INITIAL DECISION RELEASE NO. 1051
ADMINISTRATIVE PROCEEDING
FILE NO. 3-16509

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

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| In the Matter of<br><br>EDWARD M. DASPIN,<br>A/K/A "EDWARD (ED) MICHAEL";<br>LUIGI AGOSTINI; AND<br>LAWRENCE R. LUX | INITIAL DECISION OF DEFAULT<br>AS TO EDWARD M. DASPIN<br>August 23, 2016 |

APPEARANCES: Kevin P. McGrath, Nathaniel I. Kolodny, and Barry P. O'Connell for the Division of Enforcement, Securities and Exchange Commission

Edward M. Daspin, *pro se*

BEFORE: James E. Grimes, Administrative Law Judge

***Summary***

Respondent Edward M. Daspin a/k/a "Edward (Ed) Michael" founded several mixed martial arts companies and sold stock in them to a number of investors. He did so unlawfully, in unregistered offerings as an unregistered broker. He compounded this activity by deceiving investors with numerous lies and omissions about core aspects of the companies, which later failed. He also deceived them with schemes to hide his control and enable his fraud. And for many months, he attempted to derail this proceeding and evade responsibility. Because of Daspin's failure to appear at two scheduled hearings, I found him in default and deemed true as to him the allegations of the order instituting proceedings (OIP). In this initial decision, I impose on Daspin industry and penny stock bars and a cease-and-desist order. I further order him to pay disgorgement of $1,948,258.47, plus prejudgment interest, and civil penalties of $915,000.

## *1. Procedural Background*

On April 23, 2015, the Securities and Exchange Commission issued the OIP against Daspin and other respondents[1] under Section 8A of the Securities Act of 1933 and Sections 15(b)

[1] This initial decision and all findings and conclusions herein pertain only to Daspin. Respondent Lawrence R. Lux settled with the Commission on October 16, 2015. *Edward M.*

and 21C of the Securities Exchange Act of 1934. The OIP charges Daspin with willfully violating Sections 5(a), 5(c), and 17(a) of the Securities Act as well as Sections 10(b), 15(a), and 20(b) of the Exchange Act and Rule 10b-5 thereunder. OIP at 14.

The procedural history of this case is more thoroughly discussed in an order I issued on March 8, 2016, finding Daspin in default. *Edward M. Daspin*, Admin. Proc. Rulings Release No. 3683, 2016 SEC LEXIS 886. In short, Daspin failed to appear for the January 4, 2016, hearing in this matter and then failed to appear at a second hearing scheduled on February 11, 2016, to provide him with an opportunity to explain why he missed the first hearing. *Id.* at *9, *12-13. After ordering Daspin to show cause, I found him in default based on the determination that he was voluntarily absent from the first hearing and that he had no valid reason to miss the second hearing. *Id.* at *18-22. Namely, I found that Daspin had concocted bogus medical claims to avoid the January 4 hearing on the merits, refused to make himself available to the Division's medical expert ahead of the February 11 hearing, and then chose not to attend that hearing. *Id.* He also prevented his wife, Joan B. Daspin, from attending the February 11 hearing, thereby interfering with the subpoena that I directed to her. *Id.* at *20. Having found Daspin in default, I deemed as true the allegations in the OIP. *Id.* at *22. I later denied Daspin's motion to set aside the default. *Edward M. Daspin*, Admin. Proc. Rulings Release No. 3713, 2016 SEC LEXIS 1000, at *6 (ALJ Mar. 16, 2016).

Following my order finding Daspin in default and my denial of his motion to set it aside, I directed the Division to move for sanctions and set a briefing schedule, including an April 27 deadline for Daspin's opposition. *Edward M. Daspin*, 2016 SEC LEXIS 1000, at *6. In light of

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*Daspin*, Securities Act of 1933 Release No. 9963, 2015 SEC LEXIS 4287. Meanwhile, Respondent Luigi Agostini filed an action in the Southern District of New York, which was dismissed for lack of jurisdiction. *Agostini v. SEC*, No. 15-cv-9595 (S.D.N.Y. Dec. 18, 2015), ECF No. 18. After Agostini appealed, the United States Court of Appeals for the Second Circuit stayed this proceeding as to Agostini. *See Agostini v. SEC*, No. 15-4114 (2d Cir. Jan. 12, 2016), ECF No. 49. I confirmed the stay as to Agostini on January 14, 2016. *See Edward M. Daspin*, Admin. Proc. Rulings Release No. 3508, 2016 SEC LEXIS 158. Daspin likewise sought to enjoin this proceeding, but in the District of New Jersey. *See Daspin v. SEC*, No. 15-cv-8299 (D.N.J. Dec. 30, 2015), ECF No. 15. That action was dismissed for lack of jurisdiction, *id.*, and the Second Circuit later rejected Daspin's attempts to benefit from Agostini's stay, *see SEC v. Daspin*, No. 13-4622 (2d Cir. Feb. 23, 2016), ECF No. 83. On February 18, 2016, the Commission granted an extension of the filing deadline for this initial decision due to delays caused by Daspin's claimed medical condition and failure to attend the hearing scheduled for January 4, 2016. *Edward M. Daspin*, Securities Act Release No. 10040, 2016 SEC LEXIS 622; *Edward M. Daspin*, Admin. Proc. Rulings Release No. 3470, 2016 SEC LEXIS 41 (ALJ Jan. 6, 2016). On July 11, 2016, the Second Circuit vacated its stay as to Agostini, and I subsequently lifted my confirmatory stay and determined a hearing would occur as to Agostini. *Agostini v. SEC*, No. 15-4114, ECF No. 72; *Edward M. Daspin*, Admin. Proc. Rulings Release No. 4005, 2016 SEC LEXIS 2500 (ALJ July 20, 2016). Because the proceeding could not move forward as to Agostini while stayed, Chief Administrative Law Judge Brenda P. Murray moved the Commission for a second six-month extension of the initial decision due date. *Edward M. Daspin*, Admin. Proc. Rulings Release No. 3996, 2016 SEC LEXIS 2496 (ALJ July 18, 2016).

Daspin's prior practice of submitting multiple versions of filings supplemented several times, I explicitly instructed Daspin that his opposition was to be entirely self-contained in a single submission made on a single date, and that multiple versions, continuously amended and filed over an extended period, would not be considered. *Id.* at *3 n.1, *6. Because I found him in default, I directed Daspin to address in his opposition only "the appropriateness of the sanctions sought by the Division" and told him that "[a]ttempts to refute the factual allegations of the order instituting proceedings [would] not be considered." *Id*. at *6. Finally, I reminded Daspin of several prior orders, which restricted his use of my office's e-mail address, and stated that any e-mails or attachments sent by him would no longer be considered.[2] *Id.* at *3 n.1, *6.

The Division timely filed its motion and a declaration from Division accountant Elizabeth Baier (Baier Decl.) supported by exhibits A through E. In direct violation of my orders, Daspin made serial filings on multiple dates in opposition to the Division's motion, which included submissions made after the April 27 deadline for his opposition. He also sent my office dozens of e-mails during this time. The Division filed a reply on May 12. Accompanying the reply was a supplemental declaration from Baier (Baier Supp. Decl.) supported by exhibits A through H.

## *2. Findings of Fact*

These facts are drawn from the allegations in the OIP, which I have deemed true, and evidence the Division submitted. I have applied preponderance of the evidence as the standard of proof. *See Steadman v. SEC*, 450 U.S. 91, 101-04 (1981). The factual findings and legal conclusions are based on the entire record. The findings in this section that are drawn from the Division's evidence on sanctions are included to give context to the sanctions ultimately imposed. I have considered and rejected all arguments and proposed findings and conclusions that are inconsistent with this initial decision.

### *2.1 Daspin and the Formation of the WMMA Companies*

Respondent Edward Michael Daspin, seventy-eight, lives in Boonton, New Jersey. *See* OIP at 3. He has never been registered with the Commission as a broker-dealer or associated with a registered broker-dealer. *Id.* In 1978, he was convicted of bankruptcy fraud and

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[2] In repeated violation of my orders, Daspin has sent my office hundreds of e-mails, many of which were unprofessional and abusive, and made numerous piecemeal filings. *Edward M. Daspin*, 2016 SEC LEXIS 1000, at *3 n.1; *Edward M. Daspin*, 2016 SEC LEXIS 886, at *4, *7-8, *10; *Edward M. Daspin*, Admin. Proc. Rulings Release No. 3606, 2016 SEC LEXIS 562, at *1 n.1 (ALJ Feb. 16, 2016) (citing orders). Daspin has previously engaged in this sort of behavior in another legal proceeding. *See, e.g., In re Worldwide Mixed Martial Arts Sports, Inc.*, No. 13-35006, ECF No. 130 (Bankr. D.N.J. Sept. 5, 2014) (in bankruptcy proceeding for one of Daspin's companies, ordering Daspin to "CEASE and DESIST in the filing of any and all unscheduled . . . filings whatsoever," further instructing that there would be "no emailing or messages to the Court of any nature" unless in accordance with the rules "and under no circumstances on an *ad hoc* basis," and stating that a violation of the order "shall be subject to sanctions, fines and contempt proceedings").

sentenced to eighteen months in prison for concealing assets of a bankrupt company he had controlled. *Id.* (citing the criminal actions).

In April 2010, Daspin founded three companies (collectively, the WMMA companies):

- WMMA Holdings, Inc. (WMMA Holdings): A holding company whose controlling interest was held by Daspin's wife through three limited partnerships that she controlled. WMMA Holdings owned or held majority interests in the following two subsidiaries:

    - Worldwide Mixed Martial Arts Sports, Inc. (WMMA): Formed to create an international league of mixed martial arts tournaments from which to produce digital content.

    - WMMA Distribution, Inc., f/k/a American Graphics Communication and Distribution Services, Inc. (together, WMMA Distribution[3]): Created to distribute WMMA's digital content and related products.

OIP at 4-5. Daspin, who designed this corporate structure, conceived that WMMA would contract with local promoters to organize mixed martial arts tournaments around the world and create digital content and branded merchandise, which WMMA Distribution would in turn sell via cable television contracts and online viewing and product sales. *Id.* at 5. WMMA and WMMA Distribution shared the same directors and senior officers. *Id.* at 4. The WMMA companies were founded in Daspin's basement and later relocated to a commercial office in Little Falls, New Jersey. *Id.* at 5.

Daspin installed three people as directors of the WMMA companies. He enlisted Luigi Agostini, a friend of his son and former disc jockey, to serve as a director and executive chairman of each of the WMMA companies' boards. OIP at 4-5, 9. Daspin also recruited Lawrence R. Lux to serve as a director and CEO of WMMA and WMMA Distribution, and a director of WMMA Holdings. *Id.* Lux was previously involved in another Daspin venture. *Id.* Lux was associated with a registered broker-dealer from December 2005 to April 2006, but otherwise has never been registered as or associated with a registered broker-dealer. *Id.* at 4. To obtain initial working capital, Daspin approached a third individual (the third director), who was a mixed martial arts fan and who invested a total of $333,333 in December 2010 and April 2011. *Id.* at 5. The third director was named a director and the president of WMMA and WMMA Distribution, and a director of WMMA Holdings. *Id.* at 5.

[3] Where I intend to separately refer to WMMA Distribution's predecessor entity, American Graphics, I will so indicate.

