UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

Administrative Proceeding
File No. 3-17184

In the Matter of

CHRISTOPHER M. GIBSON

DIVISION OF ENFORCEMENT'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

September 13, 2019

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Pursuant to the Post-Hearing Order entered on August 5, 2019, the Division of Enforcement ("Division") submits the following proposed findings of fact and conclusions of law.

Proposed Findings of Fact

The Division proposes the following findings based on the evidence admitted during the hearing on July 29 through August 2, 2019, and the Stipulations of the Parties (Div. Ex. 216).[1]

Christopher M. Gibson

1. Respondent Christopher M. Gibson ("Gibson") currently lives in Uruguay, but maintains his permanent residence in Augusta, Georgia. Div. Ex. 216 ¶ 1; 8/1/19 Tr. 1494:1-3. Gibson's company, East Century Capital, is incorporated in Hong Kong and advises companies in Africa; Gibson is its only employee. Id. at 1492:8-1504:4.

2. Gibson graduated from Williams College in 2006. Div. Ex. 187 at 15:9-15. As of the time of the hearing, Gibson was 35 years old. Div. Ex. 216 ¶ 1.

3. From June 2006 to February 2009, Gibson worked as an analyst, and then as an associate, at Deutsche Bank Securities in New York. 7/29/19 Tr. 76:12-77:7; Div. Ex.187 at 15:9-15.

4. While at Deutsche Bank, Gibson was involved in complex financial and securities transactions, including securitization and valuation of mortgage-backed securities. 7/29/19 Tr. 76:18-23; Div. Ex.187 at 15:22-16:14. Gibson advised clients regarding a range of asset classes and contributed to the structuring and placement of over $40 billion in asset-backed securities.

[1] The Division's exhibits are cited as "Div. Ex. __." Respondent's exhibits are cited as "Resp. Ex. __." The hearing transcript is cited by the date of the testimony, the designation "Tr.," and the pages and lines at which the cited testimony appears. Designated portions of Gibson's investigative testimony are cited by the exhibit number assigned to the transcripts containing the Division's designations (Div. Exs. 187 and 188) and the pages and lines at which the cited testimony appears.

Div. Ex. 24 at 8. While at Deutsche Bank, Gibson enrolled in and took several training course in compliance and other areas. Div. Ex. 4.

5. Gibson passed the General Securities Representative Exam ("Series 7") and the Uniform Securities Agent State Law Exam ("Series 63") in 2006. 7/29/19 Tr. 78:14-79:3; Div. Ex. 216 ¶ 2; Div. Ex. 187 at 41:13-16.

6. Shortly after leaving Deutsche Bank in February 2009, Gibson began discussing various opportunities with James Hull ("Hull"), a commercial real estate developer in Augusta, Georgia. Div. Ex. 187 at 16:22-17:21; 7/29/19 Tr. 79:7-10. At the time, Gibson's father (John Gibson) was Hull's business partner. 7/29/19 Tr. 79:11-13.

7. In April 2009, Gibson began providing investment advice to Hull regarding Hull's personal investments. Div. Ex. 10 (Hull emails Gibson on April 14, 2009 "I would like for you to review my investment advisory accounts."); 7/29/19 Tr. 86:4-6 ("You provided investment advice for James Hull personally, correct? Yes, sir."). Gibson also provided general financial advice to Hull's real estate business. Div. Ex. 187 at 16:22-17:7, 21:4-23.

8. In early 2009, Hull and Gibson created two investment partnerships, the "Hull Fund" and the "Gibson Fund." 7/29/19 Tr. 86:14-87:14. The Hull Fund and the Gibson Fund invested primarily in physical gold and silver. 7/29/19 Tr. 87:6-9; 107:12-14; Div. Ex. 187 at 23:22-24:4.

Formation of Geier Group and Geier Capital

9. On April 14, 2009, Gibson proposed to Hull that an investment advisory company be created. Div. Ex. 10. The same day, Gibson formed Geier Group, LLC ("Geier Group"), a Georgia limited liability company, to function as an investment advisory firm. Div. Ex. 11; Div. Ex. 216 ¶3; 7/29/19 Tr. 87:15-89:25.

10. Gibson owned 50% of Geier Group, Hull owned 35%, and Gibson's father owned 15%. Div. Ex. 216 ¶ 4; 7/29/19 Tr. 99:5-16.

11. Gibson registered Geier Group as an investment adviser in Georgia on April 24, 2009, by signing a Form ADV and filing it with the Financial Industry Regulatory Authority. Div. Ex. 12; 7/29/19 Tr. 90:21-92:14.

12. Geier Group's Form ADV identified Gibson as "President" of Geier Group. Div. Ex. 12 at 17, 21-22, & Part IB, Item 2. Gibson was also identified as the "person responsible for supervision and compliance" at Geier Group. Id. at 17 & Part IB, Item 2; 7/29/19 Tr. 92:5-7.

13. In the Spring of 2009, Gibson passed the Uniform Investment Adviser Law Exam ("Series 65"). 7/29/19 Tr. 77:8-10. A substantial portion of that exam dealt with the regulation of investment advisers, including advisers' fiduciary duties of care, good faith, and loyalty. Id. at 77:11-78:13; Div. Ex. 187 at 42:4-16.

14. Gibson testified that, in spring 2009, when he took and passed the Series 65 exam, he "knew that investment advisers owed their clients a fiduciary duty" and "that an investment adviser's duties included loyalty to the client", as well duties of care and good faith. 7/29/19 Tr. 77:24-78:13.

15. On June 16, 2009, Geier Capital, LLC ("Geier Capital") was formed as a Georgia limited liability company. Div. Ex. 15; Div. Ex.216 ¶ 7; 7/29/19 Tr. 101:6-104:21.

16. The ownership interests in Geier Capital were the same as in Geier Group, Div. Ex. 216 ¶ 9, and Geier Group was never registered as an investment adviser. 7/29/19 Tr. 154:5-8.

17. Geier Capital's operating agreement was not finalized until January 2010, when Geier Capital was designated as the Managing Member of the Geier International Strategies Fund. Div. Ex. 20.

Geier International Strategies Fund

18. Gibson organized Geier International Strategies Fund ("GISF" or the "Fund"), a Delaware limited liability company, on December 16, 2009. Div. Ex. 17; Div. Ex. 216 ¶ 10; 7/29/19 Tr. 113:10 to 114:5.

19. Hull encouraged his friends and business associates to invest in GISF. Resp. Ex. 206; 7/30/19 Tr. 675:18-678:24. Most investors who held interests in the Hull Fund and/or the Gibson Fund transferred their interests to GISF. Div. Ex. 187 at 23:5-12.

20. GISF's Confidential Private Offering Memorandum ("offering memorandum"), operating agreement, and subscription agreement (collectively, the "offering documents") were initially distributed in January 2010. Div. Ex. 24 (offering memorandum); Div. Ex. 22 (operating agreement); Div. Ex. 25 (subscription agreement); 7/29/19 Tr. 114:22-116:25; and Div. Ex. 29.

21. Gibson used the offering documents to solicit and obtain investor funds from December 2009 through March 2011. Div. Exs. 19, 33, 54, 57-58.

22. Each GISF investor received a copy of the offering memorandum, operating agreement, and subscription agreement. 7/29/19 Tr. 116:11-14.

23. Each GISF investor signed a copy of the operating agreement and subscription agreement. 7/29/19 Tr. 116:15-21.

24. Gibson never revised or amended GISF's offering memorandum, operating agreement, or subscription agreement. 7/29/19 Tr. 116:22-117:13.

25. The offering memorandum identified Geier Capital as GISF's "Managing Member" and Gibson as Geier Capital's "Managing Director." Div. Ex. 24 at 1.

26. Gibson testified that he was the "managing director of the managing member of Geier Capital." 7/29/19 Tr. 119:8-16; Div. Ex 187 at 482:23-483:15.

27. The offering memorandum identified Geier Group as GISF's "Investment Manager" and Gibson as Geier Group's "managing member." Div. Ex. 24 at 1.

28. The offering memorandum stated that Geier Group was "registered in the State of Georgia as an investment adviser." Div. Ex. 24 at 1.

29. Gibson was the only individual named in the offering memorandum. Div. Ex. 24; Div. Ex. 187 at 187:17-187:21. Gibson was named in at least 16 places in the offering memorandum. Div. Ex. 24 at 1, 5, 7, 8, 17 and 28.

30. The offering memorandum stated that the success of the Fund was "significantly dependent upon the expertise and efforts of Chris Gibson." Div. Ex. 24 at 17.

31. Gibson and Hull held in-person meetings with almost all of GISF's investors before they invested in the Fund. 8/1/19 Tr. 1337:14-1338:8. During meetings with investors, Gibson described GISF and its investment strategy. Div. Ex. 187 at 49:15-51:3; 7/29/19 Tr. 135:5-7.

32. In early 2010 GISF raised approximately $32 million from 17 investors. Div. Ex. 31 ¶ 13 ("Offering and Sales Amounts") and ¶14 ("Investors").

33. Hull was GISF's largest investor and contributed over 80 percent of the Fund's capital. 7/30/19 Tr. 669:19-670:3; Resp. Ex. 206.

34. GISF's investors also included Gibson, Gibson's parents, Giovanni Marzullo (the father of Gibson's then-girlfriend, Francesca Marzullo), Timothy Strelitz (father of a Gibson

acquaintance), and several of Hull's friends and business associates, including Mason McKnight III, Mason McKnight IV, Matthew McKnight, Will McKnight, and Marshall McKnight. Div. Ex. 33; Resp. Ex. 206.

