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ORIGINAL

ADMINISTRATIVE PROCEEDING
FILE NO. 3-17070

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of

3C ADVISORS & ASSOCIATES, INC., STEPHEN JONES, AND DAVID PROLMAN,

Respondents.

Judge Cameron Elliot

DIVISION OF ENFORCEMENT'S MOTION FOR SUMMARY DISPOSITION

May 6, 2016

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I. INTRODUCTION

The Division of Enforcement ("Division") moves, pursuant to Rule 250(a) of the Commission's Rules of Practice, 17 C.F.R. § 201.250(a), for summary disposition in this proceeding brought pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 ("Exchange Act") against 3C Advisors & Associates, Inc. ("3C"), Stephen Jones ("Jones"), and David Prolman ("Prolman") (collectively, the "Respondents").

The material facts here are undisputed – Jones and 3C either admit them in their Answers or have testified to them. From 2013 until the Division brought this enforcement action, 3C was an unregistered broker. During that period, Prolman and Jones, through 3C, solicited small- and medium-sized businesses by marketing "capital advisory services." 3C held itself out as "arrang[ing] private placement of debt and equity securities" and facilitating capital raises. As part of its capital advisory services, 3C undertook responsibility for analyzing its customers' financial needs, recommending and designing financing methods, playing a role in negotiations with potential sources of capital, and making recommendations about proposed funding terms. Moreover, 3C's engagement agreements provided that its customers would pay performance fees that were calculated as a percentage of the capital raised, with greater potential payouts for equity investments.

By engaging in this conduct, 3C acted as a broker, but has never registered with the SEC. In doing so, it has willfully violated Section 15(a) of the Exchange Act, which prohibits a broker-dealer from effecting transactions in, or inducing the purchase or sale of, securities without first being registered with the SEC or associated with a broker-dealer that is registered. Further, 3C carried out all of these activities through Jones and Prolman. Therefore, each has willfully aided and abetted, and caused 3C's primary violation of Section 15(a). Accordingly, the Division requests that the Hearing Officer find all three Respondents liable and (1) order them to cease-

and-desist their violations; (2) bar them from the securities industry; (3) order them to disgorge with prejudgment interest amounts collected through their capital advisory services engagements; and (4) order them to pay civil monetary penalties.

II. FACTS

A. Respondents

3C is a California corporation that at all relevant times provided a range of consulting services to small- and mid-sized companies including the capital advisory services at issue in this recommendation. Declaration of Lynn M. Dean ("Dean Decl."), Ex. 43, ¶ 1. Jones founded 3C in June 2010, and is 3C's senior managing director. *Id.* Jones has never held any securities licenses. *Id.* ¶ 2. Prolman was a senior managing director at 3C, and was identified as the "leader" of 3C's Capital Advisory Services Group. *Id.* ¶ 3. Prolman has never held any securities licenses. *Id.* Ex. 46 at pp. 17:22-18:1.

B. Background—3C's Formation

Before launching 3C, Jones performed valuation analysis, litigation support, and restructuring consulting for over two decades at several consulting firms. Ex. 45 at pp. 20:23-43:21. Jones's positions at two of these firms, Navigant Consulting and Mesirow Financial Advisory, were within those firms' registered broker-dealer segments, but he never had a securities license and he did not perform any of the transactional and capital advisory services provided by those firms. *Id.* Ex. 45 at pp. 30:19-34:6; 59:2-60:6.

Jones organized 3C as a holding company that would provide comprehensive services through subsidiary limited liability companies. *Id.* Ex. 43, ¶ 4. Thus, in addition to 3C's valuation services and litigation consulting, it offered capital advisory services under a subsidiary known as the "Capital Advisory LLC." *Id.* Ex. 1 at p. 2; Ex. 46 at pp. 76:16-20; Ex. 43 ¶ 4.

In June 2013, Prolman joined 3C as a managing director, with responsibility for the firm's capital advisory services. *Id.* Ex. 29; Ex. 33; Ex. 34; Ex. 46 at pp. 76:16-20. According to 3C's marketing materials, Prolman has three decades' experience in "financial, operational and corporate management; capital finance; growth strategies; turnarounds; loan workouts; [and] bankruptcy reorganizations . . . ." *Id.* Ex. 34; *see also* Ex. 29. When he joined 3C, Prolman prepared a business plan for Jones for the capital advisory services. That plan included an "industry overview and competitive analysis" that identified six competing firms, all of which are registered broker-dealers, including Houlihan Lokey, Blackstone and Lazard. *Id.* Ex. 29 at 2; Ex. 43 ¶ 5.

After forming 3C, Jones attempted to have 3C become associated with a registered broker-dealer. He testified he thought this would allow 3C to "represent the client from the start to the completion of the deal . . . ." *Id.* Ex. 45 at pp. 54:20-55:16. However, his efforts were unsuccessful. *Id.* 3C has never registered as a broker or a dealer, and has never associated with a registered broker-dealer. *Id.* Ex. 45 at pp. 69:10-14; 90:12-91:4; Ex. 46 at pp. 17:22-18:1. Likewise, neither Jones, Prolman, nor any other individual associated with 3C since its inception has been registered as or affiliated with a registered broker-dealer. *Id.*

C. 3C's Capital Advisory Services

After Prolman joined 3C in 2013, the firm touted its capital advisory services business segment. *Id.* Ex. 2. From 2013 through 2014, 3C took on five engagements to perform capital advisory services, and earned approximately $160,000 in compensation for those services. *Id.* Exs. 5-8, 10, 11, Ex. 41 (SEC-SEAPINE-E-0000144 - client proposal and engagement agreements); Ex. 45 at pp. 108:2-8; 109:3-24; Ex. 43 ¶ 6; Ex. 46 at pp. 42:5-10. During that time, the firm received $517,420.32 in total revenue for all of its services. *Id.* Ex. 39 at p. 2; Ex.

43 ¶ 15. Thus, at least a quarter of 3C's revenue during this time was generated through its capital advisory engagements.

1. Marketing of Services

3C actively built a base of potential sources of capital who could invest in its customers. It did so by marketing directly to the capital sources themselves. 3C also made presentations to "intermediaries"—such as law firms that 3C relied on to identify potential capital sources. *Id.* Ex. 46 at pp. 30:12-21; Ex. 45 at pp. 134:12-135:7; Ex. 15.

