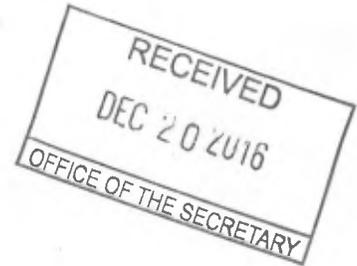


UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

Administrative Proceeding
File No. 3-17184

In the Matter of

CHRISTOPHER M. GIBSON



DIVISION OF ENFORCEMENT'S RESPONSES
TO GIBSON'S PROPOSED FINDINGS AND CONCLUSIONS

December 20, 2016

H. Michael Semler
Gregory R. Bockin
Paul J. Bohr
George J. Bagnall
U.S. Securities and Exchange Commission
Division of Enforcement
100 F Street, N.E.
Washington, D.C. 20549

Counsel for Division of Enforcement

The Division of Enforcement ("Division") hereby responds to the proposed findings of fact and conclusions of law filed by Respondent Christopher Gibson ("Gibson") on November 29, 2016. The paragraphs as numbered below refer to the corresponding paragraphs in Gibson's proposed findings and conclusions.

I. Division's Responses To Gibson's Proposed Findings of Fact

1. Undisputed.
2. Disputed in part: Gibson passed the Series 7 and Series 63 exams in 2006, but he did not pass the Uniform Investment Adviser Law Examination ("Series 65") until 2009. Div. Proposed Findings of Fact ("Div. FoF") at ¶ 14.
3. Disputed in part: Subsequent to the events at issue here, Hull Storey Gibson Companies ("HSGC") was restructured as Hull Property Group.
4. Undisputed.
5. Undisputed.
6. Disputed: Gibson's primary duties in 2009 related to investment management, not matters relating to Hull's real estate business. ("And within a matter of weeks, we formed the Gibson Fund, and at that point in time, it was certainly clear to me that my responsibilities were advising Jim on the management of the Gibson Fund." Div. Ex. 190 21:17-23.) Gibson testified that in 2009 he spent "one hundred percent" of his time working on the Hull Fund and the Gibson Fund. Div. Ex. 190 27:1-4.
7. Undisputed.
8. Undisputed.
9. Disputed in part: The record does not show that Hull "direct[ed]" the investments of the Hull and Gibson funds. Gibson advised Hull on the management of the investments.

("[M]y responsibilities were advising Jim on the management of the Gibson Fund." Div. Ex. 190 21:22-23.)

10. Undisputed.

11. Undisputed.

12. Undisputed.

13. Disputed in part: Nothing in the record shows that all GISF investors met the income or net wealth thresholds to qualify as accredited investors.

14. Undisputed.

15. Disputed: Gibson's contention that Hull "led" each meeting with investors in early 2010 is inconsistent with the testimony of Mason McKnight IV, who did not remember Hull even being present at the meeting with Gibson. (Tr. 446:23-447:2)

16. Disputed in part: Gibson did have a prior business relationship with certain investors in the GISF, including Doug Cates, Wayne Grovenstein, and the McKnight family members, each of whom invested in the Gibson Fund or the Hull Fund. Tr. 28:-18-23; 30:6-12.

17. Disputed in part: Gibson's contention that "if the GISF lost money, Gibson and his family would be financially crushed and they were" is belied by the fact that Gibson's family continued to have the resources to pay off Gibson's \$645,000 loan from Hull and, currently, to fund Gibson's legal costs in this litigation. There is nothing in the evidentiary record identifying the financial resources of Gibson's family.

18. Disputed: Gibson's contention that Hull "required" him to borrow funds from Hull contradicts his investigative testimony. Div. Ex. 190 at 28:10-15 and 29:15-30 ("Jim asked me – he did not demand, but it was clear to me, because he asked several times, that it was important to him.") Gibson also testified that he borrowed funds from Hull to secure an opportunity for a

greater profit. Tr. 577:20-578:5 ("It was an opportunity for me to make yet more money than every other investor.").

19. Disputed in part: While Gibson attempted to repay his loan on one occasion, he borrowed sums from Hull on multiple occasions, amending and restating his promissory note to Hull at least sixteen times. Div. FoF. at ¶ 41.

20. Undisputed.

21. Undisputed.

22. Disputed: Gibson admitted that the fees due to him in connection with his advisory services were under his control and could have been withdrawn from GISF if he chose to do so.

23. Undisputed.

24. Undisputed.

25. Undisputed.

26. Disputed: There is no credible evidence that Gibson's parents or Giovanni Marzullo "risked insolvency if the GISF became worthless." Likewise, there is no evidence regarding the capacity of other GISF investors to bear substantial losses, except with regard to Douglas Cates and Wayne Grovenstein.

27. Disputed: Gibson's claim that his personal interests were aligned with those of the GISF is belied by the facts that he front ran GISF, purchased put options that would increase in value as GISF's interest in TRX declined, and subordinated GISF's interests to Hull's interests. The assertion that Gibson always held "bullish views on TRX" ignores his sales of his personally-held TRX shares, his purchase and opportunistic resale of TRX put options, and his private statements to TRX management. Div. Ex. 76, 77, 78, 79, and 103.

28. Disputed in part: Gibson admitted that he did not know whether Hull encouraged other investors in GISF to purchase for their personal accounts the same assets as held by the Fund. Tr. 620:18-22.

29. Disputed in part: Gibson falsely implies that the GISF offering documents put GISF investors on notice regarding the specific outside accounts Gibson held and controlled. No such accounts were identified in the offering documents. See Division of Enforcement Post-Hearing Brief ("Div. Post-Hearing Br.") at 34-44.

30. Disputed in part: None of the accounts mentioned in this proposed finding were identified in the offering documents or known to GISF's other investors. See response to No. 29 above.

31. Undisputed.

32. Undisputed.

33. Undisputed.

34. Disputed in part: The offering documents identified Geier Group as the Fund's investment manager. Div. Ex. 24. The investment manager was the entity "responsible for determining appropriate investments for the Fund." Id.

35. Undisputed.

36. Undisputed.

37. Undisputed.

38. Undisputed.

39. Undisputed.

40. Undisputed.

41. Disputed: There is no record evidence that the offering documents were intended or understood by Hull, Gibson, or any investor to permit the front running and favoritism at issue, which was not only a violation of federal securities laws but also was inconsistent with the purported goal of aligning Gibson's interests with those of GISF.

42. Disputed: Gibson's assertions are legal arguments, not statements of fact. Moreover, Gibson's arguments distort the Division's position. The fundamental issue is not whether Gibson could maintain other accounts, or even take positions inconsistent with positions taken by GISF, but whether without further disclosures he could trade in those other accounts on the basis of his foreknowledge of GISF's anticipated trades or in a manner inconsistent with the statements in the offering documents.

