UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 20-cv-81205-RAR

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

MICHAEL FURMAN et al.,

Defendants.
_____/

COURT'S INSTRUCTIONS TO THE JURY

General Pre-Trial Preliminary Instruction

Members of the Jury: now that you've been sworn, I need to explain some basic principles about a civil trial and your duty as jurors. These are preliminary instructions. I'll give you more detailed instructions at the end of the trial.

It's your duty to listen to the evidence, decide what happened, and apply the law to the facts. It's my job to provide you with the law you must apply – and you must follow the law even if you disagree with it.

What is evidence:

You must decide the case on only the evidence presented in the courtroom. Evidence comes in many forms. It can be testimony about what someone saw, heard, or smelled. It can be an exhibit or a photograph. It can be someone's opinion. Some evidence may prove a fact indirectly. Let's say a witness saw wet grass outside and people walking into the courthouse carrying wet umbrellas. This may be indirect evidence that it rained, even though the witness didn't personally see it rain. Indirect evidence like this is also called "circumstantial evidence" – simply a chain of circumstances that likely proves a fact. As far as the law is concerned, it makes no

difference whether evidence is direct or indirect. You may choose to believe or disbelieve either kind. Your job is to give each piece of evidence whatever weight you think it deserves.

What is not evidence:

During the trial, you'll hear certain things that are not evidence and you must not consider them. First, the lawyers' statements and arguments aren't evidence. In their opening statements and closing arguments, the lawyers will discuss the case. Their remarks may help you follow each side's arguments and presentation of evidence. But the remarks themselves aren't evidence and shouldn't play a role in your deliberations.

Second, the lawyers' questions and objections aren't evidence. Only the witnesses' answers are evidence. Don't decide that something is true just because a lawyer's question suggests that it is. For example, a lawyer may ask a witness, "You saw Mr. Jones hit his sister, didn't you?" That question is not evidence of what the witness saw or what Mr. Jones did – unless the witness agrees with it.

There are rules of evidence that control what the court can receive into evidence. When a lawyer asks a witness a question or presents an exhibit, the opposing lawyer may object if he or she thinks the rules of evidence don't permit it. If I overrule the objection, then the witness may answer the question or the court may receive the exhibit. If I sustain the objection, then the witness cannot answer the question, and the court cannot receive the exhibit. When I sustain an objection to a question, you must ignore the question and not guess what the answer might have been.

Sometimes I may disallow evidence – this is also called "striking" evidence – and order you to disregard or ignore it. That means that you must not consider that evidence when you are deciding the case. I may allow some evidence for only a limited purpose. When I instruct you that

I have admitted an item of evidence for a limited purpose, you must consider it for only that purpose and no other.

Credibility of witnesses:

To reach a verdict, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, part of it, or none of it. When considering a witness's testimony, you may take into account:

· the witness's opportunity and ability to see, hear, or know the things the witness is testifying about;

· the witness's memory;

· the witness's manner while testifying;

· any interest the witness has in the outcome of the case;

· any bias or prejudice the witness may have;

· any other evidence that contradicts the witness's testimony;

· the reasonableness of the witness's testimony in light of all the evidence; and

· any other factors affecting believability.

At the end of the trial, I'll give you additional guidelines for determining a witness's credibility.

Description of the case:

This is a civil case. To help you follow the evidence, I'll summarize the parties' positions. The Plaintiff, the Securities and Exchange Commission, which is also known as the SEC, claims Defendant Michael Furman violated the federal securities laws by: (1) acting as a necessary participant or substantial factor in the unregistered Par Funding offering of promissory notes,

Plaintiff's Proposed Language: in that Mr. Furman drew prospective investors in to invest in Fidelis Planning for the ultimate purpose of raising money for Par Funding's unregistered offer

and sale of promissory notes.

Defendant objects to the inclusion of the above underlined language.

(2) The SEC also alleges that Mr. Furman made material false and/or misleading statements and/or omissions in connection with the offer or sale of the investments, and that Mr. Furman's omissions made his representations and assurances to investors false or misleading. For example, the SEC alleges that Mr. Furman touted the due diligence he had performed on Par Funding, the full transparency of the investment, and the fact that he had met with Par Funding's executives, but failed to disclose to investors that one of these Par Funding executives running the Par Funding MCA business was a convicted felon. The SEC also alleges that Mr. Furman touted the success of Par Funding to potential investors, but omitted the fact that the Pennsylvania Department of Banking and Securities had issued an Order against Par Funding for violating securities laws in connection with the offer and sale of Par Funding promissory notes, the New Jersey Division of Securities had entered a Cease and Desist Order against Par Funding for violating securities laws in connection with the offer and sale of Par Funding promissory notes, and the Texas Securities Board had entered an Emergency Cease and Desist Order against Par Funding, Par Funding executive Perry Abbonizio, and ABFP, which was managing Mr. Furman's investment fund, for violating securities laws and engaging in fraud in connection with the offer and sale of Par Funding promissory notes.

The SEC also alleges that Mr. Furman misrepresented the New Jersey Division of Securities Order entered against Par Funding by falsely claiming these state regulators had retracted the Order and had made positive findings about Par Funding.

The SEC further alleges that Mr. Furman made material misrepresentations, misleading statements, and/or omissions verbally or through marketing materials or private placement

memorandum he distributed to investors about: the 1% default rate of Par Funding's Merchant Cash Advance Loans **(Plaintiff's proposed language** and the 2,000 lawsuits Par Funding) filed against merchant borrowers in default on their Merchant Cash Advance Loans; Par Funding (**Plaintiff's proposed language** always) conducting onsite inspections; and the fact that Pennsylvania and Texas securities regulators had sanctioned ABFP, which was managing Mr. Furman's investment firm and had access to investors' funds.

Defendant objects to the underlined language above. Furman's knowledge of the number of lawsuits filed was not part of the SEC's case, and there is no allegation that Mr. Furman stated that Par Funding always conducted onsite

(3) The SEC also alleges that Mr. Furman engaged in a fraudulent scheme and employed deceptive devices, including using the agent fund Fidelis Financial Planning and making materially false statements and omissions to investors to raise investor funds for Par Funding.

Michael Furman denies these claims and claims that he acted in good faith and committed no securities laws violations, and that his statements were otherwise true. Furman also contends that he was not under an obligation to disclose the alleged omissions, and that he had any knowledge of the omissions.

