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

Administrative Proceeding
File No.: 3-17849

In the Matter of

ANGEL OAK CAPITAL PARTNERS, LLC, PERAZA CAPITAL & INVESTMENT, LLC, SREENIWAS PRABHU, and DAVID WELLS

PERAZA CAPITAL & INVESTMENT, LLC'S MOTION FOR SUMMARY DISPOSITION PURSUANT TO RULE 250

Pursuant to Rule 250 of the Securities and Exchange Commission (the "Commission") Rules of Practice, Peraza Capital & Investment, LLC, by and through its undersigned counsel, respectfully moves for an order granting summary disposition finding that the Division of Enforcement's claims are time-barred pursuant to 28 U.S.C. § 2462 ("Motion").

The grounds for this Motion are set forth in the accompanying Memorandum of Law and Declaration of Mark David Hunter.

Date: November 19, 2018

Respectfully submitted,

Hunter Taubman Fischer & Li LLC

/s/ Mark David Hunter
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Counsel for Respondent Peraza Capital & Investment, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 19, 2018, a true and correct copy of the foregoing has been furnished to the following by the methods indicated:

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Washington, DC 20549-2557
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The Honorable James E. Grimes
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/s/ Mark David Hunter
Mark David Hunter

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In the Matter of

ANGEL OAK CAPITAL PARTNERS, LLC, PERAZA CAPITAL & INVESTMENT, LLC, SREENIWAS PRABHU, and DAVID WELLS

RESPONDENT PERAZA CAPITAL & INVESTMENT, LLC'S MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY DISPOSITION

Date: November 19, 2018

Respectfully submitted,

Hunter Taubman Fischer & Li LLC

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Pursuant to Rule 250 of the Rules of Practice of the Securities and Exchange Commission (the "Commission"), Respondent Peraza Capital & investment, LLC ("Peraza"), by and through its undersigned counsel, hereby submits its Memorandum of Law in Support of its Motion for Summary Disposition against the Division of Enforcement (the "Division"). In furtherance of the same, Peraza respectfully states as follows:

INTRODUCTION

This matter arises from the Division's claim that Peraza caused Angel Oak Capital Partners, LLC's ("Angel Oak") violation of 15(a) of the Securities Exchange Act of 1934 (the "Exchange Act"). *See* Order Instituting Proceedings In the Matter of Angel Oak Capital Partners, LLC, Peraza Capital & Investment, LLC, Sreeniwas Prabhu, and David Wells, AP File No. 3-17849 ("OIP) (a copy of the OIP is attached to the Declaration of Mark David Hunter in Support of Peraza's Motion for Summary Disposition ("Hunter Decl.") as Exhibit 1) at ¶ 40. Although Peraza accepted the Division's findings without admitting or denying liability, it "agree[d] to additional proceedings in this proceeding to determine whether it is appropriate to order disgorgement, prejudgment interest and/or civil penalties pursuant to Sections 21B and 21C of the Exchange Act, and if so, the amount of disgorgement and/or civil penalties." *Id.* at 9.

The only remaining issues from the OIP concern the issue of (a) the appropriateness of penalties and disgorgement and (b) the amount thereon. As set forth herein, pursuant to 28 U.S.C. § 2462, the Division's claims for penalties and disgorgement (and, derivatively, prejudgment interest accruing thereon) are time barred

and must be denied. *See Gabelli v. SEC*, 568 U.S. 442, 454 (2013); *Kokesh v. SEC*, 198 L. Ed. 2d 86, 95 (2017) ("Disgorgement, as it is applied in SEC enforcement proceedings, operates as a penalty under § 2462. Accordingly, any claim for disgorgement in an SEC enforcement action must be commenced within five years of the date the claim accrued").

STATEMENT OF UNDISPUTED FACTS

The Commission has found in the OIP that Angel Oak violated the registration provisions of the Exchange Act by operating as an unregistered broker-dealer "[f]rom March 2010 to October 2014." OIP at ¶ 2. The Commission also found that Peraza facilitated Angel Oak's violation by providing access to the securities market for registered persons who were in the Atlanta branch office where Angel Oak operated because Peraza knew, or should have known, that the owners of Angel Oak, "who were not all registered as broker-dealers or associated with a registered broker-dealer, were controlling the securities activities of the employees involved in the securities business." *Id.* at ¶ 37. According to the OIP, Angel Oak received approximately $3,054,288 in commissions, during the relevant time-period, as a result of its arrangement with Peraza. Peraza, in turn, also received commissions as a result of the arrangement. *Id.* at ¶ 25. The Commission found that, pursuant to this arrangement, Peraza retained 15% of the revenues generated by the trading activities conducted by Angel Oak employees registered with Peraza Capital. *Id.* at ¶ 24, n.4.

Although the Commission found that unregistered persons were allegedly involved in the "securities business" at Angel Oak, it is undisputed that the Commission's Staff (the "Staff") conducted an examination of Angel Oak with an on-site review on

December 3, 2010, and January 15 through 23, 2011 (a copy of the Staff's letter to Angel Oak dated September 12, 2011 ("September 12 Letter"), is attached to the Hunter Decl. as Exhibit 2). *See* Hunter Decl. at Exhibit 2; *see also* OIP at ¶ 26. The examination identified certain deficiencies and weaknesses, which were discussed with Angel Oak on April 28, 2011, including Angel Oak's violation of Section 15(a) of the Exchange Act. *See* Hunter Decl. at Exhibit 2.

The Staff's inspection and investigation of Angel Oak and/or Peraza included Peraza's alleged indirect receipt of transaction-based compensation in violation of Section 15(a) of the Exchange Act, and Peraza's payments of such indirect compensation, in 2011, 2012, 2012, 2013, 2014, 2015 and 2016. However, the Division failed to commence a timely action against Angel Oak, Peraza or either of their principals or agents. The Division instead commenced the instant more than five (5) years after the Division's claim first accrued.

ARGUMENT

I. THE DIVISION'S CLAIMS FOR DISGORGEMENT, PENALTIES AND PRE-JUDGMENT INTEREST ARE TIME-BARRED

Based upon the undisputed facts in this case, any claims for penalties and disgorgement are time barred by 28 U.S.C. §2462. Section 2462, 28 U.S.C. provides, in pertinent part that:

> Except as otherwise provided by Act of Congress, an action, suit or proceeding for the enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise, shall not be entertained unless commenced within five years from the date when the claim ***first accrued*** if, within the same period, the offender or the property is found within the United States in order that proper service may be made thereon.

28 U.S.C. §2462 (emphasis added). Thus, if the Division failed to commence this action, suit or proceeding within five (5) years from the date the claim "***first accrued***," the claim is time-barred. As discussed herein, the Division's delay in commencing this proceeding until more than five (5) years had passed from when the claim first accrued renders its claims for disgorgement, penalties and pre-judgment interest time-barred.

In two recent Supreme Court decisions, the Supreme Court has curtailed the Commission's attempts to avoid the limitations contained in 28 U.S.C. § 2462. In *Gabelli*, 133 S. Ct. at 1217, the Commission filed a complaint in 2008 alleging that defendants allowed an investor to engage in market timing from 1999 to 2002. The Second Circuit agreed that the Commission's claim for civil penalties was governed by the limitations period in § 2462, which was limited to five (5) years from the date when the claim "first accrued," but accepted the Commission's argument that, where the underlying violation sounded in fraud, the "discovery rule" suspended the limitations period under § 2462 until the Commission discovered the violation. The Supreme Court rejected this argument. *See id.* at 1220.

In *Gabelli*, the petitioners-defendants argued "that a claim based on fraud accrues—and the five-year clock begins to tick—when a defendant's allegedly fraudulent conduct occurs," which the Supreme Court found "the most natural reading of the statute. In common parlance a right accrues when it comes into existence . . . Thus the 'standard rule' is that a claim accrues 'when the plaintiff has a complete and present cause of action." *Gabelli*, 133 S. Ct. at 1220 (internal citations omitted); s*ee also Sierra Club v. Okla. Gas & Elec. Co.*, 816 F.3d 666, 672-73 (10th Cir. 2016) (same) (citing *Heimeshoff v. Hartford Life & Accident Ins. Co.*, 134 S. Ct. 604, 610 (2013)). "Th[is] rule has

governed since the 1830's when the predecessor to § 2462 was enacted. And that definition appears in dictionaries from the 19th century up until today." *Id.* (citing 1 A. Burrill, A Law Dictionary and Glossary 17 (1850) ("an action *accrues* when the plaintiff has a right to commence it"); Black's Law Dictionary 23 (9th ed. 2009) (defining "accrue" as "[t]o come into existence as an enforceable claim or right")); *see also Wallace v. Kato*, 549 U.S. 384, 388 (2007) (a legal claim accrues when the "plaintiff has a complete and present cause of action").

The Supreme Court further explained that "[t]he SEC, for example, is not like an individual victim who relies on apparent injury to learn of a wrong." *Gabelli*, 133 S. Ct. at 1220. The Supreme Court highlighted that the Commission's central "mission" is to:

> investigat[e] potential violations of the federal securities laws . . . and it has many legal tools at hand to aid in that pursuit. It can demand that securities brokers and dealers submit detailed trading information. It can require investment advisers to turn over their comprehensive books and records at any time. And even without filing suit, it can subpoena any documents and witnesses it deems relevant or material to an investigation.

