INITIAL DECISION RELEASE NO. 502
ADMINISTRATIVE PROCEEDING
FILE NO. 3-15003

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

In the Matter of	:	
	:	
DANIEL BOGAR,	:	INITIAL DECISION
BERNERD E. YOUNG, and	:	August 2, 2013
JASON T. GREEN	:	

APPEARANCES: David Reece, B. David Fraser, Chris Davis, and Janie Frank for the Division of Enforcement, Securities and Exchange Commission

Thomas L. Taylor, III, and Andrew M. Goforth of The Taylor Law Offices, P.C., for Respondent Daniel Bogar

J. Randle Henderson for Respondent Bernerd E. Young

George C. Freeman, III, and David N. Luder of Barrasso Usdin Kupperman Freeman & Sarver, L.L.C., for Respondent Jason T. Green

BEFORE: Carol Fox Foelak, Administrative Law Judge

SUMMARY

This Initial Decision (ID) concludes that Daniel Bogar (Bogar), Bernerd E. Young (Young), and Jason T. Green (Green) violated the antifraud provisions of the federal securities laws while employed at a broker-dealer owned by convicted Ponzi-schemer R. Allen Stanford (Allen Stanford). The ID orders them to cease and desist from further violations and bars them from the securities industry. Additionally, the ID orders disgorgement of ill-gotten gains by Bogar ($1,555,485.75 plus prejudgment interest), Young ($591,992.46 plus prejudgment interest), and Green ($2,613,506.47) and orders each to pay a third-tier civil penalty of $260,000.

I. INTRODUCTION

A. <u>Procedural Background</u>

The Securities and Exchange Commission (Commission) instituted this proceeding with an Order Instituting Proceedings (OIP) on August 31, 2012, pursuant to Section 8A of the

Securities Act of 1933 (Securities Act), Sections 15(b) and 21C of the Securities Exchange Act of 1934 (Exchange Act), Sections 203(f) and 203(k) of the Investment Advisers Act of 1940 (Advisers Act), and Section 9(b) of the Investment Company Act of 1940. The undersigned held a fifteen-day hearing between February 11 and May 20, 2013, in Houston, Texas, and remotely. Twenty-six witnesses testified, including Bogar, Young, and Green, and numerous exhibits were admitted into evidence.[1]

The findings and conclusions in this ID are based on the record. Preponderance of the evidence was applied as the standard of proof. See Steadman v. SEC, 450 U.S. 91, 97-104 (1981). Pursuant to the Administrative Procedure Act, 5 U.S.C. § 557(c), the parties' Proposed Findings of Fact and Conclusions of Law and Reply pleadings were considered. All arguments and proposed findings and conclusions that are inconsistent with this ID were considered and rejected.

B. Allegations and Arguments of the Parties

This proceeding concerns Respondents' conduct during their association with companies owned and controlled by convicted Ponzi-schemer Allen Stanford, whose scheme included selling so-called certificates of deposit (CD) of his offshore bank, Stanford International Bank Ltd. (SIB or SIBL), through his broker-dealer, Stanford Group Company, Inc. (SGC), to investors in the U.S. The OIP does not charge Respondents with actually knowing about, much less operating, the Ponzi scheme, which was run by Allen Stanford and two close associates, Jim Davis (Davis) and Laura Pendergest-Holt (Holt). Rather, the OIP alleges that Respondents were culpable in their actions or inactions related to disclosure concerning SIB's assets and insurance coverage.

The Division of Enforcement (Division) is seeking cease-and-desist orders, disgorgement, third-tier civil money penalties, and bars. Respondents argue that the charges are unproven and no sanctions should be imposed.

II. FINDINGS OF FACT

A. Respondents and Other Relevant Entities

1. Allen Stanford and His Affiliates

Allen Stanford was convicted of fraud, money laundering, obstruction of a Commission investigation, and other charges related to the events at issue in this proceeding and sentenced to 110 years imprisonment and other sanctions.[2] United States v. Stanford, No. 4:09-cr-00342-1 (S.D.

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[1] Citations to the transcript will be noted as "Tr. __." Citations to exhibits offered by the Division of Enforcement, Bogar, Young, and Green will be noted as "Div. Ex. __," "Bogar Ex. __," "Young Ex. __," and "Green Ex. __," respectively.

[2] Official notice, pursuant to 17 C.F.R. § 201.323, is taken of the fact that Allen Stanford's associates in the Ponzi scheme are also incarcerated. Davis was convicted, on his plea of guilty,

Tex. June 14, 2012), appeal pending, No. 12-20411 (5th Cir.). SIB, located on the Caribbean island of Antigua, and owned and controlled by Allen Stanford, is central to the events at issue. Tr. passim; Div. Exs., Bogar Exs., Young Exs., Green Exs. passim. SIB's only business was its so-called CDs. Tr. 79, 83, 320, 3343. SGC, owned by Allen Stanford-owned Stanford Group Holdings, was during the time at issue a Commission-registered broker-dealer and investment adviser. Tr. 80, 88-89. Registered representatives associated with SGC were referred to as financial advisors (FA). Tr. passim. Branch managers were referred to as managing directors (MD). Tr. 3127. In February 2009, SGC had approximately thirty offices. Tr. 89. SGC's office in Memphis, Tennessee, oversaw certain of SIB's investments and provided research, investment, and financial analysis. Tr. 89-90, 716-22. SGC's so-called merchant banking group was in its office in Miami, Florida, and managed SIB's private equity portfolio. Tr. 91-92, 659-63, 2444-45. Allen Stanford-owned Stanford Financial Group Company provided administrative services, such as legal, accounting, HR, and IT to other Allen Stanford-owned companies (Stanford companies). Tr. 80-81. There were at least 130 Stanford companies. Tr. 81. The Stanford enterprises were seized, and their operations halted, on February 17, 2009. Tr. 1411, 2200-01.

2. Daniel Bogar

Bogar was SGC's president from March 2005 through February 2009. Tr. 2594, 2611, 2620. He had authority over SGC's sale of the SIB CD, which he considered SGC's premier product. Tr. 2874. He supervised SGC's compliance personnel himself. Tr. 2619-20. Bogar joined the Stanford companies in 2000. Tr. 2557, 2565-66. Previously, he worked as an executive in the wireless communications industry. Tr. 2557. He joined the Stanford companies following a chance encounter with Davis, his wife's uncle, at a family funeral. Tr. 2558-59. Bogar started in Miami, Florida, where he headed the merchant banking group. Tr. 659-62, 2564-66. Even after becoming president of SGC, he remained involved in managing the private equity deals. Tr. 662. Bogar reported to Davis. Tr. 663, 2566-67. Bogar, his family, and his friends invested in SIB CDs. Tr. 2773, 2841. Bogar regrets his association with SGC and the damage inflicted on customers and on former employees. Tr. 2841-42. FBI Agent Vanessa Walther (Walther) interviewed Bogar numerous times in connection with the criminal investigation into the Allen Stanford Ponzi scheme

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of conspiracy to commit mail, wire, and securities fraud; mail fraud; and conspiracy to obstruct a Commission investigation and sentenced to sixty months imprisonment followed by three years supervised release. United States v. Davis, No. 4:09-cr-00335-1 (S.D. Tex. Jan. 25, 2013). Holt was convicted, on her plea of guilty, of obstruction of a Commission investigation and sentenced to thirty-six months imprisonment followed by three years supervised release. United States v. Holt, No. 4:09-cr-00342-2 (S.D. Tex. Sept. 24, 2012). Stanford accountants Gilbert T. Lopez, Jr., and Mark J. Kuhrt were convicted of wire fraud and conspiracy to commit wire fraud and each sentenced to 240 months imprisonment. United States v. Lopez, No. 4:09-cr-00342-3 (S.D. Tex. Feb. 22, 2013), appeal pending, No. 13-20115 (5th Cir.); United States v. Kuhrt, No. 4:09-cr-00342-4 (S.D. Tex. Feb. 22, 2013), appeal pending, No. 13-20115 (5th Cir.). Leroy King, former head of the Antiguan Financial Services Regulatory Commission, was indicted but has yet to appear. United States v. King, No. 4:09-cr-00342-5 (S.D. Tex. June 18, 2009). He has been fighting extradition from Antigua since his indictment. Tr. 2195.

and found that the information he provided was helpful and accurate, as corroborated by other evidence. Tr. 2183-85, 2187.

3. Bernerd E. Young

Young was SGC's chief compliance officer from July 2006 through February 2009. Tr. 3113-14. Previously, Young was employed at the NASD, and was District Director of its Dallas, Texas, office at the time he was terminated in May 2003. Tr. 3096-3103. Thereafter, until he joined SGC, Young operated his own consulting firm, providing services to broker-dealers and investment advisers in Texas, including providing compliance training to SGC. Tr. 3104-11. Bogar was responsible for hiring him. Tr. 2621-23, 3111.

4. Jason T. Green

Green first joined SGC in 1996 as an FA in Baton Rouge, Louisiana. Tr. 3673-74. In 2000 or 2001, Green became the branch manager of SGC's Baton Rouge office. Tr. 3676. In 2004, Allen Stanford appointed him captain of the "Superstars" team of FAs in the United States who competed in sales of the SIB CD. Tr. 3679-80. In 2007, Allen Stanford promoted Green to President of the Private Client Group (PCG), in which capacity he managed all of SGC's retail brokerage operations and reported to Bogar. Tr. 3677-78. Green recommended the SIB CD to family members. Tr. 3936. Green's father, aunt, and brother-in-law's mother lost a total of almost $1.8 million as a result. Tr. 2546-47, 3934-37. Walther interviewed Green numerous times in connection with the criminal investigation into the Allen Stanford Ponzi scheme and found that the information he provided was helpful and accurate, as corroborated by other evidence, and he testified in two criminal trials of participants in the scheme. Tr. 2169-74, 2234-35.

B. The SIB CD

In the United States, SIB CDs were exclusively marketed through SGC. Tr. 103, 3857, 4006; Div. Ex. 602, Div. Ex. 644 at 12. SIB and the SIB CD contributed a large part of SGC's revenues, as all three Respondents knew. Tr. 2289-90, 2377, 2487-88, 2641, 2917, 2936, 3345-46; Div. Ex. 260. In fact, SGC was built around SIB and the SIB CD. Tr. 2879, 4006-07, 4014. SIB compensated SGC on the sale of SIB CDs at the rate of 3% at the time of sale and a trail commission of 3% per year for as long as the investor held the SIB CD.[3] Tr. 103-04, 3365; Div. Ex. 602. Other revenues that SGC received from SIB included fees to manage SIB's private equity portfolio and research fees. Tr. 2488-89. Receipts from sales of SIB CDs continued to come into SIB until it was shut down in February 2009. Tr. 135-37, 3889-90.

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[3] SGC sent clients who had purchased the SIB CD a letter notifying them of the referral fees. Tr. 3559-66; Div. Exs. 386, 628, 629, 630, 631, 632. The referral fee letter states, "SGC receives a referral fee of 3% (annualized) from SIBL, and may receive additional incentive fees for Financial Advisors who refer SGC clients to SIBL." Div. Exs. 629, 632, Div. Ex. 386 at 4. While the fee was paid annually, the most obvious meaning of "annualized" is that the 3% fee would be prorated over the term of the SIB CD. Young could not explain the use of "annualized" in lieu of "annually." Tr. 3566.

The SIB CDs were unlike conventional CDs issued by U.S. banks. Funds received from investors were pooled and purportedly invested in various investments in the manner of a hedge fund. Tr. 410-11, 2746, 2875, 3344, 3759. But, describing the SIB CDs as a "hedge fund" was strictly forbidden within SGC. Tr. 1152, 2875. "[I]nternally . . . any time you said that, you'd get slapped on the wrist. It's a bank." Tr. 2875 (emphasis added).

SGC sold the SIB CD pursuant to a Regulation D exemption from securities registration. Tr. 3189, 3467-68; Div. Ex. 370, Div. Ex. 569 at 174-81. Some investors liquidated existing holdings of mutual funds, stocks, and bonds and used the proceeds to buy the SIB CD. Tr. 1223-24, 1485, 1495-96, 1551-52, 2705, 2976.

Marketing material furnished to investors and training material used in training FAs compared the SIB CDs with conventional CDs issued by U.S. banks, showing the SIB CDs with much higher interest rates.[4] Div. Ex. 607 at 10, Div. Ex. 608 at 10, Div. Ex. 611 at 10, Div. Ex. 742 at 9. Because of the high fees, including 3% annually on all SIB CDs, other fees paid to SGC, and ordinary expenses, SIB would have had to have earned far more than the interest it paid out in order to break even. Addressing that issue, training materials used by Green showed annual portfolio returns of about 5% more than the SIB CD interest rate. Div. Ex. 65 at 30; Green Ex. 261 at 32, Green Ex. 268 at 30.

