

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

Administrative Proceeding
File No. 3-17184

In the Matter of

CHRISTOPHER M. GIBSON



**DIVISION OF ENFORCEMENT'S PROPOSED
FINDINGS OF FACT AND CONCLUSIONS OF LAW**

October 24, 2016

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Pursuant to the Post-Hearing Order entered on September 16, 2016, the Division of Enforcement (“Division”) submits the following proposed findings of fact and conclusions of law.

I. Proposed Findings of Fact

The Division proposes the following findings based on the evidence admitted during the hearing on September 12-16, 2016, and the Stipulations of the Parties (Div. Ex. 189).¹

Christopher Gibson

1. Respondent Christopher M. Gibson (“Gibson” or “Respondent”) graduated from Williams College in 2006. Div. Ex. 190 at 15:9-15. As of the time of the hearing, Gibson was 32 years old. Div. Ex. 189 at ¶10.

2. Gibson worked as an analyst, and then as an associate, at Deutsche Bank Securities in New York from June 2006 to February 2009. 9/12/16 Tr. 16:7-9 and 17:25 to 18:6; Div. Ex.190 at 15:9-15.

3. While at Deutsche Bank, Gibson was involved in complex financial and securities transactions, including securitization and valuation of mortgage-backed securities. 9/12/16 Tr. 17:25 to 18:6; Div. Ex.190 at 15:22 to 16:14. Gibson advised clients regarding a range of asset classes and contributed to the structuring and placement of over \$40 billion in asset-backed securities. Div. Ex. 24 at 8.

¹ The Division’s exhibits are cited as “Div. Ex. ___.” Respondent’s exhibits are cited as “Resp. Ex. ___.” The hearing transcript is cited by the date of the testimony, the designation “Tr.,” and the pages and lines at which the cited testimony appears. Designated portions of Gibson’s investigative testimony are cited by the exhibit number assigned to the transcripts containing the Division’s designations (Div. Exs. 190 and 191) and the pages and lines at which the cited testimony appears.

4. Gibson passed the General Securities Representative Exam (“Series 7”) and the Uniform Securities Agent State Law Exam (“Series 63”) in 2006. 9/12/16 Tr. 25:22 to 26:1 and 33:7-11; Div. Ex. 189 at ¶2; Div. Ex. 190 at 41:13-16.

5. Shortly after leaving Deutsche Bank in February 2009, Gibson began discussing various opportunities with James Hull (“Hull”), a commercial real estate developer in Augusta, Georgia. Div. Ex. 190 at 16:22 to 17:21; 9/12/16 Tr. 18:13-25. Gibson’s father (John Gibson) was Hull’s business partner. 9/14/16 Tr. 887:25 to 888:8; 9/12/16 Tr. 18:18-23.

6. In April 2009, Gibson began providing investment advice to Hull regarding Hull’s personal investments. Div. Ex. 10 (Hull emails Gibson on April 14, 2009 “I would like for you to review my investment advisory accounts.”); Div. Ex. 11 (forming Geier Group on April 14, 2009); 9/12/2016 19:12 to 20:9 (Gibson testifying that in April 2009, he sought a means to minimize fees while investing in the Rogers Commodity Index). Gibson also provided general financial advice to Hull’s real estate business. Div. Ex. 190 at 16:22 to 17:7 and 21:4-23.

7. In early 2009 Hull and Gibson created two investment partnerships, identified as the “Hull Fund” and the “Gibson Fund.” 9/12/16 Tr. 19:18 to 20:1 and 28:11 to 29:5. Gibson, Gibson’s father, Hull, and others with business or social ties to Hull invested in these funds. 9/12/16 Tr. 19:18 to 20:1 and 28:11 to 29:5.

8. The Hull Fund and the Gibson Fund invested primarily in gold and silver. 9/12/16 Tr. 29:16-20; Div. Ex. 190 at 23:22 to 24:4.

Formation of Geier Group

9. On April 14, 2009, Gibson proposed to Hull that an investment advisory company be created. Div. Ex. 10.

10. On the same day, April 14, 2009, Gibson formed Geier Group, LLC (“Geier Group”), a Georgia limited liability company, to function as an investment advisory firm. Div. Ex. 11; Div. Ex. 189 at ¶3; 9/12/16 Tr. 21:10 to 22:16.

11. Gibson owned 50% of Geier Group, Hull owned 35%, and Gibson’s father owned 15%. Div. Ex. 189 at ¶4; 9/12/16 Tr. 103:1-7.

12. Gibson registered Geier Group as an investment adviser in Georgia on April 24, 2009. Geier Group’s registration form (Form ADV) was signed by Gibson and filed with the Financial Industry Regulatory Authority (“FINRA”). Div. Ex. 12; 9/12/16 Tr. 22:17 to 23:7.

13. Geier Group’s Form ADV identified Gibson as “President” of Geier Group. Div. Ex. 12, page 17, at Part IB, Item 2, and pages 21-22. Gibson was also identified as the “person responsible for supervision and compliance.” Div. Ex. 12, page 17, at Part IB, Item 2. 9/12/16 Tr. 25:2-21.

14. In June 2009, Gibson passed the Uniform Investment Adviser Law Exam (“Series 65”). A substantial portion of that exam dealt with the regulation of investment advisers, including advisers’ fiduciary duties of care, good faith, and loyalty. 9/12/16 Tr. 25:22 to 26:24; Div. Ex. 190 at 42:4-16.

15. Gibson understood in early 2009 when he formed Geier Group as an investment management firm, registered Geier Group as an investment adviser, and passed the Series 65 exam that investment advisers had fiduciary duties to their clients, including the duties of care, good faith, and loyalty. 9/12/16 Tr. 170:12 – 171:9.

Formation of Geier Capital

16. On June 16, 2009, Geier Capital, LLC (“Geier Capital”) was formed as a Georgia limited liability company. Div. Ex. 15; Div. Ex. 189 at ¶7; 9/12/16 Tr. 27:4 to 28:5.

17. Gibson owned 50% of Geier Capital, Hull owned 35%, and Gibson's father owned 15%. Div. Ex. 189 at ¶9; 9/12/16 Tr.103:1-7.

18. The Geier Capital operating agreement was not finalized until January 2010, Div. Ex. 20, when Geier Capital was designated as the Managing Member of the Geier International Strategies Fund.

Geier International Strategies Fund

19. Gibson organized the Geier International Strategies Fund ("GISF" or "Fund") on December 16, 2009, as a Delaware limited liability company. Div. Ex. 17; Div. Ex. 189 at ¶10; 9/12/16 Tr. 35:19 to 36:4.

20. Hull assisted in the creation of GISF by providing administrative support through his commercial real estate firm. 9/12/16 Tr. 27:15 to 28:5, 46:2-14, 22:10-12, and 22:21 to 23:3.

21. Hull also encouraged his friends and business associates to invest in GISF. 9/12/16 Tr. 38:4-18. Most investors who had previously invested in the Hull Fund or the Gibson Fund transferred their interests to GISF. 9/12/16 Tr. 51:24 to 52:3; Div. Ex. 190 at 23:5-12.

22. GISF's Confidential Private Offering Memorandum ("offering memorandum") (Div. Ex. 24), GISF's Operating Agreement (copies admitted as Div. Exs. 21, 22 and 23), and the Subscription Agreement signed by investors (copies admitted as Div. Exs. 25, 26, 27, 28, 57 and 58) were initially distributed to investors in January 2010. 9/12/16 Tr.37:7-18 and 40:15-19; Div. Ex. 29.

23. The GISF offering memorandum, operating agreement, and subscription agreement were the most important documents related to GISF's formation and to the solicitation of GISF's investors. 9/12/16 Tr. 36:24 to 37:8.

24. Each GISF investor was provided the offering memorandum, operating agreement, and subscription agreement. 9/12/16 Tr. 39:6-13.
25. Each GISF investor signed a copy of the operating agreement and subscription agreement. 9/12/16 Tr. 39:6-17.
26. The GISF offering memorandum, operating agreement, and subscription agreement were never revised or amended. 9/12/16 Tr. 39:6-21.
27. The offering memorandum identified Geier Capital as GISF's "Managing Member" and Gibson as "the Managing Director" of Geier Capital. Div. Ex. 24 at 1.
28. Gibson has confirmed that he was the "managing director of the managing member of Geier Capital." 9/12/16 Tr. 41:3-21; Div. Ex. 190 at 482:23 to 483:15.
29. The offering memorandum identified Geier Group as GISF's "Investment Manager" and Gibson as "the managing member" of the Investment Manager. Div. Ex. 24 at 1.
30. The offering memorandum stated that Geier Group was "registered in the State of Georgia as an investment adviser." Div. Ex. 24 at 1.
31. The only individual named in the offering memorandum was Gibson. Div. Ex. 24; Div. Ex. 190 at 187:17 to 187:21. Gibson was referred to by name at 16 places in the offering memorandum. Div. Ex. 24 at 1, 5, 7, 8, 17 and 28.
32. The offering memorandum stated that the success of the Fund was "significantly dependent upon the expertise and efforts of" Gibson. Div. Ex. 24 at 17; 9/12/16 Tr. 44:17 to 45:11.
33. Gibson and Hull met in person with almost all of GISF's investors. During meetings with investors, Gibson described GISF and its investment strategy. Div. Ex. 190 at 49:15 to 51:3.

34. Mason McKnight IV understood that Gibson “was going to be the manager” of GISF’s money. It was Gibson to whom he directed questions about the Fund and from whom he received answers. 9/13/16 Tr. 413:20 to 415:4.

35. Mason McKnight IV testified that he invested in GISF because he trusted Gibson. 9/13/2016 Tr. 465:16-17 (“I invested in Chris. I trusted Chris.”); 9/13/2016 Tr. 466:8-13 (“THE WITNESS: . . . very seldom when a deal gets thrown together between these parties is it turned down. JUDGE MURRAY: So there was a strong element of trust? THE WITNESS: Yes, ma’am.”).

36. Matthew McKnight understood that Gibson would be managing GISF’s assets. 9/13/16 Tr. 484:14 to 485:21.

37. In early 2010 GISF raised approximately \$32 million from 17 investors. Div. Ex. 31 at ¶13 (“Offering and Sales Amounts”) and ¶14; 9/12/16 Tr. 52:4 to 53:17. .

38. Hull was GISF’s largest investor and contributed over 80 percent of the Fund’s capital. 9/12/16 Tr. 129:11-17.

39. GISF investors also included Gibson, Gibson’s parents, Giovanni Marzullo (father of Gibson’s then-girlfriend), Timothy Strelitz (father of a Gibson acquaintance), and several friends and business associates Hull, including Mason McKnight III, Mason McKnight IV, Matthew McKnight, Will McKnight, and Marshall McKnight. Div. Ex. 33; 9/12/16 Tr. 54:11 to 55:2.