*2.2 Transaction Regarding Controlling Shares Held by Mrs. Daspin*

At the outset, Daspin devised a transaction to create the illusion that the directors controlled shares of the WMMA companies when in fact his wife owned the shares through three family partnerships she controlled. OIP at 9. When the WMMA companies were first formed, Mrs. Daspin's partnerships were issued controlling shares in WMMA Holdings—which, in turn, controlled WMMA and WMMA Distribution. *Id.* at 4-5, 9. Around December 2010, for nominal consideration, her partnerships transferred the shares to the directors, who agreed to hold the shares in trust for the partnerships. *Id.* But as part of the transaction, the partnerships received a warrant to repurchase the stock on two days' written notice and payment of a nominal strike price. *Id.* It was therefore the case that although the directors ostensibly controlled a majority interest in the WMMA companies, Daspin could cause his wife's partnerships to exercise the warrants at any time and buy back the controlling interest.[4] *Id.* Moreover, the directors held the shares subject to a fiduciary duty to Mrs. Daspin and her partnerships. *Id.*

*2.3 Consulting Agreements Giving Daspin Control of the WMMA Companies*

Rather than identifying himself as an officer, director, or significant shareholder of the WMMA companies, Daspin arranged to be retained as their "consultant," acting through two other entities:

- Consultants for Business & Industry, Inc. (CBI): A consulting company wholly owned by Mrs. Daspin, through which—directly, or through MacKenzie Mergers & Acquisitions—Daspin provided services to the WMMA companies.

- MacKenzie Mergers & Acquisitions: A private company of which Daspin became senior vice president in early 2011, when MacKenzie acquired CBI's consulting agreement with the WMMA companies.

OIP at 4-5. Through a series of contracts (collectively, the consulting agreement) with these entities, the WMMA companies delegated their most important business and management functions to Daspin. *Id.* at 5. On November 30, 2010, Daspin caused CBI to enter into an agreement with WMMA Holdings and WMMA providing CBI with the exclusive right to provide the WMMA companies with services related to "human resources, deal-making, raising equity, developing strategic business, action and operating plans, and structuring mergers and acquisitions." *Id.* at 5-6 (internal quotation marks omitted). Later versions of the agreement similarly stated that CBI would provide the WMMA companies with a broad range of "management advisory services." *Id.* at 6. In the first half of 2011, the consulting agreement

[4] Daspin conceded this in his answer. Daspin Answer at 5 ("A series of family limited liability partnerships owned by Daspin's wife held warrants that, if exercised, would have given those entities a majority ownership in the WMMA Companies. Thus, in truth and fact, Daspin had the same (if not more) incentive for success as did any cash or sweat equity investor in any of the WMMA Companies.").

was assigned from CBI to MacKenzie, with Daspin becoming MacKenzie's senior vice president and continuing his role as a "consultant." *Id.*

Under the consulting agreement, Daspin effectively operated as the WMMA companies' CEO, with unrestricted authority to make virtually all important decisions, such as the hiring of employees and executives, raising capital, and negotiating contracts and transactions with third parties. OIP at 7. No one at the WMMA companies was assigned to supervise Daspin's actions. *Id.* Indeed, two of the three directors and senior officers had no relevant business experience, and all repeatedly deferred to Daspin for important business decisions. *Id.* at 9. Daspin also controlled the WMMA companies' funds and bank accounts. *Id.* at 2, 8-10. Significant payments occurred only with his approval, and he took steps to prevent the WMMA companies' finance officers from controlling funds and accessing bank records to review expenditures. *Id.* at 9-10.

Daspin received substantial payments—at least $827,000—through CBI (and later MacKenzie) for what purported to be consulting services. OIP at 6, 8. The consulting agreement entitled CBI to a $25,000 fee (payable in installments) for each non-investing employee it recruited, plus 5% of the employee's compensation in excess of $125,000 annually for five years. *Id.* at 6. For recruiting employees who invested, however, CBI was entitled to an immediate payment of $25,000, or 25% of the employee's first-year salary, whichever was greater, plus 5% annually of the employee's compensation in excess of $125,000 a year, continuing indefinitely. *Id.* Daspin, therefore, had a significant financial incentive to recruit employees who invested in the WMMA companies rather than those who did not. *Id.*

*2.4 Recruitment of Investors, Unregistered Offerings, and Daspin's Commissions*

Under the consulting agreement, Daspin was responsible for hiring and raising capital for the WMMA companies. OIP at 7. He combined the two functions by raising money for the WMMA companies from employees in connection with their hiring. *Id.* From December 2010 through May 2012, Daspin raised a total of $2,470,333 from seven investors—$333,000 from the third director initially, and the remaining $2,137,000 from six investors to whom Daspin made misstatements and omissions. *Id.* at 2, 5, 7; Baier Decl. at 2, Ex. A; *see also infra* note 9. Of that $2,470,333 total, $1,386,000 was raised in WMMA, $901,000 was raised in WMMA Distribution, and $183,333 was raised in WMMA Holdings. Baier Decl. Exs. A, B; *see* OIP at 7.[5]

[5] The OIP states that $1,486,000 was raised in WMMA, and that $901,000 was raised in WMMA Distribution, implying that the remaining $83,333 (of the $2,470,333 total) was raised in WMMA Holdings. *See* OIP at 7; Baier Decl. at 2, Ex. A at 1, Ex. B at bates 0583 ($83,333 check to WMMA Holdings). But copies of other checks and money transfers submitted in support of the Division's sanctions motion indicate that $183,333 was raised in WMMA Holdings, and therefore that $1,386,000 was raised in WMMA. *See* Baier Decl. Ex. B at bates nos. 0583, 0633, 0634.

Aside from the third director who provided initial capital, Daspin targeted unemployed mid-level finance and technology professionals by having the WMMA companies advertise on employment websites like www.sixfigurejobs.com. *See* OIP at 5, 7. Mrs. Daspin reviewed prospective employees' applications and resumes and provided Daspin those she considered most promising. *Id.* Prospects were then interviewed by telephone or Skype supposedly for executive positions. *Id.*

Typically, applicants were not told during these initial interviews that they would be required to make an investment—much less an investment of hundreds of thousands of dollars—to be hired and paid a "salary," which was simply a partial repayment of that investment. OIP at 7. After the applicants went to the WMMA companies' offices in New Jersey for a second-round interview, Daspin led the negotiations and solicited their investment. *Id.*

Through this process, six employees invested in the WMMA companies in 2011 and 2012. OIP at 6. They were each assigned annual salaries of $150,000. *Id.* Under the consulting agreement, MacKenzie was entitled to a $37,500 commission per employee—25% of each employee's salary, rather than the $25,000 flat fee for non-investing employees—plus 5% annually of the portion of each salary exceeding $125,000, continuing indefinitely, rather than for five years for non-investing employees. *Id.* Although every investor was an employee or an officer and director of one or more of the WMMA companies, the WMMA companies had other, non-investor employees and officers and directors. *Id.* at 6 n.2.

These offerings, in which Daspin sold and attempted to sell WMMA's and WMMA Distribution's securities, were not registered with the Commission. OIP at 3, 12. Each offering sought to raise $20 million, using means of general solicitation through advertisements on internet employment websites. *Id.* at 12.

Adding up the investor checks and money transfers to WMMA and WMMA Distribution, including its predecessor entity, American Graphics, the unregistered offerings in those companies raised a total of $2,037,000 from September 2011 to May 2012.[6] *See* Baier Decl. Ex. B. Although ostensibly conducted as private placements under Section 4(a)(2) of the Securities Act and Rule 506 of Regulation D thereunder,[7] neither Daspin nor anyone else associated with the WMMA companies attempted to verify the investors' claimed financial condition. OIP at 12.

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[6] This total excludes the $250,000 investment in WMMA made by the third director in December 2010 because the OIP does not allege that he invested via the unregistered offerings—which involved job postings and interviews—but rather through having been "approached" by Daspin months before those offerings. *See* OIP at 5, 7, 12; Baier Decl. Exs. A at 1, B at bates no. 0439. The total also excludes a combined $183,333 invested in WMMA Holdings by the third director and another investor because the OIP does not allege that any offerings for that entity's securities were unregistered. OIP at 3, 12; Baier Decl. Ex. A at 1-2; *see also* infra note 9.

[7] In combination, these provisions exempt from the registration requirement in Section 5 certain offerings involving accredited investors. *See* 15 U.S.C. § 77d(a)(2); 17 C.F.R. § 230.506.

At least three investors were unaccredited and were not provided with an audited balance sheet or any other audited financial information about WMMA or WMMA Distribution. *Id.*

In accordance with the consulting agreement, WMMA and WMMA Distribution paid CBI and MacKenzie a total of $383,488.95 for bringing in investments in WMMA's and WMMA Distribution's securities. OIP at 3, 12; Baier Decl. at 3, Ex. C.[8] Daspin directly received a substantial portion of that amount—$244,020.56 of it was deposited into the Daspins' bank accounts. OIP at 12; Baier Decl. Ex. D at 1.

*2.5 Solicitation of Investor-Employees Using Misstatements and Omissions*

From September 2011 through at least March 2012, Daspin raised approximately $2,137,000[9] from six investor-employees using misstatements and omissions made in person and in private placement memorandums (PPMs). *See* OIP at 7-12; Baier Decl. Ex. A.

*2.5.1 Oral Misstatements and Omissions*

Daspin falsely told a number of the prospective investor-employees that everyone who worked at the WMMA companies was an investor or had "skin in the game," suggesting that prospective investor-employees needed to invest to get a job. OIP at 8. He also pressured the prospects to invest as much as possible, telling them that investing more would boost their salary during the startup phase, under the WMMA companies' "forward stock redemption program." *Id.* Under that program, the WMMA companies would buy back a small percentage of the investor-employee's stock each month, essentially paying investors with their own money in lieu of an actual salary, which would only be paid if the WMMA companies became profitable. *Id.* at 8 n.3

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[8] A related entity, Worldwide MMA USA, Inc. (WUSA), paid certain of these commissions. Baier Decl. at 2, Ex. C. WUSA and WMMA were sufficiently related to be considered one and the same for purposes of their relationship with the consulting entities. *See* Daspin Opp. at 21, Ex. 4 (referring to agreement between Mackenzie and "WMMA/WUSA").

[9] The OIP initially refers to $2,037,000 raised fraudulently from September 2011 through March 2012. OIP at 7. The OIP, however, subsequently states that the total amount raised fraudulently was "$1,236,000" plus "$901,000," or $2,137,000. *Id.* The $2,137,000 figure appears correct, as it consistent with the Division's sanctions evidence and leaves $333,333 in proceeds obtained without fraud, which is the amount raised from the third director. *Id.* at 5, 7; Baier Decl. at 2, Ex. A at 4. *Compare* OIP at 5 (third director's last investment occurred in April 2011), *and* Baier Decl. Ex. B at bates no. 0583 (indicating the same), *with* OIP at 7 (indicating first fraudulently obtained investment did not occur until later, in September 2011). The $100,000 discrepancy likely stems from the fact that one of the six defrauded individuals, who invested a total of $500,000, put $100,000 of her investment into WMMA Holdings rather than into WMMA or WMMA Distribution. Baier Decl. Ex. A at 2. Also, of the fraudulently obtained proceeds, Daspin appears to have raised some investments in April and May of 2012. Baier Decl. Ex. A at 4, Ex. B at bates nos. 0745, 0450.