As of February 2009, SIB's total outstanding SIB CD obligations amounted to approximately $7.6 billion. Tr. 88. Almost all of SIB's funds were invested in private companies, companies that were traded over-the-counter or in the "pink sheets," real estate, and a $2 billion loan to Allen Stanford. Tr. 85. The real estate, in Antigua, had been purchased in 2008 for $63.5 million but was valued on SIB's books at $3.2 billion. Tr. 85-86. This allocation is consistent with the understanding of Fred Palmliden (Palmliden) of SGC's Memphis, Tennessee, analyst group, that SIB's assets consisted of a small amount of cash (Tier 1), another 15%-20% (less than $1 billion) of the portfolio that the Memphis group oversaw (Tier 2), and the bulk of the assets, overseen by Davis and Allen Stanford (Tier 3); the Memphis analysts had no understanding of the Tier 3 assets. Tr. 721-24, 743, 787, 795. Had Bogar, Young, or Green asked Palmliden about the nature and value of assets that the Memphis group was actually overseeing, he would have supplied the information requested. Tr. 746, 750, 796-98. However, none of them asked. Tr. 750-53. SIB's auditor, from at least 1997 onward, was C.A.S. Hewlett (Hewlett), a tiny Antigua firm. Tr. 87-88. Allen Stanford responded to suggestions that he engage a larger firm by saying that he stayed with Hewlett out of loyalty. Tr. 355, 424-26.

SGC paid the individual FAs who sold the SIB CDs to customers a 1% commission ("referral fee") at the time of sale and a trail commission of 1% per year for as long as the investor held the SIB CD. Tr. 114, 427, 3365. There was also a quarterly bonus program based on volume of sales and renewals of SIB CDs. Tr. 115-116, 427-28, 3365, 4010. A super bonus, infrequently awarded, required an FA to sell, for example, as much as $22.5 million in SIB CDs to a single

[4] The interest rates shown on the training material, Div. Ex. 742, are similar to, but not the same, as those shown on the marketing material.

customer to receive a bonus of $125,000. Tr. 4012-13; Div. Ex. 606 at 76. There was also a sales contest[5] among FA teams called "Money Machine," "Superstars," and the like related to selling SIB CDs. Tr. 116, 429-30. Forty percent of Green's time was allocated to overseeing this activity.[6] Tr. 4002-03; Div. Ex. 606 at 44-46. Green maintained team and individual FA standings and disseminated so-called "TPC Hustle Sheets that listed standings and payouts for individuals and teams."[7, 8, 9] Tr. 1374-79; Div. Exs. 788, 789. There were also rewards for the TPC (Top Producers [or Performers] Club [or Celebration]) in the form of attending meetings at destination resorts based on the volume of SIB CD sales. Tr. 118, 332, 1078-79, 1106-07, 3365, 4009-10; Div. Ex. 790. Compensation for selling conventional CDs issued by U.S. banks was a minute fraction of SIB CD related compensation. Tr. 116-17, 431-32. Bogar intended to inaugurate a compensation plan in 2009 based on total assets rather than only SIB CDs,[10] yet "without killing the golden goose, which was the bank." Tr. 2784-86, 2791-92, 2811, 2916; Div. Ex. 271; Bogar Exs. 399, 400.

Bogar sought to make SGC a mainstream broker-dealer and broaden it away from dependence on the SIB CD by hiring personnel from well-known wire houses.[11] Tr. 334, 1079-80, 1320-21, 2595-606, 2857-58. For example, in June 2004 he hired Marty Karvelis (Karvelis), who had been associated previously with Paine Webber and with Merrill Lynch, as MD of the Miami, Florida, office. Tr. 1149-50, 1202, 1216-17, 1319-21, 1324. Karvelis implemented a plan to diversify the product mix away from the SIB CD in spring 2007. Tr. 1191-93. Consequently, SIB

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[5] Bogar balked at the term "contest," instead using the more euphemistic term "recognition." Tr. 2927-32.

[6] Green's clients who testified at the hearing were not told of these additional incentives to sell the SIB CD. Tr. 1416-17, 1422-23, 1506-08, 1563-64.

[7] Bogar and Young received copies of the hustle sheets. Tr. 2928-29, 3364-65.

[8] Green recalled meeting in 2005 with an attorney, Tom Sjoblom, who was performing due diligence on SGC to decide whether he was going to represent it. Tr. 3837-41. Green said that he described SGC's compensation, including contests and bonuses, and was told that they did not present a problem. Id.

[9] SGC dropped out of the sales contest in December 2008. Tr. 3890-91; Green Ex. 300.

[10] McLagan, a consulting firm, was engaged. Tr. 2784; Div. Ex. 271; Bogar Exs. 399, 400. McLagan's February 15, 2008, draft "Financial Advisor Compensation Plan" distributed to Bogar and others, noted that SGC's current compensation plan did not "promote behavior that is in the best interest of clients because of its strong bias towards the proprietary SIB product" and was "economically unsustainable because of its extremely high SIB compensation coupled with above market interest rates." Div. Ex. 271 at 5.

[11] Bogar theorized that this would build SGC into something of value that could be taken public in the future. Tr. 2601, 2605-06. In any event, revenues from the sale of the SIB CD continued to grow but decreased as a percentage of total revenues. Tr. 2602.

CD sales in his office dropped and investments in equities and other instruments that were less profitable to SGC increased. Tr. 1193. In August 2007, Green fired him, with Bogar's approval, due to the lack of profitability. Tr. 1194-96, 1325, 2259-61, 2289-90, 2405-06, 2866-67.

In support of their previous belief that there were no improprieties in the sale of the SIB CD, all three Respondents advert to various inside and outside attorneys employed by the Stanford companies who drafted disclosure and marketing materials and dealt with other issues relating to the SIB CD. Tr. 2570-72, 2607-09, 2851-52, 3226-27, 3700-02, 3943-44, 3972-73, 4027. Respondents did not provide input into the language of disclosure and marketing materials, and believed that inside and outside counsel had approved the disclosure and marketing materials and the manner in which SGC and SIB were doing business. Tr. 2576-81, 2609, 2850-52, 3017-18 (Bogar), 3414 (Young), 3681, 3701-02, 3760, 3979 (Green).

C. Disclosures Made to Investors and Potential Investors[12]

As discussed below, representations in marketing material under the heading "Depositor Security" and in training FAs concerning SIB's portfolio were false, and those concerning insurance coverage were misleading.

1. Portfolio Disclosures

As found above, almost all of SIB's purported assets consisted of private equity, equity traded over-the-counter or in the "pink sheets," wildly overvalued real estate, and a bogus $2 billion loan. The disclosure statement, marketing brochure, and materials used to train SGC FAs contained representations that were clearly false in light of these facts.

The disclosure statement, which was provided to each investor, represented, "The funds deposited with us are primarily invested in foreign and U.S. investment grade bonds and securities, and Eurodollar and foreign currency deposits" and provided percentages of investments in categories such as Equities, Treasury Bonds, Notes, Corporate Bonds, Metals, and Alternatives. Div. Ex. 644 at 9.

Under the heading "Depositor Security," SIB's brochures represented, "We focus on maintaining the highest degree of liquidity as a protective factor for our depositors. The Bank's

[12] The offering document for the SIB CD, titled "disclosure statement," provided to prospective investors warned: "YOU MAY LOSE YOUR ENTIRE INVESTMENT UNDER CIRCUMSTANCES WHERE WE MAY BE FINANCIALLY UNABLE TO REPAY THOSE AMOUNTS. PAYMENTS OF PRINCIPAL AND INTEREST ARE SUBJECT TO RISK." Div. Ex. 644 at 6. The subscription agreement contained a number of "Depositor Representations," including "You have read and you understand the Offering Documents, particularly the discussion of the risks." Green Ex. 15 at STAN P_0079055. Unfortunately, some investors signed the subscription agreement without reading the disclosure statement, placing their trust in their FA. Tr. 1143-44, 1444-46.

assets are invested in a well-diversified portfolio[13] of highly marketable securities issued by stable governments, strong multinational companies and major international banks." Div. Ex. 607 at 5, Div. Ex. 608 at 5, Div. Ex. 611 at 5. FAs were permitted, but not required, to give the brochures to customers. Tr. 419. Young approved the use of the brochures and the disclosure statement. Tr. 3348-54. Green, through his assistant, provided the brochures to clients with the disclosure statement; the brochures had a convenient pocket in the back in which to place the disclosure statement.[14] Tr. 3954.

Bogar was aware of the training of FAs and the training material that was used. Tr. 2792-94. The SIB Training and Marketing Manual (dated December 2006 and updated March 20, 2007) (TMM), was provided individually to persons connected with SIB on condition that it not be distributed, disclosed, or disseminated to anyone else. Div. Ex. 742 at 2, 4. It was used in training FAs to sell SIB CDs and was available on SGC's intranet for FAs to consult. Tr. 3949-50. The TMM contained a chart that showed interest rates of SIB CDs to be vastly higher than those of U.S. bank CDs. Div. Ex. 742 at 9. The TMM stated, "The Bank's assets are invested in a well-balanced global portfolio of marketable financial instruments, namely U.S. and international securities and fiduciary placements." Div. Ex. 742 at 6. It further represented that, generally, asset allocation is kept within the following parameters: cash – 10-20%; fixed income – 0-70% (at least 90% investment grade); equity – 0-50%; precious metals – 0-20%; alternative investments – 0-30%. Div. Ex. 742 at 6. Under the heading "SECURITY," it represented that SIB "invests most of its assets in securities such as bonds and equities that are marketable instruments, negotiable in financial markets and easy to liquidate. . . . [SIB's] liquidity equals security, since it assures that the Bank has the resources to honor withdrawal requests as they appear." Div. Ex. 742 at 11. These representations concerning SIB's portfolio, used in training FAs to sell SIB CDs to customers, were false. Similar false representations, using almost identical language,[15] appear in a version of training material that Young used. Tr. 3181-82; Young Ex. 75 at BEY 003828, 0003831.

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[13] FAs were encouraged to recommend high concentrations of the SIB CD in clients' portfolios. Div. Ex. 65 at 32. Among the specious rationalizations was the claim that the SIB CD in itself provided diversity because of diversification of assets in SIB's portfolio. Tr. 3830, 3916, 3954-55.

[14] Green had an investment advisory relationship with at least one client. Tr. 1502-04.

[15] "The Bank's assets are invested in a strategically-balanced global portfolio of marketable (publicly traded) financial instruments, namely U.S. and foreign securities (Equities and Debt), commodities, fiduciary placements (Deposits with other banks in US dollars or other currencies) and alternative investments." Young Ex. 75 at BEY 003828. "SECURITY . . . . [SIB] invests most of its assets in securities such as bonds and equities which are marketable instruments, negotiable in financial markets and easy to liquidate. . . . [SIB's] liquidity represents security to the client, since it ensures that the Bank has the resources to honor withdrawal requests as they appear." Young Ex. 75 at BEY 0003831.

Green created his own training presentation that he used instead of the TMM.[16] Tr. 3762-66. Bogar saw Green's presentation. Tr. 3087-88. Presentations Green used in 2006, 2007, and 2008 described the portfolio as "Predominantly marketable securities." Tr. 3775-80; Div. Ex. 65 at 29; Green Ex. 260, Green Ex. 261 at 31, Green Ex. 267, Green Ex. 268 at 29. Likewise, a presentation he made in 2004[17] listed under "Factors Mitigating SIB Credit Risk: . . . Marketability: Predominantly marketable securities in portfolio." Green Ex. 250 at DS 00130. The so-called Hollier presentation Green made in December 2004 or January 2005 contained the same representation. Tr. 3768-70; Green Ex. 254 at 24.

The above representations about SIB's portfolio, furnished or relayed to investors, were clearly false. None of the three Respondents questioned them at the time, and each was aghast on learning the truth in February 2009. Tr. 2820-24 (Bogar), 3238-49 (Young), 3697-700, 3742-47, 3906-07, 3916-17 (Green). Each, however, knew, throughout the time of his involvement in the events at issue, that he did not know, and no one at SGC knew, what was in SIB's portfolio.[18] Tr. 2626-27, 2646, 2656, 2658, 2883 (Bogar), 3406 (Young), 3759-60 (Green). In fact, it was widely known at SGC, including by each Respondent, that SIB affirmatively denied transparency into its portfolio on the basis of a purported Antiguan privacy law. Tr. 321-22, 2267-68, 2458, 2626, 2646, 2656, 2879-80, 2883, 2960-61, 2984, 3214, 3222, 3331-32, 3881. "[I]t was always a touchy subject." Tr. 2656 (Bogar). The disclosure statement did not disclose this, as each Respondent knew. Tr. 2885-86, 3414, 3980. An additional reason, which was given by Holt to Green and which Bogar, Young, and others had heard, was that the portfolio was traded on the basis of a proprietary system that would lose its advantage if divulged, as it might be copied by other firms. Tr. 2267, 2738, 3016, 3759, 3965-67. Neither Green nor Young ever asked whether it might be possible to enter into a confidentiality agreement that would protect the proprietary strategy. Tr. 3492-93, 3967-68. At any rate, the alleged prohibition in Antiguan law on divulging the portfolio is inconsistent with its purportedly being managed by Holt and the Memphis group.

