UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-15003

In the Matter of

DANIEL BOGAR,
BERNERD E. YOUNG, and
JASON T. GREEN

Respondents.

DIVISION OF ENFORCEMENT'S BRIEF IN OPPOSITION TO BERNERD E. YOUNG'S BRIEF IN SUPPORT OF HIS PETITION FOR REVIEW OF INITIAL DECISION

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The Division of Enforcement responds to Respondent Bernerd E. Young's Brief on Review of the Initial Decision issued by the Administrative Law Judge ("ALJ") on August 2, 2013. ("Respondent's Brief"). At a minimum, the Initial Decision reflects an appropriate analysis of the evidence presented during a fifteen (15) day contested hearing, including testimony from twenty-six (26) witnesses and voluminous exhibits. It should be, at a minimum, affirmed.

I. INTRODUCTION AND SUMMARY OF ARGUMENT

At issue here is Young's conduct in connection with companies owned and controlled by convicted Ponzi-schemer Allen Stanford, in particular Stanford's Commission-registered broker-dealer and investment adviser, Stanford Group Company. [Initial Decision at 2].[1] Young's hyperbole about a supposed new liability for compliance personnel is misplaced. Instead, this case is about what Young did and said about the safety and nature of Stanford International Bank's putative offshore CD ("SIB" or "the Bank" and "the SIB CD"). In a nutshell, Young, the Chief Compliance Officer of a United States-registered broker-dealer and investment adviser, wholly disregarded his responsibilities under the federal securities laws, contributing to a façade of legitimacy around Stanford's enterprise that lured investors into a false sense of security about Stanford's offered investment.

The ALJ concluded that Young violated Section 17(a) of the Securities Act of 1933 ("Securities Act"), Section 10(b) and Rule 10b-5 of the Securities Exchange Act of 1934 ("Exchange Act") based on specific statements he made or authorized and actions he took in connection with SGC's efforts to sell the SIB CD. In addition, the Initial Decision holds him responsible for causing violations of Section 206(2) of the Investment Advisers Act of 1940

[1] Danny Bogar, SGC's former President, and Jason Green, former President of SGC's Private Client Group in charge of managing SGC's retail operations, were also found liable for their conduct by the ALJ. Neither sought Commission review of the Initial Decision.

("Advisers Act") by authorizing SGC and its financial advisers to use materially misleading offering materials related to the SIB CD. Because of these violations, the ALJ ordered Young to cease-and-desist from such violations, barred him from the securities industry, and ordered him to pay a $260,000 civil penalty and disgorgement of compensation he received related to the marketing of the SIB CD, plus-prejudgment interest.

Young's primary argument on appeal is that he should not be held liable because he, as he puts it, reasonably relied on others and therefore did not act with scienter. He never acknowledges that the ALJ took into account the impact others, such as attorneys, may have had here. As discussed below, the Division believes the ALJ erred in that decision.[2] In the meantime, however, it is notable that Young barely addresses the myriad findings the ALJ made against him.[3] His silence is not surprising, given the overwhelming evidence supporting those findings.

In short, the ALJ carefully considered the evidence presented at the hearing, properly applied the standards set forth in *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), and fashioned remedies that serve the public interest. Indeed, Young's conduct was, in truth, more egregious than as found by the ALJ. Accordingly, the Division respectfully submits that the Commission should, at a minimum, affirm the Initial Decision.

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2 See below at pages 19-26.

3 More generally, Respondent's brief is replete with factual assertions lacking any supporting citation that, in fact, are baseless. For example, Young complains repeatedly that somehow he was denied access to materials maintained by the Receiver appointed in a related enforcement action pending in the Northern District of Texas. [See, e.g., Respondent's Brief at 12 at n.12 and at 21.] There is no evidentiary support for this accusation and therefore the Division does not believe it warrants extensive discussion here. It is worth noting, however, that Young was well-aware of the Division's investigation into his conduct long before this proceeding was instituted. He had ample time to seek to review any materials secured by the Receiver.

II. STANDARD OF REVIEW

Rule 411(a) of the Commission's Rules of Practice authorizes the Commission to "affirm, reverse, modify, set aside or remand for further proceedings, in whole or in part, an initial decision by a hearing officer and make any findings or conclusions that in its judgment are proper on the basis of the record." The Commission's review of the Initial Decision is *de novo*. *See Richmark Capital Corp.*, 81 SEC Docket 1715 (November 7, 2003) ("We base our findings on an independent review of the record, except with respect to those findings not challenged on appeal.").

III. RESPONDENT

Respondent Young was SGC's chief compliance officer from July 2006 through February 2009. [Initial Decision at 4]. Previously he was employed by NASD, until he was terminated in May 2003. [Id.].

IV. STATEMENT OF FACTS[4]

A. SGC was an integral part of R. Allen Stanford's fraud scheme.

1. Overview of Stanford's fraud scheme

For more than 20 years, Allen Stanford orchestrated a multi-billion-dollar fraud scheme. [Division Exhibit 746 at p. 110 of 384, at ¶8; Initial Decision at 2-3]. The centerpiece of this fraud was what Stanford and his entities called "Certificates of Deposit" that were reported as being issued by SIB, an offshore company that Allen Stanford owned. [Tr. 78:17 – 79:7; 83:12-17; 84:2-11; Initial Decision at 3]. Potential investors in the SIB CD were told that SIB pooled the

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4 Citations to the transcript of the hearing in this matter are noted as "Tr. at Page:Line." Citations to Exhibits are to Exhibit (No.), proceeded by an identification of the party that introduced the Exhibit as follows: Division of Enforcement ("Division"), Young, Bogar, or Green.

money invested by CD investors and invested those funds in a single, well-diversified, portfolio. [Tr. 90:25 – 91:11; Division Exhibit 644 at p. 12 of 14; Division Exhibit 742 at p. 6 of 21].[5] According to SIB (and those who helped market the SIB CD), experienced money managers around the world managed that portfolio such that SIB earned a high enough investment return to allow SIB to pay consistently high returns and also earn a profit. [Division Exhibit 742 at pp. 6-8 of 21; Division Exhibit 644 at p. 9 of 14; Division Exhibit 607 at p. 8 of 17].

2. Despite its name, SIB was not a commercial bank, and the SIB CD was very different from U.S. bank certificates of deposit.

SIB's only product of substance was the SIB CD. [Tr. 79:5-13]. And, while the SIB CDs claimed a fixed-rate of return like domestic certificates of deposit, it was, in truth, much different. Differences between the SIB CD and domestic certificates of deposited included that: (i) SIB claimed to pool investor funds and invest those funds in the international markets to generate its spread (compared to U.S. banks' loan portfolios); and (ii) the SIB CD was not insured (compared to FDIC-insured U.S. certificates of deposit). [Tr. 99:3-11; Division Exhibit 742 at pp. 6-8 of 21]. In fact, though it was called a "certificate of deposit," those within SGC, including Young, understood that the product was, in substance, actually more like a hedge fund or non-rated offshore bond. [*See, e.g.,* Tr. 3344:7-25 (Young's admission that the SIB CD portfolio had characteristics of a hedge fund)].