40. During 2011, GISF had 21 investors. Div. Ex. 189 at ¶11.

Loans From Hull To Gibson

41. Gibson borrowed money from Hull on multiple occasions to invest in GISF. Over time, Gibson borrowed a total of approximately \$645,000 for this purpose. 9/13/16 Tr. 577:14-

16. Gibson's promissory note to Hull was amended and restated at least sixteen times. Resp. Ex. 117 at GISF000010408.

42. Gibson borrowed money from Hull to invest in GISF so that he could earn more if GISF's investments were successful. 9/13/16 Tr. 577:17 to 578:3 (“[I]f Mr. Hull wanted to validate my conviction by ensuring I had leverage to everyone else, I was happy to do that. It was an opportunity for me to make yet more money than every other investor.”); 580:8-10 (Q “So using that loan as leverage, you could multiply your return?” A “Yes, sir.”).

43. Hull did not demand that Gibson borrow money and invest it in GISF. Div. Ex. 190 at 28:10-15 and 29:15-30 (“Jim asked me -- he did not demand, but it was clear to me, because he asked several times, that it was important to him.”)

44. Hull did not pressure Gibson to take the loan or “[exert] undue influence” regarding the loan. Hull offered the loan and Gibson agreed to it. (9/14/16 Tr. 744:21 to 745:7)

45. Gibson's father had previously borrowed approximately \$8-10 million from Hull to invest in their commercial real estate business. 9/14/16 Tr. 887:25 to 888:25.

46. Gibson's father also borrowed money from Hull to invest in GISF. 9/13/16 Tr. 578:25 to 579:6.

47. GISF's offering documents did not disclose that Gibson's investment in GISF was funded in large part by a loan from Hull, and the Fund's investors were not aware of that loan. 9/13/16 Tr. 460:21-24 (Mason McKnight IV was unaware of the Hull loan); 9/13/16 Tr. 544:8-18 (Matthew McKnight was unaware of the Hull loan).

Gibson's Activities As Investment Adviser

48. Gibson has acknowledged that he served as an "investment manager" to GISF. Div. Ex 190 at 143:21-25 ("Mr. Ferrigno: Your role at Geier Group and/or Geier Capital was investment manager to what, which entity? The Witness: Geier International Strategies Fund.")

49. Gibson provided essentially the same investment advisory services to GISF in both 2010 and 2011. 9/12/16 Tr. 105:13-16.

50. Gibson tracked general market conditions and monitored macroeconomic trends. 9/12/16 Tr. 105:17-23; Div. Ex 190 at 268:13-18.

51. Gibson negotiated transactions on behalf of the Fund. 9/12/16 Tr. 105:24 to 106:1; Div. Ex. 190 at 268:19-22.

52. Gibson tracked the daily performance of GISF's portfolio. 9/12/16 Tr. 106:2-4; Div. Ex. 190 at 268:23-25.

53. Gibson emailed individual investors about the Fund and sent status reports to all investors. 9/12/16 Tr.106:10-16; Div. Exs. 32, 45, 48, and 81; Resp. Ex. 51.

54. Gibson provided GISF's investors with market analyses, projections, and discussions of the performance of the Fund's investments. Div. Exs. 32, 45, 48, 51, and 81.

55. In 2011 Gibson communicated with the management of Tanzanian Royalty Exploration, Inc. ("TRX"), the portfolio company in which GISF invested most heavily. 9/12/16 Tr. 106:17-19; Div. Exs. 76, 77, 78, 79, and 103; Div. Ex. 190 at 269:7-11.

56. Gibson communicated with brokers on behalf of the Fund, 9/12/16 Tr.107:15-18; Div. Exs. 82, 84, 92, 93, and 105, and gave brokers instructions for handling the Fund's assets, Div. Exs. 92, 93, 96, and 97.

57. Gibson was the only person who interacted on behalf of GISF with GISF's brokers or submitted orders for GISF's trades. Div. Ex. 190 at 54:11-19.

58. In late 2011 Gibson negotiated with other parties in attempting to sell the Fund's TRX holdings. Resp. Exs. 90, 92, 94, and 97; 9/12/16 Tr. 172:2 to 174:17 (selling TRX shares to Luis Sequeira); 198:6-15 (attempting to sell TRX shares to Platinum Partners); 209:2 to 210:9 (meeting with Richard Sands of Casimir Capital and David Levy of Platinum Partners to negotiate sale of TRX shares).

59. Gibson did not need Hull's authorization to purchase or sell securities for GISF. Div. Ex. 190 at 56:5-12. Gibson sought Hull's approval only for "substantial material changes to the strategy." Div. Ex. 190 at 56:13 to 57:15.

60. Gibson advised investors of his expectations for the future performance of GISF's investments. Resp. Ex. 51; Div. Ex. 81.

61. Gibson told Matthew McKnight in January 2011 that "[TRX] is conservatively a \$1bn company with a lot of upside." Div. Ex. 47 at 2 (2nd para).

62. Gibson told Matthew McKnight in March 2011 that "the company [TRX] has tremendous value and is a steal at today's price." Div. 62 at 1 (1st para).

63. Gibson told Matthew McKnight in April 2011 that "gold should achieve \$3,000 [per ounce] by 2015" and at that point TRX would be valued at "about \$50 per share." Div. Ex. 67 at 1 (4th para in email timestamped 5:14 PM).

64. Gibson told Mason McKnight IV in June 2011 that "we are going to be in double digits by year end." Div. Ex. 72 at 1 (in email timestamped 5:15 PM).

65. In an email to TRX management, Gibson referred to GISF as “my business.” Div. Ex. 77 at GISF000071654, in email timestamped 3:22 PM (“I CANNOT RUN MY BUSINESS THIS WAY.”) (Emphasis in original.)

66. In a telephone conversation with Luis Sequeira, Gibson referred to GISF as “my fund,” Div. Ex. 183A at 2:20-21 (“My fund probably lost this year, \$50 million, \$57 million”), and “my business,” Div. Ex. 183A at 3:21 (“I’ve lost my business.”).

67. Gibson signed all reports submitted to the Commission on behalf of GISF, Geier Group, and Geier Capital. Div. Exs. 31, 50 and 132 (Forms D); Div. Exs. 39, 53, 69, and 109 (Schedules 13G); Div. Ex. 70 (Form 3); Div. Ex. 71 (Form 4).

68. In his April 10, 2013 letter to investors returning their remaining funds, Gibson indicated that managing the Fund had been his responsibility. Div. Ex. 154 at GISF000002149 (“I failed to manage market risks.”)

Hull’s Role

69. Hull participated in the management of GISF by “setting strategy” through identification of “guideposts.” Div. Ex. 190 at 44:25 to 45:1.

70. The “guideposts” set by Hull included that the Fund should pursue long-term capital gains tax treatment by investing in equities rather than commodities, Div. Ex. 190 at 45:16-25, and that GISF should eschew diversification. Div. Ex. 190 at 46:1-6.

71. Gibson and Hull “shared control” of GISF. Div. Ex. 190 at 46:23-25. (“So I would say Jim and I had more control than the other participants in the Fund. We shared that control.”)

72. Dr. James Overdahl, an expert witness for Gibson, testified that both Gibson and Hull were both investment advisers to GISF. 9/15/16 Tr.1025:18-21 (“they were both advisors”).

Gibson’s Compensation

73. Pursuant to GISF’s offering memorandum and operating agreement, Geier Group was entitled to an investment management fee equal to 1% of each member’s capital account annually. Div. Ex. 189 at ¶12; 9/12/16 Tr. 42:18 to 43:10.

74. GISF paid Geier Group investment management fees totaling \$223,351 for 2010. Div. Ex. 191 at 402:7-13 and 403:1-20.

75. As the 50% owner of Geier Group, Gibson was entitled to 50% of the \$223,351 paid to Geier Group as a management fee for 2010. 9/12/16 Tr. 44:5-13 and 84:3-18; Div. Ex. 189 at ¶13; Div. Ex. 191 at 363:25 to 364:3; Div. Ex. 191 at 418:19 to 419:4.

76. GISF paid Geier Group and/or Geier Capital investment management fees totaling \$295,000 in 2011. Div. Ex. 191 at 457:4-16 and 461:12 to 462:12.

77. As the 50% owner of Geier Group and Geier Capital, Gibson was entitled to 50% of the \$295,000 in management fees paid by GISF in 2011. Div. Ex. 191 at 461:12-16.

78. Pursuant to GISF’s offering memorandum and operating agreement, Geier Capital was entitled to receive a 10% “incentive allocation” if GISF achieved an annual return in excess of a designated rate (“hurdle rate”). 9/12/16 Tr. 43:18 to 44:4.

79. In 2010, GISF achieved a return in excess of the hurdle rate and GISF paid Geier Capital an incentive allocation of approximately \$3 million. 9/12/16 Tr. 84:13 to 85:8; Div. Ex. 189 at ¶14.

80. As 50% owner of Geier Capital, Gibson was entitled to receive 50% of that incentive allocation, i.e., approximately \$1.5 million. 9/12/16 Tr. 84:13 to 85:8; Div. Ex. 189 at ¶13. Gibson reinvested that \$1.5 million in GISF. Div. Ex. 191 at 405:11-25.

81. Each year from 2010 until early 2013, Gibson also received bi-weekly payments from Hull's commercial real estate business, and these payments were reported as salary on Gibson's W-2 forms. Div. Exs. 43, 128, 147, and 156.

82. Each of Gibson's W-2's was issued by a human resources firm (Insperity PEO Services, f/k/a Administaff) used by Hull's commercial real estate business for payroll functions. Div. Ex. 191 at 450:10-21; 9/14/16 Tr. 734:15 to 735:16.

83. The amounts Gibson received from Hull's business (through Insperity) and reported as salary on Gibson's W-2's were as follows:

2010 -- \$73,953.51 (Div. Ex. 43);

2011-- \$148,718.31 (Div. Ex. 128);

2012 -- \$148,395.53 (Div. Ex. 147); and

2013 -- \$6,270.74 (Div. Ex. 156).

84. Federal income taxes, social security taxes, Medicare taxes, and state and local taxes were withheld from Hull's payments to Gibson. Div. Exs. 43, 128, 147, and 156.

85. Gibson reported Hull's payments as income on his tax returns. Div. Ex. 65 (2010 tax return); Div. Ex. 138 (2011 tax return)

86. Gibson has at times stated that the bi-weekly payments from Hull were loans, to be repaid by Geier Group or Geier Capital, in return for Gibson's advisory services. Geier Group later repaid Hull's business for the payments to Gibson in 2010. Div. Ex. 191 at 419:5 to 420: 2. The amounts Hull paid to Gibson in 2011 were not repaid. 9/12/2016 Tr. 152:12-25

(confirming that the 2011 salary was not repaid); 9/14/2016 Tr. 733:22 to 734:2 (“It was an advance that was subsequently not repaid.”).

87. Although Gibson has claimed that the salary paid to him by Hull’s real estate firm was a “loan” that should have been repaid to Hull’s real estate firm, Gibson also testified that the Geier business was supposed to repay that loan. 9/14/2016 Tr. 738:16 to 739:9 (“So if you’re looking at the party that actually paid me for providing services to Geier, it is unequivocally Geier, not Hull Storey Gibson. Hull Storey Gibson received no benefits from that, and they did not pay me to provide services to the Fund.”)