In addition to what they knew that they did not know, Bogar and Young knew that SIB's portfolio included illiquid private equity holdings valued at hundreds of millions of dollars. SIB's portfolio contained such illiquid private equity by 2007. Tr. 2479-86; Div. Exs. 1, 2. Bogar was vague about when he specifically knew that SIB had private equity in its portfolio. Tr. 2582-85, 2901. Young was aware that SIB had private equity in its portfolio by at least October 2007. Tr. 672-73, 3471-88; Div. Exs. 398, 439, 476, 503, 530.

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[16] Green was aware of the TMM and knew it was available to FAs on the firm's intranet. Tr. 3942-50.

[17] Green started training FAs in 2004. Tr. 3764-70. Green's presentation concerned marketing, and he was followed by Young or another person who conducted compliance training. Tr. 3810.

[18] In lieu of transparency into SIB's portfolio, Bogar believed in SIB, Allen Stanford, Davis, and Holt, as well as Antiguan regulator Leroy King. Tr. 2842, 2961, 3078. The source of Bogar's information on SIB's portfolio was Davis and Holt. Tr. 3090. Young also received information on SIB's portfolio from Davis and Holt. Tr. 3268-73.

2. Insurance

While a conventional U.S. bank CD is covered by FDIC insurance, there was no insurance protecting the SIB CD investor, as each Respondent knew. Tr. 2794, 3407, 3815. Instead of explicitly saying just that and no more, SIB's disclosures discussed the insurance SIB did have, using representations under the heading "Depositor Security" that were literally true but misleading.

SIB's disclosure statement stated:

> The Insurance coverage held by SIBL includes Property and Casualty, Exporter's Package, Vehicle, Worker's Compensation and Travel. Fidelity coverages include Bankers' Blanket Bond, Directors' and Officers' Liability, and Errors and Omissions Liability coverages. We also maintain Depository Insolvency insurance. We maintain excess FDIC and Depository Insolvency insurance, currently in the amount of US$20 million, for each of our major U.S. and foreign correspondent banks. The latter insurance protects us against the possible insolvency of specified financial institutions where we may place our own funds. This insurance does not insure customer deposits and is not the equivalent of the FDIC insurance offered on deposits at many institutions in the United States.

Div. Ex. 644 at 10. The last sentence refers to "[t]he latter insurance," that is, "Depository Insolvency insurance," and not to the numerous other kinds of insurance that are listed.

Under the heading "Depositor Security," SIB's brochures represented: "Insurance. Stanford International Bank maintains a comprehensive insurance program with the following coverages: • A depository insolvency policy insuring funds held in correspondent financial institutions • A bankers' blanket bond • A directors' and officers' liability policy." Div. Ex. 607 at 7, Div. Ex. 608 at 7, Div. Ex. 611 at 7.

Under the heading "SECURITY," the TMM, stated: "Since Stanford International Bank is not a U.S. bank, it is not covered by FDIC insurance. However, the FDIC provides relatively weak protection: first, it covers only up to $100,000 per client/account; second, the FDIC reserve fund covers only a minor portion of the deposits of all the banks that are insured; and third, it does not make any bank safer, nor does it prevent the failure of any bank." Div. Ex. 742 at 12. The TMM went on to say that SIB's funds "are protected by a comprehensive insurance program which provides various coverages, including: (1) Depository insolvency policy insuring SIB's funds held in correspondent banks, including excess FDIC coverage in the case of US Banks. This policy is issued by Brit Insurance Ltd. and is rated by A.M. BEST Rating "A" (Excellent) and Fitch Rating of A+ (strong). . . . (2) A Bankers Blanket Bond with Lloyds of London rated by A.M. Best Rating "A" (Excellent). (3) Directors and Officers Insurance with Lloyds of London rated by A.M. Best Rating "A" (Excellent)." Div. Ex. 742 at 12. At least one worried investor was shown a photocopy of this page in the fall of 2008, understood it to mean that SIB's insurance was better than FDIC, was reassured that his investment was safe, and did not redeem his SIB CDs. Tr. 1134-37; Div. Ex. 777.

Young's version of the training material contained similar representations under the heading "SECURITY"; however, it omitted language denigrating the FDIC and added language describing the Bankers Blanket Bond as "Operational fraud coverage" and Directors and Officers Insurance as "Protect against liability arising from errors or wrongful acts." Young Ex. 75 at BEY 0003832.

Green was confident that anyone who gave the compliance presentations following his marketing presentations stressed that there was no insurance that protected investors. Tr. 3813-17. He denies ever seeing page eight of the TMM (Div. Ex. 742 at 12) concerning insurance. Tr. 3762-63. However, presentations he used in 2006, 2007, and 2008 stated "Insured by • Lloyds of London · Directors and Officers: √ Covers Liability & Claims against directors or officers · Bankers Blanket Bond: √ covers fraud • Great American Insurance Co: · bank failure: √ covers SIB funds held at international correspondents or financial institutions which do not have FDIC Insurance." Tr. 3775-80; Div. Ex. 65 at 27; Green Ex. 260, Green Ex. 261 at 29, Green Ex. 267, Green Ex. 268 at 27. Likewise, a presentation he made in 2004 listed under "Factors Mitigating SIB Credit Risk: . . . Insurers 1. Banker's Blanket Bond 2. Directors and Officers Insurance 3. Excess FDIC Insurance." Green Ex. 250 at DS 00130. The Hollier presentation contained the same representations. Tr. 3768-70; Green Ex. 254 at 26. However, in the training sessions Green orally stressed that the insurance does not provide depositor insurance. Tr. 2262-64, 3797, 3816.

Green testified that he told clients to whom he sold the SIB CD that there was no insurance that protected their investments. Tr. 3816-17, 3922, 3933. The testimony of Green clients Cynthia Dore, James Harold Stegall, Robert Smith, and Peter Thevenot is inconsistent on this point. Tr. 1407, 1412, 1487-88, 1494-95, 1499, 1559-60, 1592, 2699. In light of this and the Division's burden of proof, it is found that Green did not tell clients to whom he sold the SIB CD that their investment was insured.

On December 16, 2008, Green sent the MDs an email responding to concerns of FAs and MDs prompted by the Madoff fraud that had just come to light; he suggested talking points to reassure clients. Div. Ex. 118. Green said, "I am comfortable reminding you of a few points from our training presentations that speak to the security and supervision of client deposits at SIBL." Div. Ex. 118 at 1. He then listed "some of the things that come to my mind in noting the safety and security of deposits held by SIBL," including "Has Directors and Officers Liability Insurance and a Bankers' Blanket Bond through Lloyd's of London" and "Has bank failure insurance for deposits held at other institutions through Great American Insurance Company." Div. Ex. 118 at 2.

Bogar "believed" that everyone associated with the Stanford companies knew the SIB CD had no deposit insurance and presented it as "not FDIC insured." Tr. 2794-95. Yet, to the extent that any marketing or disclosure document states that there is no insurance that protects the client, it is buried in language such as "comprehensive insurance program," "depository insolvency policy," "excess FDIC" insurance, "bankers' blanket bond," and the like. There was no reason to discuss such insurance except to mislead investors into thinking they were protected.[19] Indeed, as

[19] Young and Green opined that the descriptions of insurance were not intended to describe insurance coverage but rather to indicate additional oversight in that the insurance companies would conduct risk assessments of SIB. Tr. 2264, 3426-27, 3744, 3815-16, 3971. This interpretation of the language describing insurance coverage is strained and is rejected.

Respondents knew, SGC's FAs were confused on the question of insurance. In April 2008, all three Respondents were part of an email chain originating from an FA whose potential $5 to $10 million client was "requesting a little detail on the insurance coverage that is referenced in the annual report and disclosure documents." Div. Ex. 438. In June 2008, Young forwarded to Green for reply an FA's question as to whether the Lloyd's of London insurance policy is for SIB's deposits in other institutions or for SIB itself. Div. Ex. 448. On February 14, 2009, an FA asked Young for detail on the Lloyd's of London Blanket Bond as clients were asking about it. Div. Ex. 552. On February 16, 2009, Young sent an email that was copied to Bogar and Green stating that he had had "numerous requests from FA's regarding insurance coverage at SIB."[20] Div. Ex. 562. On February 19, 2009, after SIB's operations were halted, an FA queried FA Chuck Vollmer indicating his belief that there was fraud insurance related to the SIB CDs, and Vollmer replied, "If such policies exist is a question we are all asking. They certainly did in all literature and materials including annual reports that we were given and were reiterated to us by our compliance department just 3 weeks ago." Div. Ex. 368.

D. Clearing Firm Cuts Off Involvement in SIB CD Transactions

As an "introducing broker" that was not self-clearing, SGC relied on a clearing broker, such as Pershing LLC (Pershing), to execute its transactions, have custody of client assets, send out confirmations and customer account statements, and account for customer payables and receivables. Tr. 3099. Pershing and SGC entered a clearing agreement in December 2005. Tr. 800-01, 804, 918. Prior to entering a clearing relationship, Pershing undertakes a due diligence investigation of the broker-dealer, including its business model, client base, type of investments, transactional volume, its financial position, its management, any specific needs related to custody of the assets, and any other information that might be relevant. Tr. 802-03. Pershing began this process as to SGC in May 2005. Tr. 803. Pershing was not provided with information on the portfolio of SGC's affiliate, SIB, except for a representation as to the general allocation of its assets. Tr. 805-06.

The clearing agreement became operational in early 2006 and was fully implemented in late November 2006. Tr. 807, 1017. Pershing did not provide custody of SGC customers' SIB CD assets. Tr. 808. Initially it processed wire transfers from client accounts held at Pershing for the purchase of the SIB CD. Tr. 918. By the middle of 2006, Pershing became concerned about the financial reliance of SGC on SIB because SGC was losing money and a significant portion of its revenue consisted of referral payments from SIB. Tr. 809, 919. In late summer 2006, Pershing personnel, including John Ward (Ward), a relationship manager on the SGC account, had a telephone conference with SGC personnel, including Holt and Bogar. Tr. 811-12. Ward asked for verification of SIB's assets and the returns the SIB portfolio generated, but Holt responded with generalities about investment policy. Tr. 811-12. Pershing continued to try to obtain the information, including at a meeting in Miami on June 6, 2007. Tr. 813-15; Div. Ex. 230. The

[20] Young attached a letter, which tracked the representations in the TMM, to be sent to FAs "to help them educate their clients." Div. Ex. 223. He was denied permission to use the letter and was told that "legal" removed the TMM from SGC's intranet to avoid lawsuits against FAs for disseminating incorrect interpretation of coverage. Div. Ex. 562.

following day, Ward advised Bogar, "we need to go deeper into the plan for SGC, its reliance upon the referal [sic] fees generated from SIBL, and the ability of SIBL to continue generating returns to pay these referal [sic] fees. This understanding would include the portfolio investment policy and construct of the portfolios." Tr. 814-15; Div. Ex. 230. After some internal discussion and meetings with SGC, in June 2007, Edward Zelezen (Zelezen), a member of the relationship management team subordinate to Ward, asked Young for the SIB CD prospectus. Tr. 919-21, 939-49, 984-85; Div. Ex. 376. On receipt of the SIB CD disclosure document and subscription agreement, Pershing's chief credit risk officer emailed Young: "I was also looking for a list of the underlying investments and where they are held . . . . I would usually see that in the prospectus." Tr. 920-22; Div. Ex. 377.

On August 8, 2007, Ward and others met with Bogar and Davis in Davis's office. Tr. 816-20; Div. Ex. 240; Bogar Ex. 124. Davis became agitated when asked to provide information concerning SIB but ultimately, albeit grudgingly, agreed to provide the information, or possibly as an alternative, a financial statement of Allen Stanford. Tr. 818-19, 2494-95. Ward followed up with an August 27, 2007, email to Bogar listing the agreed-on information to be provided, including identifying the external managers of SIB's portfolio, statements from custodian[s] reflecting asset totals, and Allen Stanford's financial statement. Tr. 820-22; Div. Ex. 255. None of these three items was ever provided. Tr. 822.

Ward and others then traveled to Antigua, expecting to meet with SIB personnel and SIB's regulator, the Financial Services Regulatory Commission (FSRC), and to see documentation regarding SIB's balance sheet and the supporting paperwork that reflected the assets, as Bogar was informed in a January 8, 2008, email. Tr. 823-26; Div. Ex. 269. At a meeting with SIB, at which Bogar was present, SIB stated that Antiguan bank secrecy law would not allow Pershing and SGC to see work papers that would divulge SIB's portfolio. Tr. 828-29. Pershing's general counsel, Tres Arnett (Arnett), challenged this, pointing out that bank secrecy laws are intended to protect customers, not a bank's assets. Tr. 826, 829, 2943-44. In a subsequent meeting with the FSRC, at which Bogar was present, Arnett challenged the FSRC's head, Leroy King (King), concerning the unusual bank secrecy issue, but King refused to provide information on the bank's portfolio. Tr. 832-33, 2944. In sum, Pershing did not obtain the information that was expected to result from the trip to Antigua. Tr. 830, 834.

