INITIAL DECISION RELEASE NO. 468
ADMINISTRATIVE PROCEEDING
FILE NO. 3-14623

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

In the Matter of	:	
	:	
LEADDOG CAPITAL MARKETS, LLC,	:	INITIAL DECISION
f/k/a LEADDOG CAPITAL PARTNERS, INC.,	:	September 14, 2012
CHRIS MESSALAS, and	:	
JOSEPH LAROCCO, ESQ.	:	

APPEARANCES: Richard G. Primoff and Lucas Fitzgerald for the Division of Enforcement, Securities and Exchange Commission

David A. Schrader and Bruce A. Schoenberg of Schrader and Schoenberg, LLP, for Respondents Leaddog Capital Markets, LLC, f/k/a Leaddog Capital Partners, Inc., Chris Messalas, and Joseph LaRocco, Esq.

BEFORE: Carol Fox Foelak, Administrative Law Judge

SUMMARY

This Initial Decision (ID) concludes that Respondents Leaddog Capital Markets, LLC, f/k/a Leaddog Capital Partners, Inc. (Leaddog), Chris Messalas (Messalas), and Joseph LaRocco, Esq. (LaRocco), violated the antifraud provisions of the federal securities laws by making material misrepresentations and omissions to investors and potential investors in a hedge fund. The ID orders Respondents to cease and desist from violations of the antifraud provisions and, jointly and severally, to disgorge ill-gotten gains of $220,572 and pay a civil money penalty of $130,000 and imposes broker, dealer, investment adviser, and investment company bars. Additionally, the ID denies LaRocco, permanently, the privilege of appearing or practicing before the Securities and Exchange Commission (Commission) as an attorney.

I. INTRODUCTION

A. Procedural Background

The Commission instituted this proceeding with an Order Instituting Proceedings (OIP) on November 15, 2011, pursuant to Section 8A of the Securities Act of 1933 (Securities Act), Sections 15(b) and 21C of the Securities Exchange Act of 1934 (Exchange Act), Sections 203(e),

203(f), and 203(k) of the Investment Advisers Act of 1940 (Advisers Act), Section 9(b) of the Investment Company Act of 1940 (Investment Company Act), and Rule 102(e) of the Commission's Rules of Practice.[1] The undersigned held a six-day hearing between April 23 and May 17, 2012. Hearing sessions were held in New York City (April 23-27, 2012) and remotely (May 17, 2012). Five witnesses testified, including Messalas and LaRocco, and numerous exhibits were admitted into evidence.[2]

The findings and conclusions in this ID are based on the record. Preponderance of the evidence was applied as the standard of proof. See Steadman v. SEC, 450 U.S. 91, 97-104 (1981). Pursuant to the Administrative Procedure Act, 5 U.S.C. § 557(c), the parties' Proposed Findings of Fact and Conclusions of Law and the Division of Enforcement's (Division) Reply were considered. All arguments and proposed findings and conclusions that are inconsistent with this ID were considered and rejected.

B. Allegations and Arguments of the Parties

This proceeding concerns Respondents' dealings with advisory clients from approximately November 2007 through approximately August 2009. The OIP alleges that in the course of raising money from investors and operating a hedge fund, Respondents made various

[1] Exchange Act Section 4C, which was added by the Public Company Accounting Reform and Investor Protection Act of 2002, known as the Sarbanes-Oxley law, codified Rule 102(e)(1), which had been in existence for many years, and provided specific statutory authority for its provisions. The provisions of Rule 102(e) and of Exchange Act Section 4C are virtually identical. "It is well established that when Congress revisits a statute giving rise to a longstanding administrative interpretation without pertinent change, the 'congressional failure to revise or repeal the agency's interpretation is persuasive evidence that the interpretation is the one intended by Congress.'" CFTC v. Schor, 478 U.S. 833, 846 (1986) (citations omitted); see also Lorillard v. Pons, 434 U.S. 575, 580-81 (1978) ("Congress is presumed to be aware of an administrative or judicial interpretation of a statute and to adopt that interpretation when it re-enacts a statute without change [and] where, as here, Congress adopts a new law incorporating sections of a prior law, Congress normally can be presumed to have had knowledge of the interpretation given to the incorporated law, at least insofar as it affects the new statute." (citations omitted)); Cf. Herman & MacLean v. Huddleston, 459 U.S. 375, 384-85 (1983) (Congress's decision to leave Section 10(b) intact while comprehensively revising the securities laws suggested that Congress ratified the well-established judicial interpretation of the implied private right of action under Section 10(b)); Davis v. Mich. Dep't of Treasury, 489 U.S. 803, 813 (1989) ("When Congress codifies a judicially defined concept, it is presumed, absent an express statement to the contrary, that Congress intended to adopt the interpretation placed on that concept by the courts.").

[2] Citations to the transcript will be noted as "Tr. __." Citations to exhibits offered by the Division of Enforcement and by Respondents will be noted as "Div. Ex. __" and "Resp. Ex. __," respectively.

material misrepresentations and omissions concerning the liquidity of the fund's assets, conflicts of interest, related-party transactions, Messalas's disciplinary history, and other matters.

The Division is seeking cease-and-desist orders, disgorgement, third-tier civil money penalties, and bars. Respondents argue that the charges are unproven and no sanctions should be imposed.

II. FINDINGS OF FACT

As discussed below, Respondents established a hedge fund in late 2007 and provided materials to investors and potential investors containing incomplete or false representations as to Messalas's disciplinary history, the liquidity of the fund's investments, and related-party transactions.

A. Respondents and Other Relevant Entities

1. Leaddog Capital L.P.

Leaddog Capital L.P. (the Fund), the hedge fund operated by Respondents, is central to the events at issue. Tr. passim; Div., Resp. Exs. passim. Formed at the end of 2007, its first Private Placement Memorandum (PPM) was dated November 1, 2007. Tr. 418, 899; Div. Ex. 3. The Fund was to be focused on private placement investments in microcap public companies with market capitalizations under $250 million through the purchase of various types of convertible securities and common stock (Div. Ex. 3 at ENFLD-004410, 004415, 004445), would involve a high degree of risk (Div. Ex. 3 at ENFLD-004404, 004420, 004466), and limited liquidity (Div. Ex. 3 at ENFLD-004402-03, 004411, 004413, 004420, 004430). The general partner was to be paid a 2% management fee and 20% performance allocation. Div. Ex. 3 at ENFLD-004412, 004417, 004422, 004448-49. The Fund's accounts were to be audited at the end of each fiscal year by independent certified public accountants (CPAs) and copies of the CPAs' report were to be forwarded to the limited partners.[3] Div. Ex. 3 at ENFLD-004425, 004453, 004455. Subsequent PPMs, dated November 1, 2008, January 1, 2009, and August 1, 2009, also contained the foregoing representations. Div. Exs. 45, 81, 125.

The November 1, 2007, PPM limited withdrawals by limited partners to requests made after the one-year anniversary of the limited partner's capital contribution and then each December 31 thereafter and provided that the Fund would not be required to liquidate any of its underlying investments to fulfill withdrawal requests. Div. Ex. 3 at ENFLD-004412-13, 004459-60. The lock-up period was increased to two years in the November 1, 2008, and subsequent PPMs. Div. Ex. 45 at ENFLD-004565, Div. Ex. 81 at ENFLD-013703, Div. Ex. 125 at ENFLD-016803.

From November 2007 through approximately July 2009, Respondents raised approximately $2 million for investment in the Fund. Tr. 47, 68, 495; Div. Ex. 104 at ENFLD-014901.

[3] The purposes of this included marketing. Tr. 601; Div. Ex. 161.

2. Leaddog Capital Markets, LLC, f/k/a Leaddog Capital Partners, Inc.

Leaddog is owned 60% by Messalas and 40% by LaRocco.[4] Tr. 901, 988; Div. Ex. 81 at ENFLD-013707. LaRocco, as general counsel, drafted such documents as the PPM and subscription agreements, and was responsible for marketing materials and dealing with the Fund's auditor, Spicer Jeffries LLP (Spicer Jeffries). Tr. 630, 677, 984-85, 990. Messalas was responsible for trading, brokerage and bank accounts, and paying expenses. Tr. 630-631. He also approved disclosure documents drafted by LaRocco.[5] Div. Exs. 18, 19. There was also overlap between their responsibilities. Tr. 629.

3. Chris Messalas

Messalas entered the securities industry in 1992. Tr. 1060; Div. Ex. 151 at 6. He has specialized exclusively in microcap stocks. Tr. 1078. He has been associated with a number of broker-dealers: D.H. Blair & Co., Inc. (1992-1996), First United Equities Corporation (1996-1997),[6] H.J. Meyers & Co., Inc. (1998), May, Davis Group Inc. (10/1998-09/2000), Joseph Stevens & Company, Inc. (09/2000-11/2002), Park Capital Securities, LLC (Park Capital) (11/2002-01/2004),[7] Carlton Capital Inc. (Carlton Capital) (01/2004-11/2008), Wilmington Capital Securities,

---

[4] The original entity, Leaddog Capital Partners, Inc., was the general partner, investment manager, and administrator of the Fund through approximately January 2009. Div. Ex. 3 at ENFLD-004399, 004414, Div. Ex. 81 at ENFLD-013705. As compared with LaRocco, Messalas was dominant in this predecessor entity as well: Messalas was its CEO, president, and chairman of the board, and LaRocco was general counsel and a director. Div. Ex. 3 at ENFLD-004416. Leaddog Capital Markets, LLC, then became the general partner and investment manager, and another related entity, Leaddog Capital Equities, LLC, became the administrator. Div. Ex. 81 at ENFLD-013705. Gary T. Amato (Amato), who invested approximately $50,000 in the Fund, assisted in performing administrative services. Tr. 602-03; Div. Ex. 81 at ENFLD-013710, Div. Ex. 86, Div. Ex. 140 at ENFLD-058943. Respondents represented to investors that Amato was the Fund's administrator. Div. Ex. 88 at ENFLD-004835, Div. Ex. 104 at ENFLD-014904, Div. Ex. 122 at ENFLD-047490. Thomas G. Buckley, Jr., an investor in the Fund, considered the representation that the Fund had an outside administrator important in deciding whether to invest. Tr. 48-51.

