UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-14536

In the Matter of	:
MONTFORD AND COMPANY, INC.	
d/b/a MONTFORD ASSOCIATES,	:
and	:
ERNEST V. MONTFORD, SR.,	:
Respondents.	
	:

DIVISION OF ENFORCEMENT'S PREHEARING SUBMISSION

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Pursuant to Rule of Practice 222, and in compliance with the Court's October 5, 2011 Order, the Division of Enforcement ("Division") hereby makes its Prehearing Submission.

I. INTRODUCTION

As set forth in the Order Instituting Public Administrative and Cease-and-Desist Proceedings Pursuant to Sections 203(e), 203(f), and 203(k) of the Investment Advisers Act of 1940 ("OIP"), the Division alleges that Respondent Montford and Company, Inc. d/b/a Montford Associates ("Montford Associates"), an Atlanta, Georgia-based registered investment adviser, violated Sections 206(1), 206(2), 204 and 207 of the Investment Advisers Act of 1940 ("Advisers Act"), as well as Rule 204-1(a)(2) thereunder, and that Respondent Ernest V. Montford, Sr., ("Montford") (collectively, "Respondents"), the firm's President, Chief Executive Officer, Chief Compliance Officer and 100% owner, violated Sections 206(1), 206(2) and 207 of the Advisers Act, and aided and abetted and caused Respondent Montford Associates' violations of Section 204 of the Advisers Act and Rule 204-1(a)(2) thereunder.

The Division's allegations are based on Respondents' affirmative misrepresentation regarding an undisclosed conflict of interest, conduct which Respondents have essentially admitted.[1] In 2009 and 2010, Respondent Montford Associates stated in Schedule F to its Form ADV Part II, which was prepared and approved by Respondent Montford, that the firm "**do[es] not accept any fees from investment managers** . . . ." (Emphasis added.) However, as Respondents admit in Paragraphs 8 and 17 of their Answer to the OIP, "Montford, Inc. **received two payments totaling $210,000** from SJK Investment Management, LLC ("SJK") . . . in

[1] Respondents' Answer admits nearly all of the facts establishing the alleged violations. For the Court's convenience, the Division is attaching a chart of those admissions as Exhibit A to this Prehearing Submission.

2010," and "Respondents **did not disclose** the services and payments to their clients prior to January 6, 2011." (Emphasis added.) Such compensation to an investment adviser from a money manager presents a conflict of interest and should have been disclosed even in the absence of contrary representations. But in this case, Respondents further violated the antifraud provisions of the Advisers Act by: (a) taking the money *after* having affirmatively represented to their clients that they did not accept *any* fees from investment managers, and (b) continuing to represent, in their 2010 Form ADV Part II and in other communications with clients, that they did not accept any fees from investment managers when, in fact, they had made an agreement for payment with an investment manager in August 2009 and been paid $130,000 (the first of two payments under that agreement) by that investment manager in January 2010.

To make matters worse, this misrepresentation took place while Respondents' clients were deciding whether to move their funds to the very entity paying Respondents – SJK Investment Management, LLC ("SJK"). SJK was a new firm started in July 2009 by portfolio manager Stanley J. Kowalewski. Kowalewski founded SJK as a new investment adviser offering a fund-of-funds investment strategy when he left Columbia Partners Investment Management, LLC ("Columbia Partners").[2] Eleven of Respondents' clients had accounts valued at approximately $65 million being managed by Kowalewski at Columbia Partners, and Respondents recommended that all the funds be transferred to Kowalewski's new firm. Respondents admit that, in response to Respondents' express request for money in August 2009, SJK agreed to pay Respondents a fee. Respondents also admit that their clients were concerned

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2 On January 6, 2011, the Commission filed an emergency civil injunctive action charging Kowalewski and SJK with securities fraud, and obtained a temporary restraining order and asset freeze. On June 29, 2011, the Court entered a consent order permanently enjoining Kowalewski from violating the federal securities laws. The Division does not allege that Respondents were aware of or complicit in Kowalewski's fraud.

about changing to a new company, and when the process of transferring their funds to SJK became protracted and difficult due to Columbia Partners' procedures, Respondents had to spend time answering questions and assuaging concerns. Yet, Respondents continued to meet with their clients throughout the summer and fall of 2009 to recommend that investment and took steps necessary to complete the transfer, without ever revealing the arrangement with SJK.[3] Respondents' violative conduct is thus exacerbated by the surrounding facts, underscoring why the law requiring investment advisers to disclose conflicts of interest is so clear and inflexible. However, Respondents' bald misrepresentation that they did not accept any fees from investment managers when, in fact, they later demanded one – which Respondents essentially concede in their Answer – is at the core of the case, and as the Division will demonstrate at the hearing, entitles the Division to an Order finding that Respondents violated the federal securities laws as asserted in the OIP.