3C solicited its customers for its capital advisory services online, in presentations, and at industry conferences. *Id.* Ex. 45 at pp. 81:7-82:10; Ex. 46 at pp. 143:14-145:9; Ex. 43 at ¶ 7; Ex. 44 at ¶ 7. According to the version of 3C's website that was available until October 2014[1] and in other materials the firm used to market to customers, 3C offered several kinds of capital advisory services, including:

- "private placement of debt and equity securities;"[2]
- helping its "clients expand, effect ownership transitions, recapitalize and acquire other companies;"[3]
- assistance in "acquisition financing, growth capital, recapitalizations, and restructuring;"[4] and
- helping clients "structure debt and issue opinions regarding the commercial reasonableness of debt."[5]

3C's direct marketing materials to potential customers made similar claims. *Id.* Ex. 26;

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[1] As discussed below, in October 2014, 3C removed all references to "capital advisory services" on its website after receiving a subpoena from the Division seeking information about these services. *Id.* Ex. 45 at pp. 111:4-112:14.

[2] *Id.* Ex. 4; Ex. 26; Ex. 27 at SEC-LA-04471-E-0021111; Ex. 30 at p. 11; Ex. 43 ¶ 8.

[3] *Id.* Ex. 4; Ex. 43 ¶ 8.

[4] *Id.* Ex. 4; Ex. 43 ¶ 8.

[5] *Id.* Ex. 4; Ex. 43 ¶ 8.

Ex. 28 at p. 20; Ex. 43 ¶ 8. For example, in a presentation to a potential customer dated May 7, 2014, 3C touted to have "broad experience in placement of senior debt, subordinated and mezzanine debt, convertible and equity," and claimed it could assist in raising a "capital range" of between $5 million to $250 million. *Id.* Ex. 28 at p. 20-21.

2. Agreements for Services

3C's capital advisory proposals and agreements contained similar descriptions of the services it offered its customers. 3C used language in its engagement letters that came from a form Prolman had brought with him from a prior firm. *Id.* Ex. 45 at pp. 90:12-91:4.; Ex. 43 ¶ 8. 3C did not retain its own counsel to review the engagement language, nor did 3C seek counsel about the scope of permissible capital advisory services the firm could provide without registering as a broker-dealer. *Id.* Ex. 45 at pp. 90:12-91:4. The services that 3C agreed to perform in these engagement letters included broker services for its clients. For example, in August 2013, 3C initiated an engagement with JW Hill, LLC in which it agreed to "identify[] and introduce[e]" the company "to total capital liquidity in an amount approaching $35,000,000." *Id.* Ex. 5 at 1; Ex. 43 ¶ 10.

3C indicated it would "[f]ind and introduce [q]ualified [c]apital [s]ources," "assist[]in the determination of an appropriate capital structure for the Company on a go forward basis," and "assist[] in connection with the preparation and dissemination, as appropriate, of confidential materials for any potential or actual [t]ransaction." *Id.* Ex. 5 at pp. 2-3; Ex. 43 ¶ 10. 3C attempted to have it both ways in its engagement letters. Although the engagement letters stated that 3C would not conduct direct negotiations with potential investors, 3C nevertheless offered to "assist[] in all phases of the negotiation process, including establishment of price, terms and structure." *See, e.g.*, Ex. 5 at p. 3; Ex. 6 at p. 2; Ex. 10 at p. 2 ("3C will support Client in certain

negotiations as requested by Client."); Ex. 43 ¶ 11.

For its services, 3C's fee agreements required customers to pay a combination of upfront flat fees as retainers, and performance-based fees, entitling 3C to a percentage of any successful financing. *Id.* Ex. 5 at p. 3; Ex. 8 at p. 3; Ex. 7 at p. 2; Ex. 18 at p. 4. For example, the August 2013 agreement with Pollo West Corporation states that "3C's additional Consulting Performance Fees shall be based on the Company's success in both working toward and achieving a completed Transaction or series of Transactions." *Id.* Ex. 18 at p. 4. The October 2013 agreement with Cloudeeva, Inc. stated that: "Cloudeeva will pay to 3C two per cent (2%) in cash of the total dollar amount of any type of debt instrument committed by any capital source(s) to Cloudeeva" and "Cloudeeva will pay to 3C five per cent (5%) of the total dollar amount of any type of equity instrument committee by any capital source(s)." *Id.* Ex. 8 at p. 3.

Some of 3C's contracts assigned a higher performance fee for equity financing versus debt financing. Ex. 43 ¶ 12. For example, for one customer, 3C sought an initial retainer fee of $15,000 along with a performance fee of 4% of the funded investment amount with respect to the issuance of any equity securities, but the fee dropped to 2% if any debt instruments were issued. *Id.* Ex. 10 at p. 4. For another customer, 3C earned a total of $125,000, of which $90,000 amounted to a performance fee of roughly 1% of the total funding.[6] *Id.* Exs. 22-25; Ex. 49 at pp. 142:21-145:8; Ex. 43 ¶ 14.

[6] The particular fee agreement initially provided that 3C would receive a performance fee of 2%, but this was discounted because the arrangement involved both an initial lump sum and an ongoing fund, the latter of which the client would not draw down immediately. *Id.* Exs. 22-25.

3. Performance of Services

For each of its capital advisory services customers, 3C analyzed the customer's funding needs and advised the customer regarding funding options. For example, 3C, through Jones, prepared a document analyzing one of its customer's funding structure. *Id.* Ex. 11. 3C, through Prolman, also performed a review of that customer's overall financial condition in which Prolman commented on and reviewed the customer's forecast model and supporting data for inconsistencies, missing data, and assumptions. *Id.* Ex. 12; Ex. 48 at pp. 112:4-114:22. Prolman also gave advice to 3C's customers regarding their desired funding structure, the potential returns on equity investments, and advice about the appropriate amounts of funding to seek. *Id.* Ex. 13; Ex. 35; Ex. 48 at pp. 33:19-34:1; Ex. 49 at pp. 27:7-28:8.

3C also prepared materials to attract capital sources for its customers. This included creating marketing books with details about the customer and the customer's desired funding. *Id.* Ex. 9; Ex. 47 at pp. 160:20-162:7. 3C, through Prolman, also generated so-called "teasers," which contained summaries of the marketing books. *Id.* Ex. 17; Ex. 45 at pp. 84:6-10; Ex. 48 at pp. 135:13-136:10. For some of the engagements, 3C edited marketing materials generated by the customer, and for other engagements, 3C drafted the materials. *Id.* Ex. 45 at pp. 84:22-85:16.

