APPENDIX

Date Filed: 08/06/2021
United States Court of Appeals
For the First Circuit

Nos. 18-2212, 19-1320

UNITED STATES, Appellee,

v.

JEHU HAND, Defendant - Appellant.

Before
Thompson, Selya and Barron,
Circuit Judges.

JUDGMENT

Entered: August 6, 2021

After a thorough review of the record and of the parties' submissions, including the appellant Jehu Hand's ("Hand's") pro se submissions, we affirm.

We see no reversible error in the post-judgment addition to the amended judgment. See Fed. R. Crim. P. 36. Given that counsel jointly brought the omission to the court's attention, there was no abuse of discretion in the failure to provide advance notice of the correction. See 3 Wright & Miller, Fed. Prac. & Proc. Crim. § 642 (4th ed., April 2021 update). Further, we see no plain error in the

court's identification of the victims by number only, as 18 U.S.C. § 3612(b)(1)(G) appears to compel that approach, and even if it does not, Hand has failed to show that the court's approach affected his substantial rights. See Fed. R. Crim. P. 52(b).

We review Hand's challenge to his fine for plain error, United States v. Gierbolini, 900 F.3d 7, 12-13 (1st Cir. 2018), and we see none. Nothing in the record suggests that either Hand's age or his health will present any significant impediment to his obtaining employment once he is released from prison; and in view of his extensive educational background and language skills, there is no reason to think he will be unable to find work outside the practice of law. He contends that he currently lacks the resources to pay a fine, but he provided no evidence in the district court to back up this claim, and the burden of proof on that question was on him. See United States v.Rowe, 268 F.3d 34, 39 (1st Cir. 2001). In any event, a "present lack of assets or even a negative net worth will not preclude imposition of a fine unless a defendant also demonstrates that he lacks the ability to earn and to pay a fine in the future." United States v. Yeje-Cabrera, 430 F.3d 1, 19 (1st Cir. 2005) (citation omitted).

Hand also contends that the amount of the fine imposed here was arbitrary, but it was well below the top end of the guideline sentencing range, see United States v. Saxena, 229 F.3d 1, 11 (1st Cir. 2000), and the amount of the fine reflects the extent of losses generated by Hand's crimes. See United States v. Lujan, 324 F.3d 27, 34-35 (1st Cir. 2003); U.S.S.G. § 5E1.2(d)(1); U.S.S.G. §

5E1.2(d)(4). Hand complains that he received the same or greater fine as co-conspirators who netted more from the scheme; but his argument fails to acknowledge other considerations that may have factored into the sentencing court's calculus, including the co-conspirators' cooperation with the government. See United States v. González-Barbosa, 920 F.3d 125, 130 (1st Cir. 2019).

We further reject Hand's challenges to the procedural and substantive reasonableness of his prison sentence. The sentencing court "was not required to address frontally every argument advanced by the parties." United States v. Rivera-Clemente, 813 F.3d 43, 51 (1st Cir. 2016). Moreover, it appears that the court accepted Hand's contention that he was not the "mastermind" of these schemes, and largely for this reason, the court imposed a sentence that was well below the low end of the guidelines sentencing range. The court refused to award him a greater variance because his role in the scheme was nevertheless "key," in that without his legal opinion letters and the other legal work performed, the scheme could not have gone forward. The court was permitted to take these factors into account in deciding on a sentence. Hand's challenge to the jury's finding as to the amount of loss is waived because, at sentencing, he agreed to the enhancement that was based on that finding.

Hand's challenge to the substantive reasonableness of his sentence also fails. Although he contends that his sentence is much higher than national averages for similar crimes, he has failed to provide "enough relevant information to permit a determination that he and his

proposed comparators are similarly situated." United States v. Rodríguez-Adorno, 852 F.3d 168, 177 (1st Cir. 2017) (citation omitted). Likewise, he has failed to demonstrate how his co-conspirators are similarly situated to him, so his disparity challenge on that basis also falls short. See United States v. Almeida, 748 F.3d 41, 55 (1st Cir. 2014).

For substantially the reasons set out in the government's brief, his challenge to the sufficiency of the evidence fails. Finally, we reject Hand's claim based on Brady v. Maryland, 373 U.S. 83 (1963), as he has failed to show there is a "reasonable probability that the [evidence in question] would have produced a different verdict." Strickler v. Greene, 527 U.S. 263, 281-82 (1999). Hand has done nothing more than speculate that one or more witnesses would have testified that they knew they were buying into a pump-and-dump, and even if he had established that some witnesses would have so testified, there was ample evidence showing that multiple investors were deceived.

Affirmed. See 1st Cir. R. 27.0(c). By the Court:

Maria R.
Hamilton,
Clerk

15 U.S. Code § 77b (Securities Act Section 2(11))

Section 2(11)
The term "underwriter" means any person who has purchased from an issuer with a view to, or offers or sells for an issuer in connection with, the distribution of any security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking; but such term shall not include a person whose interest is limited to a commission from an underwriter or dealer not in excess of the usual and customary distributors' or sellers' commission. As used in this paragraph the term "issuer" shall include, in addition to an issuer, any person directly or indirectly controlling or controlled by the issuer, or any person under direct or indirect common control with the issuer.

15 U.S. Code § 77d (Securities Act Section 4(a)(1))

(a) In general
The provisions of section 77e [requiring registration of securities] of this title shall not apply to— (1) transactions by any person other than an issuer, underwriter, or dealer.

15 U.S.C. § 78j(b)(Securities Exchange Act 10b-5)

It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange—
(b)To use or employ, in connection with the purchase or sale of any security registered on a national securities exchange or any security not so registered, or any securities-based

swap agreement [1] any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

18 U.S.C. § 1343

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined under this title or imprisoned not more than 20 years, or both

18 U.S.C. §3571(a)

(a)In General.—
A defendant who has been found guilty of an offense may be sentenced to pay a fine.

18 U.S.C. §3572(a), (d)

(a)Factors To Be Considered.—In determining whether to impose a fine, and the amount, time for payment, and method of payment of a fine, the court shall consider, in addition to the factors set forth in section 3553(a)—
(1)the defendant's income, earning capacity, and financial resources;
(2)the burden that the fine will impose upon the defendant,

any person who is financially dependent on the defendant, or any other person (including a government) that would be responsible for the welfare of any person financially dependent on the defendant, relative to the burden that alternative punishments would impose;
(3)any pecuniary loss inflicted upon others as a result of the offense;
(4)whether restitution is ordered or made and the amount of such restitution;
(5)the need to deprive the defendant of illegally obtained gains from the offense;
(6)the expected costs to the government of any imprisonment, supervised release, or probation component of the sentence;
(7)whether the defendant can pass on to consumers or other persons the expense of the fine; and
(8)if the defendant is an organization, the size of the organization and any measure taken by the organization to discipline any officer, director, employee, or agent of the organization responsible for the offense and to prevent a recurrence of such an offense.
(d)Time, Method of Payment, and Related Items.—
(1)A person sentenced to pay a fine or other monetary penalty, including restitution, shall make such payment immediately, unless, in the interest of justice, the court provides for payment on a date certain or in installments. If the court provides for payment in installments, the installments shall be in equal monthly payments over the period provided by the court, unless the court establishes another schedule.
(2)If the judgment, or, in the case of a restitution order, the order, permits other than immediate payment, the length of time over which scheduled payments will be made shall be

set by the court, but shall be the shortest time in which full payment can reasonably be made.
(3)A judgment for a fine which permits payments in installments shall include a requirement that the defendant will notify the court of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay the fine. Upon receipt of such notice the court may, on its own motion or the motion of any party, adjust the payment schedule, or require immediate payment in full, as the interests of justice require.

18 U.S.C. §3624(e)

(e)Supervision After Release.—
A prisoner whose sentence includes a term of supervised release after imprisonment shall be released by the Bureau of Prisons to the supervision of a probation officer who shall, during the term imposed, supervise the person released to the degree warranted by the conditions specified by the sentencing court. The term of supervised release commences on the day the person is released from imprisonment and runs concurrently with any Federal, State, or local term of probation or supervised release or parole for another offense to which the person is subject or becomes subject during the term of supervised release. A term of supervised release does not run during any period in which the person is imprisoned in connection with a conviction for a Federal, State, or local crime unless the imprisonment is for a period of less than 30 consecutive days. Upon the release of a prisoner by the Bureau of Prisons to supervised release, the Bureau of Prisons shall notify such prisoner, verbally and in writing, of the

requirement that the prisoner adhere to an installment schedule, not to exceed 2 years except in special circumstances, to pay for any fine imposed for the offense committed by such prisoner, and of the consequences of failure to pay such fines under sections 3611 through 3614 of this title.

Rules

17 C.F.R. § 230.144 Persons deemed not to be engaged in a distribution and therefore not underwriters. (Subsections (e), (f), (g) and (h) omitted as not relevant)
Preliminary Note:
Certain basic principles are essential to an understanding of the registration requirements in the Securities Act of 1933 (the Act or the Securities Act) and the purposes underlying Rule 144: 1. If any person sells a non-exempt security to any other person, the sale must be registered unless an exemption can be found for the transaction. 2. Section 4(1) of the Securities Act provides one such exemption for a transaction "by a person other than an issuer, underwriter, or dealer." Therefore, an understanding of the term "underwriter" is important in determining whether or not the Section 4(1) exemption from registration is available for the sale of the securities. The term "underwriter" is broadly defined in Section 2(a)(11) of the Securities Act to mean any person who has purchased from an issuer with a view to, or offers or sells for an issuer in connection with, the distribution of any security, or participates, or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking. The interpretation of this definition

traditionally has focused on the words "with a view to" in the phrase "purchased from an issuer with a view to * * * distribution." An investment banking firm which arranges with an issuer for the public sale of its securities is clearly an "underwriter" under that section. However, individual investors who are not professionals in the securities business also may be "underwriters" if they act as links in a chain of transactions through which securities move from an issuer to the public. Since it is difficult to ascertain the mental state of the purchaser at the time of an acquisition of securities, prior to and since the adoption of Rule 144, subsequent acts and circumstances have been considered to determine whether the purchaser took the securities "with a view to distribution" at the time of the acquisition. Emphasis has been placed on factors such as the length of time the person held the securities and whether there has been an unforeseeable change in circumstances of the holder. Experience has shown, however, that reliance upon such factors alone has led to uncertainty in the application of the registration provisions of the Act. The Commission adopted Rule 144 to establish specific criteria for determining whether a person is not engaged in a distribution. Rule 144 creates a safe harbor from the Section 2(a)(11) definition of "underwriter." A person satisfying the applicable conditions of the Rule 144 safe harbor is deemed not to be engaged in a distribution of the securities and therefore not an underwriter of the securities for purposes of Section 2(a)(11). Therefore, such a person is deemed not to be an underwriter when determining whether a sale is eligible for the Section 4(1) exemption for "transactions by any person other than an issuer, underwriter, or dealer." If a sale of securities complies with all of the applicable conditions of Rule 144: 1. Any affiliate

or other person who sells restricted securities will be deemed not to be engaged in a distribution and therefore not an underwriter for that transaction; 2. Any person who sells restricted or other securities on behalf of an affiliate of the issuer will be deemed not to be engaged in a distribution and therefore not an underwriter for that transaction; and 3. The purchaser in such transaction will receive securities that are not restricted securities. Rule 144 is not an exclusive safe harbor. A person who does not meet all of the applicable conditions of Rule 144 still may claim any other available exemption under the Act for the sale of the securities. The Rule 144 safe harbor is not available to any person with respect to any transaction or series of transactions that, although in technical compliance with Rule 144, is part of a plan or scheme to evade the registration requirements of the Act.

(a) Definitions. The following definitions shall apply for the purposes of this section.

(1) An affiliate of an issuer is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such issuer.