Id. at 1222 (internal citations omitted). In the instant matter, the Commission utilized its "many legal tools" in investigating Peraza and Angel Oak, but simply delayed filing the instant proceeding until more than five (5) years after the claim first accrued. In June 2017, subsequent to *Gabelli*, the Supreme Court decided *Kokesh*, 137 S. Ct. at 1638, which held that the five (5) year limitations period contained in § 2462 also applies when the Commission seeks disgorgement. *See id.* Specifically, the Supreme Court held that "any claim for disgorgement in an SEC enforcement action must be commenced within five years of the date the claim accrued." *Id.*

Accordingly, in Commission enforcement actions, the Division may only seek a civil fine, penalty or forfeiture, including, disgorgement—following *Kokesh*—if the action, suit or proceeding is commenced within five (5) years from the date the claim ***first accrued***. It is undisputed that Angel Oak's violation ***first accrued*** in March 2010, as stated above. However, because this proceeding was not commenced within five (5) years from the date it first accrued, the Division's anticipated request for civil penalties, disgorgement or pre-judgment interest accruing thereon is time-barred, and no material issue of fact remains in dispute on the subject of civil penalties, disgorgement or pre-judgment interest.

II. IF INITIAL CLAIM IS UNTIMELY, DISGORGEMENT FOR SUBSEQUENTLY ACCRUED CLAIMS ARE ALSO TIME-BARRED

Under the plain language of § 2462, if the first-accrued claim is untimely, then disgorgement for any subsequently-accruing claims would likewise be untimely. *See* 28 U.S.C. § 2462. The OIP clearly provides that the Division's claim accrued in March 2010, and there are no findings in the OIP of a series of separate violations by Peraza. *See generally* OIP. As discussed in more detail below, there is no valid basis for the implementation of the "separate accrual" doctrine or the continuing violation doctrine in this matter.

a. The "Separate Accrual" Doctrine is Inapplicable to Securities Actions

The OIP has failed to identify any separate or distinct conduct by Peraza which would provide evidence that Peraza's receipt of commission revenues from trades by its Atlanta branch office was illegal. *See generally* OIP. The Fifth Circuit has held that "[c]ases dealing with other limitations statutes are of extremely limited value" when interpreting § 2462. *SEC v. Bartek*, 484 Fed. Appx. 949, 954 (5th Cir. 2012) (quoting

U.S. v. Core Labs, 759 F.2d 480, 481 (5th Cir. 1985)). Because § 2462 does not establish a "separate accrual rule," and because Congress has expressly included the word "***first***" in § 2462 to demark the date when the five (5) year statute of limitation begins to run, the separate accrual doctrine has no application under § 2462.

In *S.E.C. v. Jones*, 476 F. Supp. 2d 374, 381 (S.D.N.Y. 2007)—a case similar to the instant matter—"the events underlying the Commission's claims [] occurred in . . . [the] summer of 1999. [However], the Commission filed [its] action in August 2005, **six years** after the alleged wrongdoing. Having already determined that a "discovery of violation" rule does not apply to cases governed by § 2462—i.e., that the Commission's claim accrued when the factual and legal prerequisites for filing suit were in place, not when the Commission discovered those prerequisites—the Court dismissed the claim for civil penalties as untimely." *Id.* (internal citations omitted) (emphasis added).

Notably, in the instant matter, the Staff detected Peraza's conduct as early as 2010 according to the September 12 Letter. *See* Hunter Decl. at Exhibit 2. However, the Division delayed filing this matter for seven (7) years—well beyond the applicable statute of limitations period. The record is clear in this matter that a ruling by the Administrative Law Judge that this action is time-barred would not lead to an absurd result since the Commission was well aware of the facts at issue in this matter during the statutory period. *See Birkelbach v. SEC*, 751 F.3d 472, 479 (7th Cir. 2014). The facts present in this case clearly establish that Peraza's activities did not go undetected and were discovered by Staff as early as 2010, rendering the Division's claim untimely.

III. THE CONTINUING VIOLATION DOCTRINE IS INAPPLICABLE IN THIS CASE

Peraza anticipates that the Division will argue that the accrual of the Division's claim for civil penalties and disgorgement was suspended under the so-called "continuing violation doctrine." Pursuant to the judicially-created continuing violation doctrine, "the statute of limitations is tolled for a claim that otherwise would be time-barred where the violation giving rise to the claim continues to occur within the limitations period." *National Parks Conservation Assn. v. TVA*, 502 F.3d 1316, 1322 (11th Cir. 2007). This doctrine requires the Court to "distinguish between the 'present consequences of a one-time violation,' which do not extend the limitations period, and a 'continuation of a violation into the present,' which does." *Sec. & Exch. Comm'n v. Kingdom Legacy Gen. Partner, LLC*, No. 216CV441FTM38MRM, 2017 WL 417093, at *31 (M.D. Fla. Jan. 31, 2017) (quoting *Nat'l Parks & Conservation*, 502 F.3d at 1322). However, even the courts in the Eleventh Circuit that have applied this doctrine have stated that "[i]t is . . . unclear whether the continuing violations doctrine may be extended to SEC enforcement actions." *Id.* As further discussed below, the continuing violations doctrine should not apply to Commission enforcement actions.

The recent Supreme Court decision in *Kokesh* has implicitly rejected the application of the continuing violation doctrine. *See Kokesh*, 198 L. Ed. 2d at 95. In its Brief to the Supreme Court in *Kokesh*, the Commission argued that "[i]n cases that involve a continuing course of conduct, the SEC could file suit up to five years after the end of the misconduct and, at a minimum, seek disgorgement (or penalties) for any bad acts that had taken place within that five-year look-back period." *Kokesh*, Brief of Respondent, S. Ct. Case No. 16-529, at 47 (2016) (a copy of the Commission's Brief is

attached Hunter Decl. as Exhibit 3). However, the *Kokesh* decision did not authorize seeking disgorgement (or penalties) for "bad acts that had taken place within that five-year look-back period." *Kokesh*, 198 L. Ed. 2d at 89. Instead, the Court held that "[d]isgorgement in the securities-enforcement context is a 'penalty' within the meaning of § 2462, and so disgorgement actions must be commenced within five years of the date the claim accrue[d]." *Id. Kokesh* stands for the proposition that, irrespective of whether there were bad acts that took place within that five-year look-back period, a claim is time barred under § 2462 if the claim accrued more than five (5) years before filing. *See id.*

The text of § 2462 also contains no justification for applying the continuing violation doctrine. *See* 28 U.S.C. § 2462. Section 2462 has established a limit for commencing an action, suit or proceeding to five (5) years from the date when the claim *first* accrued—not when the claim was discovered, as held in *Gabelli*, or at a later time if the claim continued. *See Kokesh* 198 L. Ed. 2d at 89. Congress specifically inserted the word "*first*" into § 2462 and the application of the continuing violation doctrine would effectively render the word moot. *See Sierra Club*, 816 F.3d at 673 ("[T]he clock under § 2462 begins ***only once***, when a claim ***first*** accrues. If the limitations period under § 2462 reset each day, the statutory term 'first' would have no operative force. In other words, the statute could just as easily state that the limitations period begins whenever 'the claim accrues'") (emphasis added).

In the instant action, the Division's claim for penalties and disgorgement against Peraza is based on Angel Oak's violation of Section 15(a), which ***first accrued*** in March 2010. *See* OIP at ¶ 2; *see also Sierra Club*, 816 F.3d at 673 ("The specific statute of limitations at issue [§ 2462] begins to run when a claim 'first accrue[s]"); *see 3M*

(Minnesota Mining and Manufacturing) v. Browner, 17 F.3d 1453, 1455 n.2 (D.C. Cir. 1993). At the moment Peraza first split its transaction-based compensation with Angel Oak, the Division could have brought an action, suit or proceeding against Peraza since the Division had a "complete and present" violation of Section 15(a). *See Sierra Club*, 816 F.3d at 673 ("Even one day of unpermitted modification would have presented a 'complete and present' violation of the statute").

Based upon the findings in the OIP, the Division had a claim against Peraza as soon as Peraza engaged in the acts that caused Angel Oak's violation. The Commission found in the OIP that Peraza "facilitated" Angel Oak's "ability to operate as an unregistered broker-dealer" by (a) providing access to Peraza's trading platform and clearing arrangement, as well as trade support service; (b) interacting with its clearing firm on behalf of Angel Oak Capital Partners; (c) registering Angel Oak Capital Partners to register with Peraza as licensed securities representatives; and (d) facilitating the payment arrangement by which Angel Oak indirectly received transaction-based compensation. OIP at ¶ 37-38; *see also Sierra*, 816 F.3d at 673 ("Consequently, Sierra Club's cause of action first accrued prior to April 1, 2008, even if the violation continued until some later date. Any penalties stemming from the alleged violation are therefore time-barred"). Peraza's "facilitation" first occurred when Angel Oak entered into the Independent Contractor Agreement with Peraza and started entering trades in March 2010. *See* OIP at ¶ 2. As such, the claim "***first accrued***" in March 2010, even if the violation continued. Because § 2462 does not include any basis for suspending the limitations period, including under the continuing violation doctrine, the Division's

anticipated request for penalties, disgorgement and pre-judgment interest should be denied as time-barred.

