UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE
COMMISSION

In the Matter of **DANIEL BOGAR,** **BERNERD E. YOUNG, and** **JASON T. GREEN** **Respondents.**	**ADMINISTRATIVE PROCEEDING** **File No. 3-15003**

RESPONDENT BERNERD E. YOUNG'S
BRIEF IN SUPPORT OF HIS PETITION FOR REVIEW

Respondent Bernerd E. Young ("Young") files this Brief in Support of his Petition for Review to the U.S. Securities and Exchange Commission ("Commission"), pursuant to Rules 410 and 450 of the Commission's Rules of Practice and 17 C.P.R. § 201.410 and 201.450.

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I. INTRODUCTION

This Brief in Support of Young's Petition for Review is made *pro se* by Bernerd E. Young ("Young"), an individual who, prior to this action, has had a distinguished career having served for more than 19 years as a regulator with the National Association of Securities Dealers, Inc. (n/k/a the Financial Industry Regulatory Authority) where he not only rose to the rank of one of 14 District Directors but he was recognized twice by his superiors, (which included among others, both former SEC Chairpersons Mary Schapiro and Elisse Walters), for Excellence in Service; who from September 2004 to June 2010 served as an Independent Distribution Consultant at the request of the Commission in a Fair Funds Distribution (Ref. Admin Proceeding 3-11659); and who has otherwise dedicated his life to, and faithfully served, the financial services for more than thirty years as a regulator, as a consultant and as a chief compliance officer ("CCO") with no adverse notations. This case stems from Young's position as CCO of Stanford Group Company ("SGC") an affiliate of Stanford Financial Group ("SFG"), where he served from August 2006 to February 17, 2009. Young served *solely* in the position of CCO, and has been found liable for fraud based on theories that have historically been applied by the Commission and the Courts only to salespersons.

Pursuant to Rule 111(h) of the Commission Rules of Practice, 17 C.F.R. 201.111(h), Young, hereby submits his Brief in Support of his Petition for Review.

Beginning in August 2006 and until February 2009, Young (CRD #1109172) served as Managing Director of Compliance and CCO of SGC, and Stanford Group Holdings (SGH). SGC was a broker-dealer and an investment advisor registered with the Commission and a member of the Financial Industry Regulatory Authority ("FINRA"), the later since October 1995.

Young was charged by the Division of Enforcement ("Division") with:

(i) wilfully violating Section 17(a) of the Securities Act;

(ii) wilfully violating and/or wilfully aiding and abetting and causing SIB's and SGC's violations of Section 10(b) of the Exchange Act and Rules 10b-5 thereunder;

(iii) wilfully aiding and abetting and causing SGC's violations of 15(c)(1) of the Exchange Act; and

(iv) causing SGC's violations of Sections 206(1) and (2) of the Advisers Act;

It is the Division's position that Young's review of training and marketing materials, from a *compliance* perspective, imposes liability on him in the *sale* of securities. The materials at issue were in the Division's possession for at least one (1) year prior to Young's arrival at SGC, and were prepared, reviewed, and approved by the President and Compliance Department of Stanford International Bank Ltd. (SIB) who had direct responsibility for the product at issue, the Certificate of Deposit ("CD"), together with SFG's Legal Department and experienced outside Commission-trained counsel whose law firms have innumerable dealings with the Commission staff. Young reasonably relied on the existing work of those professionals, whom he considered absolutely trustworthy *at the time*. The ID, paints Young, an individual who never served in a sales or supervisory capacity at SGC, whose compensation was in no way tied to the sale of any security by SGC, with the same brush as Bogar and Green the ID applies the same theories "across the board" for everyone ***without distinction***. The findings are unsupportable and defy applications of Commission precedent. Agency precedent, as it relates to a CCO's obligations and duties, must be applied fairly and evenly to the unadorned facts of each case, from the R. Allen Stanford's to the John Doe's; it must not bend on how the Division or Administrative Law Judges perceive others. Young deserves to be evaluated on his own merits *and under the particular facts of this case as they apply solely to him.*

II. OVERVIEW AND SUMMARY OF ARGUMENT

FINDINGS OF FACT. SGC was a corporation formed under the laws of the State of Texas on July 21, 1995. SGH was a separate corporation, formed in November 1999 and SIB was a private financial institution chartered under the laws of Antigua and Barbuda, originally organized in

Montserrat in 1985. SIB moved to, and commenced operations in, Antigua in December 1990. SIB was presided over by a Board of Directors consisting of seven individuals a majority of whom were independent directors, a Chief Executive Officer, a President, a Chief Financial Officer, a Chief Investment Officer, a Senior Compliance Officer, managers and other officers and employees. As stated in the Disclosure Statement for SIB, its primary business was to provide private banking and to issue certificates of deposit (SIB CD). [BEY 12042]. The Disclosure Statement prepared by SIB [BEY 12035] set forth the senior officers and directors of SIB [BEY 12046-12047]. SGC sold the SIB CD in the United States pursuant to a Regulation D exemption from securities registration. Tr. 3189; 3467-68; Div. Ex. 370, Div. Ex. 569 at 174-81. SGC was not the sole distributor of the SIB CD. Additionally, the SIB CD was not the only product offered by SGC to its customers. Tr. 485-486, 1175-1176, 2347-2349, 2849, 2919-2920, 2929, 2937. Remarkably,

A. Young has been deemed a "conduit" for conveying the misleading representations to clients, contained in the offering documents, training material and talking points utilized by the FAs with clients thereby *wilfully* violating 17(a) and wilfully violating and/or wilfully aiding and abetting and <u>causing</u> SIB's and SGC's violations of Section 10(b) of the Exchange Act. However, the ID states, "Respondents did not provide input into the language of disclosure and marketing materials, and believed that inside and outside counsel had approved the disclosure and marketing materials and the manner in which SGC and SIB were doing business." (ID.; Tr. 2576-81, 2609, 2850-52, 3017-18 (Bogar), 3414 (Young), 3681, 3701-02, 3760, 3979 (Green). The leap that Young acted as a conduit for misleading and incomplete offering is illogical and damning. In fact, the SIB Disclosure Statement (Div. 607 and 608 and 611 – Disclosure Statements) and the SIB Sales Brochures (Id. Page 7), introduced as evidence during the Hearings, were in use by SIB and SGC more than 12 months prior to Young joining SGC in August 2006 and had been authorized for use by SGC's prior CCO.

B. The ID found Young failed to consider that SIB's lack of transparency was to conceal the weakness of its portfolio or the possibility that investors might be confused by the discussion of the "comprehensive insurance program". Young was "at least negligent in allowing the use of marketing material that promised depositor security on the basis of facts about SIB's portfolio that could not be verified and on the basis of a discussion of insurance that all knew had no relevance to depositor security but that *might* confuse a potential investor into thinking that it did. This was a failure to exercise reasonable care." (emphasis added). Thereby *wilfully* causing SGC's violation of Advisers Act Section 206(2).

The ID centers on a common nucleus of conduct: Young was a conduit and had responsibility for the content of certain marketing and training material that was prepared by an affiliate, SIB, and that was in place and in use when he arrived at SGC. That material, the ID finds, was misleading. The ID finds that Young who had a level of due-diligence responsibility with respect to the SIB CD, failed to exercise reasonable care by allowing the use of marketing material without the ability to independently confirm the accuracy of select statements in the material. Young thereby "committed" securities fraud.

No weight was given to Young's affirmative action's and reasonable reliance on multiple sources, including: (1) the head of the Financial Services Regulatory Commission ("FSRC"), the Antiguan regulatory authority which bore responsibility for regulation and government oversight of SIB; (2) the CCO who was in charge of compliance for the CD at SIB, the affiliate with direct responsibility over the product; (3) the current and former General Counsel for SFG; (4) outside counsel with many years of Commission experience; (5) an external auditor who was vetted annually by both the FSRC and the Eastern Caribbean Central Bank; and (6) many others whom, at the time, Young trusted and relied upon and had no reason not to do so. Moreover, Young conducted extensive due diligence on SIB and the CD. He not only specifically asked to see the portfolio investments for which the Division now seeks to hold him responsible, but three lawyers, SIB's President, SIB's CCO, the Chairman of the FSRC, each of which were considered at the time among the most responsible and trustworthy advisers available to Young, all denied his requests citing

Antiguan privacy laws. Young's reasonable reliance on these individuals must be accorded commanding deference.

The ID findings that Young violated Section 10(b) of the Securities Exchange Act of 1934, as well as Rule 10b-5 thereunder, and Section 17(a) of the Securities Act of 1933. The ID finds that Young caused or aided and abetted SGC's alleged violations of Section 206 of the Investment Advisers Act of 1940. Premised upon these statutory bases, the Division brought three (3) sales-related fraud theories against Young, SGC's CCO. As applied to Young, these theories are meritless and Judge Foelak's ID should be set aside in its entirety as the precedent is now set for compliance professionals to wear an automatic "put" on their backs from this point forward. (This "put" appears to be based solely on the performance of the investment being made. Young cannot find ANY case law that alleges (*much less holds*) securities violations, alleged by the Commission in this case, against a CCO when the investment performs as predicted/represented).