(2) The term person when used with reference to a person for whose account securities are to be sold in reliance upon this section includes, in addition to such person, all of the following persons:

(i) Any relative or spouse of such person, or any relative of such spouse, any one of whom has the same home as such person;

(ii) Any trust or estate in which such person or any of the persons specified in paragraph (a)(2)(i) of this section collectively own 10 percent or more of the total beneficial interest or of which any of such persons serve as trustee,

executor or in any similar capacity; and
(iii) Any corporation or other organization (other than the issuer) in which such person or any of the persons specified in paragraph (a)(2)(i) of this section are the beneficial owners collectively of 10 percent or more of any class of equity securities or 10 percent or more of the equity interest.
(3) The term restricted securities means:
(i) Securities acquired directly or indirectly from the issuer, or from an affiliate of the issuer, in a transaction or chain of transactions not involving any public offering;
(ii) Securities acquired from the issuer that are subject to the resale limitations of § 230.502(d) under Regulation D or § 230.701(c);
(iii) Securities acquired in a transaction or chain of transactions meeting the requirements of § 230.144A;
(iv) Securities acquired from the issuer in a transaction subject to the conditions of Regulation CE (§ 230.1001);
(v) Equity securities of domestic issuers acquired in a transaction or chain of transactions subject to the conditions of § 230.901 or § 230.903 under Regulation S (§ 230.901 through § 230.905, and Preliminary Notes);
(vi) Securities acquired in a transaction made under § 230.801 to the same extent and proportion that the securities held by the security holder of the class with respect to which the rights offering was made were, as of the record date for the rights offering, "restricted securities" within the meaning of this paragraph (a)(3);
(vii) Securities acquired in a transaction made under § 230.802 to the same extent and proportion that the securities that were tendered or exchanged in the exchange offer or business combination were "restricted securities" within the meaning of this paragraph (a)(3); and

(viii) Securities acquired from the issuer in a transaction subject to an exemption under section 4(5) (15 U.S.C. 77d(5)) of the Act.
(4) The term debt securities means:
(i) Any security other than an equity security as defined in § 230.405;
(ii) Non-participatory preferred stock, which is defined as non-convertible capital stock, the holders of which are entitled to a preference in payment of dividends and in distribution of assets on liquidation, dissolution, or winding up of the issuer, but are not entitled to participate in residual earnings or assets of the issuer; and
(iii) Asset-backed securities, as defined in § 229.1101 of this chapter.
(b) Conditions to be met. Subject to paragraph (i) of this section, the following conditions must be met:
(1) Non-affiliates.
(i) If the issuer of the securities is, and has been for a period of at least 90 days immediately before the sale, subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934 (the Exchange Act), any person who is not an affiliate of the issuer at the time of the sale, and has not been an affiliate during the preceding three months, who sells restricted securities of the issuer for his or her own account shall be deemed not to be an underwriter of those securities within the meaning of section 2(a)(11) of the Act if all of the conditions of paragraphs (c)(1) and (d) of this section are met. The requirements of paragraph (c)(1) of this section shall not apply to restricted securities sold for the account of a person who is not an affiliate of the issuer at the time of the sale and has not been an affiliate during the preceding three months, provided a period of one year has elapsed

since the later of the date the securities were acquired from the issuer or from an affiliate of the issuer.
(ii) If the issuer of the securities is not, or has not been for a period of at least 90 days immediately before the sale, subject to the reporting requirements of section 13 or 15(d) of the Exchange Act, any person who is not an affiliate of the issuer at the time of the sale, and has not been an affiliate during the preceding three months, who sells restricted securities of the issuer for his or her own account shall be deemed not to be an underwriter of those securities within the meaning of section 2(a)(11) of the Act if the condition of paragraph (d) of this section is met.
(2) Affiliates or persons selling on behalf of affiliates. Any affiliate of the issuer, or any person who was an affiliate at any time during the 90 days immediately before the sale, who sells restricted securities, or any person who sells restricted or any other securities for the account of an affiliate of the issuer of such securities, or any person who sells restricted or any other securities for the account of a person who was an affiliate at any time during the 90 days immediately before the sale, shall be deemed not to be an underwriter of those securities within the meaning of section 2(a)(11) of the Act if all of the conditions of this section are met.
(c) Current public information. Adequate current public information with respect to the issuer of the securities must be available. Such information will be deemed to be available only if the applicable condition set forth in this paragraph is met:
(1) Reporting issuers. The issuer is, and has been for a period of at least 90 days immediately before the sale, subject to the reporting requirements of section 13 or 15(d) of the Exchange Act and has:

(i) Filed all required reports under section 13 or 15(d) of the Exchange Act, as applicable, during the 12 months preceding such sale (or for such shorter period that the issuer was required to file such reports), other than Form 8-K reports (§ 249.308 of this chapter); and
(ii) Submitted electronically every Interactive Data File (§ 232.11 of this chapter) required to be submitted pursuant to § 232.405 of this chapter, during the 12 months preceding such sale (or for such shorter period that the issuer was required to submit such files); or
(2) Non-reporting issuers. If the issuer is not subject to the reporting requirements of section 13 or 15(d) of the Exchange Act, there is publicly available the information concerning the issuer specified in paragraphs (b)(5)(i)(A) to (N), inclusive, and paragraph (b)(5)(i)(P) of § 240.15c2-11 of this chapter, or, if the issuer is an insurance company, the information specified in section 12(g)(2)(G)(i) of the Exchange Act (15 U.S.C. 78l(g)(2)(G)(i)).
Note to § 230.144(C):
With respect to paragraph (c)(1), the person can rely upon: 1. A statement in whichever is the most recent report, quarterly or annual, required to be filed and filed by the issuer that such issuer has: a. Filed all reports required under section 13 or 15(d) of the Exchange Act, as applicable, during the preceding 12 months (or for such shorter period that the issuer was required to file such reports), other than Form 8-K reports (§ 249.308 of this chapter), and has been subject to such filing requirements for the past 90 days; and b. Submitted electronically every Interactive Data File (§ 232.11 of this chapter) required to be submitted pursuant to § 232.405 of this chapter, during the preceding 12 months (or for such shorter period that the issuer was required to submit such files); or 2. A written

statement from the issuer that it has complied with such reporting or submission requirements. 3. Neither type of statement may be relied upon, however, if the person knows or has reason to believe that the issuer has not complied with such requirements.

(d) Holding period for restricted securities. If the securities sold are restricted securities, the following provisions apply:

(1) General rule.

(i) If the issuer of the securities is, and has been for a period of at least 90 days immediately before the sale, subject to the reporting requirements of section 13 or 15(d) of the Exchange Act, a minimum of six months must elapse between the later of the date of the acquisition of the securities from the issuer, or from an affiliate of the issuer, and any resale of such securities in reliance on this section for the account of either the acquiror or any subsequent holder of those securities.

(ii) If the issuer of the securities is not, or has not been for a period of at least 90 days immediately before the sale, subject to the reporting requirements of section 13 or 15(d) of the Exchange Act, a minimum of one year must elapse between the later of the date of the acquisition of the securities from the issuer, or from an affiliate of the issuer, and any resale of such securities in reliance on this section for the account of either the acquiror or any subsequent holder of those securities.

(iii) If the acquiror takes the securities by purchase, the holding period shall not begin until the full purchase price or other consideration is paid or given by the person acquiring the securities from the issuer or from an affiliate of the issuer.

(2) Promissory notes, other obligations or installment contracts. Giving the issuer or affiliate of the issuer from

whom the securities were purchased a promissory note or other obligation to pay the purchase price, or entering into an installment purchase contract with such seller, shall not be deemed full payment of the purchase price unless the promissory note, obligation or contract:

(i) Provides for full recourse against the purchaser of the securities;

(ii) Is secured by collateral, other than the securities purchased, having a fair market value at least equal to the purchase price of the securities purchased; and

(iii) Shall have been discharged by payment in full prior to the sale of the securities.

(3) Determination of holding period. The following provisions shall apply for the purpose of determining the period securities have been held:

(i) Stock dividends, splits and recapitalizations. Securities acquired from the issuer as a dividend or pursuant to a stock split, reverse split or recapitalization shall be deemed to have been acquired at the same time as the securities on which the dividend or, if more than one, the initial dividend was paid, the securities involved in the split or reverse split, or the securities surrendered in connection with the recapitalization.

(ii) Conversions and exchanges. If the securities sold were acquired from the issuer solely in exchange for other securities of the same issuer, the newly acquired securities shall be deemed to have been acquired at the same time as the securities surrendered for conversion or exchange, even if the securities surrendered were not convertible or exchangeable by their terms.

Note to § 230.144(D)(3)(II):

If the surrendered securities originally did not provide for cashless conversion or exchange by their terms and the

holder provided consideration, other than solely securities of the same issuer, in connection with the amendment of the surrendered securities to permit cashless conversion or exchange, then the newly acquired securities shall be deemed to have been acquired at the same time as such amendment to the surrendered securities, so long as, in the conversion or exchange, the securities sold were acquired from the issuer solely in exchange for other securities of the same issuer.

(iii) Contingent issuance of securities. Securities acquired as a contingent payment of the purchase price of an equity interest in a business, or the assets of a business, sold to the issuer or an affiliate of the issuer shall be deemed to have been acquired at the time of such sale if the issuer or affiliate was then committed to issue the securities subject only to conditions other than the payment of further consideration for such securities. An agreement entered into in connection with any such purchase to remain in the employment of, or not to compete with, the issuer or affiliate or the rendering of services pursuant to such agreement shall not be deemed to be the payment of further consideration for such securities.

(iv) Pledged securities. Securities which are bona-fide pledged by an affiliate of the issuer when sold by the pledgee, or by a purchaser, after a default in the obligation secured by the pledge, shall be deemed to have been acquired when they were acquired by the pledgor, except that if the securities were pledged without recourse they shall be deemed to have been acquired by the pledgee at the time of the pledge or by the purchaser at the time of purchase.

(v) Gifts of securities. Securities acquired from an affiliate of the issuer by gift shall be deemed to have been acquired

by the donee when they were acquired by the donor.
(vi) Trusts. Where a trust settlor is an affiliate of the issuer, securities acquired from the settlor by the trust, or acquired from the trust by the beneficiaries thereof, shall be deemed to have been acquired when such securities were acquired by the settlor.
(vii) Estates. Where a deceased person was an affiliate of the issuer, securities held by the estate of such person or acquired from such estate by the estate beneficiaries shall be deemed to have been acquired when they were acquired by the deceased person, except that no holding period is required if the estate is not an affiliate of the issuer or if the securities are sold by a beneficiary of the estate who is not such an affiliate.
Note to § 230.1449D)(3)(VI)):
While there is no holding period or amount limitation for estates and estate beneficiaries which are not affiliates of the issuer, paragraphs (c) and (h) of this section apply to securities sold by such persons in reliance upon this section.
(viii) Rule 145(a) transactions. The holding period for securities acquired in a transaction specified in § 230.145(a) shall be deemed to commence on the date the securities were acquired by the purchaser in such transaction, except as otherwise provided in paragraphs (d)(3)(ii) and (ix) of this section.
(ix) Holding company formations. Securities acquired from the issuer in a transaction effected solely for the purpose of forming a holding company shall be deemed to have been acquired at the same time as the securities of the predecessor issuer exchanged in the holding company formation where:
(A) The newly formed holding company's securities were

issued solely in exchange for the securities of the predecessor company as part of a reorganization of the predecessor company into a holding company structure;
(B) Holders received securities of the same class evidencing the same proportional interest in the holding company as they held in the predecessor, and the rights and interests of the holders of such securities are substantially the same as those they possessed as holders of the predecessor company's securities; and
(C) Immediately following the transaction, the holding company has no significant assets other than securities of the predecessor company and its existing subsidiaries and has substantially the same assets and liabilities on a consolidated basis as the predecessor company had before the transaction.
(x) Cashless exercise of options and warrants. If the securities sold were acquired from the issuer solely upon cashless exercise of options or warrants issued by the issuer, the newly acquired securities shall be deemed to have been acquired at the same time as the exercised options or warrants, even if the options or warrants exercised originally did not provide for cashless exercise by their terms.
Note 1 to § 230.144(D)(3)(X):
If the options or warrants originally did not provide for cashless exercise by their terms and the holder provided consideration, other than solely securities of the same issuer, in connection with the amendment of the options or warrants to permit cashless exercise, then the newly acquired securities shall be deemed to have been acquired at the same time as such amendment to the options or warrants so long as the exercise itself was cashless.
Note 2 to § 230.144(D)(3)(X):

If the options or warrants are not purchased for cash or property and do not create any investment risk to the holder, as in the case of employee stock options, the newly acquired securities shall be deemed to have been acquired at the time the options or warrants are exercised, so long as the full purchase price or other consideration for the newly acquired securities has been paid or given by the person acquiring the securities from the issuer or from an affiliate of the issuer at the time of exercise.

