INITIAL DECISION RELEASE NO. 919
ADMINISTRATIVE PROCEEDING
FILE NO. 3-16353

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

In the Matter of		
SPRING HILL CAPITAL MARKETS, LLC, SPRING HILL CAPITAL PARTNERS, LLC, SPRING HILL CAPITAL HOLDINGS, LLC, and KEVIN D. WHITE	:	INITIAL DECISION November 30, 2015

APPEARANCES: Nicholas A. Pilgrim and Daniel M. Loss for the Division of Enforcement, Securities and Exchange Commission

Ronald W. Dunbar, Jr., and Andrew E. Goloboy of Dunbar Law P.C. for Respondents Spring Hill Capital Markets, LLC, Spring Hill Capital Partners, LLC, Spring Hill Capital Holdings, LLC, and Kevin D. White

BEFORE: Carol Fox Foelak, Administrative Law Judge

SUMMARY

This Initial Decision concludes that Spring Hill Capital Partners, LLC, violated the registration provisions by operating as an unregistered broker-dealer from May 2009 through February 2010, that Spring Hill Capital Markets, LLC, violated the recordkeeping, net capital, and reporting provisions during March 2010, and the remaining Respondents were secondarily liable for violations of those provisions. The Initial Decision imposes cease-and-desist orders; orders disgorgement of $3,953,608 plus prejudgment interest; orders civil penalties totaling $82,500; and censures Spring Hill Capital Markets, LLC, and Kevin D. White.

I. INTRODUCTION

A. Procedural Background

The Securities and Exchange Commission instituted this proceeding with an Order Instituting Proceedings (OIP) on January 22, 2015, pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 (Exchange Act) and Section 9(b) of the Investment Company Act of 1940. The undersigned held a four-day hearing in New York City on May 11-14, 2015. The Division of Enforcement (Division) called fourteen witnesses from whom testimony was

taken, including one expert. Respondents called three witnesses. Numerous exhibits were admitted into evidence.[1]

The findings and conclusions in this Initial Decision are based on the record and public official records of which official notice has been taken, pursuant to 17 C.F.R. § 201.323. Preponderance of the evidence was applied as the standard of proof. *See Steadman v. SEC*, 450 U.S. 91, 96-104 (1981). Pursuant to the Administrative Procedure Act, 5 U.S.C. § 557(c), the following post-hearing pleadings were considered: (1) the Division's Post-Hearing Brief and Proposed Findings of Fact and Conclusions of Law; (2) Respondents' Post-Hearing Brief and Proposed Findings of Fact and Conclusions of Law (including their September 1, 2015, Notice of Filing of Supplemental Authority regarding their Appointments Clause argument); (3) the Division's Post-Hearing Responsive Brief; and (4) Respondents' Reply Brief. All arguments and proposed findings and conclusions that are inconsistent with this Initial Decision were considered and rejected.

B. Allegations and Arguments of the Parties

This proceeding concerns two separate fact situations involving Respondents: (1) a history of transactions from May 2009 through February 2010, while Spring Hill Capital Market's application for registration as a broker-dealer was pending, during which the OIP alleges that Spring Hill Capital Partners acted as an unregistered broker-dealer; and (2) a series of transactions in a bond, known as the Gramercy Bond, in March 2010, during which, the OIP alleges, Spring Hill Capital Markets, by then a registered broker-dealer, failed to keep an accurate blotter, to keep required minimum net capital, and to timely inform the Commission of a net capital deficiency. There is little dispute between the Respondents and the Division as to the facts, but rather as to the legal conclusions to be drawn from the facts. The OIP alleges that Respondents violated, or aided and abetted and caused violations of, the registration, record-keeping, net capital and reporting provisions of the Exchange Act. Respondents have stipulated to one of the violations charged, at OIP ¶ 31, related to the Gramercy Bond transactions: that White and Spring Hill Capital Holdings willfully aided and abetted and caused a violation by broker-dealer Rafferty Capital Markets, LLC, through which Spring Hill Capital Markets introduced trades, of Exchange Act Section 17(a) and Rule 17a-3(a)(1), which require broker-dealers to make and keep current blotters containing an accurate itemized daily record of all purchases and sales of securities. Supp. Stip. 13.

The Division is seeking cease-and-desist orders, disgorgement, civil monetary penalties, and a bar and censure against one or more Respondents. Respondents argue that the administrative proceeding against them is procedurally defective and that the charges are unproven and no sanctions should be imposed.

[1] Citations to the transcript will be noted as "Tr. _." Citations to exhibits offered by the Division and by Respondents will be noted as "Div. Ex. __" and "Resp. Ex. __," respectively, and citations to the parties' May 6, 2015, Stipulations and May 11, 2015, Supplemental Stipulations will be noted as "Stip." and "Supp. Stip.," respectively.

C. Procedural Issues

Respondents argue that the proceeding is unconstitutional because the Commission appoints Administrative Law Judges in a manner that is inconsistent with the Appointments Clause of the United States Constitution and because it otherwise lacks due process. However, the Commission has rejected the Appointments Clause argument. *Raymond J. Lucia Cos., Inc.*, Exchange Act Release No. 75837, 2015 SEC LEXIS 3628, at *76-90 (Sept. 3, 2015), *appeal pending*, No. 15-1345 (D.C. Cir.); *accord Timbervest, LLC*, Investment Advisers Act of 1940 Release No. 4197, 2015 SEC LEXIS 3854, at *89-104 (Sept. 17, 2015), *appeal pending*, No. 15-1416 (D.C. Cir.); *David F. Bandimere*, Securities Act of 1933 Release No. 9972, 2015 SEC LEXIS 4472, at *74-86 (Oct. 29, 2015). Respondents' argument that the proceeding deprives them of their right to a jury trial also fails. *Atlas Roofing Co. v. OSHRC*, 430 U.S. 442 (1977).

Respondents argue that the Commission prejudged the proceeding as to them by making findings of fact concerning the events at issue in its May 15, 2014, order settling proceedings against Rafferty Capital Markets, *Rafferty Capital Mkts., LLC*, Exchange Act Release No. 72171, 2014 SEC LEXIS 1688 (May 15, 2014), and issuing a press release about the settlement order.

The Commission has considered and rejected this argument on several occasions. *See The Stuart-James Co.*, Exchange Act Release No. 28810, 1991 SEC LEXIS 168, at *2-18 (Jan. 23, 1991), *adhered to by C. James Padgett*, Exchange Act Release No. 38423, 1997 WL 126716, at *15-16 (Mar. 20, 1997), *pet. for review denied*, *Sullivan v. SEC*, 159 F.3d 637 (table), 1998 WL 388511 (D.C. Cir. 1998) (per curiam); *Steadman Sec. Corp.*, Exchange Act Release No. 13695, 1977 SEC LEXIS 1388, at *56 n.82 (June 29, 1977); *Edward Sinclair*, Exchange Act Release No. 9115, 1971 SEC LEXIS 898, at *13-14 (Mar. 24, 1971), *aff'd*, 444 F.2d 399 (2d Cir. 1971); *see also Hortonville Joint Sch. Dist. No. 1 v. Hortonville Educ. Ass'n*, 426 U.S. 482, 493 (1976) ("Mere familiarity with the facts of a case gained by an agency in the performance of its statutory role does not, however, disqualify a decisionmaker.") (citations omitted).

It is well established that the Commission's combining administrative and adjudicative functions is consistent with due process, including when the Commission considers settlement as to one or more respondents, but reviews an initial decision as to another respondent based on similar facts. A policy prohibiting settlements during the pendency of a multi-party proceeding would be contrary to the APA, which requires an agency to give all interested parties the opportunity for the submission and consideration of offers of settlement, when time, the nature of the proceeding, and the public interest permit. 5 U.S.C. § 554(c)(1). Further, while agency staff are obligated under the APA to be separated according to investigative, prosecution, and adjudicative functions, 5 U.S.C. § 554(d), the APA exempts Commission members from this separation of functions requirement. 5 U.S.C. § 554.

The precedent that Respondents cite is inapposite. In *Antoniu v. SEC*, the court nullified Commission administrative proceedings where a Commissioner made a public speech indicating prejudgment of the respondent. 877 F.2d 721 (8th Cir. 1989), *cert. denied*, 494 U.S. 1004 (1990). In the speech, the Commissioner singled out the respondent as an "indifferent violator" and announced that the bar imposed on respondent had been "made permanent," although the proceedings against the respondent had yet to become final and the Commission had yet to issue

its opinion upholding the Administrative Law Judge's initial decision. *Id.* at 723. The court explained that the Commissioner's "words describing [the respondent's] bar as permanent can only be interpreted as a prejudgment of the issue." *Id*.

In *Antoniu*, the Commissioner's conduct was held to – and did not comport with – the appearance of justice. *Id*. at 724. The circumstances here are entirely different, and the Commission's publication of findings of fact, agreed on in a settlement as to Rafferty, does not conflict with the appearance of justice. The other cases that Respondents cite are similarly misplaced, involving a speech by a Commissioner criticizing a party in a pending proceeding or a Commissioner who had actually worked on the matter before becoming a Commissioner. *See Texaco, Inc. v. Fed. Trade Comm'n*, 336 F.2d 754 (D.C. Cir. 1964), *vacated on other grounds*, 381 U.S. 739 (1965); *Amos Treat & Co. v. SEC*, 306 F.2d 260 (D.C. Cir. 1962); *see also MFS Secs. Corp v. SEC*, 380 F.2d 611 (2d Cir. 2004) (actual conflict of interest cured by recusal of individual Commissioners with conflict); *Gilligan Will & Co. v. SEC*, 267 F.2d 461 (2d Cir. 1959) (press release not a bar to enforcement action).