88. The payments from Hull's business to Gibson in 2010 were wholly or large part for Gibson’s advisory services to GISF. Div. Ex. 191 at 419:5 to 420:2, 421:1 to 422:15, and 450:4 to 451:4.

89. The payments from Hull’s business to Gibson in 2011 were wholly or in large part for Gibson’s advisory services to GISF. Div. Ex. 191 at 468:3 to 469:1.

90. Likewise, the payments from Hull’s business to Gibson in 2012 and 2013 were wholly or in large part for Gibson's advisory services to GISF. Div. Ex. 191 at 472:10-21; 473:9 to 474:5

Code of Ethics For Off-Shore Adviser

91. In December 2010, Gibson prepared a “Code of Ethics” for an offshore investment advisory firm (Geier Group Ltd.) he had created in connection with plans for an off-shore “feeder fund” that would raise money for GISF from foreign investors. Div. Ex. 38; 9/12/16 Tr. 158:21 to 160:20.

92. Gibson adapted the “Code of Ethics” from a template he located online. 9/12/16 Tr. 159:23 to 160:7. Gibson modified the template by inserting the name “Geier Group Ltd.”

and inserting his own name as the “Compliance officer.” 9/12/16 Tr. 160:8-20. The proposed off-shore entity never became operational. 9/12/16 Tr. 160:1-7.

93. The “Code of Ethics” for the planned advisory firm acknowledged that “[w]e have a fiduciary duty to clients to act solely for the benefit of our clients.” Div. Ex. 38 at CGSEC0000420 (“Introduction”); 9/12/16 Tr. 161:20 to 163:6.

94. That “Code of Ethics” also provided that “[h]igh ethical standards are essential for the success . . . and to maintain the confidence of clients and investors.” Div. Ex. 38 at CGSEC0000420 (“Introduction”).

95. Gibson never developed or adopted a code of ethics, code of conduct, or similar document for Geier Group, Geier Capital, or GISF. Div. Ex. 191 at 736:15 to 23.

Lapse of Geier Group’s Registration

96. Gibson allowed Geier Group’s registration as an investment adviser to lapse at the end of December 2010. Div. Ex. 167; 9/12/16 Tr. 93:17 to 94:3 and 94:19 to 95:10.

97. GISF investors were never told that Geier Group was no longer a registered investment adviser. 9/12/16 Tr. 94:4-7.

98. After Geier Group’s registration had lapsed, Gibson solicited and received funds from two investors using the offering memorandum falsely stating that Geier Group was a registered investment adviser. 9/12/16 Tr. 61:14 to 62:1 and 63:11 to 64:9.

99. In soliciting those investments, Gibson sent two emails falsely indicating that Geier Group was a registered investment adviser. Div. Exs. 54 and 56.

Dissolution of Geier Capital (Ga.)

100. Geier Capital (the Georgia entity) was dissolved on March 28, 2011. Div. Ex. 189 at ¶6; 9/12/16 Tr.95:19 to 96:25.

101. Geier Capital was dissolved at Gibson's direction. Div. Ex. 49; 9/12/16 Tr. 95:19 to 96:25.

102. Although Geier Capital was identified in the offering memorandum as GISF's managing member, GISF's investors were never notified that Geier Capital had been dissolved. Div. Ex. 191 at 315:6-9.

Dissolution of Geier Group

103. At Gibson's direction, Geier Group was dissolved in April 2011. Div. Ex. 60; 9/12/16 Tr.98:2 to 99:19.

104. Although Geier Group was identified in the offering memorandum as GISFs investment manager, GISF's investors were never informed had been dissolved. 9/12/16 Tr. 99:4-25; Div. Ex. 191 at Tr. 315:6-9.

105. Although Geier Group was dissolved in April 2011, Gibson continued to maintain a brokerage account in the name of Geier Group until at least September 2011. Div. Ex. 88.

106. Although Geier Group was dissolved in April 2011, Gibson continued to make Schedule 13G filings with the SEC in the name of Geier Group until November 2011. Div. Ex. 109.

Geier Capital (Del.)

107. In December 2010, Gibson had created a Delaware entity also named “Geier Capital, LLC.” Div. Ex. 40; Div. Ex. 189 at ¶7; 9/12/16 Tr. 102:10 to 103:7.

108. Gibson owned 50% of Geier Capital (Delaware), Hull owned 35%, and Gibson’s father owned 15%. Div. Ex. 189 at ¶9.

109. Gibson was the Managing Member of Geier Capital (Delaware). 9/12/16 Tr. 104:8-11.

110. Gibson testified that the Delaware entity named Geier Capital was “substituted in” for Geier Capital (Georgia) as the Managing Member of GISF by at least April 2011. 9/12/16 Tr. 103:8 to 105:6; Div. Ex. 191 at 312:16-25.

111. GISF investors were never told of any such substitution of Geier Capital (Delaware) for Geier Capital (Georgia). 9/12/16 Tr. 102:3-9 and 103:8 to 105:6; Div. Ex. 191 at 312:16-25.

112. Neither GISF’s operating agreement nor GISF’s offering memorandum was ever amended to reflect a substitution of Geier Capital (Delaware) for Geier Capital (Georgia). Div. Ex. 191 at 313:19-25; Div. Ex. 191 at 314:18-21.

GISF’s Investment in TRX

113. In late 2010, after discussions with Hull regarding the tax treatment of gains on commodities, Gibson decided to reduce GISF’s gold holdings and increase its investments in equities. 9/12/16 Tr. 85:9 to 86:18.

114. Tanzanian Royalty Exploration (“TRX”) is a Canadian company specializing in exploring for gold resources in Africa. 9/12/16 109:18 to 112:7; Div. Ex. 190 at 67:8 to 68:6.

115. In late 2010, Gibson began investing more of GISF's assets in the common stock of TRX. 9/12/16 Tr. 90:12 to 93:1.

116. By December 31, 2010, GISF owned eight percent of the issued and outstanding shares of TRX. 9/12/16 Tr. 90:12 to 92:3; Div. Ex. 53.

117 By April 29, 2011, GISF owned approximately 9.7 million shares of TRX stock, which represented approximately 10.3% of TRX's issued and outstanding shares. 9/12/16 Tr. 90:1 to 93:1; Div. Ex. 69; Div. Ex. 189 at ¶¶15-16.

118. As of April 29, 2011, 100% of GISF's assets were invested in TRX. 9/12/16 Tr. 109:2-15.

119. On April 29, 2011, TRX shares closed at \$7.26 per share. As of that date, the approximate market value of GISF's TRX holdings was over \$70 million. 9/12/16 Tr. 93:2-9; Div. Ex. 189 at ¶¶15, 17.

120. Gibson told GISF's investors that TRX shares could be expected to appreciate in response to an increased demand for gold. 9/12/16 Tr. 112:9-25.

121. After reaching \$7.26 per share in April 2011, Div. Ex. 189 at ¶17, the price of TRX's common stock stagnated and, in late summer, declined sharply. 9/12/16 Tr. 112:21-25. The value of GISF's holdings, which consisted almost entirely of TRX shares, fell correspondingly. 9/12/16 Tr. 113:1-5.

Gibson's Statements Re TRX and Its Management

122. In late summer of 2011, Gibson told TRX's management in multiple private communications that the company was failing. Div. Ex. 76, 77, 78, 79 and 103.

123. On August 10, 2011, Gibson also told TRX Chairman James Sinclair that he was "physically ill" over the performance of TRX's stock price and "[v]ery soon it will make sense to

exit our positions. There is no time left. TRX will go to \$3 if we are not at \$8 in September.”

Div. Ex. 76; 9/12/16 Tr. 113:23 to 114:16.

124. Later that same day, Gibson told Sinclair that “[o]ur share price is a disaster . . . This is TRX failing.” Gibson also told Sinclair that “Everything You Say Is Always Inaccurate.”

Div. Ex. 77; 9/12/16 Tr. 118:11 to 119:19.

125. On August 15, 2011, Gibson told TRX management that “[w]e are running on fumes” and “it is a now or never do or die moment. If the share price falls any further at any point in the next few days or weeks it will be irrecoverable.” Div. Ex. 78; 9/12/16 Tr. 119:20 to 121:7.

126. But a week later, on August 22, 2011, Gibson told GISF’s investors that due to its concentration in TRX shares, GISF was “positioned exceedingly well.” Resp. Ex. 51 at SEC-LIT-PROD-000127483 (second sentence of first paragraph). Gibson also told investors that he was “exceedingly confident in our position,” *id.* at SEC-LIT-PROD-000127485 (final sentence) and that he believed “very strongly we are in the right company at the right asset class at the right time . . . ,” *id.* at SEC-LIT-PROD-000127488 (final sentence). See also 9/12/16 Tr. 121:8 to 123:21.

127. On September 22, 2011, Gibson told TRX Chairman Jim Sinclair that he was “trying to think of ways to save [TRX]” and wondered whether the company “should engage an investment bank to sell [itself].” Div. Ex. 79; 9/12/16 Tr. 123:22 to 124:11.

128. But on September 23, 2011, Gibson told a different story to GISF’s investors, stating that he believed there was “tremendous value” in the “assets owned and business operated by TRX” and that he believed in “the reputation, character and integrity of Mr. Sinclair.” Gibson

further stated that he expected TRX's stock price to rise to "significantly higher levels." Div. Ex. 81; 9/12/16 Tr. 126:5 to 129:6).

"Front Running" On September 26, 2011

129. In that same September 23, 2011 email with GISF's investors, Gibson told the investors that he would maintain his investment in TRX until the TRX share price recovered. 9/12/16 Tr. 129:18 to 130:3; Div. Ex. 81 at 1 ("Personally, I will not redeem my interest in Geier and TRX until the bull market matures over the coming years at what I strongly believe will be significantly higher levels.").

130. Gibson also stated in his September 23, 2011, email that 90% of GISF's investors (which necessarily included Hull) had "confirmed their intentions to remain invested in Geier and TRX at their current levels." 9/12/16 Tr. 131:3-7 and 133:3-15; Div. Ex. 81.

131. Over the weekend of September 24-25, 2011, Gibson spoke with Hull, who indicated that he had no tolerance for further losses, which Gibson understood to mean that GISF should sell its TRX shares, subject to obtaining a good price. 9/12/16 Tr. 130:7-21.

132. From the weekend of September 24-25 until November 10, 2011, when GISF sold its last TRX shares, Gibson was operating under the general guidance from Hull that "if you can get good prices, let's get out." Gibson 9/12/16 Tr. 130:22 to 131:1

133. As of the weekend of September 24-25, 2011, Gibson knew GISF intended to sell its TRX shares. Id.

134. None of GISF's investors (other than Hull) were told of the decision to liquidate GISF's TRX position. 9/12/16 Tr. 131:3-7 and 133:30-15; Div. Ex. 81.

