UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

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ADMINISTRATIVE PROCEEDING
File No. 3-14684

In the Matter of

ANTHONY FIELDS, CPA
d/b/a ANTHONY FIELDS &
ASSOCIATES and d/b/a
PLATINUM SECURITIES
BROKERS,

Respondent.

JUDGE CAROL FOX FOELAK

THE DIVISION OF ENFORCEMENT'S PREHEARING BRIEF

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INTRODUCTION

This matter concerns fraudulent conduct by Respondent Anthony Fields ("Respondent" or "Fields") including his use of social media and Internet advertising to offer fictional "bank guarantees" and "mid-term notes" for sale. To lend credence to his fraudulent offerings of "billions" of dollars of securities, Fields has touted "Anthony Fields & Associates" ("AFA") as his SEC–registered investment advisory firm with a sophisticated clientele and "Platinum Securities Brokers" ("Platinum") as his brokerage firm with a large inventory of securities. Fields seeks to justify his representations based on the existence, at least on paper, of contracts purporting to involve the purchase and sale of hundreds of millions of dollars in securities. In reality, however, Fields is a one-man operation with no real contracts, no investment clients, no inventory of securities, no relevant experience, no significant resources and no offices other than his rented apartment. "Bank guarantees" and "mid-term notes" do not even exist as securities that can be traded on "secondary" markets as Fields would have investors believe. Such markets exist only in the fantasy world created by hucksters offering unwary investors nonexistent "prime bank securities" – *i.e.,* supposedly risk free and often high yielding securities issued by the world's best-known and safest (hence the term, "prime") banks. Social media and the Internet are now the preferred tools being used to troll for victims of such frauds.

In addition to Fields' violations of the anti-fraud provisions of the Securities Act and the Investment Advisers Act, this matter also concerns violations of other provisions of the federal securities laws that Fields committed in the course of attempting to bolster his credibility. Specifically, Fields violated the broker-dealer registration provisions of the Securities Exchange Act by offering to sell securities through Platinum when it was not registered with the Commission and by falsely advertising that Platinum was an SEC-registered "top institutional" brokerage firm. Fields also violated numerous other provisions of the Advisers Act when he registered AFA with the Commission as an investment adviser, including filing a Form ADV that was filled with falsehoods about AFA supposedly advising hedge funds and other sophisticated clients and having $400 million in assets under management ("AUM") when he really had no clients and not one dime of AUM.

As will be demonstrated at the hearing, the proof of Fields' many violations will mostly come from his own admissions and what he has already put in writing. Significant sanctions are warranted in order to protect investors and deter future violations because, while prime bank securities like those Fields has offered are fictional, the dangers they pose to unwary investors are all too real.

STATEMENT OF FACTS

1. Overview of Prime Bank Securities Fraud Schemes Using Social Media and the Internet

As the Division's expert witness (John Stark) in this matter has explained "[t]he typical prime bank promotion is premised on the existence of a secret secondary market within which the world's largest and most secure (i.e., *prime*) banks are said to trade financial instruments on a daily basis in billion dollar volumes at huge, irreversible and perpetual profits. This secondary market is often held out to be the domain of a small number of 'elite' and specially accredited banks." See J. Stark and N. Vietmeyer, "The SEC and Prime Bank Securities Frauds: Past and Future," 31:1 *Securities Regulation Law Journal* (Spring 2003) ("*Stark*"), at p. 12. A necessary corollary upon which these schemes depend is the notion that banks issue instruments like "prime bank guarantees" that can be resold like securities on these secretive secondary markets:

> Prime bank instruments come in an assortment of shapes and sizes, and although the basic scheme is fairly easy to describe, there exist infinite variations. Known at times as "prime bank guarantees," "prime bank letters of credit," "prime bank notes," "prime bank debentures" and by a hodgepodge of similar sounding names, prime bank instruments are packaged by their promoters in every possible manner. Stark, at p. 11.

Prime bank securities schemes have proven very adaptable while continuing to rely on the same basic premise just discussed. In the wake of past enforcement actions and investor alerts, for example, even a cursory Internet search will reveal that the term "prime" bank securities is now a major due diligence red flag. But scam artists have adapted by dropping references to "prime" bank instruments and instead describing their offerings as simply "bank guarantees," "mid-term" (or "medium term") notes," "bills of exchange" and various other types of familiar-sounding commercial instruments. With or without the word "prime," the use of such terms plays on the fact that they are sometimes used colloquially in legitimate commerce to refer to instruments like irrevocable letters of credit. The illusion that secondary markets for such instruments might really exist is fostered by numerous fraudulent offers posted on different websites; by social media discussions involving people who are either participating in a scheme or simply misinformed; by fake offering materials that appear complex, sophisticated and official; and, like urban legend, by the mere existence of viral Internet "chatter" republishing assertions made by others. Moreover, the existence of such markets may seem all the more plausible against a backdrop of publicity in recent years about exotic financial instrument investments like collateralized debt obligations that are not traded on exchanges.

Perpetrators of prime bank securities schemes tend to be either seasoned con artists or people who simply don't know or care whether a secondary market really exists so long as they can potentially profit as a purported intermediary or reseller. In either case, the dangers to investors are the same. Perpetrators often dangle the prospect of high yields before investors.

Conversely, perpetrators sometimes promise only modest returns above a benchmark like the prime rate for the sake of consistency with the assertion that the investment is risk free. Other common traits of these schemes include the unauthorized reference to the name of one or more well-known banks; the assertion that the offering is so large that is can only be made in "tranches"; the claim that investors' money will be held in accounts that will be able to view online; the essentially random use of acronyms for financial terms like "SWIFT" [Society for Worldwide Interbank Financial Telecommunication]; the liberal use of jargon like "fresh cut," "cask backed," "slightly seasoned" and "rolls and extensions"; and sometimes, the suggestion that a portion of the proceeds will be donated to some worthy humanitarian cause.

Social media and the Internet have provided the perpetrators of prime bank securities frauds with powerful new technologies to identify and defraud potential victims. An attractive Website can make a promoter seem established and sophisticated, yet the cost of creating and maintaining such a site is *de minimis.* A myriad of templates and copious amounts of content that can be used to create documents that look official can be easily found on the Internet and adapted or simply copied with little effort. Moreover, the increasing popularity of social media as a business networking platform allows promoters to generate a sense of "buzz" about fictitious offerings. Social media also facilitates direct, person-to-person contact that can enable promoters to identify and mislead unwary investors. As the SEC's Office of Investor Education and Advocacy has recently warned:

> While social media can provide many benefits for investors, it also presents opportunities for fraudsters. Social media, and the Internet generally, offer a number of attributes criminals may find attractive. Social media lets fraudsters contact many different people at a relatively low cost. It is also easy to create a site, account, email, direct message, or webpage that looks and feels legitimate – and that feeling of legitimacy gives criminals a better chance to convince you to send them your money. Finally, it can be difficult to

track down the true account holders that use social media. That potential anonymity can make it harder for fraudsters to be held accountable.

See "Investor Alert: Social Media and Investing – Avoiding Fraud," SEC Office of Investor Education and Advocacy (January 2012).

The victims of prime bank securities frauds have run the gamut from unsophisticated, elderly or novice investors to small businesses seeking alternative financing to otherwise sophisticated investors. Even some institutional investors have gone down the road of investing in such schemes before realizing their true nature. It is believed that prime bank securities schemes and their offshoots have defrauded U.S. investors out of hundreds of millions if not billions of dollars since their emergence in the early 1970s and proliferation thereafter.

2. Respondent's Background and Use of Trade Names

Fields received BS degrees in accounting and business administration in 1981 and received his license as a CPA in Illinois in 1987. Fields worked at an accounting firm from 1979 to 1986, starting as a proofreader and eventually advancing to accountant. He worked at another accounting firm in Chicago from 1987 to 1989, before opening AFA as an accounting firm in 1989. Fields operated two "home mortgage brokers" from 1998-2003, one of which he sold for $50,000 in 2000 and the other of which has been "inactive" since 2003. Fields no longer holds a CPA's license but still does tax returns for approximately 30 clients, and states his annual profits as approximately $30,000. Fields has previously declared bankruptcy, and had an outstanding tax liability of approximately $100,000 as of June 2011.

In March, 2010, Fields registered AFA as an investment adviser with the SEC. Fields also operates the Website "www.anthonyfieldsandassociates.com" to advertise AFA's services as an investment adviser. AFA has never had any officers, directors or employees besides Fields, however, and Fields has no experience trading securities or providing investment advisory services. Fields has never bought or sold any securities (for others or even for himself) and does not hold any securities licenses. The only investment advisory experience Fields claims came during 1987-89, when one of the accountants who advised clients on investments at the firm where Fields worked had him monitor newspapers and do research. More recently, Fields claims to have taken self-study courses on subject matter of the Series 7 and Series 63 examinations offered by FINRA, but he either did not take or did not pass those examinations. AFA has never had any AUM or received any compensation from any client for investment advisory services.

Platinum, like AFA, is also a sole proprietorship with no legal existence or substance apart from Fields. Platinum has no employees, officers or directors other than Fields. Platinum, like AFA, is located in Field's apartment to the extent it has any physical existence. Fields registered Platinum as a broker-dealer with the SEC in March 2010 but withdrew that registration effective September 2010 after FINRA told him that Platinum did not meet minimum net capital requirements. Nonetheless, Fields has operated, and until very recently continued to operate, the Website "www.platinumsecuritiesbrokers.com" in to advertise brokerage services.

3. Respondent's Offerings and Misrepresentations through Business Networking Social Media

Fields has offered to sell and/or broker the sale of bank guarantees ("BGs") and mid-term notes ("MTNs") on various Internet networking sites including LinkedIn and TradeKey. LinkedIn is a business networking site for marketing and employment opportunities that reportedly has over 150 million members worldwide and over 1 million discussion groups devoted to particular subject matter areas. Individual members can create and name such discussion groups. Interested members may join and post public or private comments. There are many LinkedIn discussion groups that have catch phrases like "BGs," "MTNs," "private placement" and/or "high yield" in their names. Fields is a member of many such discussion groups.[1] His LinkedIn "profile" identifies him as the owner of Platinum and the "Principal/CCO" of AFA and refers LinkedIn members to his websites for those companies for additional information. Fields' profile also asserts that his "specialties" include BGs and MTNs.