5 In a telling moment, Young attempted to mislead regulatory authorities about this undisputable fact. As the ALJ properly noted, in February 2008, Young represented to the Office of Financial Institution, a regulatory body in Louisiana, that the SIB CD was not marketed based on the underlying investment portfolio. As the ALJ rightly concluded, this representation was "unambiguously false" given the reality that the safety of the putative portfolio was the center point of all marketing of the SIB CD. [See Initial Decision at 16, n.27). Notably, Young does not contest this finding.

On the other hand, referring to the product as a "CD" (trading on its iconic meaning in the U.S.) and comparing its performance to domestic CDs led investors to view the SIB CD as comparable to a U.S. bank CD—even though it was a much riskier product. For instance, as defrauded investor Mike Bishop testified: "[one] of the things that are simple that those of us who are not in the financial world can understand, is a CD. [. . .] [I]t was something that wouldn't go down in value and that it would give you a fixed amount of interest." [Tr. at 1133:1-6].

3. Overview of Offering In the United States

In the United States, Allen Stanford used SGC, his affiliated and Commission-registered broker-dealer/investment adviser, to market the SIB CDs to accredited investors pursuant to Rule 506 of Regulation D. [Tr. 80:3-19; 88:23 – 89:1; copies of Forms D filed are included within Division Exhibit 569, at pp: 174-181 (11/13/07) and Division Exhibit 636 at pp. 92-99 (11/16/2004); 100-107 (2/18/04); 108-115 (11/16/2004); 116-130 (12/20/2001); 131-139 (10/30/1998)]. SGC was the only broker-dealer through which Allen Stanford and SIB marketed the SIB CD to United States investors. [Tr. 103:11-21; Division Exhibit 602; Division Exhibit 644 at pp. 8, 12 of 14]. SIB claimed to serve more than 30,000 clients in 130 countries, with over $7.2 billion in total SIB CD deposits. [Tr. 88:7-9.]

For U.S. investors, SIB used a disclosure statement and brochure to describe its CD program (the disclosure statement and the brochure will be collectively referred to here as "the offering documents). [Tr. 93:17-24; 95:6-25; 207:8-15; Division Exhibit 607, Division Exhibit 611; Division Exhibit 644]. The brochure was a marketing piece that was given to investors when presenting the SIB CD to U.S. investors. [Tr. 1167:25-1168:4]. And it is undisputed that investors read or received the brochure. [*See, e.g.*, Tr. 1413:7-18; 1489:13-149:9; 1555:25-1556:4].

While different versions of the brochure and disclosure statement were used over time, certain assurances were consistent. For example, the offering documents always represented that investors were provided security because the underlying investment portfolio was liquid and because of a comprehensive insurance program. [Tr. 299:9 – 300:6; 300:10 – 301:3; Division Exhibit 607 (Brochure) pp. 5, 7, 8, and 10 of 17; Division Exhibit 611 (Brochure) at pp. 5, 8, and 10 of 16; Division Exhibit 644 (Disclosure Statement) at pp. 5, 9, and 12 of 14]. It is undisputed that these representations included in the offering documents were false. In reality, SIB used investor funds to: (i) make approximately $1.8 billion in undisclosed personal loans to Allen Stanford; (ii) invest approximately $4.4 billion in illiquid, high-risk real estate and private equity deals; (iii) pay above-market compensation to SGC's sales force; and (iv) make Ponzi payments to existing CD investors. [Tr. 84:21 – 85:18; Division Exhibit 746 at p. 113 of 484, at ¶15]. And, Young knew there was no insurance that protected CD investors. [Tr. 99:3-11; 3407:4-11].

B. Young played a crucial role at SGC and in marketing the SIB CD in the United States.

Young was hired to become SGC's chief compliance officer in July 2006 and by no later than June 2007, he became SGC's Due Diligence Officer. [*See generally* Tr. 3117:23-3118-20]. As part of his employment responsibilities at SGC, Young authorized SGC and its financial advisers to use the SIB CD marketing brochures and disclosure statement in connection with marketing the SIB CD. [Tr. at 3348:16-3349:8; 3352:18-22]. He also conducted training related to the SIB CD. [*See, e.g.,* 3182:14; 3258:10-16]. Young admits that his duties as the Chief Compliance Officer of SGC and the designated due diligence officer for the SIB CD included taking steps to make sure marketing of the SIB CD was "accurate in all respects." [Tr. at 3355:15-20]. From July 2006 through February 2009, Mr. Young received nearly $1.3 million in compensation. [Tr. at 142:24 – 143:6; Division Demonstrative Exhibit 1].

C. Young knew that the SIB CD Portfolio was a "black box," yet failed to disclose this lack of transparency even while promising investors that the product was safe.

Young made multiple trips to Antigua, putatively to learn about the Bank and the SIB CD. [*See, e.g.,* Tr. 3214:23]. But these trips consisted of little more than boiler-plate presentations from Bank personnel, with no independent verification about the Bank or its assets. For example, Division Exhibit 569 reflects the due diligence file Young compiled. [*See* Tr. 3264:20-3265:22 (Young describing what was identified as Young Exhibit 62 which is identical to Division Exhibit 569)]. It includes copies of the PowerPoint presentation given during trips to the Bank in Antigua. [*See* Division Exhibit 569 at pp. 14-26, 30-42, 44-45, 60-83 of 430]. It is clear from the face of these PowerPoint presentations that the "training" conducted in Antigua conveyed little, if any, substantive information.

Moreover, Young knew that SIB refused to permit SGC or its representatives to: review SIB's investment portfolio, independently confirm its historical performance and holdings, or learn the identities of all of the alleged portfolio managers. [*See generally* Tr. 3214:7-20; 3332:15-19; 3330:23-3331:15; 3333:13-18; 3334:5-7; 3406:6-21]. Indeed, he was told immediately upon his employment at SGC that "you're not going to see the portfolio. You're not going to see it. It's subject to privacy rules. You're not going to see it." [Tr. 3214:7-20].

But aside from parroting this generic statement repeatedly, this amounts to at most, an unverified – and in fact, unchallenged – assumption. It is striking that, during a three-week proceeding, Young could not point to particular provisions of any Antiguan laws to support the premise that SIB could not disclose information about its own assets (as opposed to information about particular customers) to anyone at SGC. In fact, Young was not even able to point - either on direct, cross, or on re-direct - to a particular Antiguan law, let alone a specific provision within that law, when asked to identify the provision(s) upon which the alleged privacy or secrecy was based. [Tr. 3398:3-8]. He was unable to do so despite the fact that his due diligence file was available to him both before and during the trial.

Nor does Young offer any explanation that undercut the applicability of any alleged privacy law. For example, it is undisputed that individuals in Memphis, who were not SIB employees, had access to information about SIB's CD portfolio and those employees were never told that they were prohibited from allowing SGC employees, much less SGC executives, from learning information about the CD portfolio. [Tr. 720:17 – 723:25; 745:18 – 746:22; 750:5-16; 751:9-22; 752:22 – 753:21; 796:18 – 797:14]. This is particularly notable because these persons reported to Laura Pendergest-Holt, the very person that was held out as overseeing or managing the entire CD portfolio. In fact, had Young but asked, he would have been given copies of a spreadsheet that tracked the (in truth, limited) assets managed by the external money managers. [Tr. 720:17 – 723:25; 745:18 – 746:22; 750:5-16; 751:9-22; 752:22 – 753:21; 796:18 – 797:14]. To put it plainly, if Young had asked for -- and thus received and seen – those spreadsheets, he could have learned that – contrary to every representation the offering documents he allowed to be used – the assets actually managed by the external money managers were only a sliver of what the entire SIB CD portfolio was purported to be. [Tr. 720:23 – 722:1; 722:14 – 723:3; 723:20-25; 744:1-3; Division Exhibit 571; Division Exhibits. 579 – 582; Division Exhibits. 585 – 592].