When soliciting investments, Daspin used an alias, "Edward Michael" or "Ed Michael." OIP at 8. Only after prospective employees signed a required non-disclosure agreement, and were on the verge of investing, were they told Daspin's real name. *Id.* Daspin did this to delay disclosure of his criminal conviction and history of failed ventures. *Id.* The disclosure of Daspin's true identity came too late for prospective investor-employees to consider it, often occurring in a high-pressure setting where they were given multiple documents to sign and were expected write a check for the investment. *Id.* Daspin's aim in waiting to disclose his identity was to prevent investors from exercising reasonable due diligence and investigating Daspin before investing. *Id.*

Daspin also falsely presented himself to prospective investors as merely a consultant to the WMMA companies. OIP at 8. In fact, he often exercised ultimate control over the WMMA companies' business, including all hiring, soliciting all investors, drafting and disseminating the PPMs, negotiating transactions and contracts, controlling bank accounts, and making numerous other management decisions. *Id.* And despite the directors' titles, neither they nor anyone else at the WMMA companies were responsible for supervising Daspin's activities. *Id.*

Daspin also failed to disclose that the WMMA companies already owed him, through CBI and MacKenzie, $827,000 as of December 2011 for "consulting" fees to that point. OIP at 8. Payment of this amount could have bankrupted the WMMA companies. *Id.*

Further, Daspin misstated the financial condition of the WMMA companies. OIP at 8-9. Namely, he falsely told investors that WMMA Holdings had $100 million and would subsidize WMMA and WMMA Distribution; that "Ford" or "a car company" had committed $20 million; that WMMA and WMMA Distribution had over $30 million cash on hand; that the third director had invested $500,000; and that the WMMA companies were well funded, had sufficient cash to cover ongoing expenses, and had run profitable mixed martial arts events in the past. *See id.* When pressed about the amount of cash on hand, Daspin assured prospective investors that the WMMA companies were well-funded or evaded questions and referred prospective investors to the misleading PPMs. *Id.* at 9.

*2.5.2 Misrepresentations and Omissions in PPMs*

Daspin used misstatements and omissions in the WMMA companies' PPMs to solicit investors. These PPMs included: (1) WMMA's July 31, 2011 PPM; (2) American Graphics's July 31, 2011 PPM; (3) WMMA's January 5, 2012 PPM; and (4) WMMA Distribution's January 12, 2012 PPM. OIP at 7, 9-12. Daspin had control over, and input into, the "drafting and dissemination of the [WMMA c]ompanies' PPMs," which were provided to at least five[10]

[10] The Division asserts that six investors received PPMs, stating that "[f]our investors received the July 2011 PPMs, and two investors received the January 2012 PPMs." Div. Mot. at 8; *see id.* at 23 (highlighting the "six investors who invested based on . . . PPMs). But the OIP says that three investors were provided copies of the July 2011 PPMs, and that two investors were provided the January 2012 PPMs, for a total of five. OIP at 7. Regardless, the OIP alleges that six investors were defrauded, and further that Daspin made oral misstatements and

investors. *Id.* at 8-12. The PPMs contained numerous misstatements and omissions on the following topics:

*Daspin's Role*. Despite Daspin's ultimate control over the WMMA companies through the consulting agreement and Mrs. Daspin's controlling interest, the Daspins' names did not appear in the PMMs. OIP at 9. Indeed, the reversible transfer of controlling shares from Mrs. Daspin to the directors was designed to keep such information out of the PPMs. *Id.* at 9-10. Instead, the PPMs simply said that Agostini, Lux, and the third director were the directors and senior officers of the WMMA companies. *Id.* at 9. Prospective investor-employees were also told this during the solicitation process, and that Daspin was only a consultant. *Id.*

Daspin directed that the PPMs not disclose Mrs. Daspin's stock ownership. OIP at 10. WMMA's July 31, 2011 PPM stated that 91.5% of its stock was owned by WMMA Holdings, and that the eleven individuals who owned most of the other 8.5% also owned unspecified percentages of WMMA Holdings. *Id.* WMMA's January 5, 2012 PPM stated that each of the three directors held 22.54% of the stock of WMMA Holdings and its subsidiaries as a "trustee," without identifying the trust beneficiaries. *Id.* An earlier draft of the PPM disclosed Mrs. Daspin's control of the WMMA companies' stock, but the disclosure was removed at Daspin's direction. *Id.* American Graphics's July 31, 2011 PPM and WMMA Distribution's January 12, 2012 PPM similarly failed to disclose Mrs. Daspin's controlling interest in the WMMA companies. *Id.*

*The International Marketing Contract*. Daspin also caused the PPMs to contain material misstatements and omissions about an e-mail and telephone marketing database purportedly run by International Marketing Corporations, Inc., for which WMMA had contracted. OIP at 2. The International Marketing contract was the core of the WMMA companies' business plan. *Id.* at 10. According to the PPMs, the WMMA companies would use International Marketing's database to market and sell tickets to sponsored events, as well as all of their digital content and related products. *Id.*

In describing the International Marketing contract, the PPMs stated:

> WMMA has signed a long term strategic alliance agreement with [International Marketing]. . . . [International Marketing] is one of the foremost multi-level marketing and database marketing companies in the world and, has joint ventures with hotels, timeshares and has thousands of dollars of free product and services discounts which can be used as part of its marketing programs to provide MMA spectators with value-added benefits that they are not now enjoying by watching other competitor's shows.
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omissions to investors consistently. *Id.* at 7-9. Taken as true, these allegations support the finding above that Daspin used misstatements and omissions to raise money from six investors.

> [International Marketing] has over One Hundred and Thirty Million (130,000,000) U.S. mobile phone numbers for text messaging and invitations; as well as access to Four Million (4,000,000) websites of prospective spectators. In addition, [International Marketing] has over Eight Hundred and Forty Million (840,000,000) opt-in e-mail addresses and One Hundred Million (100,000,000) press release outlets.

OIP at 10. The PPMs further said that, out of a two billion-person potential market in the sixteen countries where WMMA planned to operate, "[International Marketing] is estimated to have about Twenty Five Percent of the WMMA MMA spectator market in its proprietary database." *Id.* at 11.

But the PPMs omitted facts that raised substantial questions about the truth of these statements and whether the database would be of any real value or use to the WMMA companies. OIP at 11, 12. As Daspin knew, no one associated with the WMMA companies had verified the existence of the database, tested it, obtained any demographic information about the individuals whose contact information was in it, or confirmed how many of the e-mail addresses and mobile phone numbers in it were valid or were associated with individuals in the mixed martial arts target audience. *Id.* Moreover, effective use of the database depended on the WMMA companies having a functioning website through which individuals who received marketing e-mails or text messages could purchase tickets to sponsored events and related products, or download or stream digital content; but the WMMA companies lacked such a website—efforts to create one had repeatedly been unsuccessful. *Id.*

Daspin authored the narrative descriptions in the PPMs regarding the International Marketing contract and database. OIP at 11. He insisted they be included despite objections that the descriptions were misleading, as WMMA had not obtained any demographic information about the database, the database had not been tested, and International Marketing had the right to cancel the contract on short notice. *Id.*

The WMMA PPMs additionally contained, at Daspin's insistence, baseless and increasingly unrealistic valuations of the International Marketing contract designed to inflate the WMMA companies' value. OIP at 11. The July 31, 2011 WMMA PPM said that MacKenzie had valued the International Marketing contract at $5 million, a figure with no reasonable basis. *Id.* As he started raising money from investors in the fall and winter of 2011, Daspin pushed to include substantially higher valuations in the WMMA PPM. *Id.* He initially tried to inflate MacKenzie's valuation of the International Marketing contract to about $160 million, but when his effort met with "stiff resistance" from others in the WMMA companies, he proposed $82 million. *Id.* Although a number of the WMMA companies' officers and employees continued to voice strong objections, Daspin persisted. *Id.* The narrative portion of the January 2012 WMMA PPM thus included a representation that MacKenzie had valued the International Marketing contract at $82 million—though not in accordance with GAAP—and that WMMA's board had approved the valuation and requested it be included in the PPM. *Id.*

Also at Daspin's insistence, the January 2012 WMMA PPM included a two-page, unaudited "Consolidated Balance Sheet" listing the International Marketing contract as an

intangible asset valued at $82 million. OIP at 11. This assertion was accompanied by a footnote stating "[a]ppraised value by MacKenzie M&A of 840 million double opt-in customer database (20 year exclusive contract)." *Id*. at 11-12. Daspin used this PPM to solicit at least two additional investors. *Id.* at 7.

Daspin knew that, as detailed above, neither he nor others at the WMMA companies exercised appropriate due diligence regarding the contents of the International Marketing database. OIP at 12. He also knew, when the January 2012 PPMs were provided to prospective investors, that the WMMA companies lacked the working website needed to take full advantage of the database. *Id*. As such, Daspin had no reasonable basis for the $82 million valuation. *Id.*

*Cash on Hand*. The January 5, 2012 WMMA PPM contained a two-page "Forecasted Consolidated Balance Sheet" for WMMA, with an entry of $33,085,850 in cash for "Stub-Period 2011 (Charitable Event)." OIP at 12. The term "stub-period" was not defined; the balance sheet bore a date of September 30, 2011, but it appeared at the bottom of the page and was not otherwise referenced. *Id.* At no time, however, did WMMA have $33 million in cash and there was no reasonable basis to believe a charitable event in 2011 would generate that amount. *Id.* Daspin referred a number of investors who asked him how much cash was on hand to this PPM. *Id.*

### *2.6 The End of the WMMA companies and Investor Losses*

In March 2012, the WMMA companies produced a charity mixed martial arts event in El Paso, Texas, to promote WMMA. OIP at 13. But the event resulted in a loss of about $500,000 and consumed most of the WMMA companies' remaining cash. *Id.* By June 2012, the WMMA companies were out of cash and ceased doing business. *Id.* After subtracting amounts investors received back through stock repurchases and other repayments, the seven investors collectively lost over $2 million. Baier Decl. Ex. A at 4.

## ***3. Conclusions of law***

Daspin is charged with willfully violating antifraud provisions of the securities laws—Securities Act Section 17(a), as well as Exchange Act Section 10(b) and Rule 10b-5. 15 U.S.C. §§ 77q(a), 78j(b); 17 C.F.R. § 240.10b-5; OIP at 14. And related to conduct charged under Exchange Act Section 10(b) and Rule 10b-5, Daspin is further charged with willfully violating Exchange Act Section 20(b). 15 U.S.C. § 78t(b); OIP at 14. Lastly, he is charged with willful violations of the broker and offering registration provisions of Exchange Act Section 15(a) and Securities Act Section 5(a) and (c). 15 U.S.C. §§ 77e(a), (c), 78*o*(a); OIP at 14.

### *3.1 Exchange Act Section 10(b), Rule 10b-5, and Securities Act Section 17(a)*

Securities Act Section 17(a)(2) and Exchange Act Rule 10b-5(b) prohibit material misstatements and omissions in the offer or sale of securities and in connection with the purchase or sale of securities. 15 U.S.C. § 77q(a)(2); 17 C.F.R. § 240.10b-5(b). As is relevant to this proceeding, Securities Act Section 17(a)(1) and (3) and Exchange Act Rule 10b-5(a) and (c) concern "scheme" liability. *See* 15 U.S.C. § 77q(a)(1), (3); 17 C.F.R. § 240.10b-5(a), (c).

