INITIAL DECISION RELEASE NO. 507
ADMINISTRATIVE PROCEEDING
FILE NO. 3-15124

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

In the Matter of	:	INITIAL DECISION AS TO
	:	DAVID F. BANDIMERE
DAVID F. BANDIMERE and	:	October 8, 2013
JOHN O. YOUNG	:	

APPEARANCES: Dugan Bliss and Thomas J. Krysa for the Division of Enforcement, Securities and Exchange Commission

David A. Zisser of Davis Graham & Stubbs LLP for Respondent David F. Bandimere

BEFORE: Cameron Elliot, Administrative Law Judge

SUMMARY

This Initial Decision finds that Respondent David F. Bandimere (Bandimere) willfully violated Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 (Securities Act) and Sections 10(b) and 15(a) of the Securities Exchange Act of 1934 (Exchange Act) and Exchange Act Rule 10b-5. This Initial Decision bars Bandimere from association with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization (NRSRO), orders Bandimere to disgorge $638,056.33 plus prejudgment interest, imposes a civil penalty of $390,000, and orders Bandimere to cease and desist from committing or causing violations of the above-listed provisions of the Securities and Exchange Acts.

I. Introduction

A. Procedural Background

The Securities and Exchange Commission (Commission or SEC) issued its Order Instituting Administrative Proceedings (OIP) on December 6, 2012, pursuant to Section 8A of the Securities Act, Sections 15(b) and 21C of the Exchange Act, Section 9(b) of the Investment Company Act of 1940, and Sections 203(f) and (k) of the Investment Advisers Act of 1940 (Advisers Act). Bandimere filed his Answer to the OIP on January 4, 2013.

A hearing was held from April 22 through April 26, 2013, and on May 2, 2013, in Denver, Colorado. The admitted exhibits are listed in the Record Index issued by the Commission's Office of the Secretary on September 24, 2013. The Division of Enforcement (Division) and Bandimere submitted their post-hearing briefs on June 14, 2013, and their reply briefs on July 8, 2013.[1]

B. Summary of Allegations

The instant proceeding concerns Bandimere's alleged violation of the antifraud and registration provisions of the Securities and Exchange Acts while allegedly operating as an unregistered broker in selling unregistered investments in IV Capital Ltd. (IV Capital) and Universal Consulting Resources LLC (UCR), two Ponzi schemes which the Commission brought actions against in 2011 and 2010. OIP at 2. The OIP alleges that these violations occurred through direct sales of IV Capital and UCR securities and/or sales of interests in three limited liability companies (LLCs) formed by Bandimere. Id. The OIP alleges that Bandimere misled potential investors by presenting only a one-sided, positive view of the IV Capital and UCR investments while failing to disclose red flags and potentially negative facts relating to those investments. Id. The OIP asserts that, based on such allegations, Bandimere violated Section 17(a) of the Securities Act and Sections 10(b) and 15(a) of the Exchange Act and Exchange Act Rule 10b-5.[2] Id. The OIP also alleges that Bandimere violated Securities Act Section 5 by selling unregistered securities in UCR and IV Capital and/or the three LLCs when no exemption applied to the registration requirements. Id. The Division seeks a cease-and-desist order, disgorgement and prejudgment interest, civil penalties, and an associational bar. Div. Br. at 22-27.

Bandimere admits that IV Capital and UCR were Ponzi schemes and that he made other persons aware of both IV Capital and UCR and those other persons provided funds to those entities for investment, but he denies he violated the antifraud provisions of the Securities or Exchange Acts and asserts that he was himself a victim of these Ponzi schemes. Bandimere Answer at 1. Bandimere denies that: he acted as an unregistered broker, he earned any transaction-based compensation, and his activities constituted sales within the meaning of the Securities or Exchange Acts. Id. at 1-2. Bandimere contends that he invested approximately $1.2 million of his own funds, exclusive of purported earnings or fees, all of which were lost. Id., p. 1. Bandimere states that he did not mislead anyone and denies that he presented only a positive view of IV Capital and UCR. Id. at 2.

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[1] Citations to the transcript of the hearing are noted as "Tr. ___.". Citations to Bandimere's Answer are noted as "Bandimere Answer at ___.". The Division and Bandimere submitted a joint exhibit list and citations to exhibits are noted as "Ex. ___.". The Division's and Bandimere's post-hearing briefs are noted as "Div. Br. at ___." and "Bandimere. Br. at ___.", respectively. The Division's and Bandimere's reply briefs are noted as "Div. Reply Br. at ___." and "Bandimere Reply Br. at ___.", respectively.

[2] The OIP also alleged that Bandimere violated Section 206(4) of the Advisers Act and Advisers Act Rule 206(4)-8, but the Division stated in its post-hearing brief that it was not pursuing its alternative theory of liability under the Advisers Act at this time. Div. Br. at 16 n.3.

II. Findings of Fact

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

A. Respondent and Other Relevant Individuals and Entities

1. Bandimere

Bandimere is a resident of Golden, Colorado, and was 67 years old at the time the OIP was issued. OIP at 3; Bandimere Answer at 3. He has never been registered with the Commission as a broker or dealer or investment adviser and has never been associated with a registered broker or dealer or investment adviser. Division and Bandimere's Submission of Joint Stipulations (Joint Stipulations) at 1.

2. The Three LLCs

Victoria Investors LLC (Victoria) was formed on April 3, 2007, with an address in Golden, Colorado. OIP at 4; Bandimere Answer at 4. Bandimere was the managing member of Victoria. Joint Stipulations at 1. Cameron Syke (Syke), an attorney from Denver, Colorado, who has known Bandimere since the mid-1990s, assisted Bandimere in the formation of Victoria. Tr. 718-23.

Exito Capital LLC (Exito) is a Colorado LLC formed on June 27, 2007, with a business address in Greenwood Village, Colorado. OIP at 4; Bandimere Answer at 3. Bandimere was the co-managing member of Exito with Syke. Joint Stipulations at 1; Tr. 1148. Exito has never been registered with the Commission as a broker, dealer, or investment adviser. Joint Stipulations at 2.

Ministry Minded Investors LLC (Ministry Minded) was formed on September 18, 2008, with an address in Golden, Colorado. OIP at 4; Bandimere Answer at 4. Bandimere was the managing member of Ministry Minded. Joint Stipulations at 1. It has never been registered with the Commission as a broker, dealer, or investment adviser. Id. at 2.

3. Richard Dalton and UCR

Richard Dalton (Dalton), age 65 at the time the OIP was issued, is a resident of Golden, Colorado. OIP at 3; Bandimere Answer at 3. Dalton was the Director of Finance, general manager, and only employee of UCR. OIP at 3; Bandimere Answer at 3. UCR is a New Mexico limited liability company with its principal place of business at Dalton's home in Golden, Colorado. OIP at 3; Bandimere Answer at 3. Dalton was never registered with the Commission as a broker or investment adviser and was never associated with a registered broker-dealer or investment adviser. OIP at 3; Bandimere Answer at 3. Neither UCR nor UCR investments were ever registered with the Commission. OIP at 3; Bandimere Answer at 3; Joint Stipulations at 1.

On February 28, 2012, the Commission obtained an amended default judgment against Dalton and UCR. SEC v. Universal Consulting Res., No. 10-cv-2794-REB-KLM (D. Colo.). Among other violations, the court found that Dalton had violated Securities Act Section 5 by offering unregistered securities in UCR. Id. The court stated that there was no registration statement in effect for the UCR securities and no exemption applied to the registration requirements for the UCR securities. Id. Dalton was ordered to pay, jointly and severally with UCR, $7,549,458 in disgorgement plus prejudgment interest of $744,032, and a civil penalty of $7,549,458 on December 7, 2011. Id. In a Commission administrative proceeding, Dalton was barred by default from association with a broker, dealer, investment adviser, municipal securities dealer, or transfer agent, and from participating in an offering of penny stock. Richard Dalton, Exchange Act Release No. 66547 (Mar. 9, 2012), 103 SEC Docket 51963.

Dalton was also criminally charged, by indictment dated October 19, 2011, for his conduct in connection with the sale of interests in UCR, and he pled guilty to money laundering and was sentenced to 120 months of imprisonment followed by three years of supervised release in United States v. Dalton, No. 11-cr-430-CMA-01 (D. Colo. June 30, 2013).

4. Larry Michael Parrish and IV Capital

Larry Michael Parrish (Parrish), age 47 at the time the OIP was issued, is a resident of Walkersville, Maryland, and he was the President and sole Director of IV Capital. OIP at 3; Bandimere Answer at 3. IV Capital is a Nevis corporation owned and managed by Parrish. OIP at 3; Bandimere Answer at 3. Neither IV Capital nor IV Capital investments were ever registered with the Commission. OIP at 3; Bandimere Answer at 3; Joint Stipulations at 1.

The Commission obtained a default judgment against Parrish on September 25, 2012, in SEC v. Larry Michael Parrish, No. 11-cv-558-WJM-MJW (D. Colo.). The court found that Parrish had violated Sections 5(a) and 5(c) of the Securities Act by offering unregistered securities in IV Capital and had violated the antifraud provisions of the federal securities laws, among other violations, and ordered him to pay disgorgement of $4,139,857.55, plus $847,919.71 in prejudgment interest, and a civil penalty of $4,987,777.26. Id. On May 24, 2013, Parrish settled an administrative proceeding with the Commission and the Commission entered an Order Making Findings and Imposing Remedial Sanctions Pursuant to Section 15(b) of the Exchange Act and Section 203(f) of the Advisors Act, which barred Parrish from association with any broker, dealer, investment adviser, municipal securities dealer, or transfer agent, and barred him from participating in any offering of a penny stock. Larry Michael Parrish, Exchange Act Release No. 69637, 2013 SEC Lexis 1524 (May 24, 2013). Parrish pled guilty on May 28, 2013, to one count of wire fraud for his misconduct in connection with IV Capital, and he is scheduled to be sentenced on November 15, 2013. United States v. Larry Michael Parrish, No. 12-cr-00342 (D. Md. May 28, 2013).

Previously, in April 2005, the Commission brought an action against Parrish for his involvement in a prime bank scheme in SEC v. Z-Par Holdings, Inc., No. 05-cv-1031 (D. Md. Apr. 14, 2005), and Parrish consented to a preliminary injunction, an asset freeze, under which he returned $7.5 million to investors, and a permanent injunction. OIP at 3; Bandimere Answer

at 3. Parrish also consented to an administrative order barring him from associating with any broker or dealer with the right to reapply for association after at least five years. Larry Michael Parrish, Exchange Act Release No. 55779 (May 17, 2007), 90 SEC Docket 2015.

B. The Investments

1. Bandimere's Introduction to Parrish and IV Capital

Dalton, who Bandimere had known for more than thirty years, introduced Bandimere to Parrish in 2005. Tr. 880-81, 1175. Bandimere understood Dalton to be an employee of Parrish who performed various functions, including introducing people to Parrish in connection with their investment interests. Tr. 880-83. Dalton reported "off and on" the amount of funds being traded by Parrish and the returns on those investments, and Bandimere understood that Dalton received compensation for handling the distribution of return checks to investors. Tr. 882-83, 1166.

Bandimere and his attorney met Parrish in November 2005, and Bandimere invested $100,000 with Parrish in December 2005 and invested another $100,000 in IV Capital in 2006. Tr. 884, 1165; OIP at 5; Answer at 5-6. Bandimere entered into a Structured Investment and Joint-Venture Agreement with IV Capital on December 2, 2005, and thereafter began receiving returns on his investment. Tr. 884; Ex. 2. Parrish represented to Bandimere that the funds invested in IV Capital were kept in an account, and he had an arrangement with a bank to use the funds in the account to receive up to ten times the depository value of the account in leverage.[3] Tr. 1167-68. Parrish told Bandimere that he had a partnership with an attorney in Nevis and their office was located there.[4] Tr. 1169.

Parrish claimed to have approximately four people engaged in trading the funds, including a young protégé trader who lived in New Jersey and a trader who lived in Texas. Tr. 1169. Bandimere testified that Parrish made a point of stating that everyone involved had invested their own funds, "everyone had skin in the game," and everyone was at risk. Tr. 1169. At some point, Parrish represented to Bandimere that he personally was managing or trading $22 million. Tr. 901-02.

2. Bandimere Introduces the IV Capital Investment to Others

Bandimere testified that when he initially met Parrish, Parrish did not encourage him to refer other investors to him, although there was some discussion of expansion and whether Bandimere was interested in "doing something more" at some point. Tr. 1191. Approximately six months after Bandimere invested with Parrish, Bandimere's son, David M. Bandimere, and

[3] According to Bandimere, he confirmed with a bank president that he knew that U.S. banks provided three-to-five times leverage and foreign banks may provide twice as much leverage. Tr. 1168.

[4] Bandimere performed research on Nevis and learned that the island was mostly known for finance. Tr. 1170.

his mother-in-law expressed interest in making an investment and they invested in IV Capital through Bandimere's account. Tr. 1191-92. A couple of Bandimere's friends and an employee of Bandimere's son also made investments in IV Capital through Bandimere's personal account. Tr. 1192-93. The LLCs were not in existence when Bandimere initially began telling others about the investment.[5] Tr. 885.

In 2006, Bandimere served on the executive committee of Global Connection International (Global Connection), a Christian humanitarian nonprofit organization. Tr. 719, 782. In early October 2006, it was announced that Global Connection had lost $25,000, and Bandimere thereafter disclosed to, or "shared" with, the Global Connection board of directors the success that he had investing with IV Capital and Parrish. Tr. 1184, 1188-89. In early November, the Global Connection board of directors met again and the board asked Bandimere whether he would guarantee the investment with Parrish. Tr. 1188-89. Bandimere agreed to the guarantee because he was confident in what he was doing with Parrish and because the funds being invested were gifts that were a "stewardship to [the] board, especially the executive committee." Tr. 1188-89.

Syke also served on the Global Connection board with Bandimere.[6] Tr. 718-19, 782. Syke testified that at the Global Connection board meeting, Bandimere described IV Capital as a professional trading organization that traded commodities and futures and that Bandimere was impressed by the person running IV Capital. Tr. 724. Syke did not get the impression that Bandimere was making a sales pitch to the Global Connection board, but that the investment had worked well for Bandimere and he thought it would be a good place for Global Connection to invest excess funds. Tr. 783. Bandimere testified that when he discussed the IV Capital investment during the board meeting at Global Connection, he was not using the meeting for marketing purposes or to get people interested in investing with him.[7] Tr. 1184-85.

Following Bandimere's discussion with the board, Syke had subsequent discussions with Bandimere and they discussed in greater detail what Bandimere knew about Parrish, what the

[5] In Bandimere's Answer, he stated that certain of his family members and personal friends made investments in IV Capital "as additional contributions to [his] existing investment." Bandimere Answer at 6.

[6] Syke received an undergraduate degree in accounting from Denver University and a law degree from DePaul University in Chicago, Illinois. Syke also received an LLM degree in tax at the University of Denver. Tr. 780-81. For a couple of years, Syke worked in public accounting with Touch Ross and Laventhol & Horwath and also worked as a registered representative for approximately a year while holding a Series 7 license. Tr. 781-82.

[7] Bandimere testified that when he discussed the IV Capital investments at meetings of two other organizations, Desert Fathers and Abbas Ministries, he similarly was not using these meetings for marketing purposes or to get people interested in investing with him. Tr. 1184-85. Bandimere testified that in the evangelical faith-based community, there is a lot of camaraderie and it is very common to "share" what is going on in your life, including finances. Tr. 1185-86.

investment was paying, what types of things Parrish was trading, and the personal guarantee to Global Connection. Tr. 785-86. Bandimere and Syke met with Parrish in December and Global Connections invested $50,000 in January 2007. Tr. 1190. Syke personally invested $80,000 with Parrish through Bandimere's checking account around the same time. Tr. 1190. At the time of these investments, the LLCs had not been formed, and Bandimere did not receive any compensation or management fees at that time from Parrish or anyone else for the investments by Global Connection or Syke. Tr. 1190-91.

3. Creation of the LLCs

Bandimere testified that around February or March 2007, while Bandimere was visiting Global Connection's office, Syke invited Bandimere to his office, which was located in the same suite as General Connection, to discuss the investments. Tr. 1193-94. According to Bandimere, Syke told him that he had given some thought to the relationship with Parrish and the fact that Bandimere handled the investments through his personal checking account. Tr. 1194. Syke presented Bandimere with a document that discussed securities, which, according to Bandimere, was his first exposure to the definition of a security. Tr. 1194-95; Ex. 215. Bandimere testified that Syke explained to him that securities are "licensed and registered" and that Syke could help him understand private investment clubs and non-registered securities if the investments were going to continue. Tr. 1194. According to Bandimere, Syke told him that the number of investors needed to be "kept small" and "it was very important that it was non-solicitation." Tr. 1195-96. Bandimere testified that he believed that Syke gave him a specific number of investors and defined "solicitation." Tr. 1196. Bandimere understood Syke's definition of solicitation to mean intentionally marketing to or targeting potential investors, carrying business cards, and presenting promotional material and advertising of some kind. Tr. 1196. According to Bandimere, Syke told him not to do these things, and he did not do them. Tr. 1196.

Syke formed Exito in 2007 for the purpose of making investments on behalf of himself and his family in IV Capital. Tr. 721-22, 732; Ex. 67. Syke set up Exito to only include accredited investors because he believed unaccredited investors could lead to increased liability or run afoul of the securities laws.[8] Tr. 727-29, 732-33; Ex. 67. Syke also did not want to involve himself with anything that could be deemed a public offering or get involved with any more than a small group of approximately ten people. Tr. 728. Syke wanted to limit membership in Exito to a small group of people, in part, to avoid any potential issues with respect to the improper sale of unregistered securities. Tr. 802-03.

Prior to the establishment of Exito, it was Syke's understanding that Bandimere included investors' money in a personal account that Bandimere had with IV Capital and accounted for returns informally. Tr. 790. Syke testified that he formed Victoria for Bandimere around the same time that he formed Exito because he did not think it was a good idea for Bandimere to

[8] Bandimere testified that Victoria included non-accredited investors. Tr. 857.

accept investors' money and co-mingle it in his personal accounts.[9] Tr. 722-23, 833. Bandimere testified that Syke prepared a Subscription Agreement and Operating Manual for Victoria. Tr. 1197; Ex. 11.

When Syke formed Victoria, he attempted to give Bandimere an overview of Regulation D (17 C.F.R. § 230.501 et seq.) (Reg. D) and provided him with a copy of a "Private and Public Securities Offerings" memorandum that he prepared in the mid-1990's with a friend who was a securities attorney. Tr. 738-39; Ex. 215. Syke attempted to give Bandimere an outline of the parameters of securities offerings, and told Bandimere that if he was going to have more investors in the future, he needed to get counsel and, depending on his plans, consider filing a Reg. D registration. Tr. 739-40. At the time Syke was involved in the formation of Victoria, there were approximately five investors involved, and, according to Syke, he never knew how many investors were ultimately involved in Victoria. Tr. 839. Syke testified that he probably discussed the concept of an investment contract with Bandimere and explained that a relationship dependent on the efforts of others, like Parrish, would constitute an investment contract and would be a security. Tr. 740-41. Syke did not advise Bandimere whether offerings of Exito were in compliance with Section 5 of the Securities Act with respect to the registration of offerings, or whether Bandimere would be acting as an unregistered broker-dealer when he offered the IV Capital or UCR investments. Tr. 736-37.

4. Bandimere Introduces the UCR Investments to Others

Investments in Dalton's investment program, UCR, were not available at the time Victoria was formed, but by June of 2008, members of Victoria were also investing in UCR. Tr. 1207-08, 1250. With respect to the investments in UCR, Dalton told Bandimere that he owned or oversaw an LLC that was a vehicle for transferring funds to a trader. Tr. 1116. Dalton's role in the investments was that of an intermediary or a liaison to the person who would be doing the trading. Tr. 1116-17. Investors in the LLCs could also invest their funds in UCR's diamond program (Diamond Program or UCR Diamond Program). Tr. 1120-21; Bandimere Answer at 8. According to Bandimere, Dalton told him that he was connected to an individual that had an airplane that went into the Congo and other places to purchase diamonds. Tr. 1121, 1246. Bandimere testified that he spoke on the telephone to this individual. Tr. 1121, 1246. Bandimere knew the man's name at one time, but did not recall it now, and did not research the trader's background. Tr. 1246-47.

5. Bandimere's Role in the IV Capital and UCR Investments

Bandimere co-managed Exito with Syke and managed Victoria and Ministry Minded. Tr. 846, 1148. Prior to formation of the LLCs, Bandimere did not have any experience offering investments. Tr. 873. Following the creation of Exito, if someone invested through Bandimere in IV Capital, their money would be invested through an LLC, rather than through Bandimere's personal account. Tr. 885-86. Investors in the LLCs were located in Colorado, as well as other

[9] Syke testified that he represented Victoria and Bandimere in connection with the formation of Victoria; however, following formation, he did not represent Victoria or any other entity associated with Bandimere. Tr. 730; Ex. 67. Syke did not form Ministry Minded. Tr. 723.

states. Tr. 853. Bandimere testified that he did not have a business or personal relationship, defined as being something more than just being acquainted with a person, with all of the investor-members of the LLCs.[10] Tr. 853-55.

Bandimere described the IV Capital and UCR investments to potential investors, answered questions from potential and current investors about IV Capital and UCR, and handled the paperwork necessary for the investments. Tr. 844-45, 848. In describing the IV Capital and UCR investments to potential investors, Bandimere testified that he tried to be very careful and let them know that their investments would not be registered securities. Tr. 856. Bandimere was aware that there were investors other than the members of the LLCs involved in IV Capital and UCR at the time he was introducing investors to those entities, but Bandimere did not know how much the other investors had invested. Tr. 861-62.

With respect to the funds that were invested, Bandimere accepted money from investors into the LLCs and sent those investments from the LLCs to a specific bank account for either IV Capital or UCR. Tr. 846, 849. Bandimere understood that the investors, by putting their investment in the bank account of an LLC, became a member of the LLC. Tr. 979. The funds pooled in the IV Capital bank account were then allegedly used to make profitable trades, and the funds pooled in the UCR bank account were then allegedly used in either a trading operation or the Diamond Program. Tr. 849-50. Bandimere understood that it was the efforts of IV Capital or UCR and their respective traders that generated profits, and not any efforts by the members of the LLCs. Tr. 850, 852. The LLC members did not decide which trades IV Capital, or which trades or diamond deals UCR, engaged in. Tr. 851-52.

Profits generated by IV Capital or UCR would initially be paid to one of the LLCs in the form of a lump sum. Tr. 850-51. With respect to calculating the returns due to investors from IV Capital, Bandimere testified that he would keep a running record of the investments that had been made and send that figure to Parrish. Tr. 890-91. Parrish would verify whether Bandimere's figure matched his own and Parrish would share "the supposed percentage that he had earned for that month." Tr. 891. Bandimere would then respond to Parrish to let him know what he thought the return should be. Tr. 891. Similar to Parrish, Bandimere told Dalton on a regular basis what he thought that the investment total in the UCR programs should be. Tr. 955-56.

Bandimere sent monthly returns from the LLCs to investors. Tr. 847. Profits to the LLC members were apportioned based on the size of the investor's investment, profits were not split equally by the members. Tr. 852-53. Either Bandimere or his wife would sign the return checks and the checks may have been mailed to or picked up by the investors, and sometimes the returns were directed to a CD or money market account. Tr. 847.

Bandimere testified that he handed out operating and subscription agreements for the LLCs and answered any questions about those forms from investors. Tr. 1208-09. Bandimere also performed "prep work" for the accounting for the LLCs, handled the wires and "bank runs,"

[10] Bandimere testified that he did not believe that Dalton or Parrish had a business or personal relationship with all the investor-members of the LLCs. Tr. 854-55.

maintained relationships with the bank, kept investor folders and other reference folders, and did the "prep work" on the distribution sheets. Tr. 1209. "Prep work" included reviewing any communications with Parrish or Dalton to determine if there were any irregularities or differences in trade periods so that Bandimere would be able to put together the correct investment and monthly return for the investors. Tr. 1209-10. Barbara Bandimere, his wife, performed the final accounting and created the ledgers. Tr. 1210. Bandimere spent approximately 80% to 90% of his time performing accounting tasks and 10% to 20% of his time communicating with members of the LLCs. Tr. 1211-12.

Parrish was a guest at Bandimere's home approximately four times, and when Parrish visited, Bandimere invited members of the LLCs over to meet him. Tr. 1212-13. On two occasions, Bandimere invited two non-members of the LLCs over to visit with Parrish, but neither became an investor, and on one occasion, Bandimere invited the children of two elderly couples who were investors, but he did not invite them in the hopes they would become investors. Tr. 1213-14. On one occasion fifteen to twenty people attended a group meeting at Bandimere's home, and some non-investors, whom Bandimere did not invite, attended. Tr. 1216. Bandimere assumed the non-investors were family members of investors. Tr. 1216.

Barbara Bandimere performed bookkeeping for Victoria, Ministry, and Exito, and for the investments made through those entities in IV Capital and UCR.[11] Tr. 993. Barbara Bandimere did bank reconciliations, used the QuickBooks Pro program to do accounting, filed checks or correspondence in investor files, and occasionally wrote checks at her husband's instruction. Tr. 998, 1002-03. Bandimere sent investor funds from the LLCs to IV Capital and UCR, and Barbara Bandimere did not play a role. Tr. 1000-01. She prepared tax returns for Victoria and Ministry from 2007 through 2009. Tr. 994, 1008-10; Ex. 18. Barbara Bandimere never communicated with investors when they were considering whether to invest and never recruited any investors or suggested that anyone speak to her husband about investing in IV Capital or UCR. Tr. 994-95. Barbara Bandimere infrequently communicated with investors about their investments or answered their questions. Tr. 995-97; Ex. 126 at BAND001851.

Barbara Bandimere maintained a general ledger for each LLC using the QuickBooks program and sometimes compiled financial statements and balance sheets for the LLCs. Tr. 1003-05; Exs. 113, 137, 138, 139. She testified she sometimes used Microsoft Excel in performing her bookkeeping duties and she tried to make the records as accurate as possible. Tr. 1003-06. She testified that she did not have any role in distributing or calculating investor returns. Tr. 1012. Barbara Bandimere maintained Distribution or Dispersement (sic) of Funds sheets for Victoria. Tr. 1015; Ex. 14. Bandimere would give her information and she would input that information into the Dispersement of Funds sheets. Tr. 1016; Ex. 14. According to Barbara Bandimere, the rate of 2.515% included on the Dispersement of Funds sheet for December 2007 would have been communicated to Bandimere by Parrish or IV Capital, and the rate would be used to calculate returns on investments. Tr. 1017-18; Ex. 14 at BAND000400. After she input the information, she would give the Dispersement of Funds sheet back to

[11] Barbara Bandimere attended three years of college at Biola University in California. Tr. 991-92. She received some accounting training in high school and college, but she is not a CPA. Tr. 992.

Bandimere and he would sometimes make further edits. Tr. 1018. The Dispersement of Funds sheets were prepared on a monthly basis and were used to keep a summary of the transactions for each investor. Tr. 1018-20. Similar Dispersement of Funds sheets were prepared for Ministry Minded. Tr. 1022-24; Ex. 31.

Through the LLCs, Bandimere also offered investors the opportunity to invest in a money market fund and in an investment called Blue Rose. Tr. 847-48. Bandimere testified that he had asked Parrish about how he and other members of the LLCs could invest their IRA funds with him, and Parrish indicated it could not be done. Tr. 1250. Bandimere subsequently learned about a company called Entrust that could handle IRA funds, and when investors asked about investing IRA funds, he would provide Entrust's telephone number. Tr. 1231-32. Bandimere testified that if there was a new inquiry from someone to become an LLC member, he would explain that if they had IRA funds, they could invest through Entrust. Tr. 1232-33.

6. Bandimere's Due Diligence Regarding the Investments

Prior to introducing IV Capital to investors, Bandimere and his attorney had spoken to Parrish, who had answered their questions, and Bandimere testified that he may have spoken to a pastor in Texas who was involved in the investments about the returns he had been receiving. Tr. 886-87. Bandimere did not receive any documents verifying Parrish's trading history or how long Parrish had been trading successfully. Tr. 887. Bandimere spoke to Dalton's wife who described her comfort level with Parrish, which, according to Bandimere, made him more comfortable with Parrish. Tr. 887-88.

Bandimere asked Parrish for every kind of documentation he could get from him and Parrish promised to provide him with certain documents. Tr. 897-98. Bandimere testified that Parrish sent him the IV Capital website and some trading records that were compiled in Exhibit 217. Tr. 897-900; Ex. 217. Bandimere did not understand those trading records when he received them, but Syke, who had more of a background in trading, told Bandimere that the records looked "very legitimate." Tr. 901. One of the documents Bandimere received from Parrish reflected an equity summary in base currency of approximately $137,000 for February 9 through February 20, 2009. Ex. 217 at Bandimere 548. When asked whether that number concerned him given that Parrish supposedly had $20 million under management, Bandimere said that it did not and Parrish had represented this would have been a "separate piece of trading money" based on what he "had pulled from the . . . main account" and that Parrish would "borrow from the Nevis Bank in multiples in order to create various kinds of trades." Tr. 902-03.

Bandimere testified that Parrish had probably shared the first names of the four protégé traders that he worked in cooperation with, but Bandimere never had their complete names and did not perform any independent research on them. Tr. 1248. Bandimere did not know how he would have been able to follow up on the four traders without Parrish's help. Tr. 1247-49.

Bandimere knew that Harley Hunter (Hunter), one of the individuals that invested in IV Capital through Bandimere, had questioned Parrish about the investment and Bandimere testified that Hunter reinforced what Bandimere had said and "went beyond" that. Tr. 1170. Bandimere

understood Hunter to be a financial planner and he believed Hunter's knowledge of securities was superior to his own. Tr. 1170-71. Bandimere testified that Syke, who Bandimere believed to have a better investment background than his own, also spoke to Parrish and Parrish and Syke discussed the types of commodities or other things that would be traded. Tr. 1171-72. According to Bandimere, Syke indicated to him that he believed that Parrish was legitimate and able to do what he purported to be able to do and that had an effect on Bandimere's comfort level with Parrish and IV Capital. Tr. 1172.

Bandimere also spoke to another investor, Deborah Pickering (Pickering), about Parrish. Tr. 1172. Bandimere testified that Pickering represented herself to be a very qualified business woman with a lot of experience and different investments. Tr. 1172. Bandimere testified that Pickering's representation to him about Parrish was, similar to Hunter, that Parrish was "a person I've been looking my whole investment life for." Tr. 1172-73. Pickering mentioned one woman who had invested with Parrish for about five years and had been repaid most, if not all, of her principal. Tr. 1173.

During one of Parrish's visits to Denver, Bandimere met Matthew Daniels, a man who Parrish represented to be a longstanding friend and who shared that he had played golf, traveled, and invested with Parrish. Tr. 1174. Bandimere also spoke to a pastor outside of Texas who indicated that he and his family and friends were involved with Parrish's program. Tr. 1175. Bandimere met Parrish and his wife and three children twice in 2006 and 2007. Tr. 1167.

With respect to Dalton, Bandimere testified that he has known Dalton for more than thirty years and he and Dalton were on the board of directors of a religious organization, Abbas Ministries. Tr. 668-69, 1175. Dalton's service on the board of Abbas Ministries affected Bandimere's opinion of Dalton's integrity because the Abbas family had "amazing heart" and impacted people in positive ways. Tr. 1176. Bandimere testified that it would have been "very hard" for him to believe that Dalton would be part of the Abbas family's organization without the family having been sure of the type of person Dalton was. Tr. 1176. Over the years, Bandimere was introduced to different people Dalton was acquainted with, including one man who owned his own mortgage finance company. Tr. 1176-77.

