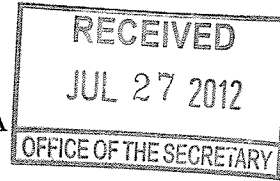


UNITED STATES OF AMERICA  
Before The  
SECURITIES AND EXCHANGE COMMISSION



ADMINISTRATIVE PROCEEDING  
File No, 3-14684

In the Matter of

ANTHONY FIELDS, CPA  
d/b/a ANTHONY FIELDS &  
ASSOCIATES and d/b/a  
PLATINUM SECURITIES  
BROKERS,

JUDGE CAROL FOX FOELAK

Respondent

RESPONDENTS' PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW /  
REPLY TO THE DIVISION OF ENFORCEMENT'S POST HEARING BRIEF

CONTENTS

TABLE OF AUTHORITIES ..... iii

BACKGROUND ..... 1

SUMMARY ARGUMENT ..... 6

REBUTTAL TO STATEMENT OF FACTS ..... 7

    A. Respondent's "Bank Guarantee" and "Mid-Term Note" Message  
    Postings on Social Media Platforms ..... 7

    B. Respondent Offered Fictional "Prime Bank" Securities ..... 7

    C. Respondent's False Claims on AFA and Platinum's Websites  
    10

    D. Respondent's False Representations in Registering AFA as an  
    Investment Adviser ..... 15

    E. Respondent's Failure to Comply with SEC Requirements for  
    Recordkeeping and Practices and Procedures ..... 16

REBUTTAL TO LEGAL ARGUMENT ..... 20

    A. Respondent Willfully Violated Section 17(a) of the Securities Act ..... 20

    B. Respondent Willfully Violated Section 15(a) of the Exchange Act. .... 21

    C. Respondent Willfully Violated the Anti-Fraud Provisions of the Advisers Act ..... 21

        1. Respondent Willfully Violated Sections 206(1) and 206(2) of the  
        Advisers Act. .... 21

        B. Respondent Willfully Violated Section 206(4) of the Advisers Act  
        and Rule 206(4)-1 (a)(5) Thereunder [Advertising] ..... 21

    D. Respondent Willfully Violated the Registration, Disclosure and  
    Recordkeeping Provisions of the Advisers Act ..... 21

        A. Respondent Willfully Violated Section 203A of the Advisers Act  
        [Ineligible to Register] ..... 21

i.	Respondent Willfully Violated Section 207 of the Advisers Act [False Form ADV] .....	21
i.	Respondent Willfully Violated Section 204 of the Advisers Act and Rules 204-2(a)(11) and 204-2(e)(3)(i) Thereunder [Books and Records] .....	21
i.	Respondent Willfully Violated Section 204A of the Advisers Act and Rule 204A-1 Thereunder [Code of Ethics] .21	
E.	Respondent Willfully Violated Section 206(4) of the Advisers Act and Rule 206(4)-7 Thereunder [Compliance Policies and Procedures] .....	21
I.	REBUTTAL TO PROPOSED FINDINGS OF FACT .....	22
A.	Respondent .....	22
B.	Respondent's "Bank Guarantee" and "Mid-Term Note" Message Postings on Social Media Platforms .....	22
C.	Respondent Offered Fictional "Prime Bank" Securities .....	23
D.	Respondent's False Claims on AFA and Platinum's Websites 27	
E.	Respondent's False Representations in Registering AF A as an Investment Adviser 19	
F.	Respondent's Failure to Comply with SEC Requirements for Recordkeeping and Practices and Procedures .....	20
II.	REBUTTAL TO PROPOSED CONCLUSIONS OF LAW .....	33
A.	Securities Act Charges and Violations .....	33
B.	Exchange Act Charges and Violations .....	34
C.	Charges and Violations under the Anti-Fraud Provisions of the Advisers Act ....	34
1.	Respondent Willfully Violated Sections 206(1) and 206(2) of the Advisers Act .....	34
2.	Respondent Willfully Violated Section 206(4) of the Advisers Act and Rule 206 (4)-1 (a)( 5) Thereunder [Advertising] .....	34

D.	Charges under the Registration, Disclosure and Recordkeeping Provisions of the Advisers Act .....	35
A.	Respondent Willfully Violated Section 203A of the Advisers Act [Ineligible to Register] .....	35
B.	Respondent Willfully Violated Section 207 of the Advisers Act [False Form ADV] .....	35
C.	Respondent Willfully Violated Section 204 of the Advisers Act and Rules 204-2(a)(11) and 204-2(e)(3)(i) Thereunder [Books and Records] .....	36
D.	Respondent Willfully Violated Section 204A of the Advisers Act and Rule 204A-1 Thereunder [Code of Ethics] .....	36
E.	Respondent Willfully Violated Section 206(4) of the Advisers Act and Rule 206(4)-7 Thereunder [Compliance Policies and Procedures] .....	38

CONCLUSION

40

**TABLE OF AUTHORITIES**

**CASES**

*Aaron v, SEC*, 446 U.S. 680 (1980) .....

**STATUTES, RULES AND REGULATIONS**

17 C.F.R. § 201.323 .....

Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010)

**MISCELLANEOUS**

Definition of Terms in and Specific Exemptions for Banks, Savings Associations, and Savings Banks under Sections 3(a)(4) and 3(a)(5) of the Securities Exchange Act of 1934, Exchange Act Release No. 44291, 2001 WL 1590253 (May 11, 2001) .....

Diver, Colin S., The Assessment and Mitigation of Civil Money Penalties by Federal Administrative Agencies, 79 Colum. L. Rev. 1435 (1970) .....

H.R. Rep. No. 101-616 (1990) .....

Investor Alert: Social Media and Investing - Avoiding Fraud, SEC Office of Investor Education and Advocacy (Jan. 2012) .....

**BACKGROUND**

Without performing any analytical review, verifying the existence of the signers of the contracts, forensic, investigation, background checks on the parties within the body of the contracts or other supporting documentation that was presented by the respondent to the Division of Enforcement of the Securities And Exchange Commission that was subpoenaed in July of 2011. Having done no due diligence, no investigation whatsoever on any of the documentation submitted, No phone calls, no subpoenas, no depositions, (other than the respondents) supporting their allegations the Department of Enforcement determined that the respondent has perpetrated a criminal offence, fraudulent in nature, has produced an expert witness, who works and is compensated by the same agency accusing the respondent of fraud, whose testimony is biased in all aspects of the term bias has prepared a respondent's Overview of Prime Bank Securities

Fraud Schemes Using Social Media and the Internet, the Respondent's Background and Use of Trade Names Respondent's Offerings and Misrepresentations through Business Networking Social Media. Respondent's False Website Advertising Respondent's False Registration of AF A with the SEC, False Certifications and Failure to Comply with Regulatory Requirements Platinum is not Registered as a Broker-Dealer with the SEC and is not a Primary Dealer in U.S. Treasury Securities and Respondent's Answer to the Order Instituting Proceedings and Refusal to Enter into Stipulations of Fact. Harlan Fiske Stone and Louis Brandeis. Wrote, "Entrapment," is the conception and planning of an offense by an officer, and his procurement of its commission by one who would not have perpetrated it except for the trickery, persuasion, or fraud of the officer."

.On May 21, 2012, 10:00 a.m. EDT, in Hearing Room 2, U.S. Securities and Exchange Commission, 100 F St., N.E., Washington, DC 20549. The parties will exchange witness and exhibit lists and prehearing briefs on or before May 7, 2012. To determine whether an ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933, SECTIONS 15(b) AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934, SECTIONS 203(e), 203(f), 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940, AND SECTION 9(b) OF THE INVESTMENT COMPANY ACT OF 1940 should be granted.

In attendance, representing, the Securities And Exchange Commission was, their lead attorney, Mr. Duane Thompson, his assistant, Ms. Donna K. Norman and their expert witness, Mr. John Reed Stark. The Respondent represented himself pro se.

The three core issues:

- A. Selling Fraudulent Securities
- B. Selling securities on the internet with the intent to defraud investors and selling bank Guarantees and MTNs that do not exist and
- C. There is no such thing as a secondary market for the purchase or sell of Mid-Term Notes (MTNs) or Bank Guarantees (BGs).

The trial only lasted two days, May 21 and 22 of 2012. The first day of the hearing, May 21, 2012, the prosecution called the respondent to the witness stand. The respondent was on the witness stand approximately 8 hours and not once did the prosecution indicate that they checked the agreements and found them to be fraudulent or that the purchaser of the securities were fake. Not one time did he mention that they cross checked the ISIN and CUSIPs in the body of the \$50 Billion contract and found them to be fake or fraudulent. Instead he focused all of his attention on the LinkedIn posts made by the respondent.

