UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-19024

In the Matter of

ASCENSION ASSET MANAGEMENT, LLC

and

GRENVILLE M. GOODER, JR.,

Respondents.

DIVISION OF ENFORCEMENT'S MOTION FOR SUMMARY DISPOSITION AGAINST RESPONDENTS ASCENSION ASSET MANAGEMENT, LLC AND GRENVILLE M. GOODER, JR. AND MEMORANDUM OF LAW IN SUPPORT

July 22, 2019

Division of Enforcement
Securities and Exchange Commission
Nicholas A. Pilgrim
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I. INTRODUCTION

The Division of Enforcement ("Division") moves, pursuant to Rule 250 of the Commission's Rules of Practice, for summary disposition of the claims against Respondents Ascension Asset Management, LLC ("Ascension") and Grenville M. Gooder, Jr. ("Gooder") (collectively "Respondents") set forth in the Order Instituting Proceedings in this matter, brought under Sections 203(e), 203(f), and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act"), 15 U.S.C. §§ 80b-3(e), (f), & (k), and Section 9(b) of the Investment Company Act of 1940 ("Investment Company Act"), 15 U.S.C. § 80a-9(b).

For as long as a decade, Ascension, an SEC-registered investment adviser, and its founder, sole owner, and sole operator, Gooder, flouted multiple rules and regulatory requirements that the Securities and Exchange Commission ("Commission" or "SEC") has adopted and implemented to protect investors. In their First Amended Answer to the OIP, filed on July 9, 2019, Respondents acknowledged violating some of the Commission's rules, but nevertheless sought to downplay the significance of their misconduct by suggesting these were merely "technical" violations. *See* Respondents Ascension Asset Management, LLC and Grenville M. Gooder, Jr.'s First Amended Answer filed July 9, 2019 ("Answer") ¶¶ 44-45. As discussed in greater detail below, because there is no genuine issue of material fact as to Respondents' liability, the Division files the instant motion pursuant to Rule 250 for summary disposition on all claims set forth in the OIP.

The undisputed facts reveal that, for more than a decade, Ascension and Gooder failed to comply with Advisers Act Section 206(4) and Rule 206(4)-7 thereunder (the "Compliance Rule") and Rule 206(4)-2 thereunder (the "Custody Rule") (15 U.S.C. § 80b-6(4) & 17 C.F.R. §§ 275.206(4)-7 & 275.206(4)-2, respectively). Respondents also failed to make and keep certain required books and records pursuant to Advisers Act Section 204 and Rule 204-2 thereunder (the

"Books and Records Rule") (15 U.S.C. § 80b-4 and 17 C.F.R. § 275.204-2) (collectively, "the Rules").

Additionally, Ascension's Forms ADV, which Gooder signed and directed to be filed with the Commission, contained materially untrue statements in violation of Advisers Act Section 207 (15 U.S.C. § 80b-7). In particular, in multiple Forms ADV filed with the Commission between 2005 and 2015, Gooder and Ascension: (i) falsely represented that Ascension did not have custody of client assets; and (ii) repeatedly named either David N. Platt ("Platt") or Patrick L. Smith ("Smith") as Ascension's Chief Compliance Officer ("CCO"), even though neither individual was ever responsible for administering any written compliance policies and procedures for the firm.

Moreover, despite having custody of client assets from at least July 2005 to at least November 2015, Respondents not only falsely claimed in their Forms ADV not to have custody of any client assets, they also failed to take any steps to comply with the Custody Rule itself, which the Commission adopted to safeguard client assets. In short, the uncontroverted record reveals that for at least a decade Respondents failed to satisfy multiple compliance obligations until SEC examination staff initiated an examination of Ascension in November 2015. In light of these undisputed facts, summary disposition is appropriate.

II. STATEMENT OF UNDISPUTED FACTS

A. Background

Ascension is a New York limited liability company with its principal place of business in New York, New York. (Order Instituting Proceedings issued Mar. 7, 2019 ("OIP") ¶ 4; Answer ¶ 4). Ascension registered with the Commission as an investment adviser in June 2004. (OIP ¶ 4; Answer ¶ 4). According to its Form ADV filed on March 23, 2018, Ascension provides asset allocation and portfolio management services to high net worth investors, trusts, foundations, and a

pension plan with regulatory assets under management of $152,456,779 as of December 31, 2017. (OIP ¶ 4; Answer ¶ 4).

Gooder is and at all times was Ascension's founder, sole owner, sole operator, and Chairman. (OIP ¶ 5; Answer ¶ 5). Gooder is a Chartered Financial Analyst ("CFA") charterholder. (OIP ¶ 5; Answer ¶ 5). After working in the securities industry for approximately 40 years, Gooder founded Ascension in June 2004. (OIP ¶ 6; Answer ¶ 6). Gooder previously worked for several SEC-registered investment advisers. (OIP ¶ 6; Answer ¶ 6). On or about June 16, 2004, Gooder signed and caused to be filed Ascension's application to be an SEC-registered investment adviser. (OIP ¶ 6; Answer ¶ 6). At all times, Gooder made all decisions concerning the management and control of Ascension. (OIP ¶ 7; Answer ¶ 7). Gooder prepared, reviewed, and signed all of Ascension's Forms ADV; he then directed an Ascension employee to file Ascension's Forms ADV with the Commission. (OIP ¶ 7; Answer ¶ 7).

Since in or about September 2005, Ascension was a continuous member of the Investment Adviser Association ("IAA"), an industry organization that advocates for and provides compliance and educational resources to SEC-registered investment advisory firms. (OIP ¶ 8; Answer ¶ 8). Gooder, therefore, had an opportunity to review information published in certain IAA monthly compliance bulletins concerning the requirements of the Rules, including guidance offered in these bulletins about the Compliance Rule and the Custody Rule. (OIP ¶ 8; Answer ¶ 8; Declaration of Nicholas A. Pilgrim, executed on July 22, 2019 ("Pilgrim Decl."), Ex. 1 (Gooder Tr. (12/12/17)) at 91:22-96:4, 100:16-101:13; Ex. 2 (IAA Bulletin dated 11/1/05) at SEC-SEC-E-0005110-5111); Ex. 3 (IAA Bulletin dated 3/3/14) at SEC-SEC-E-0005150-52); Ex. 4 (IAA Bulletin dated 9/1/10) at SEC-SEC-E-0005128-5130.[1] In fact, Gooder testified that the only step that he took to stay

[1] References herein to "Ex. __" are to exhibits attached to the Pilgrim Declaration.

informed of regulatory compliance issues was reviewing bulletins published by the IAA that the IAA mailed to Ascension monthly. Ex. 1 at 87:6-13, 88:17-89:7. However, he "didn't read them in much depth and [he] really didn't appreciate what they were saying." *Id.* at 95:21-96:4.

Gooder also failed to take other steps to educate himself about the Rules. For example, Gooder did not: (i) attend training events on investment advisory compliance issues that were offered by the IAA; (ii) read alerts on industry compliance issues sent from the IAA by e-mail; (iii) visit the Commission's website to review guidance on investment advisory compliance issues; or (iv) contact the Commission's staff for guidance on any investment advisory compliance issues. (OIP ¶ 9; Answer ¶ 9; Ex. 1 at 87:14-88:13, 89:11-91:1, 96:9-98:16, 101:14-102:22; *see also* Pilgrim Decl., Ex. 5 (IAA Alert entitled "SEC Publishes New Adviser Custody Rule" dated 1/7/10)). Gooder's failure to take steps to educate himself about the Rules was not due to lack of an opportunity. In fact, in his investigative testimony, Gooder thrice used the word "blizzard" to describe educational opportunities offered by the IAA on regulatory compliance issues. Ex. 1 at 87:18-23, 88:3-6, 96:22-97:2. Yet, despite all of these opportunities and despite being entrusted with over $100 million in client assets as an investment adviser, Gooder failed to keep abreast of Ascension's compliance obligations. He displayed this cavalier attitude even though he knew the investment management industry was highly regulated when he started his firm in 2004. *Id.* at 86:23-87:5.

B. Ascension's Compliance Rule Failures

i. Ascension Lacked Written Compliance Policies and Procedures and Failed to Conduct Required Annual Reviews Thereof.

Advisers Act Rule 206(4)-7(a) requires SEC-registered investment advisers to "[a]dopt and implement written policies and procedures reasonably designed to prevent violation . . . of the [Advisers] Act and the rules that the Commission has adopted under the Act." 17 C.F.R.