(i) Unavailability to securities of issuers with no or nominal operations and no or nominal non-cash assets.

(1) This section is not available for the resale of securities initially issued by an issuer defined below:

(i) An issuer, other than a business combination related shell company, as defined in § 230.405, or an asset-backed issuer, as defined in Item 1101(b) of Regulation AB (§ 229.1101(b) of this chapter), that has:

(A) No or nominal operations; and

(B) Either:

(1) No or nominal assets;

(2) Assets consisting solely of cash and cash equivalents; or

(3) Assets consisting of any amount of cash and cash equivalents and nominal other assets; or

(ii) An issuer that has been at any time previously an issuer described in paragraph (i)(1)(i).

(2) Notwithstanding paragraph (i)(1), if the issuer of the securities previously had been an issuer described in paragraph (i)(1)(i) but has ceased to be an issuer described in paragraph (i)(1)(i); is subject to the reporting requirements of section 13 or 15(d) of the Exchange Act; has filed all reports and other materials required to be filed by section 13 or 15(d) of the Exchange Act, as applicable, during the preceding 12 months (or for such shorter period

that the issuer was required to file such reports and materials), other than Form 8-K reports (§ 249.308 of this chapter); and has filed current "Form 10 information" with the Commission reflecting its status as an entity that is no longer an issuer described in paragraph (i)(1)(i), then those securities may be sold subject to the requirements of this section after one year has elapsed from the date that the issuer filed "Form 10 information" with the Commission.
(3) The term "Form 10 information" means the information that is required by Form 10 or Form 20-F (§ 249.210 or § 249.220f of this chapter), as applicable to the issuer of the securities, to register under the Exchange Act each class of securities being sold under this rule. The issuer may provide the Form 10 information in any filing of the issuer with the Commission. The Form 10 information is deemed filed when the initial filing is made with the Commission.

17 C.F.R. 230.405 (Securities Act Rule 405)

Control. The term control (including the terms controlling, controlled by and under common control with) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

Shell company. The term shell company means a registrant, other than an asset-backed issuer as defined in Item 1101(b) of Regulation AB (§ 229.1101(b) of this chapter), that has:

(1) No or nominal operations; and

(2) Either:

(i) No or nominal assets;

(ii) Assets consisting solely of cash and cash equivalents; or

(iii) Assets consisting of any amount of cash and cash equivalents and nominal other assets.

Note:
For purposes of this definition, the determination of a registrant's assets (including cash and cash equivalents) is based solely on the amount of assets that would be reflected on the registrant's balance sheet prepared in accordance with generally accepted accounting principles on the date of that determination.

17. C.F.R. 240.10b-5 (Securities Exchange Act Rule 10b-5)

§ 240.10b-5 Employment of manipulative and deceptive devices.

It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange,

(a) To employ any device, scheme, or artifice to defraud,

(b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

(c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon

any person, in connection with the purchase or sale of any security.

Securities Act Release 33-8587, page 9; page 10-11.

2. Comments on the Proposal

Approximately ten commenters expressed their views regarding the proposed definition of "shell company." Three commenters asked that the terms "nominal operations" and "nominal assets" be defined. These commenters sought more guidance as to the meaning of these terms and quantitative thresholds for the term "nominal." One of these commenters requested an objective test, such as specific quantitative thresholds tied to specific dollar amounts.

* * *

We are not defining the term "nominal," as we believe that this term embodies the principle that we seek to apply and is not inappropriately vague or ambiguous. We have considered the comment that a quantitative threshold would improve the definition of shell company; however, we believe that quantitative thresholds would, in this context, present a serious potential problem, as they would be more easily circumvented. We believe further specification of the meaning of "nominal" in the definition of "shell company" is unnecessary and would make circumventing the intent of our regulations and the fraudulent misuse of shell companies easier.

United States Sentencing Guidelines, §5E1.2. Fines for Individual Defendants

5E1.2(a), (d) to (g)

(a) The court shall impose a fine in all cases, except where the defendant establishes that he is unable to pay and is not likely to become able to pay any fine.

(d)In determining the amount of the fine, the court shall consider:

(1)the need for the combined sentence to reflect the seriousness of the offense (including the harm or loss to the victim and the gain to the defendant), to promote respect for the law, to provide just punishment and to afford adequate deterrence;

(2)any evidence presented as to the defendant's ability to pay the fine (including the ability to pay over a period of time) in light of his earning capacity and financial resources;

(3)the burden that the fine places on the defendant and his dependents relative to alternative punishments;

(4)any restitution or reparation that the defendant has made or is obligated to make;

(5)any collateral consequences of conviction, including civil obligations arising from the defendant's conduct;

(6)whether the defendant previously has been fined for a similar offense;

(7)the expected costs to the government of any term of probation, or term of imprisonment and term of supervised release imposed; and

(8)any other pertinent equitable considerations.

The amount of the fine should always be sufficient to ensure that the fine, taken together with other sanctions imposed, is punitive.

(e)If the defendant establishes that (1) he is not able and, even with the use of a reasonable installment schedule, is not likely to become able to pay all or part of the fine required by the preceding provisions, or (2) imposition of a fine would unduly burden the defendant's dependents, the court may impose a lesser fine or waive the fine. In these circumstances, the court shall consider alternative sanctions in lieu of all or a portion of the fine, and must still impose a total combined sanction that is punitive. Although any additional sanction not proscribed by the guidelines is permissible, community service is the generally preferable alternative in such instances.

(f)If the defendant establishes that payment of the fine in a lump sum would have an unduly severe impact on him or his dependents, the court should establish an installment schedule for payment of the fine. The length of the installment schedule generally should not exceed twelve months, and shall not exceed the maximum term of probation authorized for the offense. The defendant should be required to pay a substantial installment at the time of sentencing. If the court authorizes a defendant sentenced to probation or supervised release to pay a fine on an installment schedule, the court shall require as a condition of probation or supervised release that the defendant pay the fine according to the schedule. The court also may impose a condition prohibiting the defendant from incurring new credit charges or opening additional lines of credit unless he is in compliance with the payment

schedule.

(g)If the defendant knowingly fails to pay a delinquent fine, the court shall resentence him in accordance with 18 U.S.C. § 3614.

Fed. R. Cr. P. 32, Sentencing and Judgment

(i) Sentencing.

(1) In General. At sentencing, the court:

(A) must verify that the defendant and the defendant's attorney have read and discussed the presentence report and any addendum to the report;

(B) must give to the defendant and an attorney for the government a written summary of—or summarize in camera—any information excluded from the presentence report under Rule 32(d)(3) on which the court will rely in sentencing, and give them a reasonable opportunity to comment on that information;

(C) must allow the parties' attorneys to comment on the probation officer's determinations and other matters relating to an appropriate sentence; and

(D) may, for good cause, allow a party to make a new objection at any time before sentence is imposed.

(2) Introducing Evidence; Producing a Statement. The court may permit the parties to introduce evidence on the objections. If a witness testifies at sentencing, Rule 26.2(a)–(d) and (f) applies. If a party fails to comply with a Rule 26.2 order to produce a witness's statement, the court must not consider that witness's testimony.

(3) Court Determinations. At sentencing, the court:

(A) may accept any undisputed portion of the presentence report as a finding of fact;

(B) must—for any disputed portion of the presentence report or other controverted matter—rule on the dispute or determine that a ruling is unnecessary either because the matter will not affect sentencing, or because the court will not consider the matter in sentencing; and

(C) must append a copy of the court's determinations under this rule to any copy of the presentence report made available to the Bureau of Prisons.

Nevada Revised Statutes §78.257. Right of stockholders to inspect, copy and audit financial records; exceptions; civil and criminal liability; penalty.

1.Any person who has been a stockholder of record of any corporation and owns not less than 15 percent of all of the issued and outstanding shares of the stock of such corporation or has been authorized in writing by the holders of at least 15 percent of all its issued and outstanding shares, upon at least 5 days' written demand, including the affidavit required pursuant to subsection 2, is entitled to inspect in person or by agent or attorney, during normal business hours, the books of account and all financial records of the corporation, to make copies of records, and to conduct an audit of such records. Holders of voting trust certificates representing 15 percent of the issued and outstanding shares of the corporation are regarded as stockholders for the purpose of this subsection. The right of stockholders to inspect the corporate records may not be limited in the articles or bylaws of any corporation.

Greenway Bylaws, Article I

Section 2. Special Meetings. Special meetings of the shareholders may be called at any time by the president or a vice-president or a majority of the Board of Directors acting with or without a meeting, or the holder or holders of one-half of all the shares outstanding and entitled to vote thereat.

Docket 183, p 16, government's sentencing memorandum

Due to the size of the restitution amount (i.e., at least $487,537.44) and Jehu Hand's purportedly limited ability to pay (PSR ¶88-89) the government believes that a fine would not serve the interests of justice in this case.

Docket 218: 70:4 to Witness Hansen by government

Q. Okay. And after you heard about Greenway from your friend, um, did you do any research on the company yourself?
A. Yeah, I did some superficial research, you know, checking out their website and such.
Q. Okay, and what did you think about the company after you researched it?
A. At the time they seemed, you know, promising and ambitious and it seemed like they had a pretty good solid goal in mind.
Q. And what type of business did you understand Greenway Technology to be in?
A. If my memory serves me correctly, um, I think they, um, coordinated or operated resorts catering towards the target market of gay couples.
Q. Okay. Did you ever buy stock in Greenway Technology?
A. I did, yes.

Docket 218 74:23 to 75:23, Witness Hansen by defense

Q. Now let me, if I could, discuss with you your purchase of this stock. Do you recall what led you to go to the website of Greenway?
A. Um, yeah, well, you know, I obviously Googled the

company and that bought up their website, so that's probably the ultimate factor of how I got to their website.
Q. Fair enough. So in other words you had made a decision that you wanted to invest some money?
A. That's correct.
Q. And so on your own you went to the website and Googled Greenway?
A. Right.
Q. Having Googled it, you went to this website and there was something that was on there that led you to feel it would be a good investment?
A. I'd say that's a fair statement, yes.
Q. And did you do anything else after you decided to look for an investment and on your own Googled Greenway and then saw the website, any other research, anything else you did?
A. Like I said it was around 6 years ago, so I don't remember every step of the way of my research, but I'm pretty sure the bulk of it, the majority of my reasoning was from just looking at their website.

Docket 218, 76:8-11, 76:22 to 78:8, Witness Hansen by defense.

Q. Okay, let me ask you this. Did you -- let me refer you, if I could, to Page 14 of Exhibit 1. (On screen.) Exhibit 1, Page 14. And this a balance sheet for Greenway Technology. Did you ever have a chance to see this balance sheet?
A. I've never seen this sheet before. . . . I don't recognize it.
Q. Let me ask you, sir, did you know that a -- an update, including the document that is headed "Balance Sheet," was provided to something called the OTCBB, the Over-

The-Counter Bulletin Board, so that it would be available for review on the internet by people who were interested in purchasing stock?
A. What was the question again?
Q. Sure.
Did you know that there's a website that's maintained by FINRA, which is the Financial Industry Regulatory Authority, that allows people who want to buy stocks such as this to look at what has been filed regarding the financial state of the company, whether it has liabilities or assets, whether it's a good buy or financially a bad one?
A. Um, no, I wasn't aware of that.
Q. And you were not aware that for the last quarter, that company had lost over a quarter of a million dollars, I take it?
A. I wasn't aware of that.
Q. Had you known that it had lost over a quarter of a million dollars in the last quarter, I take it that may have affected your decision to buy the stock?
A. I would say so.
Q. If you knew that its liabilities, what it owed, exceeded its assets by more than a million dollars, I take it that would have affected your decision?
A. Yes.
Q. Did you know that Jehu Hand caused the filing of this OTC statement to let the public review this, did you know that?
A. I was not aware.
Q. Were you told that by the government?
A. Un-un.
Q. No?
A. I don't think so. I mean if I had, I don't recall that.

