IN THE MATTER OF: **ADAM WESTPHALEN** **CRD NO. 2821723** **MOSAIC FINANCIAL STRATEGIES LLC** **f/k/a MOSAIC PORTFOLIO** **STRATEGISTS LLC** **CRD NO. 149364** **MOSAIC FINANCIAL STRATEGIES LLC** **d/b/a MOSAIC ADVISORY PARTNERS** **CRD NO. 288997** **(Collectively, "Respondents")**	**FINDINGS OF FACT,** **CONCLUSIONS OF LAW** **AND ORDER** **DOCKET NO. CRNDF-19-8408-S**

I. INTRODUCTION

The Banking Commissioner ("Commissioner") is charged with the administration of Chapter 672a of the Connecticut General Statutes, the Connecticut Uniform Securities Act ("Act"), and the regulations promulgated thereunder, Sections 36b-31-2 to 36b-31-33, inclusive, of the Regulations of Connecticut State Agencies ("Regulations").

The above-referenced matter was initiated upon charges brought by the Commissioner, after an investigation conducted by the Securities and Business Investments Division ("Division") of the Department of Banking ("Department"), to issue an order to cease and desist and an order to make restitution against each Respondent, and to impose a fine upon each Respondent, and to deny their respective investment adviser and investment adviser agent registrations. On March 11, 2019, the Commissioner issued an Order to Cease and Desist, Order to Make Restitution, Notice of Intent to Deny Registrations as an Investment Adviser and as an Investment Adviser Agent, Notice of Intent to Fine and Notice of Right to Hearing against Respondents[1]. On April 1, 2019, Respondents requested a hearing. On May 10, 2019, the Commissioner issued an Amended and Restated Order to Cease and Desist, Amended and Restated Order to Make Restitution, Amended and Restated Notice of Intent to Deny

[1]Upon presentation of evidence supporting the same, both Mosaic Respondents are being treated as the same entity and not as separate and distinct entities for the purposes of this decision.

Registrations as an Investment Adviser and as an Investment Adviser Agent, Amended and Restated Notice of Intent to Fine and Notice of Right to Hearing against Respondents ("Amended Notice").

The Commissioner alleged in the Amended Notice that: (1) Respondents failed to amend one or more of their Form ADV and Form U4 filings, in violation of Section 36b-31-14e of the Regulations; (2) Mosaic Financial Strategies LLC f/k/a Mosaic Portfolio Strategists LLC and Mosaic Financial Strategies LLC d/b/a Mosaic Advisory Partners (collectively, "Mosaic") transacted business as an investment adviser in Connecticut absent registration, in violation of Section 36b-6(c)(1) of the Act; (3) Westphalen transacted business as an investment adviser agent of Mosaic in Connecticut absent registration, in violation of Section 36b-6(c)(2) of the Act; (4) Westphalen offered and/or sold securities from Connecticut to at least one investor, which securities were not registered in Connecticut under the Act nor the subject of a filed exemption claim or claim of covered security status, in violation of Section 36b-16 of the Act; (5) Westphalen transacted business as an agent of issuer of Omni Oil and Gas, Inc., and Triton Investment Partners LLC in Connecticut absent registration, in violation of Section 36b-6(a) of the Act; (6) the conduct of Westphalen constitutes, in connection with the offer, sale or purchase of any security, directly or indirectly employing a device, scheme or artifice to defraud, making an untrue statement of a material fact or omitting to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, or engaging in an act, practice or course of business which operates or would operate as a fraud or deceit upon a person, in violation of Section 36b-4(a) of the Act; (7) Mosaic filed a Connecticut Supplement form containing a statement which was, at the time and in the light of the circumstances under which it was made, false or misleading in a material respect, and during testimony given to the Division, Westphalen made certain statements on the record which were, at the time and in the light of the circumstances under which they were made, false or misleading in a material respect, both in violation of Section 36b-23 of the Act; and (8) Mosaic failed to retain its investment advisory records in accordance with legal requirements, in violation of Section 36b-14(a)(1) of the Act and Section 36b-31-14b(a) of the Regulations.

After due notice, a hearing was held at the Department on September 26, 2019, October 3, 2019, December 6, 2019, December 10, 2019 and January 15, 2020. The hearing was conducted in accordance with Chapter 54 of the Connecticut General Statutes, the "Uniform Administrative Procedure Act", and the Department's contested case regulations, Sections 36a-1-19 to 36a-1-57, inclusive, of the Regulations of Connecticut State Agencies.

Having read the entire record, including testimony of the witnesses and documentary evidence, I make the following findings of fact and conclusions of law based on the preponderance of evidence in the record.

II. FINDINGS OF FACT

1. On March 11, 2019, the Commissioner issued an Order to Cease and Desist, Order to Make Restitution, Notice of Intent to Deny Registrations as an Investment Adviser and as an Investment Adviser Agent, Notice of Intent to Fine and Notice of Right to Hearing against Respondents. (HO Ex. 1; Tr. 1 at 14.)[2]

[2]Parenthetical references relate to exhibits entered into the hearing record by the Hearing Officer ("HO Ex."), the Department ("DOB Ex.") or the Respondents ("Resp. Ex."). Transcript ("Tr.") pages reflect where an exhibit was entered into the record or where relevant testimony was given. "Tr. 1" refers to the hearing held on September 26, 2019; "Tr. 2" refers to the continued hearing held on October 3, 2019; "Tr. 3", December 6, 2019; "Tr. 4", December 10, 2019; and "Tr. 5", January 15, 2020.

2. On April 1, 2019, the Department received a written request for a hearing from Westphalen on behalf of all Respondents. (HO Ex. 1.)

3. On April 8, 2019, the Commissioner appointed Attorney Jeffrey Schuyler as Hearing Officer and scheduled the hearing for May 30, 2019. (HO Ex. 1.)

4. On May 10, 2019, the Commissioner issued an Amended and Restated Order to Cease and Desist, Amended and Restated Order to Make Restitution, Amended and Restated Notice of Intent to Deny Registrations as an Investment Adviser and as an Investment Adviser Agent, Amended and Restated Notice of Intent to Fine and Notice of Right to Hearing against Respondents. (HO Ex. 3; Tr. 1 at 15.)

5. On May 14, 2019, the Hearing Officer continued the hearing to June 27, 2019 due to Respondents' request to engage counsel. (HO Ex. 4 at 3; Tr. 1 at 15.)

6. On May 20, 2019, the Hearing Officer continued the hearing to July 9, 2019 due to the unavailability of a Division witness. (HO Ex. 4 at 1.)

7. On June 14, 2019, the Hearing Officer received an Appearance on behalf of Respondents from Richard Slavin and Ari J. Hoffman, attorneys with Cohen and Wolf, P.C., coupled with a request to continue the hearing scheduled for July 9, 2019. (HO Ex. 2; Tr. 1 at 15.)

8. On July 10, 2019, the Hearing Officer continued the hearing to September 26, 2019 by agreement of the parties. (HO Ex. 5 at 5-6; Tr. 1 at 15.)

9. Attorney Elena Zweifler appeared at the hearing on behalf of the Division. (Tr. 1 at 4.)

10. Attorneys Richard Slavin and Ari J. Hoffman from Cohen and Wolf, P.C., appeared at the hearing on behalf of all Respondents. (Tr. 1 at 4-5; Tr. 2 at 2.)

11. On December 4, 2019, the Hearing Officer received a Notice of Withdrawal from Attorney Hoffman withdrawing the Appearance of Attorneys Slavin and Hoffman, stating that they no longer represented any named Respondent in this matter. (HO Ex. 7; Tr. 3 at 3-4.)

12. Westphalen appeared at the subsequent hearings on behalf of all Respondents following the Notice of Withdrawal of counsel. (Tr. 3 at 3-4; Tr. 4 at 2; Tr. 5 at 2.)

13. Mosaic Portfolio Strategists LLC is a Connecticut limited liability company formed on December 24, 2008. On October 12, 2012, Mosaic Portfolio Strategists LLC filed with the Connecticut Secretary of State to change the firm's name to Mosaic Financial Strategies LLC. Mosaic Portfolio Strategists LLC and Mosaic Financial Strategies LLC are collectively referred to as "Mosaic". Mosaic also did business as Mosaic Advisory Partners and Mosaic College Planners from approximately 2013 to approximately 2016. (Tr. 1 at 49-50; DOB Ex. 2.)

14. Westphalen is the sole managing member and control person of Mosaic. (DOB Ex. 2; Tr. 1 at 49; Tr. 4 at 9.)

15. Triton Investment Partners LLC ("Triton") was a Connecticut limited liability company formed by Westphalen on April 14, 2003 and dissolved on August 17, 2017, with a business address of 40 Maple Road, Easton, Connecticut. (HO Ex. 3 at 7; DOB Ex. 2.)