43. Disputed in part: There is no evidence in the record showing that GISF investors "recognized" that the managing member had a "right" to create or exploit the undisclosed conflicts of interest at issue here.

44. Undisputed.

45. Undisputed.

46. Undisputed.

47. Disputed: See response to No. 43 above.

48. Undisputed.

49. Undisputed.

50. Undisputed.

51. Undisputed.

52. Disputed: See response to No. 43 above.

53. Disputed in part: Although GISF's investors understood that GISF was a speculative investment, there is no evidence that any of them "understood" that Gibson could create or exploit the undisclosed conflicts of interest at issue here.

54. Disputed: Gibson's position regarding the credibility of witnesses Mason McKnight IV and Matthew McKnight is a matter of argument, not a statement of fact. Further, to the extent Mason McKnight IV and Matthew McKnight did not know certain relevant facts relating to Gibson and to the management of GISF's investments, it was because Gibson did not make the required disclosures.

55. Disputed in part: Mason McKnight IV and Matthew McKnight invested in the GISF due to a variety of factors, including their prior associations with Gibson and Gibson's father. One of these factors was trust. Tr. 465:16-17 ("I invested in Chris. I trusted Chris."); Tr. 466:8-13 ("[V]ery seldom when a deal gets thrown together between these parties is it turned down. JUDGE MURRAY: So there was a strong element of trust? THE WITNESS: "Yes, ma'am."); Tr. 459:9-10 ("I also invested because of Mr. Gibson.")

56. Disputed in part: To the extent Mason McKnight IV and Matthew McKnight were unable to evaluate Gibson's actions with regard to front running or favoritism of Hull, it was because Gibson did not disclose his actions to them. The McKnights were unaware of Gibson's personal investment accounts or his indebtedness to Hull because Gibson never disclosed these facts. Tr. 418:25 – 419:15; 424:10-12; 427:17-24 (Gibson never told Mason McKnight IV of his personal securities trading, personal ownership of TRX, or having GISF purchase TRX shares from Hull); Tr. 460:23-461:7 (Mason McKnight IV unaware of Gibson's debt to Hull); Tr. 488:9 – 25; 496:10-17.(Matthew McKnight unaware of Gibson's personal securities trading, personal

ownership of TRX, or having GISF purchase TRX shares from Hull); Tr. 544:10-13 (Matthew McKnight unaware of Gibson's debt to Hull).

57. Disputed: Gibson's position regarding the credibility of Matthew McKnight is a matter of argument, not a statements of fact. Gibson's contentions about John Engler's purported communications with TRX short sellers, and Hull's purported response, are based solely on Gibson's unsupported and self-serving testimony.

58. Disputed in part: Matthew McKnight was unaware of Gibson's personal investment activities and indebtedness to Hull because Gibson never disclosed these facts to him. Gibson's contention that his net TRX holdings or indebtedness are "indisputably material facts necessary to evaluate allegations made by the Division" is an incorrect legal conclusion. Those issues are irrelevant to whether or not Gibson owed and breached a fiduciary duty.

59. [This proposed finding is a duplicate of No. 57 above.]

60. Disputed in part: On September 25, 2011, Gibson stated that investors' funds were "locked up" and could not be withdrawn from GISF until the end of 2012. See Resp. Ex. 62 at page 8 ("our funds are locked up until the year end 2012 (no redemption risk).") That Gibson may have permitted another investor to withdraw funds does not show that Matthew McKnight was permitted to do so.

61. Undisputed.

62. Disputed: Gibson's suggestion that he merely "implemented" investment decisions made by Hull is contrary to the record evidence. See Div. Post-Hearing Br. at 17-21. Even Gibson's witnesses described Hull's involvement as being more general, and certainly did not testify that Hull made day-to-day investment decisions. Douglas Cates testified only that Hull "was involved -- in any decision, he was going to be involved". Tr. 875:4-15. Wayne Grovenstein

stated that Hull and Gibson were “involved in making decisions about the Fund” (Tr. 954:1 – 3) and that Hull “was one of the investment advisers,” (Tr. 953:23 – 24).

63. Disputed: Gibson’s contention that he and his father could not refuse any offer or suggestion by Hull is based only on testimony by Gibson’s mother, who was unaware (Tr. 895:9 – 896:24) that Gibson and Gibson’s father controlled 65% of Geier Group and Geier Capital (Tr. 103:1-7.)

64. Disputed in part: Although Hull set strategic "guideposts," Gibson did have discretionary trading authority and did make day-to-day trading decisions without Hull’s approval (Tr. 73:8-11). Hull never dealt with brokers to carry out any trades. (Tr. 76:5-6; 107:15-18). Instead, it was only Gibson who communicated with brokers on behalf of the Fund (Div. FoF. at ¶57) and gave brokers instructions for handling the Fund’s assets. Div. FoF. at ¶56.

65. Disputed: Although Hull set strategic "guideposts" with regard to GISF's investments in gold and gold-related securities, Gibson did have discretionary trading authority and actually made the day-to-day trading decisions without Hull’s approval. See Div. Post-Hearing Br. at 19-21.

66. Disputed: The offering documents identified Gibson as the managing member of the investment adviser and the individual whose performance was crucial to the success of GISF, and investors believed that Gibson was making investment decisions. See Div. Post-Hearing Br. at 16-21.

67. Disputed: Gibson transferred funds from broker to broker himself, e.g., he transferred over nine million TRX shares (worth over \$30 million) from Gar Wood Securities to Casimir Capital in September 2011. Resp. Ex. 62, Div. Ex. 90

68. Disputed in part: At times, Hull communicated to certain friends and associates who participated in GISF, but he did not communicate with all GISF investors, nor were his communications on behalf of GISF. The document Gibson cites as evidence for Hull's direct communication with investors is not a communication to investors, but rather a personal communication to various associates, approximately half of whom had no connection to the Fund (Resp. Ex. 55).

69. Disputed in part: Gibson testified that he and Hull jointly reached these decisions. "So we decided to preclude our investment strategy to investing in equities going forward." Tr. 86:15-16.

70. Disputed in part: See response to No. 69 above.

71. Disputed in part: See response to No. 69 above.

72. Undisputed.

73. Undisputed.

74. Undisputed.

75. Disputed in part: The Schedule 13G Filing made by GISF on April 29, 2011, named Gibson 17 times, but did not refer to Hull by name or in any way that would identify Hull. Div. Ex. 69.