Dalton's supposed role as an intermediary or liaison between investors and the person who would be trading the investments in UCR did not raise any questions in Bandimere's mind because Bandimere knew Dalton to be a "people-connector" and to have been a leader in "various business involvements." Tr. 1116-17. Bandimere understood Dalton to have exhibited leadership and responsibility while serving in the military in Vietnam and Dalton had represented to Bandimere that he had led a Fortune 500 sales team. Tr. 1117-18. Bandimere testified that when he was with Dalton, Dalton's telephone was ringing constantly, and on one occasion, Dalton handed Bandimere the telephone and told him to say "hi" to the head of finances for the Vatican. Tr. 1118. Bandimere did not consider the brief period of time that Dalton appeared to be experiencing a down-turn in his business career to be an obvious sign of fraud. Tr. 1120.

Bandimere never met the Singapore trader who Dalton discussed, and had no means to do research on him. Tr. 1247. Dalton had told Bandimere that, through his connections, he had met

an older gentleman with a trading business and there was a younger gentleman that was training to take over the business. Tr. 1247. Bandimere had heard the first name of the younger trader, but could not recall it and he had no means to do any independent research to verify who he was. Tr. 1247-48. Bandimere did not think he had ever heard the name of the older gentleman. Tr. 1248. With respect to the UCR Diamond Program, Dalton did not represent himself as a diamond merchant and Bandimere did not believe Dalton's represented role in the Diamond Program to be an obvious sign that the diamond opportunity was fraudulent. Tr. 1121.

Bandimere testified that the due diligence he did perform was performed because he wanted to protect his money and the money of the people he had introduced to IV Capital and UCR. Tr. 1249.

C. Bandimere's Alleged Misrepresentations and Omissions

1. Bandimere's Receipt of Fees and Disclosure of Fees to Investors

Bandimere did not receive a salary from IV Capital or UCR, but did receive fees from those entities. Tr. 870. The amount of fees was calculated differently by each entity, and Bandimere testified that he received 10% of investors' monthly returns from IV Capital and 2% of the total amount of investors' funds each month or 24% annually from UCR. Tr. 870, 926. Bandimere testified that he earned $734,996.33 in "management fees" in connection with IV Capital and UCR between 2006 and 2010. Tr. 889.

Bandimere did not earn a management fee on the first $250,000 of his own investment with IV Capital, made through Victoria. Tr. 1147, 1251. With respect to one investor, Pickering, IV Capital only paid a fee of 5% of the monthly returns on her original $750,000 investment with Parrish, instead of 10%. Tr. 1146-47. Bandimere and Syke generally split any management fees received by Exito, except Syke received all of the management fees on his own investments and those of his family and his secretary. Tr. 1149. Syke also received a portion of the management fees derived from his own investment in Victoria. Tr. 1148. Bandimere received management fees for his investments in UCR. Tr. 1252.

Throughout 2007 and during parts of 2008, Bandimere used the terms "broker fee" and "commission" to refer to the fees he received from IV Capital. Tr. 863, 866-69; Ex. 6 at BAND000474, BAND000478, Ex. 14 at BAND000407, BAND000412. At some point, Bandimere stopped referring to the fees as broker fees or commissions and began referring to them as "management fees."[12] Tr. 868.

Section 8.2 "Compensation to Managers" of the Operating Agreement for Exito, which was prepared by Syke, stated in relevant part: "The Manager(s) shall receive a reasonable compensation for services to the LLC in managing its affairs and its properties. Such amount shall be deemed to be the excess of any funds received by the LLC in excess of the targeted returns per annum to Members." Tr. 748-49; Ex. 70 at Loebe 0000014. When asked why the fee

[12] At least on one occasion in 2009, Bandimere described the fees as "commissions." Tr. 869-70; Div. Ex. 137 at BANDIMERE-SEC20000059.

he received from IV Capital of 10% of investors' monthly returns was not disclosed in Section 8.2, Bandimere explained that the 10% fee would have been in excess of what was available to investors, but acknowledged that Section 8.2 did not specifically mention 10%. Tr. 926-27. Bandimere also acknowledged that Section 8.2 did not specifically mention the fee he received from UCR of 2% of the total amount invested monthly or 24% annually. Tr. 927-28. Bandimere did not recall whether he ever told investors the actual percentage of the fee he was paid by Dalton, but he told investors that he would be receiving in excess of their targeted returns. Tr. 928-29.

Syke testified that he drafted the "Compensation to Managers" section of the Exito Operating Agreement after discussing with Bandimere what Parrish had told him. Tr. 749. According to Syke, the "excess of any funds" referred to in the Exito Operating Agreement was in reality nonexistent or miniscule and not even enough to cover bank fees, and he recalled at some point Parrish agreed to increase the fee to approximately 10% so that the investors were not receiving less but the administrative fees would be covered. Tr. 749-50. Syke received half of that management fee after expenses were paid. Tr. 750. Syke does not recall if the Operating Agreement for Exito was ever amended to reflect the changed compensation method, but he thought there may have been a document admitted as an exhibit that was changed in the early years. Tr. 751-52.

Bandimere testified similarly with respect to Victoria's Operating Agreement, which was also prepared by Syke. Tr. 930-31, 1197; Ex. 136 at BAND003411. Apparently, two versions of Victoria's Operating Agreement existed. Tr. 1197-1203; Exs. 11, 136. Syke testified that he drafted the Operating Agreement for Victoria based on the agreement he drafted for Exito but "tailored a bit." Tr. 746. One version of the Victoria Operating Agreement stated, with respect to "Compensation to Manager(s)," "The Manager(s) shall receive a reasonable compensation for services to the LLC in managing its affairs and its properties. Such amount shall be twenty percent (20%) of the gross income of the LLC." Ex. 136 at BAND003411. Syke testified that he must have known to include the 20% figure based on discussions with Bandimere. Tr. 747. When questioned, Bandimere agreed that the provision did not contain the terms of his agreement for compensation with Dalton or Parrish. Tr. 930-31. Later, Bandimere testified that the version of the Victoria Operating Agreement offered as Exhibit 136 may have been an earlier version of the Victoria Operating Agreement offered as Exhibit 11. Tr. 1203. Bandimere testified that to his knowledge, the version included as Exhibit 136 was never sent to investors. Tr. 1204.

The second version of the Victoria Operating Agreement stated, with respect to "Compensation to Manager(s)," "The Manager(s) shall receive a reasonable compensation for services to the LLC in managing its affairs and its properties. Such amount shall be deemed to be the excess of any funds received by the LLC in excess of the targeted returns per annum to Members." Ex. 11 at Syke_0000051. According to Bandimere, he did not have any input in drafting that language and "had nothing to do with the language of any . . . of what [Syke] prepared." Tr. 1199. Bandimere believed payment of the monthly earnings to investors took priority over payment of management fees by IV Capital and UCR and he believed that approach was consistent with what the Operating Agreement stated. Tr. 1200-01. According to Bandimere, Syke knew about the management fee arrangements between the LLCs and IV

Capital and UCR, but did not suggest that the Operating Agreement include more specific disclosure of the management fees that were paid. Tr. 1201-02. Syke, on the other hand, testified that he thought the language contained in that section came from Bandimere, who had established target returns with Parrish. Tr. 830. Syke testified that he believed the section did not specify the percentage that managers would be paid by Parrish because, although there was a target return, it was not clear what the return would be each month, and that this was the agreement that Bandimere and Parrish had made and thought was fair and workable at the time. Tr. 831. Syke was not able to distinguish between the versions of the Victoria Operating Agreement and he did not know which version investors signed. Tr. 837-38; Ex. 136 at BAND003411, Ex. 11 at Syke_0000051.

According to Bandimere, he sent Syke an Earnings Report each month along with his return check, which provided a detailed accounting of how his earnings and management fees were calculated. Tr. 1204; Ex. 9. The Earnings Report contained a column labeled "10% Broker Fee" or "10% Management Fee," and Bandimere testified that Syke knew that the management fee received from IV Capital was 10% and Syke never asked Bandimere what he was referring to by a 10% management fee. Tr. 1205.

The management fees paid by IV Capital and UCR were included in the monthly payments sent to the LLCs along with investor returns, and if Bandimere received an amount that was insufficient to pay both investor returns and the management fee, the investors would be paid first. Tr. 1200-01. Bandimere did not consider his receipt of fees from IV Capital or UCR to be an obvious sign that Parrish and Dalton were conducting a fraud. Tr. 1111-12.

2. Bandimere's Knowledge and Disclosure of Dalton's Previous History

Prior to Dalton's involvement with the IV Capital and UCR investments, Bandimere knew that Dalton was involved in two multilevel marketing businesses, Directions in Health and Essence. Tr. 874. At one time, Bandimere believed Dalton to be among the top three earners at Directions in Health; however, he was not the company's owner. Tr. 1178-79. Directions in Health went out of business at some point, and Bandimere assumed that it went bankrupt. Tr. 1179-80. Essence was a re-established network marketing business that Bandimere testified "sort of came out of the ashes of . . . Directions in Health." Tr. 1180. Bandimere testified that Essence continued for some time, but at some point, Dalton was no longer involved and he assumed Dalton was dismissed from Essence. Tr. 874-75, 1181-82. Bandimere testified that following Dalton's involvement in Essence, he paid an initiation fee of approximately $500 or $600 to another multilevel marketing business on Dalton's behalf because Dalton told him that he did not have the funds to pay the fee. Tr. 1244.

Bandimere also knew that Dalton had been involved in a debenture program in which $2 million or $3 million of investor funds were lost. Tr. 875. Bandimere understood that Dalton felt some responsibility toward the investors, but testified that Dalton never made it clear whether he had raised the funds or referred people to the investment. Tr. 875. Dalton never sold or participated in the sale of debentures to Bandimere. Tr. 1182. Bandimere believed that he

lost more than $10,000 in the debenture program.[13] Tr. 875-76. Bandimere also lost over $50,000 in a project in the Philippines. Tr. 876, 1183. Bandimere saw Dalton at a meeting or two about the Philippines project and Bandimere was under the impression that Dalton knew some of the people who had an interest in the project, but to Bandimere's knowledge, Dalton was not managing the program, nor did he ever sell or participate in the sale of investments to Bandimere. Tr. 876-77, 1183.

Bandimere did not know whether Dalton had any investments prior to IV Capital and UCR that had been successful. Tr. 877-78. Bandimere testified that from approximately 2004 through 2006, Dalton and his wife lived in a two-bedroom apartment that Bandimere owned, and they paid rent of approximately $800. Tr. 878-79. At some point a few years later, Dalton moved into a home in Golden, Colorado, that was a few thousand square feet in size. Tr. 879-80.

3. Bandimere's Knowledge and Disclosure of Parrish's Previous History

Bandimere testified that sometime in 2005, Dalton told Bandimere that Parrish had an "issue with some jurisdiction," but that the issue had been resolved and the investors' funds had been returned to them. Tr. 909. At the time, Bandimere may have understood the issue to have been with the SEC or the Internal Revenue Service (IRS), but he was not clear about the jurisdiction. Tr. 910. Bandimere does not recall telling investors in IV Capital about Parrish's issue, and this included investors Samuel Duane Radke (Radke) and Hunter, who testified during the hearing that they recalled having such a conversation with Bandimere. Tr. 911. Bandimere did not view Parrish's issue with a governmental agency as an obvious sign of fraud. Tr. 1111.

One investor in IV Capital, Pickering, testified that she had a conversation with Bandimere at some point in 2011 and he told her that he had been aware that Parrish had some sort of problem in the past. Tr. 385-86. Pickering testified that she recalled Bandimere saying that "Mike had mishandled it and that it was not considered a problem." Tr. 386-87. Pickering testified that he may have referred to the SEC and she wrote down "almost verbatim" what Bandimere had told her during that conversation because it was "very important" and she sent it to the Commission in an email. Tr. 387-88; Ex. 71. Pickering testified that her purpose in sending the email was to send "new information on what Dave Bandimere knew." Tr. 388-89. The email stated in part:

> NEW INFORMATION OBTAINED FROM THE CALL – Had any of this following background been divulged to me, I would have withdrawn from the investment, there is absolutely no question in my mind.
>
> . . .

[13] Bandimere gave investigative testimony in 2012, during which he stated that Dalton was part of a debenture investment and that Dalton represented to him that he had raised approximately $2 million or $3 million that he felt he had the responsibility to repay and "[s]o he had been working on various supposed projects to try to recover that situation, and he presented to me different kinds of opportunities that he was looking at that he hoped would be an answer." Tr. 1245-46.

> 4. It occurred to me to simply ask how he'd met Mike Parrish in the first place because here we are now, what a mess. He told me he'd met him through Dick Dalton, maybe in '04 or early '05. Dick had met a couple of Florida investors from Mike's old LLC business. These investors presented that they'd found and invested in a very unusual and interesting investment. Dick investigated it and invested his own money with Mike directly back then. (I don't know if Dick was investing for others with Mike in addition to Dave back then but it's likely true because that's what he does.)
> 5. Dave and Dick are very long term friends, for about 33 years. It makes sense to me for Dick to have told Dave about the investment. Dave further said Dick directly handled all of the returns from Mike back then, he estimated for maybe 1 to 1 1/2 years worth of time.
> 6. During this time, Dave was also informed by Dick about the investment problem with the old LLC business/SEC complaint problem. The story given was that Mike and company had mishandled the deal, all of the money was returned to the investors and it was taken care of. No problem. And, as a result of that complaint, Mike went offshore after the fact that so as to not be under U.S. jurisdiction and regulation.

Tr. 430-32; Ex. 71 at 1-2.

4. Calculation of Investor Returns and Management Fees and Shortages by IV Capital and UCR

Bandimere used one investor, Radke, to explain the process of receiving returns from Parrish. Bandimere testified that Parrish would wire him the investor returns for a particular month and give him the number of days the investment traded during the month. Tr. 950-52; Ex. 112 at BAND000670. Bandimere then calculated Radke's return based on the number of trade dates. Tr. 952. When Bandimere was asked whether it concerned him that he, rather than Parrish, was calculating Radke's profit, Bandimere responded that he was surprised by the question. Tr. 952. Bandimere testified that it was his responsibility as a manager or co-manager of the LLCs to calculate the profits and look after the investors. Tr. 952-53, 1115. If Parrish disagreed with Bandimere's calculation, Parrish would let him know. Tr. 952. Bandimere testified that Parrish gave him the earnings, and Bandimere was "simply doing the math based on how many trade days he said that particular amount of the fund received." Tr. 953.

Bandimere did not believe he ever told the investors that he was calculating their profit payments and he did not think that any investor had ever asked about it. Tr. 953-54. Some of Bandimere's notes regarding the calculations would have been kept in the investors' folders, which the investors had the opportunity to review if they wanted. Tr. 953-54. Similar to Parrish, Bandimere told Dalton on a regular basis what he thought that the investment total should be.[14]

[14] On July 28, 2010, after UCR had stopped paying investors, Bandimere sent an email to Dalton listing the total amounts invested in UCR and the Diamond Program through the LLCs because

Tr. 955-56. Bandimere did not consider the fact that he performed monthly calculations of the returns owed by IV Capital and UCR to member-investors of the LLCs to be an obvious sign of fraud. Tr. 1115.

Bandimere testified that he did not necessarily agree with the Division's allegation that Parrish had sometimes shorted him management fees that were owed. Tr. 889-96. Bandimere prepared a summary of the earnings and management fees that he was paid from 2006 through 2010 in connection with IV Capital and UCR. Tr. 888-89; Ex. 93. When asked why that summary reflected that he only received seven dollars in management fees in July 2008 for Victoria when management fees for the other months in 2008 totaled thousands of dollars, Bandimere explained that sometimes there was confusion between the LLCs and funds that were owed to one LLC may have gone to a different LLC and he would have to reallocate the funds. Tr. 892; Ex. 93 at 33. According to Bandimere, "shortage" was not the correct word for what occurred, and he testified that Parrish may have sent larger payments in later months to make up for any previous miscalculations, but he would have to go back and look before he could confirm that had occurred. Tr. 892-93.

Bandimere could not explain why the summary he prepared reflected that he did not receive any management fees from IV Capital in June, July, or August 2008 for Exito. Tr. 894-95; Ex. 93 at 38. Bandimere agreed that his summary reflected negative $300 in management earnings from UCR for Victoria in July 2009. Tr. 895; Ex. 93 at 42. Bandimere testified that he did not know what the October 28, 2010, entry titled "balance of management earnings not paid in 2010" on the Account QuickReport for Victoria referred to and stated that his "wife did the books." Tr. 896; Ex. 93 at 49. Bandimere acknowledged that it appeared that he had withdrawn $14,000 on October 28, 2010, that was associated with that entry. Tr. 896-97.

Bandimere agreed that his handwritten records calculating amounts earned by Victoria, Ministry, and Exito from UCR in August 2009 and paid in September 2009 reflected "short" figures of $7,561, $13,596, and $3,000 for those entities, respectively. Tr. 956-57; Ex. 130 at BAND002275. When asked whether he had experienced shortages with UCR like he had with IV Capital, Bandimere replied that he was referring to "shortages as far as what that month was reflective of," and that it "just simply was not paid correctly." Tr. 960. Bandimere testified that he would have to go back to determine whether it was his mistake or UCR's mistake. Tr. 960. Bandimere testified that with respect to UCR, he would meet with Marie Dalton and they would review her account records and trace the funds. Tr. 960-61. Bandimere did not know whether it was reconciled "month-by-month" but it was reconciled "as soon as we could get together." Tr. 961. Bandimere did not know whether, ultimately, there were shortages or the management fees were ever completely made up. Tr. 968.

Bandimere testified that, speaking in terms of thirty-day blocks of time, there were times when IV Capital or UCR did not send enough money to pay both investor returns and

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Dalton asked him for a hard copy of the investments so that he could compare numbers. Tr. 955; Ex. 130 at BAND002273. Bandimere said that at that time Dalton represented that he was in the process of resolving things with his trader. Tr. 955.

management fees; however, there was always enough to pay the investors. Tr. 905-07. Bandimere did not view that as problematic because "it was an ongoing involvement," and sometimes the necessary funds would be there, but would have been sent to a different account due to an accounting error. Tr. 907-08. Bandimere did not tell investors in IV Capital or UCR that some months he was able to pay their returns but not management fees because there was not enough money to do so. Tr. 909.

Bandimere later testified on direct examination that beginning in April 2007, IV Capital would send one wire with investor returns and management fees to the appropriate LLC. Tr. 1127-28. UCR mailed one check with a total amount of investor returns and management fees. Tr. 1128. Separate payments were not made for management fees and returns. Tr. 1128-29. According to Bandimere, he did not always withdraw all of the cash in terms of investment returns or management fees that he was entitled to withdraw at a particular time; sometimes he left money in the LLC account. Tr. 1128-29. Bandimere testified that it was not correct to interpret the summary he prepared, and the Division questioned him about, as reflecting that he had received only seven dollars in management fees in July 2008. Tr. 1131; Ex. 93 at 33. He testified that the summary was "strictly to show in realtime what money actually, in that specific time period, would have been written on my behalf and it – it doesn't reflect anything more than just that." Tr. 1131. The summary only showed the money that was "written and taken in a given period of time," and did not show what came from Parrish, IV Capital, or UCR. Tr. 1132.

Barbara Bandimere testified that she may have been aware of some of the times that Parrish sent Bandimere the incorrect amount of funds, but she never helped Bandimere reconcile whether Parrish was short on a payment. Tr. 1027; Ex. 111 at BAND000614. She testified that Parrish "at times" shorted Bandimere on the amounts that he needed for the month. Tr. 1028. Barbara Bandimere testified that she believed that she and Bandimere attempted to calculate the amount of shortage in management fees received from IV Capital in 2009 and they made an entry at the end of 2009 to adjust for the shortage. Tr. 1038. She testified that Bandimere failed to receive $123,137, but she did not believe it to be a shortage because it was an accumulation over the year of both earnings and management fees and she made an adjusting entry in the general ledger called "Earnings Payable." Tr. 1040; Ex. 93 at 42. She testified that the shortage was paid in 2010. Tr. 1038-39.

5. IV Capital and UCR's Lack of Financial Statements or Other Documentation

Bandimere did not provide those that invested in IV Capital or UCR through the LLCs with the financial statements or audited balance sheets of IV Capital or UCR prior to their investment. Tr. 855-56. Bandimere testified that Parrish never provided him with any financial statements for IV Capital, but early on in the investment, Parrish did provide an accounting each month of the total group investment and the return. Tr. 903-04. For approximately the first fifteen months Bandimere was invested with IV Capital, he received some form of account statement from IV Capital, generally listing the investment amount, number of days of trading, interest, and profit distribution. Tr. 1113-14; Ex. 131 at BAND002364. The account statements may have taken on different forms but generally contained the same information. Tr. 1114. After the first fifteen months, the LLCs took over the accounting. Tr. 1114.

Neither Dalton nor UCR ever provided Bandimere with any financial or accounting statements, but Bandimere testified that when he visited Dalton's office it appeared that Dalton's wife was performing the accounting and keeping records. Tr. 903-04. Bandimere testified that he verified certain numbers with Dalton's wife on her computer. Tr. 903-04. Bandimere did not believe that the failure to receive account statements in some form was an obvious sign of fraud. Tr. 1114.

Bandimere did not know whether there were audits of IV Capital or UCR, but if he had known there were no audits, he would not have considered that to be an obvious sign of fraud. Tr. 1112. Bandimere did not understand Parrish's trading to have been done through a brokerage firm and did not consider the fact that he did not have brokerage records to verify Parrish's trading to be an obvious sign of fraud. Tr. 1115.

6. Dalton Stops Doing Business with Parrish

Bandimere testified that Dalton stopped representing Parrish in investment matters at some point and it was expressed to him that Dalton and Parrish had complications, but Bandimere did not know what the issues were. Tr. 912. Bandimere did not tell investors that Dalton stopped doing business with Parrish and Bandimere testified that he was not aware that the issue between Dalton and Parrish "was of such a nature that it really would be a concern." Tr. 913.

During Pickering's conversation with Bandimere in June 2011, which, as previously discussed, she subsequently described to the Division in an email, Bandimere told Pickering about Dalton's relationship with Parrish. Tr. 237; Ex. 71. In her email, Pickering stated:

> 7. Dave went on to say that he started the LLC with Cameron Syke due . . . to Dick's discomfort level being so high with Mike and also, that he'd discontinued doing business with Mike. The story goes.that (sic) Dick couldn't get the contracts he wanted from Mike, Mike ignored his calls and took forever to get things done. It was an acrimonious separation.
> 8. Very importantly, Dave told me that Dick warned him strongly at that time, be careful about doing business with Mike.

Ex. 71 at 2. Pickering testified that Bandimere told her all of that information in June 2011 and, with the exception of "It was an acrimonious separation," the rest of the information she received from Bandimere "pretty much verbatim." Tr. 237. She testified that Bandimere's statement, "Dave told me that Dick warned him strongly at the time, be careful about doing business with Mike," was "as verbatim as I can get." Tr. 237-38.

Bandimere denied that Dalton warned him to be careful about doing business with Parrish, and testified that he did not know why Pickering would have picked that up from his conversation with her. Tr. 934-35. Bandimere testified that Pickering may have misunderstood what he said. Tr. 935.

D. Investments Stop Making Return Payments

Syke testified that in the spring of 2009, Parrish said that there was a bank audit of the bank in Nevis and auditors were looking into whether all of the investors had filed returns with the IRS.[15] Tr. 754, 817. Parrish said he was waiting to make payments until the audit was complete. Tr. 754, 816-17. Syke testified that he felt a responsibility, as a manager of Exito, to fix the situation. Tr. 756. At one point, Bandimere and Syke set up a meeting with Parrish and his associate, Greg Hardtman (Hardtman), in New York, but a couple of days before the meeting was scheduled, Parrish cancelled because neither he nor Hardtman could make it. Tr. 818-19. Following that attempt, Syke and Bandimere had a few more telephone conversations with Parrish. Tr. 819. During one of the last telephone calls, Parrish told them that he could not find one of his partners, Ken Brown (Brown), and Syke testified that Parrish was trying to create a scenario where he could blame Hardtman and Brown. Tr. 819-20. At some point Parrish disappeared. Tr. 756.

After IV Capital and Parrish stopped making payments on the investments, Syke and Bandimere traveled to Maryland to look for Parrish. Tr. 820, 1128. They hired private investigators who ultimately tracked Parrish down at a house he was renting and Bandimere and Syke were able to speak with his wife, although Parrish was not there. Tr. 820-21, 1227-28. Parrish's wife said that Parrish had been gone for a week on business but it had turned into two weeks and let Bandimere and Syke into Parrish's office. Tr. 821. Syke testified that the office had been cleared out. Tr. 821. Parrish's wife claimed that she did not know what was going on or that there was a problem. Tr. 821. Parrish's wife gave Syke the hard drive to Parrish's computer, which Syke turned over to the Commission. Tr. 821, 1228-29. Syke coordinated with Hardtman in Neves to get the bank records. Tr. 1228-29. Bandimere testified that he and Syke agreed that Syke should contact the SEC. Tr. 822, 1229. Bandimere put together the wires for the SEC. Tr. 1229. Bandimere testified that he did not disagree with the decision to report Parrish to the SEC. Tr. 1229.

By approximately July 2010, neither UCR nor the Diamond Program was paying returns to investors. Tr. 1122-23. Dalton told Bandimere that the trader involved in the investments had come to the end of his contract with the bank, but if the members of the LLCs would approve the movement of their funds from a bank in Albuquerque to Europe, it would help facilitate the trader's new contract. Tr. 1123. Bandimere told Dalton that he did not think anyone was interested in moving their funds and his preference would be to close down the trading. Tr. 1123. Bandimere testified that Dalton then claimed that the trader had already committed to a new contract and "was kind of holding a gun to his head, so to speak." Tr. 1124. When Bandimere pressed the issue, Dalton admitted he had already moved the funds to Europe. Tr. 1124.

According to Bandimere, Dalton supposedly told the trader that he did not want to go forward and wanted the funds returned, but the trader would not cooperate and the trader

[15] Syke believes that he initially heard about the audit from Bandimere, but that he later had a conversation with Parrish and may have exchanged emails. Tr. 755.

allegedly told Dalton that Dalton had cost him so much money that he was going to continue to hold the funds to recover some of the losses. Tr. 1124. Dalton represented to Bandimere that there were ways for him, through other connections, to earn enough to repay investors their principal. Tr. 1125. Bandimere then provided Dalton with his own personal funds, or funds that he borrowed, to assist him. Tr. 1125-26.

E. Bandimere's Investments in IV Capital and UCR

As of September 6, 2010, after UCR and IV Capital had stopped paying returns, the LLCs had collected over $9 million in investor funds, including Bandimere's investments. Tr. 861; Exs. 93, 113.

Bandimere helped prepare a Summary of Bandimere Investment and Returns, which reflected that he personally invested $1,145,419 in the IV Capital and UCR investment programs in total. Tr. 969; Ex. 200. That total included $50,000 and $5,000 of his own funds that he invested for the benefit of David M. Bandimere and George Stepan (Stepan). Tr. 969-70; Ex. 200. Bandimere received $477,878.93 in earnings or profit payments on those investments, not including profits made on the investments for David M. Bandimere or Stepan. Tr. 970-71; Ex. 200. Bandimere received $734,996.33 in management fees. Tr. 971; Ex. 200. Bandimere borrowed money to invest in some of the programs and paid $17,008.45 in interest payments. Tr. 971-72; Ex. 200.

Bandimere chose to personally guarantee the investments made by Global Connection, Nomad Club, and Abbas Ministries and, in total, paid $53,815 back on those guarantees. Tr. 972; Ex. 200. Bandimere testified that he has not been in a position to completely pay back the guarantee to Abbas Ministries. Tr. 972. Bandimere paid $40,425 in investor advances to three investors who requested the return of their capital because of personal issues. Tr. 972-73; Ex. 200. Bandimere also paid $2,700 to Radke because either he or his wife made an error in calculating Radke's rollovers. Tr. 975; Ex. 200. Bandimere did not recall what the "Investor repayment" entry on the Summary of Bandimere Investment and Returns of $17,750 was used for. Tr. 975; Ex. 200. Bandimere also spent $11,796.46 for "professional fees" and the trip to Maryland to try to talk to Parrish. Tr. 975-76; Ex. 200.

F. Investor Testimony

1. Richard Moravec

During 2007 and 2008, Richard Moravec (Moravec), a resident of Wheat Ridge, Colorado, worked as a sales manager for a small commercial printer, and he described himself as a "very novice" investor. Tr. 152-54. Moravec met Bandimere during a meeting of a vintage car club in December 2007. Tr. 152-54, 180-81. During a club meeting, Bandimere mentioned he had an investment deal that would result in a 30% annual gain on the $1,000 the club had available to invest. Tr. 155, 181. The car club and Moravec and his wife subsequently invested with Bandimere. Tr. 156-57. Moravec testified that Bandimere did not pressure him to invest. Tr. 189.

On February 26, 2008, Moravec invested $100,000 in IV Capital through Bandimere.[16] Tr. 158-60, 181-83; Ex. 122 at BAND001669. Prior to that investment, Moravec and Bandimere discussed the "great return" of 2.5% per month Moravec would receive, but Bandimere did not mention Parrish or provide any negative information about the investment. Tr. 160-61. Moravec did not recall whether Bandimere described the investment as safe or low risk, but he knew that any investment had some risk. Tr. 184. Prior to the investment in IV Capital, Bandimere did not tell Moravec that a principal for IV Capital had previous problems with the SEC, that he had an arrangement with IV Capital to earn 10% commissions on returns, that Parrish or IV Capital had refused to provide account or trading records, or that Parrish or IV Capital had shorted him funds he needed to pay returns or cover his commissions. Tr. 165-67.

On June 27, 2008, Moravec invested an additional $100,000 in IV Capital and $49,000 in UCR, and in July 2008 he invested $50,000 in UCR and Blue Rose. Tr. 162, 164; Ex. 122 at BAND001669. Moravec recalled Bandimere told him about a "pretty high rate" of return for the UCR investment before he invested, but did not recall anything else he was told. Tr. 162-63. Bandimere did not mention Dalton's involvement or provide Moravec with any negative information about the investment. Tr. 164. Prior to the investment in UCR, Bandimere never told Moravec that he had an agreement with UCR to receive 24% annual commissions, that a principal for UCR had some failed financial dealings, that UCR and Dalton had refused to provide account or trading records, or that UCR or Dalton had shorted him funds he needed to pay returns or cover his commissions. Tr. 166-67. Moravec also invested $10,000 in a "diamond fund" through Bandimere, and he was paid back 15% on that investment. Tr. 164; Ex. 122 at BAND001669. Moravec did not have access to financial information relating to UCR or IV Capital before investing. Tr. 169.

Moravec testified that he understood he became a member of Victoria, Bandimere's investment group, by making the investments. Tr. 185. He thought the return on his investments was going to be a function of how the group as a whole did, and he understood that Bandimere would allocate investment returns to the other members of Victoria based on the allocation of the particular kinds of investments that each member selected. Tr. 186. Moravec testified he could not recall receiving a form asking for a vote on any issues during his membership in Victoria, and he never recalled casting a vote on how his funds would be traded in IV Capital or UCR.[17]

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[16] Moravec received the 2.5% return per month he was promised on that investment. Tr. 183-84.

