

STATE OF NEW JERSEY
BUREAU OF SECURITIES
P.O. Box 47029
Newark, New Jersey 07101
(973) 504-3600

IN THE MATTER OF:

Gary Richard Scheer
(CRD# 1056099) and
Retirement Financial Advisors,
LLC (CRD# 289474)

Respondents.

**SUMMARY PENALTY AND
REVOCATION ORDER**

Pursuant to the authority granted to Christopher W. Gerold, Chief of the New Jersey Bureau of Securities ("Bureau Chief"), under the Uniform Securities Law (1997), N.J.S.A. 49:3-47 to -83 ("Securities Law") and certain regulations thereunder, and based upon documents and information obtained during the investigation by the New Jersey Bureau of Securities ("Bureau"), the Bureau Chief hereby finds that there is good cause and it is in the public interest to enter this Summary Penalty and Revocation Order ("Order") against Gary Richard Scheer ("Scheer") and Retirement Financial Advisors, LLC ("RFA") and makes the following findings of fact and conclusions of law:

INTRODUCTION

From 2010 through 2018, Gary Scheer, a New Jersey-based registered investment adviser representative, recommended and sold more than \$12 million of unregistered securities in seven different

investments to at least fifty investors. These sales generated more than \$694,000 in commissions for Scheer. Ultimately, six of the seven investments were determined by federal and/or state authorities to have been fraudulent schemes, including Woodbridge Group of Companies LLC ("Woodbridge") (a \$1.2 billion Ponzi scheme) and Northridge Holdings, Ltd. ("Northridge") (an alleged \$47 million Ponzi scheme).

At the time Scheer sold the investments to his investment advisory customers, he was acting as a registered investment adviser representative. In that capacity, Scheer owed his investment advisory customers a fiduciary duty that included both a duty of care and loyalty. Scheer breached these duties and violated the Securities Law by: (1) selling unregistered securities; (2) acting as an unregistered agent; (3) omitting or materially misrepresenting the risks associated with the investments; (4) failing to conduct reasonable due diligence before making the investment recommendations; and (5) failing to inform these customers of the material conflict of interest that was created by virtue of the undisclosed commissions being paid to him. As a result of Scheer's conduct, investors are left with the devastating task of trying to recover their investments.

FINDINGS OF FACT

A. Respondents

1. Scheer (CRD# 1056099), residing in Morristown, New

Jersey, has been registered with the Bureau as an investment adviser representative of several investment advisers since July 2008, including:

a. Global Financial Private Capital, LLC ("GFPC") (CRD# 132070) from April 1, 2010 to June 19, 2014; and

b. Retirement Wealth Advisors, Inc. ("RWA") (CRD# 137658) from June 16, 2014 to January 22, 2018.

2. Since January 26, 2018, Scheer has been registered with the Bureau as an investment adviser representative of Retirement Financial Advisors, LLC ("RFA") (CRD# 289474).

3. RFA, located in Morristown, New Jersey, has been registered with the Bureau as an investment adviser since October 19, 2017. Scheer is the managing member, Chief Compliance Officer, 100% owner, and sole investment adviser representative of RFA.

4. Scheer was also previously registered with the Bureau as an agent of several broker-dealers from 1983 to 2006.

B. The JCS Securities

i. Background

5. In or about 2013, Scheer recommended and sold securities issued by JCS Enterprises, Inc. ("JCS") and T.B.T.I. Inc. ("TBTI"). JCS and TBTI claimed investor money would be invested in electronic kiosks called Virtual Concierge Machines ("VCMs") that allowed the user to, among other things, view advertisements, purchase

products, and print retail coupons. To invest in the VCMs, investors purchased investment contracts, titled Virtual Concierge Buyer Program Agreements or Virtual Concierge Investor Contracts ("JCS Securities"). To purchase the JCS Securities, investors paid \$3,500 to \$4,500 for each VCM in which they invested.

6. While investors could potentially select the location of the VCMs, the JCS Securities were structured to discourage investors from doing so. If investors opted to place the VCM at a location of their choosing, they would not be entitled to receive purportedly guaranteed monthly payments. Further, the JCS Securities did not specify how an investor would be compensated if they opted to place the VCM in a location of their choice. Every investor at issue in this matter elected to have JCS place their respective VCMs, rather than choosing their own location.

7. As such, the investors' role was entirely passive and investors took no active role in the management of the VCMs and no active role in the management of JCS or TBTI. Instead, JCS or TBTI oversaw the placement and operation of the VCMs and an investor's profits were based solely on the efforts of JCS or TBTI.

8. Ultimately, regulatory and criminal actions were filed against JCS, TBTI, and their principals. On April 7, 2014, the SEC filed a six-count complaint alleging that JCS, TBTI, and their respective principals issued and sold at least \$40 million in unregistered securities to hundreds of investors nationwide and

"guaranteed exorbitant returns, ranging from 80% to 120% annually and up to 500% over the life of a three-or four-year investment contract, by guaranteeing a \$300 monthly return for the life of the contract." In reality, the defendants were operating a Ponzi scheme.

9. On May 8, 2014, federal indictments were handed down against JCS and TBTI's principal owners, and others, on counts of mail and wire fraud, and money laundering relating to the Ponzi scheme. Each defendant was convicted and sentenced to terms ranging from seven to twenty years of imprisonment.

10. Scheer was aware of the SEC's action against JCS, TBTI, and their respective principals in the spring of 2014. This should have served as a red flag for Scheer. In the wake of the collapse of JCS and TBTI, Scheer should have undertaken reasonable due diligence regarding the legality and risk of any similar unregistered investments before recommending that his customers purchase them. Instead, Scheer continued to recommend and sell unregistered securities to his customers without conducting adequate due diligence or disclosing to his customers the amounts of the substantial commissions he was receiving from the issuers of these unregistered securities.

ii. Scheer's Sale of the Unregistered JCS Securities

11. From July 2013 to December 2013, Scheer recommended and, acting as an agent of JCS and TBTI, sold fourteen JCS Securities

to or from New Jersey, totaling \$384,000, to twelve investors.

12. Scheer represented to the investors that JCS and TBTI guaranteed a fixed payment of at least \$300 per month for each VCM in which they invested, which would be funded through the cash flow generated by the VCMs.¹

13. JCS paid Scheer between \$300 and \$450 for each VCM invested in, through the JCS Securities, which represented an 8.5% to 10% commission. Scheer received at least \$31,350 in commissions from JCS for selling the unregistered JCS Securities.

14. Scheer admitted he did not disclose to his customers how much he would be compensated for the sale of the JCS Securities.

15. The JCS Securities are securities as defined in N.J.S.A. 49:3-49(m) of the Securities Law.

16. The JCS Securities were not registered with the Bureau, not federally covered, and not exempt from registration.

C. The Dental Support Plus Securities

i. Background

17. In or about May 2013, Scheer recommended and sold securities in the form of investment contracts, titled "Operating Agreement of DSPF Group LLC" ("DSPF Securities"). Dental Support Plus Franchise, LLC ("DSPF") purportedly represented to investors that they would "own" one or more franchises that would refer

¹ Again, this was only available if investors allowed JCS to select the location of the VCM.

patients to DSPF-partnered dentists. In exchange for the referral, DSPF represented that a portion of the new patient revenue generated by providing dental services to those patients would be paid to the investor's franchise.

18. The investors' role was entirely passive and investors took no active role in the management of the franchises or DSPF. Instead, DSPF purportedly managed the advertising and sought out potential patients for DSPF-partnered dentists, and an investor's profits were based solely on the efforts of DSPF.

19. On November 18, 2013, the Arizona Securities Division issued an Order against DSPF and its co-founder, alleging that the investment contracts were securities and that respondents engaged in fraudulent conduct during the offering and sale of the DSPF Securities.

20. On January 3, 2018, the Arizona Securities Division issued an Opinion and Order against DSPF, its co-founder, and the co-founder's spouse concluding, among other things, that: (1) DSPF offered and sold unregistered securities, in the form of the DSPF Securities, in violation of Arizona securities law; (2) the DSPF Securities were not exempt from registration under Arizona law; and (3) DSPF committed fraud in the offer and sale of unregistered securities, engaging in transactions, practices or a course of business involving untrue statements and omissions of material fact in violation of Arizona securities law.

21. Scheer admitted that, by early 2014, he had become aware of the Arizona Securities Division regulatory proceeding against DSPF alleging that DSPF had sold unregistered securities and had engaged in fraud in connection with the offer and sale of the unregistered securities.

