¶ 41.

74. Nutmeg combined the quarterly statements for AdZone, Tropical, Startech, Image Globe, Nanobac, MiniFund, Lightning, October, Patriot, Michael, and Fortuna into a single statement for each investor in these funds. Agreed Findings and Conclusions [ECF No. 927] at ¶ 20; Answer to Am. Compl. [ECF No. 328] at ¶ 42.

75. The Funds' account statements sent to Mercury Fund investors did not disclose the formula by which Nutmeg calculated its fees. (Tr. 889:2-13).

76. For each of the Funds, Nutmeg reported an investor's proceeds from the sale of securities ("Sales Proceeds Earned") and the value of their portion of unsold securities ("Value of Remaining Securities"). Agreed Findings and Conclusions [ECF No. 927] at ¶ 21; Answer to Am. Compl. [ECF No. 328] at ¶ 42.

77. Nutmeg also reported the performance fee paid by the investors ("Carried Interest to Nutmeg") and the investors' "Current Cash Position." Agreed Findings and Conclusions [ECF No. 927] at ¶ 22; Answer to Am. Compl. [ECF No. 328] at ¶ 42.

78. The account statements Nutmeg created for investors in Mercury, MiniFund II, and Stealth represented the investors' "Previous NAV," which signified the net asset value of the investment from the previous quarter, and "Current NAV," which signified the investment's current net asset value. Agreed Findings and Conclusions [ECF No. 927] at ¶ 23; Answer to Am. Compl. [ECF No. 328] at ¶ 43.

79. Both of these figures included deductions for Nutmeg's administrative fee. Agreed Findings and Conclusions [ECF No. 927] at ¶ 24; Answer to Am. Compl. [ECF No. 328] at ¶ 43.

80. Nutmeg also reported its performance fee ("Carried Interest") and the value of the

investors' interest in the fund net of all fees ("Total NAV"). Answer to Am. Compl. [ECF No. 328] at ¶ 43.

D. Defendant David Goulding

81. Randall's son David became involved with Nutmeg after Randall and had a smaller role than his father. Stipulations of Fact [ECF No. 1003] at ¶ 24.

82. In 2007, David began working with Nutmeg as a consultant. Stipulations of Fact [ECF No. 1003] at ¶ 25.

83. In this capacity, David helped prepare account statements and track investments. Stipulations of Fact [ECF No. 1003] at ¶ 26.

84. Then, in January of 2008, David became a full-time Nutmeg employee and assumed additional responsibilities. Agreed Findings and Conclusions [ECF No. 927] at ¶ 34; Stipulations of Fact [ECF No. 1003] at ¶ 27.

85. As a Nutmeg employee, David helped prepare and distribute investor statements, track securities transactions (purchases and sales) in the Funds, and value the Funds' various investments and the investors' partnership units for the Funds. Agreed Findings and Conclusions [ECF No. 927] at ¶ 35.

86. In March 2008, David became Nutmeg's CCO. Stipulations of Fact [ECF No. 1003] at ¶ 28; Answer to Am. Compl. [ECF No. 328] at ¶ 8; (PX 3 at 22, 39).

87. As Nutmeg's CCO, it was David's responsibility to ensure that Nutmeg would comply or become compliant with the Advisers Act. Agreed Findings and Conclusions [ECF No. 927] at ¶ 37.

88. David had little or no investment experience outside of his relationship with Nutmeg and the Funds. (Tr. 487:14-488:17).

E. The Relief Defendants

89. Relief Defendants David Goulding, Inc., David Samuel, LLC, Financial Alchemy, LLC, Philly Financial, LLC, Eric Irrgang and Sam Wayne (collectively the "Relief Defendants") are Randall's family, friends, and companies owned by them. Stipulations of Fact [ECF No. 1003] at ¶ 30.

90. David Goulding, Inc. and David Samuel, LLC are companies owned by David. Agreed Findings and Conclusions [ECF No. 927] at ¶ 38; Answer to Am. Compl. [ECF No. 328] at ¶¶ 9-10.

91. Financial Alchemy, LLC is a company owned by Randall's son Ryan. Agreed Findings and Conclusions [ECF No. 927] at ¶ 39; Answer to Am. Compl. [ECF No. 328] at ¶ 11.

92. Philly Financial, LLC is a company owned and controlled by Randall's son Brandon. Agreed Findings and Conclusions [ECF No. 927] at ¶ 40; Answer to Am. Compl. [ECF No. 328] at ¶ 12.

93. Eric Irrgang ("Irrgang") is Randall's nephew. Answer to Am. Compl. [ECF No. 328] at ¶ 13.

94. Sam Wayne ("Wayne") is a friend of the son of Nutmeg's former office assistant. Agreed Findings and Conclusions [ECF No. 927] at ¶ 41; Randall's Answer to Initial Complaint [ECF No. 50] at ¶ 14.

F. The Transfer of Assets to the Relief Defendants

95. The Funds were not always domiciled in the state where the shares they wanted to buy were registered. Stipulations of Fact [ECF No. 1003] at ¶ 31.

96. Therefore, Randall chose to work with the Relief Defendants based, at least in significant part, on two factors: personal relationship and state of residence. Stipulations of Fact

[ECF No. 1003] at ¶ 32.

97. When the Relief Defendants made investments on behalf of the Funds, neither Nutmeg nor the Funds were parties to the investment agreements governing those investments. (Tr. 808:17-24).

98. Instead, the investments were made in the name of the Relief Defendants, were titled in the name of the Relief Defendants, and were held in the Relief Defendants' bank and brokerage accounts. The Funds did not retain legal ownership of those investments. (Tr. 808:25-809:7, 810:3-9).

99. Randall negotiated the terms of the investments made by the Relief Defendants on behalf of the Funds and was ultimately responsible for preparing the agreements and documents attendant to those investments. (Tr. 809:8-23).

100. The documents governing the Relief Defendants' investments often did not specify which Fund's assets were being used to make the investments. (Tr. 809:24-810:2).

101. Randall made the decision to buy, sell, or hold securities held by the Relief Defendants. (Tr. 810:10-15).

102. Randall was not aware of another investment adviser employing an arrangement similar to the one Nutmeg employed vis-à-vis the Relief Defendants. (Tr. 810:22-812:21).

103. Randall never asked Duncan whether Nutmeg's arrangement with the Relief Defendants was legal and never received advice that Nutmeg's use of the Relief Defendants was legal. (Tr. 814:10-20, 819:17-20, 1414:16-1415:2, 1439:8-1441:6).

104. Randall did not rely on any SEC guidance regarding special purpose vehicles in deciding to use the Relief Defendants to make investments on behalf of the Funds or at any other time at issue in this lawsuit. (Tr. 1415:3-23, 1430:17-20).

105. Nutmeg transferred more than $4 million of the Funds' assets to the Relief Defendants. (Tr. 807:25-808:8).

106. Although the Relief Defendants received legal title, Randall continued to play a significant role in determining what happened to the assets. Stipulations of Fact [ECF No. 1003] at ¶ 33.

107. Randall instructed the Relief Defendants when to receive the Funds' asset transfers and how to invest them. Stipulations of Fact [ECF No. 1003] at ¶ 34.

108. Randall decided which companies to invest in, determined how much to invest, negotiated the terms of the investments, and prepared the documentation for the investments. Stipulations of Fact [ECF No. 1003] at ¶ 35.

109. In fact, Relief Defendants never picked investments. Stipulations of Fact [ECF No. 1003] at ¶ 36.

110. And the securities and cash that Relief Defendants received through these transfers were held in bank and brokerage accounts in Relief Defendants' own names. Stipulations of Fact [ECF No. 1003] at ¶ 37.

111. Randall selected his nephew Irrgang to hold the Funds' investments. (Tr. 912:23-913:7).

112. Randall did not choose Irrgang based on Irrgang's investment experience, as Irrgang did not have any background or experience that would make him suitable for a job with an investment company. (Tr. 913:8-15).

113. At Randall's direction, Irrgang opened brokerage accounts in his own name, took custody of Fund assets, and traded in the accounts. Randall Goulding's Answer [ECF No. 328] at ¶ 13.

114. The account opening documents signed by Irrgang contained false information regarding his assets and investment experience. (PX 115, 116).

115. One of the other Relief Defendants was Wayne, who was the college roommate of the son of Randall's administrative assistant. (Tr. 902:1-10).

116. At the time Randall selected Wayne to hold the Funds' investments, Randall had never met Wayne. (Tr. 902:11-13, 904:16-18).

117. Randall understood that Wayne did not have any investment experience. (Tr. 903:14-22).

118. The asset transfers to the Relief Defendants took place over a number of years. Stipulations of Fact [ECF No. 1003] at ¶ 38.

119. At the time of Nutmeg's registration with the SEC, the Relief Defendants had not transferred back to the respective Funds all of the assets that Relief Defendants had received. Stipulations of Fact [ECF No. 1003] at ¶ 40.

G. Nutmeg's Payments to the Relief Defendants

120. When the Relief Defendants owned by Randall's sons sold securities, those Relief Defendants received 3% of the sales proceeds, regardless of whether the sales were profitable. (Tr. 851:5-854:24).

121. The other Relief Defendants received only 1% of the proceeds of their securities sales. (Tr. 904:19-905:5, 906:6-19, 913:16-914:19; PX 32, PX 76, PX 105).

122. Randall was the person who decided that his sons should get paid 3% of the proceeds of the sales of the Funds' securities. (Tr. 854:25-856:6).

123. The financial benefit to his sons was one motivating factor in Randall's decision to pay 3% of the sale proceeds. (Tr. 855:16-856:21).

124. Instead of using the Relief Defendants, Randall could have used independent third parties with far more securities experience than his family and friends. (Tr. 859:5-13).

125. However, Randall understood that an independent third party would exercise more scrutiny than the Relief Defendants, that he would be able to exert less influence over a third party, and that using an independent third party would mean less compensation for Randall's family and friends. (Tr. 859:14-25).

126. Financial Alchemy, LLC received at least $13,113; David Goulding Inc. received at least $3,318; David Samuel, LLC received at least $9,769; Philly Financial, LLC received at least $38,900; and Irrgang received at least $25,806. Randall Goulding's Answer [ECF No. 328] at ¶ 57; (PX 35, PX 36, PX 37, PX 38)

H. Nutmeg's Commingling of Client and Investor Funds

127. Prior to the SEC exam, money belonging to Nutmeg, Randall, and the Funds was commingled in the same bank accounts. Stipulations of Fact [ECF No. 1003] at ¶ 41; (Tr. 964:10-18).

128. Money from fourteen of the Funds was deposited along with Nutmeg's own money in a Nutmeg bank account. Stipulations of Fact [ECF No. 1003] at ¶ 42.

129. One consequence of the commingling was that when an asset belonging to a Fund was transferred to a Relief Defendant, that transfer was not recorded in the Fund's books and records. (Tr. 964:19-965:9).

130. Some of the Funds' investments were made in Nutmeg's name, rather than the relevant Fund's name. Stipulations of Fact [ECF No. 1003] at ¶ 43.

131. Likewise, securities owned by the Funds were deposited in brokerage accounts belonging to Nutmeg or the Relief Defendants. Stipulations of Fact [ECF No. 1003] at ¶ 44.

132. This commingling also involved Randall's own money held in Nutmeg's bank accounts, such that Randall's personal assets were commingled with Nutmeg's and the Funds' assets. (Tr. 964:15-18).

133. Randall was solely responsible for the commingling of the Funds' and Nutmeg's money. (Tr. 803:23-25, 966:25-967:2).

134. Randall admitted the commingling "was a very bad idea in retrospect" and the commingled assets "should have been severed out with separate accounts." (Tr. 967:3-8).

135. On January 10, 2007, Randall received an email from a potential investor who referenced a discussion with Duncan. (Tr. 968:11-970:4; PX 292 at 2).

136. The potential investor wrote: "I just spoke with and retained Carl Duncan. One of the many things we discussed, was the fact that Nutmeg takes the investments in the name Nutmeg and not the funds. He told me that he was unaware of this fact. He further stated and I quote 'That's crazy.'" (Tr. 969:17-970:4; PX 292 at 2).

137. On January 11, 2007, Randall received an email from Duncan stating: "Bottom line: if there isn't some indication of representative capacity (escrow, FBO, in name of fund, etc.), isn't this a classic example of commingling and leaves the funds and their respective investors bare?" (Tr. 970:1-25; PX 292 at 1).

138. On January 18, 2007, Duncan wrote Randall an email identifying "concerns" about Nutmeg, including that "[t]he title to securities (and broker accounts) were in the name of Nutmeg, not the respective fund." (Tr. 971:4-23; PX 291 at 2-3).

139. On March 19, 2007, Duncan wrote to Randall: "Whether you like it or not, hopefully you will now be getting the perception that you are in the securities business and have not done a real good job at it – particularly when you add in...the goofy one-off investment

partnerships [and] not being familiar with the applicable standards." (PX 290 at 1).

140. As with the asset transfers, the commingling was not unwound by the time of Nutmeg's registration with the SEC. Stipulations of Fact [ECF No. 1003] at ¶ 50.

141. By the time of the SEC exam, Randall still had not remedied the commingling concerns identified by Duncan. (Tr. 971:19-972:18).

I. Nutmeg and the Funds Never Were Audited

142. On February 14, 2007, Duncan advised Randall: "[M]ost professional investors…expect to have performance reporting that is completely independent and/or the subject of generally accepted auditing principles. That is possible in one of two ways…Use of Administrators [or] Have Performance Audited. Failure to have one such 'fire wall' is now pretty regularly…viewed as insufficiently trustworthy…If one doesn't use an administrator…then at minimum one should use an outside auditor." (PX 293 at 1-2; Tr. 975:15-977:5).

143. On March 19, 2007, Duncan again advised Randall that Nutmeg should obtain a "[p]erformance review by someone independent, whether by engaging an administrator and/or audit." (PX 290 at 1-2; Tr. 978:9-979:6, 980:11-981:2).

144. Randall never followed Duncan's advice to retain an auditor. (Tr. 1418:16-21).

145. The Funds never were audited or subjected to surprise examinations. Stipulations of Fact [ECF No. 1003] at ¶ 51.

146. In his November 25, 2008 letter to the SEC, Randall represented: "we have hired an accounting firm to do annual surprise exams or to provide audited financial statements for each of our funds, as appropriate." (PX 22 at 2; Tr. 981:8-24).

147. That statement was untrue because, as of the date of Randall's letter, Nutmeg had not yet hired any accounting firm. (PX 295; Tr. 981:16-982:7, 983:19-984:4).

148. In fact, Nutmeg never took steps to conduct an audit or surprise examinations for the period from June 7, 2007 to December 31, 2007. Stipulations of Fact [ECF No. 1003] at ¶ 52.

149. Instead, Nutmeg only sought an audit for the 2008 calendar year. Stipulations of Fact [ECF No. 1003] at ¶ 53. But that audit never happened. Stipulations of Fact [ECF No. 1003] at ¶ 54.

150. In fact, by the time this lawsuit was filed in March 2009, Nutmeg still had not retained an auditor. (Tr. 984:1-9).

J. Nutmeg's and the Funds' Books and Records Were Deficient

151. During the SEC's examination of Nutmeg in 2008, the SEC asked for "accounting records, financial statements, receipts, and ledgers . . . for each Fund." Stipulations of Fact [ECF No. 1003] at ¶ 58.

152. Nutmeg did not have general or auxiliary ledgers, trial balances, or income and expense statements for the period of time during which it was doing business. Ryan told the SEC staff he had not prepared such records. Randall and David admitted to the SEC staff that such records did not exist. (PX 21 at 9; Tr. 94:15-95:2).