[17] Exhibit 22 is a series of Statements of Consent by the Members of Victoria variously dated January 3, 2008, or January 5, 2009. Tr. 1236; Ex. 22. Bandimere testified that these were the annual vote sheets, and Moravec and his wife appear to have signed a Statement of Consent on January 5, 2009, which stated, "the member of the LLC desires to approve the investment of LLC funds per their individual requests for the 2009 year . . . it is RESOLVED, that the funds of the LLC shall be invested with IV Capitol (sic), Blue Rose Wealth Management LLC, Universal Consulting LLC, and local money market accounts, for the 2009 calendar year." Tr. 1236; Ex. 22 at BAND001984. Bandimere acknowledged that the Statement of Consent dated January 3, 2008, which stated that the funds of Victoria would be invested in IV Capitol (sic) for the 2008 calendar year, did not mention investments in UCR, although beginning in June 2008 some members of Victoria were investing in UCR. Tr. 1249-50.

Tr. 198. Moravec did not know Bandimere was going to be compensated for his activities on behalf of Victoria. Tr. 188-89.

Moravec played no role with respect to how profits were earned by IV Capital and UCR and he did not deal with Parrish or Dalton regarding his investments, only Bandimere. Tr. 168. Checks for Moravec's investments were provided to Bandimere. Tr. 171. If Moravec had an issue with his investment he would ask Bandimere, and Bandimere and, very rarely, his wife, handled any paperwork related to his investments. Tr. 170-71. Bandimere provided Moravec's returns to Entrust, and Entrust provided them to Moravec. Tr. 171-72. Moravec testified that Bandimere mentioned to him that he should diversify his funds, but Bandimere did not provide an exact amount to be diversified or charge Moravec for that advice. Tr. 188.

Moravec met Parrish at Bandimere's home sometime during the course of his investment. Tr. 189-91. Bandimere made an investment presentation and did most of the speaking and Parrish showed investors "how he did his trading" on the computer. Tr. 191, 199-200. Moravec did not understand what he was shown by Parrish, but agreed Parrish described it as evidence of his trading. Tr. 192. Moravec believed the purpose of the meeting was to introduce Parrish to investors and prospective investors because there were questions about him. Tr. 198-201.

Moravec stopped receiving payments on his investments at some point, and Bandimere provided him with various excuses. Tr. 174. Bandimere offered to take, and Moravec gave, $25,000 from Moravec's Blue Rose account, so that Bandimere could use it in an attempt to recoup Moravec's investments, but Moravec never received the $25,000 back. Tr. 174-76. Moravec ultimately lost all of his investments, and he described the impact the losses had on his life as "unbearable." Tr. 177-78. He currently lives in a 600-square-foot single-room cabin that did not have plumbing until last fall. Tr. 178. Moravec would not invest through Bandimere if he had the opportunity to do so again. Tr. 178. Moravec told the Commission that he believed Bandimere had meant well, but after the Commission asked him if he knew if Bandimere had knowledge that Parrish had earlier been involved in a Ponzi scheme, Moravec was no longer sure whether Bandimere meant well. Tr. 196-97.

2. Deborah Pickering

Pickering, of Capistrano Beach, California, a former business developer who is currently retired, learned of Parrish and the IV Capital investments in early-to-mid 2007 through Sonja Cassel, a previous investor who told Pickering about her own successful investments and those of her parents. Tr. 202-05, 252-54. An individual named David Smith (Smith) initially described the IV Capital investment to her, gave her a "profile" of the trading, and referred her to Parrish. Tr. 205-06, 257. In April or May of 2007, Parrish told Pickering he had twenty-two years of trading experience, a staff of eleven, and $22 million in assets under management. Tr. 207-08. Parrish told her that her principal was 100% "safe at all times" unless there was another "9/11 type of event," and that the total expected rate of return was 5% per month with 2.5% being distributed to partners and 2.5% to Pickering. Tr. 208. At the time Pickering invested in IV Capital, she had a net worth of more than $1 million. Tr. 204.

Pickering invested $750,000 with IV Capital through Parrish in 2007 and began receiving 2.5% per month returns. Tr. 209-10. Prior to this initial investment, Pickering did not speak to Bandimere or Syke. Tr. 259-60, 273, 381-82. Due to Pickering's tax requirements, Parrish referred Pickering to Syke in mid-2007, and Syke recommended that she invest through Exito. Tr. 210-11, 270-71. Pickering understood Syke and Bandimere to be partners in Exito, with Bandimere handling the money and Syke handling the legal aspects. Tr. 211-12. Pickering initially told Syke she did not want to become a member of Exito because she did not understand the Subscription and Operating Agreements and had never participated in an LLC before. Tr. 276; Ex. 230. After further explanation from Syke, she was comfortable participating. Tr. 276. In June 2007, Exito began managing Pickering's initial $750,000 investment with IV Capital. Tr. 210-11, 215-16.

In approximately September 2007, Pickering invested another $250,000 in IV Capital through Exito. Tr. 216; Ex. 115 at BAND000847. Pickering sent both the $750,000 and $250,000 investments via wire transfer directly to IV Capital accounts at a bank in Bermuda. Tr. 266-67. Pickering did not recall when she first spoke to Bandimere, or whether it was prior to making the $250,000 investment, but testified she may have first spoken to him when she started receiving return checks. Tr. 268-69, 313. Bandimere spoke to her regularly about those checks. Tr. 268-69. Pickering agreed that during 2007 she probably only communicated with Bandimere about administrative matters. Tr. 270.

Pickering invested approximately $501,000 from her IRA through Entrust in IV Capital in 2008. Tr. 219-20; Ex. 115 at BAND000850. Pickering received a call from Bandimere who told her that she could invest her IRA funds in IV Capital through Entrust. Tr. 220-23, 314. During the call, Bandimere did not tell her any negative information about IV Capital. Tr. 223. Prior to that time, Pickering had invested her IRA with either UBS or Wells Fargo Bank and had received good returns.[18] Tr. 314-15. Pickering verified with Parrish that he could manage money that was held by an IRA custodian after speaking to Bandimere. Tr. 335. Pickering also invested $1.365 million directly in IV Capital, for total investments in IV Capital of close to $3 million, which was Pickering's entire net worth. Tr. 239-42.

Pickering did not have any role in deciding how IV Capital was invested and did not have any management control over IV Capital. Tr. 227-28. Pickering understood that IV Capital generated profits by trading in various instruments, including stocks, bonds, mutual funds, and options. Tr. 227. Pickering received contracts, monthly income statements, and monthly payment checks from Bandimere. Tr. 228. Pickering expected to receive monthly return checks from Exito provided by either Bandimere or his wife. Tr. 264-65. Pickering testified that she had regular conversations with Syke and Bandimere about the investments. Tr. 230.

Parrish told Pickering that Bandimere and Smith shared in a 1% monthly commission; Bandimere never told Pickering how much he was making in commissions. Tr. 229-30.

[18] Pickering worked with financial advisors to manage the funds in her IRA, and she reviewed the prospectuses for her investments, articles in the Wall Street Journal, and Yahoo news articles as research. Tr. 316-19. The fact that she did not have to actively research the investments in IV Capital factored into her decision to transfer her IRA. Tr. 324-25.

Bandimere never told Pickering that he actually calculated the monthly returns for IV Capital and gave that information to Parrish, or that he was sometimes shorted money from Parrish for commissions. Tr. 231. Pickering testified that she would have been concerned if Bandimere had missed a monthly payment that she was owed. Tr. 231.

At a time when IV Capital was still paying returns, possibly sometime in 2007, Pickering became aware that Bandimere was not receiving reports from IV Capital. Tr. 400. She testified that the lack of reports did not lead her to believe it was a fraudulent scheme and she took no steps to withdraw her money from IV Capital. Tr. 400-01. Pickering was also aware that Bandimere was not receiving any evidence of trades or third-party documentation, but that did not lead her to believe it was a fraudulent scheme, and, in fact, she invested more money. Tr. 402-03; Div. Ex. 71 at 3. Pickering does not recall having knowledge as to whether Parrish's business was audited, but she assumed they were not audited. Tr. 404-05. Pickering admitted that she knew Exito was receiving fees sometime in 2007. Tr. 406-07.

In approximately June 2009, IV Capital stopped paying investment returns to Pickering.[19] Tr. 230, 232, 242. Pickering invested $100,000 in UCR through Victoria on March 26, 2010, using a $2,000 loan from her brother and credit lines on her credit cards. Tr. 214, 242, 247-48; Ex. 115 at BAND000846. According to Pickering, Bandimere knew about her "desperate financial straits" before she invested in UCR, and he told her "Don't worry, honey. We'll get you money coming in right away, next month." Tr. 242-43, 365. Bandimere admitted that he knew that Pickering had borrowed the $100,000, that she needed more income, and that she had lost at least $2.5 million in IV Capital. Tr. 986. Bandimere presented Pickering with a profile for the UCR investment reflecting that a trader in Singapore generated profits on the investment, managed by a couple, and the investment was made through Dalton with a 4% monthly return. Tr. 243-44. Because Pickering was no longer an accredited investor, Bandimere said she could not speak to Dalton directly but she would have to work through Bandimere; Pickering recalled Bandimere stating that he needed to arrange the contract with Dalton.[20] Tr. 244, 367-68, 370. Pickering recalled asking Bandimere whether the investment could be bonded because she could not afford to lose $100,000, and Bandimere checked with Dalton who said that it could not be bonded. Tr. 368.

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[19] After Pickering stopped receiving returns she contacted Hardtman to get her financial information. According to Parrish, Hardtman was an attorney, CPA, a managing partner of the company that set up the foreign investments, and was planning to be the next prime minister of Nevis. Tr. 424. Hardtman sent Pickering bank statements for the IV Capital bank account in Bermuda, which reflected low account balances. Tr. 425.

[20] Pickering does not recall whether she first spoke to Syke about investing in UCR, but after reviewing an email she sent to Syke on March 10, 2010, she agreed that she must have spoken with Syke initially about the "4% deal," although she does not recall a specific conversation. Tr. 361-62. Pickering believed that she decided to invest in UCR right after she spoke to Bandimere. Tr. 365-66. She also believes that Smith may have mentioned a 4% monthly return program to her sometime in 2007. Tr. 407-08.

Before she made the investment in UCR, Bandimere never told Pickering any negative information about UCR, that Dalton had been involved in prior failed investments, or that Syke had written Bandimere an email prior to Pickering's investment, stating "the failure to perform on the diamond deal casts a cloud over [UCR] and effectively precludes new investors from investing in either deal." Tr. 245-47; Ex. 43. Pickering testified that if Bandimere had told her about the statement made by Syke on March 5, 2010, she would not have invested $100,000 in UCR. Tr. 246-47. Following her investment, Pickering was told that the UCR fund was closed and that she would receive a refund, but she never received the refund or the investment contract. Tr. 247. Pickering testified that she really believed that the investment did not have any risk, and while Bandimere did not say so specifically, she assumed it was successful and was not told otherwise. Tr. 413-14.

As a result of her losses, Pickering sold her house and moved in with her younger brother who now assists her financially. Tr. 248-50. Pickering testified she worked very hard her entire life to save money so that she could retire early, but now she considers herself to be a burden to her family. Tr. 249-50. Pickering testified that following the losses, her immune system collapsed and she has had several surgeries. Tr. 248-50. She testified that she would never again invest through Bandimere. Tr. 250.

3. David A. Loebe

David A. Loebe (Loebe) of Bailey, Colorado, invested through Bandimere beginning in 2009. Tr. 285, 288-89; Ex. 114 at BAND000819. Loebe is currently self-employed and deals in real estate. Tr. 285. When Loebe invested with Bandimere, he had a net worth of at least $1 million, primarily in real estate, and had very limited investment experience, having only invested through his previous employer, Boeing Company. Tr. 286.

Loebe learned of Bandimere through Brad Moser (Moser), a carpenter working on Loebe's home who had also worked for Bandimere. Tr. 286, 301. Moser told Loebe that Bandimere had an investment set up and he had seen checks going out every month. Tr. 286-87. Moser arranged a meeting for Loebe at Bandimere's home and Bandimere told Loebe he had several funds, including funds investing in diamonds and foreign currency. Tr. 287-88, 301-02. Bandimere explained how the funds worked and said the funds Loebe was to invest in were supposed to pay a 2% monthly return. Tr. 288. It was Loebe's impression that Bandimere was enthusiastic about what he was doing and there were no high pressure sales. Tr. 303.

In May 2009, Loebe invested $25,000 in IV Capital and $50,000 in UCR. Tr. 288-89; Ex. 114 at BAND000819. Bandimere's statement regarding UCR's 2% monthly returns made Loebe decide to invest and returns were most important to him.[21] Tr. 289-90. Loebe understood that investment profits would be generated from some sort of trading activity, but he did not have any role in generating those profits. Tr. 294-95. Loebe had the impression from Bandimere that returns on the IV Capital investment were guaranteed and also that the investment was safe

[21] After having his recollection refreshed, Loebe testified that he was actually supposed to receive a 4% monthly return on the UCR investment and a 2% monthly return on the IV Capital investment. Tr. 291-92.

because Bandimere and his friends had invested. Tr. 304-05. Bandimere did not advise Loebe how much to invest or how to allocate his investments. Tr. 306.

Loebe received a copy of the Operating Agreement for Exito at the time he made the investment and he read the agreement. Tr. 293; Ex. 70 at Loebe0000010. The Operating Agreement for Exito stated, with respect to "Compensation for Manager(s)," "The Manager(s) shall receive a reasonable compensation for services to the LLC in managing its affairs and its properties. Such amount shall be deemed to be the excess of any funds received by the LLC in excess of the targeted returns per annum to Members." Tr. 293-94; Ex. 70 at Loebe0000014. Bandimere never told Loebe that he received 10% monthly commissions from monthly payouts from IV Capital or a 24% annual commission for money invested in UCR. Tr. 293-94. Loebe testified that Bandimere told him that any funds in excess of investor returns every month would go to a Christian charity doing work overseas.[22] Tr. 294.

Loebe knew that Parrish was the trader for the IV Capital investment before he invested, but never spoke to him. Tr. 295. Loebe had never heard of Dalton. Tr. 295. Loebe believed Bandimere handled the paperwork for the investments, possibly in connection with an attorney responsible for legal documentation, and Bandimere sent him return checks through the mail. Tr. 296. Loebe understood that the investment programs would send Exito whatever returns were due to it or its members and someone at Exito would do an accounting and send members their returns. Tr. 306-07. Bandimere answered Loebe's questions about IV Capital and UCR, and never told Loebe any negative information about the investments. Tr. 296-97. Bandimere never told Loebe that he was shorted money for his commissions from UCR and IV Capital, that it appeared to him that IV Capital and UCR did not have accounting records, or that persons associated with UCR had been involved in prior failed investments. Tr. 297-98. Loebe understood that IV Capital and UCR paid trading profits to investors, but it was not his understanding that Bandimere told IV Capital and UCR how much profit to pay. Tr. 297. Loebe agreed that the aforementioned information that Bandimere did not tell him would have been important to him in deciding whether to invest in IV Capital or UCR. Tr. 299-300.

Loebe received nine monthly payments of $2,000 from UCR until March 2010 when the payments stopped. Tr. 290; Ex. 114 at BAND000819. Loebe never received any return payments for his IV Capital investment. Tr. 290. On July 15, 2009, Loebe received a letter from Bandimere explaining that Loebe's June 2009 returns from IV Capital could not be released until after a bank audit was completed. Tr. 290-91; Div. Ex. 114 at BAND000820. In total, Loebe recouped $18,000 of his $75,000 investment and he testified he would not again invest through Bandimere. Tr. 300.

[22] When Bandimere was asked whether he told Loebe that the excess he received would be donated to charity, Bandimere responded, "I don't recall that that was the case. I may have shared with him that – he may have asked what I did with some of my funds in my life. And most people who know very much about me know what – that I'm – that I give to a variety of causes, so that may have been what was in the conversation that – that he – that he took from that." Tr. 929.

4. Robert Loren Blackford

Robert Loren Blackford (Blackford), a resident of Santa Barbara, California, from approximately 2008 through 2010, invested through Bandimere in February 2008.[23] Tr. 436-37, 446. Blackford first met Bandimere in January 2008 at an annual pastors' retreat. Tr. 437-38. Blackford and Bandimere took a walk during the retreat and Bandimere told Blackford about some of his investments. Tr. 437-38. Bandimere did not discuss the specifics of the investments, but he described a "particular man who was a wizard at investing" and stated that the trader was among a "handful of people who might know how to turn profits" in a day trading situation. Tr. 439, 472. Bandimere also explained how the investment club worked and told Blackford the investments had gotten really good returns. Tr. 439.

Blackford further discussed the investments with Bandimere over the next couple of weeks by telephone, getting information about how the investments worked, minimum investments, interest rates, and returns. Tr. 439-40. Blackford testified that Bandimere did not provide him with any information that caused him concern during those discussions. Tr. 442. Bandimere never told Blackford Parrish's last name, and referred to the trader as "Michael." Tr. 443. At the time Blackford made his first investment, he believed he knew that Bandimere did not have a securities license. Tr. 469.

On February 19, 2008, Blackford invested with Bandimere and Blackford understood he was investing in IV Capital, which would pay a return of 2.5% per month or 30% per year. Tr. 446-47; Div. Ex. 118 at BAND001093. In 2009, Blackford invested $88,000 in UCR with a return of 4% per month or 48% per year. Tr. 447-48; Div. Ex. 118 at BAND001093. Blackford also transferred some money from his IRA into a Blue Rose investment through Bandimere. Tr. 448. Blackford understood from discussions with Bandimere that the UCR investment had something to do with construction loans. Blackford testified that Bandimere was excited about the investment and the represented return was "even higher." Tr. 449. Bandimere did not provide Blackford with any information about the UCR investment that caused him concern, nor did Bandimere provide him with any information about the names of the principals involved in UCR. Tr. 449.

Bandimere did not use the word "guarantee" when discussing the returns, but he explained the returns that previous investors had received. Tr. 480. Blackford understood that prior returns did not mean that those returns would continue indefinitely in the future. Tr. 482. Blackford testified he understood that in light of the targeted returns represented, the investments were very risky, but Bandimere described the principal as remaining in a bank account and being used for leverage and so the principal never seemed to be at stake. Tr. 482-83. With respect to IV Capital, Blackford thought his principal investment would be held in escrow, and he associated the risk with the rate of return rather than the principal investment. Tr. 488-89.

[23] Blackford worked for New York Life Insurance Company between 1985 and 1995 and during that time he had his Series 6 and Series 22 securities licenses. Tr. 437. Blackford personally owned mutual funds and a few stock investments. Tr. 437.

Blackford was a member of Victoria and he understood that by sending money to Victoria that money would be allocated to the investment programs according to his wishes. Tr. 485-86. Blackford understood that IV Capital or UCR would send returns back to Victoria and someone at Victoria would be responsible for distributing the returns in accordance with his allocations. Tr. 486.

Blackford never received any payments from the investments because he rolled over the investments into IV Capital and UCR. Tr. 450. Approximately a year after Blackford first invested, he requested some sort of accounting statement from Bandimere, and he received a spreadsheet from Bandimere reflecting his investments, earnings, and amounts rolled over. Tr. 451-52. Blackford believed he saw the spreadsheet for the first time when Bandimere and his wife visited Blackford at his home in Santa Barbara, California, in January 2009. Tr. 452-53. During that visit, Bandimere explained the IV Capital and UCR investments to Blackford and his wife using drawings on a piece of paper. Tr. 453-54.

Blackford testified he played no role in the management of IV Capital or UCR or had any role in how his funds were traded in those investments. Tr. 455. Blackford did not believe that Bandimere asked him whether he was an accredited investor, and Blackford testified that Bandimere knew Blackford was not working because of a disability at the time of the investments and the investments represented a good portion of his savings. Tr. 455-56. Blackford testified that he relied heavily on Bandimere and said that Bandimere mentioned an attorney he worked with and that they had done some investigation and were confident in the investment. Tr. 476.

Bandimere did not tell Blackford that he had requested trading and financial data from IV Capital and UCR and had been refused, but Blackford would have wanted to know that information. Tr. 457-58. Blackford only dealt with Bandimere regarding the investments and he relied on Bandimere to get information about the investments and handle the paperwork. Tr. 458-59. Bandimere directed Blackford to wire his investments to a bank in Colorado, and Blackford believed that Bandimere handled his money. Tr. 459. Before Blackford invested in IV Capital, Bandimere never told him that the principal of IV Capital had a previous problem with the SEC, and Blackford testified that he would have wanted to know that and whether the problem was resolved. Tr. 465-66.

Blackford understood that Bandimere received some sort of management fee but never asked him about it because it did not seem like it was his business. Tr. 478. Blackford was not told prior to his investment that Bandimere was receiving a commission of 10% on investor returns in IV Capital or that he had an agreement with UCR to earn 24% annual commissions. Tr. 466. Blackford would have wanted to know about the 24% annual commission because it would have caused him to wonder how the investment could make so much money in a volatile environment. Tr. 466-67. Bandimere never told Blackford prior to his investment that IV Capital or UCR had shorted him on commissions or that a principal of UCR had a history of failed financial dealings. Tr. 466-67.

Beginning in January or February 2009, Blackford withdrew some of the returns on his investments and placed them in a money market account. Tr. 460. Bandimere suggested he do

so for diversification. Tr. 477-78. In June or July of 2009, Bandimere told Blackford that because of tax issues involving some of the other investors, the government had frozen the bank accounts that the investments were held in and returns would be credited on paper until the accounts were unfrozen. Tr. 460-61. In fall 2009, Blackford invested through Bandimere into the Diamond Program which Blackford understood to involve diamonds in Africa. Tr. 454. Blackford initially invested $10,000 and received a 10% return, which he reinvested in the Diamond Program. Tr. 454-55.

In February 2010, Bandimere told Blackford that the person involved with IV Capital, Michael, had disappeared. Tr. 461. Following that disappearance, Blackford understood that Victoria was going to be disbanded and was going to request its capital back from UCR. Tr. 462. In approximately December 2010, Blackford heard from Bandimere that some person or group of people affiliated with UCR had also disappeared. Tr. 465. Until that point in time, Blackford never knew who Dalton was. Tr. 463. Blackford testified that he thought Bandimere was trying to resolve the situation with UCR and return money to investors. Tr. 463-64. Blackford testified that during this time he was asking Bandimere a lot of questions and he felt that Bandimere knew more than he was telling him. Tr. 464-65.

Blackford lost approximately $300,000 in principal investments in UCR and IV Capital in the scheme, representing a high percentage of his retirement savings, which caused a lot of stress in his marriage and personal life. Tr. 467-68, 487. Blackford did receive approximately $30,000 back from the money market account, and his principal investments in Blue Rose were eventually returned to him. Tr. 478-80. Blackford would not invest again through Bandimere. Tr. 468.

5. John Davis

John Davis (Davis) of Golden, Colorado, invested through Bandimere beginning in April 2009. Tr. 490, 496; Ex. 121 at BAND001514. Davis is currently retired. Tr. 490. Prior to retirement, he spent thirty-eight years at Coors Brewing Company, most recently as a quality analyst. Tr. 490-91. Prior to investing with Bandimere, Davis held an IRA and a Roth IRA that mostly invested in mutual funds. Tr. 491. A friend of Davis's wife introduced Davis to Dalton and told Davis that the investments she had made through Dalton had good returns. Tr. 491-92. Davis met Dalton in February 2009 and Dalton described his investments and said that they were paying off very well. Tr. 493. Davis did not invest with Dalton because he had the impression that Dalton was not interested in his investment because at the time he was contemplating only investing $20,000 from his Roth IRA. Tr. 493-94. Dalton recommended that Davis speak to Bandimere who would invest Roth IRA money for him. Tr. 494-95. Davis called and asked for an appointment with Bandimere, and they met at Bandimere's house and Bandimere described some investments to him. Tr. 495. The meeting with Bandimere was the first time Davis heard about the return that might be gained by investing through Dalton. Tr. 520, 525-26.

During the initial meeting, Bandimere drew a diagram to explain the investments. Tr. 521-22; Ex. 121 at BAND001523. The diagram included the term, "targeted returns," but Davis did not recall Bandimere using that exact wording and recalled that Bandimere told him that, based on his investment amount, he would fall into a range of 4% monthly returns. Tr. 521-22.

Davis recalled Bandimere explaining that by contributing money to a larger fund that was then going to be used by a trader he was going to be positioned to earn a better return. Tr. 527. Davis testified that Bandimere referred to Dalton both as his partner and his associate. Tr. 527-28. Davis testified that Bandimere told him that he was managing this particular investment and he was funneling funds to Dalton. Tr. 528-29. Davis testified that Bandimere said they would get a regular return on their investment. Tr. 534.

Davis testified that he never told Bandimere to invest his money in UCR because Bandimere "was the money manager, so [Davis] assumed that [Bandimere] was going to make the decision." Tr. 529. Davis testified that he did not make any decisions regarding allocation of the $20,000 investment.[24] Tr. 529-31. Davis did not recall Bandimere stating that he had any training in investments or was in the brokerage profession; however, Bandimere was a Christian, like Davis, and Davis trusted him. Tr. 533-35. Davis understood that all investments were risky, but the fact that Bandimere said he was receiving a regular rate of return and he felt it was a good investment implied to Davis that it was a safe investment. Tr. 536-37.

On April 21, 2009, Davis invested $20,000 in UCR through Victoria. Tr. 496-97; Ex. 121 at BAND001514. Davis's wife, Karin Lopez, invested IRA money through Bandimere into Blue Rose. Tr. 503-04; Ex. 121 at BAND001529. Although the records kept by Victoria reflected that Davis received returns equal to ten payments of $800 continuing through April 2010, Davis testified that he only received four checks, and he was asked to hold the last one.[25] Tr. 497; Ex. 121 at BAND001514. Davis understood that Dalton was involved in UCR, there were other investors in UCR, that investors' money would be pooled together for trading, and that returns would come from UCR. Tr. 498-99. Davis understood that he was investing in UCR with a 4% monthly return. Tr. 502, 504. Bandimere told Davis that he had known Dalton for a long time, and they were working as partners and providing money to Parrish on the east coast who would trade the investments. Tr. 503. In deciding to invest it was important to Davis that Bandimere told him that he was looking to help Christian people invest and take advantage of an opportunity to earn some money. Tr. 505.

Davis testified that he did not have any role in trading or management. Tr. 505-06. When Davis received payments from UCR, they were in the form of checks from Bandimere. Tr. 506. Bandimere answered any questions Davis had about the UCR investment and facilitated the use of retirement funds in the Blue Rose investment. Tr. 506-07. Bandimere did not tell Davis that he was receiving a 24% annual commission from UCR on Davis's investment or that he was ever shorted payments he was owed by UCR. Tr. 507. Bandimere never told Davis that he calculated the returns that were due each month and sent that information to UCR or that UCR did not provide Bandimere with financial statements or trading records. Tr. 507. Bandimere did not tell Davis that it appeared to him that UCR did not have any accounting

[24] Bandimere testified that he believed that Davis's wife decided which program to invest in. Tr. 981-82.

[25] Exhibit 238 contains a series of eight checks reflecting seven payments of $800 and one payment of $750 made to John Davis. Tr. 1218-23; Ex. 238 at 11-13. The checks each appear to be signed by "John Davis." Tr. 1218-23; Ex. 238 at 11-13.

records at all or that Dalton had been involved in several failed investments in prior years. Tr. 507-08. Davis testified that he would have wanted to know the aforementioned information prior to investing and had he known that information he did not think he would have invested. Tr. 508.

UCR stopped paying returns to Davis sometime in 2009 and Bandimere provided numerous explanations, including that they were having issues with the trader. Tr. 509. Davis lost his entire $20,000 investment in UCR and would not invest through Bandimere again. Tr. 510. Davis's wife's investment in Blue Rose was ultimately returned to them. Tr. 538.

6. Harley Hunter

Hunter, an unregistered financial advisor who does not hold any securities licenses, invested with Bandimere beginning in February 2008. Tr. 543, 549; Ex. 120 at BAND001476. Hunter has known Bandimere for twenty years and is friends with him currently. Tr. 544. Hunter testified that he had extensive investment experience before investing through Bandimere, having served as a broker-dealer for over twenty years primarily dealing with limited partnerships that had economic and tax ramifications. Tr. 544-45. Bandimere brought up an investment opportunity during a telephone call. Tr. 546. Hunter testified that Bandimere told him that he had a large amount of money invested himself and that there were other people Hunter knew that had invested. Tr. 546-47. Hunter and Bandimere also discussed investments in person. Tr. 547.

Hunter understood the investment was called Victoria and it would invest in IV Capital. Tr. 547-48. Hunter understood Michael Parrish, an expert trader, to be involved with IV Capital. Tr. 548. Hunter did not have any role in Parrish's trading or any management role over IV Capital. Tr. 548. Bandimere told Hunter that Parrish had a long-term track record and many people had invested with him for a long time. Tr. 558. Hunter believed Parrish to be hedging particular stocks or futures, or staying in the position for a short time to make a profit and reinvesting again, which Hunter believed to be a viable trading strategy that could result in a very high return. Tr. 558-59. Bandimere confirmed that Hunter was on the right track with his understanding of the trading strategy and Hunter also discussed the strategy with Parrish. Tr. 559. Hunter also spoke to Syke who confirmed what Parrish and Bandimere had stated. Tr. 560. At the time when Bandimere presented the investment opportunity to Hunter, Hunter perceived Bandimere's investment savvy in the area of real estate to be good, but limited with respect to Parrish's trading program. Tr. 565-66.

Hunter's wife, Jeannie Hunter, invested $350,000 in IV Capital through Victoria in February and March 2008.[26] Tr. 549; Ex. 120 at BAND001476. At least $200,000 of that investment was wired to IV Capital. Tr. 552; Ex. 120 at BAND001484. Hunter and his wife began to receive payments from Victoria around March or April of 2008 and the checks were provided by Bandimere. Tr. 550. Some of the profits from the Victoria payments were being

[26] Neither Hunter nor his wife wanted to be a member of Victoria and so the Jean E. Hunter Trust entered into a joint venture agreement with IV Capital. Tr. 560-61; Ex. 220. Victoria facilitated and handled the distributions in connection with the joint venture agreement. Tr. 562.

deposited into Jeannie Hunter's money market fund at Vanguard Group. Tr. 550-51; Ex. 120 at BAND001476. Bandimere arranged for that transfer of funds. Tr. 551. Bandimere facilitated any paperwork that was necessary to invest in IV Capital through Victoria and Bandimere answered questions about IV Capital. Tr. 552-53. Hunter understood that Victoria would be compensated by IV Capital for the services it provided and he was told the amount of compensation. Tr. 562.

On January 16, 2008, Bandimere told Hunter about an "SEC problem" that Parrish had in 2004. Tr. 556-57; Ex. 143. Parrish and Hunter spoke on January 18, 2008, and Parrish explained his SEC problem and Hunter was satisfied with Parrish's answer. Tr. 557, 564. Hunter does not recall whether he spoke to Bandimere about Parrish's explanation. Tr. 557. Hunter did not receive, nor did Bandimere provide, a copy of the Commission's 2005 complaint against Parrish or the judgment the Commission received in that case. Tr. 574-75. Hunter did not receive a copy of the complaint or judgment until after the fact, when he found it himself. Tr. 575. Hunter met with Parrish at one point in time and they had a "question-and-answer session" and Parrish used his laptop computer to show Hunter how he performed his trades. Tr. 563. Bandimere was present at that meeting. Tr. 563. Hunter testified that what Parrish showed him appeared to be legitimate. Tr. 564.

In the summer of 2009, the investment stopped performing the way that Parrish had indicated it would and Hunter was told that there was some sort of IRS issue that prevented investors from receiving payments, which sounded reasonable to Hunter at the time. Tr. 568-69. After Hunter stopped receiving payments from IV Capital, he contacted Bandimere and expressed grave concern over the possibility of losing his home and asked Bandimere to personally make some of his payments in the hopes that Parrish would again start making payments and Hunter could repay Bandimere. Tr. 1234. Hunter and Bandimere reached a mutual agreement where Bandimere agreed to make the payments as an advance. Tr. 570. The advance payments totaled between $20,000 and $30,000. Tr. 571.