22. Once again, this Arizona regulatory action should have served as a red flag for Scheer when he considered recommending future investments in unregistered securities to his customers. Given his experience with JCS and DSPF, Scheer should have undertaken reasonable due diligence regarding the legality of similar unregistered securities, and the risks of those investments, before recommending them to his customers. Scheer nonetheless continued to recommend unregistered securities to his customers.

ii. Scheer's Sale of the DSPF Securities

23. Scheer recommended and, acting as an agent of DSPF, sold two DSPF Securities to or from New Jersey, totaling \$172,000, to two investors.

24. DSPF paid Scheer an 8% commission for the sale of the DSPF Securities. In total, DSPF paid Scheer approximately \$13,760 for selling the unregistered DSPF Securities.

25. Scheer admitted he did not disclose to his customers how much he would be compensated for the sale of the DSPF Securities.

26. The DSPF Securities are securities as defined in

N.J.S.A. 49:3-49(m) of the Securities Law.

27. The DSPF Securities were not registered with the Bureau, not federally covered, and not exempt from registration.

D. The Pension Income, LLC Securities

i. Background

28. From April 2012 to April 2013, Scheer recommended and sold securities issued by Pension Funding, LLC and Pension Income, LLC (collectively, "Pension Income"). Pension Income purchased income streams at a discount from individuals entitled to pension payments ("PI Pensioners"). The PI Pensioners were paid a lump sum by Pension Income in exchange for an assignment of their future income payments.

29. Pension Income offered and sold securities, in the form of investment contracts, based upon the future income payments received from the PI Pensioners, titled Buyer's Master Agreements ("PI Securities"). Pension Income represented to investors, among other things, that: (1) Pension Income will "operate as an escrow agent matching the [investor] with [a PI Pensioner]"; (2) Pension Income will "collect documents which verify the [PI Pensioner]'s ability to meet the commitments," and "send [a PI Pensioner's] information to the [investor]"; (3) that Pension Income "provides a 100% money back guarantee"; and (4) Pension Income promised that "[t]he sum of the [investor's] payments will never be less than the purchase price of the income stream."

30. On August 20, 2015, the CFPB and NYDFS jointly brought a regulatory action against Pension Income and certain owners and officers, alleging that the defendants tricked consumers into borrowing against their pensions, hid high-interest loan rates and fees, and deceived consumers about other terms of the deal. The complaint further alleged that Pension Income engaged in unfair and deceptive acts or practices in violation of New York and federal law, charged usurious interest rates in violation of New York banking law, engaged in false and misleading advertising of loans, and made material misrepresentation of facts regarding a financial product.

31. The CFPB and NYDFS further alleged that Pension Income "marketed and offered its product to consumers with pensions from sources such as military and civil service," and the average effective annual interest rate of the loans exceeded both the New York civil and criminal usury caps.

32. On January 8, 2016, a court-appointed receiver took ownership of Pension Income's assets and a plan of distribution to repay investors' funds was approved on May 2, 2019.

ii. Scheer's Sale of the Unregistered Pension Income Securities

33. Scheer recommended and, acting as an agent of Pension Income, sold four PI Securities to or from New Jersey, totaling

\$517,571.41, to two investors.

34. Pension Income paid Scheer a commission ranging from 6% to 9% for the sale of the PI Securities. In total, Pension Income paid Scheer at least \$46,580.26 for selling the unregistered PI Securities.

35. Scheer admitted he did not disclose to his customers how much he would be compensated for the sale of the PI Securities.

36. The PI Securities are securities as defined in N.J.S.A. 49:3-49(m) of the Securities Law.

37. The PI Securities were not registered with the Bureau, not federally covered, and not exempt from registration.

E. The FIP Securities

i. Background

38. From February 2012 to November 2015, Scheer recommended and sold securities issued by Future Income Payments, LLC ("FIP"). FIP held itself out as a "factoring company that specializes in secondary market pension income streams."

39. Similar to Pension Income, FIP purportedly purchased income streams at a discount from individuals entitled to payments from pension and lottery payments, annuity payments, and lawsuit settlements ("FIP Pensioners"). The FIP Pensioners were paid a lump sum by FIP in exchange for an assignment of the future income payments. FIP claimed that protections were in place to safeguard against breaches or disruptions of payments. The protections

purportedly included underwriting requirements, a shortfall and reserve account, and diversification of cash flows.

40. FIP issued securities in the form of investment contracts, titled Purchase Agreements ("FIP Securities"). FIP offered the FIP Securities through websites, including www.structuredcashflows.com. The term of the FIP Securities ranged from five to ten years and promised a 6% to 7% annual rate of return.

41. On or about January 2, 2019, investors filed a petition for involuntary Chapter 7 bankruptcy of FIP in the United States Bankruptcy Court, Central District of California. The petition was granted on February 6, 2019.

42. On March 12, 2019, FIP and its sole owner, Scott Kohn ("Kohn"), were indicted by a federal grand jury. According to the indictment, "FIP diverted new investor funds flowing into the business to fund payments to earlier investors to keep the scheme and artifice operational. In this manner, the investment program operated by FIP was a 'Ponzi scheme[],'" and "[t]he operation of the scheme and artifice surrounding FIP allowed [Kohn] to live a lavish lifestyle."

43. Additionally, in April 2019, the Securities Division of the Vermont Department of Financial Regulation and the Securities Commissioner of South Carolina issued Cease and Desist orders against FIP and Kohn for selling unregistered securities.

ii. Scheer's Sale of the Unregistered FIP Securities

44. Scheer recommended and, acting as an agent of FIP, sold eight FIP Securities, totaling \$784,000, to or from New Jersey to seven investors.

45. FIP paid Scheer a 5% commission for the sale of FIP Securities. In total, FIP paid Scheer at least \$36,200 for selling the unregistered FIP Securities.

46. Scheer admitted he did not disclose to his customers how much he would be compensated for the sale of the FIP Securities.

47. The FIP Securities are securities as defined in N.J.S.A. 49:3-49(m) of the Securities Law.

48. The FIP Securities were not registered with the Bureau, not federally covered, and not exempt from registration.

F. The Woodbridge First Position Commercial Mortgages

i. Background

49. Woodbridge Group of Companies, LLC ("Woodbridge"), a California-based financial company, purported to be a commercial lender that made hard-money loans secured by mortgages on commercial property. Woodbridge offered and sold securities in the form of promissory notes, titled First Position Commercial Mortgages ("FPCMs"), issued by Woodbridge-related entities: Woodbridge Mortgage Investment Fund 1, LLC, Woodbridge Mortgage Investment Fund 2, LLC, Woodbridge Mortgage Investment Fund 3, LLC, Woodbridge Mortgage Investment Fund 3A, LLC, and Woodbridge

Mortgage Investment Fund 4, LLC (collectively, "Woodbridge Funds").

50. The Woodbridge Funds represented that the investment included collateral consisting of a secured, first-lien interest in a specific property address and mortgage. The FPCMs were typically for a term of approximately one year and purported to pay between 6% to 8% interest annually to investors, payable on a monthly basis. At the conclusion of the term, investors could either receive a return of their principal investment or roll over their investment into a new FPCM.

51. On May 4, 2015, the Massachusetts Securities Division ("Massachusetts Securities Division"), and Woodbridge Mortgage Investment Fund 1, LLC, Woodbridge Mortgage Investment Fund 2, LLC, and Woodbridge Mortgage Investment Fund 3, LLC, entered into a consent order ("Massachusetts Consent Order"). The Massachusetts Securities Division asserted that the Woodbridge entities violated the Massachusetts Uniform Securities Act by selling unregistered securities. The Woodbridge entities were required to offer rescission to Massachusetts investors and to pay a civil penalty of \$250,000.

52. On July 17, 2015, the Texas State Securities Board ("Texas Securities Board") issued an order ("Texas C&D Order") requiring Woodbridge Mortgage Investment Fund 3, LLC, Woodbridge's former Chief Executive Officer Robert Shapiro ("Shapiro"), and

others to cease and desist from the fraudulent sale of securities in the form of promissory notes. The Texas Securities Board further found that: (1) the promissory notes issued were securities; (2) Woodbridge Mortgage Investment Fund 3, LLC was not taking reasonable steps to verify that purchasers were accredited investors; and (3) Woodbridge Mortgage Investment Fund 3, LLC intentionally failed to disclose investment risks and the existence of the Massachusetts Consent Order to investors. On March 18, 2016, Woodbridge Mortgage Investment Fund 3, LLC and Shapiro entered into a consent order with the Texas Securities Board ("Texas Consent Order"). Both individually and as the controlling member of Woodbridge Mortgage Investment Fund 3, LLC, Shapiro agreed to comply with the Texas Consent Order and to cease offering for sale or selling the unregistered securities.