Burden of proof:

The SEC has the burden of proving its case by what the law calls a "preponderance of the evidence." That means the SEC must prove that, in light of all the evidence, what it claims is more likely true than not. So, if you could put the evidence favoring the SEC and the evidence favoring the Defendant on opposite sides of balancing scales, the SEC needs to make the scales tip to its side. If the SEC fails to meet this burden, you must find in favor of the Defendant. To decide whether any fact has been proved by a preponderance of the evidence, you may – unless I instruct

you otherwise – consider the testimony of all witnesses, regardless of who called them, and all exhibits that the court allowed, regardless of who produced them. After considering all the evidence, if you decide a claim or fact is more likely true than not, then the claim or fact has been proved by a preponderance of the evidence.

On certain issues, called "affirmative defenses," the Defendant has the burden of proving the elements of a defense by a preponderance of the evidence. I'll instruct you on the facts any Defendant must prove for any affirmative defense. After considering all the evidence, if you decide that any Defendant has proven that the required facts are more likely true than not, the affirmative defense is proved.

Conduct of the jury:

While serving on the jury, you may not talk with anyone about anything related to the case. You may tell people that you're a juror and give them information about when you must be in court. But you must not discuss anything about the case itself with anyone. You shouldn't even talk about the case with each other until you begin your deliberations. You want to make sure you've heard everything – all the evidence, the lawyers' closing arguments, and my instructions on the law – before you begin deliberating. You should keep an open mind until the end of the trial. Premature discussions may lead to a premature decision.

In this age of technology, I want to emphasize that in addition to not talking face-to-face with anyone about the case, you must not communicate with anyone about the case by any other means. This includes e-mails, text messages, phone calls, and the Internet, including social-networking websites and apps such as Facebook, Instagram, Snapchat, YouTube, and Twitter. You may not use any similar technology of social media, even if I have not specifically mentioned it here. You must not provide any information about the case to anyone by any means whatsoever,

and that includes posting information about the case, or what you are doing in the case, on any device or Internet site, including blogs, chat rooms, social websites, or any other means.

You also shouldn't Google or search online or offline for any information about the case, the parties, or the law. Don't read or listen to the news about this case, visit any places related to this case, or research any fact, issue, or law related to this case. The law forbids the jurors to talk with anyone else about the case and forbids anyone else to talk to the jurors about it. It's very important that you understand why these rules exist and why they're so important. You must base your decision only on the testimony and other evidence presented in the courtroom. It is not fair to the parties if you base your decision in any way on information you acquire outside the courtroom. For example, the law often uses words and phrases in special ways, so it's important that any definitions you hear come only from me and not from any other source. Only you jurors can decide a verdict in this case. The law sees only you as fair, and only you have promised to be fair – no one else is so qualified.

Taking notes:

If you wish, you may take notes to help you remember what the witnesses said. If you do take notes, please don't share them with anyone until you go to the jury room to decide the case. Don't let note-taking distract you from carefully listening to and observing the witnesses. When you leave the courtroom, you should leave your notes hidden from view in the jury room. Whether or not you take notes, you should rely on your own memory of the testimony. Your notes are there only to help your memory. They're not entitled to greater weight than your memory or impression about the testimony.

Course of the trial:

Let's walk through the trial. First, each side may make an opening statement, although they don't have to. Remember, an opening statement isn't evidence, and it's not supposed to be argumentative; it's just an outline of what that party intends to prove.

Next, the SEC will present its witnesses and ask them questions. After the SEC questions the witness, the Defendant may ask the witness questions – this is called "cross-examining" the witness. Then the Defendant will present his witnesses, and the SEC may cross-examine them. You should base your decision on all the evidence, regardless of which party presented it.

After all the evidence is in, the parties' lawyers will present their closing arguments to summarize and interpret the evidence for you, and then I'll give you instructions on the law. You'll then go to the jury room to deliberate.

Eleventh Circuit Pattern Jury Instruction 1.1

Post-Trial Instructions

Introduction

Members of the jury:

It's my duty to instruct you on the rules of law that you must use in deciding this case.

When I have finished you will go to the jury room and begin your discussions, sometimes called deliberations.

Eleventh Circuit Pattern Jury Instruction 3.1

The Duty to Follow Instructions – Government Entity or Agency Involved

Your decision must be based only on the evidence presented here. You must not be influenced in any way by either sympathy for or prejudice against anyone.

You must follow the law as I explain it – even if you do not agree with the law – and you must follow all of my instructions as a whole. You must not single out or disregard any of the instructions on the law.

The Plaintiff in this case is the Securities and Exchange Commission. The fact that a governmental entity or agency is involved as a party must not affect your decision in any way. A governmental agency and all other persons stand equal before the law and must be dealt with as equals in a court of justice.

When a governmental agency is involved, of course, it may act only through people as its employees; and, in general, a governmental agency is responsible under the law for the acts and statements of its employees that are made within the scope of their duties as employees of the governmental agency.

Eleventh Circuit Pattern Jury Instruction 3.2.3

Consideration of Direct and Circumstantial Evidence;
Argument of Counsel; Comments by the Court

As I said before, you must consider only the evidence that I have admitted in the case. Evidence includes the testimony of witnesses and the exhibits admitted. But, anything the lawyers say is not evidence and isn't binding on you.

You shouldn't assume from anything I've said that I have any opinion about any factual issue in this case. Except for my instructions to you on the law including whether to consider evidence for only a limited purpose, you should disregard anything else I may have said during the trial in arriving at your own decision about the facts. Your own recollection and interpretation of the evidence is what matters.

In considering the evidence you may use reasoning and common sense to make deductions and reach conclusions. You shouldn't be concerned about whether the evidence is direct or circumstantial.

"Direct evidence" is the testimony of a person who asserts that he or she has actual knowledge of a fact, such as an eyewitness.

"Circumstantial evidence" is proof of a chain of facts and circumstances that tend to prove or disprove a fact. There's no legal difference in the weight you may give to either direct or circumstantial evidence.

Eleventh Circuit Pattern Jury Instruction 3.3

Credibility of Witnesses

When I say you must consider all the evidence, I don't mean that you must accept all the evidence as true or accurate. You should decide whether you believe what each witness had to say, and how important that testimony was. In making that decision you may believe or disbelieve any witness, in whole or in part. The number of witnesses testifying concerning a particular point doesn't necessarily matter.

To decide whether you believe any witness I suggest that you ask yourself a few questions:

1. Did the witness impress you as one who was telling the truth?
2. Did the witness have any particular reason not to tell the truth?
3. Did the witness have a personal interest in the outcome of the case?
4. Did the witness seem to have a good memory?
5. Did the witness have the opportunity and ability to accurately observe the things he or she testified about?
6. Did the witness appear to understand the questions clearly and answer them directly?
7. Did the witness's testimony differ from other testimony or other evidence?
8. Did the witness have any bias or motive which may affect their credibility?

