INITIAL DECISION RELEASE NO. 751
ADMINISTRATIVE PROCEEDING
FILE NO. 3-15613

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

In the Matter of JULIEANN PALMER MARTIN	INITIAL DECISON March 9, 2015

APPEARANCES: Daniel J. Wadley, Paul N. Feindt, Alison J. Okinaka, and Thomas M. Melton, for the Division of Enforcement, Securities and Exchange Commission

Rebecca H. Skordas, Skordas Caston & Hyde, LLC, for Respondent

BEFORE: Brenda P. Murray, Chief Administrative Law Judge

The Securities and Exchange Commission instituted this proceeding with an Order Instituting Administrative and Cease-and-Desist Proceedings (OIP) on November 13, 2013. During a two-day hearing in September 2014, the Division of Enforcement presented testimony from nine witnesses, including Respondent Julieann Palmer Martin (Martin) who refused to testify about the allegations on Fifth Amendment grounds. Two witnesses testified by deposition testimony, and approximately 180 exhibits were admitted into evidence. The last brief was filed on November 10, 2014.[1]

Issues

The issues are whether Martin: 1) made material misrepresentations and omissions in connection with the offer, purchase, and sale of securities by National Note of Utah, LC, which ran a Ponzi scheme, in violation of the antifraud provisions of the federal securities laws; and 2) acted as an unregistered broker and sold unregistered securities, in violation of the registration provisions.

Findings of Fact

The factual findings and legal conclusions 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, 101-04 (1981). I have considered and rejected all arguments and proposed findings and conclusions that are inconsistent with this Initial Decision.

[1] I cite the hearing transcript as "Tr. __" and exhibits as "Ex. __." I cite the parties' stipulation of facts as "Stip. ¶ __." I use similar designations when citing post-hearing filings. As to Bates-stamped pages of exhibits, I cite those pages without reference to the prefix.

Respondent

Martin graduated from Ricks College in Idaho. Tr. 300. She was employed at National Note from 1995 until 2012, where she functioned as a bookkeeper, kept track of incoming investor funds and outgoing investor distributions, made investor deposits, and regularly interacted with investors. Stip. ¶¶ 10-11, 15; Tr. 44, 46-47, 209-10. Martin has neither held a securities license nor been registered with the Commission, and has never been associated with a registered broker or dealer. Stip. ¶ 14. As discussed below, Martin played a key role in perpetuating National Note's Ponzi scheme.

National Note of Utah

National Note is a limited liability company with its principal place of business in Utah. Stip. ¶ 1. Martin's cousin, Wayne Palmer (Palmer), owned and controlled the company, which had about twelve employees. Stip. ¶ 1; Ex. 172 at 12; Tr. 43. National Note began as a lending business, but transitioned to property management and real estate development. Tr. 39-41, 70.

National Note represented to investors that its business consisted of loaning money to entities for the purchase, lease, management, and sale of real property interests. Stip. ¶ 2. National Note generally promised investors a return of 12% a year, paid from the interest earned on the company's loans to entities engaged in the real estate business. Stip. ¶ 3. Investors received a promissory note from the company in exchange for their investment of funds; these notes had a term of two to five years. Stip. ¶ 4. Investors chose whether to receive their interest payments monthly, quarterly, or at maturity; they also could receive interest payments in cash or have them added to the principal. Stip. ¶ 5.

Investors were told that National Note was able to pay the 12% return because it earned 18% on the money it loaned to others, and that National Note's expertise in buying discounted notes and in real estate lending enabled it to earn 18%. Ex. 96 at 112; Tr. 39-40. National Note's promissory notes represented: "This Note is secured by the Maker's interest in certain Notes and Trust Deeds and/or Security Agreements secured by real estate." *See, e.g.*, Exs. 150, 156.

From 1995 to 2012, National Note sold over $100 million in promissory notes to approximately 600 investors, over 400 of whom were unaccredited.[2] Stip. ¶ 8; Tr. 85. Its promissory notes were securities. Stip. ¶ 9. National Note, however, never registered an offering of securities with the Commission. Stip. ¶ 6.

[2] In relevant part, an accredited investor is a natural person: (1) whose individual net worth, or joint net worth with a spouse, exceeds $1 million; or (2) who had an individual income exceeding $200,000 in each of the two most recent calendar years or joint income with a spouse exceeding $300,000 for each of those years and a reasonable expectation of the same income level in the current year. 17 C.F.R. § 230.501(a)(5)-(6) (2010). Post-July 2010, the definition of net worth no longer includes the value of the person's primary residence. *See* 17 C.F.R. § 230.501(a)(5) (current version); Net Worth Standard for Accredited Investors, 76 Fed. Reg. 81793-02 (Dec. 29, 2011).

By the fall of 2011, National Note largely ceased making payments to investors and had trouble paying utilities and its employees. Stip. ¶¶ 22-23; Tr. 231-33. Around when it began to fail, National Note entered the business of minting coins or bars to sell to investors who wanted precious metals either to hedge against inflation or for "apocalyptic reasons." Tr. 42-43.

In June 2012, the Commission sued National Note and Palmer in federal district court. Stip. ¶ 27. The court appointed Wayne Klein as receiver for National Note and affiliated entities.[3] Stip. ¶ 28. That proceeding remains pending. *See SEC v. Nat'l Note of Utah, LC*, No. 2:12-cv-591 (D. Utah); 17 C.F.R. § 201.323 (official notice).

Solicitation

National Note marketed its business by various means; it started by word-of-mouth but also used marketing materials and a commission-sharing program with referral agents. Tr. 86-87; Ex. 172 at 41.

Chief among National Note's marketing materials was its brochure, which promised investors 12% annual returns "with complete safety of principal" and guaranteed monthly interest payments. Ex. 118 at 1, 4, 9;[4] Tr. 86. The brochure represented that the returns came from profits earned by National Note's real estate investments. Ex. 118 at 7, 10-12. The brochure included performance charts and analyses comparing National Note's unchanged 12% returns since the early 1990s to other investments, including AAA bonds, which the brochure said had low returns and may even result in losses. *Id.* at 3-5.

Palmer would speak at seminars to explain National Note's program. Tr. 86. For example, "educational" real estate seminars were arranged by a local realtor association in Reno, Nevada. Tr. 427-28. These seminars were open to the public, and there were no qualifications for someone to attend. Tr. 430. About 100 people attended the seminar at which Palmer spoke. Tr. 436. Palmer discussed, and attendees were given, the National Note brochure. Tr. 429, 432. Palmer also spoke at Robert Kiyosaki's "Rich Dad, Poor Dad" seminars across the country. Tr. 636-39. Although attendees would eventually pay to attend Kiyosaki seminars, they were open to the general public. Tr. 638-39. There is no evidence that Palmer made any effort to limit solicitation of new investors at seminars, with the exception of a $4 million offering for a minerals deal. Tr. 87.

In 2007, National Note filed a Form D with the Commission pursuant to Regulation D, Rule 506 under the Securities Act of 1933, in which the company claimed exemption from registration for a $50 million debt offering. Stip. ¶ 6; Ex. 175. In its Form D, National Note represented that it did not sell or intend to sell to non-accredited investors. Ex. 175 at 3. In connection with this

[3] Upon being appointed as receiver, Klein took control of National Note and its affiliated entities, their assets, and their business records. Ex. 96 at 14. Since June 2012, he has been investigating their business operations and analyzed their financial activities. *Id.* Klein earned his law degree from George Washington University, has extensive experience in financial matters in both the public and private sector, and has done a substantial amount of receivership work. Tr. 14-16. Klein's report and testimony demonstrate that he has acquired a keen understanding about National Note's activities and employee roles.

[4] Citations to Ex. 118 are to manually counted pages, starting with the cover page as page 1.

offering, National Note promissory notes were offered and sold through a private placement memorandum, which included unaudited financial statements. Stip. ¶ 7. National Note accepted investments for this offering in which the investors did not confirm whether they were accredited and, in fact, over 200 investors through this offering alone were unaccredited. Tr. 88-89.

Lastly, Palmer generally offered a 2% commission or referral fee as an incentive to referral agents who brought in investors. Tr. 86-87, 141, 534-35; Exs. 13, 112. Richard Hicks, a resident of Tyler, Texas, was a referral agent who testified at the hearing, and he was paid the 2% referral fee. Tr. 224, 515; Ex. 172 at 48-49. Hicks ran Elder Advisory Services to provide purported estate and financial planning for families that were placing relatives in long-term care facilities, and he placed twelve investors with National Note.[5] Tr. 519-20.

Respondent's Role at National Note

Martin had a central role at National Note in interacting with investors, and she oversaw investor funds. Martin used PeachTree, National Note's check writing and deposit software system, to track incoming and outgoing investor funds. Stip. ¶ 16. The PeachTree software was installed on Martin's computer, and Martin was responsible for cutting checks to investors for interest and principal payments at Palmer's direction. Tr. 95-96; Stip. ¶ 17; Ex. 172 at 30-31. Martin handled all payments, including the company's utility bills. Ex. 172 at 15.

Martin also used NoteSmith, a software system to track interest payments and to generate payment histories sent to investors. Stip. ¶ 19. Martin was responsible for making entries in, and had exclusive control over, NoteSmith.[6] Stip. ¶ 18; Tr. 96. Martin made NoteSmith entries for investor deposits and amounts owed to investors, as well as for loans to and from National Note, particularly for real estate transactions. Tr. 117-18; Ex. 172 at 27. Martin received some of National Note's income from loans related to real estate investments, and she notified Palmer if any were late and sent out demand letters as needed. Stip. ¶ 21. Martin knew from NoteSmith the extent to which payments came from affiliated entities and whether they were book entries or cash. Tr. 192.

From about 2005 onward, Martin handled investor calls to National Note; she became the primary contact at National Note for new investors, and in Palmer's absence, Martin was "a face for all the investors." Tr. 119-20, 209, 219. The office receptionist, Lindsey Madsen, would refer calls from prospective investors to Martin.[7] Tr. 220; *see, e.g.*, Ex. 104. This was often the case as

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[5] Hicks is a high school graduate, with no securities licenses; he has been self-employed most of his adult career. Tr. 516, 519. He settled an administrative proceeding brought by the Commission, and he pled guilty in Texas state court to fraud in the sale of securities because of his activities through National Note. Tr. 516-17; *see Richard Hicks*, Securities Act of 1933 Release No. 9511, 2014 SEC LEXIS 150 (Jan. 14, 2014); 17 C.F.R. § 201.323 (official notice).

[6] It appears that, unlike NoteSmith, Martin did not have exclusive control over PeachTree. Tr. 121-22. However, if PeachTree's records were inconsistent with NoteSmith during year-end reconciliations, PeachTree would be adjusted to match NoteSmith's records. Tr. 122.

[7] Madsen worked at National Note from 2003 until it was shut down in 2012. Tr. 197.

Palmer was frequently out of the office at seminars. Tr. 209. For some investors, Martin was their only contact at National Note. *See, e.g.*, Tr. 497; Ex. 192 at 18.