53. On October 4, 2016, the Arizona Securities Division issued a temporary cease and desist order ("Arizona C&D Order") against Woodbridge Mortgage Investment Fund 1, LLC, Woodbridge Mortgage Investment Fund 2, LLC, Woodbridge Mortgage Investment Fund 3, LLC, Woodbridge Mortgage Investment Fund 3A, LLC, other Woodbridge-related entities and Woodbridge agents. On November 27, 2018, Shapiro, on behalf of Woodbridge and the named Woodbridge funds, entered into an Order to Cease and Desist, Order for Restitution, Order for Administrative Penalties, and Consent to Same ("Arizona Consent Order"). The Arizona Consent Order included

Findings of Fact and Conclusions of Law that the FPCMs were securities and that Woodbridge offered or sold securities within or from Arizona. Woodbridge consented to cease offering and selling the FPCMs in Arizona.

54. On August 8, 2017, the Administrator of the Corporations, Securities, and Commercial Licensing Bureau for the State of Michigan ("Michigan Securities Bureau") issued separate cease and desist orders against the Woodbridge Funds ("Michigan C&D Orders"), finding that, in Michigan, the Woodbridge Funds sold more than \$14,000,000 in unregistered securities to approximately 230 investors that were marketed as "safe" and providing "higher yields." The Michigan Securities Bureau also found the Woodbridge Funds failed to provide relevant financial information to demonstrate their ability to pay the return promised in their advertisements, and that the Woodbridge Funds failed to disclose the Massachusetts Consent Order, Texas C&D Order, and the Arizona C&D Order. The Michigan C&D Orders directed the Woodbridge Funds to immediately cease offering or selling unregistered securities, and notified the Woodbridge Funds that the Michigan Securities Bureau intended to impose a \$500,000 fine in a final order. On August 27, 2018, the Michigan Securities Bureau entered into an Administrative Consent Agreement and Order with Woodbridge Funds, wherein Woodbridge Funds agreed and were ordered to cease and desist sales of the FPCMs.

55. On December 4, 2017, Woodbridge, the Woodbridge Funds, and other Woodbridge-related entities filed for Chapter 11 bankruptcy protection.

56. On December 20, 2017, the SEC filed a complaint against Woodbridge, Shapiro, the Woodbridge Funds, and other Woodbridge-related entities alleging, among other things, that the sale of the FPCMs were fraudulent and part of a \$1.2 billion Ponzi scheme orchestrated by Shapiro. On January 28, 2019, the SEC and Woodbridge consented to the entry of an order for Woodbridge to pay \$1 billion in penalties and disgorgement.

57. On April 12, 2019, Shapiro and two former Woodbridge directors were criminally charged with orchestrating a \$1.2 billion Ponzi scheme, through Woodbridge.

ii. Scheer's Sale of the Unregistered FPCMs

58. From August 2015 to August 2017, Scheer recommended and, acting as an agent of Woodbridge, sold approximately thirteen FPCMs issued by the Woodbridge Funds, totaling approximately \$1,083,800, to eight New Jersey investors.

59. The Woodbridge Funds paid Scheer the difference between a wholesale interest rate paid by the FPCMs (typically 9%), and the rate of interest that the investor received from the FPCM. The Woodbridge Funds gave Scheer the discretion to adjust the interest rate that investors received from the FPCMs. Scheer also received periodic bonuses from Woodbridge for selling the FPCMs.

60. In total, the Woodbridge Funds paid Scheer approximately \$39,751 for selling the unregistered FPCMs.

61. In 2016, Scheer inquired with Woodbridge regarding a disclosure in an investor's FPCM renewal documents that stated that noteholders in Massachusetts and Texas were not permitted to renew their notes.

62. Scheer indicated that Woodbridge disclosed to him that Woodbridge had settled regulatory matters with the Massachusetts Securities Division and had agreed not to sell the FPCMs in Massachusetts. Scheer admitted that he read the May 4, 2015 Massachusetts Consent Order. Scheer also knew that Woodbridge had been the subject of a regulatory action by the Texas Securities Board.

63. The Massachusetts Consent Order and the Texas C&D Order were clear red flags that should have caused Scheer to engage in additional due diligence about the legality of the securities and risks involved with the transaction.

64. Scheer failed to disclose to investors the risks associated with future regulatory actions against Woodbridge, such as the risk of civil penalties and monetary damages being assessed against Woodbridge, the risk of administrative and civil injunctions or cease and desist orders that would limit Woodbridge's business operations, and the risk of further litigation by private litigants.

65. Further, Scheer did not disclose the Massachusetts Consent Order, his conversation with Woodbridge regarding the Massachusetts Consent Order, and his knowledge of the Texas regulatory actions, to his customers and investors. Scheer nonetheless continued to sell the FPCMs until August 2017.

66. Scheer admitted he did not disclose to his customers how much he would be compensated for the sale of the FPCMs.

67. The FPCMs are securities as defined in N.J.S.A. 49:3-49(m) of the Securities Law.

68. The FPCMs were not registered with the Bureau, not federally covered, and not exempt from registration.

G. The Northridge Securities

i. Background

69. From April 2010 through November 2018, Scheer recommended and, acting as an agent of Eastridge Holdings, Ltd. ("Eastridge"), Unity Investment Group I, Ltd. ("Unity"), and Northridge, sold securities in the form of promissory notes issued by Eastridge and Unity ("Northridge Securities"), all of which were controlled by Northridge's owner and president, Glenn C. Mueller ("Mueller").

70. On June 10, 2019, the Bureau and the Massachusetts Securities Division, Illinois Securities Department, and New Hampshire Bureau of Securities Regulation filed actions against Northridge, Mueller, and the other Northridge-related entities,

for selling unregistered securities, among other things.

71. The Bureau filed an administrative Summary Cease and Desist Order, as well as a Complaint in the New Jersey Superior Court against Mueller, Northridge, Eastridge, Unity, and related entities.² The four-count Complaint alleged violations of the Securities Law including selling unregistered securities, acting as an unregistered broker-dealer, acting as an unregistered agent, and employing unregistered agents.

72. The Massachusetts Securities Division and New Hampshire Bureau of Securities Regulation issued an Administrative Complaint ("Massachusetts Complaint") and Notice of Order ("New Hampshire Notice of Order"), respectively, with both finding that the Northridge Securities were unregistered securities and that Northridge, Northridge-related entities, and Northridge agents offered and sold the unregistered Northridge Securities in violation of their respective securities laws. The Massachusetts Complaint and New Hampshire Notice of Order each requested, among other things, that an order be entered against Northridge prohibiting the offer and sale of the Northridge Securities.

73. The Illinois Securities Department issued a Temporary Order of Prohibition ("Illinois Order"), finding that the Northridge Securities were unregistered securities and that

² Grewal v. Glenn C. Mueller, et al., Docket No. MRS-C-54-19 (Ch. Div. Jun. 10, 2019).

Northridge, Northridge-related entities, and Northridge agents offered and sold the unregistered Northridge Securities in violation of Illinois securities laws. The Illinois Order prohibited Northridge from continuing to offer and sell the Northridge Securities in Illinois, among other things.

ii. Scheer's Sale of the Unregistered Northridge Securities

74. Scheer recommended and, acting as an agent of Eastridge and Unity as issuers, and Northridge as an unregistered broker-dealer, sold 100 Northridge Securities totaling approximately \$8.7 million to or from New Jersey, to thirty-eight investors.

75. Scheer recommended and sold the Northridge Securities without any prospectus, prospectus supplement, or other written offering materials, other than a Northridge brochure. Scheer failed to provide investors with material information such as risk disclosures, information regarding the financial solvency of the issuers, information regarding their corporate structure, or most of the information that would be required in a private placement memorandum or prospectus. Further, certain Northridge Securities were labelled as "CD Notes," even though the notes were not insured or related to certificate of deposits.

76. Amberwood Holdings Limited Partnership ("Amberwood"), a Northridge related entity, paid Scheer commissions that varied from 2% to 10% of the principal amount of the Northridge Securities

sold.³

77. Starting in June 2017, and continuing thereafter, Scheer's compensation structure changed to a "consulting fee" agreement, whereby Scheer was paid monthly "consulting fees" for the sale and/or renewal of the Northridge Securities.

78. Scheer entered into "Consulting Fee Agreements" with Northridge that, among other things, provided that:

- a. Scheer would be compensated if an investor was referred to Northridge and invested; and
- b. Scheer would be paid pursuant to a schedule attached to the Consulting Fee Agreement, which provided for fixed monthly payments over a four-month period; and the Consulting Fee Agreement could be extended every four months with renegotiated monthly payments.