II. FACTS

A. Background on Montford and Montford Associates

Respondent Montford resides in Atlanta, Georgia. Montford is President, Chief Executive Officer, Chief Compliance Officer, and 100% owner of Respondent Montford Associates. Montford Associates is a registered investment adviser with its principal place of business in Atlanta, Georgia. Montford founded Montford Associates in April 1989 and has been working in the investment advisory business for twenty-three years. He began working in the securities industry as a registered representative with Merrill Lynch in 1972. During the

[3] As set forth in more detail in Section II of this Prehearing Submission, Respondents continued to recommend SJK to their clients well into 2010, having never disclosed the conflict.

relevant period, Montford Associates had approximately 30 clients and $800 million under management. At that time, Montford Associates' clients primarily included pension plans, school endowments, and various non-profit organizations. Montford Associates provides a range of investment advisory services to institutional investors,[4] including: (1) assessing investment objectives; (2) advising on appropriate asset allocation; (3) recommending investment managers; and (4) monitoring portfolio and manager performance. Montford Associates does not manage clients' investments directly, nor does it have the authority to execute client trades. Instead, Montford Associates identifies and recommends investment managers who then invest in various securities for the benefit of Montford Associates' clients. Montford Associates charges clients an annual fee, paid quarterly, based on assets under management. The annual fee ranges, depending on various factors, from 8 to 20 basis points of the client's assets. In 2010, Montford Associates' gross revenues were $830,000, approximately $620,000 of which was in the form of fees for providing investment advisory services to clients. As discussed more below, the remaining $210,000 in revenue – approximately 25% of the firm's total revenue in 2010 – was in the form of undisclosed fees paid by SJK.

During the relevant period, Montford Associates prominently and repeatedly claimed to provide "independent" investment advice. Montford Associates' Forms ADV during the relevant period included several representations regarding the firm's independence. Specifically, Item 13 of Form ADV Part II, as filed with the Commission on March 4, 2009 and March 29, 2010, stated that Montford and Montford Associates received no economic benefit from non-

[4] Montford testified that Montford Associates' clients are typically institutional investors that are conservative, risk averse and place value on stability and consistency.

clients in connection with giving advice to clients. Schedule F of those same filings represented that Montford Associates would "disclose to clients ... all matters that reasonably could be expected to impair [the firm's] ability to make unbiased and objective recommendations." Also in Schedule F, the Forms ADV specifically disclosed that "[w]e do not accept **any** fees from investment managers or mutual funds." (Emphasis added.) Montford also admitted in testimony that he made this representation directly to his clients "ever since [he] started the firm." March 2, 2011 Testimony of Ernest V. Montford, p. 148, lines 2-7.

Furthermore, Montford Associates' promotional materials also included claims regarding the firm's independence. Montford Associates' website advertised the firm as "a source of independent investment advice for institutional investors." The website also contained articles touting the benefits of an "independent" investment adviser. In one such article, Montford Associates states "[t]he best investment advisors are *independent* – without affiliations to ... money managers." In another, Montford Associates states clients "need a strategy they can trust, because investments ... should be based on merit, not ... undisclosed compensation."

B. Montford's Historical Relationship with Kowalewski and SJK

Respondent Montford testified that he was first introduced to Kowalewski in 2002 or 2003. Respondent Montford began recommending Kowalewski as a manager of a predecessor stable-value "fund of funds" to Montford Associates' clients beginning in 2003. Montford Associates' clients remained with Kowalewski after he became affiliated in 2005 with Columbia Partners, a registered investment adviser based in the Washington, D.C. area. By July 2009, eleven of Montford Associates' clients were invested with Kowalewski at Columbia Partners for a total of approximately $65 million.