Eleventh Circuit Pattern Jury Instruction 3.4

Impeachment of Witnesses Because of Inconsistent Statements

You should also ask yourself whether there was evidence that a witness testified falsely about an important fact. And ask whether there was evidence that at some other time a witness said or did something, or didn't say or do something, that was different from the testimony the witness gave during this trial.

But keep in mind that a simple mistake doesn't mean a witness wasn't telling the truth as he or she remembers it. People naturally tend to forget some things or remember them inaccurately. So, if a witness misstated something, you must decide whether it was because of an innocent lapse in memory or an intentional deception. The significance of your decision may depend on whether the misstatement is about an important fact or about an unimportant detail.

Eleventh Circuit Pattern Jury Instruction 3.5.1

Responsibility for Proof – Plaintiff's Claims, Preponderance of the Evidence

In this case it is the responsibility of the SEC to prove every essential part of its claims by a "preponderance of the evidence." This is sometimes called the "burden of proof" or the "burden of persuasion."

A "preponderance of the evidence" simply means an amount of evidence that is enough to persuade you that the SEC's claim is more likely true than not true. If the proof fails to establish any essential part of a claim or contention by a preponderance of the evidence, you should find against the SEC on that claim.

When more than one claim is involved, you should consider each claim separately.

In deciding whether any fact has been proved by a preponderance of the evidence, you may consider the testimony of all of the witnesses, regardless of who may have called them, and all of the exhibits received in evidence, regardless of who may have produced them.

If the proof fails to establish any essential part of the SEC's claim by a preponderance of the evidence, you should find that the Defendant is not liable as to that claim or claims.

Eleventh Circuit Pattern Jury Instruction 3.7.1

Stipulations

Sometimes the parties have agreed that certain facts are true. This agreement is called a stipulation. You must treat these facts as proved for this case.

The parties have stipulated to the following facts:

1. The Par Funding, Fidelis, and ABFP notes are securities.
2. Par Funding was started by Lisa McElhone in about 2011, and Par Funding offered promissory notes from 2012 to July 2020.
3. Par Funding was registered to do business in Florida, represented it was headquartered in Florida, and operated out of offices in Philadelphia.
4. The LME 2017 Family Trust was Par Funding's sole owner, and McElhone was one of Par Funding's officers and the only employee. Ms. McElhone was the grantor of the LME Trust, and Ms. McElhone and Joseph LaForte were its trustees.
5. On October 4, 2006, LaForte was convicted of state felony charges in New York for grand larceny and money laundering. In 2009, LaForte pled guilty to criminal charges in the U.S. District Court for the District of New Jersey for conspiracy to operate an illegal gambling business.
6. Joseph Cole is a resident of Philadelphia who served as the CFO for Par Funding from 2016 until July 2020.
7. During the relevant time period, Par Funding raised money through the offer and sale of promissory notes. Par Funding issued 12-month promissory notes stating the note holder would receive various annual interest rates.
8. Dean Vagnozzi was also the owner of A Better Financial Plan and ABFP Management.
9. From 2016 until July 2020, Perry Abbonizio was the investor relations liaison for Par Funding.

10. Furman is a resident of Florida who through his company United Fidelis Group Corp., operated and managed Fidelis Financial Planning LLC, which offered, sold, and issued promissory notes to investors.
11. At all times, Fidelis Financial Planning operated out of West Palm Beach, Florida.
12. **Plaintiff's proposed language:** No registration statement was filed or in effect with the Commission with respect to the offer and sale of Par Funding's promissory notes, ABFP's promissory notes, or Fidelis promissory notes at any time.

Eleventh Circuit Pattern Jury Instruction 2.1

Use of Depositions

A deposition is a witness's sworn testimony that is taken before the trial. During a deposition, the witness is under oath and swears to tell the truth, and the lawyers for each party may ask the questions. A court reporter is present and records the questions and answers.

During the trial, portions of certain depositions were presented to you by reading the transcript. Deposition testimony is entitled to the same consideration as live testimony, and you must judge it in the same way as if the witness was testifying in court.

Do not place any significance on the behavior or tone of voice of any person reading the questions or answers.

Eleventh Circuit Pattern Jury Instruction 2.2

Use of Recorded and Video Conversations

During the course of the trial, you heard and saw videos and recordings of conversations. This is proper evidence for you to consider. Yo u also were given transcripts of the recordings and videos to help you identify speakers and guide you through the recordings and videos. But remember that it is the recording or the video that is evidence, not the transcript. If you believe at any point that the transcript said something different from what you saw or heard on the recording or the video, disregard that portion of the transcript and rely instead on what you saw or heard.

Eleventh Circuit Pattern Jury Instruction 2.3

Assertion of the Fifth Amendment

You reviewed Mr. Furman's response to Request for Admissions in which Michael Furman exercised his privilege under the Fifth Amendment to the U.S. Constitution. With respect to Mr. Furman, you are permitted, but not required, to draw an adverse inference against him that had he answered the questions to which he asserted his Fifth Amendment privilege, the answers may have been adverse to his interests. Any inference you draw should be based on all of the facts and circumstances in this case as you find them.

Defendant objects to the Proposed Jury Instruction

***Coquina Investments v. TD Bank, N.A.*, 760 F.3d 1300, 1309-11 & n.8 (11th Cir. 2014) (rejecting challenge to instructions regarding inferences which may be drawn against a defendant from a third-party's invocation of Fifth Amendment); O'Malley, Grenig and Lee, *3 Federal Jury Practice and Instructions-Civil*, § 104.28 (6th ed.); *SEC v. Jasper*, 678 F.3d 1116, 1125-27 (9th Cir. 2012) (approving district court's instructions to jury regarding Fifth Amendment); *SEC v. Burmaster, et al.*, Case No. 2:10-cv-577, Court's Instructions To The Jury (DE 225) (M.D. Fla. Aug. 7, 2014).**

The Commission's Claims

In this case, the SEC brings seven claims, or counts. The first, second, and third counts are brought under Section 10(b) and Rule 10b-5 of the Exchange Act. The fourth, fifth, and sixth counts are brought under Section 17(a) of the Securities Act. The seventh count is brought under Sections 5(a) and (c) of the Securities Act. I will now give you additional instructions on each count.

Count I Section 10(b) and Rule 10b-5(a) of the Exchange Act

The SEC, asserts claims under the Securities Exchange Act of 1934.

The Exchange Act is a federal statute that allows the SEC to enact rules and regulations prohibiting certain conduct in the purchase or sale of securities. Rule 10b-5(a) makes it unlawful for a person to employ any device, scheme, or artifice to defraud someone else in connection with the purchase or sale of any security.

A "security" is an investment in a commercial, financial, or other business enterprise with the expectation that profits or other gain will be produced by others. Some common types of securities are stocks, bonds, debentures, warrants and investment contracts.