Sometime in late 2010,[2] Fields posted the following notice in a LinkedIn discussion group named "Trade Platforms – Private Placement Programs (PPPs) – High Yield":

> FRESH CUT BGS 40+1
>
> Bank Guarantees, Cash Backed, Deutsche Bank, Credit Suisse, HSBC, JP Morgan Chase, BNP Paribas, UBS, RBS or Barclays, One (1) year and one day, Fresh Cut USD 500 Billion (USD 500,000,000,000.00) with Rolls and Extensions 40% or better plus 1% Commission Fee to be paid, to Buy Side and Sell side consultants 50/50. First Tranche: 500M USD .....If you are interested you can email for particulars at anthonyfields@att.net.

Fields posted this additional notice in the same LinkedIn discussion group:

> FRESH CUT MTNS 30+1
>
> Medium Term Notes, Cash Backed, Deutsche Bank, Credit Suisse, HSBC, JP Morgan Chase, BNP Paribas, UBS, RBS or Barclays, Ten (10) years and one (1) day. Fresh Cut 7.5% expected. USD 500 Billion (USD 500,000,000,000.00) with Rolls and Extensions. 30% or better plus 1% Commission Fee to be paid, to Buy Side and Sell side consultants 50/50. First Tranche 500 M USD. All interested parties can email me for particulars at anthonyfields@att.net.

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[1] These include discussion group named "Alternative World (MTN's, BG's, PPP's and Much More)," "BG's Bank Guarantees and Commodities," "Buyers and Sellers of Bank Debentures & Paper – Medium Term Notes, Bank Guarantees, SBLC's, T-Strips," "Medium Term Notes (MTN) Exchange," Private Broker Club (MTN's, BG's, SBLC's, Bonds, PPP's, Import/Export and Commodities," "Real Deals for MTN's and BG's," "The MTN Traders Group" and "Trade Platforms – Private Placement Programs (PPPs) – High Yield Investment Programs (HYIPs)."

[2] The Division's copies of Fields' LinkedIn postings and responses thereto were produced by Fields during the investigative phase. Those copies are mostly undated and are of poor quality.

Similarly, in another LinkedIn discussion group named "Real Deals for MTNs and BGs," Fields stated, in a "Discussions I've Started" postings, that "[w]e are direct to seller of fresh cut BGs 40+1 and slightly seasoned BGs at 55+1, cash backed [unintelligible] world banks, 50B contracts" and that "MTNS SLIGHTLY SEASONED 66+1 IF YOUR BUYER CAN PROVIDE MT 103.23 YOU CAN GET THE PAPER." In investigative testimony, Fields stated that he also used LinkedIn, TradeKey and another platform named "E2 Commerce" to advertise that "I have access to a seller of bank guarantees and MTNs, fresh cut, slightly seasoned, at 7.5 interest rate, $50B contracts, in rolls and extensions." On their face, these postings constitute offers to sell and/or broker the sale of BGs and MTNs. They also solicit would-be "consultants" to deliver "buyers" in exchange for "commissions."

In fact, Fields' LinkedIn postings succeeded in attracting interest. For example, one member of a LinkedIn discussion group responded to Fields by writing that "I have a strong client wanting 1st tranche of 500M with rolls and extensions to 50B. I have the complete compliance package. Please send your contact info and details." Another member asked that Fields "[p]lease forward to me at my email address the Complete Documents/information on behalf of your MTNs. I am also in need of MTNs at 70% to [illegible] %. Please advise ASAP."

Whereas Fields used LinkedIn to offer to sell and/or broker the sale of BGs and MTNs, he used TradeKey to offer to buy and/or broker the purchase of such instruments. TradeKey is a "B2B" platform designed to enable small to medium-sized businesses around the world to network with one another. TradeKey reports having a membership base of over 5.7 million businesses and 9.5 million visits to the platform each month. On October 13, 2010, Fields, listing AFA as his company affiliation, posted the following on TradeKey:

> Bank Guarantees
>
> My name is Anthony Fields. I'm a CPA in the United States and I have a client interested in buying $50 billion bank guarantees. If this is something that you are interested in please call me at [Fields' phone number].

On October 15, 2010, Fields posted another notice in TradeKey asserting that "I have clients interested in sellers of BG's and MTNs."

Fields apparently hoped that such postings would peak the interest of ostensible "sellers" of BGs and MTNs with whom he could collaborate or otherwise use in order to target "exit buyers." In fact, it apparently did not matter whether Fields actually had a legitimate contract with any purported seller of BGs and MTNs, so long as he could create the impression that he did. Fields apparently thought that he could take "commissions" on any monies deposited by exit buyers regardless of whether any BGs or MTNs were ever delivered. Fields knew, or was extremely reckless in not knowing, that he could not deliver any BGs and MTNs to exit buyers. Fields also was not registered as a broker-dealer.

In late October 2010, Fields solicited a London-based firm named Westminster International Corp. Ltd. ("Westminster") to buy MTNs that he did not have and could not deliver. Fields made an unsolicited phone call to Westminster's U.S. representative and falsely claimed to represent the owners of MTNs issued by German and Swiss banks. Fields proposed to arrange a sale to Westminster and the representative apparently expressed interest. Fields quickly followed up with an email telling the representative that "I spoke to the sellers rep [sic] yesterday and they are putting things in motion." In reality, Fields did not represent any owners of MTNs. Fields simply posted a message on a social media site in which he offered to broker the sale of "fifty billion Euros" worth of MTNs to a buyer specifically named as Westminster.

Fields subsequently exchanged emails with a self-described "consultant" who said she would "send [Fields] some opportunities," but no seller was ever identified. Fortunately for Westminster, its representative eventually realized that Fields did not represent the owners of any MTNs, and declined to have further contact with him. Fields did not induce anyone to actually send him money to the knowledge of the Division.

4. Respondent's False Website Advertising

Fields has made numerous false and misleading claims on AFA's Website. Prominent among them was the characterization of AFA as an investment adviser registered with the SEC.[3] AFA's homepage displays a 'Company Bio" which states "Anthony Fields & Associates is an investment advisory firm registered with the Securities and Exchange Commission." Fields did register AFA with the SEC but the claim is nonetheless misleading because, as discussed below, AFA was ineligible to register and its Form ADV was filled with falsehoods.

Fields also asserted, in the "What's New" section on the AFA homepage, that "Anthony Fields & Associates has acquired a $50 billion contract!" What the website did not say is that this supposed contract consisted of a few miscellaneous sheets of paper purporting to entitle AFA to sell up to $50 billion worth of Treasury STRIPS in $200 million tranches to an entity calling itself "East West Trading, LLC" about which Fields knew next to nothing. (Fields has testified that he could not remember how he came to be in contact with this entity but he thought that it "owned some diamond mines and some oil wells, things of that nature.") Though not reflected in the paper said to constitute the contract, Fields has testified that the idea was for East

[3] When the Division informed Fields it was recommending the Commission institute administrative and cease and desist proceedings against him, Fields informed the staff he had no intention of taking down his websites. He did make minimal changes to their respective content, but did not stop touting that he was registered with and regulated by the SEC. AFA's website appears to have been taken down sometime between January 4, 2012 and May 1, 2012.

West to obtain funds that would be placed in a bank account that AFA could use to buy $200 million blocks of Treasury STRIPs at 30% of face value.[4] East West would get the funds to give to AFA from "exit buyers" lined up to simultaneously repurchase the Treasury Strips at 32% of face value. Thus, exit buyers would provide all the financing while AFA and East West would divide the arbitrage profit. It will come as no surprise that not one cent ever changed hands pursuant to this half-baked plan. Fields does claim to have entered into a separate "joint venture" agreement whereby another entity he knew almost nothing about named "Lakeshore Ventures Group, Inc." would serve as a nominal exit buyer for a $200 million tranche of Treasury STRIPS. But that plan was even less plausible because it was contingent upon AFA itself providing the $200 million.

Fields also claimed on the AFA website that the company was organized "to take advantage of the need to fulfill a gap in the Government securities market and a $2.5 billion contract." While relying on the aforementioned contracts and plans to justify proclaiming that AFA had acquired a "$50 billion contract," Fields freely admits that there was never a separate $2.5 billion contract as stated on AFA's website. Fields now asserts that his references to a "$2.5 billion" contract and a "$50 billion" contract were intended to be interchangeable.

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[4] According to the Treasury Direct website, "STRIPS" is an acronym for "Separate Trading of Registered Interest and Principal Securities." STRIPS are also known as "zero-coupon" securities because the holder receives a payment from the Treasury Department only at maturity. STRIPS allow investors to hold and trade individual components of eligible Treasury notes and bonds as separate securities. Treasury Direct gives the following example: "[A] Treasury note with 10 years remaining to maturity consists of a single principal payment, due at maturity, and 20 interest payments, one very six months over a 10 year duration. When the note is converted to STRIPS form, each of the 20 interest payments and the principal payment becomes a separate security." Treasury Direct also states that "STRIPS are popular with investors who want to receive a known payment from STRIPS at maturity." STRIPS are not issued or sold directly to investors but instead must be purchased through financial institutions or government securities dealers and brokers. STRIPS can be traded in secondary markets at a discount to value at maturity.

Other misrepresentations made on the AFA website are no more justifiable. Thus, the purported "Company Bio" claims that:

- "Currently there are 44 designated primary dealers [of U.S. Treasury securities]. Our firm has an arrangement with the 45th primary dealer."[5]

- "The management of Anthony Fields & Associates is experienced in company start ups and securities trading and government securities in particular."

- "Previously, management grew a company from a single one man operation into a multi-level organization with sixteen branch offices and resources well over 16 million dollars."

- "Anthony Fields & Associates provides discretionary and non discretionary advisory services in fixed income portfolios to high net worth individuals and institutional investors."