Martin would respond to emails and phone calls from prospective investors, tell them about National Note's program, and send information such as the National Note brochure, sales materials, or a private placement memorandum (PPM). Tr. 119-21, Tr. 478-79. At times, Martin directed Madsen to send a PPM to a client. Tr. 213-14.

Specifically, Martin sent promissory notes to investors; answered substantive questions about National Note and investing with the company; described the terms of the notes including the 12% return, how interest was compounded, and how investor money would be assigned; and made recommendations to them on how to structure their investments with National Note. *See, e.g.*, Exs. 19, 56, 60, 104-06, 188-89; Tr. 496-500, 623, 636, 652-53; Ex. 192 at 20-21. When an investor check arrived via the mail, it would go straight to Martin, who would prepare the promissory note. Tr. 210. Martin provided Madsen with investor information on a monthly basis to update the company's internal system to track investors. Tr. 201-02.

In addition, Martin interfaced as a contact person for National Note's referral agents. She explained the 2% commission policy to referral agents, and mailed and tracked commission checks sent to them. Exs. 13, 14, 110, 112. Martin gave Hicks multiple copies of the client subscription agreement. Tr. 529. She advised Hicks that he did not need to be a licensed securities representative to market or refer client investments, even though he was mailing subscription agreements to clients and having clients sign such agreements with National Note. Ex. 114; Tr. 556-57. She also failed to inform Hicks of the accreditation requirement and thus Hicks did not determine whether investors were accredited. Tr. 537-38, 571.

Martin herself was a referral agent and received referral fees as well as large lump-sum payments for work related to specific investors.[8] Tr. 138-41, 152; Ex. 172 at 63-64, 70-71; Exs. 185-87. These commissions were paid in addition to her salary.[9] Tr. 127; Ex. 187 at 7. For a period, Martin received payments from National Note through her wholly owned entity Julieann Enterprises, Inc., a Utah corporation. Stip. ¶ 13. Martin signed National Note checks payable to herself or Julieann Enterprises, sometimes with the memo line reflecting "commissions" or "contract labor." Ex. 91; Tr. 158-61.

The Ponzi Scheme

National Note operated as a Ponzi scheme from 1995 to 2012, when about $44 million in Ponzi payments to investors were made from new investor funds. Tr. 58, 69, 110-11, 117; *see* Ex. 96 at 132-33. National Note primarily used two bank accounts for investor funds: 1) a so-called "investor trust account" at JP Morgan Chase (account number ending in 3907), into which investor funds were deposited, and from which substantial monies were frequently wired to 2) an "investor

[8] In my conclusions of law, I reject Martin's denial that such payments constituted commissions; and in determining sanctions, I discuss the amount of commissions to be disgorged.

[9] From October 11, 2004 to May 16, 2012, Martin was paid $1,076,146.87 in total as a National Note employee, including commissions, salary, and purported reimbursements. Tr. 130; Ex. 187 at 1, 7.

distribution account" at Wells Fargo (account number ending in 5954), from which payments were made to investors. Tr. 47-48; *see* Exs. 94, 95, 179, 180.

Martin was a signatory on, and had online access to, both bank accounts. Stip. ¶ 20. Moreover, she had control over these accounts and was intimately aware of the balances. Tr. 47-48. At times, she updated Palmer about the amount needed in the accounts to cover obligations and distributions to investors. Tr. 118, 120.

A major aspect of this Ponzi scheme was Palmer's use of affiliated entities. In addition to National Note, Palmer owned or controlled forty-one affiliated entities, including seventeen entities that engaged in substantial financial transactions with National Note and owed notes payable to National Note, and nine entities whose financial condition might have impacted National Note's financial condition.[10] Ex. 96, App. A at 1;[11] Tr. 77-79, 82. These affiliated entities did not have their own employees or operations, but were run out of National Note's offices and their books and records were maintained by National Note, albeit each had its own purported accounting system. Tr. 175-76.

National Note operated essentially as the clearing house for these entities. Tr. 71. National Note would create the entities to tackle a certain enterprise, investor funds would be loaned to them for "property development" or other business projects, and the revenue that purportedly came back to National Note would be paid out to investors. Tr. 70-71, 77.

This operation, however, was a sham. When an affiliated entity would first start operations, National Note would give it a cash loan from investor funds, so the entity could buy properties; in return, the entity would sign a note in favor of National Note with an 18% interest rate. Tr. 98, 102-03. However, many subsequent transactions between National Note and these entities were only paper transactions recorded by entries in National Note's accounting system, without an actual transfer of funds. Tr. 98. In the majority of cases, money simply flowed from the investor trust account to the investor distribution account, accompanied by book entries showing that the money purportedly went to an entity and came back as an interest payment. Tr. 98-99, 106-07. In connection with the book-entry interest payments, National Note frequently wrote checks to itself for the amount of interest that an entity "owed" to it; it wrote these checks from the investor trust account and deposited them into the investor distribution account, and then paid out the money to investors. Ex. 96 at 24-25; Tr. 104.

Martin admitted in her investigative testimony that she knew in early 2010 that although payments were "coded" as going to entities as interest payments, the funds actually went to the investor distribution account. Ex. 172 at 152-53.

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[10] Most of the transactions analyzed by Klein involved the seventeen entities with substantial transactions. Tr. 77.

[11] Appendix A to Ex. 96 begins at page 184 if counted manually, starting with the cover page as page 1.

National Note's Insolvency and Collapse

At no point after 1995 did National Note have sufficient net income or capital reserves to cover all the investor distributions made; distributions must have come from new investor funds. Tr. 67-68; Ex. 96 at 132-33. From 1995 to 2012, National Note and its twenty-six closest affiliated entities had, collectively, a negative aggregate net income and net equity, yet National Note made substantial distributions to investors each year.[12] Ex. 96 at 132 (graphic no. 113) & nn. 175-76. In fact, the primary assets held by National Note were "notes receivable," money owed to it by affiliated entities and others, which represented 93% of National Note's assets by 2012. Ex. 96 at 104. The percentage of notes due from affiliated entities dramatically increased after 2003; by 2006, over 80% were due from affiliated entities, increasing to 90% by 2012. Ex. 96 at 106 (graphic no. 91).

Martin knew in early 2010 that National Note was unable to return principal to an investor, whose note had matured. Exs. 139-41; Tr. 452-53. This problem became more acute by the fall of 2010, when, as Martin knew, National Note could not return the principal to another investor whose note had matured. Ex. 193 at 40-41. Further, from 2010 onward, National Note sent unsolicited, automatic renewal notes to certain investors so that they would reinvest their funds rather than National Note having to repay principal at maturity; at times, Martin sent the renewal notes. Exs. 181-83; Ex. 62, Ex. 147 at 4, Ex. 193 at 68-69; *see* Tr. 290.

National Note's financial condition worsened significantly by the summer of 2011. From July through September 2011, Martin regularly updated Palmer by email regarding funds needed in the investor trust account at Chase and investor distribution account at Wells Fargo to pay investor returns, company operating expenses, and payroll. Exs. 18, 20-22, 24-34, 36-40, 42-46, 48-50. Martin's emails show that National Note was unable to make payroll, unable to fully pay employee health and dental insurance, past due on a commercial auto policy, and overdrawn in its investor distribution account. Exs. 27, 29, 33, 35, 65. In a September 2011 email, Martin stated in the subject line: "Okay at both banks—please tell me you have a million coming today." Ex. 45.

National Note was late on investor interest payments as early as November 2010. Ex. 192 at 38; Ex. 157 at 2-3. By July 2011, late payments became apparent to others at National Note, including Madsen. Tr. 225-28; Exs. 15, 16. Martin's emails show that new investor funds were used to pay existing investors. For example, in July 2011, she discussed with Palmer whether they had enough money to cover checks that had been issued, stating that "even with Donna's money we are over extended" but "I do have a check from Dr. Concilio that I can put in first thing Monday morning." Ex. 21.

Investor checks were normally sent out on the first of the month, however, beginning in September 2011, none of the investor checks went out on time. Tr. 211-12, 231-32. Madsen then created a spreadsheet to track who received checks and who had not, which she sent to Martin and Palmer. Tr. 232, 251; Ex. 173 at 52; Ex. 107 (email attachment). Over time, many checks were "voided," meaning that the payment was never made to the investor. Tr. 250.

[12] When a company has negative equity, its liabilities are greater than its assets, indicating that it is insolvent. Tr. 35-36.

Madsen testified that it was very obvious by September 2011 that National Note was having trouble paying investors, its utilities, and payroll. Tr. 232-33. National Note had a small office, and everyone there knew that investors were not getting paid. Tr. 242-43. In fact, from September 2011 onward, Martin regularly received emails and voice messages from, and communicated with, investors about missed payments. Exs. 41, 55, 64, 67-68, 70-74, 76-77. Some investors were frantic, indicating, among other things, that they or their relatives depended on the income. *See, e.g.*, Exs. 41, 55, 64, 70. Others showed up at the office. Tr. 242. In January 2012, Martin told Palmer that an investor was considering bankruptcy and "barely making it," and had to borrow from a home equity line because he was afraid of losing his home. Ex. 77.

Palmer referred to investors who desperately needed monthly payments as "hot fires." Tr. 254. At the point that National Note could no longer pay investor returns, Martin would recommend to Palmer which investors should be paid first. Exs. 66, 107; Tr. 252-55. Madsen testified that as soon as money came in during this time period, "we would try to get as many hot fires, as they put it, covered." Tr. 255. As the receptionist, Madsen was well aware that money was coming in and immediately going out to prior investors, even though she did not have access to the company's bank accounts or accounting systems, as Martin did. Tr. 255-56.

Even after National Note developed obvious financial problems, Martin solicited new investors, requested information so National Note could obtain their money, and accepted new investor funds. For example, in September 2011, Martin arranged for an IRA rollover for a new client and arranged for a $60,000 wire from a client's retirement account. Exs. 47, 63. That same month, Martin solicited information from an investor, Patricia Fogg, to invest IRA money with National Note; in October 2011, Martin sent Fogg a promissory note for $86,000 and, by her own admission, never told the investor that National Note was late in investor payments. Exs. 53, 69, 172 at 114. In September 2011, Martin corresponded with Roxane Wilson about transferring funds, and agreed with her that investing with National Note was "probably the best thing" she could do for her kids and their future. Ex. 56. In December 2011, Martin prepared a $170,000 promissory note for an investor. Ex. 75. As detailed in the investor testimony below, Martin continued to solicit and accept new investments in late 2011 through 2012. Tr. 620-24, Exs. 167-68; Tr. 651-54; Exs. 129-30, Tr. 376. In March 2012, when the company was on the brink of collapse, a $100,000 investor deposit was made in the investor trust account. Exs. 85-86.

In late May 2012, Madsen sent Martin and Palmer an email that an investor had come to the office "in a complete panic," as he was "worried that everything is collapsing and that this is just a Ponzi scheme." Ex. 82. The next month, the district court appointed Klein as receiver, and he took possession of the premises, effectively closing down National Note's operations. Tr. 24-25, 49.