Notwithstanding, even where courts have applied the continuing violation doctrine, it has been limited in scope and, in the Eleventh Circuit, only applicable in Commission enforcement cases involving *fraudulent* conduct that is not easily detected. *See SEC v. Huff*, 758 F. Supp. 2d 1288, 1339 (S.D. Fla. 2010); *SEC v. Kingdom Legacy Gen. Partner, LLC*, 2017 U.S. Dist. LEXIS 12717 (M.D. Fla. Jan. 31, 2017) (acknowledging that the holding in *Gabelli* that "the statutory clock generally begins to run when the allegedly fraudulent activity occurs," but applying the continuing violation doctrine for an offering fraud that lasted from December 2010 to September 2015);[1] *see also In re Comverse Tech., Inc. Sec. Litig.*, 543 F. Supp. 2d 134, 155 (E.D.N.Y. 2008) ("The weight of authority in [the Second Circuit] is skeptical of the application of the continuing violation[] doctrine in securities fraud cases.") (alteration in original); *SEC v. Jones*, No. 5 Civ. 7044 (RCC), 2006 WL 1084276, at *4-5 (S.D.N.Y. Apr. 25, 2006); *de la Fuente v. DCI Telecommunications, Inc.*, 206 F.R.D. 369, 385-86 (S.D.N.Y. 2002). *See Toussie v. United States*, 397 U.S. 112, 114-15 (1970) (noting Congress's explicit limitation on the Government's ability to penalize past conduct); *see Gabelli*, 133 S. Ct. at 1224.

[1] As set forth herein, 28 U.S.C. § 2462 should not be read to include any judicially-created remedy to suspend the accrual of a Government enforcement claim. To the extent such a suspension of the limitations period would be in the public interest, as asserted in *Huff* and *Kingdom*, Congress should undertake to amend the statute, rather than allow judges to assume an intent to permit the continuing violation doctrine. *See Gabelli*, 130 S. Ct. at 1220 (quoting *Amy v. Watertown (No. 2)*, 130 U.S. 320, 324 (1889)).

The Eleventh Circuit has also narrowly limited the scope of the continuing violation doctrine "to situations in which a reasonably prudent person would have been unable to determine that a violation had occurred. If an event or series of events should have alerted a reasonable person to act to assert his or her rights at the time of the violation, the victim cannot later rely on the continuous violation doctrine." *Ctr. for Biological Diversity v. Hamilton*, 453 F.3d 1331, 1335-36 (11th Cir. 2006) (quoting *Hipp v. Liberty Nat'l Life Ins. Co.*, 252 F.3d 1208, 1221 (11th Cir. 2001)); *see Melendez v. United States*, 2013 U.S. Dist. LEXIS 41407, *8 (N.D. Fla. Jan. 7, 2013).[2] In the instant matter, it is indisputable that the Staff knew, or in the reasonable exercise of due diligence, should have known, of the event or events cited in the OIP that form the basis of Angel Oak's violation of Section 15(a) in late 2010 or early 2011, as reflected in the September 12 Letter. *See* Hunter Decl. at Exhibit 2. As set forth in that letter, the Commission discussed the purported violation of Section 15(a) with Angel Oak on April 28, 2010. *Id.* It is also indisputable that the Commission conducted on-site inspections of Angel Oak and had access to all of the books and records that reflected the indirect payment of transaction-based compensation to Angel Oak starting at least by March 2010. *See Gabelli*, 133 S. Ct. at 1220 (noting the "many legal tools" available to the Commission, including access to books and records of broker-dealers and investment

[2] Because the continuing violation doctrine is unavailable where the plaintiff knew, or in the reasonable exercise of due diligence should have known, of the violation, it is doubtful that the doctrine would ever apply in the context of an Commission enforcement action against a registered investment advisor or broker-dealer. As the Supreme Court noted, the Commission has the ability to inspect and investigate registered entities as a condition of their registration and can issue subpoenas prior to filing an action, suit or proceeding. As such, assuming the continuing violation doctrine were still valid after *Kokesh*, unless the Commission could prove that a registrant actively concealed the subject violation such that a reasonable inspection would not have uncovered the violation for over five years, this doctrine would have no bearing.

advisers). In fact, the OIP has noted, consistent with the Commission's September 12 Letter, that the Section 15(a) violation first accrued in March of 2010.

Based on the foregoing, it is undisputed that the Division's claim first accrued on March 2010 and that the Division knew, or should have known, of Angel Oak's violation by (1) December 2010, when the Staff conducted its on-site examination of Angel Oak or (2) April 28, 2011, when the Staff discussed Angel Oak's violation with Angel Oak. To the extent that the continuing violation doctrine is viable, and would be applicable in this case as a matter of law, the Administrative Law Judge should deny its application here, as the OIP did not find that Peraza (or Angel Oak) engaged in a continuing violation. *See generally* OIP. As such, no issue of material fact remains in dispute with regard to the fact that Peraza did not engage in a continuing violation.

CONCLUSION

For the reasons set forth above, the above action is time-barred pursuant to 28 U.S.C. § 2462. As a result, any request from the Division for monetary sanctions against Peraza is equally time-barred and must be denied.

WHEREFORE, Respondent Peraza Capital & Investments, LLC respectfully requests that the Administrative Law Judge refrain from ordering any civil penalties or disgorgement against Respondent Peraza Capital & Investments, LLC.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 19, 2018, a true and correct copy of the foregoing has been furnished to the following by the methods indicated:

Elizabeth Murphy, Secretary
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U.S. Securities and Exchange Commission
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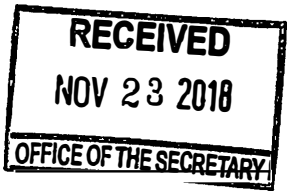
/s/ Mark David Hunter
Mark David Hunter

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

Administrative Proceeding
File No.: 3-17849



In the Matter of

ANGEL OAK CAPITAL PARTNERS, LLC, PERAZA CAPITAL & INVESTMENT, LLC, SREENIWAS PRABHU, and DAVID WELLS

DECLARATION OF MARK DAVID HUNTER IN SUPPORT OF PERAZA CAPITAL & INVESTMENT, LLC'S MOTION FOR SUMMARY DISPOSITION

Mark David Hunter, pursuant to 28 U.S.C. § 1746, does hereby declare:

1. I am counsel for Respondent Peraza Capital & Investment, LLC ("Peraza") in connection with the above-referenced matter. I submit this declaration in support of Peraza's Motion for Summary Disposition.

2. Exhibit 1 is a true and correct copy of the Order Instituting Proceedings In the Matter of Angel Oak Capital Partners, LLC, Peraza Capital & Investment, LLC, Sreeniwas Prabhu, and David Wells, AP File No. 3-17849.

3. Exhibit 2 is a true and correct copy of the Letter from the Securities and Exchange Commission to Brad Freidlander dated September 12, 2011.

4. Exhibit 3 is a true and correct copy of the relevant portion of the Securities and Exchange Commission's Brief of Respondent in *Kokesh v. SEC*, Case No. 16-659.

I do hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on November 19, 2018.

Mark David Hunter

EXHIBIT 1

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 80053 / February 16, 2017

ADMINISTRATIVE PROCEEDING
File No. 3-17849

In the Matter of **ANGEL OAK CAPITAL PARTNERS, LLC, PERAZA CAPITAL & INVESTMENT, LLC, SREENIWAS PRABHU, AND DAVID W. WELLS,** **Respondents.**	**CORRECTED ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTIONS 15(b) AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER, AND NOTICE OF HEARING**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 ("Exchange Act") against Angel Oak Capital Partners, LLC ("Angel Oak Capital Partners" or "AOCP"), and pursuant to Section 21C of the Exchange Act against Peraza Capital & Investment, LLC ("Peraza Capital"), Sreeniwas Prabhu ("Prabhu"), and David W. Wells ("Wells") (collectively, "Respondents").

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the "Offers") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party and without admitting or denying the findings herein, except as to the Commission's jurisdiction over them and the subject matter of these proceedings, which are admitted, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Sections 15(b) and 21C of the

Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order, and Notice of Hearing ("Order"), as set forth below.

III.

On the basis of this Order and Respondents' Offers, the Commission finds[1] that:

A. Introduction

1. This matter involves violations of the broker-dealer registration requirements of Section 15(a) of the Exchange Act by Angel Oak Capital Partners. Section 15(a) provides that brokers and dealers must register with the Commission, absent an applicable exemption.

2. From March 2010 to October 2014, Angel Oak Capital Partners violated the registration provisions of the Exchange Act by operating as an unregistered broker-dealer, primarily from an office located in Atlanta, Georgia. In late 2009, Angel Oak Capital Partners entered into an independent contractor agreement (the "IC Agreement") with Peraza Capital, a registered broker-dealer. The agreement's introduction provided that Angel Oak Capital Partners and Peraza Capital entered into the IC Agreement so that AOCP "may conduct a securities business through" Peraza Capital. Pursuant to the arrangement, traders employed by AOCP in its securities business were registered with FINRA as registered representatives of Peraza Capital. Peraza Capital also filed a Form BR with FINRA designating the Atlanta office as a branch office. By the terms of the agreement, Angel Oak Capital Partners was entitled to 85% of all commission revenue generated by the trading activities of the registered representatives in the Atlanta office. Peraza was to receive the remaining 15% for providing access to its trading platform, back office support, and clearance and settlement.

3. During the relevant period, Angel Oak Capital Partners held itself out as a broker-dealer. Angel Oak Capital Partners' employees who were registered representatives of Peraza Capital entered into more than 900 trades and regularly solicited customers and marketed its securities business to prospective customers. In doing so, they often used the "Angel Oak" name.

4. Moreover, Angel Oak Capital Partners and its owners or employees, who were not registered as broker-dealers or associated with a registered broker-dealer, were involved in the operations of the securities business, including by hiring new employees to engage in securities activities and who would become registered representatives of Peraza Capital, determining compensation (including transaction-based compensation) for the employees, engaging in marketing activities, and participating in relevant discussions as to how to operate the business.

5. Angel Oak Capital Partners, an unregistered entity, received transaction-based compensation in connection with the purchase and sale of securities of approximately $3,054,288 in commissions through its arrangement with Peraza Capital.

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[1] The findings herein are made pursuant to Respondents' Offers of Settlement and are not binding on any other person or entity in this or any other proceeding.

