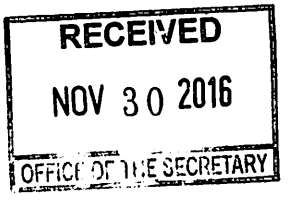
UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

ADMINISTRATIVE PROCEEDING
File No. 3-17184



In the Matter of

CHRISTOPHER M. GIBSON,

Respondent

RESPONDENT CHRISTOPHER M. GIBSON'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

November 29, 2016

Thomas A. Ferrigno
Brown Rudnick LLP
601 Thirteenth Street NW, Suite 600
Washington, D.C. 20005

Paul F. Enzinna
Ellerman Enzinna PLLC
1050 30th Street, NW
Washington, D.C. 20007

TABLE OF CONTENTS

Pursuant to the Post-Hearing Order entered on September 16, 2016, Respondent Christopher M. Gibson ("Gibson" or "Respondent") submits the following proposed findings of fact and conclusions of law.

I. Proposed Findings of Fact

The Respondent proposes the following findings based on the evidence admitted during the hearing on September 12-16, 2016, and the Stipulations of the Parties (Div. Ex. 189).[1]

RESPONDENT'S EDUCATION AND EMPLOYMENT

1. Following his graduation from Williams College in 2006, Respondent Christopher M. Gibson ("Gibson" or "Respondent") was employed by Deutsche Bank Securities, Inc. in New York. Tr. 16:7 – 9; 553:5 – 8.

2. Respondent passed the General Securities Representative Exam ("Series 7"), the Uniform Investment Adviser Law Examination ("Series 65"), and the Uniform Securities Agent State Law Exam ("Series 63") in 2006. Tr. 25:22 – 26:1, 33:7 – 11; Div. Ex. 189 at ¶2; Div. Ex. 190 at 41:13-16.

3. Hull, Storey Gibson Companies ("HSGC") is a commercial real estate management firm located in Augusta, Georgia. James Hull ("Hull"), Barry Storey and Respondent's father, John Gibson, owned and operated HSGC. Tr. 18:18 – 25; 553:13 – 21, 887:25 – 888:16.

4. Prior to graduating from college, Respondent worked at HSGC during summers. Tr. 555:14 – 21.

5. After leaving Deutsche Bank Securities, Inc., Respondent spoke with Hull about potential employment at HSGC. Respondent had great admiration for Hull, who was held in high regard in the community, and Respondent was interested in working with Hull in whatever

[1] The Division's exhibits are cited as "Div. Ex. __." Respondent's exhibits are cited as "Resp. Ex. __."

capacity Hull saw as desirable. Gibson Investigative Testimony, Div. Ex. 190; 20:21 – 23, 21:11 – 13; Tr. 16:7 – 9, 18:13 – 17, 558:7 – 11, 886:22 – 24; 839:7 – 8.

6. Hull hired Respondent for HSGC as a finance analyst, a position Respondent held from February 2009 until the end of 2012. His duties included evaluating the credit quality of tenants occupying the properties owned by HSGC. Tr. 553:13 – 21, 607:5 – 15, 728:20 – 730:7; Resp. Ex. 36, 37.

FORMATION OF INVESTMENT VEHICLES

7. While an employee at HSGC, Respondent discussed investments with Hull, and explained his market view to Hull. Respondent believed that increases in the money supply, which were made by the United States government in reaction to the financial crisis of 2008, would cause the value of the United States dollar to decline, and that the value of commodities, including gold and silver, would increase. Tr. 557:5 – 8, 561:5 – 562:3.

8. Hull proposed forming an investment vehicle, and Respondent and Hull formed two limited liability companies, the Hull Fund and the Gibson Fund. These funds did not charge advisory fees and did not engage in active trading; rather, they bought and held assets. Tr. 557:12 – 558:5, 559:10 – 12, 565:12 – 14.

9. Hull was the primary investor in both funds, and directed the funds' investments. Hull solicited his business associates to invest in the Hull and Gibson Funds, including Wayne Grovenstein, Mason McKnight III, Mason McKnight IV, Will McKnight, Nick Evans, and Doug Cates. Tr. 559:15-18, 560:4-20, 564:8-21.

10. Respondent periodically assisted Hull with regard to other investment accounts maintained by Hull and his family. Tr. 562:4 – 563:19.

11. The Hull and Gibson Funds had investment returns of approximately 40% in

2009. In late 2009, Hull told Respondent that he wanted to increase the Funds' risk profile in order to achieve higher returns. Tr. 557:12 - 558:5, 566:19 – 567:11, 615:6-18.

FORMATION OF GEIER INTERNATIONAL STRATEGIES FUND

12. In late 2009, Hull became dissatisfied with the fact that he and Respondent were performing services for the other investors in the Hull and Gibson Funds without being compensated for their services. Respondent advised Hull that in order to charge fees, they would have to adopt a more formal structure. Tr. 564:3-7, 565:3-9, 566:19-24, 615:6-18.

13. Respondent engaged counsel and Geier International Strategies Fund, LLC ("Geier Fund") was formed on December 16, 2009. Geier Fund was formed in order to make highly risky investments and to achieve a high return, and Geier Fund was expected to be highly volatile. Therefore, investment in Geier Fund was limited to accredited investors – individuals with an income of at least $200,000 (or $300,000 joint income with spouse) and more than $1.5 million in assets) who stipulated their ability to lose all of their principal. Tr. 35:-19 – 36:13, 48:15-20, 448:6-8, 448:15-17, 568:9 – 569:12, 570:6-17, 838:12-24, 915:2 – 11, 916:2-20; Div. Ex. 17.

14. Geier Fund filed an SEC Form D, Notice of Offering of Exempt Securities, on February 11, 2010. This document indicated that as of that date, Geier Fund had raised over $32,000,000 from 17 investors. Hull invested approximately 80% of this amount. Tr. 52:4-24, 53:5-22, 129:11-17; Div. Ex. 31.

HULL SOLICITED HIS BUSINESS ASSOCIATES TO INVEST IN THE FUND

15. In December 2009, Respondent and Hull met with potential investors in Geier Fund, including the investors in the Hull and Gibson Funds. Hull was present at, and led, each of these meetings with potential investors that Respondent attended. Respondent did not meet with

all of the potential investors. Each of the investors, including Mason McKnight IV and Matthew McKnight, was told that the fund would be a volatile, high risk and high reward investment vehicle, and that Geier Fund was "swinging for the fences" in hopes of a "grand slam." Tr. 39:25 – 40:9, 49:8-16, 447:23 – 448:8, 468:12 – 469:21, 572:23 - 573:16, 609:15 – 611:7, 619:10 – 620:17, 624:20 – 627:3; Div. Ex. 19.

16. Hull solicited the following individuals who, collectively, owned approximately 10% of Geier Fund: Douglas Cates, Nick Evans, Wayne Grovenstein, John Hudson, Jr., Mason McKnight III, Mason McKnight IV, Matthew McKnight, Marshall McKnight, Will McKnight, and T.R. Reddy. Respondent had no prior business relationship with these individuals, and opposed bringing them into the Geier Fund:

> Q ... you're addressing an e-mail to Mason McKnight and others... sending him the private offering memorandum, the operating agreement, and the subscription agreement.
>
> A And this is exclusively at the direction of Mr. Hull. I had no previous relationship with the McKnights and many of the other investors, and they were Mr. Hull's business associates. I didn't support bringing on small investors at the time. I thought we should wait longer and develop a track record, but this was Mr. Hull's view, and I thought it was an achievable strategy. So I was carrying out the directive of Mr. Hull to on board these investors.

Nevertheless, Respondent carried out Hull's instructions with regard to soliciting them and documenting their investments. Tr. 38:4 – 25; 51:15-23, 564:8-21, 617:4 – 618:2; Div. Ex. 33.

AT HULL'S BEHEST, RESPONDENT AND HIS PARENTS MADE EXTRAORDINARY COMMITMENTS TO THE FUND, EXPOSING THEM TO EXPONENTIALLY GREATER RISKS THAN OTHER GEIER FUND INVESTORS

17. In order to achieve an "alignment of interest," Hull designed and structured an **extraordinary** alignment of interest between the Fund, on one hand, and Respondent and his family, on the other, with a particularly **overwhelming** financial commitment by the Respondent

and the Gibson family exposing them to risk exponentially greater than any other investor in Geier relative to their liquidity and net worth. By design, if the Geier Fund lost money, the Respondent and his family would be financially crushed and they were, with the Respondent becoming insolvent on November 10, 2011. Form D-A; Resp. Ex. 149, Expert Report of James A. Overdahl, Ph.D., August 5, 2016; Exhibits 5B, 13.

18. Hull required Respondent to invest his entire net worth in Geier Fund, and he invested between $350,000 and $400,000 in the Fund. In addition, Hull required Respondent to borrow funds from Hull, under full recourse, 8% demand notes secured by all assets owned by the Respondent, and to invest those funds in Geier Fund. Respondent's debt to Hull ultimately increased to $645,000. Tr. 577:6-16, 580:5-7, 611:17 – 612:4, 620:18 – 621:4; 636:7 – 638:2, 744:21 – 745:21, 921:23 – 922:5.

19. In late 2010, Respondent attempted to repay the funds he borrowed from Hull, but Hull refused to permit him to do so. Tr. 578:15-24.

20. In the course of their business together, Hull periodically loaned funds to John Gibson, Respondent's father and Hull's partner, under full recourse, 8% demand notes secured by all assets owned by John Gibson. At the time Geier Fund was formed, John Gibson owed Hull approximately $8 million on this note. Tr. 578:25 – 579:6, 639:22 – 640:2, 887:25 – 888:25.

21. At Hull's urging, John Gibson invested his liquid assets as well as additional funds borrowed from Hull in Geier Fund. Tr. 578:25 – 579:6, 611:17 – 618:4, 620:18 – 621:4, 639:22 – 640:2, 921:23 – 922:5.

22. At Hull's direction, the three owners of the Geier Fund's Investment Manager re-invested all incentive fees received in the Geier Fund. Respondent's investment allocation of

$1.5 million for 2010 was never withdrawn by Respondent, but always remained in the Fund, except for an amount to pay taxes. James Hull objected when the Respondent attempted to pay off his debt to James Hull with proceeds from the performance fee, and Respondent remained indebted to James Hull and his investment in the Fund remained highly leveraged. Tr. 578:15-24, 781:16-19.

23. Hull urged Respondent to solicit his mother, Martha Gibson, to invest in Geier Fund. She invested approximately $725,000 – which she had inherited from her mother and her entire net worth — in Geier Fund. Tr. 575:17 -576:19, 639:4 – 21, 887:5-22.

24. Giovanni Marzullo was the father of Francesca Marzullo, who had been Respondent's girlfriend for nine years at the time Geier Fund was formed. During those nine years, Respondent had periodically provided Mr. Marzullo with financial advice, and at Respondent's urging, Mr. Marzullo – who was born in 1936 and had retired in 2009 -- invested his and his wife's entire net worth in Geier Fund. Tr. 54:25 – 55:5, 575:4-13, 638:3-639:3, 1152:14 – 18.

25. Collectively, Respondent, John Gibson, Martha Gibson, and Giovanni Marzullo owned approximately 10% of Geier Fund. Tr. 129:11 – 17.

26. By investing their entire net worth – and in the case of Respondent and his father, more than their net worth – in Geier Fund, Respondent, his parents and Mr. Marzullo undertook a risk both qualitatively and quantitatively different from the risk assumed by the other Geier Fund investors, because they risked insolvency if Geier Fund became worthless. In fact, because they invested borrowed funds in addition to their entire net worth, Respondent risked insolvency if the value of Geier Fund declined below the amount he had contributed to the Fund. By contrast, each of the other Geier Fund investors invested a small fraction of their net worth, or

"money [they] could afford to lose," in Geier Fund, and would remain wealthy even if Geier Fund became worthless. Tr. 58:24 – 59:4, 462:3 – 5, 637:17 – 638:2, 638:18 – 23, 639:22 – 640:2, 855:8 – 13, 916:16 – 20.

27. The economic interests of Respondent, his parents and the Marzullo family, including their purchase of protective put options, were always aligned with the interests of the fund – when the stock price of TRX went up they all benefitted and when it went down they all suffered together, and the protective put positions taken are consistent with Respondent's bullish views on TRX. Tr. 1132:11-18, 1132:22- 1133:22.

TO MAXIMIZE THE "ALIGNMENT OF INTERESTS," HULL ENCOURAGED "OUTSIDE ACCOUNTS".

28. Hull encouraged investors in Geier Fund, including Respondent, to maintain accounts separate from the Fund and to acquire the same assets as Geier Fund. Hull viewed such investments in personal accounts as an indication of "alignment of interest." Tr. 587:3-14, 620:7 – 22, 744:21 – 745:21.

29. Geier Fund's Offering Documents specifically permitted these "outside accounts." Tr. 1158:10 – 1160: 6.

30. The "outside accounts" maintained by Geier Fund investors included the following:

a) 680,636 shares of TRX held by Hull in a personal account outside the Fund; Tr. 620:18 – 621:4, 689:4 - 6.

b) 2,000 shares of TRX held by the Respondent in a personal account outside the Fund; Tr. 135:22 – 136:8; Div. Ex. 86.

c) 1,000 shares of TRX held by Geier Group, the investment manager of Geier Fund; Resp. Ex. 29.

d) 46,000 shares of TRX held in an IRA account outside of the Fund by the Respondent's father, a 15% owner of the Geier Capital and Geier Group; Tr. 103:1 – 7; Resp. Ex. 32 at SEC-LIT-PROD-000214167 – 168; and

e) 18,900 shares of TRX held in an account which had been opened in the name of the Respondent's longtime girlfriend Francesca Marzullo -- a graduate student living at home and the only child and sole heir of Giovanni Marzullo and his wife. This account was funded entirely by Giovanni Marzullo, and Respondent reported regularly to Giovanni Marzullo on this investment account. Francesca Marzullo maintained a separate account for her personal financial affairs. Tr. 137:3 – 17, 725:9 – 726:4, 1152:14 – 1153:6; Div. Ex. 87.

GEIER FUND INVESTORS ARE PROVIDED WITH OFFERING DOCUMENTS, AND AGREE TO THEIR PROVISIONS

31. Each investor in the Geier Fund received the Confidential Private Offering Memorandum (the "Offering Memorandum"), Operating Agreement, and Subscription Agreement (collectively, the "Offering Documents"). Hull and Respondent provided these documents to potential investors. Tr. 36:24 – 37:11, 39:6 –17, 46:18 – 23, 580:13 – 581:17.

32. Each Geier Fund investor was required to sign, and by signing evidenced their agreement to each and every provision of, the Confidential Private Offering Memorandum ("POM"), Operating Agreement, and Subscription Agreement. Hull and Respondent provided these documents to the investors. Tr. 36:24 – 37:11, 39:6-17, 46:18-23, 580:13 – 581:17.

33. All investors signed the Operating Agreement and by doing so agreed to its terms. Tr. 39:14 – 17; Div. Ex. 21-23; 25-28; Resp. Ex. 13 – 16.

34. The Offering Documents identified Geier Capital, LLC as Geier Fund's Managing Member, meaning that Geier Capital, LLC was responsible for determining

appropriate investments for the Fund, purchasing and selling those investments, and managing the Fund. Tr. 581:13 – 582:12, 618:13 – 619:9; Div. Ex. 24 at 1.

35. The Offering Documents identified Respondent as the managing director of Geier Capital. Tr. 41:3-10, 618:13 – 619:9; Div. Ex. 24 at 1.

36. The Operating Agreement authorized Geier Capital "to retain Geier Group, LLC, or such other entity as the Managing Member will determine from time to time in its sole discretion, to serve as [Geier Fund's] investment manager." Tr. 583:5-19, Div. Ex. 21; Resp. Ex. 13 at 3.

37. The Offering Documents identified Geier Group as Geier Fund's Investment Manager, and Respondent as the managing member of Geier Group. Tr. 43:6 – 13; Div. Ex. 24 at 1.

38. The Operating Agreement also authorized Geier Capital to amend the Operating Agreement "... **in its sole discretion,** in any manner **that does not materially adversely affect any member**" and provided that the Operating Agreement "may also be amended by action of the Managing Member with the consent ... of the Members owning a majority-in-interest of the capital accounts ... in an any manner that does not discriminate among the Members." (Emphasis added) Div. Ex. 21. Section 11.04(a).