Respondents contend that the claim that Spring Hill Capital Partners violated Exchange Act Section 15(a) by operating as an unlicensed broker-dealer accrued on April 28, 2009, when it signed a contract with Rafferty Capital Markets, and that the claim is barred by the applicable statute of limitations. However, cease-and-desist orders and disgorgement are not subject to the five year statute of limitations provided in 28 U.S.C. § 2462. *Riordan v. SEC*, 627 F.3d 1230, 1234-35 (D.C. Cir. 2010); *Johnson v. SEC*, 87 F.3d 484, 491 (D.C. Cir. 1996).[2] As to those sanctions that are covered by the statute of limitations, acts outside the statute of limitations may be considered to establish a respondent's motive, intent, or knowledge in committing violations that are within the statute of limitations.[3] *Sharon M. Graham*, Exchange Act Release No. 40727, 1998 SEC LEXIS 2598, at *41 n.47 (Nov. 30, 1998) (citing Fed. R. Evid. 404(b) and *Local Lodge No. 1424 v. NLRB*, 362 U.S. 411 (1960)), *aff'd*, 222 F.3d 994 (D.C. Cir. 2000); *Terry T. Steen*, Exchange Act Release No. 40055, 1998 SEC LEXIS 1033, at *14-15 (June 1, 1998) (citing *H.P. Lambert Co. v. Sec'y of the Treasury*, 354 F.2d 819, 822 (1st Cir. 1965)). Further, such acts may be considered in determining the appropriate sanction if violations are proven. *Steen*, 1998 SEC LEXIS 1033, at *14-17.

[2] The sole precedent to the contrary cited by Respondents is a U.S. District Court decision. *See SEC v. Graham*, 21 F. Supp. 3d 1300 (S.D. Fla. 2014), *appeal pending*, No. 14-13562 (11th. Cir.).

[3] Recently, the Commission declared its non-acquiescence to the ruling of the U.S. Court of Appeals for the D.C. Circuit in the *Johnson* case that sanctions such as associational bars are subject to the statute of limitations. *Timbervest*, 2015 SEC LEXIS 3854, at *55 & n.71.

II. FINDINGS OF FACT

A. Relevant Individuals and Entities

1. Spring Hill Entities

Spring Hill Capital Holdings, LLC (SHCH), is a holding company that is the sole direct owner of Spring Hill Capital Partners, LLC (SHCP), Spring Hill Capital Markets, LLC (SHCM), and Spring Hill Management Company, LLC (SHMC) (collectively, Spring Hill). Answer at 2. SHCH had full and exclusive authority to manage SHCP and SHCM. Tr. 483-85; Supp. Stip. 2; Div. Ex. 1G at F318.[4] Kevin White founded Spring Hill, is CEO of the entities, and owns 80% of SHCH. Answer at 2-3; Div. Ex. 1C. He formed Spring Hill with former Lehman Brothers colleagues in office space made available *gratis* by the Dechert law firm. Tr. 522-28. These Lehman Brothers alumni included Paul Tedeschi, Philip Bartow, John Fernando, Hui Chen, Patrick Quinn, and Lauren O'Neill. Tr. 528-33.

SHCP has never been registered with the Commission in any capacity. Stip. 2. SHCP has not had active business activity since SHCM commenced operations on approximately March 4, 2010. Stip. 4.

SHCM is a registered broker-dealer headquartered in New York City. Answer at 3; Stip. 1. Its registration as a broker-dealer became effective on February 26, 2010. *See* Spring Hill Capital Markets, L.L.C., BrokerCheck Report, *available at* http://brokercheck.finra.org (last visited October 14, 2015).[5] It commenced operations on March 4, 2010. Div. Ex. 187 at SH-AP255; Stip. 4. SHCM operated as a dealer pursuant to Exchange Act Rule 15c3-1(a)(2)(iii). Div. Ex. 1 at F49 (FINRA Form NMA); Div. Ex. 1B (attached to Form NMA) at F204. SHCM computed its net capital pursuant to Exchange Act Rule 15c3-1(a)(2)(iii). *Id*. Its minimum net capital requirement was $100,000, and White knew this. *Id*.; Div. Ex. 10 at F2247, F2249. SHCM's primary business was trading, on an agency basis on behalf of clients, bonds – predominantly structured finance bonds, such as asset-backed bonds, residential mortgage-backed securities, commercial mortgage-backed securities, collateralized loan obligations (CLOs), and collateralized debt obligations (CDOs). Tr. 219-20.

SHCP transferred approximately $235,025 to SHCM and $2,600,000, through SHMC, to SHCH. Stips. 11-13.

[4] Reference to Bates numbers will omit leading zeros. Thus, "F000318" is noted as "F318."

[5] Official notice is taken of this and the other Financial Industry Regulatory Authority, Inc. (FINRA), records cited herein. *See Joseph S. Amundsen*, Exchange Act Release No. 69406, 2013 SEC LEXIS 1148, at *2 n.1 (Apr. 18, 2013), *pet. denied*, 575 F. App'x 1 (D.C. Cir. 2014).

2. Kevin D. White

White started working in the financial industry in 1986, at Kidder Peabody. Tr. 516. Subsequently, he attended business school and ultimately, in 1991, joined Lehman Brothers, where he worked for seventeen years. Tr. 218, 247, 258, 517-18. From 1994 until 2007, he worked in the asset-backed trading group, then headed a fixed-income sales group of about fifty people until March 2008, when he joined the real estate group to help sell Lehman Brothers' $55 billion commercial real estate portfolio; he remained there following the firm's September 15, 2008, bankruptcy until the real estate group was let go a month later by Lehman Brothers' successor, Barclays Capital. Tr. 218-19, 431-32, 518-20. He formed Spring Hill shortly thereafter. Tr. 522-28. White was associated as a registered representative with Rafferty Capital Markets from August 2009 to February 2010.[6] Tr. 264. White had never been the subject of enforcement action prior to this case. Stip. 20.

3. Rafferty Capital Markets, LLC

Rafferty Capital Markets, LLC (Rafferty), is, and was during the events at issue, a Commission-registered broker-dealer headquartered in Garden City, New York. Stips. 5, 6, 15. Rafferty is an introducing broker; during the time at issue its clearing broker was first Jefferies and subsequently Merrill Lynch Broadcort.[7] Tr. 749-50. SHCM's Form NMA represented that it would have a piggyback arrangement with Rafferty and clearing through Broadcort. Div. Ex. 1 at F76. Accordingly, from March 2010 during the time at issue, SHCM conducted trading through Rafferty. White and Michael Rafferty, Rafferty's president, are friends. Tr. 327, 534.

4. Gramercy

Gramercy Capital Corp. (GKK or Gramercy) was a real estate investment trust (REIT). Tr. 730. Roger Cozzi was its CEO during the time at issue. Tr. 730. At issue in this proceeding is a series of transactions in a bond issued by a CDO known as Gramercy Real Estate CDO 2005-1, whose manager was a GKK subsidiary (Gramercy Bond). Supp. Stip. 1.

B. SHCP's Operations

White understood that it would take 270 days to obtain registration as a broker-dealer; for the interim he arranged for traders employed by SHCP to become associated with Rafferty and for a piggyback arrangement with Rafferty such that Rafferty would be the introducing broker

[6] *See* Kevin Donald White BrokerCheck Report, *available at* http://brokercheck.finra.org (last visited October 14, 2015). As CEO of SHCM, he could not be dually registered at Rafferty and at SHCM, although other registered representatives could be and were. Tr. 262.

[7] An "introducing" (also called "correspondent") firm, such as Rafferty, sends its order tickets to its clearing (also called "carrying") firm, which clears and settles the transactions, provides computer support, and sends confirmations and account statements to the customers of the introducing firm. Tr. 967-68, 974.

for their trades which would be cleared by Rafferty's clearing broker.[8] Tr. 535-45. Resp. Ex. 1. Rafferty drafted the agreement regarding this arrangement; it was evaluated on Spring Hill's side by John Fernando, a SHCP partner. Tr. 545-75; Resp. Exs. 2-20, 47; Stips. 16-18. The agreement was signed on April 28, 2009,[9] and licenses of Spring Hill employees were moved to Rafferty so that they became registered representatives of Rafferty.[10] Tr. 575-76; Stip. 19. The agreement's introduction provided that Rafferty and SHCP "have determined to enter into this Agreement for their mutual benefit to provide market information, settlement, clearing and execution services for certain securities transactions." Resp. Ex. 47 at RCML-SEC-1642. The agreed Purpose was stated as "to facilitate transactions initiated by [SHCP] with clients in order to accommodate the administration, clearance and settlement of these trades." *Id*. The agreement provided that "Services Provided" included "clearing and trade processing for trades introduced by [SHCP]." Resp. Ex. 47 at RCML-SEC-1647. Rafferty retained 15% of the revenue generated by the Spring Hill trading to compensate it for services such as processing transactions, clearing, FINOP, compliance, and counterparty credit; SHCP received the remaining 85%. *Id*.; Tr. 583-84. White negotiated the 85%-15% revenue sharing with Michael Rafferty. Tr. 417, 1146.