Pershing had another meeting with Davis and Bogar in March 2008, and, again, Davis became agitated when asked for transparency into SIB's portfolio. Tr. 835-36, 2670, 2711. Eventually, Pershing agreed to accept "a certification by a U.S. domiciled recognized accounting firm that they have conducted a review of the bank's assets and that in their professional opinion they are reflected accurately in the bank's balance sheet." Tr. 837-40, 2457-58; Div. Ex. 274. SGC was to select the accounting firm, and, after its first choice declined the engagement, scheduled a meeting with Grant Thornton on July 29, 2008. Tr. 842-45, 2459-60; Div. Ex. 298. After a lack of progress, on November 24, 2008, Ward advised Bogar that Pershing must have confirmation by December 1, 2008, of the date when Grant Thornton's review would be completed. Tr. 850-52; Div. Ex. 342. Bogar responded that SGC senior management was "focused on some other pressing issues." Tr. 853; Div. Ex. 344. Pershing's attempt to verify SIB's assets failed. Tr. 922-25.

Ward's point of contact during the two and a half year attempt to verify SIB's assets was Bogar. Tr. 809-53, 857. At the time, Ward considered that Bogar was making good faith efforts to respond to requests for information and was not attempting to withhold information or obfuscate. Tr. 857. However, he was unaware that, on August 28, 2007, Bogar had told Davis of his plan not to give Pershing the items that had been agreed on in the August 8, 2007, meeting, and that, on June 12, 2008, Davis had told Bogar not to comply with Pershing's request.[21] Tr. 899-903; Div. Exs. 256, 288.

Ultimately, in December 2008, Pershing notified SGC that it would no longer process customer wire transfers to SIB. Tr. 854, 926. Pershing continued to serve as SGC's clearing firm. Tr. 927. The reason for discontinuing the wire transfers was that SGC and SIB would not disclose the portfolio information that Pershing had been requesting for two and a half years. Tr. 897-98. This made the purchase of the SIB CD more burdensome to FAs and customers.[22] Tr. 2773, 2976. Thus, it was necessary to provide an explanation for the new complication. Tr. 2980-81; Div. Ex. 354. A December 21, 2008, email that Green drafted and sent to the MDs, and Bogar sent to his direct reports, including Young, blamed the discontinuance on a disagreement on tax reporting and Pershing's using this as leverage in negotiations on pricing in the clearing agreement.[23] Div. Exs. 355, 356. However, there was never any issue related to tax reporting.[24] Tr. 854, 927-28. Bogar acknowledged that the real issue was transparency but did not provide a convincing explanation for omitting this from the email.[25] Tr. 2984-88. Likewise, Green was aware of Pershing's concern about the lack of transparency into SIB's portfolio. Tr. 4031-33; Div. Ex. 798. He also did not provide a convincing explanation for omitting this from the email. Tr. 4059-63. Green also claimed that another reason that Pershing discontinued involvement in SIB CD purchases was that its parent,

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[21] Bogar claims that he never understood that Davis was not going to supply the information that Pershing sought. Tr. 2661-62. This claim is inconsistent with the plain meaning of the June 12, 2008, email exchange in which Bogar asks, "I have got to know today if we are going to try to comply with Pershing's request. YES or NO will do." Davis replies, succinctly, "no." Div. Ex. 288. Bogar attempted to explain this by saying the "no" refers to the "scope of work," which is a tautology.

[22] SGC tried to evade Pershing's decision by laundering the wires through an affiliate, but Pershing recognized the evasion and advised that any disbursements for investments not carried at Pershing would be assumed to be for SIB unless supporting documentation showed otherwise. Tr. 2977-80; Div. Ex. 360.

[23] In 2008, SGC sought to renegotiate pricing of certain services Pershing provided. Tr. 960, 2721, 2724-25.

[24] Tax reporting of customers' SIB CDs was questioned by a different organization, Fidelity. Tr. 3885-86. SGC had discussed the possibility of Fidelity serving as its clearing broker in case Pershing withdrew. Tr. 2719-20, 2966.

[25] Essentially, Bogar asserted, it was unnecessary to mention transparency because everyone knew there was no transparency. Tr. 2984.

the Bank of New York, had been sued by Russia for money laundering. Tr. 2372, 3883-84, 4032; Green Ex. 298.

Bogar, Green, and Young agreed on the need for SGC people to be "all on the same page" regarding the Pershing decision not to wire to SIB – the "same page" explanation was Pershing's alleged concern over tax reporting and its allegedly trying to use the issue as leverage to avoid renegotiating lower fees for clearing. Div. Exs. 355, 356.

E. Additional Red Flags

In combination with the stonewalling concerning SIB's portfolio, there were additional occurrences that should have caused Respondents to question the legitimacy of SIB and the SIB CD. There were communications from clients or potential clients concerning Allen Stanford's outsize influence over and involvement in corruption in Antigua and whether the SIB CDs were a Ponzi scheme: In February 2007, Young and Green were made aware of concerns of SGC clients Billy Hall and Electri International of corruption in Antigua, undue influence of Allen Stanford, an unsustainable business model of SIB suggestive of a Ponzi scheme, and that, at a minimum, the SIB CDs were junk bonds. Div. Exs. 71, 72, 74, 75, 653, 663. Rather than investigate the possible truthfulness of these charges,[26] Green commented about Billy Hall to Young and others, "I assume we may want to attack this one similar to the last one, with the talking points, etc." Tr. 3458-66; Div. Ex. 72 at 1, Div. Ex. 653 at 4, Div. Ex. 663 at 3. The talking points included in the approved responses that FAs sent to these clients included reassurances about Allen Stanford, SIB's soundness and its regulatory environment, representations (that as found above could not be verified) concerning SIB's portfolio and a (misleading) statement that "There are insurance policies in place to indemnify in case of fraud and/or embezzlement." Div. Ex. 77 at 8, Div. Ex. 79 at 4, Div. Ex. 658 at 3, Div. Ex. 660 at 5.

An FA, who was trying to sell the SIB CD to a wealthy prospect in May 2008, informed Green that the prospect, a CPA, did not recognize the auditor's name and was surprised that SIB did not retain a Big 4 auditor. Div. Ex. 95. In December 2008, post-Madoff, Green received an email from a CPA who was advising a prospect; the CPA was concerned that the auditor "is unknown to me. [SIB] shows consistent growth in assets and remarkably steady financial performance. How do I know that it is real?" Div. Ex. 120. Previously, in 2006, an FA informed Green that he had asked SIB what other companies Hewlett audited and was told that the names of those companies are not public. Tr. 4022-23; Div. Ex. 50.

Concerning news stories about corruption in Antigua and undue influence of Allen Stanford, each Respondent was either unaware of them or considered that there were two sides to such stories

[26] Green and Young opined that the sources of the complaints might have hoped to replace SGC as the clients' financial advisors. Tr. 3622-23, 3852-53. Also, three years previously, in 2004, SGC had won an NASD arbitration in which it claimed that a former employee failed to repay debit balances on employment promissory notes and the former employee counterclaimed that SGC was operating a Ponzi scheme and that she was fired because of her reluctance to push SIB products on her clients. Tr. 3629-30; Green Ex. 230.

and that it was unnecessary to investigate further. Tr. 2768-70 (Bogar), 3335-42, 3610-28 (Young), 3852-53 (Green). Additionally, Young and Green pointed to evidence that Antigua's climate of corruption had improved. Tr. 3307-08, 3709, 3722; Green Ex. 89.

Snyder Kearney LLC (Snyder Kearney) performs due diligence for broker-dealers and investment advisers. Tr. 1248-49. SGC engaged the firm in June or July 2008 to review two private fund offerings, which were to be sponsored by SGC and managed by an SGC affiliate, Stanford Capital Management. Tr. 1250-52. In the course of reviewing SGC's financial statements, Snyder Kearney found significant revenue being generated from a related party, SIB. Tr. 1252-53. Snyder Kearney found that SIB's financial statements did not provide much information concerning its investments and sought information that would show that the bank had investments that would support the kinds of returns that were being paid on the SIB CD. Tr. 1254-55. Snyder Kearney requested verification of SIB's portfolio, but never received any information on it or how revenue was generated and how the FAs were compensated. Tr. 1256, 1294-96. Additionally, no one at SGC provided information related to any ongoing investigations of SGC and the SIB CD by the Commission, FINRA, or of the states of Florida and Louisiana. Tr. 1257-59; Div. Ex. 494. Nor did anyone tell the firm that Pershing had been attempting to obtain information about SIB's assets. Tr. 1260-61. Had Snyder Kearney learned that these entities were all attempting without success to verify SIB's assets, it would have caused concern. Tr. 1262. Eventually Snyder Kearney withdrew from the engagement because information it had requested had not been provided, including correspondence with and examinations and investigations by regulatory authorities and information concerning SIB's investments; it so informed Young on December 16, 2008. Tr. 1262-66; Div. Ex. 506. At the hearing, Young tried to explain SGC's failure to supply Snyder Kearney with the information it requested by saying that by the fall of 2008 SGC did not want to bring a new product to market due to financial turmoil. Tr. 3571-72. He did not explain why SGC did not affirmatively inform Snyder Kearney that it was not going forward with the new product and instead waited for the firm to cancel the engagement after its repeated requests to SGC were ignored.

SGC was queried by various regulators concerning the SIB CD. Bogar and Young were aware, contemporaneously, of a November 2006 subpoena from the Commission concerning sales practices of the SIB CD that included a request for SIB's portfolio. Tr. 2795-98, 3119-21. Bogar was also aware of queries in early 2008 from the Louisiana regulator, the Office of Financial Institutions (OFI) and Young's February 14, 2008, response declining to reveal SIB's portfolio. Tr. 2802-04, 3000-01; Div. Exs. 424, 437. Young's response to the OFI stated, "[T]he SIB CDs are offered as a fixed income instrument issued by a bank. They are not marketed based on the underlying investment portfolio."[27] Div. Ex. 424 at 3. All three Respondents were aware of queries from the Florida regulator, the Office of Financial Regulation (OFR), in the summer of 2008. Tr. 2805-06, 3545-47, 4064; Div. Exs. 490, 768. With Bogar's and Green's knowledge, Young planned to send a letter to the clients that OFR had contacted and to call OFR and express outrage that OFR had contacted clients. Tr. 3545-47; Div. Ex. 491. Young was aware that all of the regulators were asking the same question – what is in the SIB portfolio. Tr. 3504-05. In December

[27] This statement was unambiguously false; the marketing material boasted of "liquidity as a protective factor for our depositors. The Bank's assets are invested in a well-diversified portfolio of highly marketable securities." Div. Ex. 607 at 5, Div. Ex. 608 at 5, Div. Ex. 611 at 5.

2008, Commission staff interviewed Bogar in conducting an examination of SGC. Tr. 2798-801. There was a FINRA examination at the same time. Tr. 2802, 2808-10. Young was involved in the response to the Commission's December 2008 document request. Tr. 3229-32. In fact, there were about twenty open items of this type from various regulators in that time frame. Tr. 3233-36. Young rationalized that the regulators were overzealous because they did not want to miss the next Madoff situation. Tr. 3506-07. Young was not aware contemporaneously of a December 2008 subpoena for his testimony. Tr. 3237-38.

Green was aware of a Commission investigation or examination related to the SIB CD in 2005. Tr. 3836-37. Green was also aware that, from time to time, clients and FAs asked to verify the assets in SIB's portfolio. Tr. 3334.

