INITIAL DECISION RELEASE NO. 501
ADMINISTRATIVE PROCEEDING
FILE NO. 3-14999

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

In the Matter of	:	INITIAL DECISION
	:	July 31, 2013
ANGELICA AGUILERA	:	

APPEARANCES: Laura R. Smith and Edward D. McCutcheon for the Division of Enforcement, Securities and Exchange Commission

Luis F. Biason for Respondent Angelica Aguilera

BEFORE: Cameron Elliot, Administrative Law Judge

SUMMARY

This Initial Decision finds that Respondent Angelica Aguilera (Aguilera) failed reasonably to supervise Fabrizio Neves (Neves) and Jose Luna (Luna) within the meaning of Sections 15(b)(4)(E) and 15(b)(6) of the Securities Exchange Act of 1934 (Exchange Act), with a view to preventing and detecting their violations of the antifraud provisions of the securities laws. The Initial Decision bars Aguilera from association with a broker or dealer in a supervisory capacity and bars Aguilera from the securities industry.

I. Introduction

A. Procedural Background

The Securities and Exchange Commission (Commission) issued its Order Instituting Administrative Proceedings (OIP) on August 29, 2012, pursuant to Section 15(b) of the Exchange Act. Aguilera filed her Answer on January 15, 2013.

A hearing was held from February 25 through February 28, 2013, in Washington, D.C. The admitted exhibits are listed in the Record Index issued by the Commission's Office of the Secretary on May 22, 2013. The Division of Enforcement (Division) and Aguilera filed their post-hearing briefs on April 19, 2013, and their reply briefs on May 10, 2013.[1]

[1] Citations to the transcript of the hearing are noted as "Tr. ___.". Citations to Aguilera's Answer are noted as "Answer ___.". Citations to exhibits offered by the Division and Aguilera

B. Summary of Allegations

The instant proceeding concerns Aguilera's alleged failure to supervise Neves, a shareholder and registered representative associated with LatAm Investments, LLC (LatAm), and Luna, a back office operations employee at LatAm, who allegedly engaged in a fraudulent markup and markdown scheme to defraud two Brazilian public pension funds and another foreign institutional customer in the offer, purchase, and sale of structured notes. OIP, p. 2. The OIP alleges that Neves and Luna violated Section 17(a) of the Securities Act of 1933 (Securities Act), Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and willfully aided and abetted violations of Section 15(c)(1) of the Exchange Act, and that Aguilera, a shareholder, Financial & Operations Principal (FINOP), and President of LatAm from October 2007 through 2010, failed to effectively follow or implement LatAm's policies and procedures with a view to preventing violations by Neves and Luna. Id., pp. 1-2, 5-6. The Division seeks a supervisory bar, an industry bar, disgorgement, and civil penalties. Div. Br., pp. 44-53.

Aguilera denies that she held a supervisory role over trading at LatAm, despite her title as President and FINOP, and argues that other individuals at LatAm exercised de facto control over the firm. Resp. Br., pp. 3, 7. She argues that LatAm's Written Supervisory Procedures (WSPs) did not accurately reflect her job responsibilities and that her job primarily consisted of administrative, human resources, and marketing tasks, but not trading supervision. Resp. Reply Br., p. 6. Aguilera also contends that a cover-up was an integral part of Neves' and Luna's fraudulent scheme, which prevented her from discovering and preventing it. Id., pp. 1-5.

II. Findings of Fact

The findings and conclusions herein are based on the entire record. I applied preponderance of the evidence as the standard of proof. See Steadman v. SEC, 450 U.S. 91, 102 (1981). I have considered and rejected all arguments, proposed findings, and conclusions that are inconsistent with this Initial Decision.

A. Respondent and Other Relevant Individuals and Entities

1. Angelica Aguilera

Aguilera, at the time the OIP issued, was a 46-year old resident of Boca Raton, Florida. OIP, p. 1; Answer, p. 1. She has worked in the financial services industry since 1994.[2] Tr. 361.

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are noted as "Div. Ex. ___." and "Resp. Ex. ___.", respectively. The Division's and Aguilera's post-hearing briefs are noted as "Div. Br. ___." and "Resp. Br. ___.", respectively. The Division's and Aguilera's reply briefs are noted as "Div. Reply Br. ___." and "Resp. Reply Br. ___.", respectively.

[2] Aguilera received a master's degree in business administration from California State University and a graduate degree in international management from a school in San Francisco, California. Tr. 361.

She earned her Series 7 securities license in 1996, and also holds Series 24 and 27 securities licenses. Tr. 361-62. Aguilera was the relationship manager for Prime Brokerage accounts at Bear Stearns from 2001 through 2003, managing the reporting, day-to-day operations, and back office support groups in Bear Stearns' Boca Raton office. Tr. 362. While at Bear Stearns, Aguilera met Maximino "Jimmy" Acosta (Acosta), with whom she later formed LatAm.[3] Tr. 362-63.

Aguilera was LatAm's FINOP from 2004 until the firm withdrew its FINRA registration in 2010. OIP, p. 2; Answer, p. 1; Tr. 364. Aguilera was LatAm's Anti-Money Laundering Compliance Officer beginning in 2004, and held the position until Esdras Vera (Vera) joined LatAm as its chief compliance officer in October 2007. Tr. 364, 490. Aguilera became the President of LatAm when Acosta left LatAm in October 2007, and she remained President until LatAm ceased operations in 2010. OIP, p. 1, Answer, p. 1; Div. Ex. 17, pp. 2, 17.

2. Jose Luna and Fabrizio Neves

Luna, age 45, who came to the United States in 1987 from Lima, Peru, joined LatAm in 2006.[4] Tr. 55-56, 74-75. Prior to joining LatAm, Luna worked at Global Strategic Investments (Global Strategic) in Miami, Florida, where he met Neves, who also worked at Global Strategic at the time.[5] Tr. 64. After Neves left Global Strategic in 2005, he encouraged Luna to resign and work for him at Capital Investment Services, which Luna did. Tr. 66-68. At Capital Investment Services, Luna's job included processing and confirming Neves' trades with counterparties. Tr. 68. Neves' customers at the time were two pension funds for post office employees in Brazil, the Brazil Sovereign II Fund (Sovereign II) and the Atlantica Real Fund (Atlantica Real) (collectively, the Brazilian Pension Funds or Funds), and he traded sovereign debt for them. Tr. 68-71, 80-81.

In 2006, Neves and Luna joined LatAm. Tr. 74-75. According to Luna, Neves joined LatAm because he was interested in acquiring an ownership interest in a broker-dealer. Tr. 75. Luna served as operations manager at LatAm, and he processed trades for Neves and other brokers, confirmed trades with counterparties, and confirmed settlements with LatAm's custodian, Pershing, LLC (Pershing). Tr. 79-80.

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[3] Acosta managed clearing operations for Bear Stearns, and, according to Aguilera, he was terminated in 2003 as a result of a dispute that arose regarding his alleged role in market timing of mutual funds. Tr. 362-63. Aguilera quit her job at Bear Stearns around the same time that Acosta was terminated. Tr. 363.

[4] Luna holds a bachelor's degree in business administration in management and finance from Mercy College in New York. Tr. 55.

[5] Luna was employed at Bankers Trust in New York from 1995 through 1999; Chase Manhattan Bank in Brooklyn, New York, in 1999; HWF Capital, a Florida hedge fund from 1999-2002; and Global Strategic in Miami, Florida, from 2002 through 2005. Tr. 55-60; Div. Ex. 52. He performed operations-related tasks, such as confirming and processing trades, sending wire transfers, and handling clients and account problems for these firms. Tr. 55-58.

Luna left LatAm in December 2009, following the departure of the Brazilian Pension Funds as clients of LatAm, because the firm could no longer afford to pay him. Tr. 63. In June 2010, the Financial Industry Regulatory Authority, Inc. (FINRA), permanently barred Luna, by consent, from association with any FINRA member in any capacity. Tr. 60-61; Div. Ex. 52. In SEC v. Neves, No. 1:12-cv-23131 (S.D. Fla. Aug. 29, 2012), a federal judge barred Luna from the securities industry as part of a consent to settle securities fraud charges with the Commission relating to conduct he engaged in at LatAm.[6] Tr. 61; Div. Ex. 52. Over the course of his career, Luna obtained Series 7 and 11 securities licenses, but no longer holds them. Tr. 60.

In May 2010, FINRA permanently barred Neves, by consent, from association with any FINRA member in any capacity. Div. Ex. 51. Neves was also named as a defendant in SEC v. Neves, and the case remains pending against him.

3. Acosta Financial Services/LatAm

Acosta Financial Services was formed sometime in 2003 and was the predecessor to LatAm.[7] Tr. 301-02, 363. Acosta contributed over $300,000 to start Acosta Financial Services, and Aguilera joined the company a little later and contributed $125,000 of her own funds to the firm. Tr. 659-60. At that time, Acosta and Aguilera shared ownership of the firm 70% and 30%, respectively. Tr. 660. Acosta was a principal of LatAm when it was founded, and he served as its CEO or President. Tr. 280-81.

In 2006, Neves invested approximately $300,000 in LatAm in exchange for an ownership interest in the firm. Tr. 366, 662-63. According to Aguilera, initially Neves had hoped to open his own broker-dealer, but when he could not reach an agreement with Pershing or receive the necessary approvals, he instead invested in LatAm.[8] Tr. 366, 662-63. The initial plan was to sell Neves an 80% ownership interest in LatAm, but because Neves did not have a principal license, Acosta only sold Neves a 1% interest. Tr. 285, 366, 661-63; Div. Ex. 17, p. 2. Aguilera understood that Neves would bring the Brazilian Pension Funds, which had business worth millions of dollars, to LatAm as clients when he joined the firm, and she and Acosta would provide operational support and the relationship with Pershing.[9] Tr. 367.

[6] Luna testified that the fact that the Commission has not yet made a recommendation as to the appropriate civil penalty to be imposed in Neves would not affect the truth or completeness of his testimony during the hearing. Tr. 62.

[7] Acosta Financial Services and LatAm are referred to throughout the transcript and this Initial Decision as LatAm. Tr. 363.

[8] Aguilera first met Neves at a restaurant sometime in 2006 with Acosta. Tr. 366, 661-63.

[9] According to Aguilera, LatAm's legal counsel from Greenberg Traurig LLP conducted a background investigation of Neves when he joined LatAm. Tr. 663-64.

Acosta left LatAm as a principal in late 2007 to form a broker-dealer in Panama. Tr. 281. Acosta became a consultant to LatAm after he left, which allowed him to remain active in the firm and receive payment for his work; however, he was no longer a signatory of the firm. Tr. 281-83; Div. Ex. 16. After Acosta left, he placed his shares of LatAm in a voting trust, and Aguilera became the sole trustee and controlled the trust. Tr. 310, 669-70. According to Aguilera, she never used the trust to control the company and no vote was ever taken during her trusteeship. Tr. 310, 669-70. Aguilera assumed Acosta's role as President of LatAm when Acosta became a consultant. Tr. 284; Div. Ex. 17, p. 8. Acosta rejoined LatAm, possibly in May 2009, but he did not resume the role of President; Aguilera remained as President until LatAm ceased operations. OIP, p. 1; Answer, p. 1; Tr. 329, 676.

In 2007, Acosta and Aguilera hired Vera to be LatAm's Chief Compliance Officer, and he remained in the position until September 2009.[10] Tr. 490-91. Howard Landers, principal at First Bridgehouse Consulting (Bridgehouse Consulting), which performed regulatory consulting work for LatAm beginning in 2004 or 2005, recommended Vera for the position. Tr. 491.

In July 2008, Marcos Konig (Konig)[11] joined LatAm as Chief Operating Officer.[12] Tr. 564-66. According to Aguilera, Konig was hired because LatAm needed someone with a Series 24 license to "look over all the operations," including compliance.[13] Tr. 369-70. Konig understood his role to be to help LatAm establish an institutional equity trading business, since the firm's fixed-income business was already established, and to develop a piggyback or clear-though business. Tr. 566.

In November 2009, Darius Lashkari (Lashkari) was hired to replace Vera as Chief Compliance Officer at LatAm.[14] Tr. 447. One month after Lashkari joined LatAm, he began working to close down the firm. Tr. 449.

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[10] Vera graduated from the Inter-American University in Puerto Rico in 2003 and has worked in the financial industry for over twenty-four years. Tr. 489. He currently holds Series 7, 24, 66, and 79 securities licenses. Tr. 430. Vera currently owns Lali Consulting and is the chief compliance officer for two firms. Tr. 489.