153. Nutmeg did not have complete historical records of the Funds' investments or its purchases and sales of securities on behalf of the Funds. (PX 21 at 9; Tr. 95:3-13).

154. Many of the notes and other documents reflecting the Funds' investments in PIPEs were not signed or were missing. (Tr. 97:25-98:15).

155. For example, an August 2007 $600,000 convertible note was payable to "The Nutmeg Group, LLC" from Physicians Healthcare Management Group, Inc. But no fund was identified in the note. (PX 9).

156. Randall was responsible for ensuring Nutmeg maintain the required books and

records. (Tr. 803:20-22).

157. The people most familiar with Nutmeg's spreadsheet-based valuation system all admitted Nutmeg grew too big for its record keeping system and there were mistakes and errors in that system. David characterized the spreadsheet-based valuation system as "an absurdly unwieldy system" that "seemed to lend itself to a problem happening." (Tr. 1571:5-24). Although David thought the spreadsheet-based system may have worked better in Nutmeg's early years, he acknowledged he has no evidence to validate that speculation. (Tr. 1598:16-24).

158. Randall agreed there were errors in Nutmeg's valuation system. (Tr. 776:18-24). Ryan acknowledged there were mistakes in the valuation spreadsheets and he could not tell if Nutmeg's fees were too high as a result of its erroneous valuations. (Tr. 1819:14-21, 1821:12-1822:9).

159. Brandon similarly agreed Nutmeg's Excel-based spreadsheet valuation system grew to be unwieldy and there were errors in that system. (Tr. 1516:18-1518:9).

160. The SEC found errors in Nutmeg's spreadsheets when its examiners first went in to conduct their investigation. (Tr. 119:19-21).

K. Randall Made False Statements to the SEC

161. In his November 25, 2008 letter to the SEC, Randall claimed that, before the SEC's compliance examination in 2008, he "wasn't even aware of this [Advisers] Act or its potential applicability" to himself or Nutmeg, because he "never happened across the Investment Advisers Act" previously. (PX 22 at 1-2)

162. In this letter, Randall explained that an attorney named Carl Duncan had performed a "legal audit" of Nutmeg and suggested that the firm become "federally-registered" as an investment adviser, which Randall agreed to do and submitted the necessary paperwork without ever becoming "aware of the Act." (PX 22 at 1-2).

163. In fact, on January 18, 2007, Duncan sent Randall an email in which specifically

called to Randall's attention "the Investment Adviser Act of 1940." (PX 291 at 2).

164. Duncan also advised Randall to use an outside auditor or third-party administrator to handle Nutmeg's valuation and reporting, and expressed concerns about Nutmeg maintaining title to the Funds' securities in its own name rather than in the names of the respective Funds. (PX 291 at 2, PX 292 at 1, PX 293 at 2).

165. Subsequently, on March 18 and April 11, 2007, Duncan referred Randall to certain requirements and substantive provisions of the Advisers Act. (PX 294 at 2-3; DX 81 at 2-3).

166. Randall also signed and certified Nutmeg's May 7, 2007 Form ADV, which was Nutmeg's application to register with the SEC as an investment adviser. (Tr. 918:9-20; PX 1).

167. That Form ADV contained multiple references to the Advisers Act. (Tr. 919:5-19; PX 1 at 3, 26, 38-39, 40).

168. Randall signed Nutmeg's ADV without personally taking any action to learn of the requirements of the Advisers Act. (Tr. 920:16-19).

169. By the time Nutmeg registered with the SEC in 2007, Randall was aware of the existence of the Advisers Act. (Tr. 940:3-17).

170. During 2007, Randall authored the Mercury Fund's amended private placement memorandum, which contains multiple references to the Advisers Act. (PX 6 at 11, 21, 66).

171. Randall admitted that he failed to familiarize himself with the Advisers Act or its requirements and was not as conversant with the Act as he should have been. (Tr. 940:10-13, 959:23-962:4).

172. Randall says he delegated responsibility for the Advisors Act to a young attorney working for him who was just a couple of years out of law school, though Randall has no specific recollection of actually delegating responsibility for the Act to this young attorney. (Tr. 961:25-

963:6). According to Randall, when Nutmeg received notice of the SEC audit, this young attorney "ran into [Randall's] office and shouted, "did you realize that there is a whole securities act regulating us that we were not aware of?? How could we have registered under an Act we didn't even know existed??" (PX 22 at 2).

L. Randall and Nutmeg Made False or Misleading Statements to Investors

173. Randall prepared, reviewed, and approved the offering materials, including private placement memoranda ("PPM"), provided to the Funds' potential investors. (Tr. 834:16-835:20).

174. Until its registration with the SEC, Nutmeg touted itself to investors and potential investors as having achieved an "internal rate of return on its investments, since its inception, exceeding 130% per annum," meaning that Nutmeg's overall return on investments exceeded 400 percent. (PX 21 at 15 § C, PX 131 at 1).

175. Randall prepared the Nutmeg Overview sometime after the death of his partner, Michael Montaigne, in 2006. (Tr. 836:25-837:5-8).

176. Nutmeg claimed that it purchased "publicly-traded stocks, directly from the company, at a discount, with substantial upside potential, invariably with warrants." (PX 131 at 1).

177. Nutmeg further described its "investment strategy" as the "discounted acquisition of publicly-traded stocks." (PX 131 at 1).

178. However, most of the assets managed by Nutmeg were not certificated, but were PIPE agreements, convertible notes, warrants, and stock certificates. Defendants' Proposed Findings of Fact and Conclusions of Law ("Defendants' Proposed Findings and Conclusions") [ECF No. 983] at ¶ 52.

179. The vast majority of the Funds' investments were not in company stock, but in

convertible notes. (Tr. 1406:23-1407:5).

180. In fact, the investments Nutmeg made for the Funds were "very speculative investments" involving companies that "were not very stable," were "very risky," and had "going concern issues." (Tr. 838:15-839:14). Randall admitted that was Nutmeg's "focus." (Tr. 1404:18-21).

181. The Nutmeg Overview included a biography of Randall that touted his career with the IRS, his legal practice, and his charitable endeavors. (Tr. 839:21-840:18; PX 131 at 5-6).

182. The Nutmeg Overview does not disclose the IRS had imposed penalties on Randall for his negligent preparation of tax returns, or that Randall had later been convicted for various felonies, including fraud, or that Randall's law license had been suspended. (Tr. 841:7-844:14, 845:8-25; PX 131).

183. The Funds' offering materials did not explain that Randall gave key roles at Nutmeg to his three sons. (Tr. 894:1-5; PX 254).

184. The Funds' offering materials did not disclose Nutmeg's use of the Relief Defendants to make investments for the Funds. (Tr. 894:6-16, 895:6-896:4, 897:3-898:12; PX 254).

185. Randall prepared, reviewed, and approved the Mercury Fund's August 2, 2007 disclosure memorandum. (Tr. 898:13-22; PX 254).

186. The Mercury Fund disclosure memorandum included a biography of Randall that touted his career with the IRS, his legal practice, and his charitable endeavors. (Tr. 899:10-23; PX 6 at 13).

187. The Mercury Fund disclosure memorandum does not disclose the IRS had imposed penalties on Randall for his negligent preparation of tax returns, that Randall had later been

convicted of various felonies, including fraud, or that Randall's law license had been suspended. (Tr. 842:22-845:13, 899:10-900:20; PX 6).

188. It was Randall's decision not to disclose his conviction and law license suspension to investors. (Tr. 900:7-11).

189. Randall did not disclose his conviction or law suspension in any offering documents that preceded the Stealth Fund, which is the last Fund at issue in this lawsuit. (Tr. 900:12-20).

M. Nutmeg's Inaccurate and Overstated Valuations of the Funds

190. On March 27, 2008, Nutmeg certified to the SEC that it had assets under management of $25.9 million. (PX 3 at 8). However, in identifying each of its client Funds for which it was an adviser, Nutmeg described assets under management totaling only $18.1 million. (PX 3 at 28-34).

191. During the SEC's compliance examination, Nutmeg claimed to have assets under management of approximately $32.3 million as of April 1, 2008. Answer to Am. Compl. [ECF No. 328] at ¶ 32; (PX 8).

192. As of April 1, 2008, four Funds held the majority of assets under Nutmeg's management: Stealth, Mercury, Michael and Fortuna. Answer to Am. Compl. [ECF No. 328] at ¶ 32; (PX 8).

193. Stealth had 19 investors and claimed to have assets under management valued at $10,376,294. Answer to Am. Compl. [ECF No. 328] at ¶ 32; (PX 8).

194. Mercury had 100 investors and claimed to have assets under management valued at $8,074,009. Answer to Am. Compl. [ECF No. 328] at ¶ 32; (PX 8).

195. Michael had 86 investors and claimed to have assets under management valued at $2,439,985. Answer to Am. Compl. [ECF No. 328] at ¶ 32; (PX 8).

196. Fortuna had 89 investors and had assets under management purportedly valued at $1,982,435. Answer to Am. Compl. [ECF No. 328] at ¶ 32; (PX 8).

197. Of the $32.3 million Nutmeg claimed to hold in purported Fund assets, approximately $1 million was held in the custody of a bank or brokerage firm. (Tr. 98:16-98:24).

198. The remaining Fund assets consisted of documents – including PIPE agreements, convertible notes, warrants, and stock certificates – which were kept at Nutmeg's offices. (Tr. 98:25-99:10).

199. Randall admitted that Nutmeg made errors in the valuation of the Mercury Fund's investments as reported to the Fund's investors in quarterly statements though he claimed those errors were unintentional. (PX 22 at 3).

200. Nutmeg did not maintain documentation adequate to reconcile the assets or the value of the assets under management as reported to investors in each of the Michael, Fortuna, Mercury, and Stealth Funds, which were the largest of Nutmeg's Funds. (Tr. 97:3-99:15, 117:20-140:13). In short, the account statements for the Funds that Nutmeg sent to investors were wrong and inaccurate. (Tr. 127:15-20).

201. Nutmeg provided the SEC's examiners with documentation for these funds which differed from the information shown on Nutmeg's internal records, as well as the information reported to investors during the first quarter of 2008. (PX 10, PX 11, PX 13, PX 14, PX 15, PX 16).

202. Nutmeg could not determine how to allocate from $400,000 to $1 million among the Funds or their investors. (Tr. 127:15-130:7, 132:16-132:19).

203. In addition, Nutmeg's valuations of the Mercury and Stealth Funds in the first quarter of 2008 were overstated. (PX 15; Tr: 136:6-137:9, 164:2-13).

204. Nutmeg recorded incorrect stock prices for Mercury and Stealth Funds' investments in Nutmeg's internal records by using incorrect stock prices, overstating the proceeds from the sale of shares, and inflating the number of shares received from the Funds' investments. (PX 19, PX 20).

205. These errors caused the value of Mercury Fund's holdings in the first quarter of 2008 to be overstated by $485,000, or nearly 6%. (PX 15; Tr. 136:6-137:9, 132:16-19).

206. Nutmeg also overstated the values for the Stealth Fund's holdings in the first quarter of 2008 by nearly $578,000 or 5.5%. (PX 16; Tr. 137:16-138:13)

207. Nutmeg also incorrectly valued the holdings of the Michael and Fortuna Funds during the first quarter of 2008. (PX 13, PX 14, PX 17, PX 18).

208. One consequence of Nutmeg overvaluing the Funds' holdings was that the Funds and their investors were paying Nutmeg inflated management and performance fees. (Tr. 681:1-21).

N. Nutmeg's Actions Following the SEC's Compliance Examination

209. In May 2008, the SEC began a five-month-long compliance examination of Nutmeg. Stipulations of Fact [ECF No. 1003] at ¶ 29.

210. In a letter to Mercury Fund investors dated September 9, 2008, David attributed Nutmeg's delay in sending investor statements to "switching over our tracking/valuation/reporting software" and a manual recalculation of all Mercury Fund investment positions. (PX 288).

211. David did not mention the SEC's compliance examination or any of the SEC's concerns about record-keeping, commingling of investor and Fund assets, transfer of Fund assets to the Relief Defendants, or Nutmeg's inability to account for the Funds' holdings. (PX 288).

212. Instead, David advised the Mercury Fund investors that Nutmeg was restating the

Fund's valuations for three prior reporting periods, and that in each case the Fund's value was understated and the NAV actually was greater than previously reported. (PX 288).

213. The SEC's compliance examiners sent Nutmeg a letter on September 30, 2008 identifying a number of issues which the SEC stated were problems, deficiencies, or violations of the securities laws. Agreed Findings and Conclusions [ECF No. 927] at ¶ 43; (PX 21).

214. On November 25, 2008, Randall sent the SEC a letter on behalf of Nutmeg responding to the statement of deficiencies. Agreed Findings and Conclusions [ECF No. 927] at ¶ 44; (PX 22).

215. In that letter, Randall only disputed certain of the SEC's statements about the problems observed with Nutmeg and the Funds. Randall argued that any inaccurate statements were unintentional and immaterial, and he described the remedial efforts Nutmeg would undertake to improve its operations. (PX 22).

216. One of the remedial efforts that Randall described was a "massive review of each and every component of the Mercury Fund," which reconstructed valuations for three prior reporting periods. (PX 22 at 3).

217. As a result, Randall advised the SEC that Nutmeg had underreported the value of the Mercury Fund's assets to investors. (PX 22 at 3).

218. David prepared a memorandum describing this review which was dated November 20, 2008 and entitled "Chronicle of Nutmeg/Mercury Fund LLLP valuation review." (PX 226).

219. Nutmeg had revalued the Mercury Fund for a number of prior quarters, increasing the total value of the fund's investments, and it advised investors that that their investments were worth more than previously reported. (PX 226, PX 288).

220. Nutmeg had advised the SEC that it was imposing discounts on convertible notes

for illiquidity and late interest payments. (PX 21 at 2).

221. However, Nutmeg continued to value unconverted notes as if they were freely tradeable stock and even added additional share equivalents for unpaid interest. (PX 226 at 7, 13 for AKYI).

222. A Nutmeg memo dated May 1, 2009 acknowledged the necessity of discounting illiquid investments and overdue promissory notes. (PX 227 at 1).

223. The discounts described in this memo, however, were formulaic. (PX 227 at 1; Tr. 631:19-633:5).

224. Nutmeg valued convertible debentures at the *higher* of principal plus accrued interest or the market value of the number of securities which could be converted. (PX 227).

O. Crowe Horwath LLP's Examination of the Mercury Fund

225. On May 7, 2009 Randall signed an engagement letter on behalf of Nutmeg with Crowe Horwath LLP ("Crowe Horwath"), requesting that Mari Reidy of Crowe Horwath and her team perform the court-ordered accounting services required by the Court's Temporary Restraining Order. (PX 58).

226. On August 31, 2009 Mari Reidy provided the Receiver with a Project Status Update describing the work that Crowe Horwath had performed up to that date. (PX 59).

227. Crowe Horwath concentrated its forensic accounting efforts on the Mercury Fund because that Fund was relatively large, had its own bank account, and held investments in the same companies as several of the other Funds. (PX 59 at 1).

228. Crowe Horwath reviewed documents relevant to the Mercury Fund, including offering documents, subscription agreements, QuickBooks general ledger entries prepared by Ryan, Mercury Fund investor statements prepared by David, Mercury Fund valuations prepared

by David, Mercury Fund bank and brokerage statements, and Nutmeg bank statements. (PX 59 at 1-2).

229. At the end of May 2009, according to Crowe Horwath, the Mercury Fund had no cash left in its bank account. (PX 59 at 3).

230. The Mercury Fund's general ledger showed management fees paid to Nutmeg in the amount of $369,002, as well as certain other compensation paid to Nutmeg, which was defined as "carried interest," in the amount of $743,031. (PX 59 at 3).