F. SIB Goes Downhill

It was widely known at SGC that SIB had liquidity issues in 2008. Tr. 2479, 2486-87, 2517-19. Bogar was aware of SIB's liquidity problem in the fall of 2008. Tr. 2519. Redemptions of the SIB CD increased. Tr. 3004, 3057-58, 4034-35. Nonetheless, Green sent an email to all MDs and FAs on October 21, 2008, attaching a quarterly report for SIB and saying, "With new capital and lots of liquidity, I'm very optimistic for the future of SIBL." Div. Ex. 108. Green immediately received replies asking where the "new capital" came from. Div. Exs. 751, 752. Green replied that it came from Allen Stanford. Div. Ex. 752. Shortly thereafter, at a meeting that included Bogar and Green, Allen Stanford said that the "new capital" was his cash. Tr. 4038-40. Allen Stanford also proposed more capital for SIB, musing that he might get it from Libya, much to Green's surprise. Tr. 3058, 4040-42. Thereafter, in December, Allen Stanford sent Green a draft of a three-page newsletter. Tr. 4044-45. The newsletter mentioned a capital contribution of $541 million on November 28, 2008. Div. Ex. 121 at 3, Div. Ex. 125 at 4. When Green examined the third page, a financial statement, he noticed that the cash and equivalents line was about $200 million less than the $541 million in cash that Allen Stanford said he put in. Tr. 4045-46. When he asked about the discrepancy, Allen Stanford reacted negatively to being found out and articulated a complicated explanation. Tr. 4046-48. The newsletter, touting SIB's "strong liquidity" and misleading insurance information, was sent out as two pages, without the financial statement. Tr. 4048; Div. Exs. 121, 125. Then, SIB failed to meet its obligation to fund private equity deals, American Leisure and Health System Solutions Inc. Tr. 3005-07; Div. Ex. 336. Toward the end, on December 23, 2008, Bogar approved the drafting of a press release falsely explaining that SIB would not be funding the Health Systems Solutions Inc. deal "because of the last hour due diligence issues." Tr. 3006-08; Div. Ex. 357. In reality, SIB lacked the funds to complete the deal, as Bogar knew. Tr. 3004-07. By January and February, Bogar and others were drawing up plans to cut spending. Tr. 2817, 3040-41, 3044; Green Ex. 301.

SGC also had a product, Stanford Investment Model (SIM), that was supposed to replicate the allocation that SIB was using. Tr. 477, 2748. In late 2008, the SIM product was experiencing significant losses. Tr. 2748-49.

Despite the indications that were becoming evident of SIB's parlous financial situation, Green and Young went on a damage control roadshow to SGC offices during the weeks of January 26 and February 2, 2009, using a presentation titled "To review [SGC's] Due Diligence Process

including the regulatory and operational safeguards of [SIB], which ensure the integrity and transparency of [SIB's] operations." Tr. 2310, 2316, 2318, 3318-21, 3323-24, 3597, 3895-97; Div. Exs. 150, 745, Div. Ex. 796 at 3. The presentation touted SIB's "Yearly Audited Financials," the qualifications of "CAS Hewitt," and the rigor of the FSRC's oversight as compared to the FDIC and the Commission. Div. Ex. 796 at 12-14, 17, 20.[28] Green and Young told FAs that SIB was sound. Div. Ex. 150. Young denies that he said SIB was sound but rather that he was informing the FAs of his due diligence process. Tr. 3319-20. However, due diligence was a proxy for actual insight into SIB's portfolio, so Young's message was that SIB was sound. Tr. 2317-18, 2322. Young's message was understood as saying that SIB was sound. Div. Ex. 150. Green talked about cost-cutting measures at SGC that might be taken. Tr. 3896-97; Green Ex. 301. Bogar did not appear at the roadshow meetings. Tr. 2411.

G. The End

A meeting was convened in Miami during the first week of February 2009. Tr. 2816-17. On Wednesday, February 4, Davis described Tier 1 of SIB's assets, as cash and cash equivalents. Tr. 2820, 3046-47. Holt then described Tier 2, and Bogar realized that Tiers 1 and 2 did not contain enough assets to account for all of SIB's purported assets. Tr. 2820-21, 3047-48. On Thursday, February 5, Tier 3 was revealed as containing some real estate and a loan to Allen Stanford, and Bogar realized Allen Stanford, Davis, and Holt had been lying; he and others became agitated and were asked to leave the meeting. Tr. 2822-24, 3048-50. Bogar emailed Green to stop selling the SIB CD and not to use the disclosure statement until it was modified based on advice of "legal."[29] Tr. 2824-29, 3050, 3898; Div. Ex. 363.

On February 12, Holt admitted to Green that she was not managing the entire SIB portfolio but would not tell him more. Tr. 3906-07. On February 17, Bogar told Green the truth about the portfolio, and Green then held a call with MDs and told them the money was missing. Tr. 3899, 3916-18.

Bogar called Young on the evening of February 5; Young was in a car with Green on the way to another location in the damage control roadshow. Tr. 3239. Bogar told Young that there was a problem with the disclosure statement and sales of the SIB CD must be stopped, but refused to elaborate on the problem, saying he needed to preserve attorney-client privilege. Tr. 3239-40. Young's attempts the following day to obtain more information from others were equally fruitless. Tr. 3240-41. Young called all the offices and required them to return the supplies of offering

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[28] Young denies that Division Exhibit 796, a PowerPoint that contains various photographs, graphics, bullet points, and a chart, was either displayed to the FAs as a PowerPoint or distributed to them in hard copy; he claims he merely used it as a reference for his oral presentation. Tr. 3318-20, 3597. While this may be a distinction without a difference, Jonathan Batarseh, another participant in the roadshow, recalled the presentation. Tr. 2316.

[29] After the revelation, Bogar consulted attorney Tom Sjoblom, who advised that it was merely a disclosure problem and they drafted the email that was ultimately sent to Green. Tr. 2824-27; Bogar Ex. 357.

documents, to ensure that there were no further sales. Tr. 3243. Young learned about the hole in the portfolio on Monday, February 16, 2009. Tr. 3247-48.

Over the next few days Bogar and others discussed self-reporting to the Commission. Tr. 2829-33, 3050-51, 3062; Bogar Ex. 296. Attorney Tom Sjoblom withdrew from representation on February 11, 2009. Tr. 3052; Bogar Ex. 383. After a frenzied search, Bogar found another attorney who agreed to represent SGC, but SGC's funds had been frozen by the time the attorney's retainer was to have been paid. Tr. 2835-38.

Green arranged a conference call held on February 10, 2009, at which Allen Stanford addressed all the FAs and announced that early withdrawals of the SIB CD were stopped. Tr. 2369-70, 3011-12; Div. Exs. 147, 150. FAs had more questions, not fewer, after the call. Div. Ex. 147. An FA in Sarasota emailed Green, Bogar, and others with questions, including: "[Green and Young] were recently in our office discussing the soundness of the bank. Has anything changed that would cause an amendment [of Young's] comments?" Div. Ex. 150. Bogar did not tell the FA or Young of the information that he had learned on February 5 that a large part of SIB's supposed assets was illusory. Tr. 3013. Bogar reasoned it was unnecessary to divulge the new information in that "[W]e had already stopped early withdrawals" and he still hoped that the problem could be fixed. Tr. 3013.

Also on February 10, 2009, Bogar and Green approved "Talking Points" that FAs could use in discussions with clients reacting to the cessation of early withdrawals, including the statement that SIB "remains a strong institution." Div. Exs. 156, 159. The same falsehood appeared in the February 12, 2013, "Compliance Approved Copy for Client Responses" (full paragraphs that could be used in written correspondence), which also blamed negative information in a Business Week article on "three disgruntled ex-employees." Div. Ex. 367. Bogar excused the representation that SIB "remains a strong institution" on the theory that he still believed that Allen Stanford had enough assets to fill the hole in SIB. Tr. 3018-20. On Sunday, February 15, 2009, when sent a proposed press release and being told "We need to release this to the press today," Bogar replied, "I vote to get this out." Div. Ex. 216. The press release, however, contained a number of false statements: "SIB does not make loans" when it had a purported $2 billion loan to Allen Stanford and "SIB remains a strong institution." Div. Ex. 216. The press release blamed negative media coverage of SIB on "two disgruntled employees."[30] Div. Ex. 216. Bogar testified that he agreed to sending the press release out in order to calm Stanford companies' people and believed since it was a Sunday, it would not go out that day, and the next day he was supposed to meet with the new attorney and would be able to stop it. Tr. 3024-26, 3065-66. As far as Bogar knows, the press release was never actually released. Tr. 3060.

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[30] This refers to Mark Tidwell and Charles Rawl, who were terminated for outside business activities in about January 2008 and owed SGC repayment of loans and threatened to complain to the Commission that SGC violated the securities laws if their loans were not forgiven. Tr. 3635-38; Div. Ex. 293.

H. Respondents' Compensation Related to the SIB CD

The below calculation of Respondents' compensation is based on evidence provided by Karyl Van Tassel (Van Tassel) using available information concerning payments to them. Tr. 138-45, 194-200, 216-20; Div. Demonstrative (Dem.) Ex. 1. Van Tassel is a CPA engaged by the court-appointed receiver in SEC v. Stanford, No. 3-09-cv-0298-N (N.D. Tex. 2009), to provide forensic accounting and cash tracing. Tr. 77-78, 81-82, 154-55; Div. Ex. 746 at 107, 138.

Between January 15, 2005, and December 31, 2007, Green received total compensation relating to the SIB CD of $2,613,506.47. Tr. 138, 143-45; Div. Dem. Ex. 1. This amount consists of commissions, quarterly bonuses, and MD quarterly compensation of $554,929.35, $38,648.33, and $2,019,928.79, respectively.[31] Div. Dem. Ex. 1. After Green's Superstars team met annual goals in 2004, 2005, and 2006, a $3 million bonus offered to Green by Allen Stanford was paid directly to charity, at Green's request. Tr. 3878-80.

Unlike for Green, information available for Bogar and Young is not limited to compensation related to the SIB CD. Tr. 200-01. Also information concerning payments prior to 2006 is not available. Tr. 140-41; Div. Dem. Ex. 1. SGC's total revenue for the period 2006 through 2008 was $621,717,361 and SGC's total SIB CD related revenue for that same period was $344,332,878.[32] Tr. 108-09; Div. Ex. 707. Accordingly, SIB CD related revenue represents 55.38% of SGC's total revenue for the period 2006 through 2008.[33] Div. Ex. 707.

Between September 15, 2006, and February 13, 2009, Bogar received total payroll compensation of $2,808,750.[34] Tr. 139-40; Div. Dem. Ex. 1. This amount consists of regular pay, quarterly bonus, and semi-annual bonus in the amounts of $1,843,750, $465,000, and $500,000, respectively. Tr. 139-40; Div. Dem. Ex. 1. Additionally, between March 24, 2006, and February 6, 2009, Bogar received $276,846.74 in payments made to him outside of payroll compensation as reflected in SGC's Oracle Financial (Oracle), a financial management system. Tr. 139, 217; Div. Dem. Ex. 1.

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[31] Green's MD quarterly compensation was based on the performance of the office he oversaw as an MD. Tr. 144.

[32] SGC total revenue is the sum of column A for the years 2006, 2007, and 2008 of Div. Ex. 707. The total SIB CD related revenue is the sum of columns B, C, and D of Div. Ex. 707 for the years 2006, 2007, and 2008.

[33] SIB CD revenue represented 57.77% of SGC's total revenue; however, this percentage includes revenue for years 2004 and 2005, for which there is no compensation information for Bogar and Young. Tr. 108-09; Div. Ex. 707.

[34] Using the 55.38% ratio of SGC's SIB CD related revenue to total revenue, Young received $591,992.46 in SIB CD related compensation.

Between July 6, 2006, and March 31, 2009, Young received total payroll compensation of $1,068,964.36.[35] Tr. 142-43; Div. Dem. Ex. 1. This amount consists of regular pay, quarterly bonus, relocation bonus, retroactive pay, vacation pay, semi-annual bonus, and an upfront loan in the amounts of $793,269.01, $135,000, $5,310.85, $12,500, $2,884.50, $45,000, and $75,000, respectively.[36] Tr. 142-43; Div. Dem. Ex. 1. Additionally, between May 5, 2006, and February 3, 2009, Young received $202,219.24 in payments made to him outside of payroll compensation as reflected in Oracle. Tr. 143; Div. Dem. Ex. 1.

The Oracle payments received by Bogar and Young were made through accounts payable rather than payroll. Tr. 217. In light of the evidence of record, it is found that they were reimbursement of expenses, such as travel expenses, and not compensation. Tr. 217-18, 3126-28.

I. Expert Testimony[37]

Doug Henderson testified for the Division. Tr. 1603-2159; Div. Ex. 746. He is currently associated with KPMG in its securities regulatory practice and has an extensive background in the securities industry, including many years with the NASD. Tr. 1768, 1775-80; Div. Ex. 746 at 1, 36. He was accepted as an expert on industry standards and Respondents compliance with the standards. Tr. 1637. He opined that SGC fell short of industry standards in that it failed to perform adequate due diligence on the SIB CD, used unsubstantiated and misleading information in training FAs and marketing the SIB CD, had distorted sales incentives, and had incomplete disclosures. Div. Ex. 746. He further opined that each Respondent participated in one or more of these shortfalls. Div. Ex. 746.