[11] Konig, age 67, received bachelor's degrees from Philadelphia College of Textiles and Science and Louisiana State University. Tr. 562. He holds Series 4, 7, 27, 44, 55, and 63 securities licenses. Tr. 563.

[12] Konig testified that although his employment contract stated he was hired as the Sales and Branch Manager of LatAm's Miami office, his title at or shortly after joining LatAm was COO. Tr. 571; Div. Ex. 98.

[13] In early 2008, Aguilera was working from home and sporadically came into LatAm's office because of her son's medical condition, which required hospitalization. Tr. 370.

[14] Lashkari, age 39, graduated from Queens College of New York in 1998 with majors in urban planning and social studies. Tr. 440. He holds Series 4, 7, 9, 10, 24, 53, 63, 66, 79, and 99 securities licenses. Tr. 440-41.

In January 2010, LatAm ceased trading operations, and in April 2010, it filed a Form BD-W, withdrawing its registration with the Commission. Div. Exs. 77, p. 5; 106.

B. Trading of Structured Notes

Neves brought the Brazilian Pension Funds to LatAm as clients when he joined the firm, and he directed trading for them. Tr. 80, 94. The majority of Neves' trading was for the Funds and he began trading structured notes for them in approximately 2007. Tr. 80-81, 94.

A structured note trade took between two days and a week for Neves to arrange.[15] Tr. 95. Neves first called issuing banks for pricing information and to inform them of the maturity and yield he sought in the note. Tr. 94-95. When Neves and the bank agreed upon the terms, Neves directed the bank to send the term sheet for the trade to Luna by email. Tr. 95-96. The bank would initially send a draft term sheet to Luna, and the final term sheet would be sent two or three days later. Tr. 96. When Luna received the term sheet, he would show it to Neves if Neves was at the office, or bring the term sheet to Neves' home to show it to him.[16] Tr. 96-97. Luna testified that Neves did not want him to send the term sheet to him by email.[17] Tr. 96-97.

The structured note transactions were usually done by the Deliver Versus Payment (DVP) method, which meant that LatAm only served as a pass-through account for the structured note, and LatAm would have a buyer ready to purchase the note at the same time that LatAm purchased the structured note from the bank. Tr. 98-99. Neves determined the amount of the structured note's markup. Tr. 100.

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[15] The Division's expert witness, David Paulukaitis, opined in his expert report that structured notes are debt instruments generally issued by financial institutions such as brokers-dealers, banks, or their affiliates. Div. Ex. 96, p. 4. Unlike conventional bonds, most structured notes do not pay a specified nominal rate of interest, but returns are instead determined based on the relative performance of some other financial instrument or market index. Id. He testified that, generally, structured notes are not for broad retail sale but are created based on specific criteria identified by institutional investors, and, normally, no active secondary market exists. Id., p. 5.

[16] Luna testified Neves did not work regular office hours, would come to LatAm's office only once or twice a week, and primarily worked from home. Tr. 85-86. Luna mostly worked at LatAm's office, but approximately once a week would go to Neves' home to drop off documents or to talk. Tr. 87.

[17] Luna testified that Neves did not want to discuss trading on the telephone and that he rarely communicated with Neves by email because Neves did not trust email or cellular telephones. Tr. 90. Initially, Luna and Neves communicated by cellular phone or Nextel point-to-point network, but at some point they instead began communicating through Skype. Tr. 87-88. Neves taught Luna how to destroy any previous or historical text messages that were exchanged on Skype. Tr. 93-94. According to Luna, they communicated through Skype for security purposes, although Luna did not know whom Neves wanted to keep information from. Tr. 230.

In addition to the Brazilian Pension Funds, Neves also sold structured notes to the Corporacion Autonoma Regional del Valle del Cauca (CVC), a Colombian institutional investor associated with a nonprofit organization. Tr. 97-98, 122-23. Andre Barbieri (Barbieri) was the broker of record and in charge of the CVC account at LatAm. Tr. 120. According to Luna, Neves brought Barbieri to LatAm as a foreign associate from Brazil, and Luna heard that Barbieri also worked at Atlantica Real. Tr. 121.

When the Funds or the CVC purchased a structured note from LatAm, Luna would confirm the trade's execution, process it in the computer system, and send confirmation of the trade, usually the term sheet, to the purchaser. Tr. 81, 110. If the Brazilian Pension Funds had purchased a structured note, Luna would send the term sheet to Priscilla Lima (Lima) or one "Daniel" at Atlantica Asset Management, the investment adviser to the Funds. Tr. 110-11. Luna believed that Atlantica Asset Management would send the term sheet to the Funds' administrator, Bank of New York Mellon (Mellon Bank). Tr. 111.

1. Markups and Interpositioning

Luna testified that in some instances, after LatAm purchased the structured note from the bank, it would sell the note to an intermediary account and then repurchase it before selling it to the Brazilian Pension Funds or the CVC.[18] Tr. 102-04, 108-09, 121. The price of the structured note would increase when it was sold to the intermediary account, when it was repurchased by LatAm, and then when it was sold to the end customer. Tr. 108-09, 121. Neves determined the price at which to execute the intermediary sales and the price that would be paid by the end customer. Tr. 121. When a structured note was purchased, Pershing would automatically send a trade confirmation to the purchaser, but the trade confirmation would only indicate the price paid by that purchaser, not the amount LatAm initially paid for the structured note, the price of the note in intermediary transactions, or the amount of any commission or markup. Tr. 105-07, 109.

Included among the intermediary accounts were River Consulting, HAA International, Inc. (HAA), Sinfon, and the Spectra Trust (Spectra). Tr. 104-05, 144-45, 147-48, 178-79; Div. Ex. 72. River Consulting was a retail account located in the British Virgin Islands, opened at LatAm by Luna at the request of Neves, and Neves' mother-in-law was the beneficiary of the account. Tr. 82, 229. Luna and Christiano Arndt (Arndt), a broker at LatAm who Luna believed also worked at Atlantica Asset Management, were the registered representatives for the account.[19] Tr. 84. HAA was an offshore trust Luna set up with the help of Neves and the beneficiary of the account was Luna's sister-in-law.[20] Tr. 104, 148, 151-52; Div. Ex. 91. Luna's

[18] According to Luna, interpositioning or markups were done for five or six structured notes sold by Neves, involving no more than ten transactions. Tr. 99, 237-38. The Division has proven that Neves and Luna marked up a total of eight structured note transactions. Div. Br., p. 11; Div. Ex. 72.

[19] Luna testified that he became the registered representative for River Consulting sometime after he became licensed in 2009. Tr. 83.

[20] Luna believes he helped his sister complete the new account paperwork; he then processed the new account at LatAm, and had Aguilera sign off on the new account on behalf of LatAm. Tr.

brother-in-law was the owner of the Sinfon account, and Luna directed the trading in the HAA and Sinfon accounts. Tr. 147-48.

Luna testified that there were three or four occasions when, at the direction of Neves, he changed or omitted the pricing information on the term sheets for the structured notes purchased by the Brazilian Pension Funds and the CVC. Tr. 113-114, 116. The methods Luna used to manipulate the price included: 1) "whiting out" the price; 2) typing the new price into a Word document, cutting it out and pasting it onto the term sheet, and making a photocopy of the altered term sheet; and 3) modifying the term sheet electronically using Acrobat, a computer program. Tr. 115-16. Luna also made changes to the coupons or percentages on the term sheets on some occasions. Tr. 118. Neves reviewed the altered term sheets before Luna sent them to Atlantica Asset Management by email. Tr. 117-19. In the case of the CVC, Luna gave the term sheet to Neves and transmitted it to Pershing, but did not send it directly to the CVC. Tr. 122, 159-60. Luna retained the original, unaltered term sheets for LatAm's records. Tr. 247-48.

2. Examples of Interpositioning Trades and Markups

i. Commerzbank Structured Note Transaction

On July 6, 2009, LatAm purchased a structured note from Commerzbank AG (Commerzbank) with a $10 million notional value at a price of 37% of the notional amount, or $3,700,000.[21] Tr. 124, 133; Div. Exs. 2; 25, p. 1; 72, p. 2.[22] At the same time, River Consulting purchased the note from LatAm at a price of 47% of the notional amount, or $4,700,000. Tr. 124-26, 133; Div. Exs. 25, pp. 1-2; 72, p. 2. On July 24, 2009, LatAm purchased the note back from River Consulting at 59.95% of the notional value, or $5,995,000. Div. Exs. 25, pp. 14-19; 72, p. 2. On the same date, LatAm sold the note to Atlantica Real for 60% of the notional value, or $6,000,000 Tr. 133; Div. Exs. 25, pp. 20-21; 72, p. 2. Atlantica Real paid a 62.16 % markup from the original price. Div. Ex. 72, p. 2.[23] River Consulting's gain on the transaction was approximately $1,295,000. Id.

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152. Luna testified that he told Aguilera that it was a new account and that it needed to be opened. Tr. 152.

[21] The ISIN number for this structured note was XS0439509240. Tr. 127-28; Div. Exs. 2; 72, p. 2.

[22] Div. Ex. 72 is a document created by William Tudor (Tudor), a Commission examiner, setting forth each transaction by which the Division contends Neves and Luna marked up eight structured notes (or in one instance, marked down). Div. Ex. 73 is Tudor's declaration, explaining that he created Div. Ex. 72 based on trade blotter data contained in Div. Ex. 71, which FINRA produced to the Division.

[23] Tudor stated that he calculated the "% Increase/Decrease In Price" found on Div. Ex. 72, which is the "percentage by which the price of each selected structured note increased or decreased over the course of the transactions in that structured note." Div. Ex. 73.

On July 13, 2009, Commerzbank sent Luna a copy of the draft term sheet for the structured note; it listed the price as 37% of the notional value. Tr. 128-30; Div. Ex. 2. On July 27, 2009, Luna sent a copy of the final term sheet to Lima at Atlantica Asset Management; it listed the price as 60% of the notional value. Tr. 130-32; Div. Ex. 3. Luna testified that 60% was not the correct issue price, he had altered the term sheet at the request of Neves, and Neves had determined the 60% price. Tr. 130-32; Div. Ex. 3. Luna agreed that there was no way to determine from the trade confirmation sent by Pershing the amount by which the price of the structured note was marked up over the original price or the subsequent prices that the structured note was sold at in the intermediary transactions. Tr. 127. Luna testified that the transactions involving the Commerzbank structured note were representative of the scheme as it worked generally, it just depended on which accounts and the number of accounts that were used as intermediaries. Tr. 134.

ii. Barclays Bank Structured Note Transactions

In early July 2009, LatAm purchased a structured note from Barclays Bank with a $3.5 million notional value at a price of 56.95% of the notional value.[24] Tr. 147, 154; Div. Exs. 30, p. 1; 72, p. 1. At the same time, River Consulting bought $3 million of the note from LatAm at a price of 78.50% of the notional value. Tr. 147, 154; Div. Exs. 30, pp. 1, 3; 72, p. 1. On July 10, 2009, HAA bought $475,000 of the note and Sinfon bought $25,000 of the note from LatAm at a price of 78.50% of the notional value. Tr. 147, 154; Div. Exs. 30, pp. 2, 4-5; 72, p. 1. On July 15, 2009, River Consulting, HAA, and Sinfon all sold the portions of the note that they had purchased back to LatAm at a price of 89.9% of the notional value. Tr. 154-55; Div. Ex. 72, pp. 1-2. LatAm then sold the $3.5 million Barclays structured note to Soverign II for a price of 90% of the notional value. Tr. 155; Div. Ex. 72, p. 2. Sovereign II paid a markup of 58.03% of the original price. Div. Ex. 72, p. 2.

On July 8, 2009, Barclays Bank sent the term sheet for the $3.5 million structured note by email to Luna and Neves and the term sheet reflected a price of 56.95% of the notional value. Tr. 153; Div. Ex. 6, p. 4. On July 16, 2009, Luna sent an email attaching the term sheet for the structured note to Lima; the term sheet did not indicate the price of the note and Luna testified that he probably removed it. Tr. 153-54; Div. Ex. 7.

According to Luna, Neves asked him to set up the HAA account so that Neves could pay him bonus commissions through the account without anyone at LatAm knowing about it. Tr. 148-49, 245-46. Luna testified that Neves paid $500,000 in bonus commissions into the HAA account. Tr. 149. Luna stated that the money Sinfon used to purchase the Barclays notes from LatAm came from his brother-in-law's own funds, and the money HAA used to purchase the Barclays notes from LatAm came from another account at LatAm for which Arndt was the beneficiary. Tr. 149-50. Arndt funded the account at the direction of Neves, and Luna testified that he shared the profits with his sister-in-law when the HAA account bought and sold the Barclays structured notes. Tr. 150-51.

