UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-19826

In the Matter of
LOUIS NAVELLIER and NAVELLIER & ASSOCIATES, INC.,
Respondents.

DIVISION OF ENFORCEMENT'S MOTION FOR SUMMARY DISPOSITION

The Division of Enforcement ("Division"), pursuant to Rule 250 of the Securities and Exchange Commission's Rules of Practice, 17 C.F.R. § 201.250, hereby moves for summary disposition against Respondents Louis Navellier and Navellier & Associates, Inc.

The Division respectfully submits that summary disposition is appropriate, that the proceeding should be resolved in favor of the Division and against Respondents, that an associational bar should be imposed against Louis Navellier, and that the registration of Navellier & Associates, Inc. should be revoked.

In support of this Motion, the Division offers the accompanying Memorandum of Law and supporting attachments.

Dated: February 14, 2023

Respectfully submitted,

/s/ Marc J. Jones
Marc J. Jones
William J. Donahue

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CERTIFICATE OF SERVICE

Pursuant to the Commission's Order of July 8, 2022 (IA-6066) and Rule 150(c), the Division of Enforcement certifies that it served its Motion for Summary Disposition on counsel for respondent on February 14, 2023.

/s/ Marc J. Jones
Marc J. Jones

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In the Matter of

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DIVISION OF ENFORCEMENT'S MEMORANDUM IN SUPPORT OF ITS MOTION FOR SUMMARY DISPOSITION

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CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

REGULATIONS

The Commission should bar Respondent Louis Navellier from association with investment advisers and other securities-related firms under Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act"). And it should revoke the registration of Respondent Navellier & Associates, Inc. ("NAI") as an investment adviser under Advisers Act Section 203(e). The undisputed record, established in the District Court's Memorandum and Order granting summary judgment to the Commission, shows that Respondents qualify for these remedies, and that these remedies would be in the public interest. Their years-long fraudulent course of business and multiple fraudulent misrepresentations, their unrepentant denial of any responsibility for those violations, and their current ability to violate the securities laws again, all point to the need to impose the bar against Navellier and to revoke NAI's registration.

Pursuant to Rule 250 of the Securities and Exchange Commission's Rule of Practice, 17 C.F.R. §201.250, the Division of Enforcement ("Division") submits this Memorandum in Support of its Motion for Summary Disposition against Respondents. All facts necessary for summary disposition have been resolved in the district court in the civil enforcement action against Respondents. *See SEC v. Navellier and Assocs., Inc. and Louis Navellier*, Civil Action No. 1:17-cv-11633-DJC, 2020 WL 731511 (D. Mass. Feb. 13, 2020) (Summary Judgment Opinion) [Ex. A]; 2021 WL 5072975 (Sept. 21, 2021) (Amended Disgorgement Findings of Fact and Conclusions of Law and Amended Final Judgment) [Findings of Fact, Ex. B; Final Judgment, Ex. C.]

Accordingly, the Division of Enforcement ("Division") asks that the Commission issue an Order barring Respondent Navellier from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or national recognized

OS Received 02/14/2023

statistical rating organization based on the injunction entered against him by the district court; and deregistering Respondent NAI.

I. STATEMENT OF UNDISPUTED FACTS

A. Summary Judgment and Final Judgment against Respondents

On February 13, 2020, the District Court granted the Commission's Motion for Summary Judgment (and denied Respondent's Motion). [Ex. A.] The Court found Respondents liable for violating Sections 206(1) and 206(2) of the Investment Advisers Act of 1940, 15 U.S.C. § 80b-6(1) & (2) ("Advisers Act"). In the September 21, 2021 Amended Final Judgment, the Court enjoined Respondents from future violations of those sections [Ex. B, pp. 1-2], ordered disgorgement of about $23 million (to be paid jointly and severally) plus $6,635,403 in prejudgment interest [*id.*, p. 2], and civil penalties of $2 million (NAI) and $500,000 (Louis Navellier) [*id.*, pp. 3-4].

B. Facts Found By the Court on Summary Judgment

Both NAI and Navellier acted as investment advisers pursuant to the definition of "investment adviser" in Section 202(a)(11) of the Advisers Act. [Ex. A, p. 3.] In letters to NAI in 1999, 2003, and 2007, the Commission's Office of Compliance Inspections and Examinations (now called the Division of Examinations) had detailed deficiencies in NAI's presentation of investment performance figures, and had warned NAI that repeat violations could result in a referral to the Division of Enforcement. [*Id.*, pp. 3-4.]

Navellier & Associates ("NAI"), through their "Vireo" line of business, recommended investment strategies, branded as "Vireo AlphaSector," to its clients and to other investment professionals. [*Id.*, p. 4.] Respondents created and distributed Vireo AlphaSector advertising materials. [*Id.*, pp. 4-5.] For the entire time that Respondents marketed them, NAI's materials

represented that the performance track record of the strategy underlying AlphaSector was based on live trading since about 2001. [*Id.*] But Defendants—despite advertising that strategy as live traded and not backtested—admit they "lack knowledge or information sufficient to admit or deny whether the strategy said by F-Squared [Investments, Inc.] to underlie the AlphaSector index was also back-tested." [*Id.*, p. 5.]

Defendants' due diligence on the Vireo strategies exposed significant gaps in what NAI knew about those strategies, including that the firm from whom Defendants licensed the strategies (an adviser called F-Squared) would not "show the math to us" and that NAI had received no trading confirmations or other ways to confirm the strategies' performance prior to 2008. [*Id.*, p. 4.] Defendants later admitted that they lacked sufficient knowledge to confirm whether the strategy underlying the Vireo products was backtested. [*Id.*, p. 5.]

Defendants then licensed the strategies and made the performance claims detailed above anyway. [*Id.*, p. 4.] And they continued to do so despite receiving information that showed them their performance claims were false and unsupported. [*Id.*, p. 5]. In internal emails, Mr. Navellier discussed the inadequacy of the due diligence and problems with the performance claims in NAI marketing materials. [*Id.*, pp. 5-6.] He even proclaimed that the product, "continues to smell like FRAUD" and that NAI could sell the Vireo business so that members of management could "have a big payday." [*Id.*, p. 6.] His emails referred to potential fraud and possible SEC consequences. [*Id.*, p. 5.] But Mr. Navellier also stated that he was "not stopping Vireo sales." [*Id.*]

So Defendants continued to sell the Vireo products using the false and unsupported performance claims in NAI marketing materials until August 2013, when NAI sold the Vireo business to F-Squared. [*Id.*, pp. 6-7.] In early 2013, Defendants received advice from a

OS Received 02/14/2023

compliance consultant. That consultant was told by a NAI senior manager that the Vireo performance results were backtested, that they were incorrect, and that NAI did not have and could not get confirmations of the performance numbers for those strategies or confirm that there were actual trades for the performance period advertised. [*Id*., p. 6]. The consultant was also told that marketing materials used by NAI incorrectly presented returns that went back ten years. [*Id.*] The consultant advised NAI that it must have a basis for its marketing representations. [*Id.*]

Throughout 2013 and the sale of the Vireo business, Mr. Navellier continued to complain in internal communications about the problems with what was being marketed about the Vireo strategies, the fake indexes, NAI's "massive due diligence failure" and its risk of "a $225,000 fine" from the SEC for NAI's distribution of the false performance records. [*Id.*, p. 7.] Yet Mr. Navellier and NAI authorized and executed that sale, and worked to transfer their clients to F-Squared without any notification to their clients of the deficiencies and misrepresentations in the Vireo marketing materials. [*Id.*, p. 7.]

The District Court found that Defendants fraudulently marketed the Vireo AlphaSector strategies, making false statements about those strategies. [*Id.*, p. 15.] The Court identified "multiple examples of NAI-created marketing materials that include false and misleading statements regarding the performance of the AlphaSector strategies." [*Id.*] The Court found those misrepresentations to be material based, in part, on statements of NAI's own personnel. [*Id.*, pp. 16-17.] And the Court found that the "Defendants were, at a minimum, highly reckless in making statements to clients about investment strategies. [*Id.*, p. 18.] The Court concluded that "the undisputed record shows that the Defendants engaged in a course of business that

OS Received 02/14/2023

operated as a fraud or deceit on their clients" in violation of Advisers Act Sections 206(1) and 206(2). [*Id.*, p. 19.]

C. The District Court's Final Judgment and Remedies-Stage Findings of Fact

Following summary judgment, the parties proceeded to the remedies phase of the litigation. The Court enjoined Defendants from further violations of Advisers Act Sections 206(1) and (2). [Ex. C, pp. 1-2.] It ordered Defendants to pay, jointly and severally, $22,734,487 in disgorgement and $6,635,403 in prejudgment interest. And it ordered NAI to pay a $2,000,000 penalty, and Mr. Navellier to pay a $500,000 penalty. [*Id.*, pp. 3-4.]

In its Findings of Fact, the Court reiterated that Defendants had made unjust profits "from their repeated fraudulent marketing misrepresentations and failures to disclose material information to clients about the Vireo products." [Ex. B, pp. 3-4.] The Court found that Defendants had together engaged in "concerted wrongdoing" and thus should pay disgorgement jointly and severally. [*Id.*, p. 4.] It also found that Mr. Navellier had continued sales of Vireo products despite knowledge of Defendants' misrepresentations, and had "authorized the selling of the Vireo AlphaSector products, even though he was well aware that the Vireo AlphaSector performance claims were unsupported." [*Id.*, p. 5.]

D. The Follow-On Administrative Proceeding

The Commission issued an Order Instituting Proceedings "OIP" in this matter on June 12, 2020. [Ex. D (OIP).] Respondents answered on July 2, 2020 [Ex. E (Answer).] In that Answer, Respondents admitted the following:

a) At all relevant times, Respondents were "investment advisers"; that Navellier serves as the Chief Investment Officer and Chief Executive Officer of NAI; and that Navellier owned between 75 and 100 percent of NAI (currently 100%) [Ex. E, p. 3];

b) A final judgment was entered against Respondents in the civil action entitled *Sec. and Exch. Commission v. Navellier and Assocs., Inc. and Louis Navellier,* Civil Action

Number 17-cv11633-DJC, enjoining Respondents from future violations of Sections 206(1) and 206(2) of the Advisers Act. [*Id.*]

c) Entry of the injunction followed February 13, 2020 grant of summary judgment on the Commission's Motion for Summary Judgment against Respondents, which found violations by Respondents of Advisers Act Sections 206(1) and (2) [*Id.*];

II. ARGUMENT

As discussed below, the undisputed record shows that the Commission should conclude that remedial sanctions are in the public interest.

A. Standard for Summary Disposition

Rule 250(b) of the Commission's Rules of Practice permits a party to move for summary disposition on any or all of an OIP's allegations and any asserted defenses. A motion for summary disposition should be granted when "there is no genuine issue with regard to any material fact and . . . the movant is entitled to summary disposition as a matter of law." 17 C.F.R. § 201.250(b). To defeat summary disposition, the opposing party must show with specificity a genuine issue for a hearing and "may not rest upon the mere allegations or denials of its pleadings." *Currency Trading Int'l, Inc., et al.*, Release No. 263, 2004 WL 2297418, at *2 (Oct. 12, 2004).

The Commission has repeatedly upheld use of summary disposition in cases such as this, where the respondent has been enjoined and the sole determination concerns the appropriate sanctions. *See Jeffrey L. Gibson*, Exchange Act Release No. 57266, 2008 WL 294717, at *5-6 & nn.21-24 (Feb. 4, 2008) (collecting cases), pet. denied, 561 F.3d 548 (6th Cir. 2009); *Conrad P. Seghers*, Release No. 2656, 2007 WL 2790633 (Sept. 26, 2007) pet. denied, 548 F.3d 129 (D.C. Cir. 2008); *Sherwin Brown & Jamerica Fin., Inc.*, Release No. 3217, 2011 WL 2433279, at *5 (June 17, 2011). Under Commission precedent, the circumstances in which summary disposition in a follow-on proceeding involving fraud is not appropriate "will be rare." *John S. Brownson*,

Exchange Act Release No. 46161, 2002 WL 1438186, at *9 n.12 (July 3, 2002), pet. denied, 66 F. App'x 687 (9th Cir. 2003).

Finally, a respondent is collaterally estopped from challenging the basis for a district court injunction "as well as factual and procedural issues that were actually litigated and necessary to the court's decision to issue the injunction." *James E. Franklin*, Exchange Act Release No. 56649, 2007 WL 2974200, at *4 (Oct. 12, 2007).

B. Navellier Qualifies for an Associational Bar; NAI for Revocation of Registration

At the threshold, Respondents meet the requirements for the Division's requested remedies. Advisers Act Section 203(f) authorizes the Commission to impose an associational bar against a respondent if: 1) at the time of the alleged misconduct, the respondent was associated with an investment adviser; and 2) the respondent is "enjoined by order, judgment, or decree of any court of competent jurisdiction . . . from engaging in or continuing any conduct or practice in connection with any such activity…." 15 U.S.C. §80b-3(e)(4), (f). Similarly, Advisers Act Section 203(e) authorizes the Commission to "revoke the registration of any investment adviser" under the same type of injunction. 15 U.S.C. §80b-3(e)(4). Respondents have admitted these requirements in their Answer. [*See* Ex. D. and Section I.C., *supra*]

C. Barring Navellier and Revoking NAI's Registration is In the Public Interest

It serves the public interest to impose the Division's requested remedies. "The public interest requires a severe sanction when a respondent's past misconduct involves fraud because opportunities for dishonesty recur constantly in the securities business." *Robert Burton*, Rel. No. 1014, 2016 WL 3030850, *4 (May 27, 2016) (quoting *Vladimir Boris Bugarski*, Exchange Act Release No. 66842, 2012 WL 1377357, *5 n. 26 (Apr. 20, 2012).

OS Received 02/14/2023

The appropriateness of any remedial sanction in this proceeding is guided by the *Steadman* factors: the egregiousness of the respondents' actions; the isolated or recurrent nature of the infraction; the degree of scienter involved; the sincerity of the respondents' assurances against future violations; the respondents' recognition of the wrongful nature of their conduct; and the likelihood that the respondents' occupation/business 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); *see Gary M. Kornman*, Release No. 2840, 2009 WL 367635, at *6 (Feb. 13, 2009). The Commission's inquiry into the appropriate sanction to protect the public interest is flexible, and no one factor is dispositive. *See Gary M. Kornman*, 2009 WL 367635, at *6.

1. Respondents' Actions Were Repetitive and Egregious

Respondents' repeatedly and egregiously made false representations and fraudulent omissions to their advisory clients, to whom they owed a fiduciary duty. As the Court found, they did so knowing that their representations were false and that they understated the risk the clients had taken in investing in the Vireo products. They did so after the Commission's Division of Examinations issued them three warnings in the prior decade of different deficiencies in their performance marketing. And they did so even after they had decided to sell off the Vireo AlphaSector business because they knew the product was a fraud and that the business now faced potential SEC and other liability. That last point warrants emphasis: as investment advisers they chose to profit by selling off the business and transferring their clients, rather than tell those clients the truth. Thus, they simultaneously violated their fiduciary duties of honest, loyalty, and full disclosures of conflicts of interest. Respondents' fraudulent scheme lasted from

2010 through 2013, with many written and oral misrepresentations during that scheme. Respondents' conduct was repetitive and egregious.

2. Respondents Acted with Scienter

The Court found that Respondents acted with scienter: "Defendants were, at a minimum, highly reckless in making statements to clients about investment strategies. [*Id.*, p. 18.] The Court highlighted several instances when Mr. Navellier discussed the problems with Vireo marketing internally, while allowing the continued sales of Vireo products by NAI, which he owned, controlled, and served as Chief Investment Officer. The mismatch of Respondents' internal and external communications about Vireo, the lengthy time in which Respondents continued to make these misrepresentations, and the decision to sell the Vireo line of business to profit rather than fulfil their fiduciary duty to their clients, all point to a high degree of scienter. This factor strongly points toward the imposition of the associational bar and revocation remedies on Respondents.

3. Respondents Have Given *No* Assurances against Future Violations

Respondents have taken no responsibility for their misconduct. They continue to assert that they did nothing wrong, and have given no assurances that they will not repeat their fraudulent conduct and again violate the federal securities laws.

Respondents' Answer makes plain how much the Respondents believe they have always been in the right:

> Respondents deny that the District Court's statements in its Order are true, they are not, and deny that the District Court's holdings are correct, they are not. Respondents deny that there were false or misleading statements in NAI's marketing, deny they knew there were misleading statements in NAI's marketing materials (Mr. Navellier made no statements in Vireo marketing materials), deny that there had been inadequate due diligence, deny they failed to inform their clients of any inadequate due diligence or fraud because there was no inadequate due diligence about which to

OS Received 02/14/2023

> inform clients. Respondents deny they continued to sell Vireo AlphaSector investment strategies (neither NAI or Mr. Navellier sold Vireo AlphaSector strategies to clients) knowing the representations about the strategies were false and misleading because the representations were not false and misleading and therefore Respondents did not know the representations were false and misleading because they weren't. The District Court order says what it says about scienter (actually extreme recklessness) but there was no factual or legal basis for the District Court's conclusions and the District Court's conclusions were wrong and unfounded. The Commission presented no admissible evidence that the statements were false and misleading, and they weren't- the statements, as shown by the evidence, were true.

[Ex. E, pp. 5-6.] Moreover, despite the Court's summary judgment finding that Respondents' own actions (including the creation of their own marketing pieces) constituted fraud, Respondents seek to lay all of the blame on F-Squared, from whom they licensed the strategies. [*Id.*, pp. 8-9 ("if there were any misstatements or false statements, they were the result of NAI and its employees being the victims of F-Squared's and its employees' 'fraud' ….").]

Respondents' March 21, 2022 Form ADV [Ex. F.] echoes these denials:

> The SEC presented no evidence that those two allegedly "false" statements were in fact false. NAI and Mr. Navellier strenuously deny that the marketing materials contained false statements and assert that the statements that were actually made in the Vireo marketing materials were true, i.e., they made no false and misleading statements. They also assert that the allegedly false statements were not material (important) and there was no scienter (intent to defraud). On June 2, 2020, the district court issued a final judgement reiterating its erroneous summary judgement decision and awarded the SEC nearly $29 million in "disgorgement" of supposedly "ill gotten" gains and prejudgment interest plus $2.5 million in penalties as a supposed result of the alleged 206(1) and (2) "violations" …. NAI and Mr. Navellier strenuously deny that there is any legal or factual basis for the assertion that NAI or Mr. Navellier committed any violations of §§206(1) or 206(2) …. NAI intends to prove its clients were not given false information, and that the allegedly violative statements were immaterial, and that NAI's clients were not harmed ….

Respondents refuse to recognize or take responsibility for their actions, a strong indication that they are likely to engage in similar conduct in the future.

4. Respondents Investment Advisory Business Presents Opportunities for Future Violations

Since the imposition of the summary and final judgments, Respondents continue unabated as investment advisors. NAI still operates as an investment advisory business with almost $1 billion in assets under management. Mr. Navellier is, according to NAI's website, NAI's Founder, Chairman of the Board, Chief Investment Officer, and (even after the District Court's finding he violated the anti-fraud provisions of the Advisers Act) its Chief Compliance Officer. This factor also supports imposing an associational bar and a revocation of registration.

5. Respondents Had Been Warned Three Times of Compliance Deficiencies in Their Advertising

Respondents had a history of problems with deficiencies in their performance advertising, showing a strong likelihood that they would offend again if not barred. In 1999, the Commission's Division of Examinations (formerly known as "OCIE") sent a letter to NAI detailing compliance deficiencies regarding NAI's failure to disclose that certain performance figures had been backtested. [Ex. A, pp. 3-4.] OCIE sent another letter to NAI in 2003 detailing deficiencies in NAI's advertisement of investment performance figures. D. 242, ¶ 36; D. 222-21. OCIE examined NAI again in 2006 and sent a letter to NAI in 2007 detailing deficiencies in NAI's presentation of performance figures. D. 242, ¶ 37; D. 222-22. The 2007 letter stated that "NAI should be aware that the [SEC] staff views repeat violations as a serious matter and considers recidivist behavior when making a determination whether to refer matters to enforcement staff for possible further actions." *Id.* at 8-9. Respondents' failure to correct their conduct as investment advisers also shows the need for the bar and the revocation of registration.

6. Summary

Respondents' conduct was repetitive, egregious, undertaken with a high degree of scienter, and continued for years. They have given no assurances against future violations and have continued their investment advising without interruption. The Commission considers fraud to be "especially serious and to subject a respondent to the severest of sanctions." *Karen Bruton and Hope Advisors, LLC*, Release No. 1386, 2019 WL 4693573, at *8 (Sept. 16, 2018); *Conrad P. Seghers*, 2007 WL 2790633, at *7. In fact, as the *Bruton* court pointed out, from 1995 to 1999, there have been over fifty litigated follow-on proceedings based on anti-fraud injunctions (like this one) or convictions in which the Commission issued opinions. In every one of those cases, the respondent was barred – at least fifty "unqualified" bars and three bars with a right to reapply after five years. And in each of those cases that followed the statutory provision of collateral bars, full collateral bars were imposed. *Bruton*, 2019 WL 4693573, at *8.

In sum, Respondents' conduct spotlights the need to revoke the registration of NAI and to bar Navellier from associating with an investment adviser or any other securities-related firm and, to the fullest extent permitted by Advisers Act Section 203(f).

D. Respondents Cannot Re-Litigate the District Court Case

Respondents' Answer demonstrates that they wish to re-litigate the facts that underlie this motion and that serve as the basis for the District Court's findings of violations of Advisers Act Sections 206(1) and (2). They challenge the court's factual findings and legal analysis, and assert inapplicable affirmative defenses (copying them wholesale from their District Court Answer, despite the Court's rejection of those defenses). [Ex. E, pp. 2-7; 8-15.] While Respondents' may pursue appeals from their district court case, the Commission does not permit a respondent to re-litigate issues that were addressed in a previous civil proceeding against a

respondent, whether resolved by consent; trial, or (as here) by summary judgment. *See Jeffrey L. Gibson*, Exchange Act Release No. 57266, 2008 WL 294717 (Feb. 4, 2008) (injunction entered by consent); *John Francis D'Acquisto*, Advisers Act Release No. 1696, 1998 WL 34300389, at *2 (Jan. 21, 1998)(injunction entered by summary judgment); *James E. Franklin*, Exchange Act Release No. 56649, 2007 WL 2974200, at *4 (Oct. 12, 2007) (injunction entered after trial); *Demitrios Julius Shiva*, Exchange Act Release No. 38389, 1997 WL 112328, at *2 & nn.6-7 (Mar. 12, 1997). As the Commission has held, a respondent "is collaterally estopped from challenging in this administrative proceeding the decisions of the district court in the injunctive proceeding. The doctrine of collateral estoppel precludes the Commission from reconsidering the injunction as well as factual and procedural issues that were actually litigated and necessary to the court's decision to issue the injunction. The appropriate forum for [Respondents'] challenge to the validity of the injunction and the district court's evidentiary rulings is through an appeal to the United States Court of Appeals." *James E. Franklin,* 2007 WL 2974200, at *4.

Respondents should not be permitted to revisit the necessary elements underlying the court's imposition of summary judgment and the injunction. In particular, Respondents' sixteen affirmative defenses all seek to re-litigate or invalidate that verdict. Not one applies to the requisites here: that Navellier was associated with an investment adviser at the time of the charged conduct and NAI was acting as an investment adviser; that they were enjoined by the district court from future violations of Advisers Sections 206(1) and (2); and that it is, under the *Steadman* factors, in the public interest to impose the full associational bar set forth in Advisers Act Rule 203(f) against Navellier and to revoke NAI's registration. This is not the forum for Respondents to try to undo the District Court's judgment.

OS Received 02/14/2023

III. CONCLUSION

The Division respectfully submits that summary disposition is appropriate, that the proceeding should be resolved in favor of the Division and against Respondents, and that the Commission should issue an Order barring Navellier from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or national recognized statistical rating organization, and revoking the registration of NAI, based on the injunction against them.

Dated: February 14, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

Pursuant to the Commission's Order of July 8, 2022 (IA-6066) and Rule 150(c), the Division of Enforcement certifies that it served its Motion for Summary Disposition on counsel for respondent on February 14, 2023.

/s/ Marc J. Jones
Marc J. Jones

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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

SECURITIES AND EXCHANGE COMMISSION,	)	
Plaintiff,	)	
v.	)	
	)	**Case No. 17-cv-11633**
NAVELLIER & ASSOCIATES, INC. and LOUIS NAVELLIER,	)	
Defendant.	)	

MEMORANDUM AND ORDER

CASPER, J. **February 13, 2020**

I. Introduction

The Securities and Exchange Commission ("SEC") filed this lawsuit against Navellier & Associates, Inc. ("NAI") and its principal, Louis Navellier ("Navellier") (collectively, "Defendants"), alleging violations of the Investment Advisers Act of 1940 ("Advisers Act"), 15 U.S.C. §§ 80b-1–80b-21. D. 1. The SEC has moved for partial summary judgment on Defendants' affirmative defense of selective enforcement and on Counts One and Two of the complaint. D. 220. Defendants have cross-moved for summary judgment on all counts. D. 223. For the reasons stated below, the Court DENIES Defendants' motion for summary judgment and ALLOWS the SEC's motion as to Defendants' affirmative defense and Counts One and Two.

II. Standard of Review

The Court grants summary judgment where there is no genuine dispute as to any material fact and the undisputed facts demonstrate that the moving party is entitled to judgment as a matter

of law. Fed. R. Civ. P. 56(a). "A fact is material if it carries with it the potential to affect the outcome of the suit under the applicable law." Santiago-Ramos v. Centennial P.R. Wireless Corp., 217 F.3d 46, 52 (1st Cir. 2000) (quoting Sánchez v. Alvarado, 101 F.3d 223, 227 (1st Cir. 1996)). The movant "bears the burden of demonstrating the absence of a genuine issue of material fact." Carmona v. Toledo, 215 F.3d 124, 132 (1st Cir. 2000); see Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). If the movant meets its burden, the non-moving party may not rest on the allegations or denials in his pleadings, Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256 (1986), but "must, with respect to each issue on which [he] would bear the burden of proof at trial, demonstrate that a trier of fact could reasonably resolve that issue in [his] favor." Borges ex rel. S.M.B.W. v. Serrano-Isern, 605 F.3d 1, 5 (1st Cir. 2010). "As a general rule, that requires the production of evidence that is 'significant[ly] probative.'" Id. (quoting Anderson, 477 U.S. at 249) (alteration in original). When assessing a motion for summary judgment, the Court will not consider "conclusory allegations, improbable inferences, and unsupported speculation." Galloza v. Foy, 389 F.3d 26, 28 (1st Cir. 2004) (quoting Medina-Munoz v. R.J. Reynolds Tobacco Co., 896 F.2d 5, 8 (1st Cir. 1990)). The Court "view[s] the record in the light most favorable to the nonmovant, drawing reasonable inferences in his favor." Noonan v. Staples, Inc., 556 F.3d 20, 25 (1st Cir. 2009). "At the summary judgment stage the judge's function is not . . . to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." DeNovellis v. Shalala, 124 F.3d 298, 308 (1st Cir. 1997).

III. Factual Background

The following facts are drawn primarily from the SEC's statement of undisputed material facts, D. 222, Defendants' statement of undisputed facts,[1] D. 227, each party's response to same, D. 232 & D. 236, and the SEC's reply to Defendants' response, D. 242.

A. History of SEC Communication with NAI

At all times relevant to this dispute, both NAI and Navellier acted as investment advisers pursuant to the definition in the Advisers Act.[2] D. 232, ¶ 1; D. 242, ¶¶ 6 & 8. In 1999, the SEC's Office of Compliance Inspections and Examinations ("OCIE") sent a letter to NAI detailing compliance deficiencies regarding NAI's failure to disclose that certain performance figures had been backtested. D. 242, ¶ 35; D. 222-20. OCIE sent another letter to NAI in 2003 detailing deficiencies in NAI's advertisement of investment performance figures. D. 242, ¶ 36; D. 222-21. OCIE examined NAI again in 2006 and sent a letter to NAI in 2007 detailing deficiencies in NAI's presentation of performance figures. D. 242, ¶ 37; D. 222-22. The 2007 letter indicated that "NAI should be aware that the [SEC] staff views repeat violations as a serious matter and considers

[1] The SEC argues that Defendants' motion should be denied in full based on violations of Local Rule 56.1, which sets forth procedural requirements for summary judgment motions, including the statements of material facts required to be filed by both parties in conjunction with their motions. See D. 231 at 1. In particular, the SEC argues that Defendants' statement of material facts is not supported by evidentiary cites or cites to documents that do not fully support the statements made. Id. The Court declines to deny Defendants' motion on this basis, but the Court has not relied upon any alleged facts or claimed disputes of fact that have not been adequately supported by record evidence. See Bradley v. Cruz, 13-cv-12927-IT, 2017 WL 1197700, at *1 (D. Mass. March 30, 2017); Shervin v. Partners Healthcare Sys., 2 F. Supp. 3d 50, 60 (D. Mass. 2014).