The promissory notes at issue in this case are securities.

To prove a claim under Section 10(b) and Rule 10b-5(a) against Mr. Furman, the SEC must prove each of the following facts by a preponderance of the evidence:

First, you must find that Michael Furman used an instrumentality of interstate commerce in connection with the purchase or sale of a security.

Second, you must find that the Defendant: used a device, scheme, or artifice to defraud someone in connection with the purchase or sale of a security.

And third, you must find the Defendant acted knowingly or with severe recklessness.

Plaintiff's proposed language: For the first element – that an instrumentality of interstate commerce was used in connection with the purchase or sale of a security – you must use these definitions: "Instrumentality of interstate commerce" means the use of the mails, telephone, Internet, or some other form of electronic communication, or an interstate delivery system such as Federal Express or UPS.

For the second element, Mr. Furman must prove that Mr. Furman used a device, scheme, or artifice to defraud in connection with the purchase or sale of a security. The SEC does not need

to identify any particular purchase or sale of securities by a specific person, including Mr. Furman. Rather, it's enough if the SEC proves that the device, scheme, or artifice to defraud used by Mr. Furman involved, or touched in any way, the purchase or sale of securities.

A "scheme" is a design or plan formed to accomplish some improper purpose. A "device," when used in an unfavorable sense, is a "trick" or "fraud." Put another way, the terms "device, scheme, or artifice to defraud" would refer to any improper plan or course of action that involves: (1) false or fraudulent pretenses, (2) untrue statements of material facts, (3) omissions of material facts, or (4) representations, promises, and patterns of conduct calculated to deceive.

A misstatement or omission of fact is "material" if there is a substantial likelihood that a reasonable investor would attach importance to the misrepresented or omitted fact in determining his course of action. Put another way, there must be a substantial likelihood that a reasonable investor would view the misstated or omitted fact's disclosure as significantly altering the total mix of available information. A minor or trivial detail is not a "material fact."

Defendants' propose: A fraudulent device or scheme is the knowing use of a deceitful practice or willful device with the intent to obtain an unjust advantage or cause a loss to another. An untrue statement of material fact or the omission of a material fact is a fact which would tend to mislead the prospective buyer or seller of a security. The alleged misrepresentation must relate to the purchase or sale of a security.[1]

A misstatement or omission of fact is "material" if there is a substantial likelihood that a reasonable investor would attach importance to the misrepresented or omitted fact in determining his or her course of action. Put another way, there must be a substantial likelihood that a reasonable

[1] *SEC v. Goble*, 2012 WL 1918819 (11th Cir. 2012).

investor would view the misstated or omitted fact's disclosure as significantly altering the total mix of available information. A minor or trivial detail is not a "material fact."

For the third element, the SEC must prove that Mr. Furman acted knowingly or with severe recklessness. The term "knowingly" means that Mr. Furman acted with an intent to deceive, manipulate, or defraud. But Mr. Furman did not act knowingly if he acted inadvertently, carelessly, or by mistake.

To act with "severe recklessness" means to engage in conduct that involves an extreme departure from the standard of ordinary care. A person acts with reckless disregard if it's obvious that an ordinary person under the circumstances would have realized the danger and taken care to avoid the harm likely to follow.

If you find that the SEC has proved one or more of its claims against Mr. Furman, I alone will determine the remedy or remedies to be imposed later.

Defendants' propose: All of these elements must be proved by the SEC by a preponderance of the evidence for a finding of liability as to any Defendant. A failure by the SEC to prove any element must result in a finding of no liability.

Modified 11th Circuit Pattern Jury Instruction 6.1

Plaintiff objects to Defendant's suggested changes to the Pattern Jury Instruction

Defendant's proposed language: *Defendant object to Plaintiff's addition of the sentence, "The promissory notes at issue in this case are securities." Plaintiff must prove that the offerings at issue involved securities, and this language directs the jury to make this finding*.

Count II – Section 10(b) and Rule 10b-5(b) of the Exchange Act

In Count II, the SEC alleges that Michael Furman violated Section 10(b) of the Exchange Act and Exchange Act Rule 10b-5(b). Rule 10b-5(b) makes it unlawful for a person to misrepresent a material fact, or omit to state a material fact, in connection with the purchase or sale of a security. The definition of the term "security" is the same as the definition I gave you in Count I.

To prove a claim under Section 10(b) and Rule 10b-5(b), the SEC must prove each of the following facts by a preponderance of the evidence:

First, you must find the Defendant used an instrumentality of interstate commerce in connection with the purchase or sale of a security.

Second, you must find that the Defendant made a misrepresentation of a material fact, or omitted to state a material fact, in connection with the purchase or sale of a security.

Third, you must find the Defendant acted knowingly or with severe recklessness.

For the first element, the definitions of the terms "sale" and "instrumentality of interstate commerce" are the same as I gave you in Count I.

For the second element, the SEC must prove that the Defendant either made an untrue statement of material fact or omitted a material fact, either of which would tend to mislead the prospective buyer or seller of a security.

A "misrepresentation" is a statement that is not true. An "omission" is the failure to state facts that would be necessary to make the statements made Mr. Furman not misleading.

A misstatement or omission of fact is "material" if there is a substantial likelihood that a reasonable investor would attach importance to the misrepresented or omitted fact in determining his or her course of action. Put another way, there must be a substantial likelihood that a reasonable

investor would view the misstated or omitted fact's disclosure as significantly altering the total mix of available information. A minor or trivial detail is not a "material fact."

The SEC does not need to identify any particular purchase or sale of securities by a specific person, including Mr. Furman. Rather, it's enough if the SEC proves that the misrepresentation or omission involved or touched any purchase or sale of a security in any way. The SEC claims that Mr. Furman made the following misrepresentations or omissions regarding:

(a) the success of Par Funding;

(b) the safety of the investment;

(c) the identity of the person controlling Par Funding and the fact that he was a convicted felon;

(d) that the Pennsylvania Department of Banking and Securities had issued an Order against Par Funding for violating securities laws in connection with the offer and sale of Par Funding promissory notes,

(e) that the New Jersey Division of Securities had entered a Cease and Desist Order against Par Funding for violating securities laws in connection with the offer and sale of Par Funding promissory notes,

(f) that the Texas Securities Board had entered an Emergency Cease and Desist Order against Par Funding, Par Funding executive Perry Abbonizio, and ABFP, which was managing Mr. Furman's investment fund, for violating securities laws and engaging in fraud in connection with the offer and sale of Par Funding promissory notes,

(g) that the New Jersey Division of Securities had retracted its Order against Par Funding and had made positive findings about Par Funding.

