INITIAL DECISION RELEASE NO. 359
ADMINISTRATIVE PROCEEDING
FILE NO. 3-12747

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

In the Matter of	:	
	:	INITIAL DECISION
MARIA T. GIESIGE	:	October 7, 2008

APPEARANCES: Thomas M. Melton and Karen L. Martinez for the Division of Enforcement, Securities and Exchange Commission

Robert G. Heim for Maria T. Giesige

BEFORE: Brenda P. Murray, Chief Administrative Law Judge

BACKGROUND

The Securities and Exchange Commission (Commission) issued an Order Instituting Administrative and Cease-and-Desist Proceedings on September 5, 2007. Resolution of the proceeding was delayed because of an unsuccessful attempt by the parties to settle. I held three days of hearing in Fort Wayne, Indiana, on June 2-4, 2008. The Division of Enforcement (Division) presented ten witnesses and introduced ninety exhibits. Maria T. Giesige (Giesige or Respondent) presented nine witnesses and introduced no exhibits. The last brief was filed on September 5, 2008.[1]

ISSUE

Whether in the period October 2005 through January 2006, Giesige willfully violated Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 (Securities Act); Sections 10(b) and 15(a) of the Securities Exchange Act of 1934 (Exchange Act) and Exchange Act Rule 10b-5; and Sections 206(1) and 206(2) of the Investment Advisers Act of 1940 (Advisers Act).

[1] I will cite to the transcript of the hearing as "(Tr. __.)." I will cite to the Division's and Respondent's exhibits as "(Div. Ex. __.)" and "(Giesige Ex. __.)," respectively. I will cite to the Division's and Respondent's Post-Hearing Briefs, and the Division's Reply Brief, as "(Div. Post-Hearing Br. __.)," "(Giesige Post-Hearing Br. __.)," and "(Div. Reply Br. __.)," respectively.

PENDING MOTIONS

On July 24, 2008, Giesige filed a Motion to Admit Additional Exhibits (Motion) that would put into evidence five emails that Giesige received from Don Hess relative to Carolina Development Company (Carolina Development).[2] On August 4, 2008, the Division filed an opposition to Giesige's Motion.

I GRANT the Motion pursuant to Rule 154 of the Commission's Rules of Practice for the following reasons. The emails are relevant to Giesige's claim that she had a basis for her position. One of Giesige's witnesses mentioned the emails, but she did not have them available. (Tr. 735-36.) The Division introduced similar emails into evidence. Admission of these late-filed exhibits does not substantially prejudice the Division.

On August 29, 2008, the Division filed a Motion to Strike Appendix A to Giesige's Post-Hearing Brief (Motion to Strike), which is Giesige's February 8, 2008, Sworn Statement of Financial Condition and an Order of Protection, together with supporting investigative documents. Giesige filed a response to the Division's Motion to Strike on September 18, 2008.

I GRANT the Division's Motion to Strike Appendix A from Giesige's Post-Hearing Brief. Appendix A contains material information about Giesige's financial condition that is not in the record. Allowing evidentiary material into evidence by way of attachments to briefs violates Rule 340 of the Commission's Rules of Practice that allows post-hearing filings of arguments and proposed factual findings based on facts in the record.[3]

FINDINGS OF FACT

The findings and conclusions herein are based on the entire record. I applied preponderance of the evidence as the standard of proof. See Steadman v. SEC, 450 U.S. 91, 102 (1981). I have considered and rejected all arguments and proposed findings and conclusions that are inconsistent with this Initial Decision.

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[2] Giesige Ex. A is an undated email, "Information on Don Hess and CDC Information;" Giesige Ex. B is an undated email from Don Hess, "Carolina Development Company Investors only meeting;" Giesige Ex. C is an email from Don Hess on April 25, 2006, "Carolina Development Company Update # 3 4-24-2006;" Giesige Ex. D is an email from Don Hess on May 23, 2006, "Carolina Development Company Update # 4;" and Giesige Ex. E is an undated email from Don Hess, "Our Investor to Investor Questionnaire."

[3] Giesige has waived her right to claim that she is unable to pay disgorgement or a civil penalty because she did not assert this claim at the hearing. See 17 C.F.R. § 201.630; Terry T. Steen, 67 SEC Docket 837, 847-48 (June 2, 1998).

Carolina Development

Carolina Development very much resembled a Ponzi scheme. (Tr. 109.) Carolina Development's principals were Lambert Vander Tag (Vander Tag), Joe Kraus, and Jonathan Carman (Carman). (Tr. 111.) Vander Tag, Carolina Development's leader, has used several names in the past and was the subject of a prior Commission enforcement action under the name Vander Tuig. (Tr. 149; Div. Ex. 8 at 14.)

Carolina Development raised approximately $52 million from about 1,400 or 1,500 investors on the pretext of having valuable assets and soon going public. (Tr. 107-08.) Carolina Development spent: about $23 million for assets (land, partnerships or options) or some business purpose; close to $10 million, or eighteen percent of the funds raised, on commissions to unlicensed sales people, including George Allendorf (Allendorf) and Fred Miller (Miller); and, $6 million to pay the personal expenses of Vander Tag and Carman, who used Carolina Development's funds as their piggy bank.[4] (Tr. 107-09.)

Carolina Development's headquarters in Irvine, California, consisted of a boiler room operation where about forty sales people used promotional scripts to make phone solicitations. (Tr. 126-27, 256; Div. Ex. 12 at 7.) Additional people around the country also solicited investors, and sales leads came from a web site that referred people to a staff of telemarketers in California. (Tr. 252.) A promised initial public offering (IPO) never occurred and the company never took any steps to make a public offering. (Tr. 206.) From September 1, 2004, through January 19, 2006, Carolina Development issued a net total of 33,196,527 shares. (Div. Ex. 8 at 5.) The shares were issued in the name of the Carolina Company at Pinehurst, which was the name Carolina Development used before Pinehurst, North Carolina, initiated a legal action. (Tr. 122; Div. Ex. 59 at 7.) There was only one company issuing one classification of stock, common stock. (Tr. 248, 268.)

During 2005, Carolina Development had 796,796 unrestricted, or free trading, shares outstanding. (Tr. 248; Div. 8 at 6.) Unregistered securities trade in the over-the-counter market and are reported in the National Quotation Service, Pink Sheets, an electronic quotation system. (Tr. 253; Div. Ex. 8 at 6.) During 2005, the Pink Sheets reported that Carolina Development's non-restricted shares traded at between $0.001 and $1.75 per share under the stock symbol CACP. (Tr. 248; Div. Ex. 8 at 6.) On February 10, 2006, CACP stock last traded at $0.10 per share. (Tr. 248; Division Ex. 8 at 6.)

The Commission began an investigation of Carolina Development in December 2005 as the result of a complaint or inquiry. (Tr. 244-45.) As the result of Commission action, the United States District Court for the Central District of California, Southern Division, appointed a Receiver for Carolina Development on February 16, 2006, and issued a preliminary injunction enjoining defendants from further violations of the securities laws. See SEC v. Vander Tuig,

[4] Some funds went to pay back investors in classic Ponzi scheme style. (Tr. 109.)

Civil Action No. SACV 06-0172AHS (C. Dist. Cal.).[5] (Giesige's Answer, Ex. A; Tr. 94; Div. Post-Hearing Br. 13-14.) The court issued a Preliminary Injunction Order on February 27, 2006, and a Final Judgment of Permanent Injunction and Other Relief Against Individual Defendants Lambert Vander Tuig and Jonathan Carman, on April 14, 2008. (Div. Exs. 93, 94.)

Giesige

Giesige is a high school graduate who has been employed in the financial services industry since 1986. (Tr. 13, 540-41.) In the period 2003 through at least June 2008, Giesige's husband was Jerry Giesige, an electrician at the General Motors plant in Defiance, Ohio. (Tr. 391, 577-78.)

Giesige passed the following examinations for: a Series 6 license on June 26, 1986;[6] a Series 26 license on April 6, 1988; a Series 63 license on March 7, 2003; and a Series 7 license on July 21, 2003. (Tr. 612; Div. Ex. 95.) In 1986, Giesige began selling mutual funds and health insurance and she became a "certified senior advisor, and started dealing with more estate planning." (Tr. 13.) In 2001, she relocated to Ohio from Connecticut and she has been licensed by the State of Ohio since 2001 to sell health and life insurance.[7] (Tr. 17-18, 539-40.) Since February 2007, Giesige has been an investment adviser registered in the State of Ohio. (Tr. 550-51.)

Giesige was a representative associated with a number of broker-dealers: Investors Capital Corp. (Investors Capital) from November 2004 to January 2007, Regis Securities Corporation from July 2003 to October 2004, and Ameritas Investment Corp. (Ameritas) from March 2000 to July 2003. (FINRA CRS # 1422131; 17 C.F.R. § 201.323.)[8] Giesige operates an office on Main Street in Ottawa, Ohio. (Tr. 705, 722.)

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[5] A receiver is a court-appointed neutral third party where there are assets involved in litigation that need to be seized, administered, or liquidated. (Tr. 89-93.)

[6] A Series 6 license, Investment Company Products/Variable Life Contracts, authorizes transactions in a limited number of securities: mutual funds, closed-end funds on the initial offering only, unit investment trusts, variable annuities, and variable life insurance.

[7] Giesige claims that prior to 2001 she had a Series 6 license and licenses from the State of Connecticut to sell life and health insurance and variable products which she did from 1997 to 2001 under the name Morgan Financial Services. (Tr. 18, 550-52.)

[8] According to Giesige, she was associated with Primerica Financial Services for eleven years, Commonwealth for two years, Ameritas for three years, and with Investors Capital, a Boston-based registered broker-dealer, from 2004 until January 2007. (Tr. 229, 541-49.) Giesige testified that she chose not to renew her relationship with Investors Capital because she wanted to become an investment adviser with its fee-based charges that were paid quarterly. (Tr. 548-49.) She also testified that she left Investors Capital at the end of 2005, and that she had not told Investors Capital that she was providing customers with fee-based asset management services. (Tr. 612.)

After she acquired her Ohio investment adviser registration in February 2007, Giesige continued the same type of activities that she had offered previously as a single proprietorship, but she incorporated and added LLC to the name of her business, Provision Financial & Estate Planning, LLC (Provision Financial).[9] (Tr. 12, 17, 552-53.) Giesige manages peoples' portfolios through brokerage accounts, 401(k) plans, IRAs, and the like, and bought and sold securities in their accounts. (Tr. 9, 11, 220-21; Div. Ex. 40 at 2.)

In 2003, Giesige clicked a link on the web site of the Chicago Board Options Exchange that advertised a brochure on hedge funds and alternative investments. (Tr. 21, 24.) She called the telephone number on the brochure and Allendorf returned the call. (Tr. 21, 553-54.) After several conversations, Allendorf, a salesperson with Brookstone Capital, suggested that Giesige invest in that company, which he represented would soon register its shares for sale to the public.[10] (Tr. 20, 22, 558-59.) Allendorf went from selling pre-IPO shares in Brookstone Capital to selling pre-IPO shares in Carolina Development. (Tr. 24, 554-55, 563.) Giesige did not know much or anything about Allendorf's background or whether he held any securities licenses. In 2003, Giesige invested $21,000 in Brookstone Capital and she recommended it to her customers even though she considered it an investment with substantial risk.[11] (Tr. 19, 23-24, 51, 82, 346, 556.) Giesige and Brookstone Capital represented to investors that an IPO would occur soon, but, in June 2008, Brookstone Capital still had not had an IPO. (Tr. 20, 292, 346, 557-58.)

In the fall in 2005, Allendorf told Giesige about Carolina Development. (Tr. 569.) Allendorf falsely represented that it owned "very good real estate holdings" and that it would soon register its shares and sell them to the public. (Tr. 564.) Allendorf gave Giesige a

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[9] In February 2006, the letterhead for Provision Financial stated, "Providing complete services for Estate Planning; Investments, Tax Shelters & Long Term Care Insurance. Also specialize in Life & Disability Income Insurance." (Div. Ex. 29.)