Docket 223, 102:1-15 (Frank Morelli III, by government)

Q. Okay, but these three that are highlighted, these are your nominees?
A. Yes.
Q. Okay. Did you ever have any discussions with Jehu Hand about who controlled these companies?
A. Yes, I believe they were controlled by the Hands.
Q. Well you just said they were your nominees?
A. No, not these three, the other ones.
Q. Okay, but the three that are highlighted, did you ever have any discussions with Jehu about who controlled those?
A. Yes.
Q. What if anything did you tell him?
A. Well they were friendly to me because -- well they were friendly with me.

Docket 229 5:23-25 to 6:2 (Sentencing)

THE COURT: You'll understand that I have not only read the presentence report, but I've read the various sentencing memoranda and the data submitted, so I am familiar with all of that.

Docket 229 11:7-10 (Sentencing)

THE COURT: All right. A fine range of not less than $15,000, nor more than $31,073,052. Restitution in the amount of $2,589,421. And there must be a special assessment of $600.

Docket 229, 14:23 to 15:19 (Sentencing)

MR. PALID: Okay. Learned Hand, for one, he participated in one of the two pump and dumps that the defendant participated in, he participated in the Crown pump and dump, and his involvement, we would argue, in the Crown pump and dump, while significant and necessary for the pump, was not as significant as that of the defendant, Jehu Hand, who we would contend was the mastermind of this pump and dump.

THE COURT: Well I know you've called him that, but I will tell you my impression of the evidence is somewhat different. My impression is that his participation was absolutely key. He was an attorney, after all, and he furnished attorney certifications without which the public trades could not have gone on, and I view that severely. He knew what he was doing. All of that. But it was others, Morelli, Katz, and Learned Hand -- and I know he was only in on the one, who are putting the thing together. Now Mr. Jehu Hand seems rather immoral and they called him in when it was necessary and he did his illegal trick, but that's my impression from the evidence. I'll hear you.

Docket 229, 38:6-8

THE COURT: . . . The Court imposes upon you a fine of $1 million subordinate to the restitution, that is restitution will be paid first, then the fine.

GREENWAY TECHNOLOGY
Balance Sheet
June 30, 2012
ASSETS

Current Assets	
Cash in bank	$ 18,750
Total Current Assets	18,750
Fixed Assets-Refinery and Engineering	252,100
Total Assets	$ 270,850
LIABILTITIES AND STOCKHOLDERS' EQUITY	
Current Liabilities	
Accounts Payable	$ 23,795
Accrued Interest Payable	231,575
Related party Advance	18,750
Note Payable - JK Advisors	230,000
Total Current Liabilities	504,120
Long Term Liabilities	
Debentures	307,216
Accrued Debenture Interest	133,745
Total Long Term Liabilities	440,961
Stockholders' Equity	
Preferred stock, 10,000,000 shares authorized, par value of $.001 per share, 5,000,000 shares issued and outstanding	5,000
Common stock, 90,000,000 shares authorized, par value of $.001 per share, 20,265,802 shares issued and outstanding	20,265
Additional paid in capital	429,888
Deficit accumulated during development stage	(1,129,385)
Total Stockholders' Equity	(674,232)
Total Liabilities and Stockholders' Equity	$ 270,850

SOURCE: Greenway Technology
October 25, 2012 13:26 ET
GREENWAY TECHNOLOGY Acquires Andalusian Resorts, LLC

LAS VEGAS, NV-- (Marketwire - Oct 25, 2012) - GREENWAY TECHNOLOGY (the "Company)" (PINKSHEETS: GWYT) today announced that it acquired Andalusian Resorts, LLC ("Andalusian") as part of an overall transaction conveying control of the Company to Bernard A. Fried. The Company acquired Andalusian for 2,000,000 shares of its preferred stock valued at $750,000. "We are thrilled to acquire Andalusian," stated Kevin Holbert, the Company's former CEO, who has agreed to remain on our Board of Directors and serve as our Senior Vice President and Chief Operating Officer. Mr. Fried added, "The transaction allows us to pursue a vast untapped upscale market with significant financial potential."
Mr. Fried brings over thirty years of telecommunications, Customer Relationship Management, and contact center experience in entrepreneurial and enterprise settings to our Company. He has applied his business development, operations and sales skills to consult with Fortune 1000 and international companies in the US, India, the Philippines and Australia. His clients have included, American Electric Power, AT&T, Capital One, Telstra and Nippon Telephone. From December 2000 through February 2010, Mr. Fried owned and operated FCI Company, LLC (f/k/a Fried Consulting Group). From July 2008 through July 2009, he also served as Managing Director of Coronado Group, Inc. From February 2010 through April 2012, he served as President and COO and from April 2012 through

September 2012 as CEO of Flint Telecom Group, Inc., an international telecom technology and services organization delivering next-generation IP communications products and services. He currently operates Andalusian Resorts, LLC ("Andalusian"), a development stage company which intends to be engaged in the operation an exclusive chain of resorts and spas.

Mr. Fried will devote his full time efforts towards the Company's affairs, earning a base salary of $250,000, plus additional compensation as determined by the Company's board of directors. While Mr. Fried and the Company have not currently entered into a formal employment agreement, it is anticipated that such an agreement will be entered into in the near future. Mr. Fried will be based out of the Company's new headquarters.

Mr. Fried currently owns 150,000,000 of our common shares and 10,000,000 of our convertible preferred shares and effectively controls the affairs and management of the Company. Within the last five years, Mr. Fried has not been the subject of any criminal or administrative proceeding, does not have any family or other relationship with any officer or director of the Company, has no known conflicts with the Company and has not entered into and does not plan on entering into any related party transaction with the Company other than as set forth herein.

Mr. Fried envisions Andalusian to be a premier luxury boutique hotel and resort chain catering specifically to the many alternative lifestyles of men and women today. "We see our resorts as a destination where exceptional care, attention to comfort and detail and the comfort of our guests will be our ultimate mission."

It is Mr. Fried's belief that current international hospitality options afforded exclusively to gay and lesbian travelers are

at best, sub-standard. "Current properties offer one or two star service for four or five star prices. We intend to offer the gay and lesbian community a top flight experience that they will want to identify with and make their own."
The Company intends to operate as Andalusian Resorts and Spas with properties initially located in various cities throughout the United States, with its first resorts targeted for Palm Springs, CA and Las Vegas, NV. The Company is in contract negotiations in Palm Springs and is in the process of completing negotiations for the acquisition of the Las Vegas property. If and when negotiations are concluded for both properties, both closings will be subject to standard conditions including, but not limited to, completion of due diligence and the availability of suitable financing, and are expected to close within the fourth calendar quarter of 2012 or the first calendar quarter of 2013. Both properties, to the extent acquired, will require significant renovation to bring each property to the Company's most stringent requirements and standards.

Matters discussed in this press release contain forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934. These forward-looking statements are based on various assumptions and involve substantial risks and uncertainties, including, without limitation, those relating to the integration of Andalusian into our company, our ability to obtain financing necessary to do so, the execution of its business plan and many other factors which may or may not be beyond our control.
CONTACT INFORMATION
Greenway Technology Bernard A. Fried (702) 605-4301
ir@arsproud .com Investor

HAND & HAND
A PROFESSIONAL CORPORATION
24 CALLE DE LA LUNA
SAN CLEMENTE, CALIFORNIA 92673
TELEPHONE (949) 489-2400
FACSIMILE: (949) 489-0034
EMAIL: jehu@jehu.com

July 31, 2012

Manhattan Stock Transfer Company
57 Eastwood Road
Miller place, NY 11764

Re: ***Greenway Technology***

Dear Sirs and Mesdames:

The undersigned has been retained as counsel to Greenway Technology, a Nevada corporation ("Greenway Technology"). The subject of this opinion are 7,000,000 shares of Common Stock to be on conversion of two promissory notes aggregating $20,000 (the "Notes") originally issued by Greenway Technology on June 20, 2008 (the "Shares"). The Shares are to be issued free of any stop transfer or restrictive legend.

According to the financial statements of Greenway Technology including In its Initial Disclosure filed with OTC Markets for the year ended June 30, 2008, as updated for the June 30, 2009 and the June 30, 2012 Annual Updates (collectively, the "Disclosure Statement"), Greenway Technology issued the original Note for cash

received in the principal amount of $230,000 to an investment fund. The original note was sold and assigned to various persons in 2010. In connection with the change of management, Greenway Technology solicited the conversion of the Notes into shares of common stock. The holders of the Notes have agreed to convert the Notes as set forth below:

Name of Holder	Common Shares
Lara Mac, Inc.	3,500,000
Florence Consulting, Inc.	3,500,000

Opinion

This opinion addresses the validity of the issuance of the Shares, the legality of issuing the Common Stock without restrictive legend on the certificates representing the Shares, and the status of the Shares as freely tradable, except as they may be acquired by "affiliates" of Greenway Technology.

Basis for Supporting Legal Opinion. The following is the basis for our supporting legal opinion for the requested issuance and delivery of the Shares free of any restrictive legend.

1. Our review and analysis of a resolution of the Board of Directors of Greenway Technology dated July 25, 2012 (the "Resolutions").

2. Our review and analysis of the Articles of

Incorporation of Greenway Technology, including the Certificate of Determination for the Series A Convertible Preferred Stock, as amended.

3. Our review of the Disclosure Statement.

4. Our review of the Notes.

5, Our review and analysis of representations by each person proposing to acquire the Shares that it is not an executive officer, director or otherwise an affiliate of Greenway Technology.

Section 3(a)(9) of the Securities Act. The original note was issued by Greenway Technology in June 2008, and assigned to various persons in 2010. The Notes being converted are each in the face amount of $10,000. The Notes constitutes "securities" of Greenway Technology as defined under Section 2(a)(1) of the Securities Act of 1933. Section 3(a)(9) exempts any security exchanged by the issuer with "its" security holders so long as no commission is paid in connection with the solicitation of the conversion. The conversion notices to be executed by the proposed holders of the Shares represent that no commission was paid. Therefore, the exchange of the Notes for the Shares is exempt under Section 3(a)(9).

Application of Rule 144. Rule 144 (d)(3)(ii) provides. that in calculating the holding period for purposes of Rule 144, "If the securities sold were acquired from the issuer solely in exchange for other securities of the same issuer, the newly acquired securities shall be deemed to have been acquired at the same time as the securities surrendered for conversion or exchange, even if the securities surrendered were not convertible or exchangeable by their terms." Since

the Notes was issued in June 2008, the holding period of Rule 144 has been satisfied provided the holders of the Notes are not "affiliates" of Greenway Technology. Rule 144(a) defines restricted securities to be those acquired from the issuer or an affiliate of the issuer. As of the date of this opinion, and giving effect to the amended Certificate of Designation, which entitles the holder with the rights of 150,000,000 shares of common stock, neither of the recipients of the Shares will own more than 2% of the outstanding shares. The determination of whether a stockholder of 2% of the outstanding shares is an "affiliate" by virtue of such percentage of ownership is a matter of the facts and circumstances; we do not note any factors such as contractual agreements for the election of directors that would indicate that any of these persons is an "affiliate" as of the date of this opinion. The form or conversion notice for each or them contain a representation as to their non-affiliate status. We believe that it is reasonable to conclude that none of these recipients is an "affiliate" for purposes of Rule 144.

Impact of Rule 144(i). Subsection (i) of Rule 144 provides that Rule 144 is not available as to securities issued by a company which either is a "shell" company or at any time in its existence was a "shell' company unless Form 10 information has been on file for 12 months. In reviewing the Disclosure Statement, it appears that Greenway Technology has never been a "shell" company. Therefore, Rule 144(i) is inapplicable to the Shares.

Supporting Legal Opinion. Accordingly, based upon the above we are of the opinion as follows with respect to the issuance of the Common Stock:

A. The issuance of the Shares will be exempt from registration pursuant to Section 3(a)(9) of the Securities Act and Rule 144 and may tack the holding period of the Notes, cg, from June 2008. Consequently, when issued, the Shares may be issued without a restrictive legend, and may be freely traded except by affiliates of Greenway Technology.