[5] Messalas testified that he did not know why LaRocco sought his approval, which he considered unnecessary. Tr. 938-39.

[6] Messalas left this firm when it ceased operations due to legal problems. Tr. 958-59.

[7] Park Capital requested withdrawal of its NASD registration on January 15, 2004. Div. Ex. 192 at 2. Thereafter, the NASD brought a disciplinary proceeding against Park Capital (Disciplinary Proceeding No. CMS 040165). Id. at 1-4. The settlement order expelling Park Capital found that, from April 2002 through February 2003, two groups of its salesmen used fraudulent techniques to induce customers to purchase securities and other violations. Id. The settlement order does not mention Messalas, and he was not implicated in any wrongdoing at Park Capital. Tr. 1094; Div. Ex. 192 at 1-4.

LLC (Wilmington) (10/2008-01/2009), and Brookstone Securities, Inc. (Brookstone Securities) (01/2009-08/2009). Tr. 957-74; Div. Ex. 151 at 6. During the time at issue, Messalas was also the sole managing member of Roadrunner Capital Group, LLC (Roadrunner), an investment vehicle. Tr. 924, 1012-13; Div. Ex. 62 at ENFLD-055955.

During the time at issue, Messalas was chairman and CEO of The Carlton Companies, Inc. (The Carlton Companies),[8] parent of Carlton Capital. Tr. 903-05. Carlton Capital was the only active subsidiary of The Carlton Companies. Tr. 930. Messalas and Albert Wardi (Wardi) together controlled The Carlton Companies through their 50-50 ownership of a preferred share that had voting control. Tr. 933-34, 1064-65. Wardi was the president of Carlton Capital. Tr. 935-36.

In 2005, Messalas settled a customer complaint of misrepresentations and omissions regarding unsuitable investments in penny stocks (NASD Case No. 04-07733) and paid $45,000 in the settlement. Tr. 968-70; Div. Ex. 151 at 12-15. A subsequent complaint (NASD Arbitration No. 07-01963), filed on July 13, 2007, had been withdrawn as to Messalas by the time it was settled on February 20, 2009, with a payment of $15,000. Tr. 966-67; Div. Ex. 151 at 11-12.

Carlton Capital withdrew its FINRA (f/k/a NASD)[9] registration on November 14, 2008.[10] Tr. 971; Div. Ex. 150 at 2. FINRA also expelled it on January 8, 2009, for failure to pay a $40,000 fine to which it had agreed in settlement of a FINRA case.[11] Div. Ex. 150 at 15-18. When Carlton Capital went out of existence, Messalas transferred his registration to Brookstone Securities, after a brief stop at Wilmington. Tr. 948; Div. Ex. 151 at 1. Messalas was not an owner, direct or indirect, of Brookstone Securities (or of Wilmington), or an officer or principal. Tr. 1067-70. However, he was managing director of equities at both Carlton Capital and Brookstone Securities. Tr. 1070-71.

---

[8] On July 11, 2008, the entity's name was changed from Clayton, Dunning Group, Inc., to The Carlton Companies. Tr. 909; Div. Ex. 193 at 4.

[9] Pursuant to July 26, 2007, Commission approval, the member firm regulatory functions of the NASD and NYSE Regulation, Inc., were consolidated under the NASD, and the name of the expanded NASD was changed to Financial Industry Regulatory Authority, Inc., or FINRA. See Exchange Act Release Nos. 56146, 56148 (July 26, 2007); 91 SEC Docket 517, 522.

[10] Messalas testified that Wardi decided to close the firm because it was unprofitable. Tr. 971-72.

[11] FINRA had alleged that Carlton Capital was subject to but failed to comply with the "taping rule," NASD Rule 3010(B)(2), by providing certain registered representatives with access to unrecorded telephone lines on which they accepted customer orders, and that it committed other violations. Div. Ex. 48, Div. Ex. 150 at 16. Messalas was not the subject of the "taping rule" charges. Tr. 1093.

4. Joseph LaRocco, Esq.

LaRocco is a lawyer who has engaged in securities-related work for about fifteen years, doing such work as drafting purchase agreements for stock investments, placement agent agreements, and other documents related to hedge funds. Tr. 402-06, 471, 626. He has known Messalas, who was associated with broker-dealers for which LaRocco drafted documents, for several years. Tr. 403-08, 628, 899.

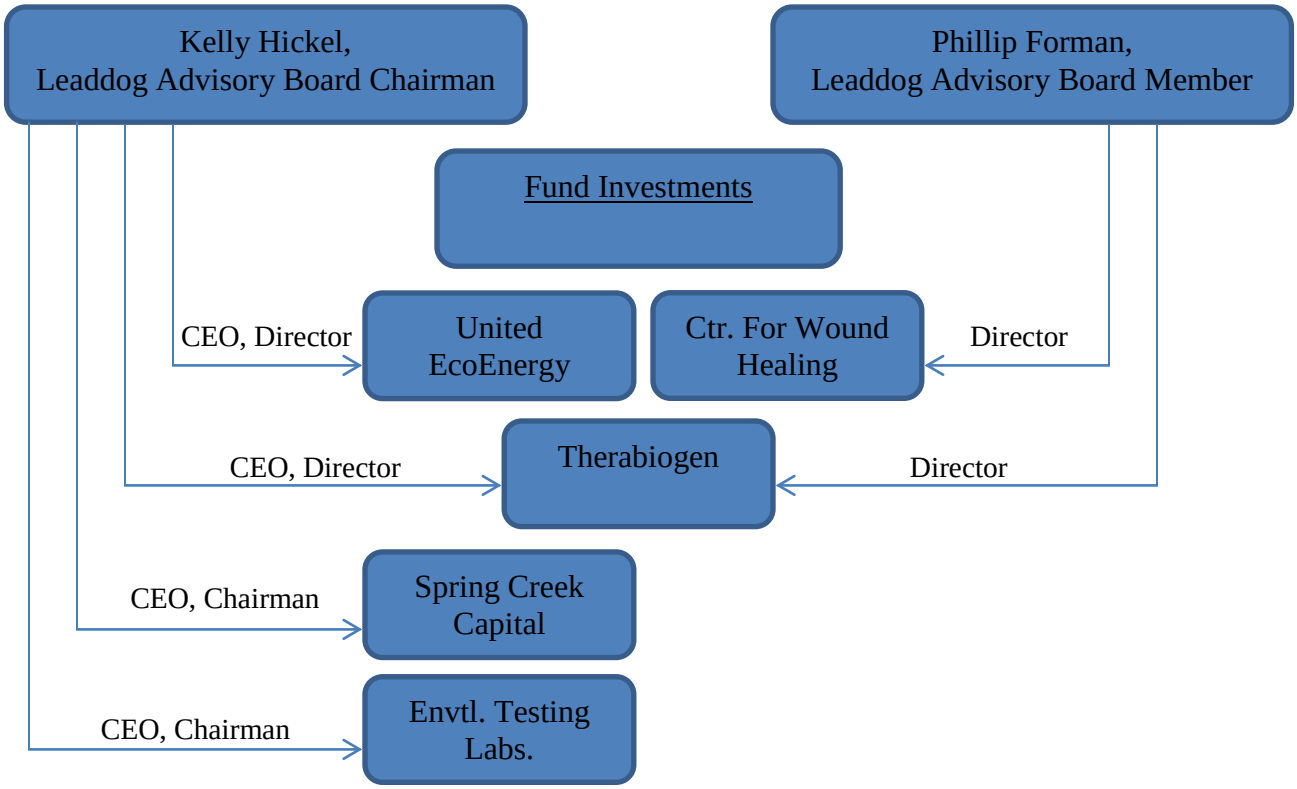
5. Related Entities and Individuals

In addition to Messalas, registered representatives associated with Carlton Capital included his sister-in-law Nicole DePasquale (a/k/a Mongelli), Wardi, Joe Gebron, Adam Mayblum (Mayblum), and Patrick Donelan. Tr. 909-10, 973-74, 1010. Wardi was also the president, CEO, and chief compliance officer of Carlton Capital. Tr. 1062-63, 1066-67; Div. Ex. 150 at 4; Resp. Ex. 38.