39. Respondent owned 50% of Geier Capital, LLC. Hull owned 35% of Geier Capital, LLC. John Gibson owned 15% of Geier Capital, LLC. Tr. 581:22 – 24.

40. Respondent owned 50% of Geier Group, LLC. Hull owned 35% of Geier Group, LLC. John Gibson owned 15% of Geier Group, LLC. Tr. 43:11-13, 584:10-14.

THE OFFERING DOCUMENTS DISCLOSED, AND GEIER FUND INVESTORS ACKNOWLEDGED, POTENTIAL CONFLICTS OF INTEREST.

41. Respondent and Hull recognized that the "outside accounts" held by Geier Fund

investors to further Hull's goal of "alignment of interests" created the potential for conflicts of interest between the Fund, on one hand, and Geier Group and Geier Capital, and their owners, including Respondent and Hull, on the other. Therefore, the Offering Documents included extensive disclosures regarding potential conflicts of interest, and by investing in the Geier Fund investors agreed that the persons identified in the conflicts of interest disclosures were permitted to engage in the conduct described in such disclosures. Tr. 619:25 – 621:4; Div. Ex. 24 at 19.

42. By executing the Operating Agreement, investors in Geier Fund agreed that "[n]othing herein contained shall prevent the Managing Member (or any of its affiliates or employees) or any other Member from conducting any other business, including any business within the securities industry, whether or not such business is in competition with [Geier Fund]." This provision permitted Hull and Respondent to maintain accounts in addition to their participation in Geier Fund, even if their actions through such accounts were contrary to actions taken by Geier Fund. This language was the result of detailed discussions between Hull and Respondent over how to achieve the objective of permitting them to hold and maintain accounts outside Geier Fund. Tr. 586:8 – 588:20, 753:12 – 760:5, 763:20 – 765:10, 891:5 – 893:9, 920:5 – 921:8, 922:24 – 923:21, 930:19 -931:13; Div. Ex. 21 at 2, Div. Ex. 22 at 2.

43. In the Offering Documents, investors in Geier Fund "recognized that in effecting transactions, it may not always be possible or consistent with the investment objectives of the various persons or entities described above and of the Company to take or liquidate the same investment positions at the same time or at the same prices." Tr. 588:22 – 589:25; Div. Ex. 21 at 2.

44. The Offering Documents provided that the "Affiliated Parties" [*i.e.*, "the Managing Member, the Investment Manager, and each of their respective directors, members,

partners, shareholders, officers, employees agents and affiliates"] "may manage funds, separate accounts or capital for others, may have, make, and maintain investments in their own name or through other entities," which other entities or accounts "may have investment objectives or may implement investment strategies similar or different to those of the company." Tr. 594:20 – 595:15, 845:9 – 847:15; Div. Ex. 24 at 19.

45. The Offering Documents provided that "the Affiliated Parties may, through other investments, including other investment funds, have interests in the securities and futures in which the Company invests as well as interests in investments in which the Company does not invest", and that "[t]he Affiliated Parties may give advice or take action with respect to such other entities or accounts that differs from the advice given with respect to the Company." Div. Ex. 24 at 19.

46. The Offering Documents provide that "[t]o the extent a particular investment is suitable for both the Company and other clients of the Affiliated Parties, such investments will be allocated between the Company and the other clients pro rata based on assets under management or in some other manner that the Affiliated Parties determine is fair and equitable under the circumstances to all clients, including the Company." Div. Ex. 24 at 19.

47. Geier Fund investors understood the Offering Documents to authorize the managing member and the investment manager to take actions outside the Fund that were not in accord with, and even in competition with, the Fund's interests. Tr. 474:17 – 477:11; 540:19 – 542:11, 845:9 – 847:15, 849:25 – 853:3; Div. Ex. 23 § 3.01; Div. Ex. 24 at 19.

48. The Offering Documents provided that "the Affiliated Parties may have conflicts of interest in allocating their time and activity between the Company and other entities, in allocating investments among the Company and other entities and in effecting transactions for

the Company and other entities, including ones in which the Affiliated Parties may have a greater financial interest." Div. Ex. 24 at 19.

49. The Offering Documents also addressed transactions between Geier Fund and any outside account owned by Affiliated Parties and provided guidelines for such transactions, which provided that "such transactions shall be effected for cash consideration at the current market price of the particular securities" and that "no extraordinary brokerage commissions or fees (i.e., except for customary transfer fees or commissions) or other remuneration shall be paid in connection with any such transaction." The Operating Agreement, at Section 3.02(h), contained a provision that empowered the Managing Member to enter into, make and perform any other contracts, agreements or other undertakings it may deem advisable in conducting the business of the company, including but not limited to contracts, agreements or other undertakings with persons, firms or corporations with which the managing member or any other member is affiliated. Tr. 596: 2 – 596:15; Resp. Ex. 13; Div. Ex. 24 at 19.

50. In the Operating Agreement, investors agreed that the investment manager (Geier Group, LLC) would receive a management fee of .25% of each Member's capital account per quarter. Tr. 42:18 – 43:5; Div. Ex. 21 § 4.03.

51. In the Offering Documents, investors agreed that if the Fund's net profits in any fiscal year exceeded a "non-cumulative 'hurdle rate' equal to a 10% annualized return," the Managing Member would be entitled to an "Incentive Allocation" of 10% of the total net profits allocated to each Member's capital account. Tr. 43:18 – 44:4; Div. Ex. 24 at 2.

52. The Offering Documents disclosed, and investors in Geier Fund understood from them, that:

a) Hull and Respondent could maintain accounts outside the Fund;

b) Hull and Respondent could take actions with regard to their outside accounts That were different from actions they took with regard to the Fund, and even actions in competition with the Fund; and

c) the Fund could purchase securities from these outside accounts in accordance with Section 3.02(h) of the Operating Agreement.

Tr. 841:16 - 847:23, 849:21 - 853:3, 890:19 - 893:9, 917:9- 926:2; 930:19 - 931:13, 954:17-20; Resp. Ex. 13.

53. The Geier Fund investors who read the Offering Documents understood the highly speculative nature of the investment, and that it was likely to yield either an extraordinary return or a significant loss. They also understood that the Offering Documents permitted the Affiliated Parties, including Respondent, to maintain outside accounts holding the same assets as the Geier Fund, to act, in managing those outside accounts, differently from the manner they acted with regard to the Geier Fund, and even to act in competition with the Geier Fund, that the Fund could buy assets from, and sell assets to, those outside accounts, and that the Offering Documents provided guidelines for any such transactions. Tr. 841:16 - 847:23, 849:21-853:3, 854:16 - 855:1, 891:5-11, 892:17-19, 917:9-923:4, 930:19 – 931:1, 943:22-23, 944:12-15, 954:17-20.

54. Testimony by Mason McKnight IV and Matthew McKnight, indicating that they were treated unfairly by Respondent, that Respondent failed to disclose material facts to them, and that Respondent advised them that they could not withdraw their funds from Geier Fund, was not credible. These witnesses admitted that they did not read the Offering Documents and that they did not know critical facts. Their testimony was internally inconsistent, and inconsistent with other facts in evidence. Tr. 412:25 - 413:3, 439:15 - 22, 441:23 - 442:3; 445:23

- 25, 446:10 - 15, 460:21 - 461:5, 463:7 - 11, 483:16 - 17, 486:24 - 487:4, 544:8 - 545:10.

55. Mason McKnight IV and Matthew McKnight did not read the Offering Documents, but invested in the Geier Fund because their father funded the investments, and because of their ongoing social and business relationships with Hull and the investors Hull solicited for the Geier Fund. They did not invest on the basis of any trust relationship with Respondent. Although Mason McKnight IV testified that he went to school with the Respondent, he admitted that for almost ten years before the Fund was formed "... he [the Respondent] left Augusta Prep, and between [then] and basically when the Fund started, **we really had no dealings**. We may see each other occasionally during holidays, **but for the most part, nothing**." Mathew McKnight testified that he **"really didn't have" any relationship with the Respondent** prior to the formation of the Fund. Respondent testified that he had "no previous relationship" with the McKnights or the other investors who were Hull's business associates. Tr. 38:10-12, 412:1-8, 412:23-413:3, 470:19-23, 474:11-16, 475:23-25, 482:22-25, 483:14-18.

56. Mason McKnight IV and Matthew McKnight were unable to evaluate Respondent's actions because they did not know, and still do not know, the size of the Respondent's investment in the Fund, or of his debt to Hull or the beneficial ownership of TRX. Mason McKnight IV testified as follows:

> Q You said they [the Division] told you things that made you think you were treated unfair ...
>
> A ... he [the Respondent] was basically betting on the Fund, on TRX going down right when he sold the Fund's value.
>
> Q How did the – how did his [the Respondent] statement in GISF compare to his personal account?
>
> A I have no idea.
>
> Q So his stake in GISF would become less valuable as the price went down, right?
>
> A Yes.
>
> ...

Q And he [the Respondent] did own shares in the Fund, right?
A I believe so. I don't know for sure. At this point I don't really know what I knew.
Q But if Mr. Gibson was going to lose more through the Fund than he was going to make on the puts, he's not going to want the price to go down, is he?
A Again, I don't know. It doesn't seem to make sense.

Mason McKnight IV also testified as follows:

Q ... Did you know that Chris Gibson had borrowed $650,000 from Jim Hull to invest in this fund?...
A No, Sir.
Q Because Mr. Hull wanted Mr. Gibson's interests aligned with the firm?
A I didn't know any of that, no.
Q The Division didn't tell you that, did they?
A No one told me that.
...
Q But if his interest in the Fund was bigger than his interest in the puts, then his interests were aligned with the Fund's, weren't they?
A From what you're telling me, I guess so, yes.

Tr. 439:15-22, 441:23- 442:6, 445:23-25, 446:10-15, 460:21- 461:9, 463:7-11, 544:8 - 545:10.

57. Matthew McKnight's testimony that the cessation of investor letters after September 23, 2011, raised a "red flag" was not credible. Jim Hull directed this communication cut off because John Engler, a relative and business associate of the McKnights, was inexplicably providing information about the Fund's strategies to a hedge fund that was shorting the TRX stock, and Hull determined it was in the best interest of the Fund to no longer continue to communicate with the McKnights. Tr. 469:2 – 3, 509:9 – 15, 574:9 – 14, 653:12 – 654:24; 656:17 – 657:3.

58. Mathew McKnight has never known and still does not know the size of the Respondent's investment in the Fund and the beneficial ownership of TRX, or the amount of the debt that Gibson owed James Hull in order to invest in the Fund and further leverage and align his interest with the Fund, which are indisputably material facts necessary to evaluate allegations

made by the Division. "I wasn't aware of all that." Tr. 544:8 – 545:10.

59. Matthew McKnight's testimony that the cessation of investor letters after September 23, 2011, raised a "red flag" was not credible. Jim Hull directed this communication cut off because John Engler, a relative and business associate of the McKnights, was inexplicably providing information about the Fund's strategies to a hedge fund that was shorting the TRX stock, and Hull determined it was in the best interest of the Fund to no longer continue to communicate with the McKnight's. Tr. 469:2-3, 653:12 – 654:24, 656:17 – 657:3.

60. Mathew McKnight's testimony that he tried to withdraw from the Fund, but that Respondent told him he could not, was not credible. John Engler made a withdrawal from the Fund in August 2011, just before the almost 30% decline in the price of TRX, and shortly before Matthew McKnight claimed to have attempted to withdraw. Tr. 509:25 - 510:3, 574:9-17, 866:2-7.

MANAGEMENT OF GEIER FUND

61. On January 1, 2010, the assets of the Hull and Gibson Funds were transferred to Geier Fund, and the investors in the Hull and Gibson Funds became investors in Geier Fund. Tr. 51:24 – 52:3, 565:25 – 566:18, 614:9-19.

62. The investors in Geier Fund understood and expected that James Hull would be deeply involved in making investment decisions for the Fund, and that Respondent would implement those decisions. Tr. 631:10 – 19, 844:8 – 845:5, 875:4-15, 953:23 – 954:3.

63. Although Respondent and his father were, ostensibly, Hull's partners, the size of Hull's investment in Geier Fund, and the large amounts of money Respondent and his father owed Hull subject to demand notes meant that they could not refuse any "offer" or suggestion Hull made. Tr. 892:21 – 893:9.

64. Hull set guideposts and strategy for Geier Fund, and Respondent implemented the guideposts and strategy directed by Hull. Respondent did not have discretionary trading authority; he required Hull's approval to buy or sell securities, unless the purchase or sale was to implement an instruction previously given by Hull. Tr. 46:2-10, 71:25 – 75:1; 107:4-14; 631:10 -19; 844:8 – 845:5, 875:4-15, 883:3-8, 953:23 – 954:3.

65. During 2010, Hull directed the allocation of Geier Fund's investments, between physical gold and the Rogers International Commodity Index. He also directed the sale of the Fund's investment in the Rogers International Commodities Index, and the purchase of silver options with the proceeds of that sale. He further directed the sale of gold and silver bars, as well as the purchase of equities. Tr. 75:9 – 76:4, 621:12 - 20.

66. Geier Fund investors understood that investment decisions for the Fund were made by Hull. Tr. 627:17 – 629:17, 844:24 – 845:5.

67. Respondent required Hull's approval to move funds from broker to broker. Tr. 76:21 – 77:7.

68. On occasion, Hull directed Respondent to communicate with Geier Fund investors regarding the Fund's performance. On other occasions, Hull communicated directly with Geier Fund investors regarding the Fund's performance. Tr. 634:11 – 636:6; Resp. Ex. 55.

GEIER FUND CHANGES ITS INVESTMENT STRATEGY

69. In 2010, Geier Fund achieved gains of more than 100%, totaling approximately $36 million. Hull was disappointed to learn that these gains would be treated by the IRS as short-term gains, and subject to a higher tax rate than long-term capital gains. As a result, he directed that the Fund limit its investments to equities, in order to ensure a more favorable tax treatment going forward. Tr. 85:9 – 86:18; 622:5 – 624:19.

70. In 2009, Respondent believed that as a result of monetary policy adopted by the United States government in response to the financial crisis of 2008, the United States dollar would decline in value, and the price of gold would rise. When, in late 2010, Hull directed that Geier Fund switch from holding commodities to holding equities, Geier Fund purchased TRX shares in the belief that the value of those shares would rise as the price of gold increased. Tr. 561:5 – 562:3, 640:3-18.

71. Because he did not want to incur the additional cost required to hire additional personnel to perform analysis on multiple companies, Hull opposed diversification of Geier Fund's portfolio and directed that the Fund invest in a single stock. Respondent disagreed with Hull, but carried out Hull's directive. Tr. 109:16 – 110:7; 624:20 – 627:3; 627:17 – 630:10, 630:23 – 631:9.

72. Thereafter, the Fund invested exclusively in shares of the Tanzanian Royalty Exploration Company ("TRX"), a Canadian company that principally acquired royalties on potential gold mining properties. TRX was chosen because, as a royalty company, it had a more diverse portfolio than other companies involved in gold exploration, and did not face the same capital risk as those companies. Exploration companies typically focus on a small number of properties, which they attempt to develop into functioning mines. In contrast to an exploration company, TRX held royalty interests in 60-120 properties, and entered into joint ventures with exploration companies, which assumed the risk of developing the mine. Tr. 89:18 – 90-:8, 110:8 – 111:18, 624:20 – 627:3; Resp. Ex. 51 at 000127486.

73. Geier Fund's investment thesis was that the value of TRX would increase as the value of the U.S. Dollar fell, and the price of gold rose. Tr. 112:9-15, 557:5-8, 561:5 – 562:3.

74. By the end of 2010, Geier Fund held 8 million shares of TRX stock. Tr. 90:12 –

92:5; Div. Ex. 53.

75. On April 29, 2011, Geier Fund filed an SEC Schedule 13G, which although signed by the Respondent alone, declared and disclosed that the voting and dispositive power of the Fund was shared with Mr. Hull without naming him. The Form reported that the Fund held 9 million shares of TRX, or 10% of the company. Tr. 92:6 – 93:9, 108:21 – 109:7; Div. Ex. 69.

