UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-19685

In the Matter of

BARTON W. STUCK,

Respondent.

DIVISION OF ENFORCEMENT'S MOTION FOR SUMMARY DISPOSITION AGAINST BARTON W. STUCK

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The Division of Enforcement ("Division") moves pursuant to Rule 250 of the Commission's Rules of Practice,[1] for summary disposition of the claims against Respondent Barton W. Stuck ("Stuck"), alleged in the Order Instituting Administrative Proceedings Pursuant to Section 203(f) of the Investment Advisers Act of 1940 ("OIP").[2] All facts necessary for summary disposition have been previously resolved by a final order by the Commissioner for the State of Connecticut Department of Banking ("Final Order") on May 2, 2018.[3] Stuck may not re-litigate the Final Order's findings of fact and conclusions of law here. As a result of the entry of the State order and pursuant to Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act")[4] the Division requests that Stuck be barred from being associated with an investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.

I. Preliminary Statement

On June 27, 2017, the Connecticut Commissioner ("Commissioner") initiated the state action by issuing an Order to Cease and Desist, Notice of Intent to Fine and Notice of Right to Hearing against Stuck and a number of related companies, including, Signal Lake Management, LLC ("SL Management"), Signal Lake General Partner LLC ("SL General Partner"), as well as a group of private funds, including Signal Lake Side Fund, L.P ("SL Side Fund"), Signal Lake Side Fund II, L.P. ("SL Side Fund II"), and Signal Lake Side Fund IIA, L.P. ("SL Side Fun IIA") (Collectively the "Signal Lake Funds"). The Commissioner alleged that Stuck and his entities

[1] *See* Rule 250 at 17 C.F.R. § 201.250.
[2] *Barton W. Stuck*, Admin. Proc. File No. 3-19685, SEC Release No. IA-5439, 2020 WL 508866, *1 (January 31, 2020).
[3] A true and accurate copy of the May 2, 2018 Final Order against Respondent is Exhibit A to the Declaration of William J. Donahue in Support of Division of Enforcement's Motion for Summary Disposition, . This Exhibit A will be called "Final Order."
[4] *See* 15 U.S.C. § 80b-3(f).

offered and sold unregistered securities from Connecticut to at least one investor. Further, The Commissioner alleged that SL Management transacted business as an unregistered investment adviser and that Stuck served as its unregistered investment adviser agent. The Commissioner also alleged that Stuck's and SL Management's conduct in connection with the offer, sale, or purchase of the unregistered securities violated the state's anti-fraud provision and that Stuck, on behalf of SL General Partner, a purportedly exempt reporting adviser, filed false and misleading Form ADV reports with the Commission and the state Banking Department, which is charged with the administration of the state's Uniform Securities Act (the "Act").

The Commissioner held hearings on the matter on November 28 and December 14, 2017. Stuck appeared at the hearing on behalf of all the Signal Lake respondents to oppose the state action. On May 2, 2018, the Connecticut Department of Banking entered its Final Order against Stuck and the Signal Lake respondents for anti-fraud and registration violations of the Act in connection with the Signal Lake businesses.[5] The Final Order found that Stuck and his Signal Lake companies violated certain anti-fraud and registration provisions of the Act relating to an unregistered offering Stuck conducted through a group of entities whose purported purpose was to invest in technology companies. Among other things, the Final Order found that Stuck made misrepresentations to at least one investor about the amount of money other investors had or would be placing with the Signal Lake Funds, and that Stuck also made false statements in Forms ADV that Stuck filed with the Commission and State of Connecticut. The Connecticut Department of Banking also found that Stuck solicited money from investors for funds while failing to register the funds as securities as required by the Act. In addition, the Final Order found that Stuck violated an investment adviser registration provision of the state's Act by

[5] *See* Exhibit A, Final Order, *In the Matter of Barton W. Stuck et al.,* Case No. CF-17-8254-S, State of Connecticut Department of Banking (May 2, 2018).

failing to register as an investment adviser certain entities he controlled and/or worked for that advised the fund.

Section 203(f) of the Advisers Act authorizes the Commission to impose a collateral bar as a sanction against a person if: (1) the person is subject to any final order of a state securities commission or any agency or officer performing like functions that bars him from engaging in the business of securities; (2) at the time of the misconduct, the person was associated or seeking to become associated with an investment adviser; and (3) the sanction is in the public interest. The Final Order establishes the predicate facts necessary for an industry-wide collateral bar under Section 203(f) of the Advisers Act Further, due to Stuck's high degree of scienter, egregious and repetitive conduct, and potential for future violations, it is also in the public interest to bar Stuck from associating with any regulated entity. For the reasons discussed below, the Division's motion should be granted.

II. Facts

From 2013 through 2017, Stuck exercised control over and was the majority owner of SL General Partner (CRD No. 285438), which was a purportedly exempt reporting adviser to SL Operations, a private fund. (Final Order ¶¶ 22-25) From 2008 to 2017, Stuck also served as an agent of SL Management, which acted as an unregistered investment adviser. (Final Order ¶¶ 87-88, 90-91). From at least 2008 to 2010, Stuck and SL Management provided investment advisory services to the Signal Lake Funds. (Final Order ¶¶ 87-89) As a managing member, Stuck exercised control and decision making for the Signal Lake Funds, and SL Management. (Final Order ¶ 10) In addition, since August 2013, Stuck was the managing director of SL General Partner and owned between 50% and 75% of the entity. (Final Order ¶ 24) SL General Partner served as the manager of the private fund, SL Operations. (Final Order ¶ 22)

Stuck, on behalf of SL Management, offered and sold limited partnership interests in the Signal Lake Funds, including SL Side Fund and SL Side Fund II, from Connecticut to investors in Connecticut and other states. (Final Order ¶¶ 45, 60) The Signal Lake Funds raised at least $30 million, but the amount raised could have been as high as $40 million for the SL Side Fund and $24 million for the SL Side Fund II. (Final Order ¶ 18). Further, to induce another $250,000 investment, Stuck falsely represented to an investor that other investors had also made multi-million dollar investments in the SL Side Fund II. The investor relied on this misrepresentation when making his new investment. (Final Order ¶¶ 70-76.) Stuck, on behalf of Signal Lake General Partner, filed Form ADVs with the Commission (and consequently also with the state Department of Banking) and falsely reported $145 million in private fund assets being managed by Signal Lake General Partner. (Final Order ¶ 30) Through the Form ADVs, Stuck also falsely reported that the private fund's financial statements were subject to an annual audit by an accounting firm. Stuck continued to make these misrepresentations during the state Department of Banking's investigation. (Final Order ¶¶ 25 -41)

The Connecticut Commissioner held hearings on the matter on November 28 and December 14, 2017. Stuck appeared at the hearing on behalf of all the Signal Lake respondents to oppose the state action. On May 2, 2018, the Connecticut Commissioner entered the Final Order against Stuck and the Signal Lake respondents for several anti-fraud and registration violations of the Act through the Signal Lake businesses.

The Final Order found that Stuck committed the following violations:

- Violation 1: Stuck offered and sold unregistered SL Side Fund and SL Side Fund II securities in violation of Section 36b-16 of the Act;

- Violation 3: Struck transacted business as an unregistered investment adviser agent of SL Management in Connecticut in violation of Section 36b-6(c)(2) of the Act;
- Violation 4: SL Management engaged Stuck as an unregistered investment adviser agent in violation of Section 36b-6(c)(3) of the Act;
- Violation 5: Stuck's conduct regarding representations to the investor in connection with his offer and sale of a security about the investment amounts purportedly received by the SL Side Fund II painted a false impression that millions of dollars were about to be invested in the SL Fund II and that Stuck never qualified or sought to clarify his statements constituted a device, scheme, or artifice to defraud, by his making an untrue statement of a material fact or omitting to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or engaging in an act, practice, or course of business which operated as a fraud or deceit upon any person, in violation of Section 36b-4(a), the anti-fraud provision of the Act.
- Violation 6: Stuck filed a Form ADV and amended Form ADV with the Commission and with the state Banking Commissioner which contained several false and misleading material statements about the purported exempt reporting adviser, SL General Partner. The Final Order also noted that Stuck continued to make false and misleading statements "throughout the [state's] investigation."

The Final Order determined that Stuck's conduct, "supports the finding that the issuance of a[] [permanent cease and desist] order against Stuck [was] both necessary and for the protection of investors." (*Id.*) Respondent filed no appeal from the entry of the Final Order.