231. The Mercury Fund's records also showed that, on February 14, 2007, a total of $1.8 million in investor contributions was transferred from the Fund's bank account to Nutmeg's bank account, which was nearly 100% of the investor contributions that had been made to that date. (PX 59 at 4).

232. According to Crowe Horwath, the purpose of this transfer was unclear, but the amount transferred was over $700,000 more than the total management fees and carried interest that Nutmeg calculated it was owed by the Mercury Fund for all of 2007 and 2008. (PX 59 at 4).

233. By July 31, 2007, approximately $2.3 million in investor contributions had been transferred from the Mercury Fund's account into Nutmeg's bank account. (PX 59 at 5).

234. Nutmeg's general ledger showed that Nutmeg funded $355,000 in investments on behalf of the Mercury Fund and made distributions to Fund investors in the amount of $307,000 during the same period of time. (PX 59 at 5).

235. According to Crowe Horwath, of the total cash distributions of $1.9 million to the Mercury Fund's investors, approximately $650,000 (or 34%) was disbursed from Nutmeg's bank account and the remaining $1.25 million in distributions (or 66%) was made from the Mercury Fund bank account. (PX 59 at 6).

236. Based on Nutmeg's records, Crowe Horwath traced approximately $5.6 million of disbursements from the Mercury Fund's bank account to purchase investments. (PX 59 at 6).

237. However, according to Crowe Horwath, $907,000 in investments recorded in the Mercury Fund's investment account consisted of the reallocation or reassignment of investments previously made by Nutmeg, along with the gains or losses on those investments. (PX 59 at 6-7).

238. For example, according to Crowe Horwath, by September 14, 2007, the Mercury Fund had paid AccessKey a total of $699,700 and received a convertible note with a face value of only $585,607. (PX 59 at 8).

239. By May of 2008, according to Crowe Horwath, Randall had assigned to the Mercury Fund $840,100 of the total amount of $3.8 million that Nutmeg, the Relief Defendants, and the Mercury Fund had invested in AccessKey. The $840,100 is $140,400 more than the Mercury Fund had invested in AccessKey (PX 59 at 8).

P. Randall Overstated the Valuations of the Funds

240. Randall was responsible for valuing the Funds' investments and selecting the methodology Nutmeg used to value the Funds' investments. (Tr. 768:6-11, 769:4-770:11).

241. Randall approved the model Nutmeg used to value the Funds' investments. (Tr. 770:12-14).

242. Randall made all the ultimate valuation determinations for the Funds' investments and had the final word on all judgment calls regarding valuation. (Tr. 770:15-20).

243. Under Randall's direction, Nutmeg generally valued the Funds' securities holdings by multiplying the number of shares of a particular issuer of a convertible note by the current price for the issuer's publicly traded securities. (Tr. 521:3-7; 1497:1-5).

244. Nutmeg applied this same approach when valuing securities which were not

publicly-traded, including restricted stock and convertible notes and debentures. In doing so, Nutmeg did not follow the valuation methodologies that it previously told investors it would follow that called for Nutmeg to consider a number of relevant variables when valuing securities that were not publicly-traded. (PX 6, § 6.3, at A-11 and A-12; PX 7, § 6.3, at A-45 and A-46; PX 131 at 1).

245. Nutmeg told Mercury and Stealth investors that it would value non-publicly traded securities by considering a number of factors, including the issuer's financial condition, operating results, recent sales prices for the same or similar securities, restrictions on transfer, the price paid to acquire the investment, significant recent events affecting the issuer, and the percentage of outstanding securities owned by the Fund. (PX 6, § 6.3(b), at A-12; PX 7, § 6.3(b) at A-45 and A-46).

246. Nutmeg did not follow this approach, however, and never advised Mercury's and Stealth's investors that it was not following the disclosed valuation methodologies.

247. In valuing the securities held by the Mercury and Stealth Funds which were not publicly-traded, Nutmeg was required to establish a fair value for those securities by following FAS 157 and the SEC's guidance for valuing restricted securities – Accounting Series Releases ("ASR") 113 and 118. (Tr. 603:5-610:24, 622:3-631:18).

248. ASR 113 and 118 prohibit the use of simple formulas and require consideration of factors including: the issuer's financial condition, any discount on the purchase price, and the size of the fund's holdings. (*Id.)*

249. Under FAS 157, fair value is defined as the price at which an asset can be sold in an orderly market transaction. (DX 72 at ¶ 7).

250. An issuer's restricted security cannot be valued at its unrestricted market price; the restriction must be taken into account as long as market participants would do so. (DX 72 at 25,

A29; Tr. 604:1-23, 622:9-22; 760:3-12).

251. According to academic studies, restricted securities are discounted by an average of at least 33%, and these discounts are even higher for the restricted securities of companies in financial distress. (Tr. 624:11-627:8).

252. Randall knew that Nutmeg needed to comply with FAS 157 and he was responsible for performing Nutmeg's FAS 157 analyses and making sure that Nutmeg's valuation analyses complied with FAS 157. (Tr. 770:21-771:8).

253. Randall claimed that, in valuing the Funds' investments, Nutmeg would employ liquidity discounts in accordance with FAS 157. (Tr. 771:9-773:4).

254. Randall claimed that, based on his understanding of FAS 157, Nutmeg would discount the value of the Funds' investments if those investments were not immediately tradeable. (Tr. 774:4-8).

255. Prior to July of 2007, Nutmeg told investors that it assessed a "10% discount for liquidity" on all illiquid investments. (PX 131 at 1). Nutmeg did not, however, assess this liquidity discount on all illiquid investments.

256. Randall conceded that Nutmeg did not begin applying liquidity discounts until July 2008. (Tr. 774:9-776:13).

257. Randall conceded that the convertible notes the Funds purchased did not trade in "active markets" and were not "Level 1" assets. (Tr. 1413:5-10).

258. Randall conceded that Nutmeg made a number of errors in the valuation of Mercury Fund and in the valuation of certain investments reported in the Funds' quarterly statements to investors. (Tr. 776:18-24).

259. The valuations contained in the investors account statements were based on data

contained in Nutmeg's internal spreadsheets. (Tr. 877:14-16; PX 46, PX 47).

260. Randall approved the account valuations contained on the investors' account statements. (Tr. 879:15-18).

261. Randall and Nutmeg did not follow FAS 157 and ASR 113 and 118 and did not discount illiquid and restricted investments which had the effect of inflating the reported value of the Funds including in Nutmeg's reporting to investors. (Tr. 644:19-645:12, 647:2-10).

262. Many of the securities held by the Mercury and Stealth Funds were notes that were convertible into restricted stock of the issuing companies. (Tr. 643:5-644:18).

263. Since these notes (and the stock they could be converted into) were not publicly-traded, Nutmeg should have applied significant discounts when valuing these securities. (Tr. 642:1-12, 651:23-652:18).

264. Nutmeg's failure to value the Funds properly resulted in the Funds being over-valued. (Tr. 680:6-12).

265. In addition, many of the illiquid and restricted securities held in the Mercury and Stealth Funds also required discounts because they were issued by companies in poor financial condition with going concern opinions in their audit letters, no revenue, and notes or debt that were in default. (Tr. 652:19-653:14).

266. The valuation and purported profitability of the Mercury and Stealth Funds also was driven by restricted investments that were concentrated in just a few portfolio companies, so any decrease in the valuation of these securities would have had a dramatic impact on the reported valuation of these Funds. (PX 70, 71, 72; Tr. 680:13-25).

267. By valuing the convertible debentures and restricted securities of the Mercury and Stealth Funds as if they were equivalent to unrestricted, freely-tradeable shares, Nutmeg

significantly overstated the valuation of both Funds in quarterly investor statements. (Tr. 647:2-10; 680:6-12).

Q. Randall Withdrew Hundreds of Thousands of Dollars from Nutmeg's Commingled Accounts That Was Not His To Withdraw

268. Randall consistently withdrew money from Nutmeg's commingled accounts for his own personal benefit and to pay his personal expenses. (Tr. 984:13-991:18) Randall withdrew large amounts of money from Nutmeg whenever he wanted to do so, for whatever he wanted to spend it on, and without regard to whether the money was his to take or, instead, belonged to the Funds or investors in the Funds. The evidence establishes that between at least 2004 and 2009, Randall withdrew from Nutmeg substantially more money than was his to withdraw.

(1) Nutmeg's Records

269. Randall testified that his initial capital contribution to Nutmeg was $70,000. (Tr. 1398:7-9). There is no evidence that he ever contributed more capital to Nutmeg.

270. Ryan testified, however, that the Nutmeg general ledger he prepared after the SEC's examination showed that as of March 31, 2008, Randall's capital account at Nutmeg had a balance of $418,361. (Tr. 1830:15-1832:9; PX 276 at 12). No back up documents were introduced into evidence to support that number in the general ledger.[1]

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[1] The Court seriously questions the credibility of Ryan's testimony that Randall's capital account with Nutmeg was a positive $418,000 in March 2008 when Ryan prepared a general ledger for Nutmeg, after the SEC had begun its examination. This finding is based on, among other things, the lack of any evidence in the record to support that figure, the extremely haphazard, at times non-existent, and endemically error prone record keeping practices at Nutmeg, the lack of historical documentation of Nutmeg's true finances and Randall's capital account, Ryan's overall lack of independence as Nutmeg's accountant, and his admitted bias in favor of his father. (Tr. 1775:20-1778:21). Further, the $418,000 number in Ryan's ledger is a negative number. Ryan testified that a negative number in Nutmeg's ledger really means that his father's capital account had a positive balance because of the way in which Ryan prepared the ledger. Ryan's testimony on this point, however, was a bit shaky and more than a little equivocal, and it therefore is viewed with skepticism by the Court. (Tr. 1830:15-1831:2) ("I have to think about that question. Hold on. Let me see. This is where I started talking about the negatives and the positives and the debits and

271. These same Nutmeg records show total distributions to Randall as of March 31, 2008 of $1,267,983. (Tr. 1827:9-20; PX 276 at 18). No evidence was introduced as to how those distributions were calculated.

272. During the same time period, Nutmeg's own records show Nutmeg owed the Funds $974,054. (Tr. 1829:5-1830:6; PX 276 at 12).

273. These same records also show Nutmeg had negative cash balances in both of its bank accounts as of March 31, 2008. (PX 276 at 1, 4).

274. Taken together, Ryan's testimony and the documents he prepared show that Nutmeg paid Randall more than $1.2 million as of March 31, 2008, Nutmeg owed the Funds approximately $1 million as of the same date, and Nutmeg had no money in the bank. This state of affairs could not have occurred if Randall was not paid to a large extent with money from Nutmeg's commingled bank accounts that belonged to the Funds and ultimately to their investors.

275. Nutmeg's financial statements for the period ending in March 31, 2008, also prepared by Ryan after the SEC's exam, tell a similar story. Those financial statements show that Nutmeg owed the Funds more than $1.2 million (Tr. 1833:7-1837:25; PX 181 (March 31, 2008 balance sheet)).[2] The financial statements also show that Nutmeg reported a members' deficit of over $150,000 when total reported assets of $2,574,324 are subtracted from total liabilities reported as $2,735,347. (PX 181 (March 31, 2008 balance sheet)). Nutmeg's reported assets, though, include "investments" of $1,298,359 that the notes to the financial statements say "will

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credits. So I don't – let me look at this for a second…I would say that is a – wait a minute. Hold on. I have to make sure I understand that. It appears to me that would be a credit balance.").

[2] According to Ryan, Nutmeg owed the Funds $1,247,361 composed of proceeds due to investors of $1,034,875 and amounts due to client funds under management of $212,486. (PX 181; Tr. 1833:7-1837:25).

later be allocated to a client fund, and thus are not really Company assets." (PX 181 (note 4 to financial statements)). If the reported Nutmeg assets that "are not really Company assets" are subtracted from the assets reported in Nutmeg's financial statements, then the members' deficit is over $1.4 million.

(2) The SEC's Examination of Nutmeg's Records

276. According to SEC accountant Ann Tushaus's examination of Nutmeg's records, for every year between 2003 and 2009, Randall deposited far less into Nutmeg's co-mingled bank accounts than he took out. During that six-year time period, Tushaus concluded Nutmeg made payments directly or indirectly to Randall totaling $1,390,058 more than Randall paid into Nutmeg or that was paid into Nutmeg on his behalf. (*See* PX 43, Schedule 2; Tr. 1024:24-1026:13). If, however, the net amount of Nutmeg's payments to Randall during only the period from March 23, 2004 to March 23, 2009, the date this lawsuit was filed, is included in the calculation,[3] then the net benefit to Randall is $642,422 based on this Schedule.[4]

277. There is abundant evidence in the record that Randall used Nutmeg as his personal piggy bank. The SEC's Tushaus calculated that Nutmeg paid $227,763 for certain of Randall's personal expenses and on credit cards in either Randall's or Nutmeg's name (PX 43, Schedules 5b, 5c, and 5d) during the relevant time period. During the five years beginning in 2004 before the filing of this lawsuit in 2009, Nutmeg's payment of Randall's personal expenses included $67,181 for such things as an Acura automobile which, though titled in Nutmeg's name, was used

[3] The SEC only is seeking disgorgement of alleged ill-gotten gains pocketed by Randall for the five-year period preceding the SEC's filing of its lawsuit in March 2009. SEC's Post-Trial Brief [ECF No. 1042] at p. 17, n.10.

[4] The Court's calculation is as follows based on PX 43: $1,390,058 net benefit from October 1, 2003 through January 2, 2009 (PX 43, Summary Schedule and Schedule 2) minus $747,636 net amount paid to Randall between October 1, 2003 and March 11, 2004 (PX 43, Schedule 2) equals $642,422.

by Randall as his personal vehicle for more than four years until he was required to turn it over to the Receiver (Tr. 989:9-990:19; 1029:18-130:16); $404 for season tickets to the Chicago White Sox and a $10,000 entry fee for Randall's father to play in the World Series of Poker (Tr. 990:20-23; 991:4-7; 1031:3-12); $16,333 to Lamico Designers, Inc.; $1,200 to the Human Relief Fund; and $5,500 for miscellaneous auto repairs. Nutmeg also made at least $160,582.11 in payments on Randall's personal credit cards and on Nutmeg's credit cards for Randall's personal benefit during this time period. (PX 43, Schedules 5c and 5d; Tr. 1029:4-17; 1031:5-8; 1031-18-20; 1031:25-1032:22; 1045:18-1046:17). Nutmeg also paid $285,115 to Randall's law offices net of payments from the law offices to Nutmeg (PX 43, Schedule 1).

278. Tushaus also calculated that Nutmeg made payments to Randall's Home Equity Line of Credit ("HELOC"). Those payments totaled approximately $660,000 in 2005 and 2006.[5] When Nutmeg's payments to Randall's HELOC during that same time period are offset by money Randall paid to Nutmeg from his HELOC, however, the net benefit to Randall's HELOC is $62,050. (PX 44). It is unclear whether some of the transfers between Nutmeg and Randall's HELOC – as reflected in PX 43, Schedule 5a, and PX 44 – also are included in the SEC's calculation of money that Nutmeg paid to Randall in PX 43, Schedule 2. It appears that at least a few of those transfers accounted for in PX 43, Schedule 5a, also may be included in PX 43,

[5] The SEC's numbers vary slightly with respect to Nutmeg's gross payments to Randall's HELOC. The Court is using $660,000 here because it is at the lowest end of the range of the SEC's evidence. Randall did not specifically rebut or contradict any of the SEC's HELOC numbers. *See* PX 43 (Compare Summary Schedule, payments to Randall's HELOC, $663,828 with PX 43, Schedule 5a, payments to Randall's HELOC, $660,580.82). In PX 44, which purports to be a summary of transfers between Nutmeg and Randall's HELOC, the SEC says Nutmeg's payments to Randall's HELOC total $660,600.82. (PX 44).