76. As of April 2011, Geier Fund's assets consisted entirely of TRX stock. Tr. 109:2-15.

TRX'S SHARE PRICE FALLS IN THE SUMMER OF 2011

77. The price of gold rose in 2011, to a high of $1,920 per ounce in late August. Tr. 640:19-22.

78. Despite the expectation that TRX's share price would increase as the price of gold increased, between April 2011 and the fall of 2011, TRX's share price remained stagnant, or even declined, as the price of gold rose. Nevertheless, Respondent continued to believe that TRX remained very valuable, that its share price was artificially low, and that its share price would rise significantly once artificial constraints on its share price were eliminated. Tr. 112:9 – 25; 113:6-18, 640:23 – 641:4.

79. TRX's share price was over $7 at the beginning of June 2011, but fell steadily after that. On August 22, 2011, it closed at $5.85. On that date, Respondent sent an investor letter to Geier Fund investors, stating that despite the decline in TRX's share price, he "remain[ed] confident . . .that [Geier Fund was] positioned exceedingly well." Respondent stated that TRX was "trading at a stunning discount to its value . . . based on its resource base," and had "compelling fundamentals." He also described market conditions as suggesting that "we are entering the phase when gold will begin to achieve spectacular gains," and that Geier Fund

had made the correct investment, but "showed up a few months too early." Therefore, he stated that Geier Fund should "be right and sit tight" – *i.e.*, hold its position in TRX. Tr. 121:8 – 123:7; Resp. Ex. 51; Resp. Ex. 149, Ex. 9B at 2–3 of 4.

80. Richard Sands was a principal in Casimir Capital, an investment bank that invested in companies in the metals and mining industries. In August 2011, Sands had arranged a transaction in which Platinum Partners had purchased $30 million in TRX shares at a per-share price of $5.75. Following that transaction, Sands approached Respondent, noting that Respondent had been putting significant pressure on TRX CEO James Sinclair. Sands told Respondent that he believed he could arrange for a buyer to purchase Geier Fund's entire position in TRX. When Respondent asked about pricing, Sands told him that Platinum Partners would be "happy" to purchase at the price it had recently paid, $5.75 per share. Tr. 134:6-135:6, 198:11-15, 642:18 – 644:1.

81. Following Platinum's purchase of $30 million in TRX shares at $5.75, the price of TRX shares remained fairly constant, closing at $5.67 on September 21, 2011. However, on September 22-23, 2011, the share price fell by approximately 30%, to slightly more than $4. There had been no new information regarding TRX that would account for that drop, and Respondent believed it had been caused by a rumor that Geier Fund needed to liquidate its TRX holdings. Respondent spoke regularly with other holders of large blocks of TRX stock, including Sands and Luis Sequeira – an investment manager in Lisbon, Portugal, whose client had large holdings in TRX stock – who also believed that this rumor accounted for the decrease in TRX share price. Respondent, and the other holders of TRX stock with whom he communicated, believed that if these other large holders purchased Geier Fund's shares, the "overhang" rumor would be proven untrue, and the price of TRX shares would return to its

former level, above $5.50. Sequeira joked that if his clients could purchase Geier Fund's TRX shares, TRX's share price would rise to $10. From his discussions with Sequeira, Respondent believed that Sequeira's clients were interested in buying Geier Fund's TRX stock, at current market prices. Tr. 114:17-25, 139:9 – 140:20, 141:1 – 142:22, 680:22 – 682:13; Resp. Ex. 149, Ex. 9B at 3 of 4.

82. No event specific to TRX accounted for the deviation of the company's share price from the price of gold. In fact, the only TRX-specific news in this period – the company's sale of $30 million of stock to Platinum Partners – was positive, and would be expected to raise its share price. Tr. 641:5-13.

83. Because no TRX-specific information accounted for the deviation between its share price and the price of gold, Respondent and Hull believed that the only plausible explanation was that there was a rumor in the marketplace of "overhang" – *i.e.*, that a large owner of TRX stock (*i.e.*, Geier Fund) could not hold its position and would be forced to sell. Tr. 641:18 – 642:11, 644:13-17, 645:12-18.

84. John Engler removed his capital from Geier Fund in August 2011. Respondent believed that John Engler, an investor in the Geier Fund and a relative and business associate of the McKnights, provided short sellers, including persons at Ospraie Capital, with information about Geier Fund's investments and strategy. As a result, Respondent believed that short sellers knew that Geier Fund had all of its assets invested in TRX stock, and lacked any additional resources to defend the price of that stock. Respondent believed that if this "overhang" rumor could be dispelled, the price of TRX stock would rise well above its September 2011 price. Tr. 139:24 – 140:12, 511:1 – 7, 574:9 – 17, 653:12 – 654:24.

SEPTEMBER TRANSACTIONS

85. TRX had been relatively stable between August 22, 2011, when it closed at $5.85, and Wednesday, September 21, 2011, when it closed at $5.57. Resp. Ex. 149, Ex. 9B at 3 of 4.

86. On September 22, 2011, TRX fell almost 18%, to close at $4.58. Resp. Ex. 149, Ex. 9B at 3 of 4.

87. On Friday, September 23, 2011, TRX's share price fell another 11%, to close at $4.07. Resp. Ex. 149, Ex. 9B at 3 of 4.

88. On September 23, 2011, Geier Fund sold 78,000 shares of TRX stock at $4.04 per share. Tr. 139:9-15, 657:9-11; Resp. Ex. 149, Ex. 3 at 1 of 5, 9B p.3; Div. Ex. 184, Expert Report of Carmen A. Taveras, Ph.D., Ex. 3, Notes.

89. The September 23, 2011, closing price of slightly more than $4 per share represented a 30% discount from the price ($5.75) at which Platinum Partners had purchased $30 million in TRX shares in August 2011. Following that purchase, Platinum's broker, Richard Sands, told Respondent that Platinum would be "happy" to buy TRX's holdings at the $4 price. Tr. 139:9 – 140:20; Resp. Ex. 62.

90. On September 23, 2011, at Hull's direction, Respondent emailed Geier Fund investors, to advise them that the value of Geier Fund had declined to only slightly above the investors' original investments. Nevertheless, he noted that in the past year, three investment funds other than Geier Fund had accumulated more than 7 million shares of TRX at prices above the September 23, 2011, close, and continued to buy, "confirm[ing his] view of the tremendous value [in] the assets owned and the business operated by TRX." He went on to state his belief that the price of gold would rise, bringing TRX's share price with it, and that Geier Fund had made the correct investment, but had done so prematurely. He also stated that the holders of

90% of Geier Fund (Respondent, his parents, Giovanni Marzullo, and Hull) had confirmed their intention to remain invested in Geier Fund and TRX, and that he personally would remain so invested. Finally, he stated that in view of the Funds' performance, no management fees would be assessed after September 30, 2011. Tr. 126:5 – 130:3, 633:4-25; Div. Ex. 75; Div. Ex. 81.

91. Over the weekend of September 24-25, 2011, Respondent spoke to Hull, who stated that he had no tolerance for further losses by Geier Fund. Respondent interpreted this as a direction to attempt to sell Geier Fund's TRX shares. Respondent did not interpret it as a direction to sell Geier Fund's TRX shares at any price, but to do so only if acceptable prices could be obtained. Tr. 130:4 – 131:2, 146:6-22, 153:19-154:24; 648:18 – 649:20; 656:6-15.

92. In their conversation, Hull did not instruct Respondent to sell Geier Fund's TRX shares at any price, or to "dump" them, and Respondent did not interpret Hull's directive to say as much. In fact, a few days later, on September 29, 2011, Respondent emailed Hull to inform him that he had not heard from anyone interested in purchasing Geier Fund's TRX shares. Respondent told Hull that he thought this was "a game" designed to "see if I am desperate and . . . have to sell," which would drive the price down. In response, Hull stated that he thought Geier Fund investors would be "well satisfied to hold the shares for the duration," and that "lower share prices should only HEIGHTEN our resolve to stay in for the duration because of the better relative value we would obtain by holding." Tr. 649:23 – 651:23; 653:12-17; Div. Ex. 85.

93. The other investors in Geier Fund were not told of Hull's decision to sell the Fund's TRX shares if acceptable prices could be obtained. One of the Geier Fund investors, John Engler, had been supplying another trader – a large hedge fund that had a short position in TRX – with information regarding Geier Fund's investment strategy, and if information regarding Geier Fund's bias toward selling became known, it would be harmful to Geier Fund

and its investors. Tr. 131:3-25, 133:11-15, 656:17 – 657:3.

94. Despite the decline in TRX's share price, Respondent remained bullish on the stock. Respondent and Hull thought the stock was a good value at $6 or $7, when gold was priced at $1400 per ounce. Now, in September 2011, gold had risen to $1,900 per ounce, and although the only TRX-specific news was positive, the price had fallen to $4. Respondent thus believed that TRX stock was trading at a price far below its actual value. Tr. 641:5-13, 644:6-12, 647:17-21.

95. Respondent believed that because TRX stock was trading at a price far below its actual value, its price would rise. This would squeeze the short sellers – who were driving the "overhang" rumor, and whom Respondent believed were highly leveraged – out of the market as the price of TRX stock rose. Respondent's strategy at this point was to hold Geier Fund's TRX stock until its price rose to reflect its value. Tr. 645:5-11, 646:7-13, 647:17-21, 648:1-9.

96. A few days prior to his September 25, 2011, conversation with Hull, Respondent spoke with one of Sands' traders at Casimir, who told Respondent that Platinum Partners was very bullish on TRX stock, and was "excited" to have an opportunity to purchase Geier Fund's holdings at the current market price. Tr. 661:4-11.

97. Respondent believed that because Platinum Partners was adversely affected by the decline of TRX's share price because of the "overhang" rumor, it would be eager to dispel that rumor by purchasing Geier Fund's TRX shares. Tr. 655:2-20.

98. Even though Respondent believed TRX shares were worth substantially more than the market price in late September 2011, he realized that the "overhang" rumor could keep that price artificially low, and Geier Fund could miss out on the gains accruing to investors in other gold-related companies. Therefore, he thought it prudent to sell TRX shares at the current

market price, and to shift the Fund's portfolio into other gold-related stocks. Tr. 655:21 – 656:15.

99. Soon after his conversation with Hull, in which Hull directed that Geier Fund sell its TRX holdings if good prices could be obtained, Respondent emailed Sands, asking whether Platinum Partners or another buyer would be interested in purchasing Geier Fund's TRX shares at "current prices." Although a "block discount" is often negotiated and agreed to in the sale of a large number of shares, Respondent believed that no such discount would be required to sell a large number of TRX shares at this time. Respondent knew that one month earlier, Sands had brokered the purchase, by Platinum Partners, of $30 million in TRX stock at a price of $5.75. Respondent believed that Platinum would purchase Geier Fund's TRX shares for a price between the current market price of approximately $4, and the $5.75 at which it had bought shares a month earlier. Tr. 135:7-21, 139:9 – 140:20, 141:1 – 142:22, 660:1-14, 661:24 – 662:6; Resp. Ex. 62 at 8.

100. At the time he initiated discussions with Sands on the evening of September 25, 2011, Respondent expected to sell Geier Fund's TRX shares to Platinum at the current market price, and did not intend to sell the shares below that price. Had Sands indicated that Platinum would not pay the market price or more, Respondent would not have continued the discussion. Tr. 662:14-21.

101. As of September 25, 2011, Geier Fund's TRX shares were held in an account at GarWood Securities. Had Geier Fund wanted to sell its TRX shares regardless of price, it could have done so through the GarWood account. Tr. 660:19 – 661: 4, 670:17 – 671:12.

102. On Monday morning, Sands emailed Respondent, asking how many shares of TRX Geier Fund wanted to sell. Respondent replied that Geier Fund would be interested in

selling its entire position of 10.25 million shares, "or anything less than that." Resp. Ex. 62 at 6-7.

103. On Monday morning, September 26, 2011, Respondent sold 2,000 TRX shares he held in his personal account at Charles Schwab & Co., the 18,900 TRX shares held in the Marzullo Account, and the 1,000 TRX shares held by Geier Group in an account at Charles Schwab & Co., at a price of approximately $4.04 per share. This was only a few trading hours after the Fund had sold 78,000 shares of TRX at $4.04 on Friday at 4:00 pm. Tr. 135:22 - 136:17, 137:5-25, 138:1 – 139:3, 139:13 – 14; Div. Ex. 86-88; Resp. Ex. 149, Expert Report of James A. Overdahl, Ph.D., August 5, 2016 at 10-12.

104. September 26, 2011 was the first trading day after Respondent had informed Geier Fund investors that they would no longer pay a management fee. At the time, Respondent owed Hull approximately $640,000, and owed the Marzullos $28,000, and he sold the TRX shares in his account in order to generate liquidity, because there was no certainty that he would continue to be paid if the Fund was not paying management fees which would be available to repay HSGC its advance to him. Tr. 136:18 – 137:2, 139:4-8, 151:18 – 152:11, 658:3-15.

105. Respondent sold the TRX shares in the Marzullo Account on September 26, 2011, because the stock price had declined substantially and, unlike the other Geier Fund investors, the Marzullos had invested their entire net worth in Geier Fund. Respondent believed the price of TRX shares would increase, and not decrease, but he felt that unlike the other investors in Geier Fund, the Marzullos could not afford to take the excessive risk to their entire liquidity and net worth should it not. Tr. 658:3 – 659:17, 788:3-789:7, 825:18 – 827:24, 838:20-24.

106. At the time he sold the TRX shares in these accounts, Respondent knew that the Fund had just sold 78,000 TRX shares at $ 4.04, but did not know that Geier Fund would sell

$3.7 million TRX shares the next day at a price of $3.50 per share, or even that such a sale was likely. On the evening of September 25, 2011, he had raised with Richard Sands the possibility of a buyer purchasing TRX shares from Geier Fund, but no buyer had been identified – or even contacted – and Respondent and Sands had not discussed price or the quantity of shares such a buyer might purchase. Tr. 139:9 – 140:20, 340:13-20, 663:9-16, 666:9-667:23, 668:13 – 670:3, 679:16 – 680:1, 775:1-19, 776:13 – 779:13; Resp. Ex. 62.

107. At the time he sold the TRX shares on September 26, 2011, Respondent understood the concept of "front-running," and would not have sold the TRX shares on September 26, 2011, if he believed that Geier Fund would be selling at a discount the next day. However, Respondent believed that the current market price represented an artificial, but significant, discount from the stock's actual value, and he believed that – as Sands had assured him – Geier Fund would be able to sell TRX shares at the current market price of slightly more than $4. Tr. 144:14 – 17, 146:6-22, 147:16 – 148:4, 149:9-25, 165:15-22.

108. In the evening of Monday, September 26, 2011, Sands emailed Respondent, saying that he "need[ed] the order firm" and "at a price." Respondent replied to Sands and inquired whether Sands was "asking [Geier Fund] for a price." Sands replied several hours later, saying that he believed he could find a buyer for 3-5 mm shares. Sands asked Respondent to approve a commission for Casimir Capital, but his email makes no reference to stock price. Resp. Ex. 62 at 5-6.

109. Later in the evening of Monday, September 26, 2011, Respondent emailed Sands, asking, "[i]s this going to price today?" Sands responded, "[m]ore likely tomorrow," and indicated that he would call Respondent if his buyers wanted to make an offer to Geier Fund. Respondent replied, asking that Sands provide the quantity and price of any offer the next day,

September 27, 2011. Resp. Ex. 62 at 4.

110. At the time of Respondent's conversations with Sands on Monday, September 26, 2011, Geier Fund's TRX shares were held by GarWood Securities. On the evening of September 26, 2011, Sands proposed an additional term for the sale – that Geier Fund send all of its TRX shares to Casimir Capital, so that the buyer would know that any Geier Fund TRX shares it did not purchase would not be "sold behind it." This term was "not desirable" to Geier Fund, because it could limit Geier Fund's ability to sell those shares. Respondent asked Sands to specify the number of shares to be sold, and stated that he would move them the next day, September 27, 2011. Respondent moved the shares to Casimir on September 27, 2011. Tr. 670:17 – 673:3; Resp. Ex. 62 at 1, 3-4.