The Commission served the OIP upon Stuck on March 24, 2020. Stuck subsequently sought, and was granted, four extensions of time in which to file his answer to the OIP.[6] In September 2020, Stuck sought a fifth extension of time asserting that the sentencing hearing in his criminal action was again rescheduled until November 3, 2020. On October 6, 2020, the Secretary's office issued an Order denying Stuck's motion for further extension. It also ordered Stuck to file his Answer to the OIP by October 20, 2020, or risk being defaulted. It also warned that the proceeding may be determined against him.[7]

On October 20, 2020, Stuck filed another motion to enlarge time for filing the Answer, which the Division opposed. On October 26, 2020, the Secretary's office issued an order, once again denying Stuck's extension request and ordering him to Show Cause by November 9, 2020 why the Commission should not find him in default for his failure to file an Answer or otherwise defend the proceeding.[8] Stuck ignored the Show Cause Order. On January 21, 2021, the Secretary's Office issued an Order noting Stuck's failure to comply with the Show Cause Order and invited the Division to submit the present dispositive motion.[9] Stuck is in default because he had sufficient notice of the OIP and several extensions beyond the initial twenty days provided to submit an Answer have passed. Moreover, as a result of Stuck's default, the allegations contained within the OIP may be deemed to be true. Rule 155, 17 C.F.R. § 210.155.

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[6] *See Barton W. Stuck*, Advisers Act Rel. No. 5472, 2020 WL 1659873 (Apr. 2, 2020) (extending time to answer until May 13, 2020); *Barton W. Stuck*, Advisers Act Rel. No. 5507, 2020 WL 2613173 (May 21, 2020) (extending time to answer until July 20, 2020); *Barton W. Stuck*, Advisers Act Rel. No. 5544, 2020 WL 4038964 (July 17, 2020) (extending time to answer until July 27, 2020); *Barton W. Stuck*, Advisers Act Rel. No. 5553, 2020 WL 4339273 (July 28, 2020) (extending time to answer until September 28, 2020).

[7] *See Barton W. Stuck*, Advisers Act Rel. No. 5608, 2020 WL 5912405 (Oct. 6, 2020) (denying Motion to Enlarge Time to File Answer)

[8] *See Barton W. Stuck*, Advisers Act Rel. No. 5619, 2020 WL 6286293 (Oct. 26, 2020) (Order to Show Cause and Denying Motion to Enlarge Time to File Answer)

[9] *See Barton W. Stuck*, Investment Advisers Act Release No. 5667, 2020 WL 125057 (Oct. 26, 2020) (Order)

III. Argument

A. Legal Standards for Summary Disposition.

The Division brings this Motion for Summary Disposition under Rule 250(b) of the Commission's Rules of Practice:

> any party may make a motion for summary disposition on one or more claims or defenses, asserting that the undisputed pleaded facts, declarations . . . show that there is no genuine issue with regard to any material fact and that the movant is entitled to summary disposition as a matter of law.

17 C.F.R. § 201.250(b) (2016).

If a respondent fails to file his Answer, or fails to appear at the hearing after being duly notified, the hearing officer may find the respondent in default and "the proceedings may be determined against [him] . . . the allegations of which may be deemed to be true as provided by Rule[] 155(a)[.]" *Fuelnation, Inc. and 3D Total Solutions, Inc.*, Admin. Proc. File No. 3-18551, SEC Release No. 83487, 2018 WL 3063581, *2 (June 30, 2018) (granting order instituting administrative proceedings and notice of hearing based on failure to comply with timely Exchange Act periodic filings).

A dispute of fact will not defeat a summary disposition motion "unless it is both genuine and material." *Joseph C. Lavin*, Admin. Proc. File No. 3-13222, 95 SEC Docket 1148, 2009 WL 613543, *5 (March 10, 2009) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986)) (analogizing summary disposition motions with the standard under Fed. R. Civ. P. 56 required for a summary judgement motion). Summary disposition is appropriate "where the only real issue involves the determination of the appropriate sanction." *Jordon McCarty*, Admin. Proc. File No. 3-16380, 111 SEC Docket 4417, 2015 WL 3813303, *4 (June 19, 2015) (citation omitted). In this case there are no genuine disputes of material fact. The Final Order entered by the

Connecticut Department of Banking provides a factual basis for the Commission to enter sanctions against Stuck.

The hearing officer can take official notice of Connecticut Department of Banking's Final Order. (Exhibit A, Final Order.) Rule 323 permits judicial notice of material facts which could be "judicially noticed by a district court of the United States[] [and] any matter in the public official records of the Commission[.]" 17 C.F.R. § 201.323; *see also* Fed. R. Evid. 201(b)(2) (permitting judicial notice of facts that "can be accurately and readily determined from sources whose accuracy cannot be reasonably questioned.").

B. The Undisputed Facts Establish the Statutory Basis for a Bar.

Section 203(f) of the Advisers Act authorizes the Commission to "bar any such person from being associated with an investment adviser[]" if the person "has committed or omitted any act or omission enumerated in paragraph . . . (9) of subsection (e)[.]" 15 U.S.C. § 80b-3(f) (amended under the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act")). Paragraph (9) of subsection (e) authorizes the Commission, by order, to "revoke the registration of any investment adviser if it finds," that such "revocation is in the public interest and that such investment adviser[] . . . is subject to any final order of a State securities commission (or any agency or office performing like functions), …that …constitutes a final order based on violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct." 15 U.S.C. § 80b-3(e)(9)(B).

The predicate facts for Respondent's bar are established by the Stuck's Connecticut Department of Banking final order where it was alleged, and found to be true after a full hearing on the merits, that Stuck violated the Connecticut Uniform Securities Act related to his actions as

an unregistered investment adviser. *In the Matter of Barton W. Stuck, et al.,* Docket No. CF-17-8254-S (May 2, 2018).

C. The Public Interest Factors and Deterrence Effect Support a Strong Sanction.

In considering the appropriateness of sanctions, the hearing officer is guided by the public interest factors set forth in *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981). Those factors include: 1) the egregiousness of the respondent's actions; 2) the isolated or recurrent nature of the infraction; 3) the degree of scienter involved; 4) the sincerity of the respondent's assurances against future violations; 5) the respondent's recognition of the wrongful nature of his conduct; and 6) the likelihood of future violations. *Id*. at 1140. The *Steadman* factors are flexible and no one factor is dispositive. *See Gary M. Kornman*, Admin. Proc. File No. 3-12716, SEC Release No. IA-2840, 95 SEC Docket 601, 2009 WL 367635, *6-7 (Feb. 13, 2009). Additionally, the Commission must consider whether the sanction will have a deterrent effect. *See Schield Mgmt Co. and Marshall L. Schield*, Admin. Proc. File No. 3-11762, 87 SEC Docket 695, 2006 WL 231642, *8 n.46 (Jan. 31, 2006) (selecting an appropriate sanction involves consideration of several elements, including deterrence).

Here, the *Steadman* factors demonstrate that Stuck's conduct was egregious, repeated, and conducted with a high degree of scienter, showing a risk of future harm to the public. The bar will also serve as a deterrent. But if the bar were not granted, Stuck would likely have an opportunity to engage in future violations. So, an industry-wide collateral bar is necessary and appropriate to protect investors and the "fairness, transparency, and regulatory oversight of the securities markets." *John W. Lawton*, 2012 WL 6208750, at *13. So, it is in the public interest to bar Stuck.

1. Stuck's conduct was egregious.

"An investment adviser is a fiduciary in whom clients must be able to put their trust." *Ahmed Mohamed Soliman*, Admin. Proc. File No. 3-7954, 58 SEC Docket 249, 1995 WL 237220, *3 (April 17, 1995). As an investment adviser, Stuck owed a fiduciary duty to investors, including an "affirmative duty of utmost good faith and full and fair disclosure of all material facts, as well as [an] affirmative obligation to employ reasonable care to avoid misleading clients." *John W. Lawton*, 2012 WL 6208750, at *10.

The Final Order details a number of violations, including:

- For more than two years, Stuck and SL Management were providing investment advice without the benefit of registration and selling between $30 -$40 million in unregistered securities (Final Order at Violations 1-3);
- Stuck violated the state anti-fraud statute through his inducing an SL Side Fund II investor to double his initial investment by materially misrepresenting that $150 million would be invested by other purported investors. The $150 million capital commitment never materialized (Final Order at ¶¶ 70-76 and Violation 5); and
- Stuck filed Form ADVs with the Commission and state Banking Commissioner that contained materially false and misleading statements about the purported exempt reporting adviser, SL General Partner. (Final Order ¶¶ 25-41 and at Violation 6).

This type of egregiousness warrants a permanent bar. *Warwick Capital Management et al.*, Admin. Proc. File No 3-123572, 92 SEC Docket 1137, 92 SEC Docket 1147, 2008 WL 149127 *11 (conduct by investment adviser involving inflating assets under management and performance returns in Forms ADV and to certain database services entities found to be

egregious resulting in bar). Stuck's actions taken with regard to his securities registrations violation is also egregious. *Alfred Clay Ludlum, III*, Admin. Proc. File No. 3-14572, 106 SEC Docket 3590, 2013 WL 3479060, *4 n.43 (noting "failure to ensure that the offerings at issue complied with the registration provisions of the Securities Act," adds to "the egregiousness[.]"). Further, the laws of the Securities Act serve to "'protect investors by promoting full disclosure of information thought necessary to informed investment decisions.'" *Id*. (quoting *SEC v. Ralston Purina Co.*, 346 U.S. 119, 124 (1953)); *see also SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 186 (1963) (stating the securities laws' fundamental purpose is "to substitute a philosophy of full disclosure for the philosophy of caveat emptor").