In the discussions leading up to the agreement, Michael Rafferty told White on March 23, 2009, "We can act as B/D of record for your registered reps. We would hold the licenses and assume those potential liabilities. . . . In effect, you would be operating as a branch of the RaffCap B/D." Resp. Ex. 1. These registered representatives would be trading mortgage-related structured products, which Rafferty did not trade. Tr. 580, 1049-50. Rafferty was to "provide the necessary compliance and review associated with [Spring Hill] trades" and "to register certain Spring Hill employees as registered representatives of its broker-dealer [who] shall be deemed to be independent representatives of the broker-dealer and not employees of [Rafferty]."

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[8] When SHCM became a registered broker-dealer, it also had a piggyback arrangement with Rafferty. Div. Ex. 1 at F5. It continued the same 85%-15% revenue sharing. Div. Ex. 121. Rafferty and SHCM's Commission Sharing Agreement, dated July 19, 2010, "formalizes the revenue sharing terms under which [SHCM and Rafferty] will operate, and have been operating." *Id*. at SH-SEC982.

[9] The entire April 28, 2009, "Services and Cost Sharing Agreement" is at Resp. Ex. 47 at RCML-SEC-1642-47.

[10] Paul Tedeschi and Philip Bartow were associated as registered representatives of Rafferty from April 2009 to January 2014; John Fernando, from September 2009 to February 2010; and Patrick Quinn, from April 2009 to February 2010. *See* BrokerCheck Reports of Paul Tedeschi, Philip Bartow, John Chinniah Fernando, and Patrick Griffin Quinn, *available at* http://brokercheck.finra.org (last visited October 14, 2015). Typically, Tedeschi, Quinn, and Bartow executed trades for Spring Hill during 2009 and 2010. Tr. 816-17. Their trading commenced after they were registered with Rafferty. Tr. 848-50. There were no trades done by SHCP personnel prior to their becoming associated with Rafferty as registered representatives. Tr. 604-05. Rafferty provided authorized trader letters to their counterparties, stating that Rafferty authorized them to trade with the counterparties. Tr. 850-52; Resp. Ex. 26.

Resp. Ex. 36 at RCML-SEC-1627; Resp. Ex. 47 at RCML-SEC-1647. The agreement also provided that "Spring Hill's offices will be registered as a Non-OSJ branch of [Rafferty]."[11] *Id.* However, this never occurred. Tr. 581, 1170, 1190-91.

White and his Spring Hill partners, not Rafferty, made marketing decisions, trading decisions, and compensation decisions for SHCP employees who were fixed income traders. Tr. 608-11, 748-49. SHCP did business with large financial institutions such as Barclays Capital, Deutsche Bank, and Swiss Re. Tr. 792-95; Div. Ex. 287.

Between May 2009 and February 2010, SHCP employees who were registered representatives of Rafferty conducted approximately ninety-five matched trades (essentially, agency trades that did not place the broker or dealer's capital at risk, consisting of ninety-five purchases matched with ninety-five sales of the same security that was purchased) – approximately sixty-one in 2009 and thirty-four in January and February 2010. Tr. 972-73; Stip. 10.

SHCP marketing materials[12] described it, *inter alia*, as a broker-dealer or as providing broker-dealer services; some material that was distributed to potential customers disclosed that FINRA broker-dealer registration had been filed and was pending, but most did not. Div. Exs. 20-32, 33A, 34-37, 39-49, 50-51, 52A, 56A, 57B, 58A, 63, 65, 66A, 67B; Resp. Exs. 60, 62, 101-03, 115A. White himself distributed these marketing materials to financial firms with the intent of drumming up business. Tr. 439-41; Div. Exs. 33, 49, 52, 57, 58, 63, 66, 67; Resp. Ex. 115A.

1. SHCP Records

SHCP kept a trade blotter (referred to by White as a "spreadsheet") to track its trading activity; this same record continued as the blotter of SHCM when it opened for business as a broker-dealer and SHCP ceased operations. Tr. 331-36; Div. Exs. 138, 138A; Stip. 8. All invoices to and payments from Rafferty changed from SHCP to SHCM as of the effective date. Div. Ex. 199.

2. SHCP Commission Revenues

From May 2009 until it ceased business activity in March 2010, SHCP received revenues of $3,953,608.61 that were commissions from securities transactions arranged by SHCP employees for clients. Tr. 110; Div. Ex. 138A; Stip. 10. This total includes payments made

[11] A Non-OSJ branch office would not be an office of supervisory jurisdiction and thus would have to fall under the supervision of a Rafferty office of supervisory jurisdiction. Tr. 1170.

[12] Respondents dispute the characterization of these as "marketing" materials on the basis that the warning "**For Informational Purposes Only**" appeared on the title page of each, and none pitched a specific product. Resp. Reply at 5-6. This interpretation is rejected. The materials were clearly intended to interest the recipients in SHCP's services.

directly by Rafferty, at SHCP's request, to the SHCP employees who arranged the transactions. Div. Ex. 138A.

3. Equivocation

In prosecuting its application for broker-dealer registration, FINRA Form NMA, SHCM affirmed: "This statement will confirm that the applicant has not previously conducted a securities business, is not currently engaged in the conduct of a securities business, and will refrain from conducting a securities business until it has received approval from FINRA." Div. Ex. 1 at F12-13. Further, it represented that SHCM's affiliate SHCP provided consulting services to clients, including Rafferty, in return for consulting fees, and that SHCP "does not conduct a securities business." Div. Ex. 1A at F85; Div. Ex. 1C; Div. Ex. 1D; Div. Ex. 1F; Div. Ex. 4 at SH-SEC11645; Div. Ex. 8 at SH-SEC11749. White was aware that SHCM represented to FINRA that SHCP offered "consulting services" and "does not conduct a securities business." Tr. 502-03; Div. Ex. 8 at SH-SEC11747, 11749; Div. Ex. 10 at F2248-49. In responding to a Commission query, Respondents again represented SHCP's revenues as for "consulting," not as "commissions."[13] Tr. 693-94; Div. Ex. 178 at SH-SEC14315. In contrast, Spring Hill provided data to its accountant showing that SHCP had "Commission Income" of $1,985,493.48 during 2009. Tr. 667-71; Div. Ex. 185 at 2. Respondents also arranged for Rafferty to remit funds from SHCP's 85% in round numbers rather than the exact amounts that it had earned during the billing period.[14] Tr. 136-38; Div. Exs. 130, 206C, 206D, 206F-I. The explanation for the representation that SHCP did not conduct a securities business – that registered representatives associated with Rafferty (who happened to be SHCP employees), not SHCP itself, conducted a securities business – is somewhat sophistical. Additionally, "commission" is a more accurate term than "consulting" to describe the transaction-based compensation that SHCP received for its business activities involving the purchase and sale of securities.

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[13] In explaining why Rafferty remitted $1,900,000 to SHCP for "consulting" performed during January and February 2010, Spring Hill stated:

> SHCP provided consultation and advice to Rafferty regarding significant capital markets transactions for clients of Rafferty and Rafferty and SHCP mutually agreed that compensation for the consultation and advice should be in the form of the referenced fixed fees. The facilitation of the transactions occurred through SHCP employees who were registered representatives of Rafferty and who were acting in their capacity as registered representatives of Rafferty.

Div. Ex. 178 at SH-SEC14315.

[14] White downplayed his involvement in the decision to leave some funds at Rafferty. Tr. 406. However, Division Exhibit 130 shows his involvement. *See also* Tr. 139.

C. The Gramercy Transactions

When SHCM commenced business operations as a broker-dealer and SHCP ceased business operations on March 4, 2010, Spring Hill's operations and its relationship with Rafferty continued unchanged. Tr. 1201-02. SHCM continued the piggyback arrangement with Rafferty. Tr. 809; Div. Ex. 1 at F5. The April 28, 2009, "Services and Cost Sharing Agreement" remained in force at least until April 28, 2010. Resp. Ex. 47 at RCML-SEC-1642. There is no evidence in the record that the parties signed a new agreement during the time at issue. Spring Hill and Rafferty continued the same 85%-15% revenue sharing. Tr. 117-28; Div. Ex. 121. Rafferty and SHCM's Commission Sharing Agreement, dated July 19, 2010, "formalizes the revenue sharing terms under which [SHCM and Rafferty] will operate, and have been operating." Div. Ex. 121 at SH-SEC982. Even the trade blotter remained the same, with sequential numbering: trade 191 occurred on February 26, 2010, during SHCP's business operations, and trade 192 on March 4, 2010, during SHCM's. Div. Exs. 138, 138A; Stip. 8. Spring Hill remained liable for any fails. Div. Ex. 121 at SH-SEC983; Div. Ex. 178 at SH-SEC14315-16.