76. Undisputed.

77. Undisputed.

78. Disputed: There is no record evidence establishing any general "expectation" that TRX's price would increase as the price of gold increased. Although Gibson told GISF investors that TRX remained a good investment, in private e-mails he shared his true, very negative view with TRX management, stating that "[t]his is TRX failing" (Div. Ex. 77) and that "[w]e are running on fumes" (Div. Ex. 78), and asked whether TRX "should engage an investment bank to sell [itself]" (Div. Ex. 79). Div. FoF. at ¶¶ 122-128.

79. Undisputed.

80. Undisputed.

81. Disputed in part. The assertions regarding Gibson's belief that he could sell GISF's shares at the prices mentioned in this paragraph are based solely on his self-serving testimony and are inconsistent with the extensive testimony regarding the depressive impact of large block sales on shares of companies like TRX. Contrary to Gibson's assertion, liquidation of GISF's entire position in TRX would indicate that the rumor, if any, regarding the "overhang" due to GISF's tenuous position was true, not that it was untrue.

82. Disputed in part: Nothing in the record evidence establishes that the deviation of the TRX price from the gold price was due entirely to events not specific to TRX.

83. Undisputed. See response to No. 82 above. There is no credible evidence showing what, if anything, Hull believed during the relevant period about the alleged rumor regarding "overhang."

84. Disputed in part: Gibson's assertions about his beliefs in late 2011 regarding (i) Engler, (ii) what short sellers believed, and (iii) the likely stock price impact of a sale of TRX

shares are all based solely on Gibson's unsupported, self-serving testimony and are contradicted by his statements to TRX management and by his own conduct.

85. Undisputed.

86. Disputed: Exhibit 9B of Gibson's Exhibit 149 does not include opening and closing prices, only closing prices, and therefore does show that TRX's share price dropped 18% on September 22, 2011

87. Disputed: Exhibit 9B of Gibson's Exhibit 149 does not include opening and closing prices, only closing prices, and therefore does not show that TRX's share price dropped 11% on September 23, 2011.

88. Undisputed.

89. Disputed in part: Neither the portion of the transcript Gibson cited nor Gibson's Exhibit 62 indicates that Richard Sands told Gibson that "Platinum would be 'happy' to buy" GISF's TRX holdings at \$4.

90. Disputed in part: There is no evidence that Gibson drafted the email at issue (Div. Ex. 81) "at Hull's direction." Gibson stated that the communication was his idea. Div. FoF. at ¶¶ 128-130; 9/12/16 Tr. at 127:10-15. The email did not identify the investors who, Gibson claimed, had confirmed their intention to remain in GISF

91. Undisputed in part: Gibson knew from at least September 25, 2011, that GISF intended to liquidate its entire TRX position, and Gibson sold a large block of TRX shares two days later subject to a significant discount. See Div. Post-Hearing Br. at 44-45.

92. Disputed in part: Gibson's assertion ignores the fact that GISF sold a large block of TRX shares on September 27, 2011. Further, Gibson did not understand Hull's statement on September 29, 2011, to be advocating that GISF maintain its TRX investment. He testified that

“generally speaking, from the 24th until we concluded, the general guidance was, ‘Good prices. Let’s get out.’” Div. FoF. at ¶¶ 131-134; Div. Ex. 190 77:13 – 78:1.

93. Disputed: There is no credible evidence that Engler was providing GISF’s information to others. See Division of Enforcement’s Post-Hearing Brief at 80-84.

94. Disputed: In emails to TRX’s management during September 2011, Gibson disclosed his true, highly negative evaluation of TRX. See Division of Enforcement’s Post-Hearing Brief at 80-81; Div. FoF. at ¶¶ 122-128. There is no credible evidence regarding what Hull “thought” on this topic.

95. Disputed: GISF’s strategy in late September 2011 was summarized by Gibson as follows: “[G]enerally speaking, from [September 24, 2011] until we concluded, the general guidance was, ‘Good prices. Let’s get out.’” Div. FoF. at ¶¶ 131-134; Div. Ex. 190 77:13 – 78:1.

96. Disputed: There is no evidence supporting this assertion other than Gibson’s self-serving testimony. See Division of Enforcement’s Post-Hearing Brief at 80-84.

97. Disputed: See response to No. 96 above and Division of Enforcement’s Post-Hearing Brief at 80-84.

98. Disputed: During the relevant period, Gibson's true opinion of the value of TRX shares was reflected in the negative assessments stated in his emails to company management.

See No. 78 above.

99. Disputed: Gibson could not have reasonably and in good faith believed that no block discount would be required to sell GISF’s TRX shares to Platinum. Div. FoF. at ¶ 149. Even Gibson’s own expert testified that discounts are expected when large blocks of stock are sold. Id.; 9/15/16 Tr. 1006:15-25 (“You would expect that there would be some discount for the block.”).

100. Disputed: See response to No. 99 above. Gibson's assertion that he would not have continued the discussion with Sands if he had known that Platinum would not pay at least the market price is also not credible because he agreed two days later to sell 3.7 million shares of GISF's TRX stock at below the market price. Div. FoF. at ¶¶ 143-148; Div. Ex. 90 at 3.

101. Undisputed.

102. Disputed in part: The exact timing of the emails in Gibson's Exhibit 62 cannot be determined and, therefore, it is not clear that Gibson and Sands sent the emails summarized in this proposed fact on Monday "morning." 9/13/16 Tr. 323:20 – 325:9; 9/14/16 Tr. 662:22 – 663:2; 9/15/16 Tr. 985:4-23.

103. Disputed in part: Gibson did not sell his, Marzullo's, and Geier Group's TRX shares in the morning on September 26, 2011, but rather in the afternoon. Div. Ex. 184 at Exhibit 3; see also Div. FoF. at ¶¶ 137-142.

104. Disputed in part: There is no evidence that Gibson sold his personal TRX shares to meet liquidity needs. He kept the proceeds of that sale in his account and reinvested those proceeds in another equity investment. Div. FoF. at ¶¶ 153-155; Division of Enforcement's Post-Hearing Brief at 84.

105. Disputed in part: Gibson's claim that he believed TRX's share price was going to increase in value is belied both by the communications he had directly with TRX management and the fact that he used every available asset he had to purchase put options that would increase in value if the TRX stock price fell. Div. FoF. at ¶¶ 122-128 and 228; Division of Enforcement's Post-Hearing Brief at 80-81; Div. Ex. 190 at 131:7-18.

106. Disputed in part: On September 26, 2011, Gibson knew that GISF was likely to sell a large block of GISF shares in the immediate future. Div. FoF. ¶¶ 131-134; Div. Ex. 190 at 77:13 – 78:5.

107. Disputed in part: The Division agrees that Gibson understood the concept of front running in the September to November 2011 timeframe. Gibson's claim that he believed that no block discount would be required to sell GISF's large TRX position is not credible. See Div. Post-Hearing Br. at 48-49.