[24] The ISIN number for this structured note was XS0439257766. Tr. 154; Div. Exs. 6; 7; 30; 72, pp. 1-2.

On August 3, 2009, LatAm purchased a structured note from Barclays Bank with an $8.5 million notional value at a price of 56.75% of the notional amount.[25] Tr. 136-37, 144-45; Div. Exs. 27, p. 1; 72, p. 1. River Consulting purchased the structured note from LatAm at 69% of the notional value. Tr. 136-37, 145; Div. Exs. 27, pp. 1-2; 72, p. 1. On August 10, 2009, River Consulting sold the structured note back to LatAm for 94.90% of the notional value, and LatAm sold the same note to Sovereign II for 95% of the notional value. Tr. 137, 145; Div. Exs. 27, pp. 3-6; 72, p. 1. Sovereign II paid a markup of 67.40% of the original price. Div. Ex. 72, p. 1. Luna testified that LatAm and River Consulting profited approximately twelve points and twenty-four points, respectively, from this series of trades, and that River Consulting made the most profit. Tr. 145. Luna agreed that Sovereign II was the "account that really pays the bills." Tr. 145.

On August 3, 2009, Barclays Bank sent the term sheet for the $8.5 million structured note to Neves by email for his approval, and the term sheet indicated a price of 56.75% of the notional value and proceeds of $4,823,750. Tr. 138-39; Div. Ex. 28. On August 10, 2009, Luna sent an email to Lima at Atlantica Asset Management regarding the $8.5 million structured note, and he attached to the email a chart reflecting a price of 95%, and the term sheet from Barclays for the note; however, the term sheet did not include the price or the amount of proceeds.[26] Tr. 139-143; Div. Ex. 5. Luna testified that Neves directed him to include the price of 95% in the chart, and he eliminated the price and amount of proceeds from the term sheet that was sent to Lima at the direction of Neves. Tr. 140-42.

iii. J.P. Morgan Chase Bank Structured Note Transaction

On November 24, 2008, LatAm purchased a structured note from J.P. Morgan Chase Bank with a $50 million notional amount at a price of 32.9% of the notional amount.[27] Tr. 160-61; Div. Exs. 10; 72, p. 4. LatAm then engaged in a series of purchase and sale transactions, selling portions of the structured note to intermediary accounts, repurchasing portions, and ultimately selling the entirety of the note to the CVC at a price that was marked up 61.91%.[28] Tr. 160-61; Div. Ex. 72, pp. 4-6. Treasure on the Bay, a LatAm account owned by Leandro Ecker (Ecker), was one of the accounts used as an intermediary in these transactions. Tr. 161. Ecker was a friend of Neves, and Luna eventually learned that Ecker was affiliated with Atlantica Asset Management. Tr. 161-62. Luna sent the term sheet for the structured note to

[25] The ISIN number for this structured note was XS0445230781. Tr. 137; Div. Exs. 27; 72, p. 1.

[26] The ISIN number listed on the chart and the term sheet sent to Atlantica Asset Management was XS0445230781. Tr. 144; Div. Ex. 5.

[27] The ISIN number for this structured note was XS0401826754. Tr. 158; Div. Exs. 10; 72, p. 4.

[28] Div. Ex. 72 reflects that the $50 million J.P. Morgan Chase Bank structured note was sold to the CVC by LatAm at 53.27% of the notional amount in the following pieces: $6.5 million on November 28, 2008; $9.6 million on December 3, 2008; $14.4 million on December 9, 2008; and $19.5 million on December 12, 2008. Tr. 162-163; Div. Ex. 72, pp. 5-6.

Pershing to set up the newly issued note in Pershing's system; however, Luna testified that he omitted the issue price from the term sheet at the direction of Neves so that Pershing would not reflect the issue price in its system. Tr. 159-60; Div. Ex. 11.

The CVC eventually discovered the markup for this structured note. On April 7, 2010, the CVC emailed Konig asking why the term sheet it received from LatAm reflected an issue price of 53.27% and an accretion rate of 6.5%, while the term sheet it later received from J.P. Morgan Chase Bank reflected an issue price of 32.9% and an accretion rate of 11.75%.[29] Tr. 163-166; Div. Ex. 99A. Konig forwarded the CVC's email to Luna. Luna testified that he did not recall receiving the email from Konig and he would not have had an answer for him. Tr. 164-65.

iv. Lehman Brothers Structured Note Transaction

On July 17, 2008, LatAm purchased a structured note from Lehman Brothers with a $7.168 million notional value. Tr. 178-79; Div. Ex. 72, p. 6. On that same date, Spectra purchased $1.568 million of that structured note. Tr. 178-79; Div. Ex. 72, p. 6. Spectra sold $5,000 of the note back to LatAm on August 8, 2008, and sold the remainder of the note back on August 12, 2008. Tr. 178-79; Div. Ex. 72, pp. 6-7. Luna testified that Spectra made approximately thirty-five cents per share as a result of those transactions. Tr. 179.

Alexej Predtechensky (Predtechensky) was the beneficiary of Spectra, a British Virgin Islands entity, and he was introduced to Luna as the President of the Brazilian Pension Funds. Tr. 168-70. Luna played a role in the creation of Spectra as an offshore account; Luna and Neves met with Amicorp Services Ltd., a Miami company that opens offshore accounts, about the creation of Spectra, and Neves signed the deed of trust executed between Spectra and Amicorp Trustees Ltd., the trustee designated for Spectra, as a witness for Predtechensky. Tr. 170-71, 173-75; Div. Exs. 35, 37. Spectra thereafter opened an account at LatAm, and on November 20, 2007, Aguilera signed the New Account Information sheet as a principal of LatAm. Tr. 175-77; Div. Ex. 92. The New Account Information sheet attached Spectra's deed of trust, which listed Predtechensky as the beneficiary of the trust, and which Neves signed as a witness. Tr. 174-75; Div. Ex. 92.

Neves funded the Spectra account in November 2007, by directing a "journal," or an account-to-account transfer, of $1.5 million from Ecker's Treasure on the Bay account to

[29] At some point Konig had met with the CVC, at the request of its investment director, to "make the client feel comfortable that [it was] dealing with a bona fide broker dealer in the [United] States." Tr. 575-76. Konig testified that he had not seen the term sheet for the structured note prior to the trip, and this was the one time that he had anything to do with the fixed income side of LatAm's business. Tr. 576-77. Konig testified that he checked with J.P. Morgan after receiving the email from the CVC and learned that the term sheet had been altered. Tr. 577-83. Immediately after learning of the alteration, Konig contacted a criminal attorney, who contacted the U.S. Attorney's Office, and Konig made an on-the-record declaration to the Federal Bureau of Investigation and was deposed by the Commission. Tr. 584.

Spectra's account at LatAm. Tr. 199-00, 206-07. Luna sent the transfer request to Pershing for clearance, attaching a letter from Ecker, which directed the transfer, and pages purportedly from Spectra's deed of trust, which reflected that Ecker was the settlor of the Spectra trust and had signed the deed of trust. Tr. 200-03; Div. Ex. 108. Luna testified that these pages from Spectra's deed of trust appeared to have been altered to make it look like Ecker was the owner of both the Treasure on the Bay and Spectra accounts so that Pershing could process the account transfer without requesting more information from LatAm or its customers. Tr. 202-05; Div. Exs. 37, 108. It was easier for Pershing to process the transfer when the owners of both accounts involved in the transfer were the same. Tr. 204-05. Luna understood Predtechensky to be the settlor of the Spectra Trust, not Ecker. Tr. 202-03. Luna testified that Neves directed the $1.5 million transfer, and that Neves directed trading in the Treasure on the Bay and Spectra accounts. Tr. 206-07.

3. Knowledge of the Structured Note Transactions

Although Aguilera learned of the structured note transactions for the Brazilian Pension Funds and the CVC in late 2006, and knew that profits from the trades were a substantial percentage of LatAm's revenue from 2007 through 2009, Aguilera never reviewed the notes' term sheets. Tr. 398-99. Aguilera testified that she was not involved in determining the markups or markdowns for the structured notes, and she was not concerned about the trades because the Funds were institutional clients who knew what they were buying. Tr. 399-400. Aguilera did not know whether markups were disclosed to purchasers of structured notes on trade confirmations, and she "didn't see the documentation because [she] wasn't paying attention." Tr. 401. Aguilera testified that she first became aware of the alterations to the term sheets during the Commission's investigation. Tr. 684-85.

After being confronted with his previous investigative testimony, Luna acknowledged that he interacted with Aguilera regarding the markups on the structured note transactions a couple of times. Tr. 215-17. Luna testified that Acosta and Aguilera questioned him about the markups, and that he told them to speak to Neves. Tr. 217-18. Luna does not know if they spoke to Neves, but the markups remained the same. Tr. 218. Luna testified that no one other than him and Neves knew about the alterations to the term sheets, including Aguilera. Tr. 244.

Vera testified that he reported a structured note trade done by Neves involving a markup and interpositioning to Aguilera, and created an internal memorandum for the compliance file, which he also gave to Aguilera.[30] Tr. 514-16. According to Vera, he raised other instances of markups and interpositioning by Neves to Aguilera, and on one occasion, Acosta, who was also in the office, responded by stating, "'You know, these are OTC instruments that are dealt with qualified institutional buyers. The price is whatever it is they want to pay for it. You don't have to worry about it.'" Tr. 515-16. Vera challenged Acosta and Acosta, who carried a gun in the office, leaned back and stated, "Things here are going to get done the way I want it to get done," and tapped his gun. Tr. 516-17. Vera testified that he responded by stating "'As long as you guys document it for me, I will write the memo, and you guys can come up with the

[30] Vera testified that he never reported this conduct to FINRA or the Commission because of the tough job market and the need to provide for his family. Tr. 520.

explanation.'"[31] Id. Vera testified that he was not aware of the alterations to the term sheets until after an examination by FINRA because Luna sent the altered term sheets from his personal email account, rather than his LatAm email account; however, that testimony is not consistent with emails admitted as evidence reflecting that Luna sent the altered term sheets from his LatAm email account. Tr. 531-34; Div. Exs. 3A, 5A, 7A.

Div. Ex. 1 is a series of LatAm internal memos from Vera to the compliance file, noting the trading of certain structured notes and identifying markup or markdown prices. Most of the memos state: "The matter was discussed with the principals of the firm and they have opted not to comment." Div. Ex. 1. Aguilera denies that Vera ever discussed these memos with her or that they were in the office, and claims she did not see them until the government investigation. Tr. 685. Lashkari also testified that he never saw the memos while he was at LatAm. Tr. 470.

Sometime in 2007, Aguilera learned that Neves was a principal of Atlantica Asset Management. Tr. 394-95; Div. Ex. 14. LatAm's outside counsel drafted a waiver of disclosure or consent to be signed by the Brazilian Pension Funds' administrator, Mellon Bank, disclosing Neves' relationship with LatAm and Atlantica Asset Management, which Aguilera knew was never signed. Tr. 395-96; Div. Ex. 14. Although she eventually asked Vera to draft an amendment to Neves' Form U4, the relationship was not actually disclosed on the Form U4 until close to the FINRA examination, and Aguilera admitted that it was negligent not to disclose it earlier. Tr. 396-98.

C. FINRA Examination of LatAm

During the course of a routine examination of LatAm during the fourth quarter of 2009, FINRA confirmed a significant increase in revenues, and Nick Hartofilis (Hartofilis), the examination manager at FINRA who oversaw the examination, testified that LatAm's revenues increased from approximately $50,000 per year in 2005 or 2006 to approximately $57 million between January 2006 and November 2009. Tr. 256-60. The examination revealed that 95% of LatAm's revenue was derived from two Brazilian funds.[32] Id.

FINRA reviewed the trading activity for the two Brazilian funds, including LatAm's trade blotter, and identified instances where there were excessive markups that appeared to involve structured notes related to the Brazilian funds and instances where nominee accounts that were opened by registered representatives at LatAm appeared to be "interposed between the firm's riskless principal trading account and the [Brazilian funds]." Tr. 259-60, 266-67. FINRA obtained indicative prices from Barclays Bank and Commerzbank and determined that "[t]here

[31] Aguilera testified that Vera never raised the issue of markups or markdowns with her, but she recalled one instance in 2008 when he brought a trade to her attention that she initially believed was customer related, but later learned it had to do with the principal trading accounts; Acosta, Landers, and Aguilera met regarding the trade and she believed the issue was resolved. Tr. 682-83.