16. Westphalen was the sole member of Triton. (DOB Ex. 2 at 4; Tr. 4 at 9.)

17. Westphalen was also actively involved in Vista Financial Strategies LLC and Vista Investment Advisors LLC, both Connecticut limited liability companies formed in 2000. Vista Financial Strategies LLC and Vista Investment Advisors LLC are collectively referred to as "Vista". (HO Ex. 3 at 4; Tr. 1 at 45.)

18. Westphalen's current address is 40 Maple Road, Easton, Connecticut. (HO Ex. 3 at 3; Tr. 4 at 5.)

19. Mosaic maintained a principal place of business at 21 Bridge Square, Third Floor, Westport, Connecticut, and Westphalen presumably conducted all of Mosaic's business activities from this same address or from his home address, both in Connecticut. (DOB Ex. 2.)

20. Mosaic was registered with the Division as an investment adviser under the Act from April 28, 2009 to December 31, 2014 under Central Registration Depository ("CRD") Number 149364. (DOB Ex. 1; Tr. 1 at 41-43.)

21. On or about March 26, 2009, Westphalen, on behalf of Mosaic Portfolio Strategists LLC filed a Form ADV, Uniform Application for Investment Adviser Registration, in order to complete its initial registration application. (DOB Ex. 3; Tr. 1 at 57.) At the time of filing, the Form ADV indicated the advisory services to be offered by Mosaic were portfolio management for individuals and/or small businesses, portfolio management for business or institutional clients, publications or periodicals or newsletters and market timing services. (Tr. 1 at 59; DOB Ex. 3 at 8.)

22. On or about March 26, 2009, Westphalen filed a Form U4, Uniform Application for Securities Industry Registration or Transfer, to register as an investment adviser agent of Mosaic, wherein Westphalen did not disclose that he was involved in any other business activities. (Tr. 1 at 65-67; DOB Ex. 4.)

23. Mosaic's Form ADV filed on March 26, 2009, did not include any disclosure of Mosaic College Planners as a business activity or as an affiliate. (Tr. 1 at 59, 61; DOB Ex. 3 at 9-10, 25.)

24. Mosaic's Form ADV filed on March 26, 2009, did not include any disclosure of Triton Investments as a business activity or as an affiliate. (Tr. 1 at 61; DOB Ex. 3 at 9-10, 25.)

25. Mosaic's Form ADV filed on March 26, 2009, did not include any disclosure of Vista as an outside business activity or make any disclosures of like kind. (Tr. 1 at 61-62; DOB Ex. 3 at 9-10, 25.)

26. On June 1, 2011, Mosaic Portfolio Strategists LLC filed a Form ADV Other-Than-Annual Amendment solely to amend Item 6, "Other Business Activities", to indicate that it was a futures commission merchant, commodity pool operator or commodity trading advisor. No other business activities were disclosed in this Amendment. (Tr. 1 at 63-65; DOB Ex. 3 at 30.)

27. On November 21, 2011, Westphalen filed a U4 Amendment, and the answer to question 13, Other Business, indicated that Westphalen was not currently engaged in any other business. (Tr. 1 at 67-68; DOB Ex. 4 at 14.)

28. On November 22, 2011, Westphalen filed a U4 Amendment, and the answer to question 13, Other Business, indicated that Westphalen was not currently engaged in any other business. (Tr. 1 at 68-69; DOB Ex. 4 at 15.)

29. On February 14, 2013, Westphalen filed a U4 Amendment, and the answer to question 13, Other Business, indicated that Westphalen was not currently engaged in any other business. (Tr. 1 at 69; DOB Ex. 4 at 16.)

30. On or about June 26, 2017, Westphalen filed a Form ADV, Uniform Application for Investment Adviser Registration and Report by Exempt Reporting Advisers on behalf of Mosaic Advisory Partners. (Tr. 2 at 157-158; DOB Ex. 26.)

31. The Division and Westphalen engaged in email correspondence following the June 26, 2017 filing wherein the Division requested and Westphalen produced, among other things, a Connecticut Supplement in which Westphalen certified that Mosaic had not rendered investment advisory services to any Connecticut resident and had not rendered investment advisory services from Connecticut to residents of any other jurisdiction. (DOB Ex. 27; Tr. 2 at 159; Tr. 3 at 10-11.)

32. Salvatore Cannata, Principal Financial Examiner with the Division, testified that in a Connecticut Supplement filed on July 25, 2017, Westphalen stated on behalf of Mosaic that he and it had not engaged in investment advisory business with a Connecticut resident or from Connecticut. (Tr. 3 at 10-11; DOB Ex. 27 at 3.)

33. On June 15, 2010, Mosaic Portfolio Strategists LLC entered into an Interactive Brokers ("IB") Institutional Services Customer Agreement ("IB Agreement") in which an omnibus account was established and maintained, investment advisory services were to be performed by Westphalen on behalf of Mosaic and advisory fees were fully disclosed and agreed upon by the clients of Mosaic in connection with said investment advisory services. (Tr. 1 at 148-158; DOB Ex. 7(B).)

34. On September 21, 2010, November 7, 2013 and April 4, 2017, Mosaic entered into Discretionary Trading Authorization Agreement for Advisor and Request to Send Trade Confirmations and Account Statements to Advisor ("Trading Agreements") with IB and customers of IB as the Advisor for said customers. (Tr. 1 at 155-159; DOB Exs. 7(C), 7(D), 7(E).)

35. The Trading Agreements allow for advisory fees to be deducted, allow all trade confirmations and statements to be sent directly to the advisor (Mosaic), authorize the advisor to engage in any and all trade activity in its discretion on behalf of the customer and grant the advisor full discretion to direct the trading on the account on the customer's behalf. (Tr. 1 at 155-159; DOB Exs. 7(C), 7(D), 7(E).)

36. One such Trading Agreement is dated April 4, 2017. (Tr. 1 at 158-159; DOB Ex. 7(E).) Mosaic was not registered as an investment adviser as of that date. (Tr. 1 at 159; DOB Ex. 1.)

37. Mr. Cannata testified that he received documentation from IB regarding advisory fees taken by Mosaic in connection with client accounts held at IB. (Tr. 1 at 160-165.) Mr. Cannata testified that advisory fees were taken by Mosaic in the amount of Twelve Thousand Three Hundred Sixty-Three and 00/100 Dollars ($12,363) after the date of December 31, 2014. (Tr. 1 at 160, 165; Tr. 3 at 29-31; DOB Ex. 8 at 20.)

38. Mr. Cannata testified that Mosaic provided investment advice by developing an S&P 500 Sector investment model and received investment advisory fees from an entity New Horizon Financial Strategies ("New Horizon") in the years 2016, 2017 and 2018, all of which when Mosaic was not registered as an investment adviser. (DOB Ex. 9; Tr. 1 at 165-171.)

39. Mr. Cannata testified that Westphalen was never registered as an agent of issuer for Omni Oil and Gas ("Omni"). (Tr. 1 at 177.)

40. Mr. Cannata testified that Omni was never registered as a security in the state of Connecticut. (Tr. 1 at 185-187; DOB Ex. 15.)

41. Mr. Cannata testified that Westphalen offered an investment in Omni to two (2) Connecticut residents. (Tr. 1 at 176, 190, 193; Tr. 4 at 78-79; DOB Exs. 12, 13, 16, 19.)

42. Mr. Cannata testified that under the Uniform Securities Act, promissory notes are considered securities. (Tr. 1 at 205; Tr. 4 at 81.)

43. Mr. Cannata testified that Triton was never registered as a security in the state of Connecticut. (Tr. 1 at 185-187, 196; DOB Ex. 15.)

44. Mr. Cannata testified that Westphalen issued three (3) notes in Triton. (Tr. 1 at 198, 203-206; DOB Ex. 20.)

45. Mr. Cannata testified that Connecticut General Statutes Section 36b-23 prohibits the making of false or misleading statements. (Tr. 3 at 12; DOB Ex. 28.)

46. Mr. Cannata testified that on October 17, 2017, Westphalen filed a Form U4, Uniform Application for Securities Industry Registration or Transfer, to be an investment adviser agent of Mosaic Advisory Partners. (Tr. 3 at 12-13; DOB Ex. 29.)

47. Mr. Cannata testified that on January 18, 2018, Westphalen filed a Form ADV-W, Notice of Withdrawal from Registration as an Investment Adviser, on behalf of Mosaic Advisory Partners. (Tr. 3 at 13, DOB Ex. 30.)

48. Mr. Cannata testified that the Division issued a subpoena to Westphalen on January 12, 2018 seeking production of documents regarding his securities or investment advisory activities in and from Connecticut. (Tr. 3 at 13-14; DOB Ex. 31.)

49. Mr. Cannata testified that, although Westphalen did produce some documents in response to the subpoena, however, some relevant documents were not produced. Specifically, Mr. Cannata testified that one of the documents contained in DOB Ex. 7, the Interactive Brokers Institutional Service Customer Service Agreement, was not produced and should have been. (Tr. 3 at 14-15.)