Young's failure to make such a basic inquiry is even more striking because it is also undisputed that many of these same employees in Memphis held securities licenses through SGC, bringing them within SGC's compliance oversight. [Tr. 719:5-14; 749:15 – 750:16;

754:15-18; 3495:2-4; 3498:8-9; 3498:23-25; Division Exhibit 720; Division Exhibit 726].[6] And Young cannot explain why those employees were able to circumvent the allegedly applicable Antiguan privacy laws, but SGC was not. In any event, even though they were subject to oversight by SGC, Young never seriously ever tried to get such information from those employees in Memphis. [Tr. 750:5-21; 751:9-25; 3500:4-13; 3503:19-23].

Finally, it is undisputed that SGC employees were in charge of managing hundreds of millions of dollars of SIB assets in the form of private equity investments. [Tr. 2890: 21 – 2891:19; 2901: 15-19; 2902:3 – 2904: 12; Division Exhibit 652]. It is also undisputed that Young was well-aware of SGC's management of these private equity investments and that he knew the private equity investments were assets of SIB . [Tr. 3471:19-3472:13; Tr. 3475:4-10; Tr. 2901:11-19; Division Exhibits. 398, 570, 652]. Yet, Young never even asked why his knowledge of this SIB asset was permitted but he was prohibited from knowing about other SIB assets.

D. Young knew that outside parties, investors, and SGC financial advisers attempted to verify the details of the SIB CD portfolio and, in fact, helped mislead such persons.

Young admits that both clients and SGC financial advisers asked to review SIB's portfolio. [*See, e.g.,* Tr. 3334:8-12 (clients asked to review SIB's investment portfolio); Tr. 3334:17-19 (SGC financial advisers asked to verify SIB's portfolio).

Young also knew that that Pershing, SGC's clearing broker, became uncomfortable with SIB, unsuccessfully attempted to confirm the existence of SIB's assets for more than 18 months, and ultimately ceased processing wire transfers from Pershing accounts to SIB because of that

6 In addition to his work in connection with overseeing the SIB CD portfolio, Palmliden and other financial analysts in Memphis worked on research reports for which SGC received compensation. Palmliden confirmed that all his work done in connection with the CD portfolio and the research reports were done on the same work computer. It is undisputed that SGC, including its compliance department, had access to that computer. [Tr. at 744:24 – 745:17].

lack of transparency. [Tr. 925:21 – 926:13, 941:1 – 942:6, 957:9 – 960:14, 1005:17 – 1006:5, 1007:1-11, 1008:15-22, 1016:24 – 1017:5; Div. Exs. 284, 376, 377, 463, 483]. When Pershing took that drastic step, Young participated in an effort by Green and Bogar to get on the "same page" in informing SGC's financial advisers about why Pershing stopped sending CD-related wires. Rather than tell them the truth, other reasons were fabricated. [See Initial Decision at 14-15].

The ALJ rightly found that Young's conduct in connection with this issue was improper. Specifically, on December 21-22, 2008, Young (along with Bogar and Green) agreed on an e-mail to be sent to SGC's managing directors that falsely told them that Pershing's decision was based on reasons other than Pershing's inability to obtain transparency into SIB's putative investment portfolio. Surprisingly, in his brief, Young states that "[t]he record clearly shows that Young … was unaware of any other reason why Pershing made the decision to discontinue wiring funds to SIB." [Respondent's Brief at 11]. That is, at best, a gross distortion of the record. One of Pershing's employees, Ed Zelezen, testified without serious impeachment that he had several conversations with Young about Pershing's concerns, the resulting efforts to verify the SIB investment portfolio, and his belief that Young understood the issue. [See, e.g., Tr. 924:17-925:24].

Young also knew Snyder Kearney, an independent party hired to due diligence on another propriety product for SGC knew immediately that it needed to have transparency into the SIB CD portfolio. In July 2008, SGC engaged Snyder Kearney, a law firm specializing in due diligence services, to conduct an independent review of two proprietary funds (not the SIB CD) that SGC wanted to market.[7] [Tr. 1248:22 – 1249:1; 1250:7 – 1251:3; 3569:19 – 3570:2]. In the context of

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[7] Young signed the engagement letter on behalf of SGC. [Tr. 1264:2-9].

this case, the reason SGC retained Snyder Kearney to conduct due diligence on this propriety product is striking. As Michael Koch, who worked with Young in SGC's compliance department explained to Green on June 5, 2008:

> "The attachment below discusses a recent SEC action versus Banc of America Investment Services **regarding inadequate or improper vetting of proprietary products** utilized in their discretionary wrap fee programs. This has raised some concern with us as it relates to the use of proprietary products from SCM in SIM ... **Since SGC has a fiduciary duty relating to clients who invest in SIM through SGC,** we need to ensure that proper due diligence is being performed on propriety products.... Obviously, since [SGC affiliate] SCM is managing the products, the due diligence gets more complicated. The preferred solution would be to utilize an outside consultant/law firm...."

[Division Exhibit 444 (emphasis added)]. Here was a compliance officer under Young's supervision spelling out exactly what the standard was and what should have been done also for the SIB CD. Ironically, Young admits that there was no consideration given to hiring an outside firm to conduct due diligence on the firm's "premier" product, the SIB CD, even though it, too, was obviously a proprietary product. [Tr. 3573:18-25].

Regardless, Kearney immediately realized based on SGC's financial statements, that SGC was wholly dependent on the fees it earned from marketing the SIB CD. [Tr. 1252:17 – 1253:5]. Even though Kearney had access to the Disclosure Statement and SIB's annual report [Tr. 1254:2-11; 1294:22 – 1295:5] and even though he is an expert in reviewing alternative and non-conventional investments, Kearney explained that the unusual nature of the SIB CD program and the lack of any details in SIB's financial statements about "the kind of assets that [SIB] was investing in" required him "to make further inquiry about the nature of the bank's investments.

[Tr. 1254:11 – 1255:4; 1265:15-22]. In short, he recognized immediately that he needed verification of the CD portfolio. [Tr. 1255:5-20; 1265:23 – 1266:15].[8]

Ultimately, Snyder Kearney terminated its engagement with SGC because it was unable to complete its due diligence review. [Tr. 1262:8-14; 1263:17-20; 1264:14-18; Division Exhibit 506]. More particularly, it terminated the engagement because SGC and SIB had been unable or unwilling to provide certain information he requested, including correspondence with regulatory authorities, regulatory exam results, and "information concerning a regulatory investigation mentioned in news articles," and information about SIB "concerning its CD offerings and its investments." [Division Exhibit 506; Tr. 1264:19 – 1266:15].[9] Notably, Young testified that he was aware that Snyder Kearney had requested this information. [Tr. 3573:18-22].