[10] Brookstone Capital is located in Costa Mesa, California. (Tr. 327, 555.) On June 19, 2008, the U.S. District Court for the Central District of California issued a preliminary injunction, froze the defendants' assets, and appointed a receiver in SEC v. Carver, Case No. CV08-627 CJC (RNBx). I take official notice of the Commission's Litigation Release No. 20631, which alleges that the defendants raised at least $21 million from nearly four hundred investors nationwide in a fraud scheme. See 17 C.F.R. § 201.323

[11] See Supra n.10. Without seeing audited financials, Giesige considered Brookstone Capital a positive investment even though the IPO had not happened five years after it was promised and she has never seen audited financials. (Tr. 557-59.) She characterized it as a wonderful company because shareholders were supposed to receive a twelve percent dividend, but instead, it had a stock split. (Tr. 556, 614-15.) Brookstone Capital is not listed in the Pink Sheets. (Tr. 557.) Giesige denied that Brookstone Capital is a similar fraud to Carolina Development. (Tr. 557.) As of June 3, 2008, Giesige had not independently verified any information supplied by Brookstone Capital. (Tr. 616-17.)

promotional package that included slick promotional material about Carolina Development that pictured Arnold Palmer, Jack Nicklaus, and Greg Norman, and attractive pictures of real estate that it purportedly owned, a Private Placement Memorandum or Offering (Private Placement Memorandum),[12] and a subscription agreement; a list of properties that Carolina Development allegedly owned; and several different lists that showed the "intrinsic value" of certain of its real estate properties.[13] (Tr. 28-35, 565-73; Div. Exs. 11, 13, 14, 16, 17, 18, 19, 20, 21.) Giesige also received copies of Carolina Development's 2005 Income Statement that showed a projected profit of $5,659,181 for 2005, and a Balance Sheet for year-end 2003, 2004, and the period ended November 2005. (Div. Ex. 10.) Giesige testified that she did not know what was meant by most of the items listed on the financial statements, such as Builder Rebates, Cust. Dep./Sale of Assets, Cost of Goods Sold, Production Expenses, Accounts Receivable, Inventory, and Non-depreciable Assets. (Tr. 59-60.)

Giesige passed all these materials and other information that she received from Allendorf on to investors. (Tr. 219-20, 238-239; Div. Exs. 52 at 16, 54 at 13, 15-16, 21.) Giesige describes her due diligence efforts to verify the accuracy of Carolina Development's information as follows:

> [W]e went to one of the properties around the National Golf Course and we actually stayed there and played golf and went to some of the properties and I had – I had done quite a bit of research just on the – on the Internet looking at – there was some kind of a link – I wanted to make sure that the two golf players that were on the front were really endorsing it. And so I did some reading on that and found that they, you know – they were – they seemed to be connected. And so I did as much verifying as I could on the Internet.

(Tr. 38.) Carolina Development paid for Giesige to have lunch and play golf when she visited the National Golf Course. (Tr. 68.)

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[12] The Private Placement Memorandum that was part of the package circulated to investors, contained a section on Investment Risks and stated: "Because of the significant risk associated with this offering, purchase of the shares should be considered only by sophisticated accredited investors who have substantial means, who can afford the illiquidity of this investment, who are prepared to sustain a complete loss in this investment and who meet the following suitability standards . . . ." Those standards include a net worth of at least one million dollars and income over $200,000 or $300,000 with a spouse, in each of the last two most recent years. (Div. Ex. 14 at 23.)

[13] A Private Placement Memorandum, dated November 15, 2005, is Div. Ex. 13, and what appears to be the same Private Placement Memorandum is part of the sales brochure. (Div. Ex. 14 at 18.) Division Exhibit 11 is a Private Placement Memorandum dated June 30, 2004. Several different iterations of this Private Placement Memorandum were found at Carolina Development's office. (Tr. 380.)

Giesige denies that she introduced her customers to Carolina Development, but the evidence indicates that she did. (Tr. 46.) She admits, however, that her husband passed on information she gave him to co-workers at General Motors and that she passed along information about Carolina Development to her clients and others and recommended Carolina Development as a good investment. (Tr. 26-27, 36-37, 46-47, 219-20.) When she first heard about Carolina Development, Giesige had between twenty-five and fifty customers, but "it absolutely exploded in number in a couple of months because it spread like wildfire all over General Motors and people were coming to [her] wanting to invest in this. And [she] gave them – [she] got the brochures from the company and [she] passed them along." (Tr. 26, 51, 578.) In two months time, approximately forty-five new people came to Giesige's office seeking information about Carolina Development. (Tr. 27.) In January 2006, Giesige arranged a meeting at her office for a total of about twenty-five people, "a combination of the people that were [her] clients prior and then many, many people from General Motors that were only interested in Carolina Development." (Tr. 55-56.) Giesige referred quite a few of her customers to Carolina Development's web site that contained the same information that Giesige received and distributed. (Tr. 36; Div. Ex. 12.)

Relying only on information from the company, Giesige and her husband invested "$21,000 in cash and then both Jerry and I put in $3900 each into a Roth IRA through Fiserv," in November 2005. (Tr. 576.) Giesige also represented to others that Carolina Development was a good investment opportunity. (Tr. 47, 50, 56, 220, 566-71, 606-09.) Giesige feels awful because she was "terribly misled and as a result [she] misled other people." (Tr. 608.)

Giesige talked with Allendorf and Miller after Carolina Development went into receivership and they "both seemed very, very sincere," and told her somehow Carolina Development "was going to be redeemed." (Tr. 587.) Giesige claims she tried to assist investors after the court found Carolina Development to be a fraud, but she could not find out what was happening from the Receiver or the Division; however, she admits she never called the Division. (Tr. 601-06, 626-27.) Giesige did not ask the Division for information because she did not want to get into trouble when all she was trying to do was to help people get into a good opportunity, and she understood that the Commission had a vendetta against Vander Tag. (Tr. 589-91.)

Through December 2007, Giesige continued to provide investors false information, including representing that investors would get their investments back plus a profit, criticizing the Receiver and the Commission, and claiming the Receiver's reports were inaccurate.[14] (Tr. 184-210, 232-36, 372, 410-11, 510-12, 655; Div. Exs. 29, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 48, 49, 50.) Giesige held a meeting at her office attended by about thirty people at which Allendorf and Miller were on a speaker phone and they and Giesige assured people that Carolina Development was not a scam. (Tr. 412-14.) Giesige told people that they could jeopardize everything if they talked with the Receiver. (Tr. 444.)

[14] Giesige remains in communication with Allendorf and, at the hearing, would not say she still considered him credible. (Tr. 227, 562.)

Giesige was not named in the legal action taken against Carolina Development, nor was she included in the distribution plan that the court adopted. (Tr. 135, 151.) In June 2008, all Giesige's securities licenses and state insurance licenses were active. (Tr. 17, 553.)

Giesige's testimony under oath was not credible. For example, Giesige testified that she considered Carolina Development to be an investment with substantial risk and that she told this to her customers. (Tr. 81-82.) However, most witnesses testified that: (1) Giesige was very confident about Carolina Development's upside potential following an IPO that would occur soon, and (2) Giesige did not explain that, as unregistered securities, Carolina Development shares were a very risky investment. (Tr. 296, 338, 364, 394-95, 398.) Giesige claims she did not know anything about the process a company goes through to register a security for public sale until she obtained a Series 7 securities license. (Tr. 14-15, 177-78, 221, 229-30; Div. Ex. 95.) However, she passed the Series 7 examination in 2003 and the sales of unregistered Carolina Development securities occurred in late 2005 and early 2006. Giesige could not remember if she told Investors Capital that she was providing fee-based asset management services in 2003 and 2004 because she was "not real clear on the dates." (Tr. 612.) She gave contradictory testimony that: (1) she was not compensated for her customers investing in Brookstone Capital, and (2) Brookstone Capital gave her 3,000 or 6,000 shares for placing customers in the investment. (Tr. 19, 613.)

Receiver

On February 16, 2006, Thomas Seaman was appointed Receiver of Carolina Development by the United States District Court for the Central District of California (Seaman or Receiver).[15] (Tr. 94.) The Receiver's sequential tasks were to: shut down the company which would cause the fraudulent activities to stop; take control of the company's books and records; perform an accounting to determine how the company had spent the money it raised from investors; and, assess whether there were opportunities to recover funds and return them to investors. (Tr. 94.) Among other things, the Receiver changed the locks on the premises, took over Carolina Development's web site, and sent out a questionnaire to investors and he asked them not to call him as it increases the cost to the estate. (Tr. 95-96, 137; Div. Ex. 6 at 15.)

The Receiver has expended considerable effort to recoup funds from the principals and has initiated legal proceedings against four attorneys who represented the company. (Div. Ex. 7 at 5-6.) The principals have provided no assistance. Untangling Carolina Development involved many transactions in which Carolina Development's principals purchased land and then Carolina Development gave large investors shares in the company and a deed of trust valued three times more than the principal had paid for the parcel. (Tr. 111-12.) The process is very expensive; everything the Receiver sells has to have three appraisals for each piece of property, and tax accountants and others are required to resolve the complex matters. (Tr. 165-66.)

[15] In 1979, Seaman earned a Bachelor's degree in Finance from the University of Illinois. He earned the designation "Chartered Financial Analyst" in 1993. He is a licensed real estate broker and a registered investment adviser in the State of California. Seaman is the sole shareholder of Thomas Seaman Company. (Tr. 88-89.)

Seaman found that Carolina Development had no revenue generating activities and its only revenue was from investors. (Tr. 102, 108.) It very much resembled a Ponzi scheme. (Tr. 109; Div. Ex. 7 at 3.) On February 16, 2006, Carolina Development had $4.4 million in a bank account, some real estate assets, and some office furniture. (Tr. 103.)

Carolina Development had no books and accounting records whatsoever. (Tr. 95, 100.) Seaman had to reconstruct accounting records from bank documents and from the computers found on the company's premises using a forensic expert. (Tr. 95.) Seaman believes he has identified all of Carolina Development's known assets. (Tr. 95-96.) There were no accounts receivable or inventory. (Tr. 103.) All the figures on the income statement, balance sheets, statement of assets, and land values that Carolina Development distributed were false. (Tr. 102-04, 110-120.) There was only one appraisal for the owned real estate and that was done by a bank pursuant to a loan. (Tr. 105.) One of the most egregious misrepresentations was the $200 million value given to the McHenry Ranch, CA (Sacramento) that Carolina Development allegedly owned. (Div. Ex. 16.) The land was located in a floodplain and could never be used to build homes, and Carolina Development did not own the land; it had an option that Seaman abandoned for ten dollars. (Tr. 116-18.) Similarly, Seaman could never locate "The Ranch," a parcel allegedly located in North Dallas, Texas, with an "intrinsic value" of $182 million. (Tr. 118; Div. Ex. 17.)

Seaman sold the most valuable real estate, 768 acres in Collin County, Texas, for $30 million dollars and netted $8 million after payment of secured liens. There are still approximately 240 acres of land in Moore County, North Carolina. (Tr. 97.) He seized bank accounts, discovered money hidden by the principals, prosecuted actions for disgorgement against salespeople licensed to sell securities, and, as of June 2008, had four actions pending against professionals who represented the company. (Tr. 97-98, 137.) He instituted a contempt action against Vander Tag for violating the freeze order and the District Court Judge "set her own motion to incarcerate him." (Tr. 149.)

The Receiver has asked Giesige to stop providing investors with false information about Carolina Development as in, for example, telling people that the principals were going to regain control of the company, and, in February 2008, telling investors that sixty percent of their investments would be returned because the Commission won a $29 million judgment against Vander Tag, when the funds will be almost impossible to collect. (Tr. 143-44.)

Seaman submits reports to the court every six months and these are posted on Carolina Development's web site. (Tr. 99; Div. Exs. 5, 6, and 7.) The court approves payment of Seaman's fees and the fees of the professional people that he has hired. (Tr. 99.) As of June 2, 2008, Seaman had been paid fees of about $850,000 and the law firm working with him had been paid about $1.2 million. (Tr. 165-66.)

Investor Witnesses

The record contains forty-five Preliminary Investor Response Forms submitted to the Receiver from defrauded investors who learned about Carolina Development from Giesige. (Tr.

139; Div. Exs. 44-47, 51-58, 60-92.) Several investor witnesses complained at the lack of information about the status of their investments. (Tr. 530, 696-701, 734-35, 776-78.) They expect the Receiver to answer their questions and to post periodic updates on the web site. They did not consider contacting the Commission, and they were unaware of the Commission's office of Investor Education and Advocacy and help@sec.gov. (Tr. 311-12, 324, 530, 657, 671, 734-35, 818-22.)