Investor Testimony

Rhea Stoddard worked as a medical assistant and in similar jobs for about twenty-five years, and retired in 2002. Tr. 362-63; *see* Ex. 129. She holds no professional licenses and her background reflects that she is not a sophisticated investor. Tr. 373-74; Ex. 129 at 1. Relatives encouraged Stoddard and her now deceased husband to invest with National Note. Tr. 362, 365-66. Her husband called National Note's offices and spoke with Martin several times in February 2012. Tr. 367, 369, 381; Ex. 129 at 1. Eventually, the Stoddards met with Martin and Palmer at National Note's office, and they led them to believe that National Note was doing very well and that the Stoddards could make money if they invested. Tr. 367. At the meetings, Palmer told the Stoddards

that their funds would be invested in real estate and would earn a 12% return. Tr. 369-70, 378. Specifically, Palmer represented that a condominium in Denver, Colorado, would secure their investment, but the Stoddards never received any deed or paperwork. Ex. 129 at 2; Tr. 371, 380.

Although Martin handled administrative work during the in-person meetings, she participated in all the meetings that the Stoddards had with Palmer, and supported what Palmer said. Ex. 129 at 2; Tr. 378, 381. Moreover, Stoddard's husband spoke with Martin before the couple invested, and Martin's explanations were fully consistent with what the Stoddards had heard from Palmer. Ex. 129 at 1.

Martin typed up the promissory note for the Stoddards to sign at National Note's office. Tr. 372. Thus, by mid-February 2012, the Stoddards invested $100,000 with National Note. Tr. 376; Ex. 130. However, they never received any interest payments or return of the principal. Ex. 129 at 2.

Neither Martin nor Palmer told the Stoddards that they needed to qualify financially to make the investment, and they did not inquire about the Stoddards' income or net worth. Ex. 129 at 2; Tr. 374. The Stoddards were not accredited investors. Ex. 129 at 2; Tr. 374-75; *see* 17 C.F.R. § 230.501(a)(5)-(6) (accreditation requirements for natural persons). Further, neither Martin nor Palmer ever discussed any risks associated with investing with National Note. Ex. 129 at 2; Tr. 371-72. Specifically, neither Martin nor Palmer told the Stoddards that National Note was in financial trouble, that the company was behind in investor payments, or that the Stoddards' money was going to be used to make payments to prior investors and to pay business expenses. Ex. 129 at 3; Ex. 172 at 128. Had Stoddard known these facts, she would not have invested with National Note. Ex. 129 at 3; Tr. 371, 373-74, 376-77.

Gerald Wallin is a self-described amateur investor. Tr. 425. He had a securities license in the early 1980s, which has since lapsed. Tr. 424-25. After serving in Vietnam, he earned a law degree and worked as a labor attorney and arbitrator. Tr. 422-23. Wallin's wife heard Palmer speak at a real estate seminar and picked up National Note's brochure. Tr. 427-30. Subsequently, Wallin attended a seminar where Palmer explained National Note's program. Tr. 431-34. He then spoke with either Palmer or Martin over the phone, calling the number on the brochure. Tr. 437. In 2005, Wallin invested $100,000 with National Note. Tr. 439; Ex. 133.

In 2007, Wallin and his wife invested an additional $293,000 after speaking with Martin. Tr. 443-47, 476-77; Exs. 136-37. Most of Wallin's conversations were with Martin, and Martin was his main contact in setting up the investments in 2007. Tr. 476-77, 479, 481.

In November 2009, Wallin notified Martin that he would be seeking return of the $100,000 principal from his first investment, due to mature in March 2010. Tr. 449-50; Ex. 139. At the time, Martin gave no indication that National Note could not return the principal. Tr. 450-51. However, in February 2010, Martin told Wallin that National Note was waiting for a client to wire $1 million so that National Note could repay him, but the bank had lost the money. Ex. 140; Tr. 452-53. In March 2010, Wallin questioned why he had to wait until new money came in for National Note to pay off his note, and Martin told him that the company was still waiting for the wire to clear. Ex. 93. It was only after several follow-up efforts and a series of installment payments that by the fall of 2010, Wallin received back the principal and interest due on his first investment. Tr. 470; Exs. 142-46. However, the Wallins received "[n]ot a penny" back from their 2007 investments. Tr. 471-

72. This loss impacted the Wallins financially and emotionally. Tr. 473. Wallin said that his $114,000 IRA contribution, as part of the 2007 investment, was the accumulation of savings since he was a teenager and now appears to be "gone." Tr. 473-74.

Prior to the Wallins making their investments, Martin never told them that their returns or principal would come from other investors, that their funds would be used to make payments to other investors or for the company's payroll, that National Note did business almost exclusively with related parties, or that the company was insolvent. Tr. 472-73. Were these facts known, the Wallins would not have invested with National Note. Tr. 473.

Bobby Fite is a novice investor with some background in understanding securities investments; he has no professional licenses. Tr. 485; Ex. 159 at 1. He worked at Goodyear Tire and Rubber Company for forty years; after being laid off, he sought to invest the settlement payment of accumulated pension funds. Ex. 159 at 1. A friend referred Fite to Hicks, who explained National Note's program and provided a copy of National Note's brochure. Tr. 488-89; Ex. 159 at 1-2.

During a meeting with Hicks in April 2010, Fite spoke directly with Martin over the phone. Tr. 492-93. Martin represented that National Note made money by investing in real estate and loans, the rate of return was 12%, and the company never failed to pay that return to investors. Tr. 493-94, 496-97; Ex. 159 at 2-3. Martin told Fite that the company had liabilities of $75 million and asscts of $95 million—the assets being real estate holdings and loans. Tr. 500; Ex. 159 at 2. As a result of this discussion, Martin convinced Fite that investing with National Note would be a good investment. Tr. 499-500. In May 2010, Fite invested $50,000 with National Note.[13] Tr. 501; Ex. 160. It was his understanding that the promissory note was collateralized by the company's properties and loans; if anything went wrong, National Note could foreclose on the properties and pay him back. Tr. 501-02.

Martin did not inform Fite that his returns would come from new investor funds, that his funds would be used to pay other investors or to cover company payroll, or that National Note did business almost exclusively with related entities. Tr. 503-04. Had he known such facts, he would not have invested. Tr. 504.

In October 2011, National Note stopped interest payments to Fite, and he never heard from Hicks or National Note again. Tr. 502; Ex. 159 at 4. His principal was never returned. Tr. 503. As a result of the loss of his investment, Fite could not retire at age 62 as planned and, at 63, works two jobs. Tr. 486, 505.

Darrel Gardner is a high school graduate, worked in airline customer service, and retired in 2008. Tr. 607-08. He has no professional licenses, and neither he nor his wife is a sophisticated investor. Tr. 608-10.

Gardner invested $25,840 of IRA money with National Note in 2005, based on coworker recommendations. Tr. 610-15; Ex. 164. He did not recall who he spoke with at National Note

[13] Fite was an accredited investor, pursuant to the definition in effect at the time. Ex. 159 at 3; Tr. 495; *see* 17 C.F.R. § 230.501(a)(5)-(6) (2010).

before investing. Tr. 615. However, he spoke with Martin after his IRA money was rolled over, and all his subsequent contacts were with Martin. Tr. 616, 621. In 2008, Gardner renewed this investment, and the promissory note reflects that his investment grew to $34,756 due to accumulated interest. Tr. 620; Ex. 165. Gardner's point of contact on the note renewal was Martin, and Gardner did not recall Martin ever disclosing that his funds could be used to pay returns to earlier investors or that most of National Note's business transactions were with related parties. Tr. 621. Martin did not inquire about his net worth or income, and he was not an accredited investor. Tr. 618-19.

When Gardner mentioned to Martin that he had a small pension, Martin recommended that he open a separate account. Tr. 626. By at least early 2010, Gardner made a second investment in the name of a family trust, this time with pension funds.[14] Tr. 626-28. Gardner never received interest payments from these first two investments; rather, he would reinvest the purported accumulated interest with National Note.[15] Tr. 627-28.

In November 2011, Gardner and his wife spoke with Martin to discuss investing a portion of his wife's retirement savings with National Note. Tr. 622-23. That month, his wife rolled over $56,050 of those retirement savings to National Note, with a maturity date of December 2013. Tr. 622-23; Ex. 167. Martin did not disclose that National Note was having financial troubles, or that the company was unable to make interest payments or repay investor principal upon maturity. Tr. 623-24, 628-29. Martin did not mention that the funds could be used to make payments to other investors or cover the company's payroll and operating expenses. Tr. 628. Were these facts known, the Gardners would not have invested. Tr. 629.

Martin sent monthly statements to Gardner until February 2012, showing interest building in his account. Tr. 616-17, 629-31; *see* Tr. 211. However, Martin stopped sending statements after February 2012 and did not respond to Gardner's emails; he eventually went to National Note's office in person, only to discover that the company had been placed in receivership. Tr. 629-30. Gardner has not received any repayment of principal or interest from National Note, and testified that the loss of funds has impacted his family financially and emotionally. Tr. 629, 631.

Thomas House has a college degree in business administration, and worked in management for gasoline and diesel distributors for thirty-eight years, retiring from that line of work in 2009. Tr. 633. Since 2009, he has sold insurance, and has managed and rented real estate. Tr. 633-34. He has some prior investment experience, but no securities licenses. Tr. 633-35.

House learned about National Note at Kiyosaki's "Rich Dad, Poor Dad" seminars, at which Palmer represented that investments were backed by real estate and earned a 12% return. Tr. 636-39, 641-42, 649. In January 2010, House invested $500,000 of his IRA money with National Note. Ex. 120 at 1; Ex. 121; Tr. 642. Subsequently, he made two additional investments: in late 2010 or

[14] The record reflects a $7,000 promissory note dated July 2009, and a $9,858 promissory note dated January 2010, both payable to Gardner's family trust. Exs. 162-63. When shown these documents, however, Gardner stated that he invested $6,800 of pension funds in 2010, in the name of the family trust. Tr. 627.

[15] Further, it appears that in November 2010, Gardner reinvested his first investment of IRA money for a second time. Ex. 166.

early 2011, he invested $400,000 with Palmer in Homeland Minerals, a gold ore processing company; and in November 2011, he invested $200,000 to finance an eldercare facility being built by Palmer. Ex. 120 at 2; Tr. 644-45; *see* Exs. 122, 124. Martin helped him set up the accounts and with the paperwork. Tr. 646-47. Instead of receiving interest payments, House had the monies reinvested, and monthly statements showed interest accruing each month, causing him to believe that his funds were earning a 12% return. Tr. 648; Ex. 120 at 2.