108. Disputed in part: The exact timing of the emails in Gibson's Exhibit 62 cannot be determined. 9/13/16 Tr. 323:20 – 325:9; 9/14/16 Tr. 662:22 – 663:2; 9/15/16 Tr. 985:4-23.

109. Disputed in part: It is not clear that Gibson and Sands sent the emails summarized in this proposed finding in "the evening" or to which day they were referring when they wrote "the next day." 9/13/16 Tr. 323:20 – 325:9; 9/14/16 Tr. 662:22 – 663:2; 9/15/16 Tr. 985:4-23.

110. Disputed in part: That GISF transfer all of its TRX shares to Casimir was not a "term" of the anticipated sale. See Division of Enforcement's Post-Hearing Brief at 80-84.

111. Disputed in part: The exact timing of the emails in Gibson's Exhibit 62 cannot be determined. 9/13/16 Tr. 323:20 – 325:9; 9/14/16 Tr. 662:22 – 663:2; 9/15/16 Tr. 985:4-23.

112. Disputed in part: The exact timing of the emails in Gibson's Exhibit 62 cannot be determined. 9/13/16 Tr. 323:20 – 325:9; 9/14/16 Tr. 662:22 – 663:2; 9/15/16 Tr. 985:4-23. The only evidence admitted during the hearing regarding the conversations between Gibson and Sands are Gibson's own self-serving testimony, which is not credible. Division of Enforcement's Post-Hearing Brief at 80-84.

113. Disputed in part: Gibson's claims that he believed GISF could sell a large block of TRX shares without offering a block discount, and that he would not have continued his

discussions with Sands on this topic if a discount had been demanded, are not credible. See responses to Nos. 99 and 100, and Div. Post-Hearing Br. at 48-49.

114. Disputed: Gibson's claim that Sands had agreed to buy GISF's TRX shares at market price without a block discount, but then backed out, is not credible. Gibson testified regarding a subsequent transaction with Sands that "I've had other dealings with Richard [Sands]. It would be very unusual for him to mislead me." 9/12/16 Tr.209:24-25.

115. Disputed: See responses to Nos. 113 and 114 and Division of Enforcement's Post-Hearing Brief at 80-84.

116. Disputed in part: These assertions regarding the reactions of Gibson and Hull to the offer from Sands mistakenly assume that Gibson and Hull reasonably expected to receive the price they desired, without a block discount. See Nos. 113-115 above and Division of Enforcement's Post-Hearing Brief at 80-84.

117. Disputed in part: Gibson did not disclose to Hull that he had front run GISF on September 26, 2011. Div. FoF. at ¶ 142; Div. Ex. 191 at 662:7 – 663:5.

118. Undisputed.

119. Disputed in part: After September 27, 2011, Gibson and Sequeira were not discussing a trade at TRX's "current market price," but rather at a price below the current market price. Div. FoF. at ¶¶ 167-168; compare Resp. Ex. 149 at Exhibit 9B (showing closing TRX prices above \$3.50 from September 27, 2011 through October 3, 2011) with Resp. Ex. 92 (September 30, 2011 share purchase agreement between GISF and Roheryn showing a \$3.50 transaction price for 5.9 million TRX shares).

120. Undisputed.

121. Disputed in part: GISF was indeed a motivated seller, since it had already been decided that GISF would liquidate its TRX position. Div. FoF. at ¶¶ 131-134; Div. Ex. 190 77:13 – 78:1. Moreover, through the September 27th transaction, Gibson had already demonstrated his willingness to sell the Fund's TRX shares at prices less than what he "believed to be an advantageous price." Div. FoF. at ¶148

122. Disputed in part: Gibson's claim that he believed that others would soon purchase large blocks of TRX shares from GISF at above an market price is not credible. But if he did hold that belief, by doing so he was acting unreasonably and recklessly. Further, if Sequeira believed that purchasing GISF's TRX position would cause TRX's share price to "rise significantly" and that the trade was "likely to be profitable," he would have purchased the position for his clients, but he never did. Div. FoF. at ¶¶ 167-169.

123. Undisputed.

124. Disputed in part: There was no credible evidence that Hull instructed Gibson to maintain "consistency" between Hull's private accounts and GISF's holdings. In fact, on October 18, 2011, Hull and Gibson engaged in a transaction that treated Hull's personal account and the GISF's accounts inversely, *i.e.*, Hull emptied the TRX shares from his account while increasing GISF's position in TRX.

125. Disputed: There is no credible evidence that Hull's sale of TRX shares to GISF was motivated by a demand by Wells Fargo. The motivation for the Hull Buyout Transaction was the knowledge that GISF would be putting its large holding on the market, and thereby depressing the market price of TRX shares.

126. Disputed in part: Hull would not have been able to sell his personal TRX shares in the market and receive "cash in the full amount of the value of his shares." Div. FoF. at ¶¶ 177-

179; Div. Ex. 185 at 23; 9/15/16 Tr. 1015:7-20 (Gibson's expert Dr. Overdahl testified that "if Mr. Hull had brought those shares to market, it's unlikely he would have gotten \$3.60 a share for that").

127. Disputed in part: Division Exhibit 24 does not support this proposed finding of fact.

128. Disputed in part: Gibson arranged the Hull transaction to benefit Hull, not the Fund, and in fact Gibson harmed GISF by causing it to purchase Hull's TRX shares. Div. FoF. at ¶¶ 180, 182-183, and 187-191; Div. Ex. 184 at 10-11; Div. Ex. 185 at 22-25. Hull realized a larger sales price by selling his personal TRX shares to GISF than he would have by selling into the market.

129. Disputed in part: The Hull transaction created an actual conflict of interest for Gibson, not a potential conflict of interest. Div. FoF. at ¶¶ 192-195; Div. Ex. 185 at 19-20; 22-25. Neither this actual conflict, nor the potential for such a conflict, was disclosed in GISF's offering documents. Id.

130. Disputed in part: The offering memorandum addressed transactions between GISF and, inter alia, Hull. Resp. Ex. 8 at 19. The relevant provisions imposed mandatory conditions that had to be met before any such transaction could be carried out. Id.

131. Disputed: The relevant provision in the offering memorandum was mandatory, and GISF paid an extraordinary commission when it ultimately resold Hull's personal TRX shares. Div. FoF. at ¶¶ 181-188; 9/15/16 Tr. 1037:4 – 1038:17; Resp. Ex. 149 at Exhibit 13.