Brian Buss

Brian Buss (Buss) is an engineer with a Bachelor's degree in Business Administration from Ohio State and a Master's degree in Manufacturing Operations from Kettering, who worked with Giesige's husband at General Motors. (Tr. 389-91.) Buss understood that Giesige was a securities professional because she handled the "personal stock saving plans" (PSP) for some people at General Motors and she had an office and "the name of her office was on the door and it was advertised as financial advisor and estate planning."[16] (Tr. 391-92, 414-15.) Buss understood that one person paid Giesige in excess of $5,000 a year to manage his investments and another paid several hundred dollars a month. (Tr. 415.)

Buss attended a meeting at Giesige's office in mid-October 2005, with six or seven potential investors from General Motors, where Giesige talked about Carolina Development and they reviewed written material. (Tr. 394, 405, 420-21; Div. Ex. 14.) Buss knows that at least three other people who attended the meeting at Giesige's office invested in Carolina Development. (Tr. 406.) Giesige said that the company was going public within a month or two, that the book value was nine dollars a share but you could buy it for three dollars a share before November 2005, and that all indications were that it would open at twenty dollars a share and increase further. (Tr. 396, 399, 401-03.) Going public was very important to Buss because his intent was always to sell his shares as soon as possible. (Tr. 399, 408-09.)

Giesige told Buss that people needed to invest quickly because the IPO was going to occur before the end of the year. (Tr. 404, 426.) Giesige represented that Carolina Development had audited financial statements. (Tr. 397.) Based on Giesige's representations, Buss believed it was a low risk investment. (Tr. 394, 397.) Giesige recommended the purchase of Carolina Development shares. (Tr. 430.) She said she had worked with Allendorf in the past and she was very confident that this investment would result in financial gain. (Tr. 394-95, 401.) Buss believed Allendorf was on the board or was an executive with Carolina Development. (Tr. 401.) Neither Giesige nor Allendorf told Buss that they were earning commissions from the sales of Carolina Development. (Tr. 402.) Giesige did not say she lacked experience with IPOs or that the investment was highly speculative or high risk. (Tr. 398.)

Buss found out that Carolina Development was trading on the Pink Sheets for twenty or thirty cents a share before he invested. (Tr. 403.) He questioned Giesige and her response was that Buss had seen the ticker symbol of another company and that Carolina Development had

[16] A PSP is the General Motors retirement plan. It is similar to a 401(k) plan. (Tr. 392.)

bought that symbol to speed up the IPO. (Tr. 403-04, 425.) Giesige was very positive and very persuasive. (Tr. 395.)

Buss invested $10,500 in Carolina Development at three dollars a share on October 23, 2005. (Tr. 400, 407; Div. Ex. 47.) He delivered his check made out to Carolina Development to Giesige. (Tr. 428.) Some of these funds came from his retirement funds. (Tr. 407.) Buss told Giesige he was not an accredited investor, and she told him that Allendorf was allowing non-accredited investors to participate in this opportunity. (Tr. 401.)

Buss has heard that some people had their investments returned, but Giesige told him she could not return his funds. (Tr. 411-12, 427-28.)

Michael Ray Coe

Michael Ray Coe (Coe) of Defiance, Ohio, became an investment adviser client of Giesige's in 2005 after Coe heard his co-workers describe how Giesige managed their investments. (Tr. 781, 788-89.) Giesige's fee, paid quarterly, is based on a percentage of the value of Coe's portfolio. (Tr. 789.) Coe made an appointment to meet with Giesige at which he asked her about Carolina Development and she gave him materials. (Tr. 782.)

On December 13, 2005, Coe invested $49,980 for 15,160 shares of Carolina Development. (Div. Ex. 51 at 3.) Coe's questionnaire returned to the Receiver states that he paid three dollars a share. A portion of the investment, $4,500, was from Coe's IRA. (Div. Ex. 51 at 3.) Coe's wife invested her IRA in Brookstone Capital through Giesige. (Tr. 790.) Coe also invested in Lincoln Bio-Tech, which seems to be one of the Brookstone Capital affiliates.[17] (Tr. 790.) After thirty years with General Motors, Coe is now retired. (Tr. 781.)

Dennis Donaldson

Dennis Donaldson (Donaldson) from Continental, Ohio, learned of Carolina Development from his co-workers at General Motors. (Tr. 755-56.) He believes Giesige to be a securities professional. (Tr. 771.) He met Giesige at her office, and she discussed Carolina Development and gave him materials that he reviewed. (Tr. 756-60.) He also participated in a conference call that Giesige arranged between potential investors and Allendorf and looked at the web site. (Tr. 760-63; Div. Ex. 53 at 3.) Donaldson knew that Carolina Development expected to go public within a few months. (Tr. 772.) Giesige seemed to know what she was talking about, and Donaldson thought that Giesige had researched Carolina Development's financial information. (Tr. 760, 772.) Donaldson knew she visited one of the properties listed and "verified what was going on," and he knew she had invested in it also (Tr. 760, 768.)

Donaldson has his retirement plan and farming interests. His accredited investor status depends on land value. (Tr. 774.) Donaldson had never made an investment like Carolina Development before, it was a big step. (Tr. 762, 770.) Donaldson and his wife invested $21,000

[17] See Supra, n.10.

for 7,000 shares of Carolina Development at three dollars a share on October 25, 2005.[18] (Div. Ex. 53 at 2, 15.)

Beatrice May Hutson

Beatrice May Hutson (Hutson), age forty-seven, of Inman, Kansas, is a telecommunications project manager with some college credits. (Tr. 281.) In 2004 or 2005, Giesige took over managing Hutson's 401(k) plan when Hutson wanted the plan to do better for her retirement. (Tr. 282, 284, 286.) Hutson wanted a diversified portfolio with some high risk included, "but certainly not all high risk." (Tr. 283.) Hutson is not a sophisticated investor, and Giesige advises her on what investments to buy and sell; sometimes Giesige makes the buy and sell decisions and informs Hutson.[19] (Tr. 282-83, 286.)

At Giesige's recommendation, in October 2005, Hutson invested $31,500 in Carolina Development using a loan on her 401(k) plan. (Tr. 306; Div. Ex. 63 at 2.) Hutson is paying the loan from her 401(k) plan back at a rate of $850 a month, which is a financial hardship. (Tr. 307.) Giesige was the only one she talked with before she made the investment. (Div. Ex. 63 at 3.) Hutson looked at the Carolina Development web site at Giesige's recommendation. (Tr. 303.) Hutson introduced her mother and brothers to Giesige. (Tr. 313.) Hutson's mother invested $25,000 in Carolina Development using funds from her IRA and a reverse mortgage on her home. (Tr. 308.) Hutson's recollection was that her brothers, Jim, Drew, and Tim, invested $45,000, $20,000, and $50,000 or $60,000, respectively.[20] (Tr. 308.) Most of these funds were from retirement accounts, and all investments were made through Giesige. (Tr. 309.) Giesige

[18] Donaldson was frustrated when he received a request for information from the Receiver that he set aside because he was very busy with harvest. When he finally had time to read the letter, it said investors who missed a response date would be excluded. (Tr. 776-77.) Donaldson also contacted the Receiver urging caution because it appeared that the Receiver was selling property at very low prices compared to the asset values that Carolina Development had circulated. (Tr. 778.)

[19] In 2004 or 2005, Hutson invested $21,000 through Giesige in Brookstone Capital, another security that was supposed to go public soon. (Tr. 281, 291-92.) Hutson understood that Brookstone Capital was a mutual fund. (Tr. 318.) Brookstone Capital's latest projection for going public is eighteen or twenty-four months from June 2008. (Tr. 292.)

[20] The evidence shows the following investments in Carolina development because of Giesige:

Antoinette Hutson	$45,000
Beatrice Hutson	$31,500
Drew Hutson	$19,800
James L. Hutson	$45,000
Miriam E. Hutson	$31,980
Timothy E. Hutson	$35,190

(Div. Exs. 62-67.)

knew the source of investment funds that Hutson and her mother used to invest in Carolina Development. (Tr. 306-08.) Her mother has suffered a financial hardship from the loss of the funds she invested in Carolina Development. (Tr. 308.)

Giesige told Hutson that she had done due diligence to feel comfortable that Carolina Development was a good investment and recommended that Hutson make the investment. (Tr. 288, 293.) Giesige represented that she had done research on the properties that Carolina Development owned. (Tr. 296.) Giesige told Hutson that Carolina Development would have a public offering in the short term and, when that occurred, the price of its shares should at least triple from what Hutson was paying for her shares. (Tr. 289-90, 301.) Hutson believed she did not have much time to make the investment because the IPO was imminent. (Tr. 303-05.) Hutson does not recall Giesige saying that she did not have experience with IPOs. (Tr. 291.) Based on what Giesige told her, Hutson believed Carolina Development was a solid, short-term investment. (Tr. 300.) She did not have a clear understanding of the risk when she made her investment. (Tr. 315.) After she invested, Hutson received the literature and talked with Allendorf, who invited himself to a Hutson family gathering in December 2005. (Tr. 295, 302, 315, 317-18, 320.)

When she filled out the subscription agreement, Hutson asked about the limitation on accredited investors. (Tr. 295.) Giesige told her that Allendorf had gotten the standards reduced. (Tr. 296, 305.) Hutson does not recall Giesige telling her that Carolina Development was a high risk investment and that she could lose her entire investment. (Tr. 296.)

Giesige continues to manage Hutson's 401(k) account. (Tr. 322.)

Michael E. Jerwers

Michael E. Jerwers (Jerwers) of Ottawa, Ohio, earned an Associate degree in Electrical Engineering and is a production coordinator for an Ohio company. (Tr. 358.) Giesige's husband is Jerwers's brother-in-law. (Tr. 359.) Jerwers is not a client of Giesige. (Tr. 374.) Giesige held herself out as a securities professional and Jerwers assumed that she was licensed as a broker. (Tr. 373, 388.)

Giesige spoke about Carolina Development at a family gathering and recommended Jerwers invest in Carolina Development. (Tr. 360, 374). Giesige told Jerwers that she visited Carolina Development's offices, that the company owned golf courses, and that, when shares went public in one or two months, they would increase from three dollars each to nine dollars a share and later to twenty-one or twenty-two dollars a share. (Tr. 361-63, 366.) From his conversations with Giesige, Jerwers thought there was very little risk in purchasing Carolina Development stock. (Tr. 364.) Giesige told Jerwers that he had to invest quickly or he would "miss the window" because the shares were going fast. (Tr. 362.) Giesige did not tell Jerwers that she was unfamiliar with IPOs. (Tr. 372.) Giesige was the source of information about Carolina Development that Jerwers needed to make the purchase and he relied on it. (Tr. 376, 388.) Giesige did not tell Jerwers that Carolina Development was traded in the Pink Sheets. (Tr. 368.) Jerwers understood from Giesige that, despite language in the Carolina Development brochure, the shares would not be restricted and he would be able to sell them immediately. (Tr.

377.) He invested $10,500 from savings in November 2005.[21] (Div. Ex. 68.) Jerwers told Giesige he did not qualify as an accredited investor, but she told him not to worry. (Tr. 365.) Jerwers received one dividend check for $53.65. (Tr. 366.)

When the IPO was delayed, Jerwers sensed a scam and went to Giesige who arranged a conference call with Miller. Jerwers was not satisfied and demanded his money back. (Tr. 367-68, 383.) Later, Giesige returned Jerwers's $10,500 investment in Carolina Development.[22] (Tr. 373-74, 383.)

Scott Morse

Scott Morse (Morse) of Longmeadow, Massachusetts, is a forty-five year old college graduate with a Bachelor's degree in English. (Tr. 491; Div. Ex. 74.) Morse is an accredited investor and has invested in equities and real estate for almost twenty years. (Tr. 491, 517.) He owned and operated a business for eleven years in southern California where he handled finances for the company. (Tr. 491, 513, 516.) In January 2008, Morse passed examinations for Series 6 and Series 63 licenses and is now a registered representative in Massachusetts. (Tr. 491-93.)