[2] The Advisers Act defines "investment adviser" as, in part, "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 and as part of a regular business, issues or promulgates analyses or reports concerning securities." 15 U.S.C. § 80b-2(a)(11). The Advisers Act defines "person" as "a natural person or company." Id. § 80b-2(a)(16).

recidivist behavior when making a determination whether to refer matters to enforcement staff for possible further actions." Id. at 8-9.

B. NAI Agreement with F-Squared

In 2009, a representative from NAI, Peter Knapp ("Knapp"), met with Howard Present ("Present"), the founder of F-Squared Investments, Inc. ("F-Squared"), to conduct due diligence on an investment strategy developed by F-Squared called the AlphaSector Allocator ("AlphaSector"). D. 232, ¶ 21; D. 242, ¶ 49. Following this meeting, Knapp prepared an "Executive Summary" detailing his due diligence. D. 232, ¶ 26; D. 242, ¶ 49. In the Executive Summary, Knapp stated that "[F-Squared] flat out won't show the math to us" in regard to the AlphaSector strategies. D. 242, ¶ 49; D. 222-42. Knapp later testified that NAI never received any trading confirmations for the AlphaSector performance returns. D. 242, ¶ 50; D. 222-43 at 7. NAI's President, Arjen Kuyper ("Kuyper"), also testified that NAI was not given any materials to confirm the AlphaSector strategy performance prior to 2008. D. 242, ¶ 52; D. 222-44 at 3. Knapp discussed the due diligence with Navellier, who agreed that NAI should enter into a model management agreement with F-Squared to license the AlphaSector strategies. See D. 232, ¶ 27. Pursuant to the model management agreement, F-Squared sent NAI securities and percentage allocation information for each of the licensed AlphaSector strategies. D. 232, ¶ 63. NAI re-branded the licensed strategies they offered to clients as "Vireo AlphaSector" strategies. See D. 232, ¶ 63; D. 242, ¶ 1.

The SEC alleges that materials used by NAI to market the Vireo AlphaSector products falsely indicated that the track record of the Vireo AlphaSector strategy was based on live trading since 2001. D. 242, ¶ 4. Defendants dispute that their marketing materials include these claims; however, the SEC has submitted exhibits of NAI marketing materials that state that the strategies

were live traded since 2001 and that they were not backtested. Id.; D. 222-27-35. Additionally, NAI's Rule 30(b)(6) witness confirmed that NAI marketing materials included the claim that the strategies were live traded for the entire time that NAI sold the Vireo AlphaSector strategies. D. 242, ¶ 41. This was confirmed by other witnesses for NAI, including NAI's Director of Marketing. D. 242, ¶ 42. In particular, NAI marketing materials included the claims that "live assets began tracking the [Vireo AlphaSector] strategies" beginning in 2001, that the returns were "not back-tested" and that presented results were "based on an active strategy with an inception date of April 1, 2001," among other claims. D. 242, ¶ 43. Defendants have admitted that they do not have sufficient knowledge to confirm whether the strategy underlying the Vireo AlphaSector products was backtested. D. 242, ¶ 5; D. 222-2, ¶ 5.

C. NAI's Internal Communications Regarding AlphaSector

During a conference call in March 2011 in which Present and NAI participated, Present stated that the AlphaSector strategies were not based on actual trades starting in 2001. D. 242, ¶ 55. A month later, in April 2011, Navellier sent an internal email to NAI personnel in which he stated that he "went to get the [AlphaSector] confirms yesterday . . . and I was told there were no confirms, just a spreadsheet. I was shocked. Any idiot can send a bogus spreadsheet!" D. 242, ¶ 56; D. 222-46. Navellier then stated "[t]hat is not due diligence, that is stupidity" and expressed concerns about avoiding liability based on this revelation, noting that "[w]e just have to cover our ass somehow" and that "the SEC is going to love this." Id. In May 2011, Navellier sent another internal email stating that "[u]nless somebody shows me the confirms, [F-Squared] is merely a model and I am protecting the firm from potential fraud, so we must not talk about [F-Squared] as being base[d] on real $ since 2001." D. 242, ¶ 57; D. 222-47. Navellier, however, stated at that time that he was "not stopping Vireo [AlphaSector] sales." Id. In August 2011, Navellier sent an

internal email to NAI leadership stating that "Vireo was a good idea, but we sold the wrong product that continues to smell like FRAUD." D. 242, ¶ 58; D. 222-48. He then stated that NAI could possibly sell the Vireo AlphaSector business so that members of management could "have a big payday." Id. Navellier sent another email in August 2011 in which he referenced selling off the Vireo AlphaSector business because the F-Squared model is "made up" and "fraud does not protect you from the SEC and other regulatory heat." D. 242, ¶ 59; D. 222-49.

D. Compliance Review by ACA

In January 2013, NAI entered into a consulting agreement with ACA Compliance Group ("ACA") to conduct a focused market review. D. 242, ¶ 65. Ted Eichenlaub ("Eichenlaub"), a representative of ACA, spoke with Kuyper and, in contemporaneous email notes to himself regarding the call, Eichenlaub noted that he was told, in part, that the Vireo AlphaSector performance results were backtested and that they were incorrect. D. 242, ¶ 68. Kuyper then followed up with an email to Eichenlaub that stated, in part, that F-Squared could not provide any confirmations of the performance numbers for the AlphaSector strategies, that there was no way to confirm actual trades and that marketing materials used by NAI incorrectly indicated that Vireo AlphaSector returns went back ten years. D. 242, ¶ 69. Eichenlaub advised NAI in a response to Kuyper that NAI was required to "have a basis for representing" performance numbers in their marketing materials. D. 242, ¶ 72.

E. Sale of Vireo AlphaSector to F-Squared

In March 2013, Navellier executed a letter of intent to sell NAI's "Vireo strategies and associated client accounts using such strategies" to F-Squared. D. 242, ¶ 73; D. 222-63. The letter of intent stated that the purchase price would be $14 million upon the fulfillment of certain terms, including that there was "at least $1.1 billion in revenue generating clients at the time of closing."

Id. In April 2013, Navellier emailed employees of NAI to notify them of the sale to F-Squared, stating, in part, that "[t]he catalyst for the surrender . . . is that F-Squared refuses to stop circulating its fake 10+ year AlphaDEX indexes before the ETFs actually commenced on May 10, 2007" and that NAI was "tipped off to F-Squared's fraud by an ex-SEC enforcement officer, so we have no other choice other than to clean up this mess ASAP." D. 242, ¶ 74; D. 222-64. The letter noted that this was "a massive due diligence failure" on behalf of NAI and that NAI was "at risk of a $225,000 fine" from the SEC for their distribution of the false performance records. Id. In August 2013, NAI and F-Squared entered into an assignment and asset purchase agreement to sell the Vireo AlphaSector business to F-Squared. D. 242, ¶ 75; see D. 232, ¶ 138. NAI also sent a letter to its clients in August 2013 announcing the sale of the Vireo AlphaSector products to F-Squared. D. 242, ¶ 77; D. 222-67. The letter did not indicate the reasons for the sale that were articulated in the letter to NAI employees and failed to notify clients that the performance information included in advertisements and marketing materials had been inaccurate and misleading. Id. Defendants do not dispute that they never informed their clients that there was no evidence to support the performance record of the Vireo AlphaSector strategy between 2001 and 2008 or any evidence that the strategy had been live traded and not backtested as they had marketed. D. 242, ¶ 77.

F. SEC Investigates F-Squared, NAI, and Other Investment Advisers

In October 2013, the SEC began investigating F-Squared and served investigative subpoenas on NAI and other advisory firms that had similarly licensed the AlphaSector products from F-Squared. D. 232, ¶ 143. During this investigation, the SEC collected approximately fifteen million pages of documents and conducted interviews. D. 232, ¶ 144. The SEC instituted an administrative action against F-Squared, which was later settled. D. 232, ¶ 145. In 2014, the SEC

also initiated a civil action against Present. D. 232, ¶ 146; D. 242, ¶ 10. The SEC litigated its case against Present and obtained an injunction and industry bar against him. D. 242, ¶ 13. The SEC brought enforcement actions against over twenty investment firms in connection with the investigation into F-Squared. D. 232, ¶ 147; D. 242, ¶ 10. Many of the parties settled with the SEC. D. 242, ¶ 13. The SEC and NAI attempted to negotiate a similar settlement, but negotiations eventually broke down and the SEC initiated the present action against NAI and Navellier in August 2017. See D. 242, ¶¶ 14-34.

IV. Procedural History

The SEC instituted this action on August 31, 2017. D. 1. The SEC moved for summary judgment on Defendants' affirmative defense of selective enforcement and on Counts One and Two, which allege violations of the Advisers Act. D. 220. Defendants cross-moved for summary judgment on all counts. D. 223. The Court held a hearing on the motions and took the matter under advisement. D. 246.

V. Discussion

A. Selective Enforcement

Defendants' fourteenth affirmative defense asserts that the SEC has engaged in selective enforcement in bringing this action against them. D. 53 at 37-38. Defendants allege selective enforcement based on both a violation of the Equal Protection clause and under a class of one theory. D. 235 at 22. They claim that similar actions have not been brought against other entities and individuals that are similarly situated and, therefore, the entire action against them must be dismissed. D. 53 at 37-38; D. 235 at 25. Defendants also assert that the SEC brought this action in bad faith to punish them for declining a settlement offer. D. 224 at 29-30. The SEC argues that it should be granted summary judgment on Defendants' selective enforcement defense because the

evidence demonstrates that it sought enforcement against similarly situated entities and that any differences in enforcement against those who are similarly situated to NAI and Navellier had a rational basis. D. 221 at 11-14.

1. Equal Protection

To establish a claim for an equal protection violation based on selective enforcement, the individual or entity must show that "(1) the person, compared with others similarly situated, was selectively treated; and (2) that such selective treatment was based on impermissible considerations such as race, religion, intent to inhibit or punish the exercise of constitutional rights, or malicious or bad faith intent to injure a person." Rubinovitz v. Rogato, 60 F.3d 906, 910 (1st Cir. 1995) (quoting Yerardi's Moody St. Restaurant & Lounge, Inc. v. Board of Selectmen, 878 F.2d 16, 21 (1st Cir. 1989)); Barth v. City of Peabody, No. CV 15-13794-MBB, 2017 WL 114403, at *4 (D. Mass. Jan. 11, 2017) (internal quotations omitted); see Aponte-Ramos v. Álvarez-Rubio, 783 F.3d 905, 908 (1st Cir. 2015) (quoting Marrero-Gutierrez v. Molina, 491 F.3d 1, 9 (1st Cir. 2007)). To determine whether individuals or entities are similarly situated, "the test is whether a prudent person, looking objectively at the incidents, would think them roughly equivalent and the protagonists similarly situated . . . the 'relevant aspects' are those factual elements which determine whether reasoned analogy supports, or demands, a like result." Aponte-Ramos, 783 F.3d at 909 (quoting Barrington Cove Ltd. P'ship v. R.I. Hous. & Mort. Fin. Corp., 246 F.3d 1, 8 (1st Cir. 2001)).

Defendants argue that the SEC has failed to enforce against numerous entities and individuals engaged in conduct like that on which the SEC bases its claims against NAI and Navellier. D. 235 at 24. The SEC counters that these entities and individuals are not similarly situated to NAI and Navellier because they did not engage in conduct as severe as that of NAI and,

with regard to the individuals identified by Defendants, they were not in similar roles in their respective companies as Navellier, who is the owner and Chief Investment Officer of NAI. D. 231 at 4-5. For example, the SEC notes that Defendants have not addressed the volume and length of time over which the false claims were made or whether, like NAI and Navellier, these other entities and individuals were aware that their marketing claims were fraudulent. Id. Additionally, Defendants had also been warned of previous violations on at least three occasions but have not provided any evidence indicating that these entities and individuals that they claim are similarly situated had received similar warnings. Defendants have failed to meet their burden to establish that the comparators they identify are similarly situated in all relevant aspects to NAI and Navellier. See Startzell v. City of Philadelphia, 533 F.3d 183, 203 (3d Cir. 2008) (stating that, for the purposes of a selective enforcement claim, "[p]ersons are similarly situated under the Equal Protection Clause when they are alike in all relevant aspects" (internal quotations omitted)).

Even if Defendants had successfully established that they were selectively treated as compared to those similarly situated, they have not established that the SEC enforced this action against them based upon impermissible considerations, to inhibit or punish the exercise of their constitutional rights, or in bad faith. Defendants claim that "it cannot be disputed" that the SEC is pursuing this enforcement action against them in bad faith based upon Defendants' denial of the SEC's settlement terms. D. 224 at 29-30. To show that the SEC acted in bad faith, however, Defendants must establish that the SEC acted with "gross abuse of power, invidious discrimination or fundamentally unfair procedures." Walsh v. Town of Lakeville, 431 F. Supp. 2d 134, 145 (D. Mass. 2006) (quoting Baker v. Coxe, 230 F.3d 470, 474 (1st Cir. 2000)). The standard for bad faith is "very high and must be scrupulously met." Kitras v. Temple, No. 16-cv-11428-ADB, 2017 WL 4238862, at *5 (D. Mass. Sept. 25, 2017) (internal quotations omitted). Although Defendants

argue that a settlement agreement was reached with the SEC, the SEC disputes this fact and the record indicates that settlement negotiations between the parties broke down before any settlement was agreed to by both parties. See D. 242, ¶ 19. There is no indication that the SEC sought to enforce more harshly against NAI or Navellier following the breakdown in settlement negotiations; rather, the SEC seeks enforcement consistent with that which they discussed in their initial communications with NAI and Navellier. D. 222-9 at 1 ("Wells Notice" sent from SEC to Defendants' counsel indicating that, if it proceeded to an enforcement action, the SEC could seek remedies similar to those sought in the present action for the same violations alleged herein). Defendants have not provided evidence sufficient to support their claim that the SEC in enforcing against them in bad faith or is based upon an improper consideration. See Rubinovitz, 60 F.3d at 911.

Defendants further argue that the SEC is estopped from disputing that it is proceeding against Defendants in bad faith because the SEC "refused" to produce certain documents related to its enforcement decisions in discovery. D. 224 at 30. The Court previously ruled on the Defendants' attempts to seek discovery related to the SEC's decision-making process regarding enforcement against other investment advisers. D. 175 (denying various document requests and deposition topics regarding the SEC's enforcement considerations and noting that the decision did not "deprive Defendants, as they suggest, of pursuing their selective enforcement defense" but that it reflected the need for discovery requests to comport with Rule 26). Defendants cite no cases that support their argument that the SEC is estopped from denying that it is acting in bad faith based on the SEC's objections to discovery requests that the Court has already determined were overbroad and not proportional.

2. Class of One

"A cognizable class of one equal protection claim requires a showing that the plaintiff 'has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment.'" Boyle v. Barnstable Police Dep't, 818 F. Supp. 2d 284, 314 (D. Mass. 2011) (quoting SBT Holdings, LLC v. Town of Westminster, 547 F.3d 28, 34 (1st Cir. 2008)); see Comley v. Town of Rowley, 296 F. Supp. 3d 327, 335 (D. Mass. 2017). "[T]he proponent of the equal protection violation must show that the parties with whom he seeks to be compared have engaged in the same activity vis-a-vis the government entity without such distinguishing or mitigating circumstances as would render the comparison inutile." Cordi-Allen v. Conlon, 494 F.3d 245, 251 (1st Cir. 2001).

The SEC has enforced against other investment advisers that are similarly situated to NAI in cases regarding false advertising of the AlphaSector strategy. D. 242, ¶¶ 10-12. Defendants argue that, despite the SEC's enforcement of claims against these similarly situated entities, there are other similarly situated entities and individuals that the SEC did not enforce against and, thus, Defendants are in a class of one and the claims against them must be dismissed. D. 224 at 29. This argument is unavailing as a class of one defense cannot be maintained where similar enforcement has been sought against other individuals and entities. Cordi-Allen, 494 F.3d at 254 (rejecting a class of one claim and stating that "[b]y definition, a class of one is not a class of many"). It is undisputed that the SEC has initiated enforcement proceedings against numerous similarly situated entities and against one individual, Present. D. 242, ¶ 10. Defendants, therefore, have not demonstrated that the SEC's initiation of proceedings against them regarding the marketing of the AlphaSector strategy selectively singled them out.

In further support of their class of one argument, Defendants claim that the SEC sought less severe remedies against the other similarly situated investment advisory firms. D. 224 at 29.

Proceedings against most of the other similarly situated entities, however, ended in settlements rather than proceeding to litigation. D. 242, ¶ 13. The SEC initially sought to negotiate a similar settlement with Defendants, but negotiations between the parties broke down. Defendants do not dispute that the SEC settled with these other similarly situated parties. See id.

Additionally, the SEC has offered a rational basis for any difference in treatment between Defendants and others similarly situated. See Wojcik v. Mass. State Lottery Comm'n, 300 F.3d 92, 104 (1st Cir. 2002) (to prove class of one selective enforcement, a party must show that "there is no rational basis for the difference in treatment") (quoting Village of Willowbrook v. Olech, 528 U.S. 562, 564 (2000)). For example, the SEC identifies three prior instances whereby the SEC had sent prior warnings to Defendants about problems in their advertising and disclosures and also warning that it would consider "recidivist behavior" when determining whether to bring enforcement actions. D. 221 at 14; D. 242, ¶¶ 35-37. The SEC also claims that Defendants' "major role in pushing AlphaSector products into the marketplace" and the evidence indicating that Navellier and other NAI personnel were aware of the false marketing and concealed it from clients contributed to any difference in treatment from other investment advisers against whom enforcement proceedings were brought regarding the AlphaSector strategies. D. 221 at 14; D. 242, ¶ 40. Defendants have failed to offer evidence disputing these rational bases for any difference in enforcement as compared to other similarly situated entities and individuals. As a result, the Court allows SEC's motion for summary judgment as to Defendants' selective enforcement defense and denies Defendants' motion for summary judgment as to the same defense.

B. Counts One & Two – Violations of Sections 206(1) and (2) of the Advisers Act

Both parties argue that summary judgment should be awarded in their favor on Counts One and Two, alleging that Defendants violated Sections 206(1) and (2) of the Advisers Act. D. 1,

¶¶ 73-82. Section 206(1) provides that it is unlawful for an investment adviser, "by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly" to "employ any device, scheme, or artifice to defraud any client or prospective client." 15 U.S.C. § 80b-6(1). Section 206(2) of the Advisers Act makes it unlawful for an investment adviser, "by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly," to "engage in any transaction, practice, or course of business which operates a fraud or deceit upon any client or prospective client." Id. § 80b-6(2). "[T]o establish a violation, each of these sections requires the SEC to show the investment adviser made a material misrepresentation with a culpable mental state." ZPR Inv. Mgmt. v. SEC, 861 F.3d 1239, 1247 (11th Cir. 2017) (citing Steadman v. SEC, 603 F.2d 1126, 1129-34 (5th Cir. 1979)). Section 206(1) violations require a showing of scienter, whereas Section 206(2) violations do not. Steadman, 603 F.2d at 1134 (citing SEC v. Capital Gains Research Bureau, Inc., 375 U.S. 180, 195 (1963)); SEC v. Slocum, Gordon, & Co., 334 F. Supp. 2d 144, 182 (D.R.I. 2004). Therefore, "to demonstrate a Section 206(1) violation, the [SEC] must show that the Defendants willfully or recklessly employed a device, artifice, or scheme to defraud," but "to establish a violation of Section 206(2), the [SEC] must show that Defendants failed to disclose or omitted material facts in their dealings with clients." Slocum, Gordon, & Co., 334 F. Supp. 2d at 182.

The SEC argues that the evidence shows that Defendants marketed to potential and current clients that the Vireo AlphaSector strategy had been live traded since 2001 and that Defendants were aware that they did not have any documentation or confirmation to support those assertions. D. 221 at 17. Defendants argue that they are not liable under Section 206 because there is no evidence that they "market[ed]" the strategies, they did not "make" the original false claims and certain other investment advisory firms did not discover the falsity and did not conduct due

diligence but have not been similarly charged with negligent advertising. D. 224 at 32. Defendants also argue that the statements made were not false because they described the performance of a hypothetical index and not an "actual performance record." D. 235 at 30. Defendants further claim that, even if marketing materials included false information, they did not have the requisite scienter because they were not aware that the performance records of the AlphaSector strategies were false. Id.

1. False Claims

Defendants' argument that they did not market the AlphaSector strategies is inconsistent with the undisputed evidence and Defendants' own admissions. Defendants admit that they distributed AlphaSector brochures to "brokers and advisers" that would then distribute them to clients who, if interested, would be referred to NAI. D. 242, ¶ 3. Further, the suggestion that Defendants did not "make" the false statements regarding the AlphaSector strategies is inapposite where they incorporated these statements into their own marketing materials where Section 206(1) of the Advisers Act requires only that they "employ any device, scheme, or artifice to defraud" their clients. 15 U.S.C. § 80b-6(1); see Lorenzo v. SEC, __ U.S. __, 139 S. Ct. 1094, 1101 (2019) (concluding, under Rule 10b-5, that "[b]y sending emails he understood to contain material untruths, Lorenzo 'employ[ed]' a 'device,' 'scheme' and 'artifice to defraud'). The record includes multiple examples of NAI-created marketing materials that include false and misleading statements regarding the performance of the AlphaSector strategies. D. 222-27–34 (Vireo AlphaSector marketing stating that the strategies had been live tested since 2001). Although certain of these advertisements include reference to an index, they claim that the index was based on an active strategy that had an inception date of April 1, 2001 even though Defendants did not

have the data to support this statement. See id. Each of these examples includes the NAI Vireo branding and was distributed by NAI personnel. Id.

Defendants also argue that the statements alleged to be false were not material because, by 2011, NAI was publishing actual performance numbers for the strategies and, therefore, any prior false statements were insufficient to support a violation of Section 206(1). D. 235 at 30. Defendants, however, cite no legal or factual support of their claim that the false and misleading statements regarding the historical performance of the strategies were immaterial to investors. See id. Kuyper admitted that the historical performance of a strategy would be material to an investor, in particular whether a strategy had been back-tested or was based on actual performance. See D. 222-68 at 2-3. "A statement is material if there is a substantial likelihood that a reasonable investor would consider it important in deciding whether or not to invest his money in a particular security." SEC v. Fife, 311 F.3d 1, 9 (1st Cir. 2002). This is especially true here as the AlphaSector strategies were marketed as defensive strategies that had been "stress tested across *two* bear markets." See D. 222-27 at 3 (emphasis in original).[3]

2. Scienter

"To prove scienter, a plaintiff must show 'either a conscious intent to defraud or a high degree of recklessness." SEC v. EagleEye Asset Mgmt., LLC, 975 F. Supp. 2d 151, 158 (D. Mass. 2013) (quoting SEC v. Ficken, 546 F.3d 45, 47 (1st Cir. 2008)). The record demonstrates that NAI personnel, including Navellier, were aware that the marketing was not supported by sufficient data, but that they took no steps to inform clients of the false statements and, instead, continued to sell

[3] To the extent that Defendants argue that these claims are time-barred because certain of the statements fell outside of the five-year statute of limitations, D. 244 at 3, n.2, that contention fails because record shows that they sent such marketing materials to clients within the statute of limitations. See D. 222-27–34.

the AlphaSector strategies despite their knowledge that representations about the strategies were false and misleading. After conducting due diligence on the F-Squared AlphaSector strategies, Knapp prepared an "Executive Summary" of his findings, which stated that "F-Squared flat out won't show the math to us [supporting the strategies]." D. 242, ¶ 49; D. 222-42 at 2. Defendants relied on a letter from NASDAQ in lieu of actual performance indices; however, it is clear on the record indicates that NASDAQ did not conduct any independent testing but relied upon information provided by F-Squared. D. 236-1 at 299-301. Despite this lack of support, NAI licensed and sold the AlphaSector strategies under its own branding. Navellier acknowledged that the due diligence conducted by NAI was insufficient in an email to Knapp, stating that Navellier "went to get the confirms yesterday . . . and I was told there were no confirms, just a spreadsheet . . . That is not due diligence, that is stupidity." D. 242, ¶ 56; D. 222-46 at 3. Navellier later emailed other management personnel at NAI stating that "[u]nless somebody shows me the confirms, [F-Squared] is merely a model and I am protecting the firm from potential fraud, so we must not talk about [F-Squared] being base[d] on real $ since 2001." D. 242, ¶ 57; D. 222-47. Despite this acknowledgement, Navellier further stated in the email that he was "not stopping Vireo [AlphaSector] sales." Id. Navellier acknowledged that NAI was selling AlphaSector strategies based on fraudulent representations in another email to NAI management, stating "we sold the wrong product that continues to smell like FRAUD, especially since no one can find the [F-Squared] indices" and "[m]aybe we can try to sell the Vireo managed account business . . . so you & Peter K. can have a big payday." D. 242, ¶ 58; D. 222-48. Defendants claim that emails sent by Navellier to other NAI personnel that reference fraud in relation to the AlphaSector strategies were not indicative of any true concerns, but were lies told by Navellier to NAI personnel because he wanted to scare them into no longer selling the strategies and he disliked Present. D.

242, ¶¶ 56-62. Such contention, however, does not change the fact that Defendants made the actionable statements to clients or the undisputed record that Defendants were, at a minimum, highly reckless in making statements to clients about investment strategies.

NAI further acknowledged that it was aware of problems with its due diligence and marketing in an email that Kuyper sent to Eichenlaub, a compliance officer NAI hired to conduct a review, in which Kuyper notes that NAI did not have any data to confirm the actual performance of the strategies and that this raised concerns about certain marketing claims. See D. 242 ¶ 69, D. 222-59 at 3-4. After conducting a review, Eichenlaub responded to Kuyper that NAI "must have a basis for representing [their] numbers and the legitimacy of the numbers." D. 242, ¶ 72.[4] Despite their knowledge of the inadequate due diligence and the misleading statements in their marketing, NAI did not attempt to halt sales or inform clients of the fraudulent statements, but instead began to explore opportunities to sell the Vireo AlphaSector business. Such actions demonstrate an intention to defraud clients or, at least, a high degree of recklessness in violation of Section 206(1). On this record, NAI, through their management team and Navellier in particular, were aware that they had not obtained sufficient support for the claims included in their marketing of the AlphaSector strategies and that they did not take any action to inform their clients, but instead continued to sell the strategies while exploring options for selling the business. See D. 242, ¶¶ 75, 77.

The same evidence supporting a finding in favor of the SEC on Count One, that NAI and Navellier violated Section 206(1), supports a finding that Navellier and NAI violated Section

[4] Defendants move to strike communications between NAI and ACA as privileged. D. 235 at 20-21. This Court previously considered this issue and found that the communications were not subject to either the attorney-client or the work product privilege. D. 125. Accordingly, the Court denies Defendants' motion to strike these communications.

206(2). As noted above, violations of Section 206(1) include a scienter requirement, whereas violations of Section 206(2) do not. Section 206(2) makes it unlawful to "engage 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). For the reasons stated above, the Court concludes that the undisputed record shows that that Defendants engaged in a course of business that operated a fraud or deceit upon their clients. Accordingly, the Court allows summary judgment in favor of the SEC on Counts One and Two.

C. Counts Three and Four

Defendants seek summary judgment on Counts Three and Four. D. 224 at 33. Count Three alleges that, in the alternative to finding Navellier liable on Counts One and Two, Navellier should be found liable for aiding and abetting NAI's violations of Sections 206(1) and (2) of the Advisers Act. D. 1, ¶¶ 83-87. To establish a claim for aiding and abetting, the SEC must show "(1) a primary or independent securities law violation by an independent violator; (2) the aider and abettor's knowing and substantial assistance to the primary securities law violator; and (3) awareness or knowledge by the aider and abettor that his role was part of an activity that was improper." Slocum, Gordon, & Co., 334 F. Supp. 2d at 184 (citing SEC v. Fehn, 97 F.3d 1276, 1288 (9th Cir. 1996); Cleary v. Perfectune, Inc., 700 F.2d 774, 777 (1st Cir. 1983)). As discussed previously, NAI has violated Sections 206(1) and (2) because it included material misrepresentations in its marketing materials with knowledge that it lacked sufficient data to support its claims. Further, the evidence indicates that Navellier was aware of these misleading claims and chose not to halt sales of the AlphaSector strategies or inform clients of the false claims. See D. 222-46; 222-48; 222-64. Accordingly, the Court denies Defendants' motion for summary judgment as to Count Three.

Count Four alleges that NAI violated Section 206(4) of the Advisers Act, which makes it unlawful for an investment adviser "by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly" to "engage in any act, practice, or course of business which is fraudulent, deceptive, or manipulative." 15 U.S.C. § 80b-6(4). The SEC has also promulgated rules and regulations describing the conduct prohibited. Rule 206(4)-1 states that it is a fraudulent, deceptive, or manipulative act for an investment adviser to "publish, circulate, or distribute any advertisement . . . which contains any untrue statement of material fact, or which is otherwise false or misleading." 17 C.F.R. § 275.206(4)-1. For the same reasons that NAI is liable under Counts One and Two, Defendants are not entitled to summary judgment on Count Four where NAI never obtained confirmation for the claims that it included in its marketing of the Vireo AlphaSector strategies and did not halt the sale of the strategies or inform existing clients of the misleading marketing. Thus, the Court denies Defendants' motion for summary judgment as to Count Four.