6. As a result of such conduct, Angel Oak Capital Partners engaged in broker-dealer activities without registering with the Commission, in violation of Section 15(a) of the Exchange Act.

7. Prabhu, an owner of Angel Oak Capital Partners, participated in deciding how to structure Angel Oak Capital Partners' securities business, including the initial decision to establish a relationship with Peraza Capital. Prabhu further participated in managing the affairs of Angel Oak Capital Partners' securities business and exercised a degree of control over the registered representatives who were associated with Peraza Capital and who were engaged in securities activities.[2]

8. Wells was involved in setting up the initial relationship between Angel Oak Capital Partners and Peraza Capital. In addition, for most of the relevant time period, Wells acted as the conduit for paying Angel Oak Capital Partners commission revenue generated as a result of the trading activities of the employees who were registered representatives of Peraza Capital. Wells was registered with Peraza Capital from 2009 to 2014 and acted as the branch manager and supervisor of the employees that operated under the name of Angel Oak and engaged in trading activities as registered representatives of Peraza Capital. Wells engaged in such conduct even though he knew Angel Oak Capital Partners was not registered as a broker-dealer and knew or should have known that the owners of Angel Oak Capital Partners, who were not registered as a broker-dealer or associated with a registered broker-dealer, were exercising control over the operation of the firm's securities business.

9. Peraza Capital, by permitting Angel Oak Capital Partners to access its trading platform, such as settlement and clearing services, provided assistance which allowed Angel Oak Capital Partners to operate a brokerage business without registering as a broker-dealer. Peraza Capital also facilitated Angel Oak Capital Partners' operation of its securities business by registering certain employees as licensed representatives through Peraza Capital. Peraza Capital facilitated Angel Oak Capital Partners' trading activities, even though it knew Angel Oak Capital Partners was not registered and knew or should have known that the owners of Angel Oak Capital Partners, who were not all registered as broker-dealers or associated with a registered broker-dealer, were exercising control over the operation of the firm's securities business. Through its arrangement with Angel Oak Capital Partners, Peraza Capital received commissions from the trading activity described above.

10. As a result of such conduct, Prabhu, Wells, and Peraza Capital caused Angel Oak Capital Partners' violation of Section 15(a) of the Exchange Act.

B. Respondents

11. **Angel Oak Capital Partners, LLC ("Angel Oak Capital Partners" or "AOCP")**, which was formed in 2008, is one of several affiliated entities that operate under the Angel Oak name. Angel Oak Capital Partners is the general partner to Angel Oak Capital Advisors,

[2] Prabhu was registered with Peraza Capital from September 2009 to September 2012.

LLC ("Angel Oak Capital Advisors"), a registered investment adviser. Angel Oak Capital Partners is not registered with the Commission in any capacity.

12. **Peraza Capital and Investment, LLC ("Peraza Capital")** is a Florida corporation and has been a registered broker-dealer with the Commission since 2002. Peraza Capital is currently known as LPE Securities, LLC. Its primary office is in St. Petersburg, Florida.

13. **Sreeniwas V. Prabhu**, age 44, lives in Atlanta, Georgia. He is a Managing Partner, a co-founder and the Chief Investment Officer of Angel Oak Capital Advisors. He is also an owner of AOC Securities, LLC ("AOC Securities"),[3] a registered broker-dealer, Angel Oak Capital Partners II, LLC, and Angel Oak Consulting Group Portfolio Management, LLC. He is an indirect owner of Caravan Capital Management LLC. He currently holds a Series 66 license and previously held a Series 7 license, including for a period when he was associated with Peraza Capital. He was associated with Peraza Capital between September 2009 and September 2012.

14. **David W. Wells**, age 40, lives in Atlanta, Georgia. He is an employee of Angel Oak Capital Advisors. He formerly held Series 7 and 24 licenses while registered with Peraza Capital from approximately 2009 to 2014 and served as the branch manager and supervisor of the Atlanta office.

C. Facts

Angel Oak Capital Partners Entered into an Agreement with Peraza Capital

15. In early 2009, Prabhu, along with the firm's other owners, wanted to conduct a securities business through Angel Oak Capital Partners and considered several options on how to set up the business, including by registering a broker-dealer. However, Prabhu was unsure whether a securities business would be profitable and would thus justify the expenses associated with registering a broker-dealer. Accordingly, Prabhu, in coordination with Wells and the firm's other owners, explored alternatives to registering a broker-dealer.

16. Prabhu, among others, began negotiations with Peraza Capital to establish an arrangement by which Angel Oak Capital Partners would enter into a relationship with Peraza Capital. Prabhu intended that Angel Oak Capital Partners would run its securities business through Peraza Capital in exchange for payment of a percentage share of the commission revenue generated as a result of Angel Oak Capital Partners' trading activities. In October 2009, the discussions culminated in the signing of the IC Agreement between Angel Oak Capital Partners and Peraza Capital.

17. The IC Agreement provided that Angel Oak Capital Partners would "conduct a securities business" through Peraza Capital. Peraza Capital was to provide "all necessary back office support" with respect to Angel Oak Capital Partners' "sales and trading activities" and also provide a trading platform which allowed Angel Oak Capital Partners "to operate a trading desk to

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[3] In late 2014, Angel Oak Capital Partners discontinued its arrangement with Peraza Capital. In December 2014, AOC Securities, an affiliate of Angel Oak Capital Partners, registered with the Commission as a broker-dealer.

execute trades in bonds and mortgage-backed securities." All trades would be cleared and settled by Peraza Capital's clearing firm.

18. In October 2009, Peraza Capital filed a Form BR with FINRA designating an office in Atlanta established for the securities trading as an "Office of Supervisory Jurisdiction."

19. Wells and other registered representatives in the Atlanta office began executing trades through Peraza Capital's trading platform in March 2010. The employees of Angel Oak Capital Partners involved in securities trading registered with FINRA as registered representatives of Peraza Capital.

20. For most of the relevant time period, Wells served as the branch supervisor of the registered representatives in the Atlanta office. In December 2012, Wells entered into an independent contractor agreement with Peraza Capital on substantially the same terms as the initial IC Agreement.

21. Angel Oak Capital Partners incurred various expenses pursuant to the IC Agreements. In particular, Angel Oak Capital Partners provided the office space as well as supplies, computers, e-mail access, and access to Bloomberg services. Angel Oak Capital Partners further paid a salary or draw to its employees who were registered representatives, and provided health and retirement benefits.

22. As the firm's business grew, Angel Oak Capital Partners tracked the profitability of its operations. For instance, Angel Oak Capital Partners prepared financial statements and other reports that tracked, on a monthly basis, the amount of commission revenue the firm earned (minus the share paid out to Peraza Capital) versus its expenses. These reports demonstrated that in certain months, Angel Oak Capital Partners earned a profit from its trading activities.

Angel Oak Capital Partners Generated Substantial Revenue from its Trading Activities

23. Angel Oak Capital Partners employees who were registered representatives of Peraza Capital brokered trades in fixed income securities and structured products, including mortgage-backed securities. Between March 2010 and October 2014, Angel Oak Capital Partners employees who were registered representatives of Peraza Capital entered into more than 900 trades.

24. The commissions generated by such trading activities were distributed as follows:

- Pursuant to the IC Agreements, Peraza Capital retained 15% of all commission revenue generated by the trading activities conducted by Angel Oak Capital Partners employees registered with Peraza Capital.[4] Because the relevant trades were cleared through Peraza Capital's clearing firm, Peraza Capital deducted its 15% share, on a monthly basis, before paying out the remaining balance.

[4] From approximately April 2011 to July 2012, Peraza Capital's share of the revenue was 10%. It went to 20% from approximately September to October 2011. For most of the relevant time period, Peraza Capital's share was 15%.

- After retaining its 15% share, Peraza Capital transmitted the balance to the account of a registered representative of Peraza Capital. During most of the relevant period, this person was Wells.

- Wells, who engaged in securities trading activities, withheld his share of the commission revenue for any trades he handled. He then paid out the commission revenue to other Angel Oak Capital Partners' employees registered with Peraza Capital as compensation for their trading activities.

- Wells typically paid out the remaining balance of the commission revenue directly to Angel Oak Capital Partners. Wells frequently paid the remainder without regard to the amount of any expenses incurred by Angel Oak Capital Partners in support of the trading activities. Neither Wells nor Peraza Capital entered into an expense-sharing agreement with Angel Oak Capital Partners until January 2014.

25. During the relevant time period, Angel Oak Capital Partners received approximately $3,054,288 in commissions as a result of its arrangement with Peraza Capital. Peraza Capital, in turn, received commissions as a result of the arrangement.

Angel Oak Capital Partners Operated a Securities Business

26. Angel Oak Capital Partners and its owners, who were not registered as broker-dealers or associated with a registered broker-dealer, controlled certain of the operations of the securities business engaged in by its employees, including by hiring new employees to engage in securities trading and who became registered representatives of Peraza Capital, determining compensation (including transaction-based compensation), and participating in relevant discussions as to how to operate the securities business.

27. Angel Oak Capital Partners marketed itself to prospective customers as providing broker-dealer services, without always disclosing its relationship with Peraza Capital. Angel Oak Capital Partners further prepared marketing materials for distribution to prospective customers that described the firm. One such document sent to a potential bank customer described the "Angel Oak Family of Companies" to include a "Full-Service Fixed Income Broker-Dealer." Moreover, trade confirmations provided to customers routinely indicated that it was "Angel Oak" that was involved in the transaction.