In October 2005, Morse and his wife met Giesige at a restaurant in Boston. (Tr. 493.) They understood Giesige to be a financial planner or financial adviser in Ohio. (Tr. 493-94.) Morse relied on the information on her business card that Giesige was with Investors Capital, a registered broker-dealer in Massachusetts. (Tr. 534.) Giesige offered Morse shares in Carolina Development. (Tr. 534.) Morse understood from Giesige that Carolina Development was buying high profile property, including golf courses, intending to develop custom homes, golf courses, and commercial real estate and that it was going public in a very short period of time. (Tr. 495-97.) Giesige did not say that she had little experience in IPOs. (Tr. 535.)

Giesige told Morse that he was lucky because Carolina Development had been working on the IPO for some time and now it was really close. (Tr. 526.) Morse was interested in Carolina Development because Giesige told him it owned the golf courses in the brochure and, based on a recent county club experience, he believed that indicated that Carolina Development owned valuable real estate. (Tr. 496, 519, 523.) Giesige told Morse that Carolina Development owned the golf courses, but leased them to others to manage. (Tr. 501-03, 525.) Morse found a reference to Carolina Development and one of the properties on Greg Norman's web site, which gave some credibility to the information he was receiving from Giesige and Allendorf. (Tr. 497.)

Giesige told Morse that the IPO would happen quickly and the opening stock price would be between twelve and fourteen dollars and that the shares would go up to eighteen to twenty

[21] Another relative invested $10,500 to make the minimum $21,000 investment amount. (Tr. 361.)

[22] Giesige claims that she repurchased Jerwers shares because at the time she thought they had value. One of her customers, Kenneth Niese, provided some of the funds and her husband borrowed the rest from his 401(k). (Tr. 609.)

maybe twenty-five dollars quickly. (Tr. 498-99.) Morse believed Giesige's representations that the book value of Carolina Development, due to the properties it owned, was nine dollars a share; he reasoned that if the IPO did not happen, the company's shares would still be worth more than he paid for them. (Tr. 498, 503, 527.) Giesige described the growth potential of an investment in Carolina Development as almost unlimited. (Tr. 507.) Morse does not remember Giesige and Allendorf mentioning any risks with investing in Carolina Development. (Tr. 502-03.) A lot of what Giesige told Morse was not true. (Tr. 533.)

Morse and his wife purchased 22,000 shares of Carolina Development at three dollars a share for $66,000 on October 26, 2005. (Div. Ex. 74.) Morse got nervous when Carolina Development missed a promised three percent dividend payment that the literature and Giesige had said they would receive. (Tr. 504, 507.) In January, after Morse complained, Allendorf offered to return his investment because the IPO was just about to happen and "the last thing we want is a disgruntled investor." (Tr. 509.) Morse has retained an attorney and has or plans to file a complaint with the Financial Industry Regulatory Authority alleging failure by Investors Capital to supervise Giesige. (Tr. 514 15, 532.)

Kenneth Niese

Kenneth Niese (Niese) of Miller, Ohio, a quality control employee at General Motors for thirty-eight years and an active farmer, turned his investments over to Giesige to manage in about 2004. (Tr. 674-75, 692.) Giesige began managing his son's investments at the same time. (Tr. 692.) Her fee is a percentage assessed on assets in the account. (Tr. 693.)

Niese believes, based on information from Giesige, that his $53,000 investment in Brookstone Capital is doing well, and he is grateful that the people associated with Brookstone Capital are good people. (Tr. 675, 689, 691-92, 695.) Niese reviewed the Carolina Development materials with Giesige who thought it looked like a good investment and wanted to know if he would be interested in investing in it. Niese considers that he pays Giesige for investment information, he trusts her completely, and relies on her advice. (Tr. 676, 679, 681, 694.) Niese and his wife invested a total of $39,000 in Carolina Development. (Tr. 684; Div. 76 at 8, 17, 26.) Niese and his wife used funds from a Roth IRA for their purchases. (Div. Ex. 76 at 2.)

Niese knew the investment was not risk free. (Tr. 680.) He believes that Giesige verified the information in the Carolina Development marketing materials and that she visited the properties described. (Tr. 680-81, 687.) Giesige is still Niese's investment adviser. (Tr. 689.)

Glen Richards

Glen Richards (Richards), who moved from Defiance, Ohio, to Covington, Indiana, was a co-worker with Giesige's husband at General Motors. (Tr. 807-08, Div. Ex. 79.) Carolina Development was the subject of a lot of talk among the workers at General Motors. (Tr. 808.) Richards and his wife made an appointment to meet with Giesige at her office. (Tr. 809.) Richards, who has considerable college credits but no degree, does not know a lot about investments, he understood that Carolina Development was an opportunity to buy a company about to go public that was in pretty sound shape, and there was a chance that the share price

might go higher than three dollars a share. (Tr. 808, 813-14, 823.) Richards is not an accredited investor. (Tr. 826.) Giesige recommended Carolina Development as a good investment. (Tr. 815-16.) He had discussions with Giesige about whether he should keep his money invested after the IPO, but his intent was to take the proceeds out quickly when Carolina Development went public. (Tr. 811.) Richards understood that Giesige and her family had invested in Carolina Development. (Tr. 808)

Richards and his wife invested $21,000 for 7,000 shares of Carolina Development at three dollars a share on November 7, 2005. (Tr. 816; Div. Ex. 79 at 2, 10.) Richards knows there is risk in every investment, but, from what he was told, he did not expect "it to go this bad." (Tr. 814.)

Marc Sanchez

Marc Sanchez (Sanchez) has attended college and is an industrial electrician at General Motors. (Tr. 432.) Sanchez is not an experienced investor. (Tr. 432.) Sanchez heard about Carolina Development from Giesige's husband at General Motors, who led Sanchez to believe that Carolina Development was similar to Brookstone Capital where Giesige had made a quick gain. (Tr. 434-35.) Sanchez connected to Carolina Development because he is an avid golfer. (Tr. 434.) Most of his information came indirectly from Giesige via Buss. (Tr. 436.) He understood that the Carolina Development shares were priced at three dollars a share and that they were worth nine dollars a share. (Tr. 438.) Sanchez took a $10,500 loan from his PSP to invest in Carolina Development; along with Buss's investment that made up the $21,000 minimum investment. (Tr. 438, 441, 449; Div. Ex. 47 at 2.) Sanchez knew he was not an accredited investor, but he saw Giesige as a professional, so he took advantage of the opportunity to invest. (Tr. 439.) Sanchez trusted Giesige. (Tr. 456.) He knew that Giesige handled the PSPs of some people at General Motors. (Tr. 435, 458.) After he made the investment, Sanchez visited Giesige's office and saw from the sign on the door that she was an investment professional. (Tr. 447.)

Sanchez went to the meeting at Giesige's office, after the Receiver was appointed, at which Giesige told investors they could still make a profit. (Tr. 446.)

Jeffery Schram

Jeffery Schram (Schram) from Ottawa, Ohio, heard about Carolina Development from his co-workers at the General Motors plant where he has worked for close to thirty years. (Tr. 704, 718.) Schram set up an appointment with Giesige in mid-November 2005, and they reviewed materials furnished by Carolina Development. (Tr. 704.) Carolina Development was Schram's first investment in pre-IPO shares of a company. (Tr. 720-21.) Giesige appeared familiar with the IPO process. (Tr. 721.) Schram understood that Carolina Development would have a public offering fairly soon in January 2006. He understood from Giesige that the book value was nine dollars a share and that the share price would go much higher. (Tr. 711.) Giesige, his co-workers, and Carolina Development were his sources of information about Carolina Development. (Tr. 716.) Giesige was pretty secure in the fact that Carolina Development would be a "fairly low risk investment." (Tr. 721.) The fact that Giesige and her

family invested in Carolina Development helped persuade Schram that Giesige believed it was a good investment. (Tr. 717.)

The questionnaire submitted to the Receiver shows that Schram and his wife invested $46,800 for 15,600 shares of Carolina Development at three dollars a share on November 30, 2005, and $4,500 from Mrs. Schram's Roth IRA account for 1,500 shares at three dollars a share on December 13, 2005.[23] (Div. Ex. 83 at 2, 27, 32.) Schram testified that he invested an additional $4,500 from his Roth IRA for a total of $55,800.[24] (Tr. 711-13.)

Giesige has managed Schram's personal savings since mid-November 2005 for a three percent charge on assets. (Tr. 719-20.) Schram trusted Giesige on his investment in Carolina Development and he trusts her now. (Tr. 720.) At Giesige's suggestion, Schram invested $50,000 in Brookstone Capital. (Tr. 723.)

Bryon Oliver Selden

Bryon Oliver Selden (Selden) is from Elida, Ohio. (Div. Ex. 84.) Seldon's son is married to Giesige's stepdaughter. (Tr. 462.) Selden holds a Series 6 license and is a licensed loan officer. (Tr. 460, 473, 479.) Carolina Development paid Selden $420 and received 560 shares in the company for selling shares in Carolina Development along with Giesige. (Tr. 487-88; Div. Ex. 84 at 13, 29.)

Giesige held herself out as a financial professional, and Selden understood that she had Series 6 and 7 licenses. (Tr. 463, 474.) Giesige furnished Selden with information about Carolina Development. (Tr. 463.) Selden knew that Giesige was getting most of her information from Allendorf. (Tr. 483.) Giesige represented that the IPO price would be from five to nine dollars a share. (Tr. 465.) Selden discussed Carolina Development going public, which was the purpose in buying it, with Giesige. (Tr. 465-66.) Selden considered Carolina Development to be a high-risk investment. (Tr. 467.) No one told Selden that Carolina Development trades were reported in the Pink Sheets. (Tr. 474.)

Selden invested $21,000 in Carolina Development at three dollars a share on October 27 or 31, 2005. (Tr. 476; Div. Ex. 84 at 2.) The reason he bought the shares was that he expected that it would go public at the end of 2005 and that the per share price would increase to nine dollars a share from three dollars a share. (Tr. 469.) Giesige signed as the Authorized Representative of Carolina Development, but Selden understood she was "like an independent who marketed the securities." (Tr. 472-73; Div. Ex. 84 at 27.)

[23] Schram's son-in-law invested $30,000 or $33,000 in Carolina Development. (Tr. 724.)

[24] Schram had Fiserv certificates to support his additional $4,500 investment. (Tr. 712.) The Division provided information so that Schram could contact the Receiver as soon as possible. (Tr. 713-14.)

Paula Stapleton

Paula Stapleton (Stapleton), Giesige's sister, has taken some college courses and is a technical school graduate specializing in heating, ventilation, and air conditioning. (Tr. 643-44.) Before Giesige began managing her investments for a quarterly fee, including her retirement account, Stapleton was invested in U.S. savings bonds and mutual funds and lost money. (Tr. 659.) Stapleton is happy with the diversification that Giesige has brought to her investment portfolio. Giesige buys and sells securities in the account. (Tr. 664.) Stapleton invested in Brookstone Capital after Giesige provided her with information about the company. (Tr. 660, 662.)

Giesige told Stapleton about Carolina Development while Stapleton was living in Peoria, Arizona, and employed at the Palo Verde Nuclear Generating Station. (Tr. 644.) In March 2007, Stapleton moved to Seaford, Delaware, to pursue a career as an artist. (Tr. 644.) Giesige gave Stapleton Carolina Development's brochure, balance sheet, and property valuation reports. (Tr. 645-46; Div. Exs. 10, 11, 14, 17.) Stapleton looked at on-line material also. (Tr. 666.) Giesige told Stapleton that she was excited about Carolina Development. (Tr. 646.) She thought it was a good investment, and that it was signature golf courses and real estate. (Tr. 646.) On January 18, 2006, Stapleton invested $37,290 for 12,430 shares of Carolina Development at three dollars a share. (Div. Ex. 85 at 2, 7.) The source of funds was "IRS Rollover to Fiserv ISS." (Div. Ex. 85 at 2.) Stapleton takes responsibility for making the investment and testified that Giesige told her not to invest any funds she was not willing to lose. (Tr. 651.)

Stapleton testified that she talked with someone at Carolina Development, but the questionnaire she provided the Receiver states that Giesige referred her to the investment and was the only person with whom she spoke. (Tr. 649-50; Div. Ex. 85 at 3.)

