BEFORE THE HEARING BOARD
OF THE
ILLINOIS ATTORNEY REGISTRATION
AND
DISCIPLINARY COMMISSION

In the Matter of:

RANDALL S. GOULDING Commission No. 2024PR00080

Attorney-Respondent, No. 1025619.

ANSWER TO COMPLAINT

Respondent, Randall S. Goulding, originally licensed to practice law in the State of Illinois on May 19, 1978, has *not* engaged in any conduct which should subject him to discipline pursuant to Supreme Court Rule 770, and upon an actual examination of the underlying facts, the Administrator cannot prove, let alone by clear and convincing evidence, that Respondent violated the Rules of Professional Conduct:

Respondent's *Conduct was Proper. Respondent did not engage in any Dishonesty, Fraud, Deceit or Misrepresentation. Only the SEC attorneys and the Receiver Engaged in such Misconduct, for which there is Ample Evidence for the Administrator to Pursue. The SEC attorneys and the Receiver, at least once in Concert, also Engaged in Multiple Acts of Fraud, Dishonesty and Deceit in Their Misrepresentations to the Court, which, as a Separate Matter, the Administrator Should have Pursued.*
In an Attorney Disciplinary Proceeding, the Administrator of the Attorney Registration and Disciplinary Commission has the Burden of Proving the Allegations by Clear and Convincing Evidence. In re Thomas, Illinois Supreme Court, Jan 20, 2012, 962 N.E.2d 454. By contrast, in the SEC's proceeding, the court only made determinations by a "preponderance of evidence".
The* Administrator's *Burden of Proof, by clear and convincing evidence, is Not Sustainable.

A. ***Introduction***

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1. In 2003, Respondent co-founded an investment advisory firm named The Nutmeg Group, LLC ("Nutmeg"), to make investments and to provide investment advice to unregistered investment pools. Prior to June 7, 2007, when it registered as an investment advisor with the federal Securities and Exchange Commission ("SEC"), Nutmeg operated without being registered due to its small size. As of 2007, though, Nutmeg had fifteen advisory clients, all of which were limited partnerships organized in either Illinois or Minnesota. Each advisory client was organized as a fund ("the Funds"), and collectively included 328 individuals or entities who participated in the Funds as limited partners. The investors invested their money with the Funds, which then purchased securities issued by companies[1] with market capitalization less than $50 million. As of 2007, Nutmeg claimed that the total amount of assets it had under management in the various Funds was approximately $32 million.

ANSWER: Respondent admits the material allegations of this paragraph.

2. Initially, each Fund was invested in a single company, but Nutmeg's practices changed around 2005 when it opened Funds that invested in more than one company.

ANSWER: Respondent admits the material allegations of this paragraph.

3. In 2006, Respondent became Nutmeg's sole owner and managing member. Respondent held those positions until 2009, when he and Nutmeg were sued by the SEC. Respondent is also an accountant, and his law firm, The Law Offices of

[1] This admission by the Administrator is significant. The $642,422 (not the $1,200,000 which the Administrator misstates below, contradicting the court's determinations) constituting Respondent's net amount received, as found by the court, was far less than Respondent's entitlements under contracts approved by the investors. Moreover, the Seventh Circuit Court of Appeals concluded that the securities offerings were not fraudulent, thus entitling Respondent to the compensation to which he was contractually entitled, which entitlements exceeded the $642,422 net receipt.

Randall S. Goulding & Associates, P.C., shared office space with Nutmeg and provided legal services to Nutmeg and the Funds. Respondent made the decision for Nutmeg to hire his law firm to provide legal services for Nutmeg and the Funds, and Nutmeg was the firm's only client and sole source of income.

ANSWER: Respondent denies "Nutmeg [hired] his law firm to provide legal services for Nutmeg and the Funds" and further denies that Nutmeg was the law firm's "sole source of income", as there was *no compensation ever paid by Nutmeg* to his law firm for legal services, only out-of-pocket expenses were reimbursed. Instead, the SEC's own exhibits (PX 43) demonstrate that the entire $642,422 net amounts received, by and for Respondent, including his law firm, directly and indirectly, was less than the amount to which he was entitled to receive according to agreements approved by Nutmeg's investors. And this is separate from Respondent's returns on his investments in Nutmeg. Indeed, as is evident from the SEC's own exhibits (PX 43) the $642,422 provides no credit for any of Respondent's entitlements, including returns on his own investments. Yet, Respondent invested in every fund managed by Nutmeg. Moreover, one particular investment was funded almost entirely by the $660,000 from Respondent's HELOC (PX 43). Yet, as further explained below, this investment produced a $2,500,000 investment return. Yet, none of that $2,500,000 was credited to Respondent. Otherwise, Respondent admits to the other material allegations of this paragraph.