In February 2012, House, who had power of attorney for his elderly aunt, invested $100,000 of her money with National Note; it was his hope that the interest payments would help cover her assisted living costs. Tr. 650-51; Ex. 120 at 2. Before House invested that money, Martin emphatically told House over the telephone that National Note had *never* missed a payment. Tr. 636, 651-53. Martin did not disclose that National Note was having financial troubles, that the money would be used to pay other investors or the company's operating expenses, that National Note was making virtually no interest payments at the time, or that National Note was doing business principally with related parties. Tr. 654-56. Had he known such facts, he would not have invested his aunt's money. Tr. 656; Ex. 120 at 3.

House has not received any principal or interest payment from his aunt's investment, nor has he received back any of the other money he invested with National Note. Tr. 655-56.

Tor Loring-Meier has a PhD in experimental psychology and works as an educational researcher. Div. Ex. 192 at 11. He has no professional licenses, and National Note was his only direct investment experience. *Id.* at 12-13. A real estate agent recommended that Loring invest with National Note, and Loring later contacted National Note and spoke with Martin in late 2006 or in 2007. *Id.* 13-15. Before Loring invested, Martin was the only person at National Note with whom he spoke. *Id.* at 18, 24.

Martin told Loring that all investments were secured against real property, the company would buy property with his funds, the company had never been late on payments, and there was a guaranteed 12% return. Ex. 192 at 15-18, 20-21. She also represented that there was no risk because the money would go into real estate; Loring did not, however, receive any verification of the collateral. *Id.* at 16-18, 32.

In a July 2007 email, Martin told Loring that he would have "an assignment of beneficial interest that is recorded against a particular property." Ex. 155 at 2. Loring considered it "critical" to his investment decision that the money was secured by property. Ex. 192 at 21. That same month, he invested $95,000 with National Note. *Id.* at 25; Ex. 156. This money was "everything" that he had saved or inherited. Ex. 192 at 21-22. At the time he invested, he did not meet the criteria of an accredited investor, and Martin did not ask him questions to determine his net worth or income. *Id.* at 28-29. Before Loring invested, Martin never told him that his interest payments would come from new investor funds or that his funds might be used to make payments to other investors. *Id.* at 47. Loring would not have invested had he known such facts. *Id.*

When Loring's note matured in August 2009, Martin did not ask if he wanted the money back. Ex. 192 at 33-34, 36. Rather, Martin subsequently told Loring that "we just left it in the system," and in January 2010, he entered into a renewed promissory note for $65,662, which was the principal amount minus withdrawals he had made. *Id.* at 34-36; Ex. 154.

As it turned out, Loring's interest was not recorded against any collateral.[16] Ex. 192 at 22-23. By November 2010, payments started coming late. *Id.* at 38; Ex. 157 at 2-3. Martin said in an email to Loring that the payments were late due to computer issues. Ex. 157 at 2. Martin's second excuse was that she was no longer getting up at 3:00 a.m. Ex. 192 at 42-43.

By October 2011, interest payments stopped altogether. Ex. 192 at 44-45, 49. The only other payment Loring received from Palmer was $3,000 to cover his shoulder surgery. *Id.* at 39-40. After the payments stopped, Loring demanded his money back, but Martin and Palmer finally admitted that the company was insolvent and that Loring would not get his money back. *Id.* at 30, 54. Loring's "heart stopped practically." *Id.* at 54.

In early 2012, Loring sent emails to Palmer and Martin pleading for money, which he needed to pay taxes and medical costs. Ex. 157 at 1-2. However, he never got the principal back. Ex. 192 at 46. The economic loss for him was "catastrophic," causing him to go into debt, default on credit card payments, and forgo medical treatments. *Id.* at 47-48.

James E. Morrow is a high school graduate who took college courses in industrial instrumentation. Ex. 193 at 11. He worked for twenty-six years in the oil and gas industry, and retired in 1989. *Id.* at 12. He has no professional licenses, has limited investment experience, and is not a sophisticated investor. *Id.* at 12-14; Ex. 147 at 1.

In 2008, Morrow was referred to Hicks to assist obtaining long-term care for his first wife and coping with financial and estate planning issues. Ex. 147 at 1; Ex. 193 at 10-11, 17-19. Hicks encouraged Morrow to invest with National Note. Ex. 147 at 1-2; Ex. 193 at 20-21. Morrow invested $500,000 from his IRA account. Ex. 147 at 2; Ex. 148. He did not speak with Martin before investing. Ex. 193 at 58.

In October 2010, Morrow inquired with Hicks about withdrawing the principal, as the note was due to mature. Ex. 147 at 3; Ex. 193 at 40-41. With Morrow on the telephone, Hicks called Martin, who said that she would have to check with Palmer because it was a rather large amount and National Note did not have sufficient funds available. Ex. 147 at 3-4; Ex. 193 at 40-41.

Morrow called National Note several times to follow-up; he was always directed to Martin, who eventually told him that National Note could not return the principal. Ex. 193 at 41-44, 54, 62. Morrow continued to call Martin on a monthly basis, but received back none of his principal. *Id.* at 46. In June 2011, Palmer renewed Morrow's note without his authorization or knowledge, and Martin sent a copy of the renewed note to Hicks. Ex. 147 at 4; Ex. 149; Ex. 193 at 68-69.

In October 2011, interest payments stopped. Ex. 193 at 47-49. Hicks told Morrow that National Note was having cash flow problems, and that other investors were not getting paid either. *Id.* at 49. Around this time, Martin assured Morrow over the phone that Palmer was working on the

[16] I overrule the hearsay objection by Martin's counsel to Loring's testimony on this point, which was based on information he received from Klein. Hearsay is admissible in administrative proceedings, and in this instance reliance on it is proper. *See* 17 C.F.R. § 201.320; *Wheat, First Secs., Inc.*, Exchange Act Release No. 48378, 2003 SEC LEXIS 3155, at *45-46 & n.54 (Aug. 20, 2003). Loring's testimony is consistent with Klein's testimony that 98% of investments were not backed by real estate. Tr. 84.

"mineral and ores business of National Note," which would soon yield substantial money such that interest payments would resume. *Id.* at 50; Ex. 147 at 4. However, Morrow never received further interest payments. Ex. 147 at 5.

Morrow was never told that his interest payments would come from funds from new investors, or that his funds would be used to make payments to other investors or to pay National Note's operating expenses. Ex. 193 at 56. Had he known such facts, he would not have invested with National Note. *Id.* at 57. The financial loss caused hardship for Morrow and his family and disrupted plans for long-term healthcare for his wife. *Id.* at 56-57.

Arguments of the Parties

The Division argues that I should draw an adverse inference against Martin because she invoked the Fifth Amendment privilege against self-incrimination in response to questions at the hearing. Div. Br. at 19-20. As to Martin's liability, the Division argues that she made material misrepresentations and omitted material facts to investors in violation of the antifraud provisions of Section 17(a) of the Securities Act, and Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder; and that she sold unregistered securities and acted as an unregistered broker in violation of the registration provisions of Securities Act Sections 5(a) and 5(c), and Exchange Act Section 15(a). *Id.* at 20-35. Regarding sanctions, the Division seeks an industry bar, cease-and-desist order, disgorgement of commission payments as far back as 1996, and a third-tier civil penalty. Div. Br. at 35-42.

Martin contends that the Division has overstated the knowledge she had of National Note's financial affairs, her role at National Note, and her culpability. Resp. Br. at 2. Specifically, she says that the Division, at best, makes a case against her "possibly beginning at the point in time that she becomes aware that National Note cannot repay the principal on loans that have come due to its investors and more clearly, at the point in time that National Note is no longer able to make timely interest payments." *Id.* at 3. She argues that the Division overreaches by attempting to hold her accountable for the entire Ponzi scheme, and emphasizes that determining the scope of her culpability impacts the determination of disgorgement and civil penalties. *Id.* at 3, 5, 7. Regarding sanctions, Martin argues that: the alleged commission payments were compensation for being previously underpaid; the payments were not commission payments; if the court is to find her at fault, her alleged misconduct is limited to a brief span of time; Palmer operated a very sophisticated Ponzi scheme with "a myriad of entities, accounts, books and records," and the Division has pointed to no evidence that she had any involvement in the operation or management of National Note or the affiliated entities; and she is unable to pay monetary sanctions. *Id.* at 7-9.

In reply, the Division contends that it has indisputably established that Martin acted with the requisite scienter from 2010 forward and Martin had reason to know that National Note was operating as a Ponzi scheme as far back as 1995; Martin points to no evidence to undermine the conclusion that she received commission payments and she should be ordered to disgorge all commissions she earned through illicit securities sales as far back as 1996; and the circumstances warrant a third-tier penalty. *See* Div. Reply.

Legal Conclusions

Adverse Inference

In a Commission proceeding, an adverse inference may be drawn as a result of a respondent's invocation of her Fifth Amendment privilege against self-incrimination. *Guy P. Riordan*, Exchange Act Release No. 61153, 2009 SEC LEXIS 4166, at *65 (Dec. 11, 2009), *pet. denied*, 627 F.3d 1230 (D.C. Cir. 2010); *see Baxter v. Palmigiano*, 425 U.S. 308, 318-19 (1976). Martin invoked the privilege at the hearing in response to questions from the Division. I decline, however, to draw an adverse inference. The evidence is "more than sufficient to support findings of violations, without regard to any adverse inference." *Guy P. Riordan*, 2009 SEC LEXIS 4166, at *68.

In July 2013, Martin received a target letter from the U.S. Attorney for the District of Utah, notifying her that she is the target of an investigation related to National Note, and the U.S. Attorney is pursuing a grand jury investigation which may lead to an indictment. *Julieann Palmer Martin*, Admin. Proc. Rulings Release No. 1537, 2014 SEC LEXIS 2163, at *8-10 (June 18, 2014). Under these circumstances and given the apparent relatedness of the criminal investigation and allegations in this proceeding, I did not preclude Martin from invoking the privilege at the hearing. *Id.* at *10. Martin did not invoke the privilege during her investigative testimony, which has been admitted into evidence. *See* Ex. 172; *see* Tr. 302-03. The circumstances do not indicate that the privilege was improperly invoked at the hearing or that the Division's case-in-chief was prejudiced. *See Guy P. Riordan*, 2009 SEC LEXIS 4166, at *65 (in determining whether an adverse inference is proper, "[d]ue consideration should be given to the nature of the proceeding, how and when the privilege was invoked, and the potential harm or prejudice to opposing parties" (internal quotation marks and footnote omitted)).

Credibility

The Division's investor witnesses were credible. Many were vulnerable, unsophisticated investors who made an honest living before retiring and sought to financially better themselves or their families. Some were seeking to provide care for relatives. Martin's counsel had few questions for these witnesses on cross-examination and failed to establish any material weakness in their testimony.