2. Stuck's conduct was recurrent, not isolated.

Stuck has been associated with SL Management since 1998 and acted as an unregistered investment adviser representative of SL Management from from at least 2008 through 2010. (Final Order ¶¶ 87-94 and Violations 2-3) Stuck likely would have continued conducting unregistered investment advisory activities had he been left unchecked. He committed several violations of the Connecticut Securities Act, including offering and selling unregistered securities, providing investment advice without the benefit of registrations, filing materially false and misleading Form ADVs and fraudulently making material misrepresentations to an investor. Stuck has neither recognized the wrongfulness of his conduct nor provided assurances against future violations.[10] These acts are not an isolated violation; instead, they rise to the level of recurrent egregiousness.

[10] While Stuck has pleaded guilty in a related criminal matter pending in the federal District Court for the District of Connecticut, sentencing in that matter has been put off until May 27, 2021. *United States v. Stuck*, 3:18-cr-00028-JAM (D. Conn). Still, Stuck has suggested recently that he is considering withdrawing his plea in the criminal matter. (*See e.g.* Stuck email to apfilings@sec.gov, dated Jan. 12, 2021) So, in effect, Stuck continues to dispute the charges in some respects. His failure to fully acknowledge his wrongful conduct, makes him more likely to re-offend, if given the opportunity.

3. Stuck acted with a high degree of scienter.

The Final Order's findings demonstrate that Stuck clearly acted either intentionally or at a minimum recklessly. Recklessness is defined as "a highly unreasonable omission, involving not merely simple, or even inexcusable[ ] negligence, but an extreme departure from the standards of ordinary care, and which presents a danger of misleading buyers or sellers that is either known to the defendant or is so obvious the actor must have been aware of it." *SEC v. Ficken*, 546 F.3d. 45, 47-48 (1st Cir. 2008) (quoting *SEC v. Fife*, 311 F.3d 1 at 9-10 (1st Cir. 2002)). Recklessness is sufficient to establish the degree of scienter required to impose a sanction under the *Steadman* factors. *Id*. at *24, *28, *32; *see also David W. Baldt*, Admin. Proc. File No. 3-13887, SEC Release No. 418, 100 SEC Docket 3346, 2011 WL 1506757, *22 (April 21, 2011) (finding recklessness to be sufficient degree of scienter required for a bar under the *Steadman* factors).

Here, Stuck had a legal duty to provide truthful information to investors concerning funding related to the SL Side Fund II. The Final Order's findings show that Stuck made very specific false representations about capital amounts and timing of funding. (Final Order ¶¶ 70-76) Further, there is nothing in the Final Order to suggest that Stuck ever corrected his misrepresentations to anyone. *Backman v. Polaroid Corp.*, 910 F.2d 10, 16-17 (1st Cir. 1990) ("[I]f a disclosure is in fact misleading when made and the speaker thereafter learns of this, there is a duty to correct it."). Stuck not only lied to an investor about the amount of purported $150 million of capital about to be invested in SL Side Fund II, but also made material misrepresentations in Form ADVs filed with the Commission and the state Banking Commissioner. (Final Order at ¶¶ 25-32; 37-38) The misrepresentations constituted an extreme departure from the standards of ordinary care.

4. Stuck has not offered assurances against future violations.

Stuck has not offered assurances against future violations and has not recognized the wrongful nature of his conduct. *See Richard P. Sandru*, Admin. Proc. File No. 3-15268, SEC Release No. IA-3646, 106 SEC docket 4657, 2013 WL 4049928, *6 (Aug. 12, 2013) (finding "[e]very Steadman factor weigh[ing] in favor of a heavy sanction[]" and noting respondent "has offered no assurance against future violations and has not recognized the wrongful nature of his conduct.") Here, Stuck has failed to file an Answer or otherwise show that he recognizes the wrongful nature of his conduct.

5. Stuck will have opportunities for future violations.

Not intending to seek registration with the Commission does not negate the likelihood of future violations where the investment adviser has "not foresworn work in the investment adviser or securities businesses." *Terry Harris*, Admin. Proc. File No. 3-12171, SEC Release No. 311, 87 SEC Docket 2868, 2006 WL 1312954, *5 (May 11, 2006) (finding recurrent violations by respondent and his failure to foreswear work in the investment adviser businesses "adds to the likelihood of future violations.").

Stuck is experienced in the investment adviser business. (Final Order, Ex. A ¶¶ 24, 44-45, 54-55, 89) Additionally, while being subject to a permanent cease and desist order by the Connecticut Department of Banking, Stuck may still reenter the industry and present future risks to the investing public. *See Charles Phillip Elliot*, Admin. Proc. File No. 3-7280, 52 SEC Docket 1462, 1992 WL 258850, *3 (Sept. 17, 1992) (industry "presents many opportunities for abuse and overreaching"), *aff'd*, 36 F.3d 86 (11th Cir. 1994). Further, the Connecticut Final Order has inherent limitations as it applies only in Connecticut but has no bearing on the other forty-nine

states, whose investors also deserve protection from the Stuck. An industry-wide collateral bar here will serve the public interest as a prospective remedy to "protect investors against fraud and . . . promote ethical standards of honesty and fair dealing" in the securities markets. *McCurdy v. SEC*, 396 F.3d 1258, 1265 (D.C. Cir. 2005) (finding that the purpose of a securities industry suspension in that case was "not to punish [the respondent], but rather to protect the public from his demonstrated capacity" for violative conduct).

6. Deterrence supports imposing a collateral bar.

Considerations of both specific and general deterrence support imposing a collateral bar against the Stuck. *See, e.g.*, *Lester Kuznetz*, Admin. Proc. File No. 3-6356, SEC release No. 34-23525, 36 SEC Docket 332, 1986 WL 625417, *3 (noting that the sanction of a bar "serves the purpose of general deterrence"). Industry bars have long been considered effective deterrence. A collateral bar is necessary to prevent Stuck from prospectively harming investors in the securities industry and to deter others from similar conduct. Moreover, even when investors are not harmed, a heavy sanction may be adequate for its deterrent effect. *Paul Edward Ed Lloyd, Jr., CPA*, Admin. Proc. File No. 3-16182, SEC Release No. 840, SEC docket 190, 2015 WL 458153, *33 (July 27, 2015).

IV. Conclusion

For the foregoing reasons, the Division requests that an industry-wide collateral bar be entered against Stuck under Advisers Act Section 203(f), barring him from association with any investment adviser, broker, dealer, municipal securities dealer, municipal adviser, transfer agent, or nationally recognized statistical rating organization.

Respectfully submitted this 11th day of February, 2021.

DIVISION OF ENFORCEMENT

By its attorneys,

Wm. J Donahue

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Certificate of Service

I certify that on February 11, 2021, in addition to filing the same with the Secretary of the Commission, I caused true and correct copies of the **Division's Motion for Summary Disposition t**o be served on the following parties and other persons entitled to notice by electronic mail delivery to the following addresses:

Office of the Secretary
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Wm. J Donahue
William J. Donahue, Senior Counsel

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-19685

In the Matter of

BARTON W. STUCK,

Respondent.

DECLARATION OF WILLIAM J. DONAHUE IN SUPPORT OF DIVISION OF ENFORCEMENT'S MOTION FOR SUMMARY DISPOSITION

1. I am a Senior Counsel in the Division of Enforcement ("Division") of the Securities and Exchange Commission's Boston Regional Office. I am one of the Division attorneys in the above-captioned proceeding against Barton W. Stuck ("Stuck"). I make this declaration based upon my personal knowledge and in support of the Division's Motion for Summary Disposition.

2. On May 2, 2018, the Commissioner for the State of Connecticut Department of Banking issued a final order ("Final Order") in *In the Matter of Barton W. Stuck et al.,* Case No. CF-17-8254-S, State of Connecticut Department of Banking (May 2, 2018), which found that Stuck had violated a number of Connecticut Uniform Securities Act provisions, including but not limited to, engaging in an act, practice or course of business that operated as a fraud or deceit upon a person. Attached hereto as Exhibit A is a true and accurate copy of the Final Order in that matter.

Respectfully submitted,

DIVISION OF ENFORCEMENT

By its attorneys,

Wm. J Donahue

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Date: February 11, 2021

Certificate of Service

I certify that on February 11, 2021, in addition to filing the same with the Secretary of the Commission, I caused true and correct copies of the **Declaration of William J. Donahue in Support of Division of Enforcement's Motion for Summary Disposition** to be served on the following parties and other persons entitled to notice by overnight mail delivery to the following addresses:

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Wm. J Donahue
William J. Donahue, Senior Counsel

EXHIBIT A

IN THE MATTER OF:	*	
BARTON W. STUCK	*	
SIGNAL LAKE MANAGEMENT, LLC	*	**FINDINGS OF FACT, CONCLUSIONS OF LAW**
SIGNAL LAKE SIDE FUND, L.P.	*	**AND ORDER**
SIGNAL LAKE SIDE FUND II, L.P.	*	**DOCKET NO. CF-17-8254-S**
SIGNAL LAKE SIDE FUND FUND IIA, L.P.	*	
SIGNAL LAKE GENERAL PARTNER LLC CRD No. 285438	*	
(Collectively, "Respondents")	*	

I. INTRODUCTION

The Banking Commissioner ("Commissioner") is charged with the administration of Chapter 672a of the Connecticut General Statutes, the Connecticut Uniform Securities Act ("Act"), and the regulations promulgated thereunder, Sections 36b-31-2 to 36b-31-33, inclusive, of the Regulations of Connecticut State Agencies.