Schedule 2.[6]

279. Including only the amounts reported in PX 43 and PX 44 with respect to (a) Nutmeg's net payments to Randall's law office ($285,115) (PX 43, Schedule 1); (b) the amounts Nutmeg paid on Randall's credit cards, on Nutmeg's credit cards for Randall's benefit, and for certain of Randall's other personal expenses ($227,763) (PX 43, Schedules 5b, 5c, and 5d); (c) the net benefit to Randall from Nutmeg's payments on his HELOC ($62,050) (PX 44); and (d) the net amount of certain miscellaneous payments to Randall from one of the Relief Defendants and certain of the Funds ($5,230) (PX 43, Schedules 3 and 4), the total benefit to Randall comes to $580,158.

280. The SEC is seeking disgorgement in this case in the amount of $1,249,471. Plaintiff's Post-Trial Brief [ECF No. 1042] at 17. That number is based on a Declaration from Ann Tushaus which was filed by the SEC after trial and was not introduced into evidence at trial. The Declaration purports to be based on bank and brokerage account statements, Randall's sworn accounting (presumably PX 42), and unspecified information contained in the SEC's investigative files and from conversations with SEC staff. Tushaus Declaration [ECF No. 1043] at ¶ 3. In its post-trial brief, the SEC says that if the Court were to include only the net payments Nutmeg made to Randall's HELOC of $62,050, after considering the payments Nutmeg received from the HELOC, then the Court should order disgorgement in the amount of $650,921 rather than $1,249,471. [ECF No. 1043 at ¶ 6 and 1043-3].[7]

281. Some of the information in the Tushaus Declaration is in PX 43. Some of the

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[6] For example, both schedules include transfers in the same dollar amounts on October 31, 2005, February 2, 2006, and February 10, 2006. (PX 43, Schedules 2 and 5a). The Court cannot tell whether other payments catalogued in PX 43, Schedule 2, also are included in other schedules within PX 43.

[7] Randall objects to the Court considering the post-trial Declaration of Ann Tushaus as it is not in evidence. Randall's Post-Trial Reply [ECF No. 1058] at 7-8.

numbers in the post-trial submission, however, are different than the numbers in PX 43, and in one instance, are not included in PX 43 or even in evidence as far as the Court can tell. For example, the net payment to Randall's law office is stated as $219,721 in the Tushaus Declaration [ECF No. 1043-1] compared to $285,115 in PX 43, Schedule 1. Reimbursement of Randall's personal expenses is pegged at $156,108 in the post-trial submission [ECF No. 1043-1] compared to a total of $227,763 paid by Nutmeg for Randall's personal expenses as reflected in PX 43 (PX 43, Schedules 5b, 5c, and 5d). And Nutmeg's total payment to Randall's HELOC is stated as $663,828 in the post-trial submission [ECF No. 1043-1] compared to $660,600 in the document in evidence (PX 44). There is no explanation for these discrepancies and no explanation as to how the SEC arrived at the numbers in its post-trial submission.

282. The post-trial submission also includes $209,814, which is said to represent a loan Nutmeg made to Randall's son-in-law [ECF No. 1043-1]. This loan does not appear to be included in PX 43, nor can the Court find any testimony or documentary evidence of that loan in the trial record.

(3) Randall's Sworn Accounting

283. According to Randall's own sworn accounting submitted to the Court under penalty of perjury on April 10, 2009, Randall received payments totaling more than $620,343.29 from Nutmeg in just 2007 and 2008. (PX 42 at 5). Randall's sworn accounting specifically does not include at least $61,176 in payments Nutmeg made to Randall in 2006, as set out in PX 43, Schedule 5b. Nor does it appear to include the $62,050 net benefit to Randall from the transactions between Nutmeg and Randall's HELOC in 2005 and 2006.[8] It also does not appear to include all payments Nutmeg made on credit cards in Randall's name or on Nutmeg's credit cards for

[8] Randall's sworn accounting includes transfers to and from his line of credit, which may be his HELOC, but it does not include transfers before 2007. (PX 42 at 5).

Randall's benefit between 2006 and 2009. Adding just the documented 2006 payments to Randall or for his benefit listed in PX 43, Schedule 5b, and in PX 44 to his own sworn accounting of money paid to him in 2007 and 2008, the total comes to $743,569.[9]

(4) The Morgan Wilbur Deals

284. Randall says the SEC did not account for personal investments he says he made through Nutmeg in 2005 and 2006 in the so-called Morgan Wilbur deals, any profit or gain on those investments, or fees Nutmeg earned from the Funds. According to Randall, these sources of income to him were sufficient to cover all the payments he received from Nutmeg during the relevant time period. Randall said he put his own money into the Morgan Wilbur deals, the investments were very profitable, and the gains he earned on those investments were deposited into Nutmeg's co-mingled accounts. Randall said the Morgan Wilbur investments generated at least $1.6 million in profit. (Tr. 1298:17-1299:6). Randall maintained he orally agreed with Morgan Wilbur to share the $1.6 million in profit from these investments, with 40% going to Morgan Wilbur and 60%, or almost $960,000, going to Randall. (PX 61 at 2-4; Tr. 1363:10-18). According to Randall, his share of the profits from the Morgan Wilbur deals had nothing to do with the Funds and was available to him to withdraw from Nutmeg's accounts as he desired.

285. Randall introduced no evidence to show how much he invested in the Morgan Wilbur deals, where that money came from, what his gains on those investments were, where that money was deposited, or what it was used for. At one point during the trial, Randall testified he could produce such evidence and would do so. (Tr. 1399:17-1399:21). He never did.

286. Nutmeg's own books and records do not say whether any of the payments made to Randall from Nutmeg's commingled bank accounts in the five years preceding the filing of this

[9] The Court's calculation is as follows: $620,343.29 (PX 42 at 5) plus $61,176 in payments Nutmeg made to Randall in 2006 that are set out in PX 43, Schedule 5b, plus $62,020 (PX 44) equals $743,569.

lawsuit were attributable to returns on the Funds' investments or to returns on personal investments Randall says he made through Nutmeg such as the Morgan Wilbur deals. (Tr. 1026:7-1027:15).

287. Nutmeg's records concerning the Funds' payments of management, performance, or other fees to Nutmeg are inaccurate and undependable. *See* Sections M and P above. As just one example of the loose link between Nutmeg's books and records and reality, Randall testified that although he calculated the fee that Mercury was to pay Nutmeg in the first quarter of 2008, and it was deducted from the Mercury Fund as an accounting matter, Nutmeg did not actually take that fee and the money stayed in the Nutmeg commingled account. (Tr. 886:17-887:23).

288. In addition, as discussed above, Nutmeg inflated the value of the Funds so that any fees realized by Nutmeg on those inflated values also were inflated. *See* Sections M and P above.

(5) Crowe Horwath's and Craig L. Greene's Analysis of the Morgan Wilbur Deals

289. The Receiver asked Crowe Horwath to investigate the accuracy of Randall's position that he used his own personal money to invest in the Morgan Wilbur deals. (PX 61 at 1, 3).

290. Crowe Horwath concluded only 3% of the money used to fund the Morgan Wilbur investments came from a bank account held in Randall's name. The rest of the money used to fund the Morgan Wilbur deals came from Nutmeg's bank account or from the bank accounts of certain Relief Defendants. (PX 61 at 7).

291. Crowe Horwath performed a detailed analysis of Nutmeg's cash position in 2004 and 2005 to determine whether the cash in Nutmeg's accounts at that time belonged to Nutmeg or the Funds. Crowe Horwath's analysis showed that the Funds' actual cash position should have ranged from $756,524.55 to $963,647.55 by the end of 2004, whereas Nutmeg's general ledger cash balance was only $273,301.71. According to Crowe Horwath, while Nutmeg started 2004

with a small positive cash balance, Nutmeg ended the year with a deficit cash position ranging from a negative $483,222.84 to a negative $690,345.84. Crowe Horwath concluded Nutmeg not only had no cash of its own by the end of 2004, but it owed the Funds a significant amount of money by that time. (PX 61 at 7).

292. According to Crowe Horwath, any money Randall put into Nutmeg's commingled bank accounts at a time when Nutmeg owed the Funds money first should have been used to satisfy Nutmeg's obligations to the Funds, not to fund Randall's personal investments.

293. Overall, Crowe Horwath concluded:

(1) at the end of 2004, all the money in Nutmeg's accounts belonged to the Funds;

(2) Randall personally owed the Funds a significant amount of money;

(3) the money Randall transferred to Nutmeg in 2005 and 2006 was less than he or Nutmeg owed the Funds as of that time, and should not have been treated as Randall's personal investment capital;

(4) nearly all the money Nutmeg invested in the Morgan Wilbur Deals belonged to the Funds; and

(5) nearly all the money generated by Nutmeg in 2005 and 2006, including the proceeds of the Morgan Wilbur Deals, was paid directly to Randall.

(PX 61 at 8-11); Mari Reidy Transcript [ECF No. 1031-3] at 90:4-94:7.

294. Craig L. Greene ("Greene"), an accountant hired by Randall, disagreed with Crowe Horwath. He testified that based on the information he was given by Randall, there was enough non-investor money in Nutmeg's accounts to fund the Morgan Wilbur deals. He thus concluded that profits from the Morgan Wilbur deals rightfully belonged to Randall and were available to him to use as he saw fit. [ECF No. 1032].

295. Greene says at the beginning of his report that he was retained to come to a specific conclusion: "to verify that investor monies were not used to fund personal investments of the

Defendants [defined to include Randall Goulding]." And Greene did what he was hired to do. To reach his "opinion," Greene looked at the documents Randall provided to him and, based on those documents and what Randall told him, he agreed with Randall.

296. Among the documents Greene reviewed were "Client prepared Spreadsheets of Carried Interest Receivable, Randall Goulding Portion of Securities Held in the Funds, Randall Goulding Portion of Cash Due from The Funds and Nutmeg Schedule of Expenses." [ECF No. 1032 at 7]. If there is one thing that is clear in the record, it is that Nutmeg's record keeping and valuation systems, to the extent they existed, were haphazard, cumbersome, not current, and they yielded valuations and other numbers that were inaccurate. The people most familiar with Nutmeg's valuation system all admitted Nutmeg grew too big for its spreadsheet-based valuation system and there were mistakes and errors in that system. *See* Section M above. There is no evidence in the record that Nutmeg's valuation system ever was sufficient to deliver accurate valuations of the Funds. In fact, the record evidence is to the contrary because, among other things, Nutmeg did not employ proper valuation principles for the Fund's assets which, in turn, affected Nutmeg's ability to calculate accurately the fees it was to be paid by the Funds. *See* Sections M and P above. Therefore, the information Randall provided to Greene was, by definition, flawed. Greene's reliance on what Randall told him and the Nutmeg documents that Randall gave him undercuts the credibility and reliability of his opinion.

297. Greene did no independent investigation or analysis, his opinion is not the product of independent expert or professional analysis, and he relied solely on information he received from Randall and Nutmeg that was objectively flawed. In the Court's view, Crowe Horwath's analysis and conclusions with respect to the Morgan Wilbur deals and the money in Nutmeg's commingled accounts available to fund those investments is more credible, plausible, and reasonable than Greene's so-called "analysis." Other than Greene's opinion, Randall introduced

no evidence to controvert Crowe Horwath's analysis and conclusions.

298. Based on all the evidence in the record, it is reasonable to conclude that Randall withdrew more money from Nutmeg than he contributed to it and that was his to withdraw.

II.

Conclusions of Law

A. The Investment Advisers Act

1. The Investment Advisers Act of 1940 ("the Advisers Act") was intended to eliminate certain abuses in the securities industry which contributed to the stock market crash of 1929 and the Great Depression of the 1930s. *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 186 (1963); *SEC v. Nutmeg Group, LLC*, 162 F. Supp. 3d 754, 771 (N.D. Ill. 2016); Agreed Findings and Conclusions [ECF No. 927] at ¶ 45.

2. The Advisers Act reflects the intent of Congress to eliminate or expose all conflicts of interest which might encourage an investment adviser, either consciously or unconsciously, to render advice which is not in an investor's best interests. *SEC v. DiBella*, 587 F.3d 553, 567 (2d Cir. 2009); *Nutmeg Group, LLC*, 162 F. Supp. 3d at 772.

3. An investment adviser is any person who receives compensation for providing advice to others regarding to the value of securities or the advisability of investing, purchasing, or selling securities. 15 U.S.C. § 80b-2(a)(11); *Nutmeg Group, LLC*, 162 F. Supp. 3d at 772; Agreed Findings and Conclusions [ECF No. 927] at ¶ 46.

4. This definition includes any person or entity that manages the funds of others for compensation or controls an investment advisory firm. *SEC v. Bolla*, 401 F. Supp. 2d 43, 59-60 (D.D.C. 2005), *aff'd in part sub nom, SEC v. Washington Inv. Network*, 475 F.3d 392, 400 (D.C. Cir. 2007); *Nutmeg Group, LLC*, 162 F. Supp. 3d at 772; Agreed Findings and Conclusions [ECF

No. 927] at ¶ 47.

5. Both Nutmeg and Randall were investment advisers. *Nutmeg Group, LLC*, 162 F. Supp. 3d at 772; Agreed Findings and Conclusions [ECF No. 927] at ¶ 48.

B. The Anti-Fraud Provisions of the Advisers Act

6. Section 206(1) of the Advisers Act prohibits an investment adviser from employing any device, scheme, or artifice to defraud any client or prospective client. 15 U.S.C. § 80b-6(1).

7. Violations of Section 206(1) require proof that a defendant acted with intent to deceive, manipulate or defraud. This intent also can be shown by recklessness, which is defined as an extreme departure from the standards of ordinary care. *Robin v. Arthur Young & Co.*, 915 F.2d 1120, 1126 (7th Cir. 1990); *SEC v. Nutmeg Group, LLC*, 2011 WL 5042094, at *5 (N.D. Ill. 2011); *SEC v. Householder*, 2002 WL 1466812, at *5 (N.D. Ill. 2002); *see also SEC v. Steadman*, 967 F.2d 636, 642 (D.C. Cir. 1992); *Vernazza v. SEC*, 327 F.3d 851, 860 (9th Cir. 2003).

8. Section 206(2) of the Advisers Act prohibits an investment adviser from engaging in any transaction, practice or course of business which operates as a fraud or deceit upon any client or prospective client. 15 U.S.C. § 80b-6(2); *Nutmeg Group, LLC*, 2011 WL 5042094, at *3-4; *Nutmeg Group, LLC*, 162 F. Supp. 3d at 778.

9. Violations of Section 206(2) do not require proof of scienter or intent to defraud. *Nutmeg Group, LLC,* 162 F. Supp. 3d at 775.

10. Further, Section 206(2) establishes a statutory fiduciary duty for investment advisers and requires them to act in their clients best interests. *Belmont v. MB Inv. Partners, Inc.*, 708 F.3d 470, 501-03 (3d Cir. 2013); *Nutmeg Group, LLC*, 162 F. Supp. 3d at 778.

11. Section 206(2) requires investment advisers to employ reasonable care in order to avoid misleading their clients, and to fully disclose all material facts and conflicts of interest.

Belmont, 708 F.3d at 501; *Nutmeg Group, LLC*, 162 F. Supp. 3d at 778.

12. Section 206(4) of the Advisers Act prohibits an investment adviser from engaging in any act, practice or course of business which is fraudulent, deceptive or manipulative. 15 U.S.C. § 80b-6(4); *Nutmeg Group, LLC*, 162 F. Supp. 3d at 775-76.