132. Disputed: Paragraph 132 is not a proposed finding of fact, but an argument. Moreover, the evidence makes clear that Gibson arranged for GISF to purchase Hull's TRX shares at a time when he had already decided to liquidate GISF's TRX position. He then consummated

the transaction at an above-market price, caused the fund to pay an extraordinary commission, and did so without disclosing the trade or the conflicts it created. Div. FoF. at ¶¶ 166-196; Div. Ex. 185 at 19-20; 22-25.

133. Undisputed.

134. Disputed in part: Gibson benefited himself and those close to him by purchasing put options that were directionally opposite from his Fund's major investment, such that he would profit in his private account if GISF's major asset fell in value -- and he did so knowing that at his direction GISF would soon sell a large block of TRX shares on the market and such a sale was likely to depress the TRX share price. Div. FoF. at ¶¶ 203-207, 211-227; Div. Ex. 185 at 25-26. There is no evidence that Gibson used the proceeds from those trades to repay any portion of the loan he took from Hull. Div. FoF. at ¶ 232. Gibson admitted that the share price of a thinly traded stock such as TRX falls when a large block of shares is sold. Div. FoF. at ¶ 150; Div. Ex. 190 at 108:12 – 109:15 (“Q But you knew it was possible that it could tank the stock? A Yes, absolutely).

135. Disputed in part: Gibson also purchased an additional 340 \$4 TRX put option contracts on November 2 and 8, 2011. Div. FoF. at ¶¶ 207; Div. Ex. 124 at 3.

136. Dispute in part: Whether Gibson's personal interests and those of GISF were aligned is irrelevant to his fiduciary duties -- his obligations to GISF were the same regardless of what Gibson did or did not hold in his own account. Further, Gibson did not buy \$4 put options on TRX for GISF, and thus his personal interests and those of GISF were not aligned. Div. FoF. at ¶¶ 211-214, 220, and 223-228.

137. Disputed: Gibson's claim that he did not expect TRX's share price to fall is not credible. See response to No. 134 above.

138. Disputed in part: Gibson admitted in his investigative testimony that his \$4 TRX put options were a short position. Div. FoF. at ¶ 213; Div. Ex. 190 at 118:24 – 119:16. (“Q Okay. So in your personal account, you had a short bet against TRX. A Correct.”) Further, it cannot be disputed that Gibson stood to gain in his personal account if the TRX share price fell, and that he did obtain a gain in his personal account when the TRX share price fell on November 10, 2011. Even considering his entire financial position, Gibson obtained an economic benefit from the put options because he mitigated his overall losses. Div. FoF. at ¶ 223-228.

139. Disputed in part: Francesca Marzullo was not an investor in GISF. Div. FoF. at ¶ 233; Div. Ex. 33 at 2; 9/15/16 Tr. at 1052:11 – 1055:19. Most importantly, Gibson's fiduciary duties, and his obligations under Section 206, were to GISF not to individual investors, and he violated his duties and Section 206 by placing the interests of certain investors over the interests of GISF.

140. Disputed: There is no evidence to support Gibson's statement that no investors would have purchased the put options. Mason McKnight testified that he would have purchased the \$4 TRX put options if given the opportunity. 9/13/16 Tr. at 459:19 – 460:3 (“I probably would have taken his advice and done it.”). Nor does the evidence support Gibson's claim that “the put options would offset only a fraction of their losses from the GISF.” Had Gibson fulfilled his duties as an investment adviser and disclosed that GISF was liquidating its interest in TRX and that he was purchasing \$4 TRX puts, the investors could have purchased enough options to hedge their entire GISF investment. See also the response to No. 139 above.

141. Disputed: See responses to Nos. 139 and 140 above.

142. Disputed: See response to No. 99 above.

143. Disputed: There is no evidence in the record supporting these assertions, except Gibson's own testimony, which is not credible. See response to No. 99 above.

144. Disputed: There is no evidence supporting these assertions, except Gibson's own testimony, which is not credible. See response to No. 99 above.

145. Disputed: There is no evidence supporting these assertions, except Gibson's own testimony, which is not credible. See response to No. 99 above.

146. Disputed: Gibson admitted during his investigative testimony that he held a short TRX position in his personal account. See response to No. 138 above. Further, Gibson attempts to support this proposed finding by citing to a document not admitted into evidence, i.e., the transcript of Hull's investigative testimony.

147. Disputed: Paragraph No. 147 is not a proposed finding of fact, but a legal argument. Moreover, that argument is without foundation. For example, there is no basis for Gibson's assertions that the Division can establish the alleged violations only by showing that Gibson had a "short" position and that he "profited." Neither is required, although the Division has in fact established both here. See responses to Nos. 138, 146; Div. Post-Hearing Br. at 44-50, 67-70.

148. Disputed: There is no credible evidence regarding the content of the conversation between Hull and John Gibson on November 8, 2011, because neither testified live or via transcript. The only evidence admitted during the hearing regarding that conversation was Gibson's own self-serving testimony, which is not credible. Division of Enforcement's Post-Hearing Brief at 80-84.

149. Disputed in part: There is no credible evidence regarding John Gibson's communications or instructions to PNC because neither John Gibson nor anyone from PNC was

called to testify, live or by transcript. The only credible evidence of the relevant John Gibson trades are the trading records relied on by the Division and its experts. See Responses to Nos. 150-151 below; Division of Enforcement's Post-Hearing Brief at 12-13, 67-80-84.

150. Disputed in part: The trade ticket for the sale of John Gibson's 350 \$4 TRX put option contracts indicates that the trade date was November 10, 2011, not November 9, 2011. Div. FoF. at ¶¶ 209-210; Div. Ex. 114 at 2; see also Div. Ex. 115 at 1 and 5. John Gibson subsequently confirmed the trades by email to PNC without ever complaining that his order was executed improperly. Div. Ex. 119 ("Thanks Chris [Young]! I approve of the trades. So do I have the \$41,448 in cash available to purchase?").

151. Disputed: The evidence contradicts Gibson's self-serving testimony regarding the advice he gave his father and what his father told PNC. See Responses to Nos. 149-150 above.

152. Disputed: By purchasing the put option contracts on TRX, and at the same time instructing his broker to sell all the TRX shares in his personal account, John Gibson positioned himself to both (i) avoid an immediate loss in value on the TRX shares in his personal account and (ii) a profit on the puts when the market price of TRX fell when GISF exited its position the following day. By acting on the inside information provided by his son, John Gibson profited in his personal account. Div. Ex. 112 ("The net cash proceeds from the sale of puts and underlying TRX netted \$159,374 for 46,000 underlying shares or \$3.46 a share – pretty good I think – do you agree?").