[32] The two funds are clearly the Brazilian Funds, although Hartofilis never refers to them by name. Tr. 256-60.

was no reason for the significant fluctuation in price that [it was] seeing on the LatAm trade blotter." Tr. 267-68. FINRA discovered that the pricing on the structured note term sheets received from the issuer appeared to have been changed in the term sheets sent to the Brazilian funds and discovered term sheets where the price had been removed altogether. Tr. 268-69.

Through its review of LatAm's trade blotter, general ledger, and operating accounts, FINRA learned that four or five registered representatives at LatAm appeared to control entities that received commissions derived from the transactions in which there were excessive markups or markdowns, and this included Neves or an entity he appeared to control. Tr. 261-62. FINRA questioned Aguilera about the purpose of the commissions, and, according to Hartofilis, Aguilera said that Ecker, Arndt, Neves, and Barbieri shared in the commissions from the trading of these accounts. Tr. 263.

FINRA did not find any evidence that the excessive markups had been disclosed to the Brazilian funds, and it determined, in total, LatAm charged approximately $27 million in markups or markdowns to the Brazilian funds, with Neves being paid $22 million in commissions. Tr. 269-70. Hartofilis testified that FINRA would have expected Aguilera, as the President and FINOP of LatAm, to understand the sources of the revenues and who was responsible for the trading, and she would have been expected to ensure that the markups and markdowns were being charged in compliance with FINRA and Commission rules.[33] Tr. 270. Following the examination, FINRA took enforcement action against several of the individuals involved, including bars against Neves and Luna, and made referrals to the Commission and the CNB, a Brazilian regulator. Tr. 270-71.

D. LatAm's WSPs and Reporting Structure

1. LatAm's WSPs

Bridgehouse Consulting drafted the LatAm WSPs on an as-needed basis. Tr. 280. A draft of LatAm's WSPs revised January 1, 2008 (January 2008 WSPs), reflected that Aguilera was the President, FINOP, and Anti-Money Laundering Compliance Officer, and Vera was a General Principal and Chief Compliance Officer.[34] Tr. 288-91; Div. Ex. 21, pp. 210-12. The January 2008 WSPs stated that both Aguilera and Vera had primary supervisory responsibility[35] for "Hiring, Registration, and Supervision of Registered Representatives and Associated

[33] Hartofilis understood from speaking to FINRA's field examiners that Aguilera signed off on the wire transfers at LatAm. Tr. 273-74.

[34] The January 2008 WSPs reflected that Vera was also President, but Landers testified that this appeared to be an error, and there is no other record evidence suggesting Vera was President. Tr. 291.

[35] Landers testified that the primary supervisor had "front line responsibility for that particular program or task," while a secondary supervisor was responsible if the primary supervisor was "not available, [was] gone for an extended period of time, or has been designated to have these roles by the primary supervisor." Tr. 291-92.

Persons," and that Vera had primary, and Aguilera had secondary, supervisory responsibility for "Review and Approval of Mark-Ups, Mark-Downs, and Commission."[36] Div. Ex. 21, pp. 209-12. LatAm's WSPs revised May 1, 2008 (May 2008 WSPs), and June 15, 2009 (June 2009 WSPs), were in accordance with the delegations above, and reflected that Aguilera had primary anti-money laundering responsibilities, but, oddly, the June 2009 WSPs no longer reflected that Aguilera was the Anti-Money Laundering Compliance Officer. Div. Exs. 89, pp. 210-13; 90, pp. 209-12. The June 2009 WSPs also reflected that Konig was the Chief Executive Officer and shared primary supervisory responsibility over "Hiring, Registration, and Supervision of Registered Representatives and Associated Persons," and secondary supervisory responsibility over "Review and Approval of Mark-Ups, Mark-Downs and Commission." Div. Ex. 90, p. 213.

LatAm's WSPs revised September 15, 2009 (September 2009 WSPs), also reflected that Aguilera was the President and FINOP of LatAm and Vera was a General Principal and Chief Compliance Officer, as well as the Anti-Money Laundering Compliance Officer. Div. Ex. 24, pp. 213-16. Aguilera had primary supervisory responsibility over "Hiring and Supervision of Registered Representatives and Associated Persons," but Vera no longer had primary supervisory responsibility over that area.[37] Id. Vera had primary supervisory responsibility over "Review and Approval of Mark-Ups, Mark-Downs and Commission," but Aguilera no longer had secondary supervisory responsibility over that area. Id. Konig was no longer listed as the Chief Executive Officer, and he no longer was listed as having primary supervisory responsibility over "Hiring, Registration, and Supervision of Registered Representatives and Associated Persons," or secondary supervisory responsibility over "Review and Approval of Mark-Ups, Mark-Downs, and Commission." Id.

The January 2008, May 2008, June 2009, and September 2009 WSPs all required the Designated Principal's prompt supervision of "pricing of securities transactions either by reviewing each order ticket or by reviewing the purchase and sales blotter containing commissions and/or markups," to ensure "that the company's mark-up/mark-down policies for principal transactions, and commission charges for agency transactions" were adhered to. Div. Exs. 21, p. 27; 24, p. 27; 89, p. 27; 90, p. 27. They provided that the mark-ups and commission charges would be based on a consideration of "all relevant factors," including: 1) type of security involved; 2) availability of the security in the market; 3) price of the security; 4) disclosure to the customer; 5) profit resulting from the transaction; and 6) dollar amount of money involved. Div. Exs. 21, p. 27; 24, p. 27; 89, p. 27; 90, p. 27.

2. LatAm's Supervisory Practices in Actuality

Aguilera acknowledged that the WSPs indicated that she was responsible for supervision of trading, but she testified that that designation was an oversight and she never supervised trading. Tr. 666. Aguilera knew that she had been assigned responsibilities that were beyond

[36] Landers understood the January 2008 WSPs' Schedule of Designated Responsibilities to be correct. Tr. 291; Div. Ex. 21, pp. 209-12.

[37] Landers understood the September 2009 WSPs' Schedule of Designated Responsibilities to be correct. Tr. 293-94; Div. Ex. 24, pp. 212-16.

her capabilities, but she believed it was necessary for regulatory purposes to have a second principal with responsibility over trading. Tr. 667. Aguilera did not try to correct the WSPs until 2009. Tr. 667-68.

According to Aguilera, Neves and Acosta exercised joint control over LatAm from 2007 through 2009, and Acosta exercised control over LatAm even when he was a consultant.[38] Tr. 669. Aguilera testified that before Acosta left LatAm, he reviewed and signed trade tickets and blotters, but he stopped doing that when he became a consultant. Tr. 672. According to Aguilera, when Acosta returned to the firm in May 2009, he resumed exercising authority over trading, but no longer signed trade tickets or blotters. Tr. 672, 676-77. Aguilera approved the firm's wire transfers and checks after Acosta left LatAm, including those related to commission payments for transactions involving the Brazilian Pension Funds or the CVC, even though the January 2008, May 2008, June 2009, and September 2009 WSPs all gave Vera primary supervisory responsibility over wire transfers, and gave Aguilera only secondary supervisory responsibility. Tr. 393-94; Div. Exs. 21, pp. 210-12; 24, pp. 213-15; 89, pp. 211-13; 90, pp. 210-12.

Aguilera treated Neves as a majority owner of LatAm unofficially, and she testified that Neves determined her salary, the location of LatAm's offices, and which bank LatAm would open an account with. Tr. 665. After Acosta left, Aguilera did not get involved with Neves' business with the Brazilian Pension Funds because she believed Acosta would tell her if there was something she needed to know about the business. Tr. 369.

A Corporate Resolution of the Members of LatAm (Resolution), dated April 1, 2008, and signed by Vera, stated that Aguilera, as President, was "responsible for the overall supervision of the company." Tr. 371; Div. Ex. 17, p. 9. Aguilera agreed that she understood, as of the date of the Resolution, that her job as overall supervisor was to verify that everyone was doing their job. Tr. 372. According to Aguilera, her "responsibility was to make sure that [Vera] was reviewing the blotters and having a second reliable compliance auditor review the accuracy of that review." Tr. 373. Aguilera testified that outside consultants, specifically Landers, were responsible for reviewing Vera's work until 2008, and after 2008, Konig became responsible for reviewing the Chief Compliance Officer's work. Tr. 374-75, 378-79, 678, 682. This external compliance review occurred "a few times a year." Tr. 682. According to Aguilera, she could not be responsible for reviewing Vera's work because of her son's medical condition and because she "didn't have the knowledge that [she would] do a good job reviewing the trade activity." Tr. 379. She testified that as part of her supervisory review she reviewed a sample of approximately fifty trade confirmation statements once a year. Tr. 402. Aguilera agreed that she was not very knowledgeable about trading and that she thought she needed additional training to learn more, but she never received further training because she was involved with marketing the firm and taking care of her son. Tr. 374.

[38] Landers testified Acosta continued to make his presence felt at LatAm and was involved on a day-to-day basis after he left, but Landers agreed that the consulting agreement Acosta executed with LatAm removed him from day-to-day management of the firm. Tr. 283-84.

Vera testified that he primarily reported to Aguilera as the President of the firm, but he may have reported to Acosta before he left the firm. Tr. 491. Vera reviewed LatAm's trade blotter, and if he had a question he would discuss it with Aguilera or Acosta. Tr. 493-94. Vera testified that Aguilera would review LatAm's trade blotter on a regular basis.[39] Tr. 498, 528. According to Vera, he did not sign off on the trade blotters, Aguilera did. Tr. 545. Vera believes he asked for access to LatAm's financial records early on, but was told that the FINOP, who may or may not have been Aguilera at the time, would take care of any questions regarding that information. Tr. 505-06. Vera believed that Steve Singer (Singer) at Mayben Strategic may have performed the day-to-day work that the FINOP would have done.[40] Tr. 506. Vera testified that if he ever asked Neves or Luna a question about their trading, Neves told him to ask Aguilera or Acosta. Tr. 500.

Aguilera testified that she did not believe Vera was an adequate compliance officer because he was not in LatAm's office regularly, LatAm's files were incomplete, and, due to Vera's negligence, the firm did not file a notification with FINRA when Acosta left. Tr. 390-91. According to Aguilera, she tried to fire Vera approximately three times. Tr. 678. In early 2008, Aguilera approached Acosta (who was a consultant to LatAm at the time) and Neves about firing Vera, but neither agreed with her. Tr. 678. In June or July 2008, Aguilera spoke to outside legal counsel about firing Vera and outside counsel recommended that he be fired, but, according to Aguilera, Acosta told her that they could not fire Vera because Vera was assisting Acosta with several side projects, and instead they hired Konig part time. Tr. 391-92, 679-81.

Konig testified that he joined LatAm as COO in July 2008, and he understood that he had been hired to help establish institutional trading in equities. Tr. 564-67. He had no responsibility over the fixed income side of LatAm's business, did not have access to the back office or accounts for fixed income, and was not invited to the fixed income meetings, many of which were held "behind closed doors." Tr. 567-69. Specifically, he did not have access to the Pershing NetIQ Exchange system that would have allowed him to view the ownership and activity in fixed income accounts. Tr. 568. He testified that he understood that he would have supervisory responsibility over the business that he was going to bring in to LatAm. Tr. 569. Konig does not recall seeing LatAm's WSPs until late 2009, and he described them as "very insufficient." Tr. 568.

[39] This testimony appears to be inconsistent with his investigative testimony. "Q: Would Ms. Aguilera review trade blotters or (sic) any sort of regular basis? A: Only when I would discuss it with her." Tr. 498-99. When confronted with his investigative testimony, Vera stated, "she would take a closer look at the blotter when I would discuss it with her," and "when she would come into the office, she would regularly pick up any of the binders to take with her." Tr. 499.

[40] According to Landers, he advised LatAm to hire someone to work with Aguilera as FINOP because FINRA had expressed concern about Aguilera's lack of experience when LatAm was attempting to get clearance to add third-party clearing as a business line, and LatAm subsequently hired Singer. Tr. 307-08.

Konig testified that he reported to Aguilera. Tr. 569-70. According to Konig, Aguilera handled the administration of LatAm and acted as supervisor of recruiting. Tr. 571-72. Konig described Aguilera's effectiveness as "deficient" because she came to the office sporadically and there was very little communication from her when she was not at the office. Tr. 572. Konig testified that there were many disagreements between Aguilera and Acosta on one side, and Vera on the other, and both sides thought the other side's performance was deficient.[41] Tr. 573. Konig did not know whose responsibility it was to review the trade blotters, but he ventured it was a "concerted effort between the CCO and the president." Tr. 584.