For at least two of the five customers that it engaged, 3C through Prolman, also reached out directly to potential capital sources on those customers' behalf, including disseminating the marketing books and teasers described above. *Id.* Ex. 36; Ex. 46 at pp. 30:6-11. When Prolman sent these materials to the potential capital sources, he targeted sources drawn from his industry contacts and from referrals from the intermediaries with which 3C collaborated. *Id.* Ex. 46 at pp. 30:12-21. Prolman also conferred with 3C customers to identify and pre-screen potential capital sources that fit the funding goals of the customers. *Id.* Ex. 46 at pp. 30:22-31:10. If the

potential capital source expressed interest in the project, then 3C's outreach also included facilitating introductions between the customer and the capital source. *Id.* Ex. 46 at pp. 32:3-11. Prolman was present during meetings between customers and capital sources, and on at least one instance Prolman acknowledged responding to substantive questions from a potential capital source during such a meeting. *Id.* Ex.46 at pp. 32:24-33:14.

Finally, for at least two customers, 3C also played an active role in negotiating the terms of the funding. Capital sources corresponded with both the customer and Prolman while crafting potential deal terms during these two engagements. *See id.* Ex. 15; Ex. 16; Ex. 19; Ex. 21; Ex. 48 at pp. 131:15-133:4; 134:18-135:7. Even when 3C's personnel were not present during meetings with capital sources regarding deal terms, Prolman and Jones advised the customers about to advisability of terms being offered by the capital sources during those negotations. *Id.* Ex. 49 at pp. 56:10-57:13; *see also* Ex. 20 (Pollo West CFO and CEO corresponding about input received from Prolman during negotiations). For example, one customer testified that 3C gave him "validation on the commercial reasonableness of various terms and conditions of the proposal" that the funding source was offering. *Id.* Ex. 48 at pp. 130:8-18. Another testified that 3C "gave me their opinions on, . . . the attractiveness of the offer. . . . And they would give me their advice on strategy, on how to go back to—how to approach JMC and how to—how to negotiate." Ex. 48 at pp. 59:21-60:2; 62:9-20; *see also Id.* Exh 42, SEC-SEAPINE-E000905 (client forwarding proposed term sheet to Prolman). 3C also communicated with capital sources separately from the customer during the course of negotiations to ascertain the status of the pending deal, and then shared these updates with the customer. *Id.* Ex. 48 at pp. 67:7-20; Ex. 43 ¶ 19.

D. Attempts to Remediate Non-Registration

In October 2014, shortly after receiving a subpoena from the Division seeking information about 3C's capital advisory services, 3C removed all references to those services from its website. *Id.* Ex. 4; Ex. 45 at pp. 111:4-112:14. Yet, after doing so, the firm took on another capital advisory engagement seeking capital for a distressed company. *Id.* Ex. 45 at pp. 109:3-112:14; Ex. 43 ¶ 20. To date, however, 3C, Jones, and Prolman, remain unregistered and still have no association with any registered entity. *Id.* Ex. 43 ¶ 21; Ex. 44 ¶ 21.

III. ARGUMENT

A. Summary Disposition Standard

Rule 250(a) of the Commission's Rules of Practice provides that after a respondent's answer has been filed and documents have been made available to a respondent for inspection and copying, a party may move for summary disposition of any or all allegations of the order instituting proceedings.[7] Additionally, at the telephonic prehearing conference on March 7, 2016, the Division was ordered to file a motion for summary disposition.

"[S]ummary disposition may be appropriate in non-follow-on proceedings." *In re Sands Bros. Asset Mgmt. LLC et al.*, 2015 SEC LEXIS 3556, at *4 (Order on Motions for Summary Disposition Aug. 31, 2015) (citations omitted), *pet. for review denied,* Rel. No. 76119 (Oct. 8, 2015). Under Rule 250(b), a hearing officer may grant the motion for summary disposition if, as here, there is no genuine issue with regard to any material fact and the party making the motion is entitled to a summary disposition as a matter of law. 17 C.F .R. § 20 1 .250(b). Indeed,

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[7] In compliance with Commission Rule of Practice 230, 17 C.F.R. § 201.230, the Division made the investigative file available for inspection and copying to Jones and 3C on February 3, 2016 and to Prolman on March 3, 2016. The Division provided copies of the documents to all Respondents on March 9, 2016.

hearing officers routinely grant summary disposition where, as with the Division's Section 15(a) claims against 3C here, scienter is not required. But even as to violations requiring scienter, such as the Division's claims that Prolman and Jones aided and abetted 3C's violations, summary disposition is appropriate where the material facts, as here, are undisputed. *See, e.g., In re S.W. Hatfield,* Exchange Act Release No. 3602, 2014 WL 6850921 (Comm. Op. Dec. 5, 2014) (reversing denial of summary disposition and finding respondent liable for intentional and reckless violation of Exchange Act Rule l0b-5); *In re Executive Registrar & Transfer, Inc.*, Initial Decision Release No. 366, 2008 WL 5262371, at *29-31 (Dec. 18, 2008) (finding on summary disposition that transfer agent's president and control person aided and abetted entity's violations of Exchange Act rules).

B. 3C Willfully Violated Section 15(a) of the Exchange Act

The undisputed record establishes that 3C willfully violated Section 15(a) of the Exchange Act, 15 U.S.C. § 78o(a). Section 15(a) requires broker-dealers who "effect any transaction in, or induce or attempt to induce the purchase or sale of," any security using interstate commerce to be registered with the Commission or, if the broker-dealer is a natural person, to be associated with a registered broker-dealer that is not a natural person. 15 U.S.C. § 78o(a); *SEC v. Martino*, 255 F. Supp. 2d 268, 283 (S.D.N.Y. 2003), *aff'd*, 94 F. App'x 871 (2d Cir. 2004). To establish liability under Section 15(a), the Division must establish that 3C acted as a broker-dealer using interstate commerce without being registered as a broker-dealer. *Id.*

The Commission need not show scienter to prove 3C's violation of Section 15(a). *See SEC v. Interlink Data Network*, 1993 U.S. Dist. LEXIS 20163 at *46 (C.D. Cal. Nov. 15, 1993); *Martino*, 255 F. Supp. 2d at 283. The Division must establish only that the violation was willful. A willful violation of the securities laws means merely "'that the person charged with the duty

knows what he is doing.'" *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (*quoting Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor "'also be aware that he is violating one of the Rules or Acts.'" *Id.* (*quoting Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

1. 3C Acted as a Broker Without Registering or Associating with a Registered Broker-Dealer