Patricia Ross testified for Respondents. Tr. 4086-4302. She has an extensive background in the securities industry, including as a registered representative and principal at broker-dealers and as chief compliance officer of the firm then known as Wells Fargo Securities. Tr. 4089-4101. She was accepted as an expert in the topics on which she opined. Tr. 4102. She opined that Bogar appropriately delegated compliance responsibilities concerning due diligence and training to Young, to be kept in the loop on an exception basis, appropriately relied on the Stanford companies' inside and outside lawyers to prepare disclosure documents. Tr. 4110-11, 4117-18, 4123-25. She opined that Young had no duty to audit the auditor. Tr. 4174-75. She opined that Green appropriately relied on SGC's legal and compliance departments to determine the adequacy of disclosure and on their advice that Antiguan law prohibited disclosure of SIB's portfolio and on the Memphis group's stated goal of protecting its proprietary trading strategy as

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[35] Using the 55.38% ratio of SGC's SIB CD related revenue to total revenue, Bogar received $1,555,485.75 in SIB CD related compensation.

[36] The relocation bonus relates to a move made by Young; payment was received in December 2006. Tr. 141. The retroactive pay relates to work performed prior to the receivership but paid after the receivership and the semi-annual bonus relates to a bonus program. Tr. 141-42, 216-18.

[37] To the extent that the experts' evidence does not lead to findings of fact, it will be summarized here and referred to as appropriate in the Conclusions of Law section of this Initial Decision.

an additional basis for the lack of transparency. Tr. 4179, 4181, 4194. She opined that Green did not have any duty to perform due diligence on the SIB CD. Tr. 4208-09.

III. CONCLUSIONS OF LAW

The OIP charges that Respondents willfully violated Section 17(a) of the Securities Act and willfully violated and/or willfully aided and abetted and caused SIB's and SGC's violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. Additionally, it charges that Respondents willfully aided and abetted and caused SGC's violations of Section 15(c)(1) of the Exchange Act and of Sections 206(1) and 206(2) of the Advisers Act. As discussed below, it is concluded that each Respondent willfully violated Securities Act Section 17(a) and Exchange Act Section 10(b) and Rule 10b-5. Additionally, each was secondarily liable for SIB's and SGC's violations.

A. Antifraud Provisions

The violations charged are of the antifraud provisions of the Securities, Exchange, and Advisers Acts – Section 17(a) of the Securities Act, Sections 10(b) and 15(c)(1) of the Exchange Act and Rule 10b-5 thereunder, and Sections 206(1) and 206(2) of the Advisers Act – which prohibit essentially the same type of conduct. United States v. Naftalin, 441 U.S. 768, 773 n.4, 778 (1979); SEC v. Pimco Advisors Fund Mgmt. LLC, 341 F. Supp. 2d 454, 469 (S.D.N.Y. 2004).

Section 17(a) of the Securities Act makes it unlawful "in the offer or sale of" securities, by jurisdictional means, to:

> 1) employ any device, scheme, or artifice to defraud;
>
> 2) obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary to make the statement made not misleading; or
>
> 3) engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

Similar proscriptions are contained in Exchange Act Sections 10(b) and 15(c)(1) and Rule 10b-5 and in Advisers Act Sections 206(1) and 206(2).

Scienter is required to establish violations of Securities Act Section 17(a)(1), Exchange Act Sections 10(b) and 15(c)(1) and Rule 10b-5, and Advisers Act Section 206(1). Aaron v. SEC, 446 U.S. 680, 690-91, 695-97 (1980); SEC v. Steadman, 967 F.2d 636, 641 & n.3 (D.C. Cir. 1992); Darvin v. Bache Halsey Stuart Shields, Inc., 479 F. Supp. 460, 464 (S.D.N.Y. 1979). It is "a mental state embracing intent to deceive, manipulate, or defraud." Aaron, 446 U.S. at 686 n.5; Ernst & Ernst v. Hochfelder, 425 U.S. 185, 193 & n.12 (1976); SEC v. Steadman, 967 F.2d at 641. Recklessness can satisfy the scienter requirement. See David Disner, 52 S.E.C. 1217, 1222 & n.20 (1997); SEC v. Steadman, 967 F.2d at 641-42; Hollinger v. Titan Capital Corp., 914 F.2d 1564, 1568-69 (9th Cir. 1990). Reckless conduct is "conduct which is 'highly

unreasonable' and represents 'an extreme departure from the standards of ordinary care . . . to the extent that the danger was either known to the defendant or so obvious that the defendant must have been aware of it.'" Rolf v. Blyth, Eastman Dillon & Co., Inc., 570 F.2d 38, 47 (2d Cir. 1978) (quoting Sanders v. John Nuveen & Co., 554 F.2d 790, 793 (7th Cir. 1977)).

Scienter is not required to establish a violation of Securities Act Section 17(a)(2) or 17(a)(3) or of Advisers Act Section 206(2); a showing of negligence is adequate. See SEC v. Capital Gains Research Bureau, Inc., 375 U.S. 180, 195 (1963); SEC v. Steadman, 967 F.2d at 643 & n.5; Steadman v. SEC, 603 F.2d 1126, 1132-34 (5th Cir. 1979), aff'd on other grounds, 450 U.S. 91 (1981). Negligence is the failure to exercise reasonable care. IFG Network Sec., Inc., Exchange Act Release No. 54127 (July 11, 2006), 88 SEC Docket 1374, 1389.

Material misrepresentations and omissions violate Securities Act Section 17(a), Exchange Act Sections 10(b) and 15(c)(1) and Rule 10b-5, and Advisers Act Sections 206(1) and 206(2). The standard of materiality is whether or not a reasonable investor or prospective investor would have considered the information important in deciding whether or not to invest. See Basic Inc. v. Levinson, 485 U.S. 224, 231-32, 240 (1988); TSC Indus., Inc. v. Northway, Inc., 426 U.S. 438, 449 (1976); SEC v. Steadman, 967 F.2d at 643.

1. Respondents Are Fiduciaries

SGC was a dually registered broker-dealer and investment adviser, and Respondents were associated persons of an investment adviser. See Advisers Act Sections 202(a)(17), 203(f). Investment advisers and their associated persons are fiduciaries. Fundamental Portfolio Advisors, Inc., 56 S.E.C. 651, 684 (2003); see Capital Gains Research Bureau, Inc., 375 U.S. at 191-92, 194, 201; see also Transamerica Mortg. Advisors, Inc. v. Lewis, 444 U.S. 11, 17 (1979). As fiduciaries, they are required "to act for the benefit of their clients, . . . to exercise the utmost good faith in dealing with clients, to disclose all material facts, and to employ reasonable care to avoid misleading clients." SEC v. DiBella, No. 3:04-cv-1342 (EBB), 2007 WL 2904211, at *12 (D. Conn. Oct. 3, 2007) (quoting SEC v. Moran, 922 F. Supp. 867, 895-96 (S.D.N.Y. 1996)), aff'd, 587 F.3d 553 (2d Cir. 2009); see also Capital Gains Research Bureau, Inc., 375 U.S. at 194 ("Courts have imposed on a fiduciary an affirmative duty of 'utmost good faith, and full and fair disclosure of all material facts,' as well as an affirmative obligation 'to employ reasonable care to avoid misleading' his clients." (footnotes omitted)). "[W]hat is required is '. . . not simply truth in the statements volunteered but disclosure' [of material facts]." Capital Gains Research Bureau, Inc., 375 U.S. at 201. "The law is well settled . . . that so-called 'half-truths' – literally true statements that create a materially misleading impression – will support claims for securities fraud." SEC v. Gabelli, 653 F.3d 49, 57 (2d Cir. 2011), rev'd on other grounds, 133 S. Ct. 1216 (2013).

2. Aiding and Abetting; Causing

The OIP charges that Respondents "aided and abetted" and "caused" violations by SGC and SIB of various provisions. For "aiding and abetting" liability under the federal securities laws, three elements must be established: (1) a primary or independent securities law violation committed by another party; (2) awareness or knowledge by the aider and abettor that his or her role was part of an

overall activity that was improper; and (3) that the aider and abettor knowingly and substantially assisted the conduct that constitutes the violation. See Graham v. SEC, 222 F.3d 994, 1000 (D.C. Cir. 2000); Woods v. Barnett Bank of Ft. Lauderdale, 765 F.2d 1004, 1009 (11th Cir. 1985); Investors Research Corp. v. SEC, 628 F.2d 168, 178 (D.C. Cir. 1980); IIT v. Cornfeld, 619 F.2d 909, 922 (2d Cir. 1980); Woodward v. Metro Bank of Dallas, 522 F.2d 84, 94-97 (5th Cir. 1975); SEC v. Coffey, 493 F.2d 1304, 1316-17 (6th Cir. 1974); Russo Sec. Inc., 53 S.E.C. 271, 278 & n.16 (1997); Donald T. Sheldon, 51 S.E.C. 59, 66 (1992), aff'd, 45 F.3d 1515 (11th Cir. 1995); William R. Carter, 47 S.E.C. 471, 502-03 (1981). A person cannot escape aiding and abetting liability by claiming ignorance of the securities laws. See Sharon M. Graham, 53 S.E.C. 1072, 1084 n.33 (1998), aff'd, 222 F.3d 994 (D.C. Cir. 2000). The knowledge or awareness requirement can be satisfied by recklessness when the alleged aider and abettor is a fiduciary or active participant. See Ross v. Bolton, 904 F.2d 819, 824 (2d Cir. 1990); Cornfeld, 619 F.2d at 923, 925; Rolf, 570 F.2d at 47-48; Woodward, 522 F.2d at 97. That is, it must be established that a respondent either acted with knowledge or that he "encountered 'red flags,' or 'suspicious events creating reasons for doubt' that should have alerted him to the improper conduct of the primary violator," or there was a danger so obvious that he must have been aware of it. Howard v. SEC, 376 F.3d 1136, 1143 (D.C. Cir. 2004).

For "causing" liability, three elements must be established: (1) a primary violation; (2) an act or omission by the respondent that was a cause of the violation; and (3) the respondent knew, or should have known, that his conduct would contribute to the violation. Robert M. Fuller, 56 S.E.C. 976, 984 (2003), petition for review denied, 95 F. App'x 361 (D.C. Cir. 2004). A respondent who aids and abets a violation also is a cause of the violation under the federal securities laws. See Graham, 53 S.E.C. at 1085 n.35. Negligence is sufficient to establish liability for causing a primary violation that does not require scienter. See KPMG Peat Marwick LLP, 54 S.E.C. 1135, 1175 (2001), recon. denied, 55 S.E.C. 1 (2001), petition for review denied, 289 F.3d 109 (D.C. Cir. 2002), reh'g en banc denied, 2002 U.S. App. Lexis 14543 (D.C. Cir. 2002).

3. Willfulness

In addition to requesting a cease-and-desist order, as authorized by Sections 8A of the Securities Act, 21C(a) of the Exchange Act, and 203(k) of the Advisers Act and disgorgement, as authorized by Sections 8A(e) of the Securities Act, 21C(e) of the Exchange Act, and 203(j) of the Advisers Act, the Division requests sanctions pursuant to Sections 15(b) and 21B of the Exchange Act, 203(f) and 203(i) of the Advisers Act, and 9(b) and 9(d) of the Investment Company Act. Willful violations by Respondents must be found in order to impose sanctions on them pursuant to Sections 15(b) and 21B of the Exchange Act, 203(f) and 203(i) of the Advisers Act, and 9(b) and 9(d) of the Investment Company Act. A finding of willfulness does not require an intent to violate, but merely an intent to do the act which constitutes a violation. See Wonsover v. SEC, 205 F.3d 408, 413-15 (D.C. Cir. 2000); Steadman v. SEC, 603 F.2d at 1135; Arthur Lipper Corp. v. SEC, 547 F.2d 171, 180 (2d Cir. 1976); Tager v. SEC, 344 F.2d 5, 8 (2d Cir. 1965).

B. <u>Antifraud Violations</u>

1. Primary Violations

Each Respondent violated Securities Act Section 17(a) and Exchange Act Section 10(b) and Rule 10b-5 more than once through a material misrepresentation or omission. In February 2007, Young and Green were made aware of concerns of clients or potential clients of corruption in Antigua, undue influence of Allen Stanford, an unsustainable model of SIB suggestive of a Ponzi scheme, and that the SIB CDs were junk bonds. Rather than investigate the possible truthfulness of these charges, they decided that SGC should "attack" with talking points used previously. The approved responses that FAs sent to the clients included representations about SIB's portfolio that could not be verified and the misleading statement that "There are insurance policies in place to indemnify in case of fraud and/or embezzlement." These statements were clearly material and made with at least a reckless degree of scienter.

During the fall of 2008, each Respondent knew that SIB had a liquidity problem, and each was complicit in material misrepresentations and omissions designed to lull customers so as to forestall redemptions and continue sales of the SIB CD. On December 16, 2008, Green sent the MDs an email responding to concerns of FAs and MDs prompted by the Madoff fraud and suggesting talking points to reassure clients concerning "the safety and security of deposits." These included "Directors and Officers Liability Insurance and a Bankers' Blanket Bond [and] bank failure insurance." These insurance coverages were, of course, not insuring "security of deposits," yet Green was urging MDs and FAs to mention them when trying to persuade clients not to redeem their SIB CDs or when selling new SIB CDs. This misleading statement was clearly material and made with at least a reckless degree of scienter.