Lashkari described compliance at LatAm in November 2009 as "need[ing] help," and "sloppy," although some of the general documents required by FINRA appeared to be present. Tr. 451. Lashkari testified that he was concerned when Vera told him that he should "never sign anything." Tr. 454-55. LatAm's trade blotters were not kept in good order, and Lashkari never recalled seeing signatures on any of the blotters, which he would have expected to see. Tr. 461. Vera told Lashkari that he did not sign off on the trade blotters, Aguilera did, but Konig and Aguilera told Lashkari that Vera should have signed the blotters. Tr. 462-64. When Lashkari told Aguilera about Vera's preference not to sign off on things at the firm, Aguilera said that was one of the reasons he was being replaced. Tr. 462-63. Lashkari testified that he did not know who the trading supervisor was at LatAm, but Aguilera did not have the necessary experience. Tr. 478-80. He never saw Aguilera review trade blotters or tickets or take any supervisory action as a trading supervisor. Tr. 479-80.

Aguilera agreed with the Division that with regard to her supervisory duties at LatAm, she "trusted but did not verify." Tr. 703.

E. Compensation

Prior to Neves joining LatAm, Aguilera earned four or six thousand dollars per month. Tr. 383. Between 2007 and 2009, Aguilera received a biweekly paycheck in an amount determined by Neves and Acosta. Tr. 384, 388. Generally, from October 2007 through August 2008, Aguilera was paid $9,000 biweekly, from August 2008 through February 2009, she was paid $10,500 biweekly, from March 2009 through September 2009, she was paid $12,500 biweekly, and beginning in October 2009, she was paid $15,000 biweekly. Tr. 385-86; Div. Ex. 107. Aguilera testified that she would not be surprised if her adjusted gross income in 2007 was $773,649, in 2008 was $826,850, and in 2009 was $1.8 million. Tr. 403. Neves also lent Aguilera $275,000 in 2007, $75,000 of which Aguilera paid back. Tr. 383.

Aguilera also received other payments from LatAm for her benefit. For example, on January 30, 2009, Aguilera signed a check on behalf of LatAm for $110,000 to M.C. Tiles

[41] Landers testified that he was aware of several disagreements between Aguilera and Vera as to their supervisory responsibilities, including the role of Anti-Money Laundering Compliance Officer and, separately, with respect to Neves' accounts. Tr. 294-95.

Corporation, a company affiliated with Neves, to pay for constructing a home office.[42] Tr. 423-25; Div. Ex. 104, pp. 15, 19. On March 10, 2009, $43,192 was paid to Intercontinental Marble Company, on March 16, 2009, $35,606.37 was paid to Opus Stone, on March 16, 2009, $22,000 was paid to M.C. Tiles Corporation, and on March 25, 2009, $13,579.37 was paid to Opus Stone; all were for Aguilera's benefit. Tr. 425-28; Div. Ex. 104, pp. 28-29.

Aguilera testified Neves was paid 90% commissions on revenues made from his trades and Aguilera paid out his commissions. Tr. 388. All expenditures of money went through Aguilera. Tr. 429. Aguilera recalled numerous payments made to Neves, including a $100,000 transfer to Neves on April 14, 2009, a transfer of $500,000 to Neves three days later, a $100,000 transfer to Neves on April 22, 2009, a $200,000 transfer to Neves on May 13, 2009, and a $300,000 transfer to Neves on May 29, 2009. Tr. 430-37. She also recalled transferring to Neves $2.7 million on November 4, 2009, $2.25 million on November 24, 2009, and $1.25 million dollars on November 25, 2009, as commission payments. Tr. 437.

F. Expert Testimony of David E. Paulukaitis

The Division called David E. Paulukaitis (Paulukaitis)[43] as an expert with experience in regulatory compliance in the areas of supervision, supervisory controls, and internal compliance systems for broker-dealers. Div. Ex. 96, p. 2. In his expert report, Paulukaitis opined that: 1) as President of LatAm, Aguilera was ultimately responsible for supervising the activities of LatAm and its registered representatives; 2) Aguilera could delegate certain of her responsibilities to other appropriately qualified principals of LatAm, but she had a duty to ensure that any duties she delegated were being adequately carried out; 3) Aguilera's failure to closely monitor Vera's performance, to whom she had delegated supervisory responsibilities, in light of her concerns about his performance, constituted a failure to fulfill her supervisory responsibilities; and 4) the markups on the transactions at issue were of such significant size that they would have been easily identifiable through even a cursory review of LatAm's transaction blotters and should have warranted a comprehensive review to determine whether they were fair and reasonable. Id., pp. 6-7.

Paulukaitis opined that Aguilera, as President, was responsible for overall supervision of LatAm, but she could delegate supervisory responsibility to someone with sufficient knowledge

[42] Aguilera testified that some of this money may also have been spent on renovations for the company. Tr. 427.

[43] Paulukaitis received a degree in finance from the University of Alabama at Huntsville in 1981. Between 1982 and 2005, he was employed by National Association of Securities Dealers, Inc. (NASD), as an examiner, supervisor of examiners, and Associate District Director in Atlanta, Georgia. Div. Ex. 96, Ex. 1. Since 2005, Paulukaitis has been Managing Director at Mainstay Capital Markets Consultants, Inc. Id. Paulukaitis was acquainted with Konig and Landers prior to the hearing through his work at NASD supervising broker-dealers, but his last conversation with Landers was probably in May 2005, and his last conversation with Konig was approximately eight or ten months ago. Tr. 608. Paulukaitis testified that his previous acquaintance did not affect his opinion or his testimony. Tr. 608.

and experience if she took reasonable steps to ensure the delegated duties were performed in a reasonable matter. Id., p. 9. He concluded that Aguilera's delegation of supervisory responsibilities to Vera appeared reasonable based on Vera's qualifications, but Aguilera failed to verify Vera was adequately performing his supervisory duties. Id., pp. 11-12. While Aguilera represented that she confirmed Vera was reviewing the trade blotters, she did not have a means to test the adequacy of his review, which made her delegation unreasonable. Id. Aguilera's reliance on Landers to monitor Vera's performance was insufficient because she failed to test the adequacy of Lander's monitoring. Id., p. 12. Aguilera had a duty to "more closely scrutinize" Vera's performance because she had concerns about his performance, which Paulukaitis opined she failed to do. Id., pp. 13-14.

Paulukaitis opined that broker-dealers have a duty to ensure that the prices they charge to customers on securities transactions are fair and reasonable, and that LatAm's markups on the structured notes were so high that "on their face they should have raised serious concerns as to any principal who saw them," and this was particularly true in light of the transactions' large size. Id., pp. 16, 18. He opined that Aguilera's lack of understanding of the structured note transactions was "noteworthy," given that they accounted for a significant portion of the firm's revenue in 2008 and 2009. Id., p. 17. Paulukaitis believed that had Aguilera fulfilled her supervisory responsibilities reasonably, she would have detected the markups on the structured notes. Id., p. 20.

III. Arguments of the Parties

The Division argues that Neves and Luna violated Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder by knowingly engaging in a fraudulent scheme to charge undisclosed excessive markups in structured note transactions by using offshore nominee accounts as intermediaries before selling the notes to the end customers. Div. Br., p. 31. The Division asserts that Neves and Luna failed to disclose to the end customers that the structured notes were first sold to intermediaries, they sold the structured notes to the end customers at markups of approximately 19% to 67%, and they altered term sheets to misrepresent or omit pricing information in order to conceal the notes' actual price. Id., pp. 34-35. The Division argues that Neves and Luna aided and abetted LatAm's violations of Section 15(c)(1) of the Exchange Act based on the same conduct underlying their primary violations. Id., p. 38.

The Division argues that Aguilera, as President, had ultimate supervisory responsibility for the firm and failed to reasonably discharge her duty to effectively implement LatAm's procedures that sought to ensure fairness of markups to LatAm's customers. Id., pp. 40-41. Specifically, Aguilera failed to review Neves' and Luna's trading activity despite knowing of LatAm's substantial increase in revenues, Neves' large commission payments, Neves' potential conflict of interest with the Brazilian Pension Funds, and Vera's concerns about the transactions. Id. The Division asserts that Aguilera did not reasonably delegate supervisory authority to Vera because of her failure to verify Vera's work and her failure to revoke or remedy the delegation after becoming concerned about Vera's performance. Id., pp. 41-43. The Division argues that Aguilera should be barred from association with a broker-dealer in a supervisory capacity, barred

from the securities industry, ordered to disgorge $1,243,762.76 plus prejudgment interest, and pay a third-tier civil penalty of $150,000. Id., pp. 44-52.

Aguilera does not deny that Neves and Luna violated the antifraud provisions or engaged in a scheme to charge undisclosed excessive markups to the Brazilian Pension Funds and the CVC; however, she claims the steps Neves and Luna took to cover up the fraud made it impossible for her to discover and prevent it. Resp. Br., p. 1; Resp. Reply Br., pp. 1-2, 4. She argues that she had no trading experience, no supervisory role in trading, and that the firm's WSPs did not accurately reflect job responsibilities. Resp. Br., pp. 3-4; Resp. Reply Br., pp. 5-7. Aguilera claims that she was conscientious about reviewing the trade blotters, and her review consisted of verifying that Vera had signed the trade blotters. Resp. Br., pp. 5-6. Finally, Aguilera asserts that Acosta and Neves exercised control over LatAm, and that a majority of the structured note trades took place prior to Acosta's departure in October 2007 and after his return in May 2009. Resp. Br., pp. 7-8; Resp. Reply Br., pp. 8-11. She requests that the case be dismissed and that she be awarded her costs and fees associated with defense of this matter. Resp. Br., p. 8.

IV. Discussion and Conclusions of Law

A. Neves and Luna Committed Fraud and Aided and Abetted LatAm's Violations of Exchange Act Section 15(c)(1):

Neves and Luna willfully violated Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Exchange Act Rule 10b-5, and willfully aided and abetted LatAm's violations of Section 15(c)(1) of the Exchange Act, by engaging in a scheme to defraud the Brazilian Pension Funds and the CVC and to charge them excessive markups on structured note transactions. In furtherance of their scheme, Neves and Luna made material misrepresentations and materially misleading omissions by altering the price of the structured notes on the term sheets sent to the Funds through their representatives.

Section 17(a)(1) of the Securities Act makes it unlawful to employ devices, schemes, or artifices to defraud in the offer and sale of securities. Section 17(a)(2) of the Securities Act prohibits material misstatements or omissions of material facts, and Section 17(a)(3) of the Securities Act prohibits transactions, practices, or courses of business that operate as a fraud or deceit on the purchaser. Section 10(b) of the Exchange Act prohibits the use of "any manipulative or deceptive device or contrivance" in connection with the purchase or sale of any security. Exchange Act Rule 10b-5 makes it unlawful for any person to employ any device, scheme, or artifice to defraud, to make any misstatements or omissions of material fact, or to engage in any act, practice, or course of business which operates as a fraud or deceit.

To establish a violation of the antifraud provisions, the Division must establish that Neves and Luna made material misrepresentations or materially misleading omissions, or committed a deceptive act as part of a scheme to defraud, in connection with the offer, sale, or purchase of securities, either acting with scienter or negligently. See SEC v. Pirate Investor LLC, 580 F.3d 233, 239-45 (4th Cir. 2009); SEC v. Morgan Keegan & Co., 678 F.3d 1233, 1244 (11th Cir. 2012) (citing SEC v. Merch. Capital, LLC, 483 F.3d 747, 766 (11th Cir. 2007)); SEC

v. Steadman, 967 F.2d 636, 641-43 (D.C. Cir. 1992). Violations of Section 17(a)(1) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder require a showing of scienter; Sections 17(a)(2) and (3) of the Securities Act require a showing of negligent conduct. See Steadman, 967 F.2d at 641 (citing Ernst & Ernst v. Hochfelder, 425 U.S. 185, 193 n.12 (1976) and Aaron v. SEC, 446 U.S. 680, 686 n.5, 696-97 (1980)). A finding of willfulness does not require intent to violate the law, but merely intent to do the act which constitutes a violation of the law. Wonsover v. SEC, 205 F.3d 408, 414 (D.C. Cir. 2000); Arthur Lipper Corp. v. SEC, 547 F.2d 171, 180 (2d Cir. 1976).