§ 275.206(4)-7(a). (OIP ¶ 10; Answer ¶ 10). Advisers Act Rule 206(4)-7(b) requires SEC-registered investment advisers to "[r]eview, no less frequently than annually, the adequacy of the policies and procedures established pursuant to [Rule 206(4)-7(a)] and the effectiveness of their implementation." 17 C.F.R. § 275.206(4)-7(b). (OIP ¶ 10; Answer ¶ 10).

It is undisputed that, from in or about October 2004 until November 2015, Ascension did not adopt and implement any written compliance policies and procedures required by Advisers Act Rule 206(4)-7(a). (OIP ¶ 11; Answer ¶ 11). During this same time period, Ascension did not conduct the reviews required by Advisers Act Rule 206(4)-7(b). (OIP ¶ 11; Answer ¶ 11).

It is also undisputed that Respondents first created written compliance policies and procedures for Ascension only after being notified of an SEC examination in 2015. (OIP ¶ 12; Answer ¶ 12). Specifically, on or about November 2, 2015, the SEC's Office of Compliance Inspections and Examinations ("OCIE") notified Ascension that it planned to conduct an imminent on-site examination of Ascension. (OIP ¶ 12; Answer ¶ 12). Ascension had never before been examined by OCIE. (OIP ¶ 12; Answer ¶ 12). After learning that OCIE was going to examine the firm and after receiving OCIE's document request dated November 2, 2015 for written policies and procedures and annual compliance review documentation, Ascension – for the first time – adopted written compliance policies and procedures on or about November 25, 2015. (OIP ¶¶ 12-13; Answer ¶¶ 12-13).

ii. Ascension's Chief Compliance Officer Designations Were "Window Dressing" Only.

Advisers Act Rule 206(4)-7(c) requires SEC-registered investment advisers to "[d]esignate an individual (who is a supervised person) responsible for administering the policies and procedures . . . adopt[ed] under [Rule 206(4)-7(a)]." 17 C.F.R. § 275.206(4)-7(c). (OIP ¶ 15; Answer ¶ 15). From September 2005 until March 2016, Ascension and Gooder designated in

Ascension's Forms ADV two individuals – Platt and Smith – who allegedly served as Ascension's CCO at different times. (OIP ¶ 16; Answer ¶ 16).[2] However, the undisputed facts reveal that neither Platt nor Smith ever was responsible for administering the compliance policies and procedures for Ascension and that the firm lacked any such policies and procedures to administer prior to November 25, 2015. (OIP ¶¶ 12-13; Answer ¶¶ 12-13).

The uncontroverted record in this action reveals that Ascension and Gooder identified Platt as Ascension's CCO and Senior Vice President ("SVP") in the firm's Forms ADV filed with the Commission between September 2005 and February 2015.[3] (OIP ¶ 17; Answer ¶ 17; Pilgrim Decl., Ex. 6A (Form ADV filed 9/14/05) at SEC-SEC-E-0003631, 3636; Ex. 6B (Form ADV filed 3/14/06) at SEC-SEC-E-0003597; Ex. 6C (Form ADV filed 3/14/07) at SEC-SEC-E-0003564, 3566, 3571; Ex. 6D (Form ADV filed 7/2/07) at SEC-SEC-E-0003496, 3503; Ex. 6E (Form ADV filed 1/30/08) at SEC-SEC-E-0003464, 3470-71; Ex. 6F (Form ADV filed 2/2/09) at 3431, 3437; Ex. 6G (Form ADV filed 3/23/10) at SEC-SEC-E-0003399, 3405-06 ; Ex. 6H (Form ADV filed 3/26/12) at SEC-SEC-E-0003332-33; Ex. 6I (Form ADV filed 2/19/13) at SEC-SEC-E-0003249, 3283-84; Ex. 6J (Form ADV filed 3/12/13) at SEC-SEC-E-0008860, 8894-95; Ex. 6K (Form ADV filed 3/11/14) at SEC-SEC-E-0003204, 3238-39; Ex. 6L (Form ADV filed 2/26/15) at SEC-SEC-E-0003114, 3148-49). However, Platt testified that he was never responsible for administering

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[2] Platt and Smith were identified as Individual A and Individual B, respectively, in the OIP.

[3] The dates of these filings were on or about September 14, 2005, March 14, 2006, March 14, 2007, July 2, 2007, January 30, 2008, February 2, 2009, March 23, 2010, March 26, 2012, February 19, 2013, March 12, 2013, March 11, 2014, and February 26, 2015. (OIP ¶ 17; Answer ¶ 17). These and other filing dates referenced herein refer to the date upon which the filings were received by the Commission. As discussed elsewhere in this brief, between 2011 and 2012, Ascension listed another individual – Smith – as its CCO and SVP.

written compliance policies and procedures for Ascension and that he never took any actions as Ascension's putative CCO. (Pilgrim Decl., Ex. 7 (Platt Dep. (6/18/19) at 14:2-15:19, 25:22-24)).[4] In fact, although Gooder and Ascension held out Platt as Ascension's CCO in multiple Forms ADV, Platt stated that he has "no idea" what the responsibilities of a CCO are and that Gooder never told him what the responsibilities of a CCO are or what he wanted Platt to do as a CCO. (*Id.* at 14:13-21). Platt also never discussed any compliance issues with Gooder; never performed an annual review of the adequacy of Ascension's compliance policies and procedures; did not know whether anyone ever did so for the firm; and has never written or drafted compliance policies and procedures on behalf of an advisory firm. (*Id.* at 15:25-16:6, 17:15-18, 25:22-26:6). Similarly, Platt never held any responsibilities as Ascension's nominal SVP. (*Id.* at 17:9-11).

No genuine issue of material fact exists as to whether Platt ever functioned as Ascension's CCO or ever was responsible for "administering the policies and procedures . . . adopt[ed] under [Rule 206(4)-7(a)]" as required by Advisers Act Rule 206(4)-7(c). 17 C.F.R. § 275.206(4)-7(c). Gooder himself conceded that he named Platt as CCO and vice president in Ascension's Forms ADV for "window dressing." (Pilgrim Decl., Ex. 8 (Gooder Tr. (12/12/16) at 29:13-15)). Gooder also admitted that he never communicated to Platt what he was supposed to be doing as Ascension's CCO or communicated with Platt about regulatory compliance issues. (Ex. 1 at 74:8-11, 76:13-15). And Gooder also acknowledged that Platt never adopted, implemented, administered, or reviewed any written policies and procedures on behalf of Ascension, despite

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[4] Platt and Gooder have been friends for decades. (Ex. 7 at 9:14-19). Beginning in 2004, Gooder shared office space with Platt, who ran his own investment advisory firm, Platt Capital Management. (*Id.* at 13:10-15, 24:1-5). According to Platt, he and Gooder identified each other as the CCO of their respective firms because "we understood that you could not be your own compliance officer. It has to be somebody else." (*Id.* at 16:10-15).

being named in the firm's Forms ADV as the CCO. (*Id.* at 74:16-76:20). Thus, it is beyond dispute that, as Platt testified, he was CCO of Ascension in name only. (Ex. 7 at 17:12-14).

Ascension and Gooder also named a second individual, Smith, as Ascension's CCO and SVP in the firm's Form ADV filed with the Commission on or about February 10, 2011. (OIP ¶ 18; Answer ¶ 18; Pilgrim Decl., Ex. 9 (Form ADV filed 2/10/11) at SEC-SEC-E-0003366-68. However, like Platt, Smith was never responsible for administering written compliance policies and procedures for Ascension. (*Id.*, Ex. 10 (Smith Dep. (6/14/19) at 78:11-19)).[5] Moreover, Smith never agreed to serve as Ascension's CCO and SVP and was never even told by Gooder that he had been identified in Ascension's Commission filings as holding these roles. (*Id.* at 63:8-14, 78:20-79:2, 79:14-21). Smith also never gave permission to Gooder or anyone else to identify him in Ascension's Form ADV as CCO or SVP and did not learn that Gooder had falsely named him as Ascension's CCO and SVP until after he was contacted by the Division in 2017. (*Id.* at 54:23-55:14, 80:18-22; *see also id.* at 83:3-17 ("Q. Did you ever authorize Mr. Gooder or anyone else at Ascension Asset Management to identify you in this document as a senior vice president and compliance officer for Ascension Asset Management, LLC? A. No, I did not. Q. What's your reaction to seeing your name there? A. Makes me unhappy. Q. And why are you unhappy? A. Well, I have to say that I'm, you know, disappointed because I always thought that Mr. Gooder was an honest guy with a lot of integrity, and really seemed like a good guy to me. So seeing this just disappoints me.).