50. Mr. Cannata testified that Westphalen provided on-the-record testimony on February 13, 2018, in which he stated that he produced all the documents called for by the subpoena. (Tr. 3 at 16-17; DOB Ex. 32 at 13.)

51. Mr. Cannata testified that a second subpoena was issued on December 17, 2018, to Westphalen. (Tr. 3 at 21, DOB Ex. 33.)

52. Mr. Cannata testified that some documents were produced in response to the second subpoena, but that other certain documents were not produced until September 2019. Specifically, Respondent's Exhibits 6, 15 and 16 were only produced by counsel just prior to the commencement of the hearing in this matter. (Tr. 3 at 21-24.)

53. Mr. Cannata testified that neither Mosaic College Planners nor Triton were disclosed on Mosaic's June 26, 2017 Form ADV. (Tr. 3 at 32-33; DOB Ex. 26.)

54. Mr. Cannata testified that neither Mosaic College Planners nor Triton were disclosed on Westphalen's October 17, 2017 Form U4. (Tr. 3 at 33; DOB Ex. 29.)

55. Mr. Cannata testified on cross-examination that Triton was an outside business activity and was required to be disclosed by Mosaic in its registration filings with the Division. (Tr. 3 at 47.)

56. Mr. Cannata testified on cross-examination that Mosaic College Planners was either a service of Mosaic or an outside business activity and/or rendering investment advice and, either way, was required to be disclosed by Mosaic in its registration filings with the Division. (Tr. 3 at 47-48.)

57. Westphalen testified that he was the sole member of Triton. (Tr. 4 at 9.)

58. Westphalen testified that he was the sole member of Mosaic. (Tr. 4 at 9.)

59. Westphalen testified that he did not disclose Triton or Vista in any Form ADV filings. (Tr. 4 at 12-13.)

60. Westphalen testified that he did not disclose Mosaic College Planners in any Form ADV filings. (Tr. 4 at 13.)

61. Westphalen testified that he charged and received fees in connection with an account with Emerald Planning in which Westphalen created a model that Emerald Planning would use for its own investment advising clients. Westphalen believed the fees were limited to his role as a chartered market technician, which was constructing the model and providing guidance on the model. Westphalen testified that this relationship terminated in July 2017. (Tr. 4 at 13-15.)

62. Westphalen testified that in connection with the model he created for Emerald Planning, he assisted in researching the subcomponents of the S&P 500 Index to provide risk return metrics for certain industry sectors, researched option expirations and provided risk parameters for each sector as it pertained to put options and created a monthly update weighting each sector. Thereafter, it was up to the advisor whether to use the model and how to use the model in the execution of trades for its clients. (Tr. 4 at 15-17, 41-46.)

63. Westphalen testified that after December 31, 2014, he performed work from his home in Connecticut or in New York City. (Tr. 4 at 15, 17.)

64. Westphalen testified that he was not an officer, owner, employee or agent of Omni, did not have a selling arrangement with Omni, was not authorized to effect contracts on behalf of Omni and did not have the ability to effect transfers of interest in any wells on behalf of Omni. (Tr. 4 at 18-19.)

65. Westphalen testified that he referred interested parties to Omni via a nonbinding indication of interest form. (Tr. 4 at 20, DOB Ex. 19 at 5.)[3]

[3]Westphalen refers to Defendant's Exhibit 28 (Resp. Ex. 28) as an example, however it was not admitted into evidence.

66. Westphalen testified that Omni appealed to him as an investment because it is a non-reportable asset, offers tax benefits and potential income from oil production. (Tr. 4 at 21.)

67. Westphalen testified that he presented other options to Investors A and B in addition to Omni. (Tr. 4 at 21-22.)

68. Westphalen testified that he believed Omni would have qualified for an exemption under Rule 506b. (Tr. 4 at 24-27; Resp. Ex. 33.)

69. Westphalen testified that Investor C was part of "nine purchasers" in Triton through promissory notes. He classified the promissory notes as a loan, so he did not provide Investor C with offering documents. (Tr. 4 at 29-30, 53; DOB Exs. 20, 21.)

70. Westphalen testified that some promissory notes with terms longer than nine months are securities under the Act. (Tr. 4 at 30.)

71. Westphalen testified that the Triton notes were eligible for covered securities status under Section 36b-21(b)(15) of the Act. (Tr. 4 at 30-31; DOB Ex. 21.)

72. Westphalen testified that thousands of trades were executed in Triton to show how the funds were used and referred to Respondent's Exhibits 13, 14 and 15 to exemplify the same, however, these exhibits were not entered into evidence. (Tr. 4 at 31.)

73. Westphalen testified that Mosaic billed clients in arrears. (Tr. 4 at 14, 37-38; DOB Ex. 38.)

74. Westphalen testified that Mosaic charged a fee in connection with a client account held at IB in March 2015, but did not state what that fee was for. Westphalen further stated that he did not have any documentation that such specific client relationship ended in 2014 due to the laptop spill. (Tr. 4 at 38-39; DOB Ex. 39.)

75. Westphalen testified that he never filed anything with regard to an exemption with the Division for Triton. (Tr. 4 at 47-48.)

76. Westphalen testified that the majority of his client documents and investment advisory documents were on his laptop, which got water spilled on it, and that there was no duplicate set, flash drive or other back up to those documents. (Tr. 4 at 49.)

77. Westphalen testified, in connection with his failure to produce subpoenaed documents, that his laptop and logic board were immersed in water due to a spill in or about June 2017. (Tr. 4 at 32-33.) Westphalen produced an exhibit of an email chain with PENSCO Trust Company from 2019 regarding requests for records to illustrate attempts to obtain records. (Tr. 4 at 33-35; Resp. Ex. 34.)

78. Westphalen testified that he did not dispute that Defendant's Exhibit 6 (Chase Bank Account Ending **0965, dated 11/1/08 – 11/28/08), Exhibit15 (MF Global, Inc. Monthly Account Statement, dated 4/30/10), Exhibit 16 (Triton Investment Partners LLC "Baseline" P & L statement, dated 12/1/08 – 12/31/12, with additional Options Express Statements), Exhibit 17 (Self Directed IRA Loan Agreement dated 4/18/11), Exhibit 18 (Note, dated 5/19/09), Exhibit 21 (Mosaic College Planners Slideshow) and Exhibit 30 (EFC Analysis for Investor B, dated October 2014) were all responsive to the Division's subpoena, but they were not produced by Mosaic or Westphalen. (Tr. 4 at 62-66.)

79. Westphalen testified that on or about October 31, 2013, September 20, 2014, November 1, 2014, February 27, 2015 and March 2, 2015, two Connecticut residents contacted him directly with an interest in purchasing Omni securities. He further testified that he sent to and received from each of them emails in connection with, among other things, the Omni sale. (Tr. 4 at 70-71, 74-76; DOB Ex. 13; DOB Ex. 19.)

80. Westphalen testified that he was attempting to be a concierge service of sorts with clients by offering a lot of different services not limited to an investment adviser or insurance person, but instead offering an entire scope of services as a certified financial planner. (Tr. 4 at 72-73.)

81. Mr. Cannata testified that it is the issuer's duty to file and prove an exemption under the securities law and, even if an exemption may be valid, it must be filed to be effective. (Tr. 4 at 81-82.)

82. One witness for Respondents ("CS") testified that he invested in Triton as investments. (Tr. 5 at 10, 15-16, 20-21, 25; DOB Ex. 21.)

83. CS testified that he also made a loan in December 2009 to Mosaic as a personal loan and not in the form of a promissory note. (Tr. 5 at 16.) CS further testified that he entered into a promissory note evidencing a loan to Triton. (Tr. 5 at 28.)

84. Another witness for Respondents ("KW") testified that he invested in a working interest in Omni. (Tr. 5 at 29, 33.)

85. KW testified that he received documents through Omni, including a statement of risk factors associated with the investment. (Tr. 5 at 33-35; Resp. Ex. 35.)

86. KW testified that he received the bill of sale from Omni. (Tr. 37-39; Resp. Ex. 36.)

87. KW testified that he provided Westphalen with financial statements so that Westphalen could make financial recommendations to him. (Tr. 5 at 44-45.)

88. KW testified that he first learned of Omni during a meeting with Westphalen and was not aware of Omni prior to being informed by Westphalen. (Tr. 5 at 47.) KW testified that Westphalen provided a suggestion to invest in Omni. (Tr. 5 at 48-49.) KW testified that he would not have invested in Omni if Westphalen had not brought it to his attention. (Tr. 5 at 55.)

89. KW testified that he paid Westphalen for assistance with planning for school, for the future and for retirement planning. (Tr. 5 at 50-52.)

90. KW also testified that he made payments to Westphalen for these services; one such payment was made on January 20, 2016 in the amount of Three Thousand Six Hundred Fifty-eight Dollars ($3,658) to Mosaic. (DOB Ex. 40; Tr. 5 at 54-57.)

91. Another witness for Respondents ("OH") testified that he was a client of Mosaic and first met Westphalen at one of his college planning seminars. (Tr. 5 at 59-60.)