4. As Nutmeg's owner and managing member, Respondent oversaw all of Nutmeg's operations and employees, determined who to hire, prepared the Funds' offering documents, identified investment opportunities, negotiated investment terms, made investment decisions for the Funds, approved the transfer of funds and payment of expenses for both Nutmeg and the Funds, approved expenses incurred by Nutmeg (including payments made to Respondent or for his benefit), and was responsible for the books and records of both Nutmeg and the Funds. In Nutmeg's annual filings with the SEC, Nutmeg identified Respondent as its Chief Compliance Officer, whose responsibility it was to ensure that Nutmeg complied with the federal securities laws, including the Investment Advisers Act of 1940.

ANSWER: Respondent denies that he "approved the transfer of funds and payment of [all] expenses for both Nutmeg and the Funds, approved [all] expenses incurred by Nutmeg", but otherwise admits to the remaining material allegations of this paragraph.

B. ***Respondent properly Valued and Represented to Investors the Value of the Funds, in Accordance with FAS 157, the Federal Accounting Standard's Board ("FASB") standard. In particular, Goulding attempted (and as he and his attorneys believe, succeeded) in valuing these securities according to Financial Accounting Standard 157, re-promulgated as Accounting Standard Codification 820 (hereinafter "FAS 157/ASC 820"), the standard set by the SEC, particularly applicable to publicly traded stocks. More significantly, the Administrator cannot establish that using the SEC standard and the FASB standard for valuing securities – using the published prices for such stocks for valuation, is wrongful, let alone, by Clear and Convincing Evidence.*** **Goulding Should Not Be Disciplined Based on Valuation Methodology that He Used, Since that Methodology Was Consistent With FASB Guidance, and Mandated, Since the SEC Requires Compliance with FASB Guidance**.

See SEC, "Policy Statement: Reaffirming the Status of the FASB as a Designated Private-Sector Standard Setter," Release Nos. 33-8221; 34-47743; IC-26028; FR-70.[2]

5. Beginning in at least 2008, Respondent caused Nutmeg to make false statements about the value of various Funds to the SEC and to investors in those Funds. During an examination by SEC staff in relating to the first quarter of 2008, Respondent was asked to substantiate claims regarding the value of Nutmeg's four largest Funds (known as Michael, Fortuna, Mercury and Stealth). The information Respondent provided overstated the value of the Mercury Fund by $485,479, overstated the value of the Stealth Fund by $578,000, and misstated the values of the Michael and Fortuna Funds because Nutmeg, at Respondent's direction, had commingled those Funds' assets with other Funds, or paid out distributions due to

[2]available at https://www.sec.gov/rules/policy/33-8221.htm

the Michael or Fortuna Funds and rolled some of those distributions to a separate Fund held in Nutmeg's name, rather than in the name of Michael or Fortuna.

ANSWER: Respondent denies the material allegations of this paragraph, denying specifically that there was any valuation overstatement. Respondent also affirmatively states that:

> **There was no valuation overstatement. The entirety of this issue was a battle of two valuation experts, one of whom used the SEC and industry standard of employing the published market price per share (per okay just second of the SEC standard and the FASB standard for valuing securities), and the other went by a little used standard which appears to be most used only when there is no published price per share, unlike in the case at hand. Respondent should not be penalized for using the industry standard, set by, and even mandated by, the SEC and by the FASB. And there is certainly *no clear and convincing evidence of any valuation overstatement* whatsoever.**

6. Respondent also caused Nutmeg to send false investor account statements to its investors about the performance of various Funds and the investors' cash position, due to Respondent's failure to properly allocate up to $1 million in rolled-over assets to certain Funds and his decision to describe as "cash" investments in unallocated and illiquid securities.

ANSWER: Respondent denies the material allegations of this paragraph and incorporates herein by this reference, his response to paragraph 5 above.