1. One sentence in a 15-page brochure that had been prepared and approved by an affiliate, SIB, before Young's arrival at SGC states, "SIB's assets are invested in a well-diversified portfolio of highly marketable securities issued by stable governments, strong multinational companies and major international banks." The Division claims that Young, had authority and responsibility for the content of this brochure, including this sentence, but that assertion finds no support in fact or in his contemporaneous job descriptions or in law as discussed below. The Division's argument that SGC had no way to verify the accuracy of that sentence and that Young, with what the Division describes as "a wink and a nod," did not inform clients of that fact in order to mislead them into purchasing the SIB CD is similarly unfounded. Young understood at the time that SIB's foreign regulator and outside competent and duly vetted auditors, as well as individuals within SFG, were able to – and did – verify the accuracy of the actual portfolio investments, and no one brought any concerns to his attention. Young did not have the benefit of hindsight, as the Commission now has.

2. The SIB brochure states that "Stanford International Bank maintains a comprehensive insurance program with the following coverages: a depository insolvency policy insuring funds held in correspondent financial institutions; a bankers' blanket bond; and a directors' and officers' liability policy." The ID states that Young "failed to consider...the possibility that investors might be confused by the discussion of the "comprehensive insurance program" into believing that their investments were insured."[1] The ID goes on to make a factual misstatement upon which it bases its conclusion that the use of the marketing material was a failure to exercise reasonable care. The ID states that Young was "at least negligent in allowing the use of the marketing material that **promised** depositor security on the basis of facts about SIB's portfolio that could not be verified and on the basis of a discussion of insurance that all knew had no relevance to depositor security but that might confuse a potential investor into thinking that it dId." The record does not support this statement. The ID makes a factual error in that the marketing material for the SIB brochure contains no language which promised or otherwise guaranteed depositor security, in fact its risk disclosures clearly rebut this statement. The ID concludes that Young failed to exercise reasonable care and thereby caused SGC's violation of Advisers Act Section 206(2) by allowing the use of the marketing material which it misstates as *promising* depositor security. This conclusion can only be reached by plucking out the term "comprehensive insurance" from the other words in the *same sentence*, by ignoring three statements in the *same brochure* emphasizing that the CDs were not FDIC insured, and disregarding at least four additional disclosures in the *same set of materials* that went to potential investors reiterating that "this insurance does not insure customer deposits.", as well as other risk disclosures contained therein. (Young 80 and 81). It should come as no surprise that the US Supreme Court and the Commission have spurned this exact mode of analysis

[1] This is remarkable as investor guidance published by the Commission on its website clearly states that a certificate of deposit is "a special type of deposit account with a bank or thrift institution that typically offers a higher rate of interest than a regular savings account" (Ref. SEC Press Release, High-Yield CDs-Protect Your Money by Checking the Fine Print, *available at* http://www.sec.gov/investor/pubs/certific.htm) and goes on to misstate the insurance coverage available to CD investors by stating: "Unlike other investments, CDs feature ***federal deposit insurance up to $250,000***". This is a material misstatement of facts, which clearly **might** mislead investors into believing that **all** CDs are covered by federal deposit insurance. This statement on the Commission's website clearly fails to advise potential investors that CDs issued by foreign banks may not in fact be covered by federal deposit insurance.

See 570 U.S. June 25, 2013 Sotomayor, J. Dissenting; Supreme Court of the United States No. 12-399.

When Young joined Stanford in August 2006, the broker/dealer had been a member of NASD (n/k/a FINRA) since October 1995. It had been marketing the SIB CDs for approximately eight years. During that time, SGC had been the subject of five NASD/FINRA cycle examinations, two SEC examinations and at least two examinations by the staff of the Texas State Securities Board (TSSB). In each instance, SGC provided copies of the SIB Disclosure Statement and SIB Sales Brochure to the Commission, FINRA and the TSSB. During the course of these examinations, and in response to requests for information from these and other regulatory authorities, SGC advised the authorities that SGC did not know the contents of the portfolio which under lied the SIB CD. Representations to this effect were submitted by SGC to the Commission staff at least two years prior to Young joining SGC. Notwithstanding the foregoing, SGC itself (*and no CCO prior to Young*) was ever cited or reprimanded for not knowing or disclosing that SGC did not know the contents of the portfolio that under lied the SIB CD, until AFTER a Receiver had been appointed for SFG.

Although CDs were not widely considered to be a security, the SIB CDs were marketed and sold by SGC since 1998 in accordance with Regulation D, upon advice of outside legal counsel. It is important to note that, in accordance with the requirements of Regulation D and regulatory guidance issued on the sale of CDs by NASD to its member firms, SGC Financial Advisors (FAs) were instructed and trained to distribute the SIB Sales Brochure only in conjunction with the Disclosure Statement for the SIB CDs. On advice of SGC outside legal counsel, the original SIB Sales Brochure was not submitted to the NASD or to FINRA prior to late 2007. Following a review of SGC by FINRA in the fall of 2007, FINRA required SGC to submit the SIB Sales Brochure to FINRA's Advertising Department for review and approval. Div. Ex 795. After submitting the SIB Sales Brochure to FINRA, they requested various revisions and disclosures. Both the original SIB Sales Brochure <u>and</u> the revised, FINRA approved, SIB Sales Brochure contained the same language under "Insurance" which read:

> "**Insurance.** Stanford International Bank maintains a comprehensive program with the following coverages: a depository insolvency policy ensuring funds held in correspondent financial institutions; a bankers blanket bond; a director and officers liability policy (SIB Private Banking Brochure Ex 80 and 81).

It is also important to note that this is the very language that Judge Foelak states is misleading. Regardless, upon submission of the new chart and new disclosures, FINRA issued a letter of approval to SGC on January 29, 2008, stating that the "brochure appears consistent with the content standards of Rule 22110..." Div. Ex 795. Again, as stated in Judge Foelak's ID, "Respondents did not provide input into the language of disclosure and marketing materials, and believed that inside and outside counsel had approved the disclosure and marketing materials and the manner in which SGC and SIB were doing business." (Id.; Tr. 2576-81, 2609, 2850-52, 3017-18 (Bogar), 3414 (Young), 3681, 3701-02, 3760, 3979 (Green). Young now asks himself, "Why did Judge Foelak find Young responsible for, or that he acted recklessly in, allowing the use of the material?" This decision sets a very dangerous precedent for CCOs, in that it puts a non-lawyer CCO, in the position of having to make a legal determination, which maybe contrary to the advice of their counsel, whether a document is in compliance with the disclosure requirements set forth under the Rules and Regulations of the Commission, or other Federal or State Regulatory Authority.

III. ARGUMENT

A. Young's Actions Were Consistent With Industry Guidance and Were Not Negligent Nor Did He Act With Scienter.

Upon joining SGC in August 2006, Young worked hard to improve compliance and to establish policies and procedures which provided for a clear separation of responsibilities between compliance and sales supervision, conducting training for both compliance and branch management staff. He worked with company personnel in other departments and outside consultants to ensure that proper controls and business practices were in place for SGC and its Compliance Department.

Industry practice has historically demonstrated that compliance officers are rarely the ultimate decision makers, but rather typically provide input on whether or not the risk of corruption has been accurately evaluated and whether or not preventative measures are appropriately adapted to the risk. Young clearly acted within industry practice. Young acted swiftly and proactively any time an issue with the SIB Disclosure Document and or SIB Sales Brochure was brought to his attention to wit:

- In fall 2007, following a review of SGC by FINRA, FINRA required SGC to submit the SIB Sales Brochure to FINRA's Advertising Department for review and approval. Young promptly directed that all copies of the SIB Sales Brochures currently in use at the time be recalled from the 29 branch offices of SGC, their receipt recorded by his assistant and the originals destroyed. Upon receipt of FINRA's requested revisions to a chart in the brochure which contained a comparison between U.S. CDs and the SIB CDs, Young advised legal counsel, of FINRA's requested changes, and did not approve the use of SIB's Sales Brochures until he was satisfied that all changes, requested by FINRA, had in fact, been made by SIB. (Tr 3191-3192)
- In early February 2009, when advised by Bogar that there were "problems" with the SIB Disclosure Statement, without knowing what the "problems" were, Young advised Bogar that SGC should cease all sales of the SIB CD until such time as the SIB Disclosure Statement could be corrected. Young inquired, of Bogar and Lena Stinson, Global Compliance ("Stinson") for SFG, what the "problems" were with the SIB Disclosure Statement but was told that they could not tell him at that time. Notwithstanding this fact, Young *again* directed that all copies, of the SIB Disclosure Statement which were in use at the time, be returned to his office by all 29 branch offices of SGC. When asked if the branch offices could simply destroy the copies which were not to be used, Young said "No". He demanded that ALL copies be returned to him and he had his assistant log the

receipt of all of the SIB Disclosure Statements to evidence that all copies had been accounted for and that none remained in use.