1. Scheme to Defraud and Material Misrepresentations and Omissions

Neves was the architect of this fraudulent and deceptive scheme. He purchased the structured notes from issuing banks with the intention of selling the notes to the Funds or the CVC. Tr. 97-98, 103. In some instances, however, instead of selling the structured notes directly to the Funds or the CVC, he and LatAm first sold and repurchased the notes in intermediary transactions. Tr. 102-04, 108-09, 121. River Consulting, HAA, and Sinfon – intermediary accounts involved in the purchase and resale of the structured notes – were affiliated with Neves, Luna, or their relatives. Tr. 103-04, 147-48, 229. Another account used in the intermediary transactions, the Spectra Trust, was set up with the assistance of Neves and Luna for the benefit of Predtechensky, a friend of Neves and the president of the Brazilian Pension Funds.[44] Tr. 168-69, 178-79. Neves determined the price at which LatAm executed the intermediary sales and the price at which the structured notes were sold to the Funds or the CVC. Tr. 121. There is no evidence that Neves, Luna, or LatAm ever disclosed to the Funds or the CVC that the structured notes had been sold to affiliated accounts prior to their ultimate sale, and Luna testified that LatAm and the affiliated accounts involved in the intermediary transactions profited, while the ultimate purchasers of the notes "really pa[id] the bills." Tr. 145.

The Commission has "long held that interpositioning can result in fraud where . . . it is done with scienter and results in the charging of excessive and undisclosed markups." Andrew P. Gonchar, Exchange Act Release No. 60506 (Aug. 14, 2009), 96 SEC Docket 19852, 19863 (citing Donald T. Sheldon, 51 S.E.C. 59, 78 (1992) (concluding that applicant's interpositioning resulted in fraudulent markups demonstrated clear scienter and was particularly egregious), aff'd 45 F.3d 1515 (11th Cir. 1995)), petition denied, 409 F. App'x 396 (2d Cir. 2010). "Sales of securities by broker-dealers to their customers carry with them an implied representation that the prices charged in those transactions are reasonably related to the prices charged in an open and competitive market," and charging customers excessive markups without proper disclosure is fraudulent conduct that violates Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act. SEC v. First Jersey Sec., Inc., 101 F.3d 1450, 1469 (2d. Cir. 1996). Generally, a markup is deemed excessive "when it bears no reasonable relation to the prevailing market price;" however, whether a markup is excessive must be determined on a case-by-case basis. Grandon v. Merrill Lynch & Co., 147 F.3d 184, 190 (2d Cir. 1998) (internal quotation omitted). Typically, markups should not exceed 5%, particularly in transactions for debt securities. Id. at

[44] The use of the Spectra Trust as an account in the intermediary transactions is particularly noteworthy because it suggests that Neves and Luna acted in concert with Predtechensky to defraud the Funds for which Predtechensky was president.

191; Inv. Planning, Inc., 51 S.E.C. 592, 594 (1993) ("[I]t has long been recognized that debt securities markups normally are lower than those for equities, and that, in appropriate circumstances, markups under 5% may be subject to sanction."); FINRA Rule 2440, IM-2440-1 (Mark-Up Policy).

There is no evidence that anyone at LatAm disclosed to the Funds or the CVC the amount of markups that were charged, or that markups had even occurred. The markups charged to the Funds and the CVC for the four transactions detailed in the Findings of Fact ranged from approximately 58% to 67% of the original value. Those markup calculations were not rebutted by Aguilera or any testimony in this proceeding. The markups on the eight structured note transactions set forth in Div. Ex. 72 ranged between 19% and 67% over the price the issuer originally charged. Div. Br., p. 11; Div. Exs. 72, 73. These markups were well above the generally accepted 5% threshold and there is no evidence to suggest that the markups were within the range of anything resembling a prevailing market price. Hartofilis testified that during the course of FINRA's investigation he obtained indicative pricing from some of the banks that issued the structured notes, and determined that there was no reason for the significant price fluctuations. Tr. 267-68.

Beyond failing to disclose the excessive markups to the Funds and the CVC, Neves and Luna, in fact, took steps to conceal the markups, thereby making material misrepresentations and omissions to the Funds and the CVC. Specifically, at Neves' direction, Luna altered the price on certain of the structured notes' term sheets from the original price that LatAm paid for the structured notes to the higher price at which Neves sold the structured notes to the Funds. Tr. 113-14. These term sheets were then sent to the Funds or their representatives at Atlantica Asset Management. Tr. 130-32; Div. Ex. 3.

The standard of materiality is whether or not a reasonable investor would have considered the information important in deciding whether or not to invest, and if disclosure of the misstated or omitted fact would have significantly altered the total mix of information available to the investor. See SEC v. Steadman, 967 F.2d at 643; see also Basic Inc. v. Levinson, 485 U.S. 224, 231-32, 240 (1988); TSC Indus., Inc. v. Northway, Inc., 426 U.S. 438, 449 (1976). The issue prices of the structured notes and the amount of any markups charged were undoubtedly material to the Funds. The issue prices, when compared to the prices at which the Funds purchased the structured notes from LatAm, would have indicated to the Funds that they were being charged a significant markup.[45] By altering the issue prices of the notes to reflect the higher price at which the Funds purchased the note from LatAm, Neves and Luna essentially made it appear that no markup was being charged. The CVC and Konig subjectively believed the markups to be material; the CVC's investment director contacted Konig when he found out

[45] It is not clear from the record that Neves or Luna sent a term sheet to the CVC in connection with its November 2008 purchase of a J.P. Morgan Chase structured note. Luna testified, however, that with respect to this note, he omitted the issue price on the term sheet before sending the term sheet to Pershing so that Pershing would not be able to reflect the issue price in its system. Tr. 159-60; Div. Ex. 11. By omitting the issue price on the term sheet sent to Pershing, Neves and Luna were effectively concealing the issue price from the CVC in connection with its purchase of the structured note.

about them, and Konig, in turn, contacted the authorities. Tr. 579-84; Div. Exs. 100A, 101A. Because the trading confirmations generated by Pershing and sent automatically to the Funds when they purchased a structured note only indicated the price at which the Funds had purchased the note from LatAm, and not the issue price, by altering the term sheets for the structured notes, Neves and Luna were able to further their scheme to defraud the Funds.

2. Scienter, Willfulness, Interstate Commerce, and "In Connection with the Purchase or Sale of Securities"

Scienter is defined as a "mental state embracing the intent to deceive, manipulate, or defraud." Ernst & Ernst v. Hochfelder, 425 U.S. 185, 193 n. 12 (1976); Aaron v. SEC, 446 U.S. 680, 686 n.5 (1980). A finding of recklessness satisfies the scienter requirement. Hollinger v. Titan Capital Corp., 914 F.2d 1564, 1568-69 (9th Cir. 1990); David Disner, 52 S.E.C. 1217, 1222 & n.20 (1997).

The evidence is unequivocal that Neves and Luna acted willfully and with the intent to deceive or defraud in carrying out their fraudulent scheme and in making material misrepresentations and omissions. Neves intentionally arranged the fraudulent structured note transactions, determined the prices at which to execute the transactions, and chose which accounts to sell the structured notes to in intermediary transactions. Luna, at the direction of Neves, purposefully altered the term sheets sent to the Funds to conceal the excessive markups and the fraudulent scheme, and knowingly omitted the price from the term sheet sent to Pershing so that Pershing would not reflect the correct issue price of the November 2008 J.P. Morgan Chase structured note in its systems. Neves reviewed the altered term sheets before Luna sent them to the Brazilian Pension Funds' investment adviser. Tr. 117-19. Neves' desire not to discuss any trades by telephone or email, and his request to receive copies of the term sheets for the structured notes in hard copy, rather than by email, further reflect Neves' scienter.

Neves and Luna engaged in their fraudulent activities "in connection with" the offer, purchase, and sale of the structured notes to the Brazilian Pension Funds and the CVC. See SEC v. Zandford, 535 U.S. 813, 819-20 (2002) (embracing a broad reading of the "in connection with the purchase or sale of any security" requirement). Section 2(a)(1) of the Securities Act and Section 3(a)(10) of the Exchange Act include "any note" in the definition of "security." 15 U.S.C. § 78c(a)(10); Reves v. Ernst & Young, 494 U.S. 56, 65 (1990). Because the Brazilian Pension Funds and the CVC are located outside the U.S., and they purchased structured notes from LatAm, a Florida-based broker-dealer, Neves' and Luna's fraudulent scheme was necessarily carried out through means of interstate and foreign commerce.

3. Neves and Luna Aided and Abetted LatAm's Violations of Exchange Act 15(c)(1).

Section 15(c)(1) of the Exchange Act prohibits broker-dealers from effecting transactions in, or inducing or attempting to induce, the purchase or sale of securities by means of a manipulative, deceptive, or other fraudulent device or contrivance. A violation of Exchange Act Section 15(c)(1) requires a finding of scienter. Gregory O. Trautman, Securities Act Release No. 9088 (Dec. 15, 2009), 97 SEC Docket 23492, 23523 n. 70 ("The scienter standards that apply to

violations of Securities Act Section 17(a), Exchange Act Section 10(b), and Exchange Act Rule 10b-5 also apply to violations of Exchange Act Section 15(c)(1).").[46] To establish an aiding and abetting violation, there must be a showing that: 1) a primary securities law violation by another occurred; 2) the aider and abettor was generally aware that his or her role was part of the overall activity that was improper or illegal; and 3) the aider and abettor provided substantial assistance in the conduct that constituted the violation. Graham v. SEC, 222 F.3d 994, 1000 (D.C. Cir. 2000).

LatAm committed primary violations of Exchange Act Section 15(c)(1). As detailed above, LatAm's agents Neves and Luna defrauded the Funds and the CVC by charging them undisclosed, excessive markups on structured notes and made material misrepresentations and omissions by providing altered term sheets to the Funds in order to conceal the excessive markups. Neves and Luna plainly acted within the scope of their employment, and their scienter is imputable to LatAm. See vFinance Invs., Inc., Exchange Act Release No. 62448 (July 2, 2010), 98 SEC Docket 29918, 29934; Raymond James Fin. Servs., Inc., Initial Decision Release No. 296 (Sept. 15, 2005), 86 SEC Docket 711, 775-78 (collecting cases).

Neves and Luna aided and abetted LatAm's violations of Exchange Act Section 15(c)(1). The record indisputably reflects that Neves and Luna were aware of their role in charging excessive markups and providing altered term sheets, and they provided substantial assistance to LatAm's violations. As previously discussed, Neves and Luna, acting with scienter, were the masterminds of the fraudulent scheme, and they made the decision to interposition the accounts, charge the excessive markups, and alter the term sheets sent to clients.

B. Aguilera Failed Reasonably to Supervise Neves and Luna

Aguilera failed reasonably to supervise Neves and Luna with a view to preventing their violations of the antifraud provisions of the securities laws. Exchange Act Section 15(b)(6), incorporating Section 15(b)(4)(E) by reference, allows the Commission to sanction a person associated with a broker-dealer if that person "has failed reasonably to supervise, with a view to preventing violations of [the securities laws], another person who commits such a violation, if such other person is subject to his supervision." Neither scienter nor willfulness is an element of a failure-to-supervise charge, although scienter may be considered in evaluating the reasonableness of supervision. Clarence Z. Wurts, 54 S.E.C. 1121, 1132 (2001); SEC v. Geon Indus., Inc., 531 F.2d 39, 53-54 (2d Cir. 1976).

The Commission has emphasized that "'the president of a brokerage firm is responsible for the firm's compliance with all applicable requirements unless and until he or she reasonably delegates a particular function to another person in the firm, and neither knows nor has reason to know that such a person is not properly performing his or her duties.'" John B. Busacca III, Exchange Act Release No. 63312 (Nov. 12, 2010), 99 SEC Docket 34481, 34496 (quoting Richard F. Kresge, Exchange Act Release No. 55988 (June 29, 2007), 90 SEC Docket 3072, 3084); see also Donald T. Sheldon, 51 S.E.C. 59, 79 (1992), aff'd 45 F.3d 1515, 1517 (11th Cir.

[46] An amended version of this Commission Opinion is available only on the Commission's website. In pertinent part, it is identical to the printed Release.

1995). Even when the president has delegated supervisory responsibilities, the president retains a duty to follow up on that delegation. Johnny Clifton, Securities Act Release No. 9417 (July 12, 2013), 2013 SEC Lexis 2022, at *49 ("[E]ven if we accepted [respondent's] claim that he delegated . . . the authority to review and approve e-mails, [respondent], as president, retained a duty to follow-up on that delegation, which he failed to do."); see also Midas Sec., LLC, Exchange Act Release No. 66200 (Jan. 20, 2012), 102 SEC 50351, 50372 ("It is not sufficient for the person with overarching supervisory responsibilities to delegate supervisory responsibilities to a subordinate . . . and then simply wash his hands of the matter until a problem is brought to his attention." (internal quotations omitted)).