Spring Hill's first revenue, in the beginning of 2009, was from an advisory contract with Gramercy pursuant to which SHCP evaluated Gramercy's existing CDOs. Tr. 530-31. Gramercy paid Spring Hill $100,000 for the first month and $50,000 per month for about the next six months. Tr. 530-31. This engagement ended by the end of 2009. Tr. 533, 732. Thereafter White and Cozzi discussed Spring Hill's finding Gramercy CDO bonds for Gramercy to buy back to redeem or hold on its balance sheet as an investment. Tr. 732-33. Rafferty was not mentioned. Tr. 733. On February 23, 2010, Spring Hill located the Gramercy Bond for sale. Tr. 734-35; Div. Ex. 109; Supp. Stip. 1.

On February 23, 2010, White solicited Cozzi for a potential purchase of the Gramercy Bond. Div. Ex. 109 at 2; Supp. Stip. 1. Cozzi initially expressed interest in purchasing the Gramercy Bond at a price of up to $75. Supp. Stip. 3. However, on February 25, 2010, Cozzi told White that, after speaking with his attorneys, he would not feel comfortable buying the bond until after an earnings call scheduled for March 4, 2010. *Id*. Cozzi explained that his decision was driven by the fact that the market would not have the same information GKK had before its earnings call. *Id*. Cozzi told White, "If the bonds trade away in the interim, so be it." *Id*.

On March 1, 2010, White instructed Paul Tedeschi, a registered representative of Rafferty,[15] who was also an employee of Spring Hill, to buy $15 million face amount of the Gramercy Bond from Citi at a price of $70.25. Supp. Stip. 4. On March 1, 2010, Tedeschi followed White's instruction and arranged an extended settlement schedule with Citi so that delivery of the bond could take place after GKK's scheduled earnings release and GKK would be in a position to make the contemplated purchase. Supp. Stip. 5. For ten days, with White's knowledge, Spring Hill withheld from Rafferty the trade ticket for the purchase of the Gramercy Bond from Citi. Supp. Stip. 6. The trade ticket sent from Citi to Tedeschi noted the trade as

[15] Tedeschi was also associated as a registered representative of SHCM. *See* Paul Tedeschi BrokerCheck Report, *available at* http://brokercheck.finra.org (last visited October 14, 2015) (showing Tedeschi as a registered representative of SHCM on and after February 26, 2010).

"Citi sells to Spring Hill." Div. Ex. 80. White knew that Rafferty expected Spring Hill to engage only in agency trading and understood that Rafferty would want to be alerted to the trade on the date the trade was confirmed with Citi. Supp. Stip. 7.

Following the purchase of the Gramercy Bond on March 1, 2010, the GKK earnings call originally scheduled for March 4, 2010, was pushed back to March 15, 2010. Supp. Stip. 8. On March 11, 2010, Rafferty received an inquiry from Citi regarding settlement of the Gramercy Bond purchased on March 1, 2010. Supp. Stip. 9. This was the first Rafferty learned of the transaction. *Id*. Also on March 11, 2010, the Gramercy Bond was sold to Barclays at a price of $70.25, and Spring Hill finally submitted to Rafferty a trade ticket for the March 1, 2010, purchase, along with a ticket for the March 11, 2010, sale. Supp. Stip. 10. The trade ticket sent by Tedeschi for the March 11, 2010, sale noted the trade as "Spring Hill sells to Barcap." Div. Ex. 143. Due to Spring Hill's failure to turn over the trade ticket to Rafferty, Rafferty's books did not reflect the purchase of the Gramercy Bond from Citi for at least ten days. Supp. Stip. 11. SHCM's trade blotter incorrectly showed that the purchase from Citi and the sale to Barclays both took place on March 12, instead of on the actual dates of the trades, March 1 and March 11, respectively. Div. Exs. 133, 133A, 138, 138A, 173, 173A.[16]

By no later than March 16, 2010, Tedeschi purchased the Gramercy Bond back from Barclays at a price of $70.75. Supp. Stip. 12. The trade ticket sent by Barclays to Tedeschi noted the trade as "Barclays sells to Spring Hill." Div. Ex. 151. The bond was then sold to Gramercy at least several hours later. Specifically, the purchase occurred no later than 11:36 a.m. on March 16. Div. Ex. 151. The sale occurred no earlier than 6:17 p.m. on March 16. Div. Ex. 104. White negotiated the sale to Gramercy, at $74, and was aware that Tedeschi had already purchased the bond from Barclays. Div. Ex. 104. The trade ticket and confirmation for the sale submitted by SHCM trader Patrick Quinn[17] and by Gramercy showed the trade date for the sale to Gramercy as March 17. Div. Exs. 148, 149. The documents noted the trade as "Spring Hill sells to Gramercy" and Quinn as the trader. *Id*. Quinn confirmed to Rafferty that Gramercy would know March 17 as the trade date. Div. Ex. 150. Spring Hill earned about $414,000 from the Gramercy Bond transaction. Tr. 314.

As found above, SHCM's minimum net capital requirement was $100,000. Prior to the purchase from Barclays and sale to Gramercy, SHCM had net capital of between $200,000 and $395,508, according to its FOCUS reports of February 26 and March 31, 2010. Div. Exs. 216,

[16] Versions of the blotter that Spring Hill provided to the Commission in 2011 showed the trade dates for both the purchase from Barclays and the sale to Gramercy as March 12. Div. Exs. 138, 138A, 173, 173A. The blotter that Spring Hill provided to FINRA in October 2012 showed March 11 as the trade date for the sale to Barclays. Div. Exs. 133, 133A.

[17] At that time, Quinn was a registered representative of SHCM and not of Rafferty. *See* Patrick Griffin Quinn BrokerCheck Report, *available at* http://brokercheck.finra.org (last visited October 14, 2015) (showing Quinn's association as a registered representative of Rafferty ended in February 2010 and his association as a registered representative of SHCM started in February 2010).

313. SHCM owed Barclays approximately $10.6 million plus accrued interest, for the purchase of the bond ($15 million face amount at a price of $70.75). Div. Ex. 151. To calculate SHCM's net capital, this liability is offset by the value of the bonds as an asset, subject to a haircut of 9%. Div. Ex. 320 at 4. Thus, SHCM had negative net capital of over $500,000 for at least several hours on March 16. It is undisputed that Spring Hill did not inform the Commission of any net capital deficiency.

SHCM's trade blotter that was provided to the Commission shows the trade dates of the March 1 Gramercy Bond purchase from Citi and the March 11 sale to Barclays both as March 12. Tr. 341; Div. Exs. 138, 138A, 173, 173A. The blotter showed March 17 as the trade date for the purchase from Barclays (as well as for the sale to Gramercy). Div. Exs. 138A, 173A. SHCM used trade date accounting in its recordkeeping. Tr. 966.

D. Expert Testimony[18]

Yui Chan, managing director in charge of the broker-dealer operations and financial responsibilities department at FINRA, testified for the Division. Tr. 958-1022; Div. Ex. 320. He was accepted as an expert in net capital requirements. Tr. 960. He testified concerning the purchase of the Gramercy Bond from Barclays and sale to Gramercy. Tr. 958-1022; Div. Ex. 320. Chan opined that SHCM was subject to moment-to-moment net capital, and was not relieved of this requirement by its piggyback arrangement with Rafferty. Tr. 966-68; Div. Ex. 320 at 4-5.

III. CONCLUSIONS OF LAW

The OIP charges violations of the broker-dealer registration, books and records, net capital and reporting provisions of the securities laws. Specifically, the OIP charges that SHCP willfully violated Exchange Act Section 15(a), by operating as an unregistered broker-dealer prior to SHCM becoming registered, and that SHCM willfully violated Exchange Act Sections 15(c)(3) and 17(a) and Rules 15c3-1, 17a-3(a)(1), and 17a-11(b)(1), in connection with the March 2010 transactions in the Gramercy Bond, through inaccurate entries in its trade blotter and a net capital deficiency of which it failed to notify the Commission. The OIP charges that SHCH and White willfully aided and abetted and caused all of those alleged violations except for SHCM's alleged violation of Exchange Act Rule 17a-3(a)(1). Additionally, it charges that SHCH and White aided and abetted and caused a violation by Rafferty of Exchange Act Section 17(a) and Rule 17a-3(a)(1) in connection with the first Gramercy Bond transaction; SHCH and White stipulated to their secondary liability to that charge.

As discussed below, it is concluded that: (1) SHCP willfully violated Exchange Act Section 15(a); and White and SHCH willfully aided and abetted and caused SHCP's violation; and (2) SHCM willfully violated Exchange Act Sections 15(c)(3) and 17(a) and Rules 15c3-1,

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

17a-3(a)(1), and 17a-11(b)(1); and White and SHCH caused SHCM's violations of Exchange Act Sections 15(c)(3) and 17(a) and Rules 15c3-1 and 17a-11(b)(1).

A. Primary and Secondary Liability

1. Willfulness

Respondents are charged with *willful* primary or secondary violations, of Exchange Act Sections 15(a), 15(c)(3), and 17(a) and Rules 15c3-1, 17a-3(a)(1), and 17a-11(b)(1). A finding of willfulness does not require an intent to violate, but merely an intent to do the act which constitutes a violation. *See Steadman v. SEC*, 603 F.2d 1126, 1135 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981); *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965).