7. The statements Respondent caused Nutmeg to make to the SEC and to Nutmeg's investors, described in paragraphs five and six, above, were false, because they were based on incomplete, inaccurate or deliberately misstated stock prices, overstated sales prices, inflated share holdings, and commingled or misallocated assets.

ANSWER: Respondent denies the material allegations of this paragraph and incorporates herein by this reference, his response to paragraph 5 above.

8. Respondent knew or should have known that the statements he caused Nutmeg to make to the SEC and to Nutmeg's investors, described in paragraphs five and six, above, were false, because they were based on incomplete, inaccurate or

deliberately misstated stock prices, overstated sales prices, inflated share holdings, and commingled or misallocated assets.

ANSWER: Respondent denies the material allegations of this paragraph and incorporates herein by this reference, his response to paragraph 5 above.

C. ***Respondent Never Used Nutmeg Assets for His Own Purposes. Nor Did He Take or Use Any Assets in Excess of That to Which He was Entitled. In More Than 6 Years, Including the 5 Years Preceding the Lawsuit, and Thereafter to Assist in the Transition to The Receivership, the Net Amounts Respondent Received were Determined by the Court to be only $642,422. That Amount Is Hardly Sufficient to Cover Compensation for His Full-Time Work For Nutmeg, let alone Sufficient to Cover his own Investment Returns. Yet, it does Not Exceed Either, Separately, and Represents Only a Small Fraction of the Two Combined.*** **See the Expert Report of McGovern Greene.**

9. Respondent's initial capital contribution to Nutmeg was $70,000. Despite that, between at least 2003 and 2009, Respondent withdrew more than $1.2 million from Nutmeg's commingled investment accounts that he used to pay his personal expenses, without regard to whether the money was his to take or belonged to the Funds or the Funds' investors. Those personal expenses included more than $660,000 on Respondent's home equity line of credit, $67,000 for the acquisition of an Acura automobile that was titled in Nutmeg's name but used by Respondent, more than $400 in tickets for Chicago White Sox baseball games, a $10,000 entry fee for the World Series of Poker, and more than $160,000 in payments on Respondent's personal credit cards or on Nutmeg's cards for purchases made on Respondent's behalf. As of 2008, Nutmeg owed the Funds $974,054, but the balances in its two bank accounts were both negative as of March 31, 2008.

ANSWER: Respondent denies the material allegations of this paragraph and affirmatively alleges that:

Respondent never used Nutmeg assets for his own purposes. Nor did he take or use any assets in excess of that to which he was entitled. In more than 6 years, including the 5 years preceding the lawsuit, and

thereafter to assist in the transition to the receivership, the net amounts Respondent received were determined by the court to be only $642,422. That amount is hardly sufficient to cover compensation for his full-time work for Nutmeg, let alone sufficient to cover his investment returns. Yet, it does not exceed either, separately, and represents only a small fraction of the two combined. The approximately $660,000 from Respondent's HELOC was clearly used to fund and coincided with (within 24 hours of each funding) of a certain investment, providing virtually all of the funding for that investment, the return on which exceeded $2,500,000. Indeed, as is evident from the SEC's own exhibits (PX 43) the $642,422 provides no credit for any of Respondent's entitlements, including returns on his own investments. Yet none of that $2,500,000 went to Respondent with the exception of merely repaying the HELOC loan. And yet, the Administrator complains, as did the SEC, of the repayment of this $660,000. The absurdity of this is clearly evident from a closer analysis of the SEC's own computation of PX 43 as well as from the McGovern Greene expert report.

10. Respondent's use of assets belonging to Nutmeg, its Funds, or those Funds' investors, was dishonest, because those assets did not belong to Respondent individually and because Respondent took those assets without notice to, or permission from, Nutmeg's investors.

ANSWER: Respondent denies the material allegations of this paragraph. Respondent affirmatively reasserts the affirmative allegations, including for the reasons as set forth in the above Responses to paragraphs 5 and 9.

D. ***The SEC took Regulatory Action Against Respondent, Nutmeg and Others, Without Adequate Basis, Often Stating False Claims***.