On the second day of the trial, May 22, 2012, the prosecution called their expert witness, Mr. John Reed Stark. Mr. Stark was asked his qualifications and background, which were as follows

- 19 years at SEC ( 11 as Chief of (OIE):
- 15 years at Georgetown University Law Center as Adjunct Professor of Law (Course: Securities Regulation and Internet)
- Personally Led 50+ Prime Bank Guarantee Investigations. (Administrative lead on all from 1997 to 2012)
- Co-wrote Seminal Prime Bank Guarantee Primer, published in Securities Regulations Journal
- Author of SEC Prime Bank Advisories
- Creator of “Prime Bank Information Center” on SEC Website and
- 2 years at Arent Fox (Securities Litigation)

The second question asked to Mr. Stark was “after reviewing the file of the respondent, what were your findings and conclusions?” Mr Stark stated his Summary Of Opinions as follows:

- Fields’ offering of Bank Guarantees (BGs) and Mid-Term Notes (MTNs) have the classic indicia of Prime Bank Securities Fraud Schemes and no record evidence suggests the actual existence of any such BGs and MTNs
- Fields did not have any reasonable expectations of being able to deliver or broker the sale of BGs and MTNs because no secondary market exists
- Fields’ use of social media and the internet to offer BGs and MTNs created significant risks to investors

After a few questions about the LinkedIn posts the prosecution stated that he had no further questions

The respondent cross examined the expert witness. The questions asked and Mr. Stark's answers are as follows"

- Did you verify any of the ISIN or CUSIPs in the \$50 Billion contract to determine whether they were real or fraudulent?  
Mr. Stark's answer: NO
- Why not?  
Mr. Starks answer: silence
- This \$50 Billion dollar contract is the core of the allegations' of my selling fraudulent securities and you did not verify whether the securities that were in the body of the agreement was real?  
Mr. Starks answer: NO
- Are you sure that there is no such thing as MTNs or Bank Guarantees?  
Mr. Starks Answer: yes
- Are you absolutely sure?  
Mr. Stark's answer: yes

Next the respondent asked Mr. Starks to look at the respondents reply to the prosecutions prehearing brief, page 89 (Respondent's Exhibit 1) , which was a screen Shot from Bloomberg showing a Deutsche Bank AG, 4.78%, 10 year note, face value \$100,000 to 10MM being sold io the secondary market.

- Are you sure that there is no such thing as MTNs or Bank Guarantees?  
Mr. Starks Answer: yes
- Are you absolutely sure?  
Mr. Stark's answer: yes

Then I gave the prosecution a link to HSBC London which has the following information:

International Business Guarantees

When you're trading internationally and don't have established relationships, guarantees reduce the risks for each party.

Manage international trade risk A guarantee or bond, as they are sometimes known, provides the beneficiary with acceptable security if the applicant (you) fails to fulfill its obligations in the underlying contract.

Extensive experience, attractive terms At HSBC we have extensive experience of guarantees, together with a worldwide network of group offices and correspondent banks to meet your domestic and international needs

#### SUMMARY ARGUMENT

The sale of securities to a relatively small number of select investors as a way of raising capital. Investors involved in private placements are usually large banks, mutual funds, insurance companies and pension funds. Private placement is the opposite of a public issue, in which securities are made available for sale on the open market.

Since a private placement is offered to a few, select individuals, the placement does not have to be registered with the Securities and Exchange Commission. In many cases, detailed financial information is not disclosed and a the need for a prospectus is waived. Finally, since the placements are private rather than public, the average investor is only made aware of the placement after it has occurred

The sale of a new issue to a few large institutional investors without registering with the SEC. A private placement is exempt from SEC registration, subject to certain restrictions, because it is not offered to the general public. A broker of a Direct Private Placement need not be licensed. The Bank Guarantees and Mid-Term Notes were Direct Private Placement sells as indicated in the body of the Letter of Intent (LOI).

: Private placement brokers are a special class of brokers that receive compensation for introducing buyers and sellers of securities but are exempt from certain requirements applicable to brokers, including application of the Securities Investor Protection Act of 1970 (§240.36a1-3) and the net capital requirements for brokers or dealers (§240.15c3-1). Private placement brokers are subject to special requirements, including limitations on the scope of their securities activities (§240.15a-12) and record keeping obligations (§240.17a-3(g)). For the purposes of this section 15, the term “broker” includes private placement broker.

“A market where investors purchase securities or assets from other investors, rather than from issuing companies themselves. The national exchanges - such as the New York Stock Exchange and the NASDAQ are secondary markets

During the nine months in business from March 10, 2010 up to December 31, 2010 the respondent has negotiated office space for the firms; negotiated contracts with Fidelity, Merrill Lynch, Bloomberg, CQG, Inc., Pershing Clearing House, DTCC and Treasury Direct which gives the respondent access to well over 25,000 securities, back office support and investment advisory support services.

Within the 9 months that my firms has been in operation I have adhered to the 12 standards of the SEC and FINRA and have prepared 39 manuals, 10 programs and a host of documents to ensure that the firms were in compliance

The allegations that the posts in the B2B websites were merely a scheme to lure investors is based on assumptions and the presumption that Bank Guarantees and Mid-Term Notes do not exist.

All the information within the websites of AF&A and Platinum were true and based on supporting facts at the time they were published

FINRA and the SEC both acknowledge that the secondary market exists and that brokers selling DPP do not need to be licensed

## REBUTTAL TO STATEMENT OF FACTS

### **A. Respondent's "Bank Guarantee" and "Mid-Term Note" Message Postings on Social Media Platforms**

The principles and methodology applied to this case is based on the assumption that MTNs and Bank Guarantees did not exist, however, the respondent proved beyond a reasonable doubt that Mid-Term Notes (MTNs) and Bank Guarantees (BGs) does exist, that the Bloomberg screenshot clearly indicated that Deutsche Bank MTNs were being sold on a secondary market and HSBC of London is one of the many banks that does sell Bank Guarantees

### **B. Respondent Offered Fictional "Prime Bank" Securities**

#### **Credit Suisse at a Glance**

Credit Suisse provides companies, institutional clients and high-net-worth private clients worldwide, as well as retail clients in Switzerland, with advisory services, comprehensive solutions, and excellent products.

#### **Credit Suisse Group**

Credit Suisse Group

Paradeplatz 8

8070 Zurich

Switzerland

Phone +41 44 212 16 16

#### **Instrument**

Every declaration labeled as a "bank guarantee" must be carefully examined in terms of legal significance and viability.

Under a bank guarantee/surety bond arrangement, the bank acts as guarantor of a claim or obligation in lieu of the debtor. The bank cannot be held liable in the event that the debtor fails to "perform". The bank's obligation is limited to its pledge to pay a maximum specified amount on fulfillment of the terms of the commitment.

A bank guarantee/surety bond may only be issued if the customer has been granted a line of credit. In certain cases, the bank may require adequate collateral.

A clear distinction must be made between a surety bond and a promise to pay. Glossary

#### **Guarantees**

These tools are a commitment by the bank to take on the debtor's payment obligation.

#### **Descriptions and Information**

- Instrument

- Difference between guarantees and surety bonds
- Types of guarantees
- Types of guarantees
- Standard Sureties
- Costs

## **Resources**

### **ICC Guidelines for Guarantees**

A brief description of the uniform rules for guarantees payable on demand.

### **ICC Stand-By Guidelines**

A brief description of international stand-by practices (ISP98).

### **Ordering Manuals**

At the Download Center, you can order the following reference publications: "Bank Guarantees", "Documentary Credits and Documentary Collections

### **International Business Guarantees**

When you're trading internationally and don't have established relationships, guarantees reduce the risks for each party.

Manage international trade risk A guarantee or bond, as they are sometimes known, provides the beneficiary with acceptable security if the applicant (you) fails to fulfil its obligations in the underlying contract.

Extensive experience, attractive terms At HSBC we have extensive experience of guarantees, together with a worldwide network of group offices and correspondent banks to meet your domestic and international needs

Our global presence means we can provide you with attractive terms on foreign guarantees

Our specialist Guarantees Team based in London can provide you with valuable support for your business.

Commonly used guarantees When you're trading internationally you may often come across the following guarantees. We can arrange these and guarantees to cover many other kinds of risk.

### **Performance Bond** The most common type of guarantee

Usually required for the duration of a contract, plus a grace period to allow the beneficiary to make a demand in the event of non-performance of the obligations covered by the guarantee.

**Tender Guarantee/Bid Bond** Often called for in support of contract tenders, particularly in international trade situations

Provides the beneficiary with a financial remedy if the applicant fails to fulfill any of the tender conditions.

**Advance Payment Guarantee** Used where the applicant calls for the provision of a sum of money at an early stage of the contract

The beneficiary can recover the amount paid in advance, or part thereof, if the applicant fails to fulfil their underlying contractual obligations.

VAT Bond/Duty Deferment Bond Provided to HM Revenue & Customs enabling the applicant to import goods from outside the EU without the immediate payment of duty or tax.

Facility Guarantee Enables an applicant to secure banking facilities for a subsidiary, associate company or personal account in other countries.

Important information International Business Price List (PDF)

Standby DC application form (PDF)

Don't have Adobe PDF Reader? Download Adobe Reader

Contact our specialist Guarantees team To learn more about Guarantees and HSBC EasyTrade:

Call us on:

0800 78 31 300 Textphone 1800 108457 125 563

Email [uktradeservices@hsbc.com](mailto:uktradeservices@hsbc.com)

Contact our specialist Guarantees team To learn more about Guarantees and HSBC EasyTrade:

Call us on:

0800 78 31 300 Textphone 1800 108457 125 563

Email: [uktradeservices@hsbc.com](mailto:uktradeservices@hsbc.com)

Guarantee application form (PDF)

Standby DC application form (PDF)

Don't have Adobe PDF Reader? Download Adobe Reader

Why choose HSBC? Access over 8,000 local experts in 63 markets Maximise international opportunities and guard against risks Manage your global banking from a single logon with our award winning HSBCnet Support and information including online guides, resources and forums. More info

Business Tool Trade Cycle Calculator

Understand your international cashflow better with our Trade Cycle Calculator.