D. Injunctive Relief

Defendants seek summary judgment on the SEC's claim for injunctive relief, arguing that the SEC improperly seeks an injunction banning Defendants "for life from the securities industry" where the SEC has not sought similar relief against any similarly situated investment advisers. D. 224 at 34-35. Defendants also argue that there is no basis to bar NAI and Navellier from marketing the AlphaSector strategies because they sold the AlphaSector business to F-Squared. Id. at 35. The SEC responds that it does not seek an injunction barring Defendants from marketing the AlphaSector strategies but, rather, seeks to enjoin Defendants from engaging in actions that violate Section 206 of the Advisors Act. D. 231 at 14; see D. 1, ¶ A.

An injunction barring a defendant from violating the securities laws is "appropriate where there is, 'at a minimum, proof that a person is engaged in or is about to engage in a substantive violation of either one of the Acts or of the regulations promulgated thereunder.'" SEC v. Sargent, 329 F.3d 34, 39 (1st Cir. 2003) (quoting Aaron v. SEC, 446 U.S. 680, 700-01 (1980)). To determine whether future violations are reasonably likely, courts consider numerous factors, including "the nature of the violation, including its egregiousness and its isolated or repeated nature, as well as whether the defendants will, owing to their occupation, be in a position to violate again." Id. (citing SEC v. Youmans, 729 F.2d 413, 415 (6th Cir. 1984)); SEC v. First City Fin. Corp., 890 F.2d 1215, 1228 (D.C. Cir. 1989); SEC v. Universal Major Indus. Corp., 546 F.2d 1044, 1048 (2d Cir. 1976)). Here, the undisputed evidence indicates that, on at least three prior occasions, the SEC sent deficiency letters to Defendants identifying violations related to their marketing materials. D. 242 ¶¶ 35-37. Despite these notices, Defendants continued to violate the Advisors Act in their marketing materials. D. 242, ¶ 37. Additionally, despite their awareness that their Vireo AlphaSector marketing materials contained misleading statements, Defendants continued to use these materials and did not halt sales of the strategies or notify clients of the misleading statements. Further, as Defendants continue to operate as investment advisors, they are in a position to commit further violations of the Advisors Act. For these reasons, the Court denies Defendants' motion for summary judgment on the SEC's claim for injunctive relief.

E. Disgorgement

Defendants also seek summary judgment on the SEC's claim for disgorgement of Defendants' "ill-gotten gains and losses avoided" as a result of their violations. D. 1, ¶ D. In a securities law action, "[d]isgorgement forces the defendant to give up the amount by which he was unjustly enriched, 'even if it exceeds actual damages to victims.'" SEC v. Present, No. 14-cv-

14692-LTS, 2018 WL 1701972, at *2 (D. Mass. Mar. 20, 2018) (quoting SEC v. Cavanagh, 445 F.3d 105, 117 (2d Cir. 2006)). "The Court has discretion to enter an order of disgorgement in an amount reflecting 'a reasonable approximation of the profits causally connected to'" the violations. Id. (quoting SEC v. Happ, 392 F.3d 12, 31 (1st Cir. 2004)).

Defendants argue that the five-year statute of limitations applicable to the SEC's claims bars consideration of violations that occurred prior to August 10, 2011[5] and, thus, bars the SEC's claim for disgorgement based on marketing prior to that date. D. 224 at 35. The SEC does not dispute that the applicable statute of limitations is five years and that it "cannot seek penalties or disgorgement for violations before that time." D. 231 at 17. The Supreme Court has stated that the five-year statute of limitations applies to disgorgement in SEC enforcement actions. Kokesh v. SEC, __ U.S. __, 137 S. Ct. 1635, 1639 (2017). The Court concluded that "any claim for disgorgement in an SEC enforcement action must be commenced within five years of the date the claim accrued." Id. at 1645. The SEC seeks disgorgement of the ill-gotten gains realized when NAI sold its Vireo AlphaSector business to F-Squared in 2013. It is undisputed that these gains were realized within the applicable statute of limitations.

Defendants also argue that it is entitled to summary judgment on the SEC's claim for disgorgement in its entirety because NAI was well within its rights to sell its "goodwill" to F-Squared and there was "no obligation" on the part of NAI's Vireo AlphaSector clients to transfer their business to F-Squared following the sale of the business. D. 224 at 37. Defendants, however, ignore the fact that the value of the business, and thus the value it received in the sale, is traceable to its wrongdoing in violating the Advisers Act. In misleading clients by making claims in its

[5] The SEC claims the applicable date is August 10, 2011 pursuant to tolling agreements. D. 231 at 16, n.6.

marketing materials, Defendants were able to gain clients that they arguably would not have gained had these misleading statements been omitted. These actions contributed to the value of the Vireo AlphaSector business that Defendants then sold to F-Squared. Since Defendants have failed to meet their burden for summary judgment as to the SEC's claim for disgorgement, the Court denies their motion as to this claim.

VI. Conclusion

For the foregoing reasons, the Court DENIES Defendants' motion for summary judgment, D. 223, and ALLOWS the SEC's motion as to Defendants' fourteenth affirmative defense and Counts One and Two, D. 220.

So Ordered.

/s/ Denise J. Casper
U.S. District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. NAVELLIER & ASSOCIATES, INC. and LOUIS NAVELLIER, Defendants.	Case No. 17-cv-11633-DJC

AMENDED DISGORGEMENT FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. The Court Has Broad Discretion to Order Disgorgement

1. In any action or proceeding brought or instituted by the Securities and Exchange Commission under any provision of the securities laws, the Commission may seek, and any Federal court may grant, any equitable relief that may be appropriate or necessary for the benefit of investors. Section 21(d)(5) of the Exchange Act, 15 U.S.C. 78u(d)(5).

2. A "disgorgement award that does not exceed a wrongdoer's net profits and is awarded for victims" is equitable relief permissible under [Section 21(d)(5)]." *Liu v. SEC*, 140 S. Ct. 1936, 1940 (2020).

3. Disgorgement is a "profit-based measure of unjust enrichment" that is measured by the defendant's "wrongful gain," and is ordered to reflect the "foundational principle" of equity that "it would be inequitable that a wrongdoer should make a profit out of his own wrong." *Liu*, 140 S. Ct. at 1943 (internal quotation marks omitted); *SEC v. Sargent*, 329 F.3d 34 (1st Cit. 2003) (disgorgement "is intended to deprive wrongdoers of profits they illegally obtained by violating the securities laws") (internal quotation omitted).

4. A wrongdoer can be required to give up unjust enrichment "without the need to show that

the claimant has suffered a loss." Restatement (Third) of Restitution and Unjust Enrichment § 1, cmt. a; *see generally, e.g.*, *Magruder v. Drury*, 235 U.S. 106, 118-20 (1914) (trustee liable for profits gained in breach of fiduciary duty, and "[i]t makes no difference that the estate was not a loser in the transaction, or that the commission was no more than the services were reasonably worth").

5. Because disgorgement is measured by a violator's "wrongful gains" as opposed to the victim's damages, *Liu*, 140 S. Ct. at 1944, disgorgement can be ordered in an amount that is different from, or even exceed the victim's loss. *See Kansas v. Nebraska*, 574 U.S. 445, 463 (2015) (ordering disgorgement that exceeded the victim's "actual damages"); *SEC v. Huffman*, 996 F.2d 800, 802 (5th Cir. 1993) ("[A] disgorgement order might be for an amount more or less than that required to make the victims whole.").

6. Disgorgement in the amount an investment adviser illicitly obtained is an appropriate remedy for violations of the Investment Advisers Act of 1940. *See, e.g.*, *SEC v. Kokesh*, 884 F.3d 979, 980 (10th Cir. 2018); *Montford & Co., Inc. v. SEC*, 793 F.3d 76, 83-84 (D.C. Cir. 2015); *SEC v. Illarramendi*, 260 F. Supp. 3d 166, 182 (D. Conn. 2017); *SEC v. Haligiannis*, 470 F. Supp. 2d 373, 384-85 (S.D.N.Y. 2007).

7. Because "flexibility is inherent in equitable remedies," the Court has broad discretion in determining the amount of disgorgement. *Kansas*, 574 U.S. at 464-45 ("[D]isgorgement need not be all or nothing."); *see also SEC v. Happ*, 392 F.3d 12, 31 (1st Cir. 2004) (standard of review); *SEC v. Wyly*, 56 F.Supp.3d 394, 426 (S.D.N.Y. 2014) (a disgorgement order "gives courts flexibility to determine the appropriate remedy to fit the wrongful conduct").

8. The amount of disgorgement ordered "need only be a reasonable approximation of profits

causally connected to the violation." *SEC v. Happ*, 392 F.3d 12, 31 (1st Cir. 2004) (quoting *SEC v. First City Fin. Corp.*, 890 F.2d 1215, 1231-1232 (D.C. Cir. 1989)); *SEC v. Yang*, 2020 WL 4530630, at *2 (9th Cir. Aug. 6, 2020) (applying this standard after *Liu*); *SEC v. Mizrahi*, 2020 WL 6114913, at *2-4 (C.D. Cal. Oct. 5, 2020) (same); *SEC v. Smith*, 20-cv-1056, Dkt. 65 at 3-4 (C.D. Cal. Oct. 19, 2020) (same).

9. "Once the SEC shows that the disgorgement is a reasonable approximation of disgorgement, the burden shifts to the defendant to demonstrate that the amount of disgorgement is not a reasonable approximation." *Happ*, 392 at 31.

10. To the extent there is a "risk of uncertainty in calculating disgorgement," that risk falls on Defendants who are the "wrongdoer[s] whose illegal conduct created that uncertainty. *Id.*; *see also Rubber Co. v. Goodyear*, 76 U.S. 788, 803-04 (1870) (explaining that no deduction is appropriate for claimed expenses where the "manner in which the books … were kept renders such an account impossible," reasoning that the defendants' "conduct in this respect has not been such as to commend them to a court of equity," and holding that "[u]nder the circumstances, every doubt and difficulty should be resolved against them") (cited with approval in *Liu*, 140 S. Ct. at 1945-46, 1950); *United States v. Rapower-3, LLC*, 18-4119 (10th Cir. July 17, 2020) (denying rehearing petition based on *Liu* where the petition "fail[ed] to identify any expenses that were not part and parcel of Petitioners' scheme and should be deducted from the disgorgement order under the standard stated in *Liu*"). "[D]oubts are to be resolved against the defrauding party." *SEC v. MacDonald*, 699 F.2d 47, 55 (1st Cir. 1983).

11. An order of disgorgement here is appropriate to deprive Defendants Louis Navellier ("Navellier") and Navellier and Associates, Inc. ("NAI") of unjust profits they made from

their repeated fraudulent marketing misrepresentations and failures to disclose material information to clients about the Vireo products. *See* D. 252 (Memorandum and Order granting Plaintiff partial summary judgment).

II. Defendants Are Jointly and Severally Liable for Disgorgement

12. Courts may impose joint and several liability against "partners" engaged in "concerted wrongdoing." *Liu*, 140 S. Ct. at 1949; *see also SEC v. Janus Spectrum, LLC*, 2020 WL 3578077, at *2 (9th Cir. July 1, 2020) ("[T]he imposition of joint and several liability for a disgorgement award is permissible so long as it is 'consistent with equitable principles.'") (quoting *Liu*, 140 S. Ct. at 1949).

13. Imposing joint and several liability for profits resulting from breach of a fiduciary duty is consistent with equitable principles. *See Crites, Inc., v. Prudential Ins. Co. of Amer.*, 322 U.S. 408, 414 (1944) ("Any profits that might have resulted from a breach of [a fiduciary duty], including the profits of others who knowingly joined [the fiduciary] in pursuing an illegal course of action, would have to be disgorged and applied to the estate.") (citing cases).

14. Courts may order that an owner-officer and a company pay disgorgement on a joint and several basis. *SEC v. Esposito, et al.*, Civ. No. 16-cv-10960-ADB, 2018 WL 2012688, *9 (D. Mass. April 30, 2018) (ordering managing director and entity jointly and severally liable for total disgorgement where violations are closely intertwined); *SEC v. Locke Capital Mgmt., Inc.*, 794 F. Supp. 2d 355, 369 (D.R.I. 2011) (holding entity and entity's sole owner, an individual, jointly and severally liable for disgorgement).

15. Defendants were engaged in concerted wrongdoing. First, Navellier formed, owned, and controlled all aspects of NAI during the relevant time period. D. 53 (Amended Answer) at ¶ 15. Navellier served as NAI's Chief Investment Officer and Chief Executive Officer,

during that time. *Id.* Navellier had the authority to hire, promote, demote, and fire NAI employees. *Id.* He had authority, along with the Board of Directors of NAI, to decide what products and investment vehicles NAI offered to its clients during the relevant time period. *Id.* He also had authority along with the Board of Directors of NAI to sell NAI business lines, including the Vireo AlphaSector business. *Id.* In other words, Navellier had final authority over NAI's fraudulent activity.

16. Second, Navellier committed his violations of Counts I and II in concert with NAI. He knew the marketing was misleading, had the power to stop NAI from its fraudulent marketing efforts, and authorized his NAI staff to continue the marketing campaign anyway. *See* Order and Memorandum, D. 252, at 5-6 (detailing Navellier's approvals of the continued marketing of the Vireo AlphaSector products using the misleading advertising, despite his knowledge that due diligence had been inadequate, that NAI lacked support for its marketing statements, and that the product "smelled like fraud") and at 7 (detailing Navellier's effort to sell NAI's Vireo line of business as a result of NAI's "massive due diligence failure," risk of SEC liability, and F-Squared's fake indexes which Defendants used in their Vireo marketing).

17. Navellier had the power to decide what products NAI offered. He authorized the selling of the Vireo AlphaSector products, even though he was well aware that the Vireo AlphaSector performance claims were unsupported. D. 252 at 5; *see also* D. 222-46, D.222-47. Navellier did not stop sales of the Vireo products or notify clients of any of Defendants' misrepresentations. *Id.* In the end, he decided to sell the Vireo assets despite what he considered "a massive due diligence failure." *Id.* at 6-7; *see also* D. 222-48, 222-63, 222-64.

18. Third, both Defendants benefited from their concerted wrongdoing. From 2009 to August 2013, Navellier owned at least 75% of NAI and in 2013, Navellier acquired complete ownership of NAI. D. 53, ¶ 15. Navellier is now the sole owner of NAI and shares in all profits and proceeds received by NAI. *Id.*; *see also* D. 222-2 at 8-9.

19. Applying the equitable principles above to these facts, Defendants may properly be held joint and severally liable for disgorgement as partners engaged in concerted wrongdoing.

III. Disgorgement Here Will Be For the Benefit of Investors

20. In *Liu*, the Supreme Court held that the "equitable nature of the profits remedy generally requires the Commission to return a defendant's gain to wronged investors for their benefit." 140 S. Ct. at 1948.

21. Because of the "delicate fiduciary nature of an investment advisory relationship" investment advisers have "an affirmative duty of utmost good faith, and full and fair disclosure of all materials facts, as well as an affirmative obligation to employ reasonable care to avoid misleading [their] clients." *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 186 (1963).

22. Through their violations, Defendants breached these duties in this case to the detriment of their clients and prospective clients. D. 252 at 16.

23. The Commission intends to distribute to the Vireo AlphaSector clients any disgorgement awarded here, if Defendants timely pay what it owed.

24. If Defendants do not timely pay their full disgorgement, the Commission shall reassess the feasibility of the distribution based on the amount paid and, if still feasible, distribute funds to clients consistent with this Court's Final Judgment. If the Commission determines at that time that a distribution is not feasible given the amount Defendants have paid in disgorgement, it shall advise the Court and seek the Court's guidance on

whether "a specific order … directing any proceeds to the Treasury" is permissible. *Liu,* 140 S. Ct. at 1949.

25. Based on the Commission's representations concerning the distribution of the disgorgement to victim clients, the award of disgorgement is for the benefit of investors, as required by *Liu.* 140 S. Ct. at 1948; *see also Mizrahi*, 2020 WL 6114913, at *2 (disgorgement ordered "for the benefit of investors" where SEC represented that it would "return [the disgorged] funds to [the violator's] clients").

IV. Defendants Should Be Deprived of the Net Profits They Gained from Their Illegal Conduct During the Statute of Limitations Period

26. Disgorgement of "net profits from wrongdoing after deducting legitimate expenses" may be awarded on a finding of the violations here. *Liu*, 140 S. Ct. at 1946.

27. To determine the net profits, it is necessary first to determine the amount of revenues from the wrongdoing. Then it is necessary to deduct those expense that are legitimate, that is, that are unrelated to the wrongdoing, here the expenses associated with providing advisory services. *See id.* at 1950 ("courts must deduct legitimate expenses before ordering disgorgement"). Net profits are the "gains 'made upon any business or-investment, when both the receipts and payments are taken into the account.'" *Id.* at 1949-50 (quoting *Goodyear*, 9 Wall., at 804). "[A] defendant may be denied inequitable deductions" and expenses that "are merely wrongful gains under another name." *Id.* at 1950 (internal quotation marks omitted).

28. As of January 1, 2021, the statute of limitations for disgorgement applicable to disgorgement in this case has been changed to ten years. Pub. L. 116-283, §6501(a)(3) & (b), Jan. 1, 2021, 134 Stat. 3388.

29. All profits of the Defendants' fraudulent scheme can be disgorged, as the earliest profits

received by the Defendants from their fraudulent conduct occurred in 2011, less than ten years before the filing of this case.

30. The Commission has properly included in its calculation of disgorgement revenues and expenses paid from January 1, 2011 through 2013 (when Defendants sold the Vireo business, and stopped receiving revenue or incurring expenses for that business).

A. Revenues

31. Defendants' misconduct resulted in two types of revenue: fees paid by clients and the proceeds of the sale of the Vireo business. Each type represents "ill-gotten gains" obtained by the Defendants as a result of the fraudulent marketing scheme and their failure at any time to disclose to their clients the significant fraudulent misrepresentations that had been made to them by Defendants about the Vireo products. *See SEC v. AbsoluteFuture.com*, 115 Fed. App'x. 105, 106-107 (2d. Cir. 2004) (affirming order to disgorge all profits received as result of fraud).

1. Fees Paid By Clients

32. Based on Navellier's income statements, as summarized in the declaration of the Commission's accountant, Rory Alex, revenue from the Vireo AlphaSector business was $22,775,867 from 2011 through 2013. This amount represents the total investment advisory fees paid by Defendants' clients for the Vireo products during the limitations period. Declaration of Rory Alex ("Alex Decl."), ¶ 8.

33. All fees from 2011 through the date of the sale of the Vireo AlphaSector business fall within the 10-year limitations period for disgorgement claims resulting from a violation of Section 206(1) of the Investment Advisors Act of 1940. Pub. L. 116-283, §6501(a)(3) & (b), Jan. 1, 2021, 134 Stat. 3388 (extending statute of limitations applicable to claims

for disgorgement for certain securities fraud violations to ten years, and applying that extension to currently pending cases).

34. Defendants fraudulently induced people to become their investment advisory clients. The clients then paid investment advisory fees to NAI, while Defendants continued to conceal the truth about the Vireo products' track records. Thus, the investment advisory fees paid by those clients represent one component of Defendants' ill-gotten gains.

2. Sale of Vireo

35. In addition to the fees earned, Defendants subsequently sold the Vireo AlphaSector assets (namely, its client relationships) on September 23, 2013 for $14,000,000. Alex Decl. at ¶ 9 & Ex. 2 (NAI's business checking account statement for September 2013).

36. The value Defendants received in the sale is causally connected to its wrongdoing in violating the Advisers Act. Defendants "actions contributed to the value of the Vireo AlphaSector business that Defendants then sold to F-Squared." D. 252 at pp. 22-23. This is particularly true as, up to and including through the sale, Defendants did not fulfill their on-going obligation to disclose the falsity of their marketing representations that was their fiduciary duty. D. 252 at 17-18. As the Vireo sale price was largely dependent on the number of clients who transferred to F-Squared (instead of terminating their client relationship), Defendants had a substantial incentive not to disclose their misrepresentations and the reason they were selling the business. D. 224-5, p. 34. Additionally, Navellier appears to have wanted to sell the Vireo business before the fraud became public and the firm faced a "big SEC enforcement fine," instead of disclosing to clients the problems. Ex. 15. Thus, there is no "clear break in or considerable attenuation of the causal connection between the illegality and the ultimate profits" from the sale. *Happ*, 392 F.3d at 32 (quoting *First City Fin. Corp., Ltd.*, 890 F.3d at 1232).

37. Adding the sale proceeds to the Vireo AlphaSector revenues discussed above, the total revenues equals $36,775,867 ($14,000,000 plus $22,775,867).

V. Non-Fraud Expenses May Be Deducted. Fraud-Furthering Expenses Should Not Be.

38. In *Liu*, the Court suggested that it is the province of the District Court, in the first instance, to determine what expenses equitably should be deducted from the disgorgement award. 140 S. Ct. at 1950 ("we leave it to the lower court to examine whether including those expenses in a profits-based remedy is consistent with the equitable principles underlying" the disgorgement-authorizing statute).

39. Expenses relating to the conduct of the legitimate business of providing investment advice to Defendants' clients will be deducted here because those expenses "arguably have value independent of fueling a fraudulent scheme." *Id*.

40. Plaintiff and Defendants start from essentially the same list of expenses, which have been apportioned to the Vireo business and do not include the non-Vireo part of NAI's investment advisory business. *See* Ex. 1; D. 278 at 13.

A. Legitimate Expenses That Should Be Deducted From Revenues

41. Expenses related to the legitimate investment advisory business conducted by NAI on behalf of Vireo clients should be deducted from revenues to determine the net profits of the wrongdoing.

42. The investment advisory agreements between Defendants and their victimized clients describe what investment advisory services Defendants contracted to provide them to after they had been fraudulently induced to sign up as clients. *E.g.,* Ex. 16, p. 2-3.

1. Research Expenses

43. These agreements indicate that the investment advisory fee clients paid was primarily to

implement the AlphaSector Strategy for clients (i.e., periodically determining what trades should be made in their accounts so that their investment followed the strategy). *Id.* ("to invest in securities in the market segment(s) designated … through the use of Navellier's proprietary fundamental and quantitative analysis.").

44. For the Vireo AlphaSector strategies, those trade instructions were exclusively supplied by F-Squared. Ex. 17 at 2. NAI paid F-Squared for those instructions. *Id.* As the Commission stated in its initial memorandum in support of its Motion for Entry of Final Judgment (D. 262 & 263), the amounts paid by Defendants to F-Squared for these trade signal represents expenses of the business of providing the AlphaSector trading strategy to the clients.

45. During the relevant time period, Defendants paid $13,502,785 to F-Squared to license the strategy. That expense is represented by the "Research" line of the Vireo Income Statement. Alex Decl., ¶ 10. That amount will be deducted from the revenues.

2. Salaries for Transmitting Instructions to Brokers, Trading and Other Administrative Tasks

46. NAI had to implement the AlphaSector trading instructions in client accounts. Once a week or once a month (for each of the strategies), NAI needed to send the trade instructions that arrived from F-Squared to the clients' brokers or custodians, or to implement the trades in the client accounts itself. The cost of the time of the employee who transmitted these instructions and/or implemented the trades, to the extent it can be substantiated by the Defendants, can be deducted from the disgorgement award as a cost of managing client accounts.

47. Investment advisory fees also were used to pay for administrative tasks for client accounts, including setting up new client accounts, handling account paperwork, billing

and processing account terminations. The portion of salaries of people performing these administrative tasks that are attributed to Vireo in the income statement can be deducted from revenues in this disgorgement calculation.

48. The Commission has estimated the amount of salary that should be deducted for trade instructions, trading, and administrative expenses, by estimating (below) the salaries of the Vireo marketing/sales staff and deducting that amount from total salaries. The amount left (the non-marketing salaries) is the Commission's reasonable approximation of salaries deductible from revenues in the disgorgement calculation. This method conservatively assumes that all non-marketing salaries at Vireo were for work done for the Defendants' clients, and is consistent with the Commission providing a reasonable approximation of disgorgement.

B. Expenses That Should Not Be Deducted

49. Many of the expenses listed on the NAI income statement do not have a value independent of Defendants' fraudulent scheme. Both *Liu* and long-standing equitable principles dictate that these expenses should not be deducted from revenues in the disgorgement calculation. *See Liu*, 140 S. Ct. at 1950 (emphasizing the deduction of "legitimate expenses"); Restatement (Third) of Restitution and Unjust Enrichment, § 51(5)(c) ("A conscious wrongdoer or a defaulting fiduciary … will ordinarily be denied any credit for … expenditures incurred directly in the commission of a wrong to the claimant."); *id.*, cmt. (h) ("The defendant will not be allowed a credit for the direct expenses of an attempt to defraud the claimant, even if these expenses produce some benefit to the claimant.").

1. Marketing Expenses

50. Defendants employed a large Vireo sales and marketing staff. The purpose of this sales and marketing staff was unrelated to providing services to Defendants' clients, the "legitimate" part of Defendants' Vireo business. To the contrary, the sales and marketing staff's purpose was to increase the number of clients who invested through NAI in Vireo AlphaSector strategies. Ex. 18 (R. 30(b)(6) Depo. of NAI) at 21:8-22:4. As determined in the Order and Memorandum granting partial summary judgment, the sales and marketing staff used the fraudulent marketing materials to induce prospective clients to sign up. In other words, Defendants' expenditures on sales and marketing amplified the harm caused by the Defendants' fraudulent marketing.

51. Defendants' marketing expenses can also be seen as the reinvestment of profits in expanding the fraud, rather than as an actual expense of the business. Defendants chose to take the money they were making from their fraud and reinvest it to acquire more clients and, in turn, additional fraud revenues, through the fraudulent marketing.

52. For these reasons, Defendants' sales and marketing expenses should not be deducted from revenues in this disgorgement calculation.

53. The Vireo income statement lists the following expenses which are not deducted in the Commission's calculation of disgorgement: salaries (for the sales and marketing staff), "marketing" costs, as well as meals, lodging, travel, entertainment, and automobile. Restatement (Third), Restitution and Unjust Enrichment, § 51, cmt. h (conscious wrongdoer's attempt to deduct the cost of services that the victim didn't ask for (here, marketing to other prospective clients) will "predictably be denied").

54. The Commission has provided a reasonable estimate of the salaries of the sales and marketing staff: $1,574,729, in the aggregate over the relevant time period. Declaration

of William Donahue ("Donahue Decl."), ¶ 8.

55. This total represents roughly 76 % of the salaries listed on the Vireo income statement over the relevant time period.[1] Alex Decl., ¶ 16.

56. The Vireo Income Statement also lists expenses characterized as "marketing." For the reasons already stated, these expenses are not deducted.

57. Expenses for meals, lodging, travel, entertainment, and automobile also all appear to relate to sales and marketing efforts, rather than to the provision of investment advisory services to existing clients. Thus, these expenses are not deducted.

2. Incentive Pay and Bonuses

58. At NAI, incentive pay and bonuses were tied, generally speaking, to the assets under management for Vireo in that year. Exs. 5, 9, 13. In other words, the incentive pay and bonus amounts were tied to the increases in managed client assets that Defendants were able to attain through their marketing. Because incentive pay and bonuses were closely related to the acquisition of more client assets, and not to the provision of services to clients, they are not (as applied here) legitimate business expenses and are not deducted.

3. Legal Expenses

59. At the end of the disgorgement period, a new $400,000 expense for "Legal & Accounting" appear that did not appear in prior years. Ex. 1

60. In 2013, NAI had two new legal expenses not previously incurred, both related to Vireo. First, the sale of the Vireo business to F-Squared. Second, NAI's response to the Commission's subpoena for documents. Similar to the expenses discussed above, neither is deductible as an expense related to the provision of services to Defendants' clients.

[1] This percentage will be used to apportion other expenses (such as lease) into marketing and non-marketing expenses, below.

The first is related to the continuation of the fraud by selling clients' accounts to F-Squared without disclosing the fraudulent misrepresentations. D. 252 at 22-23. The second is a litigation expense related to both the F-Squared litigation and this one. Ex. 22. As these legal expenses are unrelated to the provision of legitimate investment advisory services to clients, they should not be deducted.

VI. Additional Expenses Should Be Apportioned to Separate the Legitimate Expenses from Those That Should Not Be Deducted

61. "In determining net profit the court … may make such apportionments … as reason and fairness dictate, consistent with the object of" disgorgement. Restatement, Third, Restitution and Unjust Enrichment, §51(5) (2011). Apportionment "may involve … the proportion of overhead or other common expenses properly charged against these results in determining the net profits of the business in question." *Id.* at § 51, cmt g.

62. Here, the expenses listed as office/misc., delivery, postage, printing, all may relate to both the provision of investment advisory services to clients and to Defendants' marketing efforts. These expenses should be thus apportioned, and only the expenses related to the provision of client services deducted.

63. The total of these expenses over the relevant time period is $184,077. Alex. Decl., ¶ 16.

64. The Commission has suggested a reasonable method of apportioning these expenses, using the ratio of Vireo's marketing salaries (as estimated by the Commission) to total Vireo salaries. This ratio represents the portion of Vireo's other expenses that may be attributed to the marketing effort. The residual is deductible from revenues.