79. Payments made to Scheer pursuant to the schedule attached to the Consulting Fee Agreements ranged from \$1,000 to \$8,000 per month.

80. Amberwood paid Scheer at least \$499,614.30 in commissions or fees for the sales of the Northridge Securities.

81. Scheer admitted he did not disclose to his customers how

³ The commission amount would vary depending on the term to maturity of the promissory note, whether the note contained provisions allowing the note to convert to a real estate limited partnership, and whether it was an original sale or a renewal of an existing promissory note.

much he would be compensated for the sale of the FPCMs.

82. The Northridge Securities are securities as defined in N.J.S.A. 49:3-49(m) of the Securities Law.

83. The Northridge Securities were not registered with the Bureau, not federally covered, and not exempt from registration

H. The Gains Equity Management Transactions

i. Background

84. From May 2013 to August 2017, Scheer recommended and sold securities issued by Gains Equity Management, LLC ("Gains"), an Arizona-based company, that purportedly purchases portfolios of distressed debt, such as overdue credit card payments or car loans, at a discount. Gains retained a master-servicer, Collins Asset Group, LLC ("Collins"), to attempt to collect on the purchased debt.

85. Gains offered and sold limited liability membership interests ("Gains Securities"). In exchange for a lump-sum investment from investors, Gains would set up "series" limited liability companies ("Series LLCs") and investors would own a limited liability membership interest. The Series LLC would then execute a promissory note between the Series LCC and Collins, which Collins would repay through its collection efforts.

86. The Gains Securities state that "[a]ll members are expected to play an active role in [the] management of the company." However, the investors' role was passive and investors

took no active role in the management of Gains or in the management of Collins. Further, Scheer testified that, while investors purportedly engaged in "management meetings on a biannual basis and [were] involved in discussions of either adjustments in maturity dates and other decisions related to the total investments," his customers' involvement with Gains was "largely passive." The investors' returns would come from the collection of the debt, which was handled by Gains and Collins.

87. To date, there have been no regulatory actions filed by any federal or state securities regulator against Gains.

ii. Scheer's Sale of the Gains Securities

88. Scheer recommended and, acting as an agent of Gains, sold seven Gains Securities, totaling \$404,601.98, to five investors to or from New Jersey.

89. Gains paid Scheer a commission ranging from 3% to 10% for the sales of the Gains Securities. In total, Gains paid Scheer at least \$27,103.95 for selling the unregistered Gains Securities.

90. Scheer admits he did not disclose to his customers how much he would be compensated for the sale of the Gains Securities.

91. The Gains Securities are securities as defined in N.J.S.A. 49:3-49(m) of the Securities Law.

92. The Gains Securities were not registered with the Bureau, not federally covered, and not exempt from registration.

I. Scheer Violated GFPC and RWA Policies and Procedures By

Failing to Disclose Outside Business Activities

93. In 2011, GFPC's Policies and Procedures stated that "[a]ny employment or other outside activity by a Firm employee or investment adviser representative may result in possible conflicts of interests for the individual and/or for the Firm and should be reviewed and approved by the Chief Compliance Officer." They further provide that approval from the Chief Compliance Officer must be obtained before engaging in the outside business activity.

94. While at GFPC, Scheer failed to disclose certain outside business activities to GFPC as required. For example, on July 16, 2011, Scheer completed an Outside Business Activity Notification Form in which he only disclosed Gary Scheer, LLC as an outside business activity. Scheer provided the nature of the business as an insurance agency. He did not disclose that, at that time, he was acting as an agent of Eastridge, Unity, or Northridge.

95. Between June 2014 and January 2018, Scheer failed to disclose certain outside business activities to RWA.

96. On March 24, 2014, during Scheer's onboarding process with RWA, Scheer completed and signed a Form U4. Item 13 of the Form U4 regarding "Outside Business" information, which would be filed through the Central Registration Depository ("CRD"), asked, "[a]re you currently engaged in any other business either as a proprietor, partner, officer, director, employee, trustee, agent or otherwise?" In addition, the Form U4 disclosure item requested

information about engaging in another business, including the name, address and nature of the business, whether such business is investment-related, the individual's position, title, duties, start date and relationship with the other business, the approximate number of hours per month devoted to the other business, and the number of hours devoted to the other business during securities trading hours.

97. In response to Item 13, Scheer wrote, "I am an independent agent licensed to sell life and health insurance in New Jersey, New York, Pennsylvania, and Florida. My insurance based activities are based out of my sole business located at 55 Madison Avenue, Suite 54C, Morristown, NJ 07960." Scheer failed to disclose that he acted as an agent of FIP, Eastridge, Unity, Northridge, and Gains.

98. RWA also required investment adviser representatives to complete attestations which, among other things, oblige them to disclose any outside business activities to the firm.

99. On December 31, 2014, Scheer signed an Attestation and Acknowledgment Form attesting, among other things, that: (1) he had read RWA's Code of Ethics; (2) he had read RWA's Compliance Manual; (3) "other than those [outside activities] listed below, I do not have any other activities in which that I participate and receive compensation, cash or non-cash, for my participation in that activity . . ."; and (4) that each outside business activity

he participated in had been approved by RWA. Although the December 31, 2014 Attestation and Acknowledgement Form does not initially state the approved outside business activity, the form was amended in or about March 2015 to state "Gary Scheer LLC-Owner/IAR/Insurance." No other outside business activities were disclosed.

100. An Outside Business Activities Disclosure Form ("OBA Form"), signed by Scheer on August 19, 2014, included disclosures to RWA that Scheer was soliciting and selling the FIP Securities, but did not include disclosures that Scheer was soliciting and selling the Gains Securities and the Northridge Securities.

101. On or about September 2, 2014, Scheer disclosed to RWA via email that he sold certain "alternative investments" to his customers. Scheer's disclosure to RWA included the FIP Securities, the Northridge Securities, and the Gains Securities.

102. In response to Scheer's disclosure of the investments, on September 3, 2014, RWA instructed Scheer that he "should not be recommending 'alternative investments' in [his] capacity as an IAR for RWA." Scheer nevertheless continued to recommend investments in FIP, Eastridge, Unity, and Gains to his customers in violation of his firm's instructions, as described throughout this Order.

103. An OBA Form, signed by Scheer on January 13, 2015, did not include disclosures to RWA that Scheer was soliciting and selling the FIP Securities, the Woodbridge Securities, the

Northridge Securities, or the Gains Securities.

104. On January 12, 2016, Scheer emailed an updated OBA Form to an RWA compliance officer. This updated OBA Form disclosed that Scheer was soliciting and selling the FIP, Northridge and Gains Securities.

105. On March 13, 2017 Scheer signed an Attestation and Acknowledgment Form with identical, or nearly identical, acknowledgments to the December 31, 2014 attestation. On the March 13, 2017 Attestation and Acknowledgment Form, Scheer acknowledged outside business activities as life, accident, and health insurance. No other outside business activities were disclosed.

J. Scheer Omitted Material Facts in Filings with the Bureau by Failing to Report Required Information on His Form U4

106. From April 1, 2010 to the present, Scheer has failed to report within thirty days, as required, seven outside business activities, three tax liens, three compromises with creditors, and a lawsuit/arbitration.

107. From March 9, 2011 and November 8, 2018, Scheer filed six Form U4 amendments in which he failed to disclose, as required, a combined eighteen outside business activities, tax liens, compromises with creditor occurrences and/or a lawsuit/arbitration.

108. From June 11, 2014 and January 18, 2018, Scheer filed two investment adviser registration applications on the Form U4

and an investment adviser application on the Form ADV with the Bureau in which he failed to disclose as required a combined seven outside business activities, tax liens and/or compromises with creditor occurrences.

109. N.J.S.A. 49:3-54 and N.J.S.A. 49:3-58(a)(2)(i) prohibit investment adviser representatives from making misrepresentations, omitting a required document or material fact, or making an incomplete application for registration with the Bureau.

110. Pursuant to N.J.A.C. 13:47A-3A.1:

[A]ny person, who has a place of business located in this State, who desires to act in the State of New Jersey . . . and any person doing business in this State who desires to act in the State of New Jersey as an investment adviser representative . . . shall file an application with an original signature, with the Bureau on the Uniform Application for Securities Industry Registration or Transfer, Form U4

111. Pursuant to N.J.A.C. 13:47A-3A.2(a), "[a] registered investment adviser representative shall file with the Bureau an amendment to Form U4 within 30 days, whenever there is any change to the information previously reported on the Form U4."

i. Scheer Failed to Disclose Outside Business Activities

112. From April 1, 2010 and January 17, 2018, Scheer failed to update his Form U4 within thirty days and/or to report on filed Form U4s as required to disclose his outside business activities during the relevant time periods for: JCS and TBTI; DSPF; Pension

Income; FIP; Woodbridge; Eastridge; Unity; Northridge; and Gains.