To the extent Martin testified during the Division's investigation, several key points demonstrate that she is incredible, dishonest, and untrustworthy. For example, she was initially evasive about whether National Note had sales or referral agents, only later to concede that Hicks and others were paid a 2% referral fee, and that she referred investors and received a fee as well. Ex. 172 at 40-42, 48-55, 63-64, 70-71; *see, e.g.*, Exs. 13, 14, 116. Remarkably, Martin testified during the investigation that at no point did she think National Note was in financial trouble. Ex. 172 at 80. This point is flatly contradicted by the evidence, including her own emails, *see, e.g.*, Exs. 21, 29, 33, 65, 107, 140; her communications with or about investors, *see, e.g.*, Exs. 41, 55, 64, 67-68, 70-74, 76-77; Ex. 193 at 40-41; the obviousness of National Note's financial meltdown at the office, Tr. 233; and Martin's first-hand awareness of National Note's finances, Stip. ¶¶ 15-22; Tr. 47-48, 118, 120.

Martin willfully violated the registration provisions

Martin illegally sold unregistered securities

To establish a prima facie violation of Securities Act Sections 5(a) and 5(c), the Division must show that: 1) Martin, directly or indirectly, sold or offered to sell securities; 2) through the use of interstate facilities or the mails; 3) when no registration statement was in effect or filed as to those securities. *See* 15 U.S.C. § 77e(a), (c); *Ronald S. Bloomfield*, Securities Act Release No. 9553, 2014 SEC LEXIS 698, at *22 (Feb. 27, 2014) (citing *SEC v. Cavanagh*, 445 F.3d 105, 111 n.13 (2d Cir. 2006); *SEC v. Calvo*, 378 F.3d 1211, 1214-15 (11th Cir. 2004)). A showing of scienter is not required to establish a violation. *Ronald S. Bloomfield*, 2014 SEC LEXIS 698, at *22 (citing *Calvo*, 378 F.3d at 1215; *SEC v. Universal Major Indus. Corp.*, 546 F.2d 1044, 1047 (2d Cir. 1976)).

National Note never registered any offering of its securities. Stip. ¶¶ 6, 9. Martin sold and offered to sell unregistered National Note securities, and it is undisputed that the sales and offers were made using interstate facilities and the mails. *See, e.g.*, Tr. 367-72, 443-47, 492-94, 497; Ex. 172 at 34, 62-63; Ex. 192 at 15-18; Exs. 19, 56, 60, 69, 75, 78, 103, 125, 149.

Thus, the Division has established a prima facie violation. Martin has the burden to prove that a registration exemption applies. *See Ronald S. Bloomfield*, 2014 SEC LEXIS 698, at *23 (citing *SEC v. Ralston Purina Co.*, 346 U.S. 119, 126 (1953); *SEC v. Platforms Wireless Int'l Corp.*, 617 F.3d 1072, 1086 (9th Cir. 2010); *Cavanagh*, 445 F.3d at 111 n.13). "Evidence supporting an exemption must be 'explicit, exact, and not built on conclusionary statements.'" *Id.* (quoting *Lively v. Hirschfeld*, 440 F.2d 631, 633 (10th Cir. 1971)). This is because "[r]egistration exemptions are construed strictly to promote full disclosure of information for the protection of the investing public." *Cavanagh*, 445 F.3d at 115.

Martin does not dispute the Division's argument that a registration exemption does not apply, and thus has waived the issue. In any event, the most that can be gleaned from the record is that National Note filed a Form D in 2007, claiming a safe harbor for exemption from registration pursuant to Regulation D, Rule 506 under the Securities Act. Stip. ¶ 6. Rule 506 provides safe harbor from the registration requirement of Securities Act Section 5 only if the general conditions of Rules 501 and 502, and the specific conditions of Rule 506, are met. *See* 17 C.F.R. § 230.506. During the time at issue, these conditions required, among other restrictions, that the National Note offering was not conducted by means of general solicitation; there were no more than or the issuer reasonably believed that there were no more than 35 purchasers of its securities offered under Rule 506; and

> [e]ach purchaser who is not an accredited investor either alone or with his purchaser representative(s) has such knowledge and experience in financial and business matters that he is capable of evaluating the merits and risks of the prospective investment, or the issuer reasonably believes immediately prior to making any sale that such purchaser comes within this description.

17 C.F.R. § 230.502(c), .506(b).[17]

These conditions were not met. The National Note offering was, in many cases, conducted by general solicitation. *See, e.g.*, Tr. 429-30, 527-30, 638-39. The promissory notes were sold to more than 600 investors, approximately 400 of whom were unaccredited, including 200 unaccredited investors in the purported Regulation D offering. Stip. ¶ 8; Tr. 85, 88-89. Martin did not even inquire about the net worth or income of some investors, who in fact were unaccredited and had minimal financial knowledge and experience to be capable of properly evaluating the prospective investments. *See, e.g.*, Tr. 363-64, 374-75, 610, 618-19; Ex. 129 at 2; Ex. 192 at 12-13, 27-29; *see* 17 C.F.R. § 230.501(a)(5)-(6) (2010) (accreditation requirements for natural persons, in effect at the time at issue).

Accordingly, Martin violated Securities Act Sections 5(a) and 5(c). For purposes of sanctions, discussed below, her violations were willful given her direct and intentional acts in selling and offering for sale National Note securities. *See Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (a finding of willfulness does not require intent to violate the law, but merely intent to commit the act which constitutes the violation).

Martin illegally acted as an unregistered broker

Exchange Act Section 15(a) 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, in the case of a natural person, is associated with a registered entity. 15 U.S.C. § 78o(a)(1). Scienter is not required to prove a violation. *SEC v. Martino*, 255 F. Supp. 2d 268, 283 (S.D.N.Y. 2003).

As already established, Martin sold and offered for sale National Note securities through interstate facilities and the mails. It is uncontested that Martin was not registered, and that she was not associated with a registered entity. All that remains to be decided is whether Martin acted as a broker.

A "broker" is defined 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). This definition "connote[s] a certain regularity of participation in securities transactions at key points in the chain of distribution." *Mass. Fin. Servs., Inc. v. SIPC*, 411 F. Supp. 411, 415 (D. Mass. 1976), *aff'd*, 545 F.2d 754 (1st Cir. 1976); *see SEC v. Kenton Capital, Ltd.*, 69 F. Supp. 2d 1, 12-13 (D.D.C. 1998). To determine whether an individual acted as a broker, courts consider various factors, including whether she 1) is an employee of the issuer; 2) received commissions as opposed to a salary; 3) is selling, or previously sold, the securities of other issuers; 4) is involved in negotiations between the issuer and the investor; 5) makes valuations as to the merits of the investment or gives advice; and 6) is an active rather than passive finder of investors. *See SEC v. Hansen*, No. 83-cv-3692, 1984

[17] The Commission's 2013 amendments to Rule 506, which in pertinent part added subsection (c), are not relevant given that the alleged misconduct predates those amendments. *See* Eliminating the Prohibition Against General Solicitation and General Advertising in Rule 506 and Rule 144A Offerings, 78 Fed. Reg. 44771-01 (July 24, 2013).

WL 2413, at *10 (S.D.N.Y. Apr. 6, 1984). These factors, however, are not designed to be exclusive, and "transaction-based compensation" is "one of the hallmarks of being a broker[]." *SEC v. Kramer*, 778 F. Supp. 2d 1320, 1334 (M.D. Fla. 2011) (internal quotation marks omitted).

Martin played a key role in effecting transactions in National Note's securities for its investors and inducing them to invest with the company. There is no dispute that she was a National Note employee. From about 2005 onward, Martin was the primary contact at National Note for new investors, and in Palmer's absence, Martin was "a face for all the investors." Tr. 119-20, 209, 219. In fact, for some investors, she was their only contact at National Note. *See, e.g.*, Tr. 497; Ex. 192 at 18. She explained substantive details of the National Note program to prospective investors, encouraged them to invest, and answered questions about how they should structure their investments. *See, e.g.*, Exs. 19, 56, 60, 104-06, 188-89; Tr. 496-500, 623, 636, 652-53; Ex. 192 at 20-21. For some investors, her representations were convincing and critical to their investment decision. Ex. 192 at 21; Tr. 499-500.

Martin was the contact person for several referral agents including Hicks and explained the 2% commission policy to them. Exs. 13, 14, 110, 112. She also accepted and deposited checks from new investors, cut checks to investors for interest and principal payments, kept track of investor funds and distributions, and regularly interacted with investors. Stip. ¶¶ 15-17, 19; Tr. 44, 46-47; Ex. 172 at 14-15, 27. When an investor check arrived via the mail, it would go straight to Martin, who would prepare the promissory note. Tr. 210.

In addition to a salary, Martin received substantial compensation in the form of commissions as far back as 1996. Tr. 127, 131; Exs. 185-87; Ex. 172 at 70-71, 74-75. Her own commissions log reflects that such compensation was the result of work relating to investors, and she signed checks on the company's behalf—payable to herself or her entity Julieann Enterprises—reflecting that such payments were commissions. Exs. 91, 185. The payments were recorded as commissions in Peachtree, National Note's check writing and deposit system, to which Martin had access. Tr. 95-96; Ex. 186; Ex. 172 at 30-31; *cf.* Stip. ¶ 16.

During the investigation, Martin testified that she had not received commissions for years and claimed that the extra money that National Note paid her was makeup pay for being previously underpaid. Ex. 172 at 21, 77-78. Martin made similar statements in an affidavit submitted in connection with the federal-court receivership matter. Ex. 87 at 3. Klein confirmed that Martin's response was inconsistent with the evidence he had seen. Tr. 155. Given Martin's lack of credibility and the evidence to the contrary, I find her statements untruthful.

Martin argues that, regardless of any credibility assessment, the payments do not appear to be commission payments because National Note paid a 2% commission on the investment amount, and the commissions listed in the schedule prepared by Klein are whole numbers.[18] Resp. Br. at 8. Her argument is unpersuasive. Her commissions log reflects that payments made to her were transaction-based, with the names of investors and their investment amounts listed alongside payments to her. *See* Ex. 185. The only reasonable explanation is that such payments were

[18] Martin makes this argument in the context of discussing disgorgement; however, I consider it here because it bears on the issue whether she acted as a broker. My conclusion applies equally to determining whether these payments constituted illegal commissions for disgorgement purposes.

incentive-based compensation for work related to investor transactions. *Cf. SEC v. StratoComm Corp.*, 2 F. Supp. 3d 240, 262-63 (N.D.N.Y. 2014) ("[Defendant] also received transaction-based compensation in the form of a discretionary bonus that depended on how much money he raised for StratoComm by selling its securities to investors."); *Sun River Energy, Inc. v. Nelson*, No. 11-cv-00198, 2013 WL 1222391, at *5 (D. Colo. Mar. 25, 2013) ("[M]any courts find incentive-based compensation to be particularly indicative of broker-type activities."). Martin was regularly awarded amounts in the range of $10,000, $7,500, $5,000, or $2,500. Exs. 185-87. Given the totality of the evidence, that these payments were whole numbers (rather than based on the usual 2% fee structure for referral agents) does not compel a finding to the contrary, and Martin points to no caselaw or rule defining broker compensation as an specific percentage of each transaction.

