SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 60000 / May 29, 2009

INVESTMENT ADVISERS ACT OF 1940
Rel. No. 2886 / May 29, 2009

Admin. Proc. File No. 3-12747

In the Matter of

MARIA T. GIESIGE
913 Lincoln Drive
Defiance, OH 43512

OPINION OF THE COMMISSION

BROKER-DEALER PROCEEDING
INVESTMENT ADVISER PROCEEDING

Grounds for Remedial Action

Violation of Antifraud Provisions

Offer and Sale of Unregistered Securities

Unregistered Broker-Dealer

Former associated person of a registered broker-dealer and former investment adviser committed fraud in connection with the offer and sale of securities, sold unregistered securities where no exemption from registration existed, and acted as an unregistered broker-dealer by selling securities outside the scope of her relationship with the registered broker-dealer. Held, it is in the public interest to bar Respondent from association with any broker, dealer, or investment adviser, to require the payment of disgorgement, and to impose a third-tier civil penalty.

APPEARANCES:

Maria T. Giesige, pro se.

Thomas Melton and Karen L. Martinez, for the Division of Enforcement.

Appeal filed: October 30, 2008
Last brief received: January 5, 2009

I.

Maria T. Giesige, who was associated from November 2004 to January 2007 with Investors Capital Corp. ("Investors Capital"), a registered broker-dealer, and subsequently registered as an investment adviser in the State of Ohio, appeals from a decision of an administrative law judge. 1/ The law judge found that Giesige made material misstatements and omitted material facts in connection with the sale of the securities of Carolina Development Co. ("Carolina Development" or the "Company"), a Nevada corporation headquartered in California, in willful violation of Section 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934, Exchange Act Rule 10b-5, and Sections 206(1) and 206(2) of the Investment Advisers Act of 1940. 2/

The law judge also found that Giesige sold unregistered Carolina Development securities when no exemption from registration was available, in violation of Securities Act Sections 5(a) and 5(c). 3/ The law judge further found that Giesige engaged in conduct outside the scope of her association with Investors Capital by selling Carolina Development securities to her customers without obtaining the required approvals to do so from Investors Capital and, therefore, acted as an unregistered broker-dealer, in willful violation of Section 15(a) of the Exchange Act. 4/

The law judge ordered that: (1) Giesige cease and desist from violations of the above-referenced provisions; (2) Giesige be barred from association with any broker, dealer, or investment adviser; (3) Giesige pay disgorgement of $21,015.03, plus prejudgment interest; and (4) Giesige pay a third-tier civil penalty of $500,000. The law judge ordered that the disgorgement and civil penalty amounts be included in a Fair Fund to benefit Giesige's customers harmed by the violations. We base our findings on an independent review of the record, except with respect to those findings not challenged on appeal.

1/ Maria T. Giesige, Initial Decision Rel. No. 359 (Oct. 7, 2008), 94 SEC Docket 10635, 10638.

2/ 15 U.S.C. § 77q(a), 15 U.S.C. § 78j(b), 17 C.F.R. § 240.10b-5, 15 U.S.C. § 80b-6(1) and (2), respectively.

3/ 15 U.S.C. §§ 77e(a), 77e(c).

4/ 15 U.S.C. § 78o(a).

II.

A. On appeal, Giesige does not challenge the law judge's findings of violation, nor does she challenge the cease and desist order or the imposition of bars from association with any broker, dealer, or investment adviser. Giesige does, however, request, due to her alleged inability to pay, that the Commission "remove the third-tier penalty and the disgorgement and interest." The events at issue are described in detail in the Initial Decision, and our review of the record finds that the conclusions therein are supported by the record and we rely on them in making our findings. We summarize some of the findings to provide a background for our sanctions discussion.

Giesige Giesige has worked in the financial services industry since 1986. Giesige holds Series 6, Series 7, Series 26, and Series 63 licenses, and holds an Ohio license to sell health and life insurance. Giesige has been associated with several different registered broker-dealer firms during her career, including Investors Capital at the time of the recommendations and sales at issue in this proceeding. In approximately February 2007, Giesige terminated her association with Investors Capital and registered as an investment adviser in the State of Ohio. She thereafter operated as a sole proprietorship adviser, although the services she provided to her advisory customers, including managing customers' assets for a fee, remained the same as those that she performed before her registration.