Several related entities and individuals were collocated with Respondents in New York City, first at 48 Wall Street, and then at 120 Wall Street. In addition to Messalas and LaRocco, Carlton Capital, Wardi, and Nicole Mongelli were located at 48 Wall Street. Tr. 429-30. After Carlton Capital closed, Brookstone Securities opened at 48 Wall Street. Tr. 462. Kelly Hickel (Hickel), chairman of Leaddog's advisory board, also worked at the 48 Wall Street location.[12] Tr. 464-65, 569, 868, 916-17, 923. In April 2009, Messalas, Leaddog, Nicole Mongelli, The Carlton Companies, and Brookstone Securities moved to 120 Wall Street.[13] Tr. 477, 499, 921, 923. Several of the companies in which the Fund invested also moved to 120 Wall Street – Therabiogen, Inc. (Therabiogen), United EcoEnergy Corp. (United EcoEnergy), and Spring Creek Capital Corp. Tr. 499, 922. Hickel was CEO and a director of these three companies, as well as of Environmental Testing Laboratories, Inc., another company in which the Fund invested, and Mayblum was a director of United EcoEnergy. Tr. 596; Div. Ex. 62 at ENFLD-055956-57, Div. Ex. 91 at 3, Div. Ex. 176 at 18; Resp. Ex. 81 at ENFLD-003520. Phillip Forman, the other member of Leaddog's advisory board, was also a director of Therabiogen and The Center for Wound Healing, another company in which the Fund invested. Tr. 452-53, 663, 868, 1052-53; Div. Ex. 137 at ENFLD-054967; Resp. Ex. 81 at ENFLD-003555. The above relationships were not disclosed to investors during the time at issue. The chart below depicts certain of the relationships.

[12] Hickel's business card, provided by Messalas, identified him as a "director" of Leaddog. Tr. 916; Div. Ex. 22.

[13] In approximately August 2009, Brookstone Securities closed its branch office at 120 Wall Street due to legal problems. Tr. 500-02; Div. Ex. 125.



6. Investor Thomas G. Buckley, Jr.

Thomas G. Buckley, Jr. (Buckley), invested in the Fund through his fund of funds, A Wall Street Fund, Ltd., in which he was essentially the only investor during the time at issue. Tr. 633. Buckley, aged approximately 85 and with several physical health problems during the time at issue, had drifted into investing from the operation of an eponymous construction company, which he had built from scratch, in the St. Louis, Missouri, area. Tr. 22, 83-84.

B. Disclosures Made to Investors and Potential Investors

1. Disclosures in the Fund's PPMs

The November 1, 2007, PPM warned that, as the Fund had no operating history, its "investment performance for the foreseeable future will depend largely on the abilities of the General Partner" and provided biographies of Messalas and LaRocco. Div. Ex. 3 at ENFLD-004416, 004427, 004433. Messalas's biography included his association with Carlton Capital and its parent and with all other broker-dealers with which he had ever been associated, except for the disgraced firms First United Equities Corporation and Park Capital. Div. Ex. 3 at ENFLD-004416. A subsequent PPM, dated November 1, 2008, additionally omitted Carlton Capital (but retained The Carlton Companies) from Messalas's biography. Div. Ex. 45 at ENFLD-004559. LaRocco sought and received Messalas's approval for this change. Div. Exs. 56, 194. A subsequent January 1, 2009, PPM (that was provided to Buckley) added Brookstone Securities. Div. Ex. 81 at ENFLD-

013707. A subsequent August 1, 2009, PPM omitted Brookstone Securities.[14] Div. Ex. 125 at ENFLD-016807.

Messalas claimed that he provided LaRocco with complete information regarding his associations and relied on LaRocco's legal judgment as to what to include in disclosure documents. Tr. 985-87. However, this is not entirely consistent with LaRocco's testimony. LaRocco testified that he had heard that there were charges brought against Park Capital, but did not know the details, including that the NASD had expelled the firm. Tr. 411-12. LaRocco knew that Messalas had some kind of ownership interest with Wardi in Carlton Capital, but was not sure of the relationship between Carlton Capital and The Carlton Companies. Tr. 420-22, 441-42. He was also not aware that Carlton Capital was subject to the NASD taping rule. Tr. 419. LaRocco learned from Messalas that FINRA brought charges against Carlton Capital but does not know precisely when he became aware of this. Tr. 432-34, 437, 439, 445-48. He also did not recall when Messalas told him that Carlton Capital was not going to pay its $40,000 fine or when he knew that FINRA expelled it. Tr. 457, 461. In any event, after discussion, Messalas and LaRocco decided that Carlton Capital's disciplinary history was not material. Tr. 505-06. In November 2008, after speaking with a potential investor who may have known of Carlton Capital's disciplinary situation, LaRocco advised Messalas that they should "update" the portion of his biography that referenced Carlton Capital. Div. Ex. 56. LaRocco said that he would have referred the investor to Messalas if asked specific questions about Carlton Capital. Tr. 453.

Concerning the complaints against Messalas himself, LaRocco knew that NASD Case No. 04-07733 had been settled for "nuisance value." Tr. 418. However, Messalas did not tell him what the allegations were, and he did not investigate further. Tr. 419, 648. LaRocco also did not know about NASD Arbitration No. 07-01963. Tr. 865.

2. Disclosures in Buckley's Due Diligence Questionnaire

Buckley first contacted Leaddog in February 2009, and LaRocco sent him the Fund's offering documents. Div. Ex. 81 at ENFLD-013688. He eventually invested $500,000[15] in the Fund after conversing with LaRocco and evaluating Messalas and LaRocco's responses to his due diligence questionnaire (DDQ). LaRocco compiled some of the responses to Buckley's DDQ and Messalas provided input on others, including Questions 31, 32, and 45, regarding the liquidity and concentration of the Fund's portfolio, and 35-37, regarding the disciplinary history of Leaddog's principals. Tr. 476, 478-79, 523-27, 637-40, 992-1000. Both Messalas and LaRocco signed the DDQ. Div. Ex. 88 at ENFLD-004837. Their response identified Messalas as the Fund manager and LaRocco as the point of contact. Id. at ENFLD-004834.

[14] LaRocco testified that he did not know why the changes regarding Carlton Capital and Brookstone Securities were made. Tr. 446-48.

[15] Buckley invested $100,000 on February 26, 2009, and $250,000 on May 29, 2009. Tr. 24-25, 46-47; Resp. Exs. 13, 15. He invested an additional $150,000 on July 30, 2009. Tr. 66-70; Div. Ex. 124.

Buckley asked LaRocco whether the two-year lockup could be waived; due to his age and health, he was concerned about being able to get his money out.[16] Tr. 41-46. Buckley further addressed this concern in Questions 31, 32, and 45 of his DDQ. Div. Ex. 88 at ENFLD-004836. Messalas provided the answers to these questions, which were on topics with which LaRocco was not conversant. Tr. 523-30, 637-38.

Question 31 asked, "What percent of the Fund assets are invested in non-liquid issues and cannot be marked to market each day?" Div. Ex. 88 at ENFLD-004836. The answer was "50%." Id. This response was not consistent with representations in the Fund's contemporaneous financial statements that approximately 92% of its investments had no readily ascertainable market values. Div. Ex. 110 at ENFLD-045785, 045791-94. Instead, using highly sophistical reasoning, Messalas read Question 31 to ask the percentage of non-liquid assets that could not be marked to market each day, while interpreting "marked to market" as having a bid and an ask that could be researched, regardless of how long it had been since the issue last traded. Tr. 1021-28, 1038-59, 1073-77. Thus, Messalas concluded that 50% was an appropriate answer, reasoning that 50% of the holdings were "Level 3" – no observable inputs, and 50% were "Level 2" – quoted prices in markets that are not active or have directly or indirectly observable inputs, although acknowledging that none was "Level 1" – quoted prices in active markets. Tr. 1022-26; Div. Ex. 110 at ENFLD-045792.

An example of illiquidity, United EcoEnergy, which comprised 26.64% of the Fund's securities investments, traded on only eighteen days between April 7, 2008, and Respondents' February 25, 2009, answer to Buckley's DDQ. Div. Ex. 110 at ENFLD-045798; Resp. Ex. 72.

Question 32 asked, "How long would it take to liquidate the entire Portfolio?" Div. Ex. 88 at ENFLD-004836. The answer was "6 months approximately." Id. Concerning this answer, Messalas considered that he was skillful at selling low-priced securities such as those that the Fund held and thus could liquidate the Fund's portfolio in six months by various means, including private sales. Tr. 1057-59, 1078-83.

Question 45 also addressed a concern related to liquidity: "Is there a maximum percent of the assets that will be risked on one trade?" Div. Ex. 88 at ENFLD-004836. Respondents answered, "No, but will try to limit investments to 5% per issuer maximum." Id. This statement was extremely misleading – 81% of the Fund's securities investments was concentrated in four issuers, with United EcoEnergy at 26.64%. Div. Ex. 110 at ENFLD-045798.

Question 35-37 asked, "Have the Manager or trader or other principals of the firm had any complaints, civil or criminal, filed against them anywhere at any time in a court of law or with a regulatory agency, state or federal whether proven or not and if so give details of the parties and the

[16] Buckley recalled that, after consulting with Messalas, LaRocco agreed to waive the two-year lockup. Tr. 43. LaRocco recalled that they did not agree to waive it but did agree to consider a request for early redemption in the event of extraordinary circumstances. Tr. 517-18, 650-51. Buckley did eventually make such a request, which was granted. Tr. 74-75, 660. Due to the Fund's lack of liquidity, however, only $50,000 of his $500,000 investment was actually returned. Tr. 76, 183, 522, 664-65.

outcome." Div. Ex. 88 at ENFLD-004836. The answer referenced a lawsuit, twelve years earlier, against LaRocco regarding an opinion letter but did not mention the NASD complaints against Messalas or against Carlton Capital. Id.