11. On March 23, 2009, the SEC filed suit in the United States District Court for the Northern District of Illinois against Nutmeg, Respondent, and one of Respondent's sons, who was then acting as Nutmeg's Chief Compliance Officer. The SEC suit also named another of Respondent' sons and other family friends as "Relief Defendants" who were alleged to have been involved in various Nutmeg-related activities. The suit was docketed as case number 1:09-cv-01775, *Securities and Exchange Commission v. The Nutmeg Group, LLC, et al*. The SEC filed an amended

complaint on June 14, 2011. Both complaints charged Respondent with having engaged in deceptive, fraudulent or manipulative conduct, with having made untrue statements of material fact, with using instrumentalities of interstate commerce and the mail to defraud Nutmeg's clients, and with aiding and abetting Nutmeg in violations of the Investment Advisers Act of 1940.

ANSWER: Respondent admits that the SEC made such allegations, but affirmatively denies the allegations made by the SEC, including for the reasons as set forth in the above Responses to paragraphs 5 and 9.

12. On October 25, 2019, Magistrate Judge Jeffrey T. Gilbert entered a 61-page document entitled "Findings of Fact and Conclusions of Law" in case number 1:09-cv-01775, in which he concluded that Respondent violated the Investment Advisers Act of 1940 by misappropriating and misrepresenting the value of Nutmeg investors' assets, that Respondent's violations had been material, and that Respondent was reasonably likely to violate the law in the future and therefore should be permanently enjoined from violating the Investment Advisers Act. Magistrate Judge Gilbert also ordered Respondent to disgorge $642,422 of the proceeds of his illegal activities, plus prejudgment interest, plus an additional $642,422 as a civil penalty.

ANSWER: Respondent admits that these determinations were made but affirmatively denies the propriety of the conclusions reached by the trial judge, including for the reasons as set forth in the Responses to paragraphs 5 and 9.

13. On July 7, 2022, the United States Court of Appeals for the Seventh Circuit issued an opinion resolving Respondent's appeal of Magistrate Judge Gilbert's decision. *Securities and Exchange Commission v. Goulding*, number 20-1689. The Court affirmed all of Magistrate Judge Gilbert's findings and conclusions but

remanded the case for Magistrate Judge Gilbert to include more specific language in his injunction. On December 20, 2022, Magistrate Judge Gilbert entered an order in case number 1:09-cv-01775 that enjoined Respondent from "(1) buying, selling or trading securities on behalf of an investment advisor or pooled investment vehicle; (2) managing securities investments for, or providing investment advice to, any person or entity, other than himself and immediate relatives, for compensation; and (3) providing consulting, valuation, compliance or other investment-related services to an investment adviser or pooled investment vehicle."

ANSWER: Respondent admits that that these determinations were made but affirmatively denies the propriety of the conclusions reached by the conclusions reached by the trial judge, and by the appellate court, including for the reasons as set forth in the above Responses to paragraphs 5 and 9.

E. **Respondent did not engage in any Misconduct, let alone Intentional Misconduct.**

14. By reason of the conduct described above, Respondent has engaged in the following misconduct:

a. conduct involving dishonesty, deceit, fraud or misrepresentation, by conduct including making false statements to the SEC and to Nutmeg investors about the value of various Funds, and by dishonestly taking more than $1.2 million in assets belonging to Nutmeg, Nutmeg's Funds, or Nutmeg's investors, and using those assets for Respondent's own purposes, in violation of Rule 8.4(c) of the Illinois Rules of Professional Conduct.

ANSWER: Respondent denies the material allegations of this paragraph, as each such claim is false, including for the reasons as set forth in the above Responses to paragraphs 5 and 9.

WHEREFORE, the Respondent respectfully requests that the underlying facts of this matter be properly assessed and that this initiative be dismissed and that the

Administrator initiate an action against the SEC attorneys and the Receiver as is warranted.

Respectfully submitted,

By: /s/ Randall S. Goulding
Randall S. Goulding

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NOTICE OF FILING

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PLEASE TAKE NOTICE that on this date, March 11, 2025, I have filed the attached **ANSWER TO THE COMPLAINT,** which is hereby served upon you.

PROOF OF SERVICE

The undersigned attorney, hereby certifies, pursuant to Illinois Code of Civil Procedure, 735-ILCS-5/109, that he served copies of the Notice of Filing and the **ANSWER TO THE COMPLAINT** on Scott Renfroe and the Administrator on the foregoing Notice of Filing via e-mail to srenfroe@iardc.org and ARDCeService@iardc.org on March 11, 2025, at or before 5:00 p.m.

/s/ Randall S. Goulding
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