- Young acted consistent with this guidance, as on the morning of February 17, 2009, upon learning the truth of the problems with the SIB Disclosure Statement from Bogar, Young promptly advised Bogar and Green that they collectively needed to contact the SEC staff and advise them of these facts.
- When confronted with an SEC Subpoena in October 2006, he sought the advice of outside legal counsel to determine what information, and documentation was responsive to the subpoena. When presented with regulatory inquiries from various agencies, Young worked with SFG Global Compliance, Stinson and SFG General Counsel, Mauricio Alvarado ("Alvarado"), as well as Tom Sjoblom ("Sjoblom"), outside legal counsel, to insure the accuracy and completeness of each response.
- During the course of his due diligence into SIB, Young did not blindly rely on due diligence efforts of his predecessor CCO(s), but under took his own due diligence going well beyond what any CCO previously in his position had done, he met with the head of the FSRC in Antigua in December 2008 to verify the information provided to him and his predecessor, by SFG Global Compliance, by SFG external legal counsel, and by SFG in house counsel regarding Antiguan Secrecy / Privacy Laws. In fact, the Division's own witness, Doug Shaw testified that Young's Compliance Department was ***as stringent as any compliance effort*** he had come in contact with. Tr. 412-413.
- Young did not take his responsibilities as CCO casually, but instead when it was brought to his attention that "problems" existed with either the SIB Sales Brochure (in 2007) or the SIB Disclosure Statement (in 2009), he took prompt action to make sure that no misleading disclosure statements or sales brochures could fall into the hands of any investor.

The ID contains a gross factual error, to wit:

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

The record clearly shows that Young had not been a party to Bogar's discussions with Pershing and was unaware of any other reason why Pershing made the decision to discontinue wiring funds to SIB. At no time did Young attempt to conceal a fact which was not part of his knowledge, but instead was known only to the other two (2) Respondents that Pershing's decision was based on its inability to obtain transparency into SIB's portfolio. The record is also clear that Young was not aware of Green's conversation in December 2008 with R. Allen Stanford regarding the liquidity of SIB, or any discrepancies in the SIB financial statements. In fact, Young met personally with Leroy King (King), the head of the FSRC, in December 2008 during which meeting, Young was assured by King that, based upon his staff's thorough and regular review of SIB, that it was "one of the safest banks" on the island of Antigua.

Finally, the ID incorrectly states the nature of Young's comments during the "road shows". A reading of the transcript, a review of the PowerPoint presentation used, (but never distributed), both point to the nature of the meetings, to discuss Young's due diligence process and the numerous checkpoints that gave Young comfort, including the regulatory environment in Antigua, audited financial statements, independent board directors and others. (TR 3318-3319) These meetings never even mentioned the Bank portfolio or its composition, yet Judge Foelak without any foundation decided that these meetings were held to induce additional comfort in the SGC sales staff.

Young's actions as described above and during Young's trial attest to his efforts.[2] None of this suggests that Young treated compliance as a farce or that he was a participant in a scheme with others. The evidence cannot be squared with a finding that Young knowingly participated in a fraud, or that he acted recklessly or failed to exercise reasonable care.

B. The Commission's Reasonable-Reliance Doctrine Forecloses the Findings in the ID and the Division's Action Brought Against Young.

1. The Reasonable-Reliance Doctrine Is Well Established.

The theory that Young misled clients by allowing the FAs to use the SIB marketing materials has been discussed above. Settled principles of Commission precedent dictate that Young is not liable for the identified statements or omissions in the materials because of his reliance on others. However misplaced that reliance may appear in hindsight (although certainly reasonable at the time), the proposition that an individual may reasonably rely on the work or statements of others in lieu of conducting an independent verification - is reflected in decisions of the Commission stretching back for more than a quarter century. *See, e.g., In re Carlson,* 1977 SEC LEXIS 162, at *17-21 (Initial Dec. Mar. 28, 1977). Reasonable reliance "support[s] a defense based on due care or good faith," and thus operates to negate a finding of fraudulent intent, recklessness, and even negligence. *See Howard v. SEC,* 376 F.3d 1136, 1147-48 (D.C. Cir. 2004). This is so, even if the individual is a member of the compliance department with due-diligence responsibilities, *see, e.g., In re Huff,* 1991 SEC

[2] It can easily be argued that Young was denied due process while preparing his defense. As Young requested and was denied access, by the Stanford Receiver, to his files in order to defend himself against this action. Counsel for Young requested but never received, Young's extensive due diligence files which were in his office and Compliance Department on the day the Stanford Receiver seized the records of SGC. The Division acknowledged the existence of such records but "were unable to locate" numerous other documents that are potentially germane to his defense. The Division instead pointed Young to roughly 700 boxes of un-indexed, potentially relevant documents in a Houston, Texas warehouse--documents to which Young was denied access by the Receiver in order to authenticate and or to review and analyze as part of his defense.

LEXIS 551, at *4-5, *8, *11-12 (Comm'n Op. Mar. 28, 1991), and even if the representations that the individual relied on were falsehoods, turned out to be wrong, or led to violations of the securities laws. *In re Urban,* 2010 SEC LEXIS 2941, at *138, *148 (Initial Dec. Sept. 8, 2010) ("almost all the business leaders at [the firm] either lied to Urban or kept information from him"; nonetheless, "Urban ha[d] a reasonable basis for relying on [those] representations"); *Howard,* 376 F.3d at 1148 n.21 (holding that an individual who was responsible for marketing reasonably relied on information that "turned out to be wrong"). To uphold the findings, conclusions and sanctions contained in the ID, the Commission would turn its back on precedent and expand factors of liability never contemplated by prior sitting Commissions.

A quartet of precedents illustrates the force and scope of the reasonable-reliance doctrine. On September 8, 2010, in *Urban,* Chief Judge Brenda Murray dismissed all of the Enforcement Division's claims against Theodore Urban, General Counsel and Executive Vice President at Ferris, Baker Watts, Inc., based largely on this doctrine.[3] According to the court, the "major thrust" of the Division's complaint – much like the Division's tentative view here - was that Urban ***had failed reasonably to respond to red flags that*** a broker's ***conduct was illegal.*** 2010 SEC LEXIS 2941, at *127. The Division's claims against Young are, as well, that ***he (Young) failed to exercise reasonable care*** in that he failed to consider that SIB's lack of transparency was to conceal the weakness of its portfolio or the possibility that investors might be confused by the discussion of the "comprehensive insurance program" into believing that their investments were insured, thus concluding that Young was at least negligent in allowing the use of the SIB marketing material. This conclusion fails in that it is remarkably contradicted by Judge Foelak's own findings that:

> ***"To the extent that the language in the disclosure statement and brochure contained material misstatements and omissions, it cannot be***

[3] The Division withdrew the findings against Theodore Urban while awaiting a decision on a petition for review to the Commission. Chief Judge Murray's opinion remains relevant and persuasive authority as applied here.

> ***attributed to any of the Respondents.*** No Respondent had any responsibility for drafting these documents or had any input into drafting the language. To the contrary, the Stanford companies' inside and outside counsel had responsibility for drafting the language. As such, none of the Respondents was a maker of the untrue statements or omissions. Nor did any of the Respondents conceal the facts about SIB from those who drafted these marketing materials; SIB's lack of transparency and insurance was widely known at SGC." (Ref. *Id.* Page 28 @ III(2)(c)) (***emphasis added***).

However, for purposes of "Causing" liability under the Advisers Act Section 206(2), she states that "Each Respondent engaged in an act or omission that was a cause of SGC's violation of Advisers Act Section 206(2) throughout the relevant period. Young approved the use of the brochures and the disclosure statement...Similar misstatements appeared in the materials developed and used by Green and Young to train FAs, who were the conduits conveying the misleading representations to clients..." This finding or conclusion by Judge Foelak appears to be in direct conflict with her later conclusions:

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

Equally confusing and unsettling is that while the ID concluded that none of the Respondents aided and abetted or caused SIB's and SGC's violations, Judge Foelak ordered that "Respondents will be ordered to cease and desist (*after four and one half years?*) from violations of Section 17(a) of the Securities Act, Sections 10(b) and 15(c)(1) of the Exchange Act and Rule 10b-5 thereunder, and Sections 206(1) and 206(2) of the Advisers Act and barred from the securities industry."