35. During 2011, the number of investors in GISF increased to 21 investors. Div. Ex. 216 ¶ 11.

Loans From Hull To Gibson

36. Gibson borrowed approximately $650,000 from Hull to invest in GISF; a loan that was memorialized in a promissory note. 8/1/19 Tr. 1358:25 to 1361:6. The promissory note was amended and restated at least 16 times. Resp. Ex. 117 at -10408.

37. Although the loan was important to Hull, he did not demand that Gibson borrow the money. Div. Ex. 187 at 28:10-15, 29:15-30 ("Jim asked me -- he did not demand, but it was clear to me, because he asked several times, that it was important to him.").

38. Gibson's father had previously borrowed approximately $8-10 million from Hull to invest in their commercial real estate business. 7/31/19 Tr. 1085:21-1086:7.

39. Gibson's father also borrowed money from Hull to invest in GISF. 8/1/19 Tr. 1359:10-12.

40. Neither Gibson nor GISF's offering documents disclosed that Gibson had (i) borrowed money from the Fund's largest investor; or (ii) used the proceeds of that loan to leverage his investment in GISF. 7/30/19 Tr. 765:25-766:3 (Mason McKnight IV was unaware of the Hull loan); 7/30/19 Tr. 828:8-11 (Matthew McKnight was unaware of the Hull loan).

Gibson Provided Investment Advisory Services to GISF

41. Gibson testified that he served as an investment adviser to GISF. 7/29/19 Tr. 186:18-21 ("Q: In your capacity as investment advisor [sic] to the fund, you negotiated

transactions on behalf of the fund, correct? A. Yes, sir."). He also testified that he communicated to GISF investors that he would serve as GISF's investment adviser. 7/29/19 Tr. 109:18 – 110:1 ("Q: At the top of the page, you tell Mr. McKnight that Geier Group, LLC is a registered investment advisor [sic] in the state of Georgia, didn't you? A: Yes, sir. Q:And then you go on to explain that you serve as the firm's investment advisor [sic], isn't that right? A: Yes, sir."); 7/29/19 Tr. 112:24 – 113:6 ("Q: Now, during December 2009, you were in the process of forming Geier International Strategies Fund, correct? A: Yes, sir. Q: And when you're soliciting funds from the McKnights or others, you're doing so for Geier International Strategies Fund, correct? A: Yes, sir.").

42. Gibson also has acknowledged that he served as an "investment manager" to GISF. Div. Ex 187 at 143:21-25 ("Q: Your role at Geier Group and/or Geier Capital was investment manager to what, which entity? A: Geier International Strategies Fund.").

43. Gibson has admitted that he performed investment advisory services for the Fund. 7/29/19 Tr. 186:2-7. ("Q: When you performed these functions, you were performing investment advisory services for the fund, correct? A: That's correct. I was performing investment advisory services for the fund, correct, yes, sir.").

44. Gibson provided the same investment advisory services to GISF in both 2010 and 2011. 7/29/19 Tr. 184:20-23.

45. Gibson tracked general market conditions and monitored macroeconomic trends. 7/29/19 Tr. 184:24-185:4; Div. Ex 187 at 268:13-18.

46. Gibson negotiated securities transactions on behalf of the Fund. 7/29/19 Tr. 185:5-7; Div. Ex. 187 at 268:19-22.

47. Gibson tracked the daily performance of GISF's portfolio. 7/29/19 Tr. 185:8-10; Div. Ex. 187 at 268:23-25.

48. Gibson emailed individual investors about the Fund and sent status reports to all investors. 7/29/19 Tr. 185:11-17; Div. Exs. 32, 45, 48, and 81; Resp. Ex. 51.

49. Gibson provided GISF's investors with market analyses, projections, and discussions of the performance of the Fund's investments. 7/29/19 Tr. 185 Tr. 185:14-17; Div. Exs. 32, 45, 48, 51, and 81.

50. In 2011, Gibson communicated with the management of Tanzanian Royalty Exploration, Inc. ("TRX"), the portfolio company in which GISF invested most heavily that year. 7/29/19 Tr. 185:24-186:1; Div. Exs. 76, 77, 78, 79, and 103; Div. Ex. 187 at 269:7-11.

51. Gibson communicated with brokers on behalf of the Fund, 7/29/19 Tr. 187:3-5; Div. Exs. 82, 84, 92, 93, and 105, and gave brokers instructions for handling the Fund's assets, Div. Exs. 92, 93, 96, and 97.

52. Gibson was the only person who interacted with GISF's brokers and submitted orders for GISF's trades. Div. Ex. 187 at 54:11-19.

53. In late 2011, Gibson also negotiated with counterparties regarding the proposed sale of GISF's TRX holdings. Resp. Exs. 90, 92, 94, and 97; 7/29/19 Tr. 242:1-244:4 (arranging sale of TRX shares to Luis Sequeira, a broker in Portugal acting on behalf of a potential buyer); 278:23-280:2 (arranging sale of TRX shares to Casimir Capital); 320:15-321:11 (meeting with Richard Sands of Casimir Capital and David Levy of Platinum Partners to negotiate sale of TRX shares).

54. Mason McKnight IV testified that he understood Gibson would serve as investment adviser to GISF, and that Gibson in fact invested and managed GISF's funds.

7/30/19 Tr. 747:1 to 748:17. He also testified that Gibson was the person who answered his questions about the Fund. Id. at 747:15-748:4.

55. Matthew McKnight testified that he understood Gibson would serve as GISF's investment adviser, and that Gibson in fact managed GISF's assets. 7/30/19 Tr. 814:17-816:5.

56. Gibson advised investors of his expectations for the future performance of GISF's investments. Resp. Ex. 51; Div. Ex. 81.

57. Gibson signed all reports submitted to the Commission on behalf of GISF, Geier Group, and Geier Capital. Div. Exs. 31, 50 and 132 (Forms D); Div. Exs. 39, 53, 69, and 109 (Schedules 13G); Div. Ex. 70 (Form 3); Div. Ex. 71 (Form 4).

Gibson Received Compensation for Providing Investment Advisory Services to GISF

58. Pursuant to GISF's offering memorandum and operating agreement, Geier Group was entitled to an investment management fee equal to 1% of each member's capital account annually. Div. Ex. 216 ¶ 12; 7/29/19 Tr. 121:16-23.

59. GISF paid Geier Group investment management fees totaling $223,351 for 2010. Div. Ex. 188 at 402:7-13, 403:1-20.

60. As the 50% owner of Geier Group, Gibson was entitled to 50% of the $223,351 paid to Geier Group as a management fee for 2010. Div. Ex. 216 ¶ 13. Gibson received that 50% allocation of the management fee for 2010, and kept that amount invested in the Fund. Div. Ex. 188 at 363:25-364:19.

61. GISF paid Geier Group and/or Geier Capital investment management fees totaling $295,000 in 2011. Div. Ex. 188 at 457:4-16, 461:12-462:12.

62. As the 50% owner of Geier Group and Geier Capital, Gibson was entitled to 50% of the $295,000 in management fees paid by GISF in 2011. Div. Ex. 216 ¶ 13. Gibson did not

withdraw (as cash) his 50% allocation in 2011, but kept it invested in a Geier Capital capital account. Div. Ex. 188 at 461:12-462:12.

63. Pursuant to GISF's offering memorandum and operating agreement, Geier Capital was entitled to receive a 10% "incentive allocation" if GISF achieved an annual return in excess of a designated rate ("hurdle rate"). Div. Ex. 24; 7/29/19 Tr. 123:2-9.

64. In 2010, GISF achieved a return in excess of the hurdle rate and GISF paid Geier Capital an incentive allocation of approximately $3 million. Div. Ex. 42 at -0068; Div. Ex. 216 ¶ 14.

65. As 50% owner of Geier Capital, Gibson was entitled to receive 50% of that incentive allocation, i.e., approximately $1.5 million. 7/29/19 Tr. 123:2-19; Div. Ex. 216 ¶ 13. Gibson actually received those funds and chose to reinvest the $1.5 million in GISF. Div. Ex. 188 at 405:11-25.

66. Each year from 2010 until early 2013, Gibson also received a salary from Hull's real estate business that was paid in bi-weekly installments, which Gibson reported as salary on his federal W-2 tax forms. Div. Exs. 43, 128, 147, 156; 7/29/19 Tr. 246:15-252:6.

67. Each of Gibson's W-2's was issued by a human resources firm (Insperity PEO Services, f/k/a Administaff) used by Hull's real estate business for payroll functions. Div. Exs. 43; 147; 188 at 450:10-21; 7/29/19 Tr. 247:15-21.

68. The amounts Gibson received from Hull's business (through Insperity) and reported as salary on Gibson's W-2's were as follows:

2010 -- $73,953.51 (Div. Ex. 43);
2011 -- $148,718.31 (Div. Ex. 128);
2012 -- $148,395.53 (Div. Ex. 147); and
2013 -- $6,270.74 (Div. Ex. 156).

69. Gibson reported the salary he received from Hull's business as income on his tax returns. Div. Ex. 65 (2010 tax return); Div. Ex. 138 (2011 tax return).

70. Geier Group repaid Hull's business for the bi-weekly salary payments Gibson received in 2010. Div. Ex. 188 at 419:5-420: 2. The salary Gibson received in 2011 was never repaid. 7/29/19 Tr. 252:22-24.

71. The salary payments from Hull's business to Gibson in 2010 were for Gibson's advisory services to GISF. Div. Ex. 188 at 419:5-420:2, 421:1-422:15, and 450:4-451:4.

72. The salary payments from Hull's business to Gibson in 2011 were for Gibson's advisory services to GISF. 7/29/19 Tr. 251:11-252:6; Div. Ex. 188 at 468:3-469:1.