13. Advisers Act Rule 206(4)-8 prohibits an investment adviser from making false statements of material fact to any investor or prospective investor in a pooled investment vehicle or failing to state material facts that are necessary to make statements made to such investors not misleading. 17 C.F.R. § 275.206(4)-8; *Nutmeg Group, LLC*, 2011 WL 5042094, at *3; *Nutmeg Group, LLC*, 162 F. Supp. 3d at 780.

14. All of the investment funds for which Nutmeg and Randall served as investment advisers, including the Mercury and Stealth Funds, were pooled investment vehicles. *Nutmeg Group, LLC*, 162 F. Supp. 3d at 780

15. For violations of Section 206(4), and each of the rules promulgated thereunder, the SEC is not required to offer proof of intent to deceive. *Id.* at 775; *see also Householder,* 2002 WL 1466812, at *7; *Capital Gains Research Bur., Inc.*, 375 U.S. at 200.

16. Accordingly, an investment adviser may be found liable under Sections 206(2) and 206(4) for an act of negligence, which is defined as the failure to exercise ordinary care. *DiBella,* 587 F.3d at 567; *SEC v. Bolla,* 401 F. Supp. 2d at 66-67; *Nutmeg Group, LLC,* 2011 WL 5042094, at *3-4; *Nutmeg Group, LLC,* 162 F. Supp. 3d at 775.

17. A person may be found negligent by doing what no reasonable person would do, or by not doing what a reasonable person would do. Accordingly, violations of Section 206(2) and 206(4), and the rules thereunder, may be proven by a showing that, under the circumstances of this case, a defendant should have acted differently. *Nutmeg Group, LLC,* 162 F. Supp. 3d at 775.

18. As an investment adviser, Randall's conduct was subject to all the foregoing standards.

C. Valuation Standards for Illiquid and Restricted Securities

19. Under the Investment Company Act of 1940, investment funds are required to value portfolio securities for which "market quotations are readily available" at current market value, "and other securities and assets shall be valued at fair value as determined in good faith by the board of directors" of the registered entity. 15 U.S.C. § 80a-2(41)(B); 17 C.F.R § 270.2a-4(a)(1); *DH2, Inc. v. SEC*, 422 F.3d 591, 592 (7th Cir. 2005); *In re Eaton Vance Corp. Sec. Lit.*, 206 F. Supp. 2d 142, 147 (D. Mass. 2002).

20. Under the SEC's applicable guidance, Accounting Series Releases ("ASR") 113 and 118, a "good faith" valuation requires a determination of the price a fund could expect to receive for a security upon its "current sale." *SEC v. Welliver*, 2013 WL 12149244, at *20 (D. Minn. 2013).

21. Ordinarily, a fund must adhere to the valuation methodology provided to investors and discount restricted portfolio securities below the market price. *See Rockies Fund, Inc. v. SEC*, 428 F.3d 1088, 1097 (D.C. Cir. 2005); *see also In re R. Marvin Mears*, 61 S.E.C. Docket 947, 1996 WL 86539 (Feb. 27, 1996).

22. Failing to apply a restricted securities discount pursuant to ASR 113 and 118 demonstrates a reckless disregard for a fund's actual net asset value. *In re Parnassus Investments*, Rel. No. 131, 1998 WL 558996, at *14 (Sept. 3. 1998).

23. As Nutmeg's managing member, Randall was subject to all these standards when valuing, or approving Nutmeg's valuations of, the Funds.

D. Violating the Advisers Act by Misappropriation and Misrepresentation

24. The misappropriation of investor assets while misrepresenting investment results is a clear violation of Sections 206(1) and (2) of the Advisers Act. *SEC v. Desai*, 145 F. Supp. 3d 329, 336 (D.N.J. 2015).

25. These same sections are violated when an adviser commingles fund earnings or assets and redistribute them to other funds or investors. *SEC v. Sentinel Mgmt. Group, Inc.*, 2012 WL 1079961, at *16 (N.D. Ill. 2012).

26. Similarly, the misappropriation of the assets of an investment fund to pay undisclosed expenses is a violation of Sections 206(1) and (2) of the Advisers Act. *SEC v. Penn*, 225 F. Supp. 3d 225, 237–38 (S.D.N.Y. 2016).

27. In addition, it is a violation of Sections 206(1) and (2) of the Advisers Act to misappropriate fees from investment funds in order to benefit a company insider and to make related misrepresentations and omissions to investors as part of that scheme. *SEC v. Markusen*, 143 F. Supp. 3d 877, 890-92 (D. Minn. 2015).

28. An adviser who commingles his own assets with the assets of an investment fund and misstates the value and performance of fund assets while making withdrawals for his own personal benefit violates Sections 206(1) and (2) of the Advisers Act. *SEC v. Trabulse*, 526 F. Supp. 2d 1008, 1016-17 (N.D. Cal. 2007).

29. Finally, intentionally inflating the value of investor assets and collecting management fees based upon those valuations violates Sections 206(1) and (2) of the Advisers Act. *SEC v. Mannion*, 789 F. Supp. 2d 1321, 1340 (N.D. Ga. 2011).

30. All of these same activities should be deemed violations of Section 206(4) and Rule 206(4)-8, which apply to pooled investment vehicles.

E. Randall Goulding Violated Section 206 of the Advisers Act

31. Randall violated Section 206(1) of the Advisers Act by intentionally or recklessly: (a) commingling and failing to segregate the Funds' assets in separate bank and brokerage accounts; (b) transferring legal title to $4 million of the Funds' assets to the Relief Defendants, who were members of his family and friends; (c) making undisclosed payments to the Relief Defendants for acting on his own instructions to invest and sell the assets he transferred to them; and (d) failing to disclose to investors the commingling and transfer of the Funds' assets and the payments to the Relief Defendants.

32. Randall also violated Section 206(1) of the Advisers Act by intentionally or recklessly (a) overstating the valuation of Fund assets and investments; (b) assessing fees from the Funds payable to Nutmeg based on overstated asset valuations; (c) misappropriating client and investor assets from Nutmeg's commingled bank accounts for his own personal benefit; and (d) failing to disclose the overstatement of investment assets and fees, and the misappropriation of investor assets.

33. Randall also violated Sections 206(2) and 206(4) of the Advisers Act, and Rule 206(4)-8 thereunder, by failing to employ reasonable care in: (a) the valuation of Fund assets and investments; (b) assessing fees from the Funds payable to Nutmeg based on overstated assets valuations; (c) misappropriating client and investor assets from Nutmeg's commingled bank accounts for his own personal benefit; and (d) failing to disclose to investors the overstatement of investment assets and fees, and the misappropriation of investor assets.

F. Randall's Violations of the Advisers Act Were Material

34. A fact is considered material if there is a substantial likelihood that its disclosure would be viewed by a reasonable investor as significantly altering the total mix of information

available. Under this standard, deciding what is material necessarily depends on all relevant circumstances. *Basic, Inc. v. Levinson,* 485 U.S. 224, 231-32 (1988); *SEC v. Bauer,* 723 F.3d 758, 772 (7th Cir. 2013); *DiBella,* 587 F.3d at 565; *Nutmeg Group, LLC,* 162 F. Supp. 3d at 778-79.

35. This Court already has found that Randall's previously-established violations of the Advisers Act were material as a matter of law. *Nutmeg Group, LLC,* 162 F. Supp. 3d at 778-79.

36. In addition, significantly overstating the "value and true ownership" of a fund's investments to investors is a material misrepresentation. *See SEC v. Lauer*, 2008 WL 4372896, at *20 (S.D. Fla. Sept. 24, 2008), *aff'd* 478 Fed. Appx. 550 (11th Cir. 2012); *see also Penn,* 225 F. Supp. 3d at 237-38; *Mannion*, 789 F. Supp. 2d at 1339; *SEC v. Nadel*, 97 F. Supp. 3d 117, 123-24, 126 (E.D.N.Y. 2015).

37. Randall's violations of the Advisers Act were material, in that he: (a) overstated the valuation of Fund assets and investments; (b) assessed fees from the Funds payable to Nutmeg based on overstated asset valuations; (c) misappropriated client and investor assets from Nutmeg's commingled bank accounts for his own personal benefit; and (d) failed to disclose to investors the overstatement of investment assets and fees, and the misappropriation of investor assets.

G. Randall Should Be Permanently Enjoined

38. The Court has the authority to enter a permanent injunction under Section 209(d) of the Advisers Act, 15 U.S.C. § 80b-9(d). A district court's decision imposing injunctive relief is reviewed under an abuse of discretion standard. *SEC v. Cherif*, 933 F.2d 403, 408 (7th Cir. 1991).

39. Once a defendant has been found to be in violation of the federal securities laws, the SEC need only show a reasonable likelihood of future violations of the law in order to obtain a permanent injunction. *SEC v. Yang*, 795 F.3d 674, 681 (7th Cir. 2015); *SEC v. Holschuh*, 694

F.2d 130, 144-45 (7th Cir. 1982).

40. In predicting the likelihood of future violations, a court must assess the totality of the circumstances surrounding the defendant and his violation, including such factors as the gravity of the harm caused by the offense; the extent of the defendant's participation and his degree of scienter; the isolated or recurrent nature of the infraction and the likelihood that the defendant's customary business activities might again involve him in such transactions; the defendant's recognition of his own culpability; and the sincerity of his assurances against future violations. *Yang*, 795 F.3d at 681; *Holschuh*, 694 F.2d at 144-45.

41. Based on the evidentiary record, and an analysis of the relevant factors, it is reasonably likely that Randall will engage in future violations of the law and should be permanently enjoined. This conclusion is based, *inter alia*, on Randall's complete failure to comply with the Advisers Act, his comingling of investor funds with his personal assets, his implementation of flawed internal systems and methods for valuing and reporting the value of assets under management, his inattention to internal controls, his transfers of millions of dollars out of the Funds to the Relief Defendants, and his failure to disclose any of this to investors.

42. The fact that a defendant currently is not working as an investment adviser does not preclude the Court from imposing injunctive relief. *SEC v. Lipson*, 129 F. Supp. 2d 1148, 1157-59 (N.D. Ill. 2001), *aff'd*, 278 F.3d 656 (7th Cir. 2002) (defendant had training, skill and capital needed to resume his prior position); *SEC v. Koenig*, 532 F. Supp. 2d 987, 993-94 (N.D. Ill. 2007), *aff'd*, 557 F.3d 736 (7th Cir. 2009) (defendant failed to provide sufficient assurances that he would not commit future violations).

43. Accordingly, Randall should be enjoined permanently from violating the provisions of the Advisers Act which are at issue in this case.

H. Disgorgement of Ill-Gotten Gains

44. "Disgorgement is an equitable remedy that takes ill-gotten gains from a wrongdoer so that he does not profit from his misconduct." *SEC v. Rooney*, 2014 WL 3500301, at *2 (N.D. Ill. 2014) (citing *SEC v. Lipson*, 278 F.3d 656, 662-63 (7th Cir. 2002)). "The simple question is whether the profits, fees and other compensation derived from wrongdoing." *Id.* at *2 (quoting *SEC v. Capital Solutions Monthly Income Fund, LP*, 2014 WL 2922644 (D. Minn. 2014)).

45. To obtain disgorgement, the SEC need only demonstrate that its disgorgement figure is "a reasonable approximation of profits causally connected to the violation." *SEC v. Michel*, 521 F. Supp. 2d 795, 830-31 (N.D. Ill. 2007) (quoting *SEC v. First City Fin. Corp.*, 890 F.2d 1215, 1230 (D.C. Cir. 1989)); *see also SEC v. Black*, 2009 WL 1181480, at *2-3 (N.D. Ill. 2009); *SEC v. DeMaria*, 2013 WL 4506867, at *1 (N.D. Ill. 2013); *SEC v. Benger*, 2015 WL 6859168, at *4 (N.D. Ill. 2015); *SEC v. Randy*, 38 F. Supp. 2d 657, 674 (N.D. Ill. 1999).

46. Disgorgement calculations do not have to be exact. *Koenig*, 532 F. Supp. 2d at 994. Once the SEC offers a reasonable disgorgement calculation, the burden then shifts to the defendant to show that this approximation is inaccurate. *Black,* 2009 WL 1181480, at *2; *Randy,* 38 F. Supp. 2d at 674. Any "ambiguity in the calculation should be resolved against the defrauding party." *Black*, 2009 WL 1181480, at *2; *see also Koenig*, 532 F. Supp. 2d at 994. That is particularly true in a case such as this one in which Randall commingled the money in Nutmeg's accounts making it nearly impossible to trace dollars that belonged to Randall, Nutmeg, or the Funds or their investors at any point in time. In such a case, "the SEC is not required to identify the misappropriated money." *Black,* 2009 WL 1181480, at *3.

47. Moreover, "where a defendant's record-keeping or lack thereof has so obscured

matters that calculating the exact amount of illicit gains cannot be accomplished without incurring inordinate expense, it is well-within the district court's discretion to rule that the amount of disgorgement will be the more readily measurable proceeds received from the unlawful transactions." *SEC v. Calvo*, 378 F.3d 1211, 1217-18 (11th Cir. 2004).

48. "Disgorgement of salaries and other forms of compensation may be an appropriate remedy." *Black*, 2009 WL 1181480, at *7. *See also* Order in *SEC v. Resources Planning Group, Inc.*, Case No. 1:12-cv-9509 (N.D. Ill. 2014). Moreover, in cases involving investment adviser fraud, money obtained or misappropriated from investors should be considered ill-gotten gains and disgorged accordingly. *See e.g., SEC v. Brown*, 579 F. Supp. 2d 1228, 1245 (D. Minn. 2008), *aff'd* 658 F.3d 858 (8th Cir. 2011) (ordering disgorgement of misappropriated investor funds); *SEC v. Haligiannis*, 470 F. Supp. 2d 373, 384-85 (S.D.N.Y. 2007) (investor funds obtained by adviser subject to disgorgement).

49. It is "irrelevant for disgorgement purposes, how the defendant chose to dispose of the ill-gotten gains; subsequent investment of these funds, payments to charities, and/or payment to co-conspirators are not deductible from the gross profits subject to disgorgement." *SEC v. Universal Express, Inc.*, 646 F. Supp. 2d 552, 564 (S.D.N.Y. 2009) (internal quotes and citations omitted), *aff'd* 438 Fed. App'x 23 (2d Cir. 2011).

50. In addition, a defendant's financial condition, or the hardship that disgorgement might impose, are not relevant to the Court's calculation of a disgorgement award. *See, e.g., SEC v. Warren*, 534 F.3d 1368, 1370 (11th Cir. 2008); *SEC v. Mohn*, 2005 WL 2179340, at *5 (E.D. Mich. 2005); *SEC v. Grossman*, 1997 WL 231167, at *10 (S.D.N.Y. 1997) ("[T]here is no legal support for [the defendant's] assertion that his financial hardship precludes the imposition of an order of disgorgement."). A rule to the contrary would be "absurd" as defendants could "escape

disgorgement liability by spending their ill-gotten gains." *Warren*, 534 F.3d 1368 at 1370.

51. The evidence in the record supports the conclusion that a reasonable approximation of Randall's ill-gotten gains is contained in PX 43, Schedule 2, which catalogues the money Randall withdrew from Nutmeg's commingled bank accounts over and above what he deposited into those accounts. The information in that schedule is corroborated by the other schedules that comprise PX 43 as well as by Randall's own itemization of money he withdrew from Nutmeg's accounts during the relevant time period (PX 42). As discussed above and as set forth in PX 43, Nutmeg's net direct payments to Randall during the five years preceding the filing of this lawsuit in 2009 total $642,422 more than Randall contributed to Nutmeg. This is the cleanest calculation of ill-gotten gains during the relevant time period that the SEC submitted and that is in evidence.