Stapleton knew that Giesige was a securities broker and a registered representative. (Tr. 649.) Stapleton hoped that Giesige was familiar with how companies went public and balance sheets and financial statements. (Tr. 667, 670.) It is not clear whether she expected Giesige to independently verify Carolina Development's representations in the investor package. She testified that she thought it was part of Giesige's job. (648-49.) But, she also testified that she expected someone from Carolina Development to verify everything. (Tr. 649-50.) Giesige continues to manage Stapleton's account. (Tr. 658.)

Thomas Stapleton

Thomas Stapleton (T. Stapleton) from Roebuck, South Carolina, is Giesige's father. Giesige has been the investment adviser of T. Stapleton and his wife since 1997. (Tr. 792.) Giesige told T. Stapleton and his wife that she thought Carolina Development was a good investment. (Tr. 797.) She told them that it would be having an IPO, a process with which she seemed familiar, and she explained what the profits would be after that happened. (Tr. 799.) Giesige seemed familiar with Carolina Development's balance sheet and how companies went public. (Tr. 803-04.) T. Stapleton did not know that Carolina Development was a high-risk investment. (Tr. 803.)

T. Stapleton's wife, Ena R. Stapleton, invested $21,000 from a Roth IRA for 7,000 shares of Carolina Development. (Div. Ex. 57 at 2.) T. Stapleton and his wife also invested in Brookstone Capital. (Tr. 802-03.)

Karla Lynn Swarthout

Karla Lynn Swarthout (Swarthout) has known Giesige for twenty-five years. (Tr. 726.) Swarthout has an Associate degree in Electronics from DeVry University, and worked for the Bell System for twenty-six years. (Tr. 738-40.) Swarthout is an accredited investor. (Tr. 754.) When she took an early retirement, Swarthout rolled her pension into a brokerage account. (Tr. 740.) Giesige has been Swarthout's investment adviser for about four years managing a substantial portfolio. (Tr. 726, 737, 740, 750.) Swarthout pays a management fee quarterly of a percentage on the assets under management. (Tr. 750-51.) Giesige brought Brookstone Capital to Swarthout's attention and she invested $135,000 in the company's pre-IPO shares. (Tr. 738, 749-50.)

Giesige called and sent materials and asked Swarthout if she would be interested in investing in Carolina Development. (Tr. 727.) Living in Arizona, Swarthout knew that land surrounding signature golf courses was valuable. (Tr. 729, 731.) Swarthout was interested in Carolina Development as a long-term investment; she knew it was going to have an IPO at which time the shares would go up in price to nine dollars a share, but she was not concerned that the IPO occur quickly. (Tr. 730-31, 753.) Giesige did not tell her she was receiving a commission, but Swarthout presumed Carolina Development would pay Giesige for her work. (Tr. 729.) Swarthout thought Giesige understood Carolina Development's financials and the IPO process. (Tr. 753.) She did not expect Giesige to check whether Carolina Development actually held title to properties. (Tr. 737.) Swarthout considered Giesige a middle person who passed on information from Carolina Development. (Tr. 732.)

Swarthout invested $22,080 for 7,360 shares of Carolina Development at three dollars a share on February 3, 2006. The source of funds was "IRA Rollover to Fiserve ISS." (Div. Ex. 87 at 2.)

Beth Warner

Beth Warner (Warner), age fifty-nine, a high school graduate and Hutson's older sister, left her management position at Wal-Mart about three years ago for health reasons. (Tr. 326.) Warner's husband is retired from General Motors where he worked with Giesige's husband. (Tr. 328-29.) Giesige is familiar with Warner's net worth and income levels and has managed Warner's investments since 2003 or 2004. (Tr. 329-30, 332, 335.) Giesige charged a percentage on the assets she managed. (Tr. 330.) Warner is not interested in high risk, speculative investments. (Tr. 331-32.) Giesige knew that all of Warner's investments consisted of retirement funds. (Tr. 343.)

At Giesige's recommendation, in 2003 or 2004, Warner invested $65,000 in Brookstone Capital, which she understood would have a public offering. (Tr. 327-28, 335, 346-47.) She

made this investment because Giesige urged her to do something with her money. (Tr. 351.) As a result, Warner's Brookstone Capital investment was funded by the sale of stock she had in Wal-Mart as the result of payroll deductions. (Tr. 346.)

In 2005, Giesige recommended that Warner invest in Carolina Development that was supposed to have an IPO very soon, like the first of 2006. (Tr. 332-34.) Warner is not an accredited investor, but Giesige explained that Allendorf had done something so that she could invest. (Tr. 339.) Warner felt secure that Giesige had a lot of facts to support her opinion that Carolina Development was a pretty sure thing and that if the price did not triple, it would double, which is why she put "every dime she had into it." (Tr. 345, 352.) The investment had to be made quickly because the IPO was supposed to occur the first of 2006. (Tr. 344.) Giesige told Warner that Carolina Development would go public at nine dollars a share and go up to thirty dollars a share by the end of the year or two years. (Tr. 334, 345.) Giesige told Warner she had done due diligence or a lot of research on the company and that it was a good investment. (Tr. 333-34, 336-37.)

Giesige cautioned Warner about investing her entire retirement, but Warner invested the entire amount, $81,000, in Carolina Development in December 2005, because, based on Giesige's statements, she believed it was a very secure investment and the worst scenario was that the stock would double in price. (Tr. 328, 333, 337-38, 343, 345, 350.) Warner intended to sell her restricted shares after the IPO as Giesige told her she would be able to do. (Tr. 338-39.)

Warner and her husband had an additional account, "slush fund of securities," that Giesige managed. (Tr. 329.) Warner trusted Giesige and accepted her explanation that she lost the more than $8,000 in the additional account because Giesige pushed the wrong button on the computer. (Tr. 330-31.)

All of Warner's retirement savings are invested in Brookstone Capital and Carolina Development. (Tr. 328.) Warner is "going to lose everything" because neither she nor her husband are able to work, and her savings are gone. (Tr. 349, 352, 356.) Giesige continues to manage Warner's funds without charge. (Tr. 356.) She told Warner several months ago that Allendorf would make payments to keep Warner from losing her home, but no funds had been received as of June 3, 2008. (Tr. 348, 609-10, 615.)

CONCLUSIONS OF LAW

Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5

In summary, the elements of an antifraud violation are a misrepresentation or omission of a material fact made in connection with the purchase or sale of a security, which is made with the intent to deceive. Specifically, Section 17(a) of the Securities Act prohibits the following activities by any person in the offer or sale of any securities by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly:

(1) To employ any device, scheme, or artifice to defraud; or

(2) To obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading;[25] or

(3) To engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

15 U.S.C. § 77q(a).

Section 10(b) of the Exchange Act and Rule 10b-5 make it unlawful, under similar conditions as Section 17(a) of the Securities Act requires, to use or employ in connection with the purchase or sale of any security, any manipulative device or contrivance. 15 U.S.C. § 77j(b); 17 C.F.R. § 240.10b-5.

Section 17(a)(1) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 require a showing that the person acted with scienter, defined as "an intent to deceive, manipulate or defraud." See Aaron v. SEC, 446 U.S. 680, 686 n.5, 697 (1980); Ernst & Ernst v. Hochfelder, 425 U.S. 185, 193 (1976). Extreme recklessness is defined as "an extreme departure from the standards of ordinary care, and which presents a danger of misleading buyers or sellers that is either known to the defendant or is so obvious that the actor must have been aware of it." Sundstrand Corp. v. Sun Chem. Corp., 553 F.2d 1033, 1045 (7th Cir. 1977)

Activities by any person in the offer or sale of any securities

Giesige's defense is that she is blameless because she simply repeated information from Carolina Development to potential investors. She contends that the antifraud protections do not apply because her activities were not in connection with the purchase or sale of a security and that she did not sell shares, but only recommended that people read sales literature, shared information, and answered questions. (Tr. 579.) Giesige claims that she did not know much about private shares, and if she had been selling, rather than referring, she would have had a lot more information. (Tr. 65, 172, 188.)

From November 2005 through January 2006, Giesige offered and sold shares of Carolina Development to about fifty people who invested nearly $1.49 million after learning about it from Giesige, who told them it was a good investment. (Tr. 53-54, 71, 176, 241.) Almost all the investor forms returned to the Receiver that are in evidence show that the investors heard about Carolina Development from Giesige and that she was the only person that most people talked with before making their investments. (Div. Exs. 44-47, 51-58, 60-92.) Some people had been her clients and many were new clients who worked with her husband at General Motors. (Tr.

[25] Information is considered material if it is so significant that a reasonable investor would consider it significant in deciding on how to vote. See TSC Industries v. Northway, Inc., 426 U.S. 438, 449 (1976).

241.) Most of the investors in Carolina Development had limited investment experience. (Tr. 78.) Only two to five of these were accredited investors. (Tr. 71.) These investors consisted of family members, about ten existing clients, new clients who worked with her husband, and Scott Morse. (Tr. 51-53.) Giesige estimates that about a quarter of her existing customers invested in Carolina Development. (Tr. 584.) Giesige spoke directly to each of these investors. (Tr. 57.) The minimum investment was $21,000. (Tr. 66.) Some of these investors bought Carolina Development shares with their funds in their IRA accounts. (Tr. 23, 219; Div. Ex. 23.)

A substantial number of the subscription forms that her customers submitted were signed "for the Carolina Development Company, by Maria Giesige, authorized representative." (Tr. 76; Div. Ex. 24.) Giesige signed as Carolina Development's representative in order to receive a referral fee. (Tr. 76, 581.) In the period November 14, 2005, through February 24, 2006, Giesige received $21,015.03 and about 13,905 shares valued at $41,715, from Carolina Development based on sales. (Tr. 13, 54, 134, 238; Div. Exs. 9, 25, 59 at 17-18.) She also shared in the referrals made by one of her customers. (Tr. 67.) Giesige has not returned to the Receiver the commissions Carolina Development paid her.[26] (Tr. 135-36.)

These defenses by Giesige contradict basic industry standards and, as such, they raise questions as to her credibility under oath. As a person sufficiently knowledgeable to earned a Series 6 license in 1986, a Series 7 license in 2003, and with selling securities in her association with various broker-dealers over a period of twenty years, Giesige knew, or was reckless in not knowing, that her activities as detailed above resulted in the offer or sale of securities.

The use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly

Giesige received information from Carolina Development that she passed on to potential investors in Ohio, she sent some investor subscription agreements and checks from Ohio to Carolina Development's headquarters in California, she engaged in multiple conversations with Allendorf and Miller in California, and she arranged conference calls participated in by persons in both states. All these activities involved the instruments of transportation and communication in interstate commerce or use of the mails.

Misrepresentations and omissions of a material fact made in connection with the purchase or sale of a security, which is made with the intent to deceive

Giesige failed to do any due diligence before she recommended that persons invest in Carolina Development. Instead she passed on false representations to people, most of whom were not experienced investors and all of whom relied on her completely. "Brokers and salespeople are 'under a duty to investigate, and their violation of that duty brings them within

[26] She told the Receiver she would return the funds, if he did not inform the Commission that she had participated in raising funds for Carolina Development. (Tr. 136.) Attempts to negotiate a payback plan failed because the Receiver considered her offer to return the funds at something like $500 a month insignificant. (Tr. 136.)

the term 'willful' in the Exchange Act ." Hanley v. SEC, 415 F.2d 589, 595-96 (2nd Cir. 1969) citing Dlugash v. SEC, 373 F.2d 107, 109 (2nd Cir. 1967); see also Tager v. SEC, 344 F.2d 5, 8 (2nd Cir. 1965) ('willfully'. . . means intentionally committing the act which constitutes the violation . . . [A]ctual knowledge is not necessary.)

Carolina Development told Giesige that Ramirez International was auditing its financials in preparation for going public. (Tr. 40, 178.) Giesige called the firm, but she did not ask for copies of the audited financial statements.[27] (Tr. 40.) Giesige relied on information from Carolina Development, what she found on the Internet, and her call to Ramirez International for telling people that she considered Carolina Development a good investment. (Tr. 39-43, 46, 619.) She knew that Carolina Development did not have audited financials. (Tr. 617.) She did not verify its income statement and balance sheet because they seemed credible and "I just couldn't believe that someone would just make all this stuff up like they did, you know." (Tr. 571.)