Carolina Development In late 2005 and early 2006, Giesige made recommendations to approximately fifty of her broker-dealer and advisory customers that they purchase Carolina Development securities totaling approximately $1,490,000. Giesige and her then-husband invested a total of approximately $29,000 in Carolina Development during the same time period. In its promotional materials, Carolina Development purported to be a real estate development corporation with valuable land holdings and the prospect of an imminent initial public offering ("IPO"). In reality, however, Carolina Development neither registered its securities nor took any steps necessary to launch an IPO. The Company's securities traded on the over-the-counter market and were reported in the National Quotation Service Pink Sheets, an electronic quotation system.

In December 2005, the Commission staff had begun an investigation of Carolina Development. Based on the results of this investigation, on February 16, 2006, the United States District Court for the Central District of California, Southern Division, issued a preliminary injunction against further violations of the securities laws by the principals of the Company and appointed a receiver (the "Receiver") for Carolina Development. 5/ The Receiver discovered that Carolina Development had no revenue-generating activities and that new investors served as the only source of revenue for the Company. Although Carolina Development raised approximately $52,000,000 from over 1,400 investors between September 2004 and January 2006, the Receiver found that Carolina Development's assets in February 2006 consisted only of a bank account

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5/ SEC v. Vander Tuig, Civil Action No. SACV 06-0172AHS (C.D. Cal. 2006).

totaling $4,400,000, real estate (the most valuable asset of which was substantially encumbered by liens), and office furniture. The Receiver discovered that Carolina Development had no books and accounting records whatsoever and that all of the figures on the income statement, balance sheets, statement of assets, and land values that Carolina Development distributed in its promotional materials were false. The Receiver sold Carolina Development's most valuable real estate holding, a plot of 768 acres in Texas, for approximately $30,000,000 but netted only $8,000,000 after the payment of secured liens on the property. 6/

Giesige's Recommendations Giesige learned about Carolina Development from George Allendorf, a salesperson who had recommended another investment to Giesige in 2003. Giesige began selling shares of Carolina Development to her customers in late 2005. Allendorf provided Giesige with Carolina Development promotional materials, including a Private Placement Memorandum ("PPM"). The PPM stated that an investment in Carolina Development was only appropriate for accredited investors with a net worth of at least $1,000,000 and income of over $200,000 or $300,000 with a spouse, in each of the prior two years. Allendorf also provided Giesige with lists that purported to show properties owned by Carolina Development and copies of the Company's 2005 income statement and balance sheets for 2003, 2004, and 2005.

Giesige acknowledged in her testimony that she did not understand most of the terminology on the financial statements. Nonetheless, she gave the financial statements to her customers. Giesige made no effort to verify the financial statements, saying, "I just couldn't believe that someone would just make all this stuff up." Giesige testified that Carolina Development told her that the Company's financial statements were audited in preparation for an IPO, but Giesige did not request a copy of the audited financials. However, she stated that she called an accounting firm she had been told was performing work for Carolina Development and that she was told that no audit had been completed. In fact, the Company never had audited financial statements.

Giesige conducted research on the Internet that led her to believe that Carolina Development was endorsed by professional golfers Arnold Palmer, Jack Nicklaus, and Greg Norman, whose pictures appeared in the Carolina Development promotional materials. Giesige stated, ". . . 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." Giesige conducted no other due diligence besides her Internet search to reach her conclusion that the golfers endorsed Carolina Development. There was, in fact, no

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6/ The Receiver continues to seek recovery of Carolina Development investors' funds through the sale of additional real estate holdings, the seizure of bank accounts, attempts to discover additional money hidden by the principals, the prosecution of disgorgement actions against licensed securities salespeople, and actions against attorneys who represented the Company.

relationship between the golfers and Carolina Development, and Arnold Palmer had specifically requested that Carolina Development stop using his name and image in its promotional materials.

Giesige distributed the Carolina Development materials to many of her customers and recommended Carolina Development as a good investment. Many of the customers testified that Giesige gave them the impression that she had done substantial due diligence and research on Carolina Development. Giesige estimates that about one quarter of her then-existing customers invested in Carolina Development on her recommendation. As word spread about Giesige's recommendation of Carolina Development, she also gained many new customers, most of whom were co-workers of her then-husband at a General Motors plant. Giesige conducted several meetings at her office with new and existing customers, during which she distributed the Company's promotional materials, recommended Carolina Development as a good investment, and on occasion conducted conference calls with Allendorf and one of the Company's principals. Giesige signed the subscription agreements of many of her customers "for the Carolina Development Company, by Maria Giesige, authorized representative." Giesige received $21,015.03 and 13,905 Carolina Development shares from the Company in referral fees for her sales of Carolina Development to her customers.