The above-referenced matter was initiated upon charges brought by the Commissioner to issue a permanent order to cease and desist and impose a fine against each Respondent. On June 27, 2017, the Commissioner issued an Order to Cease and Desist, Notice of Intent to Fine and Notice of Right to Hearing against Respondents ("Notice"). The Commissioner alleges that: (1) Barton W. Stuck ("Stuck"), Signal Lake Side Fund, L.P. ("SL Side Fund"), Signal Lake Side Fund II, L.P. ("SL Side Fund II") and Signal Lake Side Fund IIA, L.P. (a/k/a Signal Lake Side Fund III, LP, "SL Side Fund IIA") offered and sold securities from Connecticut to at least one investor, which securities were not registered in Connecticut under the Act, in violation of Section 36b-16 of the Act; (2) Signal Lake Management, LLC ("SL Management") transacted business as an investment adviser in Connecticut absent registration, in violation of Section 36b-6(c)(1) of the Act; (3) Stuck transacted business as an investment adviser agent of SL Management in Connecticut absent registration in violation of Section 36b-6 (c)(2) of the Act; (4) SL Management engaged an unregistered investment adviser agent, in violation of Section 36b-6(c)(3) of the Act; (5) the conduct of Stuck and SL Management constituted, in connection with the offer, sale or purchase of any security, directly or indirectly employing a device, scheme or artifice to defraud, making an untrue statement of a material fact or omitting to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, or engaging in an act, practice or course of business which operates or would operate as a fraud or deceit upon any person, in violation of Section 36b-4(a) of the Act; and (6) Stuck, on behalf of Signal Lake General Partner LLC ("SL General Partner"), filed with the Commissioner a Form ADV and an Annual Amendment to Form ADV containing certain statements which were, at the time and in the light of the circumstances under which they were made, false or misleading in a material respect, in violation of Section 36b-23 of the Act.

On July 7, 2017, Respondents requested a hearing. After due notice, a hearing was held at the Department of Banking ("Department") on November 28 and December 14, 2017. The hearing was conducted in accordance with Chapter 54 of the Connecticut General Statutes, the "Uniform Administrative Procedure Act", and the Department's contested case regulations, Sections 36a-1-19 to 36a-1-57, inclusive, of the Regulations of Connecticut State Agencies.

Having read the entire record, including testimony of the witnesses and documentary evidence, I make the following findings of fact and conclusions of law based on the preponderance of evidence in the record.

II. FINDINGS OF FACT

1. On June 27, 2017, the Commissioner issued an Order to Cease and Desist, Notice of Intent to Fine and Notice of Right to Hearing against Respondents. (HO Ex. 1; Tr. 1 at 7.)[1]

2. On July 7, 2017, the Department received a written request for a hearing from Stuck on behalf of all Respondents. (HO Ex. 2; Tr. 1 at 7.)

3. On July 18, 2017, the Commissioner appointed Attorney Stacey Serrano as Hearing Officer and scheduled the hearing for September 19, 2017. (HO Ex. 1.)

4. On September 18, 2017, the Hearing Officer continued the hearing to a date to be determined due to Respondents' engagement of Robinson & Cole LLP as counsel. (HO Ex. 5; Tr. 1 at 7.)

5. On September 27, 2017, Robinson & Cole LLP informed the Hearing Officer that its engagement as counsel never commenced because the conditions to its engagement were never satisfied. (HO Ex. 4; Tr. 1 at 7-8.)

6. On October 6, 2017, the Hearing Officer scheduled the hearing for 10 a.m. on November 28, 2017. (HO Ex. 5.)

7. The hearing was held on November 28 and December 14, 2017. (Tr. 1 at 4; Tr. 2 at 4.)

8. Attorney Elena Zweifler appeared at the hearing on behalf of the Department. (Tr. 1 at 4; Tr. 2 at 5.)

9. Stuck appeared at the hearing on behalf of all Respondents. (Tr. 1 at 5; Tr. 2 at 5.)

10. Stuck and Mr. Michael Weingarten ("Weingarten") were the controlling persons behind the Signal Lake entities. (Tr. 1 at 23.) Stuck was a managing member of Signal Lake SF, LLC and SL Management. (DOB Ex. 11 at 55; Tr. 1 at 52.) Weingarten was a managing member of SL Management and SL Side Fund. (Tr. 1 at 24.)

11. Stuck had approximately 60% ownership in Signal Lake SF, LLC and Weingarten had approximately 40% ownership. Weingarten and Stuck had equal 50/50 ownership in SL Management. (DOB Ex. 27 at 18-19; Tr. 1 at 24-25.)

12. Stuck's current address is [redacted], Westport, Connecticut. (Tr. 2 at 60-61.)

13. Stuck conducted Signal Lake business from Westport, Connecticut. (Tr. 1 at 54.)

14. Signal Lake SF, LLC is the general partner of SL Side Fund, SL Side Fund II and SL Side Fund IIA. (DOB Ex. 27 at 15; DOB Ex. 11; Tr. 1 at 52, 110.)

15. As of August 28, 2017, SL Side Fund, SL Side Fund II and SL Side Fund IIA had not filed any securities registration, securities exemption or securities notice filings with the Department pursuant to Sections 36b-16, 36b-17, 36b-18, 36b-19 or 36b-21 of the Act. (DOB Ex. 17; Tr. 1 at 67-69.)

16. During Stuck's deposition with the Securities and Business Investments Division of the Department ("Division") on January 26, 2016, Stuck stated that accountants have Signal Lake's books and records. (DOB Ex. 27 at 59.)

17. Three investors complained to the Division concerning the Signal Lake entities. (Tr. 1 at 22, 119-120.)

18. The Signal Lake funds raised at least $30 million, but it could have been as high as $40 million for SL Side Fund and $24 million for SL Side Fund II. (Tr. 2 at 11.)

19. An investment adviser to a fund picks investments for the fund, manages investments on a day-to-day basis and pays rent for the office space. (Tr. 1 at 22-23.)

20. The Signal Lake investors which Sal Cannata had spoken to stated that they received most of their information from Stuck. (Tr. 1 at 24.)

21. During the hearing, the Department requested that the maximum fine of $100,000 per violation be imposed on each Respondent. (Tr.1 at 15.)

A. Signal Lake General Partner LLC

22. SL General Partner managed the fund Signal Lake Operations, LLC ("SL Operations"). (Tr. 1. at 25.)

23. SL General Partner had a principal office and place of business of 606 Post Road East #667, Westport, Connecticut 06880. (DOB Ex. 2; Tr. 1 at 30.)

24. Stuck had been the Managing Director of SL General Partner since August 2013 and owned between 50% and 75%. (DOB Ex. 2.)

25. SL General Partner filed a Form ADV on the IARD system on October 28, 2016 ("Form ADV") both with the Securities and Exchange Commission ("SEC") and the State of Connecticut claiming to be an exempt reporting adviser of the private fund SL Operations because it acts solely as an adviser to private funds and has assets under management in the United States of less than $150 million. (DOB Ex. 2; DOB Ex. 3; Tr. 1 at 31 32.)

26. The IARD is an electronic database created by all 50 states and the SEC, which allows investment advisers to file all the paperwork electronically in a centralized location. (Tr. 1 at 27.)

27. The Form ADV indicates that Corporate Formation and Registration Information and Board Minutes for SL General Partner are kept at O'Connor Davies, located at 3001 Summer Street, Fifth Floor East, Stamford, Connecticut. (DOB Ex. 3 at 4; Tr. 1 at 32.)

28. The Form ADV indicates that $145 million in private fund assets were being managed by SL General Partner. (DOB Ex. 3 at 6, 15; Tr. 1 at 32-33.)

29. The Form ADV also indicated that SL Operation's financial statements were subject to an annual audit by O'Connor Davies. (DOB Ex. 3 at 16-17; Tr. 1 at 33.)

30. Based on an investigation by the Division, the statements that O'Connor Davies kept SL Operations' books and records and performed its annual audit and that SL Operations had $145 million in assets under management, were false. (Tr. 1 at 33-35.)

31. SL General Partner filed an amended Form ADV on March 17, 2017 ("Amended Form ADV"). (DOB Ex. 4; Tr. 1 at 35-36.)

32. The Amended Form ADV also indicated that SL Operations had $145 million in assets under management, its financial statements were subject to an annual audit by O'Connor Davies and that certain books and records of SL Operations were kept at O'Connor Davies. (Tr. 1 at 37-38; DOB Ex. 4.)