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[5] Smith had worked with Gooder at another investment advisory firm, and the two remained in touch after Gooder started Ascension. (Ex. 10 at 23:13-24:24, 28:3-29:22). When Smith started his own advisory business, Gooder invited Smith to share office space with Gooder and Platt. (*Id.* at 29:23-36:7, 39:4-9, 43:23-44:5). Smith accepted the invitation and shared office space with them from roughly in or after spring of 2009 through roughly the end of 2011. (*Id.* at 15:23-17:9, 29:23-36:7, 37:11-16, 41:16-43:22, 65:6-22).

For his part, Gooder claimed, without any corroboration, that Smith had agreed to serve as CCO and SVP, but he was unable to recall ever talking with Smith about Smith's specific duties in this role. (Ex. 1 at 36:22-37:3, 9:8-10:6). Gooder also acknowledged that Smith never received a paycheck from Ascension and that Smith "didn't have any specific responsibilities to perform." (*Id.* at 9:4-7, 9:23-10:6). Instead, "we talked about investment ideas. But, other than that, [Smith] didn't have any – any particular duties he performed." (*Id.* at 10:3-6). Thus, *even if* one takes Gooder's testimony at his word, it is undisputed that Gooder and Ascension never designated Smith to be "responsible for administering the policies and procedures . . . adopt[ed] under [Rule 206(4)-7(a)]," even though Gooder and Ascension identified him as Ascension's CCO in the firm's February 2011 Form ADV. 17 C.F.R. § 275.206(4)-7(c). In fact, from in or about October 2004 until November 2015, no one administered any written compliance policies and procedures at Ascension because no such policies and procedures existed in that time period. (OIP ¶¶ 11, 13; Answer ¶¶ 11, 13).

C. Ascension's Custody Rule Failures

Advisers Act Rule 206(4)-2 requires investment advisers that maintain custody of client funds or securities to adequately safeguard and account for client assets by implementing certain procedures. *See* 17 C.F.R. § 275.206(4)-2. (OIP ¶ 21; Answer ¶ 21). Specifically, Advisers Act Rule 206(4)-2 requires SEC-registered investment advisers that maintain custody of client funds or securities to have independent public accountants conduct surprise examinations of those client funds or securities, or to have any private fund clients timely distribute audited financial statements to their investors and to have those financial statements audited by an independent public accountant subject to regular inspection by the Public Company Accounting Oversight Board ("PCAOB"). *See* 17 C.F.R. § 275.206(4)-2. (OIP ¶ 21; Answer ¶ 21). Gooder has admitted that,

prior to OCIE's examination in November 2015, he never took any steps to educate himself on the requirements of the Custody Rule. (Ex. 1 at 99:19-23).

i. Violations of the Custody Rule Arising from the Private Fund

From in or about 2005 until at least December 2015, Ascension stated in its Forms ADV that it was an investment adviser to Westway Development LLC ("Westway"), a private fund. (OIP ¶ 22; Answer ¶ 22; Pilgrim Decl., Exs. 6A-6L, 9, at Item 7.B & Schedule D, Section 7.B.).[6] By 2007, Westway had approximately 40 shareholders who collectively invested approximately $4.4 million. (OIP ¶ 22; Answer ¶ 22). Some Ascension individual investment advisory clients were Westway shareholders. (OIP ¶ 22; Answer ¶ 22). At all times, Gooder and Platt served as Westway's Managing Members, jointly managed Westway, and had authority to obtain possession and control of the fund's assets. (OIP ¶ 23; Answer ¶ 23; *see* Ex. 7 at 20:2-9; Ex. 8 at 101:8-11.) Therefore, Ascension had custody over its clients' assets invested in Westway. *See* 17 C.F.R. § 275.206(4)-2(d)(2) (defining "custody").

The uncontroverted record establishes that, from in or about March 2010 until November 2015, Ascension never: (i) retained an independent public accountant subject to regular inspection by the PCAOB to perform an annual audit of Westway and never timely distributed the audited financials to Westway's investors, or (ii) retained an independent public accountant to conduct an annual surprise examination to verify Westway's assets. (OIP ¶ 24; Answer ¶ 24). Moreover, Respondents have acknowledged that although "from in or about 2005 through at least 2015, Ascension had 'technical' custody of client assets in [Westway]," Gooder and Ascension never

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[6] The dates of these filings were on or about September 14, 2005, March 14, 2006, March 14, 2007, July 2, 2007, January 30, 2008, February 2, 2009, March 23, 2010, February 10, 2011, March 26, 2012, February 19, 2013, March 12, 2013, March 11, 2014, and February 26, 2015. (OIP ¶ 45, Answer ¶ 45; Exs. 6A-L, 9).

disclosed this fact in the firm's Forms ADV or Form ADV Part 2A brochures. (OIP ¶¶ 43, 45, 46; Answer ¶¶ 43, 45, 46; Pilgrim Decl., Exs. 11A-D (Form ADV Part 2A Brochures from 2011 through 2015), Item 15 – Custody ("We do not have custody of client funds or securities.").[7]

ii. Violations of the Custody Rule Arising from the Trust Account

In or about July 2012, Gooder was named as the sole trustee of the Marilyn Senn Moll Generations Trust ("Moll Trust"), an approximately $5.2 million trust account. (OIP ¶ 25; Answer ¶ 25). In his capacity as sole trustee over the Moll Trust, Gooder held the authority to obtain possession of and to withdraw client funds or securities maintained with a custodian upon Gooder's instructions to the custodian. (OIP ¶ 26; Answer ¶ 26). From in or about July 2012 through at least December 2015, Ascension did not engage an independent public accountant to conduct an annual surprise examination to verify the Moll Trust's assets. (OIP ¶ 27; Answer ¶ 27). Thus, although Ascension had custody over the Moll Trust's assets, it failed to disclose this fact in multiple Forms ADV and brochures. (OIP ¶¶ 44-46; Answer ¶¶ 44-46.)

D. Ascension's Books and Records Rule Failures

Advisers Act Rule 204-2 requires SEC-registered investment advisers to make and keep certain true, accurate, and current books and records related to their advisory business, including "[a] journal or journals, including cash receipts and disbursements, records, and any other records of original entry forming the basis of entries in any ledger" (Rule 204-2(a)(1)) and "[g]eneral and auxiliary ledgers (or other comparable records) reflecting asset, liability, reserve, capital, income

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[7] The dates on which the above-referenced Form ADV Part 2A brochures were filed are on or about February 10, 2011 (bearing the date February 8, 2011), March 26, 2012 (bearing the date March 20, 2012), March 12, 2013 (bearing the date February 26, 2013), and February 26, 2015 (bearing the date February 26, 2015). (OIP ¶ 46, Answer ¶ 46; Exs. 11A-D).

and expense accounts." (Rule 204-2(a)(2)). 17 C.F.R. §§ 275.204-2(a)(1) & (a)(2). (OIP ¶ 29; Answer ¶ 29).

From Ascension's inception in June 2004 until at least November 2015, Ascension did not make and keep a true, accurate, and current journal reflecting Ascension's cash receipts and disbursements. In particular, although Ascension contends that it did maintain some financial records, Ascension did not dispute to OCIE that the firm had failed to maintain current cash receipts and disbursement records. (Pilgrim Decl., Ex. 12 (OCIE Deficiency Letter dated 6/16/16) at SEC-SEC-E-0008401-8402; Ex. 13 (Ascension Response to Deficiency Letter dated 7/14/16) at SEC-SEC-E-0008419; Pilgrim Decl., Ex. 14 (Gooder Tr. (2/22/17) at 87:5-88:2). Further, on October 11, 2017, the Division issued a subpoena to Ascension for these records; however, Ascension did not produce a journal. (*Id.*, Ex. 15 (Division Subpoena dated 10/11/17) at SEC-SEC-E-0004468 (Item 17.h.1); *but see* Ex. 16 (Ascension Subpoena Response Letter dated 11/14/17) at SEC-SEC-E-0004083 (claiming "responsive documents" were produced).