2. Corporate Liability

SHCH, SHCP, and SHCM are accountable for the actions of their responsible officers, including White. *See C.E. Carlson, Inc. v. SEC*, 859 F.2d 1429, 1435 (10th Cir. 1988) (citing *A.J. White & Co. v. SEC*, 556 F.2d 619, 624 (1st Cir. 1977)). A company's scienter is imputed from that of the individuals controlling it. *See SEC v. Blinder, Robinson & Co., Inc.*, 542 F. Supp. 468, 476 n.3 (D. Colo. 1982) (citing *SEC v. Manor Nursing Ctrs., Inc.*, 458 F.2d 1082, 1096-97 nn.16-18 (2d Cir. 1972)). White, as 80% owner of SHCH, the 100% owner of SHCP and SHCM, was an associated person of the broker-dealer[s]. *See* Sections 3(a)(18) and 15(b)(4) of the Exchange Act. As an associated person of a broker-dealer, White's conduct and scienter are also attributed to the broker-dealer. *See* Section 15(b)(4) of the Exchange Act.

3. Aiding and Abetting; Causing

The OIP charges that White and SHCH "aided and abetted" and "caused" violations by SHCP, SHCM, and Rafferty of the registration, net capital and reporting provisions of the securities laws. For "aiding and abetting" liability under the federal securities laws, three elements must be established: (1) a primary or independent securities law violation committed by another party; (2) awareness or knowledge by the aider and abettor that his or her role was part of an overall activity that was improper; and (3) that the aider and abettor knowingly and substantially assisted the conduct that constitutes the violation. *See Graham v. SEC*, 222 F.3d 994, 1000 (D.C. Cir. 2000); *Woods v. Barnett Bank of Ft. Lauderdale*, 765 F.2d 1004, 1009 (11th Cir. 1985); *Investors Research Corp. v. SEC*, 628 F.2d 168, 178 (D.C. Cir. 1980); *IIT v. Cornfeld*, 619 F.2d 909, 922 (2d Cir. 1980); *Woodward v. Metro Bank of Dallas*, 522 F.2d 84, 94-97 (5th Cir. 1975); *SEC v. Coffey*, 493 F.2d 1304, 1316-17 (6th Cir. 1974); *Russo Sec. Inc.*, Exchange Act Release No. 39181, 1997 SEC LEXIS 2075, at *16-17 & n.16 (Oct. 1, 1997); *Donald T. Sheldon*, Exchange Act Release No. 31475, 1992 SEC LEXIS 3052, at *18 (Nov. 18, 1992), *aff'd*, 45 F.3d 1515 (11th Cir. 1995); *William R. Carter*, Exchange Act Release No. 17597, 1981 SEC LEXIS 1940, at *78 (Feb. 28, 1981). A person cannot escape aiding and abetting liability by claiming ignorance of the securities laws. *See Sharon M. Graham*, Exchange Act Release No. 40727, 1998 SEC LEXIS 2598, at *29 n.33 (Nov. 30, 1998), *aff'd*, 222 F.3d 994 (D.C. Cir. 2000). The knowledge or awareness requirement can be satisfied by recklessness when the alleged aider and abettor is a fiduciary or active participant. *See Ross v.*

Bolton, 904 F.2d 819, 824 (2d Cir. 1990); *Cornfeld*, 619 F.2d at 923, 925; *Rolf v. Blyth*, 570 F.2d 38, 47-48 (2d Cir. 1978); *Woodward*, 522 F.2d at 97. That is, it must be established that a respondent either acted with knowledge or that he "encountered 'red flags,' or 'suspicious events creating reasons for doubt' that should have alerted him to the improper conduct of the primary violator," or there was a danger so obvious that he must have been aware of it. *Howard v. SEC*, 376 F.3d 1136, 1143 (D.C. Cir. 2004).

For "causing" liability, three elements must be established: (1) a primary violation; (2) an act or omission by the respondent that was a cause of the violation; and (3) the respondent knew, or should have known, that his conduct would contribute to the violation. *Robert M. Fuller*, Exchange Act Release No. 48406, 2003 SEC LEXIS 2041, at *13-14 (Aug. 25, 2003), *pet. for review denied*, 95 F. App'x 361 (D.C. Cir. 2004). A respondent who aids and abets a violation also is a cause of the violation under the federal securities laws. *See Graham*, 1998 SEC LEXIS 2598, at *30 n.35. Negligence is sufficient to establish liability for causing a primary violation that does not require scienter. *See KPMG Peat Marwick LLP*, Exchange Act Release No. 43862, 2001 SEC LEXIS 98, at *82 (Jan. 19, 2001), *recons. denied*, Exchange Act Release No. 44050, 2001 SEC LEXIS 422 (Mar. 5, 2001), *pet. for review denied*, 289 F.3d 109 (D.C. Cir. 2002), *reh'g en banc denied*, 2002 U.S. App. Lexis 14543 (D.C. Cir. 2002).

B. SHCP

1. Registration Provision

Section 15(a)(1) of the Exchange Act makes it unlawful for any entity to effect transactions in securities, by jurisdictional means, without registering as a broker or dealer. 15 U.S.C. § 78o(a). "Broker" is defined in Section 3(a)(4) of the Exchange Act as "any person engaged in the business of effecting transactions in securities for the account of others." 15 U.S.C. § 78c(a)(4). Scienter is not required to establish a violation of this provision. *SEC v. Montana*, 464 F. Supp. 2d 772, 785 (S.D. Ind. 2006).

Activities of a broker are characterized by "a certain regularity of participation in securities transactions at key points in the chain of distribution." *Mass. Fin. Servs., Inc. v. Sec. Investor Prot. Corp.*, 411 F. Supp. 411, 415 (D. Mass. 1976), *aff'd*, 545 F.2d 754 (1st Cir. 1976). Other relevant factors include whether the alleged broker: "1) is an employee of the issuer; 2) received commissions as opposed to salary; 3) is selling, or previously sold, the securities of other issuers; 4) is involved in negotiations between the issuer and the investor; 5) makes valuations as to the merits of the investment or gives advice; and 6) is an active rather than passive finder of investors." *SEC v. Zubkis*, No. 97-cv-8086, 2000 WL 218393, at *9 (S.D.N.Y. Feb. 23, 2000) (quoting *SEC v. Hansen*, No. 83-cv-3692, 1984 WL 2413 at, *10 (S.D.N.Y. Apr. 6, 1984)). However, "transaction-based compensation" is "one of the hallmarks of being a broker-dealer." *SEC v. Kramer*, 778 F. Supp. 2d 1320, 1334 (M.D. Fla. 2011) (quoting *Cornhusker Energy Lexington, LLC v. Prospect Street Ventures*, No. 8:04-cv-586, WL 2620985, at *6 (D. Neb. Sept. 12, 2006)).

2. Registration Violation

White sought to comply with the registration provisions through the arrangement with Rafferty, whereby certain SHCP employees became registered representatives associated with Rafferty and Rafferty acted as introducing firm for transactions negotiated by these SHCP employees. Nonetheless, SHCP was clearly "in the business of effecting transactions in securities for the accounts of others" in violation of Section 15(a)(1) of the Exchange Act. Over the course of ten months, SHCP regularly participated in securities transactions by negotiating and conducting ninety-five matched trades on behalf of its clients. There is no dispute that SHCP received transaction-based compensation for its activities, amounting to 85% of the commissions generated by its trading. White and his Spring Hill partners, not Rafferty, decided what trades were made and determined the compensation of the Rafferty-registered SHCP traders, refuting the argument that the trades were Rafferty's rather than SHCP's. White also sought to generate business for SHCP by distributing marketing materials touting its broker-dealer services. Finally, SHCP and Rafferty's Services and Cost Sharing Agreement made clear that the parties expected SHCP to act as a broker; it specified that the services provided included "clearing and trade processing for trades introduced by Spring Hill."

The facts that Respondents sought to disguise the commission payments that SHCP received as consulting payments and that they represented to FINRA that SHCP was not conducting a securities business (a representation of which White was aware) indicates that White was aware that the arrangement was not a completely legitimate method of speeding up Spring Hill's entry into the securities business.

3. White

White aided and abetted and caused SHCP's violation of Section 15(a)(1) of the Exchange Act. He was an active participant in marketing SHCP's broker-dealer services, and his knowledge that his role was part of an overall activity that was improper is shown by his awareness that Respondents affirmatively represented to FINRA that SHCP was not conducting a securities business. This is shown as well by the facts that SHCM sought to become registered and that White knew this would be a lengthy process, during which he did business through SHCP. As CEO, 80% owner, and founder of SHCH, the 100% owner of SHCP, White's secondary liability for SHCP's violation is attributed to SHCH, as well.

C. SHCM

The OIP charged SHCM with violating Exchange Act Section 17(a) and Rule 17a-3(a)(1), based on false information on its trade blotter; a net capital deficiency, in violation of Exchange Act Section 15(c)(3) and Rule 15c3-1; and failing to notify the Commission of the net capital deficiency in violation of Exchange Act Section 17(a) and Rule 17a-11(b)(1). The OIP charged White and SHCH with aiding and abetting and causing SHCM's violation of these provisions, except Rule 17a-3(a)(1).

1. Books and Records Provisions

Section 17(a)(1) of the Exchange Act provides that brokers and dealers "shall make and keep for prescribed periods such records, furnish such copies thereof, and make and disseminate such reports as the Commission, by rule, prescribes as necessary or appropriate in the public interest." 15 U.S.C. § 78q(a)(1). The requirement that records be kept embodies the requirement that they be accurate. *James F. Novak*, Exchange Act Release No. 19660, 1983 SEC LEXIS 2023, at *12 (Apr. 8, 1983).