Carolina Development's brochure claimed, "Building luxury communities adorning Signature Championship Golf Courses with the Legends of golf." (Div. Ex. 14 at 58.) Carolina Development did not represent that it owned the golf courses, but that it owned single family lots surrounding the golf courses. (Tr. 113, 122.) Giesige believes the fact that the golfers were pictured on the Carolina Development brochure meant that they endorsed the securities. (Tr. 42-43.) Giesige did not call representatives of Jack Nicklaus, Greg Norman, and Arnold Palmer, but she did find on the Internet what she considered "connections and endorsements." (Tr. 43-44.) Giesige considers that she confirmed that the golfers shown on the cover and in the brochure endorsed the project.[28] (Tr. 42-43.) In fact, a representative of Arnold Palmer wrote to Carolina Development and requested in strenuous terms that it stop using his name. (Tr. 121-22.) Carolina Development had no documents confirming endorsements by Jack Nicklaus or Greg Norman.[29] (Tr. 121.)

Giesige told investors that the book value of Carolina Development shares was nine dollars, which was much higher than the three dollar a share sales price. Giesige also represented that the price per share would go up to nineteen dollars after the IPO that would occur by the end of 2005. (Tr. 57, 85-87, 606-08.) Giesige knew when she recommended Carolina Development as a good investment that the company did not have audited financials.

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[27] Ramirez International told the Commission staff accountant that it never accepted Carolina Development as a client and that Carolina Development failed to provide any financial documents. (Div. Ex. 8 at 7.) There is no record that Carolina Development paid Ramirez International for any audit work. (Tr. 104.)

[28] After one of the investor witnesses testified that he had viewed Greg Norman's web site, Giesige added to her testimony that she had done the same thing, but she could not remember the golfer's name. (Tr. 573-74.)

[29] Greg Norman was paid a substantial sum to design a golf course for land in Collin County, Texas, but he only produced a conceptual drawing that was unsuited to the site. (Tr. 123.)

(Tr. 179, 617.) She did not verify Allendorf's claim about the book value of Carolina Development shares. In fact, two Carolina Development fraudulent documents showing land values indicated a book value of $4.41 per share and $6.00 per share. (Div. Exs. 17, 18.) Giesige would not have been able to calculate the book value per share because the fraudulent financial statements she received did not disclose the number of Carolina Development's shares outstanding. (Div. Ex. 10.) There is no evidence that Giesige contacted the transfer agent to determine the actual number of Carolina Development's outstanding shares. Moreover, Giesige does not know how to calculate book value per share.[30] Giesige provided no credible evidence to support her prediction that the stock price would more than double shortly after the IPO. "Projections and statements of optimism are false and misleading for the purposes of the securities laws if they were issued without good faith or lacked a reasonable basis when made." Kowal v. MCI Communications Corp., 16 F.3d 1271, 1277 (D.C. Cir. 1994.)

Giesige first learned of Carolina Development in October 2005, yet she told investors that it was going to file an IPO by the end of 2005, when she knew the company did not have audited financial statements. (Tr. 27, 40, 58.) Giesige testified that she went to the Commission's web site to verify "that they had done something to register the Carolina Development Company." (Tr. 37.) However, the only filing Carolina Development made with the Commission was a Form D to be described later. Giesige could not have found a registration statement for the public sale of securities on the Commission's web site. (Div. Ex. 30.) Given that Carolina had not prepared audited financial statements and had not filed a registration statement for the public sale of securities by October 2005, it would have been highly unlikely that the company could have had a registration statement declared effective by the end of 2005. Giesige's statements with respect to Carolina Development's impending IPO lacked a reasonable basis.

Giesige did not know how much of the funds that Carolina Development raised went to sales expenses, commissions, and referral fees. (Tr. 66.) At some point, Giesige learned the Private Placement Memorandum, dated June 30, 2004, stated that the National Association of Securities Dealers had approved the trading symbol CACP for Carolina Development and that trading was occurring for fifteen cents a share, but she accepted Allendorf's explanation that another company had been purchased to make the IPO happen quicker.[31] (Tr. 173, 181; Div. Ex. 11 at 1, 2.)

Giesige did no independent verification of the information that Carolina Development provided to her and others via publications, emails, and a web site. She did not inquire whether

[30] Giesige indicated that book value per share is calculated using total assets when net assets are used in the calculation. (Tr. 86; Barron's Dictionary of Finance and Investment Terms 58 (Fourth Ed. 1995)

[31] It appears that trading occurred under the name Carolina Development at Pinehurst. (Tr. 384, 387.) When Giesige took the stand for the second time, she testified that she first learned of Pink Sheet trading in Carolina Development after she and her customers received their stock certificates. (Tr. 586.) Later, she corrected herself and testified that it might have been when she received the Private Placement Offering. (Tr. 621; Div. Ex. 11 at 1.)

Better Business Bureau or Dun & Bradstreet had information on Carolina Development; she relied on the information Carolina Development provided that they owned real estate and that it had the values they provided; she did not check the title records to the real estate that Carolina Development claimed to own; and she did not check any bank statements to support the information stated in the financials. (Tr. 39-41, 82-83, 571, 617-18, 621; Div. Exs. 17-21.) Using documents from the company and publicly available records, Scott R. Frost (Frost), a Commission staff accountant, determined that the ownership property claims on Carolina Development's web site were inaccurate.[32] (Tr. 252; Division Ex. 8 at 9-13.)

Giesige failed to question obvious discrepancies in Carolina Development's marketing materials. (Tr. 620-21.) Giesige did not seek information from Carolina Development's financial officer. (Tr. 44.) The only people at Carolina Development she talked with were Allendorf and Miller. (Tr. 617.) She did not know Miller's position or anything about his background or whether he held any securities licenses.[33] (Tr. 45.) Giesige does not know whether there were any reports prepared by analysts on Carolina Development. (Tr. 46.)

Giesige saw something she cannot describe on the Commission's web site that assured her that Carolina Development's representations were accurate and it was preparing an IPO. (Tr. 39, 58, 574.) The only filing that Carolina Development made with the Commission was a Form D, Notice of Sale of Securities Pursuant to Regulation D, Section 4(5) and/or Uniform Limited Offering Exemption, filing on October 22, 2005. (Division Exs. 8 at 6-7, 54; 30.) A Form D is a claim that the stock sales were exempt from the registration requirements. (Tr. 249-50.) According to the filing, the company wanted to raise $10.15 million through a private placement of 4.35 million shares of unregistered stock. (Tr. 351; Division Ex. 8 at 8.) In fact, Carolina Development sold about 33 million shares. (Tr. 251.)

All the witnesses who testified invested in Carolina Development because Giesige misrepresented and omitted significant facts in describing Carolina Development to them as a good investment. This information included false balance sheets, false claims of land ownership and land values, the false claim that Carolina Development had audited financials, the false claim that it had taken steps to register its shares for sale to the general public, the false claim that the shares had a book value of nine dollars, and the omission that shares were selling on the Pink Sheets for less than a dollar when she was selling shares for three dollars a share.

The evidence also establishes that Giesige gave all investors the clear impression, if not the assurance, that investments in Carolina Development were low risk and that, once the IPO

[32] Frost earned a Bachelor of Science in Economics from Utah State University and a Master's in Business Administration from Westminster College. Before joining the Commission eighteen years ago, Frost held Securities licenses 7, 63, and 24, and was associated with a broker-dealer for two years. (Tr. 243, 271.)

[33] Miller was a group sales manager. (Tr. 132.) Giesige claims that she searched unsuccessfully on the Internet for information on Vander Tag, who Allendorf told her was a very good real estate person with Carolina Development. (Tr. 564, 574-75.)

occurred, the shares would increase dramatically from the purchase price of three dollars a share. In cases too numerous to cite, the Commission has consistently held that it is inherently fraudulent to predict specific and substantial increases in the price of a speculative security. See Lester Kuznetz, 48 S.E.C. 551, 553 (1986); Cortland Investing Corp., 44 S.E.C. 45, 50 (1969) (citing Crowe, Brourman & Chatkin, Inc., 42 S.E.C. 938, 943 (1966)); Armstrong, Jones and Company, 43 S.E.C. 888, 896 (1968); Alfred Miller, 43 S.E.C. 233, 235 (1966). Even after the Receiver took control of the company, Giesige advised Carolina Development investors "not to worry," and later advised them of a report that they could realize a "250% gain." (Div. Ex. 33.)

Giesige and her customers were concerned when they received RESTRICTED shares in Carolina Development at Pinehurst. Giesige held a meeting at her office and arranged a conference call at which Allendorf and Miller told Giesige and her customers that, once the IPO occurred, everyone would be able to trade their shares electronically. (Tr. 171-73.) On February 10, 2006, Giesige informed her customers that Carolina Development's estimated IPO date had been postponed to the middle of March 2006, but that they should be "patient, it isn't every day we have the opportunity to make 1000% gain in less than a year." (Tr. 232-33; Div. Ex. 29.) The same communication, just a few days before Carolina Development was placed in Receivership, states we are looking at anywhere "between $20 to $50 IPO price." (Tr. 233; Div. Ex. 29.) Giesige signed the letter as "Your friend and Investment Advisor," but she was not a registered investment adviser in February 2006. (Tr. 234.)

All the witness believed Giesige was a securities professional based on the services she provided in buying and selling securities, managing investment and retirement portfolios, the fees she charged for her services, the lettering on her office door, and other securities-related activities that she offered to clients. Part of the system of investor protection is that people who are licensed to participate in the securities industry are held to certain performance standards. People who hold securities licenses are required to have a rational basis before they can recommend that people make investments. See Hanley, 415 F.2d at 596) ("A securities dealer occupies a special relationship to a buyer of securities in that by his position he implicitly represents he has an adequate basis for the opinion he renders."). Licensed securities professionals cannot simply parrot the marketing information furnished by sales people, Allendorf and Miller. See SEC v. Hasho, 784 F.Supp. 1059, 1107 (S.D.N.Y. 1992) (citing Hanley, 415 F.2d at 597) ("By making a recommendation, a securities dealer implicitly represents to a buyer of securities that he has an adequate basis for the recommendation.")).

Giesige's conduct is a flagrant example of fraudulent conduct, done with scienter or, at a minimum, extreme recklessness that has damaged many investors and caused irreparable damage to some. This record shows multiple willful violations by Giesige of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5.

Sections 5(a) and 5(c) of the Securities Act

The basic purpose of the Securities Act is to require that reliable information is available to the public about securities offered to the public. Section 5 is a straightforward requirement that registration is required for any sale by any person of any securities, unless the securities or transactions are specifically exempted from registration. Section 5 of the Securities Act states:

> (a) Unless a registration statement is in effect as to a security, it shall be unlawful for any person, directly or indirectly:
>
> (1) To make use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell such security through the use or medium of any prospectus or otherwise; or
>
> (2) To carry or cause to be carried through the mails or in interstate commerce, by any means or instruments of transportation, any such security for the purpose of sale or for delivery after sale.
>
> (c) It shall be unlawful for any person, directly or indirectly, to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of any prospectus or otherwise any security, unless a registration statement has been filed . . . .

15 U.S.C. §§ 77e(a), 77e(c).

Scienter is not required for violations of Section 5 of the Securities Act. See SEC v. Nat'l Executive Planners, Ltd., 503 F. Supp. 1066, 1072 (M.D.N.C. 1980). In order to establish a prima facie case of a violation of Section 5 of the Securities Act, the Division must show that: (1) Giesige sold or offered securities for sale; (2) no registration statement was in effect as to these Carolina Development securities; and (3) the offer or sale was made through the use of interstate facilities or the mails. See SEC v. Montana, 464 F. Supp. 2d 772, 782 (S.D. Ind. 2006) (citing SEC v. Spence & Green Chemical Co., 612 F.2d 896, 901-02 (5th Cir. 1980)).

Carolina Development shares were not registered with the Commission. The weight of the evidence defeats Giesige's claim that she did not sell any unregistered securities. (Giesige Post-Hearing Br. 28) Approximately forty-five people, who were not her existing clients, came to Giesige's office for information about Carolina Development. (Tr. 27.) Giesige arranged a meeting at her office for people interested in Carolina Development that included some of her existing clients and others. (Tr. 55-56.) Giesige referred her clients to Carolina Development's web site. (Tr. 35-36.) Giesige enthusiastically recommended that people invest in Carolina Development. (Tr. 53.) Approximately fifty people invested nearly $1.49 million in Carolina Development based on written and oral information that Giesige provided. Giesige signed Subscription Agreements for Carolina Development. (Div. Exs. 24, 52-56, 58, 62, 64-67, 69, 72, 75-76, 80, 82-84, 86, 88, 90, 92.) Carolina Development compensated Giesige for her efforts in selling shares with a total of $21,000 and shares of Carolina Development stock. (Tr. 54; Div. Ex. 9.) "Typically, a person who solicits the purchase will have sought or received a personal financial benefit from the sale." Pinter v. Dahl, 486 U.S. 622, 654 (1988). The evidence is persuasive that Giesige sold unregistered shares of Carolina Development common stock.