AFA's 'Our Services" page explicitly offered to provide "Investment Advice," "Financial Planning," "Managed Discretionary Funds," and "Non Managed Discretionary Funds." Specific reference is made to "our expert investment team" and "our experienced investment and research team headed by Anthony Fields" despite Fields being the only person involved with AFA. The website also purported to provide a primer on government-issued securities in general and U.S. Treasury STRIPS in particular. That section concluded with the

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[5] Fields told Division of Enforcement staff that his reference to a "45th Primary Dealer" was a reference to Platinum. Fields asserted that Platinum was a Primary Dealer registered with the New York Federal Reserve Bank. In reality, however, there are only 21 Primary Dealers: Bank of Nova Scotia, New York Agency, BMO Capital Markets Corp., BNP Paribas Securities Corp., Barclays Capital Inc., Cantor Fitzgerald & Co., Citigroup Global Markets Inc., Credit Suisse Securities (USA) LLC, Daiwa Capital , Markets America Inc., Deutsche Bank Securities Inc., Goldman, Sachs & Co., HSBC Securities (USA) Inc., Jefferies & Company, Inc., J.P. Morgan Securities LLC, Merrill Lynch, Pierce, Fenner & Smith Incorporated, Mizuho Securities USA Inc., Morgan Stanley & Co. LLC, Nomura Securities International, Inc., RBC Capital Markets, LLC, RBS Securities Inc., SG Americas Securities, LLC and UBS Securities LLC. Platinum is not among these well known institutions, nor did Fields have any "arrangement" with any of them.

question and answer: "Where can I buy Treasury Strips? You can buy Treasury Strips right here through Anthony Fields & Associates." On virtually every page of the website, there was a "Recent Events" section stating that "Anthony Fields has established a securities brokerage firm 'Platinum Securities Brokers' in a bold attempt to reduce brokerage fees!" Finally, the website invited investors to establish accounts with AFA and asserts that "you will be able to view your accounts online!"

Notwithstanding these many claims, in reality, Fields has never had any "arrangement" with a "primary dealer" of U.S. Treasury securities and has absolutely no experience trading such securities himself. AFA has no "high net worth individuals and institutional investors" as clients, or indeed, any investor clients at all. Fields heads no "expert investment team" or "experienced research team" at AFA. Fields own personal experience as an investment adviser and turnaround specialist is nonexistent. Even the "startup" that Fields claims to have grown is merely a company that he may have once audited but that he never managed and with which he had no sustained involvement. Platinum, despite its characterization on the AFA website, does not even exist except as a trade name.

Fields also made highly misleading claims on Platinum's Website. There, Fields proclaimed: "At Platinum Securities Brokers you can buy bills, notes bonds, tips and strips or mutual funds either by calling one of the our representatives or by transacting these securities yourself on the Internet." The website also claimed that Platinum "provide[s] Prime Brokerage Services. The services provided under prime brokering are securities lending (after one year), leveraged trade executions, and cash management, among other things" and that it has "state of the art electronic trading capabilities and a portfolio of over 25,000 U.S. Government securities." Platinum's website also stated that it would take commissions (i.e., transaction-based compensation). Fields failed to disclose the fact that Platinum was not registered as a broker-dealer with the SEC.

Fields has made numerous additional misrepresentations on the Platinum website, including that:

- "Platinum Securities Brokers is an institutional broker/dealer in U.S. Government securities. Licensed in the State of Illinois and registered with the Securities and Exchange Commission."

- "Platinum Securities Brokers is one of the leading institutional broker/dealers in government securities with state of the art electronic trading capabilities and a portfolio of over 25,000 U.S. Government securities."

- "[Platinum has] tremendous influences on the financial markets because we can either buy or sell a large volume of U.S. Government securities."

- "This institutional brokerage firm . . . [has] strong relationships with major Fixed Income sources like the United States Treasury, Department [sic] and the Bureau Of [sic] Public Debt and other leading issuers of Treasury obligations."

Fields also asserted that "Platinum Securities Brokers not only have their own research analysts, but also have strong relationships with other research firms"; that "[o]ur syndicate desk offers access to new issues, including structured products"; and that "you can tap into our large, executable online inventory, which provides access to more than 25,000 Government Securities."

Fields' had no good faith basis for any of these claims, and in fact, none of them is true. Fields has various rationales to justify his representations but none are sustainable. For example, Fields' only basis for claiming that Platinum had a large "inventory" of securities is that he had access to Bloomberg research tools on his computer.

5. Respondent's False Registration of AFA with the SEC, False Certifications and Failure to Comply with Regulatory Requirements

On March 15, 2010, Fields filed a Form ADV with the SEC to register AFA as an investment adviser. AFA was ineligible to register, however, because its principal place of business (to the extent it existed at all) was Fields' apartment in Illinois, a state that had enacted an investment adviser statute. Section 203A of the investment Advisers Act prohibits an adviser that is regulated or required to be regulated in the state in which its principal office is located from registering with the SEC unless it has assets under management in excess of $25 million or advises a registered investment company. AFA met neither of these conditions, and hence, was ineligible to register with the SEC.

AFA's Form ADV and accompanying "Organizational Brochure" contained numerous misrepresentations. Among these were the false representations (which Fields certified under penalty of perjury) that AFA had high net worth individuals, hedge funds and other businesses as clients and had AUM of *$400,000,000.* In truth, AFA had zero assets under management and never earned a dime from any investor. Moreover, AFA's Organizational Brochure falsely asserted that Platinum was a registered broker-dealer that receives compensation on transactions executed for AFA's clients. [6]

Fields also did not comply with the Investment Advisers Act's requirements concerning business practices and procedures. In the period March 2010 – October 2010, Fields did not adopt or implement any written procedures, let alone procedures reasonably designed to prevent

[6] Fields now blames the SEC for not catching the misrepresentations in his Form ADV at the time it was filed. However, the SEC does not, by allowing filings on IAPD's website, forfeit the right to take appropriate regulatory or enforcement action concerning any misrepresentations contained therein.

violations of the Advisers Act. Fields also failed to maintain required books and records, including records relating to client communications through LinkedIn, TradeKey and other platforms or service providers. Fields did obtain a template for a compliance manual from a commercial vendor in November 2010, but he made no substantive changes and did not even read it prior to his investigative testimony in this matter in June 2011. In addition, Fields did not have a written code of ethics prior to being contacted by the Division in May 2011, at which time he again downloaded a generic template without making any substantive changes.

6. **Platinum is not Registered as a Broker-Dealer with the SEC and is not a Primary Dealer in U.S. Treasury Securities**

Platinum is not registered with the SEC as a broker-dealer. Platinum was briefly registered from March 2010 until Fields filed a Form BDW application to withdraw its registration on July 7, 2010. Fields withdrew the registration upon FINRA's request on account of Platinum's inability to maintain $250,000 minimum in net capital. Platinum's withdrawal of its broker-dealer registration became effective on September 4, 2010. Platinum also is not licensed by the Federal Reserve Bank of New York as a primary dealer authorized to buy and sell securities directly for the U.S. Treasury.

7. **Respondent's Answer to the Order Instituting Proceedings and Refusal to Enter into Stipulations of Fact**

Fields filed his Answer to the OIP on or about February 21, 2012. It contains a "Summary Response" which appears to assert that (1) Fields should not be held accountable for any violations of the securities laws by AFA and Platinum; (2) the Commission's failure to screen Fields' applications to register AFA and Platinum constitutes "entrapment"; and (3) Fields' anticipation of a contract being fulfilled justifies the statements made in the applications and websites. There follows a 14-page section titled "Detailed Allegations" setting forth

"Responses" to the numbered paragraphs of the OIP.[7] Fields admits the allegations contained in Paragraphs 2 and 7 of the OIP. Paragraph 2 alleged, inter alia, that AFA "is a sole proprietorship" and that "Fields is its founder, president, chief compliance officer, and sole control person." Paragraph 7 of the OIP alleged that "Fields received multiple emails indicating interest from purported potential buyers who responded to his postings in LinkedIn." Except for these paragraphs, Fields answers the OIP's specific allegations with some variation of the points raised in his Summary Response.

Fields responds to the OIP's allegations concerning fraudulent offers of fictitious BGs and MTNs by stating his understanding of the definition of a "contract" and posing the question "how did the interrogator [Division counsel] determine the instruments were fraudulent"? See Answer, ¶¶5-6, pp. 6-7. The point apparently being made is that BGs and MTNs do exist and are traded on secondary markets (at least according to Fields) and that the Division simply does not understand the nature of such markets. Fields also asserts that "the instruments in question were instruments sold in the European market. EMTNs and European BGs, which are not in the jurisdiction of the Securities and Exchange Commission." Id., ¶ 6, p. 7.

With respect to AFA's Form ADV, Fields asserts that his claim to have had $400 million AUM was not false because he meant to claim $200 million AUM and that figure was based of his anticipation of receiving $200 million pursuant to the purported joint venture agreement (discussed above) with East West Trading Co., as a supposed "exit buyer." Id., at ¶8, pp. 8-9. The point apparently being made here is that Fields did have a contract (at least on paper), and therefore, was entitled to proclaim his expectation of its performance to the SEC and

[7] Fields responses to the Division's "Detailed Allegations" reflect a numbering error. Fields numbers Paragraph 2 of the OIP as Paragraph 1 in his Answer and Paragraph 3 of the OIP as Paragraph 2 of his Answer. The Answer does not have a Paragraph 3. Accordingly, the numbering in the Answer corresponds with that in the OIP beginning with Paragraph 4.

anyone with access to the Investment Adviser Public Disclosure ("IAPD") website. Fields cites various accounting publications said to allow such "anticipation of revenues." Id. Fields also avers that he has cured problems with his record keeping and required documents for an investment adviser. Id., ¶¶12-15, pp. 11-14.

With respect to the allegations concerning Fields holding himself out as a broker-dealer and touting "prime brokering" services through Platinum, Fields responds:

> What firm in the world would advertise that 'We are a new organization, never sold a security before but we want you to be our first customer"? We advertised what we do. Whether we sold a security or not we are in the business to sell United States Government Securities to institutional investors and high net worth investors and we do have state of the art electronic trading capabilities and a portfolio of over 25,000 U.S. Government securities, In addition, Platinum filed it's [sic] registration with the Federal Reserve Bank of New York and Anthony Fields has an account with Treasury Direct." Answer, ¶¶ 16-18, pp. 14-17 (emphasis added).

Thus, while denying that his representations on Platinum's website are misleading, Fields actually admits that he was offering to "sell" securities.[8]

Similarly, while apparently attempting to state denials, Fields makes the following additional admissions or statements against interest in the course of responding to other allegations:

> **OIP Paragraph 4**
>
> **Platinum Securities Brokers** is a sole proprietorship that holds itself out on the Internet as a "leading institutional broker-dealer." Fields is its founder, president, chief compliance officer, and sole control person. Although Platinum registered with the Commission as a broker-dealer in March 2010, Fields, on behalf of Platinum, filed a Form BDW to withdraw Platinum's registration on July 7, 2010, and the withdrawal became effective on September 4, 2010.

[8] As discussed below, Field's additional assertions fail to substantiate his advertising because the FRBNY denied Platinum's registration application and Fields' account with Treasury Direct is not a license to broker the purchase of Treasury securities.