73. The salary payments from Hull's business to Gibson in 2012 and 2013 were for Gibson's advisory services to GISF. Div. Ex. 191 at 472:10-21; 473:9-474:5.

74. Gibson never disclosed to GISF or its investors that Hull's business was paying his salary. 7/29/19 Tr. 254:22-25; 7/30/19 Tr. 765:21-24, 828:3-7.

Lapse of Geier Group's Registration

75. Gibson allowed Geier Group's registration as an investment adviser in the state of Georgia to lapse at the end of December 2010. Div. Ex. 167; 7/29/19 Tr. 149:22-150:24.

76. GISF investors were never told that Geier Group was no longer a registered investment adviser. 7/29/19 Tr. 150:25-151:3.

77. After Geier Group's investment adviser registration lapsed, Gibson solicited and received funds from two new investors using the offering documents, stating that Geier Group was a registered investment adviser. Div. Exs. 54, 56; 7/29/19 Tr. 151:14-152:5; 176:25-177:5. ("Q: Knowing Geier Group was not a registered investment advisor on March 1st, 2011, you sent

an e-mail to Mr. Benjamin indicating Geier Group was still a registered investment advisor, isn't that right? A: Yes, sir.").

78. The email signature block that Gibson used in his communications with these two new investors falsely identified Geier Group as a registered investment adviser. Div. Exs. 54, 56; 7/29/19 Tr. 151:14-152:5 ("Q: You indicate at the bottom that Geier Group, LLC, a subsidiary of Geier Capital, is a registered investment advisor, correct? A: Yes, sir. Q: When you sent that to Mr. Storey, that information wasn't correct, was it? A: No, it was not."), and 177:6-14.

Dissolution of Geier Capital and Geier Group

79. Geier Capital was dissolved in Georgia on March 28, 2011. Div. Exs. 63; 216 ¶6; 7/29/19 Tr. 162:8-163:21.

80. Although the Certificate of Termination submitted to the Georgia Secretary of State appears to have been signed by Hull, Div. Ex. 63, Gibson directed Geier Capital's dissolution. Div. Ex. 49 (Gibson email to Hull's assistant: [i]f there are Geier Group and Geier Capital in GA, please end them as well").

81. Although Geier Capital was identified in the offering memorandum as GISF's managing member, Gibson never informed GISF's investors that it had been dissolved. Div. Ex. 188 at 315:6-9.

82. In April 2011, Gibson directed that Geier Group also be dissolved. Div. Ex. 60; 7/29/19 Tr. 159:6-160:5.

83. Although Geier Group was identified in the offering memorandum as GISFs investment manager, Gibson never informed GISF's investors it was dissolved. 7/29/19 Tr. 161:25-162:3; Div. Ex. 188 at 315:6-9.

84. Although Geier Group was dissolved in April 2011, Gibson continued to maintain a brokerage account in the name of Geier Group until at least September 2011. Div. Ex. 88.

85. Although Geier Group was dissolved in April 2011, Gibson admitted he continued to make false Schedule 13G filings with the SEC in the name of Geier Group. Div. Exs. 69, 109; 7/29/19 Tr. 177:19-179:11. (Q: You falsely indicated on this Form 13G that Geier Group LLC still existed, didn't you? A: Yes, sir.").

86. In December 2010, Gibson created a new Geier Capital, LLC entity in the State of Delaware. Div. Ex. 40; Div. Ex. 216 ¶ 7; 7/29/19 Tr. 182:20-183:16. Gibson owned 50% of this new Delaware entity, while Hull and Gibson's father owned 35% and 15%, respectively. Div. Ex. 216 ¶ 9; 7/29/19 Tr. 183:20-23. Gibson was the Managing Member of this Delaware entity. 7/29/19 Tr. 183:24-184:1.

87. Gibson testified that the Delaware entity named Geier Capital was "substituted in" as the Managing Member of GISF by at least April 2011. Div. Ex. 188 at 312:16-25. No evidence exists in the record to show that such substitution was actually made.

88. Gibson never disclosed to GISF's investors that GISF's Managing Member had been replaced with a Delaware entity. 7/29/19 Tr. 184:2-9; Div. Ex. 188 at 312:16-25.

89. Gibson never revised or amended GISF's operating agreement or offering memorandum to reflect that the Delaware Geier Capital had replaced the Georgia Geier Capital. 7/29/19 Tr. 184:10-15; Div. Ex. 188 at 313:19-25, 314:18-2.

GISF's Investment in TRX

90. In late 2010, after discussions with Hull regarding the tax treatment of GISF's gains on its commodities investments, Gibson decided to reduce GISF's commodities investments and increase its equity investments. 8/1/19 Tr. 1345:3-13; 1350:21-1352:4.

91. After that discussion with Hull, Gibson identified TRX as a suitable investment for GISF and recommended that GISF invest in TRX. 7/30/19 Tr. 575:5-9 (Hull testimony).

92. TRX is a Canadian gold-mining company that specializes in exploring for gold resources in Africa. 7/29/19 Tr. 189:11-190:6; Div. Ex. 187 at 67:8-68:6.

93. In late 2010 and early 2011, after identifying the TRX investment, Gibson began investing GISF's assets in the common stock of TRX. 8/1/19 Tr. 1345:3-13; Div. Ex. 48 at 3.

94. By December 31, 2010, GISF owned eight percent of TRX's issued and outstanding shares. Div. Ex. 53.

95. By April 29, 2011, GISF owned approximately 9.7 million shares of TRX stock (with an approximate value of $70 million), which represented approximately 10.3% of TRX's issued and outstanding shares. Div. Ex. 69; Div. Ex. 216 ¶¶ 15-16.

96. As of April 29, 2011, Gibson had invested 100% of GISF's assets in TRX securities. 7/29/19 Tr. 188:20-23.

97. Gibson told GISF's investors that TRX shares could be expected to appreciate in response to an increased demand for gold. Div. Ex. 48, 8/1/19 Tr. 1345:3-1346:9.

98. After reaching $7.26 per share in April 2011, Div. Ex. 216 ¶ 17, the price of TRX's common stock stagnated and, in late summer, declined sharply. 7/29/19 Tr. 190:7-10; Joint Ex. 1.

Gibson's Conflicting Statements Regarding TRX and Its Management

99. In late summer of 2011, as TRX's share price was falling, Joint Ex. 1, Gibson told TRX's management in multiple communications that the company was failing. Div. Ex. 76, 77, 78, 79 and 103.

100. On August 10, 2011, for example, Gibson wrote an email to TRX Chairman James Sinclair saying that Gibson was "physically ill" over the performance of TRX's stock price and "[v]ery soon it will make sense to exit our positions. There is no time left. TRX will go to $3 if we are not at $8 in September." Div. Ex. 76; 9/12/16 Tr. 113:23-114:16.

101. Later that same day, Gibson wrote Sinclair that "[o]ur share price is a disaster . . . . This is TRX failing." Div. Ex. 77. Gibson also wrote: "Everything You Say Is Always Inaccurate." Id.

102. On August 15, 2011, Gibson wrote another email to TRX management stating: "[w]e are running on fumes" and "it is a now or never do or die moment. If the share price falls any further at any point in the next few days or weeks it will be irrecoverable." Div. Ex. 78; 7/29/19 Tr. 204:21-206:8.

103. A week later, on August 22, 2011, Gibson emailed GISF's investors to tell them that, due to the Fund's concentration in TRX, GISF was "positioned exceedingly well." Resp. Ex. 51 at -7483. In the same email, Gibson told the investors that he was "exceedingly confident in our position," id at -7485, and that he believed "very strongly we are in the right company at the right asset class at the right time . . . ." id at -7488.

104. On September 22, 2011, Gibson wrote again to Sinclair, explaining that he was "trying to think of ways to save [TRX]" and wondering whether TRX "should engage an investment bank to sell [itself]." Div. Ex. 79; 7/29/19 Tr. 210:20 to 211:6. In the same email, Gibson wrote: "[a]t the rate of value destruction we can only go lower for 4 more days." Div. Ex. 79.

105. The next day, on September 23, 2011, Gibson wrote another email to GISF's investors, telling them that (i) there was "tremendous value" in the "assets owned and business

operated by TRX"; (ii) he believed the stock price would rise to "significantly higher levels"; and (iii) he believed in "the reputation, character and integrity of Mr. Sinclair." Div. Ex. 81.

106. In the same September 23, 2011 email, Gibson also notified GISF's investors that he was suspending until further notice the management fees he charged against each investor's account. Div. Ex. 81. After this time, Gibson's only source of income was the salary he received from Hull's real estate business. 7/29/19 Tr. 252:19-253:14; Div. Ex. 137; Div. Ex. 128.

The September Front Running

107. On September 22, 2011, TRX's share price closed at $4.58. Joint Ex. 1 at 4. The next day, September 23, 2011, TRX's share price opened at $4.55, fell to a low of $3.98, and closed at $4.07. Id.

108. Gibson's September 23, 2011 email to GISF's investors explained that he would maintain his investment in Geier and TRX until TRX's share price recovered. 7/29/19 Tr. 216:5-217:6; Div. Ex. 81 at 1 ("Personally, I will not redeem my interest in Geier and TRX until the bull market matures over the coming years at what I strongly believe will be significantly higher levels."). He also wrote that 90% of GISF's investors had "confirmed their intentions to remain invested in Geier and TRX at their current levels." Id.; 7/29/19 Tr. 216:5-20 ("Q: And by 90 percent of the investors, you're referring to Jim Hull, yourself, your father, your mother and Giovanni Marzullo, isn't that right? A: Yes, sir.").