In summary, Martin acted as a broker within the meaning of the Exchange Act, and given that she was unregistered, Martin violated Section 15(a). Moreover, her repeated acts in selling and inducing investors to buy National Note securities show that her violations were willful. *See Wonsover*, 205 F.3d at 414.

Martin willfully violated the antifraud provisions

Applicable Law

Martin is charged with violating the antifraud provisions of Securities Act Section 17(a), and Exchange Act Section 10(b) and Rule 10b-5. *See* 15 U.S.C. §§ 77q(a), 78j(b); 17 C.F.R. § 240.10b-5.

To establish a Section 10(b) violation,[19] the Division must show, in relevant part, that Martin 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 jurisdictional means. *SEC v. Smart*, 678 F.3d 850, 856 (10th Cir. 2012). Section 17(a) requires substantially similar proof with respect to the offer or sale of securities. *Id.* at 857. Although scienter is required to establish violations of Section 17(a)(1) and Section 10(b), a showing of negligence is sufficient to establish violations of Sections 17(a)(2) and 17(a)(3). *Id.*; *see Aaron v. SEC*, 446 U.S. 680, 695-97, 701-02 (1980).

Scienter

Martin acted with scienter, "a mental state embracing intent to deceive, manipulate, or defraud." *Aaron*, 446 U.S. at 686 n.5 (internal quotation marks omitted). By early 2010, she knew that as new investor funds were received, they were "coded" for accounting purposes as going to Palmer's affiliated entities when, in fact, the money was transferred to the investor distribution account at Wells Fargo. Ex. 172 at 150-53. Notably, Martin oversaw National Note's bank accounts and internal accounting system during this period, so there is no question that she knew that new investor money was coming in and being paid out to existing investors. By no later than February 2010 did Martin know that National Note could not repay investor principal upon maturity, and that such repayment was dependent on receipt of new investor funds. Exs. 93, 140-41. In October 2010, Martin knew that National Note could not repay another investor's principal

[19] As the scope of Rule 10b-5 is coextensive with Section 10(b), I use "Section 10(b)" to refer to both the statute and the rule. *See SEC v. Zandford*, 535 U.S. 813, 816 n.1 (2002); *United States v. O'Hagan*, 521 U.S. 642, 651 (1997).

upon maturity. *See* Ex. 147 at 3-4; Ex. 193 at 40-41. Around this time period, she also began sending unsolicited renewal notes to investors or automatically renewing their investments, rather than National Note paying investor principal upon maturity. Exs. 181-83; Ex. 62, Ex. 147 at 4, Ex. 149, Ex. 193 at 68-69.

As Martin further knew, National Note's financial problems began increasing in 2011. By the summer of 2011, she knew that the company could not make interest payments to investors, was faltering on its business expenses, was overdrawn at the bank, and could not even make payroll. *See, e.g.*, Exs. 16, 21, 27, 29, 33, 35. By the fall of 2011, National Note's dire financial situation was ever more obvious—investor checks were late, and many checks were eventually voided. Tr. 211-12, 231-33, 249-50. Martin was fully aware that investors were not getting paid and some were pleading for money, and she was recommending to Palmer who should get paid first. *See, e.g.*, Exs. 41, 55, 64, 66, 70, 77, 80, 107; Tr. 252-55.

Despite her knowledge of National Note's financial condition and that it was a Ponzi scheme, Martin continued to solicit and accept new investor funds. As described below, she failed to disclose material information to investors about National Note's financial condition, and she made material misrepresentations to induce investments, going as far to tell one investor in February 2012 that National Note had *never* missed an interest payment. Tr. 636, 651-53. Her state of mind is further evidenced by the fact that she continued to send monthly statements to an investor until February 2012, falsely showing interest building in his account. Tr. 616-17, 629-31; *see* Tr. 211. In sum, Martin acted with an unequivocal and direct intent to defraud.

Martin argues that the Division overreaches by attempting to hold her accountable for the entire Ponzi scheme stretching back as early as 1995, and that the Division cannot hold her accountable for the entire Ponzi scheme without showing that she knew that National Note was insolvent. Resp. Br. at 3, 5. Her knowledge of, and involvement in, National Note's finances might provide some evidence to support a finding of reckless-based scienter before 2010. *See SEC v. Steadman*, 967 F.2d 636, 641-42 (D.C. Cir. 1992) (reckless-based scienter is predicated on "an extreme departure from the standards of ordinary care, . . . which presents a danger of misleading buyers or sellers that is either known to the defendant or is so obvious that the actor must have been aware of it" (internal quotation marks omitted)); *SEC v. Sullivan*, --- F.Supp.3d ---- , 2014 WL 4670929, at *9 (D. Colo. Sept. 19, 2014) (the defendant "could only have acted with the requisite scienter if he knew or clearly should have known about the Ponzi scheme . . . before committing the deceptive acts"). Regardless, it is enough to conclude that Martin acted with scienter from early 2010 forward given the overwhelming evidence. As a result of her scienter, her misconduct was willful for the purpose of imposing sanctions. *See Donald L. Koch*, Exchange Act Release No. 72179, 2014 SEC LEXIS 1684, at *49 n.139 (May 16, 2014).

Material misrepresentations and omissions

The evidence is overwhelming that Martin solicited and accepted investor funds, even after National Note's Ponzi scheme became apparent and began unraveling. In doing so, Martin made at least the following material misrepresentations and omissions with scienter.[20]

[20] As summarized in my findings of fact, the record is replete with Martin's misrepresentations and omissions. Here, I specifically list each act or omission that triggers a third-tier civil penalty, discussed *infra*. Martin spoke with these investors in getting them to invest with National Note, and

1) Before Fite invested $50,000 with National Note, Martin misrepresented to him over the phone in April 2010 that National Note made money by investing in real estate, the program was safe, and that the company had liabilities of $75 million and assets of $95 million. Tr. 493, 500-01; Ex. 159 at 2-3; Ex. 160. Her representations were false. *See, e.g.*, Tr. 83-85, 99, 458; Ex. 96 at 107, graphic no. 92. Martin knew these representations were false; she knew that National Note was unable to repay investor principal at such point in time, and that money was not actually going to affiliated entities but being paid out to existing investors.

2) Before Fite invested, Martin failed to disclose that National Note was having difficulty returning principal to prior investors, that his returns would come from new investor funds, that his funds would be used to pay other investors or to cover payroll, or that National Note did business almost exclusively with related entities. Tr. 503-04.

3) Before Fogg invested $86,000 in October 2011, Martin failed to disclose that National Note was late with its investor payments. Exs. 53, 69, 172 at 114. No disclosure was made that investor payments did not go out on time due to the company's financial condition.

4) Before Gardner's wife invested $56,050 of her retirement savings in November 2011, Martin failed to disclose that National Note was having financial troubles, that the company was unable to make interest payments or repay investor principal upon maturity, or that funds could be used to make payments to other investors or cover the company's payroll and operating expenses. Tr. 623-24, 628-29; Exs. 167, 168.

5) Before House invested $100,000 of his aunt's money in February 2012, Martin emphatically told him over the phone that National Note had *never* missed a payment. Tr. 636, 651-53. This was a blatant lie, as Martin knew National Note was making few, if any, interest payments at this point.

6) Before House invested, Martin failed to disclose that National Note was having financial troubles, that the money would be used to pay other investors or the company's operating expenses, that National Note was making virtually no interest payments at the time, or that National Note was doing business principally with related parties controlled by Palmer. Tr. 654-56.

7) Before the Stoddards invested $100,000 in February 2012, Martin supported Palmer's representations to them, had conversations with Mr. Stoddard over the phone, and her explanations were consistent with what Palmer said. Notably, during such discussions, she failed to disclose that National Note was in financial trouble, that the company was behind in investor payments, or that

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for some, she had a position of trust and acted as a broker. Thus, Martin's omissions are actionable, as well as her affirmative misrepresentations. *See Zandford*, 535 U.S. at 823 ("[A]ny distinction between omissions and misrepresentations is illusory in the context of a broker who has a fiduciary duty to her clients."); *SEC v. Fehn*, 97 F.3d 1276, 1290 n.12 (9th Cir. 1996) (the federal securities laws "impose[] a duty to disclose material facts that are necessary to make disclosed statements, whether mandatory or volunteered, not misleading" (internal quotation marks omitted)); *John J. Kenny*, Securities Act Release No. 8234, 2003 SEC LEXIS 1170, at *27 (May 14, 2003) (upon choosing to speak, a respondent is "obligated to do so truthfully and in a way that was not misleading"), *aff'd*, 87 F. App'x 608 (8th Cir. 2004).

the Stoddards' money was going to be used to make payments to prior investors and to pay business expenses. Ex. 129 at 1-3; Ex. 172 at 128; Tr. 371-73; *see* Tr. 367, 369, 380-81.

Martin's misrepresentations were material, as they were cause to induce investments with National Note and painted a rosy picture of the company. Further, her omissions were also material; no rational investor would have invested with National Note if the truth about the company's program and financial condition were known. *See Basic Inc. v. Levinson*, 485 U.S. 224, 231-32 (1988) ("[T]o fulfill the materiality requirement there must be a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the total mix of information made available." (internal quotation marks omitted)); *SEC v. Murphy*, 626 F.2d 633, 653 (9th Cir. 1980) ("Surely the materiality of information relating to financial condition, solvency and profitability is not subject to serious challenge."); *see, e.g.*, Tr. 504 (Fite); Ex. 129 at 3, Tr. 371, 373-74, 376-77 (Stoddard); Tr. 629 (Gardner); Tr. 656; Ex. 120 at 3 (House).

Nexus requirement

Martin's misrepresentations and omissions were made in connection with the purchase or sale of securities under Exchange Act Section 10(b), and with respect to the offer or sale of securities under Securities Act Section 17(a). Indeed, each cited misstatement or omission coincided with the offer, sale, or purchase of securities. *See SEC v. Zandford*, 535 U.S. 813, 819-20, 825 (2002) (Exchange Act Section 10(b)'s nexus requirement is to be construed broadly and flexibly, and is satisfied by a fraudulent scheme in which the securities transactions and breaches of fiduciary duty coincide); *United States v. Naftalin*, 441 U.S. 768, 778 (1979) (Securities Act Section 17(a) was intended to cover any fraudulent scheme in an offer or sale of securities, whether in the course of an initial distribution or in the course of ordinary market trading); *SEC v. Hasho*, 784 F. Supp. 1059, 1106 (S.D.N.Y. 1992) ("Any statement that is reasonably calculated to influence the average investor satisfies the 'in connection with' requirement . . . ." (citing *SEC v. Texas Gulf Sulphur Co.*, 401 F.2d 833, 861-62 (2d Cir. 1968))).

Jurisdictional means

Martin's misconduct involved jurisdictional means, including interstate facilities such as email and telephone. *See SEC v. Tourre*, No. 10-cv-3229, 2013 WL 2407172, at *11 (S.D.N.Y. June 4, 2013); *Heyman v. Heyman*, 356 F. Supp. 958, 969 (S.D.N.Y. 1973).