Finally, Young knew that outside advisers to investors raised serious questions and criticisms of Stanford, SIB and the SIB CD. At least as early as February 2007, Young knew that CPAs or other advisors counseling existing or potential SIB CD investors raised serious questions

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8 The Division's expert witness, Doug Henderson, found it noteworthy that others, including Pershing, Snyder Kearney and SGC clients and their advisors discerned the critical need to obtain transparency into SIB's financial condition and the portfolio purporting to underlie its CDs. He also found it noteworthy that none of those parties was successful. [*See* Division Exhibit 746 at p.20 of 384].

9 Contemporaneous with requesting information about SIB's portfolio, Kearney also sought information from SGC related to regulatory exams and enforcement inquiries. [Tr. 1256:19 – 1257:5]. Despite not receiving anything in response to these requests, Kearney developed "the impression that there might be some sort of regulatory inquiry beyond routine examinations going on . . . by a lack of an answer to a question." [Tr. 1257:6-12]. Neither Kearney, nor his firm received any information from Young or SGC about investigations or inquiries conducted by the SEC, FINRA, the State of Louisiana's Office of Financial Institutions, or the State of Florida's Office of Financial Regulation related to SGC's offer and sale of SIB CDs. [Tr. 1257:24 – 1259:15]. In fact, Kearney testified that the existence of an SEC investigation into SGC would have been highly relevant to him in assessing regulatory risk and in learning about the underlying activities giving rise to the regulators' concerns. [Tr. 1261:12-25; 1298:14-21]. In fact, if he had knowledge that the regulators all had unsuccessfully attempted to verify SIB's assets, Kearney would have been even more concerned. [Tr. 1262:1-7].

and criticisms about Stanford, SIB, and the SIB CD. [*See generally* Division Exhibits 71, 72, 74, 77, 79, 653, 658, 660, 661, 663, 666, 667].

For example, one of the CPAs stated that an investor is "best served as thinking of the 'CDs' from an offshore bank as 'junk bonds'" and should "make sure that it is receiving an interest rate at least equal to what it could get from the junk bond market in order to ensure it is being compensated for the risk of loss." [Division Exhibit 77 at p. 5]. Notably, this CPA was aware of many of the "trappings of legitimacy" with which Stanford surrounded himself, such as sponsoring the men's professional tennis circuit and polo events, and purchasing a "Financial Markets Research company based in DC for which they advertise extensively in the WSJ and FT." [Division Exhibit 77 at p.5].

The second CPA's warnings were even clearer. As SGC financial adviser Tim Vanderver, the person who originally received it, explained in an e-mail to Young, with a copy to Green:

> As you saw, there are numerous, specific allegations made, including inter alia that Stanford bank is a haven for international drug cartels and that the financials of the bank are such that it may be a Ponzi scheme.

[Division Exhibit 653 at p. 2 of 5].

When these types of inquiries were received, rather than even stopping to ask if perhaps this warning might have merit, or even attempting or suggesting some level of inquiry, the response of SGC, including Young, was quite the opposite:

> "Here's another one. See the email below. I couldn't read the attachment on my Blackberry, but I have a pretty good idea about the content based on Maggie's e-mail. I assume we may want to attack this one similar to the last one, with the talking points, etc.

[Division Exhibit 72 at p. 1 of 5; see also Tr. 3451:5-9; 3460: 9-24]. Young helped prepare and approved talking points to defend the Bank's product, which they referred to as "damage control")

[Division Exhibit 77 (subject line of email chain)]. Notably, there is no evidence that any investigation independent of the Bank or inquiry was conducted, either before, during, or after the talking points were prepared. Instead, Young admits that, although the client is receiving further assurance that the Bank's investment portfolio is a "globally diversified allocation," Young never verified whether this assurance was accurate. [Tr. 3452:2-16].[10]

E. Young played a key role in training and in allowing SGC's participation in significant sales contests.

Young was responsible for SIB CD training by at least June 2007 and conducted that training along with Green. [Tr. 3182:14; 3258: 10-16; Division Exhibit 103]. To conduct these training sessions, Green and Young (or others acting on their behalf) presented PowerPoint slide presentations. [*See, e.g.,* Division Exhibit 104]. Young knew that those training presentations armed SGC's financial advisers with promises that, among other things, the SIB CD was appropriate for investors seeking safety, that SIB maintained various insurance policies, including policies issued by Lloyd's of London that covered "fraud," and that it was appropriate for "balanced" and "growth" investors to allocate 10-30% of their portfolios to the SIB CD, and for "income" investors to allocate 20-50% to the SIB CD [Id.].

Separately from the PowerPoint training presentations Green and Young presented to SGC's financial advisers, Young new that SGC's financial advisers could download a Training and Marketing Manual related to the SIB CD from SGC's intranet. [*See* Division Exhibit 742; Tr. 3262:1-6 (Young)]. This Training Manual was also presented during the training sessions Young conducted. [*See* Tr. 1163:18-1164:13, describing the Training and Marketing Manual as "a sales

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[10] Instead, for example, when Young wanted to "confirm" the statements about insurance, he relied on page 8 of the Training and Marketing Manual. [See Division Exhibit 661 at p. 1 of 24].

manual for clients."]. The Training and Marketing Manual parroted many of the assurances contained in the offering documents used to market the SIB CD, particularly assurances related to liquidity and insurance. [Division Exhibit 742, p. 12 of 21].[11]

As Young knew, this Training and Marketing Manual was intended to be a resource for SGC's financial advisers in answering questions from clients. [Tr. 3414:21-3415:5; 3260:21-3261:10; *see also* Division Exhibit 370; Tr. 414:18-416:9; *see also* Tr. 1163:18-24, describing the Training and Marketing Manual as "a sales manual for clients"; Tr. 1167:12-14 (confirming that the information in the Manual was designed to be used in talking with customers)].

a. Young permitted SGC to participate in various sales incentives related to the SIB CD, and failed to ensure those incentives were properly disclosed.

SGC also used or participated in various sales incentive programs related to encouraging the selling the SIB CD, including:

- SGC's referral fees: SIB paid SGC a percentage of the CD value (typically 3%) both at the time of the referral and annually for the life of the CD, based on each referral to the SIB CD. [Tr. at 104:4 – 105:14].

- SGC's payment of a "trailing commission" to the SGC FA credited with the referral: under this compensation plan, SGC paid its FAs, generally, 1% of the value of any CD referred by the adviser. [Tr. at 113:24 – 115:14]. Importantly, the adviser received this 1% payment throughout the life of the CD. [Tr. at 117:4-22]. In other words, if a CD were redeemed early, the financial adviser would stop receiving payments in connection with that CD and if the CD were extended beyond its original term, the 1% payment would continue. [Tr. at 114:22 – 115: 2]. Therefore, if an SGC financial adviser sold a $1 million SIB CD with a five year term, the financial adviser would receive 1% of $1 million each year for five years; if the investor rolled the CD over for another five years, the SGC financial adviser would continue to receive the 1% payment each year. A compensation consultant hired by SGC confirmed to the Respondents in early 2008 that this

11 In the hearing, Young claimed he actually used revised versions of the Manual. For the reasons explained in the Division's post-hearing briefing, that assertion lacks any credibility.

resulted in out-sized compensation. [Division Exhibit 271 at Pgs. 6, 8, 28 of 72; Division Exhibit 432 at Pgs. 7 and 13 of 47]. By way of comparison, an SGC financial adviser that sold a domestic certificate of deposit, the adviser's fee was about 25 basis points (0.25%). [Tr. at 117:1-18; 1171:22-25].