Aguilera was President of LatAm from approximately October 2007 until the firm ceased operations in 2010, and she was therefore responsible for the firm's compliance with all applicable requirements and the "overall supervision of the company" during that time. Tr. 371-72; Div. Ex. 17, p. 9. Aguilera testified that she understood that her job as overall supervisor was to verify that everyone else was doing their job. Tr. 372. LatAm's WSPs indicated that Aguilera had primary supervisory responsibility over the hiring and supervision of registered representatives from at least January 2008 through September 2009. The hearing testimony regarding who at LatAm was responsible for supervising the registered representatives and their trading is confusing and contradictory. Aguilera testified that she never supervised trading at the firm, Vera was responsible for reviewing the firm's trade blotters, and outside consultants were responsible for reviewing Vera's work until 2008, when Konig became responsible for reviewing Vera's work. Tr. 373-75, 378-79, 667, 678, 682. Vera, on the other hand, testified that he reviewed LatAm's trade blotter, but that Aguilera was responsible for signing off on it and that she frequently reviewed the trade blotters. Tr. 493-94, 498, 528, 545. Konig, who I find to be a credible witness, testified that he did not know whose responsibility it was to review the trade blotters, but he thought it was a "concerted effort" between the president and chief compliance officer. Tr. 584.

Even accepting as true Aguilera's testimony that she delegated supervisory responsibility over the registered representatives to Vera, Aguilera still failed reasonably to supervise within the meaning of Exchange Act Section 15(b)(4)(E) because she failed in her duty to follow up on that delegation. See Donald T. Sheldon, 51 S.E.C. at 79 (holding that the president of a broker-dealer was liable for failure to supervise where he delegated the duty to supervise sales to branch managers and "neither monitored, nor established procedures to monitor, [branch managers] to determine whether they were carrying out their supervisory responsibilities"). In her post-hearing brief, Aguilera argues that she was "conscientious about verifying [Vera's] trade blotter signatures," and that her "trade blotter review consisted of verifying that [Vera] had signed off on the blotters." Resp. Br., p. 5. That argument, however, appears to conflict with testimony that she gave at the hearing; namely, that outside consultants and Konig were responsible for reviewing Vera's review of the trade blotters, not her. Tr. 374-75, 378-79, 678, 682. Lashkari, who I find to be a credible witness, testified that the firm's trade blotters were not kept in good order and he never recalled seeing signatures on any of the blotters. Tr. 460-61. In fact, Lashkari testified that he told Aguilera that Vera had told him that he did not sign off on anything at the firm, and Aguilera said that was one of the reasons Vera was being replaced. Tr. 461-63. Moreover, simply verifying that the trade blotters had been signed, without following up on the substance of Vera's review, does not constitute reasonable delegation.

Aguilera's assertion that she delegated her responsibility to verify Vera's work to outside compliance consultants, specifically Landers, and then to Konig when he joined the firm, was similarly inadequate because there is no evidence that she took any steps, or that there were any procedures in place, to verify that they were adequately reviewing Vera's work. Aguilera testified that this external compliance review only occurred "a few times a year." Tr. 682. Furthermore, I find Konig's testimony that he did not have access to the back office or accounts for fixed income trading and could not have exercised any supervisory responsibility over the fixed income trading to be credible. Tr. 567-69.

Aguilera also unreasonably continued to delegate supervisory responsibility to Vera after developing serious concerns about his performance. Aguilera testified that she did not believe Vera was an adequate compliance officer because the compliance files were incomplete and Vera was not in the office regularly, among other things. Tr. 390-91. As early as June or July of 2008, Aguilera spoke to outside counsel about firing Vera, but he was not let go until Lashkari was hired in November 2009. Tr. 390-92, 678-81.

Aguilera's argument that she cannot be held liable because the altered term sheets and use of affiliated accounts concealed Neves' and Luna's fraudulent scheme and prevented her from discovering it is misplaced. Resp. Br., pp. 1-3. Exchange Act Section 15(b)(4)(E) focuses on whether there were effective policies, procedures, and systems in place and whether there was adequate supervision. Whether a particular fraudulent scheme may nonetheless remain undetected does not shield a broker-dealer or supervisor from failing to adopt and implement adequate supervisory policies. See Consol. Inv. Servs., Inc., Exchange Act Release No. 36687 (Jan. 5, 1996), 61 SEC Docket 20, 25 (rejecting respondents' argument that no type of supervisory program could have prevented the "vast fraud" carried out where respondents took no steps to verify that the supervisory procedures in place were being followed). The cases cited by Aguilera regarding when concealment of fraud tolls the statute of limitations are irrelevant. Resp. Reply Brief, p. 2.

In further support of her position, Aguilera argues that the WSPs did not accurately reflect job responsibilities, and she points to Konig's testimony that the WSPs were "very insufficient" and "a complete mess." Resp. Br., p. 4. Instead of helping Aguilera, this argument hurts her. The fact that the firm's WSPs were inaccurate, and Aguilera, the firm's President, knew that they were inaccurate, reflects that her dereliction of duty was egregious. The steps Aguilera purportedly took in 2009 to correct the WSPs were steps in the right direction, but they do not absolve her of her previous inaction. During the hearing, Aguilera acknowledged that the WSPs assigned her responsibilities that were beyond her capabilities, stating: "I had all the responsibilities that were beyond my capabilities, but we left it like that, thinking that it was necessary for regulatory purposes to have a second person, a second principal be responsible for trading." Tr. 667-68. Aguilera's decision to assume supervisory responsibilities that she knew were beyond her capabilities for the purpose of satisfying a regulatory requirement contradicts the argument that she sought in good faith to amend the WSPs to make them accurate.

Aguilera also appears to take the position that because she had no experience in trading and had never executed a securities transaction in her life, she cannot be held liable for failure to

supervise Neves and Luna. Resp. Br., pp. 3-5. She quotes from a Commission settlement, John H. Gutfreund, 51 S.E.C. 93 (1992), for the proposition that I must consider whether Aguilera had the "'requisite degree of responsibility, ability or authority to affect the conduct of' employees." Resp. Reply Br., pp. 5-6. That quotation, however, related to the Commission's discussion of liability regarding the chief legal counsel of the firm who the Commission stated did not become a supervisor "solely" because of his position, as opposed to the president of the firm, who the Commission stated "was responsible for compliance with all of the requirements imposed on his firm," pending reasonable delegation. John H. Gutfreund, 51 S.E.C. at 112-13. Aguilera does not offer any support for the position that her lack of substantive trading knowledge entitles her to an exception from the general rule that presidents of broker-dealers are responsible for the overall supervision of the company in the absence of reasonable delegation. The fact that Aguilera may have been unqualified for her position does not shield her from liability.

Finally, Aguilera argues, in essence, that she cannot be held liable because she was just a figurehead of LatAm. She asserts that Acosta exercised "effective control," and Neves exercised "de facto" control over the firm and that the voting trust was a sham. Resp. Br., p. 7. She points to Konig's testimony that he eventually came to understand that Neves had more "control de facto" than Acosta or Aguilera did, and states that she felt "highly pressured" by Acosta. Id. The Commission has previously rejected the argument that a "figurehead president" cannot be held liable for failure to supervise stating:

> We recognize that [respondent] was more or less a figurehead president. However, once he accepted that title, he was required to fulfill the obligations attached to his office for as long as he occupied the position, a duty he failed to discharge.

Kirk A. Knapp, 50 S.E.C. 858, 864-65 (1992) (rejecting respondent's argument that he "was only a 'temporary' president"). The law is not such that the president of a Commission-registered broker-dealer can abdicate her supervisory responsibilities as a result of pressure put on her by the firm's largest producer. See Albert Vincent O'Neal, 51 S.E.C. 1128, 1136 (1994) ("This case presents another illustration of the so-called 'big producer' who, despite a myriad of warnings to management, is allowed to continue his depredations to the detriment of public investors.").

V. Sanctions

A. Associational Bar

Sections 15(b)(4)(E) and 15(b)(6)(A)(i) of the Exchange Act authorize the Commission to bar or suspend a person from association with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization if it finds that such person failed reasonably to supervise, with a view to preventing violations of the federal securities laws, another person who commits such violations, if the other person is subject to the person's supervision, and if it is in the public interest. 15 U.S.C. §78o(b)(4)(E), (b)(6)(A)(i); John W. Lawton, Investment Advisers Act of 1940 (Advisers Act) Release No. 3513 (Dec. 13, 2012), 105 SEC Docket 61722, 61737. In determining whether a

sanction is in the public interest, the Commission considers the following factors: the egregiousness of the respondent's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the respondent's assurances against future violations, the respondent's recognition of the wrongful nature of his or her conduct, and the likelihood that the respondent's occupation will present opportunities for future violations. See Vladimir Boris Bugarski, Exchange Act Release No. 66842 (Apr. 20, 2012), 103 SEC Docket 53374, 53378 (citing Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979), aff'd on other grounds, 450 U.S. 91 (1981)). The Commission also considers the extent to which the sanction will have a deterrent effect. See Schield Mgmt. Co., Exchange Act Release No. 53201 (Jan. 31, 2006), 87 SEC Docket 848, 862 & n.46.

Aguilera's conduct was egregious and recurrent in that supervisory procedures at LatAm, and supervision over Neves and Luna in particular, were woefully deficient during the approximately two years she was LatAm's President. Aguilera acknowledged that LatAm's WSPs were inaccurate, but she did not attempt to correct them until 2009. According to her testimony, Aguilera delegated supervisory responsibility to Vera; however, that delegation was evidently unreasonable given her significant concerns about his performance and her testimony that she believed he should have been fired due to his multiple failings.

Aguilera acted recklessly, that is, with a low degree of scienter. Recklessness, in the context of securities fraud, is "highly unreasonable" conduct, "which 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., 570 F.2d 38, 47 (2d Cir. 1977) (quoting Sanders v. John Nuveen & Co., 554 F.2d 790, 793 (7th Cir. 1978)); see also S.W. Hatfield, CPA, Exchange Act Release No. 69930 (Jul. 3, 2013), – SEC Docket –, p. 29. Aguilera's supervision, such as it was, was highly unreasonable. This is evidenced by her testimony that she knew as overall supervisor of LatAm she was responsible for verifying that everyone was doing their job, but nonetheless continued to delegate supervisory responsibility to Vera and external consultants without ever conducting any meaningful verification of their work. Aguilera testified that she knew that the profits from Neves' and Luna's trading on behalf of the Brazilian Pension Funds were a substantial percentage of LatAm's revenue from 2007 through 2009, and yet she never reviewed the term sheets for the structured notes and testified that she wasn't concerned about the trading because, as institutional clients, the Brazilian Pension Funds knew what they were buying. Tr. 398. The evidence is overwhelming that she was oblivious to the danger that her brokerage may have been taken over by a confidence artist, a danger that would have been obvious had her supervision been reasonable.

While Aguilera has not denied that Neves and Luna engaged in a scheme to defraud the Funds and the CVC, she has completely failed to recognize the wrongful nature of her conduct. Aguilera defended this proceeding by arguing that it was impossible to uncover Neves' and Luna's fraud because of the steps they took to conceal it, and she has consistently attempted to shift responsibility for the supervisory failings at LatAm to Vera, Acosta, Neves, outside consultants, and even Konig. Aguilera has not provided any assurances against future violations. Based on Aguilera's testimony, I am particularly concerned that if she were allowed to remain in the securities industry, the likelihood of future violations would be high. The securities industry

relies on supervisors to help police itself, and Aguilera clearly cannot be relied upon for that purpose. By failing to perform her duties as President, and failing to even accept a modicum of responsibility, Aguilera has shown herself to be unfit to participate in the securities industry, especially in a supervisory capacity. Under the circumstances, and even considering her low degree of scienter, a bar from association with a broker or dealer in a supervisory capacity and a bar from association with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization is appropriate in the public interest.

B. Disgorgement and Prejudgment Interest

Pursuant to Section 21B of the Exchange Act, the Division seeks an order requiring disgorgement of ill-gotten gains by Aguilera. 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). It returns the violator to where he or she would have been absent the misconduct and deters others from violating the securities laws. Id.; Zacharias v. SEC, 569 F.3d 458, 471 (D.C. Cir. 2009) "Disgorgement need only be a reasonable approximation of the profits casually connected to the violation." Guy P. Riordan, Securities Act Release No. 9085 (Dec. 11, 2009), 97 SEC Docket 23445, 23480 (quoting First City Fin. Corp., Ltd., 890 F.2d at 1231), petition denied, 627 F.3d 1230 (D.C. Cir. 2010). Once the Division shows that its disgorgement figure reasonably approximates the amount of unjust enrichment, the burden of going forward shifts to the respondent to demonstrate that the Division's disgorgement figure is not a reasonable approximation. Id. Any risk of uncertainty as to the disgorgement amount falls onto the wrongdoer whose illegal conduct created the uncertainty. See First City Fin. Corp., Ltd., 890 F.2d at 1232.