52. Randall's argument that he made enough profit on the Morgan Wilbur deals to cover all the money he withdrew from Nutmeg's accounts during the five years before the SEC filed its lawsuit is not credible and is not supported by the evidence. In fact, Randall introduced no evidence to support this argument other than his own say-so. To the same effect is Randall's argument that fees paid to Nutmeg by the Funds were his to withdraw as Nutmeg's sole owner. Randall's systematic overvaluation of the Funds means that the fees paid to Nutmeg by the Funds were inflated. And the pervasive commingling of monies held in Nutmeg's accounts makes it difficult or impossible to identify whether any legitimate management, performance, or other fees received by Nutmeg are the source of the money that Randall withdrew from that account over the years.

53. In similar cases, courts have rejected arguments remarkably like those made by Randall that sound good but are built on air. An investment manager who commingled his own money with investor assets, overstated the value of funds under management, and used the

comingled accounts essentially as his own piggy bank was enjoined from continuing to withdraw money for anything other than legitimate and reasonable business expenses in the absence of evidence that the money paid out to the investment manager was his to withdraw and use for his own purposes. *Trabulse,* 526 F. Supp. 2d at 1017 ("[defendant] has been utterly unable to show that there ever were 'net profits' of sufficient magnitude [to cover his withdrawals from the comingled funds].").

54. The SEC asks for a disgorgement award of $650,921 based on a calculation of the money paid to Randall or for his benefit during the relevant time period. Plaintiff's Post-Trial Brief [ECF No. 1042] at 18, n.11; Tushaus Declaration [ECF No. 1043] at ¶ 6, 1043-3. For the purpose of this calculation, the SEC used the net rather than the gross amount of Nutmeg's payments to Randall's HELOC. (PX 44). In the Court's view, that is fair because there were transfers to and from Nutmeg involving Randall's HELOC during the relevant time period, so the gross amount paid by Nutmeg to Randall's HELOC would overstate the ultimate benefit to him. (PX 44).

55. The Tushaus Declaration [ECF No. 1043], however, was submitted after trial by the SEC to support its proposed disgorgement award and it is not in evidence. It is, however, a judicial admission by the SEC that a reasonable approximation of Randall's ill-gotten gains for the purpose of a disgorgement award does not exceed $650,921. This admission appears to validate to some extent the Court's reliance on PX 43, Schedule 2 as a reasonable approximation of Randall's ill-gotten gains during the relevant time period in the amount of $642,422.

56. "A judicial admission is a statement, normally in a pleading, that negates a factual claim that the party making the statement might have made or considered making 'in order to qualify as judicial admissions, an attorney's statements must be deliberate, clear and

unambiguous.'" *Robinson v. McNeil Consumer Healthcare,* 615 F.3d 861, 872 (7th Cir. 2010) (citing *MacDonald v. General Motors Corp.,* 110 F.3d 337, 340 (6th Cir. 1997); *Best v. District of Columbia,* 291 U.S. 411, 415–17 (1934); *Oscanyan v. Arms Co.,* 103 U.S. 261, 263–64 (1880); *McCaskill v. SCI Management Corp.,* 298 F.3d 677, 680 (7th Cir. 2002); *Butynski v. Springfield Terminal R.R.,* 592 F.3d 272, 277–78 (1st Cir. 2010)). "Judicial admissions are formal concessions in the pleadings, or stipulations by a party or its counsel, that are binding upon the party making them. They may not be controverted at trial or on appeal. Indeed, they are 'not evidence at all but rather have the effect of withdrawing a fact from contention.'" Michael H. Graham, F*ederal Practice and Procedure: Evidence* § 6726 (Interim Edition); *see also* John William Strong, *McCormick on Evidence* § 254, at 142 (1992). A judicial admission is conclusive, unless the court allows it to be withdrawn; ordinary evidentiary admissions, in contrast, may be controverted or explained by the party. *Id.*

57. "Judicial admissions may occur at any point during the litigation process. They may arise during discovery, pleadings, opening statements, direct and cross-examination, as well as closing arguments." *Kohne v. EC,* 818 P.2d 360, 362 (1991) (citing *Lowe v. Kang,* 167 Ill. App. 3d 772 (2d Dist.1988)). The focus is on the statement, not on a certain stage of the litigation. *Id.; see also Postscript Enters. v. City of Bridgeton,* 905 F.2d 223, 227–28 (8th Cir. 1990) (judicial admission in defendant's appellate brief foreclosed necessity of considering certain arguments raised by plaintiff). "Any 'deliberate, clear and unequivocal' statement, either written or oral, made in the course of judicial proceedings qualifies as a judicial admission." *In re Lefkas Gen. Partners No. 1017,* 153 B.R. 804, 807 (N.D. Ill. 1993) (citing *Ensign v. Pennsylvania,* 227 U.S. 592 (1913); *In re Corland Corp.,* 967 F.2d 1069, 1074 (5th Cir. 1992) (denial of request for admission No. 11 combined with other evidence adduced at trial rendered admission in request for

admission No. 9 inconclusive and not binding as a judicial admission); *Wheeler v. John Deere Co.*, 935 F.2d 1090, 1097–99 (10th Cir. 1991) (affirmative, formal, factual statements contained in stipulation agreement entered into prior to first trial constituted judicial admissions binding on the party at the second trial where no manifest injustice resulted and party only complained of tactical disadvantage); *United States v. Cravero,* 530 F.2d 666 (5th Cir. 1976) (defense counsel's statements made at the bench constituted judicial admissions)).

58. Further corroboration of the Court's disgorgement award analysis is contained in Randall's own sworn accounting that lists the payments he says he received from Nutmeg in just 2007 and 2008. (PX 43). Randall says he received payments totaling $620,439 from Nutmeg's comingled accounts. (PX 43). Coupled with certain other uncontroverted payments Randall received from Nutmeg in 2005 and 2006, that number increases to $743,569. (Finding of Fact ¶ 283).

59. Accordingly, based on the evidentiary record, the Court holds that a disgorgement award of $642,422 is a reasonable approximation (and quite possibly at the low end of what is reasonable) of the ill-gotten gains Randall derived from his wrongdoing during the relevant period. Therefore, the Court orders Randall to disgorge $642,422 in ill-gotten gains.

I. Prejudgment Interest

60. The decision to award prejudgment interest rests within the Court's discretion. *See Michel*, 521 F. Supp. 2d at 831. However, "[i]n an enforcement action brought by the SEC, the disgorgement order should include gains flowing from the illegal conduct, including prejudgment interest, to ensure that the wrongdoer does not make any illicit profits." *Randy*, 38 F. Supp. 2d at 674.

61. Within the Seventh Circuit, the Internal Revenue Service underpayment rate is the

proper measurement for determining prejudgment interest. *SEC v. Koenig*, 557 F.3d 736, 744-45 (7th Cir. 2009); *Rooney*, 2014 WL 3500301, at *3.

62. Accordingly, Randall shall pay prejudgment interest on the disgorgement award.

J. Civil Penalties

63. Disgorgement alone "is plainly an insufficient remedy" because it merely requires a wrongdoer to "give back the profits of his wrong." *SEC v. Illarramendi*, 260 F. Supp. 3d 166, 182 (D. Conn. 2017) (quoting *SEC v. Rabinovich & Assoc., LP*, 2008 WL 4937360, at *6 (S.D.N.Y. 2007)).

64. Civil penalties help to achieve the dual goals of punishing the violator and deterring future violations. *See SEC v. Jakubowski*, 1997 WL 598108, *3 (N.D. Ill. 1997), *aff'd* 150 F.3d 675 (7th Cir. 1998); *SEC v. Moran*, 944 F. Supp. 286, 296 (S.D.N.Y. 1996) (quoting H.R. Rep. No.101-616 (1990)).

65. In order to determine whether a penalty should be imposed, and how much a defendant should pay, a court should consider: (1) the egregiousness of a defendant's conduct; (2) the degree of a defendant's scienter; (3) whether the defendant caused substantial losses or created the risk of substantial losses; (4) whether a defendant's conduct was isolated or recurring; and (5) the defendant's current financial condition. *Illarramendi*, 260 F. Supp. 3d at 183; *Haligiannis*, 470 F. Supp. 2d at 385-86.

66. This Court is authorized to impose civil penalties for violations of the Advisers Act, which provides for three separate tiers of penalties. *See* 15 U.S.C. § 80b-9(e)(2)(A)-(C); *Illarramendi*, 260 F. Supp. 3d at 182.

67. A first-tier penalty may be imposed for any violation of the Act. 15 U.S.C. § 80b-9(e)(2)(A). A second-tier penalty can be imposed for a violation involving "fraud, deceit,

manipulation, or deliberate or reckless disregard of a regulatory requirement." 15 U.S.C. § 80b-9(e)(2)(B). And a third-tier penalty is appropriate for any violation which "directly or indirectly resulted in substantial losses or created a significant risk of losses substantial losses to other persons." 15 U.S.C. § 80b-9(e)(2)(C).

68. For violations of the Advisers Act occurring between February 14, 2005 and March 9, 2009, a court may assess a penalty for "each violation" which may not exceed $6,500 (first-tier), $65,000 (second-tier), or $130,000 (third-tier), *or* the amount of the defendant's gross pecuniary gain. *See* 17 C.F.R.§ 201.1001, Table 1; *Illarramendi*, 260 F. Supp. 3d at 183 (emphasis in original); *see also Benger,* 2015 WL 6859168, at *8-9; *Koenig*, 532 F. Supp. 2d at 994.

69. Because the term "violation" is not defined, court have discretion to calculate penalties in several ways, including: (a) determining that each illegal act constituted a violation; (b) counting separate violations by the number of investors affected by the defendant's conduct; or (c) treating many individual acts as a single plan or scheme. *See Illarramendi*, 260 F. Supp. 3d at 183; *SEC v. Tourre*, 4 F. Supp. 3d 579 (S.D.N.Y. 2014); *SEC v. Milan Group, Inc.*, 124 F. Supp. 3d 21, (D.D.C. 2015); *SEC v. Locke Capital Mgmt., Inc.*, 794 F. Supp. 2d 355, 369 (D.R.I. 2011).

70. Randall shall pay a civil penalty of $642,422, which is equal to the amount of the disgorgement award. The Court believes that a civil penalty of this magnitude serves as an appropriate punishment in this case and will deter future violations of the Advisers Act by others. Randall's conduct in this case was egregious. It went on for many years and caused millions of dollars in losses to investors. Randall is an accountant and a lawyer. He was advised on multiple occasions that at least some of what he was doing was wrong. He blatantly misstated the facts to investors in Nutmeg's Funds and to the SEC. Randall's misconduct as Nutmeg's principal was not an isolated instance; he has run afoul of the law before. A substantial penalty, therefore, is

warranted in this case.

71. In its post-trial submissions, the SEC asked for a civil penalty equal to the disgorgement award. The maximum disgorgement award the SEC requested was $1,249,471. But the SEC asked the Court to impose a penalty $1,263,953.94 (an amount larger than the maximum disgorgement award it sought)[10] and to impose a penalty in that amount even if the Court reduced the disgorgement award the SEC requested, as it has done here, by using the net rather than the gross benefit to Randall from Nutmeg's payments to his HELOC. SEC's Post-Trial Brief [ECF No. 1042] at 20. The SEC argued that Randall committed at least ten violations of the Advisers Act so an award of almost $1.3 million is merited ($130,000 maximum civil penalty for each proven violation times 10 violations). SEC's Post-Trial Brief [ECF No. 1042] at 20. The SEC did not itemize each of the ten violations of the Act it says Randall committed for the purpose of calculating a penalty in this case, and the Court does not believe it is its job to identify each of the ten violations the SEC has in mind in this regard.[11] More importantly, in the Court's view, the disgorgement award and the civil penalty assessed against Randall in the same amount, which together total almost $1.3 million even before the assessment of prejudgment interest on the disgorgement award, strikes the right balance in this case.

72. The SEC shall calculate the prejudgment interest Randall must pay on the disgorgement award and file a proposed final judgment order that is consistent with these Findings of Fact and Conclusions of Law via the CM/ECF system by November 8, 2019. Within seven (7) days of the entry of these Findings of Fact and Conclusions of Law, the SEC shall provide to Randall a draft of that order including the prejudgment interest calculation for his review,

[10] The Court does not know where the SEC got the $1,263,953.94 figure.

[11] The Court recognizes it has identified at least eight violations of the Act in Conclusions of Law ¶¶ 31 and 32.

comment, and approval.

It is so ordered.

Jeffrey T. Gilbert
United States Magistrate Judge

Dated: October 25, 2019

EXHIBIT 2

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

SECURITIES AND
EXCHANGE COMMISSION,

Plaintiff,

v.

THE NUTMEG GROUP, LLC,
ET AL.

Defendants,

Case No.: 09-CV-1775

Magistrate Judge Gilbert

FINAL JUDGMENT AS TO DEFENDANT RANDALL GOULDING

After a bench trial in which this Court issued findings of fact and conclusions of law [Docket No. 1085] in favor of the Plaintiff Securities and Exchange Commission ("SEC") and against Defendant Randall Goulding ("Defendant Goulding" or "Goulding") finding Goulding liable for violating Sections 206(1), 206(2), and 206(4) of the Investment Advisers Act of 1940 ("Advisers Act") [15 U.S.C. §§ 80b-6(1), 80b-6(2), and 80b-6(4)] and Rule 206(4)-8 thereunder [17 C.F.R. § 275.206(4)-8], and after this Court having granted summary judgment against Goulding [Docket No. 795] finding him liable for violating Sections 206(2) and 206(4) of the Advisers Act [15 U.S.C. §§ 80b-6(2) and 80b-6(4)] and Rule 206(4)-8 thereunder [17 C.F.R. § 275.206(4)-8], and the Court having considered the evidence in this matter and the parties' submissions and arguments regarding appropriate remedies, the Court hereby enters this Final Judgment:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant Goulding is permanently restrained and enjoined from violating, directly or indirectly, Sections 206(1) and (2) of the Advisers Act [15 U.S.C. §§ 80b-6(1) and 80b-6(2)] by, while acting as an investment adviser and by the use of the means and instrumentalities of interstate commerce and of the mails, employing devices, schemes, and artifices to defraud his clients and prospective clients, or engaging in transactions, practices, and courses of business which operate as a fraud or deceit upon his clients or prospective clients.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED 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 Goulding's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant Goulding or with anyone described in (a).

II.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant Goulding is permanently restrained and enjoined from violating, directly or indirectly, Section 206(4) of the Advisers Act [15 U.S.C. § 80b-6(4)] and Rule 206(4)-8 thereunder [17 C.F.R. § 275.206(4)-8] by, while acting as an investment adviser to a pooled investment vehicle and using the means and instrumentalities of interstate commerce and of the mails, making untrue statements of material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading, to an investor or prospective investor in the pooled investment vehicle or otherwise engage in any act, practice,

or courses of business that is fraudulent, deceptive, or manipulative with respect to an investor or prospective investor in the pooled investment vehicle.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED 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 Goulding's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant Goulding or with anyone described in (a).

III.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Goulding is liable for disgorgement of $642,422, representing profits gained as a result of Goulding's misappropriation of client assets, together with prejudgment interest thereon in the amount of $583,230 and a civil penalty in the amount of $642,422 pursuant to Section 209(e) of the Advisers Act [15 U.S.C. § 80b-9(e)(2)]. Defendant Goulding shall satisfy this obligation by paying $1,868,074 to the Securities and Exchange Commission within 30 days after entry of this Final Judgment. Defendant Goulding 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 Goulding 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; Randall Goulding as a defendant in this action; and specifying that payment is made pursuant to this Final Judgment. Defendant Goulding 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 Goulding relinquishes all legal and equitable right, title, and interest in such funds and no part of the funds shall be returned to Goulding. The Commission shall send the funds paid pursuant to this Final Judgment to the United States Treasury.