92. OH testified that Westphalen performed a variety of services for him during the relationship. (Tr. 5 at 64-66.)

93. OH testified that he set up an account with IB through Westphalen. (Tr. 5 at 67-68, 71-73; DOB Ex. 7(E); Resp. Ex. 43.) OH testified that he was not billed advisory fees by Mosaic or Westphalen in connection with that account. (Tr. 5 at 68-73; Resp. Exs. 40, 41, 42, 43.)

94. OH testified that he was paying a quarterly fee of roughly $350 to Westphalen up until about a year prior to his testimony on January 15, 2020 for college, tax and retirement planning. (Tr. 5 at 76-77, 86-87; DOB Ex. 41.)

95. During the hearing, the Division requested a cease and desist order be issued against Respondents for each violation, that the investment adviser registration of Mosaic and investment adviser agent registration of Westphalen be denied, a fine in the amount of $1 million to be entered jointly and severally against each Respondent, representing a fine of $100,000 per violation for both Westphalen and Mosaic, as well as restitution in the amount of $367,000 for Investor C, $60,000 for Investor A and $63,000 for Investor B.[4] (Tr. 5 at 107-110.)

A. Investor A

96. Investor A is an individual that resides in Connecticut.[5] (Tr. 1 at 71.)

97. On or about March of 2013, Investor A met Westphalen at a seminar for the program Mosaic College Planners at a library after receiving a flyer in the mail promoting said seminar. (Tr. 1 at 72, 91.)

98. Shortly after March of 2013, Investor A entered into a contractual agreement with Mosaic College Planners. (Tr. 1 at 76-77; DOB Ex. 10.)

99. On or about April 6, 2013, July 22, 2013, September 11, 2013, January 7, 2014 and March 20, 2014, Investor A paid to the order of Westphalen and/or Mosaic Financial and/or Mosaic a total of Three Thousand Three Hundred and 00/100 Dollars ($3,300) for Mosaic College Planners. (Tr. 1 at 77-78; DOB Ex. 11.)

100. Services engaged in by Mosaic College Planners were performed by Westphalen and included, but were not limited to, collection of financial statements and a variety of recommendations based upon the analysis of the entire financial situation of Investor A. (Tr. 1 at 74-77, 79, 100-105, 109-113, 124; Resp. Exs. 3, 23). At times, other staff would perform services related to college essay preparation and other non-financial services. (Tr. 1 at 76.)

101. Investor A's understanding of the services being provided was to set up a plan for college, tuition payment and retirement investment. (Tr. 1 at 79.)

102. At some point in time during the relationship, Westphalen made Investor A familiar with Omni. (Tr. 1 at 79.)

103. Investor A testified that: he was not aware of Omni prior to Westphalen informing him of it; all communications in connection with Omni were with Westphalen; he never had any contact with Omni prior to making the purchase of a well; and all paperwork required during the process was received from and returned to Westphalen. (Tr. 1 at 79-86, 126-127.)

[4]The Division did not seek restitution for any other investor.

[5]Investor A is a married couple, one of whom provided testimony. Investor A shall collectively refer to the married couple and the spouse providing testimony on behalf of the married couple.

104. Investor A testified that Westphalen saw the oil fields prior to the purchase of the wells. (Tr. 1 at 125).

105. On or about September 20, 2014, Investor A notified Westphalen that he would like to proceed with the purchase of half of a working interest in a well. (Tr. 1 at 81, DOB Ex. 13.)

106. On or about October 20, 2014, Investor A issued a check payable to Omni Oil & Gas for the purchase of 50% of an oil well in the amount of Sixty-Seven Thousand Five Hundred and 00/100 Dollars ($67,500), which check he gave to Westphalen. (DOB Ex. 12; Tr. 1 at 84.)

107. Investor A testified that Westphalen sold him the oil well, but that Investor A never received the signed contracts for the purchase. (Tr. 1 at 85-86.)

108. Investor A testified that he discussed risk factors with Westphalen in connection with investing in Omni, but that he never received anything in writing from Westphalen on risk factors. (Tr. 1 at 139.)

109. Investor A formed an LLC on the advice of Westphalen and transferred the interest in the Omni well by Assignment, dated March 28, 2016. (DOB Ex. 14; Tr. 1 at 123, 134-135.)

110. Investor A has received a return on investment of an estimated total of Seven Thousand and 00/100 Dollars ($7,000) in connection with the Omni well. (Tr. 1 at 88.)

B. Investor B

111. Investor B is an individual that resides in Connecticut.[6] (HO Ex. 3 at 6.)

112. In 2013, Investor B met Westphalen at a seminar for the program Mosaic College Planners at a library after receiving a flyer in the mail promoting said seminar. (Tr. 2 at 97-98, 101.)

113. On or about April of 2013, Investor B entered into a contractual agreement with Mosaic College Planners. (Tr. 2 at 100; DOB Ex. 17.)

114. On or about April 23, 2013, June 27, 2013, September 25, 2013, December 27, 2013 and March 21, 2014, Investor B paid to the order of Mosaic College Planners and/or Mosaic Planners and/or Mosaic and/or Mosaic Coll Planners a total of Three Thousand Six Hundred and 00/100 Dollars ($3,600) for services in connection with the contractual agreement. (Tr. 2 at 103; DOB Ex. 18.)

115. Investor B testified that the expectation of the agreement was to go over all of Investor B's financial standing, where all the assets were and to construct a plan about how to maximize financial aid for college. (Tr. 2 at 102.) Westphalen performed a variety of financial-related services for Investor B. (Tr. 2 at 114-119.)

116. On or about October 2014, Westphalen performed a financial analysis for Investor B. (Tr. 2 at 112-114; Resp. Ex. 30.)

117. In or about October or November of 2014, Westphalen mentioned an investment in Omni to Investor B. (Tr. 2 at 99-100; DOB Ex. 16.)

[6]Investor B is a married couple, one of whom provided testimony. Investor B shall collectively refer to the married couple and the spouse providing testimony on behalf of the married couple.

118. Investor B testified that Westphalen advised him as to how to move assets for financial advantage and, particularly, advised Investor B to move money invested in a Nuveen mutual fund and use the proceeds to buy Omni. (Tr. 2 at 102-103).

119. Investor B testified that a withdrawal of the Nuveen funds occurred and that those funds were used to purchase Omni. (Tr. 2 at 104-106; DOB Ex. 19.)

120. Investor B testified that all communications in connection with Omni were with Westphalen, that he never had any contact with Omni prior to making the purchase of a well and that all paperwork required (including the purchase check) during the process was received from and returned to Westphalen. (Tr. 2 at 106-109, 123; DOB Ex. 19.)

121. Investor B testified that Westphalen told Investor B that he went to see the oil fields prior to the purchase of the wells, had seen an array of working wells and that Westphalen's clients were generating pretty steady returns. (Tr. 2 at 104.)

122. Investor B testified that he did not recall receiving any written documents regarding Omni prior to the purchase and that Westphalen focused on the returns his clients were getting more than a discussion of the risks involved in investing in Omni. (Tr. 2 at 105.)

123. Investor B testified that he never spoke with anyone from Omni prior to the purchase and his sole contact was Westphalen. (Tr. 2 at 106, 127.)

124. Investor B testified that Westphalen recommended Omni with paperwork and then the transaction was completed solely through Westphalen. (Tr. 2 at 127.)

125. Investor B has received a return on investment of an estimated total of Seven Thousand and 00/100 Dollars ($7,000) in connection with the Omni well. (Tr. 2 at 109.)

126. Investor B testified that Omni was taken over by "RPG" and that Investor B still owns half of one well that is generating no income. (Tr. 2 at 111.)

C. Investor C

127. Investor C is an individual that resides in Pennsylvania. (DOB Ex. 22 at 4; Tr. 1 at 55-56; DOB Ex. 31 at 8; Tr. 2 at 22.)

128. At some time after 2008, Investor C moved all of his retirement savings into Triton. (Tr. 2 at 7-10.)

129. Investor C did not receive any documents or information describing Triton from Westphalen apart from a promissory note(s). (Tr. 2 at 7-8.)

130. On or about October 25, 2008, Investor C invested in Triton as evidenced by a promissory note signed by Westphalen ("Note 1") in the principal amount of One Hundred Eighty-Five Thousand and 00/100 Dollars ($185,000) to the named borrower, Triton, which Investor C believed to be the vehicle that moved his money from his Vista investments into Triton for Westphalen to invest. (Tr. 2 at 8-9, 47; DOB Ex. 20A.)

131. The terms on the face of Note 1 state that it is for a term of 36 months and accrues at an interest rate of 9%. Note 1 is payable with three annual interest payments of $16,650 with the first payment due November 1, 2009, and two subsequent payments within five (5) business days of the anniversary of Note 1. Triton promised to pay the entire remaining principal balance on or before November 1, 2011. (DOB Ex. 20A.)