Likewise, from Ascension's inception in June 2004 until at least November 2015, Ascension did not make and keep a true, accurate, and current general ledger reflecting Ascension's assets, liabilities, reserves, capital, income, and expense accounts. Upon receiving a deficiency letter from OCIE, Ascension did not dispute OCIE's determination that it had failed to maintain a current general ledger. (Ex. 12 at SEC-SEC-E-0008401-8402; Ex. 13 at SEC-SEC-E-0008419). Moreover, on October 11, 2017, the Division issued a subpoena to Ascension for these records; however, Ascension did not produce a general ledger. (Ex. 15 at SEC-SEC-E-0004468 (Item 17.h.2)).[8]

[8] After a discussion with Ascension's and Gooder's counsel about the relevant subpoena item, 17.h, at Gooder's investigative testimony on December 22, 2017, the Division's staff sent

Instead of making and keeping the specific books and records required by Advisers Act Rule 204-2(a)(1) and 204-2(a)(2), Gooder testified that, prior to OCIE's examination of Ascension in late 2015, he "ran Ascension Asset Management out of a checkbook." (Ex. 8 at 50:4-12). Gooder has admitted that, before OCIE's examination in November 2015, he never took any steps to educate himself on the types of books and records that Ascension was required to make and maintain. (Ex. 1 at 105:12-19). This is true even though the Forms ADV that Gooder certified required him to certify that "the adviser's books and records will be preserved and available for inspection as required by law" and asked the adviser "[d]o you maintain some or all of the books and records you are required to keep under Section 204 of the Advisers Act, or similar state law, somewhere other than your *principal office and place of business*?" (*See, e.g.*, Ex. 6G at SEC-SEC-E-0003381, 3408) (emphasis in the original); *cf.*, Ex. 1 at 104:3-105:11 (Q. Did you even have a general understanding as to whether Ascension was required to maintain books and records? A. No. . . . Q. Did you see that language and the certification language every year when you filed Ascension's Form ADV? A. I suppose so.")

III. SUMMARY DISPOSITION IS APPROPRIATE PURSUANT TO RULE 250

A. Standards Applicable to the Division's Summary Disposition Motion

Rule 250 of the Commission's Rules of Practice permits a party to move "for summary disposition on one or more claims or defenses" with leave of the hearing officer. 17 C.F.R.

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counsel a follow up e-mail for any additional responsive records to this item. (Ex. 1 at 138:9-143:22; Pilgrim Decl., Ex. 17 (E-mail to Ascension counsel dated 12-26-17)). On January 8, 2018, Ascension produced hundreds of pages of additional records. (Pilgrim Decl., Ex. 18 (Letter to Division dated 1/8/18) at SEC-SEC-E-0004096). However, none of the produced records were a general ledger or journal.

§ 201.250(c).[9] The rule further provides that a hearing officer may grant a motion for summary disposition if there is no genuine issue with regard to any material fact and the party making the motion is entitled to summary disposition as a matter of law. *Id.*

Judges routinely grant summary disposition where scienter is not at issue, which applies here with respect to the Division's compliance, custody, and books-and-records charges against Respondents. But, even as to violations requiring scienter, summary disposition is appropriate where the material facts are undisputed. *See, e.g., S.W. Hatfield, CPA*, S.E.C. Release No. 3602, 2014 WL 6850921, at *3-9 (Commission Opinion) (Dec. 5, 2014) (reversing denial of summary disposition and finding Respondent liable for intentional and reckless violation of Exchange Act Rule 10b-5); *Executive Registrar & Transfer, Inc.*, S.E.C. Release No. 366, 2008 WL 5262371, at *29-31 (Initial Decision) (Dec. 18, 2008) (finding that transfer agent's president/control person aided and abetted entity's violations of Exchange Act rules on summary disposition), *notice of finality*, S.E.C. Release No. 59338, 2009 WL 366977 (Feb. 2, 2009).

B. Ascension Violated the Compliance Rule

Respondents are unable to establish a genuine issue of material fact concerning Ascension's violation of the Compliance Rule. The Compliance Rule requires registered investment advisers to: (a) adopt and implement written policies and procedures reasonably designed to prevent violation, by the adviser and supervised persons, of the Advisers Act and the rules thereunder; (b) review, no less frequently than annually, the adequacy of the policies and the effectiveness of their implementation; and (c) designate a CCO responsible for administering the policies and procedures. 17 C.F.R. § 275.206(4)-7. As with other rules issued under Section

[9] The Commission afforded the parties leave to file summary disposition motions in its May 7, 2019 Scheduling Order. *See Matter of Ascension Asset Management, LLC, et al.*, Advisers Act Release No. 5230 (Commission Order) (May 7, 2019).

206(4), no showing of scienter is required. *SEC v. Steadman*, 967 F.2d 636, 647 (D.C. Cir. 1992). As explained in the Implementing Release for Rule 206(4)-7, the Commission proposed this and related investment company rules "because it is critically important for funds and advisers to have strong systems of controls in place to prevent violations of the federal securities laws and to protect the interests of shareholders and clients." *Compliance Programs of Investment Companies and Investment Advisers*, Release No. IA-2204, 2003 WL 22971048, at *2 (Dec. 17, 2003).

It is undisputed that for more than a decade – from Ascension's inception and registration with the Commission in 2004 until after the start of OCIE's examination of Ascension in 2015 – Ascension did not adopt any written policies and procedures and did not conduct any annual reviews as required by the Compliance Rule. (OIP ¶ 11; Answer ¶ 11.) Ascension also did not designate a CCO who was responsible for administering compliance policies and procedures for the firm. *See supra*, at Section II.B.ii. Instead, Ascension identified one CCO – Platt – who had no authority and never performed any obligations as CCO, and identified another CCO – Smith – who never agreed to be, or even knew that he had been, identified as the CCO on Ascension's Form ADV. *Id.*

Given the undisputed facts establishing Ascension's Compliance Rule violations, the Division's motion for summary disposition of these claims should be granted.

C. Ascension Violated the Custody Rule

Respondents are unable to establish a genuine issue of material fact concerning Ascension's failure to comply with the Custody Rule. The Custody Rule requires registered investment advisers that maintain custody of client funds or securities to adequately safeguard and account for client assets by implementing certain procedures. The Custody Rule defines custody to mean "holding, directly or indirectly, client funds or securities, or having any authority to obtain

possession of them." 17 C.F.R. § 275.206(4)-2(d)(2). This includes possession of client funds or securities (*see* Rule 206(4)-2(d)(2)(i)) as well as "[a]ny capacity (such as general partner of a limited partnership, managing member of a limited liability company or a comparable position for another type of pooled investment vehicle, or trustee of a trust) that gives you or your supervised person legal ownership of or access to client funds or securities." 17 C.F.R. § 275.206(4)-2(d)(2)(iii).

The Custody Rule serves to ensure that investment advisers implement a robust set of controls over client assets to "prevent those assets from being lost, misused, misappropriated, or subject to advisers' financial reverses." *See Custody of Funds or Securities of Clients by Investment Advisers*, Release No. IA-2968 (Dec. 30, 2009), 75 F.R. 1456, 1457 (Jan. 11, 2010). Among other things, the Custody Rule requires a registered investment adviser with custody of client assets to retain an independent public accountant to verify those assets by a surprise examination at least once during each calendar year.[10] 17 C.F.R. § 275.206(4)-2(a)(4). Alternatively, if the client is a private fund (*i.e.*, "the account of a limited partnership (or limited liability company, or another type of pooled investment vehicle) that is subject to audit (as defined in rule 1-02(d) of Regulation S-X," *see* 17 C.F.R. § 275.206(4)-2(b)(4)), the registered investment adviser may satisfy the Custody Rule either through an annual surprise examination (17 C.F.R. § 275.206(4)-2(a)(4)) or by having the private fund timely distribute audited financial statements to the fund's investors and to have the audit performed by an independent public accountant subject to regular inspection by the PCAOB. 17 C.F.R. § 275.206(4)-2(b)(4). No showing of scienter is required to establish a violation of this rule. *Steadman,* 967 F.2d at 647.

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[10] Certain exceptions to the Custody Rule can relieve an investment adviser of various Custody Rule requirements; however, none are at issue here. *See* Rule 206(4)-2(b); 17 C.F.R. § 275.206(4)-2(b).

As described above, between 2005 and 2015, Ascension had custody over its clients' assets invested in the Westway private fund, but Ascension never subjected the fund to an annual audit or obtained a surprise examination to verify the assets. (OIP ¶¶ 23-24, 43, 45, 46; Answer ¶¶ 23-24, 43, 45, 46). Ascension also had custody over the Moll Trust account because Gooder was the sole trustee, but from July 2012 through at least December 2015, Ascension did not obtain a surprise examination to verify the trust assets. (OIP ¶¶ 25-27, 44-46; Answer ¶¶ 25-27, 44-46). Respondents' failure to take any of these required measures was not surprising given the alarming fact that Gooder never took any steps to educate himself on the requirements of the Custody Rule prior to the OCIE examination in November 2015. (Ex. 1 at 99:19-23).