153. Disputed in part: Gibson's claim that he believed other TRX holders like Platinum would buy GISF's TRX shares is not credible. Div. FoF at ¶ 217. According to Gibson, he learned at the meeting with David Levy and Richard Sands on November 9, 2011 that Platinum was potentially going to sell its TRX position. Resp. FoF. at ¶ 144 ("the only reason

Platinum Partners would propose such a deal was because Platinum Partners planned to sell its own shares”). If Platinum had made the decision to exit its TRX position as Gibson claimed, it was not reasonable for him to believe that Platinum would purchase the almost 5 million TRX shares GISF had to sell.

154. Disputed: Gibson’s self-serving testimony regarding what he intended to convey to GISF’s broker at GarWood is not credible. See response to No. 153 above.

155. Disputed in part: Gibson’s self-serving testimony (i) regarding what he intended to convey to GISF’s brokers at GarWood, (ii) that Hull directed him to liquidate GISF’s TRX position, and (iii) that other TRX owners would support TRX’s share price is not credible. See response to No. 153 above.

156. Disputed in part: There is no credible evidence regarding what Hull “believed” with regard to how other holders of TRX stock would behave when Gibson dumped GISF's shares. Further, whatever Gibson may have believed or expected was without foundation, reckless, and unreasonable, and TRX’s share price dropped below \$2 on November 10, 2011 as a result of Gibson liquidating GISF’s TRX position. Div. Ex. 84 at 12-20 and Exhibits 8-12.

157. Disputed in part: Gibson knew that he was going to sell all of GISF’s TRX shares on November 10, 2011 – approximately 5% of TRX’s outstanding shares – and it is therefore not credible for him to claim that the market volume for TRX that day was “totally unexpected,” particularly when his Fund’s sales accounted for approximately 29% of the market volume in the United States. Div. Ex. 184 at 20.

158. Disputed in part: On November 10, 2011, Gibson sold all 565 \$4 TRX put option contracts that he owned, including those that he bought on October 28, November 2, and November 8, 2011, not just the put options he purchased on October 27, 2011. Div. FoF. at ¶

220; Div. Ex. 124 at 3. Gibson had purchased TRX put options that were directionally opposite from his Fund's only investment, and his options then became profitable as a result of the market impact of his trading on behalf of GISF.

159. Disputed: There is no credible evidence that Giovanni Marzullo was the real owner of Francesca Marzullo's brokerage account. Gibson's hearing testimony on this point is directly contradicted by the testimony he gave during the investigation. Div. Ex. 190 at 113:2 to 114:18. Thus, it was Francesca Marzullo, who by this time had no investment in TRX stock, who obtained the \$250,000 profit from Gibson's trading in the \$4 TRX puts. Div. FoF. at ¶ 223, 225, and 233. Giovanni Marzullo never received any of the proceeds of Gibson's trading for Francesca Marzullo's account. Div. FoF. at ¶ 234; Div. Ex. 190 at 114:19-24.

160. Disputed in part: John Gibson benefitted in his personal account by trading on the material, non-public information provided to him by his son. See response to No. 152 above.

161. Disputed: This paragraph is not a statement of fact but a legal argument.

162. Disputed: The Division is not required to prove harm. But GISF was harmed when Gibson, its investment adviser, breached the fiduciary duties he owed to the Fund. GISF lost the opportunity to purchase \$4 TRX put options in the brief window before Gibson directed GISF to liquidate its approximately 5 million remaining TRX shares. Div. FoF. at ¶230-231.

163. Disputed: The Form D-A relied on by Gibson was not submitted until more than a month after the hearing and is not in evidence. The only written statement of Gibson's financial condition in evidence is an unsigned, unsworn, one-page statement, Resp. Ex. 145. That "financial statement" lists Gibson's "annual income" in 2015 as \$29,766, but Gibson's federal tax return for 2015 shows that his business generated \$148,303 in income in 2015. See Resp. Ex. 141 at Form 1040, page 1. Further, Gibson claims to have paid his apartment rent in

advance by \$45,500 ("Prepaid Apartment Rent"), Resp. Ex. 145, which appears to be an effort to reduce his cash position in advance of the decision in this matter. Still further, shortly before the hearing in this matter, Gibson transferred assets worth approximately \$423,896 to this father, see Resp. Ex. 145, another effort to reduce his the assets on his financial statement. Div. FoF. at ¶ 251; 9/14/16 Tr. 796:4-17. Finally, Gibson is able to draw on an apparently unlimited "line of credit" from his father, with no identified repayment schedule. As shown in Resp. Ex. 144, Gibson has "borrowed" more than \$200,000 from his father during the last 16 months. Gibson's accountant testified that all but \$1,000 of Gibson's liabilities are debts to his father, who can choose to forgive those debts at any time. 9/14/16 Tr. at 879:9 – 880:8. Thus, Gibson has ready access to substantial funds and has chosen to use those funds to defend against the Division's claims. On these facts, Gibson cannot legitimately claim that he would be unable to pay an appropriate penalty.

164. Disputed: See response to No. 163 above.

165. Disputed: See response to No. 163 above.

166. Disputed: See response to No. 163 above.

167. Disputed: There is no credible evidence in the record regarding Gibson's likely total income in 2016. Because Gibson has ignored the total income of his current business, and instead provided "income" figures only after making large and questionable deductions for unexplained "contractor expenses," Gibson's assertions regarding his estimated 2016 income are not credible.

168. Undisputed.

169. Disputed in part: Gibson recently transferred his remaining interests in GISF to his father, which reduced the outstanding balance of the debt to his father to approximately \$467,000. Div. FoF. at ¶ 251; Resp. Ex. 145.

II. Division's Responses To Gibson's Proposed Conclusions of Law

1. Undisputed.
2. Undisputed.
3. Undisputed.
4. Undisputed.
5. Disputed in part: The portion of Section 203(f) Gibson quotes is not quoted accurately, and the portion that he omitted is also relevant.
6. Undisputed.
7. Undisputed.
8. Undisputed.
9. Disputed in part: Gibson omits significant portions of Section 211(g).
10. Undisputed.
11. Disputed in part: Gibson was an investment adviser to GISF regardless of whether any other entities or individuals were also investment advisers to GISF. See Division of Enforcement's Post-Hearing Brief at 21-27.
12. Disputed in part: See response to No. 11 above. Further, Geier Group was dissolved in early 2011.
13. Disputed in part: Gibson was an investment adviser to GISF even after he suspended management fees. See Division of Enforcement's Post-Hearing Brief at 27-32.