7. James Koch

James Lloyd Koch (Koch) of Lakewood, Colorado, is currently employed with the Colorado Department of Human Services, and he first invested with Bandimere beginning in July 2009. Tr. 578-79, 583. Koch has known Bandimere for forty years. Tr. 579-80. They attended the same church beginning in 1972 or 1974 through the early 1980s, and Koch worked for the Bandimere Speedway in the late 1970s through the early 1980s. Tr. 580-81. Koch and Bandimere met up for breakfast from time to time. Tr. 581, 622-23, 1238. Prior to investing with Bandimere, Koch considered himself to be a novice investor. Tr. 579.

Koch and Bandimere first spoke about investments during a breakfast meeting in late 2008 or early 2009.[27] Tr. 581, 622. During that meeting, Bandimere explained that he had an

[27] Bandimere testified that during 2009, Koch asked him about the investment opportunities, having been made aware of them by his family members. Tr. 1238. Bandimere testified that he had been involved with investments with Koch's father that Koch's father had brought to his

opportunity that allowed him to receive good returns on investments and to meet the financing needs of certain ministries he was involved in, and also discussed diamond trading. Tr. 582. Koch testified that Bandimere thought he may be interested in the investment because he would be "able to have [his] money work for [himself]," and at the same time, Bandimere would be able to further his ministry goals by receiving a percentage of returns. Tr. 624-25.

In June 2009, Bandimere gave Koch a Subscription Agreement and in approximately July 2009, Koch and his wife went to Bandimere's home and discussed the IV Capital, UCR, and diamond investment options. Tr. 584. During the meeting, Bandimere explained the different programs: 1) a day-trading type program by Parrish that offered earnings of 2% per month; 2) an investment with UCR through a "mysterious or secret broker" with earnings of 4% per month; 3) a diamond investment with a "mysterious or secret diamond dealer" that had substantial connections and success in diamond trading. Tr. 584-85. During the meeting, Bandimere did not tell Koch anything negative or anything that concerned him about the investments. Tr. 587.

Following the meeting, Koch and his wife spoke to an attorney, Shaun Pearman (Pearman), who Bandimere mentioned had reviewed the investment and had met with Parrish, and they also spoke to Bandimere's brother, John Bandimere, who was involved in the investments. Tr. 586, 620. Pearman was not an investor but he had met with Parrish and it seemed to Koch that Pearman "didn't quite understand all that [Parrish] was involved in, except that he was a day-trader." Tr. 587. Pearman also said he would never invest in the market because he did not trust the market. Tr. 587. Koch testified that he did not think Pearman had a favorable impression of Parrish. Tr. 620. John Bandimere did not elaborate on how much money he had made, but said "I think David's really found something here." Tr. 619. Koch also spoke to his two sisters about Bandimere's investments because they invested some money with Bandimere. Tr. 615-618, 621, 636-38. They indicated that they did not understand the investments, but the investments had done alright for them. Tr. 618.

Koch and his wife first invested with Bandimere in July 2009. Tr. 582-83. On July 13, 2009, Koch invested $10,000 in IV Capital, $20,000 in UCR, and $10,000 in the Diamond Program. Tr. 588-89; Ex. 135 at BAND003257. Bandimere explained to Koch that he would invest through Ministry Minded and that his original principal must remain with IV Capital for a minimum of eighteen months and with UCR for a minimum of twelve months. Tr. 588-90; Ex. 135 at BAND003266. If Koch had a question about his investments, he would ask Bandimere, Koch received payment checks from either Bandimere or his wife, and the Bandimeres handled the paperwork with respect to Koch's investments. Tr. 593-94.

At the time Koch invested in UCR and the Diamond Program, Bandimere did not tell Koch that Dalton was associated with those investments. Tr. 591. Koch knew Dalton from church and Bandimere knew Koch knew Dalton at the time Koch made his investments. Tr. 590-91. Koch testified that he would not have invested in UCR or the Diamond Program if he knew Dalton was involved because Koch did not believe Dalton had ever been successful in anything financial or in employment. Tr. 591. Koch testified that he did not see Dalton "as a

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attention, and that he spoke freely with Koch's father and his father's employer about their investments and things that they had bought and sold. Tr. 1238-39.

person who was doing well." Tr. 591. Bandimere did not tell Koch before Koch invested in UCR or the Diamond Program that he had an agreement with Dalton and UCR to earn a 24% annual commission, that Dalton had sometimes shorted Bandimere on his commissions, or that Dalton refused to provide trading and account records to Bandimere. Tr. 591-92.

Prior to Koch's investment in IV Capital, Bandimere did not tell Koch that Parrish previously had a problem with the SEC or that Parrish had refused to provide him with account or trading records. Tr. 592-93. Bandimere did not tell Koch that Parrish sometimes shorted him on commissions. Tr. 593. Bandimere told Koch that he had an agreement with Parrish and IV Capital and would receive some type of finder's fee, but Bandimere did not tell him that he had an agreement to receive 10% on investor returns. Tr. 592.

Koch received approximately five $800 checks relating to his UCR investment, but never received any checks from IV Capital. Tr. 594-95; Ex. 135 at BAND003257. In approximately March 2010, Koch began to understand that there were problems with the payments, and around that same time, Koch found a case by the Commission against Parrish by searching the internet, which Koch characterized as describing Parrish as a "habitual fraudster." Tr. 595-96. Bandimere never offered to cover Koch's missed payments. Tr. 596.

In April 2011, Koch learned that Dalton was probably involved in the investment operation. Tr. 597-98. When he asked Bandimere who was involved with at least the Diamond Program, Bandimere said that he had promised the broker and diamond dealer anonymity. Tr. 598. Koch testified that he had asked who was involved in the investments when he was planning to invest and Bandimere told him that the trader had significant contacts and was of high stature. Tr. 598; see also infra. Koch testified that when he found out from Bandimere that the trader was Dalton, a mutual acquaintance, he felt betrayed. Tr. 598-99. Bandimere met with Koch in April 2011 and Koch questioned him about where and how the money was invested and Bandimere referred him back to the Subscription Agreement. Tr. 599-600. Koch testified that Bandimere said "Well, if you're so smart . . . why did you invest," and that he felt that Bandimere, as a friend, should have done his due diligence to determine whether the investment opportunity was credible. Tr. 600.

Koch asked Bandimere if he would refund his principal investment, but Bandimere refused and said he was bothered by the fact that some Christians were so interested in their capital and getting a return on their investments "that they're not interested in the ministry side and being willing to understand and forgive." Tr. 600. Koch also requested Bandimere give him the interest that was represented would have been earned on the principal. Tr. 645. Koch asked him to return the money based on their friendship and because Bandimere was a person who had counseled him in his investment. Tr. 647. Koch sent a letter to Bandimere on January 7, 2012, by mail and email, again requesting a refund from Bandimere. Tr. 597; Ex. 144. Bandimere refused and Koch testified that Bandimere said that he was upset because Koch had been harsh with him. Tr. 597, 600-01. Koch testified that he and his wife were modest earners and the investment losses have impacted his life. Tr. 601. Koch would not invest again through Bandimere. Tr. 601.

8. Samuel Duane Radke

Radke, currently a hospital administrator in Estes Park, Colorado, invested with Bandimere beginning in June 2008. Tr. 667, 673; Ex. 126 at BAND001806. Prior to investing with Bandimere, Radke's investment experience was fairly limited, mainly investing in money market accounts and CDs. Tr. 667. Radke has known Bandimere for approximately fifty years. Tr. 667. Radke and Bandimere attended the same church in Denver in the early to mid 1960s. Tr. 667. Radke was on the board of directors of Abbas Ministries with Bandimere and Radke was at the board meetings when Bandimere suggested that Abbas Ministries invest some of its extra funds in IV Capital. Tr. 667-68. Radke testified that he was considered "the financial person" on the board, and so the board was willing to consider the investment subject to Radke's meeting separately with Bandimere to discuss some of the issues. Tr. 667-68. Dalton was also on the board of directors of Abbas Ministries and routinely attended board meetings, although Radke does not remember if Dalton attended the meeting when Bandimere first mentioned IV Capital. Tr. 669, 677-78.

Bandimere went to Radke's home one evening to explain how the investment worked, and Radke was satisfied with the investment. Tr. 669. Bandimere told Radke that he had been involved with the fund for several years, that it had a target yield, and that it had been his experience that it had lived up to that target "month-after-month, year-after-year." Tr. 669-70. Radke believed the target rate of return was 2.5% per month, contingent upon how much principal was invested. Tr. 670. Bandimere told him that the return was not guaranteed, but did not provide him with any other negative information at that point in time. Tr. 670-71. Within two or three months after meeting with Bandimere, Radke decided to make a personal investment with Bandimere. Tr. 671-72.

Radke understood Victoria to be a small group of handpicked investors who Bandimere had chosen to participate in an investment account that Bandimere managed or for which Bandimere was the administrator. Tr. 673. Radke invested $100,000 on June 20, 2008, in UCR with the percentage of targeted returns listed as 4% per month, and on June 23, 2008, invested $100,000 in IV Capital with the percentage of targeted returns listed as 2.5% per month.[28] Tr. 673-74; Ex. 126 at BAND001806.

Bandimere told Radke that the trader for the UCR investment was an elderly gentleman located in Singapore, and the principal for the investment was held in escrow in a bank in New Mexico as collateral. Tr. 674-75. Radke did not think it was his money that was going directly to the trader to make the deals. Tr. 675. When Bandimere explained the investments, he did not tell Radke that Dalton was involved, although Bandimere knew that Radke was acquainted with Dalton. Tr. 677. Radke did not know Dalton that well, but knew he was struggling financially and at one point lived in an apartment building for which Bandimere was the landlord. Radke

[28] Radke learned that Dalton was involved in the Diamond Program at some point in time, and after he learned that information, Radke testified he "kind of crossed it off [his] list," but with an eye to seeing whether other investors' earnings and principal would be returned. Tr. 710. At some point Radke learned "that the money was not flowing." Tr. 711.

later attended an Abbas Ministries board of directors meeting at Dalton's home, which he described as a beautiful, million-dollar home, and testified that it was a puzzle to him what kind of work he did. Tr. 676.

Bandimere indicated to Radke that Parrish tried to make consistent growth in the principal and earnings on the investments and did not seek huge advances and that Parrish had a positive track record for three or four years. Tr. 679. Before Radke invested in IV Capital and UCR, he did not have access to any of their financial information. Tr. 683. At some point after Radke made his investment, Bandimere indicated to Radke that he had reviewed details of trading for a sample month or some other period of time. Tr. 680-81.

Prior to Radke's investment in IV Capital, Bandimere told him that Parrish was in a situation where he was being audited and reviewed, or maybe sanctioned, but that Parrish had successfully turned it around and was starting to make investments again. Tr. 678-79. Radke testified that Bandimere may have mentioned that Parrish's problem was with the Commission. Tr. 680. Bandimere never told Radke that he had an agreement with Parrish to earn a 10% commission on investor returns or that Parrish had refused to provide account or trading records to him. Tr. 680. Prior to his investment, Bandimere did not tell Radke that Parrish sometimes shorted him on commissions owed. Tr. 681. Radke thought Bandimere made a nominal administrative fee for the UCR investment, but Bandimere never told Radke that he was due to earn a 24% annual commission on investor funds in UCR. Tr. 681-82, 687-88.

Radke and his wife met Parrish on one occasion. Tr. 707-08. They met Parrish at a roadside restaurant halfway between Baltimore, Maryland, and Charleston, West Virginia, and Parrish described his business. Tr. 707-08. Parrish attempted to show them transactions on his laptop computer, but due to technical difficulties was unable to access his website. Tr. 707. Radke never met the trader from Singapore for the UCR investment. Tr. 712. Radke asked Bandimere whether it would be possible to meet the Singapore trader, but Bandimere indicated that it would likely never happen. Tr. 712-13.

Radke did not have any involvement in how profits were earned with respect to IV Capital or UCR. Tr. 682. Radke understood that the operators of the various investment programs would send the profits generated back to Victoria and his return would be based upon his investment allocations and would not be affected by investment allocations by other members in Victoria. Tr. 708-09. He also understood that all of the investors' money in IV Capital was pooled together in one account at IV Capital. Tr. 694-95. The Bandimeres, or someone under their direction, would make the appropriate accounting for division of profits in accordance with the investors' allocation and a check would be written or an amount would be credited to an account reflecting each member's gain. Tr. 709.

When Radke made his investments he usually delivered a check to Bandimere or to Bandimere's bank, and Radke received his investor returns from Bandimere. Tr. 683-84. Radke understood that either Bandimere or his wife handled the paperwork related to his investments. Tr. 684. Radke understood that the funds he and his wife provided to Bandimere would be wired to UCR. Tr. 685-86; Ex. 126 at BAND001809. Radke did not receive monthly accounting statements form Bandimere, but would receive a letter from Bandimere whenever he put more

money into his account. Tr. 688-89; Ex. 126 at BAND001840. In September 2009, Radke asked Bandimere if he could provide routine statements regarding his investments, but he did not receive periodic statements after he made his request; he still only received statements, usually on an Excel spreadsheet, when he had a question or a withdrawal. Tr. 689-91, 698-99; Ex. 126 at BAND001849, BAND001857.

At some point Radke learned from Bandimere that his investment money was frozen as part of a bank audit and he was not allowed to put more money into the account or receive any dividends on the account. Tr. 693-94. Radke invested approximately $240,000 in total principal through Bandimere, and lost that same amount. Tr. 699. Radke did not lose the principal he invested in Blue Rose; initially there was a $2,000 or $3,000 loss on the account, but Bandimere made him whole on the investment out of his own pocket. Tr. 702.

9. Cameron Syke

Syke does not consider himself to be a securities specialist, although prior to 1997 he worked for a law firm that did some securities work. Tr. 719. Since 2007, Syke has performed primarily general business transaction work, contract work, formation of entities, tax planning, trusts and estates work, and some probate. Tr. 718. Syke is a co-founder of Global Connection, and he served on the board of directors with Bandimere for many years. Tr. 719, 782. Syke has known Bandimere since the mid-1990s. Tr. 719.

Syke testified that he did not believe Bandimere's description of IV Capital to the Global Connection board of directors was misleading or inappropriate at the time, nor did he ever believe it was per se misleading or inappropriate. Tr. 783-84. Syke testified that Bandimere's statement that IV Capital was producing approximately 2% in income every month and had been very dependable, and that the trader had been trading for fifteen years, made him interested in investing. Tr. 725-26. Around the same time, Syke met with Parrish who told him that he had been a money manager for over twenty years, starting out with Credit Suisse, and he had an organization with six major partners who all specialized in different areas, although he owned the majority of the organization. Tr. 726. After learning about the investment from both Bandimere and Parrish, Syke decided to invest. Tr. 726-27. At the time Syke was interested in IV Capital, he was an accredited investor and had invested for years in different investments in the stock market and mutual funds, had used other professional money managers before, and had invested in real estate. Tr. 727.

Syke invested $400,000 in IV Capital and $150,000 in UCR through Cielo Capital LLC, an entity owned by Syke and his two children. Tr. 730-31; Ex. 67 at 2. Syke invested $200,000 in the UCR "deal," with total investments in IV Capital and UCR of $750,000. Tr. 731; Ex. 67 at 2-3. It was Syke's understanding that it would be the efforts of Parrish or his traders that would result in any profits as to the IV Capital investment, and it would be the efforts of the trader, or whoever was in charge of the diamonds, to generate profits with respect to UCR. Tr. 741. None of the members of Exito had any role in generating profits for IV Capital or UCR. 742.

Syke co-managed Exito with Bandimere, and his role was primarily to set the entity up, address legal matters, and oversee tax treatment. Tr. 742. Syke also located a CPA firm that would review the financials and prepare the tax returns. Tr. 743. Bandimere and his wife managed the day-to-day operations, interacted with Parrish and Dalton, received money from investors and deposited it, coordinated returns with investors, distributed returns, and made the deposits and wires. Tr. 743. On one or two occasions when Bandimere was out of town, Syke may have made a deposit or a wire, but generally Bandimere and his wife took care of those tasks. Tr. 743. Other than the meeting at which Syke heard Bandimere describe IV Capital, Syke was not aware of what he would tell investors or potential investors about IV Capital or UCR. Tr. 744. Syke did not know anything about Bandimere's activities in managing Victoria or anything about Ministry Minded. Tr. 744-45.

With respect to Exito, Bandimere negotiated a management fee from Parrish who agreed to pay an amount in excess of the earnings based solely on the income or profit that was earned, which Syke believed to be approximately 10%. Tr. 745, 797. Syke and Bandimere split that fee after paying expenses. Tr. 745, 797. Syke did not participate in any of the conversations between Parrish and Bandimere regarding the fee arrangements, and he believed that the portion of the fee he received was relatively small for the time he put into it. Tr. 745, 796. Syke did not consider his share of the management fee to be a commission because the fee was for managing the entity. Tr. 798. Syke testified that the fee was a percentage, so the amount would increase when more money was invested and more investors created more work. Tr. 798. Syke did not believe the fee was a commission notwithstanding that he introduced family members to the opportunity and provided them with descriptions of the investments. Tr. 799-800. Nor did Syke consider himself to be a broker within the meaning of the federal securities laws, although he did not consider himself an expert in that area. Tr. 800, 802. Syke agreed that if he had thought the circumstances would have made him a broker, he would not have done it. Tr. 800-01. Syke agreed that at the time he was discussing Bandimere's activities for Exito, he did not think that Bandimere's activities would cause him to be considered a broker under the securities laws. Tr. 802.

Investors in Exito received profits in proportion to the amounts they had invested in IV Capital or UCR, they did not split the profits equally. Tr. 752. Syke testified that Bandimere generally handled the money for Exito and questions from investors about IV Capital and UCR. Tr. 753. Bandimere facilitated people's ability to invest retirement funds from IRAs into IV Capital or UCR. Tr. 753. According to Syke, investors did not play any role in the trading or operations of IV Capital or UCR. Tr. 753.

Syke continued to discuss IV Capital with Bandimere during the time in which he was invested. Tr. 764. Periodically, Syke and Bandimere would discuss what information Bandimere may have received from Parrish, the results from the previous month, and what they had heard of how the investment was doing. Tr. 764. Syke testified that he became more comfortable with Parrish over time. Tr. 765. Syke testified that Parrish had commented on occasion that "we're not trying to hit home runs, we're just trying to hit, you know, singles and doubles," and that "I'm not taking that kind of risk and so that's why we're not getting those kinds of returns." Tr. 766. Syke recalled conversations with Parrish where he described a deal

with his bank that required him to use stop losses which would "kick in at 10 percent, on the downside" and would limit losses to 15 or 20% at the "real top end." Tr. 767.

Syke also spoke to Pickering about IV Capital. Tr. 768. Pickering was an investor in Exito and she had invested money with Parrish before Syke did. Tr. 768. Parrish referred Pickering to Bandimere and Exito because she wanted the centralized management of an LLC. Tr. 768. Syke testified that Pickering was one of the best sources of due diligence for him because she claimed to have known a friend whose parents had invested with Parrish for five years without any problems. Tr. 769. Before investing, Syke asked Parrish directly for supporting documents, such as financial statements and trading records, but Parrish never provided them and told Syke that they were a small, closed hedge fund that did not want to be regulated and did not provide supporting documents. Tr. 765. Parrish explained a bit more about how the investment worked and set up a telephone call with Hardtman, who Parrish represented to be his partner and a lawyer in Nevis. Tr. 775-76.

Syke testified that it did cause him some concern that Parrish did not provide supporting documents, and that is why he initially invested small amounts, but there were people such as Hardtman and Pickering who provided some positive due diligence. Tr. 776-77. Prior to investing, Syke was not aware that Parrish had "an SEC problem" in 2004 or 2005, and Parrish never told him that the SEC had a case against him or that his name was Larry Michael Parrish. Tr. 777. Syke testified that Parrish told him something to the effect that they were not regulated, that he had talked to the Commission, and that they did not want to provide the requested information, and that is why they were offshore. Tr. 777. Bandimere did not tell Syke about Parrish's problem with the Commission, and Syke testified that he did not know whether Bandimere knew "all that." Tr. 778. Syke did not find it troublesome that Parrish ran his business offshore to avoid registration because Syke had heard about people "being offshore" for different reasons. Tr. 813. Syke heard about Dalton's decision to stop placing money with Parrish, but he did not know the details of Dalton's reasoning. Tr. 778.

Syke assumed Bandimere received some sort of monthly statement regarding investments and income from IV Capital, and he did not believe that Bandimere ever told him that was not the case. Tr. 778. Syke testified that Bandimere mentioned on one or two occasions that he had to go back and forth with Parrish to get on the right track regarding deposits and what was owed, but Syke did not know the details or see records. Tr. 778-79. Syke does not recall Bandimere telling him that it seemed like Parrish and IV Capital did not have any accounting records at all. Tr. 779. Syke did not recall Bandimere disclosing that Parrish and Dalton often wired the wrong amount of money each month. Tr. 779-80. Bandimere did not tell Syke that Dalton had been involved in several failed investments in previous years. Tr. 780.

After Parrish stopped making payments on the IV Capital investment, Syke told Pickering everything he knew about the situation. Tr. 823. Pickering disclosed to Syke that she had directly invested the rest of her money with Parrish, in addition to the investments she made through Exito. Tr. 823. Syke did not believe that he somehow enticed Pickering or induced her to increase her participation in Parrish's program, and, in fact, Syke testified that he cautioned her against "putting all of her eggs in one basket." Tr. 813.

Syke testified that he did not believe Pickering ever asked him about finding another investment to generate income to meet her living expenses, but he believed she may have asked Bandimere. Tr. 824. Syke recalled a conversation with Bandimere that indicated Pickering was contemplating investing in something else, possibly one of the UCR deals. Tr. 824. Syke did not recall having a very substantive discussion with Pickering about "the Singapore trader," but she may have asked him about the trader and Syke may have told her what he knew. Tr. 824-25. Syke did not recall an email sent to him from Pickering on March 19, 2010, until presented with it during his testimony. Tr. 825. That email stated: "Dave called me last night about the Singapore deal and he was quite helpful and gracious. Thanks for asking him to do that. It worked and I'll be sending money by the end of this month to get something going." Ex. 232. Syke believed that the email may have been in response to a telephone call with Pickering, and he testified that she may have asked him about the Singapore deal and he may have given her a quick explanation. Tr. 827. Syke recalled telling Bandimere that, "as far as [he] was concerned, [Pickering was] not accredited, I'm . . . not sure any of these deals are suitable for her anyway, but – but certainly not in Exito." Tr. 827.

Syke originally knew of Dalton through Bandimere. Tr. 759. Syke met Dalton after he had made an initial investment in IV Capital in approximately spring 2007, when Syke, Dalton, and Bandimere spoke for approximately a half-an-hour about IV Capital and other trading programs. Tr. 759-60. Syke learned about the UCR Diamond Program from Bandimere who told him that Dalton had some contacts in the government at a high level in Angola and that an opportunity was available for a small group of people to invest money to purchase diamonds on a wholesale basis. Tr. 757-58. Bandimere told Syke that there would be really no risk because the purchase was being done through the government and they would facilitate the shipping of the diamonds through the government to New York. Tr. 758.

When Syke first invested in the Diamond Program in March 2009, Bandimere told him that Dalton said he thought the program would yield close to a 25% return. Tr. 761. Syke understood that the return would be paid after the wholesale transaction was complete, which was expected to be within a couple of months of the investment, but that did not occur. Tr. 761-62. Syke later invested another $50,000 with Dalton on a different diamond connection, and Syke received a return of 20% or 25% within three weeks. Tr. 762. After receiving his returns, Syke invested another $50,000 in the Diamond Program, but he never heard anything about the return or received it. Tr. 762. Syke made three investments of $100,000, $50,000 and $50,000 into the Diamond Program, and received a check for a $12,500 return on the second investment. Tr. 762-63.

In an email to Bandimere dated March 5, 2010, regarding the Diamond Program, Syke stated, "The representations made on the diamond deal at this point are simply different from what is going on and the timetable has been stretched to constitute a totally different deal. Therefore, the first deal and the third deal need to be concluded by the payment of the earnings or the money refunded." Tr. 770; Ex. 43. Syke also wrote, "This definitely constitutes an investment contract which is a security." Ex. 43. Syke explained that the stories he had received on different tranches of the diamond deal were not as originally represented, that he wanted to bring this to Bandimere's attention before approaching Dalton, and that he hoped Bandimere

would see the "gravity of the situation and take all the action he could with . . . Dalton." Tr. 772; Ex. 43.

Pickering wrote an email to Syke on March 19, 2010, in which she asked Syke what it would take "to have the Exito Capital declared a theft." Ex. 232. Syke forwarded the email to Bandimere on March 21, 2010, five days before she invested $100,000 in UCR, and stated that Pickering could not invest in Exito because she was no longer accredited. Exs. 115 at BAND000846, 232. Syke responded to Pickering that "I have concerns about this deal, I don't know that anybody should still invest." Tr. 842. In addition to his March 5, 2010, email, in which Syke told Bandimere that "the failure to perform on the diamond deal . . . effectively precludes new investors from investing in either deal," Syke also told Bandimere on the telephone that neither UCR nor the Diamond Program were suitable for Pickering. Tr. 842; Ex. 43. Bandimere had no particular reaction to Syke's opinion. Tr. 843.

Syke testified that because the diamond deals were going through UCR, and because they were not performing as represented, the whole entity was affected. Tr. 773; Ex. 43. UCR, in fact, stopped making payouts shortly after Syke's email – in June 2010. Tr. 773. Syke discussed the contents of the email with Bandimere, and Syke believed that Bandimere spoke to Dalton, but there was no resolution. Tr. 773-74. Syke eventually hired an attorney and sent a demand letter to Dalton. Tr. 774. Syke received a check, but it was not signed, and when Dalton sent a signed check, it did not clear through the bank. Tr. 774-75. Syke did not get any recovery from that lawsuit. Tr. 775.

Syke lost all of the $750,000 in principal that he invested in IV Capital and UCR, although some money was returned, but Syke was not sure if they were returned as earnings or as principal. Tr. 780.

10. George W. Stepan

George W. Stepan (Stepan) is the pastor at Ward Road Baptist Church in Arvada, and has held that position for over nine years. Tr. 1079-80. Stepan met Bandimere and his wife in 1969 at Beth Eden Baptist Church and they have had an ongoing friendship since that time. Tr. 1080. Since 1999, Stepan and his wife have had a ministry called Rekindle the Flame that is now part of the ministries of Ward Road Baptist Church. Tr. 1081.

Stepan testified that approximately three years ago, Bandimere spoke to him about certain investments that he was involved in that he described as having an unusually high rate of return. Tr. 1080-81. Stepan testified that at some point Bandimere funded an investment account in one of his LLCs in the name of Rekindle the Flame. Tr. 1082. Stepan learned of the account one year around Christmas when the Bandimeres took him out to dinner and gave him an envelope with a Christmas greeting and a printout describing the investment. Tr. 1082-83. Stepan testified that the source of the funds in the investment account came from the Bandimeres, and he did not invest any of his own funds or the funds of any organization he was affiliated with into the investment account. Tr. 1082-83.

G. Expert Witness Testimony

Bandimere called Phillip A. Parrott (Parrott) as an expert witness.[29] Ex. 239. Parrott has investigated and prosecuted criminal and civil cases involving Ponzi schemes as a prosecutor and private attorney. Id. at 4. He has tried, or assisted in the trial of, approximately seven criminal securities fraud trials involving Ponzi schemes, and pursued two civil suits to recover funds for Victims of Ponzi schemes as a civil attorney, leading him to interact with dozens of victims of Ponzi schemes. Id.

In his expert report, Parrott opined that Bandimere was a victim of Dalton and Parrish and that Bandimere fit the profile of an unwitting leader or investor selected and used for the purposes of reaching new investors. Id. at 5. Parrott explained that Bandimere appears to have possessed three attributes typical of an unwitting leader: 1) Bandimere was connected to, well know within, and respected in his community; 2) based solely on what Bandimere learned from the promoters, he was excited by the investments; and 3) Bandimere trusted the promoters completely. Id. at 6. According to Parrott, this was a classic affinity fraud, which he defined as an investment scam that preys upon members of identifiable groups, such as religious or ethnic communities. Id. at 4, 8.

Parrott opined that Bandimere's substantial personal financial investment was inconsistent with the actions of a perpetrator or co-promoter and denoted a victim. Id. at 6. Parrott asserted that Bandimere received advice from a trusted legal and evangelical community adviser – Syke – and Syke's active participation as an adviser and co-manager of Exito would have reinforced Bandimere's belief in the legitimacy of the promoters. Id. at 7. Parrott stated that Bandimere's guarantee of the Global Connection and Nomad Club investments was unique in his nineteen years of dealing with Ponzi schemes. Id.

Parrott claimed that as an unwitting recruit, Bandimere lacked the scienter required to violate the federal securities laws as alleged in the OIP. Id. at 8. According to Parrott, although the SEC alleges that Bandimere ignored certain red flags regarding Parrish and Dalton, red flags are often difficult for investors to discern while under the spell of a Ponzi promoter and also depend on the situation of the investor. Id. Parrott opined that red flags often seem easy to detect in hindsight after a scheme collapses, but are more difficult to detect during the fraud. Id. Parrott believed that the charges against Bandimere are an unjustified, unwarranted, and unwise exercise of the prosecutorial power of the Commission. Id. at 9.

During cross-examination, Parrott testified that he did not believe that Bandimere was engaged in selling securities because he was, in essence, a victim and Bandimere was not receiving a fee or commission for offering for sale or promoting the sale of a security. Tr. 1270-71. Parrott admitted that he has never worked for the Commission and that he had no idea what the Commission considered when it determined whether to bring a case against Bandimere. Tr. 1276-77. Parrott clarified that the statement in his report that Bandimere lacked the scienter

[29] Parrott received a bachelor of arts degree from Colorado State University in 1978 and a law degree from the University of Colorado School of Law in 1981. He is currently a member of the law firm Campbell Killin Brittan & Ray, LLC. Ex. 239 at 10.

required to violate the federal securities laws did not apply to the Securities Act Section 5 claims because the Division does not have to prove scienter with respect to Section 5. Tr. 1280-81. Parrott acknowledged that there were investors that had no religious connection to Bandimere. Tr. 1283-85. Parrott disagreed that Bandimere helped raise or facilitated approximately $9 million in investor funds into IV Capital or UCR, although he acknowledged that Bandimere did manage the LLCs through which the investors made their investments and wired investor funds. Tr. 1287.

III. Discussion and Conclusions of Law

A. The IV Capital and UCR Investments Were Securities

Sections 2(a)(1) of the Securities Act and 3(a)(10) of the Exchange Act define the term "security" to include an "investment contract." 15 U.S.C. §§ 77b(a)(1), 78c(a)(10). In SEC v. W.J. Howey Co., the Supreme Court defined an investment contract as a contract, transaction, or scheme involving: 1) an investment of money; 2) in a common enterprise; 3) with a reasonable expectation of profits to be derived solely from the efforts of others. 328 U.S. 293, 298-99, 301 (1946); see also Johnny Clifton, Securities Act Release No. 9417, 2013 SEC LEXIS 2022, at *32 & n.55 (July 12, 2013) (noting that the Commission has held that a common enterprise is not a distinct requirement under Howey). The third Howey element generally requires that "profits be generated . . . predominantly from the efforts of others, not counting purely ministerial or clerical efforts." SEC v. Banner Fund Int'l, 211 F.3d 602, 615 (D.C. Cir. 2000) (internal quotation marks omitted) (finding the third Howey element was met where investors were "supposed to receive returns without exerting any effort" and where the brochure advertising the program provided that the defendant "was to manage all funds in its capacity as trustee"). The definition of an investment contract is a "flexible rather than a static principle, one that is capable of adaptation to meet the countless and variable schemes devised by those who seek the use of the money of others on the promise of profits." Howey, 328 U.S. at 299; accord SEC v. Edwards, 540 U.S. 389, 393-94 (2004).