65. This ratio, as calculated by the Commission's accountant, is $1,574,729 (marketing salaries) to $2,069,327 (total salaries) over the relevant time period, or approximately 76%. Multiplying that percentage by the total office, delivery, postage, and printing

expenses for the time period yields $140,080. The residual, $43,997, shall be deducted from revenues. Alex. Decl., ¶ 16.

VII. Disgorgement Total

66. Defendants' total gross profit from their fraudulent scheme equals $36,775,867 ($14,000,000 plus $22,775,867).

67. "Legitimate expenses" deductible from revenues equals $14,041,380 (Research = $13,502,785, Non-Marketing Salaries = $494,598, and Related Non-Marketing Expenses (Office, Postage, Delivery and Printing) = $43,997). Alex Decl., ¶¶ 10-16.

68. Defendants' total disgorgement (*i.e.*, their net profits) equals $22,734,487. Alex Decl., ¶ 18.

VIII. Prejudgment Interest.

69. A district court has "broad discretion" to order a defendant to pay prejudgment interest on the disgorgement amount. *SEC v. First Jersey*, 101 F.3d 1450, 1476 (2d Cir. 1996).

70. "Courts have recognized that an assessment of prejudgment interest, like the disgorgement remedy, is intended to deprive wrongdoers of profits they illegally obtained by violating the securities laws." *Sargent*, 329 F.3d at 40 (citation omitted).

71. Without an award of prejudgment interest, a securities law violator receives an "interest-free loan" on his unjust enrichment. *Id*. at 41.

72. In SEC cases, courts typically calculate prejudgment interest using the rate established by the Internal Revenue Service for tax underpayment, which reasonably approximates the unjust benefit of a defendant's use of the money. *See First Jersey*, 101 F.3d at 1476; *Druffner*, 517 F. Supp. 2d at 512-13.

73. Using the Internal Revenue Service's interest rate for unpaid balances, prejudgment interest on $22,734,487 is $6,635,403, calculated through April 30, 2020. Alex Decl., ¶¶

17-19.

74. Defendants are hereby ordered to pay disgorgement of $22,734,487 plus prejudgment interest of $6,635,403, for a total of $29,369,890.

Dated: January 19, 2021

Respectfully submitted,

SECURITIES AND EXCHANGE COMMISSION

By its Attorneys,

/s/ Marc J. Jones
Marc J. Jones (Mass. Bar No. 645910)
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CERTIFICATE OF SERVICE

I certify that on January 19, 2021, a copy of the foregoing was electronically filed through the ECF system and will be sent electronically to all persons identified in the Notice of Electronic Filing and that paper copies will be sent to those indicated as non-registered participants.

Dated: January 19, 2021

/s/ Marc J. Jones

Adopted by the Court.
Sept. 21, 2021

Denise J. Casper
Denise J. Casper
U.S. District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. NAVELLIER & ASSOCIATES, INC. and LOUIS NAVELLIER, Defendants.	Case No. 17-cv-11633-DJC

~~PROPOSED~~ AMENDED FINAL JUDGMENT

On February 13, 2020, this Court allowed the Plaintiff Securities and Exchange Commission's Motion for Partial Summary Judgment on Counts One and Two of the Complaint finding that the Defendants intentionally or recklessly violated Sections 206(1) and 206(2) of the Investment Advisers Act of 1940 ("Advisers Act"). Subsequently, the Commission moved, with Defendants' consent, to dismiss the remaining counts of the Complaint which has been granted. Accordingly, the Court enters judgment as follows:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendants are permanently restrained and enjoined from violating Sections 206(1) and (2) of the Investment Advisers Act of 1940 ("Advisers Act") [15 U.S.C. §§ 80b-6(1)] by, directly or indirectly, using the mails or of any means or instrumentality of interstate commerce, (a) employing any device, scheme, or artifice to defraud any client or prospective clients, or (b) engaging in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client.

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) Defendants' officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendants or with anyone described in (a).

II.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendants are jointly and severally liable for disgorgement of $22,734,487, representing profits and sale proceeds gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of $6,635,403. Defendants shall satisfy this obligation by paying $29,369,890 to the Securities and Exchange Commission within 30 days after entry of this Final Judgment.

Defendants 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. Defendants 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; Navellier & Associates and Louis Navellier as Defendants in this action, and specifying that payment is made pursuant to this Final Judgment.

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

If disgorgement is ordered, 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. Defendants shall pay post judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961.

The Commission shall hold the funds (collectively, the "Fund") and may propose a plan to distribute the Fund subject to the Court's approval. The Court shall retain jurisdiction over the administration of any distribution of the Fund. If the Commission staff determines that the Fund will not be distributed, 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 shall pay post judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961.

III.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Navellier & Associates shall pay a civil penalty in the amount of $2,000,000 and Louis Navellier shall pay

a civil penalty in the amount of $500,000 to the Securities and Exchange Commission pursuant to Section 209(e) or the Advisers Act [15 U.S.C. §80b-9(e)]. Defendants shall make this payment within 30 days after entry of this Final Judgment.

Defendants 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. Defendants 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

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Defendants shall simultaneously transmit photocopies of evidence of payment and case identifying information to the Commission's counsel in this action. By making this payment, Defendants relinquishes all legal and equitable right, title, and interest in such funds and no part of the funds shall be returned to Defendants. The Commission shall send the funds paid pursuant to this Final Judgment to the United States Treasury. Defendants shall pay post-judgment interest on any delinquent amounts pursuant to 28 USC § 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.

So ordered.

Sept. 21, 2021

Denise J. Casper

Hon. Denise J. Casper
United States District Court Judge

Dated: _____

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 5520 / June 12, 2020

ADMINISTRATIVE PROCEEDING
File No. 3-19826

In the Matter of **LOUIS NAVELLIER and NAVELLIER & ASSOCIATES, INC.,** **Respondents.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTIONS 203(e) and 203(f) OF THE INVESTMENT ADVISERS ACT OF 1940 AND NOTICE OF HEARING**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Sections 203(e) and 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") against Louis Navellier and Navellier & Associates, Inc. ("NAI", collectively,"Respondents").

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. From at least 2010 to the present, Respondents acted as investment advisers pursuant to the definition in the Advisers Act, 15 U.S.C. § 80b-2(a)(11).

2. From the founding of NAI through the present, Mr. Navellier was NAI's Chief Investment Officer and Chief Executive Officer. He also owned at least 75% of NAI during that time, increasing his ownership to 100% after August 2013. Mr. Navellier is 62 years old and resides in Manalapan, Florida and Reno, Nevada.

3. NAI is located in Reno, Nevada, and has been registered with the Commission as an investment adviser since October 1987.

OS Received 02/14/2023

B. ENTRY OF THE INJUNCTIONS

4. On June 2, 2020, a final judgment was entered against Respondents, permanently enjoining them from future violations of Sections 206(1) and 206(2) of the Advisers Act, in the civil action entitled Securities and Exchange Commission v. Navellier & Associates, Inc., et al., Civil Action Number 1:17-CV-11633, in the United States District Court for the District of Massachusetts. The final judgment also orders Respondents jointly and severally to pay disgorgement of $28,964,571, including $6,513,619 in prejudgment interest, as well as civil penalties against Navellier & Associates in the amount of $2,000,000 and against Mr. Navellier in the amount of $500,000.

5. The Commission's complaint alleged that, from at least 2010 to approximately August 2013, defendants breached their fiduciary duties and defrauded their advisory clients and prospective clients through the use of marketing materials that included false and misleading statements regarding the performance of the firm's Vireo AlphaSector investment strategies that they offered.

6. In its February 13, 2020 Order granting the Commission's motion for partial summary judgment, the District Court found that Respondents knew there were misleading statements in their marketing materials and that there had been inadequate due diligence, yet they failed to inform their clients. Instead, as the court determined, the defendants continued to sell the Vireo AlphaSector investment strategies despite their knowledge that representations about the strategies were false and misleading. The District Court concluded that each Respondent acted with scienter.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondents an opportunity to establish any defenses to such allegations;

B. What, if any, remedial action is appropriate in the public interest against Mr. Navellier pursuant to Section 203(f) of the Advisers Act; and,

C. What, if any, remedial action is appropriate and in the public interest against Navellier & Associates, Inc. pursuant to Section 203(e) of the Advisers Act.

IV.

IT IS ORDERED that a public hearing before the Commission for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed by further order of the Commission, pursuant to Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

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IT IS FURTHER ORDERED that Respondents shall file Answers to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice, 17 C.F.R. § 201.220(b).

IT IS FURTHER ORDERED that the Division of Enforcement and Respondents shall conduct a prehearing conference pursuant to Rule 221 of the Commission's Rules of Practice, 17 C.F.R. § 201.221, within fourteen (14) days of service of the Answer. The parties may meet in person or participate by telephone or other remote means; following the conference, they shall file a statement with the Office of the Secretary advising the Commission of any agreements reached at said conference. If a prehearing conference was not held, a statement shall be filed with the Office of the Secretary advising the Commission of that fact and of the efforts made to meet and confer.

If a Respondent fails to file the directed Answer, or fails to appear at a hearing or conference after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against him or it upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310.

This Order shall be served forthwith upon Respondents by any means permitted by the Commission's Rules of Practice.

Attention is called to Rule 151(b) and (c) of the Commission's Rules of Practice, 17 C.F.R. § 201.151(b) and (c), providing that when, as here, a proceeding is set before the Commission, all papers (including those listed in the following paragraph) shall be filed with the Office of the Secretary and all motions, objections, or applications will be decided by the Commission. The Commission requests that an electronic courtesy copy of each filing should be emailed to APFilings@sec.gov in PDF text-searchable format. Any exhibits should be sent as separate attachments, not a combined PDF.

The Commission finds that it would serve the interests of justice and not result in prejudice to any party to provide, pursuant to Rule 100(c) of the Commission's Rules of Practice, 17 C.F.R. § 201.100(c), that notwithstanding any contrary reference in the Rules of Practice to filing with or disposition by a hearing officer, all filings, including those under Rules 210, 221, 222, 230, 231, 232, 233, and 250 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.210, 221, 222, 230, 231, 232, 233, and 250, shall be directed to and, as appropriate, decided by the Commission. This proceeding shall be deemed to be one under the 75-day timeframe specified in Rule of Practice 360(a)(2)(i), 17 C.F.R. § 201.360(a)(2)(i), for the purposes of applying Rules of Practice 233 and 250, 17 C.F.R. §§ 201.233 and 250.

The Commission finds that it would serve the interests of justice and not result in prejudice to any party to provide, pursuant to Rule 100(c) of the Commission's Rules of Practice, 17 C.F.R. § 201.100(c), that the Commission shall issue a decision on the basis of the record in this proceeding, which shall consist of the items listed at Rule 350(a) of the Commission's Rules of Practice, 17 C.F.R. § 201.350(a), and any other document or item filed with the Office of the

Secretary and accepted into the record by the Commission. The provisions of Rule 351 of the Commission's Rules of Practice, 17 C.F.R. § 201.351, relating to preparation and certification of a record index by the Office of the Secretary or the hearing officer are not applicable to this proceeding.

The Commission will issue a final order resolving the proceeding after one of the following: (A) The completion of post-hearing briefing in a proceeding where the public hearing has been completed; (B) The completion of briefing on a motion for a ruling on the pleadings or a motion for summary disposition pursuant to Rule 250 of the Commission's Rules of Practice, 17 C.F.R. § 201.250, where the Commission has determined that no public hearing is necessary; or (C) The determination that a party is deemed to be in default under Rule 155 of the Commission's Rules of Practice, 17 C.F.R. § 201.155, and no public hearing is necessary.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

For the Commission, by its Secretary, pursuant to delegated authority.

Vanessa A. Countryman
Secretary

By: Jill M. Peterson
Assistant Secretary

OS Received 02/14/2023

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 5520/ June 12, 2020

ADMINISTRATIVE PROCEEDING
File No. 3-19826

In the Matter of

LOUIS NAVELLIER and NAVELLIER & ASSOCIATES, INC.

Respondents.

ANSWER OF RESPONDENTS LOUIS NAVELLIER and NAVELLIER & ASSOCIATES, INC. TO ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTIONS 203(e) AND 203(f) OF THE INVESTMENT ADVISERS ACT OF 1940 AND NOTICE OF HEARING

Without waiving the July 1, 2020 temporary stay order issued by the Fist Circuit Court of Appeals, but in light of no order yet by the hearing officer to stay the time for Respondents to answer,

Respondents Louis Navellier ("LN") and Navellier & Associates, Inc. ("NAI") (collectively "Respondents") answer as follows:

Renewed Objections

The Commission, and the hearing officer has no jurisdiction over this matter. This case is subject to a pending enforcement case on appeal to the First Circuit Court of Appeals captioned *Securities and Exchange Commission v. Navellier & Associates, Inc. et al.* appeal case No. 20-1581.

Respondents do not consent to and believe the administrative law judge assigned to this case is not a properly constitutionally appointed judicial officer *Lucia v. SEC* 138 S. Ct. 2044, 2056 (2018).

The Commission is barred by the statute of limitations from seeking the "disgorgement" and injunctive or any other relief it seeks here since the predicate alleged acts occurred (if at all) more than five years before June 12, 2020. 28 U.S.C. §2462; *Kokesh v. SEC* 137 S. Ct. 1635, 1644 (2017); *Gabelli v. SEC* 568 U.S. 442, 454 (2013)

The Commission is barred from bringing this action by its selective enforcement in violation of Respondents' right to equal protection rights under the United States Constitution.

With regard to the specific allegations in the Order Instituting Administrative Proceedings, Respondents, and each of them respond as follows:

I

It is not in the public interest that these proceedings be instituted against NAI or against LN. Neither of them violated the securities laws, including §206(1) or 206(2) of the Investment Advisers Act [15 U.S.C. §80b-6(1), (2)].

II

A.1. Respondents admit that from at least 2010 to the present each of them acted as investment advisers, but LN denies that he was the investment adviser to clients that retained NAI to provide them with investment advice using the Vireo AlphaSector Premium or Vireo AlphaSector Allocator strategies, or any other Vireo strategies.

A.2. Respondents admit that from NAI's founding to the present, Mr. Navellier was its Chief Investment Officer and Chief Executive Officer but deny that he was the investment adviser or performed investment advisory services for any clients using the Vireo AlphaSector Premium or Vireo AlphaSector Allocator strategies. Respondents admit Mr. Navellier owned at least 75% of NAI and increased his NAI ownership to 100% after September 30, 2013. Mr. Navellier admits he is 62 years old and resides in Manalapan, Florida and that he and his wife have a second home in Reno, Nevada.

A.3. Admit

B. ENTRY OF INJUNCTIONS

B.4. Respondents admit that a "Final Judgment" in *SEC v. Navellier & Associates, Inc.* case No. 17-cv-11633-DJC was entered against them purporting to enjoin them from future violations of Sections 206(1) and 206(2) of the Advisers Act, but deny that the "Final Judgment" was correct and assert it was an erroneous judgment not based on fact. Respondents further deny that either of them violated §§206(1) or 206(2) of the Advisers Act.

OS Received 02/14/2023

Respondents admit that the "Final Judgment" orders Respondents jointly and severally to pay disgorgement of $28,965,571 (which amount includes $6,513,619 in prejudgment interest, and a civil penalty of $2 million against NAI and a civil penalty of $500,000 against LN, but Respondents deny that there is any basis for disgorgement of any amount because neither Respondent violated §§206(1) or 206(2). In light of *Liu v. SEC* 500 U.S. ___ (2020) there is no joint liability. Neither Respondent defrauded or misled any clients, or prospective clients, Mr. Navellier made no statements in any Vireo marketing or otherwise about the Vireo AlphaSector Premium or Vireo AlphaSector Allocator strategies, NAI made no false or misleading statements, neither Respondent knew the statements in NAI's Vireo marketing materials was false, because they weren't false, and neither Respondent acted with scienter, i.e., neither intended to defraud or deceive any client or prospective client and clients and prospective clients were not defrauded or misled. To the contrary, they received exactly the type of Vireo AlphaSector strategy investment advice they were promised and those clients received a return of all their investments plus a return of over $278 million in profits as a result of NAI's investment advice.

There is no legal or factual basis for the $28,964,571 disgorgement award in the final judgment, especially in light of the United States Supreme Court holding in *Liu v. SEC* 500 U.S. ___ (2020) which was issued on June 22, 2020, i.e., after the District Court issued its erroneous Final Judgment disgorgement award (and after the Commission filed their Administrative Proceedings) which limits "disgorgement" to individual liability, not joint and several liability to an equitable remedy of a return to "victims" (clients) of only the defendants' "ill-gotten" gains-not the defendants' legitimately earned gains, and only for ill-gotten gains directly received for conduct which violated laws, and as to those "ill-gotten" gains, limited to only the net profits,

OS Received 02/14/2023

equitably accounted for, after deduction of actual expenses incurred and amounts paid to the "victims". Applying the correct law on disgorgement as set forth in *Liu*, there is no "disgorgement" because Respondents did not receive any "ill-gotten" gains. NAI's clients were not defrauded and Respondents did not receive any gains as a result of any violations of 206(1) or 206(2), Respondents earned all of their advisory fees and goodwill proceeds. The clients received $278 million in profits, so there is nothing to disgorge to them, especially after a proper equitable restitution/recission accounting for "net profits" (after deductions of expenses and credit for returns, including return of principle, fees and profits).

Since there were no violations and there is no disgorgement or prejudgment interest thereon, there should be no civil penalties.

B.5. Respondents deny all allegations asserted in the Commission's complaint and deny that any of those allegations are true; the allegations are false.

B.6. The February 13, 2020 Order says what it says, (it says there were false or fraudulent statements, not "misleading" statements) and the SEC summary judgment motion argued (but didn't' prove) that the statements were false. Respondents deny that the District Court's statements in its Order are true, they are not, and deny that the District Court's holdings are correct, they are not. Respondents deny that there were false or misleading statements in NAI's marketing, deny they knew there were misleading statements in NAI's marketing materials (Mr. Navellier made no statements in Vireo marketing materials), deny that there had been inadequate due diligence, deny they failed to inform their clients of any inadequate due diligence or fraud because there was no inadequate due diligence about which to inform clients. Respondents deny they continued to sell Vireo AlphaSector investment strategies (neither NAI or Mr. Navellier sold Vireo AlphaSector strategies to clients) knowing the representations about the strategies

were false and misleading because the representations were not false and misleading and therefore Respondents did not know the representations were false and misleading because they weren't. The District Court order says what it says about scienter (actually extreme recklessness) but there was no factual or legal basis for the District Court's conclusions and the District Court's conclusions were wrong and unfounded. The Commission presented no admissible evidence that the statements were false and misleading, and they weren't- the statements, as shown by the evidence, were true.

III

Respondents assert that it is not necessary or appropriate or in the public interest that public administrative proceeding be instituted against Respondents because they did not commit the violations asserted by the Commission. In fact, this entire Administrative Proceeding is meritless and has been brought in bad faith and for improper purpose by the Commission to punish Respondents for not agreeing to rescind the settlement agreement they entered into with the Commission after the Commission breached the settlement agreement and demanded different terms than had been agreed to previously.

III.A. Deny that the allegations in Section II are true, admit Respondents should have an opportunity to establish the allegations are meritless and to establish their defenses, but this entire Administrative Proceeding should be dismissed for lack of jurisdiction, invalidity of the Final Judgment, stay pending the Appeal of said Final Judgment and the hearing officer's lack of authority to hear or determine the case *Lucia v. SEC* supra and the lack of any right to disgorgement, prejudgment interest and/or civil penalties

III.B. Deny that any "remedial actions" are appropriate or in the public interest and assert that it is in the public interest for Mr. Navellier to continue to be registered and to act as an investment adviser.

III.C. Deny that any "remedial actions" are appropriate or in the public interest and assert that it is in the public interest for NAI to continue to be registered and to act as an investment adviser.

IV

IV First Paragraph, if jurisdiction is proper for this Administrative Proceeding (Respondents deny that it is) then Respondents admit and agree with the first paragraph of IV.

IV Second Paragraph, deny that Respondents should file answers within 20 days of service in light of the First Circuit's order temporarily staying these proceedings and the Commission agreement that Respondents' time to answer is temporarily stayed.

IV Third Paragraph, subject to lack of jurisdiction objections, admit to proceedings set forth in this paragraph

IV Fourth Paragraph, deny as speculative and therefore objected, to for lack of jurisdiction as to these proceedings.

IV Fifth Paragraph, admit.

IV Sixth Paragraph, admit.

IV Seventh Paragraph, deny all allegations in said paragraph, i.e., this proceeding is not in the public interest and will result in prejudice to Respondents.

OS Received 02/14/2023

IV Eighth Paragraph, deny that jurisdiction is proper here, but admit if the proceeding goes forward or is not stayed pending a decision on the appeal in the Fist Circuit, that a written decision should be issued based on the record in these proceedings.

IV Ninth Paragraph, deny.

IV Tenth Paragraph, admit.

Affirmative Defenses

Respondents assert the following separate and additional defenses, all of which are pleaded in the alternative, and none of which constitutes an admission with respect to any of the allegations of the Order or an admission that the SEC is entitled to any relief whatsoever. By designating the following affirmative defenses, Respondents do not in any way waive or limit any defenses which are or may be raised by their denials and averments set forth herein.

1. The Order fails to state a claim upon which relief may be granted and should be dismissed.
2. The SEC's claims are barred, in whole or in part, because, at all times mentioned in the Order and with respect to all matters referenced therein, Respondents acted in good faith, and did not know, and in the exercise of reasonable care could not have known, of any alleged misstatements or omissions referenced in the Order **if there were any misstatements or false statements, they were the result of NAI and its employees being the victims of F-Squared's and its employees' "fraud" and misstatements which Respondents did not know and did not reasonably believe**

to be untrue or incorrect, i.e., Respondents were not the perpetrators of any false statements.

3. The SEC's claims are barred, in whole or in part because, at all times mentioned in the Order and with respect to all matters referenced therein, any and all actions taken by Respondents were proper and consistent with their duties and obligations.
4. The SEC's claims are barred, in whole or in part, by the applicable statutes of limitations or repose **and/or by laches.**
5. The SEC's claims are barred, in whole or in part, to the extent that those claims seek to impose on Respondents any duties or obligation that are inconsistent with those imposed pursuant to law **and in seeking to impose liability for which no law, valid or applicable rules or regulations exist and under Investment Advisers Act §206(1) and (2) thereunder which are unconstitutionally vague, particularly in light of "no action" letters such as the SEC's Clover letter, which allows investment advisers to publish hypothetical (back tested) performance and due to the SEC's refusal to clearly explain when and how hypothetical or back tested performance can be published and what disclosures (if any) need to be made to make it not misleading.**
6. The SEC's claims are barred, in whole or in part, because the alleged misrepresentations or omissions and any allegedly false or misleading statements were not "material" to a reasonable investor in light of the totality of the circumstances.

7. The SEC's claims are barred, in whole or in part, on the grounds that Respondents did not act at any time with scienter or intent to deceive, manipulate, or defraud investors or anyone else.
8. The SEC's claims are barred, in whole or in part, because Respondents had no reasonable ground to believe, and did not believe, that the statements referenced in the Order were untrue or contained any material omission.
9. The SEC's claims are barred, in whole or in part, because any alleged misrepresentations or allegedly false or misleading statements or omissions referenced in the Order were based on information supplied by other sources, which information Respondents reasonably believed to be true.
10. The SEC's claims are barred, in whole or in part, because material information alleged to have been omitted was in fact adequately disclosed to and/or otherwise known to investors.
11. The SEC's claims for injunctive relief are barred; the five year statute of limitations 28 U.S.C. §2462 and are further barred in whole or in part, because the SEC has an adequate remedy at law, the SEC has not satisfied the prerequisites for injunctive relief, and there is no likelihood that Respondents will commit any future violation of the securities laws.
12. Respondents are not liable for any statements not made by them.
13. **Respondents' actions were not negligent and did not fall below the standard of care for persons in like circumstances. Respondents were the victims of alleged fraud and misrepresentations by F-Squared.**

14. **The Commission has engaged in selective enforcement by bringing this action and these claims against Respondents and each of them and all claims asserted by the SEC herein should be dismissed as violating Respondents' constitutional rights to equal protection of the law and to not be treated (have an enforcement action brought against them) differently or more harshly than those similarly situated to NAI and to Mr. Navellier including, but not limited to, Wells Fargo Advisors, Trent Donat, Patti Loepker, and relevant Wells Fargo Advisors' compliance officers and investment advisors and brokers at Wells Fargo Advisors who reviewed and advised their clients to have their investments managed or jointly managed under wrap fee or duel contract agreements by Vireo, NAI, or F-Squared or Wells Fargo Advisors, or Beaumont or others using the same F-Squared derived AlphaSector marketing materials, all of which contained the same F-Squared 2001-2008 AlphaSector "performance figures", live money" or "live assets" or "not back tested" statements. They were not enforced against by the SEC or in the same way the SEC has sought to enforce against NAI and Mr. Navellier. The SEC has selectively enforced against Respondents, i.e., the SEC has not enforced against or sought to enforce against the following and other, investment advisors and individual investment advisors and their executive, or control persons or sought the same remedies, such as a lifetime ban or any bar from being an investment advisor against others, but not limited to, entities even though they made the same allegedly false or misleading "2001-2008 AlphaSector performance" and "live money" and "not back tested" representations in their marketing materials to investors or potential investors**

that the SEC claims here Respondents made and which representations the SEC claims violated §206(1) and (2) or the Investment Advisers Act. The SEC has not sought to ban any of the following persons or entities or others for these alleged frauds (except Howard Present who allegedly created and perpetrated the alleged AlphaSector fraud). The SEC has only sought to enforce with a ban from being an investment advisor or affiliated with an investment adviser against Respondents who did the same or less that the following investment advisers against whom the SEC has not sought enforcement against the "class of one" (NAI and Mr. Navellier) has no rational basis and there is no valid reason for the SEC to seek to ban Respondents from being investment advisers for allegedly doing the same or less allegedly violative acts in connection with advertising AlphaSector performance history than the following investment advisers. In the alternative, the SEC is selectively enforcing against Respondents by bringing this action and seeking to ban Respondents from being investment advisers while failing or refusing to seek an enforcement or the same enforcement against the persons and entities identified below who are similarly situated and who allegedly committed the same alleged §206 violations that Respondents allegedly committed because the Respondents exercised their constitutional right to petition the courts to defend against the SEC's unfounded claims (of alleged Investment Advisers Act §206 violations). Thus, when NAI declined the SEC's "revised" settlement offer to resolve the alleged §206 violations (NAI had accepted the SEC's settlement offer and had a settlement with the SEC) but after NAI accepted it the SEC demanded a change in the settlement agreement

and demanded a new settlement agreement with censure and "willful" terms) the SEC brought the civil action and this administrative proceeding to punish NAI and to punish and coerce Mr. Navellier (with the SEC's new threat and action seeking to ban Mr. Navellier from being an investment adviser) for not agreeing, initially, to change their existing settlement agreement and for exercising their constitutional right to petition (defend themselves) for redress in the courts. The SEC has continued its selective enforcement by continuing to pursue the civil litigation and this administrative proceeding even after Respondents agreed to a new settlement on better terms than the SEC had previously agreed to on May 30, 2017. Thus, the SEC breached its settlement agreement and thereafter is refusing to agree to "settle" to its own settlement terms. The SEC is selectively continuing to pursue the civil case and this administrative proceeding to ban Respondents from being investment advisers to punish them for refusing to modify their existing settlement agreement and for having exercised their constitutional right to petition the courts for redress. This selective enforcement administrative proceeding (and the civil case) should be dismissed because it violates Respondents' rights to equal protection of the laws. The persons and entities who are similarly situated (who allegedly committed the same alleged acts and omissions by publishing the same allegedly "false" AlphaSector statements as Respondents are believed to include, but are not limited to:

5T WEALTH MANAGEMENT, LLC
ALSCOTT INVESTMENTS
AMERIPRISE FINANCIAL SERVICES, INC
AMN INVESTMENTS
ANONYMOUS
ANDERSON FISHER LLC
ARGENTUS PARTNERS, LLC (FORMERLY SUMMIT ALLIANCE)
AWAS
AYLWARD, GEORGE (VIRTUS INVESTMENT PARTNERS)
BANYAN PARTNERS
BATCHELAR, PETER (VIRTUS INVESTMENT PARTNERS)
BEAUMONT FINANCIAL PARTNERS, LLC
BLUEPOINTE CAPITAL MANAGEMENT
BOSTON FINANCIAL MANAGEMENT
BRENDEL & FISHER WEALTH MANAGEMENT
BROOKSTONE CAPITAL MANAGEMENT, LLC
BROWN, KARA (F-SQUARED INVESTMENTS)
CAHILL, PAUL (VIRTUS INVESTMENTS)
CALDWELL TRUST COMPANY
CALLAN ASSOCIATES, INC.
CALTON & ASSOCIATES, INC.
CAMBRIDGE ASSOCIATES, LLC
CANTELLA & CO.
CANTELLA/CORNERSTONE INVESTMENT SERVICES, LLC
CAPITALROCK INVESTMENTS, LLC
CAPOBIANCO, MICHAEL (MORTON WEALTH ADVISORS)
CARSON WEALTH MANAGEMENT GROUP, LLC
CERUTTI, JEFFREY (VIRTUS INVESTMENT PARTNERS)
CFS INVESTMENT ADVISORY SERVICES
CHARLES CARROLL FINANCIAL PARTNERS, LLC
CHOATE HALL & STEWART
COMMONWEALTH FINANCIAL NETWORK
CONCERT WEALTH MANAGEMNT