Although Giesige only learned about Carolina Development in October of 2005, she told her customers that the Company would have an IPO by the end of 2005, even though she knew that the Company did not have audited financials. Giesige told her customers that the book value of Carolina Development's shares was $9.00 per share at the time, but that the customers could buy shares for $3.00 per share prior to the IPO. Giesige conducted no research to determine the accuracy of the $9.00 book value of the Company's shares that Allendorf quoted her.

When one of the customers noticed prior to making his investment that Carolina Development was trading on the Pink Sheets at twenty or thirty cents a share, he questioned Giesige about it. Giesige repeated to the customer the explanation she apparently received from the Company, without conducting any further inquiry to verify the information, telling the customer that he had seen the ticker symbol of a different company and that Carolina Development had bought that ticker symbol to speed up its IPO. Giesige testified, "I got an explanation from [the Company about the presence of a ticker symbol for Carolina Development on the Pink Sheets], but that was when I started to really get worried that something was wrong." Giesige made no effort to find out additional information about the Company's trading on the Pink Sheets, did not advise any of her other customers of these developments, and made no effort to inform any of her customers of her worries.

Giesige made specific projections about the future value of Carolina Development shares to several customers, stating that, after the IPO, the price of the shares would increase from $3.00 per share to $9.00 per share in a few months, and ultimately would reach $21.00 or more per share. On February 10, 2006, Giesige sent a mailing to her customers stating that Carolina Development's IPO had been delayed until March 2006, but she encouraged the customers to be

"patient, it isn't every day we have the opportunity to make 1000% gain in less than a year" and that the customers could expect "between $20 to $50 IPO price."

The record contains Preliminary Investor Response Forms from forty-five Giesige customers who purchased Carolina Development shares. Many of these customers also testified at Giesige's hearing. With a few exceptions, the customers were inexperienced and unsophisticated investors, with moderate incomes and savings. Giesige testified that, at the time, she believed that at most five of the customers were accredited. When one of Giesige's customers asked her about the requirement that all Carolina Development investors be accredited, Giesige told the customer that Allendorf "had gotten the standards reduced." Giesige told another unaccredited investor that Allendorf "was allowing non-accredited investors to participate in this opportunity."

On Giesige's recommendation, many of the customers invested funds from their retirement savings in Carolina Development, including, in some cases, taking loans against 401(k) accounts and reverse mortgages in order to make the purchases. Other customers made investments in individual retirement accounts ("IRAs"). Although Giesige testified at the hearing that she believed she had made adequate disclosure of the risk involved in the Carolina Development investment, the law judge credited the testimony of customer witnesses that Giesige did not tell them that she considered Carolina Development to be a risky investment, but rather expressed great confidence in the upside potential of the Company. The law judge also found that Giesige did not tell her customers that she had no experience with private placement offerings or IPOs, or that she received referral fees from the Company.

Giesige did not notify Investors Capital of her activities in connection with Carolina Development and did not effect her customers' purchases through Investors Capital. After the Carolina Development fraud was exposed and the Company was put into receivership, Giesige continued to endorse the merits of the Company, advising customers that they had a good chance of receiving a significant portion of the amounts they invested plus a profit and claimed that the Receiver's reports were inaccurate. 7/ Giesige encouraged her customers not to talk to the Receiver. She told one customer, who had lost all of her retirement savings, that Allendorf would make payments to keep the customer from losing her family's home, but the customer has received no money.

B. The Initial Decision

The law judge found that Giesige failed to do any due diligence, and that she made numerous material misrepresentations and omissions of material facts in her recommendations of

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7/ The Receiver testified, "[i]t seemed like [Giesige] was spreading misinformation about the case early on and I had conversations with her where I encouraged her not to do that."