Sanctions

Industry bar

Exchange Act Section 15(b)(6) authorizes the Commission to bar Martin from the securities industry if she willfully violated the federal securities laws while associated with a broker or dealer, and the bar is in the public interest. *See* 15 U.S.C § 78*o*(b)(4)(D), (6)(A)(i); *Guy P. Riordan*, Exchange Act Release No. 61153, 2009 SEC LEXIS 4166, at *76-77 (Dec. 11, 2009). Investment Company Act Section 9(b) authorizes the Commission to impose bars against Martin from associating with an investment company or certain affiliated persons if she willfully violated the Securities Act or the Exchange Act, and if the sanction is in the public interest. *See* 15 U.S.C. § 80a-

9(b)(2); *John P. Flannery*, Exchange Act Release No. 73840, 2014 SEC LEXIS 4981, at *136 (Dec. 15, 2014).

As I found, Martin willfully violated the federal securities laws, including the antifraud provisions under the Securities Act and Exchange Act. Martin acted as an unregistered broker, and she was associated with Palmer, who also acted as an unregistered broker in selling National Note securities. *See Tzemach David Netzer Korem*, Exchange Act Release No. 70044, 2013 SEC LEXIS 2155, at *32 (July 26, 2013) ("It is well established that we are authorized to sanction an associated person of an unregistered broker-dealer or investment adviser in a follow-on administrative proceeding."); *Vladislav Steven Zubkis*, Exchange Act Release No. 52876, 2005 SEC LEXIS 3125, at *5, *20 (Dec. 2, 2005) (Section 15(b) applies to natural persons acting as an unregistered broker or dealer), *recons. denied*, Exchange Act Release No. 53651, 2006 SEC LEXIS 861 (Apr. 13, 2006).

To determine whether a sanction is in the public interest, the Commission considers the *Steadman* factors: 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 her conduct; and the likelihood that the respondent's occupation will present opportunities for future violations. *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981). The Commission's inquiry regarding the appropriate sanction is flexible, and no one factor is dispositive. *Gary M. Kornman*, Exchange Act Release No. 59403, 2009 SEC LEXIS 367, at *22 (Feb. 13, 2009), *pet. denied*, 592 F.3d 173 (D.C. Cir. 2010). The Commission also considers the age of the violation, the degree of harm to investors and the marketplace resulting from the violation, and deterrence. *See Schield Mgmt. Co.*, Exchange Act Release No. 53201, 2006 SEC LEXIS 195, at *35 (Jan. 31, 2006); *Marshall E. Melton*, Exchange Act Release No. 48228, 2003 SEC LEXIS 1767, at *4-5 (July 25, 2003).

Martin's violations were egregious. The Commission has "repeatedly held that conduct that violates the antifraud provisions of the securities laws is especially serious and subject to the severest of sanctions under the securities laws." *Peter Siris*, Exchange Act Release No. 71068, 2013 SEC LEXIS 3924, at *23 (Dec. 12, 2013) (internal quotation marks omitted), *pet. denied*, 773 F.3d 89 (D.C. Cir. 2014). For over two years, she solicited, induced, and accepted new investments at a time when she was fully aware that National Note was in financial trouble. Indeed, she accepted investments even after the fall of 2011, when National Note struggled to make interest payments and when she was receiving frantic communications from investors because of missed payments. Several investors who Martin encouraged to invest were financially unsophisticated, and thus relied on her in deciding whether to invest with National Note—in some cases, entrusting her with the retirement savings of themselves or relatives. The harm to investors is substantial, as some investors lost their retirement savings and faced severe economic problems as a result. As discussed in my conclusions of law, Martin's violations of the antifraud provisions involved investments in the range of $50,000 to $100,000.

Martin's violations were also recurrent. She received commissions for years as a result of her broker-related activity. Moreover, from 2010 until National Note was closed in 2012, she repeatedly violated the antifraud provisions with glaring misrepresentations and omissions. As I found, Martin acted with a high degree of scienter. Her knowledge and misconduct demonstrate a direct intent to defraud. For example, in September 2011, a time when National Note's impending

financial collapse and inability to make payments were known, Martin said to a prospective investor: "This is probably the best thing you can do for [your kids'] future. . . . At that age, they can't even think that far into the future." Ex. 56. As late as February 2012, Martin told an investor that National Note had never missed a payment, a blatant lie. Tr. 636, 651-53. The record has several instances of such utter falsity as well as her material omissions.

Martin has provided no assurances against future violations, has refused to acknowledge her wrongdoing, and has shown no remorse. Martin's violations continued into 2012, which is when National Note was shut down. Nothing indicates that she would have stopped her misconduct otherwise. Although the bare fact of a past violation is not enough, by itself, to warrant imposing a bar, past fraudulent conduct is relevant because "the existence of a violation raises an inference that" the acts in question will recur. *Tzemach David Netzer Korem*, 2013 SEC LEXIS 2155, at *23 n.50 (quoting *Geiger v. SEC*, 363 F.3d 481, 489 (D.C. Cir. 2004)). When combined with her failure to make assurances against future violations, Martin's refusal to recognize wrongdoing suffices to demonstrate the threat of future violations. *See Christopher A. Lowry*, Investment Company Act Release No. 2052, 2002 SEC LEXIS 2346, at *19 (Aug. 30, 2002), *aff'd*, 340 F.3d 501 (8th Cir. 2003). Absent a bar, nothing prevents Martin from joining another fraudulent venture.

"Because the securities industry presents continual opportunities for dishonesty and abuse, and depends heavily on the integrity of its participants and on investors' confidence, it is essential that the highest ethical standards prevail in every facet of the securities industry." *Donald L. Koch*, 2014 SEC LEXIS 1684, at *86 (internal quotation marks and alterations omitted). The antifraud provisions that Martin violated apply broadly to the conduct of all participants in the securities industry. *See id.*

Applying the *Steadman* factors and considering the need to deter others from similar misconduct, it is in the public interest to bar Martin from the securities industry to the fullest extent under Exchange Act Section 15(b)(6) and Investment Company Act Section 9(b).

Cease and desist

Securities Act Section 8A and Exchange Act Section 21C authorize the Commission to issue a cease-and-desist order against any person who has violated the Securities Act and Exchange Act, respectively, or any rule or regulation thereunder. 15 U.S.C. §§ 77h-1(a), 78u-3(a). Although there must be some likelihood of future violations whenever the Commission issues a cease-and-desist order, the required showing is "significantly less than that required for an injunction." *KPMG Peat Marwick LLP*, Exchange Act Release No. 43862, 2001 SEC LEXIS 98, at *101, *114 (Jan. 19, 2001), *pet. denied*, 289 F.3d 109 (D.C. Cir. 2002). Absent evidence to the contrary, a single past violation ordinarily suffices to establish a risk of future violations. *Id.* at *102-03. Here, Martin committed numerous violations and has shown no remorse, more than sufficient to establish a risk of future violations.

To determine whether a cease-and-desist order is in the public interest, the Commission's considerations are essentially the same as the *Steadman* and other factors analyzed in determining whether to impose an industry bar. *See id.* at *116. In addition, the Commission considers "the remedial function to be served by the cease-and-desist order in the context of any other sanctions being sought in the same proceedings." *Id.*

I have considered the *Steadman* factors and found that they weigh heavily in favor of sanctions. Even considering the other sanctions in this proceeding, a cease-and-desist order will serve the public interest by specifying that Martin can no longer engage in such misconduct, and will put Martin and others on notice that similar misconduct is unacceptable. A cease-and-desist order against Martin for her violations is thus issued.

Disgorgement

Securities Act Section 8A(e) and Exchange Act Section 21C(e) authorize disgorgement, including reasonable interest, in cease-and-desist proceedings. 15 U.S.C. §§ 77h-1(e), 78u-3(e). Exchange Act Section 21B(e) authorizes disgorgement in proceedings in which a penalty may be imposed under that section, which applies to Martin. 15 U.S.C. § 78u-2(a), (e).

Disgorgement of ill-gotten gains "is an equitable remedy designed to deprive a wrongdoer of [her] unjust enrichment and to deter others from violating the securities laws." *Montford & Co.*, Investment Advisers Act of 1940 Release No. 3829, 2014 SEC LEXIS 1529, at *94 (May 2, 2014) (quoting *SEC v. First City Fin. Corp.*, 890 F.2d 1215, 1230 (D.C. Cir. 1989)). "When calculating disgorgement, 'separating legal from illegal profits exactly may at times be a near-impossible task.'" *Id.* (quoting *First City*, 890 F.2d at 1231). "As a result, disgorgement 'need only be a reasonable approximation of profits causally connected to the violation.'" *Id.* (quoting *SEC v. Patel*, 61 F.3d 137, 139 (2d Cir. 1995)). "Once the Division shows that the disgorgement is a reasonable approximation, the burden shifts to the respondent to show that the amount of disgorgement is not a reasonable approximation." *Id.* (citing *SEC v. Happ*, 392 F.3d 12, 32 (1st Cir. 2004)). "The risk of uncertainty in calculating disgorgement should fall on the wrongdoer whose illegal conduct created that uncertainty." *Id.* (quoting *Happ*, 392 F.3d at 31); *accord Jay T. Comeaux*, Exchange Act Release No. 72896, 2014 SEC LEXIS 3001, at *9-10 (Aug. 21, 2014).

As determined in finding her liable under Exchange Act Section 15(a), Martin earned commissions in connection with her broker-related activities, and I rejected her argument to the contrary. The Division seeks $433,140.29 in disgorgement, for commissions Martin earned as far back as 1996. Div. Br. at 41. This amount and time period, however, is outside the scope of the OIP.[21] *See* OIP at 3 ("From 2006 until February 2012, Martin was compensated, in the form of salary and commissions, for bringing in National Note investors. From 2006 through August 2010, Martin received commissions from National Note totaling $366,500.00.").

I find that Martin was paid $329,000 in commissions from 2006 through August 2010; she was not paid commissions after that time period.[22] Tr. 131, 150-53, 155; Exs. 185, 186, 187; *cf.*

[21] *See Russell W. Stein*, Exchange Act Release No. 47504, 2003 SEC LEXIS 608, at *30 n.34 (Mar. 14, 2003) (rejecting the Division's argument as outside the scope of the OIP where the allegations underlying it were not part of the OIP), *recons. granted on other grounds*, 2004 SEC LEXIS 1727 (Aug. 9, 2004); *Int'l S'holders Servs. Corp.*, Exchange Act Release No. 12389A, 1976 SEC LEXIS 1480, at *19 n. 19 (June 18, 1976) (although misconduct outside the OIP may be considered as background in assessing sanctions, the range of inquiry "is not limitless").

[22] I decline to credit the entry in the Klein's summary exhibit showing that Martin received a $500 payment on February 17, 2006. *See* Ex. 186. Although the entry is from PeachTree records, it is not reflected in Martin's commissions log, there is no corresponding check number or bank

Stip. ¶ 12. The $329,000 amount is a reasonable approximation of her ill-gotten gains and causally connected to her violations of the registration provisions of the federal securities laws. Martin's own commissions log and checks corroborate Klein's analysis of her commissions, which is based on National Note's records and bank account information. Exs. 91, 185-87. Martin does not dispute such payments, only their characterization. Resp. Br. at 7-8.