111. Late in the afternoon of Monday, September 26, 2011, Sands emailed Respondent, saying that he "ha[d] a trade set up." However, Geier Fund's shares had not yet been moved from GarWood to Casimir, and Sands told Respondent, "we need the stk and paperwork now." Respondent asked, "how many shares." Sands did not reply with a quantity to be sold, but told Respondent that Geier Fund had to transfer all of its shares to Casimir. Sands said that 3-5 million shares would likely be sold, but that the remainder of Geier Fund's holdings had to "sit[]" at Casimir so the buyer would know those additional shares would not be sold "behind it," lowering the price of TRX stock. Resp. Ex. 62 at 1.

112. At 9:07 p.m. on Monday, September 26, 2011, Sands emailed Respondent to state that he believed he would find a buyer for 3 – 5 million of Geier Fund's TRX shares. At this point, the only discussion between Sands and Respondent concerning price had been Respondent's initial proposal of a sale at "current prices." Resp. Ex. 62 at 5-8.

113. When Respondent emailed Sands on the evening of September 25, 2011, to

propose a sale, Respondent had asked Sands whether he could locate a buyer at "current prices." Given the precipitous drop in TRX's share price in the prior two trading days, and what Respondent believed to be the reasons for that drop, Respondent expected to be able to sell TRX shares at or above the then-current market price of slightly more than $4, because that price represented a steep discount from the actual value of the stock, the market price only three days earlier, and the price Platinum Partners had paid for more than 5 million TRX shares one month earlier. Had Sands indicated, in response to Respondent's inquiry, that any sale would occur at a price below $4, Respondent would not have pursued the discussions further. Tr. 144:4-18, 171:10-22, 180:15 – 181:6; Resp. Ex. 62 at 8.

114. On the afternoon of September 27, 2011, Respondent spoke with Sands by telephone, and Sands told Respondent that he had a buyer for 3.7 million of Geier Fund's TRX shares at a per-share price of $3.50. Respondent and Hull were surprised and disappointed, and Respondent felt that Sands had "misrepresented to [Geier Fund] what he was able to accomplish." Tr. 144:4 – 145:5.

115. In their discussions between that time and Sands' September 27, 2011 email proposing a sale price of $3.50 per share, the only discussion of price Respondent and Sands had was Respondent's proposal of "current prices" in his initial, September 25, 2011, email. Prior to his offer of $3.50, Sands had never indicated to Respondent that the sale price would be anything other than "current prices." Tr. 144:5 – 145:5, 674:20 – 675:22; Resp. Ex. 62.

116. Geier Fund was under no obligation to accept the offer conveyed by Sands, and Respondent and Hull discussed the possibility of rejecting the proposed deal. Nevertheless, despite their disappointment with the price being offered, they ultimately concluded that because Geier Fund had revealed to the market its intention to sell, which could lead short sellers to drive

the price down even further, it was in the best interest of the Fund to reduce its position in TRX, even though it was at a price significantly below what they had expected. Respondent feared that if Geier Fund refused the offer, the short sellers would know that Geier Fund still had all its TRX shares, but was a "motivated" seller, because it had engaged a broker to solicit bids. This would confirm the "overhang" rumor, and Respondent and Hull felt they were "forced into the sale." Tr. 144:4 – 145:5, 167:1-12, 674:1 - 676:21, 677:11-18, 680:2-19.

117. At the time Hull and Respondent decided to accept the $3.50 offer, Respondent was aware that he had sold his own TRX shares the previous day at a higher price, but he and Hull believed it was in the best interest of the Fund to make the sale. Tr. 165:23 – 166:23.

118. On September 27, 2011, Geier Fund sold 3.7 million shares of TRX at $3.50 per share. Tr. 143:12-20; Div. Ex. 90.

119. Following Geier Fund's September 27, 2011 sale of 3.7 million TRX shares, Respondent resumed discussions with Sequeira, in which Sequeira indicated that his clients would purchase Geier Fund's remaining TRX shares at the current market price. On September 30, 2011, Sequeira's company, Roheryn Investments, entered into a Share Sale Agreement with Geier Fund, pursuant to which Roheryn Investments would facilitate the sale of 5.9 million TRX shares by Geier Fund at a price of $3.50 per share. This deal was never consummated. Tr. 172:2 – 173:10, 683:5 – 685:19; Resp. Ex. 92.

120. Sequeira instead offered Geier Fund the option to sell him 200,000 shares per day. Tr. 174:16 – 21; Resp. Ex. 104.

121. Respondent believed that Sequeira was testing Geier Fund's motivation to sell, hoping Geier Fund would lower its price. Geier Fund was not a motivated seller, and intended to hold its TRX stock unless it could obtain what it believed to be an advantageous price. Tr.

173:19 – 176:8, 686:4-23; Resp. Ex. 101.

122. After September 30, 3011, Respondent continued to have discussions with Sequeira regarding a possible sale of Geier Fund's TRX stock through Roheryn Investments. Respondent understood Sequeira to believe that if another investor, such as a Roheryn client, purchased Geier Fund's TRX stock, the stock's price would rise significantly, and that the purchase of Geier Fund's TRX stock was therefore likely to be profitable. However, he believed that Sequeira delayed the purchase in order to see how low a price he could get. Tr. 687:3 – 688:7.

123. On October 14, 2011, Respondent informed Hull that Sequeira would not purchase all of Geier Fund's TRX stock, and that Respondent had rejected Sequeira's offer to purchase smaller amounts. In his email, Respondent told Hull that he was "contemplating [Geier Fund's] options," and wanted to wait "at least a few weeks" in order to obtain further information regarding TRX, and determine what action Geier Fund should take regarding its TRX stock. Tr. 172:2 – 174:17, 180:4-14; Resp. Ex. 92, 104.

TO PREVENT INTERFERENCE WITH ITS SALE OF TRX STOCK, THE FUND PURCHASES TRX SHARES FROM HULL.

124. In October 2011, Respondent continued to assist Hull with his personal investment accounts, in which Hull held TRX stock. Hull instructed Respondent to maintain consistency between these accounts and Geier Fund. Tr. 176:22 – 177:11.

125. In October 2011, Hull was engaged in discussions with Wells Fargo, the primary lender to his business, and to which Hull owed $100 million or more. Wells Fargo required Hull to maintain a certain level of funds in liquid assets, and did not treat his holdings in TRX stock as liquid. In October 2011, Wells Fargo notified Hull that if he did not increase the level of his liquid assets, Wells Fargo would increase the price of credit to Hull's commercial real estate

business. Hull therefore instructed Respondent to liquidate Hull's personal holdings of TRX stock. Tr. 177:12 – 178:24, 688:21 – 689:3, 690:14 - 16; Resp. Ex. 105.

126. Hull owned 680,636 TRX shares outside of Geier Fund. Nothing prevented him from selling those shares in the market, which would have provided him with cash in the full amount of the value of the shares. However, Respondent feared that Hull's sale of his TRX shares in the market would lower the market price of TRX shares, at a time when Geier Fund was actively negotiating to sell its own far larger stake in TRX. Therefore, Respondent asked Hull to accommodate Geier Fund by selling his personal shares to the Fund, which would combine its own TRX shares and Hull's shares and sell them in a negotiated transaction. Tr. 184:1 - 15, 693:1- 694:10, 936:4 – 938:5.

127. On October 18, 2011, Geier Fund entered into a "Contract of Sale" with Hull, pursuant to which Geier Fund would purchase 680,636 shares of TRX stock from Hull for $2,450,589.60, representing a per-share price of $3.60, the price at which TRX closed on October 18, 2011 (the "Hull Transaction"). Tr. 181:18 – 182:25; Div. Ex. 24, 95.

128. Respondent caused Geier Fund to purchase Hull's TRX shares for the benefit of Geier Fund, and not for Hull's benefit. By selling his TRX shares to the Fund, Hull realized far less than he could have obtained by selling them in the market. Had Hull sold his shares to third parties in the market, he would have received the full proceeds of the sale. But because Hull owned approximately 80% of Geier Fund, his net increase in liquidity from the sale of his TRX shares to Geier Fund was only 20% of the price Geier Fund paid for those shares – $490,117.92. The remaining 80% of the purchase price – $1,960,047.16 – represented a transfer from one of Hull's accounts to another. Tr. 184:1 - 15, 187:1-14, 364:16-365:1, 368:25 – 370:2, 371:10 – 372:1, 374:2-11, 690:8 – 692:25, 925:13 – 926:2, 933:13 – 935:12.

129. Given Hull's participation in Geier Fund, the Hull Transaction represented a potential conflict of interest for Respondent and Hull. The potential for such a conflict was disclosed by Geier Fund's Confidential Private Offering Memorandum, which authorized Geier Fund to engage in transactions with Affiliated Parties such as Hull. Tr. 185:15 – 186:14; 197:1-24.

130. Geier Fund's Confidential Private Offering Memorandum authorized the Fund to purchase securities from third parties and provided guidelines for such transactions. The guidelines provided that transactions between the Fund and third parties "shall be effected for cash consideration at the current market price of the particular securities." Tr. 596:16-598:6, 689:25 – 690:4, 858:16 - 859:10, 938:7 – 939:10.; Div. Ex. 24, 95; Resp. Ex. 8 at 19.

131. In connection with transactions between Geier Fund and third parties, the Offering Memorandum provided a guideline that Geier Fund should not pay any "extraordinary brokerage fees or commissions." Geier Fund did not pay such a fee or commission in connection with the Hull Transaction. Geier Fund paid a commission when it ultimately sold the 680,636 TRX shares it obtained in the Hull Transaction, but this was an ordinary commission. Tr. 191:6 – 21, 696:24 – 697:16; Resp. Ex. 8 at 19.

132. The Division argues that, in this transaction, Respondent "dumped" an unfavorable trade on the Geier Fund, in order to benefit Hull. This argument is premised on the fact that when the Geier Fund liquidated its TRX holdings three weeks later, on November 10, 2011, the price of TRX stock had fallen below the price the Fund paid for Hull's stock. Respondent could not have known, at the time the Fund purchased Hull's shares, the circumstances under which the Fund would sell the stock. And the evidence makes clear that Respondent did not *intend*, when the Fund purchased Hull's shares, to sell them for les – the

price of TRX shares remained stable, or even rose, in the three weeks after the Fund bought Hull's shares, and if Respondent had purchased Hull's shares to help Hull avoid a loss, rather than to facilitate the Fund's sale of its own shares, there is no reason why Respondent would not have sold Hull's shares before November 10, 2011, at a price higher than that received on November 10, 2011. Moreover, because he owned 80% of the Geier Fund, Hull obtained less by selling the shares to the Fund than he would have obtained selling his shares into the market. Moreover, it strains credulity to believe that Hull a wealthy businessman who invested more than $20 million in the Geier Fund, would engage in a transaction designed to damage the Fund for a net benefit to him of between $41,841 and $61,359 (an amount that must be reduced by more than one half because of the 10.21% owned by Respondent and his family. As Wayne Grovenstein testified:

> ... the Fund is comprised 80 percent, approximately, of Mr. Hull, 10 percent, 11 percent of Mr. Gibson, and the other 9 or 10 percent are people like me who are friends and colleagues of Mr. Hull. And the Division's allegation is that they got together and they said, "Aha, here it is. Here's our opportunity. I'm going to stick it to Wayne Grovenstein, a guy I've worked with for 15 years. I'm going to hurt myself and stick it to him." **It's really, really, really ridiculous.** (Emphasis added)

Resp. Ex. 149, Expert Report of James A. Overdahl, Ph.D., August 5, 2016, Ex. 13; Tr. 925:18 – 926:2.

RESPONDENT PURCHASES PUT OPTIONS AS "INSURANCE" BUT MAINTAINS HIS LONG POSITION IN TRX, CONSISTENT WITH THE FUND

133. On October 26, 2011, Respondent received an email from Hull's assistant, Laurie Underwood, forwarding to Respondent for signature an amended and revised demand note in favor of Hull, in the amount of $645,000. At the time, the value of Respondent's holdings in Geier Fund – *i.e.*, the entirety of his assets – was approximately $720,000. This meant that Respondent held equity of only $75,000, and that a decline of 10% in TRX's share price would

render him insolvent. In view of the volatility of Geier Fund's investments, Respondent viewed his position as "precarious." Tr. 203:3 – 13, 698:19 – 699:19.

134. Respondent continued to believe that TRX's share price would rise, but in view of his "precarious" financial position, Respondent decided to buy protective put options on TRX stock. Because he believed TRX's share price would increase, Respondent expected the options to expire worthless. However, Respondent viewed the protective put options as "insurance." If the price of TRX fell, Respondent's assets would be less than the amount he owed Hull. However, in the event the value of the put options increased, the difference between Respondent's assets and his debt to Hull would be reduced by the increase in value of the puts. Tr. 204:8 – 205:24, 699:20 – 700:25, 705:5 – 706:23, 857:20 – 858:12, 944:12-15, 1128:19-21.

135. On October 27-28, 2011, Respondent purchased 1,604 $4 TRX put option contracts in the Marzullo Account, and 225 $4 TRX put option contracts in his own personal account at Charles Schwab. Tr. 200:1 – 21; Div. Ex. 99 at 0001065; Div. Ex. 102 at 0000470-471.

136. Despite his purchase of $4 TRX put options in October and November 2011, Respondent maintained his long position in TRX, and his interests remained aligned with the Fund's, because if TRX's share price fell, Respondent would lose more in the Fund than he could realize from the put options. Tr. 462:25 – 463:11.

137. At the time Respondent bought the put options on October 27 – 28, 2011, he was engaged in ongoing discussions with several large holders of TRX stock – including Richard Sands, representing Platinum Partners, Luis Sequeira, representing Roheryn's clients, and BPI, a Portuguese bank. Each represented to Respondent that they were interested in purchasing Geier Fund's TRX shares in order to dispel the "overhang" rumor that was depressing TRX's share

price, and that they were interested in doing so at current market prices. Thus, when he bought the put options, Respondent did not expect the price of TRX stock to fall, and did not know or expect that Geier Fund would sell its TRX shares on November 10, 2011, at a price below $4. Tr. 707:4 – 710:5; 829:1-830:16.

138. The put options Respondent purchased would increase in value if the price of TRX fell, but Respondent's purchase of those options did not constitute a "short" position, and did not mean that Respondent would benefit if the price of TRX shares fell. Respondent continued to hold the vast majority of his assets in Geier Fund, the value of which would decrease – to an extent far greater than the value of the put options would increase – if TRX's share price fell. Tr. 203:14 – 204:5, 701:7 – 703:11, 940:2 – 942:5.

139. Respondent did not advise any other Geier Fund investor to purchase put options at this time because he did not view the put options as a suitable investment for any Geier Fund investor other than himself and Marzullo. Respondent and Marzullo had invested all of their assets in Geier Fund, and a decline in TRX's share price would have a devastating effect on their economic well-being. Thus, although Respondent considered the put options to be a "bad bet" -- *i.e.*, he thought it unlikely the price of TRX would fall, and believed that the put options would have no value -- the consequences such an event would have on Respondent and Marzullo would be so severe that Respondent considered it prudent to purchase the put options for himself and for Marzullo as "insurance." If TRX's price did fall, and Respondent's and Marzullo's Geier Fund investments became worthless, the put options would generate an insurance payment – an amount far smaller than they would lose in Geier Fund – to mitigate their losses. Tr. 705:5 – 706:23, 857:13 – 858:15.

140. By contrast to Respondent and Marzullo, the remaining Geier Fund investors had

invested only a small fraction of their assets –*i.e.*, "money [they] could afford to lose" – in what they understood to be a highly speculative and risky investment. Because any losses they suffered from their investments in Geier Fund would have a negligible effect on their overall net worth, and because any profit from the put options would offset only a fraction of their losses from Geier Fund, Respondent did not view the put options as a suitable investment for them, and the other Geier Fund investors would not have purchased put options had Respondent advised them that he and Marzullo were purchasing them. Tr. 705:5 – 706:23, 853:23 - 855:13, 943:12 – 944:15; Resp. Ex. 57.

141. In October and November 2011, Geier Fund investors other than Respondent and Marzullo would not have bought $4 TRX put options even had they known that Respondent had done so, because their financial circumstances differed markedly from Respondent's and Marzullo's. Tr. 462:3 – 5, 857:20 – 858:12, 943:17 – 944:15.