C. Kowalewski and SJK Paid Montford Associates to Recommend SJK to Montford Associates' Clients

In 2010, Montford Associates received two payments totaling $210,000 from Kowalewski and SJK. The first payment, for $130,000 was made on January 4, 2010. The second payment of $80,000 was made on November 1, 2010. These payments represented approximately 25 percent of Montford Associates' total revenue that year. The chronology of payments and related services is set forth below:

In July 2009, Kowalewski left Columbia Partners and created SJK. Having been told by Kowalewski in May or June of 2009 that Kowalewski might leave to start his own firm, Montford began meeting with clients to recommend that they transfer their investments to SJK. Through Montford's initial meetings with his clients, he understood that they were concerned about changing their investments to follow Kowalewski. Montford Associates' clients were risk-averse, generally uncomfortable with change, and also suspicious of hedge funds at that time, just a few months after the Madoff scandal became public. Recognizing that convincing his clients to continue investing with Kowalewski, and effecting the transfer itself, would require time and effort, Montford told Kowalewski in August 2009 that SJK was going to have to pay Montford Associates. In sworn testimony before the staff, Montford stated clearly that SJK was already operating, and the payment he was demanding was for the work involved in transferring his clients to SJK:

> Q The $130,000 that you [initially] charged Stan, did you talk to your clients about that?
> A No.
> Q And why not?
> A Well, it wouldn't have occurred to me -- since it was a one-off, he was setting up his firm as a business consultant -- to say, "I'm helping SJK get started up," **because frankly that kind of came along after he'd started, and it was going along. It didn't start at**

> **first, it just came along because of all the work.** And I said, **"Hey, we're going to, you know, we're going to have to get paid for this. This is taking so much time and we're helping you do this, and that, and the other."** And I'm pretty easy going, but I said, "We're going to have to get paid for this."

December 17, 2010 Testimony of Ernest V. Montford, p. 106, lines 8-21 (emphasis added).

In response, according to Montford, Kowalewski offered to pay Montford Associates $130,000 to assist in the transition of clients from Columbia Partners to SJK. In testimony, Montford maintained that, despite the fact that he was making the demand, Kowalewski unilaterally set the amount of the payment, and that he was unaware of how Kowalewski decided on that amount. While those details were apparently unspecific, Montford testified that there were two definite components to his work under the agreement:

> MR. McNAMARA: Let me ask a question to make sure I understand the universe of services you provide[d]. In connection with this $130,000, you met -- **is it fair to say that you met with your clients on behalf of SJK to recommend continuing to do business with SJK?**
> THE WITNESS: **Is it fair, yes.**
> MR. McNAMARA: **Is that accurate?**
> THE WITNESS: **Yes.**
>
> * * *
>
> MR. McNAMARA: That leads to my next question. So, another -- **is it fair to say another component of your services was negotiating with Columbia on behalf of SJK?**
> THE WITNESS: **I wouldn't say it was on behalf of SJK, no.**
> MR. McNAMARA: Then what did you do -- **how would you characterize what you did with Columbia?**
> THE WITNESS: I **was negotiating with Columbia on behalf of my clients.**
> MR. McNAMARA: Okay. And were you -- was that one of the services you provided, that I think you described as a one-off, that was included in the $130,000?
> THE WITNESS: Yep.
>
> * * *
>
> MR. McNAMARA: Okay. **Other than facilitating and meeting with clients and interacting with Columbia, were there any other services you provided for which you billed SJK --**
> THE WITNESS: **No.**
> MR. McNAMARA: -- in this one-off? **So, it was just those two components?**
> THE WITNESS: **That's right.**

December 17, 2010 Testimony of Ernest V. Montford, p. 108, line 19 – p. 112, line 5 (emphasis added).[5]

Adding to the mystery of how the amount of the fee – ultimately $210,000 – was determined, Montford testified that he did not keep track of how much time he spent providing services under the agreement, and his description did nothing to suggest effort worth a quarter of his firm's revenue in 2010:

> Q . . . do you have a sense of how many hours you spent or days you spent?
> A. No, but I spent weekends working on it, I can tell you that, and I had to go sometimes to see – I had to go see the president of one school on a Monday morning after I was away for the weekend, to see him, stuff like that.

Id., p. 105, lines 10-15. The fact that Montford made no effort to even keep track of his time undermines Montford's claim that the $210,000 was designed solely to compensate him for time spent in transferring clients to SJK. When pressed for more detail, Montford's account still failed to explain why he was paid such a large sum for what appeared to be a relatively modest time commitment. Asked about the first component of service (meeting with clients on behalf of SJK), Montford revealed that those meetings were few in number and generally did not last long:

> MR. McNAMARA: And with how many clients did you meet?
> THE WITNESS: I don't know, there's probably eight of them, seven or eight of them.
> * * *
> MR. McNAMARA: Okay. So, and how long did those meetings typically last?
> THE WITNESS: Well, one of them lasted most of the morning, I remember that, if you're asking me specifics. Others would be more like half an hour or less, . . .