Business Service Foreign exchange risk (PDF)

Manage your international risk with our four point FX plan (PDF).

Knowledge Centre Manage export and import finance

Understand and plan for the challenges of international trade.

Business Video Trading in Europe

Tips on processing payments from within the Eurozone.

The links on this page will open a new browser window and may:

i) Allow you to access other websites. Please read the linked websites' terms and conditions. HSBC Bank plc has no control over non-HSBC websites and is not liable for your use of them.

ii) Allow you to access another HSBC Group website. Please read the terms and conditions of the linked website, which may differ from the terms and conditions of HSBC Bank plc's website.

Products and services International business accounts and services

International payment services

Insurance and protection  
Internet and telephone banking  
Finance and borrowing  
Credit cards  
Business needs  
Importing and exporting  
International payment processing  
Protecting your business  
Global Cash Management  
Business Traveller  
Popular products  
Foreign Exchange  
Foreign Exchange Risk Management  
HSBC EasyTrade  
Export Invoice Finance  
HSBCnet  
International Business Account  
Helpful links  
Contact us  
Branch locator  
Why choose HSBC

### **C. Respondent's False Claims on AFA and Platinum's Websites**

The Division of Enforcement has again misrepresented the truth about the original contract 50 Billion dollar contract with East West Trading (EXHIBIT I). The respondent advertised on his website (Anthony Fields, & Associates) that the organization was an investment advisory firm specializing in U.S. Government Securities only. The potential investor called and asked if the respondent had access to treasury strips. The respondent informed the potential client that he did have access to the Treasury securities in his inquiry. The respondent sent a list of ISIN and CUSIP s to the potential buyer and once he verified that they were real he indicated that his company would like to purchase them at a price of 30% percent of face value whereas he would then sell them to his exit buyers for 32% of face value. When the respondent informed him that he would have to open an account with the firm he asked did the firm have the securities in the firm's portfolio. Once the respondent informed him that the firm was not in possession of the securities but would purchase them with the funds of the potential buyer he indicated that the only way he would open an account was if we already had the securities in the firm's possession.

The potential client agreed that he would sign the contract with the understanding that Anthony Fields & Associates would have the Treasury securities in it's possession. In February of 2010 Fields found Mr. Leston Williams, who indicated that he was a partner in a large pension fund and that after hearing the details of the transaction, offered to go into a joint venture with Anthony Fields & Associates to fulfill the contract requirements between East West Trading and

Anthony Fields & Associates.

The Division of Enforcement indicates that the contract was only a few pages.

Contracts can come in all shapes and sizes, and in the words of my contracts professor, Eric Andersen, even on eggshells. That's right. He litigated a case involving a contract written on an eggshell. When I saw an article about a contract on a napkin, it didn't surprise me. Now that I've been practicing law almost 20 years, not much about the law surprises me anymore. The question then becomes what constitutes a contract? Yes, it's possible to have a contract on a napkin, but it has to contain the essential elements of the contract and be signed by the party to be charged with performance

Other representations made on AF&A website are no more justifiable. Thus, the purported "Company Bio" claims that:

- "Currently there are 44 designated primary dealers [of U.S. Treasury securities]. Our firm has an arrangement with the 45th primary dealer."

The respondent acknowledges that he made that statement, however, the information was obtained from Investopedia and when the information was obtained it was out dated. Since that time Investopedia has updated their information and contends that there are 21 primary dealers in America as of 2010.

Innocent misrepresentation occurs when the representor had reasonable grounds for believing that his or her false statement was true. Prior to Hedley Byrne, all misrepresentations that were not fraudulent were considered to be innocent. This type of representation primarily allows for a remedy of rescission, the purpose of which is put the parties back into a position as if the contract had never taken place. Section 2(2) Misrepresentation Act 1967, however, allows for damages to be awarded in lieu of rescission if the court deems it equitable to do so. This is judged on both the nature of the innocent misrepresentation and the losses suffered by the claimant from it.

- "The management of Anthony Fields & Associates is experienced in company start ups and securities trading and government securities in particular."

The respondent 's statements are true and accurate and would like to know where or how did the Division of Enforcement come to the conclusion that these statements were misrepresented without verifying any of the information presented to them. The respondent has helped well over 10 start-up companies: The Illinois Migrant Council; the Reverse Mortgage Corporation; Kumow Dot Com, Inc.; Gurnee Real Estate Development Corporation is just to name a few. The respondent has also worked closely with Weiser Investment Management

Company assisting in trading and research of stocks and bonds such as AT&T, who spun off into seven other companies such as, Ameritect, Southwest Bell; Atlantic Bell, etc.

- "Previously, management grew a company from a single one man operation into a multi-level organization with sixteen branch offices and resources well over 16 million dollars."

The respondent 's statements are true and accurate and would like to know where or how did the Division of Enforcement come to the conclusion that these statements were presented without verifying any of the information presented to them

- "Anthony Fields & Associates provides discretionary and non discretionary advisory services in fixed income portfolios to high net worth individuals and institutional investors."

The respondent 's statements are true and accurate and would like to know where or how did the Division of Enforcement come to the conclusion that these statements were presented without verifying any of the information presented to them. The respondent established his investment advisory firm for the specific purpose of providing discretionary and non discretionary advisory services in fixed income portfolios to high net worth individuals and institutional investors."

The Division of Enforcement apparently does not have any knowledge of Marketing or advertising. The other misstatement of Facts presented by them are:

- Notwithstanding these many claims, in reality, Fields has never had any "arrangement" with a "primary dealer" of U.S. Treasury securities and has absolutely no experience trading such securities himself.
- AF A has no "high net worth individuals and institutional investors" as clients,
- , or indeed, any investor clients at all. Fields heads no "expert investment team" or "experienced research team" at AF A. Fields own personal experience as an investment adviser and turnaround specialist is nonexistent. Even the "startup" that Fields claims to have grown is merely a company that he may have once audited but that he never managed and with which he had no sustained involvement. Platinum, despite its characterization on the AF A website, does not even exist except as a trade name.

The respondent 's statements are true and accurate and would like to know where or how did the Division of Enforcement come to the conclusion that these statements were misrepresented without verifying any of the information presented to them. The respondent has helped well

over 10 start-up companies: The Illinois Migrant Council; the Reverse Mortgage Corporation; Kumow Dot Com, Inc.; Gurnee Real Estate Development Corporation is just to name a few. The respondent has also worked closely with Weiser Investment Management Company assisting in trading and research of stocks and bonds such as AT&T, who spinned off into seven other companies such as, Ameritect, Southwest Bell; Atlantic Bell, etc.

In addition, if you looked closely at the website you would see that the respondent's website did allow for the registration online and the viewing accounts on line with the proper ID and password.

The Division of Enforcement also represented that the respondent made highly misleading claims on his other organization's website, "Platinum Securities Brokers" as follows:

- Fields also made highly misleading claims on Platinum's Website. There, Fields proclaimed: "At Platinum Securities Brokers you can buy bills, notes bonds, tips and strips or mutual funds either by calling one of the our representatives or by transacting these securities yourself on the Internet.

- The website also claimed that Platinum "provide] s l Prime Brokerage Services. The services provided under prime brokering are securities lending (after one year), leveraged trade executions, and cash management, among other things

- and that it has "state of the art electronic trading capabilities and a portfolio of over 25,000 U.S. Government securities."

The respondent having security accounts with Fidelity, Merrill Lynch, Bloomberg, CQG, Inc., Pershing Clearing House and Treasury Direct gives the respondent access to well over 25,000 securities

- Platinum's website also stated that it would take commissions (I.e., transaction-based compensation).

- Fields failed to disclose the fact that Platinum was not registered as a broker- dealer with the SEC.

- "Platinum Securities Brokers is an institutional broker/dealer in U.S. Government securities. Licensed in the State of Illinois and registered with the Securities and Exchange Commission."

- "Platinum Securities Brokers is one of the leading institutional broker/dealers in government securities with state ofthe art electronic trading capabilities and a portfolio of over 25,000 U.S. Government securities."

- "[Platinum has] tremendous influences on the financial markets because we can either buy or sell a large volume of U.S. Government securities."
- "This institutional brokerage firm ... [has] strong relationships with major Fixed Income sources like the United States Treasury, Department [sic] and the Bureau Of [sic] Public Debt and other leading issuers of Treasury obligations."
- Fields also asserted that "Platinum Securities Brokers not only have their own research analysts, but also have strong relationships with other research firms"; that "[o]ur syndicate desk offers access to new issues, including structured products"; and that "you can tap into our large, executable online inventory, which provides access to more than 25,000 Government Securities."
- Fields' had no good faith basis for any of these claims, and in fact, none of them is true. Fields has various rationales to justify his representations but none are sustainable. For example, Fields' only basis for claiming that Platinum had a large "inventory" of securities is that he had access to Bloomberg research tools on his computer.