28. Angel Oak Capital Partners made all relevant decisions relating to the staffing of the securities business. For instance, when the firm commenced trading activities in March 2010, the firm had approximately six employees who were engaged in trading-related activities, including the regular solicitation of customers. The firm eventually hired additional staff to expand its securities business. These employees received offer letters from Angel Oak Capital Partners. Angel Oak Capital Partners also determined how much compensation the new hires would receive, including by setting their draws or salary, trading commission percentage and the amount of any performance bonus to which they would be entitled.

29. Angel Oak Capital Partners further held regular internal meetings to discuss the various Angel Oak business lines. These meetings included updates regarding the broker-dealer business, such as the number of trades conducted, new accounts opened, and information regarding prospective customers. In such communications, Angel Oak Capital Partners identified its trading activities as part of the firm's securities business and considered opportunities to expand the business.

Prabhu Caused Angel Oak Capital Partners to Violate Section 15(a) of the Exchange Act

30. Prabhu participated in the management of the securities business in the Atlanta office, and exercised a degree of control over those employees who engaged in securities trading as registered representatives of Peraza Capital. Prabhu did so, even though for most of the relevant time period he was not registered as a licensed securities representative or principal.

31. Prabhu participated in deciding how to structure Angel Oak Capital Partners' securities business, including the initial decision to establish a relationship with Peraza Capital. Prabhu, along with the firm's other owners, wanted to conduct a securities business through Angel Oak Capital Partners but were concerned about the cost of registering a broker-dealer. Prabhu therefore wanted to determine whether the firm could profitably conduct a securities business before deciding whether to register as a broker-dealer. Prabhu led negotiations with Peraza Capital to set up the relationship, which culminated in the signing of the initial IC Agreement in October 2009, and further negotiated with Peraza Capital the percentage fee arrangement.

32. Prabhu further participated in the affairs of the securities business in the Atlanta office. For instance, Prabhu was involved in determining compensation, including performance bonuses, for some employees of Angel Oak Capital Partners who were registered representatives of Peraza Capital. He further provided input into the amount of compensation some new hires of the firm were to receive. On several occasions, Prabhu was asked to address personnel problems and other internal issues that arose in the course of operating the securities business. Prabhu also received regular updates about the marketing and trading activities of employees of Angel Oak Capital Partners who were registered representatives of Peraza Capital. He further received regular updates regarding the profitability of the business.

Wells and Peraza Capital Further Caused Angel Oak Capital Partners to Violate Section 15(a) of the Exchange Act

33. Like Prabhu, Wells was involved in setting up the initial relationship between Angel Oak Capital Partners and Peraza Capital. At the time, Wells understood that Angel Oak Capital Partners could register as a broker-dealer, but the firm first wanted to determine whether it could operate a securities business profitably before deciding to register with the Commission. Wells was also involved in negotiating the percentage fee that Peraza Capital would retain in connection with the IC Agreements.

34. Once the initial IC Agreement was executed, Wells took the Series 24 exam and acted as the branch supervisor of the Angel Oak Capital Partners' employees who were registered representatives of Peraza Capital and who engaged in securities trading. Wells was responsible for entering all trades into the trading platform of Peraza Capital. Wells provided regular updates to,

and took direction from, unregistered owners of Angel Oak Capital Partners regarding the operation of the securities business and its profitability.

35. For most of the relevant time period, Wells acted as the conduit for paying Angel Oak Capital Partners commission revenue generated by the trading activity of the Angel Oak Capital Partners' employees who were registered representatives of Peraza Capital. After Peraza Capital retained its share of the commission revenue generated by the trading, Peraza Capital paid the balance to a personal bank account in the name of Wells. Wells then paid himself as well as the other Angel Oak Capital Partners' employees who were registered representatives of Peraza Capital and engaged in securities trading. Wells then often paid the remaining balance directly to Angel Oak Capital Partners.

36. Wells engaged in the foregoing conduct even though he knew Angel Oak Capital Partners was not registered as a broker-dealer and knew or should have known that the owners of Angel Oak Capital Partners, who were not registered as broker-dealers or associated with a registered broker-dealer, were controlling the operation of the firm's securities business.

37. Peraza Capital provided Angel Oak Capital Partners employees who were registered representatives of Peraza Capital access to its trading platform, through which trades were submitted for execution. Peraza Capital also provided access to its clearing firm arrangement as well as trade support services. Peraza Capital employees interacted with the clearing firm on behalf of Angel Oak Capital Partners. Peraza Capital also allowed employees of Angel Oak Capital Partners to register with Peraza as licensed securities representatives. Peraza Capital facilitated Angel Oak Capital Partners' ability to operate as an unregistered broker-dealer by providing these services when it knew or should have known that the owners of AOCP, who were not all registered as broker-dealers or associated with a registered broker-dealer, were controlling the securities activities of the employees involved in the securities business.

38. Peraza Capital also facilitated the payment arrangement by which Angel Oak Capital Partners indirectly received transaction-based compensation through Wells. As discussed above, Wells, as a licensed supervisor for Peraza Capital, received from Peraza Capital transaction-based compensation, which he then transmitted to Angel Oak Capital Partners periodically, typically on a monthly basis.

D. Violations

39. As a result of the conduct described above, AOCP willfully violated Section 15(a) of the Exchange Act. [5]

40. As a result of the conduct described above, Peraza Capital, Prabhu, and Wells caused AOCP's violation of Section 15(a) of the Exchange Act. [6]

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[5] A willful violation of the securities laws means merely "'that the person charged with the duty knows what he is doing.'" *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor "'also be aware that he is violating one of the Rules or Acts.'" *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

IV.

Pursuant to this Order, Peraza Capital agrees to additional proceedings in this proceeding to determine whether it is appropriate to order disgorgement, prejudgment interest and/or civil penalties pursuant to Sections 21B and 21C of the Exchange Act, and if so, the amount of disgorgement and/or civil penalties. If disgorgement is ordered, Respondent Peraza Capital shall pay prejudgment interest thereon, calculated from October 1, 2014, based on the rate of interest used by the Internal Revenue Service for the underpayment of federal income tax as set forth in 26 U.S.C. § 6621(a)(2). In connection with such additional proceedings, Peraza Capital agrees: (A) it will be precluded from arguing that it did not violate the federal securities laws described in this Order; (b) it may not challenge the validity of its Offer of Settlement and this Order; (c) solely for the purposes of such additional proceedings, the findings made in this Order shall be accepted as and deemed true by the hearing officer; and (d) the hearing officer may determine the issues raised in the additional proceedings on the basis of testimony, affidavits, declarations, excerpts of sworn deposition or investigative testimony, and documentary evidence.

V.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondents' Offers, and to continue proceedings against Peraza Capital to determine whether it is appropriate to order disgorgement and/or civil penalties pursuant to Sections 21B and 21C of the Exchange Act, and, if so, the amount(s) of the disgorgement and/or civil penalties, in accordance with Section IV above.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent Angel Oak Capital Partners cease and desist from committing or causing any violations and any future violations of Section 15(a) of the Exchange Act.

B. Pursuant to Section 21C of the Exchange Act, Respondent Peraza Capital cease and desist from committing or causing any violations and any future violations of Section 15(a) of the Exchange Act.

C. Pursuant to Section 21C of the Exchange Act, Respondent Prabhu cease and desist from committing or causing any violations and any future violations of Section 15(a) of the Exchange Act.

D. Pursuant to Section 21C of the Exchange Act, Respondent Wells cease and desist from committing or causing any violations and any future violations of Section 15(a) of the Exchange Act.

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[6] For "causing" liability, three elements must be established: (1) a primary violation, (2) an act or omission by the respondent that was a cause of the violation, and (3) the respondent knew, or should have known, that his conduct would contribute to the violation. Negligence is sufficient to establish liability for causing a primary violation that does not require proof of scienter.

E. Respondent Angel Oak Capital Partners be, and hereby is, censured pursuant to Section 15(b)(6) of the Exchange Act.

F. Angel Oak Capital Partners shall pay disgorgement of $3,054,288, prejudgment interest of $237,082, and a civil money penalty of $375,000—for a total amount of $3,666,370—to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment of disgorgement and prejudgment interest is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. If timely payment is not made on the civil money penalty, additional interest shall accrue pursuant to 31 U.S.C. §3717. Payment shall be made in the following installments:

1. $1,833,185, within 10 days of entry of this Order;
2. $458,296.25, within 90 days of entry of this Order;
3. $458,296.25, within 180 days of entry of this Order;
4. $458,296.25, within 270 days of entry of this Order; and
5. $458,296.25, within 360 days of entry of this Order.

If any payment is not made by the date the payment is required by this Order, the entire outstanding balance of disgorgement, prejudgment interest, and civil penalties, plus any additional interest accrued pursuant to SEC Rule of Practice 600 or pursuant to 31 U.S.C. 3717, shall be due and payable immediately, without further application.

G. Prabhu shall pay a civil money penalty of $40,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made on the civil money penalty, additional interest shall accrue pursuant to 31 U.S.C. §3717. Payment shall be made in the following installments:

1. $20,000 within 10 days of entry of this Order;
2. $10,000, within 180 days of entry of this Order; and
3. $10,000, within 360 days of entry of this Order.

H. Wells shall pay a civil money penalty of $40,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made on the civil money penalty, additional interest shall accrue pursuant to 31 U.S.C. §3717. Payment shall be made in the following installments:

1. $20,000 within 10 days of entry of this Order;
2. $10,000, within 180 days of entry of this Order; and
3. $10,000, within 360 days of entry of this Order.

I. Payments by Respondents must be made in one of the following ways:

(1) Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(2) Respondents may make direct payment from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm; or

(3) Respondents may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying the Respondents in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Gerald W. Hodgkins, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F Street, N.E., Washington, DC 20549.

J. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondents agree that in any Related Investor Action, they shall not argue that they are entitled to, nor shall they benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondents' payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondents agree that they shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondents by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

VI.

IT IS FURTHER ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section IV hereof shall be convened not earlier than sixty (60) days and not later than ninety (90) days from service of this Order at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

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

This Order shall be served forthwith upon Peraza Capital as provided for in the Commission's Rules of Practice.

IT IS FURTHER ORDERED that, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice, 17 C.F.R. § 201.360(a)(2), the Administrative Law Judge shall issue an initial decision no later than 120 days from the occurrence of one of the following events: (A) The completion of post-hearing briefing in a proceeding where the hearing has been completed; (B) Where the hearing officer has determined that no hearing is necessary, upon completion of briefing on a motion pursuant to Rule 250 of the Commission's Rules of Practice, 17 C.F.R. § 201.250; or (C) The determination by the hearing officer that a party is deemed to be in default under Rule 155 of the Commission's Rules of Practice, 17 C.F.R. § 201.155 and no hearing is necessary.

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

VII.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the findings in this Order are true and admitted by Respondents, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondents under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondents of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

By the Commission.

Brent J. Fields
Secretary

EXHIBIT 2

SECURITIES AND EXCHANGE COMMISSION
ATLANTA REGIONAL OFFICE
3475 Lenox Road, Suite 500
Atlanta, Georgia 30326-1232

September 12, 2011

Mr. Brad Friedlander, Managing Member
Angel Oak Capital Advisors, LLC
3060 Peachtree Road NW, Suite 1080
Atlanta, Georgia 30305

WITH COPY TO:
Ms. Tina Patel, Chief Compliance Officer

Re: **Angel Oak Capital Advisors, LLC**
SEC File No.: 801-70670

Dear Mr. Friedlander:

The staff conducted an examination of Angel Oak Capital Advisors, LLC ("Registrant") pursuant to Section 204 of the Investment Advisers Act of 1940 ("Advisers Act"), with on-site review on December 3, 2010, and January 15 through 23, 2011. The examination evaluated compliance with certain provisions of the federal securities laws. The examination identified the deficiencies and weaknesses that are described in this letter, which were discussed with Mr. Brad Friedlander ("Friedlander") and Mr. John Hsu ("Hsu") on April 28, 2011.

Unregistered Broker-Dealer

Section 15(a)(1) of the Exchange Act requires that any person acting as a broker or dealer who makes use of the mails or any means of interstate commerce to effect transactions in any security, or to induce or attempt to induce the purchase or sale of any security, be registered with the Commission. Section 3(a)(4) of the Exchange Act defines "broker" as "any person engaged in the business of effecting transactions in securities for the account of others." A person may be found to be acting as a broker if he regularly participates in securities transactions "at key points in the chain of distribution." Among the most relevant factors in determining whether a person is a broker is whether that person solicits investors to purchase securities.

A broker is generally defined as "any person engaged in the business of effecting transactions in securities for the account of others," and a dealer as "any person engaged in the business of buying and selling securities for his own account, through a broker or otherwise." A person may be "engaged in the business," by receiving compensation tied

to the successful completion of a securities transaction.[1] Indeed, the receipt of transaction-based compensation often indicates that such a person is engaged in the business of effecting transactions in securities. Registration helps to ensure that persons who have a "salesman's stake" in a securities transaction operate in a manner that is consistent with customer protection standards governing broker-dealers and their associated persons.

Registrant received transaction based compensation in the form of commissions paid by a registered broker dealer, Peraza. Commissions were paid by Peraza to Mr. David Wells ("Wells") to Registrant, which then paid-out a portion of the commissions to the registered representatives ("RRs") at the Peraza branch office. A portion of the commission for each trade was retained by Registrant as an administrative fee. Registrant's receipt of transaction based compensation for effecting securities transactions resulted in Registrant operating as an unregistered broker dealer. Subsequent to the RAVE exam of December 2010, Registrant stopped its practice of paying commissions to the RRs; instead Peraza paid Angel Partners, which then paid the RRs of Peraza. Registrant operated a broker-dealer during the examination period because it received transaction based compensation.

From January 1, 2010, through October 31, 2010, Registrant received $440,080 in commissions indirectly from Peraza for effecting securities transactions and paid out $323,794 to its employees who are RRs of Peraza. Registrant retained $116,286 for its administrative services.

As a result of the conduct described above, Registrant failed to comply with Section 15(a)(1) of the Exchange Act by operating as an unregistered broker.

Breach of Fiduciary Duty - Valuation

Sections 206(1) and (2) of the Advisers Act make it unlawful for an investment adviser, either directly or indirectly, to engage in any transaction, practice, or course of business that operates as a fraud or deceit upon any client or prospective client. Under Section 206, investment advisers have a fiduciary duty to act in the best interest of their clients and furnish unbiased advice, providing full and fair disclosure of any material information that is pertinent to the advisory relationship.

Registrant invests client assets primarily in mortgage backed securities. Mortgage backed securities trade on a limited basis, and can be difficult to value. Therefore, valuation is a significant risk faced by clients. This risk should be fully and adequately addressed in Registrant's Compliance Manual ("Manual"). Registrant's Manual does not contain any policies or procedures with respect to stale pricing or significant price

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[1] See Strengthening the Commission's Requirements Regarding Auditor Independence, Exchange Act Release No. 47265, n.82 (Jan. 28, 2003) (noting that a person may be "engaged in the business," among other ways, by receiving transaction-related compensation).

movements. These are significant, particularly with respect to mortgage backed securities that may have very little trading volume. While you stated that Registrant does review prices for large moves, as well as for the failure of prices to change from month to month, you could not document that this is the case. In addition, the staff believes you do not understand what stale prices are, or why an unchanged price over an extended period of time may be a concern. The fact that the Mr. Friedlander, Chief Compliance Officer at the examination, is unable to understand the pricing risks of the securities that Registrant invests client assets in is a significant concern. The staff is concerned that Registrant will not be able to implement adequate pricing policies and procedures if key personnel do not understand valuation.

Registrant provided a spreadsheet for Debt Recovery Fund and Structured Income Fund that showed the pricing of each position held in each fund for each month during the examination period. The spreadsheet shows that Registrant's prices change very little from month to month. Given that prices from Bloomberg for the same securities changed significantly month to month over the same time period, the staff is concerned that Registrant's policies and procedures over valuation are insufficient. Additionally, as the result of a September 2010 court decision that affected banks' ability to pursue foreclosure in certain situations, many mortgage backed securities dropped significantly in price between September and October 2010. Registrant's valuations do not reflect this change, even though Bloomberg's valuations do. Therefore, the staff is concerned that Registrant is not taking material events into account when pricing securities.

Registrant does not comply with of Section 206(1) and Section 206(2) because Registrant has not fulfilled its fiduciary obligation to its clients with regard to the accurate valuations of positions held in their accounts.

Custody

Rule 206(4)-2 under the Advisers Act ("the Custody Rule") states that an adviser has custody of client funds or securities if it "hold[s], directly or indirectly, client funds or securities, or [has] any authority to obtain possession of them." Further, the rule specifies that advisers acting as the general partner to limited partnerships or in a similar capacity with respect to other types of pooled investment vehicles (e.g., managing members of a limited liability company) are considered to have custody of the limited partnerships' or pooled investment vehicles' assets.

The Custody Rule was recently amended and the amendments were effective on March 12, 2010 ("the Amended Custody Rule").[2] The Amended Custody Rule requires an investment adviser with custody of client securities or funds to maintain those assets in a separate account with a qualified custodian and have a reasonable basis, after due inquiry, for believing that the qualified custodian sends an account statement, at least

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[2] See Custody of Funds or Securities of Clients by Investment Advisers, Advisers Act Release No. 2968 (December 30, 2009, *available at* http://www.sec.gov/rules/final/2009/ia-2968.pdf.

quarterly, to each client for which it maintains funds or securities. Investment advisers that have custody of client funds or securities because the adviser or a related person is a general partner, managing member, or holds a comparable position for a pooled investment vehicle, may still comply with the Amended Custody Rule by having the pooled investment vehicle audited at least annually. The audit, however, must be conducted by an independent public accountant that is registered with, and subject to regular inspection by, the Public Company Accounting Oversight Board in accordance with its rules.

As stated earlier, the general partner or managing member of the private funds is Angel Oak Capital Partners, LLC. The officers of Registrant are the managing members of the general partners. As a related party, Registrant has access to client funds and securities through its role as the general partner to the private funds. As such, Registrant is deemed to have custody of client assets and must comply with certain sections of Rule 206(4)-2. Specifically, the general partner must deliver audited financial statements to the limited partners within 120 days of the Fund's fiscal year-end.

The examination revealed that Registrant had custody of its private investments. Registrant's closed-end fund the Deep Credit Fund[3] was not audited by an independent public accountant for the year-ending December 31, 2009. The general partner provided a waiver for the audit for 2008. According to Mr. Hsu, the waiver was to be for years ending 2008 and 2009. Registrant's failure to comply with the requirements of the custody rule is not consistent with compliance of Rule 206(4)-2 under the Advisers Act.

Start Up Costs

The staff noted that Debt Recovery Fund's financial statements for the year ended December 31, 2009 indicate that Debt Recovery Fund's start up costs of $15,748 are being amortized over 60 months rather than expensed. This amount has an immaterial impact on NAV, however, AICPA Statement of Position 98-5, titled "Reporting the Costs of Start-Up Activities," states that partnership organizational costs should be expensed as incurred after the effective date of June 30, 1998. Additionally, "Commission Staff Accounting Bulletin No. 99, Materiality," discusses *qualitative materiality* and suggests that financial statements should include data (presented according to GAAP) that may be otherwise deemed immaterial in certain circumstances (n4). Therefore, materiality is not the basis for determining that the Funds' organizational expense can be amortized under GAAP. Because the Funds' organizational expenses are improperly amortized, its financial statements are not prepared in accordance with GAAP and, therefore, Registrant may not rely on the exemption provided by Rule 206(4)-2(b)(3).