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[5] Montford ultimately received $210,000 from SJK. When Montford provided testimony before the staff on December 17, 2010, however, he failed to disclose during questioning about the initial payment from SJK that he had received another payment of $80,000 from SJK just seven weeks earlier. In subsequent testimony, Montford explained that in November 2009, Kowalewski told him he would make a second payment after SJK had been in business a year. In November 2010, Montford invoiced and received another $80,000 from SJK, ostensibly for the same work provided under the original, November 30, 2009 invoice.

Id., p. 109, line 2 – p. 110, line 1. Similarly, when asked about the second component of his work, interacting with Columbia Partners, Montford's description was vague as to how much work was actually done:

> MR. McNAMARA: And do you know how much time you spent [negotiating with Columbia Partners]?
> THE WITNESS: Not in total, no. As I said, it went on the whole summer, into the fall.
> MR. McNAMARA: And how did you meet with – how did you engage in discussions with Columbia?
> THE WITNESS: I talked to them, I wrote them a letter or two, they wrote us lots of letters, and caused a good deal of work.
> MR. McNAMARA: Did you ever meet with Columbia representatives in person?
> THE WITNESS: No, other than I met the CEO like a year before, something like that.

Id., p. 110, line 24 – p. 111, line 11.

The agreement was not reduced to writing, but Montford understood that he would be paid after the transition of his clients to SJK was complete:

> MR. McNAMARA: And when would you be paid? What did you understand, the summer when you entered into this arrangement, **when did you understand you would be paid for your services**?
> THE WITNESS: **When the clients get moved over**.

Id., p. 113, lines 11-15 (emphasis added).

Montford's clients' funds were initially transferred from Columbia Partners to SJK between August and October 2009, the bulk of it well after SJK had agreed to pay Montford. After Montford's clients had transferred to SJK, on November 30, 2009, Montford Associates' invoiced SJK for $130,000. The invoice stated: "Marketing and Syndication Fee for the SJK Investment Management LLC Launch." SJK paid Montford Associates the entire amount by wire transfer on January 4, 2010.

After Montford Associates received this initial payment in January 2010, Montford continued to recommend that clients invest additional funds with Kowalewski. Specifically, in

March 2010, June 2010, and July 2010, respectively, three of Montford's clients made additional investments of approximately $4.1 million in the Absolute Return Funds based on Montford's recommendation. Additionally, in September 2010, Montford actively dissuaded another client from withdrawing its more than $1.3 million investment from SJK. According to Montford, the chairman of the client's endowment committee rashly determined that he "didn't like that kind of investment," but Montford insisted on making a presentation to the endowment committee and ultimately succeeded in convincing the client to continue investing with SJK. Montford apprised Kowalewski of his efforts on the matter, forwarding him related correspondence. And on October 1, 2010, one of Montford's clients already invested in the Absolute Return Funds, made a new $7.7 million investment, based on Montford's recommendation, in the then-new "SJK Long/Short Equity Fund."

As mentioned previously, in late October 2010, Kowalewski called Montford and asked him to invoice SJK for an additional $80,000. Montford agreed and, on November 1, 2010, invoiced SJK $80,000 for "Marketing and Syndication." SJK wired the funds to Montford Associates on the same day. Montford testified that he did not know how Kowalewski calculated the amount of the payments.

In total, Montford's clients invested approximately $82 million with SJK.

D. Montford and Montford Associates Did Not Disclose to Clients the Compensation From SJK

Prior to January 2011 (when the Commission filed an emergency action against Kowalewski and SJK), Montford and Montford Associates admit that they did not disclose to clients the marketing and consulting services provided to SJK, or the related $210,000 they received in fees. See Respondents Answer, Paragraph 17 (" . . . Respondents admit that

Respondents did not disclose the services and payments to their clients prior to January 6, 2011. . . .") Respondents had no logical explanation for their failure to disclose this information. Despite also testifying that one of the two components of his work under the agreement with SJK involved meeting "with [his] clients on behalf of SJK to recommend continuing to do business with SJK," Montford testified that he did not disclose the relationship with SJK to his clients because it was a singular project that had nothing to do with them:

> Q I mean, why didn't you disclose it to your clients, again? I'm just trying to make sure I understand.
> A Because it was a business project, one-off. It really had nothing to do with them.

December 17, 2010 Testimony of Ernest V. Montford, p. 108, lines 1-4; 21-24. However, in later testimony, he conceded that there was a potential conflict of interest and that keeping the information from clients was a mistake:

> Q You don't perceive -- Do you perceive any potential conflict of interest?
> A I think it could be perceived as a conflict of interest, yes. I certainly think it could be perceived. Now, as I said, I think it was a mistake on my part not to see that.
> Q And do you believe that these fees could raise the appearance to your clients that your advice may not be objective?
> A Correct. I do agree with that.