109. Over the weekend of September 24-25, 2011, Gibson spoke with Hull, who indicated that he had no tolerance for further losses, which Gibson understood to be an instruction for GISF to sell its TRX shares, subject to obtaining a good price. Div. Ex. 187 at 78:2-79:1.

110. From the weekend of September 24-25 until November 10, 2011, when GISF sold its last TRX shares, Gibson was operating under the general guidance from Hull that "if you can get good prices, let's get out." 7/29/19 Tr. 219:24-220:7.

111. Accordingly, as of the weekend of September 24-25, 2011, Gibson knew GISF intended to sell its TRX shares. 7/29/19 Tr. 221:8-12.

112. None of GISF's investors other than Hull were told of the decision to liquidate GISF's TRX position. 7/29/19 Tr. 220:12-18.

113. On Sunday evening, September 25, 2011, Gibson began his efforts to sell GISF's TRX position by emailing Richard Sands at Casimir Capital to ask if he had a buyer. Resp. Ex. 62 at 8 ("Is Platinum or another buyer interested in increasing their position? ... [W]e're concentrated in TRX so if there is a buyer that sees current prices as very compelling as we otherwise would, please let me know."). Sands responded that he would "work on it tomorrow." Id. at 7.

114. Throughout the day Monday, September 26, 2011, Gibson continued his communications with Sands and his efforts to sell GISF's TRX position. See e.g., Resp. Ex. 62 at 6-7 ("I can do my entire position which is 10,250,000 shares or anything less than that.").

115. Gibson knew that selling a large block of stock was likely to depress the price of that stock. Div. Ex. 187 at 108:12-21 (one would "generally expect the share price of a stock to drop when you sell a large portion of the shares").

116. At the same time, also on September 26, Gibson sold all the TRX shares he held in his personal brokerage account; in the brokerage account he controlled in the name of his then-girlfriend, Francesca Marzullo ("Marzullo"); and in the brokerage account he controlled in Geier Group's name.

117. On September 26, 2011, Gibson sold the 2,000 TRX shares in his personal brokerage account. Div. Ex. 216 ¶ 22; 7/29/19 Tr. 226:6-8; Div. Ex. 86 at 3.

118. On September 26, 2011, Gibson also sold the 18,900 TRX shares in Marzullo's account. Div. Ex. 216 ¶ 23; 7/29/19 Tr. 230:7-10; Div. Ex. 87 at 2-3.

119. On September 26, 2011, Gibson also sold the 1,000 TRX shares in Geier Group's account. Div. Ex. 216 ¶ 24; 7/29/19 Tr. 232:8-11; Div. Ex. 88 at 7 (Geier Group).

120. Gibson sold the 21,900 TRX shares from these three accounts for an average price of $4.04 to $4.05 per share. Div. Exs. 86-88, and Div. Ex. 184, Expert Report of Carmen A. Taveras, Ph.D. ("Taveras Expert Report") at 8-10.

121. Prior to selling the 21,900 TRX shares in the three accounts on September 26, 2011, Gibson never disclosed his intentions to GISF or its investors and never obtained their consent to these trades. Div. Ex. 188 at 662:7-663:5, 665:23-666:15, 669:22-670:1, and 671:1-671:4; see also, 7/30/19 Tr. 760:9-22 (Hull testimony that he was unaware of these trades at the time); 823:25-824:12 (Matthew McKnight testimony, same).

122. Among the other communications between Gibson and Sands on September 26, 2011 were emails in which Sands told Gibson that "I have a size buyer in hand to take you out of the whole position, but you need to be firm and at a price" and that Sands expected to be able to sell 3-5 million TRX shares. Resp. Ex. 62 at 5-6. In his responses, Gibson asked Sands to "maximize the number of shares but I want to price and book the sale tomorrow." Id. at 4.

123. On September 26, Sands also emailed Gibson to explain that Gibson needed to move all of GISF's TRX shares to an account at Casimir Capital, and Gibson agreed to do so the following morning. Id. at 3.

124. The next day, on September 27, 2011, GISF's TRX shares were transferred to an account in its name at Casimir. Resp. Ex. 66; Div. Ex. 90 at 4.

125. At approximately 3:00 PM, on September 27, Casimir sold approximately 3.7 million of GISF's TRX shares for an average price of $3.50 per share. Div. Ex. 90; Div. Ex. 184 (Taveras Expert Report) at 8-10.

126. On September 27, 2011, the price of TRX shares dropped approximately 14%. Div. Ex. 184 (Taveras Expert Report) at 8; Joint Ex. 1.

127. By trading ahead of GISF's sale of approximately 3.7 million TRX shares, Gibson obtained approximately $0.54 more per TRX share for each of himself, Marzullo, and Geier Group. 7/29/19 Tr. 234:19-235:10; Div. Ex. 184 (Taveras Expert Report) at 8-10; Div. Ex. 185, Expert Report of Dr. Gary Gibbons ("Gibbons Expert Report") at 20-22 ("The Fund sold its shares at $3.50 per share, which was 15% lower than the price at which Gibson, Geier Group, and this then-girlfriend sold their TRX shares the previous day.").

128. Gibson testified that he sold his personal TRX shares on September 26, because he needed "liquidity" to repay his debt to Hull. 7/29/19 Tr. 1394:15-25; 1398:4-20. After selling all of his TRX shares in his personal account on September 26, 2011, however, Gibson never used any of the proceeds to pay that debt. Div. Exs. 86, 99 (Gibson's September and October 2011 personal account statements showing that proceeds of 9/26/11 TRX trades were reinvested).

The Hull Buyout Transaction

129. After GISF's September 27, 2011 sale of 3.7 million TRX shares, Gibson continued seeking buyers for GISF's remaining 5-6 million TRX shares. 7/29/19 Tr. 259:6-260:7.

130. In late September and early October, Gibson attempted to sell all of GISF's remaining shares through Luis Sequeira. Resp. Ex. 92 at 4; Resp. Ex. 94 at 3.

131. Gibson expected that trade to be completed in early October, and wrote to GISF's broker at GarWood Securities ("GarWood") on October 3 stating that "I have a trade ready. I just need to know if I call you that you can immediately place an order to sell 5,945,000 limit 3.50." Resp. Ex. 96 at 1.

132. But the large block sale through Sequeira never materialized. On October 14, 2011, Gibson emailed Hull to explain that he had rejected Sequeira's offer to purchase GISF's TRX shares over time by buying 200,000 shares per day. Resp. Ex. 104 at 1, Gibson later testified that he rejected Sequiera's offer because he wanted to sell GISF's entire block of TRX shares at one time. 7/29/19 Tr. 245:5-22.

133. After rejecting Sequiera's offer, Gibson continued his efforts to sell GISF's TRX shares in mid-October. Div. Exs. 92, 93; 7/29/19 Tr. 259:6-260:7.

134. On October 17, Gibson instructed GISF's broker to "please do everything you can to get us able to sell 5,945,000 TRX shares starting ASAP." Div. Ex. 93.

135. The same day, October 17, Gibson sold 364,495 of GISF's TRX shares, obtaining an average price of $3.42 per share. 8/1/19 Tr. 1475:4-1481:12; Div. Ex. 227. That market transaction took two minutes, and the market sale of that volume depressed TRX's share price. Id. (initial sale price GISF obtained was $3.59/share; the price GISF obtained gradually decreased over the two minutes; and the final price GISF was able to obtain was $3.40/share).

136. Throughout this period, Gibson continued providing investment advisory services to Hull personally. Gibson testified that he considered Hull to be one of his investment advisory clients. Div. Ex. 188 at 398:12-17; 7/29/19 Tr. 86:4-6; 145:14-19. On October 15, 2011, Gibson emailed Hull to say that he had sold all of the TRX shares Hull held in a personal brokerage account at Fidelity. Resp. Ex. 105 at 1; 7/29/19 Tr. 258:2-19.

137. As Gibson continued his efforts to sell GISF's remaining TRX shares, on October 18, 2011, Gibson caused GISF to buy 680,636 TRX shares that Hull held in a personal brokerage account at LPL Financial, for approximately $2.45 million (hereinafter the "Hull Buyout Transaction"). Div. Ex. 95; 7/29/19 Tr. 260:14-262:5.

138. The purchase price used in the purchase agreement for the Hull Buyout Transaction was the closing price for TRX on October 18, 2011, indicating that the purchase agreement was completed after market close on October 18, 2011. Div. Ex. 95.

139. Hull's 680,636 TRX shares were delivered to GISF's account at GarWood on October 20, 2011, and GISF paid Hull $2,450,589.60 that same day. Div. Ex. 100 at 6.

140. In conducting the Hull Buyout Transaction, Gibson did not obtain a block discount from Hull on GISF's behalf. 7/29/19 Tr. 262:3-5.

141. Nor did Gibson require Hull to pay a commission in connection with the Hull Buyout Transaction. 7/30/19 Tr. 629:18-20 (Hull testifying he did not pay a commission).

142. The total volume of TRX shares traded on the market on October 18, 2011 was 490,625 shares. Joint Ex. 1 at 5. Thus, if Hull sold his personal TRX shares through the market on October 18, 2011, it would have increased the market volume by 139% and would have a negative impact on TRX's share price. Id.; Div. Ex. 185 (Gibbons Expert Report) at 23-24.