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[3] The Angel Oak Deep Credit Fund, LP Agreement dated March 4, 2009 on pages 24 and 25; and the Private Placement Memorandum on page 36 states that partnerships will be audited each fiscal year.

Marketing and Performance

Rule 206(4)-1(a)(2) of the Advisers Act states that it will constitute a fraudulent, deceptive, or manipulative act, practice or course of business for any adviser, directly or indirectly, to publish, circulate, or distribute any advertisement which, among other things, refers, directly or indirectly, to past specific recommendations of such adviser which were or would have been profitable to any person. Provided, however, that this shall not prohibit an advertisement which sets out or offers to furnish a list of all recommendations made by the adviser within the immediately preceding period of not less than one year if such advertisement, and such list if it is furnished separately: (i) State the name of each such security recommended, the date and nature of each such recommendation (e.g., whether to buy, sell or hold), the market price at that time, the price at which the recommendation was to be acted upon, and the market price of each such security as of the most recent practicable date, and (ii) contain the following cautionary legend on the first page thereof in print or type as large as the largest print or type used in the body or text thereof: "it should not be assumed that recommendations made in the future will be profitable or will equal the performance of the securities in this list."

An adviser can prepare and present security recommendations in the manner described in the *Franklin Management, Inc.* no-action letter (publicly available December 10, 1998), which generally provides for the use of an objective, non-performance based criteria to select the securities, such as the largest positions held during the quarter by client accounts. Also, the SEC no-action letter, *Investment Counsel Association of America, Inc.* (publicly available March 1, 2004, allows an adviser to present past specific recommendations in response to an unsolicited request by a client, prospective client or consultant for specific information, and to existing clients about past specific recommendations concerning securities that are or were recently held by each of those clients.

Rule 206(4)-1(a)(5) states that it is unlawful for an investment adviser to directly or indirectly publish, circulate or distribute any advertisement which contains any untrue statement of material fact or which is otherwise false or misleading. Rule 206(4)-1(b) defines the term advertisement, among other things, as any notice, circular, letter or other written communication addressed to more than one person, which offers any investment advisory service with respect to securities. As a general matter, whether any advertisement is deemed to be false or misleading will depend on the particular facts and circumstances surrounding it use, including (1) the form as well as the content of the advertisement, (2) the implications or inferences arising out of the advertisement in its total context, and (3) the sophistication of the prospective client (no-action letters *Anametrics Investment Management*, available May 5, 1977; *Edward O'Keefe*, available April 13, 1978; and *Covato/Lipsitz, Inc.*, available October 23,1981).

Registrant's marketing materials do not include disclosures recommended in Clover. For example, the fact sheets do not disclose whether or not dividends and

income are reinvested. In addition, the fact sheets do not disclose all facts materially relevant to the index comparison used in the advertisements. Furthermore, on one advertisement (Angel Oak Structured Income Fund I, October 2010), Registrant failed to include the statement that "Past performance is not indicative of future performance." Disclosing the possibility of loss is a required disclosure. Registrant's failure to include the disclosures recommended in Clover mentioned above is inconsistent with Registrant's disclosure obligations under Rule 206(4)-1(a)(2) and 206(4)-1(a)(5).

Compliance Policies and Procedures

The "Compliance Rule" (Advisers Act Rule 206(4)-7) requires advisers to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act. Each adviser should identify conflicts and other compliance factors creating risk exposure for the firm and its clients in light of the firm's particular operations, and then design policies and procedures that address those risks. The Commission expects that an adviser's policies and procedures, at a minimum, should address a standard set of operations to the extent that they are relevant to the adviser. (See *Compliance Programs of Investment Companies and Investment Advisers*, Advisers Act Release No. 2004 (December 17, 2003) ("Compliance Rule Release") available at http://www.sec.gov/rules/final/ia-2204.htm.) Advisers must review those policies and procedures at least annually for their adequacy and the effectiveness of their implementation, and designate a chief compliance officer to be responsible for administering their policies and procedures.

Registrant's Manual is not reasonably designed to prevent violations of the Advisers Act in that it is not adequately tailored to its business practices. For example, Registrant does not: (1) engage in principal or cross transactions in advisory accounts; (2) participate in any soft dollar activities; or (3) vote proxies for advisory clients according to you. In addition, the staff suggests that Registrant update it's Manual and consider when conducting its annual review the risk of sharing office space with non-employees as well as instituting procedures to ensure unauthorized persons cannot access client information. Also, Registrant invests the assets of the Funds in numerous securities for which there are no readily available market quotations, which is a critical risk for clients because advisory and performance fees are based on those fair values. The annual review should consider these risks as well.

Registrant stated that certain policies and procedures were included in the Manual to address potential compliance risk factors for the future. We remind Registrant that: (1) the compliance rule requires compliance policies and procedures adopted by the firm to be implemented; and (2) the compliance policies and procedures adopted by the firm should be relevant to its investment advisory operations.

Registrant's failure to adopt and implement reasonable and relevant written policies and procedures designed to prevent violations of the Advisers Act is not consistent with the requirements of Rule 206(4)-7(a).

Regulation S-P

Regulation S-P, which became effective on November 13, 2000, and required compliance by July 1, 2001, obligates investment advisers to protect the financial privacy of their customers and consumers. Regulation S-P requires an investment adviser to assess what nonpublic, personal financial information it collects from clients, assess what nonpublic personal information is shared with affiliates and non-affiliated third parties, establish procedures to protect non-public personal information, notify clients of the collection, disclosure, and protection of such information, and provide an option to clients to forego participating in such processes, referred to as an "opt out" option. Regulation S-P requires that investment advisers deliver: (i) an initial privacy notice to new customers not later than when the customer relationship is established, and (ii) an annual privacy notice to all customers.

In addition to requiring investment advisers to send privacy notices to their clients annually, Regulation S-P specifically requires advisers to adopt internal policies and procedures that address administrative, technical, and physical safeguards for the protection of customer records and information. These policies and procedures must be reasonably designed to:

I. Ensure the security and confidentiality of customer records and information;

II. Protect against any anticipated threats or hazards to the security or integrity of customer records and information; and

III. Protect against unauthorized access to or use of customer records or information that could result in substantial harm or inconvenience to any customer.

Registrant may have failed to comply with the provisions of Regulation S-P, which requires that registrants adopt appropriate procedures to protect customer information. Registrant currently subleases office space to the Privet Fund and West Club Capital. Registrant's trading desk is located in what appears to be a bull pen which is easily accessible by anyone within the office. Friedlander and Hsu indicated that they discuss the strategies for clients including the Funds. The presence of the Privet Fund and West Club Capital employees in Registrant's office, at a minimum raises issues concerning client privacy, conflicts of interest, front-running, and insider trading concerns. In addition, Registrant maintains its computer server and telephone lines in a room that includes its coffee break room which is open and accessible to persons within the office, including the employees of the Privet Fund and West Club Capital.

Registrant failed to adopt and employ any specific polices or procedures in its Manual to address the above potential concerns. A failure to adopt and maintain

adequate policies and procedures addressing the protection of sensitive data from alteration and/or deletion does not comply with the requirements of Regulation S-P.

Form ADV

Registered investment advisers are required to amend their registration forms (Form ADV) at least annually, within 90 days of their fiscal year end and more frequently if required by the instructions to the form. Updates to Part 1A of Form ADV must be filed annually through FINRA's Investment Adviser Registration Depository ("IARD"). In addition to making annual filings, advisers must promptly file an amendment to its Form ADV whenever certain information contained in its Form ADV becomes inaccurate. Although Part II is not currently required to be delivered to the Commission, it must be maintained and amended as necessary in accordance with Rule 204-1 under the Advisers Act for presentation to current and prospective clients. Form ADV filing requirements are specified in Rule 204-1 under the Advisers Act and in the General Instructions to Form ADV.

Registrant failed to comply with Rule 204-1 because it's most recent Form ADV contained omissions, inconsistencies, and/or inaccuracies with respect to the following item:

Part 1A:

Item 9.B Registrant should amend this item to indicate that it has custody of client accounts.

Schedule D

Section 7.B Registrant should amend this section to include all the private funds managed.

Part II –

Item 9.E Registrant should amend this item to indicate that the Code of Ethics will be provided upon request.

Schedule F

Item 1.D Registrant should amend to include more disclosure regarding performance fees and the nature of their conflicts, and its solicitation arrangement. In addition, Registrant should amend Schedule F to include that you are the Chief Compliance Officer.

With respect to the above item, Registrant failed to amend its Form ADV in a timely manner as required by Rule 204-1 under the Advisers Act.

The staff is bringing the deficiencies and weaknesses described above and discussed in our exit interview to your attention for immediate corrective action, without regard to any other action(s) that may result from the examination. The deficiencies and weaknesses identified above are based on the staff's examination and are not findings or conclusions of the Commission. Also, references to deficiencies or weaknesses are made in the context of an examination by the staff, are not the result of an adjudicative process and do not constitute conclusive findings of fact for the purposes of liability. You should not assume: that the firm's activities discussed in this letter do not constitute deficiencies or weaknesses under any other federal securities law or other applicable rules and regulations not discussed above; or that the firm's activities not discussed in this letter are in full compliance with federal securities laws or other applicable rules and regulations.