The respondent 's statements are true and accurate and would like to know where or how did the Division of Enforcement come to the conclusion that these statements were misrepresented without verifying any of the information presented to them. The respondent has helped well over 10 start-up companies: The Illinois Migrant Council; the Reverse Mortgage Corporation; Kumow Dot Com, Inc.; Gurnee Real Estate Development Corporation is just to name a few. The respondent has also worked closely with Weiser Investment Management Company assisting in trading and research of stocks and bonds such as AT&T, who spun off into seven other companies such as, Ameritect, Southwest Bell; Atlantic Bell, etc.

In addition, if you looked closely at the website you would see that the respondent's website did allow for the registration online and the viewing accounts on line with the proper ID and password.

#### **D. Respondent's False Representations in Registering AFA as an Investment Adviser**

The respondent uses the affirmative defenses of reasonable expectations, statement of Fact and Intention and the Future.

Statements which are made in relation to the intention of a party or the occurrence of some event in the future do not constitute misrepresentations should they fail to eventuate. This is because at the time the statements were made they can not be categorised as either true or false. However, similarly to the first point above, an action can be brought if the intention never actually existed. This can be illustrated by the decision in *Edgington v Fitzmaurice* (1885) 29 Ch.

D. 459, which deals with a statement of intention by the directors of a company to use loaned money to alter company buildings and make purchases to expand the company's operating options.

#### **Statement of Fact**

It is a general requirement that for an action in misrepresentation to proceed, that the statement in question be one of present or past fact. This has its grounding in that only facts can be distinguished as being true or untrue at the time they are made and,

The reasonable expectations doctrine is built on assumptions about the way people, in particular unsophisticated insureds, buy insurance. It assumes that in the process of buying insurance, insureds develop specific expectations about what will be covered by their policies. 5 Research done generally in consumer psychology, and specifically about insureds' perceptions and buying behaviors, casts serious doubts on these assumptions. Although not conclusive, that research tends to show that average consumers generally do not develop the kinds of expectations assumed by judges applying the reasonable expectations doctrine. If those assumptions are eliminated, the reasonable expectations doctrine is less theoretically justified and becomes arbitrary in its application. At the same time, however, this research shows that insureds are easy targets for insurers, and therefore some type of protective doctrine like reasonable expectations may be justified.

#### **E. Respondent's Failure to Comply with SEC Requirements for Recordkeeping and Practices and Procedures**

All of the standards listed below were adhered to by the respondent with the exception of Standard No 11, (Record Keeping). Apparently respondent failed to keep adequate internet communications file and the accounting records were not up to date. Everything else was complied with. And even the IRS would give time to update the accounting records before they charge you with a crime.

#### **Standard 1 (Overview of the Applicant)**

NASD Rule 1014(a)(1) requires Member Regulation to consider whether a new member or continuing membership application and all supporting documents are complete and accurate.

**Form NMA:** Information fields request certain new member applicant overview information currently contained primarily in Sections I (General Information), II (Business Lines) and VII (Facilities) of existing Form NMA (*e.g.*, formation information, identification of business activities, types of customers (and/or counterparties), owners, officers, directors and control persons, validation of clearing arrangements)..

**Standard 2 (Licenses and Registrations)**

NASD Rule 1014(a)(2) requires Member Regulation to consider whether an NMA or CMA applicant and its associated persons have all licenses and registrations required by state and federal authorities and self-regulatory organizations (SROs).

**Form NMA:** Information fields request relevant information regarding a new member applicant's licenses and registrations (*e.g.*, required licenses and registrations, two-principal requirement waiver, other SRO registrations) that is currently contained primarily in Sections I (General Information) and III (Personnel) of existing Form NMA, as well as incorporating additional information requests (*e.g.*, intent to claim exemptions from registration or seek examination waivers for personnel) that are necessary for the applicant to demonstrate compliance with this standard.

**Standard 3 (Compliance with Securities Laws, Just and Equitable Principles of Trade)**

NASD Rule 1014(a)(3) requires Member Regulation to consider whether an NMA or CMA applicant and its associated persons are capable of complying with the requirements of the federal securities laws, the rules and regulations thereunder, and FINRA rules, including observing high standards of commercial honor and just and equitable principles of trade.

**Form NMA:** Information fields consist of requests that are contained in Sections I (General Information) and III (Personnel) of existing Form NMA (*e.g.*, disciplinary history) and also incorporate additional information requests (*e.g.*, state or federal orders or decrees, statements of claims, settlement agreements) that are necessary for the new member applicant to demonstrate compliance with the standard.

**Standard 4 (Contractual and Business Relationships)**

NASD Rule 1014(a)(4) requires Member Regulation to consider whether an NMA or CMA applicant has established all contractual or other arrangements and business relationships with

banks, clearing corporations, service bureaus or others necessary to: (A) initiate the operations described in the applicant's business plan, considering the nature and scope of operations and the number of personnel; and (B) comply with the federal securities laws, the rules and regulations thereunder and FINRA rules.

**Form NMA:** Information fields include requests for information regarding an applicant's contractual and business relationships that are contained in Sections I (General Information), IV (Net Capital and Sources of Funding) and V (Contractual and Business Arrangements) of existing Form NMA (*e.g.*, description of contractual arrangements, expense sharing agreements, financing arrangements, fidelity bonds or fidelity bond applications, support and service agreements, auditor information).

#### **Standard 5 (Facilities)**

NASD Rule 1014(a)(5) requires Member Regulation to consider whether an NMA or CMA applicant has, or has adequate plans, to obtain facilities that are sufficient to: (A) initiate the operations described in the applicant's business plan, considering the nature and scope of operations and the number of personnel; and (B) comply with the federal securities laws, the rules and regulations thereunder and FINRA rules.

**Form NMA:** Information fields consist of requests regarding an applicant's facilities that are primarily contained in Section VII (Facilities) of existing Form NMA (*e.g.*, space sharing arrangements, leasing or sub-leasing arrangements) and also incorporate additional information requests that are necessary to determine whether the applicant complies with the standard (*e.g.*, authorizations to sublet, deeds of ownership).

#### **Standard 6 (Communications and Operational Systems)**

NASD Rule 1014(a)(6) requires Member Regulation to consider whether the communications and operational systems an NMA or CMA applicant intends to employ for the purpose of conducting business with customers and other members are adequate and provide reasonably for business continuity.

**Form NMA:** Information fields include requests regarding an applicant's communications and operational systems that are contained in Sections VI (Policies and Procedures) and VII (Facilities) of existing Form NMA (*e.g.*, communications and operational systems descriptions,

supervision arrangements of multiple locations, business continuity plan documents), as well as requests for additional information that are necessary for the applicant to demonstrate compliance with the standard (*e.g.*, information relating to the use of social media sites).

#### **Standard 7 (Maintaining Adequate Net Capital)**

NASD Rule 1014(a)(7) requires Member Regulation to consider whether an NMA or CMA applicant is capable of maintaining a level of net capital in excess of the minimum net capital requirements set forth in SEA Rule 15c3-1 adequate to support the applicant's intended business operations on a continuing basis.

**Form NMA:** Information fields consist of requests regarding an applicant's net capital requirements that are contained primarily in Section IV (Net Capital and Sources of Funding) of existing Form NMA (*e.g.*, information on the nature and source of capital, additional funding plans, minimum net capital requirements, future funding sources).

#### **Standard 8 (Financial Controls)**

NASD Rule 1014(a)(8) requires Member Regulation to consider whether an NMA or CMA applicant has financial controls to ensure compliance with the federal securities laws, the rules and regulations thereunder and FINRA rules.

**Form NMA:** Information fields include requests regarding an applicant's financial controls that are contained primarily in Sections I (General Information), III (Personnel) and VI (Policies and Procedures) of existing Form NMA (*e.g.*, information regarding the registered financial and operations principal's (FINOP's) experience, financial controls, FINOP outside business activity notification) and also incorporate requests for additional information that are necessary for the applicant to demonstrate compliance with the standard (*e.g.*, net capital deficiency plans).

#### **Standard 9 (Written Procedures)**

NASD Rule 1014(a)(9) requires Member Regulation to determine whether an NMA or CMA applicant has compliance, supervisory, operational and internal control practices and standards that are consistent with practices and standards regularly employed in the investment banking or securities business, taking into account the nature and scope of the applicant's proposed business.

**Form NMA:** Information fields consist of requests regarding an applicant's written procedures that are contained in Sections III (Personnel), VI (Policies and Procedures) and VIII (Recordkeeping System) of existing Form NMA (*e.g.*, written supervisory procedures (WSPs), WSP checklist, sample reports to support supervision and financial controls, heightened supervisory procedures attestation).

#### **Standard 10 (Supervisory Structure)**

NASD Rule 1014(a)(10) requires Member Regulation to determine whether an NMA or CMA applicant has a supervisory system, including WSPs, internal operating procedures (including operational and internal controls) and compliance procedures designed to prevent and detect, to the extent practicable, violations of the federal securities laws, the rules and regulations thereunder and FINRA rules.