CONGRESS WEALTH MANAGEMENT
COPELAND CAPITAL
CRICO (CONTROLLED RISK INSURANCE COMPANY)
DA DAVIDSON
DAGAN, LAURA (F-SQUARED INVESTMENTS)
NEWFOUND RESEARCH, LLC
DESKAVICH, DEBORAH (F-SQUARED INVESTMENTS)
EDGE PORTFOLIO
EMPERICAL ASSET MANAGEMENT
ENVESTNET, INC.
ESSEX FINANCIAL SERVICES
EVESTMENT ALLIANCE LLC
F-SQUARED
FAMILY ENDOWMENT PARTNERS
FERNWOOD INVESTMENT MANAGEMENT, LLC
FIDELITY BORKERAGE SERVICES
FINANCIAL TELESIS, INC.
FIRST SOUTHWEST
FIRST TRUST PORTFOLIOS LP
FISHMAN, MITCHELL (F-SQUARED INVESTMENTS)
FISHMAN, VADIM (F-SQUARED INVESTMENTS)
FOLIO RESEARCH, LLC
FOLIODYNAMIX
FOLIOMETRIX, LLC
F-SQUARED INVESTMENTS
FULCRUM EQUITY MANAGEMENT, LLC
GENWORTH FINANCIAL WEALTH MANAGEMENT, INC.
GLOBAL FINANCIAL PRIVATE CAPITAL
HAGGERTY, BRIAN (VIRTUS INVESTMENT PARTNERS)
HARBOR FINANCIAL SERVICES
HASENBERG, CHRISTOPHER
HORTER INVESTMENT MANAGEMENT, LLC
HT PARTNERS
HUNTINGTON_ASSET_ADVISORS_LIT
INFORMA INVESTMENT SOLUTIONS
IRON GATE PARTNERS, INC.
INSTITUTE FOR WEALTH MANAGEMENT
JUAN, VARGAS (F-SQUARED INVESTMENT MANAGEMENT)
KAYNE ANDERSON RUDNICK INVESTMENT MANAGEMENT
KLEOSSUM ADVISORS
KMS FINANCIAL SERVICES, INC.
LCG ASSOCIATES, INC.
LEONARD AND COMPANY
LM KOHN AND CO.
LPL FINANCIAL, LLC

LADENBURG THALMANN ASSET MANAGEMENT
LUDEMAN CAPITAL MANAGEMENT, INC.
M3 ADVISORY GROUP
MACRO CONSULTING
MARSH & MCLENNAN COMPANIES
MAYO CAPITAL
MCCLELLAND, GEORGE (F-SQUARED INVESTMENTS)
MCCORMACK, JOHN (VIRTUS INVESTMENT PARTNERS)
MEYER CAPITAL GROUP
MINDSHIFT_TECHNOLOGIES_LIT
MORNINGSTAR, INC.
MORTON, DAVID JAY
MORTON WEALTH ADVISORS
MORTON WEALTH ADVISORS (LITIGATION PRODUCTION)
MORTON WEALTH ADVISORS (PRIV LOG LITIGATION)
MV CAPITAL MANAGEMENT
MV CAPITAL MANAGEMENT (PRIV LOG)
NASDAQ OMX GROUP
NASDAQ OMX GROUP (PRIV LOG)
NATIXIS GLOBAL (LITIGATION PRODUCTION)
NAVELLIER & ASSOCIATES, INC.
NAVELLIER (PRIV LOG)
NELSON, JOHN (F-SQUARED INVESTMENTS)
NEWBURG CAPITAL (LITIGATION PRODUCTION)
NEWFOUND RESEARCH, LLC (LITIGATION PRODUCTION)
NEWFOUND RESEARCH, LLC
NEWFOUND RESEARCH, LLC (PRIV LOG)
SCHUSTER INTERVIEW NOTES
ONYX WEALTH ADVISORS
VIRTUS INVESTMENT PARTNERS (OTHER PARTY PRODUCTION)
PARAMETRIC
PLACEMARK INVESTMENT SERVICES, INC.
PLACEMARK INVESTMENT SERVICES (PRIV LOG)
PLANNING GROUP
PLATINUM WEALTH PARTNERS
PRESENT, HOWARD
PRESENT, HOWARD (LITIGATION PRODUCTION)
PROBITY ADVISORS, INC.
PROEQUITIES
PROSPERA FINANCIAL
PRICEWATERHOUSECOOPERS, LLP
QUADCAP WEALTH MANAGEMENT
RAYMOND JAMES FINANCIAL SERVICES
RAYMOND_JAMES (LITIGATION PRODUCTION)
RBC

REDHAWK WEALTH ADVISORS
RESOURCE HORIZONS GROUP
RICCI, STEPHEN
RISK PARDIGM GROUP, LLC
ROYAL WEALTH MANAGEMENT GROUP
SANTANGELO, RON
CHARLES ALBERS (INSTITUTIONAL INVESTOR ADVISERS)
SCOTT ANTRITT (IIA)
CHRISTIAN BEKMESSIAN (MACRO CONSULTING GROUP ("MCG"))
ROLAND CALDWELL (IIA)
GEORGE CHUANG (AEGON)
MARK CORTAZZO (MCG)
DOUGLAS DESMOND (MCG)
SAM ELAM (MCG)
STEPHEN ESPOSITIO (MCG)
TRACEY EVANS (AEGON)
MARK GIOVANNIELLO (COPELAND CAPITAL MANAGEMENT)
CAROL GUMBELEVICIUS (MCG)
MARC HANSON (IIA)
KIRK HORTER (HORTER CAPITAL MANAGEMENT)
MICHAEL JASTROW (AMERIPRISE) (F-2 LITIGATION PRODUCTION)
BRIAN KLIMKE (AEGON) (F-2 LITIGATION PRODUCTION)
ADELE LENNIG (AMERIPRISE)
BYRON MAGRUDER (AEGON)
MICHELLE MIELE (CANTELLA) (F-2 LITIGATION PRODUCTION)
CHRISTOPHER MORTARA (CANTELLA) (F-2 LITIGATION PRODUCTION)
THOMAS MOYER (MCG) (F-2 LITIGATION PRODUCTION)
LOUIS NAVELLIER (NAVELLIER) (F-2 LITIGATION PRODUCTION)
PETER NICOLAS (NAVELLIER) (F-2 LITIGATION PRODUCTION)
SCOTT NISHIMURA (AEGON) (F-2 LITIGATION PRODUCTION)
SONIA TORRICO NOTES RE: MCG (F-2 LITIGATION PRODUCTION)
BRUCE PALMA (AMERIPRISE) (F-2 LITIGATION PRODUCTION)
CHRISTINE PEDERSON (AMERIPRISE) (F-2 LITIGATION PRODUCTION)
GERALD PULVERMACHER (MCG) (F-2 LITIGATION PRODUCTION)
JOHN RANFT (NAVELLIER) (F-2 LITIGATION PRODUCTION)
ESITA RASLOVA (MCG) (F-2 LITIGATION PRODUCTION)
GARY RIBE (MCG) (F-2 LITIGATION PRODUCTION)
JOHN RILEY (CANTELLA) (F-2 LITIGATION PRODUCTION)
JOHN SOUZA (AEGON) (F-2 LITIGATION PRODUCTION)
STEPHEN STRAW (AEGON) (F-2 LITIGATION PRODUCTION)
HENRY THACKER JR (IIA) (F-2 LITIGATION PRODUCTION)
SUZANNE THACKER (IIA) (F-2 LITIGATION PRODUCTION)
ROBERT THOMPSON (IIA) (F-2 LITIGATION PRODUCTION)
TIMOTHY VIDENKA (IIA) (F-2 LITIGATION PRODUCTION)
SHERYL VIEIRA (IIA) (F-2 LITIGATION PRODUCTION)

SUE WALTMAN (AMERIPRISE) (F-2 LITIGATION PRODUCTION)
MICHAEL WICKRE (AMERIPRISE) (F-2 LITIGATION PRODUCTION)
MARCIA WILLIAMS (IIA) (F-2 LITIGATION PRODUCTION)
WITNESSES – NOTES COMPILATION (F-2 LITIGATION PRODUCTION)
JAMES WOODS (IIA) (F-2 LITIGATION PRODUCTION)
SECKEL CAPITAL ADVISORS, LLC
SEWARD KISSEL (F-2 LITIGATION PRODUCTION)
SHAMROCK ASSET MANAGEMENT
SHEPHERD KAPLAN LLC
SHEPHERD KAPLAN (PRIV LOG)
SIEGFIEDT, SHARON
SIMPSON THACHER
SIMPSON THACHER BARTLETT
SMARTLEAF, INC.
SOWELL MANAGEMENT SERVICES (SOWELL FINANCIAL SERVICES, LLC)
SPIRE WEALTH MANAGEMENT, LLC
STIFEL
STRATEGIC WEALTH PARTNERS (F-2 LITIGATION PRODUCTION)
STRUCTURED INVESTMENT MANAGEMENT, INC.
SUMMIT ALLIANCE COMPANIES (NOW KNOWN AS ARGENTUS PARTNERS, LLC)
TFGA (ONYX WEALTH ADVISORS)
TOMNEY, RICHARD (F-SQUARED)
TPW FINANCIAL
TRIMARC WEALTH MANAGEMENT
UNITED CAPITAL FINANCIAL ADVISERS, LLC
UNIVERSITY OF MASSACHUSETTS FOUNDATION
UNIVERSITY OF MASSACHUSETTS FOUNDATION (F-2 LITIGATION PRODUCTION)
US WEALTH MANAGEMENT
VARGAS, JUAN (F-SQUARED)
VARGAS, JUAN (F-2 LITIGATION PRODUCTION)
VERIZON
VIRTUS
VIRTUS INDEPENDENT TRUSTEES
VIRTUS INDEPENDENT TRUSTEES (PRIV LOG)
VIRTUS (PRIV LOG)
VOLT_WEALTH_MANAGEMENT
WALTMAN, FRANK (VIRTUS INVESTMENT PARTNERS)
WELLS FARGO ADVISORS
WELLSPRING INVESTMENT MANAGEMENT LLC
WILSHIRE ASSOCIATES INCORPORATED
WINSLOW EVANS & CROCKER
WOOD & WHITE
WRAPMANAGER, INC

Such acts by the SEC in seeking and then pursuing and continuing to only pursue Respondents in this manner and not seeking the same enforcement against the foregoing investment advisory firms (and others) similarly situated constitutes selective enforcement, which violates Respondents' constitutional rights to equal protection of the law and therefore all claims asserted by the SEC against NAI and against Mr. Navellier should be dismissed.

15. Respondents did not receive unjust enrichment or "ill-gotten" gains (especially after offset of benefits conferred to clients) and are not liable for "disgorgement" which must be determined pursuant to *Liu v. SEC* with all expenses and returns factored in when making an equitable accounting of disgorgement/restituting recission. Plaintiff has failed to join indispensable parties including, but not limited to, Wells Fargo Advisors and other investment advisers listed in the fourteenth affirmative defense.
16. Respondents presently lack knowledge or information sufficient to form a belief as to whether there may be other, as yet unstated, defenses available to them, and therefore expressly: (1) reserve the right to amend or supplement their Answer, defenses, and all other pleadings; and (2) reserve the right to assert any and all additional defenses under any applicable law in the event that discovery indicates such defenses would be appropriate.

WHEREFORE, Respondents pray for judgment as follows:

1. That the Order be dismissed with prejudice and that the relief sought by Commission be denied in its entirety;

2. That the Commission enter judgment in favor of Respondents;
3. That the Commission order an award of attorney's fees and other expenses in favor of Respondents, and
4. For such other and further relief as the Commission deem just and proper.

Respectfully submitted,

DATED: July 2, 2020 LAW OFFICES OF SAMUEL KORNHAUSER

By: _____

Samuel Kornhauser, Esq.
CA Bar No. 83528
Law Offices of Samuel Kornhauser
155 Jackson Street, Suite 1807
San Francisco, California, 94111
Telephone: (415) 981-6281
Email: skornhauser@earthlink.net
Attorney for Respondents

CERTIFICATE OF SERVICE

I hereby certify that this Answer was served by email to Marc Jones-JonesMarc@SEC.gov on this, July 2, 2020 to:

July 2, 2020 By: /s/ *Dan Cowan*
Dan Cowan

FORM ADV

UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION AND REPORT BY EXEMPT REPORTING ADVISERS

Primary Business Name: NAVELLIER & ASSOCIATES INC	**CRD Number: 107568**
Annual Amendment - All Sections	**Rev. 10/2021**
3/21/2022 1:10:18 PM	

WARNING: Complete this form truthfully. False statements or omissions may result in denial of your application, revocation of your registration, or criminal prosecution. You must keep this form updated by filing periodic amendments. See Form ADV General Instruction 4.

Item 1 Identifying Information

Responses to this Item tell us who you are, where you are doing business, and how we can contact you. If you are filing an *umbrella registration*, the information in Item 1 should be provided for the *filing adviser* only. General Instruction 5 provides information to assist you with filing an *umbrella registration*.

A. Your full legal name (if you are a sole proprietor, your last, first, and middle names):
NAVELLIER & ASSOCIATES INC

B. (1) Name under which you primarily conduct your advisory business, if different from Item 1.A.
NAVELLIER & ASSOCIATES INC

List on Section 1.B. of Schedule D any additional names under which you conduct your advisory business.

(2) If you are using this Form ADV to register more than one investment adviser under an *umbrella registration*, check this box ☐

If you check this box, complete a Schedule R for each relying adviser.

C. If this filing is reporting a change in your legal name (Item 1.A.) or primary business name (Item 1.B.(1)), enter the new name and specify whether the name change is of
☐ your legal name or ☐ your primary business name:

D. (1) If you are registered with the SEC as an investment adviser, your SEC file number: **801-30582**

(2) If you report to the SEC as an *exempt reporting adviser*, your SEC file number:

(3) If you have one or more Central Index Key numbers assigned by the SEC ("CIK Numbers"), all of your CIK numbers:

CIK Number
872163

E. (1) If you have a number ("*CRD* Number") assigned by the *FINRA's CRD* system or by the IARD system, your *CRD* number: **107568**

If your firm does not have a CRD number, skip this Item 1.E. Do not provide the CRD number of one of your officers, employees, or affiliates.

(2) If you have additional *CRD* Numbers, your additional *CRD* numbers:

No Information Filed

F. *Principal Office and Place of Business*

(1) Address (do not use a P.O. Box):

Number and Street 1:		Number and Street 2:	
ONE E. LIBERTY, SUITE 504			
City:	State:	Country:	ZIP+4/Postal Code:
RENO	Nevada	United States	89501-2107

If this address is a private residence, check this box: ☐

List on Section 1.F. of Schedule D any office, other than your principal office and place of business, at which you conduct investment advisory business. If you are applying for registration, or are registered, with one or more state securities authorities, you must list all of your offices in the state or states to which you are applying for registration or with whom you are registered. If you are applying for SEC registration, if you are registered only with the SEC, or if you are reporting to the SEC as an exempt reporting adviser, list the largest twenty-five offices in terms of numbers of employees as of the end of your most recently completed fiscal year.

(2) Days of week that you normally conduct business at your *principal office and place of business:*
◉ Monday - Friday ○ Other:

Normal business hours at this location:
7:00 AM TO 5:00 PM

(3) Telephone number at this location:
775-785-2300

(4) Facsimile number at this location, if any:
775-562-8212

(5) What is the total number of offices, other than your *principal office and place of business*, at which you conduct investment advisory business as of the end of your most recently completed fiscal year?
0

G. Mailing address, if different from your *principal office and place of business* address:

Number and Street 1:		Number and Street 2:	
City:	State:	Country:	ZIP+4/Postal Code:

If this address is a private residence, check this box: ☐

H. If you are a sole proprietor, state your full residence address, if different from your *principal office and place of business* address in Item 1.F.:

Number and Street 1:		Number and Street 2:	
City:	State:	Country:	ZIP+4/Postal Code:

	Yes	No
I. Do you have one or more websites or accounts on publicly available social media platforms (including, but not limited to, Twitter, Facebook and LinkedIn)?	◉	○

If "yes," list all firm website addresses and the address for each of the firm's accounts on publicly available social media platforms on Section 1.I. of Schedule D. If a website address serves as a portal through which to access other information you have published on the web, you may list the portal without listing addresses for all of the other information. You may need to list more than one portal address. Do not provide the addresses of websites or accounts on publicly available social media platforms where you do not control the content. Do not provide the individual electronic mail (e-mail) addresses of employees or the addresses of employee accounts on publicly available social media platforms.

J. Chief Compliance Officer

(1) Provide the name and contact information of your Chief Compliance Officer. If you are an *exempt reporting adviser*, you must provide the contact information for your Chief Compliance Officer, if you have one. If not, you must complete Item 1.K. below.

Name:		Other titles, if any:	
Telephone number:		Facsimile number, if any:	
Number and Street 1:		Number and Street 2:	
City:	State:	Country:	ZIP+4/Postal Code:

Electronic mail (e-mail) address, if Chief Compliance Officer has one:

(2) If your Chief Compliance Officer is compensated or employed by any *person* other than you, a *related person* or an investment company registered under the Investment Company Act of 1940 that you advise for providing chief compliance officer services to you, provide the *person's* name and IRS Employer Identification Number (if any):

Name:

IRS Employer Identification Number:

K. Additional Regulatory Contact Person: If a person other than the Chief Compliance Officer is authorized to receive information and respond to questions about this Form ADV, you may provide that information here.

Name:		Titles:	
Telephone number:		Facsimile number, if any:	
Number and Street 1:		Number and Street 2:	
City:	State:	Country:	ZIP+4/Postal Code:

Electronic mail (e-mail) address, if contact person has one:

	Yes	No
L. Do you maintain some or all of the books and records you are required to keep under Section 204 of the Advisers Act, or similar state law, somewhere other than your *principal office and place of business*?	◉	○

If "yes," complete Section 1.L. of Schedule D.

	Yes	No
M. Are you registered with a *foreign financial regulatory authority*?	○	◉

Answer "no" if you are not registered with a foreign financial regulatory authority, even if you have an affiliate that is registered with a foreign financial regulatory authority. If "yes," complete Section 1.M. of Schedule D.

	Yes	No
N. Are you a public reporting company under Sections 12 or 15(d) of the Securities Exchange Act of 1934?	○	◉

	Yes	No
O. Did you have $1 billion or more in assets on the last day of your most recent fiscal year?	○	◉

If yes, what is the approximate amount of your assets:

○ $1 billion to less than $10 billion

○ $10 billion to less than $50 billion

○ $50 billion or more

For purposes of Item 1.O. only, "assets" refers to your total assets, rather than the assets you manage on behalf of clients. Determine your total assets using the total assets shown on the balance sheet for your most recent fiscal year end.

P. Provide your *Legal Entity Identifier* if you have one:

A *legal entity identifier* is a unique number that companies use to identify each other in the financial marketplace. You may not have a *legal entity identifier*.

SECTION 1.B. Other Business Names

No Information Filed

SECTION 1.F. Other Offices

No Information Filed

SECTION 1.I. Website Addresses

List your website addresses, including addresses for accounts on publicly available social media platforms where you control the content (including, but not limited to, Twitter, Facebook and/or LinkedIn). You must complete a separate Schedule D Section 1.I. for each website or account on a publicly available social media platform.

Address of Website/Account on Publicly Available Social Media Platform: HTTP://WWW.NAVELLIER.COM

SECTION 1.L. Location of Books and Records

Complete the following information for each location at which you keep your books and records, other than your *principal office and place of business*. You must complete a separate Schedule D, Section 1.L. for each location.

Name of entity where books and records are kept:
VERITAS

Number and Street 1:		Number and Street 2:	
500 E. MIDDLEFIELD ROAD			
City:	State:	Country:	ZIP+4/Postal Code:
MOUNTAIN VIEW	California	United States	94043

If this address is a private residence, check this box: ☐

Telephone Number:	Facsimile number, if any:
866-837-4827	

This is (check one):

○ one of your branch offices or affiliates.

◉ a third-party unaffiliated recordkeeper.

○ other.

Briefly describe the books and records kept at this location.
EMAIL ARCHIVES

Name of entity where books and records are kept:
BROADRIDGE PROXY EDGE

Number and Street 1:
51 MERCEDES WAY

Number and Street 2:

City:
EDGEWOOD

State:
New York

Country:
United States

ZIP+4/Postal Code:
11717

If this address is a private residence, check this box: ☐

Telephone Number:
631-254-1675

Facsimile number, if any:

This is (check one):
- ○ one of your branch offices or affiliates.
- ◉ a third-party unaffiliated recordkeeper.
- ○ other.

Briefly describe the books and records kept at this location.
PROXY VOTING RECORDS

Name of entity where books and records are kept:
QUEST SYSTEMS

Number and Street 1:
ATTN: RYAN OKEEFFE 5822 ROSEVILLE ROAD

Number and Street 2:

City:
SACRAMENTO

State:
California

Country:
United States

ZIP+4/Postal Code:
95842

If this address is a private residence, check this box: ☐

Telephone Number:
9163387070

Facsimile number, if any:

This is (check one):
- ○ one of your branch offices or affiliates.
- ◉ a third-party unaffiliated recordkeeper.
- ○ other.

Briefly describe the books and records kept at this location.
ELECTRONIC FORMAT OF ALL SCANNED RECORDS.

Name of entity where books and records are kept:
INTERMEDIA

Number and Street 1:
825 E. MIDDLEFIELD ROAD

Number and Street 2:

City:
MOUNTAIN VIEW

State:
California

Country:
United States

ZIP+4/Postal Code:
94043

If this address is a private residence, check this box: ☐

Telephone Number:
800-379-7729

Facsimile number, if any:

This is (check one):
- ○ one of your branch offices or affiliates.
- ◉ a third-party unaffiliated recordkeeper.
- ○ other.

Briefly describe the books and records kept at this location.
E-MAIL ARCHIVES

SECTION 1.M. Registration with Foreign Financial Regulatory Authorities

No Information Filed

Item 2 SEC Registration/Reporting

Responses to this Item help us (and you) determine whether you are eligible to register with the SEC. Complete this Item 2.A. only if you are applying for SEC registration or submitting an *annual updating amendment* to your SEC registration. If you are filing an *umbrella registration*, the information in Item 2 should be provided for the *filing adviser* only.

A. To register (or remain registered) with the SEC, you must check **at least one** of the Items 2.A.(1) through 2.A.(12), below. If you are submitting an *annual updating amendment* to your SEC registration and you are no longer eligible to register with the SEC, check Item 2.A.(13). Part 1A Instruction 2 provides information to help you determine whether you may affirmatively respond to each of these items.

You (the adviser):

☑ (1) are a **large advisory firm** that either:

(a) has regulatory assets under management of $100 million (in U.S. dollars) or more; or

(b) has regulatory assets under management of $90 million (in U.S. dollars) or more at the time of filing its most recent *annual updating amendment* and is registered with the SEC;

☐ (2) are a **mid-sized advisory firm** that has regulatory assets under management of $25 million (in U.S. dollars) or more but less than $100 million (in U.S. dollars) and you are either:

(a) not required to be registered as an adviser with the *state securities authority* of the state where you maintain your *principal office and place of business*; or

(b) not subject to examination by the *state securities authority* of the state where you maintain your *principal office and place of business*;

*Click **HERE** for a list of states in which an investment adviser, if registered, would not be subject to examination by the state securities authority.*

(3) Reserved

☐ (4) have your *principal office and place of business* **outside the United States**;

☐ (5) are **an investment adviser (or subadviser) to an investment company** registered under the Investment Company Act of 1940;

☐ (6) are **an investment adviser to a company which has elected to be a business development company** pursuant to section 54 of the Investment Company Act of 1940 and has not withdrawn the election, and you have at least $25 million of regulatory assets under management;

☐ (7) are a **pension consultant** with respect to assets of plans having an aggregate value of at least $200,000,000 that qualifies for the exemption in rule 203A-2(a);

☐ (8) are a **related adviser** under rule 203A-2(b) that *controls*, is *controlled* by, or is under common *control* with, an investment adviser that is registered with the SEC, and your *principal office and place of business* is the same as the registered adviser;

If you check this box, complete Section 2.A.(8) of Schedule D.

☐ (9) are an **adviser** relying on rule 203A-2(c) because you **expect to be eligible for SEC registration within 120 days;**

If you check this box, complete Section 2.A.(9) of Schedule D.

☐ (10) are a **multi-state adviser** that is required to register in 15 or more states and is relying on rule 203A-2(d);

If you check this box, complete Section 2.A.(10) of Schedule D.

☐ (11) are an **Internet adviser** relying on rule 203A-2(e);

☐ (12) have **received an SEC order** exempting you from the prohibition against registration with the SEC;

If you check this box, complete Section 2.A.(12) of Schedule D.

☐ (13) are **no longer eligible** to remain registered with the SEC.

State Securities Authority Notice Filings* and State Reporting by *Exempt Reporting Advisers

C. Under state laws, SEC-registered advisers may be required to provide to *state securities authorities* a copy of the Form ADV and any amendments they file with the SEC. These are called *notice filings*. In addition, *exempt reporting advisers* may be required to provide *state securities authorities* with a copy of reports and any amendments they file with the SEC. If this is an initial application or report, check the box(es) next to the state(s) that you would like to receive notice of this and all subsequent filings or reports you submit to the SEC. If this is an amendment to direct your *notice filings* or reports to additional state(s), check the box(es) next to the state(s) that you would like to receive notice of this and all subsequent filings or reports you submit to the SEC. If this is an amendment to your registration to stop your *notice filings* or reports from going to state(s) that currently receive them, uncheck the box(es) next to those state(s).

Jurisdictions

☑ AL	☑ IL	☑ NE	☑ SC
☑ AK	☑ IN	☑ NV	☑ SD

☑ AZ	☑ IA	☑ NH	☑ TN
☑ AR	☑ KS	☑ NJ	☑ TX
☑ CA	☑ KY	☑ NM	☑ UT
☑ CO	☑ LA	☑ NY	☑ VT
☑ CT	☑ ME	☑ NC	☑ VI
☑ DE	☑ MD	☑ ND	☑ VA
☑ DC	☑ MA	☑ OH	☑ WA
☑ FL	☑ MI	☑ OK	☑ WV
☑ GA	☑ MN	☑ OR	☑ WI
☐ GU	☑ MS	☑ PA	☑ WY
☑ HI	☑ MO	☑ PR	
☑ ID	☑ MT	☑ RI	

If you are amending your registration to stop your notice filings or reports from going to a state that currently receives them and you do not want to pay that state's notice filing or report filing fee for the coming year, your amendment must be filed before the end of the year (December 31).

SECTION 2.A.(8) Related Adviser

If you are relying on the exemption in rule 203A-2(b) from the prohibition on registration because you *control*, are *controlled* by, or are under common *control* with an investment adviser that is registered with the SEC and your *principal office and place of business* is the same as that of the registered adviser, provide the following information:

Name of Registered Investment Adviser

CRD Number of Registered Investment Adviser

SEC Number of Registered Investment Adviser
-

SECTION 2.A.(9) Investment Adviser Expecting to be Eligible for Commission Registration within 120 Days

If you are relying on rule 203A-2(c), the exemption from the prohibition on registration available to an adviser that expects to be eligible for SEC registration within 120 days, you are required to make certain representations about your eligibility for SEC registration. By checking the appropriate boxes, you will be deemed to have made the required representations. You must make both of these representations:

☐ I am not registered or required to be registered with the SEC or a *state securities authority* and I have a reasonable expectation that I will be eligible to register with the SEC within 120 days after the date my registration with the SEC becomes effective.

☐ I undertake to withdraw from SEC registration if, on the 120th day after my registration with the SEC becomes effective, I would be prohibited by Section 203A(a) of the Advisers Act from registering with the SEC.

SECTION 2.A.(10) Multi-State Adviser

If you are relying on rule 203A-2(d), the multi-state adviser exemption from the prohibition on registration, you are required to make certain representations about your eligibility for SEC registration. By checking the appropriate boxes, you will be deemed to have made the required representations.

If you are applying for registration as an investment adviser with the SEC, you must make both of these representations:

☐ I have reviewed the applicable state and federal laws and have concluded that I am required by the laws of 15 or more states to register as an investment adviser with the *state securities authorities* in those states.

☐ I undertake to withdraw from SEC registration if I file an amendment to this registration indicating that I would be required by the laws of fewer than 15 states to register as an investment adviser with the *state securities authorities* of those states.

If you are submitting your *annual updating amendment*, you must make this representation:

☐ Within 90 days prior to the date of filing this amendment, I have reviewed the applicable state and federal laws and have concluded that I am required by the laws of at least 15 states to register as an investment adviser with the *state securities authorities* in those states.

SECTION 2.A.(12) SEC Exemptive *Order*

If you are relying upon an SEC *order* exempting you from the prohibition on registration, provide the following information:

Application Number:
803-

Date of *order*:

Item 3 Form of Organization

If you are filing an *umbrella registration*, the information in Item 3 should be provided for the *filing adviser* only.