Given the undisputed facts establishing Ascension's Custody Rule violations, the Division's motion for summary disposition should be granted on these claims. *See Abraham and Sons Capital, Inc.*, S.E.C. Release No. 1956, 2001 WL 865448, at *8 (Commission Opinion) (July 31, 2001) ("Even if we accept that the failure to comply with Rule 206(4)-2 was not deliberate, we still find that it was reckless.[11] Securities professionals are required to be knowledgeable about, and to comply with, the regulatory requirements to which they are subject.").

D. Ascension Violated the Books and Records Rule

The undisputed record establishes that, for more than a decade, Ascension failed to make and keep all the records required by Advisers Act Rule 204-2(a)(1) and Rule 204-2(a)(2),

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[11] As noted previously, the Division does not need to prove scienter to establish a violation of the Custody Rule by Ascension. *See id.* at *8 n.28 ("Lack of intent is no defense [to the Custody Rule violation]."); *Sands Brothers Asset Mgmt., LLC*, S.E.C. Release No. 3081, available at https://www.sec.gov/alj/aljorders/2015/ap-3081.pdf (Initial Decision) (granting motion for summary disposition and stating, "[s]cienter is not required to establish a violation of Section 206(4) and rules thereunder."); *see also Steadman*, 967 F.2d at 647. The holding in *Abraham and Sons Capital* quoted above concerning recklessness involved a respondent who was found liable for willfully aiding and abetting an advisory firm's Rule 206(4)-2(a)(5) violation.

promulgated pursuant to Section 204. *See* 15 U.S.C. § 80b-4 & 17 C.F.R. §§ 275.204-2(a)(1) & (a)(2). Violations of Section 204 and the rules thereunder do not require scienter. *Vernazza v. SEC*, 327 F.3d 851, 860 (9th Cir. 2003), *as amended*, 335 F.3d 1096 (9th Cir. 2003); *Disraeli & Lifeplan Assocs., Inc.*, S.E.C. Release No. 328, 2007 WL 675807, at *22 (Initial Decision) (March 5. 2007) (*citing SEC v. World-Wide Coin Ins. Ltd.*, 567 F. Supp. 724, 749, 751 (N.D. Ga. 1983)), *aff'd*, S.E.C. Release No. 8880, 2007 WL 4481515, at *13-14 (Commission Opinion) (Dec. 21, 2007), *aff'd*, App. No. 08-1037, 2009 WL 1791547 (D.C. Cir. June 19, 2009); *Amaroq Asset Mgmt. LLC,* S.E.C. Release No. 351, 2008 WL 2744866, at *13 (Initial Decision) (July 14, 2008) ("*Although books and records violations do not require a showing of scienter*, it is plain that Jones acted with a high degree of scienter.") (emphasis added), *notice of finality*, S.E.C. Release No. 2770, 2008 WL 3891308 (Aug. 22, 2008). Making and keeping a current and accurate journal and general ledger have been basic duties of investment advisers since July 1961. *See Requirement To Maintain Specified Books and Records*, 26 Fed. Reg. 5002 (June 6, 1961) (effective July 1, 1961).

Ascension failed to make and keep a current and accurate journal showing its receipts and disbursements, as required by Advisers Act Rule 204-2(a)(1). 17 C.F.R. § 275.204-2(a)(1). Ascension also failed to make and keep a current and accurate general ledger reflecting its assets, liabilities, reserves, capital, income and expense accounts, as required by Advisers Act Rule 204-2(a)(2). *See* 17 C.F.R. § 275.204-2(a)(2). When asked by the OCIE staff to provide these required book and records, Respondents failed to do so. (*See* Exs. 12-13). Instead, Gooder ran his business "out of a checkbook," (Ex. 8 at 50:4-7), but merely maintaining a checking account is no substitute for the journals and ledgers expressly called for by the rules. *See* 17 C.F.R. §§ 275.204-2(a)(1) &

(a)(2); Black's Law Dictionary (11th ed. 2019) (defining "ledger" and "journal").[12] Given the undisputed facts establishing Ascension's Books and Records Rule violations, the Division's motion for summary disposition should be granted on these claims. *See Disraeli & Lifeplan Assocs., Inc.*, S.E.C. Release No. 8880, 2007 WL 4481515 at *13-14 (finding that a registered investment adviser violated Section 204 by failing to furnish copies of prescribed books and records to the Commission upon request of the staff).

E. Ascension and Gooder Willfully Made Untrue Material Statements in Ascension's Forms ADV

Section 207 of the Advisers Act makes it "unlawful for any person willfully to make any untrue statement of a material fact in any registration application or report filed with the Commission under section 80b-3 or 80b-4 of [Title 15], or willfully to omit to state in any such application or report any material fact which is required to be stated therein." 15 U.S.C. § 80b-7. An entity and/or an individual who willfully makes an untrue statement on behalf of a registered investment adviser in a Form ADV may be held primarily liable for violating Section 207. *See, e.g., J.S. Oliver Capital Mgmt., LP*, S.E.C. Release No. 4431, 2016 WL 3361166, at *9 (Commission Opinion) (June 17, 2016), *settled on reh'g*, S.E.C. Release No. 5236, 2019 WL 2160136 (May 16, 2019); *Total Wealth Mgmt., Inc.*, S.E.C. Release No. 860, 2015 WL 4881991, at *38 (Initial Decision) (Aug. 17, 2015), *appeal dismissed as untimely*, S.E.C. Release No. 4329, 2016 WL 453458 (Feb. 5, 2016); *J. Baker Tuttle Corp.*, S.E.C. Release No. 13, 1990 WL 322592, at *3 (Initial Decision) (Dec. 21, 1990), *notice of finality*, S.E.C. Release No. 1271, 1991 WL

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[12] Black's Law Dictionary (11th ed. 2019) defines the term "ledger" to mean "[a] book or series of books used for recording financial transactions in the form of debits and credits; esp., a book in which a business or bank records how much money it receives and spends. – Also termed *general ledger*." (italics in original). It further defines the term "journal" in the context of accounting to mean, "[i]n double-entry bookkeeping, a book in which original entries are recorded before being transferred to a ledger.").

292046 (Feb. 13, 1991). The Form ADV and its amendments "embody a basic and vital part in our administration of the Advisers Act, and it is essential in the public interest that the information required by the application form be supplied completely and accurately." *Montford and Co., Inc.*, S.E.C. Release No. 3829, 2014 WL 1744130, at *16 (Commission Opinion) (May 2, 2014) (internal citations omitted), *pet. for review denied*, 793 F.3d 76 (D.C. Cir. 2015); *accord Arete Ltd.*, S.E.C. Release No. 780, 2015 WL 1885467, at *3 (Initial Decision) (Apr. 27, 2015), *notice of finality*, S.E.C. Release No. 4111, 2015 WL 3562618 (June 9, 2015).

Proving willfulness under Section 207 requires establishing that the respondent acted intentionally or recklessly. *See Robare Group, Ltd. v. SEC*, 922 F.3d 468, 479-80 (D.C. Cir. 2019) (concluding that an investment adviser does not "willfully" omit material facts from its Forms ADV under Section 207 of the Advisers Act if the omission is negligent). Here, there is no dispute that Ascension's Forms ADV falsely stated that the firm did not have custody of client assets. *See supra*, at Section III.C. It also cannot be disputed that this misrepresentation was material because "[t]he fact that the ADV form requires information . . . indicates that the information is material." *J. Baker Tuttle Corp.*, S.E.C. Release No. 13, 1990 WL 322592, at *3 ("The fact that the ADV form requires information about an adviser's billing practices indicates that the information is material.") (internal citations omitted). Moreover, this information, which is intended to safeguard client assets, would be material to a reasonable investor because a reasonable investor would want to know whether his or her adviser has the ability to misappropriate or lose his or her funds and securities.[13] *See Larry C. Grossman*, S.E.C. Release No. 727, 2014 WL 7330327, at *32 (Initial

[13] The Custody Rule is intended to ensure that investment advisers implement a robust set of controls over client assets to "prevent those assets from being lost, misused, misappropriated, or subject to advisers' financial reverses." *See Custody of Funds or Securities of Clients by Investment Advisers*, Release No. IA-2968 (Dec. 30, 2009), 75 F.R. 1456, 1457 (Jan. 11, 2010).