B. Greenway Technology, through its Board of Directors, has taken all necessary and required corporate action to cause the issuance and delivery of the Shares, and such will be duly authorized, validly issued and non-assessable.

Our above opinions are subject to the following qualifications:

1. Members or our firm are qualified m practice law in the State of California and we express no opinion as to the laws of any jurisdictions except for those of California, the BVI Companies Act and the United States of America referred to herein. For the purposes of rendering this opinion, we have assumed that if a court applies the laws of a jurisdiction other than the laws of California, the laws of such other jurisdiction are identical in all material respect to the comparable laws or the State of California.

2. The opinions set forth herein arc expressed as of the. date hereof and remain valid so long as the documents, instruments, records and certificates we have examined and relied upon as noted above, arc unchanged and the assumptions we have made, as noted above, arc valid.

This opinion is furnished by us as counsel to Greenway Technology and may only be relied upon by you in connection with the issuance of Common Stock and Greenway Technology. It may not be used or relied upon by you for any other purpose or by any other person, nor may copies be delivered to any other person, without in each instance our prior written consent.

Please have all stock certificates and delivered to Tony Katz, 11 Warf Avenue #1, Redbank, NJ 07701, telephone (561) 305-7605.

Very truly yours,

Hand & Hand
A professional corporation
/s/ by Jehu Hand, President

SECURED PROMISSORY NOTE

$230,000 June 20, 2008

FOR VALUE RECEIVED, the undersigned Greenway Technology, a Nevada corporation ("Maker") promises to pay to the order of JK Advisers Hedge Fund LLC ("Lender"), at its principal office, or at such other place as may be designated in writing by the holders of this Promissory Note ("Note"), the principal sum of TWO HUNDRED THIRTY THOUSAND AND 00/100 DOLLARS ($230,000)(the "Principal Sum"). The unpaid Principal Sum, together with all other amounts advanced from time to time by Lender, shall bear interest at 25% until paid. In addition to the interest payment, Lender also agrees to issue to Holder 100,000 restricted shares of common stock of Lender.

The unpaid Principal Sum and all accrued but unpaid interest thereon shall be due and payable on or before March 31, 2009. In addition, the Maker will pay down this note out of the proceeds of its current private placement, at the rate of 25% of the first $500,000 in net proceeds and one third of net proceeds thereafter until this Note with interest is paid in full. This Note is secured by a pledge of Maker's outstanding 5 million shares of Series A Preferred Stock.

All payments to be made under this Note shall be payable in lawful money of the United States of America which shall be legal tender for public and

private debts at the time of payment.

In the event that an action is instituted to collect this Note, or any portion thereof, Maker promises to pay all costs of collection, including but not limited to reasonable attorneys' fees, court costs, and such other sums as the court may establish.

In the event of a default under this Note when due, then the holder of this Note, at its election, may declare the entire unpaid Principal Sum and all accrued but unpaid interest thereon immediately due and payable.

Every provision hereof is intended to be several. If any provision of this Note is determined, by a court of competent jurisdiction to be illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect the other provisions hereof, which shall remain binding and enforceable.

This Note is made in the State of Nevada and it is mutually agreed that Nevada law shall apply to the interpretation of the terms and conditions of this Note.

All agreements between the holder of this Note and Maker are hereby expressly limited so that in no contingency or event whatsoever, whether by reason of deferment or acceleration of the maturity of this Note or otherwise, shall the rate of interest hereunder exceed the maximum permissible under applicable law with respect to the holder. If, from any circumstances whatsoever, the rate of interest

resulting from the payment and/or accrual of any amount of interest hereunder, at any time that payment of interest is due and/or at any time that interest is accrued, shall exceed the limits prescribed by such applicable law, then the payment and/or accrual of such interest shall be reduced to that resulting from the maximum rate of interest permissible under such applicable law. This provision shall never be superseded or waived.

The makers, endorsers, and/or guarantors of this Note do hereby severally waive presentment, demand, protest and notices of protest, demand, dishonor and nonpayment.

IN WITNESS WHEREOF, this instrument is executed as of the date first hereinabove set forth.

GREENWAY TECHNOLOGY

/s/ William E. Chipman, C.F.O.

HAND & HAND
A PROFESSIONAL CORPORATION
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EMAIL: jehu@jehu.com

July 31, 2012

Merrimac Corporate Securities, Inc.
1150 Douglas Avenue, Suite 1080
Altamonte Springs, FL 32714

Re: Shares of Esthetics World--Greenway Technology

Dear Sirs and Mesdames:

We are securities counsel to Greenway Technology (the "Company"). This opinion is provided in response to the request of Esthetics World ("Shareholder") with respect to the deposit of 1,000,000 shares of Common Stock ("Shares") of the Company represented by certificate no. TV 1101.

We understand. that you have requested an opinion of counsel with respect to certain matters pertaining to the Shares.

In giving our opinion, we have reviewed the following documents, which we believe are all of the documents required in order to provide our opinion:

(a) The information posted on the OTC Disclosure and News Service regarding the Company. which provides the "current public information" required by Rule 144(c) (the "Disclosure Statement");

(b) A seller's representation letter from the Shareholder confirming that the Shareholder has not been an affiliate of the Company for the past three months, and that a minimum of one year has elapsed since the Shares were acquired from the Company or an affiliate of the Company; and

(c) The Disclosure Statement, indicating that the Shares were issued and paid for at least twelve months prior to the date of this opinion, that the transferor of the Shares was not an "affiliate" of the Company at any time since issuance of the Shares, and that the Company has never been a "shell" company at the time the Shares were issued or the acquisition by the Shareholder.

(d) The corporate stock ledger, which reflects that a certificate was issued for the Shares of May 11, 2009.

(e) Corporate records indicating that the Shares were issued on conversion of a $2,500 promissory note on May 28. 2008.

It is our opinion that Shares are fully paid, validly issued and nonassessable, and that they may be transferred by the Shareholder under the exemption provided by Section 4(1) of the Securities Act of 1933. It is our further opinion that Rule 144(i) does not apply to these shares since the Company has never been a shell company.

This opinion may be relied on by you and your clearing firm, and may be supplied to regulatory authorities as well; otherwise, it is only for your benefit and the benefit of the Shareholder. We undertake no obligation to advise you of changes in law or fact which might arise after the date of our opinion which would, if known to us now, would materially affect the above opinion.

Very truly yours,

Hand & Hand
A professional corporation
/s/ by Jehu Hand, President

From: The Stock Psycho [PennyPsycho@PennyStockAlerts.com]

Sent: 11/19/2012 2:37:35 P.M.

To: trin5555@yahoo.com

Subject: ***GWYT Alert! Society's Trend Provides Unlimited Growth Engine***

www.PennyStockAlerts.com does its best to bring you accurate information but errors may and sometimes do occur. Always do your own research before investing. PennyStockAlerts.com is not a licensed financial advisor. This is a paid advertisement, not a solicitation or recommendation to buy or sell securities.

Good morning all. Let's get right to it.

My new Alert is **GWYT- Greenway Technology**

About GWYT:

Greenway Technology, through its acquisition of Andalusian Resort, LLC, intends to operate as Andalusian Resorts and Spas with properties initially located in numerous cities throughout the United States, with its first resorts targeted for Palm Springs, California and Las Vegas,

Nevada. Our goal is to be a premier luxury boutique hotel and resort chain catering specifically to the many alternative lifestyles of men and women today. Our resorts are intended to be a destination where exceptional care, attention to comfort and detail and the comfort of our guests will be our ultimate mission. The company is based in Las Vegas, Nevada.

This is officially my GAYEST alert ever! Now let me tell you why that's a good thing, and how **this play could deliver the pot of gold at the end of the** "rainbow." Get the giggles out of your system. While this one my sound a little funny, I give you my word, I think the trading gain potential is serious as a heart attack.

GWYT has acquired Andalusian Resort, LLC, and intends to operate as Andalusian Resorts and Spas.

This is a very innovative breakthrough company that's very intelligently breaking into an extremely lucrative market that's exploding with growth, and shockingly, has virtually NO competition.

Think about it. If I told you there was a niche market that was very profitable, had insanely large growth, and the market is almost entirely free from competitors, what would you think? It absolutely sounds too good to be

true. Oh and by the way, **this niche has pretty much perfect "recession-proof" growth that could continue going full steam even if the *overall* industry has NO growth or even if it's in decline!** Have you *ever* heard of that?

The reaction you probably had when hearing what this company does is the very barrier that has kept the Alternative Lifestyle Luxury Tourism industry the magical place where no matter how good *(or fabulous)* the market is, people are hesitant to enter this market.

That is an EXTREMELY POWERFUL SITUATION that is ultra-rare. **That's the very engine that I believe will propel GWYT to the Victory Mark!**

Combine that explosive growth with a company that's poised to dominate in their niche industry by delivering TRUE luxury quality, something that none of their competitors seem to do.

It is GWYT Management's belief that **current international hospitality options afforded exclusively to gay and lesbian travelers are at best, sub-standard. "Current properties offer one or two star service for four or five star prices.** We intend to offer the gay and lesbian community a top flight experience that they will want to identify with and make their own."

GWYT may be the first company in the WORLD to provide true luxury for gay and lesbian travelers.

That is a monster competitive advantage. Picky, cleanly, snobby...those are all stereotypical gay characteristics (not that there's anything wrong with that..). Don't you think people with those kind of personality traits are going to be extremely inclined to choose a true luxury experience at a great value than a sub-standard low quality traveling experience? In other words, I **believe gay people do NOT want a cheap and dirty hotel room!**

I think GWYT is not only first to market, but is the ONLY choice in the market.

This company seems truly poised to succeed, and but who cares? All I care about is if the STOCK will succeed, and herein lies the true beauty of GWYT.

The market-cap of GWYT is a puny, ridiculously small $1.5 million!

In my opinion, **that absolutely gives GWYT true QUADRUPLE DIGIT UPSIDE...**

The gay and lesbian tourism industry is a $65 BILLION market.

The Company intends to operate as Andalusian

Resorts and Spas with properties initially located in numerous cities throughout the United States, with its first **resorts targeted for Palm Springs, CA and Las Vegas, NV.**

The Company is in contract negotiations in Palm Springs and is in the process of completing negotiations for the acquisition of the Las Vegas property.

That's why I believe ***right now*** **could be the most profitable time to hop on the GWYT train.** The current market-cap does not seem to reflect where the company will be after completing these deals.

Here is what the company said:

If and when negotiations are concluded for both properties, both closings will be subject to standard conditions including, but not limited to, completion of due diligence and the availability of suitable financing, and are ***expected to close within the fourth calendar quarter of 2012 or the first calendar quarter of 2013.*** *Both properties, to the extent acquired, will require significant renovation to bring each property to the Company's most stringent requirements and standards* :

Well the clock is ticking. Whether the deals end up closing or not, as the time draws nearer to their projected close date, I **anticipate traders will go wild in anticipation and could**

potentially send GWYT's stock to breakout highs!
With such a small market cap, and such a perfect market to enter with seemingly no competition and unlimited growth, it seems like the perfect trading opportunity. However, GWYT is a volatile, thinly traded, and low share price stock so ANYTHING could happen. Always trade with the utmost caution and be sure to focus on protecting yourself by minimizing losses.

** Remember that every single alert I send is very volatile and risky. Any one of them could tum into a big loser. In my personal opinion, **no matter how much potential any company has, 99% of the time all that matters is HOW THE STOCK TRADES.** If a stock doesn't trade well, nothing else matters. Don't believe the hype. Be sure to use a tight stop, book profits quickly on these volatile trades, never let any one trade move too far against you, watch out for gaps, make sure the stock is trading in a healthy way before you enter, and monitor it closely to make sure momentum is positive. It's always safest to book profits quickly, even on alerts with long-term potential. (Amateur biased unlicensed opinions) **

With that being said, this could be one of our most exciting opportunities in a while.

GWYT put out news AFTER Friday's close.
Although it was kinda fluff news, there was a

quote in there I loved. Look at this:

For our shareholders, our dedication and support of the Gay traveler is not without reason." Information in a report from Community Marketing, Inc. **(CMI)** shows that **"gay men and lesbians travel more, own more homes and cars, spend more on electronics, and** have the largest amount of disposable income of any niche market." Mr. Fried continues: **"More disposable income will equate to more available dollars for vacation and travel."**

And yet society's taboos, or whatever the case may be, have kept this market miraculously free from competition, or even ONE good solid product. There is not ONE brand name in the gay and lesbian travel industry.