143. When GISF ultimately sold the TRX shares it purchased from Hull – on November 10, 2011 – it paid a sales commission of approximately $6,866.36. Div. Exh. 122 at 14-24; id. at 14 (using first sale of 10,000 TRX shares listed on page 14 of the account statement the estimated commission is calculated by multiplying the number of shares sold by the average price, subtracting from that product the proceeds credited to GISF's account, and dividing that result by the number of shares sold, and then multiplying that result by the total number of shares included

in the Hull Buyout Transaction; e.g., 10,000 x $3.2135 = $32,135; less the Fund's $32,034.38 in proceeds, yields $100.62; divided by 10,000 yields an approximate 1-cent commission, multiplied by the 686,360 shares).

144. This was the only time GISF ever paid a sales commission for the sale of one of its investor's personal shares. 7/29/19 Tr. 285:17-24.

145. Prior to the Hull Buyout Transaction, Gibson never disclosed to GISF or its investors (other than Hull) that he planned to use the Fund's assets to purchase Hull's personal TRX shares. Nor did Gibson disclose that his actions would cause the Fund to pay the sales commission associated with Hull existing his personal TRX position. 7/29/19 Tr. 260:13-262:5; 7/30/19 Tr. 763:20-765:20, 827:5-8; Div. Ex. 188 at 723:8-723:11

146. GISF used first-in, first-out ("FIFO") accounting in determining the cost basis of the shares it owned in 2011. Div. Ex. 188 at 748:4-749:13; Div. Ex. 55; Div. Ex. 74.

147. When Gibson sold GISF's entire remaining block of TRX shares in the market on November 10, 2011, the 680,636 shares purchased from Hull were among the last sold, and were sold at an average price of $2.02. Div. Ex. 122; Div. Ex. 184 (Taveras Expert Report) at 10-11.

148. GISF lost approximately $1.58 per share, or $1,074,902, as a result of the Hull Buyout Transaction. Div. Ex. 184 (Taveras Expert Report) at 10-11.

149. Before carrying out the Hull Buyout Transaction, Gibson never disclosed to GISF or its investors (other than Hull): (i) that he was providing personal investment advice to Hull and Hull's family members (7/29/19 Tr. 145:20-146:3; Div. Ex. 188 at 439:6-15); (ii) that his only source of income was the salary he received from Hull's business (7/29/19 Tr. 254:22-25; 7/30/19 Tr. 765:21-24, 828:3-7); or (iii) that he owed Hull over $600,000 (7/30/19 Tr. 765:25-766:3, 828:8-11).

150. Gibson never disclosed the Hull Buyout Transaction to GISF or its investors (other than Hull) and never received their consent to enter into the transaction. 7/29/19 Tr. 260:13-262:5; 7/30/19 Tr. 763:20-765:6, 827:5-8; Div. Ex. 188 at 723:8-723:11.

151. Gibson, who had previously advised Mason McKnight IV and Matthew McKnight to purchase TRX shares in their personal accounts, did not offer to have GISF buy them out of their TRX position. 7/29/19 Tr. 766:4-7 (Mason McKnight IV), 828:12-14 (Matt McKnight).

The October/November Front Running

152. In late October and early November 2011, TRX shares were generally trading between $3.40 and $4.07. Joint Ex. 1; Div. Ex. 184 (Taveras Expert Report) at Exhibit 15a.

153. During this period Gibson continued his efforts to sell GISF's remaining TRX position. Resp. Ex. 115 at 1; Div. Ex. 98 at 1 ("I believe I have a buyer at current levels for our entire remaining TRX position, and plan to liquidate the fund.").

154. As of October 24, 2011, Gibson had not disclosed to GISF's investors (other than Hull) that GISF would be selling its remaining TRX shares. Div. Ex. 98 at 1 ("I have not made this known even to investors.").

155. On October 27, 2011, Gibson bought 1,054 $4 TRX put option contracts for Marzullo's account. 7/29/19 Tr. 300:23-301:3; Div. Ex. 102 at 2-3.

156. On October 28, 2011, Gibson bought 225 $4 TRX put option contracts for his own account. 7/29/19 Tr. 308:17-309:9; Div. Ex. 99 at 3.

157. On October 28, 2011, Gibson bought an additional 550 $4 TRX put option contracts for Marzullo's account. 7/29/19 Tr. 307:1-308:13; Div. Ex. 102 at 2-3.

158. After Gibson purchased the $4 TRX put options on October 27 and 28, he continued to attempt to sell GISF's remaining TRX shares as a block. 7/29/19 Tr. 320:12-321:5.

159. Gibson bought an additional 340 $4 TRX put option contracts for his own account on November 2 and November 8. Div. Ex. 124 at 3.

160. Gibson used all available assets to purchase the $4 TRX put option contracts for his personal account, and he testified that he would have purchased more put option contracts if he had had the funds to do so. Div. Ex. 187 at 130:19-131:18 ("Q: Is it fair to say that you used every asset available to you at the time on November 10, 2011, to hedge your investment in the Fund? A: Every liquid available asset, yes. Q: Okay. And you would have done more if you had the assets available? A: Yes, I would have.").

161. On November 4, 2011, Gibson emailed Sinclair that TRX was "broken" and that Sinclair was a "crook." Div. Ex. 103 ("If you don't fix what you've broken, it will be my life's goal to ensure your children will know you were a crook and the pain you caused so many people all in an effort at self glorification [sic].").

162. On November 8 or 9, Gibson advised his father, John Gibson, to sell all the TRX shares his father held in a personal IRA account and to buy $4 TRX put option contracts, and John Gibson directed his broker to do so. 7/29/19 Tr. 322:9-24; 7/31/19 Tr. 1108:16-22, 1114:20-1115:3.

163. The $4 TRX put option contracts gave Gibson, Marzullo, and Gibson's father the right to require the sellers of those put option contracts to buy 251,900 shares of TRX at $4 per share, regardless of the prevailing TRX market price. Div. Ex. 184 (Taveras Expert Report) at 20-22.

164. If TRX's share price declined below $4 and the TRX shares held by GISF declined in value, the put option contracts held by Gibson, Marzullo, and Gibson's father would increase in value. Div. Ex. 187 at 118:4 to 119:20 ("Q: What would have to happen for these options to be

profitable? A: You would have to sell them for more than you paid for them. And for that to occur, the company stock price would have to go below the price at which you bought the options minus the premium you paid for the option. Q: Okay. So the share price – A: Would have to go lower.").

165. Gibson testified that the purchase of puts in his and Marzullo's personal accounts constituted a "short bet" against TRX. Div. Ex. 187 at 118:4 to 119:20 ("Q. So when you purchased these, was this a long bet? A. No, it was a short. Q. It was a short bet. A. Yes. Q. Okay. So in your personal account, you had a short bet against TRX. A. Correct.").

166. At the time Gibson told his father to sell his personal TRX shares and buy $4 TRX put option contracts, Gibson knew that GISF was going to liquidate its TRX position the next day. 7/29/19 Tr. 323:7-10 ("Q: When you told your father to buy these puts, you knew that GISF was going to liquidate its TRX position the next day, isn't that right? A: We had an idea of that, yes.").

167. On November 9, 10,000 TRX shares were sold from Gibson's father personal IRA account for an average price of $3.61. Div. Ex. 117. That same day, 350 $4 TRX puts were purchased in John Gibson's personal IRA account for $61,600. Id.

168. On November 9, 2011, Gibson learned that the anticipated sale of GISF's entire TRX position to a large investor (Platinum Partners) would not occur. After discussion with Hull, Gibson decided to immediately sell all of GISF's shares on the public market. 7/29/19 Tr. 321:6-11.

169. The next day, on November 10, 2011, as Gibson prepared to liquidate GISF's entire TRX position, he emailed GISF's broker at Gar Wood to explain that "we are going to potentially tank this [TRX] stock." Div. Ex. 105 at 1.

170. Gibson then sold GISF's remaining 4.9 million TRX shares into the market. Div. Ex. 216 ¶ 32; Div. Ex. 187 at 108:12-109:15; Div. Ex. 122 at 16-26.

171. Gibson testified that liquidating GISF's large position was likely to depress TRX's share price, and that he believed that is what happened on November 10, 2011. Div. Ex. 187 at 108:12-109:10. ("Q: Do you think it was GISF's selling of TRX stock that caused the market price for TRX to drop? A: Yes. Q: Okay, why do you think that? A: Because we sold a large volume of stock that, generally speaking, would result in what occurred. Q: Okay. And is that – not to belabor the point – but you generally expect the share price of a stock to drop when you sell a large portion of the shares? A: Yes.").

172. Almost immediately after Gibson began selling GISF's large block into the market, TRX's share price began falling drastically. Div. Ex. 184 (Taveras Expert Report) at Exhibit 12. TRX's share price opened at $3.41 at 9:30 AM on November 10, but declined to $2.99 by 9:45 AM. Id. At 9:52 AM the New York Stock Exchange halted trading in TRX for five minutes due to the dramatic price drop. Id.

173. At 10:00 AM, with TRX's share price down to $2.02, Gibson sold all 565 $4 TRX put option contracts in his account. Div. Ex. 184 (Taveras Expert Report) at 22-25 & Exhibit 16; Div. Ex. 124 at 3.

174. Two minutes later, Gibson sold all of the $4 TRX put contracts in Marzullo's account. Div. Ex. 184 (Taveras Expert Report) at 22-25 & Exhibit 16; Div. Ex. 123 at 14.

175. At 11:40 AM, all of the $4 TRX put option contracts in John Gibson's account were sold. Div. Ex. 184 (Taveras Expert Report) at 22-25 & Exhibit 16; Div. Ex. 114 at 2. That same day, the remaining 36,000 TRX shares were sold from John Gibson's personal IRA account for an average price of $2.28. Div. Ex. 117; Div. Ex. 184 (Taveras Expert Report) at 25 & n.44.