132. Investor C testified that his understanding was that Note 1 was not a loan, but rather the method used to invest in Triton in a manner similar to his prior retirement fund in Vista. (Tr. 2 at 9-10.)

133. On or about May 19, 2009, Investor C invested in Triton as evidenced by a promissory note signed by Westphalen ("Note 2") with terms similar to Note 1, except that the principal amount of Note 2 was $221,500 and the payments were accordingly higher. The entire principal balance was due on or before June 1, 2012. (Tr. 2 at 10; DOB Ex. 20B.)

134. Investor C testified that Note 2 represented an update after he rolled over Twenty-Seven Thousand and 00/100 Dollars ($27,000) from another employer's 401K to get those additional funds invested as well. (Tr. 2 at 10-11.)

135. On or about April 18, 2011, Investor C invested in Triton as evidenced by a promissory note signed by Westphalen ("Note 3"), this time in the principal amount of $273,209, and again with terms similar to Note 1 and Note 2, but for changes in the repayment amounts and the maturity date of May 1, 2014. (DOB Ex. 20C.)

136. Investor C testified that his understanding of Note 3 was the same as the previous two in that Investor C had to keep reissuing the Notes for Westphalen to keep the funds invested in Triton. (Tr. 2 at 11, 22, 46, 92.)

137. Investor C testified that Westphalen provided him with documents to set up a custodial account with PENSCO Trust Company ("Pensco") and that the account statements he received from Pensco just stated that the funds invested were in "Triton note" with no other statements as to where the money was invested. (Tr. 2 at 11-12.)

138. Investor C testified that his understanding was that Westphalen was making 100% of the choices of investments regarding his funds. (Tr. 2 at 12, 67.)

139. On or about April 26, 2017, Investor C sent an email to Westphalen and requested an estimate of the account's value and a date when the account could be closed. (Tr. 2 at 13-14; DOB Ex. 24.)

140. Westphalen responded to Investor C's email on or about May 3, 2017 where, in pertinent part, he stated that "[a]s the funds are brought back to you from the various investments, your ROI will be good - if I had to peg an amount now??? Definitely north of $500k." Westphalen did not address with certainty when the account could be closed, but did state that "we will be moving the account from Pensco once this is resolved."[7] (Tr. 2 at 15, 72-73; DOB Ex. 24.)

141. Further email correspondence from Westphalen to Investor C includes, among other things, an email exchange between Westphalen and the CEO of RPG Operating LLC to demonstrate ownership of several wells in the Wanjura field, the official document dissolving Triton and a value assertion of Five Hundred Thirty-Five Thousand Dollars ($535,000), which was arrived at

[7]"This" is in reference to an IRS issue that arose in connection with Note 1, Note 2 and Note 3, but is not included as an allegation in the Amended Notice.

by Four Hundred Forty-Four Thousand Dollars ($444,000) of a revised note calculation plus Ninety-One Thousand Dollars ($91,000). The $91,000 figure was calculated by a Two Hundred Seventy-Three Thousand Dollar ($273,000) K-1 loss at 33% effective Federal and Pennsylvania tax rate. (DOB Ex. 25; Tr. 2 at 16-17.)

142. Investor C testified that in or about February or March of 2018, he hired an attorney seeking a return of his funds. (Tr. 2 at 17, 83-34; Resp. Ex. 2.) There is currently a pending civil matter in Connecticut Superior Court involving the parties bearing docket number FBT-CV18-6075381-S. (Tr. 2 at 18-19.)[8]

143. Investor C offered testimony of that civil matter in which Westphalen described the investment in which he states, "he invested in 2008, in the company itself, in Triton, to which I gave him corresponding promissory notes for that investment." (Tr. 2 at 26; DOB Ex. 22 at 63:22-24.)

144. Investor C was never provided a K-1 from Westphalen, nor does Investor C know what a K-1 is. (Tr. 2 at 17.)

145. Investor C has not received any funds back from Westphalen in connection with the Notes. (Tr. 2 at 18.)

III. CONCLUSIONS OF LAW

The Commissioner is charged with the administration of Chapter 672a of the Connecticut General Statutes, the Connecticut Uniform Securities Act, and the regulations promulgated thereunder, Sections 36b-31-2 to 36b-31-33, inclusive, of the Regulations of Connecticut State Agencies. The Commissioner's authority includes the power to issue an order to cease and desist against each Respondent pursuant to Section 36b-27(a) of the Act, issue an order to make restitution against each Respondent pursuant to Section 36b-27(b) of the Act, deny investment adviser and investment adviser agent registrations pursuant to Section 36b-15 of the Act, and impose a fine upon each Respondent pursuant to Section 36b-27(d) of the Act.

Standard of Evidence

The applicable standard of proof in Connecticut administrative cases, including those involving fraud and severe sanctions, is the preponderance of the evidence standard. *Goldstar Medical Services v. Department of Social Services*, 288 Conn. 790, 819 (2008). "[I]t is the exclusive province of the trier of fact to make determinations of credibility, crediting some, all, or none of a given witness' testimony. . . . [A]n agency [is not] required to use in any particular fashion any of the materials presented to it as long as the conduct of the hearing is fundamentally fair." *Id*. at 830 (internal citations omitted).

"Review of an administrative agency decision requires a court to determine whether there is substantial evidence in the administrative record to support the agency's findings of basic fact and whether the conclusions drawn from those facts are reasonable." *Id*. at 833. "An administrative finding is supported by substantial evidence if the record affords a substantial basis of fact from which the fact in issue can be reasonably inferred." *Id*. "[T]here is no distinction between direct and circumstantial evidence so far as probative force is concerned. . . . In fact, circumstantial evidence may be more certain, satisfying and persuasive than direct evidence." *Id*. at 834 (internal citations omitted).

[8]The Hearing Officer took judicial notice of the civil matter.

Violations of the Connecticut Uniform Securities Act[9]

1. The Division alleges that Mosaic and Westphalen failed to promptly file a correcting amendment to one or more of their Form ADV and Form U4 filings, respectively, on file with the Commissioner to disclose (a) in the case of Mosaic, other business activities and financial industry affiliations and activities; and (b) in the case of Westphalen, other business, in violation of Section 36b-31-14e of the Regulations.

   Section 36b-31-14e(a) of the Regulations provides, in pertinent part, that:

   > If the information contained in any application for registration as . . . [an] investment adviser or investment adviser agent, or in any amendment thereto, is or becomes inaccurate or incomplete in any material respect for any reason, the applicant or registrant shall promptly file a correcting amendment with the commissioner.

   The record establishes that Mosaic was registered as an investment adviser from April 28, 2009 to December 31, 2014. Westphalen was registered as an investment adviser agent of Mosaic during that same period of time and was the sole member of Mosaic. The record establishes that neither Mosaic nor Westphalen ever filed any amendment to any Form ADV or Form U4 filings, respectively, to update and correct said filings with the associated business entities and/or other business activities of New Horizon, Vista, Triton or Mosaic College Planners as required by the Regulations and, therefore, Mosaic and Westphalen failed to promptly file with the Commissioner one or more correcting amendments to their Form ADV and Form U4 filings, respectively, in violation of Section 36b-31-14e of the Regulations.

2. The Division alleges that Mosaic transacted business as an investment adviser in Connecticut absent registration, in violation of Section 36b-6(c)(1) of the Act.

   Section 36b-6(c)(1) of the Act provides, in pertinent part, that:

   > No person shall transact business in this state as an investment adviser unless registered as such by the commissioner as provided in sections 36b-2 to 36b-34, inclusive, or exempted pursuant to subsection (e) of this section.

   Section 36b-3(11) of the Act provides, in pertinent part, that:

   > "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing or selling securities, or who, for compensation as a part of a regular business, issues or promulgates analyses or reports concerning securities.

   The evidence establishes that from approximately January 1, 2015 to at least 2017, Mosaic transacted business as an investment adviser in Connecticut absent registration, in violation of Section 36b-6(c)(1) of the Act. The evidence establishes that from approximately January 1, 2015 to at least 2017, Mosaic, in exchange for compensation, transacted business as an investment adviser in or

[9]Citations to the Act reflect the most recent statutory text applicable during the time period of underlying conduct.

from Connecticut absent registration by offering investment advice through Mosaic College Planners to both Investor A and Investor B, by engaging in investment advisory activities with Investor C in Triton, by issuing and/or promulgating analyses or reports concerning securities for compensation through the New Horizon model, and entering into trading agreements and receiving advisory fees from clients in connection with accounts at Interactive Brokers, in violation of Section 36b-6(c)(1) of the Act.

3. The Division alleges that Westphalen transacted business as an investment adviser agent of Mosaic in Connecticut absent registration, in violation of Section 36b-6(c)(2) of the Act.

Section 36b-6(c)(2) of the Act provides, in pertinent part, that:

> No individual shall transact business in this state as an investment adviser agent unless such individual is registered as an investment adviser agent of the investment adviser for which such individual acts in transacting such business.