The Division argues that Bandimere sold investments in IV Capital and UCR and those investments were securities. Div. Br. at 12. With respect to IV Capital, the Division contends that investors placed their money in a single entity to be pooled and purportedly invested with the expectation of earning profits derived from IV Capital's trading in securities, and the investors' profits were entirely dependent on the efforts and successes of IV Capital in identifying and executing profitable trades. Id. With respect to UCR, the Division argues that investors invested money that was pooled together in UCR bank accounts to allegedly trade in notes or diamonds, and investors expected to share in the profits from UCR's trading. Id. The Division asserts investors in UCR did not exercise any control over the operations of the investment, but relied solely on the efforts of Dalton, UCR, and Dalton's traders, who were expected to make all decisions regarding the use of investor funds. Id.

Bandimere argues, on the other hand, that the arrangements with IV Capital were joint ventures and because those who participate in joint ventures have substantial management powers over the venture as a matter of law, there is a strong presumption against participation in

joint ventures being considered an investment contract.[30] Bandimere Br. at 30. Bandimere contends that the presumption against a joint venture being a security exists even where a joint venture delegates direction of the affairs of the venture to a manager. Id. Bandimere argues that the Division has not presented any evidence to suggest that any joint venturer lacked the legal power to affect management. Id. at 30-31. Bandimere points to Exhibit 23, a Joint-Venture Agreement between Exito and IV Capital, and Exhibit 220, a Joint-Venture Agreement between IV Capital and the Jean E. Hunter Trust, in support of his contention that the arrangements with IV Capital were joint ventures. Id. at 31. Bandimere also asserts that there is no evidence that he sold "participations" in either IV Capital or UCR, with the exception of the Jean E. Hunter Trust, which entered into a separate joint venture agreement with IV Capital, and argues that there is no evidence that any investor bought IV Capital or UCR securities that he sold. Id.; Bandimere Reply Br. at 14.

The evidence, however, demonstrates that the investments in IV Capital and UCR were securities within the meaning of Sections 2(a)(1) of the Securities Act and 3(a)(10) of the Exchange Act. Bandimere agreed during his testimony that he would send investor funds from the LLCs to one bank account at either IV Capital or UCR, and IV Capital and UCR would purportedly use the pooled funds to make profitable trades or use the funds in either a trading or diamond operation, respectively. Tr. 849-50. Bandimere also agreed it was the efforts of IV Capital or UCR or their traders that determined whether those entities were profitable and generated any profits for the investors; investors did not decide which trades or deals in which IV Capital or UCR engaged. Tr. 850-52. Bandimere's explanation of how the investments in IV Capital and UCR worked is in accordance with Howey's definition of an investment contract.

The investors' testimony shows that their understanding of the IV Capital and UCR investments is also in accordance with Howey's definition. Not one investor testified that they played any role with respect to trading or how profits were earned by IV Capital or UCR, and those investors who were asked during the hearing whether they played any role affirmatively testified that they did not. Tr. 168 (Moravec), 227-28 (Pickering), 294-95 (Loebe), 455 (Blackford), 548 (Hunter), 682 (Radke). Not one investor testified that they played any role in the management of IV Capital or UCR, and those investors who were asked during the hearing whether they played any role in the management affirmatively testified they did not. Tr. 228 (Pickering), 455 (Blackford), 548 (Hunter).

[30] Bandimere also argues that interests in the LLCs were not securities because members of the LLCs retained control over the deployment of the funds used to purchase their interests and the only purpose of the LLCs was to provide administrative services. Bandimere Br. at 29-30. The Division stated in its reply brief, however, that it does not contend that interests in the LLCs were securities, rather the LLCs operated as a "pass through" so investors could invest their funds in IV Capital and UCR, and it was the interests in IV Capital and UCR offered by Bandimere that were securities. Div. Reply Br. at 8-9. Thus, whether the interests in the LLCs were securities is not at issue.

Bandimere's argument that the arrangements with IV Capital were joint ventures and not investment contracts is not persuasive.[31] By making this argument, Bandimere is essentially asserting that the third part of the Howey test requiring the expectation of profits solely from the efforts of a third party has not been met. Bandimere cites Banghart v. Hollywood General Partnership for the proposition that there is a strong presumption against participation in joint ventures being investment contracts. 902 F.2d 805, 807-08 (10th Cir. 1990). While Joint-Venture Agreements between Bandimere and IV Capital, Exito and IV Capital, and the Jean E. Hunter Trust and IV Capital have been offered into evidence, there is no evidence in the record of such an agreement between Victoria and IV Capital or Ministry Minded and IV Capital, the LLCs in which the majority of the investors who testified at the hearing were members. Assuming that such agreements existed, and that they were similar to those agreements that were offered and admitted as exhibits, Bandimere's argument would still fail. The Tenth Circuit ruled in Banghart that the presumption arises "[w]hen a partnership agreement allocates powers to general partners that are specific and unambiguous and those powers provide the general partners with access to information and the ability to protect their investment." Id. at 808. The Joint-Venture Agreements between IV Capital and Bandimere, Exito, and the Jean E. Hunter Trust provided investors with absolutely no general or management powers. In fact, each Joint Venture Agreement provided that the investors' sole responsibility was to "transfer / deposit liquid Legal Funds as currency and other with Escrow Agent at IV Capital's designated bank for the benefit of the Joint Venture to be exclusively managed by IV Capital as described herein." Ex. 2 (emphasis added); see also Exs. 23, 220. The reality is that investors had no management role and were dependent on the efforts of Parrish, Dalton, and their traders to generate any profits. Tr. 850-52. As noted by the Fifth Circuit in Williamson v. Tucker, a case cited by Bandimere, a "scheme which sells investments to inexperienced and unknowledgeable members of the general public cannot escape the reach of the securities laws merely by labeling itself a general partnership or joint venture." 645 F.2d 404, 423 (5th Cir. 1981). Indeed, the Joint Venture Agreements Bandimere sold appear to be "note[s] . . . just gussied up with a different form." SEC v. Thompson, No. 11-4182, 2013 WL 5498133 at *2 n.4 (10th Cir. Oct. 4, 2013).

Bandimere's argument that there is no evidence he sold "participations" in IV Capital or UCR, or that any investor bought IV Capital or UCR securities that he sold, is not entirely clear. Any reasonable interpretation of that argument, however, is simply not in accordance with the evidence in this case. The investors knew that the funds they provided to Bandimere would be invested in either IV Capital or UCR. Tr. 160 (Moravec), 216 (Pickering), 288-89 (Loebe), 446-47 (Blackford), 496-97 (Davis), 547-48 (Hunter), 588-89 (Koch), 673-74 (Radke). Bandimere testified that he specifically described the IV Capital and UCR investments to potential investors and answered questions from potential investors about IV Capital and UCR. Tr. 844-45. There is no question that Bandimere and the investors understood that investor funds were invested with IV Capital or UCR.

[31] It is not clear from Bandimere's brief whether he also contends the arrangements with UCR were joint ventures. Assuming he does, that argument would be rejected. There are no Joint-Venture Agreements with UCR in evidence and Bandimere has not otherwise offered any evidence reflecting that a joint venture existed between any of the LLCs or the investors and UCR.

In addition, the United States District Court for the District of Colorado has found the IV Capital and UCR investments to be securities. SEC v. Parrish, No. 11-cv-00558, 2012 U.S. Dist. LEXIS 137544 (D. Colo. Sept. 25, 2012) (granting the Commission's motion for default judgment against Parrish); SEC v. Universal Consulting Res. LLC, No. 10-cv-02794, 2011 WL 6012532 (D. Colo. Dec. 1, 2011) (granting the Commission's motion for default judgment against Dalton and UCR). For the reasons stated above, I agree with that finding.

B. Bandimere Willfully Violated Sections 5(a) and 5(c) of the Securities Act

The Division contends that Bandimere willfully violated Sections 5(a) and 5(c) of the Securities Act by directly or indirectly selling and offering IV Capital and UCR securities when no registration statement was in effect or had been filed for the IV Capital or UCR securities. Div. Br. at 15. As discussed below, I find that he willfully violated those provisions.

Section 5(a) of the Securities Act provides:

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

15 U.S.C. § 77e(a). Section 5(c) of the Securities Act provides, in pertinent part:

> It shall be unlawful for any person, directly or indirectly, to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of any prospectus or otherwise any security, unless a registration statement has been filed as to such security.

15 U.S.C. § 77e(c).

A prima facie case for a violation of Section 5 is established by showing that: 1) the defendant directly or indirectly sold or offered to sell securities; 2) through the use of interstate facilities or mail; 3) when no registration statement was in effect. SEC v. Calvo, 378 F.3d 1211, 1214-15 (11th Cir. 2004) (citing SEC v. Continental Tobacco Co., 463 F.2d 137, 155 (5th Cir. 1972)). Proof of scienter is not required. Calvo, 378 F.3d at 1215; SEC v. Universal Major Indus. Corp., 546 F.2d 1044, 1047 (2d Cir. 1976); SEC v. Softpoint, Inc., 958 F. Supp. 846, 859-60 (S.D.N.Y. 1997), aff'd, 159 F.3d 1348 (2d Cir. 1998). Liability under Section 5, including liability for disgorgement of profits, may be found for persons who are "necessary participants" or whose activities were a "substantial factor" in the illicit sale. Calvo, 378 F.3d at 1215; see generally SEC v. Murphy, 626 F.2d 633, 649-52 (9th Cir. 1980) (summarizing cases). Once the

Division has made out a prima facie case that respondent has violated the registration provisions, the burden shifts to respondent to prove entitlement to an exemption. SEC v. Ralston Purina Co., 346 U.S. 119, 126 (1953); Quinn & Co. v. SEC, 452 F.2d 943, 945-46 (10th Cir. 1971); Murphy, 626 F.2d at 641.

It is undisputed that the IV Capital and UCR investments were never registered with the Commission. Joint Stipulation at 1. As explained above, the IV Capital and UCR investments were securities. The only remaining issue is whether Bandimere directly or indirectly sold or offered to sell the IV Capital and UCR securities through the use of interstate facilities or the mail.

Bandimere makes two primary arguments in opposition to the Division's allegations. First, Bandimere claims that he was not a seller of securities because his motivation was to benefit his family and friends and not himself, citing to the United States Supreme Court's decision in Pinter v. Dahl, 486 U.S. 622, 647 (1998). Bandimere Br. at 31. Second, Bandimere argues that he did not act willfully because he did not understand his actions were wrongful. Id. at 34. He argues that the definition of willfulness is unclear and that Wonsover v. SEC, 205 F.3d 408, 415 (D.C. Cir. 2000) – which is often cited for the proposition that a finding of willfulness does not require intent to violate the law – actually requires some knowledge by the defendant that the act being performed was, in some sense, wrongful. Id. at 33-34. Bandimere further argues that, regardless of the meaning of willfully, his reliance on the advice he received from Syke, an attorney, is a defense to a willful violation of Section 5 of the Securities Act.[32] Id. at 34.

The evidence is clear that Bandimere sold IV Capital and UCR securities when no registration statement was in effect through the use of interstate facilities or the mails. Bandimere: introduced and explained the IV Capital and UCR securities to investors; answered investors' questions about the securities; handled the paperwork necessary for investors to invest; obtained signatures from investors for their investments; accepted their investment funds in the LLCs he managed or co-managed; sent investment funds from the LLCs to IV Capital and UCR for investment; sometimes signed investor return checks and provided those checks to investors, sometimes by mail;[33] and, as discussed further in the next section, received transaction-based compensation for selling those securities. Tr. 844-47. When asked whether "from the beginning to the end, you were involved in the process of handling investments of your investors in IV

[32] In his Answer, Bandimere asserts as an affirmative defense, "To the extent that the interests in the limited liability companies are deemed securities, and to the extent that Mr. Bandimere can be deemed to have been a seller of those securities, the sales are exempt." Answer at 10. Because the Division does not argue that the interests in the LLCs were securities, this argument is rejected as moot. Div. Reply Br. at 8-9. In addition, the burden of showing entitlement to an exemption falls on Bandimere, and he has not even asserted which exemption would apply, much less met his burden of proof. See ACAP Fin., Inc., Exchange Act Release No. 70046, 2013 SEC Lexis 2156, at *29 n.52 (July 26, 2013).

[33] Bandimere testified that sometimes his wife signed the return checks. Tr. 847.

Capital and UCR," Bandimere replied, "yes." Tr. 849. Bandimere was therefore both a necessary participant and a substantial factor in the illicit sales of IV Capital and UCR securities.

Bandimere's reliance on Pinter to avoid liability is misplaced. First, even if I interpreted Pinter's holding that Congress did not intend the Securities Act to apply to persons involved in a sale of a security where the person's sole motivation was to benefit the buyer as broadly as Bandimere urges I do, Bandimere testified that he received $734,996.33 in fees in connection with IV Capital and UCR from 2006 through 2010.[34] Tr. 889. Bandimere's assertion that he acted solely to benefit the buyer is not credible in light of the fact he received approximately three-quarters of a million dollars in fees. Moreover, I do not believe that Pinter should be read so broadly. The issue presented in Pinter was whether one must intend to confer a benefit on himself or on a third party in order to qualify as a seller within the meaning of Securities Act Section 12(1), which created a private right of action for violations of Securities Act Section 5.[35] Pinter, 486 U.S. at 641-42. In making that determination, the Supreme Court expressly rejected the test previously applied by the Fifth Circuit that defined a seller to include "one whose participation in the buy-sell transaction is a substantial factor in causing the transaction to take place," for purposes of Securities Act Section 12(1). Id. at 648-50. The Court stated, "[Section] 12's failure to impose express liability for mere participation in unlawful sales transactions suggests that Congress did not intend that the section impose liability on participants' collateral to the offer of sale." Pinter, 486 U.S. at 650.

Securities Act Section 5, unlike Section 12, imposes liability on persons who "directly or indirectly" sell securities. The Commission, as well as the federal courts, regularly examine whether a person is a substantial factor or necessary participant when determining whether a person is liable under Securities Act Section 5. See John A. Carley, Securities Act Release No. 8888 (Jan. 31, 2008), 92 SEC Docket 1693, 1709 ("To show that a person bears participant liability for a Section 5 violation, the Division must prove that the person was a 'necessary participant' or 'substantial factor' in the violation."); SEC v. Holschuch, 694 F.2d 130, 139 (7th Cir. 1982); Calvo, 378 F.3d at 1215. Therefore, there is a distinction in who may be held liable under Securities Act Sections 5 and 12. When presented with the question of whether Pinter applied to a Securities Act Section 5 claim, the United States Court of Appeals for the D.C. Circuit ruled that it did not. Zacharias v. SEC, 569 F.3d 458, 466-67 (D.C. Cir. 2009). In Zacharias, the petitioner relied on Pinter to argue that he was not a statutory seller of securities for purposes of Securities Act Section 5. Id. The Zacharias court explained that, under Pinter, "[b]ecause of the 'purchas[e] . . . from' requirement, § 12(1) liability 'extends only to the person who successfully solicits the purchase, motivated at least in part by a desire to serve his own financial interests or those of the securities owner.'" Id. at 466. The court reasoned that, "[a]s §

[34] As discussed in Section II.C., infra, those fees constituted transaction-based compensation.

[35] At the time, Securities Act Section 12(1) stated: "Any person who – (1) offers or sells a security in violation of section [5] . . . shall be liable to the person purchasing such security from him, who may sue either at law or in equity in any court of competent jurisdiction, to recover the consideration paid for such security with interest thereon, less the amount of any income received thereon, upon the tender of such security, or for damages if he no longer owns the security." Pinter, 486 U.S. at 627 n.4.

5 does *not* include the 'purchas[e] . . . from' language or any equivalent, Pinter is plainly of no use to [petitioner]." Id.; see also Geiger v. SEC, 363 F.3d 481, 487-88 (D.C. Cir. 2004); SEC v. Phan, 500 F.3d 895, 906 n.13 (9th Cir. 2007).

Bandimere also challenges the meaning of a willful violation and disputes that he acted willfully. Bandimere Br. at 32-34. Bandimere apparently contends that although Commission and federal case law has established that a willful violation under the federal securities laws simply requires that the person charged with the duty knows what he or she is doing, the Commission and the courts have not actually applied that standard, instead requiring "some knowledge by the defendant that the act being performed was, in some sense, wrongful." Id. This contention is entirely without merit. The Commission has consistently held that it is not necessary to find that the respondent "was aware of the rule he violated or that he acted with a culpable state of mind" to find a willful violation. See, e.g., Joseph S. Amundsen, Exchange Act Release No. 69406 (Apr. 18, 2013), 106 SEC Docket 66744, 66757.

In Wonsover, the court upheld the Commission's ruling that respondent had willfully violated Securities Act Section 5. 205 F.3d at 416. Bandimere contends that the Wonsover court did not base its finding of willfulness on "merely doing an act which constituted participating in a sale." Bandimere Br. at 33. To the contrary, the Wonsover court stated in no uncertain language that:

> In the context of the provision at issue here, we have rejected the knowledge and the reckless disregard standards and defined willfulness thus: It is only in very few criminal cases that "willful" means done with a bad purpose. Generally, it means no more than that the person charged with the duty knows what he is doing. It does not mean that, in addition, he must suppose that he is breaking the law.

205 F.3d at 414 (citation omitted). The court held that "the Commission did not err in determining that his resulting violations were willful under our traditional formulation of willfulness for the purpose of section 15(b)." Id. (emphasis added).

The fact that the Commission or the federal courts may have determined in some cases, such as Wonsover, that respondents acted with knowledge or intent to violate the law or acted recklessly simply reflects that those respondents acted with greater culpability than was necessary, not that the Division was required to prove respondents acted with knowledge that their conduct was wrongful to prove a willful violation. Similarly, the fact that Congress added Section 21C to the Exchange Act, which expanded the authority of the Commission to bring administrative proceedings, but did not use the term willful in describing the violative conduct, has no bearing on the meaning of a willful violation. See Bandimere Br. at 34.

While Bandimere has argued that he did not act willfully in selling IV Capital and UCR securities because he did not understand his actions were wrongful, Bandimere has not argued, nor could he, that he did not intend to do the acts that constituted the sale of securities in

violation of Securities Act Section 5 as set forth above. Accordingly, Bandimere's conduct was willful.

Finally, Bandimere argues that his reliance on the advice he received from Syke is a defense to a willful violation of Securities Act Section 5. Bandimere Br. at 34. Although the U.S. Court of Appeals for the D.C. Circuit indeed stated in Zacharias that "[i]t appears to be an open question in this circuit whether reliance on the advice of counsel is a good defense to a securities violation," the Commission has held that reliance on counsel "is of no consequence" to its determination of violations of Securities Act Section 5 because the "advice-of-counsel defense only goes to the question of scienter" and scienter is not an element of Section 5 violations. Zacharias, 569 F.3d at 467; Rodney R. Schoemann, Securities Act Release No. 9076 (Oct. 23, 2009), 97 SEC Docket 21726, 21745, aff'd, 398 F. App'x 603 (D.C. Cir. 2010) (per curiam).

In any event, Bandimere has not made the required showing to establish an advice-of-counsel-defense. To do so, he must show: 1) that he made complete disclosure to counsel; 2) that he sought advice on the legality of the intended conduct; 3) that he received advice that the intended conduct was legal; and 4) that he relied in good faith on counsel's advice. Schoemann, 97 SEC Docket at 21746 (citing Zacharias, 569 F.3d at 467).

Syke testified that he represented Bandimere in connection with the formation of Victoria, but that, following formation, he did not represent Victoria or any other entity associated with Bandimere. Tr. 730. According to Syke, he only represented Bandimere in the context of preparing a will for Bandimere and his wife. Tr. 720-21. While Syke testified that he attempted to give Bandimere an outline of the "parameters" of securities offerings, he testified that he told Bandimere that if he was going to have more investors in the future, he needed to engage counsel and, depending on his plans, consider filing a Reg. D registration. Tr. 739-40. Syke did not advise Bandimere on whether he would be acting as an unregistered broker-dealer when he offered the IV Capital or UCR investments. Tr. 736-37. Moreover, the evidence does not reflect that Bandimere made complete disclosure to Syke. At the time Syke was involved in the formation of Victoria, he understood that approximately five investors were involved, and he ultimately never knew how many investors were involved in Victoria. Tr. 839.

Finally, the required interstate nexus is de minimis and is satisfied by even "tangential mailings or intrastate telephone calls." SEC v. Softpoint, Inc., 958 F. Supp. 846, 861 (S.D.N.Y. 1997); see also SEC v. N. Am. Finance Co., 214 F. Supp. 197, 202 (D. Ariz. 1959) (collection of installment payments by mail and mailing stock certificates after payment held to satisfy interstate nexus under Section 5). This requirement is satisfied by Bandimere's use of the mail to send return checks to investors, his use of wires to send money from the LLCs to IV Capital and UCR, and his use of faxes, email and telephone to communicate with Parrish, among other things. Tr. 846-47, 849, 942, 1209.

C. Bandimere Willfully Violated Section 15(a) of the Exchange Act

Section 15(a)(1) of the Exchange Act makes it illegal for a broker to make use of the mails or any means or instrumentality of interstate commerce to effect any transactions in, or to

induce or attempt to induce the purchase or sale of, any security unless such broker is registered with the Commission or associated with a registered entity. 15 U.S.C. § 78o(a)(1). Section 3(a)(4) of the Exchange Act defines a broker as any person "engaged in the business of effecting transactions in securities for the account of others." 15 U.S.C. § 78c(a)(4)(A). Scienter is not required to prove a violation of Section 15(a)(1). SEC v. Martino, 255 F. Supp. 2d 268, 283 (S.D.N.Y. 2003); SEC v. Nat'l Exec. Planners, Ltd., 503 F. Supp. 1066, 1073 (M.D.N.C. 1980).

Activities of a broker are characterized by "a certain regularity of participation in securities transactions at key points in the chain of distribution." Mass. Fin. Servs., Inc. v. Sec. Investor Prot. Corp., 411 F. Supp. 411, 415 (D. Mass. 1976), aff'd, 545 F.2d 754 (1st Cir. 1976). Actions indicating that a person is "effecting" securities transactions include soliciting investors; providing either advice or a valuation as to the merit of an investment; actively finding investors; handling customer funds and securities; and participating in the order-taking or order-routing process. Martino, 255 F. Supp. 2d at 283; SEC v Benger, 697 F. Supp. 2d 932, 945 (N.D. Ill. 2010); SEC v. Kramer, 778 F. Supp. 2d 1320, 1334 (M.D. Fla. 2011). Other factors to consider are the dollar amount of securities sold and the extent to which advertisement and investor solicitation were used. SEC v. Kenton Capital, Ltd., 69 F. Supp. 2d 1, 12-13 (D.D.C. 1998). Transaction-based compensation, in particular, is one of the hallmarks of being a broker-dealer. Kramer, 778 F. Supp. at 1334. Transaction-based compensation means "compensation tied to the successful completion of a securities transaction." Order Exempting the Federal Reserve Bank of New York, Maiden Lane LLC and the Maiden Lane Commercial Mortgage Backed Securities Trust 2008-1 from Broker-Dealer Registration, Exchange Act Release No. 61884 (Apr. 9, 2010), 98 SEC Docket 27276, 27278-79. "Compensation based on transactions in securities can induce high pressure sales tactics and other problems of investor protection" which necessitate broker registration under the Exchange Act. Persons Deemed Not To Be Brokers, Exchange Act Release No. 22172 (June 27, 1985), 33 SEC Docket 685, 687.

Bandimere violated Section 15(a) of the Exchange Act by acting as an unregistered broker in connection with the offer and sale of IV Capital and UCR securities. As discussed in Section III.A., supra, the investments in IV Capital and UCR were investments contracts and thus securities for the purposes of the federal securities laws. It is undisputed that Bandimere has never been registered with the Commission as a broker, dealer, or investment adviser and has never been associated with a registered broker, dealer, or investment adviser. Joint Stipulations at 1. Moreover, Bandimere regularly participated at key points in the chain of distribution of IV Capital and UCR securities. Bandimere introduced the IV Capital and UCR investments to many of the investors, and, while he may not have used actual "promotional materials" when discussing the IV Capital and UCR investments, he described the investments to potential investors and answered questions posed by potential investors. Tr. 844-45. Bandimere handled the paperwork necessary for people to invest in IV Capital and UCR, and obtained signatures from investors. Id. Investors gave their money to Bandimere to be invested, and received their returns from, or had their returns coordinated by, Bandimere. Tr. 170-72, 295-96, 506, 550, 673, 683-84, 848. Bandimere recruited many of the investors by sharing stories of his success. Tr. 155-56, 438-39, 546-47, 1188.

Even assuming Bandimere did not receive transaction-based compensation, the evidence that he acted as an unregistered broker is overwhelming. However, the evidence also shows that

he received such compensation. Bandimere did not receive a salary from IV Capital or UCR but received compensation of 10% of investors' monthly returns from IV Capital and 2% each month of investors' capital in UCR. Tr. 870, 926. Bandimere disputes that this was transaction-based compensation, and instead asserts that he received those fees to compensate him for performing recordkeeping and other administrative functions with respect to the investments. Bandimere Br. at 37. Bandimere claims he received nothing from IV Capital when investors increased their investment or when new investors joined the investment. Id. However, the evidence reflects the contrary. From IV Capital, Bandimere received a percentage of the investors' monthly returns and the investors' monthly returns were calculated based on how much they invested. Tr. 446-48, 673, 870. With respect to UCR, Bandimere received a percentage of the investors' total amount of invested funds each month. Tr. 870. Additional investors and additional funds generated additional returns and meant higher investment totals and higher compensation for Bandimere. When asked ". . . so the more investor funds that – that you brought in, the more that those fee payments would be, correct," Bandimere answered "yes." Tr. 870.

Bandimere's performance of certain tasks related to the investments, such as accounting and processing investor contributions and returns, is not inconsistent with the conclusion that he received transaction-based compensation.[36] As explained in the previous paragraph, Bandimere's compensation correlated to the amount of investments involved in the two schemes, not the number of hours he spent performing administrative tasks.[37] The more money he brought

[36] Bandimere argues that Exito Capital's receipt of compensation from IV Capital of 5% of Pickering's monthly returns on her initial $750,000 investment, which was made directly with Parrish and which Bandimere had no role in selling, reflects that the fees paid were for administrative services, not sales compensation. While it may be true in this instance that Bandimere was not compensated for his role in selling that particular investment, Bandimere received transaction-based compensation for soliciting at least one subsequent Pickering investment. Pickering subsequently invested $250,000 in IV Capital under the Exito contract and approximately $501,000 from her IRA through Entrust into IV Capital. Tr. 216, 219-20. Bandimere contacted Pickering and informed her that it was possible to invest IRA funds in IV Capital through Entrust. Tr. 220-21. Pickering testified that at the time she did not think she was "aggressively pursuing [her] IRA being placed someplace," and she was surprised to receive Bandimere's call. Tr. 222.

[37] Bandimere cites Financial Planning Ass'n v. SEC, 482 F.3d 481, 488 (D.C. Cir. 2007), for the proposition that the fees he received from UCR, which were calculated as a percentage of assets under management, are not considered part of a broker's normal compensation, but are special compensation. That case involved a challenge to a Commission rule which exempted broker-dealers, in certain circumstances, from the Advisers Act when they received special compensation, often a certain percentage of assets under advisement, for providing investment advice. Id. at 485. The relevance of that case to the issues in this proceeding is not apparent. Indeed, Bandimere argues in his post-hearing brief that there "there is no allegation (and no evidence) he was in the business of, and compensated for, giving advice regarding investing in securities." Bandimere Br. at 39. Therefore, it is unclear why he seeks to analogize the fees he

in for the investment contracts in IV Capital and UCR, the more money Bandimere took home, and his compensation was therefore tied to the successful completion of securities transactions. There is no evidence that Bandimere kept track of the time spent on administrative work or submitted that information to Parrish or Dalton. Bandimere's testimony that he did not negotiate the fee he received from Parrish further belies his argument that he was being compensated for administrative tasks because, presumably, Bandimere would have needed to explain the amount and type of work he was performing before an appropriate fee arrangement was reached. Tr. 1199. Similarly, the fee from Dalton was based on Dalton's offer, not a negotiated agreement. Tr. 927. Furthermore, Bandimere's argument that if IV Capital's returns did not exceed the targeted returns for the LLCs, none of the monthly returns to the LLCs would have been allocated as management fees, does not appear to support his position. Even if the targeted returns were not met, Bandimere still would have performed the administrative tasks in connection with the investments, and yet he would not have been compensated for that work.

Bandimere likens the facts of his case to SEC v. M&A West, Inc., where a district court ruled that the defendant had not acted as an unregistered broker. No. 01-3376, 2005 U.S. Dist. LEXIS 22452 (N.D. Cal. June 20, 2005), rev'd on other grounds, 538 F.3d 1043 (9th Cir. 2008). In that case, however, the district court noted that no assets were entrusted to the defendant. Id. at *27. Here, Bandimere received investment checks from investors, wired funds from the LLCs to IV Capital and UCR, and distributed monthly returns to investors. Tr. 846-49. Therefore, M&A West, Inc., is clearly distinguishable.[38] Bandimere also contends that his role was more akin to a finder than a broker, citing Kramer. Kramer, 778 F. Supp. 2d at 1336-37. Kramer acknowledges some cases have identified "a limited, so-called finder's exception" that permits a person or entity to "perform a narrow scope of activities without triggering the b[r]oker/dealer registration requirements." Id. at 1336 (quoting Salamon v. Teleplus Enters., Inc., Civ. No. 05-2058, 2008 U.S. Dist. LEXIS 43112 at *25 (D.N.J. June 2, 2008)). Kramer states, "'Merely bringing together the parties to transactions, even those involving the purchase and sale of securities, is not enough' to warrant broker registration under Section 15(a)." Id. (quoting Apex Global Partners, Inc. v. Kaye/Bassman Int'l Corp., No. 09-cv-637, 2009 U.S. Dist. LEXIS 77679 at *10 (N.D. Tex. Aug. 31, 2009)). As previously discussed, Bandimere did not merely bring together the parties to the investment transactions; the record reflects that Bandimere was involved at nearly every point in the chain of distribution, absent the purported trading of the investment funds. He described his success with the investments, explained the investments and answered any questions, hosted meetings at his home for investors and Parrish, received investment funds, and distributed and/or coordinated investor returns.

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received from UCR to the special compensation some brokers may receive for providing investment advice.

[38] Bandimere also offers In re Slatkin, 525 F.3d 805, 817-18 (9th Cir. 2008), for the proposition that a person who does not have the ability to make a transaction in securities happen and does not hold himself out as having such an ability, but who must go through a broker, does not engage in the business of effecting transactions in securities and is not a broker. Bandimere Reply Br. at 20. Slatkin analyzed the meaning of "stockbroker" under a provision of the Bankruptcy Code and does not govern the analysis in this case.

Bandimere further argues that because, in his view, there is uncertainty surrounding the activities that may cause a person to be considered a broker, punishing him for not understanding a legal concept "so unclearly defined" would violate due process due to a lack of notice of what the law requires. Bandimere Br. at 36. Even assuming I have the authority to hold a federal statute to be void for vagueness, which I surely do not, the argument is meritless. Due process requires "only that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited." Joseph John VanCook, Exchange Act Release No. 61039A (Nov. 20, 2009), 97 SEC Docket 22664, 22685 (quoting Valicenti Advisory Servs., Inc. v. SEC, 198 F.3d 62, 66 (2d Cir. 1999)) (internal quotations omitted). Bandimere does not explain why he believes the definition of a broker is vague or point to any aspects of the statute or case law that have caused him confusion. To the extent that Bandimere takes issue with the fact that the Commission and the federal courts have analyzed a set of factors to determine whether someone is acting as a broker, that argument is also rejected. Numerous aspects of the law involve the application of multi-factored tests, and the existence of such a test in the context of determining whether someone is acting as a broker does not in itself violate due process. The fact that Syke, who testified that he did not consider himself to be a securities specialist and who worked for a law firm prior to 1997 that performed some securities work, did not see the activities in which he and Bandimere engaged as implicating a need to register as a broker, does not make Bandimere's argument more persuasive.