The Commission has emphasized the importance of the records required by the record keeping rules as "the basic source documents and transaction records of a broker-dealer." *Statement Regarding the Maintenance of Current Books and Records by Brokers and Dealers*, Exchange Act Release No. 10756, 1974 SEC LEXIS 3290, at *3 (Apr. 26, 1974). The "recordkeeping rules are a keystone of the surveillance of brokers and dealers by [Commission] staff and by the securities industry's self-regulatory bodies." *Edward J. Mawod & Co.*, Exchange Act Release No. 13512, 1977 SEC LEXIS 1811, at *16 n.39 (May 6, 1977) (citation omitted), *aff'd*, 591 F.2d 588 (10th Cir. 1979). Scienter is not required to prove a violation of Section 17(a)(1) of the Exchange Act and the rules thereunder. *SEC v. Drexel Burnham Lambert Inc.*, 837 F. Supp. 587, 610 (S.D.N.Y. 1993), *aff'd sub nom. SEC v. Posner*, 16 F.3d 520 (2d Cir. 1994); *see Stead v. SEC*, 444 F.2d 713, 716-17 (10th Cir. 1971).

2. Blotter - Rule 17a-3(a)(1)

Rule 17a-3 requires brokers and dealers to make and keep current certain books and records, including blotters containing an itemized daily record of all purchases and sales of securities, all receipts and deliveries, all receipts and disbursements of cash, and all other debits and credits (Rule 17a-3(a)(1)).[19] 17 C.F.R. § 240.17a-3(a)(1).

SHCM violated Section 17(a) of the Exchange Act and Rule 17a-3(a)(1) because its trade blotter incorrectly showed the March 1 purchase of the Gramercy Bond from Citi and the March 11 sale to Barclays as taking place on March 12. Additionally, SHCM's trade blotter incorrectly showed March 17 as the date of the purchase from Barclays and sale to Gramercy when the trade date of those transactions was March 16. White was heavily involved in these transactions – he negotiated the sale to Gramercy and was aware that Tedeschi had already purchased the bond

[19] Specifically, Rule 17a-3(a)(1) requires broker-dealers to make and keep current:

> Blotters (or other records of original entry) containing an itemized daily record of all purchases and sales of securities, all receipts and deliveries of securities (including certificate numbers), all receipts and disbursements of cash and all other debits and credits. Such records shall show the account for which each such transaction was effected, the name and amount of securities, the unit and aggregate purchase or sale price (if any), the trade date, and the name or other designation of the person from whom purchased or received or to whom sold or delivered.

from Barclays. Respondents' defense to the trade blotter violation is, essentially, that Rafferty's trade blotter is the only relevant trade blotter in that the traders involved were registered representatives of Rafferty and that SHCM piggybacked on Rafferty as introducing broker.[20] This argument is inconsistent with these facts: Tedeschi, the trader for the purchase from Citi and the sale to and purchase from Barclays, was also a registered representative of SHCM (as of February 26, 2010); Quinn, the trader for the sale to Gramercy, was a registered representative of SHCM and not of Rafferty; and the trade tickets reflected "Spring Hill" as the buyer from Citi and the seller to Barclays in the first transaction and the buyer from Barclays and seller to Gramercy in the second transaction. Indeed, if the argument were carried to its logical conclusion, there would be no point in SHCM's having become a registered broker-dealer. The record does not include any evidence, such as a written agreement, that places the responsibility for maintaining a trade blotter for SHCM's trades solely on Rafferty.

3. Net Capital - Exchange Act Section 15(c)(3) and Rule 15c3-1

Exchange Act Section 15(c)(3) requires the Commission to establish, and broker-dealers to comply with, minimum financial responsibility requirements. 15 U.S.C. § 78o(c)(3). Those requirements are found in Exchange Act Rule 15c3-1, the net capital rule. 17 C.F.R. § 240.15c3-1. As found above, SHCM's minimum net capital was $100,000, and during at least several hours on March 16, 2010, SHCM had negative net capital of at least $500,000. SHCM had not finalized the terms of the sale to Gramercy when it bought the bond from Barclays, even though White had a well-founded expectation that Gramercy would buy it. During those several hours, SHCM had bought the bond and did not yet have a firm order to sell it. The firm's capital was at risk during that time. Accordingly, SHCM violated Exchange Act Section 15(c)(3) and Rule 15c3-1.

4. Exchange Act Rule 17a-11(b)(1)

Exchange Act Rule 17a-11(b)(1) requires a broker-dealer whose net capital declines below the minimum required pursuant to the net capital rule, Rule 15c3-1, to notify the Commission on the same day. 17 C.F.R. § 240.17a-11(b)(1). SHCM did not inform the Commission of any net capital deficiency and thus violated Rule 17a-11(b)(1).

5. White and SHCH

White was involved in the Gramercy Bond transactions without which the net capital and reporting violations would not have occurred. He knew that SHCM had not finalized the terms of the sale to Gramercy when it bought the bond from Barclays, and this should have caused him to question the potential effect on SHCM's required minimum net capital. Nonetheless, there is

[20] Respondents even argue that the Commission is estopped from ascribing a trade blotter violation to SHCM in light of the blotter violation ascribed to Rafferty in the Rafferty settlement, *Rafferty*, 2014 SEC LEXIS 1688, at ¶¶ 14-15. Respondents do not, however, explain why the inaccuracy of Rafferty's books and records (downstream from SHCM's) absolves SHCM from responsibility.

no evidence in the record that shows that he had actual knowledge of SHCM's net capital on March 16, 2010, or participation in, or knowledge of, the failure to report SHCM's net capital deficiency. Therefore, in light of the Division's burden of proof, it is concluded that White did not aid and abet but did cause SHCM's violations, because he should have known that his conduct would contribute to the violations. As CEO, 80% owner, and founder of SHCH, the 100% owner of SHCM, White's secondary liability for SHCM's violation of the net capital and reporting rules is attributed to SHCH, as well. As noted above, White and SHCH stipulated that they aided and abetted and caused Rafferty's violation of Exchange Act Section 17(a) and Rule 17a-3(a)(1) in regard to the first Gramercy Bond trade.

IV. SANCTIONS

The Division requests cease-and-desist orders; disgorgement, jointly and severally by SHCP, SHCH, and White, of ill-gotten gains arising from violations of Exchange Act Section 15(a) in the amount of $3,953,608 plus prejudgment interest; civil penalties of $225,000, $725,000, $950,000, and $272,500 against SHCM, SHCP, SHCH, and White, respectively; and a censure of SHCM and an industry bar against White.

As discussed below, the following will be ordered: cease-and-desist orders; disgorgement, jointly and severally by SHCP, SHCH, and White, of $3,953,608 plus prejudgment interest; civil penalties, jointly and severally, against SHCP, SHCH, and White of $75,000; civil penalties, jointly and severally, against SHCM, SHCH, and White of $7,500; and a censure of SHCM and White.

A. Sanction Considerations

In determining sanctions, the Commission considers such factors as:

> 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 defendant's recognition of the wrongful nature of his conduct, and the likelihood that the [respondent's] occupation will present opportunities for future violations.

Steadman, 603 F.2d 1126, 1140 (quoting *SEC v. Blatt*, 583 F.2d 1325, 1334 n.29 (5th Cir. 1978)). The Commission also considers the age of the violation and the degree of harm to investors and the marketplace resulting from the violation. *Marshall E. Melton*, Exchange Act Release No. 48228, 2003 SEC LEXIS 1767, at *4-5 (July 25, 2003). Additionally, the Commission considers the extent to which the sanction will have a deterrent effect. *Schield Mgmt. Co.*, Exchange Act Release No. 53201, 2006 SEC LEXIS 195, at *35-36 & n.46 (Jan. 31, 2006). As the Commission has often emphasized, the public interest determination extends to the public-at-large, the welfare of investors as a class, and standards of conduct in the securities business generally. *See Christopher A. Lowry*, Investment Company Act of 1940 Release No. 2052, 2002 SEC LEXIS 2346, at *20 (Aug. 30, 2002), *aff'd*, 340 F.3d 501 (8th Cir. 2003); *Arthur Lipper Corp.*, Exchange Act Release No. 11773, 1975 SEC LEXIS 527, at *52 (Oct. 24, 1975). The amount of a sanction depends on the facts of each case and the value of the sanction in

preventing a recurrence. *See Leo Glassman*, Exchange Act Release No. 11929, 1975 SEC LEXIS 111, at *7 (Dec. 16, 1975).

B. Cease and Desist

Exchange Act Section 21C authorizes the Commission to issue a cease-and-desist order against a person who "is violating, has violated, or is about to violate" any provision of the Exchange Act or who "is, was, or would be a cause of the violation." 15 U.S.C. § 78u-3(a). Whether there is a reasonable likelihood of such violations in the future must be considered. *KPMG*, 2001 SEC LEXIS 98, at *101. Such a showing is "significantly less than that required for an injunction." *Id*. at *114. In determining whether a cease-and-desist order is appropriate, the Commission considers the *Steadman* factors quoted above, as well as the recency of the violation, the degree of harm to investors or the marketplace, and the combination of sanctions against the respondent. *See WHX Corp. v. SEC*, 362 F.3d 854, 859-61 (D.C. Cir. 2004); *KPMG*, 2001 SEC LEXIS 98, at *116.