3C willfully violated Section 15(a) of the Exchange Act by acting as a broker without first being registered as or associated with a registered broker-dealer. Section 3(a)(4)(A) of the Exchange Act generally defines a broker as any person "engaged in the business of effecting transactions in securities for the account of others." 15 U.S.C. §78C(a)(4)(A). The Commission has taken the position that the definition of broker "should be construed broadly and that exemptions from registration requirements that flow from [Section 3(a)(4)] should be 'narrowly drawn in order to promote both investor protection and the integrity of the brokerage community.'" *In re Wall*, Exchange Act Release No. 52467, 2005 WL 2291407, at *3, n.9 (Commission Op. 19, 2005) (*citing Persons Deemed Not to be Brokers*, Exchange Act Release No. 22172, 1985 WL 634795, at *2 (June 27, 1985)).

a. 3C was engaged in the business of a broker

The Exchange Act does not define what constitutes "being engaged in the business," but "activities that indicate a person may be a 'broker' are: (1) solicitation of investors to purchase securities, (2) involvement in negotiations between the issuer and the investor, and (3) receipt of transaction-related compensation." *SEC v. Earthly Mineral Solutions, Inc.*, 07-CV-1057, 2011

WL 1103349, at *3 (D. Nev. Mar. 23, 2011).[8] Courts and the Commission have emphasized in this context that "[t]ransaction-based compensation, or commissions are one of *the hallmarks* of being a broker-dealer," because such compensation "represents a potential incentive for abusive sales practices that registration is intended to regulate and prevent." *Id.* (emphasis added); *see also Apex Global Partners, Inc. v. Kaye/Bassman Int'l Corp.*, No. 3:09-CV-637-M, 2009 WL 2777869, at *3 (N.D. Tex. Aug. 31, 2009) (denying motion to dismiss prohibited transaction claim in part because the defendant allegedly offered to accept percentage of stock in lieu of percentage of acquisition price).

Here, there is no question that 3C effected and participated in securities transactions. *Hansen*, 1984 WL 2413, at *10. According to 3C's own marketing materials and website, the firm offered "capital advisory services" involving the purchase or sale of securities, including among other services "private placement of debt and equity securities." Dean Decl. Ex. 26; Ex. 27 at SEC-LA-04471-E-0021111; Ex. 30 at p. 11; Ex. 43 ¶ 8. 3C claimed to have "broad experience in placement of senior debt, subordinated and mezzanine debt, convertible and equity." *Id.* Ex. 26 at p. 20-21. And 3C clearly "effected" these securities transactions—it achieved funding for at least one client, and earned a $90,000 performance fee in return.[9] *Id.*

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[8] The court in *Hansen* also articulated factors for determining whether a defendant falls within the definition of "engaged in the business of a broker-dealer," including if he: "1) is an employee of the issuer; 2) received commissions as opposed to a salary; 3) is selling, or previously sold, the securities of other issuers; 4) is involved in negotiations between the issuer and the investor; 5) makes valuations as to the merits of the investment or gives advice; and 6) is an active rather than passive finder of investors." *Hansen*, 1984 WL 2413, at *10.

[9] Because Section 15(a)(1) prohibits inducing or *attempting* to induce the purchase or sale of any security unless a broker or dealer is registered, 3C's conduct violates Section 15(a)(1) by soliciting investors and issuers even if no securities transactions actually occur. *See In re Joseph M. Salvani and MainstreetIPO.com, Inc.*, Exchange Act Release No. 44590 (July 26, 2001) (settled order finding entity and individual violated Section 15(a)(1) by soliciting issuers and

Exs. 22-25; Ex. 49 at pp. 142:1-145:8; Ex. 43 ¶ 14.

Moreover, courts have "required a showing that the alleged broker or dealer was characterized by 'a certain regularity of participation in securities transactions at key points in the chain of distribution.'" *SEC v. Hansen* No. 83 CIV. 3692, 1984 WL 2413, at *10 (S.D.N.Y. Apr. 6, 1984) (internal citation omitted). Finding clients, "advising them on the merits of an investment, and assisting them in the steps necessary to execute the transaction reflects" such "regularity of participation in securities transactions at key points in the chain of distribution.'" *In re Havanich, et al.*, Initial Decision Release No. 935, 2016 SEC LEXIS 4, at *18 (January 4, 2016), quoting Massachusetts Financial Services, Inc. v. Securities Investor Protection Corp., 411 F. Supp. 411, 415 (D. Mass. 1976).

Here, 3C's conduct meets all three of the factors set forth in *Earthly Mineral.* First, 3C solicited investors to purchase securities issued by 3C customers. The firm developed its own base of potential capital sources who could invest with the customers. It also prepared marketing books and teaser summaries with details about the customer and the customer's desired funding that it sent to potential funding sources. *Id.* Ex. 9; Ex. 17; Ex. 45 at pp. 84:6-10; Ex. 46 at pp. 30:6-11; Ex. 47 at pp. 160:20-162:7; Ex. 48 at pp. 135:13-136:10; Ex. 36. For some of the engagements, 3C edited materials generated by the customer, and for other engagements, 3C drafted the materials. *Id.* Ex. 45 at pp. 84:22-85:16.

Second, 3C was involved in the negotiations between its customers (the issuers) and potential sources of capital (the investors), and opined about the merits of the investments. For at least two customers in particular, 3C gave advice about specific terms being negotiated for

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investors and noting no sales were made as a result of concerns raised by the Division of Corporation Finance).

capital investment in those customers. 3C also analyzed the customer's funding needs and advised the customer regarding funding options. *Id.* Ex. 11; Ex. 12; Ex. 13; Ex. 35; Ex. 48 at pp. 33:19-34:1 112:4-114:22; Ex. 49 at pp. 27:7-28:8. Prolman, on behalf of 3C, was present during meetings between customers and capital sources, included in correspondence between them, and responded to substantive questions from a potential capital source during such a meeting. *Id.* Ex. 15; Ex. 16; Exh 42; Ex. 19; Ex. 20; Ex. 21; Ex. 46 at pp. 32:24-33:14. Ex. 48 at pp. 59:21-60:2; 62:9-20; 130:8-18; 131:15-133:4; 134:18-135:7; Ex. 49 at pp. 56:10-57:13. 3C also communicated with capital sources separately from the customer during the course of negotiations. *Id.* Ex. 48 at pp. 67:7-20.; Ex. 43 ¶ 19.