The ID, establishes a standard and precedent which is contrary to prior case law. Chief Judge Murray's decision in *Urban* held that despite these red flags - reasonably discharged his duties, placing particular significance upon his reasonable reliance *"on continuous representations by multiple individuals in high level managerial roles."* The Chief Judge emphasized that, in fact, "almost all the business leaders at [the firm] either lied to or kept information from him, and people with clear supervisory responsibility over [the broker] did not carry out their supervisory responsibilities." *Id.* at *138. Nonetheless, the Chief Judge concluded, " ha[d] a reasonable basis for relying on [those] representations" at that time. *Id.* at *148. Judge Foelak disregarded the principle cited in *Urban*.

Similarly, in *Huff,* the Commission held that Arthur James Huff, a vice president and senior registered options principal in PaineWebber's central compliance department, was aware of, and reasonably relied on, the compliance and legal departments' "prior resolution of the issues relating to [a salesperson's activities]," and thus was excused for *"taking no action* with respect to [those] matters." 1991 SEC LEXIS 551, at *2, *8 (emphasis added). Huff had specifically been instructed by his supervisor "to keep on top of [the salesperson's] activities and to follow through if any question arose concerning [him]." *Id.* at *5. Huff's supervisor had even given him "the thick compliance department file on [the salesperson]," further signaling that Huff had an obligation to conduct a certain level of due diligence. *See Id.* Despite having this degree of responsibility, the Commission concluded that Huff's reliance was reasonable and found no fault in his inaction. *See Id.* at *4-5, *8, *11-12.

In re Dean Witter Reynolds Inc., 2001 SEC LEXIS 99 (Initial Dec. Jan. 22, 2001) is also instructive. There, the Enforcement Division argued that a broker-dealer's polices and procedures were unreasonable, in part because they allowed the compliance department to rely on statements made by branch managers, without independently "verify[ing] the information." 2001 SEC LEXIS 99, at *36, *140-41, *146-47 (Initial Dec. Jan. 22, 2001). As in *Huff*, the compliance department in *Dean Witter* had due- diligence functions-the duty "to collect, assess, and transmit information to, and request and evaluate information from, [others]," *Id.* at *36 but the court still held that independent verification was unnecessary: "[I]t is reasonable to rely on [the branch manager's] conclusions," the court reasoned, because branch managers "are generally experienced and are subject to specific licensing requirements," and they have "potential liability for failure to perform," *Id.* At *140-41.

And in *Howard*, the SEC advanced an argument that is substantially similar to the Division's contention here. The Commission alleged that Nicholas P. Howard, whose job entailed "market[ing] European equity securities to American and Canadian institutional investors," had marketed those securities without independently confirming the accuracy and legality of certain information in offering documents, in contravention of his "ongoing obligation" to "protect investors from illegality." 376 F.3d at 1138, 1147. Those client-facing documents were improper, the Commission argued, because they omitted necessary disclosure language, and Howard had thus facilitated a securities violation by allowing the documents to be filed.

But the D.C. Circuit held that Howard's reasonable reliance on management and counsel showed good faith and negated any plausible inference of scienter. *Id.* at 1148. The court observed that the Commission had "disregarded" "powerful evidence" that Howard did not act with scienter when he allowed the documents to be used with clients, *Id.* at 1138, 1148 - specifically, evidence that Howard had reasonably relied on reviews and approvals by: (1) the head of the broker-dealer's finance department, an individual who "had been a lawyer with the SEC's Division of Market Regulation," *Id.* at 1139, 1146-47; (2) executives in the Capel Group, of which Howard's broker-dealer was an affiliate, *Id.* at 1139, 1146; and

(3) outside counsel, who had "more than 20 years of experience" with securities law, *Id.* at 1147. The court noted that Howard was "a non-lawyer," and *"a non-lawyer has no real choice but to rely on counsel," Id.* at 1148 n.20 (bracket omitted); thus, the court altogether ignored the fact that Howard had conducted no due diligence – in fact, Howard was "on vacation" during a significant part of the relevant time period and "skimmed" only one of the documents, *Id.* at 1139, 1147. Yet the court still concluded that, "[i]n this case, rather than red flags, Howard encountered green ones, as outside and inside counsel approved" the information in question. *Id.* at 1147.

If the above evidence in *Howard* was found by the D.C. Circuit to amount to "powerful evidence" of reasonable reliance – and if the compliance department in *Dean Witter* was held to have reasonably relied on statements made by *a* branch manager, 2001 SEC LEXIS 99, at *140, *146-47, and the employee in *Huff* was found to have reasonably relied on *one* assessment by the company's compliance and legal department, 1991 SEC LEXIS 551, at *4-5, *8, *11-12 – then Young's reliance in this matter, based on the magnitude and nature of the sources, is unassailable and the finding that his actions were made with "at least a reckless degree of scienter" *ID* at Page 25, should be set aside.

2. Young Reasonably Relied On An Affiliate's Compliance Department, In- House Counsel, Outside Counsel, And Many Others.

Applying the above precedents to the facts of this case, it is clear that Young's reliance was more than reasonable.

First, it is undisputed that SIB-not Young, drafted, reviewed and approved the language in the materials; Young "did not provide input into the language of disclosure and marketing materials, and believed that inside and outside counsel had approved the disclosure and marketing materials and the manner in which SGC and SIB were doing business." Id. Tr. 2576-81, 2609, 2850-52, 3017-18 (Bogar), 3414 (Young), 3681, 3701-02, 3760, 3979 (Green). *Howard,* 376 F.3d at 1147. SIB documents plainly state, "We, not SGC, are solely responsible for the contents of this Disclosure Statement and other Offering Documents," which include the SIB brochure. *E.g.*, SIB Disclosure Statement at 17 (dated Oct. 15, 1998, amended Nov. 15, 2007); Young Ex 77, 78, and 79. Indeed, the record is clear that the SIB brochure was in place and in use years *before* Young arrived at SGC, and Young was not asked or required to approve the brochure that was then in existence; nor was he asked to sign off on any revisions to later versions of the brochure.

An affiliate of SGC, SIB had since its inception maintained its own Compliance Department Given this structure and the fact that SIB Compliance had vetted and approved the materials, "apparently [to its] satisfaction," Young cannot be faulted for relying on that department's work product or utilizing training material developed by SIB which contained similar misrepresentations and misstatements. The fact that SIB's President also reviewed and approved Bank documents as a matter of practice only reinforces the reasonableness of Young's reliance. *See Howard*, 376 F.3d at 1139, 1146 (holding that Howard had reasonably relied on "executives," among others).

Second, SIB Compliance worked in coordination with Stanford's companywide Legal Department, a centralized office of approximately 20 lawyers with full authority over legal matters for all Stanford affiliates, including SIB and SGC. Whether the mix of documentation that went to potential investors constituted a legally adequate presentation-whether the collective language fell within lawful bounds or over the edge of misrepresentation-is, of course, a uniquely legal determination best suited to the Legal Department, not Young a non-lawyer. As the department is "in the best position" to make the assessment, Young's reliance on Legal is all the more reasonable. *See Dean Witter*, 2001 SEC LEXIS 99, at *140.

As in *Howard*, Young "rel[ied] on the expertise of ... counsel" and "its work product," and properly believed that the "materials contained all the necessary [information and] disclosures." 376 F.3d at 1140, 1147.[4]

In determining negligence, the ID stated that "Concerning their state of mind, each Respondent failed to consider that SIB's lack of transparency was to conceal the weakness of its portfolio or the possibility that investors might be confused by the discussion of the "comprehensive insurance program" into believing that their investments were insured. Thus, each Respondent was at least negligent in allowing the use of marketing material that promised depositor security on the basis of facts about SIB's portfolio that could not be verified and on the basis of a discussion of insurance that all knew had no relevance to depositor security but that might confuse a potential investor into thinking that it did. This was a failure to exercise reasonable care...Accordingly, it is concluded that each Respondent caused SGCs violation of Advisers Act Section 206(2)." [Ref. Id. at Page 28; 2(b)]

Young believed that the reviews of the portfolio by the independent auditor and the regulatory authority in Antigua overcame the "lack of transparency". One of the primary reasons **independent** audits are conducted is to determine the accuracy and validity of an issuer's financial representations. A primary purpose of the Antiguan regulatory authority, like the U.S. banking regulators is to determine the safety and soundness of the financial institution under their jurisdiction. Neither the auditor nor the regulator **EVER** expressed any concern about the financial soundness of SIB. In addition, Young's status as a non-lawyer further bolsters the reasonableness of his actions. If the general counsel in *Urban* was found to have reasonably relied on representations by laypersons on matters that were within his competency, then Young's reliance here is on even surer footing. That is because Young, a non-lawyer, had no choice but to rely on representations by in-house and outside counsel on

[4] Legal had also retained outside counsel to review the CD documents. Outside counsel reviewed, suggested modifications to, and approved the documents, further fortifying Young's reliance.

questions that "call[] for an exercise of legal judgment" – e.g., whether the term "comprehensive insurance" may lawfully be used to characterize SIB's insurance program in certain materials that relate to the CD when accompanied by clarifying language that the CD itself is not insured; whether Antiguan privacy law forbade him from viewing the portfolio investments; whether the financial statements prepared by a licensed accountant presented fairly the financial position of SIB; or whether SGC was legally required to disclose the percentage of revenue that it received from sales, product-by-product. *Urban*, 2010 SEC LEXIS, at *149. As the D.C. Circuit has explained, "securities laws are complex and often uncertain; the layman *[i.e.*, a non- lawyer] has no real choice but to rely on counsel." *Howard*, 376 F.3d at 1148 n.20 (brackets in original and internal quotation marks omitted). Here, Young relied on such guidance and acted more than reasonably in doing so.