GWYT is in a unique "position" (lol, sorry) to profit, unlike any other company I've brought to you in recent history. While GWYT may find itself the "butt" of a few jokes, if this thing takes off like I think it will, we could all be laughing our way straight to the bank.

Why is there so much explosive growth, and how can **GWYT** prosper even if the overall travel and/or luxury travel industries are struggling? Because **GWYT** has a unique advantage, a societal trend. Gayness is more open and accepted than ever, as evidenced by the recent Election which was called the most powerful election for the gay

community ever.
It even saw the voted in election of the US's first openly gay senator, Wisconsin's Tammy Baldwin. That's not San Francisco's home of California, or even New York. That's good old cheese loving Wisconsin. That means more and more gay people are "coming out of the closet" than ever before, and it's more accepted than ever. That will translate into more gay individuals being willing to take part in activities like gay travel, which may have been too embarrassing or unacceptable to the public, for them to take part in in the past.
So GWYT's market is growing by epic proportions! It's a growth super engine that is completely independent of the underlying growth of the industry itself.
GWYT is a rare thing. **This is a 1 in a million market, clashing with a $1.5 million market cap. This 7 cent little puppy could easily be the top play to tear up the charts this week!**
All eyes on GWYT going into Turkey Day....
PSA - Stock Psycho
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ADDENDUM TO THE PRESENTENCE REPORT
UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS
UNITED STATES V. JEHU HAND, DKT. 01011:1SCR10386-001

OBJECTIONS

By the Government

No objections have been submitted by the government.

By the Defendant

The following objections have been submitted by the defendant.

* * *

OBJECTION #2: ¶15: "Greenway was a shell company as of at least June 2012, without any active business operations or significant assets. Most of Greenway' s stock was controlled by JEHU HAND."
Objection: Ben Hoskins owned just under 10 million shares of common and preferred stock which was convertible into 50 million shares. Jehu Hand owned 888,000 shares by 2012. There were about 8,800,000 shares controlled by other shareholders. Jehu Hand did not "control" Ben Hoskins.

OBJECTION #3: ¶16: "JEHU HAND connected with

stock promoter Frank Morelli in or around May 2012, and Morelli in tum brought Antonio Katz and Mitchell Brown into the fold."
Objection: Morelli testified that he was contacted by Adam Hand through a mutual acquaintance, Andy Austin, and that he first had contact with Jehu Hand in June 2012.

OBJECTION #4: ¶16: "The 'Jehu Group' (i.e., JEHU HAND and his brothers)."
Objection: The makeup of the "Jehu Group" was never clearly established by any witness. Morelli said that the "Jehu Group" included Jehu Hand's client (Ben Hoskins).

OBJECTION #5: ¶20: "JEHU HAND and his co-conspirators found a private company to merge into the Greenway shell in order to entice investors to purchase the company's worthless stock. They settled on Andalusian Resorts, LLC ("Andalusian"). Andalusian was a development stage company which planned to operate a chain of resorts catering to homosexual clientele."

Objection: There was no evidence presented at trial that Jehu Hand had anything to do with the sourcing or choice of Andalusian Resorts.

OBJECTION #6: ¶22: "When JEHU HAND did not receive his full share of the proceeds as agreed to among the co-conspirators, he cut Katz and Brown out of the next pump-and-dump scheme he perpetrated, one involving the shares of a company called Ci-own

Marketing."
Objection: This was alleged in the government's trial brief, but the evidence at trial showed that Adam Hand and Learned Hand, (but not Jehu) met with Katz, Brown and others at a hotel in New York to plan the Crown transaction. No witness ever testified that Jehu Hand "cut" Katz and Brown out of the Crown matter.

OBJECTION #7: ¶27: "Adam and Jehu recruited two experienced stock promoters."
Objection: There was no evidence that Jehu Hand had any role in arranging for stock promoters.

OBJECTION #8: ¶67: "Jennifer M. Hand, age 61, resides in Chapel Hill, North Carolina. She suffers from an intellectual disability and is currently not working. According to the defendant's brother, Learned Hand, Learned helps to support Jennifer both emotionally and financially. The defendant noted that he has a good relationship with Jennifer."
Objection: Learned Hand testified at trial that he "borrowed" substantially all of his sister's cash, about $600,000, for an investment on which only Jeremiah Hand holds title.

Probation Officer's Response to Objections #2-9: Ultimately, the Probation Office defers to the Court, which was present for the relevant testimony, and is in a better position to make any determinations regarding these contested facts. No changes have been made to the report, and defense counsel's comments/objections are provided herein for the

Court's review.

* * *

OBJECTION #13: ¶84: "Notably, the defendant also appears to have lived off of the proceeds of his fraud schemes from 2012 to 2013."

Objection: There is no evidence that Jehu Hand "lived off' the proceeds of fraud schemes. Jehu received negligible proceeds from the Greenway and Crown transactions. These funds were used in large part to reimburse him for the non-promotion activities of Greenway (including its annual franchise taxes), and Crown. Of all the participants, he received *the least.*

Probation Officer's Response: Defense counsel's comments are provided herein for the Court's review.

OBJECTION #14: ¶85: "1998 to 2012: The defendant was the sole shareholder and practitioner of Hand & Hand P.C, a California-based law firm. As previously noted, the defendant is currently licensed to practice as an attorney in California. The defendant reported that he worked only four hours per day due to his depression. He indicated that his business generated no income. As noted in the offense conduct, during this time period, the defendant incorporated both Greenway and Crown and during the scheme, he acted as securities counsel and disclosure counsel for the corporations."

Objection: Jehu did not act as securities counsel nor

disclosure counsel. Carlos Duque was the securities counsel and disclosure counsel for Crown Marketing, as established at trial through cross-examination of Learned Hand. Andrew Farber was securities and disclosure counsel for Greenway. During the schemes, Jehu Hand was largely out of the country on his boat. As a result of his convictions in this case, Mr. Hand will lose his license to practice law.

Probation Officer's Response: Paragraph 85 has been amended to remove the reference to the defendant acting as securities counsel and disclosure counsel for Greenway and Crown. The remainder of defense counsel's comments are provided herein for the Court's review.

Probation Officer's Response: The Probation Office notes that the above information is contained in the defendant's pretrial services report dated November 16, 2015 from the Southern District of Florida. Paragraph 88 has been amended to update the market values of the two boats in question. The remainder of the defendant's objection is noted herein for the Court's review.

* * *

OBJECTION #17: "Obstruction of Justice" paragraphs 31, 32, 33, 35, 48, 52

The jury unanimously acquitted Mr. Hand of the charges of destruction of records (Count 10) and destruction of records in any official proceeding (Count 11). Given this

acquittal, no adjustment for obstruction of justice is appropriate.

Probation Officer's Response: The Probation Office understands that the jury acquitted the defendant of Counts 10ss and 11ss. However, the Probation Office maintains that the Obstruction of Justice enhancement is appropriately applied in this case by a preponderance of evidence. Such conduct need not have been formally charged or proved at a trial, so long as the Court finds that the enhancement applies pursuant to a preponderance of evidence standard. Thus, the report remains unchanged and defense counsel's objection is noted herein for the Court's review.

OBJECTION #18: Restitution Paragraph 105

Restitution is required for those persons named as victims in paragraph 105. Restitution should be ordered only in the amounts set forth for these identified persons. Restitution in the total amount of $2,589,421 is not appropriate under 18 U.S.C. § 3663A(2) and (3). § 3663(c)(1) states that this section applies in all proceedings for convictions "in which an *identifiable victim* or *victims* has suffered a physical injury or primary loss." (emphasis added)

Restitution should only be ordered for payment to those persons whose identity is known. Restitution may not be ordered if there is no identifiable person to whom it can be paid. 18 U.S.C.

§ 3664 sets out procedures which require identifiable victims with determinable losses. Of course, if any additional identifiable person has losses, such person

is entitled to restitution, if they come forward before sentence or within 90 days thereafter. See 18 U.S.C. § 3664(d)(5).

Finally, it should be noted that defendant Jehu Hand received a negligible amount of money from the Greenway and Crown ventures, far less than either of his brothers, and the other participants, Brown and Katz.

Probation Officer's Response: The Probation Office maintains that the total amount of restitution due in this case is $2,589,421, $487,537.44 of which is to be paid to the identifiable victims. The Probation Office defers to the Court regarding the payment of restitution to unidentified victims.

§ 9:70. Introduction

The Act contemplates that some person or group of persons will. be in control of every corporation or other business entity..[1] The concept of control, which is crucial to the regulation of secondary distributions, is not defined in the Act. To complicate the matter, the issue of what constitutes a control relationship arises in other contexts of the federal securities laws where the reasons for the inquiry and the policy goals to be achieved are different..[2] Judicial and administrative opinions on the meaning of control for purposes other than Section 2(a)(11) might be helpful, but they are not necessarily reliable when deciding whether a person is an affiliate in the context of a secondary distribution..[3] Despite the absence of a statutory definition,

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[1] See e.g., *American Standard,* SEC No-Action Letter (October 4, 1972), 1972 WL 19628, * 5, [1972 to 1973 Transfer Binder] Fed. Sec. L. Rep. (CCH) 79,071, at ¶82,313.

[2] 15 U.S.C.A. § 77b(a)(3) (exception to the definition of the term "offer to buy" for preliminary negotiations between an affiliate and certain underwriters), 77c(a)(2) (exemption for certain securities issued by an employer or by a company in control relationship with the employer), 77o (liability of controlling persons), 77s (special powers of Commission in connection with balance sheets or income accounts of control persons), 77 Schedule A(17) (required disclosure in registration statement of commissions paid, in connection with the sale of the security to be offered, by control person), and 77p (liabilities of controlling persons), as amended. See also Sec. Act Form S-3, Gen. Instr. I.B.1, 2 Fed. Sec. L. Rep. (CCH) 7152, at 6249, where the Commission's transactional requirements for use of the form include a reference to the aggregate market value of voting stock held by nonaffiliates. See also 15 U.S.C.A. § 781(b)(l) (disclosure in registration statement as to issuer and controlling persons), 78m(e)(2) (restrictions against certain issuer repurchases applied also to controlling persons), 78t (liability of controlling persons), and 78uA(l)(B) (civil penalties for insider trading extended to controlling persons).

[3] See, e.g., *Moerman v. Zipco, Inc.*, 302 F. Supp. 439, 447, Blue Sky L. Rep. (CCH) ¶70828, Fed. Sec. L. Rep. (CCH) ,¶92478 (E.D.N.Y. 1969), judgment aff'd, 422 F.2d 871 (2d Cir. 1970), adhered to on reh'g, 430 F.2d 362, Blue Sky L. Rep. (CCH) ¶70869 (2d Cir. 1970) (For purposes of determining liability under Rule 10b-5, the court stated that the "conclusion is inescapable that persons who act as directors are in control of the corporation."). See also *Vickers v. SEC,* 383 F.2d 343,

the legislative history of Section 2(a)(11) does provide two important clues to the meaning of the undefined term. First, it seems clear that Congress did not expect Section 2(a)(11) to bring within the registration requirements of the Act all redistributions of outstanding securities. Instead, it appears that Congress intended the scope of the definitional section, especially the last sentence, to be limited to redistributions by a person having such a relationship, direct or indirect, to the issuer as to be in a position to obtain registration by the issuer.[4] Ideally, one might argue, the benefits of the registration process should have been extended to purchasers in every secondary distribution. As two early commentators on the exemptive provisions of the Act noted, however, "the limiting of the requirement of registration to those cases of secondary distribution in which registration by the issuer may be compelled is completely justified upon consideration of the practical difficulties inherent in the effecting of registration by a non-affiliated person, the probable inadequacy of any registration thus effected, and the public interest in not hampering the free interchange of outstanding securities in honest transactions.[5]

The second interpretative guideline to the meaning of the concept. Section 2(a)(11) was stated explicitly in the legislative history. According to the report of the Committee on Interstate Foreign Commerce, the concept of control "is not a narrow one, depending upon a mathematical formula of 51 percent of voting power, but is broadly defined to permit the provisions of the act to become effective wherever the fact of control actually

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344 (2d Cir. 1967) (The court sustained the Commission's finding of control under Rule 12b-2, 17 CFR § 240.12b-2, under the Securities Exchange Act.).