RESPONSE:

> [T]he reason I withdrew [Platinum's broker-dealer] application …was because FINRA indicated that I could not do a "Partial Withdrawal" …. Therefore I had to do a "Full Withdrawal" And [sic], in addition, the only reason I had to withdraw was because of the net capital requirement….

OIP Paragraph 10

> AFA's "Organizational Brochure," filed with the Commission as Part 2 of AFA's Form ADV, misrepresented Platinum as a registered broker dealer that would execute securities transactions for AFA clients.

RESPONSE

> This statement is false. The Brochure of Anthony Fields & Associates clearly stated as follows: **Participation or Interest in Client Transactions.** PLATINUM SECURITIES BROKERS is a broker/dealer registered with the U.S. Securities and Exchange Commission [and] clears securities transactions for Anthony Fields & Associates' accounts …. (emphasis in original)

Finally, the Division has attempted to engage Fields in discussion concerning possible stipulations of fact but that effort was unsuccessful. As will be demonstrated by a preponderance of the evidence at the hearing, however, the Division is entitled to judgment notwithstanding Fields' bare denials, professed belief in the existence of a secondary market for BGs and MTNs and professed expectation of receiving hundreds of millions of dollars in revenues to justify his assertions to the SEC and potential investors.

LEGAL ARGUMENT

I. Respondent Willfully Violated Section 17(a) of the Securities Act

Fields willfully violated Section 17(a) of the Securities Act, 15 U.S.C. §78q-(a), by posting offers on social media sites to sell fictitious prime bank securities and by directing potential buyers to AFA and Platinum's websites and the additional misrepresentations made therein in an attempt to bolster his credibility. Section 17(a) makes it unlawful for any person in the offer or sale of securities "to employ any device, scheme, or artifice to defraud"

(Section 17(a)(1)) or "to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser" (Section 17(a)(3)).

As a threshold matter, the BGs and MTNs that Fields offered on LinkedIn are clearly "securities" even though they were utterly fictitious. As explained in *U.S. v. Lauer,* 52 F.3d 667, 669 (7th Cir. 1995), the federal securities laws apply to fictitious prime bank securities because the standard is not whether the investment actually existed but whether, as described to investors, it has the characteristics of a security.[9] Moreover, in *Reves v. Ernst & Young*, 494 U.S. 56, 66 (1990), the Court held that "notes" or "evidence of indebtedness" are presumed to be securities. This presumption can be rebutted only if the notes are shown to be, or to bear a strong resemblance to, a category of notes specifically exempted from the Exchange Act's definition of securities, such as consumer or small business financing. 494 U.S. at 65.[10] In this case, the fictitious BGs and MTNs were marketed as high yield investments, not as consumer loans.

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[9] Many decisions have ruled consistently with *Lauer*. *See, e.g., SEC v. Secure Capital Funding Corp., et al,* Civil Action No. 3:11-cv-00916-AET-DEA (D.NJ Feb 18, 2011 (granting TRO and asset freeze against prime bank fraud scheme to sell fictitious "Swiss debentures"); *SEC v. Terry L. Dowdell, et al.,* Civil Action No. 3:01CV00116 (W.D. VA. 2002)[Litigation Release Nos. 17454 (Apr. 2, 2002), 17553 (June 10, 2002), 17781 (Oct. 10, 2002). 17780 (Oct. 10. 2002) (asset freeze and later permanent injunction against prime bank fraud scheme to sell fictitious medium term debentures); *SEC v. Sebastian Corriere, et al.,* Civil Action No. 8:02-CV-666-T1EAJ (M.D. Fla., Apr. 18, 2002)[Litigation Release Nos. 17506 (May 7, 2002), 17582 (June 24, 2002)] (granting preliminary injunction against promoter of fictional high yield medium term notes); *SEC v. Resource Development International, LLC, et al.,* Civil Action No. 3:02-CV-0605-H (D. Tex. Mar. 26, 2002) [Litigation Release No. 17438 (Mar. 26, 2002)] (granting TRO and asset freeze to stop a prime bank fraud scheme); *SEC v. Lewis J. McConnell, Jr., et al.,* Civil Action No. 02 0075 RCL (D.D.C. Jan. 16, 2002)[Litigation Release Nos. 17322 (Jan. 16, 2002), 17517 (May 14, 2002) (permanent injunction and $100,000 civil penalty imposed for offering fictitious securities); SEC v. Steve E. Thorn, et al., Civil Action No. C2-01-290 (S.D. Ohio Apr. 2, 2001)[Litigation Release Nos. 16950 (Apr. 3, 2001), 17523 (May 20, 2002), 17772 (Oct. 7, 2002] (TRO and asset freeze granted against scheme that raised over $60 million from fictitious notes issued by foreign banks).

[10] In concluding that that promissory notes sold by an agricultural co-op in *Reves* were "securities," the Court focused on the fact that the notes were marketed and purchased as investments. The Court broke its analysis into three parts, considering: (1) the transaction, i.e.,

It is equally clear that Fields has violated Section 17(a). To establish a violation, the Commission must show either a misrepresentation or omission regarding material facts or other fraudulent conduct. *See Basic, Inc. v. Levinson*, 485 U.S. 224, 235 n.13 (1988) (citation omitted). A statement or omission is material if a reasonable investor would view its disclosure as significantly altering the "total mix" of available information. *See id*; *TSC Industries v. Northway, Inc.*, 426 U.S. 438, 449 (1976). Materiality is not a close question on the facts of this case. Indeed, it is difficult to imagine anything more material than the fact that the securities Fields purported to offer did not exist. Fields' postings on LinkedIn must be also read together with his LinkedIn "profile," which falsely asserts that BGs and MTNs are among his "specialties." That assertion would be material to anyone considering Fields' offer of BGs and MTNs. Similarly, Fields' profile directed investors to the AFA and Platinum websites which contained many other material misrepresentations. Among these are the materially misleading claims that AFA is an SEC-registered investment adviser with a large and sophisticated clientele and that Platinum is a registered broker/dealer with a large inventory of securities. In addition to all these material misrepresentations, Fields also omitted material information from his LinkedIn posting by failing to disclose that he had no absolutely relationship with Deutsche Bank, Credit Suisse, HSBC or any of the other banking institutions whose names he used in his postings.

Furthermore, the state of mind evidence in this case is more than sufficient to establish a violation of Section 17(a). Establishing violation of Section 17(a)(1) requires a showing of scienter, but a showing of mere negligence is sufficient to establish a violation of Section 17(a)(3). *See SEC v. Steadman*, 967 F.2d 636, 641-42, 643 n.5 (D.C. Cir. 1992), *citing Ernst & Ernst v. Hochfelder,* 425 U.S. 185, 194 n. 12 (1976); *Aaron v. SEC,* 446 U.S. 680, 686 n. 5

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whether the buyer primarily was interested in purchasing a consumer asset (like a home) or making an "investment;" (2) the "plan of distribution," i.e., whether the instrument was commonly offered "for speculation or investment;" and (3) the reasonable expectations of investors. *Id.* at 66-67.

(1980).[11] Scienter may be established by indirect evidence and may extend to a form of extreme recklessness. *See, e.g., Herman & MacLean v. Huddleston,* 459 U.S. 375, 379 n. 4 (1983).[12] Recklessness is defined as an extreme departure from the standards of care such that the danger of misleading buyers or sellers is either known or so obvious that the person must have been aware of it. *Steadman,* 967 F.2d at 641-42 (D.C. Cir. 1992).

In this case, there is ample evidence from which scienter can be inferred. Fields is a CPA who purports to have taken courses covering the subject matter of FINRA's Series 7 (General Securities Registered Representative) and 63 (Uniform Securities) examinations and to have previously conducted research for an a accounting firm partner who was also an investment adviser. This profile strongly supports the inference that Fields knew that no secondary market for BGs and MTNs exists. Fields' advertising billions of dollars of a class of securities he knew he did not have, and had never before traded, also supports the inference of scienter. What Fields did know was that there was money to be made by offering BGs and MTNs regardless of whether they actually existed as securities traded on secondary markets. Any doubts about Fields' wrongful state of mind should be completely extinguished by his false claims on AFA's website (to which Fields' LinkedIn profile directed potential buyers) about supposed contracts worth "$50 billion" and "2.5 billion" based on nothing more than his highly realistic "contract" with a phantom counter-party, as previously described. These same facts make it impossible not to conclude that Fields, at an absolute minimum, acted with extreme recklessness sufficient to establish scienter. Even if Fields really believed there was a

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[11] Scienter is a mental state consisting of an intent to deceive, manipulate or defraud. *Ernst & Ernst,* 425 U.S. at 193 n. 12. Scienter has also been described by the Supreme Court as a "wrongful state of mind." *Dura Pharm v. Broudo,* 544 U.S. 336, 341 (2005).

[12] *Herman & MacLean v. Huddleston* stated that while Supreme Court has not expressly addressed the issue, the prevailing view of the appellate courts is that reckless behavior may satisfy the scienter requirement. *See also, SEC v. Jakubowski,* 150 F.3d 675, 681 (7th Cir. 1998); *In re Scholastic Corp.,* 252 F.3d 63, 74 (2d Cir. 2001).

secondary market for BGs and MTNs, such belief was based on extreme recklessness. Moreover, even assuming *arguendo* that it was not reckless for Fields to believe that such a market existed, he still had no basis to offer hundreds of millions of dollars worth of BGs and MTNs he did not have or have any realistic prospect of obtaining.

Fields apparently will argue that his representations were not misleading and/or do not reflect scienter or negligence because such things as BGs and MTNs do actually exist. But while commercial instruments that are sometime described as BGs and MTNs do exist and are routinely used in commercial transactions, that is not what Fields represented. What Fields' postings represented was the existence of secondary markets for buying and selling BGs and MTNs like securities. That representation was false because BG and MTNs are not securities that can be traded on secondary markets. Fields will be unable to present any competent evidence to the contrary. Furthermore, it bears emphasis that Fields purported to offer "billions" of dollars worth of specific BGs and MTNs with specific rates or return and sales commissions even though he had neither an "inventory" nor access to any BGs and MTNs at all.