Third, 3C earned transaction-based compensation—the "hallmark" of a broker. *See In re Havanich*, 2016 SEC LEXIS 4 at *16-17 (fees determined as percentage of amount invested in customer were "plainly 'transaction-based'"). 3C took on five engagements to perform capital advisory services, and was paid approximately $160,000 for this work. *Id.* Exs. 5-8, 10, 11, Ex. 41 (SEC-SEAPINE-E-0000144 - client proposal and engagement agreements); Ex. 45 at pp. 108:2-8; 109:3-24; Ex. 43 ¶ 6. The majority of this compensation, $90,000, was transaction-based, as it was based on a percentage of successful financings that 3C had arranged, ranging, from example, from 2% to 5%, depending on the type of financing.[10] *Id.* Ex. 5 at p. 3; Ex. 8 at p. 3; Ex. 7 at p. 2; Ex. 18 at p. 4; Exs. 22-25; Ex. 49 at pp. 142:1-145:8; Ex. 43 ¶ 14.

[10] Some of 3C's contracts also assigned a higher performance fee for equity financing versus debt financing. Ex. 43 ¶ 12; Ex. 10 at p. 4.

b. 3C was not a registered as a broker-dealer or associated with one

Despite performing these broker-dealer services, and receiving transaction-based compensation, 3C never registered as a broker-dealer. *Id.* Ex. 43 ¶ 21; Ex. 44 ¶ 21. And although it tried, it was never associated with a registered broker-dealer. *Id.* Ex. 43 ¶ 21; Ex. 44 ¶ 21; Ex. 45 at pp. 54:20-55:16. Therefore, the record established that 3C violated Section 15(a).

2. Respondents Were Not "Finders"

To the extent Respondents claim that they were "finders" rather than "brokers," that defense does not shield them from liability here. First, "the concept of a finder exempt from the Exchange Act's registration requirement does not exist in any decision of the Commission, the Supreme Court, or any federal court of appeals." *In re Havanich*, 2016 SEC LEXIS 4, at *22. The finder exception pertains to "'a narrow scope of activities' and broker registration is required for 'involvement at key points in the chain of distribution such as . . . discussing the details of the transaction, and recommending the investment.'" *Id. citing SEC v. Kramer*, 778 F. Supp. 2d 1320, 1336 (M.D. Fla. 2011). Indeed, courts have highlighted several activities that indicate that a respondent is a broker rather than merely a finder. These include "analyzing the financial needs of an issuer, recommending or designing financing methods, involvement in negotiations, discussion of details of securities transactions, making investment recommendations, and prior involvement in the sale of securities." *Cornhusker Energy Lexington, LLC v. Prospect St. Ventures*, No. 04-586, 2006 WL 2620985, at *6 (D. Neb. Sep. 12, 2006) (denying summary judgment on claim contract was voidable as prohibited transaction involving unregistered broker conduct), *Salamon v. Teleplus Enters., Inc.*, No. CIV. 05-2058 (WHW), 2008 WL 2277094, at

*8-9 (D.N.J. June 2, 2008) (denying summary judgment on prohibited transaction claim because application of *Cornhusker* factors posed material question of fact).[11]

Here, 3C engaged in all of these activities. Through Jones and Prolman, 3C analyzed and provided input regarding the fundraising needs of 3C's customers, recommended and designed financing options, participated in negotiations, conferred with 3C's customers and the potential capital sources regarding the advisability of the transactions, and made recommendations to the customers about deal terms. Moreover, 3C structured all of its capital advisory engagements to provide for success fees, with higher fees in the event of equity financing—and 3C collected such a fee where its customer ultimately obtained financing. *See In re Havanich*, 2016 SEC LEXIS 4, at *22 (rejecting defense that respondent was a finder, not a broker, where respondent had signed a "Finder's Fee Agreement," because he did not just "find" investors, he also gave advice, negotiated terms, facilitated transactions, and received transaction-based fees).

The record establishes that 3C acted as a broker, and did so without registering or associating with a registered broker-dealer. Thus, it is liable under Section 15(a).[12]

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[11] The Commission has also issued guidance that "[u]nregistered persons who provide services related to mergers and acquisitions or other securities-related transactions should limit their activities so they remain outside of th[e] statutory definition [of broker]. A person may 'effect transactions,' among other ways, by assisting an issuer to structure prospective securities transactions, by helping an issuer to identify potential purchasers of securities, or by soliciting securities transactions." *Strengthening the Commission's Requirements Regarding Auditor Independence*, Securities Act Release No. 47265, n.82 (Jan. 28, 2003).

[12] Section 15(a) also requires the use of the mails or any means or instrumentality of interstate commerce, which Respondents have satisfied by performing capital advisory services for customers across the country, including companies in Connecticut, California and New Jersey. Dean Decl. Exs. 5-8, 10-11.

C. Jones and Prolman Aided and Abetted 3C's Violation of Section 15(a)

Jones and Prolman willfully aided and abetted 3C's violations of Section 15(a). To establish aiding and abetting liability, the Division must show: (1) the existence of an independent primary violation; (2) the aider and abettor substantially assisted in the accomplishment of the primary violation; and (3) the aider and abettor knew or recklessly disregarded "that his or her role was part of an overall activity that was improper." *In re Spring Hill Capital Markets, LLC,* Initial Decision Release No. 919, 2015 SEC LEXIS 4895 at *36 (Nov. 30, 2015); *see also In re Finance Investments, Inc.*, Exchange Act. Release No. 62448, 2010 WL 2674858, at *13 (Comm. Op. July 2, 2010).

As discussed above, the first element is established. The undisputed record establishes a primary violation of Section 15(a) by 3C.

As for the second element, the record also proves that Prolman and Jones substantially assisted 3C's violations. Jones is 3C's senior managing director. *Id.* Dean Decl. Ex. 43 ¶ 2. Prolman was a senior managing director, and was identified as the "leader" of 3C's Capital Advisory Services Group. *Id.* ¶ 3. 3C acted through the two of them in carrying out its broker activity. There is no dispute that Jones and Prolman entered into contracts on behalf of 3C to perform brokering services, including analyzing funding needs for customers, disseminating customer information to potential capital sources, and assisting customers with negotiating funding terms. Moreover, Jones and Prolman arranged for and obtained transaction-based compensation for the firm. Without their actions, there could have been no primary violation by 3C. Thus, Jones and Prolman substantially assisted 3C's violation.