*3.1.1 Material Misstatements and Omissions*

A violation of Exchange Act Section 10(b) and Rule 10b-5(b) occurs when a person, directly or indirectly, (1) makes a material misstatement or omission (2) with scienter (3) in connection with the purchase or sale of securities (4) by means of interstate commerce or the mails. *See* 15 U.S.C. § 78j(b); 17 C.F.R. § 240.10b-5(b); *VanCook v. SEC*, 653 F.3d 130, 138 (2d Cir. 2011). A violation of Securities Act Section 17(a)(2) occurs when a person, directly or indirectly, obtains money or property "by means of" a material untrue statement or omission in the offer or sale of securities, using the means of interstate commerce or the mails. 15 U.S.C. § 77q(a)(2). Liability under Section 17(a)(2) does not depend on whether the respondent himself made the false statement and requires only negligence, not scienter. *See Aaron v. SEC*, 446 U.S. 680, 696 (1980); *SEC v. Big Apple Consulting USA, Inc.*, 783 F.3d 786, 795-98 (11th Cir. 2015); *SEC v. Stoker*, 865 F. Supp. 2d 457, 464-66 (S.D.N.Y. 2012).

Daspin made a number of oral misstatements and omissions, namely:

- He falsely told investors that: WMMA and WMMA Distribution had over $30 million cash on hand; WMMA Holdings had $100 million and would subsidize WMMA and WMMA Distribution; a car company had committed $20 million; the third director had invested $500,000; and the WMMA companies had run profitable mixed martial arts events in the past. *See* OIP at 8-9.

- He omitted that as of December 2011, the WMMA companies owed him $827,000 for "consulting" fees through CBI and MacKenzie, a debt that could have bankrupted the WMMA companies. OIP at 8.

- He falsely presented himself to investors as merely a consultant to the WMMA companies when he actually exercised ultimate control over the WMMA companies through the consulting agreement. OIP at 8-9.

- He used an alias to conceal his criminal conviction and history of failed ventures, only disclosing his real name to prospective investors in a high-pressure situation when they were on verge of investing. OIP at 8.

- He falsely told prospective employees that everyone working at the WMMA companies was an investor, suggesting that investing was a prerequisite for getting a job. OIP at 8.

He also made the following misstatements and omissions in the WMMA companies' PPMs:

- The January 5, 2012 WMMA PPM represented that the company had or would receive $33 million in cash in 2011, but at no time did WMMA possess this amount or have reasonable basis to believe it did or would. OIP at 12. And Daspin referred investors who asked about cash on hand to this PPM. *Id.*

- The PPMs said the International Marketing contract—the "core of the [c]ompanies' business plan"—would allow for marketing of tickets and content to hundreds of millions of e-mail addresses, telephone numbers, websites, and press release outlets in the International Marketing database. OIP at 10. But the PPMs omitted that the WMMA companies had not acted with diligence and investigated the database or even verified its existence, and further omitted that the WMMA companies lacked the working website needed to take advantage of it. *Id.* at 11-12.

- The July 31, 2011 WMMA PPM said MacKenzie had valued the International Marketing contract at $5 million; the January 2012 WMMA PPM said MacKenzie's non-GAAP valuation of the contract was $82 million and that WMMA's board had approved the valuation and requested its inclusion in the PPM. OIP at 11. These figures had no reasonable basis given the WMMA companies' nonfunctional website and aforementioned lack of diligence investigating the International Marketing database. *Id.* at 11-12.

- The PPMs omitted any mention of the Daspins, despite Daspin's control of the WMMA companies and Mrs. Daspin's effective ownership of them. OIP at 9-10. Instead: (1) WMMA's July 2011 PPM stated that it was 91.5% owned by WMMA Holdings, and that most of the other 8.5% was owned by eleven individuals who also owned unspecified percentages of WMMA Holdings; (2) WMMA's January 2012 PPM stated that its three directors each held 22.54% of WMMA Holdings and its subsidiaries as "trustee[s]," without identifying the trust beneficiaries; (3) American Graphics's July 2011 PPM and WMMA Distribution's January 2012 PPM similarly failed to disclose Mrs. Daspin's controlling interest. *Id.*

Despite not being a named officer or director of the WMMA companies, Daspin was the maker of the misstatements and omissions in the PPMs because he "retained ultimate control over both the content of the communication and the decision" to include it in the PPMs. *SEC v. Pentagon Capital Mgmt. PLC*, 725 F.3d 279, 286-87 (2d Cir. 2013) (further noting that a person need not be "responsible for the act of communication" to be a statement maker, so long as he has ultimate control); *see also Janus Capital Grp., Inc. v. First Derivative Traders*, 564 U.S. 135, 142-43 (2011). Through the consulting agreement, "Daspin exercised ultimate control over virtually every important decision," thereby "effectively operat[ing] as the [c]ompanies' CEO." OIP at 7, 9. And he used that control to specifically direct what was included and not included in the PPMs, with authority to override objections of company officers who disagreed, and even drafted statements himself. *Id.* at 5-7, 9-11.

The misstatements and omissions were material, as a reasonable investor would have viewed them "as having significantly altered the total mix of information made available." *Basic Inc. v. Levinson*, 485 U.S. 224, 231-32, 240 (1988) (internal quotation marks omitted). For example, a reasonable investor would deem it important to know the truth about a company's

financial condition (including the value of its assets), who actually owned and controlled the company (and his background and integrity), and pitfalls of the core business plan.[11]

Daspin made the misstatements and omissions with scienter, "a mental state embracing intent to deceive, manipulate, or defraud." *Aaron v. SEC*, 446 U.S. at 686 n.5 (internal quotation marks omitted). As the WMMA companies' de facto CEO with virtually unrestricted authority, he knew that it was deceptive to even suggest he was merely a "consultant," or that others controlled the WMMA companies. *See* OIP at 7. Tellingly, he directed that the PPMs omit his wife's stock ownership and engineered a transaction to conceal it. *Id.* at 9-10. By using an alias and delaying disclosure of his identity, he intended to conceal his conviction and history of failed ventures in order to prevent investors from diligently investigating his background and bona fides. *Id.* at 8. He knew the statements and omissions about the WMMA companies' finances and debts were false and misleading—indeed, he controlled the WMMA companies' funds. *Id.* at 8-9, 11-12. He also knew his narrative descriptions and wildly inflated valuations of the International Marketing contract were unverified and baseless, but insisted they be included in PPMs over the objections of others. *Id.* at 11. And he lied about all employees having "skin in the game" to pressure job seekers to invest. *Id.* at 8.

Daspin committed his fraud in the offer or sale of securities and in connection with the purchase or sale of securities, and further obtained money "by means of" his materially false statements and omissions.[12] He used his misstatements and omissions to solicit investments and sell over $2 million of the WMMA companies' securities in offerings to six investor-employees. OIP at 6-12. He did so during interviews and in PPMs that he disseminated and to which he referred investors. *Id.* at 8-12. Daspin obtained this money not only because he controlled the WMMA companies that received it and their bank accounts, but also because the WMMA companies paid portions of the proceeds to the consulting entities, which in turn deposited substantial sums into the Daspins' bank accounts. *Id.* at 8-10, 12; Baier Decl. Exs. C, D.

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[11] *See, e.g.*, *United States v. Reyes*, 577 F.3d 1069, 1076 (9th Cir. 2009) ("information regarding a company's financial condition is material"); *Marini v. Adamo*, 995 F. Supp. 2d 155, 190 (E.D.N.Y. 2014) ("inflated values . . . constitute material misrepresentations"), *aff'd*, No. 14-1205, 2016 WL 1128174 (2d Cir. Mar. 23, 2016); *United States v. Hatfield*, 724 F. Supp. 2d 321, 328 (E.D.N.Y. 2010) ("information impugning management's integrity is material"); *In re Priceline.Com Inc. Sec. Litig.*, 342 F. Supp. 2d 33, 53 (D. Conn. 2004) ("Statements regarding the viability of [a company's] business model and the feasibility of applying [it] to different markets are material information."); *SEC v. Enterprise Sols.*, 142 F. Supp. 2d 561, 573 (S.D.N.Y. 2001) (founder/consultant's criminal past is material); *SEC v. Poirier*, 140 F. Supp. 2d 1033, 1043 (D. Ariz. 2001) (omitting "existence of a control group" is material).

[12] *See* 15 U.S.C. §§ 77q(a), 78j(b); *SEC v. Zandford*, 535 U.S. 813, 819-20, 825 (2002) (approving a broad and flexible interpretation of Exchange Act Section 10(b)); *United States v. Naftalin*, 441 U.S. 768, 773, 778 (1979) (holding that the terms "'in' the 'offer' and 'sale'" are "define[d] broadly, . . . encompass[ing] the entire selling process" and that Section 17(a) "was intended to cover any fraudulent scheme in an offer or sale of securities"); *Stoker*, 865 F. Supp. 2d at 465 (holding that Securities Act Section 17(a)(2) applies more broadly that Exchange Act Section 10(b)).

The interstate commerce prong is met, as "[t]he jurisdictional requirements of Sections 17(a) and 10(b) and Rule 10b-5 are broadly construed, so as to be satisfied by . . . intrastate telephone calls, and by even the most ancillary mailings." *SEC v. Softpoint, Inc.*, 958 F. Supp. 846, 865 (S.D.N.Y. 1997), *aff'd*, 159 F.3d 1348 (2d Cir. 1998); *David F. Bandimere*, Securities Act Release No. 9972, 2015 SEC LEXIS 4472, at *18-19 & nn.21-22 (Oct. 29, 2015). As a result, the Division "need not" show that a respondent's use of jurisdictional means is "central to the fraudulent scheme"; use of jurisdictional means "may be entirely incidental to" the scheme. *Franklin Sav. Bank of N.Y. v. Levy*, 551 F.2d 521, 524 (2d Cir. 1977) (quoting *United States v. Cashin*, 281 F.2d 669, 673-74 (2d Cir. 1960)). Here, Daspin used interstate commerce to lure investor-employees by having the WMMA companies place job postings on the internet and conducting interviews by telephone and Skype. OIP at 7. The interstate commerce requirement is therefore satisfied. *See Anthony Fields*, Securities Act Release No. 9727, 2015 SEC LEXIS 662, at *19 & n.17 (Feb. 20, 2015); *see also Franklin Sav. Bank of N.Y.*, 551 F.2d at 524 (although a transaction was "achieved manually and without the use of the mails," use of related confirmatory mailings were "sufficient to provide jurisdiction"); *Leiter v. Kuntz*, 655 F. Supp. 725, 727 (D. Utah 1987) (use of "the telephone on at least one occasion to change a prescheduled face-to-face meeting" was an indicator that interstate commerce requirement was met).

Given the above, Daspin violated Exchange Act Section 10(b), Rule 10b-5(b), and Securities Act Section 17(a)(2).

*3.1.2 "Scheme" Liability*

Exchange Act Rule 10b-5(a) and (c) and Securities Act Section 17(a)(1) and (3) share many of the same elements as their companion provisions above,[13] except that these provisions are predicated on scheme liability. Specifically, Rule 10b-5(a) and Section 17(a)(1) prohibit "employ[ing] any device, scheme, or artifice to defraud." 15 U.S.C. § 77q(a)(1); 17 C.F.R. § 240.10b-5(a). Rule 10b-5(c) prohibits "engag[ing] in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person," 17 C.F.R. § 240.10b-5(c), whereas Section 17(a)(3) prohibits "engag[ing] in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser." 15 U.S.C. § 77q(a)(3). Scheme liability may encompass misconduct related to material misstatements or omissions.[14] *See SEC v. Goldstone*, 952 F. Supp. 2d 1060, 1205-06 (D.N.M. 2013); *SEC v. Familant*, 910 F. Supp. 2d 83, 95 (D.D.C. 2012).