Section 36b-3(12)(A) of the Act provides that:

> "Investment adviser agent" includes (i) any individual, including an officer, partner or director of an investment adviser, or an individual occupying a similar status or performing similar functions, employed, appointed or authorized by or associated with an investment adviser to solicit business from any person for such investment adviser in this state and who receives compensation or other remuneration, directly or indirectly, for such solicitation; or (ii) any partner, officer, or director of an investment adviser, or an individual occupying a similar status or performing similar functions, or other individual employed, appointed, or authorized by or associated with an investment adviser, who makes any recommendation or otherwise renders advice regarding securities to clients and who receives compensation or other remuneration, directly or indirectly, for such advisory services.

The record establishes that Westphalen was the sole member of Mosaic and was the principal contact for all clients and the related transactions. The evidence establishes that from approximately January 1, 2015 to at least 2017, Mosaic transacted business as an investment adviser in Connecticut absent registration, in violation of Section 36b-6(c)(1) of the Act. Westphalen was the only individual acting on the behalf of Mosaic in connection with investment advisory activities. As a result, from approximately January 1, 2015 to at least 2017, Westphalen, for compensation, rendered advice regarding securities to three clients, namely Investor A, Investor B and Investor C, and to other clients by way of the creation and issuance of the New Horizon model, and accounts at Interactive Brokers, in violation of Section 36b-6(c)(2) of the Act.

4. The Division alleges Westphalen offered and/or sold securities from Connecticut to at least one investor, which securities were not registered in Connecticut under the Act nor the subject of a filed exemption claim or claim of covered security status, in violation of Section 36b-16 of the Act.

Section 36b-16 of the Act provides:

> No person shall offer or sell any security in this state unless (1) it is registered under sections 36b-2 to 36b-34, inclusive, (2) the security or transaction is exempted under section 36b-21, or (3) the security is a

> covered security provided such person complies with any applicable requirements in subsections (c), (d) and (e) of section 36b-21.

Section 36b-3(19) of the Act defines "security", in pertinent part, as:

> "Security" means any note, stock, treasury stock, security future, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, interests of limited partners in a limited partnership, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas or other mineral rights, put, call, straddle, option, or privilege on any security or group or index of securities, including any interest in or based on the value of such security, group or index, put, call, straddle, option or privilege entered into on a national securities exchange relating to foreign currency, or, in general, any interest or instrument commonly known as a "security", or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.

The evidence establishes that both Omni and Triton securities were never registered or the subject of a claimed exemption filing in Connecticut. Section 36b-21(g) of the Act provides, in pertinent part, that "the burden of proving an exemption, preemption, exclusion or an exception from a definition is upon the person claiming it". No evidence was produced by Respondents supporting a claim of exemption or claim of covered security status in connection with the offer and sale of Omni or Triton in or from Connecticut.

With respect to the offer and sale of such securities, Investor A and Investor B described numerous conversations, meetings and other correspondence they had with Westphalen in which Westphalen introduced the investment in Omni to them, suggested and/or recommended said investment and thereafter facilitated the purchase of the investment by acting as an intermediary in the exchange of documents, gathering of signatures and the transmission of funds to effect the purchases. Investor KW also testified that he invested in Omni after being introduced to the investment by Westphalen and that he never would have done so without Westphalen's advisement of the existence of Omni. The evidence also establishes that Westphalen offered and/or sold securities in the form of three (3) notes to Investor C in the entity Triton, of which Westphalen was the sole member. Therefore, the evidence establishes that Westphalen offered and/or sold securities in violation of Section 36b-16 of the Act.

5. The Division alleges that Westphalen transacted business as an agent of issuer of Omni and Triton in Connecticut absent registration, in violation of Section 36b-6(a) of the Act.

Section 36b-6(a) of the Act provides:

> No person shall transact business in this state as a broker-dealer unless such person is registered under sections 36b-2 to 36b-34, inclusive. No person shall transact business in this state as a broker-dealer in contravention of a sanction that is currently effective imposed by the Securities and Exchange Commission or by a self-regulatory organization of which such person is a member if the sanction would prohibit such person from effecting transactions in securities in this state.

> No individual shall transact business as an agent in this state unless such individual is (1) registered as an agent of the broker-dealer or issuer whom such individual represents in transacting such business, or (2) an associated person who represents a broker-dealer in effecting transactions described in subdivisions (3) and (4) of Section 15(i) of the Securities Exchange Act of 1934. No individual shall transact business in this state as an agent of a broker-dealer in contravention of a sanction that is currently effective imposed by the Securities and Exchange Commission or a self-regulatory organization of which the employing broker-dealer is a member if the sanction would prohibit the individual employed by such broker-dealer from effecting transactions in securities in this state.

Section 36b-3(1) of the Act provided, in pertinent part, that:

> "Agent" means any individual, other than a broker-dealer, who represents a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities. "Agent" does not include an individual who represents an issuer in (A) effecting transactions in a security exempted by subdivision (1), (2), (3), (4), (6), (9), (10), (11) or (22) of subsection (a) of section 36b-21, [or] (B) effecting transactions exempted by subsection (b) of section 36b-21, except for transactions exempted by subdivisions (10), (13) or (14) of said subsection. . . . "Agent" does not include such other persons not within the intent of this subdivision as the commissioner may by regulation or order determine. A general partner, officer or director of a broker-dealer or issuer, or a person occupying a similar status or performing similar functions, is an agent only if such person otherwise comes within this definition and any compensation that such person receives is directly or indirectly related to purchases or sales of securities.

The record establishes that Westphalen offered Omni securities to two (2) Connecticut investors. However, the record does not establish that Westphalen acted as an agent of Omni. The record also establishes that Westphalen offered and/or solicited an investment from Investor C in Triton, of which Westphalen was the sole member. As the sole member, Westphalen was a person performing similar functions of an officer or director of Triton and the record does not establish that Westphalen received compensation directly or indirectly related to the purchases or sales of securities in Triton. In this case, the record does not establish that Westphalen acted as an agent of Triton.

6. The Division alleges that the conduct of Westphalen constitutes, in connection with the offer, sale or purchase of any security, directly or indirectly employing a device, scheme or artifice to defraud, making an untrue statement of a material fact or omitting to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, or engaging in an act, practice or course of business which operates or would operate as a fraud or deceit upon any person, in violation of Section 36b-4(a) of the Act.

Section 36b-4(a)[10] of the Act provides that:

> No person shall, in connection with the offer, sale or purchase of any security, directly or indirectly: (1) Employ any device, scheme or artifice to defraud; (2) make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or (3) engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

Section 36b-3(8) of the Act provides that:

> "Fraud", "deceit" and "defraud" are not limited to common-law deceit.

The record establishes that Investor C agreed with Westphalen to transfer all of his retirement savings into Triton. Westphalen (on behalf of Triton) executed three (3) notes to effectuate the investment. Investor C did not receive any documents or information from Westphalen in connection with his investment into Triton apart from the notes themselves. Investor C testified that he understood the notes to be the vehicle necessary to move his money into Triton and stated repeatedly that the notes were not loans. Investor C testified that Note 2 and Note 3 were required to keep the funds invested in Triton. The evidence also establishes that Investor C inquired about the balance of the account, closing the account and getting his money back. Evidence produced into the record shows that Westphalen made a statement to Investor C that the return on investment would be more than Five Hundred Thousand Dollars ($500,000). Investor C testified that he continuously relied on Westphalen due to his perceived success and expertise as well as the familial relationship of the two in engaging in the initial investments, allowing Westphalen to maintain full control over how the investments were managed and keeping the investment with Westphalen. Westphalen failed to produce a concrete value calculation of the notes based on their terms, which, if they had been loans, would be a straightforward calculation based upon the principal debt and accrual of interest taken directly from the terms of the notes. Investor C further relied on Westphalen's representations to keep the funds in his control. It is clear from the record that Investor C believed that he had an investment with Westphalen in Westphalen's investment fund, Triton, and it is also clear that Westphalen takes the position that the notes were loans. The record establishes that Westphalen made statements to Investor C that occurred in connection with inducing Investor C to make his initial investment or were material to a decision to keep funds invested in Triton. See, *Papic v. Burke*, Docket No. HHBCV054008511S, 2007 Conn. Super. LEXIS 820, at *26 (Super. Mar. 22, 2007). This establishes either misstatements of material facts or omissions of material facts made in connection with the offer, sale or purchase of securities, which constitutes making untrue statements of a material fact or omitting 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, in violation of Section 36b-4(a)(2) of the Act, and engaging in an act, practice or course of business that operated as a fraud or deceit upon a person, in violation of Section 36b-4(a)(3) of the Act[11].