142. Respondent had met several times with David Levy of Platinum Partners, who had expressed bullish views on TRX stock and had indicated that Platinum Partners might be interested in purchasing Geier Fund's TRX shares at the then-current market price. Following Geier Fund's September 27, 2011, sale of 3.7 million TRX shares, Respondent continued to have discussions with Richard Sands regarding the possibility that Platinum Partners would purchase more TRX stock from Geier Fund. Based on these discussions, Respondent believed that Platinum Partners was interested in purchasing all of Geier Fund's TRX shares at the current market price. Tr. 209:3-20; 212:7-10, 707:4 – 708:8, 709:2-20.

143. On November 7 or 8, 2011, Sands asked Respondent to meet with him and Platinum on November 9, 2011. Sands told Respondent that he had "great news," that they were "going to wrap this up," and that Respondent would be very pleased with Platinum's proposal.

Tr. 209:21 – 210:2, 708:10 – 709:17.

144. At the November 9, 2011 meeting, Levy presented Respondent with an offer to pay Geier Fund $10,000 per month if it would agree not to sell its TRX shares for 6 months. Respondent was "distress[ed]" by this offer, recognizing that the only reason Platinum Partners would propose such a deal was because Platinum Partners planned to sell its own shares, which made Respondent realize that, despite its indications that it would do so, Platinum Partners might not buy Geier Fund's TRX shares at the market price. Tr. 210:3-20, 710:6 – 712:8.

145. Following the November 9, 2011, meeting with Platinum Partners, and the realization that Platinum Partners would not purchase Geier Fund's shares at the current market price, Respondent and Hull met to discuss strategy. They believed that Platinum Partners was "bluffing," and decided to sell Geier Fund's TRX shares. Respondent and Hull believed that a decrease in TRX's share price would harm Geier Fund, but would inflict greater harm on the other large holders of TRX stock, including Platinum, and that if Geier Fund began to sell, and the price of TRX shares fell, the large holders would step in and buy Geier Fund's TRX shares in order to prevent a price drop. Tr. 212:10 – 214:12, 712:9 – 713:24.

THE PURCHASE OF THE PROTECTIVE PUT OPTIONS WERE LONG POSITIONS LIQUIDATED WITH TRX SHARES FOR LOSSES AND THERE WERE NO SHORT POSITIONS AND THERE WERE NO PROFITS.

146. The Division has asserted that, by purchasing put options in October and November 2011, Mr. Gibson took a "short" position with regard to TRX stock, placing his interests in conflict with the Fund's. This is inaccurate. A "short position" is defined as "borrowing stock and selling stock in the hope that the stock's price will decline," and there is no evidence whatsoever in the record that Respondent borrowed any TRX stock in the hope of selling it after a price decline. Instead, Respondent's purchase of put options represented a long position because those options represented an additional investment in the inventory of TRX

related securities. The put options purchased by Respondent were protective puts, more than covered by his TRX holdings in the Geier Fund. The Division's expert conceded that the purchase of the put options did not cause Respondent to hold a "short position." In other words, even with the put options, Respondent's interests remained aligned with the Fund's – Respondent, and the Fund, would obtain a net benefit if the price of TRX stock rose, and suffer a net loss if that price fell. Order, ¶¶ 9-10; Ex parte Examination of James Hull, February 25, 2015, pp. 37:3-12); Hull, John C. (2008) Options, Futures, and other Derivatives, 7th Edition, Pearson Prentice Hall, p. 8; Tr. 397:17-20, 398:20 - 399:5, 403:1-10, 1133:23 – 1134:10.

147. In claiming that Respondent obtained "illicit profits" from the put options, the Division simply ignores the inventory of long positions in shares of TRX stock beneficially owned Respondent, his family, and Mr. Marzullo. But put options that are combined with long positions are protective put options and are also called covered puts and are a form of insurance:

Q … if I buy the puts and sell the shares then sell the puts …
A It's insurance.
…
Q Now, do you know the difference between a naked put and a protected put?
A Yes.
Q What is the difference?
A A naked put means that you only have a position in the put option without any corresponding exposure in the stock.
And a covered put would be a put that also – where you also had stock in your portfolio

The definitive text on options, cited by both Dr. Taveras and Dr. Overdahl, provides the following definitions:

Protective Put A put option *combined with* a long position in the underlying asset. (Emphasis added)

A *naked option* is an option that is not combined with an offsetting position in the underlying stock. (Emphasis in the text)

Hedge A trade designed to reduce *risk*. (Emphasis added)

Long Hedge A hedge involving a long futures position.

Thus, Respondent's purchase of protective put options must be evaluated in combination with and in the context of, the long positions in the underlying shares of TRX stock. When so evaluated, "profits" are mathematically impossible because of the net long positions and there can only be a mitigation of loss from the purchase of protective put options in the form of a long hedge to reduce risk. The Division's allegation that Respondent obtained a "profit" form the put options is premised on its treatment of the put options as naked options not combined with offsetting positions in the underlying stock. Such treatment is foreclosed by the evidence. The Division has failed to prove two facts critical to its theory, as stated in the Order– that the Respondent's purchase of protective put options constituted a "short position" and that there were "profits" from their liquidation. The Division's own expert did not even use the term "short position" and the Division has abandoned its use as well. The Division's expert's report that there were "profits" is based upon the erroneous treatment of the "put contracts" as naked options. Order ¶¶ 9-10; Tr. 1128:19-21, 1135:5-13; Hull, John C. (2008) Options, Futures, and other Derivatives, 7th Edition, Pearson Prentice Hall, pp. 190, 782,785, 787.

RESPONDENT ADVISES HIS FATHER TO PURCHASE PUT OPTIONS IN CONNECTION WITH HIS LIQUIDATION OF HIS PERSONAL TRX POSITION.

148. On November 8, 2011, Respondent's father, John Gibson, had lunch with Hull, who told him that Geier Fund would be selling its TRX shares, and that John Gibson might wish to do the same. John Gibson called Respondent, and asked what action he should take to remain consistent with Geier Fund. Respondent told him to sell his own shares of TRX stock. Tr. 214:13 – 215:9.

149. John Gibson's TRX shares were held at PNC Wealth Management, which was not a broker, and John Gibson therefore could not directly instruct a trader to sell, in which case

the shares would be sold immediately. Instead, he was required to contact his relationship manager at PNC Wealth Management, who would later instruct a trader to make the sale. In the past, this process had led to slow execution in handling John Gibson's account, and Respondent therefore advised his father to buy $4 put options on TRX stock, then sell his shares, and then sell the put option, guarding against the possibility that TRX's share price might fall between the time John Gibson ordered the sale of his shares and the time the sale was actually carried out. Tr. 215:11 – 216:5, 719:5 – 721:20.

150. Mr. Gibson's father contacted PNC Wealth Management and directed the purchase of 350 protective put options covering 35,000 TRX shares in his IRA account, which contained 46,000 shares of TRX. On November 8, 2011, John Gibson directed that the protective put options be purchased and sold on November 9th, the same day as his TRX shares were to be sold. Tr. 242:5 – 14; Resp. Ex. 32 at SEC-LIT-PROD-000214163, 165, 167 – 168; Div. Ex. 104.

151. John Gibson placed the order as Respondent had recommended – *i.e.*, he directed PNC Wealth Management to purchase the put options, sell the TRX stock in his personal account, and then sell the put options. John Gibson intended that PNC Wealth Management carry out these actions simultaneously; he did not direct PNC Wealth Management to delay between the transactions in carrying them out. Tr. 242:5 – 14, 719:5 – 721:20.

152. The put options for 35,000 TRX shares that Respondent's father purchased on November 9, 2011, did not cover the more than 200,000 TRX shares Respondent's parents held in their Geier Fund accounts; they covered only a portion of the 46,000 shares in his personal account at PNC Wealth Management. Tr. 216:6 – 217:2.

BELIEVING THAT IF LARGE HOLDERS OF TRX, INCLUDING PLATINUM PARTNERS, THOUGHT THAT A SELL-OFF BY GEIER FUND WOULD DRIVE THE

PRICE OF TRX DOWN, THEY WOULD STEP IN TO PURCHASE GEIER FUND'S TRX SHARES BEFORE THE PRICE DROPPED, GEIER FUND SELLS ITS TRX SHARES

153. On the morning of November 10, 2011, after Hull had made the decision to sell Geier Fund's TRX stock in order to induce the large holders of TRX such as Platinum to step up and buy Geier Fund's TRX shares and prevent a price drop, Respondent emailed GarWood Securities, the dealer holding Geier Fund's TRX shares, instructing it to "hassle Penson" the clearing agent for GarWood – and that "[w]e are going to potentially tank this stock." Respondent did not issue these instructions because he intended that Geier Fund's sale would "tank" TRX's share price; although Respondent might receive an "insurance" payment from the put options he had purchased on October 27-28, 2011, any such payment would be dwarfed by the concomitant loss he would suffer on his Geier Fund holdings. Moreover, Respondent believed that if Geier Fund began to sell its TRX stock, the other large holders of the stock would step in and buy it in order to prevent a price drop. Tr. 230:8 – 232:7; 713:16 – 718:21; Div. Ex. 105.

154. Respondent did not tell GarWood that Geier Fund was "going to potentially tank [TRX] stock" because he hoped TRX's share price would fall so that he could "profit" on the put options he held. If TRX's share price fell, Respondent would reap no "profit," but would lose far more on his Geier Fund investment than he could possibly obtain from any insurance payment he might receive from the put options. 717:19- 718:21.

155. Respondent gave GarWood the instructions he did because normally, a broker like GarWood would execute the sale of a large block of shares slowly, and piecemeal, in order to prevent a price drop by disguising the fact that a large block was being sold. This would not serve the strategy being implemented by Respondent at Hull's direction, which was to sell

aggressively, for the purpose of making the other large TRX shareholders believe a price drop would occur, and inducing them to purchase Geier Fund's TRX stock before the price fell. Tr. 232:8 – 233:4.

156. The other large holders of TRX stock did not behave as Hull and Respondent believed they would, and did not purchase Geier Fund's stock before the price could fall. On November 10, 2011, the price of TRX shares fell from slightly above $3 to slightly over $2. Tr. 233:9 – 234:2.

157. The volume of TRX shares sold on November 10, 2011, was extraordinary and totally unexpected. Geier Fund's sale constituted only 22% of the world wide volume of TRX shares sold that day and only 28.5% of TRX shares sold in the United States. Div. Ex. 184 at 12.

158. As a result of the decline in TRX's share price, Respondent sold the $4 put options he had purchased on October 27, 2011 for $80,000 more than he paid for them. This "insurance" payment did not represent a "profit" to Respondent, however, because at the same time, he lost far more in his Geier Fund account. In fact, Respondent became insolvent as a result of the decline in the value of his TRX investment, and the amount he received from the put options merely offset a portion of the debt he owed Hull. Tr. 240:5 – 242:4, 718:22-24; FORM D-A; Resp. Ex. 149, Expert Report of James A. Overdahl, Ph.D., August 5, 2016.

159. As a result of the decline in TRX's share price, Giovanni Marzullo received $250,000 from the sale of the put options. This "insurance" payment did not represent a "profit" to Marzullo, however, because at the same time, he lost far more in his Geier Fund account. Tr. 242:2 - 4, 1133:19 – 22.

160. Although on November 9, 2011, John Gibson had instructed PNC to purchase put options, sell his TRX stock, and sell the put options immediately and at the same time, PNC

bought the puts and sold some of the TRX stock on November 9, 2011, but sold the put options on November 10, 2011. By that time, the put options had increased in value. As a result of PNC's poor execution, John Gibson received a payment of $61,600 for the put options. This "insurance" payment did not represent a "profit" to John Gibson, however, because at the same time, he lost significantly more in his Geier Fund account. Tr. 242:5-23; Div. Ex. 17 at SEC-HULL_Prop-E-0015693.

THE ECONOMIC INTERESTS OF MR. GIBSON, HIS PARENTS AND THE MARZULLO FAMILY WERE ALWAYS ALIGNED WITH THE INTERESTS OF THE FUND AND THE PURCHASE OF THE PUT OPTIONS DID NOT HARM THE FUND

161. The economic interests of Mr. Gibson, his father, his mother, and the Marzullo family, including their purchase of the protective put options, were always aligned with the interests of the Fund, and there was no conflict with the interests of the Fund. The protective put options were purchased as "insurance," and if a decrease in the price of TRX shares made the protective put options valuable, Respondent, John Gibson, and Giovanni Marzullo necessarily would have lost an amount far greater than any such "insurance" payment from their investment in Geier Fund. Tr. 1132:11-18, 1132:22 - 1133:22.

162. Respondent's purchase of protective put options, and his father's, caused no harm or loss to the Fund, and did not deprive the Fund of a "limited opportunity" to purchase put options. Resp. Ex. 149 at 35.

THE RESPONDENT IS INSOLVENT AND HAS NO CAPACITY TO PAY ANY FINE OR DISGORGEMENT

163. Respondent is insolvent, as confirmed by his Form D-A filing and review by a CPA, Mr. Doug Cates. Tr. 721:21 – 722:1, 860:11 – 865:15, Form D-A.

164. Respondent's net worth is (-$570.000). Tr. 863:10-12, Form D-A.

165. Respondent's income in 2014 was $18,000. Tr. 863:19-20, Form D-A.

166. Respondent's income in 2015 was $29,000. Tr. 863:21-22, Form D-A.

167. Respondent's income in 2016 is estimated to be $35,000. Tr. 863:23-25, Form D-A.

168. Respondent's father purchased from Mr. Hull the demand note Respondent had signed in Hull's favor. Form D-A.

169. Hull has never discharged the amount he is owed pursuant to the demand note Respondent executed in his favor. Respondent's father purchased the note from Hull and Respondent owes his father approximately $700,000 on that note. Respondent's father has not discharged the note. Tr. 246:25 – 247:17; 722:24 – 723:3, 864:1 – 865:15.

II. Proposed Conclusions of Law

A. THE INVESTMENT ADVISERS ACT

1. Section 202(a)(11) of the Investment Advisers Act, in relevant part, defines the term "investment adviser" as "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."

2. Section 202(a)(12) defines the term "control" as "the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with such company."

3. Section 202(a)(17) defines the term ''person associated with an investment adviser'' as "any partner, officer, or director of such investment adviser (or any person

performing similar functions), or any person directly or indirectly controlling or controlled by such investment adviser, including any employee of such investment adviser, except that for the purposes of section 203 of this title (other than subsection (f) thereof), persons associated with an investment adviser whose functions are clerical or ministerial shall not be included in the meaning of such term. The Commission may by rules and regulations classify, for the purposes of any portion or portions of this title, persons, including employees controlled by an investment adviser."

4. Section 202(a)(25) defines "supervised person" as "any partner, officer, director (or other person occupying a similar status or performing similar functions), or employee of an investment adviser, or other person who provides investment advice on behalf of the investment adviser and is subject to the supervision and control of the investment adviser."

5. Section 203(f), in relevant part, provides that "The Commission, by order shall censure or place limitations on the activities of any person associated or seeking to become associated, or at the time of the alleged misconduct, associated or seeking to become associated with an investment adviser, or suspend for a period not exceeding 12 months or bar any such person from being associated with an investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, if the Commission finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person ...."

6. Section 206 provides, in relevant part, that "It shall be unlawful for any investment adviser, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly—(1) To employ any device, scheme, or artifice to defraud any client or

prospective client; (2) To engage in any act, practice, or course of business which operates as a fraud or deceit upon any client or prospective client; (3) Acting as principal for his own account, knowingly to sell any security to or purchase any security from a client or acting as broker for a person other than such client, knowingly to effect any sale or purchase of any security for the account of such client, without disclosing to such client in writing before completion of such transaction the capacity in which he is acting and obtaining the consent of the client to such transaction."

7. Section 206(4) prohibits an investment adviser from engaging in any act, practice or course of business which is fraudulent, deceptive or manipulative and authorizes the Commission to define and prescribe means reasonably designed to prevent such acts, practices, and courses of business as are fraudulent, deceptive or manipulative.

8. Rule 206(4)-8, adopted pursuant to Section 206(4) of the Advisers Act, prohibits an adviser to a pooled investment vehicle from: (1) making any untrue statement of a material fact or omitting to state a material fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading, to any investor or prospective investor in a pooled investment vehicle; or (2) otherwise engaging in any act, practice, or course of business that is fraudulent, deceptive or manipulative with respect to any investor or prospective investor in the pooled investment vehicles.