113. Item 13 of the Form U4, which is to be filed through the CRD, asks, “[a]re you currently engaged in any other business either as a proprietor, partner, officer, director, employee, trustee, agent or otherwise?” In addition, this Form U4 disclosure item requests information about engaging in another business, including the name, address and nature of the business, whether such business is investment-related, the individual’s position, title, duties, start date and relationship with the other business, the approximate number of hours/month devoted to the other business, and the number of hours devoted to the other business during securities trading hours.

ii. Scheer Failed to Disclose an Investment-Related Litigation or Arbitration

114. On June 22, 2018, Scheer and RWA were named as defendants in an investment-related, consumer-initiated civil litigation, filed by customers of Scheer with the Superior Court of New Jersey. The complaint alleged that Scheer was involved in the sale of unregistered securities and had engaged in securities fraud, among other things, in connection with the sale of investments in Woodbridge. The complaint contained a claim for compensatory damages of more than \$595,000.

115. Despite the requirement to disclose an investment-related, consumer-initiated civil litigation against him, Scheer

failed to amend his Form U4 within thirty days and/or to report on filed Form U4s as required to disclose the aforesaid suit.

116. On November 7, 2018, the parties entered into a consent order agreeing to submit the matter to arbitration before the American Arbitration Association.

117. Despite the requirement to disclose an investment-related, consumer-initiated arbitration against him, Scheer failed to amend his Form U4 within thirty days and/or to report on filed Form U4s as required to disclose the pending arbitration.

118. Item 14(I)(1) of the Form U4, which is to be filed through the CRD, asks "[h]ave you ever been named as a respondent/defendant in an *investment-related*, consumer-initiated arbitration or civil litigation which alleged that you were *involved* in one or more *sales practice violations* and which . . . is still pending[?]" Additionally, subsections (3) and (5) further ask whether there had been any investment-related, consumer-initiated "written complaint," or "arbitration claim or civil litigation," which alleged that the registrant was "*involved* in one or more *sales practice violations* and contained a claim for compensatory damages of \$5,000 or more" within the past twenty-four (24) months.

iii. Scheer Failed to Disclose Tax Liens

119. Scheer failed to amend his Form U4 within thirty days and/or to report on filed Form U4s as required to disclose three

tax liens that had been entered against him with a total amount of approximately \$175,000:

- a. On December 16, 2010, a Notice of Federal Tax Lien was recorded with the County Clerk, Morris County, New Jersey, as to Gary Scheer.
- b. On September 26, 2016, a Certificate of Sale for Unpaid Municipal Tax Liens, was filed with the County Clerk, Morris County, New Jersey, regarding Scheer's home address for taxes assessed to Gary Scheer.
- c. On December 31, 2018, a Notice of Federal Tax Lien was recorded with the County Clerk, Morris County, New Jersey, as to Gary Scheer.

120. On March 28, 2019, Scheer, on behalf of RFA, filed a Form ADV with the Bureau via Investment Adviser Registration Depository. Part 1B, Item 2(D) of the Form ADV asks, "[a]re there any unsatisfied judgments or liens against you, any advisory affiliate, or any management person?" Scheer answered "No" to Part 1B, Item 2(D) on the Form ADV.

121. On the Form ADV's Execution Page, Scheer signed as Chief Compliance Officer of RFA. The Execution Page states:

I, the undersigned, sign this Form ADV on behalf of, and with the authority of, the investment adviser. The investment adviser and I both certify, under penalty of perjury under the laws of the United States of America, that the information and statements made in this ADV, including exhibits and any other information submitted, are true and correct, and that I am signing this Form

ADV Execution Page as a free and voluntary act.

122. Thus, Scheer certified that he was aware of his obligation to file the Form ADV with accurate and current information.

123. Not only did Scheer fail to disclose the outstanding tax lien, but he also affirmatively included false information in his application for registration with the Bureau.

124. Item 14(M) of the Form U4, which is to be filed through the CRD, asks "[d]o you have any unsatisfied judgments or liens against you?" In addition, the corresponding Form U4 disclosure reporting page requires information about the liens or judgments, including the authority that entered the lien, the amount of the lien, the date filed with court, and whether the lien was outstanding.

iv. Scheer Failed to Disclose Compromises with Creditors

125. Scheer failed to amend his Form U4 within 30 days and/or to report on filed Form U4s as required to disclose three compromises with creditors:

- a. On July 6, 2011, US Bank, NA, filed a foreclosure action against Scheer in the Superior Court of New Jersey.
- b. On November 30, 2015, Chevy Chase Funding LLC filed a foreclosure action against Scheer in the Superior Court of New Jersey.

c. On September 22, 2015, the Bank of New York Mellon filed a foreclosure action against Scheer in the Superior Court of New Jersey.

126. All three of these foreclosures were settled and dismissed, however Scheer failed to amend his Form U4 within 30 days and/or to report on filed Form U4s as required to disclose the compromises with creditors.

127. Item 14(K) of Form U4, which is to be filed through the CRD, asks: "Within the past 10 years[,] . . . have you made a compromise with creditors . . . ?"

K. Scheer Breached His Fiduciary Duty to His Customers

128. Investment adviser representatives, like Scheer, have a fiduciary duty to their customers. This duty was required at all relevant times in the policies and procedures at both GFPC and RWA, and is stated in RFA's ADV Brochure.

i. Scheer Failed to Perform Reasonable Due Diligence on the Unregistered Securities

129. Scheer had a duty to conduct reasonable due diligence before recommending securities to customers, including whether the securities being offered were properly registered.

130. In each of the offerings, Scheer recommended the investments without a reasonable, independent basis for his advice. To form a reasonable basis for his advice, Scheer had a duty to engage in due diligence that would allow him to

independently assess whether the key representations made by the issuers were accurate and complete.

131. Scheer failed to assess whether the issuers' representations were truthful. Because Scheer failed to conduct adequate due diligence into the unregistered securities that he was recommending, he did not have a reasonable basis for describing the investments to his customers as having low or moderate risk.

132. Further, Scheer ignored red flags that should have caused him to engage in additional due diligence about the legality of the investments and the risks involved with the transactions.

133. As early as the spring of 2014, Scheer was aware of the SEC lawsuit against JCS and TBTI. The SEC lawsuit alleged that the JCS Securities were unregistered securities being sold in violation of federal law, and that JCS and TBTI had engaged in fraud in connection with the offer and sale of the unregistered securities. Scheer was also aware of the Arizona Securities Division regulatory proceeding against DSPF. The Arizona proceeding alleged that DSPF had sold unregistered securities and had engaged in fraud in connection with the offer and sale of the unregistered securities.

134. Thus, Scheer knew that these unregistered securities had been challenged by securities regulatory authorities as involving the unlawful offer and sale of unregistered securities. Consequently, he knew that investments that purported to offer

unrealistically high returns with little risk were potentially unregistered and illegal to offer and sell, and were subject to regulatory risk and risk of fraud by their promoters.

135. Even though Scheer was aware of increased regulatory risk or potential illegality of the investments, he continued to promote those investments without informing his customers of those risks. For example, Scheer knew in 2016 that Woodbridge had entered into a Consent Order with the Massachusetts Securities Division to cease and desist from selling any further FPCMs in Massachusetts, and that it was also the subject of an Order by the Texas Securities Board. Yet he continued to sell Woodbridge to his customers until August 2017 without disclosing the Massachusetts or Texas Consent Orders.

136. Ultimately, these investments proved to be catastrophic for investors. Investors' retirement funds and savings were negatively impacted after the companies that issued the unregistered securities failed as a result of their fraudulent and illegal conduct.

ii. **Scheer Did Not Have a Reasonable Basis to Rely on the Opinion Letters Stating that the Above Transactions Were Not Securities**

137. Scheer claims to have relied on legal opinion letters, provided to him by the companies issuing the investments he recommended to investors. Scheer claims to have relied on these letters to conclude that the investments were not securities.

Scheer understood that, if the investments were in fact securities, they would need to be registered with securities regulators.