- SIB-CD related bonuses: SGC financial advisers were paid significant quarterly bonuses based on meeting certain thresholds of SIB CD sales. [Tr. at 115:15 – 116:9; see also Division Exhibits 772, 773]. The SIB CD was the only product subject to such bonuses at SGC. [Tr. at 115:19 – 116:5].
- In addition, SGC offered cash bonuses, trips, and other rewards.[12]
- a program referred to as the Top Producers Club (or the Top Producers Celebration); and [Tr. at 117:23 – 118:16]
- sales contests related to only the SIB CD. [Tr. at 116:10-25].

[*See, generally,* Tr. at 1170-1178]. Each of these programs resulted from Allen Stanford's persistent goal of growing SIB's assets. [Tr. at 1033:19 – 1034:8].

Additionally, Young knew, and endorsed, Green's supervision of an undisclosed sales incentive program for SGC FAs, which was designed to increase CD sales to U.S. investors and to "grow" the assets of the bank. [Tr. at 1038:5-17; 1039:3-8; 2928:2 – 2929:4].

Young failed to make sure that this extensive SIB-specific compensation was disclosed to investors. Nor did he ensure that investors were told of SGC's overall financial dependence on SIB, even though this information would have been important to investors. [See Tr. at 1416:1-1417:15; 1420:8-16; 1422:24-1424:9; 1506:22-1508:21; 1560:5-11; 1562:24-1564:17.] They failed to make such disclosures despite knowing from the McLagan report prepared by a

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12 In addition, the top producers were eligible to receive six-figure "mega-bonuses." [Division Exhibit 606 at Pgs. 74-77; *see also* Tr. at 4012:21 – 4013:22]. SGC's only disclosure regarding incentive compensation was a form letter—sent after the SIB CD had been recommended and sold—that disclosed the 3% referral fee and stated that "SGC may receive additional incentive bonus for Financial Advisors who aid in the sell [sic] of SIBL's CD" (emphasis added).

consultant working for SGC, that the SIB compensation program was above market, did not meet U.S. regulatory requirements, and created a bias towards the SIB CD. [See Division Exhibit 96 at p 6; Division Exhibit 271 at pp 5, 7].

F. Young knew that SGC failed to disclose its sizable financial relationship with SIB.

In a section of the offering documents captioned "Affiliate Transactions," SIB disclosed that it paid SGC a referral fee of 3% pursuant to a marketing services agreement. [Division Exhibit 64 at p. 12 of 14]. However, as Young knew, SGC's fees for sales of SIB CDs greatly exceeded this amount. According to the Receiver's forensic accountant, SIB paid SGC more than $360 million in connection with the sale of SIB CDs from 2004 to 2008. These fees were almost six times greater than what SIB and SGC represented in the offering documents and in SIB's Reg. D filings. Additionally, Bogar and Young knew that the offering documents failed to disclose other material related-party transactions between SIB and SGC. For example, in December 2004, SIB entered into an agreement with SGC (the "Private Equity Agreement") that authorized SGC to identify private equity opportunities for SIB, negotiate terms on behalf of the bank, and manage the portfolio.[13] [Division Exhibit 570]. SIB paid SGC an annual fee of 3.5% of the book value of the specific private-equity holdings that SGC managed. [Id.] SIB's private equity, which consisted of illiquid investments in speculative companies, were part of SIB's overall investment portfolio (which was purportedly managed in its entirety by Pendergest-Holt and her team of analysts in Memphis). [Tr. at 2901:11-14; 91:8 – 92:19]. These holdings were inconsistent with SIB's representations that SIB's assets "are invested in a well-diversified portfolio of highly

[13] The agreement provided: "SGC will review and monitor the financial condition and business operations of the portfolio companies, including analysis of financial statements and shareholder reports, and will provide evaluations and reports to SIBL in such form as reasonably requested by SIBL. SGC may also perform due diligence and assist in negotiating terms on future investments, as well as provide marketing assistance." [Division Exhibit 570 at Pg. 5 of 6].

marketable securities issued by stable governments, strong multinational companies and major international banks." [Division Exhibit 607 at Pg. 5 of 17].

Young received regular reports on SIB's private-equity investments. [Tr. at 709:11 – 710:23; 2901:20 – 2904:22]. These reports showed that SIB had hundreds of millions of dollars invested in illiquid, private equity. [Division Exhibits 530, 503, 476, 439, and 652]. As a result, SGC received consulting fees of approximately $39 million for managing SIB's private equity portfolio. [Division Exhibit 707; Tr. at 105:15 – 110:25].

Also, beginning in 2006, SGC entered into an agreement which, among other things, authorized SGC research analysts to prepare SIB's "Quarterly Update" for distribution to SGC FAs and SIB CD investors (the "Research Agreement").[14] [Tr. at 108:1-21 (discussing the 5th column from the left of Division Exhibit 707); Tr. at 746:23 – 748:10 (discussing Division Exhibit 94)]. The Quarterly Update provided a market summary and sector analysis, and described the adjustments that SIB made to its portfolio based upon SGC's market analysis. [Tr. at 746:23 – 748:10]. According to its audited financials, SGC earned $54.6 million in "research fees" from 2006 to 2008. [Division Exhibit 707; Tr. at 108:1-21].

G. Even as Stanford's empire crumbled, Young continued to provide false assurances to SGC's financial advisers.

During the weeks of January 26 and February 2, 2009, Young joined Green on a damage control "road show" to reassure SGC's financial advisers that SIB was sound. It cannot be seriously disputed that by this time Young knew or was reckless in not knowing that SIB had a liquidity problem, that SGC's clearing broker refused to do business related to SIB. Yet, Young

[14] According to SGC's audited financials, SGC had a "verbal agreement" to provide market research to Stanford affiliates and to produce quarterly research reports for SIB. Analysts in Memphis registered with SGC prepared the quarterly research reports for SIB. [Tr. at 746:23 – 748:10].

blindly assured SGC's financial advisers, in effect, that "all is well." [See generally Initial Decision at 25-26].

V. LEGAL ANALYSIS

A. Young is both primarily and secondarily liable for violating the antifraud provisions.

1. Young should be held accountable for his own actions.

The record leaves no doubt that Young violated Section 17(a) of the Securities Act and Section 10(b) and Rule 10b-5 of the Exchange Act.[15] In particular, as the ALJ properly concluded, Young specifically authorized representations to outside parties and even to SGC's own financial advisers that were materially false or misleading. [See above at pages 12-14 (discussing Young's efforts to attack outside CPAs questioning SIB through false talking points), 18-19 (discussing Young's misleading "road show") and 9-10 (discussing Young's direct participation in an effort to falsely assure SGC's financial advisers about Pershing's decision to stop wiring CD-related funds).] There is little doubt those representations were false and material; indeed, Young's only real challenge to those findings is that, according to him, he did not act with the requisite scienter when he made or authorized those false statements. [See, e.g., Respondent's Brief at 27-28]. As discussed below, Young's argument should be rejected.