135. On the evening of Sunday, September 25, 2011, Gibson wrote to Richard Sands at Casimir Capital seeking a buyer for GISF's TRX shares. Resp. Ex. 62 at 8 ("Is Platinum or another buyer interested in increasing their position? ... [W]e're concentrated in TRX so if there is a buyer that sees current prices as very compelling as we otherwise would, please let me know.").

136. Sands responded that he would "work on it tomorrow." Resp. Ex. 62 at 7.

137. Before trading opened the next day, Monday, September 26, 2011, there were TRX shares in Gibson's personal brokerage account and in two other accounts he controlled, i.e., an account in the name of his then-girlfriend Francesca Marzullo and an account Gibson maintained in the name of Geier Group (although Geier Group no longer existed). 9/12/16 Tr. 135:22 to 139:8.

138. On Monday, September 26, 2011, Gibson sold all the TRX shares in his personal brokerage account (2,000 shares). Div. Ex. 189 at ¶ 22; 9/12/16 Tr. 135:22 to 139:8; Div. Ex. 86 at 3.

139. On Monday, September 26, 2011, Gibson also sold all the TRX shares in Francesca Marzullo's account (18,900 shares). Div. Ex. 189 at ¶ 23; Gibson 9/12/16 Tr. 135:22 to 139:8; Div. Ex. 87 at 2-3.

140. On Monday, September 26, 2011, Gibson also sold all the TRX shares in Geier Group's account (1,000 TRX shares). Div. Ex. 189 at ¶ 24; 9/12/16 Tr. 135:22 to 139:8; Div. Ex. 88 at 7 (Geier Group).

141. Gibson sold the 21,900 TRX shares from these three accounts on September 26, 2011, for approximately \$4.04 to \$4.05 per share. Div. Ex. 184, Expert Report of Carmen A. Taveras, Ph.D. ("Taveras Expert Report") at 8-10.

142. Gibson sold these 21,900 TRX shares without disclosing his intended conduct, or the conflict of interest it created, to GISF or any of its investors, and without obtaining the consent of GISF or any of its investors. Div. Ex. 191 at 662:7 to 663:5 (Gibson's personal shares), 665:23 to 666:15 (Marzullo's personal shares), and 669:22 to 670:1 and 671:1 to 671:4 (Geier Group's shares).

143. Also on Monday, September 26, 2011, Gibson continued to arrange the sale of a large block of GISF's TRX shares through Casimir Capital, emailing Sands that he could sell GISF's entire TRX position. Resp. Ex. 62 at 6-7 ("I can do my entire position which is 10,250,000 shares or anything less than that.").

144. Later on September 26, Sands told Gibson that "I have a size buyer in hand to take you out of the whole position, but you need to be firm and at a price." Id. at 6.

145. Also on September 26, Sands told Gibson that he expected to be able to sell 3-5 million TRX shares and would need a commission of \$0.05 per share. Id. at 5. Gibson agreed to the commission and asked if the trade was "going to price today?" Id. at 4. Sands wrote back "[m]ore likely tomorrow," and Gibson replied "of course please maximize the number of shares but I want to price and book the sale tomorrow." Id.

146. Still on September 26, Gibson was told that he needed to move all of GISF's TRX shares to an account at Casimir. He replied: "Please tell me what number to move and it will be done tomorrow AM." Id. at 3.

147. On September 27, 2011, GISF's TRX shares were transferred to an account in its name at Casimir. Resp. Ex. 66; Div. Ex. 90 at 4.

148. Later on September 27, the sale of approximately 3.7 million of GISF's TRX shares through Casimir Capital was completed, at an average price of \$3.50 per share. Div. Ex. 184 (Taveras Expert Report) at 8-10.

149. Gibson's expert witness, economist Dr. James Overdahl, testified that the \$3.50 price GISF received for its 3.7 million TRX shares on September 27 included a "block discount" and that such a discount would have been expected under the circumstances. 9/15/16 Tr. 1002:9 to 1007:13 ("You would expect that there would be some discount for the block.").

150. Gibson understood when the decision was made over the weekend of September 24-25, 2011, to sell GISF's TRX shares that the sale of a large block of shares in a thinly-traded company like TRX was likely to depress the market price of that company's shares. See Div. Ex. 190 at 108:12-21.

151. The price of TRX shares dropped approximately 14% on September 27, 2011. Div. Ex. 184 (Taveras Expert Report) at 8.

152. Gibson sold all of the TRX shares in his personal account, his girlfriend's account, and the Geier Group account for over \$0.50 per share higher than the price he obtained for GISF the following day. 9/12/16 Tr. 147:12-15 ("I received 50 cents per share more than the company did the next day."); Div. Ex. 184 (Taveras Expert Report) at 8-10; Div. Ex. 185 (Expert Report of Dr. Gary Gibbons, hereinafter "Gibbons Expert Report") at 20-22 ("The Fund sold its shares at \$3.50 per share, which was 15% lower than the price at which Gibson, Geier Group, and this then-girlfriend sold their TRX shares the previous day.").

153. Gibson has claimed that he sold his personal TRX shares on September 26, because he needed "liquidity" to repay the loans he had obtained from Hull, including the "loans" he was

receiving via bi-weekly salary payments from Hull's business for services to GISF. 9/12/16 Tr. 151:18 to 153:10.

154. There is no evidence that Gibson had any particular need for "liquidity" on or about September 26, 2011. Gibson was still receiving bi-weekly salary payments from Hull's business to cover his living expenses. He continued to keep his portion of the 2011 management fees in the Fund, rather than withdraw and use any of those fees. Gibson had no need for cash to repay the funds coming from Hull (even assuming those payments were loans) because he had not made any repayments in 2011 and was not being pressed by Hull to make repayment (and he never did repay any of the money paid to him by Hull in 2011). 9/14/16 Tr. at 780:12 to 787:21.

155. After selling all of his TRX shares in his personal account on September 26, 2011, Gibson did not withdraw the proceeds of that sale, but merely reinvested those proceeds in other holdings. 9/14/16 Tr. at 780:12 to 787:21.

156. In front running GISF's sale of a large block of TRX shares, Gibson knowingly exploited confidential, non-public information he obtained as GISF's investment adviser, for the purpose of obtaining a personal financial benefit for himself and his girlfriend. Div. Ex. 185 (Gibbons Expert Report) at 20-22.

157. By front running GISF's sale of a large block of TRX shares, Gibson avoided the loss in value he and his girlfriend would have suffered in their personal accounts the next day, September 27, 2011, when GISF's sale was completed and the share price fell to \$3.50. Div. Ex. 184 (Taveras Expert Report) at 8-10.

158. By front running GISF's sale of a large block of TRX shares, Gibson put his personal interests before the interests of GISF. Div. Ex. 185 (Gibbons Expert Report) at 20-22.

159. Gibson's expert witness, Dr. Overdahl, testified that defining "front running" was outside the scope of his expertise and that the definition he relied on was provided by Gibson's attorneys. 9/15/16 Tr. 962:24 to 964:14.

160. Dr. Overdahl testified that the narrow definition of "front running" he relied on (taken from FINRA policy statement IM-2110-3) did not actually apply to Gibson's personal TRX trading. 9/15/16 Tr. at 990:6 to 1000:7.

161. Dr. Overdahl testified that even FINRA IM-2110-3 did not limit front running to situations in which all the terms of the anticipated block transaction were finalized before the abusive trading occurred. FINRA IM-2110-3 acknowledges that front running could include trading based on "knowledge of less than all of the terms of the block transaction, so long as there is knowledge that all of the material terms of the transaction have been or will be agreed upon imminently." 9/15/16 Tr. 1000:8 to 1001:6; Div. Ex. 188 (Gibbons Rebuttal Report) at 13.

162. Apart from Dr. Overdahl, Gibson offered no other expert testimony regarding front running. Gibson withdrew the report submitted by his only investment advisor expert, Charles Porten. 9/16/16 Tr. 1151:4-18.

163. Dr. Gibbons, an investment adviser who offered expert testimony on behalf of the Division, testified that front running is understood within the investment advisory industry to be "[a] pernicious form of insider trading" in which the front-runner "learns of the intention of a large investor to execute a trade in a particular security" and then "executes a trade before the large investor executes its trade in an attempt to profit from the price movement." Div. Ex. 185 (Gibbons Expert Report) at 21.

164. Dr. Gibbons testified that "[f]ront-running . . . involves using advance knowledge of impending client action to secure advantage." Id. at 21 and n.37.

165. Relying on widely accepted industry definitions of front running, Dr. Gibbons opined that Gibson's trading TRX in his, Marzullo's, and Geier Group's accounts on September 26, 2011, constituted front running. Id. at 20-21.

Purchase Of Hull's Shares in October 2011

166. After GISF's September 27 sale of 3.7 million TRX shares, Gibson continued to seek buyers for GISF's approximately 6 million remaining TRX shares. 9/12/16 Tr. 171:23 to 172:9.

167. In late September and early October, Gibson attempted to sell all of GISF's remaining shares through Luis Sequeira, a broker in Portugal acting on behalf of a potential buyer. Resp. Ex. 92 at 4; Resp. Ex. 94 at 3.

168. Gibson expected that trade to be completed in early October, and wrote to GISF's broker at Gar Wood on October 3 stating that "I have a trade ready. I just need to know if I call you that you can immediately place an order to sell 5,945,000 limit 3.50." Resp. Ex. 96 at 1.

169. But the large block sale through Sequeira never materialized. On October 14, 2011, Gibson told Hull that Sequeira's buyer would purchase only a small number of shares each day over time, and Gibson had declined that offer, Resp. Ex. 104 at 1, because Gibson wanted to sell its entire block of TRX shares at one time. 9/12/16 Tr. at 173:19 to 175:1.

170. Throughout early October, Gibson continued his efforts to sell GISF's TRX shares. Div. Exs. 92, 93; 9/12/16 Tr. at 179:8 to 180:3.

171. During this period Gibson assisted Hull in selling Hull's personal TRX holdings. On October 15, 2011, Gibson told Hull that he had sold all the TRX shares Hull held in a personal brokerage account at Fidelity. Resp. Ex. 105 at 1; see also 9/12/16 Tr. at 217:14-22.

172. On October 18, 2011, Gibson agreed to use over \$2.45 million of GISF's funds to buy all 680,636 TRX shares in Hull's personal account at LPL Financial, which comprised the remainder of Hull's personal TRX holdings. Div. Ex. 95; 9/12/16 Tr. 181:18 to 182:10 and 217:23 to 218:2.

173. The purchase agreement for the transaction between GISF and Hull had to have been drafted after the market closed on October 18, 2011, because the \$3.60 per share price was identified in the contract as the closing price for TRX on October 18, 2011. Div. Ex. 95; 9/15/16 Tr. 1013:12-23.

174. Hull's shares were delivered to GISF's account at Gar Wood on October 20, 2011, and GISF paid \$2,450,589.60 to Hull on the same day. Div. Ex. 100 at 6.