**Form NMA:** Information fields consist of requests regarding a new member applicant's supervisory structure that are contained in Sections I (General Information) and III (Personnel) of existing Form NMA (*e.g.*, information regarding supervisors' experience and duties, chief compliance officers' experience, non-FINOP outside business activities notifications).

#### **Standard 11 (Books and Records)**

NASD Rule 1014(a)(11) requires Member Regulation to determine whether an NMA or CMA applicant has a recordkeeping system that enables the applicant to comply with federal, state and SRO recordkeeping requirements and a staff that is sufficient in qualifications and number to prepare and preserve required records.

**Form NMA:** Information fields consist of requests regarding an applicant's books and records that are contained primarily in Section VIII (Recordkeeping System) of existing Form NMA (*e.g.*, recordkeeping system, sample books and records, recordkeeping service providers).

#### **Standard 12 (Continuing Education)**

NASD Rule 1014(a)(12) requires Member Regulation to determine whether an NMA or CMA applicant has completed a training needs assessment and has a written training plan that complies with the continuing education (CE) requirements imposed by the federal securities laws, the rules and regulations thereunder and FINRA rules.

**Form NMA:** Information fields consist of requests regarding an applicant's CE obligations that are contained in Section VI (Policies and Procedures) of existing Form NMA (*e.g.*, firm element owner identification, CE checklist, CE needs assessment) and also incorporate additional requests for information that are necessary for the applicant to demonstrate compliance with the standard (*e.g.*, information regarding the applicant's CE deficiency mitigation plan).

### REBUTTAL TO LEGAL ARGUMENT

#### **A. Respondent Willfully Violated Section 17(a) of the Securities Act**

The sale of securities to a relatively small number of select investors as a way of raising capital. Investors involved in private placements are usually large banks, mutual funds, insurance companies and pension funds. Private placement is the opposite of a public issue, in which securities are made available for sale on the open market.

Since a private placement is offered to a few, select individuals, the placement does not have to be registered with the Securities and Exchange Commission. In many cases, detailed financial information is not disclosed and a the need for a prospectus is waived. Finally, since the placements are private rather than public, the average investor is only made aware of the placement after it has occurred

The sale of a new issue to a few large institutional investors without registering with the SEC. A private placement is exempt from SEC registration, subject to certain restrictions, because it is not offered to the general public A broker of a Direct Private Placement need not be licensed. The Bank Guarantees and Mid-Term Notes were Direct Private Placement sells as indicated in the body of the Letter of Intent (LOI).

#### **B. Respondent Willfully Violated Section 15(a) of the Exchange Act.**

The sale of securities to a relatively small number of select investors as a way of raising capital. Investors involved in private placements are usually large banks, mutual funds, insurance companies and pension funds. Private placement is the opposite of a public issue, in which securities are made available for sale on the open market.

Since a private placement is offered to a few, select individuals, the placement does not have to be registered with the Securities and Exchange Commission. In many cases, detailed financial information is not disclosed and the need for a prospectus is waived. Finally, since the placements are private rather than public, the average investor is only made aware of the placement after it has occurred

The sale of a new issue to a few large institutional investors without registering with the SEC. A private placement is exempt from SEC registration, subject to certain restrictions, because it is not offered to the general public. A broker of a Direct Private Placement need not be licensed. The Bank Guarantees and Mid-Term Notes were Direct Private Placement sells as indicated in the body of the Letter of Intent (LOI).

### **C. Respondent Willfully Violated the Anti-Fraud Provisions of the Advisers Act**

The principles and methodology applied to this case is based on the assumption that MTNs and Bank Guarantees did not exist, however, the respondent proved beyond a reasonable doubt that Mid-Term Notes (MTNs) and Bank Guarantees (BGs) does exist, that the Bloomberg screenshot clearly indicated that Deutsche Bank MTNs were being sold on a secondary market and HSBC of London is one of the many banks that does sell Bank Guarantees

### **D. Respondent Willfully Violated the Registration, Disclosure and Recordkeeping Provisions of the Advisers Act**

#### **Standard 11 (Books and Records)**

NASD Rule 1014(a)(11) requires Member Regulation to determine whether an NMA or CMA applicant has a recordkeeping system that enables the applicant to comply with federal, state and SRO recordkeeping requirements and a staff that is sufficient in qualifications and number to prepare and preserve required records.

**Form NMA:** Information fields consist of requests regarding an applicant's books and records that are contained primarily in Section VIII (Recordkeeping System) of existing Form NMA (*e.g.*, recordkeeping system, sample books and records, recordkeeping service providers).

- i. Respondent Willfully Violated Section 207 of the Advisers Act  
[False Form ADV]

It is a general requirement that for an action in misrepresentation to proceed, that the

statement in question be one of present or past fact. This has its grounding in that only facts can be distinguished as being true or untrue at the time they are made.

The Statements made in the respondents ADV and web sites were statements of fact at the time of filling and Statements which are made in relation to the intention of a party or the occurrence of some event in the future do not constitute misrepresentations should they fail to eventuate.

## REBUTAL TO PROPOSED FINDINGS OF FACT

### **A. RESPONDENT**

Anthony Fields started his career as an intern in the Accounting Department of Continental Bank of Chicago in 1979 while in his second year of college. This internship lasted until the end of the year at which point Mr. Fields acquired a position with the accounting firm of Blumenfeld, Weiser, Friedman & Company as a proof reader of financial statements and tax returns. Mr. Fields worked his way up from proof reader to Junior Accountant in 1981 when he adegree in Accounting from Roosevelt University. In 1983 Mr. Fields advanced to Senior Accountant and acquired his Certificate of Mastery in Accounting from the Department of Agriculture's Graduate School. And finally, in 1987 Mr. Fields acquired his Certificate as a Certified Public Accountant from the University of Illinois.

While working at BlumenFeld, Weiser, Friedman Mr. Fields' responsibility was to prepare all of the receipts and disbursements of the investing activities, the Financial Statements and Tax Returns for the client's investment portfolios managed by the affiliated firm of Weiser Investment Management, as well as other accounting auditing and tax related assignments. In 1987 to 1988 Mr. Fields worked for the Accounting firm Foxx & Company located in Cincinnati, Ohio as a Manager in the Auditing Department, and In 1988 to 1989 Mr. Fields worked for the Accounting Firm Hill & Taylor & Company located in Chicago, Illinois as an Audit and Tax Manager. Mr. Fields' extensive knowledge in investments, accounting and taxes fueled the need to establish Anthony Fields & Associates, Certified Public Accountants in 1989

and ultimately spin off into Investment Advising in 2009

## **B. Respondent's "Bank Guarantee" and "Mid-Term Note" Message Postings on Social Media Platforms**

The principles and methodology applied to this case is based on the assumption that MTNs and Bank Guarantees did not exist, however, the respondent proved beyond a reasonable doubt that Mid-Term Notes (MTNs) and Bank Guarantees (BGs) does exist, that the Bloomberg screenshot clearly indicated that Deutsche Bank MTNs were being sold on a secondary market and HSBC of London is one of the many banks that does sell Bank Guarantees

## **C. Respondent Offered Fictional "Prime Bank" Securities**

Credit Suisse provides companies, institutional clients and high-net-worth private clients worldwide, as well as retail clients in Switzerland, with advisory services, comprehensive solutions, and excellent products.

### **Credit Suisse Group**

Credit Suisse Group

Paradeplatz 8

8070 Zurich

Switzerland

Phone +41 44 212 16 16

### **Instrument**

Every declaration labeled as a "bank guarantee" must be carefully examined in terms of legal significance and viability.

Under a bank guarantee/surety bond arrangement, the bank acts as guarantor of a claim or obligation in lieu of the debtor. The bank cannot be held liable in the event that the debtor fails to "perform".

The banks obligation is limited to its pledge to pay a maximum specified amount on fulfillment of the terms of the commitment.

A bank guarantee/surety bond may only be issued if the customer has been granted a line of credit. In certain cases, the bank may require adequate collateral.

A clear distinction must be made between a surety bond and a promise to pay. Glossary

### **Guarantees**

These tools are a commitment by the bank to take on the debtor's payment obligation.

### **Descriptions and Information**

- [Instrument](#)
- [Difference between guarantees and surety bonds](#)
- [Types of guarantees](#)
- [Types of guarantees](#)
- [Standard Sureties](#)
- [Costs](#)

## **Resources**

### **ICC Guidelines for Guarantees**

A brief description of the uniform rules for guarantees payable on demand.

### **ICC Stand-By Guidelines**

A brief description of international stand-by practices (ISP98).

### **Ordering Manuals**

At the Download Center, you can order the following reference publications: "Bank Guarantees", "Documentary Credits and Documentary Collections

## **International Business Guarantees**

When you're trading internationally and don't have established relationships, guarantees reduce the risks for each party.

Manage international trade risk A guarantee or bond, as they are sometimes known, provides the beneficiary with acceptable security if the applicant (you) fails to fulfil its obligations in the underlying contract.

Extensive experience, attractive terms At HSBC we have extensive experience of guarantees, together with a worldwide network of group offices and correspondent banks to meet your domestic and international needs

Our global presence means we can provide you with attractive terms on foreign guarantees

Our specialist Guarantees Team based in London can provide you with valuable support for your business.