176. By selling 10,000 of his TRX shares on November 9 instead of November 10, John Gibson obtained prices that were $1.32 more per share than what he received when the remaining 36,000 shares were sold the next day. Div. Ex. 117; Div. Ex. 184 (Taveras Expert Report) at 25 & n.44.

177. The $4 TRX put transactions yielded gross profits (before commissions) of $81,930 in Gibson's account, $254,380 in Marzullo's account, and $43,240.01 in his father's account. Div. Ex. 185 (Gibbons Expert Report) at 45; Div. Ex. 184 (Taveras Expert Report) at 22-25.

178. Thus, the total profit before commissions on the $4 TRX put option contracts was $379,550.01. Div. Ex. 185 (Gibbons Expert Report) at 45; Div. Ex. 184 (Taveras Expert Report) at 22-25.

179. The $4 TRX put transactions yielded net profits (after commissions) of $81,008.81 in Gibson's account, $251,879.81 in Marzullo's account, and $41,823.06 in John Gibson's account. Div. Ex. 185 (Gibbons Expert Report) at 45.

180. Thus, the total profit after commissions on the $4 TRX put option contracts purchased in Gibson's, Marzullo's, and John Gibson's accounts was $374,711.68. Div. Ex. 185 (Gibbons Expert Report) at 45; Div. Ex. 184 (Taveras Expert Report) at 22-25.

181. Before he purchased the $4 TRX puts in his and Marzullo's accounts, Gibson did not disclose his intentions to GISF or any of its investors and he did not obtain their consent to these trades; nor did he disclose that he had advised his father to sell his personal TRX holdings and buy $4 TRX puts. Div. Ex. 187 at 120:22-24 ("Q. Did Mr. Hull know that you purchased these puts? A. He did not."); Gibson 7/30/19 Tr. 767:10-15 (no disclosure to Mason McKnight IV), 825:3-25 (no disclosure or advice to buy puts of his own to Matthew McKnight).

182. Gibson did not purchase $4 TRX put option contracts for GISF. See, Div. Exs. 100, 122 (GISF GarWood account statements for October and November 2011).

183. Although he had earlier advised Mason McKnight IV and Matthew McKnight to buy TRX in their personal accounts, Div. Exs. 47, 72, Gibson did not advise them to sell their personal shares prior to the November 10th sale by GISF. 7/30/19 Tr. 760:23-761:3; 824:13-16.

184. Francesca Marzullo was never a GISF investor. 7/29/19 Tr. 143:18-22 After September 26, 2011, Marzullo did not own any TRX shares. 7/29/19 Tr. 230:7-22.

185. Gibson testified that he purchased the $4 TRX put option contracts for Marzullo's account to protect her parents, who were "different in terms of risk tolerance" so he would not "put elderly people at risk." Div. Ex. 187 at 112:2-22; 113:2-20; see also, 8/1/19 Tr. 1447:24-1448:11.

186. Marzullo's parents, however, did not receive any of the proceeds from Gibson's trading in $4 TRX put options in Marzullo's account because Gibson reinvested – and ultimately lost – all the proceeds he generated from that trading. Div. Ex. 187 at 114:19-24 ("Q: Do you know that her parents received the proceeds? A: The proceeds were unfortunately lost in full. Q: How is that? How were they lost? A: Invested in similar strategies that we pursued in Geier subsequent to this liquidation."); see also, 8/1/19 Tr. 1507:7-16 ("Q: You mentioned the Marzullos on direct examination and your concern for them because they were elderly, isn't that right? A: I did. Q: You took the money you obtained in Francesca's account and continued to trade it on other options trades, isn't that right? A: I did. Q: To the point where you lost it all? A: That's correct. Q: Please explain to the Judge how that is concern for elderly people? A: That was a poor decision.").

GISF after November 2011

187. Gibson continued to manage GISF's investments after November 10, 2011, and throughout the remainder of 2011. 7/29/19 Tr. 334:1-8.

188. Throughout the remainder of 2011, Gibson continued receiving bi-weekly salary payments from Hull's real estate business in return for investment advisory services he provided to GISF. Id.

189. In December 2011, Gibson emailed Hull to say that he had "worked tirelessly" for GISF's investors, "placing their interests ahead of mine." Div. Ex. 125 at 1.

190. In February 2012, Gibson spoke by telephone with Luis Sequeira regarding Sinclair. 8/1/19 Tr. 1487:5 to 1492:7; Div. Exs. 183, 183A. Gibson told Sequeira that Sinclair was "a complete crook and he is not going to have a smile on his face let alone a pulse at the end of next year." Div. Ex. 183A at 4:21-25. Gibson also told Sequiera that Sinclair had been lying to Gibson "for a year." Id. at 3:11-17.

191. Gibson managed GISF's investments throughout 2012. 7/29/19 Tr. 334 :1-5; Div. Exs. 131, 140, 142, and 143.

192. In May 2012, GISF had 20 investors and over $7 million under management. Div. Ex. 139.

193. In 2012, Gibson received approximately $148,000 in bi-weekly salary payments from Hull's business for his advisory services to GISF. Div. Ex. 188 at 472:10-21.

194. Gibson continued to manage GISF's investments in early 2013 as GISF sold its remaining holdings. Gibson 7/29/19 Tr. 335:15-17; Div. Ex. 148; Div. Ex. 149; Div. Ex. 154.

195. Gibson was paid $6,270 in salary by Hull's business for his advisory services to GISF in early 2013. Div. Ex. 188 at 473:9-474:5.

196. On April 10, 2013, Gibson sent letters to the remaining 13 GISF investors returning their investments in the Fund. Div. Ex. 154; 7/29/19 Tr. 342:12-344:19.

197. By April 2013, GISF had ceased trading and Gibson's role as investment manager ended. Id.

Proposed Conclusions of Law

Gibson was an "Investment Adviser" Under the Investment Advisers Act of 1940

1. Pursuant to Section 202(a)(11) of the Investment Advisers Act of 1940 ("Advisers Act"), the term "investment adviser" encompasses, inter alia, any person "who, for compensation, engages in the business of advising others . . . as to the value of securities or as to the advisability of investing in, purchasing, or selling securities." 15 U.S.C. § 80b-2(a)(11).

2. This is a "broad definition", Financial Planning Ass'n v. SEC, 482 F.3d 481, 484 (D.C. Cir. 2007), and reaches persons who receive compensation for investing funds of their clients or who advise their clients "'by exercising control over what purchases and sales are made with their clients' funds.'" SEC v. Ahmed, 308 F. Supp. 3d 628, 652 (D. Conn. 2018) (quoting Abrahamson v. Fleschner, 568 F.2d 862, 870-71 (2d Cir. 1977)).

3. Factors that weigh in favor of an individual being consider an investment adviser under the Advisers Act include, but are not limited to: recommending and advising the purchase and sale of securities; monitoring and managing investments; identifying, analyzing, and recommending securities investment opportunities; negotiating the terms of investments and managing relationships with companies in which clients' invest; and signing or carrying out transactions and trades. Ahmed, 308 F. Supp. 3d at 652-53.

4. There is no prohibition on a client having more than one investment adviser, and indeed a client fund may have more than one such adviser. See Abrahamson v. Fleschner, 568 F.2d 862, 869-70 (2d Cir. 1977) (three general partners who managed the limited partners' funds were each investment advisers within the scope of Section 206); SEC v. Bolla, 401 F.Supp. 2d 43, 61 (D.D.C. 2005) ("each client . . . had three or four investment advisers").

5. Whether an individual is an investment adviser does not depend on whether that individual is acting in his individual capacity or as an officer, employee, or representative of an entity. An individual may be an investment adviser even if serving as an officer, employee, or representative of an entity that is also an investment adviser. SEC v. Berger 244 F. Supp. 2d 180, 185, 192-93 (S.D.N.Y 2001) (finding president and secretary of advisory firm, who "solely responsible for overseeing [advisory firm]'s day-to-day operations," to be an investment adviser).

6. Whether an individual is an investment adviser under the Advisers Act turns on the advisory services performed by that individual, not whether the individual controls the entity through which the services are provided. See SEC v. Juno Mother Earth Asset Mgmt., LLC, No. 11- CIV-1778, 2012 WL 685302, *5-6 (S.D.N.Y. Mar. 2, 2012) (complaint stated a claim under Section 206 against portfolio manager who had 25% interest in the advisory entity and shared responsibility with two other individuals for managing the entity and the fund's investments); United States v. Jensen, 573 Fed. Appx. 863, 877 (11th Cir. 2014) (entity VP was investment adviser because she exercised "control over investor's funds" and "acted in more than a ministerial capacity;" no finding of control of entity).

7. An investment adviser is subject to the antifraud provisions of the Advisers Act regardless of whether he or she controlled an advisory firm. SEC v. The Nutmeg Group, 162 F. Supp. 3d 754, 772 (N.D. Ill. 2016) (finding that it was "undisputed" that both entity and individual acting on its behalf could commit primary violations of Advisers Act Section 206).

8. An investment adviser receives "compensation" if the adviser receives any "economic benefit" for advisory services. The adviser's compensation need not come directly from the advisee. 76 Fed. Reg. 39646 (July 6, 2011) at 39669 ("once a person meets that

definition (by receiving compensation from any client to which it provides advice), the person is an adviser"); see also, Investment Advisers Act Release No. 1092 (October 16, 1987), 52 Fed. Reg. 38400, 38402 (compensation need not come directly from the advisee).

9. An investment adviser need not actually receive such compensation; all that is required is the understanding that the investment adviser was entitled to such compensation or would ultimately be compensated for his efforts. SEC v. Fife, 311 F.3d 1, 11 (1st Cir. 2002) (defendant found to be an investment adviser where "he understood that he would be compensated . . . based on a percentage of the profits from the investments, if successful").