Fields will apparently also assert that he was merely offering his services as an "intermediary" between interested potential buyers and the prime banks that were potential sellers.[13] That assertion flies in the face of the admissions and averments contained in Fields' own Answer to the OIP. As recounted above, Fields admitted that "we are in the business <u>to sell</u> United States Government Securities," (emphasis added), that potential "buyers" responded to his LinkedIn postings and that Platinum "clears securities transactions for Anthony Fields & Associates' accounts.". Even without consideration of these admissions, the plain meaning of Fields' postings is that he was offering to <u>sell</u> securities. For example, Field's made this offer to

[13] As discussed below, since Fields was not a registered broker, offers to serve as a broker would violate Section 15(a) of the Exchange Act in any event.

members of the LinkedIn discussion group "Trade Platforms – Private Placement Programs (PPPs) – High Yield":

> FRESH CUT BGS 40+1
>
> Bank Guarantees, Cash Backed, Deutsche Bank, Credit Suisse, HSBC, JP Morgan Chase, BNP Paribas, UBS, RBS or Barclays, One (1) year and one day, Fresh Cur USD 500 Billion (USD 500,000,000,0000.00) with Rolls and Extensions 40% or better plus 1% commission fee to be paid, to Buy Side and Sell side consultants 50/50. First Tranche: 500M USD .....If you are interested you can email for particulars at anthonyfields@att.net.

On its face, this is an offer to sell securities. No seller besides Fields is identified. (While the names of various banks are identified, the whole point is that they were supposedly the original issuers of instruments now being sold on supposed secondary markets.) Nothing is said about Fields being merely a middleman. To the contrary, Fields refers to "buy side and sell side consultants" in the third person, references a sales commission payable to them and invites interested persons to email him directly "for particulars."

Furthermore, Fields' attempt to characterize himself as an intermediary is unavailing to him because the term "in the offer or sale of any securities" as used in Section 17(a) is "define[d] broadly," and is "expansive enough to encompass the entire selling process." *See United States v. Naftalin*, 441 U.S. 768, 772 (1979). Just as fraudsters cannot escape liability on the basis that the securities they offered were fictitious and therefore not really "securities," *U.S. v. Lauer,* 52 F.3d at 669, it is no defense to claim to have only offered to "intermediate" the sale of fictitious securities. Were it otherwise, defendants in all prime bank securities fraud case would rely on this circular *ipsi dixit*.

Next, Fields will apparently argue that jurisdiction is lacking because "the instruments in question were sold in the European Market." *See* Answer, p. 7, ¶ 6. That argument is specious for at least two reasons. First, neither the BGs and MTNs nor the secondary markets that Fields touted actually exist in Europe or anywhere else. Such instruments are not sold anywhere. All that really existed was Field's offers to make sales. Because only the offers existed, there is no foreign law or tribunal better situated to adjudicate the claims raised in this action. Second, the dispositive fact is assessing the Division's claim under Section 17(a) of the Securities Act is that Fields was located in the U.S. when making offers to sell securities. *See SEC v. Goldman Sachs 7 Co. and Fabrice Tourre,* Case 1:10-cv-03229-BSJ-MHD (S.D.N.Y.), Mem. Op., Jan. 6, 2011 at 37-39 (denying motion to dismiss Section 17(a) claim against defendant alleged to have made offers from New York to sell securities to foreign buyers).[14] This is because Section 17(a), unlike Section 10(b) of the Exchange Act, applies not only to the "sale" but also to the "offer" of securities. 15 U.S.C. § 77q(a). "Actual sales [are] not essential" in order to maintain a Section 17(a) claim. *SEC v. Am. Commodity Exch., Inc.,* 546 F.2d 1361, 1366 (10th Cir. 1976). "Because section 17(a) applies to both sales and offers to sell securities, the SEC need not base its claim of liability on any completed transaction at all." *SEC v. Tambone,* 550 F.3d 106, 122 (1st Cir. 2008), *citing Blue Chip Stamps v . Manor Drug Stores,* 421 U.S. 723, 733-34 & n. 6 (1975).[15]

The last argument Fields has signaled is that he cannot be held accountable for misrepresentations on the AFA and Platinum websites because they are supposedly separate

[14] Although not designated for publication, also instructive is the decision in *United States v. Hall,* D.C. No. 2:05-cr-00121-SJO-2 (9th Cir, Aug. 29, 2011), Mem. Op., at 4-5, which held that evidence that defendants "made numerous offers of securities by soliciting potential investors in the United States" was sufficient for a claim to proceed under Section 17(a).

[15] *Cf., SEC v. Gallard*, 1997 WL 767570, *3 (S.D.N.Y.) (sale of prime bank instruments and letters of credit occurred "when the contracts to purchase them were executed"); *SEC v. Roor*, 2004 WL 1933578 (S.D.N.Y.) (sale of prime bank instruments occurred "at the time [defendant] received the duped would-be investors' money"); *Baurer v. Planning Group, Inc.*, 669 F.2d 770, 779 (D.C. Cir. 1981) (exchange of funds for an investment note constituted the purchase).

entities. This argument is apparently premised on *Janus Capital Group, Inc. v. First Derivative Traders,* 131 S. Ct. 2296 (2011), which considers who may be held liable under Section 10(b) of the Exchange Act in view of its language making it unlawful for any person "[t]o make any untrue statement of a material fact" in connection with the purchase or sale of a security. The argument fails, however, because AFA and Platinum were clearly *alter egos* or trade names under which Fields conducted business.[16] Fields was the "ultimate authority" (indeed the only authority) over statements made using these trade names. *Cf., City of Rosedale Employees' Retirement System v. Energy Solutions, Inc.,* 2011 WL 4527328, at *17-18 (S.D.N.Y. Sept. 30, 2011) (defendant holding company was maker under *Janus* of statements in the registration statement filed by company that it owned). In addition, Fields' argument fails because this case is brought under Section 17(a)(1) and 17(a)(3) of the Securities Act, which do not even contain the "make" language found in Section 10(b) of the Exchange Act.

A potential argument that Fields has not raised but that the Division nonetheless wishes to address in the interest of candor to the Court is that its claims are not cognizable under Sections 17(a)(1) and 17(a)(3) of the Securities Act because they rely solely on misrepresentations rather than separate misconduct. Such an argument would follow the reasoning of *SEC v. Kelly*, 817 F. Supp. 2d 340 (S.D.N.Y. Sept. 22, 2011), which dismissed the Commission's charges under Section 17(a)(1) and 17(a)(3) on the basis that the alleged deceptive acts (i.e., structuring transactions with a counterparty to purchase advertising) were not themselves deceptive, but rather became deceptive

[16] As noted, Fields has admitted OIP Paragraph 2 which alleged, inter alia, that AFA "is a sole proprietorship" and that "Fields is its founder, president, chief compliance officer, and sole control person."

only because of another's subsequent misstatements about those transactions in its public filings.[17] *Kelly* reasoned that to hold otherwise "would allow the SEC to allege that the conduct *Janus* held insufficient to establish primary liability under subsection (b) of Rule 10b-5 is scheme-related conduct that supports primary liability under subsections (a) and (c), notwithstanding that the alleged misstatements represent the basis of that claim." *Kelly*, 2011 WL 4431161, at *4. [18]

Kelly was wrongly decided and should not be followed in this case. *Kelly's* analysis was unsound because Section 17(a) of the Securities Act does not contain the "to make" language found in Rule 10b-5 which *Janus* construed. It is for precisely this reason that other courts that have considered the question have concluded that *Janus* is inapplicable to claims filed under Section 17(a). *See SEC v. Pentagon Capital Management PLC,* 2012 WL 479576, at *42 (S.D.N.Y. Feb. 14, 2012); *SEC v. Mercury Interactive, LLC*, 2011 WL 5871020, at *2 (N.D. Cal. Nov. 22, 2011); *SEC v. Geswein*, 2011 WL 4565861, at *2 (N.D. Ohio Sept. 29, 2011); *SEC v. Daifotis*, 2011 WL 3295139, at *5-6 (N.D. Cal. Aug. 1, 2011); *see also SEC v. Radius Capital Corp.*, 2012 WL 695668, at *7 (M.D. Fla. Mar. 1, 2012) (implicitly holding that *Janus* does not apply to claim under Section 17(a)(2); granting motion to dismiss claim under Rule 10b-5(b) because it failed to allege specific facts showing that defendant had ultimate authority over statements in company prospectus, and denying motion to dismiss Section 17(a)(2) claim against same defendant based on identical allegations); *see also, SEC v. Mercury Interactive, LLC, supra*

[17] *See also In the Matter of Flannery and Hopkins*, Initial Release No. 438 Adm. Proc. File No. 3-14081 (October 28, 2011) (ALJ decision holding that *Janus* rationale extended to Section 17(a)(1) and 17(a)(3) and when a scheme to make false statements was alleged the SEC must prove respondents had ultimate authority to make false statements to hold them liable). *Flannery* is currently on appeal to the Commission.

[18] *Kelly* relied upon *SEC v. Lucent Tech., Inc.,* 610 F. Supp. 342, 360 (D.N.J. 2009), which had held that charges under subsections (a) and (c) of Exchange Act Rule 10b-5 must be premised on allegations of deceptive conduct rather than misrepresentations). It is unnecessary to consider *Lucent* in this case, and therefore, the Division merely notes its disagreement with that decision.

2011 WL 5871020, at *3 (*Janus* does not apply to Section 14(a) of the Exchange Act because it does not contain the "to make:" language contained in Rule 10b-5(b)); *SEC v. Dafotis,* 2011 WL 3295139, at *6 (N.D. Cal. Aug. 1, 2011) (*Janus* does not apply to Section 34(b) of the Investment Company Act [15 U.S.C. §80a-33(b)] because the decision was limited to Rule 10b-5(b) and there is no private right of action under Section 34(b)).

Kelly's reasoning is also at odds with the Supreme Court's reasoning in *U.S. v Naftalin*, 441 U.S. 768, 773-74 (1979), which held that Sections 17(a)(2) and (3) were intended to capture additional conduct that can be the basis for an action rather than limit the breadth of conduct that violates Section 17(a)(1).[19] The teaching of *Naftalin* is that Congress intended to capture conduct broadly through describing additional acts in each successive prong under Section 17(a), not narrowly to address fraud by requiring that conduct may *only* be charged under one prong (leaving conduct unaddressed if the elements of the particular prong are not met). Consistent with that view, the Commission has ruled on scheme liability charges in the past, *see, e.g.*, *In the Matter of Gregory O. Trautman*, 2009 SEC LEXIS 4173 (Dec. 15, 2009), but to the Division's knowledge has never drawn a bright line distinction between misrepresentations and conduct, or stated that misrepresentations alone are insufficient to support a scheme liability theory. Neither should this Court.