Finally, the record also establishes the third element of the aiding and abetting claim – that Prolman and Jones knew or, at least, recklessly disregarded the fact that 3C was violating Section 15(a) and that they had a role in furthering that unlawful activity. Recklessness is

defined as conduct that is "an extreme departure from the standards of ordinary care," (*Hatfield,* 2014 WL 6850921, at *7), and is present when "the danger was either known to the defendant or so obvious that the defendant must have been aware of it." *In re ZPR Investment Mgmt., Inc.*, Initial Decision Release No. 602, 2014 WL 2191006, at *44 (May 27, 2014) (quotations omitted). Proof of recklessness may be inferred from circumstantial evidence. *SEC v. Burns*, 816 F.2d 471, 474 (9th Cir. 1987).

Both Jones and Prolman knew, or were reckless in not knowing, that the services they offered and provided capital advisory customers through 3C violated Section 15(a). Jones and Prolman were experienced industry professionals with decades of experience. Dean Decl. Ex. 34; *see also* Ex. 29; Ex. 45 at pp. 20:23-43:21. They also both knew that there were limitations to the services they and 3C could provide without being registered, and Jones even sought to associate with a registered broker-dealer so that 3C could "represent the client from the start to the completion of the deal." *Id.* Ex. 45 at pp. 54:20-55:16. Indeed, Prolman drafted a business plan that stated that large registered broker-dealer firms like Houlihan Lokey, Blackstone and Lazard were "competitors" of 3C. *Id.* Ex. 29 at p. 2.

Jones and Prolman thus clearly knew, or were reckless in not knowing, that the capital advisory services they provided for 3C ran afoul of the law. And even if they did not have actual knowledge, they made no effort to determine whether their services were legal. They used a form engagement letter that obligated them to perform these services without consulting with a lawyer. *Id.* Ex. 45 at pp. 90:12-91:4; Ex. 43 ¶ 8. They did not retain counsel for 3C to review the engagement language, nor did they seek counsel about the scope of permissible capital advisory services the firm could provide without registration as a broker-dealer. *Id.* Ex. 45 at pp. 90:12-91:4. Finally, shortly after receiving a subpoena from the Division seeking

information regarding 3C's capital advisory services, Jones and Prolman removed all references to capital advisory services from 3C's website, thus indicating awareness of a potential issue with the firm's provision of those services. *Id.* Ex. 4; Ex. 45 at pp. 111:18-112:14. And even after taking that step, they and 3C took on another capital advisory engagement, continuing their violative conduct despite being on notice of the Division's investigation. *Id.* Ex. 45 at pp. 109:3-112:14; Ex. 43 ¶ 20. Their conduct was the very definition of recklessness. *In re Havanich*, 2016 SEC LEXIS 4 at *26 (noting that respondents who engaged in finding clients, advised them on transactions, and received transaction based compensation without registering were "at least reckless").

D. Jones and Prolman Caused 3C's Violation of Section 15(a)

In addition to aiding and abetting 3C's Section 15(a) violations, Prolman and Jones also caused them. Section 21C of the Exchange Act authorizes the Commission to bring cease and desist proceedings against any person "that is . . . a cause of the violation, due to an act or omission the person knew or should have known would contribute to such violation." "Causing liability" requires that: (1) a primary violation occurred; (2) an act or omission by the respondent contributed to that violation; and (3) the respondent knew or should have known that his or her conduct would contribute to the violation. *See In re Gateway Int'l Holdings, Inc.*, S.E.C. Release No. 53907, 2006 WL 1506286, at *8 (May 31, 2006) (Commission Op.); *In re Robert M. Fuller*, 56 S.E.C. 976, 984 (2003), pet. denied, 95 Fed. Appx. 361 (D.C. Cir. Apr. 23, 2004); *In re Erik W. Chan*, 55 S.E.C. 715, 724-26 (2002) (Commission Op.); *see also In re Spring Hill Capital Markets*, 2015 SEC LEXIS 4895 at *36. Because scienter is not required for proving a primary violation of Section 15(a), negligence suffices for establishing liability for "causing" a violation of that section. *See, e.g., In re Ambassador Capital Mgmt., LLC*, Initial Decision Release No. 672, 2014 WL 4656408, at *42 (Sept. 19, 2014) (citation omitted); *In re KPMG Peat Marwick*

LLP, 54 S.E.C. 1135, 1175 & n.100 (2001), *pet. denied*, 289 F.3d 109 (D.C. Cir. 2002); *In re Sands Bros. Asset Mgmt. LLC et al.*, 2015 SEC LEXIS 3556, at *17.

The record establishes causing liability here. For one, because the undisputed evidence proves Prolman and Jones aided and abetted 3C's primary violation of Section 15(a), they are necessarily liable for causing. "A finding that a respondent willfully aided and abetted violations of the securities laws necessarily makes that respondent a 'cause' of those violations." *In re Clarke T. Blizzard*, Advisers Act Rel. No. 2253, 2004 WL 1416184, at *5 n.10 (Comm. Op. June 23, 2004); *see also In re Sharon M. Graham*, 53 S.E.C. 1072, 1085 n.35 (1998) (Commission Op.); *see also In re Adrian C. Havill*, 53 S.E.C. 1060, 1070 n.26 (1998) (Commission Op.).

But even without a finding of aiding and abetting, "causing" liability is established under this record. As set forth above, the undisputed record establishes a primary violation of Section 15(a) by 3C, thus, the first element is established. The second element is also established. Jones and Prolman entered into contracts on behalf of 3C to provide capital advisory services, including analyzing their customers' funding needs, soliciting potential capital sources (investors), assisting their customers with negotiating the terms of the transactions, and contracting for accepting transaction-based compensation. Finally, Jones and Prolman knew or should have known that their actions would contribute to 3C's violation. Both Jones and Prolman knew that there were limitations to the services they and 3C could provide without being registered, and Jones even sought to associate with a registered broker-dealer so that 3C could "represent the client from the start to the completion of the deal." Dean Decl. Ex. 45 at pp. 54:20-55:16. When they were unable to associate with a broker-dealer, they simply provided the services anyway. They thus clearly knew, or should have known, that their conduct would cause 3C to violate Section 15(a). Accordingly, the record here is more than sufficient to establish that

Prolman and Jones are liable for causing 3C's violations.

IV. RELIEF REQUESTED

The Division seeks the following relief in this case: cease-and-desist orders, permanent bars pursuant to Section 15(b)(6); orders that Respondents disgorge their ill-gotten gains of $160,000, and imposition of civil penalties.