Bandimere again disputes that he acted willfully, arguing that his reliance on Syke, who "missed the issue," precludes any finding that he acted willfully. Bandimere Br. at 37. This argument is rejected for the same reasons as set forth in Section III.B., supra. While Bandimere may not have known that he was acting as a broker within the meaning of the federal securities laws, Bandimere intended to do the activities that constituted acting as a broker. Thus, Bandimere acted willfully. Reliance on the advice of counsel is not a complete defense to a non-scienter based claim and, as previously discussed, Bandimere did not make complete disclosure to Syke.

D. Bandimere Willfully Violated Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Exchange Act Rule 10b-5

Bandimere willfully violated Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Exchange Act Rule 10b-5 by making material misstatements and omissions to investors about the IV Capital and UCR investments.[39]

Securities Act 17(a)(2) makes it "unlawful for any person in the offer or sale of any securities . . . directly or indirectly . . . to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading." 15 U.S.C. § 77q(a). Exchange Act Section 10(b) makes it unlawful for any person, directly or indirectly, to "use or employ, in connection with the purchase or sale of any security . . . any

[39] The Division stated in its post-hearing brief that it is not pursuing scheme liability. Div. Br. at 16 n.3.

manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors." 15 U.S.C. § 78j(b). Exchange Act Rule 10b-5(b) makes it unlawful for any person, directly or indirectly, to "make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading." 17 C.F.R. § 240.10b-5.

To prove a violation of Exchange Act Section 10(b) and Rule 10b-5, the Division must prove that Bandimere made: 1) a misrepresentation or omission; 2) of material fact; 3) with scienter; 4) in connection with the purchase or sale of securities; and 5) by means of interstate commerce. SEC v. Smart, 678 F.3d 850, 856-57 (10th Cir. 2012) (citing SEC v. Wolfson, 539 F.3d 1249, 1256 (10th Cir. 2008)); see also SEC v. Steadman, 967 F.2d at 641-43. Section 17(a)(2) "requires substantially similar proof with respect to the offer or sale of securities," except negligence is sufficient to prove a violation of Section 17(a)(2). Smart, 678 F.3d at 857; see also Weiss v. SEC, 468 F.3d 849, 855 (D.C. Cir. 2006).[40]

Scienter is defined as a "mental state embracing the intent to deceive, manipulate, or defraud." Aaron v. SEC, 446 U.S. 680, 686 n.5 (1980); Ernst & Ernst v. Hochfelder, 425 U.S. 185, 193 n. 12 (1976). A finding of recklessness satisfies the scienter requirement. Hollinger v. Titan Capital Corp., 914 F.2d 1564, 1568-69 (9th Cir. 1990); Hackbart v. Holmes, 675 F.2d 1114, 1117-18 (10th Cir. 1982); David Disner, 52 S.E.C. 1217, 1222 & n.20 (1997). In the context of securities fraud, recklessness is "highly unreasonable" conduct, "which represents 'an extreme departure from the standards of ordinary care . . . to the extent that the danger was either known to the defendant or so obvious that the defendant must have been aware of it.'" Rolf v. Blyth, Eastman Dillon & Co., 570 F.2d 38, 47 (2d Cir. 1978) (quoting Sanders v. John Nuveen & Co., 554 F.2d 790, 793 (7th Cir. 1977)); see also Hackbart, 675 F.2d at 1118; Johnny Clifton, Exchange Act Release No. 69982, 2013 WL 3487076, at *10 n.67 (July 12, 2013).

The standard of materiality is whether or not a reasonable investor would have considered the information important in deciding whether or not to invest, and if disclosure of the misstated or omitted fact would have significantly altered the total mix of information available to the investor. See SEC v. Steadman, 967 F.2d at 643; see also TSC Indus., Inc. v. Northway, Inc., 426 U.S. 438, 449 (1976); Basic Inc. v. Levinson, 485 U.S. 224, 231-32, 240 (1988).

As previously discussed in Section III.A., supra, the IV Capital and UCR investments are investment contracts and thus constitute securities within the meaning of the Securities and Exchange Acts, and Bandimere offered and sold those securities to investors. The required interstate nexus is satisfied by Bandimere's use of the mail to send return checks to investors and his use of wires to send money from the LLCs to IV Capital and UCR, among other things. Tr.

[40] Although the Division cites to the United States Supreme Court's decision in Janus Capital Group, Inc. v. First Derivative Traders, 131 S. Ct. 2296, 2302 (2011), in its post-hearing brief, Bandimere does not make any arguments about Janus in his post-hearing briefs and Janus does not appear to be an issue since the OIP alleges that all of the misrepresentations and omissions were made by Bandimere.

846-47, 849, 1210. The remaining inquiry is whether material misrepresentations and omissions were made with scienter.

The Division contends that when describing the IV Capital and UCR securities to investors, Bandimere represented to many investors that he thought the investments were low risk and very good investments and he also presented a one-sided view to potential investors and highlighted only positive facts, including: 1) the consistent rates of return; 2) the established track record of performance; 3) the experienced and successful traders; 4) his personal dealings with Parrish and Dalton which gave him confidence in their abilities; and 5) with regard to Dalton, his long-standing personal relationship. Div. Br. at 17; OIP at 8-9. The Division argues that despite these representations, Bandimere knew about material red flags which suggested a different picture than the generally rosy view Bandimere presented and together the red flags suggested, at a minimum, the investments had very significant risks. Div. Br. at 17-18.

Bandimere argues that the only affirmative misrepresentations attributed to him are that he characterized IV Capital and UCR as low risk or very good investments, and these generalized statements constitute non-actionable opinions or puffing. Bandimere Br. at 3. He also asserts that material omissions are only actionable where the omitted fact is necessary to make the statements made, in light of the circumstances under which they were made, not misleading, and the OIP fails to identify a single statement rendered misleading by the alleged omissions of material fact. Id. at 4.

This case is, however, distinguishable from those cases where courts have dismissed fraud claims because the defendants' statements constituted non-actionable opinions or puffing. Bandimere did not merely make statements expressing general corporate optimism, but instead made material misstatements and omissions in the context of acting as an unregistered broker selling unregistered securities to the investors. Bandimere was not merely an impartial observer offering his opinion on the historical returns of IV Capital and UCR, rather Bandimere testified that he described the IV Capital and UCR investments to potential investors, answered their questions, handled the paperwork necessary for investments, accepted investment funds, wired or sent the investment funds to IV Capital and UCR, received and calculated investor returns from IV Capital and UCR, distributed returns to investors, and received fees, which constitute transaction-based compensation or commissions. Tr. 844-49, 869-70, 890-91, 926-28, 955-56.

Moravec, Loebe, Blackford, Koch, and Radke all testified that Bandimere told them the rate of return the IV Capital investment was supposed to earn and some of these investors testified that Bandimere described the rates of returns as good or great. Tr. 160, 288, 439-40, 582-83, 584-85, 669-70. Hunter testified that Bandimere brought up the IV Capital investment opportunity to him during a telephone call and told him that he was personally involved in the investment, he had a large amount of money invested, and that there were other people Hunter knew that had invested. Tr. 546-47. Syke testified that it was Bandimere's representations that the investment was paying approximately 2% a month and had been dependable that made him interested in investing. Tr. 725-26. Radke testified that Bandimere told him that he had been

involved with IV Capital for several years and that the investment had lived up to its target yield month-after-month and year-after-year. Tr. 669-70.[41]

With respect to UCR, Moravec, Loebe, Davis, and Koch all testified that Bandimere told them about the rate of return the UCR investment was supposed to earn. Tr. 162-63, 288-89, 501, 504, 525-26, 584-85. Radke testified that Bandimere told him that the investment principal would be kept in a bank as collateral and it was not the investors' money that would go directly to the trader to be used in deals, essentially implying that the funds would be safe. Tr. 674-75. Bandimere did not tell Moravec, Loebe, Koch, or Radke any negative information about the investments. Tr. 161, 164, 297, 587, 670-71. Blackford testified that Bandimere did not provide him with any information that would cause him concern. Tr. 442.

While it is true that Exchange Act Section 10(b) and Rule 10b-5(b) do not create an affirmative duty to disclose any and all material information, disclosure is required when necessary to make statements made, in light of the circumstances under which they were made, not misleading. Matrixx Initiatives, Inc. v. Siracusano, 131 S. Ct. 1309, 1321 (2011). Bandimere's disclosure of positive information about the investments was rendered materially misleading in light of his failure to disclose other material facts to investors.

Bandimere generally contends that he did not act with scienter or even act negligently. Bandimere Br. at 20-28. This contention lacks merit. Bandimere's high degree of scienter is demonstrated by various knowing falsehoods, intentional concealments, and counter-accusations that he directed to his victims, whose investments resulted in his handsome compensation.

First, with respect to Bandimere's compensation, Loebe testified that Bandimere told him that any funds in excess of investor returns each month would be given to a Christian charity doing work overseas. Tr. 294. There is no evidence in the record that Bandimere gave funds in excess of investor returns to charity. When asked whether he told Loebe that excess returns would be donated to charity, Bandimere responded, "I don't recall that that was the case. I may have shared with him that – he may have asked what I did with some of my funds in my life. And most people who know very much about me know what – that I'm – that I give to a variety of causes, so that may have been what was in the conversation that – that he – that he took from that." Tr. 929. However, on this point, Loebe's testimony is more credible than Bandimere's testimony. Loebe's investment of $75,000 is comparatively small and he exhibited a straightforward, matter of fact demeanor during the hearing. In contrast, Bandimere has a significant interest in the outcome of this proceeding, and, in light of the other knowing falsehoods Bandimere told investors, his testimony is simply not credible.

Bandimere's behavior with respect to Dalton's identity and Dalton's involvement with UCR similarly supports a finding of scienter. Koch and Radke testified that Bandimere knew that they knew Dalton and yet, when Bandimere explained the UCR investments to them, he did not tell either of them that Dalton was involved. Tr. 590-91, 677. The only reasonable explanation for concealing Dalton's identity and involvement in UCR is that Bandimere knew that disclosing Dalton's involvement would make Koch and Radke change their minds about

[41] Radke testified that Bandimere did tell him that the returns were not guaranteed. Tr. 670-71.

investing. Koch testified that he would not have invested in UCR if he had known Dalton was involved, and Radke testified that Dalton was not necessarily someone he would have wanted to invest with and that he knew Dalton had some financial difficulties. Tr. 591, 675-76. Bandimere deliberately deceived Koch and Radke to get their investments.

When Koch questioned Bandimere at least about the Diamond Program, Bandimere "just kept telling [Koch] that – that he had to maintain the confidentiality, that he had promised this broker and diamond dealer anonymity." Tr. 598. This was because the person involved possessed "significant" contacts and was of "such stature" that he "wouldn't want to be bothered by small investors." Id. In approximately April 2011, long after Dalton's scheme collapsed, when Koch found out from Bandimere that Dalton, a mutual acquaintance, was involved, Koch felt betrayed. Tr. 598-99. There is no evidence in the record that Dalton was of "such stature" that he did not want small investors, or that Bandimere ever promised Dalton anonymity. Bandimere's statement to Koch was a knowing falsehood intended to discourage Koch from further inquiry.

Bandimere also said to Koch, "[w]ell, if you're so smart . . . why did you invest," and Koch felt that Bandimere, as a friend, should have done his due diligence to determine whether the investment opportunity was credible. Tr. 600. Koch asked Bandimere if he would refund his principal investment, but Bandimere refused and said he was bothered by the fact that some Christians were so interested in their capital and getting a return on their investments "that they're not interested in the ministry side and being willing to understand and forgive." Tr. 600. Koch also requested Bandimere give him the interest that was represented would have been earned on the principal. Tr. 645. Koch asked him to return the money based on their friendship and because Bandimere was a person who had counseled him in his investment. Tr. 647; Ex. 144. Bandimere refused and Koch testified that Bandimere said that he was upset because Koch had been harsh with him. Tr. 597, 600-01. In short, when confronted by Koch, Bandimere threw back counter-accusations that Koch was to blame, accused him, in effect, of not being a good Christian, and acted like Koch was the wrongdoer instead of Bandimere.[42] Tr. 600, 602. In contrast to Bandimere, a man wealthy enough to lose $1 million in Ponzi schemes and still not have to work, Koch was a "modest" earner and had previously worked for Bandimere and the Bandimere family. Tr. 580-81, 601, 611-13, 992, 1119, 1241-42. Such bullying is also evidence of scienter.

Bandimere argues that Koch testified inconsistently as to whether he had inquired about Dalton's involvement prior to investing. Bandimere Br. at 17 n.9. Bandimere claims that Koch stated in a January 7, 2012, letter that he had asked Bandimere specifically about Dalton's involvement in the investment, but later admitted during testimony that he did not. Id.; Tr. 654-56; Ex. 144. Bandimere contends that, later in his testimony, Koch affirmed the correctness of what was stated in the letter. Bandimere Br. at 17 n.9; Tr. 665. I find, however, that Koch testified consistently. Koch testified that when Bandimere was describing the investment to him, he did not specifically ask whether the anonymous trader was Dalton. Tr. 654-55. The January

[42] When I asked Koch if he felt like Bandimere had accused him of not being a good Christian, Koch said that he did not know. Tr. 602. Nonetheless, it is a reasonable inference from Koch's testimony that Bandimere meant exactly that.

7, 2012, letter states in part "I even inquired of you specifically regarding Dick Dalton," however, it gives no time frame for when this inquiry was supposed to have occurred. Later, when Koch was asked whether the January 7, 2012, letter essentially captured why he felt like he should have gotten his money back from Bandimere, Koch said yes. Tr. 665. Koch's testimony that the letter accurately captured his feelings in no way contradicts his previous testimony that he did not ask Bandimere at the outset whether Dalton was involved in the investment. I asked Koch during the hearing when it was that he first asked Bandimere whether Dalton was involved with the investments, and he testified that it was around April of 2011, which is consistent with his testimony that he did not ask Bandimere whether Dalton was involved at the outset. Tr. 660-61.

Radke's testimony that Bandimere failed to disclose Dalton's involvement with UCR despite knowing that Radke knew Dalton is consistent with Koch's experience. In addition, Radke testified that he first heard about the IV Capital investment opportunity through Bandimere during a meeting of the full board of directors of Abbas Ministries. Tr. 667-68. At the time, he, Bandimere, and Dalton were all members of the Abbas Ministries board. Tr. 668-69. Radke did not recall whether Dalton was present at the board meeting when he first learned about the investment, but he testified that Dalton was routinely in attendance at board meetings. Tr. 677. The evidence is clear that Bandimere learned about Parrish from Dalton in 2005 and Bandimere understood that Dalton had been an employee of Parrish. Tr. 880-83. The email Pickering sent to the SEC in 2011, which she testified was an almost verbatim summary of a June 14, 2011, conversation with Bandimere, supports the conclusion that Bandimere and Syke started the LLC due in part to Dalton's high discomfort level with Parrish and that Bandimere knew Dalton had stopped doing business with Parrish. Tr. 232-38; Ex. 71. It also supports the conclusion that Dalton had warned Bandimere at the time to be careful about doing business with Parrish. Tr. 237-38; Ex. 71.

Despite Bandimere's knowledge of Dalton's involvement with Parrish and IV Capital, and despite Dalton's warning to Bandimere to be careful about doing business with Parrish, Bandimere explained and ultimately sold IV Capital securities to Radke and Abbas Ministries apparently without disclosing either of those facts. Even if Dalton was not present at the board meeting where the IV Capital investments were explained, Bandimere's failure to inform the board that Dalton had sold IV Capital investments for Parrish for many years, has only one plausible explanation: Bandimere and Dalton were actively concealing Dalton's prior affiliation with the investment from the board members.

Bandimere's conduct with respect to Pickering's March 2010 investment in UCR can only be described as shamelessly cruel. On March 5, 2010, Syke wrote an email to Bandimere warning him that "the failure to perform on the diamond deal casts a cloud over the U/C and effectively precludes new investors from investing in either deal." Tr. 770-73; Ex. 43. Bandimere therefore knew in early March that the UCR trading program and Diamond Program presented so much risk that no further investments should be made.

Pickering wrote an email to Syke on March 19, 2010, in which she asked Syke what it would take "to have the Exito Capital declared a theft." Ex. 232. Syke forwarded the email to Bandimere on March 21, 2010, five days before Pickering invested $100,000 in UCR, and stated

that Pickering could not invest in Exito because she was no longer accredited. Exs. 115 at BAND000846, 232. Syke responded to Pickering that "I have concerns about this deal, I don't know that anybody should still invest." Tr. 842. In addition to his March 5, 2010, email, in which Syke told Bandimere that the failure to perform on the diamond deal effectively precluded investors from investing in either UCR deal, Syke also told Bandimere on the telephone that neither UCR nor the UCR Diamond Program was suitable for Pickering. Tr. 842; Ex. 43. Bandimere had no particular reaction to Syke's opinion. Tr. 843.

Pickering invested $100,000 in UCR through Victoria on March 26, 2010, using a $2,000 loan from her brother and credit lines on her credit cards. Tr. 214, 242, 247-48; Ex. 115 at BAND000846. Bandimere admitted that he knew that Pickering had borrowed the $100,000, that she needed more income, and that she had lost at least $2.5 million in IV Capital. Tr. 986. According to Pickering, Bandimere told her "Don't worry, honey. We'll get you money coming in right away, next month." Tr. 242-43, 365. He sold her UCR securities despite knowing that Pickering was in a desperate financial situation, knowing the demonstrated serious risk presented by UCR, knowing all the other red flags about UCR, and having been warned by Syke that no further investments in UCR should be made. This was not an omission, it was a wildly deceptive affirmative misrepresentation and demonstrated an extreme degree of scienter.

All of these incidents reinforce the conclusion that Bandimere possessed an intent to defraud, that is, scienter, throughout his course of misconduct. The transaction-based compensation that Bandimere received from IV Capital, UCR, and the UCR Diamond Program was large and tied to the amount of money the investments brought in, thus giving him a motive to mislead his victims. It does not matter whether Bandimere knew he had a duty not to omit disclosing the red flags alleged in the OIP, because his conduct toward, at a minimum, Loebe, Koch, Radke, and Pickering amply demonstrates that, by remaining silent about certain issues, he intended to defraud all the investors as to which violations have been found.

Bandimere's claim that the Division's ability to prove that he acted with scienter is inextricably tied to its ability to prove that he knew or must have known that IV Capital and UCR were fraudulent investment programs is meritless. As discussed in greater detail in Section III.E., infra, the OIP does not charge Bandimere with operating a Ponzi scheme or even knowing that the securities he sold were interests in Ponzi schemes. Instead, the gravamen of the antifraud allegations is that Bandimere knew about material red flags and negative facts associated with IV Capital and UCR and never disclosed them to investors, which constitutes a highly misleading sales approach. OIP at 9. Those material red flags can be proven, and, in certain cases described below, have been proven, irrespective of whether Bandimere knew IV Capital and UCR were Ponzi schemes.

Moreover, Bandimere's conduct was willful because he acted intentionally when described the investments to investors and answered their questions. To the extent Bandimere argues that he did not act willfully because he did not know that his conduct was wrongful, that argument is rejected for the reasons set forth in Sections III.B and C, supra. See Wonsover, 205 F.3d at 415.

1. Bandimere's Receipt of Fees and Disclosure of Fees to Investors

The OIP alleges that Bandimere knew and failed to disclose that IV Capital and UCR paid him large commissions tied to the amount of funds he brought in for investment. OIP at 8. The Division alleges that Bandimere knew of this red flag no later than November 2006 as to IV Capital; July 2008 as to UCR; and March 2009 as to the Diamond Program. Supplemental Statement at 1-2. Bandimere testified that he received a fee of 10% of investors' monthly returns from IV Capital and 2% of the total investors' funds each month or 24% annually from UCR. Tr. 870, 926. While some of the investors testified that they knew Bandimere or the LLCs received some sort of compensation, none of the investors, with the exception of Hunter, who remains a close personal friend of Bandimere, and Syke, with respect to the 10% fee received from IV Capital, were told that Bandimere or the LLCs received a fee of 10% of investors' monthly returns from IV Capital or a 24% annual return on investors' funds from UCR. Tr. 165-67 (Moravec as to IV Capital and UCR),[43] 293-94 (Loebe as IV Capital and UCR), Tr. 466-67 (Blackford as to IV Capital), 507 (Davis as to UCR), 562 (Hunter), 591-92 (Koch as to IV Capital and UCR), 681-82, 687-88 (Radke as to IV Capital), 745 (Syke). In fact, Loebe testified that Bandimere told him that any funds in excess of investor returns every month would go to a Christian charity doing work overseas. Tr. 294.

Although the Operating Agreements for Exito and Victoria disclosed that the managers of those entities would receive reasonable compensation for services to the LLCs and that any amount would be deemed in excess of the targeted returns per annum to Members, the Operating Agreements did not disclose any particular compensation amount.[44] Bandimere admitted that fact. Tr. 926-29; Ex. 11 at Syke 0000051; Ex. 70 at 14. Nor did the Operating Agreements indicate that the compensation received would be tied to the amount invested. Both of those facts are clearly material and were not disclosed to most of the investors either through receipt of the Operating Agreements or through any statements made by Bandimere. The fact that the fees received were tied to the amount invested is material because it creates the potential for a conflict of interest in Bandimere's sale of the investments. See IMS/CPAs & Assocs., 55 S.E.C. 436, 453-54 (2001) ("Courts have recognized that economic conflicts of interest, such as undisclosed compensation, are material facts that must be disclosed.") The large amount of the commissions is material because it indicates that in addition to generating returns for investors, the investments would need to generate the large fees payable to Bandimere and the LLCs for the investments to be successful.

Therefore, I find that Bandimere knew and failed to disclose that IV Capital and UCR paid him large commissions tied to the amount of funds he brought in for investment at least as to investors Moravec (as to IV Capital and UCR), Loebe (as to IV Capital and UCR), Blackford

[43] During the hearing, the parties at times used the term UCR to refer to the Trading Program, the Diamond Program, or both.

[44] The version of the Operating Agreement for Victoria included as Exhibit 136 did refer to a management fee equal to 20% of the gross income of the LLC, but Bandimere testified that to his knowledge this version of the Operating Agreement was never given to investors. Tr. 1204; Ex. 136 at BAND003411.

(as to IV Capital), Davis (as to UCR), Koch (as to IV Capital and UCR), and Radke (as to IV Capital and UCR).

2. Bandimere's Knowledge of the SEC Complaint Against Parrish

The OIP alleges that Bandimere knew and failed to disclose that Parrish had been sued by the SEC in 2005 and that Bandimere admitted to an investor that he knew that the Commission had previously sued Parrish at the time that Bandimere was offering the IV Capital investment. OIP at 8. The Division alleges that Bandimere knew of this red flag no later than November 2005. Supplemental Statement at 1. Bandimere argues that the Division failed to prove that he knew, or even believed, that Parrish had been sued by the SEC in 2005. Bandimere Br. at 9. Bandimere admits that he was told Parrish had an unspecified regulatory issue in 2004 or 2005, but he contends that he was told this was resolved. Id.

Bandimere testified that sometime in 2005, Dalton told him that Parrish had an "issue with some jurisdiction," but that the issue had been resolved. Tr. 909. At the time, Bandimere testified that he may have understood the issue to be with the SEC or IRS, but he was not clear about the jurisdiction. Tr. 910. Bandimere testified that he did not recall telling investors in IV Capital about Parrish's issue, and this included Radke and Hunter. Tr. 911.

Hunter's testimony, after having his recollection refreshed by his notes, was that Bandimere had told him about Parrish's "run-in with the SEC," and Hunter thereafter spoke to Parrish who purportedly explained the situation. Tr. 555-57; Ex. 143. Radke also testified that prior to his investment in IV Capital, Bandimere told him that Parrish was in a situation where he was being audited and reviewed, or maybe sanctioned, but that Parrish had successfully turned it around and was starting to make investments again. Tr. 678-79. Radke testified that Bandimere may have mentioned that Parrish's problem was with the Commission. Tr. 679-80. Finally, Pickering testified that during a conversation with Bandimere in 2011, Bandimere told her that he had been aware that Parrish had some sort of problem in the past, and that Bandimere may have referred to the SEC. Tr. 385-88. An email Pickering sent to the SEC, which was based on her "almost verbatim" notes of a 2011 conversation with Bandimere, stated that Dalton had told Bandimere, sometime in "'04 or early '05," about Parrish's "investment problem with the old LLC business/ SEC complaint problem." Tr. 385-88, 430-31, Ex. 71.

Investors Moravec, Blackford, and Koch all testified that they were not aware that Parrish or a principal of IV Capital had a problem with the SEC. Tr. 165-66 (Moravec), 465-66 (Blackford), 592 (Koch). Blackford testified that he would have wanted to know that information and whether the problem was resolved. Tr. 465-66.

There is sufficient evidence in the record to support the conclusion that Bandimere knew that Parrish had been sued by the SEC in 2005 and Bandimere selectively disclosed this information to investors. Bandimere admits that he knew Parrish had some sort of problem with a regulatory authority. Bandimere Br. at 9. Bandimere may not currently recall whether Parrish's issue was with the SEC or some other jurisdiction, however, Hunter's contemporaneous notes of his discussion with Bandimere which mention Parrish's "run-in with the SEC," support the conclusion that Bandimere knew at the time that Parrish's problem was with the SEC. Tr.

557; Ex. 143. Bandimere quibbles with phraseology, arguing that the fact that Parrish had an issue or a problem with the SEC does not support the OIP's allegation that he knew Parrish had been previously sued by the SEC. Bandimere Br. at 9-10. Pickering's almost verbatim notes of her discussion with Bandimere in 2011, which mention an SEC complaint problem, support the conclusion that Bandimere knew a complaint had been filed. Indeed, Pickering's notes refer to a complaint on two occasions. Ex. 71. In addition to the comment regarding the SEC complaint problem, the notes further state, "And, as a result of that complaint, Mike went offshore after the fact that (sic) so as not to be under U.S. jurisdiction and regulation." Ex. 71 at 1-2; see Tr. 430-32.

In deciding whether or not to invest in IV Capital, investors would have considered the fact that a principal of IV Capital had been sued by the SEC to be an important factor in their decision, and an investor in this case testified to that fact. See Wilson v. Great Am. Indus., Inc., 855 F.2d 987, 991-92 (2d Cir. 1988) (failure to disclose adverse civil judgment held material under Exchange Act Rule 14a-9). Blackford, who was never told about the SEC's complaint against Parrish, testified that he would have wanted to know if a principal of IV Capital had a problem with the SEC and he would have wanted to know whether the problem was resolved. Tr. 465-66. After Hunter learned of Parrish's "run-in with the SEC," he testified that he actually spoke to Parrish about the problem. Tr. 557, 564. Hunter's follow-up with Parrish supports the conclusion that a reasonable investor would consider the existence of a run-in with the SEC to be material when investing and a reasonable investor would want to get more information to make sure his or her investment was secure. The fact that Hunter does not specifically mention a complaint against Parrish, but a run-in, which would be generally understood to be less serious than a complaint, supports the conclusion that even lesser interactions with the SEC would be material to investors, although there is evidence here that Bandimere knew the SEC had filed a complaint against Parrish.

Therefore, I find that Bandimere knew and failed to disclose that Parrish had been sued by the SEC in 2005 at least as to investors Moravec, Blackford, and Koch.

3. Dalton Told Bandimere He Stopped Working with IV Capital and Parrish

The OIP alleges that Bandimere knew and failed to disclose that Dalton told Bandimere that he stopped working with IV Capital and Parrish because of problems with getting paid commissions. OIP at 8. The Division alleges that Bandimere knew of this red flag no later than September 2007. Supplemental Statement at 1. Bandimere argues that no evidence was offered at the hearing to support that allegation. Bandimere Br. at 10.

Bandimere testified that Dalton stopped representing Parrish in investment matters at some point and it was expressed to him that Dalton and Parrish had complications, but Bandimere did not know what the issues were. Tr. 912. Syke testified that he heard about Dalton's decision to stop placing money with Parrish, but he did not know Dalton's reasons for doing so. Tr. 778. Pickering testified that Bandimere told her about Dalton's relationship with Parrish during their conversation in June 2011, and in the email she subsequently sent to the Commission summarizing that conversation, she stated that Bandimere told her that Dalton had a high discomfort level with Parrish and had stopped doing business with Parrish because Dalton

could not get the contracts he wanted from Parrish, Parrish ignored his calls, and Parrish took forever to get things done. Tr. 237; Ex. 71 at 2. She testified that Bandimere told her that Dalton warned him strongly at the time to be careful about doing business with Parrish. Tr. 237-38; Ex. 71 at 2.

Although the evidence reflects that Dalton had a high discomfort level with Parrish, that Dalton could not get contracts from Parrish, that Parrish ignored Dalton's calls, and that Parrish and Dalton had complications, there is no direct evidence that Dalton told Bandimere that he stopped working with IV Capital and Parrish because of problems with getting paid commissions. In its post-hearing briefs, the Division does not point to any other evidence to support its claim and therefore the Division has not proven this allegation.

4. Written Documentation, Financial Statements, Audits, Trading Confirmations, Account Statements, and Third-Party Service Providers

Paragraphs 35(f) and (j) of the OIP allege that Bandimere knew and failed to disclose to investors that:

> (f) While Bandimere initially signed written agreements with UCR and IV Capital when the LLCs made their initial investments, there was no subsequent written documentation provided by UCR or IV Capital when additional investments were made.
>
> . . .
>
> (j) Neither IV Capital nor UCR ever provided any account statements documenting the investments or purported monthly earnings.

OIP at 8-9.

With respect to subparagraph 35(f), the Division alleges that Bandimere knew of this red flag no later than June 2007 for IV Capital and no later than September 2008 for UCR. Supplemental Statement at 2. With respect to subparagraph 35(j), the Division alleges that Bandimere knew of this red flag no later than December 2005 for IV Capital and no later than August 2008 for UCR. Id.

With respect to UCR, the evidence supports the conclusion that Bandimere knew that following his initial signed written agreements with UCR, he never received any documentation from UCR or Dalton when additional investments were made and he knew that UCR never provided any account statements documenting the investments or purported monthly earnings. Bandimere admitted that neither Dalton nor UCR ever provided him with any accounting statements. Tr. 903-04. Although Bandimere claims that he viewed accounting records on UCR's computer when visiting Dalton's office, viewing records on a computer screen is materially different from receiving documentation reflecting the details of additional investments

or purported monthly earnings from the individual or entity with which investor funds have been entrusted.

Bandimere testified that for approximately the first fifteen months of the investment with IV Capital, IV Capital provided some form of accounting statement generally listing the investment amount, number of trading days, interest, and profit distribution; however, he acknowledged that the LLCs took over the accounting after the first fifteen months. Tr. 904, 1113-14; Ex. 131 at BAND002364. Therefore, the evidence supports the conclusion that Bandimere knew that after the initial fifteen months of the investment with IV Capital, he never received any documentation from IV Capital or Parrish when additional investments were made and he knew that he never received any account statements documenting the investments or purported monthly earnings. The accounting function Bandimere and the LLCs performed for investors' funds is markedly different from receiving documentation or account statements from the individual or entity that had control over investors' funds and was purportedly trading those funds.