[4] H. R. Rep. No. 85, 73d Cong., 1st Sess. 13-14 (1933). Section 6(a) of the Act requires that at least one copy of a registration statement filed under the Act be signed by the issuer. 15 U.S.C.A. § 78f(a)(1976).

[5] Throop & Lane, "Some Problems of Exemption Under the Securities Act of 1933," 4 L. & Contemp. Prob. 89, 119 (1937).

exists."[6]

The legislative history suggests that the following test be used to identify those persons who, because of their relationship to the issuer, should bear the burdens of registration in connection with a secondary distribution: Does the person possess the power to cause the issuer to file a registration statement?[7] Power, for purposes of this test, can flow from stock ownership, management responsibility, or business and personal relationships.[8] A person who meets the conditions of this test is treated under Section 2(a)(11) as equivalent to the original issuer, a characterization that is easier to comprehend in the case of a person who achieves the status by "directly or indirectly control ling . . . the issuer." The result is also justified where the person's affiliation arises from the other two situations contemplated by the last sentence in Section 2(a)(11).[9]

A person who is controlled by an issuer is subject to manipulation by the issuer. By hypothesis, an issuer can cause a controlled person to file a registration statement for the public sale of securities issued by the controlled person. A controlled person (e.g., a majority owned subsidiary) can also effect a secondary distribution, but only if the issuer approves. Consequently, the two persons are treated alike and the issuer is not free to accomplish indirectly what it is prohibited from doing directly. The other category of affiliate, a person under common control with an issuer, is considered a Section 2(a)(11) issuer because of his relationship with a person who controls the issuer. A person under common control with an issuer has a

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[6] H.R. Rep. No. 85, 73d Cong., 1st Sess. 14 (1933).

[7] The pragmatic test was suggested by Throop & Lane, at 118. It has also been attributed to Mr. Manuel Cohen, a former Chairman of the SEC. *Scanfax Systems Corporation* , SEC No-Action Letter (January 6, 1972), 1972 WL 7526, at *3.

[8] See generally Sommer, "Who's 'In Control?'- SEC," 21 Bus. Law. 559 (1966); Campbell, "Defining Control in Secondary Distributions," 18 B.C. Ind . & Com. L. Rev. 37 (1977).

[9] See, infra, §§ 9:79 and 9:80.

disability that is shared by a person controlled by an issuer, i.e., he cannot effect a secondary distribution without the prior consent of the control person. Since a control person also controls an issuer, it is not unfair to insist that the person under common control file a registration statement before publicly reselling securities of an issuer.

The theoretical basis of the test for determining whether a person constitutes a Section 2(a)(11) issuer seems clear and convincing. In practice, the test has suffered in two respects. First, it is narrow in scope. Certain persons who are not in a position to cause an issuer to file a registration statement can, nonetheless, disrupt the ordinary trading market in an issuer's securities by selling a significant amount' of securities to the public. For some courts and, at times, the Commission itself, the inquiry is not whether a person has the ability to force an issuer to sign a registration statement, but whether he has the power to influence an issuer's business policies. The SEC staff regularly employs a more flexible standard for determining affiliation in responding to inquiries from attorneys and others who seek no· action treatment for a proposed sale under Section 4(a)(l) or Rule 144..[10] Second, the concept of control that is embodied in Section 2(a)(11) is vague.[11] and

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[10] See, infra, §§ 10:37 to 10:42.

[11] The constitutionality of the control concept in Section 2(a)(11) was challenged in *U.S. v. Wolfson*, 405 F.2d 779, 783 (2d Cir. 1968), where the court dismissed the argument: "It will suffice to say that the appellants' defense was not that they misunderstood or misinterpreted the statute but that it was beneath their notice and they knew nothing about it. Under these circumstances we need say no more than that any possible uncertainty in the statute need not trouble us now. There will be time enough to consider that question when raised by someone whom it concerns." The appellants' defense, by which they attempted to demonstrate a lack of intent to violate the law, was that they were unaware of any registration requirement with respect to stock of unlisted companies and that because they operated at such high levels of corporate finance, they could not be concerned about such "details." See also, *U.S. v. Re*, 336 F.2d 306, 316 (2d Cir, 1964), where the court rejected the contention that the concept of control in Section 2(a)(11) is unconstitutionally vague, stating "The meaning of 'control'

the factors that are used for determining the existence of control are imprecise..[12] Administrative guidance in the form of Rule 405 offers little assistance in deciding particular cases..[13] As noted in the Wheat Report: "[C]ontrol of a company may arise from a combination of factors and the significance of most of these may vary from case to case, depending not only on the presence or absence of certain relationships but also upon the particular circumstances of the company and of the persons having an interest in it. The factors which would determine who is in control of General Motors would be far different from the factors which would determine who is in control of a small over-the-counter company; and even among similar companies, which case may present different relationships, corporate structures and managerial pattern.".[14]

A review of some of the administrative and judicial interpretations of Section 2(a)(11) will indicate how the SEC and the courts determine whether a person or a group of persons.[15] is an affiliate (see, infra, §§ 9:71 and 9:72). A

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under the act is no different than it is in normal everyday usage, 'The requirement of rea sonable certainty does not preclude the use of ordinary terms to express ideas which find adequate interpretation in common usage and understanding.' "

[12] Congress was aware of the problem of defining "control," at least in the context of the Securities Exchange Act: "It would be difficult if not impossible to enumerate or to anticipate the many ways in which actual control may be exerted, A few examples of the methods used are stock ownership, lease, contract, and agency. It is well known that actual control sometimes may be exerted through ownership of much less than a majority of the stock of a corporation either by the ownership of such stock alone or through such ownership in combination with other factors," H.R. Rep No. 1383, 73d Cong., 2d Sess, 26 (1934).

[13] 17 CFR § 230.405 (hereinafter cited as Rule 405), discussed, infra, in § 9:71.

[14] Wheat Report at 158.

[15] The concept of a control person has been extended by the Commission and the courts to include a control group of persons, See, e.g., *SEC v. Culpepper*, 270 F.2d 241, 246 (2d Cir. 1959); In the *Matter of Strathmore Sec., Inc.*, Exchange Act Release No. 8207 (December 13, 1967), 43 S.E.C. 575, 585, 1967 WL 87761; *In the*

proposed solution to the problem of defining control, as suggested by the Wheat Report, is set forth as a useful guideline (§ 9:73).

§ 9:71. SEC interpretations

The Commission has never formally defined the phrase "any person directly or indirectly controlling or controlled by the issuer, or any person under direct or indirect common control with the issuer" in Section 2(a)(11) for purposes of secondary distributions of unregistered securities. The Commission has formulated Rule 405, however, a definition of the term control, including the terms "controlling," "controlled by," and "under common control with." The definitional rule is incorporated into Regulation C, a collection of rules that govern every registration of securities under the Act..[16] Under Rule 405, control means "the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.".[17]

2. Under this definition, it is the existence of rather than the exercise of, the power that is the crucial factor. Control may turn on "the latent ability to exercise a dominant influence over the affairs of the controlled person.".[18] The Rule also makes it clear that the power to direct or cause the direction of the management and

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Matter of Century Sec. Co., Exchange Act Release No, 8123 (J uly 14, 1967), 43 S.E,C, 371, 379, 1967 WL 88149; *In the Matter of S.T. Jckson & Co,, et al*, Exchange Act Release No. 4459 (July 14, 1967), 36 S.E.C. 631, 635 to 48, 1950 WL 40379; *Mortgage Growth Investors*, SEC No-Action Letter (January 21, 1972), 1972 WL 9096, (1971 to 1972 Transfer Binder] Fed. Sec. L, Rep, (CCH) ¶78, 612. The Commission has stated: "Both in determining whether a particular person is in a control relationship with the issuer, and in determining whether a distribution is being made by control persons, the relationships and activities of such persons have been consistently taken in to account," Securities Act Release No. 4818 (January 21, 1966), 1966 WL 85228, at n.1.

[16] 17 CFR §§ 230.400-230.497 [N.B., footnotes for 9.71 and 9.72 are renumbered to consecutively follow those above]

[17] 17 CFR § 230.405.

[18] *In the Matter of Telescript-CSP, Inc.*, Securities Act Release No. 4644 (September 30, 1963), 41 S.E.C. 664,667, 1963 WL 62765, at *3.

policies of a person can stem from (1) the ownership of voting securities, (2) a contract, or (3) "otherwise." Although Rule 405 was not intended as an interpretation of the operative phrase in the second sentence of Section 2(a)(11), the Commission has utilized it for that purpose in its administrative proceedings..[19] Furthermore, as the

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[19] *In the Matter of Telescript-CSP, Inc.*, Securities Act Release No. 4644 (September 30, 1963), 41 S.E.C. 664, 667, 1963 WL 62765, at *3. The Commission also relies on traditional factors for identifying control: (1) stock ownership, (2) management responsibility, and (3) business and personal relationships. See, e.g., *In the Matter of Beer & Co.*, Exchange Act Release No. 5002 (February 17, 1954), 35 S.E.C. 530, 1954 WL 42925. Beer & Company, a registered broker-dealer, was charged with willfully violating Sections 5(a)(1) and (2) of the Act by selling unregistered securities on behalf of O.R. Seagraves (Seagraves), a person the SEC claimed was in control of the issuer, Wyoming-Gulf Sulphur Corporation (Wyoming). In finding Seagraves to be a person controlling Wyoming, the Commission relied on each of the three factors that individually, or in the aggregate, point to the existence of control: (1) Stock Ownership: Seagraves was the owner of only 18.2 percent of the outstanding stock of Wyoming, but that percentage of ownership made him "one of Wyoming's largest stockholders."
(2) Management Responsibility: Seagraves was not an officer or director of Wyoming. He was, however, a member of the executive committee of the board of directors, "which was authorized to exercise the powers of the Board of Directors in the management of the affairs of the corporation." He was also in charge of a sales division created by the board.
(3) Business and Personal Relationship: Seagraves was one of the organizers of Wyoming. Although not an officer or a director, Seagraves "attended and participated actively in meetings of its Board of Directors." Furthermore, a person employed by Seagraves, who "was under the complete domination and control of Seagraves," served as an officer and director of Wyoming:
See also *Trustcash Holdings, Inc. v. Moss*, 668 F. Supp. 2d 650, 659-60 Fed. Sec. L. Rep. (CCH) 95519 (D.N.J. 2009); *In the Matter of Barry Pomerantz*, Securities Act Release No. 7061 (May 17, 1994), 1994 WL 202770, [1994 to 1995 Transfer Binder] Fed. Sec. L. Rep. (CCH) 85,405, at 85,546 (chairman of the board of directors); *In the Matter of Morgan Stanley & Co.*, Exchange Act Release No. 29625 (August 29, 1991), 50 S.E.C. 692, 693, 1991 WL 286645; *In the Matter of W.H. Bell & Co.*, et al., Exchange Act Release No. 4292 (August 4, 1949), 29 SS.S.E.C. 709, 712 to 13, 1949 WL 35521; *In the Matter of Thompson*

following quotation indicates, the SEC staff automatically invokes Rule 405 as the appropriate source for determining a person's status as an affiliate for purposes of Rule 144:

> In this regard, it is this Division's position that a person's status as an officer, director, or owner of 10 % of the voting securities of a company is not necessarily determinative of whether such person is a control person or member of a controlling group of persons. His status as an officer, director or 10% shareholder is one fact which must be taken into consideration, but, as you recognize, an individual's status as a control person or a member of a controlling group is still a factual question which must be determined by considering other relevant facts in accordance with the test set forth in Rule 405 under the Act, which provides: 'The term "control" (including the terms "controlling," "controlled by" and "under common control with") means the possession, direct or indirect of the power to direct or cause the direction of the management and policies of a person, whether through the owners hip of voting securities, by contract, or otherwise.' This has been the test applied under Rule 154 prior to its repeal and wll continue to be the test applied under Rule 144. In applying this test, as a matter of law, a person who claims that he is not an affiliate in order to use an exemption from registration has the burden of proving the availability of the exemption..[20]

The use of Rule 405 by the SEC and its staff in the context of Section 2(a)(11) would hardly merit comment were it not for the fact that in doing so it has neglected the qualification of control suggested by the legislative history. Instead of asking whether a person has the power to cause

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Ross Sec. Co., Exchange Act Release No. 2455 (March 25, 1940), 6 S.E.C. 1111, 1118 to 1119, 1940 WL 36371.