On December 21-22, 2008, all three Respondents agreed on an email sent to all MDs that gave a false reason for Pershing's decision to discontinue wiring funds to SIB so as to conceal the clearly material fact that Pershing's decision was based on its inability to obtain transparency into SIB's portfolio after a two and a half year effort to do so. Respondents' plan for everyone at SGC to be "all on the same page regarding the Pershing decision not to wire to SIB" was made with at least a reckless degree of scienter. This false explanation was to be given to clients who asked why the payment process for SIB CDs had become so difficult. The false statement and omission were clearly material and made with at least a reckless degree of scienter.

During late 2008, SIB failed to meet its obligation to fund at least two private equity deals because of insufficient funds. Despite knowing this, on December 23, 2008, Bogar approved a press release falsely explaining that SIB would not be funding the Health Systems Solutions Inc. deal "because of the last hour due diligence issues." This false statement and omission to state the real reason were clearly material and made with at least a reckless degree of scienter.

On December 23, 2008, Green sent a two-page newsletter to all FAs to be disseminated to clients and prospective clients that touted SIB's "strong liquidity," "extensive insurance program," and $541 million of increased capital. Yet, in addition to his awareness of SIB's liquidity issues, Green had examined Allen Stanford's original draft of the newsletter that included a financial

statement showing cash and equivalents as about $200 million less than the $541 million that Allen Stanford said he put in. When Green asked about the discrepancy, Allen Stanford reacted negatively to being found out and articulated a complicated explanation. Green then sent the newsletter out without the discordant financial statement. In addition to the false or misleading statements about SIB's liquidity and insurance, Green actually saw a $200 million discrepancy and reacted by covering it up. Again, this was done with at least a reckless degree of scienter.

During the weeks of January 26 and February 2, 2009, Young and Green went on a damage control road show at which Young conveyed the message that SIB was sound while Green discussed cost-cutting measures at SGC. While the cost-cutting measures were related to a decline in revenue from SIB, promoting the soundness of SIB can only have been intended to influence FAs to reassure clients so as to forestall redemptions and continue to sell SIB CDs. This last-ditch effort was, in effect, a continuance of the December 2008, material misrepresentations and omissions.

After the February 10, 2009, conference call at which Allen Stanford told the FAs that early redemptions were stopped, FAs emailed Green and Bogar with questions, including asking whether anything had changed since Green and Young's road show discussing the soundness of SIB. On the same day, Bogar and Green approved talking points for FAs to use in discussions with, and letters to, clients reacting to the cessation of early redemptions. The approved talking points included the blatant falsehood that SIB "remains a strong institution" and blamed negative information in the media on disgruntled ex-employees. While it can be argued that the misrepresentations were not in connection with the offer or sale of securities since the SIB CD was no longer being sold or redeemed, they reinforce the conclusion that Bogar's and Green's earlier misrepresentations were made with scienter. Finally, Bogar voted "yes" on Sunday, February 15, to release a proposed press release (that was never actually released) containing the same misrepresentations. Again, this reinforces the conclusion that his earlier misrepresentations were made with scienter.

In sum, it is concluded that each Respondent willfully violated Securities Act Section 17(a) and Exchange Act Section 10(b) and Rule 10b-5.[38]

2. Secondary Violations Related to SIB's and SGC's Marketing Materials

a. Primary Violations by SIB and SGC

SIB and SGC violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and SGC violated Sections 15(c)(1) of the Exchange Act and 206(1) and 206(2) of the Advisers Act by the false and misleading statements of material facts concerning SIB's portfolio and insurance coverage in SIB's disclosure statement and brochure that SGC provided to prospective investors. The descriptions of SIB's portfolio were undeniably false. Further, there was no insurance protecting investors in the SIB CD, but the description of insurance that SIB did have created a confusing impression that investors were insured. Similar statements appeared in the materials used

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[38] Respondents also aided and abetted and caused violations by SIB and SGC of Exchange Act Section 10(b) and Rule 10b-5 and violations by SGC of Exchange Act Section 15(c)(1) and Advisers Act Sections 206(1) and 206(2) by the same material misrepresentations and omissions.

to train FAs to sell the SIB CD. The compensation plan, including outsize commissions, trail commissions, bonuses, and SIB CD sales contests, pressured the FAs to sell the SIB CD in lieu of other investments, using the misleading information contained in the disclosure statement, brochure, and training material. These false and misleading statements, concerning the portfolio that was to generate returns for payments on the SIB CD and be available for liquidation to redeem SIB CDs and concerning insurance that provided peace of mind, were clearly material. Scienter in the form of "a mental state embracing intent to deceive, manipulate, or defraud" was provided by SGC and SIB's owner, Allen Stanford, and his confederate, Davis, who were convicted of fraud for their roles as masterminds in the sale of the SIB CD. (The violation of Advisers Act Section 206(2) required only negligence.)

b. "Causing" Liability – Advisers Act Section 206(2)

All three Respondents knew that they did not know what was in SIB's portfolio, and Bogar and Young actually knew that the portfolio contained a significant amount of illiquid private equity. Yet Respondents distributed, or approved the distribution, of the disclosure statement and brochure that made representations concerning the liquidity and holdings of SIB's portfolio as a key component of "Depositor Security." Also, they knew that SIB affirmatively resisted their having transparency into the portfolio while purportedly allowing such transparency to the Memphis group, which was purportedly overseeing the trading of the portfolio. Likewise, all three knew that there was no depositor insurance and that at least some FAs were confused on the question of insurance. However, all three Respondents point to the involvement of various inside and outside counsel employed by the Stanford companies as support for the reasonableness of SGC's using the disclosure statement and brochure.[39]

Each Respondent engaged in an act or omission that was a cause of SGC's violation of Advisers Act Section 206(2) throughout the relevant period. Young approved the use of the brochures and the disclosure statement. Green, through his assistant, provided them to clients. Bogar was aware of the use and contents of these marketing materials and had overall authority over the sale of the SIB CD throughout the relevant period. Similar misstatements appeared in the materials developed and used by Green and Young to train FAs, who were the conduits conveying the misleading representations to clients, and Bogar was aware of and responsible for the contents of these training materials. All three were aware that SGC's distorted compensation system encouraged FAs to sell as many SIB CDs as possible, using the misleading material (although Bogar was taking steps to reform compensation, albeit "without killing the golden goose"). Green

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[39] Respondents do not actually claim that they were relying on the advice of counsel. In considering whether to credit an advice of counsel claim, the Commission considers four elements: "that the person made complete disclosure to counsel, sought advice on the legality of the intended conduct, received advice that the intended conduct was legal, and relied in good faith on counsel's advice" (footnote citing precedent omitted). Howard Brett Berger, Exchange Act Release No. 58950 (Nov. 14, 2008), 94 SEC Docket 11615, 11629-31, petition for review denied, 347 F. App'x 692 (2d Cir. 2009), cert. denied, 130 S. Ct. 2380 (2010). Counsel must also be independent. C.E. Carlson, Inc. v. SEC, 859 F.2d 1429, 1436 (10th Cir. 1988); Arthur Lipper Corp. v. SEC, 547 F.2d 171, 181-82 (2d Cir. 1976).

devoted a substantial portion of his time to overseeing the Superstars' competition in the SIB CD sales contest.

Concerning their state of mind, each Respondent failed to consider that SIB's lack of transparency was to conceal the weakness of its portfolio or the possibility that investors might be confused by the discussion of the "comprehensive insurance program" into believing that their investments were insured. Thus, each Respondent was at least negligent in allowing the use of marketing material that promised depositor security on the basis of facts about SIB's portfolio that could not be verified and on the basis of a discussion of insurance that all knew had no relevance to depositor security but that might confuse a potential investor into thinking that it did. This was a failure to exercise reasonable care. IFG Network Sec., Inc., 88 SEC Docket at 1389. Accordingly, it is concluded that each Respondent caused SGC's violation of Advisers Act Section 206(2).

c. Aiding and Abetting Liability

To the extent that the language in the disclosure statement and brochure contained material misstatements and omissions, it cannot be attributed to any of the Respondents. No Respondent had any responsibility for drafting these documents or had any input into drafting the language. To the contrary, the Stanford companies' inside and outside counsel had responsibility for drafting the language. As such, none of the Respondents was a maker of the untrue statements or omissions. Nor did any of the Respondents conceal the facts about SIB from those who drafted these marketing materials; SIB's lack of transparency and insurance was widely known at SGC.

Scienter is an element of aiding and abetting and of causing violations of Exchange Act Sections 10(b) and 15(c)(1) and Rule 10b-5 and Advisers Act Section 206(1) and of aiding and abetting violations of Advisers Act Section 206(2). With reference to the primary violations by SIB and SGC addressed in this section, in light of Respondents' knowledge of the participation of inside and outside counsel in drafting the disclosure statement and brochure, it is concluded that none of them acted with knowledge that his role was part of an overall activity that was improper or encountered red flags that should have alerted him to the improper conduct of SIB and SGC; nor was there a danger so obvious that any Respondent must have been aware of it. Accordingly, with reference to the primary violations by SIB and SGC addressed in this section, it is concluded that none of the Respondents aided and abetted or caused SIB's and SGC's violations of Exchange Act Section 10(b) and Rule 10b-5 and SGC's violation of Exchange Act Section 15(c)(1) and Advisers Act Section 206(1) or aided and abetted SGC's violation of Advisers Act Section 206(2).

IV. SANCTIONS

The Division requests cease-and-desist orders; bars; disgorgement (plus prejudgment interest) of $3,085,596.74 by Bogar, $1,271,183.60 by Young, and $5,613,506.47 by Green; and third-tier civil money penalties. As discussed below, Respondents will be ordered to cease and desist from violations of Section 17(a) of the Securities Act, Sections 10(b) and 15(c)(1) of the Exchange Act and Rule 10b-5 thereunder, and Sections 206(1) and 206(2) of the Advisers Act and barred from the securities industry. Additionally, Bogar will be ordered to disgorge $1,555,485.75 plus prejudgment interest; Young, $591,992.46 plus prejudgment interest; and Green,

$2,613,506.47 plus prejudgment interest. Each will be ordered to pay a third-tier civil penalty of $260,000.

A. Sanction Considerations

In determining sanctions, the Commission considers such factors as:

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

Steadman, 603 F.2d at 1140 (quoting SEC v. Blatt, 583 F.2d 1325, 1334 n.29 (5th Cir. 1978)). The Commission also considers the age of the violation and the degree of harm to investors and the marketplace resulting from the violation. Marshall E. Melton, 56 S.E.C. 695, 698 (2003). Additionally, the Commission considers the extent to which the sanction will have a deterrent effect. Schield Mgmt. Co., Exchange Act Release No. 53201 (Jan. 31, 2006), 87 SEC Docket 848, 862 & n.46. As the Commission has often emphasized, the public interest determination extends to the public-at-large, the welfare of investors as a class, and standards of conduct in the securities business generally. See Christopher A. Lowry, 55 S.E.C. 1133, 1145 (2002), aff'd, 340 F.3d 501 (8th Cir. 2003); Arthur Lipper Corp., 46 S.E.C. 78, 100 (1975). The amount of a sanction depends on the facts of each case and the value of the sanction in preventing a recurrence. See Berko v. SEC, 316 F.2d 137, 141 (2d Cir. 1963); see also Leo Glassman, 46 S.E.C. 209, 211-12 (1975).

B. Sanctions

1. Cease and Desist

Sections 8A of the Securities Act, 21B(e) and 21C(a) of the Exchange Act, and 203(k) of the Advisers Act authorize the Commission to issue a cease-and-desist order against a person who "is violating, has violated, or is about to violate" any provision of those Acts or rules thereunder. Whether there is a reasonable likelihood of such violations in the future must be considered. KPMG Peat Marwick LLP, 54 S.E.C. at 1185. Such a showing is "significantly less than that required for an injunction." Id. at 1183-91. In determining whether a cease-and-desist order is appropriate, the Commission considers the Steadman factors quoted above, as well as the frequency of the violation, the degree of harm to investors or the marketplace, and the combination of sanctions against the respondent. See id. at 1192; see also WHX Corp. v. SEC, 362 F.3d 854, 859-61 (D.C. Cir. 2004).

Each Respondent's conduct became egregious and exhibited a reckless degree of scienter after a period of negligence. Each Respondent's participation in statements designed to cover up SIB's parlous financial condition at the end of 2008 is an aggravating factor. Each Respondent's age, experience, and chosen occupation in or related to the financial industry will present opportunities for future violations. The violations were neither recent nor remote in time, having

ended about four years ago. Each one's ill-gotten gains related to the SIB CD quantify the degree of harm to the marketplace each caused individually. A mitigating factor is that Bogar and Green were victims as well as contributors to Allen Stanford's fraud as they and their relatives and/or friends invested in the SIB CD and lost money. In light of these considerations, a cease-and-desist order against each is appropriate.