175. GISF's purchase of 680,636 TRX shares from Hull was a private transaction not reported to the market. 9/15/16 Tr. 1014:2 to 1014:5.

176. Gibson knew that if Hull sold his 680,636 TRX shares as a block, the buyer would demand an appropriate block discount. GISF did not receive a block discount, or any other discount, for Hull's shares. 9/15/16 Tr. 1019:3 to 1022:23.

177. GISF's purchase of Hull's TRX shares enabled Hull to exit his entire personal TRX position at a known and favorable share price without the price-depressing impact of a large sale on the public market or a block discount in a private sale. Div. Ex. 185 (Gibbons Expert Report) at 22-25; 9/15/16 Tr. 1015:7 to 1017:9 (Dr. Overdahl's testimony explaining that Hull would not have received \$3.60 per share for all 680,636 of his TRX shares if he sold them on the market); 9/15/16 Tr. 1021:17 to 1022:8 (Dr. Overdahl's testimony explaining that GISF did not receive a block discount in buying Hull's personal TRX shares).

178. The total volume of TRX shares traded on the market on October 18, 2011 was only 490,625 shares. If Hull's shares had also been sold on the market on October 18, 2011, it would have caused a 139% increase in market volume. Div. Ex. 185 (Gibbons Expert Report) at 23-24.

179. A 139% increase in the market volume would have caused the market price for TRX's shares to drop below \$3.60 and Hull would not have received \$3.60 per share for all his shares had he sold them on the market. Div. Ex. 185 (Gibbons Expert Report) at 23-24; 9/15/16 Tr. 1015:7 to 1017:9 (Dr. Overdahl's testimony explaining that Hull would not have received \$3.60 per share for all 680,636 of his TRX shares if he sold them on the market).

180. The price GISF paid for Hull's personal TRX shares was not the "current market price." Div. Ex. 185 (Gibbons Expert Report) at 22-25; 9/15/16 Tr. 1026:9 to 1028:7 (Dr. Overdahl's testimony that the price GISF paid for Hull's personal TRX shares was not the market price).

181. Because Gibson arranged for GISF to purchase Hull's TRX shares, Hull was able to exit his TRX position without paying a sales commission. Div. Ex. 185 (Gibbons Expert Report) at 24.

182. GISF paid a sales commission of approximately \$6,806 it would not otherwise have incurred when it sold Hull's shares on November 10, 2011. 9/12/16 Tr. 190:21 to 191:10; Div. Ex. 188 (Rebuttal Report of Dr. Gary Gibbons ("Gibbons Rebuttal Report")) at 5 and n.10.

183. GISF was harmed when it paid a sales commission to sell the TRX shares acquired from Hull. 9/15/16 Tr. 1035:25 to 1038:17; Resp. Ex. 149 at 34, n.78, and Exhibit 13 ("Dr. Overdahl's testimony that "by not charging Mr. Hull a customary transaction fee, that Mr.

Hull benefited and that this fee ultimately became a cost to GISF when GISF's TRX shares were liquidated.").

184. This was the only time GISF paid a sales commission in connection with the sale of one of its investor's personal shares. 9/15/16 Tr. 1042:1-4.

185. GISF's investors did not know that Gibson caused the Fund to help Hull avoid paying a sales commission when exiting his personal TRX position. 9/13/16 Tr. 427:19-25 (Mason McKnight IV) and 496:12-19 (Matt McKnight: "Q. Did you agree to allow GISF to pay that sales commission? A. No. If I would have known, I wouldn't have agreed to that").

186. By purchasing Hull's TRX shares, Gibson shifted the market risk and the commission cost from Hull to GISF. Div. Ex. 185 (Gibbons Expert Report) at 24.

187. Gibson's expert Dr. Overdahl testified that Gibson harmed GISF, and benefited Hull, by having GISF purchase Hull's personal TRX shares. 9/15/16 Tr. 1028:2 to 1034:4; Resp. Ex. 149 at Exhibit 13.

188. Dr. Overdahl estimated the "Benefit to Hull / Harm to Fund" from the Hull transaction as between \$210,908 and \$309,293. Resp. Ex. 149 at Exhibit 13; 9/15/16 Tr. 1028:2 to 1034:4.

189. GISF used first-in, first-out ("FIFO") accounting in determining the cost basis of the shares it owned in 2011. Div. Ex. 191 at 748:4 to 749:13; Div. Ex. 55; Div. Ex. 74.

190. When Gibson sold GISF's entire remaining block of TRX shares in the market on November 10, 2011, the 680,636 shares purchased from Hull were among the last sold. Those shares were sold at a severely depressed price, i.e., an average price of \$2.02. Div. Ex. 184 (Taveras Expert Report) at 10-11.

191. GISF lost approximately \$1.58 per share, or \$1,074,902, as a result of the October

2011 transaction with Hull. Div. Ex. 184 (Taveras Expert Report) at 10-11.

192. At the time Gibson used GISF's funds to purchase Hull's personal TRX shares, Gibson was also providing personal investment advice to Hull and Hull's family members. Div. Ex. 191 at 630:11 to 632:10 (advice to Hull); 9/13/16 Tr. 563:13-19 (advice to Hull's daughters); 9/12/16 Tr. 183:8-20; Div. Ex. 35; Resp. Ex. 46.

193. Gibson considered Hull to be one of his investment advisory clients. Div. Ex. 191 at 398:12-17.

194. Gibson never disclosed to GISF or GISF's investors that he was providing personal investment advice to Hull and Hull's family. Div. Ex. 191 at 439:6-15.

195. Gibson arranged and executed GISF's purchase of Hull's TRX shares without disclosing that transaction to GISF or GISF's investors before or after the transaction took place. 9/12/16 Tr. 197:1 to 197:14; Div. Ex. 191 at 723:8 to 723:11.

196. Although he had previously advised both Mason McKnight IV and Matt McKnight to purchase TRX shares in their personal accounts, Gibson did not offer to have GISF buy them out of their TRX position. 9/13/16 Tr. 428:5-13 (Mason McKnight IV) and 496:20 to 497:5 (Matt McKnight).

Front Running In October and November 2011

197. In late October and early November 2011, TRX shares were generally trading between \$3.40 and \$4.07. Div. Ex. 184 (Taveras Expert Report) at Exhibit 15a.

198. During this period Gibson continued to try to sell GISF's remaining TRX holdings. Resp. Ex. 115 at 1; Div. Ex. 98 at 1 ("I believe I have a buyer at current levels for our entire remaining TRX position, and plan to liquidate the fund.")

199. Gibson still had not told GISF's investors (other than Hull) that GISF would be selling all its TRX shares. Div. Ex. 98 at 1 ("I have not made this known even to investors.").

200. During this period, Gibson also continued to tell TRX's Chairman, James Sinclair, that TRX was "broken" and that Sinclair was a "crook." Div. Ex. 103 ("If you don't fix what you've broken, it will be my life's goal to ensure your children will know you were a crook and the pain you caused so many people all in an effort at self glorification [sic].").

201. Gibson knew that liquidating GISF's large position was likely to depress TRX's share price. Div. Ex. 190 at 108:12 to 109:10 ("Q. . . . you generally expect the share price of a stock to drop when you sell a large portion of the shares? A. Yes. . . . Q. But you knew it was possible that it [dumping GISF's TRX shares] could tank the stock? A. Yes, absolutely.")

202. In particular, Gibson knew that the sale of 3.7 million TRX shares on September 27, 2011, had sharply depressed TRX share prices. Resp. Ex. 149 at 31 ("At the time of the Hull Transaction, based on his experience with the September 26 Transaction, Mr. Gibson would have understood that a large block sale of TRX shares would likely have a negative effect on TRX's share price."); 9/15/16 Tr. 1046:3 to 1047:18.

203. On October 27, 2011, Gibson bought \$4 put option contracts on TRX for his girlfriend's account. 9/12/16 Tr. 200:1-21; Div. Ex. 102 at 2-3.

204. On October 28, 2011, Gibson bought \$4 put option contracts on TRX for his own account. 9/12/16 Tr. 202:16 to 203:2; Div. Ex. 99 at 3.

205. On October 28, 2011, Gibson also bought additional \$4 put option contracts on TRX for his girlfriend's account. 9/12/16 Tr. 200:1-21; Div. Ex. 102 at 2-3.

206. After Gibson purchased the TRX put options on October 27 and 28, he continued to attempt to sell GISF's remaining TRX shares as a block. 9/14/16 Tr. at 707:9 to 709:20. There

were “three primary large buyers . . . expressing an interest in taking our position. . . . So Platinum Partners is one large buyer. Luis Sequeira’s investors are another large buyer, and there’s another large bank in Portugal also, BPI, that had a large position and bought some of our shares as well.” 9/14/16 Tr. 707:14 to 708:6.

207. Gibson bought additional \$4 TRX put option contracts for his own account on November 2 and November 8. Div. Ex. 124 at 3.

208. On November 9, 2011, Gibson learned that an anticipated sale of GISF’s entire TRX position to a large investor (Platinum Partners) would not occur, and Gibson believed that other large TRX shareholders might sell their TRX shares before GISF do so. After discussion with Hull, Gibson decided to immediately sell all of GISF’s shares on the public market. 9/14/16 Tr. 710:20 to 713:24.

209. On November 8 or 9, Gibson told his father to sell all the TRX shares his father held and to buy \$4 put contracts on TRX. His father began doing so the same day. 9/12/16 Tr. 214:13 to 217:2; Div. Ex. 114 at 1 (trade ticket for purchase of \$4 TRX puts showing a November 9, 2011 trade date); Div. Ex. 119 (John Gibson approving the TRX trades, “I approve of the trades”).

210. Gibson’s father sold a portion of the TRX stock in his personal account on November 9, 2011, at prices higher than he would have obtained for those shares on November 10 after GISF dumped its shares. Div. Ex. 184 (Taveras Expert Report) at 25; Div. Ex. 117 at 1-3.

211. The \$4 TRX put option contracts gave Gibson, Marzullo, and Gibson’s father the right to require the sellers of those contracts to buy 251,900 shares of TRX at \$4 per share, regardless of the prevailing market price. Answer and Affirmative Defenses at 9, ¶¶ 43-45; Div. Ex. 184 (Taveras Expert Report) at 20-22.

212. If TRX's share price declined below \$4 and the TRX shares held by GISF declined in value, the option contracts held by Gibson, Marzullo, and Gibson's father would become more valuable. Div. Ex. 190 at 118:4 to 119:20 ("Q. What would have to happen for these options to be profitable? A. You would have to sell them for more than you paid for them. And for that to occur, the company stock price would have to go below the price at which you bought the options minus the premium you paid for the option. Q. Okay. So the share price -- A. Would have to go lower."); 9/12/2016 Tr. at 204:4 to 204:10.