[10]This provision, as originally drafted, was modeled on Section 17(a) of the federal Securities Act of 1933. "Section 36b-4 corresponds to § 101 of the Uniform Securities Act of 1956 (Uniform Securities Act)." *Demiraj v. Uljaj*, 137 Conn. App. 800, 806 (2012). "Section 101 of the Uniform Act was modeled on Rule 10b-5 of the Securities and Exchange Commission (SEC), which, in turn, was modeled on § 17(a) of the federal Securities Act of 1933. L. Loss, Commentary on the Uniform Securities Act (1976) official comment to § 101, p. 6." *Connecticut Nat'l. Bank v. Giacomi*, 233 Conn. 304, 321 (1995).

[11]Since the Act is a substantial adoption of the Uniform Securities Act, analysis performed by other states construing similar securities provisions is instructive. In *Maryland Securities Commissioner v. U.S. Securities Corp*,

7. The Division alleges that, in connection with a June 26, 2017 investment adviser registration application, Mosaic filed with the Commissioner a Connecticut Supplement form containing a statement which was, at the time and in the light of the circumstances under which it was made, false or misleading in a material respect, and alleges that in on the record testimony to the Division on February 13, 2018, Westphalen, on his individual behalf and/or on behalf of Mosaic, made certain statements on the record which were, at the time and in the light of the circumstances under which they were made, false or misleading in a material respect, in violation of Section 36b-23 of the Act.

Section 36b-23 of the Act provides:

> No person shall make or cause to be made orally or in any document filed with the commissioner or in any proceeding, investigation or examination under sections 36b-2 to 36b-34, inclusive, any statement that is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect or, in connection with the statement, omit to state a material fact necessary to make the statement made, in the light of the circumstances under which it was made, not false or misleading.

The record establishes that Westphalen, on behalf of Mosaic, submitted several filings with the Division in connection with the registration of Mosaic and consistently failed to disclose other entities as outside business activities or associated businesses, including, but not limited to Mosaic College Planners, Triton Investments, Vista, Mosaic Portfolio Strategists LLC, Interactive Brokers or Omni. The record establishes that, on several occasions, Westphalen represented that Mosaic was a futures commission merchant, commodity pool operator or commodity trading advisor and further failed to disclose any other business activities. The record also shows that, in a subsequent Form ADV and requested Connecticut Supplement, Westphalen certified that neither he nor Mosaic had rendered investment advisory services to Connecticut residents or from Connecticut, a statement refuted by the record as stated in the findings above. Westphalen also stated in on-the-record testimony that he produced all documents in connection with the Division's subpoenas, when that was not the case and, in fact, impossible due to the fact that most, if not all, of Westphalen's client records were on a laptop that was destroyed prior to this action. Thus, Mosaic filed with the Commissioner a statement which was, at the time and in the light of the circumstances under which it was made, false or misleading in a material respect and Westphalen, on his individual behalf and/or on behalf of Mosaic, made certain statements on the record which were, at the time and in the light of the circumstances under which they were made, false or misleading in a material respect, in violation of Section 36b-23 of the Act.

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122 Md. App. 574 (1998), the court upheld a securities administrative decision which found that a broker's failure to disclose certain information in connection with the registration status of the securities sold to investors acted as a deceit upon the investors, regardless of whether the deceit involved a material fact. The court looked at the effect on the investors, stating that "[c]learly, the Maryland residents were deceived by acts or a course of business in connection with the offer and sale of stock." *Id.* at 597. This is consistent with the U.S. Supreme Court's interpretation of Section 17 in *Aaron v. SEC*, which states: "[T]he language of § 17(a)(3), under which it is unlawful for any person 'to engage in any transaction, practice, or course of business which *operates* or *would operate* as a fraud or deceit,' . . . quite plainly focuses upon the *effect* of particular conduct on members of the investing public, rather than upon the culpability of the person responsible.'" *Aaron v. SEC*, 446 U.S. 680, 696-97 (1980). (Emphasis in original).

8. The Division alleges that Mosaic failed to retain required investment advisory records in accordance with legal requirements, in violation of Section 36b-14(a)(1) of the Act and Section 36b-31-14b(a) of the Regulations.

Section 36b-14(a)(1) of the Act provides:

> Every registered investment adviser shall make, keep and preserve such accounts, correspondence, memoranda, papers, books and other records as the commissioner by regulation adopted, in accordance with chapter 54, or order prescribes. All such records shall be preserved for such period as the commissioner by regulation or order prescribes.

Section 36b-31-14b(a) of the Regulations provides:

> Every registered investment adviser shall keep and maintain, open to inspection by the commissioner, the books and records required to be kept by the Investment Advisers Act of 1940, as amended, and the rules and regulations thereunder. Such books and records shall be kept true, accurate and current and shall be preserved for such periods of time and in such places as specified by the Investment Advisers Act of 1940, as amended, and the rules and regulations thereunder. Compliance with the requirements of the United States Securities and Exchange Commission concerning preservation of records in an electronic medium is deemed compliance with this subsection.

The evidence establishes that Westphalen, on behalf of Mosaic, kept and maintained most, if not all, electronic records of clients of Mosaic on a laptop. That laptop was destroyed by a spill rendering all electronic data on said laptop to be destroyed or otherwise unrecoverable and there was no back up data storage system in place for Mosaic whatsoever. Any records kept and maintained by Mosaic were lost forever and, therefore, said records were not preserved by Mosaic, in violation of Section 36b-14(a)(1) of the Act and Section 36b-31-14b(a) of the Regulations.

Authority to Issue Order to Cease and Desist, Order to Make Restitution, Order Denying Registrations and Order Imposing Fine

Section 36b-15 of the Act provides, in pertinent part, that:

> (a) The commissioner may, by order, deny . . . any registration . . . if the commissioner finds that (1) the order is in the public interest, and (2) the applicant . . . or, in the case of . . . [an] investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the . . . investment adviser: (A) Has filed an application for registration which as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact; (B) has wilfully violated or wilfully failed to comply with any provision of sections 36b-2 to 36b-34, inclusive, or a predecessor statute or any regulation or order under said sections or a predecessor statute; . . . [or]

(L) in connection with any investigation conducted pursuant to section 36b-26 . . . has made any material misrepresentation to the commissioner or upon request made by the commissioner, has withheld or concealed material information from, or refused to furnish material information to the commissioner, provided, there shall be a rebuttable presumption that any records, including, but not limited to, written, visual, audio, magnetic or electronic records, computer printouts and software, and any other documents, that are withheld or concealed from the commissioner in connection with any such investigation or examination are material, unless such presumption is rebutted by substantial evidence . . . .

(e)(1) Withdrawal . . . of an application for registration as . . . [an] investment adviser or investment adviser agent, becomes effective ninety days after receipt of an application to withdraw such registration or a notice of intent to withdraw such application for registration or within such shorter period of time as the commissioner may determine, unless a denial . . . proceeding is pending when the application or notice is filed or a proceeding to deny . . . is instituted within ninety days after the application or notice is filed. If a proceeding is pending or instituted, withdrawal becomes effective at such time . . . as the commissioner by order determines. If no proceeding is pending or instituted and withdrawal automatically becomes effective, the commissioner may nevertheless institute a denial . . . proceeding under subsection (a) of this section within one year after withdrawal became effective.

(f) No order may be entered under this section . . . without (1) appropriate prior notice to the applicant . . . and to the employer . . . if such applicant . . . is an . . . investment adviser agent, (2) opportunity for hearing, and (3) written findings of fact and conclusions of law.

Section 36b-27 of the Act provides, in pertinent part, that:

(a) Whenever it appears to the commissioner after an investigation that any person has violated, is violating or is about to violate any of the provisions of sections 36b-2 to 36b-34, inclusive, or any regulation . . . adopted . . . under said sections, . . . the commissioner may, in the commissioner's discretion, order (1) the person . . . to cease and desist from the violations . . . of the provisions of said sections or regulations . . . . After such an order is issued, the person named in the order may, within fourteen days after receipt of the order, file a written request for a hearing. Any such hearing shall be held in accordance with the provisions of chapter 54. . . .