2. Disgorgement

Sections 8A(e) of the Securities Act, 21B(e) and 21C(e) of the Exchange Act, 203(j) of the Advisers Act, and 9(e) of the Investment Company Act authorize disgorgement of ill-gotten gains from Respondents. Disgorgement is an equitable remedy that requires a violator to give up wrongfully-obtained profits causally related to the proven wrongdoing. See SEC v. First City Fin. Corp., Ltd., 890 F.2d 1215, 1230-32 (D.C. Cir. 1989); see also Hateley v. SEC, 8 F.3d 653, 655-56 (9th Cir. 1993). It returns the violator to where he would have been absent the violative activity.

The amount of the disgorgement ordered need only be a reasonable approximation of profits causally connected to the violation. See Laurie Jones Canady, 54 S.E.C. 65, 84-85 n.35 (1999) (quoting SEC v. First Jersey Sec., Inc., 101 F.3d 1450, 1475 (2d Cir. 1996)), petition for review denied, 230 F.3d 362 (D.C. Cir. 2000); see also SEC v. First Pac. Bancorp, 142 F.3d 1186, 1192 n.6 (9th Cir. 1998) (holding disgorgement amount only needs to be a reasonable approximation of ill-gotten gains); accord First City Fin. Corp., Ltd., 890 F.2d at 1231-32.

The Commission has the authority to order disgorgement of salary. Rita J. McConville, Exchange Act Release No. 51950 (June 30, 2005), 85 SEC Docket 3127, 3151 n.64. Likewise, commissions derived from management fees are appropriately disgorged where they constitute ill-gotten gains earned during the course of violative activities. SEC v. Kapur, No. 11 Civ. 8094, 2012 WL 5964389, at *3-*4 (S.D.N.Y. Nov. 29, 2012); SEC v. Radical Bunny, LLC, No. 09-cv-1560, 2011 WL 1458698, at *8 (D. Ariz. Apr. 12, 2011), aff'd, No. 11-16275, 2013 WL 3456657 (9th Cir. July 10, 2013); Joseph John VanCook, Exchange Act Release No. 61039A (Nov. 20, 2009), 97 SEC Docket 22664, 22691. However, the Commission distinguishes between amounts earned through legitimate activities and those connected to violative activities, and it falls on the Division to show what a reasonable approximation of the salary or fees was unjust enrichment. See Gregory O. Trautman, Securities Act Release No. 9088A (Dec.15, 2009), 97 SEC Docket 23492, 23529-32 (finding that all of respondent's salary was not a reasonable measure of his unjust enrichment, but that fifty percent was related to illegitimate revenues earned through violative conduct); accord, Joseph John VanCook, 97 SEC Docket at 22691. The Division argues that Respondents should disgorge amounts earned through their legitimate activities on the theory that the funds SGC used to pay them for legitimate activities were derived from sales of the SIB CD. However, this argument fails in light of the foregoing precedent.

Green will be ordered to disgorge $2,613,506.47, the total compensation (for which information is available) that he received relating to the SIB CD. This sum omits the amount that was paid directly to charity at Green's request, in lieu of a bonus, that Green never himself received.

Bogar and Young will be ordered to disgorge 55.38% of the total payroll compensation that each received between 2006 and 2009, the period for which information is available. SIB CD related revenue was 55.38% of SGC's total revenue for the period 2006 through 2008, so that 55.38% approximates that portion of compensation related to the SIB CD that each received. Thus Bogar will be ordered to disgorge $1,555,485.75, and Young will be ordered to disgorge $591,992.46. The amounts paid to Bogar and Young through Oracle will not be ordered disgorged since the evidence of record shows that the Oracle payments were reimbursement of expenses.

3. Civil Money Penalty

Sections 21B of the Exchange Act, 203(i) of the Advisers Act, and 9(d) of the Investment Company Act authorize the Commission to impose civil money penalties for willful violations of the Securities, Exchange, Advisers, or Investment Company Acts or rules thereunder. In considering whether a penalty is in the public interest, the Commission may consider six factors: (1) fraud; (2) harm to others; (3) unjust enrichment; (4) previous violations; (5) deterrence; and (6) such other matters as justice may require. See Sections 21B(c) of the Exchange Act, 203(i)(3) of the Advisers Act, and 9(d)(3) of the Investment Company Act; New Allied Dev. Corp., 52 S.E.C. 1119, 1130 n.33 (1996); First Sec. Transfer Sys., Inc., 52 S.E.C. 392, 395-96 (1995); see also Jay Houston Meadows, 52 S.E.C. 778, 787-88 (1996), aff'd, 119 F.3d 1219 (5th Cir. 1997); Consol. Inv. Servs., Inc., 52 S.E.C. 582, 590-91 (1996).

Respondents violated the antifraud provisions, so their violative actions "involved fraud [and] reckless disregard of a regulatory requirement" within the meaning of Sections 21B(b) of the Exchange Act, 203(i)(2) of the Advisers Act, and 9(d)(2) of the Investment Company Act.

Penalties in addition to the other sanctions ordered are in the public interest in this case in consideration of fraud, harm to others, unjust enrichment, and the need for deterrence. See Sections 21B(c) of the Exchange Act, 203(i)(3) of the Advisers Act, and 9(d)(3) of the Investment Company Act; see also H.R. Rep. No. 101-616 (1990). The Division requests that Respondents be ordered to pay third-tier penalties, without specifying dollar amounts or units of violation. In addition to arguing that there were no violations, Respondents argue that civil penalties are not warranted, much less third-tier penalties. A third-tier penalty, as the Division requests, is appropriate because Respondents' violative acts involved fraud and resulted in the risk of substantial losses to other persons and gains to themselves. See Sections 21B(b)(3) of the Exchange Act, 203(i)(2)(C) of the Advisers Act, and 9(d)(2)(C) of the Investment Company Act. Under those provisions, for each violative act or omission after February 14, 2005, and before March 3, 2009, the maximum third-tier penalty is $130,000 for a natural person. 17 C.F.R. §§ 201.1003, .1004. The provisions, like most civil penalty statutes, leave the precise unit of violation undefined. See Colin S. Diver, The Assessment and Mitigation of Civil Money Penalties by Federal Administrative Agencies, 79 Colum. L. Rev. 1435, 1440-41 (1979).

The events at issue will be considered as two courses of action related to marketing the SIB CD – each Respondent committed a primary violation of the antifraud provisions through his direct participation in false and misleading statements at least once, and each was a cause of

SGC's violation of Advisers Act Section 206(2) from 2006 through 2008. Accordingly, a third-tier penalty amount of $260,000 will be ordered against each Respondent.

4. Bar

The Division requests a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, nationally recognized statistical rating organization, and investment company bar against each Respondent. Such collateral bars are authorized pursuant to Sections 15(b) of the Exchange Act, 203(f) of the Advisers Act, and 9(b) of the Investment Company Act and will be ordered.[40] Combined with other sanctions ordered, bars are in the public interest and appropriate deterrents.

V. RECORD CERTIFICATION

Pursuant to Rule 351(b) of the Commission's Rules of Practice, 17 C.F.R. § 201.351(b), it is certified that the record includes the items set forth in the record index issued by the Secretary of the Commission on July 3, 2013, as corrected on July 30, 2013.[41]

VI. ORDER

IT IS ORDERED that, pursuant to Sections 8A of the Securities Act, 21C(a) of the Exchange Act, and 203(k) of the Advisers Act,

> Daniel Bogar CEASE AND DESIST from committing or causing any violations or future violations of Section 17(a) of the Securities Act, Sections 10(b) and 15(c)(1) of the Exchange Act and Rule 10b-5 thereunder, and Sections 206(1) and 206(2) of the Advisers Act;
>
> Bernerd E. Young CEASE AND DESIST from committing or causing any violations or future violations of Section 17(a) of the Securities Act, Sections 10(b) and 15(c)(1) of the Exchange Act and Rule 10b-5 thereunder, and Sections 206(1) and 206(2) of the Advisers Act; and

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[40] The collateral bar is authorized pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act). While Respondents' misconduct antedates the July 22, 2010, effective date of the Dodd-Frank Act, the Commission has determined that sanctioning a respondent with a collateral bar for pre-Dodd-Frank wrongdoing is not impermissibly retroactive, but rather provides prospective relief from harm to investors and the markets. John W. Lawton, Advisers Act Release No. 3513 (Dec. 13, 2012), 105 SEC Docket 61722; see also Alfred Clay Ludlum, III, Advisers Act Release No. 3628 (July 11, 2013); Johnny Clifton, Securities Act Release No. 9417 (July 12, 2013); Tzemach David Netzer Korem, Exchange Act Release No. 70044 (July 26, 2013).

[41] See Daniel Bogar, Admin. Proc. No. 3-15003 (A.L.J. July 30, 2013) (unpublished) (adding Div. Ex. 21 to record index).

Jason T. Green CEASE AND DESIST from committing or causing any violations or future violations of Section 17(a) of the Securities Act, Sections 10(b) and 15(c)(1) of the Exchange Act and Rule 10b-5 thereunder, and Sections 206(1) and 206(2) of the Advisers Act.

IT IS FURTHER ORDERED that, pursuant to Sections 8A(e) of the Securities Act, 21B(e) and 21C(e) of the Exchange Act, 203(j) of the Advisers Act, and 9(e) of the Investment Company Act,

Daniel Bogar DISGORGE $1,555,485.75 plus prejudgment interest at the rate established under Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. § 6621(a)(2), compounded quarterly, pursuant to 17 C.F.R. § 201.600(b). Pursuant to 17 C.F.R. § 201.600(a), prejudgment interest is due from March 1, 2009, through the last day of the month preceding which payment is made.

Bernerd E. Young DISGORGE $591,992.46 plus prejudgment interest at the rate established under Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. § 6621(a)(2), compounded quarterly, pursuant to 17 C.F.R. § 201.600(b). Pursuant to 17 C.F.R. § 201.600(a), prejudgment interest is due from March 1, 2009, through the last day of the month preceding which payment is made.

Jason T. Green DISGORGE $2,613,506.47 plus prejudgment interest at the rate established under Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. § 6621(a)(2), compounded quarterly, pursuant to 17 C.F.R. § 201.600(b). Pursuant to 17 C.F.R. § 201.600(a), prejudgment interest is due from March 1, 2009, through the last day of the month preceding which payment is made.

IT IS FURTHER ORDERED that, pursuant to Sections 21B of the Exchange Act, 203(i) of the Advisers Act, and 9(d) of the Investment Company Act,

Daniel Bogar PAY A CIVIL MONEY PENALTY of $260,000;

Bernerd E. Young PAY A CIVIL MONEY PENALTY of $260,000; and

Jason T. Green PAY A CIVIL MONEY PENALTY of $260,000.

IT IS FURTHER ORDERED that, pursuant to Sections 15(b) of the Exchange Act, 203(f) of the Advisers Act, and 9(b) of the Investment Company Act,

Daniel Bogar IS BARRED from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization and IS PROHIBITED, permanently, from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter.

Bernerd E. Young IS BARRED from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization and IS PROHIBITED, permanently, from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter.

Jason T. Green IS BARRED from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization and IS PROHIBITED, permanently, from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter.

Payment of penalties and disgorgement plus prejudgment interest shall be made on the first day following the day this Initial Decision becomes final. Payment shall be made by certified check, United States postal money order, bank cashier's check, wire transfer, or bank money order, payable to the Securities and Exchange Commission. The payment, and a cover letter identifying the Respondent(s) and Administrative Proceeding No. 3-15003, shall be delivered to: Enterprises Services Center, Accounts Receivable Branch, HQ Bldg., Room 181, AMZ-341, 6500 South MacArthur Bld., Oklahoma City, Oklahoma 73169. A copy of the cover letter and instrument of payment shall be sent to the Commission's Division of Enforcement, directed to the attention of counsel of record.

This Initial Decision shall become effective in accordance with and subject to the provisions of Rule 360 of the Commission's Rules of Practice, 17 C.F.R. § 201.360. Pursuant to that Rule, a party may file a petition for review of this Initial Decision within twenty-one days after service of the Initial Decision. A party may also file a motion to correct a manifest error of fact within ten days of the Initial Decision, pursuant to Rule 111(h) of the Commission's Rules of Practice, 17 C.F.R. § 201.111(h). If a motion to correct a manifest error of fact is filed by a party, then that party shall have twenty-one days to file a petition for review from the date of the undersigned's order resolving such motion to correct a manifest error of fact. The Initial Decision will not become final until the Commission enters an order of finality. The Commission will enter an order of finality unless a party files a petition for review or a motion to correct a manifest error of fact or the Commission determines on its own initiative to review the Initial Decision as to a party. If any of these events occur, the Initial Decision shall not become final as to that party.

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Carol Fox Foelak
Administrative Law Judge