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[13] Unlike Section 17(a)(1), Section 17(a)(3) does not require scienter. *Aaron*, 446 U.S. at 695-97. But regardless, Daspin acted with scienter for the reasons provided above.

[14] Courts have held that "[a] defendant may only be liable as part of a fraudulent scheme based upon misrepresentations and omissions under Rule[] 10b-5(a) or (c) when the scheme also encompasses conduct beyond those misrepresentations or omissions." *WPP Luxembourg Gamma Three Sarl v. Spot Runner, Inc.*, 655 F.3d 1039, 1057 (9th Cir. 2011); *see also Pub. Pension Fund Grp. v. KV Pharm. Co.*, 679 F.3d 972, 987 (8th Cir. 2012); *Lentell v. Merrill Lynch & Co.*, 396 F.3d 161, 177-78 (2d Cir. 2005); *SEC v. St. Anselm Expl. Co.*, 936 F. Supp. 2d 1281, 1298-99 (D. Colo. 2013); *SEC v. Benger*, 931 F. Supp. 2d 908, 913-16 (N.D. Ill. 2013); *SEC v. Familant*, 910 F. Supp. 2d 83, 93-94 (D.D.C. 2012); *In re Nat'l Century Fin. Enters.,*

Daspin violated these scheme liability provisions. He defrauded six investor-employees using various devices, as well as practices that operated to deceive them. Along with his pattern of material misstatements and omissions, he designed a transaction to hide his wife's ownership stake in the WMMA companies and used the consulting agreement to conceal his unsupervised control from investors. OIP at 5, 9. To enable this stealth control, Daspin recruited puppet directors and officers mostly lacking relevant business experience who, unbeknownst to investors, deferred to Daspin for all important decisions. *Id.* at 4-5, 7, 9. That control also allowed Daspin to cause the WMMA companies to include materially false and misleading information in their PPMs. *Id.* at 9-12. Further, he used the consulting agreement and the consulting entities, CBI and Mackenzie, to pay himself substantial sums from the WMMA companies' coffers. *Id.* at 8, 12; Baier Decl. Exs. C, D. And by targeting job seekers and linking their hopes of employment to investing at a late stage in the hiring process, Daspin was able to exert pressure on them, helping facilitate his fraud. OIP at 8. He thus "took a series of actions" to "implement a scheme that he devised" and of which "he was [the] architect." *VanCook*, 653 F.3d at 139. "The scheme was specifically designed to create . . . false impression[s]" and defraud investors. *Id.* at 143; *see also Robert G. Weeks*, Securities Act Release No. 8313, 2004 WL 828, at *2 (Oct. 23, 2003) (noting that a fraudulent scheme "was designed to be opaque, featuring 'consultants' who acted as officers and directors of a corporate shell, titular officers and directors who . . . were 'rubber stamps,' and off-shore corporations whose officers, directors, and shareholders remain, in certain instances, unknown").

The other elements having already been met, as detailed above, Daspin violated Exchange Act Rule 10b-5(a) and (c), and Securities Act Section 17(a)(1) and (3). *See Pentagon Capital Mgmt.*, 725 F.3d at 285, 287 (noting scheme liability requirements of Rule 10b-5(a) and (c) and Section 17(a)(1) and (3) "are identical" and finding them "independently satisf[ied]" by a single course of conduct).

*3.2 Exchange Act Section 20(b)*

Exchange Act Section 20(b) prohibits any person, directly or indirectly, from doing "any act or thing which . . . would be unlawful for such person to do under [the Exchange Act] or any rule or regulation thereunder through or by means of any other person." 15 U.S.C. § 78t(b). "The term 'person' means a natural person [or] company." 15 U.S.C. § 78c(a)(9). Daspin violated Section 20(b) because, "through or by means of" the WMMA companies, which he controlled,[15] he violated Exchange Act Section 10(b) and Rule 10b-5 thereunder, as described above.

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*Inc., Inv. Litig.*, No. 2:03-MD-1565, 2006 WL 469468, at *21 (S.D. Ohio Feb. 27, 2006). In its recent opinion in *Dennis J. Malouf*, the Commission disagreed with this approach. *See* Securities Act Release No. 10115, 2016 SEC LEXIS 2644, at *18-32 & n.14 (July 27, 2016).

[15] Section 20 is titled "Liability of controlling persons and persons who aid and abet violations." Possibly because of word "controlling" in this title, some courts have interpreted Section 20(b) as having a control element, even though the word "control" is used in subsection (a) of Section 20 but not subsection (b). *See SEC v. Savoy Indus., Inc.*, 587 F.2d 1149, 1170 (D.C. Cir. 1978); *SEC v. Coffey*, 493 F.2d 1304, 1318 (6th Cir. 1974); *Cohen v. Citibank, N.A.*,

*3.3 Securities Act Section 5(a) and (c)*

Unless an exemption applies, subsections (a) and (c) of Securities Act Section 5 prohibit directly or indirectly (1) selling or offering to sell securities (2) through the use of interstate commerce (3) when no registration statements were in effect or filed as to those securities. 15 U.S.C. § 77e(a), (c); *David F. Bandimere*, 2015 SEC LEXIS 4472, at *13 (listing elements). Proof of scienter is not required to establish violations of subsections (a) and (c). *Id.* Daspin offered and sold over $2 million in WMMA and WMMA Distribution's stock in unregistered offerings. OIP at 6-7, 12. He did so using interstate commerce, as noted above. *See, e.g.*, *Softpoint*, 958 F. Supp. at 861 (the interstate commerce "prerequisite of a Section 5 violation is broadly construed to include tangential mailings or intrastate telephone calls"). Lastly, having defaulted, Daspin has not met his burden to show that "any exemption to registration applies."[16] *David F. Bandimere*, 2015 SEC LEXIS 4472, at *13. He therefore violated Securities Act Section 5(a) and (c).

*3.4 Exchange Act Section 15(a)*

Section 15(a)(1) of the Exchange Act makes it unlawful for any broker to effect transactions in securities using interstate commerce without being registered as a broker or associated with a registered broker. 15 U.S.C. § 78*o*(a)(1). Scienter is not required to establish a violation of Section 15(a)(1). *Anthony Fields*, 2015 SEC LEXIS 662, at *73.

"Daspin has never been registered with the Commission as a broker-dealer or associated with a registered broker-dealer." OIP at 3. For the reasons discussed above, transactions in WMMA's and WMMA Distribution's securities were effected using instrumentalities of interstate commerce. Daspin, therefore, violated Section 15(a)(1) if he acted as a broker with respect to those securities.[17]

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954 F. Supp. 621, 630 (S.D.N.Y. 1996). At least one court disagrees. *SEC v. Strebinger*, 114 F. Supp. 3d 1321, 1335 (N.D. Ga. 2015) ("th[is] [c]ourt does not read Section 20(b) to contain a 'control' limitation on liability"); *cf. Russello v. United States*, 464 U.S. 16, 23 (1983) ("[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." (citation omitted)). Even assuming subsection (b) requires a showing of control, Daspin's conduct falls within its terms because he controlled the WMMA companies. OIP at 4-5, 7-10.

[16] At least three of the investors were unaccredited and did not receive audited financial information about the companies. OIP at 12. Further, neither Daspin nor anyone else associated with the WMMA companies attempted to verify the investors' claimed financial condition. *Id.*

[17] This excludes, however, the $250,000 raised in WMMA from the third director, with respect to which the OIP does not allege that Daspin acted as an unregistered broker. *See* OIP at 3, 5, 7, 12-13; *supra* note 6.

The term "broker" means "any person engaged in the business of effecting transactions in securities for the account of others." 15 U.S.C. § 78c(a)(4)(A). Although the phrase "engaged in the business" is not defined, the term broker "connote[s] a certain regularity of participation in securities transactions at key points in the chain of distribution." *Mass. Fin. Servs., Inc. v. Secs. Inv'r Prot. Corp.*, 411 F. Supp. 411, 415 (D. Mass. 1976), *aff'd*, 545 F.2d 754 (1st Cir. 1976). Nonexclusive factors considered in determining broker status include: (1) actively soliciting or recruiting investors; (2) advising investors as to the merits of an investment, or opining on its merits; (3) receiving commissions, transaction-based compensation, or payment other than a salary for selling the investments; (4) whether the person was an employee of the issuer of the securities; (5) selling, or having previously sold, the securities of other issuers; (6) involvement in negotiations between the issuer and the investor; and (7) handling investor funds and securities. *David F. Bandimere*, 2015 SEC LEXIS 4472, at *28-29. Receiving "transaction-based compensation" is "one of the hallmarks of being a broker-dealer." *SEC v. Kramer*, 778 F. Supp. 2d 1320, 1334 (M.D. Fla. 2011) (internal citations and quotation marks omitted); *see David F. Bandimere*, 2015 SEC LEXIS 4472, at *31-32.

Daspin founded the WMMA companies and "effectively operated as the [their] CEO, with authority to make virtually every important decision." OIP at 4-5, 7. The fact that Daspin falsely held himself out as a "consultant," rather than as a typical employee, indicates that he was seeking to solicit and induce investors.[18] Further, he was paid transaction-based compensation, a broker hallmark. That is, he received more money for recruiting those who bought shares in WMMA and WMMA Distribution than for those who did not. *Id.* at 6. And "for bringing in investments," CBI and Mackenzie received $383,488.95, a substantial portion of which went to Daspin. *Id.* at 6, 12; Baier Decl. at 2-3, Exs. C, D. Daspin also gave advice and made valuations as to the merits of the investments. For example, he advised individuals to invest "as much as possible," told them to "diversify" by investing in both WMMA and WMMA Distribution, and evaluated the merits of their investments by falsely telling prospects that the WMMA companies were well funded. OIP at 7-9. Further, he was "responsible for . . . capital raising" and "look[ed] for investors" by "having the Companies post advertisements," and thereafter "le[d] the negotiations and solicited [investments]." *Id.* at 7. Daspin thus participated in these securities transactions "at key points in the chain of distribution." *Mass. Fin. Servs., Inc.*, 411 F. Supp. at 415.

Viewing the totality of Daspin's actions, I determine that he acted as a broker and consequently violated Exchange Act Section 15(a)(1).

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[18] Most "courts typically construe" the fact that an individual is not employed by the issuer "as supporting a finding that the defendant is a broker," and that being an employee of the issuer weighs against such finding. *SEC v. Collyard*, --- F. Supp. 3d ---, No. 11-cv-3656, 2015 WL 8483258, at *4-5 (D. Minn. Dec. 9, 2015), *appeal filed*, No. 16-1405 (8th Cir., docketed Feb. 17, 2016); *see, e.g.*, *Landegger v. Cohen*, 11-cv-1760, 2013 WL 5444052, at *6 (D. Colo. Sept. 30, 2013); *SEC v. Benger*, 697 F. Supp. 2d 932, 944-45 (N.D. Ill. 2010); *SEC v. Martino*, 255 F. Supp. 2d 268, 284 (S.D.N.Y. 2003). Application of this factor necessarily depends on the particular facts and circumstances in question. While the typical employee of an issuer would be paid a salary and would not be charged with soliciting or inducing investors, Daspin solicited investments and was paid for doing so.

*3.5 Willfulness*

Daspin's above violations were willful, as he intended to commit the acts constituting them. *See, e.g.*, *Wonsover v. SEC*, 205 F.3d 408, 413-15 (D.C. Cir. 2000) (discussing the meaning of willfulness); *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965) (same).