(h) That the Pennsylvania Department of Banking and Securities had issued an Order against Dean Vagnozzi/ABFP, which was managing Mr. Furman's investment fund, for violating securities laws in connection with the Par Funding securities offering and had issued sanctions;

(i) that the merchant cash advances were insured:

(j) that Par Funding's merchant case advances had a 1% default rate;

(k) that Par Funding always conducted an onsite inspection of a merchant borrower before advancing a merchant money.

For the second element, the SEC must first prove that Mr. Furman made one or more of the alleged misrepresentations of fact or omitted facts that would be necessary to prevent other statements made by Mr. Furman from being misleading. And second, that the misrepresentation or omission involved "material" facts. If Mr. Furman has previously made false or inaccurate statements regarding material facts, such as statements or information he sent to investors, or statements he made in press releases, he has a duty to correct those statements if it is discovered later that those statements weren't true when made and they remain material to a shareholder's investment decision.

For the third element, the SEC must prove that Mr. Furman made the alleged misrepresentations or omissions knowingly, or with severe recklessness. The definitions of the terms "knowingly" and "severe recklessness" are the same as I gave you in Count I.

As an example, Mr. Furman acted "knowingly" or with severe recklessness if he stated material facts that he knew were false or [stated untrue facts with reckless disregard for their truth or falsity or didn't disclose material facts that he knew or was severely reckless in not knowing, and knew or was severely reckless in not knowing that disclosing those facts was necessary to avoid making his other statements misleading.

If you find that the SEC has proved one or more of its claims against Mr. Furman, I alone will determine the remedy or remedies to be imposed later.

Defendant's proposed language: *All of these elements must be proved by the SEC by a preponderance of the evidence for a finding of liability as to any Defendant. A failure by the SEC to prove any element must result in a finding of no liability.*

Plaintiff proposed language: To find for the SEC on the second element, you need only find that the Defendant made or was responsible for one misrepresentation or omission.

Eleventh Circuit Pattern Jury Instruction 6.2

Plaintiff objects to Defendant's suggested changes to the Pattern Jury Instruction.

Count III – Exchange Act Section 10(b) and Rule 10b-5(c)

In Count III, the SEC alleges that Michael Furman violated Section 10(b) of the Exchange Act and Exchange Act Rule 10b-5(c). Rule 10b-5(c) makes it unlawful for a person to engage in any practice or course of dealing that would operate as a fraud in connection with the purchase or sale of any security.

The definition of the term "security" is the same as the definition I gave you in Count I.

To prove a claim under Section 10(b) and Rule 10b-5(c), the SEC must prove each of the following facts by a preponderance of the evidence:

First, you must find that Mr. Furman used an instrumentality of interstate commerce in connection with the purchase or sale of a security.

Second, you must find that Mr. Furman engaged in an act, practice, or course of business in connection with the purchase or sale of a security that operated or would operate as a fraud or deceit on any person.

Third, you must find that Mr. Furman acted knowingly or with severe recklessness.

For the first element, the definitions of the terms "sale" and "instrumentality of interstate commerce" are the same as I gave you in Count I.

For the second element, the SEC must prove that Mr. Furman engaged in any act, practice, or course of business, in connection with the purchase or sale of a security, that operated or would operate as a fraud or deceit on any person. The SEC does not need to identify any particular purchase or sale of securities by a specific person, including Mr. Furman. Rather, it is enough if the SEC proves that the act, practice, or course of business that Mr. Furman engaged in involved, or touched in any way, the purchase or sale of securities.

***Defendant's proposed language**: The SEC must prove that the act, practice, or course of deceitful or fraudulent business that a Defendant engaged in involved the purchase or sale of*

securities. [2]

Plaintiff's proposed language: A "fraud or deceit" means a lie or a trick. A fraud or deceit doesn't have to relate to an investment's quality or actually result in the purchase or sale of any security. It's not necessary that Mr. Furman who was allegedly involved in the fraud or deceit, sold or purchased securities personally if the fraudulent or deceitful conduct defrauded some person.

Defendant's proposed language *As noted before, a fraudulent device is the knowing use of a deceitful practice or willful device with the intent to obtain an unjust advantage or cause a loss to another. A fraud or deceit doesn't have to actually result in the purchase or sale of any security.*

The term "would" in the phrase "would operate as a fraud or deceit" means that the act, practice, or course of business had the capacity to defraud a purchaser or seller.

Defendant's proposed language: *This means that the allegedly improper practice or course of dealing must have been sufficiently material to have the capacity to defraud a purchaser or seller. I have defined "materiality" above.*

It's not necessary that the act, practice, or course of business actually defrauded someone.

For the third element, the definition of the terms "knowingly" and "severe recklessness" are the same as I gave you in Count I.

If you find that the SEC has proved one or more of its claims against Mr. Furman, I alone will determine the remedy or remedies to be imposed later.

Defendant's proposed language: *A failure by the SEC to prove any element must result in a finding of no liability as to Count Three.*

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[2] See *SEC v. Goble*, 2012 WL 1918819 (11th Cir. 2012).

Eleventh Circuit Pattern Jury Instruction 6.4

Plaintiff objects to Defendant's suggested changes to the Pattern Jury Instruction.

Defendant objects to Plaintiff's suggested changes to the Pattern Jury Instruction.

Count IV - Section 17(a)(1) of the Securities Act

In Counts IV, V, and VI, the SEC asserts claims under the Securities Act of 1933. The Securities Act is a federal statute prohibiting certain conduct in the offer or sale of securities. Section 17(a)(1), like Section 10(b) and Rule 10b-5, makes it unlawful for a person to employ any device, scheme, or artifice to defraud in connection with the offer or sale of any security .

Defendant's proposed language: *If you find that the promissory notes were not securities you need not deliberate any further as the Count Four and must find no liability as to Count Four.*

In Count IV, the SEC alleges that Michael Furman violated Section 17(a)(1) of the Securities Act, which makes it unlawful for a person to employ any device, scheme, or artifice to defraud in the offer or sale of any security.

The definition of the terms "security" and "sale" are the same as I gave you in Count I. An "offer," "offer to sell," or "offer for sale" means attempting to dispose of a security or an interest in a security for value by inviting buyers.

To prove a claim under Section 17(a)(1) of the Securities Act, the SEC must prove each of the following facts by a preponderance of the evidence:

First, you must find that the Defendant used an instrumentality of interstate commerce in the offer to sell or sale of a security.

Second, you must find that the Defendant used a device, scheme, or artifice to defraud someone in the offer to sell or sale of a security.

And third, you must find that the Defendant acted knowingly or with severe recklessness.

For the first element, the definition of the term "instrumentality of interstate commerce" is the same as the definition as I gave you in Count I.