March 2, 2011 Testimony of Ernest V. Montford, p. 91, lines 4-13.

III. LEGAL ANALYSIS

A. Montford and Montford Associates Violated Section 206 of the Advisers Act

The Division alleges that Respondents violated the antifraud provisions – Sections 206(1) and 206(2) – of the Advisers Act. Those sections read:

> It shall be unlawful for any investment adviser, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly –
>
> (1) to employ any device, scheme or artifice to defraud any client; and

(2) 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(1), (2). As noted by the Supreme Court in SEC v. Capital Gains Research Bureau, Inc., 375 U.S. 180 (1963), conflicts of interest were a primary concern behind the promulgation of the Advisers Act:

> The report [that culminated in the Advisers Act] reflects the attitude – shared by investment advisers and the Commission – that investment advisers could not 'completely perform their basic function – furnishing to clients on a personal basis competent, unbiased, and continuous advice regarding the sound management of their investments – unless all conflicts of interest between the investment counsel and the client were removed.' The report stressed that affiliations by investment advisers with investment bankers or corporations might be 'an impediment to a disinterested, objective, or critical attitude toward an investment by clients . . . .'
>
> **This concern was not limited to deliberate or conscious impediments to objectivity**. Both the advisers and the Commission were well aware that **whenever advice to a client might result in financial benefit to the adviser – other than the fee for his advice – 'that advice to a client might in some way be tinged with that pecuniary interest (whether consciously or) subconsciously motivated . . . .'**

375 U.S. 187-88 (emphasis added) (footnotes omitted).

Section 206 was thus enacted to benefit the clients of investment advisers. Transamerica Mortgage Advisers, Inc. v. Lewis, 444 U.S. 11, 17 (1979). To that end, "section 206 established 'federal fiduciary standards' to govern the conduct of investment advisers." Id. at 17. As part of these fiduciary standards, the Supreme Court has interpreted the Advisers Act to require the investment adviser to disclose all conflicts of interest which might incline it to consciously or unconsciously render advice which is not disinterested. It has imposed upon the investment adviser "an affirmative duty of 'utmost good faith, and full and fair disclosure of all material facts,'" as well as an affirmative obligation to employ reasonable care to avoid misleading its clients. Capital Gains Research, 375 U.S. at 189–192, 194.

The standard for materiality under Section 206 is that set forth by the Supreme Court in TSC Industries, Inc. v. Northway, Inc., 426 U.S. 438 (1976): "An omitted fact is material if there is a substantial likelihood that a reasonable shareholder would consider it important" when making an investment decision. Steadman v. SEC, 603 F.2d 1126, 1130 (5th Cir. 1979), *aff'd.*, 450 U.S. 91 (1981). "It is indisputable that potential conflicts of interest are 'material' facts with respect to clients and the Commission." Vernazza v. SEC, 327 F.3d 851, 859 (9th Cir. 2003).

Violations of Section 206(1) require scienter. When demonstrating scienter, the Division must show that Respondents knew or were reckless in not knowing that they failed to disclose material information to their clients and the investing public. In the Matter of IMS/CPAS & Associates, et al., Admin. Rel. No. 119, 1998 WL 7448 (Jan. 12, 1998), citing Ernst & Ernst v. Hochfelder, 425 U.S. 185, 194 n.12 (1976) and Hollinger v. Titan Capital Corp., 914 F.2d 1564, 1569-70 (9th Cir. 1990) (en banc); see also Bryant v. Avado Brands, Inc., 187 F.3d 1271, 1282 (11th Cir. 1999) (confirming "extreme recklessness" satisfies scienter in the 11th Circuit). Under § 206(2) there is no required showing of scienter. All that need be shown is that there is a "[f]ailure to disclose material facts." Capital Gains Bureau, 375 U.S. at 195, 200. In addition, the Commission has stated that "[a]n investment adviser's failure to disclose an actual or potential conflict violates Section 206(2)." In The Matter of O'Brien Partners, Inc., Advisers Act Rel. No. 1772, (Oct. 27, 1998) (settled proceeding).