IV Capital and UCR's failure to provide subsequent written documentation when additional investments were made and failure to provide any account statements documenting the investments or purported monthly earnings (at least after the initial fifteen months of the investment as to IV Capital) was not disclosed to the investors. Many of the investors testified that prior to making their investments, Bandimere did not tell them that Parrish, IV Capital, Dalton, or UCR had refused to provide account or trading records to him. Tr. 166-67 (Moravec), 297-98 (Loebe), 457-58 (Blackford), 507-08 (Davis as to UCR), 591-93 (Koch), 680-81 (Radke as to Parrish).

The lack of subsequent documentation or account statements documenting investments or purported monthly earnings is clearly material to investors. A reasonable investor would consider the absence of documentation confirming his or her investments or transactions to be important in deciding whether or not to invest. For example, Syke testified that when Parrish refused to provide him with financial statements and trading records before he invested, it caused him some concern and "it took [him] a little while to kind of get over that and consider investing, which is why I started small, but also why I was trying – and, obviously, it didn't really succeed, but to – to ferret out more of the facts and get some more substantiation." Tr. 776. Bandimere argues that the lack of subsequent documentation is immaterial because he could look to bank records and wire transfers to verify the investments. See Bandimere Br. at 26. However, gathering information from bank records is materially different from receiving records and evidence of investments from the individuals and entities to which Bandimere entrusted millions of dollars.

Therefore, I find that Bandimere knew and failed to disclose that IV Capital and UCR failed to provide subsequent written documentation when additional investments were made and failed to provide any account statements documenting the investments or purported monthly earnings (at least after the initial fifteen months of the investment as to IV Capital) at least as to

investors Moravec (as to IV Capital),[45] Loebe (as to both), Blackford (as to IV Capital), Davis (as to UCR), Koch (as to both), and Radke (as to both).[46]

Paragraph 35(g) of the OIP alleges that Bandimere knew and failed to disclose to investors that:

> (g) Bandimere knew that neither UCR nor IV Capital had any financial statements nor were they audited by any accounting firm. In fact, Bandimere testified that it seemed like Dalton and Parrish did not appear to have any accounting records whatsoever.

OIP at 8-9. The Division alleges that Bandimere knew of this red flag no later than December 2005 for IV Capital and no later than September 2008 for UCR. Supplemental Statement at 2.

As to the first part of subparagraph (g), Bandimere admitted during his testimony that Parrish never provided him with any financial statements for IV Capital; however, the fact that Parrish did not provide him with more than a minimal quantity of financial and trading information does not necessarily mean that IV Capital did not have any financial statements. Tr. 897-904; Ex. 217. Although Parrish's failure to produce any financial statements in response to Bandimere's requests could imply that he did not have any financial statements, it could also imply that he was merely lazy or disorganized. Therefore, the Division has failed to prove that Bandimere knew that IV Capital did not have any financial statements.

Similarly, with respect to UCR, Bandimere was asked during the hearing, "Mr. Dalton never provided financial statements to you for UCR, correct," and he responded, "[H]e never provided printed statements as such. But when I would go to their . . . office . . . if there were times that we needed to verify numbers or whatever, it was very obvious that what – well, the

[45] Moravec invested in UCR in June and July 2008; however, the Division does not allege that Bandimere knew that UCR failed to provide subsequent written documentation when additional investments were made or failed to provide any account statements documenting the investments or purportedly monthly earnings until September 2008 and August 2008, respectively. Ex. 122 at BAND001669; Supplemental Statement at 2. In the Supplemental Statement, the Division alleges that Moravec also made an investment in September 2009. Supplemental Statement at 5. It is possible that the September 2009 investment refers to a $10,000 investment in the UCR Diamond Program; however, the transcript provides no corroboration for that conclusion and the Schedule of Member's Interest admitted as part of Exhibit 122 does not appear to provide a date for the investment in the Diamond Program. Ex. 122 at BAND001669.

[46] Radke invested in UCR in June 2008; however, as explained above, the Division does not allege that Bandimere knew of the red flags relating to UCR until August or September of 2008. The Division alleged in the Supplemental Statement that Radke also made an investment in January 2010. Supplemental Statement at 5. Although that investment was not discussed at the hearing and it is not clear from the Supplemental Statement into which entity that investment was made, Exhibit 126 contains a receipt reflecting that Radke invested $5,000 on January 26, 2010, and those funds were wired to UCR. Ex. 126 at BAND001814.

way it appeared, Marie Dalton was doing the accounting work, and she did have records . . ." Tr. 903-04. Although that testimony may establish that Dalton never provided UCR's financial statements to Bandimere, it does not support the proposition that Bandimere knew that UCR did not have any financial statements. The Division does not cite to any additional evidence in its post-hearing briefs that would show that Bandimere had knowledge that no financial statements existed for UCR and therefore the Division has not proven that Bandimere knew that UCR did not have any financial statements.

As to the second part of subparagraph (g), Bandimere testified that he did not know whether audits of IV Capital or UCR occurred. Tr. 1112. The Division asked, "Well, you testified that it appeared to you that you and your wife were really the only ones that appeared to be doing any accounting, correct?" Bandimere replied, "I did make that statement, but it was based on a time frame that – early on in the – in the transition of going from our personal checking to the LLCs . . . ." Tr. 904-05. The Division does not point to, and the record does not otherwise appear to contain, any other evidence to support the Division's claim that Bandimere knew that neither UCR nor IV Capital was audited. At most, the evidence shows that Bandimere did not know whether UCR or IV Capital was audited and therefore the Division has not proven this allegation. While Bandimere's statement indicating that he believed he and his wife were the only ones who appeared to be doing any accounting is related to the concept of auditing, it does not provide sufficient direct evidence of Bandimere's knowledge.

Paragraph 35(h) of the OIP alleges that Bandimere knew and failed to disclose to investors that:

> (h) Bandimere knew that neither UCR nor IV Capital had any third-party service providers: brokerage firms, accountants, etc., which could be verified by him.

OIP at 9. The Division alleges that Bandimere knew of this red flag no later than November 2005 for IV Capital and no later than July 2008 for UCR. Supplemental Statement at 2.

With respect to subparagraph (h), the only relevant evidence appears to be Bandimere's testimony that he did not understand Parrish's trading to have been done through a brokerage firm and he did not have the ability to verify with any brokerage firm the trading that Parrish purported to engage in. Tr. 1114-15. Aside from Pickering's testimony that she learned in 2007 that Bandimere was not receiving evidence of trades or third-party documentation from Parrish, there does not appear to be any evidence in the record regarding whether Bandimere disclosed to the investors that he knew neither UCR nor IV Capital had any third-party service providers such as brokerage firms or accountants that he could verify. Tr. 402-03. The Division does not point to any specific evidence of this in their post-hearing briefs. Therefore, the Division has not proven their claim with respect to subparagraph (h).

Paragraph 35(i) of the OIP alleges that Bandimere knew and failed to disclose to investors that:

> (i) Dalton and Parrish refused to provide Bandimere with any documents confirming trading, their traders, or any other aspects of the investments.

OIP at 9. The Division alleges that Bandimere knew of this red flag no later than November 2005 for IV Capital and no later than July 2008 for UCR. Supplemental Statement at 2.

With respect to subparagraph (i), the Division has proven that allegation as to Parrish only. Bandimere asked Parrish for every kind of documentation he could get and Parrish promised to get him certain documents; however, Bandimere could only point to a web site that Parrish had put together and a series of trading records representing a span of eleven days in February 2009 that Parrish had given to him. Tr. 897-98; Ex. 217. Bandimere's testimony is not entirely clear on this point, but it does not appear that the eleven days of trading records were reflective of the trading of LLC investors' funds, but rather was representative of "how much he supposedly earned and – in a particular group of trades." Tr. 901. Indeed, it is entirely possible that the eleven days of records had nothing to do with IV Capital. Tr. 902-03 ("[Parrish] represented that he'd borrow from the Nevis Bank in multiples in order to create various kinds of trades"). Moreover, as the trading records were for a period of time in February 2009, it appears that Bandimere had been selling investments in IV Capital for at least a year before he received any sort of trading confirmation. Therefore, Bandimere knew that Parrish and IV Capital refused to provide him with any documents confirming their trading, their traders, or any other aspects of the investments. When questioned by the Division during the hearing, Radke, Koch, and Moravec all testified that Bandimere did not disclose to them that Parrish had refused to provide him with account or trading records. Tr. 166-67 (Moravec), 592-93 (Koch), 680-81 (Radke). Syke's testimony that he asked Parrish directly for financial statements and trading records and Parrish refused to provide them, allegedly because IV Capital was a small, closed hedge fund that did not want to be regulated, is corroborative of this allegation. Tr. 775.

Reasonable investors would consider the fact that the principal of the entity they had invested with had refused to provide documents confirming trading, its traders, or any other aspects of the investments, to be material and an important consideration in deciding whether or not to invest. Without trading records, investors are not able to evaluate whether their money was invested in accordance with their understanding of the investments.

With respect to UCR and Dalton, there is insufficient evidence in the record to support the allegation that they refused to provide Bandimere with any documents confirming trading, trader identities, or any other aspects of the investments. Bandimere testified that Dalton never provided financial statements or accounting statements, but there is no evidence showing that Bandimere affirmatively asked for this material and was refused. Tr. 903-04. Similarly, there is not any evidence that Bandimere specifically asked for documents confirming trading or their trades and was refused. Although Koch testified that when Bandimere explained the UCR investments to him, Bandimere described them as having a "mysterious or secret broker" and a "mysterious or secret diamond dealer," that inference alone is insufficient to establish that Dalton refused to provide Bandimere with any documents confirming trades, traders, or other aspects of the investment, and therefore this allegation is denied. Tr. 585.

Therefore, I find that Bandimere knew and failed to disclose that Parrish refused to provide Bandimere with any documents confirming trading, IV Capital's traders, or any other aspects of the investments at least as to investors Moravec, Radke, and Koch. Tr. 166-67, 592-93, 680-81.

5. Dalton's Previous History

Paragraphs 35(n) and (o) of the OIP allege that "Bandimere knew that Dalton had no experience with managing a large, successful investment program; and in fact, Dalton had been involved in multiple failed investment schemes," and "Bandimere knew that Dalton had serious financial problems as a result of his unsuccessful investments. OIP at 9. They also allege that Bandimere had loaned Dalton money to participate in a multilevel marketing program after Dalton lost his money in a different multilevel marketing program that had gone bankrupt. Id. Bandimere also allegedly rented Dalton an inexpensive apartment in a complex Bandimere owned, a living situation inconsistent with the high level of income Dalton claimed to be earning from his UCR investments. Id. The Division alleges that Bandimere knew of these red flags no later than January 2005. Supplemental Statement at 2.

The evidence reflects that Bandimere knew all of this information and he failed to disclose it to investors. Bandimere knew of Dalton's involvement in a debenture program in which "$2 or $3 million" of investor funds were lost. Tr. 875. At the hearing, Bandimere testified that Dalton never made it clear whether he had raised the funds or referred people to the investment; however, Bandimere acknowledged that in his 2012 investigative testimony he stated that Dalton was part of a debenture investment and Dalton had represented to him that he had raised approximately $2 or $3 million that he felt he had the responsibility to repay, and "[s]o he had been working on various supposed projects to try to recover that situation, and he presented to [Bandimere] different kinds of opportunities that he was looking at that he hoped would be an answer." Tr. 1245-46. Bandimere also saw Dalton at a meeting or two about an investment project in the Philippines in which Bandimere ultimately lost $50,000. Tr. 875-76, 1183. Bandimere testified he was under the impression that Dalton knew some of the people who had an interest in the project, but Dalton did not sell or participate in the sale of those investments to Bandimere. Tr. 876-77, 1183.

Bandimere testified that he knew Dalton was involved in two multilevel marketing businesses, one of which Bandimere assumed went bankrupt, and the other of which Bandimere assumed had dismissed Dalton. Tr. 874-75, 1178-82. Bandimere did not believe Dalton to be the owner of the business that went bankrupt. Tr. 1180. Following Dalton's involvement in the second business, Bandimere paid an initiation fee of approximately $500 or $600 to another multilevel marketing business on Dalton's behalf because Dalton told him he did not have the funds to pay the fee. Tr. 1244. Bandimere testified that from approximately 2004 through 2006, Dalton and his wife lived in a two-bedroom apartment that he owned and they paid approximately $800 in rent. Tr. 878. Later, Dalton moved into a home in Golden, Colorado, which was a few thousand square feet in size, according to Bandimere. Tr. 879-80. Bandimere's claim that he had known Dalton for over thirty years as an "honest businessman with potentially valuable connections in the business world" does not outweigh his knowledge of the serious red

flags, in particular Dalton's involvement with the debenture program, set forth above. Bandimere Br. at 27.

Bandimere did not disclose any of this information to investors. Moravec, Loebe, and Davis each testified that Bandimere did not disclose that a principal of UCR had previous failed financial dealings Tr. 166-67, 297-98, 507-08. Loebe and Davis both testified that they would have wanted to know that fact. Tr. 298, 508. Dalton's involvement in previous failed financial dealings, and in particular a situation where $2 to $3 million of investor funds was lost, clearly constitutes material information that a reasonable investor would want to know before investing. See Erik W. Chan, 55 S.E.C. 715, 723-25, 731 (2002) (failure to disclose incorporator's prior bankruptcy in private placement offering materials found to be a material omission under anti-fraud provisions of securities laws). Failed financial dealings and investments raise questions as to the competence, skill, and judgment of the person involved in the investment and the fact that there were failings would certainly alter the "total mix" of information available to the investor. See TSC Indus., 426 U.S. at 449.

Koch testified that when he was planning to invest in UCR, he asked Bandimere who was involved in at least the Diamond Program, and Bandimere responded that the person possessed significant contacts and was of such stature that Bandimere had promised the person anonymity. Tr. 598, 663. In fact, Dalton was a mutual acquaintance of both Koch and Bandimere, and Bandimere knew that Koch knew Dalton at the time he made the investments. Tr. 590-91, 598. Koch would not have invested in UCR or the Diamond Program if he knew that Dalton was involved because, to his knowledge, Dalton had never been successful financially or as an employee. Tr. 591. Koch testified that he did not see Dalton as "a person who was doing well." Tr. 591.

Similarly, Radke testified that at the time Bandimere was explaining investments to him, Bandimere did not disclose that Dalton was involved, despite the fact that Bandimere knew that Radke knew Dalton. Tr. 677. When asked whether Dalton was someone Radke would have wanted to invest with, Radke responded: "not necessarily." Tr. 676. Radke explained that he knew Dalton from the board of directors of Abbas Ministries and he knew Dalton was struggling financially. Tr. 668-69, 676-77. Radke knew that Dalton was living in an apartment building owned by Bandimere at one point; however, the following year, Radke attended a board of directors meeting at Dalton's home, which was a beautiful, million-dollar home. Tr. 668-69, 676-77.

Therefore, I find that Bandimere knew and failed to disclose the red flags alleged in Paragraphs 35(n) and (o) of the OIP at least as to investors Moravec, Loebe, and Davis.[47]

[47] If the OIP had instead alleged that Bandimere misrepresented or failed to disclose the identity of the principal involved with UCR, the Division would have proven that allegation as to Koch and Radke. Although Bandimere's conduct with respect to Koch and Radke does not form the basis of a violation, it is nonetheless probative of Bandimere's scienter for the reasons previously explained. Additionally, because I do not find any violations associated with Koch and Radke, Bandimere's citation to Jensen v. Kimble, 1 F.3d 1073 (10th Cir. 1993), is beside the point.

6. Bandimere's Calculation of Purported Returns and Receipt of Insufficient Funds

Paragraph 35(k) of the OIP alleges that "[e]ach month, Bandimere had to calculate how much the LLCs were owed based upon the purported returns and then he had to direct Parrish and Dalton to wire those amounts, rather than being provided this information by Parrish and Dalton." OIP at 9. The Division alleges that Bandimere knew of this red flag no later than May 2007 for IV Capital and no later than August 2008 for UCR. Supplemental Statement at 2. The evidence reflects that this allegation is true as to Parrish. According to Bandimere, Parrish would wire investor returns to him for a particular month and give him the number of trade dates during the month. Tr. 950-53. Bandimere then calculated investors' returns based on the number of trade dates. Tr. 952-53. Bandimere testified he would let Parrish know what he thought the return should be. Tr. 890-91. Although Bandimere testified he would tell Dalton on a regular basis what he thought the investment total in the UCR investment programs should be, there is insufficient evidence that Bandimere actually calculated investors' returns and provided that information to Dalton, and therefore this allegation is unproven as to Dalton. Tr. 955-65.

Bandimere's calculation of returns was not disclosed to investors. Bandimere testified that he did not believe he ever told the investors that he calculated their profit payments and then sent that information to Parrish and he did not think any investor had asked about it. Tr. 953-54. Loebe testified that it was not his understanding that Bandimere calculated the returns for IV Capital each month and told it how much to pay. Tr. 297. Bandimere's calculation of the returns on investments, rather than Parrish, is material because it suggests that Parrish did not keep track of the returns on his own. That information would be important to an investor in deciding whether or not to invest, because it raises the possibility that the returns investors received from IV Capital may not have actually been earned by that entity, because Bandimere did not use any actual trading records, just the number of alleged trade dates, to calculate the returns.

Therefore, I find that Bandimere knew and failed to disclose that each month he calculated the amount the LLCs were owed based on the purported returns and then directed Parrish to wire those amounts at least as to investor Loebe. Tr. 297. The Division has otherwise failed to prove the allegation in Paragraph 35(k) of the OIP.

Paragraphs 35(l) and (m) of the OIP respectively allege that "[e]ven after receiving notice of the monthly amounts owed, Parrish and Dalton often wired insufficient funds to the LLCs" and "Parrish and Dalton regularly violated their agreements to compensate Bandimere, and Bandimere was paid significantly less than he was promised by Parrish and Dalton." OIP at 9. The Division alleges that Bandimere knew of these red flags no later than June 2007 for IV Capital and no later than September 2008 for UCR. Supplemental Statement at 3.

Bandimere testified that there were months when the funds he received from Parrish may not have balanced out with the numbers, and Parrish may have sent him larger payments in later months to make up for any previous miscalculations. Tr. 890-93. Bandimere explained that sometimes there was "confusion" between the LLCs; funds that were owed to one LLC may

have been paid to a different LLC and he would have to reallocate the funds. Tr. 892; Ex. 93 at 33. Bandimere also stated, speaking in terms of thirty-day blocks of time, that there were times when IV Capital or UCR did not send enough money to pay both investor returns and management fees; however, there was always enough to pay the investors. Tr. 905-07. Barbara Bandimere also stated that at times Parrish shorted Bandimere. Tr. 1028.

During cross-examination, the Division pointed out various instances in the summary of earnings and fees that Bandimere prepared (which was admitted as Exhibit 93), where it appeared that Bandimere had received very small fees or had not received any fees at all for a particular month. Tr. 888-97, 905-09. Later on direct examination, Bandimere testified that IV Capital (as of spring 2007) and UCR sent one wire or one check with investor returns and fees to the appropriate LLC checking account, and that he did not always withdraw all of the cash, either as investment returns or fees, which he was entitled to withdraw from the LLCs at a particular time. Tr. 1128-29. Bandimere claimed that Exhibit 93 was "strictly to show in realtime what money actually, in that specific time period, would have been written on my behalf and it – it doesn't reflect anything more than just that." Tr. 1131. Bandimere claimed that Exhibit 93 did not show what was received from IV Capital or UCR. Tr. 1131-32.

The strongest evidence presented in support of these allegations appears to have occurred in late 2009 and early 2010, when the IV Capital and UCR Ponzi schemes were beginning to unravel. Bandimere was unable to explain the meaning of an entry for "balance of management earnings not paid in 2010" included on an Account QuickReport for Victoria as of January 1, 2011. Tr. 896; Ex. 93 at 49. That entry was associated with a check for $14,000 that was paid to Bandimere on October 28, 2010, which he agreed was several months after all of the investments had collapsed. Tr. 896-97; Ex. 93 at 49. Barbara Bandimere testified that she helped prepare Exhibit 93, attempted to calculate the amount of shortage Bandimere received, and made an entry for $123,137 at the end of 2009 to adjust for the shortages. Tr. 1038-40. When questioned, she agreed that Bandimere was shorted $123,137 in 2009; however, she thereafter qualified her answer by stating: "Now, it wasn't necessarily a shortage. There [were] times when the checks [were] just not written to him personally. So it was an accumulation, over the year, of both earnings and management fees . . . . In order to reconcile for the income that would come in 2009, we made an adjusting entry." Tr. 1039-40. Barbara Bandimere testified the shortages were then paid in 2010. Tr. 1038-39. Bandimere also concedes that UCR paid him $24,157 less than was due in September 2009. Bandimere Br. at 8. That underpayment was only partially made up by payments in November 2009 and February 2010, and there was still $8,597 unpaid when UCR stopped making payments after March 2010. Id. at 8-9.

There is no evidence that Bandimere ever disclosed to investors that even after receiving notice of the monthly amounts owed, Parrish often wired insufficient funds to the LLCs. Bandimere did not tell investors in IV Capital that in some months he was able to pay their returns, but not pay himself management fees, because of lack of funds. Tr. 909. Investors Moravec, Loebe, Blackford, Koch, and Radke all testified that Bandimere never told them that Parrish or IV Capital had shorted him funds needed to pay returns or cover his commissions. Tr. 165-66, 297, 466, 593, 681.

The evidence clearly establishes that, at least on a month-to-month basis, Bandimere knew that Parrish often wired insufficient funds to the LLCs even after receiving notice of the monthly amounts owed, and therefore Paragraph 35(l) of the OIP is proven as to Parrish with respect to investor Loebe. Tr. 297. Receiving insufficient funds on a month-to-month basis or frequent errors in calculation are material to investors because it suggests that IV Capital at least performed incorrect or careless accounting work, and, more significantly, that the investment returns they were receiving were not necessarily sustainable, given its inability to keep up with monthly return and fee payments.

With respect to Dalton, however, because the Division failed to prove that each month Bandimere calculated how much the LLCs were owed and directed Dalton to wire that amount – the allegation at Paragraph 35(k) of the OIP – the Division has failed to prove that Dalton received notice from Bandimere of the monthly amounts owed, which is a necessary predicate to proving Dalton often wired insufficient funds to the LLC as alleged in Paragraph 35(l) of the OIP.

Although it is a close question, there is not enough evidence in the record to support the conclusion that Parrish and Dalton regularly violated their agreements to compensate Bandimere, or that Bandimere was paid significantly less than promised by Parrish and Dalton. Barbara Bandimere testified that Bandimere was shorted $123,137 in 2009; however, she testified that the shortages were then paid in 2010. Tr. 1038-40. Bandimere concedes that there was $8,597 in fees that remained unpaid when UCR stopped making payments after March 2010, but Bandimere received $734,996.33 in management fees in total, and therefore I cannot conclude that Bandimere was paid significantly less than he was promised. Ex. 200; Bandimere Br. at 8.

Therefore, I find that Bandimere knew and failed to disclose that even after receiving notice of the monthly amounts owed, Parrish often wired insufficient funds to the LLCs with respect to investor Loebe. The Division has otherwise failed to prove the allegations in Paragraphs 35(l) and (m) of the OIP.

E. Defenses

1. Equal Protection

Bandimere asserts as an affirmative defense that the present proceeding denied him equal protection. Bandimere Answer at 11; Bandimere Br. at 43-48. I have grave doubts whether such a claim is justiciable in this forum. I have found no cases where the Commission or a Commission administrative law judge has found merit in an equal protection claim, nor has Bandimere identified any. In Commission administrative proceedings, there is apparently no provision for counterclaims or for dismissal of an OIP on procedural grounds. See Alchemy Ventures, Inc., Administrative Proceedings Rulings Release No. 702 (Apr. 27, 2012), 103 SEC Docket 53938, 53940 (OIP cannot be dismissed for failure to serve respondent); Gupta v. SEC, 796 F. Supp. 2d 503, 513 (S.D.N.Y. 2011) (counterclaims are not permitted in Commission administrative proceedings). It would seem that any relief on equal protection grounds must be predicated on a finding that the present proceeding should never have been instituted, that is, that the Commission's institution of this proceeding in itself violated Bandimere's equal protection

rights. Such a finding presupposes that I have the authority to second-guess the Commission's decision to issue the OIP. See C.E. Carlson, Inc., 48 S.E.C. 564, 568 (1986) ("Our decision to institute these proceedings was wholly unaffected by any possible bias on the part of our staff."), aff'd, 859 F.2d 1429 (10th Cir. 1988). I doubt that my authority extends that far.

Furthermore, a common basis for an alleged equal protection violation is selective prosecution, which was the subject of the criminal case U.S. v. Armstrong, 517 U.S. 456 (1996). In that case, the Supreme Court held that a "selective-prosecution claim is not a defense on the merits to the criminal charge itself, but an independent assertion that the prosecutor has brought the charge for reasons forbidden by the Constitution." Id. at 463. Additionally, the Supreme Court observed that it had "never determined whether dismissal of the indictment, or some other sanction, is the proper remedy if a court determines that a defendant has been the victim of [selective] prosecution." 517 U.S. at 461 n.2. If a selective prosecution claim is not a proper defense, then I may not have the authority to dismiss this proceeding for selective prosecution even if I found such a claim to be meritorious.

Accordingly, I reject Bandimere's equal protection claim on the basis that I lack authority to afford him any relief on it.

Alternatively, assuming that I do have such authority, I find that Bandimere's claim fails on the merits. Bandimere does not identify any particular legal standard that he claims has been violated, nor does he cite a single equal protection case that he claims is analogous to the present one. Bandimere Br. at 43-48; Bandimere Reply Br. at 30-32. The essence of his equal protection claim is that "the Commission initiated 198 civil injunctive actions against alleged Ponzi schemers, but only 13 Ponzi scheme cases . . . as administrative proceedings," and "[n]othing in the record suggests a benign explanation for this special treatment." Bandimere Br. at 46. Such an allegation does not even state an equal protection claim, because a decision to bring a claim administratively rather than civilly is "committed to agency discretion," and is presumptively unreviewable. Robert Radano, Advisers Act Release No. 2750 (June 30, 2008), 93 SEC Docket 7495, 7509-10 n.74 (internal quotation marks omitted); Eagletech Communications, Inc., Exchange Act Release No. 54095 (July 5, 2006), 88 SEC Docket 1225, 1231.

Inasmuch as Bandimere's claim is that he was selectively prosecuted, he must prove that he was singled out for an administrative enforcement action, while others similarly situated were not, and that the present action was motivated by invidious discrimination or the desire to prevent the exercise of a constitutional right. Radano, 93 SEC Docket at 7509-10 n.74; Eagletech, 88 SEC Docket at 1231. He has not proven any of these elements, and some of them he has not even articulated. The OIP does not charge Bandimere with operating a Ponzi scheme, or even knowing that the securities he sold were interests in Ponzi schemes. To be sure, the OIP asserts that "[t]hese numerous red flags and negative facts cited above should have alerted Bandimere to the fact that IV Capital and UCR were likely frauds . . . [and] Bandimere recklessly ignored these obvious signs of fraud." OIP at 2, 9. But there is no actual allegation that Bandimere knew that IV Capital and UCR were Ponzi schemes, or that he intended to defraud anyone by operating or promoting Ponzi schemes, or that he otherwise had scienter with respect to IV Capital and UCR. Not every allegation in the OIP needs to be proven. The

gravamen of the antifraud allegations of the OIP is that Bandimere "knew about numerous material red flags and negative facts associated with IV Capital and UCR that he never disclosed to investors," which constituted a "highly misleading sales approach." OIP at 9. He was not singled out for administrative enforcement while other Ponzi schemers were prosecuted civilly, because he was not a Ponzi schemer, and his evidence that the Commission almost always "sues Ponzi schemers in the federal courts" is thus completely beside the point. Bandimere Br. at 43; Ex. 228. In fact, the persons with whom he is most similarly situated, Young and Smith, were also the subject of administrative proceedings. Bandimere has also failed to identify a protected class of which he is a member, and has failed to identify, much less prove, an improper motive by the Commission in instituting the present proceedings. Indeed, Bandimere's equal protection claim is so utterly meritless that I likely would have dismissed it before hearing had the Division so moved.

2. Due Process

Bandimere asserts as an affirmative defense that the Commission's administrative proceeding does not provide him with due process. Answer at 11. As with his equal protection claim, I have grave doubts whether his due process claim is justiciable in this forum. Assuming that it is justiciable, it is plainly meritless.

Although this claim is somewhat alluded to in Bandimere's post-hearing brief, he offers no substantive discussion and makes no attempt to link his alleged deprivation of due process to any evidence in the case. See Bandimere Br. at 43 (" . . . Bandimere has been denied both equal protection of the laws, and due process, in contravention of the United States Constitution."). In any event, the Commission has ruled on several occasions that "[a]dministrative due process is satisfied where the party against whom the proceeding is brought understands the issues and is afforded a full opportunity to meet the charges during the course of the proceeding." Jonathan Feins, 54 S.E.C. 366, 378 (1999); see also William C. Piontek, 57 S.E.C. 79, 90 (2003); KPMG Peat Marwick LLP, 55 S.E.C. 1 (2001), pet. denied, 289 F.3d 109 (D.C. Cir. 2002). While it is true that a district court may have provided Bandimere with different procedural protections than were available in this administrative proceeding, Bandimere did avail himself of one powerful procedural protection that would likely not have been available to him in district court: Commission Rule 230(b)(2), which prohibits the Division from withholding documents that contain material exculpatory evidence contrary to Brady v. Maryland, 373 U.S. 83 (1963). 17 C.F.R. § 201.230(b)(2). During the course of this proceeding, I conducted an in camera review of otherwise privileged material to determine whether that material contained any material exculpatory evidence. I concluded it did not. Tr. 1102-09.

3. Statute of Limitations

In his Answer, Bandimere asserted that to the extent the OIP seeks a penalty for conduct occurring more than five years prior to the initiation of this proceeding, such claims are barred by the statute of limitations. Bandimere Answer at 10. Neither Bandimere nor the Division presented any argument regarding the statute of limitations in their briefs. In making this argument, I assume that Bandimere is referring to the five-year statute of limitations for fraud claims, codified at 28 U.S.C. § 2462. Under Gabelli v. SEC, 133 S. Ct. 1216, 1220-21 (2013),

the statute of limitations begins running at the time of accrual, that is, when the cause of action becomes enforceable. Each offer, sale, or purchase of an IV Capital or UCR security was a separate and distinct violation, and any resulting cause of action could not have accrued until the offer, sale, or purchase occurred.

The statute of limitations set forth in Section 2462 does not apply to this entire proceeding, but only to particular sanctions, specifically, civil penalties and any associational bar. See Gregory O. Trautman, Exchange Act Release No. 61167 (Dec. 15, 2009), 97 SEC Docket 23492, 23525-26. The OIP alleges that Bandimere's violations took place between 2006 and 2010. The OIP was filed on December 6, 2012, and therefore, any offers, sales, or purchases of IV Capital or UCR securities any time after December 6, 2007, may be considered in this proceeding as to those issues affected by the statute of limitations. None of the material misrepresentation or omissions found to be violations was based on any offers, sales, or purchases of securities prior to December 6, 2007.

4. Judicial Estoppel

Finally, Bandimere contends that the Division's fraud claims are barred by judicial estoppel. Answer at 10.[48] Judicial estoppel precludes a party from prevailing in one phase of a case on an argument and then relying on a contradictory argument to prevail in another phase. New Hampshire v. Maine, 532 U.S. 742, 749-50 (2001). There is no rigid test for judicial estoppel. Id. Instead, three factors inform the decision whether to apply judicial estoppel:

> First, a party's subsequent position must be clearly inconsistent with the former position. Next, a court should inquire whether the suspect party succeeded in persuading a court to accept that party's former position, so that judicial acceptance of an inconsistent position in a later proceeding would create the perception that either the first or second court was misled. Finally, the court should inquire whether the party seeking to assert an inconsistent position would gain an unfair advantage in the litigation if not estopped.