For the second element, the SEC must prove that the Defendant used a device, scheme, or artifice to defraud in the offer to sell or sale of a security. The definitions of the terms "device," "scheme," and "artifice to defraud" are the same as those I previously gave you. The Commission does not need to identify any particular offer to sell or sale of securities by a specific person, including the Defendant. Rather, it is enough if the SEC proves that the device, scheme, or artifice to defraud that the Defendant used or employed involved the offer to sell or sale of securities.

For the third element, the definition of the terms "knowingly" and "severe recklessness" are the same as I gave you in Count I.

If you find that the SEC has proved one or more of its claims against [name of defendant], I alone will determine the remedy or remedies to be imposed later.

Defendant's proposed language *A failure by the SEC to prove any element must result in a finding of no liability as to Count Four.*

Eleventh Circuit Pattern Jury Instruction 6.8

Plaintiff objects to Defendant's suggested changes to the Pattern Jury Instruction.

Count V - Section 17(a)(2) of the Securities Act

In Count V, the SEC alleges that Michael Furman violated Section 17(a)(2) of the Securities Act. Section 17(a)(2) makes it unlawful for a person to obtain money or property using any untrue statement of a material fact or by omitting any material fact necessary to make statements, in light of the circumstances under which they were made, not misleading in the offer to sell or sale of a security.

The definition of the term "security" is the same as I gave you in Count I.

To prove a claim under Securities Act Section 17(a)(2) of the Securities Act, the SEC must prove each of the following facts by a preponderance of the evidence:

First, you must find the Defendant used an instrumentality of interstate commerce in connection with the offer to sell or sale of a security.

Second, you must find the Defendant directly or indirectly made one or more misrepresentations of material fact or omissions of material fact in the offer to sell or sale of a security.

Third, you must find the Defendant was negligent in making the representation or omission.

For the first element, the definitions of the terms "instrumentality of interstate commerce," "sale," and "offer to sell" are the same as those I previously gave you.

For the second element, to prove its claim under Section 17(a)(2), the SEC must prove that the Defendant made a misrepresentation of material fact or an omission of material fact

The SEC claims that Mr. Furman is responsible for the following misrepresentations of fact or omissions regarding:

(a) the success of Par Funding;

(b) the safety of the investment;

(c) the identity of the person controlling Par Funding and the fact that he was a convicted felon;

(d) that the Pennsylvania Department of Banking and Securities had issued an Order against Par Funding for violating securities laws in connection with the offer and sale of Par Funding promissory notes,

(e) that the New Jersey Division of Securities had entered a Cease and Desist Order against Par Funding for violating securities laws in connection with the offer and sale of Par Funding promissory notes,

(f) that the Texas Securities Board had entered an Emergency Cease and Desist Order against Par Funding, Par Funding executive Perry Abbonizio, and ABFP, which was managing Mr. Furman's investment fund, for violating securities laws and engaging in fraud in connection with the offer and sale of Par Funding promissory notes.

(g) that the New Jersey Division of Securities had retracted its Order against Par Funding and had made positive findings about Par Funding.

(h) That the Pennsylvania Department of Banking and Securities had issued an Order against Dean Vagnozzi/ABFP, which was managing Mr. Furman's investment fund, for violating securities laws in connection with the Par Funding securities offering and had issued sanctions;

(i) that the merchant cash advances were insured:

(j) that Par Funding's merchant case advances had a 1% default rate;

(k) that Par Funding always conducted onsite inspections of merchant borrowers before advancing a merchant money.

The same definitions of the terms "misrepresentation," "omission," and "material" are the same as I previously gave you.

For the third element, the SEC must prove the Defendant was negligent in making materially false or misleading statements or omissions in connection with the offer to sell or sale of a security. "Negligence" is the failure to exercise the due diligence, care, or competence that a reasonable person would when making representations. Ask yourself: Would a reasonable person have omitted or made the statements?

If you find that the SEC has proved one or more of its claims against Mr. Furman, I alone will determine the remedy or remedies to be imposed later.

Defendant's proposed language: *A failure by the SEC to prove any element must result in a finding of no liability as to Count Five.*

Eleventh Circuit Pattern Jury Instruction 6.9

Plaintiff's object to Defendant's suggested changes to the Pattern Jury Instruction.

Count VI - Section 17(a)(3) of the Securities Act

In Count VI, the SEC alleges that the Defendant's violated Section 17(a)(3) of the Securities Act. Section 17(a)(3) makes it unlawful for a person, in the offer or sale of a security, to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

You should use the definition of the term "security" that I gave you in Count I.

Defendant's proposed language: *If you find that the promissory notes were not securities you need not deliberate any further as to Count Six.*

To prove a claim under Securities Act Section 17(a)1., the SEC must prove each of the following facts by a preponderance of the evidence:

First, you must find the Defendant used an instrumentality of interstate commerce in the offer to sell or sale of a security;

Second, you must find the Defendant engaged in a transaction, practice, or course of business, in connection with the offer to sell or sale of a security, that operated or would operate as a fraud or deceit upon a purchaser; and

Third, you must find the Defendant was negligent in engaging in the transaction, practice, or course of business.

For the first element, you should use the definitions of "instrumentality of interstate commerce," "sale," and "offer to sell" that I previously gave you.

For the second element, the SEC must prove the Defendant engaged in any act, practice, or course of business, in the offer to sell or sale of a security, that operated or would operate as a fraud or deceit upon the purchaser. The Commission must prove that the act, practice, or course of business that the Defendant engaged in involved the offer to sell or sale of securities.

You should use the same definitions of the terms "fraud or deceit," "sale," "offer to sell," and "would" that I previously gave you.

For the third element, you should use the same definition of "negligence" that I gave you in Count V.

Defendant's proposed language: *A failure by the SEC to prove any element must result in a finding of no liability as to Count Six.*

Eleventh Circuit Pattern Jury Instruction 6.9; Eleventh Circuit Pattern Jury Instruction 6.4; *SEC v. Burmaster, et al.*, Case No. 2:10-cv-577, Court's Instructions To The Jury (DE 225) (M.D. Fla. Aug. 7, 2014); *SEC v. City of Miami and Michael Boudreax*, Case No. 13-cv-22600, Court's Instructions To The Jury (DE 238) (S.D. Fla. Sept. 13, 2016).

Plaintiff objects to Defendant's suggested changes to the Pattern Jury Instruction.

Count VII – Sections 5(a) and 5(c) of the Securities Act

The SEC, asserts a claim under the Securities Act of 1933, a federal statute regulating the offer and sale of securities. Sections 5(a) and 5(c) of the Securities Act require the offer or sale of certain securities to be registered. Registering securities ensures that companies file essential facts with the SEC which then makes these facts public. It's unlawful, without an exemption from the Securities Act's registration requirements, for any person to use an instrumentality of interstate commerce to buy or sell, offer to buy or sell, or transport or deliver after sale, an unregistered security.