9. Section 211(g), Standard of Conduct, provides, in relevant part, as follows: (1) In General. – The Commission may promulgate rules to provide that the standard of conduct for all brokers, dealers, and investment adviser, when providing personalized investment advice about securities to retail customers (and such other customers as the Commission may by rule provide), shall be to act in the best interest of the customer without regard to the financial or

other interest of the broker, dealer or investment adviser providing the advice. In accordance with such rules, any material conflict of interests shall be disclosed and may be consented to by the customer.

10. Section 211(h) of the Investment Advisers Act states that the Commission shall "(1) facilitate the provision of simple and clear disclosures to investors regarding the terms of their relationships with brokers, dealers, and investment advisers, including any material conflicts of interest; and (2) examine and, where appropriate, promulgate rules prohibiting or restricting certain sales practices, conflicts of interest, and compensation schemes for brokers, dealers, and investment advisers that the Commission deems contrary to the public interest and the protection of investors."

B. GEIER CAPITAL AND GEIER GROUP ACTED AS INVESTMENT ADVISERS TO GEIER FUND

11. Geier Capital acted as an investment advisers to the Geier Fund as the Operating Agreement established the rights and obligations of the Members of the Geier Fund, and is binding on the Fund, its Members and persons to whom rights and duties are delegated and as the Operating Agreement provided that Geier Capital shall serve as the Managing Member of the Fund. The Fund's Operating Agreement, at Section 3.01, Management of the Company, provided that the Fund "shall be managed by the Managing Member, who shall have the discretion of making investments on behalf of the Company and of exercising the powers set forth in Section 3.02," and the Operating Agreement, at Section 3.02, Powers of the Managing Member, provided, among other things, that the Managing Member shall have the power to purchase, hold, sell and otherwise deal in securities of any sort and rights therein, on margin or otherwise deal in put and call options of any sort and in any combination thereof.

12. Geier Group acted as an investment adviser to the Fund as the Operating Agreement, at Section 3.02, provided that the Managing Member shall have the power to retain Geier Group or such other entity as the Managing Member shall determine to serve as the Fund's investment manager and Geier Capital engaged Geier Group to serve as the Investment Manager for the Fund in January 2010.

13. Geier Capital and Geier Group acted as investment advisers to the Fund for a period of time and ceased acting as the investment advisers to the Fund prior to October 1, 2011, as Geier Fund ceased paying fees or other compensation for advisory services.

14. Geier Capital and Geier Group ceased to meet the definition of the term investment adviser when Geier Fund ceased the payment of fees or other compensation for advisory services.

RESPONDENT GIBSON DID NOT ACT AS AN INVESTMENT ADVISER TO GEIER FUND

15. Respondent Gibson, who performed tasks that are routinely performed by associated persons of investment advisers as well as supervisory persons, acted as an associated person of an investment adviser and a supervisory person of an investment adviser. A determination that Respondent Gibson acted as an investment adviser would render the definitions of associated person and supervised person superfluous.

16. Respondent did not control Geier Capital or Geier Group as that term is defined in Section 202(a)(12) of the Investment Advisers Act.

17. The Commission has upheld the distinction between a person associated with an investment adviser and an investment adviser. The Commission, in *Russell W. Stein*, stated:

> We do not address the merits of the Division's claims with respect to Stein's alleged violation of Section 206. Section 206 applies by its terms only to investment advisers, rather than associated persons of investment advisers. Sections 206(1) and (2) specifically

> prohibit "investment advisers" from committing fraud on "any client or prospective client." Only investment advisers can be charged with primary liability pursuant to Section 206, and "persons associated with investment advisers" must be charged as aiders and abettors . . . . Many employees of investment advisers, of necessity, perform investment adviser activities because an adviser can only act through its employees. Nonetheless, the Act's sections distinguish between those applicable to investment advisers and to their associated persons." (citations omitted). *Russell W. Stein*, S.E.C. Release No. 2114, 2003 WL 233338876 (March 14, 2003)

18. To the extent that the SEC has found that persons associated with an investment can be charged with violations of Sections 206(1) or 206(2), such associated persons have generally controlled the investment adviser. *Warwick Capital Management, Inc.*, S.E.C. Release No. 2694, 2008WL149127 (January 16, 2008).

19. When an individual does not control an adviser, as is the case with Respondent Gibson, charging an associated person as an adviser eviscerates the distinction between an investment adviser and an associated person and, thus, there would be no meaning to the term "associated person."

20. Mr. Gibson, while a 50% owner of Geier Capital and Geier Group, was not the alter ego of either entity and did not control either entity.

21. James Hull controlled Geier Capital within the meaning of Section 202(a)(12) of the Investment Advisers Act, as demonstrated by the facts that (i) Mr. Hull determined to progress from the Gibson Fund and the Hull Fund, investment vehicles which did not pay advisory fees, to the Geier Fund which could pay an incentive allocation and a management fee; (ii) Mr. Hull determined that the Geier Fund would progress from investments in commodities, the gains on which are taxed at ordinary rates, to securities which may benefit from capital gains treatment; (iii) Mr. Hull determined that the Geier Fund would identify and invest in one security rather than diversify the Fund's portfolio, because he believed that one could follow and understand one company better than one could follow and understand multiple companies; and

(iv) Mr. Hull determined that he could not tolerate additional losses which would result from further declines in the price of TRX and directed the liquidation of the position.

22. As Mr. Hull controlled Geier Capital, Geier Group and the Geier Fund, Respondent Gibson did not control such entities, and, accordingly, Respondent Gibson did not act as an investment adviser to the Fund.

23. In order to come within the definition of the term "investment adviser" a person, among other things, must receive compensation and the compensation that Respondent Gibson received from Hull Storey Gibson Companies did not satisfy the requirements of Section 202(a)(11) as the funds that Respondent Gibson received from Hull Storey Gibson Companies during the relevant period were less than the percentage of the management fees that the Fund credited to the Capital Account of Geier Capital to which he was entitled based upon his interest in Geier Capital and Geier Group, he was entitled. In addition, Hull Storey Gibson Companies was reimbursed for the advances made to Respondent Gibson during 2010 and absent the cessation of the payment of management fees after September 30, 2011, Hull Storey Gibson Companies would have been reimbursed for the advances to Respondent Gibson during 2011.

24. Section 206, by its terms, prohibits an investment adviser from engaging in certain conduct, and necessarily only an investment adviser can violate Section 206, while an associated person can may be charged with aiding and abetting or causing an adviser's violation of Section 206.

25. Section 203(f) was added to the Investment Advisers Act in 1970 in order that enforcement actions could be instituted against associated persons precisely because they did not meet the definition of investment adviser and therefore could not be charged under Section 203(e).

26. As the Order Instituting Administrative and Cease-and-Desist Proceedings was entered pursuant to Section 203(f), administrative sanctions may be imposed only if the Division of Enforcement proved that Respondent is or is seeking to become an associated person of an investment adviser or, at the time of the alleged misconduct was or was seeking to become an associated person of an investment adviser.

27. A finding that Respondent Gibson was an associated person at the time of the alleged misconduct precludes liability for the violations alleged in the Order as only an investment adviser could violate the relevant provisions of the Investment Advisers Act. Alternatively, a finding that Respondent Gibson acted as an investment adviser within the meaning of Section 202(a)(11) precludes the imposition of an administrative sanction since Respondent could not have been associated with an investment adviser at the time of the alleged misconduct.

POTENTIAL CONFLICTS OF INTEREST WERE DISCLOSED AND CONSENTED TO BY MEMBERS OF THE GEIER FUND

28. In *Securities and Exchange Commission v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180 (1963), the Supreme Court construed the antifraud provisions of the Investment Advisers Act as requiring investment advisers to disclose conflicts of interest. The Court stated that the Investment Advisers Act reflects a Congressional intent to eliminate or to expose all conflicts of interest which might incline an investment adviser - consciously or unconsciously - to render advice which is not disinterested. 375 U.S. at 191-92. In holding that the Investment Advisers Act empowers the courts to require an adviser to make full and frank disclosure regarding a practice of trading on the effect of its recommendations, the Court noted that an investor seeking the advice of a registered investment adviser must, if the legislative purpose is

to be served, be permitted to evaluate such overlapping motivations, through appropriate disclosure. 375 U.S. at 196.

29. In Investment Advisers Act Release No. 1092, the Commission published the views of its Staff regarding, among other things, disclosure duties of investment advisers. The Staff stated:

> "The type of disclosure required by an investment adviser who has a potential conflict of interest with a client will depend upon all the facts and circumstances. As a general matter, an adviser must disclose to clients all material facts so that the client can make an informed decision as to whether to enter into or continue an advisory relationship with the adviser or whether to take some action to protect himself against the specific conflict of interest involved." Applicability of the Inv. Advisers Act to Fin. Planners, Pension Consultants, & Other Persons Who Provide Inv. Advisory Servs. as a Component of Other Fin. Servs. Investment Advisers Act Release No. IA-1092, (October 8, 1987).

30. In IA-1092, the Staff further stated "An investment adviser who structures his personal securities transactions to trade on the market impact caused by his recommendations to clients must disclose this practice to clients. An investment adviser generally also must disclose if his personal securities transactions are inconsistent with the advice given to clients (citations omitted)."

31. In adopting amendments to Form ADV, the Commission, in Investment Advisers Act Release No. IA-2711, *Amendments to Form ADV*, (Mar. 3, 2008), stated:

> Unlike the laws of many other countries, the U.S. federal securities laws do not prescribe minimum experience or qualification requirements for persons providing investment advice. They do not establish maximum fees that advisers may charge. ***Nor do they preclude advisers from having substantial conflicts of interest that might adversely affect the objectivity of the advice they provide.*** Rather, investors have the responsibility, based on disclosures they receive, for selecting their own advisers, negotiating their own fee arrangements, and evaluating their advisers conflicts (emphasis added).

32. In adopting amendments to Part 2 of Form ADV, the Commission, in Investment Advisers Act Release No. IA-3060, stated "Under the Advisers Act, an adviser is a fiduciary

whose duty is to serve the best interests of its clients, which includes an obligation not to subrogate clients' interests to its own. An adviser must deal fairly with clients and prospective clients, seek to avoid conflicts with its clients, and, at a minimum, make full disclosure of any material conflict or potential conflict." Amendments to Form ADV, Investment Advisers Act Release No. IA-3060, 98 SEC Docket 3502 (July28, 2010).

33. In Investment Advisers Act Release No. 3060, the Commission further stated: "A prospective client may seek modifications to an investment advisory agreement to better protect the client against an investment adviser's potential conflict of interest, either by better aligning the adviser's interest with that of the client or by prohibiting a particular practice in the client's account. If an adviser is unwilling to make such modifications, a prospective client may select a different adviser."

34. In the Dodd Frank Wall Street Reform and Consumer Protection Act, Congress amended the Investment Advisers Act and certain of the amendments explicitly provide that an investment adviser may disclose material conflicts of interest and clients may consent to an adviser's conflicts. Section 913 of the Dodd Frank Act added Subsection (g) to Section 211 of the Investment Advisers Act. Section 211(g), Standard of Conduct, provides as follows: (1) In General. – The Commission may promulgate rules to provide that the standard of conduct for all brokers, dealers, and investment adviser, when providing personalized investment advice about securities to retail customers (and such other customers as the Commission may by rule provide), shall be to act in the best interest of the customer without regard to the financial or other interest of the broker, dealer or investment adviser providing the advice. In accordance with such rules, any material conflict of interests shall be disclosed and may be consented to by the customer.

35. Section 913 also adds Subsection (h), Other Matters, to Section 211 of the Investment Advisers Act. Subsection (h) provides as follows: The Commission shall – (1) Facilitate the provision of simple and clear disclosures to investors regarding the terms of their relationships with brokers, dealers, and investment advisers, including any material conflicts of interest; and (2) Examine and, where appropriate, promulgate rules prohibiting or restricting certain sales practices, conflicts of interest, and compensation schemes for brokers, dealers, and investment advisers that the Commission deems contrary to the public interest and the protection of investors."

36. Section 913 of the Dodd Frank Act also directed the Commission to conduct a study to evaluate the effectiveness of existing standards of care of brokers, dealers and investment advisers imposed by the Commission and other regulatory authorities and to evaluate whether there are legal or regulatory gaps in the protection of retail customers relating to the standard of care which should be addressed by rule or statute. The Staff of the Securities and Exchange Commission conducted the study mandated by the Dodd Frank Act, in which it discussed the Commission's position regarding fiduciary duties of investment advisers and formulated a number of recommendations for rulemaking relating to a uniform fiduciary duty.

37. The Staff set forth its view that the uniform fiduciary standard would include the duties of loyalty and care as interpreted and developed under Advisers Act Sections 206(1) and (2). The Staff recommended that the Commission engage in rulemaking to implement a uniform fiduciary standard of conduct for broker-dealers and investment advisers when providing personalized investment advice about securities to retail customers and recommended that the standard of conduct for all brokers, dealers, and investment advisers when providing personalized investment advice about securities to retail customers (and such other customers as

the Commission may by rule provide), shall be to act in the best interest of the customer without regard to the financial or other interest of the broker, dealer, or investment adviser providing the advice.

38. The Staff stated that "Clarification will be particularly important in applying the obligation to eliminate or disclose all material conflicts of interest, as contemplated by the Dodd-Frank Act. The Staff further stated that Dodd Frank Act Section 913(g) addresses the duty of loyalty in that it provides that, [i]n accordance with such rules [that the Commission may promulgate with respect to the uniform fiduciary standard] . . . any material conflicts of interest shall be disclosed and may be consented to by the customer." The Staff also stated "While the duty of loyalty requires a firm to eliminate or disclose material conflicts of interest, it does not mandate the absolute elimination of any particular conflicts, absent another requirement to do so." The Staff further stated that the Commission could consider whether rulemaking would be appropriate to prohibit certain conflicts, or whether it might be appropriate to impose specific disclosure and consent requirements (e.g., in writing and in a specific format, and at a specific time) in order to better assure that retail customers were fully informed and can understand any material conflicts.

39. The Commission has not definitively set forth the fiduciary duties that investment advisers owe to clients, the duties that may be modified or eliminated through disclosure, the manner in which investment advisers must disclose conflicts of interest, or the specific content of disclosures regarding conflicts of interest. To date, the Commission has not adopted rules to implement a uniform standard of conduct for brokers, dealers, and investment advisers as provided for in the Dodd Frank Act amendments to the Investment Advisers Act. Similarly, the Commission has not provided guidance regarding the provision of simple and clear

disclosures to investors regarding the terms of their relationships with brokers, dealers, and investment advisers, including any material conflicts of interest or adopted rules prohibiting or restricting certain conflicts of interest, or the manner in which investment advisers must disclose conflicts of interest.

40. In *Burks v. Lasker*, 441 U.S. 471 (1979), the Supreme Court held that in the absence of federal law governing the specific content of disclosures or the modification of fiduciary duties, courts may look to state law unless the particular state law is inconsistent with the policy underlying the federal statue or the state law would permit action that the federal prohibits. In *Burks*, the Supreme Court further stated that the Investment Company Act and the Investment Advisers Act do not require that federal law displace state law governing the powers of directors unless the state laws permit action prohibited by the Acts, or unless 'their application would be inconsistent with the federal policy underlying the cause of action.'" *Burks*, 441 U. S. at 479.

41. In *Kamen v. Kemper*, 500 U.S. 90 (1991), the Court stated that "where a gap in the federal securities laws must be bridged by a rule that bears on the allocation of governing powers within the corporation, federal courts should incorporate state law into federal common law unless the particular state law in question is inconsistent with the policies underlying the federal statute." Kamen, 500 U.S. at 108.

42. As Section 211(g) explicitly permits the disclosure of material conflicts of interest by an adviser and the consent to such conflicts by the client, state law regarding the modification or waiver of fiduciary duties is not inconsistent with the policy underlying the Investment Advisers Act. Accordingly, the Delaware Limited Liability Company Act (the DLLCA") and

the decisions construing that statute provide parameters regarding fiduciary duties and the restriction or elimination of such duties.