Messalas testified that he divulged his disciplinary history to LaRocco and relied on his legal judgment as to what to include in the answer to Question 35-37. Tr. 994-97, 1089-90. However, LaRocco did not know about the 2007 NASD complaint (NASD Arbitration No. 07-01963). Tr. 865. LaRocco also testified inconsistently as to whether he knew the details of the 2004 complaint (NASD Case No. 04-07733). Tr. 480-81, 639-40. In any event, LaRocco reasoned that the NASD was not "a regulatory agency, state or federal" and thus, he and Messalas collectively decided, complaints filed with that body need not be disclosed in response to Question 35-37. Tr. 479-81, 484-85. Somewhat inconsistently, LaRocco testified that he made the ultimate decision on the response. Tr. 640.

3. Disclosures in HedgeFund.net's Due Diligence Questionnaire

HedgeFund.net is a website, accessible to potential investors, on which hedge funds can place information about themselves. Tr. 489, 492. Respondents advised Buckley that the Fund's monthly returns were published on HedgeFund.net. Tr. 491; Div. Ex. 88 at ENFLD-004835 (Question 21). HedgeFund.net had two levels – a basic, free level and a premium level for $11,000 annually on which a hedge fund could expose more information to more investors. Tr. 988-89; Resp. Ex. 118 at ENFLD-011820.

Respondents began using the free level in October 2008. Tr. 492; Resp. Ex. 119. They decided to move to the paid level and filled out the required DDQ as of May 11, 2009. Tr. 493-94; Div. Ex. 104. The DDQ including Respondents' answers was posted on the HedgeFund.net website. Div. Ex. 128. Respondents answered "None" to Question IV.1. "Please describe any litigation, complaints, arbitration, regulatory action and/or other disputes involving your firm, or its employees, in the past 5 years. Include the nature of the action and its outcome if resolved." Div. Ex. 104 at ENFLD-014904. Messalas provided information to LaRocco and left it to his legal judgment as to how to answer the question. Tr. 670, 984-87. LaRocco's tortured explanation of why he omitted mention of FINRA's expulsion of Carlton Capital and of any arbitration against Messalas was that he interpreted the question as referring only to complaints, litigation, or arbitration against individuals or entities in their capacity at Leaddog. Tr. 497.

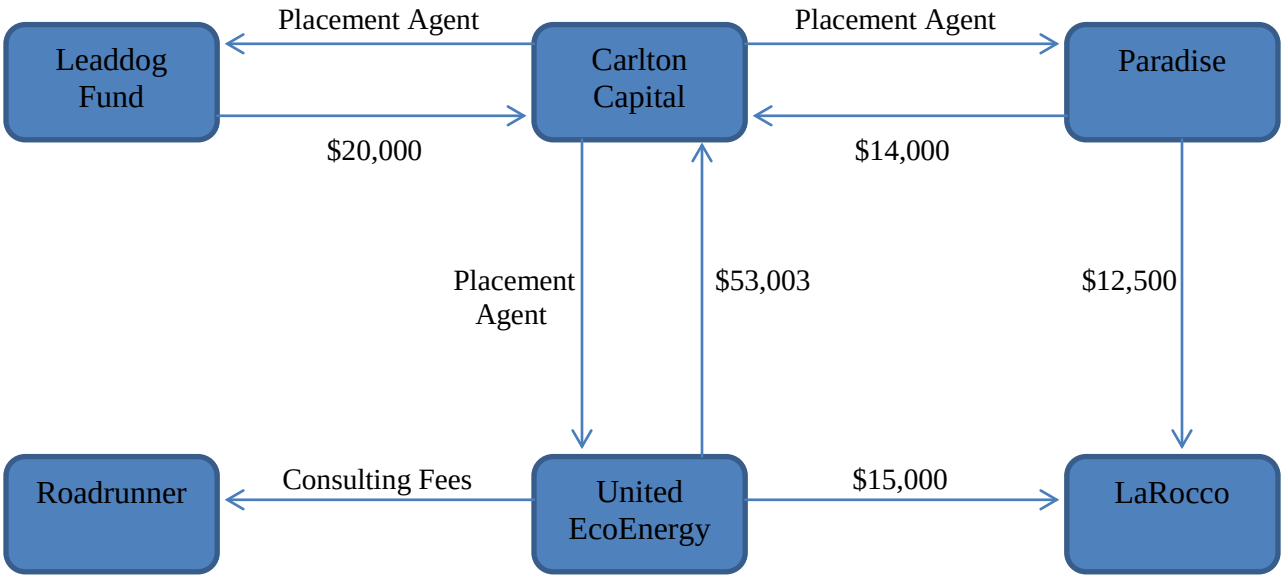
The purpose of paying HedgeFund.net $11,000 and filling out its DDQ with information to be posted on the website was to give the Fund more exposure to potential investors. Tr. 497. Somewhat unbelievably, Messalas testified that he did not know whether the purpose of the HedgeFund.net posting was for marketing the Fund or even what the purpose was. Tr. 988-91.

4. Disclosures in the Fund's Financial Statements

In December 2007, Messalas signed an agreement for Carlton Capital to act as the placement agent for an offering of United EcoEnergy stock. Tr. 582-83; Div. Ex. 158 at ENFLD-029334-42. United EcoEnergy paid Carlton Capital $53,003 and LaRocco $15,000 in fees pursuant

to the agreement.[17] Tr. 582-85; Div. Ex. 158 at ENFLD-054232-33. Messalas also signed an option agreement for his company, Roadrunner, to pay $50 for an option to purchase more than 6.9 million shares of United EcoEnergy. Tr. 1010; Div. Ex. 12. On the same day, Messalas signed an option agreement for the Fund to pay $50 for an option to purchase only 2 million shares of United EcoEnergy.[18] Tr. 1010; Div. Ex. 11. Also in 2008, the Fund loaned $25,000 to United EcoEnergy to be repaid from the proceeds of a stock offering in which Messalas and Carlton Capital were eligible to receive fees. Tr. 588-89; Div. Ex. 62 at ENFLD-056025-26.

In May 2008, Messalas signed an agreement for Carlton Capital to act as the placement agent for a securities offering of Paradise Music & Entertainment, Inc. (Paradise), another company in which the Fund invested. Tr. 596-98; Div. Ex. 160 at ENFLD-035110-20. Paradise paid Carlton Capital $14,000 and LaRocco $12,500 in fees pursuant to this agreement. Tr. 596-98; Div. Ex. 160 at ENFLD-054360-61. A few months later, Carlton Capital agreed to act as the placement agent for the general partner of the Fund, which paid Carlton Capital $20,000 in fees. Tr. 851-53; Div. Ex. 7 at 2, Div. Ex. 34. The above transactions were not disclosed in the Fund's financial statements during the time at issue. Div. Ex. 122 at ENFLD-047508. The financial statements were sent to investors. Div. Exs. 122, 161. The chart below depicts certain of the non-disclosed transactions.



[17] In May to June 2009, while Messalas was associated with Brookstone, United EcoEnergy paid Brookstone $30,740 and LaRocco $15,000 in fees pursuant to a subsequent placement agent agreement signed by Messalas. Tr. 590-94; Div. Ex. 159 at ENFLD-032479-87, 054188-89.

[18] United EcoEnergy also paid consulting fees to Roadrunner. Tr. 587-88, 1012; Div. Ex. 62 at ENFLD-056024-25.

Respondents did not disclose the related-party transactions to the Fund's auditor, Spicer Jeffries. Tr. 568-70. After learning of them in October 2009, Spicer Jeffries resigned as the Fund's auditor and retracted its report on the Fund's financial statements. Tr. 216-220, 274; Div. Ex. 182. LaRocco claims that the failure to disclose the transactions was based on a purported conversation he had with a member of the Spicer Jeffries audit team. Tr. 693-95. Inconsistent with previous assertions, LaRocco claims that this conversation took place with a staff member who did not testify at the hearing. Tr. 570-75. LaRocco also points to the Fund's PPM, which was provided to Spicer Jeffries and which warned against almost any eventuality but did not disclose the actual transactions that occurred. Tr. 198-99, 692-94; Div. Ex. 40. Spicer Jeffries's audit procedures included inquiring about any transactions with related parties. Tr. 311-13; Resp. Ex. 84 at ENFLD-007341. It was Respondents' responsibility to disclose them. Tr. 200-03, 278-79; Div. Ex. 115 at ENFLD-015361. The transactions described above were obviously related-party transactions, and specialized expertise was not needed to identify them as such.

C. Management Fees and Performance Allocations

The Fund paid Leaddog $13,389 in management fees[19] and $96,847 in performance allocations during the period November 1, 2007, to December 31, 2008. Div. Ex. 5 at ENFLD-002436, 002437, 002443.

D. Ability to Pay

LaRocco asserts that his financial condition supports a reduction in any substantial penalty that may be imposed. He and his family moved in with his parents about one year ago. Tr. 626. LaRocco submitted a number of financial statements that purported to substantiate his claim of inability to pay any substantial penalty. However, he was unable to validate certain figures because the documents were prepared by third parties. He was also unable to explain apparent inconsistency among the documents. Nonetheless, LaRocco's financial condition has been duly taken into account in determining whether disgorgement or a penalty is in the public interest. See 17 C.F.R. § 201.630(a).