Third, in 2005, Thomas Sjoblom (Sjoblom), then a partner at Chadbourne & Parke LLP, reviewed the CD for sales-practice issues and reported none to Young when he joined SGC in 2006. As in *Howard*, where one of the individuals who had been relied upon "had been a lawyer with the SEC's Division of Market Regulation" and the other had "more than 20 years of experience" with securities law, Sjoblom had Department of Justice experience and spent nearly 20 years at the SEC in Washington, D.C., serving as Assistant Chief Litigation Counsel in the Commission's Division of Enforcement from 1987 to 1999, where he prosecuted unlawful sales practices by brokers, financial and SEC reporting fraud, unregistered securities offerings, and offshore and international securities frauds-areas that were directly relevant to the scope of his CD sales- practice reviews. As far as Young knew at the time, Sjoblom brought his integrity and decades of regulatory experience and expertise to bear on the issue. Despite conducting hours of interviews with a cross-section of high-producing salespersons on how they marketed and sold the CD, Sjoblom apparently found no sales-practice issues – involving the materials in question or any other issue-worthy to be reported to Young. In short, Young "believed that the lawyers had been consulted," and the lawyers communicated a powerful "green [flag]." *Howard*, 376 F.3d at 1142, 1147.

Fourth, Commission staff sent questionnaires to certain CD clients in 2005, which included a question about the CD and insurance coverage and did not receive any customer complaints in response that related to SIB or the CD, during the period of time that Young was employed at SGC, until the liquidity crisis of 2008 hit the entire financial industry causing many larger financial institutions to collapse. Had there been a history of customer complaints, prior to the customer inquiries, or other tangible indications of irregularity regarding CD sales practices come to Young's attention, there is every reason to believe that he would have followed up in an aggressive fashion.

The Division's case is rooted in the belief that Young performed inadequate due diligence, but according to the Division, they do not have, or they have been unable to locate his extensive due-diligence file (see prior footnote re: Young's access to his files) .

The Division however, faults Young for not speaking to certain individuals or asking to see select items during the course of his due-diligence reviews. He should have done so, the Division argues, to verify the accuracy of information contained in the materials. But Young relied on SIB's Compliance Department, internal and outside legal counsel, and others, who indicated to him that they did perform that function, and that is precisely the point of the reasonable-reliance doctrine. *See Howard,* 376 F.3d at 1146-48. As is industry practice, Young was able to conduct his review within the reasonable bounds of his discretion. Further, Young ***did*** ask to speak to most if not all of the individuals identified by the Division and ***did*** ask to see items (i.e. the underlying portfolio) considered significant by the Division, but senior management at the bank, legal counsel, the foreign regulator and King, and outside counsel, **ALL** told him that he could not do so. His reliance on their representations at that time was reasonable. That some of those individuals, on whom he reasonably relied, may have themselves been part of a massive securities fraud does not change the fact that Young's reliance was reasonable. *See Id.* at 1148 n.21.

As a financial institution in Antigua, Young understood SIB was subject to the Antiguan regulation and that the execution of Antiguan banking regulations had been reviewed by specialists from the International Monetary Fund ("IMF") for compliance with Basel Core Principles.

Against that backdrop, Young conducted numerous on-site due-diligence reviews of SIB and maintained a centralized due-diligence file on SIB. He reviewed, analyzed, and kept records including copies of SIB's formation documents; SIB's auditors; reports issued by the IMF; SIB's quarterly and annual financial reports; SIB's anti-money laundering policies, rates, product information, and SIB's certificate of good standing issued by Antigua's FSRC, and other site visit documentation. During his visits to Antigua, Young interviewed a broad group of individuals, including (but not limited to) SIB's President, CCO, Chief Investment Officer ("CIO"), and Operations personnel. Young like his predecessor, reviewed SIB's due-diligence procedures, changes in its policies and procedures, SIB's investment policy, SIB's regulatory audits, and anti-money laundering procedures. Young then went above and beyond his predecessors and met with the CEO of the Antiguan regulator, who not only detailed for Young the extensive reporting requirements under which SIB operated, but the risk based audit program which the FSRC conducted on SIB. The regulator also confirmed the representations which had been made to Young, personally by Sjoblom, Stinson and SFG legal, that due to Antiguan privacy laws Young would not be able to view the SIB portfolio. Young was told by the regulator that the FSRC performed quarterly reviews of SIB, analyzing its allocations, and questioning any discrepancies found as a result of its analysis. Young had no reason to question King's representations or governmental authority. Young also asked the Regulator to see the actual portfolio investments and the regulator, as well as senior individuals at Stanford, including former CCO's, General Counsel, SIB's President and **ALL** denied his requests citing Antiguan privacy laws. With no indication of wrongful conduct, and with no one less than the current and former General Counsel, Outside counsel, and the SIB President informing him that Antiguan law forbade him from doing that which the Division now says he should have done, Young, a non-lawyer cannot be said to have acted recklessly by crediting that representation. *See, e.g., Dean Witter*, 2001 SEC LEXIS 99, at *165.

Citing foreign legal authorities in a September 2005 letter in response to an SEC request, Sjoblom represented that "there are certain provisions under the laws of Antigua and Barbuda (the violations of which can result in harsh consequences) which prohibit SIB from providing you with all the documentary information you currently request." This explanation, given to the SEC, was the same explanation given to Young. And, just as the Commission's efforts were met with resistance, so too were Young's. Indeed, the fact that the same explanation was given to the SEC lent legitimacy to the perceived validity of the reason. One does not lightly assume that a former Special Assistant United States Attorney and SEC Enforcement Division attorney with 20 years of regulatory experience would not be forthright with the Commission. Nor would it have been reasonable for Young to assume that he could not rely on a federal regulator of a country with sovereign authority over the regulation of SIB or that such an individual would be any less than forthright with Young.

Further, even putting Young's reasonable reliance to the side, his actions with respect to the insurance language independently negate any inference of recklessness or negligence. Far from being an act of recklessness or incompetence, Young's actions might have *prevented* misrepresentations by salespersons. *See* SEC Cooperation Initiative, 17 C.F.R. § 202.12(c)(3) (steps taken by individual "to prevent the violations from occurring" point away from holding him or her accountable). That is not evidence of carelessness, but prudence. Thus, the ID's findings against Young are not only unsupportable, but also unjustly target at a CCO who acted *most* reasonably.

a) Insurance Language In SIB's Materials

The ID states that "investors might be confused by the discussion of the 'comprehensive insurance program'. into believing that their investments were insured. The record does not support this finding in that the materials do not say in substance, anywhere that *the CD is insured.* Instead, the ID could only point to two words ("comprehensive insurance") in the following clause of one sentence- "Stanford International Bank maintains a comprehensive insurance program with the following coverages" (with the brochure specifying just what

SIB's comprehensive insurance program includes)- and then asserts that potential investors "might be confused" into "believing that their investments were insured". But the set of documents on which the ID relies is replete with statements that actually say the "CDs are not FDIC-Insured" and that the "CD deposits and the CD certificates are not insured," and these clear *statements* would have been understood to rebut any such *inference*. *See* SIB Disclosure Statement at 1, 4, 12; SIB Marketing Brochure (APP 0533). Instead, there is clear language that states the CD's are ***"not insured"***, and such language is featured *prominently throughout* the materials, including the materials Young used to train SGC's FAs.

In fact, the clear **"not insured"** language operates to bolster Young's reliance. Because Young understood that the clear language always accompanied the language that the ID points to, and was given to each potential investor, there was more reason to believe that the total mix of insurance language was in fact appropriate. Put differently, it was manifestly not unreasonable for Young, a non-lawyer, to rely on counsel's and others' apparent determination that a reasonable investor reading the term "comprehensive insurance" in tandem with "the CD is not insured" or "the CD is not covered by FDIC insurance" would come to the conclusion that the CD was not insured in every respect. Accordingly, Young did not fail to exercise reasonable care by allowing the use of the marketing material and therefore should not be held to have caused SGC's violation of Advisers Act Section 206(2).