Commonly used guarantees When you're trading internationally you may often come across the following guarantees. We can arrange these and guarantees to cover many other kinds of risk.

## **Performance Bond**

The most common type of guarantee

Usually required for the duration of a contract, plus a grace period to allow the beneficiary to make a demand in the event of non-performance of the obligations covered by the guarantee.

Tender Guarantee/Bid Bond Often called for in support of contract tenders, particularly in international trade situations

Provides the beneficiary with a financial remedy if the applicant fails to fulfill any of the tender conditions.

Advance Payment Guarantee Used where the applicant calls for the provision of a sum of money at an early stage of the contract

The beneficiary can recover the amount paid in advance, or part thereof, if the applicant fails to fulfill their underlying contractual obligations.

VAT Bond/Duty Deferment Bond Provided to HM Revenue & Customs enabling the applicant to import goods from outside the EU without the immediate payment of duty or tax.

Facility Guarantee Enables an applicant to secure banking facilities for a subsidiary, associate company or personal account in other countries.

Important information [International Business Price List \(PDF\)](#)

[Standby DC application form \(PDF\)](#)

[Don't have Adobe PDF Reader? Download Adobe Reader](#)

Contact our specialist Guarantees team [To learn more about Guarantees and HSBC EasyTrade:](#)

Call us on:

0800 78 31 300 [Textphone 1800 108457 125 563](#)

Email [uktradeservices@hsbc.com](mailto:uktradeservices@hsbc.com)

Contact our specialist Guarantees team [To learn more about Guarantees and HSBC EasyTrade:](#)

Call us on:

0800 78 31 300 [Textphone 1800 108457 125 563](#)

Email: [uktradeservices@hsbc.com](mailto:uktradeservices@hsbc.com)

[Guarantee application form \(PDF\)](#)

[Standby DC application form \(PDF\)](#)

[Don't have Adobe PDF Reader? Download Adobe Reader](#)

Why choose HSBC? [Access over 8,000 local experts in 63 markets](#) [Maximise international opportunities and guard against risks](#) [Manage your global banking from a single logon with our award winning HSBCnet](#) [Support and information including online guides, resources and forums.](#) [More info](#)  
[BusinessTool](#) [Trade Cycle Calculator](#)

Understand your international cashflow better with our Trade Cycle Calculator.

BusinessServiceForeign exchange risk (PDF)

Manage your international risk with our four point FX plan (PDF).

KnowledgeCentreManage export and import finance

Understand and plan for the challenges of international trade.

BusinessVideoTrading in Europe

Tips on processing payments from within the Eurozone.

The links on this page will open a new browser window and may:

i) Allow you to access other websites. Please read the linked websites' terms and conditions. HSBC Bank plc has no control over non-HSBC websites and is not liable for your use of them.

ii) Allow you to access another HSBC Group website. Please read the terms and conditions of the linked website, which may differ from the terms and conditions of HSBC Bank plc's website.

Products and servicesInternational business accounts and services

International payment services

Insurance and protection

Internet and telephone banking

Finance and borrowing

Credit cards

Business needsImporting and exporting

International payment processing

Protecting your business

Global Cash Management

Business Traveller

Popular productsForeign Exchange

Foreign Exchange Risk Management

HSBC EasyTrade

Export Invoice Finance

HSBCnet

International Business Account

Helpful linksContact us

Branch locator

Why choose HSBC

## **D. Respondent's False Claims on AFA and Platinum's Websites**

The Division of Enforcement has again misrepresented the truth about the original contract 50 Billion dollar contract with East West Trading (EXHIBIT I). The respondent advertised on his website (Anthony Fields, & Associates) that the organization was an investment advisory firm specializing in U.S. Government Securities only. The potential investor called and asked if the respondent had access to treasury strips. The respondent informed the potential client that he did have access to the Treasury securities in his inquiry. The respondent sent a list of ISIN and CUSIP s to the potential buyer and once he verified that they were real he indicated that his company would like to purchase them at a price of 30% percent of face value whereas he would then sell them to his exit buyers for 32% of face value. When the respondent informed him that he would have to open an account with the firm he asked did the firm have the securities in the firm's portfolio. Once the respondent informed him that the firm was not in possession of the securities but would purchase them with the funds of the potential buyer he indicated that the only way he would open an account was if we already had the securities in the firm's possession.

The potential client agreed that he would sign the contract with the understanding that Anthony Fields & Associates would have the Treasury securities in it's possession. In February of 2010 Fields found Mr. Leston Williams, who indicated that he was a partner in a large pension fund and that after hearing the details of the transaction, offered to go into a joint venture with Anthony Fields & Associates to fulfill the contract requirements between East West Trading and Anthony Fields & Associates.

The Division of Enforcement indicates that the contract was only a few pages.

Contracts can come in all shapes and sizes, and in the words of my contracts professor, Eric Andersen, even on eggshells. That's right. He litigated a case involving a contract written on an eggshell. When I saw an article about a contract on a napkin, it didn't surprise me. Now that I've been practicing law almost 20 years, not much about the law surprises me anymore. The question then becomes what constitutes a contract? Yes, it's possible to have a contract on a napkin, but it has to contain the essential elements of the contract and be signed by the party to be charged with performance

Other representations made on AF&A website are no more justifiable. Thus, the purported "Company Bio" claims that:

- "Currently there are 44 designated primary dealers [of U.S. Treasury securities].

Our firm has an arrangement with the 45th primary dealer."

The respondent acknowledges that he made that statement, however, the information was obtained from Investopedia and when the information was obtained it was out dated. Since that time Investopedia has updated their information and contends that there are 21 primary dealers in America as of 2010.

Innocent misrepresentation occurs when the representor had reasonable grounds for believing that his or her false statement was true. Prior to Hedley Byrne, all misrepresentations that were not fraudulent were considered to be innocent. This type of representation primarily allows for a remedy of rescission, the purpose of which is put the parties back into a position as if the contract had never taken place. Section 2(2) Misrepresentation Act 1967, however, allows for damages to be awarded in lieu of rescission if the court deems it equitable to do so. This is judged on both the nature of the innocent misrepresentation and the losses suffered by the claimant from it.

- "The management of Anthony Fields & Associates is experienced in company start ups and securities trading and government securities in particular."

The respondent 's statements are true and accurate and would like to know where or how did the Division of Enforcement come to the conclusion that these statements were misrepresented without verifying any of the information presented to them. The respondent has helped well over 10 start-up companies: The Illinois Migrant Council; the Reverse Mortgage Corporation; Kumow Dot Com, Inc.; Gurnee Real Estate Development Corporation is just to name a few. The respondent has also worked closely with Weiser Investment Management Company assisting in trading and research of stocks and bonds such as AT&T, who spinned off into seven other companies such as, Ameritect, Southwest Bell; Atlantic Bell, etc.

- "Previously, management grew a company from a single one man operation into a

multi-level organization with sixteen branch offices and resources well over 16 million dollars."

The respondent 's statements are true and accurate and would like to know where or how did the Division of Enforcement come to the conclusion that these statements were presented without verifying any of the information presented to them

- "Anthony Fields & Associates provides discretionary and non discretionary advisory services in fixed income portfolios to high net worth individuals and institutional investors."

The respondent 's statements are true and accurate and would like to know where or how did the Division of Enforcement come to the conclusion that these statements were presented without verifying any of the information presented to them. The respondent established his investment advisory firm for the specific purpose of providing discretionary and non discretionary advisory services in fixed income portfolios to high net worth individuals and institutional investors."

The Division of Enforcement apparently does not have any knowledge of Marketing or advertising. The other misstatement of Facts presented by them are:

- Notwithstanding these many claims, in reality, Fields has never had any "arrangement" with a "primary dealer" of U.S. Treasury securities and has absolutely no experience trading such securities himself.
- AF A has no "high net worth individuals and institutional investors" as clients,
- , or indeed, any investor clients at all. Fields heads no "expert investment team" or "experienced research team" at AF A. Fields own personal experience as an investment adviser and turnaround specialist is nonexistent. Even the "startup" that Fields claims to have grown is merely a company that he may have once audited but that he never managed and with which he had no sustained involvement. Platinum, despite its characterization on the AF A website, does not even exist except as a trade name.

The respondent 's statements are true and accurate and would like to know where or how did the Division of Enforcement come to the conclusion that these statements were misrepresented

without verifying any of the information presented to them. The respondent has helped well over 10 start-up companies: The Illinois Migrant Council; the Reverse Mortgage Corporation; Kumow Dot Com, Inc.; Gurnee Real Estate Development Corporation is just to name a few. The respondent has also worked closely with Weiser Investment Management Company assisting in trading and research of stocks and bonds such as AT&T, who spun off into seven other companies such as, Ameritect, Southwest Bell; Atlantic Bell, etc.

In addition, if you looked closely at the website you would see that the respondent's website did allow for the registration online and the viewing accounts on line with the proper ID and password.