To succeed on its claim that Michael Furman violated Securities Act Sections 5(a) and 5(c), the SEC must prove each of the following three elements by a preponderance of the evidence:

First, you must find that Furman directly or indirectly sold, or offered to sell, securities.

Second, you must find that Furman used an instrument of transportation or communication in interstate commerce in connection with the offer to sell or sale of securities.

And third, you must find that a registration statement for the securities was not in effect.

Defendant's proposed language *Fourth, you must find that there was no applicable exemption from the Securities Act's registration requirements*.

You should use the definition of the term "security" that I gave you in Count I.

The terms "sale" or "sell" mean the transfer of a security for value. This includes contracts for the sale for value or any other disposition for value of a security or interest in a security. An "offer," "offer to sell," or "offer for sale" means attempting to dispose of a security or an interest in a security for value by inviting buyers.

To "directly or indirectly" sell securities means Mr. Furman was a "necessary participant," or "substantial factor," in the sale or offer to sell that the SEC claims is in violation of Securities Act Sections 5(a) and 5(c).

Mr. Furman may be a "necessary participant" or "substantial factor" in the sale of securities if, for example, he employs or directs others to sell or offer to sell securities, or plans the process by which unregistered securities are offered or sold. To satisfy this element, the SEC isn't required to show that Mr. Furman had direct contact with any of the investors who were offered or purchased the securities at issue.

Defendant's proposed language: *The Commission is required to show, however, that the sale transaction would not have taken place without the Defendant's participation.*

"Instrument of transportation or communication in interstate commerce" means the use of the mails, telephone, Internet, or some other form of electronic communication, [or] an interstate delivery system such as Federal Express or UPS.

A person who sells unregistered securities violates Securities Act Section 5 regardless of whether the violation was committed knowingly, intentionally, recklessly, or negligently.

Plantiff's proposed language: A Defendant's good-faith belief that the sale or offer to sell was legal, and his reliance on the advice of counsel, aren't defenses to a violation of Securities Act § 5.

If you find that the SEC has proved these three elements by a preponderance of the evidence, the burden shifts to the Defendant to prove, by a preponderance of the evidence, that the offer to sell or sale of the securities was exempt from the Securities Act's registration requirements.

Defendant's proposed language: *A failure by the SEC to prove any element must result in a finding of no liability as to Count Seven.*

Modified Eleventh Circuit Pattern Jury Instruction 6.7; *SEC v. Murphy*, 626 F.2d 633, 651–52 (9th Cir. 1980), *cited with approval by*, *Scheck Inv., LP v. Kensington Mgmt., Inc.*, 2009 WL 10668565 (S.D. Fla. June 17, 2009); *SEC v. PV Enters.*, 2016 WL 8808697, *4 (S.D. Fla. June 28, 2016).

Plaintiff objects to Defendant's suggested changes to the Pattern Jury Instruction.

Defendant objects to Plaintiff's suggested changes to the Pattern Jury Instruction.

Defendant's Proposed instruction: *Defendant's Defense of Exemption*

As I previously explained, if you find that the SEC has proven by a preponderance of the evidence that the Defendant sold securities for which no registration was in effect, you must decide whether the Defendant has met his or her burden to prove, by a preponderance of the evidence, that the offer to sell or sale of the securities was exempt from the Securities Act's registration requirements.

Section 4(a)(2) of the Securities Act exempts from the registration requirements "transactions by an issuer not involving any public offering." Pursuant to its authority under Section 4(a)(2), the SEC adopted Rule 506 as a safe harbor provision for limited private placements. Defendant has asserted exemptions from registration under Sections 4(a)(2) and Rules 506(b) and 506(c).

Under Rule 506(c) of Regulation D, securities are exempt from the registration requirement where the issuer takes reasonable care to ensure that investors are accredited investors, there are less than 100 accredited investors as part of the offering, and the issuer files Form D with the SEC. Rule 506(b) requires that: (a) excluding "accredited investors," the issuer reasonably believes there are no more than 35 purchasers of the securities in any 90-day calendar period; and (b): each purchaser who is not an accredited investor either alone or with his purchaser representative(s) has such knowledge and experience in financial and business matters that he is capable of evaluating the merits and risks of the prospective investment, or the issuer reasonably believes immediately prior to making any sale that such purchaser comes within this description.

In order to comply with the Rule 506(b) exemption, an issuer may not sell the security by any form of general solicitation or general advertising. An offering under Rule 506(c), however,

does not include a prohibition against general solicitation to investors if all purchasers are "accredited investors" and the issuer takes reasonable measures to verify that purchasers are accredited investors.

Even if the Commission is able to show there were some deviations in compliance with Rule 506, the Defendant is still entitled to the Rule 506 exemption if he makes a good faith effort to comply with all the pertinent conditions. Rule 508 provides a safeguard for insignificant deviations from the terms of Regulation D if the error was made in good faith, and was otherwise immaterial.

Defendant's Proposed Instruction: *If Mr. Furman can established by a preponderance of the evidence that one of the foregoing exemptions applies, the SEC bears the burden of showing by a preponderance of the evidence that it does not apply.*

SOURCES; 17 C.F.R. 501, 502, 506, 508; *see also SEC v. Levin*, 849 F.3d 995, 1001 (11th Cir. 2017); *Faye L. Roth Revocable Trust v. UBS PaineWebber, Inc.*, 323 F. Supp. 2d 1279, 1300 (S.D. Fla. 2004).

Plaintiff objects to this jury instruction as confusing and inaccurate. Whether the Fidelis notes have an exemption under Rule 506(c) or was only funded by accredited investors is not at issue in this trial. The only issue regarding exemptions will be whether the Par Funding notes and the ABFP notes were subject to an exemption from registration under 506(b).

Defendant's Proposed Instruction: Fraud—Good Faith Defense

Because an essential element of the SEC's case under Counts I, II, III, IV, V, VI and VIII is intent to defraud or severe recklessness, and in Count VI it is negligence, it follows that good faith on the part of any Defendant is a complete defense to a charge of securities fraud against that Defendant. This is because the SEC must prove that the Defendant acted with an intent to defraud or with severe recklessness, or with negligence. Evidence that the Defendant in good faith followed the advice of counsel would be inconsistent with such a fraudulent intent or acting with severe recklessness, or with negligence. A Defendant is not required to prove good faith. A Defendant has no burden to establish a defense of good faith. Rather, the burden is on the SEC to prove fraudulent intent, severe recklessness, or negligence, and a consequent lack of good faith by a preponderance of the evidence. An honestly held opinion or an honestly formed belief cannot be fraudulent intent-even if the opinion or belief is mistaken. Similarly, evidence of a mistake in judgment, an error in management, or carelessness cannot establish fraudulent intent. Evidence that a defendant in good-faith followed the advice of counsel also would be inconsistent with an intent to defraud. If you find that a Defendant acted in good faith, then you must find the Defendant not liable.