33. By letter dated March 30, 2017 to Stuck, the Division requested additional information and documentation evidencing that the gross asset value of SL Operations was $145 million and that O'Connor Davies was the auditing firm. (DOB Ex. 5; Tr. 1 at 38-39.)

34. By letter dated April 17, 2017 to the Division, Stuck, on behalf of SL General Partner, responded that "we have been in communication with O'Connor Davies and expect to engage them for the audit of SLO [SL Operations] as soon as the anticipated funds in the amount of $145,000,00 [sic] are received, which we believe will be on or about May 8, 2017." (DOB Ex. 6; Tr. 1 at 39-40.)

35. The letter dated April 17, 2017 evidences that, as of the filing of the Form ADV and the Amended Form ADV, SL Operations had not yet engaged O'Connor Davies to perform its annual audit and that it did not yet have $145 million in assets under management. (Tr. 1 at 40-41.)

36. By letter dated May 8, 2017, Stuck stated that "[w]e have been in communication multiple times with the funding source for the $145,000,000 in anticipated funds and expect to receive those funds in the next seven to ten days. If there is any further delay we will advise you as soon as we know." (DOB Ex. 7; Tr. 1 at 41-42.)

37. Stuck made the SL General Partner filings on the IARD system. (Tr. 1 at 25.)

38. On October 28, 2016 and March 14, 2017, Stuck signed the Form ADV and the Amended Form ADV, respectively, on behalf of SL General Partner. (DOB Ex. 3 and 4; Tr. 1 at 42-43.)

39. In an affidavit dated May 17, 2017 ("Affidavit"), Bruce Blasnik ("Blasnik"), Partner of O'Connor Davies, represented that "O'Connor Davies does not have custody, control or possession of the books, records, corporate formation documents, and/or registration documents for Signal Lake, Signal Lake General Partners [sic] LLC or any other entity controlled by Mr. Stuck". (DOB Ex. 8; Tr. 1 at 43-44.)

40. In the Affidavit, Blasnik also represented that O'Connor Davies is not currently engaged as the auditing firm or in any capacity for SL General Partner or any other entity controlled by Stuck. (DOB Ex. 8.)

41. In fact, Blasnik represented that SL General Partner was never audited by O'Connor Davies. (DOB Ex. 8.)

B. Signal Lake Side Fund, L.P.

42. The address for SL Side Fund was 606 Post Road East, Suite 667, Westport, Connecticut. (DOB Ex. 10; Tr. 1 at 51-52.)

43. SL Management was the exclusive investment manager for SL Side Fund to manage its investments, including, without limitation, the purchasing, holding, selling, sourcing, investigating, negotiating and monitoring of the partnership investments, and to pay the management fee to the investment manager as provided in the Agreement of Limited Partnership. (DOB Ex. 9 at 37; Tr. 1 at 48; Ex. 11 at 13; Tr. 1 at 49, 52-53; DOB Ex. 30 at 8; Tr. 2 at 17, 21.)

44. Limited partnership interests of the SL Side Fund were offered and sold by Stuck from Connecticut. (Tr. 1 at 51-54.)

45. Based on the Division's investigation, Stuck solicited investors and was the individual who accepted and signed the subscription agreements on behalf of SL Side Fund. (Tr. 1 at 51-54.)

46. All securities offerings in Connecticut are required to make a registration or exemption filing with the Department. (Tr. 1 at 54-55.)

47. SL Side Fund did not file an exemption or registration with the Department. (Tr. 1 at 54-55.)

48. SL Side Fund is a Delaware limited partnership that commenced operations on January 16, 2003. (DOB Ex. 30 at 8; Tr. 2 at 17.)

49. The Financial Statements for SL Side Fund as of December 31, 2010, indicate that approximately $39 million in capital was raised from its partners, but that those investments were currently valued at $0. (Tr. 2 at 20-21; DOB Ex. 30 at 3, 12.)

50. SL Side Fund was required to pay to the manager a management fee, payable quarterly in advance, equal to 2% of its total capital commitments. (DOB Ex. 30 at 14.)

51. For the year ended December 31, 2010, SL Side Fund reported management fees of $648,409. (DOB Ex. 30 at 5.)

C. Signal Lake Side Fund II, L.P.

52. SL Management served as the investment manager of the SL Fund II and was responsible for selecting and managing the investments and providing certain management services to the fund. (DOB Ex. 12 at 24, Tr. 1 at 55-56; DOB Ex. 31 at 8; Tr. 2 at 22.)

53. The address for SL Side Fund II was 606 Post Road East, Suite 667, Westport, Connecticut. (DOB Ex. 13 at 1; Tr. 1 at 57-58.)

54. The Managing Directors for SL Side Fund II were Stuck and Weingarten. (DOB Ex. 12 at 5.)

55. Stuck and Weingarten selected the investments for SL Side Fund II. (DOB Ex. 12 at 16-18.)

56. Through December 31, 2010, SL Side Fund II had received capital commitments of $7,327,500, net of $4,682,500 in unfunded commitments. (DOB Ex. 31 at 13.)

57. In recognition of the management and administrative services provided by SL Management, SL Side Fund II was required to pay a management fee, payable quarterly in advance, equal to .25% of the fund's total capital commitments. (DOB Ex. 31 at 14.)

58. For the year ended December 31, 2010, SL Side Fund II reported management fees of $127,200. (DOB Ex. 31 at 5.)

59. The Agreement of Limited Partnership of SL Side Fund II ("Fund II Agreement") provides the fund the authority to appoint SL Management as the exclusive investment manager to manage the Partnership's investments, including, without limitation, the purchasing, holding, selling, sourcing, investigation, negotiation, and monitoring of partnership investments and to pay the management fee to the investment manager as provided in the Fund II Agreement. (DOB Ex. 14 at 13; Tr. 1 at 58-60.)

60. Based on the investigation by the Division, the investors in SL Side Fund II were solicited by Stuck. (Tr. 1 at 60.)

61. SL Side Fund II failed to file a securities registration or exemption claim with the Department. (Tr. 1 at 60-61.)

62. The 2008 tax return for SL Side Fund II indicates that it received total capital contributions of $3,962,500 in 2008, for a total capital balance of $6,396,461 as of December 31, 2008. (DOB Ex. 24; Tr. 1 at 96, 99-100.)

63. The 2009 tax return for SL Side Fund II indicates that it received total capital contributions of $2,250,000 in 2009 for a total capital balance of $5,803,641 as of December 31, 2009, after other decreases. (DOB Ex. 25; Tr. 1 at 100-101.)

64. The 2010 tax return for SL Side Fund II indicates that it received total capital contributions of $510,000 in 2010, for a total capital balance of $1,702,060 as of December 31, 2010, after decreases. (DOB Ex. 25-A; Tr. 1. At 102.)

65. On September 24, 2015, the Department received a complaint from Investor 1 against Stuck, Weingarten and Signal Lake SF, LLC. Investor 1 invested $500,000 between September 2008 and September 2009 in SL Side Fund II. (DOB Exs. 20, 22; Tr. 1 at 82-83, 86-87.)

66. Investor 1 met Stuck during an angel investing group sometime around 2007 or 2008. (Tr. 1 at 153.)

67. Approximately in July 2008, Investor 1 met Stuck in a small diner or café in Westport, Connecticut, to talk about SL Side Fund II. (Tr. 1 at 154.)

68. Stuck explained to Investor 1 that SL Side Fund II was investing in technology companies, such as InPhase, which had developed holographic storage. (Tr. 1 at 155.)

69. On September 2, 2008, Investor 1 committed to investing $250,000 in SL Side Fund II. (DOB Ex. 21; Tr. 1 at 85, 155-156.)

70. Investor 1 invested a total of $500,000 in SL Side Fund II from September 2008 to September 2009 through five transactions: $150,000 on September 2, 2008; $50,000 on September 25, 2008; $50,000 on February 13, 2009; $125,000 on September 3, 2009; and $125,000 on September 14, 2009. (DOB Ex. 22; Tr. 1 at 86-87.)

71. In an e-mail communication between Investor 1 and Stuck on August 31, 2009, Investor 1 inquired: "Since the funding is the most important point for me, my understanding is that the balance of SLSFII [SL Side Fund II] is being filled out and that another approx. 120 mil is coming. Do you know what the timetable is for the other money." Stuck responded: "we are about to draw down $50M of commitment THIS WEEK An additional $25M minimum will be drawn down by end of year, and the rest next year". (DOB Ex. 23 at 2; Tr. 1 at 90.)

72. In an e-mail communication with Investor 1 on September 2, 2009, Stuck stated, in pertinent part: "Checking in on your decision: . . . and two other investors will be adding another $75M to Signal Lake in the October time frame, just got off the phone on this". Investor 1 responded: "Bart: As I understand it, new money coming in will be . . . $75 M and another $75M next year . . . and 2 other investors in October $75M . . . please advise". Stuck responded: "You have it correct, we are on track to clear $225M". (DOB Ex. 23 at 4-5; Tr. 1 at 162-164.) There was no discussion of any contingency in order for such capital commitment to occur. (Tr. 1 at 94.)