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[19] In relevant part, the *Naftalin* decision stated: "Thus, nothing in subsection (1) of §17(a) creates a requirement that injury occur to a purchaser. Respondent nonetheless urges that the phrase, "upon the purchaser," found only in subsection (3) of § 17(a), should be read into all three subsections. The short answer is that Congress did not write the statute that way. Indeed, the fact that it did not provides strong affirmative evidence that while impact upon a purchaser may be relevant to prosecutions brought under §17(a)(3), it is not required for those brought under §17(a)(1). As is indicated by the use of an infinitive to introduce each of the three subsections, and the use of the conjunction "or" at the end of the first two each subsection proscribes a distinct category of misconduct. Each succeeding prohibition is meant to cover additional kinds of illegalities – not to narrow the reach of the prior sections."

Finally, *Kelly* should not be followed in this case because, unlike the situation in *Kelly*, there can be no concern here that scheme liability charges are being used to circumvent the requirements for imposing primary liability on persons who did not make or have ultimate authority concerning the misrepresentations in question. Fields is no mere aider and abettor. To the contrary, Fields is the only maker of the misrepresentations contained in his LinkedIn postings. He also had ultimate authority concerning the misrepresentations on AFA and Platinum's websites. Furthermore, the Division's charges under Sections 17(a)(1) and 17(a)(2) are also sustainable because Fields engaged in fraudulent conduct in addition to his misrepresentations. Specifically, the evidence shows that Fields set up AFA as phony investment adviser and Platinum as a phony broker-dealer, and then directed potential buyers to their websites through his LinkedIn profile. This conduct is at least as substantial as conduct found sufficient to support Section 17(a) charges in other cases. *See SEC v. Kearns*, 691 F. Supp. 2d 601, 617-18 (D.N.J. 2010) (corporate officer's knowledge and discussion of scheme and implementation of inadequate investigations were sufficient to state claim under Section 17(a) on a scheme liability theory); *SEC v. Patel*, Civil No. 07-cv-39-SM, 2009 WL 3151143 (D.N.H. Sept. 30, 2009) (SEC had sufficiently alleged conduct separate from underlying misrepresentations as to corporate defendant).

II. Respondent Willfully Violated Section 15(a) of the Exchange Act

Field's willfully violated Section 15(a) of the Exchange Act [15 U.S.C. § 78o(a)] by offering brokerage services through the Platinum website when he was not a registered broker-dealer or associated with one. To the extent that Fields' LinkedIn postings are deemed offers to intermediate sales rather than offers to sell, Fields also violated Section 15(a) in that manner.

Section 15(a) provides that it is unlawful for a broker or dealer to effect securities transactions or to induce or attempt to induce the purchase or sale of any security without being registered with the Commission pursuant to Section 15(b) of the Exchange Act. A natural person acting as a broker or dealer must either be registered as a broker-dealer or be an associated person of a registered broker-dealer. Section 3(a)(4) of the Exchange Act generally defines a "broker" as "any person engaged in the business of effecting transactions in securities for the account of others," and the definition connotes "a certain regularity of participation in securities transactions" at key points in the chain of distribution." *Mass. Fin. Srvs., Inc. v. Securities Investor Protection Corp.*, 411 F. Supp. 411, 415 (D. Mass. 1976); *SEC v. National Executive Planners, Ltd.*, 503 F. Supp. 1066, 1073 (M.D.N.C. 1980).[20] "A person may be 'engaged in the business,' among other ways, by receiving transaction-related compensation or by holding itself out as a broker-dealer." *See* Strengthening the Commission's Requirements Regarding Auditor Independence, Securities Exchange Act Rel. No. 47265 (Jan. 28, 2003), 68 FR 6006, 6014-15 n.82 (Feb. 5, 2003).

The evidence will show that Fields held himself out as a broker-dealer and solicited business as a broker-dealer on Platinum's website. Fields represented, for example, that "[a]t Platinum Securities Brokers you can buy bills, notes bonds, tips and strips or mutual funds either by calling one of our representatives or by transacting these securities yourself on the Internet." Such communications with and recruitment of investors for the purchase of securities is strongly indicative of broker conduct. *See SEC v. George*, 426 F.3d 786, 797 (6th Cir. 2005). The

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[20] *See also SEC v. Martino*, 255 F. Supp. 2d 268, 283 (S.D.N.Y. 2003) ("[R]egularity of participation in securities transactions at key points in the chain of distribution" is the primary indication that one is engaged in the business of effecting securities transactions for the account of others, thereby acting as a broker); *SEC v. Kenton Capital, Ltd.*, 69 F. Supp. 2d 1, 12-13 (D.D.C. 1998) ("Regularity of participation has been demonstrated by such factors as the dollar amount of securities sold . . . and the extent to which advertisement and investor solicitation were used," (citations omitted)).

Commission has likewise explained that "[s]olicitation is one of the most relevant factors in determining whether a person is effecting transactions." *Definition of Terms in and Specific Exemptions for Banks, Savings Associations, and Savings Banks under Sections 3(a)(4) and 3(a)(5) of the Securities Exchange Act of 1934*, Rel. No. 34-44291, 2001 WL 1590253, at *20 (May 11, 2001)(listing activities that constitute "effecting transactions"). To the extent that Fields' LinkedIn postings may have constituted offers to broker sales and purchases, they constitute additional evidence of solicitation.

The Commission is not required to show scienter in order to establish a violation of Section 15(a). *See SEC v. Martino*, 255 F. Supp. 2d 268, 283 (S.D.N.Y. 2003). However, it is obvious from Fields' prior registration and attempts to register Platinum with the SEC as a broker-dealer that he understood the registration requirements.[21]

III. Respondent Willfully Violated the Anti-Fraud Provisions of the Advisers Act

A. Respondent Willfully Violated Sections 206(1) and 206(2) of the Advisers Act

Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1), 80b-6(2)] prohibit an investment adviser from (1) employing any device, scheme, or artifice to defraud clients or prospective clients; or (2) engaging in any transaction, practice, or course of business that operates as a fraud or deceit upon clients or prospective clients. An investment adviser is a fiduciary whose actions are governed by the highest standards of conduct. *See SEC v. Capital Gains Research, Inc.*, 375 U.S. 180, 191-92 (1963). Investment adviser fraud must concern a material fact. *See id.* at 200. Information is "material" if there is a substantial likelihood that a reasonable person would consider the information important in making an investment decision or

[21] It is the Division's position that Fields' misleading social media postings and Internet advertising should be held to violate *both* Section 17(a) of the Securities Act and Section 15(a) of the Exchange Act.

if the information would significantly alter the total mix of information available. *See Basic, Inc.*, 485 U.S. at 231-32; *TSC Industries*, 426 U.S. at 449. Scienter is an element of a Section 206(1) violation, but not a Section 206(2) violation, and can be satisfied by a showing of extreme recklessness. *See Steadman*, 967 F.2d at 641-42, 643 n.5.[22]

Fields willfully violated Sections 206(1) and 206(2) of the Advisers Act by intentionally providing prospective clients with false information about, among other things, his AUM, number of clients, expertise and experience, operational history, existing contracts, and ability to utilize Platinum as a primary dealer to reduce client commissions. Fields knew that prospective clients would rely on the false information on his website and in his Commission filings in considering and selecting him as their investment adviser.[23] Misrepresentations regarding AUM and fund performance are material because investors may use such figures to draw conclusions

[22] An individual associated with an investment adviser can be charged as a primary violator under Section 206 of the Advisers Act where the individual controls the adviser and/or engages in activities sufficient to meet the broad definition of "investment adviser" set forth in Section 202(a)(11) of the Advisers Act. *See In the Matter of John J. Kenny and Nicholson/Kenny Capital Management, Inc.*, Advisers Act Rel. No. 2128 (May 14, 2003); *cf. In the Matter of Russell W. Stein*, Advisers Act Rel. No. 2114 (Mar. 14, 2003) ("Section 206 applies by its terms only to investment advisers, rather than associated persons of investment advisers"). Section 202(a)(11) defines an investment adviser as any person who (a) for compensation (b) engages in the business of advising others as to the value of securities or the advisability of investing in, purchasing, or selling securities. Here, Fields is the sole proprietor, officer, director, and control person of AFA and AFA has no other employees. At all relevant times, Fields was solely responsible for the management of AFA's business and made all of AFA's investment and business decisions. Fields thus falls within the definition of an investment adviser under Section 202(a)(11) of the Advisers Act.

[23] In fact, one potential Fields client has executed a sworn declaration stating that he relied upon this false information in purchasing fictitious bank guarantees recommended by Fields, but sold by a different entity, Secure Capital Funding ("SCF"). The declarant states that when he invested in the fictitious SCF offerings, he specifically relied on Fields' representations that he was a large adviser with sophisticated clients and was registered with, and thus subject to the rules and oversight of, the SEC. SCF is a defendant in separate ongoing SEC litigation over the fictitious bank guarantees. *See SEC v. Secure Capital Funding Corp.*, No. 3:11-cv-00916-AET (D.N.J. filed Feb. 22, 2011), Lit. Rel. No. 21864.

about an adviser's size, investors, and abilities. *See, e.g.*, *Warwick Capital Management,* Admin. Proc. File No. 3-12357 (Feb. 15, 2007) (initial decision finding adviser's exaggerated claims about assets under management to be material); *In the Matter of Barr Financial Group, Inc.*, Investment Advisers Act Rel. No. 2179 (Oct. 2, 2003) (Commission opinion stating that misrepresentations regarding assets under management were material because "they conveyed a false impression of [the adviser's] size and investor base and of the qualifications of the Firm's management").

Furthermore, Fields acted with a high degree of scienter. Despite representing in AFA's filed Form ADV that the firm had $400 million in AUM, Fields knew that AFA has never had one cent in AUM from any client. Moreover, having never before purchased or sold securities, Fields had no reasonable basis on which to represent any probable performance data on AFA's website. He therefore willfully violated Sections 206(1) and 206(2) of the Advisers Act by making false statements to prospective clients.