[20] *American Standard*, SEC No-Action Letter (October 4, 1972), 1972 WL 19628, at *5, (1972 to 1973 Transfer Binder] Fed. Sec. L. Rep. (CCH) 79,071, at 82,313.

the issuer to file a registration statement, the SEC's inquiry is whether a person has the power to direct or cause the direction of the management and policies of person.".[21] In many cases, the answer to the specific inquiry intended by Congress will be implicit in the answer to Rule 405's broader questions. In some cases, it will not.

The potential for erroneous characterization under Rule 405 can be illustrated. Consider, for example, a holder of less than 50 percent of a company's voting stock who, at the direction of the majority stockholder, is hired by the company to manage and operate the business. The employment arrangement expressly provides that except as to certain limited matters, such as the filing of a registration statement, the manager is to have complete authority and free rein in his duties. It seems evident that under the Rule 405 test for control, both the majority stockholder and the hired manager have the "power to direct or cause the direction of the management and policies" of a corporation. It is equally obvious that only the majority stockholder is in a position to cause the issuer to file a registration statement. If the question arises whether the hired manager is an affiliate for purposes of Section 2(a)(11), as it would were he to resell publicly for his own account a substantial amount of the company's securities, it is no longer an academic problem. As far as the manager is concerned, it becomes important for both legal and economic reasons to know whether the appropriate test for identifying an affiliate is his ability to function in the manner specified in Rule 405 or his ability to force the issuer into registration..[22]

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[21] 17 CFR § 230.405.

[22] The concept of a control group has the potential under Rule 405 of imposing Section 2(a)(11) on a person who, although a member of the group, is unable to cause the issuer to file a registration statement. An outside director, for example, is a member of a group. which, under state corporate law, has the power to direct or cause the direction of the management and policies of the issuer. Using Rule 405 as authority, one might conclude that the board of directors, as a group, should be deemed a control person. Each of the individuals in the control group··

After the adoption by the SEC of Rule 144 in 1972 and until late1979, the SEC staff often provided no-action letters to person's seeking advice on the affiliation status of a proposed seller of securities..[23] However, since then the SEC staff has taken the position. that it will no longer make determinations as to affiliate or control status,.[24] stating that the matter is an issue of fact that is better analyzed by the person involved and that person's legal counsel..[25]

§ 9:72 Judicial interpretations

Judicial interpretations of the second sentence in Section 2(a)(11) are not uniform..[26]1 For purposes of analysis they might be grouped into three classes. In the first group are those decisions that indicate as the basis for finding a particular person in control of an issuer that he was in a position to obtain the required signatures of the issuer and its officers and directors on a registration statement..[27]

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including an outside director--might then be treated as an issuer for purposes of defining the term "underwriter" under Section 2(a)(11). See, e.g., *SEC v. Culpepper*, 270 F.2d 241,246 (2d Cir. 1959), where the court, in using Rule 405 to construe Section 2(a)(11), determined that the trial court had properly found a group of persons to be in common control of the issuer and "[t]hus each of the individuals in the control group was an issuer for purposes of defining 'underwriter.' "

[23] See, *infra*, § 10:38.

[24] See "Procedures Utilized by the Division of Corporation Finance for Rendering Informal Advice," Securities Act Release No. 6253 (October 28, 1980), 1980 WL 25632, at *3. The SEC staff signaled the new position in *Book Mobile, Inc.*, SEC No-Action Letter (November 17, 1979), 1979 WL 13198.

[25] See, e.g., *Textron Financial Corporation*, SEC No-Action Letter (December 8, 9-1980), 1980 WL 15004.

[26] See, e.g., *SEC v. Computronic Industries Corp.*, 294 F. Supp. 1136, 1139 (N.D. Tex. 1968), where the court construed Section 2(a)(11) and Rule 405: "Under the aegis of Section 19(a) of the Securities Act of 1933 . . . the Commission defined 'control' and all its derivations to include at the very least any officer or director of the issuer."

[27] See *Pennaluna & Co. v. SEC*, 410 F.2d 861, 865-66, 9 A.L.R. Fed. 625 (9th Cir. 1969), on remand to, Exchange Act Release No. 8892 (May 20, 1970), 1970 WL 103692; *SEC v. International Chemical Development Corp.*, 469 F.2d 20, 28, Fed. Sec. L. Rep. (CCH) ¶93658 (10th Cir. 1972); *SEC v. Tuchinsky*, 992 WL 226302, at *5, [1992 Transfer

In a second group of decisions the determination of control under Section 2(a) finding that an individual qualifies as a Section 2(a)(11) affiliate by noting the relevance of one or more of the traditional indicia of control under Rule 405..[28]

Binder], Fed. Sec. L. Rep. (CCH) ¶96917, at 93,804 (S.D. Fla. 1992); *SEC v Great Lakes Equities Co.*, 1990 WL 260587, at* 17, [1990- 1991 Transfer Binder], Fed. Sec. L. Rep. (CCH) ¶95,685 , at 98,213 (E.D. Mich. 1990); *SEC v. American Beryllium & Oil Corp.*, 303 F. Supp. 912, 915, Fed. Sec. L. Rep. (CCH) ¶92430 (S.D.N.Y.1969); *SEC v. North Am. Research & Development Corp.*, 280 F. Supp. 106,121 (S.D.N.Y.1968), judgment aff'd in part, vacated in part, 424 F.2d 63, Fed. Sec. L. Rep. (CCH) ¶92620 (2d Cir. 1970); *SEC v. Micro-Moisture Controls, Inc.*, 148. F. Supp. 558, 562 (S.D.N.Y. 1957). In *Wassel v. Eglowsky,* 399 F. Supp. 1330, 1362 (D. Md. 1975), judgment aff'd, 542 F.2d 1235 (4th Cir. 1976), the court relied on this test to find the requisite control for purposes of Section 2(a)(11). The court based its ruling on the fact that the individual involved had directly participated in (1) the reorganization of the issuer, (2) the change of its management, (3) the removal of restrictive legends on certain of its stock certificates, and (4) the creation of an over-the-counter market in the stock. See also *SEC v. Schiffer,* 1998 WL 307375, Fed. Sec. L-. Rep, (CCH) U¶90247 at n. 23 (S.D.N.Y.1998); *SEC v. Cavanagh,* 1 F. Supp. 2d 337, 362 (S.D.N.Y. 1998), aff'd 155 F.3d 129 (2d Cir. 1998).

[28] *See SEC v. Netelkos,* 592 F. Supp. 906, 913- 15, Fed. Sec. L. Rep. (CCH) ¶91607 (S.D.N.Y. 1984), where the court found the following two individuals to be in control of the issuer, Falcon Sciences, Inc., because each "possessed and exercised the power to direct the management and policies" of the issuer: (1) Netelkos was an active participant in the day-to-day operation of Falcon and attended virtually every meeting of Falcon's board of directors, despite the fact that he had no official position on the board, and (2) Gamarekian, as to whom the court found:

> His involvement with Falcon was extensive and included complete control over Falcon's stock transfer operations, management of Falcon's stock transfer operations, management of Falcon's EOR field testing, supply purchases for those tests, and substantially all the contacts between Falcon and the market-makers of Falcon's stock. At a company the size of Falcon, control over this variety of significant work functions constitutes substantial control over the entire corporation.

See *SEC v. Netelkos,* 592 F. Supp. 906, 914-15, Fed. Sec. L. Rep. (CCH), ¶91607 (S.D.N.Y. 1984). See also *SEC v. Antoine Silver Mines, Limited (N.P.L.),* 299 F. Supp 414, 416 (N.D. Ill. 1968); U.S. v. Sherwood, 175 F. Supp. 480 (S.D.N.Y. 1959); *SEC v.Micro-Moisture Controls, Inc.*, 167

In all but the first group of decisions, it is impossible to ascertain from the written opinions whether the courts have faith- fully adhered to the limited test for control that Congress intended for Section 2(a)(11) is reported without any statement of the applicable legal standard. .[29] In the third group are those decisions where the courts have justified a finding that an individual qualifies as a Section 2(a)(11) affiliate by noting the relevance of one or more of the traditional indicia of control under Rule 405.4 In all but the first group of decisions, it is impossible to ascertain

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F. Supp. 716, 738 (S.D.N.Y. 1958), judgment aff'd, 270 F.2d 241 (2d Cir. 1959).

[29] See *U.S. v. Sprecher*, 783 F. Supp. 133, 159, Fed. Sec. L. Rep. (CCH) ¶96498, 117 A.L.R. Fed. 767 (S.D.N.Y. 1992), where the court found one defendant to be an affiliate because he was an officer and owner of the majority of outstanding voting securities, and found another defendant to be an affiliate because he was an active participant in and major influence on the management and policies of the issuer; *SEC v. National Bankers Life Ins. Co.*, 334 F. Supp. 444, 455, Fed. Sec. L. Rep. (CCH), ¶93221 (N.D. Tex. 1971), judgment aff'd, 477 F.2d 920, Fed. Sec. L. Rep. (CCH), ¶93944 (5th Cir. 1973), where the court stated that the "indicia of control evidenced by the defendants included stock ownership, directorship positions, officerships, family ties, creditor positions and dominating persuasiveness." In the following cases, the court's finding of control under Section 2(a)(11) was supported by a citation to Rule 405: *S.E.C. v. Platforms Wireless Intern. Corp.*, 617 F.3d 1072, 1087-1088 (9th Cir. 2010); SEC v. Culpepper, 270 F.2d 241, 245 (2d Cir. 1959); *In the Matter of Lexington Resources, Inc., Grant Atkins, and Gordon Brent Pierce*, Release No. 379, 96 S.E.C. Docket 229, 2009 WL 1684743, at *16 (S.E.C. Release No. 2009); *SEC v. Computronic Industries Corp.*, 294 F. Supp. 1136, 1139 (N.D. Tex. 1968); *SEC v. Bond & Share Corp.*, 229 F. Supp. 88, 95 (W.D. Okla. 1963). In *U.S. v. Sherwood*, 175 F. Supp. 480,483 (S.D.N.Y. 1959), the court rejected the Commission's claim that Sherwood was a control person at the time he resold unregistered securities. "[A]lthough Sherwood dominated 8% of the total issued stock, he was unable to secure a representation on the board of directors, he had had a falling- out with John Christopher Doyle, who appears to have been the. dominant figure in the management of [the issuer] and Sherwood was unable to free the bulk of his shares for distribution until Doyle consented thereto." For an illustration of a judicial determination based on Rule 405 that a person was not an affiliate, see *SEC v. Freiberg*, 2007 WL 2692041, at *15 (D. Utah 2007).

from the written opinions whether the courts have faithfully adhered to the limited test for control that Congress intended for Section 2(a)(11).

Summary of Prob48 Form by Petitioner, completed July 19, 2018
Case 1:15-cr-10386-WGY Document 185 Filed 10/23/18
Page 1 of 2

DEFENDANT JEHU HAND'S SUBMISSION OF FINANCIAL DECLARATION AND INFORMATION

Defendant Jehu Hand submits the attached documents (Probation Form 48 and attachment) for the Court's consideration at his sentencing.

Dated: October 23, 2018

Respectfully submitted,
/s/ Eugene G. Iredale_____
EUGENE G. IREDALE
(Attachments non public, assets and liabilities summarized)

Assets:	
2014 Honda CRV, net of loan	$ 2,000
1986 Mercedes	10,000
Boat, net of encumbrance	0
Residence, net of mortgage	50,000
Wedding ring, tungsten carbide	20
Total assets	$62,020

Liabilities:	
Owed to client from co-defendant's embezzlement	180,000
Civil judgment	32,000
Total liabilities	212,000
Net worth	$(149,980)