K. O'Malley, J. Grenig and Hon. William C. Lee, 3B Federal Jury Practice and Instructions § 19:06 (6th ed.) (August 2021 update).

Plaintiff objects to this instruction as it is not a correct statement of applicable law in a civil matter such as this one.

Plaintiff's Proposed Instruction:

Reliance on Attorneys[3]

Mr. Furman asserts the affirmative defense that he relied on lawyers' advice. I caution you that Mr. Furman does not have to disprove the SEC's claims, but he can only prevail on the defense of reliance on counsel if he proves it by a preponderance of the evidence. To prove the affirmative defense of reliance on their counsel, Mr. Furman must prove he: (1) completely disclosed the facts about the conduct at issue; (2) sought advice as to whether the specific course of conduct was appropriate; (3) received advice that the specific course of conduct was appropriate; and (4) relied on and followed the advice in good faith.

If the proof fails to establish any of these elements by a preponderance of the evidence, you should find against Mr. Furman on the defense of reliance on advice of counsel. However, even if these elements are satisfied, such reliance is not a complete defense, but only one factor for consideration in determining liability.

Defendant's Proposed Instruction: *Although a Defendant's reliance on an attorney's advice is not a complete defense to securities fraud, such reliance may constitute evidence of the Defendant's good faith, which may represent the absence of an intent to defraud. If you, as stated earlier, find that Mr. Furman acted in good faith, then you must find Mr. Furman is not liable.*

[3] The "reliance on professional" instruction should not be given unless the Defendant produces evidence he consulted with an accountant or attorney, disclosed all pertinent facts, and acted strictly in reliance on the advice. *See United States v. Greene,* 239 Fed. Appx. 431, 446 (10th Cir. 2007) ("To be entitled to the instructions, Defendant would have had to show that he had made full disclosure to the professional"); *United States. v. Langston*, 590 F.3d 1226, 1235- 36 (11th Cir. 2009) (failure to give advice of professionals instruction on defense proper absent evidence suggesting that defendant actually relied on any legal opinion).

Source: Jury Instruction Given in *SEC v. City of Miami*, Case No. 13-22600-CIV-Altonaga (D.E. 238). *United States v. Greene*, 239 Fed. Appx. 431, 446 (10th Cir. 2007) (defendant must "show that he had made full disclosure to the professional."); *United States v. Duncan*, 850 F.2d 1104, 1116 (6th Cir. 1988) ("the elements of a reliance defense [are] (1) full disclosure of all pertinent facts, and (2) good faith reliance on the accountant's advice"); *SEC v. Caserta*, 75 F. Supp. 2d 79, 94 (E.D.N.Y. 1999) (reliance on counsel or accountants requires a showing of full disclosure, seeking opinion, obtaining opinion, and reliance on it in good faith). *United States v. Erickson*, 601 F.2d 296, 305 (7th Cir. 1979), quoted with approval in, *SEC v. Goldfield Deep Mines Co. of Nevada*, 758 F.2d 459, 467 (9th Cir. 1985) ("If a company officer knows that the financial statements are false or misleading and yet proceeds to file them, the willingness of an accountant to give an unqualified opinion with respect to them does not negate the existence of the requisite intent or establish good faith reliance"). *Platten v. United States*, No. 12-cv-80949, 2014 WL 46523, *28 (S.D. Fla. Jan. 2, 2014); ("[E]ven where the[] prerequisites [for the advice of professionals defense] are satisfied, such reliance is not a complete defense, but only one factor for consideration."); *SEC v. BankAtlantic Bancorp., Inc.,* Case No. 12-cv-60082, 2013 WL 5588139 at *20-23 (S.D. Fla. Oct. 10, 2013); *SEC v. Huff,* 758 F. Supp. 2d 1288, 1349 (S.D. Fla. 2010).

Sources for Defendant's Proposed Instruction

***United States v. Peterson,* 101 F.3d 375, 381 (5th Cir. 1996), *cited with approval in*, *In re Zonagen, Inc. Sec. Litig.*, 332 F. Supp. 2d 764, 775 (S.D. Tex. 2003); *In re John Alden Fin. Corp. Sec. Litig.*, 249 F. Supp. 2d 1273, 1279 (S.D. Fla. 2003).**

Court's Duty to Decide Remedies

If you determine that the SEC has proved any Defendant liable on any of the Counts, then I alone will determine the remedy or remedies to impose at a later date.

Eleventh Circuit Pattern Jury Instructions 6.1, 6.2, 6.4, 6.7, 6.8, and 6.9 (each including instruction that " If you find that the SEC has proved one or more of its claims against [name of defendant], I alone will determine the remedy or remedies to impose at a later date.]")

Duty to Deliberate When Damages are not an Issue

Your verdict must be unanimous – in other words, you must all agree. Your deliberations are secret, and you'll never have to explain your verdict to anyone.

Each of you must decide the case for yourself, but only after fully considering the evidence with the other jurors. So you must discuss the case with one another and try to reach an agreement. While you're discussing the case, don't hesitate to reexamine your own opinion and change your mind if you become convinced that you were wrong. But don't give up your honest beliefs just because others think differently or because you simply want to get the case over with.

Remember that, in a very real way, you're judges – judges of the facts. Your only interest is to seek the truth from the evidence in the case.

Eleventh Circuit Pattern Jury Instruction 3.8.2

Election of Foreperson Explanation of Verdict Form

When you get to the jury room, choose one of your members to act as foreperson. The foreperson will direct your deliberations and speak for you in court.

A verdict form has been prepared for your convenience.

[Explain verdict]

Take the verdict form with you to the jury room. When you've all agreed on the verdict, your foreperson must fill in the form, sign it and date it. Then you'll return it to the courtroom.

If you wish to communicate with me at any time, please write down your message or question and give it to the court security officer. The court security officer will bring it to me and I'll respond as promptly as possible – either in writing or by talking to you in the courtroom. Please understand that I may have to talk to the lawyers and the parties before I respond to your question or message, so you should be patient as you await my response. But I caution you not to tell me how many jurors have voted one way or the other at that time. That type of information should remain in the jury room and not be shared with anyone, including me, in your note or question.

Eleventh Circuit Pattern Jury Instruction 3.9