Note that the descriptions of the law and related interpretations in this letter may be paraphrased, abbreviated, or incomplete. You can find complete information related to these regulatory requirements on our website at http://www.sec.gov/divisions.shtml.

Please respond in writing to each matter described above within thirty (30) days of the date of this letter, describing the steps you have taken or intend to take with respect to each of these matters. In addition, and without limiting other necessary actions, Registrant is specifically directed to provide this office with documentation demonstrating its implementation of reasonable and appropriate written policies and procedures that, at a minimum, address the requirements of Rule 206(4)-7(a) under the Advisers Act.

The Staff asks that Registrant apprise us of what steps, if any, it intends to take with respect to the transaction-based compensation charged to customers, whereby Registrant acted as an unregistered broker-dealer. If Registrant intends to reimburse customers and others, please provide documentation. Please also advise the staff of what steps Registrant has taken to register as a broker-dealer.

Registrant is also directed to provide this office with a revised copy of its compliance manual, marketing materials, Form ADV, and Regulation S-P procedures.

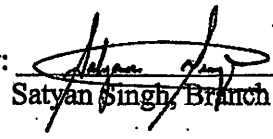
Please direct your response to the attention of Satyan Singh, Branch Chief. In addition, a copy of your reply, together with copies of any enclosures, should be sent to the following person:

Ms. Ragni Walker
Office of Compliance Inspections and Examinations
U.S. Securities and Exchange Commission
100 F Street, N.E. (Mail Stop 7030)
Washington, DC 20549-7030

Thank you for your cooperation. If you have any questions, please contact Satyan Singh at (404) 842-7681.

Sincerely,

Askari Foy
Associate Regional Director

By: 
Satyan Singh, Branch Chief

cc: Askari Foy, Associate Regional Director
Ragni Walker, OCIE

EXHIBIT 3

No. 16-529

In the Supreme Court of the United States

CHARLES R. KOKESH, PETITIONER

v.

SECURITIES AND EXCHANGE COMMISSION

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

BRIEF FOR THE RESPONDENT

SANKET J. BULSARA
Acting General Counsel
MICHAEL A. CONLEY
Solicitor
JACOB H. STILLMAN
Senior Advisor to the Solicitor
HOPE HALL AUGUSTINI
DANIEL STAROSELSKY
Senior Litigation Counsels
SARAH R. PRINS
Senior Counsel
Securities and Exchange Commission
Washington, D.C. 20549

JEFFREY B. WALL
Acting Solicitor General
Counsel of Record
MALCOLM L. STEWART
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Assistant to the Solicitor General
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fy areas where such proceedings may be utilized to efficiently, effectively, and fairly provide restitution for injured investors") (codified at 15 U.S.C. 7246(c)(1)); see also 1990 House Report 17. And Congress has placed time limits on other types of relief sought by the SEC, see, *e.g.*, 15 U.S.C. 78u-1(d)(5) (provision enacted in 1988 giving SEC five years from transaction to seek civil penalties for insider trading and stating that the limitation "shall not be construed to bar or limit in any manner any action by the Commission * * * under any other provision of this chapter"), as well as on securities actions brought by private parties, see 28 U.S.C. 1658(b) (provision enacted in 2002 limiting time to assert "private right of action" for certain claims "concerning the securities laws"). But Congress has not acted to impose any time restrictions on disgorgement, or on SEC enforcement actions more generally.

b. Petitioner has not shown that the prevailing approach to disgorgement has encouraged the SEC to delay filing suit or has unduly impaired defendants' ability to resist disgorgement claims. Because the Commission bears the burden of proof in securities-law enforcement actions, including the burden of establishing a causal connection between a violation and a disgorgement amount, any dulling of memories or loss of evidence is more likely to impede than to assist the SEC's litigation efforts. Cf. *Petrella* v. *Metro-Goldwyn-Mayer, Inc.*, 134 S. Ct. 1962, 1976-1977 (2014). The SEC thus has strong incentives to ferret out fraud and other wrongdoing as quickly as possible, despite its limited resources. See *Rind*, 991 F.2d at 1492 ("[S]ecurities fraud may involve multiple parties and transactions of mind-boggling complexity. Mar-

ket manipulation is notoriously hard to detect."). Those incentives have been strengthened by *Gabelli*, under which the SEC must bring suit within five years of the relevant misconduct to obtain statutory penalties. See *Gabelli*, 133 S. Ct. at 1223-1224.[17]

Adopting petitioner's proposed construction of Section 2462, moreover, would not give any defendant the "right to be free of" certain "claims." *Order of R.R. Telegraphers* v. *Railway Express Agency*, 321 U.S. 342, 349 (1944). Even if the passage of time after a defendant's defalcations barred the SEC from obtaining disgorgement (as well as penalties), the agency could still bring securities-law claims like the ones in

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[17] In fiscal year 2015, for example, the average time between the start of an SEC investigation and the commencement of an SEC enforcement action was 24 months. See U.S. SEC, *FY 2015 Annual Performance Report & FY 2017 Annual Performance Plan* 37, https://www.sec.gov/about/reports/sec-fy2015-fy2017-annual-performance.pdf (last visited Mar. 26, 2017). Petitioner suggests (Br. 4-5) that *Gabelli*'s holding has resulted in the filing of stale claims by the SEC. But all the cases he cites, including this one, were filed before *Gabelli* was decided in 2013, and several of them were filed within five years after the defendants' bad acts concluded. See, *e.g.*, Compl., *SEC* v. *Wyly*, *supra*, No. 10-cv-5760 (filed July 29, 2010); Compl., *SEC* v. *Crawford*, No. 11-cv-3656 (D. Minn.) (filed Dec. 21, 2011). Indeed, petitioner and his amici point to very few cases in which the SEC has brought enforcement actions that would be barred by Section 2462, despite the prevailing understanding that Section 2462 does not apply to actions for disgorgement or injunctions. Petitioner also suggests (Br. 5) that the Commission has increasingly resorted to disgorgement to circumvent the time bar on penalties—but statistics do not bear out that assertion. See SEC, *Select SEC and Market Data* 2 (2005-2016) (Tbl. 1) (showing that the ratio of disgorgement to penalties has varied considerably over the past decade and that 2013, when *Gabelli* was decided, did not mark a point of steady increase in that ratio), https:// www.sec.gov/reports (last visited Mar. 26, 2017).

this case against that defendant and seek other forms of injunctive relief, such as an order prohibiting a defendant like petitioner from serving in the kind of fiduciary capacity that enabled him to swindle investors. See generally *United States* v. *Whited & Wheless Ltd.*, 246 U.S. 552, 561, 563-564 (1918). And in cases that involve a continuing course of conduct, the SEC could file suit up to five years after the end of the misconduct and, at a minimum, seek disgorgement (and penalties) for any bad acts that had taken place within that five-year look-back period.

Here, for example, the suit against petitioner was brought within five years after some (but not all) of his embezzlement. Petitioner therefore would have been subject to the suit, and to a disgorgement remedy, even under his own interpretation of Section 2462. Adoption of petitioner's proposed rule would simply allow him to keep a significant amount of the money that he stole from the investors who trusted him.

3. Adoption of petitioner's expansive reading of Section 2462 would increase the incentives for bad actors to violate the securities laws, since those incentives will be greater if the passage of time can shield illicit gains from the possibility of recoupment. See *Texas Gulf Sulphur*, 446 F.2d at 1308 ("It would severely defeat the purposes of the Act if a violator of Rule 10b-5 were allowed to retain the profits from his violation."); see also *SEC* v. *Wyly*, 117 F. Supp. 3d 381, 390 & n.40 (S.D.N.Y. 2015) (discussing the "pains" defendants took to "hide the extent of their control" over U.S. issuers to frustrate government investigation).[18] Petitioner's approach would also reduce the

[18] Courts have interpreted the tolling doctrine of fraudulent concealment narrowly in the wake of *Gabelli*'s rejection of the

likelihood that victims will be compensated through distribution of disgorged funds. See, *e.g.*, *SEC* v. *Graham*, 21 F. Supp. 3d 1300 (S.D. Fla. 2014) (applying Section 2462 to prevent disgorgement of $300 million from Ponzi scheme), aff'd in part, rev'd in part, and remanded, 823 F.3d 1357 (11th Cir. 2016). And the adverse practical consequences of construing Section 2462 to encompass disgorgement would not be confined to securities-law cases, since the government regularly seeks disgorgement in other contexts as well, under general statutory grants of authority to give equitable relief. See, *e.g.*, *United States* v. *Universal Mgmt. Servs., Inc.*, 191 F.3d 750, 760 (6th Cir. 1999) (Federal Food, Drug, and Cosmetic Act), cert. denied, 530 U.S. 1274 (2000); *FTC* v. *Gem Merch. Corp.*, 87 F.3d 466, 469 (11th Cir. 1996) (Federal Trade Commission Act).

4. Petitioner contends (Br. 40-41) that the dangers of government abuse are great if no limitations period applies to disgorgement. But because a disgorgement remedy simply divests the defendant of his illicit gains, it does not implicate the *Gabelli* Court's concern about punishing a defendant for long-ago violations. Petitioner asserts (Br. 41-42) that the absence of a statute of limitations "is especially troubling" because of "how the SEC enforces the law." But petitioner stole money while ostensibly acting as a fiduciary for investors; that conduct is and has long been obviously illegal.

Petitioner also contends (Br. 46) that the government's position is "capricious" because it treats dis-

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discovery rule, finding that concealment is often part and parcel of the fraud itself. See *SEC* v. *Wyly*, 950 F. Supp. 2d 547, 556-558 (S.D.N.Y. 2013).