Gibson Violated Sections 206(1) and (2) of the Advisers Act

10. Section 206(1) of the Advisers Act makes it unlawful for an investment adviser "to employ a device, scheme, or artifice to defraud any client or prospective client." 15 U.S.C. § 80b-6(1).

11. Section 206(2) makes it unlawful for an adviser 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).

12. These provisions establish "'federal fiduciary standards' to govern the conduct of investment advisers." Transamerica Mortgage Advisors, Inc. v. Lewis, 444 U.S. 11, 17 (1979) ("no doubt that Congress intended to impose enforceable fiduciary obligations"). Section 206 imposes affirmative duties on investment advisers, including the obligations to exercise "utmost good faith," make "full and fair disclosure of all material facts," and "employ reasonable care to avoid misleading clients." SEC v. Capital Gains Research Bureau, Inc., 375 U.S. 180, 194 (1963).

13. Section 206 establishes a fiduciary duty that "requires the investment adviser to act in the best interests of its clients." SEC v. Moran, 922 F. Supp. 867, 895-96 (S.D.N.Y. 1996), aff'd, 587 F.3d 553 (2d Cir. 2009) (finding Section 206 "applicable to a claim" that defendants allocated favorable trade to personal and family accounts, and "requiring his clients to pay a higher price for the stock the next day").

14. An investment adviser has a duty under Section 206 to disclose, among other things, "all conflicts of interest which might incline an investment adviser -- consciously or unconsciously -- to render advice which was not disinterested." Capital Gains, 375 U.S. at 191.

15. Conflicts of interest are material facts. Vernazza v. SEC, 327 F.3d 851, 859 (9th Cir. 2003) ("It is indisputable that potential conflicts of interest are 'material' facts with respect to clients and the Commission.").

16. The Commission "has long held that "'[f]ailure by an investment adviser to disclose potential conflicts of interests to its clients constitutes fraud within the meaning of Sections 206(1) and (2).'" Robare Grp., Ltd. v. SEC, 922 F.3d 468, 472 (D.C. Cir. 2019) (quoting Fundamental Portfolio Advisors, Inc., Advisers Act Release No. 2146, 2003 WL 21658248 at *15 & n.54 (July 15, 2003)).

17. "[T]he standard of care to which an investment adviser must adhere imposes an affirmative duty of utmost good faith, and full and fair disclosure of all material facts, as well as an affirmative obligation to employ reasonable care to avoid misleading his clients." SEC v. Blavin, 760 F.2d 706, 711-12 (6th Cir. 1985).

18. In an action under Section 206, the Commission need not prove that the investment adviser's violation caused injury to the client. Capital Gains, 375 U.S. at 195 (Congress "did not intend to require proof of intent to injure and actual injury to the client" and

"intended the [Advisers Act] to be construed . . . not technically and restrictively, but flexibly to effectuate its remedial purposes.").

19. Section 206(1) is violated if the adviser acted with scienter, which includes recklessness. Ernst & Ernst v. Hochfelder, 425 U.S. 185, 193 n. 12 (1976) (scienter is a mental state embracing intent to deceive, manipulate, or defraud); Blavin, 760 F.2d at 711-12 ("Recklessness is a sufficiently culpable state of mind to support a finding of liability"); SEC v. Trabulse, 526 F. Supp. 2d 1008, 1014 (N.D. Cal. 2007) (recklessness satisfies scienter requirement and constitutes "highly unreasonable conduct that amounts to an extreme departure from standards of ordinary care").

20. Simple negligence is sufficient to establish a Section 206(2) violation. Robare Grp., Ltd., 922 F.3d at 472 ("Proof of simple negligence suffices for a violation of Section 206(2)"). Negligence is "the failure to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation" and acted with "culpable carelessness." In re Lisa B. Premo, Init. Dec. Release No. 476, 2012 WL 6705813, at *22, n.34 (Dec. 26, 2012); see also, Robare Grp., Ltd., 922 F.3d at 477 ("Negligence is the failure to 'exercise reasonable care under all the circumstances.'") (quoting Rst. 3d of Torts: Liability for Physical and Emotional Harm § 3 (2010)).

21. To establish that Gibson violated Section 206(1), the Division was required to show that Gibson, while using the mails or an instrumentality of interstate commerce, (i) was an investment adviser, (ii) breached his fiduciary duties by nondisclosure of material facts or otherwise engaged a scheme to defraud, and (iii) acted at least recklessly. Steadman v. SEC, 603 F.2d 1126, 1129-1134 (5th Cir. 1979) (Steadman I); ZPR Investment Mgmt. Inc v. SEC, 861 F.3d 1239, 1247 (11th Cir. 2017).

22. To establish violations of Section 206(2), the Division was required to establish that Gibson, while using the mails or an instrumentality of interstate commerce, (i) was an investment adviser, (ii) breached his fiduciary duties by nondisclosure of material facts or otherwise engaged in a transaction or practice that operated as a fraud or deceit, and (iii) acted at least negligently. ZPR Investment Mgmt. Inc., 861 F.3d at 1247.

23. An investment adviser's federal fiduciary duties under Section 206 may not be waived, pursuant to Section 215(a) of the Advisers Act. 15 U.S.C. § 80b-15(a) ("[a]ny condition, stipulation, or provision binding any person to waive compliance with any [other Advisers Act provisions or rules thereunder] shall be void.").

24. "While the application of the investment adviser's fiduciary duty will vary with the scope of the relationship, the relationship in all cases remains that of a fiduciary to the client"; "[i]n other words, an adviser's federal fiduciary duty may not be waived, though it will apply in a manner that reflects the agreed-upon scope of the relationship." SEC Release No. IA-5248, 2019 WL 3779889 (June 5, 2019) (the "IA Release"), at *4; see also, id. ("the specific obligations that flow from the adviser's fiduciary duty depend upon what functions the adviser, as agent, has agreed to assume for the client").

25. "To meet its duty of loyalty, an adviser must make full and fair disclosure to its clients of all material facts relating to the advisory relationship", id. at *8, and "an adviser must eliminate or at least expose through full and fair disclosure all conflicts of interest which might incline an investment adviser . . . to render advice which was not disinterested." Id. at *10. "In order for disclosure to be full and fair, it should be sufficiently specific so that a client is able to understand the material fact or conflict of interest" (e.g. "it would be inadequate . . . to disclose that the advisers has 'conflicts' without further description"). Id. "[D]isclosure that an adviser

'may' have a particular conflict, without more, is not adequate when the conflict actually exists" and "the use of 'may' would be inappropriate if it simply precedes a list of all possible or potential conflicts regardless of the likelihood and obfuscates actual conflicts . . . ." Id. at*9.

26. Front running involves an investment adviser's use, with expectation of personal benefit, of material, non-public information concerning an anticipated transaction likely to impact the value of a security. SEC v. Yang, 999 F. Supp. 2d 1007, 1016 (N.D. Ill. 2013) (front running is an attempt by an adviser "to profit personally by secretly authorizing personal trades in anticipation of much larger trades he knew that he would be authorizing"); see also, Bines, Harvey E. and Thel, Steve, *Investment Management Law and Regulation*, 2d. ed. (March 14, 2006), at 807 (front running is the illicit practice of "using advance knowledge of impending client action to secure advantage").

27. Front running creates a conflict of interest between the adviser and the client, undermines the integrity of the market, and is recognized as a violation of fiduciary duties and Sections 206(1) and (2) of the Advisers Act. See Capital Gains, 375 U.S. at 196-97 (Advisers Act requires adviser to "make full and frank disclosure of his practice of trading on the effect of his recommendations"), 201 (Advisers Act, "in recognition of adviser's fiduciary relationship to his clients, requires that his advice be disinterested" and "[t]o insure this it empowers the courts to require disclosure of material facts"); see also, Yang, 999 F. Supp. 2d at 1016.

28. Section 206 liability may attach where investment adviser favors one client over another, without disclosing financial conflict of interest. SEC v. K.W. Brown and Co. et al., 555 F. Supp. 2d 1275, 1308-09 (S.D. Fla. 2007) (advisers' cherry-picking scheme violated Section 206 by "failing to disclose their practice of allocating favorable trades to [favorable account] at

the expense of their clients and failing to disclose the conflict of interest created by Defendant['s] financial interest in the [the favorable account]").

Gibson Violated Section 206(4) of the Advisers Act and Rule 206(4)-8 Thereunder

29. Section 206(4) of the Advisers Act prohibits an investment adviser from engaging in "any act, practice, or course of business that is fraudulent, deceptive, or manipulative." 15 U.S.C. 80b-6(4).

30. Liability under Section 206(4) can arise from simple negligence. SEC v. Steadman, 967 F.2d 636, 647 (D.C. Cir. 1992) (Steadman II).

31. Rule 206(4)-8(a)(1) prohibits an investment adviser to a pooled investment vehicle from making an untrue or misleading statement regarding a material fact to investors or prospective investors, or failing to state material facts necessary to make statements to such investors not misleading. 17 C.F.R. § 275.206(4)-8(a)(1).

32. Rule 206(4)-8(a)(2) prohibits "any act, practice, or course of business that is fraudulent, deceptive, or manipulative with respect to any investor or prospective investor" in such a pooled investment vehicle. 17 C.F.R. § 275.206(4)-8(a)(2).

33. Rule 206(4)-8 applies to "pooled investment vehicles," including "hedge funds and other types of privates offered pools that invest in securities." Investment Advisers Act Release No. 2628, 2007 WL 2239114, at *3 (Aug. 3, 2007); 17 C.F.R. § 275.206(4)-8(b).