The ID's argument might be that the term, "comprehensive insurance," divorced from the words immediately surrounding it and the total mix of information that went to investors, is obviously confusing because the insurance program was not, as the Division has said, "complete in every respect" - it excluded coverage for the CD. Of course, that contextual approach to the materials is flatly contrary to controlling United States Supreme Court precedent and related Commission guidance. *See infra* Section III.C.2.a. In any event, this argument rests on assumptions about what "comprehensive insurance" must--or should-mean. But longstanding usage in related industry contexts refute the proposition that the "comprehensive insurance" language was misleading, or otherwise "might be" confusing. In fact, these authorities strengthen the reasonableness of Young's reliance. In the automobileinsurance context, for example, while "comprehensive" insurance covers certain types of damage, it normally does not cover collision damage--one of the most vital kinds of insurance. *See, e.g.*, GEICO, [http://www.geico.com/getaquote/auto/coverages-explainedl ("Comprehensive physical damage coverage pays for losses resulting from incidents other than collision."); Progressive, http://www.progressive.com/understandinginsurance/entries/2009/9/1/can_you_have_compre .aspx ("Comprehensive only policies do not offer liability coverage and are often subject to strict rules."). These policies, which are ubiquitous, exclude a core type of insurance yet are still characterized as "comprehensive." The characterization of the SIB insurance program as "comprehensive" is no different. Accordingly, Young did not fail to exercise reasonable care by allowing the use of the marketing material and therefore should not be held to have caused SGC's violation of Advisers Act Section 206(2).

b) Product Sales

The ID finds that Young, engaged in an act or omission that was a cause of SGC's violation of Advisers Act Section 206(2) by approving the use of the SIB brochures and the SIB disclosure statement, and attributes to Young and Green the development of the training materials used by Green and Young to train FAs who were in turn the conduits conveying the misleading representations to clients.Young did supplement the training program, which had been implemented by his predecessor, Bates, to include specific training regarding compliance issues related to Reg D Offerings.

Further, Young discussed his due diligence process with FA's and made numerous trips to Antigua to conduct due diligence, asking questions very similar to the ones that Commission staff had been asking, and receiving the same explanation in response.

C. The Division's Case Lacks Merit.

As applied to Young, the ID's findings are entirely novel, unsupportable, and illogical in the context of how things work in the real world of compliance. We have found no case in which the Commission charged an individual who solely occupied the CCO position with making affirmative misrepresentations or unsuitable recommendations to clients by reviewing or approving marketing literature for use or training presentations.

1. Antifraud Violations; Primary Violations.

The ID's "marketing and liquidity" theory is based on one sentence in the SIB brochure that states, "SIB's assets are invested in a well-diversified portfolio of highly marketable securities issued by stable governments, strong multinational companies and major international banks." *See* SIB Disclosure Statement at 17. The ID concluded that Young approved talking points which contained "representations about "SIB's portfolio that could not be verified and the misleading statement that 'There are insurance policies in place to indemnify in case of fraud and/or embezzlement.'" The ID found that "These statements were clearly material and made with at least a reckless degree of scienter. This argument is based on hindsight; it also overlooks the record of evidence as it applies to Young, who by virtue of his due diligence and other experiences, reasonably believed that others within and independently of SFG could – and did – verify the information contained in the SIB Disclosure Statement, the SIB Brochure, and in turn, the SIB Training material, as well as the talking points which were used by the FAs, as all such information was consistent with the SIB Disclosure Statement and representations Young received from King, Sjoblom and SFG's Insurance Manager, Barbara Fortin. Tr. 3431-3432, 3439-3442.

If the evidence in *Howard* was found by the D.C. Circuit to amount to "powerful evidence" of reasonable reliance – and if the compliance department in *Dean Witter* was held to have reasonably relied on statements made by *a* branch manager, 2001 SEC LEXIS 99, at *140, *146-47, and the employee in *Huff* was found to have reasonably relied on *one* assessment by the company's compliance and legal department, 1991 SEC LEXIS 551, at *4-

5, *8, *11-12 – then Young's reliance in this matter, based on the magnitude and nature of the sources, is again unassailable.

While the ID found that Young was not responsible for the language contained in the SIB Brochure or the SIB Disclosure Statement, the ID concluded that Young was liable for approving the use of such materials as well as materials which contained similar misstatements, "developed and used" by Green and Young to train FAs on the SIB CD product. This conclusion is erroneous in that it ignores the testimony and evidence presented before the Court that the SIB training materials which contained the language in question were in fact developed by SIB, prior to Young's arrival at SGC and that the compliance training conducted by Young focused on the restrictions placed on sales of products sold in reliance on Regulation D and the Antiguan regulatory framework. [Tr. 2147-2149, 2177].

Further, the ID states that the approved talking points that FAs sent to clients included representations about SIB's portfolio that could not be verified and the misleading statement regarding insurance coverage. The ID finds that these statements were clearly material and made with at least a reckless degree of scienter. However Young could not have been responsible for the liquidity language upon which this theory rests because it indisputably was not his language. As explained above, the SIB Disclosure Document and SIB Brochure, from which this language was taken, was in place *before* Young arrived at SGC and had been approved by the Legal Department, as well as FINRA's Advertising Department in January 2008. While the brochure was apparently reproduced each year, the liquidity language in the brochure is boilerplate and did not change during Young's tenure. *See* SIB Brochures for 2003-2007. Others drafted and approved this language, and Young reasonably relied on that work product.[5] In addition, even though Young knew of a large private venture capital portfolio, he was told by outside counsel that such were not part of the portfolio underlying the CD. Young also relied on the competency and vetting process of the SIB auditor who stated that the financial statements were prepared in conformity with International Accounting Standards. It is completely reasonable for Young,

[5] The Disclosure Statement clearly advises potential customers that "We [SIB], not SGC, are *solely* responsible for the contents of this Disclosure Statement *and the other Offering documents,*" which includes the brochure. SIB Disclosure Statement at 17 (emphases added);

who is not a international accountant, to rely on the statements made by an auditor who is vetted by both the Antiguan regulator and the Easter Caribbean Central Bank on an annual basis.

The ID maintains that these statements were clearly material and made with at least a reckless degree of scienter. However more than eight years have elapsed since the Division came into possession of the SIB Disclosure Statement and SIB Brochure which it now claims is misleading. Moreover, more than eight years have elapsed since the Division was first informed by SGC that it did not have access to the SIB portfolio. In SGC's November 2, 2004 response to an SEC inquiry, Rep Poppell, the Director of Compliance, wrote, "As we **discussed, SGC does not have access to the detailed portfolio mix of Stanford International Bank's assets.**" At that time, the Division did not inform Young's predecessor that this was an issue, nor did the Division inform Young this was an issue prior to serving Young with a Wells Notice in June 2010. To utilize this as the basis for a finding of fraud against Young, more than six years after the fact, based on that same information and documentation, not only indicates that hindsight is at work but it ignores the opinion issued by the US Supreme Court, in Gabelli Et Al. v. Securities and Exchange Commission, wherein the Court held that the five-year statute of limitations, under §2462, for the SEC to bring a civil suit seeking penalties for securities fraud against investment advisors begins to tick when the fraud occurs, not when it is discovered. (Pp. 4-11).

As explained above, Young did ask to review SIB's portfolio, but was denied access. Lawyers, SIB executives, including Alvarado, Yolanda Suarez, and Juan Rodriguez, and King, each told him that he could not see SIB's portfolio because Antiguan privacy law prevented the dissemination of that information. Outside counsel verified that characterization of Antiguan law. Young a non-lawyer reasonably relied on those many representations. And the Commission was aware, since November 2004, that SGC did not have access to SIB's portfolio for almost eight years before initiating this proceeding against Young in August 2012. Moreover, the Division suspected that SIB was engaged in a ponzi scheme as early as June 2005 (BEY003971-BEY003978), more than a year prior to Young joining SGC or becoming its CCO.

Young had absolutely no reason to believe that the portfolio investments were not accurately portrayed and thus did not act fraudulently or incompetently by approving for use, material containing the statements, of which he was not an author, and have in hindsight been proven to be inaccurate. Young reasonably believed at the time that the FSRC, SIB's foreign regulator, as well as SIB's outside auditors and others within SFG, could and did verify the accuracy of the statements contained in the SIB Disclosure Statement and the SIB Brochure which were in turn included in the talking points. Tr. 3209-3213. Young also believed that outside counsel had met with the FSRC, and he too reported no such concerns to Young. Because of the information Young obtained during the course of his due diligence on SIB, Young was given no reason to be concerned about the portfolio, the insurance or the statements contained in the talking points, thus he did not act with a reckless degree of scienter.

If the evidence in *Howard* was found by the D.C. Circuit to amount to "powerful evidence" of reasonable reliance – and if the compliance department in *Dean Witter* was held to have reasonably relied on statements made by *a* branch manager, 2001 SEC LEXIS 99, at *140, *146-47, and the employee in *Huff* was found to have reasonably relied on *one* assessment by the company's compliance and legal department, 1991 SEC LEXIS 551, at *4-5, *8, *11-12 – then Young's reliance in this matter, based on the magnitude and nature of the sources, is again unassailable.