III. CONCLUSIONS OF LAW

The OIP charges that Respondents willfully violated, and Messalas and LaRocco willfully aided and abetted and caused Leaddog's violations of, Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. Additionally, it charges that Leaddog and Messalas willfully violated, and Messalas caused and willfully aided and abetted Leaddog's violation, and LaRocco willfully aided and abetted and caused Leaddog's and Messalas's violations of Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder. As discussed below, it is concluded that they willfully violated those provisions.

[19] The 2% management fee amounted to $21,936, but Leaddog forgave the balance over the $13,389 that was actually paid. Div. Ex. 5 at ENFLD-002436, 002443.

A. Antifraud Provisions

Respondents are charged with willfully violating the antifraud provisions of the Securities, Exchange, and Advisers Acts – Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder – which prohibit essentially the same type of conduct. United States v. Naftalin, 441 U.S. 768, 773 n.4, 778 (1979); SEC v. Pimco Advisors Fund Mgmt. LLC, 341 F. Supp. 2d 454, 469 (S.D.N.Y. 2004).

Section 17(a) of the Securities Act makes it unlawful "in the offer or sale of" securities, by jurisdictional means, to:

> 1) employ any device, scheme, or artifice to defraud;
>
> 2) obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary to make the statement made not misleading; or
>
> 3) engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

Similar proscriptions are contained in Exchange Act Section 10(b) and Rule 10b-5 and in Advisers Act Section 206(4), as well as in Advisers Act Rule 206(4)-8, which applies specifically to "any investment adviser to a pooled investment vehicle."

Scienter is required to establish violations of Securities Act Section 17(a)(1) and Exchange Act Section 10(b) and Rule 10b-5. Aaron v. SEC, 446 U.S. 680, 690-91, 695-97 (1980); SEC v. Steadman, 967 F.2d 636, 641 & n.3 (D.C. Cir. 1992). It is "a mental state embracing intent to deceive, manipulate, or defraud." Aaron, 446 U.S. at 686 n.5; Ernst & Ernst v. Hochfelder, 425 U.S. 185, 193 & n.12 (1976); SEC v. Steadman, 967 F.2d at 641. Recklessness can satisfy the scienter requirement. See David Disner, 52 S.E.C. 1217, 1222 & n.20 (1997); SEC v. Steadman, 967 F.2d at 641-42; Hollinger v. Titan Capital Corp., 914 F.2d 1564, 1568-69 (9th Cir. 1990). Reckless conduct is "conduct which is 'highly unreasonable' and represents 'an extreme departure from the standards of ordinary care . . . to the extent that the danger was either known to the defendant or so obvious that the defendant must have been aware of it.'" Rolf v. Blyth, Eastman Dillon & Co., Inc., 570 F.2d 38, 47 (2d Cir. 1978) (quoting Sanders v. John Nuveen & Co., 554 F.2d 790, 793 (7th Cir. 1977)).

Scienter is not required to establish a violation of Securities Act Section 17(a)(2) or 17(a)(3) or of Advisers Act Section 206(4) and Rule 206(4)-8; a showing of negligence is adequate. See SEC v. Capital Gains Research Bureau, Inc., 375 U.S. 180, 195 (1963); SEC v. Steadman, 967 F.2d at 643 & n.5; Steadman v. SEC, 603 F.2d 1126, 1132-34 (5th Cir. 1979), aff'd on other grounds, 450 U.S. 91 (1981).

Material misrepresentations and omissions violate Securities Act Section 17(a), Exchange Act Section 10(b) and Rule 10b-5, and Advisers Act Section 206(4) and Rule 206(4)-8. The

standard of materiality is whether or not a reasonable investor or prospective investor would have considered the information important in deciding whether or not to invest. See Basic Inc. v. Levinson, 485 U.S. 224, 231-32, 240 (1988); TSC Indus., Inc. v. Northway, Inc., 426 U.S. 438, 449 (1976); SEC v. Steadman, 967 F.2d at 643.

1. Respondents Are Fiduciaries

Leaddog was the general partner of the Fund and received fees for managing the Fund. Thus it was an investment adviser within the meaning of the Advisers Act. See Section 202(a)(11) of the Advisers Act.[20] See also Goldstein v. SEC, 451 F.3d 873, 876 (D.C. Cir. 2006) (holding that the general partner of a hedge fund is an investment adviser within the meaning of the Advisers Act).

Messalas and LaRocco, as owners and principals of Leaddog, were associated persons of an investment adviser. See Advisers Act Sections 202(a)(17), 203(f). Investment advisers and their associated persons are fiduciaries. Fundamental Portfolio Advisors, Inc., Securities Act Release No. 8251 (July 15, 2003), 56 S.E.C. 651, 684; see Capital Gains Research Bureau, Inc., 375 U.S. at 191-92, 194, 201; see also Transamerica Mortg. Advisors, Inc. v. Lewis, 444 U.S. 11, 17 (1979). As fiduciaries, they are required "to act for the benefit of their clients, . . . to exercise the utmost good faith in dealing with clients, to disclose all material facts, and to employ reasonable care to avoid misleading clients." SEC v. DiBella, No. 3:04-cv-1342 (EBB), 2007 WL 2904211, at *12 (D. Conn. Oct. 3, 2007) (quoting SEC v. Moran, 922 F. Supp. 867, 895-96 (S.D.N.Y. 1996)), aff'd, 587 F.3d 553 (2d Cir. 2009); see also Capital Gains Research Bureau, Inc., 375 U.S. at 194 ("Courts have imposed on a fiduciary an affirmative duty of 'utmost good faith, and full and fair disclosure of all material facts,' as well as an affirmative obligation 'to employ reasonable care to avoid misleading' his clients." (footnotes omitted)). "[W]hat is required is '. . . not simply truth in the statements volunteered but disclosure' [of material facts]." Capital Gains Research Bureau, Inc., 375 U.S. at 201. "The law is well settled . . . that so-called 'half-truths' – literally true statements that create a materially misleading impression – will support claims for securities fraud." SEC v. Gabelli, 653 F.3d 49, 57 (2d Cir. 2011).

Leaddog is accountable for the actions of its responsible officers, Messalas and LaRocco. See C.E. Carlson, Inc. v. SEC, 859 F.2d 1429, 1435 (10th Cir. 1988) (citing A.J. White & Co. v. SEC, 556 F.2d 619, 624 (1st Cir. 1977)). A company's scienter is imputed from that of the individuals controlling it. 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

[20] Section 202(a)(11) provides:

> "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities . . . .

Cir. 1972)). As associated persons of Leaddog, Messalas's and LaRocco's conduct and scienter are also attributed to the firm. See Section 203(e) of the Advisers Act.

2. Aiding and Abetting; Causing

The OIP charges that Messalas and LaRocco "aided and abetted" and "caused" violations by Leaddog of Securities Act Section 17(a), Exchange Act Section 10(b) and Rule 10b-5, and Advisers Act Section 206(4) and Rule 206(4)-8, and LaRocco "aided and abetted" and "caused" Messalas's violation of those Advisers Act provisions. For "aiding and abetting" liability under the federal securities laws, three elements must be established: (1) a primary or independent securities law violation committed by another party; (2) awareness or knowledge by the aider and abettor that his or her role was part of an overall activity that was improper; and (3) that the aider and abettor knowingly and substantially assisted the conduct that constitutes the violation. See Graham v. SEC, 222 F.3d 994, 1000 (D.C. Cir. 2000); Woods v. Barnett Bank of Ft. Lauderdale, 765 F.2d 1004, 1009 (11th Cir. 1985); Investors Research Corp. v. SEC, 628 F.2d 168, 178 (D.C. Cir. 1980); IIT v. Cornfeld, 619 F.2d 909, 922 (2d Cir. 1980); Woodward v. Metro Bank of Dallas, 522 F.2d 84, 94-97 (5th Cir. 1975); SEC v. Coffey, 493 F.2d 1304, 1316-17 (6th Cir. 1974); Russo Sec. Inc., Exchange Act Release No. 39181 (Oct. 1, 1997), 53 S.E.C. 271, 278 & n.16; Donald T. Sheldon, 51 S.E.C. 59, 66 (1992), aff'd, 45 F.3d 1515 (11th Cir. 1995); William R. Carter, 47 S.E.C. 471, 502-03 (1981). A person cannot escape aiding and abetting liability by claiming ignorance of the securities laws. See Sharon M. Graham, Exchange Act Release No. 40727 (Nov. 30, 1998), 53 S.E.C. 1072, 1084 n.33, aff'd, 222 F.3d 994 (D.C. Cir. 2000). The knowledge or awareness requirement can be satisfied by recklessness when the alleged aider and abettor is a fiduciary or active participant. See Ross v. Bolton, 904 F.2d 819, 824 (2d Cir. 1990); Cornfeld, 619 F.2d at 923, 925; Rolf, 570 F.2d at 47-48; Woodward, 522 F.2d at 97. That is, it must be established that a respondent either acted with knowledge or that he "encountered 'red flags,' or 'suspicious events creating reasons for doubt' that should have alerted him to the improper conduct of the primary violator," or there was a danger so obvious that he must have been aware of it. Howard v. SEC, 376 F.3d 1136, 1143 (D.C. Cir. 2004).