2. In addition, Young should be held accountable for his role in allowing SGC to use the materially false SIB offering documents to sell the SIB CD.

The ALJ agreed with the Division that the SIB offering documents were materially false but declined to hold Young liable for those misrepresentations because he was not the "maker" of

[15] The elements and general standards related to these offenses are well-known and, in the interests of brevity, will not be repeated here, except for the requirement that a respondent act with scienter and certain issues with regard to primary liability as a "maker" of a statement. Young has not challenged the other requirements. But if further discussion is necessary, the Division incorporates its post-hearing submissions.

the statements included in those materials. But it is well-established the three main subdivisions of Section 17 of the Securities Act and Rule 10b-5 of the Exchange Act are "mutually supporting rather than mutually exclusive." *Cady, Roberts & Co.*, 40 S.E.C. 907, 913 (1961). As a result, clauses (a) and (c) may reach persons that "made" false statements themselves (i.e., that are prohibited by clause (b)) or who are responsible for false statements that are "made" by others. *See, e.g., VanCook v. SEC*, 653 F.3d 130 (2nd Cir. 2011) (holding that late trading in mutual fund is actionable under (a) as a scheme, under (c) because it operated as a fraud on the fund, or under (b) because the late trades were implied representations). Therefore, even if the ALJ correctly concluded that Young was not the "maker" of the statements included in the offering materials, he can – and should be – held primarily liable for his role in disseminating those false statements.[16] Alternatively, because, as discussed below, he acted with at least recklessness, Young should be held liable for aiding and abetting SGC and SIB's undisputed fraud in using those false offering documents.[17]

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[16] Bogar and Young are not insulated from liability simply because they did not communicate directly with investors when the CD was referred. *See Anderson v. McGrath,* 2013 WL 1249154 (D. Ariz. March 26, 2013) (recognizing that "[t]he maker of a fraudulent misrepresentation is subject to liability... if the misrepresentation, although not made directly to the other, is made to a third person and the maker intends or has reason to expect that its terms will be repeated or its substance communicated to the other."(citing *Janus Capital Group, Inc. v. First Derivative Traders*, ---U.S. ---, ----, 131 S. Ct. 2296, 2302, 180 L.Ed.2d 166 (2011); *Stoneridge Inv. Partners, LLC v. Scientific–Atlanta,* 552 U.S. 148, 172 (2008)); *Anixter v. Home-Stake Production Co.*, 77 F.3d 1215, 1226 (10th Cir. 1996) ("There is no requirement that the alleged violator directly communicate misrepresentations to plaintiffs for primary liability to attach") (internal citations omitted); *City of Monroe Employees Retirement System v. Bridgestone Corp.*, 399 F.3d 651, 686 n.29 (6th Cir. 2005), *cert. denied*, 546 U.S. 936 (2005) ("The requirement that the plaintiff allege that the defendant made a misrepresentation does not mean that the plaintiff must allege that the defendant communicated that misrepresentation directly to the plaintiff").

[17] For the same reasons, Young should be held liable for aiding and abetting SGC's violations of Section 15(c)(1) of the Exchange Act and Sections 206(1) and (2) of the Advisers Act.

3. Young acted with the necessary scienter and should not be permitted to hide behind unspecified actions by others.

Young claims that because he believed the offering documents were vetted by inside and outside counsel and because the Commission had certain suspicions about SIB that he did not act with scienter.[18] His argument falls for several reasons.

First, it is important to look at what Young knew. When Young approved misleading "talking points" as damage control, engaged in a damage control "road show," and when he approved the dissemination of the offering materials and the training program, he knew that SIB's portfolio was a "black box" into which SIB had refused to let SGC see. He had, consequently, no basis to approve SGC's use of the claims about SIB's portfolio. Yet, at no point did he require SGC to disclose that it was unable to confirm SIB's representations about its portfolio, including performance and liquidity, and the risks that arose therefrom. In fact, the investors did not know this crucial information. [E.g., Tr. 1419:6-1420:7 (Dore); 1500:4-16 (Stegall)].[19]

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18 *Scienter* may be established by showing that the defendant acted intentionally or with severe recklessness. *Shushany v. Allwaste, Inc.*, 992 F.2d 517, 521 (5th Cir. 1993) (quoting *Broad v. Rockwell Int'l Corp.*, 642 F.2d 929, 961-62 (5th Cir.) (en banc), *cert. denied*, 454 U.S. 965 (1981)). Severe recklessness includes (1) an extreme departure from the standards of ordinary care and (2) a present danger of misleading buyers or sellers of securities that is either known to the defendant or is so obvious that the defendant must have been aware of it. *Shushany v. Allwaste, Inc.*, 992 F.2d 517, 521 (5th Cir. 1993); *Broad,* 642 F.2d at 961-62.

19 Broker-dealers that recommend securities to their customers have an obligation to disclose all material information the broker-dealer has regarding the securities, including negative information. *See, e.g., De Kwiatkowski v. Bear, Stearns & Co.*, 306 F.3d 1293, 1302 (2d Cir. 2002) (broker-dealer "is obliged to give honest and complete information when recommending a purchase or sale"). Moreover, where the broker-dealer lacks essential information about a security, the broker-dealer must disclose this as well as the risks which arise from the lack of information. *Hanly v. SEC*, 415 F.2d 589, 595-597 (2d Cir. 1969) (finding that broker-dealer should disclose lack of essential information and risks arising therefrom)[19]; *SEC v. Current Financial Services, Inc.*, 100 F. Supp. 2d 1, 7 (D.D.C. 2000) ("[A] salesman cannot deliberately ignore that which he has a duty to know and recklessly state facts about matters of which he is ignorant." (quoting *SEC v. Kenton Capital, Ltd.*, 69 F. Supp. 2d 1, 9 (D.D.C. 1998)); *SEC v. Hasho*, 784 F. Supp. 1059, 1107 (S.D.N.Y. 1992) (citing *Hanly*, 415 F.2d at 597). A

Further, Young knew, but failed to insure investors were told, that the information he did have about SIB's investments – through his knowledge into SIB's private-equity portfolio – revealed that a very sizable part of SIB's assets was invested in the polar opposite of liquid, high-quality investments. In short, his knowledge that SIB had a sizable private equity portfolio simply cannot be squared with his blindly allowing investors to be assured that SIB's assets were liquid. Likewise, as recognized by the ALJ, Young possessed information that, at a minimum, raised questions about SIB, the SIB CD, Stanford, or the integrity of the government of Antigua and Barbuda. At a minimum, the Respondents were obliged to alert SGC's customers of the inherent inconsistency between these representations of safety and security and the information that the Respondents possessed. *See Randy*, 38 F. Supp. 2d at 669 (representative who knew of certain facts that were inconsistent with representations in offering materials for CDs issued by foreign entity committed fraud by failing to alert investors to those inconsistent facts when recommending the CDs).