Martin attempts to limit her wrongdoing to the March 2010 to June 2012 period, i.e., the period in which the Division says it has conclusively shown that she acted with scienter in violating the antifraud provisions. Resp. Br. at 7; *see* Div. Br. at 30. Martin argues that if this period is the scope of her wrongdoing, the Division is not entitled to the full amount it seeks for disgorgement, as the vast majority of such commissions were paid before the spring of 2010. Resp. Br. at 7-8.

Martin's contention is misplaced. Even if her antifraud violations did not begin until 2010, she also acted as an unregistered broker and sold unregistered securities, and disgorgement would be appropriate because she earned commissions through those illegal acts. "Disgorgement is appropriate not only in cases of fraud . . . but also where a [respondent] violates the securities registration provisions . . . ." *SEC v. Rockwell Energy of Tex., LLC*, No. 09-cv-4080, 2012 WL 360191, at *6 (W.D. Tex. Feb. 1, 2012); *see, e.g.*, *SEC v. Martino*, 255 F. Supp. 2d 268, 289 (S.D.N.Y. 2003). Here, the sales of unregistered securities were at egregious levels, and involved many unsophisticated and unaccredited investors. Combined with Martin's high-profile role with investors and her oversight of National Note's finances, she did not act blindly in selling unregistered securities. Thus, the circumstances warrant full disgorgement of her illegally earned commissions.

It is Martin's burden to clearly demonstrate that the disgorgement figure is not a reasonable approximation. *First City Fin. Corp.*, 890 F.2d at 1232. She cites no evidence to support her self-serving contention that such payments were simply makeup salary. *See SEC v. Silverman*, 328 F. App'x 601, 604-05 (11th Cir. 2009) (upholding $8.1 million disgorgement order based on finding that defendants failed to rebut the Commission's evidence because defendants "provide[d] no documentary evidence supporting their conclusory and self-serving affidavits").

As a result, Martin must disgorge $329,000 plus prejudgment interest calculated from September 1, 2010, through the last day of the month preceding the month in which disgorgement is paid.[23] *See* 17 C.F.R. § 201.600(a).

Civil penalties

Exchange Act Section 21B and Investment Company Act Section 9 authorize civil monetary penalties in this proceeding. *See* 15 U.S.C. §§ 78u-2(a)(1)(A), (a)(2), 80a-9(d)(1)(A)(i), (d)(1)(B). The statutes set out a three-tiered system for determining the maximum civil penalty for each act or omission. A maximum third-tier penalty is permitted if: 1) the act or omission involved fraud, deceit,

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transaction that has been identified for that entry, and it appears inconsistent with the general trend of Martin's commission payments. Tr. 149-52; Ex. 185 at 16; Exs. 186-87.

[23] As Martin's last commission payment was August 3, 2010, prejudgment interest should be calculated starting September 1, 2010. *See* 17 C.F.R. § 201.600(a); Exs. 186 at 2, 187 at 6. I will define the prejudgment interest rate in the ordering paragraphs. *See* 17 C.F.R. § 201.600(b).

manipulation, or deliberate or reckless disregard of a regulatory requirement; and 2) such act or omission directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons or resulted in substantial pecuniary gain to the person who committed the act or omission. 15 U.S.C. §§ 78u-2(b)(3), 80a-9(d)(2)(C). After March 3, 2009, to the end of the misconduct at issue, the maximum amount of civil penalty for each act or omission at the third tier was $150,000 for a natural person. *See* 17 C.F.R. § 201.1004, Subpt. E, Table IV.

To determine whether a penalty is in the public interest, the statutes call for consideration of: 1) whether the act or omission involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; 2) harm caused to others; 3) unjust enrichment; 4) prior violations; 5) deterrence; and 6) such other matters as justice may require. 15 U.S.C. §§ 78u-2(c), 80a-9(d)(3); *see Jay T. Comeaux*, 2014 SEC LEXIS 3001, at *22.

Penalties at the third-tier level are warranted. As discussed in my conclusions of law, Martin committed at least seven specific acts or omissions with a high degree of scienter, in violation of the antifraud provisions.[24] Each involved substantial losses or the risk of substantial losses for those investors, and there can be no dispute on this issue given that National Note operated as a Ponzi scheme and she was fully aware of such fact by at least early 2010.

In summarizing the investor testimony, in my conclusions of law, and in discussing the *Steadman* factors, I have stated in detail the nature and extent of Martin's misconduct. Martin's misconduct involved a direct intent to defraud and caused harm to numerous investors. As a result of her misconduct, investors lost substantial money, and suffered financially and emotionally. In some cases, investor losses consisted of life-savings or retirement funds. In assuming a position of trust, Martin took advantage of the vulnerability and unsophistication of some investors. She received a substantial salary and commissions during her time with National Note, compensation that at least in part had to come from investor funds given National Note's insolvency. The need for deterrence counsels strongly in the favor of the highest possible sanction. The lack of prior violations does not outweigh the other public interest considerations, given the egregious nature of Martin's misconduct.

Moreover, Martin's points in mitigation are unpersuasive. She claims that Palmer operated a sophisticated scheme and had a myriad of entities and records. That appears to be true, but it is absolutely certain that no later than early 2010 did Martin know that new investor money was being used to pay existing investors and that Palmer's setup of the affiliated entities was a sham, with accounting entries being made to show money as "coded" to go to those entities when in fact that was not occurring. Although Martin was not involved in National Note's management to the extent of Palmer, she was the second most prominent figure at the company to investors and for some, their only contact.

Within any particular tier, the Commission has the discretion to set the amount. *See Brendan E. Murray*, Advisers Act Release No. 2809, 2008 SEC LEXIS 2924, at *42 (Nov. 21, 2008). "[E]ach case has its own particular facts and circumstances which determine the appropriate

[24] "To impose second-tier penalties, the Commission must determine how many violations occurred and how many violations are attributable to each person." *Rapoport v. SEC*, 682 F.3d 98, 108 (D.C. Cir. 2012). Presumably, the same approach should be taken with respect to civil penalties at the third-tier level.

penalty to be imposed." *SEC v. Opulentica, LLC*, 479 F. Supp. 2d 319, 331 (S.D.N.Y. 2007) (internal quotation marks omitted). Civil penalties should "reflect[] the gravity of [the respondent's] misconduct." *Montford & Co.*, 2014 SEC LEXIS 1529, at *108 n.213.

For each of the seven acts and omissions, Martin is assessed the maximum penalty of $150,000, for a total civil penalty of $1,050,000. In the circumstances of this case, the maximum penalty is commensurate with the public interest. Although the civil penalty exceeds the disgorgement amount, "imposing penalties in an amount greater than disgorgement in response to egregious misconduct is consistent with [Commission] precedent." *Ronald S. Bloomfield*, 2014 SEC LEXIS 698, at *91; *cf. Collins v. SEC*, 736 F.3d 521, 526 (D.C. Cir. 2013) ("[T]he relation between the civil penalty and disgorgement (and other measures of injury) is informative . . . but hardly decisive."). Also, holding Martin fully accountable for each act and omission sends a clear message of deterrence to others.

Alleged inability to pay

Martin asks that I consider her alleged inability to pay in determining monetary sanctions. The public interest, however, warrants the maximum monetary sanctions given Martin's active and central role in the Ponzi scheme that victimized so many. Martin encouraged individuals to invest with National Note, knowing that the company was on the brink of collapse and could no longer make investor payments. Even if Martin were unable to pay, I decline to waive the monetary sanctions given the egregious nature of her misconduct and high level of scienter. *See David Henry Disraeli*, Securities Act Release No. 8880, 2007 SEC LEXIS 3015, at *82 & n.125 (Dec. 21, 2007), *pet. denied*, 334 F. App'x 334 (D.C. Cir. 2009); *cf. SEC v. Warren*, 534 F.3d 1368, 1370 (11th Cir. 2008). To hold otherwise would not be in the public interest.

Fair Fund

Pursuant to Rule of Practice 1100, 17 C.F.R. § 201.1100, I require that the amount of disgorgement, prejudgment interest, and civil money penalties be used to create a fair fund for the benefit of National Note investors harmed by the violations.

Record Certification

Pursuant to Rule of Practice 351(b), 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 January 30, 2015.

Order

I ORDER that, pursuant to Section 8A of the Securities Act of 1933 and Section 21C of the Securities Exchange Act of 1934, Julieann Palmer Martin shall CEASE AND DESIST from committing or causing any 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 thereunder.

I FURTHER ORDER that, pursuant to Section 15(b)(6) of the Securities Exchange Act of 1934, Julieann Palmer Martin is BARRED from associating with a broker, dealer, investment

adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization; and from participating in an offering of penny stock, which includes: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer, or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

I FURTHER ORDER that, pursuant to Section 9(b) of the Investment Company Act of 1940, Julieann Palmer Martin is PERMANENTLY PROHIBITED from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter.

I FURTHER ORDER that, pursuant to Section 8A(e) of the Securities Act of 1933 and Sections 21B(e) and 21C(e) of the Securities Exchange Act of 1934, Julieann Palmer Martin shall DISGORGE $329,000, plus prejudgment interest. Prejudgment interest shall be calculated at the underpayment rate of interest established under Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. § 6621(a)(2), shall be compounded quarterly, and shall run from September 1, 2010, through the last day of the month preceding the month in which payment is made. 17 C.F.R. § 201.600.

I FURTHER ORDER that, pursuant to Section 21B of the Securities Exchange Act of 1934 and Section 9(d) of the Investment Company Act of 1940, Julieann Palmer Martin shall PAY A CIVIL MONEY PENALTY in the amount of $1,050,000.

I FURTHER ORDER that, pursuant to 17 C.F.R. § 201.1100, any funds recovered by way of disgorgement, prejudgment interest, or penalties shall be placed in a fair fund for the benefit of investors harmed by the violations.

Payment of disgorgement, prejudgment interest, and civil penalties shall be made no later than twenty-one days following the day this Initial Decision becomes final, unless the Commission directs otherwise. Payment shall be made in one of the following ways: (1) transmitted electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request; (2) direct payments from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm; or (3) 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.

Any payment by certified check, United States postal money order, bank cashier's check, wire transfer, or bank money order shall include a cover letter identifying the Respondent and Administrative Proceeding No. 3-15613, and 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 of Practice 360, 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 of Practice 111, 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 a manifest error of fact. The Initial Decision will not become final until the Commission enters an order of finality. The Commission will enter an order of finality unless a party files a petition for review or motion to correct a manifest error of fact or the Commission determines on its own initiative to review the Initial Decision as to a party. If any of these events occur, the Initial Decision shall not become final as to that party.

Brenda P. Murray
Chief Administrative Law Judge