A. How are you organized?

- (•) Corporation
- ( ) Sole Proprietorship
- ( ) Limited Liability Partnership (LLP)
- ( ) Partnership
- ( ) Limited Liability Company (LLC)
- ( ) Limited Partnership (LP)
- ( ) Other (specify):

If you are changing your response to this Item, see Part 1A Instruction 4.

B. In what month does your fiscal year end each year?
DECEMBER

C. Under the laws of what state or country are you organized?

State	Country
Nevada	United States

If you are a partnership, provide the name of the state or country under whose laws your partnership was formed. If you are a sole proprietor, provide the name of the state or country where you reside.

If you are changing your response to this Item, see Part 1A Instruction 4.

Item 4 Successions

	Yes	No
A. Are you, at the time of this filing, succeeding to the business of a registered investment adviser, including, for example, a change of your structure or legal status (e.g., form of organization or state of incorporation)?	( )	(•)

If "yes", complete Item 4.B. and Section 4 of Schedule D.

B. Date of Succession: (MM/DD/YYYY)

If you have already reported this succession on a previous Form ADV filing, do not report the succession again. Instead, check "No." See Part 1A Instruction 4.

SECTION 4 Successions

No Information Filed

Item 5 Information About Your Advisory Business - Employees, Clients, and Compensation

Responses to this Item help us understand your business, assist us in preparing for on-site examinations, and provide us with data we use when making regulatory policy. Part 1A Instruction 5.a. provides additional guidance to newly formed advisers for completing this Item 5.

Employees

If you are organized as a sole proprietorship, include yourself as an employee in your responses to Item 5.A. and Items 5.B.(1), (2), (3), (4), and (5). If an employee performs more than one function, you should count that employee in each of your responses to Items 5.B.(1), (2), (3), (4), and (5).

A. Approximately how many *employees* do you have? Include full- and part-time *employees* but do not include any clerical workers.
15

B. (1) Approximately how many of the *employees* reported in 5.A. perform investment advisory functions (including research)?
4

(2) Approximately how many of the *employees* reported in 5.A. are registered representatives of a broker-dealer?
0

(3) Approximately how many of the *employees* reported in 5.A. are registered with one or more *state securities authorities* as *investment adviser representatives*?
1

(4) Approximately how many of the *employees* reported in 5.A. are registered with one or more *state securities authorities* as *investment adviser representatives* for an investment adviser other than you?

1

(5) Approximately how many of the *employees* reported in 5.A. are licensed agents of an insurance company or agency?

0

(6) Approximately how many firms or other *persons* solicit advisory *clients* on your behalf?

9

In your response to Item 5.B.(6), do not count any of your employees and count a firm only once – do not count each of the firm's employees that solicit on your behalf.

Clients

In your responses to Items 5.C. and 5.D. do not include as "clients" the investors in a private fund you advise, unless you have a separate advisory relationship with those investors.

C. (1) To approximately how many *clients* for whom you do not have regulatory assets under management did you provide investment advisory services during your most recently completed fiscal year?

0

(2) Approximately what percentage of your *clients* are non-*United States persons*?

0%

D. *For purposes of this Item 5.D., the category "individuals" includes trusts, estates, and 401(k) plans and IRAs of individuals and their family members, but does not include businesses organized as sole proprietorships.*
The category "business development companies" consists of companies that have made an election pursuant to section 54 of the Investment Company Act of 1940. Unless you provide advisory services pursuant to an investment advisory contract to an investment company registered under the Investment Company Act of 1940, do not answer (1)(d) or (3)(d) below.

Indicate the approximate number of your *clients* and amount of your total regulatory assets under management (reported in Item 5.F. below) attributable to each of the following type of *client*. If you have fewer than 5 *clients* in a particular category (other than (d), (e), and (f)) you may check Item 5.D.(2) rather than respond to Item 5.D.(1).

The aggregate amount of regulatory assets under management reported in Item 5.D.(3) should equal the total amount of regulatory assets under management reported in Item 5.F.(2)(c) below.

If a *client* fits into more than one category, select one category that most accurately represents the *client* to avoid double counting *clients* and assets. If you advise a registered investment company, business development company, or pooled investment vehicle, report those assets in categories (d), (e), and (f) as applicable.

Type of *Client*	(1) Number of *Client(s)*	(2) Fewer than 5 *Clients*	(3) Amount of Regulatory Assets under Management
(a) Individuals (other than *high net worth individuals*)	287	☐	$ 72,383,387
(b) *High net worth individuals*	1353	☐	$ 644,869,599
(c) Banking or thrift institutions		☐	$
(d) Investment companies			$
(e) Business development companies			$
(f) Pooled investment vehicles (other than investment companies and business development companies)			$
(g) Pension and profit sharing plans (but not the plan participants or government pension plans)		☐	$
(h) Charitable organizations		☐	$
(i) State or municipal *government entities* (including government pension plans)		☐	$
(j) Other investment advisers		☐	$
(k) Insurance companies		☐	$
(l) Sovereign wealth funds and foreign official institutions		☐	$
(m) Corporations or other businesses not listed above	44	☐	$ 30,624,607
(n) Other: UIT (AAM)	1	☑	$ 227,611,535

Compensation Arrangements

E. You are compensated for your investment advisory services by (check all that apply):

☑ (1) A percentage of assets under your management
☐ (2) Hourly charges
☐ (3) Subscription fees (for a newsletter or periodical)

☐ (4) Fixed fees (other than subscription fees)
☐ (5) Commissions
☑ (6) *Performance-based fees*
☐ (7) Other (specify):

Item 5 Information About Your Advisory Business - Regulatory Assets Under Management

Regulatory Assets Under Management

F. (1) Do you provide continuous and regular supervisory or management services to securities portfolios? **Yes** ◉ **No** ○

(2) If yes, what is the amount of your regulatory assets under management and total number of accounts?

	U.S. Dollar Amount	Total Number of Accounts
Discretionary:	(a) $ 747,877,593	(d) 1,685
Non-Discretionary:	(b) $ 227,611,535	(e) 1
Total:	(c) $ 975,489,128	(f) 1,686

Part 1A Instruction 5.b. explains how to calculate your regulatory assets under management. You must follow these instructions carefully when completing this Item.

(3) What is the approximate amount of your total regulatory assets under management (reported in Item 5.F.(2)(c) above) attributable to *clients* who are non-*United States persons*?

$ 0

Item 5 Information About Your Advisory Business - Advisory Activities

Advisory Activities

G. What type(s) of advisory services do you provide? Check all that apply.

☐ (1) Financial planning services
☑ (2) Portfolio management for individuals and/or small businesses
☐ (3) Portfolio management for investment companies (as well as "business development companies" that have made an election pursuant to section 54 of the Investment Company Act of 1940)
☐ (4) Portfolio management for pooled investment vehicles (other than investment companies)
☑ (5) Portfolio management for businesses (other than small businesses) or institutional *clients* (other than registered investment companies and other pooled investment vehicles)
☐ (6) Pension consulting services
☐ (7) Selection of other advisers (including *private fund* managers)
☐ (8) Publication of periodicals or newsletters
☐ (9) Security ratings or pricing services
☐ (10) Market timing services
☑ (11) Educational seminars/workshops
☑ (12) Other(specify): UIT

Do not check Item 5.G.(3) unless you provide advisory services pursuant to an investment advisory contract to an investment company registered under the Investment Company Act of 1940, including as a subadviser. If you check Item 5.G.(3), report the 811 or 814 number of the investment company or investment companies to which you provide advice in Section 5.G.(3) of Schedule D.

H. If you provide financial planning services, to how many *clients* did you provide these services during your last fiscal year?

○ 0
○ 1 - 10
○ 11 - 25
○ 26 - 50
○ 51 - 100
○ 101 - 250
○ 251 - 500
○ More than 500

If more than 500, how many?
(round to the nearest 500)

In your responses to this Item 5.H., do not include as "clients" the investors in a private fund you advise, unless you have a separate advisory relationship with those investors.

Yes ◉ **No** ○

I. (1) Do you participate in a *wrap fee program*?

(2) If you participate in a *wrap fee program*, what is the amount of your regulatory assets under management attributable to acting as:

(a) *sponsor* to a *wrap fee program*
$ 0

(b) portfolio manager for a *wrap fee program*?
$ 72,383,387

(c) *sponsor* to and portfolio manager for the same *wrap fee program*?
$ 0

If you report an amount in Item 5.I.(2)(c), do not report that amount in Item 5.I.(2)(a) or Item 5.I.(2)(b).

If you are a portfolio manager for a wrap fee program, list the names of the programs, their sponsors and related information in Section 5.I.(2) of Schedule D.

If your involvement in a wrap fee program is limited to recommending wrap fee programs to your clients, or you advise a mutual fund that is offered through a wrap fee program, do not check Item 5.I.(1) or enter any amounts in response to Item 5.I.(2).

		Yes	No
J.	(1) In response to Item 4.B. of Part 2A of Form ADV, do you indicate that you provide investment advice only with respect to limited types of investments?	○	◉
	(2) Do you report *client* assets in Item 4.E. of Part 2A that are computed using a different method than the method used to compute your regulatory assets under management?	○	◉

K. Separately Managed Account *Clients*

	Yes	No
(1) Do you have regulatory assets under management attributable to *clients* other than those listed in Item 5.D.(3)(d)-(f) (separately managed account *clients*)?	◉	○
If yes, complete Section 5.K.(1) of Schedule D.		
(2) Do you engage in borrowing transactions on behalf of any of the separately managed account *clients* that you advise?	○	◉
If yes, complete Section 5.K.(2) of Schedule D.		
(3) Do you engage in derivative transactions on behalf of any of the separately managed account *clients* that you advise?	○	◉
If yes, complete Section 5.K.(2) of Schedule D.		
(4) After subtracting the amounts in Item 5.D.(3)(d)-(f) above from your total regulatory assets under management, does any custodian hold ten percent or more of this remaining amount of regulatory assets under management?	◉	○
If yes, complete Section 5.K.(3) of Schedule D for each custodian.		

L. Marketing Activities

	Yes	No
(1) Do any of your *advertisements* include:		
(a) Performance results?	○	○
(b) A reference to specific investment advice provided by you (as that phrase is used in rule 206(4)-1(a)(5))?	○	○
(c) *Testimonials* (other than those that satisfy rule 206(4)-1(b)(4)(ii))?	○	○
(d) *Endorsements* (other than those that satisfy rule 206(4)-1(b)(4)(ii))?	○	○
(e) *Third-party ratings*?	○	○
(2) If you answer "yes" to L(1)(c), (d), or (e) above, do you pay or otherwise provide cash or non-cash compensation, directly or indirectly, in connection with the use of *testimonials*, *endorsements*, or *third-party ratings*?	○	○
(3) Do any of your *advertisements* include *hypothetical performance* ?	○	○
(4) Do any of your *advertisements* include *predecessor performance* ?	○	○

SECTION 5.G.(3) Advisers to Registered Investment Companies and Business Development Companies

No Information Filed

SECTION 5.I.(2) *Wrap Fee Programs*

If you are a portfolio manager for one or more *wrap fee programs*, list the name of each program and its *sponsor*. You must complete a separate Schedule D Section 5.I.(2) for each *wrap fee program* for which you are a portfolio manager.

Name of *Wrap Fee Program*
ACCESS

Name of *Sponsor*
CHARLES SCHWAB

Sponsor's SEC File Number (if any) (e.g., 801-, 8-, 866-, 802-):
-

Sponsor's CRD Number (if any):

Name of *Wrap Fee Program*
FOLIOFN

Name of *Sponsor*
NATIONAL ASSET MANAGEMENT

Sponsor's SEC File Number (if any) (e.g., 801-, 8-, 866-, 802-):
-

Sponsor's CRD Number (if any):

Name of *Wrap Fee Program*
FULCRUM

Name of *Sponsor*
CORECAP ADVISORS

Sponsor's SEC File Number (if any) (e.g., 801-, 8-, 866-, 802-):
-

Sponsor's CRD Number (if any):

Name of *Wrap Fee Program*
INSTITUTIONAL FOR RETAIL CLIENTS

Name of *Sponsor*
CHARLES SCHWAB

Sponsor's SEC File Number (if any) (e.g., 801-, 8-, 866-, 802-):
-

Sponsor's CRD Number (if any):

Name of *Wrap Fee Program*
LOCKWOOD SPONSORED

Name of *Sponsor*
PERSHING

Sponsor's SEC File Number (if any) (e.g., 801-, 8-, 866-, 802-):
-

Sponsor's CRD Number (if any):

Name of *Wrap Fee Program*
MANAGED ACCOUNT NETWORK

Name of *Sponsor*
FIDELITY

Sponsor's SEC File Number (if any) (e.g., 801-, 8-, 866-, 802-):
-

Sponsor's CRD Number (if any):

Name of *Wrap Fee Program*
MANAGER ACCESS SELECT

Name of *Sponsor*
LPL

Sponsor's SEC File Number (if any) (e.g., 801-, 8-, 866-, 802-):
-

Sponsor's CRD Number (if any):

Name of *Wrap Fee Program*
MARKETPLACE

Name of *Sponsor*
CHARLES SCHWAB

Sponsor's SEC File Number (if any) (e.g., 801-, 8-, 866-, 802-):
-

Sponsor's CRD Number (if any):

Name of *Wrap Fee Program*
MARKETPLACE (CHARLES SCHWAB)

Name of *Sponsor*
MEYER CAPITAL

Sponsor's SEC File Number (if any) (e.g., 801-, 8-, 866-, 802-):
-

Sponsor's CRD Number (if any):

Name of *Wrap Fee Program*
RBC CORRESPONDENT SERVICES

Name of *Sponsor*
CORECAP ADVISORS

Sponsor's SEC File Number (if any) (e.g., 801-, 8-, 866-, 802-):
-

Sponsor's CRD Number (if any):

Name of *Wrap Fee Program*
SELECT UMA

Name of *Sponsor*
MORGAN STANLEY

Sponsor's SEC File Number (if any) (e.g., 801-, 8-, 866-, 802-):
-

Sponsor's CRD Number (if any):

SECTION 5.K.(1) Separately Managed Accounts

After subtracting the amounts reported in Item 5.D.(3)(d)-(f) from your total regulatory assets under management, indicate the approximate percentage of this remaining amount attributable to each of the following categories of assets. If the remaining amount is at least $10 billion in regulatory assets under management, complete Question (a). If the remaining amount is less than $10 billion in regulatory assets under management, complete Question (b).

Any regulatory assets under management reported in Item 5.D.(3)(d), (e), and (f) should not be reported below.

If you are a subadviser to a separately managed account, you should only provide information with respect to the portion of the account that you subadvise.

End of year refers to the date used to calculate your regulatory assets under management for purposes of your *annual updating amendment* . Mid-year is the date six months before the end of year date. Each column should add up to 100% and numbers should be rounded to the nearest percent.

Investments in derivatives, registered investment companies, business development companies, and pooled investment vehicles should be reported in those categories. Do not report those investments based on related or underlying portfolio assets. Cash equivalents include bank deposits, certificates of deposit, bankers' acceptances and similar bank instruments.

Some assets could be classified into more than one category or require discretion about which category applies. You may use your own internal methodologies and the conventions of your service providers in determining how to categorize assets, so long as the methodologies or conventions are consistently applied and consistent with information you report internally and to current and prospective clients. However, you should not double count assets, and your responses must be consistent with any instructions or other guidance relating to this Section.

(a)

Asset Type	Mid-year	End of year
(i) Exchange-Traded Equity Securities	%	%
(ii) Non Exchange-Traded Equity Securities	%	%
(iii) U.S. Government/Agency Bonds	%	%
(iv) U.S. State and Local Bonds	%	%
(v) *Sovereign Bonds*	%	%
(vi) Investment Grade Corporate Bonds	%	%
(vii) Non-Investment Grade Corporate Bonds	%	%
(viii) Derivatives	%	%
(ix) Securities Issued by Registered Investment Companies or Business Development Companies	%	%
(x) Securities Issued by Pooled Investment Vehicles (other than Registered Investment Companies or Business Development Companies)	%	%
(xi) Cash and Cash Equivalents	%	%
(xii) Other	%	%

Generally describe any assets included in "Other"

(b)

Asset Type	End of year
(i) Exchange-Traded Equity Securities	77 %
(ii) Non Exchange-Traded Equity Securities	0 %
(iii) U.S. Government/Agency Bonds	0 %
(iv) U.S. State and Local Bonds	0 %
(v) *Sovereign Bonds*	0 %
(vi) Investment Grade Corporate Bonds	23 %
(vii) Non-Investment Grade Corporate Bonds	0 %
(viii) Derivatives	0 %
(ix) Securities Issued by Registered Investment Companies or Business Development Companies	0 %
(x) Securities Issued by Pooled Investment Vehicles (other than Registered Investment Companies or Business Development Companies)	0 %
(xi) Cash and Cash Equivalents	0 %
(xii) Other	0 %

Generally describe any assets included in "Other"

SECTION 5.K.(2) Separately Managed Accounts - Use of *Borrowings* and Derivatives

☑ **No information is required to be reported in this Section 5.K.(2) per the instructions of this Section 5.K.(2)**

If your regulatory assets under management attributable to separately managed accounts are at least $10 billion, you should complete Question (a). If your regulatory assets under management attributable to separately managed accounts are at least $500 million but less than $10 billion, you should complete Question (b).

(a) In the table below, provide the following information regarding the separately managed accounts you advise. If you are a subadviser to a separately managed account, you should only provide information with respect to the portion of the account that you subadvise. End of year refers to the date used to calculate your regulatory assets under management for purposes of your *annual updating amendment*. Mid-year is the date six months before the end of year date.

In column 1, indicate the regulatory assets under management attributable to separately managed accounts associated with each level of gross notional exposure. For purposes of this table, the gross notional exposure of an account is the percentage obtained by dividing (i) the sum of (a) the dollar amount of any *borrowings* and (b) the *gross notional value* of all derivatives, by (ii) the regulatory assets under management of the account.

In column 2, provide the dollar amount of *borrowings* for the accounts included in column 1.

In column 3, provide aggregate *gross notional value* of derivatives divided by the aggregate regulatory assets under management of the accounts included in column 1 with respect to each category of derivatives specified in 3(a) through (f).

You may, but are not required to, complete the table with respect to any separately managed account with regulatory assets under management of less than $10,000,000.

Any regulatory assets under management reported in Item 5.D.(3)(d), (e), and (f) should not be reported below.

(i) Mid-Year

Gross Notional Exposure	(1) Regulatory Assets Under Management	(2) *Borrowings*	(3) Derivative Exposures					
			(a) *Interest Rate Derivative*	(b) *Foreign Exchange Derivative*	(c) *Credit Derivative*	(d) *Equity Derivative*	(e) *Commodity Derivative*	(f) *Other Derivative*
Less than 10%	$	$	%	%	%	%	%	%
10-149%	$	$	%	%	%	%	%	%
150% or more	$	$	%	%	%	%	%	%

Optional: Use the space below to provide a narrative description of the strategies and/or manner in which *borrowings* and derivatives are used in the management of the separately managed accounts that you advise.

(ii) End of Year

Gross Notional	(1) Regulatory Assets	(2)

Exposure	Under Management	*Borrowings*	(3) Derivative Exposures					
			(a) *Interest Rate Derivative*	(b) *Foreign Exchange Derivative*	(c) *Credit Derivative*	(d) *Equity Derivative*	(e) *Commodity Derivative*	(f) *Other Derivative*
Less than 10%	$	$	%	%	%	%	%	%
10-149%	$	$	%	%	%	%	%	%
150% or more	$	$	%	%	%	%	%	%

Optional: Use the space below to provide a narrative description of the strategies and/or manner in which *borrowings* and derivatives are used in the management of the separately managed accounts that you advise.

(b) In the table below, provide the following information regarding the separately managed accounts you advise as of the date used to calculate your regulatory assets under management for purposes of your *annual updating amendment*. If you are a subadviser to a separately managed account, you should only provide information with respect to the portion of the account that you subadvise.

In column 1, indicate the regulatory assets under management attributable to separately managed accounts associated with each level of gross notional exposure. For purposes of this table, the gross notional exposure of an account is the percentage obtained by dividing (i) the sum of (a) the dollar amount of any *borrowings* and (b) the *gross notional value* of all derivatives, by (ii) the regulatory assets under management of the account.

In column 2, provide the dollar amount of *borrowings* for the accounts included in column 1.

You may, but are not required to, complete the table with respect to any separately managed accounts with regulatory assets under management of less than $10,000,000.

Any regulatory assets under management reported in Item 5.D.(3)(d), (e), and (f) should not be reported below.

Gross Notional Exposure	(1) Regulatory Assets Under Management	(2) *Borrowings*
Less than 10%	$	$
10-149%	$	$
150% or more	$	$

Optional: Use the space below to provide a narrative description of the strategies and/or manner in which *borrowings* and derivatives are used in the management of the separately managed accounts that you advise.

SECTION 5.K.(3) Custodians for Separately Managed Accounts

Complete a separate Schedule D Section 5.K.(3) for each custodian that holds ten percent or more of your aggregate separately managed account regulatory assets under management.

(a) Legal name of custodian:
CHARLES SCHWAB & CO., INC.

(b) Primary business name of custodian:
CHARLES SCHWAB & CO., INC.

(c) The location(s) of the custodian's office(s) responsible for *custody* of the assets :

City:	State:	Country:
SAN FRANCISCO	California	United States

	Yes	No
(d) Is the custodian a *related person* of your firm?	○	◉

(e) If the custodian is a broker-dealer, provide its SEC registration number (if any)
8 - 16514

(f) If the custodian is not a broker-dealer, or is a broker-dealer but does not have an SEC registration number, provide its *legal entity identifier* (if any)

(g) What amount of your regulatory assets under management attributable to separately managed accounts is held at the custodian?
$ 554,812,054

Item 6 Other Business Activities

In this Item, we request information about your firm's other business activities.

A. You are actively engaged in business as a (check all that apply):

☐ (1) broker-dealer (registered or unregistered)
☐ (2) registered representative of a broker-dealer

- ☐ (3) commodity pool operator or commodity trading advisor (whether registered or exempt from registration)
- ☐ (4) futures commission merchant
- ☐ (5) real estate broker, dealer, or agent
- ☐ (6) insurance broker or agent
- ☐ (7) bank (including a separately identifiable department or division of a bank)
- ☐ (8) trust company
- ☐ (9) registered municipal advisor
- ☐ (10) registered security-based swap dealer
- ☐ (11) major security-based swap participant
- ☐ (12) accountant or accounting firm
- ☐ (13) lawyer or law firm
- ☐ (14) other financial product salesperson (specify):

If you engage in other business using a name that is different from the names reported in Items 1.A. or 1.B.(1), complete Section 6.A. of Schedule D.

			Yes	No
B.	(1)	Are you actively engaged in any other business not listed in Item 6.A. (other than giving investment advice)?	○	◉
	(2)	If yes, is this other business your primary business?	○	○

If "yes," describe this other business on Section 6.B.(2) of Schedule D, and if you engage in this business under a different name, provide that name.

			Yes	No
	(3)	Do you sell products or provide services other than investment advice to your advisory *clients*?	○	◉

If "yes," describe this other business on Section 6.B.(3) of Schedule D, and if you engage in this business under a different name, provide that name.

SECTION 6.A. Names of Your Other Businesses

No Information Filed

SECTION 6.B.(2) Description of Primary Business

Describe your primary business (not your investment advisory business):

If you engage in that business under a different name, provide that name:

SECTION 6.B.(3) Description of Other Products and Services

Describe other products or services you sell to your *client*. You may omit products and services that you listed in Section 6.B.(2) above.

If you engage in that business under a different name, provide that name:

Item 7 Financial Industry Affiliations

In this Item, we request information about your financial industry affiliations and activities. This information identifies areas in which conflicts of interest may occur between you and your *clients*.

A. This part of Item 7 requires you to provide information about you and your *related persons*, including foreign affiliates. Your *related persons* are all of your *advisory affiliates* and any *person* that is under common *control* with you.

You have a *related person* that is a (check all that apply):

- ☐ (1) broker-dealer, municipal securities dealer, or government securities broker or dealer (registered or unregistered)
- ☐ (2) other investment adviser (including financial planners)
- ☐ (3) registered municipal advisor
- ☐ (4) registered security-based swap dealer
- ☐ (5) major security-based swap participant
- ☐ (6) commodity pool operator or commodity trading advisor (whether registered or exempt from registration)
- ☐ (7) futures commission merchant
- ☐ (8) banking or thrift institution
- ☐ (9) trust company
- ☐ (10) accountant or accounting firm
- ☐ (11) lawyer or law firm
- ☐ (12) insurance company or agency
- ☐ (13) pension consultant
- ☐ (14) real estate broker or dealer
- ☐ (15) sponsor or syndicator of limited partnerships (or equivalent), excluding pooled investment vehicles
- ☐ (16) sponsor, general partner, managing member (or equivalent) of pooled investment vehicles

Note that Item 7.A. should not be used to report that some of your employees perform investment advisory functions or are registered representatives of a broker-dealer. The number of your firm's employees who perform investment advisory functions should be disclosed under Item 5.B.(1). The number of your

firm's employees who are registered representatives of a broker-dealer should be disclosed under Item 5.B.(2).

Note that if you are filing an umbrella registration, you should not check Item 7.A.(2) with respect to your relying advisers, and you do not have to complete Section 7.A. in Schedule D for your relying advisers. You should complete a Schedule R for each relying adviser.

For each related person, including foreign affiliates that may not be registered or required to be registered in the United States, complete Section 7.A. of Schedule D.

You do not need to complete Section 7.A. of Schedule D for any related person if: (1) you have no business dealings with the related person in connection with advisory services you provide to your clients; (2) you do not conduct shared operations with the related person; (3) you do not refer clients or business to the related person, and the related person does not refer prospective clients or business to you; (4) you do not share supervised persons or premises with the related person; and (5) you have no reason to believe that your relationship with the related person otherwise creates a conflict of interest with your clients.

You must complete Section 7.A. of Schedule D for each related person acting as qualified custodian in connection with advisory services you provide to your clients (other than any mutual fund transfer agent pursuant to rule 206(4)-2(b)(1)), regardless of whether you have determined the related person to be operationally independent under rule 206(4)-2 of the Advisers Act.

SECTION 7.A. Financial Industry Affiliations

No Information Filed

Item 7 *Private Fund* Reporting

	Yes	No
B. Are you an adviser to any *private fund*?	○	◉

If "yes," then for each private fund that you advise, you must complete a Section 7.B.(1) of Schedule D, except in certain circumstances described in the next sentence and in Instruction 6 of the Instructions to Part 1A. If you are registered or applying for registration with the SEC or reporting as an SEC exempt reporting adviser, and another SEC-registered adviser or SEC exempt reporting adviser reports this information with respect to any such private fund in Section 7.B.(1) of Schedule D of its Form ADV (e.g., if you are a subadviser), do not complete Section 7.B.(1) of Schedule D with respect to that private fund. You must, instead, complete Section 7.B.(2) of Schedule D.

In either case, if you seek to preserve the anonymity of a private fund client by maintaining its identity in your books and records in numerical or alphabetical code, or similar designation, pursuant to rule 204-2(d), you may identify the private fund in Section 7.B.(1) or 7.B.(2) of Schedule D using the same code or designation in place of the fund's name.

SECTION 7.B.(1) *Private Fund* Reporting

No Information Filed

SECTION 7.B.(2) *Private Fund* Reporting

No Information Filed

Item 8 Participation or Interest in *Client* Transactions

In this Item, we request information about your participation and interest in your *clients*' transactions. This information identifies additional areas in which conflicts of interest may occur between you and your *clients*. Newly-formed advisers should base responses to these questions on the types of participation and interest that you expect to engage in during the next year.

Like Item 7, Item 8 requires you to provide information about you and your *related persons*, including foreign affiliates.

Proprietary Interest in *Client* Transactions

A. Do you or any *related person*:	Yes	No
(1) buy securities for yourself from advisory *clients*, or sell securities you own to advisory *clients* (principal transactions)?	○	◉
(2) buy or sell for yourself securities (other than shares of mutual funds) that you also recommend to advisory *clients*?	◉	○
(3) recommend securities (or other investment products) to advisory *clients* in which you or any *related person* has some other proprietary (ownership) interest (other than those mentioned in Items 8.A.(1) or (2))?	○	◉

Sales Interest in *Client* Transactions

B. Do you or any *related person*:	Yes	No
(1) as a broker-dealer or registered representative of a broker-dealer, execute securities trades for brokerage customers in which advisory *client* securities are sold to or bought from the brokerage customer (agency cross transactions)?	○	◉
(2) recommend to advisory *clients*, or act as a purchaser representative for advisory *clients* with respect to, the purchase of securities for	○	◉

which you or any *related person* serves as underwriter or general or managing partner?