The Division argues that Aguilera should be ordered to disgorge the compensation that she received apart from her salary during the period in which Neves and Luna charged excessive markups. Div. Br., pp. 49-50. The Division asserts that prior to Neves' arrival at LatAm, Aguilera's compensation was minimal, however, as revenues increased, Aguilera's compensation increased, and that it would be inequitable to allow Aguilera to keep the portion of her compensation that stemmed from revenues generated from the fraudulent conduct. Id. The Division contends that Aguilera received $1,019,384.76 in additional payments and $224,377 in funds used for improvements to her home, for a total of $1,243,761.76.[47] Id. at 50. In addition, the Division requests that Aguilera pay prejudgment interest of $161,311.99, calculated from September 1, 2009, to April 19, 2013. Id.

The Division's calculation of the $1,019,384.76 in additional payments is set forth in Div. Ex. 107, which reflects payments to or for the benefit of Aguilera from October 2007 through December 2009, not including the regular salary payments Aguilera received from Paychex, Inc., the company that handled LatAm's payroll. Tr. 345-47, 350; Div. Ex. 107. Fernando Torres, senior regional account at the Commission, testified that he created Div. Ex. 107 and calculated the additional payments figure by examining LatAm's bank accounts at

[47] The Division lists the total as $1,243,762.76.

HSBC and Bank of America. Tr. 347-48. Aguilera admitted on direct examination that the $224,377 was used to build a home office for her benefit. Tr. 423-29.

Aguilera does not explicitly challenge the Division's calculation of disgorgement in her post-hearing brief or reply brief. She does, however, identify several payments she received and provides further explanation of them. Resp. Reply Br., pp. 11-12. The payments are described as: 1) $200,000 of a $275,000 loan from Neves in 2007 under the terms of a promissory note for which she received a Form 1099 (Aguilera contends that she paid back $75,000 of the loan); 2) checks paid out of LatAm to home office construction vendors, which Aguilera personally assumed and were recorded as income payments to Aguilera in the amount of $224,377.74; 3) a distribution of capital of $300,000 that Acosta ordered Aguilera to use to pay off her mortgage so that her credit would not affect the company; and 4) a 2009 lump sum payment made by LatAm directly to the IRS for $305,845.00 for her 2008 taxes, which she contends was mostly used for LatAm's corporate taxes.

It is unclear whether Aguilera contends that these payments should not be included in the disgorgement calculation, but I will address each payment assuming that is her argument. The $200,000, or $275,000, loan from Neves to Aguilera in 2007 does not appear to be included in the Division's disgorgement calculation in Div. Ex. 107, and therefore this payment is not in dispute. Div. Ex. 107. The $224,377 used to construct a home office and $300,000 "distribution of capital," were compensation for Aguilera's benefit that she received separate from her salary during the period in which the excessive markups were charged and therefore are properly subject to disgorgement. Aguilera admits that the $224,377 was not expensed to LatAm and was "clearly recorded as income payments" to her on her income tax filing as a distribution of capital. Resp. Reply Br., p. 12. While Aguilera testified that some of the money that she received to construct a new home office may have been spent on renovations for the company instead, Aguilera has failed to provide a reasonable approximation, or any evidence, of how much was actually spent on renovations for the company. Tr. 427. The mortgage payment plainly benefited Aguilera and the fact that it may have had an incidental benefit on LatAm's credit is irrelevant. Finally, while Aguilera asserts that the 2009 lump sum payment to the IRS was "mostly" used for LatAm's corporate taxes, she offers no evidence in support of her claim, and therefore I find that it was properly included in the disgorgement calculation.

In sum, the Division has shown the reasonableness of the $1,243,761.76 disgorgement figure, and Aguilera has not met her burden of demonstrating that the figure is not a reasonable calculation. Aguilera did not object to the Division's request for $161,311.99 in prejudgment interest.[48]

[48] Pursuant to Rule 600(a) of the Commission's Rules of Practice, prejudgment interest is due "from the first day of the month following each such violation through the last day of the month preceding the month in which payment of disgorgement is made," and therefore the Division's request for prejudgment interest only through April 19, 2013, the date the parties' post-hearing briefs were due, benefits Aguilera. 17 C.F.R. § 201.600(a).

C. Civil Penalty

Under Section 21B(a)(1)(D) of the Exchange Act, the Commission may impose a civil penalty if it is in the public interest and if respondent "has failed reasonably to supervise, within the meaning of section 15(b)(4)(E), with a view to preventing violations of the provisions of such statutes, rules and regulations, another person who commits such a violation, if such other person is subject to his supervision." 15 U.S.C. § 78u-2(a)(1)(D).

A three-tier system establishes the maximum civil money penalty that may be imposed for each violation found. 15 U.S.C. § 78u-2(b). Where a respondent's misconduct involved fraud, deceit, or deliberate or reckless disregard of a regulatory requirement, and resulted in "substantial losses or created a significant risk of substantial losses to other persons or resulted in substantial pecuniary gain," the Commission may impose a "Third-Tier" penalty of up to $150,000 for each act or omission by an individual. Id.; 17 C.F.R. § 201.1004 (adjusting the statutory amounts for inflation). In determining whether a penalty is in the public interest, the Commission may consider: 1) whether the violation involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; 2) the resulting harm to other persons; 3) any unjust enrichment and prior restitution; 4) the respondent's prior regulatory record; 5) the need to deter the respondent and other persons; and 6) such other matters as justice may require. 15 U.S.C. § 78u-2(c).

The Division seeks the imposition of a third-tier, $150,000 civil penalty on Aguilera. Under the circumstances, I find a third-tier penalty of $150,000 to be warranted and in the public interest. Aguilera acted in at least reckless disregard of a regulatory requirement in failing to supervise Neves and Luna, which resulted in substantial losses to the Funds and the CVC. The supervisory failures at LatAm were widespread and lasted for years, and Aguilera, as President, was ultimately responsible for them. Aguilera does not dispute that Neves and Luna defrauded LatAm's clients, and Hartofilis' testimony that FINRA identified approximately $27 million in markups and markdowns that were charged by LatAm to the Funds was not rebutted. Aguilera testified at the hearing that she would not be surprised if her adjusted gross income after Neves arrived in 2007 was $773,649, in 2008 was $826,850, and in 2009 was $1.8 million. Tr. 403. Aguilera has not recognized the wrongful nature of her conduct, and therefore the need to deter her is strong.

The Division requests that the third-tier civil penalty be imposed one time. While the statute provides that a penalty may be imposed for "each act or omission," it leaves 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). Although it is at least arguable that Aguilera's conduct in failing reasonably to supervise Neves and Luna over the course of approximately two years constituted more than one "act or omission," a one-time penalty of $150,000 would prejudice Aguilera the least.

D. Ability to Pay

Under Section 21B(d) of the Exchange Act, in any proceeding in which the Commission may impose a civil penalty, a respondent may present evidence of her ability to pay the penalty. 15 U.S.C. § 78u-2(d). The Commission may, in its discretion, consider such evidence in

determining whether a penalty is in the public interest. Id. Such evidence may relate to the extent of the respondent's ability to continue in business and the collectability of the penalty, taking into account any other claims of the United States or third parties upon the respondent's assets and the amount of the respondent's assets. Id.

Pursuant to Rule 630(a) of the Commission's Rules of Practice, the Commission also considers evidence of ability to pay as a factor in determining whether a respondent should be required to pay disgorgement and interest. 17 C.F.R. § 201.630(a). In First Sec. Transfer Syst., Inc., 52 S.E.C. 392, 397 (1995), the Commission stated that it is:

> [C]ognizant of the inadvisability of assessing penalties so heavy that the persons against whom they are assessed are unable to pay them. Such a situation results in the expenditure of agency resources in unsuccessful attempts to collect the penalties. Moreover, the imposition of a sanction that cannot be enforced may ultimately render the deterrent message intended to be communicated by the sanction less meaningful.

On June 24, 2013, Aguilera submitted a sworn and dated Form D-A, Disclosure of Assets and Financial Information (Form D-A), and on June 26, 2013, Aguilera submitted her Form 1040, U.S. Individual Income Tax Return for 2011 in further support of her Form D-A.[49] A review of Aguilera's sworn Form D-A supports her claim that the disgorgement, prejudgment interest, and civil penalties requested by the Division are beyond her ability to pay now or in the reasonably foreseeable future. The Form D-A is consistent with Aguilera's testimony at the hearing regarding her finances.[50] Aguilera described the current state of her finances as "bad," and testified that she paid no estimated taxes in 2008 or 2009 due to ignorance and approximately $600,000 of the money she received from LatAm was used to pay taxes. Tr. 701, 706, 708-09. According to Aguilera, she owes over a million dollars in taxes and the Internal Revenue Service has twice levied the accounts in which she receives child support payments for her children. Tr. 687. Aguilera stated that she originally paid $695,000 for her home, which is currently worth $300,000 and is in foreclosure. Tr. 707. Aguilera testified that she spent some of the money she received on her son's medical condition, which included traveling to medical research centers in Boston, Chicago, Las Vegas, and Brazil. Tr. 707. Aguilera testified that "money was [her] god," but now she realizes that was wrong. Tr. 708.

Aguilera filed her Form D-A after post-hearing briefing was complete, and therefore the Division did not have the opportunity to address Aguilera's Form D-A in its post-hearing submissions. In its Reply brief, the Division noted that Aguilera failed to submit evidence

[49] I ruled that both submissions were covered by protective order and shall be maintained under seal. I also admitted, not under seal, Aguilera's tax returns for 2005-2009, and Forms W-2, as Div. Exs. 78-85.

[50] Aguilera's testimony about her financial condition, although similar to some of the information contained in her confidential Form D-A, was made in open court and therefore it does not violate the protective order to include the substance of her testimony in this ID.

concerning her ability to pay and therefore disgorgement, interest, and civil penalties should be imposed on her; however, since the Form D-A was filed, this Office has received no objection from the Division as to its filing. Div. Reply. Br., p. 9.

The clear and overwhelming weight of the evidence is that Aguilera does not currently, and will not for the foreseeable future, have the ability to pay the disgorgement, interest, and civil penalties ordered in this proceeding. As a result of the imposition of the full collateral bar, Aguilera will not have the ability to continue working in the securities industry. Unlike in other cases, there is no contradictory evidence in the record to suggest that Aguilera does, in fact, have the ability to pay. See Robert L. Burns, Advisers Act Release No. 3260 (Aug. 5, 2011), 101 SEC Docket 44807, 44825 (denying claim of inability to pay where respondent's purported net worth was on its face sufficient to pay disgorgement, interest, and penalties, and where respondent stated his intention to re-enter the securities industry); Joseph John VanCook, Exchange Act Release No. 61039A (Nov. 20, 2009), 97 SEC Docket 22700, 22731 (denying respondent's claim of inability to pay $533,234.01 in disgorgement plus prejudgment interest of $228,901.89 and a $100,000 civil penalty where respondent had a net worth of $400,000 and had earned over $200,000 in the twelve months prior to filing his financial statements). Therefore, Aguilera will not be ordered to pay disgorgement, prejudgment interest, or civil penalties in this proceeding.

VI. Record Certification

Pursuant to Rule 351(b) of the Commission's Rules of Practice, 17 C.F.R. § 201.351(b), I certify that the record includes the items set forth in the Record Index issued by the Secretary of the Commission on May 22, 2013.

VII. Order

IT IS ORDERED that, pursuant to Section 15(b) of the Securities Exchange Act of 1934, Respondent Angelica Aguilera is BARRED from association with a broker or dealer in a supervisory capacity.

IT IS FURTHER ORDERED that, pursuant to Section 15(b) of the Securities Exchange Act of 1934, Respondent Angelica Aguilera is BARRED from association with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.

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 of the Commission's Rules of Practice, 17 C.F.R. § 201.111. 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 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 motion to correct 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.

In the event that the Commission reviews this initial decision, Respondent is reminded of the need to update her sworn financial disclosure statement. See 17 C.F.R. § 201.410(c) ("Any person who files a petition for review of an initial decision that asserts the person's inability to pay either disgorgement, interest or a penalty shall file with the opening brief a sworn financial disclosure statement containing the information specified in Rule 630(b).").

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Cameron Elliot
Administrative Law Judge