White and SHCH have acknowledged their secondary liability for Rafferty's violation of Exchange Act Section 17(a) and Rule 17a-3(a)(1) (inaccurate trade blotter related to the first Gramercy Bond transaction). Consistent with a vigorous defense of the charges against them, White, SHCH, SHCP, and SHCM have not otherwise affirmatively recognized the wrongful nature of their conduct or given assurances against future violations.

White, SHCH, and SHCP's conduct in operating SHCP as an unregistered broker-dealer was egregious and recurrent over a period of ten months. The violation was neither recent nor distant in time. While scienter is not an element of this violation, White, SHCH, and SHCP were at least reckless – their awareness that they were operating in a potentially violative manner is shown by their representation to FINRA that SHCP "does not conduct a securities business." While White's and SHCH's occupations theoretically provide opportunity for future violations, SHCP has ceased business activity, and the motive for White and SHCH to operate an unregistered broker-dealer was removed with the registration of SHCM. Nonetheless, circumstances could change. There was no financial harm to investors and the marketplace, and the transactions that SHCP introduced (which involved major financial firms) were otherwise entirely legitimate. However, harm to the marketplace is evident from the flouting of the requirement that a broker-dealer be licensed. In light of the combination of sanctions against White, SHCH, and SHCP, a cease-and-desist order is appropriate.

The violations related to the Gramercy Bond transactions were serious but not recurrent – the recordkeeping violation occurred twice, and the net capital and reporting violation, once. While scienter is not an element of these violations, White and SHCH acknowledged aiding and abetting Rafferty's trade blotter violation concerning the first Gramercy Bond trade. Again, there was no actual harm to the marketplace, although, potentially, had SHCM failed to firm up a sell order to Gramercy, in the second transaction, it had insufficient capital to pay for the purchases. Again, White's, SHCM's, and SHCH's occupations provide opportunity for future violations.

Accordingly, a cease-and-desist order is appropriate against SHCP, SHCH, and White for the SHCP violations and against SHCM, SHCH, and White for the SHCM violations.

C. Disgorgement

Exchange Act Section 21C(e) authorizes disgorgement of ill-gotten gains, including reasonable interest, in cease-and-desist proceedings. 15 U.S.C. § 78u-3(e). Disgorgement of ill-gotten gains is "an equitable remedy designed to deprive a wrongdoer of his unjust enrichment and to deter others from violating the securities laws." *Montford & Co., Inc. v. SEC*, 793 F.3d 76, 84 (D.C. Cir. 2015) (quoting *SEC v. First City Fin. Corp*., 890 F.2d 1215, 1230 (D.C. Cir. 1989)).

"When calculating disgorgement, 'separating legal from illegal profits exactly may at times be a near-impossible task.'" *Id.* (quoting *First City Fin. Corp*., 890 F.2d at 1231). "Thus, 'disgorgement need only be a reasonable approximation of profits causally connected to the violation.'" *Id*.; *see SEC v. First Pac. Bancorp*, 142 F.3d 1186, 1192 n.6 (9th Cir. 1998) (holding disgorgement amount only needs to be a reasonable approximation of ill-gotten gains); *accord First City Fin. Corp.*, 890 F.2d at 1231-32; *Laurie Jones Canady*, Exchange Act Release No. 41250, 1999 SEC LEXIS 669, at *38 (Apr. 5, 1999) (quoting *SEC v. First Jersey Secs., Inc.*, 101 F.3d 1450, 1475 (2d Cir. 1996)), *pet. denied*, 230 F.3d 362 (D.C. Cir. 2000).

"[T]he power to order disgorgement extends only to the amount with interest by which the defendant profited from his wrongdoing. Any further sum would constitute a penalty assessment." *SEC v. ETS Payphones, Inc.*, 408 F.3d 727, 735 (11th Cir. 2005) (quotation omitted). However, "how a defendant chooses to spend his ill-gotten gains, whether it be for business expenses, personal use, or otherwise, is immaterial to disgorgement." *SEC v. Aerokinetic Energy Corp.*, 444 F. Appx. 382, 385 (11th Cir. 2011) (quotation omitted). Accordingly, "the overwhelming weight of authority holds that securities law violators may not offset their disgorgement liability with business expenses." *SEC v. Brown*, 658 F.3d 858, 861 (8th Cir. 2011) (quotation omitted).

SHCP received $3,953,608.61 in commissions from its operation as an unregistered broker-dealer; it ordered Rafferty to pay a portion of that amount directly to SHCP employees who were the registered representatives who arranged the transactions. In accord with precedent, neither the commissions paid directly to the SHCP employees, nor any other SHCP business expenses, will be omitted from the disgorgement total. Disgorgement of $3,953,608 will be ordered jointly and severally against SHCH, SHCP, and White in view of the common ownership among the Spring Hill entities, White's ultimate 80% ownership and leadership, and the flow of funds among the entities. *See, e.g., First Jersey Secs., Inc.*, 101 F.3d at 1475; *SEC v. Capital Solutions Monthly Income Fund, LP*, 28 F. Supp. 3d 887, 899 (D. Minn. 2014), *appeal pending*, No. 15-1072 (8th Cir.).

D. Civil Money Penalty

Exchange Act Section 21B authorizes the Commission to impose civil money penalties against a person who violated, or was the cause of the violation of, any provision of the

Exchange Act, or rules thereunder, where such penalties are in the public interest. 15 U.S.C. § 78u-2(a). In considering whether a penalty is in the public interest, the Commission may consider six factors: (1) fraud or deliberate or reckless disregard of a regulatory requirement; (2) harm to others; (3) unjust enrichment; (4) previous violations; (5) deterrence; and (6) such other matters as justice may require. *See* Section 21B(c) of the Exchange Act; *New Allied Dev. Corp.*, Exchange Act Release No. 37990, 1996 SEC LEXIS 3262, at *30 n.33 (Nov. 26, 1996); *First Sec. Transfer Sys., Inc.*, Exchange Act Release No. 36183, 1995 SEC LEXIS 2261, at *9 (Sept. 1, 1995); *see also Jay Houston Meadows*, Exchange Act Release No. 37156, 1996 SEC LEXIS 1194, at *25-27 (May 1, 1996), *aff'd*, 119 F.3d 1219 (5th Cir. 1997); *Consol. Inv. Servs., Inc.*, Exchange Act Release No. 36687, 1996 SEC LEXIS 83, at *22-24 (Jan. 5, 1996).

Fraud, harm to others, and previous violations are absent from the instant case. However, the SHCP violation involved a reckless disregard of a regulatory requirement and resulted in unjust enrichment. Deterrence also requires penalties for both the SHCP and SHCM violations.

Penalties in addition to the other sanctions ordered are in the public interest. Pursuant to Exchange Act Section 21B(b)(1), for each violative act or omission after March 3, 2009, and before March 6, 2013, the maximum first-tier penalty is $7,500 for a natural person and $75,000 for any other person. 17 C.F.R. § 201.1004, Subpt. E, Table IV. A second-tier penalty is appropriate when a respondent's violative acts involved a deliberate or reckless disregard of a regulatory requirement. Exchange Act Section 21B(b)(2). Under that provision, for each violative act or omission during the same time period, the maximum second-tier penalty for each violation for a natural person is $75,000 and for any other person is $375,000. 17 C.F.R. § 201.1004, Subpt. E, Table IV.

The provisions, like most civil penalty statutes, leave the precise unit of violation undefined. *See* Colin S. Diver, *The Assessment and Mitigation of Civil Money Penalties by Federal Administrative Agencies*, 79 Colum. L. Rev. 1435, 1440-41 (1979).

The events at issue will be considered as two courses of action – SHCP's operations as an unregistered broker-dealer and the violations associated with SHCM's Gramercy Bond transactions. A second-tier civil penalty of $75,000 for the SHCP violation is appropriate because it involved a reckless disregard of a regulatory requirement. *See* Exchange Act Section 21B(b)(2). The penalty for the SHCP violation will be imposed jointly and severally on SHCP, SHCH, and White. A first-tier penalty of $7,500 for the SHCM violations is appropriate as aggravating factors are largely absent. It will be imposed jointly and severally on SHCM, SHCH, and White. Combined with the other sanctions ordered, these penalties are in the public interest.

E. Exchange Act Section 15(b)(4), (6) Sanctions

The Division requests an industry bar against White and a censure of SHCM. A censure of SHCM is clearly in the public interest, in combination with the other sanctions ordered. However, a lesser sanction than a bar – a censure – is appropriate for White. No Commission opinion in a litigated administrative proceeding has imposed a bar on a respondent solely for

operating as an unregistered broker-dealer.[21] Such a sanction is found where the respondent has also violated, or aided and abetted violation of, the antifraud provisions. *See David F. Bandimere*, Securities Act Release No. 9972, 2015 SEC LEXIS 4472 (Oct. 29, 2015) (violation of antifraud, broker-dealer registration, and securities registration provisions); *Maria T. Giesige*, Exchange Act Release No. 60000, 2009 SEC LEXIS 1756 (May 29, 2009); *Paul Carroll Ferguson*, Exchange Act Release No. 6009, 1959 SEC LEXIS 549 (July 7, 1959) (violation of antifraud, broker-dealer registration, and other provisions; respondent's registration as a broker-dealer revoked); *Gregory & Co., Inc*., Exchange Act Release No. 5680, 1958 SEC LEXIS 251 (Apr. 18, 1958) (violation of antifraud, broker-dealer registration, and other provisions; respondent's application for registration as a broker-dealer denied); *The Whitehall Corp.*, Exchange Act Release No. 5667, 1958 SEC LEXIS 246 (Apr. 2, 1958) (violation of antifraud, broker-dealer registration, and other provisions; respondent's application for registration as a broker-dealer denied).