## *4. Sanctions*

The Division seeks $2,198,392.97 in disgorgement, plus prejudgment interest, a cease-and-desist order, industry and penny stock bars, and a combination of first- and third-tier civil penalties totaling $915,000. As detailed below, I impose all such sanctions against Daspin, but adjust the disgorgement amount to $1,948,258.47, plus prejudgment interest.

*4.1 Daspin's Submissions*

Daspin opposes sanctions. He made multiple submissions on various dates,[19] including:

- On April 1, a Disclosure of Assets and Financial Information Form (Daspin Form D-A) and certain tax documents. *See Edward M. Daspin*, Admin. Proc. Rulings Release No. 3764, 2016 SEC LEXIS 1257 (ALJ Apr. 5, 2016).

- By April 22, a twenty-seven page initial opposition (Daspin Opp.) with exhibits 1-22 (exhibit 1 containing its own tabs 1-6) and a five-page cover letter. These documents were not received by the Division until May 2. *See Edward M. Daspin*, Admin. Proc. Rulings Release No. 3822, 2016 SEC LEXIS 1616 (ALJ May 3, 2016).

- On May 3, a nine-page "additional supplemental declaration."

- On May 10, motions "for correction of record" and "to eliminate prior orders," as well as a letter regarding exhibits, together totaling fifteen pages, plus exhibits.

- On May 19, another "supplemental motion" and "supplemental declaration" in opposition to sanctions, totaling seventeen pages.

- On June 7, an eight-page supplement in support of a "motion to dismiss."

- On June 13, a five-page "motion to cancel and dismiss."

[19] The dates referenced are those recorded by the Office of the Secretary upon receiving these papers, rather than the dates that Daspin e-mailed them to my office. As I warned Daspin, because he violated my prior orders prohibiting them, his e-mails were disregarded. *Edward M. Daspin*, 2016 SEC LEXIS 1000, at *3 n.1. I have repeatedly instructed Daspin to properly file papers with the Office of the Secretary rather than e-mail them. *E.g.*, *Edward M. Daspin*, Admin. Proc. Rulings Release No. 3202, 2015 SEC LEXIS 4103, at *3 (ALJ Oct. 6, 2015).

Daspin submitted most of these items after the April 27 deadline for his opposition, without leave to do so. *See* 17 C.F.R. § 201.161. They far exceed the applicable length limitation of 7,000 words. *See* 17 C.F.R. § 201.154(c). Daspin's initial opposition by itself spans nearly 23,000 words. And Daspin's submissions violate my orders prohibiting serial filings, including an explicit instruction that Daspin not make serial filings for his opposition. *Edward M. Daspin*, 2016 SEC LEXIS 1000, at *3 n.1, *6. I am therefore not obligated to address or acknowledge any of these submissions.[20] But out of an abundance of caution, I opt to address the first two items on the list—his financial disclosure and his initial opposition.

Daspin's initial opposition is mainly devoted to disputing the OIP's allegations. *See, e.g.*, Daspin Opp. at 1 (stating "I never exercised control" and that the OIP's allegations "never occurred and are not true"). He has therefore ignored my explicit instructions—instructions I issued because Daspin's default means that I may take the allegations as true—to "only address the appropriateness of sanctions," as well as my warning that "[a]ttempts to refute the factual allegations of the [OIP] will not be considered." *Edward M. Daspin*, 2016 SEC LEXIS 1000, at *6. Because Daspin is precluded from making these merits arguments, I disregard them, except insofar as they show Daspin's failure to recognize the wrongfulness of his actions. The little of Daspin's opposition that remains, along with his financial disclosure, are addressed below as they relate to ability to pay and disgorgement.

*4.2 Ability to Pay*

Claiming he is "broke," Daspin Opp. at 1, Daspin asserts an inability-to-pay defense, which I reject on multiple grounds. Although the Commission may consider a respondent's ability to pay in deciding whether to impose monetary sanctions, it "is only one factor . . . and is not dispositive." *Robert L. Burns*, Investment Advisers Act of 1940 Release No. 3260, 2011 SEC LEXIS 2722, at *38 (Aug. 5, 2011); *see* 15 U.S.C. §§ 77h-1(g)(3), 78u-2(d); 17 C.F.R. § 201.630(a). Even when a respondent proves an inability to pay, the Commission has discretion not to waive monetary sanctions, "particularly when the misconduct is sufficiently egregious." *Robert L. Burns*, 2011 SEC LEXIS 2722, at *38-39.

First, "[e]ven accepting [Daspin's] statements at face value," he has failed to prove inability to pay because "[t]he financial information that [he] submitted . . . is vague, incomplete, and/or unsubstantiated in a number of respects." *E.g. Gregory O. Trautman*, Securities Act Release No. 9088, 2009 SEC LEXIS 4173, at *94-95 & n.117. (Dec. 15, 2009). For example, Daspin's Form D-A is missing Part II.E, which requires him to list the sources and amounts of "all income and other payments received from any source in the last 12 months" by Daspin or any other person or entity with respect to which Daspin could enjoy or control such money or property (*e.g.*, a spouse). *See* https://www.sec.gov/about/rulesprac2006.pdf, at PDF page 103. Also, the form's liability schedules require details for various items, including for credit cards and debts over $2,000. *See id.* at PDF page 105. Part II.C of Daspin's form reflects credit card

[20] All pending motions or requests by Daspin not explicitly addressed herein are denied as baseless. For example, his June 13 "motion to cancel and dismiss" appears to be premised on a complete misreading of the Second Circuit's decision in *Tilton v. SEC*, 824 F.3d 276 (2d Cir. 2016).

and numerous liabilities over $2,000, yet he omits the required details. Daspin Form D-A at 8. Daspin was also required to "[a]ttach any federal tax returns filed by [him] (including personal, trust, or business returns) for the year of the first violation alleged against [him] and all subsequent years." *Id.* at 7. He therefore should have submitted tax returns from at least 2011—the year of his first violation—through 2015. *See* OIP at 2, 6; *see also Gregory O. Trautman*, 2009 SEC LEXIS 4173, at *95 n.117. Daspin claimed such returns were "enclosed," but only attached tax information from 2013.[21] *See* Daspin Form D-A at 7.

Second, I do not accept Daspin's statements at face value. His propensity to lie throughout this proceeding shows that his current representations about his finances are not credible. Even if I were to ignore Daspin's behavior to date, which I do not, the misleading nature of his Form D-A is plain. For example, Daspin was supposed to list "all assets [he] owned . . . , directly or indirectly, and all assets that are subject to [his] enjoyment or control, regardless of whether legal title or ownership is held in [his] name." Daspin Form D-A at 8. But as the Division points out, Daspin omits the palatial $1.5 million home in which he lives, which is held in Mrs. Daspin's name. *See* Div. Reply at 9; Baier Supp. Decl. at 3, Ex. B (real estate website with valuation and pictures of the home), Ex. C (appraisal report). Although omitting his home, he claims $6,000 in annual home expenses to downplay his financial status. *See* Daspin Form D-A at 5, 8. Indeed, as the Division notes, Daspin fails to list any of Mrs. Daspin's assets, despite her substantial holdings and her interests in family partnerships likely worth many hundreds of thousands of dollars, if not more. Div. Reply at 9; Baier Supp. Decl. at 3-4, Exs. D-H. Daspin is thus using his wife to hide the truth, just as he did in connection with his securities fraud. *See infra* note 22 (discussing the fact that Daspin omitted Mrs. Daspin's family partnerships from his Form D-A, yet considers money loaned by those partnerships to be his own for purposes of reducing disgorgement).

And third, as detailed below, "the egregiousness of [Daspin's] conduct outweighs any discretionary waiver of disgorgement, prejudgment interest, and/or penalties," even were I to credit his Form D-A and discount its defects, which I do not. *Gregory O. Trautman*, 2009 SEC LEXIS 4173, at *95.

*4.3 Disgorgement*

Securities Act Section 8A(e) and Exchange Act Sections 21B(e) and 21C(e) authorize disgorgement, including reasonable interest, in this proceeding. 15 U.S.C. §§ 77h-1(e), 78u-2(e), 78u-3(e); OIP at 15. Disgorgement "is an equitable remedy designed to deprive a wrongdoer of his unjust enrichment and to deter others from violating the securities laws." *Montford & Co.*, Advisers Act 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)), *pet. denied*, 793 F.3d 76 (D.C. Cir.

[21] Specifically, Daspin attached: (1) his 2013 federal return, with schedules A, C, and D, as well as forms 8949, 8879, and 9325; (2) his 2013 New Jersey return, with a number of schedules and forms; and (3) some cover letters and brief summaries from his accountant. In its reply, the Division indicates that it received Daspin's 2014 federal return, not his 2013 return. Div. Reply at 8. The discrepancy is immaterial—it simply shows that the varying attachments Daspin provided were incomplete in more ways than one.

2015). The Division must initially demonstrate "a reasonable approximation of profits causally connected to the violation," *i.e.*, "but-for causation" between the respondent's violations and ill-gotten gains. *Jay T. Comeaux*, Securities Act Release No. 9633, 2014 SEC LEXIS 3001, at *9 (Aug. 21, 2014) (internal quotation marks omitted). "The burden then shifts to the respondent to demonstrate that the Division's estimate is not a reasonable approximation." *Id.* at *9-10 (internal quotation marks omitted).

The Division asserts that from December 2010 through May 2012, Daspin raised $2,470,333 from seven investors—six that Daspin defrauded, plus the third director. OIP at 2, 5, 7; Baier Decl. at 2, Ex. A. This assertion is supported by a declaration from a Division accountant, as well as accompanying exhibits showing cash flows and copies of investor checks and money transfers to the WMMA companies. Baier Decl. at 2, Exs. A, B.

The Division uses the $2,470,333 figure as the starting point for its disgorgement calculation. Div. Mot. at 21; Baier Decl. at 2, Ex. A at 4. But the third director's investments—a $250,000 payment to WMMA and an $83,333 payment to WMMA Holdings—do not appear to be connected to any violation, at least insofar as the OIP and the Division's evidence establish. The third director was the only investor not defrauded. *See supra* note 9. Nor were his investments a result of Daspin's offering and broker registration violations. The third director's $83,333 investment was in WMMA Holdings rather than the two entities that the OIP connects to Daspin's unregistered offerings and broker activity—WMMA and WMMA Distribution. *See* OIP at 3, 12. And although the third director made a $250,000 investment in WMMA, the OIP does not allege that any of his investments occurred via the unregistered offerings or broker activity, but rather through having been initially "approached" by Daspin months before. *See supra* notes 6, 17. Therefore, the third director's combined $333,333 in investments should be discounted. After subtracting that amount from the $2,470,333 total, I find that Daspin raised $2,137,000 as a result of his violations. *See* Baier Decl. Ex. B (checks and money transfers reflecting that all other investments were made by the six defrauded investors).