138. Again, as early as the spring of 2014, Scheer was aware of the SEC lawsuit against JCS and TBTI and the Arizona Securities Division regulatory proceeding against DSPF. Notwithstanding this knowledge, Scheer knew, or should have known, that the opinion letters he received from JCS and DSPF were unreliable, and that the opinion letters received from other issuers may have been unreliable and that the transactions were potentially violating the registration requirements of the securities laws.

139. In addition, Scheer recommended and sold the Northridge Securities to his customers based, in part, on a printout of a generic presentation from a Chicago attorney's website describing "Securities Law Issues for Entities raising Money from Investors." The presentation, provided to Scheer by Mueller, made no mention of Northridge, did not opine on whether the Northridge Securities satisfied the definition of a security, and referred to an "Offering Memo" – which Scheer did not have for Northridge or any of these other unregistered securities – as "the 'CYA' Document." Accordingly, Scheer had no reasonable basis to conclude that the Northridge Securities were not securities.

140. Further, Scheer should not have relied upon the opinion letter provided by Woodbridge, dated October 14, 2015, which included a disclaimer stating "[t]his opinion may not be relied

upon by anyone other than [the Woodbridge Group of Companies, LLC.]” It further explained that “[t]his opinion is not free from doubt and is by no means a guarantee and should not be treated as such.”

141. Even after Scheer became aware that some of the securities issuers had come under regulatory scrutiny, Scheer continued to sell further unregistered securities to his customers.

I. Scheer Failed to Disclose Material Conflicts When Rendering Advice

142. Scheer failed to disclose material conflicts to his customers in writing before he advised them to purchase the unregistered securities from DSPF, Gains, JCS, Pension Income, FIP, Woodbridge or Northridge.

143. There were clear financial incentives for Scheer to sell the unregistered securities, rather than recommending that his customers invest through managed accounts with GFPC or RWA. Had Scheer’s customers invested in managed accounts through GFPC or RWA, Scheer would have only been compensated 1.0% to 1.5% per year. In contrast, Scheer received commissions of up to 10% on the unregistered securities.

144. Scheer never disclosed the commissions or fees he was receiving from DSPF, Gains, JCS, FIP, Northridge, Woodbridge, or Pension Income. While Scheer disclosed to some customers that he

would be compensated, he testified that he never disclosed the specific commission amount he would receive.

145. Scheer's own regulatory disclosures admit that Scheer had a clear conflict of interest to recommend unregistered securities, such as Northridge and FIP, because he had an incentive to recommend these products based on the commissions or fees he received. As Scheer's January 18, 2018 Form U4 disclosed, the sale of the Northridge and FIP Securities "represent conflicts of interest because it gives an incentive to recommend products based on the commission or fee amount received."

146. Accordingly, Scheer failed to disclose material conflicts to his customers in writing before he advised them to purchase the above unregistered securities.

M. Scheer Recommended That His Customers Invest In Excessive Concentrations of Unregistered and Illiquid Investments

147. Scheer recommended that his customers invest in excessive concentrations of these unregistered securities. None of these securities investments were registered, as required. Nor were they publicly traded or was there a well-developed secondary market for them. As a result, Scheer's customers had little to no ability to sell or otherwise liquidate these investments before their maturity or other termination date if they needed access to their money or if the issuers experienced hardship.

148. Scheer was obligated to advise his customers not to invest an excessive amount of their liquid net worth in these unregistered and largely unseasoned securities whose high projected returns implied a high degree of risk.

149. Scheer sold the unregistered securities to at least twenty-seven customers who maintained investment advisory accounts with him at GFPC or RWA, and for which information as to their liquid net worth was available on new account documents that had been signed by Scheer. For fifteen of the twenty-seven customers, the total unregistered securities exceeded 40% of their liquid net worth. These concentrations in illiquid and high-risk issuers were excessive for these customers.

150. As an example, one of Scheer's customers, a 60-year old sales engineer, had a total net worth of \$700,000 and a liquid net worth of \$140,000 listed in his new account documents. The investor also described his risk tolerance as "moderate" on his account forms. Nonetheless, Scheer recommended that he invest \$100,000 (or 71% of his liquid net worth) into the Northridge Securities.

151. As another example, one of Scheer's customers, a 46-year old vice president of a flooring company, had a total net worth of \$300,000 and a liquid net worth of \$150,000 listed in his new account documents. The investor also described his risk tolerance as "moderate" on his account forms. Nonetheless, Scheer

recommended that he invest \$100,000 (or 67% of his liquid net worth and 30% of his total net worth) into the Northridge Securities.

152. In return for tying up significant portions of his customers' liquid net worth in at least \$12 million in these unregistered securities, Scheer was paid at least \$694,000 in commissions and fees by these issuers.

153. The fees and commissions which Scheer received from selling excessive amounts of these investments to his customers were approximately 24% of his gross income from his investment advisory business for the years 2011 through 2017. Income from selling unregistered securities accounted for approximately 41% and 37% of Scheer's gross income from his investment advisory business in 2013 and 2016, respectively, and approximately 29% of his gross income in 2017.

CONCLUSIONS OF LAW

SCHEER SOLD UNREGISTERED SECURITIES

N.J.S.A. 49:3-60

(JCS Securities, DSPF Securities, PI Securities, FIP Securities, FPCMs, Northridge Securities, and Gains Securities)

154. The preceding paragraphs are incorporated by reference as though set forth verbatim herein.

155. The JCS Securities, DSPF Securities, PI Securities, FIP Securities, FPCMs, Northridge Securities, and Gains Securities are securities as defined in N.J.S.A. 49:3-49(m).

156. The JCS Securities, DSPF Securities, PI Securities, FIP Securities, FPCMs, Northridge Securities, and Gains Securities were required to be registered with the Bureau pursuant to N.J.S.A. 49:3-60.

157. The JCS Securities, DSPF Securities, PI Securities, FIP Securities, FPCMs, Northridge Securities, and Gains Securities were not registered with the Bureau, not exempt from registration, and not federally covered.

158. Scheer offered and sold unregistered securities in violation of N.J.S.A. 49:3-60.

159. Each renewal of the unregistered securities constitutes a separate sale under the Securities Law.

160. Each offer and sale of the JCS Securities, DSPF Securities, PI Securities, FIP Securities, FPCMs, Northridge Securities, and Gains Securities constitutes a separate violation of N.J.S.A. 49:3-60 and is cause for the imposition of civil monetary penalties pursuant to N.J.S.A. 49:3-70.1.

SCHEER ACTED AS AN AGENT WITHOUT REGISTRATION

N.J.S.A. 49:3-56(a)

(JCS, DSPF, Pension Income, FIP, Woodbridge, Northridge, Eastridge, Unity and Gains)

161. The preceding paragraphs are incorporated by reference as though set forth verbatim herein.

162. Scheer acted as an agent of JCS, DSPF, Pension Income, FIP, Woodbridge, Northridge, Eastridge, Unity, and Gains, as

defined under N.J.S.A. 49:3-49(b), in effecting or attempting to effect transactions in securities in and from New Jersey.

163. Scheer was not registered with the Bureau as an agent of JCS, DSPF, Pension Income, FIP, Woodbridge, Northridge, Eastridge, Unity, and Gains.

164. Scheer violated N.J.S.A. 49:3-56(a), which requires, among other things, that only persons registered with the Bureau may lawfully act as agents.

165. Each offer and sale of the JCS Securities, DSPF Securities, PI Securities, FIP Securities, FPCMs, Northridge Securities, and Gains Securities constitutes a separate violation of N.J.S.A. 49:3-56(a), and is cause for the imposition of civil monetary penalties pursuant to N.J.S.A. 49:3-70.1.

**SCHEER OMITTED TO STATE MATERIAL FACTS NECESSARY IN ORDER TO
MAKE THE STATEMENTS MADE IN LIGHT OF THE CIRCUMSTANCES UNDER
WHICH THEY WERE MADE, NOT MISLEADING
N.J.S.A. 49:3-52(b)**

166. The preceding paragraphs are incorporated by reference as though set forth verbatim herein.

167. Pursuant to N.J.S.A. 49:3-52(b):

It shall be unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly . . .

. . . .

(b) [t]o make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading

. . . .

168. Scheer omitted to state material facts by failing to disclose in 2016 that Woodbridge had entered into a Consent Order with the Massachusetts Securities Division to cease and desist from selling any further FPCMs as securities in Massachusetts, and that Woodbridge was also the subject of an Order by the Texas Securities Board. Scheer nonetheless continued to sell the FPCMs.