34. Misstatements and omissions regarding how investor funds would be used are material as a matter of law. SEC v. Research Automation Corp., 585 F.2d 31, 35-36 (2d Cir. 1978) ("What reasonable investor would not wish to know that the money raised by stock sales would not be used for working capital but be diverted to [defendant]'s officers? It is beyond

cavil that appellants' misleading statements and omissions concerned facts that were material as a matter of law.").

Gibson Violated Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 Thereunder

35. Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") makes it unlawful, in connection with the purchase or sale of securities, to use "any manipulative or deceptive device or contrivance" in contravention of a rule issued by the Commission for the protection of investors. 15 U.S.C. § 78j(b).

36. Exchange Act Rule 10b-5 is such a rule, and prohibits three overlapping types of deceptive conduct: subsection (a) prohibits the use of any "device, scheme, or artifice to defraud"; subsection (b) prohibits false or misleading statements or omissions; and subsection (c) prohibits "any act, practice, or course of business which operates . . . as a fraud or deceit on any person." 17 C.F.R. § 240.10b-5.

37. Rule 10b-5(a) and (c) liability against investment adviser need not be based solely on fraudulent conduct towards or with respect to the adviser's client but extends to investors or potential investors. SEC v. Lauer, 478 Fed. Appx. 550, 556 (11th Cir. 2012) (district court did not err in holding that 10(b) applied to conduct aimed at investors as opposed to the hedge fund that defendant managed).

38. As with Section 206 liability, for Section 10(b) liability, the Division need not establish that Gibson's conduct harmed GISF or its investors. Graham v. SEC, 222 F.3d 994, 1001-02 (D.C. Cir. 2000) (injury to purchaser need not occur to establish 10(b) liability).

39. An investment adviser, as "a fiduciary", "therefore ha[d] an affirmative duty of utmost good faith to avoid misleading clients" and that "duty include[d] disclosure of all material facts and all possible conflicts of interest." Laird v. Integrated Res., Inc., 897 F.2d 826, 833-34

(5th Cir. 1990); SEC v. Zanford, 535 U.S. 813, 824 (2002) (fiduciary liable for fraud under 10(b) for trading on and non-disclosure of misappropriated confidential information); Geman v. SEC, 334 F.3d 1183 (10th Cir. 2003) (same); Superintendent of Ins. of State of N.Y. v. Bankers Life & Cas. Co., 404 U.S. 6, 11-12 (1971) (fiduciary who disregards trust relationship can be held liable under Section 10(b)).

40. "[S]ilence in connection with the purchase or sale of securities may operate as a fraud actionable under § 10(b)" where there is "a duty to disclose arising from a relationship of trust and confidence . . . ." Chiarella v. U.S., 445 U.S. 222, 230 (1980).

41. The Division can establish scienter, for purposes of Section 10(b) liability, by showing that a person acted knowingly or with severe recklessness. SEC v. Carriba Air, Inc., 681 F.2d 1318, 1324 (11th Cir. 1982).

Put Options

42. The value of a put option increases as the share price of the underlying security decreases, and the "buyer of a put option" therefore "anticipate[s] the stock price to drop (a 'short' position)." Olagues v. Icahn, 866 F.3d 70, 72 n.1 (2d Cir. 2017) ("The buyer of a put option . . . anticipate[s] the stock price to drop (a 'short' position)."); see also, Div. Ex. 186 at 8-12 (reciting industry authority; not opinion).

Remedies

43. In determining whether a violator should be permanently barred, pursuant to Advisers Act Section 203(f) and Investment Company Act Section 9(b), the following factors are to be considered: (i) the egregiousness of a respondent's actions; (ii) the isolated or recurrent nature of his infractions; (iii) the degree of scienter involved; (iv) the respondent's assurances against future violations; (v) whether the respondent recognizes the wrongful nature of his

conduct; and (vi) the likelihood the respondent's occupation will present opportunities for future violations. Steadman I, 603 F.2d at 1140. No one factor controls. SEC v. Fehn, 97 F.3d 1276, 1295-96 (9th Cir. 1996).

44. The factors considered in determining whether a cease-and-desist order is warranted are similar to those considered above, Steadman I, with added emphasis on the factor regarding the possibility of future violations. In re KPMG Peat Marwick LLP, Init. Dec. Release No. 157, 2000 WL 45725, *34 (Jan. 19, 2001), aff'd sub nom KPMG v. SEC, 289 F.3d 109 (D.C. Cir. 2002).

45. The severity of the sanction appropriate in a particular case depends on the facts of that case and the likely value of the sanction in preventing recurrence. Berko v. SEC, 316 F.2d 137, 141 (2d Cir. 1963); In the Matter of Leo Glassman, File No. 3-3758, 1975 WL 160534 at *2 (Dec. 16, 1975).

46. The Commission has "repeatedly held that conduct that violates the antifraud provisions of the securities laws is especially serious and subject to the severest of sanctions under the securities laws." In re Peter Siris, File No. 3-15057, 2013 WL 6528874, *6 (Dec. 12, 2013) (internal quotations and citation omitted).

47. For purposes of deciding whether to impose a permanent collateral bar, violative conduct is "willful" if the violator intentionally engaged in the conduct constituting the violation. Wonsover v. SEC, 205 F.3d 408, 414 (D.C. Cir. 2000) ("It has been uniformly held that 'willfully' in this context means intentionally committing the act which constitutes the violation."); see also, In re Dennis Malouf, Admin. Proc. No. 3-15918, IAA Rel. No. 4463, at 36 (July 27, 2016), aff'd, Malouf v. SEC, 933F.3d 1248 (10th Cir. 2019) (rejecting respondent's argument equating willfulness with scienter).

48. The Commission may seek disgorgement and prejudgment interest thereon, pursuant to Advisers Act Section 203(k)(5) [15 U.S.C. § 80b-3(k)(5)] and Exchange Act Section 21C(e) [15 U.S.C. § 78u-3(e)].

49. "Disgorgement is an equitable remedy designed to deprive a wrongdoer of his unjust enrichment and to deter others from violating the securities laws." SEC v. First City Fin. Corp., 890 F.2d 1215, 1230 (D.C. Cir. 1989) (finding no indication in the language or legislative history of the Exchange Act limiting courts' equitable remedies).

50. "The SEC is entitled to disgorgement upon producing a reasonable approximately of a [respondent]'s ill-gotten gains" and "[t]he burden then shifts to the [respondent] to demonstrate that the SEC's estimate is not a reasonable approximation." SEC v. Calvo, 378 F.3d 1211, 1217 (11th Cir. 2004). "Exactitude is not a requirement" and "any risk of uncertainty should fall on the wrongdoer whose illegal conduct created that uncertainty." Id. (citing SEC v. Warde, 151 F.3d 42, 50 (2d Cir. 1998)).

51. Losses avoided are a proper measure of disgorgement. See e.g., SEC v. Patel, 61 F.3d 137, 140 (2d Cir. 1995).

52. Prejudgment interest on a disgorgement amount is intended to deprive the wrongdoer of the benefit of holding his illicit gains over time. SEC v. Merchant Capital, LLC, 486 Fed. Appx. 93, 97 (11th Cir. 2012) ("Without prejudgment interest, [violators] would have benefitted from what in effect amounts to interest-free loans of the ill-gotten funds.") (citing SEC v. First Jersey Securities, Inc., 101 F.3d 1450, 1476 (2d Cir. 1996)).

53. Civil penalties may be imposed in administrative proceedings if they are in the public interest and based on a willful violation of the Advisers Act, Exchange Act, or the Rules thereunder. 15 U.S.C. § 80b-3(i); 15 U.S.C. § 78u-2(a)(2).

54. For violations occurring in 2011, the maximum per-violation penalties under both the Advisers Act and Exchange Act are as follows: $7,500 for a Tier I violation (non-fraud); $75,000 for a Tier II violation (fraud); and $150,000 for a Tier III violation (fraud and substantial losses or risk thereof). 17 C.F.R. § 201.1001; 15 U.S.C. § 80b-3(i)(2); 15 U.S.C. § 78u-2(b).

55. The Commission has broad discretion in determining the penalty, which may be calculated based on the number of violations, the number of statutory or regulatory provisions violated, or the disgorgement amount – including with reference to "each act or omission" (15 U.S.C. §§ 77h-1(g)(2)(C), 78u-2(b)(3), 80b-3(i)(2)(C), i.e. the number of times the violator engaged in conduct that violated the securities laws. See, e.g., In re Stanley Jonathan Fortenberry, Init. Dec. Release No. 748, 2015 WL 860715, *38 (Mar. 2, 2015) (finding nine distinct fraudulent acts or omissions for purposes of calculation penalty amount).

September 13, 2019

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of September 2019:

(i) An original and three copies of the foregoing Division of Enforcement's Proposed Findings and Conclusions of Law were filed with the Office of the Secretary, SEC, 100 F Street, N.E., Washington, D.C. 20549-9303;

(ii) a copy of the foregoing Division of Enforcement's Proposed Findings and Conclusions of Law was sent to Stephen J. Crimmins, counsel for Respondent, via email to Stephen.Crimmins@mmlawus.com and via UPS next day delivery to:

Stephen J. Crimmins, Esq.
Murphy & McGonigle
1001 G Street, NW
Washington, D.C. 20001; and

(iii) a copy of the foregoing Division of Enforcement's Proposed Findings and Conclusions of Law was provided to James E. Grimes, Administrative Law Judge, via email to *ALJ@sec.gov*.

Nicholas Margida