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. Robert M. Fuller, Securities Act Release No. 8273 (Aug. 25, 2003), 56 S.E.C. 976, 984, petition for review denied, 95 F. App'x 361 (D.C. Cir. 2004). A respondent who aids and abets a violation also is a cause of the violation under the federal securities laws. See Graham, 53 S.E.C. at 1085 n.35. Negligence is sufficient to establish liability for causing a primary violation that does not require scienter. See KPMG Peat Marwick LLP, Exchange Act Release No. 43862 (Jan. 19, 2001), 54 S.E.C. 1135, 1175, recon. denied, Exchange Act Release No. 44050 (Mar. 8, 2001), 74 SEC Docket 1351, petition for review denied, 289 F.3d 109 (D.C. Cir. 2002), reh'g en banc denied, 2002 U.S. App. Lexis 14543 (D.C. Cir. 2002).

An associated person may be charged as a primary violator, where, as here, the investment adviser is controlled by the associated person. John J. Kenny, Securities Act Release No. 8234 (May 14, 2003), 56 S.E.C. 448, 485 n.54. Messalas as majority owner controlled the firm and thus may be charged as a primary violator. Id. Accordingly, as discussed below, the

undersigned has concluded that Messalas violated Advisers Act Section 206(4) and Rule 206(4)-8 (which proscribe fraudulent conduct by investment advisers), as well as Securities Act Section 17(a) and Exchange Act Section 10(b) and Rule 10b-5. Thus, it is unnecessary to address his secondary liability for violating those provisions.

3. Willfulness

In addition to requesting a cease-and-desist order pursuant to Sections 8A of the Securities Act, 21C(a) of the Exchange Act, and 203(k) of the Advisers Act and disgorgement pursuant to Sections 8A(e) of the Securities Act, 21C(e) of the Exchange Act, and 203(j) of the Advisers Act, the Division requests sanctions pursuant to Sections 15(b) and 21B of the Exchange Act, 203(e), 203(f), and 203(i) of the Advisers Act, and 9(b) of the Investment Company Act. Willful violations by Respondents must be found in order to impose sanctions on them pursuant to Sections 15(b) and 21B of the Exchange Act, 203(f) and 203(i) of the Advisers Act, and 9(b) of the Investment Company Act. A finding of willfulness does not require an intent to violate, but merely an intent to do the act which constitutes a violation. See Wonsover v. SEC, 205 F.3d 408, 413-15 (D.C. Cir. 2000); Steadman v. SEC, 603 F.2d at 1135; Arthur Lipper Corp. v. SEC, 547 F.2d 171, 180 (2d Cir. 1976); Tager v. SEC, 344 F.2d 5, 8 (2d Cir. 1965).

B. Antifraud Violations

The record shows that Respondents as fiduciaries violated the antifraud provisions by making material misstatements and omissions in the PPMs, their responses to the Buckley DDQ, their responses to the HedgeFund.net DDQ, and the financial statements that were sent to investors. These misstatements and omissions relate to Messalas's disciplinary history and that of broker-dealers with which he had been associated, the liquidity and concentration of the Fund's portfolio, and related-party transactions.

1. Disciplinary History

Messalas claimed that he provided complete information to LaRocco and relied on LaRocco's legal judgment as to what to disclose in the PPMs, Buckley's DDQ, and HedgeFund.net's DDQ.[21] In considering whether to credit an advice of counsel claim, the Commission considers four elements: "that the person made complete disclosure to counsel, sought advice on the legality of the intended conduct, received advice that the intended conduct was legal, and relied in good faith on counsel's advice" (footnote citing precedent omitted). Howard Brett Berger, Exchange Act Release No. 58950 (Nov. 14, 2008), 94 SEC Docket 11615, 11629-31, petition for review denied, 347 F. App'x 692 (2d Cir. 2009), cert. denied, 130 S. Ct. 2380 (2010). Counsel must also be independent. C.E. Carlson, Inc. v. SEC, 859 F.2d 1429, 1436 (10th Cir. 1988); Arthur Lipper Corp. v. SEC, 547 F.2d 171, 181-82 (2d Cir. 1976). The record contains little detail concerning the content of Messalas and LaRocco's discussions about disclosure. However, LaRocco was not, in fact, aware of Messalas's complete disciplinary history, nor was he aware of

[21] Messalas does not claim that LaRocco vetoed disclosure of information that he urged be disclosed.

the exact charges against Carlton Capital. Additionally, LaRocco, as a co-owner of Leaddog, was not independent. The facts show that both Messalas and LaRocco bear responsibility for the failure to disclose the disciplinary history. The disciplinary history is clearly material to an investor, and each individual Respondent had at least a reckless degree of scienter in withholding it, and each one's scienter is attributable to Leaddog. While they believe that to disclose the broker-dealers' disciplinary history could cause potential investors to judge Messalas unfairly, nonetheless a reasonable investor might consider this important in deciding whether or not to invest.

a. HedgeFund.net's DDQ

The response "None" to the question "Please describe any litigation, complaints, arbitration, regulatory action and/or other disputes involving your firm, or its employees, in the past 5 years" was unambiguously false, and Messalas did not need any special legal knowledge to know this. The information Respondents supplied, in an email from LaRocco, was intended to be seen by potential investors on the HedgeFund.net website. It is not necessary to prove that any particular investor viewed the information; reliance is not an element of an enforcement action for securities fraud.

b. Buckley's DDQ

While Buckley's DDQ did not specifically ask about discipline imposed by self-regulatory organizations (SROs), and the response (signed by Messalas and LaRocco) was technically accurate, the failure to include the SRO disciplinary history was a material omission – the facts that were disclosed were truthful, but the response was misleading. The omitted disciplinary information was clearly material. Omitting the information was intended to prevent Buckley from learning information that might dissuade him from investing. Further, the omission was inconsistent with Respondents' fiduciary obligation to Buckley. Finally, the omission was consistent with Respondents' omitting such information elsewhere and supports the willfulness of their conduct in doing so.

c. The PPMs

Messalas's biography in the PPMs highlighted his experience in the securities industry. It included his history of association with broker-dealers back to 1992, omitting those that had been expelled or ceased operations due to legal problems, as well as omitting his own disciplinary history. For example, when Messalas was no longer associated with Carlton Capital, his biography was revised to include his new association and omitted Carlton Capital from his historical associations. This partial disclosure was misleading. These omissions were clearly intentional and intended to keep potential investors from learning information that an investor might consider pejorative. The information omitted was clearly material. His dynamically edited employment history in successive PPMs supports the conclusion that the incomplete and/or untruthful responses to the DDQs were intentional.

2. Liquidity

The answers to Buckley's DDQ, provided by Messalas, as to the liquidity of Leaddog's portfolio were false. Far from being marketable assets readily convertible to cash, over 90% of Leaddog's investments had no readily ascertainable market values. Despite this, Messalas claimed that the portfolio could be liquidated in six months and attempted to justify this claim by stating that he could dispose of assets in private sales rather than in market transactions. The representation that Leaddog would "try to limit investments to 5% per issuer maximum" was manifestly false, given that the Fund's portfolio was concentrated in four issuers, with United EcoEnergy at 26.64%. Messalas's answers show at least a reckless degree of scienter – highly unreasonable and an extreme departure from the standards of ordinary care – and a clear violation of the fiduciary duty owed by an investment adviser. These representations were so far from the truth that LaRocco also, even absent special knowledge of trading the type of securities that Leaddog held, had to have known that they were misrepresentations. Accordingly, in addition to violating Securities Act Section 17(a) and Exchange Act Section 10(b) and Rule 10b-5, LaRocco aided and abetted and caused Leaddog's violation of those provisions and Leaddog's and Messalas's violations of Advisers Act Section 206(4) and Rule 206(4)-8.

The materiality of Respondents' misrepresentation about the Fund's liquidity is shown by the fact that Respondents were only able to return 10% of Buckley's investment because of the Fund's lack of liquidity. While Respondents point to boilerplate language in the offering materials warning against the possibility of almost any eventuality, this does not excuse misrepresentations. Again, Respondents' actions show at least a reckless degree of scienter.

3. Financial Statements

Financial statements for the Fund's first year that Respondents sent to investors failed to disclose related-party transactions. This omission was clearly material and intended to conceal negative facts about the Fund – the extent of related-party dealings. As such, it was made with at least a reckless degree of scienter. The record evidence shows that only LaRocco had direct contact with the Spicer Jefferies auditors, and there is no evidence in the record to indicate that LaRocco discussed with Messalas whether to disclose related-party transactions. Any claim analogous to a reliance on advice of counsel claim must fail because Respondents did not disclose the related-party transactions to Spicer Jeffries. Rather, Respondents blame the auditor either for not affirmatively telling them which transactions should be disclosed or for failing to discover them. Their attempt to evade responsibility for the cover-up underscores their culpability.