Giesige knew Carolina Development's shares were unregistered, and she professed to believe that an exemption was in place for a private placement that allowed sales to thirty-five

accredited investors. (Tr. 618.) "Certain transactions are exempt from registration, but the burden is on the defendants to establish the availability of an exemption." See Nat'l Executive Planners, 503 F. Supp. at 1072. Giesige has not established that an exemption exists. Giesige knew that, at most, five of the fifty people to whom she sold Carolina Development shares were unaccredited investors. (Tr. 71.) Giesige testified that her clients submitted financial information as part of their applications to purchase shares; however, at least some of the subscription agreements she signed did not contain financial information.[34] (Tr. 71-75; Div. Ex. 24.) There is no evidence that Carolina Development collected financial information from investors before accepting funds. (Tr. 130-31.) Giesige states that she let Carolina Development decide whether her customers were accredited investors and, if not, whether they could come within the limited number of unaccredited investors that Carolina Development said it could accept.[35] (Tr. 71, 77.) The law, however, does not allow Giesige to abdicate her responsibility to ensure that an exemption from registration was available for the securities she sold to investors.

Giesige also claims that the sales transactions were subject to exemptions under Sections 4(1) and 4(2) of the Securities Act. (Giesige Post-Hearing Br. 31.) These sections of the Securities Act are inapposite in this case. "Section 4(1) is intended to exempt routine trading transactions between individual investors with respect to securities already issued and not to exempt distributions by issuers or acts of other individuals who engage in steps necessary to such distributions." See John A. Carley, 92 SEC Docket 1693, 1704 (Feb. 26, 2008). Further, individuals "may be deemed 'underwriters' within the statutory meaning of that term if they act as links in a chain of securities transactions from issuers or control persons to the public." Id. Finally, "a defendant is not protected by Section 4(1) if the offer or sale of unregistered securities in question was part of a transaction by someone who was an issuer, underwriter, or dealer." See SEC v. Holschuh, 694 F.2d. 130, 138 (7th Cir. 1982). Giesige's activities were part of the issuer's distribution of shares to the public and are not exempt under Section 4(1) of the Securities Act.

Section 4(2) of the Securities Act provides an exemption for non-public offerings. In order to determine whether a transaction qualifies for this exemption, "the Supreme Court has held that courts must examine whether allowing the exemption is consistent with the promotion of 'full disclosure of information thought necessary to informed investment decisions' and whether 'the class of persons affected needs the protection of the [Securities] Act.'" SEC v. Kenton Capital, Ltd., 69 F.Supp.2d. 1, 11 (Dist. D.C. 1998) (citing SEC v. Ralston Purina Co.,

[34] The Division claims that, after it began its investigation of Carolina Development, the company altered its subscription agreements to include financial information. (Tr. 74, 130-31; Div. Ex. 44 at 12.)

[35] One category of accredited investors covered by a Regulation D exemption from the registration requirements are persons with a net worth of more than one million dollars and an annual income of more than $200,000, or, together with a spouse, annual income of more than $300,000. Typically, an exemption from registration in a private offering is limited to thirty-five accredited investors. (Tr. 254-5.)

346 U.S. 119, 124-25 (1953)). The factors that need to be considered in applying an exemption under Section 4(2) are: "the number of offerees, the relationship of the offerees to each other and the issuer, the manner of the offering, information disclosure or access, and the sophistication of the offerees." Kenton Capital Ltd., 69 F. Supp.2d at 11. Carolina Development sold stock to over 1,400 investors and raised approximately $52 million. (Tr. 108.) It appears that about seventy people, including about three of Giesige's customers, of the total investors were accredited investors. (Tr. 129-30.) The evidence shows that Carolina Development stock was a public offering and that an exemption under Section 4(2) is inapplicable.

Giesige's conduct of selling unregistered shares of Carolina Development to some fifty investors using the means and instruments of interstate commerce was a violation of Sections 5(a) and 5(c) of the Securities Act.

Sections 206(1) and 206(2) of the Advisers Act

Section 202(a)(11) of the Advisers Act defines an investment adviser as "any person who, for compensation, engages in the business of advising others, either directly or indirectly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities . . . ." 15 U.S.C. § 80b-2(a)(11). Section 206 of the Advisers Act makes it unlawful for any investment adviser, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly:

> (1) To employ any device, scheme, or artifice to defraud any client or prospective client;
>
> (2) To engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client.

15 U.S.C. § 80b-6. Scienter is required for a violation of Section 206(1) but not for a violation of Section 206(2). See Steadman v. SEC, 603 F.2d 1126, 1134 (5th Cir. 1979); SEC v. Capital Gains Research Bureau, Inc., 375 U.S. 180, 195 (1963).

Giesige admits that, in April 2006, when she was not a registered investment adviser, she began managing the 401(k) plans for some people at General Motors in Defiance, Ohio, who worked with her husband, but she did not charge; she advised clients about investment decisions in their IRAs and she tried to get Fiserv, which had custody of their IRAs, to lower their fees. (Tr. 199-221, 577-78; Div. Ex. 33 at 1.) The overwhelming evidence in this record establishes that Giesige was acting as an investment adviser long before she was licensed to do so by the State of Ohio in 2007.

The Commission has held in Benjamin Levy Securities, Inc., 46 S.E.C. 1145, 1147 (1978) (quoting Marketlines, Inc. v. SEC, 384 F.2d 264, 267 (2d Cir. 1967), cert. denied, 390 U.S. 947 (1968)):

> An investment adviser is a fiduciary in whom clients must be able to put their trust. As one court has stated, it is "an occupation which can cause havoc unless engaged in by those with appropriate background and standards."

The law is settled that, as a fiduciary, an investment adviser has an affirmative duty of the "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" clients. Capital Gains, 375 U.S. at 194. The evidence is overwhelming that Giesige breached the fiduciary duty she owed to her investment adviser clients, almost all of whom were people of moderate means who are fairly conservative in their level of risk tolerance. Acting with scienter or with utter recklessness, Giesige advised clients to invest their funds, including their retirement funds, in what she represented to them was a good investment with no undue risk. However, Giesige lied to her clients, because, as she testified, she considered Carolina Development to be a substantially risky investment. (Tr. 78, 81-82.)

There is absolutely no evidence to support Giesige's claim that she told her customers of the considerable risk of investing in Carolina Development's unregistered securities. Furthermore, the evidence is that Giesige lied in giving her customers the belief that she had done a due diligence investigation of Carolina Development and that she knew about the IPO process.

Giesige's breach of her fiduciary responsibilities is taken to a higher level by the fact that she misled many of her adviser customers who trusted her with their retirement funds. She misled six members of one family, one of whom is left with nothing and another who took out a reverse mortgage on her home.

For the reasons stated, Giesige willfully violated Sections 206(1) and 206(2) of the Advisers Act.

Section 15(a) of the Exchange Act

Section 15(a) of the Exchange Act makes it unlawful:

> for any broker or dealer which is either a person other than a natural person or a natural person not associated with a broker or dealer which is a person other than a natural person . . . to make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security unless such broker or dealer is registered with the Commission.

15 U.S.C. § 78o(a)(1)

Giesige was associated with Investors Capital, a registered broker-dealer that did not deal with pre-IPO or privately sold shares. (Tr. 10.) Giesige was not authorized to sell Carolina Development shares though Investors Capital. (Tr. 63-64, 172, 176-77, 228, 580.) Giesige knew she needed approval from Investors Capital to offer Carolina Development stock to her

customers and she also knew that Investors Capital had a process for seeking approval to sell a security, but she did not follow that process. (Tr. 228-29.) Giesige did not show Investors Capital any of the Carolina Development materials and she did not tell Investors Capital that, between September 2005 and early 2006, she was offering her customers Carolina Development's pre-IPO shares. (Tr. 12, 64, 228, 232, 581.) Inasmuch as Giesige was acting beyond the authority she had from the registered broker-dealer that she was associated with, she was acting on her own and her activities were those of an unregistered broker, i.e., she was in the business of effecting transactions in securities in the accounts of others. See Roth v. SEC, 22 F.3d 1108, 1110 (D.C. Cir. 1994) ("Other circuits have found violations of the broker-dealer registration requirement when a securities salesman has acted outside the scope of his association with a member firm.")

Scienter is not required for a violation of Section 15(a). See Montana, 464 F. Supp. 2d at 785. Giesige is required to register as a broker if her activities outside of the scope of her relationship with Investors Capital demonstrate that she was acting as a broker. The term broker is defined in Section 3(a)(4) of the Exchange Act as "any person engaged in the business of effecting transactions in securities for the account of others." 15 U.S.C. § 78c (a)(4). Activities of a broker are characterized by "a certain regularity of participation in securities transactions at key points in the chain of distribution." Massachusetts Fin. Serv., Inc. v. Sec. Investor Prot. Corp., 411 F. Supp. 411, 415 (D. Mass. 1976), aff'd 545 F.2d 754 (1st Cir. 1976). Factors to be considered in evaluating whether someone is acting as a broker include whether the person: received commissions; was involved in the negotiations between the issuer and the investor; made valuations as to the merits of the investment or gave advice; sold the securities of other issuers; and actively found investors. See SEC v. Zubkis, No. 97 Civ 8086 JGK, 2000 WL 218393 (S.D.N.Y. Feb. 23, 2000). Other factors include: the dollar amount of securities sold and the extent of advertisement and investor solicitation. See Kenton Capital, Ltd., 69 F. Supp. 2d at 12-13. Giesige received commissions in the amount of $21,000 for the sale of Carolina Development stock. (Tr. 54.) Giesige operates an office on Main Street in Ottawa, Ohio, where she provides financial services. (Tr. 705, 710, 722.) Giesige recommended to her clients that they should purchase shares of Brookstone Capital, another issuer. (Tr. 19.) Approximately fifty people invested about $1.49 million in Carolina Development based on the information and recommendation that Giesige provided to them. (Tr. 53.) As a person engaged in the business of effecting transactions in securities for the account of others, Giesige was acting as a broker.

For the reasons stated, Giesige willfully violated Section 15(a) of the Exchange Act.

SANCTIONS

Cease and desist

Section 8A of the Securities Act, Section 21C of the Exchange Act, and Section 203(k) of the Advisers Act, are all authorities for this proceeding that empower the Commission to issue a cease-and-desist order based on findings of violations of the respective statutes. The Commission has found the following factors relevant for determining whether a cease-and-desist order is appropriate:

> the seriousness of the violation, the isolated or recurrent nature of the violation, the respondent's state of mind, the sincerity of the respondent's assurances against future violations, the respondent's recognition of the wrongful nature of his or her conduct, and the respondent's opportunity to commit future violations, . . . whether the violation is recent, the degree of harm to investors or the marketplace resulting from the violation, and the remedial function to be served by the cease-and-desist order in the context of any other sanctions being sought in the same proceedings.

KPMG Peat Marwick LLP, 54 S.E.C. 1135, 1192 (2001). The Division recommends that Giesige be ordered to cease and desist from violations of Sections 5(a), 5(c), and 17(a) of the Securities Act; Sections 10(b) and 15(a) of the Exchange Act and Exchange Act Rule 10b-5; and Sections 206(1) and 206(2) of the Advisers Act. (Div. Post-Hearing Br. 47-48.)

My review of the public interest factors shows that Giesige committed numerous antifraud violations of two securities statues in connection with the offer and sale of Carolina Development securities. Conduct that violates the antifraud provisions are considered very serious violations. See SEC v. Charles Zandford, 535 U.S. 813, 819 (2002); Marshall E. Melton, 56 SEC 695, 713 (2003). Giesige's violations were recurrent. She defrauded at least fifty individual investors (more since there were two names on most of the accounts) over several months in the amount of nearly $1.49 million. Giesige did not fulfill her responsibilities as a securities professional and she lied to investors, including her investment adviser clients. In addition, after a federal judge found Carolina Development to be a fraud, it was irrational for Giesige to defend Allendorf and Miller, who were part of Carolina Development's sales efforts, and who defrauded her, her family, and her customers. Furthermore, it was wrong for Giesige to spread false information that would impede the work of a court-appointed Receiver and the Commission, a government agency whose mission is to protect public investors.