The Division of Enforcement also represented that the respondent made highly misleading claims on his other organization's website, "Platinum Securities Brokers" as follows:

- Fields also made highly misleading claims on Platinum's Website. There, Fields proclaimed: "At Platinum Securities Brokers you can buy bills, notes bonds, tips and strips or mutual funds either by calling one of the our representatives or by transacting these securities yourself on the Internet.

- The website also claimed that Platinum "provide] s l Prime Brokerage Services. The services provided under prime brokering are securities lending (after one year), leveraged trade executions, and cash management, among other things

- and that it has "state of the art electronic trading capabilities and a portfolio of over 25,000 U.S. Government securities."

The respondent having security accounts with Fidelity, Merrill Lynch, Bloomberg, CQG, Inc., Pershing Clearing House and Treasury Direct gives the respondent access to well over 25,000 securities

- Platinum's website also stated that it would take commissions (I.e., transaction-based compensation).

- Fields failed to disclose the fact that Platinum was not registered as a broker- dealer with the SEC.

- "Platinum Securities Brokers is an institutional broker/dealer in U.S. Government securities. Licensed in the State of Illinois and registered with the Securities and Exchange Commission."

- "Platinum Securities Brokers is one of the leading institutional broker/dealers in government securities with state ofthe art electronic trading capabilities and a

portfolio of over 25,000 U.S. Government securities."

- "[Platinum has] tremendous influences on the financial markets because we can either buy or sell a large volume of U.S. Government securities."
- "This institutional brokerage firm ... [has] strong relationships with major Fixed Income sources like the United States Treasury, Department [sic] and the Bureau Of [sic] Public Debt and other leading issuers of Treasury obligations."
- Fields also asserted that "Platinum Securities Brokers not only have their own research analysts, but also have strong relationships with other research firms"; that "[o]ur syndicate desk offers access to new issues, including structured products"; and that "you can tap into our large, executable online inventory, which provides access to more than 25,000 Government Securities."
- Fields' had no good faith basis for any of these claims, and in fact, none of them is true. Fields has various rationales to justify his representations but none are sustainable. For example, Fields' only basis for claiming that Platinum had a large "inventory" of securities is that he had access to Bloomberg research tools on his computer.

The respondent 's statements are true and accurate and would like to know where or how did the Division of Enforcement come to the conclusion that these statements were misrepresented without verifying any of the information presented to them. The respondent has helped well over 10 start-up companies: The Illinois Migrant Council; the Reverse Mortgage Corporation; Kumow Dot Com, Inc.; Gurnee Real Estate Development Corporation is just to name a few. The respondent has also worked closely with Weiser Investment Management Company assisting in trading and research of stocks and bonds such as AT&T, who spun off into seven other companies such as, Ameritect, Southwest Bell; Atlantic Bell, etc.

In addition, if you looked closely at the website you would see that the respondent's website did allow for the registration online and the viewing accounts on line with the proper ID and password.

#### **E. Respondent's False Representations in Registering AF A as an Investment Adviser**

The respondent uses the affirmative defenses of reasonable expectations, statement of Fact and Intention and the Future.

Statements which are made in relation to the intention of a party or the occurrence of some event in the future do not constitute misrepresentations should they fail to eventuate. This is because at the time the statements were made they can not be categorised as either true or false. However, similarly to the first point above, an action can be brought if the intention never actually existed. This can be illustrated by the decision in *Edgington v Fitzmaurice* (1885) 29 Ch. D. 459, which deals with a statement of intention by the directors of a company to use loaned money to alter company buildings and make purchases to expand the company's operating options.

#### **Statement of Fact**

It is a general requirement that for an action in misrepresentation to proceed, that the statement in question be one of present or past fact. This has its grounding in that only facts can be distinguished as being true or untrue at the time they are made and,

The reasonable expectations doctrine is built on assumptions about the way people, in particular unsophisticated insureds, buy insurance. It assumes that in the process of buying insurance, insureds develop specific expectations about what will be covered by their policies. 5 Research done generally in consumer psychology, and specifically about insureds' perceptions and buying behaviors, casts serious doubts on these assumptions. Although not conclusive, that research tends to show that average consumers generally do not develop the kinds of expectations assumed by judges applying the reasonable expectations doctrine. If those assumptions are eliminated, the reasonable expectations doctrine is less theoretically justified and becomes arbitrary in its application. At the same time, however, this research shows that insureds are easy targets for insurers, and therefore some type of protective doctrine like reasonable expectations may be justified.

#### **F. Respondent's Failure to Comply with SEC Requirements for Recordkeeping and Practices and Procedures**

##### **Standard 11 (Books and Records)**

NASD Rule 1014(a)(11) requires Member Regulation to determine whether an NMA or CMA applicant has a recordkeeping system that enables the applicant to comply with federal, state and SRO recordkeeping requirements and a staff that is sufficient in qualifications and number to prepare and preserve required records.

**Form NMA:** Information fields consist of requests regarding an applicant's books and records that are contained primarily in Section VIII (Recordkeeping System) of existing Form NMA (e.g., recordkeeping system, sample books and records, recordkeeping service providers). All of the recordkeeping requirements were met with the exception of the internet communication file.

#### IREBUTTAL TO PROPOSED CONCLUSIONS OF LAW

##### **A. Securities Act Charges and Violations**

The sale of securities to a relatively small number of select investors as a way of raising capital. Investors involved in private placements are usually large banks, mutual funds, insurance companies and pension funds. Private placement is the opposite of a public issue, in which securities are made available for sale on the open market.

Since a private placement is offered to a few, select individuals, the placement does not have to be registered with the Securities and Exchange Commission. In many cases, detailed financial information is not disclosed and a the need for a prospectus is waived. Finally, since the placements are private rather than public, the average investor is only made aware of the placement after it has occurred

The sale of a new issue to a few large institutional investors without registering with the SEC. A private placement is exempt from SEC registration, subject to certain restrictions, because it is not offered to the general public A broker of a Direct Private Placement need not be licensed. The Bank Guarantees and Mid-Term Notes were Direct Private Placement sells as indicated in the body of the Letter of Intent (LOI).

##### **B. Exchange Act Charges and Violations**

The sale of securities to a relatively small number of select investors as a way of raising capital. Investors involved in private placements are usually large banks, mutual funds, insurance companies and pension funds. Private placement is the opposite of a public issue, in which

securities are made available for sale on the open market.

Since a private placement is offered to a few, select individuals, the placement does not have to be registered with the Securities and Exchange Commission. In many cases, detailed financial information is not disclosed and the need for a prospectus is waived. Finally, since the placements are private rather than public, the average investor is only made aware of the placement after it has occurred

The sale of a new issue to a few large institutional investors without registering with the SEC. A private placement is exempt from SEC registration, subject to certain restrictions, because it is not offered to the general public. A broker of a Direct Private Placement need not be licensed. The Bank Guarantees and Mid-Term Notes were Direct Private Placement sells as indicated in the body of the Letter of Intent (LOI).

### **Charges and Violations under the Anti-Fraud Provisions of the Advisers Act**

The principles and methodology applied to this case is based on the assumption that MTNs and Bank Guarantees did not exist, however, the respondent proved beyond a reasonable doubt that Mid-Term Notes (MTNs) and Bank Guarantees (BGs) does exist, that the Bloomberg screenshot clearly indicated that Deutsche Bank MTNs were being sold on a secondary market and HSBC of London is one of the many banks that does sell Bank Guarantees

### **D. Charges under the Registration, Disclosure and Recordkeeping Provisions of the Advisers Act**

All of the Standards listed below and required by the SEC and FINRA were met with the exception of standard No. 11.

#### **Standard 1 (Overview of the Applicant)**

NASD Rule 1014(a)(1) requires Member Regulation to consider whether a new member or continuing membership application and all supporting documents are complete and accurate.

**Form NMA:** Information fields request certain new member applicant overview information currently contained primarily in Sections I (General Information), II (Business Lines) and VII (Facilities) of existing Form NMA (*e.g.*, formation information, identification of business activities, types of customers (and/or counterparties), owners, officers, directors and control persons, validation of clearing arrangements)..

## **Standard 2 (Licenses and Registrations)**

NASD Rule 1014(a)(2) requires Member Regulation to consider whether an NMA or CMA applicant and its associated persons have all licenses and registrations required by state and federal authorities and self-regulatory organizations (SROs).

**Form NMA:** Information fields request relevant information regarding a new member applicant's licenses and registrations (*e.g.*, required licenses and registrations, two-principal requirement waiver, other SRO registrations) that is currently contained primarily in Sections I (General Information) and III (Personnel) of existing Form NMA, as well as incorporating additional information requests (*e.g.*, intent to claim exemptions from registration or seek examination waivers for personnel) that are necessary for the applicant to demonstrate compliance with this standard.

## **Standard 3 (Compliance with Securities Laws, Just and Equitable Principles of Trade)**

NASD Rule 1014(a)(3) requires Member Regulation to consider whether an NMA or CMA applicant and its associated persons are capable of complying with the requirements of the federal securities laws, the rules and regulations thereunder, and FINRA rules, including observing high standards of commercial honor and just and equitable principles of trade.