Decision) (Dec. 23, 2014) ("The IAAs and Forms ADV from 2003-2008 were additionally materially misleading because they did not disclose that Sovereign took custody of its clients['] assets. . . . These misstatements are material because the representation that an investment adviser will not retain custody of client assets provides an additional layer of security to investors; *investment advisers who do not have custody cannot improperly access client funds*.") (emphasis added), *aff'd in relevant part*, S.E.C. Release No. 4543, 2016 WL 5571616 (Commission Opinion) (Sept. 30, 2016), *vacated in part on other grounds*, S.E.C. Release No. 4871, 2018 WL 1532792 (Commission Order) (March 29, 2018), *vacated in part on other grounds*, S.E.C. Release No. 5281, 2019 WL 2870969 (Commission Order) (July 3, 2019).

Additionally, there is no genuine issue of material fact concerning whether Ascension and Gooder acted willfully by falsely stating on its Forms ADV that it did not maintain custody of client assets when, in fact, it did have custody of assets in a private fund and in a trust account. Gooder knew that he was the joint manager of the Westway private fund and knew that he was the sole trustee of the Moll Trust. Yet Gooder acknowledged that, prior to OCIE's examination of his firm in November 2015, he never took *any* steps to educate himself on the requirements of the Custody Rule. (Ex. 1 at 99:19-23 (Q. Before the [OCIE] examination in November 2015, the examination by the exam staff, did you ever take any steps to educate yourself on the requirements of the custody rule? A. No.)). As the sole manager and owner of an SEC-registered investment adviser with regulatory assets under management of $152,456,779 (OIP ¶ 4; Answer ¶ 4), Gooder's blatant failure to take any steps to educate himself about the Custody Rule and failure to comply with that rule over the course of several years constitutes reckless behavior. *See Larry C. Grossman*, Release No. 4543, 2016 WL 5571616, at *8 (finding that "Grossman [the founder, owner, and managing partner of a registered investment adviser] claimed that he was unaware of

the custody rules, but advisers are obligated to know the custody rules; Grossman's claimed lack of awareness was at least reckless."); *Abraham and Sons Capital, Inc.*, S.E.C. Release No. 1956, 2001 WL 865448, at *8 (finding that the president of a registered investment adviser acted recklessly because "[s]ecurities professionals are required to be knowledgeable about, and to comply with, the regulatory requirements to which they are subject."). Gooder's reckless conduct can be imputed to Ascension because he was the sole manager and owner who controlled the firm. *See SEC v. Blinder, Robinson & Co., Inc.*, 542 F. Supp. 468, 476 n.3 (D. Colo. 1982) (citing *SEC v. Manor Nursing Ctrs., Inc.*, 458 F.2d 1082, 1096-97 nn.16-18 (2d Cir. 1972)).

Gooder and Ascension also willfully violated Section 207 by falsely naming Platt and Smith as Ascension's CCO on his firm's Forms ADV when, in fact, neither of these individuals performed or was responsible for performing any duties at Ascension. Ascension's misstatements in this regard were intentional and willful because Gooder, as his firm's sole owner and sole manager, knew that Platt and Smith had no responsibilities as CCO and knew that the designations were, in his words, "window dressing." (Ex. 8 at 29:13-15) (Gooder's explanation for why he named Platt CCO and vice president). Gooder also knew that Platt and Smith were not responsible for administering any written policies and procedures on behalf of Ascension and knew that his firm had no written compliance policies and procedures at the time he reviewed, approved, and caused to be filed Ascension's inaccurate Forms ADV. *See supra*, at Section II.B.ii. Under these circumstances, Respondents cannot plausibly deny that their conduct was willful. *See J. Baker Tuttle Corp.*, S.E.C. Release No. 13, 1990 WL 322592, at *4 ("I find that these respondents acted willfully because the evidence is overwhelming that the billing information on the ADV forms was false and that the president, chairman and sole shareholder of the investment adviser knew the answers were false when he filed them."). *See also S.W. Hatfield*, S.E.C. Release No. 3602, 2014

WL 6850921, at *8 ("Even before March 8, 2010, Respondents were at least reckless in misrepresenting their status. Respondents had been in the industry for over fifteen years and knew that the Firm had to renew its license annually."); *SEC v. Platforms Wireless Intern. Corp.*, 617 F.3d 1072, 1094 (9th Cir. 2010) (noting that, in the context of a motion for summary judgment, "if no reasonable person could deny that the statement was materially misleading, a defendant with knowledge of the relevant facts cannot manufacture a genuine issue of material fact merely by denying (or intentionally disregarding) what any reasonable person would have known").[14]

Respondents' false representations identifying Platt and Smith as Ascension's CCO were also material because identifying a CCO was required information in Ascension's Forms ADV. *J. Baker Tuttle Corp.*, S.E.C. Release No. 13, 1990 WL 322592, at *4. Moreover, Gooder acknowledged the materiality of his firm's designation of its CCO by describing Smith's putative appointment and withdrawal as Ascension's "Compliance Officer" and SVP as "material changes" in the firm's Form ADV Part 2A brochures filed on February 10, 2011 and March 26, 2012. In particular, under the heading "Item 2 – Material Changes" within Ascension's Form ADV Part 2A brochure filed on February 10, 2011, Gooder identified Smith as a "new officer[]" of Ascension and portrayed Smith as holding the titles of SVP and "Compliance Officer." (Ex. 11A at SEC-SEC-E-0003764; Ex. 1 at 39:20-42:8). In the same section of Ascension's Form ADV Part 2A brochure filed on March 26, 2012, Gooder represented, as a material change, that "Patrick L. Smith, previously a Senior Vice President and Compliance Officer, is no longer affiliated with the

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[14] *Accord Larry C. Grossman*, S.E.C. Release No. 4871, 2018 WL 1532792 at *5 ("Grossman acted with scienter in not disclosing his conflict of interest. Grossman knew both that he was receiving compensation from the Battoo Funds and that he did not disclose this fact to his clients. In light of that knowledge, he acted with scienter.").

firm." (Ex. 11B at SEC-SEC-E-0003753); Ex. 1 at 45:11-46:6). Gooder's own conduct, therefore, confirms he understood that the designation of his firm's (putative) CCO was a material fact.

Gooder is also primarily liable for violating Section 207 of the Advisers Act because he reviewed, approved, signed, and caused Ascension's inaccurate Forms ADV to be filed. Gooder acted willfully because he knew that Platt and Smith were mere figureheads with no actual responsibilities, and, as the sole owner and operator of Ascension, Gooder had explicit responsibility for the firm's disclosures. *See, e.g., Total Wealth Mgmt, Inc.*, S.E.C. Release No. 860, 2015 WL 4881991, at *38 (finding that owner and CEO's "control and authority over [IA] are more than sufficient to hold him as a primary violator of Section 207"); *Larry C. Grossman*, SEC Release No. 727, 2014 WL 7330327, at *34 (founder liable for materially false Form ADV violations).

Given the undisputed facts set forth above, the Division's motion for summary disposition should be granted because the uncontroverted evidence establishes that Gooder and Ascension willfully violated Section 207 by filing with the Commission multiple Forms ADV containing materially untrue statements between 2005 and 2015.[15]

F. Gooder is Liable for Causing Ascension's Violations of the Compliance, Custody, and Books and Records Rules

Causing liability may be imposed on any person that "is, was, or would be a cause of the violation, due to an act or omission the person knew or should have known would contribute to such a violation . . . ." 15 U.S.C. § 80b-3(k)(1). To establish a respondent's liability for causing a

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[15] The OIP in this matter was filed in March 2019. All conduct cited herein that took place outside of the statute of limitations is cited to establish Respondents' motive, intent, or knowledge in committing violations that are within the statute of limitations. *Sharon M. Graham*, Exchange Act Release No. 40727, 1998 SEC LEXIS 2598, at *41 n.47 (Nov. 30, 1998) (citing Fed. R. Evid. 404(b) and *Local Lodge No. 1424 v. NLRB*, 362 U.S. 411 (1960)), aff'd, 222 F.3d 994 (D.C. Cir. 2000).

violation, the Division must show: (1) a primary violation; (2) an act or omission by the respondent that was a cause of the violation; and (3) that the respondent knew, or should have known, that his conduct would contribute to the violation. *See Robert M. Fuller*, S.E.C. Release No. 8273, 2003 WL 22016309, at *4 (Commission Opinion) (Aug. 25, 2003), *pet. for review denied*, App. No. 03-1334, 2004 WL 886330 (D.C. Cir. 2004) (*per curiam*). Negligence is sufficient to establish liability for causing a primary violation that does not require scienter. *See KPMG, LLP v. SEC*, 289 F.3d 109, 120 (D.C. Cir. 2002).