This $2,137,000 is subject to disgorgement, as it represents "the total gain from the illicit action." *SEC v. Contorinis*, 743 F.3d 296, 306 (2d Cir. 2014). Although only $244,020.56 was deposited into the Daspins' bank accounts, Baier Decl. Ex. D, disgorgement is not limited "to the direct pecuniary benefit enjoyed by the wrongdoer," as "the wrongdoer should bear the risk of any uncertainty affecting the amount of the remedy." *Contorinis*, 743 F.3d at 306; *see also SEC v. Patel*, 61 F.3d 137, 140 (2d Cir. 1995) (same). Moreover, Daspin had ultimate control over the WMMA companies and their bank accounts, and "[f]or purposes of disgorgement there is no meaningful distinction between receiving funds outright and having funds paid into an account one controls." *Gordon Brent Pierce*, Securities Act Release No. 9555, 2014 SEC LEXIS 839, at *89-94 (Mar. 7, 2014) (discussing cases), *pet denied*, 786 F.3d 1027 (D.C. Cir. 2015); *see, e.g.*, *SEC v. First Jersey Sec., Inc.*, 101 F.3d 1450, 1475 (2d Cir. 1996) (district court appropriately exercised discretion in deeming control person subject to disgorgement of firm's ill-gotten gains where he collaborated in firm's misconduct and profited from violations).

The Division has shown that there is "but-for" causation between Daspin's violations and the $2,137,000 of ill-gotten gains. Central to Daspin's investment pitch were his lies and omissions about the WMMA companies' financial condition, the value of their assets, who

owned and controlled them, their business plan, and his own background—all categorically information investors would have relied on. Daspin coupled that misinformation with a scheme of corporate machinations and personnel decisions to both enable his fraud and hide his control. Had investors known the truth, and had Daspin not unlawfully sold securities in unregistered offerings as an unregistered broker, he would not have raised the money.

The Commission "appl[ies] the rule that how a [respondent] chooses to spend his ill-gotten gains . . . is immaterial to disgorgement." *E.g.*, *Edgar R. Page*, Advisers Act Release No. 4400, 2016 SEC LEXIS 1925, at *45 n.68 (May 27, 2016) (internal quotation marks omitted). Disgorgement can be offset, however, by "[r]epayments that" a respondent actually made to investors. *David Henry Disraeli*, Securities Act Release No. 8880, 2007 SEC LEXIS 3015, at *72 n.106 (Dec. 21, 2007) (citing *SEC v. Palmisano*, 135 F.3d 860, 863-64 (2d Cir. 1998)). I therefore agree with the Division that it is appropriate here to calculate disgorgement by subtracting the amount returned to investors from the total amount raised through Daspin's violations. *See, e.g.*, *SEC v. McGinn, Smith & Co.*, 98 F. Supp. 3d 506, 520 (N.D.N.Y. 2015) ("the total amount raised through the fraudulent offerings" minus "the amount returned to investors" deemed a reasonable approximation for disgorgement), *aff'd sub nom.*, No. 15-1314, 2016 WL 1552535 (2d Cir. Apr. 18, 2016).

Excluding amounts repaid to the third director, whose investments I have excluded from the disgorgement calculation, the Division's evidence shows that the six defrauded investors recovered $188,741.53 through stock repurchases. Baier Decl. at 2, Ex. A at 2-4. Subtracting this from $2,137,000 leaves an investor loss of $1,948,258.47 attributable to Daspin's violations, which is a "reasonable approximation" for disgorgement. *Montford & Co.*, 2014 SEC LEXIS 1529, at *94 (internal quotation marks omitted).

Daspin counters that once amounts received by the consulting entities and the Daspins are netted against $615,436 in advances that he and Mrs. Daspin purportedly made to the WMMA companies, he is left with "nothing to disgorge."[22] Daspin Opp. at 6. I do not credit the $615,436 figure for reasons the Division outlines.[23] *See* Div. Reply at 4-7; Baier Supp. Decl. at

[22] Daspin contends he was left with roughly $12,000 "as income for [his] efforts of putting in 2400 hours a year for 3 years." Daspin Opp. at 6. Daspin misinterprets the Division's motion as alleging that he received $383,488.95 *plus* $244,020.56. In fact, the Division alleged—and has established—that the consulting entities received $383,488.95, *of which* $244,020.56 was funneled to the Daspins' accounts. *See* OIP at 12; Baier Decl. Exs. C, D. Also, Daspin omitted Mrs. Daspin's family partnerships from his Form D-A, yet considers money loaned by those partnerships to be his own for purposes of reducing disgorgement. *See* Daspin Opp. at 6 (arguing that the "Daspin loans . . . prove" his corporations and his wife's family partnerships "advanced a total of $615,436.00"). Daspin's suspect calculations support my decision to rely on the Division's evidence.

[23] The $615,436 figure is taken from Exhibit 1 of Daspin's opposition—a November 2015 letter from Michael Shapanka, Daspin's lawyer in other matters but not in this proceeding. Div. Reply at 4-5; *see* Daspin Opp. Ex. 1. The Division notes that the Shapanka letter merely relies on Daspin's representations and an unorganized "mishmash" of documents containing

1-3, Ex. A. But more to the point, and as noted above, the appropriate amount of disgorgement is all money Daspin unlawfully raised from investors and failed to pay back to them, not just what was paid to CBI and Mackenzie or deposited into the Daspins' own accounts. What the Daspins put into the WMMA companies, or how the illicit investor proceeds were spent—"whether . . . for business expenses, personal use, or otherwise"—is "immaterial to disgorgement." *SEC v. Aerokinetic Energy Corp.*, 444 F. App'x 382, 385 (11th Cir. 2011) (internal quotation marks omitted).

Because $1,948,258.47 is a reasonable approximation for disgorgement, and because Daspin has failed to demonstrate otherwise, I will order disgorgement of that amount, plus prejudgment interest. Daspin's prejudgment interest shall run from June 1, 2012—"the first day of the month following" his final violation in May 2012—through "the last day of the month preceding the month in which payment of disgorgement is made." 17 C.F.R. § 201.600(a); Baier Decl. Ex. A at 4, Ex. B at bates no. 0450.

*4.4 Cease-and-Desist Order and Bars (Steadman Analysis)*

As a result of Daspin's willful violations, Securities Act Section 8A and Exchange Act Section 21C authorize a cease-and-desist order against him, and Exchange Act Section 15(b) authorizes industry and penny stock bars against him. 15 U.S.C. §§ 77h-1(a), 78*o*(b)(4)(D), (6)(A)(i), 78u-3(a). In determining whether to impose these sanctions, the Commission considers the factors set forth in *Steadman v. SEC*: (1) the egregiousness of the respondent's actions; (2) the isolated or recurrent nature of the infraction; (3) the degree of scienter involved; (4) the sincerity of the respondent's assurances against future violations; (5) the respondent's recognition of the wrongful nature of his conduct; and (6) the likelihood that the respondent's occupation will present opportunities for future violations. 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981); *see Donald L. Koch*, Exchange Act Release No. 72179, 2014 SEC LEXIS 1684, at *88 (May 16, 2014), *pet. granted in part on other grounds*, 793 F.3d 147 (D.C. Cir. 2015).

In deciding whether to issue a cease-and-desist order, I also must consider, in addition to the *Steadman* factors, whether future violations are reasonably likely; the recency of the violations; "whether the violations caused harm to investors or the marketplace"; "whether [Daspin] will have the opportunity to commit future violations"; and "what remedial function [a] cease-and-desist order would serve in the overall context of any other sanctions sought in the same proceeding." *Gordon Brent Pierce*, 2014 SEC LEXIS 4544, at *82-83; *see KPMG Peat Marwick LLP*, Exchange Act Release No. 43862, 2001 SEC LEXIS 98, at *101 (Jan. 19, 2001), *recons. denied*, Exchange Act Release No. 44050, 2001 SEC LEXIS 422 (Mar. 5, 2001), *pet. denied*, 289 F.3d 109 (D.C. Cir. 2002).

Daspin's actions were egregious and caused harm to investors. He defrauded investors of over $2 million by preying on job seekers and deceiving them repeatedly. He lured them to

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mathematical errors and duplicative expense documents, lacking—among other things—an explanation as to why the expenses were legitimately related to the WMMA companies. Div. Reply at 5-6.

interviews and induced them to invest as much as possible by lying and making omissions about himself, the WMMA companies, and his control over them. For example, he claimed to be a "consultant" when in fact he was the puppet master, and failed to disclose that the WMMA companies owed him enough money to possibly bankrupt them. Further, he falsely claimed the WMMA companies had over $100 million in cash and financial backing, which did not exist. He also lied in the WMMA companies' PPMs, which likewise hid his control of the WMMA companies and similarly claimed many millions in imaginary cash. In the PPMs, he also touted wildly inflated valuations of the International Marketing contract—up to $82 million—without any basis, and failed to disclose the complete lack of diligence in investigating the marketing database central to the WMMA companies' supposed business plan. Nor did the PPMs disclose that the WMMA companies could not carry that business plan out. Compounding these lies, Daspin used a scheme of corporate transactions and pawn directors to enable his fraud and give him secret, unsupervised control of the WMMA companies. Such fraudulent acts are "especially serious and subject to the severest of sanctions." *E.g., 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).

Although his violations are not particularly recent, having occurred through May 2012, Daspin's actions were recurrent. As detailed above, Daspin deceived investors using multiple misstatements, omissions, and schemes on a repeated basis. He did so orally in interviews, and in four PPMs provided to investors. This fraud induced six investors to make over twenty separate investments. He also received numerous illicit broker commissions for bringing in investments through the consulting entities.

Daspin acted with a high degree of scienter. For example, because he controlled the WMMA companies, he knew it was deceptive to tell investors that others were in charge or that he was only a "consultant." He intentionally chose inexperienced directors to facilitate the control necessary to carry out his fraud. He engineered a transaction specifically to conceal Mrs. Daspin's stock ownership and further directed that a disclosure of her stake in the WMMA companies be removed from a PPM. Likewise, he directed that the misleading descriptions and inflated valuations of the International Marketing contract be included in PPMs, over the objections of others, and despite knowing such claims were baseless. His control of the WMMA companies' funds meant he knew the misstatements and omissions relating to finances and amounts owed were deceitful. And by targeting job seekers, Daspin sought to manipulate and exert pressure on investors.

Daspin also manifested his scienter through his conduct in this proceeding. *See, e.g.*, *SEC v. Milligan*, 436 F. App'x 1, 3 (2d Cir. 2011) (concluding that defendant's "blatant attempts to deceive the court in seeking to escape the consequences of his actions" were appropriately considered by magistrate judge as a factor in imposing sanction). He concocted bogus medical claims to avoid a hearing on the merits. He refused to make himself available to the Division's medical expert ahead of the February 11 hearing and then chose not to attend that hearing, which addressed his purported medical issues. He also prevented his wife from attending on February 11, thereby interfering with the subpoena that I directed to her. Rather than appear when he was supposed to, Daspin tried to fight this case by barraging my office with hundreds of e-mails, which he continues to send, and making numerous piecemeal filings. In so doing, he

consistently violated multiple orders that I issued. All of these actions were attempts at manipulation and reflect Daspin's consciousness of liability.

Daspin in no way has recognized the wrongful nature of his conduct, and likewise offers no assurances against future violations. Throughout this proceeding and in countless e-mails and submissions, Daspin has claimed to be the innocent victim of a conspiracy, placing blame on anyone but himself. In opposing the requested sanctions, he asserts that "the SEC has no case except suing an innocent man because I'm a juicy target." Daspin Opp. at 5. He further states that "[e]very allegation and/or counts . . . are either untrue, figments of [the SEC's] imagination and/or information that the SEC has twisted and/or inadvertently contorted to try to construct a story of fraud . . . because they were already brainwashed before they knew the truth." *Id.*; *see id.* at 22 ("I'm innocent of every charge that the SEC has concocted and or dreamt up and they have tried to con this court.").[24] Rather than accept responsibility, Daspin blames the investors he defrauded, calling them "dishonest" and accusing them of "resort[ing] to collusion to feign that I was in control." *Id.* at 1. In short, the Division is correct that "[i]t is hard to imagine a Respondent who has demonstrated a greater lack of any responsibility for any wrongdoing than Daspin." Div. Mot. at 17.