Fields will not contest the Division's assertion that he had no AUM but apparently will assert that he had a reasonable "expectation" to justify his false representations of AFA having $400 million in AUM. That assertion is specious. Most obviously, any expectation that Fields had of attracting hundreds of millions of dollars in capital was patently unreasonable because it was based on completely executory contracts that required <u>him</u> to provide the capital himself. Such contracts would not satisfy the requirements of the any of the accounting concept principles cited in Field's Answer to the OIP (even assuming their applicability). Fields' reliance on FASB Statement of Financial Accounting Concepts No. 5, "Recognition and Measurement in Financial Statements of Business Enterprises," for example, is completely misplaced because his contracts met virtually none of the criteria for representing that revenues were "realized or realized and earned." For example, no goods or services had been "delivered" and collectability was hardly "reasonably assured" under Fields' purported billion dollar contracts.

Even more fundamentally, Fields' reliance on SEC Staff Accounting Bulletins and Generally Accepted Accounting Rules related to the recognition of revenues in financial statements is misplaced because the Investment Adviser Registration Depository (the online registration system through which investment advisers must file their Form ADVs) provides explicit instruction as to how to calculate regulatory AUM for purposes of completing the Form ADV. Only "securities portfolios for which [the adviser] provides continuous and regular supervisory or management services as of the date of filing [the] Form ADV" should be counted. The value of such portfolios should be based on the current market value of the assets. Fields did not have "continuous and regular supervisory or management" control over any funds, much less $400 million, when he filed his Form ADV or any other time.

Rule 203A-2(d) [17 C.F.R. § 275.203A-2(d)] promulgated under the Investment Advisers Act did provide a limited exception for newly formed investment advisers to register with the Commission based upon a "reasonable expectation" that they will have $25 million under management prior to the end of 120 days. However, Rule 203A-2(d) required the adviser to expressly disclose its reliance on the exception. Fields made no such disclosure. Rule 203A-2(d) also explicitly stated that the exception is valid for a maximum of one 120-day period. If an adviser relies on the newly formed adviser exception and does not meet the requisite assets under management within 120 days after the SEC declares its Form ADV effective, it must file a Form ADV-W to withdraw its registration. Fields did not withdraw his registration 120 days after it became effective, even though he still did not meet the $25 million threshold.

B. Respondent Willfully Violated Section 206(4) of the Advisers Act and Rule 206(4)-1(a)(5) Thereunder [Advertising]

Section 206(4) of the Advisers Act [15 U.S.C. § 80b-6(4)] prohibits a registered investment adviser from engaging "in any act, practice, or course of business which is fraudulent, deceptive or manipulative." Proof of scienter is not required to establish a violation of Section 206(4). *See Steadman*, 967 F.2d at 647. Rule 206(4)-1(a)(5) prohibits any registered investment adviser, directly or indirectly, from "publish[ing], circulat[ing]or distribut[ing] any advertisement . . . which contains any untrue statement of a material fact, or which is otherwise false or misleading." For purposes of Rule 206(4)-1(b) [17 C.F.R. § 275.206(4)-1(b)], "investment advisory material which promotes advisory services for the purpose of inducing clients to subscribe to those services" is advertising material within the rule. *SEC v. C.R. Richmond & Co.*, 565 F.2d 1101, 1105 (9th Cir. 1977).

As previously discussed, Fields prepared and disseminated false and misleading representations on AFA's website and in its Form ADV brochure (which was submitted to the Commission as an attachment to his Form ADV) regarding, among other things, his industry experience and expertise and his association with a "leading institutional broker-dealer" that would provide his clients with direct access to a primary dealer and reduced trading commissions. Because these postings were designed to promote advisory services for the purposes of soliciting clients, these representations constitute "advertisements" within the meaning of Rule 206(4)-1(b). Fields therefore willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-1 thereunder. *See, e.g.*, *In the Matter of Isaac Sofair*, Investment Advisers Act Rel. No. 2245 (June 4, 2004) (settled order finding Section 206(4) and Rule 206(4)-1(a)(5) violations where brochures overstated firm's assets under management); *In the Matter of Nevis Capital Management, LLC*, Investment Advisers Act Rel. No. 2214 (Feb. 9, 2004) (settled order finding Section 206(4) and Rule 206(4)-1 violations where adviser provided links on its website to third-party articles that contained misrepresentations or omissions regarding the adviser's performance).

IV. Respondent Willfully Violated the Registration, Disclosure and Recordkeeping Provisions of the Advisers Act

A. Respondent Willfully Violated Section 203A of the Advisers Act [Ineligible to Register]

In March 2010 when Fields filed his Form ADV, Section 203A of the Advisers Act [15 U.S.C. § 80b-3a] generally prohibited an adviser that is regulated or required to be regulated in the state in which it has its principal office and place of business from registering with the Commission, unless it has assets under management in excess of $25 million or advises a registered investment company. Fields' principal office and place of business is in Illinois, which has a regulatory regime for investment advisers.[24] In 2010 and 2011, in AFA's Forms ADV, Fields falsely claimed that his assets under management were approximately $400 million, when in fact he never had any assets under management. By registering with less than the required $25 million in assets under management with no other legitimate basis for registration and no exemption available to him, Fields willfully violated Section 203A.

B. Respondent Willfully Violated Section 207 of the Advisers Act [False Form ADV]

Section 207 of the Advisers Act [15 U.S.C. § 80b-7] makes it unlawful "for any person willfully to make any untrue statements of material fact in any registration application or report

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[24] Effective September 19, 2011, the Advisers Act, as amended by Section 410 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010) ("Dodd-Frank Act"), increased the minimum threshold of assets under management to $100 million to register as an investment adviser with the SEC for advisers subject to regulation and examination by the state in their primary place of business and requires registered advisers that do not meet that threshold to withdraw their Form ADV registrations.

filed with the Commission under Section 203 or 204, or willfully to omit to state in any such application or report any material fact which is required to be stated therein." A finding of willfulness does not require a showing of intent to commit a violation, but merely intent to do the act that constitutes a violation. *See Wonsover v. SEC*, 205 F.3d 408, 413-15 (D.C. Cir. 2000); *In the Matter of Zion Capital Management*, Admin. Proc. No. 3-10659 (Jan. 29, 2003). In AFA's Form ADV filings from March 2010 through the present, Fields intentionally overstated the number and nature of AFA's clients and its total assets under management. AFA's Form ADV thus was materially inaccurate because it suggested that Fields had a large investment advisory business, when, in fact, he had essentially none. Thus, Fields willfully violated Section 207 of the Advisers Act. *See, e.g., In the Matter of Oakwood Counselors, Inc.*, Investment Advisers Act Rel. No. 1614 (Feb. 10, 1997) (settled order finding adviser and adviser's president, who signed false Form ADVs, violated Section 207).

C. Respondent Willfully Violated Section 204 of the Advisers Act and Rules 204-2(a)(11) and 204-2(e)(3)(i) Thereunder [Books and Records]

Section 204 of the Advisers Act [15 U.S.C. § 80b-4] and the rules thereunder require advisers registered with the Commission to maintain and provide to the Commission upon request certain identified reports and records. Rule 204-2(a)(11) [15 C.F.R. § 275-2(a)(11)] requires every registered adviser to make and keep true, accurate, and current books and records relating to its investment advisory business, including "[a] copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication that the investment adviser circulates or distributes, directly or indirectly, to 10 or more persons." Additionally, Rule 204-2(e)(3)(i) requires advisers to maintain and preserve such records in an easily accessible place for five years. The Commission does not need to prove that a defendant acted with scienter in order to establish a violation of Section 204. *See, e.g.*, *In re Disraeli and Lifeplan Assocs., Inc.*, Initial Decisions Rel. No. 328, 2007 SEC LEXIS 424, at *74 (Mar. 5, 2007) (citing *SEC v. Worldwide Coin Inv. Ltd.*, 567 F. Supp. 724, 749, 751 (N.D. Ga. 1983) (holding scienter not required for books and records violations)).

Fields maintained virtually no records. Moreover, he has no procedures designed to preserve electronic mail records. Fields admitted that, despite utilizing several free email and online communication providers (including NetZero, LinkedIn, and TradeKey) which he was aware routinely delete emails and online communications after six months, he does nothing to preserve emails prior to their deletion. As a result, Fields was unable to produce any of the email or online communications that he was required to retain, including records reflecting client solicitations and securities offerings that were more than six months old. Fields testified that such emails and online communications once existed, but that he failed to preserve them. Fields, by failing to preserve emails, online and other client communications, and advertisements, willfully violated Section 204 and Rules 204-2(a)(11) and 204-2(e)(3)(i) thereunder.

D. Respondent Willfully Violated Section 204A of the Advisers Act and Rule 204A-1 Thereunder [Code of Ethics]

Section 204A of the Advisers Act [15 U.S.C. § 80b-4a] requires that certain investment advisers "establish, maintain, and enforce written policies" reasonably designed to prevent misuse of nonpublic information, and authorizes the Commission to adopt rules designed to prevent such misuse. Rule 204A-1 [17 C.F.R § 275.204A-1] thereunder requires all investment advisers to "establish, maintain and enforce a written code of ethics." A violation of these provisions does not require a showing of scienter. *See, e.g.*, *In the Matter of F. Xavier Saavedra*, Investment Advisers Act Rel. No. 1894 (Aug. 10, 2000). Fields testified that he did not have a code of ethics until after he received the staff's document demand, at which time he downloaded a generic pre-packaged code of ethics that he had access to through his off-the-shelf compliance subscription. Fields testified that he has not even read this code of ethics. As a result, he willfully violated Section 204A and Rule 204A-1 thereunder by failing to establish, maintain, and enforce a compliant written code of ethics.

E. Respondent Willfully Violated Section 206(4) of the Advisers Act and Rule 206(4)-7 Thereunder [Compliance Policies and Procedures]

Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder require all advisers to "[a]dopt and implement written policies and procedures reasonably designed to prevent violation" of the Advisers Act and the rules thereunder by the investment adviser and its supervised persons. Here, during the first eight months that he was registered with the Commission, Fields did not have any written policies and procedures. Thereafter, he purchased an off-the-shelf policy manual. Fields did not make any substantive alterations to the policies or tailor them in any way to his specific business. In fact, Fields never printed out the policies or read them. These policies and procedures were not reasonably designed to prevent securities law violations within the meaning of Rule 206(4)-7. *See, e.g., In the Matter of Consulting Services Group, LLC and Joe D. Meals*, Investment Advisers Act Rel. No. 2669 (Oct. 4, 2007) (settled administrative proceeding charging adviser and compliance officer for adopting generic compliance manual that was not tailored to adviser's actual business). Fields therefore willfully violated Section 206(4) and Rule 206(4)-7 thereunder.