(b) Whenever it appears to the commissioner, after an investigation, that any person has violated any of the provisions of sections 36b-2 to 36b-34, inclusive, or any regulation . . . adopted . . . under said sections, . . . the commissioner may, in addition to any other remedy under this section, order the person to (1) make restitution of any sums shown to have been obtained in violation of any of the provisions of said sections or any such regulation . . . plus interest at the legal rate set forth in section 37-1 . . . . After such an order is issued, the person named in the order may, not later

> than fourteen days after receipt of the order, file a written request for a hearing. Any such hearing shall be held in accordance with the provisions of chapter 54. . . .
>
> (d) (1) Whenever the commissioner finds as the result of an investigation that any person has violated any of the provisions of sections 36b-2 to 36b-34, inclusive, or any regulation . . . adopted . . . under said sections, . . . the commissioner may send a notice to (A) such person . . . by registered or certified mail, return receipt requested, or by any express delivery carrier that provides a dated delivery receipt. The notice shall be deemed received by the person on the earlier of the date of actual receipt or the date seven days after the date on which such notice was mailed or sent. Any such notice shall include: (i) A reference to the title, chapter, regulation, rule or order alleged to have been violated . . . ; (ii) a short and plain statement of the matter asserted or charged; (iii) the maximum fine that may be imposed for such violation . . . ; (iv) a statement indicating that such person may file a written request for a hearing on the matters asserted not later than fourteen days after receipt of the notice; and (v) the time and place for the hearing.
>
> (2) If a hearing is requested within the time specified in the notice, the commissioner shall hold a hearing upon the charges made unless such person fails to appear at the hearing. Any such hearing shall be held in accordance with the provisions of chapter 54. After the hearing, if the commissioner finds that the person has violated any of the provisions of sections 36b-2 to 36b-34, inclusive, or any regulation . . . adopted . . . under said sections, . . . the commissioner may, in the commissioner's discretion and in addition to any other remedy authorized by said sections, order that a fine not exceeding one hundred thousand dollars per violation . . . be imposed upon such person. If such person fails to appear at the hearing, the commissioner may, as the facts require, order that a fine not exceeding one hundred thousand dollars per violation . . . be imposed upon such person. . . . The commissioner shall send a copy of any order issued pursuant to this subsection by registered or certified mail, return receipt requested, or by any express delivery carrier that provides a dated delivery receipt, to any person named in such order.

No evidence of mitigating circumstances was provided by Respondents during the hearing. I am imposing a fine of Nine Hundred Thousand Dollars ($900,000) upon Respondents jointly and severally.

Notice and Public Interest

Section 4-177 of the Connecticut General Statutes provides, in pertinent part, that:

> (a) In a contested case, all parties shall be afforded an opportunity for hearing after reasonable notice.
>
> (b) The notice shall be in writing and shall include: (1) A statement of the time, place, and nature of the hearing; (2) a statement of the legal authority and jurisdiction under which the hearing is to be held; (3) a reference to the particular sections of the statutes and regulations involved; and (4) a short and plain statement of the matters asserted. . . .

The Amended Notice issued by the Commissioner complied with subsections (a), (b) and (d) of Section 36b-27 of the Act and Section 4-177 of the Connecticut General Statutes.

Section 36b-31(b) of the Act provides, in pertinent part, that:

> No . . . order may be made . . . unless the commissioner finds that the action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of sections 36b-2 to 36b-34, inclusive. . . .

Section 36b-31(b) of the Act requires that the Commissioner find that an order is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of Sections 36b-2 to 36b-34, inclusive, of the Act. In this case, Mosaic and Westphalen failed to promptly file a correcting amendment to one or more of their Form ADV and Form U4 filings, respectively, on file with the Commissioner to disclose (a) in the case of Mosaic, other business activities and financial industry affiliations and activities, and (b) in the case of Westphalen, other business, both in violation of Section 36b-31-14e of the Regulations; Mosaic failed to register as an investment adviser, in violation of Section 36b-6(c)(1) of the Act; Westphalen failed to register as an investment adviser agent, in violation of Section 36b-6(c)(2) of the Act; Westphalen offered and/or sold unregistered securities, in violation of Section 36b-16 of the Act; Westphalen, in connection with the offer, sale or purchase of a security, made untrue statements of material fact or omitted to state material facts necessary to make statements made not misleading, in violation of Section 36b-4(a)(2) of the Act; Westphalen engaged in an act, practice or course of business that operated as a fraud or deceit, in violation of Section 36b-4(a)(3) of the Act; Mosaic and Westphalen made false or misleading statements to the Commissioner, in violation of Section 36b-23 of the Act; and Mosaic failed to retain its investment advisory records in accordance with legal requirements, in violation of Section 36b-14(a)(1) of the Act and Section 36b-31-14b(a) of the Regulations. Prohibition of such practices is consistent with the purpose of the Act as discussed by the Connecticut Legislature in 1977. "[S]ecurities laws generally contain three basic elements—registration of brokers and salesmen, antifraud provisions and registration of securities . . . ." *Connecticut Nat. Bank v. Giacomi*, 233 Conn. 304, 320 (1995). By publicly sanctioning Westphalen and Mosaic through the denial of their respective registrations, the issuance of an order to cease and desist, an order to make restitution and an order imposing fine, other securities personnel and investors should be warned and future violative conduct deterred.

I conclude that it is necessary and appropriate in the public interest and for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of Sections 36b-2 to 36b-34, inclusive, of the Act to issue of the following order.

IV. ORDER

Having read the record, I hereby **ORDER**, pursuant to Sections 36b-15(a), 36b-15(e)(1), 36b-15(f), 36b-27(a), 36b-27(b) and 36b-27(d) of the Act, that:

1. On the date of entry of this Order, the registration of Adam Westphalen (CRD No. 2821723) as an investment adviser agent in Connecticut be **DENIED**;

2. On the date of entry of this Order, the registration of Mosaic Financial Strategies LLC d/b/a Mosaic Advisory Partners (CRD No. 288997) as an investment adviser in Connecticut be **DENIED**;

3. The Order to Cease and Desist issued against Adam Westphalen on May 10, 2019, be made **PERMANENT** with respect to violations of Section 36b-31-14e of the Regulations and Sections 36b-6(c)(2), 36b-16, 36b-4(a)(2), 36b-4(a)(3) and 36b-23 of the Act;

4. The Order to Cease and Desist issued against Mosaic Financial Strategies LLC f/k/a Mosaic Portfolio Strategists, LLC and Mosaic Financial Strategies LLC d/b/a Mosaic Advisory Partners on May 10, 2019, be made **PERMANENT** with respect to violations of Sections 36b-31-14e and 36b-31-14b(a) of the Regulations, and Sections 36b-6(c)(1), 36b-23 and 36b-14(a)(1) of the Act;

5. A **FINE** of Nine Hundred Thousand and 00/100 Dollars ($900,000) be imposed upon Adam Westphalen and Mosaic Financial Strategies LLC f/k/a Mosaic Portfolio Strategists, LLC and Mosaic Financial Strategies LLC d/b/a Mosaic Advisory Partners, jointly and severally, to be remitted to the Department of Banking by wire transfer, cashier's check, certified check or money order, made payable to "Treasurer, State of Connecticut", no later than forty-five (45) days after the date this Order is mailed;

6. The Order to Make Restitution issued against Adam Westphalen and Mosaic Financial Strategies LLC f/k/a Mosaic Portfolio Strategists, LLC and Mosaic Financial Strategies LLC d/b/a Mosaic Advisory Partners on May 10, 2019, be made **PERMANENT**, and Adam Westphalen and Mosaic Financial Strategies LLC f/k/a Mosaic Portfolio Strategists, LLC and Mosaic Financial Strategies LLC d/b/a Mosaic Advisory Partners, jointly and severally, shall make restitution as follows:

    (a) No later than forty-five (45) days from the date this Order becomes effective, restitution shall be made to Investor A, as identified in Confidential Exhibit A attached hereto, by cashier's check, certified check or money order, in the amount of Sixty Thousand and 00/100 Dollars ($60,000) plus interest at 6% per annum, sent by certified mail, return receipt requested;

    (b) No later than forty-five (45) days from the date this Order becomes effective, restitution shall be made to Investor B, as identified in Confidential Exhibit A attached hereto, by cashier's check, certified check or money order, in the amount of Sixty-Three Thousand and 00/100 Dollars ($63,000) plus interest at 6% per annum, sent by certified mail, return receipt requested;

    (c) No later than forty-five (45) days from the date this Order becomes effective, restitution shall be made to Investor C, as identified in Confidential Exhibit A attached hereto, by cashier's check, certified check or money order, in the amount of Three Hundred Sixty-Seven Thousand and 00/100 Dollars ($367,000) plus interest at 6% per annum, sent by certified mail, return receipt requested; and

(d) Within ninety (90) days from the date this Order becomes effective, Adam Westphalen and Mosaic Financial Strategies LLC f/k/a Mosaic Portfolio Strategists, LLC and Mosaic Financial Strategies LLC d/b/a Mosaic Advisory Partners shall provide the Division proof of the ordered restitution payments in the form of copies of checks and return receipts.

7. This Order shall be entered and effective when mailed.

Dated at Hartford, Connecticut,
this 27th day of July 2020.

/s/
Jorge L. Perez
Banking Commissioner

CERTIFICATION

I hereby certify that on this 27th day of July 2020, I caused the foregoing Findings of Fact, Conclusions of Law and Order to be mailed by certified mail, return receipt requested, to Adam Westphalen, 40 Maple Road, Easton, Connecticut 06612, Certified Mail No. 7016 2710 0000 5897 0298; a hard copy of the Findings of Fact, Conclusions of Law and Order to be hand delivered to Attorney Elena Zweifler, State of Connecticut, Department of Banking, Securities and Business Investments Division, 260 Constitution Plaza, Hartford, Connecticut; and an e-mail attaching a copy of the Findings of Fact, Conclusions of Law and Order to be sent to Adam Westphalen and Attorney Zweifler.

/s/
Tina M. Daigle
Paralegal