There is a significant risk that Daspin will commit future violations. Because Daspin thinks he did nothing wrong, he is unlikely to change his behavior or avoid future misconduct. Such misconduct would likely occur in Daspin's self-styled profession of "help[ing] individuals build organizations," where he claims to have "experienced success in the negotiations and deal-making that would make [those organization] successful." Answer at 5. Daspin claims this "is the exact same thing" he did for the WMMA companies. *Id.* Indeed, Mackenzie's website still lists Daspin under his "Edward Michael" alias as the firm's "Chief Negotiator." Div. Mem. Opp. to Resp.'s Mot. to Dismiss (Oct. 14, 2015), Attachment B; Meet Our Team, Bio of Ed Michael, http://mkmainc.com/#/ourfirm/ (last visited August 8, 2016). Daspin's continuing association with Mackenzie affords him opportunities for future violations. In fact, the site claims that Daspin is "a Private Merchant Banker and has been the leading dealmaker in more than 350 acquisitions" and that "[d]uring the last thirty years" he, his merchant banks, and others "have appraised over 10,000 companies, approximately 3,500 associated real estate projects, of which they have acquired and or formed approximately 350 corporations using operating capital in excess US$500 Million dollars." Meet Our Team, Bio of Ed Michael, http://mkmainc.com/#/ourfirm/ (last visited August 8, 2016). Daspin's own website contains a similar description. *See* About Mike Daspin, http://pblog.emichaeldaspin.com/static.php?page=static080728-090026 (last visited August 8, 2016). And in the cover letter accompanying Daspin's financial disclosure, he states that "I continue to try to look for leverage[d] buyouts." Thus, rather than rebutting the "inference that [his misconduct] will be repeated," *Tzemach David Netzer Korem*, Exchange Act Release No. 70044, 2013 SEC LEXIS 2155, at *23 n.50 (July 26, 2013) (internal quotation marks omitted), Daspin essentially confirms it. *See Scott B. Gann*, Advisers Act Release No. 2684, 2009 WL 938033, at *6 (Apr. 8, 2009) ("Gann's claims

[24] Daspin makes these attacks on the Division or Commission, yet claims to "take back every critical statement that I made about the government employees" and "my falsely believing that it was an SEC and government conspiracy against me." Daspin Opp. at 3. Such concessions are overtly self-serving. *See id.* ("It takes a big man to find he was wrong.").

that he will '[a]lways hold the belief that [he] did not have the intent to defraud any mutual fund company' and that '[he] cannot admit [his] personal actions were wrong' reveal a fundamental misunderstanding of the duties of a securities industry professional that presents a significant likelihood that he will commit similar violations in the future"), *aff'd*, 361 Fed. App'x 556 (5th Cir. 2010).

All factors weighing heavily in favor of severe sanctions, I find a cease-and-desist order and industry and penny stock bars are appropriate and in the public interest. In conjunction with the disgorgement and civil penalties imposed herein, these remedial sanctions fit Daspin's misconduct and will help deter others from similar violations and encourage future compliance with the federal securities laws.

*4.5 Civil Penalties*

Securities Act Section 8A(g) and Exchange Act Section 21B(b) authorize third-tier civil penalties of up to $163,118 and $178,156, respectively, per violation if the act or omission involved fraud and resulted in substantial losses to others or pecuniary gain to the violator. 15 U.S.C. §§ 77h-1(g)(2)(C), 78u-2(b)(3); 17 C.F.R. § 201.1001 & Subpt. E, Table I (applicable to "all penalties imposed after August 1, 2016, including to penalties imposed for violations that occur before August 1, 2016").[25]

In deciding whether a civil penalty is in the public interest, the Commission considers several factors: (1) whether the act or omission involved fraud; (2) harm 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); *Francis V. Lorenzo*, Securities Act Release No. 9762, 2015 SEC LEXIS 1650, at *58-59 (Apr. 29, 2015). These factors weigh in favor of imposing third-tier penalties. Incorporating my findings and conclusions above, Daspin's violations involved fraud and a high degree of scienter, and caused approximately $2 million in investor losses, resulting in unjust enrichment to Daspin. Additionally, penalties will deter Daspin and others from committing such violations in the future. Therefore, third-tier civil penalties are in the public interest.

[25] The Commission recently adjusted these amounts by interim final rule, effective August 1, 2016, pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Pub. L. No. 114-74, § 701(b)(3), 129 Stat. 584, 599-601 (2015). *See* Adjustments to Civil Monetary Penalty Amounts, 81 Fed. Reg. 43042 (July 1, 2016) (to be codified at 17 C.F.R. Pt. 201). Congress expressly authorized application of such adjustments to penalties imposed after August 1, 2016, including for violations that occurred *before* that date. *See* 28 U.S.C. § 2461, note Sec. 6 ("Any increase under this Act in a civil monetary penalty shall apply only to civil monetary penalties, including those whose associated violation predated such increase, which are assessed after the date the increase takes effect."); Implementation of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Office of Management and Budget Memorandum M-16-06, at 4, https://www.whitehouse.gov/sites/default/files/omb/memoranda/2016/m-16-06.pdf ("[A]gencies should apply new penalty levels to any penalties assessed on and after the date that the new level takes effect.").

The Division requests third-tier penalties of $150,000 per violation, which was the maximum amount for a natural person when the Division filed its motion for sanctions. *See* Div. Mot. at 22 (citing now-replaced 17 C.F.R. § 201.1004, applicable to violations occurring after March 3, 2009, and before March 5, 2013, and Adjustments to Civil Monetary Penalty Amounts, 74 Fed. Reg. 9159, 9160 (Mar. 3, 2009)) (to be codified at 17 C.F.R. pt. 201). The Division further asserts that six violations occurred—one for each defrauded investor. *Id*. at 23. I have "discretion in setting the amount of penalty" within a given tier. *See S.W. Hatfield, CPA*, Exchange Act Release No. 73763, 2014 SEC LEXIS 4691, at *48 (Dec. 5, 2014). Although I am authorized to impose the new and higher maximum penalties set by the Commission's interim final rule, *see supra* note 25, I opt not to impose more than the Division requested; considering the public interest factors set forth above, imposing $150,000 per violation is appropriate. As to the number of violations, one for each defrauded investor is lenient given that I "may assess separate penalties 'for each act or omission,'" of which Daspin committed many. *John P. Flannery*, 2014 SEC LEXIS 4981, at *150-51; *cf. ZPR Inv. Mgmt., Inc.*, Advisers Act Release No. 4249, 2015 SEC LEXIS 4474, at *121 (Oct. 30, 2015) (assessing civil money penalties "for each of the three 2008 advertisements . . . [and] for each of the three 2011 advertisements and two 2009 newsletters"). I elect, however, not to impose penalties beyond what the Division requests, and find that one violation per each defrauded investor is reasonable. Consequently, I impose $900,000 in third-tier civil penalties for Daspin's misconduct against the defrauded investors.

The Division also seeks one $7,500 first-tier penalty for Daspin's unlawful security offerings, and another $7,500 penalty for his unlawful broker activity. Div. Mot. at 24 (citing the maximum first-tier amounts at the time the motion was filed). The relevant first-tier penalties may be imposed simply for each violation and now have maximum per-violation amounts over $8,000. 15 U.S.C. §§ 77h-1(g)(2)(A), 78u-2(b)(1); 17 C.F.R. § 201.1001, Subpt. E, Table I. As above, however, I elect not to impose penalties beyond what the Division seeks, even though they are authorized here. 17 C.F.R. § 201.1001, Subpt. E, Table I; *see, e.g.*, *Ronald S. Bloomfield*, Securities Act Release No. 9553, 2014 SEC LEXIS 698, at *88 & n.129 (Feb. 27, 2014) (imposing second-tier penalties for Section 5 violation and noting that "[e]ach of the numerous unregistered sales of these nine securities could be considered a separate violation of Securities Act Section 5."). Considering the public interest, I impose one penalty of $7,500 for Daspin's unlawful security offerings, and another penalty of $7,500 for his unlawful broker activity, totaling $15,000. This brings the total amount of civil penalties to $915,000.

### *5. Record Certification*

I certify that the record includes the items set forth in the record index issued by the Secretary of the Commission on August 5, 2016, and amended on August 23, 2016. *See* 17 C.F.R. § 201.351(b).

### *6. Order*

Under Section 8A of the Securities Act of 1933 and Section 21C of the Securities Exchange Act of 1934, Edward M. Daspin a/k/a "Edward (Ed) Michael" 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), 15(a), and 20(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder.

Under Section 15(b) of the Securities Exchange Act of 1934, Edward M. Daspin a/k/a "Edward (Ed) Michael" is BARRED from associating with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, and is FURTHER BARRED from participating in an offering of penny stock, including 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 of trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

Under Section 8A(e) of the Securities Act of 1933 and Sections 21B(e) and 21C(e) of the Securities Exchange Act of 1934, Edward M. Daspin a/k/a "Edward (Ed) Michael" shall DISGORGE $1,948,258.47, plus prejudgment interest. Prejudgment interest shall be calculated from June 1, 2012, to the last day of the month preceding the month in which payment of disgorgement is made, consistent with 17 C.F.R. § 201.600. 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), and shall be compounded quarterly. 17 C.F.R. § 201.600. Interest shall continue to accrue on all funds owed until they are paid.

Under Section 8A(g) of the Securities Act of 1933 and Section 21B of the Securities Exchange Act of 1934, Edward M. Daspin a/k/a "Edward (Ed) Michael" shall PAY A CIVIL MONEY PENALTY in the amount of $915,000.

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, bank cashier's check, bank money order, or United States postal money order made payable to the Securities and Exchange Commission and hand-delivered or mailed to the following address alongside a cover letter identifying Respondent and Administrative Proceeding No. 3-16509: Enterprises Services Center, Accounts Receivable Branch, HQ Bldg., Room 181, AMZ-341, 6500 South MacArthur Blvd., 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.

Under Rule of Practice 1100, I ORDER that any funds recovered by disgorgement, prejudgment interest, or civil penalties shall be placed in a fair fund for the benefit of investors harmed by the violations. 17 C.F.R. § 201.1100.

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. Under that rule, a party may file a petition for review of this initial decision within twenty-one days after service of the initial decision. Under Rule of Practice 111, a party may also file a motion to correct a manifest error

of fact within ten days of the Initial Decision. *See* 17 C.F.R. § 201.111. If a motion to correct a manifest error of fact is filed by a party, then a party shall have twenty-one days to file a petition for review from the date of the order resolving such motion to correct a manifest error of fact. This 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.

Daspin may move to set aside the default under Rule of Practice 155(b), which permits the Commission, at any time, to set aside a default for good cause, in order to prevent injustice and on such conditions as may be appropriate. 17 C.F.R. § 201.155(b). A motion to set aside a default shall be made within a reasonable time, state the reasons for the failure to appear or defend, and specify the nature of the proposed defense in the proceeding. *Id.* Such motion, if filed, should be directed to the Commission, as the hearing officer may only set aside a default "prior to the filing of the initial decision." *Id.*

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James E. Grimes
Administrative Law Judge