169. Each omission or materially false or misleading statement is in violation of N.J.S.A. 49:3-52(b).

170. Each misrepresentation or omission in violation of N.J.S.A. 49:3-52(b) by Scheer to each investor is a separate violation of the Securities Law and is cause for the imposition of civil monetary penalties pursuant to N.J.S.A. 49:3-70.1.

**SCHEER ENGAGED IN DISHONEST OR UNETHICAL PRACTICES
IN THE SECURITIES AND INVESTMENT ADVISORY BUSINESS**

N.J.S.A. 49:3-53(a) (3)

N.J.S.A. 49:3-58(a) (1)

N.J.S.A. 49:3-58(a) (2) (vii)

N.J.A.C. 13:47A-6.3(a) (50)⁴

(Failing to Disclose Conflicts)

171. The preceding paragraphs are incorporated by reference into this conclusion of law as though set forth verbatim herein.

172. Pursuant to N.J.S.A. 49:3-53(a) (3):

It shall be unlawful for any person who receives, directly or indirectly, any compensation from another person for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analyses or reports or otherwise

⁴ Cited as N.J.A.C. 13:47A-6.3(a) (47) prior to August 2015.

. . . (3) to engage in dishonest or unethical practices as the bureau chief may by rule define in a manner consistent with and compatible with the laws and regulations of the Securities and Exchange Commission, the self-regulatory organizations, and uniformity with the other states, the remedies for which shall be civil or administrative only"

173. Pursuant to N.J.S.A. 49:3-58(a):

The bureau chief may by order deny, suspend, or revoke any registration if he finds: (1) that the order is in the public interest; and (2) that the applicant or registrant that the applicant or registrant . . .

. . . .

(vii) has engaged in dishonest or unethical practices in the securities . . . business, as may be defined by the rule of the bureau chief.

174. Pursuant to N.J.A.C. 13:47A-6.3(a)(50), "'Dishonest or unethical practices' as used in . . . N.J.S.A. 49:3-53(a)(3) and 49:3-58(a)(2)(vii) shall include . . . [f]ailing to disclose to customers in writing before any advice is rendered any material conflict of interest relating to the adviser or any of its employees which could reasonably be expected to impair the rendering of unbiased and objective advice"

175. Scheer failed to disclose material conflicts, including the financial incentives he would receive to recommend the unregistered securities, to his customers in writing before he advised them to purchase the JCS Securities, DSPF Securities, PI Securities, FIP Securities, FPCMs, Northridge Securities, and Gains Securities.

176. These conflicts could reasonably be expected to impair the rendering of unbiased and objective advice.

177. This is cause, pursuant to N.J.S.A. 49:3-58(a)(2)(vii), to revoke Scheer's investment adviser representative registration.

178. Based upon the foregoing, and pursuant to N.J.S.A. 49:3-58(a)(1), the revocation of Scheer's investment adviser representative registration and certain exemptions is in the public interest.

179. Scheer's failure to disclose a material conflict to his customers is a violation of N.J.S.A. 49:3-53(a)(3).

180. Each violation of N.J.S.A. 49:3-53(a)(3) upon each customer is a separate violation and is cause for the imposition of civil monetary penalties pursuant to N.J.S.A. 49:3-70.1.

**SCHEER ENGAGED IN DISHONEST OR UNETHICAL
PRACTICES IN THE SECURITIES AND INVESTMENT ADVISORY BUSINESS**
N.J.S.A. 49:3-58(a)(1)
N.J.S.A. 49:3-58(a)(2)(vii)
(Breach of Fiduciary Duty)

181. The preceding paragraphs are incorporated by reference into this conclusion of law as though set forth verbatim herein.

182. Pursuant to N.J.S.A. 49:3-58(a):

The bureau chief may by order deny, suspend, or revoke any registration if he finds: (1) that the order is in the public interest; and (2) that the applicant or registrant that the applicant or registrant . . .

. . . .

(vii) has engaged in dishonest or unethical practices in the securities . . . business, as may be defined by the

rule of the bureau chief.

183. An investment adviser and their investment adviser representatives have a fiduciary duty of care and loyalty to their customers. This includes a duty to conduct a reasonable investigation and due diligence to satisfy themselves that the investment is in the best interest of their customers, and that there is a reasonable basis for all material representations that the adviser or the issuer are making to the customer.

184. In this case Scheer failed to make reasonable inquiry as to the nature and risks of the investments he recommended to his customers by primarily relying upon issuer representations and conversations with other agents to form a basis for his determination that the investments were in the best interest of his customers.

185. Scheer also failed to make reasonable inquiry as to whether the securities were being sold lawfully.

186. Despite his fiduciary duty as an investment adviser representative, Scheer advised his customers to continue to invest in unregistered securities when prior unregistered securities he recommended had come under regulatory scrutiny due to the issuers' failure to register their securities, and due as well to fraudulent conduct by the issuers.

187. Scheer also continued to recommend unregistered securities to his customers despite the red flags regarding the

legality of the investments and the risks involved with the transactions.

188. By failing to make reasonable inquiry into the nature of and risks associated with the unregistered securities, as well as whether they were required to be registered under the securities laws, Scheer breached his fiduciary duty of care to use the care, skill, prudence, and diligence that a prudent person acting in a like capacity and familiar with such matters would use taking into consideration all of the facts and circumstances.

189. Scheer engaged in dishonest or unethical practices by failing to meet these well-established standards in the investment advisory industry.

190. This is cause, pursuant to N.J.S.A. 49:3-58(a)(2)(vii), to revoke Scheer's investment adviser representative registration.

191. Based upon the foregoing, and pursuant to N.J.S.A. 49:3-58(a)(1), the revocation of Scheer's investment adviser representative registration and certain exemptions is in the public interest.

**SCHEER ENGAGED IN DISHONEST OR UNETHICAL
PRACTICES IN THE SECURITIES AND INVESTMENT ADVISORY BUSINESS**

N.J.S.A. 49:3-58(a)(1)

N.J.S.A. 49:3-58(a)(2)(vii)

**(Failure to Follow GFPC and RWA Policies and Procedures
Regarding the Reporting of Outside Business Activities)**

192. The preceding paragraphs are incorporated by reference into this conclusion of law as though set forth verbatim herein.

193. Pursuant to N.J.S.A. 49:3-58(a):

The bureau chief may by order deny, suspend, or revoke any registration if he finds: (1) that the order is in the public interest; and (2) that the applicant or registrant that the applicant or registrant . . .

. . . .

(vii) has engaged in dishonest or unethical practices in the securities . . . business, as may be defined by the rule of the bureau chief.

194. Scheer failed to follow both GFPC and RWA policies and procedures and submitted false attestations regarding his outside business activities.

195. This is cause, pursuant to N.J.S.A. 49:3-58(a)(2)(vii), to revoke Scheer's investment adviser representative registration.

196. Based upon the foregoing, and pursuant to N.J.S.A. 49:3-58(a)(1), the revocation of Scheer's investment adviser representative registration and certain exemptions is in the public interest.

**SCHEER ENGAGED IN DISHONEST OR UNETHICAL PRACTICES
IN THE SECURITIES BUSINESS**

N.J.S.A. 49:3-58(a)(1)

N.J.S.A. 49:3-58(a)(2)(vii)

N.J.A.C. 13:47A-6.3(a)(31)

(Omission of a Material Fact)

197. The preceding paragraphs are incorporated by reference into this conclusion of law as though set forth verbatim herein.

198. Pursuant to N.J.S.A. 49:3-58(a):

The bureau chief may by order deny, suspend, or revoke any registration if he finds: (1) that the order is in the public interest; and (2) that the applicant or

registrant that the applicant or registrant. . .
. . . .

(vii) has engaged in dishonest or unethical practices in the securities . . . business, as may be defined by the rule of the bureau chief.

199. Pursuant to N.J.A.C. 13:47A-6.3(a)(31), "'Dishonest or unethical practices' as used in N.J.S.A. 49:3-47 et seq. . . . shall include . . . [m]aking any misrepresentation or omission of a material fact or otherwise employing any form of concealment or deception in connection with the offer, sale, purchase or negotiation of any securities, commodity futures, banking or insurance contract, instrument or transaction"

200. Scheer omitted material facts by failing to disclose material conflicts to his customers in writing before he advised them to purchase the unregistered securities from JCS, FIP, Northridge, Woodbridge, or Pension Income.

201. Scheer omitted material facts by failing to disclose that he knew in 2016 that Woodbridge had entered into a Consent Order with the Massachusetts Securities Division to cease and desist from selling any further FPCMs as securities in Massachusetts, and that it was also the subject of an Order by the Texas Securities Board. Scheer's discovery of the Massachusetts Consent Order and knowledge of the Texas C&D Order provided him with notice of material regulatory risk related to the FPCMs.