(3) recommend purchase or sale of securities to advisory *clients* for which you or any *related person* has any other sales interest (other than the receipt of sales commissions as a broker or registered representative of a broker-dealer)? ○ ○

Investment or Brokerage Discretion

		Yes	No
C.	Do you or any *related person* have *discretionary authority* to determine the:		
	(1) securities to be bought or sold for a *client's* account?	◉	○
	(2) amount of securities to be bought or sold for a *client's* account?	◉	○
	(3) broker or dealer to be used for a purchase or sale of securities for a *client's* account?	◉	○
	(4) commission rates to be paid to a broker or dealer for a *client's* securities transactions?	◉	○
D.	If you answer "yes" to C.(3) above, are any of the brokers or dealers *related persons*?	○	◉
E.	Do you or any *related person* recommend brokers or dealers to *clients*?	◉	○
F.	If you answer "yes" to E. above, are any of the brokers or dealers *related persons*?	○	◉
G.	(1) Do you or any *related person* receive research or other products or services other than execution from a broker-dealer or a third party ("soft dollar benefits") in connection with *client* securities transactions?	◉	○
	(2) If "yes" to G.(1) above, are all the "soft dollar benefits" you or any *related persons* receive eligible "research or brokerage services" under section 28(e) of the Securities Exchange Act of 1934?	◉	○
H.	(1) Do you or any *related person*, directly or indirectly, compensate any *person* that is not an *employee* for *client* referrals?	◉	○
	(2) Do you or any *related person*, directly or indirectly, provide any *employee* compensation that is specifically related to obtaining *clients* for the firm (cash or non-cash compensation in addition to the *employee's* regular salary)?	○	◉
I.	Do you or any *related person*, including any *employee*, directly or indirectly, receive compensation from any *person* (other than you or any *related person*) for *client* referrals?	○	◉

In your response to Item 8.I., do not include the regular salary you pay to an employee.

In responding to Items 8.H. and 8.I., consider all cash and non-cash compensation that you or a related person gave to (in answering Item 8.H.) or received from (in answering Item 8.I.) any person in exchange for client referrals, including any bonus that is based, at least in part, on the number or amount of client referrals.

Item 9 Custody

In this Item, we ask you whether you or a *related person* has *custody* of *client* (other than *clients* that are investment companies registered under the Investment Company Act of 1940) assets and about your custodial practices.

		Yes	No
A.	(1) Do you have *custody* of any advisory *clients'*:		
	(a) cash or bank accounts?	○	◉
	(b) securities?	○	◉

If you are registering or registered with the SEC, answer "No" to Item 9.A.(1)(a) and (b) if you have custody solely because (i) you deduct your advisory fees directly from your clients' accounts, or (ii) a related person has custody of client assets in connection with advisory services you provide to clients, but you have overcome the presumption that you are not operationally independent (pursuant to Advisers Act rule 206(4)-2(d)(5)) from the related person.

(2) If you checked "yes" to Item 9.A.(1)(a) or (b), what is the approximate amount of *client* funds and securities and total number of *clients* for which you have *custody*:

U.S. Dollar Amount	Total Number of *Clients*
(a) $	(b)

If you are registering or registered with the SEC and you have custody solely because you deduct your advisory fees directly from your clients' accounts, do not include the amount of those assets and the number of those clients in your response to Item 9.A.(2). If your related person has custody of client assets in connection with advisory services you provide to clients, do not include the amount of those assets and number of those clients in your response to 9.A.(2). Instead, include that information in your response to Item 9.B.(2).

		Yes	No
B.	(1) In connection with advisory services you provide to *clients*, do any of your *related persons* have *custody* of any of your advisory *clients'*:		
	(a) cash or bank accounts?	○	◉
	(b) securities?	○	◉

You are required to answer this item regardless of how you answered Item 9.A.(1)(a) or (b).

(2) If you checked "yes" to Item 9.B.(1)(a) or (b), what is the approximate amount of *client* funds and securities and total number of *clients* for which your *related persons* have *custody*:

U.S. Dollar Amount	Total Number of *Clients*
(a) $	(b)

C. If you or your *related persons* have *custody* of *client* funds or securities in connection with advisory services you provide to *clients*, check all the following that apply:

(1) A qualified custodian(s) sends account statements at least quarterly to the investors in the pooled investment vehicle(s) you manage. ☐

(2) An *independent public accountant* audits annually the pooled investment vehicle(s) that you manage and the audited financial statements are distributed to the investors in the pools. ☐

(3) An *independent public accountant* conducts an annual surprise examination of *client* funds and securities. ☐

(4) An *independent public accountant* prepares an internal control report with respect to custodial services when you or your *related persons* are qualified custodians for *client* funds and securities. ☐

If you checked Item 9.C.(2), C.(3) or C.(4), list in Section 9.C. of Schedule D the accountants that are engaged to perform the audit or examination or prepare an internal control report. (If you checked Item 9.C.(2), you do not have to list auditor information in Section 9.C. of Schedule D if you already provided this information with respect to the private funds you advise in Section 7.B.(1) of Schedule D).

D. Do you or your *related person(s)* act as qualified custodians for your *clients* in connection with advisory services you provide to *clients*?

	Yes	No
(1) you act as a qualified custodian	○	◉
(2) your *related person(s)* act as qualified custodian(s)	○	◉

If you checked "yes" to Item 9.D.(2), all related persons that act as qualified custodians (other than any mutual fund transfer agent pursuant to rule 206(4)-2(b)(1)) must be identified in Section 7.A. of Schedule D, regardless of whether you have determined the related person to be operationally independent under rule 206(4)-2 of the Advisers Act.

E. If you are filing your *annual updating amendment* and you were subject to a surprise examination by an *independent public accountant* during your last fiscal year, provide the date (MM/YYYY) the examination commenced:

F. If you or your *related persons* have *custody* of *client* funds or securities, how many *persons*, including, but not limited to, you and your *related persons,* act as qualified custodians for your *clients* in connection with advisory services you provide to *clients?*

SECTION 9.C. *Independent Public Accountant*

No Information Filed

Item 10 Control Persons

In this Item, we ask you to identify every *person* that, directly or indirectly, *controls* you. If you are filing an *umbrella registration*, the information in Item 10 should be provided for the *filing adviser* only.

If you are submitting an initial application or report, you must complete Schedule A and Schedule B. Schedule A asks for information about your direct owners and executive officers. Schedule B asks for information about your indirect owners. If this is an amendment and you are updating information you reported on either Schedule A or Schedule B (or both) that you filed with your initial application or report, you must complete Schedule C.

	Yes	No
A. Does any *person* not named in Item 1.A. or Schedules A, B, or C, directly or indirectly, *control* your management or policies?	○	◉

If yes, complete Section 10.A. of Schedule D.

B. If any *person* named in Schedules A, B, or C or in Section 10.A. of Schedule D is a public reporting company under Sections 12 or 15(d) of the Securities Exchange Act of 1934, please complete Section 10.B. of Schedule D.

SECTION 10.A. *Control Persons*

No Information Filed

SECTION 10.B. *Control Person* Public Reporting Companies

No Information Filed

Item 11 Disclosure Information

In this Item, we ask for information about your disciplinary history and the disciplinary history of all your *advisory affiliates*. We use this information to determine whether to grant your application for registration, to decide whether to revoke your registration or to place limitations on your activities as an investment adviser, and to identify potential problem areas to focus on during our on-site examinations. One event may result in "yes" answers to more than one of the questions below. In accordance with General Instruction 5 to Form ADV, "you" and "your" include the *filing adviser* and all *relying advisers* under an *umbrella registration*.

Your *advisory affiliates* are: (1) all of your current *employees* (other than *employees* performing only clerical, administrative, support or similar functions); (2) all of your officers, partners, or directors (or any *person* performing similar functions); and (3) all *persons* directly or indirectly *controlling* you or *controlled* by you. If you are a "separately identifiable department or division" (SID) of a bank, see the Glossary of Terms to determine who your *advisory affiliates* are.

If you are registered or registering with the SEC or if you are an exempt reporting adviser, you may limit your disclosure of any event listed in Item 11 to ten years following the date of the event. If you are registered or registering with a state, you must respond to the questions as posed; you may, therefore, limit your disclosure to ten years following the date of an event only in responding to Items 11.A.(1), 11.A.(2), 11.B.(1), 11.B.(2), 11.D.(4), and 11.H.(1)(a). For purposes of calculating this ten-year period, the date of an event is the date the final order, judgment, or decree was entered, or the date any rights of appeal from preliminary orders, judgments, or decrees lapsed.

You must complete the appropriate Disclosure Reporting Page ("DRP") for "yes" answers to the questions in this Item 11.

	Yes	No
Do any of the events below involve you or any of your *supervised persons*?	◉	○

For "yes" answers to the following questions, complete a Criminal Action DRP:

A. In the past ten years, have you or any *advisory affiliate*:	Yes	No
(1) been convicted of or pled guilty or nolo contendere ("no contest") in a domestic, foreign, or military court to any *felony*?	○	◉
(2) been *charged* with any *felony*?	○	◉

If you are registered or registering with the SEC, or if you are reporting as an exempt reporting adviser, you may limit your response to Item 11.A.(2) to charges that are currently pending.

B. In the past ten years, have you or any *advisory affiliate*:		
(1) been convicted of or pled guilty or nolo contendere ("no contest") in a domestic, foreign, or military court to a *misdemeanor* involving: investments or an *investment-related* business, or any fraud, false statements, or omissions, wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, or a conspiracy to commit any of these offenses?	○	◉
(2) been *charged* with a *misdemeanor* listed in Item 11.B.(1)?	○	◉

If you are registered or registering with the SEC, or if you are reporting as an exempt reporting adviser, you may limit your response to Item 11.B.(2) to charges that are currently pending.

For "yes" answers to the following questions, complete a Regulatory Action DRP:

C. Has the SEC or the Commodity Futures Trading Commission (CFTC) ever:	Yes	No
(1) *found* you or any *advisory affiliate* to have made a false statement or omission?	○	◉
(2) *found* you or any *advisory affiliate* to have been *involved* in a violation of SEC or CFTC regulations or statutes?	○	◉
(3) *found* you or any *advisory affiliate* to have been a cause of an *investment-related* business having its authorization to do business denied, suspended, revoked, or restricted?	○	◉
(4) entered an *order* against you or any *advisory affiliate* in connection with *investment-related* activity?	○	◉
(5) imposed a civil money penalty on you or any *advisory affiliate*, or *ordered* you or any *advisory affiliate* to cease and desist from any activity?	○	◉

D. Has any other federal regulatory agency, any state regulatory agency, or any *foreign financial regulatory authority*:		
(1) ever *found* you or any *advisory affiliate* to have made a false statement or omission, or been dishonest, unfair, or unethical?	○	◉
(2) ever *found* you or any *advisory affiliate* to have been *involved* in a violation of *investment-related* regulations or statutes?	○	◉
(3) ever *found* you or any *advisory affiliate* to have been a cause of an *investment-related* business having its authorization to do business denied, suspended, revoked, or restricted?	○	◉
(4) in the past ten years, entered an *order* against you or any *advisory affiliate* in connection with an *investment-related* activity?	○	◉
(5) ever denied, suspended, or revoked your or any *advisory affiliate's* registration or license, or otherwise prevented you or any *advisory affiliate*, by *order*, from associating with an *investment-related* business or restricted your or any *advisory affiliate's* activity?	○	◉

E. Has any *self-regulatory organization* or commodities exchange ever:		
(1) *found* you or any *advisory affiliate* to have made a false statement or omission?	○	◉
(2) *found* you or any *advisory affiliate* to have been *involved* in a violation of its rules (other than a violation designated as a "*minor rule violation*" under a plan approved by the SEC)?	○	◉
(3) *found* you or any *advisory affiliate* to have been the cause of an *investment-related* business having its authorization to do business denied, suspended, revoked, or restricted?	○	◉
(4) disciplined you or any *advisory affiliate* by expelling or suspending you or the *advisory affiliate* from membership, barring or suspending you or the *advisory affiliate* from association with other members, or otherwise restricting your or the *advisory affiliate's* activities?	○	◉

F. Has an authorization to act as an attorney, accountant, or federal contractor granted to you or any *advisory affiliate* ever been revoked or suspended?	○	◉

		Yes	No
G.	Are you or any *advisory affiliate* now the subject of any regulatory *proceeding* that could result in a "yes" answer to any part of Item 11.C., 11.D., or 11.E.?	◉	○

For "yes" answers to the following questions, complete a Civil Judicial Action DRP:

			Yes	No
H.	(1)	Has any domestic or foreign court:		
		(a) in the past ten years, *enjoined* you or any *advisory affiliate* in connection with any *investment-related* activity?	◉	○
		(b) ever *found* that you or any *advisory affiliate* were *involved* in a violation of *investment-related* statutes or regulations?	◉	○
		(c) ever dismissed, pursuant to a settlement agreement, an *investment-related* civil action brought against you or any *advisory affiliate* by a state or *foreign financial regulatory authority*?	○	◉
	(2)	Are you or any *advisory affiliate* now the subject of any civil *proceeding* that could result in a "yes" answer to any part of Item 11.H.(1)?	◉	○

Item 12 Small Businesses

The SEC is required by the Regulatory Flexibility Act to consider the effect of its regulations on small entities. In order to do this, we need to determine whether you meet the definition of "small business" or "small organization" under rule 0-7.

Answer this Item 12 only if you are registered or registering with the SEC **and** you indicated in response to Item 5.F.(2)(c) that you have regulatory assets under management of less than $25 million. You are not required to answer this Item 12 if you are filing for initial registration as a state adviser, amending a current state registration, or switching from SEC to state registration.

For purposes of this Item 12 only:

- Total Assets refers to the total assets of a firm, rather than the assets managed on behalf of *clients*. In determining your or another *person's* total assets, you may use the total assets shown on a current balance sheet (but use total assets reported on a consolidated balance sheet with subsidiaries included, if that amount is larger).
- *Control* means the power to direct or cause the direction of the management or policies of a *person*, whether through ownership of securities, by contract, or otherwise. Any *person* that directly or indirectly has the right to vote 25 percent or more of the voting securities, or is entitled to 25 percent or more of the profits, of another *person* is presumed to *control* the other *person*.

		Yes	No
A.	Did you have total assets of $5 million or more on the last day of your most recent fiscal year?	○	○

If "yes," you do not need to answer Items 12.B. and 12.C.

B.	Do you:			
	(1)	*control* another investment adviser that had regulatory assets under management (calculated in response to Item 5.F.(2)(c) of Form ADV) of $25 million or more on the last day of its most recent fiscal year?	○	○
	(2)	*control* another *person* (other than a natural person) that had total assets of $5 million or more on the last day of its most recent fiscal year?	○	○
C.	Are you:			
	(1)	*controlled* by or under common *control* with another investment adviser that had regulatory assets under management (calculated in response to Item 5.F.(2)(c) of Form ADV) of $25 million or more on the last day of its most recent fiscal year?	○	○
	(2)	*controlled* by or under common *control* with another *person* (other than a natural person) that had total assets of $5 million or more on the last day of its most recent fiscal year?	○	○

Schedule A

Direct Owners and Executive Officers

1. Complete Schedule A only if you are submitting an initial application or report. Schedule A asks for information about your direct owners and executive officers. Use Schedule C to amend this information.
2. Direct Owners and Executive Officers. List below the names of:
   (a) each Chief Executive Officer, Chief Financial Officer, Chief Operations Officer, Chief Legal Officer, Chief Compliance Officer(Chief Compliance Officer is required if you are registered or applying for registration and cannot be more than one individual), director, and any other individuals with similar status or functions;
   (b) if you are organized as a corporation, each shareholder that is a direct owner of 5% or more of a class of your voting securities, unless you are a public reporting company (a company subject to Section 12 or 15(d) of the Exchange Act);
   Direct owners include any *person* that owns, beneficially owns, has the right to vote, or has the power to sell or direct the sale of, 5% or more of a class of your voting securities. For purposes of this Schedule, a *person* beneficially owns any securities: (i) owned by his/her child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, sharing the same residence; or (ii) that he/she has the right to acquire, within 60 days, through the exercise of any option, warrant, or right to purchase the security.
   (c) if you are organized as a partnership, all general partners and those limited and special partners that have the right to receive upon dissolution, or have contributed, 5% or more of your capital;
   (d) in the case of a trust that directly owns 5% or more of a class of your voting securities, or that has the right to receive upon dissolution, or has contributed, 5% or more of your capital, the trust and each trustee; and
   (e) if you are organized as a limited liability company ("LLC"), (i) those members that have the right to receive upon dissolution, or have contributed, 5% or more of your capital, and (ii) if managed by elected managers, all elected managers.

3. Do you have any indirect owners to be reported on Schedule B? ○ Yes ◉ No

4. In the DE/FE/I column below, enter "DE" if the owner is a domestic entity, "FE" if the owner is an entity incorporated or domiciled in a foreign country, or "I" if the owner or executive officer is an individual.

5. Complete the Title or Status column by entering board/management titles; status as partner, trustee, sole proprietor, elected manager, shareholder, or member; and for shareholders or members, the class of securities owned (if more than one is issued).

6. Ownership codes are: NA - less than 5% B - 10% but less than 25% D - 50% but less than 75%
A - 5% but less than 10% C - 25% but less than 50% E - 75% or more

7. (a) In the *Control Person* column, enter "Yes" if the *person* has *control* as defined in the Glossary of Terms to Form ADV, and enter "No" if the *person* does not have *control*. Note that under this definition, most executive officers and all 25% owners, general partners, elected managers, and trustees are *control persons*.
(b) In the PR column, enter "PR" if the owner is a public reporting company under Sections 12 or 15(d) of the Exchange Act.
(c) Complete each column.

FULL LEGAL NAME (Individuals: Last Name, First Name, Middle Name)	**DE/FE/I**	**Title or Status**	**Date Title or Status Acquired MM/YYYY**	**Ownership Code**	***Control Person***	**PR**	***CRD* No. If None: S.S. No. and Date of Birth, IRS Tax No. or Employer ID No.**
NAVELLIER, LOUIS, GENE	I	CHIEF COMPLIANCE OFFICER, CHIEF EXECUTIVE OFFICER, CHIEF INVESTMENT OFFICER	09/1988	E	Y	N	1792046

Schedule B

Indirect Owners

1. Complete Schedule B only if you are submitting an initial application or report. Schedule B asks for information about your indirect owners; you must first complete Schedule A, which asks for information about your direct owners. Use Schedule C to amend this information.

2. Indirect Owners. With respect to each owner listed on Schedule A (except individual owners), list below:

(a) in the case of an owner that is a corporation, each of its shareholders that beneficially owns, has the right to vote, or has the power to sell or direct the sale of, 25% or more of a class of a voting security of that corporation;

For purposes of this Schedule, a *person* beneficially owns any securities: (i) owned by his/her child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, sharing the same residence; or (ii) that he/she has the right to acquire, within 60 days, through the exercise of any option, warrant, or right to purchase the security.

(b) in the case of an owner that is a partnership, all general partners and those limited and special partners that have the right to receive upon dissolution, or have contributed, 25% or more of the partnership's capital;

(c) in the case of an owner that is a trust, the trust and each trustee; and

(d) in the case of an owner that is a limited liability company ("LLC"), (i) those members that have the right to receive upon dissolution, or have contributed, 25% or more of the LLC's capital, and (ii) if managed by elected managers, all elected managers.

3. Continue up the chain of ownership listing all 25% owners at each level. Once a public reporting company (a company subject to Sections 12 or 15(d) of the Exchange Act) is reached, no further ownership information need be given.

4. In the DE/FE/I column below, enter "DE" if the owner is a domestic entity, "FE" if the owner is an entity incorporated or domiciled in a foreign country, or "I" if the owner is an individual.

5. Complete the Status column by entering the owner's status as partner, trustee, elected manager, shareholder, or member; and for shareholders or members, the class of securities owned (if more than one is issued).

6. Ownership codes are: C - 25% but less than 50% E - 75% or more
D - 50% but less than 75% F - Other (general partner, trustee, or elected manager)

7. (a) In the *Control Person* column, enter "Yes" if the *person* has *control* as defined in the Glossary of Terms to Form ADV, and enter "No" if the *person* does not have *control*. Note that under this definition, most executive officers and all 25% owners, general partners, elected managers, and trustees are *control persons*.
(b) In the PR column, enter "PR" if the owner is a public reporting company under Sections 12 or 15(d) of the Exchange Act.
(c) Complete each column.

No Information Filed

Schedule D - Miscellaneous

You may use the space below to explain a response to an Item or to provide any other information.

Item 8 B (3)Louis Navellier and his family, upon occasion purchase trades in securities which Navellier & Associates trades for clients.

Schedule R

No Information Filed

DRP Pages

CRIMINAL DISCLOSURE REPORTING PAGE (ADV)

No Information Filed

REGULATORY ACTION DISCLOSURE REPORTING PAGE (ADV)

GENERAL INSTRUCTIONS

This Disclosure Reporting Page (DRP ADV) is an ○ INITIAL ***OR*** ◉ AMENDED response used to report details for affirmative responses to Items 11.C., 11.D., 11.E., 11.F. or 11.G. of Form ADV.

Regulatory Action

Check item(s) being responded to:

☐ 11.C(1)	☐ 11.C(2)	☐ 11.C(3)	☐ 11.C(4)	☐ 11.C(5)
☐ 11.D(1)	☐ 11.D(2)	☐ 11.D(3)	☐ 11.D(4)	☐ 11.D(5)
☐ 11.E(1)	☐ 11.E(2)	☐ 11.E(3)	☐ 11.E(4)	
☐ 11.F.	☑ 11.G.			

Use a separate DRP for each event or *proceeding* . The same event or *proceeding* may be reported for more than one *person* or entity using one DRP. File with a completed Execution Page.

One event may result in more than one affirmative answer to Items 11.C., 11.D., 11.E., 11.F. or 11.G. Use only one DRP to report details related to the same event. If an event gives rise to actions by more than one regulator, provide details for each action on a separate DRP.

PART I

A. The *person(s)* or entity(ies) for whom this DRP is being filed is (are):

○ You (the advisory firm)

◉ You and one or more of your *advisory affiliates*

○ One or more of your *advisory affiliates*

If this DRP is being filed for an *advisory affiliate*, give the full name of the *advisory affiliate* below (for individuals, Last name, First name, Middle name). If the *advisory affiliate* has a *CRD* number, provide that number. If not, indicate "non-registered" by checking the appropriate box.

ADV DRP - *ADVISORY AFFILIATE*

CRD Number:	107568	This *advisory affiliate* is ◉ a Firm ○ an Individual
Registered:	◉ Yes ○ No	
Name:	NAVELLIER & ASSOCIATES INC (For individuals, Last, First, Middle)	

CRD Number:	1792046	This *advisory affiliate* is ○ a Firm ◉ an Individual
Registered:	◉ Yes ○ No	
Name:	NAVELLIER, LOUIS, GENE (For individuals, Last, First, Middle)	

☐ This DRP should be removed from the ADV record because the *advisory affiliate(s)* is no longer associated with the adviser.

☐ This DRP should be removed from the ADV record because: (1) the event or *proceeding* occurred more than ten years ago or (2) the adviser is registered or applying for registration with the SEC or reporting as an *exempt reporting adviser* with the SEC and the event was resolved in the adviser's or *advisory affiliate's* favor.

If you are registered or registering with a *state securities authority* , you may remove a DRP for an event you reported only in response to Item 11.D(4), and only if that event occurred more than ten years ago. If you are registered or registering with the SEC, you may remove a DRP for any event listed in Item 11 that occurred more than ten years ago.

☐ This DRP should be removed from the ADV record because it was filed in error, such as due to a clerical or data-entry mistake. Explain the circumstances:

B. If the *advisory affiliate* is registered through the IARD system or *CRD* system, has the *advisory affiliate* submitted a DRP (with Form ADV, BD or U-4) to the IARD or *CRD* for the event? If the answer is "Yes," no other information on this DRP must be provided.

◉ Yes ○ No

OS Received 02/14/2023

NOTE: The completion of this form does not relieve the *advisory affiliate* of its obligation to update its IARD or *CRD* records.

PART II

1. Regulatory Action initiated by:
   (●) SEC ( ) Other Federal ( ) State ( ) *SRO* ( ) Foreign
   (Full name of regulator, *foreign financial regulatory authority*, federal, state, or *SRO*)
   SECURITIES AND EXCHANGE COMMISSION

2. Principal Sanction:
   Other
   Other Sanctions:
   INITIATED ADMINISTRATIVE PROCEEDING (TEMPORARILY STAYED PURSUANT TO COURT ORDER FOR INJUNCTION AGAINST FUTURE VIOLATIONS OF SECTION 206 (1) AND (2) OF INVESTMENT ADVISORS ACT; DISCOURAGEMENT; DEREGISTRATION OF NAVELLIER & ASSOCIATES INC. AND OF LOUIS GENE NAVELLIER AND SEEKING PERMANENT BAR AGAINST NAVELLIER & ASSOCIATES INC. AND AGAINST LOUIS NAVELLIER.

3. Date Initiated (MM/DD/YYYY):
   06/12/2020 (●) Exact ( ) Explanation
   If not exact, provide explanation:

4. Docket/Case Number:
   FILE NO 3-19826

5. *Advisory Affiliate* Employing Firm when activity occurred which led to the regulatory action (if applicable):
   NAVELLIER & ASSOCIATES INC

6. Principal Product Type:
   Other
   Other Product Types:
   ETF'S

7. Describe the allegations related to this regulatory action (your response must fit within the space provided):
   ON FEBRUARY 13, 2020, THE DISTRICT COURT OF MASSACHUSETTS GRANTED PARTIAL SUMMARY JUDGEMENT IN FAVOR OF THE SEC ON ITS CLAIMS THAT NAVELLIER & ASSOCIATES, INC. ("NAI") AND MR. NAVELLIER VIOLATED (SECTIONS) 206(1) AND 206(2) OF THE INVESTMENT ADVISERS ACT BY ALLEGEDLY DISSEMINATING VIREO MARKETING MATERIAL TO CLIENTS THAT CONTAINED ALLEGEDLY FALSE STATEMENTS THAT THE STRATEGY UPON WHICH THE VIREO ALPHASECTOR ALLOCATOR AND VIREO ALPHA SECTOR PREMIUM STRATEGIES WAS BASED HAD BEEN LIVE TRADED SINCE 2001 AND WAS NOT BACK-TESTED. THE DISTRICT COURT SUBSEQUENTLY DISMISSED THE SEC'S REMAINING CLAIMS WITH PREJUDICE. THE SEC PRESENTED NO EVIDENCE THAT THOSE TWO ALLEGEDLY "FALSE" STATEMENTS WERE IN FACT FALSE. NAI AND MR. NAVELLIER STRENUOUSLY DENY THAT THE MARKETING MATERIALS CONTAINED FALSE STATEMENTS AND ASSERT THAT THE STATEMENTS THAT WERE ACTUALLY MADE IN THE VIREO MARKETING MATERIALS WERE TRUE, I.E., THEY MADE NO FALSE AND MISLEADING STATEMENTS. THEY ALSO ASSERT THAT THE ALLEGEDLY FALSE STATEMENTS WERE NOT MATERIAL (IMPORTANT) AND THERE WAS NO SCIENTER (INTENT TO DEFRAUD). ON JUNE 2, 2020, THE DISTRICT COURT ISSUED A FINAL JUDGEMENT REITERATING ITS ERRONEOUS SUMMARY JUDGEMENT DECISION AND AWARDED THE SEC NEARLY $29 MILLION IN "DISGORGEMENT" OF SUPPOSEDLY "ILL GOTTEN" GAINS AND PREJUDGMENT INTEREST PLUS $2.5 MILLION IN PENALTIES AS A SUPPOSED RESULT OF THE ALLEGED 206(1) AND (2) "VIOLATIONS". THE DISTRICT COURT ALSO ENJOINED NAI AND MR. NAVELLIER FROM VIOLATING SECTIONS 206(1) AND (2) IN THE FUTURE. NAI AND MR. NAVELLIER STRENUOUSLY DENY THAT THERE IS ANY LEGAL OR FACTUAL BASIS FOR THE ASSERTION THAT NAI OR MR. NAVELLIER COMMITTED ANY VIOLATIONS OF §§206(1) OR 206(2). NAI AND MR. NAVELLIER CONTEND AND INTEND TO PROVE THAT THERE WERE NO "ILL GOTTEN" GAINS BUT RATHER, THAT THE INVESTMENT ADVISORY FEES AND GAINS (FROM THE SALE OF NAI'S VIREO DIVISION GOOD-WILL) WERE LEGITIMATELY EARNED BY NAI, SO THERE IS NO LEGAL OR FACTUAL BASIS FOR DISGORGEMENT, ESPECIALLY SINCE THE SUPREME COURT'S RECENT DECISION IN LIU VS. SEC. IN FACT, THE SUPPOSEDLY "DEFRAUDED" NAI CLIENTS GOT EXACTLY THE INVESTMENT ADVICE THEY HIRED NAI TO PROVIDE, AND RECEIVED OVER $211 MILLION IN PROFITS FROM NAI'S VIREO INVESTMENT ADVICE. NAI INTENDS TO PROVE ITS CLIENTS WERE NOT GIVEN FALSE INFORMATION, AND THAT THE ALLEGEDLY VIOLATIVE STATEMENTS WERE IMMATERIAL, AND THAT NAI'S CLIENTS WERE NOT HARMED, AND IN FACT RECEIVED OVER $211 MILLION IN PROFITS FROM NAI'S VIREO ALPHASECTOR INVESTMENT ADVICE. NAI AND MR. NAVELLIER INTEND TO PROVE THAT, EVEN IF THE SEC COULD PROVE THERE WAS A VIOLATION, WHICH NAI DOES NOT BELIEVE THE SEC CAN PROVE, AN EQUITABLE ACCOUNTING APPLYING THE LAW SET FORTH IN LIU WOULD STILL RESULT IN NO DISGORGEMENT OR AT MOST A TOTAL OF $24,681 IN DISGORGEMENT AND PREJUDGMENT INTEREST THEREON. AN APPEAL TO THE FIRST CIRCUIT COURT OF APPEALS FROM THE DISTRICT COURT JUDGEMENT WAS FILED ON JUNE 4, 2020 BY NAI AND MR. NAVELLIER WHO STRONGLY BELIEVE THE DISTRICT COURT JUDGMENT WILL BE VACATED OR REVERSED. ON JUNE 12, 2020, THE SEC INSTITUTED ADMINISTRATIVE PROCEEDINGS WITH THE SEC TO SANCTION OR POSSIBLY DEREGISTER NAI AND MR. NAVELLIER BASED ON THE ERRONEOUS FINAL JUDGEMENT. ON JULY 2, 2020 THE FIRST CIRCUIT COURT OF APPEALS TEMPORARILY STAYED (HALTED) FURTHER PROCEEDING BY THE SEC INCLUDING THE ADMINISTRATIVE PROCEEDINGS. AFTER THE SUPREME COURT DECISION IN LIU V. SEC, THE SEC ASKED THE FIRST CIRCUIT COURT OF APPEALS TO REMAND THE CASE TO THE DISTRICT COURT, IN LIGHT OF THE LIU DECISION. ON REMAND, THE DISTRICT COURT ADOPTED ITS PRIOR, ERRONEOUS DECISION AS TO LIABILITY, REDUCED THE DISGORGEMENT AMOUNT, BUT INCREASED THE PRE-JUDGMENT INTEREST AWARD FOR AN AMENDED FINAL JUDGMENT AWARD OF $29,369,890 IN DISGORGEMENT AND INTEREST PLUS $2.5 MILLION IN PENALTIES. NAI AND MR. NAVELLIER APPEALED THE DISTRICT COURT'S AMENDED JUDGMENT ON OCTOBER 28, 2021.