In addition, Young also knew that the offering documents did not accurately disclose the fees SIB paid to SGC to market the CDs and other related-party transactions.[20]

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broker-dealer cannot "recklessly state facts about matters of which it is ignorant and when it lacks essential information about a security, it should disclose this as well as the risks which arise from his lack of information." *Hanly*, 415 F.2d at 597.; *see also Kenton Capital*, 69 F.Supp.2d at 9 ("Since the duty to investigate acts as an 'implicit warrant[y]' of the soundness of the investment, a failure to disclose facts relating to such an investigation is an omission of material fact"); *Hasho*, 784 F. Supp. at 1107 (same). Here, Young's duties were heightened by the extraordinary nature of the portfolio's alleged returns. *See SEC v. Milan Capital Group, Inc.*, 2000 WL 1682761, at * 5 (broker's "duty to investigate is even greater where promotional materials are in some way questionable, for example, by promising unusually high returns").

[20] Material related-party transactions must be disclosed. *See, e.g., Zagami v. Natural Health Trends Corp.*, 540 F.Supp.2d 705, 710-12 (N.D. Tex. 2008) (noting, in a 10(b) fraud case, the "preference for disclosing related-party transactions" and that "without disclosure, investors cannot know the true nature of a transaction"). Here, the research and other fees upon which SGC depended to survive, were material because a reasonable investor would want to know what

Finally, as the ALJ detailed, Young actually knew myriad additional information raising concerns about SIB and that contradicted what he allowed SGC to promise investors about SIB and the SIB CD. *See, e.g.,* 3337:6-18; Division Exhibit 696; *see also* Division Exhibit 705; Tr. 3609:13-17; 3382:14-20; 3382:2]. Young knew that SIB had a substantial amount of assets invested in illiquid private equity despite also claiming that SIB's assets were invested in a liquid portfolio. Likewise, Young was well-aware of Pershing's concerns about transparency. [*See, e.g.,* Tr. 924:17-925:21; 1008:15-22]. He also knew of Snyder Kearney's demand for transparency. [Tr. 1264:2-9]. And Young was heavily involved with responding to, and therefore knew about, the concerns raised by outside CPAs.

Many of these additional facts would be sufficient on their own to establish scienter. When the facts he knew are viewed collectively and compared to his actions, the conclusion that each acted with intent, or at least severe recklessness is inescapable.[21] And even if the Commission believes that Young subjectively believed what he was told by SIB (a conclusion made very difficult given the bulk of evidence calling it into question), that does not preclude a finding of

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financial incentives may be motivating his broker to recommend a particular investment. *See Steadman v. SEC*, 603 F.2d 1126, 1129-30 (5th Cir. 1979), *aff'd*, 450 U.S. 91 (1981) (affirming Commission's holding that adviser's failure to disclose his heavy borrowing from the same bank at which his advised clients held accounts was a material omission under Section 17(a) of the Securities Act and Section 10(b) and Rule 10b-5 of the Exchange Act, because the loan transactions "created a potential for subordinating the [client's] interests to his own"); *Chasins v. Smith, Barney & Co.*, 438 F.2d 1167, 1172 (2d Cir. 1970) (broker's failure to disclose its position as market maker in securities recommended to customers was material omission, since "[t]he investor .. must be permitted to evaluate overlapping motivations through appropriate disclosures, especially where one motivation is economic self-interest") (*citing SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 196 (1963)).

[21] And there can be no doubt whatsoever, under the facts of this case and the responsibilities and standard of care, that Young acted, at the very least, negligently.

liability. A professional in Young's position cannot simply parrot the marketing information furnished by the issuer, SIB, even if they actually believe the representations.[22]

Young does not actually challenge much of the above analysis. Instead, his brief focuses on his argument that he should be able to escape the consequences of his fraudulent conduct because, he claims, he "reasonably relied" on others. The ALJ appears to have credited this argument for purposes of evaluating Young's scienter under the antifraud provisions. But, a careful analysis of his argument only confirms that there is no credible evidence of any real "reliance" and that, even if Young subjectively relied on the presence of attorneys and others, his reliance was wholly and recklessly unreasonable.

As a threshold matter, Young repeatedly tries to excuse his conduct by claiming that the Commission had the same materials he did yet did not bring an enforcement action and by pointing to conduct of Leroy King, the head of the Antiguan FSRC. Neither supports his argument. It is black letter law that an individual cannot negate his scienter by blaming perceived inaction by regulatory authorities. *See, e.g., G. K. Scott & Co.*, 51 S.E.C. 961, 966 *n.21 (1994), aff'd, 56* F.3d 1531 (D.C. Cir. *1995); accord, e.g., William K Cantrell, 52* S.E.C.1322, 1326 n.14 (1997); *Frank L. Palumbo, 52* S.E.C. 467, 478 n.60 . (1995); *Variable Investment Corp.*, 46 S.E.C. 1352, *1354* n.6 (1978).[23]

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22 *See SEC v. Hasho*, 784 F. Supp. 1059, 1107 (S.D.N.Y. 1992) (citing *Hanly*, 415 F.2d at 597) ("By making a recommendation, a securities dealer implicitly represents to a buyer of securities that he has an adequate basis for the recommendation."). This means that the securities professional must get independent confirmation of the issuer's representations, and that he is not entitled to "take on faith" what the issuer tells him. *Id.* at 1067.

23 In any event, Young's argument hinges on a December 2008 meeting with Leroy King at SIB's office in Antigua [Young Br. at 6]. Based on the well-known, longstanding corruption allegations about the Antiguan government and the widespread allegations that Stanford had loaned significant sums of money to the Antiguan government, Young admitted that it was necessary to approach his dealings with the FSRC with a certain amount of skepticism. [Tr.

Likewise, Young's efforts to obtain the benefit of a reliance on counsel defense without actually claiming he ever actually received legal advice should be rejected. This case presents almost the opposite situation than the situations present in the cases he relies on. For example, unlike in *Howard v. SEC*, 376 F.3d 1136 (D.C. Cir. 2004), there is no evidence that Young was specifically kept apprised of efforts by outside counsel to draft the relevant documents, but instead he simply "assumed" their involvement. Young does not need an attorney to know whether information is misleading or not. For example, his own compliance subordinate, Michael Koch, recognized that the insurance information being presented in training to SGC's financial advisers was misleading. [Tr. 3797:10-25]. There is no evidence whatsoever that Young or his subordinates sought legal advice to make sure it was permissible to include such statements.