202. This is cause, pursuant to N.J.S.A. 49:3-58(a)(2)(vii),

to revoke Scheer's investment adviser representative registration.

203. Based upon the foregoing, and pursuant to N.J.S.A. 49:3-58(a)(1), the revocation of Scheer's investment adviser representative registration and certain exemptions is in the public interest.

**SCHEER MADE MATERIALLY FALSE OR MISLEADING
STATEMENTS IN THE FILINGS WITH THE BUREAU
N.J.S.A. 49:3-54 and N.J.S.A. 49:3-70.1**

204. Pursuant to N.J.S.A. 49:3-54:

It is unlawful for any person to make or cause to be made, in any document filed with the bureau . . . any statement which is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect.

205. From December 16, 2010 through March 28, 2019, Scheer filed at least nine (9) Form U4s, two of which were filed as part of his applications for investment adviser representative registration. The Form U4s failed to disclose Scheer's business activities with JCS and TBTI, DSPF, Pension Income, FIP, Woodbridge, Northridge, Eastridge, Unity, and Gains; his investment-related, consumer-initiated litigation and pending arbitration; his unsatisfied federal and municipal tax liens; and his compromises with creditors in foreclosure actions. Each such material omission constitutes a false filing with the Bureau in violation of N.J.S.A. 49:3-54.

206. Scheer provided false responses: (1) to Item 13 of the Form U4, which asks whether he engaged in other business; (2) to

Item 14(I) of Form U4, which asks whether he had an investment-related, consumer-initiated litigation or arbitration; (3) to Item 14(M) of Form U4, which asks whether he had any unsatisfied liens; (4) to Item 14(K) of Form U4, which asks whether he made a compromise with a creditor; and (5) to Part 1B, Item 2(D) of Form ADV, which asks whether RFA's advisory affiliate or management person had any unsatisfied liens. These false responses constitute false filings with the Bureau in violation of N.J.S.A. 49:3-54.

207. Each violation of N.J.S.A. 49:3-54 is cause for the imposition of civil monetary penalties pursuant to N.J.S.A. 49:3-70.1.

SCHEER AND RFA FILED MATERIALLY FALSE
APPLICATIONS WITH THE BUREAU
N.J.S.A. 49:3-58(a) (1) and N.J.S.A. 49:3-58(a) (2) (i)

208. The preceding paragraphs are incorporated by reference into this conclusion of law as though set forth verbatim herein.

209. Pursuant to N.J.S.A. 49:3-58(a):

The bureau chief may by order, deny, suspend, or revoke any registration if he finds (1) that the order is in the public interest; and (2) that the applicant or registrant or, in the case of a broker-dealer, investment adviser, or Internet site operator, any partner, officer or director, any person occupying a similar status or performing similar functions, or any person controlling the broker-dealer, investment adviser, or Internet site operator:

. . . .

(i) has filed an application for registration which as of its effective date . . . was incomplete in any material respect or contained any statement which was,

in light of the circumstances under which it was made, false or misleading with respect to any material fact

210. Scheer submitted two applications for registration to the Bureau that omitted material facts about his engagement in business activities; investment-related, consumer-initiated pending arbitration; tax lien notices; and compromises with creditors in foreclosure actions.

211. Scheer's false answers to Item 13 of the Form U4, Item 14(I) (1), (3), and (5) of Form U4, Item 14(K) of Form U4, Item 14(M) of Form U4, and Part 1B, Item 2(D) of Form ADV constitute cause pursuant to N.J.S.A. 49:3-58(a)(2)(i) to revoke Scheer's registration as an investment adviser representative.

212. Scheer's false answer to Part 1B, Item 2(D) of Form ADV also constitutes cause pursuant to N.J.S.A. 49:3-58(a)(2)(i) to revoke RFA's registration as an investment adviser.

213. Based upon the foregoing, and pursuant to N.J.S.A. 49:3-58(a)(1), the revocation of Scheer's registration as an investment adviser representative and RFA's registration as an investment adviser is in the public interest.

RFA'S OFFICER, DIRECTOR, OR PERSON CONTROLLING RFA IS THE SUBJECT OF AN EFFECTIVE REVOCATION ORDER OF THE BUREAU CHIEF

N.J.S.A. 49:3-58(a)(1)
N.J.S.A. 49:3-58(a)(2)(v)

214. The preceding paragraphs are incorporated by reference

as though set forth verbatim herein.

215. Pursuant to N.J.S.A. 49:3-58(a):

The bureau chief may by order, deny, suspend, or revoke any registration if he finds (1) that the order is in the public interest; and (2) that the applicant or registrant or, in the case of a broker-dealer, investment adviser, or Internet site operator, any partner, officer or director, any person occupying a similar status or performing similar functions, or any person controlling the broker-dealer, investment adviser, or Internet site operator:

. . . .

(v) is the subject of an effective order of the bureau chief denying, suspending, or revoking registration as [an] . . . investment adviser representative . . .

216. As Scheer is the subject of this Order, the Bureau Chief may revoke RFA's registration as an investment adviser pursuant to N.J.S.A. 49:3-58(a)(2)(v).

217. Based upon the foregoing and pursuant to N.J.S.A. 49:3-58(a)(1), the revocation of RFA's registration and certain exemptions is in the public interest.

CONCLUSION

For the reasons stated above, it is on this 25th day of February 2020 **ORDERED** that:

218. The investment adviser representative registration of Scheer is **REVOKED**;

219. The investment adviser registration of RFA is **REVOKED**;

220. Scheer is assessed and liable to pay civil monetary

penalties in the amount of \$750,000, pursuant to N.J.S.A. 49:3-70.1, for violations of the Securities Law described in this Order, which is immediately due and payable to the "State of New Jersey, Bureau of Securities."

221. Payment of civil monetary penalties shall be made by certified check, bank check, or an attorney trust account check, and delivered to the Bureau at 153 Halsey Street, 6th Floor, Newark, NJ 07102, to the attention of the Bureau Chief. The civil monetary penalty payments shall be deposited in the Securities Enforcement Fund, pursuant to N.J.S.A. 49:3-66.1.

222. All exemptions contained in N.J.S.A. 49:3-50 subsection (a) paragraph 9, 10, and 11 and subsection (b) are hereby **DENIED** as to Scheer.

223. All exemptions to the registration requirements provided by N.J.S.A. 49:3-56(b), N.J.S.A. 49:3-56(c), and N.J.S.A. 49:3-56(g) are hereby **DENIED** as to Scheer.



Christopher W. Gerold
Chief, New Jersey Bureau of Securities

NOTICE OF RIGHT TO HEARING

Pursuant to the Uniform Securities Law (1997), N.J.S.A. 49:3-47 to -83 ("Securities Law") specifically, N.J.S.A. 49:3-58(c), the bureau chief shall entertain on no less than three days' notice, a written application to lift the summary revocation on written application of the applicant or registrant and in connection therewith may, but need not, hold a hearing and hear testimony, but shall provide to the applicant or registrant a written statement of the reasons for the summary revocation.

This matter will be set down for a hearing if a written request for such a hearing is filed with the Bureau within 20 days after the respondents receive this Order. A request for a hearing must be accompanied by a written response, which addresses specifically each of the allegations set forth in the Order. A general denial is unacceptable. At any hearing involving this matter, an individual respondent may appear on his/her own behalf or be represented by an attorney.

Orders issued pursuant to this subsection to suspend or revoke any registration shall be subject to an application to vacate upon 10 days' notice, and a preliminary hearing on the order to suspend or revoke any registration shall be held in any event within 20 days after it is requested, and the filing of a motion to vacate the order shall toll the time for filing an answer and written request for a hearing.

If no hearing is requested, the Order shall become a Final Order and will remain in effect until modified or vacated. If a hearing is held, the Bureau Chief shall affirm, vacate, or modify the order in accord with the findings made at the hearing.

NOTICE OF OTHER ENFORCEMENT REMEDIES

You are advised that the Uniform Securities Law (1997), N.J.S.A. 49:3-47 to -83, provides several enforcement remedies, which are available to be exercised by the Bureau Chief, either alone or in combination. These remedies include, in addition to this action, the right to seek and obtain injunctive and ancillary relief in a civil enforcement action, N.J.S.A. 49:3-69, and the right to seek and obtain civil penalties in an administrative or civil action, N.J.S.A. 49:3-70.1.

You are further advised that the entry of a final order does not preclude the Bureau Chief from seeking and obtaining other enforcement remedies against you in connection with the claims made against you in this action.