In sum, it is concluded that Leaddog, Messalas, and LaRocco willfully violated, and LaRocco willfully aided and abetted and caused Leaddog's violations of, the antifraud provisions of the Securities and Exchange Acts by their material misrepresentations and omissions concerning Messalas's disciplinary history and that of broker-dealers with which he had been associated in the PPMs, Buckley's DDQ, and HedgeFund.net's DDQ. Additionally, Leaddog and Messalas willfully violated, and LaRocco willfully aided and abetted and caused their violations of, Advisers Act Section 206(4) and Rule 206(4)-8 by the same material misrepresentations and omissions. Leaddog and Messalas willfully violated Securities, Exchange, and Advisers Acts' provisions by their material misrepresentations and omissions

concerning liquidity, and LaRocco willfully aided and abetted and caused those violations. Finally, Leaddog and LaRocco violated the Securities and Exchange Acts' provisions, and Leaddog violated the Advisers Act's provisions, by their material misrepresentations and omissions in the financial statements that were sent to investors, and LaRocco willfully aided and abetted and caused Leaddog's violations of those provisions.

IV. SANCTIONS

The Division requests cease-and-desist orders, disgorgement of $220,572 plus prejudgment interest, third-tier civil money penalties, and industry bars, and that LaRocco be denied, permanently, the privilege of appearing or practicing before the Commission. As discussed below, Respondents will be ordered to cease and desist from violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder; jointly and severally to disgorge $220,572 plus prejudgment interest; and to pay, jointly and severally, a third-tier civil penalty of $130,000. Broker, dealer, investment adviser, and investment company bars will be imposed on Messalas, and investment adviser and investment company bars, on LaRocco. Additionally, LaRocco will be denied, permanently, the privilege of appearing or practicing before the Commission as an attorney.

A. Sanction Considerations

In determining sanctions, the Commission considers such factors as:

> the egregiousness of the defendant's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the defendant's assurances against future violations, the defendant's recognition of the wrongful nature of his conduct, and the likelihood that the defendant's occupation will present opportunities for future violations.

Steadman, 603 F.2d at 1140 (quoting SEC v. Blatt, 583 F.2d 1325, 1334 n.29 (5th Cir. 1978)). The Commission also considers the age of the violation and the degree of harm to investors and the marketplace resulting from the violation. Marshall E. Melton, Advisers Act Release No. 2151 (July 25, 2003), 56 S.E.C. 695, 698. Additionally, the Commission considers the extent to which the sanction will have a deterrent effect. Schield Mgmt. Co., Exchange Act Release No. 53201 (Jan. 31, 2006), 87 SEC Docket 848, 862 & n.46. As the Commission has often emphasized, the public interest determination extends to the public-at-large, the welfare of investors as a class, and standards of conduct in the securities business generally. See Christopher A. Lowry, Advisers Act Release No. 2052 (Aug. 30, 2002), 55 S.E.C. 1133, 1145, aff'd, 340 F.3d 501 (8th Cir. 2003); Arthur Lipper Corp., 46 S.E.C. 78, 100 (1975). The amount of a sanction depends on the facts of each case and the value of the sanction in preventing a recurrence. See Berko v. SEC, 316 F.2d 137, 141 (2d Cir. 1963); see also Leo Glassman, 46 S.E.C. 209, 211-12 (1975).

B. Sanctions

1. Cease and Desist

Sections 8A of the Securities Act, 21B(e) and 21C(a) of the Exchange Act, and 203(k) of the Advisers Act authorize the Commission to issue a cease-and-desist order against a person who "is violating, has violated, or is about to violate" any provision of those Acts or rules thereunder. Whether there is a reasonable likelihood of such violations in the future must be considered. KPMG Peat Marwick LLP, 54 S.E.C. at 1185. Such a showing is "significantly less than that required for an injunction." Id. at 1183-91. In determining whether a cease-and-desist order is appropriate, the Commission considers the Steadman factors quoted above, as well as the recency of the violation, the degree of harm to investors or the marketplace, and the combination of sanctions against the respondent. See id. at 1192; see also WHX Corp. v. SEC, 362 F.3d 854, 859-61 (D.C. Cir. 2004).

Respondents' conduct was egregious and recurrent, continuing for many months. The conduct involved at least a reckless degree of scienter. The lack of assurances against future violations and recognition of the wrongful nature of the conduct goes beyond a vigorous defense of the charges. Messalas's attempt to displace blame onto LaRocco is an aggravating factor, as is LaRocco's attempt to displace blame onto Spicer Jeffries. Messalas's and LaRocco's chosen occupations in or related to the financial industry will present opportunities for future violations. The violations were neither recent nor remote in time, having ended about three years ago. The evidence of record does not quantify the degree of harm to the marketplace in dollars but harm is evident from the dishonest nature of Respondents' misconduct. In light of these considerations, a cease-and-desist order is appropriate.

2. Disgorgement

Sections 8A(e) of the Securities Act, 21B(e) and 21C(e) of the Exchange Act, 203(j) of the Advisers Act, and 9(e) of the Investment Company Act authorize disgorgement of ill-gotten gains from Respondents. Disgorgement is an equitable remedy that requires a violator to give up wrongfully-obtained profits causally related to the proven wrongdoing. See SEC v. First City Fin. Corp., Ltd., 890 F.2d 1215, 1230-32 (D.C. Cir. 1989); see also Hateley v. SEC, 8 F.3d 653, 655-56 (9th Cir. 1993). It returns the violator to where he would have been absent the violative activity.

The Division requests that Respondents be ordered to disgorge ill-gotten gains of $220,572. The Division reached this figure by doubling the amount Leaddog received during its first year of operation in management fees and performance allocation in order to include an estimated total for 2009. Respondents did not specifically dispute this calculation. Respondents will be ordered to disgorge $220,572. The amount of the disgorgement ordered need only be a reasonable approximation of profits causally connected to the violation. See Laurie Jones Canady, Exchange Act Release No. 41250 (Apr. 5, 1999), 69 SEC Docket 1468, 1487 n.35 (quoting SEC v. First Jersey Sec., Inc., 101 F.3d 1450, 1475 (2d Cir. 1996)), petition for review denied, 230 F.3d 362 (D.C. Cir. 2000); see also SEC v. First Pac. Bancorp, 142 F.3d 1186, 1192

n.6 (9th Cir. 1998) (holding disgorgement amount only needs to be a reasonable approximation of ill-gotten gains); accord First City Fin. Corp., 890 F.2d at 1230-31.

Respondents will be held jointly and severally liable for the disgorgement because Leaddog was Messalas's alter ego during the violative activities, with LaRocco as the other, 40%, owner. See Daniel R. Lehl, Securities Act Release No. 8102 (May 17, 2002), 55 S.E.C. 843, 874-75 & n.65 (citing SEC v. First Pac. Bancorp, 142 F.3d 1186, 1191 (9th Cir. 1998) (citing SEC v. Hughes Capital Corp., 124 F.3d 449, 455 (3d. Cir. 1997); SEC v. First Jersey Sec., Inc., 101 F.3d 1450, 1475 (2d. Cir. 1996); Hateley, 8 F.3d at 656)). Additionally, joint and several liability takes account of LaRocco's financial circumstances.

3. Civil Money Penalty

Sections 21B of the Exchange Act, 203(i) of the Advisers Act, and 9(d) of the Investment Company Act authorize the Commission to impose civil money penalties for willful violations of the Securities, Exchange, Advisers, or Investment Company Acts or rules thereunder. In considering whether a penalty is in the public interest, the Commission may consider six factors: (1) fraud; (2) harm to others; (3) unjust enrichment; (4) previous violations; (5) deterrence; and (6) such other matters as justice may require. See Sections 21B(c) of the Exchange Act, 203(i)(3) of the Advisers Act, and 9(d)(3) of the Investment Company Act; New Allied Dev. Corp., Exchange Act Release No. 37990 (Nov. 26, 1996), 52 S.E.C. 1119, 1130 n.33; First Sec. Transfer Sys., Inc., 52 S.E.C. 392, 395-96 (1995); see also Jay Houston Meadows, Exchange Act Release No. 37156 (May 1, 1996), 52 S.E.C. at 787-88, aff'd, 119 F.3d 1219 (5th Cir. 1997); Consol. Inv. Servs., Inc., 52 S.E.C. 582, 590-91 (1996).

As to Respondents, there are no mitigating factors. They violated the antifraud provisions, so their violative actions "involved fraud [and] reckless disregard of a regulatory requirement" within the meaning of Sections 21B(c)(1) of the Exchange Act, 203(i)(2) of the Advisers Act, and 9(d)(2) of the Investment Company Act. Deterrence requires substantial penalties against Respondents because of the abuse of the fiduciary duty owed to advisory clients.

Penalties are in the public interest in this case. Penalties in addition to the other sanctions ordered are necessary for the purpose of deterrence. See Sections 21B(c)(5) of the Exchange Act, 203(i)(3)(E) of the Advisers Act, and 9(d)(3)(E) of the Investment Company Act; see also H.R. Rep. No. 101-616 (1990). The Division requests that Respondents be ordered to pay third-tier penalties, without specifying dollar amounts or units of violation. In addition to arguing that there were no violations, Respondents argue that civil penalties are not warranted, much less third-tier penalties. A third-tier penalty, as the Division requests, is appropriate because Respondents' violative acts involved fraud and resulted in the risk of substantial losses to other persons and gains to themselves. See Sections 21B(b)(3) of the Exchange Act, 203(i)(2)(C) of the Advisers Act, and 9(d)(2)(C) of the Investment Company Act. Under those provisions, for each violative act or omission after February 14, 2005, the maximum third-tier penalty is $130,000 for a natural person and $650,000 for any other person. 17 C.F.R. § 201.1003. For violations after March 3, 2009, those values are $150,000 and $725,000, respectively. 17 C.F.R. § 201.1004. The provisions, like most civil penalty statutes, leave the precise unit of violation

undefined. See Colin S. Diver, The Assessment and Mitigation of Civil Money Penalties by Federal Administrative Agencies, 79 Colum. L. Rev. 1435, 1440-41 (1979).