Queen v. TA Operating, LLC, No. 11-8090, 2013 U.S. App. LEXIS 17296, at *10 (10th Cir. Aug. 20, 2013) (citations omitted).

Bandimere argues that in its enforcement action against Parrish, the Commission alleged that Bandimere was a victim of Parrish's lulling activities and was a victim duped by Parrish. Bandimere Br. at 28. Bandimere asserts that the judge in the enforcement action referred to the lulling activities in his order granting judgment in that matter. Id. He claims that the

[48] In his Answer, Bandimere asserts as an affirmative defense that "[a]ll claims arising from transactions involving IV Capital or Lawrence Michael Parrish are barred by the doctrine of equitable estoppel," but offers no substantive discussion of this defense in his post-hearing briefs and therefore this defense is rejected.

Commission has now reversed its position by claiming that Bandimere knew or must have known that the IV Capital scheme was fraudulent. Id.

Even if the Commission had asserted that Bandimere was one of the investors to whom Parrish's lulling activities were directed, Bandimere's claim for judicial estoppel still would not lie because the Commission's position in this case is not clearly inconsistent with its position in the Parrish action. As previously explained, Paragraphs I.E.34 and 35 of the OIP charge Bandimere with making specific material misstatements and omissions while offering and selling IV Capital and UCR securities. OIP at 8-9. These alleged misstatements and omissions relate to Bandimere's knowledge of matters he could have known, and, as found above in, did know in certain instances, irrespective of whether he knew or should have known the IV Capital scheme was a fraud. There was insufficient evidence presented as to whether Bandimere knew or should have known IV Capital or UCR was a Ponzi scheme and any such claim would be denied.

IV. Sanctions

The Division requests that Bandimere be barred from association with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or NRSRO; be ordered to cease and desist from committing or causing violations of Sections 5 and 17(a) of the Securities Act, Sections 10(b) and 15(a) of the Exchange Act and Exchange Act Rule 10b-5; pay disgorgement of $734,996.33 and prejudgment interest; and pay three third-tier civil penalties totaling $390,000. Div. Br. at 22-27. The Division also requests that I order the creation of a Fair Fund for the benefit of defrauded investors pursuant to Section 308 of the Sarbanes-Oxley Act of 2002 and Rule 1100 to distribute any disgorgement, prejudgment interest, and civil penalty payments. Div. Br. at 27.

A. Willful Violations and the Public Interest

The Division seeks sanctions pursuant to Section 8A of the Securities Act and Sections 15(b), 21B, and 21C of the Exchange Act. OIP at 12-13; Div. Br. at 22-27. To impose sanctions under Exchange Act Sections 15(b) and 21B, Bandimere's violations must have been willful. As discussed in Sections III.B and C, supra, a finding of willfulness does not require intent to violate the law, but merely intent to do the act which constitutes a violation of the law. Wonsover, 205 F.3d at 414; Arthur Lipper Corp. v. SEC, 547 F.2d 171, 180 (2d Cir. 1976).

Bandimere acted willfully because he intentionally offered and sold unregistered IV Capital and UCR securities while acting as an unregistered broker. Bandimere also acted intentionally when he explained the IV Capital and UCR investments to investors, answered their questions, handled paperwork for the investments, accepted investors' funds, and sent those funds to IV Capital or UCR bank accounts. I have already rejected Bandimere's arguments that he did not act willfully because he did not understand his actions were wrongful and because he relied on the advice of Syke. Furthermore, the credibility of Bandimere's asserted reliance on Syke is questionable in light of Bandimere's decision to sell UCR securities to Pickering after receiving an email and telephone call from Syke warning him not to do so.

When considering whether an administrative sanction serves the public interest, the Commission considers the factors identified in Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979), aff'd on other grounds, 450 U.S. 91 (1981): the egregiousness of the respondent's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the respondent's assurances against future violations, the respondent's recognition of the wrongful nature of his or her conduct, and the likelihood that the respondent's occupation will present opportunities for future violations (Steadman factors). Gary M. Kornman, Exchange Act Release No. 59403 (Feb. 13, 2009), 95 SEC Docket 14246, 14255, pet. denied, 592 F.3d 173 (D.C. Cir. 2010). The Commission also considers the extent to which the sanction will have a deterrent effect. See Schield Mgmt. Co., Exchange Act Release No. 53201 (Jan. 31, 2006), 87 SEC Docket 848, 862 & n.46 (citations omitted). The Commission's inquiry into the appropriate sanction to protect the public interest is a flexible one and no one factor is dispositive. See Gary M. Kornman, 95 SEC Docket at 14255.

In this case, the public interest factors weigh in favor of a heavy sanction. Bandimere violated the federal securities laws by selling unregistered securities while acting as an unregistered broker over the course of approximately three years. In addition to his registration violations, the Division alleged that Bandimere made fifteen material misstatements and omissions to numerous investors, and I found that the Division had proven their allegations with respect to eight allegations and in part as to three allegations. The LLCs collected over $9 million in investor funds and many of the investors who testified at the hearing stated that they lost most, if not all, of their investments when the two Ponzi schemes collapsed. Tr. 176-78 (Moravec), 247 (Pickering), 300 (Loebe), 467-68 (Blackford), 510 (Davis), 600-01 (Koch), 699 (Radke). While Bandimere personally invested $1,145,419 in IV Capital and UCR investment programs, he received $477,878.93 in earnings or profits on those investments and $734,996.33 in transaction-based compensation. Tr. 969-71, 1032-33; Ex. 200. Thus, Bandimere's conduct was egregious and recurrent.

Bandimere's high degree of scienter in violating the antifraud provisions supports the imposition of a heavy sanction. As previously explained, Bandimere's conduct toward, at a minimum, Loebe, Koch, Radke, and Pickering amply demonstrates that he intended to defraud all the investors as to which violations of the antifraud provisions were found. Bandimere lied to Loebe when he told him that any funds in excess of investor returns would be given to charity. He deliberately concealed Dalton's identity from Koch and Radke to get their investments. He lied to Koch when he told him that he could not disclose the identity of the UCR trader because he had high stature and Bandimere promised him anonymity. He engaged in wildly deceptive behavior when he sold Pickering UCR securities, despite knowing that Pickering was in a desperate financial situation, knowing the serious risk presented by UCR, and having been warned by Syke that no further investments in UCR should be made.

Bandimere has also failed to recognize the wrongful nature of his conduct. Bandimere acknowledges that his "brief foray into the securities world ended disastrously, causing him to lose both money and personal relationships;" however, he has not taken responsibility for selling unregistered securities, acting as an unregistered broker, or making material misrepresentations and omissions to investors. See Bandimere Br. at 41. Bandimere attempts to shift blame to Syke and argues that he was deceived by Parrish and Dalton. While he may have been deceived by

Parrish and Dalton, Bandimere's failure to recognize that he committed wrongdoing irrespective of the existence of Parrish's and Dalton's Ponzi schemes weighs in favor of a substantial sanction. Bandimere has made assurances against future violations to the extent that he testified that, in light of his experiences with IV Capital and UCR, he would not be inclined to get other people involved in investments in the future. Tr. 1242. Bandimere's conduct with respect to Pickering's 2010 investment in UCR, however, raises serious questions in my mind about the credibility of those assurances. At the time Bandimere sold Pickering the UCR securities, he knew that there were serious problems with the UCR Diamond Program and investors were not receiving returns and Syke had told him not to sell the UCR securities to Pickering. Bandimere's decision to proceed with the sale despite knowing those facts is baffling and leads to the conclusion that Bandimere has disregarded known risks, which increases the potential for future violations.

Finally, although it is not entirely clear from the record, it does not appear that Bandimere is currently employed and therefore the likelihood that his occupation would present opportunities for future violations is small. Tr. 1241-42. Therefore, this factor weighs against imposing a severe sanction. In addition, Bandimere has taken some steps to help out investors or pay them back, which is admirable. Bandimere testified that after IV Capital stopped making payments he agreed to make a number of payments towards Hunter's home mortgage after Hunter called him and expressed grave concern over the possibility of losing his home. Tr. 1234-35. Although seriously misguided, Bandimere also testified sometime after the UCR investments had stopped making payments in approximately July 2010, he gave Dalton additional funds to invest with a different group of individuals in the hopes of earning money to repay investors in UCR. Tr. 1222-25.

In sum, while Bandimere's current occupation weighs against imposition of a severe sanction, and he has represented that he is not inclined to get other people involved with investments in the future, all of the other Steadman factors weigh in favor of a sanction. Bandimere's recurrent and egregious conduct, his high degree of scienter, and failure to recognize the wrongfulness of his conduct significantly outweigh his assurances against future violations and the fact that his current occupation will not present opportunities for future violations. Under the circumstances, a severe sanction is warranted.

B. Cease-and-Desist Order

Section 8A of the Securities Act and Section 21C of the Exchange Act provide that the Commission may order a person found to be violating or to have violated a provision of the Securities or Exchange Act to cease and desist from such violations. 15 U.S.C. §§ 77h-1, 78u-3(a). While some likelihood of future violation must be present, the required showing is "significantly less than that required for an injunction." KPMG, 55 S.E.C. at 14. Indeed, absent evidence to the contrary, a single past violation ordinarily suffices to establish a risk of future violations. Id. at 1191. In evaluating the propriety of a cease-and-desist order, the Commission considers the Steadman factors, as well as the recency of the violation, the resulting harm to investors in the marketplace, and the effect of other sanctions. Id. at 1192.

In the context of analyzing whether a cease-and-desist order is appropriate, Bandimere argues that the Steadman factors have not been accepted by the United States Court of Appeals for the District of Columbia Circuit as authoritative and are in some respects contrary to the law of the Circuit. Bandimere Br. at 40. Although Bandimere seems to stop short of arguing that the Steadman factors should not be used in determining whether an administrative sanction serves the public interest, to that extent that is in fact his contention, I reject it. The Commission considers the public interest factors in determining whether an administrative sanction serves the public interest and therefore I will also consider those factors. See KPMG Peat Marwick LLP, 54 S.E.C. 1135, 1192 (2001), pet. denied, 289 F.3d 109 (D.C. Cir. 2002).

As noted, the Steadman factors weigh in favor of a heavy sanction. Bandimere's unlawful conduct continued until relatively recently. As recently as April 2011, Bandimere was continuing to conceal Dalton's identity and involvement in UCR from Koch. Many of the investors testified that they lost most, if not all, of their investments when the two Ponzi schemes collapsed. Bandimere's high degree of scienter and the egregiousness of his conduct outweigh the fact that he is not currently employed in the securities industry. While Bandimere may now be 69 years old, his age is not a barrier to a cease-and-desist order. Some of the violations occurred within the past three years, which means that Bandimere was approximately 64 years old at the time the violations were committed and therefore age is not a good predictor of the risk of future violations in this case. Although the other sanctions are serious, my review of the public interest criteria show that it is necessary and appropriate to order Bandimere to cease and desist from violations of Sections 5(a), 5(c), and 17(a) of the Securities Act and Sections 10(b) and 15(a) of the Exchange Act and Exchange Act Rule 10b-5.[49]

C. Associational Bar

Section 15(b)(6) of the Exchange Act authorizes the Commission to bar a person from association with any broker, dealer, investment adviser, municipal securities dealer, municipal

[49] Bandimere also offers SEC v. First City Financial Corp., 890 F.2d 1215, 1229 (D.C. Cir. 1989) for the proposition that federal courts have held that a lack of remorse, as shown by the decision to defend the case and the arguments raised by counsel, was not a legitimate consideration in determining the appropriate relief. Bandimere Br. at 40. He also cites that case to support his position that whether the violations were flagrant or deliberate or merely technical in nature should be considered in determining relief and the Steadman factors do not encompass those important factors. First City Fin. Corp., 890 F.2d at 1228. Bandimere is entitled to present a zealous defense of the charges against him but the fact remains that he repeatedly made material misrepresentations and omissions to investors with scienter and does not recognize that his conduct was wrongful. See Michael C. Pattison, CPA, Initial Decision Release No. 434 (Sept. 29, 2011), 102 SEC Docket 46456, 46466 (citing Seghers v. SEC, 548 F.3d 129, 136-37 (D.C. Cir. 2008) ("due process is not violated by giving a respondent a choice between recognizing the wrongfulness of his conduct, or refusing to do so and thereby risking more severe remedial action")). Considering whether Bandimere's violation was flagrant or deliberate does not result in a more favorable outcome for Bandimere because his violations were not merely technical in nature – he acted with scienter in violating the antifraud provisions of the Securities and Exchange Acts.

advisor, transfer agent, and NRSRO, if the person has willfully violated any provision of the Exchange Act and it is in the public interest. 15 U.S.C. § 78o(b)(6)(A). Bandimere clearly has no business associating with the securities industry in any capacity, and, as discussed, the Steadman factors weigh in favor of a severe sanction. The Commission has held that the requested collateral bar is not impermissibly retroactive and it will be imposed as well. John W. Lawton, Advisers Act Release No. 3513 (Dec. 13, 2012), 105 SEC Docket 61722, 61737. The fact that Bandimere was not associated with a registered broker-dealer during his wrongdoing does not insulate him from a bar. See Vladislav Steven Zubkis, Exchange Act Release No. 52876 (Dec. 2, 2005), 86 SEC Docket 2618, 2627, recon. denied, Exchange Act Release No. 53651 (Apr. 13, 2006), 87 SEC Docket 2584 (noting that Exchange Act Section 15(b) applies to persons acting as a broker or dealer).

D. Disgorgement and Prejudgment Interest

Disgorgement pursuant to Exchange Act Section 21C is an equitable remedy that requires a violator to give up wrongfully-obtained profits causally related to the proven wrongdoing. See First City Fin. Corp., 890 F.2d at 1230-32. It returns the violator to where he or she would have been absent the misconduct and deters others from violating the securities laws. Id.; see also Zacharias v. SEC, 569 F.3d 458, 471 (D.C. Cir. 2009). "Disgorgement need only be a reasonable approximation of the profits causally connected to the violation." Guy P. Riordan, Securities Act Release No. 9085 (Dec. 11, 2009), 97 SEC Docket 23445, 23480 (quoting First City Fin. Corp., Ltd., 890 F.2d at 1231), pet. denied, 627 F.3d 1230 (D.C. Cir. 2010). Once the Division shows that its disgorgement figure reasonably approximates the amount of unjust enrichment, the burden of going forward shifts to the respondent to demonstrate that the Division's disgorgement figure is not a reasonable approximation. Id. The consequence of uncertainty as to the disgorgement amount falls on the wrongdoer whose illegal conduct created the uncertainty. See First City Fin. Corp., 890 F.2d at 1232.

The Division argues that Bandimere should be ordered to disgorge the $734,996.33 he received as management fees during the relevant period plus prejudgment interest. Div. Br. at 24; Ex. 93. On the other hand, Bandimere argues that, for purposes of disgorgement, gains are equivalent to profits and therefore disgorgement is inappropriate in this case because he never realized a gain; instead, he lost money in the Ponzi schemes and his net financial outcome from his activities with IV Capital and UCR was a loss of over $76,000. Bandimere Br. at 41-42. Bandimere also argues that the management fees he received are too attenuated to be subject to disgorgement. Id. Bandimere did not retain investors' funds but transmitted them to IV Capital and UCR at the direction of the investors and the compensation he received was for performing administrative services and therefore not causally connected to the alleged violations. Id. Finally, Bandimere argues that the Division did not differentiate between the compensation Bandimere received for performing legitimate administrative activities, which he contends took up approximately 90% of his time, and compensation Bandimere received related to raising money, which he contends took up 10% of his time. Id. at 43.

I reject Bandimere's arguments that he did not receive a gain that is subject to disgorgement and he is entitled to offset any management fees he received with the losses he sustained in the Ponzi schemes. Bandimere has again conflated the misconduct alleged in the OIP

– selling unregistered securities, operating as an unregistered broker, and making material misrepresentations and omissions to investors – with Parrish's and Dalton's misconduct. Even if IV Capital and UCR had been legitimate businesses, I still would have found Bandimere liable for operating as an unregistered broker and selling unregistered securities to investors. None of the misrepresentations or omissions I determined Bandimere made to investors was dependent upon Bandimere's knowledge that Parrish and Dalton were operating Ponzi schemes. Bandimere earned over $700,000 in management fees while operating as an unregistered broker selling unregistered securities. Bandimere made misrepresentations and omission to investors while selling those unregistered securities. Therefore, Bandimere's arguments are rejected.

Bandimere's assertion that 90% of the management fees he earned are not subject to disgorgement because he spent 90% of his time engaged in legitimate administrative and management activities is also rejected. All of the administrative and managerial activities he engaged in were in furtherance of his illegal sale of unregistered securities while acting as an unregistered broker. Bandimere made material misrepresentations and omissions to investors while selling those unregistered securities. Therefore, none of Bandimere's administrative and managerial tasks were in furtherance of legitimate activities and the management fees are causally connected to Bandimere's violations.

Bandimere's citation to SEC v. McCaskey, No. 98-cv-6153, 2002 WL 850001 (S.D.N.Y. Mar. 26, 2002), does not convince me that I should find otherwise. In that case, the defendant was previously held liable for market manipulation by engaging in wash sales and matched orders over the course of approximately a six-month period; the question remaining for the magistrate judge was whether the defendant should be ordered to disgorge ill-gotten gains. McCaskey, 2002 WL 850001 at *1. The Commission requested disgorgement equal to the net proceeds from the defendant's sale of stock on the sixteen days that the defendant sold more stock than he purchased and reaped profits from his scheme. Id. at *6. The magistrate judge held that disgorgement was not appropriate, reasoning that the Division's approach ignored the other wash trades the defendant executed during the alleged six-month period of manipulation, which he lost money on. Id. at *8, 10. The other losses had to be considered when calculating disgorgement because the wash trades were central to his scheme to sell stock at a profit. Id. at *8. The Commission had argued throughout the case that the wash trades "were part and parcel of the same scheme." Id. Unlike in McCaskey, the investment losses Bandimere sustained are not "part and parcel" of the conduct for which has been held liable. Bandimere violated the securities laws irrespective of the fact that Dalton and Parrish were running Ponzi schemes and irrespective of whether Bandimere knew about the schemes and lost money.

Bandimere further argues that $734,996.33 is not a reasonable approximation of unjust enrichment because that amount includes fees earned on investments: 1) made by Bandimere on behalf of himself, his son, and George Stepan; 2) made by Pickering, which Bandimere argues he had nothing to do with; and 3) made through Exito Capital, for which Bandimere argues there is insufficient evidence that he, as opposed to Syke, acted as a broker. Bandimere Reply Br. at 27. I find, however, that the amount of management fees Bandimere earned on the investments is a reasonable approximation of Bandimere's unjust enrichment. Tr. 889; Ex. 200. Brokering involves a number of discrete activities, some of which are tangential to the actual sales, including providing advice as to the merit of an investment and handling customer funds.

Martino, 255 F. Supp. 2d at 283; see also SEC v. Gagnon, No. 10–cv–11891, 2012 WL 994892, at *11 (E.D. Mich. Mar. 22, 2012) (person who solicited sales, advised investors about the merits of the investment, and received transaction-based compensation, but did not actually sell any securities, found to be broker); Alchemy Ventures, Inc., Initial Decision Release No. 473 (Nov. 28, 2012), 105 SEC Docket 61204, 61206-07 (respondent who received transaction-based compensation in return for allowing customers to execute trades using respondent's trading accounts, but did not actually sell any securities, found to be broker).

Bandimere acted as a broker for essentially every investor in IV Capital and UCR, because, at a minimum, he distributed their monthly returns and received compensation based on the size of each investment. He also advised investors on the merits of investments, even when he was not the salesman, as with Pickering. Tr. 210-12, 270-71. The Division's disgorgement approximation may not be perfect, but it is undeniably reasonable because it correctly presupposes that Bandimere violated the law as to essentially all investors, and in any event Bandimere has failed to offer a specific alternative amount. See David Henry Disraeli, Securities Act Release No. 8880 (Dec. 21, 2007), 92 SEC Docket 852, 879, aff'd, 334 F. App'x 334 (D.C. Cir. 2009). Although it is possible that Bandimere may have been able to show that the disgorgement amount should be reduced by the fees paid in connection with the three categories set forth above, he has not identified or specified those amounts or provided any proof verifying those assertions and therefore his argument is rejected. See id.

I do, however, believe it is appropriate to reduce the disgorgement amount by the amount Bandimere returned to investors. See SEC v. United Energy Partners, Inc., 88 F. App'x 744, 747 (5th Cir. 2004); David Henry Disraeli, 92 SEC Docket at 879 & n. 106. Therefore, the following amounts will be subtracted from the disgorgement total because they constitute repayments Bandimere provided to investors: $50,000 repaid on the guarantee to Global Connection; $1,000 repaid on the guarantee to Nomad Club; $2,815 repaid on the guarantee to Abbas Ministries; $40,425 in investor advances; and $2,700 paid as an adjustment to Radke. Tr. 972-75; Ex. 200. Exhibit 200 also included an "Investor repayment" category referencing $17,750 in alleged repayments; however, Bandimere testified that he did not recall what that amount referred to and therefore there is insufficient evidence in the record with respect to these repayments and they will not be subtracted from the disgorgement total.

Therefore, $96,940 is subtracted from the $734,996.33 in management fees Bandimere earned and Bandimere is ordered to disgorge $638,056.33 plus prejudgment interest. Prejudgment interest shall be calculated from February 1, 2010, the first day of the month following the last alleged investment date for the investors who testified at the hearing and as to whom Bandimere made misrepresentations or omissions through the last day of the month preceding the month in which payment of disgorgement is made. See 17 C.F.R. § 201.600(a); Supplemental Statement at 5.

E. Civil Penalty

The Division requests imposition of a civil penalty against Bandimere pursuant to Section 8A(g) of the Securities Act and Section 21B of the Exchange Act.[50] Under Section 21B(a)(1) of the Exchange Act, the Commission may impose a civil penalty if it is in the public interest and if respondent has willfully violated any provision of the Securities or Exchange Acts. 15 U.S.C. § 78u-2(a)(1). This section authorizes the imposition of civil penalties where the proceeding was instituted pursuant to Exchange Act Section 15(b)(6). Id.

Bandimere argues that prior to the Dodd-Frank amendments, the Commission had no authority to impose penalties against a non-regulated person and because Bandimere was neither a registered broker (or associated person) nor a registered investment adviser, civil penalties are unavailable. Bandimere Br. at 40. However, as explained in the context of the associational bar, the Commission has applied Section 15(b)(6) to bar an unregistered associated person of an unregistered broker-dealer from association with a broker or dealer. The fact that Bandimere was not associated with a registered broker-dealer during his misconduct does not insulate him from the application of Section 15(b)(6). See Zubkis, 86 SEC Docket at 2627. Even prior to Dodd-Frank, Exchange Act Section 21B(a)(1) authorized the imposition of monetary penalties in any proceeding instituted pursuant to Exchange Act Section 15(b)(6), and therefore civil penalties may be imposed on Bandimere pursuant to Exchange Act Section 21B(a)(1).

A three-tier system establishes the maximum civil money penalty that may be imposed for each violation found. 15 U.S.C. § 78u-2(b). Where a respondent's misconduct involved fraud, deceit, or deliberate or reckless disregard of a regulatory requirement and resulted in "substantial losses or created a significant risk of substantial losses to other persons or resulted in substantial pecuniary gain," the Commission may impose a third-tier penalty of up to $130,000 for each act or omission prior to March 3, 2009, and $150,000 for each act or omission thereafter. Id.; 17 C.F.R. § 201.1004, .1005 (adjusting the statutory amounts for inflation). In determining whether a penalty is in the public interest, the Commission may consider: 1) whether the violation involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; 2) the resulting harm to other persons; 3) any unjust enrichment and prior restitution; 4) the respondent's prior regulatory record; 5) the need to deter the respondent and other persons; and 6) such other matters as justice may require. 15 U.S.C. § 78u-2(c). "Not all factors may be relevant in a given case, and the factors need not all carry equal weight." See Robert G. Weeks, Initial Decision Release No. 199 (Feb. 4, 2002), 76 SEC Docket 2609, 2671.

[50] The civil penalty provisions codified at Section 8A(g) of the Securities Act and Section 21B(a)(2) of the Exchange Act were added to the Securities and Exchange Acts by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank). Bandimere argues that the Division has offered no evidence that he committed any violations after the Dodd-Frank amendments became effective and therefore Securities Act Section 8A(g) and Exchange Act Section 21B(a)(2) do not apply to him. Bandimere Br. at 39. Because the Commission has the authority to impose civil penalties on Bandimere pursuant to Exchange Act Section 21B(a)(1), which was in existence prior to Dodd-Frank, I have not relied upon Securities Act Section 8A(g) or Exchange Act Section 21B(a)(2) in imposing civil penalties.

The Commission must determine how many violations occurred to impose civil penalties under the statute. See Rapoport v. SEC, 682 F.3d 98, 108 (D.C. Cir. 2012). The Division is seeking three third-tier penalties against Bandimere for a total of $390,000, but it does not specify the unit of violation upon which its request is based. Division Br. at 26. The most serious violations alleged in this proceeding are the violations of the antifraud provisions. The Division alleged that Bandimere made fifteen misrepresentations or omissions to investors, and I concluded that the Division had proven their case as to eight of those allegations and three of those allegations in part. Because assessing third-tier penalties for three violations would prejudice Bandimere far less than assessing penalties for at least eight violations, I find that there were three violations for purposes of the civil penalty calculation. Because Bandimere acted with scienter, generated substantial pecuniary gain for himself, and investors actually suffered substantial losses, the violation falls into the third tier. Bandimere shall, therefore, be assessed three third-tier penalties. Although his violative conduct continued after March 3, 2009, a civil penalty calculated using pre-2009 rates prejudices Bandimere less than one calculated using 2009 rates, and therefore pre-2009 rates shall apply.

Although the tier determines the maximum penalty, "each case has its own particular facts and circumstances which determine the appropriate penalty to be imposed" within the tier. SEC v. Murray, No. OS-CV-4643 (MKB), 2013 WL 839840, at *3 (E.D.N.Y. Mar. 6, 2013) (quotation omitted); see also SEC v. Kern, 425 F.3d 143, 153 (2d Cir. 2005). In addition to the statutory factors cited above, courts consider:

> (1) the egregiousness of the violations at issue, (2) defendants' scienter, (3) the repeated nature of the violations, (4) defendants' failure to admit to their wrongdoing; (5) whether defendants' conduct created substantial losses or the risk of substantial losses to other persons; (6) defendants' lack of cooperation and honesty with authorities, if any; and (7) whether the penalty that would otherwise be appropriate should be reduced due to defendants' demonstrated current and future financial condition.

SEC v. Lybrand, 281 F. Supp. 2d 726, 730 (S.D.N.Y. 2003), aff'd on other grounds, 425 F.3d 143 (2d Cir. 2005) (Lybrand factors).

As noted, the Steadman factors weigh in favor of a heavy sanction. Bandimere's conduct was egregious, he acted with a high degree of scienter, and his violations were recurrent. Bandimere has failed to admit the wrongfulness of his conduct and his conduct resulted in substantial losses for the investors. Many of the investors testified that they lost most, if not all, of their investments when the two Ponzi schemes collapsed. Tr. 176-78 (Moravec), 247 (Pickering), 300 (Loebe), 467-68 (Blackford), 538 (Davis), 594-95 (Koch), 699 (Radke). Moravec testified that investing with Bandimere had a devastating impact on his life and he currently lives in a 600-square foot single-room cabin that did not have plumbing until last fall. Tr. 176-78. Pickering testified that her "immune system basically collapsed" and she was forced to sell her home as a result of her losses. Tr. 247-49. The need to deter Bandimere and others is considerable. On the other hand, Bandimere has no prior regulatory record and apparently cooperated with the authorities, at least with respect to his and Syke's decision to report Parrish

to the authorities. Tr. 1228-29. Although Bandimere testified that if some sort of monetary sanction were imposed on him, even in the amount of $500,000, it would change his economic position and both he and his wife would probably seek employment again, he has not otherwise offered any evidence of his financial condition. Tr. 1241-42.

The mitigating factors are insufficient to warrant a civil penalty less than the maximum authorized. I place particular weight on the Steadman factors, the substantial losses suffered by the investors, and Bandimere's unjust enrichment. Under the totality of the circumstances, I find that three third-tier penalties of $130,000 each, or $390,000 total, to be warranted.

V. Fair Fund

Pursuant to Rule 1100 of the Commission's Rules of Practice, 17 C.F.R. § 201.1100, I will require that the disgorgement, prejudgment interest, and civil money penalties be used to create a Fair Fund for the benefit of investors in IV Capital and UCR securities. The Fair Fund will be the same Fair Fund that was created in the Initial Decision as to Respondent John O. Young. See David F. Bandimere, Initial Decision Release No. 506 (Oct. 4, 2013).

VI. Record Certification

Pursuant to Rule 351(b) of the Commission's Rules of Practice, 17 C.F.R. § 201.351(b), I certify that the record includes the items set forth in the Record Index issued by the Secretary of the Commission on September 24, 2013.

VII. Order

IT IS ORDERED that, pursuant to Section 8A of the Securities Act of 1933 and Section 21C of the Securities Exchange Act of 1934, Respondent David F. Bandimere shall CEASE AND DESIST from committing or causing violations or future violations of Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 and Sections 10(b) and 15(a) of the Securities Exchange Act of 1934 and Rule 10b-5 of the Securities Exchange Act of 1934.

IT IS FURTHER ORDERED that, pursuant to Section 15(b) of the Securities Exchange Act of 1934, Respondent David F. Bandimere is BARRED from association with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.

IT IS FURTHER ORDERED that, pursuant to Section 21C of the Securities Exchange Act of 1934, Respondent David F. Bandimere shall DISGORGE $638,056.33 plus prejudgment interest at the rate established under Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. § 6621(a)(2), compounded quarterly, pursuant to 17 C.F.R. § 201.600(b). Pursuant to 17 C.F.R. § 201.600(a), prejudgment interest is due from February 1, 2010, through the last day of the month preceding which payment is made.

IT IS FURTHER ORDERED that, pursuant to Section 21B of the Securities Exchange Act of 1934, Respondent David F. Bandimere shall PAY A CIVIL MONEY PENALTY in the amount of $390,000.

IT IS FURTHER ORDERED that, pursuant to Rule 1100 of the Commission's Rules of Practice, the disgorgement, prejudgment interest, and civil money penalties shall be used to create a FAIR FUND for the benefit of harmed investors, to be set forth in the Division of Enforcement's plan of distribution. See 17 C.F.R. §§ 201.1100, .1101. The Fair Fund will be the same Fair Fund that was created in the Initial Decision as to Respondent John O. Young. See David F. Bandimere, Initial Decision Release No. 506 (Oct. 4, 2013).

Payment of penalties and disgorgement plus prejudgment interest shall be made on the first day following the day this Initial Decision becomes final. Payment shall be made by certified check, United States postal money order, bank cashier's check, wire transfer, or bank money order, payable to the Securities and Exchange Commission. The payment, and a cover letter identifying the Respondent(s) and Administrative Proceeding No. 3-15124, shall be delivered to: Enterprises Services Center, Accounts Receivable Branch, HQ Bldg., Room 181, AMZ-341, 6500 South MacArthur Bld., Oklahoma City, Oklahoma 73169. A copy of the cover letter and instrument of payment shall be sent to the Commission's Division of Enforcement, directed to the attention of counsel of record.

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

_____

Cameron Elliot
Administrative Law Judge