The guiding principle in imposing sanctions against a respondent is the public interest. *See, e.g., In re Vladimir Boris Bugarski*, Exchange Act Rel. No. 66842, 2012 SEC LEXIS 1267 at *10-11 (Apr. 20, 2012) (Comm. op.); *In re Joseph P. Doxey*, Initial Decision Rel. No. 598, 2014 SEC LEXIS 1668, at *58 (May 15, 2014). In determining whether an administrative sanction is in the public interest, the Commission generally focuses on the factors identified in *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979): (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. *Steadman*, 603 F.2d at 1140; *see also In re Gary M. Kornman*, Exchange Act Rel. No. 59403, 2009 SEC LEXIS 367, at *22 (Feb. 13, 2009) (Comm. op.) (applying *Steadman*); *Doxey*, 2014 SEC LEXIS 1668, at *58-59 (same).

In addition, the Commission considers whether sanctions will have a deterrent effect. *See In re Schield Mgmt. Co.*, 58 S.E.C. 1197, Exchange Act Rel. No. 53201, 2006 SEC LEXIS 195, at *35 (Jan. 31, 2006) (Comm. op.); *In re Bandimere*, Initial Decision Rel. No. 507, 2013 SEC LEXIS 3142, at *228-29 (Oct. 8, 2013).

"The appropriate sanction depends on the facts and circumstances of each case." *Schield*

Mgmt., 2006 SEC LEXIS, at * 35. Thus, the "inquiry into the appropriate sanction to protect the public interest is a flexible one and no one factor is dispositive." *Kornman*, 2009 SEC LEXIS 367, at *22; *see also In re Toby G. Scammell*, Advisers Act Rel. No. 3961, 2014 SEC LEXIS 4193, at * 23 (Oct. 29, 2014) (Comm. op.). The facts and circumstances here support the requested sanctions against Respondents.

A. Cease-and-Desist Orders Are Appropriate

Section 21C (a) of the Exchange Act authorizes that Respondents be ordered to cease and desist from committing violations of the Exchange Act. See 15 U.S.C. U.S.C. § 78u-3(a). In *KPMG Peat Marwick* , the Commission determined that there must be "some" likelihood of future violations whenever a cease-and-desist order is issued. 2001 SEC LEXIS 98 at *101. The Commission explained that:

> Though "some" risk is necessary, it need not be great to warrant issuing a cease-and-desist order. Absent evidence to the contrary, a finding of violation raises a sufficient risk of future violation. To put it another way, evidence showing that a respondent violated the law once probably also shows a risk of repetition that merits our ordering him to cease and desist.

Id. at *102-103. The Commission based this conclusion on the statutory language, which allows it to impose a cease-and-desist order on a person who "has violated" the securities laws, in contrast with the Commission's authority to seek injunctive relief in those instances when a person "is engaged or about to engage" in violative conduct. *Id.* at *103.

Along with the risk of future violations, the Commission considers "our traditional factors," including the factors listed in *Steadman*, and, in addition, "whether the violation is recent, the degree of harm to investors or the marketplace resulting from the violation, and the remedial function to be served by the cease-and-desist order in the context of any other sanctions being sought in the same proceedings." *Id.* at *116. This inquiry is a flexible one, and no one

factor is dispositive. This inquiry is undertaken not to determine whether there is a "reasonable likelihood" of future violations, but to guide the Commission's discretion. *Id.*

Cease-and-desist orders are appropriate against Respondents. As discussed above, they each have violated, or aided and abetted or caused another's violations of, Section 15(a) of the Exchange Act. In fact, Respondents are likely to commit or cause future violations. Indeed, even after October 2014 – after they received the Division's subpoena – 3C removed online references to the conduct in question, but the Respondents took on at least one new capital advisory engagement without registering.

B. Permanent Bars are Appropriate

Section 15(b)(6) authorizes imposition of a bar from the securities industry if the respondent willfully violated the federal securities laws while associated with a broker or dealer, and the suspension or bar is in the public interest. *See In re Martin,* Initial Decision Release No. 751, 2015 SEC LEXIS 880 at *80 (March 9, 2015) at *63. The *Steadman* factors are considered to determine whether imposition of a suspension or bar is in the public interest. *Id.* Additionally, the need to deter others from similar misconduct is considered in imposing a bar. *See In re Martin,* 2015 SEC LEXIS 880 at *69 (applying both the *Steadman* factors and considering the need to deter others).

Here, Respondents clearly meet the *Steadman* factors for imposition of a bar. *Steadman,* 603 F.2d at 1140 ((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). 3C willfully violated Section 15(a) of the Exchange Act by acting as a broker despite its failure to register, and Prolman and Jones aided and abetted and caused 3C's

violation. Their actions were egregious and involved at least recklessness, given that they knew or should have known that registration was required to provide the broker services they were providing, and they simply failed to do so, even after being on notice that the Division was investigating their conduct. The violation was recurring, since it involved five clients and took place over a period of two years and continued until the Division brought this enforcement action. Respondents have refused to recognize the wrongfulness of their conduct, or make any assurances that they will not violate the law in the future, and both of them continue to work in the securities industry, making future violations likely. Under the circumstances here, permanent bars are warranted.

For all of the above reasons, the Division also seeks collateral bars prohibiting Respondents from participating industry-wide. To determine the appropriateness of a collateral bar, the hearing officer should "review each case on its own facts" to make findings regarding the respondent's fitness to participate in the industry in the barred capacities. *In re Ross Mandell*, Exchange Act Rel. No. 71688, 2014 SEC LEXIS 849, at *7-8 (Mar. 7, 2014) (Comm. Op.) Prolman and Jones are have decades of experience in the consulting and financial services industries. Because each of the *Steadman* factors militates in favor of barring Respondents, they should be barred from association with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization. *Steadman*, 603 F.2d at 1140.

C. Disgorgement

Sections 21B(e) and 21C(e) of the Exchange Act authorize disgorgement in administrative or cease-and-desist proceedings, including reasonable interest. *See* 15 U.S.C. § 78u-2(e), § 78u-3(e). The goal of disgorgement is two-fold: "'to deprive a wrongdoer of unjust enrichment, and to deter others from violating securities laws by making violations

unprofitable.'" *SEC v. Platforms Wireless*, 617 F.3d 1072, 1096 (9th Cir. 2010), *quoting SEC v. First Pac. Bancorp*, 142 F.3d 1186, 1191 (9th Cir. 1998). Therefore, "the amount of disgorgement should include all gains flowing from the illegal activities." *Id.*, *see also In re Donald L. Koch*, Exchange Act Rel. No. 72179, 2014 SEC LEXIS 1684, at * 90 (May 16, 2014) (Comm. op.) (*citing SEC v. JT Wallenbrock & Assoc.*, 440 F.3d 1109, 1113-14 (9th Cir. 2006)). Further, respondents can be held jointly and severally liable for disgorgement when they collaborated worked closely together in violating the federal securities laws. *See In re Gordon B. Pierce*, Securities Act Rel. No. 9555, 2014 SEC LEXIS 839, at *91 (March 7, 2014) (Comm. op.) (cases cited therein, for joint and several liability disgorgement award); *see also J.T. Wallenbrock*, 440 F.3d at 1117 ("[W]here two or more individuals or entities collaborate or have a close relationship in engaging in the violations of the securities laws, they [may be] held jointly and severally liable for the disgorgement of illegally obtained proceeds.") (citation omitted).