The Commission may enforce the Court's judgment for disgorgement and prejudgment interest by moving for civil contempt and/or through other collection procedures authorized by law at any time after 30 days following entry of this Final Judgment. Defendant Goulding shall pay post judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961.

IV.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

V.

There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Clerk is ordered to enter this Final Judgment forthwith and without further notice

SO ORDERED this 12 day of November, 2019.

HON. JEFFREY T. GILBERT
UNITED STATES MAGISTRATE JUDGE

EXHIBIT 3

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Chicago Regional Office
175 W. Jackson, Suite 1450
Chicago, IL 60604

DIVISION OF ENFORCEMENT

Andrew Shoenthal
Senior Counsel
312.353.4947
ShoenthalA@sec.gov

December 18, 2019

VIA UPS

Eric Berry
Berry Law PLLC
745 Fifth Avenue, 5th Floor
New York, NY 10151

Re: **In the Matter of Randall S. Goulding**
Administrative Proceeding File No. 3-19617

Dear Mr. Berry:

Pursuant to Rule 230 of the Securities and Exchange Commission's ("SEC") Rule of Practice, 17 C.F.R. § 201.230, the SEC will make all non-privileged documents related to this matter available for inspection and copying upon reasonable notice at the SEC Chicago Regional Office. These documents include: (1) all filings in *SEC v. The Nutmeg Group, LLC, et al.*, (Case No. 09-cv-1775 N.D. Ill.); (2) deposition and trial transcripts and accompanying exhibits; and (3) documents previously produced to Randall Goulding, you, or his prior counsel in *SEC v. Nutmeg*. Please note that a respondent in an SEC proceeding is responsible for bearing the cost of copying. *See* SEC Rule of Practice 230(f), 17 C.F.R. § 201.230(f). If you wish to make arrangements to inspect and copy these documents, please let me know.

Sincerely,

Andrew Shoenthal
Senior Counsel
Division of Enforcement

UPS CampusShip: View/Print Label

1. **Ensure there are no other shipping or tracking labels attached to your package.** Select the Print button on the print dialog box that appears. Note: If your browser does not support this function select Print from the File menu to print the label.

2. **Fold the printed label at the solid line below.** Place the label in a UPS Shipping Pouch. If you do not have a pouch, affix the folded label using clear plastic shipping tape over the entire label.

3. **GETTING YOUR SHIPMENT TO UPS**
   Customers with a Daily Pickup
   Your driver will pickup your shipment(s) as usual.

   Customers without a Daily Pickup
   Take your package to any location of The UPS Store®, UPS Access Point(TM) location, UPS Drop Box, UPS Customer Center, Staples® or Authorized Shipping Outlet near you. Items sent via UPS Return Services(SM) (including via Ground) are also accepted at Drop Boxes. To find the location nearest you, please visit the Resources area of CampusShip and select UPS Locations.
   Schedule a same day or future day Pickup to have a UPS driver pickup all your CampusShip packages.
   Hand the package to any UPS driver in your area.

UPS Access Point™
THE UPS STORE
116 W JACKSON BLVD
CHICAGO ,IL 60604

UPS Access Point™
THE UPS STORE
17 E MONROE ST
CHICAGO ,IL 60603

UPS Access Point™
CVS STORE # 2934
208 W WASHINGTON ST
CHICAGO ,IL 60606

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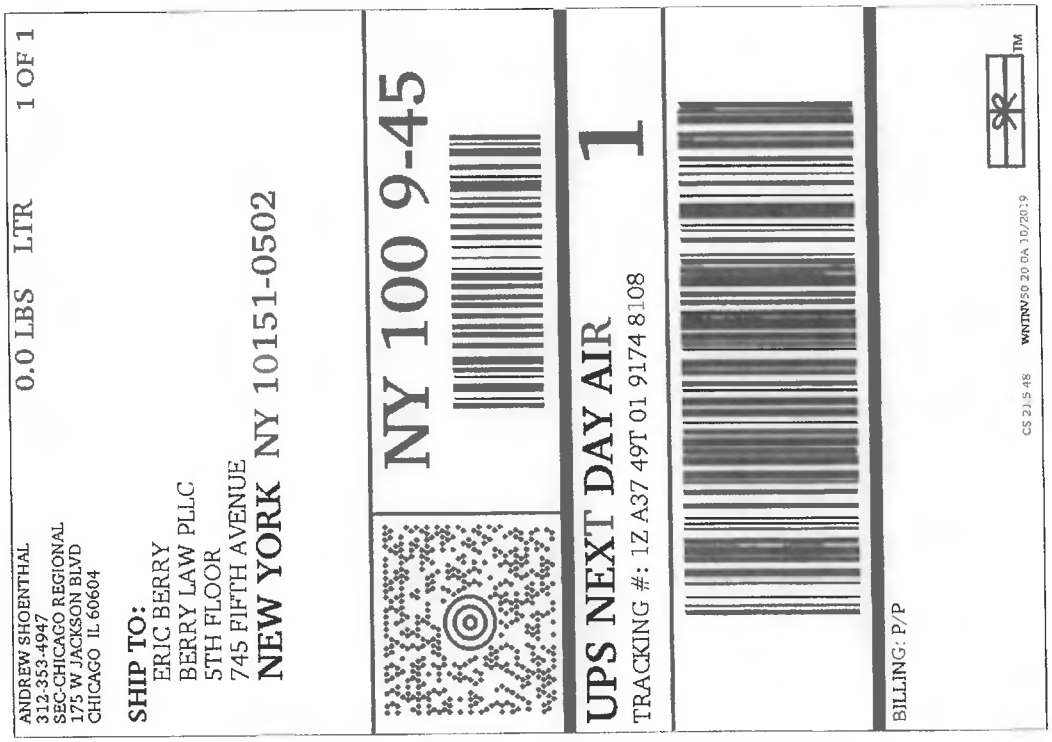

EXHIBIT 4

EX1A-12 OPN CNSL.2 15 sensor_ex122.htm SECURITIES COUNSELORS, INC.

EXHIBIT 12.2

Securities Counselors, Inc.
The Securities Professionals
For Private and Public Issuers, Shareholders and Funding Sources

June 27, 2019

Sensortecnics Inc.
35 Elmdon Road, Selly Park,
Birmingham B29 7LF United Kingdom

Gentlemen:

We are acting as counsel to Sensortecnics Inc., a Colorado corporation (the "Company"), in connection with the preparation and filing with the Securities and Exchange Commission, under the Securities Act of 1933, as amended, of the Company's Post-Qualification Amendment No. 1 to its Offering Statement on Form 1-A. The Offering Statement covers 8,333,333 shares of the Company's common stock (the "Shares").

In our capacity as such counsel, we have examined and relied upon the originals or copies certified or otherwise identified to our satisfaction, of the Offering Statement, the form of Subscription Agreement and such corporate records, documents, certificates and other agreements and instruments as we have deemed necessary or appropriate to enable us to render the opinions hereinafter expressed.

On the basis of such examination, we are of the opinion that:

1. The Shares have been duly authorized by all necessary corporate action of the Company.

2. When issued and sold by the Company against payment therefor pursuant to the terms of the Subscription Agreement, the Shares will be validly issued, fully paid and non-assessable.

We hereby consent to the use of our name in the Offering Statement and we also consent to the filing of this opinion as an exhibit thereto.

Very truly yours,

Randall S. Goulding
SECURITIES COUNSELORS, INC.

1333 Sprucewood Deerfield, IL 60015
Fax: 484-450-5130; Phone: 847.948.5431

Randy@securitiescounselors.net

EX1A-12 OPN CNSL.2 12 verax_ex122.htm OPINION OF COUNSEL

EXHIBIT 12.2

Securities Counselors, Inc.
The Securities Professionals
For Private and Public Issuers, Shareholders and Funding Sources

EXHIBITS 12.1 AND 12.2, OPINION OF COUNSEL AND ASSOCIATED CONSENT

June 27, 2019

Verax Research Services, Inc.
Verax Botanical Research Center@ Hopkins,
Johns Hopkins University—MCC,
9601 Medical Center Drive-- Suite 221, Rockville, Maryland 20850

Gentlemen:

We are acting as counsel to Verax Research Services, Inc., a Delaware corporation (the "Company"), in connection with the preparation and filing with the Securities and Exchange Commission, under the Securities Act of 1933, as amended, of the Company's Offering Statement on Form 1-A. The Offering Statement covers 8,000,000 shares of the Company's common stock (the "Shares").

In our capacity as such counsel, we have examined and relied upon the originals or copies certified or otherwise identified to our satisfaction, of the Offering Statement, the form of Subscription Agreement and such corporate records, documents, certificates and other agreements and instruments as we have deemed necessary or appropriate to enable us to render the opinions hereinafter expressed.

On the basis of such examination, we are of the opinion that:

1. The Shares have been duly authorized by all necessary corporate action of the Company.

2. When issued and sold by the Company against payment therefor pursuant to the terms of the Subscription Agreement, the Shares will be validly issued, fully paid and non-assessable.

We hereby consent to the use of our name in the Offering Statement and we also consent to the filing of this opinion as an exhibit thereto.

Very truly yours,

Randall S. Goulding
SECURITIES COUNSELORS, INC.

1333 Sprucewood Deerfield, IL 60015
Fax: 484-450-5130; Phone: 847.948.5431

Randy@securitiescounselors.net

EX1A-12 OPN CNSL.1 6 social_ex121.htm LEGAL OPINION

EXHIBIT 12.1

Securities Counselors, Inc.
The Securities Professionals
For Private and Public Issuers, Shareholders and Funding Sources

July 17, 2018

Social Investment Holdings, Inc.
2121 S.W. 3rd Avenue—Suite 601
Miami, Florida 33129

Gentlemen:

We are acting as counsel to Social Investment Holdings, Inc., a Florida corporation (the "Company"), in connection with the preparation and filing with the Securities and Exchange Commission, under the Securities Act of 1933, as amended, of the Company's Post-Qualification Amendment No. 1 to its Offering Statement on Form 1-A. The Offering Statement covers 2,500,000 shares of the Company's common stock (the "Shares").

In our capacity as such counsel, we have examined and relied upon the originals or copies certified or otherwise identified to our satisfaction, of the Offering Statement, the form of Subscription Agreement and such corporate records, documents, certificates and other agreements and instruments as we have deemed necessary or appropriate to enable us to render the opinions hereinafter expressed.

On the basis of such examination, we are of the opinion that:

1. The Shares have been duly authorized by all necessary corporate action of the Company.

2. When issued and sold by the Company against payment therefor pursuant to the terms of the Subscription Agreement, the Shares will be validly issued, fully paid and non-assessable.

We hereby consent to the use of our name in the Offering Statement and we also consent to the filing of this opinion as an exhibit thereto. We further consent to the inclusion this opinion of counsel in this Post-Qualification Amendment No. 1 to Company's Form 1-A line and any amendments thereto.

Very truly yours,

Randall S. Goulding
SECURITIES COUNSELORS, INC.

1333 Sprucewood Deerfield, IL 60015
Fax: 484-450-5130; Phone: 847.948.5431

Randy@securitiescounselors.net

CORRESP 1 filename1.htm

Securities Counselors, Inc.

The Securities Professionals

For Private and Public Issuers, Shareholders and Funding Sources

MAIL STOP 4546

December 6, 2017

Joseph McCann (for Suzanne Hayes, Assistant Director)
Office of Healthcare and Insurance
Division of Corporation Finance
Securities and Exchange Commission
Washington, D.C. 20549

Re: McGraw Conglomerate Corporation
Pre-Effective Amendment No. 9 to Offering Statement on Form 1-A
Filed November 9, 2017
File No. 024-10657

Dear Mr. McCann:

In connection with the sale of up to 2,500,000 shares of common stock of McGraw Conglomerate Corporation (the "Company") at $6.00 per share (the "Offering"), we filed on November 9, 2017 the Company's Pre-Effective Amendment No. 8 to the Form 1-A originally filed December 23, 2016 (the "original filing") with the Securities and Exchange Commission ("SEC") pursuant to Regulation A (the "Regulation") under the Securities Act of 1933, as amended (the "Securities Act"). In response to the staff's review of the associated P.E. No. 7 in late October, I was advised that the SEC had no further comments--albeit we needed to confirm that FINRA had cleared the brokerage compensation between the Company and its best efforts selling agent, Alexander Capital LLC. (hereafter, "Selling Agent").

As a result of your review of P.E. No. 8, (i) the staff issued an additional comment via a comment letter dated November 22, 2017 and (ii) FINRA has issued its final comments. We have made all cumulative changes to the Offering Circular and have been advised by Counsel for the Selling Agent that that the brokerage compensation (and their supplemental comments) are being cleared today (subject to this Pre-Effective Amendment No. 9 filing).

In that context, we hereby file this P.E. No. 9 responsive to the staff's comments, most specifically that funds raised in this Offering may be applied only to the four designated companies described in "Use of Proceeds" and "Business of the Company," respectively. Please note that this SEC Response Letter (being filed concurrently as a "Communication" on EDGAR) relates to such P.E. Amendment No. 9 which is also being filed concurrently on EDGAR.

1333 Sprucewood Deerfield, IL 60015
Fax: 484-450-5130; Phone: 847.948.5431

Randy@securitiescounselors.net

We again acknowledge that the Company and its management are responsible for the accuracy and adequacy of their disclosures, notwithstanding any review, comments, action or absence of action by the SEC or FINRA staffs.

Upon completion of your review, we trust that this lone remaining comment will have been satisfied and you can advise us that the Company's Offering Statement can be declared effective at a mutually convenient time, hopefully on or before 4PM Friday, December 8, 2017. As we discussed late last week, we are concurrently filing as Correspondence a Rule 461 Request for Acceleration (48 hours after this filing as you instructed) so requesting.

Thank you for your assistance and prompt review of these materials. I will call Ms. Yale on Thursday late afternoon to coordinate any remaining issues with the staff, presumably including coordination of the date of effectiveness and the associated Request for Acceleration Letter that will have been filed pursuant to Securities Act Rule 461.

Very truly yours,

Randall S. Goulding
SECURITIES COUNSELORS, INC.

1333 Sprucewood Deerfield, IL 60015
Fax: 484-450-5130; Phone: 847.948.5431

Randy@securitiescounselors.net

EX1A-12 OPN CNSL 6 mgc_ex12.htm OPINION OF COUNSEL

EXHIBIT 12

Securities Counselors, Inc.

The Securities Professionals
For Private and Public Issuers, Shareholders and Funding Sources

May 18, 2018

Midnight Gaming Corporation
1900 East Golf Road—Suite 950
Schaumburg, Illinois 60516

Gentlemen:

We are acting as counsel to Midnight Gaming Corporation (the "Company") in connection with the preparation and filing with the Securities and Exchange Commission, under the Securities Act of 1933, as amended, this Post-Effective Amendment No. 1 to the Company's Form 1-A Offering Statement. The Offering Statement, as amended, covers 1,250,000 shares of the Company's common stock (the "Shares").

In our capacity as such counsel, we have examined and relied upon the originals or copies certified or otherwise identified to our satisfaction, of the Offering Statement, the form of Subscription Agreement and such corporate records, documents, certificates and other agreements and instruments as we have deemed necessary or appropriate to enable us to render the opinions hereinafter expressed.