Respondents violated Section 206(1) and (2).[6] Montford and Montford Associates included disclosure in their Forms ADV stating they accepted no fees from investment managers,

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[6] Montford was acting as an investment adviser and thus can be held directly liable under Section 206. See In re John J. Kenny and Nicholson/Kenny Capital Management, Inc., Advisers Act Rel. No. 2128 (May 14, 2003) (Commission opinion). Section 202(a)(11) of the Advisers Act defines an "investment adviser" in relevant part as a "person who, for compensation, engages in the business of advising others . . . as to the value of securities or as to

which was in place before the agreement and first payment from SJK were made, and reiterated thereafter. Yet, they expressly requested money from SJK, an investment manager. And part of the proffered purpose of the money – which Montford clearly testified included meeting with clients on behalf of SJK to recommend doing business with SJK – is obviously improper and demonstrates at least reckless conduct. Moreover, Montford was a securities industry veteran who had operated Montford Associates for over twenty years. Accordingly, he had to know that the other purpose behind the money – interacting with Columbia Partners on behalf of his clients – was work for which he was already being compensated by his advisory fees. And in testimony and in their Answer, Respondents concede they did not disclose the arrangement to any clients prior to January 2011.

There simply is no room for debate that Respondents were subject to a conflict of interest, about which they had made an affirmative misrepresentation, and this was doubly true after Respondents published their Form ADV Part II on March 29, 2010. "It is indisputable that potential conflicts of interest are 'material' facts with respect to clients and the Commission." Vernazza, 327 F.3d at 859. With respect to scienter, a number of facts support the finding that Respondents were either aware of the misrepresentation or reckless in not knowing. First, Montford specifically testified that he was paid to recommend SJK to his clients and, in fact, Montford invoiced SJK for "Marketing and Syndication." Second, Montford continued to recommend SJK after entering into the unwritten August 2009 agreement with Kowalewski for payment. Third, Montford testified that he understood that he would be paid "[w]hen the clients

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the advisability of investing in, purchasing, or selling securities." Montford is the sole owner of Montford Associates, and serves as the firm's President, CEO, and CCO. Montford also recommended investing with SJK to Montford Associates' clients. Thus, Montford meets the definition of "investment adviser."

get moved over." Fourth, *even if* the payments were solely related to administrative services provided to SJK, such payments would still present an actual conflict of interest that should have been disclosed to clients. Fifth, there is no evidence that the payments bear any reasonable relationship to any administrative services provided to SJK.

B. Montford and Montford Associates Violated Section 207 of the Advisers Act

Section 207 of the Advisers Act makes it unlawful for any person willfully to make any untrue statement of a material fact or omit to state any material fact required to be stated in an application or report filed with the Commission.[7] Montford and Montford Associates violated Section 207. Specifically, Montford Associates' Form ADV Part II, dated March 29, 2010, which was prepared by Montford and deemed filed with the Commission, contained material misstatements and/or omitted to state material facts required to be stated in the Forms ADV. Specifically, Item 13 of Form ADV Part II stated that Montford and Montford Associates received no economic benefit from a non-client in connection with giving advice to clients. Schedule F disclosed that Montford Associates would "disclose to clients ... all matters that reasonably could be expected to impair [the firm's] ability to make unbiased and objective recommendations." Also in Schedule F, the Forms ADV specifically disclosed that the firm did "not accept any fees from investment managers or mutual funds." Given the relationship with SJK discussed above, these statements materially misstated the facts at the time and, as such, the 2010 Form ADV was false when filed in violation of Section 207.

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[7] 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).

C. Montford Associates Violated, and Montford Aided, Abetted, and Caused Violations of, Section 204 of the Advisers Act

Section 204 of the Advisers Act and Rule 204-1(a)(2) thereunder require filing and periodic amendment of Form ADV by investment advisers. Rule 204-1(a)(2) specifically provides that a registrant must amend its Form ADV as required by the instructions to the Form ADV. The instructions to the Form ADV specify that a registrant must, in addition to the annual amendment, update, among other things, its brochure (Part II of Form ADV) promptly if information provided therein becomes materially inaccurate. Montford Associates violated Section 204 and Rule 204-1(a)(2). Specifically, Montford Associates' Form ADV Part II for 2009, prepared by Montford and deemed filed with the Commission in March 2009, contained the same disclosures as the 2010 Form ADV, and became materially inaccurate when Montford agreed to receive fees from SJK in August 2009. Montford Associates failed to amend the form, as required by Section 204 of the Advisers Act and Rule 204-1(a)(2), and otherwise failed to correct the materially inaccurate statements.