2. The Division's Insurance Theory Fails To Account For Crucial Pieces Of Undisputed Fact.

The ID finds that the approved talking points sent by FAs to clients, included the "misleading statement" that "There are insurance policies in place to indemnify in case of fraud and/or embezzlement", and that this statement was clearly material and made with at least a reckless degree of scienter. This conclusion however runs afoul of Supreme Court precedent with respect to establishing either materiality or scienter.

a) Assumption vs. Evidence regarding insurance

Wholly absent from the materials – whether brochures, trainings, or anything else – is language that unequivocally says that the CD is insured. Grasping for a theory, the ID sites the statement "There are insurance policies in place to indemnify in case of fraud and / or embezzlement", and states that this statement is clearly material and made with a reckless degree of scienter. In fact there is language - featured prominently on numerous pages throughout the marketing materials and the training materials - that plainly says **"The CD deposits and the CD certificates are not insured by the FDIC or any other agency of the United States Government or any state jurisdiction, or by any insurance program of the Government of Antigua and Barbuda. "**

The ID cites language on page 5 of a brochure that states, "Stanford International Bank maintains a comprehensive insurance program with the following coverages" (with the brochure then laying out just what that program includes), but ignores *three different statements in the same document* (on pages 8 and 13) that say, "Stanford International Bank CDs (not FDIC-Insured)," and again, "Stanford International Bank Limited CDs are not FDIC Insured," and then again, SIB's products are not "covered by the investor protection or securities insurance laws." *See* SIB Marketing Brochure (APP 0533). Further, SGC's compliance policies required "[t]he FA and/or Branch Management" to "affix a disclaimer to the SIB brochure stating that there was no FDIC or SIPC insurance.

The ID likewise disregards language in the SIB Disclosure Statement that, as far as Young knew, and as the Divisions own materials attest, always went to potential investors. Once again, the language could not be clearer: "The CD deposits and the CD certificates are not insured by the Federal Deposit Insurance Corporation ('FDIC') or any other agency of the United States government or any state jurisdiction, or by any insurance program of the government of Antigua and Barbuda." *See* SIB Disclosure Statement at 1. This information is featured prominently on the first page, is repeated in all capitals on page 4, and then reiterated once again (in substance) on page 12. Even the SIB CD Deposit Rate Card disclosed that the

SIB CD was not covered "by the investor protection or securities insurance laws of any jurisdiction."

The Division's reliance on the SIB Training and Marketing Manual is similarly misplaced. The Division focuses on language that states, "**Stanford International Bank's funds are protected** by a comprehensive insurance program which provides various coverages" [emphasis added] (with those coverages spelled out). The language clearly *does not* say that "depositors funds are protected" by a comprehensive insurance program...in fact it says only that *SIB's funds are protected*, this is an important distinction as the same document states "*The CD Deposits and the CDs are not insured...*" Further, the two sentences *right above* that isolated clause unambiguously state, "Since [SIB] is not a U.S. bank, it is not covered by FDIC insurance," and that clear language would dispel any inference that might be extrapolated from the language right below it. As the manual documentation states, "This manual and the information contained herein is solely for the use of individuals designated by [SIB] and may not be distributed, disclosed or disseminated to any other individual(s) or entity not so designated."

Young believes, and by now, the Commission should also concur, that a reasonable investor would understand that "not insured" means just that, NOT INSURED, and would have credited these clear *statements* over any *inference* from the language that the ID relies on. In addition, Young was not aware of any client that ever alleged that the CD was insured, UNTIL the Commission swooped in and appointed a Receiver.

b) No Scienter Or Negligence

There is no support for a finding of scienter or negligence. A showing of at least recklessness is required to establish scienter, *Fanelli v. Cypress Capital Corp.*, 1994 WL 725427, at *8 (N.D. Cal. Dec. 29, 1994), but reasonable reliance negates recklessness and negligence, and, as demonstrated above, Young more than reasonably relied on in-house and outside counsel, as well as SIB's Compliance Department and other individuals, *Howard*, 376 F.3d at 1146; *Huff*, 1991 SEC LEXIS 551, at *2, *8.

It was unknown to Young until February 17, 2009 that the representations in the marketing material under the heading "Depositor Security" and in training materials prepared by SIB were false, and those concerning insurance coverage were in any way misleading. It was further unknown to Young that almost all of SIB's purported assets consisted of private equity, equity traded over-the-counter or in the "pink sheets", wildly overvalued real estate, and a bogus $2 billion loan. In fact, it was represented to Young by SFG's Global Compliance Officer and Sjoblom that the private equity portfolio was not part of SIB's CD portfolio. His due diligence on SIB, as well as his discussions with SIB's CCO and two of its independent board members, and his review of SIB's audited financial statements SIB as well as legal opinions issued by reputable law firms such as Proskauer Rose and Greenberg Traurig failed to disclose that the private equity portfolio was in any way tied to the SIB CD portfolio.

As opposed to the materials that the Division relies on, which were developed by SIB and others, Young developed his own compliance training, and his training discussed the Reg D restrictions on public solicitation as well as the unmistakably clear language saying "Important Disclosures," the CD is "Not Insured" and "Cannot be compared equally with US CDs-very major differences," and "No FDIC or SIPC Insurance." (Emphases in original) Salespersons could not sell CDs unless they completed this compliance training-a rule that Young as CCO enforced.

The ID states "Scienter is not required to establish a violation of Securities Act Section 17(a)(2) or 17(a)(3) or of Advisers Act Section 206(2); a showing of negligence is adequate. The ID ignores these authorities. It instead proceeds by plucking out snippets from the materials of which Young was not the maker, and isolating them for purposes of its assessment of Young's level of culpability. At the same time, Judge Foelak in her ID chooses to disregard other clarifying statements - in the exact same documents - that are indisputably part of the "total mix" of information. This is the antithesis of *Basic, Inc. v. Levinson,* 485 U.S. 224 (1988) let alone the Commission's own guidance to the industry.

c) Application of Janus

In re Janus Capital Group, Inc. v. First Derivate Traders, (131.S. Ct. 2296(2011) the Supreme Court held that an investment management company that was "significantly involved in preparing prospectuses" was not liable under Rule10b-5 for making an untrue statement of material fact. (I.D. at 2305). As a result, the Supreme Court dismissed the suit, reversing the judgment of the United States Court of Appeals for the Fourth Circuit dismissing the suit against Janus Capital Management. The Court determined that the investment management company did not actually "make" the statements because it did not have "ultimate authority" over the statements. (Id). The Court explained that "for purposes of Rule 10b-5, the maker of a statement is the person or entity with ultimate authority over the statement, including its content and whether and how to communicate it." (Id. At 2302).

It should be noted that, as stated in the ID, neither Young nor the other Respondents were charged with actually knowing about, much less operating the Ponzi scheme which was run by Allen Stanford and two close associates, Jim Davis and Laura Pendergest-Holt. Rather the ID finds that the Respondents were culpable in their actions or inactions related to disclosures concerning SIB's assets and insurance coverage.

As stated in the ID, as well as testimony introduced at trial, Young did not have any knowledge that any of the representations contained in the offering documents were incomplete, false or misleading. Accordingly, in keeping with the *Janus* case, Young was not a maker of the misleading statements as at no time did he have ultimate authority over the SIB Disclosure Statement or the SIB Sales Brochure (the Offering Documents), nor did his limited "approval of the use of the SIB Disclosure Statement" in accordance with his understanding of Regulation D and or the SIB Sales Brochure by SGC Financial Advisors, or the talking points which carried the statements derived from the SIB Brochure and SIB Disclosure Document mean that he in any way caused SGC or SIB to make false or misleading statements, or that he acted recklessly or was a "conduit" of those misleading statements.

In this case, SIB was the entity which prepared the offering memorandums, sales brochure and training material in conjunction with its legal counsel. Accordingly, Young was not the "maker" or "conduit" of the statements contained in the SIB Disclosure Statement and he was not an officer, director or control person over SIB, the entity with ultimate authority over the statements. Therefore Young should not be held liable or otherwise found to have acted recklessly or as a conduit or to have violated Rule 10b-5 when he had no knowledge that the documents being used were based upon the SIB Disclosure Statement contained false or misleading information.

3. Role of a CCO

CCOs have always known that they have a target on their backs, by the nature of their position. The ID in effect held that Young did not perform his duties and responsibilities *well enough*. Now, not only must a CCO manage his or her employer's employees and follow written supervisory policies and procedures, but must do so with the threat of Commission action looming. The ID has now shifted a CCO's responsibility to be embossed with substantial legal savvy.

The ID, if allowed to stand, places a CCO in the role of guarantor of the actions of others within and outside of their organization, even those over which he/she has no direct supervisory responsibility, this is an extremely dangerous precedent to establish, as no man or woman can ever guarantee or otherwise insure the actions of another.