The events at issue will be considered as one course of action related to marketing the Fund. Since Leaddog was essentially a two-man operation and was Messalas's alter ego during the violative activities, a total third-tier penalty amount of $130,000 will be ordered against Respondents, jointly and severally. Additionally, joint and several liability takes account of LaRocco's financial circumstances.

4. Bar

The Division requests an "industry bar." Broker, dealer, investment adviser, and investment company bars are authorized pursuant to Sections 15(b) of the Exchange Act, 203(f) of the Advisers Act, and 9(b) of the Investment Company Act[22] and will be ordered against Messalas.[23] Investment adviser and investment company bars will be ordered against LaRocco, who was not associated with a broker-dealer. Combined with other sanctions ordered, bars are in the public interest and appropriate deterrents. The violations involved scienter. Respondents' business provides them with the opportunity to commit violations of the securities laws in the future. The record shows a lack of recognition of the wrongful nature of the violative conduct. The individual Respondents' attempts to deflect blame onto others are aggravating factors. Because Respondents were fiduciaries, their abuse of the trust placed in them is particularly reprehensible.

5. Rule 102(e) Sanction

Rule 102(e) provides, "The Commission may censure a person or deny, temporarily or permanently, the privilege of appearing or practicing before it in any way to any person who is found . . . (iii) to have willfully violated, or willfully aided and abetted the violation of any provision of the Federal securities laws or the rules and regulations thereunder." The Commission has stated, "Not every violation of law . . . may be sufficient to justify invocation of the sanctions available under [the rule]. The violation must be of a character that threatens the

[22] The fact that the hedge fund was not a registered investment company is not a barrier to imposing an investment company bar. See Zion Capital Mgmt. LLC, Securities Act Release No. 8345 (Dec. 11, 2003), 57 S.E.C. 99, 110 n.27; see also Vladislav Steven Zubkis, Exchange Act Release No. 52876 (Dec. 2, 2005), 86 SEC Docket 2618, 2627, recon. denied, Exchange Act Release No. 53651 (Apr. 13, 2006), 87 SEC Docket 2584 (unregistered associated person of an unregistered broker-dealer barred from association with a broker or dealer).

[23] The Division's request also includes a collateral bar pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act). However, Respondents' misconduct antedates the July 22, 2010, effective date of the Dodd-Frank Act. Neither the Commission nor the courts have approved such retroactive application of its provisions in any litigated case, and the undersigned declines to impose the new sanction retroactively. See Koch v. SEC, 177 F.3d 784 (9th Cir. 1999); see also Sacks v. SEC, 648 F.3d 945 (9th Cir. 2011).

integrity of the Commission's processes in the way that the activities of unqualified or unethical professionals do." William R. Carter, Exchange Act Release No. 17597 (Feb. 28, 1981), 47 S.E.C. 471, 478. Violation of the antifraud provisions is clearly such a violation. As the Commission said, in another context (an administrative proceeding based on an injunction from violating the antifraud provisions), "[C]onduct that violates the antifraud provisions of the federal securities laws is especially serious and subject to the severest of sanctions under the securities laws." Melton, 56 S.E.C. at 713. Because of issues discussed in Carter and in the few additional litigated cases in which the Commission considered disciplining attorneys pursuant to Rule 102(e),[24] the Commission summarized its concerns relatively recently in Scott G. Monson, Investment Company Act Release No. 28323 (June 30, 2008), 93 SEC Docket 7517, 7522-25 & nn.9-26 and indicated that such proceedings were warranted only in cases of scienter-based conduct. In the instant case, LaRocco violated the antifraud provisions with scienter and thus should be denied the privilege of appearing or practicing before the Commission.

V. RECORD CERTIFICATION

Pursuant to Rule 351(b) of the Commission's Rules of Practice, 17 C.F.R. § 201.351(b), it is certified that the record includes the items set forth in the record index issued by the Secretary of the Commission on August 15, 2012, as corrected on September 11, 2012.[25]

VI. ORDER

IT IS ORDERED that, pursuant to Sections 8A of the Securities Act, 21C(a) of the Exchange Act, and 203(k) of the Advisers Act,

> Leaddog Capital Markets, LLC, f/k/a Leaddog Capital Partners, Inc., CEASE AND DESIST from committing or causing any violations or future violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder.

---

[24] Those cases are: Steven Altman, Esq., Exchange Act Release No. 63306 (Nov. 10, 2010), 99 SEC Docket 34405, petition for review denied, 666 F.3d 1322 (D.C. Cir. 2011) (permanent bar based on unethical and improper professional conduct while representing prospective witness in Commission administrative proceeding); Chris G. Gunderson, Esq., Exchange Act Release No. 61234 (Dec. 23, 2009), 97 SEC Docket 24040 (permanent bar based on injunction against violating antifraud and registration provisions); Scott G. Monson, Investment Company Act Release No. 28323 (June 30, 2008), 93 SEC Docket 7517 (dismissing proceeding against general counsel of broker-dealer based on unproven charges of causing broker-dealer's late trading violations; the Commission noted its "traditional reluctance to bring an administrative action against a lawyer for the negligent rendering of non-public legal advice to his or her own client." Id. at 7518).

[25] See Leaddog Capital Mkts., LLC, Admin. Proc. No. 3-14623 (A.L.J. Sept. 11, 2012) (unpublished) (deleting Respondents' Exhibit 86).

> Chris Messalas CEASE AND DESIST from committing or causing any violations or future violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder.
>
> Joseph LaRocco, Esq., CEASE AND DESIST from committing or causing any violations or future violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder.

IT IS FURTHER ORDERED that, pursuant to Sections 8A(e) of the Securities Act, 21B(e) and 21C(e) of the Exchange Act, 203(j) of the Advisers Act, and 9(e) of the Investment Company Act, Leaddog Capital Markets, LLC, f/k/a Leaddog Capital Partners, Inc., Chris Messalas, and Joseph LaRocco, Esq., jointly and severally, DISGORGE $220,572 plus prejudgment interest at the rate established under Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. § 6621(a)(2), compounded quarterly, pursuant to 17 C.F.R. § 201.600(b). Pursuant to 17 C.F.R. § 201.600(a), prejudgment interest is due from August 1, 2009, through the last day of the month preceding which payment is made.

IT IS FURTHER ORDERED that, pursuant to Sections 21B of the Exchange Act, 203(i) of the Advisers Act, and 9(d) of the Investment Company Act, Leaddog Capital Markets, LLC, f/k/a Leaddog Capital Partners, Inc., Chris Messalas, and Joseph LaRocco, Esq., jointly and severally, PAY A CIVIL MONEY PENALTY of $130,000.

IT IS FURTHER ORDERED that, pursuant to Sections 15(b) of the Exchange Act, 203(f) of the Advisers Act, and 9(b) of the Investment Company Act,

> Chris Messalas is barred from association with any broker, dealer, or investment adviser and is prohibited, permanently, from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter.
>
> Joseph LaRocco, Esq., is barred from association with any or investment adviser and is prohibited, permanently, from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter.

IT IS FURTHER ORDERED that, pursuant to Rule 102(e)(1) of the Commission's Rules of Practice, as authorized pursuant to Section 4C of the Exchange Act, Joseph LaRocco, Esq., is denied, permanently, the privilege of appearing or practicing before the Commission as an attorney.

Payment of penalties and disgorgement plus prejudgment interest shall be made on the first day following the day this Initial Decision becomes final. Payment shall be made by

certified check, United States postal money order, bank cashier's check, wire transfer, or bank money order, payable to the Securities and Exchange Commission. The payment, and a cover letter identifying the Respondent(s) and Administrative Proceeding No. 3-14623, shall be delivered to: Office of Financial Management, Accounts Receivable, 100 F Street N.E., Washington, DC 20549-6042. A copy of the cover letter and instrument of payment shall be sent to the Commission's Division of Enforcement, directed to the attention of counsel of record.

This Initial Decision shall become effective in accordance with and subject to the provisions of Rule 360 of the Commission's Rules of Practice, 17 C.F.R. § 201.360. Pursuant to that Rule, a party may file a petition for review of this Initial Decision within twenty-one days after service of the Initial Decision. A party may also file a motion to correct a manifest error of fact within ten days of the Initial Decision, pursuant to Rule 111(h) of the Commission's Rules of Practice, 17 C.F.R. § 201.111(h). If a motion to correct a manifest error of fact is filed by a party, then that party shall have twenty-one days to file a petition for review from the date of the undersigned's order resolving such motion to correct a manifest error of fact. The Initial Decision will not become final until the Commission enters an order of finality. The Commission will enter an order of finality unless a party files a petition for review or a motion to correct a manifest error of fact or the Commission determines on its own initiative to review the Initial Decision as to a party. If any of these events occur, the Initial Decision shall not become final as to that party.

_____

Carol Fox Foelak
Administrative Law Judge