213. Through his purchase of the \$4 TRX put options, Gibson had in effect "shorted" TRX. Div. Ex. 190 at 118:4 to 119:20 ("Q. So when you purchased these, was this a long bet? A. No, it was a short. Q. It was a short bet. A. Yes. Q. Okay. So in your personal account, you had a short bet against TRX. A. Correct.").

214. By using his personal account to purchase \$4 TRX put contracts and front run GISF's anticipated sale of TRX shares, Gibson sought to mitigate any losses he might suffer due to a decline in the value of his interest in GISF when GISF sold its TRX shares. 9/12/16 Tr. 202:18 to 204:10; Div. Ex. 190 at 127:21 to 128:3 ("But you purchased the \$4 puts as a hedge, right? A. Right. Q. Because there was a possibility that they would be valuable, right? A. Yes. Q. If it didn't go the way that you anticipated. A. Correct.").

215. By using Francesca Marzullo's personal account to purchase \$4 TRX puts and to front run GISF's anticipated sale of TRX shares, Gibson sought to obtain a financial gain for his girlfriend if TRX shares declined in price when GISF sold its TRX shares. Div. Ex. 190 at 118:11 to 119:7.

216. By directing his father to purchase \$4 TRX puts and to front run GISF's anticipated sale of TRX shares, Gibson sought to enable his father to mitigate any losses his father might suffer due to a decline in the value of TRX shares. Div. Ex. 185 (Gibbons Expert Report) at 25-26.

217. On November 10, 2011, as Gibson prepared to liquidate GISF's entire TRX position, he told GISF's broker at Gar Wood Securities that "we are going to potentially tank this stock." Div. Ex. 105 at 1.

218. Gibson then dumped GISF's remaining 4.9 million TRX shares into the market. Div. Ex. 189 at ¶ 28; Div. Ex. 190 at 108:12 to 109:15; Div. Ex. 122 at 16-26.

219. The TRX share price plummeted immediately after Gibson began dumping GISF's large block into the market. The TRX share price opened at \$3.41 at 9:30 AM on November 10, but declined to \$2.99 by 9:45 AM. At 9:52 AM the New York Stock Exchange halted trading in TRX for five minutes due to the dramatic price drop. Div. Ex. 184 (Taveras Expert Report) at Exhibit 12.

220. At 10:00 AM, with TRX's share price down to \$2.02, Gibson sold all the \$4 TRX put contracts in his account. Div. Ex. 184 (Taveras Expert Report) at 22-25 and Exhibit 16; Div. Ex. 124 at 3.

221. Two minutes later, Gibson sold all of the \$4 TRX put contracts in Marzullo's account. Div. Ex. 184 (Taveras Expert Report) at 22-25 and Exhibit 16; Div. Ex. 123 at 14.

222. At 11:40 AM, Gibson's father sold all of the \$4 TRX put contracts in his account. Div. Ex. 184 (Taveras Expert Report) at 22-25 and Exhibit 16; Div. Ex. 114 at 2.

223. Gibson's front running via \$4 TRX put options resulted in gross profits (before commissions) of \$81,930 in his account, \$254,380 in his girlfriend's account, and \$43,240.01 in

his father's account. Div. Ex. 185 (Gibbons Expert Report) at 45; Div. Ex. 184 (Taveras Expert Report) at 22-25.

224. The total profit before commissions on the \$4 TRX put option contracts was \$379,550.01. Div. Ex. 185 (Gibbons Expert Report) at 45; Div. Ex. 184 (Taveras Expert Report) at 22-25.

225. Gibson's front running via \$4 TRX put options resulted in net profits (after commissions) of \$81,008.81 in his account, \$251,879.81 in his girlfriend's account, and \$41,823.06 in his Gibson's father's account. Div. Ex. 185 (Gibbons Expert Report) at 45.

226. The total net profit (after commissions) on the \$4 TRX put option contracts was \$374,711.68. Div. Ex. 185 (Gibbons Expert Report) at 45.

227. Respondent's expert, Dr. Overdahl, testified that Gibson could have expected that he, his girlfriend, and his father would benefit from their transactions in \$4 TRX puts in October and November 2011. Resp. Ex. 149 at 37-38 and Exhibits 14A and 14B.

228. Gibson used all the assets available to him outside the Fund to purchase the \$4 TRX put option contracts for his personal account, and he would have purchased more such contracts if he had had the funds to do so. Div. Ex. 190 at 130:19 to 131:18 ("Q. Is it fair to say that you used every asset available to you at the time on November 10, 2011, to hedge your investment in the Fund? A. Every liquid available asset, yes. Q. Okay. And you would have done more if you had the assets available? A. Yes, I would have.").

229. Gibson set up and implemented this front running scheme over a period of two weeks (October 27 through November 10), which was more than adequate time to disclose the conflict of interest and seek his client's consent had he wanted to do so. Div. Ex. 189 at ¶ 25; Gibson 9/12/16 Tr. 202:18 to 204:10.

230. Gibson did not disclose his intention to front run GISF using TRX put options to anyone, other than advising his father to purchase \$4 TRX put option contracts. Div. Ex. 190 at 120:22-24 (“Q. Did Mr. Hull know that you purchased these puts? A. He did not.”); Gibson 9/13/16 Tr. 425:3 to 425:23 (no disclosure to Mason McKnight IV); 9/13/16 Tr. 494:3-24 (no disclosure to Matthew McKnight); 9/14/16 Tr. 856:18 to 857:16 (no disclosure to Douglas Cates); and 9/15/16 Tr. 941:18-22 (no disclosure to Wayne Grovenstein).

231. Gibson admitted that GISF’s operating agreement and offering memorandum did not allow him to trade on his foreknowledge of the Fund’s trading intentions. 9/14/16 Tr. 766:3-7 (regarding the operating agreement, “No. You’re not – no, it does not allow someone to use foreknowledge in order to benefit themselves.”); 9/14/16 Tr. 760:14-18 (regarding the offering memorandum).

232. Although Gibson claimed that he purchased the \$4 TRX puts to protect his creditor, Hull, 9/14/16 Tr. 748:9-19, there is no evidence that Gibson used any of the proceeds from his trading in the \$4 TRX puts to repay any of the money he borrowed from Hull.

233. Francesca Marzullo was not a GISF investor and after September 26, 2011, she no longer owned TRX shares. 9/15/16 Tr. 1052:11 to 1055:19. Marzullo did not hold a “net long position” in TRX when Gibson purchased the \$4 TRX puts in her account. Those options could have been profitable only if TRX’s share price declined. 9/15/16 Tr. 1054:21 to 1056:1.

234. Although Gibson claimed that he purchased the \$4 TRX put option contracts for Francesca Marzullo’s account to protect her parents, who had invested in GISF, 9/12/16 Tr. 202:21 to 205:24, Marzullo’s parents never received any of the proceeds from the sale of the \$4 TRX put options in her account. The proceeds were kept in Marzullo’s account, reinvested by Gibson, and ultimately lost. Div. Ex. 190 at 114:19-24 (“Q. Do you know that her parents received the

proceeds? A. The proceeds were unfortunately lost in full. Q. How is that? How were they lost?

A. Invested in similar strategies that we pursued in Geier subsequent to this liquidation.”).

235. Although he had earlier advised Mason McKnight IV and Matthew McKnight to buy TRX in their personal accounts, Div. Exs. 72 and 9/13/16 Tr. 425:24 to 426:21 (Mason McKnight IV); Div. Ex. 47 and 9/13/16 Tr. 494:24 to 495:19 (Matthew McKnight), Gibson did not advise them to sell their personal shares prior to the November 10 sale by GISF.

GISF After November 10, 2011

236. Gibson continued to manage GISF’s investments after November 10, 2011, and throughout the remainder of 2011. 9/12/16 Tr. 243:10-21.

237. Gibson continued throughout 2011 to receive bi-weekly salary payments from Hull’s real estate business for investment advisory services to GISF.

238. Gibson claimed to Hull in December 2011 that he had “worked tirelessly” for GISF’s investors, “placing their interests ahead of mine.” Div. Ex. 125 at 1. Gibson’s statement that he had placed the interests of investors ahead of his own interests was false. Div. Ex. 185 (Gibbons Expert Report) at 20-26.

239. Gibson also stated in December 2011 that he was “proud of my conduct, and I have done everything possible to align my interests with my investors.” Div. Ex. 125 at 1. Gibson’s statement that he had done everything possible to align his interests with GISF’s investors was false. 9/14/16 Tr. 746:20-22.

240. In December 2011, Gibson spoke by telephone with Luis Sequeira regarding TRX’s Chairman, Jim Sinclair. 9/14/16 Tr. at 812:6-9. Gibson told Sequeira that “I’m going to kill him [Sinclair] . . . after this I’m going to kill him for what he’s done to me.” Div. Ex. 183;

Div. Ex. 183A at 3:4-8. After Sequeira told Gibson not to say “stupid things,” Gibson said “No, I’m not. I’m serious. I will kill him.” Id. at 3:9-25.

241. Later in the conversation and referring to Sinclair, Gibson told Sequeira “[t]hat fucking asshole is a complete crook and he is not going to have a smile on his face let alone a pulse at the end of next year.” Id. at 4:23-25.

242. Referring to TRX, Gibson also told Sequeira that “[t]he point is the company has nothing. . . . It hasn’t done anything in 10 years.” Id. at 7:18 to 8:1.

243. Gibson likewise managed GISF’s investments throughout 2012. 9/12/16 Tr. 243:22 to 244:2; Div. Ex. 131; Div. Ex. 140; Div. Ex. 142; Div. Ex. 143.

244. In May 2012, GISF had 20 investors and over \$7 million under management. Div. Ex. 139.

245. In 2012, Gibson received approximately \$148,000 in bi-weekly salary payments from Hull’s business for his advisory services to GISF. Div. Ex. 191 at 472:10-21.

246. Gibson continued to manage GISF’s investments in early 2013 as GISF sold its remaining holdings. Gibson 9/12/16 Tr. 245:23 to 246:10; Div. Ex. 148; Div. Ex. 149; Div. Ex. 154.

247. On April 10, 2013, Gibson sent letters to 13 GISF investors returning the remainder of their investments in the Fund. Div. Ex. 154; 9/12/16 Tr. 246:11-24.

248. By April 2013, GISF had ceased trading and Gibson’s role as investment manager ended. 9/12/16 Tr. at 246:25 to 247:13.

249. Gibson was paid \$6,270 in salary by Hull’s business for his advisory services to GISF in early 2013. Div. Ex. 191 at 473:9 to 474:5.

Subsequent Events

250. GISF currently holds assets for a small number of investors associated with the Gibson and Marzullo families, but is largely inactive. Div. Ex. 190 at 36:19 to 37:5.

251. Gibson maintained a significant financial interest in GISF until recently, but has now transferred that interest, valued at \$423,896, to his father. Resp. Ex. 145.

252. Gibson is currently the managing director of Weiji Capital LLC, a firm he founded to provide merger and acquisition consulting internationally. Div. Ex. 190 at 39:13 to 41:12.