There is no genuine issue of material fact as to whether Gooder negligently caused Ascension's Compliance, Custody, and Books and Records violations. Gooder was the sole manager and operator of Ascension and even though he spent more than a decade running a lucrative business in a highly-regulated industry, he did not take even basic steps to educate himself about long-established Commission's rules. *See supra*, at Section II.A. When Gooder started Ascension, he had approximately 40 years of securities industry experience, including at other SEC-registered investment advisers. (OIP ¶ 6; Answer ¶ 6). He knew or should have known that there were compliance functions involved in operating a SEC-registered investment adviser. *Id.*; *accord S.W. Hatfield*, S.E.C. Release No. 3602, 2014 WL 6850921, at *8 (finding that Respondents acted *recklessly* in holding themselves out as CPAs where "Respondents had been in the industry for over fifteen years and knew that the Firm had to renew its license annually."); *see also Larry C. Grossman*, S.E.C. Release No. 4543, 2016 WL 5571616, at *8. Despite this fact, he failed to comply with the Rules and took no steps to educate himself about the Custody Rule or what books and records Ascension were required to maintain until after he learned OCIE would examine his firm. This conduct was reckless, which is more than sufficient to satisfy the negligence requirement for causing violations. *See id.*

Gooder was further put on notice of the regulatory requirements of investment advisers through his regular receipt of a "blizzard" of information from IAA about SEC-registered investment advisers' compliance obligations. However, Gooder conceded that while he read some of the IAA monthly bulletins, he "didn't read them in much depth and [he] really didn't appreciate what they were saying." (Ex. 1 at 95:21-96:1). It is also undisputed that Gooder failed to take other steps to educate himself about the Rules – for example, Gooder did not: (i) attend training events on investment advisory compliance issues that were offered by the IAA; (ii) read alerts on industry compliance issues sent from the IAA by e-mail; (iii) visit the Commission's website to review guidance on investment advisory compliance issues; or (iv) contact the Commission's staff for guidance on any investment advisory compliance issues. (OIP ¶ 9; Answer ¶ 9; Ex. 1 at 87:14-88:13, 89:11-91:1, 96:9-98:16, 101:14-20; *see also id.* at 102:15-18 (Q. I'll just ask generally, did you ever read any alerts that the IAA e-mailed to you concerning the custody rule requirements? A No.)).

Gooder's failure to take steps to educate himself about the Rules for over a decade—despite having ample opportunity to do so and despite knowing that he worked in a highly-regulated industry as an investment adviser—certainly constitutes negligent behavior, at a minimum. *Larry C. Grossman*, S.E.C. Release No. 4543, 2016 WL 5571616, at *8; *Abraham and Sons Capital, Inc.*, S.E.C. Release No. 1956, 2001 WL 865448, at *8 ("Even if we accept that the failure to comply with Rule 206(4)-2 was not deliberate, we still find that it was reckless. Securities professionals are required to be knowledgeable about, and to comply with, the regulatory requirements to which they are subject."). Accordingly, given the undisputed facts set forth above, the Division's motion for summary disposition should be granted against Gooder for causing Ascension's Compliance, Custody, and Books and Records violations.

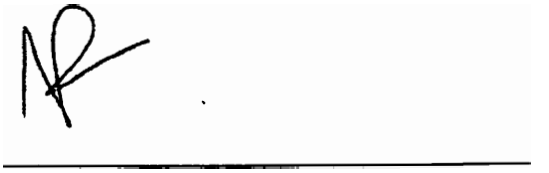
IV. CONCLUSION

For the foregoing reasons, the Division respectfully requests that its motion for summary disposition be granted on the issue of liability. The Division further requests that the Honorable Carol Fox Foelak determine at the September 9, 2019 hearing in this matter what sanctions are warranted in light of Respondents' multiple violations which persisted for at least a decade.

DATED: July 22, 2019

Respectfully submitted,

DIVISION OF ENFORCEMENT
By its Attorney:



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COUNSEL FOR
DIVISION OF ENFORCEMENT

CERTIFICATION PURSUANT TO RULE 250(e)

I, the undersigned counsel on behalf of the Division, certify that this motion together with any supporting memorandum of points and authorities (exclusive of any declarations, affidavits, deposition transcripts or other attachments), does not exceed 9,800 words. This certification relies upon based the word count of the word-processing program to prepare this document.

Counsel for the Division of Enforcement

CERTIFICATE OF SERVICE

In the Matter of Ascension Asset Management, LLC and Grenville M. Gooder, Jr.
Administrative Proceeding File. No. 3-19024

Service List

Pursuant to Commission Rule of Practice 151 (17 C.F.R. § 201.151), I certify that the foregoing:

DIVISION OF ENFORCEMENT'S MOTION FOR SUMMARY DISPOSITION AGAINST RESPONDENTS ASCENSION ASSET MANAGEMENT, LLC AND GRENVILLE M. GOODER, JR. AND MEMORANDUM OF LAW IN SUPPORT

was served on July 22, 2019 upon the following parties as follows:

BY E-MAIL

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Counsel for the Division of Enforcement

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-19024

In the Matter of

ASCENSION ASSET MANAGEMENT, LLC

and

GRENVILLE M. GOODER, JR.,

Respondents.

DECLARATION OF NICHOLAS A. PILGRIM IN SUPPORT OF THE DIVISION OF ENFORCEMENT'S MOTION FOR SUMMARY DISPOSITION AGAINST RESPONDENTS ASCENSION ASSET MANAGEMENT, LLC AND GRENVILLE M. GOODER, JR.

NICHOLAS A. PILGRIM, pursuant to 28 U.S.C. § 1746, declares:

1. I am a member in good standing of the bar of the state of New York. I am employed by the Securities and Exchange Commission ("Commission" or "SEC") as an Assistant Chief Litigation Counsel with the Division of Enforcement ("Division") in the Commission's Home Office in Washington, D.C. I represent the Division as trial counsel in the above-captioned matter.

2. Except as otherwise stated, I have personal knowledge of the matters set forth in this Declaration, and, if called as a witness, I could and would competently testify under oath to the facts stated herein.

3. I make this Declaration in support of the Division's Motion for Summary Disposition against Respondents Ascension Asset Management, LLC ("Ascension") and Grenville M. Gooder, Jr. ("Gooder") (collectively "Respondents").

4. This Declaration and its accompanying exhibits provide documentary support or attribution for facts that are set forth more fully in the Order Instituting Proceedings entered on or about March 7, 2019, and in the Division's Motion for Summary Disposition filed in the above-captioned matter.

5. Attached hereto as **Exhibit 1** is a true and correct copy of excerpts from a transcript of Gooder's investigative testimony given on December 12, 2017 in In the Matter of Ascension Asset Management, File No. HO-13084-A.

6. Attached hereto as **Exhibit 2** is a true and correct copy of an Investment Adviser Association ("IAA") bulletin dated November 1, 2005, along with an accompanying business record certification from IAA.

7. Attached hereto as **Exhibit 3** is a true and correct copy of an IAA bulletin dated March 3, 2014, along with an accompanying business record certification from IAA.

8. Attached hereto as **Exhibit 4** is a true and correct copy of an IAA bulletin dated September 1, 2010, along with an accompanying business record certification from IAA.

9. Attached hereto as **Exhibit 5** is a true and correct copy of an IAA Alert dated January 7, 2010.

10. Attached hereto as **Exhibit 6A** is a true and correct certified copy of Ascension's Form ADV filed with the Commission on or about September 14, 2005.

11. Attached hereto as **Exhibit 6B** is a true and correct certified copy of Ascension's Form ADV filed with the Commission on or about March 14, 2006.

12. Attached hereto as **Exhibit 6C** is a true and correct certified copy of Ascension's Form ADV filed with the Commission on or about March 14, 2007.

13. Attached hereto as **Exhibit 6D** is a true and correct certified copy of Ascension's Form ADV filed with the Commission on or about July 2, 2007.

14. Attached hereto as **Exhibit 6E** is a true and correct certified copy of Ascension's Form ADV filed with the Commission on or about January 30, 2008.

15. Attached hereto as **Exhibit 6F** is a true and correct certified copy of Ascension's Form ADV filed with the Commission on or about February 2, 2009.