Carolina Development stock to her customers. 8/ The law judge concluded that Giesige acted with scienter and that her conduct "has damaged many investors and caused irreparable damage to some." The law judge concluded that Giesige had engaged in repeated fraudulent conduct in her sales of Carolina Development securities, in violation of Securities Act Section 17(a), Exchange Act Section 10(b), and Exchange Act Rule 10b-5.

The law judge also found, based on the definition of investment adviser in Section 202(a)(11) of the Advisers Act, 9/ that Giesige acted as an investment adviser for her customers in late 2005 and 2006, even though she was not registered as an investment adviser in Ohio until February 2007. The law judge found that Giesige had breached her fiduciary duty to her advisory customers by making the misrepresentations and omissions discussed above. The law judge found that this breach of fiduciary duty was particularly egregious in that "almost all of [the customers] were people of moderate means who are fairly conservative in their level of risk tolerance," and many of the customers had invested their retirement funds in Carolina Development on Giesige's recommendation. Based on these findings, the law judge found that Giesige violated Advisers Act Sections 206(1) and (2).

The law judge further found that Giesige sold unregistered Carolina Development securities. The law judge rejected Giesige's arguments that she was not in fact offering or selling Carolina Development shares, noting that Giesige held several meetings at her office at which she recommended that her customers purchase Carolina Development shares, and that Giesige received referral fees from Carolina Development for the purchases her customers made. The law judge further found that Giesige knew that Carolina Development's securities were unregistered and that she knew that most of her customers who purchased the unregistered securities were not accredited investors. The law judge thus found that the exemption from

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8/ Among those cited in the Initial Decision were "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 $9.00, and the omission that shares were selling on the Pink Sheets for less than $1.00 when she was selling shares for $3.00 a share."

9/ 15 U.S.C. § 80b-2(a)(11). Section 202(a)(11) 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. . . ." Several customers, including two of the customers who worked at General Motors, testified that, during the relevant period, they paid Giesige quarterly management fees based on a percentage of their assets under management. This activity occurred without the knowledge or permission of Investors Capital. As the law judge found, "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."

registration in Section 4(2) of the Securities Act for private placements was not available. Based on these facts, the law judge found, "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."

The law judge also held that Giesige was not authorized by Investors Capital, the broker-dealer firm with which she was associated at the time, to sell Carolina Development shares. The law judge noted that Giesige recommended the investments to her customers; provided them with the Company's promotional materials; put the customers in contact with the Company, including signing certain subscription agreements as a Company representative; and received referral fees from the Company for her customers' purchases. The law judge found, "As a person engaged in the business of effecting transactions in securities for the account of others, Giesige was acting as a broker." Because Giesige was not individually registered as a broker-dealer with the Commission at the time, the law judge found that Giesige violated Exchange Act Section 15(a).

The law judge also found that "Giesige's testimony under oath was not credible." The law judge noted that Giesige's assertions at the hearing that she warned her customers about the risks of an investment in Carolina Development were contradicted by the testimony of many customers, who stated that "Giesige was very confident about Carolina Development's upside potential" and that "Giesige did not explain that, as unregistered securities, Carolina Development shares were a very risky investment." The law judge further noted additional inconsistencies in Giesige's testimony, including with respect to when she became aware that the Company's securities were not registered and when she began to provide fee-based asset management services to her customers.

Based on the record before us, we find that Giesige willfully violated Securities Act Sections 5(a), 5(c), and 17(a), Exchange Act Sections 10(b) and 15(a), Exchange Act Rule 10b-5, and Advisers Act Sections 206(1) and 206(2). 10/

III.

Giesige's Appeal

A. Giesige's Motion to Adduce Additional Evidence Along with her brief on appeal, Giesige has submitted a Motion to Adduce Additional Evidence (the "Motion to Adduce").

10/ Although the law judge did not make a specific finding of willfulness with regard to the Section 5 violations, we find that the record amply supports that Giesige's conduct in violating Section 5 was willful. The requirement that Giesige acted willfully may be satisfied by a showing that she intended to do the acts that constituted the violations. Wonsover v. SEC, 205 F.3d 408, 414 (D.C. Cir. 2000).

Under Rule 452 of the Commission's Rules of Practice, 11/ parties may file motions to adduce evidence not included in the record, provided "that such additional evidence is material and there were reasonable grounds for failure to adduce such evidence previously." For the reasons set forth below, we deny Giesige's motion.