43. The DLLCA permits the members of a limited liability company to reach an agreement regarding a number of issues, including the standards that will govern the internal affairs of the limited liability company. *Elf Atochem North America, Inc. v. Jaffari*, 727 A.2d 286, 291-92 (Del. 1999).

44. The DLLCA provides that the fiduciary duties of a member, manager, or other person that is a party to or bound by a limited liability agreement "may be expanded or restricted or eliminated by provisions in a limited liability company agreement. Del. Code Ann. tit. 6, § 18-1101(c). Accordingly, the provisions of the relevant limited liability company agreement will determine whether otherwise applicable fiduciary duties have been modified, restricted or eliminated. *Zimmerman v. Crothall*, 62 A.3d 676, 703 (Del. Ch. 2013), (finding that "through the Adhezion Operating Agreement and consistent with their prerogative under 6 Del. C. § 18–1101(c), the parties 'restricted' the fiduciary duties that the Director Defendants owed in the context of their dealings with the Company.)"

45. Accordingly, the provisions of the Geier Fund's disclosure documents, (i.e., the Operating Agreement and the Offering Memorandum) determine whether otherwise applicable fiduciary duties have been modified, restricted or eliminated.

46. By receiving the Offering Memorandum and executing the Operating Agreement, Members of the Geier Fund agreed that other Members were permitted to engage in any other business, including any business within the securities industry, whether or not such business is in competition with the Fund; were free to engage in other activities in the securities business, including businesses which compete with the Geier Fund; were free to act as investment adviser

or investment manager for others; were free to pursue investment objectives or implement strategies similar to or different than the objectives or strategies of the Geier Fund; were free to invest in securities in which the Fund invests or invest in securities in which the Fund does not invest; were free to give advice or take action that differs from the action taken by the Geier Fund or the advice given to the Geier Fund; and were free to purchase the same securities as the Fund as well as securities in which the Fund did not invest. Further, by becoming Members of the Geier Fund, investors agreed "that in effecting transactions, it may not always be possible or consistent with the investment objectives of the various persons or entities described above and of the Company to take or liquidate the same investment positions at the same time or at the same prices." Members of the Geier Fund further agreed that the Managing Member of the Fund was empowered to enter into, make and perform any other contracts, agreements or other undertakings it may deem advisable in conducting the business of the Company, including but not limited to contracts, agreements or other undertakings with persons, firms or corporations with which the Managing Member or any other Member is affiliated."

47. As the provisions of the Operating Agreement and the Offering Memorandum clearly and unequivocally disclosed potential conflicts of interest, the duty of loyalty that was owed to the Fund was significantly modified, and permitted Respondent and others to purchase and sell the same securities that the Fund purchased and sold and to purchase and sell securities that the Fund did not purchase and sell, including TRX securities and put contracts on TRX securities.

48. Similarly, Respondent could not be exposed to liability in connection with Mr. Hull's sale of TRX securities to the Fund as the Operating Agreement specifically provided that

the Managing Member could enter into transactions that it deemed advisable, including transactions with persons with which the Managing Member is affiliated.

C. RESPONDENT GIBSON DID NOT ENGAGE IN FRONT RUNNING

49. The SEC, to date, has not adopted a rule that defines and proscribes front running, and as a result, a determination that Respondent engaged in front running in violation of the federal securities laws is impermissible. *Upton v. Securities and Exchange Commission,* 75 F.3d 92, 98 (2d Cir. 1996) (stating "Due process requires that 'laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited. Although the Commission's construction of its own regulations is entitled to 'substantial deference,' we cannot defer to the Commission's interpretation of its rules if doing so would penalize an individual who has not received fair notice of a regulatory violation." (citations omitted).

50. Notwithstanding the absence of a clear definition of the term "front running," Respondent's sale of TRX securities and purchase of TRX puts could not be found to constitute a violation of the federal securities laws.

51. Respondent could not have engaged in a violation of the securities laws because, at the time he sold TRX securities and purchased TRX put contracts, the Fund was not about to engage in an imminent block transaction which he could take advantage of. Rather, at the time that Respondent placed orders to sell TRX securities and purchase TRX put contracts Respondent was soliciting bids for the Fund's TRX securities from third parties. Respondent did not contact the brokerage firm at which Geier Fund maintained an account and place an order to sell TRX securities either at the market or pursuant to a limit order. Rather, he contacted a firm at which he had not established an account or relationship and which did not owe the Fund a duty of confidentiality or a duty of best execution and once Respondent Gibson asked whether

Casimir Capital was aware of a potential buyer, a potential sale of TRX securities by the Fund was no longer nonpublic information. And at the time he placed sell orders on September 26th, he could not know whether Casimir Capital would be able to locate a buyer or whether the size of any proposed transaction or the price at which the Fund's TRX securities could be sold would be acceptable.

52. Similarly, Respondent could not be found to have violated the securities laws when he purchased $4.00 put contracts on the securities of TRX because he was continuing to explore the possibility of negotiated transactions in the upstairs market, but he had not reached agreements with other parties regarding the price or volume of TRX securities, and there was not an order to sell TRX securities which he could front run.

D. RESPONDENT GIBSON DID NOT FAVOR A FUND INVESTOR OVER THE FUND

53. The Investment Advisers Act did not require Respondent Gibson to disclose that, at the time of the Hull Transaction, the Fund's trading strategy was to exit its TRX position, as the Fund's Operating Agreement vested discretion in Geier Capital to make investment decisions on behalf of the Fund.

54. At the time of the Hull Transaction, neither Geier Capital nor Respondent Gibson was acting as an investment adviser within the meaning of Section 202(a)(11) as the Geier Fund had ceased paying compensation for advisory services prior to the time of the Hull Transaction, and, any remaining fiduciary duties that existed in light of the modifications set forth in the Operating Agreement and the Offering memorandum had ceased.

55. The Investment Advisers Act did not require Respondent Gibson to disclose the terms of the Hull Transaction as the Fund's Operating Agreement at Section 3.02(h) specifically authorized Geier Capital, the Fund's Managing Member, "To enter into, make and perform any

other contracts, agreements or other undertakings it may deem advisable in conducting the business of the Company, including but not limited to contracts, agreements or other undertakings with persons firms or corporations with which the Managing Member or any Member is affiliated. And the provision set forth in the Offering Memorandum which stated that purchase and sale transactions may be effected between the Fund and other entities and accounts subject to guidelines that such transactions shall be effected for cash consideration at the current market price of the particular securities and no extraordinary brokerage commissions or fees or other remuneration shall be paid does not prohibit the Hull Transaction as the provision in the Offering Memorandum is a guideline rather than a requirement. In any event, the Hull Transaction complied with the provision set forth in the Offering Memorandum as the transaction was effected at current market prices and no extraordinary commissions or other remuneration was paid.

56. The Hull Transaction cannot be found to have violated the federal securities laws because Respondent did not favor Mr. Hull over the Fund as Mr. Hull's ownership in the Fund was approximately 80% of the Fund and the consequences of any transaction whether favorable or unfavorable affected primarily Mr. Hull. Moreover, any adverse consequences of a transaction also affected Respondent and those close to him and whose interests in the Fund represented approximately 10% of the Fund. As a result, approximately 90% of the impact of any developments regarding the Fund affected Mr. Hull and Respondent Gibson. .

57. The Hull Transaction cannot be found to constitute impermissible "cherry picking," because the transaction involved the Fund and Mr. Hull and neither party knew whether the price of the subject security would increase or decrease in value after the transaction was completed.

58. The Hull Transaction cannot be found to constitute a violation of the federal securities laws because the transaction was entered into in order to avoid any adverse consequences that might develop from Mr. Hull's efforts to sell securities in the market at the same time that the Fund was exploring the sale of the same securities and the transaction between Mr. Hull and the Fund did not benefit Mr. Hull as a sale of his TRX securities in the market would have increased his liquid assets by approximately $2,500,000, while a sale of his TRX shares to the Fund increased his liquid assets by approximately $500,000 and the reason for his sale of his TRX securities was to increase his liquidity.

59. The Investment Advisers Act did not require Respondent to disclose that he was employed by Mr. Hull's real estate company at the time of the Hull Transaction and the Fund's investors were aware that Respondent became an employee of Hull Storey Gibson Companies in 2009 and continued in that role through the relevant period.

60. The Hull Transaction could not be found to constitute a violation of the federal securities laws because the Operating Agreement authorized the Managing Member to amend the Fund's Operating Agreement as necessary to further permit the parties to enter into the Hull Transaction. Section 11.04(a) provides as follows: This agreement may be amended by the Managing Member, in its sole discretion, in any manner that does not materially adversely affect any Member, including to effectuate the investment of the company's assets in a Master Fund, or to effect any changes required by applicable law or regulations. The Operating Agreement may also be amended by action of the Managing Member with the consent (which may be in the form of a negative consent) of the Members owning a majority-in-interest of the capital accounts of all the Members in any manner that does not discriminate among the Members. As Mr. Hull owned approximately 80% of the Fund, he held an ownership interest sufficient to permit the

amendment to the Operating Agreement, if necessary to enter into the transaction proposed by the Managing Member and the Hull Transaction does not discriminate among the Members as Mr. Hull shared fully in any effect the Hull Transaction had on the Members of the Fund. Accordingly, to the extent necessary, the Managing Member and Mr. Hull may be deemed to have amended the Operating Agreement to the extent necessary to permit the Hull Transaction.

E. RESPONDENT GIBSON DID NOT VIOLATE SECTION 206(4) AND RULE 206(4)-8

61. By its terms, Rule 206(4)-8 applies to investment advisers and Respondent Gibson did not act as investment adviser with respect to the Fund. In addition, Rule 206(4)-8 prohibits an investment adviser from making an untrue statement of material fact or omitting a material fact necessary to make the statements made not misleading. The rule does not affirmatively require an investment adviser to make statements to investors or potential investors. Moreover, the rule does not establish a fiduciary relationship between an investment adviser and investors or prospective investors, which relationship might require disclosure of material information to investors or prospective investors.

62. Respondent cannot be found to have violated Rule 206(4)-8 as the disclosures provided to investors stated that Respondent could have a securities brokerage account, that Respondent could advise others with respect to securities brokerage matters and could trade, and that it might not be possible or consistent with investment objectives of the various persons or entities to take or liquidate the same investment positions at the same time and at the same prices. As the Operating Agreement is binding on the Fund and its Members, the Members of the Fund have consented to Respondent's sales of TRX securities and purchases of put options.

63. As Respondent did not engage in front running, accordingly, he could not be obligated to disclose that he engaged in front running.

64. Respondent was not obligated to disclose the Hull Transaction to Fund investors because Section 3.02(h) of the Operating Agreement specifically authorized the transactions such as the Hull Transaction. As the Members of the Fund consented to transactions such as the Hull transaction when they signed the Operating Agreement, further notification of such a transaction was not required.

F. THE SECURITIES EXCHANGE ACT ANTIFRAUD PROVISIONS

65. Section 10(b) of the Securities Exchange Act and Rule 10b-5 thereunder prohibit a person from engaging in certain fraudulent or deceptive practices in connection with the purchase or sale of any security.

66. Section 10(b) makes it "unlawful for any person, directly or indirectly . . . to use or employ, in connection with the purchase or sale of any security . . . any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors."

67. Rule 10b-5, which implements the Commission's authority under Section 10(b), similarly makes it "unlawful for any person, directly or indirectly, to employ any device, scheme, or artifice to defraud; to make any untrue statement of a material fact or to omit a material fact necessary in order to make the statements made, not misleading; or to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security."

68. To establish liability under Section 10(b) and Rule 10b-5, the SEC must show that "in connection with the purchase or sale of a security the defendant, acting with scienter, made a material misrepresentation (or a material omission if the defendant had a duty to speak) or used

a fraudulent device." *SEC v. First Jersey Sec., Inc.*, 101 F.3d 1450, 1467 (2d Cir. 1996). In order to establish violations of Section 10(b) and Rule 10b-5, there must be proof of a manipulative or deceptive act. *Santa Fe Indus., Inc. v. Green*, 430 U.S. 462, 471 (1977) (Section 10(b) of the Securities Exchange Act "makes it 'unlawful for any person . . . to use or employ . . . any manipulative or deceptive device or contrivance in contravention of (Securities and Exchange Commission rules)'; Rule 10b-5, promulgated by the SEC under § 10(b), prohibits, in addition to nondisclosure and misrepresentation, any 'artifice to defraud' or any act 'which operates or would operate as a fraud or deceit.'"). *See S.E.C. v. Lee*, 720 F. Supp. 2d 305, 325 (S.D.N.Y. 2010) ("To state a claim under Sections 10(b) of the Exchange Act and 17(a) of the Securities Act, the plaintiff must successfully allege that each defendant . . . committed a deceptive or manipulative act...") (citing *SEC v. Monarch Funding Corp.*, 192 F.3d 295, 308 (2d Cir.1999)).

69. Full disclosure of the relevant conduct negates any deception or manipulation and thus negates liability. *United States v. O'Hagan*, 521 U.S. 642, 642 (1997). The Fund's Operating Agreement and Offering Memorandum fully disclosed any conflicts of interest related to Respondent's sale of securities which were also held by the Fund or purchases of put contracts which were derivatives of the securities held by the Fund. The documents disclosed that members of the Managing Member may conduct securities business in competition with the Fund; may make and maintain investments that employ strategies similar or different to those of the Fund; and may have interests in the securities and futures in which the Fund invests as well as interests in investments in which the Fund does not invest.

70. As Respondent disclosed potential conflicts of interest and did not engage in front running, he did not engage in a manipulative or deceptive act, and therefore, there did not violate the antifraud provisions of the Securities Exchange Act.

G. RESPONDENT DID NOT ACT WITH THE REQUISITE MENTAL STATE

71. Section 206(1) and Section 10(b) and Rule 10b-5 require proof of scienter, while Section 206(2) and 206(4) and Rule 206(4)-8 require proof of negligence. Scienter is shown by facts demonstrating, "a mental state embracing intent to deceive, manipulate, or defraud." SEC v. Rubera, 350 F.3d 1084, 1094 n. 1(9th Cir. 2003) (citations omitted.) It may also be established by recklessness, which is: highly unreasonable omissions or misrepresentations that involve not merely simple or even inexcusable negligence, but an extreme departure from the standards of ordinary care, and that present a danger of misleading buyers or sellers which is either known to the defendant or is so obvious that the defendant must have been aware of it. Id. To establish negligence, the SEC must show that Mr. Gibson had no reasonable basis for his actions. "Negligence is not a strict liability standard[,] but "requires the absence of a reasonable basis." SEC v. Morris, No. CIV.A. H-04-3096, 2007 WL 614210, at *3 (S.D. Tex. Feb. 26, 2007) (citing Weiss v. SEC, 468 F.3d 849, 855 (D.C.Cir.2006); SEC v. Dain Rauscher, Inc., 254 F.3d 852, 854 (9th Cir.2001).)

72. As the Offering Memorandum and the Operating Agreement contained extensive disclosures regarding potential conflicts of interest, and as Respondent Gibson was aware of the disclosures contained in those documents and as the documents specifically permitted the transactions in which Respondent engaged he could not have acted recklessly or negligently in failing to disclose such matters.

73. As Respondent Gibson did not engage in front running or favor Mr. Hull over the Fund in violation of the Investment Advisers Act or the Securities Exchange Act or rules thereunder, he could not have acted recklessly or negligently in failing to disclose such matters.

H. RESPONDENT CANNOT BE LIABLE FOR THE PUT TRANSACTIONS OF JOHN GIBSON

74. Respondent Gibson did not violate the Investment Advisers Act, the Securities Exchange Act and the rules thereunder in connection with his recommendation to John Gibson that he purchase and sell $4.00 TRX put contracts as a part of John Gibson's liquidation of his position in TRX securities which were held in an individual retirement account, as Respondent Gibson did not purchase or sell the $4.00 TRX put contracts, and he did not exercise discretion with respect to John Gibson's purchase or sale of the $4.00 put contracts in his individual retirement account. Respondent merely suggested that John Gibson place one order to purchase $4.00 TRX put contracts, sell his TRX securities and sell the put contracts, which John Gibson did. Moreover, The transactions executed by John Gibson, a member of Geier Capital, in TRX securities and put options on TRX securities were fully disclosed in the Fund's Operating Agreement and Offering Memorandum and John Gibson, at the time he liquidated his position in TRX securities (which included his put transactions), was a Member of the Geier Fund. As the Fund's Operating Agreement permitted Members to conduct "any other business, including any business within the securities industry, whether or not such business is in competition with the Company" and as John Gibson was a member of Geier Capital, the Managing Member of the Geier Fund, John Gibson was permitted to engage in sales of TRX securities and the purchase of TRX put contracts.