On the basis of such examination, we are of the opinion that:

1. The Shares have been duly authorized by all necessary corporate action of the Company.

2. When issued and sold by the Company against payment therefor pursuant to the terms of the Subscription Agreement, the Shares will be validly issued, fully paid and non-assessable.

We hereby consent to the use of our name in the Offering Statement and we also consent to the filing of this opinion as an exhibit thereto. In giving this consent, we do not thereby admit that we are within the category of persons whose consent is required under Section 7 of the Securities Act of 1933 or the rules and regulations of the Commission thereunder.

Very truly yours,

Randall S. Goulding
SECURITIES COUNSELORS, INC.

1333 Sprucewood Deerfield, IL 60015
Fax: 484-450-5130; Phone: 847.948.5431

Randy@securitiescounselors.net

SC 13D 1 s108721_sc13d.htm SC 13D

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549
http://www.sec.gov

SCHEDULE 13D
Under the Securities Exchange Act of 1934

E N C O U N T E R T E C H N O L O G I E S I N C .

(Name of Issuer)

Common Stock, $0.001 Par Value
(Title of Class of Securities)

29259J303
(CUSIP Number)

For the Issuer:
Securities Counselors, Inc.
1333 Sprucewood Lane
Deerfield, Illinois 60015
(847) 828-3700

Copy, To:

For the Reporting Person:
Phillip E. Ruben, Esq.,
Firsel Ross
2801 Lakeside Drive
Suite 207
Bannockburn, IL 60015
(847) 582-9901

(Name, Address, and Telephone Number of Persons
Authorized to Receive Notices and Communications)

December 18, 2017
(Date of Event Which Requires Filing of this Statement)

If the filing person has previously filed a statement on Schedule 13G to report the acquisition that is the subject of this Schedule 13D, and is filing this schedule because of §§240.13d-1(e), 240.13d-1(f) or 240.13d-1(g), check the following box ☐.

Note: Schedules filed in paper format shall include a signed original and five copies of the schedule, including all exhibits. See §240.13d-7 for other parties to whom copies are to be sent.

*The remainder of this cover page shall be filled out for a reporting person's initial filing on this form with respect to the subject class of securities, and for any subsequent amendment containing information which would alter disclosures provided in a prior cover page.

The information required on the remainder of this cover page shall not be deemed to be *"filed"* for the purpose of Section 18 of the Securities Exchange Act of 1934 (*"Act"*) or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act (however, see the Notes).

CUSIP No. 29259J303

1. Name of Reporting Person:
SEBASTIEN C. DUFORT
Taxpayer I. D. No.: 82-3715495

2. Check the Appropriate Box if a Member of a Group (See Instructions)
(a) ☐
(b) ☐

3. SEC Use Only

4. Source of Funds:
SC

5. Check if Disclosure of Legal Proceedings Is Required Pursuant to Items 2(d) or 2(e): ☐

6. Citizenship or Place of Organization:
Illinois

Number of Shares Beneficially Owned by Each Reporting Person With

7. Sole Voting Power
7,100,000,000

8. Shared Voting Power
-0-

9. Sole Dispositive Power
7,100,000,000

10. Shared Dispositive Power
-0-

11. Aggregate Amount Beneficially Owned by Each Reporting Person
7,100,000,000

12. Check Box if the Aggregate Amount in Row (11) Excludes Certain Shares ☐

13. Percent of Class Represented by Amount in Row (11)
32.6%

14. Type of Reporting Person
IN

CUSIP No. 29259J303

ITEM 1. SECURITY AND ISSUER. This schedule pertains to the common stock, $0.001 par value per share ("Common Stock"), of Encounter Technologies, Inc., a Colorado corporation ("Issuer"). The CUSIP Identifier associated with the Issuer's Common Stock 29259J303. The Issuer's Common Stock is quoted over-the-counter on the Link Alternative Trading System, which is managed and overseen by OTC Markets Group, Inc., under the symbol "ENTI" (US.ENTI.PK).

The mailing address for the Issuer's principal executive office is 4100 West Flamingo Road, Suite 2750, in Las Vegas, Nevada. The Issuer's principal phone number is (702) 546-6480, and, the Issuer maintains a website at http://www.enticolorado.com.

ITEM 2. IDENTITY AND BACKGROUND. The name of the reporting person hereunder is Sebastien C. DuFort ("Reporting Person"). The Reporting Person's business address is 200 West Sixth Street in Lockport, Illinois.

The Reporting Person serves as the Chairman, President, and Chief Executive Officer of IDGreen Corp. f/k/a IDGlobal Corp., a Colorado corporation, the common voting equity securities of which are quoted over-the-counter on Link Alternative Trading System, which is managed and overseen by OTC Markets, Inc., under the symbol "IDGC" (US.IDGC.PK). In addition, beyond February 2003, Mr. DuFort served as President of Voyager Petroleum, Inc., now known as USA Recycling Industries, Inc., the common voting equity securities of which are quoted over-the-counter since February 2003. Mr. DuFort has extensive financial and insurance experience both on the institutional and retail sides of the business. He has held the position of managing director of a consulting firm that helps to facilitate real estate transactions and has obtained funding in excess of one billion dollars for multiple projects through the years. Mr. DuFort was a consultant for Linsco Private Ledger (1997-2001), LaSalle Street. (2001-2003). In addition to his positions with IDGreen, Mr. DuFort is President of Farallon, Inc. a coffee procurement company that works with Café La Fortuna in Willowbrook, Illinois, which offers private-label coffee for Harbour Trading (which made Oprah's Christmas List in 2017. Mr. DuFort also heads up Monochrome Corp., a Colorado corporation that specializes in CBD products, and, in December 2017, Mr. DuFort formed and organized Azure Blockchain Inc. in Colorado.

During the last five years, the Reporting Person has not been convicted in any criminal proceeding (excluding the disclosures, as permitted, of traffic violations and similar misdemeanors).

During the last five years, the Reporting Person was not a party to any civil proceeding of a judicial or administrative body of competent jurisdiction and is not subject to a judgment, decree, or final order enjoining future violations of, or prohibiting or mandating activities subject to, federal or state securities laws or the finding any violation with respect to such laws.

The Reporting Person is a citizen of the United States of America.

ITEM 3. SOURCE AND AMOUNT OF FUNDS OR OTHER CONSIDERATION. The Reporting Person did not utilize any funds to effect the acquisition of the Issuer's Common Stock ("Acquisition") reported hereunder.

The consideration to the Issuer for the issuance of its Common Stock to the Reporting Person is described in the *Common Stock Purchase Agreement*, dated December 15, 2017, and described or referenced elsewhere in this schedule.

The Reporting Person and the Issuer view the Acquisition to be a "security-based swap" as such phrase and transaction are described in *Exchange Act Release 34-64087 (dated, March 17, 2011)* and/or in *Exchange Act Release 34-64628 (dated, June 8, 2011)*.

The Reporting Person sold, transferred, assigned, and delivered the Issuer 71,100,000 shares of voting securities ("IDGC Control Stock") owned by him in IDGreen Corp. a/k/a IDGlobal Corp., a Colorado corporation, the common voting equity securities of which are quoted over-the-counter on the Link Alternative Trading System, which is managed and overseen by OTC Markets Group, Inc., under the symbol "IDGC" (US.IDGC.PK) ("IDGC"), in exchange for the issuance to him of the Issuer's Common Stock.

The shares of the Reporting Person's Common Stock acquired by him pursuant to the Acquisition are fully-paid and non-assessable.

ITEM 4. PURPOSE OF TRANSACTION. The Issuer's purpose of the transaction with the Reporting Person is to promote the collective growth and development of the Issuer and IDGC, for which the Reporting Person serves as its Chairman, President, and Chief Executive Officer, for the specific purpose of inter-exchanging the collective business strategies and knowledge of each of the Reporting Person and the Issuer's Chief Executive Officer, Randolph S. Hudson, the shareholders and investors of the Issuer, and IDGC.

As the result of the transaction with the Reporting Person, the Issuer acquired 51% voting control in IDGC by acquiring IDGC Control Stock from the Reporting Person. As such, there were certain limitations imposed on the Reporting Person and the Issuer with respect to any disposition in future by the Issuer of IDGC, its assets, and any subsidiary. The key to these impositions and limitations is the fact that the Issuer's control stockholder must approve any such sale together with the Reporting Person and the Issuer's Board of Directors must unanimously approve any such disposition of IDGC, any of its assets, or any subsidiary of IDGC.

As of the date of this schedule, there is no contract or other arrangement with the Issuer that provides for the Reporting Person to purchase additional shares of the Issuer's Common Stock. However, the Issuer contemplates, following the events described below under this item fourth that, the Issuer will compensate the Reporting Person for serving on its board of directors, and for other matters' consultant for the business affairs of the Issuer and/or its subsidiaries, in shares of the Issuer's Common Stock. Under any registered, qualified stock option plan, the Reporting Person would have the ability to purchase additional shares in the Issuer, in addition to those shares which are granted or awarded to him for his services to the Issuer.

The Issuer is conducting a number of extraordinary corporate actions that the Issuer's Board of Directors anticipate will better serve its shareholders and others conducting business with it, and, which will better serve IDGreen's shareholders and investors. To that extent, the Issuer will be filing a preliminary information statement on Schedule 14-C not later than 12 January to describe the corporate actions that were unanimously adopted by the Issuer's Board of Directors and approved by the written consent of the Issuer's control shareholder.

The specific corporate actions are (a) the split down of the Issuer's Common Stock at the ratio of 1:15,000 shares; (b) to change the Issuer's Public Company Accounting Oversight Board ("PCAOB")-qualified certifying public accountant; (c) to convert the shares of the holders of the Issuer's Series B Preferred Stock to Common Stock; (d) to eradicate the Issuer's authorization to issue Series B Preferred Stock; (e) to eradicate the Issuer's authorization to issue Series C Preferred Stock; (f) to restate the Issuer's Articles of Incorporation (x) to restate the Issuer's authorized capital; and (g) to authorize the issuance to those persons who are to receive shares of the Issuer's Common Stock prior to the effectiveness of the reverse split; (h) to authorize the Issuer's President to file a notification of corporate actions with FINRA and to authorize him to undertake the specific corporate actions ("Corporate Actions").

As the result of the transaction with the Reporting Person, the Issuer does not contemplate selling, transferring, or disposing of any of its assets, nor of those held in any of its active or dormant subsidiaries.

The Issuer's Articles of Incorporation, as amended, provide that the Issuer is required to have at least one person to serve on its Board of Directors. Prior to the transaction that is subject to this schedule, the Issuer's President, Randolph S. Hudson, was the only member of the Issuer's Board of Directors. As the result of the transaction being reported herein, the Reporting Person was appointed to the Issue's Board of Directors. The terms of the Issuer's appointment provide that he shall serve until he resigns, until his death, or by operation of law. There are no proposals to fill additional vacancies on the Issuer's Board of Directors; however, should the Issuer acquire any new asset, it may be a condition to the acquisition, and depending on the asset's value and the terms of financing the acquisition of the asset, to appoint the seller of the asset, or his representative, to the Issuer's Board of Directors as inducement for any seller to enter into a transaction with the Issuer.

As of the date of the even reported herein, there has not been any material change in the present capitalization or dividend policy of the Issuer. However, as the result and as parts of the Corporate Actions, the Issuer will be effecting a split down of its Common Stock at the ratio of 1:15,000, the conversion of the holders shares in the Issuer's Series B Preferred Stock to Common Stock at the required ratio of 4:1, the cancellation of the Issuer's Series B Preferred Stock, the cancellation of the Issuer's Series C Preferred Stock, and the restatement of the Issuer's Articles of Incorporation; whereby, the capital stock of the company will be restated to authorize the Issuer to issue 250,000,000 shares of Common Stock and 75,000,000 shares of Series A Preferred Stock. The Corporate Actions shall be subject to review by FINRA. Due to FINRA's review, the Issuer is uncertain when the Corporate Actions will become effective, if at all.

On November 24, 2017, the Issuer filed a notification on Form N-8A with the Commission. Pursuant to the Issuer's notification thereunder, the Issuer became subject to the Investment Company Act of 1940 ("1940 Act"), and, the Issuer is required to file a registration statement under the Securities Act of 1933 or the 1940 Act with the Commission not later than March 24, 2018. At present the Issuer will be reviewing its policies to fully observe the requirements and provisions that govern 1940 Act companies. Presently, the Issuer has no plans or proposals to change its investment policy; however, if the Issuer must become compliant with the rules and regulations of the 1940 Act, the Issuer may have to adjust its investment policy.

Each of the Issuer's Articles of Incorporation, as amended, its bylaws, or any other instrument, does not contain any provision to restrict or impede a change in control of the Issuer. Notwithstanding this fact, the Issuer's control stock is that of its Series A Preferred Stock, the shares of which have preferential and superior voting rights over the shares of the Issuer's Common Stock. Consequently, the holder of the Issuer's control stock may approve or disapprove any corporate action or material event of the Issuer and may override any action(s) undertaken by the holders of the Issuer's Common Stock, unless pursuant to the terms of any validly enforceable agreement or other voting arrangement with the holders of the Issuer's Common Stock. As of the date of this schedule, there is no

voting agreement between the Issuer's control stockholder and the holder of any shares of Common Stock, except, as to the disposition by the Issuer of IDGC, its assets, or its subsidiaries.

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ITEM 5. INTEREST IN SECURITIES OF ISSUER.

As of the date of this schedule, the Issuer has issued 28,865,593,734 shares of its Common Stock. Under the transaction being reported on this schedule, the Issuer issued the Reporting Person 7,100,000,000 shares of Common Stock, which is included in the aforesaid aggregate amount. The Reporting Person is the beneficial owner of the aforementioned shares of the Issuer's Common Stock and his percentage ownership of the Issuer's total issued and outstanding Common Stock is 32.6%. The Reporting Person is not a member of any voting group, as that term is defined in Section 13(d)(3) of the Act. The Reporting Person and the Issuer did timely comply with ownership disclosure requirements pursuant to Section 16(a) of the Act, and did timely file the same with the Commission.

The Reporting Person has the sole power to vote or to direct the vote and the sole power to dispose or to direct the disposition of the Issuer's Common Stock, which is the subject of this schedule.

The transaction reported on this schedule is the only transaction that required the filing of a Schedule 13D within the 60 days prior to the date hereof.

ITEM 6. CONTRACTS, ARRANGEMENTS, UNDERSTANDINGS OR RELATIONSHIPS WITH RESPECT TO SECURITIES OF THE ISSUER. The Issuer and the Reporting Person do not have any understanding with respect to any preferential voting group or collective, and, the Reporting Person is not a member of any voting group with any holder of the Issuer's Series A Preferred Stock or Common Stock.

The only arrangement the Issuer and the Reporting Person agreed to in regard to the underlying transaction that required the filing of this schedule. The conditions to the stock purchase agreement between the Issuer the Reporting Person that resulted in the Issuer's succession to the voting control of IDGC are that, the Reporting Person was appointed to the Issuer's Board of Directors and that the Issuer's control stockholder must approve any such sale *together* with the Reporting Person> Both the Issuer's and IDGC's Board of Directors must unanimously approve any disposition, sale, transfer, or liquidation of IDGC, any of its assets, or any of its subsidiaries.

There were no fees, commissions, or other financial instruments associated with or payable to any person or entity in connection with the transaction between the Issuer and the Reporting Person.

CUSIP No. 29259J303

Signature

After reasonable inquiry and to the best of the undersigned's knowledge and belief, the undersigned certifies that the information set forth in this statement is true, complete, and correct.

Dated December 18, 2017
at Village of Bannockburn, County of Lake, State of Illinois.

/s/ Sebastien C. DuFort
Sebastien C. DuFort
("Reporting Person")