73. On September 9, 2009, in an e-mail exchange with Investor 1, Stuck stated that "Our lead investor is putting 85% of $11M capital commitment into Signal Lake Side Fund II LP, and is asking that all other investors similarly take their capital commitments up to at least 80% or higher. Can you handle this?" Investor 1 subsequently asked: "What happens if the $11M doesn't come in?" Stuck responded: "It is coming in, they called to say that it coming, and want to know how much to the penny to wire". (DOB Ex. 23 at 6-7; Tr. 1 at 165-168.)

74. On September 11, 2009, Stuck e-mailed Investor 1 stating: "Wire hit at 9:42AM to Signal Lake bank account for $11M Can you handle your wire of remaining capital commitment". (DOB Ex. 23 at 8; Tr. 1 at 95, 167-168.) There was no evidence of such $11 million investment. (Tr. 1 at 95, DOB Ex. 25; Tr. 1 at 100-102.)

75. Investor 1 had invested the additional $250,000 in September 2009 because he was impressed by the amount of money that was going to be available, considering that Stuck had represented in previous conversations that the only thing standing in the way of the success of InPhase was money. (Tr. 1 at 160.)

76. Investor 1 stated that he never would have invested the additional $250,000 in September 2009 if Stuck had not made the representations concerning the $150 million capital commitment. (Tr. 1 at 163.) The capital commitment of $150 million never materialized. (Tr. 1 at 93-94.)

77. The additional $250,000 invested by Investor 1 in September 2009 was allegedly part of $11 million needed for SL Side Fund II to reach its cap. (Tr. 1 at 165.)

78. On October 6, 2009, Investor 1 inquired whether an investor had put in the $39M into SL Side Fund IIA. Stuck responded that "[i]t is now increasing to $89M and an initial drawn [sic] down has occurred." (DOB Ex. 23 at 11; Tr. 1 at 168-169.)

79. Investor 1 visited InPhase and learned that, in January 2010, they had withdrawn all of their staff. (Tr. 1 at 174.)

80. Investor 1 had wired the $500,000 to the bank account of SL Side Fund held at Bank of America. (Tr. 1 at 176-177.)

81. In Signal Lake's annual investor meeting in November 2010, Stuck failed to disclose that InPhase was dead and that the $11 million investment in 2009 was pulled back. (Tr. 1 at 181-183.)

D. Signal Lake Side Fund IIA, L.P.

82. The names Signal Lake Side Fund III, LP ("SL Side Fund III") and Signal Lake Side Fund IIA, LP were used interchangeably. (Tr. 1 at 61; DOB Ex. 16, Tr. 1 at 63-64.)

83. The address for SL Side Fund IIA is 606 Post Road East, Suite 667, Westport, Connecticut 06880. (DOB Ex. 16; Tr. 1 at 66-67.)

84. The Agreement of Limited Partnership of SL Side Fund III dated August 15, 2009, stated that the General Partner was authorized to appoint SL Management as exclusive investment manager to manage the Partnership's investments, including, without limitation, the purchasing, holding, selling, sourcing, investigating, negotiating and monitoring of partnership investments and to pay the management fee to the investment manager as provided within the Agreement. (DOB Ex. 15 at 12; Tr. 1 at 61-63.)

85. SL Management was entitled to a management fee of 2% of committed capital and 20% of the profits of SL Side Fund IIA for its services. (Tr. 1 at 69-71.)

86. For the year ended December 31, 2011, there were 14 limited partners in SL Side Fund IIA. (DOB Ex. 16; Tr. 1 at 65.)

E. Signal Lake Management, LLC

87. As an investment manager for SL Side Fund, SL Management was entitled to a fee for services of 2% of the capital that had been committed to the Fund. (DOB Ex. 9 at 41; Tr. 1 at 48, 70-71.)

88. SL Management paid salaries and wages to Stuck and Weingarten of $353,934 in 2008, $361,445 in 2009, $237,947 in 2010 and $0 in 2011. (DOB Ex. 18, Tr. 1 at 75-77; DOB Ex. 27 at 26, Tr. 1 at 110.)

89. Stuck and Weingarten were the individuals behind SL Management choosing investments for the Signal Lake funds. (Tr. 1 at 71, 73.)

90. As of November 28, 2017, SL Management had not registered as an investment adviser with the Division or filed a claim of exempt reporting adviser status. (Tr. 1 at 73-74.)

91. Stuck was never registered with the Division as an agent of SL Management. (Tr. 1 at 75.)

92. SL Side Fund paid management fees of $607,198 in 2008, SL Side Fund II paid management fees of $127,200 in 2010 and SL Side Fund IIA paid management fees of $51,000 in 2011. (DOB Ex. 19; Tr. 1 at 78-79.)

93. Stuck has been with SL Management since 1998. (DOB Ex. 27 at 14.)

94. SL Management paid the bills for the Signal Lake Side Funds and received fees of 0.5% per quarter, for a total of 2 % per year through 2010. (DOB Ex. 27 at 24-25.)

III. CONCLUSIONS OF LAW

The Commissioner is charged with the administration of Chapter 672a of the Connecticut General Statutes, the Connecticut Uniform Securities Act, and the regulations promulgated thereunder, Sections 36b-31-2 to 36b-31-33, inclusive, of the Regulations of Connecticut State Agencies. The Commissioner's authority includes the power to issue an order to cease and desist against each Respondent pursuant to Section 36b-27(a) of the Act and impose a fine upon each Respondent pursuant to Section 36b-27(d) of the Act.

Standard of Evidence

The applicable standard of proof in Connecticut administrative cases, including those involving fraud and severe sanctions, is the preponderance of the evidence standard. *Goldstar Medical Services v. Department of Social Services*, 288 Conn. 790, 819 (2008). "[I]t is the exclusive province of the trier of fact to make determinations of credibility, crediting some, all, or none of a given witness' testimony. . . . [A]n agency [is not] required to use in any particular fashion any of the materials presented to it as long as the conduct of the hearing is fundamentally fair." *Id*. at 830 (internal citations omitted).

"Review of an administrative agency decision requires a court to determine whether there is substantial evidence in the administrative record to support the agency's findings of basic fact and whether the conclusions drawn from those facts are reasonable." *Id*. at 833. "An administrative finding is supported by substantial evidence if the record affords a substantial basis of fact from which the fact in issue can be reasonably inferred." *Id*. "[T]here is no distinction between direct and circumstantial evidence so far as probative force is concerned. . . . In fact, circumstantial evidence may be more certain, satisfying and persuasive than direct evidence." *Id*. at 834 (internal citations omitted).

Violations of the Connecticut Uniform Securities Act [2]

1. The Department alleges that Stuck, SL Side Fund, SL Side Fund II and SL Side Fund IIA each offered and sold securities from Connecticut to at least one investor, which securities were not registered in Connecticut under the Act, in violation of Section 36b-16 of the Act nor the subject of a filed exemption claim or claim of covered security status.
   Section 36b-16 of the Act, states that:

   > No person shall offer or sell any security in this state unless (1) it is registered under sections 36b-2 to 36b-34, inclusive, (2) the security or transaction is exempted under section 36b-21, or (3) the security is a covered security provided such person complies with any applicable requirements in subsections (c), (d) and (e) of section 36b-21.

   Section 36b-3(19) of the Act defines "security", in pertinent part, as:

   > [I]nterests of limited partners in a limited partnership . . . investment contract . . . [and] includes . . . (B) as an "investment contract", an interest in a limited liability company or limited liability partnership . . . .

   The evidence establishes that SL Side Fund, SL Side Fund II and SL Side Fund IIA are limited partnerships established in Connecticut that had numerous investors prior to the hearing. In particular, through December 31, 2010, SL Side Fund raised at least $39 million, SL Side Fund II raised at least $7 million and SL Side Fund IIA had 14 limited partners as of December 31, 2011. Such evidence establishes that SL Side Fund, SL Side Fund II and SL Side Fund IIA were securities sold from Connecticut.
   The evidence also establishes that SL Side Fund, SL Side Fund II and SL Side Fund IIA were never registered or the subject of a claimed exemption filing in Connecticut. Section 36b-21(g) of the Act provides, in pertinent part, that "the burden of proving an exemption, preemption, exclusion or an exception from a definition is upon the person claiming it". No evidence was produced by Respondents supporting a claim of exemption or exclusion in connection with the offer and sale of SL Side Fund, SL Side Fund II and SL Side Fund IIA from Connecticut.
   With respect to the offer and sale of such securities, Investor 1 described numerous conversations that he had with Stuck in which Stuck discussed SL Side Fund II and encouraged his investment in the security. In addition, the Division's investigation found that Stuck solicited investments in SL Side Fund and SL Side Fund II. However, there was no discussion during the hearing concerning the offering and solicitation of SL Side Fund IIA. As a result, the record only establishes that Stuck offered and sold SL Side Fund and SL Side Fund II securities in violation of Section 36b-16 of the Act.