75. Moreover, John Gibson placed a single order to buy puts, sell securities and sell puts, but the entity at which John Gibson maintained his account failed to execute the transaction on the day John Gibson entered the order and executed sales of some TRX securities and put contracts on the next day, which was the day the Fund sold TRX shares.

76. Neither Geier Capital nor Respondent Gibson was acting as an investment adviser and neither owed duties to the Fund that could be breached in connection with John Gibson's liquidation of his position in TRX securities.

I. SANCTIONS AND RELIEF

77. Section 203(f) provides that the Commission's administrative jurisdiction extends to persons who are or are seeking to become associated with an investment adviser or a person who was associated or seeking to become associated at the time of the alleged misconduct. Respondent was associated with Geier Capital and Geier Group during some or all of the period relevant to this matter, but neither entity could meet the definition of investment adviser set forth in Section 202(a)(11) as the Fund ceased paying compensation prior to October 1, 2016. Accordingly, no sanctions pursuant to Section 203(f) could be imposed against Respondent for conduct occurring after that date. Further, Respondent did not violate the Investment Advisers Act, the Securities Exchange Act, or the rules thereunder. Accordingly, no administrative sanctions pursuant to Section 203(f) may be imposed on the Respondent.

78. Sanctions pursuant to Section 203(f) and (k) of the Investment Advisers Act, Section 21C of the Securities Exchange Act, and Section 9(b) of the Investment Company Act are inappropriate as Respondent has not violated the Securities Exchange Act or the Investment Advisers Act. Evidence admitted during the hearing establishes that sanctions and other relief are not appropriate in light of the factors that the Commission has considered proceedings of this type. As the Respondent engaged solely in activities that were addressed in the Fund's Offering Memorandum and Operating Agreement; Respondent's transactions in TRX securities and TRX put contracts did not harm the Fund and the Hull transaction was believed to be in the interest of the Fund as opposed to the interest of Mr. Hull; the activities at issue in this matter were, in fact,

isolated rather than recurrent in nature; the Fund commenced operations in January 2010 and the activities at issue occurred in September, October and November 2011; Respondent Gibson undertook the actions at issue with the understanding that they were permitted by the Fund's Offering Memorandum and Operating Agreement and that the actions either did not harm the Fund or benefitted the Fund; and in light of the activities that Respondent has undertaken since the events at issue and in the future it is unlikely that he will be in a position to engage in violations of the securities laws in the future. Further, evidence admitted in this matter establishes Respondent's inability to pay a civil penalty or to comply with an order requiring him to pay disgorgement.

79. The imposition of sanctions or other relief are barred, in whole or in part, because this administrative proceeding violates Respondent's right to due process under the United States Constitution because, for example, the administrative procedures are unconstitutionally inadequate.

80. The imposition of sanctions or other relief are barred, in whole or in part, because this administrative proceeding violates Respondent's right to equal protection of the laws under the United States Constitution.

81. The imposition of sanctions or other relief are barred, in whole or in part, because this administrative proceeding violates Respondent's right to a jury trial under the Seventh Amendment of the United States Constitution.

82. The imposition of sanctions or other relief are barred by the applicable statute of limitations.

83. Respondent did not act intentionally, recklessly, or negligently in regard to the claims asserted in the OIP.

84. Disgorgement is an inappropriate remedy as Respondent did not realize and/or retain illicit profits and is unable to pay disgorgement.

85. Civil penalties should be denied because any such award would be unjust, arbitrary and oppressive, or confiscatory and Respondent is unable to pay a civil penalty.

III. The Division of Enforcement's Proposed Findings of Fact and Conclusions of Law

In accordance with the Post-Hearing Order dated September 16, 2016, Respondent Gibson identifies, by paragraph number, the Division of Enforcement's Proposed Findings of Fact and Conclusions of Law that are in dispute and the findings and conclusions of law that are not in dispute.

A. The Division of Enforcement's Proposed Findings of Fact

1. Not in dispute.
2. Not in dispute
3. In dispute. Not supported by hearing record.
4. Not in dispute
5. Not in dispute
6. In dispute. Not supported by hearing record.
7. Not in dispute
8. Not in dispute
9. In dispute. Not supported by hearing record.
10. Not in dispute.
11. Not in dispute
12. In dispute. Not supported by hearing record.
13. Not in dispute
14. In dispute. Not supported by hearing record.
15. Not in dispute
16. Not in dispute.
17. Not in dispute.
18. In dispute. Not supported by hearing record.
19. In dispute. Not supported by hearing record.
20. In dispute. Not supported by hearing record.
21. Not in dispute.
22. In dispute. Not supported by hearing record.
23. Not in dispute.

24. Not in dispute.
25. Not in dispute.
26. In Dispute. Not supported by hearing record.
27. Not in dispute.
28. Not in dispute.
29. Not in dispute.
30. Not in dispute.
31. Not in dispute.
32. Not in dispute.
33. Not in dispute.
34. Not in dispute.
35. In dispute. Not supported by hearing record.
36. Not in dispute.
37. Not in dispute.
38. Not in dispute.
39. Not in dispute.
40. Not in dispute.
41. Not in dispute.
42. In dispute. Not supported by hearing record.
43. In dispute. Not supported by hearing record.
44. In dispute. Not supported by hearing record.
45. Not in dispute.
46. Not in dispute.
47. In dispute. Not supported by hearing record.
48. In dispute. Not supported by hearing record.
49. Not in dispute.
50. Not in dispute.
51. Not in dispute.
52. Not in dispute.
53. Not in dispute.
54. Not in dispute.
55. Not in dispute.
56. Not in dispute.
57. In dispute. Not supported by hearing record.
58. Not in dispute.
59. In dispute. Not supported by hearing record.
60. Not in dispute.
61. Not in dispute.
62. Not in dispute.
63. Not in dispute.
64. Not in dispute.
65. Not in dispute.
66. Not in dispute.
67. Not in dispute.
68. In dispute. Not supported by Hearing Record.
69. In dispute. Not supported by hearing record.

70. In dispute. Not supported by hearing record.
71. In dispute. Not supported by hearing record.
72. In dispute. Not supported by hearing record.
73. Not in dispute.
74. Not in dispute.
75. Not in dispute.
76. Not in dispute.
77. Not in dispute.
78. Not in dispute.
79. Not in dispute.
80. Not in dispute.
81. In dispute. Not supported by hearing record.
82. Not in dispute.
83. In dispute. Not supported by hearing record.
84. Not in dispute.
85. Not in dispute.
86. Not in dispute.
87. In dispute. Not supported by hearing record.
88. In dispute. Not supported by hearing record.
89. In dispute. Not supported by hearing record.
90. In dispute. Not supported by hearing record.
91. In dispute. Irrelevant.
92. In dispute. Irrelevant.
93. In dispute. Irrelevant
94. In dispute. Irrelevant
95. In dispute. Irrelevant.
96. Not in dispute.
97. In dispute. Irrelevant.
98. In dispute. Irrelevant.
99. In dispute. Irrelevant.
100. Not in dispute.
101. In dispute. Not supported by hearing record.
102. In dispute. Not supported by hearing record.
103. In dispute. Not supported by hearing record. .
104. Not in dispute.
105. Not in dispute.
106. Not in dispute.
107. Not in dispute.
108. Not in dispute.
109. In dispute. Not supported by hearing record.
110. In dispute. Not supported by hearing record.
111. Not in dispute.
112. Not in dispute.
113. In dispute. Not supported by hearing record.
114. In dispute. Not supported by hearing record.
115. In dispute. Not supported by hearing record.

116. Not in dispute.
117. Not in dispute
118. Not in dispute.
119. Not in dispute.
120. In dispute. Not supported by hearing record.
121. Not in dispute.
122. Not in dispute.
123. Not in dispute.
124. Not in dispute.
125. Not in dispute.
126. Not in dispute.
127. Not in dispute.
128. In dispute. Not supported by hearing record.
129. In dispute. Not supported by hearing record.
130. Not in dispute.
131. Not in dispute.
132. Not in dispute.
133. In dispute. Not supported by hearing record.
134. In dispute. Not supported by hearing record.
135. In dispute. Not supported by hearing record.
136. Not in dispute.
137. Not in dispute.
138. Not in dispute.
139. Not in dispute
140. Not in dispute.
141. Not in dispute.
142. In dispute. Not supported by hearing record.
143. In dispute. Not supported by hearing record.
144. In dispute. Not supported by hearing record.
145. In dispute. Not supported by hearing record.
146. In dispute. Not supported by hearing record.
147. In dispute. Not supported by hearing record.
148. Not in dispute.
149. In dispute. Not supported by hearing record.
150. In dispute. Not supported by hearing record.
151. Not in dispute.
152. In dispute. Not supported by hearing record.
153. In dispute. Not supported by hearing record.
154. In dispute. Not supported by hearing record.
155. In dispute. Not supported by hearing record.
156. In dispute. Not supported by hearing record.
157. In dispute. Not supported by hearing record.
158. In dispute. Not supported by hearing record.
159. Not in dispute.
160. Not in dispute.
161. Not in dispute.

162. Not in dispute.
163. In dispute. Not supported by haring record.
164. In dispute. Not supported by hearing record.
165. In dispute. Not supported by hearing record.
166. Not in dispute.
167. Not in dispute.
168. Not in dispute.
169. Not in dispute.
170. Not in dispute.
171. Not in dispute.
172. Not in dispute.
173. In dispute. Not supported by hearing record.
174. Not in dispute.
175. In dispute. Not supported by hearing record.
176. In dispute. Not supported by hearing record.
177. In dispute. Not supported by hearing record.
178. In dispute. Not supported by hearing record.
179. In dispute. Not supported by hearing record.
180. In dispute. Not supported by hearing record.
181. In dispute. Not supported by hearing record.
182. In dispute. Not supported by hearing record.
183. In dispute. Not supported by hearing record.
184. In dispute. Not supported by hearing record.
185. In dispute. Not supported by hearing record.
186. In dispute. Not supported by hearing record.
187. In dispute. Not supported by hearing record.
188. Not in dispute.
189. Not in dispute.
190. In dispute. Not supported by hearing record.
191. In dispute. Not supported by hearing record.
192. Not in dispute.
193. In dispute. Not supported by hearing record.
194. In dispute. Not supported by hearing record.
195. In dispute. Not supported by hearing record.
196. In dispute. Not supported by hearing record.
197. In dispute. Not supported by hearing record.
198. Not in dispute.
199. In dispute. Not supported by hearing record.
200. Not in dispute.
201. In dispute. Not supported by hearing record.
202. In dispute. Not supported by hearing record.
203. Not in dispute.
204. Not in dispute.
205. Not in dispute.
206. Not in dispute.
207. Not in dispute.

208. In dispute. Not supported by hearing record.
209. In dispute. Not supported by hearing record.
210. In dispute. Not supported by hearing record.
211. Not in dispute.
212. In dispute. Not supported by hearing record.
213. In dispute. Not supported by hearing record.
214. In dispute. Not supported by hearing record.
215. In dispute. Not supported by hearing record.
216. In dispute. Inaccurate.
217. Not in dispute.
218. In dispute. Not supported by hearing record.
219. In dispute. Not supported by hearing record.
220. Not in dispute.
221. Not in dispute.
222. In dispute. Not supported by hearing record.
223. In dispute. Not supported by hearing record.
224. In Dispute. Not supported by hearing record.
225. In dispute. Not supported by hearing record.
226. In dispute. Not supported by hearing record.
227. Not in dispute.
228. Not in dispute.
229. In dispute. Not supported by hearing record.
230. In dispute. Not supported by hearing record.
231. In dispute. Not supported by hearing record.
232. In dispute. Not supported by hearing record.
233. In dispute. Not supported by hearing record.
234. In dispute. Not supported by hearing record.
235. In dispute. Not supported by hearing record.
236. In dispute. Not supported by hearing record.
237. Not in dispute.
238. In dispute. Not supported by hearing record.
239. In dispute. Not supported by hearing record.
240. Not in dispute.
241. Not in dispute.
242. Not in dispute.
243. Not in dispute.
244. Not in dispute.
245. In dispute. Not supported by hearing record.
246. Not in dispute.
247. Not in dispute.
248. Not in dispute.
249. Not in dispute.
250. In dispute. Not supported by hearing record.
251. Not in dispute.
252. In dispute. Not supported by hearing record.

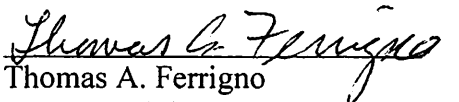
B. The Division of Enforcement's Proposed Conclusions of Law

1. Not in dispute.
2. Not in dispute.
3. In dispute. Misstates law.
4. Not in dispute.
5. Not in dispute.
6. In dispute. Misstates law.
7. In dispute. Misstates law.
8. Not in dispute.
9. Not in dispute.
10. Not in dispute.
11. In dispute. Misstates law.
12. In dispute. Misstates law.
13. In dispute. Misstates law.
14. Not in dispute.
15. Not in dispute.
16. In dispute. Not a legal conclusion.
17. Not in dispute.
18. In dispute. Misstates law.
19. In dispute. Misstates law.
20. In dispute. Misstates law.
21. In dispute. Not a legal conclusion.
22. In dispute. Misstates law.
23. In dispute. Misstates law.
24. In dispute. Misstates law.
25. In dispute. Misstates law.
26. In dispute. Misstates law.
27. In dispute. Misstates law.
28. In dispute. Misstates law.
29. In dispute. Misstates law.
30. In dispute. Misstates law.
31. In dispute. Misstates law.
32. In dispute. Misstates law.
33. In dispute. Misstates law.
34. In dispute. Misstates law.
35. In dispute. Misstates law.
36. In dispute. Misstates law.
37. In dispute. Misstates law.
38. In dispute. Misstates law.
39. In dispute. Not a legal conclusion.
40. In dispute. Not a legal conclusion.
41. In dispute. Not a legal conclusion.
42. In dispute. Misstates law.
43. In dispute. Misstates law.
44. In dispute. Misstates law.
45. In dispute. Misstates law.

46. In dispute. Misstates law.
47. In dispute. Misstates law.
48. In dispute. Misstates law.
49. In dispute. Misstates law.
50. In dispute. Misstates law.
51. Not in dispute.
52. In dispute. Misstates law.
53. Not in dispute.
54. Not in dispute.
55. In dispute. Misstates law.
56. In dispute. Misstates law.
57. In dispute. Misstates law.
58. In dispute. Misstates law.
59. In dispute. Misstates law.
60. In dispute. Misstates law.
61. In dispute. Misstates law.
62. In dispute. Misstates law.
63. In dispute. Misstates law.
64. In dispute. Misstates law.
65. In dispute. Misstates law.
66. In dispute. Misstates law.
67. In dispute. Misstates law.
68. Not in dispute.
69. In dispute. Misstates law.
70. In dispute. Misstates law.
71. In dispute. Misstates law.
72. In dispute. Misstates law.
73. In dispute. Misstates law.
74. In dispute. Misstates law.
75. In dispute. Misstates law.
76. In dispute. Misstates law.
77. In dispute. Misstates law.

Respectfully submitted,

November 29, 2016



Thomas A. Ferrigno
Brown Rudnick LLP
601 Thirteenth St. NW, Suite 600
Washington, D.C. 20005
(202) 536-1785

Counsel for Respondent

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of November 2016:

(i) an original and three copies of the foregoing *Respondent Christopher M. Gibson's Proposed Findings of Fact and Conclusions of Law* were filed with the Office of the Secretary, Securities and Exchange Commission, 100 F Street, N.E., Washington, D.C. 20549-9303;

(ii) a copy of the foregoing was delivered by courier to H. Michael Semler, Division of Enforcement, Securities and Exchange Commission, Mail Stop 5977, 100 F Street, N.W, Washington, D.C. 20549; and

(iii) a copy of the foregoing was sent via email to Brenda P. Murray, Chief Administrative Law Judge, at ALJ@sec.gov.

Thomas A. Ferrigno