**Form NMA:** Information fields consist of requests that are contained in Sections I (General Information) and III (Personnel) of existing Form NMA (*e.g.*, disciplinary history) and also incorporate additional information requests (*e.g.*, state or federal orders or decrees, statements of claims, settlement agreements) that are necessary for the new member applicant to demonstrate compliance with the standard.

## **Standard 4 (Contractual and Business Relationships)**

NASD Rule 1014(a)(4) requires Member Regulation to consider whether an NMA or CMA applicant has established all contractual or other arrangements and business relationships with banks, clearing corporations, service bureaus or others necessary to: (A) initiate the operations described in the applicant's business plan, considering the nature and scope of operations and the number of personnel; and (B) comply with the federal securities laws, the rules and regulations thereunder and FINRA rules.

**Form NMA:** Information fields include requests for information regarding an applicant's contractual and business relationships that are contained in Sections I (General Information), IV (Net Capital and Sources of Funding) and V (Contractual and Business Arrangements) of existing Form NMA (*e.g.*, description of contractual arrangements, expense sharing agreements, financing arrangements, fidelity bonds or fidelity bond applications, support and service agreements, auditor information).

#### **Standard 5 (Facilities)**

NASD Rule 1014(a)(5) requires Member Regulation to consider whether an NMA or CMA applicant has, or has adequate plans, to obtain facilities that are sufficient to: (A) initiate the operations described in the applicant's business plan, considering the nature and scope of operations and the number of personnel; and (B) comply with the federal securities laws, the rules and regulations thereunder and FINRA rules.

**Form NMA:** Information fields consist of requests regarding an applicant's facilities that are primarily contained in Section VII (Facilities) of existing Form NMA (*e.g.*, space sharing arrangements, leasing or sub-leasing arrangements) and also incorporate additional information requests that are necessary to determine whether the applicant complies with the standard (*e.g.*, authorizations to sublet, deeds of ownership).

#### **Standard 6 (Communications and Operational Systems)**

NASD Rule 1014(a)(6) requires Member Regulation to consider whether the communications and operational systems an NMA or CMA applicant intends to employ for the purpose of conducting business with customers and other members are adequate and provide reasonably for business continuity.

**Form NMA:** Information fields include requests regarding an applicant's communications and operational systems that are contained in Sections VI (Policies and Procedures) and VII (Facilities) of existing Form NMA (*e.g.*, communications and operational systems descriptions, supervision arrangements of multiple locations, business continuity plan documents), as well as requests for additional information

that are necessary for the applicant to demonstrate compliance with the standard (*e.g.*, information relating to the use of social media sites).

### **Standard 7 (Maintaining Adequate Net Capital)**

NASD Rule 1014(a)(7) requires Member Regulation to consider whether an NMA or CMA applicant is capable of maintaining a level of net capital in excess of the minimum net capital requirements set forth in SEA Rule 15c3-1 adequate to support the applicant's intended business operations on a continuing basis.

**Form NMA:** Information fields consist of requests regarding an applicant's net capital requirements that are contained primarily in Section IV (Net Capital and Sources of Funding) of existing Form NMA (*e.g.*, information on the nature and source of capital, additional funding plans, minimum net capital requirements, future funding sources).

### **Standard 8 (Financial Controls)**

NASD Rule 1014(a)(8) requires Member Regulation to consider whether an NMA or CMA applicant has financial controls to ensure compliance with the federal securities laws, the rules and regulations thereunder and FINRA rules.

**Form NMA:** Information fields include requests regarding an applicant's financial controls that are contained primarily in Sections I (General Information), III (Personnel) and VI (Policies and Procedures) of existing Form NMA (*e.g.*, information regarding the registered financial and operations principal's (FINOP's) experience, financial controls, FINOP outside business activity notification) and also incorporate requests for additional information that are necessary for the applicant to demonstrate compliance with the standard (*e.g.*, net capital deficiency plans).

### **Standard 9 (Written Procedures)**

NASD Rule 1014(a)(9) requires Member Regulation to determine whether an NMA or CMA applicant has compliance, supervisory, operational and internal control practices and standards that are consistent with practices and standards regularly employed in the investment banking or securities business, taking into account the nature and scope of the applicant's proposed business.

**Form NMA:** Information fields consist of requests regarding an applicant's written procedures that are contained in Sections III (Personnel), VI (Policies and Procedures)

and VIII (Recordkeeping System) of existing Form NMA (*e.g.*, written supervisory procedures (WSPs), WSP checklist, sample reports to support supervision and financial controls, heightened supervisory procedures attestation).

#### **Standard 10 (Supervisory Structure)**

NASD Rule 1014(a)(10) requires Member Regulation to determine whether an NMA or CMA applicant has a supervisory system, including WSPs, internal operating procedures (including operational and internal controls) and compliance procedures designed to prevent and detect, to the extent practicable, violations of the federal securities laws, the rules and regulations thereunder and FINRA rules.

**Form NMA:** Information fields consist of requests regarding a new member applicant's supervisory structure that are contained in Sections I (General Information) and III (Personnel) of existing Form NMA (*e.g.*, information regarding supervisors' experience and duties, chief compliance officers' experience, non-FINOP outside business activities notifications).

#### **Standard 11 (Books and Records)**

NASD Rule 1014(a)(11) requires Member Regulation to determine whether an NMA or CMA applicant has a recordkeeping system that enables the applicant to comply with federal, state and SRO recordkeeping requirements and a staff that is sufficient in qualifications and number to prepare and preserve required records.

**Form NMA:** Information fields consist of requests regarding an applicant's books and records that are contained primarily in Section VIII (Recordkeeping System) of existing Form NMA (*e.g.*, recordkeeping system, sample books and records, recordkeeping service providers).

#### **Standard 12 (Continuing Education)**

NASD Rule 1014(a)(12) requires Member Regulation to determine whether an NMA or CMA applicant has completed a training needs assessment and has a written training plan that complies with the continuing education (CE) requirements imposed by the federal securities laws, the rules and regulations thereunder and FINRA rules.

**Form NMA:** Information fields consist of requests regarding an applicant's CE obligations that are contained in Section VI (Policies and Procedures) of existing Form NMA (e.g., firm element owner identification, CE checklist, CE needs assessment) and also incorporate additional requests for information that are necessary for the applicant to demonstrate compliance with the standard (e.g., information regarding the applicant's CE deficiency mitigation plan).

The respondent uses the affirmative defenses of reasonable expectations, statement of Fact and Intention and the Future.

Statements which are made in relation to the intention of a party or the occurrence of some event in the future do not constitute misrepresentations should they fail to eventuate. This is because at the time the statements were made they can not be categorised as either true or false. However, similarly to the first point above, an action can be brought if the intention never actually existed. This can be illustrated by the decision in *Edgington v Fitzmaurice* (1885) 29 Ch. D. 459, which deals with a statement of intention by the directors of a company to use loaned money to alter company buildings and make purchases to expand the company's operating options.

#### **Statement of Fact**

It is a general requirement that for an action in misrepresentation to proceed, that the statement in question be one of present or past fact. This has its grounding in that only facts can be distinguished as being true or untrue at the time they are made and,

The reasonable expectations doctrine is built on assumptions about the way people, in particular unsophisticated insureds, buy insurance. It assumes that in the process of buying insurance, insureds develop specific expectations about what will be covered by their policies. 5 Research done generally in consumer psychology, and specifically about insureds' perceptions and buying behaviors, casts serious doubts on these assumptions. Although not conclusive, that research tends to show that average consumers generally do not develop the kinds of expectations assumed by judges applying the reasonable expectations doctrine. If those assumptions are eliminated, the reasonable expectations doctrine is less theoretically justified and becomes arbitrary in its application. At the same time, however, this research shows that insureds are easy targets for insurers, and therefore some type of protective doctrine like reasonable expectations may be justified.

## CONCLUSION

Without verifying the validity of the ISIN or CUSIP's of the securities to determine the validity of the instruments the Division Of Enforcement accused me of selling fraudulent securities. For 19 years the Division Of Enforcement and it's expert witness was not aware that there were such instruments as Bank Guarantees and Mid-Term Notes and determined that since they were not aware that they existed they accused me of selling factious securities. Within 4 months after the close of my fiscal year, which was a short year (9 months) and the first year of operations the Division Of Enforcement charged me with failing to maintain adequate books and records, when even the Internal Revenue Service will give a new organization an extension time to update their books and records.

Without performing any analytical review, verifying the existence of the signers of the contracts, forensic, investigation, background checks on the parties within the body of the contracts or other supporting documentation that was presented by the respondent to the Division of Enforcement of the Securities And Exchange Commission that was subpoenaed in July of 2011. Having done no due diligence, no investigation whatsoever on any of the documentation submitted, No phone calls, no subpoenas, no depositions, (other than the respondents) supporting their allegations.

The Respondent's Answer to the Order Instituting Proceedings and Refusal to Enter into Stipulations of Fact. Harlan Fiske Stone and Louis Brandeis. Wrote, "Entrapment," is the conception and planning of an offense by an officer, and his procurement of its commission by one who would not have perpetrated it except for the trickery, persuasion, or fraud of the officer."

Based on the evidense provided by the respondent, the allegations of selling fraudulent and fictions securities should be dismissed.

Professionally Submitted,



---

Anthony Fields, CPA

Pro Se