II. Proposed Conclusions of Law

A. Section 206 And Federal Fiduciary Duties

1. Section 206(1) of the Advisers Act makes it unlawful for an investment adviser “to employ a device, scheme, or artifice to defraud any client or prospective client.” 15 U.S.C. § 80b-6(1).

2. Section 206(2) makes it unlawful for an adviser to “engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client.” 15 U.S.C. § 80b-6(2).

3. These provisions establish “‘federal fiduciary standards’ to govern the conduct of investment advisers.” Transamerica Mortgage Advisors, Inc. v. Lewis, 444 U.S. 11, 17 (1979). Section 206 imposes affirmative duties on investment advisers, including the obligations to exercise “utmost good faith,” make “full and fair disclosure of all material facts,” and “employ reasonable care to avoid misleading clients.” SEC v. Capital Gains Research Bureau, Inc., 375 U.S. 180, 194 (1963).

4. An investment adviser has a duty under Section 206 to disclose, among other things, “all conflicts of interest which might incline an investment adviser -- consciously or unconsciously -- to render advice which was not disinterested.” Capital Gains, 375 U.S. at 191.

5. In an action under Section 206, the Commission need not prove that the investment adviser’s violation caused injury to the client. Capital Gains, 375 U.S. at 195.

6. Section 206(1) is violated if the adviser acted with scienter, which includes recklessness. SEC v. Blavin, 760 F.2d 706, 711-12 (6th Cir. 1985).

7. Simple negligence is sufficient to establish a Section 206(2) violation. Capital Gains, 375 U.S. at 195. Negligence is “the failure to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation “ In re Lisa B. Premo, 2012 SEC LEXIS 4036, at *68 n.34 (Dec. 26, 2012).

8. To establish that Gibson violated Section 206(1), the Division was required to show that Gibson, while using the mails or an instrumentality of interstate commerce, (i) was an investment adviser, (ii) breached his fiduciary duties by nondisclosure of material facts or otherwise engaged a scheme to defraud, and (iii) acted at least recklessly.

9. To establish violations of Section 206(2), the Division was required to establish that Gibson, while using the mails or an instrumentality of interstate commerce, (i) was an investment adviser, (ii) breached his fiduciary duties by nondisclosure of material facts or otherwise engaged in a transaction or practice that operated as a fraud or deceit, and (iii) acted at least negligently.

B. Gibson Was An Investment Adviser

10. Pursuant to Section 202(a)(11) of the Adviser's Act, the term "investment adviser" encompasses, inter alia, any person "who, for compensation, engages in the business of advising others . . . as to the value of securities or as to the advisability of investing in, purchasing, or selling securities." 15 U.S.C. § 80b-2(a)(11).

11. Whether an individual is an investment adviser depends on the individual's conduct, not the individual's title or position. An individual may be an investment adviser even if he or she also performs non-advisory activities.

12. Whether an individual is an investment adviser does not depend on whether that individual is acting in his individual capacity or as an officer, employee, or representative of an entity.

13. An individual may be an investment adviser even if serving as an officer, employee, or representative of an entity that is also an investment adviser.

14. Pursuant to Section 202(a)(17) of the Advisers Act, the term "person associated with an investment adviser" includes, inter alia, any partner, officer, or (with certain exceptions) employee of an investment adviser. Both investment advisers and persons who are not investment advisers can be persons "associated with an investment adviser."

15. An individual may be an investment adviser to a particular client even if another individual or entity is also serving as an investment advisor to that client.

16. Gibson provided investment advice and other investment advisory services to GISF throughout the period at issue in this matter.

17. An investment adviser receives “compensation” if the adviser receives any “economic benefit” for advisory services. The adviser’s compensation need not come directly from the advisee.

18. Gibson continued to have a contractual right (as a result of his 50% ownership interest in, and his position as Managing Director of, Geier Capital of Delaware) to collect an investment management fee from GISF after September 30, 2011. His decision to voluntarily waive collection of the fee “until further notice” did not terminate his right to the fee. Gibson’s continuing right to collect a management fee constituted “compensation” under Section 202(a)(11) of the Adviser’s Act.

19. Throughout 2011, including after September 30, 2011, Gibson had a contractual right (as a result of his 50% ownership interest in, and his position as Managing Director of, Geier Capital of Delaware) to an “incentive allocation” if GISF achieved an annual return in excess of the designated “hurdle rate.” That right to compensation if earned by performance constituted “compensation” for purposes of Section 202(a)(11) of the Adviser’s Act.

20. The salary Gibson received throughout 2011 from James Hull’s business for services to GISF constituted “compensation” for advisory services under Section 202(a)(11) of the Adviser’s Act.

21. Gibson was compensated for his services as an investment adviser to GISF throughout the relevant period, including after September 30, 2011.

22. Gibson was an investment adviser to GISF within the scope of Section 202(a)(11) of the Advisers Act throughout the relevant period.

C. Gibson's Obligations Under Section 206 Were Not Waived Or Eliminated

23. An investment adviser's federal fiduciary duties, as well as the other obligations and prohibitions imposed by Section 206 of the Advisers Act, cannot be waived, reduced, or eliminated by private agreement or by the interaction of state law and private agreement.

24. Gibson's federal fiduciary duties and the other obligations and prohibitions imposed by Section 206 of the Advisers Act were not waived, reduced, or eliminated by the "Potential Conflicts of Interest" provision in the GISF offering memorandum (Div. Ex. 24) or the "Management of the Company" provision in GISF's operating agreement (Div. Ex. 22).

25. While the GISF offering documents noted that Gibson might engage in other business activities in the securities industry and own or manage other accounts, and might give advice or take actions in connection with those businesses or accounts that differed from the advice Gibson gave or the action he took with regard to GISF, nothing in the offering documents authorized Gibson to conduct such other activities in a way that violated Section 206 of the Adviser's Act.

26. Even if the GISF offering documents had provided that Gibson could engage in other activities in a way that violated Section 206, any such provision would have been contrary to federal law and without effect.

D. The Offering Documents Did Not Satisfy Gibson's Disclosure Obligations

27. Among Gibson's fiduciary duties to GISF was the duty to disclose any material conflicts of interest between himself (or Geier Group and Geier Capital) and GISF. This required not only initial disclosure of potential conflicts, but also on-going disclosure of actual conflicts as they arose.

28. The “Potential Conflicts of Interest” provision in the GISF offering memorandum and the “Management of the Company” language in the GISF operating agreement stated in general terms that certain types of potential conflicts of interest might arise in the future. Nothing in these provisions disclosed that Gibson might engage in front running or that he might favor Hull’s personal financial interests at the expense of GISF.

29. Neither the “Potential Conflicts of Interest” provision nor the “Management of the Company” provision disclosed the actual conflicts of interest that existed from the time GISF began operations in January 2010 due to the facts that Gibson’s investment in GISF was funded largely by a loan from Hull, that Gibson was being paid by Hull for services to GISF, and that Gibson was providing investment advice to Hull personally and considered Hull one of his advisory clients.

30. Neither “Potential Conflicts of Interest” provision nor the “Management of the Company” provision were subsequently amended to disclose, and investors were not otherwise informed of, the conflicts of interest Gibson created and exploited in September, October, and November 2011 when he arranged to front-run GISF’s trading on multiple occasions and used GISF’s funds to enable Hull to exit his TRX position when GISF was itself attempting to sell its TRX shares.

E. Gibson Violated Section 206(1) and (2) By "Front Running" On September 26, 2011

31. “Front running” refers to an investment adviser’s use, to seek personal gain, of material non-public information concerning an anticipated client transaction that is likely to impact the value of a security. Front running is a violation of fiduciary duties and Sections 206(1) and (2) of the Advisers Act.

32. A front running violation occurs when an investment adviser trades for a personal account based on knowledge of a client's intended trade. It is not necessary that all aspects of the anticipated client transaction (e.g., price, time, and volume) be fixed in place when the adviser makes use of his knowledge of his client's anticipated trading. Knowledge of the client's intention to trade in the near term, rather than of the exact terms of the proposed trade, is sufficient to bar the adviser from trading ahead of the client.

33. Establishing a front running violation does not require a showing of harm to the client, or to any person or entity. Nor does it require a showing that the front running affected the market price of the security at issue. Front running is prohibited and unlawful because it undermines the integrity of the securities markets.

34. Establishing a front running violation does not require a showing that the front runner knew with certainty in advance that they would profit from their conduct.

35. Gibson engaged in front running when on September 26, 2011, while knowing that GISF intended to sell a large block of TRX shares, he traded ahead of GISF's sale for the benefit of his personal account, Francesca Marzullo's account, and the account controlled by Gibson in the name of Geier Group.

36. Gibson's front running on September 26, 2011, violated his fiduciary duties to GISF, defrauded his client in violation of Section 206(1), and operated as fraud in violation of Section 206(2).

F. Gibson Violated Section 206(1) and (2) By Arranging For GISF To Purchase Hull's TRX Shares In October 2011

37. As a fiduciary, an investment adviser must not subordinate the interests of a client to the interests of another party or another client, except pursuant to full disclosure and informed consent.

38. The prospect that Gibson might use GISF funds to relieve another of his clients, James Hull, of the risks associated with holding TRX shares created a conflict of interest that should have been either fully disclosed and approved or avoided entirely.

39. The closing price of TRX shares on October 18, 2011, did not reflect the downward pressure on the share price that would have resulted if Hull's shares had been sold in the market that day and did not include a customer block discount for an order of that size. Thus, the closing price of \$3.60 was not the "current market price" for TRX shares on October 18, 2011.

40. When GISF sold its entire remaining block of TRX shares on November 10, 2011, the shares purchased from Hull were sold at severely depressed prices, resulting in a substantial loss to GISF due to the acquisition of Hull's shares.

41. When GISF sold its remaining TRX shares on November 10, 2011, and paid the brokerage commission on the shares purchased from Hull, it incurred an "extraordinary brokerage commission" that GISF would not have incurred absent the purchase of Hull's shares.

42. GISF's purchase of Hull's TRX shares on October 18, 2011, was not authorized by the Potential Conflicts of Interest section in the offering memorandum and was not in the best interest of GISF.

43. By favoring Hull's interests over the interests of GISF, contrary to the provisions in the offering memorandum and without disclosing the proposed purchase from Hull or that Gibson was in debt to Hull, was receiving a salary from Hull, and considered Hull his advisory client, Gibson violated his fiduciary duties to GISF, defrauded his client in violation of Section 206(1), and engaged in a transaction which operated as fraud in violation of Section 206(2).

G. Gibson Violated Section 206(1) and (2) By Front Running In October and November 2011 Using Put Option Contracts

44. Gibson engaged in front running on five occasions in October and November 2011, by purchasing put option contracts on TRX for his personal account and his then girlfriend's personal account, and by advising his father to purchase the same options, all based on his knowledge that GISF intended to sell a large block of TRX shares in the near future.