14. Disputed: Geier Group was dissolved in early 2011. Gibson was still an investment adviser to GISF even after he suspended management fees. See Division of Enforcement's Post-Hearing Brief at 27-32.
15. Disputed: Gibson was both an investment adviser and a person associated with an investment adviser, which are not mutually exclusive categories. See Division of Enforcement's Post-Hearing Brief at 25-27.
16. Disputed: Gibson was an investment adviser regardless of whether or not he controlled Geier Group. But in fact, Gibson did control the activities of Geier Capital and Geier Group on a day-to-day basis. See Division of Enforcement's Post-Hearing Brief at 23-24.
17. Disputed in part: On reconsideration, the Commission dismissed the proceeding in In re Russell W. Stein, 2003 WL 1125746 (March 14, 2003) and the Division has found no indication that Stein has been relied on in any subsequent Commission decision.
18. Disputed: See Division of Enforcement's Post-Hearing Brief at 24.
19. Disputed: See Division of Enforcement's Post-Hearing Brief at 26-27.
20. Disputed in part: Although "control" does not determine status as an investment adviser, Gibson did control Geier Capital and Geier Group on a day-to-day basis. See Division of Enforcement's Post-Hearing Brief at 23-24.
21. Disputed: Although he set certain strategic "guideposts," Hull did not control Geier Capital. See Division of Enforcement's Post-Hearing Brief at 23-24.
22. Disputed: See No. 16 above and Division of Enforcement's Post-Hearing Brief at 23-24.
23. Disputed: See Division of Enforcement's Post-Hearing Brief at 27-32.

24. Disputed in part: Gibson was both an investment adviser and associated person. See Division of Enforcement's Post-Hearing Brief at 26-27.
25. Disputed in part: See Division of Enforcement's Post-Hearing Brief at 26-27.
26. Disputed in part: Section 203(f) relates only to a certain range of sanctions.
27. Disputed: Gibson was both an investment adviser and a person associated with an investment adviser, which are not mutually exclusive categories. See Division of Enforcement's Post-Hearing Brief at 25-27.
28. Undisputed.
29. Disputed in part: The portion of Investment Advisers Act Release No. 1092 Gibson's quotes is not quoted accurately.
30. Undisputed.
31. Disputed in part: The release Gibson quotes here accompanied a proposed rule; it was not released in connection with the Commission adopting the amendments proposed.
32. Undisputed.
33. Undisputed.
34. Disputed in part: Section 211(g) is not quoted in full. The initial portion of this paragraph is an incomplete paraphrasing of the legislation at issue.
35. Undisputed.
36. Disputed in part: Gibson's summary of Section 913 of the Dodd-Frank Act is incomplete, including in its identification of the topics the study was to consider.
37. Disputed: Gibson's summary of the lengthy staff report is selective and incomplete.

38. Disputed: Gibson's summary of the lengthy staff report is selective and incomplete.

39. Disputed: The fiduciary duties investment advisers owe their clients are well-established and widely known, including the obligation to disclose all conflicts of interest. See Division of Enforcement's Post-Hearing Brief at 32-34.

40. Disputed in part: Burks does not support Gibson's argument that his federal fiduciary duties were reduced or nullified by contract under Delaware law. Rather, Burks makes clear that federal securities laws displace state law where the state law would permit action prohibited by federal law. See Division of Enforcement's Post-Hearing Brief at 34-37.

41. Disputed in part: Kamen does not support Gibson's argument that Delaware law permitted GISF's members to waive the fiduciary duties Gibson owed to GISF pursuant to Section 206 of the Advisers Act.

42. Disputed: Section 211(g) makes clear that it does not permit investment advisers' clients to waive the fiduciary duties owed to them: "Such rules shall provide that such standard of conduct shall be no less stringent than the standard applicable to investment advisers under section 206(1) and (2) of this Act"

43. Disputed in part: Gibson's obligations, and the Division's claims, arise under federal law and are not superseded or otherwise affected by Delaware law. See Division of Enforcement's Post-Hearing Brief at 34-37.

44. Disputed in part: See No. 43 above and Division of Enforcement's Post-Hearing Brief at 34-37.

45. Disputed: See Division of Enforcement's Post-Hearing Brief at 34-37.

46. Disputed in part: GISF's offering documents did not waive the fiduciary duties Gibson owed to his Fund as an investment adviser, including his disclosure obligations, and did not satisfy those duties. See Division of Enforcement's Post-Hearing Brief at 37-44.

47. Disputed: See No. 46 above and Division of Enforcement's Post-Hearing Brief at 37-44.

48. Disputed: See No. 46 above and Division of Enforcement's Post-Hearing Brief at 37-44. Gibson did not disclose the potential or actual conflicts of interest surrounding the Hull transaction, and did not comply with the relevant terms of the offering documents with regard to the Hull transaction.

49. Disputed: Front running is well-known as an abusive and prohibited trading practice, as Gibson well understood. See Division of Enforcement's Post-Hearing Brief at 46-48, 50-54.

50. Disputed: See No. 49 above and Division of Enforcement's Post-Hearing Brief at 67-73, 75-79.

51. Disputed: See Division of Enforcement's Post-Hearing Brief at 46-48. 68-70.

52. Disputed: See Division of Enforcement's Post-Hearing Brief at 46-48. 68-70.

53. Disputed: Under the circumstances, Gibson was required to disclose to GISF and its investors that he had changed GISF's trading strategy and was arranging a transaction with Hull that did not comply with the terms of the offering documents. See Division of Enforcement's Post-Hearing Brief at 54-56.

54. Disputed: See Division of Enforcement's Post-Hearing Brief at 27-32.

55. Disputed: GISF's offering documents did not waive or satisfy the fiduciary duties Gibson owed to GISF with regard to the Hull transaction. The governing provisions in the

offering documents established mandatory terms applicable to GISF's transactions with affiliated parties and the Hull transaction did not comply with those terms. See response to No. 53 above and Division of Enforcement's Post-Hearing Brief at 54-67.

56. Disputed: Through the Hull transaction, Gibson favored Hull over the Fund, harmed the Fund, and violated the federal securities laws. See Division of Enforcement's Post-Hearing Brief at 62-67 and 73-75. Although it has done so, the Division was not required to prove harm or injury to a client to succeed on its claims against Gibson, including its claims related to the Hull transaction. See Division of Enforcement's Post-Hearing Brief at 16 and n.11

57. Disputed: Because Gibson knew that GISF was attempting to liquidate its large TRX position and that doing so would likely cause TRX's share price to drop, he fraudulently allocated an unprofitable trade from Hull's account to GISF's. See Division of Enforcement's Post-Hearing Brief at 64-66.

58. Disputed: See Nos. 56 and 57 above and Division of Enforcement's Post-Hearing Brief at 64-66. The remainder of this purported conclusion of law argues factual issues and is disputed because the evidence established that Hull would not have been able to obtain approximately \$2.5 million for his personal shares by selling them in the market.