1. Exhibit A Prior to the hearing before the law judge, Giesige and the Division of Enforcement engaged in settlement discussions. During the course of the settlement discussions, Giesige provided the Division with a sworn statement of her financial condition, dated February 4, 2008, which Giesige includes as Exhibit A to the Motion to Adduce. Because this document was provided to the Division as part of ultimately unsuccessful settlement discussions, under Rule 240(c)(6) of the Commission's Rules of Practice, it was not included in the record during Giesige's hearing. 12/ Although Giesige was represented by counsel during the entirety of her hearing before the law judge, she did not attempt to enter any evidence establishing her financial condition or her alleged inability to pay a monetary sanction during the course of the hearing. For the first time before the law judge, Giesige attempted to introduce her sworn statement of financial condition as an appendix to her post-hearing brief. 13/ In the Initial Decision, the law judge granted the Division's motion to strike the appendix from the record, finding that "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."

The law judge's determination to strike Giesige's untimely effort to introduce evidence purporting to show an inability to pay a monetary sanction after the hearing was correct. Under Rule 340(b) of the Commission's Rules of Practice, 14/ post-hearing proposed findings of fact and conclusions, such as the ones to which Giesige sought to attach her sworn statement of financial condition before the law judge, "must be supported by citations to specific portions of the record." As noted above, the record includes no evidence relating to Giesige's ability to pay a monetary sanction. When a respondent asserts an inability to pay, the opposing party (in this case, the Division) should be afforded the opportunity to conduct a "searching inquiry" into the

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11/ 17 C.F.R. § 201.452.

12/ 17 C.F.R. § 201.240(c)(6). Rule 240(c)(6) states, "If the Commission rejects the offer of settlement, the person making the offer shall be notified of the Commission's action and the offer of settlement shall be deemed withdrawn. The rejected offer shall not constitute a part of the record in any proceeding against the person making the offer. . . . "

13/ Like Exhibit A, the financial statement did not include the required attachments. See text accompanying note 16 infra.

14/ 17 C.F.R. § 201.340(b).

claim. 15/ Because Giesige did not make her claim during the hearing, the Division had no opportunity to call its own witnesses, introduce exhibits, or cross-examine Giesige about the claim.

We also find that Exhibit A is not sufficiently complete to be material to the issue of inability to pay. Although Exhibit A states that Giesige "will enclose" credit card statements, "Dell leases," bank and brokerage account statements, and statements for retirement accounts, nothing is attached. Nor does Exhibit A attach the income tax returns required by the Commission financial disclosure form. 16/ We also note that Exhibit A is not updated and current as required under Commission Rule of Practice 630(b). 17/

Even if we found that Giesige had demonstrated an inability to pay, we have discretion not to waive a penalty and disgorgement if the conduct is sufficiently egregious. 18/ As discussed below, we believe that Giesige's conduct is egregious and does not warrant a waiver of the penalty or disgorgement.

2. Exhibit B Exhibit B to Giesige's Motion to Adduce includes email messages between Giesige's former counsel and the Division during the period before the hearing when the parties were discussing a potential settlement of the proceeding. According to Giesige, "[Exhibit B] proves information on the Sworn Financial Statement was provided to the Division's satisfaction in a PRE-Hearing and satisfactory way." (emphasis in original) Giesige's counsel appears to have discussed the financial information with the Division in the context of settlement negotiations. However, as noted above, under Rule 240(c)(6), unsuccessful settlement discussions are not included in the record.

3. Exhibit C In the Initial Decision, the law judge stated, "Resolution of the proceeding was delayed because of an unsuccessful attempt by the parties to settle." Giesige claims that this statement in the Initial Decision is inaccurate because, according to Giesige, her counsel and the Division "DID come to a successful attempt to settle, even though [the law judge] said we did not, but for some reason the Commission rejected it." (emphasis in original)

15/ Castle Sec. Corp., Securities Exchange Act Rel. No. 52580 (Oct. 11, 2005), 86 SEC Docket 1466, 1474.

16/ Form D-A Model Disclosure of Assets and Financial Information Form, 17 C.F.R. §209.1. ¶ K.1 (requiring that any federal tax returns for year of first violation and all subsequent years be attached).

17/ 17 C.F.R. § 201.630(b).

18/ David Henry Disraeli and Lifeplan Associates, Inc., Securities Act Rel. No. 8880 (Dec. 21, 2007), 92 SEC Docket 883 n.124.