It is concluded above that White caused, but did not aid and abet, SHCM's net capital and reporting violations; White admitted that he aided and abetted and caused Rafferty's trade blotter violation. However, even had he aided and abetted all the violations, no Commission opinion in a litigated administrative proceeding has imposed a bar for violation of Exchange Act provisions and Commission rules regarding recordkeeping, net capital, and reporting. Rather, such a sanction is found where the respondent has also violated the antifraud provisions. *See Orlando Joseph Jett*, Securities Act Release No. 8395, 2004 SEC LEXIS 504 (Mar. 5, 2004) (violation of antifraud provisions; secondary liability for broker-dealer's violation of recordkeeping provisions); *Zion Capital Mgmt. LLC*, Securities Act Release No. 8345, 2003 SEC LEXIS 2939 (Dec. 11, 2003) (violation of antifraud and recordkeeping provisions); *David E. Lynch*, Exchange Act Release No. 46439, 2002 SEC LEXIS 3416 (Aug. 30, 2002) (violation of antifraud provisions, secondary liability for broker-dealer's violation of net capital and recordkeeping provisions); *Abraham and Sons Capital, Inc*., Exchange Act Release No. 44624, 2001 SEC LEXIS 2773 (July 31, 2001) (primary or secondary violation of antifraud, recordkeeping, and other provisions; bar with right to reapply in five years); *Marc N. Geman*, Exchange Act Release

[21] To the extent that the Division cites to settlements to support its request for a bar, it goes without saying that a settlement is not precedent, as the Commission has stressed many times. *See Richard J. Puccio*, Exchange Act Release No. 37849, 1996 SEC LEXIS 2987, at *10-11 (Oct. 22, 1996) (citing *David A. Gingras*, Exchange Act Release No. 31206, 1992 SEC LEXIS 2537, at *20 (Sept. 21, 1992), and cases cited therein); *Robert F. Lynch*, Exchange Act Release No. 11737, 1975 SEC LEXIS 599, at *12 n.17 (Oct. 15, 1975) (citing *Samuel H. Sloan*, Exchange Act Release No. 1376, 1975 SEC LEXIS 942, at *12 n.24 (Apr. 28, 1975); *Haight & Co., Inc.*, Exchange Act Release No. 9082, 1971 SEC LEXIS 436, at *67-69 (Feb. 19, 1971), *aff'd without opinion*, (D.C. Cir. 1971); *Security Planners Assocs., Inc.*, Exchange Act Release No. 9421, 1971 SEC LEXIS 1035, at *13-14 (Dec. 17, 1971)); *see also Mich. Dep't of Natural Res. v. FERC*, 96 F.3d 1482, 1490 (D.C. Cir. 1996), and cases cited therein (settlements are not precedent). Indeed, Commission settlement orders contain a disclaimer to this effect: "The findings herein are made pursuant to [Respondent's] Offer of Settlement and are not binding on any other person or entity in this or any other proceeding."

No. 43963, 2001 SEC LEXIS 282 (Feb. 14, 2001) (secondary liability for violation of the antifraud, recordkeeping, and other provisions; bar with right to reapply in three years).

Even those few cases in which a respondent was suspended or barred in the absence of fraud involved conduct that was much more serious, long-running, and otherwise harmful to the markets than White's conduct. *See Russo Secs., Inc.*, Exchange Act Release No. 44186, 2001 SEC LEXIS 2771 (Apr. 17, 2001) (broker-dealer violated net capital and related recordkeeping and reporting provisions; chief financial officer suspended for one year; firm had included in its net capital calculations stock that it did not even have and that had no ready market; firm had negative net capital for three months); *Ronald S. Bloomfield*, Securities Act Release No. 9553, 2014 SEC LEXIS 698 (Feb. 27, 2014) (registered representatives sold large amounts of unregistered penny stocks from highly questionable customers, and manager failed reasonably to supervise them with a view toward detecting and preventing their registration violations; all aided and abetted and caused broker-dealer's failure to file Suspicious Activity Reports; registered representatives barred; manager barred with a right to reapply in a non-proprietary, non-supervisory capacity after two years).

Accordingly, in combination with the other sanctions ordered, a censure of White and of SHCM is in the public interest.

V. RECORD CERTIFICATION

Pursuant to Rule 351(b) of the Commission's Rules of Practice, 17 C.F.R. § 201.351(b), it is certified that the record includes the items set forth in the revised record index issued by the Secretary of the Commission on November 27, 2015, as corrected herein.[22]

VI. ORDER ON MOTION FOR SUMMARY DISPOSITION

During the hearing the undersigned reserved ruling on Respondents' motion for summary disposition on the net capital charge, made at Tr. 1039-41. Based on the findings and conclusions set forth above:

IT IS ORDERED that Respondents' motion for summary disposition IS DENIED IN PART and GRANTED IN PART.

VII. ORDER

IT IS ORDERED that, pursuant to Section 21C of the Exchange Act, SPRING HILL CAPITAL PARTNERS, LLC, SPRING HILL CAPITAL HOLDINGS, LLC, and KEVIN D. WHITE CEASE AND DESIST from committing or causing any violations or future violations of Section 15(a) of the Exchange Act.

IT IS FURTHER ORDERED that, pursuant to Section 21C of the Exchange Act, SPRING HILL CAPITAL MARKETS, LLC, SPRING HILL CAPITAL HOLDINGS, LLC, and

[22] Division Exhibit 196, listed as pending in the record index, will not be admitted.

KEVIN D. WHITE CEASE AND DESIST from committing or causing any violations or future violations of Sections 15(c)(3) and 17(a) of the Exchange Act and Rules 15c3-1, 17a-3(a)(1), and 17a-11(b)(1) thereunder.

IT IS FURTHER ORDERED that, pursuant to Section 21C of the Exchange Act, SPRING HILL CAPITAL PARTNERS, LLC, SPRING HILL CAPITAL HOLDINGS, LLC, and KEVIN D. WHITE, JOINTLY AND SEVERALLY, DISGORGE $3,953,608 plus prejudgment interest at the rate established under Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. § 6621(a)(2), compounded quarterly, pursuant to 17 C.F.R. § 201.600(b). Pursuant to 17 C.F.R. § 201.600(a), prejudgment interest is due from April 1, 2010, through the last day of the month preceding which payment is made.

IT IS FURTHER ORDERED that, pursuant to Section 21B of the Exchange Act, SPRING HILL CAPITAL PARTNERS, LLC, SPRING HILL CAPITAL HOLDINGS, LLC, and KEVIN D. WHITE shall, JOINTLY AND SEVERALLY, PAY A CIVIL MONEY PENALTY OF $75,000, and SPRING HILL CAPITAL MARKETS, LLC, SPRING HILL CAPITAL HOLDINGS, LLC, and KEVIN D. WHITE shall, JOINTLY AND SEVERALLY, PAY A CIVIL MONEY PENALTY OF $7,500.

IT IS FURTHER ORDERED that, pursuant to Section 15(b) of the Exchange Act, SPRING HILL CAPITAL MARKETS, LLC IS CENSURED for violating Exchange Act Sections 15(c)(3) and 17(a) and Rules 15c3-1, 17a-3(a)(1), and 17a-11(b)(1) and KEVIN D. WHITE IS CENSURED for aiding and abetting SHCP's violation of Exchange Act Section 15(a) and Rafferty's violation of Exchange Act Section 17(a) and Rule 17a-3(a)(1).

Payment of disgorgement, prejudgment interest, and civil penalties shall be made no later than twenty-one days following the day this Initial Decision becomes final, unless the Commission directs otherwise. Payment shall be made in one of the following ways: (1) transmitted electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request; (2) direct payments from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm; or (3) by certified check, United States postal money order, bank cashier's check, wire transfer, or bank money order, payable to the Securities and Exchange Commission.

Any payment by certified check, United States postal money order, bank cashier's check, wire transfer, or bank money order shall include a cover letter identifying the Respondent[s] and Administrative Proceeding No. 3-16353, and shall be delivered to: Enterprises Services Center, Accounts Receivable Branch, HQ Bldg., Room 181, AMZ-341, 6500 South MacArthur Bld., Oklahoma City, Oklahoma 73169. A copy of the cover letter and instrument of payment shall be sent to the Commission's Division of Enforcement, directed to the attention of counsel of record.

This Initial Decision shall become effective in accordance with and subject to the provisions of Rule 360 of the Commission's Rules of Practice, 17 C.F.R. § 201.360. Pursuant to that Rule, a party may file a petition for review of this Initial Decision within twenty-one days after service of the Initial Decision. A party may also file a motion to correct a manifest error of fact within ten days of the Initial Decision, pursuant to Rule 111 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 a 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.

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Carol Fox Foelak
Administrative Law Judge