59. Disputed: Gibson was required to disclose the salary he received from Hull's real estate business. See Division of Enforcement's Post-Hearing Brief at 61-62. The remainder of this purported conclusion of law argues factual issues and is disputed. There is no evidence that GISF's investors were aware that Gibson was an employee of Hull's real estate business. Further, the evidence established that Gibson received the salary from Hull in exchange for the investment advisory services he provided to GISF, and that GISF's investors were unaware of that fact.

60. Disputed: The Operating Agreement was never amended. Further, any amendment would not have voided Gibson's duties to disclose conflicts of interest, such as the Hull transaction. The Hull transaction also materially and adversely affected GISF's members financially. See Division of Enforcement's Post-Hearing Brief at 54-66.

61. Disputed in part: Gibson was an investment adviser to GISF. Section 206(4) of the Advisers Act and Rule 206(4)-8 require investment advisers to provide correct information to investors if failure to do so would make prior statements materially false or misleading. See Division of Enforcement's Post-Hearing Brief at 73-77.

62. Disputed: The GISF offering documents neither eliminated nor satisfied Gibson's disclosure obligations. See Division of Enforcement's Post-Hearing Brief at 37-43.

63. Disputed: Gibson's sale of TRX securities on September 26, 2011, and his purchase of put options on TRX in October and November 2011, constituted front running, and Gibson favored Hull over the Fund in the Hull Buyout Transaction. Gibson was required to disclose those transactions and never did so. See Division of Enforcement's Post-Hearing Brief at 44-50.

64. Disputed: Section 3.02(h) of the operating agreement did not authorize the Hull transaction because that transaction contravened the clear restrictions on such transactions disclosed to GISF's investors in the offering memorandum. See Division of Enforcement's Post-Hearing Brief at 54-67.

65. Undisputed.

66. Undisputed.

67. Disputed in part: Gibson does not accurately quote Exchange Act Rule 10b-5.

68. Disputed in part: Gibson's recitation of elements for Exchange Act Section 10(b) and Rule 10b-5 thereunder is incomplete. See Division of Enforcement's Post-Hearing Brief at 77-78.

69. Disputed: GISF's offering documents did not satisfy Gibson's disclosure obligations. See Division of Enforcement's Post-Hearing Brief at 34-43.

70. Disputed: Gibson's failure to make proper disclosure of the conflicts of interest relating to his front running violated the antifraud provisions of the Exchange Act. Division of Enforcement's Post-Hearing Brief at 44-54.

71. Disputed in part: Gibson's recitation of the scienter and negligence standards fails to note that he was an investment adviser subject to fiduciary duties. See Division of Enforcement's Post-Hearing Brief at 50-54 and 66-67.

72. Disputed: GISF's offering documents did not waive or satisfy the fiduciary duties Gibson owed to his Fund as an investment adviser. The operating agreement did not authorize the Hull transaction. Gibson acted with scienter in connection with his front running and the Hull transaction. See Division of Enforcement's Post-Hearing Brief at 50-54, 62-64, and 79. Gibson also acted negligently in connection with those transactions. Id. at 16, 66-67, 73-77.

73. Disputed: Gibson's sale of TRX securities on September 26, 2011, and his purchase of put options on TRX in October and November 2011 constituted front running, and Gibson favored Hull over the Fund in the Hull Buyout Transaction, and both types of conduct violated the Advisers Act and the Exchange Act. See Division of Enforcement's Post-Hearing Brief at 44-80.

74. Disputed: Gibson violated the Advisers and Exchange Acts in connection with his father's trading in TRX securities and options on those securities in November 2011. See

Division of Enforcement's Post-Hearing Brief at 67-70, 75-79, 90-91, and n.53 – n.54. The remainder of this purported conclusion of law raises disputed factual issues.

75. Disputed: This purported conclusion of law raises disputed factual issues. The trade ticket for the sale of John Gibson's 350 \$4 TRX put option contracts indicates that the trade date was November 10, 2011, not November 9, 2011. Div. Ex. 114 at 2; see also Div. Ex. 115 at 1 and 5. John Gibson subsequently confirmed the trades by email to PNC without ever complaining that his order was executed improperly. Div. Ex. 119.

76. Disputed: Gibson was an investment adviser to GISF and owed fiduciary duties to GISF. See Division of Enforcement's Post-Hearing Brief at 16-32.

77. Disputed: Gibson was an investment adviser, even after suspending management fees, and was also an associated person of an investment adviser, and is subject to sanctions under Advisers Act Section 203(f). See Division of Enforcement's Post-Hearing Brief at 25-27 and 85-88.

78. Disputed: Sanctions against Gibson pursuant to Section 203 of the Advisers Act, Section 21C of the Exchange Act, and Section 9(b) of the Investment Company Act are appropriate, including the monetary relief sought by the Division. See Division of Enforcement's Post-Hearing Brief at 84-95. As to monetary relief, Gibson has a seemingly limitless source of funds from his father, who has consistently covered Gibson's debts and expenses, including his son's defense in this litigation. Div. Ex. 191 at 624:11-15; Resp. Ex. 145; 9/14/16 Tr. 797:9-22; Form D-A List of Attachments at 6-7. His father has made no effort to collect on those debts and there is no evidence he ever will. 9/14/16 Tr. at 722:24 – 723:8; 797:9-22. Further, Gibson is young and can pay disgorgement and a penalty over time. Div. Ex. 189 at 1.

79. Disputed: This proceeding did not violate Gibson's due process rights.
80. Disputed: This proceeding did not violate Gibson's equal protection rights.
81. Disputed: This proceeding did not violate Gibson's right to a jury trial.
82. Disputed: Neither the sanctions nor any other relief are barred by any statutes of limitation.
83. Disputed: Gibson acted with scienter and negligently.
84. Disputed: Gibson obtained ill-gotten gains through his fraud that should be disgorged. See Division of Enforcement's Post-Hearing Brief at 88-92.
85. Disputed: Gibson should be ordered to pay civil penalties, and has the ability to do so. See Division of Enforcement's Post-Hearing Brief at 92-95.

Respectfully submitted,



December 20, 2016

H. Michael Semler (202) 551-4429
Gregory R. Bockin (202) 551-5684
Paul J. Bohr (202) 551-4899
George J. Bagnall (202) 551-4316
U.S. Securities and Exchange Commission
Division of Enforcement
100 F Street, N.E.
Washington, D.C. 20549

Counsel for Division of Enforcement

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of December 2016:

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

(ii) a copy of the foregoing Division responses was sent to Thomas A. Ferrigno and Paul Enzinna, counsel for Respondent, via email to TFerrigno@brownrudnick.com and via UPS next day delivery to:

Thomas A. Ferrigno, Esq.
Brown Rudnick LLC
601 Thirteenth Street, N.W.
Suite 600
Washington, D.C. 20005; and

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



H. Michael Semler