8. Current Status? (●) Pending ( ) On Appeal ( ) Final

9. If on appeal, regulatory action appealed to (SEC, *SRO,* Federal or State Court) and Date Appeal Filed:
   AN APPEAL TO THE FIRST CIRCUIT COURT OF APPEALS FROM THE DISTRICT COURT JUDGEMENT WAS FILED ON JUNE 4, 2020 BY NAVELLIER & ASSOCIATES INC AND MR. NAVELLIER. AN APPEAL FROM THE DISTRICT COURT AMENDED JUDGEMENT WAS FILED BY NAVELLIER & ASSOCIATES AND MR. NAVELLIER ON OCTOBER 28, 2021 ON JUNE 12, 2020 THE SEC INSTITUTED ADMINISTRATIVE PROCEEDINGS WITH THE SEC TO SANCTION OR POSSIBLY DEREGISTER NAVELLIER & ASSOCIATES AND MR. NAVELLIER BASED ON THE ERRONEOUS FINAL JUDGEMENT. ON JULY 2, 2020 THE CIRCUIT

COURT OF APPEALS TEMPORARILY STAYED FURTHER PROCEEDING BY THE SEC INCLUDING THE ADMINISTRATIVE PROCEEDINGS.

If Final or On Appeal, complete all items below. For Pending Actions, complete Item 13 only.

10. How was matter resolved:

11. Resolution Date (MM/DD/YYYY):

○ Exact ○ Explanation

If not exact, provide explanation:

12. Resolution Detail:

A. Were any of the following Sanctions *Ordered* (check all appropriate items)?

☐ Monetary/Fine Amount: $

☐ Revocation/Expulsion/Denial

☐ Censure

☐ Bar

☐ Disgorgement/Restitution

☐ Cease and Desist/Injunction

☐ Suspension

B. Other Sanctions *Ordered:*

Sanction detail: if suspended, *enjoined* or barred, provide duration including start date and capacities affected (General Securities Principal, Financial Operations Principal, etc.). If requalification by exam/retraining was a condition of the sanction, provide length of time given to requalify/retrain, type of exam required and whether condition has been satisfied. If disposition resulted in a fine, penalty, restitution, disgorgement or monetary compensation, provide total amount, portion levied against you or an *advisory affiliate*, date paid and if any portion of penalty was waived:

13. Provide a brief summary of details related to the action status and (or) disposition and include relevant terms, conditions and dates (your response must fit within the space provided).

ON FEBRUARY 13, 2020, THE DISTRICT COURT OF MASSACHUSETTS GRANTED PARTIAL SUMMARY JUDGEMENT IN FAVOR OF THE SEC ON ITS CLAIMS THAT NAVELLIER & ASSOCIATES, INC. ("NAI") AND MR. NAVELLIER VIOLATED (SECTIONS) 206(1) AND 206(2) OF THE INVESTMENT ADVISERS ACT BY ALLEGEDLY DISSEMINATING VIREO MARKETING MATERIAL TO CLIENTS THAT CONTAINED ALLEGEDLY FALSE STATEMENTS THAT THE STRATEGY UPON WHICH THE VIREO ALPHASECTOR ALLOCATOR AND VIREO ALPHA SECTOR PREMIUM STRATEGIES WAS BASED HAD BEEN LIVE TRADED SINCE 2001 AND WAS NOT BACK-TESTED. THE DISTRICT COURT SUBSEQUENTLY DISMISSED THE SEC'S REMAINING CLAIMS WITH PREJUDICE. THE SEC PRESENTED NO EVIDENCE THAT THOSE TWO ALLEGEDLY "FALSE" STATEMENTS WERE IN FACT FALSE. NAI AND MR. NAVELLIER STRENUOUSLY DENY THAT THE MARKETING MATERIALS CONTAINED FALSE STATEMENTS AND ASSERT THAT THE STATEMENTS THAT WERE ACTUALLY MADE IN THE VIREO MARKETING MATERIALS WERE TRUE, I.E., THEY MADE NO FALSE AND MISLEADING STATEMENTS. THEY ALSO ASSERT THAT THE ALLEGEDLY FALSE STATEMENTS WERE NOT MATERIAL (IMPORTANT) AND THERE WAS NO SCIENTER (INTENT TO DEFRAUD). ON JUNE 2, 2020, THE DISTRICT COURT ISSUED A FINAL JUDGEMENT REITERATING ITS ERRONEOUS SUMMARY JUDGEMENT DECISION AND AWARDED THE SEC NEARLY $29 MILLION IN "DISGORGEMENT" OF SUPPOSEDLY "ILL GOTTEN" GAINS AND PREJUDGMENT INTEREST PLUS $2.5 MILLION IN PENALTIES AS A SUPPOSED RESULT OF THE ALLEGED 206(1) AND (2) "VIOLATIONS". THE DISTRICT COURT ALSO ENJOINED NAI AND MR. NAVELLIER FROM VIOLATING SECTIONS 206(1) AND (2) IN THE FUTURE. NAI AND MR. NAVELLIER STRENUOUSLY DENY THAT THERE IS ANY LEGAL OR FACTUAL BASIS FOR THE ASSERTION THAT NAI OR MR. NAVELLIER COMMITTED ANY VIOLATIONS OF §§206(1) OR 206(2). NAI AND MR. NAVELLIER CONTEND AND INTEND TO PROVE THAT THERE WERE NO "ILL GOTTEN" GAINS BUT RATHER, THAT THE INVESTMENT ADVISORY FEES AND GAINS (FROM THE SALE OF NAI'S VIREO DIVISION GOOD-WILL) WERE LEGITIMATELY EARNED BY NAI, SO THERE IS NO LEGAL OR FACTUAL BASIS FOR DISGORGEMENT, ESPECIALLY SINCE THE SUPREME COURT'S RECENT DECISION IN LIU VS. SEC. IN FACT, THE SUPPOSEDLY "DEFRAUDED" NAI CLIENTS GOT EXACTLY THE INVESTMENT ADVICE THEY HIRED NAI TO PROVIDE, AND RECEIVED OVER $211 MILLION IN PROFITS FROM NAI'S VIREO INVESTMENT ADVICE. NAI INTENDS TO PROVE ITS CLIENTS WERE NOT GIVEN FALSE INFORMATION, AND THAT THE ALLEGEDLY VIOLATIVE STATEMENTS WERE IMMATERIAL, AND THAT NAI'S CLIENTS WERE NOT HARMED, AND IN FACT RECEIVED OVER $211 MILLION IN PROFITS FROM NAI'S VIREO ALPHASECTOR INVESTMENT ADVICE. NAI AND MR. NAVELLIER INTEND TO PROVE THAT, EVEN IF THE SEC COULD PROVE THERE WAS A VIOLATION, WHICH NAI DOES NOT BELIEVE THE SEC CAN PROVE, AN EQUITABLE ACCOUNTING APPLYING THE LAW SET FORTH IN LIU WOULD STILL RESULT IN NO DISGORGEMENT OR AT MOST A TOTAL OF $24,681 IN DISGORGEMENT AND PREJUDGMENT INTEREST THEREON. AN APPEAL TO THE FIRST CIRCUIT COURT OF APPEALS FROM THE DISTRICT COURT JUDGEMENT WAS FILED ON JUNE 4, 2020 BY NAI AND MR. NAVELLIER WHO STRONGLY BELIEVE THE DISTRICT COURT JUDGMENT WILL BE VACATED OR REVERSED. ON JUNE 12, 2020, THE SEC INSTITUTED ADMINISTRATIVE PROCEEDINGS WITH THE SEC TO SANCTION OR POSSIBLY DEREGISTER NAI AND MR. NAVELLIER BASED ON THE ERRONEOUS FINAL JUDGEMENT. ON JULY 2, 2020 THE FIRST CIRCUIT COURT OF APPEALS TEMPORARILY STAYED (HALTED) FURTHER PROCEEDING BY THE SEC INCLUDING THE ADMINISTRATIVE PROCEEDINGS. AFTER THE SUPREME COURT DECISION IN LIU V. SEC, THE SEC ASKED THE FIRST CIRCUIT COURT OF APPEALS TO REMAND THE CASE TO THE DISTRICT COURT, IN LIGHT OF THE LIU DECISION. ON REMAND, THE DISTRICT COURT ADOPTED ITS PRIOR, ERRONEOUS DECISION AS TO LIABILITY, REDUCED THE DISGORGEMENT AMOUNT, BUT INCREASED THE PRE-JUDGMENT INTEREST AWARD FOR AN AMENDED FINAL JUDGMENT AWARD OF $29,369,890 IN DISGORGEMENT AND INTEREST PLUS $2.5 MILLION IN PENALTIES. NAI AND MR. NAVELLIER APPEALED THE DISTRICT COURT'S AMENDED JUDGMENT ON OCTOBER 28, 2021.

CIVIL JUDICIAL ACTION DISCLOSURE REPORTING PAGE (ADV)

GENERAL INSTRUCTIONS

This Disclosure Reporting Page (DRP ADV) is an ○ INITIAL ***OR*** ◉ AMENDED response used to report details for affirmative responses to Item 11.H. of Part 1A or Item 2.F. of Part 1B of Form ADV.

Civil Judicial

Check Part 1A item(s) being responded to:

☑ 11.H(1)(a) ☑ 11.H(1)(b) ☐ 11.H(1)(c) ☑ 11.H(2)

Check Part 1B item(s) being responded to:

☑ 2.F(1) ☑ 2.F(2) ☐ 2.F(3) ☐ 2.F(4) ☐ 2.F(5)

Use a separate DRP for each event or *proceeding* . The same event or *proceeding* may be reported for more than one *person* or entity using one DRP. File with a completed Execution Page.

One event may result in more than one affirmative answer to Item 11.H. of Part 1A or Item 2.F. of Part 1B. Use only one DRP to report details related to the same event. Unrelated civil judicial actions must be reported on separate DRPs.

PART I

A. The *person(s)* or entity(ies) for whom this DRP is being filed is (are):

○ You (the advisory firm)

◉ You and one or more of your *advisory affiliates*

○ One or more of your *advisory affiliates*

If this DRP is being filed for an *advisory affiliate*, give the full name of the *advisory affiliate* below (for individuals, Last name, First name, Middle name). If the *advisory affiliate* has a *CRD* number, provide that number. If not, indicate "non-registered" by checking the appropriate box.

ADV DRP - *ADVISORY AFFILIATE*

CRD Number:	107568	This *advisory affiliate* is ◉ a Firm ○ an Individual
Registered:	◉ Yes ○ No	
Name:	NAVELLIER & ASSOCIATES INC (For individuals, Last, First, Middle)	

CRD Number:	1792046	This *advisory affiliate* is ○ a Firm ◉ an Individual
Registered:	◉ Yes ○ No	
Name:	NAVELLIER, LOUIS, GENE (For individuals, Last, First, Middle)	

☐ This DRP should be removed from the ADV record because the *advisory affiliate(s)* is no longer associated with the adviser.

☐ This DRP should be removed from the ADV record because: (1) the event or *proceeding* occurred more than ten years ago or (2) the adviser is registered or applying for registration with the SEC or reporting as an *exempt reporting adviser* with the SEC and the event was resolved in the adviser's or *advisory affiliate's* favor.

If you are registered or registering with a *state securities authority* , you may remove a DRP for an event you reported only in response to Item 11.H. (1)(a), and only if that event occurred more than ten years ago. If you are registered or registering with the SEC, you may remove a DRP for any event listed in Item 11 that occurred more than ten years ago.

☐ This DRP should be removed from the ADV record because it was filed in error, such as due to a clerical or data-entry mistake. Explain the circumstances:

B. If the *advisory affiliate* is registered through the IARD system or *CRD* system, has the *advisory affiliate* submitted a DRP (with Form ADV, BD or U-4) to the IARD or *CRD* for the event? If the answer is "Yes," no other information on this DRP must be provided.

◉ Yes ○ No

NOTE: The completion of this form does not relieve the *advisory affiliate* of its obligation to update its IARD or *CRD* records.

PART II

1. Court Action initiated by: (Name of regulator, *foreign financial regulatory authority, SRO,* commodities exchange, agency, firm, private plaintiff, etc.)
U.S. SECURITIES AND EXCHANGE COMMISSION

2. Principal Relief Sought:
Civil Penalty(ies)/Fine(s)
Other Relief Sought:
DISGORGEMENT, INJUNCTION, BAR FROM INDUSTRY

3. Filing Date of Court Action (MM/DD/YYYY):

08/31/2017 (•) Exact ( ) Explanation
If not exact, provide explanation:

4. Principal Product Type:
Other
Other Product Types:
INVESTMENT STRATEGIES

5. Formal Action was brought in (include name of Federal, State or Foreign Court, Location of Court - City or County and State or Country, Docket/Case Number):
U.S. DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS - BOSTON -MA - CASE 1:17-CV-11633

6. *Advisory Affiliate* Employing Firm when activity occurred which led to the civil judicial action (if applicable):
NAVELLIER & ASSOCIATES INC.

7. Describe the allegations related to this civil action (your response must fit within the space provided):
ALLEGED VIOLATIONS OF SECTIONS 206(1), 206(2), AND 206(4) AND AIDING AND ABETTING(DISMISSED WITH PREJUDICE) OF THE INVESTMENT ADVISORS ACT OF 1940 ("ADVISORS ACT"), AND RULE 206(4)-1(A)(5) (DISMISSED WITH PREJUDICE) THEREUNDER; AND AIDING AND ABETTING OF SECTIONS 206(1) AND 206(2) OF THE ADVISORS ACT. (DISMISSED WITH PREJUDICE)

8. Current Status? ( ) Pending (•) On Appeal ( ) Final

9. If on appeal, action appealed to (provide name of court) and Date Appeal Filed (MM/DD/YYYY):
FIRST CIRCUIT COURT OF APPEALS CASE NUMBER 20-1581;APPEAL FILE JUNE 4, 2020 AND APPEAL NO. 21-1857 FILED OCTOBER 28, 2021

10. If pending, date notice/process was served (MM/DD/YYYY):
08/31/2017 (•) Exact ( ) Explanation
If not exact, provide explanation:

If Final or On Appeal, complete all items below. For Pending Actions, complete Item 14 only.

11. How was matter resolved:
Other

12. Resolution Date (MM/DD/YYYY):
06/04/2020 ( ) Exact (•) Explanation
If not exact, provide explanation:
APPEAL FILE JUNE 4, 2020

13. Resolution Detail:

A. Were any of the following Sanctions Ordered or Relief Granted(check appropriate items)?

- [x] Monetary/Fine Amount: $ 2,500,000.00
- [ ] Revocation/Expulsion/Denial
- [ ] Censure
- [ ] Bar
- [x] Disgorgement/Restitution
- [ ] Cease and Desist/Injunction
- [ ] Suspension

B. Other Sanctions:

C. Sanction detail: if suspended, *enjoined* or barred, provide duration including start date and capacities affected (General Securities Principal, Financial Operations Principal, etc.). If requalification by exam/retraining was a condition of the sanction, provide length of time given to requalify/retrain, type of exam required and whether condition has been satisfied. If disposition resulted in a fine, penalty, restitution, disgorgement, or monetary compensation, provide total amount, portion levied against you or an *advisory affiliate*, date paid and if any portion of penalty was waived:
PENALTY AND $28,964,571 ARE ON APPEAL

14. Provide a brief summary of circumstances related to the action(s), allegation(s), disposition(s) and/or finding(s) disclosed above (your response must fit within the space provided).
TON FEBRUARY 13, 2020, THE DISTRICT COURT OF MASSACHUSETTS GRANTED PARTIAL SUMMARY JUDGEMENT IN FAVOR OF THE SEC ON ITS CLAIMS THAT NAVELLIER & ASSOCIATES, INC. ("NAI") AND MR. NAVELLIER VIOLATED (SECTIONS) 206(1) AND 206(2) OF THE INVESTMENT ADVISERS ACT BY ALLEGEDLY DISSEMINATING VIREO MARKETING MATERIAL TO CLIENTS THAT CONTAINED ALLEGEDLY FALSE STATEMENTS THAT THE STRATEGY UPON WHICH THE VIREO ALPHASECTOR ALLOCATOR AND VIREO ALPHA SECTOR PREMIUM STRATEGIES WAS BASED HAD BEEN LIVE TRADED SINCE 2001 AND WAS NOT BACK-TESTED. THE DISTRICT COURT SUBSEQUENTLY DISMISSED THE SEC'S REMAINING CLAIMS WITH PREJUDICE. THE SEC PRESENTED NO EVIDENCE THAT THOSE TWO ALLEGEDLY "FALSE" STATEMENTS WERE IN FACT FALSE. NAI AND MR. NAVELLIER STRENUOUSLY DENY THAT THE MARKETING MATERIALS CONTAINED FALSE STATEMENTS AND ASSERT THAT THE STATEMENTS THAT WERE ACTUALLY MADE IN THE VIREO MARKETING MATERIALS WERE TRUE, I.E., THEY MADE NO FALSE AND MISLEADING STATEMENTS. THEY ALSO ASSERT THAT THE ALLEGEDLY FALSE STATEMENTS WERE NOT MATERIAL (IMPORTANT) AND THERE WAS NO SCIENTER (INTENT TO DEFRAUD). ON JUNE 2, 2020, THE DISTRICT COURT ISSUED A FINAL JUDGEMENT REITERATING ITS ERRONEOUS SUMMARY JUDGEMENT DECISION AND AWARDED THE SEC NEARLY $29 MILLION IN "DISGORGEMENT" OF SUPPOSEDLY "ILL GOTTEN" GAINS AND PREJUDGMENT INTEREST PLUS $2.5 MILLION IN PENALTIES AS A SUPPOSED RESULT OF THE ALLEGED 206(1)

AND (2) "VIOLATIONS". THE DISTRICT COURT ALSO ENJOINED NAI AND MR. NAVELLIER FROM VIOLATING SECTIONS 206(1) AND (2) IN THE FUTURE. NAI AND MR. NAVELLIER STRENUOUSLY DENY THAT THERE IS ANY LEGAL OR FACTUAL BASIS FOR THE ASSERTION THAT NAI OR MR. NAVELLIER COMMITTED ANY VIOLATIONS OF §§206(1) OR 206(2). NAI AND MR. NAVELLIER CONTEND AND INTEND TO PROVE THAT THERE WERE NO "ILL GOTTEN" GAINS BUT RATHER, THAT THE INVESTMENT ADVISORY FEES AND GAINS (FROM THE SALE OF NAI'S VIREO DIVISION GOOD-WILL) WERE LEGITIMATELY EARNED BY NAI, SO THERE IS NO LEGAL OR FACTUAL BASIS FOR DISGORGEMENT, ESPECIALLY SINCE THE SUPREME COURT'S RECENT DECISION IN LIU VS. SEC. IN FACT, THE SUPPOSEDLY "DEFRAUDED" NAI CLIENTS GOT EXACTLY THE INVESTMENT ADVICE THEY HIRED NAI TO PROVIDE, AND RECEIVED OVER $211 MILLION IN PROFITS FROM NAI'S VIREO INVESTMENT ADVICE. NAI INTENDS TO PROVE ITS CLIENTS WERE NOT GIVEN FALSE INFORMATION, AND THAT THE ALLEGEDLY VIOLATIVE STATEMENTS WERE IMMATERIAL, AND THAT NAI'S CLIENTS WERE NOT HARMED, AND IN FACT RECEIVED OVER $211 MILLION IN PROFITS FROM NAI'S VIREO ALPHASECTOR INVESTMENT ADVICE. NAI AND MR. NAVELLIER INTEND TO PROVE THAT, EVEN IF THE SEC COULD PROVE THERE WAS A VIOLATION, WHICH NAI DOES NOT BELIEVE THE SEC CAN PROVE, AN EQUITABLE ACCOUNTING APPLYING THE LAW SET FORTH IN LIU WOULD STILL RESULT IN NO DISGORGEMENT OR AT MOST A TOTAL OF $24,681 IN DISGORGEMENT AND PREJUDGMENT INTEREST THEREON. AN APPEAL TO THE FIRST CIRCUIT COURT OF APPEALS FROM THE DISTRICT COURT JUDGEMENT WAS FILED ON JUNE 4, 2020 BY NAI AND MR. NAVELLIER WHO STRONGLY BELIEVE THE DISTRICT COURT JUDGMENT WILL BE VACATED OR REVERSED. ON JUNE 12, 2020, THE SEC INSTITUTED ADMINISTRATIVE PROCEEDINGS WITH THE SEC TO SANCTION OR POSSIBLY DEREGISTER NAI AND MR. NAVELLIER BASED ON THE ERRONEOUS FINAL JUDGEMENT. ON JULY 2, 2020 THE FIRST CIRCUIT COURT OF APPEALS TEMPORARILY STAYED (HALTED) FURTHER PROCEEDING BY THE SEC INCLUDING THE ADMINISTRATIVE PROCEEDINGS. AFTER THE SUPREME COURT DECISION IN LIU V. SEC, THE SEC ASKED THE FIRST CIRCUIT COURT OF APPEALS TO REMAND THE CASE TO THE DISTRICT COURT, IN LIGHT OF THE LIU DECISION. ON REMAND, THE DISTRICT COURT ADOPTED ITS PRIOR, ERRONEOUS DECISION AS TO LIABILITY, REDUCED THE DISGORGEMENT AMOUNT, BUT INCREASED THE PRE-JUDGMENT INTEREST AWARD FOR AN AMENDED FINAL JUDGMENT AWARD OF $29,369,890 IN DISGORGEMENT AND INTEREST PLUS $2.5 MILLION IN PENALTIES. NAI AND MR. NAVELLIER APPEALED THE DISTRICT COURT'S AMENDED JUDGMENT ON OCTOBER 28, 2021.

Part 2

Exemption from brochure delivery requirements for SEC-registered advisers

SEC rules exempt SEC-registered advisers from delivering a firm brochure to some kinds of clients. If these exemptions excuse you from delivering a brochure to *all* of your advisory clients, you do not have to prepare a brochure.

	Yes	No
Are you exempt from delivering a brochure to all of your clients under these rules?	○	◉

If no, complete the ADV Part 2 filing below.

Amend, retire or file new brochures:

Brochure ID	Brochure Name	Brochure Type(s)
348059	NAV ASSOC PART 2-03262021	Individuals, High net worth individuals, Pension plans/profit sharing plans, Wrap program
363600	NAV ASSOC PART 2-03-21-2022	Individuals, High net worth individuals, Pension plans/profit sharing plans, Pension consulting, Other institutional, Wrap program

Part 3

CRS	Type(s)	Affiliate Info	Retire
	Investment Advisor	✔	

Execution Pages

DOMESTIC INVESTMENT ADVISER EXECUTION PAGE

You must complete the following Execution Page to Form ADV. This execution page must be signed and attached to your initial submission of Form ADV to the SEC and all amendments.

Appointment of Agent for Service of Process

By signing this Form ADV Execution Page, you, the undersigned adviser, irrevocably appoint the Secretary of State or other legally designated officer, of the state in which you maintain your *principal office and place of business* and any other state in which you are submitting a *notice filing*, as your agents to receive service, and agree that such *persons* may accept service on your behalf, of any notice, subpoena, summons, *order* instituting *proceedings*, demand for arbitration, or other process or papers, and you further agree that such service may be made by registered or certified mail, in any federal or state action, administrative *proceeding* or arbitration brought against you in any place subject to the jurisdiction of the United States, if the action, *proceeding*, or arbitration (a) arises out of any activity in connection with your investment advisory business that is subject to the jurisdiction of the United States, and (b) is *founded*, directly or indirectly, upon the provisions of: (i) the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, the Investment Company Act of 1940, or the Investment Advisers Act of 1940, or any rule or regulation under any of these acts, or (ii) the laws of the state in which you maintain your *principal office and place of business* or of any state in which you are submitting a *notice filing*.

Signature

I, the undersigned, sign this Form ADV on behalf of, and with the authority of, the investment adviser. The investment adviser and I both certify, under

penalty of perjury under the laws of the United States of America, that the information and statements made in this ADV, including exhibits and any other information submitted, are true and correct, and that I am signing this Form ADV Execution Page as a free and voluntary act.

I certify that the adviser's books and records will be preserved and available for inspection as required by law. Finally, I authorize any *person* having *custody* or possession of these books and records to make them available to federal and state regulatory representatives.

Signature:
LOUIS NAVELLIER

Date: MM/DD/YYYY
03/21/2022

Printed Name:
LOUIS NAVELLIER

Title:
CEO CCO CIO

Adviser *CRD* Number:
107568

NON-RESIDENT INVESTMENT ADVISER EXECUTION PAGE

You must complete the following Execution Page to Form ADV. This execution page must be signed and attached to your initial submission of Form ADV to the SEC and all amendments.

1. Appointment of Agent for Service of Process

By signing this Form ADV Execution Page, you, the undersigned adviser, irrevocably appoint each of the Secretary of the SEC, and the Secretary of State or other legally designated officer, of any other state in which you are submitting a *notice filing*, as your agents to receive service, and agree that such persons may accept service on your behalf, of any notice, subpoena, summons, *order* instituting *proceedings*, demand for arbitration, or other process or papers, and you further agree that such service may be made by registered or certified mail, in any federal or state action, administrative *proceeding* or arbitration brought against you in any place subject to the jurisdiction of the United States, if the action, *proceeding* or arbitration (a) arises out of any activity in connection with your investment advisory business that is subject to the jurisdiction of the United States, and (b) is *founded*, directly or indirectly, upon the provisions of: (i) the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, the Investment Company Act of 1940, or the Investment Advisers Act of 1940, or any rule or regulation under any of these acts, or (ii) the laws of any state in which you are submitting a *notice filing*.

2. Appointment and Consent: Effect on Partnerships

If you are organized as a partnership, this irrevocable power of attorney and consent to service of process will continue in effect if any partner withdraws from or is admitted to the partnership, provided that the admission or withdrawal does not create a new partnership. If the partnership dissolves, this irrevocable power of attorney and consent shall be in effect for any action brought against you or any of your former partners.

3. *Non-Resident* Investment Adviser Undertaking Regarding Books and Records

By signing this Form ADV, you also agree to provide, at your own expense, to the U.S. Securities and Exchange Commission at its principal office in Washington D.C., at any Regional or District Office of the Commission, or at any one of its offices in the United States, as specified by the Commission, correct, current, and complete copies of any or all records that you are required to maintain under Rule 204-2 under the Investment Advisers Act of 1940. This undertaking shall be binding upon you, your heirs, successors and assigns, and any *person* subject to your written irrevocable consents or powers of attorney or any of your general partners and *managing agents*.

Signature

I, the undersigned, sign this Form ADV on behalf of, and with the authority of, the *non-resident* investment adviser. The investment adviser and I both certify, under penalty of perjury under the laws of the United States of America, that the information and statements made in this ADV, including exhibits and any other information submitted, are true and correct, and that I am signing this Form ADV Execution Page as a free and voluntary act.

I certify that the adviser's books and records will be preserved and available for inspection as required by law. Finally, I authorize any *person* having *custody* or possession of these books and records to make them available to federal and state regulatory representatives.

Signature:

Date: MM/DD/YYYY

Printed Name:

Title:

Adviser *CRD* Number:
107568