To establish aiding and abetting liability, the Division must show (i) a securities law violation by a primary wrongdoer, (ii) knowledge of the violation by the person sought to be charged, and (iii) proof that the person sought to be charged substantially assisted in the primary wrongdoing. See Armstrong v. McAlpin, 699 F.2d 79, 91 (2nd Cir. 1983). "Causing liability" requires that: (1) a primary violation occurred; (2) an act or omission by the respondent contributed to the violation; and (3) the respondent knew or should have known that his or her conduct would contribute to the violation. Respondent Montford was President, Chief Executive Officer, Chief Compliance Officer, and 100% owner of Respondent Montford Associates and,

through his knowing misconduct, Montford Associates violated Sections 206(4) and Rule 204-1(a)(2) of the Advisers Act. As such, Montford aided, abetted, and caused those violations.

IV. RELIEF REQUESTED

A. Cease-and-Desist Order

Section 203(k) of the Advisers Act authorizes the Commission to enter an order requiring any person that violated or is, was, or would be a cause of the violation, due to an act or omission the person knew or should have known would contribute to such violation, to cease and desist from committing such violation and any future violation of the same provision, rule or regulation.

Accordingly, based upon the evidence that will be presented at the hearing in this matter, the Court should order Respondents Montford and Montford Associates to cease and desist from committing or causing violations of and any future violations of Sections 206(1), 206(2), 204 and 207 of the Advisers Act and Rule 204-1(a)(2) thereunder.

B. Civil Penalties and Disgorgement Plus Prejudgment Interest

Section 203(i) of the Advisers Act allows the Commission to impose a civil penalty in proceedings instituted pursuant to Sections 203(e) and (f) of the Advisers Act.. Six factors are relevant in determining whether civil monetary penalties are in the public interest: (1) deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; (2) direct or indirect harm to others; (3) unjust enrichment; (4) prior violations; (5) deterrence; and (6) such other matters as justice may require. See Section 203(i) of the Advisors Act. "Not all factors may be relevant in a given case, and the factors need not all carry equal weight." In the Matter of Robert G. Weeks, Admin. Proc. File No. 3-9952.

In this case, Respondents conduct involves deceit, manipulation, and/or deliberate or reckless disregard of a regulatory requirement. Respondent Montford has not been truthful with the Commission or his clients. He received unjust enrichment in the amount of $210,000. And while the Division does not allege that Respondents were aware of Kowalewski's fraud, Respondents violations indirectly caused harm to the investors, Respondents' clients, by advising them to invest with Kowalewski. Under these facts, the Division requests that the Court impose a civil penalty of $25,000 against each Respondent.

Section 203(j) of the Advisers Act allows the Commission to seek an order requiring disgorgement, including prejudgment interest, in administrative proceedings in which the Commission may impose a money penalty. The Commission may also seek disgorgement and prejudgment interest in the cease-and-desist proceedings pursuant to Section 203(k) of the Advisers Act. Disgorgement in an investment adviser case based on a failure to disclose a conflict of interest caused by improper compensation is equal to the amount paid under the agreement – this prevents Respondents from "keep[ing] the fruits of their fraud." In the Matter of IMS/CPAS & Associates, et al., Admin. Rel. No. 119, 1998 WL 7448 at *14 (Jan. 12, 1998); see also SEC v. Washington Co. Utility Dist., et al., 676 F.2d 218, 227 (1981) (reversing district court decision denying disgorgement; "[b]ecause we hold [Defendant] liable for the failure to disclose those payments, we conclude that the district court should order [Defendant] to disgorge a sum of money equal to the total value of all the payments he received . . . .")

In this case, Respondents concede they were paid $210,000. In addition, Rule of Practice 600 specifies that prejudgment interest should begin on the first day of the month following each violation. 17 § C.F.R. 201.600(a). Under these facts, there are a variety of dates that could be

chosen, but the Division suggests April 1, 2010, as it is the first day of the month following the March 29, 2010 adoption of Respondents' Form ADV Part II that retained the language "[w]e do not accept any fees from investment managers . . . ." Using that date and the hearing date as the parameters, prejudgment interest on the $130,000 paid as of April 1, 2010 equals $7,569.63. SEC v. First City Financial Corp., Ltd., 890 F.2d 1215, 1231 (D.C. Cir. 1989).

C. Suspension or Bar

Section 203(e) of the Advisers Act authorizes the Commission to censure, place limitations on the activities, functions, or operations of, or suspend for a period not exceeding twelve months, or revoke the registration of an investment adviser, where it is in the public interest to do so, and where the adviser has been found to have violated the securities statutes. Section 203(f) of the Advisers Act authorizes the Commission to impose similar sanctions on persons associated with an investment adviser, including barring such person from being associated with an investment adviser.

The established criteria for determining what sanctions are appropriate in the public interest include deterrence and:

> the egregiousness of the defendant's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the defendant's assurances against future violations, the defendant's recognition of the wrongful nature of his conduct, and the likelihood that the defendant's occupation will present opportunities for future violations.

Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981); see also In the Matter of Richard C. Spangler, Inc., 46 S.E.C. 238, 254 n.67 (1976).

Here, Respondent Montford acted with scienter, and it is unquestionable that his current occupation will present opportunities for future violations. Respondent Montford claims to have

acknowledged the wrongful nature of his conduct during the latter part of his testimony. However, he failed to disclose his illegal payments to his clients even after he received a Wells Notice. The Division expects Respondents' clients – who knew about the $130,000 from filings in the Kowalewski case, but had no notice of the later $80,000 payment – to testify that he has never to date divulged that part of the deal. This brings into question the sincerity of his assurances against future violations. The Division thus recommends that, to ensure others are deterred from similar conduct and to protect the investing public, Respondent Montford be barred from associating with any investment adviser. The Division further recommends that Respondent Montford be given the opportunity to request that the Commission lift the bar after two years.

V. CONCLUSION

For the foregoing reasons, and based on the evidence to be presented by the Division at the hearing, the Court should find that Respondents violated the Advisers Act provisions set forth in the OIP and grant relief as requested herein.

This 27th day of October, 2011

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EXHIBIT A

Facts Admitted or Stated in Respondents' Answer	Paragraph
Respondents admit that Montford Associates is a registered investment adviser chartered in Georgia with a principal place of business in Atlanta, Georgia.	1
Respondents admit that Montford, age 64, resides in Atlanta, Georgia. During the relevant time period, Montford was President, Chief Executive Officer, Chief Compliance Officer, and 100% owner of Montford Associates.	2
Respondents admit that during the relevant period, Respondents provided fee-based investment advisory services to institutional investors. These services included, among others, recommending investment managers to clients, monitoring manager performance, and reporting quarterly to clients on manager performance. In connection with providing their services, Respondents claimed to provide "independent" investment advice.	5
Respondents admit that Montford Associates' Forms ADV – filed with the Commission in 2009 and 2010, and signed by Montford – included representations regarding Respondents' independence. Item 8.B.3 of Part I of the Forms ADV filed on May 8, 2009 and March 26, 2010 disclosed that Respondents did not have any sales interests in the securities they recommended. Item 13 of Part II, as filed on March 4, 2009 and March 29, 2010, stated that Respondents received no economic benefit from a non-client in connection with giving advice to clients. Schedule F of those same filings represented that Respondents would "disclose to clients … all matters that reasonably could be expected to impair [the firm's] ability to make unbiased and objective recommendations." Also in Schedule F, the Forms ADV specifically disclosed that Respondents did "not accept any fees from investment managers or mutual funds." (Emphasis supplied.) During the relevant period, Respondents made this disclosure directly to clients.	6
Respondents admit that Montford Associates' promotional materials represented that the firm was "a source of independent investment advice for institutional investors." Montford Associates' website contained articles touting the benefits of an "independent" investment adviser. In one, Montford Associates states "[t]he best investment advisors are *independent* – without affiliations to … money managers." In another, Montford states clients "need a strategy they can trust, because investments … should be based on merit, not … undisclosed compensation." Finally, Montford Associates' letterhead claimed that the firm is an "Independent Investment Management Consultant."	7
Respondents admit that Montford, Inc. received two payments totaling $210,000 from SJK Investment Management, LLC ("SJK") and that those payments represented approximately 25 percent of Montford, Inc.'s total revenue in 2010.	8
Respondents state that Respondents notified clients of Kowalewski's departure from the DC Adviser in July 2009, and, as is generally the case, clients were concerned that an investment manager made a change to a different company.	10

Respondents admit that Montford told Kowalewski that Montford Inc. would need to get paid for its work in assisting with Kowalewski's transition to SJK.	11
Respondents admit that they recommended that some clients invest with Kowalewski.	12
Respondents admit client funds were initially transferred from DC Adviser to SJK between August and October 2009, that Montford, Inc. invoiced SJK for $130,000, and that SJK paid Montford, Inc. on January 4, 2010.	13
Respondents admit that after January 4, 2010, Respondents recommended that some clients invest with Kowalewski. Respondents admit that they did recommend that the client referred to in the third sentence of Paragraph 14 not withdraw its investment with SJK.	14
Respondents admit that in November 2010, Montford, Inc. sent SJK a final invoice for $80,000 and that the invoice was paid.	15
Respondents admit that Respondents' clients invested over $80 million with SJK.	16
Respondents admit that Respondents did not disclose the services and payments to their clients prior to January 6, 2011.	17