The ID represents a significant expansion of liability for compliance personnel and would create havoc in the compliance world. This decision not only raises the bar for all CCOs as to what is considered "reasonable" but it punishes the very type of compliance professional whose energy, perseverance and independence the Commission should want to protect and foster. Public policy dictates that a compliance professional must maintain independence from the business side of an organization where, with very rare exceptions, the role of supervision appropriately resides. Young discharged his duties professionally and with care, reasonably establishing written supervisory procedures which were designed to address each area of SGC's business, clearly delineating responsibilities between compliance and sales supervision, conducting training for SGC Branch Office Managers and Sales Supervisors which was designed to educate them on the separation between compliance and supervision, as well as carefully training those involved in sales on the prohibitions against public solicitation of an offering sold in reliance on the exemptive provisions of Regulation D of the Securities Act of 1933. All, with a view and in an effort, to protect investors and the organization for which he was employed as CCO.

Another issue which the ID will cause conflict for CCO's throughout the securities industry is the statement that "Similar misstatements appeared in the materials developed and used by Green and Young to train FAs, who were the ***conduits*** conveying the misleading representations to clients, and Bogar was aware of and responsible for the contents of these training materials." This "conduit" conclusion directly contradicts Judge Foelak's earlier finding that Young was not responsible for content. The record reflects, and Judge Foelak has acknowledged, that Young approved the "use" of materials after having been prepared and reviewed by many others. How could Young be a "conduit" of misleading statements when he took every step to assure himself that the materials had been approved by other persons inside and outside of SGC. In order to assess liability against Young, Judge Foelak has constructed a finding which not only ignores the earlier releases published by the Commission, but also constitutes a serious disconnect between the facts and conclusions. SIB Tr. 2147-2150; Young's participation in the training of FA's was limited to a discussion of the regulatory frame work of Antigua and Barbuda as well as the limitations imposed on sales activities under Regulation D of the Securities Act of 1933. (TR 3258-3260) Young was not the author of the slides which discussed the financial strength of SIB or the performance of the SIB CD, nor was he the supervisory principal in charge of conducting sales training. As evidenced by testimony in trial, Green had been conducting sales training for FA's since 2004. Tr. 3763-3765. Although Young became CCO of SGC in October 2006, Young did not begin conducting the SIB CD Compliance Training until Bates' departure in the summer of 2007.

4. Young Did Not Aid And Abet A Violation Of Section 206.

As applied to Young, the ID's aiding -and-abetting claim is meritless. The same general aiding-and-abetting test applies in the same way to the same core conduct. *See In re Feeley and Wilcox Asset Mgmt. Corp.*, 2000 SEC LEXIS 980, at *50 (Initial Dec. May 16, 2000). These reasons alone demonstrate that an aiding-and-abetting finding against Young should be vacated, reversed, set aside in its totality.

On the merits, this charge warrants only brief discussion. "Irrespective of the level of proof required to establish the primary violation, the Commission has made clear that the accused aider and abettor must have acted with scienter." *In re Murray*, 2007 SEC LEXIS 1486, at *33 (Initial Dec. July 10, 2007). As explained above, scienter cannot be shown where, as here, there is reasonable reliance, and particularly not where-on the core allegations made by the Division-Young affirmatively instructed salespersons that the CD was not comparable to a U.S. CD and was not insured, and that salespersons needed to conduct a suitability assessment before presenting the CD to any client. If Young was in fact acting with scienter, why would he have, on more than one occasion, when an issue was raised as to the accuracy of the content or disclosures contained in either the SIB Disclosure Statement or the SIB Sales Brochure, required (*without exception*) that all materials relating to the SIB CD be returned to him so as not to allow the remotest possibility that they might fall into the hands of any potential depositor. Young's "good faith preclude[s] a finding of scienter necessary to hold that [he] aided and abetted the firm's various violations." *In re Kingsley, Jennison, McNulty & Morse, Inc.*, 51 S.E.C. 904, 911 & n.28 (1993) (in a Section 206 case, an executive officer was not liable for aiding and abetting because he believed that the investment firm was within the law regarding its disclosures); *see also In re Seavey*, 2002 SEC LEXIS 398, at *46 (Initial Dec. Feb. 20, 2002) (in a Section 206 case, Commission found that the respondent "reasonably relied" on the firm owner's representation, noting that the respondent was "lulled by assurances from the bank").

Finally, while salespersons who received commissions from the sale of the CD and others may have benefited from the fraud, there was no benefit to Young "beyond that normally obtained in a legal relationship" with an employer – a consideration that the Commission has relied on in the past to reject aiding-and-abetting claims. *See, e.g., In re Carter*, 1981 WL 384414, at *27 (Comm'n Op. Feb. 28, 1981). Young's salary was not tied to the performance of the CD. His bonus was not tied to the CD. He received no incentive payments based on the CD. Nor did he sell the CD or make any commissions based on the sale of the CD. Simply put, Young did not benefit from the alleged fraudulent acts of Stanford.

5. The Supreme Court's Decision regarding Statute of Limitations Forecloses the Division's Action Which Was Brought Against Young.

It was unknown to Young that the Division suspected that SIB was engaged in a ponzi scheme as early as June 2005, however they chose not to use their power to impose a cease and desist order or institute a temporary restraining order against SGC, SIB or SFG, instead they took no action to stop the alleged ponzi scheme which they had written to the FSRC about (BEY003971-BEY003978). In November 2006 the Division alleged that the SIB CD was an unregistered mutual fund and that SGC was engaged in the sales of unregistered investment company shares, yet they chose not to issue a cease and desist or temporary restraining order against SGC or SFG at that time. It should additionally be noted that the SIB 2005 and 2006 Disclosure Statements and SIB Sales Brochures presented during Young's trial by the Division, were documents produced by SGC, (responsive to the SEC's November 2006 subpoena), in January 2007. These facts are important to note as Young was not charged by the Division until August 31, 2012, some 5 ½ years, after these documents were provided to the SEC.

In its opinion issued by the US Supreme Court, in Gabelli Et Al. v. Securities and Exchange Commission, argued January 8, 2013 and decided on February 27, 2013 the Court held that the five-year statute of limitations, under §2462, for the SEC to bring a civil suit seeking penalties for securities fraud against investment advisors begins to tick when the fraud occurs, not when it is discovered.

The Commission did not institute proceedings to stop the fraud which the Division staff believed was on going at SIB since June 2005, (more than 12 months prior to Young joining SGC) until February 2009. (Moreover, the Commission retroactively applied the extension privileges granted it under Dodd-Frank and authorized the OIP more than 26 months from the date of Young's Wells notice.) Instead the Division allowed the fraud to continue for almost 4 more years until the raid on SFG's operations on February 17, 2009. Further, while the Division's investigation into SIB and SFG had been ongoing for more than 5 years when the Division issued a Wells Notice to Young and the Commission further delayed and or failed to issue an Order Instituting Proceedings against Young, and the other two Respondents until August 31, 2012, more than 7 years after the SEC first documented its belief that SIB was operating a "ponzi" scheme. (BEY003971-BEY003978)

IV. CONCLUSIONS

As noted above, Young acted in reasonable reliance on sources deeded, AT THE TIME, to be reliable and trustworthy. Young was not the maker of the allegedly untrue statements or misrepresentations. Young conducted extensive and exhaustive due diligence, including the unprecedented act of meeting with the Chairman of the Antiguan regulatory authority. Such meeting included an in-depth conversation about Antiguan Rules and regulations concerning the bank and its auditor, and the nature of Antiguan examination, including its enforcement capabilities. As a result of a Receiver being appointed by the Commission, Young was without a substantial portion of his working documents throughout the entire time he was under investigation by the Commission, including being refused access to his own records in preparation for the Administrative Proceeding. Extending liability to Young as CCO for being a "conduit" for "conveying the misleading representations" by conducting compliance "training" of the SGC FA's is contrary to public policy and the traditional role of compliance as independent educator, evaluator and guide. Further, extending liability to Young for the statements contained in the SIB Training Materials, and the talking points, neither of which he authored, nor had ultimate authority over their contents is a slippery slope which serves instead to deter compliance professionals from reviewing any communications with the public or engaging in any training of sales staff. In addition, Young is being charged with wilfully violating securities rules even though he pro-actively took steps to stop the sales of the CD or stop the dissemination of "misleading" materials on several occasions. Finally, the Commission's own documents show that they were aware of the "violations" they accuse Young of at least 14 months before Young began working for Stanford and did not bring this action until 7 ½ years after it believed such information was misleading and Stanford was engaged in a Ponzi scheme. The fact that only Young, as the "last man" (CCO) standing was charged should cause concern to both the Commission and the entire compliance industry.

For the foregoing reasons, we pray upon the Commission to vacate, reverse and or otherwise set aside the ID and all sanctions imposed therein..

Respectfully Submitted, *pro se*

Dated: December 3, 2013

Bernerd E. Young

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