V. Significant Sanctions Should Be Imposed Against Respondent

The assessment of whether a particular sanction recommended by the Division is in the public interest is derived from the Court's analysis in *Steadman v. SEC*, 603 F.2d 1126, 1140

(5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981), which includes the following elements: the egregiousness of the defendant's actions; the isolated or recurrent nature of the infraction; the degree of scienter involved; the sincerity of the defendant's assurances against future violations; the defendant's recognition of the wrongful nature of his or her conduct; and the likelihood that the defendant's occupation will present opportunities for future violations. In addition, the Commission has listed three additional factors to be considered in making the public interest determination concerning sanctions: (1) the age of the violation; (2) the degree of harm to investors and the marketplace as a result of the violations (*see In the Matter of Marshall E. Melton, et al.,* 80 S.E.C. Docket 2258, 2003 WL 21729839, at * 2 (July 25, 2003)); and (3) the "extent to which the sanction will have a deterrent effect" (*see Schield Management Co. and Marshall L. Schield*, Exchange Act Rel. No. 53201, 2006 WL 231642, at * 8 (January 31, 2006)). Based on these factors, this Court should impose the sanctions against Fields that are recommended below on account of the violations complained of herein.

A. Cease-and-Desist Order

Section 8A of the Securities Act, Section 21C of the Exchange Act and Section 203(e) of the Advisers Act provide, among other things, that the Court may enter an order requiring anyone who has violated any provision of those statutes to cease and desist from committing or causing such violation and any future violation of such provisions. *See* 15 U.S.C. §§ 77h-1, 78u-2; 15 U.S.C. § 80b-3(i). In considering whether to impose a cease-and-desist order, a Court should consider the *Steadman* factors discussed above. *See In the Matter of Herbert Moskowitz*, 77 S.E.C. Docket 446, 456, 2002 WL 434524, at *8 (March 21, 2002). In addition, although some risk of future violations is necessary, it need not be very great to warrant issuing a cease-and-desist order. See In the Matter of KPMG Peat Marwick, LLP, 74 S.E.C. Docket 357, 2001

WL 47245, at * 24 (January 19, 2001), *recon. denied*, Rel. No. 34-44050, 2001 WL 223378, at * 6-7 (March 8, 2001), *petition for review denied*, *KPMG, LLP v. SEC*, 289, F.3d 109 (D.C. Cir. May 14, 2002) *rehearing en banc denied*, (July 16, 2002). Absent evidence to the contrary, a finding of past violation raises a significant risk of future violation. *See Id.*

As discussed above, Fields willfully violated Section 17(a) of the Securities Act, Section 15(a) of the Exchange Act and Sections 203A, 206(1) and 206(2) of the Adviser's Act and Rules 204A-1, 204-2 and 206(4)-7. Accordingly, Fields should be ordered to cease and desist from committing or causing any violations of these provisions.

B. Withdrawal as Adviser, Bar from Association and Collateral Bars

The evidence will conclusively establish that Fields has never had any assets under management and that his principal place of business has at all times relevant been in Illinois, a state with a regulatory regime for advisers with less than $100 million in assets under management. Section 203A of the Advisers act, as amended by Section 410 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010) ("Dodd-Frank Act"), prohibits advisers subject to state regulation and examination regimes (including Illinois) from registering with the Commission unless they have at least $100 million in assets under management. Accordingly, the Division requests the court order Fields immediately to withdraw his Form ADV.

Section 15(b)(6) of the Exchange Act [15 U.S.C. § 78o(b)(6)] provides that the Court can, among other things, bar any person from association with any broker or dealer if such person has, pursuant to Section 15(b)(4) of the Exchange Act, willfully violated any provision of the Securities Act or Exchange Act. Field's holding himself out as a registered broker d/b/a Platinum and his making false statements on Platinum's website warrant a bar from association with any broker, dealer or investment company. Fields should be permanently barred from association with any broker or dealer.

Based on Fields' willful violations of Section 17(a) of the Securities Act and Sections 203A, 206(1) and 206(2) of the Adviser's Act and Rules 204A-1, 204-2 and 206(4)-(7), it is also appropriate under Section 9(b) of the Investment Company Act of 1940 ("Investment Company Act") to impose a permanent bar on Fields from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter. Fields also should be permanently barred from association with any municipal securities dealer or transfer agent.

These sanctions are warranted because Fields' conduct was egregious and created a substantial risk of loss for a virtually unlimited number of potential victims seeking investments or investment advice through the various forms of social media and website advertising Fields utilized. The Commission treats violations occurring within the context of fiduciary relations with particular seriousness and due regard for the relationship of trust and confidence. James C. Dawson, 98 SEC Docket 3500, 2010 WL 2886183, at *3, 8-9 & n.16 (2010); Don Warner Reinhard, 2011 SEC LEXIS 158, at *21 n.27 ("[T]he importance of honesty for a securities professional is so paramount that we have barred individuals even when the conviction was based on dishonest conduct unrelated to securities transactions or the securities business"). As an investment adviser, Fields owed clients "an affirmative duty of utmost good faith ... as well as an obligation to employ reasonable care to avoid misleading his clients." *Dawson*, 2010 WL 2886183, at *8. The evidence in this case demonstrates that Fields intentionally deceived prospective clients about his background, experience, expertise; connections to the Federal

Reserve Bank of New York and the US Treasury and various well known financial institutions, not to mention extolling potential exponential returns from fictitious securities. Under these circumstances he should be permanently barred. Steadman v. SEC, 603 F.2d 1126, 1137 (5th Cir. 1979). A lack of a disciplinary history is not an impediment to imposing a bar for a Respondent's first adjudicated fraud violation. *In the Matter of Jaimie L. Solow,* AP File No. 3-13066, 2008 WL 4222151, at *4 (Sept. 16, 2008) (*citing Robert Bruce Lohmann*, 56 S.E.C. 573, 582 (2003) and *Martin R. Kaiden*, 54 S.E.C. 194, 209 (1999)).

The sanctions sought herein are also appropriate because Fields has accepted no responsibility for the wrongfulness of his conduct. Indeed he has steadfastly maintained he is in the process of refining his various SEC filings to continue doing what he has been doing. Furthermore, the selection of an appropriate sanction includes an assessment of the deterrent effect it will have in upholding an enforcing the standards of conduct in the securities business. *See* Schield Mgmt Co., 87 SEC Docket 704, 2006 WL 4730604 at *35 & n.46 (Jan. 31, 2006); *Arthur Lipper Corp.*, 46 SEC 78, 100 (1975). An industry bar against Fields will serve to deter future misconduct in the investment adviser industry.

C. Civil Penalties

The Division respectfully requests that the Court order Fields to pay civil penalties on account of his misconduct as follows. Fields should be ordered to pay a Third Tier penalty for his willful violation of Section 17(a) of the Securities Act. Section 8A(g) of the Securities Act [15 U.S.C. § 77h-1(g)] authorizes the Commission to impose a civil penalty upon a finding, with notice and opportunity for a hearing, that any person is violating or has violated any provision, rule or regulation issued under the Securities Act and that such penalty is in the public interest.

A Third Tier penalty of a maximum amount of $150,000 for each such act or omission may be imposed against a natural person if:

(i) The act or omission ...(1) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and

(ii) Such act or omission directly or indirectly resulted in –

(I) Substantial losses or created a significant risk of substantial losses to other persons; or

(II) Substantial pecuniary gain to the person who committed the act or omission.

Fields should also be ordered to pay a Third Tier penalty on account of his willful violation of Section 15(a) of the Exchange Act. Section 21B of the Exchange Act provides that civil penalties may be imposed in any proceeding instituted pursuant to Section 15(b)(4) of the Exchange Act on any person who (1) has willfully violated the federal securities laws; or (2) has failed reasonably to supervise, within the meaning of Section 15(b)(4)(E) of the Exchange Act, with a view to preventing violations of the provisions of such statutes, rules and regulations, another person who commits such a violation, if such other person is subject to his supervision; and such a penalty is in the public interest. 15 U.S.C. § 78u-2(a)(4). Section 21B(b)(3) authorizes the Commission to assess a Third Tier penalty in a maximum amount of $100,000 against a natural person for each act or omission that "involved fraud, deceit, manipulation or deliberate or reckless disregard of a regulatory requirement" and "such act or omission directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons ...."

Fields should also be ordered to pay a Third Tier penalty on account of his violation of Sections 206(1), 206(2) 206(4) of the Advisers Act and Rules 206(4)1(a)(5) and 206(4)-7 thereunder. Section 203(i) of the Advisers Act authorizes the Commission to impose a civil penalty against any person upon a finding, with notice and opportunity for a hearing, that such penalty is in the public interest and that has willfully violated any provision of the Securities Act, the Exchange Act or subchapter II of the Advisers Act or the rules or regulations thereunder. A penalty in a maximum amount of $100,000 may be imposed against a natural person "for each act or omission." The criteria for imposing a Third Tier penalty under the Section 203(i) of the Advisers Act are the same as the criteria for imposing a Third Tier penalty under Section 8A(g) of the Securities Act and Section 21B of the Exchange Act as quoted above.

Third Tier penalties for Fields' violations of Section 17(a) of the Securities Act, Section 15(a) of the Exchange Act and Sections 206(1) and 206(2) of the Advisers Act are in the public interest because these violations created a significant risk of substantial losses to other persons. In accordance with *Steadman v. SEC*, Third Tier penalties are also in the public interest in order to deter Fields or other persons from perpetrating prime bank securities frauds in the future. Furthermore, Fields has not provided assurances that he will not continue or repeat his violations of the securities laws.

In addition to the Third Tier penalties discussed above, Fields should be ordered to pay Second Tier penalties on account of his willful violations of Sections 203, 204, 204A and 207 of the Advisers Act and Rules 204-2(a)(11), 204-2(e)(3)(i), 204(4), 204-2 and 204A-1 thereunder. Section 203(i) of the Advisers Act authorizes the Commission to assess a Second Tier penalty in a maximum amount of $50,000 against a natural person for each act or omission that "involved fraud, deceit, manipulation or deliberate or reckless disregard of a regulatory requirement." While the Court should consider evidence of Field's ability to pay penalties, it would be incumbent upon Fields to present probative and reliable evidence to support any request for leniency.

CONCLUSION

Based on the foregoing, the Division respectfully requests that this Court make findings of fact with regard to the misconduct discussed above and that the requested sanctions be imposed on the Respondent.

Dated: May 7, 2012

Respectfully submitted,

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