Under Rule 240(c)(6), Exhibit C to Giesige's Motion to Adduce, a document entitled "Offer of Settlement of Maria Giesige," was not part of the record before the law judge. Further, Exhibit C does not, as Giesige claims, "show that there was a successful attempt by the parties to settle which is the opposite of what [the law judge] claims on Pg 2 of her Initial Decision." Because the parties did not, in fact, settle the proceeding, the law judge's statement in the Initial Decision is accurate.

4. Exhibit D Exhibit D to the Motion to Adduce is Giesige's counsel's response to the Division's objection to Giesige's attempt to introduce the sworn financial statement as an exhibit to Giesige's post-hearing brief. This document is already part of the record on appeal.

B. Disgorgement The purpose of a disgorgement award is to deprive the wrongdoer of ill-gotten gains and to deter others from violating the securities laws. 19/ Giesige received $21,015.03 in referral fees from Carolina Development for her sales of Carolina Development securities to her customers. Because Giesige received this money as compensation for the very transactions that constituted the violations at issue, the disgorgement order is appropriate, whether or not Giesige is currently able to pay the full disgorgement amount.

C. Civil Penalty Third-tier penalties are in the public interest where the violations at issue 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. 20/ Where a third-tier penalty is in the public interest, the Commission is authorized to assess a maximum $130,000 penalty for each violative act or omission. 21/ As discussed above, Giesige made numerous and repeated misstatements and omissions to each of her approximately fifty customers who purchased Carolina Development securities, and the Commission has the authority to assess a penalty for each of these individual violations.

We have held, "An applicant's ability to pay is but one factor to consider in determining whether a penalty is in the public interest." 22/ Where the egregiousness of an applicant's conduct outweighs any consideration of the respondent's inability to pay the civil penalty, the

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19/ SEC v. First City Fin. Corp., 890 F.2d 1215, 1230 (D.C. Cir. 1989) (citing SEC v. Tome, 833 F.2d 1086, 1096 (2d Cir. 1987), cert. denied, 108 S. Ct. 1751 (1988); SEC v. Blavin, 760 F.2d 706, 713 (6th Cir. 1985); SEC v. Texas Gulf Sulphur Co., 446 F.2d 1301, 1307 (2d Cir. 1971), cert. denied, 404 U.S. 1005 (1971)) .

20/ 15 U.S.C. §§ 78u-2(b), 80b-3(i)(2).

21/ See 17 C.F.R. § 201.1003.

22/ Bearcat, Inc., 57 S.E.C. 406, 429 (2004) (citing Brian A. Schmidt, 55 S.E.C. 576, 597-98 (2002)).

public interest requires that the civil penalty be imposed. 23/ Although Giesige acknowledges that she exercised "poor judgment and because of this many people have been hurt" and states "I have withdrawn my [Ohio registered investment adviser] license and accept the barring of my other securities licenses," she appears to argue that her conduct was not sufficiently egregious to warrant the law judge's imposition of the third-tier civil penalty. Giesige states, "There was not one witness that neither testified [sic] nor seemed to feel that I was operating in the fashion that [the law judge] describes [in the Initial Decision.] I realize now that I was to be held to a higher standard and an unscrupulous company duped me and I shared information with others that I believed to be true."

The record contradicts Giesige's assertions that her conduct was not egregious. Although some of the customers continue to trust Giesige and some of them apparently continue to allow Giesige to manage their portfolios, all of the customers testified that Giesige recommended Carolina Development to them as a good investment. Most of the customers who invested were unaccredited. They had moderate incomes and trusted Giesige to make recommendations suited to their investment needs. Many of the customers invested significant portions of their retirement savings in a fraudulent enterprise based on the recommendations of Giesige. Giesige conducted virtually no research to back up her recommendations. Although Giesige learned that no audit of the Company's financial statements had ever been completed, she did not disclose this to her customers. Giesige repeatedly and without basis told her customers that Carolina Development was close to launching an IPO, and she made specific, baseless projections that the value of the stock would increase from their $3.00 per share purchase price to over $20.00 per share. She failed to inform the customers that Carolina Development shares traded on the Pink Sheets at a price below $1.00 per share during the entire time that she recommended them to her customers, even after a customer alerted her to this fact. Giesige asserted to her customers, without engaging in any independent effort to confirm the Company's numbers, that the book value of their shares was $9.00 per share when, in fact, the book value was considerably lower.