This proceeding shows a serious lack of communication between the Commission's Office of Investor Education and Advocacy (OIEA) and the Division. When the Division succeeds in having a Receiver appointed, it always should post on the company's web site a notice that assistance and information are available from OIEA. During the hearing, the Division assisted investor witnesses whose anger and frustration at the lack of information from the government about their investments had been building for over two years.

There is no evidence that Giesige recognizes the wrongful nature of her conduct. It is inexplicable for Giesige, who holds securities licenses that required knowledge of the securities laws, to insist she did nothing wrong when she acknowledges passing on fraudulent information given to her by people selling securities without performing any due diligence. The absurdity of her defense is magnified by her insistence that she performed due diligence by looking at information that Carolina Development posted on the Internet and by the fact that she did not check on the credentials of Allendorf and Miller, the salesmen on whom she relied. Giesige blames others for her violations and continued, after the fraud was exposed, to rely on representations by Allendorf and Miller, who were the persons who made false representations to her.

Giesige has not returned to the Receiver the $21,000 that Carolina Development paid to her for selling shares. Based on her actions, I find that Giesige's statement that she feels awful about what happened falls short of an acknowledgment of remorse.

The evidence indicates that Giesige's continued participation in the securities industry poses a real threat to the public interest. Despite her lies and self-serving activities, Giesige has convinced every investor who testified that she is knowledgeable about investments, blameless for their losses, and that she continues to work for their best interests. The evidence, however, shows just the opposite. My review of the public interest criteria set out in KPMG Peat Marwick LLP, shows that it is necessary and appropriate to order Giesige to cease and desist from violations of Sections 5(a), 5(c), and 17(a) of the Securities Act; Sections 10(b) and 15(a) of the Exchange Act and Exchange Act Rule 10b-5; and Sections 206(1) and 206(2) of the Advisers Act.

Bar from association

This Proceeding was instituted pursuant to Section 15(b) of the Exchange Act and Section 203(f) of the Advisers Act. These statutory provisions authorize the Commission to censure, place limitations on the functions or activities of, suspend for a period of up to a year, or bar from association, a person who willfully violates any provision of the Exchange Act or Advisers Act, and who at the time of the misconduct was associated with a broker-dealer or investment adviser, if it is the public interest to do so. The public interest considerations for a sanction pursuant to Section 15(b) of the Exchange Act and Section 203(f) of the Advisers Act are:

> [T]he 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 v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979), aff'd on other grounds, 450 U.S. 91 (1981); see also Joseph J. Barbato, 53 S.E.C. 1259, 1282 n.31 (1999); Donald T. Sheldon, 51 S.E.C. 59, 86 (1992), aff'd, 45 F.3d 1515 (11th Cir. 1995). Deterrence is also a factor to be considered. See Berko v. SEC, 316 F.2d 137, 141 (2d Cir. 1963.)

The Division recommends that Giesige be barred from association with any broker or dealer or investment adviser. (Div. Post-Hearing Br. 49-53.) Giesige, on the other hand, contends the alleged violations of the Advisers Act occurred well before she became a licensed investment adviser in 2007. She argues that the Commission cannot impose a collateral bar citing Teicher v. SEC, 177 F.3d 1016 (D.C. Cir. 1999) for the proposition that the Commission cannot bar a person from being associated with an investment adviser based on that individual's violations of the Exchange Act. (Giesige Post-Hearing Br. 44.)

I find Teicher inapplicable to this situation because Giesige, unlike Teicher, violated both the Exchange Act and the Advisers Act so a collateral bar is not an issue.

The Steadman factors are almost identical to the public interest considerations set out in KPMG Peat Marwick LLP. My consideration of these criteria causes me to conclude for the reasons set forth above that, pursuant to Section 15(b) of the Exchange Act and Section 203(f) of the Advisers Act, it is necessary and appropriate for the protection of investors to bar Giesige from association with any broker, dealer, or investment adviser.

Disgorgement

This proceeding was instituted pursuant to Section 8A(e) of the Securities Act and Sections 21B(e) and 21C(e) of the Exchange Act that authorize disgorgement and reasonable interest in any cease-and-desist proceeding or a proceeding in which the Commission may impose a civil money penalty. This is such a proceeding.

The Division recommends that Giesige be ordered to disgorge $21,015.03, including reasonable interest. (Div. Post-Hearing Br. 53.) Giesige, on the other hand, argues that she should not be ordered to disgorge funds when she lost the $28,800 she invested in Carolina Development and the Receiver has excluded her from the plan of distribution. (Giesige Post-Hearing Br. 44-45.)

Disgorgement is defined as "an equitable remedy designed to deprive [respondents] of all gains flowing from their wrong." SEC v. AMX, Int'l, Inc., 872 F. Supp. 1541, 1544 (N.D. Tex. 1994) (citations omitted). A violator is returned to where he or she would have been absent the misconduct. Disgorgement deprives a wrongdoer of his or her ill-gotten gains and deters others from violating the securities laws. See SEC v. First City Fin. Corp., 890 F.2d 1215, 1230 (D.C. Cir. 1989).

The fact that Giesige lost her investment in Carolina Development is no reason why she should keep the funds she earned as part of the fraud. Giesige's investment loss is of her own making. There is no basis for her retaining the illegal gains she received as a result of her illegal acts. "The effective enforcement of the federal securities laws requires that the SEC be able to make violations unprofitable. The deterrent effect of an SEC enforcement action would be greatly undermined if securities law violators were not required to disgorge illicit profits." SEC v. Manor Nursing Ctrs., Inc., 458 F.2d 1082, 1104 (2d Cir. 1972). Accordingly, I will require that Giesige disgorge $21,015.03, and prejudgment interest from March 1, 2006, computed as set forth in Rule 600 of the Commission's Rules of Practice, 17 C.F.R. § 201.600(b) into a Fair Fund established to benefit Carolina Development investors.[36]

Civil money penalty

Section 21B of the Exchange Act and Section 203(i) of the Advisers Act empower the Commission to impose civil money penalties in proceedings instituted pursuant to Section 15(b) of the Exchange Act or Section 203(f) of the Advisers Act where there has been a willful

[36] Carolina Development's last payment to Giesige was on February 24, 2006. (Div. Ex. 9.)

violation of the Securities Act, Exchange Act, or Advisers Act. These statutes set out a three-tiered level of maximum penalties for "each act or omission" with the highest or third tier applicable where the violations involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement, and, in addition, resulted in substantial losses or created a significant risk of substantial losses to other persons or resulted in substantial pecuniary gain to the person who committed the act or omission.[37] 15 U.S.C. § 78u-2(b), 15 U.S.C. § 80b-3(i)(2).

The public interest factors for deciding to impose a civil money penalty are whether the act or omission involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; the harm caused to other persons from such act or omission; the extent to which a person was unjustly enriched; whether the person has committed prior violations; the need to deter others; and such other matters as justice may require. Section 21B(c), Section 203(i)(3) of the Advisers Act; 15 U.S.C. § 78u-2(c) 15 U.S.C. § 80b-3(i)(3).

The Division recommends that Giesige be subject to a third-tier civil money penalty. (Div. Post-Hearing Br. 53-54.) Giesige, on the other hand, argues that a third-tier penalty is excessive. She denies acting with scienter, and she claims that she and her family have suffered financial losses, that she is not a recidivist, that she has taken steps to assist defrauded investors, and she has not referred investors to any pre-IPO investments since Carolina Development. Giesige views Carolina Development as an aberration in her twenty-two years in the investment industry. (Giesige Post-Hearing Br. 45.)

A third-tier civil money penalty is appropriate because Giesige's actions involved fraud, deceit, manipulation, and a deliberate or reckless disregard of regulatory requirements, and, resulted in substantial losses to investors. Giesige convinced people that, based on her due diligence investigation, Carolina Development was a sound investment. In fact, the only information she had was company-generated promotional material delivered by company salesmen. Giesige's actions were egregious in what she did and to whom she did it. She knowingly, or utterly recklessly, advocated the most speculative type of investment to people of moderate means, many of whom used their retirement funds to make the investment. Her actions violated the most basic investment strategy. The results of Giesige's actions have been devastating to the finances of most of the people who trusted her and, inexplicably, still do. Some of these people were wary of investing before this experience which has likely caused them to abandon it altogether. Giesige caused unscrupulous people to receive $1.49 million and her actions held out potential benefit to her. Giesige's lack of prior violations does not outweigh what occurred here.

For all these reasons, I find that Giesige should pay a third-tier penalty of $500,000, which is roughly one-third of the amount her customers invested in Carolina Development and less than the total of a $130,000 penalty for each of the fifty investments. See Mark David

[37] Violations committed by a natural person after February 14, 2005, have a maximum penalty per occurrence of $6,500 in the first tier; $65,000 in the second tier; and $130,000 in the third tier. See Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, ch. 10, sec. 31001, § 3701(a)(1), 110 Stat. 1321-358; 28 U.S.C. § 2461 (effective Mar. 9, 2006); 17 C.F.R. § 201.1003.

Anderson, 56 S.E.C. 840, 863 (2003) (imposing a civil penalty for each of the respondent's ninety-six violations). This civil money penalty should be put into a Fair Fund to benefit Carolina Development investors.

Fair Fund

Pursuant to Rule 1100 of the Commission's Rules of Practice, 17 C.F.R. § 201.1100, I will require that the amount of disgorgement and civil money penalty be used to create a Fair Fund for the benefit of Carolina Development investors who were harmed by the violations.

RECORD CERTIFICATION

Pursuant to Rule 351(b) of the Commission's Rules of Practice, 17 C.F.R. § 201.351(b), I certify that the record includes the items described in the record index issued by the Secretary of the Commission on September 19, 2008, and the additional items admitted in this Initial Decision.

ORDER

Based on the findings and conclusions set forth above:

I ADMIT Giesige Exhibits A, B, C, D, and E into evidence.

I ORDER, pursuant to Section 8A of the Securities Act of 1933, Sections 15(b) and 21C of the Securities Exchange Act of 1934, and Section 203(k) of the Investment Advisers Act of 1940, that Maria T. Giesige cease and desist from committing or causing any violations, or any future violations, of Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933; Section 10(b) and 15(a) of the Securities Exchange Act of 1934 and Exchange Act Rule 10b-5; and Sections 206(1) and 206(2) of the Investment Advisers Act of 1940;

I FURTHER ORDER, pursuant to Section 15(b)(6) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940, that Maria T. Giesige is barred from association with a broker, dealer, or investment adviser;

I FURTHER ORDER, pursuant to Section 8A(e) of the Securities Act of 1933, Section 21C(e) of the Securities Exchange Act of 1934, and Section 203(k) of the Investment Advisers Act of 1940, that Maria T. Giesige shall disgorge $21,015.03, and prejudgment interest from March 1, 2006, computed as set forth in Rule 600 of the Commission's Rules of Practice, 17 C.F.R. § 201.600(b);

I FURTHER ORDER, pursuant to Section 21B of the Securities Exchange Act of 1934 and Section 203(i) of the Investment Advisers Act of 1940, that Maria T. Giesige shall pay a civil money penalty in the amount of $500,000; and

I FURTHER ORDER, pursuant to Rule 1100 of the Commission's Rules of Practice, 17 C.F.R. § 201.1100, the creation of a Fair Fund and that the amount of disgorgement and civil

money penalties collected be placed in this Fair Fund and used for the benefit of Carolina Development investors who were harmed by the violations found in this decision.

Payment of the disgorgement, prejudgment interest, and civil penalties 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, or bank money order, payable to the U.S. Securities and Exchange Commission. The payment, and a cover letter identifying Respondent and the proceeding designation, shall be delivered to the Comptroller, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, Virginia 22312. 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 of the Commission's Rules of Practice, 17 C.F.R. § 201.111. 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 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 motion to correct 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.

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Brenda P. Murray
Chief Administrative Law Judge