16. Attached hereto as **Exhibit 6G** is a true and correct certified copy of Ascension's Form ADV filed with the Commission on or about March 23, 2010.

17. Attached hereto as **Exhibit 6H** is a true and correct certified copy of Ascension's Form ADV filed with the Commission on or about March 26, 2012.

18. Attached hereto as **Exhibit 6I** is a true and correct certified copy of Ascension's Form ADV filed with the Commission on or about February 19, 2013.

19. Attached hereto as **Exhibit 6J** is a true and correct certified copy of Ascension's Form ADV filed with the Commission on or about March 12, 2013.

20. Attached hereto as **Exhibit 6K** is a true and correct certified copy of Ascension's Form ADV filed with the Commission on or about March 11, 2014.

21. Attached hereto as **Exhibit 6L** is a true and correct certified copy of Ascension's Form ADV filed with the Commission on or about February 26, 2015.

22. Attached hereto as **Exhibit 7** is a true and correct copy of excerpts from a transcript of David Platt's deposition taken on or about June 18, 2019 in the above-captioned matter.

23. Attached hereto as **Exhibit 8** is a true and correct copy of excerpts from a transcript of Gooder's investigative testimony given on December 12, 2016 in In the Matter of Ascension Asset Management, File No. HO-13084-A.

24. Attached hereto as **Exhibit 9** is a true and correct certified copy of Ascension's Form ADV filed with the Commission on or about February 10, 2011.

25. Attached hereto as **Exhibit 10** is a true and correct copy of excerpts from a transcript of Patrick Smith's deposition taken on or about June 14, 2019 in the above-captioned matter.

26. Attached hereto as **Exhibit 11A** is a true and correct certified copy of Ascension's Form Firm Brochure filed with the Commission on or about February 10, 2011.

27. Attached hereto as **Exhibit 11B** is a true and correct certified copy of Ascension's Form Firm Brochure filed with the Commission on or about March 26, 2012.

28. Attached hereto as **Exhibit 11C** is a true and correct certified copy of Ascension's Form Firm Brochure filed with the Commission on or about March 12, 2013.

29. Attached hereto as **Exhibit 11D** is a true and correct certified copy of Ascension's Form Firm Brochure filed with the Commission on or about February 26, 2015.

30. Attached hereto as **Exhibit 12** is a true and correct copy of a letter dated June 16, 2016 sent from the SEC Office of Compliance Inspections & Examinations ("OCIE") to Gooder (hereinafter the "OCIE Deficiency Letter").

31. Attached hereto as **Exhibit 13** is a true and correct copy of a letter dated July 14, 2016 sent from Gooder to an Assistant Director at OCIE in response to the OCIE Deficiency Letter.

32. Attached hereto as **Exhibit 14** is a true and correct copy of excerpts from a transcript of Gooder's investigative testimony given on February 22, 2017 in In the Matter of Ascension Asset Management, File No. HO-13084-A.

33. Attached hereto as **Exhibit 15** is a true and correct copy of a cover letter dated October 11, 2017 along with a subpoena and related forms that were sent from the Division to counsel for Respondents in In the Matter of Ascension Asset Management, File No. HO-13084-A.

34. Attached hereto as **Exhibit 16** is a true and correct copy of a letter dated November 14, 2017 sent from Thomas J. McGonigle of Murphy & McGonigle, counsel for Respondents, to staff attorneys of the Division in response to the subpoena referenced in Exhibit 14.

35. Attached hereto as **Exhibit 17** is a true and correct copy of an e-mail dated December 26, 2012 sent from Luke Pazicky, a Senior Counsel with the Division, to counsel for Respondents in connection with In the Matter of Ascension Asset Management, File No. HO-13084-A.

36. Attached hereto as **Exhibit 18** is a true and correct copy of a letter dated January 8, 2018 sent from Alexandra J. Marinzel of Murphy & McGonigle, counsel for Respondents, to staff attorneys of the Division in connection with In the Matter of Ascension Asset Management, File No. HO-13084-A.

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

Executed on July 22, 2019.

Nicholas A. Pilgrim
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

COUNSEL FOR
DIVISION OF ENFORCEMENT

CERTIFICATE OF SERVICE

In the Matter of Ascension Asset Management, LLC and Grenville M. Gooder, Jr.
Administrative Proceeding File. No. 3-19024

Service List

Pursuant to Commission Rule of Practice 151 (17 C.F.R. § 201.151), I certify that the foregoing **Declaration of Nicholas Pilgrim in support of the Division of Enforcement's Motion for Summary Disposition Against Respondents Ascension Asset Management, LLC and Grenville M. Gooder, Jr.** was served on July 22, 2019 upon the following parties as follows:

BY E-MAIL

Thomas J. McGonigle
Murphy & McGonigle
1001 G Street, N.W.
Seventh Floor
Washington, DC 20001
(202) 661-7010 Direct
(202) 661-7059 Fax
[redacted] Mobile
thomas.mcgonigle@mmlawus.com
Counsel for Respondents

Counsel for the Division of Enforcement

EXHIBIT LIST	
Exhibit Number	**Description**
1	Transcript Excerpts of Grenville Gooder Jr., dated 12/12/2017 - Vol. I.D12.HQ-0324-18
2	Investment Advisor Association Newsletter, dated 11/1/2005 (SEC-SEC-E-0005103-14)
3	Investment Advisor Association Newsletter, dated 3/3/2014 (SEC-SEC-E-0005135)
4	Investment Advisor Association Newsletter, dated 9/1/2010 (SEC-SEC-E-0005115)
5	IAA Alert entitled "SEC Publishes New Adviser Custody Rule", dated 1/7/2010 (SEC-SEC-E-0005236)
6A	Ascension Asset Management ADV Form, dated 9/14/2005 (SEC-SEC-E-0003608)
6B	Ascension Asset Management ADV Form, dated 3/14/2006 (SEC-SEC-E-0003576)
6C	Ascension Asset Management ADV Form, dated 3/14/2007 (SEC-SEC-E-0003543)
6D	Ascension Asset Management ADV Form, dated 7/2/2007 SEC-SEC-E-0003475)
6E	Ascension Asset Management ADV Form, dated 1/30/2008 (SEC-SEC-E-0003443)
6F	Ascension Asset Management ADV Form, dated 2/2/2009 (SEC-SEC-E-0003410)
6G	Ascension Asset Management ADV Form, dated 3/23/2010 (SEC-SEC-E-0003378)
6H	Ascension Asset Management ADV Form, dated 3/26/2012 (SEC-SEC-E-0003295)
6I	Ascension Asset Management ADV Form, dated 2/19/2013 (SEC-SEC-E-0003247)
6J	Ascension Asset Management ADV Form, dated 3/12/2013 (SEC-SEC-E-0008858)
6K	Ascension Asset Management ADV Form, dated 3/11/2014 (SEC-SEC-E-0003202)

6L	Ascension Asset Management ADV Form, dated 2/26/2015 (SEC-SEC-E-0003112)
7	Transcript Excerpts of Deposition of David N. Platt, dated 6/18/2019
8	Excerpts of Grenville Gooder Jr. Transcript, dated 12/12/2016 (PDF Condensed)
9	Ascension Asset Management ADV Form, dated 2/10/2011 (SEC-SEC-E-0003344)
10	Transcript Excerpts of Deposition of Patrick Smith, dated June 14, 2019
11A	Ascension Asset Management ADV brochure, dated 2/8/2011 (SEC-SEC-E-0003762)
11B	Ascension Asset Management ADV brochure, dated 3/20/2012 (SEC-SEC-E-0003751)
11C	Ascension Asset Management ADV brochure dated 3/12/2013 (SEC-SEC-E-0003744)
11D	Ascension Asset Management ADV brochure, dated 2/26/2015 (SEC-SEC-E-0003737)
12	OCIE Deficiency letter, dated 6/16/2016 (SEC-SEC-E-0008394)
13	Ascension Asset Management, Deficiency Response letter, dated 7/14/2016 (SEC-SEC-E-0008404)
14	Transcript Excerpts of Grenville Gooder Jr., dated 2/22/2017
15	S.E.C. Division of Enforcement Division Subpoena, dated 10/11/2017 (SEC-SEC-E-0004459)
16	Ascension Asset Management Counsel response letter, dated 11/14/2017 (SEC-SEC-E-0004079)
17	S.E.C. Division of Enforcement email to AAM counsel, dated 12/26/2017 (SEC-SEC-E-0000145)
18	Ascension Asset Management Counsel letter re: subpoena dated 1/8/2018 (SEC-SEC-E-0004096)