2. The Department alleges that SL Management transacted business as an investment adviser in Connecticut absent registration, in violation of Section 36b-6(c)(1) of the Act.
   Section 36b-6(c)(1) of the Act states, in pertinent part, that:

   > No person shall transact business in this state as an investment adviser unless registered as such by the commissioner as provided in sections 36b-2 to 36b-34, inclusive, or exempted pursuant to subsection (e) of this section. . . .

   Section 36b-3(11) of the Act states, in pertinent part, that:

   > "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing or selling securities, or who, for compensation as a part of a regular business, issues or promulgates analyses or reports concerning securities.

   The evidence establishes that from approximately 2008 to at least 2010, SL Management transacted business as an investment adviser in Connecticut absent registration by managing the investments for SL Side Fund, SL Side Fund II and SL Side Fund IIA and receiving compensation for such services, in violation of Section 36b-6(c)(1) of the Act.

3. The Department alleges that Stuck transacted business as an investment adviser agent of SL Management in Connecticut absent registration, in violation of Section 36b-6(c)(2) of the Act.
Section 36b-6(c)(2) of the Act states, in pertinent part, that:

> No individual shall transact business in this state as an investment adviser agent unless such individual is registered as an investment adviser agent of the investment adviser for which such individual acts in transacting such business.

Section 36b-3(12)(A) of the Act states that:

> "Investment adviser agent" includes (i) any individual, including an officer, partner or director of an investment adviser, or an individual occupying a similar status or performing similar functions, employed, appointed or authorized by or associated with an investment adviser to solicit business from any person for such investment adviser in this this state and who receives compensation or other remuneration, directly or indirectly, for such solicitation; or (ii) any partner, officer, or director of an investment adviser, or an individual occupying a similar status or performing similar functions, or other individual employed, appointed, or authorized by or associated with an investment adviser, who makes any recommendation or otherwise renders advice regarding securities to clients and who receives compensation or other remuneration, directly or indirectly, for such advisory services.

The record establishes that Stuck was a managing member of SL Management and advised SL Side Fund, SL Side Fund II and SL Side Fund IIA in their selection of investments, but was never registered under the Act. Stuck also admitted to receiving a salary from the management fees paid by such funds to SL Management. As a result, from at least 2008 to 2010, Stuck transacted business as an investment adviser agent in Connecticut absent registration, in violation of Section 36b-6(c)(2) of the Act.

4. The Department alleges SL Management engaged an unregistered investment adviser agent, in violation of Section 36b-6(c)(3) of the Act.
Section 36b-6(c)(3) of the Act states, in pertinent part, that:

> No investment adviser shall engage an investment adviser agent unless such investment adviser agent is registered under sections 36b-2 to 36b 34, inclusive.

As previously discussed, the record reflects that SL Management engaged Stuck as an unregistered investment adviser agent in violation of Section 36b-6(c)(3) of the Act.

5. The Department alleges that the conduct of Stuck and SL Management constitutes, in connection with the offer, sale or purchase of any security, directly or indirectly employing a device, scheme or artifice to defraud, making an untrue statement of a material fact or omitting to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, or engaging in an act, practice or course of business which operates or would operate as a fraud or deceit upon any person, in violation of Section 36b-4(a) of the Act.
Section 36b-4(a) [3] of the Act states that:

> No person shall, in connection with the offer, sale or purchase of any security, directly or indirectly: (1) Employ any device, scheme or artifice to defraud; (2) make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or (3) engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

Section 36b-3(8) of the Act states that "fraud", "deceit" and "defraud" "are not limited to common-law deceit".
In particular, the Department alleged that from August to October 2009, Stuck and SL Management made several false representations concerning the amount of money that was going to be invested in SL Side Fund 2 by other persons in order to induce a second investment of $250,000 from Investor 1. Since the first prong of Section 36b-4(a) of the Act may be interpreted to require intent by the violator and Respondents' intent was not discussed during the hearing and the record is unclear on behalf of which entity Stuck was acting when he made the representations [4], this section will be limited to an analysis of whether Stuck's conduct violated Section 36b-4(a)(2) or 36b-4(a)(3) of the Act.
The evidence demonstrates that the investment amounts touted by Stuck in his e-mails to Investor 1 dated August 31, 2009, September 11, 2009 and October 6, 2009 were never received by SL Side Fund II. Such statements by Stuck painted a false impression that millions of dollars were imminently being invested in SL Fund II. At no time did Stuck qualify or attempt to clarify the statements he had made depicting that such investments were a certainty. Rather, Stuck continued with such false representations for at least another year, stating to investors at the annual meeting in November 2010 that Signal Lake had obtained a $150 million to $225 million funding commitment that would fully fund SL Side Fund II. (Resp. Ex. 4 at 3; Tr. 1 at 141.) Through his repeated communications with Investor 1, Stuck perpetrated the fraud that SL Side Fund II was a very successful partnership with capital commitments in excess of $150 million. Furthermore, from Investor 1's previous interactions with Stuck, Investor 1 had trusted his representations. As a result, Investor 1 was truly deceived by Stuck's representations until he uncovered the truth by personally visiting the operations of InPhase in January 2010. Such conduct by Stuck constitutes making untrue statements of a material fact or omissions of a material fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading, in violation of Section 36b-4(a)(2) of the Act, and engaging in an act, practice or course of business that operated as a fraud or deceit upon a person, in violation of Section 36b-4(a)(3) of the Act. [5]

6. The Department alleges that Stuck, on behalf of SL General Partner, filed with the Commissioner a Form ADV and an Amended Form ADV containing certain statements that were, at the time and in the light of the circumstances under which they were made, false or misleading in a material respect, in violation of Section 36b-23 of the Act.
Section 36b-23 of the Act states:

> No person shall make or cause to be made orally or in any document filed with the commissioner or in any proceeding, investigation or examination under sections 36b-2 to 36b-34, inclusive, any statement that is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect or, in connection with the statement, omit to state a material fact necessary to make the statement made, in the light of the circumstances under which it was made, not false or misleading.

The evidence establishes that Stuck made several statements to the Commissioner that were false or misleading in a material respect in connection with his filing of SL General Partners' Form ADV on October 28, 2016, and Amended Form ADV on March 17, 2017. In such filings, Stuck, as Managing Director of SL General Partner stated that SL Operations had assets under management of $145 million and that O'Connor Davies performed its annual audit and maintained its books and records, statements which were proven false or misleading by the Division during the hearing. Such conduct reflects that both Stuck and SL General Partner violated Section 36b-23 of the Act.
Furthermore, throughout the Division's investigation, Stuck continued to make false and misleading statements. For example, by letter dated April 17, 2017, Stuck represented to the Division that SL Operations would receive $145 million on or about May 8, 2017, and by letter dated May 8, 2017, Stuck represented to the Division that the $145 million is expected to be received within seven to ten days. Yet, the hearing record is devoid of any evidence that such monies were ever received.
Instead, the hearing record is full of baseless assertions and argument by Stuck that the Department, through its issuance of the Order to Cease and Desist, somehow interfered with the ability of SL Operations to receive the $145 million. Stuck's tenuous relationship with the truth is further demonstrated by his attempt to introduce an exhibit purporting to be bank statements evidencing funds committed to Signal Lake. (See Resp. Ex. 2; Tr. 1 at 127-128.) The Division quickly attacked the veracity of the document, pointing out that the bank statements were nothing more than a document publicly available on the Whistleblowers website (thewhistleblowers.info), under the header "Mark Anthony Owenby + Counterfeit 2013 ABN AMRO Bank Documents." (See DOB Ex. 29; Tr. 1 at 148-150.) As further discussed below, such conduct supports the finding that the issuance of an order against Stuck is both necessary and for the protection of investors.