The law judge further found that Giesige did not disclose to her customers that the Carolina Development investments were risky. In addition, Giesige never disclosed to her customers the $21,105 in referral fees that she received from the Company. As a result, while Giesige personally invested money in Carolina Development, any losses she suffered, unlike those of her customers, are mitigated by her receipt of referral fees for convincing her customers to invest.

As set forth in this opinion, we find that Giesige's conduct involved fraudulent misstatements and omissions, some of which were knowing while others were extremely reckless. In sum, her conduct manifested a reckless disregard of the provisions of the securities laws Giesige violated, and the conduct caused her customers to suffer losses that were significant to them. We further find that the egregiousness of Giesige's conduct outweighs any inability she may have to pay the amount, even if we were to accept Giesige's motion to introduce her

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23/ Id. (citing Schmidt, 55 S.E.C. at 598).

untimely and inadequate evidence of her inability to pay. Given that Giesige made numerous misstatements and omissions to each of the approximately fifty customers who purchased Carolina Development securities on her recommendation, for each of which violations the Commission has the authority to assess a $130,000 penalty, we believe that the law judge's assessment of a civil penalty in the amount of $500,000 is not unreasonable. 24/

D. Fair Fund

The law judge ordered "the creation of a Fair Fund and that the amount of disgorgement and civil money penalties be placed in this Fair Fund and used for the benefit of Carolina Development investors who were harmed by the violations found in [the Initial Decision]," pursuant to Rule of Practice 1100. 25/ "Sarbanes-Oxley's Fair Fund provision provides the [Commission] with flexibility by permitting it to distribute civil penalties among defrauded investors by adding the civil penalties to the disgorgement fund." 26/ We direct that the civil money penalty and disgorgement amounts ordered in this matter be paid into such a fund.

An appropriate order will issue. 27/

By the Commission (Chairman SCHAPIRO and Commissioners WALTER and PAREDES); Commissioners CASEY and AGUILAR not participating.

Elizabeth M. Murphy
Secretary

24/ The law judge noted that the $500,000 penalty amount was "less than the total of $130,000 penalty for each of the fifty investments." We note that even a $10,000, second-tier penalty for each of the misstatements or omissions Giesige made with respect to the investments of the fifteen customers who testified at the hearing would produce a penalty amount greater than the $500,000 penalty assessed by the law judge.

25/ 17 C.F.R. § 201.1100.

26/ Official Comm. of the Unsecured Creditors of Worldcom, Inc. v. SEC, 467 F.3d 73, 82 (2d Cir. 2006) (citing Section 308(a) of the Sarbanes-Oxley Act, 15 U.S.C. § 7246(a)).

27/ We have considered all of the arguments advanced by the parties. We have rejected or sustained them to the extent that they are inconsistent or in accord with the views expressed in this opinion.

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 60000 / May 29, 2009

INVESTMENT ADVISES ACT OF 1940
Rel. No. 2886 / May 29, 2009

Admin. Proc. File No. 3-12747

In the Matter of

MARIA T. GIESIGE
913 Lincoln Drive
Defiance, OH 43512

ORDER IMPOSING REMEDIAL SANCTIONS

On the basis of the Commission's opinion issued this day, it is

ORDERED 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; Sections 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; and it is further

ORDERED that Maria T. Giesige be barred from association with any broker, dealer, or investment adviser; and it is further

ORDERED that Maria T. Giesige shall disgorge $21,105.03, and prejudgment interest in the amount of $4,883.28 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); and it is further

ORDERED that Maria T. Giesige shall pay a civil money penalty in the amount of $500,000; and it is further

ORDERED that the disgorgement and civil money penalty be used to create a "Fair Fund" for the benefit of investors pursuant to Commission Rules of Practice 1100-1106.

Payment of the amount to be disgorged, prejudgment interest, and the civil money penalty shall be: (1) made by United States postal money order, certified check, bank cashier's check, or bank money order; (2) made payable to the Securities and Exchange Commission; (3) mailed or delivered by hand to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Alexandria, VA 22312; and (4) submitted under cover letter that identifies the respondent and the file number of this proceeding. 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 the counsel of record.

By the Commission.

Elizabeth M. Murphy
Secretary