When seeking disgorgement, the Division only needs to present evidence of a "reasonable approximation" of the ill-gotten gains. *See Platforms Wireless*, *Koch* and *JT Wallenbrock, supra.* Once the Division has made that showing, the burden shifts to the respondent "clearly to demonstrate that the disgorgement figure was not a reasonable approximation," and any "risk of uncertainty should fall on the wrongdoer whose illegal conduct created that uncertainty." *SEC v. First City Fin. Corp.*, 890 F.2d 1215, 1232 (D.C. Cir. 1989); *see also Koch,* 2014 SEC LEXIS 1684, at *90-91 & n. 233; *In re S.W. Hatfield, CPA*, Exchange Act Release No. 73763, 2014 SEC LEXIS 4691, at *3 (Dec. 5, 2014) (Comm. op.).

Here, Respondents should disgorge, with prejudgment interest, the amounts that they were unjustly enriched through their violations. The record established that 3C, through the joint work of Prolman and Jones, received $160,000 in revenue from the activity that constituted

unregistered broker activity. Thus, Respondents should be ordered, jointly and severally, to disgorge the $160,000 in compensation they received from their capital advisory services customers.

D. Penalties

Finally, the Division seeks civil penalties. Section 21B(a) of the Exchange Act authorizes the Commission to seek penalties in administrative proceedings. *See* 15 U.S.C. § 78u-2(a). Under Section 21B(a)(1), civil penalties are warranted in an administrative proceeding where the penalty is in the public interest and the respondents willfully violated or willfully aided and abetted a violation by other individuals. Penalties should be imposed when they serve the public interest, and they are meant to deter future violators. *See, e.g., In re Raymond James Fin. Servs., Inc.*, et al., Initial Decision Release No. 296, 2005 SEC LEXIS 2368, at *197 (Sep. 15, 2005). In determining whether a penalty is in the public interest, the statute provides several factors to consider: (1) whether the violation involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; (2) the resulting harm to other persons; (3) any unjust enrichment and prior restitution; (4) the respondent's prior regulatory record; (5) the need to deter the respondent and other persons; and (6) such other matters as justice may require. 15 U.S.C. § 78u-2(c). "'Not all factors may be relevant in a given case, and the factors need not all carry equal weight.'" *Bandimere*, 2013 SEC LEXIS 3142, at *249-50 (citations and quotations omitted).

As for the amount of the penalty, "a three-tier system establishes the maximum civil money penalty that may be imposed for each violation if found in the public interest." *Doxey*, 2014 SEC LEXIS 1668 at *67-68. It is up to the hearing officer to determine the amount of the penalty to be imposed within the tier. *See In re Martin,* 2015 SEC LEXIS 880 at *80, *citing In re Brendan E.*

Murray, Advisers Act Rel. No. 2809, 2008 SEC LEXIS 2924 (Nov. 21, 2008). In making that assessment, courts have considered the following factors established in *SEC v. Lybrand*:

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

281 F. Supp. 2d 726, 730 (S.D.N.Y. 2003), *aff'd on other grounds*, 425 F.3d 143 (2d Cir. 2005); *see also Bandimere*, 2013 SEC LEXIS 3142, at *251-52. Although these factors provide guidance, "each case has its own particular facts and circumstances which determine the appropriate penalty to be imposed." *In re Martin*, 2015 SEC LEXIS 880 at *80, *quoting SEC v. Opulentica, LLC*, 479 F. Supp. 2d 319, 331 (S.D.N.Y. 2007).

Moreover, the size of a civil penalty is "not limited to the amount of profits derived from the violation." *In re Martin,* 2015 SEC LEXIS 880 at *81, *citing In re Ronald S. Bloomfield,* Exchange Act Rel. No. 71632, 2014 SEC LEXIS 698, at *91 (Feb. 27, 2014) (Comm. op.). Thus, the civil penalty imposed against Respondents may far exceed any personal gain they made, since civil penalties can be imposed "without regard to defendants' pecuniary gain." *Id.* (finding that penalty for one respondent that was 27 times larger than his pecuniary gain was proper).

This matter does not involve allegations of fraud, therefore, imposition of first tier penalties of $7,500 for a natural person or $75,000 for any other person for each act or omission in violation of the federal securities laws are appropriate. Respondents willfully violated or willfully aided and abetted a violation of the federal securities laws. A penalty is needed to deter others from doing the same. As for the amount, 3C, through Prolman and Jones, engaged in unregistered broker activity with five customers. The Division therefore requests that first tier penalties be ordered against the

Respondents for each of the five capital advisory engagements they undertook, for a total of $375,000 for 3C and $37,500 each for Prolman and Jones. *See In re Mark David Anderson*, 56 S.E.C. 840, 863 (Comm. Op., Aug. 15, 2003) (imposing a civil penalty for each of the respondent's ninety-six violations); Rule 201.1004 and Table V to Subpart E, Adjustment of civil monetary penalties – 2009, 17 C.F.R. Part 201.1004 and Table V.

V. CONCLUSION

For all the reasons stated, the Division requests that the Hearing Officer find all three Respondents liable and order them to (1) cease-and-desist their violations; (2) be permanently barred pursuant to Section 15(b)(6); (3) disgorge with prejudgment interest amounts collected through their capital advisory services engagements; and (4) pay civil monetary penalties.

Dated: May 6, 2016

Respectfully submitted,

DIVISION OF ENFORCEMENT

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In the Matter of 3C Advisors & Associates, Inc., Stephen Jones, and David Prolman
Administrative Proceeding File No. [3-17070]

Service List

Pursuant to Commission Rule of Practice 151 (17 C.F.R. § 201.151), I certify that the attached:

DIVISION OF ENFORCEMENT'S MOTION FOR SUMMARY DISPOSITION

was served on May 6, 2016, upon the following parties as follows:

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