Authority to Issue Order to Cease and Desist and Order Imposing Fine

Section 36b-27 of the Act provides, in pertinent part, that:

> (a) Whenever it appears to the commissioner after an investigation that any person has violated, is violating or is about to violate any of the provisions of sections 36b-2 to 36b-34, inclusive, . . . the commissioner may, in the commissioner's discretion, order (1) the person . . . to cease and desist from the violations . . . of the provisions of said sections . . . . After such an order is issued, the person named in the order may, within fourteen days after receipt of the order, file a written request for a hearing. Any such hearing shall be held in accordance with the provisions of chapter 54.
> (d) (1) Whenever the commissioner finds as the result of an investigation that any person has violated any of the provisions of sections 36b-2 to 36b-34, inclusive, . . . the commissioner may send a notice to (A) such person . . . by registered or certified mail, return receipt requested, or by any express delivery carrier that provides a dated delivery receipt. The notice shall be deemed received by the person on the earlier of the date of actual receipt or the date seven days after the date on which such notice was mailed or sent. Any such notice shall include: (i) A reference to the title, chapter, regulation, rule or order alleged to have been violated; (ii) a short and plain statement of the matter asserted or charged; (iii) the maximum fine that may be imposed for such violation; (iv) a statement indicating that such person may file a written request for a hearing on the matters asserted not later than fourteen days after receipt of the notice; and (v) the time and place for the hearing.
> (2) If a hearing is requested within the time specified in the notice, the commissioner shall hold a hearing upon the charges made unless such person fails to appear at the hearing. Any such hearing shall be held in accordance with the provisions of chapter 54. After the hearing if the commissioner finds that the person has violated . . . any of the provisions of sections 36b-2 to 36b-34, inclusive, . . . the commissioner may, in the commissioner's discretion and in addition to any other remedy authorized by said sections, order that a fine not exceeding one hundred thousand dollars per violation be imposed upon such person. If such person fails to appear at the hearing, the commissioner may, as the facts require, order that a fine not exceeding one hundred thousand dollars per violation be imposed upon such person. The commissioner shall send a copy of any order issued pursuant to this subsection by registered or certified mail, return receipt requested, or by any express delivery carrier that provides a dated delivery receipt, to any person named in such order.

No evidence of mitigating circumstances was provided during the hearing. I am imposing a fine of Five Hundred Thousand Dollars ($500,000) on Stuck, a fine of One Hundred Thousand Dollars ($100,000) on SL Management and a fine of One Hundred Thousand Dollars ($100,000) on SL General Partner.

Notice and Public Interest

Section 4-177 of the Connecticut General Statutes provides, in pertinent part, that:

> (a) In a contested case, all parties shall be afforded an opportunity for hearing after reasonable notice.
> (b) The notice shall be in writing and shall include: (1) A statement of the time, place, and nature of the hearing; (2) a statement of the legal authority and jurisdiction under which the hearing is to be held; (3) a reference to the particular sections of the statutes and regulations involved; and (4) a short and plain statement of the matters asserted. . . .

The Notice issued by the Commissioner complied with subsections (a) and (d) of Section 36b-27 of the Act and Section 4-177 of the Connecticut General Statutes.

Section 36b-31(b) of the Act provides, in pertinent part, that:

> No . . . order may be made . . . unless the commissioner finds that the action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of sections 36b-2 to 36b-34, inclusive. . . .

Section 36b-31(b) of the Act requires that the Commissioner find that an order is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of Sections 36b-2 to 36b-34, inclusive. In this case, the activities of Stuck, SL Management and SL General Partner involved failing to register as an investment adviser and investment adviser agent, in violation of Section 36b-6 of the Act; offering and selling unregistered securities, in violation of Section 36b-16 of the Act; making untrue statements of material fact or omitting material facts necessary to make statements made not misleading, in violation of Section 36b-4(a)(2) of the Act; engaging in an act, practice or course of business that operated as a fraud or deceit, in violation of Section 36b-4(a)(3) of the Act; and making false or misleading statements to the Commissioner, in violation of Section 36b-23 of the Act. Prohibition of such practices is consistent with the purpose of the Act as discussed by the Connecticut Legislature in 1977. "Securities laws generally contain three basic elements—registration of brokers and salesmen, antifraud provisions and registration of securities . . . ." *Connecticut Nat. Bank v. Giacomi*, 233 Conn. 304, 320, 659 A.2d 1166, 1173 (1995). By publicly sanctioning Stuck, SL Management and SL General Partner through the issuance of an order to cease and desist and order imposing fine, other securities personnel and investors should be warned and future violative conduct deterred.

I conclude that it is necessary and appropriate in the public interest and for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of Sections 36b-2 to 36b-34, inclusive, of the Act to issue the following order.

IV. ORDER

Having read the record, I hereby **ORDER**, pursuant to Sections 36b-27(a) and 36b-27(d) of the Act, that:

1. The Order to Cease and Desist issued against Barton W. Stuck on June 27, 2017, be made **PERMANENT** with respect to violations of Sections 36b-16, 36b-6(c)(2), 36b-4(a)(2), 36b-4(a)(3) and 36b-23 of the Act;

2. The Order to Cease and Desist issued against Signal Lake Management, LLC on June 27, 2017, be made **PERMANENT** with respect to violations of Sections 36b-6(c)(1) and 36b-6(c)(3) of the Act;

3. The Order to Cease and Desist issued against Signal Lake General Partner LLC on June 27, 2017, be made **PERMANENT** with respect to violations of Section 36b-23 of the Act;

4. A **FINE** of Five Hundred Thousand Dollars ($500,000) be imposed upon Barton W. Stuck, to be remitted to the Department of Banking by wire transfer, cashier's check, certified check or money order, made payable to "Treasurer, State of Connecticut", no later than thirty (30) days after this Order is mailed;

5. A **FINE** of One Hundred Thousand Dollars ($100,000) be imposed upon Signal Lake Management, LLC, to be remitted to the Department of Banking by wire transfer, cashier's check, certified check or money order, made payable to "Treasurer, State of Connecticut", no later than thirty (30) days after this Order is mailed;

6. A **FINE** of One Hundred Thousand Dollars ($100,000) be imposed upon Signal Lake General Partner LLC, to be remitted to the Department of Banking by wire transfer, cashier's check, certified check or money order, made payable to "Treasurer, State of Connecticut", no later than thirty (30) days after this Order is mailed; and

7. This Order shall become effective when mailed.

Dated at Hartford, Connecticut, ____/s/_____

this 2nd day of May 2018. Jorge L. Perez

Banking Commissioner

This Order was sent by certified mail, return receipt requested, to Barton W. Stuck on behalf of all Respondents, and hand delivered to Elena Zweifler, Esq., on May 3, 2018.

Barton W. Stuck
[redacted]
Westport, CT [redacted]
Certified Mail No. 7012 3050 0000 6999 5460

Barton W. Stuck
[redacted]
Westport, CT [redacted]
Certified Mail No. 7012 3050 0000 6999 5477

ENDNOTES

[1] Parenthetical references relate to exhibits entered into the hearing record by the Hearing Officer ("HO Ex.") or the Department ("DOB Ex."). Transcript ("Tr.") pages reflect where an exhibit was entered into the record or where relevant testimony was given. "Tr. 1" refers to the hearing held on November 28, 2017, and "Tr. 2" refers to the continued hearing held on December 14, 2017.

[2] Citations to the Act reflect the most recent statutory text applicable during the time period of underlying conduct.

[3] This provision, as originally drafted, was modeled on Section 17(a) of the Federal Securities Act of 1933. "Section 36b-4 corresponds to § 101 of the Uniform Securities Act of 1956 (Uniform Securities Act)." *Demiraj v. Uljaj*, 137 Conn. App. 800, 806 (2012). "Section 101 of the Uniform Act was modeled on Rule 10b-5 of the Securities and Exchange Commission (SEC), which, in turn, was modeled on § 17(a) of the federal Securities Act of 1933. L. Loss, Commentary on the Uniform Securities Act (1976) official comment to § 101, p. 6." *Connecticut Nat'l. Bank v. Giacomi*, 233 Conn. 304, 321 (1995).

[4] In construing similar language in Section 17(a) of the Securities Act, the U.S. Supreme Court stated, "[t]he language of § 17(a) strongly suggests that Congress contemplated a scienter requirement under § 17(a)(1), but not under § 17 (a)(2) or § 17(a)(3). The language of § 17(a)(1), which makes it unlawful 'to employ any device, scheme, or artifice to defraud,' plainly evinces an intent on the part of Congress to proscribe only knowing or intentional misconduct. Even if it be assumed that the term 'defraud' is ambiguous, given its varied meanings at law and in equity, the terms 'device,' 'scheme,' and 'artifice' all connote knowing or intentional practices". *Aaron v. SEC*, 446 U.S. 680, 695-96 (1980).

[5] Since the Act is a substantial adoption of the Uniform Securities Act, analysis performed by other states construing similar securities provisions is instructive. In *Maryland Securities Commissioner v. U.S. Securities Corp*, 122 Md. App. 574 (1998) the court upheld a securities administrative decision which found that a broker's failure to disclose certain information in connection with the registration status of the securities sold to investors acted as a deceit upon the investors, regardless of whether the deceit involved a material fact. The court looked at the effect on the investors, stating that "[c]learly, the Maryland residents were deceived by acts or a course of business in connection with the offer and sale of stock." *Id*. at 597. This is consistent with the U.S. Supreme Court's interpretation of Section 17 in *Aaron v. SEC*, which states: "[T]he language of § 17(a)(3), under which it is unlawful for any person 'to engage in any transaction, practice, or course of business which *operates* or *would operate* as a fraud or deceit,' . . . quite plainly focuses upon the *effect* of particular conduct on members of the investing public, rather than upon the culpability of the person responsible.'" *Aaron v. SEC*, 446 U.S. 680, 696-97 (1980). (Emphasis in original).

Administrative Orders and Settlements (/DOB/Enforcement/Administrative-Orders-Index-Pages/Index---Administrative-Orders-and-Settlements)