Instead, this case falls squarely in line with the well-established law that reliance on counsel is not reasonable in the face of red flags. *See, e.g., Wonsover v. SEC,* 205 F.3d 408, 415 (D.C. Cir. 2000) (no justifiable reliance on counsel excusing lack of inquiry by defendant in face of multiple red flags); *Sorrell v. SEC,* 679 F.2d 1323, 1327 (9th Cir. 1982) (when a party "ignores the obvious need for further inquiry, even in reliance on assurances from other brokers or attorneys, he violates the act") (citations omitted). A respondent cannot ignore the obvious need for further inquiry, even in reliance on assurances from other firm personnel or attorneys. *Sorrell* 679 F.2d at 1327 (citing *Feeney v. SEC, 564* F.2d 260, 262 (8th Cir. 1977)). When a securities professional ignores an obvious need for further inquiry, even in reliance on assurances from other brokers or attorneys, he violates the law. *See, e.g., Everest Securities v. SEC,* 116 F.3d 1235, 1239 (8^{th} Cir. 1997) (rejecting argument that defendants "properly relied on the

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3394:24 – 3395:8]. Yet, the record is devoid of evidence that Young exercised any skepticism in his dealings with King or the FSRC. In fact, just the opposite.

information contained in the memorandum because it was provided to them by [the issuer and its] attorneys" because reliance on others did not excuse the defendants' lack of investigation).[24]

Finally, it is well-recognized that a securities professional such as Young has a duty to investigate the truth of the representations they make to clients, because, by virtue of their title, clients are entitled to presume that the representations made were the result of reasonable investigation. *Hanly v. SEC,* 415 F.2d 589, 596 (2d Cir.1969). Thus, when recommending specific securities, a broker has a duty to do some independent investigation and cannot rely solely on the materials submitted by the issuer or given to him by his employer. *SEC v. Hasho,* 784 F. Supp. 1059, 1107 (S.D.N.Y.1992). The amount of independent investigation required varies with the circumstances, but the duty to investigate is greater whenever the legitimacy of an investment is in some way questionable. *SEC v. Milan Capital Group, Inc.,* No. 00 Civ. 108(DLC), 2000 WL 1682761, at *5 (S.D.N.Y. Nov. 9, 2000). Moreover, "[s]ecurities issued by smaller companies of recent origin obviously require more thorough investigation." *Hanly,* 415 F.2d at 597. Where circumstances "raise enough questions," "a person's failure to investigate before recommending that investment [may be considered] reckless." *Milan Capital Group,* 2000 WL 1682761, at *5 (citing various examples).

B. At a minimum, Young "caused" violations of Section 206(2) of the Advisers Act.

Section 206(2) prohibits any investment adviser from engaging in any transaction, practice or course of business which operates as a fraud or deceit upon any client or prospective client. *See* Investment Advisers Act of 1940 § 206(2), 15 U.S.C. § 80b-6(2) (2011). Scienter is an element of a Section 206(1) violation, but negligence is sufficient to support a Section 206(2) charge. *SEC v.*

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[24] Young's argument also fails because the attorneys he cites to were not disinterested or independent. *SEC v. O'Meally,* 2010 WL 3911444, at *4 (S.D.N.Y. Sept. 29, 2010); *Arthur Lipper Corp. v. SEC, 547* F.2d 171, 181-82 (2d Cir. 1976). This lack of independence is especially critical here, given SGC's financial dependence on SIB.

Steadman, 967 F. 2d 636, 641 and 643 (D.C. Cir. 1992); *SEC v. Moran*, 922 F. Supp. 867, 896-97 (S.D.N.Y. 1996). For causing liability to attach, three elements must be demonstrated: (1) a primary violation; (2) an act or omission by the respondent that was a cause of the violation; and (3) the respondent knew or should have known that his conduct would contribute to the violation.

Here, the only seriously disputed element is whether Young knew or should have known that his conduct would contribute to a violation. For the reasons set out above, that negligence requirement is easily satisfied.

C. The remedies imposed by the ALJ are appropriate and in the public interest.

The Initial Decision confirms that in imposing sanctions against Young, the ALJ carefully applied the factors set out in *Steadman*, 603 F.2d at 1140 and other precedent. [See Initial Decision at 29]. Those sanctions should be affirmed. In fact, Young does not offer any specific challenge to the sanctions beyond arguing he did nothing wrong.

1. The ALJ properly required Young to disgorge his CD-related compensation.

Young has not challenged either the imposition or the amount of disgorgement or prejudgment interest imposed. His silence is not surprising. The ALJ, based on the evidence provided by a forensic accountant working on behalf of an equity Receiver, calculated his ill-gotten gains based on the percentage of SGC's revenue that was derived from selling the SIB CD. There is no basis for Young to argue that the same percentage applied to his compensation is not a reasonable approximation of his gain. Indeed, as set out in its post-hearing submissions, the Division believes a higher amount would also constitute a reasonable approximation of his ill-gotten gains; at a minimum, however, this amount is appropriate. *Thomas C. Bridge*, 2009 SEC LEXIS 3367 at *93 (only reasonable approximation of ill-gotten gains is necessary); *SEC v. Resnick*, 604 F. Supp. 2d 773, 782 (D. Md. 2009); *SEC v. First Jersey Sec., Inc.*, 101 F.3d 1450, 1474-75 (2d Cir. 1996), *cert. denied*, 522 U.S. 812 (1997) (citations omitted); *cf. In re GMC*, 110 F.3d 1003, 1019 n. 16 (4th Cir.), *cert. denied*, 522 U.S. 814 (1997). Likewise, prejudgment interest is applicable. *See Hughes Capital*, 917 F. Supp. at 1090.

2. The ALJ properly ordered Young to pay third-tier civil penalties.[25]

The ALJ required Young to pay a civil penalty of $260,000 based on his direct misrepresentations and his causing of SGC's violations. This penalty amount, at a minimum, is supported by the record in this case. The Division established that: (1) Young committed fraud; (2) that conduct caused widespread harm to investors; (3) there is a clear need for deterrence here because a person in Young's position was in the best position to understand the problems, yet he continues to deny his wrongdoing. Likewise, penalties are appropriate to send a message that conduct such as Young's will not be tolerated, particularly by senior brokerage professionals. A meaningful civil penalty is appropriate here. *Cf. FPA*, 2003 WL 21658248, *18); *Don Warner Reinhard*, Rel. No. IA-3139, 2011 WL 121451, *2 (Jan. 14, 2011) (Comm'n Op. *Thomas C. Bridge*, 2009 SEC LEXIS 3367, *98 (2009) (citing Exchange Act Section 21B(c)).

3. The ALJ properly issued a cease-and-desist order and barred Young from further involvement in the securities industry.

The Division demonstrated that Young committed recurring securities violations when he failed to carry out his fiduciary responsibilities as members of the management team of SGC. These violations resulted in profound harm to investors, who were falsely lured into investing in the SIB CD. He has provided no assurance against future violations and a cease-and-desist order

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25 With regard to the financial remedies, Young has submitted a sworn financial statement apparently suggesting he does not have the ability to pay the award. But this argument is waived because it was not presented to the ALJ. *See, e.g., In the matter of David Henry Disraeli*, Securities Act Rel. No. 33-8880, 92 SEC Docket 754 (December 21, 2007). The materials included in that submission only confirm the risk Young poses by his continued involvement as a compliance consultant.

would also serve an important public function in alerting the public that Young violated the securities laws.

Similarly, the ALJ properly imposed a full collateral bar against Young. As the record in this case demonstrates, Young poses a continuing threat to the investing public because his fraudulent activities were egregious and recurrent. In addition, acting with a high degree of scienter, Young caused investors to be seriously misled. And Young has offered no assurances against future violations; instead, he continues to claim he acted properly. Continued participation by Young in the securities and related industries will present opportunities for future violations.

VI. CONCLUSION

Young violated the federal securities laws in a way that created substantial hardship on the investing public. He should be held accountable for his actions. The Division therefore asks that, at a minimum, the Initial Decision in this case be affirmed.

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