45. In purchasing the put option contracts for his personal account and his girlfriend's account, and by advising his father to sell his TRX shares and buy put options, Gibson sought to mitigate any loss he and his father might suffer due to a decline in the price of TRX shares as a result of the anticipated sale of GISF's remaining block of TRX shares. By this front running, Gibson also sought to secure a profit for his girlfriend's account.

46. Gibson never disclosed to GISF's investors that he would use his foreknowledge of GISF's intended sales to trade for his advantage in his personal account or the account of his girlfriend, or that he would advise his father to do so. Nor did Gibson disclose to GISF's investors (other than his father) that he had in fact traded for his personal account based on his foreknowledge of GISF's intended sales.

47. On November 10, 2011, as Gibson carried out the anticipated liquidation of GISF's TRX holdings, the resultant decline in the TRX share price resulted in illicit profits to Gibson, his girlfriend, and his father when the put options in their personal accounts were sold.

48. Gibson's front running through the use of put option contracts was a violation of his fiduciary duties to GISF, a fraud on his client in violation of Section 206(1), and a transaction which operated as fraud in violation of Section 206(2).

H. Gibson's Knowledge Of His Misconduct Cannot Be Attributed To GISF

49. Gibson failed to satisfy his fiduciary duty to disclose to his client, GISF, the conflicts of interest he created and exploited. His disclosure obligation was not satisfied simply because Gibson was aware of his own misconduct and was an agent of GISF. An agent's knowledge is not attributable to the principal when the agent is acting contrary to the interests of the principal.

50. Gibson was acting contrary to the interests of GISF when he traded ahead of GISF on September 26, 2011, and on multiple occasions in October and November 2011 based on his foreknowledge of the Fund's intended sales. Likewise, Gibson acted contrary to the interests of his client when he used GISF's funds to purchase Hull's shares in October 2011. Thus, Gibson's knowledge of his own misconduct cannot be attributed to GISF, and he could not have consented of behalf of GISF to his own unlawful conduct.

I. Gibson Violated Section 206(4) and Rule 206(4)-8 Thereunder

51. Section 206(4) of the Advisers Act prohibits an investment adviser from engaging in "any act, practice, or course of business that is fraudulent, deceptive, or manipulative." Liability under Section 206(4) can arise from simple negligence.

52. Rule 206(4)-8(a)(1) prohibits an investment adviser to a pooled investment vehicle from making an untrue or misleading statement regarding a material fact to investors or prospective investors, or failing to state material facts necessary to make statements to such investors not misleading.

53. Rule 206(4)-8(a)(2) prohibits "any act, practice, or course of business that is fraudulent, deceptive, or manipulative with respect to any investor or prospective investor" in such a pooled investment vehicle.

54. At all relevant times, GISF was a “pooled investment vehicle” under Rule 206(4)-8. See Rule 206(4)-8(b).

55. Gibson is liable under Section 206(4)-8 and Rule 206(4)-8(a)(1) because he made untrue or misleading statements to GISF’s investors.

56. The private offering memorandum indicated to GISF’s investors that they would be treated fairly and equitably. When Gibson engaged in front running and used GISF’s funds to purchase Hull’s TRX shares, he was acting contrary to the disclosures made to GISF’s investors, which was fraudulent, deceptive, and manipulative.

57. By providing that Gibson could engage in outside business activities and hold outside accounts, but failing to disclose that he would use that authority to benefit himself and those close to him by front running GISF and favoring Hull over GISF, the offering documents omitted material facts, making those documents misleading.

58. Gibson also made false or misleading statements to investors immediately prior to front running GISF in September 2011. On September 23, 2011, Gibson told investors that there was “tremendous fundamental value” in “the assets owned and business operated by TRX” and that he believed in the “reputation, character, and integrity” of TRX’s Chairman, James Sinclair. He also assured investors that “[p]ersonally, I will not redeem my interest in Geier and TRX until the bull market matures over the coming years.” These statements were false and misleading, and Gibson sold his entire personal interest in TRX on the next trading day.

59. Gibson is also liable under Section 206(4)-8 and Rule 206(4)-8(a)(2) because he intentionally, recklessly, or negligently engaged in practices that were fraudulent, deceptive, or manipulative toward GISF’s investors.

60. Front running by an investment adviser is inherently deceptive and fraudulent because it rests on undisclosed misuse of confidential, non-public information for personal gain.

61. Gibson's front running was also manipulative. On November 10, 2011, Gibson used his control of the timing and manner of GISF's sales to "tank" the price of TRX shares at the beginning of the day on November 10, 2011, which maximized the value of the \$4 option contracts he held for his personal account and his girlfriend's account (and had advised his father to purchase).

62. Gibson's front running was also fraudulent and manipulative because he used his foreknowledge and control of GISF's anticipated selling to "pick winners and losers" among the investors who held TRX shares in personal accounts. Gibson protected himself when he sold the shares he held in his personal account on September 26, protected himself, his father, and Hull by selling all TRX shares in the Geier Group account on September 26, and protected his father by advising him on November 9 to sell his TRX shares and buy \$4 put options. Other investors, including the McKnight family, received no such protection.

63. The Hull transaction was deceptive and fraudulent because it was contrary to the provisions of the offering memorandum, which provided that transactions between GISF and affiliated parties could be conducted only at the current market price and without extraordinary commissions. Neither of these requirements was met in connection with the Hull transaction.

J. Gibson Violated Section 10(b) and Rule 10b-5

64. Section 10(b) of the Securities Exchange Act makes it unlawful, in connection with the purchase or sale of securities, to use "any manipulative or deceptive device or contrivance" in contravention of a rule issued by the Commission for the protection of investors. 15 U.S.C. § 78j(b).

65. Rule 10b-5 is such a rule, and prohibits three overlapping types of deceptive conduct: subsection (a) prohibits the use of any “device, scheme, or artifice to defraud”; subsection (b) prohibits false or misleading statements or omissions; and subsection (c) prohibits “any act, practice, or course of business which operates . . . as a fraud or deceit on any person.” 17 C.F.R. § 240.10b-5.

66. Subsections (a) and (c) of Rule 10b-5 create what is commonly referred to as “scheme liability.” Scheme liability extends to those “who had knowledge of the fraud and assisted in its perpetration.”

67. To establish that Gibson violated the “scheme liability” provisions of Rule 10b-5, the Division was required to show that in connection with the offer or sale of a security, and acting with scienter, Gibson engaged in a scheme to defraud (for Rule 10b-5(a) liability) or engaged in an act, practice, or course of business that operated or would operate as a fraud or deceit on any person (for Rule 10b-5(c) liability).

68. The Division can establish scienter by showing that a person acted knowingly or with severe recklessness. *SEC v. Carriba Air, Inc.*, 681 F.2d 1318, 1224 (11th Cir. 1982).

69. For purposes of Rule 10b-5 the Division was not required to show that Gibson was an investment adviser. However, because Gibson was an investment adviser, his fiduciary duties are considered in evaluating his potential liability under Rule 10b-5. “For the purpose of Rule 10b-5, an investment adviser is a fiduciary and therefore has an affirmative duty of utmost good faith to avoid misleading clients. This duty includes disclosure of all material facts and all possible conflicts of interest.” *Laird v. Integrated Res., Inc.*, 897 F.2d 826, 833-34 (5th Cir. 1990).

70. For purposes of Rule 10b-5, the Division was not required to show that Gibson's misconduct was directed to GISF itself. Liability can also be based on conduct addressed to, or impacting, GISF's investors.

71. To establish Rule 10b-5 liability, the Division was not required to show that Gibson's conduct resulted in any harm to GISF, any investor, or to the investing public.

72. Gibson violated subsection (a) of Rule 10b-5 by engaging in multiple instances of front running and by using GISF's funds to relieve Hull of his investment in TRX. On each of these occasions, Gibson, acting with intent to defraud or extreme recklessness, engaged in a scheme to defraud GISF and GISF's investors in connection with the offer or sale of securities.

73. Similarly, each time he traded ahead of GISF, and when he used GISF's funds to relieve Hull of his investment in TRX, Gibson violated subsection (c) of Rule 10b-5 by engaging, with intent to defraud or extreme recklessness, in an act or practice that operated as a fraud or deceit on GISF and GISF's investors.

K. Remedies

74. It is appropriate and in the public interest that Gibson be ordered to cease and desist from committing or causing violations of Sections 206(1), (2), and (4) of the Advisers Act and Rule 206(4)-8 thereunder, as well as Section 10(b) and Rule 10b-5 of the Exchange Act.

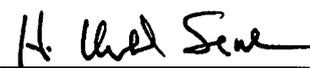
75. It is appropriate and in the public interest that Gibson be permanently barred from serving as an "investment adviser" as defined in Section 202(a)(11) of the Advisers Act and from being associated with an investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally-recognized statistical ratings organization.

76. It is appropriate and in the public interest that Gibson be required to disgorge the ill-gotten gains obtained from his above-mentioned violations. The ill-gotten gains to be

disgorged, with prejudgment interest, include (i) the losses Gibson and his girl-friend avoided in their personal accounts by the front running on September 26, 2011, (ii) the amounts Gibson and his girlfriend gained in their personal accounts from the front running in October and November 2011, and (iii) the amounts gained by Gibson's father by selling TRX shares on November 9, 2011, and by purchasing \$4 put options on November 9, 2011, and then selling them the following day, all at Gibson's direction. Gibson should also be required to disgorge the gains he provided to Hull, at the expense of GISF, by arranging for GISF to purchase Hull's TRX shares on October 18, 2011, at a price above the current market price and without any discount for the commissions Hull avoided.

77. It is appropriate and in the public interest that Gibson be required to pay civil penalties for his violations. Gibson should pay a Tier II penalty in connection with each of his eight front running violations (i.e., the front running in three accounts on September 26, 2011; the front running on four dates in October and November 2011 through put options; and Gibson's November 9, 2011, instruction to his father to sell his TRX holdings and purchase similar put options). Additionally, Gibson should pay a Tier III penalty for using GISF funds to relieve Hull of Hull's TRX shares in October 2011, a violation that involved both fraud and a substantial monetary loss by GISF.

Respectfully submitted,



October 24, 2016

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U.S. Securities and Exchange Commission

Division of Enforcement

100 F Street, N.E.

Washington, D.C. 20549

Counsel for Division of Enforcement

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of October 2016:

(i) An original and three copies of the foregoing DIVISION OF ENFORCEMENT'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW were filed with the Office of the Secretary, SEC, 100 F Street, N.E., Washington, D.C. 20549-9303;

(ii) a copy of the foregoing DIVISION OF ENFORCEMENT'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW was sent to counsel for Respondent via email to TFerrigno@brownrudnick.com and paul@enzinnalaw.com, and via UPS next day delivery to:

Thomas A. Ferrigno, Esq.
Brown Rudnick LLC
601 Thirteenth Street, N.W.
Suite 600
Washington, D.C. 20005; and

(iii) a copy of the foregoing DIVISION OF ENFORCEMENT'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW was provided to Brenda P. Murray, Chief Administrative Law Judge, via email to ALJ@sec.gov.



H. Michael Semler